

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

JUDICIAL WATCH, INC.,)	
)	
<i>Plaintiff,</i>)	
)	
v.)	Civil Action No. 1:15-cv-00688 (RC)
)	
U.S. DEPARTMENT OF STATE,)	
)	
<i>Defendant.</i>)	
_____)	

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

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

MEMORANDUM OF LAW

I. Introduction.

Defendant seeks the extraordinary relief of an indefinite stay in a FOIA case which has already proceeded nearly to the summary judgment stage. ECF No. 15. Defendant failed to meet and confer with Plaintiff prior to filing its motion. It also failed to provide 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. Further, the relief Defendant seeks in its miscellaneous action for a “coordinating judge” is unlikely to succeed. As a result, Defendant’s motion must be denied.

II. Factual Background.

Plaintiff filed this FOIA lawsuit seeking documents concerning the State Department’s review of conflicts of interest resulting from the former Secretary’s role or involvement with the

Clinton Foundation and its various foreign financial contributors. ECF No. 1. The parties filed an initial Joint Status Report raising certain issues relating to preservation, discovery, and search in this FOIA litigation. ECF No. 7. Thereafter, the Court held a hearing where the parties and Court discussed preservation of records, production schedules, search for records, and whether disputed issues should be raised at the preliminary stage of the litigation or at the summary judgment stage. ECF No. 9, Transcript of Status Conference Before Judge Rudolph Contreras held July 9, 2015. Since that hearing, the Court has issued one Scheduling Order and three additional Minute Orders in this case taking various actions to manage the litigation, including ordering the parties to confer, directing Defendant to produce records, ordering Plaintiff and Defendant to arrive at search terms for Defendant to use to search the 55,000 pages of records, and ordering Defendant to search the 55,000 records using search terms. *See* ECF No. 8, Scheduling Order; July 23, 2015 Minute Order; August 11, 2015 Minute Order; August 21, 2015 Minute Order.

III. Defendant Failed to Meet and Confer.

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 filing the motion for a stay, Defendant’s counsel sent an email to all Judicial Watch attorneys assigned to FOIA cases between Plaintiff and Defendant. The email stated, in pertinent part:

[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, attached as Exhibit 1.

It is evident from the entire email chain, attached as Exhibit 2, that the parties never met and conferred on the motion to stay Defendant filed in this particular case or how Defendant's "coordination motion" would affect this particular case, if at all. Defendant only purported to meet and confer on its "coordination motion," and even then did not engage in any meaningful discussion with Plaintiff about that motion. In response, Plaintiff not only sought to understand Defendant's proposed "coordination motion," but also offered to meet and discuss how Defendant's search and production efforts could be prioritized, among other issues. *See* Exhibit 2. Defendant filed its "coordination motion" that same day without responding. *Id.* Defendant's counsel later asserted that they "forgot" to send a response and apologized. *Id.* Defendant's apology regarding the "coordination motion" notwithstanding, Defendant plainly failed to satisfy Local Rule 7(m) with regard to the instant motion to stay.

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. On that date, Defendant initiated a "miscellaneous action," seeking to have the Chief Judge order "17 different district judges" to transfer "more than 30 FOIA lawsuits," including 16 lawsuits filed by Judicial Watch, to a "coordinating judge" at least for a period of time. *See* United States Department of State's Motion for Designation of Coordinating Judge and Memorandum in Support at 15, *In Re U.S. Dep't of State FOIA Litigation Regarding Emails of Certain Former Officials*, Case No. 15-mc-01188 (D.D.C.). 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 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) (RCL) (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. It is unsurprising that most judges entertaining these Motions to Stay filed in the past month have denied them.¹

¹ 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 already 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 has been 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).

Most fatal of all, however, is the complete absence of any substantive legal basis for Defendant's claim.² It is beyond doubt 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); *see also 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. LEXIS 151044 (D.D.C. Oct. 23, 2014); *Mason v. Kahn* 2008 U.S. Dist. LEXIS 50258 at *1 (D.D.C. June 30, 2008). The Court lacks subject matter jurisdiction even to consider such a claim. *Klayman*, 2013 U.S. App. LEXIS 10148 at *2.

In *Klayman*, the plaintiff filed an action seeking to have one district judge issue an injunction against another district judge, among other relief. 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.

² On September 3, 2015, Judge 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 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 3, at 13.

