UNITED STATES DISTRICT COURT

for the

Western District of Louisiana

The State of Missouri and the State of Louisiana

Plaintiff

v.

Joseph Biden, Jr., in his official capacity as President of the United States, et al.

Defendant

Civil Action No. 3:22-cv-01213 TAD-KDM

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Instagram, LLC, 575 7th Street NW, Washington, DC 20004

(Name of person to whom this subpoena is directed)

☑ *Production:* **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: The documents requested in Attachment A

Place:	Date and Time:
10555 Main Street, Suite 350, Fairfax, Virginia 22030	08/17/2022 10:00 am

☐ *Inspection of Premises:* **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 7/18/22

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* the State of Missouri, who issues or requests this subpoena, are:

D. John Sauer, John.Sauer@ago.mo.gov, (573) 571-8870, 815 Olive Street, #200, St. Louis, MO 63101

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

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PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____

on *(date)* _____ .

☐ I served the subpoena by delivering a copy to the named person as follows: _____

_____

_____ on *(date)* _____ ; or

☐ I returned the subpoena unexecuted because: _____

_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of $ _____ .

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) ***For a Trial, Hearing, or Deposition.*** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) ***For Other Discovery.*** A subpoena may command:

(A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) ***Quashing or Modifying a Subpoena.***

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) ***Claiming Privilege or Protection.***

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

ATTACHMENT A

Plaintiffs State of Missouri and State of Louisiana, by and through counsel, pursuant to the Federal Rules of Civil Procedure and the July 12, 2022 Order of the U.S. District Court for the Western District of Louisiana (*see* Attachment B), request that Instagram, LLC comply with this subpoena and produce the documents identified below on or before August 17, 2022 at 10:00 a.m. To the extent possible, and to increase your convenience and avoid any shipping, printing, or other costs, Plaintiffs ask that documents be delivered electronically and will provide a secure link upon a request sent to: kenneth.capps@ago.mo.gov.

DEFINITIONS

A. "And," "or" and "and/or" and any other conjunctions or disjunctions used herein shall be read both conjunctively and disjunctively so as to require the production of all Documents (as hereinafter defined) responsive to all or any part of each particular request.

B. "Any," "each," "every," and "all" shall be read to be inclusive and to require the production of each and every Document and/or Communication (hereinafter defined) responsive to the particular request.

C. "Content Modulation" means any action by You and/or any Social-Media Platform to limit, restrict, or eliminate distribution of speech or content determined to be misinformation or sanction a speaker for speech or content determined to be misinformation. "Content Modulation" includes any form of restriction on access, censorship, suppression, or modulation of speakers, viewpoints, speech, and/or content by any Social-Media Platform, including any reference to or discussion of any speech or content considered to be Misinformation, or any speaker considered to be a purveyor of Misinformation. "Content Modulation" includes any form of blocking, deterring, deleting, suspending, suppressing, reducing the exposure of, and/or restricting or limiting access to, any speech, content, or speaker on social media, including but not limited to

termination of account(s) or channel(s), permanent or temporary suspension of account(s) or channel(s), removal of content or posting(s), issuing strike(s) or warning(s) against account(s) or speaker(s), suppression of content, de-boosting, de-emphasizing, de-monetizing, deindexing, downlisting, shadow-banning, limiting number(s) of followers or subscribers, affixing advisory label(s) or warning label(s) to content, preventing the amplification of content, requiring additional click(s) to access content, and/or reducing or restricting the distribution of content in any way; and it includes, but is not limited to, the use or adjustment of algorithm(s) to achieve any of the foregoing.

D. "CDC" means the Centers for Disease Control and Prevention, and any officer, official, employee, or agent of the CDC, as well as all of its divisions, agencies, boards, employees, contractors, and any subordinate agency or entity.

E. "CISA" means the Cybersecurity and Infrastructure Security Agency within DHS, and any officer, official, employee, or agent of CISA, as well as all of its divisions, agencies, boards, employees, contractors, and any subordinate agency or entity.

F. "Communication" means any disclosure, transfer, or exchange of information, expression, or opinion, however made, including oral, graphic, written, or electronic transmittal of information, including any Document that contains, reflects, or references any Communication.

G. "Content" means any material, including but not limited to messages, videos, photographs, and sound files, posted or sent by users on Social-Media Platform(s).

H. "Defendant" means President Joseph R. Biden, Jr., White House Press Secretary Jennifer Psaki, Surgeon General Vivek Murthy, HHS Secretary Xavier Becerra, NIAID Director and White House Science Advisor Anthony Fauci, DHS Secretary Alejandro Mayorkas, Director

Jen Easterly, Director Nina Jankowicz, all in their official capacity, and the departments and agencies known as HHS, DHS, NIAID, CDC, and CISA.

