

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

WILMER GARCIA RAMIREZ, <i>et al.</i> , <i>Plaintiffs,</i> v. U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, <i>et al.</i> , <i>Defendants.</i>))))))))))))))	Case No. 1:18-cv-00508-RC Class Action
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PARTIES' JOINT STATUS REPORT

During the status conference on February 1, 2019, the Court directed the parties to, by February 11, meet and confer and file a joint status report outlining their respective positions on the following: (1) the prioritization of ESI custodians to make up the next batch of documents to be subject to Active Learning review; (2) the scope and timeline for production of the supporting documents attached to the age-out worksheets already produced to Plaintiffs; and (3) the timeline for production of the documents from the first eighteen custodians that were excluded from Active Learning review. The parties conferred on February 6, 2019, and submit the following proposals.

PLAINTIFFS' STATEMENT OF POSITION

In terms of the three issues as to which the Court ordered the parties to meet and confer on February 1, 2019, Plaintiffs have agreed:

- To limit their further requests for ESI to a single batch of 23 of the 57 remaining custodians previously proposed by Plaintiffs and ordered by the Court (*see* October 29, 2018 Order); and that such ESI shall be reviewed for privilege and all non-privileged documents produced at Defendants' proposed rate of 5,000 documents per week;

- To limit their request for materials in ICE’s new SharePoint site to those relating to age-outs at the 10 field offices previously identified by Plaintiffs and ordered by the Court. Consistent with Defendants’ past practice and this Court’s prior orders, Plaintiffs request that such documents shall be produced no later than the week before the deposition of the FOJC identified by Defendants for that field office, as more fully described in Section III.A below; and
- To accede to Defendants’ request that they shall have until April 26, 2019, to produce responsive, non-privileged documents from the 71,000 files that were “excluded” from Defendants’ Active Learning process.

However, for the reasons set forth below, Plaintiffs respectfully request that these three issues not be addressed alone, but rather as part of a comprehensive and detailed order that sets a discovery cutoff of April 30, 2019, and a plan and schedule for completing all remaining discovery within that cutoff, in the form proposed in Exhibit A, attached. The objective of such an order would be to eliminate (or at least reduce) the need for this Court’s supervision and management of day-to-day discovery issues, by setting forth a detailed schedule for the completion of all remaining discovery, with specific obligations and timelines. While Plaintiffs do not believe this will eliminate the need for periodic discovery conferences, their hope is that it will limit them to a report on status and compliance and, if necessary, enforcement of the schedule previously ordered.

I. STATUS OF DISCOVERY

To date, Plaintiffs have taken the depositions of three Rule 30(b)(6) witnesses and of the Field Office Juvenile Coordinators (“FOJCs”) identified by Defendants for six of the ten field offices which Plaintiffs previously proposed, and the Court previously ordered, for targeted discovery based on the number of age-outs they are responsible for (San Francisco, Washington, D.C., Seattle, Chicago, New York, and Miami). Three of those field office depositions were taken

after ICE began producing the “age-out review worksheets” and accompanying SharePoint site materials relating to age-outs at those field offices since ICE’s new documentation system took effect on or about October 17, 2018. That leaves four field offices and one sub-field office for which depositions remain to be taken—Phoenix, Houston, El Paso, San Antonio, and Harlingen, Texas (which is a sub-field office of San Antonio). As explained in greater detail below, Plaintiffs propose to continue taking at least one of these depositions each week, with emails, hard copy documents, age-out review worksheets and SharePoint site materials, and any other responsive documents from that field office produced by close of business (“COB”) Thursday of the prior week.

Plaintiffs also intend to take the depositions of up to eight ICE headquarters and field office officials, including the current and past “unit chiefs” of ICE’s Juvenile and Residential Management Unit (“JFRMU”). However, in a further effort to limit the number of depositions, Plaintiffs propose below that, if Defendants identify which of these witnesses they actually intend to call at trial, Plaintiffs will depose only those witnesses.

