

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF WASHINGTON
3 AT SEATTLE
4

5 JOHN DOE, et al.,) Case No. C17-0178JLR

6 Plaintiffs,)

7 v.)

8 DONALD TRUMP, et al.,)

9 Defendants.)

10 -----)
11 JEWISH FAMILY SERVICES,)

12 et al.,)

13 Plaintiffs,)

14 v.)

15 DONALD TRUMP, et al.,)

16 Defendants.)
17 -----)

18 Friday, February 15, 2019

19 Deposition of KELLY GAUGER, taken at the offices
20 of Skadden Arps Slate Meagher & Flom, LLP,
21 1440 New York Ave NW, Washington, D.C. beginning at
22 9:01 a.m., before Nancy J. Martin, a Registered Merit
Reporter, Certified Shorthand Reporter.

Page 2

1 A P P E A R A N C E S :

2

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1 I N D E X

2 PAGE

3 TESTIMONY OF KELLY GAUGER

4 BY MS. KEANEY 7

5 BY MS. LIN 251

6

7 E X H I B I T S

8 NUMBER DESCRIPTION MARKED

9 Exhibit 47 PRM Organizational Chart 16

10 Exhibit 47-A PRM Organizational Chart 18
with corrections

11 Exhibit 48 E-mail dated November 6, 266
2017,

12 DOE-JFS_STATE_00000204 -
-205

13

14 Exhibit 49 E-mail string, 272
DOE-JFS_State_0000160 -
-164

15

16 Exhibit 50 E-mail dated January 30, 274
2018,
DOE-JFS_STATE_00000181 -
-199

17

18 Exhibit 51 E-mail dated December 23, 278
2017, DOE_JFS_STATE_0000200

19

20 Exhibit 52 E-mail dated January 4, 280
2018, DOE-JFS_State_0000064
- -66, 4 pages

21

22

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1 A P P E A R A N C E S : (CONTINUED)

2

3 U.S. DEPARTMENT OF JUSTICE
CIVIL DIVISION

4 BY: KEVIN SNELL, ESQ.
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9 ALSO PRESENT:

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DEPARTMENT OF STATE
11 OFFICE OF THE LEGAL ADVISOR

12

13 RONALD WHITNEY, USCIS

14

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Page 5

1 E X H I B I T S

2 (CONTINUED)

3 NUMBER DESCRIPTION MARKED

4 Exhibit 53 Declaration of Sophone 291
Bizmana in Support of Doe
5 Plaintiffs' Opposition to
Defendants' Motion to
6 Dismiss

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Page 6	Page 8
<p>1 EXHIBITS PREVIOUSLY MARKED</p> <p>2 NUMBER PAGE</p> <p>3 Exhibit 2 48</p> <p>4 Exhibit 4 12</p> <p>5 Exhibit 8 264</p> <p>6 Exhibit 10 196</p> <p>7 Exhibit 11 199</p> <p>8 Exhibit 12 217</p> <p>9 Exhibit 24 251</p> <p>10 Exhibit 27 153</p> <p>11 Exhibit 31 101</p> <p>12 Exhibit 34 74</p> <p>13 Exhibit 35 90</p> <p>14 Exhibit 36 97</p> <p>15 Exhibit 37 123</p> <p>16 Exhibit 38 130</p> <p>17 Exhibit 39 140</p> <p>18 Exhibit 40 149</p> <p>19 Exhibit 41 166</p> <p>20 Exhibit 43 184</p> <p>21 Exhibit 44 214</p> <p>22 Exhibit 46 236</p>	<p>1 so that she can record everything, no shaking of the</p> <p>2 head or "uh-huhs"?</p> <p>3 A. Okay.</p> <p>4 Q. Can you please state your full name for the</p> <p>5 record.</p> <p>6 A. Kelly Gauger.</p> <p>7 Q. And your title?</p> <p>8 A. Deputy director, refugee admissions.</p> <p>9 Q. Okay. And do you understand that you are</p> <p>10 under oath today to testify truthfully? That's the</p> <p>11 same as if you were testifying in court under penalty</p> <p>12 of perjury?</p> <p>13 A. I do.</p> <p>14 Q. I also want to remind you that when we take</p> <p>15 breaks during the deposition today, you'll still</p> <p>16 remain under oath. Do you understand that?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And if you don't understand the</p> <p>19 question that I ask, please ask for clarification. If</p> <p>20 you do answer my question, I'll assume that you</p> <p>21 understood it. Is that okay?</p> <p>22 A. Yes.</p>
Page 7	Page 9
<p>1 WASHINGTON, D.C., FRIDAY, FEBRUARY 15, 2019; 9:01 A.M.</p> <p>2 -OoO-</p> <p>3</p> <p>4 KELLY GAUGER,</p> <p>5 having been first duly sworn/affirmed,</p> <p>6 was examined and testified as follows:</p> <p>7</p> <p>8 EXAMINATION</p> <p>9 BY MS. KEANEY:</p> <p>10 Q. Good morning. My name is Melissa Keaney.</p> <p>11 With me on this side of the table are my co-counsel in</p> <p>12 Jewish Family Services vs. Trump. At the end is Tana</p> <p>13 Lin. She's with the related case Doe v. Trump, and</p> <p>14 she'll be asking some questions at the end of the day</p> <p>15 today.</p> <p>16 A. Okay.</p> <p>17 Q. Have you ever had your deposition taken</p> <p>18 before?</p> <p>19 A. No.</p> <p>20 Q. So today I'll be asking you some questions.</p> <p>21 They'll be recorded by Nancy, our court reporter. Do</p> <p>22 you understand that you will need to answer verbally</p>	<p>1 Q. Also, please allow me to finish my questions</p> <p>2 before answering, and I'll try to do the same so that</p> <p>3 it's easier for Nancy to record our answers.</p> <p>4 A. Okay.</p> <p>5 Q. Are the DOJ attorneys present today</p> <p>6 representing you in your personal capacity?</p> <p>7 A. No. I don't know the answer to that.</p> <p>8 MR. DUGAN: I'll proffer for the record that</p> <p>9 DOJ litigation counsel represents Ms. Gauger in her</p> <p>10 official capacity as an employee of the state</p> <p>11 department.</p> <p>12 MS. KEANEY: Okay.</p> <p>13 Q. And your attorneys may have already told you</p> <p>14 this, but if you want to talk to them, that's fine,</p> <p>15 but I ask that if we're in the middle of a line of</p> <p>16 questioning that we conclude the questioning before</p> <p>17 you consult. Same thing with breaks. We'll take a</p> <p>18 break for lunch, but if you need a break before lunch</p> <p>19 or after lunch, we can do that. Just let me know.</p> <p>20 But if we're in the middle of a line of questioning,</p> <p>21 then I'll probably ask you to finish the questioning</p> <p>22 before we take a break.</p>

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1 A. All right.

2 Q. Your attorney may make objections for the

3 record. Those are simply for the record unless he

4 instructs you not to answer. So you should ignore the

5 objections and answer as you would have without the

6 objection. Do you understand that?

7 A. Yes.

8 Q. Okay. Have you taken any medication or

9 consumed any alcohol in the last 24 hours that would

10 make you unable to give truthful or accurate testimony

11 today?

12 A. No.

13 Q. I mean is there any reason that you cannot

14 give truthful --

15 A. No.

16 Q. -- and accurate testimony today?

17 A. No.

18 Q. Okay. Did you talk to anyone to prepare for

19 today's deposition?

20 A. Yes. I talked to the four attorneys at this

21 table.

22 Q. Okay. How many times did you talk to them?

Page 11

1 A. Well, the three gentlemen just once, but Meg

2 at the state department -- I mean we spoke officially

3 once, but she's the one who informed me that I would

4 be deposed and asked me not to speak to anyone about

5 it.

6 Q. Okay. Did you speak to anybody else aside

7 from the lawyers?

8 A. No.

9 Q. And when you spoke with your lawyers, was

10 there anybody else present?

11 A. No.

12 Q. Okay. Did you speak to Jennifer Higgins, who

13 was deposed on Wednesday?

14 A. No.

15 Q. Did you read any documents to prepare for

16 your deposition?

17 A. Yes.

18 Q. Which documents did you read?

19 A. My three declarations and the October 23

20 memo.

21 Q. Okay. Anything else?

22 A. No.

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1 Q. Okay. Did you -- it looks like you have

2 water.

3 A. Yep.

4 MS. KEANEY: All right. So first I'm going

5 to hand you what's been marked as Plaintiff's

6 Exhibit 4. You guys will recognize this from

7 Wednesday.

8 (Previously marked Exhibit 4 was handed to

9 the witness.)

10 BY MS. KEANEY:

11 Q. This is just a list of some of the acronyms

12 that I think might come up during our conversation

13 today. If you could just take a moment to look at

14 this and make sure it looks okay to you. And by that,

15 I mean that when I use a term -- sorry, an acronym on

16 the left-hand column, that we can agree that it refers

17 to the explanation on the right-hand column.

18 THE WITNESS: Can I get my reading glasses?

19 MS. KEANEY: Of course.

20 There's a front and back.

21 (The witness reviewed Exhibit 4.)

22 THE WITNESS: Okay.

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1 BY MS. KEANEY:

2 Q. Did you want to make any changes to it?

3 A. No.

4 Q. Then I guess to the extent that you may use

5 some acronyms today that I don't understand, I may ask

6 you to explain them, and we can add them to the list.

7 A. Okay.

8 Q. So if you could again please state your

9 current job title.

10 A. Deputy director.

11 Q. And how long have you held that position?

12 A. Since late 2010, I believe.

13 Q. Okay. Wasn't there a period during the time

14 between 2010 and now that you've held a different

15 position?

16 A. Yes. So from late October 2017 until

17 about -- until early November 2018 I was the acting

18 director of the office.

19 Q. Okay. Can you please summarize your current

20 primary job responsibility as the deputy director?

21 A. Uh-huh. To help the office director in

22 overall office leadership, to fill in for the office

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1 director when he's not there. I handle most personnel
2 issues for the office. I -- the three section heads
3 in our office directly report to me. So the overseas
4 processing section, the domestic resettlement section,
5 and the policy section all report up to me as well.
6 Q. Do you have any responsibility for issuing
7 instructions to PRM employees regarding USRAP
8 operations?
9 A. Could you repeat the question? Do I have --
10 Q. Do you have any responsibility for issuing
11 any instructions to PRM employees recording USRAP
12 operations?
13 A. Sure, yes.
14 Q. Under what circumstances?
15 A. Under a lot of circumstances. I mean it's
16 often the people who report to me, such as the
17 overseas section chief, who are issuing instructions
18 to the resettlement support centers, but I and Larry,
19 in general, provide overall policy direction to our
20 office and our partners about USRAP processing and
21 policy.
22 Q. Okay. You mentioned that sometimes your

Page 15

1 section has issued instructions to the RSCs or others
2 that need them. Are those instructions that you
3 always review before they are sent?
4 A. I wouldn't say "always." I would say
5 90 percent of the time.
6 Q. In what circumstances might you not review
7 instructions to --
8 A. If Hillary Ingraham, the director of the RPC
9 or Larry had cleared and didn't think that I needed
10 to.
11 Q. Okay.
12 A. Or sometimes they might issue an instruction
13 that they didn't think was significant enough to rise
14 to needing to be cleared by one of the three of us.
15 And so they would just issue it.
16 Q. You mentioned Ms. Ingraham. My understanding
17 is that she has the refugee processing center; is that
18 correct?
19 A. Yes.
20 Q. Do your job responsibilities include
21 oversight of the refugee processing center?
22 A. No. No. We both report up to the office

Page 16

1 director. So that would be Larry.
2 Q. Okay. So you have no oversight over the RPC?
3 A. I do not. I don't know if this really
4 matters, but during the year that I was acting
5 director, I was Hillary's supervisor of record. So I
6 have to write her evaluation for last year. But in
7 general, no, I do not supervise the operations of the
8 RPC.
9 Q. Okay. So in your current position, who do
10 you report to?
11 A. Larry Bartlett.
12 Q. Larry Bartlett. And he is the director?
13 A. Yes.
14 Q. And who does Larry report to?
15 A. Andrew Veprek.
16 REPORTER MARTIN: I'm sorry. Andrew who?
17 THE WITNESS: Veprek, V-e-p-r-e-k.
18 MR. KEANEY: I'm going to hand you what's
19 been marked as Plaintiff's Exhibit 47.
20 (Deposition Exhibit 47 was marked for
21 identification.)
22 MS. KEANEY: And this is a document that we

Page 17

1 created based on, probably, available information to
2 try to capture exactly what we're talking about, which
3 is the organizational structure of PRM. I'll just
4 give you a moment to take a look at it.
5 (The witness reviewed Exhibit 47.)
6 THE WITNESS: Yep.
7 BY MS. KEANEY:
8 Q. Are there any corrections that you would
9 make?
10 A. Well, the policy team isn't here. This might
11 be a little old because our policy section was created
12 in 2016.
13 Q. Okay. And the policy team. So that would be
14 a separate branch?
15 A. Yes. So there would be a third line coming
16 from this big box here, (indicating).
17 Q. Okay. And the policy team I believe you said
18 reports to you; is that correct?
19 A. Uh-huh.
20 Q. Who is the head of the policy team?
21 A. His name is Cameron McGlothlin,
22 M-c-G-l-o-t-h-l-i-n. Also, there's -- I feel like

Page 18

1 you're missing a few people at the program officer
 2 level. Under Barbara Day there is an additional
 3 program officer and a program assistant.
 4 Q. I'm sorry. I'm not seeing it.
 5 A. Sorry. Under this right here, the "Domestic
 6 Resettlement" (indicating).
 7 Q. Would it be possible for you to --
 8 MR. DUGAN: I'll offer for the record, and if
 9 possible, if the witness could avoid using phrases
 10 like "this right here" because the court reporter
 11 can't understand that.
 12 THE WITNESS: Okay.
 13 MR. DUGAN: Thank you.
 14 MS. KEANEY: I'm noting for the record that
 15 she's drawing on Exhibit 47.
 16 (Pause in proceedings.)
 17 MS. KEANEY: Thank you so much. So we will
 18 introduce this as Plaintiff's Exhibit 47-A.
 19 MR. DUGAN: Could we ask during the break
 20 maybe we can make a copy of the exhibit.
 21 MS. KEANEY: Absolutely.
 22 (Deposition Exhibit 47-A was marked for

Page 19

1 identification.)
 2 BY MS. KEANEY:
 3 Q. Okay. So going back to positions that you've
 4 held. Prior to, I believe you said, 2010 when you
 5 were associate director, what position did you hold --
 6 A. I was overseas section chief.
 7 Q. Okay. And when did you hold that position,
 8 approximately?
 9 A. Let's say from about 2007 to about 2010.
 10 Q. In that position, what were your primary job
 11 responsibilities?
 12 A. To oversee the resettlement support centers.
 13 Q. Okay. And prior to holding that position,
 14 what position did you hold?
 15 A. I was one of the program officers underneath
 16 the overseas section.
 17 Q. For which -- was it regional?
 18 A. For Africa. I would say that was from about
 19 2003 to 2007.
 20 Q. What were your primary job responsibilities
 21 in that position?
 22 A. To oversee resettlement from Africa -- the

Page 20

1 overseas processing side from Africa.
 2 Q. Okay. And prior to that position?
 3 A. I was on the other -- on the domestic side I
 4 was one of the program officers on the reception and
 5 placement program from '99 to '03.
 6 Q. Prior to that?
 7 A. That's it.
 8 Q. Been doing for --
 9 A. Coming up on 20 years.
 10 Q. 20 years at PRM; is that right?
 11 A. Yeah.
 12 Q. Okay. And prior to working with PRM, were
 13 you working on refugee issues --
 14 A. No.
 15 Q. -- in another capacity?
 16 A. No.
 17 Q. Okay. So given your 20 years of experience,
 18 if we can start at a very basic level. Imagine you're
 19 talking to somebody who really doesn't know anything
 20 about refugee processing. At a high level of
 21 generality, how would you explain the process?
 22 MR. DUGAN: Objection. Calls for a

Page 21

1 narrative.
 2 You can answer.
 3 THE WITNESS: The process of admitting a
 4 refugee to the United States?
 5 BY MS. KEANEY:
 6 Q. Please.
 7 A. How long of an explanation do you want? I
 8 mean I could make it --
 9 Q. Start at a high level of generality, and then
 10 I'll ask you specific questions if I have them.
 11 MR. DUGAN: Same objection.
 12 Go ahead.
 13 THE WITNESS: Okay. So a case -- a refugee
 14 case is referred to the United States via one of three
 15 avenues. Priority 1, Priority 2, or Priority 3. Once
 16 that case is referred to us, it is assigned to one of
 17 our resettlement support centers, of which we have, I
 18 believe, eight right now around the world, with a
 19 couple of sub offices.
 20 Those resettlement support centers prepare
 21 the case for a Department of Homeland Security
 22 interview, which means collecting a lot of

Page 22

1 information, mostly biographic information and their
 2 refugee claim with the threats that they've faced or
 3 the persecution they've faced. The resettlement
 4 support centers then work with us and the Department
 5 of Homeland security to schedule circuit rides where
 6 teams of DHS or USCIS officers travel overseas to
 7 interview refugees.

8 For the cases that are approved, our support
 9 centers work with us and the refugee processing center
 10 to coordinate completion of all security checks. They
 11 work with mostly the international organization for
 12 migration to schedule a medical check. They work
 13 through the refugee processing center to obtain a
 14 sponsorship assurance for a resettlement agency in the
 15 United States and then the RSCs work with IOM,
 16 international organization for immigration, to
 17 schedule travel to the United States, and IOM
 18 transports them to their final destination where the
 19 domestic resettlement agencies take over.

20 BY MS. KEANEY:
 21 Q. Thank you.
 22 Okay. Does it always happen in the order as

Page 23

1 you just described it?
 2 A. Yeah. Yes.
 3 Q. Okay. So, for example, prior to the security
 4 checks being run, USCIS does the interview?
 5 A. Okay. So that has changed over the years.
 6 We launch most initial security checks prior to the
 7 DHS interview. They are not always returned by the
 8 time DHS interviews the case. And oftentimes after a
 9 DHS interview, the officer has pulled some additional
 10 information, such as a different -- maybe the
 11 applicant presented a document that had a different
 12 name spelling or something that causes us to then have
 13 to rerun the security checks after the interview.
 14 And so the security -- the main goal is we
 15 would all love to have them requested and done before
 16 the DHS interview, but it just is not always
 17 accomplishable.
 18 Q. Okay. How about the medical check? Does
 19 that -- is there -- let me rephrase.
 20 For the medical check to occur, there's
 21 certain other steps that have to have been completed?
 22 A. We almost always do medical checks after the

Page 24

1 DHS interview because you don't want to waste
 2 resources on medicaling a person who is not going to
 3 be approved by DHS. We almost always do them
 4 afterward. But there have been times in the past
 5 where we do medical checks beforehand if it's a case
 6 load that has a very high approval rate and if --
 7 especially if they're located in a remote location and
 8 the logistics work out that way, that it's easier to
 9 get an IOM medical team in before the DHS -- or it
 10 could be kind of simultaneous.

11 It could be that there's a medical circuit
 12 ride and a DHS circuit ride going on at the same time.
 13 But there may be some people who have the medical
 14 before the DHS interview.

15 Q. Okay. My understanding is that some of these
 16 checks, either security -- we'll start with
 17 security -- can expire; is that correct?
 18 A. They do.
 19 Q. What is the time line for a security check?
 20 A. So it depends.
 21 Q. Okay. On what?
 22 A. And you're only asking about security or also

Page 25

1 medical?
 2 Q. We'll start with security and then medical.
 3 A. So there are a number of security checks, and
 4 unfortunately, I'm not sure that I'm going to remember
 5 exactly which validity period corresponds to which
 6 one.
 7 Q. Okay.
 8 THE WITNESS: Is it okay to name the security
 9 checks?
 10 MR. DUGAN: You can answer the question as
 11 you understand it.
 12 THE WITNESS: Okay. The interagency check is
 13 recurrent. And so we don't have to re-request it.
 14 It's just always running in the background.
 15 BY MS. KEANEY:
 16 Q. Okay.
 17 A. The security advisor opinion, it used to be
 18 valid for a year, but I think it's longer. I'm sorry.
 19 I don't know. It might be 18 months. I think it's
 20 the same for the class check, the consular lookout,
 21 and support systems check, I believe, is also about a
 22 year and a half.

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1 Q. Okay. And not to get into too much detail,
2 but in terms of the process for initiating the
3 security check, is that done through WRAPS?
4 A. It is. It's done by a case worker at
5 resettlement support center through WRAPS.
6 Q. Okay. So an RSC case worker requests
7 specific security checks through WRAPS?
8 A. Yes.
9 Q. And then turning then to medical checks, how
10 long is there validity?
11 A. So that depends on whether, during the
12 initial interview, the applicant had any signs of TB.
13 Q. Okay.
14 A. If they did, I believe the validity of the
15 medical is three months. If they had no signs of TB,
16 I believe the validity of the medical is six months.
17 Q. Okay. If we could walk through the steps
18 that you outlined that a refugee processing and
19 connect how much of those Department of State or PRM
20 is responsible for. So first the referral to the
21 United States, as I understand it, that would be --
22 they're not responsible until it is referred; is that

Page 27

1 correct?
2 A. Correct.
3 Q. And then it is assigned. Preparing the case
4 file, is that something that PRM is responsible for?
5 A. Via the resettlement support centers, yes.
6 Q. Okay. Scheduling the circuit ride?
7 A. So we in PRM -- so when the RSCs have a
8 critical mass of cases that are ready to be
9 interviewed, they provide that information to us in
10 PRM. We provide a request to USCIS where we say,
11 "Here are the -- we usually do this on a
12 quarter-by-quarter or fiscal quarter basis."
13 We send them a list saying here are the
14 places we would like you to send officers, and here
15 are the number of cases that we have ready in each of
16 those locations. DHS comes backs to us and tells us
17 if they can fulfill them.
18 Then we pass that information back to the
19 resettlement support centers, and then the RSCs are
20 the ones that -- they take it from there. Once we've
21 gotten the overall numbers and send the schedule back
22 to the RSCs, they do the scheduling, you know,

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1 deciding which cases are going to be interviewed on
2 which day.
3 Q. Okay. And then next, I believe, is the
4 interview, which I assume USCIS is responsible for?
5 A. Yes.
6 Q. Okay. And then for those approved, as I
7 understood what you said, the RSC would initiate the
8 request for the security check and the medical check?
9 A. Well, they've already issued the request for
10 many of the security checks before the interview.
11 Q. But the initiation of the request for
12 security check and medical check is something that PRM
13 is responsible for through the RSCs?
14 A. Yes.
15 Q. Okay. And then the assurance, is that also
16 something that PRM is responsible for?
17 A. Yes. So when a case is approved by USCIS,
18 the resettlement support center goes into WRAPS and
19 requests that the case be assured, that the case is
20 ready for assurance.
21 Q. Okay. And the RSCs are contractors; is that
22 correct?

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1 A. No. Cooperative agreement.
2 Q. What's the difference?
3 MR. DUGAN: Objection to the extent it calls
4 for a legal conclusion.
5 You can answer.
6 THE WITNESS: I'm not sure I know the
7 technical difference. My sense is that a contract --
8 so the RPC is under a contract.
9 BY MS. KEANEY:
10 Q. Okay.
11 A. We specify the work we want done. People bid
12 on it. We pay for it. A cooperative agreement --
13 okay. So some of our resettlement support centers are
14 run by non-governmental organizations, and with them
15 we have a cooperative agreement. Some of our
16 resettlement support centers are run by IOM, which is
17 an international organization. So we can't have a
18 cooperative agreement with them, but we have an MOU
19 with IOM.
20 So the funding is just a little bit
21 different, but, in essence -- I mean it looks like a
22 contract in that these organizations are 100 percent

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1 funded by PRM and 100 percent responsible to us. So
2 they're our arm. They're our actor in the country.
3 So it looks like a contract. It's just our
4 comptroller would say it's not a contract.
5 Q. Thank you. Okay. Aside from Department of
6 State through PRM and USCIS, what other agencies are
7 involved in U.S. refugee processing?
8 THE WITNESS: Can I say all of them?
9 MR. DUGAN: You can answer the question to
10 the extent you have knowledge.
11 And I'll proffer for the record, and I'm sure
12 this is obvious to everyone here, but if any question
13 were to implicate classified information, the witness
14 will not be able to disclose classified information on
15 a public record. I have no idea if that's what's
16 implicated here.
17 MS. KEANEY: Understood.
18 MR COX: It should be made clear when the
19 witness is not saying something because it's
20 classified.
21 MR. DUGAN: The government agrees, and if the
22 witness is in a position where a question implicates

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1 classified information, the witness should so state.
2 BY MS. KEANEY:
3 Q. I'm just asking you which other agencies
4 might have a role in refugee processing aside from
5 USCIS and PRM.
6 A. Right. U.S. government agencies?
7 Q. That's correct.
8 A. So the FBI, NCTC, the National
9 Counterterrorism Center, and then there are two
10 agencies that my understanding is that it's classified
11 to associate them with refugee processing.
12 Q. Okay. Would it be safe to assume that they
13 are involved in the security checks?
14 A. Yes.
15 Q. Okay. Is it also the case that the FBI and
16 NCTC's role was in security checks?
17 A. Yes.
18 Q. Do they have any other role in refugee
19 processing?
20 A. No.
21 Q. Can you explain to me SAO. What is an SAO?
22 MR. DUGAN: Objection. Vague.

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1 You can answer.
2 THE WITNESS: So an SAO is one of the two
3 primary refugee security checks that are initiated by
4 resettlement support centers. The RSC makes a
5 request, and then the refugee processing center
6 packages up certain elements of that person's
7 biographic information. And then that information is
8 sent via the consular affairs bureau at the state
9 department, I believe through the CCD, the consular
10 consolidated database.
11 And it goes out to the FBI and the other
12 agency, and when those agencies have reviewed that
13 information against their holdings, they then send
14 their responses back to us, and if both agencies clear
15 we can say in WRAPS that it's got a clear SAO.
16 BY MS. KEANEY:
17 Q. What is the other option aside from "clear"
18 in terms of the response that could come back?
19 A. Well, for one, for the agency that I didn't
20 name, they generally will say either "clear" or
21 "documentation," and they will send us documentation
22 from their -- documentation that contains some

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1 information that they believe relates to our
2 applicant, and then we have two people at PRM who
3 review that information that that agency has to
4 determine whether that means that the person should
5 not be admitted and should not have a clear check from
6 that agency.
7 The FBI is a little bit more directive in
8 their responses to us, although it's evolving right
9 now. So it used to be that they would give us either
10 a green or a red, and if -- and just -- but they
11 wouldn't provide us the information behind it.
12 Right now, the FBI is moving to a system
13 whereby it's trying to move more towards the way the
14 other agency does it, where they provide us and USCIS
15 a little bit of information behind why they are
16 recommending that the person not be admitted. So but
17 it's a subject of a lot of discussion right now
18 about -- but it's evolving.
19 So it's kind of -- for the most part it's
20 clear or not clear, but the goal is to get a little
21 bit more information so that USCIS mostly can make a
22 little bit of their own determination about whether

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1 the information is relevant. Relevant enough that the
2 person shouldn't be admitted to the U.S.
3 Q. Understood. To clarify, on the other agency,
4 not the FBI, you said that they send either a clear
5 response or documentation?
6 A. Yeah.
7 Q. And that that goes to somebody at PRM; is
8 that correct?
9 A. Yeah.
10 Q. Who are the two people at PRM that that goes
11 to?
12 A. They're retired foreign service officers who
13 work for us.
14 Q. Okay. And they ultimately have the authority
15 to determine whether or not to find the security clear
16 or not clear?
17 A. Yeah. Based on guidelines that were agreed
18 to by an interagency group that includes the vetting
19 agencies, the state department, and USCIS.
20 Q. Okay. And then with respect to the FBI, I
21 understood you to say they give a response of either
22 green or red, but that that is moving towards a

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1 process more like the other agency where that
2 information, I believe you said, would go to USCIS?
3 A. So it's prime -- yes, primarily to USCIS. We
4 have a little bit of a role, but it's generally --
5 this is evolving a little bit also. We used to be
6 entirely responsible for the SAO, but in recent years
7 the Department of Homeland Security has taken on a
8 larger role.
9 And so, yes, it's their analysts who are
10 primarily looking at the information from the FBI.
11 Q. And under the system that you're moving
12 towards, would it be their analysts that have the
13 authority to determine whether or not to clear or not
14 clear?
15 A. Yes.
16 Q. So in terms of refugee processing for SAO
17 nationals, how does it differ from the process that
18 you described to me in the general process of refugee
19 processing?
20 A. So from our side, the primary difference is
21 after the case has been prescreened only those
22 applicants who are of an SAO nationality have an SAO

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1 requested. On the USCIS side, they have a number of
2 additional reviews that they have to undertake for SAO
3 nationalities, but I'm not the one to -- I can't
4 provide details about that. I don't know all the
5 details.
6 Q. Okay. If a security check, either SAO or
7 another security check comes back as not clear or red,
8 is refugee resettlement denied based on that alone?
9 A. It used to be, but we're moving -- USCIS is
10 trying to move towards a system where a red from the
11 FBI doesn't automatically mean a rejection, but that
12 they would have more of a role in determining whether
13 the information was serious enough or significant
14 enough to deny admission into the United States.
15 Q. And when did that start to change?
16 A. When did people start to talk about it? I
17 mean when did -- I would say over the last year or so
18 USCIS has expressed a growing interest in being able
19 to do this.
20 Q. Is that -- the evolving process that you're
21 referring to, does it only refer to individuals for
22 whom there was an either not clear or a red that USCIS

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1 wants to have a role, or does it also include
2 individuals for whom there came back a clear or a
3 green light?
4 MR. DUGAN: Objection. Compound.
5 You can answer.
6 THE WITNESS: It only applies to those who
7 came back as red.
8 BY MS. KEANEY:
9 Q. Okay. So if an individual came back as green
10 or clear, then their application for refugee status
11 would not be denied based upon a security check?
12 A. As long as the other agency also said that it
13 was clear, yes.
14 Q. Okay. At this moment in time right now, what
15 happens if a check comes back as not clear? I
16 understand it's an evolving process but --
17 A. Right. Right. Honestly, it goes into a pool
18 of cases that need to be reviewed.
19 Q. By whom?
20 A. USCIS, and sometimes FBI.
21 Q. Okay. And who ultimately decides whether or
22 not to clear the case?

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1 A. Do you mean which person or which agency?
2 Q. Start with which agency.
3 A. USCIS.
4 Q. And which person?
5 A. I don't know the answer to that.
6 Q. Okay. Can you explain to me the
7 follow-to-join program.
8 MR. DUGAN: Objection to the extent it calls
9 for a narrative.
10 You can answer, just so you know.
11 THE WITNESS: Okay. So I assume you're only
12 asking about refugee follow-to-joins because there are
13 both asylee and refugee --
14 BY MS. KEANEY:
15 Q. Yes. Refugee.
16 A. So refugee follow-to-joins means that a
17 refugee who is admitted to the United States can file
18 an I-730 application with USCIS for his or her spouse
19 and/or unmarried children under 21.
20 That petition is submitted to USCIS, and
21 depending on where the person is located, after the
22 petition is kind of preliminarily approved by USCIS, I

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1 believe a service center, the approved or kind of
2 preliminarily approved petition is either sent to a
3 U.S. embassy or to a resettlement support center.
4 And right now, if the refugee is in Kenya,
5 where we have a resettlement support center, or in
6 Thailand, where we have a larger resettlement support
7 center, the petition is sent there, and our RSCs
8 process them pretty much -- a lot in the same way that
9 other refugees are processed, except they don't have
10 to have a refugee claim. But all the other
11 information is kind of the same. They coordinate
12 their security checks, that sort of thing.
13 I know less about the cases that are
14 forwarded to a U.S. embassy. It's a little bit of a
15 complicated process because depending on whether USCIS
16 has a field office director in that embassy, the
17 responsibility for adjudicating that case,
18 interviewing the individual either goes to a consular
19 officer or to a USCIS officer.
20 Q. Okay.
21 A. So the cases that go to an embassy -- the
22 questions about that are best asked to USCIS.

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1 Q. Okay. Is it fair to say that you're aware of
2 several Presidential executive orders since 2016 that
3 have addressed refugee processing?
4 A. Yes.
5 MR. DUGAN: Objection. Vague. I would just
6 ask the witness to pause just a bit.
7 THE WITNESS: Yes, I know.
8 MR. DUGAN: Thank you.
9 BY MS. KEANEY:
10 Q. To your knowledge, was anyone at Department
11 of State involved in the development of the first
12 executive order?
13 A. Not that I'm aware of.
14 Q. How about the second executive order?
15 A. Not that I'm aware of either, no.
16 Q. And you'll see on our list of terms we're
17 calling the executive order that is the subject of
18 this litigation the fourth executive order. So was
19 anyone at Department of State involved in the fourth
20 executive order?
21 MR. DUGAN: Objection. Lacks foundation.
22 BY MS. KEANEY:

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1 Q. You can still answer.
2 A. Not that I know of.
3 Q. Okay. If we can start with the first
4 executive order. What role did you play in
5 implementing the first executive order?
6 MR. DUGAN: Objection. Assumes facts not in
7 evidence.
8 You can answer.
9 THE WITNESS: So I'm trying to separate the
10 two in my mind.
11 BY MS. KEANEY:
12 Q. Yeah. So this would be January --
13 A. Right. I see. 27 is the first one.
14 So, again, just stating up front that because
15 there was quite a bit of turmoil during this period
16 because of executive orders and then court actions, I
17 believe that what happened with that one was that our
18 primary role was to halt refugee travel into the
19 United States, but I can't remember if we had a little
20 bit of a grace period at that time.
21 So I don't believe that we halted travel
22 immediately, but I think we had a couple days to

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1 implement it.

