

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

LEAGUE OF UNITED LATIN AMERICAN
CITIZENS (LULAC), et al.,

Plaintiffs,

v.

GREG ABBOTT, et al.,

Defendants.

Civil Action No. 3:21-cv-259
(DCG-JES-JVB)
(consolidated cases)

**JOINT STATUS REPORT CONCERNING
APPEALS AND MISCELLANEOUS ACTIONS**

Pursuant to this Court's November 23 Order, ECF No. 654, the parties hereby provide a status report concerning all pending and terminated appeals that stem from this matter, as well as miscellaneous actions related to this case.

Brooks v. Abbott (Brooks Preliminary Injunction)

This Court denied the Brooks Plaintiffs' motion for a preliminary injunction on February 1, PI Order 3, ECF No. 176, and subsequently issued an opinion explaining the order, PI Opinion, ECF No. 258. The Brooks Plaintiffs then entered a notice of appeal, Brooks NOA, ECF No. 314, and the Supreme Court dismissed the appeal for want of jurisdiction. *See Order, Brooks v. Abbott*, No. 22-136 (U.S. Nov. 21, 2022).

LULAC v. Guillen (Legislator Depositions)

This Court denied motions to quash deposition subpoenas issued to legislators and outlined procedures to address legislative privilege in a May 18 order. Dep. Order, ECF No. 282. The legislators then noticed an interlocutory appeal. *See Dep. NOA*, ECF No. 284. This

Court denied a request for a stay pending appeal, Stay Order, ECF No. 296, and the Fifth Circuit and Supreme Court subsequently denied relief as well, *see LULAC v. Guillen*, No. 22-50407, 2022 WL 271363, at *1 (5th Cir. May 20, 2022) (holding that Legislators’ assertion of state legislative privilege was “not yet ripe”); *Guillen v. LULAC*, 142 S. Ct. 2773 (2022).

Appellants then moved for the appeal to be held in abeyance, pending further orders from this Court relating to depositions of legislators. Mot. for Abeyance, *LULAC v. Guillen*, No. 22-50407 (5th Cir. June 7, 2022). The Fifth Circuit granted the relief requested and ordered Appellants to submit monthly status reports. Order, *LULAC v. Guillen*, No. 22-50407 (June 17, 2022), ECF No. 348; *see also* Status Rep., *LULAC v. Guillen*, No. 22-50407 (Aug. 8, 2022); 2d Status Rep., *LULAC v. Guillen*, No. 22-50407 (Sept. 8, 2022); 3d Status Rep., *LULAC v. Guillen*, No. 22-50407 (Oct. 7, 2022); 4th Status Rep., *LULAC v. Guillen*, No. 22-50407 (Nov. 7, 2022). Legislators have also amended their notice of appeal to incorporate later orders denying in whole or in part motions to quash deposition subpoenas. Am. NOA, ECF No. 437; *see also* 2d Dep. Order, ECF No. 340; 3d Dep. Order 409. The appeal continues to be held in abeyance, pending resolution of Plaintiffs’ motions to compel use of legislative deposition testimony. *See* 4th Status Rep. ¶ 3.

LULAC v. Patrick (Legislator Documents)

This Court ordered Texas legislators, the Lieutenant Governor, and legislative employees to produce documents responsive to subpoenas *duces tecum*, notwithstanding privilege claims. Doc. Order, ECF No. 467; In Camera Review Order, ECF No. 642. Legislators filed a notice of appeal, Doc. NOA, ECF No. 479, and the Fifth Circuit entered an administrative stay, Order,

LULAC v. Patrick, No. 22-50662 (5th Cir. July 27, 2022).¹ The Court of Appeals then granted Appellants' motion to hold the appeal in abeyance, pending the resolution of *LULAC Texas v. Hughes*, No. 22-50435 (another appeal concerning legislative privilege arising from separate litigation concerning Texas Senate Bill 1 (Second Called Session of the 87th Legislature)), and ordered the parties to file joint monthly status reports. Order, *LULAC v. Patrick*, No. 22-50662 (5th Cir. Sept. 15, 2022); *see also* Status Rep. *LULAC v. Patrick*, No. 22-50662 (5th Cir Nov. 4, 2022); 2d Status Rep., *LULAC v. Patrick*, No. 22-50662 (5th Cir Dec. 5, 2022). This Court's order remains stayed, and the appeal continues to be held in abeyance.

In re Bryan and United States v. Wienckowski

The United States filed a subpoena enforcement action against Thomas Bryan and Eric Wienckowski, third parties who are demographers retained by the law firm of Butler Snow. *See* Mot. to Enforce, *In re Bryan*, No. 3:22-mc-230 (E.D. Va. June 14, 2022), ECF No. 1; Mot. to Enforce, *United States v. Wienckowski*, No. 3:22-mc-219 (S.D.N.Y. June 15, 2022), ECF No. 2. Local courts transferred both actions to this Court. *See* Order, *United States v. Wienckowski*, No. 3:22-mc-219 (S.D.N.Y. June 24, 2022), ECF No. 15; Order, *In re Bryan*, No. 3:22-mc-230 (E.D. Va. July 5, 2022), ECF No. 8.

