

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

_____	)	
RANDALL ROYER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 10-cv-1196 (RCL)
	)	No. 10-cv-1996 (RCL)
	)	
FEDERAL BUREAU OF PRISONS,	)	
	)	
Defendant.	)	
_____	)	

**PLAINTIFF’S REPLY IN SUPPORT OF MOTION  
TO COMPEL DISCOVERY RESPONSES**

In his motion to compel defendant Federal Bureau of Prisons (BOP) to respond to his discovery requests, plaintiff Randall Royer requested that the Court (1) order BOP to provide complete responses to Royer’s document requests and interrogatories; (2) declare that BOP’s objections on all grounds other than privilege have been waived by its failure to respond timely; (3) overrule BOP’s assertion of law enforcement privilege; (4) order BOP to comply with the requirements of Rules 33(b)(3) and (5), which require interrogatory responses to be signed under oath and by the person making the statements; and (5) order BOP to pay Royer his reasonable expenses and attorney’s fees in connection with the motion pursuant to Rule 37(a)(5)(A). ECF No. 89. On November 15, 2013, BOP filed a late response in opposition to Royer’s motion.<sup>1</sup>

<sup>1</sup> BOP’s opposition was due on November 12. On November 4, BOP filed a motion for an extension of time to November 15 to file its response (ECF No. 92), but did not secure an order from the Court before its opposition was due. In its request for an extension, BOP stated that Assistant United States Attorney Rhonda C. Fields “was being substituted for the counsel previously responsible for preparing the response” and “additional time is needed for new counsel to become familiar with this matter and to consult with her co-counsel and agency counsel concerning the response.” *Id.* at 1. However, new counsel’s name does not appear on

ECF No. 95. Because BOP has offered no adequate defense for its failure to comply with the discovery rules or any justification for its invocation of a law enforcement privilege to avoid disclosure of relevant information, Royer's motion should be granted.

**1. Because BOP Has Not Established Good Cause for Its Failure to Provide Timely and Particularized Objections to Royer's Requests, BOP's Objections Have Been Waived.**

BOP concedes that its discovery responses were late but argues that it should be excused because its failure to meet the deadline was the result of a "misunderstanding" between BOP's attorneys regarding "their division of duties." ECF No. 95 at 3. BOP asserts that "[b]ecause the length of time between the due date and the actual delivery of objections was short, and the reason for the delay was inadvertence, and not bad faith, the Court should not find that Defendant's objections have been waived." *Id.* at 3-4. But BOP's objections to the document requests were fourteen days late, and its objections to interrogatories were seventeen days late. ECF No. 89-1, ¶¶ 3-6. More importantly, BOP made boilerplate objections in its late responses, and the responses remain incomplete.

BOP also asserts that it "is attempting to provide as much of the requested materials as possible." ECF No. 95 at 4. The facts indicate otherwise. BOP has repeatedly claimed that further responses to Royer's discovery requests would be forthcoming, but those responses have not materialized. *See* ECF Nos. 89-1 and 94-1. Indeed, BOP has produced nothing since September 13, even though BOP's attorneys promised during a telephone call on September 25 to produce documents on a rolling basis. ECF 94-1, Ex. B.

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BOP's response, which was filed by Assistant United States Attorney Rhonda L. Campbell. ECF No. 95 at 10.

BOP's failure to cooperate in discovery should not be excused because it is part of a pattern of dilatory behavior. For example:

- This case was filed in July 2010, but BOP did not file an Answer until August 12, 2013 (ECF No. 84), even though Royer advised BOP by letter of June 19, 2013, that its Answer was overdue. ECF No. 94-1, Ex. A. BOP did not seek leave to file its Answer out of time, and it has never explained the reason for its default.
- With respect to Royer's Administrative Procedure Act (APA) claim regarding the policy BOP used to classify Royer as a terrorist inmate, BOP has not yet identified the policy or compiled and designated the administrative record. *See County of San Miguel v. Kempthorne*, 587 F. Supp. 2d 64, 72 (D.D.C. 2008) (noting that challenges to agency decisions under the APA require the agency to "compile and designate the administrative record that was before it and which it directly or indirectly considered in reaching its decision on the action being challenged.").
- In an effort to expedite the exchange of relevant information, once he was represented by counsel, Royer offered to exchange Rule 26(a)(1) disclosures, but BOP refused. ECF No. 94-1, ¶ 2.
- After BOP failed to respond to Royer's requests for admissions within 30 days of service, the matters were deemed admitted pursuant to Rule 36(a)(3). Nevertheless, BOP attempted to deny certain matters in responses served 24 days late (ECF No. 89-1, ¶ 7), even though BOP has not filed a motion to withdraw the admissions it made by default.
- In an effort to resolve or narrow the discovery issues, on August 22, 2013, Royer sent BOP a detailed letter explaining the deficiencies in BOP's discovery responses. *Id.*, ¶ 8 & Ex. G. On August 26, BOP said it would respond in detail to the letter. *Id.*, ¶ 8. The parties conferred on September 10, and BOP promised a response to the letter by September 11. On September 11, BOP stated that it needed "one more day on the letter." *Id.*, ¶ 12 & Ex. I. On September 12, BOP stated that the letter would be sent on September 13. *Id.*, ¶ 13 & Ex. J. On September 13, BOP stated it was waiting for more information before sending the letter. *Id.*, ¶ 14 & Ex. K. The parties conferred again on September 25, and BOP promised to respond to the deficiency letter by September 27. *Id.*, ¶ 16. To date, BOP has not responded to the deficiency letter that was served over three months ago. BOP's refusal to engage with Royer on the discovery issues has made it impossible for Royer to determine which specific discovery issues can be resolved without the Court's assistance and which issues will require further motions practice.
- Since September 13, BOP has produced no information responsive to Royer's discovery requests, even though Royer has agreed to protect any information produced pending resolution of issues regarding a proposed protective order. For example, BOP has not yet produced two sections of Royer's Central File totaling 213 pages, even though BOP stated on September 25 that it was reviewing and processing those pages. *Id.*, ¶ 16. Even

if BOP reviewed only three pages a day, by now it should have been able to produce the remaining pages.

- On November 8, BOP filed a motion to limit discovery (ECF No. 90), without first discussing the motion with Royer's counsel to attempt to narrow the areas of disagreement as required by Local Rule 5.4(m). ECF No. 94-1, ¶ 8. Indeed, in its motion, BOP failed to acknowledge the compromises that Royer offered in his August 22 deficiency letter. *See* ECF No. 89-1, Ex. G at 3 ("By way of compromise, Mr. Royer will limit this request to all documents and things concerning or relating to any administrative hearings concerning Mr. Royer's classification, assignment, or conditions of confinement since December 2006"); *id.* at 4 ("[B]y way of compromise, we would be willing to consider entering into a narrowly crafted protective order with respect to institutions that currently house inmates whom BOP has classified as terrorists.").

As the examples above make clear, BOP was not simply 14-17 days late serving its objections; rather, BOP has engaged in a pattern of refusing to comply with the Federal Rules of Civil Procedure and its own commitments. Its responses to Royer's discovery requests are more than four months overdue.

Ignoring the concerns raised in this lawsuit, BOP claims that Royer is not prejudiced by BOP's failure to respond timely because Royer is incarcerated and will not be released for several more years. ECF No. 95 at 4. Royer alleges that he has been classified a terrorist inmate and subjected to harsh and atypical conditions of confinement since December 2006 pursuant to a policy promulgated in violation of the APA; that his classification is based on records BOP knew to be false and that BOP refused to amend, in violation of the Privacy Act; and that he has not been provided with notice of the factual basis for his classification as a terrorist inmate or a meaningful opportunity to challenge his classification or conditions of confinement in violation of his constitutional right to due process. Royer is prejudiced by BOP's delay because he continues to be held under conditions and for reasons that he alleges are unlawful.

