

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

September 30, 2016

Intervenor-Defendants.) 10:05 a.m.

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

4 APPEARANCES:

5 1:16CV236

6 For the Plaintiff: SCOTT B. WILKENS, ESQ.
7 JENNER & BLOCK, LLC.
8 1099 New York Avenue, NW Suite 900
9 Washington, DC 20005

10 CHRISTOPHER BROOK, ESQ.
11 ACLU of NORTH CAROLINA
12 P. O. Box 28004
13 Raleigh, North Carolina 27611

14 TARA L. BORELLI, ESQ.
15 LAMBDA LEGAL DEFENSE AND EDUCATION FUND
16 730 Peachtree Street, NE, Suite 1070
17 Atlanta, Georgia 30308

18 1:16CV425

19 For the Plaintiff: COREY L. STOUGHTON, ESQ.
20 CHRISTOPHER J. CARNEY, ESQ.
21 ALYSSA C. LAREAU, ESQ.
22 CAMILLE A. MONAHAN, ESQ.
23 TARYN W. NULL, ESQ.
24 U. S. DEPARTMENT OF JUSTICE
25 Civil Rights Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

WHITNEY PELLEGRINO, ESQ.
CANDYCE PHOENIX, ESQ.
U. S. DEPARTMENT OF JUSTICE
Civil Rights Division
Education Opportunities Section
601 D Street, NW
Washington, DC 20579

1 APPEARANCES (Continued):

2 For the Defendants:

3
4 (State of NC,
5 Governor McCrory,
6 DPS)

7
8 WILLIAM W. STEWART, JR.
9 MILLBERG GORDON & STEWART, P.L.L.C.
10 1101 Haynes Street, Suite 104
11 Raleigh, North Carolina 27604

12 (UNC)

13 JOHN M. GORE, ESQ.
14 JONES DAY
15 51 Louisiana Avenue, N.W.
16 Washington, DC 20001

17
18 CAROLYN C. PRATT, ESQ.
19 UNIVERSITY OF NORTH CAROLINA
20 P.O. Box 2688
21 Chapel Hill, North Carolina 27517

22 (Intervenors)

23 STUART K. DUNCAN, ESQ.
24 ROBERT POTTER, ESQ.
25 SCHAERR DUNCAN, LLP
1717 K Street, NW, Suite 900
Washington, DC 20006

LEAH D. MCDOWELL, ESQ.
2237 Sheffield Drive
Jackson, Mississippi 39211

26 Court Reporter:

27 BRIANA NESBIT, RPR
28 Official Court Reporter
29 P.O. Box 20991
30 Winston-Salem, North Carolina 27120

P R O C E E D I N G S

10:04:08 1
10:05:09 2 **THE COURT:** Good morning. This is Judge Peake. I am
10:05:14 3 going to call for a telephone conference the two cases we have
10:05:19 4 on this morning, 16CV236 and 16CV425, for a status conference
10:05:27 5 on a couple of pretrial issues. If I could just have everyone
10:05:33 6 who is on the call identify themselves for me and for the
10:05:37 7 record and who is going to be speaking for each of the groups,
10:05:40 8 and we can start with the Carcano Plaintiffs.

10:05:42 9 **MR. WILKENS:** Good morning, Your Honor. This is
10:05:44 10 Scott Wilkens from Jenner & Block with the Carcano Plaintiffs,
10:05:47 11 and I will be speaking. And also on the phone with me for the
10:05:51 12 Carcano Plaintiffs are Chris Brook from the ACLU of North
10:05:53 13 Carolina and Tara Borelli from Lambda Legal.

10:05:59 14 **THE COURT:** Very good. Thank you. As to the
10:06:00 15 Department of Justice Plaintiffs?

10:06:04 16 **MS. STOUGHTON:** Your Honor, this is Corey Stoughton,
10:06:05 17 and I will be speaking for the United States, and with me on
10:06:08 18 the phone are Chris Carney, Candyce Phoenix, Whitney
10:06:12 19 Pellegrino, Taryn Null, and Alyssa Lareau.

10:06:17 20 **THE COURT:** Okay. Thank you. For the Legislative
10:06:19 21 Defendants, who do we have?

10:06:23 22 **MR. DUNCAN:** Good morning, Your Honor. It's Kyle
10:06:26 23 Duncan here for the Legislative Intervenors joined by Bob
10:06:30 24 Potter and Leah McDowell.

10:06:32 25 **THE COURT:** And for the State Defendants?

10:06:35 1 **MR. STEWART:** Good morning, Your Honor. It's Bill
10:06:36 2 Stewart. I'll be speaking today on behalf of the State
10:06:41 3 Defendants. Here with me today is also Tyler Brooks with my
10:06:45 4 office.

10:06:45 5 **THE COURT:** All right. And then the UNC Defendants?

10:06:49 6 **MR. GORE:** Good morning, Your Honor, John Gore on
10:06:51 7 behalf of the UNC Defendants. Also on the phone is Carolyn
10:06:56 8 Pratt from UNC.

10:06:57 9 **THE COURT:** Very good. And then just to make sure we
10:07:00 10 are covered for the record and so I am aware, is there anyone
10:07:02 11 else on the call that hasn't been identified yet?

10:07:16 12 **MS. MONAHAN:** Camille Monahan with the Department of
10:07:18 13 Justice.

10:07:19 14 **THE COURT:** And that's with the United States
10:07:20 15 Department of Justice?

10:07:23 16 **MS. MONAHAN:** Yes, ma'am.

10:07:23 17 **THE COURT:** Anyone else? All right.

10:07:28 18 This morning it looks like there are two relatively
10:07:32 19 brief matters for us to take up: The issue of deposition
10:07:36 20 limits and the issue of the schedule for addressing the
10:07:42 21 question of medical records or protective order relating to
10:07:47 22 medical records.

10:07:48 23 Let me ask if there are any other issues other than
10:07:51 24 those two things that anyone has that we would need to also add
10:07:55 25 to the list of things we are going to address today?

10:08:02 1 **MR. WILKENS:** Your Honor, for the Carcano Plaintiffs,
10:08:02 2 I don't believe so, no.

10:08:05 3 **THE COURT:** Anyone else? All right.

10:08:09 4 Let's get started then with the deposition limits.

10:08:14 5 What I think I'll do is just go through the list or the group
10:08:18 6 of each of you to let me hear what your issues are or what the
10:08:24 7 position of your clients would be, and then I can take that up.

10:08:29 8 It may be that rather than trying to limit time, that
10:08:34 9 I look at the number of depositions, and so what I would also
10:08:37 10 be interested in is the number of fact depositions that you
10:08:44 11 intend to notice, the number of expert depositions you intend
10:08:49 12 to notice, and then when we get to the point of looking at the
10:08:52 13 schedule, how you intend to divide those up between the first
10:08:57 14 and second deposition period just primarily so that however we
10:09:02 15 get there, we have some limits in place to make sure that
10:09:06 16 discovery doesn't expand too far beyond what's presently
10:09:10 17 contemplated in a way that would throw our schedule into
10:09:15 18 jeopardy in terms of getting everything done in time.

10:09:18 19 But I'll hear from each of you, and I can start with
10:09:21 20 the Carcano Plaintiffs. Mr. Wilkens?

10:09:24 21 **MR. WILKENS:** Yes, thank you, Your Honor. So as you
10:09:27 22 will have noticed, the joint notice addresses the issue of time
10:09:33 23 limitations on certain depositions rather than kind of the
10:09:35 24 number of depositions, and so on the issue of time -- of the
10:09:41 25 proposed time limitations, you know, we believe that there

10:09:47 1 should be time limitations for all witnesses for the Plaintiffs
10:09:52 2 and for the Defendants that are alleging harm from the presence
10:09:57 3 or lack of H.B. 2 and that that would be appropriate.

10:10:02 4 I don't know if you want others to address that
10:10:04 5 before we get to the issue of the number of depositions in each
10:10:09 6 period.

10:10:10 7 **THE COURT:** Well, I can hear from you -- I would -- I
10:10:13 8 think it would be helpful, while I've got you just because of
10:10:17 9 the logistics of going through the list of everybody as I do
10:10:23 10 this, to get as much as I can while I've got you on point; but
10:10:28 11 if you want to address further the time limits, you can do
10:10:31 12 that. I will tell you that my inclination is to generally
10:10:37 13 defer to the seven-hour time limits that the federal rules
10:10:41 14 otherwise call for; and then if you have particular folks that
10:10:44 15 you want to include as part of a motion for protective order to
10:10:48 16 limit those, I can consider that.

10:10:51 17 I can also let you all, of course, continue to
10:10:54 18 discuss, and you can maybe reach some agreement ahead of time
10:11:00 19 for other time limits just for your scheduling purposes so that
10:11:03 20 you can include two individuals on a given day for scheduling,
10:11:08 21 or something along those lines; but I don't know that I am
10:11:14 22 going to go too far down the road of imposing some kind of
10:11:19 23 blanket limits other than the default that's presently in the
10:11:24 24 federal rules without making a more particularized
10:11:27 25 determination.

10:11:28 1 Do you understand what I mean on that?

10:11:30 2 **MR. WILKENS:** Yes, I do, Your Honor. I think the
10:11:33 3 reasons for the proposal that we have been discussing, at least
10:11:37 4 I'll speak for the Carcano Plaintiffs, is we believe that that
10:11:40 5 amount of time, the four, four and a half hours, would be more
10:11:45 6 than ample to explore all relevant issues with the individual
10:11:50 7 plaintiffs or nonparties that are alleging harm, and that
10:11:57 8 because the issues are particularly sensitive, you know, there
10:12:06 9 will be -- sort of having some time limitations that's tighter
10:12:10 10 than the seven hours probably would be beneficial to all sides
10:12:15 11 in that it would kind of force, you know, questioning to be
10:12:19 12 focused and to move quickly or relatively quickly and that four
10:12:25 13 hours is still a lot of time to get through what needs to be
10:12:30 14 gotten through, but that seven hours just seems excessive with
10:12:35 15 respect to these witnesses to explore the issue of harm.

10:12:40 16 **THE COURT:** That seems to overlap to some extent to
10:12:42 17 the issues that you have anticipated raising in the protective
10:12:47 18 order for medical records; is that accurate?

10:12:53 19 **MR. WILKENS:** Yes, that is true. It does overlap.

10:12:55 20 So having heard the Court's inclination on that, I
10:12:59 21 can turn to the issue of the number of depos. I have to say --
10:13:03 22 I will say I am counting in front of me as I'm on the phone.

10:13:10 23 **THE COURT:** Okay.

10:13:12 24 **MS. STOUGHTON:** Scott, if you want, I think I can --
10:13:14 25 I have that information.

10:13:16 1 **MR. WILKENS:** Oh, good.

10:13:16 2 **THE COURT:** All right. So what I'll do then,
10:13:18 3 Mr. Wilkens, is I am going to go to Ms. Stoughton on that, and
10:13:22 4 then I will come back to you at the end, if you want to add
10:13:25 5 anything else on the numbers for us.

10:13:27 6 **MR. WILKENS:** Okay. Very helpful. Thanks.

10:13:27 7 **THE COURT:** All right. Anything else, Mr. Wilkens,
10:13:29 8 before I go on?

10:13:30 9 **MR. WILKENS:** No.

10:13:31 10 **THE COURT:** Ms. Stoughton?

10:13:32 11 **MS. STOUGHTON:** Thank you, Your Honor. So with the
10:13:34 12 caveat that this information is at least a week old and there
10:13:39 13 sometimes -- and things have been changing since we have been
10:13:44 14 scheduling people, at the last count we did, there are 58
10:13:47 15 contemplated depositions in total for all sides, and that's 38
10:13:52 16 fact witnesses and 20 experts --

10:13:55 17 **THE COURT:** All right.

10:13:55 18 **MS. STOUGHTON:** -- designated.

10:13:56 19 **THE COURT:** Can you break those out for me -- and if
10:13:59 20 you need some time to do this, I can go through everyone and
10:14:05 21 come back to you; but if you break those out in terms of the
10:14:08 22 number that the Plaintiffs would be noticing, and I don't know
10:14:12 23 if you've distinguished between the two plaintiff groups at all
10:14:14 24 on that, and the number that the Defendants would anticipate
10:14:17 25 noticing? Do you have it broken out that way?

10:14:20 1 **MS. STOUGHTON:** I don't have that at hand. I think
10:14:24 2 we can do that. Whitney, while I'm talking, could you look at
10:14:28 3 the work plan and maybe do some quick scratches?

10:14:32 4 But I can tell you, for the second part of it, for
10:14:35 5 some witnesses, speaking for the Plaintiffs' side here, the
10:14:39 6 Carcano Plaintiffs and the United States, in some categories,
10:14:41 7 for example, experts --

10:14:44 8 **THE COURT:** Right.

10:14:44 9 **MS. STOUGHTON:** -- the Carcano Plaintiffs and the
10:14:46 10 United States have had conversations and have kind of joined
10:14:52 11 together to narrow -- to jointly designate experts where there
10:14:54 12 were experts that we had separately designated whose expertise
10:14:59 13 overlapped.

10:15:00 14 **THE COURT:** Okay.

10:15:00 15 **MS. STOUGHTON:** So in that category, we have done
10:15:03 16 that. In other categories, we haven't. It's not been a
10:15:08 17 uniform approach. I think we've had conversations where we've
10:15:11 18 made an effort to reduce duplication, but there are some
10:15:13 19 witnesses -- in part, because we have different claims, there
10:15:18 20 are some witnesses that the Carcano Plaintiffs are offering
10:15:21 21 that really aren't necessarily witnesses we would offer, not
10:15:25 22 because they are not important witnesses to the case as a
10:15:26 23 whole, but because they are not really pertaining to the United
10:15:27 24 States' claims; and, likewise, I think we have some claims,
10:15:30 25 Title VII, for example, and VAWA, that raise some issues that

10:15:36 1 don't perfectly overlap, but we have had some of those
10:15:38 2 conversations. I'll let the Defendants speak, I think, to any
10:15:41 3 of --

10:15:41 4 **THE COURT:** Right, how they've coordinated among
10:15:43 5 themselves as well on that.

10:15:45 6 Let me ask you this. There are a couple of different
10:15:48 7 ways I can come at this. We could sort of limit it to the 58
10:15:53 8 who are currently designated with leave for you all to add more
10:15:59 9 by agreement if it wouldn't affect the schedule or otherwise to
10:16:03 10 come back to the Court to add individuals, but I could also
10:16:08 11 give you each an additional couple or handful to add that
10:16:15 12 wouldn't affect the schedule if there's still a little leeway
10:16:21 13 that you need on that; but I am looking for, in light of the
10:16:24 14 work you've already done, how best to make sure we don't end up
10:16:30 15 expanding too far beyond that in a way that messes with the
10:16:36 16 schedule essentially.

10:16:42 17 **MR. WILKENS:** Your Honor, I would only -- I'm not
10:16:46 18 opposed to putting on some kind of a cap, but I would note that
10:16:50 19 I don't think in the numbers that Ms. Stoughton gave you are
10:16:54 20 some depositions that are currently, I think, contested, the
10:16:58 21 depositions of the Legislative Intervenors and the Governor,
10:17:03 22 which we may seek. We may notice them. We haven't done that
10:17:08 23 yet, but I wouldn't want a cap that the Court would put in
10:17:15 24 place now based on that number of 58, which I don't think
10:17:19 25 includes the three that I just mentioned. I wouldn't want that

10:17:23 1 to prejudice the ability to seek the depositions -- notice the
10:17:28 2 depositions of the Governor and the Legislative Intervenors.

10:17:31 3 **THE COURT:** And that would just be three; is that
10:17:33 4 right?

10:17:33 5 **MR. WILKENS:** That's right.

10:17:34 6 **THE COURT:** Anyone else that you have like that that
10:17:36 7 is out there that is an issue but not included with the 58?

10:17:42 8 **MR. WILKENS:** No, Your Honor. We have noticed the
10:17:44 9 depositions -- sorry. We have noticed -- we have sent, sorry,
10:17:49 10 subpoenas for documents to four legislators, but we have not
10:17:53 11 noticed their depositions, and we would intend to. So we would
10:17:56 12 need to include those four.

