

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 97-0805-CIV-KING

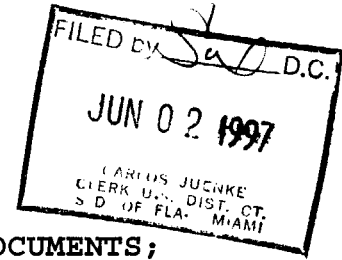
ROBERTO TEFEL et al.,

Plaintiffs,

v.

JANET RENO, Attorney General
of the United States et al.,

Defendants.



**ORDER COMPELLING DISCLOSURE OF CERTAIN DOCUMENTS;
FINDING PRIVILEGE APPLIES TO CERTAIN OTHER DOCUMENTS**

THIS CAUSE comes before the Court in relation to the Court's ruling, at a hearing conducted Friday, May 30, 1997, directing that Defendants provide certain documents--nine in number--for the Court's in camera review.¹

Defendants have provided the Court with the responsive documents along with a declaration of Commissioner Doris Meissner of the Immigration and Naturalization Service. (Defs.' Notice of Filing Declaration, etc. (May 30, 1997).) Commissioner Meissner asserts the deliberative process privilege for each of the nine documents.

In Nadler v. U.S. Department of Justice, 955 F.2d 1479 (11th Cir. 1992), the Eleventh Circuit Court of Appeals discussed the deliberative process privilege and the framework for its

¹ The Court also ordered Defendant to disclose those documents to Plaintiffs but effectively stayed that order pending the Court's in camera review.

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application.² This Court finds the following portion of Nadler instructive with regard to the instant matter:

The deliberative process privilege protects the internal decisionmaking processes of the executive branch in order to safeguard the quality of agency decisions. Two prerequisites must be met before the Government properly may withhold a document from production pursuant to the deliberative process privilege. First the document must be "predecisional," i.e., "prepared in order to assist an agency decisionmaker in arriving at his decision." Second, it must be "deliberative," that is, "a direct part of the deliberative process in that it makes recommendations or expresses opinions on legal or policy matters." Moreover, purely factual material that does not reflect the agency deliberative process generally is not protected. Factual material may be withheld, however, when that material is so inextricably connected to the deliberative material that its disclosure would reveal the agency's decision making processes or when it is impossible to segregate in a meaningful way portions of the factual information from the deliberative information.

Id. at 1490-91 (citations omitted).

This Court used the Nadler framework in conducting its in camera review of the following nine documents, as identified in Defendants' Second Amended Privilege Log dated May 30, 1997: Nos. 9P, 11P, 117P, 119P, 129P, 135P, 138P, 139P, and 141P.

The Court finds that the following three documents are covered by the deliberative process privilege and, therefore, need not be disclosed to Plaintiffs: Nos. 9P, 11P, and 139P. These three documents are both predecisional and deliberative.

The Court finds that the following six documents are not covered by the deliberative process privilege: 117P, 119P, 129P,

² Nadler discusses the deliberative process privilege in the context of "Exemption 5," 5 U.S.C. § 552(b)(5), of the Freedom of Information Act, 5 U.S.C. § 552.

135P, 138P, and 141P. Although these documents appear to be predecisional (indeed, some if not all of the documents are clearly drafts), they comprise factual material markedly unvarnished by opinions or recommendations.

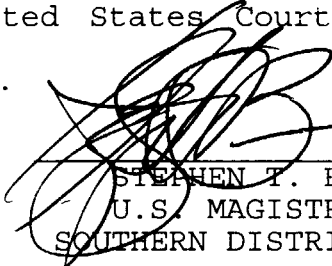
Accordingly, after a careful review of the record, and the Court being otherwise fully advised, it is

ORDERED and ADJUDGED that Defendants be and are hereby COMPELLED to provide Plaintiffs' with the following documents, as identified in Defendants' Second Amended Privilege Log dated May 30, 1997: 117P, 119P, 129P, 135P, 138P, and 141P.

