

**U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #: 1:22-cv-01865-DLF**

MCKATHAN v. UNITED STATES DEPARTMENT OF
HOMELAND SECURITY et al
Assigned to: Judge Dabney L. Friedrich
Cause: 05:552 Freedom of Information Act

Date Filed: 06/27/2022
Jury Demand: None
Nature of Suit: 550 Prisoner Petition: Civil
Rights (Other)
Jurisdiction: U.S. Government Defendant

Plaintiff

DENZIL E. MCKATHAN

represented by **DENZIL E. MCKATHAN**
R 09015-003
YAZOO CITY LOW
FEDERAL CORRECTIONAL
INSTITUTION
Inmate Mail/Parcels
P.O. BOX 5000
YAZOO CITY, MS 39194
PRO SE

V.

Defendant

**UNITED STATES DEPARTMENT
OF HOMELAND SECURITY**

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Defendant

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Defendant

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Defendant

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Defendant

**UNITED STATES DEPARTMENT
OF JUSTICE**
Criminal Division

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Date Filed	#	Docket Text
06/27/2022	<u>1</u>	COMPLAINT against ADMINISTRATIVE OFFICE OF UNITED STATES COURTS, EXECUTIVE OFFICE OF UNITED STATES ATTORNEYS, UNITED STATES DEPARTMENT OF HOMELAND SECURITY, UNITED STATES DEPARTMENT OF JUSTICE, UNITED STATES DEPARTMENT OF STATE (Filing fee \$ 402, receipt number 202466) filed by DENZIL E. MCKATHAN. (Attachments: # <u>1</u> Exhibits, # <u>2</u> Civil Cover Sheet)(zed) (Entered: 06/30/2022)
06/29/2022		SUMMONS (7) Issued as to ADMINISTRATIVE OFFICE OF UNITED STATES COURTS, EXECUTIVE OFFICE OF UNITED STATES ATTORNEYS, UNITED STATES DEPARTMENT OF HOMELAND SECURITY, UNITED STATES DEPARTMENT OF JUSTICE, UNITED STATES DEPARTMENT OF STATE, U.S. Attorney and U.S. Attorney General (zed) (Entered: 06/30/2022)
07/01/2022	<u>2</u>	STANDARD ORDER for Civil Cases. See text for details. Signed by Judge Dabney L. Friedrich on July 1, 2022. (lcldf3) (Entered: 07/01/2022)
07/15/2022	<u>3</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed on United States Attorney General. Date of Service Upon United States Attorney General 07/15/2022. (Jubran, Lewis) (Entered: 07/15/2022)
08/09/2022	<u>6</u>	AFFIDAVIT of Service by DENZIL E. MCKATHAN. (zed) (Entered: 08/18/2022)
08/10/2022	<u>4</u>	NOTICE of Appearance by Thomas Anthony Quinn on behalf of All Defendants (Quinn, Thomas) (Entered: 08/10/2022)
08/15/2022	<u>5</u>	MOTION for Extension of Time to File Answer re <u>1</u> Complaint, by ADMINISTRATIVE OFFICE OF UNITED STATES COURTS, EXECUTIVE OFFICE OF UNITED STATES ATTORNEYS, UNITED STATES DEPARTMENT OF HOMELAND SECURITY, UNITED STATES DEPARTMENT OF JUSTICE, UNITED STATES DEPARTMENT OF STATE. (Quinn, Thomas) (Entered: 08/15/2022)
08/15/2022		MINUTE ORDER granting the defendants' <u>5</u> Motion for Extension of Time to File Response to Complaint. The defendants shall answer or otherwise respond to the plaintiff's complaint on or before September 22, 2022. So Ordered by Judge Dabney L. Friedrich on August 15, 2022. (lcldf3) (Entered: 08/15/2022)
09/21/2022	<u>7</u>	MOTION for Extension of Time to <i>file Response to Complaint</i> by ADMINISTRATIVE OFFICE OF UNITED STATES COURTS, EXECUTIVE OFFICE OF UNITED STATES ATTORNEYS, UNITED STATES DEPARTMENT OF HOMELAND SECURITY, UNITED STATES DEPARTMENT OF JUSTICE, UNITED STATES DEPARTMENT OF STATE. (Quinn, Thomas) (Entered: 09/21/2022)
09/21/2022		MINUTE ORDER granting the defendants' <u>7</u> Motion for Extension of Time to File Response to Complaint. The defendants shall answer or otherwise respond to the plaintiff's complaint on or before October 21, 2022. So Ordered by Judge Dabney L. Friedrich on September 21, 2022. (lcldf2) (Entered: 09/21/2022)
09/21/2022		Set/Reset Deadlines: Answer due by 10/21/2022, (zjch,) (Entered: 09/22/2022)
10/21/2022	<u>8</u>	MOTION to Dismiss by ADMINISTRATIVE OFFICE OF UNITED STATES COURTS. (Quinn, Thomas) (Entered: 10/21/2022)
10/21/2022	<u>9</u>	MOTION for Extension of Time to by EXECUTIVE OFFICE OF UNITED STATES ATTORNEYS, UNITED STATES DEPARTMENT OF HOMELAND SECURITY, UNITED STATES DEPARTMENT OF JUSTICE, UNITED STATES DEPARTMENT OF STATE. (Quinn, Thomas) (Entered: 10/21/2022)

