

EXHIBIT 8

Linda Lye

From: Linda Lye
Sent: Thursday, September 24, 2015 11:05 AM
To: Freeborne, Paul (CIV); Gostin, Kieran G. (CIV)
Cc: Julia Mass; Nasrina Bargzie (nasrinab@advancingjustice-alc.org); Scotch-Marmo, Stephen; Sadler, Nicole R.
Subject: Gill v DOJ - Administrative Record issues
Attachments: 2015.08.31 Letter to Freeborne and Gostin.attachment.pdf; 2015.08.31 Letter to Freeborne and Gostin.pdf

Dear Paul and Kieran,

I'm writing to follow up on outstanding issues regarding the administrative record. As you know, Plaintiffs contend that the record is incomplete. Judge Seeborg instructed us to continue our meet and confer and referred us to a magistrate to hear any disputes we are unable to resolve. Are you available on Monday for a call to discuss the outstanding issues? I'm available except 11-11:30 PT or 3:15-4 PT (but I suspect that latter slot is too late in your day in any event).

I was hoping to discuss the following:

- 1) For your convenience, I'm attaching our last letter setting forth our concerns.

We believe Defendants have used the wrong legal standard in compiling the record by inappropriately limiting the scope of the record to the definition of suspicious activity and withholding materials that the agency considered. While we understand you contend that the materials withheld are privileged, there is ample support for the proposition that at a minimum, Defendants should provide a privilege log. It is our position that Defendants should prepare a record consisting of all documents directly or indirectly considered in the development of the Functional Standard (including versions 1.0, 1.5, and 1.5.5), and that if it seeks to withhold materials, it should provide a privilege log. Although we did not make this express in our prior letters, it is also our position that in preparing the record under this correct standard, the agency should conduct a search for and include in the record: (a) all internal and external documents regarding the decision-making process for the Functional Standard, including drafts, memoranda, reports, internal reviews and critiques, inter-agency reviews, and e-mail exchanges or other correspondence between and among the agencies and/or others involved in the process, (b) all documents addressing whether 28 C.F.R. Part 23 applies to SARs and the NSI and (c) all documents exploring whether the agency should have pursued formal notice and comment proceedings.

We also believe that there are many specific documents and categories of documents that the agency directly or indirectly considered, as evidenced by the Record already certified, but that are missing from the Record.

- 2) To the extent we are not able to resolve our disputes, I hope we can also discuss process and timing issues.

Process: We've been assigned to MJ Westmore. Judge Westmore's standing order (<http://www.cand.uscourts.gov/kaworders>) has detailed requirements regarding civil discovery disputes, including a requirement that the parties meet and confer by telephone or in-person and to raise any discovery disputes that cannot be resolved through a joint letter that follows a particular format. We do not believe that these requirements apply to us, given that this is not a "discovery" motion. Rather, it would be a motion to complete and/or supplement the record. Her letter brief format requires the parties to discuss each interrogatory or request for production and the parties' respective positions regarding it. That format is simply inapplicable, as there are no discovery requests at issue here. But we would welcome your views on this. If you

agree, we think it makes sense to file some kind of stipulation setting forth the parties' understanding that the requirement in the court's standing order does not apply to this dispute. We think it makes sense to get that on file before filing any brief, to give the court the opportunity to express a different view as to how we should proceed.

Timing: If we are unable to resolve our disputes, we propose to file a motion on October 1, 2015. Judge Westmore hears matters on the first and third Thursdays of the month, and would be available for a hearing on November 5 (there is a 5-week notice period in the Northern District). Our next CMC is scheduled for Nov 19, and the Court ordered us to provide a status update on Nov 12, which would be a week after a hearing if we file on October 1. If we file a motion anytime after October 1, the earliest Judge Westmore would be able to hear this matter would be Nov 19, the current date of our CMC and after our Nov 12 status update is due.

Please let me know if you are available for a call to discuss these issues.

Thanks.

Best, Linda

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