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16 UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
17 SAN FRANCISCO DIVISION

18 WILEY GILL; JAMES PRIGOFF; TARIQ
19 RAZAK; KHALID IBRAHIM; and AARON
CONKLIN,

20 Plaintiffs,

21 v.

22 DEPARTMENT OF JUSTICE; LORETTA
LYNCH, in her official capacity as the
23 Attorney General of the United States;
PROGRAM MANAGER – INFORMATION
24 SHARING ENVIRONMENT;
KSHEMENDRA PAUL, in his official
25 capacity as the Program Manager of the
Information Sharing Environment,

26 Defendants.

Case No. 3:14-cv-03120-RS-KAW

**PLAINTIFFS' STATEMENT RE:
FILING OF NOTICED MOTION TO
COMPLETE THE ADMINISTRATIVE
RECORD**

Hearing Date: November 5, 2015
Time: 11:00 a.m.
Judge: Hon. Kandis A. Westmore
Date of Filing: July 10, 2014
Trial Date: None Set

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PLAINTIFFS' STATEMENT RE: FILING OF
NOTICED MOTION TO COMPLETE THE
ADMINISTRATIVE RECORD
3:14-CV-03120-RS-KAW

1 1. This case is an Administrative Procedure Act (“APA”) challenge to a nationwide
2 domestic surveillance program that scoops up innocent Americans for the purpose of populating a
3 vast counterterrorism database. Plaintiffs contend that the Administrative Record filed by
4 Defendants is incomplete. The District Court referred any disputes over the Administrative
5 Record that the parties are unable to resolve through the meet and confer process to a magistrate
6 judge. *See* Dkt. No. 72. This matter has been assigned to Magistrate Judge Kandis Westmore.

7 2. Judge Westmore’s standing order sets forth procedures for civil discovery disputes
8 that include a meet and confer requirement, as well as a specified joint letter format for presenting
9 discovery disputes to the Court.

10 3. Plaintiffs seek Magistrate Judge Westmore’s resolution of a dispute between the
11 parties regarding the completeness of the Administrative Record filed by Defendants. Plaintiffs
12 respectfully submit that the letter brief format mandated by Judge Westmore’s standing order for
13 civil discovery disputes is inapplicable to this dispute. To date, Plaintiffs have not propounded
14 discovery, and Defendants have represented to Plaintiffs and to the District Court throughout this
15 action that discovery is generally inappropriate in APA cases. *See, e.g.*, Dkt. No. 36 at 6-7; Dkt.
16 No. 40 at 5-7; Dkt. No. 59 at 4. In addition, the standing order requires the letter brief to
17 separately address each dispute over specific interrogatories or requests for production. Because
18 Plaintiffs have not propounded discovery, there are no specific interrogatories or requests for
19 production at issue. Further, many of the parties’ disputes arise from differing views over the
20 correct legal standard to be applied under the APA, not the proper scope of discovery under the
21 Federal Rules of Civil Procedure. Resolution of some of the parties’ disputes over the
22 Administrative Record also requires reference to the legal issues underlying the merits of this
23 action. Disputes over the legal issues are best, and traditionally, presented in a noticed motion
24 with supporting memorandum of points and authorities.

25 4. In the spirit of Judge Westmore’s standing order, the parties have met and
26 conferred telephonically, as well as in writing. An in-person conference was not feasible because
27 Plaintiffs’ counsel are located primarily in San Francisco and Defendants’ counsel are located in
28

1 Washington, D.C.

2 5. The parties' meet and confer efforts have not resolved all of their disputes.
3 Plaintiffs therefore respectfully seek to submit the remaining disputes over the adequacy of the
4 Administrative Record to the Court through a regularly noticed motion supported by a
5 memorandum of points and authorities. If, however, the Court believes the dispute should be
6 presented through a format other than a memorandum of points and authorities, Plaintiffs will re-
7 file in the format instructed by the Court.

9 Dated: October 1, 2015

By: /s/ Linda Lye
Linda Lye

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FILER'S ATTESTATION

I, Nicole R. Sadler, am the ECF user whose identification and password are being used to file this PLAINTIFFS' STATEMENT RE: FILING OF NOTICED MOTION TO COMPLETE THE ADMINISTRATIVE RECORD. Pursuant to L.R. 5-1(i)(3), I hereby attest that concurrence in the electronic filing of this document has been obtained from each of the other signatories.

Dated: October 1, 2015

By /s/Nicole R. Sadler
Nicole R. Sadler