

1                    IN THE UNITED STATES DISTRICT COURT  
2                    FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

3 JOAQUIN CARCAÑO, et al.,                    ) 1:16CV236

4                    Plaintiffs,                    )

5 V.                    )

6 PATRICK McCRORY, in his                    )  
7 Capacity as Governor of North                    )  
8 Carolina, et al.,                    )

9                    Defendants,                    )

10                    and                    )

11 PHIL BERGER, in his official                    )  
12 Capacity as President Pro                    )  
13 Tempore of the North Carolina                    )  
14 Senate; and TIM MOORE, in his                    )  
15 Official capacity as Speaker of                    )  
16 The North Carolina House of                    )  
17 Representatives.                    )

18                    Intervenor-Defendants.                    )

19 \_\_\_\_\_ ) 1:16CV425

20 UNITED STATES OF AMERICA,                    )

21                    Plaintiff,                    )

22 V.                    )

23 STATE OF NORTH CAROLINA, et al.                    )

24                    Defendants,                    )

25                    and                    )

PHIL BERGER, in his official                    )  
Capacity as President Pro                    )  
Tempore of the North Carolina                    )  
Senate; and TIM MOORE, in his                    )  
Official capacity as Speaker of                    )  
The North Carolina House of                    )  
Representatives,                    )

Winston-Salem, North Carolina  
November 14, 2016  
10:05 a.m.

Intervenor-Defendants.                    )

1                   TRANSCRIPT OF THE **TELEPHONIC STATUS CONFERENCE**  
2                   BEFORE THE HONORABLE JOI E. PEAKE  
3                   UNITED STATES MAGISTRATE JUDGE

3 APPEARANCES:

4 1:16CV236

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17 1:16CV425

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## P R O C E E D I N G S

1  
2           **THE COURT:** Good morning. So this is a telephone  
3 scheduling conference in 16CV236 and 16CV425.

4           What I am going to do is start by just asking  
5 everyone on the call to identify themselves, let me know who  
6 will be speaking. I am going to go through each of the groups,  
7 and then I'll set out where we are and take up the matter  
8 before the Court.

9           Just in terms of who is on the call, let me start  
10 with the Carcano Plaintiffs.

11           **MR. WILKENS:** Yes, Your Honor, it's Scott Wilkens  
12 on, and I believe that my colleagues Christopher Brook and Jon  
13 Davidson are also on.

14           **THE COURT:** All right. Anyone else on for the  
15 Carcano Plaintiffs then?

16           All right. The DOJ Plaintiffs?

17           **MS. STOUGHTON:** Your Honor, this is Corey Stoughton,  
18 and I will be speaking; and I'm on the line with Ripley Rand,  
19 United States Attorney, and Whitney Pellegrino and Lori Kisch.

20           **THE COURT:** Very good. Thank you. Anyone else for  
21 the DOJ Plaintiffs then?

22           **MS. PFEIFFER:** Good morning, Your Honor. This is  
23 Sonya Pfeiffer. I'm a non -- I represent A. N., A. T., and  
24 Alaina Kupec. I will not be speaking. I'm on the call just to  
25 make sure I'm up to speed with scheduling and the status of the

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1 case.

2 **THE COURT:** You were interrupted with someone joining  
3 the meeting, so can you repeat for me who you are?

4 **MS. PFEIFFER:** Yes, ma'am, Sonya Pfeiffer. I'm an  
5 attorney for three of the declarants, A. N., A. T., and Alaina  
6 Kupec.

7 **MS. NULL:** This is Taryn Wilgus Null for DOJ.

8 **THE COURT:** And you are with the U.S. Department of  
9 Justice?

10 **MS. NULL:** Correct.

11 **THE COURT:** All right. Anyone else then that hasn't  
12 been identified either by Ms. Stoughton or who have identified  
13 themselves for the DOJ Plaintiffs?

14 **MR. SUSSMAN:** My name is Jake Sussman. I, like Ms.  
15 Pfeiffer, represent a third party, Stephanie Paige Dula, who is  
16 the subject of some of the litigation around the subpoenas. So  
17 I was on the call -- just to the extent that there's any  
18 relevance on scheduling, I was going to address it.

19 **THE COURT:** All right. Very good. For the record,  
20 could you repeat again your name for me?

21 **MR. SUSSMAN:** Jake Sussman.

22 **THE COURT:** All right. Anyone else with the DOJ  
23 Plaintiffs or related third parties?

24 All right. Then to the Legislative Defendants, who  
25 do we have?

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1           **MR. DUNCAN:** Good morning, Your Honor. This is Kyle  
2 Duncan for the Legislative Intervenors, and I'm joined by Leah  
3 McDowell and Robert Potter.

4           **THE COURT:** Very good. Anyone else then for the  
5 Legislative Defendants or Intervenors? And for the State  
6 Defendants, or what we've designated as the State Defendants,  
7 who do we have?

8           **MR. BOWERS:** Good morning, Your Honor. This is Butch  
9 Bowers, and on the line with me are Bill Stewart and Bob  
10 Stephens.

11           **THE COURT:** All right. Very good. And anyone else  
12 on the call for the State Defendants in this case?

13           All right. And then, finally, I have the UNC  
14 Defendants.

15           **MR. GORE:** Good morning, Your Honor. This is John  
16 Gore on behalf of the UNC Defendants, and I'm joined by Noel  
17 Francisco.

18           **THE COURT:** All right. Very good. And then let me  
19 just ask: Anyone else on the call that hasn't otherwise been  
20 identified?

21           **MS. PRATT:** Good morning, Your Honor. This is  
22 Carolyn Pratt from UNC.

23           **THE COURT:** All right. Very good. Anyone else?

24           All right. By text order last Thursday, I set this  
25 for a status and scheduling conference today in light of the

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1 joint request of the parties. In that same text order, I went  
2 ahead and continued the hearing that was previously set for  
3 this upcoming Friday just so you all would have as much notice  
4 as I could give you of that in light of the issues that we  
5 might take up today, and I think your joint request or your  
6 joint submission was very helpful.

7           What I would like to do is start with just going  
8 through to get the position of each of the parties, and I'm  
9 going to ask you to address three things in particular. The  
10 first is your position on proceeding with discovery or staying  
11 discovery for, say, 60 or 90 days and extending the trial date  
12 and all the discovery deadlines by that same period of time or,  
13 otherwise, staying discovery pending a ruling in the Supreme  
14 Court decision in *G.G.* So that would be the first issue I'd  
15 ask you to address.

16           The second would be your position on whether the  
17 Court should proceed with the Department of Justice's motion  
18 for preliminary injunction and how the grant of certiorari in  
19 *G.G.* affects that.

20           And then, finally, your position on whether the Court  
21 should proceed with the remaining due process issue on the  
22 Carcano Plaintiffs' motion for preliminary injunction and how  
23 the grant of cert. affects that, and also what position you are  
24 taking on that with the Fourth Circuit.

