UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

INTERNATIONAL REFUGEE ASSISTANCE PROJECT, *et al.*, Plaintiffs, v. DONALD TRUMP, in his official capacity as President of the United States, *et al.*, Defendants.	No. 8:17-cv-00361-TDC

DEFENDANTS' OPPOSITION TO
PLAINTIFFS' MOTION FOR EXPEDITED DISCOVERY

Plaintiffs' lawsuit challenges Executive Order No. 13,769, which states a purpose "to protect the American people from terrorist attacks by foreign nationals admitted to the United States." 82 Fed. Reg. 8977, 8977 (Jan. 27, 2017). Per the Court's scheduling Order, *see* ECF No. 59, Plaintiffs filed a motion for expedited discovery on February 22, 2017. *See* ECF No. 63 ("Pls.' Mot."). By the time that Plaintiffs filed their discovery motion, however, the Government had already indicated its intention to replace Executive Order No. 13,769 with a New Executive Order. *See id*. at 1. On March 6, 2017, the President issued that New Executive Order with an effective date of March 16, 2017, and on that effective date—just eight days from this filing, and well before the Court is scheduled to hear Plaintiffs' motion on March 28, 2017, *see* ECF No. 59—the New Executive Order revokes Executive Order No. 13,769. *See* ECF No. 79-1 at 19 (New Executive Order §§ 13, 14). Prior to filing this brief, the Government conferred with Plaintiffs to inquire whether Plaintiffs wished first to revise their motion for expedited discovery in light of the subsequently issued New Executive Order. Plaintiffs declined.

Early discovery is unusual, and unwarranted in this case. Parties seeking to take such discovery typically have a preliminary injunction motion on file; that way, the parties and the court can evaluate the early discovery requests in light of the specific arguments being made in the substantive motion. Here, Plaintiffs have filed a motion seeking a preliminary injunction, *see* ECF No. 64, but that motion targets only Section 5(d) of Executive Order No. 13,679, in which the President "proclaim[ed] that the entry of more than 50,000 refugees in fiscal year 2017 would be detrimental to the interests of the United States, and thus suspend[ed] any such entry until such time as [the President] determine[s] that additional admissions would be in the national interest." 82 Fed. Reg. at 8979. Plaintiffs' expedited discovery motion does not purport to relate to that pending motion for a preliminary injunction, even though the two motions were filed concurrently.

Instead, Plaintiffs' motion for expedited discovery alludes generally to the claims that Plaintiffs speculated they might like to press on a preliminary basis against a then-prospective New Executive Order. But the since-issued New Executive Order was subject to its own deliberative processes and was developed separately from Executive Order No. 13,769, and the two Executive Orders differ in substantial respects. *See* ECF No. 79 (summarizing differences). And because the New Executive Order had not yet been issued at the time that Plaintiffs filed their expedited discovery motion, Plaintiffs fail to describe why their specific discovery requests are tailored in any way to the relief that they might be seeking. Indeed, as of the date of this filing, it is still unclear what Plaintiffs' legal arguments against the New Executive Order might even be. For that reason alone, Plaintiffs' motion for expedited discovery should be denied.

Plaintiffs' request for expedited discovery fails for other reasons as well. Plaintiffs claim that their discovery requests are narrow in scope; to support their position, Plaintiffs note that they are only serving four document requests. But each of those requests is incredibly *broad* in scope,

seeking sweeping categories of documents regarding the "development" and "implementation" of Executive Order 13,769, as well as the of New Executive Order that Plaintiffs had not yet seen at the time they filed their motion. Moreover, Plaintiffs' proposed discovery raises substantial privilege and separation of powers concerns. For all of these reasons, as set forth in more detail below, Plaintiffs' motion should be denied.

ARGUMENT

I. Plaintiffs Fail to Demonstrate Unusual Circumstances Exist That Are Sufficient to Obtain Expedited Discovery.

Plaintiffs seek an exception to the requirement of Federal Rule of Civil Procedure 26(d) that discovery typically shall not commence until the parties to an action meet and confer as prescribed by Rule 26(f). "Expedited discovery is not the norm." *Merrill Lynch, Pierce, Fenner & Smith v. O'Connor*, 194 F.R.D. 618, 623 (N.D. Ill. 2000); *see also Dimension Data N. Am., Inc. v. NetStar-1, Inc.*, 226 F.R.D. 528, 530 (E.D.N.C. 2005) (expedited discovery is available only "in limited circumstances"). Instead, expedited discovery is available when "unusual circumstances exist." *ForceX, Inc. v. Tech. Fusion, LLC*, No. 4:11-cv-88, 2011 WL 2560110, at *4 (E.D. Va. June 27, 2011) (citation omitted). The burden is on the movant to "make some *prima facie* showing of the *need* for the expedited discovery." *Merrill Lynch*, 194 F.R.D. at 623.