I. "DHS" means the U.S. Department of Homeland Security, as identified in 5 U.S.C. § 101, and all of its divisions, agencies, boards, employees, contractors, and any subordinate agency or entity, including CISA and the Disinformation Governance Board, as well as any officer, official, employee, or agent of DHS.

J. "Document" means without limitation, any written, recorded, graphic, or other material, however produced or reproduced, whether or not claimed to be privileged against discovery on any grounds, including, but not limited to, material in the forms of reports, statements, records (including any workflow software record), agreements, lists, memoranda, correspondence, sound and/or video recordings (or transcripts of recordings), appointment calendars, appointment invitations and responses, worksheets, emails, computer files, or any other documents or Communications of any kind whatsoever, irrespective of form. All attachments or enclosures to a document are deemed to be part of such document.

K. "Federal Official" means any officer, official, employee, or agent of the federal government or any federal department or agency, or of any division or sub-agency, or any person or contractor acting on their behalf, including but not limited to the Executive Office of the President, any White House staff, the Department of Homeland Security, the Cybersecurity and Infrastructure Security Agency, the Disinformation Governance Board, the Department of Health and Human Services, the Centers for Disease Control and Prevention, the Food and Drug Administration, the National Institutes of Health, and the National Institute of Allergy and Infectious Diseases, among other agencies. "Federal Official" includes, but is not limited to, any individual having an email address that includes hhs.gov, dhs.gov, niaid.nih.gov, nih.gov, cdc.gov,

eop.gov, wh.gov, and whitehouse.gov, among others. "Federal Official" includes, but is not limited to, all Defendants. "Federal Official" includes anyone who, at the time of a responsive Communication or Document, was a Federal Official, even if they are no longer a Federal Official. "Federal Official" does not include an agent of a federal law-enforcement agency such as the FBI, the DEA, the ATF, or the U.S. Marshal's Service, who has contacted You about an ongoing criminal investigation.

L. "HHS" means the U.S. Department of Health and Human Services, as identified in 5 U.S.C. § 101, and all of its divisions, agencies, boards, employees, contractors, and any subordinate agency or entity, including CDC and NIAID, as well as any officer, official, employee, or agent of HHS.

M. "Including" means including, but not limited to.

N. "Information" means data, documents, communications, writings, drawings, graphs, charts, photographs, sound recordings, images, records generated by individuals or machines, or the compilation of any of the foregoing stored in any medium, including electronically stored information.

O. "Misinformation" means any form of speech, expression, writing, or other communication or content considered to be potentially or actually incorrect, mistaken, false, misleading, lacking proper context, disfavored, having the tendency to deceive or mislead, or otherwise objectionable on similar grounds, including but not limited to any content or speech considered by any federal official or employee to be "misinformation," "disinformation," "malinformation," "MDM," "misinfo," "disinfo," or "malinfo." "Misinformation" includes, but is not limited to, any speech, expression, or content that discusses Hunter Biden's laptop, the "lab-leak hypothesis" or theory that the SARS-CoV-2 virus originated from a laboratory in China, the

efficacy of COVID-19 restrictions such as mask-wearing or lockdowns, the security of voting by mail, and any content considered to be "conspiracies about the validity and security of elections," "disinformation related to the origins and effects of COVID-19 vaccines or the efficacy of masks," "false or misleading narratives and conspiracy theories," and/or "false or misleading narratives regarding unsubstantiated widespread election fraud and COVID-19."

P. "Meeting" includes gatherings conducted in person, by telephone, or virtually.

Q. "NIAID" means the National Institute of Allergy and Infectious Diseases, and any officer, official, employee, or agent of NIAID, as well as all of its divisions, agencies, boards, employees, contractors, and any subordinate agency or entity.

R. "Disinformation Governance Board" means the entity with that name within DHS.

S. "Person" means any natural person, firm, partnership, association, joint venture, corporation, governmental entity or agency, or other organization or legal or business entity, without any limitation, or any party (including agents or employees) to this litigation.

T. "Relates to" or "relating to" means involving, discussing, identifying, referring to, concerning or in any way touching upon the matter sought.

U. "Search Terms" mean the following terms, deemed to be case-neutral and thus inclusive of both uppercase and lowercase letters, and deemed so that singular includes plural and vice versa: "misinformation, "misinfo," "disinformation," "disinfo," "malinformation," "malinfo," "MDM," "mask," "masks," "masking," "COVID," "SARS-CoV-2," "lockdown," "election," "conspiracy," "conspiracies," "flag," "flagging," "Berenson," "Barrington," "gbdeclaration," "Bhattacharya," "Kulldorff," "Hoft," "Hines," "HealthFreedom," "Kheriaty," "Changizi," "Kotzin," "Senger," "McCollum," "A.J. Kay," "Baumgartner," "Jeff Allen," "Gateway Pundit," "gatewaypundit," "NewsTalkSTL," "Epoch Times," "lab-leak," "lab leak," "Section 230,"

"antitrust," "anti-trust," "DGB," "Disinformation Governance Board," "Analytic Exchange," "Disinformation Dozen," "Kennedy," "Daszak," "Wuhan," "algorithm," "Hunter Biden's laptop," "Hunter Biden laptop," "DeSantis," "Atlas," "Trump," "super-spreader," "Babylon Bee," "Federalist," "Daily Wire," and "New York Post."

