

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’ OPPOSITION TO PLAINTIFF’S MOTION TO COMPEL
EXPEDITED DISCOVERY**

Despite repeatedly telling the Court that she did not wish to seek expedited discovery beyond the deposition of Dr. Alison Leukefeld, Plaintiff has now changed course and seeks broad, burdensome discovery less than three weeks before the preliminary injunction hearing, without justifying why she suddenly needs expedited discovery to support a motion filed six months ago. Pl.’s Mot. to Compel Discovery, ECF No. 146 (“Mot.”). Plaintiff’s motion to compel expedited discovery should be denied.

BACKGROUND

On August 30, 2021, the Court held a telephonic status conference to discuss, among other things, “the parties['] need for expedited discovery before the preliminary [injunction] hearing.” ECF No. 40; Ex. 1. Shortly before that conference, Plaintiff’s counsel advised the government in writing that, “[a]fter thinking more about the question of moving forward with expedited discovery, we are inclined to limit the expedited discovery we request to a deposition of Dr. Leukefeld.” Ex. 2. Consistent with that representation, Plaintiff’s counsel informed the Court during the status conference that Plaintiff did not seek any discovery beyond Dr. Leukefeld’s deposition. Defendants

did not object to the deposition, in part because of their understanding that Plaintiff would not seek any expedited discovery other than that deposition.

On August 31, 2021, the Court issued a minute order instructing counsel for the parties to inform the Court by September 10, 2021, regarding, among other things, “whether any additional depositions or discovery is needed to be completed before the hearing over Plaintiff’s preliminary injunction on September 21, 2021.” ECF No. 143.

On September 8, just two days before Dr. Leukefeld’s deposition, Plaintiff’s counsel served a Rule 45 subpoena seeking, among other things,

[A]ny documents [Dr. Leukefeld] uses to prepare for the deposition; and any records she relied on to prepare her two declarations (not including any documents included as exhibits to Defendants’ court filings). Those records should include any TEC records, including minutes, related to Cristina’s requests for transfer, surgery and hair removal that were not included in Defendants’ court filings, including those referenced in Dr. Leukefeld’s April 2021 Declaration, ¶¶ 15-16. They should also include those TCCT records mentioning Christina to the extent that Dr. Leukefeld has already relied on them or will do so to prepare for the deposition.

Ex. 3. Defendants responded to the subpoena the next day, explaining that it was procedurally improper, untimely, and inconsistent with Plaintiff’s representations to the Court and government counsel. Ex. 4. Nevertheless, in the spirit of cooperation, the government produced over one hundred pages of documents, including multiple minutes from the Transgender Executive Council (“TEC”). *Id.*

On September 10, *after* the conclusion of Dr. Leukefeld’s deposition, Plaintiff’s counsel notified the Court that “[t]hey have taken the deposition of Dr. Leukefeld and do not anticipate the need for any additional depositions or discovery before that hearing.” Ex. 5.

Despite this representation to the Court, Plaintiff changed course only ten days later, when her attorneys emailed Defendants to request additional documents. Ex. 6. Defendants’ counsel responded the following day, referring Plaintiff to previous correspondence explaining the impropriety of such a request. *Id.* Plaintiff then waited another eight days, until less than three weeks

remained before the preliminary injunction hearing, and filed her motion to compel production of the requested documents on an expedited basis. Mot. at 4-5. Specifically, Plaintiff now demands that Defendants produce within the next two weeks:

(1) the agendas, minutes, and records from all [TEC] and Transgender Critical Care Team (“TCCT”) meetings where Ms. Iglesias was discussed that have not been produced; (2) all documents about Ms. Iglesias considered by members of the TEC and TCCT; (3) all medical and mental-health records for Ms. Iglesias that have not already been produced for the period of 2019 to present, including unit-staff-only filings; and (4) all communications about Ms. Iglesias to or from the TEC, TCCT, and/or Dr. Elizabeth Stahl since May 2021.

Id. at 5. Notably, Plaintiff’s counsel sought this discovery without serving a discovery request under Federal Rule of Civil Procedure 34.

ARGUMENT

Plaintiff’s belated informal request for discovery is unduly burdensome and fails to explain why it is necessary for purposes of the upcoming preliminary injunction hearing. Despite repeatedly telling the Court that she did not want discovery beyond Dr. Leukefeld’s deposition, Plaintiff now seeks to compel broad discovery just weeks before the evidentiary hearing. Plaintiff’s motion should be denied as both procedurally defective and substantively improper.

