

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION - LOS ANGELES

JEFFREY POWERS, ET AL,	)	CASE NO: 2:22-cv-08357-DOC-JEMx
	)	
Plaintiffs,	)	CIVIL
	)	
vs.	)	Santa Ana, California
	)	
DENIS RICHARD MCDONOUGH,	)	Thursday, April 4, 2024
ET AL,	)	
	)	(11:06 a.m. to 11:28 a.m.)
Defendants.	)	( 1:05 p.m. to 1:44 p.m.)
	)	( 2:07 p.m. to 2:08 p.m.)

HEARING RE:

MOTION TO FILE COMPLAINT IN INTERVENTION [DKT.NO.144]

BEFORE THE HONORABLE DAVID O. CARTER,  
UNITED STATES DISTRICT JUDGE

APPEARANCES: SEE PAGE 2

Court Reporter: Recorded; CourtSmart

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1 Santa Ana, California; Thursday, April 4, 2024; 11:06 a.m.

2 (Call to Order)

3 **THE COURT:** We're on the record in the matter of  
4 Jeffrey Powers versus Denis Richard --is it McDonug (sic)? Am  
5 I --

6 **MR. SPEAKER:** McDonough.

7 **THE COURT:** McDunug (sic), I'm sorry. On 22-08357.  
8 And, counsel, just remain seated.

9 But if you'd make your appearances, please?

10 **MR. ROSENBAUM:** Good morning, Your Honor. First of  
11 all, thank you for moving the time. That was extremely  
12 helpful.

13 **THE COURT:** Okay.

14 **MR. ROSENBAUM:** I'm Mark Rosenbaum from Public  
15 Counsel on behalf of Plaintiffs.

16 **THE COURT:** Nice to see you.

17 **MS. SAVAGE:** Good morning, Your Honor. I'm Amanda  
18 Mangaser Savage from Public Counsel on behalf of Plaintiffs.

19 **THE COURT:** Nice seeing you.

20 **MR. SILBERFELD:** Morning, Your Honor. Roman  
21 Silberfeld, Robins Kaplan for the Plaintiff.

22 **THE COURT:** Thank you.

23 **MR. DU:** Good morning, Your Honor. Tommy Du, Robins  
24 Kaplan, on behalf of Plaintiffs.

25 **THE COURT:** Thank you. And then let me turn to --

1           **MR. MCCORMICK:** Good morning, Your Honor. Sean  
2 McCormick on behalf of the proposed intervenor, Bridgeland  
3 Resources.

4           **THE COURT:** Oh, Linda, just a moment. How do I spell  
5 your first name, sir?

6           **MR. MCCORMICK:** S-E-A-N.

7           **THE COURT:** All right. And your last name, sir.

8           **MR. MCCORMICK:** M-C-C-O-R-M-I-C-K.

9           **THE COURT:** M-I-C-K, McCormick.

10          **MR. MCCORMICK:** Yes, sir.

11          **THE COURT:** Okay. And --

12          **MR. GUADIANA:** Good morning, Your Honor. Ernest  
13 Guadiana also on behalf of Bridgeland Resources.

14          **THE COURT:** All right. Now just a little bit slower.  
15 Your first name?

16          **MR. GUADIANA:** Ernest, E-R-N-E-S-T.

17          **THE COURT:** Thank you.

18          **MR. GUADIANA:** And the last name is Guadiana, which  
19 is "G" as in George, U-A-D as in David, I-A-N as in Nancy, "A."

20          **THE COURT:** Thank you very much. Nice to have you.  
21 And then, counsel, just remain seated.

22          **MR. ROSENBERG:** Good morning, Your Honor. Brad  
23 Rosenberg, special counsel in the Federal Programs Branch --

24          **THE COURT:** Right.

25          **MR. ROSENBERG:** -- with Department of Justice, Civil

1 Division.

2 **THE COURT:** Good to see you. And --

3 **MR. KNAPP:** And Cody Knapp, also with the Federal  
4 Programs Branch.

5 **THE COURT:** Now, just a moment. (Inaudible) captive  
6 of the name submitted to me. Who's Zachary Anthony Avallone?

7 **MR. ROSENBERG:** Mr. Avallone was the prior trial  
8 attorney on this case. You may recall his last hearing here  
9 was --

10 **THE COURT:** Right.

11 **MR. ROSENBERG:** -- in September.

12 **THE COURT:** All right.

13 **MR. ROSENBERG:** He has since left the Department of  
14 Justice.

15 **THE COURT:** So, Karlen, let's take him off the  
16 appearance list, okay?

17 Who is Keith, middle initial "E," last name is Smith?

18 **MR. ROSENBERG:** He is a counsel for HACLA.

19 **THE COURT:** Okay. And he's no longer by stipulation  
20 here. We can take him off the appearance list.

21 Who's Christine Kroot Kloss (phonetic)?

22 **MR. ROSENBERG:** Oh, she is a counsel for the  
23 Department of Veterans Affairs, agency counsel.

24 **THE COURT:** Okay. Will she be making an appearance  
25 and should I keep her on the list?

1           **MR. ROSENBERG:** She is not here today --

2           **THE COURT:** Time out. Let's just keep her on the  
3 list --

4           **MR. ROSENBERG:** Okay.

5           **THE COURT:** -- as a courtesy so if she does make an  
6 appearance, okay.

7           And Richard Hipolit.

8           **MR. ROSENBERG:** He is a senior agency counsel with  
9 VA. He appeared at the --

10          **THE COURT:** Yeah.

11          **MR. ROSENBERG:** -- September hearing.

12          **THE COURT:** Then let's keep him on the list although  
13 he's not present.

14          Well let me turn this over to you, folks. How we  
15 doing?

16          (No audible response.)

17          Well then let's all go to lunch and the beach. And  
18 how are we doing?

19          **MR. SILBERFELD:** Good morning again, Your Honor.

20 Roman Silberfeld for the Plaintiffs.

21          We've gotten a lot accomplished since January. We've  
22 taken a number of depositions. I don't know that we've  
23 completed any because of some document production issues. We  
24 learned yesterday that there's some document production yet to  
25 come from the Government.

1           We have not had a chance since this occurred  
2 yesterday to actually sit down and talk with either counsel in  
3 detail about this or with either of the special masters. We  
4 had a brief conversation just before --

5           **THE COURT:** And we'll do that over the lunch hour --

6           **MR. SILBERFELD:** Yeah.

7           **THE COURT:** -- if needed, okay?

8           **MR. SILBERFELD:** But we've -- we have filed expert  
9 reports, four of them. The government has amended its 26  
10 disclosure to add three of its own employees to be giving  
11 opinion testimony at the time of trial, so that's complete as  
12 of Monday of this week.

13          **THE COURT:** Okay.

14          **MR. SILBERFELD:** And now we move into some of the  
15 motion phases.

16          **THE COURT:** Okay.

17          **MR. SILBERFELD:** But there's way more to do.

18          **THE COURT:** How are we doing?

19          **MR. ROSENBERG:** I think I largely agree with what my  
20 friend on the Plaintiffs' side has said. I think we've  
21 accomplished an enormous amount, and we've been working  
22 cooperatively up until this point.

23                I think the special masters would acknowledge that  
24 the depositions have all run very smoothly. We have not had  
25 any discovery disputes that we've had to take to them to date.

1 I'll note -- and my colleague, Mr. Knapp, is really a  
2 little bit closer to the document issues, but we've produced in  
3 excess of 122,000 pages of documents so far, both from VA and  
4 HUD.

5 Plaintiffs have taken several depositions, including  
6 at least two days of 30(b)(6) depositions so far. There's at  
7 least one more -- and three -- and two days of 30(b)(6)  
8 depositions of VA, one 30(b)(6) deposition of HUD. And there's  
9 one more day of a 30(b)(6) deposition that's currently  
10 scheduled.

11 **THE COURT:** Okay.

12 **MR. ROSENBERG:** We are looking at the expert phase of  
13 discovery at this point. As Mr. Silberfeld noted, Plaintiffs  
14 have identified four experts. We anticipate taking those  
15 depositions.

16 And then we also anticipate taking the depositions of  
17 the named Plaintiffs themselves.

18 **THE COURT:** I'm trying to divide the resources into  
19 east coast and west coast so that there was no windshield time.  
20 I assumed that a lot of our depositions would take place by  
21 video. But in case there were in-person depositions that were  
22 demanded, I didn't want you paying for west coast.

23 So Judge Smith has been out on the west coast.  
24 Daniel Garrie's been out on the east coast. But they're  
25 available to both of you.



1           Do you have enough resources? In other words, are  
2 the resources that I've extended to you sufficient to meet your  
3 knees or do I need to and somehow, you know, embrace you and  
4 increase those resources?

5           **MR. SILBERFELD:** From our perspective, the --

6           **THE COURT:** You okay so far.

7           **MR. SILBERFELD:** -- resources we have are good.

8           **THE COURT:** I want to make it as cost-effective as  
9 possible.

