UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS (Boston)

No. 1:25-cv-10685-WGY
Volume 2, Page 66 to 131

AMERICAN ASSOCIATION of UNIVERSITY PROFESSORS, et al,
Plaintiffs

vs.

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

****

For Bench Trial Before:
Judge William G. Young

United States District Court
District of Massachusetts (Boston.)
One Courthouse Way
Boston, Massachusetts 02210
Friday, July 11, 2025

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P R O C E E D I N G S

(Resumed, 11:30 a.m.)

THE COURT: Mr. Wilkens, go ahead, for your 5 minutes. I have been given a document, the heading is the "White House Organization of the National Security Council and Subcommittees," January 20th, 2025.

Go ahead.

MR. WILKENS: Yes, your Honor, and I will come back to that in a little while. I want to focus --

THE COURT: In your 5 minutes?

MR. WILKENS: Yes. I want to focus my 5 minutes on Visa revocations, not applications for Visas. But with respect to Visa revocations, why the cable that we were talking about, marked as CG, is relevant to Visa revocations.

CROSS-EXAMINATION BY MR. WILKENS: (By Zoom, Continued.)

Q. So you earlier, several times today, have spoken about the Foreign Affairs Manual. Do you remember that?

A. Yes, I have referred several times to the Foreign Affairs Manual today.

Q. Okay.

MR. WILKENS: And if we can pull up Exhibit CK, please.

(On screen.)

A. Okay, I see the document. I'm going to open it and review it. I just need a minute or two.
Q. Sure. And I'm going to only ask you about one specific provision, but -- on Page 6.
A. Oh, okay.
Q. And I can tell you which number.
MS. STROKUS: Your Honor, I'm going to object again on the same grounds as the prior document.
THE COURT: I haven't got it yet. I haven't got it.
It's on Page 6?
MS. STROKUS: This document was not produced by the government in discovery, and we therefore cannot attest to its authenticity. It appears to be a leaked version.
THE COURT: Yeah, once again this is allegedly a "leaked version" of a government document.
All right, um, so you're going to have to prove authenticity, and that's fine. Go ahead.
MR. WILKENS: Your Honor, if I could? In the bottom left this shows that it's the public version of the FAM. There is a nonpublic version, but this is from the state.gov website, that's where it comes from. And it was produced by the plaintiffs in this case.
THE COURT: Yeah, all right.

MS. STROKUS: I'll withdraw my objection that it is, um -- that it is leaked. However, I continue to state that the government did not produce this document.

THE COURT: It isn't even offered yet, so let's see his question. But we'll take it as authentic.

Q. Ms. Smith, do you recognize this document?

A. Yes, this appears to be a section of 9 FAM.

Q. Okay. And you're aware that portions of the 9 FAM are publicly available, correct?

A. Yes, that is correct. There is one version online for the public that has some sections that are labeled unavailable, um, and we have the full version internally in Consular Affairs.

A. Okay. And you'll see the heading here, that this 9 FAM 403.11 deals with or covers Visa revocations, correct?

A. That is correct, 9 FAM 403.11 does cover Visa revocations.

Q. Okay. And let me ask you to turn to -- oh, um, let me first move this into evidence.

What exhibit number?

MS. STROKUS: Objection, your Honor, proper foundation. Foundation and authenticity. Again, it was not produced by the government in discovery.

THE COURT: Understood. But I thought you waived

the foundation when you agreed that it was part of the public manual, the Foreign Affairs Manual?

MS. STROKUS: Your Honor, it was not stipulated to as part of the exhibit list.

THE COURT: Isn't it marked as one of the, um, unagreed-to exhibits?

MS. STROKUS: It is not agreed to.

THE COURT: I know it's not agreed to, but it was marked for identification as a nonagreed-to exhibit, isn't that correct?

MS. STROKUS: Yes, your Honor.

THE COURT: Overruled. It may be admitted and it will be Exhibit 200 and --

MR. WILKENS: 238, your Honor.

THE COURT: 238. Thank you.

(Exhibit 238, marked.)

Q. If I could direct you, Ms. Smith, to Page 6 of Exhibit 238, and to the provision at the bottom, which is titled 9 FAM 403.11-5(b), "Prudential Revocations." Do you see that?

A. I do. I would like a minute to read through that paragraph, since you're focusing on that one.

Q. Sure.

A. (Reads.) Okay.

Q. Okay. And just looking at this paragraph, um, if

you go down to the third line, after that first word classification, there's a comma, it says, "The Department may revoke a Visa if an ineligibility or lack of entitlement is suspected when an individual would not meet requirements for admission or in other situations where warranted."

Do you see that?

A. Yes, I do see that text.

Q. Okay. And so based on that text, isn't it correct that the bases for eligibility or for admission and the reasons for ineligibility for admission are relevant to the prudential revocation of a Visa?

MS. STROKUS: Objection.

THE COURT: Overruled.

A. So, um, I'm not qualified to talk about admission because that is a Customs and Border Protection decision, they deal with inadmissibility. So would you mind repeating the question, um, focusing on what you would like me to answer, please?

Q. Yes. So with respect to the granting of Visas, um, isn't this passage indicating that with respect to the revocation of Visas, the factors that a Visa officer can look at for the, um, eligibility of a person for the granting of a Visa are relevant to Visa revocations?

MS. STROKUS: Objection.

THE COURT: No, overruled. I'll let him have that question and one more.

A. Well I think it's a complicated question to answer because Visa eligibility is covered in other sections of the FAM. This citation that you're noting on Page 6 of Exhibit CK is related to, um, revoking a Visa, and as it, you know, pretty simply states in the text, if, um -- the Department can revoke a Visa if ineligibility is um, you know, identified, um, or if an -- if the person is believed to no longer be entitled to their Visa. And so, um, I hope that answers the question.

THE COURT: All right. One more.

MR. WILKENS: Yes, your Honor.

Q. If we could turn to Exhibit CG, the cable that we were speaking about earlier, please. Oh, sorry. Yes, CG.

A. Yes, I'm bringing that up now. Just a moment. Okay. I am ready.

Q. Okay. And if we turn to a Page 6 of that exhibit, and, um, the paragraphs, um -- well beginning with 20, that describe, um, factors that can be taken into account for the eligibility or ineligibility for the granting of a Visa.

A. Okay, I'll read through Paragraphs 20 and 21. Just a moment, please.

Q. Yeah.
A. (Reads.) Okay.
Q. Am I right that these factors, identified here in this cable, can be taken into account in revoking a Visa?
MS. STROKUS: Objection, your Honor.
THE COURT: Overruled.
A. Yes, the information contained in Paragraphs 20 and 21 of Exhibit CG can be taken into account when a decision is made to revoke a Visa. Paragraphs 20 and 21 talk about if an applicant is not credible, um, if their activities are inconsistent with, um, their Visa class, um, if there are inconsistencies or derogatory information that is discovered during vetting, and so all of these factors could be relevant to a Visa revocation. And as I've stated prior, a Consular officer always looks at the totality of circumstances, um, and all facts for every case, um, before making, um, a decision to revoke a Visa.
Q. Okay.
MR. WILKENS: Your Honor, I would move this exhibit into evidence.
THE COURT: Do you object?
MS. STROKUS: Objection, your Honor.
THE COURT: Overruled. It may be admitted,

Exhibit 239.

