IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

BRIANNE DRESSEN, *et al.*, *Plaintiffs*, v. ROB FLAHERTY, *et al.*, *Defendants*.	CASE NO. 3:23-CV-155

PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTIONS TO DISMISS

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SUMMARY OF ARGUMENT

Plaintiffs' First Amended Complaint (FAC) alleges in detail that Defendants orchestrated and executed an extensive campaign to suppress constitutionally protected speech on social media platforms. This campaign, which spanned multiple federal agencies and leveraged private actors, including the Stanford Defendants, targeted viewpoints disfavored by the Government, particularly surrounding Covid vaccines. Plaintiffs have suffered—and continue to suffer—repeated censorship as a result of Defendants' actions. Defendants' motions to dismiss are without merit.

First, this Court may exercise personal jurisdiction over all Defendants. Defendants engaged in intentional, forum-directed conduct that foreseeably caused harm in Texas, singling out Texas as a hotspot for "misinformation," monitoring Texas-based speech and speakers, and pressuring platforms to suppress content emanating from the State. These actions establish purposeful minimum contacts with the forum, and the exercise of jurisdiction comports with fair play and substantial justice.

Second, Plaintiffs have Article III standing. Unlike the plaintiffs in *Murthy v. Missouri*, 603 U.S. 43 (2024), whose standing was clouded by censorship that predated the evidence of those defendants' conduct, Plaintiffs here allege a detailed and traceable timeline showing that Defendants' coordinated pressure campaign directly resulted in the censorship of Plaintiffs' vaccine-injury-related speech. Moreover, *Murthy* resolved only a limited procedural question—whether the plaintiffs in that case provided evidence of standing to seek relief through a preliminary injunction. It did not address the plaintiffs' standing in the context of a motion to dismiss or whether they could seek retrospective

relief, including damages. Plaintiffs here seek both: damages for the censorship already inflicted and forward-looking injunctive relief to halt the ongoing censorship of their constitutionally protected speech. Both forms of relief redress Plaintiffs' injuries.

Third, venue is proper in this District. Substantial events giving rise to Plaintiffs' claims occurred in the Southern District of Texas, including the censorship of Plaintiff Ramirez's speech, which was closely tied to the loss of his son and his efforts to publicly share that experience on social media.

Fourth, the FAC states valid claims for relief under both the First Amendment and 42 U.S.C. § 1985(3). Plaintiffs allege that Defendants entered into a conspiracy motivated by class-based animus against the vaccine-injured (disability) and like-minded individuals (viewpoint) to deprive them of their First Amendment rights to free speech. While the Fifth Circuit currently limits § 1985(3) to racial animus, the statute's plain text and other Circuits support a broader application.

Finally, if the Court harbors any doubts regarding personal jurisdiction or standing, Plaintiffs have unquestionably satisfied the threshold for jurisdictional discovery. Courts routinely permit such discovery where, as here, a plaintiff makes a prima facie showing and the jurisdictional facts lie within the exclusive possession of the defendants. Plaintiffs allege a coordinated, largely covert censorship campaign, involving private communications, internal directives, and other non-public information—all of which remain under Defendants' control. It would be fundamentally unjust to allow Defendants to evade judicial scrutiny by virtue of their own opacity. At a minimum, Plaintiffs are entitled to limited discovery to uncover facts essential to resolving these issues.

Defendants' motions to dismiss should be denied in full.

ARGUMENT

I. PERSONAL JURISDICTION EXISTS OVER ALL DEFENDANTS

This Court has specific personal jurisdiction over Stanford and the individual-capacity Defendants. Because Texas's long-arm statute extends to the limits of due process, the personal jurisdiction inquiry turns on whether the exercise of jurisdiction comports with due process—*i.e.*, whether (1) Defendants had sufficient "minimum contacts" with Texas, and (2) exercising jurisdiction is consistent with traditional notions of fair play and substantial justice. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472–77 (1985) (citation omitted). Further, when an out-of-state defendant commits an intentional tort—including a constitutional tort under § 1985(3)[1]—directed at a particular forum, the defendant "must reasonably anticipate being haled into court" in that forum to answer for its conduct. *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 781 (1984). In other words, if a defendant engages in tortious activity "outside the state that bears *reasonably foreseeable consequences* in the state—maintenance of the lawsuit does not offend traditional notions of fair play and substantial justice.'" *Brown v. Flowers Indus., Inc.*, 688 F.2d 328, 333 (5th Cir. 1982) (emphasis added); *Def. Distributed v. Grewal*, 971 F.3d 485, 494 (5th Cir. 2020) (where harm is "reasonably foreseeable" in a particular forum, defendant purposefully availed himself of "the privilege of causing a consequence" in forum—which is sufficient for minimum contacts).

[1] *See Griffin v. Breckenridge*, 403 U.S. 88, 101-02 (1971) (Section 1985(3) is a federal tort law designed to punish conspiracies having some form of "class-based, invidiously discriminatory animus").

Defendants' actions were purposeful and targeted—and the harm Plaintiff Ramirez suffered in Texas, described in more detail below (*infra* §§ II.A. and III) was foreseeable. Defendants viewed Texas as an epicenter of what they deemed Covid vaccine-related "misinformation" and "disinformation." They actively targeted specific speakers, groups, topics, and, importantly, jurisdictions (as relevant here, Texas) that they viewed as particularly problematic with respect to Covid vaccine-related misinformation. *See infra* § I.A.1. Thus, "the relationship among the defendant[s], the forum, and the litigation," *Calder v. Jones*, 465 U.S. 783, 788 (1984), all favor personal jurisdiction in Texas. And "where a defendant who purposefully has directed his activities at forum residents seeks to defeat jurisdiction, he must present a compelling case that the presence of some other considerations would render jurisdiction unreasonable." *Burger King*, 471 U.S. at 477. Defendants targeted Texas residents for the express purpose of suppressing their constitutionally protected speech, but they present no valid reason—much less a compelling one—as to why they should be excused from having to answer for their actions in Texas.

A. Defendants Have Sufficient "Minimum Contacts" with Texas

Defendants contend that this Court lacks personal jurisdiction because their censorship activities were national in scope, not aimed uniquely at Texas. *See* ECF 85 at 13; ECF 89 at 6; ECF 94 at 10–11. That argument misstates the law and mischaracterizes the facts. First, a nationwide scheme and purposeful forum-specific conduct are not mutually exclusive; a defendant can be subject to personal jurisdiction in any forum where it intentionally directs unlawful conduct that causes foreseeable harm. *See Keeton*,

465 U.S. at 780. Here, Defendants orchestrated a sweeping, coordinated effort to suppress speech across platforms used by millions of Americans—including Texans. Second, as detailed below, Defendants' unconstitutional enterprise *did* deliberately target Texas-based speech and speakers. Defendants cannot hide behind the breadth of their scheme to avoid jurisdiction in a forum that they affirmatively targeted and where they caused harm.

1. Defendants Targeted Texas[2]

During the pandemic, Texas was perceived (including by Defendants) as a hotspot for Covid-related "misinformation" and a particularly problematic state with respect to Covid vaccine hesitancy.[3,4] According to then-President Biden, "states like Texas and Florida [were] doing everything they [could] to undermine" public health requirements. He accused the two states of "playing politics with the lives of their citizens, especially children," stating "*I refuse to give in to it*."[5] Defendant Slavitt repeatedly condemned

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[2] When a court considers a Rule 12(b)(2) motion without an evidentiary hearing, the plaintiff need only establish a *prima facie* case of personal jurisdiction. *Def. Distributed*, 971 F.3d at 490. The court must accept as true all uncontroverted allegations in the complaint and resolve all contested allegations and evidence in the plaintiffs' favor. *Carmona v. Leo Ship Mgmt., Inc*., 924 F.3d 190, 193 (5th Cir. 2019). Further, in addressing Defendants' challenge under Rule 12(b)(2), the Court "may receive and weigh affidavits and any other relevant matter to assist it in determining jurisdictional facts...." 5B Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1351 (4th ed. 2025); *accord Simon v. United States*, 644 F.2d 490, 497 (5th Cir.1981).

[3] *See, e.g.*, Remarks by President Biden on Fighting the COVID-19 Pandemic (Aug. 3, 2021), https://tinyurl.com/m5jbbea9 (blaming Texas and Florida "for one third of all new COVID-19 cases in the entire country" due to vaccine-related "misinformation.").

[4] *See, e.g.*, Justin M. Luningham et al., *Demographic and Psychosocial Correlates of COVID-19 Vaccination Status among a Statewide Sample in Texas*, 11 Vaccines 848 (2023), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10144075/ ("Texas is a particularly unique state with a history of opposing vaccination mandates … According to a prior study, low uptake of the COVID-19 vaccine was … associated with concerns regarding the safety and efficacy of the vaccine, misinformation, and scientific ambiguity.").

[5] Joe Biden, @JoeBiden, *Twitter* (Sept. 16, 2021, 7:41 PM), https://x.com/JoeBiden/status/1438649149738700809 (emphasis added).

Texas's Covid vaccination policies, vaccination rates, and broader approach to the pandemic, using his widely followed Twitter account to single Texas out as emblematic of the Covid-related public health failures he sought to combat. *See* Ex. A ("HEY TEXAS: You're a COVID hot spot with 78% case growth…."); Ex. B (criticizing Texas for flouting CDC guidance); Ex. C ("40% of COVID cases are coming from 3 states—Florida, Texas, and Missouri."); Ex. D ("The virus has no better friends than these heavyweights," linking to article about Texas suing school districts over mask requirements); Ex. E (criticizing Texas Governor for barring vaccine mandates in Texas); Ex. F (warning about "vaccine evasion" noting that "the test positivity rate in Texas is 46%").

Meanwhile, Stanford's Virality Project (VP), directed and run by Defendants DiResta and Stamos, *see* FAC ¶¶ 29, 31-32, 352-56, repeatedly monitored and flagged Texas speech for censorship while working in close collaboration with Defendants. *See id*. ¶¶ 204-09, 361-68, 373-86. For example, a House Judiciary Committee investigation into the federal government's collusion with third-party intermediaries to censor American speech found that Stanford, including Defendants Stamos and DiResta, worked closely with federal agencies and social media platforms to monitor, flag, and suppress Covid vaccine-related "misinformation."[6] The Committee obtained the following subset of "Jira Tickets"[7]—records used by VP to track and share "misinformation" reports flagging

[6] *See* House Judiciary Committee, *The Weaponization of "Disinformation" Pseudo-Experts and Bureaucrats: How the Federal Government Partnered with Universities to Censor Americans' Political Speech*, 1, 84, 93–95 (Nov. 14, 2023), https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/EIP_Jira-Ticket-Staff-Report-11-7-23-Clean.pdf.

[7] *Id*. at 5; *see also* FAC ¶¶ 370, 373.

particular content for censorship—which document multiple instances of the Stanford Defendants surveilling and targeting Texas speech and speakers:

- Ticket VP-716 flags a video showing a woman who experienced paralysis and seizures following administration of the Covid vaccine. The ticket identifies Texas as the "Location of Origin" and notes that the video had gone viral with more than 600,000 likes on TikTok. VP contacted TikTok to report the video;
- Ticket VP-874 targets an article published by the *Texas Tribune* entitled, *"COVID Jab: They Skipped all animal trials because animals were dying & went directly to people,"* labeling the piece "sensationalized/misleading" and classifying the content as "General Anti-Vaccination" under its moderation categories. The article discusses remarks by Texas State Senator Bob Hall regarding concerns about the Covid vaccine and was flagged by Stanford to Facebook;
- Ticket VP-888 alerts platforms to a video of a Texas doctor testifying before the Texas Senate about Covid vaccine dangers, labeling the video as "misleading" and urging that it be taken down. The video, which had over 168,000 views, appears to have been removed from multiple platforms at Stanford's instigation. Targeting a Texas legislative hearing to suppress speech that occurred in the Texas state capitol is a paradigmatic forum-directed act;
- Ticket VP-997 flags a widely shared video from an event in Dallas, Texas, in which a doctor gave a "science-based presentation on the Covid Pandemic, from the Virus, to vaccines, treatments, and the Public Health response," including his concerns about the vaccines. VP alerted platforms to the video's "false claims," and within an hour, at least one platform responded that they were "On it."

See Ex. G.

The Stanford Defendants' focus on Texas speech is further underscored by VP's Final Report[8] and its Weekly Briefings—which it shared with government officials and social media platforms. *See* FAC ¶ 383. These documents identified Texas as a hotspot for

[8] The Virality Project, *Memes, Magnets, and Microchips: Narrative Dynamics Around COVID-19 Vaccines*, 8 (April 2022) (citing "Vaccine Legislation in Texas and the Rise of the State Anti-Vaccine Movement: A Survey of Vaccine-Related Bills Filed and Passed in the Texas State Legislature from 2009 to 2019"); *id*. at 86 (describing how in late 2010s, the "medical freedom" movement, which espoused an aversion to government inference in health choices, expanded in four states, including Texas, and citing an article entitled "Lessons from the Front Line: Advocating for Vaccine Policies at the Texas Capitol During Turbulent Times"); *id*. at 88.

Covid-19 "misinformation," and frequently referenced Texas-specific events, speakers, and narratives, including concerns about vaccine hesitancy in Texas communities and the popularity of "anti-vaccine" influencers with large followings in the state. For instance, the VP's Weekly Briefing #25 warns that "[c]urrent tactics by anti-vaccine groups focus on the use of individual stories to highlight potential vaccine side effects and more overarching legal action through petitions and lawsuits in multiple states, *most notably in Texas*."[9]

Defendant Becerra similarly targeted Covid-related "misinformation" in Texas. During his tenure as Secretary of Health and Human Services, HHS awarded multiple grants to third parties aimed at combating Covid "misinformation" and "disinformation" across Texas, including on social media platforms. These grants, issued under his authority to approve and direct HHS funding, targeted Texas both geographically and demographically. For example, in May 2023, HHS awarded a grant to a Texas university to address "misinformation and disinformation about COVID-19 prevention and treatment initiatives among Hispanics," particularly in El Paso and similar communities—an effort premised on the assertion that "hispanics rely more on social media to obtain information on COVID-19 than any other ethnic group."[10] Notably, over 12.5 million Texans—approximately 40% of the state's population—identify as

[9] The Virality Project, *Weekly Briefings*, #25 (June 15, 2021) (also discussing, under "Ongoing Themes and Tactics," Texas Governor Abbott's vaccine passport ban); *see also id*. at #4 (January 19, 2021) (describing how "a Texas anti-vaccine mandate bill saw engagement in anti-vaccine mandate groups"); *id*. at #16 (April 13, 2021) (describing Texas Governor Abbott's executive order banning vaccine passports, noting that "many comments use news of opposition against vaccine passports to question the efficacy of the vaccine"); *id*. at #21 (May 18, 2021) (warning that "Uncensored Truth Tour" would visit Texas and three other states with a likely focus on Covid vaccines, noting that "local anti-vaccine groups in the areas where she is visiting" had promoted her tour).

[10] https://www.usaspending.gov/award/ASST_NON_U01FD007886_7524.

