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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
Before The Honorable Alex G. Tse, Magistrate Judge

LAW,)
)
Plaintiff,)
)
vs.) No. C 24-06628-YGR
)
FEDERAL BUREAU OF PRISONS,)
)
Defendant.)
)

San Francisco, California
Monday, May 12, 2025

TRANSCRIPT OF PROCEEDINGS OF THE OFFICIAL ELECTRONIC SOUND
RECORDING 1:03 - 1:41 = 38 MINUTES

APPEARANCES:

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1 Monday, May 12, 2025

1:03 p.m.

2 P-R-O-C-E-E-D-I-N-G-S

3 --oOo--

4 THE CLERK: Calling 24CV6628, Law versus Federal
5 Bureau of Prisons.

6 Counsel, please state your appearances, beginning with
7 Plaintiff.

8 MS. HENRY: Good afternoon, your Honor. Caitlin
9 Kelly Henry, representing the Plaintiff Victoria Law.

10 THE COURT: Thank you.

11 MR. PYLE: Good afternoon, your Honor. Michael
12 Pyle for the Federal Bureau of Prisons.

13 THE COURT: Okay. Thank you.

14 All right. I wanted to meet with you. I think I'm
15 ready to issue an order. But before doing so, I wanted to
16 have a chance to talk to Counsel, and the reason for that is
17 the posture of the referral in the case -- the relief, as I
18 understand it, that the Plaintiff seeks really first
19 requires that I find that there be some violation of FOIA
20 and that -- before we get to the production and so forth,
21 which is all an appropriate request. It's just that that's
22 not my role. My role isn't to determine whether or not FOIA
23 has been violated, and therefore getting to this next
24 question about how the production goes forward. That is a
25 role that is reserved for the district court judge here,

1 Gonzalez Rogers, who is presiding over the FOIA action.

2 But before I wanted to issue that order, one of the
3 reasons why sometimes the judges send the case to us is to
4 help facilitate a resolution to the FOIA case, and if there
5 is a way to do that, then maybe we can just cut right to the
6 chase.

7 So I served as discovery magistrate in the larger
8 action involving the Bureau. Mr. Pyle is not the lawyer of
9 record in that case. That's handled by other DOJ lawyers.
10 But I was wondering if those documents that were produced in
11 connection with that larger case are also subject to this
12 FOIA action. And if that's the case, then maybe there is an
13 amount of coordination that could happen. I'm actually
14 assuming this has already happened. I just want to make
15 sure before I issue the order.

16 So, Ms. Henry, I mean, do you have any sense if the
17 documents that you're seeking for, that you're seeking in
18 your FOIA action have already been produced in the larger
19 action?

20 MS. HENRY: I would like to address two
21 provisions. Can I --

22 THE COURT: Sure.

23 MS. HENRY: -- address the --

24 THE COURT: Sure. After you answer my question,
25 then, of course, you can go ahead and respond.

1 MS. HENRY: I understand it to be a Venn diagram.

2 THE COURT: Okay.

3 MS. HENRY: There -- protective order issued,
4 documents, records, videos. We are seeking some of those.
5 Then my client was also an intervener --

6 THE COURT: Okay.

7 MS. HENRY: -- in the case. You may remember.
8 Some records were produced under that, and those are
9 enumerated and have also been sent to the BOP through
10 Michael in terms of what records have been released and
11 summarized versus what records in the 50 enumerated items we
12 are seeking. So I believe that we have narrowed the scope
13 of some of the records that were released through the motion
14 to intervene, but we are asking for things that fall within
15 the protective order and -- potentially --

16 THE COURT: Okay.

17 MS. HENRY: -- but a lot of things outside --

18 THE COURT: That are outside the protective order,
19 okay.

20 MS. HENRY: -- of that that were not the scope of
21 the claims. The closure is a different -- the time period
22 in which we have agreed when we narrowed the scope, Michael
23 and myself and previous BOP counsel, is more narrow than the
24 scope of the litigation. The claims of the litigation are
25 also more narrow than the scope of some of the requests,

1 which are about what process BOP follows during the closure.

2 THE COURT: Okay. Okay. All right. So knowing
3 that, basically the answer to my question, as I understand
4 it, is that, yes, there are some documents that have already
5 been produced in litigation, and then some documents,
6 though, are -- may not be -- and that, therefore, you
7 legitimately filed a FOIA request to capture those
8 documents.

9 So with respect to the documents that have already been
10 produced in the other litigation, has there been a
11 discussion about how those records are going to be produced
12 to you, Ms. Henry?

