Exhibit 6

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

HERITAGE FOUNDATION,

Civil Action Plaintiff, No. 1:23-1198

vs. Washington, DC April 30, 2024

U.S. DEPARTMENT OF HOMELAND SECURITY,

Defendant. 3:25 p.m.

TRANSCRIPT OF EX PARTE STATUS CONFERENCE

BEFORE THE HONORABLE CARL J. NICHOLS

UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Defendant: John Bardo

Peter Pfaffenroth

DOJ-USAO

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Reported By: Lorraine T. Herman, RPR, CRC

Official Court Reporter U.S. District & Bankruptcy Courts 333 Constitution Avenue NW Washington, DC 20001

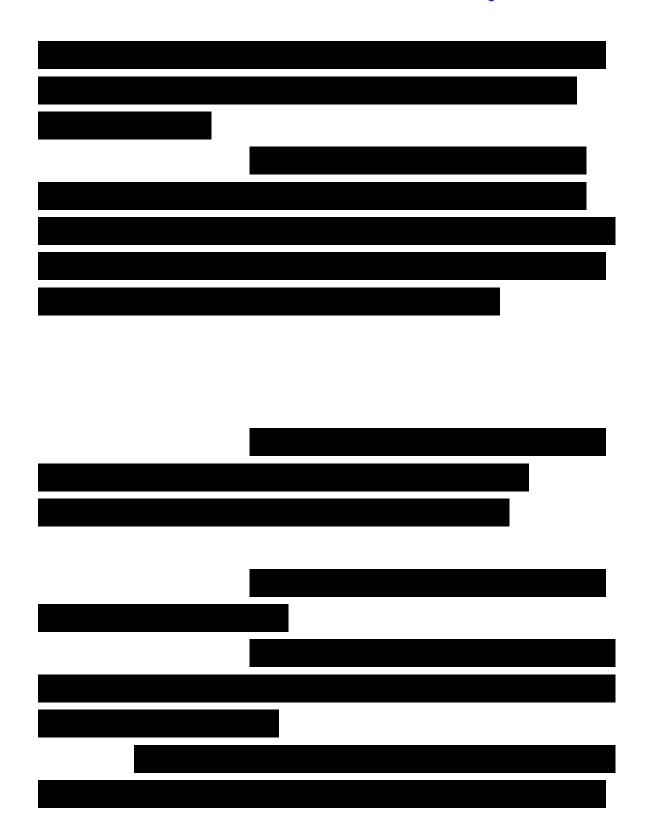
lorraine_herman@dcd.uscourts.gov

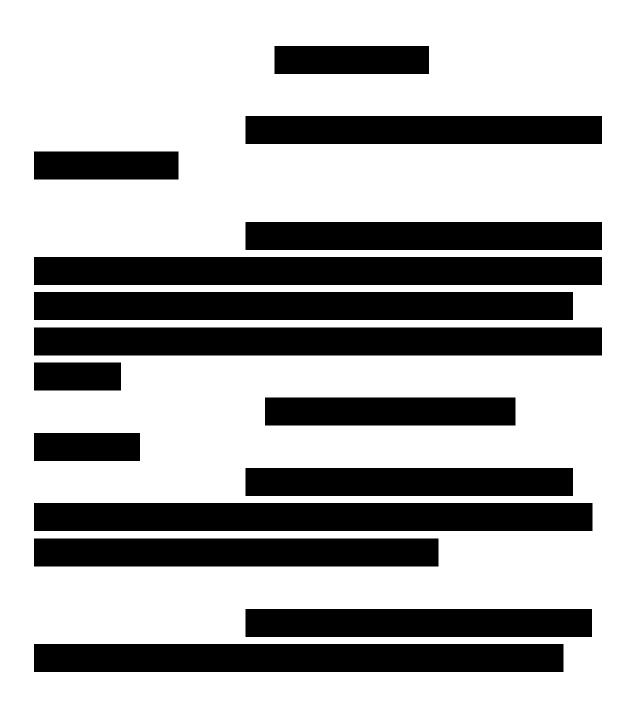
*** Proceedings recorded by stenotype shorthand.

