

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

JUDICIAL WATCH, INC.,)	
)	
Plaintiff,)	Civil Action No. 13-cv-1363 (EGS)
)	
v.)	
)	
U.S. DEPARTMENT OF STATE,)	
)	
Defendant.)	

**PLAINTIFF’S OPPOSITION TO DEFENDANT’S MOTION FOR
PARTIAL STAY PENDING RESOLUTION OF ITS MOTION FOR
DESIGNATION OF COORDINATING JUDGE**

Plaintiff Judicial Watch, Inc., by counsel, respectfully submits this opposition to Defendant’s motion. As grounds therefor, Plaintiff states as follows:

MEMORANDUM OF LAW

I. Introduction.

Defendant’s motion for an indefinite stay of proceedings should be denied. Defendant has presented no evidence whatsoever that proceeding on course in this case will, in any way, adversely affect any other cases. Moreover, as Plaintiff demonstrates below, the relief sought by Defendant will slow, if not stop entirely, the substantial progress that the Court and the parties have made in resolving the few issues that remain.

Since the reopening of this case in June 2015, the Court has held two status hearings and has scheduled another two hearings for September 16, 2015 and October 1, 2015. The Court also has issued at least six orders. In addition, the parties either jointly or separately have docketed no less than 10 filings with the Court. As a result of this activity, only two significant questions remain: whether any additional records that are potentially responsive to Plaintiff’s

FOIA request exist and, if so, where they may be located. As the first step to resolving this issue, the Court ordered Defendant to establish a dialogue with the FBI and to provide the Court with an update by September 21, 2015. Now, without any evidence whatsoever that an indefinite stay is necessary to avoid conflicts with other courts, Defendant requests that the Court stay this order and prevent the case from moving forward. The request should be denied.

II. Defendant Failed to Meet and Confer.

Defendant failed to meet and confer before it moved for a stay. Defendant has filed a motion to stay indefinitely two aspects of this case. First, Defendant seeks to stay “the search and processing of certain additional records that have been provided to it by Ms. Mills and Ms. Abedin.” *See* Defendant’s Motion for Partial Stay Pending Resolution of Its Motion for Designation of Coordinating Judge (“Def’s Mot.”) at 2-3. Second, Defendant seeks to stay the Court’s August 20, 2015 Order, which requires Defendant to establish a dialogue with the FBI and provide an update to the Court by September 21, 2015. *Id.*

Local Rule 7(m) requires that “[b]efore filing any nondispositive motion in a civil action, counsel shall discuss the anticipated motion with opposing counsel *in a good-faith effort to determine whether there is any opposition to the relief sought and, if there is, to narrow the areas of disagreement.*” LCvR 7(m) (emphasis added). Prior to Defendant filing its motion for a stay, an attorney who purportedly represents Defendant but has not entered his appearance in this case sent an email to all Judicial Watch attorneys assigned to FOIA cases involving Plaintiff and Defendant. The email stated:

[T]he Department will be filing a motion in each of the above-listed cases seeking a stay of those portions of each case addressing the documents provided to the Department by former Secretary Clinton and the other former employees until the coordination motion is decided, and, if it is granted, until the coordinating judge

issues an order determining how to proceed in the cases listed in that motion. The stay sought would not affect those portions of the cases that deal with the search and production of other documents.

See September 1, 2015 Email from Robert Prince, which is attached as Exhibit A. This email fails to satisfy Local Rule 7(m) in at least three ways.

First, the email in no way states that Defendant would be seeking a stay of the Court's August 20, 2015 Order requiring Defendant to establish a dialogue with the FBI and provide an update to the Court by September 21, 2015. Second, as is evident from the entire email chain, which is attached as Exhibit B, Defendant did not allow for the parties to fully discuss the motion. Plaintiff not only sought to fully understand what Defendant intended to file, but Plaintiff also again proposed that the parties meet and discuss the issue. Instead, Defendant filed its "coordination motion" and the motion to stay in this case. Third, there was no attempt by Defendant whatsoever to narrow the areas of disagreement. Had Defendant meaningfully conferred with Plaintiff about the remaining searches to be conducted of certain additional records that have been returned by Ms. Mills and Ms. Abedin, Defendant would have learned that Plaintiff is willing to reasonably coordinate such production as necessary. By not properly conferring with Plaintiff, Defendant is unnecessarily burdening the Court with this issue. For this reason alone, Defendant's motion should be denied.