13 MS. HENRY: No, I provided a memorandum making
14 analogies --

15 THE COURT: Okay.

16 MS. HENRY: -- (Zoom glitch) to the records that I
17 understand exist from reading what's public in the docket.

18 THE COURT: Okay.

19 MS. HENRY: I do not have information from the
20 BOP. There's very little information other than the
21 production status index that was attached to the second
22 discovery brief and the first discovery brief. And I do
23 have an update, if your Honor would like that today.

24 THE COURT: Sure. Sure. But let me get to making
25 sure I understand that there's some documents --

1 Is it undisputed, Mr. Pyle? Are those documents that
2 have already been produced that are subject of this FOIA
3 case, do you have an understanding of what those documents
4 are?

5 MR. PYLE: I don't.

6 THE COURT: Okay.

7 MR. PYLE: As your Honor noted, I'm not counsel --

8 THE COURT: You're not counsel, correct.

9 MR. PYLE: -- in the underlying case, and my
10 office has conflicted out of that case, so --

11 THE COURT: I see. Okay. So the issue -- so the
12 issue may be that we just have to figure out if there's a
13 way to bridge that and have the department come in and at
14 least start making some progress in the -- producing
15 documents that have already been produced. And if there's a
16 reason why they can't be, then maybe that needs to be
17 explained. I do think that Judge Gonzalez Rogers is looking
18 for me to kind of facilitate that.

19 So I don't know if there's a way that we can accomplish
20 that, so that really what's left -- this is what my goal is,
21 that what's left, in terms of production schedules and all
22 of that or, you know, dispute over what needs to happen and
23 when, under FOIA, is limited to really those documents that
24 have not been already produced in the other case. Now, what
25 I don't know that may be an issue is the protective order,

1 but I haven't talked to the other lawyers in the case, the
2 DOJ lawyers. Maybe they have some information.

3 But, Mr. Pyle, you're conflicted out, so it could be
4 that it has to be done in connection with the other case to
5 figure that out, but I -- let me get some more information.

6 Ms. Henry, you indicate you have some updates that
7 might help me.

8 MS. HENRY: I have updates. Could I address the
9 initial point --

10 THE COURT: Sure.

11 MS. HENRY: -- about the statutory provisions of
12 FOIA?

13 THE COURT: Yes.

14 MS. HENRY: My understanding of 552(a)(6)(C)(i) is
15 that BOP is actually asking for relief here, not just
16 Plaintiff asking for relief. They're asking for more time,
17 and as the briefing stated, they did not meet the standard
18 to have more time. So we have the two issues, the rates and
19 methodology of production.

20 THE COURT: Sure.

21 MS. HENRY: There's the jurisdictional constraint
22 of the statute, where if BOP does not meet its standard to
23 show that exceptional circumstances are present and that it
24 has provided due diligence and efforts to make reasonable
25 progress to reduce its backlog, which it hasn't here, and I

1 provided some attachments, but could also provide additional
2 updates from a May 1st e-mail from --

3 THE COURT: Right, right. So -- and I did
4 understand that. The issue is, that's not my -- that's not
5 my role to rule on that, whether or not there's been a
6 violation of deadlines and so forth. That is something that
7 you would be taking up before Judge Gonzalez Rogers, that
8 she's the one who makes the decision whether or not the
9 Government has failed to comply with FOIA. So this is a --
10 this is a -- a traditional DJ, MJ referral is for discovery
11 purposes. That's not really what we have here. FOIA is
12 basically one big discovery issue. But the issue is the
13 adjudication that I have the authority to rule on is not the
14 underlying merits of the case, which is, if I were to find
15 in favor of you or against you, it would essentially
16 terminate your action or would resolve your action. You, of
17 course, would appeal that to the Ninth Circuit. But that's
18 not, again, my role. My role isn't that. So that's why I'm
19 trying to find out if there's a way that we can at least get
20 the production going forward, and maybe Mr. Pyle has some
21 recommendations on how to do that, even though he's recused.
22 I obviously do have access to the lawyers in the other case,
23 not in this case, but in terms of the other case, but -- so
24 you've had no contact with the DOJ lawyers.