25           I will tell you that what I may end up doing is



1 asking you to file position papers on the latter two matters so  
2 that the district judge will have the ability to consider those  
3 and make some separate determination as to the preliminary  
4 injunction motions, and the matter that I would be most  
5 interested in resolving this morning would be the question  
6 about discovery; but I think it would be helpful to me to go  
7 ahead and let you address those things, as I go through each of  
8 you, with the focus on the discovery piece for me this morning.

9           So let me just start, Mr. Wilkens, with you.

10           **MR. WILKENS:** Thank you, Your Honor. So, first, on  
11 the first piece in terms of discovery, we would support a stay  
12 of the proceedings without the 60- or 90-day deadline but  
13 pending the outcome of the ruling in *G.G.*, and the reason being  
14 that -- you know, given that Title IX is one of the important  
15 claims in the action, we do think that the Supreme Court's  
16 ruling in *G.G.* is likely to have an impact on that claim, the  
17 shape of it, the discovery necessary to pursue that claim and  
18 to present that claim at trial. We think it makes sense to  
19 stay discovery pending the ruling in *G.G.* and then shape the  
20 discovery around that ruling.

21           So that would be our position with respect to the  
22 first issue. If you have questions on that, I would be happy  
23 to address that.

24           **THE COURT:** All right. I guess the only question I  
25 would have is if there is some disagreement on that, is there

1 any reason not to stay everything for 90 days and then set a  
2 further status conference, like this one, at the conclusion of  
3 the 90-day period just to visit where we are at that point to  
4 determine what everyone's position might be then?

5 **MR. WILKENS:** Your Honor, that would be fine, I mean,  
6 to reconvene in 90 days. And, again, I will say -- I think --  
7 I mean, it's possible that our view could change over the  
8 course of 90 days, but I think -- where we are now, I think we  
9 would be in favor of a stay pending the ruling in the *G.G.*  
10 case, but we are happy to reconvene in 90 days to readdress  
11 that.

12 **THE COURT:** All right. That helps. If you want to  
13 just briefly let me know where you are on those other two  
14 issues, that would be helpful, too.

15 **MR. WILKENS:** On the second issue, I really -- I  
16 guess I would want to really leave that with the United States.  
17 We -- whether the Court wants to proceed with that -- I mean,  
18 it's obviously a matter for the Court, and my understanding is,  
19 from what the United States has said in our joint filings, they  
20 want the Court to proceed with that. If the Court wants to do  
21 that, that's fine. I mean, it's not our motion, but --

22 **THE COURT:** I just want to make sure -- I know, if  
23 you have a position on that, understandably that might not be  
24 your focus; but if there is anything you wanted to add on that,  
25 and then I will hear from DOJ.

1           **MR. WILKENS:** We certainly wouldn't be -- if the  
2 Court were to proceed with that and obviously issue the broader  
3 relief -- grant a PI with the broader relief, I mean, that's  
4 obviously a matter for the Court to decide and that -- if such  
5 relief were granted, that would obviously be a benefit to  
6 transgender people across the state.

7           With regard to the third issue, unless you want to --

8           **THE COURT:** I guess -- so you are certainly not  
9 opposed to the Court proceeding, but you don't have a position  
10 necessarily either way on that one?

11           **MR. WILKENS:** That's correct, Your Honor.

12           **THE COURT:** All right. And then the one that I would  
13 assume is more your focus, tell me about the third piece.

14           **MR. WILKENS:** Yeah, on the third piece, we are -- we  
15 would like -- or we believe it would be appropriate to have  
16 that due process piece fall within the scope of the stay. We  
17 are -- we're pursuing broader relief in the Fourth Circuit  
18 through our protection appeal, and that's where our focus is in  
19 terms of seeking broader relief. We had understood from the  
20 Court that it would prefer not to deal with things in a  
21 piecemeal manner. I envisioned that the due process issue  
22 would be heard at trial or dealt with at the same time, and so  
23 we didn't kind of view that as a separate process.

24           **THE COURT:** Right.

25           **MR. WILKENS:** That's why, I mean, in coming to our

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1 position in terms of on the stay, we would not want a carve-out  
2 of due process.

3 Now, if we are done with those three issues, I wanted  
4 to add one more.

5 **THE COURT:** Okay. All right. Let me follow up with  
6 that. I think that my understanding and intent would be and  
7 would have been that we concluded that if the due process piece  
8 required any evidentiary hearing or determination, that that  
9 would be rolled into the trial, and you were in agreement with  
10 that being delayed, at least previously at the time, until May  
11 and now until after a ruling in *G.G.*, but my understanding was  
12 before, at least, that you were still maybe requesting a ruling  
13 on the due process piece to the extent it didn't require an  
14 evidentiary hearing before the Court; but that's part of what I  
15 want to make sure I understand.

16 **MR. WILKENS:** Yes, so, Your Honor, I mean, we are --  
17 we are not requesting a separate ruling on the due process  
18 claim, and we are -- we're not seeking to have that carved out  
19 of a stay. That would be part of the stay that we would be  
20 agreeing to --

21 **THE COURT:** Okay.

22 **MR. WILKENS:** -- before the Court.

23 **THE COURT:** All right. So you would then agree not  
24 only to a stay of discovery but also to a stay of your -- any  
25 further determination of your motion for preliminary injunction

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1 on due process; is that right?

2 **MR. WILKENS:** That's right.

3 **THE COURT:** All right. So one piece of that I had  
4 included was the position at the Fourth Circuit. I don't want  
5 to be in a position where the Fourth Circuit is holding up what  
6 it might do waiting for us to rule on the due process piece if  
7 you are all in agreement that the due process piece can be  
8 stayed until trial.

9 **MR. WILKENS:** I mean, at least -- there certainly has  
10 been briefing about this before the Fourth Circuit, but I don't  
11 believe that the due process claim will in any way inhibit the  
12 Fourth Circuit from ruling on the appeal pending before it.

13 **THE COURT:** Right. So your position is then that can  
14 proceed separately, and you are agreeing to stay any further  
15 consideration of the due-process-based request for preliminary  
16 injunction until the trial, whenever that might be; is that  
17 right?

18 **MR. WILKENS:** Yes, Your Honor.

19 **THE COURT:** Okay. So then what was the other issue  
20 you wanted to raise or include?

21 **MR. WILKENS:** The other issue I wanted to raise is  
22 that we would like to -- well, at present, we would like to  
23 amend the complaint in one respect, and, that is, one of our  
24 named Plaintiffs, Mr. Carcano, has -- is just about to receive  
25 a right-to-sue letter under Title VII against UNC, and so we

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1 would want to amend the complaint to add that claim. And the  
2 question is just given the stay -- you know, there is a 90-day  
3 period in which he has to do that under the right-to-sue  
4 letter. It was an EEOC complaint.

5 **THE COURT:** Right.

