

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

STATE OF NEW YORK, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, et al.,

Defendants.

Case No. 20 Civ. 2340 (EGS)

DEFENDANTS’ REPLY TO COUNTER-STATEMENT OF MATERIAL FACTS

	Plaintiffs’ additional facts as permitted by ¶ 13(d) of the Court’s Standing Order Governing Civil Cases (ECF No. 9).
Deny to the extent that this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit. Otherwise, admit.	63. On October 19, 2020, the U.S. Postal Service’s Office of Inspector General (“OIG”) issued a report “to address specific concerns related to Postal Service changes put in place after the Postmaster General was sworn in on June 15, 2020.” <i>See</i> Defs.’ Ex. 23 (corrected) (ECF No. 70-1), at 1, 26 (“Our scope of this was a nationwide review of the impact of Postal Service operational changes made from June 15, 2020 to September 3, 2020 on mail delivery services.”).
Deny to the extent that this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit. Otherwise, admit.	64. For purposes of preparing its report, the OIG interviewed U.S. Postal Service officials and postal union representatives; obtained, reviewed, and analyzed data and documents related to the changes; analyzed service performance; conducted site visits; and conducted a test mailing. Defs.’ Ex. 23, at 26.

<p>Deny to the extent that this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit. Otherwise, admit.</p>	<p>65. As set forth in the OIG’s report, in “June and July 2020, Postal Service operations executives initiated various significant cost reduction strategies on top of three initiatives the Postmaster General launched to achieve financial targets.” Defs.’ Ex. 23, at 1.</p>
<p>Deny to the extent that this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit. Otherwise, admit.</p>	<p>66. The OIG’s report concluded that, “[a]fter his appointment, the Postmaster General implemented the following three operational and organizational changes in July and August 2020:</p> <ul style="list-style-type: none"> • <i>Elimination of late and extra trips to transport mail.</i> Started July 10, 2020, this initiative was to eliminate all late and extra trips outside of regularly scheduled transportation service. • <i>Organization Restructure:</i> On August 7, 2020, the Postmaster General announced a reorganization of field operations and headquarters functions to align functions based on core business operations. • <i>Expedited Street Afternoon Sortation (ESAS):</i> This initiative began as a pilot program at 384 facilities nationwide on July 25, 2020, and was designed to eliminate excessive pre- and post-tour overtime.” <p>Defs.’ Ex. 23, at 2.</p>
<p>Deny to the extent that this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit. Otherwise, admit.</p>	<p>67. The OIG’s report concluded that “[i]n addition to these three changes, Postal Service operations executives outlined 57 initiatives” known as the “Do It Now FY Strategies” that, according to the agency’s Chief Operating Officer, constituted “‘transformational changes’ in Postal Service operations.” Defs.’ Ex. 23, at 2.</p>

<p>Deny to the extent that this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit. Otherwise, admit.</p>	<p>68. The Do It Now FY Strategies “outlined changes from current operations in each function including mail processing, vehicle services, equipment maintenance, and post office operations (delivery and retail). They included strategies such as eliminating pre-tour overtime in city delivery operations, elimination of certain mail processing operations on Saturday, and alignment of clerk workhours to workload.” Defs.’ Ex. 23, at 10.</p>
<p>Deny. The cited exhibit provides that the referenced initiatives “reflects the status of [the initiatives] as of September 18, 2020 and . . . September 21, 2020.” Defs.’ Ex. 23 at 29, n. 26. Further deny to the extent that the Postal Service has continued a long-running process to reduce “unearned time,” which is the “time that an employee takes to complete those duties over and above the earned time,” but is not implementing an ongoing strategy to eliminate overtime as such. Defs.’ Ex. 10, Curtis Tr. 53:21-23.</p> <p>Also deny to the extent that this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit.</p>	<p>69. Some of the Do It Now FY Strategies are ongoing, including strategies to eliminate overtime. Defs.’ Ex. 23, at 29-31; <i>see, e.g., id.</i> at 30 (listing “Eliminate Pre-Tour Overtime” as “Ongoing”).</p>
<p>Admit that the paragraph accurately quotes a portion of the cited exhibit, but further aver that the OIG report also concludes that “the Postal Service followed applicable legal and policy requirements regarding notification of the Postal Regulatory Commission.” Defs.’ Ex. 23 at 2.</p> <p>Deny to the extent that this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit.</p>	<p>70. The OIG’s report concluded that “[n]o analysis of the service impacts of these various changes was conducted.” Defs.’ Ex. 23, at 1, 2, 8, 13, 24.</p>

