

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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J.K. IDEMA, EDWARD CARABALLO, and  
BRENT BENNETT,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF STATE,  
UNITED STATES DEPARTMENT OF JUSTICE,  
FEDERAL BUREAU OF INVESTIGATION,  
UNITED STATES MARSHALS SERVICE,  
DEPARTMENT OF DEFENSE, and  
DEFENSE INTELLIGENCE AGENCY,

Defendants.

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No. 05 CV 01334 (EGS)

Assigned Judge:  
Hon. Emmet G. Sullivan

**PLAINTIFFS' STATUS REPORT**

This case arises under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552. Pursuant to the Court's Order for Initial Scheduling Conference ("Scheduling Order"), dated August 1, 2005, plaintiffs' hereby submit their<sup>1</sup> status report in this matter.

Plaintiffs fully expected to file a Joint Status Report and worked diligently with defendants towards that end. Defendants were to ECF file the joint report for all parties. After days of work by Idema's counsel, defendants filed a separate status report at the last minute on Friday after having received the final JSR. Therefore, counsel requests this Court grant a temporary exception to L.Cv.R. 83.2 (c)(1) to accept this document for filing.

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<sup>1</sup> Plaintiff Idema and plaintiff's counsel objected to defendants' exclusion of the *pro se* plaintiffs, and include them by reference to preserve their rights as *pro se* parties held incommunicado by the US State Department. By telephone Captain Brent Bennett has consented to this on behalf of himself and Mr. Caraballo to preserve their rights.

## INITIAL STATEMENT

### Plaintiffs' Position:

There is disagreement over whether or not this case should be exempt from the requirements of LCvR 16.3(b)(9),<sup>2</sup> and counsel for Idema welcomes the opportunity to discuss these issues with the Court. In anticipation of the scheduling conference set for September 30, 2005 at 10:15 a.m., counsel for plaintiff Idema submits this Status Report, on behalf of all plaintiffs, as set forth in Rule 16.3(c).

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<sup>2</sup> Defendants originally contended that LCvR 16.3(b)(3) supported exemption because, “[a]ll three plaintiffs are currently incarcerated in Afghanistan, and two of the three – Messrs. Bennett and Caraballo – are proceeding pro se.” Defendants stated that “[c]ounsel for defendants was thus unable to consult with them with respect to the matters set forth herein.” Plaintiffs note that defendants’ counsel can reach any of them by phone at any time 24 hours a day, or by mail, but has never attempted to do so. Defendants originally referred to LCvR 16.3(b)(3) “which exempts pro se actions brought by prisoners incarcerated in the United States from the requirements of Local Civil Rule 16.3 [(b)(3)]... presumably because of the difficulty of consultation in such cases. A fortiori, cases such as this, in which the pro se plaintiffs are incarcerated abroad should similarly be exempt.”

**However**, this is precisely what makes this such an important case—plaintiffs’ right to access federal records which may ultimately free them from what is arguably one of the world’s most infamous and dangerous prisons. The *pro se* plaintiffs also assert that because the Rules do not specifically state inmates abroad are exempt, then it is without argument that they are not exempt and each case should be viewed on an individual basis. In this case, the *pro se* plaintiffs, and Idema, are specifically allowed by the Afghan government (in spite of US government objections) to participate in all US court appearances and conferences. The Afghan Ministry of Defence gave them a phone for 24 hour a day use. They are only obstructed from calling counsel and participation because the State Department illegally seized their trust account in violation of the 4th and 5th Amendments in order to deprive them of funds needed to use that phone. Defendants claim (fn2, Def. Status Report) that they were not provided with phone numbers for plaintiffs—this is misleading at best. Caraballo has a DOS purchased phone, and the DOS has had Bennett’s number for a year.

**I. Statement of the Case and Statutory Basis of Causes of Action & Defenses**

Both plaintiffs' causes of action and the defenses arise under the FOIA.