10/21/2022		MINUTE ORDER. Pursuant to Fox v. Strickland, 837 F.2d 507 (D.C. Cir. 1988), the plaintiff is advised that failure to respond to the defendant's pending <u>8</u> Motion to Dismiss by November 4, 2022 may result in the Court (1) treating the motion as conceded, (2) ruling on the defendant's motion based on the defendant's arguments alone; or (3) dismissing the plaintiff's claims for failure to prosecute. The Clerk of Court is directed to mail a copy of this Minute Order to the plaintiff's address of record. So Ordered by Judge Dabney L. Friedrich on October 21, 2022. (lcldf2) (Entered: 10/21/2022)
10/21/2022		MINUTE ORDER granting the defendants' <u>9</u> Motion for Extension of Time. The defendants shall answer or otherwise respond to the plaintiff's complaint on or before November 18, 2022. No further extensions will be granted absent extraordinary circumstances. So Ordered by Judge Dabney L. Friedrich on October 21, 2022. (lcldf2) (Entered: 10/21/2022)
10/21/2022		Set/Reset Deadlines: Answer due by 11/18/2022, Response to Dispositive Motions due by 11/4/2022. (zjch,) (Entered: 10/24/2022)
10/31/2022	<u>10</u>	MOTION for Extension of Time to File Response as to <u>8</u> MOTION to Dismiss by DENZIL E. MCKATHAN. (zed) (Entered: 11/04/2022)
11/04/2022		MINUTE ORDER granting the plaintiff's <u>10</u> Motion for Extension of Time. The plaintiff shall file a response to the motion to dismiss on or before November 30, 2022. So Ordered by Judge Dabney L. Friedrich on November 4, 2022. (lcldf2) (Entered: 11/04/2022)
11/07/2022	<u>11</u>	Memorandum in opposition to re <u>8</u> Motion to Dismiss filed by DENZIL E. MCKATHAN. (zed) (Entered: 11/08/2022)
11/13/2022	<u>12</u>	MOTION for Extension of Time to File Response/Reply as to <u>8</u> MOTION to Dismiss by ADMINISTRATIVE OFFICE OF UNITED STATES COURTS. (Quinn, Thomas) (Entered: 11/13/2022)
11/14/2022		MINUTE ORDER granting the defendant's <u>12</u> Motion for Extension of Time. The Administrative Office of United States Courts shall file its reply brief on or before November 30, 2022. So Ordered by Judge Dabney L. Friedrich on November 14, 2022. (lcldf2) (Entered: 11/14/2022)
11/18/2022	<u>13</u>	ANSWER to <u>1</u> Complaint, by EXECUTIVE OFFICE OF UNITED STATES ATTORNEYS, UNITED STATES DEPARTMENT OF HOMELAND SECURITY, UNITED STATES DEPARTMENT OF JUSTICE.(Quinn, Thomas) (Entered: 11/18/2022)
11/18/2022	<u>14</u>	ENTERED IN ERROR.....MOTION to Dismiss by UNITED STATES DEPARTMENT OF STATE. (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Text of Proposed Order)(Quinn, Thomas) Modified on 11/21/2022. Counsel has refiled pleading. (zed). (Entered: 11/18/2022)
11/18/2022	<u>15</u>	MOTION to Dismiss by UNITED STATES DEPARTMENT OF STATE. (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Declaration, # <u>3</u> Text of Proposed Order)(Quinn, Thomas) (Entered: 11/18/2022)
11/21/2022		MINUTE ORDER. Pursuant to Fox v. Strickland, 837 F.2d 507 (D.C. Cir. 1988), the plaintiff is advised that failure to respond to the defendant's pending <u>15</u> Motion to Dismiss by December 2, 2022 may result in the Court (1) treating the motion as conceded, (2) ruling on the defendant's motion based on the defendant's arguments alone; or (3) dismissing the plaintiff's claims for failure to prosecute. The Clerk of Court is directed to mail a copy of this Minute Order to the plaintiff's address of record. So Ordered by Judge Dabney L. Friedrich on November 21, 2022. (lcldf2) (Entered: 11/21/2022)
12/05/2022	<u>16</u>	Memorandum in opposition to re <u>15</u> Motion to Dismiss filed by DENZIL E. MCKATHAN. (znmw) (Entered: 12/07/2022)
12/09/2022	<u>17</u>	MOTION for Extension of Time to File Response/Reply as to <u>15</u> MOTION to Dismiss by UNITED STATES DEPARTMENT OF STATE. (Quinn, Thomas) (Entered: 12/09/2022)

12/12/2022		MINUTE ORDER granting the Department of State's <u>17</u> Motion for Extension of Time. The Department of State shall file its reply brief in support of its <u>15</u> motion to dismiss on or before December 23, 2022. So Ordered by Judge Dabney L. Friedrich on December 12, 2022. (lcldf2) (Entered: 12/12/2022)
12/21/2022	<u>18</u>	MOTION for Extension of Time to File Response/Reply as to <u>15</u> MOTION to Dismiss by UNITED STATES DEPARTMENT OF STATE. (Quinn, Thomas) (Entered: 12/21/2022)
12/22/2022		MINUTE ORDER granting the Department of State's <u>18</u> Motion for Extension of Time. The Department of State shall file its reply brief in support of its <u>15</u> motion to dismiss on or before January 20, 2023. No further extensions will be granted absent extraordinary circumstances. So Ordered by Judge Dabney L. Friedrich on December 22, 2022. (lcldf2) (Entered: 12/22/2022)
01/20/2023	<u>19</u>	REPLY to opposition to motion re <u>14</u> MOTION to Dismiss , <u>15</u> MOTION to Dismiss filed by UNITED STATES DEPARTMENT OF STATE. (Quinn, Thomas) (Entered: 01/20/2023)
03/08/2023		<p>MINUTE ORDER denying the Administrative Office's <u>8</u> and the Department of State's <u>15</u> Motions to Dismiss. First, as to the AO's motion, it is unclear whether the motion seeks dismissal of the complaint in full or in part: the motion asks for the Court "to dismiss Plaintiff's claims against it under the Freedom of Information Act" and then, in the next sentence, states that "[t]herefore, Defendants' Motion to Dismiss should be granted and Plaintiffs' [sic] claims dismissed." Mot. at 1, Dkt. 8; <i>see also id.</i> at 7 (proposed order requesting dismissal of "the claims in Plaintiff's complaint against the Administrative Office"). In any event, the pro se complaint clearly states that the FOIA claim is brought against the <i>other</i> defendants in the lawsuit, <i>not</i> the AO. <i>See</i> Dkt. 1 at 8 ("Count 1: Freedom of Information Act (as to Defendants DHS, DOS, EOUSA, DOJ)"). The pro se plaintiff plainly flagged the government's error in his opposition—noting that he instead brought two other claims against the AO, neither of which the AO's motion addressed, <i>see</i> Dkt. 11—and the AO never filed a reply, despite asking for and receiving an extension to do so, <i>see</i> Dkt. 12; Minute Order of November 14, 2022. Second, as to State's motion, which seeks dismissal only of the FOIA claim, the government relies principally on an attached declaration that it provides no authority for considering at the motion to dismiss stage. Given that other claims against State will be pending regardless, and given that all other defendants remain in the lawsuit, the Court will not exercise its discretion to sua sponte convert this motion into a motion for summary judgment.</p> <p>Accordingly, the motions are DENIED. The AO and State are directed to answer the complaint on or before March 22, 2023. So Ordered by Judge Dabney L. Friedrich on March 8, 2023. (lcldf2) (Entered: 03/08/2023)</p>
03/08/2023		Set/Reset Deadlines: Status Report due by 3/22/2023 (zjch,) (Entered: 03/09/2023)
03/21/2023	<u>20</u>	MOTION for Extension of Time to File Answer re <u>1</u> Complaint, by ADMINISTRATIVE OFFICE OF UNITED STATES COURTS, UNITED STATES DEPARTMENT OF STATE. (Quinn, Thomas) (Entered: 03/21/2023)
03/21/2023		MINUTE ORDER granting the two defendants' <u>20</u> Motion for Extension of Time. The defendants shall answer the complaint on or before April 21, 2023. However, given the defendants' already numerous requests for extensions of time—including one motion for an extension to file a reply brief that the defendant ultimately never filed, see Minute Order of March 8, 2023—no further extensions will be granted absent extraordinary circumstances. So Ordered by Judge Dabney L. Friedrich on March 21, 2023. (lcldf2) (Entered: 03/21/2023)
03/21/2023		Set/Reset Deadlines: Answer due by 4/21/2023, (zjch,) (Entered: 03/22/2023)
04/21/2023	<u>21</u>	Amended ANSWER to <u>1</u> Complaint, by ADMINISTRATIVE OFFICE OF UNITED STATES COURTS, EXECUTIVE OFFICE OF UNITED STATES ATTORNEYS, UNITED STATES DEPARTMENT OF HOMELAND SECURITY, UNITED STATES DEPARTMENT OF JUSTICE, UNITED STATES DEPARTMENT OF STATE.(Quinn, Thomas) (Entered: 04/21/2023)

