UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
....x
KATE DOYLE, NATIONAL SECURITY ARCHIVE, CITIZENS FOR RESPONSIBILITY AND ETHICS IN WASHINGTON, KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA UNIVERSITY,

Plaintiffs,

17 Civ. 2542 (KPF)

v.

U.S. DEPARTMENT OF HOMELAND SECURITY,

Defendant.
....x

MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFFS' MOTION FOR AN ORDER TO SHOW CAUSE

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Defendants the Department of Homeland Security ("DHS") and the Executive Office of the President ("EOP") (collectively, the "government") respectfully submit this memorandum of law in opposition to plaintiffs' motion for an order requiring that Defendants show cause for purportedly failing to comply with the Court's July 14, 2017 scheduling order (the "Scheduling Order" or "Order"). ECF No. 33. There is no basis for the Court to issue an order to show cause—let alone hold an evidentiary hearing or impose sanctions—as the government fully complied with the Court's scheduling order, and the proposed separate motion practice on that question will waste judicial resources and potentially delay resolution of this case. Plaintiffs' dispute is with the government's legal position as to records of presidential visitors at Mar-a-Lago, an issue that will be fully addressed in the government's summary judgment motion scheduled to be filed on October 23, less than three weeks from today. The Court should address the status of the Mar-a-Lago records—along with the other legal issues presented by plaintiffs' amended complaint—based on a complete record, filed in accordance with the schedule previously agreed upon by the parties and entered by the Court. Plaintiffs' motion therefore should be denied.

BACKGROUND

A. Plaintiffs' Initial Complaint and the July 14 Scheduling Order

Plaintiffs filed the initial complaint in this action on April 10, 2017, asserting claims against DHS under the Freedom of Information Act, 5 U.S.C. § 552, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202. ECF No. 1 ("Complaint"). Plaintiffs sought to compel the United States Secret Service to release records in response to their Freedom of Information Act ("FOIA") request seeking two categories of records: (1) records of the Workers and Visitors Entry System ("WAVES") and Access Control Records ("ACR") system—the records systems

used to track visitors at the White House Complex, *id.* ¶ 17—from January 20, 2017 until March 8, 2017, and (2) "records of presidential visitors at Mar-a-Lago and Trump Tower" from the same time period. *Id.* ¶ 24. Specifically, plaintiffs sought from these records "the same 28 fields of data contained in the White House Visitor Records posted by the Obama Administration" under its voluntary disclosure policy. *Id.*; *see id.* ¶¶ 9-11 (describing voluntary disclosure policy adopted by Obama Administration in 2009).

The Court scheduled an initial pretrial conference in this matter for July 14, 2017, and directed the parties to confer and submit a joint letter and case management plan in advance of the conference. ECF No. 11. The parties conferred and on July 6, 2017, filed a joint letter proposing an agreed-upon "schedule for resolution of this case." ECF No. 22 at 4. The parties then appeared at the initial pretrial conference on July 14, 2017. ECF No. 33-3 ("Tr.").

During the conference, the parties proposed a schedule and plan for resolving disputes as to the two categories of documents sought by plaintiffs. The first category of records—WAVES and ACR records of visitors to the White House Complex—had been the subject of prior litigation in the D.C. Circuit. *See Judicial Watch v. United States Secret Service*, 726 F.3d 208 (D.C. Cir. 2013). The parties proposed to address the legal status of responsive WAVES and ACR records in cross-motions for summary judgment, with plaintiffs' reserving their right to seek (and the government to oppose) discovery under Federal Rule of Civil Procedure 56(d). Tr. at 8, 10.