V. "Social-Media Platform" means any organization that provides a service for public users to disseminate speech, expression, information, or other content (typically content that includes messages, videos, photographs, and/or sound files) to other users or the public. "Social-Media Platform" includes both the organization and any of its officers, agents, employees, contractors, or any other person employed by or acting on behalf of the Social-Media Platform; as well subcontractors or entities used to conduct fact-checking or any other activities relating to Content Modulation. "Social-Media Platforms" include, but are not limited to, YouTube, Facebook (n/k/a Meta Platforms), Twitter, NextDoor, LinkedIn, and Instagram, Google, Reddit, Facebook Messenger, WeChat, TikTok, Weibo, Wikipedia, Snapchat, and Pinterest, among others.

W. "White House Communications Team" means any person with an email domain of @who.eop.gov, including but not limited to Ron Klain, Kate Bedingfield, Jennifer Psaki, Gina McCarthy, and Karine Jean-Pierre, among others.

X. "You" and "Your" refer to Instagram, LLC, including any subsidiary, parent, agent, employee, officer, contractor, or other person or entity acting at the direction of or on behalf of You.

Y. "COVID-19" refers to the coronavirus, SARS-CoV-2, all variant strains, and the disease or illness it causes.

Z. "Defendant" means President Joseph R. Biden, Jr., White House Press Secretary Karine Jean-Pierre and her predecessor Jennifer Rene Psaki, Surgeon General Vivek Murthy, HHS

Secretary Xavier Becerra, NIAID Director Anthony Fauci, DHS Secretary Alejandro Mayorkas, Director Jen Easterly, Director Nina Jankowicz, all in their official capacity, and the departments and agencies known as HHS, DHS, NIAID, CDC, and CISA. This includes anyone appointed to or exercising the powers of the foregoing offices.

AA. "New York Post Censorship Event" means all matters related to the Content Modulation of the October 14, 2020 New York Post story about Hunter Biden's laptop.

BB. "Person" means any natural person, firm, partnership, association, joint venture, corporation, governmental entity or agency, or other organization or legal or business entity, without any limitation, or any party (including agents or employees) to this litigation.

INSTRUCTIONS

1. If your response to a request is that you do not have possession, custody, or control of a document or communication, please identify who likely has control of the document and its location.

2. In the event that any information requested is withheld on the basis of a claim of privilege, state the ground(s) of the privilege claimed with sufficient particularity to evaluate the claim, and, if any documents are claimed to be privileged, set forth the author, all recipients, number of pages, attachments or appendices, present custodian, and a general description (e.g., "letter" or "memorandum") of the document.

3. Any information not provided on the basis that the disclosure would be burdensome or oppressive should be identified by stating the approximate number of documents to be produced, the approximate number of person-hours to be incurred in the identification, and the estimated cost of responding to the request. This will make it possible to further narrow any request and

potentially identify a reasonable alternative or limitation, and Plaintiffs will meet and confer on that matter.

4. Each copy or duplicate of a document bearing initials, stamps, comments or notations of any character which are not part of the original text shall be considered a separate document. Additionally, all drafts (whether typed, handwritten or otherwise) made or prepared in connection with any document shall be considered a separate document.

5. Documents kept in an electronic or digital format should be produced with all metadata and delivered in their original format or in a manner agreed to by counsel.

6. Emails must identify all recipients and include attachments, previous threads, and forwards.

7. The singular of any noun includes the plural.

8. Unless otherwise directed, these requests ask for discoverable materials from January 1, 2020 to the present.

DOCUMENTS TO BE PRODUCED

REQUEST NO. 1. Produce all Communications with any Federal Official relating to Misinformation and/or Content Modulation.

RESPONSE:

REQUEST NO. 2. Produce all Communications with any Federal Official that contain any of the Search Terms.

RESPONSE:

REQUEST NO. 3. Produce all Communications with the Disinformation Governance Board or any person associated with the Disinformation Governance Board, including but not limited to Nina Jankowicz.

RESPONSE:

REQUEST NO. 4. Produce all Documents, including any organizational chart, showing what Federal Officials You communicate with or have communicated with relating to Misinformation and/or Content Modulation.

RESPONSE:

REQUEST NO. 5. Produce all Documents and Communications relating to any act of Content Modulation that You have taken or are taking based in whole or in part on information You received, directly or indirectly, from any Federal Official.

RESPONSE:

REQUEST NO. 6. Produce all Documents and Communications relating to any meeting You attended with any Federal Official related to Content Modulation and/or Misinformation.