10          **MR. SILBERFELD:** Right.

11          **THE COURT:** How about you folks?

12          **MR. ROSENBERG:** I mean, I think if you're -- the  
13 Court is referring to the external resources that it's made  
14 available to us with the special masters, I think it's worked  
15 well so far. I don't think we need any additional resources on  
16 that front.

17          **THE COURT:** Okay.

18          **MR. ROSENBERG:** I would defer of course to the  
19 special masters themselves and their schedule.

20          **THE COURT:** I'm anticipating that we're truly going  
21 to trial here. I had an expectation that because you'd reached  
22 a settlement before in 2015, that when you first came into my  
23 court you were very candid and said, "I screwed up," referring  
24 to counsel not having judicial let's say consent decree or  
25 something else occurring. Kind of refreshing, frankly. Thank

1 you.

2 But also on your homeless population from your papers  
3 it increased from 1200 to 3800 or more in that period of time,  
4 and so back you came with litigation.

5 I somewhat anticipated that there might be a  
6 possibility of a settlement. But I'm not pushing that on you  
7 in any way, shape, or form.

8 And, in fact, I'm going to start moving cases now on  
9 my calendar because I didn't quite know the reality of whether  
10 we're going to trial.

11 And I'm not going to hold you to this. But if you  
12 were going to put on the Plaintiffs' case, hypothetically how  
13 long would you need? And by the way, you're not limited in  
14 time.

15 **MR. SILBERFELD:** Five days for the Plaintiffs' case,  
16 Your Honor.

17 **THE COURT:** Which makes two weeks, okay, all right.  
18 Just kidding you. But five to seven days, okay. No pressure  
19 on my part, okay.

20 How long do you folks need?

21 **MR. ROSENBERG:** I think likewise probably about the  
22 same amount of time.

23 **THE COURT:** Okay. Five days to seven days. Let's  
24 just take 14 days. So if we have, you know, four days a week  
25 because most of you can't hold up -- I couldn't hold up doing

1 litigation five days a week. It was pretty hard. So probably  
2 four days a week, giving you a day off. So we've really got  
3 about, oh, roughly three to four weeks, don't we?

4 Now, before I get involved with the intervenors for  
5 just a second, because you'll have your needs, remember this,  
6 I'll never hurt you professionally. I'll growl at you, okay,  
7 but I'll never hurt you in terms of your family, you know, your  
8 personal life.

9 As far as your other cases are concerned, I'm not  
10 concerned, unless you're Steve Wilson who's significantly older  
11 than I am. I'm just joking, a little bit older. There's no  
12 other seniority here, okay.

13 So we've got a July 23rd date that I'm holding to  
14 tightly. But I also anticipate some of your witnesses are  
15 going to give you pushback in that period of time if they've  
16 got children, vacations, etcetera.

17 I can move it two weeks either direction. I can put  
18 pressure on you and move it earlier, but I don't think that's  
19 fair. You don't want that.

20 I can move it a little bit later. My drop-dead time  
21 would be September, quite frankly. That's the latest I would  
22 get the case off the ground.

23 But if you've got witness problems with children and  
24 such to where they're pushing back or taking summer vacations,  
25 I don't want that to happen to you as counsel when you're

1 getting this pushback, well, tell the judge I can't make it  
2 because, then we're all going to be here.

3           Is July 23rd a good date for all of you? And, if  
4 not, I want you to have that discussion over the lunch hour.  
5 And I represent to you that I'm willing to work with you and  
6 move this case, you know, a couple weeks and you have witness  
7 problems, because I want a continuous trial, okay?

8           And so it might be the week -- or the week we come  
9 back from Labor Day, for instance. But I don't see moving it  
10 from simply July to August because if you've got family  
11 problems with your witnesses.

12           So talk about that and that I'll -- I can accommodate  
13 you out of courtesy, but no later than September if we decide  
14 to move it. And if we're going to move it, we ought to move it  
15 earlier rather than later, okay?

16           All right. The second thing is I want to talk to the  
17 intervenors for just a moment. Now, you're Bridgeland  
18 Resources. And I'm prepared with you moving for leave to file  
19 a complaint and intervention under Federal Rule of Civil  
20 Procedure 24(b)(1)(B) to grant your motion.

21           You filed that under docket 144. I'm allowing you to  
22 intervene, and I actually have a tentative written order today  
23 so I can make that pronouncement in one paragraph and get you  
24 out of here quickly.

25           But I need the representation that you're going to be

1 ready for trial if you're intervening on the date that we set  
2 it. And right now, until I hear anything further, it's July  
3 23rd.

4 **MR. MCCORMICK:** Thank you for the opportunity, Your  
5 Honor, and thank you for granting our motion to intervene.

6 At this time right now, I cannot say for certain that  
7 Bridgeland will not move to bifurcate its issues from the main  
8 trial. We're certainly -- Bridgeland's certainly not  
9 interested in slowing --

10 **THE COURT:** Well just a moment. Then why are you  
11 intervening?

12 **MR. MCCORMICK:** Excuse me, Your Honor?

13 **THE COURT:** Then why are you intervening?

14 **MR. MCCORMICK:** We're intervening to protect  
15 Bridgeland's surface agreement that --

16 **THE COURT:** You can file a separate complaint. Why  
17 would I allow this intervention? In other words, if I'm going  
18 to allow you to intervene -- and maybe I'm confused -- you're  
19 ready for trial and you're ready for trial on this date.

20 Otherwise you're like the rest of the lessees, you  
21 may choose to sue in the future.

22 But this trial won't be held up because of your  
23 intervention.

24 **MR. MCCORMICK:** And Bridgeland's not interested in  
25 slowing the trial of any issues that don't apply to Bridgeland.

1 But Bridgeland we believe has a due process right. If the  
2 Plaintiffs are seeking to invalidate its surface agreement with  
3 the VA, Bridgeland has a right to participate in that  
4 litigation --

5 **THE COURT:** Okay. You're going to discuss that  
6 because you're on dangerous ground. I was prepared to grant  
7 this. I don't think I am at the present time. So you have a  
8 healthy discussion. Now, here's my direction to you.

9 You are ready to proceed on the date that we choose,  
10 either July 23rd or shortly thereafter. And lead counsel will  
11 make that decision. Otherwise, you can file a separate  
12 complaint, maybe the school will join you, maybe the parking  
13 lots, maybe (inaudible) lessees. But nothing will interfere  
14 with the trial date that we have set between the principal  
15 parties. Am I clear?

16 **MR. MCCORMICK:** Yes, Your Honor.

17 **THE COURT:** now that I'm clear, you can have that  
18 discussion and decide tactically what you want to do. But if  
19 you proceed along this line, it won't be intervening.

20 **MR. MCCORMICK:** Understand, Your Honor.

21 **THE COURT:** Understood? Nothing's going to hold up  
22 this case other than the Court's courtesy to making certain I'm  
23 not inconveniencing witnesses, you know, people going on  
24 vacation with their grandchildren, things like that.

25 So it makes no difference to me if it's July 23rd or

1 August 25th or September 4th. But my drop-dead date is early  
2 September. That's the latest time I would take the matter.

3 And I'm hearing now that I need to start clearing my  
4 calendar when you come back to me after lunch and give you  
5 probably at least, you know, probably four weeks, which I need  
6 to do. I need to do that during couple other cases with other  
7 counsel. And I didn't know what to do until I saw that there  
8 really wasn't going to be a settlement.

9 Now, the second thing is, I think all (inaudible)  
10 disclosed that this is a court trial.

11 **MR. SPEAKER:** Yes, Your Honor, correct.

12 **MR. SPEAKER:** Correct.

13 **MR. MCCORMICK:** Correct from us, too, for our claim  
14 for declaratory relief.

15 **THE COURT:** Okay. Court trial, right?

16 **MR. MCCORMICK:** Yes.

17 **THE COURT:** All right. Should I have an advisory  
18 jury? Nothing like the public getting involved. Talk about  
19 that. Because I'll make my own decision probably before an  
20 advisory jury comes on. But I can impanel an advisory jury.

21 Maybe they would disagree with the Court's  
22 proceeding, give you good reason for appeal. I don't -- I'm  
23 not suggesting it but I'm just saying done it before. Don't  
24 have to here. It can just be a court trial, okay?

25 **MR. MCCORMICK:** Your Honor, --

1           **THE COURT:** I'm sorry, please.

2           **MR. MCCORMICK:** -- may I clarify the Court's ruling?  
3 Are you inclined to deny the intervention motion under Rule  
4 24(a) --

5           **THE COURT:** I don't repeat myself. You heard what I  
6 said.

7           **MR. MCCORMICK:** Okay. I heard that you're --

8           **THE COURT:** You can have a nice conference over  
9 lunch. I was very clear, by the way.

10          **MR. MCCORMICK:** Okay.

11          **THE COURT:** Thank you very much.

12          **MR. MCCORMICK:** Thank you, Your Honor.