Plaintiffs' Position:<sup>3</sup>

Plaintiffs' cause of action arises under the FOIA. Plaintiffs assert that they made more than thirty-one separate FOIA requests to the various defendant agencies and seek the release of documents pursuant to those requests. Defendants claim that some of the requests at issue were never received; improperly made; made by individuals other than plaintiffs; do not constitute valid FOIA requests; are administratively closed for various reasons; or are being processed. Plaintiffs assert that these are nothing more than disingenuous excuses designed to subvert the action and cause undue delay and expense to undermine plaintiffs' rights.

Defendants' Prior<sup>4</sup> JSR Position:

“Defendants agree that the Exhibits attached to the Complaint purport to identify some thirty-one FOIA requests allegedly made to various defendant agencies.

Defendants assert that some of the alleged requests at issue do not constitute valid FOIA requests; some of the alleged requests were never received; some of the alleged requests

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<sup>3</sup> Defendants' counsel stated *via* email: “*I have changed references to "Plaintiffs' Position" to "Plaintiff Idema's Position" to accurately reflect who you represent... [and] in those sentences where you used the term "plaintiffs" as the subject of the sentence and purported to speak on behalf of all three plaintiffs.*” Counsel for Idema objected, and did not consent to that characterization or to defendants' reference to "the parties" as only Idema and defendants. This may be one reason defendants refused to file the Joint Status Report.

<sup>4</sup> Although not normally included, for the convenience of the Court plaintiffs have included defendants' previous positions as set forth in the unfilled Joint Status Report (“Prior JSR Position”) which plaintiffs thought was being filed on Friday, September 23, 2005.

were improperly made; some of the alleged requests were made by individuals other than plaintiffs; some of the alleged requests have been administratively closed for various reasons; some of the alleged requests are being processed; and some of the named defendants are improper defendants in this action.”

## **II. Rule 16.3 Topics**

### **1. Whether the Case is Likely to Be Disposed of By Dispositive Motion**

The parties<sup>5</sup> agree that this case likely will be resolved on dispositive motions.

### **2. Date for Joinder of Other Parties & Amendment of Pleadings; Narrowing of Factual or Legal Issues**

#### Plaintiffs' Position:

Plaintiffs anticipate that based on new evidence, and information obtained about the spoliation of evidence and documents, they may request that the Court allow them to file an Amended Complaint after the Scheduling Conference but any amendment will not significantly differ from the original complaint. Plaintiffs assert that summary judgment would be premature until such time as defendants have provided a Vaughn Index.

#### Defendants' Prior JSR Position:

“Defendants do not anticipate amending their pleading. In light of plaintiff Idema's indication that he (and/or the other plaintiffs) may amend their Complaint, defendants request that the Court set a firm date for any amendment of pleadings.

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<sup>5</sup> **Defendants' references** to “the parties” are a reference to only plaintiff Idema and the defendants. **Plaintiffs' references** to “the parties” herein are a reference to all plaintiffs and all defendants.

Defendants further suggest that cross-motions for summary judgment will narrow the factual and legal issues.”

**3. Assignment to Magistrate Judge**

The parties do not consent to assignment of this matter to a magistrate judge.

**4. Realistic Possibility of Settlement**

There does not appear to be a realistic possibility of settlement at this time.

**5. Alternative Dispute Resolution**

The parties agree that it is unlikely that this case could benefit from the Court's alternative dispute resolution procedures or some other form of ADR.

**6. Resolution by Summary Judgment/Motion to Dismiss and Proposed Schedule**

Plaintiffs' Proposed Schedule:

Plaintiffs submit their briefing schedule in light of the seriousness of this case.

These three plaintiffs have been targeted for death on eleven (11) separate occasions.<sup>6</sup>

Mr. Idema has a \$250,000.00 reward placed on him by Osama bin Laden and Gulbideen Hekmatyar, both most wanted terrorists. As of today, seven Afghan officers have been killed defending Idema against terrorist acts. Fourteen others have been wounded, five have been seriously wounded. A December 17, 2004 attack by Iraqi, Pakistani, and Arab terrorists resulted in two Colonels, and two officers killed within feet of plaintiffs, and three officers wounded during a 10 hour stand-off during which Idema, Bennett, and

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<sup>6</sup> There have been seven actual attempts, and four assassination plots foiled by the United Front Military Forces (Northern Alliance) and MOJ Northern Alliance officials prior to execution.