*** Transcript produced by computer-aided transcription.







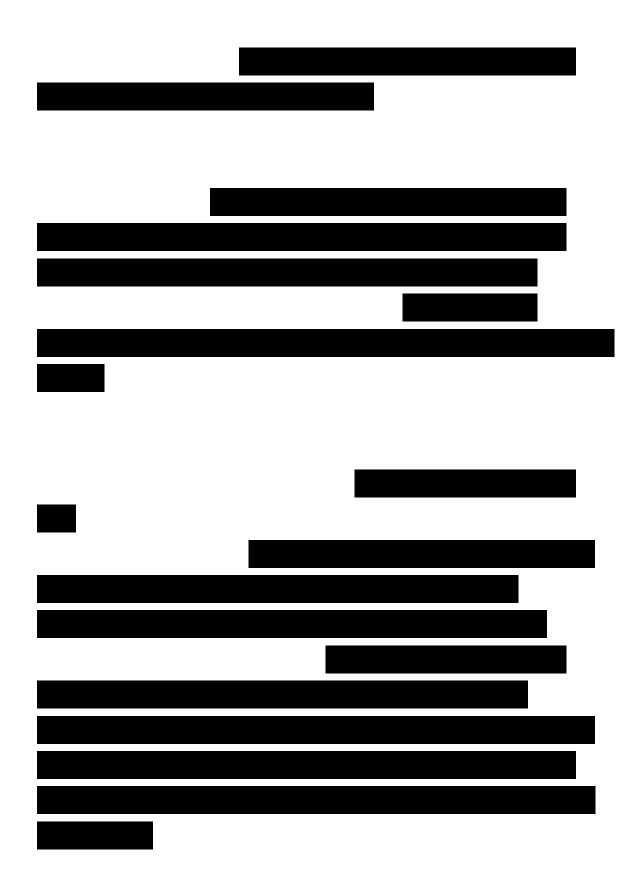






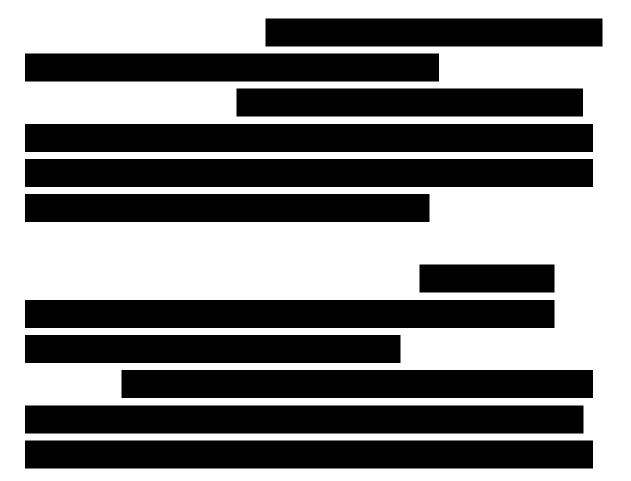




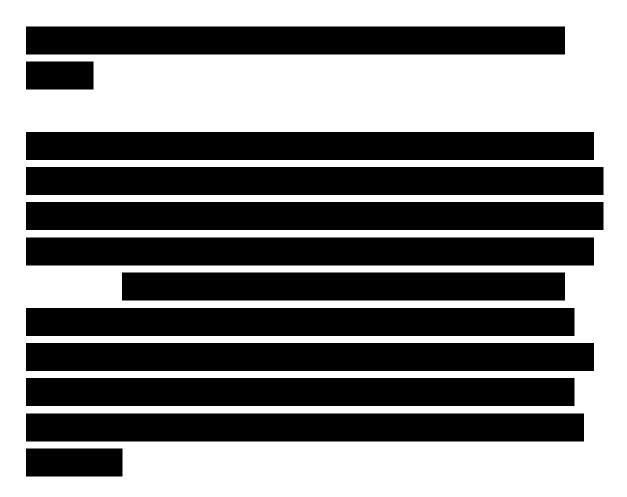