2 Q. Okay. And what role did you play in halting

3 refugee travel pursuant to the executive order?

4 A. There were messages sent out from PRM to our

5 resettlement support centers in IOM about this, and

6 they either would have been sent by Larry or myself or

7 Jennifer Smith. I can't say exactly if I sent any of

8 those E-mails. But I was certainly involved in the

9 discussion.

10 Q. Okay. Then with respect to EO2, the second

11 executive order, what role did you play in

12 implementing that executive order?

13 A. So there was definitely a grace period built

14 into the second one. And so we halted refugee travel,

15 but I think it was about 10 days hence. So we were

16 working with our resettlement support centers and IOM

17 to provide instructions based on the language of the

18 EO about up until when refugees could still travel to

19 the United States.

20 We also worked closely with CBP to make

21 sure -- because that executive order also had

22 provisions about arriving immigrants, but refugees

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1 still could arrive for a certain period of time, there

2 was a little bit of confusion. So we had to work with

3 CBP to make sure they had lists of refugees that were

4 okay to enter, although that was more Larry Bartlett

5 who was working with CBP on that.

6 MR. DUGAN: I'm going to state at this point

7 for the record, so I don't have to interrupt your

8 questions, the government would consider this line of

9 questioning about the history of the EOs and the

10 witness' involvement in them improper and far outside

11 the scope of authorized discovery. So this is sort of

12 a standing objection to this line of questioning.

13 Again, I don't want to interrupt every question you

14 ask in this area.

15 BY MS. KEANEY:

16 Q. How would you say the executive orders have

17 impacted refugee processing?

18 MR. DUGAN: Objection. Calls for

19 speculation.

20 You can answer.

21 THE WITNESS: How have they impacted refugee

22 processing?

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1 BY MS. KEANEY:

2 Q. Yes.

3 A. They have slowed it down.

4 Q. Anything else?

5 A. They have made it more -- they have made the

6 process for admitting certain profiles much more

7 difficult than it used to be.

8 Q. What profiles?

9 A. Largely the SAO nationalities.

10 Q. How have they made it more difficult?

11 A. Because the parameters of the SAOs change.

12 So the profiles of the type of people who needed an

13 SAO expanded. And we had to collect -- for anyone

14 as -- I can't remember if it was the end of the

15 120-day review or 90-day review, but I think it was

16 the 120-day. We had to go over all applicants who

17 hadn't yet traveled who needed an SAO and collect

18 additional information from them and rerun the SAO.

19 So it has created a very large backlog of

20 people who need SAOs.

21 Q. Either for the first time or need to have

22 their SAOs rerun; is that correct?

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1 A. Yes.

2 Q. We'll get into more detail about that. I'm

3 going to be asking you some questions about the

4 discovery that has taken place in this case. So I

5 first wanted to ask you a few background questions.

6 Are you aware we have issued interrogatories

7 in this litigation?

8 A. I'm aware, yes.

9 Q. Did you play any role in responding to the

10 interrogatories?

11 A. I did not. I only kind of vaguely knew that

12 they were there, but I know that Hillary has spent a

13 lot of time on it.

14 Q. You didn't play any role in reviewing any of

15 the responses to the interrogatories?

16 A. Not that I recall.

17 Q. Okay. Anyone else aside from Ms. Ingraham

18 that was involved in responding to the plaintiff's

19 interrogatories?

20 A. I don't think I -- I don't think I would

21 know -- I'm not sure who else she worked with on this.

22 Q. Okay. Are you aware that the plaintiffs also

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1 issued requests for production in this litigation?
2 That's the request for documents.
3 A. Yes.
4 Q. Okay. Did you play any role in responding to
5 our request for documents?
6 A. No.
7 Q. Who at Department of State or PRM played a
8 role in that?
9 A. Hillary Ingraham.
10 Q. Anyone else?
11 A. Again, I don't know if she was only working
12 with people under her at the RPC or if she brought in
13 like Jennifer or Larry. I just don't know.
14 Q. Okay. Do you know who determined which
15 custodians -- for the E-mail searches, which
16 custodians would be searched to respond?
17 MR. DUGAN: Sorry. Objection. Lacks
18 foundation to the extent the witness does not appear
19 to know about the discovery efforts.
20 THE WITNESS: Could you repeat the question.
21 BY MS. KEANEY:
22 Q. Sure. The question is do you know who

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1 determined which custodians for the E-mail searches
2 were -- who identified the custodians to search?
3 MR. DUGAN: Objection.
4 THE WITNESS: I do not.
5 BY MS. KEANEY:
6 Q. Do you know whether, on our organizational
7 chart, there are, as I understand it, five program
8 officers overseas; is that correct?
9 A. I think I added a sixth to your chart.
10 Q. Okay. Do you know whether the six program
11 officers' accounts were searched in response to our
12 request for production?
13 MR. DUGAN: Same objection.
14 THE WITNESS: I do not.
15 BY MS. KEANEY:
16 Q. Do you know whether your E-mail was searched
17 in response to our request for production?
18 MR. DUGAN: Same objection.
19 THE WITNESS: I do not believe that it was.
20 BY MS. KEANEY:
21 Q. Okay. Are you aware of anything that might
22 have been withheld from plaintiffs as a result of --

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1 on the basis of some sort of privilege?
2 MR. DUGAN: Same objection.
3 THE WITNESS: I do not know.
4 MS. KEANEY: I'm handing you what's been
5 marked as Plaintiff's Exhibit 2.
6 (Previously marked Exhibit 2 was handed to
7 the witness.)
8
9 BY MS. KEANEY:
10 Q. Do you recognize this document?
11 A. I do.
12 Q. What is it?
13 A. It's the tripartite memo from state DHS and
14 DNI to the President at the end of the 120-day review
15 that was required by EO2.
16 Q. How do you know that?
17 A. Because I've seen it many times.
18 Q. Okay. Can we refer to this as "the agency
19 memo"?
20 A. Sure.
21 Q. Do you understand that this case is about the
22 agency memo?

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1 A. Yes.
2 Q. Okay. Were you involved at all in the
3 process that led up in the issuance of the agency
4 memo?
5 A. I was not.
6 Q. So the first time that you saw the agency
7 memo was when?
8 A. When it was issued.
9 Q. Okay. Do you know who at Department of State
10 might have been involved in the issuance of the agency
11 memo?
12 MR. DUGAN: Objection to the extent it calls
13 for speculation.
14 You can answer if you know.
15 THE WITNESS: So in my office Hillary
16 Ingraham and Larry Bartlett were involved in the
17 interagency working group that led up to this agency
18 memo. I don't know who exactly drafted the memo in
19 the end.
20 BY MS. KEANEY:
21 Q. The interagency working group that you just
22 referred to, is that the 6(a) working -- Section 6(a)

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1 working group that's both referred to in this agency
 2 memo and what's called for by the prior executive
 3 order?
 4 A. I believe that is correct, yes.
 5 Q. Okay. You stated that the first time you saw
 6 the agency memo was on the day that it was issued.
 7 Were you surprised about the issuance of the agency
 8 memo?
 9 MR. DUGAN: Objection. Vague.
 10 THE WITNESS: Was I surprised at the content
 11 of it?
 12 BY MS. KEANEY:
 13 Q. First, were you surprised that -- of its
 14 existence?
 15 A. No.
 16 MR. DUGAN: Same objection.
 17 THE WITNESS: No.
 18 BY MS. KEANEY:
 19 Q. Why is that?
 20 A. Because I knew that the working group had to
 21 come up with a product to present to the President, or
 22 to write a memo to the President.

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1 Q. Okay. Were you surprised at the content of
 2 the agency memo?
 3 MR. DUGAN: Same objection.
 4 THE WITNESS: Was I surprised. I don't
 5 believe I was surprised, no.
 6 BY MS. KEANEY:
 7 Q. Why is that?
 8 MR. DUGAN: Same objection.
 9 THE WITNESS: Why was I not surprised?
 10 Because I knew that there was an interagency working
 11 group who were working on a memo, and I assumed that
 12 they would come up with recommendations to tighten
 13 refugee vetting.
 14 BY MS. KEANEY:
 15 Q. Were you surprised by any of the
 16 recommendations that they had come up with?
 17 MR. DUGAN: Same objection.
 18 THE WITNESS: I don't know that I could say
 19 that I was surprised or not. I honestly don't
 20 remember being surprised by them. You know, many of
 21 them were along the lines of what I probably expected.
 22 BY MS. KEANEY:

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1 Q. Okay. Had you heard that the White House
 2 wanted Somalis to be banned in particular?
 3 A. I did not, no.
 4 Q. Okay. What's your understanding of what the
 5 agency memo did with respect to SAO processing?
 6 MR. DUGAN: Objection to the extent it calls
 7 for a narrative.
 8 You can answer.
 9 THE WITNESS: My understanding of what it did
 10 to...
 11 BY MS. KEANEY:
 12 Q. SAO processing, or processing of SAO
 13 nationals.
 14 A. Well, as I referred to earlier, it caused us
 15 to put all existing SAOs on hold, go back to all of
 16 our applicants to collect additional information as
 17 required -- well, I guess it's not spelled out here,
 18 but that was required and re-request the SAOs. So
 19 that created a very large backlog of new SAO requests.
 20 Q. Okay. What's your understanding of what the
 21 agency memo did to FTJ refugee processing?
 22 MR. DUGAN: Same objection to the extent it

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1 calls for a narrative.
 2 You can answer.
 3 THE WITNESS: I believe it halted -- so,
 4 again, this is something that Hillary would know much
 5 better than I, but I believe that it halted FTJ
 6 processing for those cases that were processed by
 7 consular sections, but it did not halt FTJ processing,
 8 I don't believe, for cases that were processed by the
 9 RSCs because those FTJs had been getting all along
 10 security checks that were the same as other -- as
 11 principal refugees.
 12 So FTJs that are processed by our
 13 resettlement support centers were -- following this
 14 memo were treated in the same way as regular refugees.
 15 So they were under the new requirements that regular
 16 refugees were subject to, but they weren't halted in
 17 the way that processing of FTJs at embassies was
 18 halted.
 19 BY MS. KEANEY:
 20 Q. Okay. So just to confirm that I'm
 21 understanding, when you refer to FTJs process at RSCs,
 22 you're referring to FTJs processed in Thailand and

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1 Kenya; is that correct?
2 A. Yes.
3 Q. And so your understanding of the agency memo
4 is that FTJ processing at both Kenya and Thailand was
5 not halted by the agency --
6 A. I believe that is true. I'm not 100 percent
7 sure, but I very much believe that to be true.
8 Q. Okay. And what is that belief based on?
9 A. Based on the fact that they were -- they have
10 always gotten the same security checks as regular
11 refugees. Because their security checks have always
12 come through PRM and the RPC in the process that I
13 described, we have always gotten the same security
14 checks. But FTJs process at embassies had not been
15 getting one element of the interagency check.
16 So the embassies needed to figure out kind of
17 the systems talking to each other --
18 Q. Okay.
19 A. -- between embassies. And, again, I don't
20 know all the details, but there were some technical
21 changes that need to be made.
22 Q. Okay. Are you able to describe for me what

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1 the element -- you said there was one element that
2 wasn't being checked.
3 A. It's that one of the agencies that I didn't
4 name earlier was not checking those refugees.
5 Q. Okay.
6 A. That the request wasn't going to that agency
7 because the pipeline didn't exist.
8 Q. All right. Earlier you had stated that
9 Ms. Ingraham might know more with respect to the
10 processing of FTJs. Can you explain to me why that
11 is? What is her role in processing FTJs?
12 A. Hillary is just much, much more -- much
13 closer to the -- because she runs the refugee
14 processing center, she's much closer to the processing
15 work that's done. She's more in contact with the
16 resettlement support centers about security checks and
17 processing. She's more operational than I am.
18 Q. Okay. What effect did the agency memo have
19 on non-SAO processing?
20 MR. DUGAN: Similar objection to the earlier
21 to the extent it calls for a narrative.
22 You can answer.

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1 THE WITNESS: So some of the provisions in
2 the memo and the recommendations that came out of the
3 working group applied to all refugees. So if you look
4 at -- okay. I guess even the non-SAO nationalities
5 had to have additional data collected because they
6 also -- I think the additional data had to go to the
7 interagency check partners. So they were subject to
8 increased data collection. The enhanced identity
9 management, they were being interviewed on circuit
10 rides with FDNS officers, although USCIS is much
11 likely to send FDNS officers to circuit rides that
12 have more SAO nationalities.
13 Under the system checks, the updating
14 security checks, non-SAO nationalities also have to
15 have their -- at least their interagency check
16 re-requested if some of the key data points in their
17 biodata changed.
18 BY MS. KEANEY:
19 Q. Okay. When you refer to if some -- you said
20 the key data points in their bio at that time changed.
21 Is that a bio diff?
22 A. Yes.

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1 Q. In the agency memo, I'm looking at what is
2 Page 8 at the top. Sorry. At the top of the page.
3 A. I see it. Okay.
4 Q. In that first real paragraph, the last
5 sentence, it says, "DHS and DOS will work together to
6 take resources that may have been dedicated to
7 processing nationals," and it goes on, "of SAO
8 countries during this review period and reallocate
9 them to process applicants from non-SAO countries."
10 So in particular with respect to that provision in the
11 agency memo, what effect did that have on non-SAO
12 refugee processing?
13 MR. DUGAN: Same objection. Calls for a
14 narrative, and also lacks foundation.
15 You can answer if you know.
16 THE WITNESS: So what impact did that
17 sentence have on non-SAO nationalities?
18 BY MS. KEANEY:
19 Q. Yes. The reallocation of resources.
20 MR. DUGAN: Same objection.
21 THE WITNESS: I would say the primary kind of
22 manifestation of this was in scheduling second quarter

<p style="text-align: right;">Page 58</p> <p>1 circuit rides. So the circuit rides would have taken 2 place from January to March. We took this to mean 3 that we should not schedule SAO nationalities unless 4 there was a certain reason to do so in case there 5 was -- unless there was a case that had -- was in a 6 particularly dire situation, and I believe we had to 7 get USCIS' permission if we were going to put an SAO 8 nationality on a circuit ride schedule in the second 9 quarter, I believe. 10 BY MS. KEANEY: 11 Q. Okay. So you just described the -- as part 12 of implementation of the agency memo, the Department 13 of State determined that Quarter 2 circuit rides, that 14 they should not schedule any SAO nationals for those 15 quarter circuit rides. Is that fair? 16 MR. DUGAN: Objection. Mischaracterizes 17 testimony. 18 BY MS. KEANEY: 19 Q. Absent the permission to do so in exigent 20 circumstances? 21 A. Yes, correct. 22 Q. Okay. What other steps did the Department of</p>	<p style="text-align: right;">Page 60</p> <p>1 MR. DUGAN: Could you restate the question, 2 please. 3 MS. KEANEY: Sure. 4 Q. What additional data was it that needed to be 5 collected when you had referred to "additional data"? 6 A. All right. I guess, given that we had to 7 collect the additional data from people, people are 8 aware what that additional data was. So we had to -- 9 the main piece was we had to go back further in time 10 on certain pieces of information. The -- any 11 addresses you had, phone numbers that you had. Maybe 12 even employment. And instead of going back 5 years, 13 we had to go back 10 years. 14 And then -- oh, gosh. They had to ask 15 additional questions about people who were on the 16 applicant's family tree. We had to gather more 17 information. I think it was more phone numbers and 18 addresses from more people on the family tree. Those 19 are the two primary things that I recall. 20 Q. Okay. Some of that is described in the 21 documents that we've received. 22 A. Okay.</p>
<p style="text-align: right;">Page 59</p> <p>1 State take to implement the agency memo? 2 MR. DUGAN: Objection. Lacks foundation. 3 You can answer. 4 THE WITNESS: Well, the big piece was we 5 started to instruct our RSCs to go out and get the 6 additional data that needed to be collected. 7 BY MS. KEANEY: 8 Q. And what is that additional data that needed 9 to be collected? 10 MR. DUGAN: Same objection. 11 THE WITNESS: Can I talk about SBU 12 information in this setting? 13 MR. DUGAN: So I'll proffer for the record 14 that information that is deemed SBU by the state 15 department can, in some circumstances, be law 16 enforcement sensitive. So I would ask the witness to 17 confer with counsel on any questions the witness may 18 have about privilege before disclosing information the 19 witness believes may impact the privilege. 20 BY MS. KEANEY: 21 Q. Do you feel you need to consult your 22 attorneys before answering the question?</p>	<p style="text-align: right;">Page 61</p> <p>1 Q. So the -- so far you've discussed two ways in 2 which the Department of State implemented the agency 3 memo pursuant to the Quarter 2 circuit rides as well 4 as this additional data. Were there any other steps 5 that Department of State took to implement the agency 6 memo? 7 MR. DUGAN: Objection. Same objection. 8 Lacks foundation. 9 You can answer. 10 THE WITNESS: So I would say that most of the 11 other changes that we had to implement would be better 12 answered by Hillary Ingraham because it was making 13 changes in WRAPS on things like this enhanced identity 14 management, expanded information sharing, and updating 15 security checks. So they were technical fixes. 16 BY MS. KEANEY: 17 Q. Okay. Sorry to go back, though, but on the 18 additional data that needed to be collected, you said 19 was that for all SAOs? 20 A. Actually, I might have said that wrong in the 21 beginning. It was for all nationalities we had to 22 collect the additional data. But if I remember</p>

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1 correctly, it was only SAO nationalities who were held
2 up when we had this additional information. If you
3 were non-SAO nationality -- again, this is a question
4 better answered by Hillary. But there was either a
5 grace period or something that was allowed for non-SAO
6 nationalities on collecting this information.
7 Q. Did it depend on where they were in the
8 process?
9 A. I believe it did. I believe it did. But I
10 don't recall the details.
11 Q. Okay. We can revisit this. I have some
12 documentation that may refresh your recollection.
13 A. Okay.
14 Q. Did you receive any instructions from your
15 superiors about how to implement the agency memo?
16 A. I do not recall receiving instructions. I'm
17 sure that we spoke to our front office about this, but
18 it was probably more them saying to us, "You guys
19 doing all this?" I mean because they're not refugee
20 processing experts. So I imagine we had some
21 discussions with our front office just to make sure
22 that we were implementing all of these measures.

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1 Q. And when you refer to the "front office," who
2 does that refer to?
3 A. So at the time, Simon Henshaw was our
4 principal deputy assistant secretary who was in charge
5 because we had no assistant secretary -- we still have
6 no confirmed assistant secretary. What I can't
7 recall -- no, actually I can recall. So he was the
8 PDAS. Our deputy assistant secretary that we reported
9 directly to at the time was Mark Stirella.
10 So they're both career foreign service
11 officers who were in our front office at the time.
12 Q. Okay. So you remember having conversations
13 with Mark Stirella about implementation of the agency
14 memo?
15 MR. DUGAN: Objection. Misstates testimony.
16 BY MS. KEANEY:
17 Q. Do you remember having conversations with
18 Mark Stirella about implementation?
19 A. I don't remember specific conversations, but
20 I can't imagine that we didn't have them because this
21 came out, and it was obviously important. And so I'm
22 sure we had conversations about just making sure that

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1 we were complying.
2 Q. Did you receive any instructions from the
3 White House about implementation of the agency memo?
4 A. Not that I recall.
5 Q. The agency memo included what we call a
6 "waiver process," and I'm referring to, again, at
7 Page 8 of the agency memo. It's the second real
8 paragraph. Meaning that on a case-by-case basis the
9 secretary of homeland security and state would
10 consider particular individuals for admission
11 notwithstanding the suspension. Is that your
12 understanding?
13 A. Yes.
14 Q. Okay. Was there a process put in place to
15 determine requests for a waiver?
16 MR. DUGAN: Objection. Vague.
17 You can answer.
18 THE WITNESS: Yes. We would put together
19 lists that we would send over to USCIS of cases that
20 we thought should be considered for a waiver.
21 BY MS. KEANEY:
22 Q. When did that start?

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1 A. I am guessing that we sent the first list
2 over to them a month later. So maybe mid to late
3 November.
4 Q. How often would you send the list, would you
5 estimate?
6 A. We did not send that many because USCIS never
7 responded to our first list of cases. But my
8 recollection is that we later sent a smaller list
9 because I think it was determined that the list that
10 we sent the first time had too many people on it, and
11 so they wanted us to send a smaller list that we sent
12 later. But I believe that was not until January, and
13 then the end of the 90-day period was coming at the
14 end of January anyways. So...
15 Q. You said it was determined that you had too
16 many people on the first list. How was that
17 determination --
18 A. USCIS told us that. They asked us to send
19 them a shorter list.
20 Q. Someone in particular at USCIS?
21 A. I'm sorry. I don't recall.
22 Q. Do you remember how many people the first

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1 list had on it?
2 A. About 200, I think.
3 Q. And did USCIS tell you how many people should
4 be on any subsequent list?
5 A. I don't know if they gave us a specific
6 number, but the shorter lists were substantially
7 smaller, like in the range of 30 to 40 is what I
8 recall.
9 Q. When you said USCIS told you that the list
10 was too large, how was that communicated? Was it via
11 E-mail?
12 A. I don't know. So our primary partners at
13 USCIS are the refugee affairs division. So most of
14 the time Larry or I are speaking to our counterparts
15 over there, the director or deputy of the refugee
16 affairs division. So I'm guessing that one of the two
17 of them conveyed that to us. I honestly do not
18 remember if it was a phone call or an E-mail.
19 Q. Sorry. Who are you referring to over at RAD?
20 A. So I'm hesitating only because it was Barbara
21 Strack up to a certain point, but then she retired.
22 Q. Okay.

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1 A. So it was either Barbara Strack or Joanna
2 Ruppel in the director job, and then I believe during
3 the entire time the deputy director was Mary -- I'm
4 blanking on her name.
5 Q. Is it Stone?
6 A. Yes. Mary Margaret Stone. Thank you.
7 Q. Did they explain any rationale behind why
8 they felt the list was too long?
9 A. I don't recall because I don't recall exactly
10 how we were told that the list was too long. So I do
11 not recall if they gave a rationale when that message
12 was conveyed to us.
13 Q. Okay. So in terms of PRM's role in the
14 process for determining a waiver, did PRM have any
15 role aside from providing lists of potential waiver
16 refugees to USCIS?
17 A. No.
18 Q. Who was the ultimate decision maker on
19 whether or not a waiver would be granted?
20 A. Someone at USCIS, but I'm not sure.
21 Q. How did PRM put together the list of
22 individuals who might be suitable for a waiver?

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1 A. I was not directly involved in putting
2 together a list, but normally, when we put together an
3 expedite list like that, someone would go out to our
4 resettlement support centers and ask them to put
5 forward cases that they knew of who were in a
6 particularly difficult situation, either significant
7 medical condition they weren't able to have treated or
8 they had significant physical or legal protection
9 concerns.
10 So I would imagine that it was our RSCs who
11 sent in -- who sent in candidates along with a
12 rationale. I believe there might have been a process
13 whereby they might have had to provide the reason that
14 they think it should be included. Then I think
15 someone in our office, probably Jen, winnowed the list
16 down to what she thought were the most in need of
17 protection.
18 Q. Was it also Ms. Smith who winnowed the list
19 down further once you received instruction from USCIS
20 that it was too large?
21 MR. DUGAN: Objection. Lacks foundation.
22 You can answer if you know.

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1 THE WITNESS: I'm guessing that would be her
2 role. So if she was in the office that week and she
3 wasn't on vacation or wasn't someone acting in her
4 role, that is something that would fall within her job
5 normally. So I'm guessing that it was her.
6 BY MS. KEANEY:
7 Q. Okay. And the waiver process that was
8 created under this agency memo, is that the first time
9 that waiver process had been created under the various
10 executive orders we've been discussing?
11 A. No. No. I don't believe so.
12 Q. Do you recall --
13 A. Unfortunately, no. I'm not sure if I'm
14 thinking of the period -- there was a process by which
15 we could put cases forward that were SAO nationalities
16 that fell into the national interest, and at one point
17 we had developed a list of cases in Nauru and Manus
18 which were determined to be important because of our
19 arrangement with Australia. And I believe there was
20 also a list of cases that were in particular -- had
21 medical or other concerns.
22 But that period between the issuance of the

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1 first EO, and frankly, you know, all the way up to
2 this period was so -- there was so many times when,
3 you know, we were either under instructions to do
4 something because of court order or -- so what I can't
5 remember, if this was the first time -- this wasn't
6 the only time. I honestly don't know if it was the
7 first time or if -- there were certainly -- I'm sorry.
8 I'm rambling here.
9 There were certainly -- you know, I think
10 earlier on in the periods maybe after the second EO
11 but before the first court injunction on that that we
12 could put together a list of cases of people who
13 should be able to arrive, and we had -- I believe we
14 had to work with USCIS and CBT on that. I'm not
15 remembering the details or when exactly that was.
16 Q. Okay. That's fair. To your recollection,
17 was a waiver ever granted under any of the executive
18 order prior to this agency memo?
19 A. Yes. They were not granted during -- so this
20 list of 230 or something that we sent later, none of
21 those were granted. But what I was just talking about
22 in this list of people who were allowed to travel at

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1 some point during the executive order, my recollection
2 is that some of those people were able to come.
3 Q. Do you have any sense of how many that would
4 have been?
5 A. I'm -- let's say around 100 people, perhaps.
6 100, 150.
7 Q. So understanding that your memory is a bit
8 foggy, but under Executive Order 2, I believe which
9 was in place for the longest period of time, would
10 that have been -- this would have been this issue,
11 sorry.
12 So that would have been executive order in
13 effect from June 2017 until it was replaced by this
14 executive order agency memo, which is the subject of
15 this litigation. Is that the period during which you
16 believe there were some waivers granted?
17 MR. DUGAN: Objection. Lacks foundation to
18 the extent the witness has testified she doesn't
19 recall specific details.
20 You can answer to the extent you know.
21 THE WITNESS: I think I got a little confused
22 when you were talking about orders and dates in June.

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1 Could you ask that question again.
2 MS. KEANEY: Sure.
3 Q. So EO2 --
4 A. Yes.
5 Q. -- which would have been in effect from
6 June --
7 A. No, March.
8 Q. So there was an injunction that was issued,
9 and then the Supreme Court allowed a portion of it to
10 move forward. I know we're all a bit caught up in the
11 details here. And so there was a part of Executive
12 Order 2 that went into effect in June 2017 that was in
13 effect, then, from June 2017 until it was replaced by
14 the executive order and agency memorandum that is the
15 subject of this litigation?
16 A. You are correct, yes.
17 Q. To your knowledge, would that be the time
18 where you believe some waivers had been granted?
19 MR. DUGAN: Same objections as before.
20 Object to the extent the question is confusing.
21 You can answer.
22 THE WITNESS: So during that period from the

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1 Supreme Court decision in late June to late October, I
2 wouldn't characterize them as waivers or exceptions.
3 We had that BFR allowance. And so cases were allowed
4 to come because they had a bona fide relationship to a
5 person or entity in the United States. To me, that
6 was a little different because that was -- we didn't
7 need to get -- if you had the bona fide relationship
8 and if USCIS confirmed that you had the bona fide
9 relationship, you could travel. So that's a little
10 different in my mind.
11 I'm recalling a different period of time. It
12 must have been earlier when people had to get a formal
13 waiver from -- I believe it was from our PRM front
14 office. I believe Simon had to sign the memo along
15 with someone from USCIS.
16 MR. KEANEY: Thank you for clarifying. It's
17 confusing.
18 Q. And just to confirm -- I believe you said
19 this -- but during the time period when the agency
20 memo was in effect from October 24, 2017 until the
21 injunction in this case on December 23, 2017, there
22 were no waivers granted; is that correct?

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1 A. Correct.

2 Q. Did you ever receive any response to the list

3 that you had sent to USCIS?

4 A. No.

5 Q. That is aside from the response that the list

6 was too long?

7 A. No, not that I recall.

8 Q. None of the subsequent lists that you sent

9 received any response?

10 A. Not that I recall.

11 MS. KEANEY: How are you doing? Would you

12 like to take a break?

13 THE WITNESS: I'm fine, but if you want to

14 take five minutes...

15 MS. KEANEY: Let's keep going then.

16 THE WITNESS: All right.

17 MS. KEANEY: I'm going to hand you what's

18 been marked as Plaintiff's Exhibit 34.

19 (Previously marked Exhibit 34 was handed to

20 the witness.)

21 BY MS. KEANEY:

22 Q. Do you recognize this document?

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1 A. I do.

2 Q. What is it?

3 A. It is guidance that we sent to our

4 resettlement support centers in terms of kind of

5 immediate actions that they needed to take in relation

6 to the agency memo.

7 Q. And this was sent by you on October 24, 2017;

8 is that correct?

9 A. Yes.

10 Q. And at this time, would you have been acting

11 director of PRM?

12 A. It might have been the first day because I

13 remember that Larry left on a Monday. So it may have

14 been Monday the 23rd that was his last day with us.

15 Q. So this is an E-mail from you as acting

16 director of PRM to the RSCs -- was it sent to others

17 as well or just to the RSCs?

18 A. If I could just say at the time I was still

19 signing "Deputy Director." At the state department we

20 aren't like other agencies where as soon as there's a

21 vacancy above you there's kind of this process whereby

22 there's like a personnel action in your name. It's

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1 very informal. So I continued to sign as deputy

2 director for a period of time until I kind of clarify

3 with my front office am I supposed to be calling

4 myself acting director.

5 So I think I was -- I believe Larry was gone.

6 So I was acting as though I was acting director, but

7 I'm not sure I was calling myself that at the time.

8 Q. Okay. So an E-mail sent from you to the

9 RSCs. Were there others who received this E-mail?

10 A. It looks like our ref cords, our refugee

11 coordinators, are on it. They're the foreign service

12 officers who serve in our embassies and are point

13 people on refugees at our embassies.

14 Q. Okay. And what was the purpose of this

15 E-mail?

16 THE WITNESS: Can I just read through it for

17 a second?

18 MS. KEANEY: Sure. Of course.

19 (The witness reviewed Exhibit 34.)

20 THE WITNESS: Okay.

21 BY MS. KEANEY:

22 Q. Okay. So, again, what was the purpose of

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1 this E-mail?

2 A. To let people know, who were processing cases

3 for us at our RSCs, what kind of immediate steps they

4 needed to take or things they needed to halt,

5 basically because of the agency memo.

6 Q. And what were the immediate steps that they

7 needed to take as a result of the agency memo?

8 A. So the -- in general, the 120-day halt to the

9 program or the pause was over. So processing could

10 generally resume, except that SAO nationalities were

11 still to be kept on hold. I'm also seeing that at

12 this time we believe that all follow-to-join refugees

13 had to be halted. As I told you earlier, I thought it

14 was immediately, but it must not have been.

15 At some point it was determined that FTJs

16 that we processed could travel because they were

17 getting the security checks, but it's clear to me here

18 that at the time, we did not provide that guidance.

19 Q. Do you know approximately when you might have

20 made that determination?

21 A. I don't. I don't believe it was much after

22 that, but I don't know.

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1 Q. Do you know how that determination was made?
2 A. I don't know exactly, but I imagine --
3 obviously this was all a lot to digest. And this was
4 sent right afterwards. So I would -- I believe that
5 probably this week and, you know, in subsequent weeks
6 we were having meetings amongst ourselves to try to
7 figure out exactly what we needed to do next and what
8 other guidance we needed to send our RSCs.
9 At some point -- I don't know who -- somebody
10 must have raised -- the FTJs that we process at our
11 RSCs get the same security checks. So they should be
12 able to travel. But I believe there was a process
13 whereby we had to get others to agree to that, others
14 at USCIS, to believe that that was true, and I'm
15 guessing that took several weeks.
16 Q. Do you know whether that determination was
17 communicated to the RSCs?
18 A. I certainly hope -- I would assume so, yes.
19 It had to have been.
20 Q. Was it you that communicated that
21 determination?
22 A. Do you mean the determination in the end that

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1 they could process them?
2 Q. Yes.
3 A. I don't recall. It could have been me. It
4 could have been Hillary. It could have been Jennifer.
5 Q. So you were speaking about the immediate
6 steps that RSCs and others needed to take in order to
7 implement the agency memo. You mentioned that
8 processing in general could resume, but that SAOs
9 still had to be kept on hold. Is there anything else
10 in terms of immediate steps that RSCs needed to be
11 aware of to implement the agency memo?
12 A. Not that I recall. I don't see anything else
13 that's in this memo. I believe we -- I mean I'm not
14 sure. Maybe you have them. I'm not sure what
15 guidance we provided in subsequent weeks, but that
16 looks like that's all the guidance we provided on that
17 day.
18 Q. Okay. Can you explain to me what you mean by
19 SAOs still needed to be kept on hold? What does it
20 mean for an SAO to be on hold?
21 A. So I mean there's a case status in WRAPS
22 where you can put a case on hold for various reasons.

