

on the district court docket: 9/25/2008

4. Does the judgment or order to be reviewed dispose of **all** claims by and against **all** parties? *See* Fed. R. Civ. P. 54(b).
Yes

(If the order being appealed is not final, please answer the following questions in this section.)

- a. If not, did district court direct entry of judgment in accordance with Fed. R. Civ. P. 54(b)? When was this done?

- b. If the judgment or order is not a final disposition, is it appealable under 28 U.S.C. § 1292(a)? Yes
- c. If none of the above applies, what is the **specific** statutory basis for determining that the judgment or order is appealable? _____
5. Tolling Motions. *See* Fed. R. App. P. 4(a)(4)(A); 4(b)(3)(A).
- a. Give the filing date of any motion under Fed. R. Civ. P. 50(b), 52(b), 59, 60, including any motion for reconsideration, and in a criminal appeal any motion for judgment of acquittal, for arrest of judgment or for new trial, filed in the district court:
Motion for Reconsideration filed 10/31/2007.
- b. Has an order been entered by the district court disposing of that motion, and, if so, when? The motion was denied on 9/25/2008.
6. Bankruptcy Appeals. (To be completed only in appeals from a judgment, order or decree of a district court in a bankruptcy case or from an order of the Bankruptcy Appellate Panel.)

Are there assets of the debtor subject to administration by a district or bankruptcy court? _____

Please state the approximate amount of such assets, if known.

B. REVIEW OF AGENCY ORDER (To be completed only in connection with petitions for review or applications for enforcement filed directly with the Court of Appeals.)

1. Date petition for review was filed: _____
2. Date of the order to be reviewed: _____
3. Specify the statute or other authority granting the court of appeals jurisdiction to review the order: _____

4. Specify the time limit for filing the petition (cite specific statutory section or other authority): _____

C. APPEAL OF TAX COURT DECISION

1. Date notice of appeal was filed: _____
(If notice was filed by mail, attach proof of postmark.)
2. Time limit for filing notice of appeal: _____
3. Date of entry of decision appealed: _____
4. Was a timely motion to vacate or revise a decision made under the Tax Court's Rules of Practice, and if so, when? *See* Fed. R. App. P. 13(a) _____

II. LIST ALL RELATED OR PRIOR RELATED APPEALS IN THIS COURT WITH APPROPRIATE CITATION(S). If none, please so state.

This matter has not been subject to appeal in this Court.

III. GIVE A BRIEF DESCRIPTION OF NATURE OF ACTION AND RESULT BELOW.

Plaintiff requested certain records from the FBI pursuant to the Freedom of Information Act. After the FBI satisfied the FOIA request, plaintiffs sought to depose two federal inmates in an effort to demonstrate that the FBI's search for responsive documents was inadequate. The district court granted that request and, at the same time, closed the underlying case.

IV. ISSUES RAISED ON APPEAL.

Whether the district court erred in ordering, in connection with this FOIA case against the FBI, the videotaped depositions of two high-profile federal inmates..

V. **ADDITIONAL INFORMATION IN CRIMINAL APPEALS.**

- A. Does this appeal involve review under 18. U.S.C. § 3742(a) or (b) of the sentence imposed? _____
- B. If the answer to question in A is yes, does the defendant also challenge the judgment of conviction? _____
- C. Describe the sentence imposed. _____

- D. Was the sentence imposed after a plea of guilty? _____
- E. If the answer to question D is yes, did the plea agreement include a waiver of appeal and/or collateral challenges? _____
- F. Is defendant on probation or at liberty pending appeal? _____
- G. If the defendant is incarcerated, what is the anticipated release date if the judgment of conviction is fully executed? _____

NOTE: In the event expedited review is requested, the defendant shall consider whether a transcript of any portion of the trial court proceedings is necessary for the appeal. Necessary transcripts must be ordered at the time of appeal by completing and delivering the transcript order form to the clerk of the district court when a notice of appeal is filed. Defendant/appellant must refrain from ordering any unnecessary transcript as this will delay the appeal. If the court orders this appeal expedited, it will set a schedule for preparation of necessary transcripts, for designation and preparation of the record on appeal, and for filing briefs. If issues other than sentencing are raised by this appeal, the court will decide whether bifurcation is desirable.

VI. INDICATE WHETHER ORAL ARGUMENT IS DESIRED IN THIS APPEAL. If so, please state why.

The United States believes the district court's error is sufficiently clear that oral argument would be unnecessary to resolve this appeal. The government, however, stands ready to present argument if necessary.

VII. ATTORNEY FILING DOCKETING STATEMENT:

Name: Nicholas Bagley Telephone: (202) 514-2498

Firm: United States Department of Justice

Email Address: Nicholas.Bagley@usdoj.gov

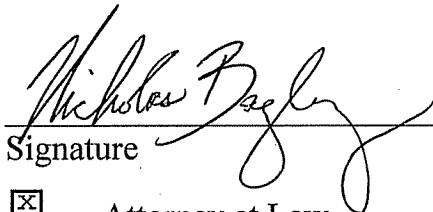
Address: 950 Pennsylvania Avenue, Room 7226
Washington, DC 20530

PLEASE IDENTIFY ON WHOSE BEHALF THE DOCKETING STATEMENT IS FILED:

- A. Appellant
- Petitioner
- Cross-Appellant

B. PLEASE IDENTIFY WHETHER THE FILING COUNSEL IS

- Retained Attorney
- Court-Appointed
- Employed by a government entity
(please specify Department of Justice)
- Employed by the Office of the Federal Public Defender.


Signature _____ Date 11/14/2008

Attorney at Law

NOTE: A copy of the court or agency docket sheet, the final judgment or order appealed from, any pertinent findings and conclusions, opinions, or orders, any motion filed under Fed. R. Civ. P. 50(b), 52(b), 59, or 60, including any motion for reconsideration, for judgment of acquittal, for arrest of judgment, or for new trial, and the dispositive order(s), any motion for extension of time to file notice of appeal and the dispositive order, and the notice of appeal or petition for review **must be attached to the Docketing Statement**, except as otherwise provided in Section I of the instructions.

The Docketing Statement must be e-filed with the Clerk care of esubmission@ca10.uscourts.gov. In addition, within two business days counsel must forward one hard copy of the statement, with attachments, to the court. .

This Docketing Statement must be accompanied by proof of service.

The following Certificate of Service may be used.

CERTIFICATE OF SERVICE

I, Nicholas Bagley hereby certify that on
[appellant/petitioner or attorney therefor]

November 14, 2008 I sent [or emailed with permission] a copy of the
foregoing **Docketing Statement**,
[date]

to:

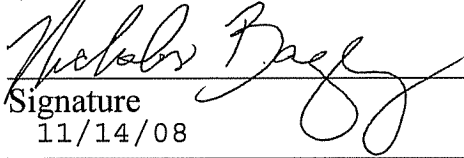
Jesse Trentadue, care of Federal Express

[counsel for/or appellee/respondent]

8 East Broadway, Suite 200

Salt Lake City, UT 84111

_____, the last known address,
by way of United States mail or courier, or email address if service is via email.



Signature
11/14/08

Dated signed

[Printed name and address of person completing service]

Electronic Case Filing System
District of Utah (Central)
CIVIL DOCKET FOR CASE #: 2:04-cv-00772-DAK

Trentadue v. FBI, et al
Assigned to: Judge Dale A. Kimball
Demand: \$0
Case in other court: Tenth Circuit, 08-04207
Cause: 05:0552 Freedom of Information Act

Date Filed: 08/20/2004
Date Terminated: 09/26/2008
Jury Demand: None
Nature of Suit: 895 Freedom of Information Act
Jurisdiction: U.S. Government Defendant

Plaintiff

Jesse C. Trentadue

represented by **Jesse C Trentadue**
SUITTER AXLAND
8 E BROADWAY STE 200
SALT LAKE CITY, UT 84111
(801)532-7300
Email: jesse32@sautah.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

Federal Bureau of Investigation

represented by **Carlie Christensen**
US ATTORNEY'S OFFICE (UT)
SALT LAKE CITY, UT 00000
(801)524-5682
Email: Carlie.Christensen@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Elbert Lin
US DEPT OF JUSTICE
FEDERAL PROGRAMS BRANCH
20 MASSACHUSETTS AVE NW RM 7217
WASHINGTON, DC 20530
(202)353-0533
TERMINATED: 04/05/2007
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

**Federal Bureau of Investigation's Oklahoma
City Field Office**

represented by **Carlie Christensen**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Elbert Lin
(See above for address)
TERMINATED: 04/05/2007
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

| Date Filed | # | Docket Text |
|-------------------|--------------------|--|
| 08/20/2004 | 1 | Complaint filed, assigned to Judge Dee Benson Receipt no.: 142324 (kvs) (Entered: 08/23/2004) |
| 08/20/2004 | 2 | Return of summons executed as to FBI, FBI OK Cty Field c/o Laurie Coles on 8/20/04 Answer due on 9/9/04 for FBI OK Cty Field, for FBI (kvs) (Entered: 08/23/2004) |
| 08/25/2004 | | Memo of recusal of Judge Dee Benson (kvs) (Entered: 08/26/2004) |
| 08/25/2004 | 3 | Amended complaint by Jesse C. Trentadue . Amends [1-1] complaint (kvs) (Entered: 08/26/2004) |
| 08/26/2004 | | Case reassigned to Judge Dale A. Kimball (kvs) (Entered: 08/26/2004) |
| 08/26/2004 | 4 | NTC of recusal of Judge Benson and reassignment to Judge Kimball. cc: atty (blk) (Entered: 08/26/2004) |
| 09/20/2004 | 5 | Answer by FBI, FBI OK Cty Field to amended complaint (blk) (Entered: 09/21/2004) |
| 09/21/2004 | | Clerk's mailing of certificate of acknowledgment of alternative dispute resolution option. Mailed, faxed or emailed to plaintiff Jesse C. Trentadue, defendant FBI, defendant FBI OK Cty Field (blk) (Entered: 09/21/2004) |
| 09/23/2004 | 6 | Magistrate Notice of Hearing Initial Pretrial Conference set for 1:30 12/1/04 To be held before Judge Nuffer cc:atty (Ntc generated by: clerk) (blk) (Entered: 09/23/2004) |
| 10/15/2004 | 7 | Notice of Motion to Consolidate filed in 2:03cv946-BSJ by Jesse C. Trentadue. (blk) (Entered: 10/18/2004) |
| 10/20/2004 | 8 | Motion by Jesse C. Trentadue for partial summary judgment (blk) (Entered: 10/20/2004) |
| 10/20/2004 | 8 | Memorandum by Jesse C. Trentadue in support of [8-1] motion for partial summary judgment (blk) (Entered: 10/20/2004) |
| 10/20/2004 | 9 | Second Declaration of Jesse C. Trentadue Re: [8-1] support memorandum, [8-1] motion for partial summary judgment (blk) (Entered: 10/20/2004) |
| 10/27/2004 | 10 | Certificate of election filed by plaintiff Jesse C. Trentadue Refer to: Litigation (blk) (Entered: 10/28/2004) |
| 11/17/2004 | 11 | Notice reminder of Attorneys' Planning Meeting Report due five days from receipt of this notice re: Initial Pretrial Conference 1:30 12/1/04 before Judge DON, cc:attys (ce) (Entered: 11/17/2004) |
| 11/19/2004 | 12 | Stipulation by Jesse C. Trentadue to vacate Courts Order/Notice [11-1] requiring the parties to file Atty Planning Meeting Report and Scheduling Order and to vacated the Initial Pretrial Conference set for 12/1/04 (blk) (Entered: 11/19/2004) |
| 11/22/2004 | 13 | Memorandum by FBI, FBI OK Cty Field in opposition to [8-1] motion for partial summary judgment (blk) (Entered: 11/23/2004) |
| 11/22/2004 | 14 | Motion by FBI, FBI OK Cty Field for summary judgment (blk) (Entered: 11/23/2004) |
| 11/22/2004 | 13 | Memorandum by FBI, FBI OK Cty Field in support of [14-1] motion for summary judgment (blk) (Entered: 11/23/2004) |
| 11/22/2004 | 15 | Order granting [12-1] stipulation motion to vacate Courts Order/Notice [11-1] requiring the parties to file Atty Planning Meeting Report and Scheduling Order and to vacate the Initial Pretrial Conference set for 12/1/04, terminated deadlines signed by Judge David Nuffer , 11/22/04 cc:atty (blk) Modified on 11/24/2004 (Entered: 11/23/2004) |
| 11/23/2004 | 18 | Reply by Jesse C. Trentadue to response to [8-1] motion for partial summary judgment (tsh) Modified on 12/01/2004 (Entered: 11/29/2004) |
| 11/29/2004 | 16 | Motion by Jesse C. Trentadue to strike FBI Dfts' Statement of Undisputed Facts (blk) (Entered: 11/30/2004) |