III. Defendant's "Coordination Motion" – or Whatever It Is – Is Unlikely To Succeed.

On September 2, 2015, Defendant filed a "miscellaneous action," seeking to have the Chief Judge order 16 district judges to transfer more than 30 Freedom of Information Act ("FOIA") lawsuits, including at least 16 lawsuits filed by Judicial Watch, to a "coordinating

judge” at least for a period of time.¹ See United States Department of State’s Motion for Designation of Coordinating Judge and Memorandum in Support at 15. Regardless of how Defendant describes it, this “miscellaneous action” is a new lawsuit. It suffers from numerous fatal flaws, not the least of which is Defendant’s failure to identify any basis for the District Court’s subject matter jurisdiction or demonstrate why the relief it seeks is properly the subject of a miscellaneous action. Defendant also has failed to identify any basis for the District Court to assert personal jurisdiction over respondents – the FOIA requestors who have bought the more than 30 lawsuits in question. There plainly has been no service of process, and mere notice of an action is no substitute for proper service of process. See, e.g., *Omni Capital Int’l Ltd. v. Rudolf Wolff & Co.*, 484 U.S. 97, 104 (1987); see also *Ibiza Business Ltd. v. United States*, 2010 U.S. Dist. LEXIS 70903 (D.D.C. July 8, 2010) (Lamberth, J.) (denying motion for default judgment in miscellaneous action due to insufficiency of service of process). Defendant also failed to join at least 16 indispensable parties, namely the district judges against whom they seek relief.

Most fatal of all, however, is the complete absence of any substantive legal basis for Defendant’s claim. One district judge cannot order another district judge to take action in a case pending before that judge. *Klayman v. Kollar-Kotelly*, 2013 U.S. App. LEXIS 10148 (D.C. Cir. May 20, 2013), *reh’g denied* 2013 U.S. App. LEXIS 16769 (D.C. Cir. Aug. 12, 2013), *reh’g en banc denied* 2013 U.S. App. LEXIS 16770 (D.C. Cir. Aug. 12, 2013); see also *Celotex Corp. v. Edwards*, 514 U.S. 300, 313 (1995); *Jones v. Supreme Court of the United States*, 405 Fed. Appx. 508 (D.C. Cir. 2010) (per curium); *Prentice v. United States District Court*, 307 Fed. Appx. 460 (D.C. Cir. 2008) (per curium); *Adams v. United States District Court*, 2014 U.S. Dist.

¹ To avoid confusion, Plaintiff uses the numbers identified by Defendant in its “coordination motion.”

LEXIS 151044 (D.D.C. Oct. 23, 2014) (Berman Jackson, J.); *Mason v. Kahn* 2008 U.S. Dist. LEXIS 50258 at *1 (D.D.C. June 30, 2008). Not only does a district judge lack such power, but the District Court lacks subject matter jurisdiction to consider a claim that it does. *Klayman*, 2013 U.S. App. LEXIS 10148 at *2.

In *Klayman*, the plaintiff filed an action seeking, among other relief, to have one district judge issue an injunction against another district judge. Then Assistant United States Attorney Rudolph Contreras – now Judge Contreras – argued to Judge Leon that he had no authority to issue an order to Judge Kollar-Kotelly: “This Court lacks jurisdiction to order a District Judge to take judicial action in cases pending before that judge.” Defendants’ Memorandum in Support of Motion to Dismiss at 6, *Klayman v. Kollar-Kotelly, et al.*, Case No. 11-1775 (RJL) (D.D.C. Dec. 5, 2011) (ECF No. 11). Judge Leon agreed. *Klayman v. Kollar-Kotelly*, 892 F. Supp.2d 261 (D.D.C. 2012). So did the appellate court, which summarily affirmed. *Klayman*, 2013 U.S. App. LEXIS 10148 at *1. The relief Defendant seeks – that a district judge order 16 other district judges to transfer more than 30 FOIA lawsuits to a single “coordinating judge” – is unwarranted by any existing law. Fed.R.Civ.P. 11(b)(2). Nor is it warranted by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law. *Id.*

In addition, Local Civil Rules 40.5(c) and 40.6(a), both of which Defendant cites, also do not provide a legal basis for the relief Defendant seeks. Both rules make clear that the assignment and transfer processes they establish are effectuated only with the consent of the judges involved. Again, no district judge can order another district judge to do anything. Defendant’s motion for an indefinite stay should be denied because its “coordination motion” is unlikely to succeed.

IV. An Indefinite Stay Is Inappropriate.

Notwithstanding Defendant's failure to confer or the fact that its "coordination motion" is unlikely to succeed, an indefinite stay is inappropriate. Since this case was reopened on June 19, 2015, significant progress has been made in resolving the few outstanding issues. Defendant now wants to halt this progress.

