

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

ADHAM AMIN HASSOUN,

Petitioner,

v.

JEFFREY SEARLS, in his official capacity
Acting Assistant Field Office Director and
Administrator of the Buffalo Federal
Detention Facility,

Respondent.

Case No. 1:19-cv-00370-EAW

DECLARATION OF JONATHAN HAFETZ

I, Jonathan Hafetz, of New York, hereby declare:

1. I am counsel to Petitioner Adham Admin Hassoun. I submit this declaration in support of Petitioner's Motion for a Protective Order Staying Enforcement of Respondent's Subpoena for the Deposition of a Non-Party and Compelling Production of Records. The deposition is currently scheduled for Monday, February 10, 2020, at 3:00 PM.

2. I submit this declaration pursuant to Local Civil Rule 7(d)(3) to show that sincere efforts have been made by Petitioner to resolve this dispute, to no avail.

3. By way of summary, the government has stated that this witness is likely to be unavailable to appear in person at the evidentiary hearing in April, and that it intends to use the deposition as a means to secure his testimony. This deposition therefore amounts to trial testimony and is likely to be Petitioner's only opportunity to examine him relating to any and all matters relevant to his defense.

4. For the reasons detailed below, including Petitioner’s failure to produce concededly relevant evidence until today and to produce other potentially relevant discovery until Monday at 10:30 AM—mere hours before the scheduled deposition—it is impossible for Petitioner’s counsel to prepare for a deposition on this timeline. In order to conduct a fair and meaningful examination of this witness, Petitioner’s counsel requires a reasonable opportunity to review discovery, to challenge Petitioner’s failure to produce relevant documents, to challenge substantial redactions of documents that have been produced, and, crucially, to consult with his client regarding voluminous discovery and to engage in its own investigation of these matters beyond the documents the government is willing to produce. It is impossible for that to happen by Monday, and Petitioner asks this Court to stay the deposition so that it may occur on an orderly timeline that is consistent with this Court’s carefully-crafted schedule for discovery and pre-trial proceedings.

Respondent’s Unannounced Notice Of A Rule 45 Subpoena Of A Previously Unidentified Witness

5. By email dated Friday, January 31, 2020, 5:09 PM ET, without seeking the Court’s leave or providing any advance warning to Petitioner, Respondent’s counsel Anthony Bianco notified Petitioner that it had subpoenaed one [REDACTED] for a video deposition pursuant to Federal Rule of Civil Procedure (“Federal Rule”) 45. A true copy of Mr. Bianco’s email is attached as Exhibit A.

6. A copy of Respondent’s Rule 45 deposition subpoena (the “Subpoena”) was attached to Mr. Bianco’s January 31, 2020 email. The deposition subpoena did not indicate whether it had yet been served. A true copy of the deposition subpoena is attached as Exhibit B.

7. According to the Subpoena, [REDACTED] deposition was to be held on Friday, February 7, 2020, at 10 a.m., at the U.S. Attorney's Office for the Eastern District of New York. The subpoena described the subject matter of the deposition as follows: "[REDACTED] [REDACTED]." See Ex. B.

8. The government provided no further explanation of why it was seeking to take this deposition.

9. Counsel for the parties had spoken on the phone earlier on the afternoon of Friday, January 31, 2020, from approximately 2–3 PM EST, in order to discuss matters relating to the protective order and discovery disclosures in this case. During that call, Petitioner's counsel specifically invited the government to raise any other matters related to the case. None of the government attorneys on that call, who included Anthony Bianco, Steven Platt, and Timothy Belsan, mentioned the impending deposition subpoena, or gave any warning whatsoever. Moreover, the government did not seek consent from Petitioner or leave from the Court to schedule the deposition on less than 21 days' notice, as required by Local Civil Rule 30(b)(1).

Petitioner's Preliminary Objections to the Unannounced Rule 45 Subpoena and Subsequent Meet-and-Confer

10. By email dated Saturday, February 1, 2020, 5:02 PM EST, Petitioner's counsel emailed the government seeking to meet and confer as soon as possible, pursuant to Federal Rule 26(c). A true copy of this email is attached as Exhibit C.

11. In that email, Petitioner's counsel raised multiple concerns with [REDACTED] scheduled deposition, including that:

- (a) the government had not identified [REDACTED] as a potential witness, either in response to Petitioner's first set of interrogatories or in a supplement to that response;
- (b) the government had provided Petitioner with less than a week's notice of the deposition, after having represented to both Petitioner and the Court that it did not foresee the need to take depositions, and after the Court had already entered a scheduling order that, based on the parties' negotiations and representations, did not provide for depositions and instead carefully scheduled discovery and pre-hearing motions based on the premise that the parties were engaging only in paper discovery;
- (c) the government had not provided Petitioner with any documents in discovery which might enable Petitioner to prepare for the deposition, even though various documents pertaining to potential witnesses were squarely encompassed within Petitioner's prior discovery request; and
- (d) if the government intended to use [REDACTED] deposition testimony against Petitioner in lieu of live testimony at the evidentiary hearing, as seemed likely, then conducting the deposition on a rushed basis, with virtually no time to review the government's discovery production or otherwise prepare for cross-examination, was fundamentally unfair and improper.

12. The parties exchanged email correspondence to schedule a telephonic meet-and-confer by phone on Monday, February 3, 2020, at 1:00 PM. The government provided no

substantive response in its emails to Petitioner's concerns. A true copy of this email correspondence is attached as Exhibit D.

13. During the telephonic meet-and-confer on February 3, 2020, Respondent was represented by Anthony Bianco, Steven Platt, and, to the best of my recollection, Timothy Belsan. Mr. Bianco spoke on behalf of Respondent. Petitioner was represented by Jonathan Hafetz, Nicole Hallett, Jonathan Manes, Charlie Hogle, Victoria Roeck, and student attorneys Erin Barry and Colton Kells.

14. During the February 3 meet-and-confer, Mr. Bianco represented that:

- (a) the government was interested in [REDACTED] testimony because he had been named as a corroborating witness on a report that formed the basis for one of the allegations in the FBI Letter;
- (b) the government had believed that [REDACTED] was outside the United States;
- (c) government investigators at ICE working on Mr. Hassoun's case had learned approximately two weeks earlier that [REDACTED]
[REDACTED]
[REDACTED];
- (d) the government believed that [REDACTED] testimony might contain a new factual allegation against Petitioner not previously disclosed in the FBI Letter or otherwise;
- (e) a government investigator had conducted an interview with [REDACTED]
[REDACTED], and the government had

subsequently made a determination not to assert the confidential informant privilege to shield [REDACTED] identity;¹ and

- (f) the government refused to consider exploring the possibility of [REDACTED] [REDACTED] remaining for some additional days in the United States to allow Petitioner's counsel time to prepare or arranging for [REDACTED] to provide his testimony via video from [REDACTED].

15. During the meet-and-confer, Petitioner's counsel reiterated all of the concerns identified in its February 1, 2020 email, and emphasized that Petitioner was severely prejudiced by the manner in which the government was proceeding because the government intended to use this deposition as a means to obtain testimony from [REDACTED] against Mr. Hassoun and this would be Mr. Hassoun's only opportunity to confront and cross-examine an accuser. Petitioner's counsel notified Respondent that they were planning to seek relief from the Court including a stay or delay of the deposition, immediate disclosure of all relevant documents, and other relief necessary to protect Mr. Hassoun's rights.

16. Additionally, during the February 3 meet-and-confer, the government agreed to provide Petitioner's counsel with redacted documents relevant to [REDACTED] potential testimony on an expedited basis, with the understanding that said documents would be subject to the protective order currently being negotiated by the parties. Petitioner's counsel requested that this production include any notes, reports, memoranda, and other records of the government's prior interviews or conversations with [REDACTED]. Petitioner's counsel reserved the right to

¹ Government counsel initially stated the interview occurred on [REDACTED], but later clarified that the interview had occurred on [REDACTED].

seek relief from the Court, depending on, *inter alia*, the adequacy and timing of the production, and the extent of the prejudice to Petitioner.

17. Finally, during the meet-and-confer earlier in the day, the government represented that its investigators had not spoken directly with [REDACTED] about Mr. Hassoun during his time in custody at Batavia or otherwise [REDACTED].

Respondent Produces an Incomplete and Heavily Redacted Set of Documents Relevant to the Deposition

18. By email dated February 3, 2020, 9:52 PM EST, Respondent's counsel Anthony Bianco produced to Petitioner a total of five redacted PDF documents that it identified as relevant to [REDACTED] expected deposition testimony. A true copy of Mr. Bianco's email is attached as Exhibit E.

19. The government's production of February 3 does not include any notes, reports, memoranda, or other records of the government's prior interviews or conversations with [REDACTED]

20. The government's production of February 3 did include [REDACTED]
[REDACTED]. The government has redacted [REDACTED], however, to hide [REDACTED] and other information.

21. The government's production of February 3 also included [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

22. The documents in this way appeared to contradict the government's representation at the February 3, 2020 meet-and-confer that the government had no previous direct interaction with [REDACTED] regarding Mr. Hassoun. It also suggested that the government was likely to have reports of [REDACTED] including, potentially: [REDACTED]

[REDACTED]

[REDACTED]

23. Further, the February 3 production suggests that the government has known about the relevance of [REDACTED] testimony since as early as [REDACTED]

[REDACTED]

[REDACTED]. Yet the government apparently made no effort to interview [REDACTED] in connection with its decision to certify and indefinitely detain Petitioner; nor did the government notify Petitioner's counsel of [REDACTED] existence, despite Petitioner's interrogatories. Pet'rs First Set Interrog. 5-6, Dec. 23, 2020 (ECF 65-1).

