

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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CARTER PAGE,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civ. No. 1:20-cv-03460
	:	
JAMES COMEY, <i>et al.</i> ,	:	
	:	
Defendants.	:	

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**UNOPPOSED MOTION FOR CLARIFICATION OR IN THE ALTERNATIVE  
FOR AN EXTENSION OF TIME FOR THE INDIVIDUAL DEFENDANTS AND  
DEFENDANT UNITED STATES TO RESPOND TO THE COMPLAINT**

Defendants the United States, the Department of Justice, and the Federal Bureau of Investigation respectfully move for clarification of the Court’s February 15, 2021 Order granting the government’s Unopposed Motion for an Extension of Time to Respond to the Complaint. *See* ECF No. 12. In the alternative, the government renews and clarifies its motion for an extension of time until March 26, 2021, for the individual defendants and defendant United States to respond to the complaint. An extension is necessary in order to provide the Department of Justice with sufficient time to evaluate the individual defendants’ requests for representation and will establish a uniform deadline for all defendants, including defendant United States, to respond to the complaint. The grounds for this motion are more fully detailed as follows:

1. On January 26, 2021, the Defendants United States, the Department of Justice, and the Federal Bureau of Investigation filed an unopposed motion for an extension of time until March 26, 2021, to respond to the complaint. *See* ECF No. 12. The motion included a request to

extend “any pending individual-capacity deadlines for those individuals who have been properly served to the same date.” *Id.* at 2.

2. On February 15, 2021, the Court entered a text-only order granting the motion and ordered that “the FBI and DOJ shall answer or otherwise respond to the complaint on or before 3/26/2021.” The order did not address the response deadlines for the individual capacity defendants or for defendant United States.

3. Plaintiff Carter Page alleges five counts against current and former employees of the Federal Bureau of Investigation in their individual capacities. *See generally* Compl., ECF No. 1. Each individual defendant has 60 days from the date service on the individual is completed to respond to the complaint. *See* Fed. R. Civ. P. 12(a)(3).<sup>1</sup> To the government’s knowledge, the latest service on any individual defendant properly identified in this case occurred on January 25, 2021, making his response deadline March 26, 2021. Federal employees sued for actions taken during the course of their official duties may request Department of Justice representation pursuant to the regulatory guidelines set forth in 28 C.F.R. § 50.15, and individual defendants have done so in this case. The Department of Justice’s Civil Division, Constitutional and Specialized Torts Staff, must approve representation authority before any Department of Justice attorney may represent any individual defendant in this action. *See generally* 28 C.F.R. § 50.15. In order to evaluate the requests and provide a consistent response date for all defendants, the government requests an extension until March 26, 2021, for all individual defendants who have been properly served to respond to the complaint.

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<sup>1</sup> Rule 12(a)(3) provides that an federal officer sued in his or her individual capacity must respond to the complaint “within 60 days after service on the officer or employee or service on the United States attorney, whichever is later.” Fed. R. Civ. P. 12(a)(3). The United States Attorney’s Office was served on December 7, 2020.

4. While the Department of Justice does not currently represent any of the individual capacity defendants, 28 U.S.C. § 517 permits the Attorney General and Department of Justice officers to appear in court “to attend to the interests of the United States.” The United States often has an interest in defending suits brought against government employees in an individual capacity. This interest is reflected in the Federal Rules of Civil Procedure. As mentioned above, *supra* n.2, Rule 12(a)(3) provides that federal officials sued in their individual capacities for alleged acts or omissions occurring in connection with their duties have 60 days to respond to a complaint. The corresponding Advisory Committee notes recognizes that “[t]ime is needed for the United States to determine whether to provide representation to the defendant officer or employee.” *See* Fed. R. Civ. P. 12 advisory committee’s note (2000). That government interest is further reflected in Federal Rule of Civil Procedure 4(i)(3), which was also amended in 2000 to require service on the United States in such cases “whether or not the officer or employee is also sued in an official capacity,” or the government is otherwise a party. Taken together these rules acknowledge that whether or not the government is a party it has an interest warranting notice of personal capacity suits against its officers and employees and sufficient time in which to determine whether to defend the action on the employee’s behalf.

5. Good cause supports this motion. Given the unique nature of the events at issue in this case, the ordinary 60-day period for the government to evaluate the individual defendants’ requests for representation will not suffice. Here, as in all cases in which government officers or employees sued in an individual capacity request government representation, the Department of Justice must determine, among other things, whether the employee defendants reasonably appear to have acted in the scope of employment, *see* 28 C.F.R. § 50.15(a)(2), whether their representation is in the interest of the United States, *see id.*, and whether legal or factual conflicts

exist among the various defendants such that representation of all by the same attorney would be inappropriate, *see* § 50.15.(a)(10). Due to the nature of the events at issue in this case, additional time is necessary in order for the Department of Justice to properly weigh and evaluate these and other considerations.

6. As previously stated in the unopposed motion by the United States, the Department of Justice and the Federal Bureau of Investigation for an extension of time to respond to the complaint (ECF No. 12), defendant United States has an interest in responding to the complaint with the same deadline and briefing schedule as the Department of Justice and Federal Bureau of Investigation. As the complaint has raised numerous complex factual and legal issues that require investigation, coordination and analysis, allowing the United States to have the same deadline and briefing schedule will give the United States and the agency defendants the ability to coordinate arguments that are consistent with the interests of each.

7. Undersigned counsel has consulted with Plaintiff's counsel, who does not oppose this motion.

For the foregoing reasons, the government respectfully moves for clarification of the Court's February 15, 2021 Order, or for an extension of time until March 26, 2021, for those individual defendants who have been properly served and for defendant United States to respond to the complaint.

Dated: March 15, 2021

Respectfully submitted,

BRIAN BOYNTON  
Acting Assistant Attorney General

MARCIA BERMAN  
Assistant Director, Federal Programs Branch

/s/Amy E. Powell

AMY E. POWELL

Trial Attorney, Federal Programs Branch

Civil Division, Department of Justice

c/o U.S. Attorney's Office

150 Fayetteville St., Suite 2100

Raleigh, NC 27601

Phone: 919-856-4013

Email: amy.powell@usdoj.gov

*Attorneys for Defendants Department of  
Justice and Federal Bureau of Investigation*

/s/ Daniel P. Chung

DANIEL P. CHUNG

CATE E. CARDINALE

Trial Attorneys, Torts Branch

Civil Division

United States Department of Justice

P.O. Box 888 Ben Franklin Station

Washington, DC 20044

Phone: (202) 616-4258

Email: Daniel.P.Chung@usdoj.gov

*Attorneys for the United States of America*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

Carter PAGE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	Case No. 1:20-cv-03460
JAMES COMEY, et al.,	)	
	)	
Defendants.	)	
	)	

**[PROPOSED] ORDER**

Having considered the Official Capacity Defendants' Unopposed Motion For Clarification, the motion is HEREBY GRANTED; and it is hereby ORDERED that the United States shall file its response to the Complaint on or before March 26, 2021 (the same deadline previously set for Defendants FBI and DOJ). It is FURTHER ORDERED that any pending response deadlines for those individuals who have been properly served are hereby extended to the same date.

SO ORDERED.

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U.S. DISTRICT COURT JUDGE