Unlike WAVES and ACR records, which are a readily identifiable set of electronic records, Tr. at 12, it was unclear what, if any, records the Secret Service might possess that would be potentially responsive to plaintiffs' request for records of "presidential visitors" at Mar-a-Lago, and in particular the 28 data fields that were publicly posted by the prior

Administration under its voluntary disclosure policy. Declaration of Kim E. Campbell dated October 4, 2017 ("Campbell Decl."), ¶ 9; *see* Complaint ¶ 24 (noting that FOIA request sought two categories of records, WAVES/ACR records and records of "presidential visitors at Mar-a-Lago and Trump Tower," and "[f]rom these records the request identifies the same 28 fields of data contained in the White House Visitor Records posted by the Obama Administration").[1] The Secret Service therefore needed to undertake a broad set of searches, and review the substantial volume of records captured by those broad searches, to determine whether it possessed records responsive to the Mar-a-Lago request. Campbell Decl. ¶ 10. This process was still ongoing at the time of the initial conference. ECF No. 22 at 2 (pre-conference letter stating that "the Secret Service is in the process of searching for and processing responsive records").

At the initial pretrial conference, the government noted that the parties were engaged in ongoing discussions to narrow the Mar-a-Lago request and "identify the categories of records in which the plaintiffs are not interested so that the Secret Service can process the remaining records that are responsive as expeditiously as possible." *Id.* at 10; *see also id.* at 4 (statement by plaintiffs' counsel that plaintiffs had agreed to narrow request to exclude "local law enforcement officers who wanted a photo op with the President, . . . as well as certain family members who routinely would not have shown up in the automated system within the White House"). The parties proposed a September 8 deadline for the Secret Service to complete its processing and production of responsive Mar-a-Lago records, with the understanding that the Secret Service could, upon review and processing of the documents, withhold responsive documents (or portions of documents) from production. *Id.* at 4, 10, 11-12. To the extent any disputes

[1] As the parties advised the Court, the President did not visit Trump Tower during the relevant time period, and thus there are no responsive records relating to Trump Tower. Tr. at 3; ECF No. 22 at 2 n.2.

remained as to the Mar-a-Lago records following the Secret Service's production, including disputes as to the adequacy of the Secret Service's search and the applicability of any exemptions, they would also be addressed in the parties' subsequent cross-motions for summary judgment. *Id.* at 10-12.

At the end of the initial pretrial conference, the Court stated that it would "issue a scheduling order replicating that sought by the parties." *Id.* at 19. Later that day, the Court issued the Scheduling Order, which "impose[d] the parties' proposed schedule for document production and motions practice." ECF No. 23. The Order provided that "[t]he Secret Service will complete its search for and processing of responsive 'records of presidential visitors at Mar-a-Lago,' and produce any non-exempt responsive records, by September 8, 2017," to be followed by cross-motions for summary judgment. *Id.*

B. The Secret Service's Search for and Processing of Mar-a-Lago Records

The Secret Service undertook a broad set of searches to identify any records reflecting that an individual or individuals had visited or met with the President at Mar-a-Lago during the time period requested. Campbell Decl. ¶¶ 10, 15. These included searches of multiple divisions and offices for paper and electronic records, as well as a broad key-word search of relevant employee email accounts. *Id.* ¶¶ 15-19. The documents captured by these searches, which numbered in the thousands even after de-duplication, were then individually reviewed for responsiveness. *Id.* ¶¶ 19-21.

The Secret Service's review of these documents revealed that many of the emails and attachments identified in the email search were merely copies of media reports concerning the President's visits to Mar-a-Lago, which were deemed non-responsive. *Id.* ¶ 22. In addition, pursuant to the parties' agreement, the Secret Service deemed non-responsive records reflecting

visits by family members, cabinet members, and White House staff who were present at Mar-a-Lago, as well as local law enforcement and support personnel who were scheduled to have their photograph taken with the President. *Id.* ¶¶ 23-24.[2]

Moreover, as the government explained to plaintiffs, *see* ECF No. 33-4 at 3 & n.1, most if not all of the records the Secret Service identified through its searches merely indicate the possibility of a "presidential visit" (e.g., a document indicating that a person is scheduled to meet with the President). Campbell Decl. ¶ 31. They do not reveal whether a visit actually took place. *Id.* For purposes of identifying the universe of potentially responsive records, the Secret Service nonetheless interpreted plaintiffs' FOIA request so as to encompass these records of potential presidential visitors without conceding that such records are, in fact, responsive to plaintiffs' FOIA request. ECF No. 33-4 at 3 n.1.

