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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELECTRONIC PRIVACY .
INFORMATION CENTER .
Plaintiff, .
vs. . Docket No. CV 19-810-RBW
UNITED STATES DEPARTMENT . Washington, D.C.
OF JUSTICE .
Tuesday, April 9, 2019
Defendant. .
.x 9:02 a.m.

TRANSCRIPT OF MOTIONS HEARING
BEFORE THE HONORABLE SENIOR JUDGE REGGIE B. WALTON
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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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 what would need to be produced, assuming production is
2 appropriate in this case, may be in fact broader than the
3 redactions that will have to be effected in reference to
4 what may be submitted to Congress. But why at this time
5 would it be appropriate for me to grant the relief that's
6 being requested?

7 MR. BUTLER: Yes, your Honor. So the key question
8 now which is different slightly than the question at the
9 time we filed the preliminary injunction is what actions
10 does this Court need to take to ensure that the agency
11 processes EPIC's request as soon as practicable, which is
12 what is required under the statute. Obviously, it's no
13 longer in dispute that we're entitled to expedited
14 processing. That was in dispute at the time that we filed
15 the complaint. The agency's conceded that point.

16 Our position now is that this Court has authority
17 under 552(a)(4)(B) and *Payne Enterprises*, to enjoin the
18 agency to cease withholding responsive records. That
19 doesn't mean that the Court is going to order the agency to
20 release all material regardless of whether or not it's
21 exempt. But the point we're making is that there are three
22 categories of records in our proposal that we believe can be
23 expeditiously processed, and ultimately, the material can be
24 released on the schedule we've proposed.

25 First is the Mueller report itself. And it's

1 actually the agency's representation summarized in the
2 Attorney General's letter to Congress that by mid-April, if
3 not sooner, the agency will be finished with the processing
4 and prepared to release that material to the public. And
5 our point is simply that at that, that is the point at which
6 EPIC is entitled to receive the record and that this Court
7 can issue an order consistent with the agency's own
8 representation about that production.

9 As to the other two categories we highlight in our
10 reply brief, one there are reports based on statements from
11 individuals within the Special Counsel's office that there
12 are summaries either in the report or associated with the
13 report that were specifically drafted as summaries. And
14 we've seen in prior independent counsel reports that there
15 were executive summaries or introductions drafted to be
16 released to the public that we believe do not, would not
17 contain exempt material because they're drafted specifically
18 for that purpose.

19 So we believe that the agency can be ordered to
20 process those specific subcategory of the record immediately
21 because we believe they would not necessarily contain exempt
22 material. And the third category that we've proposed in our
23 exchange with opposing counsel is that the agency
24 immediately begin processing Category 5 of EPIC's request.
25 We believe that that's a priority category and we are

1 willing at this point to proceed in phases with the
2 processing of our request.

3 The agency at this point has not taken the
4 position on a search for responsive records which so far as
5 we know it has not conducted. That can certainly be ordered
6 to complete as well as, you know, a reasonable processing
7 schedule which this Court enters routinely in FOIA matters
8 necessarily would be available in this matter which is even
9 more urgent than the normal FOIA requests.

10 THE COURT: And what documents are you referencing
11 in this third category? What type of documents?

12 MR. BUTLER: So in Category 5 each of our -- the
13 seven categories in our request refers actually to a very
14 specific subset of records based on the Special Counsel
15 regulation. Category V request, "referrals, any referrals
16 that the Special Counsel has made for all referrals by the
17 Special Counsel, Attorney General or Acting Attorney General
18 for administrative remedies, civil sanctions or other
19 governmental action outside the criminal justice system,"
20 which is under the regulatory authority of 600.4(c) of the
21 Special Counsel regulations.

22 And also I'll note that each of our, this request
23 which at the time we drafted it was based on the limited
24 public knowledge we have includes subcategories for drafts
25 and attached material which, you know, depending on the

1 status of the records now, you know, obviously the agency
2 could provide more information about whether that, there is
3 substantial materials in those categories or not.

4 But we believe that it would be completely within
5 this Court's authority to order the immediate initiation of
6 processing of that category. We've proposed a timeline for
7 the processing of that category by April 29th. The agency
8 hasn't offered a counterproposal at this point.

9 THE COURT: Anything else?

10 MR. BUTLER: I'll just come back to the point that
11 just quickly the legal basis that you asked about. I think
12 that the agency points out the Protect Democracy case. I
13 think that case neatly summarizes how preliminary
14 injunctions can be handled in FOIA cases in this district.
15 And as I noted the first potential category of relief, we've
16 already been granted expedited processing. But the second
17 category that this Court does have authority to ensure is
18 the documents are produced as soon as practicable.

19 And I'll just point out finally that that's not
20 the same thing as granting EPIC ultimate relief in this
21 case. Ultimate relief in this case as in any FOIA case will
22 be a final resolution typically on cross-motions for summary
23 judgment as to whether the agency has in fact disclosed all
24 nonexempt material.

25 THE COURT: Thank you. Government response.

1 MS. ENLOW: Thank you, your Honor. EPIC is not
2 entitled to emergency injunctive relief to obtain a document
3 that did not exist a month ago. The Attorney General has
4 laid out in his letters to Congress the process that is
5 taking place. And the Attorney General has stated that the
6 government is well along in the process of redacting the
7 report for information that must be redacted according to
8 the law; Grand Jury information, information concerning
9 intelligent sources and methods, information concerning
10 other ongoing matters and personal privacy information.
11 This process like I said the Attorney General has stated is
12 well along. They're well along in the process of redacting
13 the report.

14 EPIC simply fails to meet any of the elements
15 showing clear entitlement to preliminary injunctive relief,
16 which is what they have to do here, especially to obtain
17 this sort of mandatory injunctive relief which the DC
18 Circuit has said should be issued sparingly. EPIC shows no
19 irreparable harm. Indeed, no harm by getting the report at
20 the same time as the rest of the public in approximately
21 mid-April.

22 The public interest is best served here by
23 allowing the process that the Attorney General has set forth
24 that the department's undertaking with the assistance of the
25 Special Counsel to finish that process, redact the

1 appropriate material, and then at that point and once the
2 government has had a chance to file its answer in this case,
3 which is not even due till April 25th, to then come back,
4 reassess where we are. The world likely will be very
5 different at that point and file a joint status report for
6 the, you know, to propose further proceedings in this case.

7 To the extent that they are seeking executive
8 summaries, to the extent that the report includes executive
9 summaries they will be processed along with the rest of the
10 report. The Attorney General has stated that it is not in
11 the public's interest to release the report in a serial or
12 piecemeal fashion. That's exactly what they're seeking
13 here.

14 Finally that Category 5 of documents that they
15 mentioned that category the Office of Information Policy has
16 submitted a declaration stating that that category of
17 documents could contain to the extent the records exists,
18 they could contain on the -- there's been a description of
19 the category itself that they could be subject to a number
20 of exemptions. The department needs time as the declarant
21 stated to discuss with EPIC the scope of their request that
22 they're seeking in an attempt to better frame it and narrow
23 it. Those discussions should take place in the regular
24 course after the government's filed an answer once the
25 report has been released, and then we'll know better where

1 we are in this case.

2 There's simply no basis to expedite this process
3 now on an emergency injunctive relief. And courts have
4 repeatedly recognized that injunctive relief in FOIA cases
5 should not be to order the government to produce documents.
6 That's the EPIC case from 2014. *Project Democracy*
7 recognizes that as well, the *Daily Caller*. There's numerous
8 cases that recognize that. Plaintiff simply is not entitled
9 to it here.

10 THE COURT: How would you be as the government
11 indicates irreparably harmed if you don't receive the
12 documents prior to the time when the public would receive
13 the documents following the Attorney General's review and
14 assessment of what should be released?

15 MR. BUTLER: Well, your Honor, as to irreparable
16 harm again there's three different categories of records
17 we've laid out as to the Mueller report itself. Our
18 proposal is not that we would receive the documents before
19 the public, but that the Court must order the agency to
20 provide their response commensurate with that processing.
21 But I think importantly our interest in this case are moving
22 forward as expeditiously as possible, as practicable to a
23 final resolution with each category of our request which as
24 I noted before would include judicial review of any
25 withholdings which is not going to happen in the public

1 context where Attorney General Barr is sort of agreeing to
2 provide materials to Congress.

3 This Court has jurisdiction to review any
4 withholdings. And we want to seek review as expeditiously
5 as possible in the public interest, so that's why we need
6 the Court to ensure that the agency provides a FOIA response
7 to EPIC that is reviewable commensurate with the timeline
8 they've already agreed to. And obviously as to the other
9 categories, in particular the third category that, just
10 records responsive to Category 5 of our request, if the
11 agency doesn't even begin processing that category until
12 after their answer deadline, which I would note is a
13 litigation deadline that has nothing to do with their
14 obligation to process the request as soon as practicable,
15 then EPIC will have lost valuable time in obtaining records
16 that provide additional information about the context of
17 this Special Counsel proceeding.

18 There are hearings upcoming in Congress within
19 that time frame. And EPIC and the public who EPIC informs
20 through its media status would not have information about,
21 necessary to understand the report and the context of the
22 report if we, if processing doesn't begin immediately.

23 THE COURT: I understand what you're saying, but I
24 don't know if that really addresses the issue of irreparable
25 harm if you don't receive the information sooner than would

1 be the normal course.

2 MR. BUTLER: Oh, your Honor --

3 THE COURT: I understand you want to get the
4 information and you want to make the information available
5 to the public, but I guess I'm having some difficulty
6 understanding how if you don't get it sooner than later that
7 somehow is going to cause irreparable harm.

8 MR. BUTLER: This goes to the point that's been
9 raise in *Payne* and many other cases that stale information
10 is of a lesser value and also that, especially in the course
11 of an extremely urgent public debate over government
12 activities over which there is a significant and unique
13 public concern as there is in this case. Time is really of
14 the essence. And that was the point that was made in the
15 *EPIC versus DOJ* decision in 2006, which dealt with the
16 warrantless wiretapping program at the time which may be,
17 you know, the last most significant -- the last proceeding
18 as significant as the one we're dealing with right now.

19 And so time really is of the essence. It's not
20 the case that we can simply wait around for months and
21 months for the agency to come back and negotiate a schedule
22 for processing that would take months and months. The
23 reason that we're here, the reason we filed the preliminary
24 injunction is because this process needs to begin as soon as
25 practicable which we're entitled to under the statute.

1 So I believe that with respect to the likelihood
2 of the success on the merits the agency really has presented
3 no argument that it's not practicable to process our request
4 for the Mueller report in the timeline that they've already
5 proposed. They've offered no counterproposal as to the
6 processing of our Category 5 records.

7 And I'll note that in that proposal, which we
8 offered to opposing counsel, we've already significantly
9 narrowed and prioritized the scope of our request.

10 Obviously, if the agency was willing to engage in
11 negotiations over that processing we can do so further. But
12 I believe that we've established irreparable harm which
13 would be caused by a refusal to even process our request at
14 this point to not produce our request commensurate with the
15 representations the agency has already made.