When the Court reopened this case on June 19, 2015, three general issues existed:

1. Defendant had not searched the 55,000 pages of emails returned by Mrs. Clinton for records responsive to Plaintiff's FOIA request;
2. Defendant had not searched the emails returned by Ms. Abedin and Ms. Mills; and
3. Defendant had not conducted additional searches reasonably calculated to uncover all responsive records.

Since then, in less than three months, Defendant has (1) agreed to re-search the system of records it originally searched for records responsive to Plaintiff's FOIA request; (2) requested that Mrs. Clinton, Ms. Abedin, and Ms. Mills return all records potentially responsive to Plaintiff's FOIA request; (3) searched the 55,000 pages of emails returned by Mrs. Clinton for records responsive to Plaintiff's FOIA request; (4) searched the emails returned by Ms. Abedin and Cheryl Mills as of June 30, 2015; and (5) since June 30, 2015, received additional records from Ms. Abedin and Ms. Mills that Defendant has said it will search. In short, the first issue has been completely resolved, and the second and third issues have been partly resolved and continue to efficiently move towards resolution.

What remains at issue is simple and straightforward. First, Defendant does not seek to stay its revised searches of the system of records that it originally searched. Based on statements made by Defendant's counsel during the August 20, 2015 Status Hearing, it appears that the

search has been completed and Defendant is in the process of preparing approximately 200 pages for production. This process should continue on course.

Second, Defendant has said it will search the records returned by Ms. Abedin and Ms. Mills since June 30, 2015 for records responsive to Plaintiff's FOIA request. If Defendant needs additional time to conduct these searches, Plaintiff does not oppose a reasonable schedule for completion. However, without knowing the number of records as well as the number of pages that were returned by both individuals and whether the records were returned in native format or in paper form, Plaintiff does not know and cannot know what is reasonable. Plaintiff therefore requests that Defendant identify the total number of records and pages that were returned by Ms. Abedin and Ms. Mills since June 30, 2015 and that have not already been searched as well as whether such records were returned in native format or paper form. Once Defendant identifies this information, the parties can meaningfully meet and confer and attempt to agree to a reasonable production schedule.

Third, the Court must resolve whether any additional records that are potentially responsive to Plaintiff's FOIA request exist and, if so, where they may be located. Those records undoubtedly include all emails sent or received by Mrs. Clinton from any email address on the clintonemail.com system as well as all emails sent or received by Ms. Abedin on the same system. If such records do exist, Defendant has an obligation to recover those records and search them for responsiveness. August 20, 2015 Transcript at 20 ("If any e-mails pertaining to official government business are found in the 30,000, quote, unquote, personal e-mails through the FBI, DOJ search, will those documents be returned to State? I guess that would be the second part of that directive. I think the State Department should ask they be returned.")

As the first step of this process, the Court ordered Defendant to open a dialogue with the FBI “about recovery of potential information that may be responsive to [Plaintiff’s] FOIA request.” August 20, 2015 Transcript at 44. Two weeks later – and conveniently the day before Defendant moved to stay the Court’s order – Defendant initiated the dialogue with the FBI. *See* September 2, 2015 Letter, which is attached as Exhibit C. Now Defendant seeks to stop that dialogue. It should not be stopped.

Now that the dialogue has finally been initiated, it is assumed that the “FBI will provide [Defendant] with the information that it has an obligation to provide; that is, with respect to materials that are responsive to [Plaintiff’s] FOIA request.” *Id.* at 46. If Defendant does not receive the necessary information from the FBI or if the FBI informs Defendant that no emails of Mrs. Clinton or Ms. Abedin exist on the server in the FBI’s possession, discovery may be appropriate. *Id.* (“I think we just need to wait and see what the response is before the Court determines whether or not there’s any basis for discovery.”); *see also id.* at 46-47 (“Let’s see what the investigation reveals, if anything. And whatever it reveals, if anything is probably going to inform the Court’s decision about the need for discovery.”). Stopping the process now, less than two weeks before Defendant is to inform the Court about the outcome of its dialogue with the FBI, will only slow resolution of this case.

Importantly, Defendant provides no evidence whatsoever that a stay is necessary. Defendant has failed to demonstrate that the Court’s August 20, 2015 Order requires Defendant to take action that it is already taking in response to another court’s order. Nor has Defendant demonstrated that the Court’s August 20, 2015 Order conflicts with any order of another court or that any order of another court conflicts with the Court’s August 20, 2015 Order. Nor does

Defendant demonstrate that opening a dialogue with the FBI and the gathering of information from the FBI will cause injury or be harmful to Defendant. Nor does Defendant demonstrate how another district judge “would be in the best position” to determine the next steps in this case when this Court already has held two status hearings, received numerous filings, and has ordered an additional filing and scheduled another hearing for October 1, 2015.