13          **THE COURT:** Okay. Now, would you want to go to lunch  
14 now and come back? Is that more of a benefit to you, and talk  
15 to the special masters?

16                 Because if you can talk to the special masters now,  
17 I'll try to get you out before lunch because we have a  
18 sanctions issue with the city coming back, and then at 3:00  
19 o'clock we have some auditors coming in. So I'm at your  
20 disposal.

21          **MR. ROSENBERG:** So, Your Honor, I suspect there's  
22 actually quite a bit that we need to discuss. And I'm not sure  
23 how long that's going to take.

24          **THE COURT:** Oh, don't worry, I --

25          **MR. ROSENBERG:** No, sorry, I don't want to -- I just



1 -- I want to try to be efficient and --

2 **THE COURT:** Don't be.

3 **MR. ROSENBERG:** -- help move this case along.

4 **THE COURT:** Don't be. I'll be here to 9:00 o'clock  
5 tonight if you want.

6 **MR. ROSENBERG:** Okay.

7 **THE COURT:** (Inaudible) tomorrow if you want. Don't  
8 be --

9 **MR. ROSENBERG:** No, I --

10 **THE COURT:** -- efficient. Just get it done so we're  
11 not having to come back or I'm getting phone calls about a  
12 dispute between the two --

13 **MR. ROSENBERG:** Right.

14 **THE COURT:** -- if you hash that out today, okay?

15 **MR. ROSENBERG:** Right. My only point was that I  
16 don't think it's something we can resolve, you know, before  
17 lunch --

18 **THE COURT:** Okay.

19 **MR. ROSENBERG:** -- or in the next 30 minutes or an  
20 hour.

21 **THE COURT:** One o'clock, --

22 **MR. ROSENBERG:** I think it just take a little bit of  
23 time.

24 **THE COURT:** -- 1:30 okay?

25 **MR. SILBERFELD:** One o'clock.

1           **THE COURT:** One o'clock.

2           **MR. SILBERFELD:** Let's say 1:00 o'clock, Your Honor.

3           **THE COURT:** One o'clock, okay. Then Jim and Daniel  
4 or Judge Smith's here and Daniel's here at your disposal.

5           And can you meet with them -- Jim, Daniel, can you  
6 meet with them over the lunch hour? Come on up for a moment.  
7 Let's make sure you're being heard. And what problems are  
8 occurring from their standpoint, and then tell me your worst  
9 fears.

10           And use the microphone so I have a record. Yeah.

11           **JUDGE SMITH:** The list of problems is going to be  
12 very short. Counsel have been very cooperative in all  
13 respects.

14           **THE COURT:** Yeah.

15           **JUDGE SMITH:** Depositions have been not  
16 confrontational, they've been adverse to each other but not  
17 unreasonably so.

18           I think Mr. Garrie has experienced the same thing.

19           Our only critical path now is getting a deposition  
20 scheduled. And I know that that's not easily -- it's easily  
21 said and not necessarily easily done.

22           But we need to have that so that we can make whatever  
23 arrangements or changes to our calendar so we can make sure  
24 that we're not causing any inconvenience to the parties by  
25 having to continue depositions because we're not available.

1           **THE COURT:** Yeah, here's my (inaudible) let me --  
2 sometimes I get cases with complexity where the 30(b)(6)  
3 witness, for instance, is being exchanged. We start off with  
4 one 30(b)(6) but we have a substitution or we have multiple  
5 30(b)(6) witnesses. No.

6           Number two, we get piecemeal documentation coming in  
7 and in good faith we take a deposition, something comes up that  
8 wasn't disclosed, we then have to bring that 30(b)(6) back or  
9 that percipient witness back.

10           And by that time they're pretty mad at us as counsel  
11 and the Court because they just don't understand why they're  
12 coming back the second or third time. No.

13           So I'm now worried about the document production.  
14 And I now (inaudible) know exactly where we are in terms of  
15 this document production and who we're having to call back for  
16 the second or third time because these witnesses shouldn't be  
17 harassed or inconvenienced. They're deposed one time out of  
18 courtesy continuously.

19           And I for the life of me I don't understand why we  
20 wouldn't have these documents because you've been in some kind  
21 of litigation since 2011 or 2012. And you (inaudible) in 2015  
22 and you had to have these leases then, you had to have these  
23 documents then.

24           So the dog ate my homework excuse isn't any good, or  
25 I can't find them isn't any good, or they're on a server I

1 can't find. That's the duty of the government to disclose  
2 those.

3 So where are we, folks? Jim.

4 **JUDGE SMITH:** We've had no discovery motions at this  
5 point.

6 **THE COURT:** Well I know we haven't but that doesn't  
7 mean they're not coming, you know, on the eve of trial.

8 **JUDGE SMITH:** There's been indications in a couple of  
9 my depositions and I think Mr. Garri's --

10 **THE COURT:** Okay. You folks talk about that --

11 **JUDGE SMITH:** -- the same thing --

12 **THE COURT:** -- informally so I'm not, you know,  
13 embarrassing any of you. Get these documents in.

14 And if we're not, guess what? We're in continuous  
15 session apparently for the next couple weeks so they're in  
16 continuous session. These documents are in and they're  
17 attested to, and they're in forthwith; is that understood?

18 And since I'm going to make my life miserable for a  
19 couple weeks, guess what? Get these documents in so we're  
20 prepared so if you take a deposition on either side, we're not  
21 calling that person back for the second or third time.

22 And we've had these documents since 2012, fair  
23 enough? Okay.

24 **MR. GARRIE:** And --

25 **THE COURT:** Daniel.

1           **MR. GARRIE:** -- I agree with Judge Smith, the part  
2 what the depositions have been, adversarial but --

3           **THE COURT:** Yeah.

4           **MR. GARRIE:** -- cooperative and --

5           **THE COURT:** Well, I have no doubt. Every feedback  
6 I've gotten from you should be extraordinary, professional,  
7 adversarial but incredibly courteous with one another. I mean,  
8 you really have my compliments from the bench about the way  
9 you've conducted yourself. All of the input has been  
10 phenomenal, excellent.

11           My biggest fear is that with all of that courtesy  
12 extended in the adversarial system, here come the documents.

13           Now you got time for a story? A great story.

14           In the Aryan Brotherhood case which involved 30  
15 killings of Black victims, which was a nine-month trial, we're  
16 getting ready to go to trial.

17           And after attestations from the Federal government  
18 that all the documents have been disclosed, guess what? On the  
19 eve of trial, 52,000 documents suddenly get disclosed. No.

20           We worked every weekend for four weeks to make  
21 certain that the trial date was upheld. I don't want to do  
22 that to you. Have I done it in the past? Absolutely. Get  
23 these documents in.

24           (Inaudible) at the same times trying the Oklahoma  
25 City bombing case. Death penalty is rendered. FBI suddenly

1 finds 50,000 additional documents that my (inaudible) colleague  
2 has to go through. No. Okay.

3 Now, those are just kind of war stories from an old  
4 judge. I've been through it. I want an attestation from them  
5 when all of the documents are handed in. Otherwise, they're in  
6 continuous session again, okay? Each day.

7 Go get these documents, folks. We'll see you at 1:00  
8 o'clock, okay? Have a nice lunch.

9 **MR. SPEAKER:** Thank you, Your Honor.

10 **MR. SPEAKER:** Thank you, Your Honor.

11 **(Recess taken from 11:27 a.m. to 1:05 p.m.)**

12 **THE COURT:** All right, folks, then we're back on the  
13 record. I'll just refer this -- to this as the -- well, it's  
14 Case Number 2002291. No, my apologies. It's 2208357, Jeffrey  
15 Powers versus Mr. McDonug (sic).

16 **MR. SPEAKER:** McDonough.

17 **THE COURT:** McDonough, okay. All counsel are  
18 present.

19 I just want to know where you're at as a courtesy and  
20 probably send you right back into the room for whatever  
21 discussions you're having that I don't need to be privy to.

22 **MR. ROSENBERG:** Your Honor, we have -- I don't know  
23 how much detail the Court wants us to go into at this point,  
24 but we do have a tricky situation regarding the processing and  
25 review of the emails, which is a portion of the discovery in

1 the case.

2 As of course I mentioned earlier, we've already  
3 produced in excess of 120,000 pages of documents. But the --

4 **THE COURT:** Okay.

5 **MR. ROSENBERG:** -- emails remain to be processed.

6 And, you know, the parties are -- I think are  
7 currently fairly far apart in terms of what that processing  
8 will look like. We're trying to come up with a path forward,  
9 and we've floated some ideas.

10 But I think it's going to take more conversations  
11 between us.

12 **THE COURT:** Sure.

13 **MR. ROSENBERG:** We also have been talking to our  
14 colleagues in the civil division in D.C. and they've been  
15 involved in those conversations that we had in the jury room  
16 over the last hour or so to try to figure out how to manage  
17 this substantial resource problem.