(Exhibit 239, marked.)

THE COURT: Now do you have any further questions for this witness?

MR. WILKENS: I do not, your Honor.

THE COURT: I take it you do not.

(Laughter.)

THE COURT: And counsel for the government, any further questions for the witness?

MS. STROKUS: No, your Honor, and cognizant of the Court's time.

THE COURT: Thank you. And thank you, Ms. Smith.

Very well. Call your next witness.

MS. SANTORA: Your Honor, the government calls John Armstrong.

MR. BIALE: And, your Honor, before this witness comes in, and this is just the issue I raised at the beginning --

THE COURT: Yes, and I'll hear you.

MR. BIALE: With respect to -- you know we have a dispute about what documents can be used. Our plan is to cross-examine this witness, Ms. Conlon will cross-examine this witness using some of the documents that were initially produced in-camera --

THE COURT: I understand. I'm not surprised.

MR. BIALE: I just want to make that clear, so we don't have a fight about it in the middle of the testimony.

THE COURT: Well they can object, but I intend, having given the documents to you, if they pertain to his cross-examination, they may use them.

MR. BIALE: Thank you, Judge.

THE COURT: Mr. Armstrong may be called.

(Witness takes the stand.)

(JOHN ARMSTRONG, sworn.)

THE CLERK: And please state your full name, spelling your last name for the record.

THE WITNESS: John Armstrong, A-R-M-S-T-R-O-N-G.

THE COURT: And if I may start, um, welcome. I had originally thought we were going to hear your testimony remotely because you were or are on your way to the United Kingdom?

THE WITNESS: Um, no, that is not me, sir. I just run things in Washington. Although we do have official travel from time to time.

THE COURT: Okay, I am mistaken. But you are welcome.

THE WITNESS: Thank you, sir.

THE COURT: Ms. Santora, go right ahead.

MS. SANTORA: Thank you, your Honor.

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JOHN ARMSTRONG

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DIRECT EXAMINATION BY MS. SANTORA:

Q. Hello, Mr. Armstrong, thank you for being here today.

Can you tell us your current role at the State Department?

A. My current position is Senior Bureau Official in the Bureau of Consular Affairs.

Q. And how long have you been in that role?

A. I assumed it on the 27th of February of this year.

Q. How long have you worked for the State Department?

A. It's, um, over 30 years. It will be 31 in October.

Q. So when did you first start working for the State Department, in what year?

A. 1994, in October, I believe. It was October 14th.

Q. And in what capacity?

A. When I began, I started as a Foreign Service Officer. I continue to be one today.

Q. Can you briefly tell the Court about your assignments starting with your first and going up

through your current role?

A. I'd be happy to. Initially when I came in in October of 1994, I was assigned, um, following basic training, to take consular training, and then Rumanian language, and then sent to Rumania for 2 years as a Vice Consul where I ran the nonimmigrant Visa section and the fraud prevention section.

After Rumania, I went to Warsaw Poland where I served as the trade officer on -- working on trade issues for two years.

And then from there, I went back to Washington D.C. where I served as the Belarus desk officer in the Office of Western Slavic and Moldovan Affairs.

Following that position -- just a moment, I have to think. I went back to Warsaw for four years, where I was a political officer and I was also the labor officer.

Following that time in Warsaw, I went to the Russia desk, the Office of Russia Affairs, where I was a Senior Political Officer for two years.

After that I studied Ukrainian for a year and then went to Kyiv Ukraine to our embassy where I was the Deputy Consul General.

Following Kyiv, I went to -- my next posting was in the Bahamas, at Embassy Nassau, where I was the

Consular Section Chief, which I did for a year, and then I was Acting Deputy Chief Admission, the Number 2 position, for two years.

Following that, I returned to Washington D.C. where I was the Director of the Washington Passport Agency for three years.

After that, I went to Embassy Warsaw in Poland where I was the Economic Counselor running the Economics Section for three years.

After that, in 2020, during covid, I returned to Washington and was the Director of the Office of Eastern European Affairs which deals with Ukraine, Belarus, and Molodova.

Following that position, where I was for two years, I was a Senior Advisor in the Office of Sanction Coordination, also at the main building of the State Department.

Following that, I studied Spanish and went to Lima, Peru, where I was Consul General, and I served until returning to Washington in the middle of February of this year, and I was briefly the Deputy Assistant Secretary for Overseas Citizen Services.

And then I assumed my current position on February 27th of this year.

Q. And are you -- is there anyone senior -- can you

remind the Court of what is your current position?
A. My current position is Senior Bureau Official in the Bureau of Consular Affairs. I'm the top official in the Bureau of Consular Affairs.
Q. And who is senior to you at the State Department?
A. The Undersecretary for Management.
Q. Anyone else senior to you at the State Department?
A. Um, yes. Well there's the two Deputy Secretaries, the Deputy Secretary, and then the Deputy Secretary for Management and Resources. And above them is the Secretary of State.
Q. What does the Bureau of Consular Affairs do?
A. Basically we have three missions. First of all, we're responsible for passport issuance throughout the United States at 29 passport bureaus and centers. It's approximately 25 million passport products a year.

Secondly, we are in charge of, um, processing Visas at Foreign Missions -- our Foreign Missions abroad or diplomatic posts, that's over 200 of them, and there's approximately 14 million applications a year.

And then finally, we are responsible for the welfare of American citizens abroad and providing them services they need. If they're in need, we try to help them. Overall we have a staff of approximately 13,000 and a budget of $5.5 billion.

Q. What are your responsibilities as a Senior Official in the Bureau of Consular Affairs?
A. I am responsible for the operations of the Bureau. The buck stops with me.
Q. And that includes being responsible for the Visa section that you mentioned?
A. Yes, ma'am.
Q. Are you aware of the policies applicable to Visas?
A. Yes.
Q. Would you say that you're aware of all policies applicable to Visas?
A. In general, yes, I would say that.
Q. Would you say it would be possible for a policy related to Visas to exist without you knowing about it?
MS. CONLON: Objection, your Honor.
THE COURT: She may have it in that form.
A. I would be very surprised if there was such a policy. I have a good hand on the pulse of what's done by the Visa office, your Honor.
Q. Does the Bureau of Consular Affairs get involved in issuance of Visas, is that correct?
A. Could you repeat the question please?
Q. Is the Bureau of Consular Affairs involved in the issuance of Visas?
A. Yes, it is, we are responsible for that overseas.