Ironically, it was counsel for Defendant that suggested that the Court order Defendant to open a dialogue with the FBI. *See* August 20, 2015 Transcript at 20-21. Defendant’s counsel also agreed with the Court that “[p]erhaps the response [from the FBI] will help to inform any next steps that are required.” *Id.* at 22. Is it now Defendant’s position –two weeks later – that it is burdensome or injurious for the Court to require Defendant to take such steps? Perhaps, Defendant simply does not want to take such steps at such time because it is seeking out another district judge in hopes that that judge will not require Defendant to take such steps.

V. Conclusion.

For all the reasons stated above, Defendant’s motion for an indefinite stay should be denied.

Dated: September 8, 2015

Respectfully submitted,

/s/ Michael Bekesha
Michael Bekesha (D.C. Bar No. 995749)
JUDICIAL WATCH, INC.
425 Third Street S.W., Suite 800
Washington, DC 20024
(202) 646-5172

Counsel for Plaintiff Judicial Watch, Inc.

Exhibit A

Michael Bekesha

From: Prince, Robert (CIV) <Robert.Prince@usdoj.gov>
Sent: Tuesday, September 01, 2015 9:38 AM
To: Ramona Cotca; Paul Orfanedes; Michael Bekesha; Jason Aldrich; Lauren Burke; Chris Fedeli
Cc: Elliott, Stephen (CIV); Edney, Marsha (CIV); Wechsler, Peter (CIV); Todd, James (CIV); Thurston, Robin F. (CIV); Carmichael, Andrew E. (CIV); Anderson, Caroline J. (CIV); Olson, Lisa (CIV); Riess, Daniel (CIV)
Subject: Seeking Judicial Watch's Position on Motion to Designate a Coordinating Judge and Corresponding Stay Motions in 16 cases v. State Department

Dear counsel,

This email is in reference to the following cases:

Judicial Watch v. U.S. Dep't of State, et al., Civil No. 12-893 (JDB)
Judicial Watch v. U.S. Dep't of Defense, et al, Civil No. 14-812 (KBJ)
Judicial Watch v. U.S. Dep't of State, Civil No. 12-2034 (RW)
Judicial Watch v. U.S. Dep't of State, Civil No. 13-1363 (EGS)
Judicial Watch v. U.S. Dep't of State, Civil No. 13-772 (CKK)
Judicial Watch v. U.S. Dep't of State, Civil No. 14-1242 (RCL)
Judicial Watch v. U.S. Dep't of State, Civil No. 14-1511 (ABJ)
Judicial Watch v. U.S. Dep't of State, Civil No. 15-1128 (EGS)
Judicial Watch v. U.S. Dep't of State, Civil No. 15-321 (CKK)
Judicial Watch v. U.S. Dep't of State, Civil No. 15-646 (CKK)
Judicial Watch v. U.S. Dep't of State, Civil No. 15-684 (BAH)
Judicial Watch v. U.S. Dep't of State, Civil No. 15-687 (JEB)
Judicial Watch v. U.S. Dep't of State, Civil No. 15-688 (RC)
Judicial Watch v. U.S. Dep't of State, Civil No. 15-689 (RDM)
Judicial Watch v. U.S. Dep't of State, Civil No. 15-691 (APM)
Judicial Watch v. U.S. Dep't of State, Civil No. 15-692 (APM)

I seek your position on two motions. First, the Department of State intends to file a motion with the Chief Judge seeking designation of a coordinating judge for resolution and management of common issues of law, fact, and procedure across numerous FOIA suits, including these cases, that implicate the search and production of documents that were provided to the Department by former Secretary of State Hillary Clinton and, to the extent applicable, certain other former employees (Cheryl Mills, Huma Abedin, Jacob Sullivan, and Phillippe Reines). In each case, the transferring judge would retain the case for all other purposes, including searches for responsive records other than the provided documents. The motion envisions coordination of common issues such as the scheduling of searches of the recently provided documents, requests for information and discovery about those documents, and requests for orders relating to preservation.

This coordination motion will be filed in a miscellaneous action. Once it is filed, the Department will file a notice in each of the above-listed cases, along with a copy of the motion itself.

Second, the Department will be filing a motion in each of the above-listed cases seeking a stay of those portions of each case addressing the documents provided to the Department by former Secretary Clinton and the other former employees until the coordination motion is decided, and, if it is granted, until the coordinating judge issues an order determining how to proceed in the cases listed in that motion. The stay sought would not affect those portions of the cases that deal with the search and production of other documents.