18 **THE COURT:** Okay. You know my greatest fear is that  
19 information comes trickling in, that we have multiple  
20 depositions where witnesses really feel that they don't want to  
21 come back to court, and also a last moment either intentional  
22 or unintended document dump which then causes due process  
23 problems in terms of a trial.

24 Because I need to clear out a month at least for you  
25 folks and so I need to move probably 20 or 30 cases, which I've

1 delayed doing until we -- so where are we at from your  
2 perspective?

3 In other words, right now I know we have a problem.

4 **MR. SILBERFELD:** Right.

5 **THE COURT:** I don't want to delve into the problem  
6 because I have the two best special masters in the world with  
7 me. Yeah.

8 **MR. SILBERFELD:** So and --

9 **THE COURT:** So what are we going to do about this?

10 **MR. SILBERFELD:** I think Special Master Garrie can  
11 address this as well, but let me sort of summarize the problem  
12 for the Court, if I may.

13 **THE COURT:** Well, just as long as you're not  
14 disclosing anything that's confidential between the two of you.

15 **MR. SILBERFELD:** I don't think so.

16 **THE COURT:** It's okay?

17 **MR. ROSENBERG:** I don't think so either but I want an  
18 opportunity to respond. But --

19 **THE COURT:** Okay. What's our problem.

20 **MR. SILBERFELD:** So in the document production that  
21 we've gotten, there were no emails. We were told that there  
22 are emails and there are three and a half terabytes worth of  
23 email which, if using just normal-size pages, is about 250  
24 million pages.

25 The government has not had the ability yet apparently



1 to process those in a way to make them searchable so that they  
2 haven't been produced to us and they haven't been made  
3 searchable yet. And the issue is how long will that take?

4           These were document requests that were made for the  
5 first time in January. There was a follow-up but these were  
6 covered by the January request for production --

7           **THE COURT:** I see.

8           **MR. ROSENBERG:** -- of documents, and we're now in  
9 April. And we have a discovery cutoff of May 1.

10          **THE COURT:** So that's causing difficulty because  
11 three or four months have gone by, --

12          **MR. ROSENBERG:** Correct.

13          **THE COURT:** -- which then might cause -- from the  
14 Court's perspective good cause for a continuance after we've  
15 moved, you know, these blocks of time around.

16          **MR. ROSENBERG:** Right. And so the issue at the  
17 moment that we've spent the last hour talking about is how much  
18 time will it take the government to actually process this  
19 information and produce it in a searchable way to us? And  
20 we're told that's going to take 45 days.

21               I think I'll at this moment turn over to Special  
22 Master Garrie who has some additional ideas about that.

23          **THE COURT:** Daniel, what are your thoughts?

24          **MR. GARRIE:** Well, I haven't -- so my thoughts are  
25 based on the information that I've been provided, which are,

1 you know, is I understand counsel's trying the best they can  
2 limited -- they got the information yesterday.

3 But from what I understand, you know, it should take  
4 two weeks to process. Not for them to produce it but for them  
5 to actually -- for the lawyers to actually do something with  
6 the information because just so we're talking apples to apples,  
7 it's 45 days for them to just get the information to then  
8 actually do something with the information.

9 And I think, you know, probably we could -- it could  
10 be done in two weeks' time if the government was able to  
11 find -- and I understand they're resource-constrained, but if  
12 they would --

13 **THE COURT:** No, they're the United States government.  
14 They have plenty of resources.

15 **MR. GARRIE:** Okay. Well, I'm just repeating the  
16 information that was communicated to me by the government that  
17 they're resource-constrained because of other moving parts. We  
18 were --

19 **THE COURT:** That -- I don't understand that.

20 **MR. GARRIE:** Well neither do I, Your Honor, but I'm  
21 repeating what I was told from the Department of Justice --

22 **THE COURT:** I don't know what the constrained with  
23 other moving parts means.

24 **MR. GARRIE:** -- and that they are resource and  
25 capital-constrained.

1           **THE COURT:** I don't know what that means. What is  
2 constrained with other moving parts?

3           **MR. ROSENBERG:** All right. So let me -- simply put,  
4 as the Court's aware, there is a recent appropriation to the  
5 government.

6           Civil division's budget was cut. Civil division  
7 manages an enormous number of cases across the entire country,  
8 separate and apart from litigation that's handled by individual  
9 U.S. Attorney's offices.

10           We have in-house processing of electronic discovery  
11 that's done through contractors within the civil division, and  
12 they have to balance the needs of multiple cases in this court,  
13 in the Northern District of California, --

14           **THE COURT:** Sure.

15           **MR. ROSENBERG:** -- DDC, everywhere.

16           **THE COURT:** I understand.

17           **MR. ROSENBERG:** You know, we are -- those are just  
18 real constraints that are based on our appropriations.

19           There's also one other point that I think is --

20           **THE COURT:** Well let's stop there for a moment.

21           **MR. ROSENBERG:** Okay, of course.

22           **THE COURT:** I don't mean to discount that. But who's  
23 making these priority decisions? Give me a name. You  
24 certainly have to talk to somebody who talks to somebody. I'd  
25 like an actual name. Who's making the priority decisions about

1 whether this veterans case is lower or higher? Because this  
2 has been going on since 2012.

3 **MR. ROSENBERG:** So I disagree on that this --

4 **THE COURT:** That's okay.

5 **MR. ROSENBERG:** -- case has been --

6 **THE COURT:** Give me a name.

7 **MR. ROSENBERG:** -- going on since --

8 **THE COURT:** I'm sorry, I don't mean to quibble.

9 **MR. ROSENBERG:** -- 2012. I think that's a false  
10 premise.

11 **THE COURT:** Give me a name.

12 **MR. ROSENBERG:** There's no specific name, Your Honor,  
13 that --

14 **THE COURT:** Okay.

15 **MR. ROSENBERG:** -- I can provide.

16 **THE COURT:** Give me a group of names. Who's my  
17 decisionmaker?

18 **MR. ROSENBERG:** I would say that it would be the e-  
19 discovery group within the civil division.

20 **THE COURT:** And you talked to them.

21 **MR. ROSENBERG:** They were actually -- a  
22 representative was on the call with us earlier --

23 **THE COURT:** And what's the representative's name?

24 **MR. ROSENBERG:** Leah Wolf.

25 **THE COURT:** Leah Wolf. And she then the person who's

1 controlling -- I don't mean controlling but making the  
2 decision.

3 **MR. ROSENBERG:** No, she -- and to be clear, you know,  
4 this is an issue that we have flagged for that group to try to  
5 work through this process.

6 **THE COURT:** Well I understand that.

7 **MR. ROSENBERG:** And she has been brought on board  
8 within the last couple of days, and she is in the process of  
9 exploring what other resources can be applied. So --

10 **THE COURT:** I know.

11 **MR. ROSENBERG:** -- it's not a situation where a final  
12 decision is made.

13 **THE COURT:** Okay. Who's then the decisionmaker from  
14 allegedly January to April making these decisions about  
15 disclosure? Because it seems that two or three months have  
16 gone by without the Court being aware of this issue. Who was  
17 making the decision then? A name.

18 **MR. ROSENBERG:** I don't think that there is a  
19 decision there, Your Honor. I can explain the process as to  
20 how the documents were produced and the order that they were  
21 produced. That was a litigation decision.

22 And I think the context on this is critically  
23 important. This is obviously a very important case. It's an  
24 important case for the government, it's an important --

25 **THE COURT:** Just a moment.

1           **MR. ROSENBERG:** -- case for Plaintiffs, --

2           **THE COURT:** Let me write this down.

3           **MR. ROSENBERG:** -- and for the Court.

4           **THE COURT:** Important case, and then I want to put --

5           **MR. ROSENBERG:** But --

6           **THE COURT:** -- priority question mark.

7           **MR. ROSENBERG:** It is a priority. But this Court  
8 also has made clear that it wants the case to go to trial this  
9 summer. And we understand that. But to do that, it has  
10 provided for an extremely compressed discovery window: four  
11 months.

12                   And that four-month -- in that four-month discovery  
13 window, the parties have been producing documents, responding  
14 to interrogatories, responding to requests for admissions.

15                   We have made multiple witnesses available for  
16 depositions. We've worked very cooperatively with Plaintiffs.

17                   And I'll note that indeed we even raised this issue  
18 affirmatively with Plaintiffs when we identified that there was  
19 a problem here.

20                   But because of the extremely compressed discovery  
21 window and the volume -- I think my colleague mentioned  
22 somewhere in the neighborhood of 250 million emails, there are  
23 just some practical limitations on what the scope of discovery  
24 in this case can and should look like.

25                   There's a valid argument that processing 250 million

1 emails in a four-month time period, part of which includes the  
2 time to object and respond to discovery requests, is  
3 disproportionate to the needs of this case.

4           We've also served objections and responses to the  
5 discovery requests so we think some of the information that's  
6 being sought is potentially out of scope.

7           I don't want to go into all of the details here. But  
8 as these are issues that I think we've been able to at least to  
9 this point work through with Plaintiffs' counsel.

