

**THE HONORABLE MARSHA J. PECHMAN
CHIEF JUDGE**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

IGNACIO LANUZA,)	
)	NO. CV-14-1641-MJP
Plaintiff,)	
)	DECLARATION OF
vs.)	TIMOTHY M. DURKIN IN
)	SUPPORT OF MOTION FOR
JONATHAN LOVE, and)	PROTECTIVE ORDER – STAY
UNITED STATES OF AMERICA,)	
)	
Defendants.)	

TIMOTHY M. DURKIN, Special Counsel to the U.S. Attorney General and Assistant United States Attorney (EDWA), declares and states under the penalty of perjury under the laws of the United States (28 U.S.C. § 1746) that the following information is true and correct to the best of his knowledge, information and belief:

1. I am not a party and am competent to testify to the matters stated herein, which are based upon personal knowledge - information and/or the review of information and records connected with the claims, defenses and/or allegations in this case, and which statements would be admissible as evidence or proffer at the time of hearing or trial;

2. On or about **February 13, 2014**, Plaintiff submitted a FTCA tort claim with ICE seeking \$500,000 in damages. *ECF 1, ¶ 5*. ICE denied Plaintiff’s claim

1 on **August 11, 2014**. Plaintiff then commenced this civil rights and FTCA lawsuit
2 against Mr. Love and the United States (ICE) on **October 23, 2014**. See ECF 1, ¶ 6.
3 Service of Plaintiff's Complaint was performed separately on Mr. Love and the
4 United States.

5 3. On **December 18, 2014**, Mr. Love filed a motion to dismiss based on
6 alleged failures to state cognizable *Bivens* claims and a claim of qualifiedly
7 immunity from suit. ECF 9. Mr. Love also moved to stay initial Rule 26(a)(1)
8 disclosures and other discovery while his dispositive motions to dismiss and his
9 claim of immunity from suit was pending. ECF 10.

10 4. On **December 23, 2014**, the United States filed its own motion to
11 dismiss based *inter alia* on the absence of jurisdiction under the Federal Tort
12 Claims Act (FTCA), statutes of limitation and alleged failures to state allowable -
13 cognizable FTCA tort claims. ECF 14. The United States also joined Defendant
14 Love's motion to stay discovery and filed its own Rule 26(a)(1)(C) Objection to
15 having to make initial disclosures and/or having to respond to other discovery while
16 motions to dismiss, including claims of lack of jurisdiction, remained pending.
17 ECF 15; attached Exhibit A-1.

18 5. The motion to stay was ultimately noted for hearing (without oral
19 argument) for **December 31, 2014**. The United States motion to dismiss was
20 originally noted for hearing (w/o argument) on **January 16, 2015**, but the Court
21 ultimately consolidated that motion with Defendant Love's motion to dismiss and
22 the hearing was re-set for **January 23, 2015**.

23 6. On **December 29, 2014**, the United States provided provisional Initial
24 Discovery Disclosures, which also included an Objection to Disclosures as allowed
25 under Rule 26(a)(1)(C). See attached Ex. A-1.

26 7. On **January 8, 2015**, while the United States' motion to dismiss and its
27

1 joinder to the motion to stay was pending, Plaintiff served via email three sets of
2 written discovery, e.g., Interrogatories, Requests for Production and Requests for
3 Admission. The United States requested the Plaintiff to grant a conditional extension
4 for response to the discovery of up to 30 days after the Court's rulings on the pending
5 dismissal motions. However, Plaintiff's counsel indicated that this type of extension
6 would leave the Plaintiff relying on responses possibly being provided at an uncertain
7 date in the future and thus offered a 30 day extension. *See attached Ex. A-2 – email*
8 *thread re: discovery extension request.* The United States accepted the 30 day
9 extension and advised Plaintiff that while it would work on the discovery responses, it
10 nonetheless would likely seek one or more protective orders. The United States also
11 hoped that a ruling on the pending motions to dismiss would be entered before the
12 extended due date for the discovery responses arrived.

13 8. The undersigned has met and conferred with Messrs. Chris Shenck and
14 Matthew Adams, and have agreed to continue discussions regarding the possible
15 resolution of Plaintiff's current discovery demands (i.e., reduction in scope and/or an
16 alternative information – discovery response). However, no formal agreement has
17 been reached yet and given the current discovery response deadline of March 12, 2015,
18 and the undersigned litigation obligations next week, the United States (DHS – ICE)
19 feels compelled to file this motion for a protective order now in order to fully protect
20 its interests and present legal position.