24. The government's production of February 3 does not appear to contain the basis for its belief that [REDACTED].

25. By email dated February 4, 2020, at 12:20 PM EST, counsel for Petitioner emailed the government reiterating counsel's request for all prior reports of interviews with [REDACTED] and all corresponding documentation, including all notes and emails. A true copy of this email is attached as Exhibit F.

Respondent Re-Notices the Deposition for Monday, February 10

26. By email dated February 4, 2020, 4:32 PM, the government informed Petitioner it had re-noticed the deposition for Monday, February 10, 2020, at 3:00 PM, at the U.S. Attorney's Office for the Eastern District of New York. A true copy of this email is attached as Exhibit G. The government stated that it had re-noticed the deposition to accommodate both [REDACTED] [REDACTED] schedule and Petitioner's "concerns regarding having sufficient time to review." See Ex. G.

27. In the same email, the government informed Petitioner that it [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] The government stated that it would "produce these [additional documents] as soon as possible."

28. On February 4, 2020, at 6:31 PM, counsel for Petitioner reiterated Petitioner's continuing objection to the deposition, given the lack of notice and adequate time to conduct an investigation and prepare. A true copy of Petitioner's email is attached as Exhibit H. Petitioner further asked the government for clarification on the following issues:

- (a) What arrangements, if any, the government would make to ensure that Mr. Hassoun has the opportunity to observe [REDACTED] testimony and to confer confidentially with his counsel during the deposition;
- (b) What steps would be taken to ensure adequate time for cross-examination of [REDACTED] given the deposition was scheduled to commence at 3 PM;

- (c) Whether the government would be invoking the confidential informant privilege regarding [REDACTED];
- (d) Concerns regarding the Court's ability to rule on any objections during the deposition, particularly if the government intended to instruct [REDACTED] not to answer certain questions;
- (e) Confirmation of the time and date of production of the requested additional documents; and
- (f) The basis for the redactions in the previously produced documents.

29. By email dated February 5, 2020, 3:13 PM, government counsel represented that Mr. Hassoun would not be able to observe the deposition because televideo access at the detention center is "scheduled for other uses" during the time of the deposition, but that Mr. Hassoun would have direct access to the deposition via a telephone line and that a request had been made "for local counsel to be permitted cell phone use to confer with counsel at the deposition." A true copy of this email is attached as Exhibit I. Government counsel further represented that its direct examination was likely to take approximately one hour and that counsel would confirm relevant persons remained available until 7 PM to complete a cross-examination. Government counsel stated [REDACTED] and [REDACTED] and provided a list of the abbreviations for the privileges the government may have claimed in its earlier production.

30. The February 5, 2020, 3:13 PM email further stated that the government was “in the process of producing relevant documents” without redactions and that Petitioner’s counsel would have them no later than as part of [the government’s] scheduled production [on February 6].” Ex. I.

31. By email dated February 5, 5:13 PM, counsel for Petitioner once again asked the government how and when it would produce the relevant documents pertaining to [REDACTED] deposition, given that that counsel needed time not only to review the documents but also, potentially, to seek relief from the Court. A true copy of this email is attached as Exhibit J. Petitioner also asked the government whether it would designate any documents Attorneys’ Eyes Only, and whether, if the deposition took longer than expected, it could be extended into the evening or continued first thing the next morning.

Respondent Again Fails to Produce All Records Relevant to [REDACTED] Deposition

32. The government responded by email dated February 5, 2020, at 9:44 PM. A true copy of this email is attached as Exhibit K. The government represented that it (a) no longer asserted the confidential informant privilege regarding one [REDACTED]; and (b) had reserved space for the deposition through the evening and informed the reporter that the deposition might extend to the evening.

33. Attached to the same email were what Mr. Bianco referred to as “the production documents related to [REDACTED].” Ex. K. Like the government’s previous production, this production did not include [REDACTED]; it did, however, include the documents from the government’s previous production with fewer redactions.

34. Petitioner’s counsel emailed the government on February 6, 2020, at 12:38 PM. A true copy of this email is attached as Exhibit L. Again, Petitioner requested documents and notes pertaining to [REDACTED]. Specifically, Petitioner sought clarification on whether the government’s forthcoming production—at this point, the production required by the Court’s schedule—would include:

- (a) [REDACTED]
[REDACTED]
- (b) [REDACTED]
[REDACTED]
- (c) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED];
- (d) [REDACTED]
[REDACTED]; and
- (e) [REDACTED].

35. The government responded by email on February 6, 2020, at 1:04 PM. A true copy of this email is attached as Exhibit M. In that email, Mr. Bianco represented that he had sent Petitioner’s questions “to the relevant individuals” and would “provide [Petitioner] a substantive response by this evening.”

36. Petitioner’s counsel responded on February 6, 2020, at 4:57 PM. A true copy of this email is attached as Exhibit N. Petitioner’s counsel informed the government that they could

not agree to the deposition unless the government produced all relevant records, including [REDACTED] by that evening.

Petitioner's counsel further requested that the government produce records pertaining to [REDACTED]. Petitioner informed the government that after the government produced all relevant records, Petitioner would determine whether to proceed with the deposition or seek relief from the Court. Finally, Petitioner asked the government to confirm its availability for a telephone conference at 11:00 AM EST on February 7, 2020.

37. By email dated February 6, 2020, at 9:51 PM, government counsel transmitted a production of documents and a privilege log in accordance with the Court's scheduling order. A true copy of this email is attached as Exhibit O. None of the documents appears responsive to Petitioner's request for [REDACTED]

38. Further, the production was incomplete; at least one additional volume of discovery was not included in the email. Respondent's counsel stated that the additional volume of discovery had been sent via courier to Petitioner's counsel on a thumb drive. According to the Federal Express tracking receipts for said shipment, the shipment will not arrive at Petitioner's counsel's offices until at or around Monday, February 10, at 10:30 AM. That is four days after the deadline imposed by this Court and, for purposes directly relevant here, the day of [REDACTED] deposition.

39. By email dated February 6, 2020, at 10:25 PM, government counsel confirmed that the report of [REDACTED] was not included in that evening's production as government counsel "did not receive it until [that] afternoon." A true copy of this

email is attached as Exhibit P. This was five days after Petitioner's counsel first requested disclosure of the documents by email on February 1, 2020.

40. Government counsel further stated in his email he would "provide a copy informally tomorrow upon [his] client's review and approval." *See* Ex. P. Government counsel did not specify a time by which the report would be provided, nor did he confirm that the client's approval would necessarily be forthcoming. Government counsel represented he was not aware of [REDACTED]. *See id.*

41. As to Petitioner's counsel's express and repeated requests for [REDACTED] [REDACTED] as well as documents pertaining to [REDACTED] in the government's possession and control, government counsel responded only that he would "provide any updates that [he] receive[s] regarding [Petitioner's counsel's] remaining questions as [he] receive[s] them." *Id.*

42. By email dated February 7, 2020, 12:39 AM, Petitioner's counsel reiterated their concerns about the government's delayed production of the report of [REDACTED] [REDACTED] and government counsel's failure either to produce the other requested records, including [REDACTED] [REDACTED] or even to provide a substantive response as to why those items were not being produced. A true copy of this email is attached as Exhibit Q. Counsel for Petitioner also reiterated the request to schedule for a meet-and-confer at 11 a.m. that morning before seeking emergency relief from the Court.

43. By email dated February 7, 2020 (today) at 8:33 AM, Respondent's counsel agreed to schedule a meet-and-confer at 11 AM.

The Parties' Final Meet-and-Confer

44. The parties conferred for approximately 30 minutes beginning at 11:05 AM today. On the call for the Petitioner were Jonathan Hafetz, Jonathan Manes, Nicole Hallett, Victoria Roeck, and Charlie Hogle. On the call for Respondent were Anthony Bianco and Daniel Moar.

45. During the call, Mr. Bianco stated that:

- (a) With regards to the [REDACTED]
[REDACTED]
[REDACTED].
- (b) [REDACTED] had prepared [REDACTED]
[REDACTED] but Mr. Bianco had determined that he was not going to disclose it because his “client”—i.e., the investigator—[REDACTED]
[REDACTED];
- (c) Instead, Mr. Bianco stated that he would disclose [REDACTED]
[REDACTED] Mr. Bianco indicated that he had concerns about attorney work-product privilege but would draft a notice protecting that privilege.
- (d) Counsel for Respondent inquired whether [REDACTED] contained information that would not have been captured [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(e) Mr. Bianco did not provide a response. Instead, Respondent's counsel reiterated that he would provide only [REDACTED] and that if we had any concerns after listening to it we could "circle back" and discuss those concerns, despite the fact that the deposition is scheduled for Monday.

(f) Mr. Bianco stated that he would send [REDACTED] [REDACTED] (At 12:34 PM today, Mr. Bianco transmitted [REDACTED] to Petitioner's counsel by email. Petitioner's counsel have not had the opportunity to review [REDACTED].)