RESPONSE:

REQUEST NO. 7. Produce all Communications between You and any Federal Official relating to then-White House Press Secretary Jen Psaki's remarks that the White House "engage[s] regularly with all social media platforms about steps that can be taken that has continued, and I'm sure it will continue." White House, Press Briefing by Press Secretary Jen Psaki, April 25, 2022, at https://www.whitehouse.gov/briefing-room/press-briefings/2022/04/25/press-briefing-by-presssecretary-jen-psaki-april-25-2022/.

RESPONSE:

REQUEST NO. 8. Produce all Communications that relating to then-White House Press Secretary Jen Psaki's remarks that Federal Officials are "in regular touch with these social media platforms, and those engagements typically happen through members of our senior staff, but also members of our COVID-19 team," and/or that "we're flagging problematic posts … that spread disinformation." White House, Press Briefing by Press Secretary Jen Psaki, July 15, 2021, at https://www.whitehouse.gov/briefing-room/press-briefings/2021/07/15/press-briefing-by-press-secretary-jen-psaki-and-surgeon-general-dr-vivek-h-murthy-july-15-2021/.

RESPONSE:

REQUEST NO. 9. Produce all Communications with any Federal Official that relate to the theory that the virus that causes COVID-19 originated in a laboratory, and/or that relate to the New York Post Censorship Event.

RESPONSE:

REQUEST NO. 10. Produce all Communications with any Federal Officials that relate to Misinformation related to COVID-19.

RESPONSE:

REQUEST NO. 11. Produce all Communications with any Federal Officials that relate to Misinformation regarding elections, election integrity, election security, and/or public confidence in election outcome(s).

RESPONSE:

REQUEST NO. 12. Produce all Communications with any Federal Officials that relate to the Instagram account(s) of the so-called "Disinformation Dozen."

RESPONSE:

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

STATE OF MISSOURI ET AL	**CASE NO. 3:22-CV-01213**
VERSUS	**JUDGE TERRY A. DOUGHTY**
JOSEPH R BIDEN JR ET AL	**MAG. JUDGE KAYLA D. MCCLUSKY**

MEMORANDUM RULING AND ORDER

Before this Court is a Motion for Expedited Preliminary Injunction-Related Discovery [Doc. No. 17] filed by the States of Missouri and Louisiana ("Plaintiff States"). An Opposition [Doc. No. 26] was filed by Government Defendants[1] on July 1, 2022. A Reply [Doc. No. 30] was filed by Plaintiff States on July 7, 2022.

For the reasons set forth herein, Plaintiff States' Motion for Expedited Preliminary Injunction-Related Discovery is GRANTED in accordance with the schedule set out herein.

I. BACKGROUND

On May 5, 2022, Plaintiff States filed a Complaint [Doc. No. 1] against Government Defendants. In the Complaint, Plaintiff States allege that Government Defendants have colluded with and/or coerced social media companies to suppress disfavored speakers, viewpoints, and content on social media platforms by labeling the content "disinformation," "misinformation," and "malinformation." Plaintiff States allege the suppression of disfavored speakers, viewpoints, and contents constitutes government action and therefore violates Plaintiff States' freedom of speech in violation of the First Amendment to the United States Constitution.

[1] Government Defendants consist of Joseph R. Biden, Jr., Jennifer Rene Psaki, Vivek H. Murthy, Xavier Becerra, Department of Health and Human Services, Anthony Fauci, National Institute of Allergy and Infectious Diseases, Centers for Disease Control and Prevention, Alejandro Mayorkas, Department of Homeland Security, Jen Easterly, Cybersecurity and Infrastructure Security Agency, and Nina Jankowicz.

The Complaint further alleged Plaintiff States have created a "Disinformation Governance Board" ("DGB") within the Department of Homeland Security, which is intended to be used and will be used to induce, label, and pressure the censorship of disfavored content, viewpoints, and speakers on social-media platforms.

In the Complaint, Plaintiff States set forth examples of suppression of free speech, which include:

1. The Hunter Biden laptop story prior to the 2020 Presidential election;
2. Speech about the lab-leak theory of COVID-19's origin;
3. Speech about the efficiency of masks and COVID-19 lockdowns; and
4. Speech about election integrity and the security of voting by mail.

Additionally, the Complaint sets forth actions by specific Government Defendants that have been taken to suppress free speech. Plaintiff States allege that free speech is the bedrock of American liberty, and Government Defendants are in violation of the First Amendment to the U.S. Constitution in attempting to suppress free speech by labeling the speech as "misinformation."

Plaintiff States bring this action to enforce Plaintiff States' own laws and constitutions on behalf of themselves and on behalf of their citizens ("*parens patriae*").

The Complaint alleges:

Count One – Violation of the First Amendment against all Government Defendants;

Count Two – Action in Excess of Statutory Authority against all Government Defendants;

Count Three – Violation of the Administrative Procedures Act against the HHS Defendants; and

Count Four - Violation of the Administrative Procedures Act against the DHS Defendants.