<p>Admit that the paragraph accurately quotes a portion of the cited exhibit, but further aver that the OIG report also concludes that “the Postal Service followed applicable legal and policy requirements regarding notification of the Postal Regulatory Commission.” Defs.’ Ex. 23 at 2.</p> <p>Deny to the extent that this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit.</p>	<p>71. The OIG’s report concluded that the U.S. Postal Service’s “operational initiatives should have been analyzed and evaluated ahead of deployment to fully understand the impact of implementation.” Defs.’ Ex. 23, at 24 (“[G]iven the challenges resulting from the COVID-19 pandemic, including reduced employee availability, increased package volume, and a heightened focus on voting by mail, these operational initiatives should have been analyzed and evaluated ahead of deployment to fully understand the impact of implementation.”).</p>
<p>Admit that the paragraph accurately quotes a portion of the cited exhibit, but further aver that the OIG report also concludes that “the Postal Service followed applicable legal and policy requirements regarding notification of the Postal Regulatory Commission.” Defs.’ Ex. 23 at 2.</p> <p>Deny to the extent that this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit.</p>	<p>72. The OIG’s report concluded that the U.S. Postal Service implemented the changes “quickly” and “communicated primarily orally, which resulted in confusion and inconsistent application across the country.” Defs.’ Ex. 23, at 1–2, 8.</p>
<p>Admit that the paragraph accurately quotes a portion of the cited exhibit, but further aver that the OIG report also concludes that “the Postal Service followed applicable legal and policy requirements regarding notification of the Postal Regulatory Commission.” Defs.’ Ex. 23 at 2.</p> <p>Deny to the extent that this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit.</p>	<p>73. The OIG’s report concluded that the U.S. Postal Service executed the changes with higher “velocity and consistency” than it did with different prior year initiatives. Defs.’ Ex. 23, at 13, 24.</p>

<p>Deny to the extent that the paragraph contains an incomplete quote. The complete quote provides, “combined with the ongoing employee availability challenges resulting from the pandemic, negatively impacted. . .” Defs.’ Ex. 23 at 3.</p> <p>Further aver that the OIG report also concludes that “the Postal Service followed applicable legal and policy requirements regarding notification of the Postal Regulatory Commission.” Defs.’ Ex. 23 at 2.</p> <p>Deny to the extent that this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit.</p> <p>Otherwise, admit.</p>	<p>74. The OIG’s report concluded that the “collective results” of the U.S. Postal Service’s changes “negatively impacted the quality and timeliness of mail delivery nationally,” with “mail service performance significantly dropped beginning in July 2020, directly corresponding to implementation of the operational changes and initiatives.” Defs.’ Ex. 23, at 1, 3, 14.</p>
<p>Admit that the paragraph accurately quotes a portion of the cited exhibit, but further aver that the OIG report also concludes that “the Postal Service followed applicable legal and policy requirements regarding notification of the Postal Regulatory Commission.” Defs.’ Ex. 23 at 2.</p> <p>Deny to the extent that this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit.</p>	<p>75. The OIG’s report concluded that the U.S. Postal Service’s changes “[d]elayed mail in post offices, stations, and other facilities,” reaching levels “higher than [prior year] values and even exceed[ing] the average of peak values.” Defs.’ Ex. 23, at 14–15.</p>
<p>Deny to the extent the cited exhibit does not provide a basis to admit the asserted fact, particularly with regard to details regarding the communication that the paragraph describes. Pls.’ Ex. 22.</p> <p>Deny to the extent that supplemental instructions have since been issued to Postal Service employees regarding the use of extraordinary measures in handling and delivering Election Mail in a timely manner. Defs.’ Ex. 20; Defs.’ Ex. 35.</p> <p>Also deny to the extent this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit.</p> <p>Otherwise, admit.</p>	<p>76. The Postal Service recently directed postal employees to cease the long-standing practice of providing a cautionary notice to business customers regarding political and election mail. <i>See</i> ECF No. 59-22 (Pls.’ Ex. 22) (“One communication put forth a directive to immediately cease the long-standing practice of providing a cautionary notice to business customers regarding political mail and election mail”).</p>