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1 So at some point -- I don't know if it was the RPC or
2 the RSCs had to put cases on hold to make sure they
3 wouldn't travel. And then it looks like we also -- we
4 were also at that time not -- decided to not schedule
5 SAO nationals for DHS interview, and they generally
6 couldn't proceed in their processing because there was
7 this group that was going to look at the SAO
8 nationalities, whether further changes needed to be
9 made to that list or to how we process SAOs. So we
10 just couldn't move forward on anything while this was
11 happening for 90 days.
12 Q. What about did the instructions that you were
13 providing to RSCs require canceling travel that had
14 already been scheduled at the time of the agency memo
15 on October 23?
16 MR. DUGAN: Objection. Vague.
17 You can answer.
18 THE WITNESS: Did it involve canceling travel
19 for people who were scheduled. I'm not sure of the
20 answer to that, but it's possible, given that during
21 the 120-day pause because of the BFR provision, which
22 applied to all nationalities, including SAO

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1 nationalities, then I suppose it's possible that we
2 had SAO nationalities that were booked to travel
3 beyond that period that we had to cancel. But I don't
4 recall specifically.
5 BY MS. KEANEY:
6 Q. Okay. Does your understanding of what the
7 agency memo required, would it require -- if there
8 were individuals who were scheduled to travel, would
9 it require canceling that travel?
10 A. For SAO --
11 Q. For SAO, yes.
12 MR. DUGAN: Objection. Calls for
13 speculation.
14 THE WITNESS: Yes. Unless we had a waiver
15 period, which I do not see any evidence of here. But,
16 yes, that would have been my understanding at the
17 time.
18 BY MS. KEANEY:
19 Q. Okay. If you could skip down to the second
20 to the last paragraph beginning with "Nationals from
21 SAO list countries."
22 A. Uh-huh.

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1 Q. If you could describe for me what the purpose
2 of this instruction was.

3 A. What was the purpose of this?

4 Q. Yes. What were you instructing RSCs?

5 A. It was instructing them that they couldn't
6 put forward an SAO national or adjudication, including
7 both scheduling and requesting hold lift without
8 approval by us.

9 Q. Okay. What does it mean to request a hold
10 lift?

11 A. A hold lift is a USCIS hold, and it's a
12 status, again, in WRAPS where if a case is on hold but
13 an RSC believes that it is ready for a hold lift,
14 meaning that the reason that USCIS put it on hold has
15 been resolved, that they put it forward to ask USCIS
16 to lift the hold so the case can move forward.

17 Q. Okay. Is it true that only USCIS can put a
18 case on hold?

19 A. No, that's not true.

20 Q. Okay.

21 A. Could be us. Could be the RSC also.

22 Q. Okay. In what situations would the PRM or

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1 the RSC put a case on hold?

2 A. It would be far more likely than an RSC would
3 put a case on hold. You know, let's say you're
4 processing a case and it's close to being done or
5 ready to travel, and suddenly, the mom on the case has
6 a baby. Well, there's a new member on the case. So
7 you have to put the case on hold because USCIS has to
8 kind of certify the baby and usually they have to see
9 the baby and that sort of thing. So an RSC would put
10 a case on hold for that.

11 Or let's say UNHCR contacted an RSC and said,
12 "We've got a group of cases that we want you to put on
13 hold because we fear that there's been fraud in this
14 office that was referring cases to you, and we're
15 doing an investigation. So please put all these cases
16 on hold." Those are some of the reasons that I see.

17 Why PRM might? It's probably a better
18 question asked of Hillary. I can't think of -- I
19 really can't think of a reason offhand why PRM by
20 itself, you know, without having a reason that came
21 from USCIS or an RSC, why we would put a case on hold.
22 I can't think of anything.

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1 Q. Okay. And why might USCIS put a case on
2 hold, from your understanding?

3 MR. DUGAN: Objection. Calls for
4 speculation. Incomplete hypothetical.

5 You can answer if you know.

6 THE WITNESS: It's normally done after --
7 from my understanding, it's normally done after USCIS
8 has done an interview and that there was something
9 that they uncovered during the interview that causes
10 them to think "We need to conduct an additional
11 review." I don't know if you know about CARP,
12 C-A-R-P. So if they thought that there were national
13 security concerns that came up during the interview,
14 not through a security check but through the testimony
15 that someone gave, they would then probably put it on
16 CARP hold.

17 So that's the type of hold -- that probably
18 is the most common, but I'm sure they have other,
19 often security related or -- national security related
20 reasons to put a case on hold.

21 BY MS. KEANEY:

22 Q. I want to confirm something I believe I

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1 understood you to be saying, which is at the time the
2 agency memo issued, all SAO national cases were put on
3 hold; is that correct?

4 A. Again that's a question better asked of
5 Hillary, but that's my understanding.

6 Q. Okay. And when you say they were put on
7 hold, it would mean a specific technological status
8 put into WRAPS; is that correct?

9 A. Yes.

10 Q. Okay. And what would be the process for
11 taking an individual off of hold, or can an individual
12 come off hold?

13 A. Uh-huh.

14 Q. Okay. What would be the process for taking
15 them off of hold?

16 A. Well, it would depend on who asked for the
17 hold. And, again, I'm sorry to keep referring you
18 back to Hillary, but if it's a USCIS hold for a case
19 like a CARP reason that I told you about, it would be
20 USCIS that would have to remove that hold, and RSC
21 would ask USCIS to remove that hold.

22 In terms of the cases, the fact that all SAO

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1 nationalities were put on hold, again, Hillary would
 2 be the better source of this, but my understanding
 3 would be that we asked RSCs to put them on hold, and
 4 then in order to remove them from hold -- I'm actually
 5 not sure if that would have had to have just -- if we
 6 would have had to get USCIS' approval for that or not.
 7 I'm not sure.

8 Q. Okay. That same paragraph references that
 9 nationals from SAO list countries could not be
 10 presented to USCIS without explicit approval by DHS
 11 and state?

12 A. Uh-huh.

13 Q. How were RSCs to seek explicit approval from
 14 DHS or state?

15 A. I'm not entirely sure, but I'm guessing it
 16 would have been by E-mail. That the RSC would have
 17 E-mailed, you know -- either if they had a number of
 18 cases, they probably would have put them onto a
 19 spreadsheet and E-mailed them to us and we would have
 20 checked with DHS. But I don't think I was terribly
 21 involved in this process.

22 Q. Can I clarify, does this process -- is this

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1 process the same as the waiver process under the
 2 agency memo, or is it a separate process?

3 A. To me it's separate. This feels different.

4 Q. How is it different?

5 A. Because the waiver process was about allowing
 6 people to be admitted into the United States. This is
 7 just about moving forward to the next step involving
 8 DHS. I mean it doesn't use the word "waiver" in the
 9 sentence. To me, it seems like a less -- it's less
 10 consequential because it's not about admitting
 11 somebody. It's about just putting them forward for
 12 DHS.

13 Q. Okay. And, again, for the process of getting
 14 explicit approval, you're not clear about what that
 15 process was?

16 A. I don't recall.

17 Q. Who may have information about that?

18 A. I think Hillary would.

19 MS. KEANEY: Okay. I think it might be time
 20 to take a break, if that's okay.

21 THE WITNESS: Okay. Sure.

22 (Whereupon a recess was taken from 10:40 a.m.

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1 to 10:49 a.m.)

2 MR. DUGAN: Before we start questions, I want
 3 to make a statement on the record. We've done some
 4 internal research and have learned that it is now our
 5 understanding at DOJ that the identities of the two
 6 vetting agencies, other than FBI, are not DET
 7 classified, are instead, in the agency's view, law
 8 enforcement sensitive.

9 And so we would instruct the witness not to
 10 answer questions that would identify those vetting
 11 agencies but not on the basis of classification but
 12 rather on the basis of LES privilege.

13 MR. COX: Can you explain the basis for -- as
 14 I understand it, law enforcement sensitive privilege
 15 typically applies when divulging information would
 16 somehow jeopardize -- like would give an individual
 17 the ability to circumvent, you know, whatever the
 18 security measure is. So it seems odd to think that
 19 the identity of an agency could fit that criteria.
 20 But I'm curious if you have any further explanation
 21 for why it would be law enforcement sensitive to the
 22 identity of the agency.

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1 MR. DUGAN: Yeah. That's a fair question. I
 2 think risk of circumvention is probably not the only
 3 circumstance in which the government would invoke LES.
 4 I think more generally, it applies in situations where
 5 release of the information could be somewhat damaging
 6 to the national security, but not such as to rise to
 7 the level of confidential, secret or top secret
 8 information within the classification system under --
 9 I don't recall the EO that establishes those levels
 10 but it's in the executive order. I don't have further
 11 information at this point about the specific basis for
 12 asserting LES. We can look into it internally, and we
 13 can provide some additional information when we're
 14 able.

15 MR. COX: Yeah. I think that would be
 16 helpful, and I think -- you know, in general, I think
 17 it would be -- it's useful for us, like when you're
 18 asserting the privilege, to know like what the basis
 19 is.

20 MR. DUGAN: Understood. I mean I thought
 21 this was classified information until quite recently
 22 myself. So I'm continuing the conversation with the

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1 agency to learn more.
2 MR. COX: Okay.
3 MS. KEANEY: Okay. I'm handing you what's
4 been marked as Plaintiff's Exhibit 35.
5 (Previously marked Exhibit 35 was handed to
6 the witness.)
7 BY MS. KEANEY:
8 Q. Which is a document entitled "FINDINGS OF
9 FACT, CONCLUSIONS OF LAW, AND ORDER ISSUING
10 PRELIMINARY INJUNCTION."
11 Are you familiar with this document?
12 A. I don't believe I am, no.
13 Q. This is the preliminary injunction that was
14 issued on December 23, 2017 in our case.
15 A. Okay.
16 Q. So is this the first time that you're seeing
17 this document, this order?
18 A. I've certainly not read it. I don't recall
19 if I've seen it.
20 Q. When did you first become aware of the
21 preliminary injunction in our case?
22 A. Well, I was on vacation in California at the

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1 time. So I was not closely following it but was
2 checking my Blackberry periodically. So kind of knew
3 in general that it might be coming. But I don't know
4 exactly when it was that I became aware.
5 Q. Okay. Do you remember how you became aware
6 of it, the injunction had issued?
7 A. I think probably I saw an E-mail when I
8 checked my Blackberry.
9 Q. Do you know who that would have been from?
10 A. Probably Meg Pickering.
11 Q. That's agency counsel?
12 A. Yes.
13 Q. Okay. What was your understanding of what
14 the injunction required?
15 MR. DUGAN: Objection. Calls for a legal
16 conclusion or interpretation.
17 You can answer to the extent you know.
18 THE WITNESS: My understanding was that it
19 lifted the -- it lifted the provisions of EO -- would
20 that have been EO4?
21 BY MS. KEANEY:
22 Q. That's right. Yes.

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1 A. -- that put a halt to travel of SAO nationals
2 and FTJs.
3 Q. As a practical matter, what did that mean in
4 terms of what the agency needed to do in order to
5 comply with the injunction?
6 MR. DUGAN: Same objection.
7 THE WITNESS: It meant that we needed to
8 instruct the RSCs that they could resume processing of
9 both categories, both SAO nationals and FTJs.
10 BY MS. KEANEY:
11 Q. Were you a part of any discussions about how
12 to implement the injunction in this case?
13 A. Well, I was on vacation that whole next week,
14 and then when I came back had a pretty serious case of
15 the flu. So I was out of the office for the next two
16 weeks.
17 Q. I'm sorry. Do you mean three weeks in total,
18 then? One week of vacation and two weeks --
19 A. Well, so. No, I think two weeks total.
20 Q. Okay. Sorry. So I had asked you were you
21 part of any discussions on how to implement the
22 injunction in this case.

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1 A. Not in the first two weeks. I'm sure I was
2 involved in discussions when I got back to the office.
3 Q. Was there somebody else at the agency who
4 would have been a part of those discussions in your
5 absence?
6 A. So --
7 MR. DUGAN: Objection. Calls for
8 speculation.
9 Go ahead.
10 THE WITNESS: Will you ask the question
11 again?
12 MS. KEANEY: Sure.
13 Q. Was there somebody else at the agency who
14 would have been a part of those discussions in your
15 absence?
16 MR. DUGAN: Same objection.
17 THE WITNESS: Yes, but being the holidays, a
18 lot of people were out. So I'm not sure that I can
19 specifically say.
20 BY MS. KEANEY:
21 Q. So let me confirm. You were on vacation when
22 the injunction issued; is that correct?

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1 A. Uh-huh.

2 Q. You first learned that the injunction existed

3 through an E-mail of some sort. Was that on the day

4 that the injunction issued, on December 23?

5 A. I don't recall.

6 Q. And then you didn't -- you were not a part of

7 any discussions about how to -- what steps to take in

8 compliance with the injunction during those first two

9 weeks after it issued?

10 A. I was not. I was not, no.

11 Q. Did you instruct anybody that they needed to

12 take any steps to implement the injunction?

13 A. Not that I recall.

14 Q. Okay. When you returned after those two

15 weeks, were you then a part of any discussions about

16 the injunction?

17 A. I'm sure that I was.

18 Q. Can you recall when the first one would have

19 been?

20 A. No, I don't recall any specific

21 conversations. It's just if I was back in the office,

22 I'm sure I was involved somehow.

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1 Q. Without telling me the content of your

2 discussions, of course, when was the first time that

3 you spoke with your attorneys about the injunction?

4 A. I'm sorry. I don't recall. I'd only be

5 guessing. So I don't know.

6 Q. Okay. Are you aware of any steps there were

7 taken to implement the injunction after it was issued?

8 MR. DUGAN: Objection. Calls for

9 speculation.

10 THE WITNESS: I'm aware that we issued

11 guidance to the RSCs, I believe on December 24, that

12 told them to take steps to resume processing both

13 categories.

14 BY MS. KEANEY:

15 Q. And do you know who sent that --

16 A. Sumi Siram.

17 Q. Okay. Are you aware if anyone who works at

18 the White House was involved in any discussions about

19 how to implement the injunction?

20 A. I'm not aware.

21 Q. Okay. So did you tell me everything that PRM

22 did to implement the injunction. You've mentioned a

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1 guidance that was sent on December 24. What did the

2 agency next do to implement the injunction?

3 MR. DUGAN: Objection. Lacks foundation.

4 THE WITNESS: I'd only be speculating if I

5 answer that question. I don't recall specifically

6 what next steps we would have taken.

7 BY MS. KEANEY:

8 Q. Okay. When you returned after two weeks of

9 being out of the office, did you take any steps to

10 become aware of what had happened during that two-week

11 period?

12 A. I'm sure that I did because that would be

13 normal behavior for somebody to come back to the

14 office and ask what had been going on.

15 Q. Do you remember whether you did that and what

16 form it took?

17 A. I do not.

18 Q. You said that during those two weeks when

19 people were on vacation, do you know who within PRM

20 would have been primarily responsible for ensuring

21 implementation at the injunction?

22 A. I don't know specifically who was in charge.

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1 I don't recall specifically who was in charge during

2 that period. It could have been Hillary or Jennifer.

3 (Previously marked Exhibit 36 was handed to

4 the witness.)

5 BY MS. KEANEY:

6 Q. I'm handing you what's been marked as

7 Plaintiff's Exhibit 36, which is a document entitled

8 "DECLARATION OF KELLY A. GAUGER IN SUPPORT OF

9 DEFENDANTS' NOTICE OF COMPLIANCE WITH PRELIMINARY

10 INJUNCTION."

11 Do you recognize this document?

12 A. Yes.

13 Q. What is it?

14 A. It's a declaration that I made January 18.

15 Q. January 18?

16 A. I signed it on January 18. Sorry. I don't

17 know when it was --

18 Q. Sorry. Yes. Is that your signature on

19 Page 5?

20 A. Yes.

21 Q. Did you draft this declaration?

22 A. No.

<p style="text-align: right;">Page 98</p> <p>1 Q. Who did?</p> <p>2 A. I'm not sure.</p> <p>3 Q. Did you review the declaration?</p> <p>4 A. Yes.</p> <p>5 Q. When did you review it?</p> <p>6 A. I don't recall specifically the date.</p> <p>7 Q. Did you review it on more than one occasion?</p> <p>8 A. Do you mean before I signed it?</p> <p>9 Q. Yes. Thank you.</p> <p>10 A. I do not recall.</p> <p>11 Q. Who gave you the declaration to review?</p> <p>12 A. Agency counsel.</p> <p>13 Q. Do you understand that this declaration was</p> <p>14 submitted in our case in support of the defendant's</p> <p>15 notice of compliance with the preliminary injunction?</p> <p>16 A. Yes.</p> <p>17 Q. So this declaration describes the steps that</p> <p>18 the Department of State took to comply with the</p> <p>19 preliminary injunction; is that correct?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. What did those steps include?</p> <p>22 A. That we issue guidance on the 24th --</p>	<p style="text-align: right;">Page 100</p> <p>1 THE WITNESS: Without having it in front of</p> <p>2 me, no, I couldn't do that.</p> <p>3 BY MS. KEANEY:</p> <p>4 Q. Going back to the instructions that you</p> <p>5 issued on October 24, which we reviewed in the</p> <p>6 E-mail -- I believe that was Exhibit 34. Do you need</p> <p>7 to reference it?</p> <p>8 A. That we reviewed here?</p> <p>9 Q. Yes. This is the E-mail that you sent to</p> <p>10 RSCs on October 24 --</p> <p>11 A. Okay.</p> <p>12 Q. -- notifying them of the agency memo and the</p> <p>13 steps they needed to take to implement the agency</p> <p>14 memo.</p> <p>15 A. Okay.</p> <p>16 Q. So going back through those instructions, the</p> <p>17 guidance that was sent on December 24 did not reverse</p> <p>18 the prior instruction prohibiting RSCs from scheduling</p> <p>19 travel for SAO nationals; is that correct?</p> <p>20 A. As I said, I don't know. Without it in front</p> <p>21 of me, I don't know that I could answer that.</p> <p>22 MS. KEANEY: Okay. All right. We'll have it</p>
<p style="text-align: right;">Page 99</p> <p>1 Q. Anything else?</p> <p>2 A. -- to the RSCs.</p> <p>3 And that we ask the RSCs if they had some SAO</p> <p>4 nationals that they could add to the circuit ride</p> <p>5 schedule for the second quarter. That looks like the</p> <p>6 two main things.</p> <p>7 Q. Does this declaration describe all of the</p> <p>8 steps that PRM took to implement the preliminary</p> <p>9 injunction?</p> <p>10 MR. DUGAN: Objection. Lacks foundation.</p> <p>11 THE WITNESS: I'm sorry. I don't know the</p> <p>12 answer to that.</p> <p>13 BY MS. KEANEY:</p> <p>14 Q. There may have been steps that PRM took to</p> <p>15 implement the injunction which are not described in</p> <p>16 this declaration?</p> <p>17 A. There may be.</p> <p>18 Q. Can you walk me through the guidance that was</p> <p>19 issued to the RSCs on December 24, 2017 that's</p> <p>20 referenced in Paragraph 2 of your declaration?</p> <p>21 MR. DUGAN: Objection to the extent it calls</p> <p>22 for a narrative.</p>	<p style="text-align: right;">Page 101</p> <p>1 in front of you in a moment.</p> <p>2 THE WITNESS: Okay.</p> <p>3 (Previously marked Exhibit 31 was handed to</p> <p>4 the witness.)</p> <p>5 BY MS. KEANEY:</p> <p>6 Q. I'm handing you what's been marked as</p> <p>7 Plaintiff's Exhibit 31, which is a document entitled</p> <p>8 "ORDER DENYING THE MOTION FOR STAY PENDING APPEAL."</p> <p>9 Are you familiar with this document?</p> <p>10 A. "ORDER DENYING MOTION FOR STAY PENDING</p> <p>11 APPEAL." What's the date on this?</p> <p>12 Q. It's at the very top. It's January 9.</p> <p>13 A. I do not recall reading or seeing this.</p> <p>14 Q. Okay. So Exhibit 31 is an order in our case.</p> <p>15 It's marked ECF No. 106. It denied the defendant's</p> <p>16 request for a stay, which in non-lawyer speak is a</p> <p>17 pause of the injunction in our case. That request was</p> <p>18 made on December 29.</p> <p>19 So if you could go to the bottom of Page 5 of</p> <p>20 the order. The pages are at the top. Here, this</p> <p>21 is -- I'm reading from right under Roman Numeral B.</p> <p>22 A. Okay.</p>

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1 Q. The court is repeating language from the
2 defendant's request to stay our injunction, and it
3 reads, "(Defendants do not understand the preliminary
4 injunction to require them to take affirmative steps
5 to undo decisions that were made consistent with the
6 [Agency Memo] prior to the preliminary injunction's
7 issuance.')." Do you see that?
8 A. Yes.
9 Q. Okay. Did your understanding of what the
10 preliminary injunction required change at any time
11 during the course of PRM's efforts to implement it?
12 MR. DUGAN: Objection. Vague. Calls for a
13 legal conclusion or interpretation.
14 THE WITNESS: I do not recall our
15 interpretation changing.
16 BY MS. KEANEY:
17 Q. The words that I just read to you from the
18 order, have you ever seen those before?
19 (The witness reviewed Exhibit 31.)
20 THE WITNESS: Have I seen them before?
21 BY MS. KEANEY:
22 Q. Yes.

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1 A. Yes, I believe so.
2 Q. Okay. When did you see them?
3 A. I don't know.
4 Q. It sounds like -- are they familiar to you,
5 those words?
6 A. Yes.
7 Q. Why are they familiar to you?
8 A. Because our understanding was that the
9 injunction didn't nullify new requirements that were
10 stipulated in the agency memo, but that the injunction
11 applied only to the halt on SAO nationals and FTJs.
12 Q. Okay. What was that understanding based on?
13 MR. DUGAN: Same objection. Calls for a
14 legal conclusion. Lacks foundation.
15 THE WITNESS: I don't know.
16 BY MS. KEANEY:
17 Q. Okay. What do you mean by "the injunction
18 didn't nullify" the "new requirements that were in the
19 agency memo"? What requirements are you referring to?
20 A. I'm largely referring to the new SAO
21 requirements. So they required us to go out and
22 collect additional information and then rerun all the

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1 SAOs.
2 Q. Okay. And then you said that the injunction
3 applied only to the halt on SAO nationals and FTJs; is
4 that correct?
5 A. That's my recollection.
6 MR. DUGAN: Same objection. Calls for a
7 legal conclusion. Lack of foundation.
8 BY MS. KEANEY:
9 Q. Okay. So as a practical matter, how were
10 you -- how did the agency understand its obligations
11 under the injunction?
12 MR. DUGAN: Same objection.
13 THE WITNESS: How did I understand our
14 obligations under the injunction?
15 BY MS. KEANEY:
16 Q. What was the agency to do because of the
17 injunction?
18 MR. DUGAN: Same objection.
19 THE WITNESS: To allow the travel of SAO
20 nationals and FTJs once they had completed all of the
21 steps laid out in the agency memo.
22 BY MS. KEANEY:

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1 Q. Okay. Anything else?
2 MR. DUGAN: Same objection.
3 THE WITNESS: Not that I recall.
4 BY MS. KEANEY:
5 Q. Okay. You testified earlier that you spoke
6 at some point to agency counsel about the injunction;
7 is that correct?
8 A. I don't think that I said that. I mean I saw
9 the E-mail from her at some point while I was on
10 vacation, and I can only imagine that I spoke with her
11 at some point. I was the acting director of the
12 office. When I came back, I'm sure we spoke.
13 Q. Do you remember having any conversation --
14 strike that. Sorry.
15 Further down on the order -- this is on
16 Page 6 now. That first paragraph. It is, I believe,
17 the fourth sentence. It reads, "Defendants are
18 required to restore the status quo prior to the
19 issuance of the Agency Memo with respect to the
20 processing of applications from FTJ refugees and
21 refugees from SAO countries." Have you ever seen this
22 sentence before?

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1 A. I'm not sure that I have.

2 Q. What did you understand "restoring the status
3 quo" to mean?

4 MR. DUGAN: Objection. Calls for a legal
5 conclusion or interpretation. Lacks foundation.

6 You can answer to the extent you know.

7 THE WITNESS: Since I don't recall seeing
8 this, I don't know that I can answer that question.

9 BY MS. KEANEY:

10 Q. Were you aware of any obligation to restore
11 the status quo under the injunction?

12 MR. DUGAN: Same objection.

13 THE WITNESS: I wouldn't have thought of it
14 this way, of returning the status quo. To me it was
15 that we could resume the processing of SAO nationals
16 and FTJs. I don't think I thought of it that way.

17 BY MS. KEANEY:

18 Q. Okay. What, in your mind, would be the
19 difference between resuming the processing of SAO and
20 FTJ nationals and restoring the status quo?

21 MR. DUGAN: Objection. Vague. Calls for a
22 legal conclusion.

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1 THE WITNESS: I'm not saying there's a
2 difference. I'm just saying I didn't think of it that
3 way in my mind, of returning to the status quo.

4 BY MS. KEANEY:

5 Q. Okay. I'm going to be asking you some
6 questions about circuit rides. So just to get some
7 general background about circuit rides first, what is
8 a circuit ride?

9 MR. DUGAN: Objection. Calls for a
10 narrative.

11 THE WITNESS: It's when USCIS sends officers
12 oversees to conduct refugee interviews.

13 BY MS. KEANEY:

14 Q. So USCIS performs the circuit ride; is that
15 correct?

16 A. Yes.

17 Q. And they occur overseas; is that right?

18 A. Yes.

19 Q. How many circuit rides are scheduled in a
20 year?

21 A. I would just have to estimate. It depends
22 from year to year on USCIS' capacity. So what period

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1 are you asking about?

2 Q. That's okay. I'm still speaking in general.

3 A. Okay.

4 Q. So earlier, you talked about the process for
5 scheduling a circuit ride. As I understood it, the
6 RFCs compile cases that are ready for interview and
7 submit them to USCIS. USCIS then determines its
8 capacity, and there's a back-and-forth that happens in
9 order to determine where the circuit rides will be
10 scheduled; is that correct?

11 A. Almost --

12 MR. DUGAN: Object to the extent that counsel
13 is testifying.

14 THE WITNESS: Mostly correct, but the RSCs
15 give us the number of cases that are ready for
16 interview at each location. We send that to USCIS,
17 and USCIS agrees to send a certain number of officers
18 to certain locations, and then later RSC schedules the
19 cases.

20 BY MS. KEANEY:

21 Q. Okay. Can you explain to me how the circuit
22 rides are broken into quarters. When does each

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1 quarter start and end?

2 A. They're fiscal quarters. So the first
3 quarter would be October 1 to December 31 and so on.

4 Q. When are the circuit ride schedules finalized
5 prior to the quarter?

6 A. It's not always the same. There's not a
7 rigid date.

8 Q. Okay. Are they ever finalized?

9 A. Yes, they have to be because USC- -- I mean
10 they're finalized at some point, and then USCIS does
11 the trips.

12 Q. Can changes be made to a circuit ride once
13 they're finalized?

14 MR. DUGAN: Objection. Calls for
15 speculation.

16 THE WITNESS: Can they be modified once
17 they're --

18 BY MS. KEANEY:

19 Q. Finalized.

20 A. Yes.

21 Q. Under what circumstances?

22 MR. DUGAN: Same objection.

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1 THE WITNESS: I mean the most common reason
2 would be because of the security incident, that they
3 had planned to go to a location but then had an attack
4 of some sort. So they had to cancel or change the
5 dates.
6 BY MS. KEANEY:
7 Q. Okay.
8 A. Or if USCIS told us they had additional
9 officers that were available or if someone called in
10 sick or someone got sick. So they couldn't go, and so
11 they would have to increase or reduce the number.
12 Q. Okay. So is it fair to say that you're aware
13 of instances where circuit ride schedules have been
14 changed after they've been finalized?
15 A. Yes.
16 Q. Okay. Could you say how often that happens?
17 MR. DUGAN: Objection. Lacks foundation.
18 THE WITNESS: No, because -- also because
19 when you use the term "finalize," I mean we don't have
20 a formal definition of the term "finalized." I mean
21 it's finalized when they say, "Yes, we can do it," or
22 it's finalized when they're getting on a plane and

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1 going. So there's not a finalization with a capital
2 "F" on it.
3 BY MS. KEANEY:
4 Q. Okay. Going back to Exhibit 36, which is
5 your declaration from January 19. In Paragraph 5 of
6 your declaration you state that "On December 26,
7 2017," PRM's "Admissions Office asked RSCs whether
8 there were any SAO nationals who were ready for
9 interview." Can you explain to me what this paragraph
10 refers to?
11 A. This was -- this refers to our office,
12 someone in our office asking each of the RSCs if they
13 had SAO nationals that could be added to the second
14 quarter circuit ride schedule.
15 Q. Can you explain to me what it means for a
16 refugee to be ready for interview?
17 A. That they've been prescreened and initial
18 security checks requested. USCIS normally likes to
19 have 30 days between the request of the class check
20 and the scheduling -- and the actual interview date to
21 give it the best chance of having come back.
22 Q. Okay. So the December 26 request that you

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1 referred to from the admissions office asked RSCs for
2 a list of all SAO nationals who were ready for
3 interview; is that correct?
4 A. No. If there were ready -- if there were any
5 that were ready that could be added to the circuit
6 ride schedule for the second quarter.
7 Q. Okay. What's the difference between all SAO
8 nationals ready for interview and those ready for
9 interview that could be added to the second quarter?
10 A. Because all SAO nationals ready for interview
11 would have been thousands and thousands of people, and
12 I don't think that's realistic, to assume we could
13 have added them to the second quarter circuit ride
14 schedule.
15 Q. Okay. So how did you take the thousands and
16 thousands of people and narrow it, I guess?
17 A. The same way we always -- when we're
18 undertaking an effort to either expedite certain cases
19 or put them forward through a waiver, you ask the RSCs
20 if they have particularly vulnerable cases. I mean
21 the understanding would have been we couldn't add that
22 many. So do you have particularly vulnerable cases

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1 that we could add.
2 Q. Did you have a goal in mind in terms of how
3 many SAO nationals you wanted to add to the Quarter 2
4 circuit ride?
5 A. No. Remember, I wasn't in the office during
6 this period. So, no, I personally did not have --
7 Q. Did PRM have a goal for how many SAO
8 nationals to add to the Quarter 2 circuit ride?
9 MR. DUGAN: Objection. Lacks foundation.
10 THE WITNESS: I wouldn't know because I
11 wasn't there.
12 BY MS. KEANEY:
13 Q. Do you know how many were ultimately added to
14 Quarter 2 circuit ride schedules?
15 A. I believe a couple of dozen.
16 Q. Do you know whether -- do you know how many
17 RSCs requested to be added to Quarter 2 circuit rides?
18 A. (Nods head.)
19 Q. Do you know whether there were individuals
20 RSCs requested to be added to Quarter 2 circuit rides
21 who ultimately were not added to Quarter 2 circuit
22 rides?

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1 A. I don't know.
2 Q. Skipping down to Paragraph 6 of your
3 declaration. I'll give you a second to read it, and
4 then my question is can you explain to me what this
5 paragraph refers to.
6 (The witness reviewed the document.)
7 THE WITNESS: It refers to the fact that we
8 understood that since we needed to start interviewing
9 SAO nationals again and it wasn't feasible or
10 practical to add very many cases in the second
11 quarter, that we would kind of heavy up the third
12 quarter with SAO nationals.
13 BY MS. KEANEY:
14 Q. Okay. And if I'm understanding correctly,
15 the third quarter circuit rides began in April; is
16 that correct?
17 A. Yes, April.
18 Q. Okay. So at the time that you were -- that
19 you submitted this declaration in January 19, had the
20 third quarter circuit ride already been finalized?
21 A. No.
22 Q. Okay. So this refers -- this paragraph then

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1 refers to requests to add these countries to a circuit
2 ride schedule that was still being considered; is that
3 correct?
4 A. That was being formulated. I mean in
5 January -- so that's three months in advance -- we
6 would have still been kind of putting it together. So
7 this says that as we were putting it together, we
8 would be requesting locations such as these listed.
9 Q. Okay. And why did PRM plan to request to add
10 these locations?
11 MR. DUGAN: Objection. Lacks foundation.
12 THE WITNESS: Because those are locations
13 where SAO nationals are located, where they're
14 interviewed.
15 BY MS. KEANEY:
16 Q. Do I understand correctly that it was in
17 order to comply with the injunction in this case?
18 A. Yes.
19 Q. Who decided that these were the locations
20 that should be added to the third quarter circuit
21 ride?
22 A. I don't recall who specifically -- it wasn't

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1 just one person. I'm sure it was a group decision.
2 Q. Was there any discussion of whether PRM
3 needed to add a certain number of interviews in order
4 to comply with the injunction?
5 MR. DUGAN: Objection. And at this point I
6 would interpose an objection on the basis of the
7 deliberative process privilege. I think a question
8 that goes to internal discussion in PRM about how the
9 circuit ride schedule would be set up, it's clearly
10 predecisional deliberative. So I would instruct the
11 witness not to answer understanding that we'll be
12 contacting the Court shortly to discuss this issue.
13 BY MS. KEANEY:
14 Q. Did you personally believe that adding Iraq,
15 Jordan, Turkey, and potentially Kenya to the third
16 quarter circuit rides would be sufficient to comply
17 with the injunction in this case?
18 MR. DUGAN: Objection. Vague. Calls for a
19 legal conclusion. Legal interpretation.
20 You can answer that one.
21 THE WITNESS: Yes, I did.
22 BY MS. KEANEY:

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1 Q. Based on what?
2 MR. DUGAN: Same objection.
3 THE WITNESS: These are just -- these are
4 four of our biggest locations where we had SAO
5 nationals, and where we've just done -- where the
6 percentage of the cases in those locations are SAO
7 nationals, and just the volume of cases is larger. So
8 those are substantial SAO locations.
9 BY MS. KEANEY:
10 Q. Did you consider adding other countries aside
11 from the ones listed?
12 MR. DUGAN: Objection. Vague. To the extent
13 the question implicates an internal agency
14 deliberation, I would instruct the witness not to
15 answer. That being said, if the question is just what
16 she considered, she can answer to the extent she
17 knows.
18 BY MS. KEANEY:
19 Q. The question is just did you personally
20 consider adding any other countries aside from the
21 ones listed to the third quarter circuit ride?
22 A. I don't recall. These are the big ones.

