

EXHIBIT J

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
PROJECT SOUTH, et al., : Docket #21cv8440
 : 1:21-cv-08440-ALC-BCM
 :
 Plaintiffs, :
 :
 - against - : New York, New York
 : March 3, 2022
 UNITED STATES IMMIGRATION AND :
 CUSTOMS ENFORCEMENT, et al. :
 :
 Defendants. :
 ----- : SCHEDULING CONFERENCE

PROCEEDINGS BEFORE
HONORABLE BARBARA C. MOSES
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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INDEX

E X A M I N A T I O N S

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Re-Direct</u>	<u>Re-Cross</u>
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None

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
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THE CLERK: Project South, et al. versus United States Immigration and Customs Enforcement, et al., docket number 21cv89440. Counsel, please state your appearance for the record.

MR. BAHER AZMY: Good morning, Judge Moses, Baher Azmy from the Center for Constitutional Rights. I'm joined by my colleague, Elsa Mota, who is a fellow at the CCR, and we have four people on the phone, my colleague, Ian Head who is a legal worker for the Center for Constitutional Rights, Luz Lopez, who is co-counsel from the Southern Poverty Law Center, Annmarie Dubonnet (phonetic) who's a Cameroonian activist in the Cameroonian Advocacy Network, and an intern from CCR, Sabrina Suliman.

HONORABLE BARBARA C. MOSES (THE COURT): All right, welcome, you may be seated. Addressing myself to those of you on the phone, can you hear us? Let's, Mr. Azmy, go through them one at a time so we can do a sound check here.

MR. AZMY: Ian Head.

THE COURT: Mr. Head?

MR. IAN HEAD: I can hear you great, thank you.

THE COURT: Excellent. Next.

MR. AZMY: Luz Lopez.

MS. LUZ LOPEZ: Luz Lopez and I can hear you well,

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Your Honor, I'm not hearing Mr. Azmy as well.

THE COURT: All right, pull the microphone a little closer, Mr. Azmy, and we'll do our best.

MR. AZMY: Annmarie?

MS. ANNMARIE DUBONNET: Hello, this is Annmarie Dubonnet, I hear you well, thank you.

THE COURT: Excellent, thank you.

MR. AZMY: And Sabrina?

MS. SABRINA SULIMAN: Hi, this is Sabrina Suliman, I can hear you well.

THE COURT: Excellent, now the speaking roles are going to be you and your co-counsel in court, correct?

MR. AZMY: Predominantly me, Your Honor.

THE COURT: Predominantly you, okay.

MR. AZMY: They are on the phone, Annmarie, in particular, has great expertise in the underlying events should the Court have questions that I'm not able to answer, but I'll take the predominant speaking role.

THE COURT: All right, thank you very much. And for the Government?

MR. LUCAS ISSACHAROFF: Lucas Issacharoff, United States Attorney's Office for the Government, good

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2 morning, Your Honor.

3 THE COURT: Good morning, welcome and be
4 seated. Just a housekeeping note as we commence. The
5 Covid-19 rules change every 10 minutes here in the
6 Southern District of New York as they do elsewhere.
7 Luckily, they are changing for the better at the
8 moment. Under our current set of rules, you may take
9 your mask off if you are fully vaccinated and if you
10 are speaking from the podium. You may wish to use the
11 podium, which ordinarily I would not require during a
12 scheduling conference, but you may wish to use it
13 given that that gives you the opportunity to take your
14 masks off. The rules say that the judge is also
15 permitted to take her mask off if she is speaking from
16 the bench, but I make it a practice to inquire first,
17 if anyone is uncomfortable with that raise your hand,
18 I'm used to speaking through a mask by now. All right,
19 this is a new and exciting experience for me.

20 Okay, so this is primarily a scheduling
21 conference and because this is a FOIA case the
22 schedule only will have a few items on it. I guess my
23 preliminary question from a scheduling standpoint is
24 are we even ready to enter into a schedule? Normally
25 in a case like this the schedule would say something

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2 like the Government will provide a supplemental
3 response by thus and such a date, and the parties will
4 meet and confer by this other date, and summary
5 judgment motions will be made by the following date if
6 the parties can't agree. But I see in your pre-
7 conference letter that you haven't gotten that far
8 yet, Mr. Azmy?