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| 11/29/2004 | 16 | Memorandum by Jesse C. Trentadue in support of [16-1] motion to strike FBI Dfts' Statement of Undisputed Facts (blk) (Entered: 11/30/2004) |
| 11/30/2004 | 17 | Memorandum by Jesse C. Trentadue in opposition to [14-1] motion for summary judgment (blk) (Entered: 12/01/2004) |
| 11/30/2004 | 17 | Motion by Jesse C. Trentadue to continue pending discovery (blk) (Entered: 12/01/2004) |
| 12/09/2004 | 19 | Notice of Hearing filed : Motion hearing set for 3:00 2/24/05 for [16-1] motion to strike FBI Dfts' Statement of Undisputed Facts, set for 3:00 2/24/05 for [14-1] motion for summary judgment, set for 3:00 2/24/05 for [8-1] motion for partial summary judgment To be held before Judge DAK cc:atty (Ntc generated by: DAK's crtrm dep) (tsh) (Entered: 12/09/2004) |
| 12/27/2004 | 20 | Motion by Jesse C. Trentadue to supplement the record (blk) (Entered: 12/28/2004) |
| 12/27/2004 | 20 | Memorandum by Jesse C. Trentadue in support of [20-1] motion to supplement the record (blk) (Entered: 12/28/2004) |
| 01/04/2005 | 21 | Reply by FBI, FBI OK Cty Field to response to [14-1] motion for summary judgment (blk) (Entered: 01/05/2005) |
| 01/04/2005 | 21 | Memorandum by FBI, FBI OK Cty Field in opposition to [17-1] motion to continue pending discovery, [16-1] motion to strike FBI Dfts' Statement of Undisputed Facts (blk) (Entered: 01/05/2005) |
| 01/13/2005 | 22 | Reply by Jesse C. Trentadue to response to [17-1] motion to continue pending discovery (blk) (Entered: 01/14/2005) |
| 01/13/2005 | 23 | Third Declaration of Jesse C. Trentadue Re: [17-1] motion to continue pending discovery (blk) (Entered: 01/14/2005) |
| 02/10/2005 | 24 | Declaration of Emanuel (Manny) Johnson Jr. (tsh) (Entered: 02/10/2005) |
| 02/14/2005 | 25 | Second Motion by Jesse C. Trentadue to supplement the record (blk) (Entered: 02/15/2005) |
| 02/16/2005 | 26 | Fourth Declaration of Jesse C. Trentadue Re: [14-1] motion for summary judgment (blk) (Entered: 02/17/2005) |
| 02/17/2005 | 27 | Second Declaration of David M. Hardy (blk) (Entered: 02/18/2005) |
| 02/17/2005 | 28 | Response by FBI, FBI OK Cty Field to [25-1] motion to supplement the record, [20-1] motion to supplement the record (blk) (Entered: 02/18/2005) |
| 02/21/2005 | 29 | Reply by Jesse C. Trentadue to response to [25-1] motion to supplement the record (blk) (Entered: 02/22/2005) |
| 02/25/2005 | 30 | Minute entry: Motion hearing held for [17-1] motion to continue pending discovery, held for [14-1] motion for summary judgment, held for [8-1] motion for partial summary judgment ; Crt granting [25-1] motion to supplement the record, granting [20-1] motion to supplement the record, denying [16-1] motion to strike FBI Dfts' Statement of Undisputed Facts; [17-1] motion to continue pending discovery taken under advisement, [14-1] motion for summary judgment taken under advisement, [8-1] motion for partial summary judgment taken under advisement ; Judge: DAK Court Reporter: Kelly Hicken Court Deputy: Kim Jones (kj) (Entered: 02/25/2005) |
| 05/05/2005 | 31 | ORDER granting 8 Motion for Partial Summary Judgment, denying 14 Motion for Summary Judgment, finding as moot 17 Motion to Continue . Signed by Judge Dale A. Kimball on 5/5/05. (awm,) (Entered: 05/05/2005) |
| 05/19/2005 | 32 | MOTION to Amend 31 Order on Motion for Partial Summary Judgment, Order on Motion for Summary Judgment, Order on Motion to Continue, or alternatively, MOTION for relief from order re 31 Order on Motion for Partial Summary Judgment, Order on Motion for Summary Judgment, Order on Motion to Continue filed by Defendants Federal Bureau of Investigation, Federal Bureau of Investigation's Oklahoma City Field Office. (blk,) (Entered: 05/20/2005) |
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| 05/19/2005 | 33 | MEMORANDUM in Support re 32 MOTION to Amend/Correct 31 Order on Motion for Partial Summary Judgment, Order on Motion for Summary Judgment, Order on Motion to Continue MOTION for relief from order re 31 Order on Motion for Partial Summary Judgment, Order on Motion for Summary Judgment, Order on Motion to Continue MOTION for relief from order re 31 Order on Motion for Partial Summary Judgment, Order on Motion for Summary Judgment, Order on Motion to Continue filed by Defendants Federal Bureau of Investigation, Federal Bureau of Investigation's Oklahoma City Field Office. (blk,) (Entered: 05/20/2005) |
| 05/27/2005 | 34 | MOTION to Stay pending resolution of motion to reconsider and any subsequent appeal re 31 Order on Motion for Partial Summary Judgment, Order on Motion for Summary Judgment, Order on Motion to Continue filed by Defendants Federal Bureau of Investigation, Federal Bureau of Investigation's Oklahoma City Field Office. (blk,) (Entered: 05/31/2005) |
| 05/27/2005 | 35 | MEMORANDUM in Support re 34 MOTION to Stay re 31 Order on Motion for Partial Summary Judgment, Order on Motion for Summary Judgment, Order on Motion to Continue filed by Defendants Federal Bureau of Investigation, Federal Bureau of Investigation's Oklahoma City Field Office. (blk,) (Entered: 05/31/2005) |
| 05/31/2005 | 36 | MOTION to Strike and for finding of civil contempt re: 32 MOTION to Amend/Correct 31 Order on Motion for Partial Summary Judgment, Order on Motion for Summary Judgment, Order on Motion to Continue MOTION for relief from order re 31 Order on Motion for Partial Summary Judgment, Order on Motion for Summary Judgment, Order on Motion to Continue MOTION for relief from order re 31 Order on Motion for Partial Summary Judgment, Order on Motion for Summary Judgment, Order on Motion to Continue, 33 Memorandum in Support of Motion,, filed by Plaintiff Jesse C. Trentadue. (blk,) (Entered: 06/01/2005) |
| 05/31/2005 | 37 | MEMORANDUM in Support re 36 MOTION to Strike 32 MOTION to Amend/Correct 31 Order on Motion for Partial Summary Judgment, Order on Motion for Summary Judgment, Order on Motion to Continue MOTION for relief from order re 31 Order on Motion for Partial Summary Judgment, Order filed by Plaintiff Jesse C. Trentadue. (blk,) (Entered: 06/01/2005) |
| 05/31/2005 | 38 | 5th DECLARATION of Jesse C. Trentadue re 36 MOTION to Strike 32 MOTION to Amend/Correct 31 Order on Motion for Partial Summary Judgment, Order on Motion for Summary Judgment, Order on Motion to Continue MOTION for relief from order re 31 Order on Motion for Partial Summary Judgment, Order filed by Jesse C. Trentadue. (blk,) (Entered: 06/01/2005) |
| 05/31/2005 | 39 | DECLARATION of Emmanuel (Manny) Johnson, Jr. re 36 MOTION to Strike 32 MOTION to Amend/Correct 31 Order on Motion for Partial Summary Judgment, Order on Motion for Summary Judgment, Order on Motion to Continue MOTION for relief from order re 31 Order on Motion for Partial Summary Judgment, Order filed by Jesse C. Trentadue. (blk,) (Entered: 06/01/2005) |
| 06/06/2005 | 40 | ORDER granting in part and denying in part 34 Motion to Stay. Signed by Judge Dale A. Kimball on 6/6/05. (awm,) (Entered: 06/06/2005) |
| 06/08/2005 | 41 | STIPULATION to Entry of a Stay Order filed by Jesse C. Trentadue. (blk,) (Entered: 06/10/2005) |
| 06/09/2005 | 45 | REPLY to Response to Motion re 32 MOTION to Amend/Correct 31 Order on Motion for Partial Summary Judgment, Order on Motion for Summary Judgment, Order on Motion to Continue MOTION for relief from order re 31 Order on Motion for Partial Summary Judgment, Order on Motion for Summary Judgment, Order on Motion to Continue MOTION for relief from order re 31 Order on Motion for Partial Summary Judgment, Order on Motion for Summary Judgment, Order on Motion to Continue, 36 AND OPPOSITION TO MOTION to Strike 32 MOTION to Amend/Correct 31 Order on Motion for Partial Summary Judgment, Order on Motion for Summary Judgment, Order on Motion to Continue MOTION for relief from order re 31 Order on Motion for Partial Summary Judgment, Order filed by Defendants Federal Bureau of Investigation, Federal Bureau of Investigation's Oklahoma City Field Office. (blk,) (Entered: 06/15/2005) |
| 06/10/2005 | 42 | MOTION for Extension of Time to file reply memorandum, MOTION for Leave to File corrected memorandum filed by Defendants Federal Bureau of Investigation, Federal Bureau of Investigation's Oklahoma City Field Office. (blk,) (Entered: 06/14/2005) |
| 06/10/2005 | 44 | CORRECTED REPLY to Response to Motion re 32 MOTION to Amend/Correct 31 Order on |

