

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

AMERICAN COUNCIL OF THE BLIND, *et al.*,

Plaintiffs,

v.

STEVEN T. MNUCHIN,¹ *Secretary of the Treasury*,

Defendant.

Civil Action No. 02-00864 (BAH)

Chief Judge Beryl A. Howell

ORDER

The defendant has moved for a stay of proceedings in light of a lapse of appropriations, which the plaintiffs oppose. *See* Def.’s Mot. to Stay, ECF No. 170; Pls.’ Mem. in Opp’n to Mot. to Stay, ECF No. 171; Pls.’ Response to Order of the Court (“Pls.’ Resp.”), ECF No. 172. Upon consideration of the parties’ arguments, the defendant’s motion for a stay is **DENIED** without prejudice, the Motions Hearing scheduled for January 25, 2019 is **VACATED**, as are deadlines related to that hearing, *see* Minute Order (Jan. 4, 2019), and the parties are **DIRECTED** to submit detailed answers to the questions, by the deadlines, set out below.

I. BACKGROUND

The plaintiffs have, for the third time, moved to modify the injunction originally entered over a decade ago, in 2008, in this case.² *See* Pls.’ Third Mot. to Modify Injunction (“Pls.’ Third Mot.”), ECF No. 164. The original injunction ordered the defendant to “take such steps as may be required

¹ The current Secretary of the Treasury is automatically substituted as Defendant in his official capacity for his predecessor pursuant to Fed. R. Civ. P. 25(d).

² The defendant implies that the plaintiffs erroneously refer to this Order as an “injunctive order,” *see* Def.’s Opp’n to Third Mot. at 3 n.1, ECF No. 164. As noted in this Court’s Memorandum accompanying that Order, *American Council of the Blind v. Paulson*, 581 F. Supp. 2d 1, 1 (D.D.C. 2008), however, the Order was issued following remand from the D.C. Circuit, which affirmed the district court’s judgment that the defendant was violating section 504 of the Rehabilitation Act, 29 U.S.C. § 794, by failing to provide meaningful access to currency to persons who are blind or visually impaired, *American Council of the Blind v. Paulson*, 525 F.3d 1256, 1259–60, 1274 (D.C. Cir. 2008), then remanded for the district court to “address the request for injunctive relief,” *id.* at 1260, 1274. *See also Am. Council of the Blind v. Paulson*, 581 F. Supp. 2d at 2 (“The injunction is granted by the order that accompanies this memorandum.”).

to provide meaningful access to United States currency for blind and other visually impaired persons . . . in connection with each denomination of currency, not later than the date when a redesign of that denomination is next approved by the Secretary of the Treasury.” Order, October 3, 2008, ECF No. 96. Citing the defendant’s delays in redesigning currency in order to accommodate “significant developments in counterfeiting technology,” *see* Def.’s Supplemental Status Report ¶ 5, ECF No. 139; Def.’s Supplemental Status Report ¶ 1, ECF No. 141, the plaintiffs moved to modify the injunction to require the defendant to provide meaningful access to the \$10 bill by December 31, 2020, and to other denominations that can be legally redesigned by December 31, 2026. *See* Pls.’ Second Mot. to Modify Injunction at 4–5, ECF No. 142. This Court denied that motion, *American Council of the Blind v. Lew*, No. 02-CV-00864 (BAH), 2017 WL 6271264, at *2 (D.D.C. Jan. 6, 2017), but the D.C. Circuit reversed and remanded, *American Council of the Blind v. Mnuchin*, 878 F.3d 360, 371 (D.C. Cir. 2017).

In lieu of pursuing remand proceedings on their second motion to modify the injunction, the plaintiffs opted to file a renewed motion to modify the injunction, mooting their second motion. *See* Joint Status Report with Stipulation at 1, ECF No. 158 (“Upon the filing of plaintiffs’ renewed motion to modify, plaintiffs’ motion of June 6, 2016 [Pls.’ Second Mot.] shall be denied as moot.”). The plaintiffs’ third motion seeks identical relief to their second motion: an order requiring meaningful access to the \$10 bill by December 31, 2020 and to other denominations that can be legally redesigned by December 31, 2026. Pls.’ Third Mot. at 4.