25 MR. PYLE: If that's to me, no.

1 THE COURT: Yeah, okay.

2 MR. PYLE: They can't talk to me about the case,
3 but I do have --

4 THE COURT: Understood. Yeah, understood.

5 MR. PYLE: There is a -- there is a BOP lawyer who
6 was involved in the document production in that case --

7 THE COURT: Sure.

8 MR. PYLE: -- that I can talk to just about
9 facilitating getting documents to release to -- to the FOIA.

10 THE COURT: Well -- and would you agree with me --
11 would you agree with me, Mr. Pyle, there's nothing
12 precluding Ms. Henry from talking to the DOJ lawyers and
13 telling them that she's filed a FOIA action that implicates
14 documents. I mean, she certainly can tell them that she has
15 an action, it's public, and it's just a matter of
16 coordinating, so that the department and its various
17 lawyers, who she has access to, can tell her. And if their
18 response is going to be, "Well, that's not our case," I'm
19 going to try to bridge that, too, because the reality is she
20 could probably file a FOIA case, I would think, or FOIA
21 action in the other action instead of filing on her own.
22 But that's something that I'm hoping that will save
23 everybody as much time as we can. This does not address --
24 to be clear, this does not address the documents that are
25 not part of protective order, not part of the other

1 litigation, that are part -- properly part of the FOIA
2 complaint in this case. The real question is that the
3 relief that you're seeking, Ms. Henry, about whether or not
4 the Government has properly withheld documents, blown
5 through schedules, whatever your arguments are, those have
6 to be addressed by the district court judge that's assigned
7 to the case, not by me. But I'm hoping -- I don't know, and
8 maybe you don't even know, Ms. Henry -- that maybe there's a
9 lot of documents that have not been part of the FOIA case.

10 MS. HENRY: (Zoom glitch). It's been three --
11 over 300 days, and --

12 THE COURT: Yes. No, and I hear you --

13 MS. HENRY: -- (Zoom glitch).

14 THE COURT: -- the Government has violated FOIA
15 and the --

16 MS. HENRY: And I don't know the scope of the
17 records that exist to --

18 THE COURT: Yes.

19 MS. HENRY: -- (Zoom glitch) into Venn diagram
20 visualization for you.

21 THE COURT: Yes.

22 MS. HENRY: And I've been asking, and we've had 18
23 meet and confers, and pretty much every week, the answer is,
24 "I don't have information," so I'm seeking guidance on the
25 substantive issue of whether they can have more time, but --

1 which you're saying is outside of the scope of this, so that
2 means motions practice next. But I can't define the
3 universe.

4 THE COURT: Understood.

5 MS. HENRY: I've been attempting to discern the
6 universe.

7 THE COURT: Yes.

8 MS. HENRY: In my understanding, it would not be
9 -- there would not be that many documents because there was
10 very little discovery in the CCWP case --

11 THE COURT: Right.

12 MS. HENRY: -- (Zoom glitch) about that. I don't
13 know the scope of discovery in the MR cases because so many
14 of those reached settlements and so many are in progress.

15 THE COURT: Correct.

16 MS. HENRY: Imagine many of the documents -- and I
17 think the majority, but I don't know the scope, I've been
18 trying to discern it -- are not within that. They're not
19 related to claims. The closure of the prison is --

20 THE COURT: Yeah.

21 MS. HENRY: -- is not related to the specific
22 claims. So I'm just trying to understand for the record
23 today what the Court's position is, what I can do with the
24 information I have, and how to prepare, it sounds like, for
25 motions practice as the next step, if I'm understanding

1 correctly.

2 THE COURT: Yeah, and that's my -- it's my
3 understanding, and I think Mr. Pyle would agree, I mean, is
4 -- I mean, I know that you had discussions about production,
5 and the main argument I'm hearing from the Government is
6 they don't have the resources to respond to that. And then
7 that can all be taken up with Judge Gonzalez Rogers. That's
8 either something that's -- it's going to persuade her is an
9 acceptable response or not, but that's the call that needs
10 to be made by her. It's not me to make the call that, oh,
11 yes, the Government is -- lacks the resources, and therefore
12 it doesn't have to basically comply with FOIA. So the
13 decision that I'm being asked to be made by the Plaintiff is
14 that there's been a violation of FOIA.

15 MS. HENRY: Or that if the Government requests
16 more time, per that statutory provision, it has to bear the
17 burden of establishing the exceptional circumstances.

18 THE COURT: So any defense to the FOIA violation,
19 I'm hearing you, is also something that I don't adjudicate
20 for you in this instance. That's not the posture of my role
21 here.

22 But, Mr. Pyle, you want to add to --

23 MR. PYLE: Yeah, I just -- and I just want to be
24 clear, I haven't discussed this with BOP --

25 THE COURT: Sure.

1 MR. PYLE: -- but I am trying to think outside the
2 box, and I guess you don't have a referral for this either,
3 but magistrate judges obviously --

4 THE COURT: And, typically, I don't, yeah and --
5 yeah, yeah --

6 MR. PYLE: Yeah, but a magistrate judge can,
7 obviously, you know, serve as a -- in a settlement
8 context --

9 THE COURT: Correct.

10 MR. PYLE: -- to, you know, work out a lot of
11 these issues, and the fact that you know about that (Zoom
12 glitch) --