II. PLAINTIFFS’ PROPOSED PLAN AND SCHEDULE FOR COMPLETING DISCOVERY

A. Field Office Depositions and Production of SharePoint Site and Other Documents

Plaintiffs propose that they continue taking the deposition of the FOJC designated by Defendants for at least one field office each week, with ICE producing all ESI, SharePoint and other responsive documents relating to that office by COB Thursday of the prior week, until all 10 of the field offices and sub-field office previously identified by Plaintiffs are completed. In view of the fact that there are four field offices remaining and one sub-office, and acceding to Defendant’s request that depositions not be taken during the week of March 11, such depositions should be completed by Friday, March 21, 2019. Plaintiffs further propose that all SharePoint site

documents (and other responsive documents not previously produced) for the three field offices deposited without the production of such documents (Washington, D.C., San Francisco and Seattle) be completed by COB on Thursday, March 14, 2019. Any remaining SharePoint site materials for the ten field offices and one sub-field office not previously produced (including those relating to any age-outs at these offices since the dates of their respective productions), would be produced by COB on or before Thursday, March 21, 2019.

While Plaintiffs have agreed to limit their request for SharePoint materials to the ten field offices and one sub-office previously identified by Plaintiffs and ordered by the Court, they will object to any attempt by Defendants to rely on or introduce at trial any “age-out review worksheets” as to which the accompanying SharePoint materials have not been produced. Accordingly, to the extent Defendants intend to rely on worksheets for offices other than the 11 identified by Plaintiffs, Defendants respectfully request that the Court order that they produce the accompanying SharePoint materials within the discovery period.

B. Additional ESI

Plaintiffs are willing to limit further ESI searches to one additional batch of 23 custodians, who are listed by name, position, and office location on Exhibit B. Plaintiffs have proposed to Defendants that they complete the collection of such custodians’ emails, load them onto Relativity, run them through ICE’s Active Learning process, and advise Plaintiffs of the results (including the total number of responsive documents and a search term report), by COB, Thursday, February 21, 2019.

Plaintiffs further propose that defendants shall complete the review of at least 5,000 documents for privilege each week and produce all non-privileged documents by COB Thursday of that week, starting on February 28, 2019.

C. 71,000 “Excluded” Files

To the extent that these files are attached to emails or other ESI that Defendants are reviewing, these attachments should be reviewed, and if responsive and not privileged, produced, at the same time. To the extent such files are not attached to emails, Plaintiffs agree to Defendants’ proposal that they shall have until April 26, 2019 to produce all responsive, non-privileged documents.

Both Defendants and Plaintiffs now agree these files may contain responsive documents and should be reviewed, as they either contain a search term or are attached to a document that contains a search term. They include approximately: 47,000 image files (which may contain screen shots of responsive documents); 11,000 Excel spreadsheets (which in the past have included age-out data and other responsive information); 5,000 pdfs (which in the past have included FOJC manuals and other responsive email attachments); and 2,000 Word documents and PowerPoints (which in the past have included responsive information). Given the foregoing, the parties have not been able to identify any file types that can be excluded from Defendants’ review. However, the bulk of these files (47,000 of 71,000) are image files that Plaintiffs believe Defendants should be able to review very quickly because they likely contain hundreds of exact duplicates of images (like logos) that can be reviewed and coded in bulk.

D. Other Depositions of Defendants

Plaintiffs are willing to limit any further depositions (other than the 11 depositions of field office FOJCs and of Melissa Harper and her predecessor as Unit Chief) to witnesses Defendants actually intend to call at trial. To the extent Defendants opt to accept this offer, Plaintiffs propose that they be ordered to identify all such witnesses in good faith by March 15, 2019. Such acceptance will not foreclose Defendants from subsequently identifying additional or different trial

witnesses from their prior disclosures, provided Plaintiffs are provided an opportunity to depose such additional witnesses at least one week in advance of trial.

E. Miscellaneous Document Requests

Plaintiffs have made a number of letter requests for documents referenced at depositions that are clearly responsive to Plaintiffs' requests but have not been produced. These requests were summarized and attached to a January 24, 2019 letter to Defendants' counsel. Plaintiffs propose that Defendants shall produce any non-privileged documents responsive to these requests by March 28, 2019.