(g) With respect to [REDACTED] Mr. Bianco represented that [REDACTED] [REDACTED] [REDACTED]. He also represented that he [REDACTED] [REDACTED] [REDACTED] [REDACTED]

46. Petitioner's counsel expressed their concern that it would be impossible to conduct a meaningful examination of [REDACTED] given that:

(a) Petitioner's counsel still had not received [REDACTED] [REDACTED];

- (b) Petitioner's counsel had received hundreds of pages of documents the night before that related to matters about which [REDACTED] might have knowledge and that they might wish to examine him about;
- (c) Petitioner's counsel would not receive additional volume of discovery until the morning of the deposition;
- (d) Petitioner's counsel's examination of [REDACTED] at the deposition need not be limited to the matters that the government wished to examine him about, and that because this was likely their only opportunity to examine him, it was fundamentally unfair to deny Petitioner's counsel the time necessary to review the documents, to conduct their own investigation, and otherwise to prepare to conduct what amounts to a trial examination of [REDACTED] on such a compressed timeline.

47. Petitioner also raised again the option that [REDACTED] could be examined at a later date and, ideally, at the evidentiary hearing. Petitioner's counsel noted that:

- (a) The United States has diplomatic relations with [REDACTED]
[REDACTED];
- (b) [REDACTED] is a resident of the United States with meaningful ties here, including, on information and belief, [REDACTED], and not a mere foreign citizen;
- (c) The United States has embassies and consulates that presumably are equipped with internet access and videoconferencing capability that would

permit [REDACTED] to appear at the evidentiary hearing or a deposition remotely.

48. The government asserted that the time and expense involved in making these arrangements was an unwarranted inconvenience, that [REDACTED] was reluctant to testify, and that it therefore wished to take his testimony now, [REDACTED]. The government represented that [REDACTED]

49. Petitioner's counsel reiterated that the timeline made it impossible for them to have a fair opportunity to review the evidence, confer with their client, and conduct an independent investigation of the facts.

50. Petitioner's counsel also reiterated that there were serious discovery disputes that would need to be resolved before a deposition could fairly be taken, including the government's redaction and withholding of numerous documents, and serious questions about whether the government had fully searched for and identified all responsive documents, including [REDACTED]

51. The parties agreed that they were at an impasse. Petitioner's counsel notified Respondent that they would be approaching the Court.

The Government's Extraordinarily Late Notice of [REDACTED] Deposition, Combined With Its Repeated Failure To Produce All Documents Relevant to the Deposition, Denies Petitioner's Counsel Adequate Time to Prepare for Cross-Examination and Is Highly Prejudicial to Petitioner.

52. Since receiving the late-noticed deposition subpoena, issued in violation of the local rules and in violation of the spirit if not the letter of this Court's scheduling order in this

matter, Petitioner's counsel has worked assiduously to allow for the possibility that the deposition might move forward without grossly prejudicing Petitioner.

53. Government counsel has categorically refused to consider continuing the deposition to a date beyond Monday, whether by either securing [REDACTED] attendance at a later date or by arranging for his testimony from [REDACTED].

54. Government counsel has also failed to explain why it did not inform either Petitioner's counsel or this Court earlier that it might be seeking to depose [REDACTED] even though the government was aware of this possibility by as early as [REDACTED], when it first became aware of [REDACTED] presence in the United States.

55. Government counsel has also not provided Petitioner's counsel with all of the discovery required under this Court's order. And even as to the discovery that has been produced, Petitioner's counsel has not had a meaningful time to review it, let alone to challenge the extensive redactions, in order to conduct a meaningful examination of [REDACTED].

56. Government counsel has, to be sure, made various efforts to address Petitioner's urgent concerns, as set forth above, and Petitioner's counsel readily acknowledges those efforts.

57. But the deposition of a government witness remains inherently prejudicial under this incredibly compressed time schedule because Petitioner lacks critical documents, including the deponent's own prior statements, and because Petitioner's counsel lacks adequate time to examine the documents counsel has received, confer meaningfully with their client, and conduct an independent investigation, including into a witness who appears to [REDACTED].

58. In particular, Petitioner's counsel has had virtually no time to examine the several hundred pages of documents government produced on February 6, at 10:25 PM. However upon a quick review, the documents appear to include numerous areas about which Petitioner's counsel may want to examine [REDACTED]. For example, [REDACTED]
[REDACTED]
[REDACTED]. These documents, moreover, are heavily redacted; indeed, entire pages are completely blacked out.

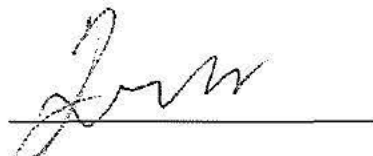
59. Petitioner's counsel will have even less time, if counsel has any time at all, to review the documents in "Volume 3," which are slated for delivery on Monday, only hours before the deposition.

60. It is manifestly unreasonable and unfair to force Petitioner's counsel to proceed with a deposition of a witness without having received numerous relevant documents, without having adequate time to examine the documents counsel has received, and without any opportunity to challenge the extensive redactions in those documents.

61. Petitioner's counsel must be given an opportunity to review the documents, to conduct their own investigation of the facts revealed therein, to confer with their client, and to have this Court resolve numerous disputed issues related to discovery, redactions, and privileges.

62. Forcing Petitioner to proceed with a deposition that would provide the sole opportunity to confront and cross-examine his accuser without these documents and without adequate time to examine them, would violate due process.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

A handwritten signature in black ink, appearing to be "J. W.", is written over a horizontal line.

Executed on this 7th day of February, 2020

Exhibit A

University at Buffalo School of Law
The State University of New York
613 O'Brian Hall, North Campus
Buffalo, NY 14260-1100
O: (716) 645-6222
F: (716) 645-6199
M: (203) 214-0195

Sent from a phone; please excuse errors.

On Jan 31, 2020, at 3:09 PM, Bianco, Anthony D. (CIV) <Anthony.D.Bianco@usdoj.gov> wrote:

Counsel,

Attached is a copy of a subpoena to [REDACTED] for a video deposition scheduled for Friday, February 7, 2020, at 10:00 am. [REDACTED] and is a lawful permanent resident.

This abbreviated schedule is necessary due to [REDACTED] upcoming personal travel outside of the United States.

Regards,
Anthony Bianco

Anthony D. Bianco | U.S. Department of Justice
Senior Litigation Counsel
District Court Section
Office of Immigration Litigation
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<Hassoun (W.D.N.Y. 19-cv-0370) [REDACTED] Subpoena.pdf>

Exhibit B

AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of New York

ADHAM AMIN HASSOUN

Plaintiff

v.

JEFFREY SEARLS, in his official capacity as Acting Asst. Field Office Dir. & Admin. of the Buffalo F.D.F.

Defendant

Civil Action No. 1:19-CV-0370 EAW

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To:

(Name of person to whom this subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Table with 2 columns: Place (United States Attorney's Office, 271-A Cadman Plaza East, 7th Floor, Brooklyn, New York 11201) and Date and Time (02/07/2020 10:00 am)

The deposition will be recorded by this method: audiovisual means

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached - Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 01/31/2020

CLERK OF COURT

OR

Handwritten signature of attorney

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing Respondents, who issues or requests this subpoena, are:

Anthony D. Bianco, Senior Counsel for National Security, U.S. Department of Justice, Civil Division, Ben Franklin Station, P.O. Box 868, Washington, DC 20044, (202) 305-8014, anthony.d.bianco@usdoj.gov

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 1:19-CV-0370 EAW

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____.

I served the subpoena by delivering a copy to the named individual as follows: _____

_____ on *(date)* _____; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

Exhibit C

Jonathan Hafetz

From: Manes, Jonathan <jmmanes@buffalo.edu>
Sent: Saturday, February 01, 2020 5:02 PM
To: Bianco, Anthony D. (CIV)
Cc: Brett Max Kaufman; Nicole Hallett; Jonathan Hafetz; Colton Kells; Marline Paul; Richard Barney; Victoria Roeck; Charlie Hogle; Judy Rabinovitz; Celso Perez; Erin Barry; Belsan, Timothy M. (CIV); Platt, Steven A. (CIV); Moar, Daniel (USANYW); nukiri@lawclinic.uchicago.edu; beccis@lawclinic.uchicago.edu; bzagrocki@lawclinic.uchicago.edu
Subject: Re: Hassoun v. Searls (W.D.N.Y. 19-cv-0370) notice of subpoena for deposition

Anthony,

Pursuant to FRCP 26(c) we write to schedule a telephone conference with you immediately to discuss the deposition subpoena that you served on us yesterday afternoon without any prior notice or warning. We intend to ask the Court to delay the deposition so that we can have adequate time to prepare. We also intend to ask the Court to order to you disclose to us all documents related to the deponent immediately. We may seek other relief as well. We would like to speak with you as soon as possible to learn more about your course of action here.

Among other things, it appears that you are in violation of your obligation to update your interrogatory responses. Our interrogatories asked Respondent to identify any and all witnesses. We had a meet-and-confer after you provided your initial responses at which you confirmed that you would update your witness list in good faith, which is your obligation under the rules in any event. Yet you did not and have never identified [REDACTED] as a witness.