Hispanic.[11] HHS also funded two separate initiatives at the University of Texas. One, beginning in July 2020, sought to characterize "misinformation dynamics in Covid-19 related health information in online social media."[12] Another, launched in December 2022, focused on addressing Covid testing and vaccine disparities in Houston/Harris County, South Texas, and Northeast Texas, using "multilevel social network analysis" to combat "misinformation" and "increase intervention agility, intensity, and reach."[13] Additionally, in August 2022, HHS awarded a contract to a Houston-based company to develop "real-time surveillance of vaccine misinformation from social media platforms."[14] These grant-funded initiatives—many of which directly involved surveillance, targeting, and intervention strategies focused on speech in Texas communities—make clear that Secretary Becerra's HHS actively targeted COVID-related "misinformation" originating from or affecting Texas residents.

Meanwhile, in December 2021, Defendant Easterly announced the appointment of the first members of CISA's new "Cybersecurity Advisory Committee"—a group that would work on "combating misinformation and disinformation impacting the security of critical infrastructure; and transforming public-private partnership into true operational collaboration."[15] Among the new members were: (i) then-Mayor of Austin, Texas, (ii) a

[11] https://www.census.gov/quickfacts/fact/table/TX/RHI725223#qf-headnote-b.

[12] https://www.usaspending.gov/award/ASST_NON_R01LM012974_7529.

[13] https://www.usaspending.gov/award/ASST_NON_U01TR004355_7529.

[14] https://www.usaspending.gov/award/CONT_AWD_75N93022C00047_7529_-NONE-_-NONE-.

[15]https://www.hstoday.us/federal-pages/dhs/cisa-names-23-members-to-new-cybersecurity-advisory-committee/.

University of Texas School of Law professor, (iii) Stanford Defendant Alex Stamos, (iv) the Chief Information Security Officer of the Johnson & Johnson Covid vaccine; and (v) a Twitter executive.

And Defendant Flaherty, in a conversation with Facebook officials on April 5, 2021, discussed the need to target and identify "pockets of the country where vaccine hesitancy is more of a problem," pointing to "Texas with no mask mandate" as a prime example.[16]

In short, those in and collaborating with the Biden Administration specifically targeted Texas-based speech related to Covid vaccine hesitancy.

2. Defendants' Forum Contacts Were Purposeful and Targeted

Moreover, the law does not require that Texas be the *only* target of Defendants' efforts—only that it was *a* target. *See, e.g.*, *Keeton*, 465 U.S. at 780 (holding defendant could be sued in *any* forum where it had directed its nationwide tortious conduct, including in forum where neither party resided and where only a small portion of harm occurred).

The Supreme Court's *Keeton* ruling exemplifies this principle. There, the defendant was a California- and Ohio-based magazine publisher, which "produce[d] a national publication aimed at a nationwide audience." 465 U.S. at 772, 781. The plaintiff brought a libel action in New Hampshire, "seeking nationwide damages" for harm "suffered in all States." *Id*. at 775. The Court observed that it was "undoubtedly true that the bulk of the harm done to petitioner occurred outside of [the forum state]" since "only a small portion of [the magazines] were distributed in New Hampshire." *Id*. at 775, 780. However, the

[16] https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/Censorship-Industrial-Complex-WH-Report_Appendix.pdf.

Court nevertheless concluded that personal jurisdiction in New Hampshire was appropriate. *Id*. at 781. Despite or, more accurately, *because* of the nationwide reach of the defamation, the Court held that the defendant could be sued in *any* forum where it had directed its tortious conduct, including one where neither the party resided and only a small portion of the harm had been felt. *Id*. at 775–80.

Similar principles apply here. Defendants carried out a nationwide censorship campaign that predictably and intentionally caused injuries in Texas. Indeed, Texas was one of the focal points of their efforts. *Supra* § I.A.1. So, while there may be a question as to whether this suit could be brought in every state, this Court certainly has jurisdiction. Defendants cannot avoid accountability by hiding behind the breadth of their scheme. It is sufficient that Defendants' conduct was intentionally directed in a manner that foreseeably caused injury in Texas, as it did to Plaintiff Ramirez and others. *See* FAC ¶¶ 607-44.

3. The Cases Defendants Rely upon Are Inapposite

The cases on which Defendants rely to avoid jurisdiction are legally inapposite and factually distinguishable. Defendants heavily cite *Sangha* and *Walden*, yet neither case bears any resemblance to the facts in this case. In *Sangha v. Navig8 ShipManagement Priv. Ltd.*, a Texas-based ship captain sued his former employer, a foreign company, after it emailed the captain's then-current employer—based in Alabama—to object to the captain's participation in a ship maneuver near the Gulf of Mexico. 882 F.3d 96, 98-99 (5th Cir. 2018). The Fifth Circuit held that specific jurisdiction in Texas was lacking because the defendant's conduct—sending an email from overseas to Alabama—was not directed at Texas, and it was "merely fortuitous" that the correspondence happened to

impact the plaintiff in Texas. *Id*. at 103. The court emphasized that "Sangha's presence in the Gulf of Mexico/Port of Houston [was] largely a consequence of *his* relationship with the forum, and not of any actions Navig8 took to establish contacts with the forum." *Id*. at 104. Here, it is not "random, fortuitous, or attenuated," *Keeton*, 465 U.S. at 774, that Defendants injured Plaintiff Ramirez in Texas. Defendants conducted a campaign to monitor and target speech in Texas. This is the antithesis of a "random" contact.

Walden v. Fiore is similarly inapposite. 571 U.S. 277 (2014). There, a Georgia officer seized cash from Nevada residents as they were passing through Georgia. *Id*. at 279-81. There was nothing Nevada-directed about the defendant's conduct—and "[b]ecause the defendant had no other contacts with Nevada, and because a plaintiff's contacts with the forum State cannot be 'decisive in determining whether the defendant's due process rights are violated,'" there was no personal jurisdiction. *Id*. at 279 (quote omitted). Here, however, Defendants monitored, tracked, and targeted speech in Texas and engaged in a Texas-directed censorship campaign to silence Texas speech. *Supra* § I.A.1.

This case bears no resemblance to *Walden* or *Sangha*, where the defendants engaged in isolated acts with only incidental or attenuated ties to the forum.

The individual-capacity Federal Defendants' reliance on *Feds for Medical Freedom v. Garland*, 2024 WL 1859958 (S.D. Tex. Apr. 29, 2024) is similarly inapt. *See* ECF 94 at 10. The *Feds for Medical Freedom* plaintiffs sued federal officials in Texas for implementing a Biden-announced nationwide vaccine mandate for all federal employees (Executive Order 14043). *Feds for Med. Freedom*, 2024 WL 1859958 at *1. The court held that it lacked jurisdiction because the officials' only "contact" with Texas was the broad

implementation of the Executive Order, and the plaintiffs did not allege that the officials targeted Texas in any way. *Id*. at *6. The court suggested, however, that its determination might have been different had the plaintiffs demonstrated some nexus beyond the nationwide policy. *Id.* Here, there is more. *See supra* § I.A.1.

The individual-capacity Federal Defendants' reliance on *Smith v. Carvajal*, 558 F. Supp. 3d 340 (N.D. Tex. 2021) and *Vu v. Meese*, 755 F. Supp. 1375 (E.D. La. 1991) is likewise unavailing. In *Smith*, the court declined to exercise personal jurisdiction over the Director of the Federal Bureau of Prisons in a case brought by a Texas inmate, finding that the Director's only alleged contact with the forum was a failure to respond to a letter from the inmate. *Smith*, 558 F. Supp. 3d at 348–49. The court emphasized that the plaintiff had not identified any purposeful, forum-specific conduct by the Director—only his general supervisory role over the federal prison system. *Id*. Similarly, in *Vu v. Meese*, the court held that federal officials' general authority to "enforce federal laws and policies on a nationwide basis [was] not sufficient *in and of itself* to maintain personal jurisdiction" in the absence of any forum-specific conduct. 755 F. Supp. at 1378 (emphasis added). There, as in *Smith*, the plaintiff failed to allege that the officials engaged in any conduct purposefully directed at the forum.

Here, Defendants intentionally and repeatedly took action to suppress speech emanating from and directed to audiences in Texas—conduct that is directly tied to the constitutional violations alleged and that far exceeds the passive activity in question in cases like *Smith* or *Vu*. Indeed, the FAC details how Defendants orchestrated a *targeted conspiracy* to suppress speech in violation of the rights of Americans nationwide—

including the Plaintiffs here. Unlike the general policy in *Feds for Medical Freedom*, Defendants' conduct was intentionally directed toward the forum state[17] and aimed at silencing voices perceived to be purveyors of vaccine-related "misinformation," including those in Texas who might "induce vaccine hesitancy" (such as, namely, members of Texas's vaccine-injured community). *See, e.g.*, FAC ¶¶ 139-57, 174-79, 214-21, 246-48, 271, 274-78, 293-95, 323-26, 337-42, 351-56, 366-67, 412-16.

B. Defendants' Conspiratorial Conduct Directed at Texas Meets the Requirements for Specific Jurisdiction

Defendants contend that personal jurisdiction is lacking because Plaintiffs do not allege that each Defendant, in his or her individual capacity, personally directed conduct at Texas. *See* ECF 94 at 5, 10–11; ECF 85 at 9–10; ECF 88 at 17–18; ECF 89 at 7–8. These arguments misstate both the law and the facts. First, as discussed above, Defendants' conduct was not merely a passive "nationwide" policy with incidental effects in Texas. Rather, Texas was a known and intentional target of Defendants' censorship efforts. Second, even if certain individual Defendants are not shown at this stage to have individually, specifically "traveled to, conducted activities within, contacted anyone in, or sent anything or anyone to [Texas]," *see* ECF 85 at 9 (quoting *Walden*, 571 U.S. at 289), the requirements of specific jurisdiction are nevertheless met. Indeed, the claim that Defendants never availed themselves of any benefit in Texas, *see* ECF 85 at 9; ECF 89 at 7, ignores the FAC, which alleges in great detail the intentional tort (civil conspiracy to

[17] *See infra* § I.A.1. (April 5, 2021 conversation between Flaherty and Facebook officials, in which they discuss how to "identify pockets of the country where vaccine hesitancy is more of a problem" and track and target vaccine hesitancy "by region and demographics.").

violate rights) that Defendants committed and directed at Texas, among other forums. *See, e.g.*, FAC ¶¶ 139–57, 174–79, 214–21, 246–48, 271, 274–78, 293–95, 323–26, 337–42, 351–56, 366–67, 412–16. By "availing [themselves] of the privilege of causing a consequence" (civil conspiracy to violate rights and censor speech) "in Texas," *Def. Distributed*, 971 F.3d at 494 (quotations omitted), "there is a strong relationship among the defendant, the forum, and the litigation—the essential foundation of specific jurisdiction," *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 592 U.S. 351, 365 (2021) (quotations omitted).

Moreover, since "the parties' relationships with each other may be significant in evaluating their ties to the forum," *Rush v. Savchuk*, 444 U.S. 320, 332 (1980), it follows that "[t]he existence of a conspiracy and acts of a co-conspirator within the forum may, in some cases, subject another co-conspirator to the forum's jurisdiction," *Melea Ltd. v. Jawer SA*, 511 F.3d 1060, 1069 (10th Cir. 2007) (citing *Lolavar v. de Santibanes*, 430 F.3d 221, 229 (4th Cir. 2005)); *see also Allstate Life Ins. Co. v. Linter Group Ltd.*, 782 F. Supp. 215, 221 (S.D.N.Y. 1992) (noting many courts assert "personal jurisdiction … pursuant to a conspiracy theory."). *Mississippi Interstate Express, Inc. v. Transpo, Inc.*, 681 F.2d 1003 (5th Cir. 1982), is illustrative. There, personal jurisdiction existed in Mississippi against two California defendants who conspired with another California defendant over a breached contract. The *Mississippi Interstate Express* defendants made arguments similar to Defendants', emphasizing, inter alia, that: the defendants were not residents of Mississippi; committed no act inside Mississippi; had no office or place of business in Mississippi; solicited no business in Mississippi; and with regard to the tort alleged, all acts

of the alleged conspirators occurred outside of Mississippi. *Id*. at 1005. The Fifth Circuit squarely rejected these arguments, concluding that "the due process requirements of sufficient contact with Mississippi and foreseeable involvement with its law are met by the intentional acts of the non-resident defendants that caused a breach of a Mississippi-centered contract and resultant damage in Mississippi." *Id.* at 1012 (citing *Simon v. United States*, 644 F.2d 490 (5th Cir. 1981)). So too here. By actively involving themselves in an unlawful, conspiracy to target and suppress protected speech, including Mr. Ramirez's, Defendants abridged Texas-centric speech and intentionally caused harm in Texas.

Defendant Slavitt contends that "even in a conspiracy lawsuit, the contacts must be made by the defendant in the forum state 'individually, and not as part of the conspiracy.'" ECF 88 at 17-18 (citing *Delta Brands Inc. v. Danieli Corp.*, 99 F. App'x 1, 6 (5th Cir. 2004) (citing *Guidry v. United States Tobacco Co.*, 188 F.3d 619, 625 (5th Cir. 1999))). The cited portion of *Guidry*, however, is not a holding, but a neutral summary of the lower court's ruling: "The district court did not determine whether the plaintiffs had made a prima facie case of specific personal jurisdiction over each tobacco trade association defendant based on a tort committed in the state, individually and not as part of a conspiracy, by each particular defendant." *Guidry*, 188 F.3d at 625. In fact, the Fifth Circuit in *Guidry* expressly reserved the question of whether a well-pleaded conspiracy makes a *prima facie* showing of personal jurisdiction. *Id*. at 631. However, *Guidry* emphasizes that, at the motion-to-dismiss stage, detailed factual allegations of a civil conspiracy claim are "not required and [are] on the whole undesirable." *Id*. at 632 (quotation omitted); *id.* ("The courts have recognized that the nature of conspiracies often makes it impossible to provide details at

the pleading stage and that the pleader should be allowed to resort to the discovery process and not be subjected to a dismissal of his complaint.") (citation omitted). Thus, a properly pleaded conspiracy can make out a *prima facie* case of personal jurisdiction over defendants who may lack direct contacts with the forum, or can at least justify permitting "the pleader ... to resort to the discovery process and not be subjected to a dismissal of his complaint." *Id*. (citing 5 Wright & Miller, §1233, at 257). As detailed below, *infra* § IV.B., the FAC sufficiently pleads conspiracy under § 1985(3).

Defendants' reliance on *Delta Brands*, an unpublished opinion, which involved a conclusory complaint lacking factual allegations of conspiracy, misses the mark. *See Guidry*, 188 F.3d at 632–33 (distinguishing conclusory conspiracy pleadings from those with detailed allegations). Here the FAC presents a comprehensive, nearly 160-page account of a multi-actor, censorship conspiracy—backed by internal emails and communications among the Defendants and platforms, congressional reports, and additional government records—plausibly tying each Defendant to the scheme.