10           But when the Court asks the question about, you know,  
11 is this a priority case, the answer is yes. And enormous  
12 resources have been spent on this case and will continue to be  
13 spent on this case.

14           But the volume of information that is being sought at  
15 this point in time is not feasible for the amount of time that  
16 the government has. It is, at least from the government's  
17 perspective, impossible.

18           Okay. So then I'm fleshing out so far this is what  
19 I'm intaking. Judge, as we get closer to trial, there's going  
20 to be a motion to continue this case probably by the Plaintiffs  
21 because as they receive last-moment documentations, they're  
22 going to claim due process problems.

23           Or we're all going to get caught by surprise during  
24 this trial or have later-produced evidence if there's a verdict  
25 one way or the other that didn't come in to trial.

1           So what I'm hearing is the case doesn't get off the  
2 ground.

3           **MR. ROSENBERG:** I think what we would say is we have  
4 been producing --

5           **THE COURT:** No, I know that.

6           **MR. ROSENBERG:** -- enormous volumes of materials.

7           **THE COURT:** Virtue --

8           **MR. ROSENBERG:** Okay.

9           **THE COURT:** -- is with you, don't worry about that.  
10 You've been producing.

11           **MR. ROSENBERG:** You know, one of the things that the  
12 Court suggested --

13           **THE COURT:** Am I going to move a month's worth of  
14 cases, probably 20 or 30 cases? In other words, am I going to  
15 call civil counsel and criminal counsel and block out a period  
16 of time in July to August or August to September or September  
17 and then find out that we have issues concerning due process or  
18 lack of information that might be vital to either party?

19           That's when I might have a little bit of trouble with  
20 both parties.

21           **MR. ROSENBERG:** I appreciate the concern that the  
22 Court has over its schedule and its --

23           **THE COURT:** Now I'm going to give you my priority.

24           **MR. ROSENBERG:** No, I --

25           **THE COURT:** My other 20 cases have priority also.



1 I've got a patent case with billions of dollars. Do I call  
2 them up with three million dollars of attorneys fees and say,  
3 I'm moving you?

4 **MR. ROSENBERG:** So one of the things that the Court  
5 raised before we broke was the possibility of moving the trial  
6 back --

7 **THE COURT:** Little bit.

8 **MR. ROSENBERG:** -- slightly to September.

9 **THE COURT:** Yeah.

10 **MR. ROSENBERG:** You know, I will say for various  
11 reasons just for me personally that works better, and we do  
12 have at least --

13 **THE COURT:** Okay.

14 **MR. ROSENBERG:** -- one witness who's unavailable at  
15 least the first week of the trial as it's currently scheduled.  
16 And that additional time might provide --

17 **THE COURT:** Okay.

18 **MR. ROSENBERG:** -- the runway to allow us to work out  
19 this issue.

20 **THE COURT:** I'm not -- hold on. I'm not going to be  
21 unreasonable about that. I mean, July to August doesn't make a  
22 significant difference.

23 And I got worried, just so you know, I didn't know  
24 what each of your personal commitments were in terms of family.  
25 I'm not trying to hurt you in that regard.

1           But the case has to get off the ground in some block  
2 of time. And I thought, you know, I could move that back to  
3 September if need be.

4           And since it's also a court trial, we can go a week  
5 and take a couple days, you know, in that period of time if you  
6 both agree. And if you both agree, my response is going to be  
7 yes, got it? In other words, if you both agree to something,  
8 I'm probably going to take your wisdom.

9           **MR. SPEAKER:** Your Honor, --

10          **THE COURT:** Now, hold on, I'm going to be with you.

11           I'm terrified, okay. I don't know what I'm dealing  
12 with here. But, Daniel, can we process 3.5 million terabytes?  
13 Because you're working on a case right now with 1.9 --

14          **MR. GARRIE:** It's just --

15          **THE COURT:** -- million terabytes and you're getting  
16 it done in a couple days frankly.

17          **MR. GARRIE:** Yeah. Well, the case actually has about  
18 30 plus. But anyways, the point is, is that we're working on  
19 dedicated resources. And I appreciate what the government --  
20 what they're saying. It can be done, and I think safely in 15  
21 days if the resources could be made available to do it. I --

22          **THE COURT:** Yeah. And you, Daniel -- I'm going to  
23 interrupt. Here's what I'm afraid of. I'm afraid of anybody  
24 in -- no, not Washington, D.C. specifically, but somebody  
25 controlling this process when you're on the firing line, you

1 know, in a sense, taking the Court's concern. That isn't fair  
2 to you. So that's why I want to know when Leah Wolf is going  
3 to join us.

4 **MR. ROSENBERG:** I actually have her on my iPad back  
5 in the jury room if --

6 **THE COURT:** Great.

7 **MR. ROSENBERG:** -- you would like to --

8 **THE COURT:** Bring her out here and put her up here  
9 and let's get rid of the informality, let's get rid of the  
10 rules. Let's talk to Leah and see when she's going to join us  
11 because I don't want the pressure on you. You're my trial  
12 counsel. I need to take care of you.

13 But somebody in D.C. isn't making a decision about  
14 priority because I could say that this has the highest priority  
15 concerning veterans in west L.A., or it may have a power  
16 priority.

17 I don't care about your financial problems, do you  
18 understand me?

19 **MR. ROSENBERG:** I do --

20 **THE COURT:** After 12 --

21 **MR. ROSENBERG:** -- understand you --

22 **THE COURT:** -- years or 13 years, you're the highest  
23 priority.

24 Now, Leah's not going to make that decision.

25 **MR. ROSENBERG:** So I fully respect the --

1           **THE COURT:** Go get her --

2           **MR. ROSENBERG:** -- power of an Article Three Court --

3           **THE COURT:** -- on the iPad so you're not in the  
4 firing line. Let's have a discussion with Leah.

5           **MR. ROSENBERG:** Thank you. Let me go if I may --

6           **THE COURT:** Yeah, sure.

7           **MR. ROSENBERG:** -- go get the iPad. Thank you.

8           **THE COURT:** And just ask her about the plane fares.  
9 Obviously she can't be out here tomorrow, but Monday would be  
10 fine.

11           **MR. ROSENBERG:** Logistically would it be easier if we  
12 were to call her on a Court phone rather than my iPad  
13 (inaudible) --

14           **THE COURT:** No. I'd rather see her because she's  
15 coming out in person. So we might as well -- I might as well  
16 give the bad news to her so you don't have to, okay? That will  
17 keep you two friendly.

18           **MR. ROSENBERG:** Okay.

19           **THE COURT:** But she's going to be on that plane now.  
20 I'll be right back with you. We're going to find out  
21 the timeframes and get this going.

22           And if you want to, you can put it up on the screen  
23 or --

24           **MR. ROSENBERG:** I don't know what the (inaudible) --

25           **THE COURT:** Just come on up. We can do this

1 informally. Why don't you come up here on the bench in fact?

2 **MR. ROSENBERG:** Oh, sure.

3 **THE COURT:** Don't be concerned. Forget the procedure  
4 and let's get to it.

5 Hi, Leah. Can you see me?

6 **MS. WOLF:** I cannot see you but I can hear you.

7 **THE COURT:** A lot of people don't want to see me,  
8 Leah. Hold on, we'll get you on the screen.

9 **MS. WOLF:** Okay.

10 **THE COURT:** There you go. Stay right with me. There  
11 you --

12 Hi, Leah. Can you see me now?

13 **MS. WOLF:** Hi, Your Honor.

14 **THE COURT:** Nice meeting you.

15 **MS. WOLF:** I can see you.

16 **THE COURT:** It's a pleasure.

17 So I need your help. Let me hear what -- let me tell  
18 you what I'm hearing. And pardon the informality but we could  
19 spend, you know, two weeks with documents back and forth.

20 It's been represented to me that you may be the  
21 decisionmaker about limited government resources. Now, hold  
22 on, don't confess to that. It may be President Biden. I'm  
23 just joking with you, okay.

24 But to me, after a case being filed in 2012 involving  
25 veterans that reached a settlement in 2015 involving homeless,

1 especially veterans all over the streets of Los Angeles who may  
2 or may not need help, and not knowing whether there's liability  
3 or not, and then finding a block of time for a month of trial  
4 and moving at least 20 cases around to give the courtesy to the  
5 parties, I'm hearing that we have a document issue.

6 I didn't know about the extent of that, Leah, until  
7 recently. Pardon the informality. I'm Dave Carter. I --  
8 judge but okay.

9 **MS. WOLF:** No problem.

10 **THE COURT:** Yeah. If you're the decisionmaker, to me  
11 that this has the highest priority. And a polite way of saying  
12 is I don't know that I care about your problem concerning lack  
13 of resources. I don't know how to more bluntly say that.

14 And I need these documents produced and I have two  
15 ways of doing that. I want to take the easy way and I want  
16 your cooperation. But if I can't then I've got another remedy.  
17 Help me.