BOP further asserts that Royer is not prejudiced by BOP's delay because Royer's counsel agreed that, because of BOP's failure to cooperate in discovery, an extension of time to complete

discovery would be needed. ECF No. 95 at 4-5. However, as explained in Royer's opposition to BOP's motion to limit discovery and its supporting declaration, Royer's counsel agreed only that some extension would be necessary to allow Royer to seek further discovery, including depositions, after BOP responds fully to the requests that are the subject of the pending motion to compel. *See* ECF No. 94 at 9; ECF No. 94-1, ¶ 7. Royer never agreed to an extension of BOP's deadline to respond to the pending requests.

Similarly, the fact that a protective order is not yet in place provides no excuse for BOP's failure to cooperate in discovery because Royer agreed to treat all documents produced as protected pending the resolution of the protective order issues. Third Kirkpatrick Declaration, ¶ 3 & Ex. C; *see also Lohrenz v. Donnelly*, 187 F.R.D. 1, 7 (D.D.C. 1999) (noting that a party "is not allowed to re-write the rules of civil procedure to fit whatever sequence of discovery that [it] may choose, in the absence of a protective order. [Rule] 26(d) explicitly rejects the proposition that, even if good cause could be shown ... a party is free to produce responsive information when it unilaterally chooses."). And BOP's claim that Royer's counsel "has indicated a desire to use [] sensitive information in a way that will jeopardize the safety and security of BOP institutions" (ECF No. 95 at 5), is categorically false. Rather, Royer's counsel indicated a willingness to agree to a protective order for sensitive information, but only where BOP has a good faith basis for so designating the information. However, BOP wants to designate every document as "protected," even if the documents are already in the public record, and shift the burden to Royer to move the Court to lift the improper designations. Third Kirkpatrick Declaration, ¶ 4. BOP's attempt to shift the burden to Royer is contrary to well-established case law requiring the party seeking protection to demonstrate that the designation is justified. *See Aristotle Int'l, Inc. v. NGP Software, Inc.*, 714 F. Supp. 2d 1, 16 (D.D.C. 2010) ("Because

protective orders are based on a finding of good cause [under Rule 26(c)] ... the logical conclusion is that the burden of persuasion falls upon the party or parties seeking to restrict disclosure.”); *D’Onofrio v. SFX Sports Group, Inc.*, 256 F.R.D. 277, 279 (D.D.C. 2009) (requiring proponent of protective order to demonstrate good cause for restricting access to relevant and discoverable information); *Klayman v. Judicial Watch, Inc.*, 247 F.R.D. 19, 23 (D.D.C. 2007) (placing burden on defendants to justify confidentiality designations they sought).

**2. Royer’s Discovery Requests Are Not Unduly Burdensome; Rather, They Seek Information That This Court Has Identified as Necessary for Resolution of Royer’s Claims.**

BOP asserts that Royer’s requests are unduly burdensome (ECF No. 95 at 6-7), but offers no support for its claim other than a reference to BOP’s motion to limit discovery (ECF No. 90). Royer has already responded to BOP’s motion and will not repeat his arguments here, other than to note that Royer’s discovery requests are carefully crafted to seek discovery of the precise factual information that this Court identified in its March 28, 2013, opinions and orders as relevant to Royer’s claims. *See* ECF No. 94.

**3. BOP Has Failed to Establish the Applicability of the Law Enforcement Privilege.**

Royer explained in his motion that, to properly invoke the law enforcement privilege, “BOP must demonstrate: ‘(1) a formal claim of privilege by the head of the department having control over the requested information; (2) assertion of the privilege must be based on actual personal consideration by that official; and (3) the information for which the privilege is claimed must be specified, with an explanation why it properly falls within the scope of the privilege.’” ECF No. 89 at 13 (quoting *In re Sealed Case*, 856 F.2d 268, 271 (D.C. Cir. 1988)). In its opposition, BOP does not address these threshold requirements, but instead defends its invocation of the law enforcement privilege with a single conclusory sentence: “BOP is a law enforcement agency and all of its documents have a law enforcement purpose.” ECF No. 95 at 8. Because BOP has failed to meet even

the threshold requirements for asserting the law enforcement privilege, the Court should order BOP to produce the information it has withheld on that basis.

