IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE:	)	
	)	
U.S. DEPARTMENT OF STATE FOIA	)	Misc. No. 15-1188
LITIGATION REGARDING EMAILS	)	
OF CERTAIN FORMER OFFICIALS	)	
	)	

RESPONDENT JUDICIAL WATCH, INC.'S MOTION TO DISMISS OR, IN THE ALTERNATIVE, OPPOSITION TO DESIGNATION/TRANSFER MOTION

Respondent Judicial Watch, Inc., by counsel and pursuant to Rule 12(b) of the Federal Rules of Civil Procedure and the Court's September 4, 2015 order, respectfully submits this motion to dismiss or, in the alternative, opposition to the U.S. Department of State's motion to designate a "coordinating judge" and to transfer 32 separate Freedom of Information Act ("FOIA") lawsuits pending before 16 district judges to the designated "coordinating judge." As grounds therefor, Judicial Watch states as follows:

STATEMENT OF POINTS AND AUTHORITIES

I. Introduction.

Despite clear precedent holding that neither a district court's chief judge nor any other district judge has authority to order another district judge to take action in a case pending before that judge, the U.S. Department of State (the "State Department" or the "agency") seeks an order compelling 16 district judges to transfer 32 FOIA lawsuits to a single "coordinating judge" to decide "common legal, factual, and procedural issues."[1] The extraordinary, unprecedented relief sought by the agency is plainly beyond the power of the Court. It also is unwarranted. The State

---

[1] In its initial communication with Judicial Watch about this action, the agency represented that it intended to direct its request to the Chief Judge despite the express language of LCvR 40.3(a) requiring miscellaneous cases be assigned randomly. *See* Exhibit 1. The State Department has yet to take any action to have the case assigned to the Chief Judge, nor would such action be proper under LCvR 40.3(a). The action must be assigned randomly.

Department's miscellaneous action should be dismissed or, in the alternative, its motion should be denied.

II. The State Department's Miscellaneous Action Must Be Dismissed Under Rule 12(b)(1), (2), (4), (5), and (7).

Rule 12(b) of the Federal Rules of Civil Procedure requires the dismissal of actions for lack of subject matter jurisdiction, lack of personal jurisdiction, insufficiency of process, insufficiency of service of process, and the failure to join an indispensable party. Fed. R. Civ. P. 12(b)(1), (2), (4), (5), and (7). All five shortcomings exist here.

The State Department fails to identify any legal basis for the Court's subject matter jurisdiction over this miscellaneous action. The State Department cites no federal statute, rule, or law authorizing the Court to intervene in ongoing litigation before it. The action should be dismissed under Rule 12(b)(1).

The State Department also fails to identify any basis for the Court to exercise personal jurisdiction over respondents – the 13 separate FOIA requesters who brought the 32 lawsuits at issue. There 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) (denying motion for default judgment in miscellaneous action due to insufficiency of service of process). The action should be dismissed under Rule 12(b)(2), (4), and (5).

The State Department also has failed to join indispensable parties – the 16 district judges who preside over the 32 FOIA lawsuits the agency seeks to have transferred to a "coordinating judge." These 16 judges are the real parties in interest. They are the individuals to whom the

orders sought by the State Department would be directed.[2, 3] The State Department's failure to join these 16 judges warrants dismissal under Rule 12(b)(7).

The State Department cannot assert that Rule 12 is inapplicable because its miscellaneous action is a not a conventional civil lawsuit. Any such assertion would only beg the question, "Then what is it?" The agency's miscellaneous action plainly is not like any other miscellaneous action authorized by law. It does not seek to enforce or quash a subpoena – actions that are expressly authorized by law and include specific service provisions. *See* Fed. R. Civ. P. 45. It does not seek to perpetuate testimony, which also is an action expressly authorized by law and has its own service provisions. *See* Fed. R. Civ. P 27. It is not a supplementary proceeding brought in aid of execution of a judgment. *See* Fed. R. Civ. P. 69 and 70. It also is not a "request for judicial assistance," which typically arise in international litigation.[4] "Requests for judicial assistance" are expressly authorized by statute and are initiated by application to a district court. 28 U.S.C. § 1782. A "request for judicial assistance" is not a wholesale invitation to seek any imaginable relief from a federal court. Any assertion by the State Department that this action is not governed by Rule 12 and that subject matter jurisdiction, personal jurisdiction, service of process, and the joinder of indispensable parties are not necessary would only further highlight the fact that the action has no basis in law and is made up out of whole cloth.