10:17:59 13 **THE COURT:** Okay. So it's just the potential three
10:18:01 14 that you would at least have as a possibility but not -- you
10:18:06 15 are not taking a position one way or another even as to those
10:18:10 16 three at this point; is that correct?

10:18:13 17 **MR. WILKENS:** That's correct.

10:18:14 18 **THE COURT:** Ms. Stoughton, let me come back to you
10:18:16 19 with the question that I had sort of initially put out there on
10:18:21 20 that, as to the 58 or how best to include some limits on that?

10:18:26 21 **MS. STOUGHTON:** Well, Your Honor, the one concern I
10:18:28 22 have is that the number 58 was really arrived organically in
10:18:34 23 kind of saying here is our witnesses. What I haven't done, and
10:18:39 24 maybe Whitney's math will eliminate -- because we haven't
10:18:41 25 really discussed or considered this is -- I don't have an

10:18:45 1 understanding of how equitable that is.

10:18:49 2 **THE COURT:** That's why I want to know. There is
10:18:51 3 obviously a couple of different ways I can do this. I could
10:18:55 4 include a number limit for each side for the number that each
10:18:59 5 side could notice; but as I said, I want to take into account
10:19:02 6 the work that you have all already done to try and narrow it
10:19:05 7 and the work you have already done to schedule those 58 in the
10:19:12 8 deposition periods that you've then allocated.

10:19:16 9 So the alternative to putting the numbers on each
10:19:20 10 side would be using those 58 and then some additional number
10:19:26 11 for each side to give you each a little bit of leeway, but I
10:19:31 12 can also give you a minute if you want to sort of make some
10:19:34 13 more determinations as to that 58 number and what your
10:19:37 14 suggestions or proposals might be on that.

10:19:42 15 **MS. STOUGHTON:** I would appreciate that time, Your
10:19:43 16 Honor.

10:19:43 17 **THE COURT:** Okay. Let me go to the Defendants, and
10:19:46 18 then I don't think that it should take too much time to come up
10:19:51 19 with those numbers. I can even take a quick break here, and
10:19:55 20 we'll come back to the call, if we need to, after I have given
10:19:59 21 you a chance to come up with some proposals on that.

10:20:02 22 Going through the Defendants as to your positions on
10:20:05 23 those things, Mr. Duncan, I will start with you.

10:20:08 24 **MR. DUNCAN:** Good morning, Your Honor. I think we
10:20:09 25 are in the same position on that as the Carcano Plaintiffs. We

10:20:12 1 would like just a little leeway. We certainly see the
10:20:16 2 possibility -- let me just say, first, that I'm -- right now,
10:20:20 3 I'm kind of like Mr. Wilkens; I'm getting specific numbers from
10:20:27 4 my cocounsel because I am not the one who keeps track of those
10:20:31 5 things.

10:20:32 6 **THE COURT:** Right.

10:20:32 7 **MR. DUNCAN:** It seems to us that there is the
10:20:34 8 possibility of perhaps reducing, you know, a few of the
10:20:39 9 witnesses we want to notice -- I mean, I'm sorry, a few of the
10:20:45 10 witnesses we want to put forward, and we would certainly like
10:20:48 11 to talk to the other side about this idea of -- it's the first
10:20:52 12 I've heard of their combining expert witnesses and maybe using
10:20:56 13 that as a way of reducing the number of total witnesses. I
10:21:00 14 think there's the possibility of reducing the number of
10:21:02 15 witnesses we may want to offer, and so reducing the number of
10:21:05 16 depositions that way.

10:21:07 17 By the same token, just like Mr. Wilkens said, he may
10:21:10 18 want to try to notice the deposition of our clients and the
10:21:14 19 Governor which, of course, we are going to resist, but we may
10:21:19 20 well want to serve a 30(b)(6) deposition notice, at least one
10:21:24 21 or two, on the United States. We're planning that right now.
10:21:28 22 So we would like just a little leeway in being able to add a
10:21:33 23 couple of depositions.

10:21:34 24 **THE COURT:** All right. And that -- and let me ask
10:21:35 25 you, as to the Defendants, are you all coordinating or in

10:21:42 1 agreement on the numbers that you would be noticing, or is
10:21:45 2 there some combination where it might be some that are
10:21:48 3 particular to each of the defendant groups but some that are
10:21:52 4 coordinated?

10:21:57 5 **MR. DUNCAN:** Thus far, Your Honor, we have -- the two
10:22:00 6 defendant groups, specifically the State Defendants and the
10:22:03 7 Intervenor Defendants, we've been coordinating already. I
10:22:08 8 don't sense that there is much overlap there.

10:22:12 9 Hold on one second. I am looking at numbers that Bob
10:22:14 10 Potter just sent me.

10:22:15 11 **THE COURT:** Okay.

10:22:17 12 **MR. DUNCAN:** What we're looking at is 6 fact
10:22:21 13 witnesses in the first period, 7 in the second period. That's
10:22:25 14 a total of 13 across the two periods.

10:22:29 15 **THE COURT:** These are -- just to make sure I'm
10:22:29 16 following. These are not ones you're noticing. These are
10:22:31 17 defense witnesses that you would be sort of offering?

10:22:35 18 **MR. DUNCAN:** That is correct.

10:22:35 19 **THE COURT:** All right.

10:22:36 20 **MR. DUNCAN:** For the first period on experts, we have
10:22:39 21 5. Is that right, Bob; we have 5?

10:22:48 22 **MR. POTTER:** That's correct.

10:22:50 23 **MR. DUNCAN:** Total of 9 across the two periods.

10:22:53 24 **THE COURT:** So it's 5 and 4.

10:22:56 25 **MR. DUNCAN:** It's 5 and 4; that's right. Now, I'm

10:23:00 1 also getting numbers here for the Plaintiffs. We have 7
10:23:03 2 Plaintiff fact witnesses the first period and 12 including
10:23:09 3 rebuttal fact witnesses during the second period. That's a
10:23:12 4 total of 19.

10:23:14 5 **THE COURT:** All right.

10:23:16 6 **MR. DUNCAN:** And then I'm getting two additional --
10:23:22 7 it's not clear to us whether they're expert or fact witnesses.
10:23:27 8 So there's 3 Plaintiff experts, plus 4 rebuttal experts during
10:23:31 9 the first period. That's a total of 7. There's 4 Plaintiff
10:23:36 10 experts for the second period. That's a total of 4, but we
10:23:40 11 count 52, which goes to Ms. Stoughton's point that the number
10:23:46 12 58 may not be the best number to use as a hard number.

10:23:49 13 **MS. STOUGHTON:** Kyle, I'm sorry to interrupt, but you
10:23:50 14 technically have more than 5 expert witnesses. You have 5
10:23:55 15 medical expert witnesses, and then I think you have several
10:23:59 16 public safety experts as well. I'm a little concerned --

10:23:59 17 **MR. DUNCAN:** Well --

10:24:00 18 **THE COURT:** I tell you what. It's harder for me and
10:24:05 19 for the court reporter to keep up if we are doing too much of
10:24:09 20 the discussing while we're also doing the status conference,
10:24:12 21 but I think it's helpful to let you all do that, but it sounds
10:24:17 22 like you might not quite yet be in a position to propose the
10:24:24 23 kind of limits that I'm looking for. And, again, my whole
10:24:27 24 point in doing that would be to focus you all to think about
10:24:35 25 who you need or how you want to use the depositions that you're

10:24:40 1 allocated among the possible witnesses consistent with the
10:24:43 2 numbers that you've been anticipating or looking at, what you
10:24:48 3 think that this case is going to require, but also so that we
10:24:51 4 don't have a problem later with additional depositions that
10:24:55 5 would require more time than what we have available.

10:24:59 6 So what I might do is take a break from the status
10:25:07 7 conference so that I go off the call and you all can have some
10:25:12 8 discussion among yourselves, and then I can join you back in
10:25:16 9 say 15 or 20 minutes after you've had a chance to do that.

10:25:19 10 Mr. Duncan, do you think that would be helpful?

10:25:22 11 **MR. DUNCAN:** That would be fine. And, Corey, you're
10:25:24 12 right. I mean, the 5 experts I mentioned are the first period.
10:25:31 13 There are 4 in the second period as well. That would be fine.

10:25:33 14 **THE COURT:** All right. Let me go to make sure I've
10:25:35 15 covered everybody. Mr. Stewart, anything that you wanted to
10:25:38 16 add for the State Defendants?

10:25:40 17 **MR. STEWART:** No, Your Honor. I think Mr. Duncan
10:25:42 18 gave a pretty accurate assessment of what's going on.

10:25:46 19 **THE COURT:** All right. And Mr. Gore?

10:25:47 20 **MR. GORE:** No, Your Honor. We stated our position
10:25:50 21 about time limits in the joint notice and are less involved
10:25:57 22 than the other parties in terms of these deposition issues, but
10:25:59 23 we obviously would favor limits on depositions that can be
10:26:02 24 agreed to and reasonably worked out by the parties.

10:26:05 25 **THE COURT:** All right. As far as the time limits,

10:26:08 1 and I will come back to you, Mr. Wilkens, I indicated my intent
10:26:12 2 on that. What I would say is this: If, as part of your motion
10:26:16 3 for protective order related to the medical records, you want
10:26:20 4 to also ask for specific individuals to have limits on their
10:26:26 5 deposition times, I can consider that, but just as a general
10:26:32 6 default, I think the federal rules provide the seven hours, and
10:26:38 7 I don't want to get too far into the issues that are otherwise
10:26:43 8 going to be raised in the protective order in terms of how
10:26:47 9 broad those inquiries might be or what the amount of time might
10:26:53 10 be that would potentially be needed to cover whatever the
10:26:56 11 issues might be for any of these witnesses.

10:26:59 12 So I think that as part of just a pure scheduling
10:27:03 13 determination, I would be inclined to put some limits on the
10:27:07 14 number of depositions so those get focused, but not to limit
10:27:13 15 the time on a sort of substantive or type of witness basis; but
10:27:17 16 I would certainly leave that issue open if you needed or wanted
10:27:21 17 to revisit that again as part of your motion for protective
10:27:25 18 order.

10:27:25 19 Does that make sense?

10:27:30 20 **MR. WILKENS:** Yes, thank you, Your Honor. So we will
10:27:30 21 address it, if we want to, in a protective order, and when we
10:27:31 22 speak amongst ourselves in just a moment, we will focus on the
10:27:35 23 issue of the number.

10:27:36 24 **THE COURT:** I think that's right. And then, again,
10:27:37 25 that is the seven-hour default. If you all can reach agreement

10:27:42 1 as to particular witnesses as to the amount of time that you
10:27:46 2 think would be needed or that you agree would be sufficient but
10:27:50 3 also would focus the questions and allow you to schedule, say,
10:27:55 4 more than one in a day, obviously, that's the kind of thing
10:27:58 5 that I think is appropriate to continue to discuss and work
10:28:03 6 out; but if there is a need for a protective order so it limits
10:28:08 7 something as to particular witnesses, then I think I'll
10:28:11 8 consider those separately, if you need to make a motion in that
10:28:14 9 regard or include in your request for a protective order.

10:28:16 10 I think that covers your request on that,
10:28:20 11 Mr. Wilkens. Does that make sense? Do you understand where
10:28:23 12 I'm going with that?

10:28:24 13 **MR. WILKENS:** It does, Your Honor. Thank you.

10:28:24 14 **THE COURT:** All right. Does anybody else need to
10:28:26 15 raise anything or address anything further as to the time limit
10:28:31 16 issue, or is there anything else before I make that my
10:28:35 17 determination that anyone wants to raise or make an argument
10:28:38 18 before the Court?

10:28:42 19 All right. So with respect to time limits, I am
10:28:46 20 going to leave the default, the seven hours, provided in the
10:28:51 21 federal rules, but subject to any further requests for
10:28:54 22 particular limits by way of a motion for protective order as to
10:29:00 23 particular defendants and certainly with the caveat that the
10:29:05 24 parties can agree to limits for scheduling reasons or for
10:29:12 25 general negotiations in terms of how you want to set up the

10:29:16 1 depositions or agreements you might be able to reach to limit
10:29:21 2 some in exchange for the other side limiting others. That's, I
10:29:25 3 think, fairly within the scope of what the parties might be
10:29:28 4 able to reach by agreement, if you can do that, and then if
10:29:33 5 not, if there is a need for me to address that further, you can
10:29:37 6 include that in a request for protective order.

10:29:39 7 What I would intend to do is let you all discuss some
10:29:45 8 of the expert and fact witness numbers in terms of how we limit
10:29:49 9 those in a way to make sure we stay on track with the numbers,
10:29:54 10 and focusing discovery and the schedule that we've got. Before
10:29:59 11 I do that, though, I want to go ahead and talk about the other
10:30:02 12 issues so if there is anything else, we don't have to break
10:30:07 13 again.

10:30:07 14 The question about the schedule for the medical
10:30:10 15 records issue or the motion for the protective order, let me
10:30:15 16 start again, Mr. Wilkens, with you and let you address that
10:30:18 17 with me in terms of what the issue might be for the Court on
10:30:21 18 that.

10:30:23 19 **MR. WILKENS:** Well, thank you, Your Honor. The -- so
10:30:28 20 there is a meet-and-confer process that is ongoing. I think
10:30:31 21 that the main issue for the Court, and why I think it will be
10:30:36 22 appropriate for Ms. Stoughton to speak next, is that there are
10:30:40 23 kind of two different tracks happening and obviously -- because
10:30:43 24 in our case the dispute is over the medical records of the
10:30:53 25 three named transgender plaintiffs, and there was a document

10:31:01 1 request served with regard to medical records quite some time
10:31:03 2 ago to which we objected, and that's what we've been meeting
10:31:07 3 and conferring over.

10:31:09 4 In contrast to that, the U.S. case is in a very
10:31:13 5 different posture procedurally, and so we're not on the same
10:31:19 6 track in terms of the -- getting notice from the Defendants of
10:31:24 7 what they -- you know, what records they are seeking, and I'll
10:31:31 8 let Ms. Stoughton address that.

10:31:33 9 **THE COURT:** Right. Okay. That makes sense.
10:31:35 10 Ms. Stoughton?

10:31:35 11 **MS. STOUGHTON:** Thank you, Your Honor. The problem
10:31:37 12 is that our witnesses are third parties, and this Court
10:31:46 13 scheduled some briefing on this issue and I think assumed that
10:31:51 14 we would have demands in front of us and then be able to meet
10:31:55 15 and confer in this meet-and-confer period that leads up to next
10:31:59 16 Tuesday. Although we have been meeting and conferring, we have
10:32:00 17 been doing that without any subpoenas in front of us, and we
10:32:04 18 had -- you know, we've been doing that, I think trying to have
10:32:08 19 discussions, but we only last night at 9:00 p.m. received by
10:32:13 20 email copies of the subpoenas.

10:32:15 21 **THE COURT:** Okay. Do you have the subpoenas now
10:32:16 22 then?

10:32:17 23 **MS. STOUGHTON:** We do.

10:32:18 24 **THE COURT:** Okay.

10:32:19 25 **MS. STOUGHTON:** I don't know that they've been served

10:32:20 1 on the parties, but we have them.

10:32:25 2 **THE COURT:** You have them now. All right.

10:32:28 3 What I would intend to do -- and I'll let the
10:32:28 4 Defendants respond. I understand the different tracks here. I
10:32:31 5 would want to give you enough time to respond to the particular
10:32:38 6 subpoenas. I think that was the intent was to make sure we
10:32:42 7 narrow this and made this as particular as possible in the
10:32:48 8 briefing, and it may be that I set the hearing out a week or
10:32:55 9 two in order to do that, but I would keep the legislative
10:33:00 10 immunity briefing on the schedule that it's currently on so I
10:33:03 11 have the benefit of the briefing and the additional time of
10:33:06 12 that and give some additional time on the front end for filing
10:33:11 13 the motions for the medical records issue.

10:33:15 14 So I'm open to that possibility, and I am going to go
10:33:20 15 to the Defendants now, but I would also want to make sure that
10:33:24 16 all the medical record subpoenas have been served so if the
10:33:28 17 Defendants need more time to make sure that there are not any
10:33:33 18 others that they would intend to serve, we can take that up so
10:33:36 19 that I make sure this is addressed globally and not piecemeal.

