

**UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ILLINOIS**

CRISTINA NICHOLE IGLESIAS
(a.k.a. CRISTIAN NOEL IGLESIAS),

Plaintiff,

v.

FEDERAL BUREAU OF PRISONS, *et al.*,

Defendant.

Case No. 19-cv-00415-NJR

Judge Nancy J. Rosenstengel

**PLAINTIFF’S OPPOSITION TO DEFENDANTS’ MOTION
TO EXCLUDE UNTIMELY AND UNDISCLOSED EXPERT TESTIMONY
AND REQUEST FOR EXPEDITED CONSIDERATION**

Plaintiff Cristina Iglesias respectfully submits this brief in opposition to Defendants’ motion to bar the introduction of certain expected testimony from Dr. Randi Ettner, a psychiatrist retained by Ms. Iglesias, at the upcoming hearing on the pending motion for preliminary injunction. To the extent Defendants contend there is little time to prepare for Dr. Ettner’s expected testimony, they have no one but themselves to blame. Dr. Ettner’s planned video evaluation of Ms. Iglesias did not become feasible until May 25, when Defendants finally acquiesced to Ms. Iglesias’s request to be transferred to a women’s correctional facility. And Dr. Ettner’s preparation for that evaluation has been thwarted by Defendants’ continued failure to provide Ms. Iglesias with a complete set of her own medical records. Defendants now seek to benefit from their obstructive tactics by precluding Dr. Ettner’s ability to speak at the preliminary injunction hearing about conclusions she may draw from her upcoming evaluation of Ms. Iglesias along with her review of medical records and other information. This Court should deny Defendants’ continued attempts to unfairly prejudice Ms. Iglesias.

ARGUMENT

Throughout this litigation, Defendants have refused to provide Ms. Iglesias with her own medical records, even as Defendants have relied on those same records in opposing Plaintiff's motion for a preliminary injunction. Defendants now seek to further benefit from their continued stonewalling by requesting that Dr. Ettner's testimony, informed in part by some of the newly available records as well as her psychological evaluation of Ms. Iglesias, be excluded from this hearing as untimely and unduly prejudicial. Yet, it was Defendants' untimely transfer of Ms. Iglesias and still incomplete disclosure of documents that necessitate Dr. Ettner's upcoming evaluation and associated opinions.

A. Defendants Have Continuously Obstructed Ms. Iglesias's Efforts to Obtain Her Own Medical Records.

Plaintiff initially served formal Rule 34 document requests on Defendants on December 29, 2020. These requests, which Plaintiff served on Defendants almost 4 months before seeking a preliminary injunction, sought a complete set of Plaintiff's relevant medical records. *See Ex. A* (Plaintiff's Dec. 29, 2020 discovery requests). Defendants categorically refused to produce a single responsive document. *See Ex. B* (Jan. 12, 2021 Letter from Gardner to Battaglia).

Having been denied access to all of her relevant medical records by Defendants, Ms. Iglesias filed a Freedom of Information Act request seeking the same documents on January 4, 2021. Defendants did nothing to facilitate that request. As of March 2021, Plaintiff had still not received any documents in response to her FOIA request. Plaintiff then moved for preliminary injunction based on the exigent circumstances discussed in that motion.

Considering Defendants' refusal to produce a single page of records, Ms. Iglesias was understandably stunned to see that Defendants themselves cited and relied on her medical records in opposing the motion for preliminary injunction. This type of asymmetrical informational

advantage is exactly what the Federal Rules of Civil Procedure are designed to prevent. Ms. Iglesias's counsel thus immediately contacted Defendants to obtain her medical records pursuant to their outstanding Rule 34 requests. *See* Ex. C (May 7, 2021 Email to Defendants). Defendants again categorically refused the request. They argued that a response was premature, even while they were relying on those records in opposition to the preliminary injunction motion. *Id.*

By mid-April, still without a complete set of her own records, Ms. Iglesias requested her medical records directly to Bureau of Prisons staff. Defendants' counsel stated his "understanding that BOP is working with the Plaintiff to provide her with the requested records." *See* Ex. C. To this day, Ms. Iglesias has not received a single document via her direct request to Bureau of Prisons staff.

On June 2, 2021, Plaintiff finally received medical records in response to her FOIA request. Although more complete than the records she had previously been able to obtain, Ms. Iglesias still believes it is an incomplete set of records. Indeed, Defendants confirmed on July 1, 2021, that the FOIA office is continuing to "review, process and produce" responsive documents. *See* Ex. D. Meanwhile, Defendants maintain their refusal to make any production in response to Ms. Iglesias's formal document requests. *Id.* (July 1, 2021 Email from Gardner).

B. Dr. Ettner's Full Evaluation of Ms. Iglesias Has Been Delayed by Defendants' Failure to Produce Ms. Iglesias's Medical Records.