Q. And are there different types of Visas?
A. Yes, there are. There are two basic types, or the nonimmigrant Visa and the immigrant Visa.
Q. What is a nonimmigrant Visa?
A. Nonimmigrant Visas are for people who are coming for temporary purposes in the United States and will be leaving and returning -- leaving the United States for another destination, students, tourists, um, people coming to work, um, journalists.
Q. And how is an immigrant Visa different from that?
A. Immigrant Visas are for people who are coming to remain in the United States, permanently.
Q. Are you familiar with the allegations in this case?
A. I have some knowledge, but I haven't ever seen all of them.
Q. Is it fair to say, based on your knowledge, that this case does not involve immigrant Visa holders?
A. Yes.
Q. So when I ask you questions about Visa holders, if I don't specify, I'm referring to nonimmigrant Visa holders. Okay?
A. I understand.
Q. I believe you mentioned this, but what type of Visa, nonimmigrant or immigrant, is a student Visa?

A. Student Visas are nonimmigrant Visas, they're Fs, Ms, and they can be Exchange Visitors, which are Js.
Q. What standards apply to the issuance of nonimmigrant Visas?
A. Could you clarify the question?
Q. What legal authorities apply to the issuance of nonimmigrant Visas?
A. The applicant for the Visa has to, um, show that they are qualified for that Visa. In some cases they need a petition. In others they need forms, like students will need a form from an accredited university. Students also, as do tourists, have to overcome Section 214(b) of the Immigration and Nationality Act, which is an intending immigrant. They have to show that they do not intend to remain in the United States to the satisfaction of a Consul Officer at an interview. The law, which we all follow very strictly, places the burden of proof on the applicant, on the alien. If our Consul Officer is not convinced, the Consul Officer -- of that, they must refuse that application.
Q. Does the Bureau of Consular Affairs deal with the revocations of nonimmigrant Visas?
A. Yes, we do. Yes. And it has for years. It's in the Immigration and Nationality Act, I believe it's Section 221(i).

Q. And what standards apply -- I believe you just mentioned one, what legal authorities apply to Visa revocations?

A. The key legal authority for a revocation is Section 221(i) of the Immigration and Nationality Act, which if I remember correctly, your Honor, gives the Secretary of State and any Consular Officer the ability to revoke a Visa at any time for any reason. We treat this seriously. And of course some sort of evidence is needed. We don't go do this on a whim. We review each case individually and carefully.

Q. Does the Bureau of Consular Affairs make removability determinations?

A. I'm sorry?

THE COURT: I didn't catch it either. Would you ask the question again.

MS. SANTORA: Sure, I'll rephrase it a little bit.

Q. Does the State Department make removability determinations?

THE COURT: Removability determinations.

A. Yes, the Secretary of State can make those determinations, I believe it's, um -- it's also in the INA. We call it 4(c) is the section. But it's a longer section citation.

Q. Would that be INA Section 237(a)(4)(c)?

A. I believe that's it, yes.
Q. Okay. Are you familiar with the State Department's process and protocols for, um, the revocations of Visas, which we talked about a few questions ago?
A. Yes, I am.
Q. And are you familiar with the State Department's process and protocols for making determinations under 237(a)(4)(c), the statute you just referenced?
A. Yes, ma'am, I am.
Q. How are you familiar with those, um, processes and protocols?
A. It's part of my job. I have to know about these things in order to lead the Bureau of Consular Affairs.
Q. Have you prepared a chart to assist the Court with explaining how the process and protocol works?
A. My staff and I have reviewed the chart, yes.
Q. Okay.
MS. SANTORA: Your Honor, I would like to identify Exhibit H, or mark for identification Exhibit HN. This is the chart that Mr. Armstrong referred to.
THE COURT: Um, do I have it?
MS. SANTORA: It should be in a binder.
THE COURT: Yes, well I have -- yes, I do have it. Yes. HN. And I will permit this chalk to be used as --

I will permit this chart to be used as a chalk.

Go ahead.

MS. SANTORA: Thank you.

Q. Mr. Armstrong, I think we're going to pull the chart up on the screen.

(Technical difficulties.)

MS. SANTORA: Your Honor, may I approach? I can also give him a paper copy.

THE COURT: He can use mine. But of course you may.

THE WITNESS: I'll take this one, sir, so you can also see it.

THE COURT: Thank you.

(Hands up.)

THE COURT: A question I have, and I've seen these initials come up. I'm roughly familiar with this chart. But do you see, um, the Bureau of Consular Affairs is there roughly in the center. And then to the right, there's two little boxes, "NIV" and "LPR." What do those initials stand for?

THE WITNESS: Your Honor, "NIV" is "Nonimmigrant Visa," and "LPR" is "Legal Permanent Residence."

THE COURT: Yes, understood.

Proceed.

THE WITNESS: No problem.

Q. Okay, it looks like we might not be able to pull the chart up on the screen, so, um -- um, okay.

Mr. Armstrong, is this the chart that you were just referring to when I asked if you had prepared a chart?

A. Yes, it is.

Q. Okay. Based on your experience at the Bureau of Consular Affairs, does the chart accurately represent the State Department's process and protocol for Visa revocations and foreign policy determinations under INA Section 237(a)(4)(c)?

A. It accurately represents that in the case of referrals from the Department of Homeland Security.

Q. Okay. So does the State Department rely on information when it is revoking a nonimmigrant Visa or making a foreign policy determination under INA Section 237(a)(4)(c)?

A. I'm sorry, I don't understand the question. Do we rely on information? From various sources. We do rely on information from various sources, including it may come from the Department of Homeland Security, it may come from sources that we have, it may come from law enforcement, diplomatic sources abroad, the media. So a variety of sources. Yes, we do actually look at information.

Q. Okay, let's focus on information that you received from, you mentioned, the Department of Homeland Security. Do you see them referenced in the chart?
A. Yes, on the left-hand side, the big blue box.
Q. Okay. And how does information come, if it does, to the Bureau of Consular Affairs from the Department of Homeland Security?
A. From my experience it comes in the form of an e-mail, which serves as a cover letter, and then an attachment with additional information about the case.
Q. And is that attachment referred to as a "referral"?
A. Yes.
Q. And when the Bureau of Consular Affairs receives the information, um, what do they first determine about the individual?
A. Well the first thing they do is confirm receipt to DHS, that we have actually received this, your Honor, and that we are acting on it. After that, um, the -- as related to your Honor's question, the question is whether it's a nonimmigrant Visa or whether it's a legal permanent resident. Nonimmigrant Visas go for processing and review to the Visa office. The legal permanent residents take a different track and go up to the Secretary of State if we find that the evidence is

sufficient to take action.

Q. Okay, let's stick with the nonimmigrant Visas first. You said they go to the Visa office. What does the Visa office then do with the referral after they receive it?

A. The Visa office examines the information, seeing if it's serious enough to enact a revocation. It will also consult with, um, lawyers at the State Department who work for the Legal Advisor, they don't work for Consul Affairs directly, but there are lawyers assigned to look at it from a legal point of view.

After that, if the Visa office finds it's sufficient, they'll discuss it with whoever received the, um, referral from DHS, and if that person agrees, then it will go into the revocation process and the Visa will be revoked. If not, um, then -- well actually in either case, whether it's revoked or whether it's not, there'll be a communication back to DHS telling DHS what was done in that case. Or there's one other possibility. If I may?

