IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JUDICIAL WATCH, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 1:07-CV-01267 (JR)
	)	
U.S. NATIONAL ARCHIVES AND RECORDS ADMINISTRATION,	)	
	)	
Defendant.	)	
	)	

PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR *OPEN AMERICA* STAY AND MOTION FOR LIMITED DISCOVERY

Plaintiff, by counsel, hereby submits this memorandum in opposition to Defendant's Motion for *Open America* Stay of the Proceedings. For the reasons set forth below, (1) Defendant's motion should be denied, and (2) Plaintiff's accompanying motion for limited discovery should be granted.

MEMORANDUM OF LAW

I. Introduction.

Defendant describes at great length the hurdles it claims to face in order to respond to Plaintiff's Freedom of Information Act ("FOIA") request. None, however, can excuse Defendant's tardiness in responding to Plaintiff's request.

First, more than seven years after taking possession of the records of former President William J. Clinton, and almost two years after receiving Plaintiff's FOIA request, the Clinton Presidential Library ("Library"), which Defendant controls, apparently is prepared to respond

only to a portion of Plaintiff's request.[1] Moreover, Defendant cannot offer a concrete timetable under which it will begin processing the remainder of the request, let alone inform Plaintiff as when it can expect to receive a full and complete response.

Instead, Defendant asks this Court for, in effect, an indefinite stay of this case despite Defendant's admission that it wildly underestimated the public's interest in the records, was woefully unprepared when it started receiving FOIA requests, and remains understaffed and entirely unable to comply with its statutory responsibilities.

Serious questions exist concerning how Defendant is handling Plaintiff's FOIA request. Plaintiff's request apparently has been placed within the Library's byzantine seventeen-part queue structure. At a minimum, this queue structure is violative of the "first in, first out" principle governing FOIA requests. In addition, it appears that the Library is using allegedly scarce resources to process FOIA requests concerning subjects such as "Unidentified Flying Objects," ahead of more timely, public interest requests. *See* Ex. 1 (Fred Lucas, "Clinton Library Answers UFO Theorist, Not USA Today," *Cybercast News Serv.* (Feb. 4, 2008); *see also* Ex. 2 (Clinton Presidential Library, "Inventory for FOIA Request 2006-492-F"). This, along with other issues, raises serious questions as to how processing decisions are in fact being made at the Library. Accordingly, accompanying this memorandum is Plaintiff's motion to conduct limited discovery regarding the processing procedures of the Library. Plaintiff respectfully submits that, under the circumstances, such discovery is necessary before there can be any adjudication of Defendant's motion.

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[1] Defendant's partial response to Plaintiff's April 5, 2006 FOIA request is scheduled to be released on March 20, 2008. *See* Second Supplemental Declaration of Emily Robison ("Robison Second Supp. Dec.") at ¶5.

In the event the Court does not authorize limited discovery at this time, Defendant's motion to stay this case should be denied. Not only for Plaintiff, but for the public interest, Defendant must not be allowed to evade its duty to timely respond to Plaintiff's FOIA request.

II. Factual Background.

Judicial Watch is a nonprofit, educational foundation organized under the laws of the District of Columbia. Judicial Watch seeks to promote integrity, transparency, and accountability in government and fidelity to the rule of law. In furtherance of its public interest mission, Judicial Watch regularly serves FOIA requests on Federal, state, and local government agencies, entities, and offices, and disseminates its findings to the public.

The Presidential Records Act ("PRA"), 44 U.S.C. § 2201 *et seq.*, establishes a five-year moratorium on the disclosure of presidential records after a president leaves office. After five years, presidential records become subject to FOIA requests, unless a president expressly designates a longer period of time, not to exceed twelve years.

