

EXHIBIT G

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
PROJECT SOUTH, et al., : Docket #21cv8440
 : 1:21-cv-08440-ALC-BCM
 :
 Plaintiffs, :
 :
 - against - : New York, New York
 : April 25, 2022
 UNITED STATES IMMIGRATION AND :
 CUSTOMS ENFORCEMENT, et al., :
 :
 Defendants. :
 ----- : STATUS CONFERENCE

PROCEEDINGS BEFORE
HONORABLE BARBARA C. MOSES
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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None

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
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THE CLERK: Project South versus United States Immigration and Customs Enforcement, case number 21cv8440. Counsel, please make your appearance for the record.

MS. SAMAH SISAY: Samah Sisay with the Center for Constitutional Rights for plaintiffs.

HONORABLE BARBARA C. MOSES (THE COURT): Good morning, Ms. Sisay, and you have a large group with you, some here and some online, correct?

MS. SISAY: That's correct, good morning, Judge.

THE COURT: Who's next?

MR. ILAN STEIN: Ilan Stein from the US Attorney's Office on behalf of the defendants, Your Honor.

THE COURT: Mr. Stein, you do not have a large group here with you today.

MR. STEIN: It's just me here today.

THE COURT: Ms. Sisay, do you wish to introduce your colleagues?

MS. SISAY: Yes, I can do that. In the room here with me is Sabrina Suliman who is a legal intern with the Center for Constitutional Rights. We're grateful to the Court for granting phone access, there are I believe currently four people on the line. From the Center for Constitutional Rights we have Ian Head and Elsa Mota on the phone line. Our co-counsel from

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the Southern Poverty Law Center, Luz Lopez is also on the line. And an advocate with the Cameroon Advocacy Network, Annmarie Dubonnet (phonetic) is also on the line.

THE COURT: Thank you very much, Ms. Sisay, let me just do a check of those of you on the line, can you hear me and can you hear the lawyers in the courtroom?

VOICES ON TELEPHONE LINE: Yes.

THE COURT: Excellent, so I think we are set for business. This is a status conference. I did issue a housekeeping order not too long ago reminding Mr. Azmy that he needs to update his information on ECF but I understand he was called out of the country on a personal matter. Ms. Sisay, will you remind him to attend to that when he gets back, please.

MS. SISAY: Yes. Yes, I will.

THE COURT: All right, what we have before us today is a report which I asked for, thank you, on an agency by agency basis regarding the pace at which the various required searches and so on are being conducted. I guess we have to either work forward or work backward, Ms. Sisay, do you think it would make sense for us today to go through the agency reports on an agency by agency basis or do you think it would make more sense, now that both sides have some, have

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arms around, to some degree, the universe of documents and the pace at which they're being processed, do you think it would make more sense to start by putting a summary judgment date in place and working backward?

MS. SISAY: I will leave it up to you, Judge, but I do think the latter would be more efficient.

THE COURT: Okay, how long do you think it will be before the parties either are ready to file for summary judgment or have decided that they don't need to?

MS. SISAY: I'm, we are still working through reaching agreement around the pace of production --

THE COURT: Sure.

MS. SISAY: However, I think six months max.

THE COURT: Excuse me?

MS. SISAY: Six months.

THE COURT: Six months, I was kind of thinking six months, myself, Mr. Stein, what do you think?

MR. STEIN: Your Honor, I think it's a little premature in the sense that some of the agencies have not completed all the searches and part of that reason is that the parties were still negotiating and finalizing the search parameters just to make sure that plaintiffs agree with what the agencies are

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doing. And so it is a little bit difficult to know if some of the remaining searches return a very large number of potentially responsive documents, and so I hesitate to set a firm date at this point.

Your Honor, I do have some updates to the status report.

THE COURT: All right, why don't we hear those now?

MR. STEIN: Okay, so, Your Honor, with respect to Department of Homeland Security --

THE COURT: Hold on, DHS.

