UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS (Boston)

No. 1:25-cv-10685-WGY

AMERICAN ASSOCIATION of UNIVERSITY PROFESSORS, et al,
Plaintiffs

vs.

MARCO RUBIO, in his official capacity as Secretary of State, et al,
Defendants

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For Hearing Before:
Judge William G. Young

Case Management Conference

United States District Court
District of Massachusetts (Boston.)
One Courthouse Way
Boston, Massachusetts 02210
Tuesday, May 6, 2025

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P R O C E E D I N G S

(Begins, 10:00 a.m.)

THE CLERK: The Court will hear Civil Case Number 25-10685, the American Association of University Professors, et al vs. Marco Rubio, et al.

THE COURT: Good morning. I'm not going to go through the routine of having everyone introduce themselves every time we may get together, but as people may change, um, today I'll ask you to do that again.

So would counsel for the plaintiffs introduce themselves and then counsel for the defense.

MS. KRISHNAN: Good morning, your Honor, Ramya Krishnan for the plaintiff, and with me at the bar table are Jameel Jaffer, Scott Wilkens, and we're from the Knight First Amendment Institute. We also have co-counsel Noam Biale and Michael Tremonte of Sher Tremonte.

THE COURT: And good morning to you all.

And for the government?

MS. YEN: Good morning, your Honor, Shawna Yen for the United States.

THE COURT: And good morning to you.

Again I have authorized internet access to this hearing. If anyone has availed themselves of the internet access, I must remind you that the rules of

court remain in full force and effect, you must keep your microphone muted, there is no taping, streaming, rebroadcast, screen shots, or other transcription of these proceedings.

This is a case-management scheduling conference. As I have traditionally held these conferences, we could go back into the lobby, sit around -- with so many of you I would do it in a jury room, and we could sit around the jury's table and have our coffee and, um, talk. Because that's what I want to do this morning, I want to talk and flag, um, as best I can, the issues that may arise.

But for some scheduling, orders, um, I'm going to share my ruminations, as I am the factfinder here as well as the case manager. I invite you to interrupt me. And you may be sure that when I'm done, I'm going to ask for questions and comments.

I don't view this -- though in the interests of transparency, I'm doing it out in open court, I have the Court Reporter here, everything's being taken down, I don't view myself -- except as scheduling, I don't view myself as making any rulings today, substantive rulings at all, and so it's not the time to argue. Though I'm not going anywhere and we may have -- we may have further argument at appropriate times, and I'm going to

have to have a final pretrial conference. So that's the -- that's what I think this case-management scheduling conference is, a conference among counsel with the Court.

Now having collapsed the further hearing for a preliminary injunction with trial on the merits and asked when plaintiffs would be ready, you said 6 weeks. That takes us to June. I have a trial -- interestingly a trial that involves MS-13, to commence on Monday the 2nd of June, it will go two weeks. I'm looking for you on Monday the 16th of June.

If that case should resolve prior to, um -- and stay close with Ms. Belmont, prior to the 16th, we'll come looking for you. I'll take witnesses out of order. It's jury-waived. I'll try to accommodate you as to timing. But we're not going to look for trial time prior to, um, June since plaintiffs said 6 weeks.

I'm going to try the case, um -- as I view it, though the case is framed significantly by the plaintiffs, but as I view it I'm going to try it in two parts. Liability, that is, have any of the President or these high public officials violated your client's First Amendment free speech rights? That's the first part.

The second part is remedy. And I'm not assuming remedy, and I'm not -- other than in the most general

way I'm not going to talk about it today, because that's the second phase.

First, plaintiffs bear the burden of proof. It's a civil case. The burden of proof is proof by a fair preponderance of the evidence. If that's established, then the Court must consider remedy, if any, because redressability here is a very real issue and one we're going to need to talk about, but not today because I would be getting -- well my remarks are going to focus really on liability here and what I think this case involves and what I think the overarching law is. Now I stand to be corrected on all of this, um, I'm trying to be both transparent and helpful.

First, I want to make some remarks about what you, as attorneys, and I, as the judicial officer, are doing here together.