Defendant received custody of the records of former President William J. Clinton, including records from the Office of the First Lady from the departing Clinton administration on January 20, 2001. *See* Def.'s Mem. of Points and Auth. In Support of a Stay of the Proceedings ("Def.'s Mem.") at 6. Over the course of the next five years, Defendant claims that it provided training to Library staff and otherwise prepared to receive FOIA requests under the PRA. Def. Mem. at 6-7. On January 20, 2006, the five-year moratorium on FOIA requests for the records of President Clinton expired. According to Defendant, the Library established 17 separate "access queues" for these records, 16 for FOIA requests and one for review of classified documents. *Id.* at 7. Each queue is then further subdivided based on the type of record requested and volume of

responsive records. The Library then rotates through the "queue structure," processing one request per queue. *Id.* at 8. After a request is processed, that queue goes to the "end of the line." *Id.* Defendant describes the queue structure as "continually evolving" and that the Library anticipates "continued flexibility" in how requests are assigned to various queues. *Id.*

According to Defendant, as of February 25, 2008, the Library has processed only 72 of the 436 FOIA requests it has received since it began receiving requests more than two years ago.[2] *Id.* at 9. This allegedly represents 230,004 pages of textual and electronic records and 31,600 audiovisual records.[3] *Id.* The Library has six archivists who, as only part of their job duties, process FOIA requests. *Id.*

Plaintiff submitted its FOIA request on April 5, 2006, seeking access to "First Lady Hillary Rodham Clinton's calendar, to include but not limited to her daily office diary, schedule, day planner, telephone log book, and chronological file." *Id.* The Library responded by stating that approximately 188,000 records may be responsive to the request and further stated that the request was placed in the "complex electronic unclassified processing queue." *Id.* at 10. Of these records, approximately 62,600 were estimated to be textual records and 125,732 were estimated to be electronic records. *Id.* Defendant subsequently reduced the total number of

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[2] Plaintiff notes that in *Judicial Watch v. National Archives*, C.A. No. 07-1987 (PLF), Defendant stated that, as of January 24, 2008, of the 430 FOIA requests received, "archivists at the library have processed a total of 72 FOIA requests, representing a total of approximately 225,094 pages of textual records and 44,363 audio-visual records." See Defendant's Motion to Dismiss, or in the Alternative, for a Stay of the Proceedings at 9. In other words, over the past month, Defendant has not lowered the number of requests to which it needs to respond. That number has, in fact, increased.

[3] According to a November 30, 2007 interview with an archivist employed by Defendant, the number of processed records is approximately 100,000. *See* Exh. 3 (*National Journal*, "Inside the Clinton Archives: Q&A: Sharon Fawcett," at 9 (published Dec. 17, 2007)).

documents responsive to Plaintiff's request to 30,000 textual records only. Def. Mem. at 10, n.1. It found that *none* of the 125,732 previously identified electronic records were responsive. *Id.* Thus, it would appear that Defendant's original estimate of the number and type of records responsive to Plaintiff's request was grossly overestimated. At the moment, Plaintiff has no way of knowing whether or not, had this error be caught earlier, Plaintiff's request might have been placed in a different queue and processed more quickly.

In response to an inquiry by Plaintiff, on August 9, 2006, Defendant informed Plaintiff that 156 FOIA requests were pending before Plaintiff's request as of that date. Def. Mem at 10. It is unclear how many of these requests were submitted before or after Plaintiff's request. *Id.* Subsequently, a portion of Plaintiff's request, constituting approximately 10,000 pages of Hillary Rodham Clinton's daily schedule records, apparently was transferred from the "complex unclassified" queue to a newly-created "multi-request" queue. *Id.* at 11. The remaining 20,000 pages, consisting of telephone log books, were also transferred to the multi-request queue. *Id.* While Defendant states that the remainder of Plaintiff's FOIA request now has 30 requests in front of it for processing, it remains unclear what effect these assignments to various queues had upon Plaintiff's overall position in the queue. *Id.*

Nonetheless, Defendant has belatedly scheduled production of 10,000 of the 30,000 pages responsive to Plaintiff's FOIA request for March 20, 2008. *See* note 1, *supra*. As for the remaining 20,000 pages of Plaintiff's request, Defendant incredibly estimates that it will be "at least" 1 to 2 *years* before it will even begin processing those records. Def. Mem. at 12. No estimate is given as to when Plaintiff can expect any of those 20,000 records to actually be produced. Defendant nonetheless asserts that this action should be, in effect, indefinitely stayed,

citing *Open America v. Watergate Special Prosecution Force*, 547 F.2d 605 (D.C. Cir. 1976). Plaintiff objects to Defendant's failure to provide a concrete estimate of the date by which it will complete, or even begin, its processing of the remaining 20,000 pages of documents responsive to Plaintiff's April 5, 2006 FOIA request. Plaintiff also objects to Defendant's efforts to stay this litigation indefinitely. Defendant has failed to satisfy its burden of demonstrating that a stay is warranted to allow it additional time to complete its processing of responsive records. Moreover, substantial questions of fact have arisen that justify allowing Plaintiff to conduct limited discovery.

