

1 ROBERT W. FERGUSON
2 *Attorney General*

3 JEFFREY T. SPRUNG, WSBA #23607
4 JOSHUA WEISSMAN, WSBA #42648
5 PAUL M. CRISALLI, WSBA #40681
6 NATHAN K. BAYS, WSBA #43025
7 BRYAN M.S. OVENS, WSBA #32901
8 *Assistant Attorneys General*
9 800 Fifth Ave., Ste. 2000
10 Seattle, WA 98104
11 (206) 464-7744

7 **UNITED STATES DISTRICT COURT**
8 **EASTERN DISTRICT OF WASHINGTON**
9 **AT SPOKANE**

10 STATE OF WASHINGTON, et al.,

11 NO. 4:19-cv-05210-RMP

12 Plaintiffs,

13 PLAINTIFF STATES'
14 OPPOSITION TO DEFENDANTS'
15 MOTION FOR STAY OF ORDER
16 TO PRODUCE PRIVILEGE LOG
17 OR, IN THE ALTERNATIVE, FOR
18 EXTENSION OF TIME

19 v.

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

Defendants.

NOTED FOR: June 4, 2020
Without Oral Argument

PLAINTIFF' OPP. TO DEFTS.'
MOTION FOR STAY OF ORDER
OR FOR EXTENSION OF TIME
NO. 4:19-cv-05210-RMP

ATTORNEY GENERAL OF WASHINGTON
Complex Litigation Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 464-7744

I. INTRODUCTION

2 Defendants' (DHS) motion for stay of the Court's Order to produce a
3 privilege log should be denied. The main basis for DHS's motion has been
4 rejected by the Ninth Circuit, which recently held that a motions panel's decision
5 on a motion to stay an injunction "provides 'little guidance as to the appropriate
6 disposition on the merits.'" *E. Bay Sanctuary Covenant v. Trump*, 950 F.3d 1242,
7 1262 (9th Cir. 2020) (citation omitted). Further, given DHS's admission that it
8 has not even begun to identify and assemble purportedly privileged documents,
9 a stay of DHS's obligation to produce a privilege log risks serious harm to the
10 Plaintiff States from routine deletion, inadvertent loss, and destruction of relevant
11 e-mails, text messages, and other documents. Finally, DHS's motion omits any
12 mention of the Plaintiff States' efforts to reach an agreeable compromise. The
13 Plaintiff States respectfully request that DHS be ordered to produce its privilege
14 log on a rolling basis with periodic status reports.

II. ARGUMENT

A. Standard of Review

17 “It is well-established that a party seeking a stay of discovery carries the
18 heavy burden of making a strong showing why discovery should be denied.”
19 *Ministerio Roca Solida v. U.S. Dep’t of Fish & Wildlife*, 288 F.R.D. 500, 503 (D.
20 Nev. 2013) (citing *Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9th Cir.
21 1975)). Blanket motions to stay discovery pending a decision on a motion to

1 dismiss are disfavored. *Mlejneky v. Olympus Imaging Am., Inc.*, No. 2:10-CV-
 2 02630, 2011 WL 489743, at *6 (E.D. Cal. Feb. 7, 2011). Further, a party's
 3 "conclusory [argument] . . . that its motion to dismiss will succeed" does not
 4 justify a stay because "[s]uch general arguments could be said to apply to any
 5 reasonably large civil litigation." *Skellerup Indus. Ltd. v. City of Los Angeles*, 163
 6 F.R.D. 598, 600 01 (C.D. Cal. 1995). District courts stay discovery when
 7 "convinced that the plaintiff will be unable to state a claim for relief." *Wood v.*
 8 *McEwen*, 644 F.2d 797, 801 (9th Cir. 1981) (emphasis added); see *Palmason v.*
 9 *Weyerhaeuser Co.*, No. C11-0695RSL, 2011 WL 13101278, at *1 (W.D. Wash.
 10 Oct. 13, 2011) (denying motion to stay discovery pending resolution of motion
 11 to dismiss and noting "statutory presumption in favor of discovery"); *Twin City*
 12 *Fire Ins. Co. v. Employers Ins. of Wausau*, 124 F.R.D. 652, 653 (D. Nev. 1989)
 13 (denying protective order); *Turner Broad. Sys., Inc. v. Tracinda Corp.*, 175
 14 F.R.D. 554, 555 (D. Nev. 1997) (same).

15 **B. The Basis for Defendants' Motion for Stay is Flatly Wrong**

16 DHS contends that it should not be required to produce a privilege log—
 17 as already ordered by this Court—because the Ninth Circuit motions panel's
 18 decision on DHS's motion to stay is essentially law of the case, and no
 19 "conceivable argument that Plaintiffs could raise" could dislodge that decision.
 20 ECF No. 213 at 6. This argument misunderstands appellate procedure.