16 I think also the public interest in this matter,
17 the agency doesn't really contest given the significance of
18 the request the fact that there's -- agency points out
19 there's hundreds of other requests for similar material, so
20 the agency prioritizing this request is entirely sensible
21 given that they have a wide range of obligations for
22 similar, to process quickly similar material.

23 THE COURT: Well I don't know what, I mean maybe
24 the government may not know at this time what your
25 projection would be as to how long it's going to take to

1 process these documents that are being requested. But does
2 the government have any idea how long it's going to take
3 before this information can be reviewed and assessment made
4 as to what should be not produced and put us in a position
5 where we can bring this to final resolution?

6 MS. ENLOW: Your Honor, OIP has started the
7 process, but we don't know the time frame for the final
8 resolution of this case at this point.

9 The most efficient way to move forward with this
10 case right now would be for the government to file its
11 answer, the report to come out, and seven days after, the
12 government files its answer April 25th, seven days after
13 within that time period for the parties to meet and confer
14 to learn, to better frame EPIC's request and narrow it down
15 if possible, and have OIP understand exactly what EPIC is
16 seeking in some of these requests that are very broad and
17 it's not clear, and then have the parties file a joint
18 status report a week after the answer to propose a plan
19 going forward in this case.

20 We're not talking about months and months and
21 months here. We're talking about in a matter of weeks
22 having the government and EPIC come together and file a
23 joint status report for the conclusion of this case.

24 THE COURT: And in reference to these Category 5
25 documents that are being referenced do you have any idea how

1 many documents we're talking about?

2 MS. ENLOW: I don't, your Honor. But again I, the
3 best way to go forward on that category as well is for the
4 parties to be able to meet and confer about it and then file
5 a joint status report proposing further proceedings to move
6 forward with that processing.

7 THE COURT: And you would be proposing this joint
8 status report be submitted to me by when?

9 MS. ENLOW: A week after our answer. Our answer
10 is due April 25th. A week after would be May 2nd, I
11 believe, May 1st.

12 THE COURT: I was just advised this morning that
13 I'll be assigned I guess another case by another filer
14 basically seeking the same information that's being sought
15 in this case. It was assigned to another judge, but when he
16 realized that this case had been assigned to me already he
17 concluded I think appropriately, that it's a related case so
18 that case will be reassigned to me today as I understand.

19 I guess I'm just not convinced that there has been
20 a sufficient showing of irreparable harm if we adhere to
21 what the government is being suggested in reference to its
22 filing an answer by the 25th of April. And the parties then
23 meet and conferring and then coming back before me seven
24 days after that to see where we are at that point.

25 I agree with the plaintiff that this is a very

1 important matter and the public has a right to know what it
2 can know about the investigation as expeditiously as
3 possible. And therefore, I will keep the parties on a fast
4 track so that we can get this done as soon as possible, but
5 I just don't see what I accomplish by way of putting in
6 place a procedure at least at this point that would be
7 inconsistent with what the government is being proposed.

8 That would bring us back here in early May, and
9 hopefully we'd have a better appreciation of how many
10 documents we're talking about and what type of time schedule
11 we would be on in having these documents reviewed and an
12 assessment made as to what could be produced. And then
13 whatever the government decides can't be produced put us in
14 a position where we could proceed to summary judgment in
15 reference to those documents.

16 Again, I just don't see how there's irreparable
17 harm if we're talking about this only being moved back
18 several weeks when I would be in a better position to know
19 exactly what the landscape is, how many documents we're
20 talking about, and how long we're talking about it would be
21 before the government believes it would be in a position to
22 assess what can be or what cannot be produced.

23 MS. ENLOW: Thank you, your Honor.

24 THE COURT: Yes.

25 MR. BUTLER: A few additional points relevant to

1 what you were just saying, your Honor. This really is an
2 ongoing and urgent matter. The Attorney General is
3 testifying in Congress literally at this moment, is
4 preparing to testify again in several weeks. And frankly,
5 the answer deadline that the agency refers to again has
6 nothing to do with this request. Has nothing to do with the
7 as soon as practicable standard. And if the agency wants to
8 confer with EPIC and review the requests and set a
9 processing schedule as soon as practicable, which they're
10 required under the statute, then that should simply happen
11 now. We don't need to wait for an answer for that to
12 happen.

13 And in fact, EPIC did try to begin that process
14 last week when we contacted the agency and opposing counsel
15 to avoid the need for briefing and for the hearing before
16 your Honor today. We want the process to begin now. And
17 again that processing includes a search for responsive
18 records, determination by the agency of how many exist for
19 the different categories we're willing to scope and
20 prioritize.

21 We're willing to make this process as efficient as
22 possible, but waiting several weeks is not only going to
23 cause EPIC irreparable harm because of the ongoing public
24 debate that's not informed by the information we seek, but
25 is also not consistent with the statutory standard, with the

1 agency's requirement to produce as soon as practicable. The
2 answer deadline is just simply not related to that issue.

3 And I'll point out that in any number of cases
4 that, a number of cases that we reviewed which we referred
5 to in our reply brief involving preliminary injunctions in
6 this court, parties come together at the time the
7 preliminary injunction is filed or after that or at the time
8 of the hearing and agree on a schedule for processing. It
9 happened in EPIC's case against the National Archives last
10 year. It happened in two different cases we cited against
11 the Department of Justice last year, and even in a number of
12 Your Honor's cases that we found that didn't involve
13 preliminary injunction.

14 The agency came to a hearing prepared with
15 information about the responsive records of the request.
16 The agency had a request for months. They've had our
17 complaint for weeks. At this point we believe they need to
18 begin that processing, the process of identifying records
19 responsive to EPIC's request. And I also point out that the
20 Mueller report is a single record. It's 400 pages, but the
21 agency already began reviewing it weeks ago. And so I don't
22 think it's credible to say that, for the agency to say that
23 it's not practicable to process and produce that request
24 commensurate with their prior representations with respect
25 to the other categories.

1 I think that the orderly process that this Court
2 typically imposes in FOIA cases is that once the parties
3 have appeared the parties are instructed to confer and to
4 set a processing schedule commensurate with their
5 obligations which I think is exactly what should happen now
6 and not in several weeks.

7 THE COURT: Government, do you intend or are you
8 prepared to work with EPIC between now and when your answer
9 would be filed to try and identify what responsive documents
10 exists so you'd be in a better position to determine as soon
11 as possible exactly what the landscape is and what we're
12 talking about as far as what needs to be reviewed and what
13 conceivably needs to be produced?

14 MS. ENLOW: Your Honor, the government certainly
15 has no intention of delaying discussions with EPIC. Again,
16 I think the best course forward here is to wait for the
17 report to be released and then we can have the discussions
18 of exactly what EPIC is seeking.

19 THE COURT: Do you know exactly when that is going
20 to occur?

21 MS. ENLOW: No I do not, your Honor. I don't have
22 that information. But I will say, your Honor, EPIC's claim
23 of wanting a schedule right -- again, we're here on a
24 preliminary injunction. They simply have not met their high
25 burden of showing irreparable harm. They claim that

1 irreparable, they've suffered irreparable harm simply
2 because the agency hasn't produced the records or because
3 there's public debate going on right now. But that claim of
4 irreparable harm should be rejected out right. It's a very
5 high bar as the court in the EPIC 2014 case said.

6 Simply not getting the records does not meet that
7 high bar because presumably every FOIA requester who's filed
8 a case in court would have that same irreparable harm. That
9 simply is not the standard here.

10 Again, we should wait for the process the Attorney
11 General has laid out to take place, the government file an
12 answer, and then seven days after file a joint status
13 report.

14 THE COURT: Okay. Let me take a short break and
15 come back with my ruling.

16 [Thereupon, recess taken at 9:33 a.m.m, resuming
17 at 9:38 a.m.]

18 THE COURT: I fully appreciate the desire on the
19 part of EPIC to acquire this information as quickly as
20 possible and to have the processing of what is being sought
21 occur as quickly as possible. I can appreciate that this is
22 an extremely important subject matter to the nation. And as
23 a result of that I think it's important that the government
24 be as transparent as possible in references to what it
25 produces consistent with the law.

1 But at this point I'm being asked to impose an
2 extraordinary remedy of an injunction, and obviously it's an
3 appropriate remedy to impose in appropriate circumstances.
4 But here I just haven't been convinced that not adhering to
5 what the government is being suggested be done at this point
6 that pursuing that course would cause irreparable harm to
7 the plaintiffs by not proceeding at a more expedited manner
8 than is being suggested.

9 But I do have a couple of questions however. In
10 reference to the government's as I understand agreement as
11 far as expediting the review of at least something has been
12 agreed to is that only the report itself that the
13 government -- because it was a request for expedited
14 processing, and I thought there was some agreement that that
15 had been resolved. As I understood that's only in reference
16 to the report; is that right? Or is that not even correct?

17 MS. ENLOW: No, your Honor, the department has
18 granted expedited processing for EPIC's FOIA request, its
19 entire request. But what that means though is that the
20 department should be allowed to process the documents, the
21 request as soon as practicable. Here if you read EPIC's
22 request at its broadest they're literally asking for, or
23 could be asking for all records from the Special Counsel's
24 office.

25 And so what the government is proposing is that

1 the government take the time now to, and after the report is
2 released and then after the government has a chance to file
3 its answer in this case, to work, to have discussions with
4 EPIC with narrowing these broad requests to better
5 understanding what EPIC is seeking for -- seeking.

6 We can talk to them about the scope of the
7 request, but the idea of discussing the actual schedule for
8 processing the documents, processing and release of any
9 documents should happen after the report is released so we
10 better understand the world we're living in.

11 OIP also has a, as our declarant has stated a high
12 burden of expedited requests -- high burden of other cases
13 that it's processing as well.

14 THE COURT: One moment.

15 [Brief pause.]

16 THE COURT: Okay.

17 MS. ENLOW: Thank you, your Honor. My final point
18 was EPIC should not be permitted leapfrog over these
19 requests that were granted expedited processing before it
20 was.

21 THE COURT: There are other requests that you are
22 processing at this time that the courts have ordered be
23 expedited?

24 MS. ENLOW: Yes, your Honor. As set forth in the
25 declaration, I believe there's ten expedited requests that

1 in litigate -- nine or ten expedited requests that are
2 already in litigation. But there's also all the other
3 expedited requests that OIP has that are not in litigation
4 but they have granted expedition to that OIP also has to
5 process. And EPIC is simply not entitled to leapfrog over
6 all those requests simply because they filed a lawsuit.

7 That being said, your Honor, the government will
8 be processing as the Attorney General stated the report for
9 release and then OIP will begin processing it for release
10 and for FOIA.