Plaintiff asserts that her “counsel has only recently been made aware of the existence and importance of relevant documents in the last month, including through the September 10, 2021 deposition of Dr. Alison Leukefeld and new developments in Ms. Iglesias’s healthcare at her new institution, Federal Medical Center-Carswell (“FMC-Carswell”).” Mot. at 1-2. As an initial matter, Plaintiff’s counsel informed the Court *after* Dr. Leukefeld’s deposition that Plaintiff was not seeking any additional discovery in advance of the preliminary injunction hearing. Ex. 5. Plaintiff fails to provide any justification for her change in position. Nor does Plaintiff explain why she waited three weeks after Dr. Leukefeld’s deposition to move to compel the documents she now seeks.

Plaintiff opaquely alludes to “new developments concerning Ms. Iglesias’s healthcare brought to counsel’s attention at legal meetings with Ms. Iglesias throughout September 2021.” Mot. at 3. But Plaintiff fails to explain what these new developments are, let alone how they relate to her claim for gender-affirming surgery or why any such documents would be necessary in connection with the preliminary injunction motion. Further, without knowing when these supposed new developments occurred or specifically when they were disclosed to Plaintiff’s counsel, the Court cannot determine whether Plaintiff or her counsel were dilatory in failing to raise them until now.

Plaintiff also contends that the Federal Rules can permit expedited discovery in the context of a preliminary injunction motion. Mot. at 4-5. Even if true, that is beside the point. Plaintiff has had the opportunity *twice* to seek expedited discovery and made the strategic decision to seek only the deposition of Dr. Leukefeld. Plaintiff has failed to explain with any specificity why she should be entitled to a third bite at the apple at this late date.¹

Indeed, because Plaintiff has made only an informal email request for documents, she is not even legally entitled to move to compel at this time. As district courts in the Seventh Circuit have uniformly held, an “informal request for the production of documents . . . does not constitute a formal discovery demand that can properly serve as the basis for a motion to compel.” *Studio & Partners, s.r.l. v. KI*, No. 06-C-0628, 2007 WL 896065, at *1 (E.D. Wis. Mar. 22, 2007); *see also Rustom*

¹ Plaintiff asserts that her “pre-conferral discovery request is expressly authorized” under S.D. Ill. Local R. 26.1(a). Mot. at 3. Putting to one side the fact that the Court already has authorized limited discovery in advance of the preliminary injunction hearing based on the requests of the parties, Plaintiff’s reliance on Local Rule 26.1(a) is misplaced. Local Rule 26.1(a) is not an absolute exemption from routine discovery events such as the Rule 26(f) meeting of counsel, even in prisoner civil rights cases. Instead, that rule expressly acknowledges that the Court “may order an initial conference . . . in a case falling in one of the excluded categories if the judicial officer determines that the complexity of the case or some unusual factor warrants more extensive pretrial case management than is usually necessary for that type of case.” L.R. 26.1(a). Defendants respectfully submit, particularly where plaintiff is represented by counsel, that this case falls squarely within that exception to Local Rule 26.1(a).

v. Rustom, No. 17 C 9061, 2018 WL 3105926, at *2 (N.D. Ill. June 25, 2018); *Ousterhout v. Zukowski*, No. 11 CV 9136, 2016 WL 3675564, at *4 (N.D. Ill. Apr. 5, 2016), *R&R adopted*, No. 11-CV-9136, 2016 WL 3612086 (N.D. Ill. July 6, 2016); *Patel ex rel. R.P. v. Menard, Inc.*, No. 1:09-CV-0360-TWP-DML, 2011 WL 5024991, at *3 (S.D. Ind. Oct. 20, 2011).

Moreover, as the movant, Plaintiff bears the burden of explaining what expedited discovery is necessary and why, as well as ensuring that her request is narrowly tailored such that the discovery can reasonably be completed in the shortened timeframe. *See Orthopediatrics Corp. v. Wishbone Med.*, No. 3:20-CV-929-JD-MGG, 2020 U.S. Dist. LEXIS 255019, at *4 (N.D. Ind. Dec. 15, 2020).