1 The motions panel decided only whether DHS had met its burden to obtain
 2 a stay of the preliminary injunction; it did not dictate the outcome of appellate
 3 review of the injunction itself, much less a decision on the merits of the Plaintiff
 4 States' claims. DHS's argument was expressly rejected recently in *E. Bay*
 5 *Sanctuary Covenant*, 950 F.3d at 1242. In that case, a panel hearing an appeal of
 6 the merits of a district court injunction concluded that it was not bound by a
 7 published motions panel opinion addressing a motion to stay the injunction
 8 pending appeal. “[M]erits panels of this court frequently depart from published
 9 decisions issued by motions panels in the same case.” *Id.* at 1262. Further, the
 10 reasons for this “are particularly heightened” where—as here—“the motions
 11 panel considered whether to grant the government’s request for a stay of the
 12 district court’s preliminary injunction,” because “there are important differences
 13 between a preliminary injunction and a stay pending review.” *Id.* at 1264. DHS
 14 is wrong in its assumption that the motions panel’s opinion on its stay request
 15 will govern the panel considering the merits of its appeal of the injunction. Its
 16 assumption is even further attenuated when applied to this Court’s consideration
 17 of the ultimate merits of this case.

18 Further, DHS’s position would be particularly unfair to the Plaintiff States
 19 because the motions panel rendered its decision without the benefit of the
 20 administrative record. “The record before a motions panel, much like the record
 21 before a district court deciding a preliminary injunction, is often incomplete.”

1 *E. Bay Sanctuary Covenant*, 950 F.3d at 1263. If the record before subsequent
 2 panels differs, “the first panel’s decision . . . provides ‘little guidance as to the
 3 appropriate disposition on the merits.’” *Id.* at 1262 (quoting *Sports Form, Inc. v.*
 4 *United Press Intern., Inc.*, 686 F.2d 750, 753 (9th Cir. 1982)). Particularly in the
 5 early stages of record review cases, “[u]nilaterally binding later merits panels to
 6 the preliminary decisions made by motions panels prevents litigants from fully
 7 vindicating their appellate rights.” *E. Bay Sanctuary Covenant*, 950 F.3d at 1263.

8 Here, DHS did not produce the administrate record until after the
 9 preliminary injunction had been issued. *Compare* ECF No. 162 (Order Granting
 10 Mot. for Section 705 Stay and Preliminary Inj. entered Oct. 11, 2019) *with* ECF
 11 No. 193 at 2 (reporting that Defendants produced the administrative record on
 12 November 25, 2019). The record before the motions panel therefore did not
 13 include the agency’s administrative record. Yet this Court will next consider
 14 Plaintiffs’ arbitrary and capricious claims with the benefit of the administrative
 15 record.¹ If DHS’s position were to prevail—that a ruling made before it even
 16 produced the administrative record precluded any further consideration of
 17 Plaintiffs’ APA claims—it would entirely frustrate the record review required by
 18 the APA. *See Portland Audubon Soc. v. Endangered Species Comm.*, 984 F.2d
 19 1534, 1548 (9th Cir. 1993) (“Section 706 of the APA provides that judicial

21 ¹ Plaintiffs note, however, that they still are disputing the completeness of
 22 DHS’s administrative record.

1 review of agency action shall be based on ‘the whole record,’” and “[i]f the record
 2 is not complete, then the requirement that the agency decision be supported by
 3 ‘the record’ becomes almost meaningless”).

4 *In re United States*, 138 S. Ct. 443 (2017), does not support DHS’s
 5 position. In arguing otherwise, DHS overlooks two critical distinctions. First, the
 6 Court here ordered production only of a privilege log, while the district court in
 7 *In re United States* ordered DHS to begin producing documents, including
 8 documents DHS apparently believed were privileged. *Id.* at 444-45. Thus, the
 9 Supreme Court insisted that “the District Court may not compel the Government
 10 to disclose any document that the Government believes is privileged without first
 11 providing the Government with the opportunity to argue the issue” (*id.* at 445)—
 12 a risk completely absent here.

13 Second, the bases for DHS’s motion to dismiss in *In re United States* were
 14 jurisdictional—whether the challenged agency action was unreviewable because
 15 it was committed by statute to agency discretion, and whether the INA deprived
 16 the district court of jurisdiction. *Id.* at 445. DHS makes neither argument in this
 17 case. Apart from an unsuccessful challenge to state standing (which was rejected
 18 by every district court and motions panel that considered it), DHS has not
 19 disputed this Court’s jurisdiction. Thus, unlike in *In re United States*, there is no
 20 prospect here that the Court will lack jurisdiction to hear the Plaintiff States’ APA
 21
 22

1 claims. For these reasons, the Supreme Court’s decision in *In re United States*,
 2 which it limited to the “specific facts of this case,” *id.* at 445, does not control.

