

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

GREG ABBOTT, in his capacity as
GOVERNOR OF THE STATE OF TEXAS,
and THE STATE OF TEXAS,

Defendants.

Case No. 1:23-cv-00853-DAE

**JOINT MOTION TO VACATE SCHEDULE AND
ORDER CONFERENCE OF THE PARTIES**

Plaintiff, the United States of America, and Defendants, Governor Greg Abbott and the State of Texas (together, “Texas”), hereby jointly move for the Court to vacate the current case schedule and order the parties to meet and confer on a new discovery and pretrial schedule in light of the Fifth Circuit’s February 9, 2024 order denying Texas’s emergency motion for a stay of proceedings in this case. *See* ECF 83 (Order, *United States v. Abbott*, No. 23-50632 (5th Cir. Feb. 9, 2024)). The parties seek this relief in order to provide clarity on the schedule for further proceedings and promote the efficient and expeditious resolution of this case.

In support of this Motion, the Parties state the following:

1. On January 19, 2024, the Court held a status conference and entered an order setting a bench trial for the week of March 19, 2024. ECF 69 (transcript of status conference); ECF 73 (order setting bench trial and related deadlines).

2. In addition to the trial date, the Court established the following deadlines for discovery and pretrial submissions:

- a. January 24: Disclosure of United States' expert witnesses, ECF 69 at 28
- b. January 26: Disclosure of Texas's expert witnesses, ECF 75 at 2
- c. February 16: Close of fact discovery, ECF 69 at 28
- d. February 22: Disclosure of expert reports, ECF 69 at 29
- e. February 29: Close of expert discovery, ECF 69 at 29
- f. March 5: Proposed findings of fact and conclusions of law, ECF 73 at 1
- g. March 11: Pretrial submissions, including identification of exhibits, witnesses who may or will be called at trial, witnesses whose testimony is expected to be presented by deposition, and estimated probable length of trial, ECF 73 at 1-2
- h. March 13: Objections to pretrial submissions, ECF 73 at 2

3. On January 22, 2024, Texas filed an emergency motion to stay further proceedings in this case pending resolution of the Fifth Circuit's *en banc* review in *United States v. Abbott*, No. 23-50632. ECF 71. The United States filed a response opposing the stay motion on January 23. ECF 74. The Court entered a written order denying Texas's stay motion on January 24, ECF 76, and then a supplemental order on Texas's stay motion on January 25, ECF 77.

4. On January 24, 2024, Texas filed an emergency motion in the Fifth Circuit seeking to stay trial proceedings in this Court. *United States v. Abbott*, No. 23-50632, ECF 124-1 (5th Cir. Jan. 24, 2024). The United States filed a response opposing that stay motion on January 26, and Texas filed a reply that same day. *United States v. Abbott*, No. 23-50632, ECF 127-1 & 129-1 (5th Cir. Jan. 26, 2024).

5. The Fifth Circuit granted a temporary administrative stay of trial court proceedings in this case on January 26, 2024, which was docketed the next day. ECF 79.

6. On February 9, 2024, the Fifth Circuit issued a *per curiam* order denying Texas's emergency motion for a stay of trial court proceedings in this case. ECF 83.

7. The United States and Texas request that the Court vacate the current case schedule and order the parties to meet and confer on a new discovery and pretrial schedule. Several of the deadlines set forth at the January 19 status conference and in the Court's subsequent orders, *see* ECF 69, 73, 75, will pass in the near future, including the close of all fact discovery (February 16) and disclosure of expert reports (February 22). Vacating those deadlines would provide certainty regarding the Parties' obligations until such time as the Parties are able to confer regarding a new schedule and the Court is able to enter an updated scheduling order in light of the Fifth Circuit's temporary administrative stay and subsequent order denying Texas's stay motion.

CONCLUSION

For the foregoing reasons, the Parties respectfully request that the Court vacate the current case schedule and order the parties to meet and confer on a new discovery and pretrial schedule.

Respectfully submitted,

Dated: February 13, 2024

JAIME ESPARZA
UNITED STATES ATTORNEY

/s/ Landon A. Wade
LANDON A. WADE
Assistant United States Attorney
Texas Bar No. 24098560
United States Attorney's Office
Western District of Texas
903 San Jacinto Blvd., Suite 334
Austin, TX 78701
(512) 370-1255 (tel)
(512) 916-5854 (fax)
Landon.wade@usdoj.gov

TODD KIM
ASSISTANT ATTORNEY GENERAL
Environment & Natural Resources Division

/s/ Andrew D. Knudsen
BRIAN H. LYNK
Senior Trial Counsel
DC Bar No. 459525
KIMERE J. KIMBALL
Trial Attorney
CA Bar No. 260660
ANDREW D. KNUDSEN
Trial Attorney
DC Bar No. 1019697
U.S. Department of Justice
Environmental Defense Section
P.O. Box 7611
Washington, DC 20044
(202) 514-6187 (Lynk)
(202) 514-8865 (fax)
Brian.lynk@usdoj.gov
Kimere.kimball@usdoj.gov
Andrew.knudsen@usdoj.gov

Counsel for the United States of America

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

RALPH MOLINA
Deputy Attorney General for Legal Strategy

/s/ Ryan D. Walters (with permission)
RYAN D. WALTERS
Chief, Special Litigation Division
Tex. State Bar No. 2410585

DAVID BRYANT
Special Counsel
Tex. State Bar No. 03281500

AMY SNOW HILTON
Special Counsel
Tex. State Bar No. 24097834

MUNERA AL-FUHAID

Special Counsel
Tex. State Bar No. 24094501

JACOB E. PRZADA
Special Counsel
Tex. State Bar No. 24125371

OFFICE OF THE ATTORNEY GENERAL
P.O. Box 12548 (MC-009)
Austin, Texas 78711-2548
Tel.: (512) 463-2100
Fax: (512) 457-4410
Ryan.Walters@oag.texas.gov
David.Bryant@oag.texas.gov
Amy.Hilton@oag.texas.gov
Munera.Al-fuhaid@oag.texas.gov
Jacob.Przada@oag.texas.gov

COUNSEL FOR DEFENDANTS

CERTIFICATE OF SERVICE

I certify that on February 13, 2024, a copy of this filing was served on counsel of record through the Court's electronic filing system.

/s/ Andrew Knudsen
Andrew Knudsen