In re Kincaid

Adam Kincaid and the National Republican Redistricting Trust, third parties subpoenaed by the LULAC Plaintiffs about their involvement with counsel for certain members of the Texas Congressional delegation related to Congressional redistricting, have moved to quash deposition

¹ Legislators subsequently amended their notice of appeal to add an additional appellant. Am. Doc. NOA, ECF No. 558. They intend to further amend their notice of appeal to incorporate this Court's related order resolving attorney-client privilege issues. *See* In Camera Review Order, ECF No. 642.

subpoenas or, in the alternative, for protective orders restricting their depositions. These motions are pending in the U.S. District Court for the District of Columbia. Mot. to Quash, *In re Kincaid*, No. 1:22-mc-67 (D.D.C. July 12, 2022), ECF No. 1. The motions have been fully briefed since August 2. See U.S. Opp'n, *In re Kincaid*, No. 1:22-mc-67 (D.D.C. July 26, 2022), ECF No. 6; LULAC Opp'n, *In re Kincaid*, No. 1:22-mc-67 (D.D.C. July 27, 2022), ECF No. 7; Reply to U.S., *In re Kincaid*, No. 1:22-mc-67 (D.D.C. Aug. 2, 2022), ECF No. 8; Reply to LULAC, *In re Kincaid*, No. 1:22-mc-67 (D.D.C. Aug. 2, 2022), ECF No. 9.² The United States requested expedited consideration in light of the September trial date, Mot. to Expedite, *In re Kincaid*, No. 1:22-mc-67 (D.D.C. Aug. 16, 2022), ECF No. 10, but informed the enforcement court once the trial date had been vacated, see Trial Date Notice, *In re Kincaid*, No. 1:22-mc-67 (D.D.C. Aug. 30, 2022), ECF No. 12.

In re Dave's Redistricting App / Jetton v. United States

Texas Representative Jacey Jetton and Adam Foltz, an employee of the Texas Legislative Council assigned to assist House Redistricting Chair Todd Hunter, have moved to quash a subpoena *duces tecum* issued to Dave's Redistricting App, a third-party software provider. This is pending in the U.S. District Court for the Western District of Washington. See *In re Dave's Redistricting App*, No. 2:22-mc-69 (W.D. Wash. Aug. 12, 2022), ECF No. 1. The motion has been fully briefed since August 26. See U.S. Response, *In re Dave's Redistricting App*, No. 2:22-mc-69 (W.D. Wash. Aug. 23, 2022), ECF No. 8; Reply Mem., *In re Dave's Redistricting App*, No. 2:22-mc-69 (W.D. Wash. Aug. 26, 2022), ECF No. 9. The United States had highlighted the September trial date in its opposition, U.S. Response at 2, and thereafter

² Following supplemental briefing, the enforcement court granted LULAC Plaintiffs' motion for an extension of time to file their opposition to the motion to quash, *nunc pro tunc*. Minute Order, *In re Kincaid*, No. 1:22-mc-67 (D.D.C. Sept. 26, 2022).

informed the enforcement court when this Court vacated that date, *see* U.S. Notice, *Jetton v. United States*, No. 2:22-cv-1203 (W.D. Wash. Aug. 30, 2022), ECF No. 16. The enforcement court then ordered the parties to submit a joint status report by February 13, 2023, or within five days of any significant case development, Minute Order, *Jetton v. United States*, No. 2:22-cv-1203 (W.D. Wash. Nov. 15, 2022), ECF No. 19.³

Morris v. State of Texas

A *pro se* plaintiff brought a constitutional challenge to Texas's reapportionment of Congressional districts in the U.S. District Court for the Southern District of Texas. Compl., *Morris v. Texas*, No. 4:21-cv-03456 (S.D. Tex. Oct. 20, 2021), ECF No. 1. No party requested consolidation with the above-captioned case, and a single district court judge granted Defendants' motion to dismiss. Order, *Morris v. Texas*, No. 4:21-cv-03456 (S.D. Tex. June 8, 2022), ECF No. 26. Plaintiff appealed the district court's dismissal of his claims, and the appeal has now been fully briefed. *See Morris v. State of Texas*, No. 22-20348 (5th Cir.).

Dated: December 7, 2022

³ Following the completion of briefing, the enforcement court removed the matter from the miscellaneous docket and assigned a new caption and civil action number. *See* Order, *In re Dave's Redistricting App.*, No. 2:22-mc-69 (W.D. Wash. Aug. 29, 2022), ECF No. 11.

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CERTIFICATE OF SERVICE

I hereby certify that, on December 7, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of this filing to counsel of record.

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