Each one of you has filed an appearance in this case, so you are subject to the ethical rules of this court, and I have no question about it, I simply note it. This is a trial, I think it's a trial of some public significance, so let me say a couple of things about that.

One, if any -- any of you lawyers, or your clients indeed, and I include the government defendants as well, if there's any threats or, um, you are approached in any

way, clients or lawyers, about your representation in this case, the issue of obstruction of justice is raised. This is a trial. Trials are meant to be resolved on evidence with the cool, reflective, impartial, um, adjudication of the facts.

Also, I really respect -- and I hope the opinion I've issued on standing manifests that respect. I respect vigorous advocacy, I welcome it, I'm -- I'm fine with it. At the same time -- and you won't take this as criticism, and I don't mean it as criticism, I've praised you justly -- and Mr. Graver is not here, but I include him, for the advocacy so far, but ethically you owe the Court absolute candor in answering the Court's questions, and I'm sure I will get it.

It's not inappropriate to mention that in another case, um, government counsel, um, suffered -- apparently from what I read in the press, from absolute candor to the tribunal. I'm not going to go into that other than to say, I read the newspapers. If there's any intimation of anything like that in this case -- and I -- I find it hard to believe there could be, um, you can be very very sure that I will draw an adverse inference against that party, a severe adverse inference. I don't expect it and it's totally unacceptable.

So now, um, if you'll let me talk a bit about how I think the constitutional right to free speech, um, the framework applies in this case. These are not rulings. I'm being transparent, I'm telling you what I'm thinking going in. So it truly is a free-speech case.

Now some of the speech that will be analyzed is the speech of the President and high, um, government officials. That speech may be brutal, coarse, demeaning, um, that makes no difference, it seems to me, these officials have the right to speak. Teddy Roosevelt had it right, "The Presidency is a bully pulpit." Our President is duly-elected in a full and fair election.

And one can draw conclusions as to why people speak. Such political speech by the powerful, um, is intended to persuade, but it may also include, um, speech that quite candidly is intended to bully people, to frighten the opposition, to chill the opposition into silence. The First Amendment protects all of that. Justice Scalia remarked once that under the First Amendment a certain amount of fortitude is required." He was speaking of citizens. And that's the case. So this Court, whatever the content of pure speech by the government, by these defendants, I'm starting out believing that's absolutely protected by the First

Amendment.

Now, at the same time the President, these high-executive public officials, are routinely mocked, maligned, condemned, in equally coarse language, and that's all protected under the First Amendment. We remember that as magnificent a President as President Abraham Lincoln, he was routinely called a "gorilla" throughout his tenure. That's the First Amendment at work, it's boisterous, rambunctious. It can be very coarse, demeaning, vitriolic. We've survived for, um, now close on -- we're talking about 250 years, with that, um, approach to speech under our First Amendment.

Retribution, government retribution for speech is prohibited by the First Amendment. In fact, in the circumstances of this case, were there to be found retribution, government retribution for speech, it would go to the very center or core of the concerns of the First Amendment, because it would, um, it appears to be, um, dealing with political speech, what's most precious and must be absolutely protected under the First Amendment. And if that -- if the Court were to find that action by government officials in retribution for free speech, without more, the government -- the Court would be warranted -- and I'm not saying I would, because it's open to proof, and I'm not saying it's

presumed, but my view is the Court would be warranted in finding that such retribution chills the speech, the constitutionally-protected speech of others similarly situated. And the Court's ruling on standing as to who's similarly situated here gives some idea who, I think anyway, I would be warranted were I to make that finding, and that -- that's the key finding I think here.

So let me come out -- let me come down out of the -- these generalities and talk about what appears to be at issue in this case, at least as framed by the plaintiffs, and I don't adopt their framing, that's the -- that's the framing we've got here.

The plaintiffs claim that this is pro-Palestinian speech, certainly that's political speech, protected under the First Amendment. So also within that ambit, um, it would seem -- it would seem, I think, that speech, however coarse, hostile, um, to the State of Israel and its policies, both civil and military, um, that's political speech, that's firmly protected.