Could you please let me know your position with respect to each above-listed case by 4 PM today?

Best,

Rob

Robert Prince

Trial Attorney

U.S. Department of Justice, Civil Division

Federal Programs Branch

(202) 305-3654

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Exhibit B

Paul Orfanedes

From: Shapiro, Elizabeth (CIV) <Elizabeth.Shapiro@usdoj.gov>
Sent: Thursday, September 03, 2015 11:17 AM
To: Paul Orfanedes; Berman, Marcia (CIV)
Subject: RE: Seeking Judicial Watch's Position on Motion to Designate a Coordinating Judge and Corresponding Stay Motions in 16 cases v. State Department

Paul,
I asked Rob, and he simply forgot to send the follow up message he had written. Apologies.

From: Paul Orfanedes [mailto:POrfanedes@JUDICIALWATCH.ORG]
Sent: Thursday, September 03, 2015 11:07 AM
To: Shapiro, Elizabeth (CIV); Berman, Marcia (CIV)
Subject: FW: Seeking Judicial Watch's Position on Motion to Designate a Coordinating Judge and Corresponding Stay Motions in 16 cases v. State Department

Elizabeth/Marcia:

Further to our conversation this morning, the last communication I received from Robert Prince was at 11:01 a.m. yesterday. I sent him this email at 1:51 p.m. and a second at 4:04 p.m., which I'm sending you separately. I received no response to either email.

PJO

From: Paul Orfanedes
Sent: Wednesday, September 02, 2015 1:51 PM
To: 'Prince, Robert (CIV)'
Subject: RE: Seeking Judicial Watch's Position on Motion to Designate a Coordinating Judge and Corresponding Stay Motions in 16 cases v. State Department

Robert:

We'd also like to see these cases move forward more efficiently and expeditiously, but I'm not sure how your proposal does that. Maybe I'm not understanding your concerns.

Your proposed order would have the coordinating judge "resolve and manage" all "issues of law, fact, and procedure" regarding the "search and production of responsive records within the recently provided documents." If your concern is coming up with an order for completing searches of the 55,000 Clinton emails between now and the January 29, 2016 date set by Judge Contreras, we're happy to do that for our cases, and we would try to do so in a way that accommodates the other requestors as well. The same would be true for the Abedin, Mills, Reines, and Sullivan materials. At this point however, I'm not sure we have enough information about these latter sets of materials to have an informed discussion, but I'm sure we could work something out. Off the top of my head, I'm not even sure which (or how many) of our 16 cases you listed might implicate these latter sets of materials such that it makes sense to include them all in your proposal. I'm sure the judges in our various cases also would not object to reasonable, agreed, coordinated production schedules.

If your concern is something broader than completing searches of the 55,000 Clinton emails and the Abedin, Mills, Reines, and Sullivan materials, what would your proposal leave for the originally assigned judges to decide? For example, in 14-1242, which is before Judge Lamberth, State moved for summary judgment and we filed Rule 56(d) motion in response. Would your proposal take those motions away from Judge Lamberth and put them on hold? If so,

for how long? What about Judge Sullivan's order in 13-1363 requiring State to ask the FBI for information about what the FBI recovers from the server? Is that within or outside your proposal? You say it's not feasible to have a detailed discussion about how each case might proceed under your proposal, but as I'm sure you can imagine, that is a very important issue, at least for us. In some of our cases, we've been trying to obtain records for more than four years.

If your concern is about requests for information or discovery about the "Clinton server" and related issues – it's not clear to me if that is within or outside your proposal or if it is even an issue in all 16 of our cases, or all 30 + cases you seek to include in your proposal – we might be able to work something out there as well. If the State Department would work with us to enable us to get answers to some of our basic questions in one case, that same information could be used in other cases as well. We wouldn't need to make requests for information or discovery in multiple lawsuits. I'm not aware of any non-Judicial Watch cases in which have these issues have been raised. I'm not asserting that it hasn't; I'm just not aware of any. How many others are there?

In the end, and without more time for us to discuss logistics and think about these question, I could see a fair amount of disputes – and more delay – about what is within or outside the scope of the referral to the coordinating judge, what is still within the purview of the originally assigned judge, how these disputes will be resolved, etc. We could end up wasting or at least diminishing the substantial progress made to date and the substantial efforts expended by the courts. If you'd like to sit down and discuss your concerns, how we might try to accommodate them, and the status of our various cases, as I offered Ms. Shapiro in early July, we'd be happy to do so.

