

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MARYLAND

BROCK STONE, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as
President of the United States, *et al.*,

Defendants.

Case 1:17-cv-02459-GLR

Hon. A. David Copperthite

**DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION TO EXPEDITE BRIEFING
ON PLAINTIFFS' MOTION TO SET A DATE CERTAIN FOR COMPLIANCE WITH
DISCOVERY ORDER**

INTRODUCTION

Plaintiffs' Motion to Set a Date Certain for Compliance with Discovery Order, Dkt. 222, seeks to circumvent the District Court's review of this Court's discovery order and any subsequent appellate review, through disclosure of the thousands of deliberative documents subject to that order within seven days. Moreover, even though they plainly suffer no harm by following the normal briefing schedule set by the Local Rules, Plaintiffs also request that the Court order Defendants to file a response to their motion within seven days. Defendants respectfully file this partial response, addressing only Plaintiffs' request for an expedited briefing schedule.

Given the importance of the issues at stake in the pending discovery dispute and the fact that Plaintiffs suffer no harm, the Court should decline to expedite briefing and permit Defendants to file their response to the motion within the fourteen days allowed by Local Rule 105.2(a).

ARGUMENT

The Court should decline to order expedited briefing for three reasons. First, Plaintiffs failed to comply with Local Rule 104.7 by not meeting and conferring with Defendants before filing their

motion. Although the parties had been discussing issues with the production of documents via correspondence and telephone,¹ *see, e.g.*, Dkt. 222-3—222-5, Plaintiffs’ counsel did not inform Defendants’ counsel of its forthcoming motion to set a date certain for compliance with the Memorandum Opinion and Order or seek to obtain Defendants’ position on such a motion, nor did Plaintiffs discuss moving for expedited briefing on the motion. For that reason alone, the motion for expedited briefing should be denied.

Second, Plaintiffs plainly suffer no harm by briefing this matter on the schedule set forth in the Local Rules. Plaintiffs fail to acknowledge the existence of the preliminary injunction, which protects their rights while discovery disputes are pending. *See* Pls.’ Mot. Notably, in the related case *Doe v. Trump*, the Court emphasized that holding discovery disputes in abeyance would “not prejudice Plaintiffs, because the Court’s preliminary injunction remains in place.” *See* Order, Dkt. 145, *Doe v. Trump*, No. 17-cv-1597 (D.D.C. June 19, 2018). In addition, there is no reason to expedite briefing for any case management purpose. Pursuant to the parties’ joint motion, the district court suspended discovery deadlines pending the final resolution, including any appellate proceedings,² of Plaintiffs’

¹ As counsel for Defendants informed Plaintiffs’ counsel, “the Department of Defense (“DoD”) and the Services have already devoted significant time and resources toward producing the documents that are subject to the Memorandum Opinion and Order if the motion to stay is denied, subject to the Government considering appellate options.” Dkt. 222-4. Specifically, “[t]he Department of Defense and the Services have been undertaking a re-review of thousands of documents at issue but, owing to the number of deliberative documents at issue and other work that needs to be done in this and other cases, they still have thousands of deliberative documents to re-review. The Department of Defense and the Services will continue to work diligently to ensure that production, if ultimately required, can occur in a timely manner.” *Id.*

² In the related case *Karnoski v. Trump*, the district court entered a similar discovery order directing the disclosure of deliberative documents, and Defendants filed an emergency motion to stay compliance with the order and a petition for a writ of mandamus with the Ninth Circuit. *See* Pet. for a Writ of Mandamus & Emergency Mot. for Stay, Dkt. 1, *In re Donald J. Trump*, 18-72159 (9th Cir. Aug. 1, 2018). On September 17, 2018, the Ninth Circuit granted Defendants’ emergency motion for a stay pending consideration of the mandamus petition. Oral argument was held before the Ninth Circuit on October 10, 2018.

Motion to Compel and Defendants' Motion for a Protective Order (the motions underlying the Court's Memorandum Opinion and Order, Defendants' Objections, and Defendants' Motion to Stay Compliance with the Magistrate Judge's Memorandum Opinion and Order). *See* Order, Dkt. 213. And no trial date is set in this case. There is simply no reason to expedite consideration of Plaintiffs' motion.

Finally, counsel for Defendants require more than seven days to adequately respond to Plaintiffs' unannounced and unexpected motion. One counsel for Defendants is appearing today in the Eastern District of Michigan to present argument in a discovery dispute in the related case *Karnoski v. Trump*. Counsel for Defendants are also preparing the Government's response to a discovery motion in another related case, *Doe v. Trump*, which that court directed be filed by Tuesday, October 30. The same attorneys who are assigned to this case are also working on other related matters and require the full time permitted by Local Rule 105.2(a) to file Defendants' response to Plaintiffs' motion.

Accordingly, because Plaintiffs failed to follow the Local Rules, and would suffer no harm if their motion is briefed on the schedule set forth in the Local Rules, whereas Defendants are prejudiced by such in unnecessary expedition, the Court should decline to order expedited briefing on their motion.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court decline to order Defendants to respond to Plaintiffs' motion within seven days.

Date: October 23, 2018

Respectfully submitted,

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