On June 14, 2022, Plaintiff States filed a Motion for Preliminary Injunction [Doc. No. 10] asking to prohibit Government Defendants from taking steps to demand, urge, encourage, pressure, or otherwise induce any social-media company or platform to censor, suppress, remove, de-platform, suspend, shadow-ban, de-boost, restrict access to content, or take any other adverse action against any speaker, content, or viewpoint expressed on social media. On June 17, 2022, Plaintiff States filed the Motion for Expedited Preliminary Injunction-Related Discovery [Doc. No. 17]. Any response to the Motion for Preliminary Injunction has been stayed pending disposition of the request for discovery.[2]

II. LAW AND ANALYSIS

A. Standing

The first issue that must be addressed is standing. Government Defendants argue this Court does not have jurisdiction because Plaintiff States have no standing. Courts are instructed to examine their jurisdiction at every stage of the litigation.[3] At the pleading stage, the plaintiff's burden is to allege a plausible set of facts establishing jurisdiction.[4] Government Defendants additionally maintain discovery should be stayed pending the filing and ruling of the Government Defendants' expected motion to dismiss.

Government Defendants argue Plaintiff States do not have the authority to bring a *parens patriae* suit against the Federal Government. Government Defendants also argue that Plaintiff States do not meet the standing requirements of injury in fact, traceability, and redressability. Plaintiff States maintain in addition to a *parens patriae* suit on behalf of its citizens, it is also bringing a suit to enforce its own laws and constitution.

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[2] [Doc. No. 19].
[3] *Enochs v. Lampasas Cnty.*, 641 F.3d 155, 161 (5th Cir. 2011).
[4] *Haverkamp v. Linthicum*, 6 F.4th 662, 668 (5th Cir. 2021).

This Court must determine whether it has judicial power to hear this case. The United States Constitution limits exercise of judicial power to certain "cases" and "controversies."[5]

Under the doctrine of "standing," a federal court can exercise judicial power only where a plaintiff has demonstrated that it (1) suffered an injury in fact, (2) fairly traceable to the challenged conduct of the defendant, and (3) likely to be redressed by a favorable decision. *Lujan v. Defenders. of Wildlife*, 504 U.S. 555, 560–61, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992). The party invoking federal jurisdiction bears the burden of establishing these elements. *Id*. at 561.

The Plaintiffs in this case are two states. States are not normal litigants for purposes of invoking federal jurisdiction. *Massachusetts v. E.P.A.*, 549 U.S. 497, 518, 127 S. Ct. 1438, 167 L. Ed. 2d 248 (2007). Rather, a state is afforded "special solicitude" in satisfying its burden to demonstrate the traceability and redressability elements of the traditional standing inquiry whenever its claims and injury meet certain criteria. *Id*. at 520; *Texas v. United States*, 809 F.3d 134, 151–55 (5th Cir. 2015), *as revised* (Nov. 25, 2015). Specifically, a state seeking special solicitude standing must allege that a defendant violated a congressionally accorded procedural right that affected the state's "*quasi-sovereign*" interests in, for instance, its physical territory or lawmaking function. *Massachusetts*, 549 U.S. at 520–21; *Texas*, 809 F.3d at 151–55.

1. Injury in Fact

A plaintiff seeking to establish injury in fact must show that it suffered "an invasion of a legally protected interest" that is "concrete," "particularized," and "actual or imminent, not conjectural or hypothetical." *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1548, 194 L. Ed. 2d 635

[5] U.S. Constitution Art. III Section 2.

(2016), *as revised* (May 24, 2016). For an injury to be "particularized," it "must affect the plaintiff in a personal and individual way." *Id*. at 1548. A "concrete" injury must be "de facto," that is, it must "actually exist." "Concrete" is not however, necessarily synonymous with "tangible." Intangible injuries can nevertheless be "concrete." *Id.,* at 1548-49.

Plaintiff States have alleged both individual and *quasi-sovereign parens patriae* interests.

This Court finds the Plaintiff States' alleged injuries are both particularized and concrete. Plaintiff States have a "*parens patriae*" standing and/or a *quasi-sovereign* interest in protecting their citizens from having rights of free speech suppressed.

Additionally, the Plaintiff States have standing to regulate enforcement of their laws and constitution, which guarantees residents of Missouri and Louisiana free speech. The alleged injuries are "imminent" and allegedly "on-going," due to allegations of social media suspensions, removals of disfavored viewpoints, and censorship.

2. Traceability

Plaintiff States must show a "fairly traceable" link between their alleged injuries and Government Defendants alleged actions. As a general matter, the causation required for standing purposes can be established with "no more than de facto causality." *Dep't of Com. v. New York*, 139 S. Ct. 2551, 2556, 204 L. Ed. 2d 978 (2019). The plaintiff need not demonstrate that the defendant's actions are "the very last step in the chain of causation." *Bennett v. Spear*, 520 U.S. 154, 169–70, 117 S. Ct. 1154, 137 L. Ed. 2d 281 (1997).