C. Personal Jurisdiction in Texas Is Fair and Reasonable

Given Defendants' purposeful conduct directed into Texas, the exercise of personal jurisdiction in this forum is "fair and reasonable." *Def. Distributed*, 971 F.3d at 490. To make this determination, courts balance: (1) the nonresident defendant's burden of defending itself in the forum, (2) the forum state's interest in the case, "(3) the plaintiff's interest in obtaining convenient and effective relief, (4) the interstate judicial system's interest in the most efficient resolution of controversies, and (5) the shared interests of the states in furthering fundamental social policies." *Sangha*, 882 F.3d at 102. The Fifth Circuit

has observed that "[i]f a nonresident has minimum contacts with the forum, rarely will the exercise of jurisdiction over the nonresident not comport with traditional notions of fair play and substantial justice." *Def. Distributed*, 971 F.3d at 496 (quoting *DeJoria v. Maghreb Petro. Expl., S.A.*, 804 F.3d 373, 388 (5th Cir. 2015)). This is not that rare case.

First, these Defendants' burden of defending in Texas is minimal. Most Defendants are either current or former high-ranking officials or well-resourced institutions with national reach. Stanford University and its personnel (DiResta, Stamos) are represented by a major law firm, which routinely litigates across the country. The federal official Defendants are or were agents of the United States and have the resources of the federal government or equivalent at their disposal. Traveling to Texas for an occasional hearing or trial poses no significant hardship for individuals equipped with these resources—certainly nothing beyond the ordinary inconveniences that *Burger King* held are not enough to defeat jurisdiction. 471 U.S. at 484–85. Importantly, no Defendant has shown that litigating in Texas would impair his or her defense. Documents can be exchanged electronically; depositions can occur where convenient; and counsel can (and have) appear *pro hac vice*. This factor weighs in favor of jurisdiction.

Second, Texas has a strong interest in adjudicating this dispute. The rights at issue—freedom of speech and the right to be free from a government-driven conspiracy to violate constitutional rights—are fundamental to Texans. Tex. Const. art. I, § 8. Moreover, Mr. Ramirez is a Texas resident whose speech was muzzled, and the broader Texas public was deprived of the viewpoints that Defendants repeatedly suppressed. Texas unquestionably has an interest in safeguarding the free speech rights of its own citizens—

as well as the speech emanating from its own elected officials or arising in the course of its citizens petitioning their government. *See supra* § I.A.1. (discussing Stanford targeting Texas legislator's and petitioner's speech). By contrast, neither California nor Washington D.C. (Defendants' proposed forums) holds an interest superior to Texas's interest in protecting the constitutional rights of Texans on Texas soil. This factor heavily favors jurisdiction.

Third, Plaintiffs have a strong interest in obtaining convenient and effective relief in Texas. Plaintiff Ramirez is a Texas resident of limited means. If forced to re-file elsewhere (such as California for Stanford and D.C. for federal officials), Plaintiffs' case would become fragmented, far more costly, and procedurally unwieldy, potentially denying them a practical day in court. Texas, by contrast, is geographically central and more accessible to the remaining Plaintiffs, who are located in states across the country. Requiring them to litigate separately on opposite coasts would impose significant and unnecessary burdens. Followed to its logical conclusion, Defendants' jurisdictional objections would splinter this action into multiple lawsuits throughout the country. That benefits no one. This factor supports jurisdiction.

Fourth, efficiency favors keeping this case here. The Fifth Circuit in *Guidry* recognized that plaintiffs have a powerful interest in suing all defendants in one forum, especially when alleging a unified conspiracy. 188 F.3d at 631. Texas is that forum: it can exercise jurisdiction over all co-conspirators, enabling one comprehensive adjudication. *See Keeton*, 465 U.S. at 777. Forcing Plaintiffs to litigate elsewhere would undermine judicial economy and risk inconsistent judgments. This factor favors jurisdiction.

Lastly, keeping the case in Texas poses no threat to the shared sovereignty of the states or the federal system. This is not a case of a parochial forum hauling in an out-of-state defendant over a trivial local matter. Rather, Texas is addressing conduct that, while national in scope, distinctly harmed Texas residents. Adjudicating here aligns with federalism principles because it holds actors accountable in a state that was targeted and injured by their actions.

Considering all factors, the exercise of jurisdiction over each Defendant is not only fair, but also manifestly just. The Fifth Circuit has held that "when a defendant purposefully avails himself of the benefits and protection of the forum's laws—by engaging in activity … outside the state that bears reasonably foreseeable consequences in the state—maintenance of the law suit does not offend traditional notions of fair play and substantial justice." *Brown*, 688 F.2d at 333. Here, Defendants' actions caused foreseeable consequences in Texas making it entirely reasonable to require them to defend this suit in this forum. Defendants cannot present the kind of "compelling case" needed to defeat jurisdiction on fairness grounds. *Burger King*, 471 U.S. at 477. As *Guidry* observed in upholding jurisdiction over out-of-state conspirators, the forum state had a "substantial interest" in the case, the plaintiffs' interest in convenient relief was strong, and "the judicial system's concerns for the efficient resolution of controversies" favored a single forum—all of which made it reasonable to require the defendants to defend in that forum. 188 F.3d at 631. The same is true here.

Plaintiffs have made a *prima facie* showing that Defendants have sufficient contacts with Texas and that exercising personal jurisdiction comports with fair play and substantial justice. The Rule 12(b)(2) motions should be denied.

D. Alternatively, Jurisdictional Discovery Is Warranted

If any jurisdictional questions remain unresolved, this Court should grant leave to conduct jurisdictional discovery—a tool designed precisely for cases like this, where key facts remain under Defendants' exclusive control and possession. District courts have broad discretion to allow discovery of jurisdictional facts. *Kelly v. Syria Shell Petroleum Dev.*, 213 F.3d 841, 855 (5th Cir. 2000) (discretion regarding discovery "will not be disturbed ordinarily unless there are unusual circumstances showing a clear abuse.") (cleaned up); *see also Wyatt v. Kaplan*, 686 F.2d 276, 283 (5th Cir. 1982) ("[W]e will not hesitate to reverse a dismissal for lack of personal jurisdiction, on the ground that the plaintiff was improperly denied discovery..."). Here, Plaintiffs have made at least a "preliminary showing of jurisdiction" sufficient to justify discovery. *Fielding v. Hubert Burda Media, Inc.*, 415 F.3d 419, 429 (5th Cir. 2005). A preliminary showing is a low bar—it "does not require proof that personal jurisdiction exists," *Next Technologies, Inc. v. ThermoGenesis, LLC*, 121 F. Supp. 3d. 671, 676 (W.D. Tex. 2015), only "factual allegations that suggest with reasonable particularity the possible existence of the requisite contacts." *Fielding*, 415 F.3d at 429. If a plaintiff presents such allegations, "the plaintiff's right to conduct jurisdictional discovery should be sustained." *Id*.

Plaintiffs have met that standard. The FAC and supporting public materials allege numerous specific contacts between Defendants and Texas relating to the cause of action—

certainly enough to "suggest with reasonable particularity" that further contacts likely exist. Jurisdictional discovery would allow Plaintiffs to seek: (1) Defendants' communications that reference Texas, Texans, or Texas-based organizations in the context of Covid vaccine-related "misinformation," "disinformation," or "malinformation," including communications with or about social media companies regarding content originating from Texas; (2) Defendants' records of meetings, phone calls, or videoconferences, involving social media companies referencing Texas-based concerns, users, or speech regarding vaccine-related "misinformation;" and (3) data reflecting the geographic reach and impact of Defendants' censorship activities—such as takedown requests, account actions, or algorithmic suppression—showing whether speech from or reaching Texas audiences was disproportionately targeted. It is neither speculative nor a "fishing expedition" to seek evidence of additional forum contacts given the strong preliminary showing Plaintiffs have already made. Rather, discovery is likely to yield further proof solidifying jurisdiction—and, at the very least, would ensure an accurate and just determination of this issue. *See* 5B Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1351 (4th ed. 2025).

Other courts within this Circuit have permitted jurisdictional discovery in similar cases, involving some of the same Defendants and asserting similar claims. In *Hines v. Stamos*, No. 3:23-cv-00571 (W.D. La. Dec. 18, 2024), a case against the same Stanford Defendants here, the court granted limited discovery into personal jurisdiction (over Stanford, DiResta, Stamos, and others), denying the defendants' motion to dismiss. *Hines v. Stamos*, No. 3:23-cv-571, slip op. (W.D. La. Dec. 18, 2024) (ECF No. 131). Likewise,

in *Missouri v. Biden*, No. 3:22-cv-01213 (W.D. La. Nov. 8, 2024), the plaintiffs alleging a similar social-media censorship scheme against many of the same government defendants were permitted jurisdictional discovery—and the *Missouri* defendants' motion to dismiss was similarly denied. *Missouri v. Biden*, No. 3:22-cv-01213, 2024 WL 5316601 (W.D. La. Nov. 8, 2024); *see also Kennedy v. Biden*, 745 F. Supp. 3d 440, 447 (W.D. La. 2024) ("where the alleged Government coercion … came from numerous people at numerous federal agencies and/or the White House, it is almost impossible for most plaintiffs to prove [all facts] without conducting discovery").

As Justice Alito aptly warned, "If a coercive campaign is carried out with enough sophistication, it may get by. That is not a message this Court should send." *Murthy v. Missouri*, 603 U.S. at 80 (Alito, J., dissenting).

II. PLAINTIFFS HAVE STANDING: THEIR INJURIES ARE TRACEABLE TO DEFENDANTS AND CAN BE REDRESSED BY THIS COURT[18]

Defendants' contention that Plaintiffs lack standing, ECF 85 at 14; ECF 88 at 26-28; ECF 89, at 9; ECF 96 at 7-13, rests on a misunderstanding of the Supreme Court's decision in *Murthy v. Missouri*, which explicitly confined its holding to the preliminary injunction context. *See Murthy*, 603 U.S. at 50 (holding no plaintiff has standing to seek a *preliminary injunction*). Further, unlike in *Murthy*, Plaintiffs here seek punitive damages against several defendants in their individual capacities, FAC at 154, and, for those claims,

[18] When a motion to dismiss challenges standing, "the court must 'accept as true all material allegations of the complaint and ... construe the complaint in favor of the complaining party.'" *Petteway v. Galveston Cnty.*, 666 F. Supp. 3d 655, 664 (S.D. Tex. 2023) (quoting *Ass'n of Am. Physicians & Surgeons, Inc. v. Tex. Med. Bd.*, 627 F.3d 547, 550 (5th Cir. 2010)). "[T]he presence of one party with standing is sufficient to satisfy Article III's case-or-controversy requirement." *Rumsfeld v. Forum for Acad. & Institutional Rts., Inc.*, 547 U.S. 47, 52 n.2 (2006) (quotation omitted).

need not show a likelihood of future harm. Plaintiffs' injuries are not currently disputed, but Defendants claim that the injuries were caused by independent third parties—social media platforms—and thus are not traceable to Defendants or redressable by a judgment against them.

With respect to *Murthy*, a *preliminary injunction* is an "extraordinary and drastic remedy." *Munaf v. Geren*, 553 U.S. 674, 689–90 (2008) (cleaned up, citation omitted). *See Murthy*, 603 U.S. at 56 ("*At this stage*, neither the individual nor the state plaintiffs have established standing *to seek an injunction*…") (emphasis added); *id.* at 58 (contrasting standing requirements at the pleading stage, where a plaintiff can "rest on 'mere allegations,'" with the preliminary injunction stage, where a plaintiff "must instead point to factual evidence").

The Supreme Court did *not* hold that the lack of standing for a preliminary injunction translated into a lack of standing at the pleadings stage, which is the current posture of this case.[19] Indeed, the burden is far higher at the preliminary injunction phase, at which plaintiffs must make a "clear showing" to substantiate standing. *See Tex. All. for Retired Ams. v. Hughs*, 976 F.3d 564, 567 (5th Cir. 2020) (differentiating between "minimal showing of standing that a plaintiff must show to overcome a motion to dismiss, [and] 'clear showing' of standing required to maintain a preliminary injunction")

[19] The district court in *Missouri* denied the Government's motion to dismiss for lack of standing. *Missouri v. Biden*, 662 F. Supp. 3d 626 (W.D. La. 2023). That ruling has not been reversed or limited. The Supreme Court's ruling in *Murthy* addressed only standing to seek preliminary injunctive relief and declined to disturb the Fifth Circuit's or district court's other conclusions.

(quotation omitted); *cf. Behrens v. Pelletier*, 516 U.S. 299, 309 (1996) (noting that the "legally relevant factors" on a motion to dismiss and summary judgment motion differ because the former involves mere allegations and the latter requires evidence); *Hines v. Stamos*, No. 3:23-cv-571, slip op. at 8 (ECF No. 131) (denying motion to dismiss in case against the Stanford Defendants based on a similar censorship theory while noting that: "Defendants err in their appraisal of what *Murthy* said. *Murthy* did not say that those plaintiffs did not have standing to maintain suit.").

In sum, the Supreme Court's decision in *Murthy* did not direct dismissal of that case. And it certainly does not justify dismissing *this* case, which is only in the pleading stage, and in which Plaintiffs *already* have a stronger showing of standing.

A. Plaintiffs' Injuries Are Traceable to the Defendants

A key distinction between this case and *Murthy* is the clarity of the censorship timeline: which is clearer here. The Supreme Court's finding in *Murthy* rested in large part on the fact that some of the censorship occurred *before* the Biden Administration assumed office. That muddied the waters, making it unclear, in the Court's view, that the social media suppression resulted from the Government's conduct. *See Murthy*, 603 U.S. at 68–69. Because the Government's pressure campaign post-dated the beginning of the complained-of censorship, the Court determined that the plaintiffs could not concretely trace their harm to the Government. *See Murthy*, 603 U.S. at 63–68. Here, the FAC does not suffer this alleged defect: the first instances of online censorship that Plaintiffs encountered occurred in March of 2021—shortly *after* the commencement of the Biden Administration's censorship campaign.

Plaintiffs have identified numerous email exchanges, beginning in early February 2021, between Defendant Flaherty (at the time, the White House Director of Digital Strategy) and Facebook, along with other major platforms. FAC ¶¶ 122-46, 153-66, 172-73, 199, 204-11, 223-31, 235-37, 272-73, 284, 290-91, 295, 306-08, 311, 323, 329. In the exchanges, Flaherty expressed dissatisfaction (in many cases, bordering on outrage) with the companies' proposed alterations (or resistance to such alterations) to their content moderation policies pertaining to vaccine "misinformation"—precisely the topic on which Plaintiffs were censored (in Flaherty's view, the policies did not go far enough if, for example, they did not appear to consistently censor "things that are dubious, but not provably false[]"). *See* FAC ¶¶ 127–40. Facebook employees would change their content moderation policies and practices because of and in response to the Government's repeated and often forceful demands. *See, e.g.*, FAC ¶¶ 131–33.

But there's more. Also in early February of 2021, Flaherty demanded more aggressive action against "borderline" content—that which did not clearly violate Facebook's policies and which was factually correct, but which the White House demanded be censored anyway because it *might* discourage Covid vaccinations. *See* FAC ¶¶ 143–45. Likewise, around March 15, 2021, Defendant Slavitt accused Facebook of dishonesty, and threatened action for its ostensible lack of cooperation with the White House's demands for increased censorship. *See* FAC ¶ 148 ("Internally we have been considering our options on what to do about it."). A couple of days after a March 19, 2021 meeting with the White House, including Flaherty and Slavitt, Facebook sent a follow-up email, stating that the platform was taking action accordingly:

> You also asked us about our levers for reducing virality of vaccine hesitancy content. In addition to policies previously discussed, these include the additional changes that were approved late last week and that we'll be implementing over the coming weeks. As you know, in addition to removing vaccine misinformation, we have been focused on reducing the virality of content discouraging vaccines that does not contain actionable misinformation. …. We'll remove these Groups, Pages, and Accounts when they are disproportionately promoting this sensationalized content.