Banderas,<sup>7</sup> held off 300 al-Qaida and Taliban terrorists with barricades and makeshift weapons. The schedule proposed<sup>8</sup> by plaintiffs takes into account the real and present possibility that plaintiffs may not live long enough to benefit from any distant resolution of this case, and therefore propose the following:

- Defendants will file a Vaughn Index by October 20, 2005;<sup>9</sup>
- Defendants/plaintiffs will file any Motions by October 25, 2005;
- Defendants/plaintiffs will file their Oppositions by November 10, 2005;
- Defendants/plaintiffs will file Replies by November 20, 2005;
- And any oppositions to cross motions by November 30, 2005;
- Defendants/plaintiffs will file any further Replies by December 5, 2005;
- Neither party will be granted any extensions.

Plaintiffs point out that there is a collateral related *habeas corpus* case pending in this Court (*Idema, et al, v. Khalilzad, et al*, Case #1:05-cv-02947 SDNY- transferred to DCDC). This FOIA case has collateral consequences in that unassigned case because it is relevant to evidence of rendition<sup>10</sup> and other acts by several of these defendants.

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<sup>7</sup> Lieutenant Wahid Rasuli Banderas is an Afghan CIA officer and Lieutenant in the Afghan Ministry of Defence who has remained with plaintiffs since being found innocent of all charges by an Afghan Court in December 2004. All plaintiffs were declared innocent after a trial *de novo* at the Appeal Court level in March 2005, but not released.

<sup>8</sup> In an effort to address defendants' press of business argument, these times exceed the time allowed and set forth in Local Civil Rule 7.

<sup>9</sup> Assuming this Honorable Court grants a Vaughn Index Motion if and when one is filed.

<sup>10</sup> "Rendition" (CIA terminology), also known as "rendering" (FBI terminology), is a technique used by the U.S. government in cases involving suspected terrorists in which U.S. officials or agents of the United States remove a subject from, or place a subject in, the custody of a foreign government for the purpose of avoiding *due process* and circumventing the United States Constitution and associated protections for U.S. citizens and foreign nationals by removing or holding the subject outside the territories of the U.S. to avoid jurisdiction by U.S. federal courts. Only the US government is objecting plaintiffs' release.

In response to defendants' statements below, plaintiffs object to the characterization that their FOIA complaint and exhibits are in "disarray" and leave that determination to this Honorable Court upon review of plaintiffs' FOIA Matrix Exhibit.

Further, any missing exhibits listed in the Matrix Chart/Exhibit are missing because 1) US State Department seized the originals and refused to return copies, and/or 2) the US State Department destroyed, lost, or has withheld the only copies.<sup>11</sup>

Defendants' JSR Proposed Schedule:

Defendants submitted "the following briefing schedule for what they anticipate will be cross-motions for summary judgment. The schedule is proposed in light of the large number of alleged FOIA requests at issue in the case, the number of defendants in the case, the difficulty in even identifying the FOIA requests plaintiffs allege to have made, and the numerous legal issues likely to be addressed in any motion."

"Plaintiffs' Complaint names six different federal agencies as defendants. Attached as Exhibit 1 to the Complaint is a chart listing 31 different "FOIA letters" allegedly delivered to these various agencies. The other exhibits to the Complaint include various written FOIA requests and correspondence purporting to represent the FOIA requests listed in Exhibit 1 to the Complaint. A comparison of the chart attached as Exhibit 1 to the Complaint with the correspondence attached as Exhibits 3-10 thereto,

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<sup>11</sup> Plaintiffs were not allowed to possess pen or paper during the time they were in the Saderat Extreme Interrogation Facility in Kabul and any FOIA request written by them and given to the US Consul was written surreptitiously and smuggled to the Consul in their shoes or a pack of cigarettes. All copies were later seized by agents of the US government. If caught with pens or paper Idema, Bennett, and Banderas were beaten repeatedly.

however, reveals that many of the alleged FOIA requests set forth in the chart are not attached as Exhibits and at least one of the Exhibits is not listed in the chart. Even those Exhibits that appear in some respects to match the entries in the chart often have different dates than those entries, making it difficult to identify precisely which Exhibit corresponds to which entry. Moreover, plaintiffs and Mr. Tiffany often sent duplicative FOIA requests to the same agency, with different dates, and on different letterhead, making it even more difficult to match up the alleged FOIA requests listed on Exhibit 1 to the Complaint with actual FOIA requests received by the various defendant agencies.