3 **C. The Plaintiff States Would Be Injured by a Stay or Further Delay**

4 DHS’s motion should be denied for the further reason that a stay of its
 5 obligation to prepare a privilege log will seriously harm the Plaintiff States and
 6 is contrary to securing the just and speedy determination of this action. Fed. R.
 7 Civ. P. 1. Alarmingly, Defendants state in their motion that they have not yet
 8 even begun to identify and compile assertedly privileged documents. ECF No.
 9 213 at 6 (“Defendants must now search the records of numerous custodians
 10 across multiple components of DHS for materials to be included on the privilege
 11 log”). Despite numerous cases in this District and elsewhere rejecting DHS’s
 12 position, DHS admits that its standard practice is to not even identify or review
 13 documents withheld from the administrative record on the basis of privilege when
 14 initially compiling the administrative record. *Id.* at 6 (“Consistent with” its view
 15 of the law, “. . . which has been overruled by the Court in its Order[], Defendants
 16 did not assemble such materials when compiling the administrative record”).
 17 How DHS compiled the administrative record is opaque, but what is clear is that
 18 document custodians—who may be non-lawyers—were not required to maintain
 19 a collection of purportedly privileged, and therefore withheld, documents. It is
 20 not clear that individuals who possess documents DHS unilaterally deemed
 21
 22

1 privileged and excluded from the administrative record, such as e-mails between
 2 drafters and decision-makers, have even been ordered to preserve them.

3 As a result, currently unsegregated documents over which the Plaintiff
 4 States may dispute privilege, and on which they may prevail, may be vulnerable
 5 to DHS's routine deletion protocols, inadvertent loss, or other destruction. This
 6 case was filed on August 14, 2019. ECF No. 1. Over the past nine months, it
 7 appears that documents DHS unilaterally deemed privileged were left
 8 unsegregated in the custody of DHS employees. In the Motion to Stay, DHS
 9 makes no representations to the contrary. The longer Plaintiff States are required
 10 to wait for the start of the production of a privilege log, the greater the risk of
 11 routine deletion, inadvertent loss, and destruction of documents. It therefore is
 12 critical that DHS promptly begin the process of compiling a privilege log,
 13 including notifying custodians of their duty to segregate documents for logging.

14 **D. DHS Misstates the Plaintiff States' Position as to the Requested
 15 Extension, and the Court Should Order DHS to Begin Its Work**

16 The Plaintiff States did not oppose DHS's request for an extension of time
 17 to produce the privilege log in its entirety. *See* Declaration of Jeffrey T. Sprung
 18 in Opposition to Motion for Stay, ¶¶ 1-2 and Exhibit 1. However, instead of a 90-
 19 day extension running from the date of the Court's Order on DHS's pending
 20 motion for stay, Plaintiffs proposed a rolling production of the privilege log. *Id.*
 21 Plaintiffs continue to advocate that solution as a reasonable compromise here.

1 As noted in the parties' correspondence, Plaintiffs are extremely sensitive
2 to COVID-related hardships and stand ready to work with DHS to reach a
3 solution. *Id.* But in light of DHS's alarming statement that it has not even begun
4 to segregate assertedly privileged documents, it is critical that DHS immediately
5 *begin* the work of producing the privilege log this Court has already ordered. To
6 do otherwise continues the unacceptable risk of loss or destruction of documents.
7 Consequently, the Plaintiff States ask that the Court order DHS to produce its
8 privilege log on a rolling basis starting on June 12, 2020—an extension of over
9 three weeks from the current deadline (May 17). Plaintiffs also request that DHS
10 make reports to the Court and Plaintiffs every other Friday, beginning June 12,
11 on its progress toward completion of the privilege log. This report should include
12 DHS's progress on (1) notifying potential custodians of their obligation to
13 preserve potentially relevant documents, even if assertedly privileged, (2)
14 segregating all assertedly privileged documents for review, and (3) logging
15 privileged documents pursuant to Fed. R. Civ. P. 26(b)(5)(A). The numbers DHS
16 reports should be stated in absolute terms and as a percentage of the whole, so
17 Plaintiffs and the Court can assess DHS's progress toward completion.

18 A proposed order is submitted herewith.

III. CONCLUSION

20 For the foregoing reasons, DHS's motion to stay its obligation to produce
21 a privilege log should be denied, and any extension of the date to produce the

privilege log should require a rolling production and bi-weekly status reports to the Court and Plaintiffs.

RESPECTFULLY SUBMITTED this 11th day of May, 2020.