Now the Executive Orders here -- which are not challenged, and we'll get to that in a moment, speak of "violent antisemitism." Now because the government uses the word "violent," and the President uses that word, I can follow that, that's not challenged. Indeed violent

antisemitism, as I understand it, is not protected, under the First Amendment, to citizens or noncitizens alike. But we don't have statutes against hate speech. And while I personally find antisemitism repugnant, I find Islamophobia to be repugnant. I find the choice whether to believe or not believe, if that is the basis of animus toward an individual, I find that contrary to the American character, as I conceive of it. And nothing that I just said has any bearing on this case. You're entitled to know it, it's appropriate that I say it, but that's not going to be the basis for any finding.

I do think that under the First Amendment -- the First Amendment, unlike some other countries who prohibit hate speech, we don't under the First Amendment, and so antisemitism, repugnant though it may be, the speech itself is not prohibited.

Now I'm very much aware that, um, speech can become threats, threats can become assault, without more. A -- a threat with the potential that it be carried out, or inciting the carrying out of a threat, is, I think, that's an assault at common law. It's open to state and federal authorities to criminalize that. And it's certainly open to these public officials, who have been sued here, to take action against it. Even

though pure speech, certainly political speech hostile to the state of Israel, antisemitism, the government -- our government has a justified interest in promoting tolerance for all faiths, or no faith, um, that's an appropriate government goal. And just as an aside, I don't know how it's squared with this hostility to what is called "DEI." Put that aside. So enough on that.

Two other things I want to say going in that my research has surprised me -- and you're going to want to be thinking about this and I, um, candidly, um, solicit further analysis and briefing. And the first is this.

When first I drew this case and began to read the -- to read the complaint and the associated documents, I adopted a view that of course noncitizens have full rights to freedom of speech under the First Amendment. The First Amendment speaks of "persons." I went to law school when the Warren court was sitting and among its justices was Justice Black, who is probably the most famous texualist, and I haven't got the case here, but I thought it was Black as saying that "'persons' means 'persons,' and that's all persons." You didn't have to be a citizen. Now I'm not saying I've changed that view, what I'm saying is I'm not at all clear, under the jurisprudence of the Supreme Court today, that that's correct.

I find that that's assumed by a number of my colleagues in related cases that deal with free speech in the lower courts. But, um, I'm not clear that noncitizens have, um, I will call them the "full rights" to free speech that a citizen has. I'm looking for guidance. I'm looking for help.

And the second thing is, but this goes more to, um, remedy, but we live in the real world and if we ever got there, maybe we'll have to deal with it.

I see that the hearing officer in Mahmoud Khalil's case, again just reading the papers, says, "Well he's an embarrassment to the foreign policy of the United States," and when I first read that I thought, "Well that's not a standard, that exception squanders the rule," an "embarrassment to the foreign policy of the United States"? And then I look into it and of course that is a ground. And more than that, the Supreme Court has spoken to that and says I'm not, um, permitted to question that. I work for the Supreme Court. I'm sworn to give full and complete adherence and implement its rulings. And candidly -- I'm hopeful we don't get to it in this case, but I don't see how that will work if a noncitizen has the same rights as a citizen to speak about these matters.

That's really everything I have to say about the

law. Let's turn from those general things to, um, how I -- I've tried to, in sort of the law-exam issue-spotting, um, here's some of the issues as we get ready for trial. I'm not hoping that these issues arise, I'm actually hoping -- and I exhort you to, consistent with your duty to your clients, to cooperate, to make things simple and understandable, the public interests will be served, your duties as attorneys to be most easily accomplished. But, um, here's what I think are the elements of the plaintiffs' case in, um -- and then I'll get into some specifics.

The plaintiffs say, "All right, here are these Executive Orders, we don't challenge them." Here's all this rhetoric by the defendant President and the high Executive Orders which, pretty clear, goes well beyond what the Executive Orders themselves confine to, but as I see it, they have every right to say what they want to say. And then -- and this of course is where the rub comes.

Then the plaintiffs say, "Well there has been retaliation against individuals, it's not just the speech which chills those who are not in office and who are not as powerfully situated with the media organizations and the like, there is, um -- there is retribution against these individuals for their speech."