Plaintiff has done neither. Rather, Plaintiff says virtually nothing about why the requested expedited discovery is supposedly necessary, noting only that it relates to “the healthcare that Defendants are denying Ms. Iglesias[.]” Mot. at 5. But if that generic justification—that the discovery allegedly relates to the claims in the case—were sufficient, expedited discovery would be the norm, not the disfavored exception. For that reason, courts routinely deny motions for expedited discovery where, as here, the movant fails to explain with specificity why the discovery is needed in connection with a preliminary injunction motion. *See, e.g., Fidelity Brokerage Services, LLC, v. Jason Edwards and Edward D. Jones & Co., LP*, No. 20-cv-852, 2021 WL 3771771, at *1 (N.D. Tex. Feb. 4, 2021) (denying motion for expedited discovery where plaintiff failed to explain why requested discovery “would aid in determining the preliminary injunction issue”) (citing *KWB & Assocs. v. Marvin*, No. EDCV 18-289-DMG, 2018 WL 5094923, at *4 (C.D. Cal. Mar. 6, 2018) (denying request for proposed deposition where plaintiff made no effort to identify or limit topics)).

Next, contrary to Plaintiff’s contention, Plaintiff’s requests are not “narrowly tailored.” Mot. at 5. Rather, they are exceptionally burdensome because of the breadth of the requests, the extremely short time in which Defendants would have to respond, and the obligations Defendants’

counsel have in other cases (which include representing the government in two other preliminary injunction proceedings). For example:

- Plaintiff's demand for "all communications about Ms. Iglesias sent to or from the TEC, TCCT, and/or Dr. Elizabeth Stahl since May 2021," would require the government to conduct electronic and hard-copy searches of numerous custodians over a five-month period, review the results of those searches for responsiveness and privilege, redact any privileged or non-responsive information concerning other inmates, and produce any documents after providing them to the government's lab for processing.
- Plaintiff's demand for "all documents about Ms. Iglesias considered by members of the TEC and TCCT," would require all the above steps as well as interviews of the members of the TEC and TCCT to identify any responsive documents over the several years that Plaintiff has been considered for any type of care by those entities.
- Not only is the request for "the agendas, minutes, and records from all [TEC] and [TCCT] meetings where Ms. Iglesias was discussed that have not already been produced" equally burdensome—particularly given the need to redact sensitive information related to other inmates—but this material appears to be cumulative of materials the government already has provided to Plaintiff. For instance, Defendants already have provided Plaintiff with the minute meetings from the October 7, 2019, March 9, 2020, and April 19, 2021 TEC meetings. Notably, the meeting minutes are cumulative, meaning that each contains a summary of every meeting dating back to May 2016. Plaintiff has not articulated any reason she would need even more meeting minutes to support her preliminary injunction motion.
- Plaintiff requests "all medical and mental-health records for Ms. Iglesias that have not already been produced for the period of 2019 to present, including unit-staff-only filings." However,

Defendants already provided Plaintiff with her medical and mental health records through July 2021, the date the Federal Bureau of Prisons fulfilled Plaintiff's Freedom of Information Act request. Plaintiff has not identified any medical records missing from Defendants' July production, which totals more than 1,500 pages and which Defendants believe to be comprehensive.² The only additional medical and psychological records of which Defendants are aware would be those created since July. Plaintiff has not proffered any reason she would need those two months' of records for the upcoming hearing.

CONCLUSION

For the foregoing reasons, Plaintiff's Motion to Compel Expedited Discovery should be denied.

Dated: October 4, 2021

Respectfully submitted,

BRIAN M. BOYNTON
Acting Assistant Attorney General
Civil Division

ALEXANDER K. HAAS
Director, Federal Programs Branch

/s/ Joshua E. Gardner
JOSHUA E. GARDNER
Special Counsel
GARY D. FELDON
Trial Attorney
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Federal Programs Branch
1100 L St. NW, Room 11502
Washington, DC 20530
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Fax: (202) 616-8470
Email: joshua.e.gardner@usdoj.gov

Counsel for Defendants

² Plaintiff has requested "unit-staff-only filings," Mot. at 5, but this term is unfamiliar to Defendants. Regardless, Defendants' July production endeavored to capture and produce *all* of Plaintiff's medical and psychological records, so it should include whatever Plaintiff means by that term.