MR. STEIN: DHS.

THE COURT: All right. As of the 18th when you submitted the written report to me, you said that you had identified six additional custodians but you hadn't started searching them yet, what's your update?

MR. STEIN: So those have been searched and the agency found approximately 190 potentially responsive pages. And so the total number of potentially responsive pages for DHS is approximately 635 pages.

THE COURT: Not so bad.

MR. STEIN: Not so bad.

THE COURT: While we are discussing pages

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2 which haven't been, as you say, processed yet, I note
3 that in your letter, this is in footnote, somewhere,
4 footnote 2, you note that part of the processing
5 process, if I can use an awkward phrase, part of the
6 processing process is to remove duplicative copies of
7 records. Why bother, doesn't that just take more time
8 with little real benefit?

9 MR. STEIN: I suppose that's right, Your
10 Honor. I'll confess, I don't know if that is something
11 that the processing system does automatically or if
12 it's something more manual. But --

13 THE COURT: If it's across different agencies,
14 in particular DHS making sure that they are not
15 producing the exact same record that ICE has
16 previously produced, for example, it strikes me as
17 likely to require manual review and, therefore, likely
18 to be a time suck.

19 MR. STEIN: All right, Your Honor, so with
20 respect to DHS, I think the point that we were trying
21 to make is that DHS is not going to be conducting
22 searches for some of the records that are in ICE's
23 possession to avoid duplicative searches. And then
24 also, Your Honor, for DHS specifically, there are a
25 number of subcomponents within DHS and by regulation

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the FOIA process requires that it be conducted by the individual component within DHS.

THE COURT: But not ICE because ICE got its own separate FOIA request, is that, am I following along at home here?

MR. STEIN: Yeah, I think that's right, Your Honor.

THE COURT: Okay.

MS. SISAY: And so I think the point here is that, you know, for certain of the requests that were directed at all of the agencies, so DHS and ICE, where, you know, I think the parties agree that the proper recipient was ICE, DHS is not going to be running its own separate searches for those because --

THE COURT: That's fine, and I understand counsel have already discussed that, and counsel for the plaintiff has grumbled a little bit about it but is not asking me to order you to do anything differently, correct, Ms. Sisay?

MS. SISAY: Yes, that's correct.

THE COURT: Okay, so DHS now has a total of approximately 635 pages which haven't been, as you say, processed yet.

MR. STEIN: Correct.

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2 THE COURT: Taking it from the top, and by the
3 top I simply mean the order in which the agencies
4 appear in your April 18th letter, ICE, as of the date
5 of the letter, had already produced I think 81
6 documents -- no, I take it back, I'm not adding up the
7 columns properly, ICE had produced a certain number of
8 documents, had identified others which had not yet
9 been processed, and was proposing to process
10 responsive documents at a rate of up to 300 pages by
11 the last day of every month. And you're using the
12 phrase processed intentionally there, right, not
13 produced --

14 MR. STEIN: Correct.

15 THE COURT: On the theory that if you process
16 300 pages you may only produce some subset of those.

17 MR. STEIN: Correct.

18 THE COURT: Have you produced other, any
19 additional documents out of ICE since April the 18th or
20 are you waiting for the end of the month?

21 MR. STEIN: We have not produced additional
22 documents but ICE did complete a search of two of the
23 three custodians that were identified and currently
24 the number of potentially responsive pages that have
25 not yet been produced is 2,500.

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THE COURT: That haven't been either processed or produced?

MR. STEIN: Correct, have not been processed or produced.

THE COURT: Okay, I've seen worse.

MR. STEIN: And, Your Honor, so I'll note, then this gets to what I was saying earlier, that for ICE there are a number of searches that are outstanding, right? So one of the three custodians, ICE is still collecting the emails.

THE COURT: Right.