9 MR. AZMY: That's correct, Your Honor, and I
10 think one thing the schedule suffers from is we don't
11 yet even have a sense of how many documents may be
12 subject to processing and production. Ultimately, we
13 would want a scheduling order that would produce,
14 would require the government to produce a certain
15 number of pages per month and we would like to have
16 the production completed in three or four months and
17 then contemplate the possibility of summary judgment
18 regarding redactions if appropriate.

19 THE COURT: Well, as you point out, as a
20 predicate for an order saying 10 pages a month or
21 1,000 pages a month, you need some idea of how many
22 pages are out there. If I understand it correctly,
23 you have named as defendants, you have sought FOIA
24 responses from one, two, three, four, five agencies, most
25 within the Department of Homeland Security but also state.

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And you have received so far what from who?

MR. AZMY: A handful of documents from the Executive Office of Immigration Review.

THE COURT: And that's it, nobody else has turned over any documents?

MR. AZMY: Correct, although we have been meeting and conferring with the Government particularly regarding the State Department to refine search terms.

THE COURT: Right. And have all of the agencies turned down the request for expedited review?

MR. AZMY: Yes.

THE COURT: And what about the fee waiver, have they all granted that?

MR. AZMY: No, they have not.

THE COURT: Some have if I recall correctly.

MR. AZMY: That's right, some have and some have not. I think it's in our complaint. Yeah, I think with respect to DHS it's not clear --

THE COURT: You need to stay closer to your microphone.

MR. AZMY: Sorry, with respect to DHS it's not actually clear what has happened with the fee waiver, so we've included the fee waiver as a count in the

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complaint to preserve our entitlement to it but hopefully we can have clarity from the agencies as well.

THE COURT: I ask because usually that's not at the top of the list. Mr. Issacharoff, can you give us any clarity here?

MR. ISSACHAROFF: It is noted in the complaint, it hasn't been a focus of our discussions, I will be sure to raise it with the agencies, I don't see any basis on which to deny a fee waiver in this case.

THE COURT: Those of you who are listening on the phone, if you have the ability to mute the line at your end that would be a good idea, we are getting some background noise. I can't tell exactly who it's coming from, but it's coming from one of you, not one of us, so if you have a mute button, you should probably use it.

All right, Mr. Issacharoff, how long will it be before the Government can give even a preliminary indication of what the potential universe is out there, or is that a loaded questions?

MR. ISSACHAROFF: That is, unfortunately, a loaded question, Your Honor. So just one, I believe

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it's ultimately six agencies are the recipients of the FOIA requests, there's a separate request to the US Citizenship and Immigration Services in addition to the five agencies in the initial, I have State DHC, ICE, ELIR, BIA, and USCIS.

THE COURT: Oh, I didn't have BIA.

MR. ISSACHAROFF: They're under the authority of ELIR so I'm not sure whether you count them as separate or not but we have the same agency counsel coordinating both, but it's slightly different documents we're looking for.

THE COURT: All right, they're not separately named as a defendant agency in the complaint which is why I didn't have them on my list, but thank you for that clarification.

MR. ISSACHAROFF: So we have some information, the Department of Homeland Security has run search terms proposed by plaintiffs over custodians identified by DHS and identified 415 pages that they're now processing. BIA has identified 163 decisions involving Cameroonians in the relevant time period, those would each need to be independently processed for potentially personally identifiable information that would be redacted under exemption 6. So that would be a pretty, I don't have the

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page count of all those decisions but that would be a pretty significant volume although if they're, again, if they're relatively short it could be manageable within a couple, within a few months.

The issues that are outstanding, there are a few different -- and, sorry, one point --

THE COURT: That's two agencies, we have a few more to go.

MR. ISSACHAROFF: Yes. On USCIS there was a separate request there for statistics regarding credible fear interviews, and USCIS did produce a spreadsheet of credible fear interviews for overall and for Cameroonians in that time period. Plaintiffs have requested some additional categories of information and were discussing whether that's fairly encompassed within the original FOIA request or would need to be submitted in a new FOIA request or whether the agency will just see if it has it and go ahead and provide it to short circuit that process. But USCIS has effectively or potentially completed its production in this case.