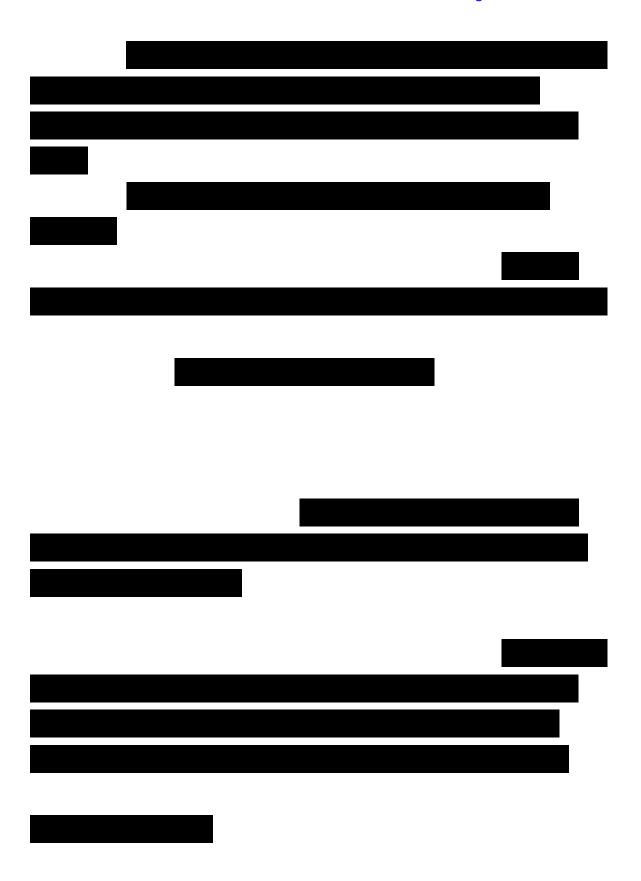


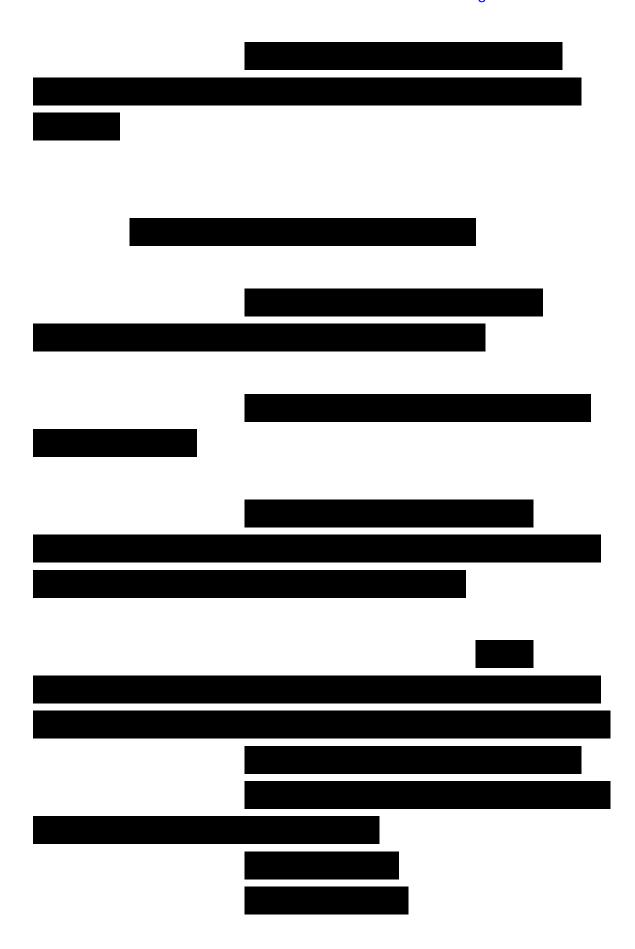






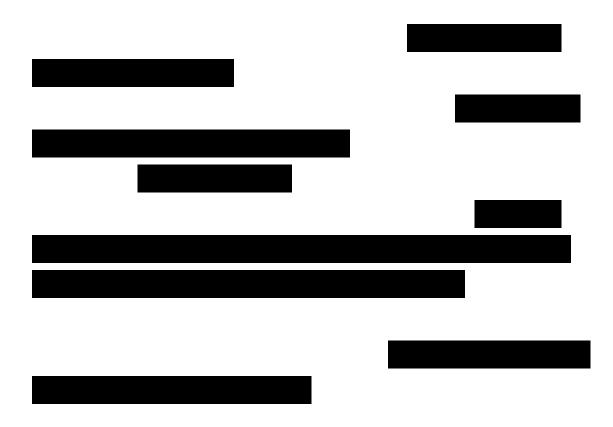












public about how the government was dealing with the Duke.