10:33:42 20 Mr. Duncan, I'll start with.

10:33:45 21 **MR. WILKENS:** Your Honor, this is Scott Wilkens. I
10:33:45 22 just want to say one thing before we move to the Defendants.

10:33:47 23 **THE COURT:** All right.

10:33:47 24 **MR. WILKENS:** I just wanted to say, in talking about
10:33:50 25 the fact that the two Plaintiffs are on different tracks at the

10:33:54 1 moment, we think in terms of efficiency it makes sense to be on
10:33:59 2 the same track in terms of briefing the Court and having a
10:34:04 3 hearing before Your Honor on the issue of medical records. I
10:34:04 4 just wanted to make that clear.

10:34:05 5 **THE COURT:** All right. I understand that. And my
10:34:07 6 hope is that even though you are maybe on slightly different
10:34:10 7 tracks, you can combine your requests in a way that prevents
10:34:17 8 unnecessary duplication of the issues being presented, and I'm
10:34:24 9 assuming that's your intent. Is that correct, Mr. Wilkens?

10:34:25 10 **MR. WILKENS:** That's certainly our intent, Your
10:34:28 11 Honor.

10:34:28 12 **THE COURT:** Let me go to Mr. Duncan for the
10:34:30 13 Defendants first.

10:34:32 14 **MR. DUNCAN:** Thanks, Your Honor. So I guess our
10:34:33 15 position on this is that we have been meeting and conferring
10:34:37 16 with both the Carcano Plaintiffs and the United States for some
10:34:41 17 time on this.

10:34:42 18 **THE COURT:** Right.

10:34:42 19 **MR. DUNCAN:** We've already -- we circulated on the
10:34:46 20 21st -- or actually on the 20th of September what we thought
10:34:48 21 were perfectly sufficient descriptions of the kind of medical
10:34:51 22 records that we were seeking -- that we would seek from the
10:34:55 23 United States and already sought from the Carcano Plaintiffs.
10:34:58 24 The descriptions are actually more specific than the requests
10:35:02 25 for production of documents I think that we served on the

10:35:05 1 Carcano Plaintiffs.

10:35:07 2 So in terms of sort of notice to the United States,
10:35:09 3 we believe the United States has been on notice for quite some
10:35:12 4 time now about exactly what we were seeking. We had a long
10:35:18 5 meet-and-confer trying to flesh that out further. We sent the
10:35:21 6 notice of subpoenas last night. Someone will correct if I'm
10:35:23 7 wrong, for sure, but we got the addresses for the United
10:35:26 8 States' witnesses only -- I forget. Was it earlier this week?
10:35:32 9 I forget when.

10:35:35 10 **MR. STEWART:** Close of business Tuesday.

10:35:36 11 **MR. DUNCAN:** Close of business Tuesday. So we've
10:35:37 12 gotten out the notice of subpoenas. We'll serve the subpoenas
10:35:41 13 today through the Governor's Office. Governor's counsel will
10:35:46 14 be serving those today, but the description of the records that
10:35:48 15 we're seeking -- we always thought that it's quite
10:35:52 16 straightforward what we want. We want records documenting the
10:35:56 17 Plaintiffs' medical conditions and the witnesses' medical
10:35:59 18 conditions, that they've put those conditions at issue.

10:36:06 19 So having said all that, we communicated to the
10:36:07 20 United States last night that we would not have a problem
10:36:10 21 agreeing to a one-week extension on their motion for protective
10:36:15 22 order. They can speak to how much time they want for an
10:36:18 23 extension, but we are not against a week extension so they can
10:36:21 24 consider the subpoenas as much as they like.

10:36:25 25 **THE COURT:** All right. I will come back to them.

10:36:27 1 That's sort of the range of time that I would contemplate. At
10:36:33 2 least another sort of week seems within the range of the time
10:36:37 3 period we're looking at once they've got the subpoenas; but if
10:36:41 4 I'm going to do that, I want to make sure that all of the
10:36:45 5 subpoenas for medical records have been served. So they're not
10:36:50 6 any other medical records that Defendants would intend to serve
10:36:54 7 subpoenas for; is that correct, Mr. Duncan?

10:36:57 8 **MR. DUNCAN:** That's correct, as far as I understand,
10:36:59 9 Your Honor. I'd like for Mr. Stewart to speak to that as well
10:37:03 10 since his office will be serving them. That's what I believe,
10:37:06 11 that we are serving all of them today.

10:37:08 12 **THE COURT:** All right. And there are not any others
10:37:10 13 that may be coming down the road later on? You've got the
10:37:14 14 whole universe at this point; is that right?

10:37:17 15 **MR. DUNCAN:** That's right, Your Honor.

10:37:21 16 **THE COURT:** Mr. Stewart, I will go to you then.

10:37:26 17 **MR. STEWART:** Yes, Your Honor. Regarding the
10:37:28 18 subpoena issue, the Department of Justice is exactly right. We
10:37:34 19 filed -- or served a notice of the subpoenas last night, and we
10:37:40 20 intend to serve all of these subpoenas regarding these medical
10:37:44 21 records of the transgender witnesses sometime this afternoon.
10:37:49 22 So everything, as far as I know, as you said, in the universe
10:37:53 23 should be issued and served on the parties today.

10:37:57 24 I would just like to -- just to add on to what
10:38:02 25 Mr. Duncan said, is that these meet-and-confers regarding the

10:38:10 1 medical records have, in fact, been discussed among the parties
10:38:13 2 for quite some time. In fact, according to my records, it
10:38:14 3 dates back to August, and Your Honor will probably recall when
10:38:19 4 we first came to you at a status conference on September 2, we
10:38:24 5 told you about our dispute, and you told us to submit a joint
10:38:29 6 26(f) report and come up with some sort of procedure on how to
10:38:33 7 deal with it, and that's what we did. We came back with this
10:38:38 8 October 4 deadline, and you adopted it. You provided a
10:38:43 9 briefing schedule and said we could possibly have a hearing on
10:38:47 10 October 28. I think Your Honor did that for one primary
10:38:50 11 reason, which is just to give us enough time before we got into
10:38:54 12 the two depositions schedules --

10:38:58 13 **THE COURT:** Right.

10:38:59 14 **MR. STEWART:** -- or period. And on September 20, as
10:39:03 15 Mr. Duncan pointed out, we did circulate an email, and we
10:39:07 16 described, not only the category of records pretty
10:39:11 17 specifically, but we also listed a few examples of the type of
10:39:15 18 questions that we might ask the witnesses, which I think at one
10:39:19 19 of the previous status conferences you were inclined not to
10:39:22 20 require us to do that. We didn't have to show them our
10:39:26 21 deposition outline, but we did take it a step further to
10:39:31 22 provide at least some attempt to say these are some of the
10:39:32 23 questions we would ask. So at least by September 20, they knew
10:39:36 24 the type of records that we're looking for, and I really don't
10:39:41 25 think the subpoenas -- or the description of the records in the

10:39:45 1 subpoenas really adds much to what we are looking for.

10:39:48 2 And regarding the subpoenas, Mr. Duncan is exactly
10:39:52 3 right. We could not serve any subpoenas until we had the
10:39:57 4 witnesses' contact information and the name of the attorneys
10:40:01 5 who are representing some of those witnesses. I can't -- we
10:40:05 6 couldn't subpoena somebody by their initials, just can't do it
10:40:10 7 with a third-party witness. We did not get that information
10:40:12 8 until close of business Tuesday. In fact, on Wednesday, we
10:40:17 9 were provided, I guess, more complete information on a handful
10:40:21 10 of the witnesses by giving us addresses. So really we've
10:40:24 11 turned that around, Your Honor, in a day, which I think is
10:40:29 12 pretty good since we've got other matters we're working on.

10:40:32 13 So they now have that in front of them. We did
10:40:33 14 suggest a week. I'm concerned that -- they want three weeks,
10:40:37 15 Your Honor, and in Ms. Null's letter to us yesterday afternoon,
10:40:42 16 she indicated proposing a possible hearing date after
10:40:47 17 November 15. I think that is problematic. I think that's
10:40:51 18 going to be pushing us way into the second deposition schedule
10:40:56 19 into where these medical experts will be deposed and relying on
10:41:00 20 these medical records.

10:41:01 21 So we're fine with a week, and I think anything
10:41:07 22 beyond a week and pushing this out again is going to be
10:41:12 23 problematic at this point.

10:41:13 24 **THE COURT:** All right. Let me ask you about the last
10:41:15 25 scheduling piece, and I understand there are issues on both

10:41:19 1 sides with how you got to this point, whether they needed the
10:41:21 2 subpoenas or had sufficient information. What I'm looking at
10:41:24 3 primarily right now, though, is making sure that all of the
10:41:28 4 subpoenas have been served, there's not anything else holding
10:41:33 5 it up, and whether we can put this back on track maybe with an
10:41:37 6 additional week built in there so that they have time to
10:41:41 7 complete their motions for protective order along those lines.

10:41:46 8 As to the schedule, though, and just to remind me of
10:41:50 9 this, all of these witnesses that we're talking about would be
10:41:54 10 in the second deposition period; is that right, Mr. Stewart?

10:41:59 11 **MR. STEWART:** Well, I am primarily referring to the
10:42:02 12 medical experts who will be relying on some of these records.
10:42:06 13 I will let Kyle speak to it differently, but I think that was
10:42:09 14 one of my concerns. They are predominantly, Judge, going to be
10:42:12 15 in the second deposition schedule, which begins December 6.

10:42:15 16 **THE COURT:** Okay.

10:42:15 17 **MR. STEWART:** So if we push out your hearing date on
10:42:19 18 this much further, I think we run the risk, as you said
10:42:23 19 earlier, sort of jamming everybody up in trying to schedule
10:42:26 20 medical experts without the benefit of these records. So I
10:42:30 21 think if we'll stay on the track Your Honor has suggested with
10:42:34 22 a one week-extension, I think that would adequately cover
10:42:38 23 everybody's concerns.

10:42:40 24 **THE COURT:** And just to make sure I'm following, the
10:42:42 25 issue would be that the experts are not scheduled for

10:42:46 1 deposition until December, but they would need some additional
10:42:49 2 time in November to review the records prior to their
10:42:53 3 depositions; is that right? Is that what you're getting at?

10:42:56 4 **MR. STEWART:** Yes, Your Honor.

10:42:57 5 **THE COURT:** All right. So it's the additional time
10:43:00 6 to prepare and finalize whatever report they might have based
10:43:03 7 on those experts -- I mean, excuse me, based on those medical
10:43:06 8 records and then be ready for deposition early in the second
10:43:11 9 deposition period, which starts in December?

10:43:14 10 **MR. STEWART:** And also to allow us adequate time to
10:43:17 11 prepare to take their medical expert depositions utilizing
10:43:22 12 those same records, Judge.

10:43:23 13 **THE COURT:** Okay. All right. I think I am following
10:43:24 14 the time frame issue on that. Anything else, Mr. Stewart?

10:43:28 15 **MR. STEWART:** No, Your Honor.

10:43:29 16 **THE COURT:** Mr. Gore, anything for the UNC
10:43:30 17 Defendants?

10:43:31 18 **MR. GORE:** No, Your Honor. We've not sought
10:43:35 19 discovery on these topics, so we take no position.

10:43:37 20 **THE COURT:** All right. So let me come back around.
10:43:40 21 I know, Mr. Wilkens, this doesn't necessarily address you
10:43:42 22 directly, so I'd intend to go Ms. Stoughton; but is there
10:43:46 23 anything that you would need to add on that, Mr. Wilkens?

10:43:50 24 **MR. WILKENS:** No, Your Honor. But I would say
10:43:53 25 that -- except to say that I think the Carcano Plaintiffs would

10:43:57 1 as well benefit from the additional time to meet and confer
10:44:03 2 with the Defendants because there are still, I think,
10:44:05 3 substantial questions about what -- the medical records they
10:44:09 4 are seeking and the basis for their requests.

10:44:13 5 **THE COURT:** All right. Ms. Stoughton?

10:44:17 6 **MS. STOUGHTON:** Thank you, Your Honor. A couple of
10:44:19 7 things. We have asked for three weeks, and the reason is
10:44:24 8 that -- and the problem with having had these meet-and-confers
10:44:27 9 without the language of the subpoenas in front of us, which
10:44:30 10 language the Defendants could have shared with us irrespective
10:44:33 11 of whether they were able to serve them or not, is that the
10:44:38 12 categories of documents the Defendants have now subpoenaed are
10:44:42 13 totally different from the categories that we have been
10:44:45 14 discussing in the meet-and-confer, very different from what
10:44:48 15 Mr. Duncan characterized it today.

10:44:51 16 They did send us a list of what they were looking at,
10:44:55 17 but instead of that list, which was really about the diagnosis
10:44:57 18 itself, they've now asked for any and all records, medical
10:45:00 19 records and psychological records, without restriction for
10:45:03 20 every person for the past ten years.

10:45:05 21 So I just say that to illustrate that although we
10:45:08 22 have been talking, I'm not sure what the result or effect or
10:45:12 23 benefit of any of that talking was because now we have
10:45:18 24 subpoenas that are different. That's one point.

10:45:19 25 The second point is the complication for the United

10:45:20 1 States here is that we're dealing with third parties. It
10:45:24 2 varies by parties, but some of them have counsel and some of
10:45:28 3 those conversations have been very difficult to have when the
10:45:32 4 question is, well, what have they actually asked for. We have
10:45:36 5 shared that information and have had those discussions, but we
10:45:40 6 haven't had the subpoena, and that has impeded our ability to
10:45:45 7 communicate with third parties, especially with those who are
10:45:45 8 represented.

10:45:45 9 So we're not in a position right now to even know
10:45:48 10 what some of these folks' actual reaction to the subpoena is
10:45:54 11 because they don't even have them yet because we only got them
10:45:58 12 at 9 p.m. last night. We need some time to go and have those
10:46:01 13 conversations so we can engage in a meaningful meet-and-confer
10:46:05 14 now having seen the actual subpoena so that we can actually
10:46:08 15 narrow this and see if we can get back to where I thought we
10:46:09 16 were before, which is that we're talking about records related
10:46:12 17 to the diagnosis of gender dysphoria, or are we talking about
10:46:15 18 something broader, and, if so, what are we actually moving on.
10:46:18 19 So those are the reasons.

10:46:20 20 With regard to the question of is there enough time,
10:46:24 21 as Your Honor noted, these depositions are not until the second
10:46:27 22 stage, which doesn't start until December. I'm very confused
10:46:30 23 by the notion that this is linked to the experts because with
10:46:35 24 regard to expert reports, the expert reports are done. They
10:46:37 25 have been submitted. So if there was an illusion to new expert

10:46:43 1 reports, I think that's surprising and not contemplated in the
10:46:48 2 schedule and not something we would -- we anticipated or think
10:46:53 3 should be happening.

10:46:54 4 With regard to deposing our experts on our clients'
10:46:57 5 medical records, we have no intention of having our experts
10:46:59 6 opine about anything having to do with any individual
10:47:03 7 transgender person's medical records. So I don't understand
10:47:06 8 the relevance of needing those documents to depose our experts.
10:47:11 9 I think the only feasible relevance of these medical records,
10:47:14 10 and, you know, we dispute that they are relevant at all,
10:47:16 11 relates to depositions of those individuals, and those aren't
10:47:21 12 happening until December. So I don't think there is any harm
10:47:24 13 to pushing this out up to three weeks or so.

10:47:27 14 **THE COURT:** I do think that raises an additional
10:47:30 15 point as to the fact that expert witnesses have already
10:47:35 16 provided their reports. So any new reports would need to have
10:47:39 17 some separate permission or procedure for how that gets added,
10:47:45 18 if that were even to be allowed at all. Is that what you are
10:47:49 19 getting at, Ms. Stoughton?

10:47:52 20 **MS. STOUGHTON:** Yes, Your Honor.

10:47:53 21 **THE COURT:** All right.