III. Argument.

A. Defendant's Motion for an Open America Stay Should Be Denied.

1. FOIA Requires Timely Production.

"The basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed." *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978). FOIA also prevents excessive government secrecy. In enacting FOIA, "Congress sought to open agency action to the light of public scrutiny." *U.S. Department of Justice v. Tax Analysts*, 492 U.S. 136, 142 (1989); *see also Department of Justice v. Reporters Comm.*, 489 U.S. 749, 772 (1989); *Department of Air Force v. Rose*, 425 U.S. 352, 372 (1976). Records are "presumptively disclosable unless the government can show that one of the enumerated exemptions applies." *Consumer Federation of Am. v. Department of Agriculture*, 455 F.2d 283, 287 (D.C. Cir. 2006) (quoting *Bureau of National Affairs, Inc. v. U.S. Dep't of Justice*, 742 F.2d 1484, 1498 (D.C. Cir. 1984)).

Equally important to effectuating the purpose of FOIA is ensuring that agency records be disclosed in a timely manner. As the legislative history of FOIA makes clear, Congress recognized that delay in releasing information can be "tantamount to denial" of access. *See* H. Rep. No. 876, 93rd Cong., 2d Sess., *reprinted in* 1974 U.S. Code Cong. & Admin. News, 6267, 6271. "The value of information is partly a function of time." *Fiduccia v. U .S. Dep't of Justice*, 185 F.3d 1035, 1041 (9th Cir. 1999). Consequently, agencies are required to determine within twenty days of the receipt of a request for records "whether to comply with such request" and "to immediately notify the person making such request of such determination and the reasons thereof." 5 U.S.C. § 552(a)(6)(A)(I). This time limit can be extended by ten working days if the agency determines that "unusual circumstances" exist. 5 U.S.C. § 552(a)(6)(B).

Although nearly two years have passed since Plaintiff submitted its FOIA request to the library on April 5, 2006, Defendant is only now responding in part to Plaintiff's request. In addition, Defendant seeks an indefinite stay for responding to a substantial majority of Plaintiff's request. Defendant's conduct demonstrates a complete disregard for the law.

2. Defendant Failed to Satisfy Its Burden of Demonstrating That a Stay Is Warranted.

FOIA's twenty day time limit may be extended if an agency makes a showing that it is facing "exceptional circumstances" and is "exercising due diligence" in responding to a request. *See* 5 U.S.C. § 552 (a)(6)(C)(I). This "safety valve" provision was "carefully crafted to put a substantial burden on the government to justify to the courts any noncompliance with FOIA time limits." *Open America v. Watergate Special Prosecution Force*, 547 F.2d 605, 617 (D.C. Cir. 1976). In *Open America*, the U.S. Court of Appeals for the District of Columbia Circuit ("D.C.

Circuit") found that "exceptional circumstances" exist only when an agency meets the following test: (1) the agency is deluged with a volume of requests for information "vastly in excess" of that anticipated by Congress; (2) the agency's existing resources are inadequate to deal with the volume of such requests within the time limits set forth by FOIA; *and* (3) the agency can show that it is exercising due diligence in processing the request. *Open America*, 547 F.2d at 616.

In 1996, Congress passed the Electronic Freedom of Information Act Amendments ("E-FOIA Amendments") to address, in part, "the single most frequent complaint about the operation of the FOIA: agency delays in responding to FOIA requests." *See* H. Rep. No. 795, 104th Cong., 2d Sess., *reprinted in* 1996 U.S. Code Cong. & Admin. News, 3448, 3466. In enacting the E-FOIA Amendments, Congress declared:

> In *Open America* . . . the District of Columbia Circuit Court of Appeals held that exceptional circumstances exist when the agency can show it has inadequate resources to process FOIA requests within statutory time limits . . . Relying upon overly broad dictum in this case, agencies have employed the exceptional circumstances -- due diligence exception to obtain judicial approval for lengthy delays whenever they have a backlog.
>
> Backlogs of requests for records under the FOIA should not give agencies an automatic excuse to ignore the time limits.