Denied. I've entered an order that we're taking it that all substantive allegations are denied by the defense, I take that very seriously, that's a factual difference. So we're going to have to figure out what happened and what is it that the plaintiffs say is actual retribution against speakers. And then -- I think of things chronologically, then the plaintiffs are going to have to prove the effects.

My ruling on standing, um, is you're going to have to have some evidence. I pointed out that a single person can be sufficient for standing for an organization, but I've got to have some evidence of the specific person.

Now that's the overview. I think those are the elements. Prove those things by a fair preponderance, then in my view there is liability. I'm not at all sure what that means, but I do think it means, um, it means a declaration of rights. Prove that, it would be my obligation so to declare.

And I have no, um -- no inflated view of my role in the firmament here, but I have every sensibility of the responsibility that devolves on me and my obligation to discharge that responsibility. So at minimum there's a declaration of rights. Whether there's any more, we'll see.

Now I'm not -- I'm anticipating an expedited narrow-focused run-up to the trial in this case. Here's what I mean. Again we're just talking. So these aren't orders, but this is what I expect, um, I'm trying to flag issues. I'm not saying this is how I'll rule, but I'm simply trying to be helpful.

So I am not expecting full discovery. We don't have much time, we only have less than a month, if the case in front of you were to fold and, um, a little more than a month if that goes to two weeks. So I don't expect depositions of certain -- I'm not going to permit any direct discovery of the President or the high executive officials that you have named and sued in their official capacity. I'm not going to require that they answer interrogatories or, um, submit themselves to discovery at all, um, they're busy and they have many other things to do besides deal with this case. The, um -- well having said that, I'm not preventing any of the high executive officials from coming forward and submitting testimony, they have every right to do all that. But I'm not requiring any of it.

It seems to be proof would follow pretty much the following form. The Executive Orders are there, I can take judicial notice of them and I'm prepared to, they're not challenged, but they set the framework.

On reflection I think -- I want to refine a little bit what I said at the initial hearing. I said to the plaintiffs, "Well you haven't got the evidence here, these -- these newspaper clippings are insufficient because maybe they're not complete." Actually I think the default is the other way. Prove -- and I'm talking plaintiffs now. Prove that these clippings are in fact authentic, then they are admissions, under the Federal Rules of Evidence, by the specific defendant. If they're not complete -- and of course the defense may raise under Article I the fact of the Rules of Evidence, that they're not complete, then it falls upon the defendants, you've got to come up with the complete interview, you've got to come up with the complete outtakes, um, whatever qualifications are not in them, the rhetoric. And I -- I don't think that's going to take as much time and, um, I don't think that's the purpose.

Then we come to this whole issue of government retribution, which is what I think the case turns on, because I don't think it would be hard to prove a chilling effect, at least as I've cast standing. And as to that, um, I really do expect the government -- plaintiffs may have to frame a request for production, but I expect every contemporaneous document that exists

up and down the chain of command within the government bureaucracy that bears on that evidences -- but don't make a request that says, "I want all the documents related to the" -- that's silly, all life is related to other life, so I routinely deny those requests. But seriously now, because I'm hopeful for complete cooperation by the government here, by these executive officials, um, as to or --

And candidly I think this is your case to try, but on the retribution issue I would expect the plaintiffs to focus on the -- well I've identified three individuals who are the ones that I read about most in the papers, and that would be Mahmoud Khalil, this Rumeysa Ozturk, and, um, Mohsen Madawi. Because since this is a case about chilling, if the government -- and the government isn't acting secretly here, one thing that can be said is the government's pretty forthright about what it's doing, so in fact part of the plaintiffs' case is that's all intended to chill, that's -- and I won't get into specifics, but I could imagine what evidence we will get to show how frightening it is.

I want to -- so I'm asking the plaintiffs -- I'm expecting a limited focus on retribution. If the plaintiffs make that limited focus on retribution, then

I expect the government to be absolutely fulsome in its disclosure of contemporaneous documents. And if I'm going to hear from people, if I'm going to hear from -- hear from people, um, as witnesses, if subpoenas go out here, the people I -- and I'm just thinking if those were the three, I'd like to hear from the lower-level person or persons who organized the actual apprehension of these three and what instructions they had and why and work back up from there.