The largest group of documents captured by the search consisted of records, created for other purposes, relating to the visit to Mar-a-Lago of the Prime Minister of Japan, Shinzo Abe. *Id.* ¶ 25. Some of these records contained references to the fact that Prime Minister Abe and Mrs. Abe were scheduled to meet or dine with the President at Mar-a-Lago. *Id.* The Secret Service questioned whether this material was responsive to plaintiffs' request for records of "presidential visitors" and specifically the data fields previously published, and whether this was even the type of material that plaintiffs were seeking. *Id.* ¶ 26. Accordingly, government counsel engaged plaintiffs in discussions in an effort to narrow the number of records in this

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[2] *See* ECF Nos. 33-4 at 3 (Secret Service's proposal to exclude as non-responsive records of "presidential visitors" if those records reflect individuals meeting with the President under circumstances that would not normally result in the creation of a WAVES record of the type that was disclosed pursuant to the prior Administration's voluntary disclosure policy," specifically, cabinet members, family members, and White House staffers, as well as "records of visits by law enforcement officials to have their picture taken with the President"), 33-5 at 2 (letter from plaintiffs' counsel agreeing to exclude these categories of records as non-responsive).

category to be processed. *Id.* ¶ 27; *see* ECF Nos. 33-4, 33-5, 33-6. Based on those discussions, the Secret Service initially located and processed three documents relating to the Prime Minister's visit: the President's travel schedules for Friday, February 10, and Saturday, February 11 (the dates that correspond to the Prime Minister's visit), respectively, and an email that originated from the State Department identifying the individuals associated with the Prime Minister's visit who would need access to Mar-a-Lago. Campbell Decl. ¶ 28; *see* ECF No. 33-6 at 3.

The government proposed to treat these three documents as responsive to the FOIA request and to process them, *see* ECF No. 33-6 at 3 & n.1, not necessarily to produce the documents, as plaintiffs state in their motion, Pl.'s Mem. at 7. Indeed, the government specifically noted that "the Secret Service may need to refer the records to the Department of State and/or the White House," and "also reserve[d] its right to assert exemptions regarding these records." ECF No. 33-6 at 3 n.1. Plaintiffs indicated they were willing to accept this compromise provided the government did not assert any exemptions to disclosing the three documents that it could not assert equally with respect to the remaining documents relating to the Japanese Prime Minister's visit, *see* ECF No. 33-7 at 2—a condition the government had no reason to believe would not be met. In any event, regardless of whether the parties "ultimately . . . achieve[d] a final meeting of the minds" to narrow this category of records, Pl.'s Mem. at 11, the Secret Service conducted an expedited review of the remaining records relating to the Prime Minister's visit and determined that only approximately fifteen documents contain any reference to an individual or individuals potentially meeting with the President, Campbell Decl. ¶ 29. Those references consist of general and redundant references to the fact that Prime Minister and Mrs. Abe would be meeting or dining with the President at Mar-a-Lago. *Id.* Beyond that limited

information—which is already publicly known and reflected in the State Department email—the records are duplicative and therefore were deemed non-responsive. *Id.*

Ultimately, the Secret Service's review of the materials located through its searches revealed that the Secret Service did not maintain or have access to records of presidential visitors or any listing or database containing the data fields specifically requested by plaintiffs. *Id.* ¶¶ 11-13. The Secret Service therefore concluded that it maintains no record and has no access to any record directly responsive to plaintiffs' request. *Id.* ¶ 13. Even construing the request broadly to encompass records of potential presidential visitors—*i.e.*, individuals who were scheduled to meet with the President—apart from the records relating to Prime Minister Abe's visit, the Secret Service had access to only a handful of emails and Presidential schedules showing that the President was expected to meet with an individual or individuals at Mar-a-Lago. *Id*. ¶¶ 30-31.