---

[2] The State Department did not designate any of these 32 cases as related at the time they were filed or at any time thereafter. Nor did it move for consolidation in any of the underlying cases or seek transfer by consent. Even if the Chief Judge had authority to order the Court's district judges to transfer cases pending before them to a "coordinating judge," the State Department should be denied relief because it failed to raise the matter in the first instance before the individual district judges.

[3] The State Department cannot claim it does not seek orders directed to these 16 judges. Its motion expressly states, "the Court should grant this motion and transfer the common legal, factual, and procedural issues to a member of this Court to serve as a coordinating judge." Motion at 15. It does not ask for the judges' consent.

[4] The State Department obviously is aware of "requests for judicial assistance" because the agency plays a significant role in facilitating their passage through diplomatic channels. *See*, *e.g.*, 28 U.S.C. § 1781.

III. The State Department's Miscellaneous Action Must Be Dismissed Under Rule 12(b)(6) or, in the Alternative, Its Motion Must Be Denied.

Most fatal of all is the obvious unavailability of the relief the State Department seeks. It is beyond peradventure 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.

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]there 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* Order at 1-2, *In re Guantanamo Bay Detainee Litig.*, Misc. No. 08-422 (TFH) (D.D.C. July 2, 2008) (ECF No. 1); *see also* Resolution of the Executive Session, U.S. District Court for the District of Columbia (July 1, 2008), attached as Exhibit 2. 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.[5] Two district judges "opted out" of the coordination process, a fact the State Department readily admits. *See* Motion at 10, n.7. 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

---

[5] The Court's resolution addressed procedural issues primarily. Exhibit 2 at ¶ 4. With respect to substantive issues, the coordinating judge was to "confer with those Judges whose cases raise common substantive issues" before ruling on the issue. *Id*. at ¶ 5. If a district judge did not agree with a substantive ruling made by the coordinating judge, that judge was not bound by the ruling and could "resolve the issue in his or her own cases as he or she deem[ed] appropriate." *Id*. Not only does the State Department make no effort to address how such conflicts might be resolved here, but if an originally assigned judge is able to ignore the coordinating judge's substantive rulings, little if any efficiencies will be gained and further delays will result.

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 1. 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 should be dismissed for failure to state a claim under Rule 12(b)(6), or, alternatively, the motion should be denied.

IV. The State Department's Motion is Unwarranted Substantively.

The State Department claims that granting its motion will be more convenient for the agency, but fails to demonstrate that the 13 FOIA requesters or the 16 district judges affected by the relief will benefit in any way. The agency seeks coordination on: (1) searching the Clinton emails; (2) searching records provided by others; and (3) adjudicating requests for information, discovery, and preservation. The agency's request is unwarranted on each issue.

A. Searches of the Clinton Emails.

The State Department complains that searches of the Clinton emails "have the potential to interfere with each other." Motion at 11. It does not identify the cases in which this alleged, potential interference might occur. Nor does it identify how any specific search might interfere with others. As far as Judicial Watch can tell, the Clinton emails are at issue in only 25 of the 32 cases, and, of those 25 cases, no disputes about searches have arisen in 18 of them. One such

case is *Leopold v. U.S. Dep't of State*, 15-0123, in which the production of all of the Clinton emails is to be completed by January 29, 2016. In 6 of the 25 cases, the agency has already completed its searches.[6] In another 6 cases, the FOIA requesters have agreed to defer searches until after the *Leopold* production is complete.[7] In 2 other cases, the State Department has not sought to stay production schedules that include searches of the Clinton emails.[8] In 3 other cases, searches have not begun, so it is not even clear if the Clinton emails are at issue.[9] Therefore, in only 7 of the 25 cases implicating the Clinton emails have the parties not yet reached an agreement as to when the records will be searched.[10]

With respect to these 7 cases, the State Department does not demonstrate how searches will interfere with one another or jeopardize the agency's ability to release all non-exempt Clinton emails by January 29, 2016. The emails have been scanned into a database and are readily capable of being searched electronically. Most, if not all, of the searches can be accomplished by a keyword search. The State Department fails to address the procedural posture of these 7 cases or whether the parties are working together to resolve issues about searches. In

---

[6] *Judicial Watch, Inc. v. U.S. Dep't of State*, 13-1363; *Judicial Watch, Inc. v. U.S. Dep't of State*, 14-1242; *Judicial Watch, Inc. v. U.S. Dep't of State*, 14-1511; *Judicial Watch, Inc. v. U.S. Dep't of State*, 15-0321; *Judicial Watch, Inc. v. U.S. Dep't of State*, 15-0688; *Freedom Watch, Inc. v. U.S. Dep't of State*, 12-1088.