6 **MR. WILKENS:** So when either -- I guess we could  
7 either just -- with the Court's permission -- and we've already  
8 previewed this or mentioned this to UNC and to the other  
9 parties.

10 **THE COURT:** Okay.

11 **MR. WILKENS:** We could amend it -- we could go ahead  
12 and amend it now, or I guess there's also an option that the  
13 Court and UNC could agree to a tolling period on when we would  
14 need to amend by to meet the statutory --

15 **THE COURT:** I think probably the best way to do that  
16 would be to have you go ahead and make your motion to amend,  
17 and we'll take care of that, but then stay any further  
18 proceedings on that consistent with whatever other stay might  
19 be in place. I think that probably makes that simpler to take  
20 care of it that way, but I will hear from UNC or anyone else  
21 who wants to add on to that.

22 Any reason, though, you wouldn't just go ahead and  
23 make your motion to amend if --

24 **MR. WILKENS:** Yeah, no -- sorry, Your Honor, I didn't  
25 mean to interrupt. The reason why we wouldn't do that now, and

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1 we could certainly make a motion for leave or if -- I mean, if  
2 that was what we needed to do, we can certainly do that now.

3 I would also just mention that just given the passage  
4 of time, we may -- as the case proceeds, we may want to add or  
5 sub in some additional named plaintiffs as people graduate and  
6 life moves on. We may want to add -- you know, there may be  
7 some different named plaintiffs. In other words, you know, I  
8 don't know when, but maybe, let's say, at the time *G.G.* were to  
9 come down, we would want to be able to do that. I just wanted  
10 to note that. The parties have also -- already are aware of  
11 that issue and have at least discussed it.

12 **THE COURT:** On that, it seems to me, it probably  
13 makes sense to visit that whenever we're lifting whatever stay  
14 may be in place --

15 **MR. WILKENS:** Yes, Your Honor.

16 **THE COURT:** -- so we don't do that unnecessarily  
17 while proceedings are otherwise stayed; but I will let anyone  
18 address that as well, if there is anything else to add on that  
19 piece.

20 All right. Anything else, Mr. Wilkens?

21 **MR. WILKENS:** Not at the moment, no, thank you.

22 **THE COURT:** All right. Ms. Stoughton?

23 **MS. STOUGHTON:** Thank you, Your Honor. The United  
24 States' position on the first question is really related to our  
25 position on the second question, which is that, you know, we

1 filed a motion for preliminary injunction. You know, the  
2 motion was premised on ongoing irreparable harm to people  
3 because of H.B. 2; and while that's happening in the absence of  
4 preliminary relief, we object to any stay of the action,  
5 recognizing that the Court has granted cert.

6           You know, we have claims that are independent of the  
7 claims being considered in *G.G.*, the VAWA claim, and, you know,  
8 as we all know, anything can happen with that decision. And so  
9 while that certainly does obviously play into the Court's  
10 understanding of how to proceed with the case, we would urge  
11 the Court to proceed, and we want to vigorously pursue the  
12 enforcement action until and unless we had preliminary relief;  
13 in which case, I think our calculation would obviously be much  
14 different because the motivating force behind our desire to  
15 move forward and be ready as quickly as possible is that  
16 irreparable harm.

17           So we don't object to any brief stay, recognizing the  
18 reality that the Court will probably certainly at least want to  
19 have trial --

20           **THE COURT:** Right.

21           **MS. STOUGHTON:** -- by the outcome of the *G.G.* case,  
22 but there is a big difference between staying proceedings and  
23 then having to start up all over again in June, or whenever it  
24 happens, and a brief stay where we get, you know, the 60-plus  
25 depositions -- you know, we get a lot of that under our belt



1 and can be ready to go very quickly after that decision  
2 happens.

3           **THE COURT:** All right. What about the possibility of  
4 extending all the deadlines, including the trial, for, say, 90  
5 days to get to that period after we'll have a decision in *G.G.*  
6 for final trial preparation and trial and then staying  
7 discovery for 90 days just to let those intermediate issues  
8 work themselves out, however they might, and then I can set  
9 this for another scheduling conference at the conclusion of the  
10 90-day period so that we can visit those things? It's not then  
11 stayed indefinitely. We'll have to revisit it then, and we  
12 would keep the schedule that's presently in place but extend  
13 everything 90 days so that there would be a plan in place for  
14 starting back up after we take a brief stay of those things.

15           Any objection to that?

16           **MS. STOUGHTON:** Well, Your Honor, I think -- yes, I  
17 think so. I mean, we haven't discussed that internally, but I  
18 think our overriding goal is to keep things moving, and, you  
19 know, I don't know -- I guess a brief stay -- I'd have to take  
20 that back, I'm sorry. It wasn't discussed thoroughly so I  
21 don't think I can take a position on that right now.

22           **THE COURT:** As far as the second piece, the motion  
23 for preliminary injunction, that's going to really be up to the  
24 district judge. And in terms of addressing how the grant of  
25 cert. affects that and what your position would be on that, is

1 that something then -- presumably, even if I stay discovery,  
2 that's still pending. That would be something you could  
3 address with the district judge in terms of your position as to  
4 whether the grant of cert. affects that or should affect any  
5 determination on that; is that right?

6 **MS. STOUGHTON:** Your Honor, I mean -- yes, Your  
7 Honor. We are happy to state that position with the district  
8 judge, but our position is that he should certainly rule on the  
9 preliminary injunction that's pending. The grant of cert.  
10 obviously may ultimately affect things, but until there's a  
11 ruling, the -- you know, the law is still as it was set forth  
12 in our brief.

13 **THE COURT:** Okay. What about the Carcano motion for  
14 preliminary injunction on due process grounds? It sounds like  
15 they are willing to let that be stayed pending trial. Do you  
16 have any position on that?

17 **MS. STOUGHTON:** No, we don't have any position on  
18 that.

19 **THE COURT:** All right. Anything else that you wanted  
20 to raise or address, Ms. Stoughton?

21 **MS. STOUGHTON:** Your Honor, I just wanted to go back  
22 to the notion of a brief stay. I do understand the logic of  
23 it, but I also think there's really no harm -- there is quite a  
24 lot of discovery pending in this case, and I think all the  
25 parties are feeling the burden of compressing a lot of

1 depositions in a brief time frame. So I think our preference  
2 would be to proceed with discovery, push the schedule out, as  
3 you say, for 60 or 90 days, but then just let discovery go, and  
4 we can then take it at a slower pace, as opposed to just  
5 staying discovery and then kind of start the machine back up  
6 again.

7 **THE COURT:** What discovery would you anticipate  
8 trying to do within the next, say, 90 days?

9 **MS. STOUGHTON:** Well, I think there are a number of  
10 depositions already scheduled where the schedules of lawyers  
11 and witnesses have been worked out. So the most urgent thing I  
12 think would be to keep that. It was a feat, a miracle, with  
13 the hard work of all the parties on the phone to get that  
14 schedule in place. So one thing that I think makes a lot of  
15 sense is to keep that schedule, and, you know, if a few things  
16 need to be -- if a few dates need to be moved around, that's  
17 fine. We have suspended depositions. So there are some  
18 depositions that need to be worked back in, but, again, with a  
19 pushed-back schedule, we will have the space for that.