The first we learned of [REDACTED] existence was your email at 5:10pm yesterday, Friday, January 31, 2020, when you transmitted to us a Rule 45 deposition subpoena that you have apparently served on him. At this point we still do not know who [REDACTED] is and we have no idea how he relates to the case against Mr. Hassoun. It appears from the subpoena that you intend to take testimony from him [REDACTED]. Accordingly, we can perceive no reason for Respondent to take this deposition other than to use [REDACTED] as a government witness against Mr. Hassoun, yet he has not been disclosed as such.

More fundamentally, we do not believe it is permissible for you to schedule a deposition without conferring with us first, given that the Court has entered a discovery scheduling order that made no provision for depositions and the government previously represented that it did not foresee taking any depositions. The Court has expended considerable time and energy developing a discovery and pre-trial schedule on the basis of the parties' representations. This unannounced deposition upends that schedule and arguably violates the scheduling order set by the Court.

Your failure to notify us sooner of the existence of this witness is particularly troubling because we spent a full hour on the phone with you and your co-counsel Steven Platt and Timothy Belsan yesterday afternoon--only a few hours before you served the deposition subpoena--discussing matters relating to ongoing discovery. Toward the end of the call, just before 3pm, we specifically invited you to raise any other matters related to this case. You did not mention this deposition or this witness. Instead, you waited until just after close of business on a Friday to send us the deposition subpoena without explanation.

Moreover, your unilateral action is unfair to Petitioner because you seek to schedule the subpoena for Friday, February 7, at 10am, less than one week after serving us notice. That date is also the morning after your responses to our discovery requests are due on February 6. On the phone yesterday you proposed sending us those discovery responses via overnight mail on February 6 so that we would not receive them until February 7, the very day of the proposed deposition.

Of course, we cannot meaningfully participate in a deposition of an unknown government witness without prior disclosure of relevant discovery. Our requests for production requested prior statements and other documents related to any government witnesses. Even if we were somehow to receive your discovery responses on February 6—and even assuming we had no disputes about the adequacy of those responses—there would not be enough time to prepare before a 10am deposition the following day. In effect, you have engineered the schedule so as to take a deposition of a witness against our client before we will have received the documents necessary for us to prepare and potentially cross-examine the deponent. This is especially unfair and improper if the government is contemplating using this deposition as a means to obtain the witness's testimony for use against Mr. Hassoun without putting him on the stand before the factfinder at the evidentiary hearing.

For all these reasons it is necessary to schedule a meet-and-confer as soon as possible. We are available Monday from 10:30am-12:00pm and 1-3pm.

Jonathan Manes
Counsel for Petitioner

--

Jonathan Manes
University at Buffalo School of Law
The State University of New York
613 O'Brian Hall, North Campus
Buffalo, NY 14260-1100
O: (716) 645-6222
F: (716) 645-6199
M: (203) 214-0195

Sent from a phone; please excuse errors.

On Jan 31, 2020, at 3:09 PM, Bianco, Anthony D. (CIV) <Anthony.D.Bianco@usdoj.gov> wrote:

Counsel,

Exhibit D

Please use the following call in information:

+1-877-465-7975

Pin: 15566432

Sent from my iPhone

On Feb 2, 2020, at 7:37 PM, Bianco, Anthony D. (CIV) <abianco@civ.usdoj.gov> wrote:

Jonathan,

I understand your concerns and I believe we can resolve them tomorrow during our discussion. Are you available at 1 pm tomorrow to discuss? I will provide a call-in number upon your response.

Thank you,
Anthony

From: Manes, Jonathan <jimmanes@buffalo.edu>
Sent: Saturday, February 1, 2020 5:02 PM
To: Bianco, Anthony D. (CIV) <abianco@CIV.USDOJ.GOV>
Cc: Brett Max Kaufman <bkaufman@aclu.org>; Nicole Hallett <nhallett@uchicago.edu>; Jonathan Hafetz <jhafetz@aclu.org>; Colton Kells <coltonke@buffalo.edu>; Marline Paul <marlinep@buffalo.edu>; Richard Barney <rkbarney@buffalo.edu>; Victoria Roeck <VRoeck@nyclu.org>; Charlie Hogle <CHogle@aclu.org>; Judy Rabinovitz <JRabinovitz@aclu.org>; Celso Perez <cperez@aclu.org>; Erin Barry <ebarry2@buffalo.edu>; Belsan, Timothy M. (CIV) <tbelsan@CIV.USDOJ.GOV>; Platt, Steven A. (CIV) <splatt@CIV.USDOJ.GOV>; Moar, Daniel (USANYW) <DMoar@usa.doj.gov>; nukiri@lawclinic.uchicago.edu; beccis@lawclinic.uchicago.edu; bzagrocki@lawclinic.uchicago.edu
Subject: Re: Hassoun v. Searls (W.D.N.Y. 19-cv-0370) notice of subpoena for deposition

Anthony,

Pursuant to FRCP 26(c) we write to schedule a telephone conference with you immediately to discuss the deposition subpoena that you served on us yesterday afternoon without any prior notice or warning. We intend to ask the Court to delay the deposition so that we can have adequate time to prepare. We also intend to ask the Court to order to you disclose to us all documents related to the deponent immediately. We may seek other relief as well. We would like to speak with you as soon as possible to learn more about your course of action here.

Among other things, it appears that you are in violation of your obligation to update your interrogatory responses. Our interrogatories asked Respondent to identify any and all witnesses. We had a meet-and-confer after you provided your initial responses at which you confirmed that you would update your witness list in good faith, which is your obligation under the rules in any event. Yet you did not and have never identified [REDACTED] as a witness.

Exhibit E

Jonathan Hafetz
Senior Staff Attorney
Center for Democracy
American Civil Liberties Union
125 Broad Street
New York, NY 10004
jhafetz@aclu.org
(212) 284-7319

From: Bianco, Anthony D. (CIV) [<mailto:Anthony.D.Bianco@usdoj.gov>]
Sent: Monday, February 03, 2020 9:52 PM
To: Manes, Jonathan
Cc: Brett Max Kaufman; Nicole Hallett; Jonathan Hafetz; Colton Kells; Marline Paul; Richard Barney; Victoria Roeck; Charlie Hogle; Judy Rabinovitz; Celso Perez; Erin Barry; Belsan, Timothy M. (CIV); Platt, Steven A. (CIV); Moar, Daniel (USANYW); nukiri@lawclinic.uchicago.edu; beccis@lawclinic.uchicago.edu; bzagrocki@lawclinic.uchicago.edu; Hill, Serrita L. (CIV)
Subject: [Not Virus Scanned] [Not Virus Scanned] [Not Virus Scanned] RE: Hassoun v. Searls (W.D.N.Y. 19-cv-0370) notice of subpoena for deposition

Jonathan,

██████████ is not represented by counsel.

Attached is the production relevant to ██████████ as discussed on the call today. Respondent is producing the attached documents ahead of the production deadline and prior to the entry of a protective order with the understanding that this production will be subject to the protective order entered in this case as applicable.

The password for the attached is ██████████

Regards,
Anthony Bianco

From: Manes, Jonathan <jmmanes@buffalo.edu>
Sent: Monday, February 3, 2020 4:03 PM
To: Bianco, Anthony D. (CIV) <abianco@CIV.USDOJ.GOV>
Cc: Brett Max Kaufman <bkaufman@aclu.org>; Nicole Hallett <nhallett@uchicago.edu>; Jonathan Hafetz <jhafetz@aclu.org>; Colton Kells <coltonke@buffalo.edu>; Marline Paul <marlinep@buffalo.edu>; Richard Barney <rkbarney@buffalo.edu>; Victoria Roeck <VRoeck@nyclu.org>; Charlie Hogle <CHogle@aclu.org>; Judy Rabinovitz <JRabinovitz@aclu.org>; Celso Perez <cperez@aclu.org>; Erin Barry <ebarry2@buffalo.edu>; Belsan, Timothy M. (CIV) <tbelsan@CIV.USDOJ.GOV>; Platt, Steven A. (CIV) <splatt@CIV.USDOJ.GOV>; Moar, Daniel (USANYW) <DMoar@usa.doj.gov>; nukiri@lawclinic.uchicago.edu; beccis@lawclinic.uchicago.edu; bzagrocki@lawclinic.uchicago.edu; Hill, Serrita L. (CIV) <sehill@CIV.USDOJ.GOV>
Subject: Re: Hassoun v. Searls (W.D.N.Y. 19-cv-0370) notice of subpoena for deposition

Exhibit F

From: Jonathan Hafetz <jhafetz@aclu.org>
Sent: Tuesday, February 4, 2020 12:20 PM
To: Bianco, Anthony D. (CIV) <abianco@CIV.USDOJ.GOV>; Manes, Jonathan <jmmanes@buffalo.edu>
Cc: Brett Max Kaufman <bkaufman@aclu.org>; Nicole Hallett <nhallett@uchicago.edu>; Colton Kells <coltonke@buffalo.edu>; Marline Paul <marlinep@buffalo.edu>; Richard Barney <rkbarney@buffalo.edu>; Victoria Roeck <VRoeck@nyclu.org>; Charlie Hogle <CHogle@aclu.org>; Judy Rabinovitz <JRabinovitz@aclu.org>; Celso Perez <cperez@aclu.org>; Erin Barry <ebarry2@buffalo.edu>; Belsan, Timothy M. (CIV) <tbelsan@CIV.USDOJ.GOV>; Platt, Steven A. (CIV) <splatt@CIV.USDOJ.GOV>; Moar, Daniel (USANYW) <DMoar@usa.doj.gov>; nukiri@lawclinic.uchicago.edu; beccis@lawclinic.uchicago.edu; bzagrocki@lawclinic.uchicago.edu; Hill, Serrita L. (CIV) <sehill@CIV.USDOJ.GOV>
Subject: RE: Hassoun v. Searls (W.D.N.Y. 19-cv-0370) notice of subpoena for deposition

Anthony:

Does the government intend to produce the [REDACTED] as we have requested, and if so, when does it intend to make said production?