10:47:55 22 **MS. STOUGHTON:** Just to be clear, this is the first
10:47:59 23 time -- I mean, I haven't gone to every meet-and-confer, so I
10:48:00 24 do want to caveat that, but this is certainly the first time
10:48:03 25 that I have heard mention of this.

10:48:06 1 **THE COURT:** Before I look at particular times on
10:48:07 2 that, let me come back around to the Defendants so you can
10:48:11 3 respond on that with respect to the timing and the expert
10:48:15 4 issues. And, Mr. Stewart, I think you had raised that, so let
10:48:19 5 me go to you on that.

10:48:23 6 **MR. STEWART:** Your Honor, I guess my concern -- if I
10:48:31 7 could go back to -- on the -- to Ms. Stoughton about the
10:48:35 8 subpoena issue and about how the whole scope appears to have
10:48:41 9 changed real quick. She's exactly right. In the subpoenas,
10:48:49 10 we've basically -- the scope is basically any and all records,
10:48:53 11 mainly because it was sort of difficult, at least in my mind,
10:48:56 12 to request from these various providers and these witnesses
10:49:03 13 certain records, some records which may be in a counseling
10:49:07 14 session, some may be with a general practitioner. We thought
10:49:15 15 that was the best way to go ahead and seek these records.
10:49:15 16 We're obviously -- you know, we're not at the admissibility
10:49:17 17 stage, Your Honor. This is the discovery stage.

10:49:22 18 In the September 20th email, and I know that the
10:49:24 19 Court doesn't have the benefit of having it in front of her,
10:49:28 20 but we asked -- we told them these are generally the type of
10:49:33 21 records that we are looking for, and they had to do with the
10:49:36 22 diagnosis of gender dysphoria and treatment of gender
10:49:39 23 dysphoria, including the basis. We also indicated records
10:49:43 24 related to diagnosis of sex development disorder recognized by
10:49:49 25 the DSM-5 as one possible basis and also records relating to

10:49:54 1 any sort of co-occurring preexisting mental health or physical
10:50:03 2 disorders. We further explained to them records sufficient to
10:50:03 3 explore whether any harm allegedly caused by H.B. 2 might have
10:50:07 4 another cause and harm part. As I told Your Honor earlier, we
10:50:11 5 went on to actually give some examples of some questions.

10:50:14 6 So they've had some very specific context for these
10:50:20 7 records since September 20. I don't want the Court to be left
10:50:24 8 with the impression that all of a sudden now, at the last
10:50:28 9 minute, these subpoenas were served and everybody is sort of
10:50:32 10 surprised about what we're looking for. It's pretty well
10:50:38 11 documented, at least in my mind, and I will let Mr. Duncan
10:50:41 12 speak to it as well, that there is no surprise here, and I
10:50:45 13 still believe one week is sufficient.

10:50:47 14 **THE COURT:** All right. Well, let me ask you just on
10:50:49 15 that point, though, because I understand there might be
10:50:52 16 differences and positions generally on that, and I don't know
10:50:56 17 how much it helps me to try to sort out things that aren't
10:51:00 18 going to make a difference at this point in sort of
10:51:03 19 specifically what we do moving forward, but what I want to make
10:51:08 20 sure I understand.

10:51:09 21 It sounds like you've had discussions with respect to
10:51:11 22 what you're actually looking for, but it is still now your
10:51:16 23 position that you wouldn't be able to narrow down the subpoenas
10:51:19 24 because the medical providers wouldn't necessarily be able to
10:51:26 25 make those determinations for you and so your subpoena would

10:51:30 1 have to be for all of the records, and then the United States
10:51:33 2 would have the option to file their motion for protective order
10:51:36 3 on that, unless you all can come up with some way to narrow the
10:51:43 4 actual subpoena itself that would be going to the medical
10:51:46 5 providers. Is that right?

10:51:49 6 **MR. STEWART:** Absolutely, Your Honor. And we would
10:51:51 7 certainly, you know, based on descriptions that we have given
10:51:54 8 them earlier, would accept less than this -- you know, all the
10:51:59 9 medical records for everything. We're not interested in asking
10:52:02 10 these witnesses about every piece of medical information. It's
10:52:07 11 only with regard to some of the specific issues in this case.
10:52:11 12 Yes, Your Honor, I agree with your assessment of it.

10:52:16 13 **THE COURT:** All right. So --

10:52:29 14 **MR. DUNCAN:** Your Honor?

10:52:29 15 **THE COURT:** Yes.

10:52:29 16 **MR. DUNCAN:** I'm sorry to interrupt. This is Kyle
10:52:29 17 Duncan.

10:52:29 18 **THE COURT:** Actually, I was going to come to you
10:52:29 19 next, Mr. Duncan, but let me make sure with Mr. Stewart.

10:52:29 20 **MR. DUNCAN:** That's fine.

10:52:29 21 **THE COURT:** Mr. Stewart, just to finish up on that
10:52:34 22 last thought. Then the subpoenas themselves are what you
10:52:42 23 contend you need to ask for now, which is everything, and if
10:52:45 24 you all can come up with some way to narrow those for the
10:52:51 25 providers, then you could do that; but if the United States

10:52:54 1 needs to file their motion for protective order, then it would
10:52:58 2 be as to your request for everything. I think that's what
10:53:00 3 you've confirmed; is that right?

10:53:06 4 **MR. STEWART:** Yes, Your Honor. I think the avenue
10:53:07 5 here is, again, to address it in a motion for protective order.

10:53:11 6 **THE COURT:** All right. Before I go to Mr. Duncan,
10:53:14 7 because I want to get his take on all of this as well, but I
10:53:18 8 wanted to follow up again with you, Mr. Stewart, on the other
10:53:23 9 question I originally came to you on, which is as to the
10:53:27 10 experts and the need to have these records prior to the experts
10:53:32 11 being deposed. Can you talk to me about that? Expert reports
10:53:40 12 are already done; right?

10:53:41 13 **MR. STEWART:** Yes, Your Honor. Just generally, with
10:53:42 14 regard, for example, for some of their medical experts, Your
10:53:42 15 Honor, I want to -- we want to make sure that their opinions
10:53:48 16 are about this alleged harm of some of these transgender
10:53:53 17 plaintiffs, whether or not it's consistent with actually the
10:54:01 18 medical condition of these specific plaintiffs, for example.
10:54:05 19 If they've had other issues going on in their lives that are,
10:54:11 20 you know, causing some of these issues they've alleged in their
10:54:14 21 complaint, the types of harm, then we would want to have that
10:54:19 22 information to possibly cross-examine their own medical
10:54:23 23 witnesses with some of those details.

10:54:25 24 **THE COURT:** All right. So let me follow up on that.
10:54:29 25 So it sounds like, Mr. Stewart, to the extent -- there might be

10:54:32 1 some issue here with respect to relevance or something else
10:54:36 2 that the Government might include in their motion for
10:54:39 3 protective order, but your contention is you would want it for
10:54:43 4 purposes of potentially cross-examining their expert witnesses,
10:54:46 5 and I want to make sure then there's -- your experts, though,
10:54:50 6 have already done their reports so there wouldn't be anything
10:54:54 7 else where it would affect your experts; is that right?

10:55:02 8 **MR. STEWART:** Your Honor, we are not inclined to be
10:55:05 9 supplementing our expert reports, if that's the Court's
10:55:08 10 question at this time. Obviously, if something came up based
10:55:11 11 on these medical records and we felt the need to do that, then
10:55:14 12 we would bring it to your attention; but that's certainly not
10:55:18 13 our goal.

10:55:18 14 We do want to have our experts prepared when -- if,
10:55:24 15 for example, they're cross-examined about an opinion or
10:55:26 16 something in their declarations, and I don't have those in
10:55:31 17 front of me, Judge, to go through each one, but there's
10:55:34 18 certainly the potential there that we would like them to have
10:55:37 19 that information so they can be prepared for their depositions.

10:55:43 20 **THE COURT:** I think that if there are issues that
10:55:46 21 need to be developed on that, then I can let you all do that in
10:55:49 22 a way that presents it more squarely to me, but I'm also
10:55:56 23 wanting to make sure that I am certainly not intending to open
10:56:01 24 the door for something that otherwise wouldn't be within the
10:56:05 25 scope of what the experts have already provided their reports

10:56:10 1 on and which they would be subject to deposition on. Do you
10:56:13 2 understand that?

10:56:15 3 **MR. STEWART:** Yes, Your Honor, and that's not our
10:56:17 4 intent.

10:56:18 5 **THE COURT:** All right. So then, Mr. Duncan, let me
10:56:20 6 come to you as to both of those issues, the experts and the
10:56:24 7 time that you need and also generally the scope of the
10:56:29 8 subpoenas and how those might be potentially addressed.

10:56:35 9 **MR. DUNCAN:** Sure, Your Honor. Let me say this to
10:56:37 10 try and cut through some of this. From our point of view, the
10:56:42 11 difference of opinion here has to do with the relevance of this
10:56:46 12 kind of medical information to the Plaintiffs' claims. I think
10:56:52 13 that's where the disagreement is, and that's why I agree, I
10:56:54 14 think with Mr. Wilkens and Mr. Stewart, that the proper place
10:56:57 15 for thrashing this out is in a motion for protective order. I
10:57:02 16 think judging from the meet-and-confers and the communications
10:57:06 17 among the parties, there's a real difference of opinion about
10:57:10 18 how these sorts of medical issues are relevant to the claims.
10:57:14 19 So, I mean, I think that's my basic point here. This is really
10:57:19 20 a legal argument about the relevance of these things.

10:57:22 21 From our point of view on the defense side, this is a
10:57:25 22 very straightforward issue. I know there's not much in this
10:57:28 23 case that's straightforward, but this is pretty straightforward
10:57:32 24 from our point of view, that the Plaintiffs and their witnesses
10:57:34 25 are putting their medical condition at issue in some way, be it

10:57:38 1 for to establish harm or to establish that they are a protected
10:57:41 2 class or what have you or, frankly, to establish something as
10:57:47 3 basic as what's the definition of sex for purposes of these
10:57:49 4 federal statutes.

10:57:49 5 Our basic position has always been that if the
10:57:54 6 Plaintiffs are going to do that, then, just as in any other
10:57:57 7 case, the Defendants have the right to explore those issues of
10:58:02 8 the medical conditions, the nature of medical conditions, both
10:58:06 9 generally and with respect to the Plaintiffs, and they ought to
10:58:09 10 be able to do that by requesting medical records and by asking
10:58:13 11 the Plaintiffs questions in depositions. That's been our
10:58:16 12 position all along, and our subpoena is perfectly consistent
10:58:18 13 with that. It's just a generic -- as far as I can -- in my
10:58:20 14 view, it's just a generic request for medical records because
10:58:27 15 medical issues are a big deal in this case, and that's what
10:58:31 16 we're looking for.

10:58:33 17 The meet-and-confers -- obviously, we have a
10:58:35 18 difference of opinion with the Plaintiffs on what we're
10:58:38 19 actually talking about, and I'm not going to rehearse that
10:58:38 20 here. The meet-and-confers were intended to see if we could
10:58:42 21 reach some kind of agreement on narrowing categories. We've
10:58:46 22 proposed some possibilities. I remain skeptical, frankly, that
10:58:51 23 it's feasible to sort of proactively limit the kinds of
10:58:56 24 categories. We are willing to consider it if we get a
10:59:00 25 counterproposal back. At this point, I don't think it's

10:59:04 1 feasible to proactively limit those.

10:59:07 2 **THE COURT:** In terms of limiting what the providers
10:59:09 3 send or what the subpoena actually says? Is that what you
10:59:13 4 mean?

10:59:14 5 **MR. DUNCAN:** That's right. For example, if we are
10:59:16 6 interested in exploring sort of the diagnosis of gender
10:59:22 7 dysphoria and relevant medical conditions that go along with
10:59:27 8 that, I, frankly, don't know how to perspectively limit a
10:59:31 9 subpoena request to get at that without potentially leaving out
10:59:34 10 a bunch of other stuff that we think is relevant. We are sort
10:59:36 11 of shooting in the dark.

10:59:37 12 **THE COURT:** Well, and I think that the request for
10:59:40 13 protective order can certainly raise the issue as to whether
10:59:46 14 the information is relevant and discoverable at all, but also
10:59:52 15 can raise the question of whether there are parameters that
10:59:55 16 could be put around it to provide some protection along the
11:00:00 17 lines of the things that 26(c) contemplates or some other
11:00:05 18 proposal that would be an appropriate basis to narrow or
11:00:12 19 otherwise provide limitations to help protect the disclosure of
11:00:18 20 the information. So I would expect that the motion for
11:00:23 21 protective order could cover both of those things in terms of
11:00:27 22 whether it should be allowed at all or, if it is allowed, what
11:00:30 23 the parameters or other protections might be that the Court
11:00:34 24 could put on that.

11:00:36 25 As far as the time frame goes and the experts,

11:00:40 1 Mr. Duncan, I will let you speak to that issue that Mr. Stewart
11:00:44 2 also addressed in terms of not opening up defense experts
11:00:51 3 beyond the reports that they've already provided and whether or
11:00:56 4 not it's any basis for cross of the Plaintiffs' experts when
11:01:02 5 that's not included within their report. I think those are
11:01:05 6 issues. I don't want to certainly open the door here today for
11:01:09 7 these things to be part of expert depositions that they
11:01:13 8 wouldn't otherwise be or some need to do the disclosures early
11:01:19 9 enough for experts to do something with them.

11:01:21 10 Do you understand the question?

11:01:23 11 **MR. DUNCAN:** I understand the concern. It is not --
11:01:25 12 I agree with everything that Mr. Stewart said in response to
11:01:28 13 that. It has not ever been our intent to open the door to
11:01:35 14 additional expert reports. We haven't suggested that. I
11:01:36 15 didn't hear Mr. Stewart suggest that either.

11:01:40 16 **THE COURT:** I think that was actually part of my
11:01:42 17 question as to what the need was.

11:01:42 18 **MR. DUNCAN:** I didn't want to say it quite that way,
11:01:46 19 Your Honor, but that's --

11:01:46 20 **THE COURT:** Right.

11:01:46 21 **MR. DUNCAN:** -- I heard Your Honor. If anyone wanted
11:01:49 22 to do something like that, whether on the Plaintiffs' side or
11:01:52 23 on the Defendants' side, I assume there would have to be some
11:01:57 24 kind of motion or some kind of agreement to do that. It's not
11:01:59 25 our intent to do that.

11:01:59 1 **THE COURT:** All right.

11:01:59 2 **MR. DUNCAN:** The only thing that I would add to what
11:02:03 3 Mr. Stewart said is I am not a medical doctor. I am not a
11:02:06 4 psychologist or psychiatrist. So in order for me to
11:02:11 5 intelligently understand how to ask a witness a question on
11:02:15 6 these topics, I have to talk to my experts who can interpret
11:02:20 7 whatever may be in these medical records for me and have me be
11:02:24 8 able to understand how to get at some of these issues. I'm
11:02:24 9 just not a doctor.

11:02:27 10 **THE COURT:** All right. And I understand. I think
11:02:28 11 that --

11:02:29 12 **MR. DUNCAN:** The time frame I need --

11:02:31 13 **THE COURT:** Right. So you need some that way. I
11:02:33 14 think what prompted my question, and I think it helps to narrow
11:02:37 15 it here, but what prompted my question about experts or expert
11:02:41 16 reports or questions from experts had to do with Mr. Stewart's
11:02:44 17 suggestion that he needed these records sufficiently in advance
11:02:49 18 of the expert depositions so his experts would have a chance to
11:02:53 19 be able to review them and prepare for their depositions, and
11:02:59 20 how that would actually be relevant in their depositions is
11:03:02 21 part of what I was trying to get at or explore.

11:03:06 22 It sounds like it might be slightly different than
11:03:10 23 what I was at least originally understanding in that there
11:03:13 24 might be some request that you would have to get these in
11:03:16 25 advance of the fact witnesses' depositions in time for you to

11:03:21 1 be able to review them and, to the extent you wanted or needed
11:03:25 2 to do that, to look at them with your experts in anticipation
11:03:28 3 of the fact witness' deposition, which is different than
11:03:31 4 somehow opening these things up as part of the -- your experts'
11:03:36 5 depositions. Does that make sense?