Now understand I think the government has these high public officials -- and certainly the President of the United States, have, um, various grounds that they may serve to withhold such documents, or some of them, and I want to address those now just to try to head it off.

The government has a deliberative privilege. I must honor it and I must honor it without any cost to the defendants, that is drawing any adverse conclusions. But a deliberative privilege just doesn't throw a blanket over the lie. Let me give an example.

At some level -- and I'm making all this up just as I -- (Coughs.) At some level, um, let's assume that one or more of the defendants identified here, um, says, within the government, "We should do something about the protests at Columbia, all right, and, um, give me a memo

on that," to somebody else. Well that's privileged, it seems to me. But now saying that there's a deliberative privilege doesn't mean the government can't come forward with that, maybe that helps them. But again, it's not for me to say. And something happens within the bureaucracy, someone responds, "Here's a plan, what do you think of that?" Well that's privileged under the deliberative privilege. Meetings at which things were kicked around, um, privileged. But the memo which says "Approved," "Executed," or "Approved, except for Paragraph 6," that's not, that's the directive. The decision's made then. Government works as a bureaucracy. There's nothing wrong with a bureaucracy, a bureaucracy works.

And here, when we get down to the level of ICE enforcement agents, they work in -- and again I don't mean this to be pejorative, but in a sort of quasi-military style and they get instructions. All those instructions are not in any way privileged, and I want to know about it. What was going on? Why were they armed or masked or not or identified or not? All of that. What was going on? And why? Who set that out? Who set up this business with the Madawi in Vermont?

Now a caution here, and the caution is, um, by identifying these three -- I'm trying to deal with my

case, which is a chilling case. I imagine there are documents and documents have been produced and the like. This Court in no way is going to retry immigration proceedings or judicial proceedings in another district, I just want to know what happened. It's the what happened which I imagine the plaintiffs are going to say is the retaliation. And my identifying these three doesn't cabin the plaintiffs in, there may be others, there may be a better. But, um, the fact I haven't heard about them, well that's more evidence that, um, in the community of people who have standing, if they've heard about them, that that's what's going around. We need to know at some stage. But I've heard about these and I'm just the average newspaper-reader. Um, that's one thing, deliberative privilege.

It's possible that there's state secrets here, the government has some sort of intelligence about terrorist organizations or the like, and as to this my remarks are directed to the government. If that figures in -- in -- well you people are going to have to cooperate.

First of all, you're going to have to -- I'm looking at the plaintiffs. You're going to have to limit what you think is the retribution and let the government know, and then the government will be able to answer the question that I now put to the government,

and it's an important one.

If there's any state secrets issue here, um, I know how to handle those cases, I've handled genuine terrorist cases. I presided over the ***Richard Reid*** case, the ***David Daoud Wright*** case. I am aware that there is a -- a rather complete protocol for protecting governmental secrets in the course of litigation, and the government's going to have to do something.

You're going to have to -- assuming that's going to be a part of this case, you're going to have to get the proper officer who understands that protocol to advise this Court. I'm going to need a secret clearance for Ms. Belmont and one of my law clerks. I've been there, done that. I don't mean in any way to be blase about it, I take it very seriously. But it doesn't prevent me, as the judicial officer, from knowing what they are.

As I understand the protocol, and I have followed it before, is I'm entitled to see them. And the plaintiffs will understand they do not in any way get disclosed in the course of these civil proceedings. But I need to know. Because I very much want to go to trial, as I've described.

Lastly is the attorney-client privilege. We're all familiar with that. Understand that under Rule 502,

um -- 502 does take some of its coloration from where you sit. Here in Massachusetts, if you, um, claim attorney-client privilege, um, in the state courts, I'm entitled to draw an adverse inference from that, that you're hiding someone. Um, I've always thought that worked in federal court too. I'm not sure of it. My experience has been, over the years, that, um, by telling lawyers that, they're skittish about claiming the attorney-client privilege. And usually what the lawyers have to say -- and I mean no disrespect, I honor lawyers, but it doesn't amount to much anyway. But be aware, coming into the case, with that in mind.