20 **THE COURT:** All right. And can you just give me an  
21 idea of who we're talking about? Who will those depositions  
22 be?

23 **MS. STOUGHTON:** You know, some of the other parties  
24 may have it more at their fingertips. I think upcoming are  
25 some of the educators, some of whom are experts and some of

1 whom are fact witnesses, to discuss how H.B. 2 or a different  
2 rule affects school environments. I think that there are  
3 public safety experts, the law-enforcement-type experts the  
4 parties have put forward. Those are on the block, and then I  
5 think there are a few individual witnesses upcoming, but there  
6 may be more than that. Others may know off the top of their  
7 head.

8           **MS. PFEIFFER:** Your Honor, this is Sonya Pfeiffer.  
9 If I could just pipe in on that for a moment? I represent  
10 three of the declarants, again, A. N., A. T., and Alaina Kupec.  
11 All three of those depositions are scheduled. I have arranged  
12 my schedule appropriately, including purchasing a ticket to  
13 Washington, D.C., to be present for the deposition of Alaina  
14 Kupec at the end of January, and I know that my clients have  
15 also rearranged their schedules to be prepared for those.

16           **THE COURT:** And as I understand it, that's -- are  
17 those individuals then also subject to some of the pending  
18 motions on -- motions to quash that I also have pending?

19           **MS. PFEIFFER:** Yes, ma'am.

20           **THE COURT:** All right. Ms. Stoughton, anything else  
21 you wanted to add on that?

22           **MS. STOUGHTON:** No, Your Honor.

23           **THE COURT:** Okay. All right. Let me hear from the  
24 Legislative Defendants then. Mr. Duncan?

25           **MR. DUNCAN:** Sure, Your Honor, good morning.

1           **THE COURT:** Good morning.

2           **MR. DUNCAN:** Right, so the first question is the  
3 discovery. We are in agreement with the Carcano Plaintiffs on  
4 this issue. As we set forth in the pleading that we filed,  
5 frankly, our position has always been, ever since the stay of  
6 G.G. back in early August, that the whole thing should be  
7 stayed. Now our position, as shouldn't surprise anybody, is  
8 just stronger. The Court is going to decide the case.

9           The brief -- I mean, I represent the school board in  
10 that case as well, so I can tell you that the briefing schedule  
11 right now is pretty quick. I don't think the Court is -- our  
12 brief is due on December 12. I don't know that -- I don't see  
13 anywhere on the Court website and I haven't received any  
14 communication from the Court about a definitive oral argument  
15 date. My assumption is it's going to be late February, but  
16 that's not official. It will only be official when the Court  
17 sets the calendar, and lots of stuff can happen then that might  
18 push off the argument date. So that's sort of up in the air,  
19 but that case has been granted.

20           We think, as we set forth in our pleading, that that  
21 means discovery ought to be stayed. We would not at all object  
22 to what Your Honor suggested, which is a 90-day stay of  
23 everything and then we reconvene. I think that would be  
24 mid-February, if I'm not mistaken.

25           **THE COURT:** Right.

1           **MR. DUNCAN:** At that point, who knows what the world  
2 is going to look like. It can change rapidly these days, and  
3 we can all assess where we are at that point.

4           **THE COURT:** All right.

5           **MR. DUNCAN:** I think that makes perfect sense.

6           If I may, and, of course, interrupt me with any  
7 questions --

8           **THE COURT:** Well, let me -- I do want you to tell me  
9 about the other things as well and anything else you want to  
10 add.

11           As to the particular depositions that the United  
12 States has mentioned, it sounds like there are educators,  
13 public safety experts, and individual witnesses. Tell me how  
14 you anticipate the decision in *G.G.* may affect the scope of  
15 those depositions or the focus of those depositions going to my  
16 ultimate determination, whether it makes sense to let you go  
17 ahead and proceed with those depositions that you have or  
18 whether it makes more sense to delay those out until we have a  
19 little more information.

20           **MR. DUNCAN:** Your Honor, let me tell you what I am  
21 looking at right now. I'm looking at what I have as a master  
22 deposition calendar on my calendar, and -- well, let me answer  
23 your specific question first.

24           I think that the potential impact of *G.G.* means that  
25 we put off all these depositions. I cannot sit here and

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1 intelligently say, you know, what *G.G.* might affect or might  
2 not affect with respect to any specific depositions or any  
3 specific category of depositions. You know, for example,  
4 depending upon what the Supreme Court does in *G.G.*, we may well  
5 want to advocate for a short -- a reasonable period to file  
6 dispositive motions, especially on the United States' Title IX  
7 and Title VII claims; and it would certainly make sense to  
8 resolve those in light of whatever two legal landscapes we have  
9 instead of going forward with depositions.

10 I guess another way to look at it is to the extent  
11 that these depositions concern any parts of the United States'  
12 claims -- you know, and I'm looking at the calendar. I mean, I  
13 think many of them do. If we are going to think about  
14 dispositive motions, then it really doesn't make sense to go  
15 forward with a bunch of depositions in the interim when they  
16 may not be useful -- may not be necessary at all.

17 The other thing is is that, as I understand the  
18 Carcano Plaintiffs, they can correct me if I'm wrong, the  
19 Carcano Plaintiffs are also in favor of postponing all these  
20 depositions right now. So I just don't understand -- I mean,  
21 the scheduling of all the depositions -- sure, everybody has  
22 expended a lot of effort. I think an economist would call that  
23 a sunk cost. Simply because we've done that doesn't mean we  
24 have to expend frankly geometrically more effort and money,  
25 public money, to go forward with these depositions right now.

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1 I just don't see the point.

2           The other thing is, and I don't mean -- I guess I  
3 don't mean to be political in anything I am trying to say here,  
4 but I think the Court understands that there's going to be a  
5 different administration in place as of January 20. I don't  
6 know what that administration's view of these matters is going  
7 to be, but it certainly, it seems to me, at a minimum makes  
8 sense not to make the parties go forward with massive  
9 expenditures in terms of depositions when we don't even know  
10 what the new administration's position on these issues is going  
11 to be. It may be the same or it may be different, but it seems  
12 to me the prudent thing to do is just to call a timeout on the  
13 depositions until after that becomes clear, and I think it will  
14 be clear and I imagine it will be clear by the end of the  
15 90-day stay that the Court is proposing. So we think all these  
16 depositions ought to be put off.

17           **THE COURT:** All right. Was there anything else you  
18 were otherwise going to address or add? I know then I wanted  
19 to hear from you as to the preliminary injunction as well, but  
20 I didn't know if there was something else you wanted to  
21 include.