Together with all the efforts taken to obtain her own medical records, Ms. Iglesias's counsel also made a timely request for a full psychological evaluation by Dr. Ettner. Plaintiff's briefing in support of a preliminary injunction is supported by two expert declarations from Dr. Ettner, based on her review of medical records then available to Plaintiff as well as a brief evaluation of Plaintiff by telephone. A full psychological evaluation is necessary to ensure that Dr. Ettner's opinions are able to reflect subsequent developments after the motion for a preliminary

injunction was briefed. These developments include Ms. Iglesias's June 2021 receipt of selected medical records as a result of her FOIA request, as well as her May 25, 2021, transfer to a women's facility by Defendants in response to her motion for a preliminary injunction. While a full psychological evaluation was neither necessary nor feasible before the motion was filed given the limited but compelling evidence available at that time and Ms. Iglesias's need for emergency relief, these later developments warrant additional review by Dr. Ettner.

Shortly after receiving the FOIA documents and being transferred to a women's facility on or before June 28, 2021, Ms. Iglesias requested Defendants' assistance in arranging a full psychological evaluation of Ms. Iglesias by video conference. Defendants initially told Plaintiff that a private medical evaluation by Dr. Ettner was not possible because "video conferencing at the facility is not currently configured for confidential communications and is in a public space." *See Ex. D.* Plaintiff continued to press. A few days later, Defendants reversed their position and indicated that it would be possible for Dr. Ettner to conduct a confidential evaluation. That is scheduled to occur on July 20, 2021.

Before their July 16 Motion (ECF No. 130), Defendants took no issue with Ms. Iglesias meeting with Dr. Ettner or the testimony that is expected to result from it. Defendants simply suggested they may want to depose Dr. Ettner prior to the preliminary injunction hearing. *See Ex. E* (July 9, 2021 Email from Gardner). Defendants' motion is the first time they argue that any of Dr. Ettner's testimony should be excluded, in direct contradiction to their acquiescence just days earlier to Dr. Ettner's testimony. *See Ex. E* (July 1, 2021 Email from Gardner ("If the court decides to hold an evidentiary hearing, and if the Defendants decide to call witnesses, we are willing to discuss the possibility of making those witnesses available for deposition.")).

Further, the cases cited in Defendants' brief in fact support Plaintiff's position. In *J.M. ex rel. Lewis v. Crittendon*, defense counsel attempted to call two witnesses to testify at a preliminary injunction hearing after the hearing had already started. No. 1:18-CV-568-AT, 2018 WL 7080041, at *1 (N.D. Ga. Apr. 10, 2018). The court excluded testimony from those two witnesses because they were not previously disclosed. *Id.* As for the third witness, the court limited the expert's testimony due to a lack of notice. *Id.* However, that expert was disclosed for the first time in defendants' response to plaintiff's motion for preliminary injunction. *Id.*; No. 1:18-CV-568-AT, ECF 20 at p. 12. Here, Plaintiff disclosed their intention to call Dr. Ettner far in advance of the hearing, yet Defendants argue her testimony should be wholly excluded from this hearing. Contrary to Defendants' argument, even in *Crittendon*, where the expert was not disclosed until defendants responded to plaintiff's preliminary injunction, the court still allowed limited testimony from that expert. 2018 WL 7080041, at *1. Also, like the case here, the *Crittendon* court allowed the doctor who filed a declaration in support of plaintiff's motion for preliminary injunction to testify at the hearing. No. 1:18-CV-568-AT, ECF 28. This Court should similarly allow Dr. Ettner to testify at this hearing.¹

¹ The other cases cited by Defendants are equally unpersuasive. In *Jindal v. U.S. Dep't of Educ.*, No. CIV.A. 14-534-SDD-RL, 2015 WL 2405950, at *2-*3 (M.D. La. May 18, 2015), Plaintiff did not disclose their witness until the final day of the discovery deadline before the preliminary injunction hearing. Also, in *Rao v. Rusch*, No. 14 C 66, 2017 WL 4278541, at *2 (N.D. Ill. June 21, 2017) and *Ridge Chrysler Jeep L.L.C. v. Daimler Chrysler Servs. N. Am., L.L.C.*, No. 03 C 760, 2004 WL 3021842, at *3 (N.D. Ill. Dec. 30, 2004), expert testimony was excluded at trial since it was offered after the discovery deadline in those respective cases expired. Here, Defendants have known about Plaintiff's intention to call Dr. Ettner since April 6, 2021 when Plaintiff filed its preliminary injunction motion, and the Court has expressly given the parties until July 26, 2021, to disclose the names of witnesses that will appear at that hearing. Defendants' attempt to paint Dr. Ettner's testimony as an unfair surprise is disingenuous and unfairly prejudicial to Ms. Iglesias.