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1 Q. Okay. In your opinion, did the -- did the
 2 agency add enough interviews of SAO nationals to
 3 compensate for the agency memo?
 4 MR. DUGAN: Objection. Vague. Implicitly
 5 calls for a legal conclusion or interpretation.
 6 You can answer to the extent you know.
 7 THE WITNESS: In my opinion, yes.
 8 BY MS. KEANEY:
 9 Q. Okay. What's the basis for that conclusion?
 10 A. Because I felt that by adding these locations
 11 we would add a substantial number of SAO nationals to
 12 our third-quarter interview schedule.
 13 Q. Okay. And by "substantial number," do you
 14 have an approximation of what you're referring to?
 15 A. Absolute number or percentage?
 16 Q. Percentage.
 17 A. I actually don't. Because I don't recall
 18 where else we interviewed in that quarter. So I don't
 19 know. But it was -- at the time that we thought that
 20 it was the right amount that felt right.
 21 Q. Okay. How did you know that it was enough?
 22 MR. DUGAN: Objection. Vague.

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1 THE WITNESS: I don't know that I knew it was
 2 enough. I felt like it was enough.
 3 BY MS. KEANEY:
 4 Q. So the third-quarter circuit rides were to
 5 begin in April. That's about four months after the
 6 injunction was ordered; is that correct?
 7 A. Yes. Usually circuit rides don't start on
 8 the first day of the quarter because they're usually
 9 in the middle. So they usually start a couple weeks
 10 in.
 11 Q. Okay. Did you feel that that was soon enough
 12 to comply with the injunction in our case?
 13 MR. DUGAN: Objection. Vague. Calls for a
 14 legal conclusion or interpretation.
 15 You can answer.
 16 THE WITNESS: I did.
 17 BY MS. KEANEY:
 18 Q. Based on what?
 19 MR. DUGAN: Same objection.
 20 THE WITNESS: Based on the fact that our
 21 second-quarter circuit ride schedule was largely set
 22 and the USCIS wasn't going to really many locations at

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1 all where there were SAO nationals and that it just
 2 wouldn't have been possible to do that the second
 3 quarter. So the third quarter was the first
 4 opportunity to really do that.
 5 BY MS. KEANEY:
 6 Q. Okay. So in your opinion, could the agency
 7 have done more to add SAO nationals to any of the
 8 quarter circuit rides?
 9 MR. DUGAN: Objection. Calls for
 10 speculation.
 11 THE WITNESS: Could we have done more? We
 12 could have asked for more, but it just wouldn't have
 13 been -- it wouldn't have been practical, and it likely
 14 would have led to the cancellation of non-SAO
 15 nationals who were scheduled to be interviewed.
 16 BY MS. KEANEY:
 17 Q. Was that -- from the agency's perspective,
 18 was that a problem, to cancel already scheduled
 19 interviews?
 20 MR. DUGAN: Same objection, and I would add
 21 that the witness is here as a fact witness. So I'm
 22 not sure she's in a position to testify as to the

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1 agency's perspective.
 2 MS. KEANEY: Sorry.
 3 Q. In your opinion, was it a problem to cancel
 4 already scheduled interviews in order to accommodate
 5 more SAO interviews?
 6 A. Yes.
 7 Q. Why is that?
 8 A. Both because it's kind of a terrible thing to
 9 do to someone who had an interview schedule that
 10 probably took years to schedule, and to turn around
 11 and say, "Oh, sorry. We made a mistake. Your
 12 interview is canceled." And it's also a resource
 13 issue. You know, many of our refugees are located in
 14 places that USCIS officers can't go. So you have to
 15 make plans to move them into a camp or into a
 16 processing location or a capitol.
 17 Those discussions were already underway in
 18 terms of -- because people need permission to travel
 19 from the government is that you have to ask in advance
 20 for -- UNHCR has to go to the host government and say,
 21 "Can we move this group of 200 refugees from this camp
 22 into the city," and all of that was well underway at

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1 that point.

2 Q. Okay. So the agency took the position that

3 it should not cancel already scheduled interviews in

4 order to comply with the injunction; is that correct?

5 MR. DUGAN: Same objection. I don't think

6 the witness can speak on behalf of the agency. She

7 can certainly answer the question if she knows in her

8 individual capacity.

9 THE WITNESS: That's correct. I can't speak

10 for the agency. In our office we felt that way.

11 BY MS. KEANEY:

12 Q. In your office you felt that you should not

13 cancel already scheduled interviews in order to comply

14 with the injunction; is that correct?

15 A. Okay. Again, remembering I was out of the

16 office during this period, that's my understanding.

17 Q. Okay. In order to add the countries listed

18 in your declaration to the third-quarter circuit ride,

19 did that require canceling any already scheduled

20 interviews?

21 A. To the third quarter?

22 Q. Yes.

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1 A. I do not believe it did.

2 Q. Okay.

3 A. Because we were still formulating it.

4 Q. Thank you. That was going to be my thought.

5 So because the interviews hadn't already been

6 scheduled at that point?

7 A. Right.

8 MS. KEANEY: Okay.

9 (Previously marked Exhibit 37 was handed to

10 the witness.)

11 BY MS. KEANEY:

12 Q. I'm handing you an exhibit marked as

13 Plaintiff's Exhibit 37. Do you recognize this

14 document?

15 A. Yes.

16 Q. What is it?

17 A. It's an E-mail from Sumi to the overseas team

18 in our office asking for them to go out to the RSCs

19 and ask about compelling expedite cases that could be

20 added to the second quarter interview schedule.

21 Q. And, again, who is Ms. Siram?

22 A. Sumi is the Africa desk officer who works

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1 under Jen Smith.

2 Q. Okay. And if you look at the "To" line in

3 the E-mail, it was sent to "PRM - Admissions -

4 Overseas DL." Is that an E-mail group?

5 A. Yep.

6 Q. Who does this E-mail group include?

7 A. All of the officers on the overseas team,

8 plus Jennifer, plus me. It would be Larry, but at the

9 time Larry wasn't in the office. And it might also be

10 Hillary.

11 Q. Okay. So did you receive this E-mail?

12 A. Yes, when I was on leave.

13 Q. Okay. Did you review this E-mail before it

14 was sent?

15 A. No.

16 Q. To your knowledge, did anyone who -- scratch

17 that.

18 To your knowledge, did anyone review this

19 E-mail before it was sent --

20 A. I don't know. I don't know who was in the

21 office that day.

22 Q. Okay. Is this December 26 E-mail the E-mail

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1 that you're referring to in Paragraph 5 of your

2 declaration which we just discussed? If you need to

3 refer back to that, it is --

4 A. I see it. But Paragraph 5 doesn't refer to

5 an E-mail. It says we asked the RSCs.

6 Q. Correct. So when you state in your

7 declaration you asked the RSCs, were you referring to

8 this December 26 E-mail?

9 A. No, because this wasn't to the RSCs. So this

10 was asking the people on the overseas team to turn

11 around and ask the RSCs if they had any additional

12 cases.

13 Q. Okay. Thank you for that clarification. So

14 the paragraph in your declaration is referring to

15 essentially what followed from this December 26

16 E-mail; is that correct?

17 A. Yes.

18 Q. And to your knowledge, were the program

19 officers, they were responsible for communicating this

20 to the RSCs; is that correct?

21 A. Yes.

22 Q. How would that communication have happened?

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1 MR. DUGAN: Objection. Calls for
2 speculation.
3 THE WITNESS: I don't know. And it might
4 have depended by officer.
5 BY MS. KEANEY:
6 Q. Okay. What does it mean for a case to be
7 compelling expedite?
8 A. We do not have a written definition for that,
9 but it's a term that we use -- we've used for years,
10 that we use with our RSCs when we ask them to put
11 cases forward for a specific reason. And, again, as I
12 mentioned earlier, it could be someone who has a
13 medical condition that's not treatable in the country
14 where they are, or if they have a particular legal
15 or -- usually it's physical protection concern.
16 Q. Okay. Is it fair to say that the category of
17 cases that are compelling expedite is smaller than the
18 category of cases where any SAO nationals are ready
19 for interview?
20 A. Much smaller.
21 Q. Okay. And earlier you stated that -- in your
22 declaration you stated that the admissions office

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1 asked the RSCs whether there are any SAO nationals who
2 are ready for interview; is that correct?
3 A. Yes. That's what I stated, but I did not --
4 that does not mean that we asked -- I mean we asked if
5 there were any, and then the E-mail said are there any
6 compelling expedite cases.
7 Q. Okay. And why the difference between what
8 your declaration stated and what the E-mail states?
9 A. I just think that the statement in the
10 declaration is not as specific as the request that
11 went to the RSCs. This was a much more specific
12 request than was -- we just didn't include all the
13 information, all the specifics in the declaration.
14 Q. Okay. And why not?
15 MR. DUGAN: Objection. Calls for
16 speculation.
17 THE WITNESS: Because I didn't draft this.
18 So I -- I was just reviewing it, but I didn't draft
19 it.
20 BY MS. KEANEY:
21 Q. Okay. The E-mail from Ms. Siram, she states,
22 "USCIS will not add to the current interview schedule,

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1 but rather will replace an existing slot." What does
2 that mean?
3 MR. DUGAN: Same objection to the extent this
4 E-mail was not drafted by the witness.
5 You can answer to the extent you know.
6 THE WITNESS: I mean I'd only be speculating.
7 So I can't answer definitively.
8 BY MS. KEANEY:
9 Q. What would be the difference between adding
10 to a current interview schedule versus replacing in an
11 existing slot in general terms?
12 A. Adding to the current interview schedule
13 would mean adding more interviews on top of what was
14 already being done, which would mean the USCIS would
15 have to send additional officers or extend the circuit
16 ride.
17 Q. Okay. And what does it mean to replace an
18 existing slot, in a general sense?
19 A. To pull someone off the circuit ride schedule
20 and add someone new.
21 Q. That is somebody who is going to be
22 interviewed; is that correct?

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1 A. Yeah.
2 Q. So if I'm understanding correctly, does this
3 mean that if a compelling expedite case was identified
4 and scheduled for an interview, USCIS would have to
5 cancel an interview that was already scheduled for
6 that slot?
7 MR. DUGAN: Objection. Lacks foundation to
8 the extent we're talking now about this E-mail in
9 particular as opposed to in general.
10 THE WITNESS: Again, I'm not sure.
11 BY MS. KEANEY:
12 Q. Are you aware whether any interviews were
13 canceled to accommodate any compelling expedite cases?
14 A. I am not aware. I don't know.
15 Q. Who might know that?
16 A. The RSC may know. RSC Bangkok because they
17 were added to mostly the RSC Bangkok --
18 Q. Okay. Is there somebody who overseas that
19 RSC?
20 A. Yes.
21 Q. Who would that be?
22 A. Margaret Burkhart.

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1 Q. Earlier you had stated that it was your
 2 understanding that PRM took the position that already
 3 scheduled interviews should not be canceled in
 4 Quarter 2 in order to accommodate SAO national
 5 interviews; is that correct?
 6 A. I said my office, admissions, not PRM. When
 7 I said "my office," I meant the admissions office.
 8 Q. Okay. Can you tell me who runs the RSC
 9 Bangkok?
 10 A. What organization?
 11 Q. Yes.
 12 A. IRC.
 13 MS. KEANEY: Okay.
 14 (Previously marked Exhibit 38 was handed to
 15 the witness.)
 16 BY MS. KEANEY:
 17 Q. I'm handing you what's been marked as
 18 Plaintiff's Exhibit 38.
 19 Do you recognize this document?
 20 A. Yes.
 21 Q. And what is it?
 22 A. This is the E-mail that Sumi sent on

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1 December 24 saying that we were aware of the
 2 enjoinder, if that's what you call it, and that we
 3 will be issuing guidance shortly.
 4 Q. Okay. If you look at the "To" row, do you
 5 see your name listed?
 6 A. Yes.
 7 Q. Can you confirm that you received this
 8 E-mail?
 9 A. I believe that I did, but, again, I was on
 10 leave.
 11 Q. Okay. Were you involved at all in the
 12 process of drafting this E-mail?
 13 A. No.
 14 Q. Did you instruct Ms. Siram to send this
 15 E-mail?
 16 A. No.
 17 Q. Is it customary for a regional program
 18 officer to be tasked with sending an E-mail to all PRM
 19 partners?
 20 MR. DUGAN: Objection. Vague.
 21 You can answer.
 22 THE WITNESS: Because of the holidays and so

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1 many people were out, I believe she was the most
 2 senior person on the overseas kind of side of the
 3 house who was in the office. And it was over a
 4 weekend also.
 5 BY MS. KEANEY:
 6 Q. Okay. To your knowledge, did anyone approve
 7 this E-mail before it was sent?
 8 MR. DUGAN: Objection. Calls for
 9 speculation.
 10 THE WITNESS: I don't know.
 11 BY MS. KEANEY:
 12 Q. So this is an E-mail from Ms. Siram, who is
 13 the program officer for Africa, that was sent to PRM
 14 partners on December 24, 2017, which is the day after
 15 the injunction issued, notifying them about the
 16 court's injunction in this case; is that correct?
 17 A. Yes.
 18 Q. Is this December 24 E-mail the guidance that
 19 you reference in Paragraph 2 of your declaration when
 20 you state that PRM sent guidance to RSCs about the
 21 injunction on December 24?
 22 A. Yes.

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1 Q. Is there anything else that Paragraph 2 of
 2 your declaration is referring to?
 3 A. Not that I'm aware of.
 4 Q. Is it your understanding that with this
 5 guidance the RSCs were required to resume processing
 6 of SAO refugees in accordance with normal procedures
 7 immediately upon opening a business on December 25,
 8 2017?
 9 MR. DUGAN: Objection. Ambiguous.
 10 You can answer if you understand.
 11 THE WITNESS: Can you ask the question again?
 12 BY MS. KEANEY:
 13 Q. Sure. I actually have the date wrong too.
 14 Is it your understanding that with this
 15 guidance, RSCs were required to resume processing of
 16 SAO refugees in accordance with normal procedures upon
 17 opening of this list on January 26, 2017?
 18 MR. DUGAN: Same objection.
 19 THE WITNESS: Yes.
 20 BY MS. KEANEY:
 21 Q. Can you explain to me what "normal
 22 procedures" meant?

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1 A. I mean resuming processing of cases. So I
 2 mean we got a case load. Cases are at different
 3 stages of processing. So resuming processing.
 4 Q. Okay. Did normal procedures mean the
 5 procedures that were in place before the agency memo
 6 took effect?
 7 A. No.
 8 Q. Why not?
 9 A. Because it was not my, or I believe anyone's
 10 understanding that we were going back to -- going back
 11 to the time before the October 23 memo was issued, or
 12 the agency memo was issued.
 13 Q. Okay. So in this case, "normal procedures"
 14 meant the procedures that had been put in place as a
 15 result of the agency memo; is that correct?
 16 A. Yes.
 17 Q. Okay. To your knowledge, did PRM discuss any
 18 other options regarding how to implement the
 19 injunction aside from sending this December 24 E-mail?
 20 A. I am not aware of that, no.
 21 Q. Okay. I have some questions about the RPC,
 22 the refugee processing center.

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1 A. Okay.
 2 Q. Could you just start by describing for me
 3 what the role is of RPC in refugee processing.
 4 MR. DUGAN: Objection to the extent it calls
 5 for a narrative.
 6 Go ahead.
 7 THE WITNESS: I mean understanding that
 8 Hillary is the head of the RPC and in a much better
 9 place to do this, it's the -- it is a contractor of
 10 PRM that implements the WRAPS system and also serves
 11 as our source of data if we need to run reports on the
 12 refugee caseload.
 13 BY MS. KEANEY:
 14 Q. Okay. And you may have said this earlier. I
 15 apologize. But as associate director of PRM, do you
 16 oversee the RPC?
 17 A. Deputy director, no, I do not.
 18 Q. When you were acting director, did you
 19 oversee the RPC?
 20 A. Yes.
 21 Q. What does that mean in terms of what role do
 22 you play in overseeing the RPC as acting director?

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1 A. As a practical matter during that period,
 2 very little because with Larry gone, I pretty much ran
 3 the admissions office, and Hillary ran the RPC.
 4 Q. Okay. Ordinarily -- is it ordinarily
 5 different when Larry is not -- when Larry is in his
 6 position?
 7 A. No. It was kind of the same. I mean what
 8 I'm saying is during that period when I was acting
 9 director, I was not fulfilling that part of Larry's
 10 role of overseeing the RPC for all intents and
 11 purposes.
 12 Q. Okay. But when Larry is in his position, he
 13 has the responsibility of overseeing the RPC?
 14 A. Yes.
 15 Q. And during the period of time when Larry was
 16 out of his position, nobody was overseeing the RPC
 17 aside from Hillary, who heads it; is that correct?
 18 A. Well, when you say, "nobody was overseeing"
 19 it, I mean Hillary -- you know, we have a front
 20 office, and so they had to periodically become
 21 involved. But, no, for the most part Hillary was
 22 running the RPC.

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1 Q. Okay. Not to get into too much technological
 2 detail, but what is WRAPS exactly?
 3 A. So it's a worldwide refugee admissions
 4 processing system, and it's -- I don't know if you'd
 5 call it a database. It's a system whereby it contains
 6 all refugee applicant data. So that people in PRM,
 7 our officers in the admissions office, have a log-on
 8 to get into the system so we can look at cases or run
 9 reports and that the RSCs, they can log into the
 10 system and access -- and add to the electronic case
 11 file of all of the applicants that they're processing.
 12 Q. Okay. Are there times when changes to WRAPS
 13 are required?
 14 A. Yes.
 15 Q. Okay. Do you have any role in making changes
 16 to WRAPS?
 17 A. No.
 18 Q. As acting director did you have any role
 19 during that period of making changes to WRAPS?
 20 A. As a practical matter, no.
 21 Q. Okay. Who is in charge of making changes to
 22 WRAPS when required?

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1 A. Hillary.
2 Q. And does anybody oversee her work in making
3 changes to WRAPS?
4 A. As a practical matter, during that period,
5 no. I mean when there's an actual office director,
6 theoretically yes, but it's not that every change that
7 has to be made goes up to a certain level.
8 Q. Okay. Are there certain kinds of changes
9 that might go up to a certain level?
10 A. That's something that Hillary would have to
11 describe to you. I don't know the distinction that
12 she makes.
13 Q. Okay. Aside from Ms. Ingraham, is anyone
14 else involved in making changes to WRAPS when they are
15 required?
16 A. Well, I mean she's not making them herself.
17 She has a deputy.
18 Q. Okay.
19 A. So he's involved at some level, but it
20 involves making -- you know, issuing instructions to
21 the contractors to do it.
22 Q. As far as you understand, though, she

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1 oversees that work; is that correct?
2 A. Yes.
3 Q. Okay. Does the RPC have a help desk?
4 A. Yes.
5 Q. What is the help desk?
6 A. Again, Hillary is in a much better place to
7 answer this question. They're -- they help with a
8 variety of things. If we have a report request, we
9 can send it into the help desk. RSCs, I think, send
10 requests into the help desk. But I actually don't
11 know very much about what they do on a day-to-day
12 basis.
13 Q. Okay. Do you know whether the help desk
14 sends E-mails?
15 A. Yes.
16 Q. Okay. And do you know who those help desk
17 E-mails typically go to?
18 MR. DUGAN: Objection. Vague. Calls for
19 speculation.
20 THE WITNESS: No.
21 BY MS. KEANEY:
22 Q. Okay. Do you know who determines whether or

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1 not the help desk will send an E-mail?
2 A. I don't.
3 MR. DUGAN: Same objection.
4 BY MS. KEANEY:
5 Q. Is the help -- sorry to be this practical,
6 but is the help desk a grouping of individuals? Is
7 that fair to say?
8 A. Yes.
9 Q. Okay. So if the help desk is going to send
10 an E-mail, is it somebody who's part of the help desk
11 that drafts that E-mail, typically?
12 MR. DUGAN: Same objection.
13 THE WITNESS: If the help desk issues an
14 E-mail, is it somebody on the help desk who writes it?
15 BY MS. KEANEY:
16 Q. Yes.
17 A. Yes.
18 Q. Does anybody have a role in reviewing E-mails
19 that the help desk drafts before they are sent?
20 A. I don't know.
21 (Previously marked Exhibit 39 was handed to
22 the witness.)

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1 BY MS. KEANEY:
2 Q. I'm handing you what's been marked as
3 Plaintiff's Exhibit 39.
4 Do you recognize this document?
5 A. Yes.
6 Q. What is it?
7 A. It's guidance that Hillary sent to mostly the
8 RSCs on December 28.
9 Q. And under the "To" line, do you see your name
10 listed?
11 A. Yes.
12 Q. Can you confirm that you received this
13 E-mail?
14 A. Yes.
15 Q. Did you review this E-mail before it was
16 sent?
17 A. No.
18 Q. Okay. Did you approve it before it was sent?
19 A. No.
20 Q. So this is an E-mail that was sent by
21 Ms. Ingraham, who is the head of RPC to RSCs and
22 others on December 28, 2017 regarding the Court's

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1 injunction in this case; is that correct?
2 A. Yes.
3 Q. Can you confirm whether this E-mail is the
4 additional detailed guidance that you reference in
5 again your declaration, Paragraph 2? That's
6 Exhibit 36 if you need to look at it.
7 A. Yes. I don't know that this is the entirety
8 of it, but this would have been included in that, yes,
9 additional guidance.
10 Q. So is there anything else that part of your
11 declaration may have been referring to?
12 A. I can't think of anything specifically. I
13 don't know.
14 Q. Okay. In it Ms. Ingraham notes that the RPC
15 is in the process of adding BFR status checks into
16 WRAPS. Can you explain to me what that means?
17 MR. DUGAN: Objection. Vague to the extent
18 that the witness understands -- I'll leave it at that.
19 THE WITNESS: It means that there's a status
20 in WRAPS that helps contribute to determining whether
21 somebody is ready for travel, and so the BFR status
22 was added back in, meaning you had to show that you

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1 had a BFR -- that was one of the steps to be on your
2 way to being ready for travel.
3 BY MS. KEANEY:
4 Q. Okay. Can you -- going back to that general
5 process you just described for me, the various stages
6 that a refugee application goes through, can you
7 explain to me when in that process the BFR status
8 check comes into play?
9 A. I do not know.
10 Q. Okay. Do you know whether a BFR
11 determination is required at a certain stage before
12 the refugee can move into the next stage?
13 A. Well, when you say -- we don't use BFR
14 anymore. This was just during that period.
15 Q. So during this period, was a BFR
16 determination required before a refugee could move
17 into a next phase of processing?
18 A. The reason it's hard to answer that question
19 is when you're processing a refugee, there are a lot
20 of things that are happening at once. It's not like
21 you do this and then this and then this. Some things
22 are happening simultaneously. So I think the answer

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1 is no, this wasn't required to move on to a next step.
2 I mean it was required before travel, but I don't...
3 Q. Okay. So, for example, could a BFR -- was a
4 BFR determination required before a USCIS interview
5 could take place?
6 A. I don't know.
7 Q. Okay. Do you know what was the process for
8 determining how to apply the BFR definition in our
9 preliminary injunction case?
10 MR. DUGAN: Objection. Calls for a legal
11 conclusion. Interpretation. Lack of foundation.
12 THE WITNESS: I don't know because I wasn't
13 there.
14 BY MS. KEANEY:
15 Q. Do you know who was involved in determining
16 that?
17 A. I do not.
18 Q. By the time you had returned from your two
19 weeks of leave, do you know whether or not the PRM had
20 already determined how to apply the BFR definition?
21 A. I do not know. I don't.
22 Q. Were you a part of any conversations about

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1 how to apply the BFR determination?
2 A. I don't recall any specific discussions.
3 Q. Okay. Speaking -- I know BFR has come into
4 play at other times during the life of these executive
5 orders, but speaking specifically to this agency memo
6 and BFR determinations under our injunction, what was
7 the process for determining whether or not a BFR
8 exists?
9 A. I don't think I can answer that with any
10 specificity. It's not something that I was involved
11 in.
12 Q. Who could?
13 A. Hillary.
14 Q. Okay. Do you know who makes the
15 determination of whether or not there's a BFR in an
16 individual case?
17 A. I do not.
18 Q. Okay. Under -- are you aware that the BFR
19 requirement also came into play with respect to the
20 EO2, executive order?
21 A. Yes, during that period from late June to
22 late October.

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1 Q. Okay. Were you involved at all in
 2 implementing the BFR requirement during that period?
 3 A. I mean I was involved in a general way. I
 4 wasn't figuring it out how to put it into WRAPS or
 5 that sort of thing, but in a general way.
 6 Q. Okay. What role did you play in determining
 7 that?
 8 A. As a participant in discussions with Hillary
 9 and our lawyer about what exactly it meant because I
 10 think there was a period where we weren't sure how far
 11 to take the relationships out, you know, how far did
 12 it go. So, again, I don't remember how that evolved,
 13 but I would have been a participant in some of those
 14 discussions.
 15 Q. Okay. Is there any written training or
 16 guidance for the individuals who make BFR
 17 determinations on how to do so?
 18 A. I don't know if Hillary would know. Hillary
 19 should know.
 20 Q. Okay. Do you know approximately how long it
 21 takes to determine whether or not a BFR exists?
 22 A. I'm sorry. I don't.

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1 Q. Do you know whether -- do you know what the
 2 process was for making BFR determinations under the
 3 EO2 under the Hawaii injunction?
 4 A. Not specifically, no.
 5 Q. Okay. So going back to Ms. Ingraham's E-mail
 6 here, prior to the BFR status check being added back
 7 into WRAPS, could RSCs request BFR verification for
 8 cases with SAO nationalities?
 9 A. Can you say that again?
 10 Q. Sure. Prior to the BFR status check being
 11 added back into WRAPS, could RSCs request BFR
 12 verification for cases involving SAO nationalities?
 13 MR. DUGAN: Objection. Lacks foundation.
 14 THE WITNESS: Well, if it wasn't in WRAPS,
 15 they couldn't do it. So no.
 16 BY MS. KEANEY:
 17 Q. Okay. So there was no like manual process,
 18 for example, for somebody to request BFR verification?
 19 A. No --
 20 MR. DUGAN: Same objection.
 21 THE WITNESS: -- not that I'm aware of.
 22 BY MS. KEANEY:

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1 Q. Okay. Do you know when the BFR status check
 2 was added back into WRAPS?
 3 A. I do not.
 4 Q. Okay. Could cases involving SAO nationals
 5 continue with normal processing during the time period
 6 between when the injunction was issued and when the
 7 BFR status checks were readded into WRAPS?
 8 MR. DUGAN: Objection. Vague. Lacks
 9 foundation.
 10 THE WITNESS: Could you ask -- could you say
 11 that again?
 12 MS. KEANEY: Sure.
 13 Q. Could cases involving SAO nationals continue
 14 with normal processing during that time period between
 15 when the injunction issued and when BFR status checks
 16 were readded into WRAPS?
 17 MR. DUGAN: Same objection.
 18 THE WITNESS: Yes, because, again, as I said,
 19 a lot of things are happening at the same time in
 20 WRAPS. So yes.
 21 BY MS. KEANEY:
 22 Q. Okay. Could RSC schedule travel for SAO

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1 nationals?
 2 MR. DUGAN: Lacks foundation. Objection.
 3 THE WITNESS: Not if they didn't have a BFR.
 4 BY MS. KEANEY:
 5 Q. Okay. And, again, a BFR could not be
 6 determined until that status was readded into WRAPS;
 7 is that correct?
 8 A. You know, I actually shouldn't even answer
 9 these questions because I'm not an expert on this
 10 process at all.
 11 Q. Okay. Again, who would know the answers?
 12 A. Hillary.
 13 MS. KEANEY: Okay.
 14 (Previously marked Exhibit 40 was handed to
 15 the witness.)
 16 BY MS. KEANEY:
 17 Q. I'm handing you what's been marked as
 18 Plaintiff's Exhibit 40, which is a document entitled
 19 "DECLARATION OF HILLARY E. INGRAHAM IN SUPPORT OF
 20 DEFENDANTS' OPPOSITION TO PLAINTIFFS' JOINT MOTION TO
 21 COMPEL."
 22 Do you recognize this document?

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1 A. I do not believe that I have seen this, no.
 2 I only reviewed my declarations.
 3 Q. Okay. So this is the first time that you're
 4 seeing Ms. Ingraham's declaration?
 5 THE WITNESS: Let me look through it.
 6 MS. KEANEY: Okay.
 7 (The witness reviewed Exhibit 40.)
 8 THE WITNESS: I mean I believe this is the
 9 first time I'm seeing it. It looks fairly dense. And
 10 so if you want me to read and digest the whole thing,
 11 I can, but I don't believe that I've seen this before.
 12 BY MS. KEANEY:
 13 Q. You don't need to read the whole thing. I'm
 14 just going to point you to specific portions. So if
 15 you could read Paragraph 13. I will give you a moment
 16 to read this.
 17 A. That whole, long paragraph?
 18 Q. Yes, please.
 19 (The witness reviewed Exhibit 40.)
 20 THE WITNESS: Okay. I read it. I'm not sure
 21 if I understand it. I'd have to read it a few times.
 22 It's a little confusing.