Numerous other cases hold likewise. In *In re McBryde*, 117 F.3d 208 (5th Cir. 1997), a district court judge successfully sought a writ of mandamus against the chief judge of the district court in which he sat when the chief judge ordered cases pending before the district judge be reassigned. “No express or implied power is granted to a chief judge to affect administratively, directly or indirectly, litigation assigned to and pending before another judge of the court.” *Id.* at 225 (quoting, *United States v. Heath*, 103 F. Supp. 1, 2 (D. Haw. 1952)). “Not one case upholds reassignment of a pending case by a chief judge without the consent of the presiding judge.” *Id.* “[T]here is no authority for the undersigned [federal district judge] or any other federal district court judge to intervene in [the underlying federal district court] action.” *Cobble v. Bernanke*, 2009 U.S. Dist. LEXIS 33872, *6 (W.D. Ky. April 20, 2009). Applicable law “does not grant either express or implied authority to a chief judge to take action in litigation which has been assigned to another judge of the court.” *Williams v. Prison Health Services*, 2007 U.S. Dist. LEXIS 19378, *1 (D. Kan. Mar. 16, 2007). “The structure of the federal courts does not allow one judge of a district court to rule directly on the legality of another district judge’s acts or to deny another district judge his or her lawful jurisdiction.” *Dhalluin v. McKibbin*, 682 F. Supp. 1096, 1097 (D. Nev. 1988). “The undersigned [federal district judge] has no authority to order another federal district judge to take any action in another case.” *Smith v. Peterson & Paletta, PLC*, 2013 U.S. Dist. LEXIS 83805, *6 (W.D. Mich. June 14, 2013).

The State Department’s miscellaneous action fails to state a claim on which relief can be granted because the relief the agency seeks – that the Chief Judge order another district judge to serve as a coordinating judge, order as many as 16 other district judges to transfer 32 FOIA lawsuits to the “coordinating judge” to decide “common legal, factual, and procedural issues,”

and then order that the cases be transferred back to the originally assigned district judges – is beyond the power of the Court. The Court also does not have the power to bind originally assigned judges to the decisions of a “coordinating judge.” If anything, such a process will only increase the number of issues to be decided, not reduce them, due to challenges and disputes over the lawfulness of the process, and create additional delay.

The Guantanamo Bay detainee cases heard by this Court following the United States Supreme Court’s decision in *Boumediene v. Bush*, 553 U.S. 723 (2008) are inapposite. The Court resolved by Executive Session to designate a single judge to coordinate and manage some 249 petitions for writs of habeas corpus filed by Guantanamo Bay detainees. *See In re Guantanamo Bay Detainee Litig.*, Misc. No. 08-422 (TFH) (D.D.C. July 2, 2008) (ECF No. 1), Order at 1-2 and Exh. 2, Resolution of the Executive Session, U.S. District Court for the District of Columbia (July 1, 2008). The Court’s Executive Session resolution was an administrative act, not a judicial act. No party to a lawsuit filed a motion invoking the Court’s judicial power to order relief. No district judge was ordered by another district judge to serve as a “coordinating judge” or to transfer cases pending before him or her, and two district judges even “opted out” of the coordination process. The fact that two judges could “opt out” of this “coordination process” further confirms that the process was a consensual, voluntary process, not court-ordered relief.

Local Civil Rules 40.5(c) and 40.6(a) do not provide a legal basis for the relief the State Department seeks. Both rules make clear that the assignment and transfer processes they establish are effectuated only with the consent of the judges involved. Neither rule authorizes one district judge to order another district judge to transfer a case, accept a case assignment, or serve as a “coordinating judge.” Local Civil Rule 40.7(h) only expresses in general terms the

administrative authority of the chief judge. It is not a grant of additional judicial authority to the chief judge, nor does it contradict or overrule the well-established, constitutionally-based principle that neither a chief judge nor a district judge has express or implied authority to order action be taken in litigation assigned to another district judge.

Finally, before the State Department initiated this action, Judicial Watch asked it to identify the legal basis for the action. It could not do so. The State Department responded, “There is no precise rule that provides for what we are seeking. Since we will be filing a notice with the motion attached in each case, all 17 (sic) judges and 13 plaintiffs will receive notice, and the Court will be able to respond as it sees fit.” *See* Exhibit 2. It continued, “We will, of course, follow directions from the Court if it turns out a miscellaneous action is inappropriate.” *Id.* In short, the State Department knew its miscellaneous action had no basis in law – certainly none that it could identify – but proceeded nonetheless. The action will likely be dismissed for failure to state a claim under Rule 12(b)(6), or, alternatively, the motion will likely be denied.

V. 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 still inappropriate. First of all, the only current deadlines in this case is State Department’s production of responsive records from its internal components (the non-55,000 pages) which is due on October 23, 2015, after which the parties will file a Joint Status Report to discuss whether briefing is necessary by November 6, 2015. It appears the defendant is not requesting a stay of the October 23, 2015 production date, although that is not entirely clear from State’s motion. In any event, Plaintiff

believes any indefinite stay of the October 23, 2015 production – a date which State itself proposed – would be unjustified and unsupportable. *See* ECF No. 12 at p. 2.

As for the November 6, 2015 Joint Status Report, the purpose of this report is for the parties to inform the Court whether any issues require summary judgment briefing. In the present case, the Defendant has already informed this Court that questions concerning the search for any allegedly missing records have already been briefed at the summary judgment stage in other FOIA cases:

THE COURT: ...In that [FOIA] case, the government reached out to former employees to secure official documents?