Q. Sure.

A. There may be a request for more information.

Q. And who would they request more information from?

A. They would write back to whoever in DHS had sent the referral.

Q. Okay. Let's talk now about the other part of the chart, relating to this "LPR" on the chart. That's a "Lawful Permanent Resident"?
A. Yes.
Q. And how is a lawful permanent resident different from a nonimmigrant Visa?
A. Um, first of all, we cannot revoke the status of a lawful permanent resident. Um, the Secretary of State can have a finding that that person is removable, but we cannot do that in the -- in the Bureau of Consular Affairs. So what happens in that case, after an analysis of information -- and this is done in each case individually, an action memo, um, sometimes called a "decision memo," is sent to the Secretary of State, and the Secretary of State will have a choice then, and from my experience in most cases there are three choices. One, agree and find the person removable, usually under, um, 4(c), as we talked about. Um, disagree and find the person not removable. Or discuss, in other words ask for more information.
Q. And in the event that the Secretary of State finds the person removable, um, what happens after that?
A. Um, the, um, Department of Homeland Security is informed of this, and this usually take two routes. There will be an informal notification back to the

person who sent the original referral, as a courtesy, but the official notification goes from the Secretary of State to, um, the DHS secretary, because the DHS secretary is his interlocutor.

Q. And I believe you also mentioned that it's possible for the Secretary of State to determine that the person is not removable, correct?

A. That's correct. And in which case the Bureau of Consular Affairs would contact the person in DHS who made the referral and say the Secretary has found -- has disagreed and does not fine the person removable.

Q. Okay, I want to go back to --

THE COURT: Just to get a feel for this.

THE WITNESS: Yes, sir.

THE COURT: With respect to, um, legal permanent residence.

THE WITNESS: Yes, sir.

THE COURT: Under the statute, this is a determination that is, um, by statute, given to the Secretary, that officer in the government, that cabinet Secretary himself or herself?

THE WITNESS: Yes.

THE COURT: And then as I'm listening to you, pretty much as a matter of courtesy, since it's a Cabinet Secretary who's made that determination, the

communication as to the result, goes to the Cabinet Secretary in the Department of Homeland Security, and in today's world, she, then takes action, because action falls within the Department of Homeland Security.

Is that right?

THE WITNESS: That is correct, sir. The actual formal -- Homeland Security will not take action in those cases until they receive the official notification Secretary to Secretary. What we would send to Consular Affairs is a courtesy that, yes, the Secretary has made this finding. Then the official notification will go from Executive Secretary to Executive Secretary.

THE COURT: Thank you.

THE WITNESS: Certainly.

Q. I want to go back, for a second, to nonimmigrant Visas.

Does the Visa office independently analyze the referral that it received from DHS?

A. Yes, most definitely, that's our job. We're not a rubber stamp for DHS.

Q. Do all referrals of nonimmigrant Visa holders from DHS that go to the Visa office result in Visa revocations?

A. No.

Q. Do you have any idea of the percentage that does

result in Visa revocations?
A. Based on my time in my current position, I would say approximately 25 to 30 percent are sent back without action be taken, either to ask for more information or we just find the information not significant enough to take action.
Q. Okay. And you've been in your position since February of 2025, correct?
A. Yes, ma'am.
Q. And has the Bureau of Consular Affairs handled DHS referrals consistently with this chart that we've been discussing since that time?
A. Yes, and it's my understanding even before. We do not create any policy or procedure here.
MS. CONLON: Objection, move to strike as nonresponsive.
THE COURT: Overruled. That may stand.
Q. Does this chart depict how the Bureau of Consular Affairs handles all referrals from DHS?
A. Yes.
Q. Does it accurately depict how the Bureau of Consular Affairs would handle a DHS referral involving protesters?
A. Yes, all referrals from DHS.
Q. Okay. So the chart focuses on a referral from

DHS, but you mentioned that the State Department, in revoking Visas and, um, making removability determinations, can rely on information from other sources, correct?

A. That is correct.

Q. And, um, what are those other sources?

A. For example, the media. There can be derogatory information that comes up after a Visa was issued, some action the Visa holder took or is planning to take, and if it's significant enough, that could lead to a, um, revocation of the Visa. Information received from law enforcement. Information that happens that is, um, sent by the public. Poison pen letters.

I, in fact, know of a case like this, when I was in Ukraine, of a security guard who worked at the embassy, who supposedly was going as a tourist, but one of his colleagues revealed his true intention, which was to remain in the United States. And we revoked that Visa and fired him.

Q. And so would you say that some of the information, um, is internal information to the State Department?

A. It can be, yes.

Q. And in the case of information that it not based on a referral, um, say we're talking about a nonimmigrant Visa holder, so it goes to the Visa office

and the Visa office determines that the Visa should not be revoked. In those circumstances, again where there's no referral, does the Visa office tell DHS about the Visa revocation?

A. No, DHS is not involved in this.

Q. Okay.

(Pause.)

MS. SANTORA: Your Honor, I move to introduce into evidence this chart.

MS. CONLON: Your Honor, we understand it doesn't aid or assist with testimony, so we object for it coming in for sort of its truth, but to the extent that it's a demonstrative aid, I don't even know that it needs to be admitted.

THE COURT: I think that's a proper characterization. If he says this is accurate and it's been accurate throughout his tenure, as I understand it, it will be part of the record, but as HN, a chalk. And the difference is, as factfinder, I have to decide whether to believe, disbelieve, or believe in part any witness's testimony.

Here the chart depends on my belief of this witness's testimony, it doesn't stand alone. They created it for this trial. And I accept it in that fashion. I mean no disrespect, that's just my

responsibility. Actually I find this helpful and I will be referring to it. But it was created for the witness, for his testimony, and so what he has to say about it really governs.

Go ahead.

MS. SANTORA: Thank you, your Honor.

Q. Mr. Armstrong, I'm going to show you a document that is an exhibit in this case, this is Exhibit 70.

MS. SANTORA: Your Honor, may I approach to hand this document to the witness?

THE COURT: Of course.

(Hands to witness.)

THE WITNESS: Thank you.

May I familiarize myself with it?

THE COURT: Of course.

THE WITNESS: Thank you, sir.