04/21/2023		VACATED PURSUANT TO MINUTE ORDER ISSUED 5/5/2023.....MINUTE ORDER requiring the parties to MEET AND CONFER and file a Meet and Confer report proposing a schedule for further proceedings. The report should address the status of the plaintiff's FOIA request, including the anticipated number of documents responsive to the request and the anticipated date(s) for release of the requested documents. The parties shall file the Meet and Confer report on or before May 5, 2023. So Ordered by Judge Dabney L. Friedrich on April 21, 2023. (lcldf2) Modified on 5/8/2023 (zjch,). (Entered: 04/21/2023)
05/04/2023	<u>22</u>	MOTION for Extension of Time to <i>File Status Report</i> by ADMINISTRATIVE OFFICE OF UNITED STATES COURTS, EXECUTIVE OFFICE OF UNITED STATES ATTORNEYS, UNITED STATES DEPARTMENT OF HOMELAND SECURITY, UNITED STATES DEPARTMENT OF JUSTICE, UNITED STATES DEPARTMENT OF STATE. (Truong, John) (Entered: 05/04/2023)
05/04/2023	<u>23</u>	MOTION to Vacate <i>the Meet and Confer Requirement of April 21, 2023 Min. Order</i> by ADMINISTRATIVE OFFICE OF UNITED STATES COURTS, EXECUTIVE OFFICE OF UNITED STATES ATTORNEYS, UNITED STATES DEPARTMENT OF HOMELAND SECURITY, UNITED STATES DEPARTMENT OF JUSTICE, UNITED STATES DEPARTMENT OF STATE. (Truong, John) Modified event title on 5/9/2023 (znmw). Added MOTION for Extension of Time to on 5/9/2023 (znmw). (Entered: 05/04/2023)
05/05/2023		MINUTE ORDER granting the defendants' <u>22</u> Motion for Extension of Time and <u>23</u> Motion for Order. The April 21, 2023 Minute Order is VACATED. The defendants are instead directed to provide a status report to the Court on or before June 2, 2023, containing the information requested in the Court's prior minute order. The plaintiff shall file a response, if any, on or before June 16, 2023. So Ordered by Judge Dabney L. Friedrich on May 5, 2023. (lcldf2) (Entered: 05/05/2023)
05/05/2023		Set/Reset Deadlines: Responses due by 6/16/2023 (zjch,) (Entered: 05/08/2023)
06/01/2023	<u>24</u>	STATUS REPORT by ADMINISTRATIVE OFFICE OF UNITED STATES COURTS, EXECUTIVE OFFICE OF UNITED STATES ATTORNEYS, UNITED STATES DEPARTMENT OF HOMELAND SECURITY, UNITED STATES DEPARTMENT OF JUSTICE, UNITED STATES DEPARTMENT OF STATE. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, part 1, # <u>3</u> Exhibit 2, part 2)(Quinn, Thomas) (Entered: 06/01/2023)
06/26/2023	<u>25</u>	RESPONSE re <u>24</u> Status Report filed by DENZIL E. MCKATHAN. (zed) (Entered: 06/27/2023)
06/27/2023		MINUTE ORDER. The defendants are directed to reply to the plaintiff's <u>25</u> Response on or before July 5, 2023. So Ordered by Judge Dabney L. Friedrich on June 27, 2023. (lcldf2) (Entered: 06/27/2023)
06/27/2023		Set/Reset Deadlines: Replies due by 7/5/2023. (zjch,) (Entered: 06/28/2023)
06/30/2023	<u>26</u>	MOTION for Extension of Time to File Response/Reply by ADMINISTRATIVE OFFICE OF UNITED STATES COURTS, EXECUTIVE OFFICE OF UNITED STATES ATTORNEYS, UNITED STATES DEPARTMENT OF HOMELAND SECURITY, UNITED STATES DEPARTMENT OF JUSTICE, UNITED STATES DEPARTMENT OF STATE. (Truong, John) (Entered: 06/30/2023)
06/30/2023		MINUTE ORDER granting the defendants' <u>26</u> Motion for Extension of Time. The defendants are directed to reply to the plaintiff's <u>25</u> Response on or before July 12, 2023. So Ordered by Judge Dabney L. Friedrich on June 30, 2023. (lcldf2) (Entered: 06/30/2023)
07/12/2023	<u>27</u>	REPLY re <u>24</u> Status Report filed by ADMINISTRATIVE OFFICE OF UNITED STATES COURTS, EXECUTIVE OFFICE OF UNITED STATES ATTORNEYS, UNITED STATES DEPARTMENT OF HOMELAND SECURITY, UNITED STATES DEPARTMENT OF JUSTICE, UNITED STATES DEPARTMENT OF STATE. (Truong, John) Modified docket event/text on 7/13/2023 (zed). (Entered: 07/12/2023)
07/13/2023	<u>28</u>	NOTICE of Appearance by Michael David Wagner on behalf of All Defendants (Wagner, Michael) (Entered: 07/13/2023)

