

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

COOK COUNTY, ILLINOIS, et al.,

Plaintiffs,

vs.

CHAD F. WOLF, in his official capacity as
Acting Secretary of U.S. Department of
Homeland Security, et al.,

Defendants.

Case No. 19-cv-6334

**DECLARATION OF
DAVID J. PALMER**

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I, David J. Palmer, do hereby declare and say:

1. Since January 2017, I have been employed by the U.S. Department of Homeland Security (“DHS”) as the Chief of Staff for the Office of the General Counsel (“OGC”). As the Chief of Staff, I supervise attorneys and other professional staff who are coordinating efforts at DHS Headquarters (DHS HQ) to respond to court orders and discovery requests in this case, as well as in other litigation in which DHS HQ is a party or has equities. I make the following statements based on my personal knowledge and upon information furnished to me in the course of my official duties.
2. Prior to my current position as Chief of Staff, I served in a variety of roles within DHS OGC. From July 2015 through January 2017, I served as Associate General Counsel for the Legal Counsel Division. The Legal Counsel Division is responsible for providing legal advice on a variety of portfolios, including significant litigation, legislative affairs, civil rights and civil liberties, privacy, and matters of strategic

oversight.

3. Prior to July 2015, beginning in July 2008, I served as Deputy Associate General Counsel, with extended periods of service as the Acting Associate General Counsel for the Legal Counsel Division. From January 2008 through July 2008, I served as Senior Counsel for the Office for Civil Rights and Civil Liberties. Prior to joining DHS, I worked for approximately twenty (20) years in various roles with the U.S. Department of Justice.
4. The matters contained in this declaration are based upon my personal knowledge or information provided to me in my official capacity relating to the case of *Cook County v. Wolf*, No. 19-cv-6334, pending in the U.S. District Court for the Northern District of Illinois.
5. It is my understanding that plaintiff is seeking expedited discovery in this case. It is my further understanding that plaintiff is asking the government to respond to discovery requests, including a complete production of documents, within 14 days of the Court's ruling on plaintiff's motion for expedited discovery.
6. For RFPs 1, 2 and 4, plaintiff has identified by name several proposed custodians. Of those, the following are current or former DHS employees: Kenneth Cuccinelli, Claire Grady, John Mitnick, Chad Wolf, Gene Hamilton, Kirstjen Nielsen, and Julie Kirchner. Plaintiff has not limited RFP 3 to any specific custodians.
7. To collect and produce documents, if any, responsive to plaintiff's document requests, DHS must conduct searches for potentially relevant documents and then transfer those documents to DOJ, where the data will be processed and uploaded into DOJ's Relativity platform. Attorneys will then review the documents for responsiveness and privilege.

8. DHS's search capabilities are limited, and the process takes significant time. DHS HQ IT personnel can conduct searches using terms, phrases, and Boolean strings by custodian over a specified date range against (1) DHS HQ's unclassified e-mail systems, (2) DHS HQ custodians' personal server drives and local hard drives, and (3) DHS HQ non-custodian shared server drives. These systems have limited searching, collecting, and processing capabilities, which necessitates collecting overbroad amounts of data.
9. Also, due to technology changes to DHS information technology systems over time, emails are housed both in Office 365 and Enterprise Vault. DHS's search capabilities are especially limited for data in the Enterprise Vault. Based on experience in running search terms in Enterprise Vault like the search terms plaintiff proposes, DHS HQ IT does not believe the Enterprise Vault system has the technical ability to run plaintiff's complex proposed search terms. Therefore, in order to collect documents in the manner plaintiff has proposed, DHS would have to first collect a broad set of data for each custodian and then transfer that data to another platform where plaintiff's search terms would be applied to the document set.
10. Resource limitations resulting from both technical limitations and the limited availability of personnel make the process of searching data contained in emails and drives exceedingly burdensome. DHS HQ currently has three employees who work on, among other work streams, fulfilling data search requests for all of DHS HQ. The time intensity of the search requests varies depending on the complexity of searches and the platform that is being searched. For example, for searches in Enterprise Vault all searches must be input manually. Any errors in the manual entry—such as an errant comma—renders an invalid

search. Thus, the increased complexity of searches, such as plaintiff's proposed search, increases the likelihood of potential error in manual entry. Additionally, due to limitations in DHS's systems, DHS IT is only able to run a limited number of searches simultaneously.

11. Moreover, COVID-19 related disruptions in operations, and an increase in Department-wide telework, will also likely delay the process of pulling and transferring data. Since mid-March 2019, DHS HQ IT and DHS OGC personnel have experienced significant delays in transferring data across servers due to the increased use of network systems and virtual private networks, which have resulted from the unprecedented amount of COVID-19 related telework. The heavier use of our network for these purposes has generally reduced the speed of the Department's computer networks. The reduction in speed is particularly significant where a large amount of data is being transferred.
12. For a recent data pull in another public charge matter, which was also subject to the staffing and network speed issues addressed above, a data request for 15 custodians resulting in 75GB of data took 21 days from the pull request to transmission to DOJ.
13. DHS has already collected some email records for certain custodians, in connection with proceedings in a similar case challenging the public charge rule, *Washington v. DHS*, No. 19-5210 (E.D. Wash.). However, the scope of documents collected in that case differ in material ways from the scope of documents plaintiff appears to seek here. Therefore, DHS would be required to perform several additional searches to collect documents to respond to plaintiff's requests.
14. DHS OGC has limited personnel to dedicate to the searches. DHS OGC's litigation team is comprised of four attorneys, one paralegal, and one supervisor, all of whom are working on multiple matters. DHS OGC is not able to commit any staff to full-time document review.
15. DHS HQ rarely engages in such extensive discovery and does not have attorneys (or

support staff) whose normal duties are substantially anticipated to include such a significant volume of document review. Specifically, with regard to this case, there is one DHS OGC attorney assigned to directly work on this matter. The duties of the DHS OGC attorney assigned to this case involve the coordination and review of significant high-profile litigation at the Departmental and Inter-Departmental level, and this case is one of many on a fully-committed docket that includes all other public charge litigation, as well as a significant portfolio of other litigation matters. DHS HQ's other litigation attorneys have similarly over-burdened and fully-committed dockets of assigned cases.

16. DHS takes its obligation to comply with court orders exceptionally seriously and will do its utmost to comply with any order issued by the Court. But, given what DHS OGC does currently know about the likely volume of potentially responsive materials, as well as the agency's limited resources to process and review those materials, I believe it would take far beyond the timeframe proposed by plaintiff to complete the searches, collection, transfer, processing, review, and production of documents.
17. Pursuant to the provisions of 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my information, knowledge, and belief.

Executed on this 16th day of June 2020, in Washington, DC.

David J. Palmer
Chief of Staff
Office of the General Counsel
Department of Homeland Security
Washington, District of Columbia