FAC ¶ 152. Yet that wasn't enough for Flaherty, who continued to demand that Facebook take harsher action. *Id.* ¶¶ 153–54. Facebook then agreed to another meeting, after which—on April 9, 2021—Flaherty accused the company of being responsible for violence at the Capitol on January 6, and heavily implied that the platform would likewise be responsible for Covid-19 related deaths if it did not do more to "deploy[] an algorithmic shift" that promoted and censored content in accordance with his commands. Flaherty demanded "assurances, based in data, that you are not doing the same thing again here [as on January 6]." *Id.* ¶ 156. Facebook replied, "Understood[,]" and stated that it would obtain data to determine "what percentage of [Covid] content is vax hesitancy content, *and how we are addressing it*." *Id.* ¶ 157 (emphasis added). It could hardly be clearer that Facebook was *changing its policies to censor more* in response to the Government's demands. Similar discussions continued over the subsequent weeks, with White House personnel repeatedly demanding assurances that the platform would censor content that stoked vaccine hesitancy, true or not, and Facebook promising to do so. *Id.* ¶¶ 162–82.

Put succinctly, Facebook stated that it was altering its policies to address the White House's demands about material on its platform—*i.e.*, "often-true content" about vaccines,

which is precisely why Plaintiffs were censored. Moreover, these exchanges occurred in February through April of 2021, the period immediately preceding the surge in censorship that Plaintiffs experienced for just such material.

Plaintiff Dressen began using social media in April of 2021 to discuss the injuries she had received as a participant in a vaccine trial. She was censored on Facebook for the first time in June 2021, within 24 hours of speaking publicly at a press conference about her vaccine injury. She then experienced relentless suppression of her posts and accounts, including private online conversations. *See* FAC ¶¶ 445, 448-49. Plaintiff Barcavage began posting about his vaccine injury in March of 2021; both his public posts and private support groups were censored almost immediately. *Id.* ¶¶ 513-15. Plaintiff Dobbs turned to online support groups for help coping with her vaccine injury in February or March of 2021, but was not censored until June 28, 2021, after participating in the same press conference as Ms. Dressen. *Id.* ¶¶ 536-41. Like Ms. Dressen, Ms. Dobbs then experienced countless instances of censorship of her social media posts and accounts. *Id.* ¶¶ 541-50. During the summer of 2021, Plaintiff Holland discovered online support groups for the Covid vaccine-injured following a series of devastating medical injuries after receiving a vaccine in February of 2021. *Id.* ¶¶ 551-63. Almost immediately, she noticed that her own posts and those of others on Facebook would be flagged with warnings suggesting that they were misleading and that support groups for vaccine-injured individuals did not appear in her searches. *Id.* ¶¶ 564–67. The censorship escalated as time went on, and her posts and videos were consistently removed as purportedly harmful "misinformation." *Id.* ¶¶ 568-74. Plaintiff Ramirez, whose formerly healthy teenage son died of an enlarged heart and

myocarditis five days after receiving his first dose of a Covid vaccine, began traveling to speak about his son's condition, but his GoFundMe page to help fund his travels was removed in August of 2021. *Id.* ¶¶ 600-10. He began posting about his son's experience on social media in mid-2021 and participating in private online support groups for vaccine-injured individuals. His posts were virtually always either removed entirely or flagged as false and misleading. *Id.* ¶¶ 612-44. All of these events post-date Defendants' initial actions, which began in February 2021 and escalated as the year progressed.

This is precisely the crisp timeline not documented in *Murthy*, and that the Court insinuated would have led to a different outcome. *See Murthy*, 603 U.S. at 62-63 ("But [the states] never say when Facebook took action against the official's post—and a causal link is possible only if the removal occurred *after* Facebook's communication with the CDC."). Unlike in *Murthy*, Plaintiffs here were *not* censored prior to the Biden Administration's pressure campaign, but, as the FAC describes, they were subsequently censored with increasing frequency and belligerence as the platforms aligned their content moderation policies with Defendants' demands.

That is *prima facie* evidence of government-induced censorship, and, given the temporal connection, suffices to establish Plaintiffs' standing at this stage. In fact, even at this early phase, Plaintiffs have made a stronger showing of traceability than the plaintiffs in *Department of Commerce v. New York*, 588 U.S. 752, 768 (2019) (explaining that traceability was established because the respondents "met their burden of showing that third parties will likely react in predictable ways" to the government's influence.). Plaintiffs here did not merely show that third parties (social media companies) would likely

react in predictable ways. They have already provided evidence demonstrating that the third parties *did* act in those ways.

Stanford contends that Plaintiffs' speech was censored from "August 2021 to September 2024," ECF 85 at 6, and thus their injuries cannot be traced to the Stanford Defendants' conduct because VP "ceased operations" in August 2021. *Id*. at 11. That argument fails. First, it misstates the timeline alleged in the FAC, which alleges that Plaintiffs' speech was censored as early as March 2021—well before VP's purported end. *See* FAC ¶¶ 513-15. Second, the supposed cessation of VP's formal operations does not sever traceability for injuries that resulted from Stanford's actions. In any event, the FAC does *not* allege that VP ceased operations in August 2021; on the contrary, it alleges that, using whatever moniker, the Stanford Defendants' censorship activities are "ongoing and continue beyond the period described in the VP report." *See* FAC ¶ 388.

The Stanford Defendants are also incorrect in their assertion that, to establish traceability, a plaintiff must show that she was explicitly named and targeted for censorship by a defendant. *See* ECF 85 at 6. Under *Murthy*, a plaintiff can demonstrate traceability by showing that she was censored on a specific topic *after* a defendant began making demands of the social media companies to censor that subject. *Cf. Murthy*, 603 U.S. at 68, n.8 ("The whole purpose of the traceability requirement is to ensure that 'in fact, the asserted injury was the consequence of the defendants' actions,' rather than of 'the independent action' of a third party.") (internal quotation omitted). Certainly, nothing more needs to be shown at the pleading stage, where the only requirement is that allegations *plausibly* assert that a plaintiff is entitled to relief. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

Assuming *arguendo* that there is ambiguity about the degree of Government influence over the social media companies, that is a question of fact which is not appropriate for resolution at the motion-to-dismiss phase. *See id.* ("[F]or the purposes of a motion to dismiss we must take all of the factual allegations in the complaint as true[.]").

Defendant Slavitt, for example, argues that he had no power to change the companies' policies and engaged in no express threats. *See* ECF No. 88 at 26. But whether his conduct caused the platforms to change their policies is the core question in this case—and it is a fact question on the merits. Even if there were a question of Plaintiffs' standing to pursue their claims against Defendant Slavitt based on the FAC (there is not), jurisdiction-related discovery would be the appropriate next step, not dismissal. *See infra* § I.D.; *see also Chatham Condo. Ass'ns v. Century Village, Inc.*, 597 F.2d 1002, 1012 (5th Cir. 1979) (cautioning against dismissing for lack of subject matter jurisdiction prior to providing plaintiff with ample opportunity for discovery in cases where the questions of jurisdiction and merits are intertwined).

Similarly, the Stanford Defendants claim, citing *Murthy*, that the FAC alleges merely "that third-party social-media companies adopted policies against misinformation on their platforms and then enforced those policies against Plaintiffs." *See* ECF 85 at 14-15. These are, according to Stanford, "quintessential 'independent action[s]' by 'third part[ies]' that cannot support standing." *Id*. But that is not what the Supreme Court held in *Murthy*. Rather, the Court acknowledged that the Government's influence on social media companies' content moderation could violate the First Amendment precisely because in such a scenario, changes in content moderation policies would *not* be independent actions.

However, in *Murthy*'s specific context—which again, was adjudicated at the preliminary injunction, rather than the pleading stage—the Court found that the plaintiffs had made an inadequate showing that their injuries were traceable to the Government. *See Murthy*, 603 U.S. at 59-60. For the reasons discussed above, such a showing *has* been made in this case.

With respect to the Stanford Defendants, the FAC alleges sufficient facts that, when construed in the light most favorable to Plaintiffs, permit the Court to infer that Plaintiffs' injuries are traceable to those Defendants. Plaintiffs contend that the Stanford Internet Observatory and its subsidiaries, including the Virality Project, served as arms of the state, implementing the Government's censorship efforts in an attempt to evade the strictures of the First Amendment. *See* FAC ¶¶ 207, 352-394. In fact, Defendant Flaherty admitted as much when he indicated to YouTube that the White House was coordinating with Stanford—which, in turn, included Plaintiff Dressen in its report about so-called purveyors of vaccine misinformation. *Id.* ¶ 207.[20] Further corroborating the inference that the White House had commandeered or partnered with Stanford to do its bidding is the fact that federal officials demanded that Facebook make its internal "misinformation" data available to Stanford's researchers, including Defendant DiResta. *Id.* ¶ 277. These allegations, at a minimum, raise questions of fact, which warrant discovery, rather than dismissal. *See Hines*, No. 3:23-cv-571, slip op. at 9–10 (ECF No. 131) ("[W]e find that Plaintiffs have

[20] The Stanford Defendants claim that this was merely a report documenting the spread of vaccine misinformation. But the purpose(s) for this report is a question of fact. And the fact that Ms. Dressen was singled out as problematic by an organization that communicated the government's censorship requests to social media companies is sufficient, at the very least, to warrant discovery.

provided sufficient allegations to put beyond mere conjecture or suggestion that Defendants, through … the … Virality Project, caused Plaintiffs to be censored ….").

B. Plaintiffs' Injuries Can Be Redressed by This Court

When a plaintiff seeking injunctive relief alleges that the defendant inflicted harm through a third party, she must show that the threat of future injury she faced "likely would be redressed" by injunctive relief. *FDA v. Alliance for Hippocratic Medicine*, 602 U.S. 367, 380 (2024) (explaining that "causation and redressability—are often 'flip sides of the same coin[]' …. If a defendant's action causes an injury, enjoining the action or awarding damages for the action will typically redress that injury."). To establish that their injuries are redressable, Plaintiffs "need not show that a favorable decision will relieve [their] *every* injury." *Larson v. Valente*, 456 U.S. 228, 234, n.15 (1982). Rather, "a plaintiff satisfies the redressability requirement when he shows that a favorable decision will relieve *a* discrete injury to himself." *Id; see also Massachusetts v. EPA*, 549 U.S. 497, 526 (2007).

In the Fifth Circuit, "plaintiffs seeking injunctive and declaratory relief can satisfy the redressability requirement only by demonstrating a continuing injury or threatened future injury." *Stringer v. Whitley*, 942 F.3d 715, 720 (5th Cir. 2019). Past harm can constitute an injury-in-fact for purposes of injunctive relief if it causes "continuing, present adverse effects." *City of Los Angeles v. Lyons*, 461 U.S. 95, 102 (1983). Plaintiffs meet this requirement. They have alleged ongoing harm stemming from the censorship that they continue to experience—censorship that persists under policies adopted in response to Defendants' unconstitutional pressure campaign. These harms are current and continuing. As the FAC details, Defendants' coercion, threats, and behind-the-scenes influence

distorted platform moderation policies in ways that continue today. While President Trump's recent Executive Order may signal a change in posture, it provides no concrete mechanism for disentangling the Government's prior influence from the platforms' existing policies, nor does it provide guarantees that such interference will not resume. Plaintiffs are entitled to declaratory and injunctive relief, including requiring the Government Defendants to take meaningful steps to restore the independence of content-moderation policies. Courts routinely recognize standing for such forward-looking relief where a plaintiff alleges ongoing or likely future harm stemming from the Government's prior influence on or coordination with third parties. *See generally Ateres Bais Yaakov Acad. of Rockland v. Town of Clarkstown*, 88 F.4th 344, 350–53 (2d Cir. 2023) (standing where government's prior influence with third party plausibly caused plaintiff's loss of contract); *Texas v. Becerra*, 577 F. Supp. 3d 527, 560 (N.D. Tex. 2021) (standing where future harm was shown to be "the predictable effect of Government action on the decisions of third parties," *i.e.*, employer terminating employee who refused Covid vaccination); *Whitman-Walker Clinic, Inc. v. HHS*, 485 F. Supp. 3d 1 (D.D.C. 2020) (ongoing burdens resulting from HHS regulation sufficed to establish standing for injunctive relief).

Declaratory and injunctive relief remain the most meaningful remedies for the First Amendment deprivations that Plaintiffs suffer. Moreover, nothing (including the Executive Order) currently prevents federal officials from resuming the same unconstitutional tactics. All it takes is a change in administration or a shift in personnel for the Government to revert to the same conduct that unlawfully silenced Plaintiffs. However, what the Constitution forbids in principle, it must also prevent in practice. Without enforceable relief, future

officials may revive the same unlawful censorship efforts whenever political priorities shift.

Moreover, not all of Plaintiffs' claims require a showing of future harm, as they seek compensatory and punitive damages against several defendants in their individual capacities. FAC at 154. As the Court explained in *Murthy*, "[i]f the plaintiffs were seeking compensatory relief, the traceability of their past injuries would be the whole ball game." *Murthy*, 603 U.S. at 59.

C. Alternatively, Jurisdictional Discovery Is Appropriate

If the Court determines that, at this juncture, evidence of Plaintiffs' standing is inadequate (to be clear, Plaintiffs maintain that the allegations in the FAC suffice), Plaintiffs should be granted limited jurisdictional discovery. Indeed, upon remand, the *Missouri* district court declined to dismiss that case, reasoning that the Supreme Court's ruling rested on "this heightened [preliminary injunction] standard …." *See Missouri*, 2024 WL 5316601, at *1; *id*. ("[W]hile the Supreme Court's ruling inarguably undermines our *certainty* of subject-matter jurisdiction, it nowhere forces our conclusion that we lack such jurisdiction."). Instead, the court ordered jurisdictional discovery to allow plaintiffs to obtain evidence to substantiate standing. *Id.* at *2.

In cases like these, where "the government is 'uniquely in control of the facts, information, documents, and evidence regarding the extent and nature of their mass [censorship efforts]' serious jurisdictional discovery is likely the only vehicle by which Plaintiffs could attempt to prove standing." *Id.* at *2 (quoting *Obama v. Klayman*, 800 F.3d 559, 568 (D.C. Cir. 2015)). Consequently, to the extent that this Court harbors doubts about

Plaintiffs' standing, such doubts "clearly warrant[] further discovery," *id.*, rather than dismissal.[21] *See generally Gill v. Whitford,* 585 U.S. 48, 72–73 (2018); *Hines*, No. 3:23-cv-00571 (ECF No. 131) (ordering jurisdictional discovery, including against the Stanford Defendants, for similar censorship activities).

III. VENUE IS PROPER IN THE SOUTHERN DISTRICT OF TEXAS

On May 13, 2025, this Court expressly stated that, even assuming the Stanford Defendants are correct that venue is improper in the Southern District of Texas (it is not), the Court would not dismiss on that basis. ECF No. 100 at 2, n.2. Instead, if venue were determined to be improper, the Court would simply transfer this case. *Id*.