Okay, let's see. I don't see -- oh, I want to -- I'm surfing back now though, it's basic to the plaintiffs' case, um, to standing. We're going to have to have somebody to establish the standing of each of the associations or entities, um, to the distance that I was willing to accept standing, and nobody's going to testify by pseudonym or anything, it's got to be an actual person. And the sooner they're disclosed, the better off we are, because the defendants, they need to know who that person or persons is.

I'm also open to -- I know I didn't go so far, but I don't think the citizen professors have standing, I think that's too far away, but that doesn't mean I

wouldn't accept one or two witnesses, um, brief, as to effects on, um, their functioning, as I've seen in the moving papers. But absent standing, um, I'm not giving advisory opinions. So, yes, I think there should be a trial, yes, I think -- and certain noncitizen professors have standing, but it's got to be proved, plaintiffs have to prove it and make disclosures so that the defendants can meet it.

Now experts. I don't see experts in this case. I'm not foreclosing any, but I don't see experts in this case. But, you know, I'm -- I think that's for argument. But if someone wanted to propose an expert, and you know what the rules are, and, um, I follow this idiosyncratic rule, that you know you have to produce an expert report. I like to say, in the usual product liability case, that the expert report has to be "to the level of exquisite detail of a patent claim." No expert's going to testify to anything that's not in the report. But actually I just don't see it.

Summary judgment prior to trial. It's open to the parties. I don't see it. The -- I can't see how the plaintiffs could get summary judgment, because they bear the burden of proof, and even if things were, um -- unless things were actually stipulated, I would accept them. But anything that wasn't stipulated, as the

factfinder, I'm open to reject it. So the fact that they don't, um, line by line oppose it, doesn't, um -- I just don't see how you can get there.

For any of the defendants to seek summary judgment because the plaintiffs' proof, as you work it up for trial, is inadequate, um, there's this real tension between the right under the First Amendment and this exception for the government to say, "Well they're not citizens and it embarrasses our foreign policy." I don't think that's likely to happen because then these defendants -- that's a really interesting constitutional issue, but it's not my job -- constitutional avoidance is my job. The Supreme Court or any higher court is not going to be happy if you just serve up an interesting constitutional issue. I'm not going to permit that. And it would have to be absolutely stipulated that, um, clearly, um, these high public officials, and the President -- or the President, were, um, violating the First Amendment rights of these people who have standing. I can't conceive that the defense defendants would want to say that, and so I don't see that we're -- we're not going to get any, um, "We don't admit it, but if it were true, it makes no difference, because we have the right to say a person can be excluded because it embarrasses our foreign policy."

You've all sat mute. No one interrupted me. I really would rather sit around a table and, um, drink coffee -- but I drink tea. But in all honesty now, I anticipate a final pretrial conference. I'm looking forward to a trial. I didn't spot anything else. You see the tenor of my concerns.

Questions or comments from the -- and not just to mechanical things. (Laughs.) And this always happens, I start and then I think of something else.

(Laughter.)

I think that -- you're going to find trouble from me if you're going to tell me this is going to take more than two weeks, I think we can get this case tried in two weeks -- and less maybe, hopefully less. It doesn't mean these are of any less importance, these are, um, of extraordinary importance, but I've got to get some focus. And then I would be helped going in -- well the first day of trial, if not even before, with requested findings and rulings, even though we haven't had the trial, um, because that gives me a basis to rule, to find and rule as soon after the close of evidence as it's possible.

This is, after all, the start of, um -- with the plaintiffs' claim that they needed a preliminary injunction for irreparable harm, I take that very very

seriously. But now I'll try to be quiet and answer questions and listen to comments. I want your help.

Yes?

MS. KRISHNAN: Thank you, your Honor. And I appreciate everything that you've shared with us. You've given us a lot to digest. I wonder if you'd give us a few minutes to --

THE COURT: I'll do better than that, I'll take a recess and we'll come back after a half an hour or maybe 20 minutes.

Does that make sense?

MS. KRISHNAN: Yes.

THE COURT: How about the defense, the same?