11:03:41 6 **MR. DUNCAN:** I do understand that, sorry.

11:03:43 7 **THE COURT:** And so if that -- am I now understanding
11:03:48 8 that the issue would be to have the information in preparation
11:03:52 9 for the fact witnesses' depositions, not your expert witnesses'
11:03:57 10 depositions; is that right?

11:03:59 11 **MR. DUNCAN:** You know, I think so, Your Honor. I'm
11:04:00 12 just trying to run through all the possibilities in my mind. I
11:04:04 13 mean, in order for me to cross-examine an expert -- in order
11:04:12 14 for me to cross-examine one of their experts, I -- you know,
11:04:16 15 it's hard to imagine that this is just purely in the abstract.
11:04:20 16 This is one of the issues that's, quite frankly, confusing to
11:04:24 17 me.

11:04:24 18 We have individual witnesses and individual
11:04:27 19 plaintiffs who are alleging specific things about their medical
11:04:31 20 conditions and their stories, et cetera, et cetera, their
11:04:35 21 transition, and then we have these experts who are making very
11:04:40 22 broad statements about gender identity and gender dysphoria and
11:04:45 23 the treatment of all that. It's sort of abstract.

11:04:47 24 So, I mean, I do think it would help to have these
11:04:50 25 medical records in advance of expert depositions or at least

11:04:54 1 close enough to the time of expert depositions so we could at
11:04:56 2 least consider them. It would just make the questions to the
11:05:03 3 experts more pointed so we are not just talking about
11:05:05 4 abstraction; we are talking about real people who happen to be
11:05:09 5 plaintiffs in this lawsuit. I don't know if that makes sense,
11:05:11 6 but I'm just -- I'm having trouble divorcing the idea of these
11:05:15 7 individual plaintiffs with their particular medical conditions
11:05:17 8 and the experts who are making very general pronouncements
11:05:21 9 about the medical issues in the case.

11:05:24 10 **THE COURT:** All right. I think I understand that's
11:05:26 11 not something that at this point we're reaching any kind of
11:05:32 12 agreement or determination as to the extent of the relevance of
11:05:38 13 these records that we don't even have yet on potential expert
11:05:41 14 witness depositions, but to the extent that there was a concern
11:05:47 15 raised by Defendants of having the information in time for
11:05:55 16 Defendants' experts to be able to incorporate or more prepare
11:05:59 17 them, it doesn't sound like that is necessarily something that
11:06:04 18 I would need to build in time for.

11:06:06 19 Going to what the schedule might look like, if I
11:06:10 20 moved the hearing out a couple of weeks -- November 11 is
11:06:17 21 actually a federal holiday. If I moved it to Friday the 18th,
11:06:22 22 then that still has us in mid November with some period of time
11:06:27 23 in advance of the second deposition period, understanding that
11:06:34 24 while there might be some dispute as to the relevance of these
11:06:38 25 records and the potential limitations to put around these as to

11:06:42 1 the fact witness and as to the experts, it's not in anyone's
11:06:46 2 contemplation at this point that they would be part of or
11:06:52 3 included within expert reports that have already been provided,
11:06:55 4 and that would have to be something separately presented and
11:06:59 5 raised to the Court if someone wanted leave to go down that
11:07:02 6 road in some way.

11:07:04 7 Is that accurate for where we are right now? Let me
11:07:09 8 ask you first, Mr. Duncan?

11:07:11 9 **MR. DUNCAN:** That's correct, Your Honor.

11:07:12 10 **THE COURT:** And Mr. Stewart?

11:07:15 11 **MR. STEWART:** Your Honor, we can live with that.

11:07:16 12 **THE COURT:** All right. And Ms. Stoughton?

11:07:21 13 **MS. STOUGHTON:** Yes, Your Honor. I just want to be
11:07:23 14 very clear that none of our experts' opinions are based on a
11:07:26 15 review of any individual medical records from the third-party
11:07:32 16 witnesses. Our position is that there's simply no basis for
11:07:36 17 cross-examining them on them.

11:07:38 18 **THE COURT:** All right. I understand and appreciate
11:07:40 19 that. I think, as I indicated, it sounds like there are
11:07:45 20 obviously going to be issues that you've already raised and
11:07:48 21 discussed that would be included within the protective order in
11:07:50 22 terms of whether these documents are relevant at all; and then,
11:07:54 23 as I indicated, if there is some relevance but still
11:07:59 24 necessarily some additional protection you would ask for, if
11:08:05 25 they were produced, then you can include that in your request

11:08:08 1 for protective order as well.

11:08:10 2 I'm not going to try to anticipate that many steps
11:08:18 3 ahead in terms of what may be issues that arise, questions that
11:08:23 4 may be contemplated and objections to those questions; but if
11:08:27 5 there are things that are sufficiently anticipated that you
11:08:32 6 want to bring them to the Court's attention to include, then
11:08:36 7 that would certainly be something you could do in the request
11:08:39 8 for a protective order in terms of the limits that you would
11:08:43 9 want to put around something. Then that would give the
11:08:46 10 Defendants an opportunity to respond to that.

11:08:49 11 But, again, to the extent there may have been some
11:08:53 12 suggestion that there would be a need for these for the
11:08:56 13 Defendants' expert reports, that would not be within what's
11:08:59 14 currently contemplated, given the fact that the expert reports
11:09:03 15 have already been completed, and that would require some
11:09:05 16 separate requests for leave to the Court. If there were some
11:09:09 17 new report that the Defendants somehow wanted to try to present
11:09:13 18 or prepare, that would have its own concerns at that point.

11:09:20 19 Is that right, Ms. Stoughton?

11:09:23 20 **MS. STOUGHTON:** That sounds right to me.

11:09:25 21 **THE COURT:** Mr. Wilkens, anything else on that?

11:09:28 22 **MR. WILKENS:** I would only add this, Your Honor, and
11:09:31 23 echo Ms. Stoughton on this point. We would certainly want to
11:09:35 24 be able to address in a protective order motion what we now are
11:09:40 25 really for the first time hearing about in terms of the

11:09:42 1 supposed relevance of these records for the need of the medical
11:09:48 2 experts. That has not been raised or discussed before, and we
11:09:52 3 would want to be able to argue -- certainly present argument as
11:09:54 4 to their irrelevance with regard to medical expert testimony in
11:09:59 5 this case.

11:09:59 6 **THE COURT:** All right. And, again, I think that what
11:10:01 7 I anticipate is if you all have disagreement as to whether the
11:10:07 8 records request is relevant at all or is overly broad or the
11:10:13 9 records can be provided but with some other limitations on
11:10:17 10 them, all of that would be helpful if you could address that in
11:10:20 11 the motion for protective order in a way that sets out various
11:10:25 12 options in terms of what your contentions are but what the
11:10:29 13 alternatives may be. If I were to find some of the records
11:10:36 14 relevant, then how, as a practical matter, they could be
11:10:42 15 provided or narrowed, if that was possible, or otherwise
11:10:47 16 protected and what that might look like.

11:10:50 17 So if you can include that, and also if you all can
11:10:54 18 have the discussions about the anticipated use of those things,
11:10:58 19 because while I don't want to get into hypotheticals or too
11:11:04 20 many steps ahead, if you anticipate an issue that's going to
11:11:09 21 come up in a deposition, certainly, it would be more efficient
11:11:12 22 to raise that specific issue ahead of time and have that
11:11:17 23 resolved rather than interrupting the deposition or having to
11:11:21 24 reschedule the deposition based on a dispute that you know is
11:11:24 25 coming but that hasn't been resolved.

11:11:26 1 So understanding the issues as they've developed and
11:11:32 2 the Court's option of setting out that hearing for two weeks,
11:11:36 3 which would take it to Friday the 18th of November, let me ask
11:11:42 4 for some proposals on a briefing schedule that would give you
11:11:47 5 some period of time to continue with your meet-and-confer in
11:11:51 6 light of the issues we've talked about here today and the
11:11:57 7 specific language now included in the subpoenas.

11:12:01 8 Ms. Stoughton, I am going to start with you on that
11:12:03 9 proposal since it's your request for the additional time on
11:12:07 10 that.

11:12:07 11 **MS. STOUGHTON:** Yes, Your Honor, thank you. Our
11:12:10 12 proposal would be that the Plaintiffs would move for a
11:12:13 13 protective order by October 25 with a response from the
11:12:17 14 Defendants by November 8 and the reply by November 15. And,
11:12:24 15 you know, the reason why we think that's an appropriate
11:12:27 16 schedule is that the time in advance of that I think -- I think
11:12:31 17 this conversation reveals that there is substantial room and
11:12:35 18 need for more concrete meeting and conferring. I think we've
11:12:40 19 heard, you know, new explanations for the relevance of these
11:12:44 20 records today, and I think those conversations need to
11:12:46 21 continue.

11:12:47 22 I think that this is not just a straightforward
11:12:51 23 disagreement about categorical relevance. To the contrary, the
11:12:55 24 Carcano Plaintiffs have offered the Defendants some medical
11:12:59 25 records. The United States is willing to consider that as

11:13:03 1 well, and I can't go farther than that because we don't have
11:13:07 2 authorization from all of the witnesses because it's obviously
11:13:09 3 at some level their call, but we are absolutely willing to
11:13:12 4 consider disclosing some medical records.

11:13:17 5 So those conversations really need to happen, and I
11:13:20 6 think there is an opportunity to narrow -- at least narrow the
11:13:26 7 scope of the dispute and possibly even resolve the dispute. I
11:13:30 8 think that's a possibility that remains on the table, and I
11:13:33 9 just think those conversations, for a variety of reasons, have
11:13:37 10 just not really progressed sufficiently. So we need some time
11:13:40 11 to turn back to them. In other words, it's not simply a
11:13:44 12 request for that time to brief a motion. I make that request
11:13:48 13 for some three weeks here so that we can in good faith meet and
11:13:52 14 confer.

11:13:57 15 **THE COURT:** All right. As I'm thinking about that, I
11:14:03 16 also wondered if it's helpful to include some specific dates or
11:14:10 17 deadlines for you all to meet on particular issues or whether
11:14:17 18 that adds anything to that process. Ms. Stoughton?

11:14:24 19 **MS. STOUGHTON:** You mean in terms of setting up
11:14:26 20 specific meet-and-confer times?

11:14:29 21 **THE COURT:** Times or deadlines or particular number
11:14:32 22 of meet-and-confers, or something that ensures that that's
11:14:35 23 happening. What I obviously don't want to have happen is I
11:14:39 24 push this out for two weeks, and then there's still the same
11:14:44 25 issues by the time we get to a hearing November 18 that could

11:14:52 1 or should have been sort of further addressed in
11:14:55 2 meet-and-confers if you all had had a chance to raise all of
11:15:02 3 the issues and including, for example, a requirement or a
11:15:15 4 directive for Defendants to give some sort of notice of their
11:15:22 5 intent for how they would use or with which witnesses they
11:15:27 6 would use the records so that you have an opportunity to
11:15:30 7 respond and discuss and narrow that and then include that in
11:15:35 8 the motion for protective order, if you couldn't otherwise
11:15:39 9 narrow it, and then set dates for when they would do that and
11:15:43 10 when you would have your meet-and-confers.

11:15:47 11 I don't want to involve myself too much in that part
11:15:51 12 of the process, but I want to make sure that you all have moved
11:15:54 13 the disputes sort of forward enough or otherwise narrowed it
11:15:58 14 enough so that the motion for protective order deals with just
11:16:01 15 the pieces that you aren't able to resolve.

11:16:05 16 Is there something you could suggest, Ms. Stoughton?

11:16:10 17 **MR. WILKENS:** Well, that's an attractive idea. I
11:16:16 18 will say in terms of the process and getting together and
11:16:19 19 making themselves available, all the parties have been, I
11:16:21 20 really think, excellent on that. So I don't think that's our
11:16:24 21 problem. If there was -- I do think it would be useful to have
11:16:29 22 a clearer sense from the Defendants of what their basis for
11:16:35 23 relevance is so that we can address those issues specifically
11:16:40 24 in the motion.

11:16:41 25 I acknowledge that the Defendants sent an email on

11:16:43 1 the 20th that kind of stated in broad terms the categories of
11:16:48 2 records they were seeking, and that was helpful. I think it
11:16:52 3 would be helpful to maybe do that again now that the subpoenas
11:16:55 4 have been served, given that the subpoenas are broader. I
11:16:57 5 think there has been some conversation, which I think has been
11:16:59 6 helpful, about the reasons for that on this call, but actually
11:17:01 7 do that in the context of the meet-and-confer.

11:17:04 8 And if there are -- if there is more specific
11:17:08 9 information that the Defendants can provide in terms of their
11:17:11 10 intentions for how these records would be used for their
11:17:14 11 defenses, again, so that we can research those issues and
11:17:17 12 address them in the motion, I do think that would be useful.
11:17:21 13 I'm sure the Defendants have more concrete -- it's hard to kind
11:17:25 14 of be more specific than that in the abstract.

11:17:30 15 **THE COURT:** Right. So the other sort of possibility,
11:17:32 16 though, or the way to think about this is they have subpoenaed
11:17:35 17 what they've subpoenaed, and if you file your motion for
11:17:40 18 protective order setting out your position on that, then in
11:17:47 19 response they would have their own obligation to address those
11:17:53 20 issues and then potentially provide their own alternatives.
11:17:57 21 And so it may be that rather than building in additional time
11:18:04 22 on the front for more abstract conversation, it is better to
11:18:09 23 have your motion and then put them to the task of responding
11:18:13 24 and build in an additional meet-and-confer after you filed
11:18:17 25 their motion and they file your response and everyone is sort

11:18:21 1 of on paper at that point, and then you would still have the
11:18:25 2 opportunity to file a reply, and I can even include a joint
11:18:30 3 notice so that I know what the narrowed issues are, if anything
11:18:34 4 has been resolved as a result of your meets-and-confers.

11:18:37 5 Does that -- do you understand where I am going with
11:18:40 6 that, Ms. Stoughton?

11:18:41 7 **MS. STOUGHTON:** I do. Generally, it's our preference
11:18:48 8 to try to narrow it in the first place, but if we do it that
11:18:51 9 way, that's fine. I would just ask in that case that we have
11:18:54 10 more time than might be usual between the opposition to the
11:18:57 11 motion and the reply because I think that's a space where a
11:19:03 12 meet-and-confer process will also unfold hopefully, but also
11:19:10 13 that's where the real work of the motion is in figuring out --
11:19:10 14 you know, going back to these third-party witnesses, saying
11:19:12 15 what are you really willing to give up here, what are your
11:19:17 16 interests, because just, to be frank, what we're -- one of our
11:19:20 17 considerations here is that there are some witnesses --
11:19:21 18 depending on where the line gets drawn here, there are some
11:19:26 19 witnesses who are otherwise willing to participate in this
11:19:26 20 endeavor who may not be willing to participate if the
11:19:30 21 requirement is really broad disclosure.

11:19:32 22 And so we'll have -- it's not until we really have
11:19:39 23 the concrete sense of this is what the Defendants are really
11:19:42 24 getting at that those witness are in a position tell us I will
11:19:47 25 give this much and no more or, you know what, I'm out. So then

11:19:50 1 we don't have to fight about -- you know, that might eliminate
11:19:51 2 us having to fight about certain things. Other witnesses may
11:19:55 3 have different thresholds or may have different records or they
11:19:56 4 might not have any records.

11:20:00 5 I'm sorry. I am rambling here, but it's just to say
11:20:02 6 that there are a lot of reasons why, if that's the structure,
11:20:06 7 we would just need a pretty substantial -- maybe two weeks
11:20:08 8 before the reply.