THE COURT: What about ICE?

MR. ISSACHAROFF: ICE Is still running the search terms and there are still also, you know, the search terms are one aspect but there are also the search for policy documents. I don't believe that any of the agencies

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has completed its search for policy documents and is in a position to identify the number of pages. The State Department is also still in the process of running those search terms over identified custodians, although those were actually partially specified for the State Department. But there's also an overarching request for data that is the same, the same request for quite a lot of data is sent to each agency other than USCIS --

THE COURT: The request for the spreadsheet?

MR. ISSACHAROFF: Yes.

THE COURT: With the individuals across this way and the categories of information in vertical columns?

MR. ISSACHAROFF: Exactly.

THE COURT: I saw that and I wondered, I'll ask the Government first and then plaintiffs' counsel, under FOIA does the Government have the obligation to prepare such a document if it doesn't exist in that form in their files?

MR. ISSACHAROFF: No, Your Honor, our position is that for, you can't submit an interrogatory for data through FOIA essentially and the government has no obligation to compile records that do not exist. We are still in the process of identifying what records might exist, different agencies may have spreadsheets

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2 that are partially responsive to different portions of
3 that request. The issue there is going to be that
4 virtually, the request, in order to be able to produce
5 something responsive to the request that would be
6 useful to the plaintiffs, essentially what you would
7 have to do is take different pieces of information
8 from different databases and link them together such
9 as we have a list of deportees in one place, we can
10 use their A number to find out what happened in their
11 credible fear interview and what happened in their BIA
12 proceedings, but none of the, as best I can tell, none
13 of the information that currently exists is going to
14 contain essentially anything other than a spreadsheet
15 of personally identifiable information that would be
16 subject to redaction.

17 So if we had a manifest, for example, of
18 deportees on a particular flight, it might be useful
19 to the defendants to know how many there were on that
20 particular flight and they could count the rows, but I
21 haven't yet seen the spreadsheet but I imagine --

22 THE COURT: Useful to the plaintiffs.

23 MR. ISSACHAROFF: I'm sorry, useful to the
24 plaintiffs, but I imagine virtually every entry in
25 such a spreadsheet would be redacted.

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THE COURT: Backing up a bit because I did browse through the original FOIA requests, I can't claim to have read every line of every page of every letter, but I do see that the focus, not the sole focus but perhaps the primary focus is the removal of Cameroonians during a specific period of time, which is to say August, 2020, through the middle of January, right before the inauguration, I'm sure that's coincidental, of 2021. What, Mr. Azmy, what was the impetus for the inquiry into that particular set of deportation flights during that particular period of time and what, what do you think the volume is here?

MR. AZMY: Yeah, thank you, Your Honor, the impetus was these, these requests relate to late Trump era sets of mass deportations of Cameroonians back to Cameroon.

THE COURT: Why Cameroonians? Why Cameroon?

MR. AZMY: Oh, there, that's partly what we're trying to investigate because of the policy documents, what extent State Department and ICE authorized these mass deportations despite knowledge of a civil war and incidences of atrocities in Cameroon. The, there's also sort of a public understanding that the Trump administration was engaged in opportunistic mass

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2 deportations of black and brown migrants, and this is
3 one such opportunity. We suspect also the Trump
4 administration maybe had pressured Cameroon to accept
5 these deportees, and so we're talking about at least
6 two flights, one in October and one in November of I
7 think under 100 Cameroonians.

8 THE COURT: Under 100 in the aggregate --

9 MR. AZMY: Yeah, I think, the first flight we
10 think are 57 and second flight in November is 20 to
11 30. So that led us to believe, and then, you know,
12 there are also, there's also interest in documents
13 from ICE arising out of very credible allegations that
14 these sets of Cameroonians who were held in the Adams
15 Detention Facility in Louisiana were subject to
16 physical violence and threats and coercion to
17 withdraw, to basically exceed to deportation and
18 withdraw their immigration processing which had been
19 in place. And, you know, another sort of feature of
20 the data that we're seeking, which I understand is a
21 complicated question, is to try to get a sense of what
22 individuals who were on these flights, what their
23 immigration proceedings, in what stage their
24 immigration proceedings were they in because some were
25 in proceedings and should not have been deported.