Finally, one more concern about your proposed procedure, under LCvR 40.3, miscellaneous cases are assigned on a random basis. How do you propose getting your motion in front of the Chief Judge in light of the Court's rule?

PJO

From: Prince, Robert (CIV) [<mailto:Robert.Prince@usdoj.gov>]

Sent: Wednesday, September 02, 2015 11:01 AM

To: Paul Orfanedes

Subject: RE: Seeking Judicial Watch's Position on Motion to Designate a Coordinating Judge and Corresponding Stay Motions in 16 cases v. State Department

Paul,

The plan is to seek to coordinate 30+ cases (a specific list will be included in the motion).

What we're proposing is actually very simple. We plan to leave the involved questions to the coordinating judge, whom I assume would seek input from the parties. I've attached the proposed order and, as you can see, it simply asks for the designation of a coordinating judge to "to resolve and manage issues of law, fact, and procedure arising in the Coordinated Cases from the search and production of responsive records within the recently provided documents" ("recently provided documents" is defined in the order). That is the relief we're requesting.

In the email I sent yesterday morning, I gave some specific examples of what those issues would include ("scheduling of searches of the recently provided documents, requests for information and discovery about those documents, and requests for orders relating to preservation"); the motion explains why the Court and the parties would benefit from coordination of these issues that have arisen in multiple cases in the district. But we are not specifically asking the Court to manage those issues in a particular way. So the motion we're addressing here does not seem particularly involved.

Given that there are 12 other plaintiffs (all but one of whom have responded with a position statement to include in the motion), it is not feasible to engage in detailed discussions about how these cases will proceed once coordinated. This is one of the reasons that our motion contemplates that the coordinating judge resolve the detailed, involved questions, with input from all parties. We've described the relief we are seeking; discussing questions not addressed by the motion are not necessary to meaningfully confer.

Regarding the use of a miscellaneous action, there is no precise rule that provides for what we are seeking, which is not traditional consolidation. Since we will be filing a notice with the motion attached in each case, all 17 judges and 13 plaintiffs will receive notice, and the Court will be able to respond as it sees fit. We will, of course, follow direction from the Court if it turns out a miscellaneous action is inappropriate.

Rob

Robert Prince

Trial Attorney

U.S. Department of Justice, Civil Division

Federal Programs Branch

(202) 305-3654

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From: Paul Orfanedes [<mailto:POrfanedes@JUDICIALWATCH.ORG>]

Sent: Tuesday, September 01, 2015 9:26 PM

To: Prince, Robert (CIV)

Subject: RE: Seeking Judicial Watch's Position on Motion to Designate a Coordinating Judge and Corresponding Stay Motions in 16 cases v. State Department

Robert:

I'm familiar with miscellaneous actions relating to discovery subpoenas, administrative subpoenas, judgment enforcement, registration of foreign judgments, etc. Frankly, I've never heard of a party to an ongoing lawsuit opening a miscellaneous action in the same court to move for the designation of a "coordinating judge." In order to better understand what you propose, can you explain, as a preliminary matter, how you settled on this particular procedure? What rule or statute are you relying on? I recall that a coordinating judge was designated for the Guantanamo Bay detainee cases, but it was my understanding that was done administratively by the court – I think it was by resolution of the Executive Session – not by a party or motion. Also, which other cases do you propose to include in this miscellaneous action? All 35 or so? As I indicated previously, what you propose is a involved question and it's going to take some time for us to even understand it. I'm sure we'll have more question, but don't think we can say we've "met and conferred" unless we understand it better.

Elizabeth Shapiro told Judge Contreras on July 9th, "And there are approximately 35 at various stages and in various forms. There are difficulties in terms of how they would be consolidated, and since some of them are different claims, there are different parties, there are different stages. So the mechanics of that have eluded us to date, but we haven't given up on the idea." I asked her after the hearing if DOJ wanted to try to talk about it. There was no real response, and we never heard anything further until your email of this morning. Not only do I not understand what you are proposing, but I don't understand why there seems to be a sudden rush to file something.

PJO

From: Prince, Robert (CIV) [<mailto:Robert.Prince@usdoj.gov>]

Sent: Tuesday, September 01, 2015 3:44 PM

To: Paul Orfanedes; Ramona Cotca; Michael Bekesha; Jason Aldrich; Lauren Burke; Chris Fedeli

Cc: Elliott, Stephen (CIV); Edney, Marsha (CIV); Wechsler, Peter (CIV); Todd, James (CIV); Thurston, Robin F. (CIV); Carmichael, Andrew E. (CIV); Anderson, Caroline J. (CIV); Olson, Lisa (CIV); Riess, Daniel (CIV)

Subject: RE: Seeking Judicial Watch's Position on Motion to Designate a Coordinating Judge and Corresponding Stay Motions in 16 cases v. State Department

Paul, can I put your position down as "has not yet taken position" (or, if you prefer, "needs to see motion before taking position")?