EXHIBIT 1

From: [Deana Brinkley](#)
To: [apovolish_fmgr.com](#); [fbattaglia@winston.com](#); [cblock@winston.com](#); [*jknigh@ACLU-il.org](#);
[josh.blechercohen@gmail.com](#); [khundt@winston.com](#); [kwarner@winston.com](#); [tbrown@aclu.org](#); [Gardner, Joshua E \(CIV\)](#); [Smith, Laura K. \(CIV\)](#); [Feldon, Gary D. \(CIV\)](#); [Jones, Laura J. \(USAILS\)](#)
Cc: [Daniel Ritter](#)
Subject: 19-cv-415-NJR Iglesias v. True et al.
Date: Tuesday, August 03, 2021 12:05:48 PM

Counsel: At the telephonic hearing set for August 30, 2021 at 3 PM, please be prepared to discuss the following:

1. if the parties need any expediated discovery before the preliminary hearing.
Defendants note the possibility of deposing Dr. Ettner before the evidentiary hearing;
2. if Dr. Ettner is going to form new opinions on Iglesias, then will the parties need new briefing on the motion for preliminary injunction?;
3. if the parties want to establish deadlines for the names of witnesses who will appear at the preliminary injunction hearing;
4. if Defendants plan to file a motion for summary judgment on the issue of exhaustion of administrative remedies;

Deana Brinkley
Courtroom Deputy to Chief Judge Nancy J. Rosenstengel
United States District Court - Southern District of Illinois
750 Missouri Avenue
East St. Louis, IL 62201
(618) 482-9342

EXHIBIT 2

From: [John Knight](#)
To: [Gardner, Joshua E \(CIV\)](#)
Cc: [Feldon, Gary D. \(CIV\)](#); [Warner, Kevin](#); [Battaglia, Frank](#); [Josh Blecher-Cohen](#); [Taylor Brown](#); [Lemajeur, Shannon Denise](#)
Subject: Re: Iglesias
Date: Monday, August 30, 2021 3:25:47 PM
Attachments: [image003.png](#)

Josh and Gary,

After thinking more about the question of moving forward with expedited discovery, we are inclined to limit the expedited discovery we request to a deposition of Dr. Leukefeld. I wanted to give you a heads up regarding that prior to the status.

John

From: Gardner, Joshua E (CIV) <Joshua.E.Gardner@usdoj.gov>
Sent: Monday, August 30, 2021 10:41 AM
To: John Knight
Cc: Feldon, Gary D. (CIV); Warner, Kevin; Battaglia, Frank; Josh Blecher-Cohen; Taylor Brown; Lemajeur, Shannon Denise
Subject: RE: Iglesias

[No, three psychologists and agency counsel.](#)

From: John Knight <jknight@aclu-il.org>
Sent: Monday, August 30, 2021 11:03 AM
To: Gardner, Joshua E (CIV) <Joshua.E.Gardner@usdoj.gov>
Cc: Feldon, Gary D. (CIV) <Gary.D.Feldon@usdoj.gov>; Warner, Kevin <KWarner@winston.com>; Battaglia, Frank <FBattaglia@winston.com>; Josh Blecher-Cohen <JBlecherCohen@aclu-il.org>; Taylor Brown <TBrown@aclu.org>; Lemajeur, Shannon Denise <SLemajeur@winston.com>
Subject: Re: Iglesias

4 psychologists?

From: Gardner, Joshua E (CIV) <Joshua.E.Gardner@usdoj.gov>
Sent: Monday, August 30, 2021 9:50 AM
To: John Knight
Cc: Feldon, Gary D. (CIV); Warner, Kevin; Battaglia, Frank; Josh Blecher-Cohen; Taylor Brown; Lemajeur, Shannon Denise
Subject: RE: Iglesias

[John – including agency counsel, four BOP employees will have access to the test results.](#)

Josh

EXHIBIT 3

AO 88A (Rev. 12/20) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Illinois

Cristina Nichole Iglesias

Plaintiff

v.

Ian Connors, et al.

Defendant

Civil Action No. 19-cv-00415

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Dr. Alison Leukefeld
BOP Psychology Services Branch Administrator

(Name of person to whom this subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must promptly confer in good faith with the party serving this subpoena about the following matters, or those set forth in an attachment, and you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about these matters:

Place: By recorded video conference (via Zoom)	Date and Time: September 10, 2021, 8:30 a.m. Eastern
--	---

The deposition will be recorded by this method: Stenographic and videographic means

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material: See Schedule A

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 09/08/2021

CLERK OF COURT

OR

/s/ John A. Knight

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Plaintiff
Cristina Nichole Iglesias

, who issues or requests this subpoena, are:
John A. Knight, Roger Baldwin Foundation of ACLU, Inc., 150 N. Michigan Ave., Ste. 600, Chicago, IL 60601;
312-201-9740; jknight@aclu-il.org

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 19-cv-00415

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____ .