<p>Deny to the extent the cited exhibit does not provide a basis to admit the asserted fact, particularly with regard to details regarding the communication that the paragraph describes. Pls.’ Ex. 22.</p> <p>Deny to the extent that supplemental instructions have since been issued to Postal Service employees regarding the use of extraordinary measures in handling and delivering Election Mail in a timely manner. Defs.’ Ex. 20; Defs.’ Ex. 35.</p> <p>Also deny to the extent this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit.</p> <p>Otherwise, admit.</p>	<p>77. Postal clerks have been directed by Postal Service management not to prioritize election ballots received by mail. <i>See</i> ECF No. 59-22 (Pls.’ Ex. 22) (“Additional postal management email communications to the field essentially informed the reader to instruct postal clerks to not prioritize election ballots received via mail. The directive advises the reader to not separate ballots.”).</p>
<p>Deny to the extent this paragraph relies on inadmissible hearsay, and does not set forth an uncontroverted fact that is material to the outcome of this suit.</p> <p>Otherwise, admit.</p>	<p>78. The voter hotline maintained by the New York State Office of the Attorney General “has received over 25 complaints as of October 27 from voters who did not receive their absentee ballots in the mail in a timely manner.” ECF No. 71-4 (Pls.’ Ex. 62) (Clarke Decl. ¶ 12).</p>
<p>Deny. This paragraph relies on inadmissible hearsay.</p> <p>Also deny to the extent this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit.</p>	<p>79. The voter hotline maintained by the New York State Office of the Attorney General “received a complaint from a voter who reported that although they requested their absentee ballot several weeks ago, and that they received an email from the Postal Service on October 10, 2020 indicating that their ballot would be ‘arriving soon,’ they still had not received their absentee ballot on October 22, 2020.” ECF No. 71-4 (Pls.’ Ex. 62) (Clarke Decl. ¶ 13).</p>

<p>Deny. This paragraph relies on inadmissible hearsay. Also deny to the extent this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit.</p>	<p>80. The voter hotline maintained by the New York State Office of the Attorney General has “received a complaint from another voter who reported that they received a notification from the Postal Service on October 5, 2020 indicating that their ballot would be arriving soon, yet, as of October 21, 2020, they had not received their ballot. This complainant contacted the Postal Service many times regarding the status of the absentee ballots, but did not receive any further communications from the Postal Service. In their complaint, this voter reported they now planned to vote at the polls due to the Postal Service’s failure to timely deliver their absentee ballot.” ECF No. 71-4 (Pls.’ Ex. 62) (Clarke Decl. ¶ 14).</p>
<p>Deny to the extent this paragraph relies on inadmissible hearsay, and does not set forth an uncontroverted fact that is material to the outcome of this suit. Otherwise, admit.</p>	<p>81. The voter hotline maintained by the New York State Office of the Attorney General “has also received over 20 complaints as of October 20 about incredibly long lines at voting sites.” ECF No. 71-4 (Pls.’ Ex. 62) (Clarke Decl. ¶ 15).</p>
<p>Deny to the extent this paragraph relies on inadmissible hearsay, and does not set forth an uncontroverted fact that is material to the outcome of this suit. Otherwise, admit.</p>	<p>82. The voter hotline maintained by the New York State Office of the Attorney General has received complaints from multiple voters who have waited over five hours in line to vote. ECF No. 71-4 (Pls.’ Ex. 62) (Clarke Decl. ¶¶ 16-17).</p>
<p>Deny to the extent this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit. Otherwise, admit.</p>	<p>83. The New York State Board of Elections has found that “many of the issues we saw in the June primary and anticipated for the November general election are occurring.” ECF No. 71-5 (Pls.’ Ex. 63) (Kellner Suppl. Decl. ¶ 7).</p>