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1 BY MS. KEANEY:
 2 Q. I might have very few questions.
 3 As my understanding, it describes RPC's work
 4 to re-add the BFR status checks back into WRAPS. Is
 5 that your understanding from reading?
 6 A. Yes.
 7 Q. Were you involved in any way in the re-adding
 8 of the BFR status into WRAPS?
 9 A. No.
 10 Q. Okay. And was it Ms. Ingraham who oversaw
 11 this process?
 12 A. In her capacity as director of the RPC, yes,
 13 she would have overseen it in general. I don't know
 14 how much she was involved in the technical steps that
 15 needed to be taken.
 16 Q. Understood. Okay. And were you involved at
 17 all in the process of determining how to interpret the
 18 BFR definition in our case?
 19 A. No.
 20 Q. Okay. All right. If we could go back to the
 21 E-mail, which was Exhibit 39. So that first bullet in
 22 Ms. Ingraham's E-mail indicates that one of the first

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1 basis for when a refugee -- for determining whether or
 2 not a BFR exists is when a refugee receives a formal
 3 assurance from a resettlement agency in the
 4 United States; is that correct?
 5 A. (Nods head.)
 6 Q. And isn't it true that PRM eventually took
 7 the position that because a formal assurance
 8 established a BFR under our case's injunction, that
 9 all post DHS SAO nationality cases would have
 10 categorical BFR status?
 11 MR. DUGAN: Objection. Vague. Lacks
 12 foundation.
 13 THE WITNESS: I think you need to ask that
 14 again. Sorry.
 15 MS. KEANEY: Sure.
 16 Q. Isn't it true that PRM eventually took the
 17 position that because a formal assurance established
 18 BFR under our injunction, that all post DHS SAO
 19 nationality cases had categorical BFR status once they
 20 were assured?
 21 MR. DUGAN: Same objection.
 22 THE WITNESS: I'm actually not sure I can

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1 answer that question. I'm not sure that it was
 2 determined it was on a categorical basis. I just
 3 don't know.
 4 BY MS. KEANEY:
 5 Q. Okay. So you wouldn't know -- were you a
 6 part of any discussions in determining whether or
 7 not -- what effect the fact that assurances provided a
 8 basis for BFR, what effect that had in implementing
 9 the injunction, were you involved --
 10 A. Was I involved in any of the discussions?
 11 Q. Uh-huh.
 12 A. No, I don't believe so because I think I was
 13 out of the office during the whole period of time
 14 where that was discussed.
 15 MS. KEANEY: Okay.
 16 (Previously marked Exhibit 27 was handed to
 17 the witness.)
 18 BY MS. KEANEY:
 19 Q. I'm handing you what's been marked as
 20 Plaintiff's Exhibit 27. It's a document entitled
 21 "DEFENDANTS' SUPPLEMENTAL OBJECTIONS TO PLAINTIFFS'
 22 JFS AND JOSEPH DOE'S FIRST SET OF INTERROGATORIES TO

<p style="text-align: right;">Page 154</p> <p>1 DEFENDANTS." Are you at all familiar with this 2 document? 3 A. I do not believe I've seen this before. 4 Q. So this is the response to plaintiffs' first 5 set of interrogatories in this case. If I could 6 direct you to Page 65, and I'm referring to the 7 numbers at the top of the pages. 8 So this is a response to plaintiffs' 9 interrogatory requesting information about BFR 10 verifications. I'm wondering if you can explain to me 11 why BFR status was still being confirmed as late as 12 January 2018 -- June -- excuse me, June 2018. 13 A. I'm sorry. I do not know. 14 Q. Okay. Would that be a question that 15 Ms. Ingraham would know? 16 A. Should be. 17 Q. So turning to the topic of security checks. 18 We're going to leave this document alone for a little 19 bit. If you had to explain security checks that 20 refugees go through to someone -- sorry. Strike that. 21 How do security checks for nationals of 22 SAO -- do security checks for nationals of SAO</p>	<p style="text-align: right;">Page 156</p> <p>1 Q. And who makes that request? 2 A. A case worker at an RSC. 3 Q. And who does that request go to? 4 A. The RPC. 5 Q. And which agencies are involved in creating 6 the opinion that is the result of the SAO check? 7 MR. DUGAN: I'll interpose an objection to 8 reassert the LES -- 9 MS. KEANEY: I understand. 10 MR. DUGAN: Okay. 11 THE WITNESS: So it's FBI and the other 12 agency, another agency. 13 BY MS. KEANEY: 14 Q. Okay. And at what point must the SAO check 15 be cleared in order for a refugee to move into the 16 next stage of processing? 17 A. I don't know how to answer that. It has 18 varied over the years. Hillary is much better at this 19 but -- so -- I'm sorry. I'm trying to figure out how 20 I want to say this. 21 So after prescreening, certain security 22 checks are requested and launched. During some</p>
<p style="text-align: right;">Page 155</p> <p>1 nationals countries differ from other refugees? 2 MR. DUGAN: Objection. Vague. 3 BY MS. KEANEY: 4 Q. Let me restate it. 5 A. How does -- go ahead, please. 6 Q. Do security checks for SAO nationals differ 7 from other refugees? 8 A. Yes. 9 Q. How do they differ? 10 A. They require an SAO. 11 Q. Okay. And at what -- can you walk me through 12 the process of SAO checks and the role that Karen 13 plays starting with does somebody have to make a 14 request for the SAO? 15 MR. DUGAN: Objection to the extent it calls 16 for a narrative, but I think the question is more 17 precise and she can answer that. 18 THE WITNESS: Does it require somebody 19 requesting an SAO? 20 BY MS. KEANEY: 21 Q. Yes. 22 A. Yes.</p>	<p style="text-align: right;">Page 157</p> <p>1 periods of time that has been all three. So class, 2 SAO, and IAC. There have been other periods of time 3 when the SAO has not been requested until after the 4 DHS interview because it was determined that if you 5 request it before the DHS interview, it's very likely 6 It's going to have to be re-requested after the DHS 7 interview, just adding to this massive SAO workload 8 that we have. 9 So it has been determined at various periods. 10 I believe right now -- but again, Hillary is best to 11 answer -- that it's best to ask for the SAO after the 12 DHS interview so that you can get all of the 13 information that might have been taken out of DHS' 14 interview and compile it into one request. So you're 15 only submitting one request to the agencies rather 16 than one and then a subsequent. 17 Q. Okay. Is there any official policy that 18 governs when RSCs can make an SAO request? 19 A. I don't know. 20 Q. But to your understanding, currently the 21 practice is to request the SAO after the DHS 22 interview; is that correct?</p>

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1 A. That is my understanding, but it may not be
2 in all locations.
3 Q. Okay. Is there a point at which the refugee
4 cannot go into a subsequent stage of processing until
5 the results of the SAO check has been received?
6 A. I don't think I should answer this because I
7 think I'd be speculating. I'm actually not sure.
8 It's gone back and forth over the years, and I can't
9 speak competently about where it is now.
10 Q. Let me ask you a more specific question and
11 see if you know the answer.
12 Can a refugee be assured to a resettlement
13 agency prior to the SAO request coming back, the
14 results of the SAO request coming back?
15 A. I don't know that answer for sure.
16 Q. Do you know what the average time frame is
17 between when the SAO check is requested and when it is
18 completed?
19 A. I'd only be speculating. So, no, I don't.
20 Q. Do you know whether the average period of
21 time has changed over time?
22 A. Yes. Yes.

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1 Q. How has it changed?
2 A. I mean, in general, it takes longer than it
3 used to.
4 Q. Could you pinpoint when -- at what period of
5 time it started taking longer?
6 A. I don't know the dates, but it would have
7 been when the responsibility for the FBI portion
8 shifted from one division to another.
9 Q. Okay. Do you know on average -- at this
10 point in time, how long it takes for an SAO check to
11 be completed?
12 A. I do not.
13 Q. Okay. You said it's been taking longer since
14 the responsibility shifted from one FBI portion to
15 another. Can you explain to me what that means, that
16 it was shifted?
17 A. There was one division of FBI that used to do
18 the checks and now it's a different division.
19 Q. Do you know why it shifted?
20 A. I do not.
21 Q. Do you know when it shifted?
22 A. I believe it was in 2016, but I'm not sure.

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1 Q. Okay. Do you know whether the number of --
2 sorry. Excuse me.
3 Earlier I think you testified that the
4 results of an SAO check can be either clear or not
5 clear; is that correct?
6 A. At one point it was clear or not clear. At
7 one point it was red or green. It's kind of evolved.
8 Q. Do you know what it is right now?
9 A. I do not.
10 Q. Okay. So taking either whether it's not
11 clear or red, do you know whether the number of SAO
12 checks coming back is not clear or red has changed
13 over time?
14 A. Yes.
15 Q. And how so?
16 A. It has increased.
17 Q. Do you know why?
18 MR. DUGAN: Objection. Calls for
19 speculation.
20 THE WITNESS: I don't think I can speculate.
21 BY MS. KEANEY:
22 Q. Could you pinpoint at what point it changed?

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1 A. I don't think -- I'd be speculating. I can't
2 answer that.
3 Q. Did the change coincide with the shift of --
4 in the FBI of who was handling those FBI checks?
5 MR. DUGAN: Same objection.
6 THE WITNESS: I mean I don't know that I
7 could be 100 percent sure of my answer. So I'm going
8 to say I don't know.
9 BY MS. KEANEY:
10 Q. Okay. At the time the agency memo was
11 issued, some refugees had already gotten SAO checks;
12 is that correct?
13 A. Some refugees had clear SAO checks, yes.
14 Q. Thank you. And is it the case that some of
15 those individuals had to have their SAO checks redone?
16 A. Yes.
17 Q. Okay. And why is that?
18 A. Because the new requirements that were laid
19 forth in the agency memo were effective immediately,
20 and nobody was grandfathered in. So everybody had to
21 have the new -- the additional biographic information
22 collected and then packaged up and resubmitted to the

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1 clearing agency.

2 Q. So is it the case that every SAO who had had

3 an SAO check cleared at the time the agency memo

4 issued had to have them redone?

5 A. Yes.

6 Q. There were no exceptions to that?

7 A. I actually don't know the answer to that for

8 sure.

9 Q. Okay. Is it your understanding that all SAOs

10 who had -- even those who had had SAO clears had to

11 have their SAO redone?

12 A. Yes.

13 Q. And that was as a result of the agency memo?

14 A. Yes.

15 Q. If we can return to Exhibit 40, which is

16 Ms. Ingraham's declaration. On Paragraph 3 of her

17 declaration -- I'll give you a second to read it and

18 then I'll want to ask do you know what she is

19 describing here.

20 A. Top of Page 4, Paragraph 3?

21 Q. That's right.

22 (The witness reviewed Exhibit 40.)

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1 THE WITNESS: Yes.

2 BY MS. KEANEY:

3 Q. Do you know what Ms. Ingraham is describing

4 here?

5 A. Yes. I mean I know in general terms what

6 she's talking about.

7 Q. What, in general terms, is she writing?

8 A. That because our SAOs, in order to get to the

9 vetting agencies, have to go through the CCD, the

10 consular system database, that changes had to be made

11 in order to accommodate the additional -- kind of the

12 size of the files that were being sent because they

13 were larger and they contained more information. So

14 there had to be a change made to the system.

15 Q. And the system you're referring to here is

16 WRAPS; is that correct?

17 A. No. Actually, it's the interface between

18 WRAPS and CCD. My understanding that the change

19 actually has to be made on the CA side.

20 Q. So after the agency memo is issued, RSCs can

21 no longer make requests for SAOs through WRAPS; is

22 that correct?

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1 A. No, I don't think so. Say that again.

2 Q. After the agency memo was issued, RSCs had to

3 begin collecting this additional data; is that

4 correct?

5 A. Yes.

6 Q. Okay. And collecting the additional data and

7 allowing that to be incorporated into the SAO check

8 required changes to the systems; is that correct?

9 A. You're going a bit beyond my expertise here,

10 unfortunately.

11 Q. Okay. Do you know whether, during the period

12 after the agency memo was issued, whether RSCs could

13 continue to make requests for SAO checks through

14 WRAPS?

15 A. I do not.

16 Q. You do not know?

17 A. I don't know if there was a period where they

18 couldn't make them.

19 Q. Okay. In her declaration, Ms. Ingraham

20 describes a process established for manually

21 requesting SAO checks. Do you have any knowledge

22 about the manual process?

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1 A. Very little.

2 Q. Okay. Are you aware that there was a process

3 created?

4 A. I am.

5 Q. Were you involved at all in creating the

6 process for manually requesting SAO checks?

7 A. I was not.

8 Q. Okay. Who was involved in that process?

9 A. Hillary.

10 Q. Down further in Paragraph 5 -- I'll give you

11 a moment to read it and then ask you a question.

12 (The witness further reviewed Exhibit 40.)

13 THE WITNESS: Okay.

14 BY MS. KEANEY:

15 Q. Do you understand what Ms. Ingraham is

16 describing here?

17 A. Yes, in general.

18 Q. Okay. What do you understand it to refer to?

19 A. That during the 90-day period, that SAOs that

20 needed to be submitted under the case-by-case process

21 had to be done manually.

22 Q. Okay. And Ms. Ingraham describes this

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1 process as time-consuming; is that correct?
 2 A. I see "cumbersome." I don't know if I see
 3 time-consuming.
 4 Q. Okay. Did you have any conversations with
 5 Ms. Ingraham about the manual process and what it
 6 entailed for requesting SAO checks manually?
 7 A. I do not recall any specific conversations
 8 about that, no.
 9 Q. Okay. Did you have any discussions with
 10 Ms. Ingraham about how to prioritize SAO requests
 11 during this period of time in which they were being
 12 made manually?
 13 A. I do not recall any conversations about that,
 14 no.
 15 Q. Okay. Do you know whether or not there were
 16 any sort of instructions given to RSCs about making
 17 manual requests for SAO checks?
 18 MR. DUGAN: Objection. Lacks foundation.
 19 THE WITNESS: I do not. Sorry.
 20 (Previously marked Exhibit 41 was handed to
 21 the witness.)
 22 BY MS. KEANEY:

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1 Q. So I'm showing you what's been marked as
 2 Plaintiff's Exhibit 41.
 3 Are you familiar with this document?
 4 THE WITNESS: Let me take a look at it.
 5 MS. KEANEY: Sure.
 6 (The witness reviewed Exhibit 41.)
 7 THE WITNESS: Okay.
 8 BY MS. KEANEY:
 9 Q. And are you familiar with this document?
 10 A. Yes.
 11 Q. And what is it?
 12 A. It is an E-mail from Hillary, mostly to the
 13 RSCs, saying that we can resume requesting SAOs,
 14 presumably by the electronic way, and telling each RSC
 15 that they had a monthly allotment of SAOs they could
 16 request.
 17 Q. Okay. And if you look at the "To" line, can
 18 you see your name listed?
 19 A. Yes.
 20 Q. Can you confirm you received this E-mail?
 21 A. Yes.
 22 Q. Was this E-mail received after you had

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1 returned to the office?
 2 A. Yes.
 3 Q. Okay. Do you know on what date you returned
 4 to the office?
 5 A. I'd have to look at a calendar, but it should
 6 have been the Monday which was two weeks from
 7 Christmas.
 8 Q. Okay. So the Monday following New Year's Eve
 9 week?
 10 A. Yeah. Like January 7, it probably was, or
 11 something like that.
 12 Q. Okay. So this E-mail is an E-mail that was
 13 sent by Ms. Ingraham, who was the head of RPC to the
 14 RSCs on February 2, 2018, and it regarded updates made
 15 to WRAPS, including the update to now request SAO
 16 checks; is that correct?
 17 A. Yes.
 18 Q. Okay. And you referenced earlier this E-mail
 19 also includes an allocated quota for RSC SAO requests;
 20 is that right?
 21 A. Right.
 22 Q. This is the first time that PRM ever

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1 instituted quota for SAO checks; is that correct?
 2 A. I believe so.
 3 Q. Do you know who made a decision to institute
 4 a quota?
 5 A. Like many decisions made in the admissions
 6 office, it was kind of a collective decision made
 7 based on the capacity of the vetting agencies.
 8 Q. Do you know who was involved in that
 9 collective decision?
 10 A. Myself, Hillary, Jen. Jen Smith.
 11 Q. Anyone else?
 12 A. I don't recall.
 13 Q. How did you arrive at the quota numbers?
 14 A. Because at some point the vetting agencies
 15 had signaled to us that they thought they could do
 16 about 2,000 a month. So I don't know if this is the
 17 2,000 exactly, but that's what I recall.
 18 Q. And --
 19 A. Yeah. It does add up to 2,000.
 20 Q. My understanding is that the global monthly
 21 quota set by this E-mail is 2,010.
 22 A. Okay.

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1 Q. How did you determine how many to allocate to
2 each RSC?

3 A. Based on the number of people that they had
4 in their caseload who required an SAO.

5 Q. You said you arrived at the global monthly
6 quota as a result of information from the vetting
7 agencies about their capacity; is that correct?

8 A. (Nod head.)

9 Q. Is there a particular vetting agency whose
10 capacity was considered in terms of arriving at the
11 2,000 number?

12 A. Well, it was both of them. Both the FBI and
13 the other agency said that that was about their
14 capacity.

15 Q. Okay. Going back to Ms. Ingraham's
16 declaration from November 5, 2018. This is
17 Exhibit 40. In Paragraph 10 she's talking about the
18 SAO quotas, and she notes that "Between February and
19 April of 2018, vetting partners provided" completed --
20 "complete SAO response for only 110 individual
21 requests."
22 A. Yeah.

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1 Q. Is that your understanding?
2 A. Yes.

3 Q. Were you involved in any discussions
4 regarding this figure?

5 A. You mean putting this figure into this
6 declaration (indicating)?

7 Q. No. I mean the fact that between February
8 and April of 2018 the vetting partners completed only
9 110 requests?

10 A. I mean I was generally aware that the output
11 was very low. I don't recall that it was exactly 110,
12 but I was aware that it was very low. Not anywhere
13 near the 2,000 they said it was.

14 Q. And was that -- who were you made aware --
15 who made you aware of that? Do you recall?

16 A. Hillary.

17 Q. Okay. And did you discuss the fact that the
18 output was lower than expected with Ms. Ingraham?

19 A. I mean it was the subject of discussions on a
20 frequent basis, yes.

21 Q. Okay. And what about it did you discuss?
22 A. That it was much lower than they had said

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1 that it was going to be.

2 Q. Did you have any understanding for why it was
3 much lower than what they had said?

4 A. I mean I don't think I can speak on -- say
5 the question again.

6 Q. Did you have any understanding about why the
7 figure was lower than what they had anticipated --

8 A. My understanding is that it was because they
9 didn't have the capacity to do any more.

10 Q. Okay. And how did that impact PRM's work to
11 process refugee applications?

12 MR. DUGAN: Objection. Vague.

13 THE WITNESS: It slowed it down.

14 BY MS. KEANEY:

15 Q. Okay. In that same paragraph, Ms. Ingraham,
16 in her declaration, she indicates that of the 110 that
17 were completed, 101 of them were not clear. Is that
18 your understanding as well?

19 A. That sounds right. If that's the number she
20 provided, I'm sure that's right.

21 Q. Did you have any discussions with
22 Ms. Ingraham about the fact that of the number of SAO

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1 requests that were completed, a great majority of them
2 had come back not clear?

3 A. Yes.

4 Q. Okay. And what did you discuss with respect
5 to this figure of numbers that were not clear?

6 A. I mean it's -- it was for a period of time
7 just a discussion we had frequently because it was
8 having a major impact on our pipeline. So it was just
9 a problem that didn't seem to be resolvable.

10 Q. And what was the impact precisely on your
11 pipeline?

12 A. That it was very difficult to get an SAO
13 nationality applicant to -- ready for travel in any
14 number, any meaningful number.

15 Q. Would you say that the primary obstacle to
16 resettling SAO nationalities is getting a clear SAO
17 check?

18 MR. DUGAN: Objection. Vague.

19 But you can answer.

20 THE WITNESS: Yes.

21 BY MS. KEANEY:

22 Q. You said it was your understanding that the

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1 numbers were low because of a lack of capacity on the
 2 vetting partners side; is that correct?
 3 A. Yes.
 4 Q. Where -- how did you learn that that was the
 5 issue attributable to why the numbers were so low?
 6 A. Because that's what they told us.
 7 Q. Okay. Did you have conversations with the
 8 vetting partners directly?
 9 A. No.
 10 Q. Do you have any understanding for why there
 11 was such a capacity problem on behalf of the vetting
 12 partners?
 13 MR. DUGAN: Objection. Calls for
 14 speculation.
 15 THE WITNESS: I can tell you what they told
 16 us, which is that they were having to do -- at least
 17 one of the agencies was having to do the checks
 18 manually. So it was every check had to be done by a
 19 human being, not automated.
 20 BY MS. KEANEY:
 21 Q. Is it your understanding that that continues
 22 to be the process?

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1 MR. DUGAN: Same objection.
 2 THE WITNESS: So I should clarify. Although
 3 I have not had direct conversations with vetting
 4 partners about this, I've been in meetings where this
 5 has been discussed. So I heard it from them directly,
 6 and I know that they have recently -- the one agency
 7 I'm thinking of has recently developed a capacity to
 8 do a certain number of checks in an automated way
 9 which has increased their output.
 10 BY MS. KEANEY:
 11 Q. Okay. And do you have a sense of what their
 12 current output is?
 13 A. I'd only be speculating. It's kind of
 14 periodic. It's not like a steady output. It's kind
 15 of up and down.
 16 Q. Okay. Later in that paragraph Ms. Ingraham
 17 indicates that "PRM established a new global monthly
 18 allocation of 500 SAO requests" --
 19 A. Where is that?
 20 Q. This is in Paragraph 10, at the very bottom,
 21 last sentence. Is that your understanding?
 22 A. Yes.

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1 Q. Is it your understanding that the current
 2 global monthly allocation is 500?
 3 A. It is not. We have largely lifted the
 4 monthly allocation because of the vetting partner that
 5 has said that their capacity is higher because of
 6 their ability to do a certain number in an automated
 7 way.
 8 Q. When did you lift the allocation?
 9 A. I don't know exactly.
 10 Q. Okay. Was that communicated to the RSCs?
 11 A. Yes.
 12 Q. Do you know how it was communicated to the
 13 RSCs?
 14 A. By E-mail, but I don't know the date or by
 15 whom.
 16 Q. Okay. Going back to the period referenced in
 17 this declaration, were you a part of any of the
 18 discussions to arrive at the new global monthly figure
 19 of 500?
 20 A. Yes.
 21 Q. And what role did you play in making that
 22 decision?

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1 A. Just as a participant in the discussion,
 2 trying to come at what seemed like a more appropriate
 3 number given the -- given what we were seeing from the
 4 vetting agencies.
 5 Q. Did you have reason to believe that the
 6 vetting partner capacity could reach the new figure of
 7 500?
 8 A. We did not expect that it would, but we
 9 wanted to keep pressure on the vetting agencies.
 10 MS. KEANEY: Okay. I think we're all
 11 probably hungry. Should we break for lunch?
 12 THE WITNESS: Sure.
 13 (A recess was taken from 12:36 p.m.
 14 to 1:26 p.m.)
 15 BY MS. KEANEY:
 16 Q. If we can return to a topic we discussed
 17 earlier, which is circuit rides. As I understand it,
 18 it's the RSC -- once the circuit ride schedule has
 19 been determined, it's the RSC that schedules the
 20 specific, individual interviews; is that correct?
 21 A. Correct.
 22 Q. Are there parameters that the RSC uses in

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1 order to determine who to schedule for those
 2 interviews?
 3 A. In general, they would try to put any urgent
 4 cases at the front end of the circuit ride so that
 5 they could have a chance of getting approved earlier.
 6 Q. Okay. And then assuming they exhausted
 7 whatever list of most urgent cases, are there
 8 additional parameters that guide the scheduling of
 9 interviews?
 10 A. Not that I'm aware of.
 11 Q. Okay. And you had mentioned that circuit
 12 rides are usually planned a few months in advance of
 13 when the circuit ride is to take place. Based on
 14 that, were there circuit rides planned for the first
 15 quarter in 2017 -- so this would be October 1 to
 16 December 1, 2017 -- that included SAO nationals?
 17 A. I do not know the answer to that. In
 18 general, there were relatively few circuit rides
 19 during that period.
 20 Q. Why is that?
 21 A. Part of it is that USCIS' capacity for a
 22 period of time was a lot lower because they had to

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1 second officers to the asylum corps. And, in general,
 2 with all of the kind of churn in the program, we just
 3 didn't have as many circuit rides.
 4 Q. Were there any interviews that were canceled
 5 during that Quarter 1 as a result of the agency memo
 6 suspension of SAO nationals?
 7 A. I'm sorry. I don't recall. I actually don't
 8 have a good picture in my mind of what the circuit
 9 ride schedule was in that first quarter.
 10 Q. Do you know whether the Quarter 1 circuit
 11 ride schedule was determined by the time the agency
 12 memo was issued on October 24?
 13 A. I do not know, but I doubt it.
 14 Q. Why do you doubt it?
 15 A. Because we were waiting to see what the
 16 outcome of the 120-day discussion would be, and I
 17 think we didn't know what sort of new measures might
 18 be in place that might impact circuit rides.
 19 Q. Okay. Is it fair to say that the Quarter 1
 20 circuit ride schedule was scheduled later than
 21 ordinary as a result of the agencies waiting to see
 22 what was the outcome of the 120 days?

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1 A. I think so, but I don't know exactly when it
 2 was finalized.
 3 Q. An who would know when Quarter 1's circuit
 4 ride schedule was finalized?
 5 A. I doubt anyone would know offhand. I mean
 6 somebody would have to go back into E-mails to look it
 7 up. I mean someone could go back. It could be me.
 8 Q. Also on a topic we discussed earlier on SAOs,
 9 I believe you testified that the difficulty in getting
 10 SAO checks cleared is a primary reason why SAO
 11 national cases are not moving; is that correct?
 12 A. Yes.
 13 Q. Are there -- in your opinion, are there other
 14 reasons?
 15 A. That's the primary reason. There are a
 16 number of reviews that USCIS undertakes now after all
 17 the security vetting -- after all the security checks
 18 are back. These reviews have to happen before the
 19 person travels, but USCIS can only do the reviews on
 20 cases that we get all the security clearances back.
 21 So there's always kind of a small backlog of cases
 22 requiring USCIS final reviews because they have to

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1 wait -- I mean they have to wait for all the security
 2 checks to come in. So there's always a small backlog,
 3 but nothing substantial.
 4 Q. Okay. Has the review -- that final review
 5 that you're speaking of that USCIS conducts after all
 6 the other security checks, and I assume medical
 7 checks, is that true, have been completed?
 8 A. Yes.
 9 Q. Has the outcome of those final reviews, have
 10 those changed over time?
 11 A. Well, those reviews have only been in place
 12 since the 120-day review.
 13 Q. I see. Were those reviews ordered by the
 14 120-day review, the outcome of that review?
 15 A. I don't know if they were ordered explicitly
 16 by the 120-day review, but USCIS put them in place
 17 after the 120-day review.
 18 Q. What's your understanding of the purpose of
 19 that final review?
 20 MR. DUGAN: Objection. Lack of foundation.
 21 You can answer.
 22 THE WITNESS: I think I would only be

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1 speculating if I answered it.

2 BY MS. KEANEY:

3 Q. That's okay. Do you have any understanding

4 of why they put in this final review?

5 MR. DUGAN: Same objection.

6 THE WITNESS: In general, I would say to make

7 sure that the processing of the case was entirely in

8 accordance with the new requirements put in place

9 through the reviews.

10 BY MS. KEANEY:

11 Q. Is there a name for this final review that

12 they've put in place?

13 A. Yes. There's actually two, though. It's EFR

14 and PDR.

15 Q. The pipeline DHS review, PDR, yes. They're

16 on our list of terms.

17 A. Right. And enhanced FDNS review.

18 Q. Okay. Thank you.

19 Earlier you also testified that over time

20 many -- more of the SAO requests are coming back as

21 not clear than in years prior; is that correct?

22 A. Yes, that's correct.

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1 Q. What is your understanding or theory about

2 why that is?

3 MR. DUGAN: Objection. Calls for

4 speculation. Lack of foundation.

5 You can answer to the extent you know.

6 THE WITNESS: I mean I can tell you what the

7 agency has told us, which is that because they're

8 checking more databases, they are finding more matches

9 between our applicants and holdings that they have.

10 BY MS. KEANEY:

11 Q. I see. Okay. And is there anything else?

12 Any other reasons that more are coming back as not

13 clear that you're aware of?

14 MR. DUGAN: Same objection.

15 THE WITNESS: I can tell you also what the

16 agency has told us, which is that they're -- but I

17 don't know much about the details, but that they're

18 using a different threshold than they used to.

19 BY MS. KEANEY:

20 Q. The vetting agencies are using a different

21 threshold?

22 A. No. The one agency that has a high denial

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1 rate.

2 Q. I see.

3 A. Okay.

4 Q. And anything else?

5 A. No.

6 (Previously marked Exhibit 43 was handed to

7 the witness.)

8 BY MS. KEANEY:

9 Q. All right. So I'm handing you what's been

10 marked as Plaintiffs' Exhibit 43, which is a document

11 entitled "DECLARATION OF KELLY A. GAUGER IN SUPPORT OF

12 DEFENDANTS' RESPONSE TO JFS PLAINTIFFS' MOTION FOR

13 REINSTATEMENT AND DOE PLAINTIFFS MOTION TO JOIN."

14 Do you recognize this document?

15 A. Yes.

16 Q. What is it?

17 A. Well, it says -- I think this is primarily

18 about the E-mail that was sent from our Congressional

19 liaison where she misstated what her current practice

20 was, and this is a little bit of an explanation about

21 how that came to be.

22 Q. Okay. So to be fair, this is a declaration

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1 that you submitted in our case related to this

2 Congressional liaison's efforts?

3 A. Uh-huh.

4 Q. Can you confirm that this is your signature

5 on Page 4?

6 A. Uh-huh.

7 Q. Did you draft this declaration?

8 A. No.

9 Q. Who did?

10 A. I believe our counsel.

11 Q. Okay. And did you review this declaration?

12 A. Yes.

13 Q. Did you make any changes to it?

14 A. I don't recall.

15 Q. If you could go to Paragraph 2. And tell me

16 what this paragraph is explaining. Excuse me. What

17 this paragraph is describing.

18 A. Uh-huh. So Wi Are -- congressional liaison

19 is a long-time prn civil servant who used to work in

20 the admissions office who has a particular knowledge

21 of the general process and has access to WRAPS. And

22 so when she gets case inquiries from Congressional

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1 staff, she looks them up and figures out what she can
2 say about the case and then responds.
3 Q. Okay. How long has she been with PRM?
4 A. I don't know for sure.
5 Q. Okay. Approximately?
6 A. Longer than I have been. So longer than 20
7 years.
8 Q. Okay. Do you know approximately how long she
9 has been the Congressional liaison?
10 A. I'd say about 10 years.
11 Q. Okay. And as Congressional liaison, who does
12 she report to?
13 A. The -- so currently to the director of our
14 policy office. She used to report to the director of
15 our multilateral office.
16 Q. Do you know when that changed?
17 A. I don't.
18 Q. At the time that she made these
19 representations, which are referenced in the
20 declaration, do you know who she was referring to?
21 A. The head of the policy office.
22 Q. Do you know whether she has received any

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1 training regarding how to respond to Congressional
2 inquiries?
3 MR. DUGAN: Objection. Lack of foundation.
4 THE WITNESS: I do not.
5 BY MS. KEANEY:
6 Q. In Paragraph 3 you state that you confirmed
7 with the Congressional liaison that the E-mails that
8 she sent, which were attached to declarations that we
9 submitted in our case, Hamdi Mohammed and John Doe 1,
10 were not reviewed by anyone prior to being sent to
11 Congress; is that correct?
12 A. So I confirmed that not directly with her but
13 via our counsel, who had talked to her about it.
14 Q. Did you speak to her at all about these
15 cases?
16 A. I did not.
17 Q. Based on your understanding in responding to
18 these two Congressional inquiries, where was the
19 Congressional liaison getting her information from?
20 A. From WRAPS, about the case status
21 information.
22 Q. Were there other sources of information she

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1 was consulting?
2 A. No. What I meant was the part about her
3 E-mail that talked about the status of -- I don't know
4 how you want to -- the part that -- she had some
5 language that she had been using during the 90-day
6 review that she had -- at some point we had approved,
7 but we didn't know she was still using it.
8 Q. I see. Okay. So are you referring -- in
9 Paragraph 6 you quote some of the language from her
10 E-mail, I believe, "on temporary hold" and "temporary
11 suspension"?
12 A. I believe that's it. I'd want to look at the
13 E-mail to be sure.
14 Q. I apologize. I don't have it.
15 A. Oh. Okay.
16 Q. So but what you're saying is that there was
17 language that PRM had approved prior to the sending of
18 these E-mails, and what was the purpose of that
19 language?
20 A. To explain what was happening with cases were
21 affected by the 90-day review during the 90-day
22 review.

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1 Q. How was she to know when to use that language
2 and when not to use that language?
3 A. Well, she knew to use the language at the
4 beginning of the 90-day review, but we clearly didn't
5 convey to her when to stop using it.
6 Q. I see. And then she was also, as I
7 understand it, consulting reps for status information
8 about the status of these two cases; is that correct?
9 A. Yes.
10 Q. Was there nothing in WRAPS that would have
11 confirmed for her that these cases were no longer on
12 temporary hold?
13 A. Well, I don't --
14 MR. DUGAN: Objection. Lack of foundation.
15 You can answer.
16 THE WITNESS: Pam would have been reviewing
17 the narrative of the case that was just about case
18 processing. She wouldn't necessarily have been able
19 to ascertain that whatever hold status had been placed
20 during the review that had been released, that that
21 had changed. That's not so obvious from looking at a
22 screen shot on WRAPS.

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1 BY MS. KEANEY:
2 Q. I see. Okay. Then you state in your
3 declaration, I believe it's Paragraph 6, that these
4 cases were processed in accordance with the injunction
5 issued in this case as of the next business day after
6 the injunction was issued; is that right?
7 A. Yes.
8 Q. What did you mean by that?
9 A. What that means -- what I would mean is that
10 those cases starting that next business day, which I
11 guess would have been the 26th, were once again able
12 to be processed in the way that they would be
13 processed before the 90-day review, which doesn't
14 necessarily mean that on that day something on that
15 case changed, but they were back in a status that was
16 eligible to start moving along. But not every case
17 changes on every day. So I can't say that something
18 specific changed on that day.
19 Q. Okay. That was going to be my next question.
20 So to your knowledge, did anything specific change in
21 the case that's referenced in the Hamdi Mohammed
22 declaration as of the next business day, December 26?

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1 A. I do not know.
2 Q. Okay. And as of your knowledge, did anything
3 specific change on the day, first business day,
4 December 26, in John Doe I's case?
5 A. Not that I'm aware of.
6 Q. Did you do anything to confirm the facts of
7 these two individual cases?
8 A. No.
9 Q. Okay. I have a few questions about program
10 announcements. So just first some background.
11 A. Okay.
12 Q. Are you familiar with PRM program
13 announcements?
14 A. Yes.
15 Q. Okay. And what exactly is a program
16 announcement?
17 A. It's a way that we convey programmatic or
18 policy changes. The vast majority go to our
19 resettlement support centers.
20 Q. Okay. And under what circumstances does PRM
21 issue a program announcement?
22 A. It's not black and white. It's when there's

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1 a significant enough change that we think that, you
2 know, it's not sufficient just for the RPC to do an
3 update to an SOP and send it out, or that it's not
4 enough just to have Jen send out an E-mail to the
5 RSCs. It kind of rises to something more important,
6 but it's not a black-and-white line of when do we do a
7 program announcement and when do we just do an E-mail.
8 Q. Okay. And who makes the determination of
9 whether or not it rises to that level of being
10 significant enough?
11 A. The drafter. The drafter who drafts it, and
12 then it has to be cleared. So, you know, there would
13 be an opportunity for someone higher up to say, "Oh,
14 no. This doesn't rise to the level of a program
15 announcement." But that doesn't happen that often.
16 Q. Okay. Who drafts program announcements?
17 A. Jen Smith does a number of them. Hillary
18 would do some. Barbara Day, who used to be our
19 section chief for our domestic section would draft
20 them if they had to do with domestic resettlement.
21 Cameron has probably drafted a few.
22 Q. Okay. And I believe the language you used

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1 was that once they're drafted, they have to be
2 cleared; is that correct?
3 A. Yes.
4 Q. Okay. What's the process for them to be
5 cleared?
6 A. There's kind of the appear clearance process
7 first where, if Cameron drafted it, you know, you
8 might clear it among Barbara and somebody else.
9 Ultimately, for the most part, Larry, I, or Hillary
10 would need to put final clearance on a program
11 announcement before it goes out.
12 Q. Okay. And I think you said this, but
13 program -- who is the audience for a program
14 announcement?
15 A. Well, it depends. You'll see it in the "To"
16 line. So it's often overseas resettlement support
17 centers. Sometimes it's also domestic resettlement
18 agency.
19 Q. Okay.
20 A. Sometimes both. Sometimes you have an issue
21 that spans overseas and domestic. So you put them
22 both up.

