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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

NATIONAL PUBLIC RADIO, INC. and  
GRAHAM SMITH,  
  
Plaintiffs,  
  
v.  
  
U.S. CENTRAL COMMAND and  
U.S. DEPARTMENT OF DEFENSE,  
  
Defendants.

Case No.: 3:21-cv-01079-MMA-AHG  
  
**ORDER RESOLVING OPPOSED  
JOINT MOTION AND GRANTING  
PLAINTIFFS’ MOTION TO  
VACATE BRIEFING SCHEDULE**  
  
**[ECF No. 26]**

Before the Court is the parties’ opposed joint motion regarding the briefing schedule set forth in the Amended Scheduling Order (ECF No. 21). ECF No. 26. Plaintiffs seek to vacate the remaining summary judgment briefing schedule deadlines, which Defendants oppose. *Id.*

**I. BACKGROUND**

After the second Early Neutral Evaluation Conference in this matter on February 16, 2022, and after issuing a mediator’s proposal that was not accepted by all parties, the Court issued the operative Amended Scheduling Order, which set a briefing schedule for cross-motions for summary judgment. ECF Nos. 20, 21. The Court issued the following briefing schedule:

- 1 (1) Defendants must file their Motion for Summary Judgment by  
2 April 6, 2022.
- 3 (2) Plaintiffs must file their Opposition to Defendants’ summary judgment  
4 motion and their Cross-Motion for Summary Judgment by May 6, 2022.
- 5 (3) Defendants must file a Reply in support of their summary judgment  
6 motion and their Opposition to Plaintiffs’ cross-motion by June 6, 2022.
- 7 (4) Plaintiffs must file a Reply in support of their cross-motion by  
8 June 21, 2022.
- 9 (5) A hearing on the Defendants’ Motion for Summary Judgment and  
10 Plaintiffs’ Cross-Motion for Summary Judgment will be held on  
11 July 11, 2022 before the Honorable Michael M. Anello.

12 ECF No. 21 at 1–2 (emphasis omitted). Defendants filed their motion for summary  
13 judgment on April 6, 2022. ECF No. 23. On April 20, 2022, pursuant to this Court’s  
14 Chambers Rules (*see* Chmb.R. at 2), the parties filed the instant opposed joint motion. ECF  
15 No. 26. This Order follows.

## 16 **II. LEGAL STANDARD**

17 Parties seeking to continue deadlines in the scheduling order must demonstrate good  
18 cause. FED. R. CIV. P. 16(b)(4) (“A schedule may be modified only for good cause and with  
19 the judge’s consent”); ECF No. 21 at 5 (Amended Scheduling Order, stating that “[t]he  
20 dates set forth herein will not be modified except for good cause shown”); *see also*  
21 Chmb.R. at 2 (stating that any request for continuance requires “[a] showing of good cause  
22 for the request”).

23 Courts have broad discretion in determining whether there is good cause. *See, e.g.,*  
24 *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 607 (9th Cir. 1992). “Good cause”  
25 is a non-rigorous standard that has been construed broadly across procedural and statutory  
26 contexts. *Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1259 (9th Cir. 2010). The  
27 good cause standard focuses on the diligence of the party seeking to amend the scheduling  
28 order and the reasons for seeking modification. *Johnson*, 975 F.2d at 609 (“[T]he focus of  
the inquiry is upon the moving party’s reasons for seeking modification. . . . If that party  
was not diligent, the inquiry should end.”) (internal citation omitted).