11:20:09 9 **THE COURT:** All right. So if I did that and moved
11:20:12 10 your motion date out until October 18, which is still giving
11:20:19 11 you two weeks rather than just the one week, for filing your
11:20:23 12 motion, with the intent that you all use that, at least a week
11:20:28 13 of that, to engage in additional meet-and-confers in attempts
11:20:33 14 to narrow it by agreement, now that you've got the language of
11:20:37 15 the subpoena, if you can have some discussion about potential
11:20:43 16 parameters and resolve it short of filing a motion and then
11:20:45 17 you've got time built in to do that -- if the motion was the
11:20:51 18 18th, the response would be November 1, and then what I would
11:20:58 19 intend to do is set up an additional meet-and-confer deadline
11:21:02 20 for attempting to resolve and narrow the issues, maybe with an
11:21:07 21 additional meet-and-confer by the next week, November 8, and
11:21:13 22 then replies due -- it would be helpful to me to have as much
11:21:22 23 time as I could with that prior to the hearing. If you need --
11:21:29 24 I could at least make it the 14th, if you needed that amount of
11:21:34 25 time to get the reply, but what I would intend then is the

11:21:39 1 reply to also let me know where you all have reached agreement
11:21:44 2 and what the remaining dispute is, and then you can also reply
11:21:47 3 to any remaining issues on that. And then that would be Monday
11:21:53 4 November 14 for the reply, and then I would have that for the
11:21:58 5 hearing on the 18th.

11:22:01 6 And that hearing on the 18th would obviously take the
11:22:05 7 place of the hearing that's presently set for the 28th. So it
11:22:06 8 would include legislative immunity and the medical records
11:22:09 9 issue, but I would leave legislative immunity on the same
11:22:13 10 track.

11:22:13 11 Now, I am going to the Defendants because we've
11:22:16 12 covered a lot of different possibilities. So before I go too
11:22:19 13 far down that road, I am going to get their thoughts on it as
11:22:23 14 well.

11:22:24 15 That sort of schedule may include that way both a
11:22:31 16 time period for meet-and-confer in attempts to narrow on the
11:22:35 17 front end, but also with the notion that this will be more
11:22:38 18 concrete once you actually filed a motion and there's been a
11:22:43 19 response, and my hope -- or my intent would be that you have
11:22:46 20 another round of meet-and-confer prior to the hearing in
11:22:48 21 attempts to narrow it.

11:22:52 22 Does that make sense to you, Ms. Stoughton?

11:22:56 23 **MS. STOUGHTON:** Yes, Your Honor.

11:22:56 24 **THE COURT:** Before I go to the Defendants, any other
11:23:00 25 suggestions for how we might set that up or things you want to

11:23:02 1 be heard on that?

11:23:04 2 **MS. STOUGHTON:** No, Your Honor.

11:23:05 3 **THE COURT:** Okay. Actually, Mr. Wilkens, before I go
11:23:09 4 to the Defendants, anything you needed to add on that?

11:23:15 5 **MR. WILKENS:** No, Your Honor.

11:23:16 6 **THE COURT:** Mr. Duncan, I've covered lots of
11:23:18 7 different possibilities with Ms. Stoughton. I will let you
11:23:22 8 address what she's raised, if you need to do that, or sort of
11:23:25 9 what the Court's proposal might -- or how that might work for
11:23:28 10 you.

11:23:29 11 **MR. DUNCAN:** Well, thank you, Your Honor. I'm not
11:23:31 12 really sure where to begin. I guess the first thing that
11:23:34 13 occurred to me was that Your Honor's suggestion of briefing
11:23:39 14 this early in order to make these issues more concrete is
11:23:43 15 something I would strongly support as opposed to having
11:23:45 16 additional meet-and-confers in advance of briefing.

11:23:50 17 My reason is this: It's because of my experience
11:23:53 18 already of meet-and-confers on this issue. As I said earlier,
11:23:58 19 our strong position here is that this is an issue about
11:24:04 20 relevance. The Plaintiffs and their witnesses are putting
11:24:08 21 their medical conditions at issue. I don't mean to repeat
11:24:13 22 myself, but they are putting their medical conditions at issue.
11:24:13 23 Their affidavits and their complaint is replete with references
11:24:16 24 to their medical conditions.

11:24:19 25 In any normal case, the Defendants ought to have the

11:24:22 1 ability to have discovery into those medical conditions and to
11:24:26 2 ask the Plaintiffs questions and their witnesses questions
11:24:29 3 about their medical conditions. If we want to have a
11:24:33 4 discussion about sort of the time period of medical records,
11:24:38 5 fine. That's at least a concrete discussion we can have, but I
11:24:43 6 doubt that it's going to be very productive to have more
11:24:45 7 meet-and-confers so that the parties can simply disagree with
11:24:49 8 each other about the relevance of those medical issues.

11:24:52 9 Instead, if the United States and I guess the Carcano
11:24:55 10 Plaintiffs -- I don't know if these proposals are for the
11:24:59 11 Carcano Plaintiffs. I thought the Carcano Plaintiffs were
11:25:01 12 ready to file a motion for protective order.

11:25:04 13 **THE COURT:** Well, I think my intent is to keep
11:25:07 14 everybody together because I would rather have one brief from
11:25:09 15 the Plaintiffs rather than multiple -- or different tracks for
11:25:12 16 this.

11:25:12 17 **MR. DUNCAN:** Sure.

11:25:12 18 **THE COURT:** So whether they've already -- or would
11:25:17 19 otherwise already be ready to file, I think that I would put
11:25:21 20 them on the same track, and I will let you come back to this,
11:25:26 21 but to the extent that there is some possibility for still
11:25:29 22 addressing it on the front end, whether by time frame, by types
11:25:34 23 of providers, by who will get to see the records or what use
11:25:37 24 might be made of the records even if they are all otherwise
11:25:39 25 provided, I mean, those are the kinds of concrete things that

11:25:42 1 you all could potentially discuss without just having a debate
11:25:48 2 about the relevance of the documents.

11:25:51 3 If you can't reach an agreement on that, at least you
11:25:53 4 might know where your disagreement is in terms of, as I said,
11:25:57 5 whether it's time frame or which providers or what use is made
11:26:05 6 or which witnesses are subject to questioning about the
11:26:09 7 records, how they are used. I think those are things that you
11:26:15 8 all may be able to reach some agreement or at least narrowing
11:26:19 9 on some issues that then don't have to be addressed in the
11:26:21 10 motion for protective order.

11:26:22 11 If you can't, you can't, but it does seem there might
11:26:25 12 be at least room for one round of discussions about some
11:26:28 13 concrete limits or proposals for ways to narrow this dispute or
11:26:40 14 the various ways that this dispute might arise, whether it's
11:26:43 15 providing the records at all or who has access to the records
11:26:47 16 or how the records are used. Those all seem like areas that
11:26:50 17 you might be able to reach some kind of agreement that would
11:26:53 18 narrow the issues that would have to be raised in the
11:26:57 19 protective order.

11:26:58 20 Do you understand on that what I mean?

11:27:00 21 **MR. DUNCAN:** I understand exactly what you're saying,
11:27:05 22 Your Honor. Let me add to that that we have been waiting for a
11:27:07 23 counterproposal from either the United States or the Carcano
11:27:11 24 Plaintiffs on these issues.

11:27:14 25 From our perspective, we have already gone above and

11:27:19 1 beyond what we would normally do in a case involving medical
11:27:23 2 issues. We have indicated the kinds of records that we're
11:27:25 3 looking for. We have indicated, even as Mr. Stewart pointed
11:27:26 4 out, the kind of questions that we might ask. We are waiting
11:27:31 5 for a counterproposal from the Plaintiffs on any of those
11:27:36 6 things, and any of the issues that Your Honor just raised, we
11:27:39 7 would consider; but what I don't think would be fruitful is for
11:27:44 8 the parties to have additional meet-and-confers discussing the
11:27:47 9 relevance of these matters to the clients. Instead, I think
11:27:53 10 what would be helpful to make those discussions concrete is to
11:27:55 11 see a brief from the Plaintiffs explaining why these sorts of
11:28:01 12 issues should not be relevant to their claims.

11:28:04 13 Who knows. If -- you know, as I think I alluded
11:28:09 14 earlier in this call, I remain substantially confused -- this
11:28:14 15 won't surprise the Plaintiffs, but I remain substantially
11:28:16 16 confused on the relationship between these issues of gender
11:28:20 17 identity and gender dysphoria and medical conditions, the
11:28:25 18 relevance of those issues, which evidently are fact issues to
11:28:30 19 the Plaintiffs' claims. Maybe the Plaintiffs will enlighten me
11:28:34 20 on these issues, and this might provide some fruitful way of
11:28:39 21 limiting all sorts of things, be they discovery, deposition, or
11:28:41 22 even the issues at trial.

11:28:43 23 So, you know, sorry to ramble, but understanding from
11:28:49 24 the Plaintiffs why these kinds of issues are not relevant to
11:28:51 25 their claims and why we shouldn't be entitled to explore them

11:28:55 1 would be very helpful. So I guess I think, yes, one
11:28:59 2 meet-and-confer dealing with concrete issues would be helpful,
11:29:05 3 but a brief -- a motion for protective order from the
11:29:09 4 Plaintiffs would be especially helpful so we can make these
11:29:13 5 issues more concrete.

11:29:15 6 That's my thought on that. I'm sure I haven't
11:29:18 7 covered a great deal of things that you want me to cover.

11:29:21 8 **THE COURT:** No, well, I guess the Court's proposal
11:29:26 9 then would be that you all have at least one more round of
11:29:29 10 meet-and-confer, and I think it is appropriate that that would
11:29:34 11 be focused on potential concrete ways to narrow or limit the
11:29:40 12 request that would then make it sufficiently palatable to the
11:29:50 13 Plaintiffs that they could agree to the release, even if you
11:29:53 14 all continue to have some dispute about the relevance of these
11:29:56 15 things and, of course, some ultimate dispute that would have to
11:30:02 16 be resolved at trial with respect to the relevance of these
11:30:03 17 things; but for discovery purposes, if there is some agreement
11:30:07 18 that you all could reach on some concrete sort of limits, as I
11:30:12 19 said, in terms of whether it's time frame or the type of
11:30:15 20 provider, a limit on the type of records that are requested, if
11:30:18 21 that's even feasible for what might go to a provider, or limits
11:30:23 22 on how the records are used or to whom they are disclosed, I
11:30:28 23 think those are the kinds of sort of practical limits or
11:30:32 24 negotiations that you all could have as part of a
11:30:35 25 meet-and-confer so that if at least some of the issues can come

11:30:41 1 off the table, then they don't have to be addressed in a motion
11:30:44 2 for protective order. They could be expressed by agreement,
11:30:48 3 and potentially all of it resolves, at least as to some of the
11:30:53 4 fact witnesses or the Plaintiff parties, by some agreement that
11:31:01 5 you can reach.

11:31:01 6 On the other hand then, if that meet-and-confer
11:31:06 7 doesn't resolve everything or if there are some issues that
11:31:12 8 remain, then the motion for protective order would be filed
11:31:15 9 October 18 and then responses November 1. I don't think that
11:31:20 10 that precludes you certainly from engaging in some additional
11:31:22 11 discussion after you have the motion for protective order on
11:31:27 12 the 18th. You can file the response on the 1st, and then after
11:31:32 13 the response is filed, both sides are then committed in terms
11:31:36 14 of what their positions are on those things; and it seems that
11:31:42 15 rather than adding another week at the beginning, we'll add in
11:31:46 16 a week there prior to the hearing for you all to engage in
11:31:50 17 another round of meet-and-confers by November 8 on the
11:31:57 18 possibility of resolving those things once everybody knows the
11:32:01 19 other parties' positions and their proposals, which, as I said,
11:32:06 20 I hope you all would include in your motion and in the response
11:32:09 21 in terms of what practical proposals you would make or requests
11:32:13 22 from the Court.

11:32:13 23 And then I would have the replies ultimately due on
11:32:17 24 the 14th in preparation for the hearing on November 18, which
11:32:26 25 would then still be in advance of the second deposition period,

11:32:32 1 to the extent that any records would be relevant for
11:32:39 2 individuals being deposed in the second deposition period, with
11:32:43 3 that also being part of what you all could address in terms of
11:32:49 4 how those records are used.

11:32:51 5 So all of that to say then, Mr. Duncan, in terms of
11:32:56 6 the schedule that I am proposing, do you have any other
11:32:58 7 suggestions on that or anything else you want me to take into
11:33:03 8 account or objections to how that schedule might work?

11:33:07 9 **MR. DUNCAN:** No, I don't think so, Your Honor. In
11:33:10 10 terms of some additional meet-and-confer, though, I just want
11:33:15 11 to continue to be on the record that the Defendants have made
11:33:21 12 proposals, have sent communications. Indeed our letter -- I'm
11:33:30 13 sorry -- our letter accompanying the notice of subpoenas
11:33:35 14 contains further explanation of why we think these issues are
11:33:39 15 relevant to the claims. We've done this several times now. We
11:33:45 16 haven't gotten anything back from the Plaintiffs.

11:33:47 17 So if there is going to be an additional
11:33:50 18 meet-and-confer, it's very important to the Defendants that we
11:33:52 19 get something concrete from the Plaintiffs that we can talk
11:33:55 20 about, but we can live with the schedule subject to whatever
11:33:58 21 Mr. Stewart might have to say.

11:34:01 22 **THE COURT:** Mr. Stewart?

11:34:03 23 **MR. STEWART:** Your Honor, we would certainly concur
11:34:05 24 with Mr. Duncan's thoughts on this. Also, we are fine, Judge,
11:34:09 25 with your proposal to address the Plaintiffs' concerns up front

11:34:14 1 in filing a motion for protective order. Like Mr. Duncan said,
11:34:19 2 we think that it's important that we see where they're coming
11:34:22 3 from; and once we have their motion and their brief, I think
11:34:27 4 that will provide us with a little more concrete basis for
11:34:31 5 understanding their position, and we're also fine with your
11:34:35 6 proposed schedule.

11:34:36 7 **THE COURT:** All right. Mr. Gore, I understand you're
11:34:39 8 not necessarily involved in this particular issue, but anything
11:34:43 9 else you wanted to add on that?

11:34:45 10 **MR. GORE:** No, Your Honor, thank you.

11:34:47 11 **THE COURT:** Coming back to the Plaintiffs then,
11:34:49 12 Mr. Wilkens, I will let you speak to that. It sounds like what
11:34:53 13 I might also do is ask the Plaintiffs to go ahead and provide
11:34:57 14 their response or proposals to the Defendants in anticipation
11:35:02 15 of another early meet-and-confer. It sounded like from your
11:35:06 16 joint notice that that was something you still anticipated
11:35:10 17 doing, and it sounds like from the Defendants it would be
11:35:13 18 helpful to have that before you have your other meet-and-confer
11:35:16 19 in anticipation of the motions being filed on the 18th.

11:35:19 20 So I'll let you address that and also the schedule
11:35:22 21 generally that I have gone over here.

11:35:24 22 **MR. WILKENS:** Yes, Your Honor. We certainly would
11:35:28 23 intend to exchange a written counterproposal with them in
11:35:31 24 advance of having a meet-and-confer because we think that would
11:35:34 25 be the most productive way to proceed, and we are certainly and

11:35:39 1 we have been in the course of preparing it.

11:35:42 2 I will just note for Your Honor that the email they
11:35:49 3 sent us with the categories of documents that they are seeking
11:35:52 4 raised a number of questions partly because at least two of the
11:35:56 5 categories of documents they are seeking are simply not covered
11:35:58 6 by any of their Rule 34 document requests. So they are really
11:36:03 7 not even an issue, and so it was just surprising to get a list
11:36:07 8 of documents from them that they haven't even sought under the
11:36:11 9 discovery rules, and that we would have a meet-and-confer about
11:36:14 10 that is a bit strange.

11:36:16 11 We are not opposed to talking about it, but there's
11:36:19 12 no request before us seeking those records. So there are a
11:36:22 13 number of issues that we would address to them in a written
11:36:25 14 response and that we would need to address with them in the
11:36:28 15 actual meet-and-confer.

11:36:29 16 **THE COURT:** All right. When would you propose
11:36:30 17 getting your written response to them, if we are looking --
11:36:34 18 October 18 is the date we are working back from for the
11:36:39 19 motions. So say the meet-and-confer by October 11. When do
11:36:42 20 you anticipate you would get your written counterproposal to
11:36:47 21 them?

11:36:48 22 **MR. WILKENS:** I am just looking at my calendar, Your
11:36:49 23 Honor. I would say -- you said the meet-and-confer would be on
11:36:59 24 the 11th?