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1 Q. Okay. When a program announcement is issued,
 2 is it effective immediately?
 3 A. It's either effective immediately, or
 4 sometimes it has an implementation date. It will say
 5 on the first paragraph, "This is in effect as of" "X"
 6 date. But otherwise, it's understood to be
 7 immediately.
 8 Q. And when it's not immediately and it's
 9 effective as of whatever date is in the program
 10 announcement, is that always a date sometime in
 11 advance of the program announcement?
 12 A. As opposed to retroactive, you mean?
 13 Q. Yes.
 14 A. I can't think of one that we've done
 15 retroactively. I suppose it's possible, but I can't
 16 think of one. It would normally be in the future.
 17 Q. Okay. How does PRM -- well, let me back up.
 18 Program announcements sometimes require PRM
 19 to change the way it performs its work; is that
 20 correct?
 21 A. Yes.
 22 Q. And so how does the agency operationalize

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1 those changes that are made, announced through a
 2 program announcement?
 3 A. Well, it would depend on what the change is.
 4 Sometimes it could be a change in WRAPS. Sometimes it
 5 could just be a change of procedures at the RSCs or by
 6 the -- less so by the domestic resettlement agency.
 7 Q. Okay. And how do you ensure that the changes
 8 announced in the program announcement are implemented
 9 by the partners that they're directed to?
 10 A. That would be the role of Jen Smith as
 11 overseas section chief and her team. The overseas
 12 team.
 13 Q. Okay. If a program announcement change
 14 requires a change to WRAPS, who makes that
 15 determination?
 16 A. Hillary.
 17 Q. Okay. And does Hillary also oversee whatever
 18 the relevant changes to WRAPS are?
 19 A. In many cases, yes.
 20 MR. KEANEY: Okay. I'm going to hand you
 21 what's marked as Plaintiff's Exhibit 10.
 22 (Previously marked Exhibit 10 was handed to

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1 the witness.)
 2 BY MS. KEANEY:
 3 Q. Are you familiar with this document?
 4 A. Yes.
 5 Q. What is it?
 6 A. The changes to SAO criteria that were
 7 determined by the agency memo, by the review and the
 8 agency memo.
 9 Q. And is it okay if I refer to this as
 10 PA 2018-05?
 11 A. Sure.
 12 Q. And this lists you under the line "From"; is
 13 that correct?
 14 A. Yes.
 15 Q. Does that mean that you drafted this program
 16 announcement?
 17 A. No.
 18 Q. What does that mean?
 19 A. It means that I cleared off on it.
 20 Q. Okay.
 21 A. Program announcements almost always go out
 22 under the name of the most senior person who is in the

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1 office. So it would be either me or Hillary.
 2 Q. Okay. And why was PA 2018-5 issued?
 3 A. Because there were new requirements that were
 4 laid out in the agency memo for SAOs. So we had to
 5 inform RSCs because they have to request the SAOs.
 6 Q. Okay. And who drafted this program
 7 announcement?
 8 A. I don't know for sure.
 9 Q. Okay. But you testified that you signed off
 10 on it?
 11 A. Yes.
 12 Q. Okay. And did you consider any alternatives
 13 to program announcement 2018-5 in order to implement
 14 the changes required by the agency memo?
 15 A. I don't recall that I specifically considered
 16 other options, no.
 17 Q. Did somebody at PRM make the decision that
 18 there would be no grandfather period for the cases
 19 that were impacted by this program announcement?
 20 MR. DUGAN: Objection. Foundation.
 21 THE WITNESS: That decision wasn't made by
 22 PRM alone.

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1 BY MS. KEANEY:
 2 Q. Who was it that made the decision?
 3 A. I mean it was -- I think I'd only be
 4 speculating because I wasn't in the group that did the
 5 120-day review, but my understanding, that it was a
 6 joint decision and recommendation of the working
 7 group.
 8 Q. So the decision not to provide for a
 9 grandfather period for this extended SAO requirements
 10 was made by the 6(a) working group; is that correct?
 11 MR. DUGAN: Same objection.
 12 THE WITNESS: I don't know for sure. That's
 13 just my guess, but I don't know for sure.
 14 BY MS. KEANEY:
 15 Q. That's your guess. Okay.
 16 A. All I'm saying is it wasn't made by us alone.
 17 This wasn't a PRM decision.
 18 Q. I see. You testified that you don't know who
 19 drafted this; is that correct?
 20 A. I do not. I mean it says to contact Jennifer
 21 Smith at the back, which would generally mean that
 22 Jennifer wrote it, but I can't be sure.

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1 Q. Do you know, aside from potentially Jennifer
 2 Smith and you, who took a look at it, anybody else who
 3 was involved in determining the contents of this
 4 program announcement?
 5 A. I don't know for sure.
 6 MS. KEANEY: Okay. I'm going to hand you
 7 what's marked as Plaintiff's Exhibit 11.
 8 (Previously marked Exhibit 11 was handed to
 9 the witness.)
 10 (The witness reviewed Exhibit 11.)
 11 BY MS. KEANEY:
 12 Q. Are you familiar with this document?
 13 (The witness reviewed Exhibit 11.)
 14 THE WITNESS: I mean I probably -- do you
 15 want me to read the whole thing and kind of really
 16 digest the whole thing?
 17 BY MS. KEANEY:
 18 Q. No. We'll go through specific parts of it.
 19 Are you able to describe what this document is?
 20 A. Yeah. If I read through it a little bit
 21 better.
 22 Q. Okay.

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1 A. This must have been --
 2 (The witness further reviewed Exhibit 11.)
 3 THE WITNESS: Okay. So this is describing
 4 king of the biggest workload that we had as PRM under
 5 the agency memo, which is instructing RSCs to go out
 6 and collect the additional information from
 7 applicants.
 8 BY MR. KEANEY:
 9 Q. When you say, "the biggest workload change,"
 10 do you mean in the history of your time at PRM?
 11 A. No. No. In terms of when you were asking me
 12 earlier about the things that we had to do, we, as an
 13 agency had to do coming out of the agency memo, this
 14 was the big thing on our side, USCIS, but this was a
 15 big change for us.
 16 MS. KEANEY: And just for the record, so this
 17 document that we were produced from defendants has a
 18 water mark of "Draft," but as I understand from your
 19 E-mail yesterday, Joe, this is the final program
 20 announcement, and you've confirmed that with PRM?
 21 MR. DUGAN: That's correct. I've confirmed
 22 with PRM. This is the final version of the document.

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1 MS. KEANEY: Okay. And this is the version
 2 that went out to the RSCs?
 3 MR. DUGAN: I don't have any personal
 4 knowledge of that, but I assume so.
 5 BY MS. KEANEY:
 6 Q. Do you know whether or not this is the
 7 version that went out to the RS- --
 8 A. I actually didn't notice until you said that
 9 it says "Draft" across the -- so, no, I don't know.
 10 Q. Do you know who drafted this program
 11 announcement?
 12 A. Again, it's "please contact Jennifer," So it
 13 could have been Jennifer, but I'm not sure.
 14 Q. Did you play any role in drafting or
 15 finalizing -- drafting, first, this program
 16 announcement?
 17 A. I'm sure I -- well, I was likely asked to
 18 review it, but I don't remember it specifically.
 19 Since Larry was still here, I wasn't always involved
 20 in all of the decisions -- all of the -- the things
 21 that we had to do related to the agency memo right in
 22 the beginning. I mean that changed soon because he

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1 left soon after this, but up until this point, I was
 2 kind of a step or two removed.
 3 Q. Okay. Do you know whether or not this ever
 4 went to the RSCs?
 5 A. I'm sure it did. I mean it had to have
 6 because they had to be told to do this because these
 7 specific changes weren't mentioned in the agency memo.
 8 So this had to be provided by us.
 9 Q. Who would be able to confirm if this went to
 10 the RSCs and when?
 11 A. Any one of us could check our E-mail because
 12 we would have been on the distribution.
 13 Q. Okay.
 14 A. But it sounds like you already did that.
 15 Q. And so PA 2018-04 was issued on October 23;
 16 is that correct?
 17 A. That's what it looks like, yeah.
 18 Q. Okay. And it was effective two days later on
 19 October 25; is that correct?
 20 A. That's what it looks like, yes.
 21 Q. Do you know who determined the effective
 22 date?

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1 A. I do not.
 2 Q. Who would know that?
 3 A. Hillary or Jen. I'm not sure they would
 4 recall why, but they'd have to go back and probably
 5 look at their E-mails to see.
 6 Q. Okay. Can you describe for me the specific
 7 changes that were announced by this program
 8 announcement?
 9 A. Yep. So as I mentioned earlier, this is
 10 going back and collecting more information from 5 to
 11 10 years. So throughout the -- whereas we had
 12 previously requested just for the previous 5, and then
 13 additional information for family tree members.
 14 Q. And can you walk me through the steps that
 15 were taken to implement this program announcement?
 16 A. Not well because I would guess that it
 17 involved some changes in WRAPS, like some new fields
 18 that had to be added, but I don't know.
 19 Q. You don't know whether that was the case?
 20 A. No.
 21 Q. Who would know that?
 22 A. Hillary.

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1 Q. Can you explain to me which refugees the
 2 expanded data requirements applied to according to
 3 this program announcement?
 4 A. So it looks like it applied to everyone. So
 5 cases that had already been prescreened, it had to be
 6 added into WRAPS, and for those who were waiting,
 7 prescreening had to be collected at prescreening.
 8 Q. Did it apply to all cases whether or not they
 9 had already had the USCIS interview?
 10 A. Yes.
 11 Q. My understanding, I guess, looking at this
 12 first paragraph, it says, "All cases scheduled for an
 13 interview to include reinterviews on or after
 14 October 25, 2017 are required to have the information
 15 entered into WRAPS." So did this program
 16 announcement's requirement to expand the data
 17 collection apply to all cases regardless of whether or
 18 not the USCIS interview had already taken place?
 19 A. Well, yes, because it goes on to say, "For
 20 applicants who have not yet been prescreened, this
 21 information can be collected at prescreening. For
 22 cases that have been prescreened, RSCs can collect

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1 this information the same day as the USCIS interview.
 2 So, yes, it looks like it applied to everybody.
 3 Q. All right. So to be clear, if a non-SAO case
 4 had already been interviewed by USCIS as of
 5 October 25, 2017, would that case require the expanded
 6 data to be collected?
 7 A. I actually don't know. I mean I could read
 8 this in a more careful way and try to answer that
 9 question, but I'm not sure.
 10 Q. If you could. It's actually important that I
 11 understand who this program announcement applies to.
 12 A. Okay. So say your question again.
 13 Q. So we're talking about non-SAO cases.
 14 A. Okay.
 15 Q. And my question is did this apply to all
 16 non-SAO cases with the expanded data requirements or
 17 only those for whom the interviews had not yet
 18 occurred as of October 25, 2017?
 19 A. That's confusing.
 20 (The witness reviewed Exhibit 11.)
 21 THE WITNESS: It appears that way because it
 22 only refers to post USCIS cases that require an SAO.

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1 BY MS. KEANEY:
 2 Q. Okay. So let me make sure I'm understanding.
 3 In cases of non-SAOs, this program announcement
 4 required the expanded data to be collected only if the
 5 interview had occurred after October 25, 2017?
 6 A. So I'm answering your question based on my
 7 reading of this program announcement and my best
 8 understanding of it. In the period immediately
 9 following the agency memo, our caseload was kind of
 10 sliced and diced in so many ways that it was actually
 11 confusing to keep straight ourselves. So we had to
 12 kind of work all this out.
 13 So my answer is, based on my reading of this,
 14 it appears to me that only SAO nationalities that were
 15 post DHS interview had to have this information
 16 collected before they traveled. That's what it
 17 appears to be.
 18 Q. Okay. Looking at the third paragraph, it
 19 says, "For post USCIS cases with a case number who
 20 requires an SAO, RSCs must collect these additional
 21 data elements for all case members."
 22 A. Okay. So there you go. So if you're on a

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1 case with somebody who has an SAO, even if you
 2 yourself don't, then, yes, it was required. So if
 3 you're the 12-year-old daughter, you need to have this
 4 information collected as well.
 5 Q. Regardless of whether or not the USCIS
 6 interview has taken place?
 7 A. Oh, I don't know about that.
 8 Q. What does it mean -- sorry. There seems to
 9 be a distinction between Paragraph 2 and Paragraph 3
 10 related to the timing of post USCIS cases. What is
 11 post USCIS cases?
 12 A. Cases that had been interviewed by USCIS.
 13 Q. Okay. So Paragraph 3 applies even in cases
 14 where the interview has already -- the USCIS interview
 15 has already taken place; is that correct?
 16 A. Yes, that appears to be correct.
 17 Q. But only where there's a case number who
 18 requires an SAO?
 19 A. Yes.
 20 Q. And Paragraph 2 applies only where the USCIS
 21 interview is on or after October 25, 2017, then the
 22 expanded data requirements apply. Is that your

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1 understanding?
 2 A. Yes.
 3 Q. Maybe I'll put it another way. My
 4 understanding is this program announcement applied
 5 prospectively to all preinterview refugees that hadn't
 6 been interviewed as of the date of this program
 7 announcement, October 25, it applied to them in all
 8 cases. However --
 9 A. Yes. This whole thing is rather confusing,
 10 but yes, that is my understanding.
 11 Q. Okay. However, for cases where there was a
 12 case member who required an SAO either -- we can go
 13 over that in a minute. But these additional data
 14 requirements applied retroactively and prospectively
 15 regardless of when the interview had taken place?
 16 MR. DUGAN: Objection. Vague. Compound.
 17 You can answer if you understand.
 18 THE WITNESS: Could you restate?
 19 MS. KEANEY: Sure.
 20 Q. For cases with a case member who requires an
 21 SAO, these additional data requirements applied
 22 retroactively and prospectively regardless of when the

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1 USCIS interview had taken place?
 2 A. Yes.
 3 MR. DUGAN: Same objection.
 4 BY MS. KEANEY:
 5 Q. And when it says that it applied
 6 retroactively to all cases where there's a case member
 7 who requires an SAO, can you explain to me what is
 8 meant by who requires an SAO?
 9 MR. DUGAN: Objection. Lack of foundation.
 10 THE WITNESS: If they meet the parameters
 11 laid out for the people who need SAOs in the --
 12 following the agency memorandum.
 13 BY MS. KEANEY:
 14 Q. Okay. And in what cases was an SAO required
 15 following the agency memorandum?
 16 A. Well, I notice that this was redacted. So...
 17 MR. DUGAN: Objection. To the extent that
 18 the question would require disclosure of material that
 19 the agency has asserted law enforcement sensitive
 20 privilege over, we would instruct the witness to
 21 answer to that extent.
 22 MR. COX: Will you let us know the scope of

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1 your privilege assertion.
2 MR. DUGAN: I think Plaintiff's Exhibit 10,
3 the redaction under the bullet "New SAO requirements"
4 would tend to reveal to this witness what the
5 protected information is.
6 BY MS. KEANEY:
7 Q. Is it safe to say that an SAO -- whether an
8 SAO is required is limited by the individual's
9 nationality?
10 A. Not only the nationality.
11 Q. One factor is limited by the nationality?
12 A. Uh-huh.
13 Q. Is it also safe to say that whether an SAO is
14 required is also limited by the individual's age?
15 A. Yes.
16 Q. Okay. And can you tell me when is age
17 measured? Is it in determining whether or not an SAO
18 is required at the moment of application or at some
19 later point?
20 A. Well, a person -- if you are going to be that
21 age -- if you're going to be that age on the day you
22 enter, you have to have had an SAO. So since we

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1 assume that it takes a certain amount of time to
2 process somebody, that means we actually do SAOs on
3 people who are younger than that age range because we
4 assume that up to several years could elapse between
5 the time you start the processing and the person
6 enters.
7 Q. Okay. If it's clear that the person is going
8 to be older than whatever the age range is at the time
9 that they enter, then an SAO would not necessarily be
10 required?
11 A. If they were going to be on the outer end,
12 the older end?
13 Q. It's based on when you anticipate the person
14 would be --
15 A. I don't know the answer to that, if it's the
16 same or if -- I don't know the answer to that.
17 Q. Okay. Is it also, based on what we've been
18 saying about when an SAO is required, safe to say the
19 universe of individuals who require an SAO is smaller
20 than all SAO nationals; is that correct?
21 A. Yes.
22 Q. Okay. Since this has been so complicated,

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1 I'm just going to go through one more time and confirm
2 my understanding and make sure we're on the same page.
3 A. Okay.
4 Q. So this program announcement requires certain
5 expanded data to be required; is that correct?
6 A. To be collected.
7 Q. To be collected. Okay. I'm sorry.
8 Okay. For individuals who required an SAO --
9 for cases where there was an individual who required
10 an SAO because of their age or nationality, those
11 additional data requirements applied regardless of
12 when the USCIS interview had taken place?
13 MR. DUGAN: Objection. Asked and answered.
14 THE WITNESS: Yes.
15 BY MS. KEANEY:
16 Q. Okay. So taking, for example, a case with an
17 individual who requires an SAO and a USCIS interview
18 had occurred in August of 2017, before the agency memo
19 and before this program announcement, this program
20 announcement would still apply and require those
21 expanded data to be collected even though that
22 interview had already taken place; is that correct?

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1 MR. DUGAN: Objection. Vague. Calls for a
2 hypothetical.
3 THE WITNESS: Yes, that is true.
4 BY MS. KEANEY:
5 Q. Okay. And in all other cases, cases that did
6 not involve individuals who require an SAO, the
7 program announcement requirements applied only
8 prospectively only to cases where the USCIS interview
9 occurred on -- or after October 25, 2017?
10 MR. DUGAN: Objection. Asked and answered.
11 THE WITNESS: That's what this memo appears
12 to indicate.
13 BY MS. KEANEY:
14 Q. Okay. Do you know whether -- when did the
15 RSCs begin collecting the expanded data that was
16 required by this program announcement?
17 A. I mean this requirement was put into effect
18 on October 25. I can't guarantee that on October 26
19 they started calling someone in, but they were told to
20 begin the process.
21 Q. Okay. Earlier I think you had said that
22 implementing this program announcement required

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1 changes to WRAPS; is that correct?
2 A. I think I said that I believe it did. I
3 believe it required additional data fields to be added
4 into WRAPS, but I'm not sure.
5 Q. Are you aware whether or not RSCs were able
6 to collect the data before any changes to WRAPS were
7 made?
8 A. I mean they wouldn't have been able to enter
9 the data into WRAPS before the changes were made, but
10 they could have collected on a piece of paper and then
11 entered it. But I don't know when they actually
12 started doing it.
13 Q. Who would know the answer to that?
14 A. I mean Hillary might know. I imagine she
15 knows. Otherwise, the RSCs themselves would know.
16 MS. KEANEY: Okay. I'm handing you what's
17 been marked as Plaintiff's Exhibit 44.
18 (Previously marked Exhibit 44 was handed to
19 the witness.)
20 BY MS. KEANEY:
21 Q. Are you familiar with this document?
22 A. Yes. I mean I'm not sure I've read it since

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1 it came out, but I'm generally familiar with it.
2 Q. What is this document?
3 (The witness reviewed Exhibit 44.)
4 THE WITNESS: This is announcing to the RSCs
5 that the BFR status and expanded data collection
6 status was -- had been implemented in WRAPS.
7 BY MS. KEANEY:
8 Q. Do you remember seeing this E-mail before
9 today?
10 A. I mean I probably saw it on January 11, but
11 that was a long time ago. I haven't looked at it
12 since.
13 Q. A lot of the recipients are redacted. Could
14 you confirm whether or not you received this E-mail on
15 January 11?
16 A. I don't know for sure. I should have, but I
17 don't know for sure.
18 Q. Okay. And is this -- excuse me.
19 Is there any process that an E-mail like this
20 would go through before being sent in terms of review?
21 MR. DUGAN: Objection. Vague. You can
22 answer.

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1 THE WITNESS: I mean this is pretty technical
2 stuff. And so I think that I would guess that Jen had
3 to work with someone at the RPC on this.
4 BY MS. KEANEY:
5 Q. Okay. I'll give you a minute to read that
6 first paragraph, although I think maybe you already
7 have, and if you could tell me what this first
8 paragraph refers to.
9 A. As I said, that the BFR and expanded data
10 collection status have been implemented in WRAPS so
11 they could start using these statuses immediately.
12 Q. And to your knowledge, the changes that were
13 made to WRAPS, they were not completed until
14 January 11, 2018; is that correct?
15 MR. DUGAN: Objection. Lack of foundation.
16 THE WITNESS: I don't know.
17 BY MS. KEANEY:
18 Q. Who would know the answer to that?
19 A. Hillary, maybe Jen.
20 Q. Okay. So the expanded data collection status
21 that's referred to in this E-mail, does that refer to
22 the expanded data that was required by the program

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1 announcement we just discussed, 2018-04?
2 A. I believe so, yes.
3 Q. And, again, you don't know whether or not the
4 RSCs were collecting the expanded data prior to the
5 technological changes being made to WRAPS?
6 A. I do not.
7 MS. KEANEY: Okay.
8 (Previously marked Exhibit 12 was handed to
9 the witness.)
10 BY MS. KEANEY:
11 Q. I'm handing you what's been marked as
12 Plaintiff's Exhibit 12.
13 Are you familiar with this document?
14 (The witness reviewed Exhibit 12.)
15 THE WITNESS: I mean if I saw it, I haven't
16 seen it in a long time. I'm trying to determine how
17 this is different from the original. I think I'd have
18 to spend more time on it to see how it's different.
19 BY MS. KEANEY:
20 Q. What do you mean by "the original"?
21 A. Well, because it says it updates and replaces
22 2018-04.

<p style="text-align: right;">Page 218</p> <p>1 Q. I see. Okay. The other program 2 announcements that we've seen had a "From" line. This 3 one does not. Do you know why that is? 4 A. I noticed that. No, I do not. 5 Q. And on April 13, 2018 when this was issued, 6 were you acting director or was somebody else in that 7 position? 8 A. I was. I mean if I was in the office that 9 week, and it's awfully close to spring break. So I 10 don't know. If I were there, then, yes, I was acting 11 director. 12 Q. The other thing that appears different from 13 the other program announcements is this italicized 14 paragraph underneath the subject line (indicating). 15 A. Uh-huh. 16 Q. Do you know why that was added? 17 A. Yes. 18 Q. Why was that added? 19 A. Because our program announcements were being 20 shared with the press almost immediately after we were 21 sending them, and we were trying to stop that. 22 Q. I see. Who made the decision to add this to</p>	<p style="text-align: right;">Page 220</p> <p>1 A. I do not. 2 Q. Did you review this program announcement 3 before it was issued? 4 A. If I was in the office, I probably would 5 have, but I don't know for sure. 6 Q. Okay. Who would know who finalized an issue 7 in this program announcement? 8 A. Somebody who went back through our files. I 9 don't know for sure, but there might be a draft that 10 has a clearance page on it, but I'm not sure. 11 Q. Okay. Can you walk me through what 12 particular changes this program announcement 13 announced? 14 A. That's what I was saying. I actually don't 15 know. So I'd have to look at it pretty carefully 16 compared to the old one. 17 Q. My understanding is that this program 18 announcement, so 2018-17, expanded the circumstances 19 where the expanded data requirements applied to cases 20 involving SAOs. 21 A. Okay. 22 Q. So if we look --</p>
<p style="text-align: right;">Page 219</p> <p>1 the program announcements? 2 A. I think it was a collective decision that we 3 all agreed would be good. 4 Q. Okay. What was -- why were you trying to 5 stop program announcements from being shared with the 6 press? 7 A. Because they were program announcements that 8 described operations that we didn't think needed to be 9 known other than by our processing partners. 10 Q. Okay. Was there confidential information in 11 the program announcements that you were concerned 12 about? 13 A. No. No. Because we wouldn't have put it out 14 if it had confidential information in it. It 15 was -- they -- it led to a lot of press inquiries that 16 took up a lot of time. People who read these who 17 don't understand processing get very confused by them, 18 and it didn't seem like something that needed to be in 19 the press. 20 Q. Did you draft this program announcement? 21 A. No. No. 22 Q. Do you know who did?</p>	<p style="text-align: right;">Page 221</p> <p>1 MR. DUGAN: I'll just lodge an objection to 2 testimony by counsel. 3 BY MS. KEANEY: 4 Q. If you look back at Exhibit 11, which is the 5 program announcement of 2018-4 which this one 6 replaced, it required expanded data -- this is again 7 the third paragraph where post USCIS cases with the 8 case number who requires an SAO, and if you look at 9 what is now the fourth paragraph of Program 10 Announcement 2018-17, it says, "Host USCIS cases with 11 one or more case members of an SAO nationality." Is 12 that a different standard? 13 A. Yes, it is. 14 Q. How is it different? 15 A. Because in the first instance you could be an 16 SAO nationality but not within the age requirement, 17 and in the second instance you could be an SAO 18 nationality -- even if you're an SAO nationality not 19 within the age requirement, the information has to be 20 collected. That's how I read that. 21 Q. Okay. So in other words, as I said, it 22 expanded the circumstance where the expanded data</p>

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1 requirements applied to all cases involving SAOs
2 regardless of whether or not an SAO was required of
3 any member on the case; is that correct?
4 A. Yes.
5 Q. And earlier we talked about program
6 announcements more generally and that program
7 announcements are usually effective on the day that
8 they're issued or prospectively.
9 A. Uh-huh.
10 Q. If you notice on this program announcement,
11 it says that it's effective October 25, 2017.
12 However, it was issued on April 13, 2018. So would
13 you agree that this program announcement was applied
14 retroactively?
15 MR. DUGAN: Objection. Vague.
16 THE WITNESS: No. That second sentence says
17 for settlement -- effective that date RSCs have new
18 requirements for data collections for all case
19 members. I read that to mean that because of this
20 program announcement, the original one, there are new
21 data collection requirements because of the agency
22 memo.

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1 BY MS. KEANEY:
2 Q. So when was this program announcement,
3 2018-17, effective? As of what date?
4 A. I don't know the answer to that.
5 Q. Okay. Do you know why this program
6 announcement was issued to replace Program
7 Announcement 2018-4?
8 MR. DUGAN: Objection. Calls for
9 speculation.
10 You can answer.
11 THE WITNESS: No. I would only be
12 speculating if I answered.
13 BY MS. KEANEY:
14 Q. That's okay. Do you have any understanding
15 of why this program announcement was issued?
16 MR. DUGAN: Same objection.
17 THE WITNESS: I mean clearly there was a
18 decision made to -- that you just focused on and that
19 this is announcing that. So that's why this was
20 issued is what it appears to me.
21 BY MS. KEANEY:
22 Q. Do you know who made that decision?

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1 A. I do not.
2 Q. And you don't know who drafted this program
3 announcement?
4 A. I do not.
5 Q. Or who reviewed it?
6 A. I do not.
7 Q. In your 20 years at PRM, have you ever seen a
8 program announcement replace another program
9 announcement in this way?
10 A. Yes.
11 Q. What sort of circumstances does that happen?
12 A. If there's been a change. If we issued a
13 program announcement at one point that was no longer
14 valid because we had made a change, then we -- often
15 it would say "revised program announcement" up top,
16 but maybe not always. But, yes, it's definitely
17 happening.
18 MS. KEANEY: Okay. If you could go back to
19 Exhibit 44, which is the January 11 E-mail from
20 Ms. Smith.
21 If you could take a look at the first bullet.
22 I'll give you a minute to read it.

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1 (The witness reviewed Exhibit 44.)
2 THE WITNESS: Okay.
3 BY MS. KEANEY:
4 Q. What is that first bullet describing in terms
5 of what RSCs were required to do?
6 (The witness further reviewed Exhibit 44.)
7 THE WITNESS: All post DHS nationality cases
8 have to have data collection regardless of age or
9 whether they need an SAO.
10 BY MS. KEANEY:
11 Q. Okay. Sorry. So is it the case, then, that
12 according to this E-mail from Ms. Smith all cases
13 involving an SAO nationality needed the expanded data
14 collected regardless of whether or not an SAO was
15 required?
16 A. That's what it appears to say.
17 Q. Okay. And this E-mail went out on
18 January 11, 2018; is that correct?
19 A. Yes.
20 Q. And at that time, Program Announcement 2018-4
21 was in effect; is that correct?
22 A. Yes.

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1 Q. And Program Announcement 2018-4 required the
 2 expanded data collection in cases involving an SAO
 3 national who required an SAO; is that correct?
 4 A. Correct. Uh-huh.
 5 Q. And so the representation in Ms. Smith's
 6 January 11 E-mail that all cases involving SAOs
 7 regardless of whether or not an SAO was required was,
 8 in fact, broader than what the program announcement
 9 required?
 10 MR. DUGAN: Objection to the extent it calls
 11 for a legal interpretation of "program announcement."
 12 You can answer.
 13 THE WITNESS: I mean it is broader because
 14 it's saying that it's regardless of age or whether
 15 they needed an SAO.
 16 BY MS. KEANEY:
 17 Q. Okay. Is it, in fact -- so Ms. Smith's
 18 representation of the cases covered by Program
 19 Announcement 2018-4 was broader than what the program
 20 announcement actually required and, in fact -- strike
 21 that. Excuse me.
 22 So the cases Ms. Smith instructs RSCs to

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1 apply the expanded data collection on are actually the
 2 same as the cases in the later program announcement,
 3 2018-17, which we just discussed; is that correct?
 4 MR. DUGAN: Objection. Vague.
 5 THE WITNESS: That appears to be correct.
 6 BY MS. KEANEY:
 7 Q. So Ms. Smith got Program Announcement 2018-4
 8 wrong; is that correct?
 9 MR. DUGAN: Objection. Calls for -- to the
 10 extent that it calls for a legal analysis of a policy
 11 statement, it's argumentative.
 12 MR. COX: Joe, can you keep the speaking
 13 objections down.
 14 MR. DUGAN: I don't think I'm engaging in
 15 improper speaking objections.
 16 MR. COX: Okay. Well, we do.
 17 MR. DUGAN: Well, we defer.
 18 THE WITNESS: If I answer this, it would
 19 really just be pure speculation. I'm not really -- it
 20 could be that, or it could be that the program
 21 announcement was incorrect.
 22 BY MS. KEANEY:

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1 Q. I'm sorry. The prior program announcement,
 2 2018-04 was incorrect?
 3 A. It could be. It could be that Jen
 4 misrepresented the program announcement. It could be
 5 that the program announcement didn't go out with the
 6 understanding that had been achieved. I don't know
 7 which one it is.
 8 Q. Okay. So -- all right. I'm going to ask you
 9 questions about PDR.
 10 A. Okay.
 11 Q. Does PRM have any involvement in PDR?
 12 A. No.
 13 Q. Do you receive any information from USCIS
 14 about how PDR is going?
 15 A. About how it's going.
 16 Q. Do you receive any updates from USCIS about
 17 PDR?
 18 A. I don't know the answer to that. I don't --
 19 it's difficult to explain why I don't know, but I
 20 don't know -- I don't know if that just goes directly
 21 into WRAPS or what. So I don't know.
 22 Q. Okay. If anyone was receiving information

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1 from USCIS about how the PDR is going, who within PRM
 2 would that --
 3 A. When you say, "how it's going," do you mean
 4 how in general, it's going well. It's going not so
 5 well, or do you mean this week we did 20 cases. Last
 6 week we did 40.
 7 Q. I mean the specifics of how quickly cases and
 8 how many cases are moving through PDR.
 9 A. I personally do not receive them. I don't
 10 know if anyone else at the RPC or admissions receives
 11 them.
 12 Q. Okay. Is it -- do you believe that the PDR
 13 process is slowing refugee admissions for SAO
 14 nationals?
 15 MR. DUGAN: Objection. Lacks foundation.
 16 THE WITNESS: Only in a minor way.
 17 BY MS. KEANEY:
 18 Q. Why is that?
 19 A. Because I think, as I said earlier, PDRs are
 20 only done on cases once they have an SAO answer. So
 21 there's only a certain small universe of cases that
 22 have cleared SAOs that then are eligible to get PDR.

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1 So they've only got a small backlog in front of them
2 at any given time.
3 Q. Okay. How would you describe what the
4 purpose of PDR is?
5 A. I don't know enough about it to say anything
6 about it.
7 Q. Okay. Would it be fair to say that PDR is an
8 additional hurdle for SAO nationals who have received
9 an SAO clear check?
10 MR. DUGAN: Objection.
11 You may answer.
12 THE WITNESS: It's an additional step in the
13 process.
14 BY MS. KEANEY:
15 Q. Okay. In the 20 years of experience that you
16 have at PRM, have you ever -- are you aware of
17 anything like the current PDR happening in the past?
18 MR. DUGAN: Objection. Vague.
19 THE WITNESS: No, not very much like that.
20 No.
21 BY MS. KEANEY:
22 Q. Okay. Anything kind of like the current PDR

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1 that's happened in the past?
2 MR. DUGAN: Same objection.
3 THE WITNESS: I mean the reason I'm
4 struggling is that throughout the history of refugee
5 processing, things are constantly changing because of
6 X, Y, or Z. There are new steps added, or new this,
7 new checks, new parameters. So it's hard to say
8 somewhat like or exactly like. Things are always
9 changing and being added as the process is being
10 refined. So there surely have been similar things,
11 but I don't know how similar enough to qualify as
12 similar.
13 BY MS. KEANEY:
14 Q. Okay. I am going to ask a few questions
15 about some of the interrogatory responses in our case.
16 Just first, though, would you agree that the number of
17 SAO refugees arriving to the U.S. remains low compared
18 to the year prior to 2017?
19 A. Yes.
20 Q. What do you attribute that to?
21 MR. DUGAN: Objection. Calls for
22 speculation.