13 THE COURT: Right. So I might be able to
14 facilitate some of that or at least get the proper people to
15 talk. But it doesn't -- I mean, Mr. Pyle, do you -- I mean,
16 again, I -- Ms. Henry can call the DOJ lawyers. Can she
17 not? She can ask them -- they don't have to respond to her,
18 but I would hope that they did -- that -- for her to at
19 least make the assessment of what she needs and doesn't
20 need. I would think that if she can get an idea of what's
21 available to her in the other litigation and doesn't have to
22 resolve any disputes, then maybe that takes off of this case
23 the plate on this place -- the plate on -- in this case,
24 what is really at issue in FOIA. And then you could tee up
25 more cleanly what the relief is you're asking from Judge

1 Gonzalez Rogers. But, right now, it doesn't sound like the
2 Plaintiff has a real good sense of what's available, what's
3 not available.

4 MS. HENRY: Correct. I have been trying to get a
5 sense of that. I don't have a sense. I will request
6 relief. But I'm trying to also understand, in the order
7 that you're trying to inform today, is provision you're
8 contemplating ordering the DOJ to speak to me, or is it
9 informally that Michael will speak to the DOJ about speaking
10 to me? And if they would like to speak to me, then I can
11 speak to them directly to define the scope, but BOP
12 doesn't --

13 THE COURT: Yeah, I do not think that it requires
14 a court order to do that, but I'm telling you, as a judicial
15 officer, that that's what -- I mean, you don't need
16 instructions. I don't think Mr. Pyle can prevent you from
17 reaching out to the DOJ lawyers. He has -- he's precluded
18 from talking to the DOJ lawyers because he is recused. But
19 it doesn't mean that you, as a plaintiff in another action,
20 and it's related even, in that Judge Gonzalez Rogers is
21 presiding over both is you can talk to those lawyers, or you
22 can talk to the client, even BOP has personnel that they can
23 talk to. I would think, in that instance, though, that the
24 BOP can request their lawyers to be present at that
25 communication, since they are a represented party at that

1 point. But I'm trying to get beyond the point, because I do
2 sense that there's just not, first of all, a joinder of what
3 really is moot is available. And I would like to tee it --
4 if I'm going to be sending it back to Judge Gonzalez Rogers,
5 I would like her to know that this is what you're deciding,
6 which is whether or not FOIA applies or not and at what
7 juncture she should apply to that, because providing the
8 relief that you're seeking right now, the Government hasn't
9 had even an opportunity to file any kind of responsive --
10 typically, it's a summary judgment motion. And there's no
11 Vaughn Index, for example, the kind of thing that would, you
12 know, figure out exactly if documents were withheld under
13 FOIA. I understand right now nothing has been produced, but
14 the typical FOIA defenses haven't even really been teed up
15 yet in this case, and I can't jump over that. And your
16 right to the --

17 MS. HENRY: But I would like to (Zoom glitch) the
18 BOP, they have produced 1,806 pages, five productions --

19 THE COURT: Yes.

20 MS. HENRY: -- two violating the agreements.

21 THE COURT: Okay.

22 MS. HENRY: And so, of those, 1,238 were not
23 already public. So they're producing at a rate of 247 pages
24 a month. So we would be here for 27 years.

25 THE COURT: Yeah, no, I can understand that, but

1 the Government needs to be able to raise its defense, which
2 may be that they don't have the personnel, and then there is
3 law governing all of that too, so -- but that needs to be
4 adjudicated. That needs to be resolved, and I get that, but
5 that has to be resolved, I think, through a motion before
6 Judge Gonzalez Rogers, not me.

7 But I, first of all, wanted to make sure that you've
8 already received documents that you can in the other case.
9 I understand that it's -- there's definitely no complete
10 overlap. It may not even be a lot, but at least you'll be
11 better informed to know that, well, "I have some, and I
12 don't -- I'm not talking about those, I'm talking about
13 something else." And that way, you can focus in on what is,
14 under FOIA, in this case available to you.

15 MR. PYLE: And I guess, again, thinking outside
16 the box, is there a way that Plaintiff can file something
17 with Gonzalez Rogers in the case -- cases that my office is
18 recused from, to have Judge Gonzalez, you know, essentially
19 order or provide the, sort of, case documents to the
20 Plaintiff?

21 THE COURT: So you think that there needs to be
22 some official -- that she might have to actually appear as a
23 party in the other case?