18 **MS. WOLF:** I absolutely -- yes, I absolutely  
19 understand. I absolutely hear you. And the Department does  
20 want to (inaudible) --

21 **THE COURT:** Oh, I know that. That's not my question.

22 **MS. WOLF:** (Inaudible)

23 **THE COURT:** How are we going to get this done?

24 **MS. WOLF:** (Inaudible)

25 **THE COURT:** Okay, go ahead.

1           **MS. WOLF:** I think the best case scenario -- and to  
2 clear things up, I am unfortunately not the decisionmaker  
3 (inaudible) --

4           **THE COURT:** Just a moment, timeout.

5           **MS. WOLF:** There is --

6           **THE COURT:** Leah, Leah, stop. I'm going to work up  
7 the chain. Who is the decisionmaker? I want a name. Who's  
8 the decisionmaker?

9           **MS. WOLF:** You want a name.

10          **THE COURT:** I want a name. Not a bureaucrat, not a  
11 bureaucracy, not we don't know, we're the government. I want a  
12 name. Who's my decisionmaker?

13          **MS. WOLF:** The decisionmaker to allocate any kind of  
14 funding within the civil --

15          **THE COURT:** Who --

16          **MS. WOLF:** -- division would probably -- it would be  
17 a combination of our executive officer and Brian Boynton most  
18 likely.

19          **THE COURT:** Okay. Let's slow that down. Who's your  
20 executive --

21          **MS. WOLF:** That being --

22          **THE COURT:** Who's your executive --

23          **MS. WOLF:** We have an acting executive. It's Dana  
24 Martin right now, Your Honor.

25          **THE COURT:** Could you help me just because of --

1           **MS. WOLF:** Dana --

2           **MR. ROSENBERG:** Oh.

3           **MS. WOLF:** -- Martin.

4           **MR. ROSENBERG:** Dana, D-A-N-A, Martin, --

5           **THE COURT:** Okay.

6           **MR. ROSENBERG:** -- M-A-R-T-I-N, --

7           **THE COURT:** Okay.

8           **MR. ROSENBERG:** -- is the executive officer.

9           **THE COURT:** Thank you, Leah. And who else?

10          **MR. ROSENBERG:** The other person she referred to is

11 Brian Boynton, B-O-Y-N-T-O-N.

12          **THE COURT:** B-O-Y --

13          **MR. ROSENBERG:** N-T-O-N.

14          **THE COURT:** C-O --

15          **MR. ROSENBERG:** "T."

16          **THE COURT:** T-O-N.

17          **MR. ROSENBERG:** Boynton.

18          **THE COURT:** I'm so happy you told me that because I  
19 didn't want this, you know, falling on your shoulders. But do  
20 you believe that they're the decisionmakers on this?

21          **MS. WOLF:** I believe so. And I think what we would  
22 recommend to them for the decision would be to, as we started  
23 to do, work with this information that we very recently  
24 received, start what they call processing it, so taking it from  
25 the raw form and making it useable for our purposes and for



1 Plaintiffs' purposes.

2 We can do that in chunks, Your Honor, so we can take  
3 a couple of important VA folks, process them, and get them out  
4 the door much more quickly than we could this large volume.

5 **THE COURT:** Daniel, Jim, come on up here for a  
6 moment.

7 **MS. WOLF:** That would be the proposed.

8 **THE COURT:** No, come on.

9 **MS. WOLF:** And that's what I would suggest to the  
10 decisionmakers as well.

11 **THE COURT:** Okay. And have they made a decision on  
12 that?

13 **MS. WOLF:** Have they made a decision yet?

14 **THE COURT:** Yeah.

15 **MS. WOLF:** No, because we haven't had the chance to  
16 propose that yet.

17 **THE COURT:** Behind me these two young people are  
18 here.

19 Come here, youngsters.

20 This is Daniel Garrie is a special master. See him?

21 **MR. GARRIE:** Hello.

22 **MS. WOLF:** Hi.

23 **THE COURT:** And judge -- no, Judge Smith, come on  
24 over. See him?

25 Now, Daniel, --

1           **MS. WOLF:** Hi, Judge.

2           **THE COURT:** -- without saying too much because it's  
3 some national security concerns involved, you might check who  
4 he is. And when you find out, I think --

5           **MS. WOLF:** I understand.

6           **THE COURT:** -- I've got if not the best one of the  
7 best in the United States at what we're about in a whole  
8 different arena, including this arena.

9           So, Daniel, talk to Leah for a moment and tell her  
10 how quickly we're going to do this.

11           **MR. GARRIE:** Well, she's got to free up --

12           **THE COURT:** Sit down.

13           **MR. GARRIE:** Leah needs to free up the capital  
14 resources to get more servers. Without more servers, she can't  
15 do anything.

16           Like the problem she has is that the Department of  
17 Justice has a limited number of machines that can actually do  
18 the work. And right now they're saying that those machines are  
19 allocated to, like I said to her earlier, many different moving  
20 parts.

21           And she's unable to allocate whatever the resources  
22 within the budget she has to get it done. Her boss or her  
23 boss's boss or some boss somewhere in the food chain can tell  
24 her that, hey, look, we found resources, and she can then  
25 allocate the resources and get it done.

1           Otherwise, the discovery will not complete until  
2 after discovery has closed for these email messages at the  
3 current rate.

4           **THE COURT:** Jim. Meet Judge Smith.

5           **JUDGE SMITH:** Nice to meet you. The problem is  
6 that --

7           **MS. WOLF:** Likewise.

8           **JUDGE SMITH:** -- if I had a pile of dirt to move, I  
9 could move it for -- with an hour and a half with a skip loader  
10 or I could use a small shovel and take three or four days to  
11 move it.

12           You've got to find a skip loader. And there's some  
13 way in your system there's a big skip loader that can move that  
14 dirt. And you've got to find it or else the Court's going to,  
15 I think, make some orders that are going to be very difficult  
16 to deal with.

17           **THE COURT:** He made that threat, I didn't  
18 specifically yet.

19           **MS. WOLF:** I hear you.

20           **THE COURT:** No, you won't, not yet, no, you don't.

21           I'm going to keep your attorneys here with me. You  
22 inform whoever the decisionmaker is that they're back tomorrow,  
23 they're back Monday, and you two start making decisions back  
24 there, okay? Because I think this case has the highest  
25 priority. Am I clear?

1           **MS. WOLF:** (Inaudible)

2           **THE COURT:** Okay. Good. I'm glad we're  
3 communicating because after 2012 to 2015 to 2021 to now,  
4 somehow the idea that the government doesn't have resources  
5 isn't something that I'm very receptive to, okay? All right.

6           **MS. WOLF:** Understood.

7           **THE COURT:** So, counsel, you're ordered back  
8 tomorrow. Congratulations, you'll be living here. And we're  
9 going to check every day.

10                   And unfortunately I'm going to have to keep my  
11 special masters here, which are expensive, and I don't want to  
12 do that.

13                   And I'm happy to talk to Dana Martin or Brian Boynton  
14 so you're not in the middle of this. And I -- first of all, I  
15 want to thank you for your courtesy.

16                   And I'm conveying a message through you that's rather  
17 harsh. And this is not directed at you. You've been nothing  
18 but professional and polite. I want that on the record.

19                   But as far as the government doing this, absolutely  
20 not. Okay. So do you want me to --

21           **MS. WOLF:** (Inaudible)

22           **THE COURT:** -- talk to Dana Martin? I'm happy to do  
23 so personally so you're not in the middle. I'm happy to talk  
24 to mister what's his name, McDonough who?

25           **MR. SPEAKER:** McDonough.

1           **THE COURT:** Yeah, Mr. Dunna (sic), invite him to come  
2 out. Apparently he has a busy calendar.

3           And I don't want you to see the fire-breathing judge  
4 and be in the middle of this because this isn't your  
5 responsibility. You're not the decisionmaker. Help me. What  
6 do we do?

7           **MS. WOLF:** Thank you, Your Honor. I will. I have --  
8 I've started laying the groundwork and I will continue.

9           **THE COURT:** Okay. All right. Well, they're here  
10 until we get a resolution that's satisfactory to me, okay?

11           **MS. WOLF:** I understand.

12           **THE COURT:** Okay. Daniel, anything further?

13           **MR. GARRIE:** No. I'm hopeful get to a resolution  
14 today.

15           **THE COURT:** And they can communicate any time. In  
16 other words, I will work with you on Saturdays and Sundays. Is  
17 that -- do you understand that? I'll work with you to --

18           **MS. WOLF:** I understand.

19           **THE COURT:** -- midnight tonight, okay. You don't  
20 know the hours I keep.

21           **MS. WOLF:** Okay.

22           **THE COURT:** Just ask around.

23           **MS. WOLF:** Okay.

24           **THE COURT:** Okay, fully dedicated. But this case  
25 gets off the ground because I'm not moving 20 or 30 cases on my

1 calendar, setting a date, and then having last-moment discovery  
2 problems.