[7] *Judicial Watch, Inc. v. U.S. Dep't of State*, 12-2034; *Canning v. U.S. Dep't of State*,13-0831; *O'Brien v. U.S. Dep't of State*, 14-0119; *Associated Press v. U.S. Dep't of State*, 15-0345; *Citizens United v. U.S. Dep't of State*, 15-0441; *Citizens United v. U.S. Dep't of State*, 15-0518.

[8] *Accuracy in Media v. U.S. Dep't of State*, 14-1589; *Veterans for a Strong America v. U.S. Dep't of State*, 15-0464.

[9] *Judicial Watch, Inc. v. U.S. Dep't of State*, 15-1128; *Competitive Enterprise Institute v. U.S. Dep't of State*, 15-0553; *Citizens United v. U.S. Dep't of S*tate, 15-1031.

[10] *Judicial Watch, Inc. v. U.S. Dep't of State*, 12-0893; *Judicial Watch, Inc. v. U.S. Dep't of State*, 13-0772; *Judicial Watch, Inc. v. U.S. Dep't of State*, 15-0646; *Judicial Watch, Inc. v. U.S. Dep't of State*, 15-0691; *Judicial Watch, Inc. v. U.S. Dep't of State*, 15-0692; *Bauer v. U.S. Dep't of State*, 1-0693; *Joseph v. U.S. Dep't of State*, 14-1896

at least one case, *Judicial Watch, Inc. v. U.S. Dep't of State*, 13-0772, the parties are attempting to reach agreement on search terms.

In sum, search issues have already been resolved in 18 of the 25 cases in which the Clinton emails are relevant. Search issues remain in only 7 cases. The State Department has not and cannot demonstrate that these search issues cannot be resolved without a coordinating judge or that conducting searches in these 7 cases will interfere with each other or jeopardize the agency's ability to release all of the Clinton emails by the January 29, 2016 deadline in *Leopold*.

B. Searches of Records Provided by Others.

The State Department's motion is devoid of any facts or analysis regarding searches of records returned by other former employees. The agency does not identify the quantity or volume of these records. It also does not identify the format – native, pdf, paper, or something else – of the records. Nor does it identify which of the 32 cases even implicate searches of these records. In other words, the agency complains about the effort it must undertake to search these records without disclosing any information that would allow its complaint to be assessed.

In addition, the State Department states that it will search these additional records only if it has an obligation to search the state.gov email accounts of the former employees and if the FOIA requester requests that the records be searched. Motion at 12, fn. 10. Plainly, if the State Department does not know or is not willing to say whether it even intends to search these records in any of the 32 cases, the extraordinary relief it seeks is unwarranted.

C. Requests for Information, Discovery, and Preservation.

Finally, the State Department baldly asserts that various requests for information, discovery, or records preservation may result in "conflicting rulings on such issues." Motion at 14. The State Department fails to identify any case in which it has been subject to conflicting

rulings to disclose information, respond to discovery, or preserve records. Judicial Watch is not aware of any such cases. Nor has the agency identified any cases in which conflicting rulings are likely to occur. In fact, to Judicial Watch's knowledge, only one judge in a single case has ordered the State Department to provide information about the existence and location of potentially responsive records and directed the agency to preserve records. When the State Department moved to stay that case pending the outcome of its motion, its request was denied. *See* Minute Order, *Judicial Watch, Inc. v. U.S. Dep't of State*, 13-1363 (EGS) (D.D.C. Sept. 11, 2015). Because the State Department cannot point to a single conflicting ruling – or even potentially conflicting rulings – regarding requests for information, discovery, or records preservation, it would appear that its motion is nothing more than a thinly veiled attempt to delay having to provide the information ordered in that case.

WHEREFORE, Judicial Watch respectfully requests that this action be dismissed, or, in the alternative, that the State Department's motion be denied.

Dated: September 14, 2015

Respectfully submitted,

/s/ Paul J. Orfanedes
Paul J. Orfanedes (D.C. Bar No. 429716)

/s/ Michael Bekesha
Michael Bekesha (D.C. Bar No. 995749)

/s/ Ramona R. Cotca
Ramona R. Cotca (D.C. Bar No. 501159)
JUDICIAL WATCH, INC.
425 Third Street SW, Suite 800
Washington, D.C. 20025
(202) 646-5172
Email: porfanedes@judicialwatch.org
mbekesha@judicialwatch.org
rcotca@judicialwatch.org

Counsel for Judicial Watch, Inc.