<p>Deny to the extent that this paragraph suggests or implies that the referenced guidance documents directed U.S. Postal Service employees to return the number of late and extra trips to pre-July levels, or that returning to pre-July levels would result in more efficient operations. Defs.’ Statement of Material Facts Not in Dispute, ECF No. 66-2, ¶¶ 22-25. Also deny to the extent this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit. Otherwise, admit.</p>	<p>84. Despite new guidance documents issued to U.S. Postal Service employees in September and October 2020, <i>see</i> ECF Nos. 59-60, 64-1, the number of late trips and extra trips did not return to pre-July 2020 levels, <i>see</i> ECF No. 71-7 (Pls.’ Ex. 65) (Defs.’ October 29, 2020 Late Trip and Extra Trip Data).</p>
<p>Deny to the extent that this paragraph suggests or implies that there is a causal link between the number of late and extra trips and service performance. The relative decrease in Service Scores throughout 2020 began with the onset of the COVID-19 pandemic in March and continues through the present. See FY20 Q2-FY21 Q1 Weekly Service Performance of Market Dominant Products through Week of Oct. 10, 2020 (Defs.’ Ex. 28). Further deny to the extent that service performance scores improved in August while the use of late and extra trips declined. USPS Congressional Briefing: Transportation & Service Performance Updates (Aug. 31, 2020) (Defs.’ Ex. 27). There are a variety of issues – such as the COVID-19 pandemic, holiday backlogs, natural disasters, and inclement weather – which have contributed to the service delays and are outside of USPS’s control. See Press Release, The U.S. Postal Service Issues New Performance Report for the Week of September 12th Consistent with Performance Metrics Following a Federal Holiday (Sept. 24, 2020) (Defs.’ Ex. 29); Dearing Decl. (Defs.’ Ex. 31) ¶¶ 5-8. Also deny to the extent this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit. Otherwise, admit.</p>	<p>85. Despite new guidance documents issued to U.S. Postal Service employees in September and October 2020, <i>see</i> ECF No. 59-60, 64-1, service performance in October has not returned to pre-July 2020 levels, <i>see</i> ECF No. 71-8 (Pls.’ Ex. 66) (Defs.’ October 29, 2020 Service Performance Data).</p>

<p>Deny to the extent this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit. Otherwise, admit.</p>	<p>86. Nationally, on-time delivery of First Class Mail declined from 88.76 percent for the week of October 3, 2020 to 83.26 percent for the week of October 17, 2020. ECF No. 71-8 (Pls.' Ex. 66) (Defs.' October 29, 2020 Service Performance Data).</p>
<p>Deny to the extent this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit. Otherwise, admit.</p>	<p>87. Nationally, on-time delivery of Marketing Mail declined from 91.36 percent for the week of October 3, 2020 to 88.58 percent for the week of October 17, 2020. ECF No. 71-8 (Pls.' Ex. 66) (Defs.' October 29, 2020 Service Performance Data).</p>
<p>Deny to the extent that this paragraph disregards Postal Service's caution that the cited data does not provide a representatively accurate measurement of Election Mail service performance. <i>See</i> Pls.' Ex. 64. Also deny to the extent this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit. Otherwise, admit.</p>	<p>88. Between October 24 and October 28, 2020, processing scores for outbound non-ballot election mail, which can include items like voter registrations, ranged between 29.88 and 95.930 percent. ECF No. 71-9 (Pls.' Ex. 67) (Defs.' October 29, 2020 Ballot Delivery Data).</p>
<p>Deny to the extent that this paragraph disregards Postal Service's caution that the cited data does not provide a representatively accurate measurement of Election Mail service performance. <i>See</i> Pls.' Ex. 64. Also deny to the extent this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit. Otherwise, admit.</p>	<p>89. Between October 24 and October 28, 2020, processing scores for inbound and outbound ballots ranged between 91.30 and 97.60 percent. ECF No. 71-9 (Pls.' Ex. 67) (Defs.' October 29, 2020 Ballot Delivery Data).</p>
<p>Deny to the extent this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit. Otherwise, admit.</p>	<p>90. October 28, 2020, service performance scores reflected on-time delivery of 88.87% of first class mail around Sacramento, but 81.86% in Southern New Jersey and 61.57% in the Philadelphia metropolitan region. ECF No. 71-8 (Pls.' Ex. 66) (Defs.' October 29, 2020 Service Performance Data).</p>

<p>Deny to the extent this paragraph does not set forth an uncontroverted fact that is material to the outcome of this suit, as prior to October 27, 2020, the Postal Service had issued guidance clarifying that the Cintron guidelines did not ban late/extra trips, and that USPS employees should follow updated, October 16, 2020 guidance. Defs.' Ex. 16. Otherwise, admit.</p>	<p>91. On October 27, 2020, Defendants—for the first time—formally rescinded the Cintron Guidelines via email to Postal Service management. ECF No. 71-6 (Pls.' Ex. 64) (Defs.' October 28, 2020 Notice of Data).</p>
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Dated: November 2, 2020

Respectfully submitted,

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