MR. RIESS: Yes, I believe that's right. They filed a summary judgment motion in No. 14-1242 on July 7, I believe. So that case was actually at a more advanced stage.

THE COURT: So the representations about who was -- former employees that were reached out to was in the context of declarations for summary judgment?

MR. RIESS: I believe that's correct, Your Honor.

ECF No. 9, Hearing Tr. at 8:4-13. Accordingly, it is unclear why such questions about the adequacy of search under FOIA would not be unique to each lawsuit based on the type of records sought, or why such questions could not be resolved by this Court (or other courts) on summary judgment.

In connection with this point, it bears consideration that the judges in this Court routinely rule on summary judgment motions in FOIA cases where the disputed legal issues are similar to other pending cases before other judges. Defendant's suggestion for a specially-convened "FOIA Court" to resolve what are fundamentally routine FOIA matters – even ones which attract an unusual amount of media attention – could in principle apply not only to the present State Department FOIA cases, but to many other FOIA disputes as well, as well as any other matters of a routine and repetitive nature with common questions of law – federal narcotics prosecutions,

taxation litigation, etc. Nevertheless, it appears that Defendant believes a stay is necessary so the ordinary summary judgment FOIA question of search sufficiency can now be taken away from this Court and referred to another judge.

As explained above (pp. 1-2, *supra*), this FOIA case has proceeded quite far since it was filed in May of 2015. The parties have been in regular contact and engaged in negotiations over the issues of search and production in this lawsuit, and those efforts have resulted in six (6) status reports in this case since May, many of them joint filings which Plaintiff drafted or co-drafted. Throughout the course of this lawsuit, undersigned counsel for Plaintiff has invested many hours prosecuting and arguing the unique factual and procedural issues of this case with opposing counsel and before this Court. The parties have already appeared before this Court for a hearing to address early disputes that arose in this case, including whether the parties were required to confer about preservation (which they have since done), and the State Department's duty to preserve records under FOIA. ECF No. 9, Hearing Tr. And only eleven days ago, on September 10, 2015, the parties submitted a Joint Filing informing the Court of their agreement that the search of at least one component (the 55,000 page set) was now complete with respect to this lawsuit. ECF No. 17. Accordingly, Defendant's request to stay the September 10, 2015 deadline is now moot. ECF No. 15 at ¶ 4. And an indefinite stay of the remaining deadlines in this case is unreasonable and inappropriate, as it would bring to a halt the progress already made towards a final resolution of Plaintiff's claims.

Defendant provides no evidence whatsoever demonstrating that a stay is necessary to address remaining issues in this case. Plaintiff seeks no less and no more than what FOIA requires. If Defendant agrees that it must search recently-retained agency records to satisfy its

FOIA obligations in this case, Plaintiff is amenable to discussing a reasonable schedule for completion of this task. But if Defendant seeks an indefinite stay of this litigation so that a coordinating judge can be appointed to oversee the completion of a task Defendant denies it has any obligation to undertake, this would suggest that Defendant's motion is baseless.

VI. Conclusion.

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

Dated: September 21, 2015

Respectfully submitted,

JUDICIAL WATCH, INC.

s/ Chris Fedeli
Chris Fedeli
425 Third Street SW, Suite 800
Washington, DC 20024
Tel: (202) 646-5172
cfedeli@judicialwatch.org

Attorney for Plaintiff

EXHIBIT 1

Chris Fedeli

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 2

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)

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

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 3

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JUDICIAL WATCH, INC. .
Plaintiff, .
vs. . Docket No. CV 12-2034
U.S. DEPARTMENT OF STATE . Washington, D.C.
September 3, 2015
Defendant. .
.x 9:33 a.m.

TRANSCRIPT OF STATUS CONFERENCE

BEFORE THE HONORABLE JUDGE REGGIE B. WALTON

UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: Chris Fedeli, Attorney-at-Law
Paul Orfanedes, Attorney-at-Law
Tom Fitton, Attorney-at-Law
JUDICIAL WATCH, INC.
425 third Street, SW - Suite 800
Washington, DC 20024

For the Defendant: Elizabeth Shappiro, Attorney-at-Law
Marsha Edney, Attorney-at-Law
U.S. DEPARTMENT OF JUSTICE
Civil Division
P.O. Box 883
Washington, DC 20044

Court Reporter: Cathryn J. Jones, RPR
Official Court Reporter
Room 6521, U.S. District Court
333 Constitution Avenue, N.W.
Washington, D.C. 20001

Proceedings recorded by machine shorthand, transcript
produced by computer-aided transcription.

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.,)	
)	
<i>Plaintiff,</i>)	
)	Civil Action No. 1:15-cv-00688 (RC)
v.)	
)	
U.S. DEPARTMENT OF STATE,)	
)	
<i>Defendant.</i>)	
_____)	

[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: _____

Rudolph Contreras
U.S. District Court Judge