Although the plaintiffs bear the burden of showing the necessity for modification of the agreed-upon injunctive relief, *see* Fed. R. Civ. P. 60(b)(5); *American Council of the Blind v. Mnuchin*, 878 F.3d at 366 (“The party seeking relief bears the burden of establishing that changed circumstances warrant relief.”) (internal quotation marks and citation omitted), and despite the Court’s invitation to identify any government witnesses from whom the plaintiffs may wish to elicit

testimony, *see* Minute Order (Jan. 4, 2019), the plaintiffs have indicated that they “do not intend to call any government witnesses to testify. . . . [and] rest their case on the basis of their existing briefs plus the attachments,” Pls.’ Resp. at 1. Moreover, the plaintiffs ask the Court “not [to] indulge the Secretary with yet another opportunity to satisfy his burden [of providing more concrete cost estimates],” *id.* at 2, indicate that “oral testimony from government witnesses at this stage of these proceedings would serve no useful purpose,” *id.*, and argue that the motions hearing the Court scheduled for January 25, 2019 should be vacated as it “is not likely to facilitate the Court’s understanding of the relevant issues,” *id.* The plaintiffs take this position, ironically, at the same time they demand more clarity as to three critical issues, including (1) the defendant’s position on the feasibility of a raised tactile feature (“RTF”), *see* Pls.’ Response to the Def.’s Supplemental Status Report, ECF No. 173; (2) the defendant’s cost estimates, *see* Pls.’ Resp. at 1; Pls.’ Reply in Support of Third Mot. to Modify Injunction, ECF No. 168; and (3) relatedly, the defendant’s timeline for deployment of currency changes, Pls.’ Third Mot. at 3.

The D.C. Circuit previously deemed the defendant’s cost estimates “crucial to weighing the equities of the plaintiffs’ requested modification,” *American Council of the Blind v. Mnuchin*, 878 F.3d at 369. As for the overall timeline for the redesign, an issue essential to analyzing the plaintiffs’ motion to decouple the security redesign from the meaningful access redesign, *see id.* (“[T]he difference in costs between the two timelines. . . . is crucial to weighing the equities of the plaintiffs’ requested modification.”), the D.C. Circuit relied on a “working timeline” the defendant submitted to Congress, *see id.* at 366 (citing Letter from Leonard Olijar, Dir. of Bureau of Engraving and Printing, to Sen. Ron Wyden (Aug. 1, 2017)), and to this Court in its Eighteenth Status Report (Sept. 18, 2017), ECF No. 156, but the defendant has provided no updates to that timeline since 2017, aside from a change to the order in which bills will be redesigned, Nineteenth Status Report (Mar. 16, 2018) ¶ 4, ECF No. 159. Overall, the plaintiffs’ resistance to supplementing the record appears to

relegate to the Court the task of obtaining any pertinent information relevant to “weighing the equities” to carry their burden. *Am. Council of the Blind v. Mnuchin*, 878 F.3d at 369.

II. QUESTIONS TO PLAINTIFFS:

In light of these circumstances, the plaintiffs are directed to submit, by January 18, 2019, detailed responses to questions 1 through 12 below:

- (1) A key provision in the original injunction ordered the defendant to “take such steps as may be required to provide meaningful access to United States currency for blind and other visually impaired persons . . . in connection with each denomination of currency, not later than the date when a redesign of that denomination is next approved by the Secretary of the Treasury.” Order, October 3, 2008, at 1. The plaintiffs are now seeking a fundamental modification of this term by asking the Court to decouple the meaningful access redesign from the security redesign that the defendant is statutorily obligated to undertake. *See* 12 U.S.C. § 418. At what point would the filing of a new lawsuit be more appropriate rather than a motion to modify the injunction, given the fundamental changes sought by the plaintiffs, the passage of time, new information available to both sides, and new technology?
- (2) Explain in detail any differences between the modifications to the injunction sought in the plaintiffs’ second motion, *see* Pls.’ Second Mot., ECF No. 142, and the current, pending motion, *see* Pls.’ Third Mot., ECF No. 160.
- (3) After obtaining a decision from the D.C. Circuit reversing and remanding this Court’s decision denying the plaintiffs’ second motion for modification of the injunction, why are the plaintiffs foregoing any remand proceedings, rendering the plaintiffs’ second motion moot, and opting instead to file a third renewed motion to modify the injunction, outside the boundaries of the mandate rule? In addition, explain precisely which modifications are currently being sought by the plaintiffs in the pending motion that would be outside the mandate rule from the D.C. Circuit?