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### 1 III. DISCUSSION

2 Plaintiffs contend that they had “understood that Defendants’ summary judgment  
3 motion would argue that CENTCOM’s two searches preceding the Second ENE satisfied  
4 its FOIA obligations, and began to prepare its cross-motion based on that understanding.”  
5 ECF No. 26-1 at 3.<sup>1</sup> However, in Defendants’ motion for summary judgment (ECF No.  
6 23), Plaintiffs “learned for the first time that CENTCOM has been conducting a third search  
7 and review process since February 16, 2022.” ECF No. 26-1 at 3. Therefore, Plaintiffs  
8 argue that “the [summary judgment m]otion does not state what search terms CENTCOM  
9 is using and what databases it is searching, which prevents NPR from assessing  
10 CENTCOM’s compliance and meaningfully addressing in its opposition, the  
11 reasonableness of the agency’s efforts to comply with FOIA. ... Nor does the Motion state  
12 when the third search will be complete, leaving open the possibility that CENTCOM could  
13 release additional responsive records that might moot summary judgment after NPR has  
14 filed its opposition and cross-motion, or require further rounds of summary judgment  
15 pleadings.” *Id.* Further, Plaintiff contends that “[e]ven if NPR agreed that CENTCOM’s  
16 third search is targeting the appropriate search terms and databases captured in its FOIA  
17 request, summary judgment on the current schedule would still be premature because NPR  
18 may need to challenge CENTCOM’s exemptions to any documents resulting from the third  
19 search.” *Id.* Thus, since “a second round of summary judgment ... would be an inefficient  
20 use of the Court’s and the parties’ time and resources,” Plaintiffs seek an Order from the  
21 Court (1) vacating the current briefing schedule and (2) requiring the parties to file a joint  
22 status report regarding the third search and proposed new scheduling deadlines. *Id.* at 4.

23 Defendants explain that the third search to which Plaintiffs refer was initiated in  
24 order to evaluate the Court’s supplemental search term mediator’s proposal, and though  
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27 <sup>1</sup> Due to discrepancies between original and imprinted page numbers, page numbers for  
28 docketed materials cited in this Order refer to those imprinted by the court’s electronic case  
filing system.

1 the proposal was not accepted by all parties, “CENTCOM opted to complete the search  
2 once underway ... and [would] voluntarily notify the Court and parties if additional  
3 responsive records were identified.” ECF No. 26-1 at 5; *see also id.* at 6 (“when that  
4 proposal was not accepted by all parties CENTCOM chose to moot foreseeable complaints  
5 by completing the pending search and volunteering to disclose any new responsive records  
6 anyway”). In response to Plaintiffs’ allegations that they do not know what search terms  
7 are being used in the third search, Defendants explain that the search terms being used are  
8 from the Mediator’s Proposal, which both sides had access to. *Id.* at 6. Further, Defendants  
9 contend that their motion for summary judgment is “is expressly based on facts presented  
10 well before the Mediator’s Proposal” and the third search conducted after the February 16  
11 second ENE is “procedurally relevant but not necessary for summary judgment in either  
12 party’s favor, nor is it material to Plaintiffs’ opposition to the pending motion.” *Id.*  
13 Defendants reiterate that Plaintiffs are able to timely file their opposition and cross-motion  
14 because “Plaintiffs were in possession of the responsive documents warranting summary  
15 judgment long before [the third search].” *Id.* Defendants state that Plaintiffs are essentially  
16 seeking an indefinite stay in proceedings, and propose instead that the Court either (1)  
17 permit Defendants to end the third search if “Plaintiff is precluded from subsequent  
18 reference or objection to doing so,” or (2) permit a mutual extension of briefing schedule  
19 deadlines to dates certain. *Id.* at 7.

20 The Court has reviewed the joint motion, as well as Defendants’ motion for summary  
21 judgment, and has considered the arguments of both sides. To avoid piecemeal issues on  
22 summary judgment, the Court finds that the briefing schedule should be vacated so that the  
23 Government’s search and production can be completed. Thus, good cause appearing,  
24 Plaintiffs’ motion is **GRANTED**. The remaining deadlines set forth in the Court’s  
25 Amended Scheduling Order (ECF No. 21), including the July 11, 2022 hearing before  
26 Judge Anello, are **VACATED**. In consideration of Defendants’ request to avoid an  
27 indefinite stay in the matter, the Court **SETS** a Status Conference via videoconference for  
28 **May 10, 2022** at **2:00 p.m.** before Magistrate Judge Allison H. Goddard. *Counsel are*

1 ***required to attend; clients are welcome, but not required.*** The parties must send the Court  
2 a joint status update and proposed schedule via email (to  
3 [efile\\_goddard@casd.uscourts.gov](mailto:efile_goddard@casd.uscourts.gov)) (*not filed*) by **May 6, 2022**. To facilitate the  
4 videoconference:

5 a. The Court will use its official Zoom video conferencing account to hold  
6 the Status Conference. **If you are unfamiliar with Zoom:** Zoom is available on  
7 computers through a download on the Zoom website (<https://zoom.us/meetings>) or  
8 on mobile devices through the installation of a free app.<sup>2</sup> Joining a Zoom conference  
9 does not require creating a Zoom account, but it does require downloading the .exe  
10 file (if using a computer) or the app (if using a mobile device). Participants are  
11 encouraged to create an account, install Zoom and familiarize themselves with Zoom  
12 in advance of the Status Conference.<sup>3</sup> There is a cost-free option for creating a Zoom  
13 account.