11:37:00 25 **THE COURT:** Well, it doesn't necessarily have to be

11:37:02 1 on the 11th, but I just want to give you an outside date for
11:37:06 2 the meet-and-confer to happen sufficiently in advance of your
11:37:10 3 motion being filed on the 18th.

11:37:12 4 **MR. WILKENS:** I would propose not later than the 5th.

11:37:17 5 **THE COURT:** Okay.

11:37:20 6 **MR. WILKENS:** And that will also give us a chance, I
11:37:23 7 think, to speak to the United States, once they've had a chance
11:37:28 8 to actually speak to the nonparties, just to understand the
11:37:33 9 scope of issues that would be addressed in the meet-and-confer
11:37:37 10 among all parties.

11:37:39 11 **THE COURT:** All right. So you're proposing that
11:37:41 12 you'll get written counterproposals to the Defendants by
11:37:45 13 October 5, the meet-and-confer would be by October 11 or 12,
11:37:51 14 and then the motions for protective order by October 18, along
11:37:56 15 the schedule that the Court's otherwise sort of proposed here;
11:38:01 16 is that right?

11:38:03 17 **MR. WILKENS:** Yes, Your Honor.

11:38:04 18 **THE COURT:** Okay. Anything else that you would want
11:38:07 19 to raise or address as to any of those scheduling issues on
11:38:10 20 that?

11:38:14 21 **MR. WILKENS:** Only, Your Honor, that we believe that
11:38:19 22 it may make sense to indeed have more than one meet-and-confer,
11:38:23 23 and that may very well may happen. I also will just echo what
11:38:29 24 Ms. Stoughton said, that the parties have been very amendable
11:38:33 25 to scheduling meet-and-confers. There's been no problem with

11:38:33 1 that. So I think it very well may be the case that we have
11:38:36 2 more than one meet-and-confer.

11:38:38 3 **THE COURT:** I think that makes sense. Certainly,
11:38:40 4 putting any dates in there would not mean to set a date when a
11:38:46 5 meet-and-confer has to happen or preclude additional
11:38:49 6 meet-and-confers; and if it doesn't help to do a date in there,
11:38:55 7 then I can hear from you on that. What I want to make sure of
11:38:58 8 is regardless of when the meet-and-confers are happening or how
11:39:02 9 they are happening, that the Plaintiffs are prepared to file
11:39:04 10 their motion for protective order by the 18th.

11:39:07 11 Does that make sense?

11:39:08 12 **MR. WILKENS:** Yes, Your Honor.

11:39:11 13 **THE COURT:** Would you want me to put a date for when
11:39:13 14 the meet-and-confers should happen by, or would you rather me
11:39:18 15 not include that?

11:39:21 16 **MR. WILKENS:** I really don't think it's necessary,
11:39:22 17 given the way the parties have conducted themselves thus far?

11:39:26 18 **THE COURT:** Okay.

11:39:27 19 **MR. WILKENS:** In light of this conference, I think we
11:39:30 20 all will be very motivated to proceed forward and have a
11:39:34 21 meet-and-confer as soon as we can. I don't think we need it.

11:39:39 22 **THE COURT:** Okay. That's fair enough. Anything
11:39:41 23 else, Mr. Wilkens, before I go on to Ms. Stoughton?

11:39:45 24 **MR. WILKENS:** No, Your Honor.

11:39:45 25 **THE COURT:** Ms. Stoughton?

11:39:55 1 **MS. STOUGHTON:** Your Honor, this sounds fine with me.
11:39:59 2 We will do everything we can to get a counterproposal by
11:40:02 3 October 5, and I only hesitate because we have other counsel
11:40:09 4 involved, but if there is any problems with that, we'll make as
11:40:12 5 complete a counterproposal as we can.

11:40:15 6 **THE COURT:** All right. And then is there a need to
11:40:17 7 put any dates for meet-and-confers or deadlines for that, or
11:40:21 8 you're content with the parties continuing to work that out,
11:40:24 9 understanding your motion for protective order would need to be
11:40:28 10 filed by the 18th?

11:40:30 11 **MS. STOUGHTON:** Your Honor, I think the parties --
11:40:32 12 we've all agreed; we've been very good about scheduling things.
11:40:35 13 So we're content and understand the briefing deadline.

11:40:39 14 **MR. WILKENS:** Your Honor, this is Mr. Wilkens. Sorry
11:40:39 15 to interrupt, but I just wondered, given what Ms. Stoughton
11:40:42 16 just said about the third parties, whether it makes sense to
11:40:48 17 make a deadline for our proposal to be two days later, on
11:40:53 18 Friday the 7th, but we'll try to do it earlier, if we can, just
11:40:58 19 given the need for the United States to communicate with third
11:41:02 20 parties and figure out there what they can and can't do.

11:41:06 21 **THE COURT:** Well, and while that might be fine,
11:41:10 22 understanding that, obviously, it pushes everything out in
11:41:15 23 terms of the meet-and-confer, the Defendants having an
11:41:19 24 opportunity to review and respond to that. So if you need that
11:41:23 25 time, I don't think it necessarily hurts anything other than

11:41:26 1 making sure that regardless of then what you're still trying to
11:41:30 2 work out the week of the 10th, the motions for protective order
11:41:35 3 are still ready to go on the 18th. I think Ms. Stoughton
11:41:38 4 understands that.

11:41:39 5 I'll go to the Defendants, but if you wanted a -- try
11:41:44 6 to get it by the 5th, but the -- if you needed additional time
11:41:49 7 to get additional input from the third-party fact witnesses,
11:41:54 8 then it might take until the 7th, but that just pushes you even
11:41:59 9 tighter on what you might do prior to the motion for protective
11:42:04 10 order being due on the 18th. Does that sound right?

11:42:08 11 **MR. WILKENS:** Yes, Your Honor.

11:42:09 12 **THE COURT:** Ms. Stoughton?

11:42:10 13 **MS. STOUGHTON:** Yes, Your Honor, and we'll take that
11:42:12 14 as additional incentive to badger our third parties.

11:42:17 15 **THE COURT:** All right. Anything else?

11:42:20 16 **MS. STOUGHTON:** Can I just add one more thing?

11:42:21 17 **THE COURT:** Yes.

11:42:22 18 **MS. STOUGHTON:** I think this has been clarified, but
11:42:23 19 I just wanted to make sure that I was totally clear about it,
11:42:26 20 that what has been served as of today is the universe of
11:42:36 21 medical record requests that the transgender individuals in
11:42:36 22 these cases will receive?

11:42:39 23 **THE COURT:** Yes, and I will include that in
11:42:41 24 confirming with the Defendants once I go back to them, but that
11:42:45 25 was what I intended to confirm earlier in the status

11:42:48 1 conference, that all of those subpoenas for medical records
11:42:50 2 have now been served -- or will be served today based on what
11:42:56 3 was disclosed last night and there are not any other subpoenas
11:43:00 4 for medical records that would be forthcoming, that this is the
11:43:04 5 universe, as I put it, and I think just to make sure it's
11:43:09 6 clear, that included subpoenas, but if that is only an issue
11:43:13 7 with requests for production of documents for the party
11:43:16 8 plaintiffs, then I would want to make sure that that's all
11:43:21 9 complete as well with respect to any medical records so that
11:43:26 10 the Plaintiffs, in making their counterproposals, are working
11:43:31 11 off a complete set of what the request would be, whether by
11:43:36 12 subpoena or request for production.

11:43:38 13 So I will ask the Defendants to confirm that here in
11:43:42 14 a minute, but I think that would address your question; is that
11:43:46 15 right, Ms. Stoughton?

11:43:48 16 **MS. STOUGHTON:** Yes, Your Honor.

11:43:49 17 **THE COURT:** All right. So what I would be proposing
11:43:51 18 then, and I am just going to go over this and confirm with Mr.
11:43:59 19 Wilkens and Ms. Stoughton before I go back to the Defendants,
11:43:59 20 what would be the Court's anticipation and proposal would be
11:44:02 21 that all of the medical records requests would be either by
11:44:11 22 subpoena or request for production completed today, and if the
11:44:15 23 Defendants need additional time on that, they can tell me here
11:44:18 24 in a minute; but that all of that would be final in terms of
11:44:24 25 the universe of medical records that are being requested, and

11:44:28 1 then the Plaintiffs would have a week until October 7 to make
11:44:35 2 that their counterproposals with the intent and incentive to
11:44:42 3 try to do that earlier, if possible, so that the
11:44:44 4 meet-and-confer process can happen earlier, and understanding
11:44:47 5 that you all have obviously had rounds of discussion prior
11:44:51 6 based on requests that the Defendants have previously outlined,
11:44:54 7 so that you can potentially do that earlier by the 5th, but at
11:45:01 8 least by the 7th, in terms of Plaintiffs' counterproposals.

11:45:05 9 You would then engage in a meet-and-confer process
11:45:12 10 with respect to potentially narrowing or resolving the dispute,
11:45:17 11 not in terms of debating the relevance, which would be
11:45:23 12 something that would be part of the briefing, but, rather, in
11:45:26 13 terms of any limits that would be sufficient to allow
11:45:31 14 Plaintiffs then to agree to the production, whether it's by
11:45:36 15 time or provider or disclosure or use of the records that you
11:45:41 16 all can otherwise discuss or contemplate.

11:45:47 17 For any issues that remain unresolved, the motions
11:45:51 18 for protective order would be due on October 18 and responses
11:45:56 19 to those motions would be due on November 8. There's not a
11:46:00 20 specific requirement of another meet-and-confer, but I think it
11:46:04 21 might be worthwhile for you all to at least consider doing that
11:46:08 22 once the motions for protective order have been filed, but then
11:46:12 23 certainly it's the Court's intent, and built into the schedule,
11:46:15 24 that you all have another round of meet-and-confer after the
11:46:18 25 response has been filed once both sides' positions are -- sort

11:46:23 1 of have been set out and memorialized for the Court, and that
11:46:29 2 would include then whatever has been raised in the motion and
11:46:33 3 the response and any agreement that you all might be able to
11:46:38 4 reach or negotiate that would resolve some or all of those
11:46:44 5 issues, with then responses -- or, excuse me, replies due
11:46:52 6 November 15 -- excuse me -- November 14, and I am going to move
11:46:57 7 that back a day just to give myself extra time to have your
11:47:00 8 briefing in anticipation for the hearing on Friday the 18th.

11:47:05 9 So replies due November 14, and what I would request
11:47:12 10 in the reply is an outline of the issues that remain and the
11:47:20 11 Government's reply -- or the Plaintiffs' reply as to those
11:47:24 12 issues that remain.

11:47:28 13 And then I will add this. If you all have or believe
11:47:37 14 that a joint notice to the Court would be helpful or if there
11:47:41 15 are any issues that you all want to bring to the Court's
11:47:46 16 attention other than just the legislative immunity and the
11:47:57 17 medical records issue or if there are other pieces that you
11:47:58 18 want to include in that, we'll set a joint notice on the 15th
11:48:02 19 along the lines of what you have been providing for the prior
11:48:06 20 hearings. I think it's helpful to me and hopefully helps you
11:48:08 21 all to have discussed and put into writing the issues that you
11:48:15 22 all have or the disputes that remain so that we are all on the
11:48:19 23 same page what we need to cover at the hearing, and then the
11:48:22 24 hearing that's presently set for October 28 will be rescheduled
11:48:27 25 for November 18.

11:48:34 1 As far as the timing goes, I'm on criminal duty that
11:48:38 2 day, so I will need to work in time for any initial appearances
11:48:43 3 and detention hearings that I also have to cover that day. I'm
11:48:48 4 open, though, in how I do that. I don't know, as far as you
11:48:52 5 all coming here, what your schedules might be or if the time of
11:48:55 6 that makes a particular difference for you all. I'm open on
11:49:01 7 that, and I can work the criminal matters around as I need to.

11:49:06 8 So if you all have discussions for when it would be
11:49:09 9 helpful during the day on the 18th to set that, whether earlier
11:49:12 10 or later, then I can hear from you on that, too, knowing that
11:49:15 11 we're going to have to at least cover legislative immunity and
11:49:19 12 the medical records issue that's not otherwise resolved.

11:49:26 13 **MS. STOUGHTON:** I just wanted to ask about the
11:49:28 14 schedule. I think earlier you had mentioned November 1 as the
11:49:34 15 Defendants' response date, but I think you just said
11:49:37 16 November 8.

11:49:38 17 **THE COURT:** Oh, yes, thank you then. I appreciate
11:49:40 18 the correction on that. Yes, November 1 would be the response.
11:49:44 19 I think the 8th is what I had said was the date for the
11:49:44 20 meet-and-confer, but in light of what Mr. Wilkens mentioned,
11:49:48 21 rather than setting a particular date for the meet-and-confer,
11:49:51 22 I'll just leave the extra time in there and let you all
11:49:54 23 schedule that. So it would be October 18, November 1, and
11:49:57 24 November 14 is what I intended for the deadlines.

11:50:01 25 I think November 8 may have been your original

11:50:05 1 discussion, Ms. Stoughton, and the date I intended to adopt for
11:50:08 2 the meet-and confer rather than the response deadline, but,
11:50:15 3 again, I don't necessarily need to include specific deadlines
11:50:19 4 for meet-and-confer if you all are working that out.

11:50:22 5 So that would be the intent. Ms. Stoughton, anything
11:50:26 6 else on that? Does that clarify it?

11:50:30 7 **MS. STOUGHTON:** Thank you, Your Honor. With regard
11:50:31 8 to timing, it does help if the meet-and-confers are in the
11:50:37 9 later part of the day rather than earlier. I think several of
11:50:41 10 the counsel are in Washington.

11:50:48 11 **THE COURT:** A hearing later on the 18th is better
11:50:50 12 than trying to move it earlier in the morning; is that right?

11:50:55 13 **MS. STOUGHTON:** Yes, Your Honor, because there are
11:50:56 14 late flights but not especially early flights to make a
11:51:02 15 10:00 a.m. appearance.

11:51:03 16 **THE COURT:** Mr. Wilkens, anything else as to the
11:51:05 17 schedule that I just summarized or proposed?

11:51:09 18 **MR. WILKENS:** Only with respect to legislative
11:51:10 19 immunity, Your Honor. So it's my understanding that that --
11:51:13 20 the hearing on that is being moved to the -- from October 28 to
11:51:20 21 November 18?

11:51:21 22 **THE COURT:** Right.

11:51:22 23 **MR. WILKENS:** Does that have any impact on the
11:51:25 24 briefing schedule? The PO has been filed. The opposition
11:51:30 25 currently is due next Friday, and then the reply a week after

11:51:36 1 that.

11:51:38 2 **THE COURT:** My intent is to leave that as it is
11:51:40 3 because, frankly, I would like the extra time with the benefit
11:51:44 4 of your briefing in anticipation of the hearing on that so I
11:51:46 5 can go ahead and look at that earlier. So I would rather not
11:51:50 6 move the briefing on that, even though I am moving the hearing
11:51:54 7 on that one.

11:51:57 8 **MR. WILKENS:** Understood, Your Honor.

11:51:59 9 **THE COURT:** Anything else on any of the scheduling
11:52:02 10 issues for you, Mr. Wilkens?

11:52:06 11 **MR. WILKENS:** No -- well, one thing, which is simply
11:52:10 12 that in terms of the meet-and-confer process, I absolutely
11:52:16 13 appreciate what Mr. Duncan has said about not wanting to
11:52:21 14 contest relevance and that that may not be very productive. I
11:52:25 15 just wouldn't want to foreclose the ability to at least raise
11:52:29 16 that. If we get more specific on categories, it may actually
11:52:33 17 be helpful to just be able to discuss it. So I just wouldn't
11:52:36 18 want to foreclose that as to a possible topic to address in a
11:52:40 19 meet-and-confer.

11:52:42 20 **THE COURT:** Well, I am not going to attempt to
11:52:45 21 micromanage the topics that you all cover other than the
11:52:51 22 general observation that whatever you can do to move things
11:52:51 23 forward rather than simply debating your disagreements I think
11:52:54 24 is the more productive way to go on the meet-and-confers, but
11:52:58 25 I'll leave that to you all in terms of how best to get to some

11:53:03 1 resolution of those things.