I served the subpoena by delivering a copy to the named individual as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

SCHEDULE A

Dr. Leukefeld's curriculum vitae; any documents she uses to prepare for the deposition; and any records she relied on to prepare her two declarations (not including any documents included as exhibits to Defendants' court filings). Those records should include any TEC records, including minutes, related to Cristina's requests for transfer, surgery and hair removal that were not included in Defendants' court filings, including those referenced in Dr. Leukefeld's April 2021 Declaration, ¶¶ 15-16. They should also include those TCCT records mentioning Cristina to the extent that Dr. Leukefeld has already relied on them or will do so to prepare for the deposition.

EXHIBIT 4



U.S. Department of Justice

Civil Division

Federal Programs Branch

Mailing Address

P.O. Box 883
Washington, D.C. 20044

Overnight Delivery Address

1100 L Street, N.W.
Washington, D.C. 20005

Joshua E. Gardner

Special Counsel

Tel: (202) 305-7583

Fax: (202) 616-8202

Joshua.e.gardner@usdoj.gov

September 9, 2021

Via Email

John Knight
Roger Baldwin Foundation of ACLU, Inc.
150 N. Michigan, Suite 600
Chicago, IL 60602

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

Dear Mr. Knight:

We are in receipt of your September 8, 2021 Rule 45 subpoena for the deposition of Dr. Alison Leukefeld and the following documents: “Dr. Leukefeld’s curriculum vitae; any documents she uses to prepare for the deposition; and any records she relied on to prepare her two declarations (not including any documents included as exhibits to Defendants’ court filings). Those records should include any TEC records, including minutes, related to Christina’s request for transfer, surgery and hair removal that were not included in Defendants’ court filings, including those referenced in Dr. Leukefeld’s April 2021 Declaration, ¶¶ 15-16. They should also include those TCCT records mentioning Christina to the extent that Dr. Leukefeld has already relied upon them or will do so to prepare for the deposition.”

Although the Defendants will make Dr. Leukefeld available for deposition on September 10, 2021, as the parties previously have agreed, your request for documents is inappropriate for numerous reasons. First, your request is procedurally defective. Rule 45 subpoenas are for non-parties, not employees of a party, which are governed by Rule 34. *See* Fed. R. Civ. P. 34(c) (“As provided in Rule 45, a *nonparty* may be compelled to produce documents . . .”) (emphasis added); *Smith v. Pendergrass*, No. 1:02-CV-125, 2003 WL 21919182, *3 (N.D. Ind. Jun. 17, 2003) (“Plaintiff wants to serve his subpoena on parties to this suit; however, he should properly obtain such discovery through Rule 34 document requests.”); *Brinckerhoff v. Town of Paradise*, No. S-10-0023, 2010 WL 4806966, *7 (E.D. Cal. Nov. 18, 2010) (holding that Rule 45 subpoena for documents was ineffective when served on employees of defendant). Second, even if Rule 45 were applicable—and it plainly is not—the rule requires a reasonable time for production. *See Elliot v. Mission Trust Serv., LLC*, No. 15-C-9625, 2015 WL 1567901, *4 (N.D. Ill. Apr. 7, 2015) (recognizing that 14 days is the “benchmark for time for compliance” under Rule 45(d)(2)(B)). Plaintiff’s subpoena seeks compliance in less than 48 hours, a presumptively unreasonable time for compliance.

Third, your request for the production of documents is inconsistent with your August 30, 2021

email, where you stated that “[a]fter thinking more about the question of moving forward with expedited discovery, we are inclined to limit the expedited discovery we request to a deposition of Dr. Leukefeld.” And during the telephonic status conference later that same day, when the Court asked if you wanted any discovery before the evidentiary hearing, you stated that the only discovery you wanted was Dr. Leukefeld’s deposition. Accordingly, the Court permitted the deposition of Dr. Leukefeld and did not order the production of any documents. In the absence of a court order, you have no entitlement to discovery at this juncture. Fed. R. Civ. P. 26(d). Fourth, the documents identified by counsel for the Defendants in preparation for Dr. Leukefeld’s deposition are subject to work-product protection, and will not be produced. *In re Yasmin and Yaz (Drospirenone) Mktg., Sales Practices and Relevant Prod. Liab. Litig.*, No. 3:09-md-02110, 2011 WL 2580764, *2 (N.D. Ill. Jun. 29, 2011) (holding that “counsel’s selection of documents in preparation for a client’s deposition is shielded from discovery under the work-product doctrine.”)