- (4) The plaintiffs demand, in the third motion for modification of the injunction, that the defendant be required to provide meaningful access for the blind to the \$10 bill by December 31, 2020 and to other denominations by December 31, 2026. Given the plaintiffs' position that external currency readers and mobile apps currently fail to provide meaningful access, as well as the defendant's explanation of the extensive research and testing necessary to redesign currency, *see* Def.'s Opp'n to Third Mot. at 8–9, do the plaintiffs concede that the only feasible way that the defendant could comply with the plaintiffs' pending proposed order is to incorporate some form of RTF by those deadlines?
- (5) How do the plaintiffs propose for the Court to consider “[a] more concrete estimate of the financial burden of incorporating a raised tactile feature,” as directed by the D.C. Circuit, *American Council of the Blind v. Mnuchin*, 878 F.3d at 369, including the difference in costs between a timeline based solely on incorporating RTF and a timeline coupling the incorporation of RTF with other necessary redesigns, *id.*, when the defendant continues to state that the “exact costs [of decoupling the RTF provision from the next redesign] cannot be known until the Secretary identifies the best technological method for adding a tactile feature to the currency”? Def.'s Opp'n to Third Mot. at 4.
- (6) Explain how the plaintiffs have met their burden of establishing that changed circumstances are significant enough to warrant relief, *American Council of the Blind v. Mnuchin*, 878 F.3d at 366–37, when one circumstance is that the defendant's development of RTF is not yet sufficiently advanced to meet the plaintiffs' proposed timelines, or even to provide concrete estimates of the cost of modifying the injunction, *see* Def.'s Opp'n to Third Mot. at 18?
- (7) The defendant has described numerous concerns about RTF, explaining that “many of the assumptions the Bureau made in 2010 are no longer valid.” Def.'s Supp. Status Report (Dec. 20, 2018) ¶ 13, ECF No. 169. Do the plaintiffs believe that the defendant should explore other,

previously discarded options for providing meaningful access to currency, such as producing notes in different sizes? Would the plaintiffs support such a reevaluation even if this further delayed the development of accessible currency?

(8) What is the plaintiffs' position as to an acceptable accuracy rate for RTF?

(9) The plaintiffs are critical of the defendant's efforts to add larger, high-contrast numerals to bills as failing to provide meaningful access to currency for some vision-impaired persons. *See* Pls.' Third Mot. at 31–33. Is the plaintiffs' position that RTF, even with the flaws identified by the defendant, would address those concerns?

(10) Do the plaintiffs take the position that any argument by the defendant regarding external currency readers and mobile apps already providing meaningful access to currency for persons who are blind or visually impaired, *see* Def.'s Opp'n to Third Mot. at 24–25, has been rejected and is foreclosed by the D.C. Circuit's opinion in *American Council of the Blind v. Mnuchin*? *See, e.g.*, 878 F.3d at 366 (“With the newest timeline [regarding the redesign of currency], the Secretary will be in violation of federal law for eight to twenty more years than it would have been had it met its expected timeline for currency redesigns when the injunction issued.”) (emphasis added); *id.* at 367 (“Under the injunction’s current terms, millions of visually impaired Americans who could have expected meaningful access to currency by 2018 must now wait until 2026 and beyond. In the meantime, *only a fraction of them are helped by the other measures* put in place by the Secretary.”) (emphasis added); *id.* at 368 (“The added financial burden of decoupling the timelines may very well render the Secretary’s *ongoing violation of the Rehabilitation Act*—which the parties reasonably expected to be cured in one decade but under the Secretary’s current timeline will stretch into a second decade, and most likely a third—equitable.”) (emphasis added).

- (11) Given that the defendant issued a notice of agency action and request for comments prior to adoption of the agency's current, three-pronged strategy for providing meaningful access to currency for the blind and visually impaired, *see* Notices, Dep't of the Treasury, 75 Fed. Reg. 28331-02 (May 20, 2010), would this same notice-and-comment procedure have to be followed for the defendant to change the three-pronged strategy for providing meaningful access to currency?
- (12) If the defendant insists, based on internal and independent evaluations of available RTF and other technologies presented to this Court, that meeting the timelines in the plaintiffs' proposed order would be infeasible or impossible, must the plaintiffs' pending motion be denied?