MS. YEN: The same, your Honor. Thank you.

THE COURT: Yes, one last thing. Come to the sidebar, and this does not need to be on the record.

(Sidebar off the record.)

THE COURT: We'll stand in recess for one half hour.

(Recess, 11:00 a.m.)

(Resumed, 11:30 a.m.)

THE COURT: Taking a half hour allowed me to think of one thing I had not said, and I'll say it now.

I could also anticipate -- and I get this from reading articles about new computer systems that allow

the government to search the social media visa holders. I've had cases where the government, quite properly says, "We're not going to disclose because it will reveal law-enforcement techniques," and that's a perfectly appropriate thing for the government to say. And the way I have always dealt with it, and the way I believe it should be dealt with, is the government, if it says that, I still get to see the data -- and again I'm making it up, say the adherence to a terrorist organization or something, "But we're going to not tell you how we know." Well I'm not going to buy that. But I will allow an ex-parte filing, and I will review the material myself in camera. That's different from the state secrets where I must, under law, absolutely preserve the state secrets, in this case it's up to me. And I'm not going to reveal anything that in fact is not generally known -- well I might make use of the data to ground a finding. That's the one additional thing that I had not said.

Yes, questions and comments? Let's start with the plaintiffs.

MS. KRISHNAN: Thank you, your Honor. I'd like to address four things.

The first is that, you know, just to say that we appreciate this Court's willingness to move quickly in

this case for the reasons your Honor described.

The second is we think this can be a short trial, we're committed to pursuing it in a narrow and focused way, as your Honor previewed. We don't think it will take longer than a week.

The third is just on timing. In some respects we'd like to move more quickly and in some respects we'd like to build in a few more weeks at the back end. There are some scheduling conflicts that a couple of our key witnesses have, they are scholars and they have been granted international travel in connection with their academic work from mid June onwards. They're the two key representatives of MESA and the AUP.

THE COURT: It's jury-waived. Not a problem.

MS. KRISHNAN: Okay.

THE COURT: I have tailored my scheduling to your requests. Now you're not the only one who has an interest, the President and the high public officials have -- but if they agree, I will move it.

Again, um, I usually take vacation in August. My vacation is not as important as this trial and I've drawn other cases of I think significance, so I want to get this done. A two-week continuance is fine, if that's what you want.

Go ahead.

MS. KRISHNAN: Thank you.

THE COURT: And you were talking, the Clerk tells me --

Does that make sense?

MS. YEN: Well, yes, sure, your Honor. Thank you so much for the guidance that you provided earlier in this hearing.

I think at this point we're waiting to hear from the plaintiffs as to how they plan to put on their case. It's really difficult for us to gauge timing until we hear more.

THE COURT: Understood.

So we interrupted you, and go ahead.

MS. KRISHNAN: Thank you.

So for those two individuals we're wondering if, um, this Court would take their testimony out of turn in the first couple of weeks of June, but to have the balance of the trial scheduled for the last couple of weeks of July.

THE COURT: The last couple of weeks of July?

MS. KRISHNAN: Or earlier in July.

THE COURT: Yeah, how about the first couple of weeks, and here's why.

MS. KRISHNAN: Yes, your Honor.

THE COURT: Just talking back and forth is fine,

but this -- win lose or draw, this needs some written, um, conclusions, even as to the first part, and I'm not thinking about a second part. But as to the first part.

So the first two weeks of July? Yes. Taking witnesses out of order? Yes. Um, again, subject to the defendants' proper concerns.

Go ahead.

MS. KRISHNAN: Thank you. I've just had a note passed to me.

The week of July 7th, if that's convenient to the Court, um, I think would work on our end. One of our co-counsel has a commitment earlier on in July.

THE COURT: Well understand that this is a civil case, I'm responsible for trying criminal cases as well. But, yes, I'll work with you. And it's jury-waived. I normally sit on trial from 9:00 in the morning until 1:00 in the afternoon and do everything else in the afternoon. If worst comes to worse, I can sit on trial in the afternoon, though I would reserve Friday afternoons to try to do everything else. That's a hard schedule. I've been able to do that. I'd rather not. But to the extent I can accommodate you, I will do it.