22           **MR. DUNCAN:** Sure. I don't think I have anything  
23 else to say on the discovery part --

24           **THE COURT:** Okay.

25           **MR. DUNCAN:** -- of the equation.



1           On the PI motion, our position has been -- and I  
2 think we said this in writing in other pleadings. I don't  
3 think our current pleading addresses this, but we've also said  
4 it to the United States. We don't -- we're not going to try to  
5 argue that the Court shouldn't go ahead and rule on the United  
6 States' preliminary injunction motion, if that's what the Court  
7 wants to do. Frankly, I don't know any basis for saying that  
8 the Court shouldn't rule on it.

9           **THE COURT:** All right.

10          **MR. DUNCAN:** Our position, though, is pretty clear, I  
11 think, that we think -- back when the Court stayed *G.G.*, we  
12 said that that stay alone suggests that the United States'  
13 motion ought to be denied, and now the Court has granted *G.G.*,  
14 and, of course, we still say that the United States' motion  
15 should be denied.

16          But, you know, the United States has made it clear to  
17 us that it views sort of going forward with that PI motion as  
18 important to its interests, and I understand that. So we think  
19 the Court should go ahead and rule on it, and then the parties  
20 can seek whatever appellate relief that they think is  
21 appropriate in light of the Court's motion.

22          **THE COURT:** All right. What about the due process  
23 piece of the Carcano motion for preliminary injunction?

24          **MR. DUNCAN:** Right. I have to say my answer to this  
25 is going to be -- is going to seem a little complicated and

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1 maybe counterintuitive. As I understand the Carcano  
2 Plaintiffs' position on this call, they do not oppose sort of  
3 folding that due process component of the PI ruling into a  
4 stay. If I haven't stated that correctly, forgive me.

5 **THE COURT:** That's my understanding as well; right.

6 **MR. DUNCAN:** Okay. You know, our view is it's their  
7 motion, and so we're not going to tell the Court go ahead and  
8 rule on it or don't rule on it. It's a motion that's seeking  
9 broader relief against my clients than the PI that's already  
10 been entered, so I would be delighted if the Court never rules  
11 on the thing.

12 However, Your Honor, Mr. Wilkens alluded to arguments  
13 being made in the Fourth Circuit, so I want to be clear.

14 **THE COURT:** Right.

15 **MR. DUNCAN:** We are arguing in the Fourth Circuit, in  
16 a motion to dismiss that we've already filed, that the fact  
17 that that due process component in the PI motion is still  
18 hanging out there means that the Fourth Circuit should not  
19 entertain the appeal. We're saying that it doesn't have  
20 jurisdiction, that, you know, you've piecemealed an appeal  
21 across two different courts essentially on the same motion.

22 Now, to be fair, the Carcano Plaintiffs have filed a  
23 vigorous objection to that, and they will disagree with all of  
24 my arguments on that point.

25 **THE COURT:** It's probably helpful to clarify that to

1 the extent there may be some disagreement about what's  
2 happening here. I want it to be at least factually clear what  
3 we are doing here so then it's not one understanding here and a  
4 different presentation at the Fourth Circuit.

5 If there is some basis to go ahead and agree that  
6 that due process piece is stayed or separated out and rolled  
7 into trial so then it doesn't affect anything as part of the  
8 appeal, but the Court also is not going to reach it or proceed  
9 on it, it seems like now is the time to go ahead and figure  
10 that out.

11 **MR. DUNCAN:** I understand, Your Honor. As I  
12 understand it -- I mean, we could all agree here that the due  
13 process part of the PI motion won't be ruled on by the Court  
14 and would be folded into any trial.

15 As I sit here, I don't know -- obviously don't intend  
16 to give away any part of my motion to dismiss the appeal in the  
17 Fourth Circuit.

18 **THE COURT:** Well, I understand that. The concern is  
19 if we are agreeing here to separate it out and fold it into the  
20 trial, then I don't know if it is -- if at least it would  
21 accurately reflect my understanding of what we're doing then to  
22 tell the Fourth Circuit that they should delay or shouldn't  
23 rule because we haven't reached everything that's still pending  
24 before us.

25 I guess that's the tension I want to make sure that

1 we're addressing or at least factually on the same page as to  
2 what is happening here in this Court. Do you understand where  
3 I'm going with that?

4 **MR. DUNCAN:** I do understand. I think I do, at  
5 least. May I make a suggestion? It seems to me that that  
6 would work, that sort of understanding would work -- well, let  
7 me put it this way. It wouldn't work if there's still a  
8 pending motion for preliminary injunction on the basis of the  
9 due process claims.

10 **THE COURT:** So if the Carcano Plaintiffs withdraw the  
11 motion for preliminary injunction on due process grounds  
12 without prejudice and with leave to file that as part of a  
13 request for permanent injunctive relief at trial, then that  
14 would seem to clarify the status of things here and also make  
15 it clear that that issue is not still open or pending here that  
16 otherwise would delay what the Fourth Circuit -- or affect what  
17 the Fourth Circuit might do? Is that fair; right?

18 **MR. DUNCAN:** Your Honor, I think depending on what  
19 sort of the pleading looked like, I think that would clarify  
20 that there's no longer on the table a PI motion based on the  
21 due process claims. That would -- I think that would clarify  
22 things, yeah.

23 **THE COURT:** All right. That raises another question,  
24 and I will come back around ultimately to the Carcano  
25 Plaintiffs to address that; but before I do that, let me let

1 you finish addressing anything else then as to any of the  
2 matters I raised or the additional issues that Mr. Wilkens  
3 raised with respect to amending the complaint or changing the  
4 named plaintiffs at some point, some of those procedural  
5 issues.

6 Anything as to those matters, or anything else you  
7 wanted to add?

8 **MR. DUNCAN:** No, I don't think I have anything else,  
9 Your Honor.

10 **THE COURT:** Okay. All right. Then let me go on to  
11 Mr. Bowers. Let me let you address anything that you want to  
12 add as to those things.

13 **MR. BOWERS:** Thank you, Judge. Hopefully, you'll  
14 appreciate this. I'll just appropriate and adopt everything  
15 that Kyle just said. We're on the same page.

16 **THE COURT:** That's sounds fine.

17 **MR. BOWERS:** We're on the same page on all of these  
18 issues.

19 **THE COURT:** Then if there isn't anything else, I'm  
20 going to move on to the UNC Defendants. Anything at all,  
21 Mr. Bowers, you wanted to add as to any of those things?

22 **MR. BOWERS:** Not at this time, Judge. If I want to  
23 do a reattack, I will let you know; but right now, I will just,  
24 again, stand on the comments that Kyle made.

25 **THE COURT:** All right. Mr. Gore, anything that you

1 want to add?

2           **MR. GORE:** Good morning, Your Honor. Yes, I would  
3 like to address a couple of these points very briefly on behalf  
4 of the UNC Defendants.