3           And this apparently has been pending since January.  
4 And I can't quite get a handle on how serious this is. But  
5 it's not fair to the Court, it's not fair to the litigants.  
6 And, quite frankly, not fair to other parties that I have to  
7 move around.

8           And I think you've got the resources frankly. You're  
9 the United States.

10           It's been a pleasure.

11           **MS. WOLF:** (Inaudible)

12           **THE COURT:** Come out here, always love to buy you a  
13 cup of coffee. I'm smiling, which you'll never see Federal  
14 judges do. So thank you very much for your courtesy. And it's  
15 been a pleasure talking to you.

16           **MS. WOLF:** Likewise, thank you.

17           **THE COURT:** (Inaudible) hope you enjoy Los Angeles.  
18 We need your money for our economy. But every day we're coming  
19 back until we get some action on this, okay?

20           Now, do you want to have another conversation with  
21 them in the back?

22           **MR. GARRIE:** Yeah, I think --

23           **THE COURT:** Okay.

24           **MR. GARRIE:** -- yeah.

25           **MR. ROSENBAUM:** Your Honor, may I be heard?

1           **THE COURT:** I'm sorry, I neglected you. I apologize.

2           **MR. ROSENBAUM:** No apology necessary. I just want to  
3 make three quick --

4           **THE COURT:** Oh, by the way, you're coming back also.  
5 So every day when they're inconvenienced and I'm  
6 inconvenienced, you're inconvenienced.

7                   But this isn't going back into some room with  
8 somebody deciding, you know, the Wizard of Oz, and then we get  
9 more stalling here. This should have been done long ago.

10           **MR. ROSENBAUM:** I just wanted to make three points  
11 quickly, Your Honor.

12                   One is Special Master Garrie offered to have this  
13 matter sourced to him. And if I -- I don't want to  
14 misrepresent it. As I understand it, he represented it could  
15 be done in two weeks.

16           **THE COURT:** Daniel, can you do this in two weeks?

17           **MR. GARRIE:** If it's looseleaf emails, yes.

18           **MR. ROSENBAUM:** The second point is -- that I want to  
19 make is the request for emails as Mr. Silberfeld said, was made  
20 in January. We have not received a single email. And I've had  
21 to conduct depositions without them.

22           **THE COURT:** And it leaves (inaudible) --

23           **MR. ROSENBAUM:** And the third point I just want to  
24 state on the record is that the budget for 2025 for the VA has  
25 \$369 billion.

1           **THE COURT:** Let me write that down, \$369 billion.

2           **MR. ROSENBAUM:** Believe it is the second highest  
3 budgeted agency in the government. I'm not certain of that.

4           And the last thing is, with respect to the dates, we  
5 have no inclination whatsoever to move the date backwards. If  
6 anything, we'd like to move it forward.

7           **THE COURT:** Okay. Why don't you go back and talk to  
8 the special masters and attempt to sort this out because we'll  
9 be here for a while.

10          **MR. ROSENBERG:** May we respond to one --

11          **THE COURT:** Oh, absolutely.

12          **MR. KNAPP:** Yeah, I mean, I just want to make clear  
13 there have been two sets of document requests that were served  
14 on us, one on January 3rd, one I believe it was February 8th.  
15 I may be off by a day or two there.

16                 But only one of the 23 requests that were in the  
17 first set addressed communications.

18          **THE COURT:** I see.

19          **MR. KNAPP:** We were clear about our objections and  
20 the burden that that would impose. And we did not commit at  
21 that point to searching for emails.

22          **THE COURT:** Okay.

23          **MR. KNAPP:** We then engaged in a -- you know, it's  
24 back and forth. We had a call. We exchanged letters with  
25 Plaintiffs' counsel. So we've been engaged on these issues to



1 define the scope.

2           We then received the second set of request for  
3 productions which had still not even close to a majority of  
4 their requests going to communications, but more categories of  
5 information that they were seeking that included  
6 communications.

7           That's really what we're talking about here where we  
8 collected this data in response to that second set of requests.

9           **THE COURT:** Okay. Now here's what I'm going to do.  
10 I haven't started to move all these cases yet. Right now it's  
11 July 23rd, that's when you're going to trial.

12           I may move this back depending upon the input I get  
13 just in terms of fairness. But my drop-dead date would be the  
14 first week of September.

15           I don't see a significant difference in that. But by  
16 the same token, right now if you're truly able to advance it, I  
17 hear -- think I would hear from the other side unfairness,  
18 okay. I don't want that.

19           So go work with Jim. And if we are successful today,  
20 then fine. But we're here now until we get the decisionmakers  
21 apparently back in Washington, D.C. --

22           **MR. MCCORMICK:** Your --

23           **THE COURT:** -- making decisions.

24           **MR. MCCORMICK:** Your Honor, I think before the break  
25 you wanted an update about Bridgeland, the proposed

1 intervenor's position.

2           **THE COURT:** Oh, my apology. Yes, I did. How are you  
3 doing?

4           **MR. MCCORMICK:** We're doing fine. Unfortunately, at  
5 this time Bridgeland cannot waive -- agree to waive its right  
6 to seek a continuance of the trial or to bifurcate its  
7 issues --

8           **THE COURT:** Okay.

9           **MR. MCCORMICK:** -- given that --

10           **THE COURT:** Now, just a moment. Would you put up the  
11 documents that we received? Because the representations are  
12 exactly opposite what -- no, -- now you're quiet.

13           **MR. MCCORMICK:** And I can explain.

14           **THE COURT:** Now you will explain in a moment because  
15 actually I read your documents. So put up the attestation.  
16 And I want you to read what I'm reading as a judge before you  
17 make this verbal representation. And if you're backing away,  
18 that's fine.

19           But I want to read what I'm reading coming into this  
20 hearing and what you've said to me, okay?

21           **MR. MCCORMICK:** Absolutely.

22           **THE COURT:** All right.

23           **(Judge/Clerk confer.)**

24           **THE COURT:** This was on page 20, lines 24 through 26.  
25 Bridgeland proposes asserting a single claim for declaratory

1 relief.

2 Further, Bridgeland does not seek a trial  
3 continuance. Thus, Bridgeland's intervention will not delay  
4 the proceedings.

5 Counsel.

6 **MR. MCCORMICK:** At the time, that was our position.  
7 I guess there's two points.

8 First of all, Bridgeland may need to move to  
9 bifurcate its issues from the main trial. We have no interest  
10 in delaying issues that have nothing to do with Bridgeland.

11 We understand there's a lot of those issues in this  
12 case and that Bridgeland's issues are a very small part of this  
13 larger litigation, which we have no visibility into and we have  
14 no interest in delaying those issues. Second --

15 **THE COURT:** Just a moment. You have 6.4 -- if you'd  
16 help me. We have \$6.4 million involved, don't we, that you're  
17 taking out of the ground?

18 **MR. MCCORMICK:** Are you talking --

19 **THE COURT:** They're both on the VA property --

20 **MR. MCCORMICK:** -- about the revenues from --

21 **THE COURT:** -- and slant drilling, \$6.4 million a  
22 year.

23 **MR. MCCORMICK:** From one of the wells?

24 **THE COURT:** Yes.

25 **MR. MCCORMICK:** Yeah.

1           **THE COURT:** Six point four.

2           **MR. MCCORMICK:** Okay.

3           **THE COURT:** Where's that money going?

4           **MR. MCCORMICK:** It goes to a number of places. It  
5 goes to royalties --

6           **THE COURT:** Two percent goes to the veterans.

7           **MR. MCCORMICK:** Two point five, yes.

8           **THE COURT:** Two point five. Where's the rest going?

9           **MR. MCCORMICK:** A number of places --

10          **THE COURT:** To the veterans, 2.5 goes --

11          **MR. MCCORMICK:** There's another --

12          **THE COURT:** -- to the veterans.

13          **MR. MCCORMICK:** -- working interest owner that  
14 Bridgeland shares the lessee's interests. There are also  
15 individual private owners in the Sawtelle neighborhood that  
16 have royalty interests and then --

17          **THE COURT:** But they're not going to the veterans,  
18 are they? In other words 2.5 percent are going to the veterans  
19 organization for internal communication on the premises itself.

20                 In other words that 2.5 that's going to the veterans  
21 is for actually buses running around west LA VA.

22          **MR. MCCORMICK:** That's my understanding.

23          **THE COURT:** Absolutely. Now, how does that help the  
24 veterans in fact when they're entitled to transportation? In  
25 other words, why isn't the government paying for that?

1           **MR. MCCORMICK:** I don't think I can answer that  
2 question.

3           **THE COURT:** Well where's the rest of the 98 -- I'm  
4 sorry, 97.5 percent going?

5           **MR. MCCORMICK:** It goes again to other royalty  
6 interests, the other --

7           **THE COURT:** Does that benefit the veterans?

8           **MR. MCCORMICK:** I don't think so.

9           **THE COURT:** I don't think so either.