14 b. Prior to the start of the Status Conference, the Court will email each  
15 participant an invitation to join a Zoom video conference. Again, if possible,  
16 participants are encouraged to use laptops or desktop computers for the video  
17 conference, as mobile devices often offer inferior performance. Participants shall  
18 join the video conference by following the ZoomGov Meeting hyperlink in the  
19 invitation. **Participants who do not have Zoom already installed on their device**  
20 **when they click on the ZoomGov Meeting hyperlink will be prompted to**  
21 **download and install Zoom before proceeding.** Zoom may then prompt  
22 participants to enter the password included in the invitation.

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25 <sup>2</sup> If possible, participants are encouraged to use laptops or desktop computers for the  
26 video conference, rather than mobile devices.

27 <sup>3</sup> For help getting started with Zoom, visit: [https://support.zoom.us/hc/en-](https://support.zoom.us/hc/en-us/categories/200101697-Getting-Started)  
28 [us/categories/200101697-Getting-Started](https://support.zoom.us/hc/en-us/categories/200101697-Getting-Started)

1 c. Each participant should plan to join the Zoom video conference **at least**  
2 **five minutes before** the start of the Status Conference to ensure that the conference  
3 begins promptly at 2:00 p.m.

4 d. No later than **May 6, 2022**, counsel for each party shall send an e-mail  
5 to the Court at [efile\\_goddard@casd.uscourts.gov](mailto:efile_goddard@casd.uscourts.gov) containing the following:

6 i. The **name and title of each participant**;

7 ii. An **e-mail address for each participant** to receive the Zoom  
8 video conference invitation;

9 iii. **telephone number where each participant** may be reached if  
10 technical difficulties arise; and

11 iv. A **cell phone number for that party's preferred point of**  
12 **contact** (and the name of the individual whose cell phone it is).

13 e. All participants shall display the same level of professionalism during  
14 the Status Conference and be prepared to devote their full attention to the Status  
15 Conference as if they were attending in person, i.e., cannot be driving while speaking  
16 to the Court. Because Zoom may quickly deplete the battery of a participant's device,  
17 each participant should ensure that their device is plugged in or that a charging cable  
18 is readily available during the video conference.

19 f. Counsel are advised that although the Status Conference will take place  
20 on Zoom, all participants shall appear and conduct themselves as if it is proceeding  
21 in a courtroom, i.e., counsel must dress in appropriate courtroom attire.

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1 **IV. CONCLUSION**

2 For the reasons set forth above, the Court orders as follows:

3 1. Plaintiffs' motion to vacate the amended scheduling order is **GRANTED**.  
4 ECF No. 26 (referring to ECF No. 21).

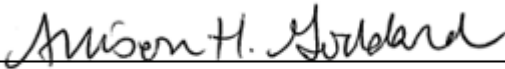
5 2. The remaining deadlines set forth in the Court's Amended Scheduling Order  
6 (ECF No. 21), including the July 11, 2022 hearing before Judge Anello, are **VACATED**.

7 3. The Court **SETS** a Status Conference via videoconference for **May 10, 2022**  
8 at **2:00 p.m.** before Magistrate Judge Allison H. Goddard.

9 4. The parties must send the Court a joint status update and proposed schedule  
10 via email (to [efile\\_goddard@casd.uscourts.gov](mailto:efile_goddard@casd.uscourts.gov)) (*not filed*) by **May 6, 2022**. Each party's  
11 videoconference participant contact information lists are also due via email on  
12 **May 6, 2022**.

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14 **IT IS SO ORDERED.**

15 Dated: April 21, 2022

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18 Honorable Allison H. Goddard  
19 United States Magistrate Judge  
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