

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS

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No. 6:21-cv-00191

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**State of Texas et al.,**  
*Plaintiffs,*

v.

**Chiquita Brooks-LaSure et al.,**  
*Defendants.*

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**ORDER**

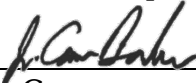
To assist in resolving the parties' dispute regarding discovery into agency decision-making, the court ordered the parties to file briefing to supplement their Rule 26(f) report. Doc. 59. Defendants have now filed their supplemental briefing. Doc. 65. In it, defendants argue that the court "should dismiss" plaintiffs' claim pursuant to 5 U.S.C. § 706(1) that agency action was unlawfully withheld or delayed. *Id.* at 14. Defendants also argue that plaintiffs' estoppel claim be dismissed for failure to state a claim, *id.* at 18, and that plaintiffs' Spending Clause claim "fails on the pleadings and should be dismissed," *id.* at 22. Defendants ask that the court "direct the filing of a partial motion for judgment on the pleadings." *Id.* at 9.

The court has already denied defendants' motion to dismiss that asserted a lack of subject-matter jurisdiction on account of plaintiffs' administrative appeal. Defendants are directed, however, to file a Rule 12(c) motion for judgment on the pleadings asserting their remaining arguments that the pleadings fail to state a claim on which relief can be granted. Given that defendants' supplemental Rule 26(f) brief already develops those arguments substantially, defendants' Rule 12(c) motion expounding those arguments should be filed by October 4, 2021. Further briefing on that motion will then proceed under the default deadlines.

Given that development, plaintiffs' obligation to file a responsive Rule 26(f) supplemental brief is terminated. Instead,

plaintiffs' motion to supplement the administrative record, which is currently due on or before November 11, 2021, may also present responsive arguments to defendants' Rule 26(f) briefing and the questions posed by the court.

*So ordered by the court on September 28, 2021.*

  
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J. CAMPBELL BARKER  
United States District Judge