See H. Rep. No. 795, 104th Cong., 2d Sess., *reprinted in* 1996 U.S. Code Cong. & Admin. News, 3448, 3456-57. With the E-FOIA Amendments, Congress doubled the time allowed to agencies to respond to FOIA requests, but expressly limited those circumstances previously considered exceptional:

> For purposes of this subparagraph, the term "exceptional circumstances" does not include a delay that results from a predictable agency workload of requests under this section, unless the agency demonstrates reasonable progress in reducing its backlog of pending requests.

5 U.S.C. § 552(a)(6)(C)(ii). Courts have denied stays where agencies have shown no more than predictable workloads or have failed to show reasonable progress in reducing the backlog of pending requests. *Leadership Conf. on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 259 (D.D.C. 2005); *Wilderness Society v. U.S. Dep't of the Interior*, 2005 U.S. Dist. LEXIS 20042, *32-34 (D.D.C. September 12, 2005); *Hunter v. Christopher*, 923 F. Supp. 5, 8 (D.D.C. 1996).

i. Defendant Failed to Demonstrate the Existence of "Exceptional Circumstances" Warranting a Stay.

Defendant has failed to demonstrate that "exceptional circumstances" exist warranting a stay of this lawsuit, much less a stay of indefinite duration.

First, Defendant has not demonstrated that the volume of requests it has received is "vastly in excess" of anything contemplated by Congress or that this volume is anything more than a predictable agency workload. Defendant must have been aware that the Library would receive a high volume of FOIA requests, especially considering that: (1) the Clinton presidency was highly controversial and the subject of an unprecedented degree of media and public scrutiny; (2) President Clinton is one of only two presidents to be impeached in the history of the United States; (3) Mrs. Clinton played a particularly prominent role in her husband's presidency; (4) while First Lady, Mrs. Clinton ran for and was elected to the U.S. Senate and currently is a sitting U.S. Senator for the State of New York; (5) Mrs. Clinton had long been considered a likely candidate for the Presidency of the United States and formally declared her candidacy more than a year ago; and (6) if elected, Mrs. Clinton would be the first female President of the United States and the first spouse of a former president to be elected. In short, Defendant should

have known that public interest in the records of the Clinton Library, and in particular the records pertaining to Mrs. Clinton's calendars, would be substantial, and it also should have known that the number of requests for records would likely exceed by a substantial margin the number of requests received by the libraries of President Clinton's predecessors. It simply is not credible for Defendant to assert that it has been "burdened" with an "unprecedented" number of FOIA requests. A predictable workload yields nothing more than a predictable backlog.

Second, the number of records at issue here – 20,000 pages of textual records out of a total of approximately 78 million pages – does not constitute an "exceptional circumstance" under FOIA, nor should it excuse Defendant's delay in failing to meet FOIA's statutorily mandated time period. Defendant must have been fully aware, long before the five-year moratorium on the disclosure of Clinton presidential records expired, of the volume of records the Library would be required to review in order to process and respond to FOIA requests. Under the PRA, Defendant had five years time to coordinate, organize, and index the Library's records in order to prepare for the inevitably large number of FOIA requests the Library would likely receive. Nonetheless, Defendant admits the Library waited until shortly before the moratorium expired to send two of its archivists to the George H.W. Bush Presidential Library in College Station, Texas to review the Bush Library's handling of FOIA requests. Def.'s Mem. at 7. Defendant's assertion that the Library's staff participated in "one or more" training exercises and was briefed via telephone conference by Defendant's staff on "FOIA processing issues" demonstrates a particularly lackluster effort to try to satisfy its FOIA obligations. *Id.*

Third, "inadequate staff, insufficient funding or a great number of requests are not within the meaning of 'exceptional circumstances' as that language is used in the statute nor were they

within the contemplation of its framers as evidenced by the legislative history." *Hamlin v. Kelley*, 433 F. Supp. 180, 182 (N.D. Ill. 1977). Defendant has had years to address this alleged deficiency, but has failed to do so. Hence, Defendant's claim that the Library's resources are insufficient to address the number of FOIA requests it receives does not justify a stay.