ROBERT W. FERGUSON
Attorney General of Washington

/s/ Jeffrey T. Sprung

JEFFREY T. SPRUNG, WSBA #23607
JOSHUA WEISSMAN, WSBA #42648
PAUL M. CRISALLI, WSBA #40681
NATHAN K. BAYS, WSBA #43025
BRYAN M.S. OVENS, WSBA #32901
Assistant Attorneys General
800 Fifth Ave., Ste. 2000
Seattle, WA 98104
(206) 464-7744
Jeff.Sprung@atg.wa.gov
Joshua.Weissman@atg.wa.gov
Paul.Crisalli@atg.wa.gov
Nathan.Bays@atg.wa.gov
Bryan.Ovens@atg.wa.gov
*Attorneys for Plaintiff State of
Washington*

MARK R. HERRING
Attorney General of Virginia

/s/ Michelle S. Kallen

MICHELLE S. KALLEN,
VSB #93286

Deputy Solicitor General

JESSICA MERRY SAMUELS,
VSB #89537

**Assistant Solicitor General
RYAN SPREAGUE HARRIS**

RYAN SPREAGUE HARDY,
VSB #78558
ALICE ANNE LLOYD

ALICE ANNE LLOYD,
VSB #79105

1 MAMOONA H. SIDDIQUI,
2 VSB #46455
3 Assistant Attorneys General
4 Office of the Attorney General
5 202 North Ninth Street
6 Richmond, VA 23219
7 (804) 786-7240
8 MKallen@oag.state.va.us
JSamuels@oag.state.va.us
RHardy@oag.state.va.us
ALloyd@oag.state.va.us
MSiddiqui@oag.state.va.us
SolicitorGeneral@oag.state.va.us
*Attorneys for Plaintiff Commonwealth of
Virginia*

9
10 PHIL WEISER
11 Attorney General of Colorado

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

21
22 KATHLEEN JENNINGS
Attorney General of Delaware
AARON R. GOLDSTEIN
State Solicitor
ILONA KIRSHON
Deputy State Solicitor

/s/ Monica A. Horton
MONICA A. HORTON, #5190
Deputy Attorney General

820 North French Street
Wilmington, DE 19801
Monica.horton@delaware.gov
*Attorneys for Plaintiff the State of
Delaware*

KWAME RAOUL
Attorney General of Illinois

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

CLARE E. CONNORS
Attorney General of Hawai'i

/s/ Lili A. Young
LILI A. YOUNG, #5886
Deputy Attorney General
Department of the Attorney General
425 Queen Street
Honolulu, HI 96813
(808) 587-3050;
Lili.A.Young@hawaii.gov
Attorneys for Plaintiff State of Hawai'i
BRIAN E. FROSH
Attorney General of Maryland

/s/ Jeffrey P. Dunlap
JEFFREY P. DUNLAP
#1812100004
Assistant Attorney General
200 St. Paul Place
Baltimore, MD 21202

1 T: (410) 576-7906
2 F: (410) 576-6955
3 JDunlap@oag.state.md.us
4 *Attorneys for Plaintiff State of Maryland*

5
6 MAURA HEALEY
7 Attorney General of Commonwealth of
8 Massachusetts

9
10 /s/ Abigail B. Taylor
11 ABIGAIL B. TAYLOR, #670648
12 Chief, Civil Rights Division
13 DAVID UREÑA, #703076
14 Special Assistant Attorney General
15 ANGELA BROOKS, #663255
16 Assistant Attorney General
17 Office of the Massachusetts Attorney
18 General
19 One Ashburton Place
20 Boston, MA 02108
21 (617) 963-2232
22 abigail.taylor@mass.gov
david.urena@mass.gov
angela.brooks@mass.gov
*Attorneys for Plaintiff Commonwealth of
Massachusetts*

15 DANA NESSEL
16 Attorney General of Michigan

17 /s/Toni L. Harris
18 FADWA A. HAMMOUD, #P74185
19 Solicitor General
20 TONI L. HARRIS, #P63111
21 *First Assistant Attorney General*
22 Michigan Department of Attorney
General
P. O. Box 30758
Lansing, MI 48909
(517) 335-7603 (main)

1 HarrisT19@michigan.gov
2 Hammoudf1@michigan.gov
3 *Attorneys for the People of Michigan*

4
5 KEITH ELLISON
6 Attorney General of Minnesota

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

/s/ R.J. Detrick
R.J. DETRICK, #0395336
Assistant Attorney General
Minnesota Attorney General's Office
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

AARON D. FORD
Attorney General of Nevada

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

GURBIR S. GREWAL
Attorney General of New Jersey

/s/ Glenn J. Moramarco
GLENN J. MORAMARCO, #030471987
Assistant Attorney General
Office of the Attorney General
Richard J. Hughes Justice Complex
25 Market St., 1st Fl., West Wing

1 Trenton, NJ 08625-0080
2 (609) 376-3232
3 Glenn.Moramarco@law.njoag.gov
4 *Attorneys for Plaintiff State of New Jersey*

5 HECTOR BALDERAS
6 Attorney General of New Mexico

7 /s/ Tania Maestas
8 TANIA MAESTAS, #20345
9 Chief Deputy Attorney General
P. O. Drawer 1508
Santa Fe, NM 87504-1508
tmaestas@nmag.gov
10 *Attorneys for Plaintiff State of New Mexico*

11 PETER F. NERONHA
12 Attorney General of Rhode Island

13 /s/ Lauren E. Hill
14 LAUREN E. HILL, #9830
15 Special Assistant Attorney General
16 Office of the Attorney General
17 150 South Main Street
18 Providence, RI 02903
19 (401) 274-4400 x 2038
20 lhill@riag.ri.gov
21 *Attorneys for Plaintiff State of Rhode Island*

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 1st day of May 2020, at Seattle, Washington.