I'm not saying that's the case. I'm just saying that, depending on what the true state of affairs was, that may or may not be true.

So my whole point in doing the ex parte discussion and submission was, rather than think about the set of hypothetical possibilities and whether each of them could possibly disclose some conduct by the government that one might want to know about or whatever, was to know with certainty what actually happened and then to think through what disclosing that set of facts would harm, by way of privacy interests, and what it would -- what, if any, public interest it would forward.

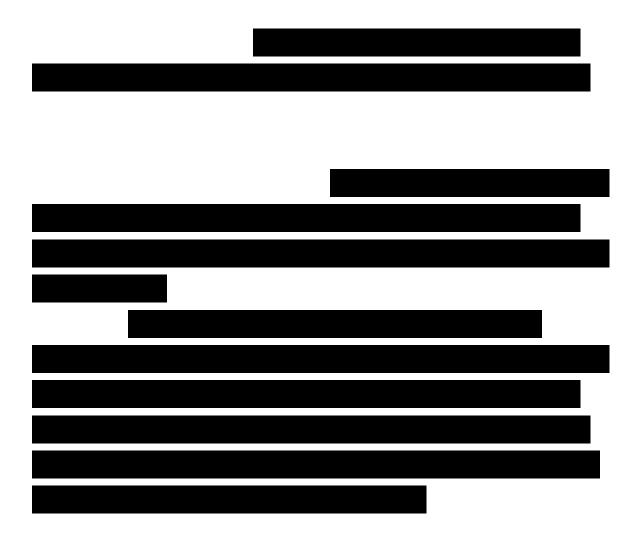
So while I have some of the "true set of facts" right now, I don't have all of them. And I well understand that some of this information that we've been talking about today is not at DHS.

MR. BARDO: That's correct.

THE COURT: I completely understand that.

Do I have authority, in your view, to require the executive branch to disclose that information to me by way of declaration or a brief or something like that, all of the relevant true set of facts, even if one of the executive branch agencies is not a defendant and even if one of the executive branch agencies that has relevant information at





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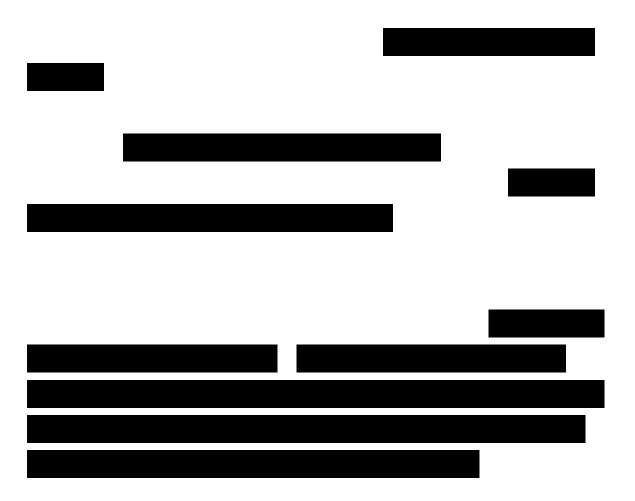
but --

declarations that lay out all of the relevant facts even though that might require them to get information from a sister agency? MR. BARDO: Could I confer with Mr. Pfaffenroth? THE COURT: Yes, of course. MR. BARDO: Thank you. THE COURT: Of course. (Discussion off the record.) MR. BARDO: So, Your Honor, our position would be getting the State Department involved in this case would run far afield of what exactly plaintiff is seeking. We believe that the issue in this case is whether the Department of Homeland Security is lawfully withholding these records under Exemption 6 and 7(C). It's about plaintiff's request for these specific records. We would have to research whether the Court is able to get another agency that's not involved in this case into this case, and we would likely need to take it up the chain through various people at State and at Justice. this case is really about whether the Heritage Foundation is entitled to these records. THE COURT: No, I agree with that. Clearly, we're not talking about State Department FOIA production here