**4. BOP Does Not Defend Its Failure to Produce Its Policies Governing Terrorist Inmates.**

In his motion, Royer explained that BOP has refused to produce its inmate terrorist policy or a description of the restrictions imposed on terrorist inmates, thus precluding a decision on the merits of Royer's claim that the promulgation of the policy violated the APA's notice-and-comment rulemaking requirements. ECF No. 89 at 12. In its opposition, BOP asserts that "Plaintiff's counsel complains that Defendant has not provided policies governing CMU inmates," even though BOP has produced some materials relating to CMU designations. ECF 95 at 8. BOP misses the point. Royer alleges that he has been subjected to a terrorist inmate policy that is not coterminous with the draft CMU regulation. Because BOP does not even attempt to defend its refusal to produce information regarding its terrorist inmate policy, the Court should order BOP to produce the requested information.

**5. BOP Has Failed to Establish That It No Longer Has Any Documents Concerning an Alleged Association between Royer, Abu Zubair al Madani, and Al Qaeda or Any Documents Showing That BOP Knew That No Such Association Existed.**

BOP attempts to defend its failure to respond to Document Requests 20 and 22 by asserting that "Plaintiff's counsel is well aware [that] Defendant has redacted any language referencing 'Abu Zubair,' as a whole, from Royer's Central File, and Plaintiff's counsel has received those documents." ECF No. 95 at 8. BOP is apparently referring to a document BOP produced with its responses to interrogatories. On August 5, BOP produced simultaneously an unredacted copy of Royer's December 2006 Notice of Transfer which contains the false statement that Royer "trained and fought with 'Abu Zubair,' a Bosnian terrorist organization," and a copy of the same notice with that language redacted. *Compare* Third Kirkpatrick Decl., Exs. A & B. BOP's statement in its opposition is insufficient to establish that BOP no longer maintains any records concerning an

alleged association between Royer, Abu Zubair al Madani, and Al Qaeda or any documents showing that BOP knew that no such association existed.

First, BOP claims that all such references have been redacted from Royer's Central File, but BOP does not submit a declaration or any other evidence to support its assertion. Second, Royer still has not received two sections of his Central File; thus, Royer is unable to verify BOP's statement. Moreover, the fact that BOP produced an unredacted version of the Notice of Transfer undermines its assertion that BOP has scrubbed Royer's Central File clean of any references linking Abu Zubair and Al Qaeda. Third, BOP has not established that the responsive documents were maintained only in Royer's Central File and in no other system of records.

Finally, in its opposition, BOP recites allegations concerning Royer's association with Lashkar-e-Tabia (LET), as though such information somehow shields BOP from liability under the Privacy Act for maintaining records falsely linking Royer and the Abu Zubair unit of the Bosnian army to Al Qaeda. This Court has already ruled that it does not. Civ. No. 10-1996, ECF No. 106 at 12 n.8 (noting that "if the Privacy Act applies, [Royer's] association with LET is irrelevant. The issue is whether BOP erroneously links him to Al Qaeda."). Because BOP has failed to establish that the redacted copy of Royer's December 2006 Notice of Transfer demonstrates that BOP no longer has any records responsive to Royer's Document Requests 20 and 22, the Court should order BOP to either respond fully to the document requests, or produce competent evidence establishing that it no longer has any responsive documents, and explaining when and by whom the documents were altered or destroyed.

**6. The Court Should Order BOP to Sign and Swear to Its Interrogatory Responses.**

In his motion, Royer explained that BOP failed to comply with the requirements of Rules 33(b)(3) and (5) because BOP's responses to Royer's interrogatories were signed only by its attorneys, and interrogatories to which BOP did not object were not answered under oath. ECF

No. 89 at 17. BOP's opposition is silent on this point. Thus, the matter should be treated as conceded, and the Court should order BOP to comply with Rules 33(b)(3) and (5).