As noted above, defendants anticipate that they will raise various defenses to each of the alleged FOIA requests at issue. Given the number of requests, the number of defendants, the disarray evident in the Complaint and its Exhibits, and the number of different defenses applicable to the various alleged requests, defendants propose the following briefing schedule:

- Defendants will file their Motion(s) by November 30, 2005;
- Plaintiffs will file their Opposition(s) and/or Cross-Motion(s) by January 15, 2006;
- Defendants will file their Reply(ies) and/or Opposition(s) by February 15, 2006;
- Plaintiffs will file their Reply(ies) by March 15, 2006.

In the event that the Court allows plaintiffs to amend their Complaint, defendants respectfully request that the above briefing schedule be adjusted accordingly (i.e., moved back by the amount of time plaintiffs are given to amend the Complaint).

Finally, defendants object to plaintiff Idema's proposal that defendant be required to file a Vaughn index in advance of filing a motion for summary judgment, as set forth in Idema's proposed briefing schedule.”

Plaintiffs’ Reply to Defendants’ Vaughn Index Argument:

Defendants’ added a lengthy argument with accompanying case law in response to one 7-word sentence relating to a Vaughn Index in the third draft Joint Status Report. Plaintiffs received defendants’ 322 word Vaughn Index argument only hours before their Joint Status Report was to be filed.<sup>12</sup> It was impossible at that late hour to add a responsible and directed response supported by case law. Counsel for Plaintiff Idema requested by fax letter to the government that they withdraw that section, and the defendants did not respond (Plaintiffs’ letter to Ori Lev is attached hereto as Exhibit 1).<sup>13</sup>

Therefore, because plaintiffs were compelled to rely on defendants for ECF filing of the JSR, plaintiffs respectfully requests this Court strike both defendants’ Vaughn Index argument and this response as unnecessary and best litigated if and when a Vaughn Index motion is filed, and reserve those arguments for supporting memorandum’s of law.

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<sup>12</sup> Defendants’ Vaughn Index objection is not included herewith, but is in their Status Report.

<sup>13</sup> Actually, defendants did respond at 5:37pm on Friday by faxing a letter to the office of Plaintiff Idema’s counsel (attached hereto as Exhibit 2). However, Mr. Lev, counsel for defendants was well aware that plaintiff’s counsel was out of the office all afternoon, and although both counsel were in communication by email, Mr. Lev did not inform opposing counsel that defendants had not filed the Joint Status Report until Monday, 26 Sep 2005 at 10:12 AM, at which time plaintiff received the following email message;

“John: Attached please find a copy of a letter that I faxed to you on Friday, shortly after I received your fax, wherein you indicated that I could not expect a revised version of the JSR until "quite late today" (i.e., Friday). As my letter states, I went ahead and filed a separate status report on behalf of defendants Friday evening. I do not intend to file the "final joint status report" attached to your email below either as a joint report or on your behalf. Ori”

Defendants made their decision to file a separate Status Report and refusal to ECF file plaintiffs' Status Report too late for plaintiffs to comply with the Court's Order, and plaintiffs then had to re-draft this Status Report. Therefore, plaintiffs are filing by express delivery and request the Court permit this late filing.

**7. Initial Disclosures**

Not applicable. See LCvR 16.3(b).

**8. Discovery**

Plaintiffs' Position:

Plaintiffs assert that there are circumstances not normally within the scope of FOIA litigation that are of paramount importance in this case. As an example, many of the documents, photographs, and videotapes requested are the rightful property of plaintiffs and were seized in violation of law. Plaintiffs have a clear property interest in those documents, but also a liberty interest in that they contain exculpatory information. Further, they are not subject to any exemption, because they are documents taken from plaintiffs and now in government custody and control, and therefore subject to FOIA. Limited discovery is necessary to ascertain which agency currently has those documents.