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| | | Motion for Partial Summary Judgment, Order on Motion for Summary Judgment, Order on Motion to Continue MOTION for relief from order re 31 Order on Motion for Partial Summary Judgment, Order on Motion for Summary Judgment, Order on Motion to Continue MOTION for relief from order re 31 Order on Motion for Partial Summary Judgment, Order on Motion for Summary Judgment, Order on Motion to Continue filed by Defendants Federal Bureau of Investigation, Federal Bureau of Investigation's Oklahoma City Field Office. (blk,) Modified on 6/15/2005 CORRECTS DOCUMENT 45 (blk,). (Entered: 06/15/2005) |
| 06/13/2005 | 43 | ORDER granting 42 Motion for 1-day Extension of Time to file reply memo, granting 42 Motion for Leave to File corrected memorandum . Signed by Judge Dale A. Kimball on 6/13/05. (blk,) (Entered: 06/14/2005) |
| 06/15/2005 | 46 | SECOND MOTION to Strike 27 Declaration of David M. Hardy and Reply Memo in Support of Motion to Reconsider filed by Plaintiff Jesse C. Trentadue. (blk,) (Entered: 06/15/2005) |
| 06/15/2005 | 47 | MEMORANDUM in Support re 46 MOTION to Strike 27 Declaration filed by Plaintiff Jesse C. Trentadue. (blk,) (Entered: 06/15/2005) |
| 06/15/2005 | 48 | MEMORANDUM in Opposition re 36 MOTION to Strike 32 MOTION to Amend/Correct 31 Order on Motion for Partial Summary Judgment, Order on Motion for Summary Judgment, Order on Motion to Continue MOTION for relief from order re 31 Order on Motion for Partial Summary Judgment, Order filed by Defendants Federal Bureau of Investigation, Federal Bureau of Investigation's Oklahoma City Field Office. (blk,) (Entered: 06/20/2005) |
| 06/17/2005 | 50 | REPLY to Response to Motion re 36 MOTION to Strike 32 MOTION to Amend/Correct 31 Order on Motion for Partial Summary Judgment, Order on Motion for Summary Judgment, Order on Motion to Continue MOTION for relief from order re 31 Order on Motion for Partial Summary Judgment, Order filed by Plaintiff Jesse C. Trentadue. (blk,) (Entered: 06/23/2005) |
| 06/20/2005 | 49 | Amended Second MOTION to Strike 44 Reply Memorandum/Reply to Response to Motion,,, 39 Declaration,, 27 Declaration filed by Plaintiff Jesse C. Trentadue. (blk,) (Entered: 06/22/2005) |
| 06/20/2005 | 51 | REPLY to Response to Motion re Motion for Contempt 36 filed by Plaintiff Jesse C. Trentadue. (blk,) (Entered: 06/23/2005) |
| 06/22/2005 | 52 | NOTICE of Appearance by Elbert Lin on behalf of Federal Bureau of Investigation, Federal Bureau of Investigation's Oklahoma City Field Office (kvs,) (Entered: 06/23/2005) |
| 06/24/2005 | 53 | MOTION/ORDER granting motion for Admission Pro Hac Vice for of Elbert Lin for Federal Bureau of Investigation and Federal Bureau of Investigation's Oklahoma City Field Office. <i>Attorneys admitted pro hac vice may download a copy of the District of Utah's local rules from court's web site at http://www.utd.uscourts.gov.</i> Signed by Judge Dale A. Kimball on 6/23/05. (blk,) (Entered: 06/27/2005) |
| 06/30/2005 | 54 | MOTION for Extension of Time to file response to amd second motion to strike filed by Defendants Federal Bureau of Investigation, Federal Bureau of Investigation's Oklahoma City Field Office. (blk,) (Entered: 06/30/2005) |
| 06/30/2005 | 55 | ORDER granting 54 Motion for Extension of Time. Signed by Judge Dale A. Kimball on 6/30/05 (alt) (Entered: 07/05/2005) |
| 07/08/2005 | 56 | MEMORANDUM in Opposition re 49 MOTION to Strike 44 Reply Memorandum/Reply to Response to Motion,,, 39 Declaration,, 27 Declaration filed by Defendants Federal Bureau of Investigation, Federal Bureau of Investigation's Oklahoma City Field Office. (blk,) (Entered: 07/18/2005) |
| 07/14/2005 | 57 | REPLY to Response to Motion re 49 MOTION to Strike 44 Reply Memorandum/Reply to Response to Motion,,, 39 Declaration,, 27 Declaration filed by Plaintiff Jesse C. Trentadue. (blk,) (Entered: 07/18/2005) |
| 07/26/2005 | 58 | NOTICE of Release of Documents to Plaintiff by Federal Bureau of Investigation, Federal Bureau of Investigation's Oklahoma City Field Office (blk,) (Entered: 07/28/2005) |
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| 07/28/2005 | 59 | RESPONSE re 58 Notice (Other) filed by Plaintiff Jesse C. Trentadue. (blk,) (Entered: 07/29/2005) |
| 08/05/2005 | 60 | RESPONSE/Reply re 59 Response to Notice 58 Notice (Other) filed by Defendants Federal Bureau of Investigation, Federal Bureau of Investigation's Oklahoma City Field Office. (blk,) (Entered: 08/05/2005) |
| 08/17/2005 | 61 | ORDER Setting Hearing on All Pending Motions: Motion 36 MOTION to Strike 32 MOTION to Amend/Correct 31 Order on Motion for Partial Summary Judgment, Order on Motion for Summary Judgment, Order on Motion to Continue MOTION for relief from order re 31 Order on Motion for Partial Summary Judgment, Order, 46 MOTION to Strike 27 Declaration, 32 MOTION to Amend/Correct 31 Order on Motion for Partial Summary Judgment, Order on Motion for Summary Judgment, Order on Motion to Continue MOTION for relief from order re 31 Order on Motion for Partial Summary Judgment, Order on Motion for Summary Judgment, Order on Motion to Continue MOTION for relief from order re 31 Order on Motion for Partial Summary Judgment, Order on Motion for Summary Judgment, Order on Motion to Continue, 49 MOTION to Strike 44 Reply Memorandum/Reply to Response to Motion,, 39 Declaration,, 27 Declaration: Motion Hearing set for 10/12/2005 03:00 PM in Room 220 before Judge Dale A. Kimball. (NOTE: See order for all instructions to counsel). Signed by Judge Dale A. Kimball on 8/17/05. (blk,) (Entered: 08/17/2005) |
| 08/25/2005 | 62 | 3rd MOTION to supplement the record filed by Plaintiff Jesse C. Trentadue. (blk,) (Entered: 08/26/2005) |
| 09/01/2005 | 63 | REQUEST for Clarification of the 8/17/05 Order re 61 Order Setting Hearing on Motion,,,, filed by Plaintiff Jesse C. Trentadue. (blk,) (Entered: 09/02/2005) |
| 09/12/2005 | 64 | RESPONSE re 63 Brief, filed by Defendants Federal Bureau of Investigation, Federal Bureau of Investigation's Oklahoma City Field Office. (blk,) (Entered: 09/15/2005) |
| 09/15/2005 | 65 | Reply Memorandum re 63 Clarification Brief filed by Plaintiff Jesse C. Trentadue. (blk,) (Entered: 09/19/2005) |
| 09/15/2005 | 66 | 6th DECLARATION of Jesse C. Trentadue filed by Jesse C. Trentadue. (blk,) (Entered: 09/19/2005) |
| 10/04/2005 | 67 | OBJECTIONS to Continuance of 10/12/05 hearing filed by Plaintiff Jesse C. Trentadue. (blk,) (Entered: 10/04/2005) |
| 10/04/2005 | 68 | MOTION to Continue Hearing Set for 10/12/05 filed by Defendants Federal Bureau of Investigation, Federal Bureau of Investigation's Oklahoma City Field Office. (blk,) (Entered: 10/06/2005) |
| 10/05/2005 | 69 | RESPONSE to Motion re 68 MOTION to Continue Hearing Set for 10/12/05 filed by Plaintiff Jesse C. Trentadue. (blk,) (Entered: 10/06/2005) |
| 10/07/2005 | 70 | ORDER granting 68 Motion to Continue hearing date of 10/12/05. Hearing reset for 11/10/05 at 3:00 p.m. before Judge Kimball. The FBI shall submit its legal memo and Vaughn declaration to the crt no later than 10/17/05 and pla shall submit any reply memo in advance of the scheduled hearing date . Signed by Judge Dale A. Kimball on 10/6/05. (ce,) (Entered: 10/07/2005) |
| 10/07/2005 | 71 | NOTICE OF HEARING: (Notice generated by Chambers per order no. 70) Miscellaneous Hearing set for 11/10/2005 03:00 PM in Room 220 before Judge Kimball re: Plaintiff's objection to 7/21/05 release of documents to plaintiff. Reset from 10/21/05 at 3:00 p.m. (ce,) (Entered: 10/07/2005) |
| 10/07/2005 | 72 | NOTICE OF HEARING ON MOTION re: 36 MOTION to Strike 32 MOTION to Amend/Correct 31 Order on Motion for Partial Summary Judgment, Order on Motion for Summary Judgment, Order on Motion to Continue MOTION for relief from order re 31 Order on Motion for Partial Summary Judgment, Order, 46 MOTION to Strike 27 Declaration, 62 MOTION to supplement the record, 32 MOTION to Amend/Correct 31 Order on Motion for Partial Summary Judgment, Order on Motion for Summary Judgment, Order on Motion to Continue MOTION for relief from order re 31 Order on Motion for Partial Summary Judgment, Order on Motion for Summary Judgment, Order on Motion to Continue MOTION for relief from order re 31 Order on Motion for Partial Summary Judgment, Order on Motion for Summary Judgment, Order on Motion to Continue, 49 MOTION to Strike 44 |

