

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

CRISTINA NICHOLE IGLESIAS	)	
(a.k.a. Cristian Noel Iglesias),	)	
	)	
Plaintiff,	)	
	)	Case No. 19-cv-00415-RJN
v.	)	
	)	
IAN CONNORS, <i>et al.</i> ,	)	
	)	
Defendants.	)	

**DEFENDANTS’ REPLY IN SUPPORT OF THEIR MOTION TO EXCLUDE  
UNTIMELY AND UNDISCLOSED EXPERT TESTIMONY AND REQUEST FOR  
EXPEDITED CONSIDERATION**

Pursuant to SDIL-LR 7.1(c), Defendants respectfully file this reply brief in support of their Motion to Exclude Untimely and Undisclosed Expert Testimony and Request for Expedited Consideration (“Motion”). ECF No. 130. Defendants acknowledge that reply briefs are not favored in this district and should be filed only in exceptional circumstances. Such circumstances exist here. Plaintiff’s opposition misstates facts and relies on a baseless implicit assumption. ECF No. 131 (“Opposition”).

First, Plaintiff’s Opposition is premised on the unstated assumption that Defendants failed to comply with an alleged legal obligation to respond to Plaintiff’s discovery requests. Plaintiff provides no explanation for why Defendants were obligated to respond to Plaintiff’s premature discovery requests. And, if Plaintiff thought Defendants were obligated to respond, it was Plaintiff that delayed in raising this issue with the Court.

Plaintiff does not dispute that responses to her document production requests are premature. Pursuant to Federal Rule of Civil Procedure 26(d)(2)(A)-(B), although a party may deliver document production requests before the parties’ Rule 26(f) meeting of counsel, the requests are not deemed

served until after the parties have their Rule 26(f) conference. Plaintiff does not dispute that the parties have not had their Rule 26(f) meeting of counsel. As Defendants repeatedly have explained to Plaintiff, a Rule 26(f) meeting of counsel is premature while the Court is considering Defendants' fully dispositive motion to dismiss that raises issues concerning venue and subject matter jurisdiction. Accordingly, the central premise of Plaintiff's opposition—that she is justified in presenting new, undisclosed opinions from Dr. Ettner because of some discovery failure by Defendants—is factually and legally unsupported.

Second, Plaintiff claims that she was compelled to make a Freedom of Information Act ("FOIA") request because Defendants "denied all access to all of her medical records." Opp. at 2. This is not accurate. Plaintiff made her FOIA request only six days after she provided Defendants with her document requests and *before* she was told that the official capacity defendants (who were not parties at that time) would not respond to her discovery requests. ECF No. 131-2. Accordingly, there is no merit to Plaintiff's suggestion that Defendants' refusal to respond to the document production requests forced Plaintiff to seek similar information through FOIA.

Third, Plaintiff claims that Defendants using Plaintiff's medical records in opposing her preliminary injunction motion was unfair and that her "counsel thus immediately contacted Defendants to obtain her medical records pursuant to the[] outstanding Rule 34 requests." Opp. at 2-3. But Plaintiff was served with the Defendants' opposition and replied to it two weeks later, then waited another four days to renew her discovery requests. ECF No. 99 (opposition filed April 20); ECF No. 107 (reply filed May 3); Opp. Ex. C (May 7, 2021 email regarding discovery). Plaintiff's seventeen-day delay belies her suggestion that her medical records were necessary for her reply brief or for Dr. Ettner's second declaration filed in connection with her reply.

Fourth, Plaintiff claims that Plaintiff requested a psychological examination "shortly" after being transferred to a women's prison and that Defendants "reversed their position" on their

willingness to permit a psychological evaluation. Plaintiff again has misstated the facts. Plaintiff arrived at FMC Carswell on May 25, 2021. ECF No. 111. Plaintiff did not contact Defendants about securing a full psychological evaluation until more than a month later, on June 28, 2021. ECF No. 131-4 at 3. In response, counsel for the Defendants explained that “video conferencing at the facility is not currently configured for confidential communications and is a public space[, so] . . . BOP [was] looking into potential ways to create a confidential environment.” *Id.* at 2. The next day, Defendants’ counsel informed Plaintiff’s counsel that “the institution appears to have found a way to accommodate a private video conference” and provided contact information to set up the conference. Ex 1. Accordingly, the facts do not support Plaintiff’s suggestion that she was diligent in seeking a psychological examination or that Defendants took inconsistent positions about their willingness to facilitate an exam.