[REDACTED]

Please provide a definition of all the redaction markings, so there is no misunderstanding.

Jon

Jonathan Hafetz
Senior Staff Attorney
Center for Democracy
American Civil Liberties Union
125 Broad Street
New York, NY 10004
jhafetz@aclu.org
(212) 284-7319

From: Bianco, Anthony D. (CIV) [<mailto:Anthony.D.Bianco@usdoj.gov>]
Sent: Monday, February 03, 2020 9:52 PM
To: Manes, Jonathan
Cc: Brett Max Kaufman; Nicole Hallett; Jonathan Hafetz; Colton Kells; Marline Paul; Richard Barney; Victoria Roeck; Charlie Hogle; Judy Rabinovitz; Celso Perez; Erin Barry; Belsan, Timothy M. (CIV); Platt, Steven A. (CIV); Moar, Daniel

Exhibit G

Jonathan Hafetz

From: Bianco, Anthony D. (CIV) <Anthony.D.Bianco@usdoj.gov>
Sent: Tuesday, February 04, 2020 4:32 PM
To: Jonathan Hafetz; Manes, Jonathan
Cc: Brett Max Kaufman; Nicole Hallett; Colton Kells; Marline Paul; Richard Barney; Victoria Roeck; Charlie Hogle; Judy Rabinovitz; Celso Perez; Erin Barry; Belsan, Timothy M. (CIV); Platt, Steven A. (CIV); Moar, Daniel (USANYW); nukiri@lawclinic.uchicago.edu; beccis@lawclinic.uchicago.edu; bzagrocki@lawclinic.uchicago.edu; Hill, Serrita L. (CIV)
Subject: RE: Hassoun v. Searls (W.D.N.Y. 19-cv-0370) notice of subpoena for deposition

Jon,

I confirmed with my client that they [REDACTED]

I have also confirmed that in the forthcoming production, there are additional documents [REDACTED]
[REDACTED]
[REDACTED]

I am in the process of expediting review of the earlier reporting for immediate production and [REDACTED]
[REDACTED] I will produce these as soon as possible.

I spoke to [REDACTED] today regarding the deposition. He stated that he [REDACTED]
[REDACTED] and would be available on Monday afternoon. Given petitioner's expressed concerns regarding having sufficient time to review and to accommodate [REDACTED] schedule prior to his departure for [REDACTED], I am renoting the deposition for Monday, February 10, 2020, at 3 pm. Location, United States Attorney's Office, 271-A Cadman Plaza East, 7th Floor, Brooklyn, New York 11201, to remain the same.

Regards,
Anthony Bianco

From: Jonathan Hafetz <jhafetz@aclu.org>
Sent: Tuesday, February 4, 2020 12:20 PM
To: Bianco, Anthony D. (CIV) <abianco@CIV.USDOJ.GOV>; Manes, Jonathan <jmmanes@buffalo.edu>
Cc: Brett Max Kaufman <bkaufman@aclu.org>; Nicole Hallett <nhallett@uchicago.edu>; Colton Kells <coltonke@buffalo.edu>; Marline Paul <marlinep@buffalo.edu>; Richard Barney <rkbarney@buffalo.edu>; Victoria Roeck <VRoeck@nyclu.org>; Charlie Hogle <CHogle@aclu.org>; Judy Rabinovitz <JRabinovitz@aclu.org>; Celso Perez <cperez@aclu.org>; Erin Barry <ebarry2@buffalo.edu>; Belsan, Timothy M. (CIV) <tbelsan@CIV.USDOJ.GOV>; Platt, Steven A. (CIV) <splatt@CIV.USDOJ.GOV>; Moar, Daniel (USANYW) <DMoar@usa.doj.gov>; nukiri@lawclinic.uchicago.edu; beccis@lawclinic.uchicago.edu; bzagrocki@lawclinic.uchicago.edu; Hill, Serrita L. (CIV) <sehill@CIV.USDOJ.GOV>
Subject: RE: Hassoun v. Searls (W.D.N.Y. 19-cv-0370) notice of subpoena for deposition

Anthony:

Exhibit H

The government will not be invoking a confidential informant privilege for [REDACTED]
[REDACTED] We are in the process of producing relevant documents without these redactions and should have them no later than as part of our scheduled production tomorrow.

The following is a list of the abbreviations for the privileges the government may have claimed in the initial production.
AC: Attorney Client Privilege
WP: Attorney Work Product Privilege
DP: Deliberative Process Privilege
IN: Informant Privilege
IV: Investigatory Files Privilege

Anthony

From: Jonathan Hafetz <jhafetz@aclu.org>
Sent: Tuesday, February 4, 2020 6:31 PM
To: Bianco, Anthony D. (CIV) <abianco@CIV.USDOJ.GOV>; Manes, Jonathan <jmmanes@buffalo.edu>
Cc: Brett Max Kaufman <bkaufman@aclu.org>; Nicole Hallett <nhallett@uchicago.edu>; Colton Kells <coltonke@buffalo.edu>; Marline Paul <marlinep@buffalo.edu>; Richard Barney <rbarney@buffalo.edu>; Victoria Roeck <VRoeck@nyclu.org>; Charlie Hogle <CHogle@aclu.org>; Judy Rabinovitz <JRabinovitz@aclu.org>; Celso Perez <cperez@aclu.org>; Erin Barry <ebarry2@buffalo.edu>; Belsan, Timothy M. (CIV) <tbelsan@CIV.USDOJ.GOV>; Platt, Steven A. (CIV) <splatt@CIV.USDOJ.GOV>; Moar, Daniel (USANYW) <DMoar@usa.doj.gov>; nukiri@lawclinic.uchicago.edu; beccis@lawclinic.uchicago.edu; bzagrocki@lawclinic.uchicago.edu; Hill, Serrita L. (CIV) <sehill@CIV.USDOJ.GOV>
Subject: RE: Hassoun v. Searls (W.D.N.Y. 19-cv-0370) notice of subpoena for deposition

Anthony:

Thank you for the update. We continue to object to the deposition, even with the new date of Monday, Feb. 10, given the lack of notice and adequate time to conduct an investigation and prepare. The timing is particularly unfair given that we still do not have critical documents, including [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] The lack of adequate notice of the deposition aside, we want to raise the following additional issues. Our position is informed by your representation that [REDACTED] will not be available to testify at the evidentiary hearing scheduled to commence on April 28. If true, this is not simply a deposition, but effectively [REDACTED] trial testimony. We would appreciate a prompt response to each of the following.

1. What, if any, arrangements will the government make to ensure that Mr. Hassoun has an opportunity to confront and cross-examine this witness, as he would if [REDACTED] testified at the evidentiary hearing. Given that [REDACTED]

██████████ will be testifying about ██████████ ██████████, it is essential that Mr. Hassoun have both the opportunity to observe ██████████ testimony and to confer confidentially with his counsel during the deposition, to enable counsel to conduct a meaningful examination of the witness, particularly in a situation like this one, where Mr. Hassoun has direct knowledge of ██████████ ██████████.

2. What steps are being taken to ensure there is adequate time for cross-examination of ██████████? You said you are now noticing the deposition for 3 p.m. Monday. We have serious concerns that we will not have enough time to question ██████████.

3. Will you be invoking the confidential informant privilege to restrict our ability to question ██████████

██████████? We will not be able to meaningfully cross-examine ██████████ if the government intends to invoke the confidential informant privilege or other privileges to restrict our ability to question the witness. This would be particularly unfair, and improper, given that the government is seeking to take ██████████ deposition before the Court is scheduled to rule on various privileges pursuant to the scheduling order, which was carefully worked out among the parties and the Court.

4. Relatedly, and especially given that the deposition would commence at 3 p.m., we have serious concerns about the Court's ability to rule on any objections during the deposition, particularly if the government intends to instruct ██████████ not to answer certain questions.

5. Can you confirm you will be producing the additional documents you reference below before the deposition and, if so, by what date/time can we expect to receive them?

6. Finally, we reiterate our request for information about the basis for the redactions in the documents that you disclosed last night.

Jon

From: Bianco, Anthony D. (CIV) [<mailto:Anthony.D.Bianco@usdoj.gov>]
Sent: Tuesday, February 04, 2020 4:32 PM
To: Jonathan Hafetz; Manes, Jonathan
Cc: Brett Max Kaufman; Nicole Hallett; Colton Kells; Marline Paul; Richard Barney; Victoria Roeck; Charlie Hogle; Judy Rabinovitz; Celso Perez; Erin Barry; Belsan, Timothy M. (CIV); Platt, Steven A. (CIV); Moar, Daniel (USANYW); nukiri@lawclinic.uchicago.edu; beccis@lawclinic.uchicago.edu; bzagrocki@lawclinic.uchicago.edu; Hill, Serrita L. (CIV)
Subject: RE: Hassoun v. Searls (W.D.N.Y. 19-cv-0370) notice of subpoena for deposition

Jon,

I confirmed with my client that they [REDACTED].