07/13/2023		MINUTE ORDER. The pro se plaintiff, in his <u>25</u> Response, asks the Court to "authorize limited discovery," "order a Vaughn Index to be created," or set "an expedited summary judgment briefing schedule." Dkt. 25 at 6. The Court thus construes the plaintiff's response as a motion requesting that relief, with the grounds stated in the remainder of the <u>25</u> Response. The defendants are ORDERED to file, on or before July 27, 2023, an opposition to the motion addressing the plaintiff's requested relief and providing supporting authority. The opposition should address the plaintiff's claims under FOIA, the First Amendment, and the common law right of access. Legal arguments aside from the request for discovery, a Vaughn index, and an expedited briefing schedule will be addressed upon the filing of any dispositive motions. Additionally, the defendants refer in their <u>26</u> Reply to a number of potential next steps in the litigation, including production of documents and the filing of a motion to dismiss. The defendants are accordingly ORDERED to file, together with the opposition on or before July 27, 2023, a status report proposing next steps in light of the parties' filings to date. So Ordered by Judge Dabney L. Friedrich on July 13, 2023. (lcldf2) (Entered: 07/13/2023)
07/25/2023	<u>29</u>	Proposed MOTION for Extension of Time to 8/24/23 by ADMINISTRATIVE OFFICE OF UNITED STATES COURTS, EXECUTIVE OFFICE OF UNITED STATES ATTORNEYS, UNITED STATES DEPARTMENT OF HOMELAND SECURITY, UNITED STATES DEPARTMENT OF JUSTICE, UNITED STATES DEPARTMENT OF STATE. (Wagner, Michael) (Entered: 07/25/2023)
07/25/2023		MINUTE ORDER granting the defendants' <u>29</u> Motion for Extension of Time. The defendants shall, on or before August 24, 2023, file (1) an opposition to the plaintiff's <u>25</u> Motions as construed by the Court in its July 13, 2023 Minute Order, and (2) any dispositive motions. No further extensions will be granted absent extraordinary circumstances. So Ordered by Judge Dabney L. Friedrich on July 25, 2023. (lcldf2) (Entered: 07/25/2023)
07/28/2023	<u>30</u>	Amended STATUS REPORT by ADMINISTRATIVE OFFICE OF UNITED STATES COURTS, EXECUTIVE OFFICE OF UNITED STATES ATTORNEYS, UNITED STATES DEPARTMENT OF HOMELAND SECURITY, UNITED STATES DEPARTMENT OF JUSTICE, UNITED STATES DEPARTMENT OF STATE. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit)(Wagner, Michael) (Entered: 07/28/2023)
08/24/2023	<u>31</u>	Partial MOTION for Summary Judgment <i>and</i> MOTION to Dismiss <i>and response to Plaintiff's motion</i> by ADMINISTRATIVE OFFICE OF UNITED STATES COURTS, EXECUTIVE OFFICE OF UNITED STATES ATTORNEYS, UNITED STATES DEPARTMENT OF HOMELAND SECURITY, UNITED STATES DEPARTMENT OF JUSTICE, UNITED STATES DEPARTMENT OF STATE. (Attachments: # <u>1</u> Appendix TOC, # <u>2</u> Appendix TOA, # <u>3</u> Memorandum in Support Memo, # <u>4</u> Statement of Facts SUMF, # <u>5</u> Appendix Exhibit List, # <u>6</u> Exhibit 1, # <u>7</u> Exhibit 2, # <u>8</u> Exhibit 3, # <u>9</u> Text of Proposed Order)(Wagner, Michael). Added MOTION to Dismiss on 8/28/2023 (zed). (Entered: 08/24/2023)
08/24/2023	<u>32</u>	CERTIFICATE OF SERVICE by ADMINISTRATIVE OFFICE OF UNITED STATES COURTS, EXECUTIVE OFFICE OF UNITED STATES ATTORNEYS, UNITED STATES DEPARTMENT OF HOMELAND SECURITY, UNITED STATES DEPARTMENT OF JUSTICE, UNITED STATES DEPARTMENT OF STATE re <u>31</u> Partial MOTION for Summary Judgment <i>and motion to dismiss and response to Plaintiff's motion</i> . (Wagner, Michael) (Entered: 08/24/2023)
08/24/2023		MINUTE ORDER. Before the Court is the defendants' <u>31</u> Partial Motion to Dismiss and for Summary Judgment. Pursuant to <i>Fox v. Strickland</i> , 837 F.2d 507 (D.C. Cir. 1988), the plaintiff is advised that failure to respond to the defendants' <u>31</u> Partial Motion to Dismiss and for Summary Judgment may result in the Court (1) treating the motion as conceded, (2) ruling on the defendants' motion based on the defendants' arguments alone; or (3) dismissing the plaintiff's claims for failure to prosecute. Further, pursuant to <i>Neal v. Kelly</i> , 963 F.2d 453 (D.C. Cir. 1992), the Court reminds the plaintiff that on a motion for summary judgment, "any factual assertions in the movant's affidavits will be accepted as being true unless [the opposing party] submits his own affidavits or other documentary evidence contradicting the assertion." <i>Id.</i> at 456. Under Fed. R. Civ. P. 56(e), if a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c),

