

ROBERT W. FERGUSON  
*Attorney General*

JEFFREY T. SPRUNG, WSBA #23607  
ZACHARY P. JONES, WSBA #44557  
JOSHUA WEISSMAN, WSBA #42648  
PAUL M. CRISALLI, WSBA #40681  
NATHAN K. BAYS, WSBA #43025  
BRYAN M.S. OVENS, WSBA #32901  
*Assistant Attorneys General*  
8127 W. Klamath Court, Suite A  
Kennewick, WA 99336  
(509) 734-7285

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON  
AT SPOKANE**

STATE OF WASHINGTON, et al.,

NO. 4:19-cv-05210-RMP

## Plaintiffs,

## PLAINTIFFS' RESPONSE TO NOTICE OF SUPPLEMENTAL AUTHORITY

V.

UNITED STATES DEPARTMENT  
OF HOMELAND SECURITY, a  
federal agency, et al.

## Defendants.

1 Plaintiff States respectfully submit this response to Defendants' Notice of  
 2 Supplemental Authority regarding Plaintiffs' Motion to Compel (ECF No. 206).  
 3 The decision Defendants attach—*Almaklani v. Trump*, 18CV398NGGCLP,  
 4 2020 WL 1282920 (E.D.N.Y. Mar. 17, 2020)—is distinguishable from  
 5 Plaintiffs' pending Motion in several respects.

6 First, plaintiffs sought discovery in *Almaklani* at the “eleventh[] hour.”  
 7 ECF No. 206 at 9. The case had been pending for over two years, and at the  
 8 time of the court’s decision, the federal defendants had already moved for  
 9 summary judgment. *Id.* at 5, 8. By contrast, Plaintiffs here promptly filed their  
 10 Motion to Compel before any dispositive motions have been filed.

11 Second, unlike in *Almaklani*, the constitutional claim here is distinct from  
 12 the APA claims. *See* ECF No. 200 at 7 (the “Equal Protection claim is not  
 13 merely duplicative of the APA claims”); *cf.* ECF No. 206 at 16 (acknowledging  
 14 split of authority and citing cases disallowing discovery where “constitutional  
 15 claims fundamentally overlap with the APA claims”).

16 Third, Plaintiffs have made a more than adequate showing to permit  
 17 discovery. Unlike in *Almaklani*, *see* ECF No. 206 at 18–19, Plaintiffs proffered  
 18 significant public-record evidence—including statements and emails—that  
 19 suggests certain federal officials may have acted with unlawful discriminatory  
 20 intent, *see* ECF No. 195 at 13–15; ECF No. 200 at 7–8.

21  
 22

Finally, the *Almaklani* decision says nothing about the first of the two types of relief Plaintiffs seek: a privilege log provided by Defendants to accompany the Administrative Record. *See* ECF No. 195 at 5–9.

The *Almaklani* case therefore does not support Defendants' position. Plaintiffs respectfully request that the Court grant their Motion to Compel (ECF No. 195) in its entirety.

RESPECTFULLY SUBMITTED this 30th day of March 2020.

ROBERT W. FERGUSON  
Attorney General of Washington

*/s/ Jeffrey T. Sprung*  
JEFFREY T. SPRUNG, WSBA #23607  
ZACHARY P. JONES, WSBA #44557  
JOSHUA WEISSMAN, WSBA #42648  
PAUL M. CRISALLI, WSBA #40681  
NATHAN K. BAYS, WSBA #43025  
BRYAN M.S. OVENS, WSBA #32901  
Assistant Attorneys General  
8127 W. Klamath Court, Suite A  
Kennewick, WA 99336  
(509) 734-7285  
[jeff.sprung@atg.wa.gov](mailto:jeff.sprung@atg.wa.gov)  
[zach.jones@atg.wa.gov](mailto:zach.jones@atg.wa.gov)  
[joshua.weissman@atg.wa.gov](mailto:joshua.weissman@atg.wa.gov)  
[paul.crisalli@atg.wa.gov](mailto:paul.crisalli@atg.wa.gov)  
[nathan.bays@atg.wa.gov](mailto:nathan.bays@atg.wa.gov)  
[bryan.ovens@atg.wa.gov](mailto:bryan.ovens@atg.wa.gov)  
*Attorneys for Plaintiff State of Washington*

1 MARK R. HERRING  
2 Attorney General of Virginia

3 */s/ Michelle S. Kallen*  
4 MICHELLE S. KALLEN, VSB #93286  
5 Deputy Solicitor General  
6 JESSICA MERRY SAMUELS, VSB #89537  
7 Assistant Solicitor General  
8 RYAN SPREAGUE HARDY, VSB #78558  
9 ALICE ANNE LLOYD, VSB #79105  
10 MAMOONA H. SIDDIQUI, VSB #46455  
11 Assistant Attorneys General  
12 Office of the Attorney General  
13 202 North Ninth Street  
14 Richmond, Virginia 23219  
15 (804) 786-7240  
16 MKallen@oag.state.va.us  
17 JSamuels@oag.state.va.us  
18 RHardy@oag.state.va.us  
19 ALloyd@oag.state.va.us  
20 MSiddiqui@oag.state.va.us  
21 SolicitorGeneral@oag.state.va.us  
22 *Attorneys for Plaintiff Commonwealth of Virginia*

14 PHIL WEISER  
15 Attorney General of Colorado

16 */s/ Eric R. Olson*  
17 ERIC R. OLSON, #36414  
18 Solicitor General  
19 Office of the Attorney General  
20 Colorado Department of Law  
21 1300 Broadway, 10th Floor  
22 Denver, CO 80203  
(720) 508 6548  
Eric.Olson@coag.gov  
*Attorneys for Plaintiff the State of Colorado*