The Fourth Circuit has not adopted a formal standard for evaluating requests for expedited discovery; instead, courts in this circuit typically apply one of two separate tests to determine whether expedited discovery is necessary. Some courts apply a "reasonableness or good cause" test. *See Dimension Data*, 226 F.R.D. at 531. "Under that test, a court facing a motion for expedited discovery in connection with a request for preliminary injunction may consider the timing of the motion, whether a party seeking discovery has narrowly tailored its requests to gather information relevant to the preliminary injunction determination, and whether the requesting party

has shown a likelihood of irreparable harm without access to expedited discovery." *Lewis v. Alamance Cty. Dep't of Social Servs.*, No. 1:15-cv-298, 2015 WL 2124211, at *1 (M.D.N.C. May 6, 2015) (citing *Dimension Data*, 226 F.R.D. at 531-32). Other courts have rejected the reasonableness standard, instead concluding that "[i]t is most logical to treat the motion for expedited discovery under a similar standard as to the preliminary injunction standard." *ForceX*, 2011 WL 2560110, at *5. Under this test, a party seeking early discovery must make a strong showing of success on the merits as well as likely irreparable harm in the absence of obtaining discovery. *See id*. Regardless of which test is applied here, Plaintiffs' request for expedited discovery fails.

A. Plaintiffs Cannot Demonstrate a Present Compelling Need for Expedited Discovery, Particularly Because They Have Not Yet Filed a Motion to Which Those Requests Will Purportedly Relate.

Fundamentally, expedited discovery is designed for the unusual circumstance in which a party would suffer harm if discovery were postponed until after the parties' Rule 26(f) conference. Thus, regardless of which test is applied, Plaintiffs "must show a likelihood of irreparable harm without access to early discovery." *Lewis*, 2015 WL 2124211, at *2. Here, Plaintiffs have failed to demonstrate why their requested discovery is necessary now.

Although Plaintiffs have already filed a motion for preliminary injunction, that motion challenges only Section 5(d) of Executive Order No. 13,769, *see* ECF No. 64, which is *not* the basis for Plaintiffs' requested expedited discovery. Instead, Plaintiffs are seeking expedited discovery for a *future* preliminary injunction motion directed at the New Executive Order that replaces and explicitly revokes Executive Order No. 13,769. *See* Pls.' Mot. at 4 ("Once the replacement executive order is issued, Plaintiffs anticipate that they will need to move swiftly for a temporary restraining order and preliminary injunction to enjoin its enforcement and prevent further irreparable injury. Plaintiffs therefore request expedited discovery in order to develop the

factual record available on the preliminary injunction motion."); *see also id.* at 6 ("Plaintiffs are making this motion for expedited discovery now in order to obtain additional facts directly relevant to that preliminary injunction motion [against the replacement executive order] as quickly as practicable[.]").

Critically, however, Plaintiffs have not demonstrated why expedited discovery is needed for that future, not-yet-filed motion. To the contrary, Plaintiffs claim that the evidence they already have "is more than sufficient to show that they are likely to succeed in their claim that the January 27 Order or a similar successor order violates the Constitution." Pls.' Mot. at 8-9. Given that Plaintiffs themselves do not view discovery as necessary to prove their claims on their future motion for a preliminary injunction, there is no basis for permitting expedited discovery here.

Indeed, Plaintiffs' motion cannot possibly have made the required showing about why expedited discovery is needed now, because Plaintiffs filed their discovery motion *prior* to filing their future, potential motion for a preliminary injunction challenging the replacement Executive Order, and prior to even seeing the New Executive Order. It is well-settled that a "motion for expedited discovery is not reasonably timed, where, as here, plaintiff has not yet filed a temporary restraining order or a motion for a preliminary injunction, setting out in detail the areas in which discovery is necessary in advance of a determination of preliminary injunctive relief." *Dimension Data*, 226 F.R.D. at 532; *see also Carter v. Ozoeneh*, No. 3:08-cv-614, 2009 WL 1383307, at *3 (W.D.N.C. May 14, 2009) (rejecting request for expedited discovery because "[p]laintiffs have not even filed a motion seeking preliminary injunctive relief"); *Lab. Corp. of Am. Holdings v. Cardinal Health Sys., Inc.*, No. 5:10-cv-353-D, 2010 WL 3945111, at *3 (E.D.N.C. Oct. 6, 2010) (granting request for expedited discovery where "[p]laintiff has already filed its motion requesting a

preliminary injunction" and "Defendants do not oppose the request for expedited discovery"). Plaintiffs' request for expedited discovery, therefore, is clearly premature.