5           I think it's clear from our portion of the joint  
6 filing from last week that the UNC Defendants strongly support  
7 a stay of all proceedings until a decision issues from the  
8 Supreme Court in *G.G.* That would also apply to any depositions  
9 or discovery that would be affected, both in their scope and in  
10 their extent and even in their need, by the Supreme Court's  
11 ruling, at least potentially. So we see no basis to go forward  
12 now with any depositions or discovery that might be altered or  
13 obviated by the Supreme Court's decision in *G.G.*

14           On the second issue that Your Honor raised, with  
15 respect to the Department of Justice's motion for a preliminary  
16 injunction, on the merits, I think we made clear our position  
17 as to why that injunction shouldn't issue. From a procedural  
18 standpoint, I don't think we have any objection to the Court  
19 proceeding to rule on that, if the Court chooses to do so.

20           As to the due process issue raised by the Carcano  
21 Plaintiffs, we are again in agreement with the Carcano  
22 Plaintiffs and the other Defendants that that can be rolled  
23 into any eventual trial in the case.

24           I will note, in terms of the Fourth Circuit piece of  
25 that, Your Honor, that the UNC Defendants are -- have been

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1 dismissed as parties to that appeal. So we have no position or  
2 anything to add to that conversation on that issue.

3 **THE COURT:** All right.

4 **MR. GORE:** In terms of the two amendments that  
5 Mr. Wilkens mentioned on the phone, let me take -- or the first  
6 one is amending the complaint to add a Title VII claim for  
7 Mr. Carcano.

8 **THE COURT:** Right. I'm sorry. What's that?

9 **MR. GORE:** Can you hear me, Your Honor?

10 **THE COURT:** I hear you now. You went out for a  
11 minute. Go ahead and restate what your position was on that.

12 **MR. GORE:** I think our position is fairly  
13 straightforward. We would not have any objection to  
14 Mr. Carcano amending the complaint to add that claim at this  
15 time as long as our response to that amended complaint, whether  
16 it would be to adopt our prior motion to dismiss or file a  
17 supplemental motion to dismiss with respect to that particular  
18 claim, would be postponed until after the stay.

19 We had had some conversations about that, I think,  
20 with Mr. Wilkens; and as long as we had 30 days or so after the  
21 stay was lifted to file our responsive pleading, we don't  
22 object to the amendment happening now so that Mr. Carcano can  
23 try to do that within a timely fashion.

24 In terms of the amendment to add additional parties  
25 in order to prevent the case from becoming moot, again, we

1 think that that would be best handled after any eventual stay  
2 is lifted and we have a better sense of what the timing and the  
3 terrain are for the remainder of the case.

4           **THE COURT:** All right. That's very helpful. So let  
5 me come back around then to Mr. Wilkens and Ms. Stoughton to  
6 let you address the issues raised by the Defendants, to the  
7 extent there is anything you wanted to add.

8           Mr. Wilkens, let me go to you first.

9           **MR. WILKENS:** Well, Your Honor, I think with respect  
10 to the due process PI issue and the suggestion that if we were  
11 to withdraw it without prejudice to kind of renewing it as a --  
12 to seek permanent injunctive relief at some later point, I  
13 would just want to -- I don't -- on this call, I don't have a  
14 formal position. It sounds like it may be a workable solution.  
15 I would just want to be able to confer with the various counsel  
16 for the Carcano Plaintiffs and be able to come back to the  
17 Court quickly on that. That very well may be a workable  
18 solution that we could implement fairly quickly.

19           **THE COURT:** Just on that, my intent is this: If the  
20 parties are all in agreement here on this call that it makes  
21 sense to stay that determination at this point, then I don't  
22 see any reason for the Court to have to resolve an issue the  
23 parties otherwise agree should be stayed and rolled over into  
24 trial; but I also want to make sure that that is then sort of  
25 accurately and consistently translated at the Fourth Circuit,

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1 or wherever else it might be, and so while I can note the  
2 parties' positions, I'm -- I think that that may be one for you  
3 all to visit, as I had indicated, maybe with some filing with  
4 the district judge in the next week or so as to everyone's  
5 positions so that it's cleaned up as far as the DOJ motion for  
6 PI motion.

7           It sounds like everyone is in agreement that that one  
8 can proceed, but it might still be helpful to address what  
9 effect, if any, the grant of cert. in *G.G.* might have on that;  
10 and then as to the due process piece, if the parties are in  
11 agreement that should be stayed or handled in trial, then  
12 procedurally the best way to accomplish that so it's not  
13 creating some separate issue or that it's not still showing  
14 pending as here I think would be worthwhile.

15           Does that make sense, Mr. Wilkens?

16           **MR. WILKENS:** It does, Your Honor.

17           **THE COURT:** All right. Anything else you wanted to  
18 respond as to any of those things?

19           **MR. WILKENS:** Just one point that John Gore had made  
20 about amending the complaint to add a Title VII claim for Mr.  
21 Carcano. It would be only against UNC. If UNC does not  
22 object, and I would assume that the other Defendants wouldn't  
23 object to that amendment, then I just wonder whether a motion  
24 for leave is necessary or whether the Court would be able to  
25 just grant us the right to file a third-amended complaint?

1           **THE COURT:** I think what I would intend to do is  
2 handle that as part of this call, and I can ask the clerk to  
3 note an oral motion to amend that I can grant without  
4 objection, if that is ultimately where we are on that. That  
5 would give you then a certain number of days to file that  
6 motion, and it would include, as part of that, the  
7 determination that any response deadline is extended.

8           So I think we can do that. It still is going to show  
9 a motion that's being granted by the Court, but we can do that  
10 all as part of this hearing, unless there is some objection  
11 that would need to be addressed further on any written  
12 presentation. So I will come back around to that, and,  
13 Mr. Wilkens, if I don't, then you can remind me before we end  
14 the call to make sure we've covered that as well.

15           As far as, Mr. Wilkens, before I go to Ms. Stoughton,  
16 the individuals who are otherwise scheduled for deposition and  
17 your position with respect to whether it makes sense to go  
18 ahead and conduct any of those depositions in the next 90 days  
19 or so or whether it would be better to postpone those, I will  
20 hear from you further on that.

21           **MR. WILKENS:** Your Honor, I do think it makes sense  
22 to postpone them. I mean, while there may be some -- it may be  
23 possible to point to some depositions that theoretically may  
24 not be affected by the *G.G.* ruling, it's hard to do that, and I  
25 think -- I think what -- at least what we envisioned is that

1 the *G.G.* ruling may recast the case -- kind of case strategy,  
2 what depositions -- what the parties want to focus on, and I  
3 will note, for example, the various medically related  
4 depositions coming up mostly in January, but that's a very  
5 intensive period of depositions with experts, and that could  
6 very well be impacted in some ways in terms of the questions  
7 that are asked, the areas that are pursued, depending on what  
8 the Supreme Court says about the facts of the case before it  
9 and how it handles transgender issues in its ruling.