21 9. The parties have agreed to continue discussions on the discovery issue and
22 are hopeful that a resolution will be reached before the extended hearing date that the
23 United States has set on this motion for protective order – stay (e.g., discovery dispute
24 may be resolved either by the Court's orders on the pending motions to dismiss and/or
25 by the reaching of mutual agreement on discovery between the United States and the
26 Plaintiff).



U.S. Department of Justice
United States Attorney's Office
Eastern District of Washington

300 United States Courthouse (509) 353-2767
Post Office Box 1494 Fax (509) 353-2766
Spokane, Washington 99210-1494

December 29, 2014

Mr. Matt Adams, Esq.
Mr. Glenda M. Aldana Madrid, Esq.
Northwest Immigrant Rights Project
615 Second Avenue, Ste. 400
Seattle, WA 98101

Re: *Nick Zawada v. United States* - Cause No. 14-cv--0288-SAB
United States' Rule 26(a)(1)(C) Objection and Initial Rule 26(a)(1) Disclosures

Dear Matt and Glenda:

In follow up to the parties' Rule 26(b) conference and the draft Joint Status Report, and the Court's Order concerning the making of initial Rule 26(a)(1) discovery disclosures on or by December 29, 2014, and in light of the United States' filed and now pending Motion for Rule 12 Dismissal of all of the Plaintiff's FTCA claims (e.g., dismissal sought on absence of jurisdiction and failure to state cognizable claims), the United States hereby gives notice of its Rule 26(a)(1)(C) Objection to having to provide any initial disclosures until such time as the District Court determines "... what disclosures, if any, are to be made ..." and also sets for the "... the time for the disclosures." *Id.*

Without waiver and/or prejudice, however, and in the interest of facilitating some initial discovery disclosures that the Court may require in the future, the United States provides the following initial Fed. R. Civ. P. 26(a)(1) discovery disclosure of the information and/or documents:

The Defendant Government believes that the following individuals may have discoverable information relevant to Plaintiff's allegations of negligence and/or damages:

1. Plaintiff Ignacio Lanuza-Torres. The Plaintiff can be contacted through one or more of his various counsel, including Mr. Adams or Ms. Aldana Madrid;
2. The Plaintiff Ignacio Lanuza-Torres's various counsel that represented him during the subject Immigration removal proceedings;

Lanuza v. Jonathan Love and United States (ICE)

December 29, 2014

Page -2-

3. Plaintiff Lanuza-Torres's wife and children. These individuals may be reached through the Plaintiff's various counsel, including Mr. Adams or Ms. Aldana Madrid;
4. One or more of the Plaintiff Lanuza-Torres's family members residing in the United States and/or in Mexico who have knowledge of the Plaintiff's residency in the United States and/or visits to Mexico during relevant time periods;
5. One or more of the Plaintiff Lanuza's presently unknown employers during the relevant time period(s) involved;
6. Any presently unknown health care provider that have purportedly provided treatment and/or care to the Plaintiff Mr. Lanuza;
7. Heather Carlson, Forensic Examiner, Northwest Forensics, Chehalis, WA. Ms. Carlson can be reached at (360) 740-1700;
8. One or more presently unknown employee jailers and/or administrators at the King County Jail;
9. One or more presently unknown Deputy Prosecutors with the King County Prosecutor's Office;
10. Jonathan Love, Esq., Assistant Chief Counsel, U.S. Immigration and Customs Enforcement (ICE). Mr. Love can be reached through his personal counsel, Messrs. Brennan and Guthrie, McKay Chadwell, PLLC.
11. Anthony Dodd, Immigration Enforcement Agent, ICE. Mr. Dodd can be reached through the Office of Chief Counsel for ICE and/or through the undersigned counsel for the United States (ICE); ;
12. Lisa McDaniel, Examining Officer, ICE. Ms. McDaniel can be reached through the Office of Chief Counsel for ICE and/or through the undersigned counsel for the United States (ICE);
13. James L. Davis, Immigration Officer, U.S. Department of Homeland Security. Mr. Davis can be the Office of Chief Counsel for U.S. Department of Homeland Security and/or through the undersigned counsel for the United States (ICE);