I have also confirmed that in the forthcoming production, there are additional documents [REDACTED]
[REDACTED]
[REDACTED].

I am in the process of expediting review of [REDACTED]
[REDACTED]. I will produce these as soon as possible.

I spoke to [REDACTED] today regarding the deposition. He stated that he [REDACTED]
[REDACTED] and would be available on Monday afternoon. Given petitioner's expressed concerns regarding having sufficient time to review and to accommodate [REDACTED] schedule prior to his departure for [REDACTED], I am renouncing the deposition for Monday, February 10, 2020, at 3 pm. Location, United States Attorney's Office, 271-A Cadman Plaza East, 7th Floor, Brooklyn, New York 11201, to remain the same.

Regards,
Anthony Bianco

From: Jonathan Hafetz <jhafetz@aclu.org>
Sent: Tuesday, February 4, 2020 12:20 PM
To: Bianco, Anthony D. (CIV) <abianco@CIV.USDOJ.GOV>; Manes, Jonathan <jmmanes@buffalo.edu>
Cc: Brett Max Kaufman <bkaufman@aclu.org>; Nicole Hallett <nhallett@uchicago.edu>; Colton Kells <coltonke@buffalo.edu>; Marline Paul <marlinep@buffalo.edu>; Richard Barney <rkbarney@buffalo.edu>; Victoria Roeck <VRoeck@nyclu.org>; Charlie Hogle <CHogle@aclu.org>; Judy Rabinovitz <JRabinovitz@aclu.org>; Celso Perez <cperez@aclu.org>; Erin Barry <ebarry2@buffalo.edu>; Belsan, Timothy M. (CIV) <tbelsan@CIV.USDOJ.GOV>; Platt, Steven A. (CIV) <splatt@CIV.USDOJ.GOV>; Moar, Daniel (USANYW) <DMoar@usa.doj.gov>; nukiri@lawclinic.uchicago.edu; beccis@lawclinic.uchicago.edu; bzagrocki@lawclinic.uchicago.edu; Hill, Serrita L. (CIV) <sehill@CIV.USDOJ.GOV>
Subject: RE: Hassoun v. Searls (W.D.N.Y. 19-cv-0370) notice of subpoena for deposition

Anthony:

Does the government intend to produce the reports and/or notes, emails, and/or other written documentation of the government's interview(s) of [REDACTED] as we have requested, and if so, when does it intend to make said production?

Exhibit I

Jonathan Hafetz

From: Bianco, Anthony D. (CIV) <Anthony.D.Bianco@usdoj.gov>
Sent: Wednesday, February 05, 2020 3:14 PM
To: Jonathan Hafetz; Manes, Jonathan
Cc: Brett Max Kaufman; Nicole Hallett; Colton Kells; Marline Paul; Richard Barney; Victoria Roeck; Charlie Hogle; Judy Rabinovitz; Celso Perez; Erin Barry; Belsan, Timothy M. (CIV); Platt, Steven A. (CIV); Moar, Daniel (USANYW); nukiri@lawclinic.uchicago.edu; beccis@lawclinic.uchicago.edu; bzagrocki@lawclinic.uchicago.edu; Hill, Serrita L. (CIV)
Subject: RE: Hassoun v. Searls (W.D.N.Y. 19-cv-0370) notice of subpoena for deposition
Attachments: Hassoun (W.D.N.Y. 19-cv-0370) [REDACTED] Subpoena proof of service.pdf

Jon,

First off, I want to confirm that the deposition of [REDACTED] scheduled for Friday, February 7, 2020, is renoticed for Monday, February 10, 2020, at 3 pm. Attached is a copy of the proof of service shortly. I will notify you when [REDACTED] confirms receipt. Note that [REDACTED] has confirmed his availability for the rescheduled deposition and has indicated he will comply.

My client has confirmed that they have scheduled an attorney visitation room for Mr. Hassoun for Monday afternoon with telephone access. I have requested that the room be available for the duration of the deposition as well as for a period prior to allow for any preparation that you may need. Mr. Hassoun may have direct access to the deposition via a telephone connection to the deposition. I have also requested that local counsel be permitted cell phone use to confer with counsel at the deposition. Televideo access is not possible during the deposition as the three locations at the Buffalo Federal Detention Facility with televideo access are scheduled for other uses during that time.

I do not anticipate the direct examination of [REDACTED] to take more than one hour, not accounting for breaks or other significant interruptions in the examination. I will confirm that all relevant persons and resources are available until 7:00 pm to complete a cross examination. Please indicate whether you anticipate needing additional time.

The government will not be invoking a confidential informant privilege [REDACTED]. We are in the process of producing relevant documents without these redactions and should have them no later than as part of our scheduled production tomorrow.

The following is a list of the abbreviations for the privileges the government may have claimed in the initial production.

AC: Attorney Client Privilege
WP: Attorney Work Product Privilege
DP: Deliberative Process Privilege
IN: Informant Privilege
IV: Investigatory Files Privilege

Anthony

From: Jonathan Hafetz <jhafetz@aclu.org>
Sent: Tuesday, February 4, 2020 6:31 PM
To: Bianco, Anthony D. (CIV) <abianco@CIV.USDOJ.GOV>; Manes, Jonathan <jmmanes@buffalo.edu>
Cc: Brett Max Kaufman <bkaufman@aclu.org>; Nicole Hallett <nhallett@uchicago.edu>; Colton Kells <coltonke@buffalo.edu>; Marline Paul <marlinep@buffalo.edu>; Richard Barney <rbarney@buffalo.edu>; Victoria Roeck <VRoeck@nyclu.org>; Charlie Hogle <CHogle@aclu.org>; Judy Rabinovitz <JRabinovitz@aclu.org>; Celso Perez <cperez@aclu.org>; Erin Barry <ebarry2@buffalo.edu>; Belsan, Timothy M. (CIV) <tbelsan@CIV.USDOJ.GOV>; Platt,

Exhibit J

Jonathan Hafetz

From: Jonathan Hafetz
Sent: Wednesday, February 05, 2020 5:13 PM
To: Bianco, Anthony D. (CIV); Manes, Jonathan
Cc: Brett Max Kaufman; Nicole Hallett; Colton Kells; Marline Paul; Richard Barney; Victoria Roeck; Charlie Hogle; Judy Rabinovitz; Celso Perez; Erin Barry; Belsan, Timothy M. (CIV); Platt, Steven A. (CIV); Moar, Daniel (USANYW); nukiri@lawclinic.uchicago.edu; beccis@lawclinic.uchicago.edu; bzagrocki@lawclinic.uchicago.edu; Hill, Serrita L. (CIV)
Subject: Re: Hassoun v. Searls (W.D.N.Y. 19-cv-0370) notice of subpoena for deposition

Dear Anthony:

Thank you for your response. A few points.

Given the tight timing, can you let us know by what time and by what means you will produce the relevant documents tomorrow? We want to ensure not only that we have adequate time to review the documents, but also that we have adequate time to seek relief from the Court, if we believe it necessary.

Also, will you be disclosing anything that is marked Attorneys Eyes Only? If so, that will impede our ability to prepare for and conduct the deposition.

Lastly, as to the length of the deposition, it is difficult to know for certain given that we don't know the scope of [REDACTED] testimony. That said, if the deposition begins at 3, the government's direct examination lasts approximately 1 hour, and there are no unforeseen issues (e.g., with Mr. Hassoun's access), we believe 3 hours should be sufficient for our examination of the witness. However, we want to ensure that, if necessary, the deposition could be extended that evening (or continued first thing the following morning), given that we anticipate this will be the only examination of this witness.

Jon

From: Bianco, Anthony D. (CIV) <Anthony.D.Bianco@usdoj.gov>
Sent: Wednesday, February 5, 2020 3:13 PM
To: Jonathan Hafetz <jhafetz@aclu.org>; Manes, Jonathan <jmmanes@buffalo.edu>
Cc: Brett Max Kaufman <bkaufman@aclu.org>; Nicole Hallett <nhallett@uchicago.edu>; Colton Kells <coltonke@buffalo.edu>; Marline Paul <marlinep@buffalo.edu>; Richard Barney <rbarney@buffalo.edu>; Victoria Roeck <VRoeck@nyclu.org>; Charlie Hogle <CHogle@aclu.org>; Judy Rabinovitz <JRabinovitz@aclu.org>; Celso Perez

Exhibit K

American Civil Liberties Union
125 Broad Street
New York, NY 10004
jhafetz@aclu.org
(212) 284-7319

From: Bianco, Anthony D. (CIV) [mailto:Anthony.D.Bianco@usdoj.gov]
Sent: Wednesday, February 05, 2020 9:44 PM
To: Jonathan Hafetz; Manes, Jonathan
Cc: Brett Max Kaufman; Nicole Hallett; Colton Kells; Marline Paul; Richard Barney; Victoria Roeck; Charlie Hogle; Judy Rabinovitz; Celso Perez; Erin Barry; Belsan, Timothy M. (CIV); Platt, Steven A. (CIV); Moar, Daniel (USANYW); nukiri@lawclinic.uchicago.edu; beccis@lawclinic.uchicago.edu; bzagrocki@lawclinic.uchicago.edu; Hill, Serrita L. (CIV)
Subject: RE: Hassoun v. Searls (W.D.N.Y. 19-cv-0370) notice of subpoena for deposition

Jon,

Attached are the production documents related to [REDACTED]. The government no longer asserts the confidential informant privilege [REDACTED]. These documents will be included in the formal production tomorrow but are being provided herein in response to petitioner's concerns.