11 THE COURT: Do you know if that processing of the
12 report also includes the summaries?

13 MS. ENLOW: I don't have that information, your
14 Honor.

15 THE COURT: Okay. Well, I'll need to know that
16 when we come back what documents are in fact encompassed
17 within the agreement to expedite the request. And I'll need
18 to know a timetable as to how long its believed -- I mean, I
19 don't know how, I guess you'll have to confer with EPIC and
20 I'll require that you try and do that as expeditiously as
21 possible to see exactly what the scope of the requests are
22 so that you can narrow your assessment as to what the
23 universe of documents are that need to be searched and
24 processed to see what exactly within those documents can and
25 should be produced so that hopefully when we come back here

1 seven days after your answer is filed that we'll be in a
2 position to put in place a scheduling order that will move
3 this matter expeditiously to conclusion.

4 So I will at this point have to deny the motion
5 for an injunction concluding that based upon what's been
6 represented to me that I have not been convinced that
7 irreparable harm has been established, and that is a
8 foundation requirement for the issuance of injunctive
9 relief. So I will deny without prejudice the request for
10 injunctive relief at this point. And the government will
11 file its answer by the 25th. Yes.

12 MR. BUTLER: Your Honor, we understand that your
13 Honor believes that the best way for this case to move
14 forward is through conferring with the agency and issuing a
15 status report in order to produce an expeditious schedule.
16 I would only note that that can happen right now. And EPIC
17 actually already reached out last week to opposing counsel
18 to begin that process.

19 An agency answer as you know in a FOIA case is
20 mostly boilerplate. It's not going to add anything. We
21 believe that we could simply begin now conferring with
22 opposing counsel. We can file a status report within a
23 week. We've already began attempting to narrow the scope,
24 focus the scope of our request and prioritize. And if
25 opposing counsel would engage in negotiations with us, we

1 believe we could do that more expeditiously. It wouldn't
2 actually require Your Honor to enter a preliminary
3 injunction order. All you would have to do is order the
4 parties to confer and file a joint status report in a week
5 and that would also provide an opportunity for this Court to
6 be updated about the status of the release of the Mueller
7 report itself, and also to provide an update as to the
8 status of prioritized categories of EPIC's requests narrowed
9 specifically and tailored to be processed as expeditiously
10 as possible.

11 And one additional thing I'll just note is that
12 EPIC's initial request and appeal were filed months ago. So
13 if the agency is truly granting our request for expedited
14 processing and therefore waiving that argument then we
15 should have been put in the queue at that point not now.
16 And another -- on that point I'll also point out that the
17 agency notes in its own brief that it doesn't process
18 expedited requests wholesale in order. It processes in
19 piecemeal. So the first step of any expedited processing
20 would be a search identifying responsive records, you know,
21 potentially scoping out areas of the requests, all of which
22 I think can and should happen now. The agency hasn't even
23 actually represented that other expedited requests are still
24 at the search stage.

25 So I believe it would be consistent with this

1 Court's practice and also in the interest of all parties
2 here to move this forward expeditiously if we simply had a
3 status report in a week.

4 THE COURT: Any response to that request?

5 MS. ENLOW: Your Honor, the Court already ruled on
6 their motion for preliminary injunction. Again, the best
7 way forward is to have the report released, the answer and
8 then JSR seven days after.

9 THE COURT: Very well. I will require that the
10 answer be filed by the 25th, and the parties thereafter meet
11 and confer and try and assess how this case should proceed
12 thereafter as expeditiously as humanly possible. And I'll
13 require that the parties report back to me either on the 2nd
14 or the 3rd of May, and at that point be prepared to propose
15 a schedule for the review and the production of documents on
16 an expedited basis.

17 Either day. I don't have anything on my calendar
18 either day so either day is fine. Either preferred day,
19 either side?

20 MS. ENLOW: Just have a moment, your Honor.

21 MR. BUTLER: Your Honor, May 2nd would be
22 preferable, Thursday.

23 THE COURT: That's fine.

24 MS. ENLOW: May 2nd.

25 THE COURT: Any particular time, I'm free all day?

1 MR. BUTLER: We're free all day as well, your
2 Honor.

3 THE COURT: Very well. Ten o'clock. There was
4 one question I needed to ask. I think you said the
5 expedited review that the government has agreed to doesn't
6 encompass the Mueller report, but you're not sure as to
7 whether it encompasses the summaries and whether it
8 encompasses any of these Category 5 requests; is that right?

9 MS. ENLOW: Your Honor, to be clear the expedited
10 processing that the department has granted is for EPIC's
11 entire FOIA request that includes the Mueller report, that
12 includes Category 5.

13 THE COURT: And the summaries?

14 MS. ENLOW: To the extent they are part of the
15 report that would include that as well.

16 THE COURT: I assume they're part of the report,
17 right? They were submitted --

18 MS. ENLOW: I don't know.

19 THE COURT: If the report in the media is correct
20 that they were submitted as a part of the report I assume?

21 MS. ENLOW: I don't know, your Honor.

22 THE COURT: Very well. Thank you.

23 [Thereupon, the proceedings adjourned at 9:50
24 a.m.]

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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 27 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 9th day of April, 2019.

