

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

NATIONAL INFUSION CENTER
ASSOCIATION, on behalf of itself and its
members; GLOBAL COLON CANCER
ASSOCIATION, on behalf of itself and its
members; and PHARMACEUTICAL RESEARCH
AND MANUFACTURERS OF AMERICA, on
behalf of itself and its members,

Plaintiffs,

vs.

XAVIER BECERRA, in his official capacity as
Secretary of the U.S. Department of Health and
Human Services; the U.S. DEPARTMENT OF
HEALTH AND HUMAN SERVICES; CHIQUITA
BROOKS-LASURE, in her official capacity as
Administrator of the Centers for Medicare and
Medicaid Services; and the CENTERS FOR
MEDICARE AND MEDICAID SERVICES,

Defendants.

Civil Action No. 1:23-cv-00707

JOINT MOTION TO SET BRIEFING SCHEDULE AND FOR OTHER RELIEF

Plaintiffs and Defendants respectfully move jointly to set a briefing schedule governing the parties' forthcoming cross-motions for summary judgment, and for related relief requested below.

1. On June 21, 2023, Plaintiffs brought this action seeking declaratory and injunctive relief. ECF No. 1. Service has been effectuated by certified mail.

2. On August 10, 2023, Plaintiffs moved for summary judgment, ECF No. 33, pursuant to the parties' stipulated briefing schedule, ECF Nos. 33–34.

3. On August 28, 2023, before their deadline to respond to Plaintiffs' motion for summary judgment and to file a cross-motion for summary judgment, Defendants moved to dismiss for lack of subject matter jurisdiction and improper venue. ECF No. 39. The Court vacated the existing schedule for the summary judgment briefing, ECF No. 45, and, on February 12, 2024, granted Defendants' motion to dismiss, ECF No. 53.

4. On September 20, 2024, the Fifth Circuit reversed that decision and remanded the case to this Court. *Nat'l Infusion Ctr. Ass'n v. Becerra*, 116 F.4th 488 (2024). The mandate issued on November 12, 2024.

5. Since the Fifth Circuit's decision, the parties have met and conferred and intend to file cross-motions for summary judgment pursuant to Federal Rule of Civil Procedure 56.

6. The parties propose the following stipulated schedule for cross-motions:

- Plaintiffs will file a motion for summary judgment on or before January 10, 2025.
- Defendants will file a combined cross-motion for summary judgment, and opposition to Plaintiffs' motion on or before March 7, 2025.
- Plaintiffs will file a combined reply in support of their motion and opposition to Defendants' cross-motion on or before April 11, 2025.
- Defendants will file a reply in support of their cross-motion on or before May 13, 2025.

7. The parties respectfully request that the Court allow each brief described above to exceed this Court's default page limitations, due to the complexity of this case and the consolidated briefing on parallel motions. The parties request that the Court set the parties' page limits as follows:

- Plaintiffs' motion: 40 pages
- Defendants' combined cross-motion and opposition: 50 pages
- Plaintiffs' combined reply and opposition: 40 pages
- Defendants' reply: 30 pages

8. Defendants also note that the parties have conferred regarding Plaintiffs' intent to attach an expert declaration to their forthcoming motion for summary judgment. Defendants do not seek any relief on that issue at this time. Nevertheless, Defendants will review Plaintiffs' filing when it comes in, and reserve their rights to object or otherwise request any appropriate relief from the Court—including, specifically, relief that may disrupt this otherwise agreed-upon briefing schedule (*e.g.*, by requesting a pause in briefing to allow for expert discovery, submission of expert testimony from the government, a motion to strike or preclude consideration of the declaration, or some combination thereof). Plaintiffs note in response that their expert report was first disclosed to the government in August 2023, and any changes would simply be to update the report (without changing any of the opinions). The government has therefore had notice of those opinions since August 2023, and any delay to take expert discovery at this late date should therefore take that fact into account.

9. Because this case involves the facial constitutionality of a federal statute, the parties further respectfully request that the Court dispense with Defendants' obligation to file an Answer to the Complaint.

CONCLUSION

For the foregoing reasons, the parties request that the Court: (1) order the above stipulated schedule for briefing on the parties' forthcoming cross-motions for summary judgment; (2) grant the parties' joint request to extend page limits for all briefs identified in that schedule; and (3) dispense with Defendants' obligation to file an Answer to the Complaint.

Dated: December 18, 2024

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