That said, Plaintiff remains amenable to arranging a deposition of Dr. Ettner following her evaluation of Ms. Iglesias and believes there is ample time before the hearing to accomplish both an evaluation and deposition.²

CONCLUSION

Despite Plaintiff's continued attempts to obtain her own medical records necessary to Dr. Ettner's full evaluation, Plaintiff still has not received a complete set of those medical records. Even so, after receiving a portion of Ms. Iglesias's medical records, both Plaintiff and Dr. Ettner have diligently reviewed those documents. Following her review of those records, Dr. Ettner will conduct a full evaluation of Ms. Iglesias on July 20, 2021. Defendants' attempt to bar Dr. Ettner's testimony due to their own stonewalling is improper and unfairly prejudices Ms. Iglesias. To the extent that this Court believes Defendants are entitled to a deposition of Dr. Ettner before the hearing, Plaintiff will agree to such a deposition, but Plaintiff disagrees that Dr. Ettner's testimony should be barred from the hearing.

For the foregoing reasons, Plaintiff respectfully requests this Court deny Defendants' entire motion.

Dated: July 19, 2021

Respectfully submitted,

/s/ Frank Battaglia

Kevin Warner
Frank Battaglia
Katherine D. Hundt
Courtney Block

² In contrast to Ms. Iglesias's candor about which witnesses she may call at the hearing and the nature of their expected testimony, Defendants have thus far refused to identify any witnesses they may call and have provided no indication of their intended testimony, despite inquiries from Plaintiff's counsel. Ms. Iglesias reserves the right to seek to preclude Defendants from calling any live witnesses given their delay in disclosing their intentions.

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*Attorneys for Plaintiff Cristina Nichole
Iglesias*

CERTIFICATE OF SERVICE

I, Frank A. Battaglia, certify that a true and correct copy of the foregoing document was electronically filed with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel of record in the above-captioned case.

Dated: July 19, 2021

/s/ Frank A. Battaglia
Frank A. Battaglia

Exhibit

A

From: [Battaglia, Frank](#)
To: "[Feldon, Gary D. \(CIV\)](#)"; [John Knight](#); [Smith, Laura K. \(CIV\)](#); [Warner, Kevin](#); [Gardner, Joshua E \(CIV\)](#)
Cc: [Hundt, Kate](#); [Block, Courtney](#)
Subject: Iglesias v. True et al., 19-cv-415 (S.D. Ill. 2019) - Plaintiff's First Set of Requests for Production of Documents
Date: Tuesday, December 29, 2020 3:05:00 PM
Attachments: [Iglesias v. True et al, 19-cv-415 \(S.D. Ill. 2019\) - Plaintiff Iglesias First Set of Requests for Production.pdf](#)

Gary,

Please see the attached service copy of Plaintiff's First Set of Requests for Production of Documents to certain Defendants in their official capacity in the above-captioned matter. A copy of the same was sent to you via U.S. Mail today.

Best,

Frank A. Battaglia

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B. As used herein, “communication” means any transmission of information by one or more persons and/or between two or more persons by any means, including telephone conversations, letters, telegrams, teletypes, telexes, telecopies, electronic mail, other computer linkups, written memoranda, and face-to-face conversations.

C. As used herein, “and” and “or” shall be construed conjunctively and disjunctively so as to acquire the broadest meaning possible.

D. As used herein, “any” and “all” shall each be construed to mean “each and every,” so as to acquire the broadest meaning possible.

E. As used herein, the singular of any word shall include the plural, and the plural shall include the singular.

F. As used herein, “include” and “including” shall be construed to mean “without limitation,” so as to give the broadest possible meaning to requests and definitions containing those words.

G. As used herein, “person” means any natural person or any business, legal, or governmental entity or association.

H. As used herein, “related” or “relating” to any given subject means, without limitation, identifying, describing, discussing, concerning, assessing, stating, reflecting, constituting, containing, embodying, tending to support or refute, or referring directly or indirectly to, in any way, the particular subject matter identified.

I. As used herein, the term “Complaint” shall mean as originally filed or as amended or supplemented throughout the progression of the case.

J. As used herein, the term “request” shall mean all documents described in the section labeled Requests for Production.

K. As used herein, the term “BOP” shall mean Federal Bureau of Prisons, its officers, directors, employees, representatives, agents, predecessors, assignees, subsidiaries, affiliates, successor, and unless privileged, its attorneys.

L. The document requests herein shall be deemed to include any and all relevant documents within the possession, custody, or control of BOP, including documents located in the personal files of any and all past and present directors, officers, agents, representatives, employees, attorneys, and accountants of BOP, including any third-party testing entities.