**7. BOP Does Not Dispute That Royer Is Entitled to Reasonable Expenses, Including Attorney's Fees, Incurred in Bringing His Motion to Compel.**

Pursuant to Rule 37(a)(5)(A), Royer requested that he be allowed to submit documentation of the costs and attorney's fees incurred in bringing his motion to compel if the Court grants his motion. ECF No. 89 at 18. BOP did not oppose this request. Thus, upon granting the motion to compel, the Court should also grant Royer costs and attorney's fees.

**CONCLUSION**

The Court should grant plaintiff's motion to compel discovery.

Respectfully submitted,

s/ Michael T. Kirkpatrick  
Michael T. Kirkpatrick  
DC Bar No. 486293  
Jehan A. Patterson  
DC Bar No. 1012119  
PUBLIC CITIZEN LITIGATION GROUP  
1600 20th Street NW  
Washington, DC 20009  
(202) 588-1000

Dated: November 22, 2013

*Counsel for Plaintiff*

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

_____	)	
RANDALL ROYER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 10-cv-1196 (RCL)
	)	No. 10-cv-1996 (RCL)
	)	
FEDERAL BUREAU OF PRISONS,	)	
	)	
Defendant.	)	
_____	)	

**THIRD DECLARATION OF MICHAEL T. KIRKPATRICK**

I, Michael T. Kirkpatrick, declare as follows:

1. I am counsel for plaintiff Randall Royer in the above-captioned case. I have personal knowledge of the facts stated in this declaration.
2. On August 5, 2013, defendant Federal Bureau of Prisons (BOP) produced simultaneously an unredacted copy of Royer’s December 2006 Notice of Transfer, a true and correct copy of which is attached hereto as Exhibit A, and a copy with certain language redacted, a true and correct copy of which is attached hereto as Exhibit B.
3. On September 13, 2013, Royer agreed to treat as protected any documents bearing that designation, pending resolution of issues related to a proposed protective order. A true and correct copy of the email exchange memorializing that agreement is attached as Exhibit C.
4. BOP produced documents on September 13, 2013. BOP designated every page it produced as at least “Protected,” even though a number of them are already in the public domain, including documents filed as exhibits in this case.

5. During a telephone conference on September 25, 2013, BOP's counsel indicated that BOP intended to continue to designate all documents produced in discovery in this case as "Protected" and shift the burden to Royer to apply to the Court to lift the designations.

Pursuant to 28 U.S.C. § 1746, I hereby certify under penalty of perjury that the foregoing is true and correct.

Executed in Washington, DC on November 22, 2013.

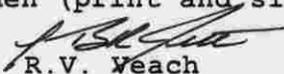
/s/ Michael T. Kirkpatrick  
Michael T. Kirkpatrick

# EXHIBIT A

## NOTICE TO INMATE OF TRANSFER TO COMMUNICATION MANAGEMENT UNIT

U.S. DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF PRISONS

Inmate Name (Last, First, Middle): Royer, Randall	Register Number: 46812-083
Warden (print and signature):  R.V. Weach	Institution:  FCC Terre Haute, Indiana

NOTICE: This notice informs you of your transfer to a Federal Bureau of Prisons (Bureau) facility that allows greater management of your communication with persons in the community through more effective monitoring of your telephone use, written correspondence, and visiting. Your communication by these methods may be limited as necessary to allow effective monitoring. Your general conditions of confinement in this unit may also be restricted as necessary to provide greater management of your communications. Your transfer to this unit, by itself, will have no effect on the length of your incarceration. You will continue to earn good-conduct sentence credit in accordance with Bureau policy.

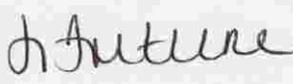
Your transfer to this facility under these conditions is based on the following specific information:

According to sentencing materials, you trained and fought with "Abu Zubair," a Bosnian terrorist organization, and you were associated with Laskar-e-Tabia, which the United States declared a foreign terrorist organization in 2001.