		the court may: (1) give an opportunity to properly support or address the fact; (2) consider the fact undisputed for purposes of the motion; (3) grant summary judgment if the motion and supporting materials—including the facts considered undisputed—show that the movant is entitled to it; or (4) issue any other appropriate order. Thus, failure to respond to the defendants' motion in this case carries with it the risk that the case will be dismissed or that judgment will be entered for the defendants. Accordingly, the plaintiff shall file any response to the defendants' <u>31</u> Partial Motion to Dismiss and for Summary Judgment on or before September 7, 2023; and the defendants shall file any reply in support of their <u>31</u> Partial Motion to Dismiss and for Summary Judgment on or before September 14, 2023. The Clerk of Court shall mail a copy of this minute order to the plaintiff's address on record. So Ordered by Judge Dabney L. Friedrich on August 24, 2023. (lcldf2) (Entered: 08/24/2023)
08/24/2023		Set/Reset Deadlines: Plaintiff shall file any response to the defendants' <u>31</u> Partial Motion to Dismiss and for Summary Judgment on or before September 7, 2023; and the defendants shall file any reply in support of their <u>31</u> Partial Motion to Dismiss and for Summary Judgment on or before September 14, 2023. (zsmc) (Entered: 08/25/2023)
09/11/2023	<u>33</u>	Memorandum in opposition to re <u>31</u> Motion for Summary Judgment,, Motion to Dismiss,, filed by DENZIL E. MCKATHAN. (Attachments: # <u>1</u> Declaration, # <u>2</u> Exhibits)(zjm) (Entered: 09/14/2023)
09/14/2023	<u>34</u>	MOTION for Extension of Time to <i>September 21, 2023</i> by ADMINISTRATIVE OFFICE OF UNITED STATES COURTS, EXECUTIVE OFFICE OF UNITED STATES ATTORNEYS, UNITED STATES DEPARTMENT OF HOMELAND SECURITY, UNITED STATES DEPARTMENT OF JUSTICE, UNITED STATES DEPARTMENT OF STATE. (Attachments: # <u>1</u> Text of Proposed Order)(Wagner, Michael) (Entered: 09/14/2023)
09/14/2023		MINUTE ORDER granting the defendants' <u>34</u> Motion for Extension of Time. The defendants shall file their combined reply to the plaintiff's <u>33</u> opposition on or before September 21, 2023. So Ordered by Judge Dabney L. Friedrich on September 14, 2023. (lcldf2) (Entered: 09/14/2023)
09/15/2023		Set/Reset Deadlines: Reply due by 9/21/2023. (smc) (Entered: 09/15/2023)
09/21/2023	<u>35</u>	REPLY to opposition to motion re <u>31</u> Partial MOTION for Summary Judgment <i>and motion to dismiss and response to Plaintiff's motion</i> MOTION to Dismiss filed by ADMINISTRATIVE OFFICE OF UNITED STATES COURTS, EXECUTIVE OFFICE OF UNITED STATES ATTORNEYS, UNITED STATES DEPARTMENT OF HOMELAND SECURITY, UNITED STATES DEPARTMENT OF JUSTICE, UNITED STATES DEPARTMENT OF STATE. (Attachments: # <u>1</u> Exhibit Ex A 2d Weetman Decl, # <u>2</u> Exhibit Ex B EOUSA Ltr, # <u>3</u> Certificate of Service)(Wagner, Michael) (Entered: 09/21/2023)
11/06/2023	<u>36</u>	MOTION for Preliminary Injunction by DENZIL E. MCKATHAN. (Attachments: # <u>1</u> Exhibit)(mg) (Entered: 11/08/2023)
11/08/2023		<p>MINUTE ORDER denying the plaintiff's <u>36</u> Motion for a Preliminary Injunction. The plaintiff, proceeding <i>pro se</i>, has moved for a preliminary injunction against defendants the Executive Office for United States Attorneys (EOUSA) and the Administrative Office of the United States Courts (AO), seeking to "enjoin EOUSA and AO from continuing to withhold" (1) "redacted information" described in Exhibit A (an October 5, 2016 email); and (2) "any other records which are responsive to Plaintiff's records requests attached to the complaint." Mot. for Prelim. Inj. at 12, Dkt. 36. The Court will deny the motion.</p> <p>By way of brief background, in the U.S. District Court for the Southern District of Alabama, the plaintiff moved under Rule 60(b)(4) and 60(b)(6) of the Federal Rules of Civil Procedure to reopen his 28 U.S.C. § 2255 proceedings "due to unlawful and unconstitutional collusion between certain judicial agents and executive branch agents, and spoliation of relevant evidence" information he allegedly learned in June 2023. Pet.'s Second Mot. Pursuant to Rule 60(b)(4) & 60(b)(6), <i>McKathan v. United States</i>, No. 14-cr-290 (S.D. Ala.), Dkt. 175. The government moved for a more definite statement because the plaintiff's "cryptic and ambiguous" motion prevented "the United States [from] reasonably prepar[ing] a proper response to the allegations raised</p>

in McKathan's motion." Mot. for a More Definite Statement at 23, *McKathan*, No. 14-cr-290, Dkt. 179. The district court granted the government's motion and ordered the plaintiff to file on or before November 27, 2023 an amended motion with more specific information, including copies of relevant communications, identities of executive and judicial agents, and an explanation for how the plaintiff became aware of the alleged conduct in June 2023. *See* Order of Oct. 26, 2023, *McKathan*, No. 14-cr-290, Dkt. 180. The plaintiff now moves in this Court for a preliminary injunction. *See* Dkt. 36.

