

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS**

STATE OF TEXAS,

Plaintiff,

v.

MERRICK GARLAND, in his official capacity as
Attorney General, *et al.*,

Defendants.

Case No. 5:23-cv-00034-H

**JOINT MOTION FOR CONTINUANCE WITH THE PARTIES' COMPETING
SCHEDULING PROPOSALS**

On October 20, 2023, the Court “notifie[d] the parties that it will advance the trial on the merits and consolidate it with the motions hearing” that had previously been scheduled for October 30, 2023. ECF No. 73 at 1. The Court instructed the parties that, “[a]t trial, [they] should be prepared to discuss and, if necessary, present evidence regarding” eleven topics. *Id.* at 2–3. The Court stated that, “[i]f, in light of this notice, a party will need additional time to gather evidence for the trial on the merits, that party may request a continuance of the October 30, 2023 trial date.” *Id.* at 3. The parties conferred regarding the Court’s notice and the potential need for a continuance. The parties agree that additional time is necessary to adequately prepare for trial, including to gather the evidence requested by the Court and any other evidence that may be relevant to a final decision on the merits in this case. The parties disagree, however, on when trial and the accompanying pre-trial deadlines should specifically occur. Plaintiff requests that the trial date be continued to November 20, 2023. Defendants request that the current trial date be vacated and reset at a later date after the parties complete their proposed pre-trial steps described below.

The parties’ respective proposals are set forth below.

Plaintiff’s Position

In advance of trial, Plaintiff proposes that the parties exchange declarations addressing the

topics covered by the Court's October 20 notice. Plaintiff proposes that the parties exchange these declarations—and any declarations subject to the Court's October 16 minute order and previously due on October 24, 2023—by November 1, 2023. After the declarations are exchanged, Plaintiff proposes that the parties confer about a possible agreement regarding the admissibility of such declarations and the possible exchange of responsive declarations. Plaintiff proposes that, by November 7, 2023, the parties will notify the Court whether they have reached such an agreement, and, if not, the parties will present a joint proposal, or, if necessary, separate proposals, regarding the presentation of evidence at trial. Such proposal (or proposals) will contain proposed deadlines for any potential objections and responsive declarations. Plaintiff proposes that the parties file a final list of trial exhibits by November 17, 2023, and that trial be held on November 20, 2023. After diligently working with its agencies to acquire declarations relevant to this case, Plaintiff believes that November 20 provides sufficient time for the parties to present their case. Thus, Plaintiff disagrees with Defendants that trial should be vacated indefinitely.

Defendants' Position

Defendants agree that the parties should first exchange declarations addressing the topics covered by the Court's October 20 notice. Defendants propose that the parties be afforded two weeks to prepare these declarations and propose that the parties exchange them, and any declarations subject to the Court's October 16 minute order and previously due on October 24, 2023, by November 6, 2023. After the declarations are exchanged, Defendants propose that the parties confer about the substance of their respective declarations and the subjects identified in the Court's standard scheduling order for civil cases, including discussing whether discovery is necessary, proposed dates for pre-trial disclosures, and a proposed trial date. By November 13, 2023, Defendants propose that the parties file a status report and proposed scheduling order for the Court's consideration.

Defendants request that the parties undertake these steps before trial to allow the parties

sufficient time to gather evidence and to conserve judicial resources by narrowing the disputed issues necessitating resolution at trial. Pending before the Court are Plaintiff's motion for a preliminary injunction and Defendants' motion to dismiss. To date, neither party has moved for summary judgment, and Plaintiff has not yet submitted a declaration in this case. Accordingly, Defendants are not yet aware of the extent to which discovery might be necessary to challenge assertions in such declarations. Because the motions hearing has been consolidated with a trial on the merits, and to preserve Defendants' right to develop an adequate factual record at trial, including for any appeal, Defendants request a sufficient opportunity to review Plaintiff's declarations and determine whether any subsequent discovery may be required. At this time, and until they have had an opportunity to review the factual assertions in Plaintiff's declarations, Defendants do not yet know the extent to which discovery will be required prior to trial.

* * *

The parties set forth the dates described herein in the attached proposed order.

CERTIFICATE OF CONFERENCE

I certify that on October 20, 2023, and October 23, 2023, undersigned counsel conferred regarding this motion. The parties agree that the October 30, 2023 trial date should be continued; Plaintiff proposes that it be continued to November 20, 2023, and Defendants propose that it be vacated and set at a later date after the parties complete the proposed pre-trial steps described above.

Dated: October 23, 2023

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Respectfully submitted,

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Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on October 23, 2023, I electronically filed the foregoing paper with the Clerk of Court using this Court's CM/ECF system, which will notify all counsel of record of such filing.

/s/ Michael J. Gaffney _____
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**[PROPOSED] ORDER GRANTING JOINT MOTION FOR CONTINUANCE WITH
THE PARTIES' COMPETING SCHEDULING PROPOSALS**

Upon consideration of the parties' Joint Motion for Continuance with the Parties' Competing Scheduling Proposals, it is ORDERED that the Motion is GRANTED. It is further ordered that:

Plaintiff's Proposal	Defendants' Proposal
<ul style="list-style-type: none">• The trial date is continued to November 20, 2023 at 9:00 am in the United States District Court, Courtroom C-216, 1205 Texas Avenue, Lubbock, Texas;• The parties shall exchange declarations by November 1, 2023;• The parties shall notify the Court whether they have reached an agreement regarding the admissibility of such declarations and the possible exchange of responsive declarations by November 7, 2023;• The parties shall file a final list of trial exhibits by November 17, 2023.	<ul style="list-style-type: none">• The October 30, 2023 trial date is vacated;• The parties shall exchange declarations by November 6, 2023;• By November 13, 2023, the parties shall submit a status report and proposed scheduling order that addresses whether discovery will be necessary, proposed deadlines for pre-trial disclosures, and a proposed trial date.

IT IS SO ORDERED.

Dated: _____

James Wesley Hendrix
UNITED STATES DISTRICT JUDGE