M. As used herein, the term “Plaintiff” shall mean Plaintiff Cristina Nichole Iglesias.

N. For any document or material responsive to these requests that is withheld on the ground that it is protected by the attorney-client privilege, work product immunity, or any other claim of privilege or immunity, provide a written statement setting forth, as to each such document or thing, at a minimum the following items: (a) an identification (including date, title, author, and number of pages) of each document or material containing the allegedly protected information; (b) an identification (including name, position, address, and employer at the time of preparation or

dissemination) of each person from and to whom the information has been communicated (e.g., individuals who authored, drafted, or prepared the document or thing and individuals to whom it was directed, circulated, or copied, or who had access thereto), and, if any such person is an attorney, identifying him or her as such; (c) a description of the subject matter of the information; (d) a summary of the legal and factual ground(s) relied upon in withholding the responsive document or thing, providing sufficient detail to enable the Court to make a determination on the merit of the claim of privilege or immunity; and (e) a certification that all elements of the claimed privilege or immunity are met and have not been waived.

O. Documents should be produced in the manner in which they are maintained in the ordinary course of business. For example, any documents maintained in color must be produced in color. Documents produced electronically must be produced with sufficient resolution so as to be legible. Documents from any single file should be produced in the same order as they were found in such file, including any labels, files, folders, and/or containers in which such documents are located in or associated with. If copies of documents are produced in lieu of the originals, such copies should be legible and bound or stapled in the same manner as the original.

P. If you object to any part of a request, set forth the basis for your objection and respond to all parts of the request to which you do not object. Any ground not stated in an objection within the time provided by the Federal Rules of Civil Procedure, or any extensions thereof, shall be waived. All objections must be made with particularity and must set forth all the information upon which you intend to rely in response to any motion to compel.

Q. In answering these requests, furnish all information, however obtained, including hearsay, that is available to you, including information in your actual or constructive possession, or in the actual or constructive possession of your attorneys, experts, officers, directors, employees, accountants, consultants, and anyone else acting on your behalf or subject to your control. If any

request seeks information about a topic for which you lack direct knowledge, you must provide all information containing any estimate or approximation, whether internally generated or provided to you by a third party.

R. If you cannot answer all or part of any request after exercising due diligence to secure the full information to do so, you shall state and answer to the extent possible, specifying your inability to answer the remainder; stating whatever information or knowledge you have concerning the unanswered portion; and detailing what you did in attempting to secure the unknown information.

S. These requests for production shall be deemed continuing, and supplemental responses, documents, and things must be timely provided as additional information becomes available, pursuant to Rule 26(e) of the Federal Rules of Civil Procedure.

REQUESTS FOR PRODUCTION

1. All medical records relating to or discussing Plaintiff, whether or not those records are contained in Plaintiff's medical records file.

2. All mental health records relating to or discussing Plaintiff, whether or not those records are contained in Plaintiff's medical records file.

3. All grievances, appeals of grievances, letters, complaints, or other communications from, or on behalf of, Plaintiff, as well as responses to those grievances, letters, complaints, or other communications.

4. All communications involving medical professionals or medical personnel, including but not limited to emails, letters, tickets, and notes, relating to or discussing Plaintiff.

Dated: December 29, 2020

By: /s/ John A. Knight
John A. Knight
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Attorneys for Plaintiff Cristina Nicole Iglesias

CERTIFICATE OF SERVICE

I hereby certify that on December 29, 2020, the foregoing document was served on the following counsel by U.S. Mail and e-mail:

Joshua Edward Gardner
Gary Feldon
U.S. Department of Justice
1100 L Street, NW
Washington, DC 20005
202-305-7583
Fax: 202-616-8460
joshua.e.gardner@usdoj.gov
Gary.D.Feldon@usdoj.gov

A courtesy copy of the foregoing document also was sent to the following counsel by e-mail on December 29, 2020:

Laura Katherine Smith
Trial Attorney, Civil Division
United States Department of Justice
P.O. Box 7146, Ben Franklin Station
Washington, DC 20044
Tel: (202) 616-0419
Laura.Smith2@usdoj.gov

/s/ Frank A. Battaglia

Exhibit

B

From: [Gardner, Joshua E \(CIV\)](#)
To: [Battaglia, Frank](#); [Feldon, Gary D. \(CIV\)](#); [John Knight](#); [Smith, Laura K. \(CIV\)](#); [Warner, Kevin](#)
Cc: [Hundt, Kate](#); [Block, Courtney](#)
Subject: RE: Iglesias v. True et al., 19-cv-415 (S.D. Ill. 2019) - Plaintiff's First Set of Requests for Production of Documents
Date: Tuesday, January 12, 2021 10:37:29 AM
Attachments: [1 12 2021 Letter to Plaintiff.pdf](#)

Frank,

Please see the attached correspondence.