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1 You can answer.
2 THE WITNESS: Several things, but the changes
3 that were made in the -- mostly the 120-day review.
4 BY MS. KEANEY:
5 Q. Okay. What -- specifically what changes do
6 you attribute it to?
7 MR. DUGAN: Same objection.
8 THE WITNESS: The biggest is probably the
9 fact that we had to go out and collect additional data
10 elements for more than 100,000 people. Now we have a
11 queue of a very significant number of SAOs that have
12 to be redone because of it.
13 BY MS. KEANEY:
14 Q. Okay. Would you also agree that the number
15 of FTJ refugees arriving to the U.S. remains low
16 compared to the year prior to 2017?
17 A. I actually don't know the answer to that. I
18 don't think it's much lower, but I don't know the
19 answer to that because we don't process a lot of the
20 FTJs. Consular does. So they count in our numbers,
21 but because we don't process them, it's not something
22 that I pay a super amount of attention to.

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1 Q. Understood.
2 Can you explain to me what it means for a
3 refugee to be ready for departure.
4 A. I'm hesitating because there's RFD, there's
5 RFT, ready for departure and ready for travel, and I'm
6 not sure I can describe what the difference is between
7 the two. RFD comes before RFT, but I'm not quite sure
8 what the difference is, like what additional has to be
9 done.
10 Q. I see. Could you describe what has to be
11 done to get to RFD?
12 A. No. That's what I'm saying is I'm not sure.
13 Q. I understand you're not sure the
14 difference between getting from RFD to RFT but --
15 A. But there's something additional that has to
16 happen between RFD and RFT. So I'm not sure what that
17 is. So I can't place that on the left side of RFD to
18 say, "All of these things have to be done." But it
19 means the case is very close to travel.
20 Q. Okay. Maybe if I give you some specifics it
21 will help too. If a refugee is ready for departure,
22 does that mean they've already been prescreened by the

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1 RSD?

2 A. Yes.

3 Q. Does it mean that they've already cleared

4 biometric screening?

5 A. Yes.

6 Q. And does it mean that they've already had a

7 USCIS interview?

8 A. Yes.

9 Q. Does it mean that they've passed that

10 interview?

11 A. Yes.

12 Q. Does it mean that they've passed the security

13 vetting?

14 A. Yes.

15 Q. Does it mean that they've passed the medical

16 examination?

17 A. Yes.

18 Q. Does it mean that they've been approved by

19 USCIS?

20 A. You have to be careful how you use "approved"

21 status because after an interview, they can kind of

22 tentatively approve it, and we enter it in WRAPS, but

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1 that's just a preliminary approval. A case isn't

2 actually really approved until they stamp the I-590,

3 and that's what I'm not sure, if that's the step that

4 happens between RFD and RFT.

5 Q. Okay. The step before where they approve, is

6 that the step before they conditionally approve?

7 A. I suppose they might use it in that way. I

8 think so.

9 Q. Okay. Do you know whether, if a refugee is

10 ready for departure, does that mean they've received

11 an assurance?

12 A. Yes. Yes.

13 Q. So the only part that you're not sure about

14 is whether a refugee being ready for departure means

15 that they've had the official final stamp from USCIS;

16 is that correct?

17 A. No. It's also that I'm not sure if PDR

18 happens in between those two steps.

19 Q. I see. But when did PDR start?

20 A. I would have to guess. I don't know for

21 sure.

22 Q. Wasn't PDR a result of the 90-day review, so

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1 it began sometime after January 2018?

2 MR. DUGAN: Objection. Lacks foundation.

3 THE WITNESS: That sounds right, but I'm not

4 sure.

5 MS. KEANEY: Okay. I'm going to hand you

6 what's been marked as Plaintiff's Exhibit 46.

7 (Previously marked Exhibit 46 was handed to

8 the witness.)

9 BY MS. KEANEY:

10 Q. This is a document entitled "DEFENDANTS'

11 WRITTEN RESPONSES TO PLAINTIFFS' JFS AND JOSEPH DOE'S

12 THIRD SET OF INTERROGATORIES TO DEFENDANTS."

13 Are you familiar with this document?

14 A. I don't believe so, no.

15 Q. Okay. If I can just direct you to Page 111.

16 That's 111 on the top.

17 So this is defendants' response to

18 plaintiffs' Interrogatory No. 25, which asked

19 defendants to "identify the number of cases and

20 refugees who were ready for departure on the day of

21 the Agency Memo." Have you found it?

22 A. Yes.

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1 Q. Okay. So this table represents the data that

2 was compiled by, I believe, Department of State

3 reflecting the number of SAO and FTJ refugees who were

4 ready for departure on the date of the agency memo; is

5 that correct?

6 MR. DUGAN: Objection. Lacks foundation.

7 She can answer.

8 THE WITNESS: That's what it says.

9 BY MS. KEANEY:

10 Q. Have you ever seen this document before?

11 A. Not this exact one, no.

12 Q. Okay. So on the day the agency memo was

13 issued, there were 106 SAO nationality cases

14 representing 231 individuals who were ready for

15 departure; is that correct?

16 A. Yes.

17 MR. DUGAN: Same objection.

18 BY MS. KEANEY:

19 Q. Also on the date the agency memo was issued a

20 total of 11 FTJ cases representing 11 individuals who

21 were ready for departure?

22 MR. DUGAN: Sorry. Same objection.

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1 THE WITNESS: All, including non-SAO
 2 nationalities and --
 3 BY MS. KEANEY:
 4 Q. That's right.
 5 A. And, again, this is a very small number
 6 because it only represented those processed by our
 7 RSCs in Kenya and Thailand. So there would have been
 8 many more presumably ready at embassies.
 9 Q. Understood. Okay. And then if you could
 10 please move to Page 113 at the top. This is
 11 defendants' response to Interrogatory No. 26, which
 12 asked defendants to identify the agency -- sorry.
 13 "Identify the number of cases and refugees that were
 14 ready for departure on the date of the Agency Memo but
 15 have been returned to processing of the application
 16 since the date of the Agency Memo." Is that correct?
 17 Are you following me?
 18 A. I'm following you, but I'm not exactly sure
 19 what "returns to processing of applications" means.
 20 I've never seen that term before.
 21 Q. Okay. Well, if you look at the --
 22 Interrogatories 27 and 28, the ones that follow this.

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1 Those two detail the number of cases and refugees that
 2 were ready for departure on the date of the agency
 3 memo and have been admitted either without additional
 4 processing, which is Interrogatory No. 27, or with
 5 additional processing, which is the response to
 6 Interrogatory No. 28.
 7 A. Okay. I'm having a hard time following this,
 8 but okay.
 9 MR. DUGAN: Continuing objection. I won't
 10 keep interrupting. Standing objection to this line of
 11 questioning to the extent this witness doesn't have
 12 familiarity with the document. Lacks foundation.
 13 MS. KEANEY: Sure.
 14 Q. Would it help you to give you a moment to
 15 look at these?
 16 A. So 25 through 28.
 17 Q. Really 26, 27, and 28.
 18 (The witness reviewed the document.)
 19 THE WITNESS: Okay. It's a little confusing,
 20 but what's your question?
 21 BY MS. KEANEY:
 22 Q. All right. So my question is basically the

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1 figures on Page 113, which is the response to
 2 Interrogatory No. 26, again represents the number of
 3 SAO and FTJ refugees who were ready for departure on
 4 the date the agency memo was issued but were returned
 5 to processing and had not been admitted, at least as
 6 of the date of the agency's response to these
 7 interrogatories, which was October 5 of 2018.
 8 And so my question is that, in other words,
 9 more than half of the SAO nationals who had previously
 10 been ready for departure on the date the agency memo
 11 was issued, were placed back in processing and remain
 12 in processing at least 10 months after the injunction
 13 in this case. And I wanted to ask you if you could
 14 explain this.
 15 MR. DUGAN: Objection. Vague and confusing.
 16 You can answer.
 17 THE WITNESS: I'm sorry. I can't explain
 18 that. I don't know. I'm not sure why these people
 19 haven't traveled.
 20 BY MS. KEANEY:
 21 Q. Did the agency at any point consider whether
 22 or not to treat individuals who were ready for

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1 departure on the day of the agency memo any
 2 differently once the injunction was issued?
 3 MR. DUGAN: Objection. Lack of foundation.
 4 THE WITNESS: Not that I'm aware of.
 5 BY MS. KEANEY:
 6 Q. Does -- is PRM able to expedite certain
 7 cases?
 8 A. We're able to request the expediting of
 9 certain cases, yes.
 10 Q. Who do you make that request to?
 11 A. Well, it depends on what we want to expedite.
 12 Is it the SAO. Is it the DHS interview. Is it
 13 prescreening.
 14 Q. Okay. Did PRM ever consider whether or not
 15 to expedite the cases of individuals who were ready
 16 for departure on the day of the agency memo in order
 17 to comply with the injunction?
 18 MR. DUGAN: Same objection.
 19 THE WITNESS: Not that I recall.
 20 BY MS. KEANEY:
 21 Q. Was there any discussion about what could be
 22 done for these individuals who were ready for

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1 departure in order to return them to the position that
2 they were in on the date the agency memo went into
3 effect?
4 A. Not that I'm aware of.
5 Q. Do you believe that PRM's actions to
6 implement the injunction in this case were effective
7 in returning these individuals to the place that they
8 were in prior to the issuance of the agency memo?
9 MR. DUGAN: Objection. Vague. Calls for a
10 legal conclusion.
11 You can answer.
12 THE WITNESS: Could you ask again?
13 BY MS. KEANEY:
14 Q. Do you believe that PRM's actions taken to
15 implement the injunction in our case were effective in
16 returning these individuals who were ready for
17 departure on the day of the agency memo to the
18 position that they were in prior to the issuance of
19 the agency memo?
20 MR. DUGAN: Same objection.
21 THE WITNESS: As I mentioned, that's not
22 something that we -- we never -- I do not recall any

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1 discussion about the individuals who were ready for
2 travel on that day. So this is not something I've
3 ever thought of before.
4 MS. KEANEY: Would it be okay if we take a
5 short break?
6 THE WITNESS: Sure.
7 (A recess was taken from 2:44 p.m.
8 to 2:52 p.m.)
9 BY MS. KEANEY:
10 Q. I actually think I'm finished. I just wanted
11 to go back to a topic I'm confused about, which is the
12 program announcement from October 23, 2017. So,
13 again, this is Exhibit 11. The difference between the
14 requirements of this program announcement and Jennifer
15 Smith's E-mail from January. What, aside from this
16 program announcement, could Jennifer Smith be
17 consulting to communicate the requirements of the
18 expanded data collection to RSCs?
19 MR. DUGAN: Objection. Calls for
20 speculation.
21 THE WITNESS: I don't know the answer to
22 that.

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1 BY MS. KEANEY:
2 Q. This -- did this program announcement
3 represent the agency's policy with respect to the
4 expanded data collection requirements?
5 MR. DUGAN: Objection. Just to the extent
6 the witness is answering in her individual capacity,
7 she can answer.
8 BY MS. KEANEY:
9 Q. To your knowledge, did this program
10 announcement represent the agency policy at that time
11 in January 2018?
12 A. I think, as I said before, I'm not sure which
13 was wrong. I'm not sure if this was wrong or if this
14 was wrong (indicating). So I'm not sure of the answer
15 to that.
16 Q. Is there anything superior to the program
17 announcement that would supersede the program
18 announcement in terms of establishing the agency's
19 policy about expanded data collection?
20 MR. DUGAN: Objection. Vague.
21 THE WITNESS: "Is there anything superior."
22 Nothing that I could really name, no, other than just

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1 a mutual understanding between us and USCIS.
2 BY MS. KEANEY:
3 Q. Okay. How would that mutual understanding
4 have been achieved?
5 MR. DUGAN: Objection. Calls for
6 speculation.
7 THE WITNESS: Through our work on
8 implementing the provisions of the 120-day review.
9 BY MS. KEANEY:
10 Q. In drafting the E-mail to the RSCs that --
11 Jennifer Smith, in drafting her E-mail to the RSCs,
12 are there any other sources of information that she
13 could have consulted aside from this program
14 announcement?
15 MR. DUGAN: Objection. Speculative and asked
16 and answered.
17 THE WITNESS: I'm sorry. I don't know.
18 BY MS. KEANEY:
19 Q. What do you mean by the program announcement
20 could have gotten it wrong?
21 A. It could be that the original understanding
22 that we had achieved was actually this understanding

<p style="text-align: right;">Page 246</p> <p>1 in the Jennifer Smith E-mail, and it was misstated in 2 this program announcement. But I don't know. I'm 3 just saying that's a possibility. 4 Q. Were you a part of the discussions that 5 reached the understanding with USCIS? 6 A. I don't recall. I'm not sure if I was in a 7 direct discussion or -- I was aware of the 8 discussions, but I'm not sure if I was in them. 9 Q. Is there any place that whatever that 10 original understanding between PRM and USCIS was would 11 be memorialized? 12 A. I doubt it. 13 Q. Why is that? 14 A. There were some provisions of the agency memo 15 that weren't 100 percent crystal clear and required 16 consensus between us and USCIS about how to interpret 17 them. So -- and I believe this looks like it was one 18 of them, but it might have -- there might have been 19 some confusion. And, you know, sometimes these things 20 were decided in a meeting. They weren't always put on 21 paper, but things were drafted based on those 22 discussions, and it could be that this was wrong. I'm</p>	<p style="text-align: right;">Page 248</p> <p>1 Ms. Ingraham; is that correct? 2 A. In general, yes. 3 Q. Okay. So how can an E-mail that's not issued 4 by either yourself, Ms. Ingraham, or Larry supersede a 5 program announcement? 6 A. It's hard to say. This is a very specific 7 operational instruction, and it corresponds to changes 8 made in WRAPS. So if I were at an RSC, I would take 9 this more seriously because it's very specific, and 10 it, again, corresponds to changes made in WRAPS, but 11 that's just my feeling. 12 Q. So if a program announcement is issued, would 13 it be your view that anybody within PRM could 14 supersede a program announcement by issuing a 15 contradictory E-mail after the fact? 16 MR. DUGAN: Objection. Calls for a legal 17 conclusion. 18 You can answer. 19 THE WITNESS: No. That's not the case. 20 BY MS. KEANEY: 21 Q. Why do you say it's not the case? 22 A. Because I believe you asked that anybody in</p>
<p style="text-align: right;">Page 247</p> <p>1 not sure. 2 Q. If there is a conflict between the program 3 announcement and an E-mail sent by PRM staff, which 4 instruction should RSCs follow? 5 A. The more recent one. 6 Q. So RSCs should ignore instructions in a 7 program announcement to the extent that they conflict 8 with a later E-mail? 9 A. "Ignore" is kind of a strong word. I mean 10 this -- I have no idea if anybody at the RSCs who read 11 this noticed that it was different. I mean I don't 12 know what was going on in the field at the time. And 13 so I don't know if somebody said to Jen, "Hey, that's 14 different than the program announcement." I don't 15 know exactly what happened. But this -- in my mind, 16 this is the operational instruction because it came 17 after. 18 Q. Earlier you said a program announcement can 19 be drafted by multiple individuals; is that correct? 20 A. Yes. 21 Q. But in order for it to be issued, it has to 22 be approved by either yourself, Larry, or</p>	<p style="text-align: right;">Page 249</p> <p>1 PRM could just issue an E-mail that would contradict a 2 program announcement. 3 Q. That's correct. 4 A. I mean Jennifer Smith is the overseas section 5 chief who manages all of the RSCs. So she's a pretty 6 authoritative source. And what I'm saying is I 7 believe this is an example of the confusion that often 8 existed in the implementation of some of these things 9 because it wasn't always crystal clear what the 10 requirement was. 11 Q. Were there other areas of confusion in terms 12 of how to implement the agency memo's provisions? 13 A. I mean I'm -- I'd have to go back and -- I 14 mean sometimes the -- there's a difference between a 15 memo that was written by very senior people and trying 16 to implement it on the -- so it's just sometimes a 17 matter of trying to make something operational that is 18 stated in policy or in a policy memo that then, when 19 it comes down to the details, it's confusing, and I'm 20 sure we have made errors that -- it looks like this 21 second program announcement corrected the error that 22 was made in the first program announcement is what it</p>

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1 looks like to me.

2 Q. Is it also possible that the second program

3 announcement corrected the error that was made in

4 Ms. Smith's E-mail?

5 A. You mean that it was issued just to correct

6 this (indicating)?

7 Q. Yes.

8 A. I doubt that. I doubt that.

9 Q. What -- can you recall other areas where

10 there was confusion about how to operationalize the

11 agency memo aside from the expanded data collection

12 requirements?

13 (The witness reviewed the document.)

14 THE WITNESS: I can't think of anything

15 specific, but -- I mean also, in my mind, sometimes

16 it's hard to distinguish between the agency memo and

17 then the end of the 90-day review, and then the memo

18 from Nielsen to Cissna and the memo from Higgins to

19 Ruppel.

20 And so I'm getting -- it's hard to keep them

21 straight. So like looking at this, this is a

22 fairly -- this is a fairly nonspecific set of

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1 requirements. The things that came in the memo from

2 Nielsen and from Jennifer Higgins were more specific

3 but still needed some interpretation. And so I think

4 it could have been in the interpretation of those

5 memos.

6 MS. KEANEY: Okay. With that, I'm going to

7 turn it over to my colleague, Tana, who will have some

8 questions.

9

10 EXAMINATION

11 BY MS. LIN:

12 Q. Good morning, Ms. Gauger. My name is Tana

13 Lin, and as I said off the record, I'm with Keller

14 Rohrbach and I'm a cooperating attorney with the ACLU

15 of Washington, and I represent the plaintiffs in

16 Doe v. Trump.

17 A. Okay.

18 (Previously marked Exhibit 24 was handed to

19 the witness.)

20 BY MS. LIN:

21 Q. Can I hand you what has previously been

22 marked as Plaintiff's Exhibit 24, which is

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1 Doe-JFS_USCIS_827 through -828. We're going to be

2 focusing on Page -828, the "I-730 Refugee Adjudication

3 Processing Checklist."

4 A. Okay.

5 Q. Are you familiar with this document at all?

6 A. No, I've never seen this.

7 Q. Okay. Does the department -- the state

8 department have a similar checklist as what's

9 reflected in -- on Page -828?

10 A. A similar checklist for I-730s or for refugee

11 cases?

12 Q. For I-730. I'm going to be asking questions

13 about FTJs in particular --

14 A. Uh-huh.

15 Q. -- and FTJ refugees.

16 A. Right.

17 To tell you the truth, I'm not sure. As I

18 had mentioned earlier, FTJs processed by -- that are

19 in Kenya and Thailand are processed by us more like

20 regular refugee, but they don't need a refugee

21 interview. So I actually don't know how the questions

22 that our RSCs ask I-730 applicants are different from

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1 what they asked regular refugee applicants.

2 Q. Who would know that?

3 A. People who work at the RSCs. That's a fairly

4 technical processing detail. So I'm not even sure

5 anyone in our office would know, except maybe Hillary.

6 Q. So FTJs that aren't processed in Kenya or

7 Thailand, are they all processed by Homeland Security

8 then or USCIS?

9 A. Not necessarily. They're processed at U.S.

10 embassies and if there's a USCIS field office present

11 at that embassy, it's generally the USCIS office that

12 handles it. If there's not, it's generally a consular

13 officer.

14 Q. And is that a consular office with the state

15 department?

16 A. Yes.

17 Q. Do you know if the steps reflected in this

18 checklist generally reflect the steps that the state

19 department uses to process I-730 refugee petitions?

20 MR. DUGAN: Objection. Foundation.

21 You can answer.

22 THE WITNESS: Hard for me to say. I'm

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1 actually not sure. I mean we have to follow the same,
2 you know -- the same general procedures apply. So
3 there's not a major difference. Especially not now,
4 now that I-730 is processed by an embassy have all the
5 same security checks. I just can't say if our -- if
6 the case workers do this or if it's only the USCIS
7 office. I'm sorry. I don't know.
8 BY MS. LIN:
9 Q. Okay. Let me just ask about -- you may not
10 know, but there are a couple of abbreviations I'm
11 going to ask you about. It says, C-O-N-S. It says,
12 "Submitted SAO request to CONS." And this is in a
13 "PRE-SCREENING" section. Do you know what C-O-N-S is?
14 A. Consular section.
15 Q. And in the next section, "POST-INTERVIEW," it
16 says, "I-730 stamped 'approved,' signed and COA
17 noted." Do you know what a C-O-A is?
18 A. I'm sorry. I do not.
19 Q. And a couple of lines there, second to the
20 last item below "POST-INTERVIEW" it says,
21 "Transportation Letter signed," and in parenthesis it
22 says, "(JIT TECS)." Do you know what that is?

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1 A. I don't know what JIT is. TECS is a USCIS
2 name check database. Kind of CLASS.
3 THE WITNESS: CLASS, C-L-A-S-S, all in
4 capitals. It's an acronym.
5 BY MS. LIN:
6 Q. A little while ago you had looked at the
7 chart that showed the number of refugees that were
8 ready for departure. Do you remember that?
9 A. Uh-huh.
10 Q. And you had said that that was the data only
11 for FTJs processed in RSCs in Kenya and Thailand. Do
12 you remember that?
13 A. Yes. Yes.
14 Q. Does the department of state have data on
15 RTJs who are processed elsewhere, like through
16 consular reviews?
17 MR. DUGAN: Objection. Foundation.
18 You can answer.
19 THE WITNESS: Do we have data about them? Is
20 that what --
21 BY MS. LIN:
22 Q. Would you have the equivalent data for FTJs

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1 not processed in the RFCs in Kenya or Thailand?
2 A. Yeah. That's a little bit of a complicated
3 answer. For cases that are processed at embassies, a
4 consular officer does a certain amount of work on the
5 case. So they get from the USCIS service center.
6 They do the interview, and at some point they are
7 instructed to contact the RPC to help facilitate the
8 sponsorship assurance in the United States, and at
9 some point something has to be entered into the RPC.
10 So in the end, we know how many follow --
11 FTJs enter from certain countries, but we aren't
12 always able to give a snapshot and say, "Oh. Right
13 now I know that there are 47 cases being processed in
14 Yowindow or somewhere because we only know of them at
15 a certain point, and I don't know what that point is.
16 Q. Who would know at what point you know where
17 they are?
18 A. Hillary should know. Poor Hillary. Knower
19 of all.
20 Q. Have you reviewed the declarations Jennifer
21 Smith gave in this case?
22 A. I don't think so.

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1 Q. I'll just represent to you that in one of
2 her -- in her December 29, 2017 declaration she
3 mentioned that the exit permit process in Kenya
4 usually takes three to four weeks. First, what is the
5 "exit permit process"?
6 A. So in order to depart a refugee from Kenya
7 and a number of other countries, you have to get
8 permission from the government or they won't be able
9 to leave the airport. It's usually either IOM or
10 UNHCR submits a list of -- you know, usually it's once
11 travel has been booked, they'll submit a list of cases
12 to the government to say, "We need exit permission for
13 the following people."
14 And normally a country does like kind of an
15 immigration check or police check to see if there's
16 any outstanding arrest warrants or that sort of thing,
17 or if they were there illegally they might try to
18 impose a fine on them. But it's to get someone
19 permission to leave.
20 Q. Do you agree that the exit permit process
21 usually takes three to four weeks?
22 A. I only know what I'm told, and I've been told

<p style="text-align: right;">Page 258</p> <p>1 that, but I don't have independent -- I've been told 2 that by RFC, but I don't know that for sure. I don't 3 know that personally. 4 Q. Do you know if there are average time 5 frames -- let me put it differently. Are there target 6 numbers of FTJs to be processed through each step that 7 you have in like performance reports or anything like 8 that where you evaluate people? 9 A. You mean when like say we were evaluating the 10 performance of the RFC? 11 Q. Yes. 12 A. No. No. 13 Q. Do you have just general goals in terms of 14 how many, for example, applications you want processed 15 per week? 16 A. Generally not per week. I think it's more 17 often by year. You know, when we -- by year. 18 Q. Okay. What types of goals do you set per 19 year? 20 A. So are you only referring to FTJs or overall? 21 Q. FTJs. 22 A. See, actually, then I will retract my answer</p>	<p style="text-align: right;">Page 260</p> <p>1 managers at the RSCs, and so they would presumably 2 disseminate it to other employees who needed to know 3 this information at the RSCs. 4 Q. And would this type of message also be shared 5 with USCIS? 6 A. They're usually on these. Barbara, yeah. 7 Barbara Strack, Mary Margaret Stone. 8 Q. Okay. In this October 24, 2017 E-mail, I'll 9 direct your attention to the second page. Ms. Keaney 10 asked you about the first bolded paragraph. I'm going 11 to ask you about the second bolded paragraph. 12 You said, "No 'follow-to-join refugees may 13 travel until further notice." Do you see that? 14 A. Yes. 15 Q. And were, in fact, FTJ refugees prohibited 16 from traveling after the issuance of this E-mail? 17 A. For a period of time, yes. 18 Q. And were they prohibited from traveling even 19 if they had a Visa issued already? 20 A. Well, they don't get Visas. They get a 21 boarding foil. I don't know the answer to that. 22 Q. Do you know who would know?</p>
<p style="text-align: right;">Page 259</p> <p>1 because that's more for RSCs in general to process 2 refugees. FTJs are such a small percentage of our 3 caseload of RFCs that we do not have targets for 4 those. 5 Q. Can we pull out Exhibit 34. Is this E-mail 6 considered formal guidance that all DOS employees were 7 going to be expected to follow? 8 MR. DUGAN: Object to the extent it calls for 9 a legal characterization. 10 But you can answer. 11 THE WITNESS: No, not all DOS employees. 12 These would be PRM and staff of our resettlement 13 support centers, who are largely not governmental 14 employees. They're not at all. 15 BY MS. LIN: 16 Q. Did you provide this guidance to anyone 17 beyond the recipients of this E-mail? 18 A. Not that I'm aware of. 19 Q. Were the recipients of this type of E-mail 20 expected to disseminate it any further than the group 21 on here? 22 A. Well, I mean so these would go to the senior</p>	<p style="text-align: right;">Page 261</p> <p>1 A. Any number of us could go back and look at 2 E-mails. I'm just -- I myself am not sure. Hillary 3 or Jennifer might know. I think I might have to look 4 at E-mails. 5 Q. You also wrote, "However, previously 6 scheduled interviews may proceed." Do you see that? 7 A. Uh-huh. 8 Q. Was that regardless of what country an FTJ 9 was located in, that if they had an interview already 10 scheduled, that could go ahead? 11 A. Well, this only went to our RSCs. So this 12 would only apply to Kenya and Thailand. 13 Q. Do you know how many FTJs had previously 14 scheduled interviews as of October 24, 2017? 15 A. Sorry, I do not. 16 Q. Is there a way to -- would there be a way for 17 you to find out how many there were? 18 A. I doubt that. You would need kind of a 19 snapshot in time from WRAPS. So I don't know. 20 Q. Is that something Hillary Ingraham might 21 know? 22 A. Yes, she would know.</p>

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1 Q. Do you know if the -- all the previously
2 scheduled interviews in fact did proceed?
3 A. I can only assume so, but I don't know.
4 Q. Other than the previously scheduled
5 interviews that you said could continue, did any other
6 FTJ processing continue after October 24?
7 MR. DUGAN: Objection. Lacks foundation.
8 You can answer if you know.
9 THE WITNESS: So as I mentioned earlier,
10 there was a time at which we allowed our RSCs in Kenya
11 and Thailand to proceed with FTJ processing and travel
12 because it was decided that since they had been
13 getting the same security check all along as other
14 refugees that they could continue -- they could be
15 processed in the same way that other refugees were
16 being processed, according to all the new
17 requirements.
18 So at some point this part of our guidance
19 changed to they may travel once they have all their
20 security checks in place. I just don't know when it
21 was.
22 BY MS. LIN:

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1 Q. But there was a period of time when the only
2 FTJs that could move forward after October 24 were
3 those with previously scheduled interviews it sounds
4 like?
5 A. Yes. The interviews could move forward, but
6 the travel could not. That only refers to interviews.
7 Q. Why was there a distinction made for
8 follow-to-joins with previously scheduled interviews
9 versus just others in the process?
10 MR. DUGAN: Objection. Lacks foundation.
11 You can answer.
12 THE WITNESS: I'm not sure I know the exact
13 answer for that.
14 BY MS. LIN:
15 Q. Do you know who would know?
16 A. Again, this is only about interviews and not
17 travel. It doesn't mean that those people could be
18 interviewed and then travel. It just means they could
19 be interviewed. You could ask Hillary.
20 Q. So it sounds like you didn't make the
21 decision that, for example, FTJs with previously
22 scheduled interviews should go ahead and proceed in

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1 Kenya and Thailand?
2 A. I mean I didn't make it personally. I may
3 have been involved in the discussion about making --
4 providing that guidance, but it's not a decision that
5 I made myself.
6 Q. You also wrote that "PRM and USCIS will issue
7 more detailed implementing guidance shortly on
8 follow-to-join refugee processing." Do you see that?
9 A. Uh-huh.
10 (Previously marked Exhibit 8 was handed to
11 the witness.)
12 BY MS. LIN:
13 Q. So this is the "Interim Guidance" dated
14 November 9, 2017. It's previously been marked as
15 Exhibit 8.
16 Do you know if the interim guidance that you
17 were holding is what was eventually issued in
18 reference to your E-mail? I should back up.
19 Does that document look familiar to you at
20 all?
21 A. So this doesn't look like a state department
22 to me. We normally would put things on some sort of

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1 letterhead or something. So I think this might be
2 USCIS guidance, but...
3 Q. Does it have -- I think it has a USCIS number
4 at the bottom.
5 A. Yes, it does.
6 Q. So it is a USCIS guidance. You had written
7 the "PRM and USCIS will issue more implementing
8 guidance." So I was wondering if that was it, or let
9 me just ask the question differently then.
10 What more detailed implementing guidance did
11 PRM and USCIS issue, if any?
12 MR. DUGAN: Objection. Lacks foundation.
13 But you can answer if you know.
14 THE WITNESS: So given that this came out a
15 couple weeks later, this is surely one piece of
16 guidance. I mean this doesn't say that we'll only
17 issue one guidance. We'll issue more. So I would
18 guess that we issued -- there could have been other
19 things, and this looks like it was likely something
20 that is additional implementing guidance that we
21 referred to.
22 BY MS. LIN:

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1 Q. And do you know if there were other guidance
2 issued by PRM, in particular, on the follow-to-join
3 refugee processing in particular?
4 MR. DUGAN: Same objection.
5 THE WITNESS: Uh-huh. I mean at some point
6 we issued guidance that FTJs processed by RSCs could
7 travel. I don't know if that's in here. I mean I can
8 read it to see if I can find it. But that came
9 eventually. I just don't know when or how.
10 BY MS. LIN:
11 Q. You don't remember, for example, if it was
12 the state department guidance with like a state
13 department --
14 A. It seems to me more likely it would have been
15 state department guidance because it was guidance to
16 the RFCs, which we fund. But do you want me to look
17 in here to see if it's in here (indicating)?
18 Q. No. That's okay.
19 A. I don't actually see much about FTJs in this.
20 (Deposition Exhibit 48 was marked for
21 identification.)
22 BY MS. LIN:

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1 Q. I'm handing you what's been marked as
2 Plaintiff's Exhibit 48. It is Doe-JFS-USCIS_204
3 through -205.
4 Are you familiar with this E-mail?
5 A. I'm a recipient. So I saw it as some point.
6 Let me just take a look at it.
7 (The witness reviewed Exhibit 48.)
8 THE WITNESS: Okay.
9 BY MS. LIN:
10 Q. How would you describe the group of
11 recipients of this E-mail?
12 A. Well, the "To" line is our RSC in Thailand
13 and RSC in Kenya.
14 Q. Are those all state department people in the
15 "cc" line?
16 A. Yes. Admissions and refugee coordinators.
17 Q. And sort of the second line, second -- first
18 full paragraph down Ms. Smith wrote, "All I-730
19 refugee (B93) cases where travel documents already
20 issued on or before October 24, 2017 (all locations,
21 all nationalities) are allowed to travel as planned."
22 Do you see that?