10          **MR. MCCORMICK:** I don't have an answer.

11          **MR. GUADIANA:** Your Honor, to step --

12          **THE COURT:** No, no, just a moment now.

13          **MR. GUADIANA:** So --

14          **THE COURT:** I'm talking to you.

15          **MR. MCCORMICK:** Yes, sir.

16          **THE COURT:** Does it benefit the veterans, that 97.5  
17 percent going to other entities?

18          **MR. MCCORMICK:** Our position is that the 2.5 percent  
19 overriding royalty goes to --

20          **THE COURT:** You said that. I asked you about the  
21 97.5 percent.

22          **MR. MCCORMICK:** I don't have -- I mean, it goes  
23 partially to our client, Bridgeland, and it goes partially to  
24 the other working interest owner --

25          **THE COURT:** Does any of it go to the veterans beside

1 the 2.5 percent?

2 **MR. MCCORMICK:** It certainly doesn't go to the  
3 Department of Veterans Affairs or the --

4 **THE COURT:** Does any of that go to any veterans  
5 organization?

6 **MR. MCCORMICK:** The -- besides the 2.5 percent?

7 **THE COURT:** That's right.

8 **MR. MCCORMICK:** Not to my knowledge.

9 **THE COURT:** Okay, there we go. Now, do you really  
10 want to join this lawsuit in intervention? I don't know what's  
11 going to happen. There may be liability, no liability.

12 There are other entities involved, one or two parking  
13 lots, other lessees out there, a school lot there. And, quite  
14 frankly, they better either get in the game or wait.

15 Do you really want to have -- intervene in this  
16 matter? Because whether we bifurcate or not, you're not going  
17 to slow this process.

18 **MR. MCCORMICK:** If --

19 **THE COURT:** And I may be forcing you into trial at  
20 that time; do you understand that? I may deny your motion to  
21 bifurcate. I mean, you need to take that into account.

22 If you're coming in, you may be all the way in. So  
23 I'm gently trying to tell you be very careful about what you're  
24 representing to this Court.

25 **MR. MCCORMICK:** I understand. And --

1           **THE COURT:** Now, you have a little conference with  
2 your colleague there and then he can speak. You two talk,  
3 that's an order. Talk to one another --

4           **MR. MCCORMICK:** We will discuss --

5           **THE COURT:** And make an intelligent decision now what  
6 you want to do. And if you want to intervene I'll probably let  
7 you. But don't assume I'm going to let you bifurcate.

8           Okay, now, just -- counsel, did you want to say  
9 something before you have this (inaudible)?

10          **MR. GUADIANA:** Well, the only thing that I was going  
11 to speak about is the other 97.5 percent of the revenue.

12           This license allows us to slant drill through an  
13 existing drill site. So the only land use component of this  
14 license is for a passthrough right and allowing to comingle oil  
15 on the property.

16           The mineral rights that are actually produced are not  
17 owned by the Federal government. They are owned by citizens in  
18 west L.A. So they are entitled to a large portion of the  
19 revenue from this. That's all that I wanted to speak to, Your  
20 Honor.

21          **THE COURT:** And respectfully I understand that.

22          **MR. GUADIANA:** Yes.

23          **THE COURT:** That has nothing to do with my question  
24 if the other 97.5 percent benefits veterans or not.

25          **MR. GUADIANA:** TO my knowledge it does not.

1           **THE COURT:** Okay. That's candid. And thank you.  
2           Now do you want to intervene or not?

3           **MR. MCCORMICK:** We're certainly seeking that relief,  
4           yes, absolutely. I mean, if Bridgeland's property interests  
5           and contract interests are at stake, we have no --

6           **THE COURT:** Okay.

7           **MR. MCCORMICK:** -- choice but to seek intervention.

8           **THE COURT:** Then I'm going to instruct you now, and I  
9           can always back off that position, that you better be prepared  
10          for trial on the date that I set. Am I clear?

11          In other words don't come to me later on if I make  
12          the ruling that you're not bifurcating and that you're going  
13          forward with all fours because I will keep you in the case and  
14          force you in the case.

15          And you'll probably come to me with discovery issues  
16          and say, Judge, not fair. So I'm putting you on notice now.

17          **MR. MCCORMICK:** I appreciate the notice.

18          **THE COURT:** Okay.

19          **MR. MCCORMICK:** I mean, here's the position that  
20          Bridgeland finds itself in. It had no idea about this case  
21          until the last day of January. It moved to intervene as soon  
22          as possible.

23          My understanding --

24          **THE COURT:** Sure.

25          **MR. MCCORMICK:** -- under the current scheduling order



1 is that we would not even be able to serve written discovery at  
2 this point if we were allowed to intervene.

3 I think any litigant, especially when their property  
4 and contract interests are at stake, should have a fair shot at  
5 taking discovery and litigating their case --

6 **THE COURT:** No, discovery's --

7 **MR. MCCORMICK:** -- and defending their property --

8 **THE COURT:** Discovery's been already taken with a  
9 number of people. This would cause rediscovery.

10 And I agree with you, you ought to have a fair shot.  
11 But I'm not making a ruling. I'm warning you that I may not  
12 bifurcate. And you may be dragged into this lawsuit and I may  
13 take the chance on appeal if there is liability.

14 Now, if there's liability, no issue, no problem.

15 Take that into account and fully hear me now. Okay.

16 **MR. MCCORMICK:** I understand, Your Honor.

17 **THE COURT:** Okay. Thank you very much.

18 Now, I would encourage you then to join this  
19 discussion. I haven't made a decision yet. I want you fully  
20 part of this discussion so that you understand what's  
21 occurring.

22 We'll take it up again after you're done with Judge  
23 Smith and Daniel, okay? Make sure you still want to intervene,  
24 okay.

25 **MR. MCCORMICK:** Thank you, Your Honor.

1           **THE COURT:** All right. Why don't --

2           **MR. GUADIANA:** Thank you, Your Honor.

3           **THE COURT:** -- you go back now in the jury room.

4           **(Recess taken from 1:44 p.m. to 1:44 p.m.)**

5           **THE COURT:** (Inaudible) at 3:00 o'clock. I have a  
6 4:00 o'clock matter probably with the county and the city,  
7 okay?

8           **MR. SPEAKER:** And if we're not able to resolve it by  
9 then, what's the next day? Just for our planning purposes.

10          **THE COURT:** Monday.

11          **MR. SPEAKER:** Monday, okay.

12          **THE COURT:** You're continuously now. I mean, go home  
13 with your families and I'll work with you and schedule in the  
14 afternoon. But we're going to get this resolved so I'm not  
15 setting aside 20 cases and surprised later on.

16          **MR. SPEAKER:** Thank you, Your Honor.

17          **THE COURT:** Thank you.

18          **(Recess taken from 1:44 p.m. to 2:07 p.m.)**

19          **THE COURT:** All right. Now, --

20          **JUDGE SMITH:** Pardon me, Your Honor, on the homeless  
21 case, Judge, --

22          **THE COURT:** -- pardon my -- pardon me for  
23 interrupting again. Now we're going to go back to the Veterans  
24 Administration case. Just remain seated. So counsel --

25          **JUDGE SMITH:** On the --

1           **THE COURT:** -- I see you gathering.

2           **JUDGE SMITH:** -- homeless case -- on the VA case,  
3 counsel has a request, if he'd like to share it with you.

4           **THE COURT:** Sure.

5           **MR. SILBERFELD:** Yes, Your Honor. I think we've  
6 gotten about as far as we can go today. I understand we're  
7 ordered back tomorrow at 3:00. Between now and then the  
8 government is going to see what it can do to solve the problems  
9 that we discussed with the Court.

10          **THE COURT:** So good faith you'd like me to recess so  
11 you have better things to do and you can't be productive until  
12 tomorrow at 3:00 o'clock.

13          **MR. SILBERFELD:** Correct. But if there is some  
14 progress that is made by the VA and the DOJ before 3:00 o'clock  
15 tomorrow, they'll let us know and we'll let Mr. Garrie and  
16 Judge Smith and the Court know.

17          **THE COURT:** But no matter what --

18          **MR. SILBERFELD:** We're here tomorrow.

19          **THE COURT:** -- I want you back in court at 3:00  
20 o'clock. All parties are ordered back.

21          **MR. SILBERFELD:** Yes, Your Honor.

22          **THE COURT:** Tomorrow at 3:00; is that acceptable?

23          **MR. SPEAKER:** Yes.

24          **THE COURT:** You go have a wonderful day and we'll see  
25 how the VA does, okay?

1                   **MR. SILBERFELD:** Thank you, Your Honor.

2                   **THE COURT:** Thank you very much. So (inaudible)  
3 order all parties are ordered back 3:00 p.m. tomorrow, Karlen.  
4 And the VA's going to find some funding.

5                   **(This proceeding was adjourned at 2:08 p.m.)**

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

April 6, 2024

Signed

Dated

*TONI HUDSON, TRANSCRIBER*