

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

JUDICIAL WATCH, INC.,)	
)	
<i>Plaintiff,</i>)	
)	Civil Action No. 12-cv-2034-RBW
v.)	
)	
U.S. DEPARTMENT OF STATE,)	
)	
<i>Defendant.</i>)	
)	

PLAINTIFF’S NOTICE OF FILING PROPOSED PRESERVATION ORDER

Pursuant to the Court’s September 3, 2015 Order, plaintiff Judicial Watch, Inc. by and through counsel, respectfully submits the attached Proposed Preservation Order. In connection therewith, plaintiff briefly highlights certain issues which demonstrate the need for this Preservation Order:

1. The August 12, 2015 letter from David Kendall only specified that copies of the paper records already turned over to the Defendant were being preserved.¹
2. A separate letter from Mr. Kendall to the State Department indicates neither former Secretary Clinton nor Mr. Kendall believes they are under a current obligation to preserve records they deem personal, or to return such records to the Defendant for a formal determination.²
3. Although the original physical server itself is now in the possession of the FBI and is subject to other preservation obligations, that server was reportedly “wiped” to erase all data, and it

¹ August 12, 2015 Letter from David E. Kendall to the Honorable Ron Johnson, available at http://pdfserver.amlaw.com/nlj/kendall_letter_20150812.pdf .

² August 21, 2015 Letter from David E. Kendall to the Honorable Patrick Kennedy, p. 3, available at <http://www.judicialwatch.org/wp-content/uploads/2015/08/08-26-15-JW-v-State-Kendall-ltr-01363.pdf> (“Under the FRA and implementing regulations, she had no obligation to include in that set her personal e-mails, or to retain such personal e-mails.”).

is currently unknown whether that server contains any recoverable data or how many potentially responsive records from 2009-2013 remain on it.³

Dated: September 4, 2015

Respectfully submitted,

s/ Chris Fedeli _____

Chris Fedeli

JUDICIAL WATCH, INC.

425 Third Street, S.W., Suite 800

Washington, DC 20024

Tel: 202-646-5185

cfedeli@judicialwatch.org

Counsel for Plaintiff

³ March 27, 2015 Letter from David E. Kendall to the Honorable Trey Gowdy, p. 6, available at http://democrats.benghazi.house.gov/sites/democrats.benghazi.house.gov/files/documents/2015_03_27_Kendall_to_TG_re_Response_to_March_4_Subpoena.pdf.

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

JUDICIAL WATCH, INC.,)	
)	
<i>Plaintiff,</i>)	
)	Civil Action No. 12-cv-2034-RBW
v.)	
)	
U.S. DEPARTMENT OF STATE,)	
)	
<i>Defendant.</i>)	
_____)	

[PROPOSED] PRESERVATION ORDER

As discussed at the September 3, 2015 status hearing, certain contents of the clintonemail.com server (the “Server”) from the years 2009-2013 have apparently not been provided to the Defendant. The Defendant has not confirmed to Plaintiff or the Court whether copies of these records still exist and will be preserved throughout the pendency of this litigation.

This Court finds that preservation must be required until such a time as the parties and this Court can fully brief and consider relevant questions of law, including but not limited to whether a server that was serviced by State Department IT employees and used extensively for government business is a government system of records, and whether, given the facts, copies of the original complete Server contents for the relevant time period remain Defendant’s property until reviewed by current government employees or officials. Accordingly, it is hereby

ORDERED that the Defendant shall take all reasonable steps to determine whether copies of clintonemail.com documents and data from 2009-2013 (excluding data already returned to the Defendant) exist anywhere separate and apart from the clintonemail.com Server, and if they exist, to ensure they are preserved. These contents include, but are not limited to: the 31,380 reportedly withheld hdr22@clintonemail.com records; any emails associated with Huma

Abedin's clintonemail.com account; and any other emails or documents of any other current or former government employee or official during the relevant time period.

ORDERED that the Government shall send letters to former Secretary Hillary Clinton, Mr. David Kendall (in his capacity as a potential bailee of government property), and Platte River Networks enclosing this Order and requesting they confirm in writing, under penalty of perjury: 1) whether they currently have possession, custody, or control of copies of any of the contents of the Server from 2009-2013 not already returned to the Defendant; 2) whether they are aware of any other parties who may possess or control copies of the Server contents from 2009-2013 not already returned to the Defendant; and 3) the identities of the parties referenced in question 2. In these letters, the Defendant shall also instruct Clinton, Kendall, and Platte River Networks to return, in their native format, all above-described records that may exist. Defendant shall request a response to these letters no later than September 21, 2015.

ORDERED that no later than September 22, 2015, Defendant shall file to this docket: copies of its letters to Clinton, Kendall, and Platte River Networks; any responses received to those letters; and a statement informing the Court of Defendant's compliance with this Order.

Date

Reggie B. Walton
United States District Judge