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| | | Reply Memorandum/Reply to Response to Motion, 39 Declaration, 27 Declaration: Motion Hearing set for 11/10/2005 03:00 PM in Room 220 before Judge Dale A. Kimball (reset from 10/12/05 at 3:00 pm). See order no. 70.(ce,) (Entered: 10/07/2005) |
| 10/17/2005 | 73 | MOTION for Leave to File overlength memorandum in response to this court's order of 8/17/05 and in response to plaintiff's objections to the FBI's release of documents on 7/21/05 filed by Defendants Federal Bureau of Investigation, Federal Bureau of Investigation's Oklahoma City Field Office. (ce,) (Entered: 10/19/2005) |
| 10/17/2005 | 74 | Memorandum re response to court's 61 Order Setting Hearing on Motion, 60 Response/Objections to the FBI's release of documents on 7/21/05 filed by Defendants Federal Bureau of Investigation, Federal Bureau of Investigation's Oklahoma City Field Office. (Attachments: # 1 Exhibit A to the FBI's Memo in Response to Plaintiff's Objections)(ce,) (Entered: 10/19/2005) |
| 10/18/2005 | 76 | NOTICE of In Camera Submission of Documents for the court's review by Federal Bureau of Investigation, Federal Bureau of Investigation's Oklahoma City Field Office (ce,) (Entered: 10/21/2005) |
| 10/21/2005 | 75 | ORDER granting 73 Motion for Leave to File overlength memorandum in response to this court's order of 8/17/05 and in response to plaintiff's objections to the FBI's release of documents on 7/21/05. Signed by Judge Dale A. Kimball on 10/18/05. (ce,) (Entered: 10/21/2005) |
| 11/04/2005 | 77 | Reply to FBI Dfts response to Plas Objections to the Release of Redacted Documents in Response to His FOIA Requests filed by Plaintiff Jesse C. Trentadue. (blk,) Additional attachment(s) added on 11/7/2005 (rak,). Modified on 11/7/2005 (rak,) - original document seemed to be corrupted - replaced with uncorrupted document. (Entered: 11/04/2005) |
| 11/04/2005 | 78 | EXHIBITS filed by Jesse C. Trentadue re 77 Reply. (Attachments: # Exhibits)(blk,) Additional attachment(s) added on 11/18/2005 (rak,). Modified on 11/18/2005 attachment 1 appears to be corrupted, replaced with uncorrupted document (rak,). (Entered: 11/04/2005) |
| 11/07/2005 | 79 | Modification of Docket: Error: Original document appears to be corrupted. Correction: Replaced with uncorrupted document. re 77 Response (NOT to motion),. (rak,) (Entered: 11/07/2005) |
| 11/07/2005 | 80 | ERRATA to 77 Reply to Response re: Plas Objections Release of Redacted Documents filed by Plaintiff Jesse C. Trentadue. (blk,) (Entered: 11/07/2005) |
| 11/14/2005 | 81 | Minute Entry for proceedings held before Judge Dale A. Kimball : Motion Hearing held on 11/14/2005 re: 62 MOTION to supplement the record filed by Jesse C. Trentadue, 46 MOTION to Strike 27 Declaration filed by Jesse C. Trentadue, 32 MOTION to Amend/Correct 31 Order on Motion for Partial Summary Judgment, Order on Motion for Summary Judgment, Order on Motion to Continue MOTION for relief from order re 31 Order on Motion for Partial Summary Judgment, Order on Motion for Summary Judgment, Order on Motion to Continue MOTION for relief from order re 31 Order on Motion for Partial Summary Judgment, Order on Motion for Summary Judgment, Order on Motion to Continue filed by Federal Bureau of Investigation,, Federal Bureau of Investigation's Oklahoma City Field Office, 49 MOTION to Strike 44 Reply Memorandum/Reply to Response to Motion, 39 Declaration,, 27 Declaration filed by Jesse C. Trentadue, 36 MOTION to Strike 32 MOTION to Amend/Correct 31 Order on Motion for Partial Summary Judgment, Order on Motion for Summary Judgment, Order on Motion to Continue MOTION for relief from order re 31 Order on Motion for Partial Summary Judgment, Order filed by Jesse C. Trentadue. After hearing the arguments of counsel, the Court took the motions under advisement. Attorney for Plaintiff: Jesse Trentadue, Attorney for Defendant: Carlie Christensen & Joel Miller.(Court Reporter:Kelly Hicken.) (kmj,) (Entered: 11/14/2005) |
| 12/20/2005 | 82 | NOTICE OF FILING of Plaintiffs Supplementation of Record RE: Shawn Kenny filed by Plaintiff Jesse C. Trentadue. (Note: a disk (cd) was filed in conjunction with this entitled Shawn Kenny court TV November 2005, and it will be retained in the clerks office) (blk,) (Entered: 12/22/2005) |
| 01/13/2006 | 83 | OBJECTIONS to <i>Plaintiff's Supplementation of Record</i> filed by Defendant Federal Bureau of Investigation. (Christensen, Carlie) (Entered: 01/13/2006) |
| 01/15/2006 | 84 | RESPONSE re 83 Objections, filed by Plaintiff Jesse C. Trentadue. (blk,) (Entered: 01/19/2006) |
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| 01/17/2006 | 85 | Seventh DECLARATION of Jesse C. Trentadue filed by Jesse C. Trentadue. (blk,) (Entered: 01/19/2006) |
| 01/17/2006 | 86 | DECLARATION of Leslie Blade filed by Jesse C. Trentadue. (blk,) (Entered: 01/19/2006) |
| 03/29/2006 | 87 | ORDER granting in part and denying in part 32 FBI's Motion to Amend/Correct, denying 36 Plaintiff's Motion to Strike, denying 49 Plaintiff's Motion to Strike, granting 62 Plaintiff's Motion to Supplement. See Order for specific details . Signed by Judge Dale A. Kimball on 3/29/06. (awm,) (Entered: 03/29/2006) |
| 03/30/2006 | 88 | AMENDED MEMORANDUM DECISION AND ORDER. Signed by Judge Dale A. Kimball on 3/30/06. (awm,) (Entered: 03/30/2006) |
| 04/04/2006 | 89 | Plaintiffs Rule 59(e) MOTION to Amend/Correct 88 Memorandum Decision filed by Plaintiff Jesse C. Trentadue. (blk,) (Entered: 04/05/2006) |
| 04/04/2006 | 90 | MEMORANDUM in Support re 89 MOTION to Amend/Correct 88 Memorandum Decision filed by Plaintiff Jesse C. Trentadue. (blk,) (Entered: 04/05/2006) |
| 04/06/2006 | 91 | AMENDED Rule 59(e) MOTION to Amend/Correct 88 Memorandum Decision filed by Plaintiff Jesse C. Trentadue. (blk,) (Entered: 04/07/2006) |
| 04/06/2006 | 92 | MEMORANDUM in Support re 91 Amended Rule 59(e) MOTION to Amend/Correct 88 Memorandum Decision filed by Plaintiff Jesse C. Trentadue. (blk,) (Entered: 04/07/2006) |
| 04/24/2006 | 93 | OBJECTIONS to 92 Memorandum in Support of Motion filed by Defendants Federal Bureau of Investigation, Federal Bureau of Investigation's Oklahoma City Field Office. (Christensen, Carlie) (Entered: 04/24/2006) |
| 05/01/2006 | 94 | REPLY to Response to Motion re 89 MOTION to Amend/Correct 88 Memorandum Decision filed by Plaintiff Jesse C. Trentadue. (blk,) (Entered: 05/04/2006) |
| 05/22/2006 | 95 | ORDER denying 91 Motion to Amend/Correct . Signed by Judge Dale A. Kimball on 5/19/06. (blk,) (Entered: 05/22/2006) |
| 06/02/2006 | 96 | NOTICE of DOCUMENT SEARCH AND PRODUCTION PURSUANT TO COURT ORDER OF MARCH 30, 2006 by Federal Bureau of Investigation, Federal Bureau of Investigation's Oklahoma City Field Office (Attachments: # 1 Hardy Declaration# 2 Exhibit 8# 3 Exhibit 8b# 4 Exhibit 9# 5 Exhibit 9a# 6 Exhibit 12# 7 Exhibit 12a# 8 August 1996 Teletype)(Christensen, Carlie) (Entered: 06/02/2006) |
| 02/16/2007 | 97 | MOTION for Discovery filed by Plaintiff Jesse C. Trentadue. (Attachments: # 1 Exhibit A) (Trentadue, Jesse) (Entered: 02/16/2007) |
| 02/16/2007 | 98 | MEMORANDUM in Support re 97 MOTION for Discovery filed by Plaintiff Jesse C. Trentadue. (Attachments: # 1 Exhibit 1# 2 Exhibit 2)(Trentadue, Jesse) (Entered: 02/16/2007) |
| 02/16/2007 | 99 | DECLARATION of David Paul Hammer filed by Jesse C. Trentadue. (blk) (Entered: 02/20/2007) |
| 02/16/2007 | 100 | DECLARATION of Terry Lynn Nichols filed by Jesse C. Trentadue. (blk) (Entered: 02/20/2007) |
| 02/16/2007 | 101 | **SEALED DOCUMENT** EXHIBITS A-G re 100 Declaration of Terry Lynn Nichols filed by Plaintiff Jesse C. Trentadue. Clerks Note: Exhibits A-G have been sealed and entered on the docket separately from the Declaration of Terry Lynn Nichols by the clerk due to protected information contained therein, see DUCiv R 7-3. Some information included in the exhibits are dates of birth, social security numbers and personal residential addresses of individuals. (blk) (Entered: 02/20/2007) |
| 02/20/2007 | 102 | NOTICE OF CONVENTIONAL FILING of Declaration of Terry Lynn Nichols and David Hammer filed by Plaintiff Jesse C. Trentadue re 99 Declaration, 100 Declaration, 101 Sealed Document, (Trentadue, Jesse) (Entered: 02/20/2007) |
| 03/08/2007 | 103 | MOTION for Extension of Time Ext of time to file memo in opposition to Plaintiff's Motion to Conduct Discovery filed by Defendant Federal Bureau of Investigation. (Attachments: # 1) |

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| | | (Christensen, Carlie) (Entered: 03/08/2007) |
| 03/13/2007 | 104 | ORDER granting 103 Motion for Extension of Time for FBI to file its response to plaintiff's Motion to Conduct Discovery. Response due: 3/16/07. Signed by Judge Dale A. Kimball on 3/9/07. (blk) (Entered: 03/13/2007) |
| 03/16/2007 | 105 | MOTION for Extension of Time Time to file memorandum in opposition to Plaintiff's Motion to Conduct Discovery filed by Defendant Federal Bureau of Investigation. (Attachments: # 1) (Christensen, Carlie) (Entered: 03/16/2007) |
| 03/20/2007 | 106 | ORDER granting 105 Motion for Extension of Time to respond to Plaintiff's Motion to Conduct Discovery. Response due: 3/23/07. Signed by Judge Dale A. Kimball on 3/19/07. (blk) (Entered: 03/20/2007) |
| 03/23/2007 | 107 | MEMORANDUM in Opposition re 97 MOTION for Discovery filed by Defendant Federal Bureau of Investigation. (Christensen, Carlie) (Entered: 03/23/2007) |
| 04/01/2007 | 108 | MOTION for Extension of Time to File Response/Reply as to 97 MOTION for Discovery filed by Plaintiff Jesse C. Trentadue. (Attachments: # 1 Exhibit A - Proposed Order)(Trentadue, Jesse) (Entered: 04/01/2007) |
| 04/02/2007 | 109 | ORDER Granting 108 Motion for Extension of Time until 4/20/07 for Plaintiff to File Response/Reply re 97 MOTION for Discovery. Replies due by 4/20/2007. Signed by Judge Dale A. Kimball on 4/2/07. (ce) (Entered: 04/02/2007) |
| 04/04/2007 | 110 | MOTION to Withdraw as Attorney (<i>Elbert Lin</i>) filed by Defendant Federal Bureau of Investigation. (Christensen, Carlie) (Entered: 04/04/2007) |
| 04/05/2007 | 111 | ORDER granting 110 Motion to Withdraw as Attorney. Attorney Elbert Lin withdrawn from case for FBI. Signed by Judge Dale A. Kimball on 4/5/07. (blk) (Entered: 04/05/2007) |
| 04/16/2007 | 112 | REPLY to Response to Motion re 97 MOTION for Discovery filed by Plaintiff Jesse C. Trentadue. (Attachments: # 1 Exhibit 1# 2 Exhibit 2# 3 Exhibit 3# 4 Exhibit 4# 5 Exhibit 5# 6 Exhibit 6# 7 Exhibit 7# 8 Exhibit 8)(Trentadue, Jesse) (Entered: 04/16/2007) |
| 09/20/2007 | 113 | MEMORANDUM DECISION granting 97 Motion for Discovery. Signed by Judge Dale A. Kimball on 9/20/07. (jwt) (Entered: 09/21/2007) |
| 10/31/2007 | 114 | MOTION Motion to reconsider discovery order and request for oral argument filed by Defendant Federal Bureau of Investigation. (Christensen, Carlie) (Entered: 10/31/2007) |
| 10/31/2007 | 115 | MEMORANDUM in Support re 114 MOTION Motion to reconsider discovery order and request for oral argument filed by Defendant Federal Bureau of Investigation. (Attachments: # 1 Exhibit) (Christensen, Carlie) (Entered: 10/31/2007) |
| 11/05/2007 | 116 | ENTRY ERROR - IMAGE FOR DOCUMENT WAS INCOMPLETE. COUNSEL WILL RE-FILE MOTION. MOTION for Extension of Time to File Response/Reply as to 114 MOTION Motion to reconsider discovery order and request for oral argument filed by Plaintiff Jesse C. Trentadue. (Attachments: # 1 Text of Proposed Order)(Trentadue, Jesse) Modified on 11/5/2007 (jwt). (Entered: 11/05/2007) |
| 11/05/2007 | 117 | MOTION for Extension of Time to File Response/Reply as to 114 MOTION Motion to reconsider discovery order and request for oral argument filed by Plaintiff Jesse C. Trentadue. (Attachments: # 1 Text of Proposed Order)(Trentadue, Jesse) (Entered: 11/05/2007) |
| 11/06/2007 | 118 | ORDER granting 117 Motion for Extension of Time to File Response/Reply re 114 MOTION to reconsider discovery order and request for oral argument. Replies due by 12/3/2007. Signed by Judge Dale A. Kimball on 11/06/07. (jwt) (Entered: 11/06/2007) |
| 11/20/2007 | 119 | DECLARATION of David Paul Hammer re 114 MOTION Motion to reconsider discovery order and request for oral argument filed by Jesse C. Trentadue. (Attachments: # 1 Exhibit)(Trentadue, Jesse) (Entered: 11/20/2007) |
| 11/20/2007 | 120 | DECLARATION of Ronald C. Travis re 114 MOTION Motion to reconsider discovery order and |

