

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JUDICIAL WATCH, INC.,)	
)	
<i>Plaintiff,</i>)	
)	
v.)	Civ. No. 1:15-cv-00646 (CKK)
)	
U.S. DEPARTMENT OF STATE,)	
)	
<u><i>Defendant.</i></u>)	

PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO STAY

Plaintiff Judicial Watch, Inc., by and through counsel, respectfully submits this opposition to Defendant's Motion to Stay Pending Resolution of Its Motion for Designation of Coordinating Judge ("coordination motion"). As grounds therefor, Plaintiff states as follows:

MEMORANDUM OF LAW

I. Introduction.

Defendant seeks the extraordinary relief of an indefinite stay without any evidence demonstrating how proceeding in this case will affect, adversely or otherwise, the other Freedom of Information Act ("FOIA") cases in which similar records might be at issue. The Court already ordered a rolling production of documents every sixty days in this case. A stay would only halt the progress already being made in this lawsuit. Further, the relief Defendant seeks in its miscellaneous action for a "coordinating judge" is unlikely to succeed. As a result, Defendant's motion should be denied.

II. Factual and procedural background.

Plaintiff submitted its FOIA requests to Defendant on March 10, 2015 for any records concerning requests made by or on behalf of Secretary Clinton for use of an iPad and/or iPhone, and communications concerning the use of unauthorized electronic devices for official

government business. *See* Compl. at ¶ 5. The proposed stay Defendant seeks appears to include any issues regarding the emails of Secretary Clinton as well as certain emails and records of at least four of Secretary Clinton's top aides – Huma Abedin, Cheryl Mills, Jacob Sullivan and Philippe Reines.

All records returned by Secretary Clinton to Defendant on December 4, 2014 were in the custody, possession and control of the Defendant at the time of Plaintiff's FOIA requests and are potentially responsive to Plaintiff's FOIA requests. All of Secretary Clinton's emails have been uploaded and are searchable by keyword terms. *See* Joint Status Report, July 2, 2015 at ¶ 4, p. 3 ("First Joint Status Rpt.") (ECF No. 8). Emails from Secretary Clinton recently posted by Defendant on its FOIA website reveal communications with Secretary Clinton's senior aides, Huma Abedin and Philippe Reines, regarding Secretary Clinton's use of an iPad. *See* Joint Status Report, Sep. 1, 2015 at ¶ 6, p. 3 ("Second Joint Status Rpt.") (ECF No. 9). Ms. Abedin and Mr. Reines are therefore also former officials whose records are potentially responsive to Plaintiff's FOIA requests. Plaintiff is not aware – and Defendant has not revealed – if Cheryl Mills and Jacob Sullivan are also former officials whose records are potentially responsive to Plaintiff's FOIA requests.

Pursuant to the Court's minute order of July 7, 2015, Defendant initiated its search of potentially responsive records - the Office of the Executive Secretariat (S/ES) and the Bureau of Diplomatic Security (DS) – and although the Court ordered that Defendant's first production shall be made by no later than August 20, 2015, Defendant produced two records with redactions on August 27, 2015, and withheld one responsive record in full as exempt. *See* Second Joint Status Rpt. at p. 2 (ECF No. 9). Although the Court did not set a final production deadline "in

order to leave open the possibility that the production of documents can be completed more expeditiously than the January 2016 deadline proposed by the Defendant,” the Court ordered Defendant, in the interim, to produce records every six weeks after the initial August 20, 2015, production. *See* July 7, 2015 Minute Order.

III. An indefinite stay is inappropriate.

Notwithstanding Defendant’s failure to meet and confer with Plaintiff or the fact that its “coordination motion” is unlikely to succeed, an indefinite stay is inappropriate.¹ The Court has already ordered a production schedule every sixty days in this case, with the possibility that the final production can be completed sooner than the January 2016 deadline. Now, Defendant seeks to completely halt the progress that has already been made in this case for a “coordinating judge” to rule on issues related to records Defendant has not yet identified as relevant to this lawsuit. To date, Defendant has refused to specify whether records from Ms. Mills, Ms. Abedin, Mr. Sullivan and Mr. Reines are potentially responsive records Defendant deems it is obligated to search under FOIA in this case. Neither a “coordinating judge” nor a stay pending the designation of one is necessary to disclose this information and resolve a final production schedule, especially when Defendant has yet to identify the records it is obligated to search.

