

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

BRIANNA BOE, individually and on behalf of her minor son, MICHAEL BOE; *et al.*,

Plaintiffs,

and

UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

v.

STEVE MARSHALL, in his official capacity as Attorney General of the State of Alabama; *et al.*,

Defendants.

Case No. 2:22-cv-184-LCB-CWB

Honorable Liles C. Burke

**PLAINTIFF-INTERVENOR UNITED STATES' OPPOSITION TO
DEFENDANTS' MOTION TO SCHEDULE ARGUMENT ON THEIR
MOTION TO COMPEL PRODUCTION OF HHS DOCUMENTS FOR THE
FEBRUARY 8 DISCOVERY HEARING**

The United States of America, as Plaintiff-Intervenor, respectfully submits this opposition to Defendants' Motion to Schedule Argument on Their Motion to Compel Production of HHS Documents for the February 8 Discovery Hearing. In support of its opposition, the United States states the following:

1. Just today, on January 24, 2023, Defendants filed a motion to compel

the production of certain records in the possession, custody, and control of the United States Department of Health and Human Services, as well as two of its sub-agencies: the Food and Drug Administration and National Institutes of Health (“Motion to Compel”).

2. This Court has set hearings on four other motions for February 8, 2023.¹ Defendants have filed a motion to expedite the briefing schedule to allow the Court to hear argument on the Motion to Compel on the same date.

3. The United States is respectful of the Court’s interest in managing the docket and shares the goal of expeditiously resolving discovery disputes in this case. Defendants’ delay in filing the Motion to Compel, however, risks prejudicing the United States’ ability to file a responsive pleading and adequately prepare for the oral argument on February 8.

4. Ten days is not enough time for the United States to research the various issues raised in Defendants’ Motion to Compel, draft its opposition, complete the review and approval process within each of the impacted agencies, and prepare for argument on this and the other motions scheduled to be heard on February 8. The United States’ response to Defendants’ motion and preparation for oral argument requires coordination between the U.S. Department of Justice, U.S.

¹ The Court will hear the Motion for Sanctions (Dkt. No. 198), the Motion to Quash (Dkt. No. 208), Defendants’ motion to compel (Dkt. No. 215), and Defendants’ Motion in Limine (Dkt. No. 220).

Department of Health and Human Services, Food and Drug Administration, and National Institutes of Health.

5. Given that the typical response time is 21 days, the United States respectfully requests until February 13, 2023 to file its opposition and requests that a hearing on the motion be set later that week or the following week. If the Court sets the hearing for February 8, 2023, the United States requests that it be permitted to file its opposition no later than February 6, 2023.

6. The United States' proposed briefing schedule should not further delay discovery in this case or affect any deadlines. It should not negatively impact Defendants' experts' ability to meet their deadline for filing expert reports.

Dated: January 24, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 24, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel of record.

Respectfully submitted,

s/ Renee Williams

Trial Attorney

U.S. Department of Justice