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| | | request for oral argument filed by Jesse C. Trentadue. (Attachments: # 1 Exhibit a# 2 Exhibit B) (Trentadue, Jesse) (Entered: 11/20/2007) |
| 11/20/2007 | 121 | DECLARATION of Jesse C. Trentadue re 114 MOTION Motion to reconsider discovery order and request for oral argument filed by Jesse C. Trentadue. (Attachments: # 1 Exhibit A)(Trentadue, Jesse) (Entered: 11/20/2007) |
| 11/21/2007 | 122 | DECLARATION of Wesley I. Purkey re 114 MOTION Motion to reconsider discovery order and request for oral argument filed by Jesse C. Trentadue. (Attachments: # 1 Exhibit)(Trentadue, Jesse) (Entered: 11/21/2007) |
| 12/03/2007 | 123 | MEMORANDUM in Opposition re 114 MOTION Motion to reconsider discovery order and request for oral argument filed by Plaintiff Jesse C. Trentadue. (Attachments: # Exhibit 1)(Trentadue, Jesse) Modified on 12/11/2007 removing attachment per 126 order (jwt). (Entered: 12/03/2007) |
| 12/03/2007 | 124 | ERRATA to 123 Memorandum in Opposition to Motion filed by Plaintiff Jesse C. Trentadue (<i>to replace Exhibit 1</i>). (Attachments: # 1 Exhibit 1)(Trentadue, Jesse) (Entered: 12/03/2007) |
| 12/03/2007 | 125 | MOTION to Amend/Correct 123 Memorandum in Opposition to Motion (<i>Remove Exhibit 1</i>) filed by Plaintiff Jesse C. Trentadue. (Attachments: # 1 Text of Proposed Order)(Trentadue, Jesse) (Entered: 12/03/2007) |
| 12/10/2007 | 126 | ORDER granting 125 Motion to Remove Exhibit 1 Attached to Doc. No. 123 From the Record. Signed by Judge Dale A. Kimball on 12/10/07. (jwt) (Entered: 12/11/2007) |
| 01/30/2008 | 127 | REPLY to Response to Motion re 114 MOTION Motion to reconsider discovery order and request for oral argument filed by Defendant Federal Bureau of Investigation. (Attachments: # 1 Declaration of Harvey Church# 2 Declaration of Thomas B. Smith)(Christensen, Carlie) (Entered: 01/30/2008) |
| 01/31/2008 | 128 | NOTICE of SUPPLEMENTAL AUTHORITY by Jesse C. Trentadue re 114 MOTION Motion to reconsider discovery order and request for oral argument (Attachments: # 1 Exhibit A)(Trentadue, Jesse) (Entered: 01/31/2008) |
| 04/03/2008 | 129 | NOTICE of Release of Documents by Jesse C. Trentadue (Attachments: # 1 Exhibit 1, # 2 Exhibit 2) (Trentadue, Jesse) (Entered: 04/03/2008) |
| 04/16/2008 | 130 | OBJECTIONS to 128 Notice of Supplemental Authority filed by Defendants Federal Bureau of Investigation, Federal Bureau of Investigation's Oklahoma City Field Office. (Christensen, Carlie) (Entered: 04/16/2008) |
| 04/17/2008 | 131 | RESPONSE re 130 Objections, <i>TO NOTICE OF RELEASE OF ADDITIONAL INFORMANT DOCUMENTS</i> filed by Plaintiff Jesse C. Trentadue. (Attachments: # 1 Exhibit 1)(Trentadue, Jesse) (Entered: 04/17/2008) |
| 09/25/2008 | 132 | ORDER denying 114 Motion to reconsider discovery order and request for oral argument and Overruling [130 OBJECTIONS to 128 Notice of Supplemental Authority. The clerk of the court is directed to close this case. Signed by Judge Dale A. Kimball on 9/25/08. (jwt) (Entered: 09/26/2008) |
| 11/05/2008 | 133 | NOTICE OF APPEAL as to 132 Order on Motion for Miscellaneous Relief, 113 Order on Motion for Discovery, Memorandum Decision filed by Federal Bureau of Investigation. Appeals to the USCA for the Tenth Circuit. No Filing Fee. (Christensen, Carlie) Modified on 11/12/2008-this appeal has been sent to the Tenth Circuit not the Federal Circuit as previously stated in text (jmr). (Entered: 11/05/2008) |
| 11/06/2008 | 137 | USCA Case Number Case Appealed to Tenth Circuit Case Number 08-4207 for 133 Notice of Appeal, filed by Federal Bureau of Investigation. Transcript order form due 11/21/2008 for Carlie Christensen. (jmr) (Entered: 11/12/2008) |
| 11/07/2008 | 134 | Transmission of Preliminary Record to USCA re 133 Notice of Appeal, (Main Document: Letter of Transmission of Preliminary Record on Appeal; Attachments: # 1 Notice of Appeal, # 2 Order, # 3 Memorandum Decision, # 4 Docket Sheet)(ce) (Entered: 11/07/2008) |
| 11/10/2008 | 135 | MOTION Supplement Record filed by Plaintiff Jesse C. Trentadue. (Trentadue, Jesse) (Entered: 11/10/2008) |

11/10/2008)

11/10/2008

[136](#)

MEMORANDUM in Support re [135](#) MOTION Supplement Record *on Appeal* filed by Plaintiff Jesse C. Trentadue. (Trentadue, Jesse) (Entered: 11/10/2008)

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| Billable Pages: | 9 | Cost: | 0.72 |

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

JESSE C. TRENTADUE,

Plaintiff,

vs.

**FEDERAL BUREAU OF
INVESTIGATION and FEDERAL
BUREAU OF INVESTIGATION,
OKLAHOMA CITY FIELD OFFICE,**

Defendants.

**MEMORANDUM DECISION AND
ORDER**

Case No. 2:04CV772 DAK

This matter is before the court on Plaintiff Jesse C. Trentadue's Motion to Conduct Discovery. The court has carefully reviewed the written memoranda submitted by the parties. Pursuant to local rule 7-1(f), the court has concluded that oral argument would not be helpful or necessary, and thus the court will determine the motion on the basis of the written memoranda. *See* DUCivR 7-1(f).

Plaintiff filed this action in August 2004, alleging that the FBI had failed to provide certain documents that were responsive to his FOIA request. In the instant motion, Plaintiff seeks an Order from the court allowing him to take—and videotape—the depositions of Terry Lynn Nichols and David Paul Hammer. The FBI contends that this court does not have jurisdiction to award such relief because, among other things, after this court issued its Memorandum decision

resolving Plaintiff's FOIA claims, there no longer existed any 'case or controversy' sufficient to confer subject matter jurisdiction on this court.

The court, however, disagrees with the FBI's contention. This case has not yet been closed by the court and remains on the list of the court's active pending cases. In the court's view, the March 30, 2006 Amended Memorandum Decision did not necessarily end this action.

Specifically, on May 5, 2005, the court found that the FBI's search was not reasonably calculated to discover the requested documents, and the court ordered the FBI to search specific case files, to produce unredacted copies of various documents, and to produce other documents responsive to Plaintiff's FOIA request. Subsequently, Plaintiff objected to the redactions contained in the documents and argued that the FBI's search was still inadequate. In response, the FBI claimed that its redactions were appropriate and that it had not even been required to produce these documents because they were not responsive to Plaintiff's FOIA request. The FBI sought reconsideration of the court's previous determination that the FBI's original search was not reasonably calculated to locate responsive documents. In addition, the FBI requested a determination that its manual search of five files, and the ZYIndex search of the OKBOMB file fulfilled the FBI's responsibilities to locate responsive documents under FOIA and that no further search was required.

The court specifically stated in its March 29, 2006 Order that it declined to reconsider its previous determination regarding the reasonableness of the FBI's initial search and the need to conduct additional manual searches. Moreover, the court ordered the FBI to conduct two more

limited searches in the OKBOMB file and noted that “it is troubling that so many of the documents produced by the FBI refer to FD-302s that were or should have been prepared, and the disclosed documents also refer to other attachments that at one time appear to have accompanied the document, yet these documents have not been produced. While the FBI’s failure to discover documents is not necessarily an indication of bad faith, it is puzzling that *so many* documents could be referenced but not produced.” The court, however, declined to order further searches beyond what the court had already specifically ordered.

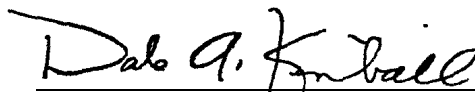
The court had also noted in its May 5, 2005 Order that “[u]pon Motion, the court will allow Plaintiff to conduct discovery should the FBI fail to produce documents and/or records responsive to this FOIA requests.” In light of (1) the court’s previous finding that the FBI’s original search was not reasonably calculated to locate responsive documents; (2) the troubling absence of documents to which other documents referred; and (3) the information that Plaintiff has thus far discovered from Terry Lynn Nichols and David Paul Hammer, the court is persuaded that it continues to maintain jurisdiction over this action, and, furthermore, that by allowing the requested depositions, Plaintiff may be better able to identify the existence of other records responsive to his FOIA request that have not yet been produced.

Therefore, for these reasons and the reasons set forth by Plaintiff in his memorandum in support and his reply memorandum, IT IS HEREBY ORDERED that Plaintiff’s Motion [docket # 97] is GRANTED. The court notes that it is not compelling Nichols and Hammer to cooperate; rather, the court is permitting Plaintiff to take—and videotape—the depositions, so long as these individuals are willing to cooperate. In addition, the court is ordering the respective

federal correctional institutions to cooperate in allowing Plaintiff to take these depositions.

DATED this 20th day of September, 2007.

BY THE COURT:

A handwritten signature in black ink that reads "Dale A. Kimball". The signature is written in a cursive style with a horizontal line underneath it.