10           So I think it makes sense to stay these depositions  
11 because we very well may re-prioritize who -- you know, which  
12 -- what the witnesses will be at trial and, therefore, who  
13 needs to be deposed and who doesn't need to be deposed. One  
14 thing I think everybody on the call would admit is that it's a  
15 very long list of deponents --

16           **THE COURT:** Right.

17           **MR. WILKENS:** -- a lot of depositions, and the idea  
18 that we could kind of truncate that significantly potentially  
19 after a *G.G.* ruling I think would be beneficial to all sides.

20           **THE COURT:** Anything else?

21           **MR. WILKENS:** No, Your Honor.

22           **THE COURT:** Ms. Stoughton?

23           **MS. STOUGHTON:** Your Honor, I don't know that I have  
24 much to add. I think our position is the same. Again, a brief  
25 extension of time is appropriately consistent, but we feel the

1 need to continue to pursue this enforcement action, including  
2 making progress on some of the discovery, which may be affected  
3 by *G.G.*, but I think the question of that is sufficiently  
4 speculative in the absence of preliminary injunctive relief we  
5 feel the need to pursue.

6 **THE COURT:** All right. It is accurate to say that  
7 you are in agreement at least the trial date be extended until  
8 later into the summer of 2017?

9 **MS. STOUGHTON:** We have no objection to that.

10 **THE COURT:** All right. Then anything else for any of  
11 the Defendants?

12 **MR. DUNCAN:** No, Your Honor.

13 **MR. BOWERS:** No, Your Honor.

14 **THE COURT:** All right. What I would intend to do is  
15 this: Along the lines as I had initially asked you to address,  
16 I think that in light of the grant of cert. in *G.G.*, the  
17 overlapping or potentially overlapping issues, and the effect  
18 that it may have or appears likely to have on the scope of  
19 discovery, that it makes sense to delay the trial for 90 days  
20 so that we'll have a decision in *G.G.* prior to trial and,  
21 hopefully, some period of time for dispositive motions as well;  
22 and that with respect to the discovery, while I proceeded with  
23 discovery even with the stay that was granted at the Supreme  
24 Court and in light of the need to go ahead and get some written  
25 discover underway, the depositions -- the volume of depositions

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1 and the extent of the discovery contemplated are voluminous and  
2 extensive and would potentially be impacted significantly by  
3 the decision *G.G.*, but I don't want it to be unnecessarily  
4 delayed and to have a longer period than necessary to get this  
5 case ready for trial once we have some decision from the  
6 Supreme Court.

7           So in light of all that, I think the intermediate  
8 approach that I contemplated would be to stay discovery for 90  
9 days, and that is in order to give the parties an opportunity  
10 to further address and consider the status of the proceedings  
11 at the Supreme Court in *G.G.* and determine what their positions  
12 might be with respect to how we proceed and the extent of  
13 discovery that we need to do, still aiming for a trial date in  
14 the summer of 2017 but extended 90 days to account for the  
15 90-day stay here; and then I'll address that further at a  
16 status and scheduling conference in February.

17           And so what I would intend to do is extend all of the  
18 discovery deadlines for 90 days and extend the trial date for  
19 90 days, stay the pending discovery for that 90-day period, but  
20 then ask the parties to file position statements, and that  
21 would be mid-February, so let's say February 13, as to their  
22 positions on scheduling and discovery, whether the stay should  
23 be extended, and whether the matter is ready to go ahead and  
24 proceed with any part of discovery in order to still continue  
25 with the deadlines that would otherwise apply just with the

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1 90-day extension.

2           And then at that point, I can consider whether there  
3 is a basis to extend the deadlines further, whether it makes  
4 sense to do that, or whether we should go ahead and proceed  
5 with the schedule we previously set just with the 90-day  
6 extensions.

7           With regard to the pending preliminary injunction  
8 motions, I am not going to include either of those in the stay.  
9 Obviously, the parties seem to have some agreement that the  
10 Department of Justice's motion for preliminary injunction could  
11 proceed and that the Carcano Plaintiff's motion for preliminary  
12 injunction could be stayed or rolled into the trial on the  
13 merits; but in light of the parties' positions and the need to  
14 have that presented to the district judge and the need to have  
15 it clarified so that our docket is clear as to the status of  
16 those for purposes of anything that may be happening at the  
17 Fourth Circuit, what I am going to do is ask you to each file a  
18 position statement, and that's just a short sort of turnaround,  
19 say in a week or so, and I will hear from you if we need to  
20 adjust that, but say by next Monday, the 21st, with respect to  
21 your position on the preliminary injunction motions and  
22 specifically the effect of the Supreme Court's granting of  
23 cert. in *G.G.* and the position that you may be taking in the  
24 Fourth Circuit or how any proceedings in the Fourth Circuit  
25 should or could be considered in that determination.

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1           And if you all reach some agreement on the due  
2 process preliminary injunction in the Carcano case, then you  
3 can address that and file an appropriate motion on that, but I  
4 am going to for now leave those as showing pending for you all  
5 to address further with the district judge.

6           So the effect of that would be to stay the pending  
7 discovery-related motions, and I am going to include the UNC  
8 motion to dismiss as well. So the motions that would be stayed  
9 would be in the 236 case -- I am going ask the clerk to follow  
10 with me to make sure I have this. So in the 236 case, it would  
11 be Number 89, which is the UNC motion to dismiss; Number 153,  
12 the motion for protective order on legislative privilege; and  
13 then I show 167, 168, and 172 related to the motions for  
14 protective order and motions to quash. All of those would be  
15 stayed.

16           And then in the 425 case, it would be Number 98,  
17 which is the UNC motion to dismiss; Number 183, which is the  
18 motion for protective order on legislative privilege, and then  
19 what I believe would be Numbers 204, 207, and 211, which are  
20 motions for protective order and as to motions to quash.

21           I will enter a written order on that, but at this  
22 point, it would be a determination that everyone agrees that  
23 the trial could be extended in order to have the decision in  
24 *G.G.* prior to trial, and so I would extend the trial date for  
25 90 days; and I'll let the clerk's office take a look at

1 specifically when that might be reset.

2           And then while we have this intermediate period, I  
3 will go ahead and extend all of the discovery deadlines by 90  
4 days but also include a 90-day stay so that we don't have  
5 unnecessary depositions that we may need to otherwise revisit  
6 or could potentially narrow, and then we'll revisit all of that  
7 after mid-February, and I will go ahead and ask you by  
8 February 13 to file your joint notice, and then I will  
9 anticipate setting it for a telephone scheduling conference,  
10 although if, based on your notice, it looks like it's going to  
11 need a full hearing, then I can set it for a full scheduling  
12 conference and hearing. I would anticipate doing that sometime  
13 either the week of February 13 or February 20. So it would be  
14 there during those middle two weeks in February.

15           As to the motion to amend the complaint to add a  
16 Title VII claim against the UNC Defendants, I'll ask the clerk  
17 to show an oral motion to amend by the Plaintiffs in the  
18 Carcano case, in the 236 case, and no objection.