As to those records, and the three records relating to Prime Minister Abe's visit that the government had proposed to treat as responsive and process, the Secret Service proceeded to undertake the necessary referrals and/or consultations, as is routine in FOIA matters in which an agency possesses records belonging to another federal entity or in which another federal entity has an interest. *Id.* ¶¶ 32-33. The email originating with the State Department was referred to that agency for possible release to plaintiffs; the email was reviewed for Department of State equities and returned to the Secret Service. *Id.* ¶ 32. The remaining documents, consisting of information concerning the President's schedules, were referred to EOP for consultation. *Id.* ¶ 33. Because that consultation had not been completed as of September 7, 2017, the government wrote to the Court to request a one-week extension of the September 8 deadline for production of agency records responsive to plaintiffs' FOIA request. *Id.*; *see* ECF No. 27. The Court granted

the government's application, and extended the "deadline to produce agency records responsive to [plaintiffs'] FOIA request" to noon on September 15, 2017. ECF No. 28.

C. The Government's September 15 Production

On September 15, the government produced the State Department email, with redactions pursuant to FOIA exemptions 6 and 7(C), 5 U.S.C. § 552(6), (7)(C). Campbell Decl. ¶ 34; *see* ECF No. 33-8 at 2, 4-5. In its cover letter, the government explained that "[t]he remaining records that the Secret Service has processed in response to the Mar-a-Lago request contain, reflect, or otherwise relate to the President's schedules. The government believes that Presidential schedule information is not subject to FOIA. *See Judicial Watch v. United States Secret Service*, 726 F.3d 208, 224-32 (D.C. Cir. 2013)." ECF No. 33-8 at 2. Cognizant of the fact that plaintiffs would disagree with this position, the government advised that "[w]e are, of course, prepared to brief this issue in our forthcoming dispositive motion." *Id.*

D. Plaintiffs' Amended Complaint and the Parties' Joint Request for a Revised Briefing Schedule

On August 30, 2017, plaintiffs filed a motion to amend the complaint to add EOP as a defendant and to assert entirely new claims under the Presidential Records Act ("PRA"), 44 U.S.C. § 2201 *et seq.*, Federal Records Act ("FRA"), 44 U.S.C. § 2101 *et seq.*, and Administrative Procedure Act ("APA"), 5 U.S.C. § 706. ECF No. 26. The new claims sought to be asserted in the proposed amended complaint do not pertain to records of presidential visitors at Mar-a-Lago or even presidential visitors to the White House Complex, but rather concern the treatment of records of visits to "agency components of the EOP" pursuant to a 2015 Memorandum of Understanding entered into by the Presidential Information Technology Community. ECF No. 32 ("Amended Complaint") ¶¶ 63, 67.

The government responded to plaintiffs' motion to amend by letter dated September 13, 2017. ECF No. 29. The government advised the Court that although it believes plaintiffs' new claims lack merit, in an effort to avoid unnecessary motion practice and facilitate the ultimate resolution of the case, the government would consent to the filing of the proposed amended complaint provided that the briefing schedule the parties had previously submitted regarding plaintiffs' FOIA claims (which the Court had endorsed) was extended to allow the government to file one consolidated motion with regard to all claims in the proposed amended complaint. *Id.* Plaintiffs agreed to this proposal, and the parties jointly proposed an amended briefing schedule. *Id.* Under that amended schedule, plaintiffs would file the amended complaint within two days; the government would respond to the amended complaint and file dispositive motions as to all claims, including motions under Rules 12 and 56, by October 23, 2017; plaintiffs would file an opposition and any cross-motion by December 4, 2017; and the motions would be fully briefed by February 2, 2018. *Id.* The Court thereafter granted the parties' application, ECF No. 30, and plaintiffs filed the amended complaint on September 15, 2017, ECF No. 32.