F. Privilege Logs

Plaintiffs propose that logs of all documents withheld in whole or in part on grounds of privilege shall be due on or before April 15, 2019. Such logs should comply with F.R.C.P. 26(b)(5) and set forth (a) a description of the document or communication, (b) the date it was authored and/or sent, (c) the name and position of all authors and recipients, and (d) the privilege claimed or other basis for withholding the document.

G. New Deadline for Disclosure of Experts and Expert Reports

Plaintiffs propose that the current deadline for disclosing experts and producing expert reports be extended to March 15, 2019, and that any rebuttal experts shall be disclosed, and their reports produced, on or before April 15, 2019.

H. Discovery Cutoff

Plaintiffs propose that all discovery, including expert discovery, shall be completed by April 30, 2019.

* * *

Defendants' belated assertion that they were surprised by Plaintiffs' request for a broader scheduling order and deprived of "a meaningful opportunity for input" is not accurate. In fact,

Plaintiffs made clear during the meet-and-confer on February 6, 2019, that they intended to propose such a schedule and seek such an order, and they specifically laid out the foregoing proposal. Defendants' counsel asked that Plaintiffs confirm the foregoing proposal in writing, and Plaintiffs promptly did that same day. *See* Ex. C. When Plaintiffs had not heard back from Defendants by Friday, February 8, they emailed Defendants on two separate occasions inquiring as to their response and suggesting a further meet-and-confer call that afternoon. Ex. D. Those emails went unanswered. *See id.* This morning, February 11, 2019, counsel for Plaintiffs again inquired as to Defendants' response and suggested a further meet and confer to see if there were "further matters we c[ould] agree upon." *Id.* Defendants did not respond until this afternoon. Ex. E. Their email made clear that they were rejecting Plaintiffs' proposal and instead asking for a meet and confer on *their* threatened Motion for a Protective Order Concerning ESI, "[g]iven the parties' inability to reach agreement." Ex. E.

DEFENDANTS' STATEMENT OF POSITION

Defendants limit their portion of this report to the scope of the Court's Minute Order of February 1, 2019. During the meet-and-confer on February 6, 2019, the parties discussed other matters related to case management. The parties reached agreement on some of those issues and not others. Plaintiffs proposed a number of due dates that were premature, unrealistic, or both, and Defendants informed Plaintiffs of this during the meet-and-confer. At 6:51pm EST today, Plaintiffs sent Defendants this proposed status report that includes position statements exceeding the scope of the Court's Minute Order and that were not agreed upon by the parties. Plaintiffs had not previously informed Defendants that they would raise these additional matters in the joint status report. Defendants conferred with Plaintiffs' counsel in good faith and object to Plaintiffs' counsel's last-minute attempt to rush to the courthouse with a proposal that exceeds the scope of

the Court's minute order, without providing Defendants a meaningful opportunity for input. Defendants provide their positions below on each of the three matters the Court directed the parties to address in its Minute Order of February 1, 2019.

(1) Prioritization of ESI custodians to make up the next batch of documents to be subject to Active Learning review.

Defendants continue to object to this expansion as unnecessarily duplicative and burdensome and not proportional the needs of the case. Defendants' position is that the documents Active Learning deemed likely to be responsive, culled from the 2.8 million documents collected from eighteen custodians at ICE Headquarters and 10 field offices, will provide more than adequate discovery into ICE's practices, procedures, and policies regarding age-outs. Moreover, it would be premature to continue with additional discovery when Plaintiffs have not seen the ESI that is currently being reviewed and will be produced. Adding custodians would greatly prolong discovery in this case.