Regards,

Josh

From: Battaglia, Frank <FBattaglia@winston.com>
Sent: Tuesday, December 29, 2020 4:06 PM
To: Feldon, Gary D. (CIV) <Gary.D.Feldon@usdoj.gov>; John Knight <jknight@aclu-il.org>; Smith, Laura K. (CIV) <Laura.Smith2@usdoj.gov>; Warner, Kevin <KWarner@winston.com>; Gardner, Joshua E (CIV) <Joshua.E.Gardner@usdoj.gov>
Cc: Hundt, Kate <KHundt@winston.com>; Block, Courtney <CBlock@winston.com>
Subject: Iglesias v. True et al., 19-cv-415 (S.D. Ill. 2019) - Plaintiff's First Set of Requests for Production of Documents

Gary,

Please see the attached service copy of Plaintiff's First Set of Requests for Production of Documents to certain Defendants in their official capacity in the above-captioned matter. A copy of the same was sent to you via U.S. Mail today.

Best,

Frank A. Battaglia

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Federal Programs Branch

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January 12, 2021

Via Email

Mr. Frank Battaglia, Esq.
Winston & Strawn, LLP
35 W. Wacker Dr.
Chicago, IL 60601

RE: *Iglesias v. Carvajal*, No. 19-cv-00415-JPG (S.D. Ill.)

Dear Mr. Battaglia:

We are in receipt of Plaintiff's First Set of Requests for Production to Defendants Michael Carvajal, Alix McLearen, Chris Bina, Donald Lewis, Thomas J. Scarantino, and Ian Connors, in their official capacities. As you are aware, the Court dismissed all of the official capacity claims in this case in its screening order. Although Plaintiff has moved for reconsideration, in part, of that screening order, the Court has not yet ruled on that motion. And as explained in BOP's response to Plaintiff's motion for reconsideration, Plaintiff did not seek reconsideration of the dismissal of the official capacity claims against the individual federal defendants. ECF No. 76. Accordingly, there presently are no official capacity claims in this case, and any discovery concerning the dismissed claims is inappropriate and, regardless, would be premature. The official capacity defendants will not respond to Plaintiff's request for production at this juncture.

Sincerely,

/s/Joshua E. Gardner

Joshua E. Gardner
Special Counsel
Federal Programs Branch

Exhibit

C

From: [Gardner, Joshua E \(CIV\)](#)
To: [Battaglia, Frank](#); [Feldon, Gary D. \(CIV\)](#)
Cc: [John Knight](#); [Josh Blecher-Cohen](#); [Warner, Kevin](#); [Lemajeur, Shannon Denise](#)
Subject: RE: Iglesias (19-cv-415) - Second Amended Complaint and Discovery
Date: Monday, May 10, 2021 10:54:04 AM

Frank:

Thank you for your email. We can accept service of process on behalf of individuals sued in their official capacities.

As for your request that the agency respond to your discovery requests by May 14, a response is premature. Even assuming that the court had screened the second amended complaint, which it has not yet done, the parties have not conducted the meeting of counsel under Federal Rule of Civil Procedure 26(f). The government's time to respond to plaintiff's discovery requests therefore has not yet begun to run. *See* Fed. R. Civ. P. 26(d)(2)(B); Fed. R. Civ. P. 34(b)(2) (A). And it makes little sense to have the meeting of counsel before the defendants file, and the court resolves, any motion to dismiss, as the resolution of that motion could greatly streamline, if not completely eliminate, discovery in this case.

More fundamentally, as Plaintiff notes in her supplemental declaration, she recently made a request for her records directly from the Federal Bureau of Prisons, *see* Dkt. No. 107-2 at ¶ 13. Our understanding is that BOP is working with the Plaintiff to provide her with the requested records.

Regards,

Josh

From: Battaglia, Frank <FBattaglia@winston.com>
Sent: Friday, May 07, 2021 11:59 AM
To: Gardner, Joshua E (CIV) <Joshua.E.Gardner@usdoj.gov>; Feldon, Gary D. (CIV) <Gary.D.Feldon@usdoj.gov>
Cc: John Knight <jknight@aclu-il.org>; Josh Blecher-Cohen <JBlecherCohen@aclu-il.org>; Warner, Kevin <KWarner@winston.com>; Lemajeur, Shannon Denise <SLemajeur@winston.com>
Subject: Iglesias (19-cv-415) - Second Amended Complaint and Discovery

Dear Josh and Gary,

We write concerning a few outstanding matters related to Plaintiff's attached Second Amended Complaint ("SAC") in the above matter, filed on April 30, 2021 pursuant to leave of the Court.

First, can you please confirm that you can accept service of this SAC on behalf of Defendants Dan Sproul and Jeffrey Allen, in their official capacities? Plaintiff does not believe service of this SAC is necessary with respect to Defendants Bureau of Prisons, Michael Carvajal, Chris Bina, Ian Connors, Alix McLearn, Thomas Scarantino, and Donald Lewis, who were named as defendants in Ms. Iglesias's First Amended Complaint and served with that complaint. To the extent you disagree, can you please confirm that you can accept service of this SAC on behalf of those Defendants in their official capacities as well?