24 MR. PYLE: No, I'm not --

25 THE COURT: Yeah.

1 MR. PYLE: -- I'm not trying to require that. I'm
2 just --

3 THE COURT: Right.

4 MR. PYLE: -- again trying to think of ways to try
5 to --

6 THE COURT: Ms. Henry, my advice is that you can
7 reach out -- you know who the -- if you don't know who the
8 lawyers are, Mr. Pyle, you can provide who the lawyers are
9 that she can talk to. And they can -- and they can -- they
10 can at least tell her, "We can help you" or, "We're not
11 going to help you." But I would like this to happen because
12 I don't -- right now, I feel like there's -- there are
13 documents here that are in everyone's benefit, hers and
14 yours. Let's figure it out and take them off the table, and
15 then we can go back in the FOIA case and litigate that and
16 figure out what's really the universe, because, right now,
17 Ms. Henry doesn't have really any idea. And then if the
18 other DOJ team feels like, "We can't respond because she's
19 not a party," then they'll tell her that. But I don't want
20 -- I don't necessarily -- and then I might -- because I'm
21 the discovery referral in that case, I might convene a
22 hearing in one of those cases, because I at least have that
23 overlap. But let's see if that happens, because you -- I
24 can appreciate you, as being recused, are not going to be
25 able to have that kind of discussion, but Ms. Henry can talk

1 to them.

2 MR. PYLE: That is correct.

3 THE COURT: Yeah.

4 MR. PYLE: And I -- it's not something that I
5 could or would, you know, try to block or prevent --

6 THE COURT: No, I understand, but I would like
7 that to happen, so that she can -- we can move this along,
8 and then thereafter -- I don't -- I would like to -- I would
9 like to know, is there a way that you can -- we can see --

10 Ms. Henry, can you maybe -- if you get the -- do you
11 have the information? It's publicly available. It's on the
12 docket in the other cases, so you have the -- you should
13 have the contact information of those DOJ lawyers.

14 MS. HENRY: Your Honor is suggesting I reach out
15 to the current --

16 THE COURT: Yeah, yeah, yeah.

17 MS. HENRY: -- DOJ lawyers on the docket.

18 THE COURT: And see --

19 MS. HENRY: -- (Zoom glitch) BOP and specifically
20 ask for the CCWP and MR records not related to what my
21 client already filed with a motion to intervene, but that
22 are within the scope of the FOIA with the attached 50 items.
23 And --

24 THE COURT: What I would like you to do -- you
25 have a sense of what your FOIA requests are. What you don't

1 know is how many of those responsive documents are actually
2 already produced and available, ready to go, and could be
3 produced to you. I would like to give the Government an
4 opportunity to tell you, if they can, what that is. I don't
5 think they're going to be required to give you an index of
6 everything that they've produced. I think it's going to be
7 more driven by what you want and that you have a FOIA
8 request outstanding. And then, you know, you can tell them,
9 if they don't already know, that you have a FOIA request and
10 case pending. They should know that because they're not
11 handling that part of the case. But we're trying to get at
12 the idea of, like, what documents have been produced that
13 you would find responsive to FOIA.

14 MS. HENRY: (Zoom glitch) CCWP.

15 THE COURT: Whatever is -- you can at least get a
16 sense of, like, what's been produced (Zoom glitch).

17 MS. HENRY: And then outside of the scope of
18 those, we're going back to --

19 THE COURT: Then your relief -- if it's covered by
20 your FOIA request, then your relief is under FOIA in this --
21 but it has to be subject of your request that -- what your
22 argument would be, as I -- as I'm tracking it, is that,
23 "There are responsive documents under my FOIA request that
24 was filed on this day. I'm seeking these records, and
25 that's going to be pursued to conclusion in this FOIA case."

1 And that will hopefully frame your arguments by motion or
2 what to the -- Judge Gonzalez Rogers.

3 Now, let -- let's play this out again. The way that it
4 gets teed up is, isn't it, Mr. Pyle, the Government, because
5 there's a FOIA request, you're going to have to file some
6 dispositive motion that either the Government complied with
7 FOIA or not, and then you can get into the next phase of
8 this is why we haven't complied with FOIA, either we
9 legitimately withheld, "Here's the Vaughn Index," or we have
10 additional grounds upon which we were not able to respond
11 timely, the lack of resources or whatnot. But isn't that
12 the Government's burden to do that?

13 MR. PYLE: We're not -- the type of motion that
14 the Plaintiff is talking about is an Open America --

15 THE COURT: Yeah.

16 MR. PYLE: -- what's called an Open America stay
17 motion. And that's not at all what the Government is
18 seeking in this case.

19 THE COURT: Okay. So that's not going to be -- so
20 the issue is the Government is not going to be doing an Open
21 America.

22 MR. PYLE: No.

23 THE COURT: Okay. So -- but when you raise in the
24 papers, to me, that there's a lack of resources, what is
25 that in connection with, then?

