

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

ELI LILLY AND COMPANY, and  
LILLY USA, LLC

Plaintiffs,

v.

U.S. DEPARTMENT OF HEALTH AND  
HUMAN SERVICES, *et al.*,

Defendants.

No. 1:21-cv-81-SEB-MJD

**DEFENDANTS' UNOPPOSED REQUEST TO APPEAR VIA VIDEO OR  
TELECONFERENCE**

On February 5, 2021, the Court set oral argument on Plaintiff Eli Lilly's motion for a preliminary injunction for February 26, 2021, "in Room 216 of the United States Courthouse in Indianapolis, Indiana," "in person (with masks and distancing protocols fully enforced in the courtroom." *See* Scheduling Order, ECF No. 29. Undersigned counsel understands and respects the Court's desire for an in-person hearing, and appreciates that precautions will be taken in the courtroom to mitigate the risk of COVID-19 transmission. Nevertheless, Defendants respectfully ask the Court to grant permission for counsel to participate by video or telephone conference, as the Court prefers, in light of the following facts related to the risks currently inherent in interstate travel.

Undersigned counsel, Kate Talmor, who is based in Washington, D.C., will conduct oral argument on behalf of Defendants in this case. Ms. Talmor and co-counsel in this matter also are handling seven additional cases stemming from the same underlying facts and legal issues, and pending in district courts across the country. *See* ECF No. 32, Defs.' Opp. to Pls.' Mot. for Prelim.

Inj., at 9-11 (providing docket numbers and procedural posture of related cases). To attend the hearing in this matter in person, Ms. Talmor would have to travel by air from Washington, D.C. to Indianapolis and, most likely, stay overnight in a hotel in advance of the hearing. Air travel poses considerable risks to counsel and her family, in addition to court personnel, opposing counsel, and others with whom Ms. Talmor may interact while traveling, because social distancing is almost impossible to maintain on an airplane or at an airport. Ms. Talmor and her husband have avoided all air travel throughout the pandemic, even to visit close family, in order to mitigate the risk of bringing the virus into their home. It is difficult to predict the specific risk factors that may be present in Washington, D.C. or in Indianapolis at the time of the hearing, but the Centers for Disease Control continues to advise that the risk of travel throughout the United States remains “high.” *See* <https://www.cdc.gov/coronavirus/2019-ncov/travelers/map-and-travel-notice.html> (Feb. 17, 2021).

The Civil Division of the Department of Justice (“DOJ”) remains in maximum telework posture for the National Capital Region, with all non-essential travel strongly discouraged. Indeed, in new guidance issued only yesterday, the Assistant Attorney General for Administration confirmed that “only mission-critical travel in support of Primary Mission Essential Functions or Mission Essential Functions is permissible,” with “[r]emote meetings, hearings, and court operations [] strongly encouraged over in-person appearances,” and that “travel should occur only after means to otherwise accomplish the business have been exhausted.” Memorandum to Heads of Departments and United States Attorneys Re: 2021 Department of Justice COVID-19 Workforce Safety Plan (Feb. 16, 2021) at 3, *available at* <https://www.justice.gov/jmd/page/file/1367556/download>. Consistent with that guidance and previous guidance issued earlier in the pandemic, to protect the health of attorneys and their

families, the directors of the Federal Programs Branch (the DOJ component representing Defendants in this and related actions) have determined that, absent an exceptional circumstance, its attorneys are not to attend in-person litigation events.

Finally, undersigned counsel successfully has used various video conferencing platforms and, if the Court directs a video appearance, believes it will be possible to ensure that counsel's remote appearance has no negative impact on the proceedings. In particular, undersigned counsel completed a three-hour argument on January 26, 2021 before the Eastern District of Texas via the Webex platform. And on February 9, 2021, undersigned counsel completed a roughly one-hour hearing in a related case, *American Hospital Association v. HHS*, before the Northern District of California, on the Zoom platform. Counsel has the technology necessary to complete a hearing with no or minimal technical issues and, should the Court grant counsel's request and direct a video appearance, will test and ensure familiarity with any system the Court prefers.

Undersigned counsel contacted counsel for Plaintiff in advance of this request; Plaintiff's counsel do not oppose Defendants' request. In light of these unique circumstances and the risks posed to counsel and her family, Defendants respectfully ask the Court to allow counsel to appear via video or teleconference technology, as the Court prefers.

Dated: February 17, 2021

Respectfully submitted,

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