So that's sufficient for you?

MS. KRISHNAN: Yes, that is.

THE COURT: All right. Thank you.

MS. KRISHNAN: If I could just mention one more thing, your Honor?

THE COURT: Yes.

MS. KRISHNAN: Which is that we would like to come back to this Court in two weeks to address any issues that have surfaced in the course of discovery. It may be that the government, as you've previewed, raises various privileges. Given the schedule we welcome the Court's close supervision in this case and we would welcome a --

THE COURT: Well the Clerk will suggest a date. But let me turn to defense counsel.

All of this is agreeable to you?

MS. YEN: Well, your Honor, we don't know what the government's -- no, I'm sorry, what the plaintiffs' case will be yet, and we certainly have not seen their discovery request. So realistically I guess what I would ask the Court is if we can have a few days? I think when they are able to share with us their discovery request, quite shortly, if we could have a few days to digest those requests, then I can go back to my clients and see when we can respond to all those requests before --

THE COURT: Well I'm not hearing -- I'm not hearing anything, um, different than what they suggest.

Having heard from the plaintiffs, here's what I'm thinking.

The Clerk will suggest a status conference two weeks out.

MS. YEN: Yes.

THE COURT: The -- at that time I will be interested to know who, um, because they know, they want to take early on out of turn and about how long that's going to take, just the logistics of it, and see when I can schedule that in June or maybe towards the end of May. I'll further talk about trial, and you'll be in a better position to talk about trial, early in July.

So does that make sense?

MS. YEN: That does make sense, your Honor.

THE COURT: And in that time, um, I'm so gratified that you're talking, because I expect them to be fully forthcoming with what they want, and I'll be interested to know what your response is, so that I can be guided in how to deal with it.

And back to the plaintiffs. Have we taken care of the issues?

MS. KRISHNAN: I'm sorry, your Honor, I missed that question?

THE COURT: Are we done?

MS. KRISHNAN: Oh, yes, we are.

THE COURT: And the defense, are we done?

MS. YEN: Just one housekeeping matter, your Honor.

THE COURT: Sure.

MS. YEN: At the end of the last hearing you mentioned that the government -- that you were taking the government as having denied the substantive allegations of the complaint, which is absolutely correct, and that we did not need any more formal briefing. So we're taking up the Court's indication to not file a formal answer in this case, if that's okay?

THE COURT: It's perfectly okay.

MS. YEN: Okay.

THE COURT: I knew exactly what I was saying. This isn't the first time I've combined a preliminary injunction with trial on the merits. It's meant to be a fair but expeditious procedure. But fair.

No, I want it to be expeditious. You've denied all the substantive allegations of the complaint, and I'm very sensitive to that. I've now placed it on the record twice.

MS. YEN: Yes, thank you, your Honor.

THE COURT: All right.

The Clerk will suggest a time for a status conference. It will be in the afternoon. And it may

not be long.

THE CLERK: Tuesday, May 20th at 2:00 p.m.

THE COURT: Is that satisfactory to the plaintiffs?

(Pause.)

MS. KRISHNAN: Would Thursday the 22nd work?

THE CLERK: Yes.

MS. KRISHNAN: Thank you.

THE COURT: There's five of you now, um, sitting here, so, um, I try to accommodate.

How does defense counsel feel about that, Thursday the 22nd at 2:00 p.m.?

MS. YEN: That's fine, your Honor. Thank you.

THE COURT: (To Clerk.) Did you say 2:00?

THE CLERK: Yes.

THE COURT: Thursday the 22nd at 2:00 p.m. for a status conference.

Thank you very much. It's good to see you.

We'll stand in recess until that time.

(Ends, 11:45 a.m.)

C E R T I F I C A T E

I, RICHARD H. ROMANOW, OFFICIAL COURT REPORTER, do hereby certify that the forgoing transcript of the record is a true and accurate transcription of my stenographic notes, before Judge William G. Young, on Tuesday, May 6, 2025, to the best of my skill and ability.

/s/ Richard H. Romanow 05-08-25
_____
RICHARD H. ROMANOW Date