Consistent with the Court’s order of July 7, 2015, Plaintiff tried to confer with Defendant about Secretary Clinton’s emails and other sources of records potentially responsive to Plaintiff’s FOIA request. *See* Second Joint Status Rpt. at pp. 1-4 (ECF No. 9); First Status Rpt. at pp. 2-4 (ECF No. 8). To date, Defendant has refused to identify (1) the universe of potentially

¹ Judicial Watch offered to meet with the State Department to try to reach agreement on a schedule for completing searches that would take into account other FOIA cases and other FOIA requestors, but the State Department did not respond. *See* Exhibit 1. The lack of a response by the State Department constitutes a failure to meet and confer. LCvR 7(m).

responsive records, (2) the search terms Defendant is using to conduct its search and (3) the sources Defendant is searching for potentially responsive records.² This information is necessary to determine whether a sixty day production schedule through the end of January 2016 is reasonable. Defendant does not provide any evidence how providing the requested information will adversely affect any of the other FOIA cases in which similar records might be at issue. Indeed, if Defendant would be forthcoming and would confer cooperatively with Plaintiff about these issues, there would likely be fewer disputed issues in these FOIA cases, and less undue delays.³

Based on information Plaintiff has been able to piece together from Defendant's submissions in different cases about the records from former officials, Plaintiff learned that the records Defendant received from Huma Abedin have already been uploaded and are searchable. Defendant is processing records received from Cheryl Mills and they will be completely uploaded and searchable by Friday, September 25, 2015. *See* Minute Order Sep. 22, 2015, *Citizens United v. Dep't of State*, Case No. 15-374 (D.D.C.) (EGS) ("In order to set a reasonable, non-arbitrary schedule for production of documents relevant to this case, the Government is hereby ordered to complete the relevant searches of Ms. Abedin's and Ms. Mills' documents by no later than Friday, October 2, 2015...[and] shall [] submit a status report by no later than 12:00 p.m. on Monday, October 5, 2015, detailing the number of documents identified and an estimate

² Plaintiff seeks to confer with Defendant about the keyword search terms used by Defendant because records already produced by Defendant on its FOIA website reveal that Secretary Clinton and some of her senior aides refer to Secretary Clinton's iPad as an "hPad." In light of the use of the term "hPad" in these records relevant to Secretary's use of an iPad, Plaintiff submits that "hPad" and "hPhone" are terms that should also be included in the keyword searches conducted by Defendant. *See* Second Joint Status Rpt. at ¶ 6, pp. 2-3 (ECF No. 9).

³ In light of the extraordinary, unprecedented circumstances created by Secretary Clinton's exclusive use of a "clintonemail.com" email server to conduct official State Department business, a host of questions remain whether Defendant has satisfied its FOIA obligations, and, if not, how that failure might be remedied. Ms. Abedin also used a "clintonemail.com" email account to conduct official, State Department business.

of how long it will take to review those documents prior to production.”). Plaintiff does not have similar information about the records received from Jacob Sullivan or Philippe Reines. Rather than seeking an indefinite stay and further delay its obligations under FOIA, Defendant should provide basic relevant information for the Court and Plaintiff to determine a reasonable final production deadline, as it was ordered to do in *Citizens United v. Dep’t of State* by Judge Sullivan. *Id.* Plaintiff remains willing and available to confer with Defendant on these issues.

IV. Defendant’s “Coordination Motion” is unlikely to succeed.

The purported basis for the motion to stay is the “coordination motion” Defendant filed on September 2, 2015. Although the State Department downplays it in its motion, the agency not only seeks an order designating a “coordinating judge,” but also an order transferring 32 ongoing FOIA cases pending before 16 district judges to whomever is designated as the “coordinating judge.” This “coordinating judge” will then decide “common legal, factual, and procedural issues.” The law could not be any clearer that one district judge cannot order another district judge to take action in a case pending before that judge. *See, e.g., Klayman v. Kollar-Kotelly*, 2013 U.S. App. LEXIS 10148 (D.C. Cir. May 20, 2013); *In re McBryde*, 117 F.3d 208 (5th Cir. 1997). It makes no difference if the district judge issuing the order is the chief judge or the order is an order of reassignment. *In re McBryde*, 117 F.3d at 225 (“[N]ot one case upholds reassignment of a pending case by a chief judge without the consent of the presiding judge.”). As a result, it is highly unlikely that Defendant will prevail on its coordination/transfer motion.⁴