MR. STEIN: And then there are a few of the offices within ICE who have been tasked with some of the searches that we're still waiting on. So ORAP has been tasked to search for the policy documents, they haven't yet completed that search.

THE COURT: Which haven't yet been found, right.

MR. STEIN: For some of the data requests, the Office of Field Operations and Custody Management have been tasked with that. We don't yet have updates from them. And then we're still waiting on there were requests for data with respect to Atlanta and New Orleans, sort of office specific data, and we're still

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waiting for that.

THE COURT: All right, so that's ICE and you gave me DHS, any other updates for me?

MR. STEIN: Yes, Your Honor. For Executive Office of Immigration Review --

THE COURT: EOIR.

MR. STEIN: EOIR, so the -- so in our status report we indicated that the searches of the custodians' emails, that EOIR identified 63 emails.

THE COURT: But they were huge.

MR. STEIN: Well the attachments were huge.

THE COURT: Uh-huh.

MR. STEIN: And so the parties have agreed that EOIR will process and produce the emails.

THE COURT: Okay.

MR. STEIN: Produce those to plaintiff. Plaintiff will then, from the date of the final EOIR production, have 30 days to let EOIR know which, if any, of the attachments plaintiffs are interested in.

THE COURT: All right.

MR. STEIN: And what else do I have, oh, and that the emails without the attachments total approximately 280 pages, so quite manageable.

THE COURT: Two-hundred-eighty pages without

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attachments, all right.

MR. STEIN: For the State Department, there was one outstanding question with respect to the search parameters for, let's see, subpart two of the plaintiff's FOIA request that ends 5632, and subparts one and two of the request that ends 5639. So when the State Department conducted its search initially, it came back with a huge number of cables. In the last week, the State Department reran the searches because they had done it incorrectly the first time and the number of cables is much more manageable. And so State Department is no longer requesting that those searches be limited to emails.

THE COURT: Okay.

MR. STEIN: And the total number, this is not a final number but the initial number that we have for emails and cables and all electronic records is approximately 2,000 pages.

THE COURT: Okay.

MR. STEIN: Now State had been waiting to come to an agreement on the search parameters in order to task the individual bureaus for the other requests. So, for example, policy documents and so forth, and so they haven't yet run all of those searches. And so

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there is a question as to how many pages State will find with respect to the taskers sent to particular bureaus.

THE COURT: Okay.

MR. STEIN: And that is my update, Your Honor.

THE COURT: All right. So the question now before me is I am going to go ahead and give you I think a six months summary judgment date, but I'm going to put some interim dates in there to see how we're doing along that path and whether adjustments need to be made. So six months would take us to late September, let's just take a look -- I'm sorry, late October. I can't count today. So we could say, for example, October the 25th for summary judgment.

Because this is a FOIA case I will check with the District Judge to make sure he doesn't disagree, but I think he will dispense with the requirement of pre-motion letters for summary judgment. Alternatively, I can't remember if I reminded you this last time or not, you are free always, if you wish, to consent to the jurisdiction of the assigned Magistrate Judge for dispositive as well as nondispositive proceedings. I'm not advocating, I'm truly not advocating because, trust me, FOIA summary judgments are not all that high

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2 on my list of -- well, all motions are a joy, I'll
3 leave it like that, but some motions are more of a joy
4 than other motions. Anyway, I'm not advocating and
5 there are never any negative consequences for
6 consenting or not consenting. But if you wish to do
7 so, you may, the form is on the District Judge's
8 webpage. The form is also on my webpage and on the
9 Clerk of the Court's webpage as well. One advantage,
10 or disadvantage, depending on how you look at it, in
11 consenting to the Magistrate Judge's jurisdiction is
12 that you only have one round, there is no second layer
13 of review by a different judge. That can be a great
14 advantage if you do well in front of the Magistrate
15 Judge, that can be can be considered a disadvantage if
16 you're unhappy with the Magistrate Judge's result.
17 But we'll simply give you a date for now of October
18 the 25th.