As rare and unusual as discovery may be in FOIA cases, plaintiffs assert the need for discovery which may be appropriate when a plaintiff can raise sufficient question as to the agency's good faith in processing or in its search. See, e.g., Carney v. United States Dep't of Justice, 19 F.3d 807, 812 (2d Cir. 1994); Gilmore v. United States Dep't of Energy, 33 F. Supp. 2d 1184, 1190 (N.D. Cal. 1998) (permitting discovery when plaintiff

claimed existence of pattern and practice of unreasonable delay in responding to FOIA requests..."); Judicial Watch, Inc. v. Department of Commerce, 34 F. Supp. 2d 28, 46 (D.D.C. 1998) (allowing discovery concerning alleged illegal destruction and removal of records subsequent to plaintiff's FOIA request), partial summary judgment granted, 83 F. Supp. 2d 105 (D.D.C. 1999); Long v. United States Dep't of Justice, 10 F. Supp. 2d 205, 210 (N.D.N.Y. 1998); Hawthorn Management Servs. v. HUD, No. 3:96CV2435, 1997 WL 821767, at \*3 (D. Conn. Dec. 18, 1997); Armstrong v. Bush, 139 F.R.D. 547, 553 (D.D.C. 1991) (allowing discovery to test government's claim that request "would place an unreasonable burden on the agency"); Van Strum v. EPA, 680 F. Supp. 349, 350-51 (D. Or. 1987); Shurberg Broad. v. FCC, 617 F. Supp. 825, 832 (D.D.C. 1985).

In any event, plaintiffs fully agree that determinations of whether discovery should be permitted—and, if so, the type and extent of such discovery—are always vested in the sound discretion of the district court.

Therefore, plaintiffs assert that this matter is better resolved by motion if and when defendants file their affidavits or other pleadings which might then raise the issue of whether or not discovery is warranted or necessary. See Grand Cent. Partnership, 166 F.3d at 488 (noting that district court has "broad discretion to manage the scope of discovery" (quoting SafeCard Servs. v. SEC, 926 F.2d 1197, 1200 (D.C. Cir. 1991))); Becker v. IRS, 34 F.3d 398, 406 (7th Cir. 1994); Maynard v. CIA, 986 F.2d 547, 567 (1st Cir. 1993); Gillin v. IRS, 980 F.2d 819, 823 (1st Cir. 1992) (per curiam).

Defendants' Prior JSR Position:

Defendants' position is that “discovery is generally inappropriate in FOIA cases and is inappropriate in this case as well. See Allen v. U.S. Secret Service, 335 F. Supp. 2d 95, 100 (D.D.C. 2004) (Sullivan, J.) (discovery generally inappropriate in FOIA case); Wheeler v. CIA, 271 F. Supp. 2d 132, 139 (D.D.C. 2003) ("Discovery is generally unavailable in FOIA actions."); Judicial Watch, Inc. v. Export-Import Bank, 108 F. Supp. 2d 19, 25 (D.D.C. 2000) ("[D]iscovery in a FOIA action is generally inappropriate.") (citation omitted); see also Comment to LCvR 16.2(b) (FOIA cases exempt from requirements of LCvR 16.3 "because they are actions that typically do not require discovery"). As plaintiffs do not appear to be seeking discovery at this time, defendants submit that the Court's Scheduling Order need not provide for discovery. In the event that any of the plaintiffs seeks discovery in this case, defendants reserve the right to oppose such request.”

**9. Exchange of Expert Witness Reports**

The parties agree that expert witnesses will not be needed in this matter.

**10. Class Actions**

Not applicable.

**11. Bifurcation of Discovery and/or Trial**

Plaintiffs' Position:

The parties disagree as to whether or not there is a need for discovery in this case, and thus no need for bifurcation of discovery. Defendants have refused to provide any

viable response to any request, have not yet provided a Vaughn Index from any defendant, and have never provided a single document. Plaintiffs should be allowed discovery of their actual FOIA requests. Some of these requests were presented to the US State Department in person by plaintiffs and are now "missing." The spoliation of FOIA requests, emails, and other evidence is a discovery matter for which limited discovery should be allowed; such as interrogatories directed to officials which originally accepted requests in person hand-to-hand and now claim these documents are "missing."