I have confirmed that we have the office space through the evening and informed the reporter to the possibility of going into the evening.

Regards,
Anthony

From: Jonathan Hafetz <jhafetz@aclu.org>
Sent: Wednesday, February 5, 2020 5:13 PM
To: Bianco, Anthony D. (CIV) <abianco@CIV.USDOJ.GOV>; Manes, Jonathan <jmmanes@buffalo.edu>
Cc: Brett Max Kaufman <bkaufman@aclu.org>; Nicole Hallett <nhallett@uchicago.edu>; Colton Kells <coltonke@buffalo.edu>; Marline Paul <marlinep@buffalo.edu>; Richard Barney <rkbarney@buffalo.edu>; Victoria Roeck <VRoeck@nyclu.org>; Charlie Hogle <CHogle@aclu.org>; Judy Rabinovitz <JRabinovitz@aclu.org>; Celso Perez <cperez@aclu.org>; Erin Barry <ebarry2@buffalo.edu>; Belsan, Timothy M. (CIV) <tbelsan@CIV.USDOJ.GOV>; Platt, Steven A. (CIV) <splatt@CIV.USDOJ.GOV>; Moar, Daniel (USANYW) <DMoar@usa.doj.gov>; nukiri@lawclinic.uchicago.edu; beccis@lawclinic.uchicago.edu; bzagrocki@lawclinic.uchicago.edu; Hill, Serrita L. (CIV) <sehill@CIV.USDOJ.GOV>
Subject: Re: Hassoun v. Searls (W.D.N.Y. 19-cv-0370) notice of subpoena for deposition

Dear Anthony:

Thank you for your response. A few points.

Given the tight timing, can you let us know by what time and by what means you will produce the relevant documents tomorrow? We want to ensure not only that we have adequate time to review the documents, but also that we have adequate time to seek relief from the Court, if we believe it necessary.

Exhibit L

Jonathan Hafetz

From: Jonathan Hafetz
Sent: Thursday, February 06, 2020 12:38 PM
To: Bianco, Anthony D. (CIV); Manes, Jonathan
Cc: Brett Max Kaufman; Nicole Hallett; Colton Kells; Marline Paul; Richard Barney; Victoria Roeck; Charlie Hogle; Judy Rabinovitz; Celso Perez; Erin Barry; Belsan, Timothy M. (CIV); Platt, Steven A. (CIV); Moar, Daniel (USANYW); nukiri@lawclinic.uchicago.edu; beccis@lawclinic.uchicago.edu; bzagrocki@lawclinic.uchicago.edu; Hill, Serrita L. (CIV)
Subject: RE: Hassoun v. Searls (W.D.N.Y. 19-cv-0370) notice of subpoena for deposition

Anthony:

Regarding the forthcoming production, we would like clarification regarding the following.

1. Will the government be producing [REDACTED] with today's production?
2. Will the government also be producing today [REDACTED]? We thought you said earlier this week that [REDACTED]
3. Will the government be producing today [REDACTED]; including the following:
 - a. [REDACTED].
 - b. [REDACTED]
 - c. [REDACTED].
4. Will the government be producing all notes pertaining to [REDACTED]?

If the government does not intend to produce any of these documents today, please advise us immediately.

Lastly, Colton Kells and Marline Paul, two of our law student interns, intend to be with Mr. Hassoun during the deposition. I assume that will not present any issue. If so, please let us know.

Thanks,
Jon

Jonathan Hafetz
Senior Staff Attorney
Center for Democracy

Exhibit M

Jonathan Hafetz

From: Bianco, Anthony D. (CIV) <Anthony.D.Bianco@usdoj.gov>
Sent: Thursday, February 06, 2020 1:04 PM
To: Jonathan Hafetz
Subject: RE: Hassoun v. Searls (W.D.N.Y. 19-cv-0370) notice of subpoena for deposition

Jon,

I have sent your requests to the relevant individuals and I will provide you a substantive response by this evening.

Anthony

From: Jonathan Hafetz <jhafetz@aclu.org>
Sent: Thursday, February 6, 2020 12:38 PM
To: Bianco, Anthony D. (CIV) <abianco@CIV.USDOJ.GOV>; Manes, Jonathan <jmmanes@buffalo.edu>
Cc: Brett Max Kaufman <bkaufman@aclu.org>; Nicole Hallett <nhallett@uchicago.edu>; Colton Kells <coltonke@buffalo.edu>; Marline Paul <marlinep@buffalo.edu>; Richard Barney <rkbarney@buffalo.edu>; Victoria Roeck <VRoeck@nyclu.org>; Charlie Hogle <CHogle@aclu.org>; Judy Rabinovitz <JRabinovitz@aclu.org>; Celso Perez <cperez@aclu.org>; Erin Barry <ebarry2@buffalo.edu>; Belsan, Timothy M. (CIV) <tbelsan@CIV.USDOJ.GOV>; Platt, Steven A. (CIV) <splatt@CIV.USDOJ.GOV>; Moar, Daniel (USANYW) <DMoar@usa.doj.gov>; nukiri@lawclinic.uchicago.edu; beccis@lawclinic.uchicago.edu; bzagrocki@lawclinic.uchicago.edu; Hill, Serrita L. (CIV) <sehill@CIV.USDOJ.GOV>
Subject: RE: Hassoun v. Searls (W.D.N.Y. 19-cv-0370) notice of subpoena for deposition

Anthony:

Regarding the forthcoming production, we would like clarification regarding the following.

1. Will the government be producing [REDACTED] [REDACTED]?

2. Will the government also be producing today [REDACTED]? We thought you said earlier this week that [REDACTED]

3. [REDACTED] including the following:

a. [REDACTED]

b. [REDACTED]
[REDACTED]

c. [REDACTED]
[REDACTED]
[REDACTED]

4. Will the government be producing [REDACTED]?

Exhibit N

Jonathan Hafetz

From: Jonathan Hafetz
Sent: Thursday, February 06, 2020 4:57 PM
To: Bianco, Anthony D. (CIV)
Cc: Manes, Jonathan; Charlie Hogle; Brett Max Kaufman; Nicole Hallett; Colton Kells; Marline Paul; Judy Rabinovitz; Erin Barry; nukiri@lawclinic.uchicago.edu; beccis@lawclinic.uchicago.edu; bzagrocki@lawclinic.uchicago.edu; Celso Perez
Subject: RE: Hassoun v. Searls (W.D.N.Y. 19-cv-0370) notice of subpoena for deposition

Anthony:

You had previously represented we would have all documents relevant to [REDACTED] deposition by yesterday. You have not provided them. We need all documents referenced below, which again includes not only [REDACTED], and we need them by the end of today. At that point, we will assess whether we have sufficient time to proceed with the deposition on Monday or whether we need to seek relief from the Court. Absent production of those documents by this evening, however, we cannot agree to the deposition, given the need for time to review the materials with our client and to pursue our investigation of the witness. We have repeatedly made clear the grave prejudice that the timing of this deposition is already causing to our client. We also request by the end of today the following documents regarding [REDACTED].

Please advise us of your availability for a call at 11 a.m. EST tomorrow morning. We want to get something on the calendar now for tomorrow morning so that we have an opportunity to confer again in the event we need to seek emergency relief from the Court, which we intend to do at or around noon tomorrow, if necessary.

Jon

From: Bianco, Anthony D. (CIV) [mailto:Anthony.D.Bianco@usdoj.gov]
Sent: Thursday, February 06, 2020 1:04 PM
To: Jonathan Hafetz
Subject: RE: Hassoun v. Searls (W.D.N.Y. 19-cv-0370) notice of subpoena for deposition

Jon,

I have sent your requests to the relevant individuals and I will provide you a substantive response by this evening.

Anthony

From: Jonathan Hafetz <jhafetz@aclu.org>
Sent: Thursday, February 6, 2020 12:38 PM
To: Bianco, Anthony D. (CIV) <abianco@CIV.USDOJ.GOV>; Manes, Jonathan <jmmanes@buffalo.edu>
Cc: Brett Max Kaufman <bkaufman@aclu.org>; Nicole Hallett <nhallett@uchicago.edu>; Colton Kells <coltonke@buffalo.edu>; Marline Paul <marlinep@buffalo.edu>; Richard Barney <rkbarney@buffalo.edu>; Victoria Roeck <VRoeck@nyclu.org>; Charlie Hogle <CHogle@aclu.org>; Judy Rabinovitz <JRabinovitz@aclu.org>; Celso Perez <cperez@aclu.org>; Erin Barry <ebarry2@buffalo.edu>; Belsan, Timothy M. (CIV) <tbelsan@CIV.USDOJ.GOV>; Platt, Steven A. (CIV) <splatt@CIV.USDOJ.GOV>; Moar, Daniel (USANYW) <DMoar@usa.doj.gov>; nukiri@lawclinic.uchicago.edu; beccis@lawclinic.uchicago.edu; bzagrocki@lawclinic.uchicago.edu; Hill, Serrita L. (CIV)

Exhibit O

Jonathan Hafetz

From: Platt, Steven A. (CIV) <Steven.A.Platt@usdoj.gov>
Sent: Thursday, February 06, 2020 9:51 PM
To: Jonathan Hafetz; Manes, Jonathan; Brett Max Kaufman; Nicole Hallett; Colton Kells; Marline Paul; Richard Barney; Victoria Roeck; Charlie Hogle; Judy Rabinovitz; Celso Perez; Erin Barry; nukiri@lawclinic.uchicago.edu; beccis@lawclinic.uchicago.edu; bzagrocki@lawclinic.uchicago.edu
Cc: Bianco, Anthony D. (CIV); Moar, Daniel (USANYW); Belsan, Timothy M. (CIV)
Subject: Hassoun v. Searls - Document Production
Attachments: SecureMessageAtt.html



This is a secure message.