19 What I think I would like to do is I would
20 like to put two interim dates in roughly 60 days from
21 now and 120 days from now. And at each of those
22 interim dates I would like a written update, and
23 depending on whether the process seems to be going
24 well, meaning going quickly enough to get the parties
25 to a point where they can make that summary judgment

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2 deadline if they need to move for summary judgment,
3 I'll just read the report and won't call you in for a
4 conference. But if things do not appear to be going
5 swiftly enough or if one side or the other thinks you
6 need to come in and perhaps ask the Judge to twist
7 somebody's arm, we can do that as well.

8 So for now, rather than set status conference
9 dates, I'm simply going to set status update letter
10 dates, but either side can use the opportunity of that
11 letter to ask for a court proceeding if you would
12 like. So today being April 25th, why don't I set your
13 first joint status update letter due date at June the
14 25th. I can't do that, it's a Saturday, June the 27th
15 is the Monday. And, again, if you're unhappy with the
16 other side or you just want to come in and chat with
17 the Court, you may ask in that letter for an in court
18 status conference and I will schedule one relatively
19 promptly, and then August the 25th, I'll give you the
20 26th, it's a Friday, August the 26th for your next
21 status update letter.

22 Is there anything further that we need to do
23 today, Ms. Sisay?

24 MS. SISAY: No, thank you, Judge Moses. I
25 think I just wanted to state for the record that

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2 plaintiffs do think that a production order would be
3 proper in this case, because it has been over a year
4 and the time period that we're asking for is very
5 limited. And as the update that the Government counsel
6 just provided shows, there actually does not seem to
7 be that many documents here. And so we were really
8 hoping to get a production order that would push the
9 agencies to move the processing along and start
10 producing documents to us because, as stated, they
11 could process how many documents and we don't know
12 when they would actually be produced to us. So we
13 really would, we do think that a production order
14 would be important to not burden the Court and the
15 parties for this to keep going on for a long period of
16 time.

17 THE COURT: Let's see how we go in the next 60
18 days. You can do the math, Ms. Sisay, and if at the
19 60 day mark the pace of production is such that you
20 think the parties are not going to be able to fish or
21 cut bait within 6 months, you should absolutely renew
22 your request at that point and do the math for me at
23 that point, if you would, please, and let me know what
24 kind of a production order you think is required to
25 keep the government on track. I do understand that the

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government sat on these FOIA requests for a long time and nothing much happened until you came to court.

Unfortunately, we have all seen that movie many times. The Government now does seem to be engaged, so I'm going to give them 30 days to, excuse me, 60 days to demonstrate to me that they don't need a month by month, page by page order for the Court to get it done. If they need a month by month, page by page order, I'll issue one in June, okay?

MS. SISAY: Okay, thank you.

THE COURT: All right, thank you all very much.

MR. STEIN: Just one thing, Your Honor?

THE COURT: Mr. Stein.

MR. STEIN: This may be premature to ask, but for the summary judgment briefing, I imagine as we get closer to the date -- well let me ask it this way, is your intention to have a staggered briefing schedule where one side files and initial brief and then the other side --

THE COURT: As opposed to simultaneous cross filings?

MR. STEIN: Yes.

THE COURT: I kind of like the simultaneous cross filing approach, it's tighter and faster, but if

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the parties have strong feelings otherwise, we can chat about it at the next conference. I imagine we'll probably meet at least once between now and October.

All right, thank you both very much. Thank you all very much, I should say.

MS. SISAY: Thank you.

MR. STEIN: Thank you, Your Honor.

(Whereupon the matter is adjourned.)

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C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the United States District Court, Southern District of New York, Project South, et al. versus United States Immigration and Customs Enforcement, et al., Docket #21cv8440, was prepared using digital transcription software and is a true and accurate record of the proceedings.

Signature Carole Ludwig

Date: May 13, 2022