A. (Reads.) I have finished my review.

Q. Okay, thank you. Have you seen this document before?

A. Yes.

Q. And what is it?

A. It's an Executive Order from the President.

Q. What is the title?

A. "Protecting the United States from Foreign Terrorists and other National Security and Public Safety

Threats."
Q. In what capacity have you seen it?
A. In my official capacity as the top official in the Bureau of Consular Affairs.
Q. What is the purpose of the document?
A. The purpose is to protect the United States and the American people from foreign threats.
Q. Have you relied on this document to do your job?
A. Yes, we have referred to this document in doing my job, as have other people in the Bureau of Consular Affairs, and not only.
Q. How would you use it with respect to doing your job?
A. Well I think the key thing is, um, to summarize this document, is it instructs all of us to use existing procedures to maximize the security of the American people.
Q. Does it require anything of the State Department?
A. It requires quite a few things of the State Department. They're enumerated. Again, to summarize, it's increasing our vigilance and to make sure we're using all existing mechanisms, procedures, and policies that we have to ensure the security of the American people.
Q. Did it create new legal authorities related to the

State Department's work?
A. To my knowledge, no.
Q. Did the State Department do anything in response to the Executive Order?
A. Yes, we take our orders from the President, whoever that is, and we increase our use of the -- it reviewed actually what we were doing, and that review is actually ongoing.
Q. And can you explain what exactly, if anything, the State Department did in response to this Executive Order?
A. Well one thing I can actually say, and it's -- it's a bit of "Inside Baseball," your Honor, if I may? Um, there's -- in our nonimmigrant Visa system, there are messages that come when derogatory information appears, and a lot of our posts are very -- have a lot of work to do, a lot of people to interview, they have backlogs, and they don't always review those messages in a timely manner and act upon them. We noted this and we emphasized to our diplomats overseas that they need to review this information, and when justified, to revoke Visas, not to let it build up. It needs to be kept up. Because people -- if there is negative information and they have a Visa and it should be revoked, we need to do that, and not delay. I think this was talked about,

some people have called it the "Catch and Revoke Policy."

Q. I'd like to show you -- okay, I'd like to show you the document, um, you just referred to.

MS. SANTORA: Your Honor, may I approach?

THE COURT: You may.

MS. SANTORA: This is Exhibit 21 for the record, and I'm going to show it to the witness.

(Hands to witness.)

THE WITNESS: Thank you.

THE WITNESS: May I review it?

THE COURT: Of course.

THE WITNESS: Thank you.

A. (Reads.) I've completed my review.

Q. Okay. Is this the document you were referring to?

A. Yes.

Q. And can you explain what it is?

A. This is an instruction, a guidance to our diplomatic posts abroad, over 200 posts. In particular you can see that because it says "All diplomatic and consular posts collective," it's known as an "all-back." It was sent out talking about this very thing I spoke about, about the need to review systems messages on a regular timely basis, and to take action where warranted.

Q. Okay. And is this document implementing the Executive Order we were just talking about, Executive Order 14161?
A. Yes, it even refers to it in the second paragraph.
Q. And how does it implement the Executive Order?
A. By increasing the emphasis on and the vigilance in reviewing systems messages which carry -- can carry significant negative information about Visa holders, and then when justified, revoking these Visas, which is done at the diplomatic posts.
Q. Does it provide new legal authority for revoking Visas?
A. No, not -- no, it's using the 221(i).
Q. So in revoking Visas under this guidance, the State Department is relying on existing legal authority, correct?
A. Yes, I believe so. I believe 221(i) has been in the INA since the beginning, 70 years ago.
Q. Okay. Are you aware of anything else that the State Department has done in response to Executive Order 14161?
A. We've issued guidance to the field, again emphasizing the importance of security and the importance of reviews, for example the importance of 214(b) has been an issue that we've raised with the

field. Again, these are using existing policies and authorities, it's nothing new in that regard.

Q. I'd like to show you another document.

MS. SANTORA: This has been entered into evidence as Exhibit 53 in this case, your Honor.

THE COURT: Say again the document number?

MS. SANTORA: Exhibit 53.

THE COURT: 53.

MS. SANTORA: No, I'm sorry, your Honor, it actually is Exhibit 64.

THE COURT: 64.

MS. SANTORA: May I approach to give a copy of this document --

THE COURT: You may.

(Hands to witness.)

THE WITNESS: Thank you.

May I review it, your Honor?

THE COURT: Of course.

THE WITNESS: Thank you, sir.

A. (Reads.) I've completed my review.

Q. Okay. Do you recognize that document?

A. Could you repeat the question please?

Q. Do you recognize that document?

A. I do recognize this document.

Q. What is it?

A. It is a guidance to the field. As discussed previously, it is an all-back, it's sent out to all our posts abroad.
Q. And, um, what is the guidance related to?
A. It's related to, um, social media and online screening of students and exchange visitors, the F, M, and J Visa classes.
Q. And is it guidance that was issued in response to the Executive Order we were just talking about?
A. Yes.
Q. And how does it implement that Executive Order?
A. It increases the vetting of, um, a class of Visa applicants.
Q. Why does it do that?
A. In order to improve the security of the United States.
Q. What class of Visa applicants does it increase vetting to?
A. Students and exchange visitors.
Q. And that's social media vetting, correct?
A. Yes.
Q. And why does it focus on students and exchange visitors?
A. Well I can think of a couple of reasons. First of all, the social media is -- when the INA was written --

and in the past this hasn't been considered, it didn't exist, but it's a gold mine of information. And also, um, people who are younger, students, and most students and exchange visitors are -- I'm 60 and I don't use social media much, but they do use social media a lot. So they're a group that uses all that information and those tools. And so it makes it available to us.

Q. Does it create new legal authority, um, for vetting through social media chats?

MS. CONLON: Objection, your Honor, these questions about legal authority seem to call for a legal conclusion.

THE COURT: No, I want to hear his view.

You may answer, sir.

THE WITNESS: Thank you, your Honor.

A. No, it doesn't. It talks about Section 214(b) of the Immigration and Nationality Act, and also, um, Section 212(a)(3)(b), which is, um, support for terrorist organizations. These are not new.

Q. And how do those sections that you just referred to relate to vetting?

A. In the vetting one could find information that would lead to a 214(b) refusal under an intending immigrant, for example, if someone talks about their previous unauthorized work in the United States. Or it

could lead to a finding on support for a terrorist organization, someone brags about how they've given money to Hamas.

Q. And both of those would bear on someone's eligibility for a Visa?

A. Most definitely.

Q. Are you aware of anything else that, um, the Department of State did in response to Executive Order 14161?

A. There were, um -- there was a review, um, at least a partial review of 3(c) policies, and, um, that's a foreign policy ground for refusal under the INA, um, and there were some that the Secretary authorized to be added. One, for example, for, um, government officials who assist in a legal migration to the United States.

Q. You said 3(c) policies. Are you referring to a section of the INA when you say that?

A. Yes, ma'am.

Q. What section is that?

A. I don't know the whole number, we call it "3(c)." It's the foreign policy section. Ineligibility on foreign policy grounds.

Q. Okay.

(Pause.)

MS. SANTORA: Your Honor, I'd like to mark for

identification Exhibit JJ, the statute that the witness just referred to.

THE COURT: The statute?

MS. SANTORA: Yes.

THE COURT: I see no reason for adding statutes in.

MS. SANTORA: Okay.

THE COURT: A citation to them is sufficient.

MS. SANTORA: Okay. May I approach to show the witness a copy of the statute to refresh his recollection?

THE COURT: Of course.

(Approaches, hands document to witness.)

THE WITNESS: Thank you.

May I review it, your Honor?

THE COURT: Well it's pretty thick, I don't even know what she's going to ask here. But of course take a look at it.

THE WITNESS: May I ask which part you're referring to? It is rather thick.

MS. SANTORA: Yes, I was referring to the section you referenced, which I believe is Section (a)3(c), it's INA 312 of 1182, the statute.