In any event, the argument that venue is improper in this District is without merit. The gravamen of the Stanford Defendants' argument is that, because they are not "federal defendants," Plaintiffs cannot rely on 28 U.S.C. § 1391(e)(1) (which governs suits against the federal government) to establish that venue is proper as to Stanford. ECF 85 at 21. But § 1391 includes multiple independent bases for venue, and Plaintiffs have pleaded facts satisfying § 1391(b)(2), which permits suit where "a substantial part of the events or omissions giving rise to the claim occurred." *See, e.g.*, *Braspetro Oil Servs. Co. v. Modec (USA), Inc.*, 240 F. App'x 612, 615 (5th Cir. 2007); 5B Charles A. Wright and Arthur R.

[21] On January 20, 2025, President Trump signed Executive Order 14149, "Restoring Freedom of Speech and Ending Federal Censorship," 90 Fed. Reg. 8,243 (Jan. 20, 2025). In that Order, the President recognized that "[o]ver the last 4 years, the previous administration trampled free speech rights by censoring Americans' speech on online platforms, often by exerting substantial coercive pressure on third parties, such as social media companies, to moderate, deplatform, or otherwise suppress speech that the Federal Government did not approve." The parties in *Missouri v. Biden* agreed to brief the effect the Executive Order has on that case. Briefing is expected to be complete by August 6, 2025. *See Missouri v. Biden*, No. 2:22-cv-1213 (W.D. La. Mar. 26, 2025) (ECF No. 436).

Miller, *Federal Practice and Procedure* § 1352 (4th ed. 2025) ("[A]ll well-pleaded allegations in the complaint bearing on the venue question generally are taken as true.").

Plaintiffs have amply alleged that a substantial part of the events or omissions giving rise to their claims occurred in this District. Plaintiff Ramirez resides in the Southern District of Texas. FAC ¶¶ 3, 10. It is in this District that Mr. Ramirez's son received his first dose of a Covid vaccine and died five days later from myocarditis. The pain of that loss motivated Mr. Ramirez to speak out in this District: to share his son's story, raise awareness, and connect with others in the vaccine-injured community through social media. FAC ¶¶ 605-13. It is in this District that Mr. Ramirez's speech has been relentlessly censored as a result of Defendants' efforts, *see* FAC ¶¶ 614-44, and that Mr. Ramirez has suffered the harm of these First Amendment violations.

"A court is not obliged to determine the 'best' venue," but only whether venue is proper. *Seariver Mar. Fin. Holdings, Inc. v. Pena*, 952 F. Supp. 455, 459 (S.D. Tex. 1996). It is immaterial whether "another district's contacts with the controversy are more substantial than this district." *Id*; *see also McClintock v. Sch. Bd. E. Feliciana Par.*, 299 F. Appx. 363, 365 (5th Cir. 2008) (same). Further, in addition to a defendant's conduct, courts "may also consider the location of the effects of the alleged conduct." *Umphress v. Hall*, 479 F. Supp. 3d 344, 352 (N.D. Tex. 2020) (rejecting defendants' argument that venue was improper because defendants' conduct occurred outside of the district); *see also Fernandez-Lopez v. Hernandez*, 2020 WL 9396523, at *17 (W.D. Tex. Oct. 1, 2020) (For tort claims, "courts tend to focus on where the allegedly tortious actions took place and where the harms were felt.") (citation omitted).

Defendants' unlawful censorship scheme targeted Texas residents, *supra* § I.A.1., and directly harmed Mr. Ramirez in this District, including by preventing him from sharing his personal story and freely associating with other members of the vaccine-injured community. These harms—all of which were felt in the Southern District of Texas—are central to the claims asserted and establish proper venue under § 1391(b)(2). Accordingly, the Stanford Defendants' Motion to Dismiss for improper venue should be denied.

IV. THE COMPLAINT STATES VALID CLAIMS FOR RELIEF[22]

A. Plaintiffs State a Valid First Amendment Claim and Defendants Are Not Shielded by Their Own Speech nor Qualified Immunity

Defendants make few arguments about the merits of Plaintiffs' First Amendment claims—indeed, only the Stanford Defendants and Defendants Slavitt and Flaherty directly address this issue. The Stanford Defendants' argument on this point mirrors their standing claim: that Plaintiffs have failed to demonstrate that Defendants exercised any kind of control over the platforms' content moderation policies. *See* ECF 85 at 29-30. Defendants' contention is fully addressed in Section II.A., and those arguments are incorporated by reference.

Further, *every* judge that has reached the merits of *Missouri v. Biden* (sub nom. *Murthy v. Missouri*), which made very similar claims, *see supra* § II, found that the Government's conduct violated First Amendment rights. *See Murthy*, 603 U.S. at 79 (Alito,

[22] To survive a Rule 12(b)(6) motion, a complaint need only provide the grounds of "entitle[ment] to relief" beyond "labels and conclusions" or a "formulaic recitation of the elements." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). To prevent dismissal, "a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Iqbal*, 556 U.S. at 678.

J., dissenting) ("A coterie of officials at the highest levels of the Federal Government continuously harried and implicitly threatened Facebook with potentially crippling consequences if it did not comply with their wishes …. [This] Court, however, shirks [its] duty and thus permits the successful campaign of coercion in this case to stand as an attractive model for future officials who want to control what the people say, hear, and think."); *Missouri v. Biden*, 83 F.4th 350, 392 (5th Cir. 2023) ("[T]he Supreme Court has rarely been faced with a coordinated campaign of this magnitude orchestrated by federal officials that jeopardized a fundamental aspect of American life."); *Missouri v. Biden*, 680 F.Supp.3d 630, 641 (W.D. La. 2023) ("the present case arguably involves the most massive attack against free speech in United States' history"). The Supreme Court's majority ruling explicitly did not touch upon the merits of the case. *Murthy*, 603 U.S. at 56 ("We therefore lack jurisdiction to reach the merits of the dispute."). *Murthy* left the Fifth Circuit's merits analysis in *Missouri* untouched. *See Murthy*, 603 U.S. at 55, n.3. That portion of the opinion is, thus, still the authoritative interpretation of the law of this Circuit. *See Cent. Pines Land Co. v. United States*, 274 F.3d 881, 893 n.57 (5th Cir. 2001) (explaining that panel opinions are binding where the Supreme Court reverses the *judgment* on other grounds, but does not vacate the Court of Appeal's opinion).

Defendants also argue that this lawsuit violates *their* First Amendment rights, because it seeks to hold them responsible for their speech as private actors. *See* ECF 85 at 21-22; ECF 88 at 23-24; ECF 89 at 11. This argument misses the mark. Defendants, like all other Americans, are free to share their views with government actors. They are also free to conduct academic research into "misinformation" or "disinformation." But

Defendants are *not* free to engage in conduct at the behest of government actors to silence *other Americans*—and this is precisely what Plaintiffs allege.

> A government official can share her views freely and criticize particular beliefs, and she can do so forcefully in the hopes of persuading others to follow her lead. In doing so, she can rely on the merits and force of her ideas, the strength of her convictions, and her ability to inspire others. What she cannot do, however, is use the power of the State to punish or suppress disfavored expression.

Nat'l Rifle Ass'n v. Vullo, 602 U.S. 175, 188 (2024). The same holds true of private parties who become so enmeshed with the government that they become state actors. *See, e.g., Skinner v. Ry. Lab. Execs.' Ass'n*, 489 U.S. 602, 614 (1989) ("Although the Fourth Amendment does not apply to a search or seizure, … effected by a private party on his own initiative, the Amendment protects against such intrusions if the private party acted as an instrument or agent of the Government."); *Reitman v. Mulkey*, 387 U.S. 369, 375-76 (1967) ("[P]rohibited state involvement could be found 'even where the state can be charged with only encouraging,' rather than commanding" the private conduct in question) (quoting *McCabe v. Atchison, Topeka & Santa Fe R. Co.*, 235 U.S. 151 (1914)); *see also Brentwood Acad. v. Tennessee Secondary Sch. Athletic Ass'n*, 531 U.S. 288, 294, 296 (2001) ("There is no single test to identify state actions and state actors," but the Supreme Court's "cases have identified a host of facts that can bear on the fairness of such an attribution [of state action]"). That is the theory underlying Plaintiffs' claims. In addition to whatever actions Defendants may have taken on their own, Plaintiffs have adequately alleged that they served as willing, active, force-multiplying conduits by which the Government furthered its actions.

Defendant Flaherty's assertion that he is "a private actor entitled to First Amendment protections," ECF 89 at 11, simply because he is being sued in his individual capacity reflects a fundamental misunderstanding of the law governing individual-capacity claims. *See, e.g.*, *Kentucky v. Graham*, 473 U.S. 159, 165 (1985) ("Personal-capacity suits seek to impose personal liability upon a government official for actions he takes under color of [state or federal] law."); *Ermold v. Davis*, 130 F.4th 553, 563 (6th Cir. 2025) (rejecting official's First Amendment defense because the First Amendment does not protect actions taken while acting under government authority or "wielding the authority of the State"). Suing a federal official in his individual capacity permits plaintiffs to hold that official *personally liable* for constitutional violations that he committed—it does not, as Flaherty appears to believe, somehow transform that official into a "private actor" who is shielded from constitutional scrutiny. Defendant Flaherty was a senior White House official at the time of the acts alleged—acts which involved sustained, coordinated efforts to coerce and pressure social media platforms into censoring disfavored viewpoints on behalf of the federal government. FAC ¶¶ 11–12, 122–61, 204–37, 272, 290–91, 307. The First Amendment offers no shield for such unconstitutional conduct and certainly does not protect speech undertaken in the service of state censorship. Defendant Flaherty engaged in speech with the purpose of suppressing lawful private expression. That falls squarely within the domain of unconstitutional governmental action, not a private citizen's "truthful speech or opinion speech on matters of public concern." ECF No. 89 at 11. His liability in this suit arises from his role as a federal officer who leveraged government power to silence

others. Defendant Flaherty cannot invoke First Amendment rights as a defense to conspiracy to deprive Plaintiffs of their First Amendment rights.

Thus, the case on which Defendants rely—*Missouri v. Biden*—does not free them from the First Amendment's strictures, but subjects them to it. The Fifth Circuit held that precisely the kind of coercive, coordinated censorship campaign alleged here runs afoul of the Constitution. Indeed, the Fifth Circuit found that numerous federal officials—including those in the White House, the Office of the Surgeon General, the CDC, CISA, and others—had engaged in a years-long campaign of "unrelenting pressure" on social media platforms to suppress disfavored speech, including on Covid-related topics. *Missouri v. Biden,* 83 F.4th at 392 ("[T]he district court was correct in its assessment—'unrelenting pressure' from certain government officials likely 'had the intended result of suppressing millions of protected free speech postings by American citizens.'"). The Fifth Circuit recounted in detail how these officials (many of whom are Defendants here) engaged in a "coordinated campaign" of pressure, coercion, and entanglement in the platforms' decision-making processes, and repeated demands that the platforms modify their content moderation policies to align with the government's viewpoints. *Id*. at 381-92. These actions, the court concluded, crossed the line from permissible government speech into unconstitutional state action. The conduct alleged in the FAC mirrors, and in some instances expands upon, the conduct condemned in *Missouri*, involving not just federal officials, but also private collaborators such as the Stanford Defendants. *See, e.g*., FAC ¶¶ 127-182, 311-372, 392-436. Defendants cannot evade constitutional scrutiny by repackaging government-driven censorship as mere "advice" or "participation" in public discourse. The First Amendment

does not permit government actors to accomplish indirectly—by whisper or by shove—what the Constitution squarely forbids them to do directly.

B. The Complaint States a Valid Claim Under 42 U.S.C. § 1985(3)

Defendants contend that the FAC fails to state a valid conspiracy claim under § 1985(3) because it supposedly: (1) does not allege any valid class-based animus (ECF 85 at 27-28; ECF 88 at 19-20; ECF 89 at 12; ECF 94 at 14-17); (2) does not allege a conspiracy to violate Plaintiffs' rights (ECF 85 at 24-27; ECF 88 at 21-22; ECF 94 at 18-19); (3) does not allege that Defendants caused Plaintiffs' injuries (ECF 85 at 30; ECF 89 at 14; ECF 94 at 20-21); (4) inaptly applies Section 1985(3) to deprivations under federal law (ECF 88 at 21); (5) invokes the intracorporate conspiracy doctrine (ECF No. 94 at 19–20); and (6) fails to allege a First Amendment violation, which Stanford contends cannot be asserted under Section 1985(3). ECF 85 at 29-30.[23] These arguments are without merit.

1. The Complaint Alleges Invidious, Class-Based Animus

Plaintiffs' § 1985(3) conspiracy claim is supported by well-pleaded allegations of "some racial, or *perhaps otherwise class-based*, invidiously discriminatory animus" behind the conspiracy. *Griffin*, 403 U.S. at 102. The Supreme Court has never held that the animus element of § 1985(3) is limited to racial bias. In *Griffin*, the Court expressly declined to decide that question. Likewise, in *United Brotherhood of Carpenters & Joiners v. Scott*, the Court declined to extend § 1985(3) to a conspiracy targeting "others on account of their economic views, status, or activities" (there, non-union workers), withholding judgment

[23] The Stanford Defendants briefly argue that Plaintiffs fail to allege any First Amendment violation. ECF 85 at 29. This argument is without merit for the reasons discussed in detail above, concerning Plaintiffs' First Amendment claims. *See supra* § IV.A.

on whether § 1985(3) extends beyond its "central concern" of "combatting the violent and other efforts of the Klan and its allies to resist and to frustrate the intended effects of the Thirteenth, Fourteenth, and Fifteenth Amendments." 463 U.S. 825, 836-37 (1983). Notably, Justices Blackmun, Brennan, Marshall, and O'Connor dissented to underscore the statute's broader purpose: "Congress intended to provide a remedy to any class of persons, whose beliefs or associations placed them in danger of not receiving equal protection of the laws from local authorities. While certain class traits, such as race, religion, sex, and national origin, *per se* meet this requirement, other traits also may implicate the functional concerns in particular situations." *Id*. at 853 (Blackmun, J., dissenting); *see also id*. at 851 ("The general statements of the Act's purpose give some indication of the breadth of the remedy Congress provided.…[T]he Forty-Second Congress viewed the Ku Klux Klan as preeminently a political organization, whose violence was thought to be premised most often on the political *viewpoints* of its victims….") (emphasis added).

Plaintiffs concede that under governing Fifth Circuit precedent, "only conspiracies actionable under section 1985(3) are those motivated by racial animus," *Cantu v. Moody*, 933 F.3d 414, 419 (5th Cir. 2019). However, the Fifth Circuit is in error, and many of its sister circuits have concluded that § 1985(3) applies to conspiracies driven by non-racial animus. And importantly, the Supreme Court has not yet decided this question. *Cantu*, 933 F.3d at 419. Plaintiffs acknowledge that this Court is bound by the Fifth Circuit's governing precedent, but expressly preserve their argument that the Fifth Circuit's approach must be reconsidered, to comply with the statute's purpose, legislative history, and plain meaning.