A preliminary injunction is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Sherley v. Sebelius*, 644 F.3d 388, 392 (D.C. Cir. 2011) (quoting *Winter v. NRDC*, 555 U.S. 7, 22 (2008)). To prevail, a party seeking preliminary relief must make a "clear showing that four factors, taken together, warrant relief: likely success on the merits, likely irreparable harm in the absence of preliminary relief, a balance of the equities in its favor, and accord with the public interest." *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 6 (D.C. Cir. 2016) (cleaned up). The plaintiff "bear[s] the burdens of production and persuasion." *Qualls v. Rumsfeld*, 357 F. Supp. 2d 274, 281 (D.D.C. 2005) (citing *Cobell v. Norton*, 391 F.3d 251, 258 (D.C. Cir. 2004)).

First, the plaintiff has failed to show a likelihood of irreparable harm, which is alone sufficient to defeat his motion for a preliminary injunction. *See Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006). The D.C. Circuit "has set a high standard for irreparable injury." *Mdewakanton Sioux Indians of Minn. v. Zinke*, 255 F. Supp. 3d 48, 52 (D.D.C. 2017) (quoting *Chaplaincy*, 454 F.3d at 297). "First, the injury must be both certain and great; it must be actual and not theoretical. The moving party must show the injury complained of is of such imminence that there is a clear and present need for equitable relief to prevent irreparable harm. Second, the injury must be beyond remediation." *Chaplaincy*, 454 F.3d at 297 (cleaned up). For the extraordinary remedy of a preliminary injunction ordering an agency to fulfill its obligations by a date certain, "[c]ourts in our district have generally found irreparable harm . . . only where the requested documents are 'time-sensitive and highly probative, or even essential to the integrity, of an imminent event, after which event the utility of the records would be lessened or lost.'" *Heritage Found. v. EPA*, No. 23-cv-748, 2023 WL 2954418, at *4 (D.D.C. Apr. 14, 2023) (quoting *N.Y. Times Co. v. Def. Health Agency*, No. 21-cv-566, 2021 WL 1614817, at *8 (D.D.C. Apr. 25, 2021)). For example, "courts have granted preliminary injunctions in cases seeking documents regarding" an imminent presidential election, decennial census, and "time-limited impeachment process." *Id.* (citing cases). Here, the plaintiff's basis for irreparable harm is that he "has been ordered to file a more definite [R]ule 60(b) motion . . . on or before November 27, 2023," and without the records requested, he "cannot comply by the deadline." Mot. for Prelim. Inj. at 4. But this deadline arose because the plaintiff filed a conclusory motion to reopen in the District Court for the Southern District of Alabama. He presents no evidence that he could not withdraw the motion to reopen without prejudice and then refile if he receives the requested records in this case in the ordinary course. The plaintiff presents no evidence that "the utility of the records would be lessened or lost" were he to later refile a motion to reopen. *Heritage Found.*, 2023 WL 2954418, at *4. Further, on the present record, "any connection between [the plaintiff's] FOIA request and his continued incarceration is highly speculative" and thus not a basis for irreparable harm. *Flee-Garcia v. DOJ*, No. 19-cv-1420, 2020 WL 956470, at *2 (D.D.C. Feb. 27, 2020). Indeed, the plaintiff has failed to point to any other evidence suggesting an imminent need for the requested records, and without explanation, he attaches to his motion an October 5, 2016 email, further underscoring his lack of a time-sensitive need for the records. *See Chaplaincy*, 454 F.3d at 297.

Second, the balance of the equities and the public interest militate against entering a preliminary injunction here. Granting this preliminary injunction would effectively grant the plaintiff's request expedited status, jumping the line ahead of other requests. *See Nation Mag. v. Dept of State*, 805 F. Supp. 68, 74 (D.D.C. 1992) (noting as against the public interest that the reordering of request processing under a FOIA preliminary injunction "would severely jeopardize the public's interest in an orderly, fair, and efficient administrative of the FOIA"). Further, granting a preliminary injunction would lend this Court's imprimatur to the strategy of filing a vague motion in parallel