Nevertheless, in the spirit of cooperation, enclosed are documents Dr. Leukefeld reviewed in support of her preliminary injunction declaration that have not already been made available to you through the attachments to her declaration, the Freedom of Information Act, or are not otherwise publicly available. The documents are bates labeled IGLESIAS 000001-000114. We are also enclosing a copy of her CV.

Sincerely,

/s/ Joshua E. Gardner

Joshua E. Gardner
Special Counsel
Federal Programs Branch

Encl.

EXHIBIT 5

From: [John Knight](#)
To: deana_brinkley@ilsd.uscourts.gov; NJRpd@ilsd.uscourts.gov
Cc: [Josh Blecher-Cohen](#); [Feldon, Gary D. \(CIV\)](#); [Battaglia, Frank](#); [Taylor Brown](#); [Lemajeur, Shannon Denise](#); [Gardner, Joshua E \(CIV\)](#)
Subject: Iglesias v. Connors, No. 19-cv-00415-NJR
Date: Friday, September 10, 2021 4:03:47 PM

Dear Ms. Brinkley,

Plaintiffs intend to call Cristina Iglesias and Dr. Ettner at the preliminary injunction hearing on September 21, 2021. They have taken the deposition of Dr. Leukefeld and do not anticipate the need for any additional depositions or discovery before that hearing.

Thank you,

John Knight

Pronouns: he, him

American Civil Liberties Union

LGBT & HIV Project

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From: Gardner, Joshua E (CIV) <Joshua.E.Gardner@usdoj.gov>
Sent: Friday, September 10, 2021 2:53 PM
To: deana_brinkley@ilsd.uscourts.gov; NJRpd@ilsd.uscourts.gov
Cc: John Knight; [Josh Blecher-Cohen](#); [Feldon, Gary D. \(CIV\)](#); [Battaglia, Frank](#); [Taylor Brown](#); [Lemajeur, Shannon Denise](#)
Subject: Iglesias v. Connors, No. 19-cv-00415-NJR

Pursuant to the Court's August 31, 2021 order, ECF No. 143, the government intends to call Dr. Alison Leukefeld at the upcoming preliminary injunction hearing. In addition, the government is scheduled to depose Dr. Randi Ettner on Monday, September 13, 2021. Defendants do not anticipate the need for any additional depositions or discovery before the preliminary injunction hearing.

Regards,

Josh Gardner

EXHIBIT 6

From: [Gardner, Joshua E \(CIV\)](#)
To: [John Knight](#)
Cc: [Josh Blecher-Cohen](#); [Chris Romer](#); [Feldon, Gary D. \(CIV\)](#); [Warner, Kevin](#); [Battaglia, Frank](#); [Taylor Brown](#); [Lemajeur, Shannon Denise](#)
Subject: RE: Iglesias
Date: Thursday, September 23, 2021 9:05:37 AM

John:

We have addressed your request on prior occasions, including as recently as our September 9, 2021 letter. We refer you back to that correspondence.

Josh

From: John Knight <jknight@aclu-il.org>
Sent: Wednesday, September 22, 2021 12:46 PM
To: Gardner, Joshua E (CIV) <Joshua.E.Gardner@usdoj.gov>
Cc: Josh Blecher-Cohen <JBlecherCohen@aclu-il.org>; Chris Romer <CRomer@aclu-il.org>; Feldon, Gary D. (CIV) <Gary.D.Feldon@usdoj.gov>; Warner, Kevin <KWarner@winston.com>; Battaglia, Frank <FBattaglia@winston.com>; Taylor Brown <TBrown@aclu.org>; Lemajeur, Shannon Denise <SLemajeur@winston.com>
Subject: [EXTERNAL] Re: Iglesias

Josh,

Thanks for sending these documents. We believe that there are still some documents that Defendants should produce as part of the limited discovery we have requested in anticipation of the preliminary injunction hearing.

We request the following:

- o Agendas/minutes/records from all TEC and TCCT meetings where Cristina Iglesias was discussed that have not already been produced;
- o All documents about Cristina Iglesias considered by members of the TEC and TCCT;
- o Medical/mental-health records for Cristina Iglesias that have not already been produced for the period 2019 to September 2021, including unit-staff-only filings;
- o All communications about Cristina Iglesias to the TEC, TCCT, and Dr. Stahl, since May 2021.

Please let us know when you can produce these or if a phone call about this request would be helpful.

Thank you - John