III. QUESTIONS TO DEFENDANT

The defendant is directed, within five business days of Congress appropriating funds for the defendant, to submit responses to questions 13 through 28 below:

- (13) In the event that the plaintiffs' proposed order is adopted, list—
- a. for each U.S. currency denomination, how the schedule for introducing new bills would be affected;
 - b. the specific and potential estimated costs associated with: (i) redesigning, manufacturing and distributing the \$10 bill with any new feature(s), including RTF, to provide meaningful access to currency for the blind and visually impaired, (ii) education, (iii) upgrading banking equipment hardware or software, (iv) testing costs, (v) costs to replace bills that wear down, and (vi) any other costs the defendant believes to be relevant;
 - c. the specific and potential estimated costs associated with: (i) redesigning, manufacturing and distributing the \$5 bill, \$20 bill, \$50 bill and \$100 bill, with any new feature(s), including RTF, to provide meaningful access to currency for the blind and visually impaired, (ii) education, (iii) upgrading banking equipment hardware or software, (iv)

testing costs, (v) costs to replace bills that wear down, and (vi) any other costs the defendant believes to be relevant.

- (14) In the event that the plaintiffs' proposed order is adopted, would the defendant be forced to prioritize a redesign incorporating RTF over the ongoing security redesign, and, if so, would this reprioritization jeopardize the security of U.S. currency in any way? Provide any details available regarding the costs to public and private entities of counterfeit bills.
- (15) In response to the plaintiffs' pending, third motion to modify the injunction, the defendant resubmitted a Declaration from Michael Wash, ECF No. 164-1, with no updates since it was last submitted in 2016, *see* ECF No. 148-1, despite the D.C. Circuit's holding that the declaration was "inadequate to fully and independently serve as the basis for [this Court's] decision," *American Council of the Blind v. Mnuchin*, 878 F.3d at 368, and that the costs cited in it "tell us nothing about the difference in costs between the two timelines. . . . [which] financial difference is crucial to weighing the equities of the plaintiffs' requested modification, *id.* at 369. Please explain why this declaration should not be stricken from the record.
- (16) The defendant suggests that external currency readers and mobile apps available to the blind or visually impaired already provide meaningful access to currency. *See* Def.'s Opp'n to Third Mot. at 24–25. Given that the usage rate of external currency readers and mobile apps has not changed significantly in the past year, why is the defendant's argument that meaningful access is already being provided not foreclosed by the D.C. Circuit's opinion in *American Council of the Blind v. Mnuchin*, 878 F.3d 360, which included several statements indicating that the D.C. Circuit did not believe that currency readers and mobile apps fulfill the defendant's obligation to provide meaningful access? *See, e.g., id.* at 366 ("With the newest timeline [regarding the redesign of currency], the *Secretary will be in violation of federal law for eight to twenty more years* than it would have been had it met its expected timeline for currency redesigns when the

injunction issued.”) (emphasis added); *id.* at 367 (“Under the injunction’s current terms, millions of visually impaired Americans who could have expected meaningful access to currency by 2018 must now wait until 2026 and beyond. In the meantime, *only a fraction of them are helped by the other measures* put in place by the Secretary.”) (emphasis added); *id.* at 368 (“The added financial burden of decoupling the timelines may very well render the Secretary’s *ongoing violation of the Rehabilitation Act*—which the parties reasonably expected to be cured in one decade but under the Secretary’s current timeline will stretch into a second decade, and most likely a third—equitable.”) (emphasis added).

(17) Given that the defendant issued a notice of agency action and request for comments prior to adoption of the current, three-pronged strategy for providing meaningful access to currency, *see* Notices, Dep’t of the Treasury, 75 Fed. Reg. 28331-02 (May 20, 2010), is the defendant required to follow this same notice-and-comment procedure to make any changes to this three-pronged strategy for providing meaningful access to currency to the blind and visually impaired?