Second, we write to follow up on the document requests Ms. Iglesias had served on December 29, 2020, and Josh's January 12, 2021 letter response to those requests. In short, we request that Defendants produce the requested documents immediately. There is no basis for withholding them. There is no question the requested documents are relevant to this case and, of most immediate concern, the pending motion for preliminary injunction. Indeed, Defendants opposed that motion in part in reliance on the precise medical records, grievances and communications we requested but that you have thus far refused to produce to us in full. That situation alone requires their immediate production just to cure the prejudice Plaintiff is suffering with respect to the pending motion, to say nothing of her right to obtain those documents as part of fact discovery in this case. Moreover, while you are aware that Plaintiff sought her medical records through a FOIA request in the wake of your refusal to produce the document, you should also be aware that Ms. Lee-Anne Eichensehr, BOP's Northeast Region Government Information Specialist handling the FOIA request, responded that she was unable to provide an estimated date as to when to expect the records. That kind of information asymmetry cannot exist in this case when the DOJ apparently had the ability to obtain, review and rely on Ms. Iglesias's records in between the filing of the preliminary injunction motion and the filing of the opposition. Nor is it any longer the case that BOP is not a party to this case, regardless of what arguments you intend to make about the official capacity individuals named in the SAC. Please confirm that you will produce all documents requested in the December 29 Rule 34 request no later than May 14.

Best,

Frank A. Battaglia

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Exhibit

D

From: [Gardner, Joshua E \(CIV\)](#)
To: [John Knight](#)
Cc: [Feldon, Gary D. \(CIV\)](#); [Battaglia, Frank](#); [Josh Blecher-Cohen](#); [Taylor Brown](#); [Warner, Kevin](#)
Subject: RE: Response Deadline in Iglesias v. True
Date: Thursday, July 1, 2021 3:56:31 PM

John:

Thank you for your email.

With respect to your first issue, we have provided your name to the relevant individual at the prison who will be in touch with your to arrange a time for an attorney-client phone conference outside the immediate presence of BOP employees.

With respect to your second issue, I am a little unclear as to what you are requesting. If this relates to Plaintiff's document production requests, I would refer you back to our previous correspondence on this issue. If this relates to Plaintiff's Freedom of Information Act request, my understanding is that BOP has produced documents and is continuing to review, process and produce documents. If this relates to something else, please let me know.

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Regards,

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Sent: Wednesday, June 30, 2021 4:44 PM
To: Gardner, Joshua E (CIV) <Joshua.E.Gardner@usdoj.gov>
Cc: Feldon, Gary D. (CIV) <Gary.D.Feldon@usdoj.gov>; Battaglia, Frank <FBattaglia@winston.com>; Josh Blecher-Cohen <JBlecherCohen@aclu-il.org>; Taylor Brown <TBrown@aclu.org>; Warner, Kevin <KWarner@winston.com>
Subject: Re: Response Deadline in Iglesias v. True

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We believe that we need to get a motion on file by Friday regarding whether the Court will allow the parties to offer testimony.

Thanks - John

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Sent: Thursday, June 24, 2021 8:16 PM
To: John Knight
Cc: Feldon, Gary D. (CIV); Battaglia, Frank; Josh Blecher-Cohen; Taylor Brown; Warner, Kevin
Subject: RE: Response Deadline in Iglesias v. True

Sure, we can use the following:

866-747-2291
Passcode: 1096075

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Subject: Re: Response Deadline in Iglesias v. True

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Cc: Feldon, Gary D. (CIV); Battaglia, Frank; Josh Blecher-Cohen; Taylor Brown; Warner, Kevin
Subject: Re: Response Deadline in Iglesias v. True

Terrific - did you want to circulate a call-in or did you want me to?
Sent from my iPhone

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Subject: RE: Response Deadline in Iglesias v. True

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Subject: Re: Response Deadline in Iglesias v. True

3pm CT/4pm ET would work for us.

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To: John Knight
Cc: Feldon, Gary D. (CIV); Battaglia, Frank; Josh Blecher-Cohen; Taylor Brown; Warner, Kevin
Subject: Re: Response Deadline in Iglesias v. True

I'm out of the office tomorrow, but could talk Monday late afternoon.
Sent from my iPhone

On Jun 24, 2021, at 5:47 PM, John Knight <jknight@aclu-il.org> wrote:

Josh and Gary,
In light of the upcoming hearing, could we speak tomorrow? If tomorrow works, please suggest some times that work for you.