The vast majority of Circuits to have addressed the question diverge from the Fifth Circuit's restricted (and atextual) interpretation of the statute, which refers not only to racial animus, but more generally to the "equal protection of the laws" and "equal privileges and immunities under the laws," 42 U.S.C. § 1985(3). *See, e.g.*, *Parker v. Landry*, 935 F.3d 9, 18 (1st Cir. 2019) (conspiracy needs to be "motivated by *some* discriminatory animus") (emphasis added); *Dolan v. Connolly*, 794 F.3d 290, 296 (2d Cir. 2015) (Section 1985(3) "covers classes beyond race," including gender and political affiliation); *Lyes v. City of Riviera Beach*, 166 F.3d 1332, 1339 (11th Cir. 1999) (*en banc*) ("[W]omen are a 'class of persons' within the meaning of § 1985(3)."); *Life Ins. Co. of N. Am. v. Reichardt*, 591 F.2d 499, 505 (9th Cir. 1979) (same); *Lake v. Arnold*, 112 F.3d 682 (3d Cir. 1997) (discrimination based on handicap/disability or gender qualify under § 1985(3)); *Volk v. Coler*, 845 F.2d 1422, 1434 (7th Cir. 1988) ("[Section] 1985(3) extends beyond …race to conspiracies to discriminate against persons based on sex, religion, ethnicity or political loyalty."); *Cameron v. Brock*, 473 F.2d 608, 610 (6th Cir. 1973) ("§ 1985(3)'s protection reaches clearly defined classes, such as supporters of a political candidate.")).

As the Third Circuit explained in *Lake v. Arnold*, § 1985(3) was "cast in general terms" and "proscribed conspiracies aimed at depriving 'any person or class of persons' of equal protection and equal privileges." 112 F.3d at 686. However, the "breadth of such language was not adventitious," and while the impetus toward the statute's enactment "was supplied by concern regarding violence directed at blacks and Union sympathizers, the bill subsequently enacted contained no such limitation." *Id*. at 686-87 (the Third Circuit's

decision not to "truncat[e] [the] sweep of section 1985(3) is buttressed by the fact that 'comparable Reconstruction civil rights legislation such as the equal protection clause of the fourteenth amendment has no such boundaries.'") (citation omitted)); *see also Keating v. Carey*, 706 F.2d 377, 387 (2d Cir. 1983) ("A narrow interpretation of the statute as protecting only blacks and other analogously oppressed minorities is untenable in light of the history of the Act …. At least one informed Republican Senator acknowledged that the Act would have to be applied to conspiracies against a man 'because he was a Democrat ... or ... a Catholic, ... or ... a Methodist, ... or ... a Vermonter.'") (quoting *Cong.Globe,* 42nd Cong., 1st Sess. 567, col. 2 (1871) (remarks of Senator Edmunds of Vermont)).

Plaintiffs have alleged class-based forms of animus that violate equal protection, including animus on the basis of viewpoint and vaccine injury. *See* FAC ¶¶ 673-74.

Defendants contend that § 1985(3) does not extend to viewpoint discrimination. *See* ECF 85 at 28; ECF 88 at 20; ECF 94 at 16. However, Section 1985(3) prohibits conspiracies to deprive any person or class of persons "of the equal protection of the laws," and free-speech rights fall within the class of rights deemed to be so "fundamental" that they automatically trigger heightened scrutiny for equal-protection purposes. *Regan v. Taxation with Representation of Washington*, 461 U.S. 540, 547 (1983) (holding that, under the Equal Protection Clause, government policies "are subjected to a higher level of scrutiny if they interfere with the exercise of a fundamental right, *such as freedom of speech*") (emphasis added). Moreover, while the Supreme Court has held that § 1985(3) does not reach conspiracies motivated solely by animus toward *economic* views, it carefully cabined that holding, expressly reserving judgment on whether the statute applies

to conspiracies targeting groups based on other ideological viewpoints or activities. *Carpenters*, 463 U.S. at 837 ("Even if the section must be construed to reach conspiracies aimed at any class or organization on account of its political views or activities, ... we find no convincing support … that the provision was intended to reach conspiracies motivated by [bias based on economic views]."); *see also Conklin v. Lovely*, 834 F.2d 543, 550 (6th Cir. 1987) (Section 1985(3) applies to political viewpoints).

Where, as here, Defendants are alleged to have conspired to suppress speech based on viewpoint (as well as physical disability), they have not merely burdened speech—they have denied Plaintiffs equal access to a "fundamental right." *Regan*, 461 U.S. at 547. That conduct falls squarely within the ambit of § 1985(3), which protects against conspiratorial efforts to deny individuals the equal protection and equal enjoyment of their most basic legal rights.

2. The Complaint Alleges a Conspiracy to Violate Plaintiffs' Rights

The FAC alleges extensive facts raising an inference of "an actual agreement" (or conspiracy) between Defendants to deprive Plaintiffs of their constitutionally protected rights. Contrary to Defendants' arguments, *see* ECF 85 at 24; ECF 88 at 21; ECF 89 at 13; ECF 94 at 18, Plaintiffs' allegations go well beyond merely identifying "parallel conduct." *See, e.g.*, *Body by Cook, Inc. v. State Farm Mut. Auto. Ins.*, 869 F.3d 381, 389 (5th Cir. 2017).

The FAC describes Defendants' "sprawling censorship enterprise," which "involved the efforts of myriad federal agencies and government actors … to direct, coerce, and, ultimately, work in concert with social media platforms to censor, muffle, and flag as

'misinformation' speech that conflicts with the government's preferred narrative." FAC at 2. "Through threats, pressure, inducement, and coercion, Defendants now work in concert with social media companies to censor so-called 'disinformation,' 'misinformation,' and 'malinformation'—a feat that the government could never lawfully accomplish alone." *Id*. at 6. "Defendants are engaged in egregious violations of the First Amendment across numerous federal agencies … as well as massive government/private joint censorship enterprises, including the Stanford Internet Observatory's 'Virality Project,' to target and suppress speech on the basis of content (i.e., Covid vaccine-related speech) and viewpoint (i.e., speech that expresses doubt or concern about the safety and efficacy of Covid vaccines)." *Id*. at 7.

Plaintiffs do not merely allege a conspiracy—they substantiate it. Their nearly 160-page FAC is grounded not only in allegations, but in evidence and factual revelations drawn from multiple authoritative sources, including discovery materials disclosed in *Missouri v. Biden*, internal communications made public in the Twitter and Facebook Files, House Judiciary Committee investigative reports, and other public records. *See* FAC ¶¶ 122-429. These sources expose, sometimes in Defendants' own words, Defendants' deliberate and coordinated effort to suppress disfavored speech relating to Covid vaccination. The result is a complaint that does not merely allege a conspiracy to violate First Amendment rights—it documents it. Thus, contrary to Defendants' argument, the Complaint plainly alleges "an *actual agreement*" to deprive Plaintiffs of their federally protected rights.

In many ways, this case parallels *Lee v. Christian*, 98 F. Supp. 3d 1265 (S.D. Ga. 2015). In *Lee*, the plaintiff alleged that, following various incidents of sexual harassment

by the County Manager, the Manager and several other individuals had engaged "in a conspiracy to deprive her of her employment with the [local] Chamber of Commerce." *Id.* at 1269. She alleged that "all of the individual Defendants attended multiple meetings held for the purpose of having Plaintiff removed …." *Id.* Plaintiff further alleged that, "[t]o implement the alleged conspiracy, Defendants attempted to eliminate funding for the Chamber of Commerce in the County budget if Plaintiff was not discharged …." *Id.* at 1270. The *Lee* court denied defendants' motions to dismiss, which in part were based on the argument that the plaintiff had only shown parallel conduct. The court noted that, while some allegations "standing alone might be considered conclusory … additional facts alleged throughout the Amended Complaint create plausible grounds to infer" that a conspiracy existed. *Id.* at 1272. "The fact of the agreement itself is supported by the allegation that Defendants met multiple times to discuss their plan to have Plaintiff removed from her position." *Id.* The court also concluded that "Defendants' conversations with Board members of the Chamber of Commerce and actions in cutting funding for the Chamber of Commerce were plausible substantial steps in furtherance of the alleged conspiracy." *Id.* The present case parallels *Lee*. Here, Plaintiffs allege that Defendants met and/or communicated frequently and on a regular basis with the express purpose of suppressing constitutionally protected speech—specifically, vaccine-related speech like Plaintiffs', which questioned the safety or efficacy of the Covid vaccines. Such meetings and communications give rise to a plausible inference that Defendants' actions do not merely constitute "parallel conduct," but a "meeting of the minds." And, as in *Lee*, the fact

that speech was actually suppressed "supports Plaintiff[s'] allegation of an agreement to injure" them. *Id.*

Plaintiffs' allegations are sufficient to withstand Defendants' motions to dismiss.

3. The Complaint Alleges That Defendants Caused Plaintiffs' Injuries

Defendants contend that the FAC fails to allege that Defendants caused Plaintiffs' injuries. ECF 85 at 30; ECF 88 at 29; ECF 94 at 20-21. This argument simply reiterates Defendants' arguments on traceability and are without merit for the reasons addressed above. *See supra* § II.

4. Section 1985(3) Applies to Deprivations Under Color of Federal Law

Defendants' contention that Section 1985(3) does not apply to deprivations of rights that take place under color of federal law fails to account for, among other things, the differences between 42 U.S.C. § 1985(3) and 42 U.S.C. § 1983. Notably, § 1985(3), unlike § 1983, does not explicitly require action "under color of state law." If Congress had intended to limit § 1985(3) to conspiracies involving state actors, it knew exactly how to do so—as it did expressly in 42 U.S.C. § 1983—yet it chose not to include any such limitation, signaling a deliberate intent to reach a broader category of conspirators.

Moreover, the Supreme Court expressly declined to read into the statute artificial restrictions beyond the text that Congress enacted. *Griffin*, 403 U.S. at 96, 99. Indeed, in *Griffin*, the Supreme Court eliminated any notion that § 1985(3) requires state involvement, holding that § 1985(3) reaches purely private conspiracies, including those intended to violate *federal* rights. *Id*. at 100, 106 (holding § 1985(3) applied to private conspiracy to violate "federal right to travel interstate"). If § 1985(3) may extend to purely private actors

operating under no color of law at all, it is nonsensical to exempt federal officials acting under color of federal law. And nothing in *Griffin* or any subsequent Supreme Court decision suggests that federal-officer conspiracies are beyond § 1985(3)'s reach. To the contrary, the Supreme Court has proceeded on the assumption that federal officials *can* be liable under § 1985(3). *See Ziglar v. Abbasi*, 582 U.S. 120, 153–55 (2017) (assuming § 1985(3) covered conspiracy between federal officials).

While Plaintiffs acknowledge that Fifth Circuit precedent (or perhaps dicta) may[24] support the contention that §1985(3) does not reach conspiracies under color of *federal* law, such reasoning is counter to the plain meaning of the statute and Supreme Court precedent. The Fifth Circuit's narrow reading of § 1985(3) conflicts with the prevailing view among its sister Circuits, the majority of which have held—either explicitly or implicitly—that the statute applies not only to state actors, but also to federal officials who have engaged in conspiracies to violate federally protected rights. *See, e.g.*, *Davis v. Samuels*, 962 F.3d 105, 112 (3d Cir. 2020) (federal and private prison personnel conspiring "in the federal equivalent of 'state action'" can be liable under § 1985(3)); *see id.* at 114 ("A significant consensus among our sister Courts of Appeals is that *Griffin* has rendered untenable the argument that § 1985(3) is inapplicable to those acting under color of federal law."); *Federer v. Gephardt*, 363 F.3d 754, 758 (8th Cir. 2004) ("Unlike 42 U.S.C. § 1983,

[24] At least one court within the Fifth Circuit has determined that *Mack v. Alexander*, 575 F.2d 488 (5th Cir. 1978) is not binding with respect to the question of § 1985(3)'s applicability to federal officials because the precedent on which *Mack* relied, *Walker v. Blackwell,* 360 F.2d 66 (5th Cir. 1966), made no analysis of the plaintiff's § 1985(3) claim, dismissing it without comment alongside the plaintiff's § 1983 claim (which *does* require a showing of state action) due to the absence of state action. *See Kenyatta v. Moore*, 623 F. Supp. 224, 230 (S.D. Miss. 1985).

which requires that the offending action be done under the color of state law, … the scope of § 1985(3) is considerably broader and can reach conspiracies composed of federal officers or federal employees."); *Hobson v. Wilson*, 737 F.2d 1, 20–25 (D.C. Cir. 1984) (allowing § 1985(3) claim against FBI agents and others for conspiracy to disrupt political activists' First Amendment rights); *Gillespie v. Civiletti*, 629 F.2d 637, 641 (9th Cir. 1980) (while § 1983 requires state action, § 1985(3) "covers all deprivations of equal protection of the laws and equal privileges and immunities under the laws, regardless of its source.") (citing *Griffin*, 403 U.S. at 91); *Taylor v. Nichols*, 558 F.2d 561, 567 (10th Cir. 1977) ("State action or color of state law is not essential to a claim under … Section 1985(3).").

Accordingly, to the extent *Mack v. Alexander*, 575 F.2d 488, 489 (5th Cir. 1978), applies, it must be reconsidered. By excluding federal conspiracies, the Fifth Circuit imposes a limitation that appears nowhere in the statutory text—and that contradicts the expansive and unqualified language that Congress enacted in § 1985(3).

The Fifth Circuit's approach leaves a conspicuous gap in civil rights protection—one that Congress never designed nor enacted.

5. The Intracorporate Conspiracy Doctrine Does Not Bar Plaintiffs' Claim

The individual-capacity Federal Defendants are incorrect that Plaintiffs' § 1985(3) conspiracy claim is foreclosed by the intracorporate conspiracy doctrine. ECF 94 at 19-20. As the Fifth Circuit reaffirmed, the doctrine "precludes plaintiffs from bringing conspiracy claims [under § 1985(3)] against multiple defendants employed *by the same governmental entity*." *Konan v. USPS*, 96 F.4th 799, 805 (5th Cir. 2024) ("[The Fifth Circuit has]

consistently held that *an agency and its employees* are a 'single legal entity' which is incapable of conspiring with itself.'") (emphasis added). But this case is not limited to internal coordination among employees of a single agency or department. Rather, Plaintiffs allege that the conspiracy involved coordination among officials from multiple federal agencies, as well as private actors (including the Stanford Defendants), who, as far as Plaintiffs are aware, were not employed by the federal government at any relevant time. The intracorporate conspiracy doctrine does not apply.

6. The Individual-Capacity Federal Defendants Are Not Entitled to Qualified Immunity

Defendant Slavitt[25] and the individual-capacity federal Defendants argue that they are shielded from Plaintiffs' claims due to the doctrine of qualified immunity. ECF 88 at 22-23; ECF 94 at 11-13. But defendants are not entitled to qualified immunity where, as here, their conduct violated clearly established rights.