Defendants' Prior JSR Position:

“As defendants believe that there will be no need for discovery or trial in this FOIA case, there is likewise no need for bifurcation of discovery or trial. To the extent that plaintiff Idema's response in this section suggests that he is seeking discovery at this juncture, it is clear that such discovery is inappropriate where, as here, the Government has not yet had an opportunity to file its dispositive motion and any affidavits in support thereof. See Micavige, 2 F.3d at 369; Founding Church of Scientology v. United States Marshals Serv., 516 F. Supp. 151, 156 (D.D.C. 1980).”

**12. Date of Pre-Trial Conference**

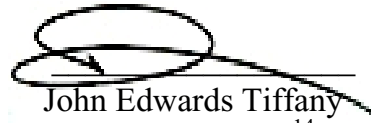
The parties agree that this case will likely be resolved by dispositive motions and that it is unnecessary to schedule a pre-trial conference.

**13. Trial Date**

The parties agree that this case will likely be resolved by dispositive motions and that it is unnecessary to set a firm trial date.

Dated: September 27, 2005.

Respectfully submitted,



John Edwards Tiffany  
(JT7322 – SDNY)<sup>14</sup>  
PO Box 190, 55 Washington Street  
Bloomfield, NJ 07003  
Ph: 973/566-9300  
Fax: 973/566-0007  
*Counsel for Plaintiff Idema*

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<sup>14</sup> Counsel is admitted to the Southern District of New York District Court, the Eastern District of New York, and the District of New Jersey, with *pro hac vice* admissions to the Northern District of New York and Middle District of Pennsylvania. This case was involuntarily transferred from the SDNY to the DCDC. Since that time counsel for the government has treated opposing counsel as counsel of record for Idema. Counsel had considerable difficulty finding an attorney admitted to the DC Bar who met the requirements of a one year relationship and therefore has not yet filed for admission, although counsel expects to resolve that hurdle in the near future. Therefore, counsel respectfully requests this Court allow his appearance as counsel for Idema (LCvR 83.2 (d)).

Further, because **counsel is proceeding completely pro bono in this case**, counsel requests this Honorable Court admit him for the purposes of representation of an American incarcerated overseas under Local Civil Rule 83.2(g) which allows a member in good standing of the bar of any United States Court to appear, file papers and practice in any case handled without a fee on behalf of indigents upon filing a certificate that the attorney is providing representation without compensation. **COMMENT TO LCvR 83.2(g):** “*The provision under LCvR 83.10 [w]as [ ] deleted to avoid any confusion between this rule and the deleted rule, and to make clear that attorneys can represent parties pro bono.*”

Additionally, because counsel is not yet admitted to the DCDC Bar, plaintiffs are unable to file directly by ECF, LCvR 5.4 (b)(1), and therefore has filed this Status Report on paper and CD, with both paper and CD courtesy copies sent directly to the Court.

## CERTIFICATE OF SERVICE

I do hereby certify that a copy of the foregoing STATUS REPORT was served on all parties by depositing a copy of same in the United States mail, first class, postage paid, on September 27, 2005, for service, addressed as follows:

PETER D. KEISLER, Assistant Attorney General  
KENNETH L. WAINSTEIN, United States Attorney  
ELIZABETH J. SHAPIRO, Assistant Branch Director  
ORI LEV, DC # 452565, Trial Attorney  
United States Department of Justice  
Civil Division, Federal Programs Branch  
P.O. Box 883, Washington, DC 20044  
20 Massachusetts Ave., NW, Rm 7330,  
Washington, DC 20001

Edward Caraballo  
*Co-plaintiff*  
c/o Russel Brown, US Consul  
US Embassy Afghanistan  
6180 Kabul Place  
Dulles, VA 20189-6180

Brent Bennett  
*Co-plaintiff*  
c/o Russel Brown, US Consul  
US Embassy Afghanistan  
6180 Kabul Place  
Dulles, VA 20189-6180

This 27th Day of September 2005.