Plaintiff States easily meet this requirement based on allegations of suppression of disfavored speakers, viewpoints, and content of its citizens, and based upon alleged violations of Plaintiffs States' laws and constitutions.

3. Redressability

The redressability element of standing to sue requires a plaintiff to demonstrate "a substantial likelihood that the requested relief will remedy the alleged injury in fact." *El Paso Cty., Texas v. Trump*, 982 F.3d 332, 341 (5th Cir. 2020), *cert. denied sub nom. El Paso Cty., Texas v. Biden*, 141 S. Ct. 2885, 210 L. Ed. 2d 991 (2021), *reh'g denied*, 142 S. Ct. 51, 210 L. Ed. 2d 1019 (2021).

Plaintiff States meet this requirement. Stopping of the alleged suppression of supposed disfavored speakers, viewpoints, and content would address Plaintiff States' alleged injuries.

4. Special Solicitude

Although this Court has found that Plaintiff States have proven standing through the normal inquiry, they also can establish standing as a result of special solicitude. Plaintiff States assert a constitutionally bestowed right (free speech), and the government action at issue affects the Plaintiff States' *quasi-sovereign* interests (of protecting its citizens from suppression of free speech).

Additionally addressed herein is Government Defendants' contention that the Plaintiff States do not have the authority to bring a *parens patriae* suit against the Federal Government,[6] arguing the Federal Government is the ultimate *parens patriae* of every citizen. The States of Missouri and Louisiana have the authority to bring suits on behalf of their citizens. In *Massachusetts v. EPA*, 549 U.S. 497, 520 and n.17 (2007), the U.S. Supreme Court upheld the State of Massachusetts' ability to bring a *parens patriae* suit against the federal government where the states seek to assert its rights under federal law. In footnote 17, in addressing Chief Justice Roberts' argument that there was significant doubt on a States standing to assert a *quasi-*

[6] [Doc. No. 26, pp 15-16]

sovereign interest against the Federal Government, a majority of the Court specifically held that a State has standing to assert their rights under federal law, even if it applies to its citizens. The First Amendment obviously applies to the citizens of Missouri and Louisiana, so Missouri and Louisiana have the authority to assert those rights.

This Court further discusses the cases cited by Government Defendants that dismissed similar suits for lack of standing.[7] The Plaintiff in *Hart* was a suit by an individual against Facebook, Twitter, President Joe Biden, Surgeon General Vivek Murthy, the Department of Health and Human Services, and the Office of Management and Budget. *Hart* alleged Facebook and Twitter flagged his posts as misinformation about COVID-19 and suspended and locked his accounts in violation of the First Amendment under the U.S. Constitution and the Free Speech Clause of the California Constitution.

In addition to the claim against Facebook and Twitter, *Hart* alleged the Government Defendants directed social media platforms to make changes resulting in his posts being flagged as "misinformation" and ultimate suspension. The Motion to Dismiss filed by the government defendants was granted because *Hart* was unable to set forth facts plausibly alleging the government was a joint participant in the activity and that the government coerced Facebook and Twitter to take these actions. Therefore, the Court lacked standing because *Hart's* claims were neither "fairly traceable" nor "redressable" by *Hart's* suit.

In *Association of American Physicians and Surgeons, the Association of American Physicians and Surgeons* ("AAPS") an individual, Katrina Verreli ("Verreli") alleged Congressman Adam Schiff ("Schiff") violated her First Amendment rights by coercing

[7] *Ass'n of Am. Physicians & Surgeons v. Schiff*, 518 F. Supp. 3d 505, 510 (D.D.C. 2021), aff'd 23 F.4th 1028 (D.C. Cir. 2022); *Hart v. Facebook, Inc.* 2022 WL 1427507 (N.D. Cal. May 5, 2022); and *Changizi v. Dept. of Health & Hum. Servs.* 2022 WL 1423176 (S.D. Ohio, May 5, 2022).

technology companies to discriminate against AAPS. Verreli alleged Schiff's actions limited her First Amendment right to access information about vaccines.

The Court dismissed the plaintiff's claims against Schiff based upon standing.[8] In finding lack of standing, the Court found the plaintiff had not alleged an injury in fact which was sensually related to defendant's conduct.

The court also noted that standing was "ordinarily substantially more difficult to establish" when an individual plaintiff asserts injuries arising from the regulation of someone else.[9]

In *Changizi*, three individual Twitter users were suspended by Twitter for false or misleading COVID-19 information. The plaintiffs sued the United States Department of Health and Human Services ("DHHS") and the Surgeon General and Secretary of DHH, alleging defendants "instrumentalized" or "commandeered" Twitter to censor and chill online criticism of the government's response to COVID-19.