19           And let me ask just to make sure: Is there any  
20 objection to allowing that motion the amend? All right. So  
21 we'll show the motion to amend with no objection, and I will  
22 grant that motion to amend, and so within the week --  
23 Mr. Wilkens, do you need more than a week for that?

24           **MR. WILKENS:** No, Your Honor, we can do it very  
25 quickly.



1           **THE COURT:** All right. So within the week that -- by  
2 next Monday, the 21st, the Carcano Plaintiffs will file their  
3 amended complaint adding the Title VII claim, but no response  
4 is due until after the 90-day stay has been lifted, and I can  
5 address any deadlines or dates for that after we have that  
6 conference in mid-February.

7           And then with respect to changing the case to add or  
8 substitute named plaintiffs in the Carcano case, I will just  
9 note that there would not be a need to do that while the case  
10 is stayed for those 90 days, but that's something that we could  
11 take up to the extent we need to substitute any plaintiffs.  
12 That could happen after the stay is lifted, and I will address  
13 that at that point, but that would be -- any need to do that  
14 would be stayed during the period that the discovery is stayed.

15           So, to be clear, I'm extending the trial deadline,  
16 staying discovery, and staying those particular motions I  
17 noted, but I am not staying the preliminary injunction pieces  
18 that are still showing, and those would be matters that you  
19 would need to address with the district judge, and file your  
20 position papers on that within a week, say by the 21st, so that  
21 that's clear, I would assume consistent with what you've  
22 presented here to me today, but so that it is presented to the  
23 district judge that way; and he can make a determination  
24 whether to proceed or which matters to proceed or how *G.G.* may  
25 affect that on the preliminary injunction request, and if

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1 there's some resolution as to the due process piece, as a  
2 procedural matter, then I will let you all work that out during  
3 that time as well.

4           So that would be what I intend to do, and I'll enter  
5 a written order that just summarizes that; but what I want to  
6 do now is go through each of you to see if there's anything  
7 that I need to clarify or any other issues that I need to  
8 address to make sure I've covered everything while I've got you  
9 here on the call.

10           Mr. Wilkens, any questions or anything I need to  
11 address further?

12           **MR. WILKENS:** Your Honor, that was very thorough. I  
13 only have one point -- one question, which is while the  
14 legislative privilege issue is fully briefed before Your Honor,  
15 the medical records issue, the reply brief I believe is due  
16 today. I just wanted to clarify whether the stay is affecting  
17 that. We obviously are prepared to file our reply and fully  
18 brief it today. So I just wanted to clarify that point.

19           **THE COURT:** All right. I would say this: If you  
20 have a reply brief ready to go and want to go ahead and file  
21 that today, it will not be today before I enter the order  
22 setting all of this out. So you could go ahead and file that  
23 today, and then what I would intend to do is when the stay is  
24 lifted and we revisit those issues, I'll let you supplement or  
25 address further those pending matters in light of where we

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1 stand. So if you want to go ahead and do that just to have the  
2 briefing complete on that, then I think that might be helpful  
3 and worthwhile; but I'm going to stay the Court's consideration  
4 of that until we get to the point in the case where we are  
5 ready to take that up and actually proceed with those  
6 depositions.

7 Does that make sense?

8 **MR. WILKENS:** Understood, Your Honor, yes.

9 **THE COURT:** All right. So anything else,  
10 Mr. Wilkens?

11 **MR. WILKENS:** No, Your Honor, thank you.

12 **THE COURT:** All right. Ms. Stoughton, anything for  
13 DOJ?

14 **MS. STOUGHTON:** Just one thing on that last point,  
15 Your Honor. If we choose not to file a reply brief today, is  
16 that without prejudice to further addressing it when the stay  
17 is lifted?

18 **THE COURT:** That's correct. If you want to wait and  
19 not file that now, I think that would just be a matter to  
20 address with me when we lift the stay. If you want to file a  
21 reply brief or otherwise address further the arguments that  
22 were raised as well as any new issues that may have arisen,  
23 that would be something you could do. You just need to raise  
24 that and address that at the time.

25 **MS. STOUGHTON:** Thank you.

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1           **THE COURT:** All right. Any other questions or any  
2 other issues that we need to address, Ms. Stoughton?

3           **MS. STOUGHTON:** No, Your Honor, thank you.

4           **THE COURT:** Mr. Duncan?

5           **MR. DUNCAN:** No, we don't have anything further to  
6 address. Thanks very much.

7           **THE COURT:** Mr. Bowers?

8           **MR. BOWERS:** Nothing further, Your Honor, thank you.

9           **THE COURT:** Mr. Gore?

10          **MR. GORE:** Your Honor, just to confirm our  
11 understanding, that the response to the amended complaint that  
12 the Carcano Plaintiffs would be filing within the week, the due  
13 date for our response will be set at a later time after the  
14 stay is lifted?

15          **THE COURT:** I think that's right. What I'll tell you  
16 is this: I would assume it would need to be filed 21 days  
17 after the stay is lifted; but if you want to address that  
18 further at the time we're lifting the stay, then that's  
19 certainly something you could address. I don't want it to be  
20 left completely indefinite where we don't get a response or it  
21 otherwise falls through the cracks. So assume that once the  
22 stay is lifted, you are going to need to go ahead and file your  
23 response; but if you want the Court to visit that deadline in  
24 any way, we can do that as part of setting the schedule once we  
25 lift the stay, but I'll take that up further when we reconvene

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1 in mid-February.

2 Does that clarify?

3 **MR. GORE:** Understood, Your Honor. Thank you, and we  
4 have nothing further.

5 **THE COURT:** All right. Let me ask any of the other  
6 third-party representatives on the call: Does anyone have  
7 anything that you need to raise with the Court?

8 **MS. PFEIFFER:** Nothing further, Your Honor.

9 **THE COURT:** All right. Anything else from anyone  
10 before we go ahead and adjourn?

11 All right. Thank you very much. I will enter the  
12 written order setting all of this out. Obviously, as I've  
13 already indicated and indicated in the text order, we won't be  
14 having the hearing this week on Friday, but I will anticipate a  
15 hearing mid-February either by telephone conference or in  
16 person, and I will make that determination after I get your  
17 position papers February 13.

18 Thank you very much. We'll go ahead and be  
19 adjourned.

20 (END OF PROCEEDINGS AT 11:08 A.M.)

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1 UNITED STATES DISTRICT COURT

2 MIDDLE DISTRICT OF NORTH CAROLINA

3 CERTIFICATE OF REPORTER

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5


6 I, Briana L. Nesbit, Official Court Reporter,  
7 certify that the foregoing transcript is a true and correct  
8 transcript of the proceedings in the above-entitled matter.

9

10 Dated this 15th day of November 2016.

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Briana L. Nesbit, RPR  
Official Court Reporter

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