Fifth, Plaintiff suggests that any harm with Dr. Ettner’s offering new, untimely opinions can be remedied simply by making her available for deposition before the evidentiary hearing scheduled in eight days. ECF No. 131. Initially, Defendants lack fair notice of Dr. Ettner’s new opinions. Indeed, Plaintiff has *still* not disclosed them. Deposing Dr. Ettner under these circumstances would not be effective. Moreover, the preliminary injunction evidentiary hearing is currently scheduled for next Wednesday. Between now and July 30, 2021, counsel for Defendants need to prepare and defend eight depositions in another matter, in addition to preparing for the evidentiary hearing in this case. Under these circumstances, Dr. Ettner’s last-minute, undisclosed opinions would prejudice Defendants, and the opportunity to depose her would not cure that prejudice.

For these reasons, Defendants’ motion to exclude should be granted.

Dated: July 20, 2021

STEVEN D. WEINHOFET  
United States Attorney

LAURA J. JONES

Respectfully submitted,

BRIAN M. BOYNTON  
Acting Assistant Attorney General  
Civil Division

Assistant United States Attorney

ALEXANDER K. HAAS  
Director, Federal Programs Branch

*/s/ Joshua E. Gardner*

JOSHUA E. GARDNER

Special Counsel

GARY D. FELDON

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*Counsel for Defendants*

# EXHIBIT 1

**From:** [Gardner, Joshua E \(CIV\)](#)  
**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  
**Date:** Friday, July 02, 2021 5:18:13 PM

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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

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**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](mailto: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

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**From:** Feldon, Gary D. (CIV) <[Gary.D.Feldon@usdoj.gov](mailto: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

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

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**From:** Gardner, Joshua E (CIV) <[Joshua.E.Gardner@usdoj.gov](mailto: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

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.

With respect to your third issue, my understanding is that the video conferencing at the facility is not currently configured for confidential communications and is in a public space. BOP is looking into potential ways to create a confidential environment. Alternatively, Dr. Ettner could meet with Plaintiff in person or by phone in a confidential environment, which is my understanding of the way these sorts of meetings are typically handled.

With respect to your fourth issue, if you are seeking depositions of the declarants that supported Defendants' opposition to Plaintiff's preliminary injunction in the absence of an evidentiary hearing, we do not understand the basis for claiming an entitlement to such discovery now. 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.

Finally, my understanding during our call was that you wanted to file a joint motion for clarification of the court's minute order to determine if the court intended to hold an evidentiary hearing. Please send me a draft of that motion at your convenience so I can share it with the agency and within the Department of Justice and get the appropriate sign-offs.

Regards,

Josh

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

Thanks, Josh.

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**From:** Gardner, Joshua E (CIV) <[Joshua.E.Gardner@usdoj.gov](mailto:Joshua.E.Gardner@usdoj.gov)>  
**Sent:** Wednesday, June 30, 2021 3:39 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

John:

We are continuing to look into these issues and will get back to you as soon as we can.

Josh

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**From:** John Knight <[jknight@aclu-il.org](mailto:jknight@aclu-il.org)>  
**Sent:** Wednesday, June 30, 2021 12:48 PM  
**To:** Gardner, Joshua E (CIV) <[Joshua.E.Gardner@usdoj.gov](mailto:Joshua.E.Gardner@usdoj.gov)>  
**Cc:** Feldon, Gary D. (CIV) <[Gary.D.Feldon@usdoj.gov](mailto:Gary.D.Feldon@usdoj.gov)>; Battaglia, Frank <[FBattaglia@winston.com](mailto:FBattaglia@winston.com)>; Josh Blecher-Cohen <[JBlecherCohen@aclu-il.org](mailto:JBlecherCohen@aclu-il.org)>; Taylor Brown <[TBrown@aclu.org](mailto:TBrown@aclu.org)>; Warner, Kevin <[KWarner@winston.com](mailto:KWarner@winston.com)>