DALE A. KIMBALL

United States District Judge

BRETT L. TOLMAN, United States Attorney (#8821)
CARLIE CHRISTENSEN, Assistant United States Attorney (#0633)
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Salt Lake City, Utah 84111
Telephone: (801) 524-5682

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

| | | |
|-----------------------------|---|--------------------------------|
| JESSE C. TRENTADUE, | : | 2:04 CV 00772 DAK |
| Plaintiff, | : | |
| vs. | : | FEDERAL DEFENDANTS' |
| | : | MEMORANDUM IN SUPPORT |
| FEDERAL BUREAU OF | : | OF MOTION TO RECONSIDER |
| INVESTIGATION and FEDERAL | : | DISCOVERY ORDER |
| BUREAU OF INVESTIGATION, | : | |
| OKLAHOMA CITY FIELD OFFICE, | : | Hon. Dale A. Kimball |
| Defendants. | : | |

The Federal Bureau of Investigation and the FBI Oklahoma City Field Office (collectively the “FBI”) hereby submit this memorandum in support of their Motion to Reconsider this Court’s Memorandum Decision and Order of September 20, 2007.

INTRODUCTION

On September 20, 2007, this Court issued a Memorandum Decision and Order (“the Discovery Order”) granting Plaintiff’s motion for discovery and permitting Plaintiff to take and videotape the depositions of Terry Lynn Nichols (“Nichols”), who is serving a life sentence at FCC Florence; and David Paul Hammer (“Hammer”), who is under a death sentence and confined in Terre Haute, Indiana. See Dkt. No. 113 at 4.¹ Specifically, the Court found that it retained jurisdiction of

¹All references to this Court’s docket will be cited as Dkt. No. ____ at ____.

this case and that by granting Plaintiff's motion to take the depositions of these individuals, Plaintiff may be able to identify the existence of other FBI records responsive to his FOIA request that have not yet been produced. Id. at 3.

As set forth below, this Court should reconsider its Discovery Order and deny Plaintiff's motion because the Order exceeds the permissible scope of discovery under FOIA and is without legal precedent. Discovery under FOIA is limited to the underlying FOIA issues in the case, i.e., the scope of the agency's search for responsive documents and its indexing and classification procedures. Discovery is not permitted when the Plaintiff is using the FOIA lawsuit as a fishing expedition into the investigatory action taken by the agency or other cases unrelated to the FOIA lawsuit. Here, the Court's Discovery Order has the impermissible effect of allowing Plaintiff to depose Nichols and Hammer to conduct discovery into the Oklahoma City bombing investigation. There can be no other purpose since Nichols and Hammer are not employees of the FBI and lack any knowledge of the FBI's search for records or its decisions concerning the disclosure of the requested records. Moreover, the Court's Discovery Order is without legal precedent. This Court did not cite and the FBI has not located any authority which permits the depositions of non-agency personnel in a FOIA case.

Further, this Court should reconsider its Discovery Order and deny Plaintiff's motion because there is no case and controversy here sufficient to confer subject matter jurisdiction. The Court previously ordered and the FBI conducted multiple searches for documents responsive to Plaintiff's FOIA requests, the FBI produced all the responsive documents which it located, and the FBI asserted and the Court upheld the exemptions to disclosure of certain records. The Court issued its final ruling regarding the adequacy of the FBI searches and its disclosures when it issued its Amended

Order and denied Plaintiff's Rule 59(e) motion. Because all pending issues were resolved at that time, there no longer remained an Article III case and controversy sufficient to confer subject matter jurisdiction on this Court or any pending issue on which discovery could be had.

Even if the adequacy of the FBI's searches remained at issue, this Court should still reconsider its Discovery Order and deny Plaintiff's motion because there is no question as to the FBI's good faith sufficient to justify discovery. This Court has never found that the FBI acted in bad faith and Plaintiff's own speculative criticism of the FBI's searches is insufficient to justify discovery. Although Plaintiff claims that the FBI responded in bad faith to his FOIA request, Plaintiff's request simply never sought the records which he now claims the FBI failed to produce.

Finally, this Court should reconsider its Discovery Order and deny Plaintiff's motion to videotape Hammer and Nichols because the BOP has determined that a video recording poses a threat to the security of the institutions where these individuals are confined.

STATEMENT OF FACTS

1. On July 19, 2004 Plaintiff submitted a FOIA request to the FBI seeking a copy of a "memorandum" from former FBI Director Louis Freeh concerning Morris Dees and the Southern Poverty Law Center ("SPLC") dated January 4, 1996. See Dkt. No. 3, Ex. A; Dkt. No. 21, Ex. A. at 2. Plaintiff also requested copies of all other documents which "directly or indirectly report upon, concern, reference, or refer to Morris Dees *and/or* the SPLC's involvement *with and/or connection to* Elohim City, OKBOMB, BOMBROB, Tim McVeigh, Richard Guthrie, Terry Nichols, Dennis Mahon, Robert Miller, Michael Brescia, Peter Langan and/or Andreas Strassmeir including all contacts Dees or the SPLC may have indirectly had with the foregoing through informants." Id. (emphasis added).

2. On July 28, 2004, Plaintiff submitted a second FOIA request to the FBI seeking a copy of an FD-302 which he believed was prepared as the result of a meeting he attended with John Tanner of the Civil Rights Division, Department of Justice; Assistant United States Attorney Jerome Holmes; and FBI Agent Tom Linn on August 12, 1996. See Dkt. No. 3, Ex. C; Doc. No. 21 Ex. C.

3. On August 20, 2004, Plaintiff filed this action pursuant to FOIA seeking disclosure of the records which he requested from the FBI, see Dkt. No. 3 at ¶ 7. On October 20, 2004, Plaintiff filed a Motion for Partial Summary Judgment. See Dkt. No. 8. On November 22, 2004, the FBI filed its opposition to Plaintiff's Motion for Partial Summary Judgment and its own Motion for Summary Judgment. See Dkt. Nos. 13, 14.

4. On May 5, 2005, this Court granted Plaintiff's Motion for Partial Summary Judgment and denied the FBI's Motion for Summary Judgment ("Summary Judgment Order"). See Dkt. No. 31 at 7.

5. On May 19, 2005, the FBI sought modification of the Summary Judgment Order or alternatively, relief from the Summary Judgment Order pursuant to Fed. R. Civ. P. 59(e) and 60(b)(6). See Dkt. Nos. 32-33. On March 29, 2006, this Court issued a Memorandum Decision and Order granting in part and denying in part the FBI's motion. See Dkt. No. 87 at 21.

6. On March 30, 2006, the Court issued an Amended Memorandum Decision and Order ("Amended Order") altering the wording of the second sentence of section III.C.4.a of its original Order. See Dkt. No. 88 at 2 n.1, 15. In all other respects, the Order of March 29, 2006 remained unchanged. See Dkt. No. 88.

7. On April 4, 2006, and again on April 6, 2006, Plaintiff filed a Rule 59(e) motion asking the Court to modify its Amended Order and direct the FBI to conduct a search of the Salt Lake City

Field Office for additional teletypes allegedly referenced in the redacted documents produced by the FBI. See Dkt. Nos. 89 at 2; 90 at 1-2; 91 at 2; 92 at 1-2. Alternatively, Plaintiff requested that if the FBI could not locate the documents in the Salt Lake City Field Office, that the Court direct the FBI to conduct a *manual* search of the OKBOMB file for the additional teletypes. Id. On May 19, 2006, this Court denied Plaintiff's Rule 59(e) motions because the documents requested by Plaintiff were not responsive to his FOIA request. See Dkt. No. 95 at 1.

8. On June 2, 2006, the FBI notified the Court that it had completed the limited search directed by the Court's Amended Order and located one additional document, a June, 1996 teletype. See Dkt. No. 96 at 1-2. The FBI also notified the Court that it produced for Plaintiff, in redacted form, the June, 1996 teletype; those documents previously identified as Exhibits 8, 8b, 9, 9a, 12 and 12a; and the August, 1996 teletype. Id. at 2.

9. Plaintiff did not appeal the Court's Amended Order or its Order of May 19, 2006 denying Plaintiff's Rule 59(e) motions. See Dkt. Nor did Plaintiff challenge the FBI's search results or the validity of the exemptions asserted in its June 2, 2006 production. Id.

10. On February 16, 2007, approximately nine months later, Plaintiff filed his Discovery Motion seeking an order permitting him to depose Nichols² and Hammer³, two inmates currently incarcerated in federal correctional facilities in Florence, Colorado and Terre Haute, Indiana

²Nichols is serving a life sentence for his conviction on conspiracy to use weapons of mass destruction and involuntary manslaughter charges arising from the bombing of the Alfred P. Murrah Federal Building in Oklahoma City which killed 168 people. See U.S. v. Nichols, 169 F.3d 1255, 1260 (10th Cir. 1999).

³Hammer received a death sentence for his conviction on first degree murder charges for the strangulation death of Andrew Marti, another inmate. See U.S. v. Hammer, 226 F.3d 229, 230-31 (3rd Cir. 2000).

respectively. See Dkt. 97 at 2. Plaintiff claimed that these individuals could provide “valuable information” pertaining to the Oklahoma City bombing and the FBI’s alleged bad faith response to Plaintiff’s FOIA requests and this Court’s Summary Judgment Order. See Dkt. No. 98 at 4. In support of his motion, Plaintiff filed the Declarations of Nichols and Hammer. See Dkt. Nos. 99; 100.

11. On September 20, 2007, this Court issued its Discovery Order granting Plaintiff’s motion for discovery and permitting Plaintiff to take and videotape the requested depositions. See Dkt. No. 113 at 4. Specifically, the Court found that it retained jurisdiction of this case and that by granting Plaintiff’s motion to take the requested depositions, Plaintiff may be able to identify the existence of other FBI records responsive to his FOIA request that have not yet been produced. Id. at 3.

ARGUMENT

I. THIS COURT SHOULD RECONSIDER ITS DISCOVERY ORDER AND DENY PLAINTIFF’S MOTION BECAUSE IT EXCEEDS THE PERMISSIBLE SCOPE OF DISCOVERY UNDER FOIA.

This Court should reconsider its Discovery Order and deny Plaintiff’s motion because the Order exceeds the permissible scope of discovery under FOIA and is without legal precedent.⁴ Discovery is the exception not the rule in FOIA cases. See Baker & Hostetler LLP v. U.S. Dep’t of Commerce, 473 F.3d 312, 318 (D.C. Cir 2006); Wheeler v. CIA, 271 F. Supp. 2d 132, 139 (D.D.C. 2003) (holding that discovery is generally unavailable in FOIA actions); Judicial Watch, Inc. v. Exp.-

⁴This Court has jurisdiction to reconsider and vacate its Discovery Order because it is an interlocutory order. See Anderson v. U.S. Dep’t of Health & Human Svcs., 3 F.3d 1383, 1385 (10th Cir. 1993) (holding that discovery order denying request to take depositions in FOIA action was interlocutory in nature). Such requests rely upon “the inherent power of the rendering district court to afford such relief from interlocutory judgments. . . as justice requires.” Greene v. Union Mut. Life Ins. Co. of America, 764 F.2d 19, 22 (1st Cir. 1985); Wanamaker v. Columbian Rope Co., 907 F. Supp. 522, 527 (N.D.N.Y. 1995).