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

1 ROBERT W. FERGUSON
2 *Attorney General*

3 JEFFREY T. SPRUNG, WSBA #23607
4 JOSHUA WEISSMAN, WSBA #42648
5 PAUL M. CRISALLI, WSBA #40681
6 NATHAN K. BAYS, WSBA #43025
7 BRYAN M.S. OVENS, WSBA #32901
8 *Assistant Attorneys General*
9 800 Fifth Ave., Suite 2000
10 Seattle, WA 98104
11 (206) 464-7744

7 **UNITED STATES DISTRICT COURT**
8 **EASTERN DISTRICT OF WASHINGTON**
9 **AT SPOKANE**

10 STATE OF WASHINGTON, et al.,

11 NO. 4:19-cv-05210-RMP

12 Plaintiffs,

13 v.
14 UNITED STATES DEPARTMENT
15 OF HOMELAND SECURITY, a
16 federal agency, et al.
17 Defendants.

18 ORDER GRANTING IN PART
19 AND DENYING IN PART
20 DEFENDANTS' MOTION FOR
21 STAY OF ORDER OR, IN THE
22 ALTERNATIVE, FOR
EXTENSION OF TIME TO
PRODUCE PRIVILEGE LOG
[PROPOSED]

NOTED FOR: June 4, 2020
Without Oral Argument

This matter came before the Court on Defendants' Motion for Stay of Order Or, in the Alternative, for Extension of Time to Produce Privilege Log. Having considered Defendants' motion, Plaintiffs' opposition, and Defendants' reply, and the entire record in the above-captioned matter, and being fully apprised of the matter, now, therefore, it is hereby:

23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
8010
8011
8012
8013
8014
8015
8016
8017
8018
8019
8020
8021
8022
8023
8024
8025
8026
8027
8028
8029
8030
8031
8032
8033
8034
8035
8036
8037
8038
8039
8040
8041
8042
8043
8044
8045
8046
8047
8048
8049
8050
8051
8052
8053
8054
8055
8056
8057
8058
8059
8060
8061
8062
8063
8064
8065
8066
8067
8068
8069
8070
8071
8072
8073
8074
8075
8076
8077
8078
8079
8080
8081
8082
8083
8084
8085
8086
8087
8088
8089
8090
8091
8092
8093
8094
8095
8096
8097
8098
8099
80100
80101
80102
80103
80104
80105
80106
80107
80108
80109
80110
80111
80112
80113
80114
80115
80116
80117
80118
80119
80120
80121
80122
80123
80124
80125
80126
80127
80128
80129
80130
80131
80132
80133
80134
80135
80136
80137
80138
80139
80140
80141
80142
80143
80144
80145
80146
80147
80148
80149
80150
80151
80152
80153
80154
80155
80156
80157
80158
80159
80160
80161
80162
80163
80164
80165
80166
80167
80168
80169
80170
80171
80172
80173
80174
80175
80176
80177
80178
80179
80180
80181
80182
80183
80184
80185
80186
80187
80188
80189
80190
80191
80192
80193
80194
80195
80196
80197
80198
80199
80200
80201
80202
80203
80204
80205
80206
80207
80208
80209
80210
80211
80212
80213
80214
80215
80216
80217
80218
80219
80220
80221
80222
80223
80224
80225
80226
80227
80228
80229
80230
80231
80232
80233
80234
80235
80236
80237
80238
80239
80240
80241
80242
80243
80244
80245
80246
80247
80248
80249
80250
80251
80252
80253
80254
80255
80256
80257
80258
80259
80260
80261
80262
80263
80264
80265
80266
80267
80268
80269
80270
80271
80272
80273
80274
80275
80276
80277
80278
80279
80280
80281
80282
80283
80284
80285
80286
80287
80288
80289
80290
80291
80292
80293
80294
80295
80296
80297
80298
80299
80200
80201
80202
80203
80204
80205
80206
80207
80208
80209
80210
80211
80212
80213
80214
80215
80216
80217
80218
80219
80220
80221
80222
80223
80224
80225
80226
80227
80228
80229
80230
80231
80232
80233
80234
80235
80236
80237
80238
80239
80240
80241
80242
80243
80244
80245
80246
80247
80248
80249
80250
80251
80252
80253
80254
80255
80256
80257
80258
80259
80260
80261
80262
80263
80264
80265
80266
80267
80268
80269
80270
80271
80272
80273
80274
80275
80276
80277
80278
80279
80280
80281
80282
80283
80284
80285
80286
80287
80288
80289
80290
80291
80292
80293
80294
80295
80296
80297
80298
80299
80200
80201
80202
80203
80204
80205
80206
80207
80208
80209
80210
80211
80212
80213
80214
80215
80216
80217
80218
80219
80220
80221
80222
80223
80224
80225
80226
80227
80228
80229
80230
80231
80232
80233
80234
80235
80236
80237
80238
80239
80240
80241
80242
80243
80244
80245
80246
80247
80248
80249
80250
80251
80252
80253
80254
80255
80256
80257
80258
80259
80260
80261
80262
80263
80264
80265
80266
80267
80268
80269
80270
80271
80272
80273
80274
80275
80276
80277
80278
80279
80280
80281
80282
80283
80284
80285
80286
80287
80288
80289
80290
80291
80292
80293
80294
80295
80296
80297
80298
80299
80200
80201
80202
80203
80204
80205
80206
80207
80208
80209
80210
80211
80212
80213
80214
80215
80216
80217
80218
80219
80220
80221
80222
80223
80224
80225
80226
80227
80228
80229
80230
80231
80232
80233
80234
80235
80236
80237
80238
80239
80240
80241
80242
80243
80244
80245
80246
80247
80248
80249
80250
80251
80252
80253
80254
80255
80256
80257
80258
80259
80260
80261
80262
80263
80264
80265
80266
80267
80268
80269
80270
80271
80272
80273
80274
80275
80276
80277
80278
80279
80280
80281
80282
80283
80284
80285
80286
80287
80288
80289
80290
80291
80292
80293
80294
80295
80296
80297
80298
80299
80200
80201
80202
80203
80204
80205
80206
80207
80208
80209
80210
80211
80212
80213
80214
80215
80216
80217
80218
80219
80220
80221
80222
80223
80224
80225
80226
80227
80228
80229
80230
80231
80232
80233
80234
80235
80236
80237
80238
80239
80240
80241
80242
80243
80244
80245
80246
80247
80248
80249
80250
80251
80252
80253
80254
80255
80256
80257
80258
80259
80260
80261
80262
80263
80264
80265
80266
80267
80268
80269
80270
80271
80272
80273
80274
80275
80276
80277
80278
80279
80280
80281
80282
80283
80284
80285
80286
80287
80288
80289
80290
80291
80292
80293
80294
80295
80296
80297
80298
80299
80200
80201
80202
80203
80204
80205
80206
80207
80208
80209
80210
80211
80212
80213
80214
80215
80216
80217
80218
80219
80220
80221
80222
80223
80224
80225
80226
80227
80228
80229
80230
80231
80232
80233
80234
80235
80236
80237
80238
80239
80240
80241
80242
80243
80244
80245
80246
80247
80248
80249
80250
80251
80252
80253
80254
80255
80256
80257
80258
80259
80260
80261
80262
80263
80264
80265
80266
80267
80268
80269
80270
80271
80272
80273
80274
80275
80276
80277
80278
80279
80280
80281
80282
80283
80284
80285
80286
80287
80288
80289
80290
80291
80292
80293
80294
80295
80296
80297
80298
80299
80200
80201
80202
80203
80204
80205
80206
80207
80208
80209
80210
80211
80212
80213
80214
80215
80216
80217
80218
80219
80220
80221
80222
80223
80224
80225
80226
80227
80228
80229
80230
80231
80232
80233
80234
80235
80236
80237
80238
80239
80240
80241
80242
80243
80244
80245
80246
80247
80248
80249
80250
80251
80252
80253
80254
80255
80256
80257
80258
80259
80260
80261
80262
80263
80264
80265
80266
80267
80268
80269
80270
80271
80272
80273
80274
80275
80276
80277
80278
80279
80280
80281
80282
80283
80284
80285
80286
80287
80288
80289
80290
80291
80292
80293
80294
80295
80296
80297
80298
80299
80200
80201
80202
80203
80204
80205
80206
80207
80208
80209
80210
80211
80212
80213
80214
80215
80216
80217
80218
80219
80220
80221
80222
80223
80224
80225
80226
80227
80228
80229
80230
80231
80232
80233
80234
80235
80236
80237
80238
80239
80240
80241
80242
80243
80244
80245
80246
80247
80248
80249
80250
80251
80252
80253
80254
80255
80256
80257
80258
80259
80260
80261
80262
80263
80264
80265
80266
80267
80268
80269
80270
80271
80272
80273
8027

1 ORDERED that Defendants' Motion for Stay of the Court's April 17, 2020
2 Order requiring the production of a privilege log is DENIED. Defendants'
3 Motion for Extension of Time to Produce Privilege Log is GRANTED IN PART
4 AND DENIED IN PART, as specified below.