Like *Hart* and *Association of American Physicians and Surgeons*, the plaintiffs were unable to plausibly allege they sustained an injury-in-fact which was causably related to defendants' conduct.

Each of the above cases were factually intensive. Based upon the specific facts of each case, the court found the plaintiffs had not plausibly alleged injury-in-fact and causation. In the present case, this Court finds Missouri and Louisiana have plausibly alleged injury-in-fact, causation, and redressability. The Plaintiff States' eighty-four-page Complaint sets forth much more detailed allegations and evidence against federal agencies and officials than the cases cited by Government Defendants.

[8] Suit was also dismissed on the basis of the Speech and Debts clause of the U.S. Constitution.
[9] 518 F. Supp. 3d at 513

If Missouri and Louisiana do not have standing under the facts alleged, when would anyone ever have standing to address these claims? In conclusion, the Court finds that the Plaintiff States have standing and that this Court has the judicial power to hear this case**.**

B. Expedited Discovery

Federal Rule of Civil Procedure 26 Article(d) states:

Duty to Disclose, General Provisions Governing Discovery

(d) Timing and Sequence of Discovery.

1) Timing. A party may not seek discovery from any source before the parties have conferred as required by Rule 26(f), except in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B), or when authorized by these rules, by stipulation, or by Court order.

Plaintiff States seek a court order allowing expedited discovery. Although the Fifth Circuit has not explicitly adopted a standard to determine whether a party is entitled to expedited discovery, several districts within the Fifth Circuit have expressly utilized the "good cause" standard when addressing this issue. The "good cause" analysis takes into consideration such factors as the breadth of discovery requests, the purpose for requesting expedited discovery, the burden on the defendants to comply with the requests, and how far in advance of the typical discovery process the request was made.[10] Courts utilizing the "good cause" standard examine the discovery request on the entirety of the record to date, and the reasonableness of the request in light of all the surrounding circumstances.[11]

Expedited discovery is not the norm. Courts only allow it in limited circumstances. Courts have allowed expedited discovery when there is some showing of irreparable harm, or

[10] *GHX Industrial, LLC v. Servco Hose and Supply, LLC*, 2020 WL 1492920; *Elargo Holdings, LLC v. Doe*, 318 F.R.D. 58, 61 (M.D. La. 2016); *Wilson v. Samson Contour Energy E&P, LLC*, 2014 WL 2949457, at 2 (W.D. Louisiana 2014).
[11] *Wilson*, 2014 WL 2949457 at 2.

when there is a risk that evidence would be lost or destroyed.[12] The factors used by good cause typically exists where the need for expedited discovery outweighs the prejudice to the responding party.[13]

When a party seeks expedited discovery for the purpose of an injunction hearing, factors commonly considered in determining the reasonableness of expedited discovery request include: (1) whether the preliminary injunction is pending; (2) the breadth of the discovery requests; (3) the purpose of requesting the expedited discovery; (4) the burden on the defendants to comply with the requests; and (5) how far in advance of the typical discovery process the request was made.[14]

In the Motion for Expedited Preliminary Injunction-Related Discovery, Plaintiff States ask for the following expedited discovery:

(1) Targeted interrogatories and document requests to Government Defendants requesting the identities of federal officials who have or are communicating with social-media platforms about disinformation, misinformation, malinformation, or any form of censorship or suppression of online speech;

(2) Targeted interrogatories and document requests to Government Defendants requesting the nature and content of such federal officials' communications with such social-media platforms, including both currently known and unknown federal officials;

(3) Serve third-party subpoenas on a limited number of major social-media platforms seeking similar information about the identity of federal officials who communicate with them, and the nature and content of those communications;

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[12] *Id at 3.*
[13] *Soileau v. GPS Maine, LLC*, 2020 WL 9078308 at 2 (E.D. Louisiana 2020).
[14] *Amos v. Taylor*, 2020 WL 5809972 at 5 (N.D. Miss. 2020); *Attkisson v. Holder*, 113 F. Supp. 3d 156, 162 (D.D.C. 2015).

(4) Allowing objections and responses to the discovery requests, conferring in good faith about discovery disputes and submit a joint statement to the Court detailing the nature of any remaining disputes;

(5) The Court rule on all objections;

(6) After any objections are resolved by the Court, Plaintiff States are to notify Government Defendants, based upon discovery responses received, whether Plaintiff States seeks to take any depositions;

(7) The parties will again confer in good faith and submit a joint statement to the Court of any remaining disputes;

(8) The Court will rule on all objections.