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

<p>MR. BUTLER: [11] 3/6 4/6 6/11 7/9 10/14 12/1 12/7 16/24 24/11 26/20 26/25</p> <p>MS. ENLOW: [19] 3/10 7/25 14/5 15/1 15/8 16/22 19/13 19/20 21/16 22/16 22/23 23/12 26/4 26/19 26/23 27/8 27/13 27/17 27/20</p> <p>THE COURT: [31]</p> <p>THE DEPUTY CLERK: [1] 3/1</p>	<p>14/20 14/21 15/1 15/4 16/2 16/10 16/17 16/20 16/20 18/15 19/12 22/6 25/6</p> <p>above [1] 28/6</p> <p>accomplish [1] 16/5</p> <p>according [1] 8/7</p> <p>acquire [1] 20/19</p> <p>Acting [1] 6/17</p> <p>action [2] 3/5 6/19</p> <p>actions [1] 4/9</p> <p>activities [1] 12/12</p> <p>actual [1] 22/7</p> <p>actually [5] 5/1 6/13 24/17 25/2 25/23</p> <p>add [1] 24/20</p> <p>additional [3] 11/16 16/25 25/11</p> <p>addresses [1] 11/24</p> <p>adduced [1] 28/5</p> <p>adhere [1] 15/20</p> <p>adhering [1] 21/4</p> <p>adjourned [1] 27/23</p> <p>administrative [2] 3/19 6/18</p> <p>advised [1] 15/12</p> <p>after [15] 9/24 11/12 14/11 14/12 14/18 15/9 15/10 15/24 18/7 20/12 22/1 22/2 22/9 24/1 26/8</p> <p>again [10] 10/16 15/2 16/16 17/4 17/5 17/17 19/15 19/23 20/10 26/6</p> <p>against [2] 18/9 18/10</p> <p>agency [36]</p> <p>agency's [4] 4/15 5/1 5/7 18/1</p> <p>ago [3] 8/3 18/21 25/12</p> <p>agree [2] 15/25 18/8</p> <p>agreed [3] 11/8 21/12 27/5</p> <p>agreeing [1] 11/1</p> <p>agreement [3] 21/10 21/14 23/17</p> <p>aided [1] 2/7</p> <p>Alan [2] 1/13 3/7</p> <p>all [11] 4/20 6/16 7/23 21/23 23/2 23/6 25/3 25/21 26/1 26/25 27/1</p> <p>allowed [1] 21/20</p> <p>allowing [1] 8/23</p> <p>along [4] 8/6 8/12 8/12 9/9</p> <p>already [11] 7/16 11/8 13/4 13/8 13/15 15/16 18/21 23/2 24/17 24/23 26/5</p> <p>also [13] 6/22 12/10 13/16 17/25 18/19 22/11 23/2 23/4 23/12 25/5 25/7 25/16 26/1</p> <p>another [4] 15/13 15/13 15/15 25/16</p> <p>answer [20] 9/2 9/24 11/12 14/11 14/12 14/18 15/9 15/9 15/22 17/5 17/11 18/2 19/8 20/12 22/3 24/1 24/11 24/19 26/7 26/10</p> <p>any [13] 6/15 7/21 8/14 10/24 11/3 14/2 14/25 18/3 22/8 25/19 26/4 26/25 27/8</p> <p>anything [3] 7/9 24/20 26/17</p> <p>appeal [1] 25/12</p> <p>APPEARANCES [1] 1/12</p> <p>appeared [1] 19/3</p> <p>apply [1] 3/22</p> <p>appreciate [2] 20/18 20/21</p> <p>appreciation [1] 16/9</p> <p>appropriate [5] 4/2 4/5 9/1 21/3 21/3</p> <p>appropriately [1] 15/17</p> <p>approximately [1] 8/20</p> <p>April [9] 1/6 5/2 7/7 8/21 9/3 14/12 15/10 15/22 28/11</p>	<p>April 25th [1] 14/12</p> <p>April 29th [1] 7/7</p> <p>Archives [1] 18/9</p> <p>are [26] 4/21 5/10 5/12 5/25 6/10 7/18 9/4 9/7 10/1 10/21 11/18 14/1 14/16 14/25 15/24 19/3 19/7 22/21 22/21 23/1 23/3 23/16 23/21 23/23 25/23 27/14</p> <p>areas [1] 25/21</p> <p>argument [2] 13/3 25/14</p> <p>around [1] 12/20</p> <p>as [89]</p> <p>ask [3] 3/5 3/16 27/4</p> <p>asked [2] 7/11 21/1</p> <p>asking [2] 21/22 21/23</p> <p>assess [3] 3/21 16/22 26/11</p> <p>assessment [5] 3/25 10/14 14/3 16/12 23/22</p> <p>assigned [3] 15/13 15/15 15/16</p> <p>assistance [1] 8/24</p> <p>associated [1] 5/12</p> <p>assume [2] 27/16 27/20</p> <p>assuming [1] 4/1</p> <p>attached [1] 6/25</p> <p>attempt [1] 9/22</p> <p>attempting [1] 24/23</p> <p>Attorney [15] 1/17 1/18 5/2 6/17 6/17 8/3 8/5 8/11 8/23 9/10 10/13 11/1 17/2 20/10 23/8</p> <p>authority [4] 4/16 6/20 7/5 7/17</p> <p>available [2] 6/8 12/4</p> <p>Avenue [2] 1/15 2/2</p> <p>avoid [1] 17/15</p>
<p>.</p> <p>.x [1] 1/7</p> <p>/</p>	<p>/s [1] 28/13</p>	<p>as [89]</p> <p>ask [3] 3/5 3/16 27/4</p> <p>asked [2] 7/11 21/1</p> <p>asking [2] 21/22 21/23</p> <p>assess [3] 3/21 16/22 26/11</p> <p>assessment [5] 3/25 10/14 14/3 16/12 23/22</p> <p>assigned [3] 15/13 15/15 15/16</p> <p>assistance [1] 8/24</p> <p>associated [1] 5/12</p> <p>assume [2] 27/16 27/20</p> <p>assuming [1] 4/1</p> <p>attached [1] 6/25</p> <p>attempt [1] 9/22</p> <p>attempting [1] 24/23</p> <p>Attorney [15] 1/17 1/18 5/2 6/17 6/17 8/3 8/5 8/11 8/23 9/10 10/13 11/1 17/2 20/10 23/8</p> <p>authority [4] 4/16 6/20 7/5 7/17</p> <p>available [2] 6/8 12/4</p> <p>Avenue [2] 1/15 2/2</p> <p>avoid [1] 17/15</p>
<p>1</p> <p>1100 [1] 1/19</p> <p>1718 [1] 1/15</p> <p>19-810 [1] 3/5</p> <p>19-810-RBW [1] 1/4</p> <p>1st [1] 15/11</p>	<p>addresses [1] 11/24</p> <p>adduced [1] 28/5</p> <p>adhere [1] 15/20</p> <p>adhering [1] 21/4</p> <p>adjourned [1] 27/23</p> <p>administrative [2] 3/19 6/18</p> <p>advised [1] 15/12</p> <p>after [15] 9/24 11/12 14/11 14/12 14/18 15/9 15/10 15/24 18/7 20/12 22/1 22/2 22/9 24/1 26/8</p> <p>again [10] 10/16 15/2 16/16 17/4 17/5 17/17 19/15 19/23 20/10 26/6</p> <p>against [2] 18/9 18/10</p> <p>agency [36]</p> <p>agency's [4] 4/15 5/1 5/7 18/1</p> <p>ago [3] 8/3 18/21 25/12</p> <p>agree [2] 15/25 18/8</p> <p>agreed [3] 11/8 21/12 27/5</p> <p>agreeing [1] 11/1</p> <p>agreement [3] 21/10 21/14 23/17</p> <p>aided [1] 2/7</p> <p>Alan [2] 1/13 3/7</p> <p>all [11] 4/20 6/16 7/23 21/23 23/2 23/6 25/3 25/21 26/1 26/25 27/1</p> <p>allowed [1] 21/20</p> <p>allowing [1] 8/23</p> <p>along [4] 8/6 8/12 8/12 9/9</p> <p>already [11] 7/16 11/8 13/4 13/8 13/15 15/16 18/21 23/2 24/17 24/23 26/5</p> <p>also [13] 6/22 12/10 13/16 17/25 18/19 22/11 23/2 23/4 23/12 25/5 25/7 25/16 26/1</p> <p>another [4] 15/13 15/13 15/15 25/16</p> <p>answer [20] 9/2 9/24 11/12 14/11 14/12 14/18 15/9 15/9 15/22 17/5 17/11 18/2 19/8 20/12 22/3 24/1 24/11 24/19 26/7 26/10</p> <p>any [13] 6/15 7/21 8/14 10/24 11/3 14/2 14/25 18/3 22/8 25/19 26/4 26/25 27/8</p> <p>anything [3] 7/9 24/20 26/17</p> <p>appeal [1] 25/12</p> <p>APPEARANCES [1] 1/12</p> <p>appeared [1] 19/3</p> <p>apply [1] 3/22</p> <p>appreciate [2] 20/18 20/21</p> <p>appreciation [1] 16/9</p> <p>appropriate [5] 4/2 4/5 9/1 21/3 21/3</p> <p>appropriately [1] 15/17</p> <p>approximately [1] 8/20</p> <p>April [9] 1/6 5/2 7/7 8/21 9/3 14/12 15/10 15/22 28/11</p>	<p>assessment [5] 3/25 10/14 14/3 16/12 23/22</p> <p>assigned [3] 15/13 15/15 15/16</p> <p>assistance [1] 8/24</p> <p>associated [1] 5/12</p> <p>assume [2] 27/16 27/20</p> <p>assuming [1] 4/1</p> <p>attached [1] 6/25</p> <p>attempt [1] 9/22</p> <p>attempting [1] 24/23</p> <p>Attorney [15] 1/17 1/18 5/2 6/17 6/17 8/3 8/5 8/11 8/23 9/10 10/13 11/1 17/2 20/10 23/8</p> <p>authority [4] 4/16 6/20 7/5 7/17</p> <p>available [2] 6/8 12/4</p> <p>Avenue [2] 1/15 2/2</p> <p>avoid [1] 17/15</p>
<p>2</p> <p>200 [1] 1/15</p> <p>20001 [1] 2/3</p> <p>20009 [1] 1/16</p> <p>2006 [1] 12/15</p> <p>2014 [2] 10/6 20/5</p> <p>2019 [2] 1/6 28/11</p> <p>20530 [1] 1/20</p> <p>25th [6] 9/3 14/12 15/10 15/22 24/11 26/10</p> <p>27 [1] 28/7</p> <p>29th [1] 7/7</p> <p>2nd [4] 15/10 26/13 26/21 26/24</p>	<p>addresses [1] 11/24</p> <p>adduced [1] 28/5</p> <p>adhere [1] 15/20</p> <p>adhering [1] 21/4</p> <p>adjourned [1] 27/23</p> <p>administrative [2] 3/19 6/18</p> <p>advised [1] 15/12</p> <p>after [15] 9/24 11/12 14/11 14/12 14/18 15/9 15/10 15/24 18/7 20/12 22/1 22/2 22/9 24/1 26/8</p> <p>again [10] 10/16 15/2 16/16 17/4 17/5 17/17 19/15 19/23 20/10 26/6</p> <p>against [2] 18/9 18/10</p> <p>agency [36]</p> <p>agency's [4] 4/15 5/1 5/7 18/1</p> <p>ago [3] 8/3 18/21 25/12</p> <p>agree [2] 15/25 18/8</p> <p>agreed [3] 11/8 21/12 27/5</p> <p>agreeing [1] 11/1</p> <p>agreement [3] 21/10 21/14 23/17</p> <p>aided [1] 2/7</p> <p>Alan [2] 1/13 3/7</p> <p>all [11] 4/20 6/16 7/23 21/23 23/2 23/6 25/3 25/21 26/1 26/25 27/1</p> <p>allowed [1] 21/20</p> <p>allowing [1] 8/23</p> <p>along [4] 8/6 8/12 8/12 9/9</p> <p>already [11] 7/16 11/8 13/4 13/8 13/15 15/16 18/21 23/2 24/17 24/23 26/5</p> <p>also [13] 6/22 12/10 13/16 17/25 18/19 22/11 23/2 23/4 23/12 25/5 25/7 25/16 26/1</p> <p>another [4] 15/13 15/13 15/15 25/16</p> <p>answer [20] 9/2 9/24 11/12 14/11 14/12 14/18 15/9 15/9 15/22 17/5 17/11 18/2 19/8 20/12 22/3 24/1 24/11 24/19 26/7 26/10</p> <p>any [13] 6/15 7/21 8/14 10/24 11/3 14/2 14/25 18/3 22/8 25/19 26/4 26/25 27/8</p> <p>anything [3] 7/9 24/20 26/17</p> <p>appeal [1] 25/12</p> <p>APPEARANCES [1] 1/12</p> <p>appeared [1] 19/3</p> <p>apply [1] 3/22</p> <p>appreciate [2] 20/18 20/21</p> <p>appreciation [1] 16/9</p> <p>appropriate [5] 4/2 4/5 9/1 21/3 21/3</p> <p>appropriately [1] 15/17</p> <p>approximately [1] 8/20</p> <p>April [9] 1/6 5/2 7/7 8/21 9/3 14/12 15/10 15/22 28/11</p>	<p>assessment [5] 3/25 10/14 14/3 16/12 23/22</p> <p>assigned [3] 15/13 15/15 15/16</p> <p>assistance [1] 8/24</p> <p>associated [1] 5/12</p> <p>assume [2] 27/16 27/20</p> <p>assuming [1] 4/1</p> <p>attached [1] 6/25</p> <p>attempt [1] 9/22</p> <p>attempting [1] 24/23</p> <p>Attorney [15] 1/17 1/18 5/2 6/17 6/17 8/3 8/5 8/11 8/23 9/10 10/13 11/1 17/2 20/10 23/8</p> <p>authority [4] 4/16 6/20 7/5 7/17</p> <p>available [2] 6/8 12/4</p> <p>Avenue [2] 1/15 2/2</p> <p>avoid [1] 17/15</p>
<p>3</p> <p>333 [1] 2/2</p> <p>3rd [1] 26/14</p>	<p>addresses [1] 11/24</p> <p>adduced [1] 28/5</p> <p>adhere [1] 15/20</p> <p>adhering [1] 21/4</p> <p>adjourned [1] 27/23</p> <p>administrative [2] 3/19 6/18</p> <p>advised [1] 15/12</p> <p>after [15] 9/24 11/12 14/11 14/12 14/18 15/9 15/10 15/24 18/7 20/12 22/1 22/2 22/9 24/1 26/8</p> <p>again [10] 10/16 15/2 16/16 17/4 17/5 17/17 19/15 19/23 20/10 26/6</p> <p>against [2] 18/9 18/10</p> <p>agency [36]</p> <p>agency's [4] 4/15 5/1 5/7 18/1</p> <p>ago [3] 8/3 18/21 25/12</p> <p>agree [2] 15/25 18/8</p> <p>agreed [3] 11/8 21/12 27/5</p> <p>agreeing [1] 11/1</p> <p>agreement [3] 21/10 21/14 23/17</p> <p>aided [1] 2/7</p> <p>Alan [2] 1/13 3/7</p> <p>all [11] 4/20 6/16 7/23 21/23 23/2 23/6 25/3 25/21 26/1 26/25 27/1</p> <p>allowed [1] 21/20</p> <p>allowing [1] 8/23</p> <p>along [4] 8/6 8/12 8/12 9/9</p> <p>already [11] 7/16 11/8 13/4 13/8 13/15 15/16 18/21 23/2 24/17 24/23 26/5</p> <p>also [13] 6/22 12/10 13/16 17/25 18/19 22/11 23/2 23/4 23/12 25/5 25/7 25/16 26/1</p> <p>another [4] 15/13 15/13 15/15 25/16</p> <p>answer [20] 9/2 9/24 11/12 14/11 14/12 14/18 15/9 15/9 15/22 17/5 17/11 18/2 19/8 20/12 22/3 24/1 24/11 24/19 26/7 26/10</p> <p>any [13] 6/15 7/21 8/14 10/24 11/3 14/2 14/25 18/3 22/8 25/19 26/4 26/25 27/8</p> <p>anything [3] 7/9 24/20 26/17</p> <p>appeal [1] 25/12</p> <p>APPEARANCES [1] 1/12</p> <p>appeared [1] 19/3</p> <p>apply [1] 3/22</p> <p>appreciate [2] 20/18 20/21</p> <p>appreciation [1] 16/9</p> <p>appropriate [5] 4/2 4/5 9/1 21/3 21/3</p> <p>appropriately [1] 15/17</p> <p>approximately [1] 8/20</p> <p>April [9] 1/6 5/2 7/7 8/21 9/3 14/12 15/10 15/22 28/11</p>	<p>assessment [5] 3/25 10/14 14/3 16/12 23/22</p> <p>assigned [3] 15/13 15/15 15/16</p> <p>assistance [1] 8/24</p> <p>associated [1] 5/12</p> <p>assume [2] 27/16 27/20</p> <p>assuming [1] 4/1</p> <p>attached [1] 6/25</p> <p>attempt [1] 9/22</p> <p>attempting [1] 24/23</p> <p>Attorney [15] 1/17 1/18 5/2 6/17 6/17 8/3 8/5 8/11 8/23 9/10 10/13 11/1 17/2 20/10 23/8</p> <p>authority [4] 4/16 6/20 7/5 7/17</p> <p>available [2] 6/8 12/4</p> <p>Avenue [2] 1/15 2/2</p> <p>avoid [1] 17/15</p>
<p>4</p> <p>400 [1] 18/20</p>	<p>addresses [1] 11/24</p> <p>adduced [1] 28/5</p> <p>adhere [1] 15/20</p> <p>adhering [1] 21/4</p> <p>adjourned [1] 27/23</p> <p>administrative [2] 3/19 6/18</p> <p>advised [1] 15/12</p> <p>after [15] 9/24 11/12 14/11 14/12 14/18 15/9 15/10 15/24 18/7 20/12 22/1 22/2 22/9 24/1 26/8</p> <p>again [10] 10/16 15/2 16/16 17/4 17/5 17/17 19/15 19/23 20/10 26/6</p> <p>against [2] 18/9 18/10</p> <p>agency [36]</p> <p>agency's [4] 4/15 5/1 5/7 18/1</p> <p>ago [3] 8/3 18/21 25/12</p> <p>agree [2] 15/25 18/8</p> <p>agreed [3] 11/8 21/12 27/5</p> <p>agreeing [1] 11/1</p> <p>agreement [3] 21/10 21/14 23/17</p> <p>aided [1] 2/7</p> <p>Alan [2] 1/13 3/7</p> <p>all [11] 4/20 6/16 7/23 21/23 23/2 23/6 25/3 25/21 26/1 26/25 27/1</p> <p>allowed [1] 21/20</p> <p>allowing [1] 8/23</p> <p>along [4] 8/6 8/12 8/12 9/9</p> <p>already [11] 7/16 11/8 13/4 13/8 13/15 15/16 18/21 23/2 24/17 24/23 26/5</p> <p>also [13] 6/22 12/10 13/16 17/25 18/19 22/11 23/2 23/4 23/12 25/5 25/7 25/16 26/1</p> <p>another [4] 15/13 15/13 15/15 25/16</p> <p>answer [20] 9/2 9/24 11/12 14/11 14/12 14/18 15/9 15/9 15/22 17/5 17/11 18/2 19/8 20/12 22/3 24/1 24/11 24/19 26/7 26/10</p> <p>any [13] 6/15 7/21 8/14 10/24 11/3 14/2 14/25 18/3 22/8 25/19 26/4 26/25 27/8</p> <p>anything [3] 7/9 24/20 26/17</p> <p>appeal [1] 25/12</p> <p>APPEARANCES [1] 1/12</p> <p>appeared [1] 19/3</p> <p>apply [1] 3/22</p> <p>appreciate [2] 20/18 20/21</p> <p>appreciation [1] 16/9</p> <p>appropriate [5] 4/2 4/5 9/1 21/3 21/3</p> <p>appropriately [1] 15/17</p> <p>approximately [1] 8/20</p> <p>April [9] 1/6 5/2 7/7 8/21 9/3 14/12 15/10 15/22 28/11</p>	<p>assessment [5] 3/25 10/14 14/3 16/12 23/22</p> <p>assigned [3] 15/13 15/15 15/16</p> <p>assistance [1] 8/24</p> <p>associated [1] 5/12</p> <p>assume [2] 27/16 27/20</p> <p>assuming [1] 4/1</p> <p>attached [1] 6/25</p> <p>attempt [1] 9/22</p> <p>attempting [1] 24/23</p> <p>Attorney [15] 1/17 1/18 5/2 6/17 6/17 8/3 8/5 8/11 8/23 9/10 10/13 11/1 17/2 20/10 23/8</p> <p>authority [4] 4/16 6/20 7/5 7/17</p> <p>available [2] 6/8 12/4</p> <p>Avenue [2] 1/15 2/2</p> <p>avoid [1] 17/15</p>
<p>5</p> <p>552 [1] 4/17</p>	<p>addresses [1] 11/24</p> <p>adduced [1] 28/5</p> <p>adhere [1] 15/20</p> <p>adhering [1] 21/4</p> <p>adjourned [1] 27/23</p> <p>administrative [2] 3/19 6/18</p> <p>advised [1] 15/12</p> <p>after [15] 9/24 11/12 14/11 14/12 14/18 15/9 15/10 15/24 18/7 20/12</p>	