Plaintiffs apparently filed their motion for expedited discovery based upon an assumption that the New Executive Order would be "similar in design and effect" to Executive Order No. 13,769. Pls.' Mot. at 1. It is not. As set forth in the Government's Notice of Filing of Executive Order, the New Executive Order is substantially different from, and much narrower in scope than, the Executive Order that is subject to Plaintiff's currently pending request for preliminary injunctive relief. *See* Notice of Filing, ECF No. 79. For example, the New Executive Order's 90-day suspension of entry provision no longer applies to Iraqi nationals. *See* Notice of Filing at 4-5 (citing New Executive Order § 1(g), ECF No. 79-1). Nor does it apply to individuals who have a valid visa on March 16, 2017 or had a valid visa as of 5:00 p.m. Eastern Standard Time on January 27, 2017. *See* Notice of Filing at 5 (citing New Executive Order § 3(a)). As for the individuals to whom the suspension of entry will apply, the New Executive Order differs from Executive Order No. 13,769 in many ways. Among other things, the New Executive Order expressly excludes from its scope many categories of individuals, including but not limited to:

- Lawful permanent residents;
- Any foreign national admitted to or paroled into the United States on or after the New Executive Order's effective date;
- Dual nationals traveling on a passport other than one issued by one of the six designated countries; and
- Any foreign national who has been granted asylum.

See Notice of Filing at 5-6 (citing New Executive Order § 3(a), (b) (providing more exhaustive list)). Moreover, the New Executive Order contains robust waiver provisions that may apply, on a case-by-case basis, to categories of individuals including, for example:

- Foreign nationals who have previously been admitted to the United States for a continuous period of work, study, or other long-term activity, whose denial of reentry would impair this activity;
- Foreign nationals who have prior connections to the United States;
- Foreign nationals who seek to enter the United States for significant business or professional obligations;
- Foreign nationals seeking to visit or reside with close family members in the United States; and
- Infants, young children or adoptees, and individuals needing urgent medical care.

See id. at 6-7 (citing New Executive Order § 3(c) (describing waiver provisions in greater detail)).

The New Executive Order differs from Executive Order No. 13,769 in other respects. Unlike the prior Executive Order, the New Executive Order does not prioritize in any way refugees who practice minority religions. *See id*. at 9. Nor does the New Executive Order contain any provisions that are specific to refugees from Syria. *See id.* Moreover, the New Executive Order describes, in detail, the basis for the policy it announces regarding both the suspension of entry provision and the U.S. Refugee Admissions Program. *See id*. 10-13.

By filing their discovery motion regarding an Executive Order that they had not yet even seen, all Plaintiffs can offer regarding a lack of discovery causing irreparable injury is an assertion that "[t]he government's implementation of the January 27 Order was chaotic, secretive, and marked by major reversals," as well as speculation that the New Executive Order may contain an "ambiguity." Pls.' Mot. at 9-10. As set forth above (and described in more detail in the Government's Notice of Filing), however, the New Executive Order is clearly written and provides a detailed description of the basis for its policy; there is nothing ambiguous about it. And whatever complaints Plaintiffs may have about Executive Order No. 13,769, that order will be revoked as of March 16, 2017. Therefore, discovery sought by Plaintiffs related to that *past* action is not going to be narrowly tailored for relevance to Plaintiffs' purported claims of *future* harm, which

is what Plaintiffs must show to obtain injunctive relief. Thus, Plaintiffs have not demonstrated how any of their requested discovery—in particular discovery related to the prior Executive Order—is needed *now*.

It is already clear that the New Executive Order is substantially different from Executive Order No. 13,769, and was produced as a result of a separate deliberative process. Plaintiffs have failed to explain why they need discovery relating to either Executive Order; to the contrary, Plaintiffs admit that no additional discovery is needed in connection with their future motion for a preliminary injunction. For these reasons alone, Plaintiffs' motion should be denied.

B. Plaintiffs' Requested Discovery Is Not Narrowly Tailored.

Even if Plaintiffs' discovery requests sought potentially relevant information, Plaintiffs' motion for expedited discovery should still be denied because their discovery requests are not narrowly tailored to obtaining the information necessary for their future motion for a preliminary injunction.