ARGUMENT

Plaintiffs' motion for an order to show cause is without merit, and should be denied.

A. The Government Complied With the July 14 Scheduling Order

Plaintiffs' motion should be denied because they have not shown any violation of the July 14, 2017 Scheduling Order, and because the issues they seek to raise will most efficiently and promptly be resolved by adhering to the already-existing schedule for case-dispositive motions.

Plaintiffs fundamentally misconstrue the July 14 Order. They interpret the Order as a determination by the Court that Mar-a-Lago records are "agency records" subject to disclosure under FOIA unless they fall within one of the exemptions set forth in 5 U.S.C. § 552(b). But the

Order was simply a scheduling order, which adopted the schedule jointly proposed by the parties. *See* Tr. at 19 (Court's statement at conclusion of initial pretrial conference that "I will issue a scheduling order replicating that sought by the parties."); July 14 Order ("the Court hereby imposes the parties' proposed schedule for document production and motions practice"); *see generally Edberg v. CPI, Inc.*, No. 398CV716, 2000 WL 1844651, at *2 (D. Conn. Nov. 22, 2000) ("The purpose of scheduling orders is to schedule litigation events sequentially, in order to achieve case disposition in an orderly and predictable manner."). The Order was not a determination on the merits as to the legal status of the Mar-a-Lago records. *Cf. Carlson v. Manchester Memorial Hosp., Inc.*, 182 F.3d 898, 1999 WL 461768, at *2 (2d Cir. 1999) (unpublished) (distinguishing a scheduling order from a denial of motion on the merits). Nor would the Court have had any basis to make such a legal determination at the outset of the case, without any record or briefing on the issue.

Plaintiffs erroneously suggest that the government has somehow conceded that all Mar-a-Lago records are "agency records" subject to FOIA. *See* Pl.'s Mem. at 5 (characterizing statements by government counsel as "representing the government's position that the Mar-a-Lago records are agency records subject to the FOIA, and that any potential issues with those records involved FOIA exemptions"). In fact, the government made no such concession, and plaintiffs point to no statement by the government or its counsel that Mar-a-Lago records had been determined to be, or necessarily would be treated as, "agency records" under FOIA. Instead, plaintiffs rely on statements in the parties' joint pre-conference letter, during the initial pretrial conference, and/or in subsequent correspondence between the parties to the effect that the Secret Service was searching for and processing responsive records and intended to "produce any non-exempt responsive records" by September 8. Pl.'s Mem. at 4; *see id.* 3-7. But the

government's mere reference to FOIA exemptions or 5 U.S.C. § 552(b) hardly reflects a concession that all records reflecting presidential visitors at Mar-a-Lago are agency records, or a representation that the government would withhold such records only if they fall within an exemption in § 552(b). The Secret Service's processing of the Mar-a-Lago records included, but was not limited to, application of the exemptions in § 552(b). *See* ECF No. 33-8 at 4-5 (information redacted pursuant to FOIA exemptions 6 and 7(C), 5 U.S.C. § 552(b)(6), (7)(C)). It also included a review and determination, in consultation with the EOP, as to whether particular documents and information are subject to disclosure under FOIA at all. *Id.* at 2.[3]

Moreover, while plaintiffs fault the government for "represent[ing] to the Court and to plaintiffs that the Secret Service was processing and would produce all non-exempt records for presidential visitors at Mar-a-Lago, a process it claimed would require months," Pl.'s Mem. at 1, as the above chronology demonstrates, the government *did* process the Mar-a-Lago records, that process *did* require months, and the government *did* make a production on the extended September 15 deadline. Campbell Decl. ¶¶ 34-35; *see also id.* at ¶ 35 (time spent by agency personnel just to review email and paper documents captured by initial searches took several weeks, and hundreds of work hours, to complete). We understand that plaintiffs disagree with, and intend to challenge, the government's ultimate production, including its determination that records containing, reflecting or otherwise relating to the President's schedules are not subject to disclosure under FOIA. But the proper mechanism for challenging that determination is the