A. (Looks.) Is this, ma'am, the section that says "See foreign policy"?

Q. Yes.
A. Yes, I believe that is it.
Q. Okay. Can you take a moment to review it.
A. (Looks.) I've reviewed it.
MS. SANTORA: If you don't mind, may I approach also to get it back?
(Approaches witness to get document back.)
Q. So the statute you just reviewed, Mr. Armstrong, was that the statute you were referring to when you referred to "3(c) policies"?
A. Yes.
Q. And do 3(c) policies apply to, um, Visa holders or to Visa applicants?
A. It could be both actually, um, if a Visa holder was outside the United States. But also an applicant could be found ineligible under 3(c).
Q. Okay. So 3(c) policies do not apply to Visa holders in the United States?
A. No. That's my understanding.
Q. Okay. I'd like to show you another document.
MS. SANTORA: If I could approach? This has been marked as Exhibit 71 in this case.
(Approaches witness with document.)
THE WITNESS: Thank you.
A. (Looks.) I'm familiar with this document.

Q. Okay, what is the document?
A. It's an Executive Order from the President of the United States.
Q. And what is it titled?
A. "Additional Measures to Combat Antisemitism."
Q. And how are you familiar with that document? In what capacity have you seen that document before?
A. In carrying out my job.
Q. And how have you relied on it to do your job?
A. It makes clear that the official policy of the United States is to combat antisemitism both at home and abroad.
Q. Did the State Department rely on this document to revoke Visas?
A. We would rely on the Immigration and Nationality Act. It doesn't give us any authority here, it instructs us and emphasizes. It's a document that informs what we're doing, yes, but not as a part of the law that we would use to revoke a Visa.
Q. Okay. Did the document change the State Department's authority to revoke Visas?
A. It's my understanding it didn't.
Q. Did the document change the State Department's process and protocols for revoking Visas?
A. No.

Q. Did the document change the State Department's authority to make removability determinations?
A. No.
Q. Did the document change the State Department's process and protocols for making removability determinations?
A. No.
Q. I'd like to show you a few more documents.
MS. SANTORA: Your Honor, the documents that I'm intending to show the witness are not privileged but have been marked as confidential, um, based on the protective order signed between the parties. We would ask that the courtroom be cleared of the public for the purposes of putting on this document.
THE COURT: I'm not going to clear the courtroom unless I see what the documents are.
MS. CONLON: What documents are we talking about?
MS. SANTORA: So they are -- the documents will be Exhibits 8, 12, 16, 19, and --
THE COURT: 8.
MS. SANTORA: 8. 12.
THE COURT: Wait a minute.
MS. CONLON: Sorry, are these the documents from the certified administrative record in this case, are those all from that record?

MS. SANTORA: They're from the sealed version of the administrative record.

MS. CONLON: I see. So 8, 12 --

MS. SANTORA: So 16, 19, and 21.

THE COURT: Well I'm not disposed to clear the courtroom, there's a constitutional right --

MS. CONLON: And we would object to that.

THE COURT: -- to have a public courtroom for public trials. So, um -- and these have been marked in evidence in this case, which means they are documents upon which I may, and I may be required, to make my decision. So that request is denied. You see -- I'm not doing it.

MS. SANTORA: Thank you, your Honor.

Q. Mr. Armstrong, I would like to show you a document, I'll show you one at a time.

MS. SANTORA: If I may approach?

Q. The first has been marked as Exhibit 8 in this case.

(Approaches witness, hands document.)

THE WITNESS: Thank you.

May I review it?

MS. SANTORA: Sure.

THE WITNESS: Thank you.

A. (Reads.) I've completed my review.

Q. Okay. Do you recognize this document?
A. I do.
Q. What is it?
A. It's a memorandum from Secretary Rubio to the Secretary of Homeland Security.
Q. And in what capacity have you seen this document?
A. In doing my job, my official duties at the State Department.
Q. What does the memorandum relate to?
A. The memorandum informs, um, the Secretary of Homeland Security of Secretary Rubio's finding in a case of a particular alien, finding the person, um, removable under 273(a)(4)(c) of the Immigration and Nationality Act. Actually two people, one is blacked out.
Q. Okay. Who is the person whose name is not redacted?
A. Mahmoud Khalil.
Q. And can you summarize what the document finds with respect to Mr. Khalil?
A. That section of the INA deals with foreign policy grounds for finding removability, which the Secretary of State does, or if given a different document. It informs of it here and then talks about Mr. Khalil's antisemitic -- role in antisemitic protests and disruptive activities that foster a hostile environment

for students in the United States.
Q. And it provides that as the basis for finding Mr. Khalil removable?
A. Yes, it describes it on the back, on the second page.
Q. What does it say about Mr. Khalil's activities?
THE COURT: Well in view of your objection, remember it's in evidence. I've read it.
MS. SANTORA: Okay, thank you, your Honor, we can move on.
Q. Mr. Armstrong, I'd like to show you another document.
MS. SANTORA: If I may approach? This has been marked as Exhibit 12 in this case.
(Approaches witness, hands document.)
THE WITNESS: Thank you, your Honor. May I review it?
THE COURT: Of course.
THE WITNESS: Thank you.
A. (Reads.) I've completed my review.
Q. Do you recognize this document?
A. I do.
Q. Have you seen it before?
A. I have, in performance of my official duties in leading the Bureau of Consular Affairs.

Q. Okay. And what is the document?
A. The document's similar to the previous one, it's a memorandum from the Secretary of State informing the Secretary of Homeland Security of a decision made regarding the removability of an alien.
Q. What alien does it refer to?
A. It refers to Mohsen Mahdawi.
Q. And what does it find with respect to Mr. Mahdawi?
A. Oh, sorry I pronounced it wrong. The Secretary of State informs us that he found Mr. Mahdawi removable under Section 237(a)(4)(c)(1) of the Immigration and Nationality Act.
Q. And does the document provide the Secretary's rationale for that finding?
A. It does, on the second page. That rationale was Mr. Mahdawi's involvement and leadership of disruptive protests at Columbia University, and that included antisemitic conduct and calling for the destruction of Israel. The Secretary also noted that this is clearly against U.S. policy to counter antisemitism. And Mr. Mahdawi's activities undermine the peace process in the Middle East, including coming to a peaceful resolution of the ongoing conflict in Gaza.
Q. Thank you. I'd like to show you another document.
MS. SANTORA: If I can approach? This is Exhibit

Number 19.

THE COURT: Say again the number?

MS. SANTORA: 19.

THE COURT: Thank you.

(Approaches, hands to witness.)

THE WITNESS: Thank you.

May I review it, your Honor?

THE COURT: Of course.

THE WITNESS: Thank you.

A. (Reads.) I've completed my review.

Q. Do you recognize this document?

A. I do.

Q. Have you seen it before?

A. I have, in performance of my duties as the senior Bureau official of the Bureau of Consular Affairs at the State Department.