Based on this information, your transfer to this facility for greater communication management is necessary to the safe, secure, and orderly operation of Bureau institutions, or protection of the public. Your continued designation to this facility will be reviewed regularly by your Unit Team under circumstances providing you notice and an opportunity to be heard, in accordance with the Bureau's policy on Classification and Program Review of Inmates.

**OPPORTUNITY TO APPEAL TRANSFER DECISION** - You may appeal this transfer decision, or any conditions of your confinement, through the Bureau's Administrative Remedy Program, 28 C.F.R. §§ 542.10 through 542.19, and corresponding policy. A member of your Unit Team will provide you with the necessary form upon request.

**INSTRUCTIONS TO STAFF** - Provide the inmate a copy of this form and complete the following information documenting delivery.

Staff Member Name and Position (printed): L Fortune, Case Mgr.	Staff Member (signature): 	Date Issued: 12/14/13
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## EXHIBIT B

NOTICE TO INMATE OF TRANSFER TO COMMUNICATION MANAGEMENT UNIT

U.S. DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF PRISONS

Inmate Name (Last, First, Middle): Royer, Randall	Register Number: 46812-083
Warden (print and signature): <i>R.V. Weach</i> R.V. Weach	Institution: FCC Terre Haute, Indiana

NOTICE: This notice informs you of your transfer to a Federal Bureau of Prisons (Bureau) facility that allows greater management of your communication with persons in the community through more effective monitoring of your telephone use, written correspondence, and visiting. Your communication by these methods may be limited as necessary to allow effective monitoring. Your general conditions of confinement in this unit may also be restricted as necessary to provide greater management of your communications. Your transfer to this unit, by itself, will have no effect on the length of your incarceration. You will continue to earn good-conduct sentence credit in accordance with Bureau policy.

Your transfer to this facility under these conditions is based on the following specific information:

According to sentencing materials, [REDACTED] and you were associated with Laskar-e-Tabia, which the United States declared a foreign terrorist organization in 2001.

Based on this information, your transfer to this facility for greater communication management is necessary to the safe, secure, and orderly operation of Bureau institutions, or protection of the public. Your continued designation to this facility will be reviewed regularly by your Unit Team under circumstances providing you notice and an opportunity to be heard, in accordance with the Bureau's policy on Classification and Program Review of Inmates.

**OPPORTUNITY TO APPEAL TRANSFER DECISION** - You may appeal this transfer decision, or any conditions of your confinement, through the Bureau's Administrative Remedy Program, 28 C.F.R. §§ 542.10 through 542.19, and corresponding policy. A member of your Unit Team will provide you with the necessary form upon request.

**INSTRUCTIONS TO STAFF** - Provide the inmate a copy of this form and complete the following information documenting delivery.

Staff Member Name and Position (printed): L Fortune, Case Mgr.	Staff Member (signature): <i>L Fortune</i>	Date Issued: 12/14/16
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## EXHIBIT C

## Michael Kirkpatrick

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**From:** Michael Kirkpatrick  
**Sent:** Friday, September 13, 2013 5:41 PM  
**To:** 'Weinstein, Laurie (USADC)'; Jehan Patterson  
**Cc:** Campbell, Rhonda (USADC)  
**Subject:** RE: More documents -

Laurie,

In the interest of getting the document production moving, we agree to abide by the designations you have described in your message until any issues regarding the proposed protective order are resolved.

Thanks.