1 MR. PYLE: That is in connection with our belief
2 that, you know, producing or processing 1,000 pages a month
3 is a -- you know, a reasonable rate to respond to the FOIA.

4 THE COURT: Okay. And who adjudicates that? Who
5 decides whether or not that's an appropriate pace to produce
6 documents?

7 MR. PYLE: I thought it was going to be you today,
8 but perhaps it's going to be Judge Gonzalez Rogers (Zoom
9 glitch).

10 THE COURT: Well -- but so is the Government
11 conceding -- is the Government conceding that they violated
12 FOIA?

13 MR. PYLE: No, we're not conceding that we
14 violated FOIA.

15 THE COURT: Right. So it's that issue that I
16 don't see how I can move beyond. If I were to argue that
17 the production rate is fine, what authority does the
18 Government have that I can issue a pre-dispositive motion
19 order, because the Ninth Circuit law, as I read it, really
20 discourages filing any kind of production order. But if the
21 Government is going to concede, which it's not, that is the
22 issue that I don't see how I can move beyond.

23 MR. PYLE: That -- I don't have a case for you on
24 that because I --

25 THE COURT: But you believe there's authority that

1 allows for me, not the trial judge, to rule on the
2 appropriate pace of production before there's been a finding
3 of whether or not the Government has violated FOIA or not.

4 MR. PYLE: I was going to say that was an
5 assumption, but --

6 THE COURT: What is the assumption?

7 MR. PYLE: That -- again, I don't have a case in
8 mind, but the idea that it's essentially a -- it's not -- I
9 really have nothing to offer in terms of a case for that
10 proposition. I could --

11 MS. HENRY: Could I offer a case that was in the
12 letter brief on -- in my portion?

13 THE COURT: Yeah, you can tell me, yes.

14 MS. HENRY: The Fiduccia, F-I-D-U-C-C-I-A, vs.
15 Department of Justice brief --

16 THE COURT: Okay.

17 MS. HENRY: -- quote I had in the second letter
18 brief where an agency fails to seek additional resources
19 that would facilitate statutory compliance with the "tough
20 statute" Congress wrote on agency delay and compliance.
21 That policy choice has legal consequences. That was a Ninth
22 Circuit case. In addition, I had other --

23 THE COURT: Let me break down the procedural
24 posture in that Ninth Circuit case that you just cited, one
25 in which there's already been a determination on whether or

1 not FOIA has been violated or not.

2 MR. PYLE: Yeah, in that particular discussion
3 that she's citing, it's -- the district court granted a Open
4 America stay --

5 THE COURT: Yeah.

6 MR. PYLE: -- to the FBI and --

7 THE COURT: Yeah. I think that case is factually
8 and procedurally distinct.

9 So what I'm trying to get at is, in order to get to
10 what the issue is, like, on what is the pace of the
11 production, whether or not that's appropriate or not, there
12 has to be some predicate resolution that there has to be a
13 production in the first instance. So if everyone is on the
14 same page and they all agree that -- but the Government just
15 indicated they're not conceding that there's been a
16 violation of FOIA, so their position, as I'm taking it, is -
17 - and they have a right to raise that defense before we get
18 to the timing of when documents get handed over. And it
19 doesn't mean cases shouldn't resolve that way because, at
20 the end, if there's not going to be a good defense, then the
21 issue should be there should be a production schedule. And
22 perhaps what the Government has been doing is trying to cut
23 through all of that and get to what is the appropriate rate.
24 And I think what the Government is foreshadowing is that
25 it's not likely to get any better, and the current status of

1 staffing and so forth, it's not going to get any faster,
2 which has led me to kind of figure out, well, let's get off
3 the table the things that we can get and get them to the
4 Plaintiff in the FOIA case more quickly, and then focus on
5 what really is, under FOIA, going to have to be produced,
6 and is there a way to do that in a way that can kind of meet
7 both -- try to get closer to what the Plaintiff's
8 expectations are, given what the Government's limitations
9 are, and then get you to the point of doing a satisfactory
10 production schedule that you can mutually agree to, because
11 I don't see that there's a dispute that there's going to be
12 a production of records here. It's going to happen. The
13 question is how quickly and how can we get there? And
14 that's what I'm trying to work with the parties, within my
15 limitations on what I can and cannot do. So I can't,
16 unfortunately -- I don't see a way that I can -- I don't see
17 any law either that tells me I can -- with -- before you get
18 to filing dispositive motions and whatnot, say this is a
19 production schedule and this is a reasonable schedule,
20 because that is -- that will assume that there are some
21 findings, which have not been done yet.