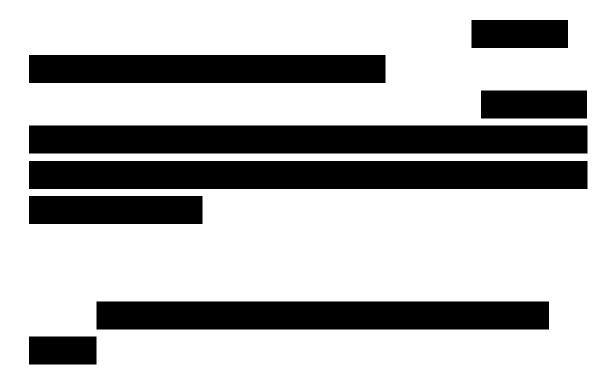
MR. BARDO: Can I mention something else,











hived into two separate buckets. You have buckets over at DHS, which reference State Department materials and decisions, but the documents or at least the reasons for them are over at State and vice versa.

So you have a universe of documents that the documents are their own universe but the information isn't contained within that universe only; and that's what makes it complicated in my view. So I completely understand. And I'm open to your telling me, By the way, here's the true state of affairs — this is hypothetical. Right?

This is a true state of affairs but the public's interest in knowing is reduced because if you -- if we had to produce the CBP materials or the DHS materials, that wouldn't tell the whole story. The public doesn't have an interest in knowing the full story.

So even if you think about this as the true state of affairs versus private interest, as you are, Judge Nichols, you may know that but the production of the materials at issue here wouldn't disclose that true state of affairs. It would disclose the DHS half of it. I totally get that and I'm open to that argument. I understand it completely.

It seems to me, though, that, thinking about even that argument, it's easier for me to think about the strength of it when I know the true state of affairs. So

I'm not rejecting the argument at all. It just seems to me that that, like many of the other arguments here, is more easily weighed when I know everything.

And so I'll leave it to the government to decide if it would like to do that. You have until May 10th to communicate however you would like to propose how you would like to proceed. Again, if you need a little bit more time past the 10th, just let me know that.

Yes, Counsel, please.

MR. PFAFFENROTH: I apologize, Your Honor.

THE COURT: No, please.

MR. PFAFFENROTH: Peter Pfaffenroth. We'll obviously run this up the chain.

The only points that I would just like to add are, you know, when we're talking about State records, as the Court just correctly summarized, we're talking about records that are, by statute, exempt.

And under the relevant precedence, you know,

Congress has already done the balancing there and the

weighing there. This case is unusual and, frankly, more

interesting than almost all other FOIA cases because it's

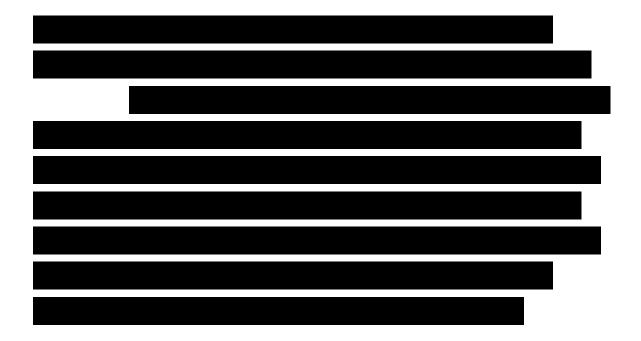
the interplay of immigration law and FOIA law.

But I know that, you know, various judges of this court have not always been particularly enamored of the consular non-reviewability arguments but the Court is









in whether Prince Harry or Sting or anyone else you can think of who is prominent has a particular visa status.

Anyway, I don't want to belabor the point.

THE COURT: No, I get it.