Plaintiffs have submitted four proposed discovery requests, which can be separated into two groups. First, Plaintiffs seek "[a]ll instructions, guidance, memoranda, policies, projections, reports, data, summaries, or similar documents developed by or issued to relevant agencies regarding the implementation and interpretation of the January 27 Order and subsequent court orders," as well as "regarding the implementation and interpretation of the replacement executive order." ECF No. 63-1 at 6 (Requests for Production of Documents Nos. 2 and 4). Second, Plaintiffs seek "[a]ll memoranda, policies, projections, reports, data, summaries, or similar documents relating to the development of the January 27 Order," as well as "relating to the development of any replacement for the January 27 Order." *Id.* (Requests for Production of Documents Nos. 1 and 3). For both groups of requests, Plaintiffs have included instructions with expansive definitions of what types of documents fall within the requests. *See id.* at 3-4, ¶ 5.

On the first group of requests, a narrow interpretation proves these requests are unnecessary, whereas a broad interpretation highlights their intrusive nature. To the extent those requests are interpreted narrowly—*i.e.*, as truly seeking only instructions and guidance related to the implementation of Executive Order No. 13,769 and the New Executive Order—responding to those requests would not aid Plaintiffs' claims in any meaningful way. The Government has already made public numerous documents related to agencies' implementation of both Executive Orders.[1] Plaintiffs may seek to criticize the substance of that implementation, but their own Complaint makes clear that they have had no trouble accessing documents reflecting the agencies' implementation of Executive Order No. 13,769. *See* ECF No. 1 at ¶¶ 83-89, 92-94.

Alternatively, a broad interpretation of these requests would be incredibly burdensome and intrusive. For example, these requests could conceivably extend to every U.S. Customs and Border Protection officer's decision to grant or deny entry, for every national of the seven countries, occurring from January 27, 2017, to the present. *See* Request No. 2, ECF No. 63-1 at 6 (seeking all "policies, . . . reports, [and] data" regarding the implementation of Executive Order No. 13,769, as well as the implementation of "subsequent court orders").[2] This type of expansive inquiry should not be compelled, particularly when Plaintiffs have offered no explanation whatsoever as to their need for these kinds of documents in conjunction with their current (or even future) motion for a preliminary injunction. *Cf. Chryso, Inc. v. Innovative Concrete Solutions of the Carolinas, LLC*, No. 5:15-cv-115-BR, 2015 WL 12600175, at *5 (E.D.N.C. June 30, 2015) (rejecting broad-

---

[1] *See, e.g.*, U.S. Department of Homeland Security, Q&A: Protecting the Nation from Foreign Terrorist Entry To The United States, https://www.dhs.gov/news/2017/03/06/qa-protecting-nation-foreign-terrorist-entry-united-states (last visited Mar. 8, 2017).

[2] The document requests also seem to extend to the Government's compliance with other courts' orders in different cases not under this Court's jurisdiction. *See* ECF No. 63-1 at 6 (Request No. 2) (seeking information related to the implementation of "subsequent court orders").

ranging expedited discovery because "[w]hile some of these topics may be relevant to the overall case, they are not narrowly tailored to the issues relevant to the preliminary injunction").

As for the second group of requests, these are even more burdensome and intrusive. These requests seek all "memoranda, policies, projections, reports, data, summaries, or similar documents relating to the development of" Executive Order No. 13,769 and the New Executive Order. ECF No. 63-1 at 6 (Requests for Production of Documents Nos. 1 and 3). In terms of "projections, reports, data, summaries, or similar documents" relating to these Executive Orders, that could encompass a vast expanse of material: for example, data relating to visa admissions and entry of foreign nationals; intelligence reports regarding potential future terrorist attacks; summaries of prior terrorism investigations and prosecutions; and numerous other sensitive documents related to our Nation's foreign relations, national security, and immigration activities. It would not be a stretch for these requests to extend to tremendous swaths of documents stored at the Department of Homeland Security, the Department of State, and the Office of the Director of National Intelligence. This expansive scope is hardly narrowly tailored. *Cf. Chryso*, 2015 WL 12600175, at *4 ("[G]iven the nature of the industry the parties are engaged in, the final clause of the definition . . . could encompass almost every document related to the defendants' businesses, regardless of whether those documents are related to the Preliminary Injunction Motion. Thus, this definition is not narrowly tailored[.]").