[Click here](#) by 2020-02-17 02:52 UTC to read your message.
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Exhibit P

Jonathan Hafetz

From: Bianco, Anthony D. (CIV) <Anthony.D.Bianco@usdoj.gov>
Sent: Thursday, February 06, 2020 10:25 PM
To: Jonathan Hafetz; Manes, Jonathan
Cc: Brett Max Kaufman; Nicole Hallett; Colton Kells; Marline Paul; Richard Barney; Victoria Roeck; Charlie Hogle; Judy Rabinovitz; Celso Perez; Erin Barry; Belsan, Timothy M. (CIV); Platt, Steven A. (CIV); Moar, Daniel (USANYW); nukiri@lawclinic.uchicago.edu; beccis@lawclinic.uchicago.edu; bzagrocki@lawclinic.uchicago.edu; Hill, Serrita L. (CIV)
Subject: RE: Hassoun v. Searls (W.D.N.Y. 19-cv-0370) notice of subpoena for deposition

Jon,

My apologies, the [REDACTED] as I inadvertently stated in a previous email. [REDACTED] was not included in the production that has been sent today as I did not receive it until this afternoon. I will provide a copy informally tomorrow upon my client's review and approval. I am not aware of [REDACTED].

The production sent today should include [REDACTED]. I will provide any updates that I receive regarding your remaining questions as I receive them.

Anthony

From: Jonathan Hafetz <jhafetz@aclu.org>
Sent: Thursday, February 6, 2020 12:38 PM
To: Bianco, Anthony D. (CIV) <abianco@CIV.USDOJ.GOV>; Manes, Jonathan <jmmanes@buffalo.edu>
Cc: Brett Max Kaufman <bkaufman@aclu.org>; Nicole Hallett <nhallett@uchicago.edu>; Colton Kells <coltonke@buffalo.edu>; Marline Paul <marlinep@buffalo.edu>; Richard Barney <rkbarney@buffalo.edu>; Victoria Roeck <VRoeck@nyclu.org>; Charlie Hogle <CHogle@aclu.org>; Judy Rabinovitz <JRabinovitz@aclu.org>; Celso Perez <cperez@aclu.org>; Erin Barry <ebarry2@buffalo.edu>; Belsan, Timothy M. (CIV) <tbelsan@CIV.USDOJ.GOV>; Platt, Steven A. (CIV) <splatt@CIV.USDOJ.GOV>; Moar, Daniel (USANYW) <DMoar@usa.doj.gov>; nukiri@lawclinic.uchicago.edu; beccis@lawclinic.uchicago.edu; bzagrocki@lawclinic.uchicago.edu; Hill, Serrita L. (CIV) <sehill@CIV.USDOJ.GOV>
Subject: RE: Hassoun v. Searls (W.D.N.Y. 19-cv-0370) notice of subpoena for deposition

Anthony:

Regarding the forthcoming production, we would like clarification regarding the following.

1. Will the government be producing [REDACTED] [REDACTED] [REDACTED]?
2. Will the government also be producing today [REDACTED]? We thought you said earlier this week that [REDACTED]
3. Will the government be producing today [REDACTED] [REDACTED], including the following:
 - a. [REDACTED]

Exhibit Q

Jonathan Hafetz

From: Jonathan Hafetz
Sent: Friday, February 07, 2020 8:34 AM
To: Bianco, Anthony D. (CIV)
Cc: Manes, Jonathan; Brett Max Kaufman; Nicole Hallett; Colton Kells; Marline Paul; Richard Barney; Victoria Roeck; Charlie Hogle; Judy Rabinovitz; Celso Perez; Erin Barry; Belsan, Timothy M. (CIV); Platt, Steven A. (CIV); Moar, Daniel (USANYW); nukiri@lawclinic.uchicago.edu; beccis@lawclinic.uchicago.edu; bzagrocki@lawclinic.uchicago.edu; Hill, Serrita L. (CIV)
Subject: Re: Hassoun v. Searls (W.D.N.Y. 19-cv-0370) notice of subpoena for deposition

Anthony:
Can you circulate a call-in number for today's 11 a.m. call?
Jon

From: Bianco, Anthony D. (CIV) <Anthony.D.Bianco@usdoj.gov>
Sent: Friday, February 7, 2020 7:33 AM
To: Jonathan Hafetz <jhafetz@aclu.org>
Cc: Manes, Jonathan <jmmanes@buffalo.edu>; Brett Max Kaufman <bkaufman@aclu.org>; Nicole Hallett <nhallett@uchicago.edu>; Colton Kells <coltonke@buffalo.edu>; Marline Paul <marlinep@buffalo.edu>; Richard Barney <rbarney@buffalo.edu>; Victoria Roeck <VRoeck@nyclu.org>; Charlie Hogle <CHogle@aclu.org>; Judy Rabinovitz <JRabinovitz@aclu.org>; Celso Perez <cperez@aclu.org>; Erin Barry <ebarry2@buffalo.edu>; Belsan, Timothy M. (CIV) <Timothy.M.Belsan@usdoj.gov>; Platt, Steven A. (CIV) <Steven.A.Platt@usdoj.gov>; Moar, Daniel (USANYW) <Daniel.Moar@usdoj.gov>; nukiri@lawclinic.uchicago.edu <nukiri@lawclinic.uchicago.edu>; beccis@lawclinic.uchicago.edu <beccis@lawclinic.uchicago.edu>; bzagrocki@lawclinic.uchicago.edu <bzagrocki@lawclinic.uchicago.edu>; Hill, Serrita L. (CIV) <Serrita.L.Hill@usdoj.gov>
Subject: Re: Hassoun v. Searls (W.D.N.Y. 19-cv-0370) notice of subpoena for deposition

Jon,

I am available for a call at 11 am to discuss these matters.

Anthony

Sent from my iPhone

On Feb 7, 2020, at 12:39 AM, Jonathan Hafetz <jhafetz@aclu.org> wrote:

Anthony:

The [REDACTED] should have been provided already as you yourself represented. Please provide [REDACTED] by 12 noon today (Friday).

Given that you plan to take the deposition of [REDACTED] on Monday, we need an answer immediately as to the other documents, specifically:

(i) [REDACTED]; (ii) [REDACTED]
[REDACTED]
[REDACTED]; and (iii) [REDACTED]
[REDACTED]
[REDACTED].

Are you denying responsive documents exist or are you refusing to provide them?

You have also not responded to our request to schedule a call today at 11 a.m. to confer.

We are doing everything possible to attempt to resolve these issues without seeking the emergency intervention of the Court but the government is making it virtually impossible to avoid our doing so.

Jon

From: Bianco, Anthony D. (CIV) <Anthony.D.Bianco@usdoj.gov>
Sent: Thursday, February 6, 2020 10:25 PM
To: Jonathan Hafetz <jhafetz@aclu.org>; Manes, Jonathan <jmmanes@buffalo.edu>
Cc: Brett Max Kaufman <bkaufman@aclu.org>; Nicole Hallett <nhallett@uchicago.edu>; Colton Kells <coltonke@buffalo.edu>; Marline Paul <marlinep@buffalo.edu>; Richard Barney <rkbarney@buffalo.edu>; Victoria Roeck <VRoeck@nyclu.org>; Charlie Hogle <CHogle@aclu.org>; Judy Rabinovitz <JRabinovitz@aclu.org>; Celso Perez <cperez@aclu.org>; Erin Barry <ebarry2@buffalo.edu>; Belsan, Timothy M. (CIV) <Timothy.M.Belsan@usdoj.gov>; Platt, Steven A. (CIV) <Steven.A.Platt@usdoj.gov>; Moar, Daniel (USANYW) <Daniel.Moar@usdoj.gov>; nukiri@lawclinic.uchicago.edu <nukiri@lawclinic.uchicago.edu>; beccis@lawclinic.uchicago.edu <beccis@lawclinic.uchicago.edu>; bzagrocki@lawclinic.uchicago.edu <bzagrocki@lawclinic.uchicago.edu>; Hill, Serrita L. (CIV) <Serrita.L.Hill@usdoj.gov>
Subject: RE: Hassoun v. Searls (W.D.N.Y. 19-cv-0370) notice of subpoena for deposition

Jon,

My apologies, the [REDACTED] as I inadvertently stated in a previous email. [REDACTED] the production that has been sent today as I did not receive it until this afternoon. I will provide a copy informally tomorrow upon my client's review and approval. I am not aware of [REDACTED].

The production sent today should include [REDACTED]. I will provide any updates that I receive regarding your remaining questions as I receive them.

Anthony

From: Jonathan Hafetz <jhafetz@aclu.org>
Sent: Thursday, February 6, 2020 12:38 PM