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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF WASHINGTON**
10 **AT SPOKANE**

11 STATE OF WASHINGTON, et al.,

12 Plaintiffs,

13 v.

14 UNITED STATES DEPARTMENT
15 OF HOMELAND SECURITY, a
16 federal agency, et al.

17 Defendants.

NO. 4:19-cv-05210-RMP

PLAINTIFFS' RESPONSE TO
NOTICE OF SUPPLEMENTAL
AUTHORITY

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1 Plaintiff States respectfully submit this response to Defendants’ Notice of
2 Supplemental Authority regarding Plaintiffs’ Motion to Compel (ECF No. 206).
3 The decision Defendants attach—*Almaklani v. Trump*, 18CV398NGGCLP,
4 2020 WL 1282920 (E.D.N.Y. Mar. 17, 2020)—is distinguishable from
5 Plaintiffs’ pending Motion in several respects.

6 First, plaintiffs sought discovery in *Almaklani* at the “eleventh[] hour.”
7 ECF No. 206 at 9. The case had been pending for over two years, and at the
8 time of the court’s decision, the federal defendants had already moved for
9 summary judgment. *Id.* at 5, 8. By contrast, Plaintiffs here promptly filed their
10 Motion to Compel before any dispositive motions have been filed.

11 Second, unlike in *Almaklani*, the constitutional claim here is distinct from
12 the APA claims. *See* ECF No. 200 at 7 (the “Equal Protection claim is not
13 merely duplicative of the APA claims”); *cf.* ECF No. 206 at 16 (acknowledging
14 split of authority and citing cases disallowing discovery where “constitutional
15 claims fundamentally overlap with the APA claims”).

16 Third, Plaintiffs have made a more than adequate showing to permit
17 discovery. Unlike in *Almaklani*, *see* ECF No. 206 at 18–19, Plaintiffs proffered
18 significant public-record evidence—including statements and emails—that
19 suggests certain federal officials may have acted with unlawful discriminatory
20 intent, *see* ECF No. 195 at 13–15; ECF No. 200 at 7–8.

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1 Finally, the *Almaklani* decision says nothing about the first of the two
2 types of relief Plaintiffs seek: a privilege log provided by Defendants to
3 accompany the Administrative Record. *See* ECF No. 195 at 5–9.

4 The *Almaklani* case therefore does not support Defendants’ position.
5 Plaintiffs respectfully request that the Court grant their Motion to Compel
6 (ECF No. 195) in its entirety.

7 RESPECTFULLY SUBMITTED this 30th day of March 2020.

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DECLARATION OF SERVICE

I hereby declare that on this day I caused the foregoing document to be electronically filed with the Clerk of the Court using the Court’s CM/ECF System which will serve a copy of this document upon all counsel of record.

DATED this 30th day of March 2020, at Seattle, Washington.

/s/ Jeffrey T. Sprung
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