		<p>litigation, generating a deadline by which the plaintiff must clarify, and leveraging that deadline in a related case. Given the plaintiff has failed to show irreparable harm or that the balance of the equities and public interest are in his favor, the Court does not need to reach the plaintiff's likelihood of success on the merits before denying his motion.</p> <p>The plaintiff's <u>36</u> Motion for a Preliminary Injunction is thus DENIED. So Ordered by Judge Dabney L. Friedrich on November 8, 2023. (lcldf2) (Entered: 11/08/2023)</p>
03/27/2024	<u>37</u>	NOTICE OF SUBSTITUTION OF COUNSEL by Alexander Schreiber on behalf of All Defendants Substituting for attorney Michael David Wagner (Schreiber, Alexander) (Entered: 03/27/2024)
03/29/2024	<u>38</u>	ORDER granting in part and denying in part the defendants' <u>31</u> Partial Motion to Dismiss and for Summary Judgment and denying the plaintiff's <u>25</u> Motion for Requested Relief. See text for details. The Clerk of Court is directed to mail a copy of this order to the plaintiff's address of record. Signed by Judge Dabney L. Friedrich on March 29, 2024. (lcldf2) (Entered: 03/29/2024)
03/29/2024	<u>39</u>	MEMORANDUM OPINION regarding the defendants' <u>31</u> Partial Motion to Dismiss and for Summary Judgment and the plaintiff's <u>25</u> Motion for Requested Relief. See text for details. The Clerk of Court is directed to mail a copy of this memorandum opinion to the plaintiff's address of record. Signed by Judge Dabney L. Friedrich on March 29, 2024. (lcldf2) (Entered: 03/29/2024)
04/01/2024		MINUTE ORDER. In light of the Court's <u>38</u> Order, on or before May 1, 2024, the defendants are directed to file a status report updating the Court on the status of the remaining defendants' production of responsive records. The Clerk of Court is directed to mail a copy of this order to the plaintiff's address of record. So Ordered by Judge Dabney L. Friedrich on April 1, 2024. (lcldf2) (Entered: 04/01/2024)
04/16/2024	<u>40</u>	MOTION to Vacate <u>39</u> Memorandum & Opinion, <u>38</u> Order on Motion for Summary Judgment, Order on Motion to Dismiss, by DENZIL E. MCKATHAN. (Attachments: # <u>1</u> Exhibit)(mg) (Entered: 04/17/2024)
04/17/2024		MINUTE ORDER denying the plaintiff's <u>40</u> Motion to Amend Order or in the Alternative Notice of Appeal. The plaintiff seeks reconsideration of the Court's <u>38</u> Order and <u>39</u> Memorandum Opinion. Under Rule 54(b) of the Federal Rules of Civil Procedure, "any order or other decision," such as the Court's <u>38</u> Order, "that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties . . . may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties rights and liabilities." Fed. R. Civ. P. 54(b). "Courts in this district . . . will grant a motion to reconsider only when the movant demonstrates: (1) an intervening change in the law; (2) the discovery of new evidence not previously available; or (3) a clear error in the first order." <i>Kelleher v. Dream Catcher, LLC</i> , 263 F. Supp. 3d 253, 254–55 (D.D.C. 2017). In his motion, the plaintiff fails to point to any intervening change in the law or new evidence not previously available. His motion thus rises or falls on whether he has demonstrated "a clear error in the first order." <i>Id.</i> The plaintiff has done nothing of the sort; rather, he uses his motion "as an opportunity to rehash arguments previously made and rejected." <i>Moore v. Johnson</i> , 303 F.R.D. 105, 106 (D.D.C. 2014). To the extent the plaintiff raises any new arguments, all are beyond the scope of a Rule 54(b) motion, without merit, and certainly short of any "clear error." <i>See Kelleher</i> , 263 F. Supp. 3d at 255. The Court also rejects the plaintiff's suggestion that it overlooked First Amendment prior-restraint claims. <i>See</i> Mot. to Reconsider at 2, Dkt. 40. The plaintiff's "prior-restraint claim" is clearly intertwined and derivative of his First Amendment right-of-access claims, which the Court rejected on the merits. <i>See</i> Compl. ¶ 47, Dkt. 1 ("Plaintiff has been prevented from speaking about the contents of the requested records, and from publishing the same <i>because Defendants have prevented Plaintiff from having access to them in the first instance.</i> " (emphasis added)). And, in any event, the prior-restraint allegations are entirely conclusory and insufficient to state a claim to relief that is plausible under Rule 12(b)(6). <i>See Bell Atl. Corp. v. Twombly</i> , 550 U.S. 544, 570 (2007). McKathan's motion thus falls well short of the high bar for Rule 54(b) relief. The Court denies the motion. The Clerk of Court is directed to mail a copy of this order to the plaintiff's address of record. So Ordered by Judge Dabney L. Friedrich on April 17, 2024. (lcldf2) (Entered: 04/17/2024)

05/01/2024	<u>41</u>	STATUS REPORT by ADMINISTRATIVE OFFICE OF UNITED STATES COURTS, EXECUTIVE OFFICE OF UNITED STATES ATTORNEYS, UNITED STATES DEPARTMENT OF HOMELAND SECURITY, UNITED STATES DEPARTMENT OF JUSTICE, UNITED STATES DEPARTMENT OF STATE. (Schreiber, Alexander) (Entered: 05/01/2024)
05/02/2024		MINUTE ORDER. Upon consideration of the defendants' <u>41</u> Status Report, the defendants are directed to file another status report on or before September 1, 2024 updating the Court on the status of the remaining defendants' production of responsive records. The Clerk of Court is directed to mail this order to the plaintiff's address of record. So Ordered by Judge Dabney L. Friedrich on May 2, 2024. (lcldf2) (Entered: 05/02/2024)
05/07/2024	<u>42</u>	MOTION for Certification for interlocutory appeal, MOTION to Appoint Counsel by DENZIL E. MCKATHAN. (mg) (Entered: 05/10/2024)
05/11/2024		<p>MINUTE ORDER. The plaintiff has moved for the certification of an interlocutory appeal and for the appointment of counsel. <i>See</i> Dkt. 42. The Court will deny both motions.</p> <p>As to certification, a district court may certify for an interlocutory appeal "an order not otherwise appealable" upon a finding that (1) the order "involves a controlling question of law," (2) there is "substantial ground for difference of opinion" over the question, and (3) "an immediate appeal from the order may materially advance the ultimate termination of the litigation." 28 U.S.C. § 1292(b). Given the "strong congressional policy against piecemeal reviews, and against obstructing or impeding an ongoing judicial proceeding by interlocutory appeals, the party seeking an interlocutory appeal also bears a heavy burden to show that exceptional circumstances justify a departure from the basic policy of postponing appellate review until after the entry of final judgment." <i>Citizens for Resp. & Ethics in Wash. v. Am. Action Network</i>, 415 F. Supp. 3d 143, 145 (D.D.C. 2019).</p> <p>The plaintiff has not satisfied the "demanding standard" required for certification. <i>Id.</i> Among other things, the plaintiff has not pointed to any issue of law for which there is "substantial ground for difference of opinion." 28 U.S.C. § 1292(b). Indeed, his motion for reconsideration primarily focuses on (1) the fact-bound issue of whether the exhaustion requirement was triggered based on his failure to perfect his FOIA request and (2) a misunderstanding of the scope of immunity absent a plain waiver. In short, this straightforward case does not present any exceptional circumstances justifying a deviation from the ordinary operation of the final-judgment rule. Although the Court is sympathetic to the plaintiff's concerns about delay arising from the remaining defendants' production of records, the Court has every intention of ensuring that the defendants finish production in due course. Moreover, the plaintiff has other forms of relief at his disposal. Without taking any view on the merits of such a motion, the plaintiff could, for example, move under Rule 54(b) for a partial final judgment as to the dismissed parties (AO, the Department of Homeland Security, and the State Department) upon a showing "that there is no just reason for delay." Fed. R. Civ. P. 54(b).</p> <p>As to the appointment of counsel, "[t]he law is well established that there is no constitutional right to appointment of counsel in a civil case, and no indigent civil litigant is guaranteed counsel." <i>Brown v. Children's Nat'l Med. Ctr.</i>, 773 F. Supp. 2d 125, 140 (D.D.C. 2011). In deciding whether to appoint counsel in a civil case, courts consider, among other factors, the "nature and complexity of the action" and "the potential merit of the pro se party's claims." LCvR 83.11(b)(3). The plaintiff suggests that appointed counsel would assist with "conserving judicial resources" and "confer[ring]" with defense counsel. Mot. at 2, Dkt. 42. The Court disagrees. First, the Court is familiar with the record in this case. Second, the remaining issues require a straightforward application of FOIA law. And third, the Court understands that the plaintiff seeks to prosecute his case as expeditiously as possible, and the Court will be reluctant to grant the government unjustified extensions of time.</p> <p>The plaintiff's <u>42</u> Motion for Leave to Take an Interlocutory Appeal or Alternatively for Appointment of Counsel is DENIED. The Clerk of Court is directed to mail a copy of this order to the plaintiff's address of record. So Ordered by Judge Dabney L.</p>