EXHIBIT 1

TO

RESPONDENT JUDICIAL WATCH, INC.'S MOTION TO DISMISS

OR, IN THE ALTERNATIVE, OPPOSITION TO

DESIGNATION/TRANSFER MOTION

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

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.

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 2

TO

RESPONDENT JUDICIAL WATCH, INC.'S MOTION TO DISMISS

OR, IN THE ALTERNATIVE, OPPOSITION TO

DESIGNATION/TRANSFER MOTION

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RESOLUTION OF THE EXECUTIVE SESSION

July 1, 2008

WHEREAS, some 249 cases pertaining to more than 643 individual detainees who have been or are being held at Guantanamo Bay are pending with this Court (the "Guantanamo Bay cases"); and

WHEREAS, it is expected that up to several dozen more new Guantanamo Bay cases could be filed with this Court in the near future; and

WHEREAS, it is in the interests of the litigants, as well as the public, the Court, and counsel, to provide the most expeditious and efficient handling of these cases;

IT IS HEREBY RESOLVED by the Executive Session of the United States District Court for the District of Columbia that:

1. Senior Judge Thomas F. Hogan is designated to coordinate and manage proceedings in all Guantanamo Bay cases so that these cases can be addressed as expeditiously as possible as required by the Supreme Court in *Boumediene v. Bush*. No. 06-1195, slip op. at 66 (U.S. June 12, 2008).

2. All Guantanamo Bay cases, both those which have been filed and those which may be filed in the future, are to be transferred by the Judge to whom they are assigned, pursuant to LCvR 40.6(a) and 40.5(e), to Senior Judge Thomas F. Hogan for coordination and management. The transferring Judge will retain the case for all other purposes.

3. Senior Judge Thomas F. Hogan will identify and delineate both procedural and

substantive issues that are common to all or some of these cases.

4. To the extent possible, Senior Judge Thomas F. Hogan will rule on procedural issues that are common to these cases.

5. As to substantive issues, Senior Judge Thomas F. Hogan will confer with those Judges whose cases raise common substantive issues. To the extent possible, and provided that consent is given by the transferring Judge, one of the transferring Judges or Senior Judge Thomas F. Hogan will address specified substantive issues that are common to the Guantanamo Bay cases.[1] A Judge who does not agree with any substantive decision reached in this manner may resolve the issue in his or her own cases as he or she deems appropriate.

---

[1] LCvR 40.6(a) provides that: "A Judge, upon written advice to the Calendar Committee, may transfer directly all or part of any case on the Judge's docket to any consenting Judge" (emphasis added).

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE:	)	
	)	
U.S. DEPARTMENT OF STATE FOIA	)	Misc. No. 15-1188
LITIGATION REGARDING EMAILS	)	
OF CERTAIN FORMER OFFICIALS	)	
	)	

[PROPOSED] ORDER

Upon consideration of the U.S. Department of State's motion for designation of a coordinating judge, Respondent Judicial Watch, Inc.'s Motion to Dismiss or, in the Alternative, Opposition to Designation/Transfer Motion, and the entire record herein, it is hereby ORDERED that:

1. The U.S. Department of State's motion for designation of a coordinating judge and to transfer is DENIED; and

2. Respondent Judicial Watch, Inc.'s motion to dismiss is GRANTED.

Dated:

____
U.S. District Judge

Copies to:

Paul J. Orfanedes
Michael Bekesha
Ramona R. Cotca
JUDICIAL WATCH, INC.
425 Third Street, SW, Suite 800
Washington, DC 20024

Elizabeth J. Shapiro
Robert J. Prince
U.S. DEPARTMENT OF JUSTICE
P.O. Box 883
Washington, DC 20044

Theodore B. Olson
Matthew D. McGill
GIBSON, DUNN & CRUTCHER, L.L.P.
1050 Connecticut Avenue, NW
Washington, DC 20036-5306

Ryan Steven James
LAW OFFICE OF RYAN S. JAMES
5208 Capricorn Loop
Killeen, TX 76542

Jeffrey Louis Light
LAW OFFICES OF JEFFREY LIGHT
1712 Eye Street, NW
Suite 915
Washington, DC 20006

and

All other counsel of record