U.S. Department of Justice

Civil Division

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Washington, DC 20530

April 24, 2014

Honorable Edward R. Korman
United States District Judge
225 Cadman Plaza East
Brooklyn, NY 11201

      Re: *Abidor, et al. v. Napolitano, et al.*, CV-10-4059 (Korman, J.) (Azrack, M.J.)

Dear Judge Korman:

      In this action, Plaintiff Pascal Abidor ("Plaintiff") has asked this Court to amend its December 31, 2013 decision to conclude that Plaintiff has standing because Plaintiff "seeks expungement of all information unlawfully obtained from his devices, including data extracted or information derived from the contents of his devices or images." ECF Doc. 38-1 (emphasis omitted). On April 21, the parties filed simultaneous briefs on the applicability of Rule 41(g) of the Federal Rules of Criminal Procedure to Plaintiff's request that the Court reconsider the standing portion of its decision. Later that day, this Court issued an order directing Defendants "to provide for [the Court's] inspection, under seal if necessary and justified, the information that they insist on keeping."

      Consistent with that order, Defendants are collecting responsive documents containing data extracted, or information derived, from the contents on Plaintiff's devices or images that Defendants would maintain after the conclusion of this litigation. As Defendants previously represented, once this litigation is concluded, Defendants will destroy any copies that they possess of Plaintiff's laptop or any other electronic devices, including all copies, if any, of data and files contained on Plaintiff's laptop or any other electronic devices. The only records that Defendants intend to retain are government records generated in connection with the search of Plaintiff's electronic devices.

      The Court's order of April 21, 2014, did not set a deadline for providing these records to the Court. Defendants are in the process of gathering these documents and hope to be able to provide them to the Court by the time of the hearing on April 25, 2014. At present, Defendants are prepared to attend the oral argument the Court has scheduled for April 25, 2014, but if the Court would prefer to hold the hearing after it receives and reviews the records it has requested, Defendants will be available at an alternate date and time.

      When these records are submitted, Defendants respectfully request that these documents be retained under seal because they are subject to privileges, including the law enforcement privilege. These records contain information relating to law enforcement operations, methods,

techniques and procedures. These records also contain computer screen transaction codes, computer transaction codes, computer function codes, and information that would reveal the results of specific law enforcement database queries. And these records contain information subject to the Privacy Act. If the Court so requests, Defendants are willing to submit one or more declarations to further explain the need to maintain these submitted records under seal, but will not be able to do so by time of the oral argument.

In addition to the records created in connection with the border search, Defendants also possess litigation and briefing materials generated as a result of the filing of this lawsuit. These documents include memoranda and other communications among attorneys within the Department of Homeland Security and with attorneys at the Department of Justice, as well as internal briefing materials regarding this litigation. These non-operational documents, some of which are protected by the attorney-client and other appropriate privileges, do not appear to be implicated by Plaintiff's motion, but in the interest of thoroughness, Defendants herein note their existence.

Respectfully submitted,

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Assistant U.S. Attorney   Assistant Branch Director

                                                    s/Marcia K. Sowles
                                                    Marcia K. Sowles
                                                    Senior Counsel
                                                    U.S. Department of Justice, Civil Division

cc: Counsel of Record
      (Via ECF)