From: Paul Orfanedes [<mailto:POrfanedes@JUDICIALWATCH.ORG>]

Sent: Tuesday, September 01, 2015 10:43 AM

To: Prince, Robert (CIV); Ramona Cotca; Michael Bekesha; Jason Aldrich; Lauren Burke; Chris Fedeli

Cc: Elliott, Stephen (CIV); Edney, Marsha (CIV); Wechsler, Peter (CIV); Todd, James (CIV); Thurston, Robin F. (CIV); Carmichael, Andrew E. (CIV); Anderson, Caroline J. (CIV); Olson, Lisa (CIV); Riess, Daniel (CIV)

Subject: RE: Seeking Judicial Watch's Position on Motion to Designate a Coordinating Judge and Corresponding Stay Motions in 16 cases v. State Department

Robert:

We'll give it some thought. We won't decide by your 4:00 p.m. deadline. At this point, it's a more involved question than that.

PJO

From: Prince, Robert (CIV) [<mailto:Robert.Prince@usdoj.gov>]

Sent: Tuesday, September 01, 2015 9:38 AM

To: Ramona Cotca; Paul Orfanedes; Michael Bekesha; Jason Aldrich; Lauren Burke; Chris Fedeli

Cc: Elliott, Stephen (CIV); Edney, Marsha (CIV); Wechsler, Peter (CIV); Todd, James (CIV); Thurston, Robin F. (CIV); Carmichael, Andrew E. (CIV); Anderson, Caroline J. (CIV); Olson, Lisa (CIV); Riess, Daniel (CIV)

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Judicial Watch v. U.S. Dep't of State, Civil No. 13-772 (CKK)
Judicial Watch v. U.S. Dep't of State, Civil No. 14-1242 (RCL)
Judicial Watch v. U.S. Dep't of State, Civil No. 14-1511 (ABJ)
Judicial Watch v. U.S. Dep't of State, Civil No. 15-1128 (EGS)
Judicial Watch v. U.S. Dep't of State, Civil No. 15-321 (CKK)
Judicial Watch v. U.S. Dep't of State, Civil No. 15-646 (CKK)
Judicial Watch v. U.S. Dep't of State, Civil No. 15-684 (BAH)
Judicial Watch v. U.S. Dep't of State, Civil No. 15-687 (JEB)
Judicial Watch v. U.S. Dep't of State, Civil No. 15-688 (RC)
Judicial Watch v. U.S. Dep't of State, Civil No. 15-689 (RDM)
Judicial Watch v. U.S. Dep't of State, Civil No. 15-691 (APM)
Judicial Watch v. U.S. Dep't of State, Civil No. 15-692 (APM)

I seek your position on two motions. First, the Department of State intends to file a motion with the Chief Judge seeking designation of a coordinating judge for resolution and management of common issues of law, fact, and procedure across numerous FOIA suits, including these cases, that implicate the search and production of documents that were provided

to the Department by former Secretary of State Hillary Clinton and, to the extent applicable, certain other former employees (Cheryl Mills, Huma Abedin, Jacob Sullivan, and Phillippe Reines). In each case, the transferring judge would retain the case for all other purposes, including searches for responsive records other than the provided documents. The motion envisions coordination of common issues such as the scheduling of searches of the recently provided documents, requests for information and discovery about those documents, and requests for orders relating to preservation.

This coordination motion will be filed in a miscellaneous action. Once it is filed, the Department will file a notice in each of the above-listed cases, along with a copy of the motion itself.

Second, the Department will be filing a motion in each of the above-listed cases seeking a stay of those portions of each case addressing the documents provided to the Department by former Secretary Clinton and the other former employees until the coordination motion is decided, and, if it is granted, until the coordinating judge issues an order determining how to proceed in the cases listed in that motion. The stay sought would not affect those portions of the cases that deal with the search and production of other documents.

Could you please let me know your position with respect to each above-listed case by 4 PM today?

Best,

Rob

Robert Prince

Trial Attorney

U.S. Department of Justice, Civil Division

Federal Programs Branch

(202) 305-3654

The information in this transmittal (including attachments, if any) is intended only for the recipient(s) listed above and contains information that is confidential. Any review, use, disclosure, distribution, or copying of this transmittal is prohibited except by or on behalf of the intended recipient. If you have received this transmittal in error, please notify me immediately and destroy all copies of the transmittal. Your cooperation is appreciated.