22 MS. HENRY: And I believe I cited the Los Angeles
23 Times, which was pre-motions practice.

24 THE COURT: Okay.

25 MS. HENRY: I believe (Zoom glitch) vs. DHS. I

1 believe that was a status report case where status reports
2 had been ordered --

3 THE COURT: Okay.

4 MS. HENRY: -- and we can, for things outside the
5 scope of those other cases that you would like us to go to
6 GOJ for, timely file our motions. We have discussed what
7 motions we would file with Mr. Pyle, but we were trying to
8 work collaboratively and --

9 THE COURT: Yes, no, I get that. No, and I see
10 that you have --

11 MS. HENRY: Yeah.

12 THE COURT: -- and I'm trying to facilitate
13 that --

14 MS. HENRY: Right.

15 THE COURT: -- before getting to --

16 So the LA case, you believe that -- that's pre-
17 dispositive motion. And in that case, what did the ninth --
18 is it a Ninth Circuit case?

19 MS. HENRY: I don't think so. I'm trying to --

20 MR. PYLE: No, it's a Central District of
21 California case.

22 THE COURT: Okay.

23 MS. HENRY: And I believe that the portion of the
24 case I cited was in the page schedules. I think it was in
25 the case management and the -- the case management statement

1 and the letter brief with regards to DHS moving for
2 reconsideration. And I believe the procedure was different.
3 I don't have that all in front of me. I do have them
4 printed out in front of me, and I could reference them --

5 THE COURT: Yeah, but what do you use -- what do
6 you want to use that case to stand for?

7 MS. HENRY: My understanding of what I was hoping
8 to achieve today --

9 THE COURT: Yes. No, but what do you -- what do
10 you think that case -- I want to -- I want to see if I can
11 address the point you -- you're citing in that legal
12 authority. But what are you citing it for?

13 MS. HENRY: That you have the authority to order
14 production and production status reports of the pages of
15 your (indiscernible). You have the authority to manage
16 production pace.

17 THE COURT: At what stage, though. That's --

18 MS. HENRY: At this stage.

19 THE COURT: Okay. All right. I'll take a look at
20 that.

21 Mr. Pyle, do you want to respond, though, if you --

22 MR. PYLE: Yeah, I think the issue may be that I
23 hadn't given enough attention to is the referral fact,
24 because the Los Angeles Times case, it's a district judge --
25 you know, a district judge assigned to the case at the

1 status conference --

2 THE COURT: That's correct that there was a
3 presiding judge. It wasn't a judge that was referred
4 anything. That's -- yeah.

5 MR. PYLE: Right. And I think that -- and I don't
6 think we have a case that grapples with that particular --

7 THE COURT: Right. So I think if Judge Gonzalez
8 Rogers were sitting here talking to you, I think she could -
9 - she would have the authority to talk about production
10 schedules. But the fact is she has referred whatever, and I
11 know that you guys didn't talk to her about it, she just did
12 it before you had a chance to meet with her at a CMC. So --

13 MS. HENRY: And speaking of the CMC --

14 THE COURT: Yes.

15 MS. HENRY: -- does the order contemplate ordering
16 the -- a pre-motions practice conference with Judge Gonzalez
17 Rogers? We could file the relief we've discussed about
18 judgment as a matter of law and summary judgment, but I
19 think Mr. Pyle and I have worked collaboratively, and, in my
20 perspective, we would be happy to continue working
21 collaboratively. We can file the motion. But is there a
22 step beyond that in the interim where you would contemplate
23 referring --

24 THE COURT: Here's what I would like to have
25 happen. I can appreciate what Mr. Pyle just said, that he

1 has not -- he has not appreciated this referral aspect on
2 what limitations there are to what I can order. And in -- I
3 would like for -- Mr. Pyle for you to think about that in
4 how you would want to fashion your continued collaboration
5 with Ms. Henry, because I am confident that you can try to
6 figure out what a realistic production schedule is, and
7 either, Ms. Henry, you're going to be satisfied with what
8 the Government is telling you or not, and that's totally up
9 to you. If Mr. Pyle comes back and says, "I still can't do
10 it at a faster pace," then it's up to you to figure out the
11 relief you want, given all the needs that you have for the
12 records. And I'm hoping that you can continue to meet and
13 confer and do that. And we can reconvene and see how that's
14 going, but I do -- now that I think that Mr. Pyle has -- is
15 understanding what the dilemma is for me to be able to
16 adjudicate a production schedule, which I do not believe
17 that I can -- I still don't believe that I can, given the
18 posture of the case. So we can do that. But the other
19 thing I would want to happen -- and, Mr. Pyle, if you can
20 facilitate it through the BOP -- I understand your recused
21 status -- then I would encourage you to do that. I would
22 like Ms. Henry to find out what she doesn't need to go and
23 adjudicate in the FOIA case. And I would like her to know
24 that "I know that these documents that I want have already
25 been produced," and it's just mechanically how to work and