During the meet-and-confer Plaintiffs proposed, as to the twenty-three members of the second set of custodians, that Defendants "run ESI through the Active Learning process and advise Plaintiffs of the results" by COB February 21, 2019 and complete review of 5,000 documents for privilege and produce non-privileged documents by COB Thursday of each week, starting February 29, 2019. Additionally, Plaintiffs asked Defendants for the dates each custodian held his or her position. Defendants informed Plaintiffs during the meet-and-confer on February 6, 2019 that the discovery schedule that Plaintiffs propose is unrealistic. Nevertheless, and in order to help Plaintiffs prioritize, Defendants provided Plaintiffs the dates for which Defendants collected ESI from each member of the second set of custodians. Plaintiffs previously agreed to limit productions from ESI custodians from January 1, 2017, to the present, and Defendants have

identified custodians for those timeframes for all positions and locations identified in Plaintiffs' proposal at ECF No. 59.

Custodian name and title	Dates for which Defendants collected ESI
Steve Antkowiak – JFRMU Chief	1/1/2016 to 11/30/2016
Roberto Salazar – JFRMU Chief	6/1/2017 to 11/30/2017
Eric Ravenell – National Juvenile Coordinator	1/1/2016 to 10/26/2018
Dawn Helland – National Juvenile Coordinator	6/1/2018 to 10/26/2018
Sudi Rogers – National Juvenile Coordinator	7/1/2018 to 10/26/2018
Amy Kraus – National Juvenile Coordinator	9/1/2016 to 11/30/2017
Karlo Midel – National Juvenile Coordinator	1/1/2016 to 2/28/2018
Christine Dablewski – National Juvenile Coordinator	5/1/2018 to 9/30/2018
Ana Sanchez-Zimak – National Juvenile Coordinator	2/1/2018 to 5/31/2018
Diego C. Castillo – FOJC, San Antonio Field Office	10/1/2015 to 9/30/2016
Gerardo P. Parada – Deportation Officer within FOJC unit, San Antonio Field Office	1/1/2016 to 12/31/2016
Rito Acuna – Deportation Officer within FOJC unit, San Antonio Field Office	1/1/2016 to 12/31/2016
Robert L. Moore – FOJC Phoenix Field Office	1/1/2016 to 12/31/2016
Jeremy Harristhal – FOJC Phoenix Field Office	3/1/2016 to 1/31/2017
Jessica Lagassey – Supervisory Detention and Deportation Officer within FOJC unit, Phoenix Field Office	3/1/2016 to 10/31/2016
Brandon Roloff – Deportation Officer within FOJC unit, Phoenix Field Office	1/1/2016 to 9/30/2016
Thomas G. Degnim – FOJC, San Francisco Field Office	1/1/2016 to 10/31/2016
Liza Bolanos – Supervisory Detention and Deportation Officer within FOJC unit, San Francisco Field Office	5/1/2018 to 10/26/2018

Custodian name and title	Dates for which Defendants collected ESI
Eddie Robinson – Supervisory Detention and Deportation Officer within FOJC unit, San Francisco Field Office	5/1/2018 to 10/26/2018
Nicholas R. Petrone – Deportation Officer within FOJC unit, San Francisco Field Office	10/1/2018 to 10/26/2018
Geraldo S. Arbiol – Deportation Officer within FOJC unit, San Francisco Field Office	10/1/2016 to 8/31/2018
Christopher T. Howe – Deportation Officer within FOJC unit, San Francisco Field Office	8/1/2016 to 9/30/2016
Byoung C. Park – Deportation Officer within FOJC unit, San Francisco Field Office	1/1/2016 to 9/30/2016

Information for all other personnel is contained in Defendants’ filed declarations.

(2) Scope and timeline for production of the supporting documents attached to the age-out worksheets already produced to Plaintiffs.

ICE expects to produce these documents by March 14, 2019, barring another government shutdown or other unforeseen circumstances.

(3) Timeline for production of the documents from the first eighteen custodians that were excluded from Active Learning review.

After production of documents from the eighteen custodians is completed, ICE estimates it will take eight weeks to review the 71,000 excluded files, assuming no other competing discovery obligations are ordered by the Court.

DATE: February 11, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on this 11th day of February, 2019, a true and correct copy of the foregoing was served via ECF upon counsel of record.

/s/ Tia T. Trout Perez