In addition to not being able to demonstrate "exceptional circumstances," Defendant has failed to show that the Library is making reasonable progress in reducing its backlog of pending requests. Instead, it appears that the backlog of requests is multiplying at an ever-increasing rate. Defendant asserts that the Library received 211 FOIA requests in the first three months following the expiration of the PRA moratorium, totaling an estimated 5,260,000 pages. Def.'s Mem. at 9. Of these 210 FOIA requests, it has taken the Library more than two years to process only 72 requests. *Id.* Since the first three months, however, the Library received an additional 225 requests, totaling approximately 10,500,000 pages. *Id.* Clearly, the Library has not gained any ground. Rather, it appears to be falling further behind as its backlog is increasing.[4] Defendant's request for a stay should be denied for the additional reason that the Library has failed to demonstrate reasonable progress in reducing its backlog of pending requests.

ii. Defendant Failed to Demonstrate That it Exercised "Due Diligence" in Responding to Plaintiff's Request.

Defendant's effort to show "due diligence" in responding to Plaintiff's request also is lacking. Defendant appears to try to make this showing by citing budgetary proposals for possible future increases in personnel for Fiscal Year 2009 and a 2007 in-house study conducted

[4] According to a published interview, the Library anticipates processing only 200,000 pages in 2008. *See* Exhibit 3.

by the Office of Presidential Libraries and Defendant's Presidential Materials Staff discussing ways to achieve faster processing. Def.'s Mem. at 9. Neither of these points demonstrate that Defendant has acted with due diligence in processing *Plaintiff's* request. Instead, the possibility of added personnel and "streamlining" of the FOIA request process only demonstrates how the Library *might* treat *future* FOIA requests with greater diligence. Moreover, Defendant has not demonstrated that it exercised "due diligence" *from the outset* in order to qualify for the relief Defendant seeks here. *Oglesby v. Department of the Army*, 920 F.2d 57, 62 n.3 (D.C. Cir. 1990) ("The court [has] authority to allow the agency additional time to examine requested records in exceptional circumstances where the agency was exercising due diligence in responding to the request *and had been since the request was received*.") (quoting H.R. Conf. Rep. No. 1380, 93 Cong., 2d Sess. 11 (1974)) (emphasis added).

The Library has not, in fact, treated Plaintiff's request with due diligence. Defendant admits that its original estimate of the number and type of records responsive to Plaintiff's request was wildly inaccurate. It originally estimated that there were approximately 188,000 records responsive to the request, of which 125,732 were electronic records and 62,600 were textual. It now asserts that none of the 125,732 records are responsive and only 30,000 of its original estimate of 62,600 textual records are responsive. Defendant fails to explain how this huge overestimate of the number and type of records responsive to Plaintiff's request has affected the processing of the request. It also appears that the request originally was placed – erroneously – in the "complex electronic unclassified" queue even though *none* of the responses to the request are electronic. Defendant does not even attempt to explain how such clear error could constitute "due diligence."

In addition, Defendant admits that, after almost two years, it still cannot state with certainly when it can even begin processing the majority of Plaintiff's FOIA request. Def.'s Mem. at 12. Such treatment simply cannot amount to due diligence. This is particularly true when the Library apparently has been using its alleged scarce resources to process less newsworthy FOIA requests. According to one published news account and the Library's own website, the Library has responded to requests on UFOs, "Roswell New Mexico," Area 51, and even a surprise birthday party for President Clinton, featuring the music group "Greasy Greens." *See* Exhibits 1, 2. Not only does this fail to demonstrate due diligence, but it raises factual issues concerning how, in fact, FOIA requests are being selected for processing.

Defendant also claims that it is entitled to a due diligence finding because its queue structure allegedly is part of a "larger, complex first-in first-out" queue system. Def.'s Mem. at 19. While an agency may establish due diligence by assigning all requests on a "first in/first out basis" (*Open America*, 547 F.2d at 615), that is not simply not what Defendant has created here. The queue structure created by Defendant is a byzantine and opaque system by which some or all parts of a FOIA request may end up in any one of 17 separate "access queues." Def.'s Mem. at 7-8. Each of these 17 queues apparently is then subdivided into five subgroups, based on the type of record requested and the volume of responsive records. *Id.* at 8 After assigning a FOIA request to one of these queues, the Library then "rotates" through the "queue structure," processing one request per queue. *Id.* After a request is processed, that queue goes to the "end of the line." *Id.* Adding to the uncertainty, Defendant states that the queue structure is "continually evolving" and the Library anticipates "continued flexibility" in how requests are assigned to various queues. *Id.*

Such a system cannot be said to constitute a "first-in first-out" system. As described by Defendant, a request is placed in a particular queue based on the type of records requested, not based on when it was received. Processing of a particular request must wait while the queue system "rotates" back to the particular queue in which the request was placed. As a result, if a request goes into a queue already containing an unusual number of other requests, by the time the system rotates back to that queue, other later-in-time requests will inevitably have been processed. As a result, it appears that a particular request could actually lose substantial ground in the overall queue structure, as other queues fill up with requests and are processed. It is clear, however, that this queue structure is not based on the first-in first out principle, and therefore cannot demonstrate due diligence by Defendant.