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1 A. Uh-huh.
2 Q. Is that a "yes"?
3 A. Yes.
4 Q. Were FTJs with travel documents already
5 issued on or before October 24, 2017 in fact allowed
6 to travel after the agency memo was issued then?
7 A. Are you asking whether they were allowed to
8 travel beginning November 6 or beginning October 24?
9 Q. Beginning October 24.
10 A. I don't know the answer to that. I mean to
11 me it appears this went on the 6th. It appears that
12 we were giving guidance on the 6th, that those cases
13 who had documents issued before the 24th could travel.
14 Q. So would it be accurate to say that no FTJs
15 who had travel documents already issued traveled
16 between October 24 and November 6?
17 MR. DUGAN: Objection. Lacks foundation.
18 THE WITNESS: I don't know the answer to
19 that.
20 BY MS. LIN:
21 Q. Who would know?
22 A. I mean, again, it's like any number of us can

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1 go back and look at E-mails to figure that out or kind
2 of pick our brains, but Jen Smith might be the best to
3 ask. Maybe Hillary. I'm not sure.
4 Q. Do you know how the follow-to-join who had
5 travel documents were identified, or how would you go
6 about -- if you had to go back and look, how would you
7 figure out who had travel documents?
8 A. Well, for cases that were processed by our
9 RSCs, they would just know because they would be in
10 WRAPS. Although -- I believe that there is an
11 indication in WRAPS whether an I-730 applicant has had
12 the foil stamped into their documents. So we could
13 know -- we could know the universe of the ones
14 processed by us.
15 We would not be able to know the universe
16 processed by consular. They would have -- each
17 embassy really probably only knows the number. I'm
18 not even sure if consular affairs would know the whole
19 universe.
20 Q. Do you have any idea how many FTJs there were
21 with travel documents already issued on or before
22 October 24, 2017?

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1 A. No.

2 Q. Going down to just where it says, "Cases for
3 SAO population," and then it goes on to the second
4 page, Ms. Smith wrote, "RSCs should temporarily hold
5 further processing of I-730 refugee (V93) cases for
6 SAO populations pending further guidance." Do you see
7 that?

8 A. Uh-huh.

9 Q. And were all I-730 SAO refugees who were
10 being processed in Kenya and Thailand in fact have
11 their cases held from further processing as a result
12 of the agency memo?

13 MR. DUGAN: Objection. Foundation.

14 THE WITNESS: As a result of the agency memo?
15 Well, I guess the question is is it as a result of the
16 agency memo or is it as a result of EO4? I mean it
17 was -- it was a decision in one of those documents.
18 I'm not sure which one.

19 BY MS. LIN:

20 Q. Okay. So as a result of either EO4 or the
21 agency memo, I-730 SAO refugees were held from being
22 processed further?

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1 MR. DUGAN: Same objection, and to the extent
2 it calls for a legal conclusion or interpretation.
3 You can answer if you know.

4 THE WITNESS: This was during the 90-day
5 review. Yes, because we were holding all SAO
6 nationals during the 90-day review.

7 BY MS. LIN:

8 Q. If an I-730 case involved members of a family
9 where some were SAO nationals and others were not,
10 what happened with those cases after the issuance of
11 the agency memo but before the issuance of a PI?

12 MR. DUGAN: Object to the hypothetical.

13 THE WITNESS: I do not know the answer to
14 that. It could depend on whether the principal
15 applicant -- forget it. That's not true because
16 everybody is a principal applicant on an I-730. I
17 don't know the answer to that.

18 BY MS. LIN:

19 Q. Do you know who would know?

20 A. I don't know. Someone in consular. It may
21 be Hillary. I'm not sure that Jen would know. I'm
22 not even sure that Hillary would know.

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1 Q. Was there any further guidance on the
2 processing of applications of I-730 SAO refugees who
3 were in Kenya and Thailand issued before the
4 expiration of the 90-day period that you know of?

5 A. I don't know.

6 MR. DUGAN: Exhibit 49?

7 MS. LIN: 49.
8 (Deposition Exhibit 49 was marked for
9 identification.)

10 MS. LIN: Actually, while I'm doing this can
11 you pull out Exhibit 41. We're going to look at those
12 in conjunction.

13 And also can you pull out Exhibit 34.
14 (Pause in proceedings.)

15 THE WITNESS: Yep.

16 BY MS. LIN:

17 Q. Plaintiff's Exhibit 49 is Doe-JFS_STATE_160
18 through -164. So between Plaintiff's Exhibit 34, 41,
19 and 49 you'll see it has Message No. 1 fiscal year
20 2018 update on USRAP provisions all the way through
21 Message No. 6 of FY218 update on USRAP operations;
22 right?

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1 A. Yes. So it's 1, 5, and 6.

2 Q. Actually, if the change -- it should have 1,
3 2, 3, 4, 5, 6.

4 A. Oh. Okay. Okay.

5 Q. And my question is were Messages 1 through 6
6 the instructions that DOS employees were to follow in
7 implementing the agency memo after the issuance of the
8 PI?

9 A. Well, again, I think earlier you had used the
10 term "DOS employees" also. It's not -- PRM employees,
11 but really are partners at the RSC.

12 Q. So, again, on Exhibit 49, Message No. 5 that
13 you sent, who were you sending the message to? What
14 groups? Is it all the RSCs, it looks like?

15 A. So on the "To" line I see RSC in Kenya, RSC
16 Eurasia, which is in Moscow and Havana.

17 Q. And other than these messages reflected in
18 Nos. 1 through 6, were there any other instructions
19 provided to PRM employees to follow with regard to
20 processing FTJ applications after the PI was issued?

21 MR. DUGAN: Objection. Speculative. Lacks
22 foundation.

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1 THE WITNESS: I don't think I can answer
 2 that. I don't think I can say for sure that it was
 3 only 1 through 6. I'm sure what No. 7 said. So I --
 4 I don't know.
 5 BY MS. LIN:
 6 Q. Are there any others that you remember
 7 issuing other than what you see in 1 through 6?
 8 A. I think before I answer that, I would have to
 9 read through all of them, but I think even after all
 10 of them I'm not sure I would remember back exactly to
 11 whether there was more. But do you want me to read
 12 through all of them?
 13 Q. No, if you're not going to remember anyway.
 14 A. I don't think so. It seems unlikely that I
 15 would remember, "Oh, No. 7 had 'X.'"
 16 Q. It wasn't a trick question. 1 through 6 is
 17 what we were able to find.
 18 A. No, I understand.
 19 (Deposition Exhibit 50 was marked for
 20 identification.)
 21 BY MS. LIN:
 22 Q. Plaintiff's Exhibit 50 is Doe-JFS_STATE_181

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1 through -199. Are you familiar with this document?
 2 A. I'm sure I saw it when consular issued it,
 3 but I haven't reviewed it in a long time if I've seen
 4 it.
 5 Q. Can you tell me is there a name for this type
 6 of E-mail?
 7 A. It's a cable. It looks to me like a cable.
 8 Q. I was going to ask you to start with some of
 9 the abbreviations on this page, the first page.
 10 Actually, who is -- it says, "From Smart Core." What
 11 is "Smart Core"?
 12 A. Smart is our cable system at the state
 13 department. I'm not sure what "core" refers to.
 14 Consular affairs in general does a lot of their
 15 guidance by cable, which we do not.
 16 Q. Do you know what "MRN" stands for?
 17 A. I don't know specifically what it stands for,
 18 but it's generally the cable numbers. So 18 refers to
 19 the year that it was issued, and then state 9136 is
 20 the number so that you can look it up in the system if
 21 you want to -- if someone says, "Look up 18 state
 22 9136," you can look it up.

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1 Q. Is "EO" executive order?
 2 A. I don't think so. 13526. That doesn't look
 3 familiar to me. So I don't believe so.
 4 Q. Do you know what it stands for?
 5 A. We don't. Again, because we issue mostly
 6 guidance to our RSCs and they don't get cables, we
 7 just don't do a lot of cable in PRM, but consular
 8 does.
 9 Q. Do you know what TAGS, T-A-G-S, is?
 10 A. So I know "CVIS" to me means Visa. "CMJIT"
 11 means management. So to me this looks like it was
 12 tagged for the Visa sections and the management
 13 sections in the post that this was going to. So that
 14 would route it to the mailboxes of people who worked
 15 in management or consular -- Visa work.
 16 Q. Then can we turn to Page 5 of this E-mail.
 17 Do you see where it notes that you -- your name is on
 18 there, "Gauger cleared by"?
 19 A. Okay.
 20 Q. Okay. Is that -- K. Gauger is you?
 21 A. That's me.
 22 Q. Okay. To -- you said MRNs are distributed

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1 from the consular offices to who?
 2 A. To posts overseas, to embassies overseas.
 3 Q. Were you expected to distribute these in any
 4 way?
 5 A. No.
 6 Q. Do you know how many MRNs were issued with
 7 regards to FTJ processing after the issuance of a PI?
 8 A. No idea, no.
 9 Q. On that fifth page, where it says, "XMT," do
 10 you know what that stands for?
 11 A. On Page 5?
 12 Q. Yes.
 13 A. Is that on the clearance page?
 14 Q. Yeah. There's a "Cleared by" section. If
 15 you keep going down, right above "Attachments."
 16 A. Oh, XMT. It might mean exempt. It might
 17 mean that it didn't go to Sana'a.
 18 Q. What is S-a-n-a-'a?
 19 A. Embassy Sana'a. It's in Yemen.
 20 Q. And the Am- --
 21 A. Am embassy in Sana'a.
 22 Q. What is Am Embassy?

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1 A. American Embassy in Sena'a. I believe that
 2 means that this did not go to them because I mean in
 3 January 2018, our embassy in Sena'a was largely drawn
 4 down.
 5 Q. All right. Can we pull out Exhibit 36 again,
 6 which is your January 9 declaration. January 19.
 7 A. Sorry. No. 6, you said?
 8 Q. 36.
 9 A. 36.
 10 (Deposition Exhibit 51 was marked for
 11 identification.)
 12 BY MS. LIN:
 13 Q. Plaintiff's Exhibit 51 is Doe-JFS_STATE_200.
 14 A. Yep.
 15 Q. Have you ever seen this document before?
 16 A. This E-mail from Simmons?
 17 Q. Yes.
 18 A. I don't believe so, but I'm not sure.
 19 Q. Who is John Simmons?
 20 A. I don't know. He's not in our office.
 21 Q. Okay. In Paragraph 3 of your declaration,
 22 you wrote, "I'm aware that the Bureau of Consular

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1 Affairs advised consular post on December 23, 2017 of
 2 the injunction." I was actually wondering if State
 3 200 is the post you were referencing in Paragraph 3 of
 4 your declaration.
 5 A. I doubt it because this is very minimal, and
 6 the thing that I reference in Paragraph 3 instructs
 7 them to do certain things. So, no, this can't be
 8 that.
 9 Q. How are you aware that the Bureau of Consular
 10 Affairs advised consular posts on December 23 of the
 11 injunction and the instructions listed in your
 12 declaration?
 13 A. Because I was told that. I mean, also, that
 14 happened when I was on vacation, but I was told.
 15 MR. DUGAN: And I would just, for the record,
 16 advise the witness not to disclose any specific
 17 communications with counsel to the extent that it
 18 potentially could be implicated in this line of
 19 questioning.
 20 BY MS. LIN:
 21 Q. Did you personally see whatever was sent to
 22 the consular post on December 23, 2017 that you were

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1 referencing in your declaration?
 2 A. I likely saw it. Again, when I'm on
 3 vacation, I tend to look at my Blackberry once in a
 4 while. I don't remember how often I looked at my
 5 Blackberry during that vacation, but at some point I'm
 6 sure that I saw it and read it.
 7 Q. Okay. In that same paragraph you say that
 8 "I'm also aware that an additional state department
 9 cable with guidance on follow-to-join refugees was
 10 sent to all diplomatic and consular posts on
 11 January 4, 2018." How are you aware of that
 12 additional cable?
 13 A. That probably also was forwarded to me by
 14 E-mail -- I'm not sure from whom -- and so I would
 15 have seen that at some point. Maybe not on January 4,
 16 but I would have seen it at some point.
 17 (Deposition Exhibit 52 was marked for
 18 identification.)
 19 BY MS. LIN:
 20 Q. Plaintiff's Exhibit 52 is Doe-JFS_STATE_64
 21 through -66. Does this document look familiar to you?
 22 A. Yes.

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1 Q. Is this the cable that you were referencing
 2 in Paragraph 3 of your declaration?
 3 A. Yes, that sounds right.
 4 Q. Do you see under No. 1 of this cable, sort of
 5 the last sentence, says "Applicants who qualify for a
 6 boarding foil should" now be -- I can't read.
 7 "Applicants who qualify for a boarding foil should be
 8 issued one at this time." Do you see that?
 9 A. Yes.
 10 Q. Had DOS begun issuing boarding foils to FTJs
 11 prior to the issuance of this MRN in the January 4,
 12 '18 E-mail?
 13 MR. DUGAN: Objection. Lack of foundation.
 14 THE WITNESS: I don't know the answer to that
 15 because this would have been an embassy -- embassy
 16 consular sections would have been doing that for the
 17 most part.
 18 BY MS. LIN:
 19 Q. It also says that "Consular officers should
 20 take this opportunity to review the status of all
 21 follow-to-join refugee cases currently held at post."
 22 Do you see that?

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1 A. Uh-huh. Yes.

2 Q. Do you know before this cable, had DOS begun

3 reviewing the status of FTJ cases?

4 MR. DUGAN: Same objection.

5 THE WITNESS: I'm sorry. I just don't know

6 because this is from consular to their consular

7 officers. So I just wouldn't know.

8 BY MS. LIN:

9 Q. There were about two months between

10 implementation of the agency memo on October 24, 2017

11 and the issuance of the preliminary injunction on

12 December 23, 2017; correct?

13 A. Yes.

14 Q. So FTJs lost, essentially, at least two

15 months of time between a freeze called for in the

16 agency memo and the issuance of the injunction;

17 correct?

18 MR. DUGAN: Objection.

19 THE WITNESS: Well, two months past, yes,

20 between the two. Yes.

21 BY MS. LIN:

22 Q. And you testified earlier that some

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1 clearances are only valid for a limited amount of

2 time; correct?

3 A. Yes.

4 Q. And some FTJs had their medical -- for

5 example, had their clearances expire between the time

6 of the agency memo and when the PI was issued;

7 correct?

8 MR. DUGAN: Objection to the extent it

9 assumes facts not in evidence.

10 THE WITNESS: I don't know that for sure.

11 Maybe.

12 BY MS. LIN:

13 Q. Did PRM make any effort to determine if there

14 were any FTJs with clearances expired between the time

15 the agency memo went into effect and the PI was

16 issued?

17 MR. DUGAN: Objection. Lack of foundation.

18 THE WITNESS: Not that I'm aware of.

19 BY MS. LIN:

20 Q. Will FTJs who had any clearances expire

21 during that period have to get them again?

22 MR. DUGAN: Objection. Calls for

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1 speculation.

2 THE WITNESS: If they expire during that

3 period, they would have to get them again, yes.

4 BY MS. LIN:

5 Q. So if an FTJ's clearance had expired during

6 this time, they'll lose even more time waiting to get

7 the clearance again; is that correct?

8 MR. DUGAN: Same objection.

9 THE WITNESS: Well, yes. I don't know if I'd

10 characterize it that way, but yes, a case who was put

11 on hold -- could you ask the question again?

12 BY MS. LIN:

13 Q. So if an FTJ had a clearance expire during

14 this time, they'll lose even more time waiting to get

15 the clearance again; is that correct?

16 MR. DUGAN: Objection to form.

17 THE WITNESS: They have to get a new

18 clearance. So, yes, that would be delayed because of

19 that.

20 BY MS. LIN:

21 Q. I also want to make sure I understand what

22 you thought was required to comply with the

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1 preliminary injunction, and I believe you said that

2 you believe that DOS or PRM needed to resume

3 processing SAO nationals and FTJs according to prior

4 procedures and nothing else; is that correct?

5 MR. DUGAN: Objection to the extent it refers

6 to prior testimony. Objection to the legal

7 conclusion.

8 You can answer.

9 THE WITNESS: You're saying that I said --

10 will you repeat the question?

11 BY MS. LIN:

12 Q. Yeah. Am I correct that you believed that,

13 in order to comply with a PI, what PRM needed to do

14 was resume processing of SAO nationals and FTJs

15 according to prior procedures?

16 MR. DUGAN: Same objection.

17 THE WITNESS: Yes.

18 BY MS. LIN:

19 Q. Was there anything else you believed needed

20 to be done to comply with the PI other than resuming

21 processing of SAO nationals and FTJs according to

22 prior procedures?

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1 MR. DUGAN: Same objection.
2 THE WITNESS: I honestly don't recall.
3 BY MS. LIN:
4 Q. And I think you had said you hadn't really
5 thought in terms of returning FTJs and SAOs to the
6 status quo as was in the court order?
7 A. Yeah.
8 Q. And so I'm wondering, sitting here now, are
9 there any affirmative actions that you think could
10 have been taken to put FTJs back and SAOs back in the
11 position that they would have been but for the
12 suspension required by the agency memo?
13 MR. DUGAN: Objection. Speculative. Calls
14 for a legal conclusion.
15 THE WITNESS: No. That's just -- to the
16 extent that we prioritize cases, it's based on
17 vulnerability and that sort of thing. We didn't
18 consider -- at least I didn't consider prioritizing
19 the cases that were ready for trial just because
20 they're ready for trial.
21 BY MS. LIN:
22 Q. I think you had said before earlier that

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1 cases could be expedited though. You could request
2 they be expedited; right?
3 A. Yes.
4 Q. And so if you wanted, you could request that
5 FTJs who were -- for example, were ready for travel be
6 expedited?
7 MR. DUGAN: Objection. Calls for
8 speculation.
9 You can answer.
10 THE WITNESS: We could do that, yes.
11 BY MS. LIN:
12 Q. Could you call for the expediting of medical
13 clearances or medical exams for those whose clearances
14 have expired?
15 MR. DUGAN: Same objection.
16 THE WITNESS: Yes.
17 BY MS. LIN:
18 Q. Could you call for the expediting of security
19 checks or follow-to-join refugees whose security
20 clearances have expired during this period of time?
21 MR. DUGAN: Same objection.
22 THE WITNESS: Yes.

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1 BY MS. LIN:
2 Q. Are you familiar with the centralization of
3 FTJ refugee case processing that requires posts that
4 only adjudicate non-immigrant Visa applications to
5 transfer FTJ applications -- that's long, sorry, to a
6 post that offers processing of immigrant Visa
7 services?
8 MR. DUGAN: Objection. Compound. Confusing.
9 THE WITNESS: Yes, I'm aware of that.
10 BY MS. LIN:
11 Q. When did this change become effective?
12 A. I do not know.
13 Q. What was the purpose of this change?
14 A. The purpose was to process those applications
15 at embassies that had the capacity to do the piece of
16 the security check on FTJs that was not being done by
17 FTJs that were being processed at non-immigrant Visa
18 posts.
19 Q. Do FTJ refugees require some check that FTJ
20 asylees don't require since the change didn't apply to
21 FTJ asylees?
22 A. So I don't know the answer to that because we

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1 don't process FTJ asylees. PRM does not.
2 Q. What will be required of an FTJ who was at
3 the beginning of the process but now needs to travel
4 to another country to complete the application or the
5 petition process?
6 A. What was the first part of that question?
7 Q. What will be required of an FTJ who is at the
8 beginning of the -- you know, like if they're
9 submitting a new petition now and they're subject to
10 the centralization and they're in a country where
11 they'll need to travel to another country, what needs
12 to happen so that they can actually complete the
13 petition?
14 MR. DUGAN: Objection. Lack of foundation.
15 THE WITNESS: So I don't know the answer to
16 that because this is instructions provided by consular
17 affairs to consular officers. We're just not in that
18 chain of command. But my understanding is they have
19 to travel to that country to be processed.
20 BY MS. LIN:
21 Q. Do they need extra papers to travel to
22 another country?

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1 A. I don't know. It probably depends on the
 2 country and the Visa requirements.
 3 Q. Do you know if they'll be required to travel
 4 multiple times to another country?
 5 MR. DUGAN: Same objection.
 6 THE WITNESS: I'm sorry. I don't.
 7 BY MS. LIN:
 8 Q. Do you know if DOS is offering any assistance
 9 to FTJs who now need to travel to a different country?
 10 In other words, are they facilitating that process for
 11 those FTJs?
 12 MR. DUGAN: Same objection.
 13 THE WITNESS: I'm not aware of any assistance
 14 they're providing.
 15 BY MS. LIN:
 16 Q. As in you don't know, or DOS is not providing
 17 any assistance?
 18 A. I don't know. I'm just not aware of any
 19 assistance that's being provided.
 20 Q. What was the piece of security checks that
 21 the non-immigrant Visa only embassy were not doing?
 22 A. It was the portion of the interagency check

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1 run by the agency that I didn't name, not NCTC but the
 2 other one.
 3 Q. Do you know for FTJs who are further along in
 4 the process, for example, they were already
 5 interviewed, do you know what will happen to their
 6 applications with this change in the centralization?
 7 A. I do not.
 8 Q. If an FTJ had already been assured, do you
 9 know how their application will be affected by this
 10 centralization?
 11 MR. DUGAN: Same objection. I'll just have a
 12 standing objection to this line of question. Lacks
 13 foundation.
 14 THE WITNESS: I'm sorry. I just don't know.
 15 (Deposition Exhibit 53 was marked for
 16 identification.)
 17 BY MS. LIN:
 18 Q. Exhibit 53 is the declaration of Sophone
 19 Bizmana in support of Doe plaintiff's opposition to
 20 defendant's motion to dismiss. Have you ever seen
 21 this before?
 22 A. I don't think so.

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1 Q. So according to Mr. Bizmana in Paragraph 7 of
 2 his declaration, his petition was being handled by the
 3 embassy in Uganda where his family currently resides.
 4 A. Okay.
 5 Q. And the embassy in Kampala, Uganda has
 6 transferred all its FTJ cases to Nairobi, Kenya; is
 7 that correct?
 8 MR. DUGAN: Objection. Lacks foundation.
 9 THE WITNESS: I don't know of that
 10 personally, but it appears that way.
 11 BY MS. LIN:
 12 Q. And he is one whose family had already
 13 cleared the medical clearances, but they've now
 14 expired. So do you know what will happen -- what he
 15 needs to do in order to complete the FTJ process for
 16 his family?
 17 MR. DUGAN: Objection. Assumes facts not in
 18 evidence.
 19 THE WITNESS: No, I don't.
 20 BY MS. LIN:
 21 Q. So between October 24, 2017 and at least
 22 December 24, 2017, the processing of Mr. Bizmana's

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1 I-730 petition would have been suspended pursuant to
 2 the ban required by the agency memo; correct?
 3 MR. DUGAN: Objection to the
 4 characterization. Calls for a legal conclusion.
 5 THE WITNESS: Could you ask the question
 6 again.
 7 BY MS. LIN:
 8 Q. Between October 24, 2017 and at least
 9 December 24, 2017, right after the PI, the processing
 10 of Mr. Bizmana's I-730 petition would have been
 11 suspended pursuant to the ban required by the agency
 12 memo; is that correct?
 13 MR. DUGAN: Same objection.
 14 THE WITNESS: I mean I don't have specific
 15 knowledge of his petition. So I can't say for sure
 16 that his petition was suspended.
 17 BY MS. LIN:
 18 Q. Well, his petition was in Uganda, and it
 19 sounded like only -- even if FTJs were being
 20 processed, it's only the FTJs in Kenya and Thailand;
 21 correct?
 22 A. Yes. But for a time, as we saw from the

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1 documents, even they weren't being processed.
 2 Q. Okay. But because his family is in Uganda,
 3 certainly his family was not being processed; is that
 4 correct?
 5 MR. DUGAN: Objection. Assumes facts not in
 6 evidence.
 7 THE WITNESS: I don't know.
 8 BY MS. LIN:
 9 Q. If his family was assured in February, do you
 10 know why they would not have arrived yet?
 11 MR. DUGAN: Objection. Calls for
 12 speculation.
 13 THE WITNESS: Where is it?
 14 BY MS. LIN:
 15 Q. Paragraph 6.
 16 A. So you're asking -- say it again.
 17 Q. If his family had been assured in or around
 18 February of 2018, what would be the reasons they
 19 haven't arrived yet, almost a year later?
 20 MR. DUGAN: Same objection.
 21 THE WITNESS: I don't know for sure, but it
 22 says here that he has to travel to Kenya. So I don't

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1 know if he's done that.
 2 BY MS. LIN:
 3 Q. Okay. His family has to travel to Kenya.
 4 A. Right. And I just don't know if that's
 5 what's holding it up, that he hasn't traveled to Kenya
 6 or...
 7 Q. Joseph Doe is one -- we're done with this.
 8 Joseph Doe is one of the named plaintiffs in
 9 this matter. Are you familiar with the I-730 petition
 10 he filed for his wife and sons?
 11 A. No.
 12 Q. Did you have any involvement with any
 13 instructions that were given relating to the
 14 processing of Joseph Doe's I-730 petition?
 15 A. No.
 16 MS. LIN: Can we take a break?
 17 (A recess was taken from 4:00 p.m.
 18 to 4:04 p.m.)
 19 BY MS. LIN:
 20 Q. Is there anything that was discussed today
 21 either with me or Ms. Keaney that you feel you need to
 22 clarify or was incomplete?

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1 A. No.
 2 MS. KEANEY: I have no further questions.
 3 MR. COX: Any examination from y'all?
 4 MR. DUGAN: No examination of the witness.
 5 MR. COX: Okay. So we're going to leave the
 6 deposition open in light of the privileges that we're
 7 going to be briefing on Tuesday. We'll get you guys
 8 the list of the issues that we intend to address with
 9 Judge Robart. We'll get you that over the weekend
 10 when we get the transcript from today.
 11 MR. DUGAN: Is it safe to assume -- I think I
 12 only invoked privilege once. There was maybe a second
 13 question that was in the same line where maybe we
 14 partially invoke the privilege. So if plaintiffs
 15 ultimately determine not to pursue that particular
 16 question, is it safe to assume, then, that the
 17 deposition is closed?
 18 MR. COX: So my recollection from today is
 19 that there was claim of privilege regarding
 20 discussions about how many circuit rides to add, and
 21 the claim of privilege was deliberative process.
 22 MR. DUGAN: That's correct.

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1 MR. COX: That will be one of the things we
 2 address.
 3 MR. DUGAN: Okay. Fair enough.
 4 MR. COX: You also invoked privilege, if I
 5 recall correctly, about the identity of the other
 6 agency, which I think is the National Counterterrorism
 7 Center, but you -- I think that you're going to maybe
 8 give us some additional information about the basis
 9 for that.
 10 MR. DUGAN: We're continuing to research the
 11 matter internally.
 12 MR. COX: Okay. So that's possibly one that
 13 we would want to address, but we would like to know a
 14 little about the defendant's basis for the claim of
 15 privilege.
 16 Then there are a couple of things from
 17 Ms. Higgins' deposition that need to be addressed.
 18 The only thing I wanted to say is we continue to be a
 19 little bit concerned, maybe a little more than a
 20 little, about how much you all are putting on
 21 Ms. Higgins' 30(b)(6) deposition and Ms. Ingraham's
 22 30(b)(6) deposition. As we've heard, these are really

<p style="text-align: right;">Page 298</p> <p>1 complicated processes, as we've been saying for -- 2 since the case was filed. These are really 3 complicated processes. 4 So we're slightly concerned about the 5 designations, you know, only designating one 6 individual for each. And so just wanted to make sure 7 that that's clear on the record. Again, like we said 8 on Wednesday, if the witness comes unprepared to 9 discuss one of the topics, that's tantamount to not 10 showing up at all. Given that you all are under a 11 court order to provide the testimony, we would like to 12 be seeking fees and costs certainly if we have to come 13 back for additional deposition. 14 So I just want to make sure that that's clear 15 because we are concerned. 16 MR. DUGAN: And we appreciate the statement, 17 and I mean we've studied the notices and will continue 18 to review them with the agency and are aware of our 19 obligations. 20 MR. COX: Great. 21 MR. SNELL: Can I ask two quick clarifying 22 questions. With respect to the two-page Judge Robart</p>	<p style="text-align: right;">Page 300</p> <p>1 MR. COX: Okay. So we'll do noon eastern on 2 Wednesday. We'll circle back with the scheduling 3 clerk, and we'll also seek clarity regarding the 4 double spaced or single spaced. 5 MR. SNELL: The other quick point of 6 clarification: When can we expect to learn about 7 which specific challenges just because our -- we would 8 appreciate the clarity -- 9 MR. COX: Of course. Totally understand. So 10 I can say for sure it's going to be the deliberative 11 process privilege that was asserted today. It will be 12 the Presidential communication privilege that was 13 asserted Wednesday, as well as the deliberative 14 process privilege asserted Wednesday. And I think you 15 can assume that those three certainly will be in 16 there. 17 We'll take a look at the transcripts from 18 today and see, as well as one from Wednesday, and see 19 if we want to address -- I think the only assertions 20 were law enforcement sensitive on Wednesday and today, 21 and we'll let you know no later than mid-day Sunday 22 whether we'll be addressing those.</p>
<p style="text-align: right;">Page 299</p> <p>1 filing, we understand that is to be double spaced. Is 2 that similar to your understanding? 3 MR. DUGAN: I don't think it was clear on the 4 call. So we're just assuming -- most of our filings 5 have been double spaced. 6 MR. COX: We'll seek to clarify that. We'll 7 ask our local counsel in Washington to give Chambers a 8 call and find out. He also said a letter brief, which 9 letter briefs are typically single space. 10 MS. LIN: We can double-check just to make 11 sure we're all on the same line numbers on pages. 12 MR. COX: And I don' think that we've heard 13 yet what time, but we also are trying to get a call 14 set up for Wednesday, and we -- you know, we're aiming 15 for Wednesday morning pacific time just to make sure 16 we're still here during the deposition. 17 Okay. So the judge is available Wednesday 18 morning between 9:00 and 10:00 pacific or 11:00 and 19 noon pacific, and they asked us to circle back today. 20 So I would suggest the noon eastern time. 21 MR. DUGAN: That seems logical. It kind of 22 hits with lunchtime here.</p>	<p style="text-align: right;">Page 301</p> <p>1 MR. SNELL: Thank you. Appreciate it. 2 MR. COX: Sure. 3 Anything else we should discuss? 4 MR. DUGAN: Nothing from the government's 5 perspective. 6 MR. COX: Okay. We can go off the record. 7 (Witness excused.) 8 (Deposition concluded at 4:10 p.m.) 9 10 11 12 13 14 15 16 17 18 19 20 21 22</p>

CERTIFICATE

I do hereby certify that the aforesaid testimony was taken before me, pursuant to notice, at the time and place indicated; that said deponent was by me duly sworn to tell the truth, the whole truth, and nothing but the truth; that the testimony of said deponent was correctly recorded in machine shorthand by me and thereafter transcribed under my supervision with computer-aided transcription; that the deposition is a true and correct record of the testimony given by the witness; and that I am neither of counsel nor kin to any party in said action, nor interested in the outcome thereof.

Nancy J. Martin, RMR, CSR

Dated: February 26, 2019

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ERRATA SHEET

IN RE: JOHN DOE, et al. vs. DONALD TRUMP, et al.
DATE: 2/15/2019

Table with 3 columns: PAGE, LINE, CORRECTION AND REASON. Includes a signature line for Kelly Gauger.

ACKNOWLEDGMENT OF DEPONENT

I have read the foregoing transcript of my deposition and except for any corrections or changes noted on the errata sheet, I hereby subscribe to the transcript as an accurate record of the statements made by me.

KELLY GAUGER

SUBSCRIBED AND SWORN before and to me this ___ day of ___, 20__.

NOTARY PUBLIC

My Commission expires:

ERRATA SHEET CONTINUED

IN RE: JOHN DOE, et al. vs. DONALD TRUMP, et al.
DATE: 2/15/2019

Table with 3 columns: PAGE, LINE, CORRECTION AND REASON. Includes a signature line for Kelly Gauger.

Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate.

The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

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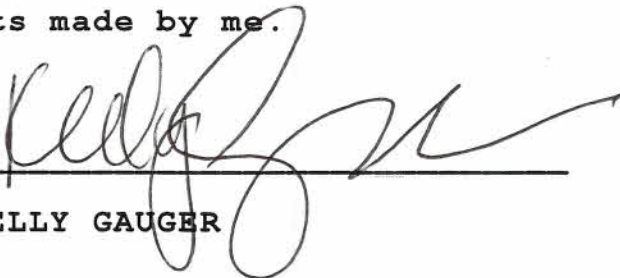
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ACKNOWLEDGMENT OF DEPONENT

I have read the foregoing transcript of my deposition and except for any corrections or changes noted on the errata sheet, I hereby subscribe to the transcript as an accurate record of the statements made by me.


KELLY GAUGER

SUBSCRIBED AND SWORN before and to me this 28th day of March, 2019.

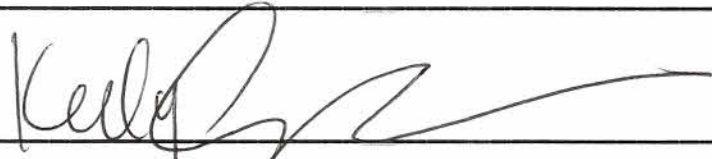
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My Commission expires:

E R R A T A S H E E T

IN RE: JOHN DOE, et al. vs. DONALD TRUMP, et al.

DATE: 2/15/2019

4	PAGE	LINE	CORRECTION AND REASON
5	Throughout		Hillary's name is spelled wrong (Hillam) throughout.
7	p. 3	12	Ron Whitney was not present.
8	p. 44	11	"change" should be "changed"
9	p. 63	9+18	Mark Stivella should be "Storella"
10	p. 200	4	"King" should be "kind"
11	p. 256	14	"Yowindow" should be "Yaownde"
12	p. 258	2	"RFC" should be "RSC"
13	"	10	"
14	p. 259	3	"RFC" should be "RSC"
15			
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21	3-28-19		
22	(DATE)		KELLY GAUGER