
Activity in Case 1:25-cv-10313-JEK Orr et al v. Trump et al Order

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United States District Court

District of Massachusetts

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Case Name: Orr et al v. Trump et al

Case Number: [1:25-cv-10313-JEK](#)

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Document Number: [200](#)

Docket Text:

District Judge Julia E. Kobick: ORDER entered. Please see attached.

The plaintiffs' motion for discovery pursuant to Federal Rule of Civil Procedure 56(d), ECF [191], is GRANTED.

On June 29, 2026, following the First Circuit's vacatur of this Court's preliminary injunction orders as moot, the defendants moved for summary judgment on Counts 1 through 5 of the amended complaint, each of which asserts constitutional claims. ECF [187]. The parties had previously filed cross-motions for summary judgment on Counts 6 and 7 of the amended complaint, which are claims under the Administrative Procedure Act. ECF [145], [174]. In response to the defendants' motion for summary judgment on Counts 1 through 5, the plaintiffs filed a motion under Rule 56(d), contending that consideration of the summary judgment motion was premature because no fact or expert

discovery has taken place and such discovery bears on the defendants' liability. ECF [191]. The defendants oppose the plaintiffs' Rule 56(d) motion, contending that all of the plaintiffs' claims fail as a matter of law and that no discovery in this matter is warranted. ECF [193].

Federal Rule of Civil Procedure 56(d) provides that, in response to a motion for summary judgment, "[i]f a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may: (1) defer considering the motion or deny it; (2) allow time to obtain affidavits or declarations or to take discovery; or (3) issue any other appropriate order." The rule "provides a safety valve for claimants genuinely in need of further time to marshal 'facts, essential to justify [their] opposition . . . to a summary judgment motion.'" *Reid v. New Hampshire*, 56 F.3d 332, 341 (1st Cir. 1995) (quoting *Mattoon v. City of Pittsfield*, 980 F.2d 1, 7 (1st Cir. 1992)). "In the mine-run of cases," the First Circuit has explained, "the crucial inquiry under Rule 56(d) is whether the movant has had a full and fair opportunity to conduct discovery needed to mount an effective opposition to a summary judgment motion." *Emigrant Residential LLC v. Pinti*, 37 F.4th 717, 724 (1st Cir. 2022). A Rule 56(d) movant must make an "authoritative" proffer, "advanced in a timely manner," that "explain[s] why the party is unable currently to adduce the facts essential to opposing summary judgment." *In re PHC, Inc. S'holder Litig.*, 762 F.3d 138, 143 (1st Cir. 2014) (quotation marks omitted). Where, as here, a party cannot adduce such facts because of incomplete discovery, "the party's explanation . . . should: (i) show good cause for the failure to have discovered the facts sooner; (ii) set forth a plausible basis for believing that specific facts . . . probably exist; and (iii) indicate how the emergent facts . . . will influence the outcome of the pending summary judgment motion." *Hernández v. Blanche*, 181 F.4th 149, 160 (1st Cir. 2026) (quoting *id.*).

The plaintiffs have made such a proper, authoritative, and timely proffer here. The affidavit of Attorney Isaac D. Chaput in support of their Rule 56(d) motion explains that the parties "have not engaged in any discovery or served discovery requests in this action." ECF 192, ¶ 22. The parties' delay in commencing discovery was due to a series of stay orders entered by the Court in this case, not due to a lack of diligence by the plaintiffs. The First Circuit has admonished that "when the parties have [had] no opportunity for discovery, denying the [Rule 56(d)] motion and ruling on a summary judgment motion is likely to be an abuse of discretion." *In re PHC, Inc. S'holder Litig.*, 762 F.3d at 144 (quotation marks omitted). The Chaput affidavit further explains, in detail, the types of discovery requests that the plaintiffs intend to serve on the defendants, and it connects those discovery requests to the plaintiffs' constitutional claims. ECF [192], ¶¶ 26-38 & Exs. A through C. In light of the robust showing made by the plaintiffs, and the fact that discovery in this matter has yet to begin, the plaintiffs have demonstrated that they have not yet had "a full and fair opportunity to conduct discovery needed to" oppose the defendants' summary judgment motion. *Emigrant Residential*, 37 F.4th at 724.