Officials enjoy qualified immunity only to the extent that their conduct is objectively reasonable in light of clearly established law. *See Kinney v. Weaver*, 367 F.3d 337, 346-47 (5th Cir. 2004) (citing *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). To constitute "clearly established" law for the purposes of assessing an official's entitlement to qualified immunity, "[t]he contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Anderson*

[25] Defendant Slavitt also argues that when engaging in the complained-of conduct, he was no longer employed by the government and acting in his individual capacity. As Plaintiffs have argued, even if he was no longer officially employed by the government, he was using his government email address and operating under the auspices of the office he had held, so this defense fails. But, at a minimum, if he was acting outside of the contours of public office, then he cannot shield himself using qualified immunity.

v. Creighton, 483 U.S. 635, 640 (1987). The "clearly established" standard does not mean that an official's conduct is protected by qualified immunity unless "the very action in question has previously been held unlawful," *Kinney*, 367 F.3d at 350, nor that qualified immunity is mandated unless the facts of case precedent are "materially similar" to the conduct being challenged. *Hope v. Pelzer*, 536 U.S. 730, 740 (2002) (the law may be clearly established "despite notable factual distinctions between the precedents relied on and the cases then before the Court," so long as the precedents provide "fair warning" that the conduct at issue violated constitutional rights). Further, to determine whether the law was clearly established, the Fifth Circuit differentiates between (i) "split-second excessive force cases" in which law enforcement officers must make "life-or-death" decisions (requiring an elevated degree of specificity to constitute clearly established case law) and (ii) non-split-second contexts in which an official enjoys, from a position of safety, the benefit of thinking before acting (permitting a higher level of generality and more flexible standard). *See Hughes v. Garcia*, 100 F.4th 611, 620 & n.1 (5th Cir. 2024). The Defendants here, who made calculated decisions, free from the stresses of split-second, life-or-death decision-making, violated clearly established law and may not shield themselves from liability with the more exacting clearly established standard that is reserved for law enforcement officers whose lives are on the line.

The First Amendment prohibits the government from "abridging" the freedom of speech: "[i]f there is a bedrock principal underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable." *Missouri*, 680 F. Supp. 3d at 691 (granting

preliminary injunction) (citing *Matal v. Tam*, 582 U.S. 218, 243 (2017)). Case law developed over the past several decades makes clear that the government cannot exert its influence over third parties in order to suppress certain viewpoints, whether through threats and coercion or encouragement and cooperation. *Supra* § IV.A.; *see also Bantam Books v. Sullivan*, 372 U.S. 58, 72 (1963) (holding that government agency violated First Amendment by threatening booksellers with prosecution if they did not remove certain books and magazines deemed objectionable by the government); *Norwood v. Harrison*, 413 U.S. 455, 465 (1973) (government may not "induce, encourage or promote private persons to accomplish what it is constitutionally forbidden to accomplish.").

As the FAC describes at length, Defendants violated these principles. In March of 2021, Defendant Slavitt, for example, openly threatened Facebook, stating that the company's lack of cooperation in removing "borderline" content meant that the White House had "internally … been considering [its] options on what to do about it." FAC ¶ 148. Slavitt, along with Defendant Flaherty, attended numerous meetings with Facebook after which the company capitulated to their demands, agreeing to "reduc[e] the virality of content discouraging vaccines that does not contain actionable misinformation." *Id.* at ¶¶ 151-52.

Slavitt also leveraged his White House role to pressure Facebook and Twitter into censoring high-profile figures such as Tucker Carlson and Alex Berenson—both outspoken critics of the federal government's Covid vaccine policies. These efforts underscore Slavitt's blatant disregard for the First Amendment. *See* FAC ¶¶ 167–68, 185–201. In another telling example, Facebook executive Nick Clegg reported that, during an hour-long

phone call, Slavitt had expressed outrage that the platform had failed to remove certain vaccine-related posts—including a satirical meme. *Id*. ¶¶ 174–79. Clegg instructed his team to take action in response to the "issues" Slavitt had raised, including removing content that, while humorous, might contribute to vaccine hesitancy. *Id*. These incidents exemplify a pattern of coercive government interference with protected speech, executed by a high-ranking federal official in violation of clearly established First Amendment principles.

A government official—or one leveraging the authority and influence of his former office—who persistently pressures, threatens, and berates private social media platforms to silence disfavored viewpoints engages in the flagrant violation of clearly established First Amendment law. *See, e.g., Bantam Books*. 372 U.S. at 72; *Garzes v. S. San Antonio Indep. Sch. Dist.*, 2004 WL 7337262, at *11 (W.D. Tex. Aug. 13, 2004) (denying qualified immunity where there was genuine issue of material fact as to whether defendants conspired to deprive plaintiff of his free speech rights); *Burrell v. Bd. of Trustees of Ga. Military College*, 970 F.2d 785, 796 (11th Cir. 1992) (denying qualified immunity to officers alleged to have conspired with public academy to violate First Amendment rights).

Likewise, former Surgeon General Murthy wielded the authority of his high office to pressure and intimidate social media platforms into suppressing constitutionally protected speech. He repeatedly threatened adverse consequences for failing to aggressively police Covid-related "misinformation," making clear that increased censorship was not merely encouraged—it was expected. As part of these efforts, Murthy's office issued a formal "Request for Information" demanding data from platforms about misinformation on their services—an act that functioned less as a neutral inquiry and more

as a coercive lever to compel greater compliance. See FAC ¶ 242. Murthy's campaign to silence dissenting views played out both in public and behind closed doors. In public, he used the bully pulpit to call for "accountability" for health misinformation, while in private, his communications with platform executives left little doubt that noncompliance would carry consequences. *See id*. ¶¶ 246–47, 292. In one telling exchange, a Facebook employee texted Murthy about "deescalating" the situation—an implicit acknowledgment that the platform viewed his demands as threatening and sought to mollify him by increasing its censorship efforts. *See id.* ¶¶ 259–60, 285–86.

Defendant Crawford, the CDC's Division Director of Digital Media, was also a key participant in the federal censorship apparatus. She regularly convened meetings with social media platforms to discuss Covid- and vaccine-related "misinformation," actively collaborating with them to identify disfavored narratives and speakers for suppression. *See* FAC ¶ 397. Crawford, along with her subordinates, did not merely monitor trends—they flagged individual posts, proposed categories of disapproved content, and directly encouraged the platforms to remove or demote lawful speech. *Id*. ¶ 398. These actions were not neutral or advisory; they were integral to a coordinated campaign in which federal officials exploited private intermediaries to achieve unconstitutional ends. The law is clear: government actors may not coerce or collude with private entities to suppress speech that the government could not lawfully restrict on its own. *See supra* § IV.A.

Defendant Becerra, as Secretary of HHS, bears responsibility for the actions undertaken by the CDC and the Office of the Surgeon General, both of which fall under HHS's purview. *See Ala. Ass'n of Realtors v. HHS*, 594 U.S. 758 (2021) (recognizing HHS

accountability for CDC-imposed measures). As head of the department, Becerra directed and oversaw the entities through which this censorship campaign was executed—and cannot now disavow the unconstitutional conduct carried out under his direction and authority.

The DHS Defendants, Mayorkas and Easterly, operated an elaborate censorship enterprise wherein they funneled censorship activities through CISA, a subagency within DHS, and outsourced them to third party intermediaries, including Stanford. *See, e.g.*, FAC ¶¶ 317-18, 387–89; *supra* § I.A.1. Rather than directly enforcing content moderation, these officials devised a strategy to outsource censorship to ostensibly "independent" actors, thereby insulating themselves from constitutional scrutiny while maintaining operational control over what speech would be suppressed.

Government officials cannot sidestep constitutional constraints by laundering censorship through third parties. That principle is well-settled, and these Defendants cannot shield themselves with qualified immunity when their actions so plainly crossed constitutional lines.

7. Plaintiffs' Claim Against Defendant Slavitt Is Not Time-Barred

Lastly, Defendant Slavitt contends that Plaintiffs' § 1985(3) claim against him is time-barred, but this argument—for which he has the burden of proof—also fails. ECF 88 at 18-19. As Slavitt acknowledges, *id*. at 19, the two-year statute of limitations for a § 1985(3) claim only accrues when "[the plaintiffs] knew or should have known of the overt acts involved in the alleged conspiracy." *Beckwith v. City of Houston*, 790 F. App'x. 568, 572, 576 (5th Cir. 2019). Thus, the critical question here is when did Plaintiffs know

(1) that they had been injured, *and*, crucially, (2) who caused the injury. *Id*. *See Mikkilineni v. City of Houston*, 1999 WL 35794666, at *2–3 (S.D. Tex. Feb. 16, 1999) (denying motion to dismiss where unclear when plaintiffs knew or should have known of defendants' conduct in conspiracy).

Applying those principles, Plaintiffs' § 1985(3) claim against Slavitt, who was added to the lawsuit on September 12, 2024, *see* ECF 88 at 19, is well within the two-year period. Although Plaintiffs were undoubtedly aware that their speech was being censored as early as the spring of 2021, they had no way of knowing—nor could they reasonably have known—the identity of those responsible for orchestrating that censorship. The veil only began to lift in December 2022, with the release of the initial installment of the "Twitter Files," which exposed for the first time direct communications between federal officials and social media companies to censor Covid-related "misinformation" on their platforms.[26] And it was not until March 2023, when the factual record from court-ordered discovery in *Missouri v. Biden* was made public, that the scope of the federal government's role—and the individual actors involved—was revealed with sufficient clarity to ground Plaintiffs' claims.[27]

The "Twitter Files," the record developed in *Missouri v. Biden*, and related 2023 congressional investigations, exposed for the first time the scope and structure of the

[26]https://www.cbsnews.com/news/twitter-files-matt-taibbi-bari-weiss-michael-shellenberger-elon-musk/; https://www.techpolicy.press/scrutinizing-the-twitter-files/.

[27] Plfs' Proposed Findings at 13, *Missouri v. Biden*, (E.D. Mo. Mar. 6, 2023) (ECF 212-3).

federal government's behind-the-scenes role in social media censorship—and specifically, the active participation of Defendant Slavitt, a former White House senior advisor.

Slavitt argues that the limitations period began to run on July 21, 2021, when he appeared on a podcast and made cryptic statements that he had spoken to a Facebook executive, including predicting that Facebook would become "the number one story of the pandemic." *See* ECF No. 88 at 19 (citing FAC ¶ 254). But that offhand remark in an obscure podcast episode—one that never mentions Plaintiffs, never alludes to a multi-agency censorship apparatus, and never discloses any hint of a government-driven conspiracy targeting speech of the vaccine-injured—is plainly insufficient to trigger accrual. The law does not require plaintiffs to intuit the existence of a clandestine conspiracy from a single ambiguous remark made on a podcast. The question is whether Plaintiffs knew or reasonably could have known the *cause* of their injury—not merely that content moderation was happening. *See Beckwith*, 790 F. App'x at 574–75. Nothing in Slavitt's July 2021 podcast revealed the identities of the federal actors orchestrating the censorship campaign, the extensive interagency coordination behind it, or the federal government's covert partnerships with third parties. At a minimum, the timeliness question involves factual determinations (*e.g.*, when Plaintiffs learned or should have learned of Slavitt's role) that cannot be resolved against Plaintiffs at the motion-to-dismiss stage.

CONCLUSION

The motions to dismiss fail on all grounds and should be denied.

DATED: May 27, 2025 Respectfully submitted,

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I certify that on May 27, 2025, I electronically filed the foregoing document with the United States District Clerk for the Southern District of Texas and electronically served all counsel of record via the District Court's ECF system.

/s/ Casey Norman

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

BRIANNE DRESSEN, *et al.*, *Plaintiffs*, v. ROB FLAHERTY, *et al.*, *Defendants*.	CASE NO. 3:23-CV-155

AFFIDAVIT AUTHENTICATING EXHIBITS A–G TO PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTIONS TO DISMISS

I, Thomas Curro, am a paralegal at the New Civil Liberties Alliance, which represents Plaintiffs in the above captioned action.

Exhibit A hereto is a true and correct copy (screenshot) of a tweet by Defendant Andrew Slavitt dated June 25, 2020.

Exhibit B hereto is a true and correct copy (screenshot) of a tweet by Defendant Andrew Slavitt dated July 9, 2021.

Exhibit C hereto is a true and correct copy (screenshot) of a tweet by Defendant Andrew Slavitt dated July 22, 2021.

Exhibit D hereto is a true and correct copy (screenshot) of a tweet by Defendant Andrew Slavitt dated September 12, 2021.

Exhibit E hereto is a true and correct copy (screenshot) of a tweet by Defendant Andrew Slavitt dated October 11, 2021.

Exhibit F hereto is a true and correct copy (screenshot) of a tweet by Defendant Andrew Slavitt dated July 12, 2022.

Exhibit G hereto is a true and correct copy of the text of excerpts from an appendix to a House Judiciary Committee report entitled *The Weaponization of "Disinformation" Pseudo-Experts and Bureaucrats: How the Federal Government Partnered with Universities to Censor Americans' Political Speech* ("Report"). The Report indicates that the appendix is a collection of Jira Tickets produced by Stanford. These excerpts were created for the convenience of the court and do not include all rows, columns, or other extraneous data.

I solemnly swear under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed: Arlington, VA
May 27, 2025

/s/ Thomas Curro

CERTIFICATE OF SERVICE

I certify that on May 27, 2025, I electronically filed the foregoing document with the United States District Clerk for the Southern District of Texas and electronically served all counsel of record via the District Court's ECF system.

/s/ Casey Norman

Exhibit A

← Post

Reply

Andy Slavitt
@ASlavitt

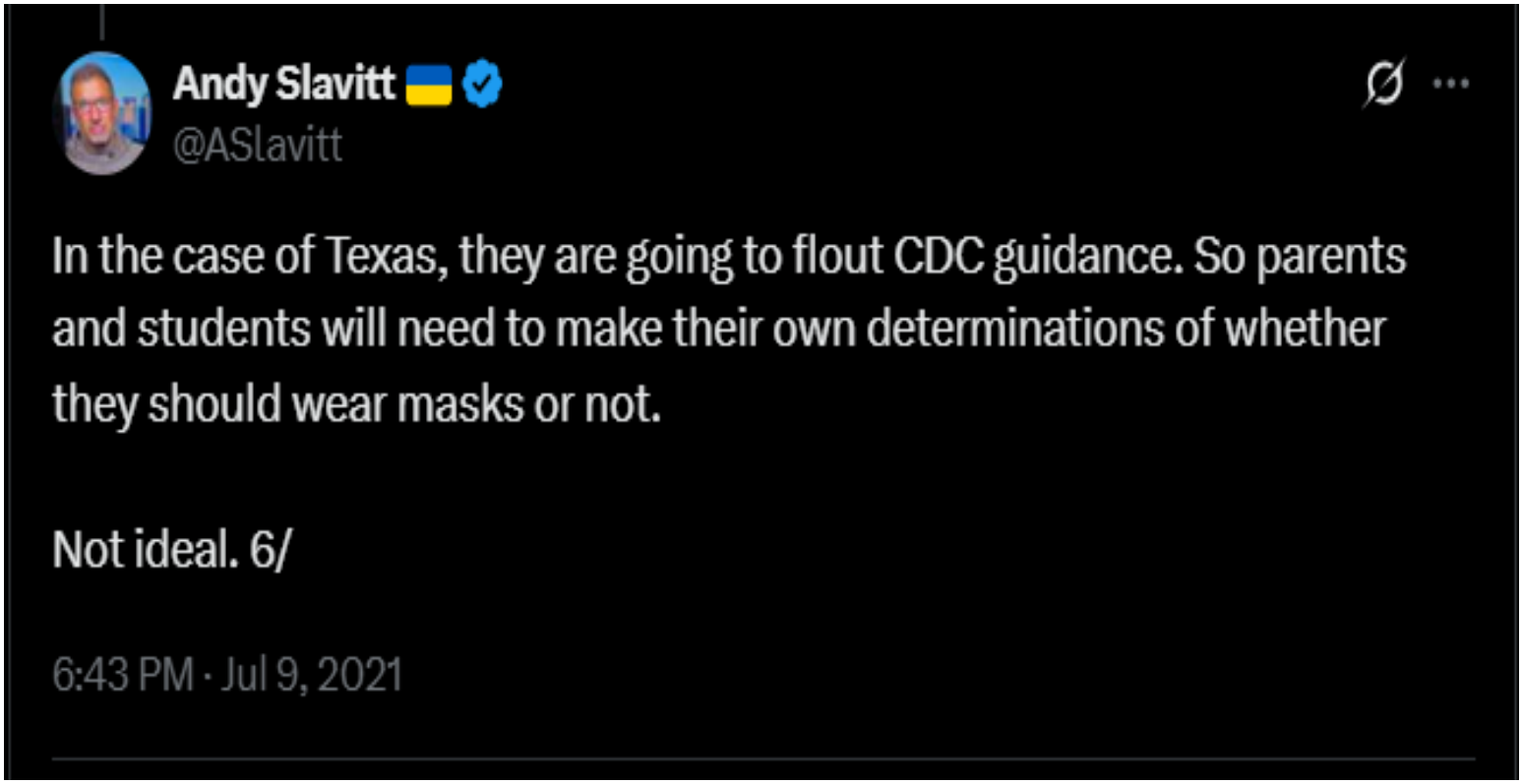
HEY TEXAS: You're a COVID hot spot with 78% case growth in the last 2 weeks.