B
Branch [1] 1/19
break [1] 20/14
brief [4] 5/10 18/5 22/15 25/17
briefing [1] 17/15
bring [2] 14/5 16/8
broad [2] 14/16 22/4
broader [1] 4/2
broadest [1] 21/22
burden [3] 19/25 22/12 22/12
Butler [2] 1/13 3/7

C
calendar [1] 26/17
Caller [1] 10/7
came [1] 18/14
can [21] 4/22 4/23 5/7 5/19 6/5 7/14 12/20 13/11 14/3 14/5 16/2 16/4 16/22 19/17 20/21 22/6 23/22 23/24 24/16 24/22 25/22
can't [1] 16/13
cannot [1] 16/22
case [30]
cases [10] 7/14 10/4 10/8 12/9 18/3 18/4 18/10 18/12 19/2 22/12
categories [9] 4/22 5/9 6/13 7/3 10/16 11/9 17/19 18/25 25/8
category [23] 5/22 5/24 5/25 6/11 6/12 6/15 7/6 7/7 7/15 7/17 9/14 9/15 9/16 9/19 10/23 11/9 11/10 11/11 13/6 14/24 15/3 27/8 27/12
Cathryn [4] 2/1 28/2 28/13 28/14
cause [3] 12/7 17/23 21/6
caused [1] 13/13
cease [1] 4/18
CENTER [4] 1/3 1/14 3/3 3/9
certainly [2] 6/5 19/14
CERTIFICATE [1] 28/1
certify [2] 28/4 28/7
chance [2] 9/2 22/2
Circuit [1] 8/18
circumstances [1] 21/3
cited [1] 18/10
civil [3] 1/19 3/4 6/18
claim [3] 19/22 19/25 20/3
clear [3] 8/15 14/17 27/9
clearly [1] 3/19
COLUMBIA [2] 1/2 28/4
come [9] 7/10 9/3 12/21 14/11 14/22 18/6 20/15 23/16 23/25
coming [1] 15/23
commensurate [5] 10/20 11/7 13/14 18/24 19/4
complaint [2] 4/15 18/17
complete [1] 6/6
completely [1] 7/4
computer [1] 2/7
computer-aided [1] 2/7
conceded [1] 4/15
conceivably [1] 19/13
concern [1] 12/13
concerning [2] 8/8 8/9
concluded [1] 15/17
concluding [1] 24/5
conclusion [2] 14/23 24/3
conducted [1] 6/5
confer [7] 14/13 15/4 17/8 19/3 23/19

25/4 26/11
conferring [3] 15/23 24/14 24/21
Congress [7] 3/25 4/4 5/2 8/4 11/2 11/18 17/3
Connecticut [1] 1/15
consistent [4] 5/7 17/25 20/25 25/25
constitute [1] 28/8
Constitution [1] 2/2
contacted [1] 17/14
contain [4] 5/17 5/21 9/17 9/18
contest [1] 13/17
context [3] 11/1 11/16 11/21
convinced [3] 15/19 21/4 24/6
correct [2] 21/16 27/19
could [9] 7/2 9/17 9/18 9/19 16/12 16/14 21/23 24/21 25/1
counsel [15] 3/12 3/17 5/14 5/23 6/14 6/16 6/17 6/21 8/25 11/17 13/8 17/14 24/17 24/22 24/25
Counsel's [2] 5/11 21/23
counterproposal [2] 7/8 13/5
couple [1] 21/9
course [5] 9/24 12/1 12/10 19/16 21/6
court [22] 1/1 2/1 2/1 2/2 4/10 4/16 4/19 5/6 6/7 7/17 10/19 11/3 11/6 18/6 19/1 20/5 20/8 25/5 26/5 28/2 28/3 28/14
Court's [2] 7/5 26/1
Courtney [2] 1/17 3/11
courts [2] 10/3 22/22
credible [1] 18/22
criminal [1] 6/19
cross [1] 7/22
cross-motions [1] 7/22
CV [1] 1/4

D
D.C [2] 1/5 2/3
Daily [1] 10/7
Danielle [1] 1/17
Davisson [1] 1/14
day [7] 26/17 26/18 26/18 26/18 26/25 27/1 28/11
days [6] 14/11 14/12 15/24 20/12 24/1 26/8
DC [3] 1/16 1/20 8/17
deadline [4] 11/12 11/13 17/5 18/2
dealing [1] 12/18
dealt [1] 12/15
debate [3] 12/11 17/24 20/3
decides [1] 16/13
decision [1] 12/15
declarant [2] 9/20 22/11
declaration [2] 9/16 22/25
Defendant [2] 1/7 1/17
delaying [1] 19/15
Democracy [2] 7/12 10/6
deny [2] 24/4 24/9
department [9] 1/5 1/18 3/4 3/12 9/20 18/11 21/17 21/20 27/10
department's [1] 8/24
depending [1] 6/25
description [1] 9/18
desire [1] 20/18
determination [1] 17/18
determine [1] 19/10
did [2] 8/3 17/13

didn't [1] 18/12
different [5] 4/8 9/5 10/16 17/19 18/10
difficulty [1] 12/5
disclosed [1] 7/23
discuss [1] 9/21
discussing [1] 22/7
discussions [4] 9/23 19/15 19/17 22/3
dispute [2] 4/13 4/14
district [7] 1/1 1/2 1/11 2/2 7/14 28/3 28/3
Division [1] 1/19
do [16] 5/16 8/16 11/13 13/11 14/25 17/6 17/6 19/7 19/19 19/21 21/9 23/11 23/20 25/1 25/3 28/4
Docket [1] 1/4
document [2] 3/21 8/2
documents [24] 6/10 6/11 7/18 9/14 9/17 10/5 10/12 10/13 10/18 14/1 14/25 15/1 16/10 16/11 16/15 16/19 19/9 21/20 22/8 22/9 23/16 23/23 23/24 26/15
does [4] 4/10 7/17 14/1 20/6
doesn't [6] 4/19 11/11 11/22 13/17 25/17 27/5
DOJ [1] 12/15
don't [17] 10/11 11/24 11/25 12/6 13/23 14/7 15/2 16/5 16/16 17/11 18/21 19/21 23/13 23/19 26/17 27/18 27/21
done [2] 16/4 21/5
down [1] 14/14
drafted [4] 5/13 5/15 5/17 6/23
drafts [1] 6/24
due [2] 9/3 15/10

