IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Case No. 25-mc-00063-SKC-CYC

IN RE: DEPARTMENT OF JUSTICE ADMINISTRATIVE SUBPOENA No. 25-1431-030

UNITED STATES'S MOTION FOR LEAVE TO FILE SURREPLY

Respondents move for leave from the Court to file a surreply to Children's Hospital Colorado's Reply, ECF No. 16, in support of its Motion to Quash. In the Reply, Petitioner repeatedly cites to and argues the applicability of a District of Massachusetts decision assessing a similar subpoena. *See In Re: Admin. Subpoena No. 25-1431-019*, 2025 WL 2607784 (D. Mass. Sept. 9, 2025)("BCH Order"), Reply at 1,3 5-6 (Dkt. 16). The citation of a case not published at the time of the United States's Opposition and petitioner's arguments based on the case mean that the United States did not have an opportunity to respond to these new arguments. If the Court is to consider these new arguments as part of the briefing on the Motion to Quash, it should provide the United States with an opportunity to respond to it through a surreply. A proposed surreply is attached to this motion as Exhibit A. The parties have met and conferred regarding this motion and Children's Hospital Colorado opposes the motion for the reasons it memorialized in an email to undersigned counsel. A copy of this email is attached as Exhibit B.

BACKGROUND

Children's Hospital Colorado ("CHC") filed the Motion to Quash on August 8, 2025. Dkt. 1. The United States filed an Opposition on August 29, 2025. Dkt. 10. On September 9, 2025, the United States District Court for the District of Massachusetts entered an order quashing an administrative subpoena issued to Boston Children's Hospital ("BCH Order"). On September 12, 2025, CHC filed a Reply to the United States's Opposition where it cited the BCH Order. The United States should have an opportunity to respond to the BCH Order in this matter as part of the Response to the Motion to Quash.

ARGUMENT

When a district court considers issues raised for the first time in a reply brief, it "robs the [non-moving party] of the opportunity to demonstrate that the record does not support [the moving party's] factual assertions and to present an analysis of the pertinent legal precedent that may compel a contrary result." *Stump v. Gates*, 211 F.3d 527, 533 (10th Cir. 2000). Thus, when a party submits "new materials" in a reply brief, the district court may either: (1) disregard the new material when adjudicating the motion; or (2) permit the opposing party to file a surreply. *See Pippin v. Burlington Res. Oil & Gas Co.*, 440 F.3d 1186, 1192 (10th Cir. 2006) (citing *Beaird v. Seagate Tech., Inc.*, 145 F.3d 1159, 1164-65 (10th Cir. 1998)). "Material," for purposes of this analysis, "includes both new evidence and new legal arguments." *Green v. New Mexico*, 420 F.3d 1189, 1196 (10th Cir. 2005) (citations omitted).

Here, CHC raises the BCH Order and argues that this Court follow the same reasoning in deciding the instant Motion to Quash. Thus, Respondents had no reason or opportunity to respond to CHC's arguments related to the BCH Order. Because the bell cannot be unrung related to CHC's arguments based on the BCH Order, this Court should grant the United States's leave to respond to CHC's Reply. To deny this request would "rob" the Respondents "of the opportunity" to respond to this new request. *Stump*, 211 F.3d at 533. Under the standard set forth in *Stump,* when it is presented in this posture, the United States's is robbed of the opportunity to respond absent a surreply. *Id*.

CONCLUSION

Because CHC's Reply includes arguments and citations to newly published cases, that were not part of the original Motion to Quash, the Court should grant the United States's leave to respond via a surreply.

Dated this 10th day of October 2025.

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA

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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of October 2025, filed the foregoing with the Clerk of Court using the CM/ECF system, and separately emailed to counsel for Children's Hospital Colorado at:

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Dated this 10th day of October 2025.

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