11:53:04 2 **MR. WILKENS:** Yes, Your Honor, thank you.

11:53:05 3 **THE COURT:** All right. So, Ms. Stoughton, anything
11:53:09 4 else that you wanted to add as to any of those things?

11:53:11 5 **MS. STOUGHTON:** No, Your Honor.

11:53:12 6 **THE COURT:** All right. Let me come back around to
11:53:17 7 Mr. Duncan. I think the one piece I wanted to highlight or
11:53:22 8 make sure of was that all the Defendants were in agreement that
11:53:26 9 all of the medical records had been, or will be today,
11:53:29 10 requested, whether by subpoena or request for production of
11:53:33 11 documents, and then the schedule that I've otherwise just
11:53:35 12 reviewed and then the scheduling for the hearing on the 18th.

11:53:44 13 **MR. DUNCAN:** With respect to subpoenas, Your Honor,
11:53:45 14 yes. I was a little concerned by Mr. Wilkens' comment that the
11:53:51 15 existing RFP, request for production of documents, wasn't broad
11:53:56 16 enough to include some of the categories of information that
11:53:59 17 we're talking about it. We're looking at it right now. It
11:54:05 18 seems pretty broad to me, but if there is a disagreement on
11:54:07 19 that, then we may have to serve additional requests for
11:54:12 20 production of documents on the Carcano Plaintiffs to include
11:54:13 21 everything we want. We certainly don't want to give up our
11:54:16 22 ability to do that.

11:54:17 23 **THE COURT:** I understand you wouldn't want to give up
11:54:18 24 the ability to do that. What I would like to do is go ahead
11:54:20 25 and have you do that before they're filing their

11:54:24 1 counterproposal so that your request is final before they're
11:54:27 2 making their counterproposal.

11:54:31 3 Do you want to propose a date for me when you would
11:54:37 4 do that?

11:54:38 5 **MR. DUNCAN:** Sure. Remind me when they're going to
11:54:39 6 file their counterproposal.

11:54:41 7 **THE COURT:** Their counterproposal, they were going to
11:54:43 8 shoot for October 5, but it may be October 7, and so I think
11:54:47 9 we'll just set that by October 7, earlier if they can, but with
11:54:52 10 the intent that it be no later than October 7.

11:54:57 11 **MR. DUNCAN:** Well, then, you know, I will let Mr.
11:55:00 12 Stewart weigh in on this as well because I know he's concerned
11:55:03 13 about this as well. We could look at that and see if there is
11:55:07 14 the necessity of filing a very targeted additional RFP on that
11:55:13 15 issue by Tuesday.

11:55:16 16 **THE COURT:** I think that seems reasonable just to
11:55:19 17 make sure --

11:55:19 18 **MR. STEWART:** It's reasonable.

11:55:19 19 **THE COURT:** -- that that is covered. Was that you,
11:55:22 20 Mr. Stewart?

11:55:23 21 **MR. STEWART:** Yes, sorry, Your Honor. I was just
11:55:23 22 saying I think that's reasonable.

11:55:29 23 **THE COURT:** So, Mr. Duncan, let me come back to you,
11:55:31 24 and then, Mr. Stewart, I will go to you to cover all of this as
11:55:35 25 well.

11:55:36 1 Mr. Duncan, then if there was any additional requests
11:55:38 2 for production just on that issue that you wanted to add to
11:55:41 3 make sure that everything was requested, then that would be by
11:55:45 4 October 4.

11:55:52 5 **MR. DUNCAN:** That's right, Your Honor.

11:55:53 6 **THE COURT:** So that would be by October 4. And then
11:55:59 7 the Plaintiffs' response or counterproposal would be October 7,
11:56:03 8 and then the motions are due the 18th.

11:56:08 9 And, again, to confirm then, the subpoenas -- or any
11:56:13 10 subpoenas for medical records are served today, and that's
11:56:17 11 complete, and the requests for production will be complete --
11:56:23 12 or some supplement will be complete on the medical records
11:56:28 13 issue by October 4 so that there wouldn't be any additional
11:56:33 14 requests for production as to medical records that the
11:56:38 15 Plaintiffs would need to respond to, and they would then have
11:56:42 16 through the 7th to make their counterproposals.

11:56:45 17 Is that accurate, Mr. Duncan?

11:56:48 18 **MR. DUNCAN:** That's our understanding, Your Honor.
11:56:50 19 Of course, I think it would go without saying and probably
11:56:53 20 shouldn't go without saying that if the Plaintiffs are --
11:56:54 21 attempt to add any other witnesses or any other transgender
11:57:00 22 witnesses, then we would have to subpoena them as well. I
11:57:03 23 don't know if they intended to do that, but I just wanted to
11:57:03 24 throw that out there.

11:57:05 25 **THE COURT:** All of this is working under the

11:57:09 1 assumption that we're dealing with the witnesses that have been
11:57:12 2 identified thus far.

11:57:15 3 **MR. DUNCAN:** Thank you.

11:57:15 4 **THE COURT:** All right. Anything else, Mr. Duncan?

11:57:19 5 **MR. DUNCAN:** No, Your Honor.

11:57:20 6 **THE COURT:** All right. Mr. Stewart?

11:57:22 7 **MR. STEWART:** And, Your Honor, I would echo
11:57:24 8 everything Mr. Duncan said and agree with everything you've
11:57:27 9 mentioned. I would just add one thing about any additional
11:57:31 10 third-party witnesses being subpoenaed. I know that when the
11:57:34 11 Plaintiffs filed their second amended complaint, they had left
11:57:43 12 off two individual plaintiffs, Kelly Trent and Beverly Newell,
11:57:47 13 and I know that it might have been a week or several weeks ago,
11:57:52 14 we had circulated an email basically asking them to confirm
11:57:57 15 whether or not these two individuals were going to be witnesses
11:58:00 16 in this case, and, honestly, I don't remember if we got a
11:58:06 17 response back.

11:58:07 18 I just want to make sure, since we're talking about
11:58:10 19 the universe of folks who we could subpoena, as Mr. Duncan
11:58:12 20 pointed out, if these folks are now going to be witnesses,
11:58:18 21 depending on kind of what they are going to allege, whether
11:58:21 22 they're transgender or not, we may want to look at their
11:58:24 23 records, too. We just don't have that information in front of
11:58:27 24 us.

11:58:28 25 **THE COURT:** Rather than going too far down that right

11:58:31 1 now, what I will do is let you all resolve that issue, if it
11:58:38 2 hasn't already been, so that if you do intend to include
11:58:45 3 subpoenas for those individuals, you do that by the 4th as
11:58:48 4 well. Does that cover it, Mr. Stewart?

11:58:54 5 **MR. STEWART:** Yes, Your Honor.

11:58:54 6 **THE COURT:** All right. As far as the timing of the
11:58:57 7 hearing, it sounds like putting this on in the afternoon, say
11:59:01 8 at 1:00, might be better for you all, and I can handle the
11:59:07 9 criminal court matters in the morning, but if there's -- anyone
11:59:12 10 has anything else they wanted to add on that, they can let me
11:59:16 11 know, but, otherwise, we can set it for November 18 at 1:00 in
11:59:21 12 the afternoon here in this courtroom in Winston-Salem.

11:59:34 13 All right. Mr. Gore, just to make sure, anything
11:59:38 14 else you needed to add on that?

11:59:40 15 **MR. GORE:** No, Your Honor.

11:59:41 16 **THE COURT:** All right. So I've gone over my intent
11:59:47 17 and expectation on this. I think by Tuesday, October 4, all of
11:59:55 18 the subpoenas and requests for production for medical records
11:59:59 19 will be served by the Defendants, and by October 7th, the
12:00:10 20 Plaintiffs will provide their counterproposals. The parties
12:00:13 21 will engage in a meet-and-confer, and by October 18, the
12:00:19 22 Plaintiffs will file their motion for protective order.
12:00:20 23 Responses will be due November 1. Parties will engage in
12:00:24 24 another round of meet-and-confers in an attempt to narrow those
12:00:29 25 issues, and then replies will be due on November 14.

12:00:33 1 In addition, the parties can file a joint notice on
12:00:37 2 November 15 with respect to the issues that are remaining in
12:00:41 3 dispute or they would ask to cover at the hearing, and that
12:00:45 4 hearing is set for November 18 at 1:00 p.m. here in Courtroom 3
12:00:50 5 in Winston-Salem.

12:00:56 6 I think that covers everything for that issue. I am
12:00:59 7 going to go through to make sure there's not anything else, and
12:01:02 8 then what I am going to do is take a 30-minute break or so to
12:01:09 9 let you all discuss the limits you would propose on the number
12:01:14 10 of depositions and then -- actually, we can -- I'll hear from
12:01:19 11 you on this, too. We can take a break for an hour, come back
12:01:22 12 at 1:00. I will let you call back in and give me your
12:01:26 13 proposals for that. I would like to go ahead and take care of
12:01:28 14 it today while we are doing this so that we don't come back on
12:01:33 15 this issue or have to reconvene this at another point.

12:01:37 16 Let me go through it and ask everybody in terms of
12:01:41 17 where we are on this. Mr. Wilkens, I've set out the schedule
12:01:45 18 for the second issue with respect to the motion for protective
12:01:50 19 order, and then I will take an hour or so and let you discuss
12:01:56 20 the limits on number of depositions and call back in at 1:00.
12:02:01 21 Anything you want to suggest as to any of those things?

12:02:05 22 **MR. WILKENS:** I think that all makes sense. I would
12:02:08 23 just suggest a possible alternative on the deposition issue of
12:02:12 24 letting the parties discuss it and submitting to you by the end
12:02:15 25 of the day a one-page joint proposal on depo limits because I

12:02:26 1 think we -- we all need to do a little bit of math and figure
12:02:33 2 out which are happening when and how many and then how many
12:02:37 3 30(b)(6) we want to reserve and all that, and I just wonder
12:02:38 4 whether it may make more sense to do that and then send you --
12:02:44 5 I imagine we can come to a joint report.

12:02:47 6 **THE COURT:** All right. And I'm open to that
12:02:48 7 possibility. I don't know that it would help much to have more
12:02:52 8 hearing on that this afternoon. If you all want to come up
12:02:55 9 with sort of a joint proposal or different ways to propose
12:03:04 10 limits on that, you know what my interest and my concern is.

12:03:08 11 I want to leave room for each of you to have some
12:03:11 12 leeway as you need it and to take into account the number of
12:03:11 13 folks you've already identified, but put some limits on it for
12:03:18 14 making sure we don't expand discovery beyond what's presently
12:03:23 15 intended as we go through the process.

12:03:25 16 So I am open to doing it that way. If you all could
12:03:28 17 get me something by end of the day today, then we wouldn't need
12:03:32 18 to reconvene the hearing.

12:03:33 19 So let me go to Ms. Stoughton as to the schedule that
12:03:38 20 I set out for the medical records issue and then the proposal
12:03:45 21 that's left for the deposition -- or limiting numbers of
12:03:49 22 depositions.

12:03:51 23 **MS. STOUGHTON:** Your Honor, we are fine with the
12:03:53 24 medical records schedule and are happy to approach the
12:03:57 25 discussion about limiting depositions, either way.

12:04:00 1 **THE COURT:** Mr. Duncan?

12:04:03 2 **MR. DUNCAN:** We are fine with the schedule, Your
12:04:04 3 Honor, and with submitting the joint proposal by the end of the
12:04:07 4 day. Just so I understand so that our discussions can be as
12:04:12 5 fruitful as possible, you're looking for us to report on sort
12:04:18 6 of the number of depositions we're willing to limit to, and you
12:04:21 7 want that by period; right?

12:04:23 8 **THE COURT:** Well, it helps to break it out by period.
12:04:28 9 Just for practical purposes, what I would -- what I intended to
12:04:31 10 ask or to find out from you all was how many fact witnesses
12:04:37 11 total that each side intended to notice and how many expert
12:04:42 12 witnesses total each side intended to notice, and then just for
12:04:49 13 planning purposes, at this point how you intended to divide
12:04:52 14 those between the first and second period.

12:04:56 15 I think you have deadlines set out in terms of
12:04:59 16 identifying who is going to be in the first period and who is
12:05:01 17 going to be in the second period, and I don't intend to
12:05:05 18 interfere with that; but I think that putting a number limit --
12:05:08 19 it doesn't have to be a number limit for first period and
12:05:13 20 second period. It would be a number limit overall, but a
12:05:17 21 number limit just to make sure that there's, again, not some
12:05:21 22 expansion beyond what's presently intended but leaving you all
12:05:24 23 some little bit of leeway for the issues you anticipate might
12:05:29 24 still be developing.

12:05:32 25 I had indicated that that could look like using the

12:05:36 1 total number that's presently anticipated as sort of the
12:05:43 2 agreed-upon amount and then giving each side an equal number of
12:05:47 3 additional witnesses, three or five, whatever it may be, or
12:05:54 4 otherwise looking at how it's allocated between the sides and
12:05:58 5 whether you think there's some reason to impose some other
12:06:03 6 sorts of limits on there.

12:06:06 7 **MR. DUNCAN:** That's helpful.

12:06:08 8 **THE COURT:** But I'll let you all have that
12:06:11 9 conversation to see where the limits might be or where the --
12:06:15 10 which best way you would propose to the Court to include some
12:06:18 11 sort of limits so we don't get much beyond what's presently
12:06:21 12 identified in a way that both sides can accept as reasonably
12:06:27 13 fair in light of where we are.

12:06:28 14 Anything else then on that, Mr. Duncan?

12:06:31 15 **MR. DUNCAN:** Nothing else.

12:06:32 16 **THE COURT:** Mr. Stewart?

12:06:34 17 **MR. STEWART:** Your Honor, we agree with everything
12:06:36 18 you proposed and have nothing further.

12:06:39 19 **THE COURT:** Mr. Gore, anything else?

12:06:42 20 **MR. GORE:** No, Your Honor, we are in agreement.

12:06:43 21 **THE COURT:** All right. So what I am going to do is I
12:06:46 22 will take Mr. Wilkens up on his suggestion and let you all run
12:06:50 23 with the deposition piece and just come back with something
12:06:53 24 written by the end of the day, and then I will include or adopt
12:06:59 25 that as part of my order memorializing this telephone

12:07:07 1 conference. And what I will do is enter a written order just
12:07:15 2 with the dates and what we have gone over here, but if it's not
12:07:18 3 entered prior to the deadlines you've already agreed on, then
12:07:21 4 certainly what I've outlined here is what I would intend. So
12:07:24 5 the October 4 and the October 7 would be deadlines next week
12:07:30 6 that would be in place even if the written order hasn't yet
12:07:34 7 been entered.

12:07:34 8 And we'll go ahead and adjourn the telephone
12:07:39 9 conference call but with the direction that you all finish the
12:07:44 10 discussion on the deposition limits and file something by the
12:07:48 11 end of the day that sets out your proposals for the Court.

12:07:53 12 Anything else before we adjourn on that proposal or
12:07:59 13 on that basis? Mr. Wilkens?

12:08:01 14 **MR. WILKENS:** No, Your Honor.

12:08:02 15 **THE COURT:** Ms. Stoughton?

12:08:04 16 **MS. STOUGHTON:** You, Your Honor.

12:08:05 17 **THE COURT:** Mr. Duncan?

12:08:06 18 **MR. DUNCAN:** We're fine, Your Honor. Nothing else.

12:08:10 19 **THE COURT:** And Mr. Stewart?

12:08:14 20 **MR. STEWART:** We have nothing further, Your Honor.

12:08:16 21 **THE COURT:** And Mr. Gore?

12:08:17 22 **MR. GORE:** No, Your Honor, thank you.

12:08:20 23 **THE COURT:** Thanks to all of you, and we'll reconvene
12:08:24 24 again then on November 18.

12:08:27 25 (END OF PROCEEDINGS AT 12:08 P.M.)

12:08:27 1 UNITED STATES DISTRICT COURT
2 MIDDLE DISTRICT OF NORTH CAROLINA
3 CERTIFICATE OF REPORTER
4
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 14th day of October 2016.
11

12 
13

14 Briana L. Nesbit, RPR
15 Official Court Reporter
16
17
18
19
20
21
22
23
24
25