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THE COURT: Unless they waived.

MR. AZMY: Unless they waived but we also want an understanding of whether or not they were coerced to waive.

THE COURT: All right, and you have some reason to believe, some suspicion that Cameroonians as a group were targeted for some sort of coercion campaign during these months?

MR. AZMY: Yes, in part also because a number of these Cameroonians were actively critical of detention conditions in Adams Detention Facility which is notoriously --

THE COURT: Well they weren't the only ones who were critical.

MR. AZMY: They weren't, no, but we suspect, so there is, we submit, a pattern of targeting black migrants that regrettably continues to this day with the Biden administration and Haitian immigrants, and so we suspect that the Trump administration seized an opportunity, having pressured Cameroon, to -- and there are other African migrants who were deported, as well, but --

THE COURT: But you're focusing on Cameroonians?

MR. AZMY: We are, with our sort of Cameroonian

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Advocacy Partners. And, in particular, because, you know, not unlike Haiti, but in particular in Cameroon the conditions there were awful. And the year before the Trump administration had condemned the Cameroonian government and the conditions on the ground, nevertheless, one year later and towards the end of the administration, there are enacted these mass deportations.

THE COURT: All right, I understand your theory, picking up though on the phrase mass deportations, you just gave me an estimate of approximately 100 Cameroonians?

MR. AZMY: Yes.

THE COURT: Over a period of about four or five months, that's compared to, I have no sense, whatsoever, for how many Cameroonians are A) in the United States or B) in deportation proceedings, do you have any sense of proportionality here?

MR. AZMY: I don't, Your Honor, I think, I understand the word is loaded, and I think what that reflects is, you know, an increasing reliance by ICE of filling up planes with a number of migrants and shipping them rather than having individualized (inaudible) or deportations. So maybe it's an unartful word but we are, given the context, we think

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it's appropriate. They identified a collection of deportable Cameroonians or, in some cases, not lawfully deportable Cameroonians, and expedited their removal in a hasty way.

THE COURT: All right. Again, I think I understand adequately what the theory is and what's behind the information request, tell me, as counsel have been meeting and conferring to identify custodians and search terms and hopefully scheduling goals, are you having any major fights about the appropriate scope of the FOIA requests or is it just a question of grinding through it to see what's out there? Let me hear from the Government first on that.

MR. ISSACHAROFF: I don't think we've had any significant disputes over the scope of the requests, I do, so we, there were some, and I apologize because I was on paternity leave in November and December and a colleague of mine handled the initial discussions, and there was some, that was when there were more discussions over the scope of policy documents and I think there as some difficulty there because areas of, I think areas of conflict is the term used in the FOIA request and the agencies have essentially said that's not, that's not a term of art that is of use there. And so there have been some discussions about can we look at

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2 policy documents that apply to Cameroon as well as
3 comparably, countries engaged in comparable degrees of
4 conflict.

5 And so I think we have an understanding there, but
6 that was sort of, you know, without having more information
7 on the policy documents and without our having yet
8 identified the scope of those and produced them subject to
9 redactions, that's something that could come up later on as
10 a point of contention.

11 THE COURT: All right, look, I don't want to get
12 in the way of the meet and confer process, if it's moving
13 along reasonably well, I say reasonably well in the context
14 of what I have come to understand is an invariably slow
15 government response to a FOIA request, it strikes me that
16 the best thing I can probably do here is set a conference
17 for a month or possibly two months down the road, but I'd
18 also like to put some guiderails around that. For example,
19 I would like to know in advance of the next conference when
20 you write me a joint pre-conference status letter, I would
21 like to know agency by agency from the government what
22 you've done, what areas of the FOIA request you have agreed
23 on custodians and search terms, what areas you haven't, and
24 for those where you have agreed on custodians and search
25 terms, what searches you've done and what the volume is that

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you've turned up and, of course, what the parties are going to propose for the schedule going forward. I do believe in a case like this for the Court to set deadlines and say I want you to produce this many documents by thus and such a date, because at the very least that means that if you don't you have to come and I get to yell at you and that sometimes produces a helpful result. I mean I have a little more up my sleeve than yelling at you, but that's generally the first step.