1 KATHLEEN JENNINGS  
2 Attorney General of Delaware  
3 AARON R. GOLDSTEIN  
4 State Solicitor  
5 ILONA KIRSHON  
6 Deputy State Solicitor

7 */s/ Monica A. Horton*  
8 MONICA A. HORTON, #5190  
9 Deputy Attorney General  
10 820 North French Street  
11 Wilmington, DE 19801  
12 Monica.horton@delaware.gov  
13 *Attorneys for Plaintiff the State of Delaware*

14 KWAME RAOUL  
15 Attorney General of Illinois

16 */s/ Liza Roberson-Young*  
17 LIZA ROBERSON-YOUNG, #6293643  
18 Public Interest Counsel  
19 Office of the Illinois Attorney General  
20 100 West Randolph Street, 11th Floor  
21 Chicago, IL 60601  
22 (312) 814-5028  
ERobersonYoung@atg.state.il.us  
*Attorney for Plaintiff State of Illinois*

16 CLARE E. CONNORS  
17 Attorney General of Hawai'i

18 */s/ Lili A. Young*  
19 LILI A. YOUNG, #5886  
20 Deputy Attorney General  
21 Department of the Attorney General  
22 425 Queen Street  
Honolulu, HI 96813  
(808) 587-3050  
Lili.A.Young@hawaii.gov  
*Attorneys for Plaintiff State of Hawai'i*

1 BRIAN E. FROSH  
2 Attorney General of Maryland

3 /s/ Jeffrey P. Dunlap  
4 JEFFREY P. DUNLAP, #1812100004  
5 Assistant Attorney General  
6 200 St. Paul Place  
7 Baltimore, MD 21202  
8 T: (410) 576-7906  
9 F: (410) 576-6955  
10 JDunlap@oag.state.md.us  
11 *Attorneys for Plaintiff State of Maryland*

12 MAURA HEALEY  
13 Attorney General of Commonwealth of  
14 Massachusetts

15 /s/ Abigail B. Taylor  
16 ABIGAIL B. TAYLOR, #670648  
17 Chief, Civil Rights Division  
18 DAVID UREÑA, #703076  
19 Special Assistant Attorney General  
20 ANGELA BROOKS, #663255  
21 Assistant Attorney General  
22 Office of the Massachusetts Attorney General  
One Ashburton Place  
Boston, MA 02108  
(617) 963-2232  
abigail.taylor@mass.gov  
david.urena@mass.gov  
angela.brooks@mass.gov  
*Attorneys for Plaintiff Commonwealth of  
Massachusetts*

1 DANA NESSEL  
2 Attorney General of Michigan

3 /s/Toni L. Harris  
4 FADWA A. HAMMOUD, #P74185  
5 Solicitor General  
6 TONI L. HARRIS, #P63111  
7 *First Assistant Attorney General*  
8 Michigan Department of Attorney General  
P.O. Box 30758  
Lansing, MI 48909  
(517) 335-7603 (main)  
HarrisT19@michigan.gov  
Hammoudfl@michigan.gov  
*Attorneys for the People of Michigan*

9  
10 KEITH ELLISON  
11 Attorney General of Minnesota

12 /s/ R.J. Detrick  
13 R.J. DETRICK, #0395336  
14 *Assistant Attorney General*  
15 Minnesota Attorney General's Office  
16 Bremer Tower, Suite 100  
445 Minnesota Street  
St. Paul, MN 55101-2128  
(651) 757-1489  
(651) 297-7206  
Rj.detrick@ag.state.mn.us  
*Attorneys for Plaintiff State of Minnesota*

1 AARON D. FORD  
2 Attorney General of Nevada

3 /s/ Heidi Parry Stern  
4 HEIDI PARRY STERN, #8873  
5 Solicitor General  
6 Office of the Nevada Attorney General  
7 555 E. Washington Ave., Ste. 3900  
8 Las Vegas, NV 89101  
9 HStern@ag.nv.gov  
10 *Attorneys for Plaintiff State of Nevada*

11 GURBIR S. GREWAL  
12 Attorney General of New Jersey

13 /s/ Glenn J. Moramarco  
14 GLENN J. MORAMARCO, #030471987  
15 Assistant Attorney General  
16 Office of the Attorney General  
17 Richard J. Hughes Justice Complex  
18 25 Market Street, 1st Floor, West Wing  
19 Trenton, NJ 08625-0080  
20 (609) 376-3232  
21 Glenn.Moramarco@law.njoag.gov  
22 *Attorneys for Plaintiff State of New Jersey*

15 HECTOR BALDERAS  
16 Attorney General of New Mexico

17 /s/ Tania Maestas  
18 TANIA MAESTAS, #20345  
19 Chief Deputy Attorney General  
20 P.O. Drawer 1508  
21 Santa Fe, New Mexico 87504-1508  
22 tmaestas@nmag.gov  
*Attorneys for Plaintiff State of New Mexico*

1 PETER F. NERONHA  
2 Attorney General of Rhode Island  
3 /s/ Lauren E. Hill  
4 LAUREN E. HILL, #9830  
5 Special Assistant Attorney General  
6 Office of the Attorney General  
7 150 South Main Street  
8 Providence, Rhode Island 02903  
9 (401) 274-4400 x 2038  
10 E-mail: lhill@riag.ri.gov  
11 *Attorneys for Plaintiff State of Rhode Island*

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

## **DECLARATION OF SERVICE**

I hereby declare that on this day I caused the foregoing document to be electronically filed with the Clerk of the Court using the Court's CM/ECF System which will serve a copy of this document upon all counsel of record.

DATED this 30th day of March 2020, at Seattle, Washington.

/s/ Jeffrey T. Sprung  
JEFFREY T. SPRUNG, WSBA #23607  
Assistant Attorney General