1. Good Cause

This Court will address whether Plaintiff States have shown "good cause" for expedited discovery. First, the Court will address Government Defendants' contention that no discovery should be permitted except as to the administrative record before each federal agency. Although generally discovery is not allowed beyond the Administrative Record ("AR"), a Court may receive and consider evidence outside the AR relating to a request for a preliminary injunction, and in circumstances where the moving party demonstrates unusual circumstances.[15]

Currently, there is no AR in this case, and the Court is not sure there will ever be one for this claim. In any event, the need for a Preliminary Injunction would likely be thwarted if the Court were to wait for all of the Government Defendants to provide an AR before determining whether discovery is necessary. This Court believes that determination needs to be made now, not after waiting for an AR to be produced.

[15] *Pegasus Equine Guardian Assoc. v. United States Army*, 2018 WL 2760339 (W.D. La. March 9, 2018); *Medina Co. Envt'l Action Ass'n. v. Surface Transp. Bd.*, 602 F.3d 687, 706 (5th Cir. 2010).

(i) Whether a preliminary injunction is pending

The first factor for "good cause" is satisfied as Plaintiff States filed a Motion for Preliminary Injunction [Doc. No. 10] on June 14, 2022.

(ii) Breadth of Discovery Requests

At this point, Plaintiff States seek to issue interrogatories and document requests to Government Defendants; and to serve third party subpoenas on a limited number of social media platforms. Whether depositions will be taken will be addressed later. Plaintiff States seek identity of federal officials communicating with these social media platforms including the nature and content of those communications. Plaintiff States seek similar information from the social media platforms.

This is a complicated case. The proposed discovery requests are targeted to the specific allegations of Plaintiff States' Complaint. The requests are reasonable.

(iii) Purpose of Requesting the Expedited Discovery

The purpose of the proposed expedited discovery is to gain additional evidence to prove the allegations of Missouri and Louisiana for purposes of the pending Motion for Preliminary Injunction. The proposed discovery is tailored to the allegations Plaintiff States seek to prove and is not a "fishing expedition."

(iv) Burden on Government Defendants

Certainly, it would be time-consuming to produce the information requested. However, this issue involves the alleged violation of a constitutional right – the right of free speech. Therefore, this Court feels the need for this information outweighs the burden to Government Defendants.

(v) Discovery Process

The last factor involves the question of how far in advance of the typical discovery process the request was made. The Complaint was filed on May 5, 2022. The Motion for Preliminary Injunction was filed on June 14, 2022. The Motion for Expedited Preliminary Injunction-Related Discovery was filed on June 17, 2022.

The request was made far in advance of the typical discovery process and is important to the resolution of the Motion for Preliminary Injunction.

Therefore, this Court believes that Missouri and Louisiana have shown good cause for expedited preliminary injunction discovery.

C. Scope of Expedited Discovery

Although there is certainly a "need for speed" for discovery related to a preliminary injunction, the Plaintiff States' proposed schedule is too fast. Therefore, this Court adopts the following schedule for expedited preliminary injunction–related discovery and/or motion for preliminary injunction.

(1) Within five business days after this ruling, Plaintiff States may serve interrogatories and document requests upon Government Defendants and third party-subpoenas on up to five major social-media platforms seeking the identity of federal officials who have been and are communicating with social-media platforms about disinformation, misinformation, malinformation, and/or any censorship or suppression of speech on social media, including the nature and content of those communications.

(2) Within thirty days of Plaintiff States' discovery requests, responses and/or objections shall be provided by Government Defendants and/or the major social-media platforms.

(3) Within ten days following receipt of the objections and/or responses, the parties shall meet and confer in good faith about discovery disputes. A joint statement to the Court shall be submitted detailing the nature of the remaining disputes.

(4) Within seven days from the filing of said joint statement, the Court shall rule on any remaining objections.

(5) Withing ten days after the production of any objected-to responses, Plaintiff States shall notify Government Defendants of any depositions the Plaintiff States wish to take.

(6) Within seven days thereafter, the parties shall meet and confer regarding any deposition requests. If the parties do not agree on the deposition(s), the parties shall file a joint statement as to their positions as to the depositions.

(7) Within seven days from date of filing of said joint statement, the Court shall rule on the deposition requests.

(8) Plaintiff States will have thirty days after the Court's ruling to take any authorized depositions.

(9) Within twenty days after all authorized depositions are taken, Plaintiff States will be allowed to supplement their previous memorandum regarding the need for a preliminary injunction.

(10) Within twenty days after Plaintiff States files their supplemental memorandum, Government Defendants may file a supplemental memorandum addressing the requests for preliminary injunction.

(11) Within ten days after Government Defendants' supplemental memorandum, the Plaintiff States may file a reply.

(12) In due course, this Court will rule on Plaintiff States' Motion for Preliminary Injunction.

III. CONCLUSION

For the reasons set forth herein,

IT IS ORDERED that in accordance with the terms and conditions set forth herein, Plaintiff States' Motion for Expedited Preliminary Injunction-Related Discovery [Doc. No. 17] is **GRANTED.**

MONROE, LOUISIANA, this 12th day of July 2022.

TERRY A. DOUGHTY
UNITED STATES DISTRICT JUDGE