Michael Kirkpatrick  
Public Citizen Litigation Group  
1600 20<sup>th</sup> Street NW  
Washington, DC 20009  
(202) 588-1000

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**From:** Weinstein, Laurie (USADC) [<mailto:Laurie.Weinstein2@usdoj.gov>]  
**Sent:** Friday, September 13, 2013 5:32 PM  
**To:** Michael Kirkpatrick; Jehan Patterson  
**Cc:** Campbell, Rhonda (USADC)  
**Subject:** More documents -

Michael and Jehan,

We are about to send most of the central file to you but since we still don't have the protective order in place, would you agree to abide by the designation of the documents which are: "Protected" okay for both you and Mr. Royer to have but not public; "Protected- Not for Possession of Inmate" which you can review with Mr. Royer but he may not keep a copy, and "Protected- Attorneys' Eyes Only" which means you may not share the information with Mr. Royer. (This last is often things like the names of other inmates or staff that is withheld for security reasons and/or would violate BOP policy to provide to the inmate.) We are not asking you to waive your right to challenge any of the designations- just that you will abide by the designations until the protective order is in place. At that point, if you wanted to challenge any of the designations, we can address them specifically. If this is not acceptable, we will have to wait until the protective order is in place. It has been getting reviewed here for consistency with the *Aref* protective order in addition to the regular review process (which you probably remember).

With regard to the letter I owe you, I found out that a lot of the documents you have requested have already been processed by the *Aref* folks, which I think I mentioned, but they have agreed to give us access to their work (which was not a given). This should significantly shorten the time estimates that I was preparing for you as well as making it possible for us actually to provide certain things sooner. But I am waiting for a call back from them on what they have so I can compare it to what you have requested. I think there is significant overlap, although they have multiple named plaintiffs involved. I am also still waiting for several BOP staff to report on what responsive documents they have to review. So I am trying to make sure whatever I send you about what we can do is actually what we can do.

Please let me know about the Central File documents and if we agree, I can start providing them now.

Laurie

## EXHIBIT D

## Michael Kirkpatrick

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**From:** Michael Kirkpatrick  
**Sent:** Friday, September 20, 2013 4:36 PM  
**To:** laurie.weinstein2@usdoj.gov  
**Cc:** rhonda.campbell@usdoj.gov; Jehan Patterson  
**Subject:** Discovery issues in Royer v. BOP

Laurie:

Thank you for sending us portions of Mr. Royer's Central File by email last Friday, 9/13. Your first email from last Friday indicates that you sent "most of the central file." Please let us know if you have withheld any documents in the Central File that are responsive to our discovery requests.

As you know, we agreed to abide by the designations you described in your email pending resolution of any issues related to the proposed protective order. Rhonda sent us the proposed protective order on Monday, 9/16, and we have several concerns. First, we believe that the definition of Protected Information sweeps too broadly. Second, we are concerned about the limitations placed on sharing documents with the lowest "Protected" designation. Third, every single page of documents you sent last Friday was designated at least "Protected," even though many are already public documents, including documents filed as exhibits in this case. We will need to schedule a phone call to discuss these concerns, so please let us know when you are available to discuss these issues.

Further, many of the Central File documents you provided last week have information redacted without explanation or a privilege log. For examples, see CF SEC2 00004, CF SEC3 00001-00004 and 00046, CF SEC4 00020, 00022, 00029, and 00073-00078, CF SEC6 00010, 00020, 00021.

There also appear to be pages missing from the Central File documents. For example, the page that should precede CF SEC2 00013, and the pages that would complete the document one part of which appears at CF SEC6 00060.

Finally, we are still waiting for your detailed response to our deficiency letter of 8/22. As you will recall, we scheduled a meet and confer session to discuss the issues we identified. That conference was ultimately held on 9/10. During the 9/10 meeting, you told us that we could expect your detailed response by Wednesday, 9/11. Late on 9/11, you emailed us that you would need one more day but would send us your letter on Thursday, 9/12. On 9/12, you emailed us and stated that your letter would be coming with the Central File documents on 9/13. On 9/13, you informed us that you were waiting for some call backs regarding certain documents before sending us your letter. Another week has passed, we have still not received the letter, and we appear no closer to either resolving the discovery disputes or narrowing the issues that will need to be addressed in our motion to compel. Please advise when we can expect to receive your response to our deficiency letter.

Michael Kirkpatrick  
Public Citizen Litigation Group  
1600 20<sup>th</sup> Street NW  
Washington, DC 20009  
(202) 588-1000