The defendants urge the Court to reject the plaintiffs' Rule 56(d) motion. First, they contend that they have already filed an administrative record in this matter, which should provide all the facts necessary to adjudicate the parties' competing summary judgment motions. While the Court must resolve Administrative Procedure Act claims on the basis of the administrative record, parties ordinarily are entitled to discovery on constitutional claims, like those asserted in Counts 1 through 5 of the amended complaint. See, e.g.,

Bos. All. of Gay, Lesbian, Bisexual & Transgender Youth v. United States Dep't of Health & Hum. Servs., 557 F. Supp. 3d 224, 245 (D. Mass. 2021) (“[L]imiting the scope of review to the administrative record makes little sense in the context of an inquiry into illicit animus.”). Second, the defendants contend that the Supreme Court “foreclosed” the plaintiffs’ constitutional claims in its order staying this Court’s preliminary injunction orders. ECF [193], at 3. That assertion misreads the Supreme Court’s order. In particular, with respect to the plaintiffs’ animus claim under the Equal Protection Clause, the Supreme Court explained that the plaintiffs had not established likely animus “on this record.” *Trump v. Orr*, 146 S. Ct. 44, 46 (2025). At a minimum, then, the Supreme Court acknowledged that the record would be further developed on that claim. Third, the defendants preview arguments that they intend to make in response to the plaintiffs’ discovery requests. But those matters can be addressed in due course, and the Court emphasizes that the parties are obligated to make discovery requests, and lodge objections to discovery demands, in good faith, and they must meet and confer regarding any disagreements over the scope of discovery.

Because the Court has not adopted a Scheduling Order, the Court orders the following deadlines for discovery events:

Initial Disclosures to be completed by 9/30/2026

Amendment to Pleadings due by 10/30/2026

All requests for production of documents and interrogatories must be served by 2/5/2027

All requests for admission must be served by 2/5/2027

All depositions, other than expert depositions, to be completed by 3/24/2027

Fact Discovery must be completed by 3/31/2027

Plaintiffs’ trial experts must be designated by 4/30/2027 and deposed by 5/28/2027

Defendants’ trial experts must be designated by 6/25/2027 and deposed by 7/23/2027

Dispositive motions to be filed by 8/13/2027

As previewed at the July 1, 2026 status conference, the Court will also **DENY** all of the pending summary judgment motions—ECF [145], [174], and [187]—without prejudice to their renewal following the close of fact and expert discovery in this case. ECF [190]. This denial enables the Court and parties to avoid piecemeal adjudication of summary judgment motions, thereby conserving judicial and party resources, and it ensures that the parties have completed discovery before any summary judgment motions are filed in this case. The parties may, of course, reassert any arguments they have made in their summary judgment motions, even verbatim, in any renewed motion for summary judgment. (Currie, Haley)

1:25-cv-10313-JEK Notice has been electronically mailed to:

Rayford A. Farquhar rayford.farquhar@usdoj.gov, caseview.ecf@usdoj.gov,
olivia.padden@usdoj.gov, usama.ecf@usdoj.gov

Jessie J. Rossman jrossman@aclum.org, acaruso@aclum.org, waltshuler@aclum.org

Jennifer Herrmann jherrmann@aclum.org

Isaac D Chaput ichaput@cov.com, docketing@cov.com

Gavin Wayne Jackson gjackson@cov.com

Li Nowlin-Sohl lnowlin-sohl@aclu.org, ccaicedo@aclu.org

Sean Bender sbender@cov.com

Sruti J. Swaminathan sswaminathan@aclu.org

Malita Picasso mpicasso@aclu.org

Aditi Fruitwala afruitwala@aclu.org

Elizabeth Brooke Layendecker elizabeth.b.layendecker@usdoj.gov

James D. Esseks jesseks@aclu.org

Robert Gianchetti rgianchetti@cov.com

Michael Velchik michael.velchik@usdoj.gov

M. Jared Littman jared.littman2@usdoj.gov, FedProg.ECF@usdoj.gov

Peter William Johnston pjohnston@cov.com

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Joshua Harrell(Terminated)
935 Kearny St
#65
San Francisco, CA 94133

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