[3] For the same reason, the government's statement that records were "being processed under FOIA," Tr. at 10, did not constitute a concession or representation that the records necessarily would be deemed agency records subject to FOIA. It simply referred to the fact that the Secret Service had undertaken to search for, review, and process records potentially responsive to plaintiffs' FOIA request.

forthcoming motion practice—not an order to show cause for purported violation of a scheduling order.

There is no support for plaintiffs' suggestion that because the government did not assert from the outset of this case that records reflecting presidential visitors at Mar-a-Lago are *categorically* outside the scope of FOIA, the government is somehow precluded from withholding individual documents as presidential records. *See* Pl.'s Mem. at 4 (arguing that parties' two-sentence description of issues in joint pre-conference letter "clearly reflects the parties' understanding that the government is challenging only one of the two distinct systems of records at issue as outside the scope of the FOIA, namely, the WAVES and ACR records"). Nor does it make sense to penalize the government for taking the time to identify and review individual documents before making a determination of their legal status.

In fact, the government had good reasons not to adopt a categorical approach to the Mar-a-Lago records at the outset of the case. It was not clear at that stage "what, if any, record systems or record groupings might exist in regard to who visited the President at Mar-a-Lago, or where such record systems or record groupings might be located." Campbell Decl. ¶ 9. The Secret Service ultimately determined—as a result of its broad set of searches—that the agency does not maintain any system for keeping track of presidential visitors at Mar-a-Lago, as there is at the White House Complex. *Id.* ¶ 11 ("Specifically, it was determined that there is no grouping, listing, or set of records that would reflect Presidential visitors to Mar-a-Lago."). Nor does the agency have access to any data system, grouping of records, listing, or document(s) that contains the data fields specifically sought by plaintiffs. *Id.* ¶ 12. But the agency was not in a position to make a determination as to the Mar-a-Lago records without first conducting a broad search for potentially responsive records, individually reviewing and processing the resulting

records, and undertaking the necessary referrals and consultations. *Id.* ¶ 10 (broad set of searches conducted "to determine what, if any, record systems or record groupings existed that might contain information potentially responsive to Plaintiffs' request for Presidential visitors at Mar-a-Lago, and in particular, the request for the 28 fields of data found in WAVES records").

Only upon review of the records captured by that search could the Secret Service determine that it has no records directly responsive to Plaintiffs' request for records of "presidential visitors" at Mar-a-Lago and specifically the data fields previously made public under the prior Administration's voluntary disclosure policy. *Id.* ¶ 13. Even construing the request broadly to include documents indicating that an individual was scheduled to meet with the President, the government needed to review the documents to make the determination that any responsive information in the documents—*i.e.*, information that would have been reflected in the data fields made public by the prior Administration—contains, reflects, otherwise relates to the President's schedule. That information, in the government's view, is exempt from public disclosure under the reasoning of *Judicial Watch*, as the government will explain in its forthcoming motion. ECF No. 33-8 at 2.

Because there has been no violation of the Scheduling Order, plaintiffs are not entitled to any relief, let alone an evidentiary hearing, discovery, or sanctions of any kind. The motion for an order to show cause should be denied.

B. Plaintiffs Have Not Shown Good Cause to Expedite Briefing

To the extent plaintiffs request that the Court expedite briefing on the government's forthcoming motion for summary judgment, Pl.'s Mem. at 13, that request should likewise be denied. It is not clear whether plaintiffs are proposing to expedite briefing only with regard to the government's motion for summary judgment on their FOIA claims, or also with regard to the

government's dispositive motion addressing the new claims asserted in plaintiffs' amended complaint. Either way, plaintiffs have not shown good cause to expedite the parties' agreed-upon schedule, under which the government's consolidated dispositive motion is due on October 23, 2017. ECF No. 30.