A. What is the document?

A. The document is a communication, a memorandum from Secretary Rubio to the Secretary of Homeland Security.

Q. And what is the memo about?

A. The memo informs Secretary Noem that Secretary Rubio has found two aliens, um, one is Yunseo Chung, and the other one is blacked out, so I don't know who the person is, um, to be removable under the foreign policy section of the INA, Section 237(a)(4)(c)(1).

Q. And does the document provide the Secretary's rationale for this determination?
A. Yes, it does. It found that Ms. Chung and the other unnamed person were involved in, um, participation and apparently leadership roles in antisemitic protests and disruptive activities. It created a hostile environment for Jewish students in the United States.
Q. Thank you. I'd like to show you another document.
MS. SANTORA: If I could approach. This is labeled as Exhibit 21 in this case.
(Approaches, hands witness document.)
THE WITNESS: Thank you.
Your Honor, may I review it?
THE COURT: Yes.
THE WITNESS: Thank you.
A. (Reads.) I've completed my review.
Q. Do you recognize this document?
A. I do.
Q. And have you seen it before?
A. Yes, I have, as in my leadership role of the Bureau of Consular Affairs at the Department of State.
Q. What is the document?
A. The document is a memorandum from Secretary Rubio informing Secretary Noem, the Secretary of Homeland Security, of Secretary Rubio's decision to find Badar

Khan Suri deportable under INA Section 273(a)(4)(c)(1), which is the foreign policy section.

Q. And does the memo provide the rationale for the Secretary's determination?

A. Yes, it does, it cites Mr. Suri's direct connection to Hamas leadership as well as his involvement in antisemitic activities that created a hostile environment for Jewish students in the United States.

Q. Okay, I have one more document to show you.

MS. SANTORA: If I could approach? This is Exhibit 16.

(Approaches, hands to witness.)

THE WITNESS: Thank you.

Your Honor, I'd like to review?

THE COURT: Sure.

THE WITNESS: Thank you.

A. (Reads.) I've completed my review.

Q. Do you recognize the document?

A. I most certainly do.

Q. What is it?

A. It's a communication, um, a memorandum from me to Andre Watson, who's the Assistant Director of the National Security Division of ICE, at DHS.

Q. And you wrote that in your official capacity as

the Senior Bureau Official at the Bureau of Consular Affairs, correct?

A. I did not write it, I signed it. Other people drafted the document.

Q. Okay. But you have reviewed what the memo said, correct?

A. I did, before signing it, yes.

Q. And, um, what is the purpose of the memorandum?

A. The purpose is to inform Mr. Watson of the decision made to, um, revoke, um, Rumeysa Ozturk's Visa due to her activities in the United States, and it was revoked under Section 221(i) of the Immigration and Nationality Act.

Q. And --

A. And I signed it on the back. That's me.

Q. Thank you.

What was the basis for your determination?

THE COURT: His determination?

Q. What was basis for your determination that the Visa should be revoked?

THE COURT: He may answer.

THE WITNESS: Thank you, your Honor.

A. The basis was her antisemitic activities in the U.S., as detailed. It talks about creating a hostile environment for Jewish students, and indicating support

for a designated terrorist organization. I believe it was Hamas, but it might have been Hezbollah. I don't remember exactly.

Q. I want to direct your attention to the last line, the last line of the first paragraph of the memorandum. It says, "Due to ongoing ICE operations, security of this revocation will be silent. The Department of State will not notify the subject of the revocation."

Does the Department of State, when it revokes nonimmigrant Visas, typically inform the Visa holder that their Visa has been revoked?

A. Yes, we usually do.

Q. And in this case you did not?

A. That is correct. And judging from the context, ICE had made a request that we not inform so that they could take action to remove Ms. Ozturk from the United States.

THE COURT: Let me ask you a couple of questions here, but I'm going back to the other four that you've been shown, and I'm talking about the chart.

You know about the Secretary's actions because, as I understand it, your involvement here, as the Director of the Bureau of Consular Affairs, you're the one who causes the memo or in fact sends the memo to the Secretary of State saying "Agree," "Disagree,"

"Discuss"?

THE WITNESS: Yes, I'm the last one who looks at it, yes.

THE COURT: All right. So, um, my question is broader than the, um, what you've been shown.

But since you've been there, in your official capacity, can you estimate how many such memos involve student protests, protesters, and concerns about antisemitism, limit it as to that. About how many such memos have you sent to the Secretary of State?

THE WITNESS: I would estimate the number of such memos would be between 15 to 20.

THE COURT: All right. And of those 15 to 20, if you can break down how many were agreed and executed, how many were disagreed, how many were discussed?

THE WITNESS: In my recollection, almost all were agreed. There may have been one that was not. I'm the not sure. And there may have been another one that was discussed and later agreed to.

THE COURT: Yeah, just asking for your best recollection.

Go ahead, Ms. Santora.

Q. And related to those memos that your Honor was just discussing, um, the -- your office, before sending an action memo to the Secretary, independently analyzes

the information in referrals, correct?
A. That is correct, we analyze it. The Visa office, along with legal counsel, analyze it, um, independently of DHS, the information.
Q. And then makes a recommendation on removability to the Secretary, correct?
A. That is correct. And the recommendation is reviewed by many people. And then I -- or whoever is sitting in the position I am currently in, makes the final determination of whether it goes forward to the Secretary or not. My practice is to read the whole memo.
Q. And the Secretary, um, makes the ultimate determination on removability, correct?
A. That is correct, the Secretary of State, Marco Rubio.
Q. You said before that you were familiar with the allegations in this complaint, correct?
A. I have some knowledge of them, I have not read the complaint.
Q. Are you familiar with the fact that the plaintiffs in this case allege that the government is implementing an ideological deportation policy?
A. I have heard that --
MS. CONLON: Objection, your Honor.

THE COURT: No, she may so characterize it. And she may ask the question. And his answer may stand.

A. I have heard that accusation. I believe it's groundless.

Q. So is there an ideological deportation policy?

A. No.

Q. How do you know?

A. I run the Bureau of Consular Affairs. I'm responsible for everything those 13,000 people do. At the end of the day, the buck stops with me. I would know if there was an ideological deportation policy going on that involved the Bureau of Consular Affairs or the State Department for that matter. It's silly to suggest that there's such a policy that I didn't know about.

Q. Does the State Department have any policy to revoke Visas based on protected speech?

A. No.

Q. Does the State Department have any policy to find people removable based on protected speech?

A. No.

Q. Does the State Department have any policy to revoke Visas based on political viewpoints?

A. Um, if you're supporting a terrorist organization, yes, in that case. And it's been made clear by the

statements of Marco Rubio and, um -- this is not something that we started with Marco Rubio. If you support terrorism, you can have your Visa revoked.

Q. And is that a provision of the law?

A. It's in the law. There's the ineligibility, the 3(b) that we talked about. And actually that example you gave me, right before 3(c), they have 3(b) that goes into several pages of discussion of this. These officers abroad are required to put in a security advisory opinion on any case that they think that there's any indication of support for terrorism. We treat this very seriously.