In sum, Defendant has failed to carry its burden of demonstrating that "exceptional circumstances" exist or that it has exercised "due diligence" in responding to Plaintiff's request. As a result, Defendant has failed to show that any stay, much less a stay of indefinite duration, is warranted.

B. Plaintiff Should Be Allowed to Conduct Limited Discovery.

Defendant's failure to properly respond to Plaintiff's FOIA request raises significant questions of fact that are directly related to Defendant's request for a stay. A full and complete understanding of the Library's "queue" system, and Plaintiff's position in the queue, is necessary before any request for a stay can be adjudicated by the Court. Plaintiff respectfully suggests that the answers to these questions, if Plaintiff is permitted to obtain them through limited discovery, would be in the public interest as well as its own.

Limited discovery regarding certain factual matters is permitted in a FOIA case, and is liberally granted when jurisdiction is at issue. *See, e.g., CREW v. Office of Admin.*, No. 07-964 (D.D.C. Feb. 11, 2008) (CKK) (order authorizing jurisdictional discovery in FOIA/PRA case); *Public Citizen v. FDA*, 997 F. Supp. 56, 72 (D.D.C. 1998) (permitting discovery for "investigating the scope of the agency search for responsive documents, the agency's indexing procedures, and the like"). In this case, significant questions exist as to how the queue system functions, whether Plaintiff's request was properly placed in the queue, whether Plaintiff's request will be processed on a "first-in first-out" basis, and how the Library's resources are being utilized. The limited discovery proposed by Plaintiff would seek answers to these questions. Only after these questions are answered can Defendant's request for a stay be adjudicated properly. Questions to be answered in discovery would include:

- Have less timely FOIA requests been processed ahead of Plaintiff's request and, if so, how many?
- What input did Defendant's original, grossly erroneous estimate of the number and type of records responsive to Plaintiff's request have on the placement of the request in the queue structure?
- When Plaintiff's request was transferred from the "unclassified complex" queue to the "multi-request" queue, what effect did this have on the request's "place in line"?
- Of the 156 requests allegedly pending before Plaintiff's request as of August 9, 2006, how many were submitted before and how many were submitted after Plaintiff's request?

- Of the 30 requests allegedly currently pending before Plaintiff's request, how many were submitted before and how may were submitted after Plaintiff's request?
- How many FOIA requests involving "Unidentified Flying Objects" have been received, when were they received, and what is their status in queue structure?

In short, the objective of limited discovery would be to understand exactly where Plaintiff's request falls within the queue structure, how this decision was made, and the effect this has had on the timeliness of the processing of Plaintiff's request.

Plaintiff, and the public, are entitled to understand why Plaintiff's and other FOIA requests are not being processed. Limited discovery regarding Plaintiff's request will help answer these questions prior to any stay being entered.

IV. Conclusion.

For the foregoing reasons, Defendant's request for an indefinite stay of this lawsuit pursuant to *Open America* should be denied. At a minimum, Plaintiff should be allowed to conduct limited discovery on the factual issues discussed above before any stay is entered.

Date: March 17, 2008

Respectfully submitted,

JUDICIAL WATCH, INC.

/s/ Paul J. Orfanedes
D.C. Bar No. 429716
/s/ Jason B. Aldrich
D.C. Bar No. 495488
501 School Street, S.W., Suite 500
Washington, DC 20024
Tel: (202) 646-5172
Fax: (202) 646-5199

Attorneys for Plaintiff

LOCAL RULE 7.1(m) CERTIFICATE OF COUNSEL

On March 17, 2008, I contacted Helen H. Hong, Esq., counsel for Defendant, by telephone, to confer, and to inquire whether her client would consent to Plaintiff's Motion for Limited Discovery. Ms. Hong stated that her client will oppose Plaintiff's motion.

/s/ Jason B. Aldrich