5 It is ORDERED that Defendants shall produce a privilege log on a rolling
6 basis starting on June 12, 2020.

7 It is further ORDERED that Defendants shall make reports to the Court
8 and Plaintiffs every other Friday, beginning June 12, on their progress toward
9 completion of the privilege log. This report should include Defendants' progress
10 on (1) notifying potential custodians of their obligation to preserve potentially
11 relevant documents, even if assertedly privileged, (2) segregating all assertedly
12 privileged documents for review, and (3) logging privileged documents pursuant
13 to Fed. R. Civ. P. 26(b)(5)(A). The numbers of custodians notified and documents
14 segregated and logged that are reported in Defendants' report should be stated in
15 absolute terms and as a percentage of the whole, so Plaintiffs and the Court can
16 assess DHS's progress toward completion.

17 It is SO ORDERED.

18 ISSUED this _____ day of _____, 2020.

19
20
21

ROSANNA MALOUF PETERSON
United States District Judge
22

ORDER GRANTING IN PART
AND DENYING IN PART DEF'S'
MOT. FOR STAY OR
EXTENSION [PROPOSED]
NO. 4:19-cv-05210-RMP

2

ATTORNEY GENERAL OF WASHINGTON
Complex Litigation Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 464-7744

1 Presented by:

2 ROBERT W. FERGUSON
3 Attorney General of Washington

4 /s/ Jeffrey T. Sprung

5 JEFFREY T. SPRUNG, WSBA #23607
6 Assistant Attorney General
7 JOSHUA WEISSMAN, WSBA #42648
8 PAUL M. CRISALLI, WSBA #40681
9 NATHAN K. BAYS, WSBA #43025
10 BRYAN M.S. OVENS, WSBA #32901
11 Assistant Attorneys General
12 800 Fifth Ave., Suite 2000
Seattle, WA 98104
(206) 464-7744
Jeff.Sprung@atg.wa.gov
Joshua.Weissman@atg.wa.gov
Paul.Crisalli@atg.wa.gov
Nathan.Bays@atg.wa.gov
Bryan.Ovens@atg.wa.gov
Attorneys for Plaintiff State of Washington

13 MARK R. HERRING
14 Attorney General of Virginia

15 /s/ Michelle S. Kallen

16 MICHELLE S. KALLEN, VSB #93286
17 Deputy Solicitor General
RYAN SPREAGUE HARDY, VSB #78558
ALICE ANNE LLOYD, VSB #79105
MAMOONA H. SIDDIQUI, VSB #46455
18 Assistant Attorneys General
Office of the Attorney General
202 North Ninth Street
Richmond, Virginia 23219
(804) 786-7240
MKallen@oag.state.va.us
JSamuels@oag.state.va.us
RHardy@oag.state.va.us
ALloyd@oag.state.va.us

22
ORDER GRANTING IN PART
AND DENYING IN PART DEF'S
MOT. FOR STAY OR
EXTENSION [PROPOSED]
NO. 4:19-cv-05210-RMP

1 MSiddiqui@oag.state.va.us
2 SolicitorGeneral@oag.state.va.us
3 *Attorneys for Plaintiff Commonwealth of Virginia*

4 PHIL WEISER
5 Attorney General of Colorado

6 /s/ Eric R. Olson
7 ERIC R. OLSON, #36414
8 Solicitor General
9 Office of the Attorney General
10 Colorado Department of Law
11 1300 Broadway, 10th Floor
12 Denver, CO 80203
13 (720) 508 6548
14 Eric.Olson@coag.gov
15 *Attorneys for Plaintiff the State of Colorado*

16 KATHLEEN JENNINGS
17 Attorney General of Delaware
18 AARON R. GOLDSTEIN
19 State Solicitor
20 ILONA KIRSHON
21 Deputy State Solicitor

22 /s/ Monica A. Horton
23 MONICA A. HORTON, #5190
24 Deputy Attorney General
25 820 North French Street
26 Wilmington, DE 19801
27 Monica.horton@delaware.gov
28 *Attorneys for Plaintiff the State of Delaware*

29 KWAME RAOUL
30 Attorney General of Illinois

31 /s/ Liza Roberson-Young
32 LIZA ROBERSON-YOUNG, #6293643
33 Public Interest Counsel

34 ORDER GRANTING IN PART
35 AND DENYING IN PART DEF'S
36 MOT. FOR STAY OR
37 EXTENSION [PROPOSED]
38 NO. 4:19-cv-05210-RMP

1 Office of the Illinois Attorney General
2 100 West Randolph Street, 11th Floor
3 Chicago, IL 60601
4 (312) 814-5028
5 ERobersonYoung@atg.state.il.us
6 *Attorney for Plaintiff State of Illinois*