E
each [3] 6/12 6/22 10/23
early [1] 16/8
effected [1] 4/3
efficient [2] 14/9 17/21
either [7] 5/12 26/13 26/17 26/18 26/18 26/18 26/19
ELECTRONIC [4] 1/3 1/14 3/3 3/8
elements [1] 8/14
Elizabeth [2] 1/18 3/13
else [1] 7/9
emergency [3] 3/18 8/2 10/3
encompass [1] 27/6
encompassed [1] 23/16
encompasses [2] 27/7 27/8
engage [2] 13/10 24/25
enjoin [1] 4/17
Enlow [2] 1/17 3/12
ensure [3] 4/10 7/17 11/6
enter [1] 25/2
Enterprises [1] 4/17
enters [1] 6/7
entire [2] 21/19 27/11
entirely [1] 13/20
entitled [6] 4/13 5/6 8/2 10/8 12/25 23/5
entitlement [1] 8/15
EPIC [28] 5/6 7/20 8/1 8/14 8/18 9/21 10/6 11/7 11/15 11/19 11/19 12/15 14/15 14/22 17/8 17/13 17/23 19/8 19/15 19/18 20/5 20/19 22/4 22/5 22/18 23/5 23/19 24/16

E
EPIC's [11] 4/11 5/24 14/14 18/9 18/19
19/22 21/18 21/21 25/8 25/12 27/10
especially [2] 8/16 12/10
Esquire [3] 1/13 1/13 1/14
essence [2] 12/14 12/19
established [2] 13/12 24/7
even [7] 6/8 9/3 11/11 13/13 18/11
21/16 25/22
every [1] 20/7
exactly [9] 9/12 14/15 16/19 19/5
19/11 19/18 19/19 23/21 23/24
exchange [1] 5/23
executive [3] 5/15 9/7 9/8
exempt [3] 4/21 5/17 5/21
exemptions [2] 3/22 9/20
exist [2] 8/3 17/18
exists [2] 9/17 19/10
expedite [2] 10/2 23/17
expedited [18] 4/13 7/16 21/7 21/13
21/18 22/12 22/19 22/23 22/25 23/1
23/3 25/13 25/18 25/19 25/23 26/16
27/5 27/9
expediting [1] 21/11
expedition [1] 23/4
expeditious [1] 24/15
expeditiously [10] 4/23 10/22 11/4
16/2 23/20 24/3 25/1 25/9 26/2 26/12
extent [4] 9/7 9/8 9/17 27/14
extraordinary [1] 21/2
extremely [2] 12/11 20/22

F
fact [5] 4/2 7/23 13/18 17/13 23/16
fails [1] 8/14
far [3] 6/4 19/12 21/11
fashion [1] 9/12
fast [1] 16/3
Federal [1] 1/19
few [1] 16/25
file [12] 9/2 9/5 14/10 14/17 14/22 15/4
20/11 20/12 22/2 24/11 24/22 25/4
filed [12] 3/16 4/9 4/14 9/24 12/23
18/7 19/9 20/7 23/6 24/1 25/12 26/10
filer [1] 15/13
files [1] 14/12
filing [1] 15/22
final [5] 7/22 10/23 14/5 14/7 22/17
finally [2] 7/19 9/14
fine [2] 26/18 26/23
finish [1] 8/25
finished [1] 5/3
first [3] 4/25 7/15 25/19
focus [1] 24/24
FOIA [13] 3/19 6/7 6/9 7/14 7/21 10/4
11/6 19/2 20/7 21/18 23/10 24/19
27/11
following [1] 10/13
foregoing [1] 28/7
forth [2] 8/23 22/24
forward [10] 3/5 10/22 14/9 14/19 15/3
15/6 19/16 24/14 26/2 26/7
found [1] 18/12
foundation [1] 24/8
frame [4] 9/22 11/19 14/7 14/14
frankly [1] 17/4
free [2] 26/25 27/1

fully [1] 20/18
further [4] 9/6 13/11 15/5 28/7

G
General [11] 6/17 6/17 8/3 8/5 8/11
8/23 9/10 11/1 17/2 20/11 23/8
General's [2] 5/2 10/13
get [3] 12/3 12/6 16/4
getting [2] 8/19 20/6
given [2] 13/17 13/21
go [1] 15/3
goes [1] 12/8
going [10] 4/19 10/25 12/7 13/25 14/2
14/19 17/22 19/19 20/3 24/20
Good [4] 3/7 3/10 3/11 3/14
government [27] 7/25 8/6 9/2 10/5
10/10 12/11 13/24 14/2 14/10 14/12
14/22 15/21 16/7 16/13 16/21 19/7
19/14 20/11 20/23 21/5 21/13 21/25
22/1 22/2 23/7 24/10 27/5
government's [2] 9/24 21/10
governmental [1] 6/19
Grand [1] 8/8
grant [1] 4/5
granted [5] 7/16 21/18 22/19 23/4
27/10
granting [2] 7/20 25/13
guess [5] 3/24 12/5 15/13 15/19 23/19

H
had [7] 9/2 15/16 18/16 18/16 21/15
26/2 28/5
handled [1] 7/14
happen [7] 10/25 17/10 17/12 19/5
22/9 24/16 25/22
happened [2] 18/9 18/10
harm [15] 8/19 8/19 10/16 11/25 12/7
13/12 15/20 16/17 17/23 19/25 20/1
20/4 20/8 21/6 24/7
harmed [1] 10/11
has [36]
hasn't [3] 7/8 20/2 25/22
have [34]
haven't [1] 21/4
having [3] 12/5 14/22 16/11
he [2] 15/15 15/16
hearing [4] 1/9 17/15 18/8 18/14
hearings [1] 11/18
here [15] 3/15 8/16 8/22 9/13 10/9
12/23 14/21 16/8 19/16 19/23 20/9
21/4 21/21 23/25 26/2
hereby [1] 28/4
hereto [1] 28/10
high [5] 19/24 20/5 20/7 22/11 22/12
highlight [1] 5/9
his [1] 8/4
Honor [29]
Honor's [1] 18/12
HONORABLE [1] 1/10
hopefully [2] 16/9 23/25
how [15] 3/17 7/13 10/10 12/6 13/25
14/2 14/25 16/9 16/16 16/19 16/20
17/18 23/18 23/19 26/11
however [1] 21/9
humanly [1] 26/12
hundreds [1] 13/19

I
I'll [12] 6/22 7/10 7/19 13/7 15/13 18/3
23/15 23/17 23/20 25/11 25/16 26/12
I'm [4] 12/5 15/19 21/1 26/25
idea [3] 14/2 14/25 22/7
identify [2] 3/6 19/9
identifying [2] 18/18 25/20
immediate [1] 7/5
immediately [3] 5/20 5/24 11/22
important [3] 16/1 20/22 20/23
importantly [1] 10/21
impose [2] 21/1 21/3
imposes [1] 19/2
include [2] 10/24 27/15
includes [6] 6/24 9/8 17/17 23/12
27/11 27/12
inconsistent [1] 16/7
Indeed [1] 8/19
independent [1] 5/14
indicates [1] 10/11
individuals [1] 5/11
information [24] 1/3 1/14 3/3 3/8 7/2
8/7 8/8 8/8 8/9 8/10 9/15 11/16 11/20
11/25 12/4 12/4 12/9 14/3 15/14 17/24
18/15 19/22 20/19 23/13
informed [1] 17/24
informs [1] 11/19
initial [1] 25/12
initiation [1] 7/5
injunction [10] 3/15 4/9 12/24 18/7
18/13 19/24 21/2 24/5 25/3 26/6
injunctions [2] 7/14 18/5
injunctive [7] 8/2 8/15 8/17 10/3 10/4
24/8 24/10
instructed [1] 19/3
intelligent [1] 8/9
intend [1] 19/7
intention [1] 19/15
interest [6] 8/22 9/11 10/21 11/5 13/16
26/1
introductions [1] 5/15
investigation [1] 16/2
involve [1] 18/12
involving [1] 18/5
irreparable [15] 8/19 10/15 11/24 12/7
13/12 15/20 16/16 17/23 19/25 20/1
20/1 20/4 20/8 21/6 24/7
irreparably [1] 10/11
is [92]
issuance [1] 24/8
issue [3] 5/7 11/24 18/2
issued [1] 8/18
issuing [1] 24/14
it [30]
it's [17] 4/12 4/20 4/25 12/19 13/3
13/25 14/2 14/17 15/17 18/20 18/22
18/23 20/4 20/23 21/2 22/13 24/20
its [11] 9/2 11/20 14/10 14/12 15/21
21/18 21/22 22/3 23/18 24/11 25/17
itself [5] 4/25 9/19 10/17 21/12 25/7

J
Jay [1] 1/13
John [1] 1/14
joint [7] 9/5 14/17 14/23 15/5 15/7
20/12 25/4
Jones [4] 2/1 28/2 28/13 28/14

J
JSR [1] 26/8
judge [3] 1/10 1/11 15/15
judgment [2] 7/23 16/14
judicial [1] 10/24
jurisdiction [1] 11/3
Jury [1] 8/8
just [14] 3/16 7/10 7/11 7/19 11/9
15/12 15/19 16/5 16/16 17/1 18/2 21/4
25/11 26/20
justice [6] 1/6 1/18 3/4 3/12 6/19
18/11

K
keep [1] 16/3
key [1] 4/7
know [23] 6/5 6/6 6/25 7/1 9/6 9/25
11/24 12/17 13/23 13/24 14/7 16/1
16/2 16/18 19/19 23/11 23/15 23/18
23/19 24/19 25/20 27/18 27/21
knowledge [1] 6/24

L
laid [3] 8/4 10/17 20/11
landscape [2] 16/19 19/11
last [6] 12/17 12/17 17/14 18/9 18/11
24/17
later [1] 12/6
law [2] 8/8 20/25
lawsuit [1] 23/6
leapfrog [2] 22/18 23/5
learn [1] 14/14
least [2] 16/6 21/11
legal [1] 7/11
lesser [1] 12/10
Let [2] 3/16 20/14
letter [1] 5/2
letters [1] 8/4
like [1] 8/11
likelihood [1] 13/1
likely [1] 9/4
limited [1] 6/23
literally [2] 17/3 21/22
litigate [1] 23/1
litigation [3] 11/13 23/2 23/3
living [1] 22/10
long [4] 13/25 14/2 16/20 23/18
longer [1] 4/13
lost [1] 11/15