1 get them over to her. Now, I admit I don't know if that's
2 even -- I'm just assuming that there are records ready for
3 her to go, but I also recognize in this FOIA case that there
4 was mention of the fact that maybe the documents aren't in
5 the correct format for her, and that may be the case in the
6 other litigation too. I don't know what format records are
7 available and have been produced, and so that may be an
8 outstanding issue, that let's say there are a subset of
9 documents that have already been produced in the main
10 litigation but are still unavailable to Ms. Henry because
11 they're in a different format, then that may be something
12 that has to be further addressed. And then we may be back
13 in the FOIA case because then, technically, I think all of
14 it may be in the FOIA case, because she is seeking records
15 that are maintained in a certain way, and yet she wants or
16 believes that she has the authority to get them produced to
17 her in a certain format. I don't know what the answer is
18 going to be. I'm reserving any kind of ruling on that, if I
19 need to rule on whether or not the -- how the documents are
20 going to be, how the records are going to be delivered and
21 produced and in what fashion, under FOIA, that may have to
22 be litigated. I'm not sure. But I recognize that that is
23 an open question, potentially. But I would at least like to
24 have Ms. Henry know that, okay, we -- "these are the
25 universe of documents. I don't need to be swimming around

1 too many areas."

2 So do you think all of this can be done in two weeks,
3 and we can regroup and come back here on Zoom?

4 MS. HENRY: I'm assuming you're addressing Mr.
5 Pyle.

6 THE COURT: To both -- yeah, to both of you. I
7 want to try to, you know, keep this moving.

8 MS. HENRY: Michael, would you like to discuss it
9 on Friday? And I presume our answer is yes, and we can
10 collaborate on these e-mails --

11 THE COURT: Great. Perfect. Perfect.

12 MR. PYLE: Yes, I think we should -- I think
13 reconvening in two weeks is --

14 THE COURT: Okay.

15 MR. PYLE: -- a good amount of time to try to get
16 to the bottom (Zoom glitch).

17 THE COURT: Okay. And then we'll at least get an
18 update. And, okay, so we'll do that.

19 Stephen, if you can confirm in two weeks time.

20 MS. HENRY: Memorial Day is Monday the 26th, if
21 that's a scheduling issue.

22 THE COURT: Yes, that will be a scheduling issue,
23 so Tuesday, please.

24 THE CLERK: Your Honor, we'll schedule it for
25 Tuesday, 1:00 p.m., this platform. Tuesday, the 27th of

1 May.

2 THE COURT: Okay. Very good.

3 MS. HENRY: And would you be issuing an order
4 today or --

5 THE COURT: I think I'm going to hold off until I
6 get what the update is.

7 MS. HENRY: Would you like us to submit anything
8 before that for your review, such as the e-mails to the DOJ?

9 THE COURT: I don't think I need that.

10 MS. HENRY: Okay.

11 THE COURT: Okay.

12 MR. PYLE: But can we file something if we either
13 find a case on referral or --

14 THE COURT: Yeah. I mean, if you want -- if you
15 want to update the Court --

16 MR. PYLE: -- or have a -- or have a --

17 THE COURT: Why don't you do this? I'm just
18 assuming that if you -- that you can submit a joint letter
19 to me on what -- progress, and you can either do it jointly,
20 or if you need to write separate sections, you can do that,
21 and we'll keep that under five pages for the joint
22 submission.

23 MR. PYLE: Okay. And when do you want that? Just
24 before --

25 THE COURT: A couple of days before the hearing

1 will be fine.

2 MR. PYLE: Okay.

3 THE COURT: So if the hearing is on Tuesday, how
4 about that Friday? Although that's Memorial Day weekend.
5 Thursday, maybe.

6 MR. PYLE: How about Thursday? Yeah.

7 THE COURT: Thursday, okay.

8 All right. Okay. I think that's it for today.

9 MS. HENRY: Thank you.

10 THE COURT: Okay.

11 MR. PYLE: Thank you, your Honor.

12 THE COURT: All right. Thank you.

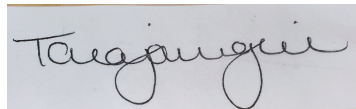
13 (Proceedings adjourned at 1:41 p.m.)
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CERTIFICATE OF TRANSCRIBER

I certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages of the official electronic sound recording provided to me by the U.S. District Court, Northern District of California, of the proceedings taken on the date and time previously stated in the above matter.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken; and, further, that I am not financially nor otherwise interested in the outcome of the action.



Echo Reporting, Inc., Transcriber
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