5 CLARE E. CONNORS
6 Attorney General of Hawai‘i

7 /s/ Lili A. Young
8 LILI A. YOUNG, #5886
9 Deputy Attorney General
10 Department of the Attorney General
11 425 Queen Street
12 Honolulu, HI 96813
13 (808) 587-3050
14 Lili.A.Young@hawaii.gov
15 *Attorneys for Plaintiff State of Hawai‘i*

12 BRIAN E. FROSH
13 Attorney General of Maryland

14 /s/ Jeffrey P. Dunlap
15 JEFFREY P. DUNLAP, #1812100004
16 Assistant Attorney General
17 200 St. Paul Place
18 Baltimore, MD 21202
19 T: (410) 576-7906
20 F: (410) 576-6955
21 JDunlap@oag.state.md.us
22 *Attorneys for Plaintiff State of Maryland*

19 MAURA HEALEY
20 Attorney General of Commonwealth of Massachusetts

21 /s/ Abigail B. Taylor
22 ABIGAIL B. TAYLOR, #670648
23 Chief, Civil Rights Division

ORDER GRANTING IN PART
AND DENYING IN PART DEF’S
MOT. FOR STAY OR
EXTENSION [PROPOSED]
NO. 4:19-cv-05210-RMP

1 DAVID UREÑA, #703076
2 Special Assistant Attorney General
3 ANGELA BROOKS, #663255
4 Assistant Attorney General
5 Office of the Massachusetts Attorney General
6 One Ashburton Place
7 Boston, MA 02108
8 (617) 963-2232
9 abigail.taylor@mass.gov
10 david.urena@mass.gov
11 angela.brooks@mass.gov
12 *Attorneys for Plaintiff Commonwealth of Massachusetts*

13 DANA NESSEL
14 Attorney General of Michigan

15 /s/Toni L. Harris
16 FADWA A. HAMMOUD, #P74185
17 Solicitor General
18 TONI L. HARRIS, #P63111
19 *First Assistant Attorney General*
20 Michigan Department of Attorney General
21 P.O. Box 30758
22 Lansing, MI 48909
23 (517) 335-7603 (main)
24 HarrisT19@michigan.gov
25 Hammoudf1@michigan.gov
26 *Attorneys for the People of Michigan*

27 KEITH ELLISON
28 Attorney General of Minnesota

29 /s/ R.J. Detrick
30 R.J. DETRICK, #0395336
31 *Assistant Attorney General*
32 Minnesota Attorney General's Office
33 Bremer Tower, Suite 100
34 445 Minnesota Street
35 St. Paul, MN 55101-2128
36 (651) 757-1489

37 ORDER GRANTING IN PART
38 AND DENYING IN PART DEF'S
39 MOT. FOR STAY OR
40 EXTENSION [PROPOSED]
41 NO. 4:19-cv-05210-RMP

1 (651) 297-7206
2 Rj.detrick@ag.state.mn.us
2 *Attorneys for Plaintiff State of Minnesota*

3
4 AARON D. FORD
4 Attorney General of Nevada

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

9
10
11
12
13
14
15
16
17
18
19
20
21
22

ORDER GRANTING IN PART
AND DENYING IN PART DEF'S'
MOT. FOR STAY OR
EXTENSION [PROPOSED]
NO. 4:19-cv-05210-RMP

1 GURBIR S. GREWAL
2 Attorney General of New Jersey

3 */s/ Glenn J. Moramarco*
4 GLENN J. MORAMARCO, #030471987
5 Assistant Attorney General
6 Office of the Attorney General
7 Richard J. Hughes Justice Complex
8 25 Market Street, 1st Floor, West Wing
Trenton, NJ 08625-0080
(609) 376-3232
Glenn.Moramarco@law.njoag.gov
Attorneys for Plaintiff State of New Jersey

9
10 HECTOR BALDERAS
11 Attorney General of New Mexico

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

14
15 PETER F. NERONHA
16 Attorney General of Rhode Island

17 */s/ Lauren E. Hill*
18 LAUREN E. HILL, #9830
Special Assistant Attorney General
Office of the Attorney General
150 South Main Street
19 Providence, Rhode Island 02903
(401) 274-4400 x 2038
E-mail: lhill@riag.ri.gov
Attorneys for Plaintiff State of Rhode Island

20
21
22
ORDER GRANTING IN PART
AND DENYING IN PART DEF'S
MOT. FOR STAY OR
EXTENSION [PROPOSED]
NO. 4:19-cv-05210-RMP

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 11th day of May 2020, at Seattle, Washington.

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

ORDER GRANTING IN PART
AND DENYING IN PART DEF'S
MOT. FOR STAY OR
EXTENSION [PROPOSED]
NO. 4:19-cv-05210-RMP