Q. Has anyone ever told you to revoke the Visas on the basis of protected speech?

A. No.

Q. As anyone ever told you to find someone removable on the basis of their protected speech?

A. I can't find anyone removable, but no one has instructed me to prepare the materials for the Secretary to make that finding.

Q. Could the State Department be deploying an ideological deportation policy in secret without your knowledge?

MS. CONLON: Objection.

THE COURT: Based upon the entire record, I'm

going to sustain that.

(Pause.)

Q. To be clear, it's your testimony that it would not be possible for an ideological deportation policy to be implemented at the State Department without your knowledge, correct?

A. That is my --

MS. CONLON: Objection.

THE COURT: No, no, he can -- and I sustained the earlier objection because the whole gravamen of the case is that it is an avowedly public operation supported by the statements of the -- here the defendant public officials. And I'll let his testimony stand.

Anything else for this witness?

MS. SANTORA: No, that's it. Thank you, your Honor.

THE COURT: All right.

Ms. Conlon?

MS. CONLON: Yes, may I, um, go to the podium?

THE COURT: You may.

THE WITNESS: Your Honor, may I stand up for a minute?

THE COURT: Of course you can.

THE WITNESS: Thank you, sir.

(Stands.)

(Then Sits.)

CROSS-EXAMINATION BY MS. CONLON:

Q. Good afternoon, Mr. Armstrong.

A. Good afternoon.

Q. Okay. So you were asked --

THE COURT: Wait. Wait a minute. Wait a minute. I have, at this moment, received an order from the Court of Appeals, so let me read it.

(Reads.)

THE COURT: Here's how we're going to proceed. Let me read this in open court and you'll all have copies. This is entered and I received it as you hear it, and this is the order of the Court of Appeals in the First Circuit.

"The government has filed a mandamus petition and accompanying request for interim relief. Plaintiffs have opposed. After initial review of the parties' submissions and relevant portions of the record, we grant the government's request for a stay of any further disclosure of documents for which the government says it has claimed privilege and where waiver is the only basis stated for rejecting the claim of privilege. Plaintiffs may file a more fulsome answer to the petition by Monday, July 14, 2025, at 5:00 p.m.

The District Court is invited to address the petition by Tuesday, July 15, 2025 at 5:00 p.m. The Court's response should identify what the reason was for the in-camera review and detail the rationale for its waiver rulings on the government's assertion of certain privileges. The motion for administrative stay is denied as moot. The Court will rule promptly on the petition."

In light of the order of the First Circuit, and because it's 5 minutes to 1:00, I think we'll suspend proceedings at this time.

Ms. Conlon?

MS. CONLON: Could I begin my examination, with the 5 minutes remaining, without anything that will affect the order from the First Circuit just so we can get started?

THE COURT: Well I'm deferential to their order. I've got to reflect on what it reaches. But for my review of this order, it reaches everything that has been -- that this Court has disclosed to you as to which the government has objected.

And you've got 5 minutes.

MS. CONLON: 5 minutes to argue it or 5 minutes to --

THE COURT: No, no, 5 minutes to question him.

MS. CONLON: Okay. Just for the clarity for the Court and the record, our understanding, I think, is different in terms of the group of documents that we understood the government to be filing the petition about, um, but I am certainly able to start examining this witness without using any documents at all. So I just wanted to be clear, because I hear the Court saying that the Court thinks that the documents that I might use in this examination, which is to say the ones we received from the Court yesterday, are implicated by the government's petition, and I want to be clear that our understanding is that they are not, and that that relates to documents that have yet to be disclosed to us. But I understand the Court needs to review the document that's in front of you more thoroughly. So if I may begin the examination --

THE COURT: It's not a document, it's an order.

MS. CONLON: Correct, the binding order. So I will not -- I have no intention, in this remaining minute --

THE COURT: Right. You have 4 minutes. Go ahead.

MS. CONLON: Thank you, your Honor.

(Pause.)

Q. Mr. Armstrong, you testified on direct examination about certain noncitizens, um, by name, that the

government asked you about. To be clear, um, you had personal involvement in the decisions with respect to all of them, is that right?

A. That's my recollection, because in the case of the ones that went to the Secretary of State for decision, the action memo would have gone through me before it went up. And in the one remaining case, I -- as I recall, the action memo actually went to me from one of the Deputy Assistant Secretaries. So, yes, I was involved, in my professional duties, in these cases.

Q. And when you say that it went to you before it went up to Secretary Rubio, it's the case that you actually had to clear the document to go to Secretary Rubio, is that right?

A. That's correct. I'm the -- for the action memo, before it can leave the Bureau of Consular Affairs, it comes from -- it's actually from me, um, the decision -- the action memo is from me. And as I stated, it's my practice to read, um, the documents before they go up. I treat it seriously, I treat my duties seriously to read it in full. And make corrections, if needed, I may add.

Q. And when you say "corrections," what kind of corrections?

A. Um, there's any number. It's part of the

clearance or the approval process. It's serious business. For example, sometimes, despite best efforts, there's simple grammatical errors or punctuation errors. I can't send something to the Secretary with not enough commas or a semicolon in the wrong place. Sometimes it's more serious, there are what I believe, in my position, I judge to be something that is not phrased in the clearest way to get across our point or, for example, not the best evidence is used to make our point. Sometimes I disagree completely and send the document back to the drafter and I say, "This can't stand, you have to fix this."

Q. You're describing a sort of searching review before it goes to the Secretary, is that right?

A. That's correct, much of my time is spent doing such activities.

Q. With respect to the five individuals whose documents you just reviewed with the government, you didn't make any corrections about those, right?

A. I -- I'm trying to be helpful, but I review in a week, you know, sometimes 10, 15, or more action memos that go to other parts of the State Department, and I can't recall what I did on a memo that was, you know, several months ago.

Q. You don't have an independent recollection of the

back and forth on these memos that the government showed you, is that right?

A. I do not. But my general practice is that I review things thoroughly and judiciously before I sign them. I have to sign off on it, and that's my responsibility, even if it's someone else's fault.

Q. And if you disagreed with a memo that came to you that was intended for the Secretary, you could stop it from going to him, right, by not clearing it?

A. That's correct, I could send it back.

Q. You didn't do that for any --

THE COURT: I think that's a good place to stop.

MS. CONLON: Okay.

THE COURT: We'll stop taking testimony today. We'll start promptly at 9:00 a.m. on Monday next week.

The total elapsed time is, um, for the plaintiffs, 3 days, 55 minutes. For the defense, 1 day, 1 hour, um, 35 minutes.

Understand you've only got four days -- four and a half days for the plaintiffs, and I thought that that included -- I intend that that include closing arguments. So assuming you want some cross-examination here, um, time is of the essence.

Now have a good weekend.

MR. KANELLIS: Your Honor, I apologize.

THE COURT: Well now the apology is properly sought. I said we're stopping at 1:00. We're stopping. We'll recess.

(Adjourned, 1:00 p.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 Friday, July 11, 2025, to the best of my skill and ability.

/s/ Richard H. Romanow 07-11-25
_____
RICHARD H. ROMANOW Date