Plaintiffs offer two reasons why they think their discovery is sufficiently narrowly tailored. First, Plaintiffs assert that "the expedited discovery requested here is either in line with, or less burdensome than, what courts in this and other Circuits have ordered in other cases." Pls.' Mot. at 7. But Plaintiffs merely contrast the number of document requests they seek (four), with the number of document requests or depositions authorized in other cases. *See id.* That comparison

wholly ignores the expansive *scope* of their four requests—submitted to three agencies and potentially the Executive Office of the President—as well as the sensitive privilege issues implicated by their requests, as discussed further below. Plainly the raw number of requests is not, by itself, indicative of the intrusiveness or burden imposed on a party in responding to such requests.

Second, Plaintiffs argue that any burden is only incremental because the lawsuit filed in the Western District of Washington is already proceeding to discovery. *See* Pls.' Mot. at 7. That case is not currently in discovery, however, because the deadlines were recently extended in light of the then-upcoming issuance of the New Executive Order. *See* Minute Order of Feb. 28, 2017, *Washington v. Trump*, No. 17-cv-141 (W.D. Wash.) (extending the deadline for the Rule 26(f) conference until March 15, 2017). And in any event, even if the plaintiffs in that case sought identical discovery, two instances of plaintiffs seeking expansive and intrusive discovery would not justify allowing that discovery to proceed in either case. The expansive nature of Plaintiffs' requested discovery—and the absence of any connection to an identified need for purposes of litigating their future motion for a preliminary injunction—likewise compels denial of their motion.

C. Plaintiffs Cannot Succeed on the Merits Should This Court Apply the Preliminary Injunction Standard to Plaintiffs' Request for Expedited Discovery.

The above discussion demonstrates why Plaintiffs cannot fulfill the "good cause" or "reasonableness" standards for expedited discovery. *See Lewis*, 2015 WL 2124211, at *1-2. Should this Court apply the preliminary injunction standard to Plaintiffs' motion for expedited discovery, Plaintiffs' request would fail for an additional reason: Plaintiffs cannot make a strong showing of success on the merits. *See ForceX*, 2011 WL 2560110, at *5.

Even with respect to Plaintiffs' currently-pending motion for a preliminary injunction, Plaintiffs have not established a likelihood of success on the merits. (And again, the discovery sought by Plaintiffs in this motion is not even related to that currently-pending motion for a preliminary injunction.) As set forth in the Government's opposition to Plaintiffs' currently-pending motion for a preliminary injunction, Plaintiffs make a conspicuously weak showing of success on the merits. Plaintiffs lack standing to bring that motion, seek relief regarding an aspect of the U.S. Refugee Admission Program for which they lack a private right of action, and challenge what was in any event a lawful exercise of the President's authority.

Moreover, as for the motion to which Plaintiffs' requested discovery is purportedly related—Plaintiffs' yet-to-be-filed motion for a preliminary injunction challenging the New Executive Order—Plaintiffs cannot possibly have carried their burden of demonstrating a strong likelihood of success. Plaintiffs have not yet filed that motion, much less described the basis for it. Until Plaintiffs have filed that motion challenging the New Executive Order, they cannot have "demonstrate[d] by a 'clear showing'" a likelihood of success on their claims. *ForceX*, 2011 WL 2560110, at *4.

Regardless of the precise standard used by this Court for evaluating Plaintiffs' motion, therefore, Plaintiffs have failed to establish a basis for allowing expedited discovery.

II. Plaintiffs' Broad Discovery Requests Raise Substantial Privilege Concerns.

Plaintiffs' requested discovery should be rejected for still one more reason: the proposed discovery would raise significant privilege issues, including potentially with the highest levels of the Executive Branch.

Plaintiffs' broad discovery requests seek a significant amount of material that is plainly subject to privilege. *See* ECF No. 63-1 at 6 (Request No. 1) (seeking "[a]ll memoranda, policies, . . . or similar documents relating to *the development* of the January 27 Order" (emphasis added));