		Friedrich on May 11, 2024. (lcldf2) (Entered: 05/11/2024)
06/05/2024	<u>43</u>	MOTION for Partial Judgment by DENZIL E. MCKATHAN. (mg) (Entered: 06/06/2024)
06/18/2024	<u>44</u>	MOTION for Extension of Time to <i>Respond to Plaintiff's Motion For Partial Final Judgment</i> by ADMINISTRATIVE OFFICE OF UNITED STATES COURTS, EXECUTIVE OFFICE OF UNITED STATES ATTORNEYS, UNITED STATES DEPARTMENT OF HOMELAND SECURITY, UNITED STATES DEPARTMENT OF JUSTICE, UNITED STATES DEPARTMENT OF STATE. (Schreiber, Alexander) (Entered: 06/18/2024)
06/18/2024		MINUTE ORDER granting the defendants' <u>44</u> Motion for Extension of Time to Respond to Plaintiff's Motion for Partial Final Judgment. The defendants shall file their response to the plaintiff's <u>44</u> Motion for Partial Final Judgment on or before July 3, 2024. So Ordered by Judge Dabney L. Friedrich on June 18, 2024. (lcldf2) (Entered: 06/18/2024)
07/03/2024	<u>45</u>	Memorandum in opposition to re <u>43</u> Motion for Judgment filed by ADMINISTRATIVE OFFICE OF UNITED STATES COURTS, EXECUTIVE OFFICE OF UNITED STATES ATTORNEYS, UNITED STATES DEPARTMENT OF HOMELAND SECURITY, UNITED STATES DEPARTMENT OF JUSTICE, UNITED STATES DEPARTMENT OF STATE. (Schreiber, Alexander) (Entered: 07/03/2024)
07/13/2024		MINUTE ORDER denying the plaintiff's <u>43</u> Motion for Partial Final Judgment. Rule 54(b) of the Federal Rules of Civil Procedure provides that "[w]hen an action presents more than one claim for relief—whether as a claim, counterclaim, crossclaim, or third-party claim—or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay." On March 29, 2024, the Court dismissed from this case the Administrative Office, Department of Homeland Security, and the State Department. <i>See</i> Dkt. 38. The Executive Office of United States Attorneys and Department of Justice thus remain as defendants. The Department of Justice has issued a "no records" letter to the plaintiff, and EOUSA anticipates completing production on September 1, 2024. <i>See</i> Opp'n at 2, Dkt. 45. Given production will be complete within two months, the Court does not believe that judicial economy would be served by granting partial final judgment. Indeed, it would create repetition in short succession for the D.C. Circuit to evaluate essentially the same record twice, and the Court does not believe the issues across the two groups of defendants are appreciably distinct so as to benefit from a partial final judgment. <i>See Stewart v. Gates</i> , 27 F.R.D. 33, 37 (D.D.C. 2011). What is more, the Court intends to hold the defendants to their representations that production will be complete by September 1, 2024. As such, on or before <u>September 1, 2024</u> , the defendants shall file a status report proposing a briefing schedule for any dispositive motions related to the remaining records. Absent extraordinary circumstances, the Court is not inclined to extend this September 1, 2024 deadline. The Clerk of Court is directed to mail a copy of this Order to the plaintiff's address of record. So Ordered by Judge Dabney L. Friedrich on July 13, 2024. (lcldf2) (Entered: 07/13/2024)
07/13/2024		Set/Reset Deadlines: Status Report due by 9/1/2024 (zjch,) (Entered: 07/15/2024)
08/30/2024	<u>46</u>	STATUS REPORT by ADMINISTRATIVE OFFICE OF UNITED STATES COURTS, EXECUTIVE OFFICE OF UNITED STATES ATTORNEYS, UNITED STATES DEPARTMENT OF HOMELAND SECURITY, UNITED STATES DEPARTMENT OF JUSTICE, UNITED STATES DEPARTMENT OF STATE. (Schreiber, Alexander) (Entered: 08/30/2024)
09/03/2024		MINUTE ORDER. Upon consideration of the defendant's <u>46</u> Status Report, it is ORDERED that the following schedule shall govern further proceedings: the defendant's Motion for Summary Judgment shall be due on or before November 8, 2024; the plaintiff's Cross-Motion for Summary Judgment/Opposition shall be due on or before December 9, 2024; the defendant's Reply/Opposition shall be due on or before January 8, 2025; and the plaintiff's Reply shall be due on or before February 7, 2025. So Ordered by Judge Dabney L. Friedrich on September 3, 2024. (lcldf2) (Entered: 09/03/2024)

09/03/2024		Set/Reset Deadlines: Cross Motions due by 12/9/2024. Response to Cross Motions due by 1/8/2025. Reply to Cross Motions due by 2/7/2025. Summary Judgment motions due by 11/8/2024. Response to Motion for Summary Judgment due by 12/9/2024. Reply to Motion for Summary Judgment due by 1/8/2025. (zjch,) (Entered: 09/04/2024)
09/10/2024	<u>47</u>	NOTICE OF SUBSTITUTION OF COUNSEL by Dimitar Georgiev-Rommel on behalf of All Defendants Substituting for attorney Alexander Schreiber (Georgiev-Rommel, Dimitar) (Entered: 09/10/2024)