So I'm thinking early to mid-April is when I should see you next, does that make sense, Ms. Azmy?

MR. AZMY: Yes, Your Honor. I'm on vacation, you know, during the public school spring break which is I think the 14th to the 23rd, so if we could do it before that would be helpful.

THE COURT: Let me take a look. New York City schools?

MR. AZMY: Yeah.

THE COURT: Okay.

MR. AZMY: I'm traveling abroad actually starting the 13th.

THE COURT: So I think that is actually the week of the 17th for the public schools, that's the Sunday, Monday's the 18th?

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MR. AZMY: Right, well, they have Friday, I think it's Good Friday, the 15th.

THE COURT: All right, so let's look at, I'm going to give you extra time but that means you have to give me extra information.

MR. ISSACHAROFF: Your Honor, I just want to flag for the Government I will actually be out on paternity leave again for the months of April and May, and I can, I will bring on --

THE COURT: Wait, wait, you're going to be traveling on school break with children who are currently in school the week of April 18th, and you're also out the whole month with a child who doesn't exist yet?

MR. ISSACHAROFF: No, I'm sorry, plaintiffs' counsel will be traveling on spring break --

THE COURT: Oh, I'm sorry, I got confused.

MR. ISSACHAROFF: I have an existing child whose mother will be returning to work as of the beginning of April.

THE COURT: Just give me a week, counsel, when do you all want to come back?

MR. ISSACHAROFF: If you want me instead of, I mean I will have to bring on co-counsel to deal with

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the, to have the agencies keep on their production obligations, so we could do any week during April that works and it would just be co-counsel instead of myself.

MR. AZMY: That's fine, Your Honor.

THE COURT: And, Mr. Azmy, you're out jus the one week?

MR. AZMY: The 14th to the 23rd.

THE COURT: All right, Monday April 25th, 10:00?

MR. AZMY: Wonderful.

THE COURT: Monday, April 25th, 10 a.m., here in Courtroom 20A, I would like that status update letter one week prior which is to say Monday, the 18th. Now if you're all scattering to the four winds for that vacation week you can certainly get the update letter in sooner than April the 18th, just don't get it in any later. And as we discussed in the update letter, I want to hear agency by agency whether search terms and custodians have been agreed upon, yes or no. If you could add, Mr. Issacharoff, whether the fee waiver issue has been taken care of for all of the agencies, I would appreciate that. As to agencies where search terms and custodians have been agreed upon, I

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want a status update on how the search terms has gone from that point and, in particular, whether responsive documents have been identified and, if so, how many. If you need to separate that out into different categories, by all means do so, and I want a proposal for what the schedule should be on a going forward basis leading up to, if necessary, summary judgment motions.

I am required by Rule 16 to set a deadline for amendment of the pleadings and joinder of additional parties at this conference, so let me pick a date which is two weeks from today. What is today, March the 3rd, March the 17th, anybody object to that?

MR. ISSACHAROFF: No, Your Honor.

MR. AZMY: No, Your Honor.

THE COURT: I don't expect there to be any amendments, do you?

MR. AZMY: No, we don't, Your Honor.

THE COURT: All right, so that will be the amendment date and then I will see you on April the 25th and I will get a status update from you at least one week prior.

Anything further from the plaintiff?

MR. AZMY: No, thank you, Your Honor.

THE COURT: From the defendant?

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MR. ISSACHAROFF: No, Your Honor, thank you.

THE COURT: Thank you very much, we'll be
adjourned.

(Whereupon the matter is adjourned.)

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C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the United States District Court, Southern District of New York, Project South, et al. versus United States Immigration and Customs Enforcement, et al., Docket #21cv8440, was prepared using digital transcription software and is a true and accurate record of the proceedings.

Signature Carole Ludwig

Date: April 19, 2022