It is FURTHER ORDERED that Defendants shall, in the absence of a contrary order from a higher court, comply with this Order by 5 p.m. Tuesday, June 3, 1997.

It is FURTHER ORDERED and ADJUDGED that the following documents, as identified in the manner discussed supra, be and are hereby covered by the deliberative process privilege and need not be disclosed to Plaintiffs: Nos. 9P, 11P, and 139P. The Court shall return these documents to Defendants at the earliest convenience.

DONE and ORDERED in chambers at the James Lawrence King Federal Justice Building and United States Courthouse, Miami, Florida, this 3rd day of June 1997.



STEPHEN T. BROWN
U.S. MAGISTRATE JUDGE
SOUTHERN DISTRICT OF FLORIDA

cc: Dexter A. Lee, AUSA
Mary E. Kramer, Esq.
Elliot H. Scherker, Esq.



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SOUTHERN DISTRICT OF FLORIDA

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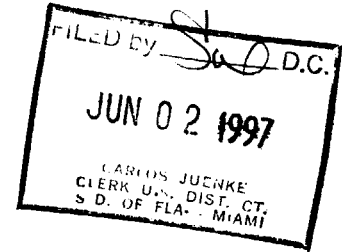
ROBERTO TEFEL et al.,

Plaintiffs,

v.

JANET RENO, Attorney General
of the United States et al.,

Defendants.



**ORDER OVERRULING DEFENDANTS' OBJECTIONS
TO PLAINTIFFS' PROPOSED DISCOVERY ORDER**

THIS CAUSE comes before the Court upon the "Objections To Plaintiffs' Proposed Discovery Order Submitted May 29, 1997," filed by Defendants on May 29, 1997.

Defendants raise two objections regarding the Court's oral rulings and those rulings as reflected in a Proposed Order drafted by Plaintiffs.

First, Defendants state that Plaintiffs, on May 29, 1997, delivered to Defendants a Proposed Order that would require Defendants to search nationwide for documents responsive to Plaintiffs' Request Nos. 1, 2, 3, and 5 of their Notice To Produce of April 24, 1997. Defendants assert that such a search misstates the Court's Order of May 28, 1997. They state that the Court did not order a nationwide search, but rather "directed defendants to search for responsive documents only in the State of Texas."

Second, Defendants state that the Proposed Order requires Defendants to produce all responsive documents by 9 a.m. Saturday May 31, 1997. Defendants state that the Court ordered Defendants to

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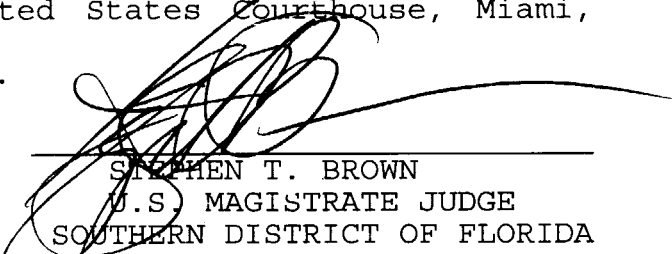
commence production, as opposed to complete production, by that time.

The Court, at a hearing conducted Friday, May 30, 1997, overruled both of Defendants' objections.

Accordingly, after a careful review of the record, and the Court being otherwise fully advised, it is

ORDERED and ADJUDGED that Defendants' Objections To Plaintiffs' Proposed Discovery Order be and are hereby OVERRULED.

DONE and ORDERED in chambers at the James Lawrence King Federal Justice Building and United States Courthouse, Miami, Florida, this 2nd day of June 1997.



STEPHEN T. BROWN
U.S. MAGISTRATE JUDGE
SOUTHERN DISTRICT OF FLORIDA

cc: Dexter A. Lee, AUSA
Mary E. Kramer, Esq.
Elliot H. Scherker, Esq.