

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

BRIANNE DRESSEN, <i>et al.</i> ,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	Civil Action 3:23-cv-155
	§	
ROB FLAHERTY, White House Director	§	
of Digital Strategy, in his official capacity;	§	
<i>et al.</i> ,	§	
	§	
Defendants.	§	

Joint Status Report

The Government Defendants, the Stanford Defendants, and Plaintiffs (collectively, “parties”) submit this Joint Status Report pursuant to the Court’s November 5, 2024, Order. ECF No. 48.

1. On May 22, 2023, Plaintiffs filed the Complaint in this action. *See* ECF No. 1. On October 25, 2023, this Court stayed all pretrial deadlines and proceedings until the Supreme Court sends down its judgement in *Murthy v. Missouri*. *See* ECF No. 36. The Supreme Court issued its decision in *Murthy v. Missouri*, 144 S. Ct. 1972 (2024), on June 26, 2024.

2. On July 22, 2024, the parties filed a joint motion for entry of a scheduling order and stay of discovery pending a resolution of Defendants’ dispositive motions, *see* ECF No. 39, which was granted by the Court, *see* ECF No. 41.

3. On September 12, 2024, Plaintiffs filed their Amended Complaint. *See* ECF No. 42. In it, Plaintiffs added claims against certain Federal Defendants in their individual capacities, triggering response deadlines that differed from those formerly agreed to by the parties in their proposed scheduling order. *See* ECF No. 39.

4. In the interest of efficiency and to preserve party and judicial resources, Government Defendants filed an unopposed motion requesting that the Court vacate all pending deadlines until the individual-capacity defendants are adequately represented. ECF No. 43. The Government Defendants further proposed that the parties file a joint status report on November 4, 2024. *Id.*

5. The Court granted the Government Defendant's motion. ECF No. 44.

6. The November 4, 2024, report informed the Court that, at that time, most, but not all, individual-capacity defendants had been served, and not all individual-capacity defendants had obtained representation.¹ The report also notified the Court that Plaintiffs intended to move for alternative methods of service due to their concerns that the few individual-capacity Defendants yet to be served were avoiding service.

7. As of November 4, 2024, the only individual-capacity Defendants yet to be served were Alejandro Mayorkas, Xavier Becerra, and Rob Flaherty.

8. On November 7, 2024, Plaintiffs were contacted by Department of Justice (DOJ) counsel who informed Plaintiffs that he represented all Government Defendants sued in their individual capacities in this action except for Defendants Andrew Slavitt and Rob Flaherty. DOJ counsel also provided Plaintiffs with the contact information of those agents authorized to accept service on behalf of Defendants Mayorkas and Becerra. Defendants

¹ As noted in the Government Defendants' earlier motion, the Department of Justice is not authorized to represent any person in their individual capacity until the process set out in 28 CFR 50.15 has been completed. *See* ECF No. 43. That process is required anytime a claim is brought against an individual federal officer or employee, and the process takes time to complete.

Mayorkas and Becerra were served shortly thereafter, leaving Defendant Flaherty as the sole individual-capacity Defendant yet to be served.

9. Due to Plaintiffs' ongoing concerns that Mr. Flaherty was avoiding service, Plaintiffs moved for alternative methods of service. *See* ECF No. 49.

10. On November 25, 2024, the Court granted Plaintiffs' motion for alternative service, ECF No. 50, and Plaintiffs represent that they served Mr. Flaherty by means of one of the authorized alternative service methods on November 27, 2024.

Plaintiffs' Position

11. As all individual-capacity Defendants have now been served, to avoid undue delay, it is Plaintiffs' position that this action should be permitted to proceed. Accordingly, Plaintiffs propose the following briefing schedule:

- Defendants' answers/dispositive motions to the Amended Complaint: **January 27, 2025**
- Plaintiffs' response to Defendants' dispositive motions: **March 4, 2025**
- Defendants' replies: **March 25, 2025**

12. To Plaintiffs' knowledge, all individual-capacity Defendants have obtained counsel except for Defendant Flaherty, who is already a party to this lawsuit and who has been represented by the DOJ in his official capacity.²³

Government Defendants' Position

² At the time that Plaintiffs initiated this action, Defendant Flaherty was employed as the White House Director of Digital Strategy, and Plaintiffs sued him in his official capacity. Mr. Flaherty has since left the White House, and Christian Tom currently serves as the White House Director of Digital Strategy. *See* Fed. R. Civ. P. 25(d).

³ To Plaintiffs' knowledge, the DOJ has completed its process under 28 CFR § 50.15 with respect to all individual-capacity Government Defendants except for Defendant Flaherty.

13. Defendant Flaherty was only very recently served, and the parties have not had the opportunity to confer regarding a consolidated briefing schedule. The Government therefore proposes that the parties, including the individual-capacity defendants represented by separate DOJ counsel, Mr. Slavitt and/or his counsel, and Mr. Flaherty and/or his counsel, convene to discuss a potential schedule for future proceedings in the coming weeks. The Government therefore proposes that the parties file a joint status report on or before January 8, 2024, updating the Court and proposing a schedule for further proceedings.⁴

14. In the alternative, and to the extent the Court is inclined to enter a briefing schedule before all parties have conferred, the Government proposes the following schedule:

- Defendants' answers/dispositive motions to the Amended Complaint: February 10, 2025⁵
- Plaintiffs' response to Defendants' dispositive motions: March 17, 2025
- Defendants' replies: April 7, 2025

Stanford Defendants' Position

15. The Stanford Defendants join the Government's proposal.

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

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Special Counsel

⁴ Undersigned counsel for the Government Defendants only represents the Government Defendants in their official capacity and cannot speak for defendants served in their individual capacity.

⁵ The Government notes that because Defendant Flaherty was purportedly served on November 27, 2024, his deadline to respond to the Complaint is January 27, 2025. *See* Fed. R. Civ. P. 12(a)(3).

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/s/ Faith E. Lowry

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* *Motions for admission pro hac vice forthcoming*

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