**Subject:** Re: Response Deadline in Iglesias v. True

Josh and Gary,

I am following up on our Monday call, since we haven't heard yet from you. Please let us know by tomorrow at the latest the following: 1) an agreeable time for an attorney-client phone conference with our client in a confidential setting; 2) production of any medical and mental health records, including clinician notes, that have not already been produced; 3) some available times for our expert to conduct a video-conference psychological evaluation of Ms. Iglesias; and 4) Defendants' position regarding making available the 3 declarants who support Defendant's response to the Motion for Preliminary Injunction.

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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**From:** Gardner, Joshua E (CIV) <[Joshua.E.Gardner@usdoj.gov](mailto:Joshua.E.Gardner@usdoj.gov)>

**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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**From:** John Knight <[jknight@aclu-il.org](mailto:jknight@aclu-il.org)>  
**Sent:** Thursday, June 24, 2021 8:54 PM  
**To:** Gardner, Joshua E (CIV) <[Joshua.E.Gardner@usdoj.gov](mailto:Joshua.E.Gardner@usdoj.gov)>  
**Cc:** Feldon, Gary D. (CIV) <[Gary.D.Feldon@usdoj.gov](mailto:Gary.D.Feldon@usdoj.gov)>; Battaglia, Frank <[FBattaglia@winston.com](mailto:FBattaglia@winston.com)>; Josh Blecher-Cohen <[JBlecherCohen@aclu-il.org](mailto:JBlecherCohen@aclu-il.org)>; Taylor Brown <[TBrown@aclu.org](mailto:TBrown@aclu.org)>; Warner, Kevin <[KWarner@winston.com](mailto:KWarner@winston.com)>  
**Subject:** Re: Response Deadline in Iglesias v. True

If you can, that would be great. thanks.

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**From:** Gardner, Joshua E (CIV) <[Joshua.E.Gardner@usdoj.gov](mailto:Joshua.E.Gardner@usdoj.gov)>  
**Sent:** Thursday, June 24, 2021 7:52 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

Terrific - did you want to circulate a call-in or did you want me to?

Sent from my iPhone

On Jun 24, 2021, at 8:52 PM, John Knight <[jknight@aclu-il.org](mailto:jknight@aclu-il.org)> wrote:

Yes, that's fine.

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**From:** Gardner, Joshua E (CIV) <[Joshua.E.Gardner@usdoj.gov](mailto:Joshua.E.Gardner@usdoj.gov)>  
**Sent:** Thursday, June 24, 2021 7:14 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

Thanks John. Could we do 4:30 ET? After I sent my original email with my availability I got a meeting request for a meeting that should end at 4:15.

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**From:** John Knight <[jknight@aclu-il.org](mailto:jknight@aclu-il.org)>  
**Sent:** Thursday, June 24, 2021 8:10 PM  
**To:** Gardner, Joshua E (CIV) <[Joshua.E.Gardner@usdoj.gov](mailto:Joshua.E.Gardner@usdoj.gov)>  
**Cc:** Feldon, Gary D. (CIV) <[Gary.D.Feldon@usdoj.gov](mailto:Gary.D.Feldon@usdoj.gov)>; Battaglia, Frank <[FBattaglia@winston.com](mailto:FBattaglia@winston.com)>; Josh Blecher-Cohen <[JBlecherCohen@aclu-il.org](mailto:JBlecherCohen@aclu-il.org)>; Taylor Brown <[TBrown@aclu.org](mailto:TBrown@aclu.org)>; Warner, Kevin <[KWarner@winston.com](mailto:KWarner@winston.com)>  
**Subject:** Re: Response Deadline in Iglesias v. True

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

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**From:** Gardner, Joshua E (CIV) <[Joshua.E.Gardner@usdoj.gov](mailto:Joshua.E.Gardner@usdoj.gov)>  
**Sent:** Thursday, June 24, 2021 4:56 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

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](mailto: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

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**From:** Feldon, Gary D. (CIV) <[Gary.D.Feldon@usdoj.gov](mailto: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](mailto:Gary.D.Feldon@usdoj.gov)

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