Thanks - John

From: Feldon, Gary D. (CIV) <Gary.D.Feldon@usdoj.gov>
Sent: Thursday, June 17, 2021 2:50 PM
To: Battaglia, Frank; John Knight
Cc: Gardner, Joshua E (CIV); Block, Courtney; Hundt, Kate; Josh Blecher-Cohen; Taylor Brown; Warner, Kevin
Subject: Response Deadline in Iglesias v. True

Dear John (and team),

In light of today's screening order in *Iglesias*, Defendants intend to seek an enlargement of the response deadline to Plaintiffs' second amended complaint until two weeks after the Court resolves Plaintiff's motion for a preliminary injunction. It seems to us this would be most efficient for both parties, given that (a) the relief sought by the motion is the same as

the ultimate relief sought by the Complaint, and (b) the court's ruling on the motion potentially will clarify the issues in the case. Although there is no requirement in the local rules to confer on this motion, as a courtesy, we wanted to see if Plaintiff would consent. We look forward to hearing from you.

Best,
Gary

Gary Feldon
Trial Attorney
United States Department of Justice
Civil Division, Federal Programs Branch
Via Special Delivery: 1100 L St NW, Room 11104, Washington, DC 20005
Via U.S. Mail: P.O. Box 883, Washington, DC 20044
(202) 598-0905
Gary.D.Feldon@usdoj.gov

Exhibit

E

From: [Gardner, Joshua E \(CIV\)](#)
To: [John Knight](#); [Feldon, Gary D. \(CIV\)](#)
Cc: [Battaglia, Frank](#); [Josh Blecher-Cohen](#); [Taylor Brown](#); [Warner, Kevin](#)
Subject: RE: Response Deadline in Iglesias v. True
Date: Friday, July 9, 2021 10:19:54 AM

John:

I wanted to follow up on the parties' plans for the upcoming preliminary injunction hearing. Based on our joint motion for clarification, we understand that Plaintiff intends to introduce testimony "to show Plaintiffs' [sic] ongoing need for preliminary injunctive relief." ECF No. 126 ¶ 5. To the extent Plaintiff intends to limit the testimony of Dr. Ettner or Plaintiff to alleged ongoing irreparable harm, the government does not see a need to depose either witness or present its witnesses. To the extent Plaintiff intends to present evidence beyond that, however, we would need to know the nature of that additional testimony to determine whether we would need depositions or to call our own witnesses. Accordingly, could you please let us know at your earliest convenience the following: (1) who you intend to call; and (2) the scope of their testimony? Once we have this information, we can let you know our plans for the hearing. Thanks, and have a terrific weekend.

Josh

From: John Knight <jknight@aclu-il.org>
Sent: Thursday, July 08, 2021 12:25 PM
To: Gardner, Joshua E (CIV) <Joshua.E.Gardner@usdoj.gov>; Feldon, Gary D. (CIV) <Gary.D.Feldon@usdoj.gov>
Cc: Battaglia, Frank <FBattaglia@winston.com>; Josh Blecher-Cohen <JBlecherCohen@aclu-il.org>; Taylor Brown <TBrown@aclu.org>; Warner, Kevin <KWarner@winston.com>
Subject: Re: Response Deadline in Iglesias v. True

We've spoken to the counselor about this now. Sorry for my confusion regarding who would set it up. I was told something different when I spoke to the counselor last week.

From: Gardner, Joshua E (CIV) <Joshua.E.Gardner@usdoj.gov>
Sent: Wednesday, July 7, 2021 4:01 PM
To: John Knight; Feldon, Gary D. (CIV)
Cc: Battaglia, Frank; Josh Blecher-Cohen; Taylor Brown; Warner, Kevin
Subject: RE: Response Deadline in Iglesias v. True

My understanding is the same person who helped set up the legal call is the same person who can help facilitate the meeting with Dr. Ettner. Has Josh asked that individual to help facilitate the meeting with Dr. Ettner?

From: John Knight <jknight@aclu-il.org>
Sent: Wednesday, July 07, 2021 4:53 PM
To: Gardner, Joshua E (CIV) <Joshua.E.Gardner@usdoj.gov>; Feldon, Gary D. (CIV)

<Gary.D.Feldon@usdoj.gov>

Cc: Battaglia, Frank <FBattaglia@winston.com>; Josh Blecher-Cohen <JBlecherCohen@aclu-il.org>; Taylor Brown <TBrown@aclu.org>; Warner, Kevin <KWarner@winston.com>

Subject: Re: Response Deadline in Iglesias v. True

Hi Josh. While Josh Blecher-Cohen has been able to set up another legal call with our client, neither he nor I have heard from anyone about setting up a video conference for Cristina with our expert, Dr. Ettner. Can you check with the institution about this?

Thank you,
John

From: Gardner, Joshua E (CIV) <Joshua.E.Gardner@usdoj.gov>

Sent: Friday, July 2, 2021 4:34 PM

To: John Knight; Feldon, Gary D. (CIV)

Cc: Battaglia, Frank; Josh Blecher-Cohen; Taylor Brown; Warner, Kevin

Subject: RE: Response Deadline in Iglesias v. True

My understanding is the counselor will be reaching out directly to you. If you don't hear from him by the middle of next week let me know and I can look into it.