⁴ On September 3, 2015, the Hon. Reggie B. Walton also raised concerns about the lack of authority by anyone, including the Chief Judge, to order another judge to consolidate these cases. “But at least from information I’ve heard I think there may be some reluctance on the part of judges to go along with that because we’re so far along in the process and there’s so many different cases at different procedural postures that I’m not sure that the judges, because it would have to be a buy in. I don’t know if anyone even the chief judge would have the authority to order us to consolidate the cases, so there’d have to be a buy in on the part of the judges that consolidation would

There is no reason to stay this action pending a ruling in the State Department's meritless miscellaneous action. *See also* Respondent Judicial Watch, Inc.'s Motion to Dismiss, or, in the Alternative, Opposition to Designation/Transfer Motion, *In re U.S. Dep't of State FOIA Litigation Regarding Emails of Certain Former Officials*, Case No. 15-ms-1188 (Unassigned) (D.D.C.) (ECF No. 24) (Sept. 14, 2015).

V. Conclusion.

For the foregoing reasons, Defendant's motion for a stay should be denied.

Dated: September 22, 2015

Respectfully submitted,

JUDICIAL WATCH, INC.

/s/ Ramona R. Cotca
Ramona R. Cotca, D.C.
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Attorneys for Plaintiff

be appropriate." *See* Transcript of Status Conference, *Judicial Watch, Inc., v. U.S. Dep't of State*, Case No. 12-2034 (D.D.C.) (RBW) (Sept. 3, 2015), attached hereto as Exhibit 2, at 13.

As of September 17, 2015, the State Department had filed motions to stay in only 26 lawsuits, not the 32 it identified in its "consolidation motion." Of those 26 motions, 6 have been denied. *See* Minute Order, *Judicial Watch, Inc. v. U.S. Dep't of State*, Case No. 13-1363 (EGS) (D.D.C.) (Sept. 11, 2015); Minute Order, *Bauer v. Central Intelligence Agency*, Case No. 14-963 (APM) (D.D.C.) (Sept. 16, 2015); Minute Order, *Joseph v. U.S. Dep't of State*, Case No. 14-1896 (RJL) (D.D.C.) (Sept. 10, 2015); Minute Order, *Citizens United v. U.S. Dep't of State*, Case No. 15-374 (EGS) (D.D.C.) (Sept. 11, 2015); Minute Order, *Judicial Watch, Inc. v. U.S. Dep't of State*, 15-692 (APM) (D.D.C.) (Sept. 16, 2015); Minute Order, *Citizens United v. U.S. Dep't of State*, Case No. 15-1031 (EGS) (D.D.C.) (Sept. 11, 2015). Only one motion has been granted, and that ruling was issued before the requestor even filed a response. *See* Minute Order, *Judicial Watch, Inc. v. U.S. Dep't of State*, Case No. 14-1511 (ABJ) (D.D.C.) (Sept. 10, 2015). A second was granted in part and denied in part. *See* Minute Order, *Citizens United v. U.S. Dep't of State*, Case No. 15-518 (ABJ) (D.D.C.) (Sept. 18, 2015). A third is being held in abeyance. *See* Minute Order, *Judicial Watch, Inc. v. U.S. Dep't of Justice*, Case No. 15-321 (CKK) (D.D.C.) (Sept. 9, 2015).

EXHIBIT 1

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 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 questions, 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)

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 2

1 P R O C E E D I N G S

2 THE DEPUTY CLERK: Civil Action Number 12-2034,
3 Judicial Watch, Inc. versus U.S. Department of State.
4 Counsel, can you come forward and identify yourselves for
5 the record.

6 MR. FEDELI: Good morning, your Honor. Chris
7 Fedeli for the plaintiffs Judicial Watch.

8 THE COURT: Good morning.

9 MS. SHAPPIRO: Good morning, your Honor.
10 Elizabeth Shappiro on behalf of the Department of State and
11 with me is Marsha Edney.