M
machine [3] 2/7 28/4 28/9
made [5] 6/16 12/14 13/15 14/3 16/12
make [2] 12/4 17/21
making [1] 4/21
mandatory [1] 8/17
manner [1] 21/7
many [5] 12/9 15/1 16/9 16/19 17/18
Marc [1] 1/13
material [10] 4/20 4/23 5/4 5/17 5/22
6/25 7/24 9/1 13/19 13/22
materials [2] 7/3 11/2
matter [8] 3/15 6/8 13/16 14/21 16/1
17/2 20/22 24/3
matters [2] 6/7 8/10
may [10] 4/2 4/4 12/16 13/24 15/10
15/11 16/8 26/14 26/21 26/24

maybe [1] 13/23
me [12] 3/12 3/16 3/18 3/25 4/5 15/8
15/16 15/18 15/23 20/14 24/6 26/13
mean [3] 4/19 13/23 23/18
means [1] 21/19
media [2] 11/20 27/19
meet [6] 8/14 14/13 15/4 15/23 20/6
26/10
mentioned [1] 9/15
merits [1] 13/2
met [1] 19/24
methods [1] 8/9
mid [2] 5/2 8/21
mid-April [2] 5/2 8/21
moment [3] 17/3 22/14 26/20
month [1] 8/3
months [9] 12/20 12/21 12/22 12/22
14/20 14/20 14/21 18/16 25/12
more [4] 6/9 7/2 21/7 25/1
morning [6] 3/2 3/7 3/10 3/11 3/14
15/12
most [2] 12/17 14/9
mostly [1] 24/20
motion [3] 3/15 24/4 26/6
motions [2] 1/9 7/22
move [5] 14/9 15/5 24/2 24/13 26/2
moved [1] 16/17
moving [1] 10/21
Mueller [7] 4/25 10/17 13/4 18/20 25/6
27/6 27/11
must [2] 8/7 10/19
my [5] 20/15 22/17 26/17 28/9 28/10

N
N.W [1] 2/2
name [1] 28/11
narrow [4] 9/22 14/14 23/22 24/23
narrowed [2] 13/9 25/8
narrowing [1] 22/4
nation [1] 20/22
National [1] 18/9
neatly [1] 7/13
necessarily [2] 5/21 6/8
necessary [1] 11/21
need [9] 4/1 4/10 11/5 17/11 17/15
18/17 23/15 23/17 23/23
needed [1] 27/4
needs [4] 9/20 12/24 19/12 19/13
negotiate [1] 12/21
negotiations [2] 13/11 24/25
nine [1] 23/1
no [10] 1/4 4/12 8/18 8/19 10/2 13/3
13/5 19/15 19/21 21/17
nonexempt [1] 7/24
normal [2] 6/9 12/1
not [47]
note [5] 6/22 11/12 13/7 24/16 25/11
noted [2] 7/15 10/24
notes [2] 25/17 28/9
nothing [3] 11/13 17/6 17/6
now [17] 3/23 4/8 4/16 7/1 10/3 12/18
14/10 17/11 17/16 19/5 19/8 20/3 22/1
24/16 24/21 25/15 25/22
number [5] 3/5 9/19 18/3 18/4 18/11
numerous [1] 10/7
NW [2] 1/15 1/19

O
o'clock [1] 27/3
obligation [1] 11/14
obligations [2] 13/21 19/5
obtain [2] 8/2 8/16
obtaining [1] 11/15
obviously [6] 3/25 4/12 7/1 11/8 13/10
21/2
occur [2] 19/20 20/21
offered [3] 7/8 13/5 13/8
office [3] 5/11 9/15 21/24
official [4] 2/1 28/2 28/8 28/14
Oh [1] 12/2
OIP [6] 14/6 14/15 22/11 23/3 23/4
23/9
Okay [3] 20/14 22/16 23/15
once [3] 9/1 9/24 19/2
one [6] 3/22 5/10 12/18 22/14 25/11
27/4
ongoing [3] 8/10 17/2 17/23
only [5] 16/17 17/22 21/12 21/15 24/16
opportunity [2] 3/20 25/5
opposing [6] 5/23 13/8 17/14 24/17
24/22 24/25
order [10] 4/19 5/7 7/5 10/5 10/19 24/2
24/15 25/3 25/3 25/18
ordered [3] 5/19 6/5 22/22
orderly [1] 19/1
other [11] 5/9 6/18 8/10 11/8 12/9
13/19 18/25 22/12 22/21 23/2 25/23
our [25] 4/16 4/22 5/5 5/9 5/22 6/2
6/12 6/13 6/22 10/17 10/21 10/23
11/10 13/3 13/6 13/9 13/13 13/14 15/9
15/9 18/5 18/16 22/11 24/24 25/13
out [13] 7/12 7/19 8/4 10/17 13/18
14/11 18/3 18/19 20/4 20/11 24/17
25/16 25/21
outside [1] 6/19
over [5] 12/11 12/12 13/11 22/18 23/5
own [2] 5/7 25/17

P
pages [2] 18/20 28/7
part [4] 20/19 27/14 27/16 27/20
particular [2] 11/9 26/25
parties [13] 3/5 14/13 14/17 15/4
15/22 16/3 18/6 19/2 19/3 25/4 26/1
26/10 26/13
pause [1] 22/15
Payne [2] 4/17 12/9
period [1] 14/13
permitted [1] 22/18
personal [1] 8/10
phases [1] 6/1
piecemeal [2] 9/12 25/19
place [6] 3/24 8/5 9/23 16/6 20/11 24/2
plaintiff [5] 1/4 1/13 3/16 10/8 15/25
plaintiff's [1] 3/16
plaintiffs [2] 3/8 21/7
plan [1] 14/18
please [1] 3/6
point [30]
points [3] 7/12 13/18 16/25
Policy [1] 9/15
position [8] 4/16 6/4 14/4 16/14 16/18
16/21 19/10 24/2
possible [13] 10/22 11/5 14/15 16/3

P
possible... [9] 16/4 17/22 19/11 20/20
20/21 20/24 23/21 25/10 26/12
potential [1] 7/15
potentially [1] 25/21
practicable [11] 4/11 7/18 10/22 11/14
12/25 13/3 17/7 17/9 18/1 18/23 21/21
practice [1] 26/1
preferable [1] 26/22
preferred [1] 26/18
prejudice [1] 24/9
preliminary [10] 4/9 7/13 8/15 12/23
18/5 18/7 18/13 19/24 25/2 26/6
prepared [4] 5/4 18/14 19/8 26/14
preparing [1] 17/4
presented [1] 13/2
presumably [1] 20/7
prior [3] 5/14 10/12 18/24
prioritize [2] 17/20 24/24
prioritized [2] 13/9 25/8
prioritizing [1] 13/20
priority [1] 5/25
privacy [5] 1/3 1/14 3/3 3/8 8/10
procedure [1] 16/6
proceed [3] 6/1 16/14 26/11
proceeding [3] 11/17 12/17 21/7
proceedings [6] 2/7 9/6 15/5 27/23
28/5 28/8
process [27] 3/23 5/20 8/4 8/6 8/11
8/12 8/23 8/25 10/2 11/14 12/24 13/3
13/13 13/22 14/1 14/7 17/13 17/16
17/21 18/18 18/23 19/1 20/10 21/20
23/5 24/18 25/17
processed [4] 4/23 9/9 23/24 25/9
processes [2] 4/11 25/18
processing [34]
produce [5] 10/5 13/14 18/1 18/23
24/15
produced [10] 2/7 4/1 7/18 14/4 16/12
16/13 16/22 19/13 20/2 23/25
produces [1] 20/25
production [4] 3/21 4/1 5/8 26/15
program [1] 12/16
Programs [1] 1/19
Project [1] 10/6
projection [1] 13/25
proposal [3] 4/22 10/18 13/7
propose [3] 9/6 14/18 26/14
proposed [5] 4/24 5/22 7/6 13/5 16/7
proposing [3] 15/5 15/7 21/25
Protect [1] 7/12
provide [7] 3/17 7/2 10/20 11/2 11/16
25/5 25/7
provides [1] 11/6
public [17] 5/4 5/16 6/24 8/20 8/22
10/12 10/19 10/25 11/5 11/19 12/5
12/11 12/13 13/16 16/1 17/23 20/3
public's [1] 9/11
purpose [1] 5/18
pursuing [1] 21/6
put [4] 14/4 16/13 24/2 25/15
putting [1] 16/5

Q
question [3] 4/7 4/8 27/4
questions [1] 21/9
queue [1] 25/15

quickly [4] 7/11 13/22 20/19 20/21
R
raise [1] 12/9
range [1] 13/21
RBW [1] 1/4
re [1] 3/3
reached [1] 24/17
read [1] 21/21
realized [1] 15/16
really [6] 11/24 12/13 12/19 13/2 13/17
17/1
reason [2] 12/23 12/23
reasonable [1] 6/6
reassess [1] 9/4
reassigned [1] 15/18
receive [5] 5/6 10/11 10/12 10/18
11/25
recess [1] 20/16
recognize [1] 10/8
recognized [1] 10/4
recognizes [1] 10/7
record [4] 3/6 5/6 5/20 18/20
recorded [1] 2/7
records [17] 4/18 4/22 6/4 6/14 7/1
9/17 10/16 11/10 11/15 13/6 17/18
18/15 18/18 20/2 20/6 21/23 25/20
redact [1] 8/25
redacted [1] 8/7
redacting [2] 8/6 8/12
redactions [1] 4/3
reference [7] 3/24 4/3 14/24 15/21
16/15 21/10 21/15
referenced [1] 14/25
references [1] 20/24
referencing [1] 6/10
referrals [3] 6/15 6/15 6/16
referred [1] 18/4
refers [2] 6/13 17/5
refusal [1] 13/13
regardless [1] 4/20
REGGIE [1] 1/10
regular [1] 9/23
regulation [1] 6/15
regulations [1] 6/21
regulatory [1] 6/20
rejected [1] 20/4
related [2] 15/17 18/2
release [7] 4/20 5/4 9/11 22/8 23/9
23/9 25/6
released [9] 3/24 4/24 5/16 9/25 10/14
19/17 22/2 22/9 26/7
relevant [1] 16/25
relief [12] 3/18 4/5 7/15 7/20 7/21 8/2
8/15 8/17 10/3 10/4 24/9 24/10
remedies [1] 6/18
remedy [2] 21/2 21/3
repeatedly [1] 10/4
reply [2] 5/10 18/5
report [42]
reported [1] 28/4
Reporter [4] 2/1 2/1 28/2 28/14
reports [2] 5/10 5/14
representation [2] 5/1 5/8
representations [2] 13/15 18/24
represented [2] 24/6 25/23
request [35]

requested [2] 4/6 14/1
requester [1] 20/7
requesting [1] 3/18
requests [18] 6/9 13/19 14/16 17/8
22/4 22/12 22/19 22/21 22/25 23/1
23/3 23/6 23/21 25/8 25/18 25/21
25/23 27/8
require [4] 23/20 25/2 26/9 26/13
required [2] 4/12 17/10
requirement [2] 18/1 24/8
resolution [4] 7/22 10/23 14/5 14/8
resolved [1] 21/15
respect [2] 13/1 18/24
response [4] 7/25 10/20 11/6 26/4
responsive [8] 4/18 6/4 11/10 17/17
18/15 18/19 19/9 25/20
rest [2] 8/20 9/9
result [1] 20/23
resuming [1] 20/16
review [8] 10/13 10/24 11/3 11/4 17/8
21/11 26/15 27/5
reviewable [1] 11/7
reviewed [4] 14/3 16/11 18/4 19/12
reviewing [1] 18/21
right [12] 3/20 3/23 12/18 14/10 16/1
19/23 20/3 20/4 21/16 24/16 27/8
27/17
Room [1] 2/2
Rotenberg [1] 1/13
routinely [1] 6/7
RPR [2] 2/1 28/14
ruled [1] 26/5
ruling [1] 20/15