id. (Request No. 3) (seeking "[a]ll instructions, guidance, memoranda, . . . or similar documents relating to *the development* of any replacement for the January 27 Order" (emphasis added)). Any such documents would clearly qualify as pre-decisional and deliberative, thus subject to the Government's deliberative process privilege. *See City of Virginia Beach v. Dep't of Commerce*, 995 F.2d 1247, 1253 (4th Cir. 1993) ("To invoke the privilege successfully, the government must show that, 'in the context in which the materials are used,' the documents are both predecisional and deliberative."); *Jones v. Murphy*, 256 F.R.D. 510, 515-16 (D. Md. 2008) (Gauvey, M.J) ("The executive or deliberative-process privilege exists to protect the governmental decision-making process. It protects from disclosure advice, opinions and recommendations that are part of the decision-making process; the goal is 'to prevent injury to the quality of agency decisions.'"), *aff'd*, 2009 WL 604937 (D. Md. Feb. 23, 2009). Given that Plaintiffs' discovery requests *on their face* are targeted to obtain privileged material, that is reason enough to reject Plaintiffs' requested expedited discovery. *Cf.* Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any *nonprivileged matter* that is relevant to any party's claim or defense and proportional to the needs of the case[.]" (emphasis added)).

Plaintiffs' requested discovery not only seeks deliberative material, but could theoretically extend to the highest levels of the Executive Branch. Given that the policy challenged here is an Executive Order signed by the President, and particularly if Plaintiffs' discovery were interpreted to extend into the Executive Office of the President given the naming of Donald Trump as a defendant in his official capacity as President, Plaintiffs' requested discovery—all four requests—could threaten to place this Court on a collision course with the presidential communications privilege and/or the President's more general Executive Privilege. *See generally Loving v. Dep't of Def.*, 550 F.3d 32, 37 (D.C. Cir. 2008) ("The presidential communications privilege, a

'presumptive privilege for [p]residential communications,' preserves the President's ability to obtain candid and informed opinions from his advisors and to make decisions confidentially." (quoting *United States v. Nixon*, 418 U.S. 683, 708 (1974)); *In re Sealed Case*, 121 F.3d 729, 752 (D.C. Cir. 1997) (privilege protects "communications authored or solicited and received by those members of an immediate White House adviser's staff who have broad and significant responsibility for investigating and formulating the advice to be given the President on the particular matter to which the communications relate").

Remarkably, Plaintiffs' motion and discovery requests wholly ignore that vast amounts of the material they seek are privileged. When considering how (and whether) to proceed in civil discovery, however, courts are obligated to avoid intruding on these sensitive privileges of the Executive Branch. *See Cheney v. U.S. Dist. Court for Dist. of Columbia*, 542 U.S. 367, 385 (2004) ("The high respect that is owed to the office of the Chief Executive . . . is a matter that should inform the conduct of the entire proceeding, including the timing and scope of discovery," and "the Executive's 'constitutional responsibilities and status [are] factors counseling judicial deference and restraint' in the conduct of litigation against it."); *United States v. McGraw-Hill Cos., Inc.*, No. 13-cv-0779-DOC (JCGx), 2014 WL 8662657, at *8 (C.D. Cal. Sept. 25, 2014) (explaining that courts should take a "methodical approach" to discovery of White House documents because "[t]he Supreme Court has been crystal clear: courts must ensure that the invocation of executive privilege is the last resort"). The burden to justify potentially intrusive discovery falls squarely on Plaintiffs. *See Cheney*, 542 U.S. at 388 (discovery is permissible "only after the party requesting the information . . . ha[s] satisfied his burden of showing the propriety of the requests," because the Executive Branch does not "bear the onus of critiquing the unacceptable discovery requests line by line"). Plaintiffs' requested discovery here is

inappropriate not only in scope, but also due to its intrusion into core Executive Branch privileges. For this reason, too, Plaintiffs' motion should be denied.

CONCLUSION

For the foregoing reasons, the Government respectfully requests that the Court deny Plaintiffs' motion for expedited discovery.

Dated: March 8, 2017

Respectfully submitted,

CHAD A. READLER
Acting Assistant Attorney General

ROD J. ROSENSTEIN
United States Attorney

JENNIFER D. RICKETTS
Director, Federal Programs Branch

JOHN R. TYLER
Assistant Director, Federal Programs Branch

/s/ Arjun Garg
ARJUN GARG (Bar No. 806537)
MICHELLE R. BENNETT (Bar No. 806456)
DANIEL SCHWEI
BRAD P. ROSENBERG
Trial Attorneys
United States Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Ave., NW
Washington, DC 20530
Tel: (202) 305-8613
Fax: (202) 616-8470
E-mail: arjun.garg@usdoj.gov
michelle.bennett@usdoj.gov

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on March 8, 2017, I electronically filed the foregoing Defendants' Opposition to Plaintiffs' Motion for Expedited Discovery using the Court's CM/ECF system, causing a notice of filing to be served upon all counsel of record.

/s/ Arjun Garg
ARJUN GARG