Plaintiffs' request for an expedited briefing schedule is premised on the illogical notion that they "should not be held to a schedule that was established to accommodate the government's claimed need for months to produce what turned out to be a single document." Pl.'s Mem. at 13. It was only by searching for and processing the Mar-a-Lago records that the government could make the determination that only one of those records is subject to disclosure under FOIA. And as the Campbell declaration makes clear, the Secret Service needed the time allotted by the Scheduling Order (and one additional week) in order to conduct a broad search for potentially responsive records; cull through the documents to identify records potentially reflecting "presidential visitors" and the type of information contained in the requested data fields; process those records and information; undertake the necessary consultations and referrals; and make a final determination (in consultation with the EOP) as to the status of the records and information. *See* Campbell Decl. ¶¶ 9-35. The government's processing and ultimate determination as to the Mar-a-Lago records therefore has not caused any delay, much less a "lengthy," "needless," or "unreasonable delay," Pl.'s Mem. at 13, in the resolution of this case.

Plaintiffs' contention that they "agreed to an extended briefing schedule for defendants' forthcoming motion for summary judgment" "in reliance on the government's representations that it would produce the Mar-a-Lago records," Pl.'s Mem. at 1-2, 13, is flatly wrong. The summary judgment briefing schedule was extended because, several weeks after the Court

entered the Scheduling Order, plaintiffs filed a motion to amend their complaint to add EOP as a defendant and add entirely new claims under the PRA, FRA and APA. *See* ECF No. 29. Although the government believes the new claims are without merit, rather than oppose plaintiffs' motion to amend, the government consented to the filing of an amended complaint provided the briefing schedule was amended to allow the government to address all claims in the amended complaint in one consolidated dispositive motion. *See id.* Plaintiffs agreed to this proposal, and the parties jointly proposed the amended schedule to the Court.

The amendment of the briefing schedule thus had nothing to do with the Secret Service's processing or production of Mar-a-Lago records. Indeed, by agreeing to amend the briefing schedule, plaintiffs secured the government's consent to the filing of the amended complaint and avoided motion practice that could have delayed the ultimate resolution of this case.

The government appreciates that plaintiffs disagree with and intend to challenge the determination that Presidential schedule information is not subject to FOIA. As we advised plaintiffs at the time of the September 15 production, the government is prepared to brief that issue in its forthcoming motion. The parties' agreed-upon deadline for that motion is now less than three weeks away. Plaintiffs have not shown good cause to expedite the briefing schedule (or to bifurcate briefing into separate, piecemeal motions). Nor does the government believe it could reasonably comply with a more expedited schedule at this point, given that its consolidated motion will address not only plaintiffs' FOIA claims with regard to the Mar-a-Lago and WAVES/ACR records, but also plaintiffs' new claims under the PRA, FRA, and APA.

CONCLUSION

For the foregoing reasons, plaintiffs' motion should be denied.

Very truly yours,

CHAD A. READLER
Acting Assistant Attorney General

By: /s/ Elizabeth J. Shapiro
ELIZABETH J. SHAPIRO
BRAD P. ROSENBERG
20 Massachusetts Ave., N.W.
Washington, D.C. 20530
Telephone: (202) 514-5302/3374
Elizabeth.Shapiro@usdoj.gov

JOON H. KIM
Acting United State Attorney
Southern District of New York

By: /s/ Sarah S. Normand
SARAH S. NORMAND
CASEY KYUNG-SE LEE
86 Chambers Street, Third Floor
New York, New York 10007
Telephone: (212) 637-2709/2714
Sarah.Normand@usdoj.gov