S
said [6] 8/11 8/18 20/5 23/7 27/4 28/8
same [4] 7/20 8/20 15/14 20/8
sanctions [1] 6/18
say [3] 18/22 18/22 19/22
saying [2] 11/23 17/1
schedule [11] 4/24 6/7 12/21 16/10
17/9 18/8 19/4 19/23 22/7 24/15 26/15
scheduling [1] 24/2
scope [7] 9/21 13/9 17/19 22/6 23/21
24/23 24/24
scoping [1] 25/21
scrub [1] 3/20
search [4] 6/4 17/17 25/20 25/24
searched [1] 23/23
second [1] 7/16
see [5] 15/24 16/5 16/16 23/21 23/24
seek [2] 11/4 17/24
seeking [8] 9/7 9/12 9/22 14/16 15/14
19/18 22/5 22/5
seems [2] 3/18 3/25
seen [1] 5/14
SENIOR [1] 1/10
sensible [1] 13/20
serial [1] 9/11
served [1] 8/22
set [4] 8/23 17/8 19/4 22/24
seven [7] 6/13 14/11 14/12 15/23
20/12 24/1 26/8
several [4] 16/18 17/4 17/22 19/6
Shapiro [1] 3/13
short [1] 20/14
shorthand [3] 2/7 28/5 28/9

S
should [17] 3/24 8/18 9/23 10/5 10/14 14/4 17/10 19/5 20/4 20/10 21/20 22/9 22/18 23/25 25/15 25/22 26/11
showing [3] 8/15 15/20 19/25
shows [1] 8/18
side [1] 26/19
significance [1] 13/17
significant [3] 12/12 12/17 12/18
significantly [1] 13/8
similar [3] 13/19 13/22 13/22
simply [15] 5/5 8/14 10/2 10/8 12/20 17/10 18/2 19/24 20/1 20/6 20/9 23/5 23/6 24/21 26/2
single [1] 18/20
slightly [1] 4/8
so [23] 4/7 5/19 6/4 6/12 11/5 12/19 13/1 13/11 13/19 15/17 16/4 18/21 19/10 21/25 22/9 23/22 23/25 24/4 24/9 25/12 25/19 25/25 26/18
some [4] 3/23 12/5 14/16 21/14
somehow [1] 12/7
something [1] 21/11
soon [10] 4/11 7/18 11/14 12/24 16/4 17/7 17/9 18/1 19/10 21/21
sooner [3] 5/3 11/25 12/6
sort [2] 8/17 11/1
sought [3] 3/21 15/14 20/20
sources [1] 8/9
sparingly [1] 8/18
Spariro [1] 1/18
Special [8] 5/11 6/14 6/16 6/17 6/21 8/25 11/17 21/23
specific [2] 5/20 6/14
specifically [3] 5/13 5/17 25/9
stage [1] 25/24
stale [1] 12/9
standard [3] 17/7 17/25 20/9
started [1] 14/6
stated [6] 8/5 8/11 9/10 9/21 22/11 23/8
statements [1] 5/10
STATES [5] 1/1 1/5 1/11 3/4 28/3
stating [1] 9/16
status [14] 7/1 9/5 11/20 14/18 14/23 15/5 15/8 20/12 24/15 24/22 25/4 25/6 25/8 26/3
statute [5] 3/19 3/22 4/12 12/25 17/10
statutory [1] 17/25
step [2] 3/5 25/19
still [1] 25/23
Street [1] 1/19
subcategories [1] 6/24
subcategory [1] 5/20
subject [2] 9/19 20/22
submitted [5] 4/4 9/16 15/8 27/17 27/20
subscribed [1] 28/10
subset [1] 6/14
substantial [1] 7/3
success [1] 13/2
suffered [1] 20/1
sufficient [1] 15/20
suggested [3] 15/21 21/5 21/8
Suite [1] 1/15
summaries [8] 5/12 5/13 5/15 9/8 9/9 23/12 27/7 27/13

summarized [1] 5/1
summarizes [1] 7/13
summary [2] 7/22 16/14
sure [1] 27/6
system [1] 6/19
T
table [1] 3/13
tailored [1] 25/9
take [8] 4/10 9/23 12/22 13/25 14/2 20/11 20/14 22/1
taken [2] 6/3 20/16
taking [2] 3/24 8/5
talk [1] 22/6
talking [8] 14/20 14/21 15/1 16/10 16/17 16/20 16/20 19/12
ten [3] 22/25 23/1 27/3
testify [1] 17/4
testifying [1] 17/3
testimony [1] 28/5
than [6] 4/2 4/8 6/9 11/25 12/6 21/8
Thank [5] 7/25 8/1 16/23 22/17 27/22
that [205]
that's [11] 4/5 5/25 7/19 9/12 10/6 11/5 12/8 15/14 17/24 21/15 26/23
their [8] 9/21 10/20 11/12 11/13 18/24 19/4 19/24 26/6
them [1] 22/6
then [16] 9/1 9/3 9/25 11/15 14/17 15/4 15/22 15/23 16/12 17/10 19/17 20/12 22/2 23/9 25/14 26/8
there [12] 4/21 5/10 5/11 5/14 7/2 11/18 12/12 12/13 15/19 21/14 22/21 27/3
there's [11] 3/23 9/18 10/2 10/7 10/16 13/18 13/19 16/16 20/3 22/25 23/2
thereafter [2] 26/10 26/12
therefore [2] 16/3 25/14
Thereupon [2] 20/16 27/23
these [7] 14/1 14/16 14/24 16/11 22/4 22/18 27/8
they [16] 5/21 8/16 9/7 9/9 9/14 9/18 9/19 13/21 18/17 19/24 19/25 23/4 23/6 27/14 27/17 27/20
they're [7] 5/17 8/12 9/12 9/22 17/9 21/22 27/16
they've [5] 11/8 13/4 13/5 18/16 20/1
thing [2] 7/20 25/11
think [12] 7/11 7/13 10/21 13/16 15/17 18/22 19/1 19/5 19/16 20/23 25/22 27/4
third [3] 5/22 6/11 11/9
this [75]
those [6] 5/20 7/3 9/23 16/15 23/6 23/24
though [1] 21/19
thought [1] 21/14
three [2] 4/21 10/16
through [2] 11/20 24/14
Thursday [1] 26/22
till [1] 9/3
time [21] 4/4 4/9 4/14 6/23 8/20 9/20 10/12 11/15 11/19 12/13 12/16 12/19 13/24 14/7 14/13 16/10 18/6 18/7 22/1 22/22 26/25
timeline [3] 7/6 11/7 13/4
timetable [1] 23/18

today [2] 15/18 17/16
together [2] 14/22 18/6
track [1] 16/4
transcribed [1] 28/9
transcript [3] 1/9 2/7 28/8
transcription [1] 2/7
transparent [1] 20/24
Trial [2] 1/17 1/18
truly [1] 25/13
try [4] 17/13 19/9 23/20 26/11
Tuesday [1] 1/6
two [2] 5/9 18/10
type [2] 6/11 16/10
typically [2] 7/22 19/2
U
U.S [2] 1/18 2/2
ultimate [2] 7/20 7/21
ultimately [1] 4/23
under [7] 3/19 3/22 4/12 4/17 6/20 12/25 17/10
understand [9] 3/23 11/21 11/23 12/3 14/15 15/18 21/10 22/10 24/12
understanding [2] 12/6 22/5
understood [1] 21/15
undertaking [1] 8/24
unique [1] 12/12
UNITED [5] 1/1 1/5 1/11 3/4 28/3
universe [1] 23/23
until [1] 11/11
upcoming [1] 11/18
update [1] 25/7
updated [1] 25/6
upon [1] 24/5
urgent [3] 6/9 12/11 17/2
us [4] 14/4 16/8 16/13 24/25
V
valuable [1] 11/15
value [1] 12/10
versus [2] 3/3 12/15
very [8] 6/13 9/4 14/16 15/25 20/4 26/9 27/3 27/22
W
wait [4] 12/20 17/11 19/16 20/10
waiting [1] 17/22
waiving [1] 25/14
WALTON [1] 1/10
want [4] 11/4 12/3 12/4 17/16
wanting [1] 19/23
wants [1] 17/7
warrantless [1] 12/16
was [12] 4/14 6/23 12/14 12/14 13/10 15/12 15/15 21/13 21/14 22/18 22/20 27/3
Washington [4] 1/5 1/16 1/20 2/3
way [5] 14/9 15/3 16/5 24/13 26/7
we [53]
we'd [1] 16/9
we'll [2] 9/25 24/1
we're [18] 4/13 4/21 12/18 12/23 12/25 14/20 14/21 15/1 16/10 16/17 16/19 16/20 17/19 17/21 19/11 19/23 22/10 27/1
we've [9] 4/24 5/14 5/22 7/6 7/15 10/17 13/8 13/12 24/23

W

week [8] 14/18 15/9 15/10 17/14 24/17
24/23 25/4 26/3

weeks [7] 14/21 16/18 17/4 17/22
18/17 18/21 19/6

well [15] 6/6 8/6 8/12 8/12 10/7 10/15
13/23 15/3 22/13 23/15 26/9 27/1 27/3
27/15 27/22

were [7] 5/13 5/15 17/1 22/19 25/12
27/17 27/20

what [42]

what's [1] 24/5

whatever [1] 16/13

when [9] 10/12 15/8 15/15 16/18 17/14
19/8 19/19 23/16 23/25

where [6] 9/4 9/25 11/1 14/5 15/24
16/14

whereof [1] 28/10

whether [6] 3/22 4/20 7/2 7/23 27/7
27/7

which [26] 3/21 4/8 4/11 5/5 6/4 6/7
6/8 6/20 6/23 6/25 8/16 8/17 9/3 10/23
10/25 11/12 12/12 12/15 12/16 12/25
13/7 13/12 17/9 18/4 19/5 25/21

who [1] 11/19

who's [1] 20/7

wholesale [1] 25/18

why [2] 4/4 11/5

wide [1] 13/21

will [16] 4/3 5/3 7/21 9/4 9/9 11/15
15/18 16/3 19/22 23/7 23/9 24/2 24/4
24/9 24/10 26/9

willing [4] 6/1 13/10 17/19 17/21

wiretapping [1] 12/16

withholding [1] 4/18

withholdings [2] 10/25 11/4

within [7] 5/11 7/4 11/18 14/13 23/17
23/24 24/22

without [1] 24/9

witness [1] 28/10

work [2] 19/8 22/3

world [2] 9/4 22/10

would [37]

wouldn't [1] 25/1

Y

year [2] 18/10 18/11

Yes [4] 4/7 16/24 22/24 24/11

you [33]

you'd [1] 19/10

you'll [1] 23/19

you're [3] 3/18 11/23 27/6

your [34]

yourselves [1] 3/6