Imp. Bank, 108 F. Supp. 2d 19, 25 (D.D.C. 2000) (“[D]iscovery in a FOIA action is generally inappropriate.”). Unlike the broad provisions in the Rules of Civil Procedure which permit discovery on any non-privileged matter relevant to the claim or defense of any party, see Fed. R. Civ. P. 26(b)(1), discovery under FOIA is “limited to the scope of an agency’s search [for responsive documents] and its indexing and classification procedures.” See Heily v. United States Dep’t of Commerce, 69 Fed. Appx. 171, 174 (4th Cir. 2003) (per curiam); Tax Analysts v. IRS, 214 F.3d 179, 185 (D.C. Cir. 2000) (remanding for discovery on “narrow and fact-specific question” concerning disclosability of specific type of document); Judicial Watch, Inc. v. United States Dep’t of Commerce, 127 F. Supp. 2d 228, 230 (D.D.C. 2000) (permitting depositions to be taken about parameters of FOIA search); Pub. Citizen Health Research Group v. FDA, 997 F. Supp. 56, 72 (D.D.C. 1998) (holding that discovery is limited to “investigating the scope of the agency search for responsive documents, the agency’s indexing procedures, and the like”); Billington v. Dep’t of Justice, 11 F.Supp.2d 45, 72 (D.D.C. 1998) (“Discovery is generally limited to the scope of an agency’s search.”).

Discovery is not permitted where the plaintiff is using the FOIA lawsuit as a means of questioning investigatory action taken by the agency or the underlying reasons for conducting such investigations. See RNR Enters. v. SEC, 122 F.3d 93, 98 (2d Cir. 1997) (upholding district court’s exercise of discretion in denying discovery propounded for “investigative purposes”); Flowers v. IRS, 307 F. Supp. 2d 60, 72 (D.D.C. 2004) (scolding plaintiff, who “may be unhappy with the search results,” for seeking discovery in a FOIA case in order to conduct investigation of the agency’s rationale for tax audit).

Nor is discovery permitted where the plaintiff is using a FOIA lawsuit “as a fishing expedition” for investigating matters related to separate lawsuits. See Tannehill v. Dep’t of the Air Force, No. 87-1335, 1987 WL 25657, at *2 (D.D.C. Nov. 12, 1987) (limiting discovery to determination of FOIA issues, not to underlying personnel decision); Al-Fayed v. CIA, No. 00-2092, slip op. at 17 (D.D.C. Dec. 11, 2000) (terming plaintiff’s discovery request “a fishing expedition” and refusing to grant it), aff’d on other grounds, 254 F.3d 300 (D.C. Cir. 2001).

Accordingly, even when discovery is permitted to explore the steps an agency took or might have taken to locate responsive records, discovery is not available as a means of circumventing the limitations of FOIA itself. It cannot be used to allow a FOIA plaintiff to interrogate agency employees, or anyone else, on the various topics, for which the plaintiff sought the records in the first place. FOIA is a device that allows access to records, not to people. See Goldgar v. Office of Administration, 26 F.3d 32, 34-35 (5th Cir. 1994) (“FOIA applies only to information in record form”; if a plaintiff “is not seeking an agency record . . . then he is abusing and misusing the FOIA”).

In this case, the Court’s Discovery Order exceeds the permissible scope of discovery because it is not limited to the scope of the FBI’s search for responsive documents, the FBI’s indexing procedures, or any other matter relevant to the FBI’s disclosure obligations under FOIA. See Dkt. No. 113. To the contrary, the Discovery Order has the impermissible effect of allowing Plaintiff to depose Nichols and Hammer to conduct discovery into the Oklahoma City bombing investigation. There can be no other purpose since Nichols and Hammer are not employees of the FBI and lack any knowledge of the FBI’s search for records or its decisions concerning the disclosure of the requested records. Even Plaintiff has not suggested that the proposed discovery would or could provide

information about the adequacy of the FBI's search for records. Instead, Plaintiff intends to question these witnesses about the underlying subject matter of those records, i.e., the Oklahoma City bombing. See Dkt. No. 98 at 4 (claiming that Nichols and Hammer could provide "valuable information" pertaining to the Oklahoma City bombing); see also Letter to Robert Mueller, dated September 21, 2007 and attached as Exhibit A. Such discovery is not permitted under FOIA.

Further, the Discovery Order is without legal precedent. The Court did not cite and the FBI has not located any authority which permits the depositions of non-agency personnel in a FOIA case. The only court to address this issue rejected an attempt by a FOIA plaintiff to compel the deposition of a private citizen. See Kurz-Kasch v. U.S. Dep't of Defense, 113 F.R.D. 147 (S.D. Ohio 1986). In Kurz-Kasch, the prospective deponent, Mr. Kurak, was not an employee of the Department of Defense, and did not participate in either the search for agency records or the decisions concerning the disclosure of the requested records. Id. at 147. Accordingly, the court concluded that because Mr. Kurak was a private individual "having no official connection with any federal governmental agency," the Court had no jurisdiction under FOIA to enforce the subpoena against Mr. Kurak. Id. at 148.

Likewise in this case, neither Nichols nor Hammer have ever been employed by the FBI, or participated in the search for the FBI's records or the decisions concerning the disclosure of the FBI's records. Accordingly, this Court should reconsider its Discovery Order and deny Plaintiff's motion because the Order exceeds the permissible scope of discovery under FOIA and is without legal precedent.

II. THIS COURT SHOULD RECONSIDER ITS DISCOVERY ORDER AND DENY PLAINTIFF’S MOTION BECAUSE THERE IS NO CASE AND CONTROVERSY SUFFICIENT TO CONFER SUBJECT MATTER JURISDICTION UNDER ARTICLE III.

This Court should also reconsider its Discovery Order and deny Plaintiff’s motion because there is no case and controversy sufficient to confer subject matter jurisdiction here. Article III of the Constitution requires that federal courts hear only “Cases” and “Controversies.” U.S. Const. art. III, section 2. Federal courts have “no authority to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before [them].” Church of Scientology v. United States, 506 U.S. 9, 12 (1992).

In the FOIA context, once an agency releases documents responsive to a FOIA request, there no longer exists a ‘case or controversy’ sufficient to confer subject matter jurisdiction on the court because the court has no further judicial function to perform. See Bloom v. Soc. Sec. Admin., 72 Fed. Appx. 733, 735 (10th Cir. July 3, 2003); Anderson, 3 F.3d at 1384 (“[i]n general, once the government produces all the documents a plaintiff requests, her claim for relief under the FOIA becomes moot”); Tijerina v. Walters, 821 F.2d 789, 799 (D.C. Cir.1987) (holding that “[h]owever fitful or delayed the release of information under the FOIA may be ... if we are convinced appellees have, however belatedly, released all nonexempt material, we have no further judicial function to perform under the FOIA”).

Likewise, when an agency determines that it does not have any documents responsive to the plaintiff’s request, the court has no judicial function to perform because the court cannot order the agency to disclose records which it does not have or cannot locate. See Goldgar, 26 F.3d at 34 (5th Cir. 1994) (per curiam) (pointing out that where agency had no records responsive to plaintiff’s

request, court had no jurisdiction under FOIA); Wichlacz v. United States Dep't of Interior, 938 F. Supp. 325, 329 n.1 (E.D. Va. 1996) (holding that FOIA action against FBI was moot where FBI determined it did not have responsive documents). Thus, once an agency advises a FOIA requester that the agency released all its responsive records, or does not have, or is unable to locate, responsive records, there is no case or controversy and thus, no judicial function for the court to perform.

In this case, the FBI conducted multiple searches, both voluntarily and pursuant to court orders and located records responsive to Plaintiff's FOIA request. The FBI disclosed, in full or in part, all the responsive records which it located. The FBI asserted and this Court upheld the FBI's assertion of various exemptions to disclosure of those records under FOIA. Based upon this record, the Court ruled on the parties' cross-motions for summary and partial summary judgment and reconsidered its ruling under Rules 59(e) and 60(b). Collectively, these orders resolved the parties' pending claims. Accordingly, there is no longer any case and controversy and no judicial function for this court to perform.

In its Discovery Order, however, the Court concluded that it retained jurisdiction because the case had not been closed and remained on the Court's list of active pending cases. Dkt. No. 133 at 2. Neither of these circumstances is determinative of whether this Court has the requisite "case and controversy" under Article III. Rather, the question is whether there remained any judicial function for the Court to perform.

In this case, the Court issued a final ruling regarding the adequacy of the FBI's searches and the validity of its asserted exemptions when it issued its Amended Order and subsequently denied Plaintiff's Motion to Amend Judgment. See Dkt. No. 95 at 1. At that time, there were no longer any pending issues. Although the Court never entered a separate judgment, under Fed. R. Civ. P.

58(a)(1)(D) and (b)(1), judgment was entered, in effect, when the Court denied Plaintiff's Rule 59(e) motion and entered its Order on the docket. See Whitaker v. Garcetti, 486 F.3d 572, 579 (9th Cir. 2007) (holding that when the parties treat a fully dispositive summary judgment order as if it were a final judgment, the requirement in Rule 58 that the judgment 'be set forth on a separate document' can be waived.") The time for appealing that final judgment expired 60 days later under Fed. R. App 4(a)(1)(b). Once the time expired, the Court's Order was final, there was no further judicial function for this Court to perform, and this case should have been closed.

Further, even if the Court retained jurisdiction to ensure that the FBI complied with its Amended Order, the FBI indicated that it did so on June 2, 2006. See Dkt. No. 96 at 1-2. Thus, a determination as to the adequacy of the FBI's searches in response to Plaintiff's FOIA request was over at this point and there was no further judicial function to perform.

Accordingly, because this Court resolved all pending issues pertaining to the FBI's searches and the validity of its asserted exemptions, there is no case and controversy here and no further judicial function for this Court to perform.

III. THIS COURT SHOULD RECONSIDER ITS DISCOVERY ORDER AND DENY PLAINTIFF'S MOTION BECAUSE PLAINTIFF HAS FAILED TO RAISE A QUESTION AS TO THE FBI'S GOOD FAITH SUFFICIENT TO JUSTIFY DISCOVERY.

Even if there were a case and controversy here sufficient to confer subject matter jurisdiction under Article III, this Court should still reconsider its Discovery Order and deny Plaintiff's motion because there is no question as to the FBI's good faith sufficient to justify discovery. This Court has never found that the FBI acted in bad faith and Plaintiff's own speculative criticism of the FBI's response to Plaintiff's FOIA request is insufficient to justify discovery.

As set forth above, discovery is the exception not the rule in FOIA cases. See Wheeler, 271 F. Supp. 2d at 139 (holding that discovery is generally unavailable in FOIA actions); Judicial Watch, Inc., 108 F. Supp. 2d at 25 (“[D]iscovery in a FOIA action is generally inappropriate.”). The only exception to this general limitation on discovery exists when plaintiff raises a question as to the agency’s good faith sufficient to impugn its affidavits or provides some evidence that an exemption claimed by the agency should not apply. See Carney v. U.S. Dep’t of Justice, 19 F.3d 807, 812 (2nd Cir. 1994) (no discovery if agency satisfies burden unless plaintiff makes a “showing of bad faith on the part of the agency”). A FOIA plaintiff is not entitled to discovery based upon his own “speculative criticism” of the agency’s search. See Accuracy in Media, Inc. v. Nat’l Park Serv., 194 F.3d 120, 124 (D.C. Cir. 1999) (upholding denial of discovery based on “speculative criticism” of agency’s search); Grand Cent. P’ship, 166 F.3d at 489 (finding discovery unwarranted based on plaintiff’s “speculation that there must be more documents” and that agency acted in “bad faith” by not producing them).

