



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*86 Chambers Street
New York, New York 10007*

August 6, 2020

MEMO ENDORSED

In view of plaintiffs' lack of position, application granted only to the extent that the August 4 order is modified by making the deadline for release of the documents October 5, 2020 but otherwise denied.

Lewis A. Kaplan
8/7/2020

BY ECF

Hon. Lewis A. Kaplan
United States District Court
Southern District of New York
500 Pearl Street, Room 1050
New York, New York 10007

Re: *Behar v. U.S. Department of Homeland Security*,
Nos. 17 Civ. 8153, 18 Civ. 7516 (LAK)

Dear Judge Kaplan:

I write respectfully on behalf of the U.S. Secret Service, a component of defendant the U.S. Department of Homeland Security (the "government"), to request a stay of the Court's Order dated August 4, 2020, ECF No. 80 in 17 Civ. 8153 (the "August 4 Order"), in this Freedom of Information Act ("FOIA") case. The government respectfully requests a stay of the August 4 Order for sixty days, or until October 5, 2020, to permit the Acting Solicitor General of the United States to consider whether to authorize appeal of the Order. The government further requests that if a notice of appeal is filed on or before October 5, the stay continue until the final disposition of the government's appeal. In the alternative, we respectfully request that the August 4 Order be modified to impose a deadline of October 5 rather than August 18 for the release of documents called for by the Order. I have conferred with plaintiff's counsel, who advised me that plaintiff takes no position on the government's request for a stay.

In the August 4 Order, the Court denied the government's motion for summary judgment, granted plaintiff's cross-motion for summary judgment, and directed the government to "produce the responsive materials to the plaintiff on or before August 18, 2020."¹ Judgment was entered on August 4. Under 28 U.S.C. § 2107(b) and Federal Rule of Appellate Procedure 4(a)(1)(B), the government has sixty days after entry of judgment, or until October 5, 2020 (October 3 being a Saturday), to file a notice of appeal. Only the Acting Solicitor General can authorize an appeal by the government. *See* 28 C.F.R. § 0.20(b). The government's process for consideration of appeal involves consultation with affected Department of Justice and other governmental components.

¹ As the August 4 Order noted, the Court's Memorandum Opinion issued on August 15, 2019, ECF No. 49 in 17 Civ. 8153 ("2019 Opinion" or "2019 Mem. Op."), sustained the Secret Service's withholding of "names and other information pertaining to law enforcement personnel." Mem. Op. at 27. Thus, the government understands the August 4 Order to require disclosure of all records with the exception of any information pertaining to law enforcement personnel.