Exhibit C



United States Department of State

Washington, D.C. 20520

September 2, 2015

James A. Baker
General Counsel
Federal Bureau of Investigations
935 Pennsylvania Avenue, NW
Washington, D.C. 20535-0001

Ging
Dear Mr. Baker:

I am writing to you regarding a request the Department of State ("Department") has been ordered to make of the Federal Bureau of Investigation ("FBI") in a Freedom of Information Act ("FOIA") case, *Judicial Watch v. Department of State* (D.D.C. No. 13-cv-1363).

The underlying FOIA request at issue in the above-referenced case seeks the following information:

- Any and all SF-50 (Notification of Personnel Action) forms for Huma Abedin;
- Any and all contracts (including, but not limited to, personal service contracts) between the Department of State and Ms. Abedin; and
- Any and all records regarding, concerning, or related to the authorization for Ms. Abedin to represent individual clients and/or otherwise engage in outside employment while employed by and/or engaged in a contractual arrangement with the Department of State.

Pursuant to the Court's order of August 20, 2015 (the "Order"), a copy of which is attached, the Department requests that the FBI "inform it about any information recovered from [former Secretary Hillary] Clinton's server and the related thumb drive that is: (a) potentially relevant to the FOIA request at issue in this case; and (b) not already in the Department's possession."

Please confirm receipt of this letter and respond to the above request for information in writing on or before September 14, 2015, as the Court has directed the Department to file a status report with the Court no later than September 21, 2015, informing the Court of "the process agreed upon between the FBI and the State Department for sharing of information relevant to this lawsuit."

Sincerely,

A handwritten signature in cursive script that reads "Mary E. McLeod".

Mary E. McLeod
Principal Deputy Legal Adviser

From: DCD_ECFNotice@dcd.uscourts.gov
To: DCD_ECFNotice@dcd.uscourts.gov
Subject: Activity in Case 1:13-cv-01363-EGS JUDICIAL WATCH, INC. v. DEPARTMENT OF STATE Order
Date: Thursday, August 20, 2015 4:26:35 PM

This is an automatic e-mail message generated by the CM/ECF system. Please **DO NOT RESPOND** to this e-mail because the mail box is unattended.

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U.S. District Court

District of Columbia

Notice of Electronic Filing

The following transaction was entered on 8/20/2015 at 4:25 PM and filed on 8/20/2015

Case Name: JUDICIAL WATCH, INC. v. DEPARTMENT OF STATE

Case Number: [1:13-cv-01363-EGS](#)

Filer:

Document Number: No document attached

Docket Text:

MINUTE ORDER. For the reasons stated by the Court at the August 20, 2015 status hearing, and as agreed to by Defendant's counsel, the State Department is hereby ordered to request that the Federal Bureau of Investigation (FBI) inform it about any information recovered from Mrs. Clinton's server and the related thumb drive that is: (a) potentially relevant to the FOIA request at issue in this case; and (b) not already in the State Department's possession. The State Department shall file a status report, no later than Monday, September 21, 2015 at 12:00 p.m., informing the Court of the following: (1) the process agreed upon between the FBI and the State Department for the sharing of information relevant to this lawsuit; (2) the status of the Inspector General of the State Department's report regarding Mrs. Clinton's use of a private server; and (3) a timetable for the completion of any ongoing searches related to this lawsuit. Signed by Judge Emmet G. Sullivan on August 20, 2015. (lcegs4)

1:13-cv-01363-EGS Notice has been electronically mailed to:

Paul J. Orfanedes porfanedes@judicialwatch.org, jwlegal@judicialwatch.org

Peter T. Wechsler peter.wechsler@usdoj.gov

Michael Bekesha mbekesha@judicialwatch.org, jwlegal@judicialwatch.org

1:13-cv-01363-EGS Notice will be delivered by other means to::

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

JUDICIAL WATCH, INC.,)	
)	
Plaintiff,)	Civil Action No. 13-cv-1363 (EGS)
)	
v.)	
)	
U.S. DEPARTMENT OF STATE,)	
)	
Defendant.)	
)	

[PROPOSED] ORDER

Upon consideration of Plaintiff’s Opposition to Defendant’s Motion for Partial Stay Pending Resolution of its Motion for Designation of Coordinating Judge and the entire record herein, it is hereby ORDERED that:

1. Defendant’s motion for a partial stay is **DENIED**.

SO ORDERED.

DATE: _____

The Hon. Emmet G. Sullivan, U.S.D.J.