MR. PFAFFENROTH: I know the Court is well aware
of all these --

THE COURT: No, I know -- I mean, certainly my view is that I have ex parte discussions and ask for ex parte information only in particularly unique cases. I don't like to do it. I know the government has a strong interest in not having it happen.

It did seem to me that, in this case, given the parade of hypotheticals that Heritage had laid out, some of which, at least in theory, could suggest information the public would have an interest in seeing about the government, that the better path for me was to understand, again, the true set of facts.

And then that would be -- I mean, just again, I've said this a couple times but, if all of the relevant information was at DHS, if we didn't have State off to the side, and then I knew right now exactly what happened with all of these things, and that information, again, would be produced if -- because I have the defendant with all of the relevant records in front of me and I would know that production of those FOIA records would be 100 percent of the

relevant information, and I had all of that information, then I would be able to weigh the public's interest in knowing that against the privacy concerns.

What makes this unique is that we have the added complication -- really two things. Of course the thing that you've been talking about, which is the State status, but also that, even an order requiring production of every single document here doesn't disclose the true state of affairs.

But again, if you assume a counter-hypothetical where all of the information is here, then what I would know in an ex parte setting is an order of disclosure would tell the public what happened and I could say, Does the public have much of an interest in knowing that picture versus the privacy interest?

And I was trying to, sort of, get to that point, not because I thought the public had an interest in knowing. I mean, to be really clear, I know you just said this, but everything I've asked today is hypothetical.

I'm not suggesting that the public has one iota of interest in knowing any of this because I don't know what actually happened. And that's the question for you guys to consider is whether I should.

MR. PFAFFENROTH: The only other follow-up I have,
Your Honor, is about timing --

THE COURT: Yeah.

MR. PFAFFENROTH: -- because, depending upon how far we have to run this, people may want to read a transcript of the Court's questions, and I don't know how quickly we can get that. So if -- but I don't want to put pressure on your court reporter if we have a -- we need to get back to you on May 10th.

THE COURT: How about we do this. You know I'd like to know an answer by May 10th, if possible.

MR. PFAFFENROTH: Right.

THE COURT: I have amazing staff. As I've said recently, I probably don't say it enough. I'm sure she will do her level best to get it to you as soon as possible, if that's the case.

MR. PFAFFENROTH: I appreciate that, yes.

THE COURT: And in the event that, for whatever reason you say, We need a little bit more time, just come back.

MR. PFAFFENROTH: Great.

THE COURT: I realize that, whereas my original request was for DHS information of course, this is asking for information from a non-party, at least, obviously in a sense. And that may be more complicated than the prior requests. So if you need more time, just let me know.

Okay?

MR. PFAFFENROTH: Thank you, Your Honor. 1 THE COURT: All right. 2 3 MR. BARDO: Your Honor --THE COURT: Yes. 4 5 MR. BARDO: -- would you like me to communicate 6 with Ms. Moore? 7 THE COURT: Yes, unless you decide you need to 8 file something. In other words, I'm envisioning -- I sort 9 of leave it to you to decide how you'd like to come back on 10 May 10th. 11 But as I said before, if you say, We've had a 12 chance to confer, we would like another discussion with you 13 ex parte, Your Honor, then go to Ms. Moore and tell her that 14 because she'll set that up. 15 If you send an email that just says, Yes, we'd 16 like to submit an ex parte filing, can we have 30 days, send 17 that to her. If you want to submit something ex parte 18 that's like a, We're not doing this and here's why, 19 hypothetically, if it's a filing, then you don't need to do 20 that. 21 MR. BARDO: I understand, Your Honor. 22 THE COURT: Well, actually maybe you have to 23 anyway because it would be ex parte. So probably, in all circumstances, you're going through Ms. Moore. Okay? 24

MR. BARDO: I understand, Your Honor.

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                 THE COURT: Okay. Thank you all for your time
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       today.
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                 MR. BARDO: Thank you, Your Honor.
           (Proceedings concluded at 4:30 p.m.)
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May 8, 2024

DATE

CERTIFICATE

I, Lorraine T. Herman, Official Court Reporter, certify that the foregoing is a true and correct transcript of the record of proceedings in the above-entitled matter.

/s/ Lorraine T. Herman
Lorraine T. Herman