12 THE COURT: Good morning. How do you all propose
13 we deal with this case? As you know, this case was closed
14 out at one point, but the parties ask it be reopened based
15 upon the revelation that there had been some additional,
16 actually a large number of emails that had been identified
17 that may be subject to a disclosure pursuant to this case.
18 But there are as I understand, I don't how many, but a
19 number of other cases also pending in this court before
20 other judges. And as I understand it at least in some of
21 those cases or at least one of them, all of the documents
22 being requested in this case would be encompassed by the
23 production in at least one of the cases.

24 Am I wrong in that regard?

25 MR. FEDELI: Yes. If I can address that briefly.

1 MS. SHAPPIRO: But what he's suggesting is wild
2 speculation. Has no basis to think they exist elsewhere.

3 THE COURT: Well, unfortunately, if this private
4 server had not been used we wouldn't be in this situation.

5 MS. SHAPPIRO: I understand that, your Honor. We
6 are, the government is trying to cope the best we can with
7 these circumstances. And have really gone, taken great
8 lengths to reopen cases like these to ensure that searches
9 are done pursuant to FOIA, and to remedy the FOIA situation
10 the best that we can, which is what we're here in this court
11 about. That's why we asked former employees to return
12 records. That's why we are undergoing this enormous
13 production process of putting all of them on online.

14 THE COURT: What's your position regarding the
15 plaintiff's request for some type of order from this court
16 related to that 31,000-plus documents which I assume are
17 documents that former secretary Clinton concluded were
18 private documents and therefore, not subject to disclosure?

19 MS. SHAPPIRO: We would oppose it because I don't
20 know how we could comply with such an order, one. And two,
21 we think the court should stay its hand entirely because
22 there's a motion pending to appoint a coordinating judge who
23 would deal with all of these sorts of issues across all of
24 the cases.

25 THE COURT: I don't know how successful you'll be

1 in reference to that. I can understand why you would want
2 it. But at least from information I've heard I think there
3 may be some reluctance on the part of judges to go along
4 with that because we're so far along in the process and
5 there's so many different cases at different procedural
6 postures that I'm not sure that the judges, because it would
7 have to be a buy in. I don't know if anybody even the chief
8 judge would have the authority to order us to consolidate
9 the cases, so there'd have to be a buy in on the part of the
10 judges that consolidation would be appropriate. And at
11 least from what I've heard there may be some reluctance to
12 do that because the cases are in different postures and this
13 request wasn't made earlier.

14 MS. SHAPPIRO: Right. I guess I would just say
15 that at least two judges have expressed a desire to have
16 some sort of coordination. What we're asking for is not
17 consolidation because of the very reasons you cite. But
18 just coordination of these particular search and discovery
19 issues and courts --

20 THE COURT: I mean that may make sense in this
21 case since we are early on in the process. Because the
22 process had been halted based upon the parties'
23 understanding of what the status of the matter was late,
24 back I think it was in May.

25 What do you propose? I mean, obviously to the

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CERTIFICATE

I, Cathryn J. Jones, an Official Court Reporter for the United States District Court of the District of Columbia, do hereby certify that I reported, by machine shorthand, the proceedings had and testimony adduced in the above case.

I further certify that the foregoing 30 pages constitute the official transcript of said proceedings as transcribed from my machine shorthand notes.

In witness whereof, I have hereto subscribed my name, this the 8th day of September, 2015.

/s/ Cathryn J. Jones
Cathryn J. Jones, RPR
Official Court Reporter

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JUDICIAL WATCH, INC.,)
)
 Plaintiff,)
)
 v.) Civ. No. 1:15-cv-00646 (CKK)
)
 U.S. DEPARTMENT OF STATE,)
)
 Defendant.)

[PROPOSED] ORDER

Upon consideration of Defendant's Motion to Stay Pending Resolution of Its Motion for Designation of Coordinating Judge, Plaintiff's Opposition thereto, any reply, oral argument, and the record herein, it is hereby

ORDERED that Defendant's Motion to Stay Pending Resolution of Its Motion for Designation of Coordinating Judge is **DENIED**.

Dated:

U.S. District Court Judge

Cc: All counsel of record