  
John Edwards Tiffany

**Law Offices of  
John E. Tiffany P.C.**  
55 Washington Street, P.O. Box 190  
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Tel: (973) 566-9300  
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Ori Lev, US Attorney  
Trial Attorney  
US Dept of Justice, Civil Division  
PO Box 883  
Washington, DC 20044  
Phone: (202) 514-2395

September 23, 2005

*Via Facsimile:* (202) 318-7589

*Via Facsimile:* (202) 307-0449

Subject: Today's Events – and my objection to your improper Vaughn Index revisions  
Reference: Joint Status Report

Dear Mr. Lev,

I clearly asked that your proposed JSR be sent to me no later than 12 noon because I had other commitments today. I understood your draft sent to me to be your final draft, and spent a great deal of time drafting plaintiff's portion.

When I received your "revisions" I was a little surprised to find that roughly 700 words of argument and facts had been added over and above the several hundred words we included being deleted. Ori, in light of the total of about 1200 extra words of arguments and facts you added to the Joint Status report at the 11th hour, you can expect our final copy quite late today.

None of YOUR language is being changed in any way. Plaintiff's language being revised and added is our final proposal, if you wish to change or alter any other statement, or even any word in the JSR, then we request that you ECF file for us two separate JSRs and will we just advise the judge that we are unwilling to allow the continued changes of our wording by the government.

Additionally, we ADAMANTLY object to you adding a 322 word opposition including case law to our one line sentence stating we will be seeking a Vaughn Index. In essence, you are filing a Vaughn Motion opposition before we even file a Vaughn Motion. Unless you remove the Vaughn Motion section which you added at beyond the 11th hour, we have no choice but to object to this sort of action directly to the Court, and ask to file on Monday.

I hope we can resolve this.

Sincerely,

*Dictated and Signed Telephonically s/*  
John Edwards Tiffany  
*Attorney at Law*

**Exhibit #1 to Plaintiffs' Status Report**



U.S. Department of Justice  
Civil Division  
Federal Programs Branch  
700 Post Office  
New Franklin Station  
Washington, D.C. 20544

Civil  
Trial Attorney

Tel: (202) 504-3995  
Fax: (202) 515-1549

September 23, 2005

Via Expedite 973-586-0001  
John E. Tibbitts  
66 Washington Street, P.O. Box 190  
Bloomfield, NJ 07102

Re: Idemare, Dep't of State, 05-1334 (D.D.C.)

Dear Mr. Tibbitts:

I write in response to the letter you faxed me at 4:50 p.m. this afternoon, in which you indicate that I cannot expect a revised draft of the joint status report from you until "quite late today." As it appears that we will not be able to reach agreement on a joint filing by a person with whom I agree that we should each file our own separate status reports with the Court, I do not agree to file your report on your behalf.

Sincerely,

Ken Lee  
Attorney for Defendants

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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J.K. IDEMA, <u>et al.</u> ,	)	
Plaintiffs,	)	
v.	)	
	)	No. 05 CV 01334 (EGS)
UNITED STATES DEPARTMENT OF STATE,	)	
<u>et al.</u> ,	)	
Defendants.	)	
<hr/>	)	

**[PLAINTIFFS' PROPOSED] SCHEDULING ORDER**

Upon consideration of the Status Reports submitted by counsel for plaintiff Idema and counsel for defendants, and the Scheduling Conference held in this matter, it is hereby ORDERED that the parties shall adhere to the following schedule:

Defendants and plaintiffs shall file any motion(s) to dismiss and/or for summary judgment no later than October 25, 2005;

Defendants and plaintiffs shall file any opposition(s) and/or any cross-motion(s) no later than November 10, 2005;

Defendants and plaintiffs will file any reply(ies) to oppositions no later than November 20, 2005 and/or oppositions to cross-motion(s) no later than November 30, 2005; and

Defendants and plaintiffs shall file any reply(ies) in further support of their motion(s) by December 5, 2005.

**SO ORDERED.**

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EMMET G. SULLIVAN  
United States District Judge