(18) The defendant has described numerous concerns about RTF, explaining that “many of the assumptions the Bureau made in 2010 are no longer valid.” Def.’s Supp. Status Report (Dec. 20, 2018) ¶ 13, ECF No. 169. Has the experience of developing and testing RTF led the defendant to conclude that other, previously discarded options for providing meaningful access to currency, such as producing notes in different sizes, should be re-evaluated for adoption?

(19) Is the best accuracy rate for an RTF in testing environments 80 percent or 90 percent?

Compare Decl. of Leonard R. Olijar ¶ 10, ECF No. 164-3, *with* Decl. of Michael Wash ¶ 3, ECF No. 164-1.

(20) The plaintiffs are critical of the defendant’s efforts to add larger, high-contrast numerals to bills as failing to provide meaningful access to currency for some vision-impaired persons and urge that more be done to make bills meaningfully accessible to vision-impaired persons. *See*

Pls.’ Third Mot. at 31–33. Does the defendant intend to address those concerns by making further changes to the numerals or to the coloring of bills as part of any upcoming redesign?

- (21) Clarify whether public and private bodies conduct extensive testing on each denomination when it is redesigned for security reasons, or whether only the first denomination with newly designed security features requires extensive testing, whereas testing for later denominations is generally simpler and less costly.
- (22) Clarify whether public and private bodies would need to conduct extensive testing on each denomination that incorporates RTF, or whether only the first denomination with RTF would require extensive testing, whereas testing for later denominations would be generally simpler and less costly.
- (23) The D.C. Circuit repeatedly emphasized that, to determine whether to modify the injunction, this Court needs “concrete estimates of the costs that matter,” *American Council of the Blind v. Mnuchin*, 878 F.3d at 371, that is, the difference between a timeline coupled to other security measures and one that is decoupled from any other redesign. Yet the defendant continues to state that the costs of “decoupling the provision of meaningful access from the next redesign . . . cannot be known until the Secretary identifies the best technological method for adding a tactile feature to the currency.” Def.’s Opp’n to Third Mot. at 4. Has the defendant (a) determined the best technological method for adding a tactile feature to currency?; (b) calculated more concrete estimates comparing the cost of adding an RTF, decoupled from any other redesign requirement, to the costs of combining RTF with the security redesign?; and (c) if the response to both (a) and (b) is no, estimated when answers may be provided to these questions?
- (24) Provide an estimate, with a detailed description of the assumptions about accuracy and durability, of how long it would take to introduce, with associated costs, a \$10 bill with RTF for

circulation, if no other security redesigns were included, even if that RTF were not as durable or effective as a later version might be.

- (25) What specifically is the harm, including any economic costs, of introducing an initial version of RTF on the \$10 bill that may need adjustment to improve accuracy, durability, or other features before incorporation in other denominations?
- (26) Does any testing indicate whether RTF has any impact on the effectiveness of external currency readers or mobile apps to denominate currency?
- (27) Does the defendant contend that introduction of a \$10 bill with RTF by December 31, 2020, or of other denominations of bills (aside from the \$1 bill) with RTF by December 31, 2026 would be infeasible or impossible? If so, please detail the specific reasons supporting this contention, with citation to any up-to-date declarations or other evidence provided by the defendant to support each reason.
- (28) The defendant refers to the cost of public education campaigns, and the possibility that conducting campaigns for two redesigns in quick succession, one for RTF and one for security features, may create confusion. Def.'s Opp'n to Third Mot. at 16, 21. Provide historical data on the costs of past public education campaigns for currency redesigns, and explain how, if at all, a public education campaign for RTF would likely differ (in cost, scope, complexity, etc.) from those past campaigns.

For the foregoing reasons, it is hereby

ORDERED that defendant's Motion to Stay Proceedings in Light of Lapse of Appropriations is **DENIED**, without prejudice; and it is further

ORDERED that the Motions Hearing scheduled for January 25, 2019 and any deadlines related to that Motions Hearing are **VACATED**; and it is further

ORDERED that the plaintiffs are directed to submit, by January 18, 2019, responses to

questions 1 through 12; and it is further

ORDERED that the defendant is directed to submit, within five business days of Congress appropriating funds for the defendant, responses to questions 13 through 28.

SO ORDERED.

Date: January 9, 2019

BERYL A. HOWELL
Chief Judge