Donald Trump filed papers to take coverage from 1,958,000 Texans today by repealing the ACA.

7:57 PM · Jun 25, 2020

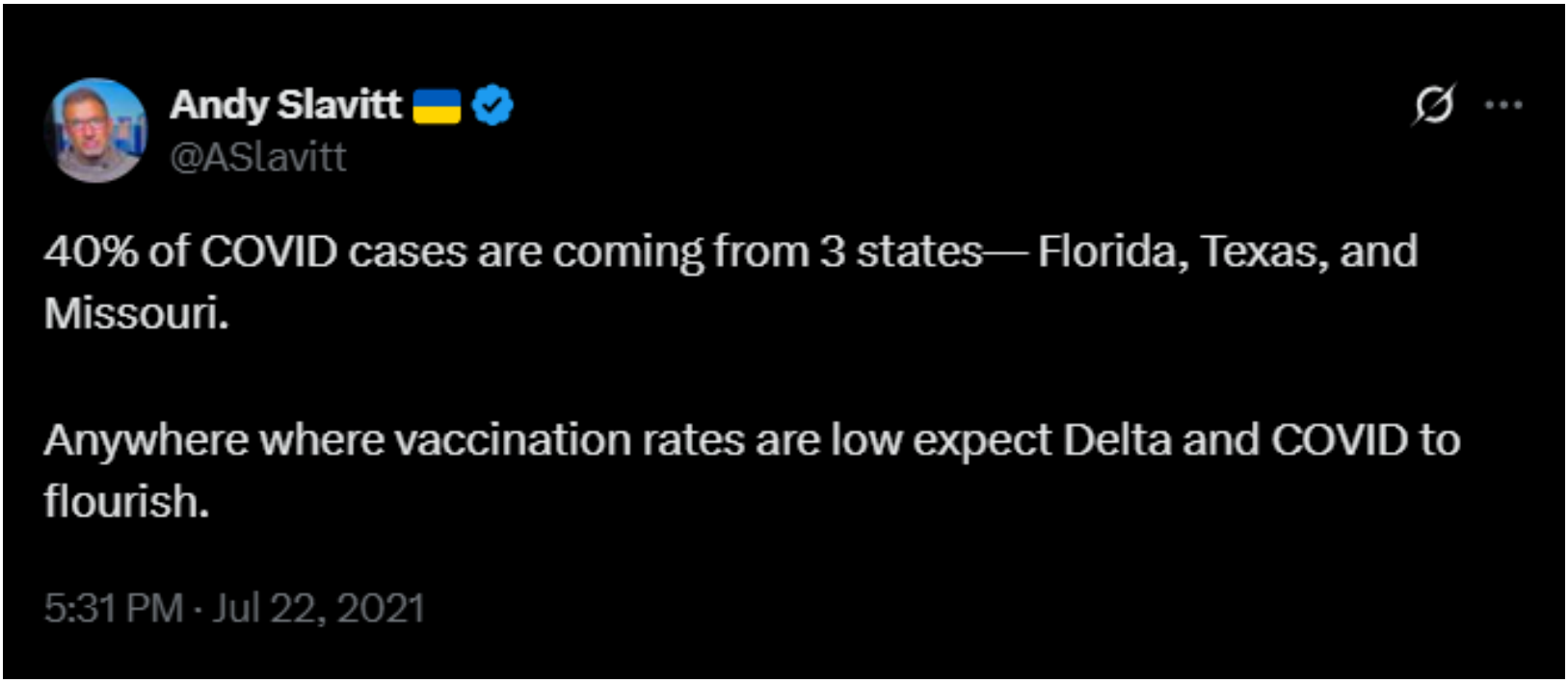
https://x.com/ASlavitt/status/1276303587711188992

Exhibit B



https://x.com/ASlavitt/status/1413629884136521728

Exhibit C



https://x.com/ASlavitt/status/1418322796682235904

Exhibit D

← Post

Andy Slavitt
@ASlavitt

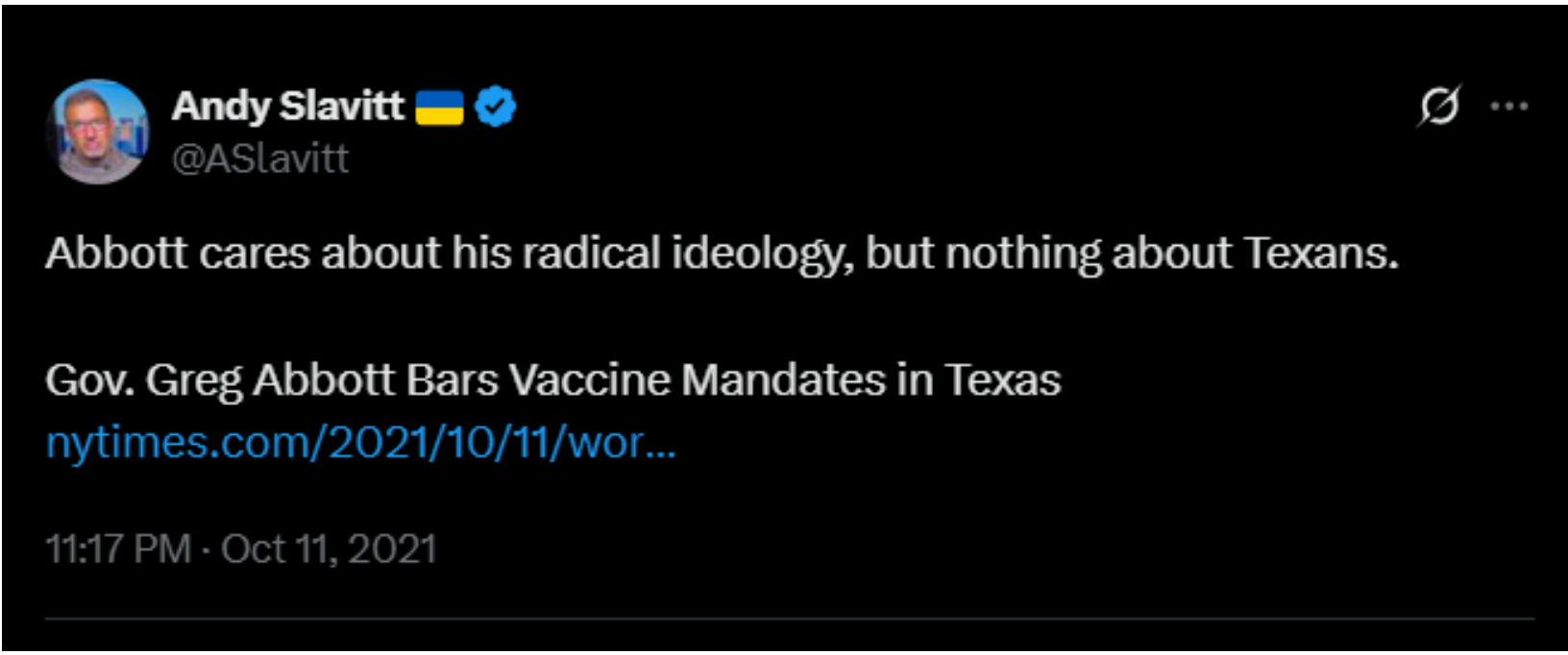
The virus has no better friends than these heavyweights.

From nbcnews.com

1:14 PM · Sep 12, 2021

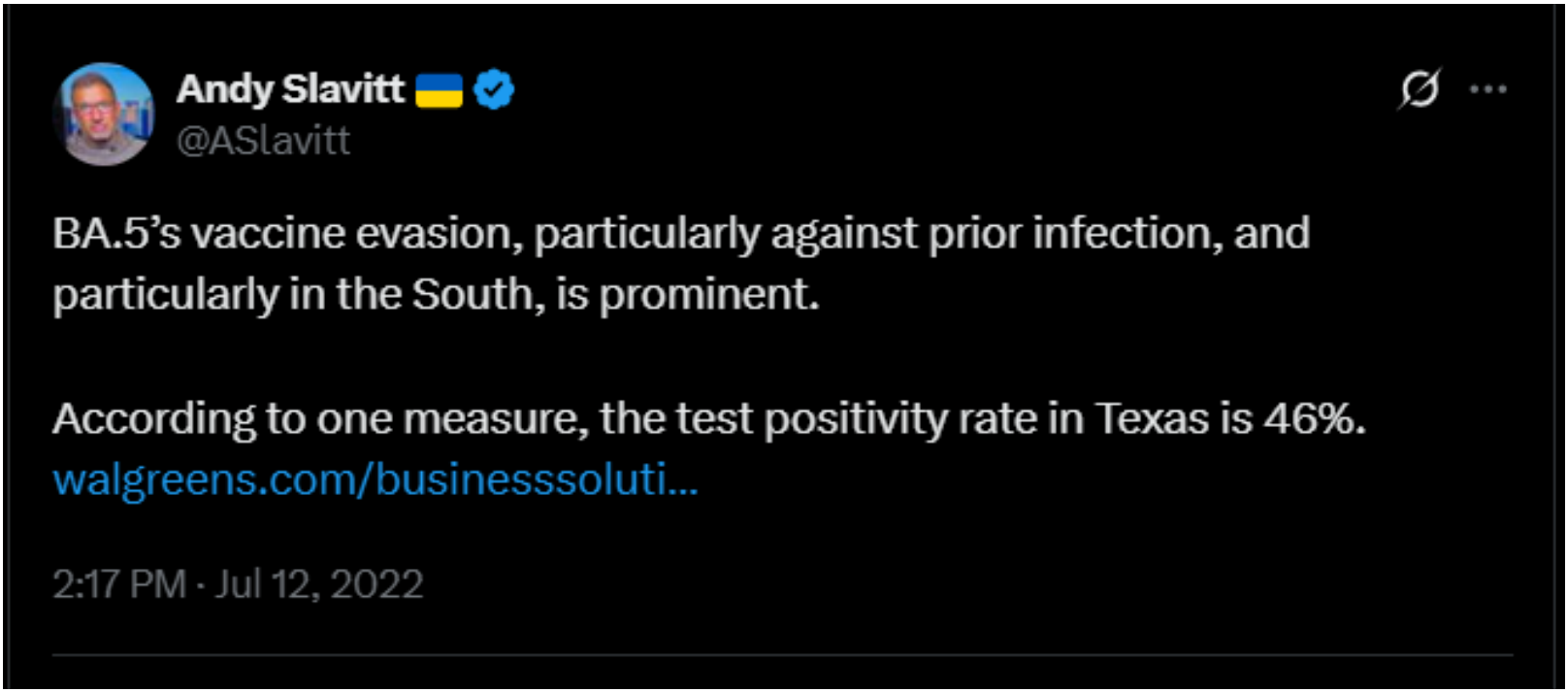
https://x.com/ASlavitt/status/1437102381259362304

Exhibit E



https://x.com/ASlavitt/status/1447763247789080583

Exhibit F



https://x.com/ASlavitt/status/1546921626511351809

Exhibit G

Excerpts from https://docs.google.com/spreadsheets/d/e/2PACX-1vSbP06KE51ds51-Ha6MXkuyoWuCLW168Wz9CMBbhe1BV1lVLxG660eDBUpaVw_Hs5KdhvTvOLS7BUit/pubhtml?widget=true&headers=false#gid=992391887

Summary	Issue Key	Project Name	Created	Custom field (Location of Origin)	Comment	Comment	Comment	Comment	Custom field (Fact Checking or other URLs)
Woman experiences paralysis and seizures day after J&J	VP-716	Virality Project	12/Apr/21 1:49 PM	TX	[REDACTED]	[REDACTED]	... Hi TikTok team, See the following video that reshares a now-deleted video of a woman experiencing paralysis and seizures after the Johnson and Johnson vaccine. The video questions whether users are confident in "this experiment", and has 600k likes. … Thank you, [REDACTED]		
COVID Jab: They skipped all animal trials because animals were dying & went directly to people	VP-874	Virality Project	17/May/21 9:52 AM		[REDACTED]	… Dear Facebook, The following video [spreads a false claim….] that vaccine manufacturers skipped animal trials. [instragram links] Thanks			https://www.texastribune.org/2021/05/17/texas-bob-hall-covid-19-vaccine/ https://apnews.com/article/fact-checking-afs:Content:9792931264#:~:text=AP'S%20ASSESSMENT%3A%20False.,spreading%20misinformation%20about%20vaccine%20trials
Texas doctor testifies to State Senate on 5/6; ~168k views	VP-888	Virality Project	19/May/21 11:35 AM	TX	… Dear Platforms, Please note this video of a Texas doctor making misleading clams regarding, among other things, VAERS death rates and natural immunity, shared on the following URLs : [includes instagram, youtube, twitter, facebook, tiktok] Thanks, [REDACTED]	routing			
Video implying fatal vaccine results on mice	VP-997	Virality Project	11/Jun/21 11:12 AM	Texas	… Dear Platforms, Please note this circulating video that falsely claims early testing of vaccines on animals killed the animals. It also falsely claims that spike proteins in the vaccines will kill humans. [citing twitter, facebook, instagram and other links] Thanks, [REDACTED]	Thanks, [REDACTED]/! On it - Joe			https://archives.fbi.gov/archives/omaha/press-releases/2009/om082009.htm https://www.reuters.com/article/uk-factcheck-mice/fact-check-a-2012-study-did-not-use-mrna-vaccines-or-result-in-animals-dying-from-disease-idUSKBN2A22UW