From: John Knight <jknight@aclu-il.org>

Sent: Friday, July 02, 2021 5:21 PM

To: Gardner, Joshua E (CIV) <Joshua.E.Gardner@usdoj.gov>; Feldon, Gary D. (CIV) <Gary.D.Feldon@usdoj.gov>

Cc: Battaglia, Frank <FBattaglia@winston.com>; Josh Blecher-Cohen <JBlecherCohen@aclu-il.org>; Taylor Brown <TBrown@aclu.org>; Warner, Kevin <KWarner@winston.com>

Subject: Re: Response Deadline in Iglesias v. True

ok. That's good to hear. Should I reach out to someone to set that up? If so, who do I call?

Enjoy your weekend as well - John

From: Gardner, Joshua E (CIV) <Joshua.E.Gardner@usdoj.gov>

Sent: Friday, July 2, 2021 4:18 PM

To: Feldon, Gary D. (CIV); John Knight

Cc: Battaglia, Frank; Josh Blecher-Cohen; Taylor Brown; Warner, Kevin

Subject: RE: Response Deadline in Iglesias v. True

John:

To follow up on your request concerning Dr. Ettner's video conference with Plaintiff, the institution appears to have found a way to accommodate a private video conference. The staff member coordinating the legal call with you will also coordinate the video conference for Dr.

Ettner in terms of finding a mutually agreeable time, date and length and ensuring that the equipment is compatible.

Have a nice holiday weekend.

Josh

From: Feldon, Gary D. (CIV) <Gary.D.Feldon@usdoj.gov>
Sent: Friday, July 02, 2021 5:10 PM
To: John Knight <jknight@aclu-il.org>
Cc: Gardner, Joshua E (CIV) <Joshua.E.Gardner@usdoj.gov>; Battaglia, Frank <FBattaglia@winston.com>; Josh Blecher-Cohen <JBlecherCohen@aclu-il.org>; Taylor Brown <TBrown@aclu.org>; Warner, Kevin <KWarner@winston.com>
Subject: Re: Response Deadline in Iglesias v. True

Thanks, John! This looks good to us.

On Jul 2, 2021, at 4:52 PM, John Knight <jknight@aclu-il.org> wrote:

Gary,

I've suggested a few edits in response to your additions. I've cut the word "live" from paragraph 4, because the Court has set this hearing by Zoom and we are suggesting that the testimony be presented in that manner rather than having live witnesses in the court room.

Please let me know if this is good to go or if you have further suggested edits.

John

From: Feldon, Gary D. (CIV) <Gary.D.Feldon@usdoj.gov>
Sent: Friday, July 2, 2021 3:13 PM
To: John Knight; Gardner, Joshua E (CIV)
Cc: Battaglia, Frank; Josh Blecher-Cohen; Taylor Brown; Warner, Kevin
Subject: RE: Response Deadline in Iglesias v. True

John,

Thanks for drafting this. I've added the government's signature block and position regarding evidence. Also, I had one edit to paragraph 4 concerning the framing of the necessary clarification from the Court. Let me know if you need to discuss. Otherwise, enjoy your long weekends!

Best,
Gary

From: John Knight <jknight@aclu-il.org>
Sent: Friday, July 02, 2021 12:42 PM
To: Gardner, Joshua E (CIV) <Joshua.E.Gardner@usdoj.gov>
Cc: Feldon, Gary D. (CIV) <Gary.D.Feldon@usdoj.gov>; Battaglia, Frank <FBattaglia@winston.com>; Josh Blecher-Cohen <JBlecherCohen@aclu-il.org>; Taylor Brown <TBrown@aclu.org>; Warner, Kevin <KWarner@winston.com>
Subject: Re: Response Deadline in Iglesias v. True

Here is a motion, Josh. If you are ok with this, please add your signature line (or we can do so). If you want to propose any edits, let us know that too.

thanks - John

From: Gardner, Joshua E (CIV) <Joshua.E.Gardner@usdoj.gov>
Sent: Thursday, July 1, 2021 3:56 PM
To: John Knight
Cc: Feldon, Gary D. (CIV); Battaglia, Frank; Josh Blecher-Cohen; Taylor Brown; Warner, Kevin
Subject: RE: Response Deadline in Iglesias v. True

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Thank you for your email.

With respect to your first issue, we have provided your name to the relevant individual at the prison who will be in touch with your to arrange a time for an attorney-client phone conference outside the immediate presence of BOP employees.

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Passcode: 1096075

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To: Battaglia, Frank; John Knight

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Trial Attorney
United States Department of Justice
Civil Division, Federal Programs Branch
Via Special Delivery: 1100 L St NW, Room 11104,
Washington, DC 20005
Via U.S. Mail: P.O. Box 883, Washington, DC 20044
(202) 598-0905
Gary.D.Feldon@usdoj.gov

<Iglesias - Joint Motion for Clarification (DOJ edits) (Plaintiff edits).docx>