In its Discovery Order, the Court concluded that discovery was appropriate because Nichols and Hammer might be able to identify the existence of other FBI records responsive to Plaintiff’s FOIA request that have not yet been produced. See Dkt. No. 113 at 3. Even if the Court were correct about the deponents’ ability to identify the existence of other documents, a dubious proposition, the Court’s rationale is in error. Under FOIA, the FBI is not required to locate or produce every document extant. FOIA requires only that an agency make “a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.” Nation Magazine v. United States Customs Serv., 71 F.3d 885, 890 (D.C. Cir. 1995) (quoting Oglesby v. United States Dep’t of the Army, 920 F.2d 57, 68 (D.C.

Cir. 1990)). An “agency is not expected to take extraordinary measures to find the requested records.” Garcia v. United States Dep’t of Justice, 181 F. Supp. 2d 356, 368 (S.D.N.Y. 2002).

In this case, the FBI conducted multiple searches using methods not only reasonably calculated to produce the requested information, but also extraordinary methods. See Hardy Decl. at ¶ 16; 2nd Hardy Decl. at ¶¶ 8, 9; 3rd Hardy Decl. at ¶¶ 6, 9 fn.5; 4th Hardy Decl. at ¶ 16; 6th Hardy Decl. at ¶7. The FBI is not required to do any more and this Court has declined to order that the FBI do any more presumably based upon the reasonableness of the FBI’s prior searches. See Dkt. No. 88 at 21. (“But given the nature of Plaintiff’s initial FOIA request and the searches that have been conducted by the FBI thus far, the court declines to order further searches beyond what the court has ordered above.”).

Although the Court previously found that the FBI’s initial search “was not reasonably calculated to discover the requested documents,” Dkt. No. 31 at 5, and expressed concern that documents produced by the FBI referred to other documents that were not produced, see Dkt. No. 113 at 3, this Court also found that the absence of such documents “was not necessarily an indication of bad faith.” See Dkt. No 88 at 21. In fact, there is no evidence that documents which were referenced, but not produced, are responsive to Plaintiff’s FOIA request or even in existence. Moreover, as the FBI previously explained, a search is not unreasonable simply because it fails to produce all responsive material. See Nation Magazine, 71 F.3d at 892 n.7 (“[T]he failure to turn up [a specified] document does not alone render the search inadequate; there is no requirement that an agency produce all responsive documents.”).

Although Plaintiff claims that the FBI responded in bad faith to his FOIA request, Plaintiff’s request simply never sought the records which he now claims the FBI failed to produce. Compare

Dkt. No. 3, Ex. A and Dkt. Nos. 97 at; 98 at 2. Plaintiff's FOIA requests did not seek information about an "undercover operative" or any of several militia groups which he now identifies as the Michigan Militia, the Constitution Rangers or the Arizona Patriots. See Dkt. No. 98 at 2. Nor did Plaintiff seek information "related to a failed sting operation" by the SPLC and FBI at Elohim City as he contends. See Dkt. No. 97 at 2.

Likewise, neither Nichols' nor Hammer's declaration raise any issue as to the FBI's good faith in responding to Plaintiff's FOIA request, the adequacy of the FBI's searches, or the validity of its asserted exemptions. Nor does either declaration make any mention of Morris Dees or the SPLC, the individual and entity who were the actual subjects of Plaintiff's FOIA original request. See Dkt. No. 3, Ex. A.

Accordingly, because this Court has not found that the FBI acted in bad faith and Plaintiff has failed to raise a question as to the FBI's good faith sufficient to impugn its affidavits or create a genuine issue as to the reasonableness of the FBI's searches, this Court should reconsider its Discovery Order and deny Plaintiff's motion.

IV. ALTERNATIVELY THIS COURT SHOULD RECONSIDER ITS DISCOVERY ORDER AND DENY PLAINTIFF'S REQUEST TO VIDEOTAPE THESE DEPOSITIONS FOR SECURITY REASONS.

Alternatively, even if this Court is inclined to permit Plaintiff to depose Nichols and Hammer, this Court should still reconsider its Discovery Order and deny Plaintiff's request to videotape their depositions because the Bureau of Prisons ("BOP") has determined that a video recording poses a potential threat to the security of the institutions where these individuals are confined. Specific regulations govern the BOP's management of a federal correction facility and specifically, its search of inmates and visitors, and the supervision of visits and visitors. See

generally, 28 C.F.R. Part 500. Under these provisions, the BOP has the discretion to manage non-inmates, the objects they bring, and their activities, while inside a BOP facility or upon the grounds of any BOP facility. See 28 C.F.R. § 511.10(a). The BOP also has the discretion to approve or deny a request to use recording equipment on institution grounds. If the BOP determines that such a recording poses a potential threat to the institution's security or to the privacy of individuals, including inmates and staff, it may deny the request. See 28 C.F.R. §§ 511.11; 511.12 (prohibiting the introduction of cameras and/or recording equipment into a BOP facility).

In this case, the BOP has determined that allowing recording equipment onto the institution's grounds and into the institutions where these individuals are confined, threatens and is detrimental to the order and security of the prisons and may violate the privacy of others. Accordingly, this Court should reconsider its Discovery Order and deny Plaintiff's request to videotape the depositions of these witnesses.

CONCLUSION

Based upon the foregoing, the FBI respectfully requests that this Court reconsider its Discovery Order and deny Plaintiff's motion. Alternatively, the FBI requests that this Court reconsider its Discovery Order and deny Plaintiff's request to videotape these depositions.

DATED this 31st day of October, 2007.

BRETT L. TOLMAN
United States Attorney

/s/ Carlie Christensen

CARLIE CHRISTENSEN
Assistant United States Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the United States Attorney's Office, and that a copy of the foregoing Memorandum in Support of Motion to Reconsider was mailed, postage prepaid and/or electronically to all parties named below, this 31st day of October, 2007.

Jesse C. Trentadue
Suttter Axland
8 E. Broadway, Suite 200
Salt Lake City, UT 84111

/s/ Linda Pearson

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

JESSE C. TRENTADUE,

Plaintiff,

vs.

**FEDERAL BUREAU OF
INVESTIGATION and FEDERAL
BUREAU OF INVESTIGATION,
OKLAHOMA CITY FIELD OFFICE,**

Defendants.

ORDER

Case No. 2:04CV772 DAK

This matter is before the court on the Federal Defendants' Motion to Reconsider Discovery Order and Request for Oral Argument. The court has carefully reviewed the written memoranda submitted by the parties. Pursuant to local rule 7-1(f), the court has concluded that oral argument would not be helpful or necessary, and thus the court will determine the motion on the basis of the written memoranda. *See* DUCivR 7-1(f). Now, being fully advised, the court renders the following Order.

On September 20, 2007, the court issued granted Plaintiff's Motion to Conduct Discovery. Specifically, the court stated that it would permit Plaintiff to take—and videotape—the depositions of Nichols and Hammer, so long as these individuals are willing to cooperate.

The Federal Defendants argue (1) that this court's Discovery Order exceeds the permissible scope of discovery under FOIA, (2) that the court lacks jurisdiction because the court

there is no longer an Article III case and controversy, (3) there is no question as to the FBI's good faith sufficient to justify the Discovery Order, and (4) the BOP has determined that a video recording poses a threat to the security of the institutions where these individuals are confined.

Defendants, however, asserted the first three arguments in their Memorandum in Opposition. The court rejected those arguments previously and will not reconsider them at this point. As to the BOP's concern that a video recording poses a threat to the security of the institutions, the court will limit the usage of the video recording equipment to only the room in which the deposition is taken. The two affidavits submitted by the Federal Defendants express concerns that various aspects of the prison grounds, security systems, equipment storage, offices, staff, other inmates and various other items might be filmed.

While it is doubtful that Plaintiff intended to video anything other than Nichols and Hammer during their actual depositions, the court hereby orders that no video equipment may be used other than in the specific room where each deposition is taking place, and the video equipment may not record the images of any person other than Nichols and Hammer. In addition, if it would allay the security concerns of the respective prison officials, Plaintiff is directed to make arrangements to meet an designated prison official at a predetermined location outside of the correctional facility and so that the prison official may take possession of the recording equipment and transport it to the proper location where the deposition will take place.

Now that the court has declined to reconsider its Discovery Order and made clear that Plaintiff is entitled to conduct this discovery, the court will now close this case. Plaintiff has stated, however, that he "believes that if he is allowed to depose Nichols and Hammer, these men

will be able to provide evidence that will link the informants thus far revealed to the SPLC and, thereby, identify and/or document the existence of records responsive to Plaintiff's FOIA requests that have not been produced." If Plaintiff is correct and through these depositions he discovers the existence of records responsive to Plaintiff's FOIA request, he may file a motion to reopen the case. At that point, the court will determine whether it is appropriate to reopen the case or to direct Plaintiff to file another FOIA request.

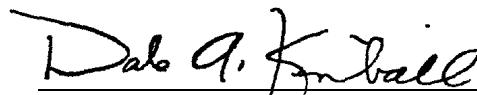
Finally, the Federal Defendants have filed an "Objection" to Plaintiff's filing of a "Notice of Release of Documents," along with attached documents. While the court agrees that they are not relevant to the issue of whether Plaintiff is entitled to depose Nichols and Hammer—and the court has not relied on these documents in making its decision—the court declines to strike them from the record, as requested by the Federal Defendants.

CONCLUSION

For the foregoing reasons, IT IS HEREBY ORDERED that the Federal Defendants' Motion to Reconsider [docket # 114] is DENIED and their Objection [docket # 130] is OVERRULED. The Clerk of the Court is directed to close this case.

DATED this 25th day of September, 2008.

BY THE COURT:



DALE A. KIMBALL
United States District Judge

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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

| | | |
|---------------------------|---|-------------------------|
| JESSE C. TRENTADUE, | : | 2:04 CV 00772 DAK |
| Plaintiff, | : | |
| vs. | : | NOTICE OF APPEAL |
| FEDERAL BUREAU OF | : | |
| INVESTIGATION and FEDERAL | : | |
| BUREAU OF INVESTIGATION | : | |
| OKLAHOMA CITY FIELD | : | Hon. Dale A. Kimball |
| OFFICE, | : | |
| Defendants. | : | |

Pursuant to 28 U.S.C. § 1291, the Federal Bureau of Investigation and the Federal Bureau of Investigation Oklahoma City Field Office (collectively “the FBI”) hereby appeal to the United States Court of Appeals for the Tenth Circuit from the following orders entered by the Court after its final adjudication of all the underlying issues in this Freedom of Information Act case:

1. The order of September 20, 2007 granting Jesse Trentadue’s motion to take and videotape the depositions of two prisoners confined in the Bureau of Prisons’ maximum and high security facilities; and

2. The order of September 25, 2008 denying the FBI's motion for reconsideration of the Court's previous order granting the requested depositions.

DATED this 4th day of November, 2008.

BRETT L. TOLMAN
United States Attorney

/s/ Carlie Christensen
CARLIE CHRISTENSEN
Assistant United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that on November 4th, 2008, a true and correct copy of the FBI's Notice of Appeal was mailed, postage prepaid and/or electronically to all parties named below:

Jesse C. Trentadue
Sutter Axland
8 E. Broadway, Suite 200
Salt Lake City, UT 84111

/s/ Christine Allred
Legal Assistant