14. Records Custodian, ICE or DHS re: the maintenance and control of DHS's-ICE's file on the Plaintiff Ignacio Lanuza-Torres;
15. One or more presently unknown U.S. Border Patrol Agents who had previous contact with the Plaintiff Ignacio Lanuza-Torres during relevant time period(s);
16. One or more presently unknown investigators with the Office of Inspector General, DHS, and/or the FBI, who may be investigating the Plaintiff's complaint to ICE regarding the Defendant ICE Assistant Chief Counsel Jonathan Love's alleged misconduct. The unknown investigators may be contacted through the Office of General Counsel for OIG-DHS and/or the FBI;

The United States also incorporates herein those persons with knowledge that Plaintiff identified in his initial discovery disclosures. In making these initial disclosures, the United States does not make any express or implied representation as to the identified person's competency and/or knowledge, and reserves the right to object on any ground relative to any person's proffered or actual testimony. This Rule 26 discovery disclosure may be supplemented as this case and discovery progress.

The following are custodians of documents, which the Defendant is aware of and/or the Plaintiff has previously disclosed - referenced during the claim process, which may be relevant to Plaintiff's liability and/or damages claims:

1. U.S. Immigration Court, Executive Office for Immigration Review, 1000 Second Ave., Ste. 2500, Seattle, WA; (206) 553-5953;
2. U.S. Department of Immigration and Customs Enforcement, U.S. Department of Homeland Security, Seattle Office of Chief Counsel, 1000 2nd Ave., Ste. 2200, Seattle, WA 98104; The records custodian can be reached through the undersigned counsel;
3. U.S. Customs & Border Protection, Nogales, AZ, and Imperial Beach, CA, Sectors-Stations, 1500 W. La Quinta Rd., Nogales, AZ, (520) 287-1432; and 1802 Saturn Blvd., Imperial Beach, CA 91933, (619) 628-2900; The records custodian can be reached through the undersigned counsel;
4. King County Jail (Justice Center), 500 5th Ave., Seattle, WA (206) 296-1234;

Lanuza v. Jonathan Love and United States (ICE)

December 29, 2014

Page -4-

5. King County Prosecuting Attorney's Office, King County Courthouse, Rm. W554, 516 Third Ave., Seattle, WA 98104-2362; (206) 296-9000;
6. King County Superior Court, Clerk of the Court, 516 Third Ave., Room E-609, Seattle, WA; (206) 296-9300;

At this time, the undersigned counsel for the Defendant United States (ICE) has no documents in its possession that have not been previously disclosed to Plaintiff and/or his attorneys that may be relevant to Plaintiff's claims. The United States incorporates herein all documents and persons (including those referenced in the records) that are identified by the Plaintiff in his initial Rule 26(a)(1) disclosures.

There are no insurance agreements with the United States that are applicable to this FTCA claim. However, Plaintiff should be aware that any settlement or judgment recovered in this matter is subject to the availability of appropriated funds. *See* 42 U.S.C. § 233(k)

Without waiver of the United States Rule 26(a)(1)(C) Objection, the foregoing constitutes the United States' initial disclosures at this time. If additional persons with knowledge and/or relevant records come to our attention, this disclosure will be supplemented. *See* Rule 26(e). Please contact me should there be any questions.

Very truly yours,

MICHAEL C. ORMSBY
United States Attorney

s/ Timothy M. Durkin
TIMOTHY M. DURKIN
Assistant United States Attorney

cc: Counsel for the Plaintiff Ignacio Lanuza:
Christopher Schenck, cschenck@kilpatricktownsend.com;
Stephanie Martinez, smartinez@kilpatricktownsend.com
Dario A Machleidt, dmachleidt@kilpatricktownsend.com

Counsel for Defendant Jonathon Love:
Thomas M. Brennan, tmb@mckay-chadwell.com;
Donald Jack Guthrie, djg@mckay-chadwell.com

Durkin, Tim M. (USAWAE)

From: Durkin, Tim M. (USAWAE)
Sent: Tuesday, February 03, 2015 5:07 AM
To: 'Schenck, Chris'
Cc: Matt Adams (matt@nwirp.org); Glenda M. Aldana Madrid (glenda@nwirp.org); Blair, Stephanie; Martinez, Stephanie
Subject: RE: Lanuza v. USA, et al.: Plaintiff Lanuza's First Set of Discovery Requests

Chris:

Sorry for the delay. I've been tied up in matters involving a large med mal case against the VA.

Yes, thank you for an extension of 30 days for responding to Plaintiff's written discovery (i.e. March 13th). I do anticipate some protective order(s), which I will provide/discuss with you in advance of the discovery due date. Thank you again for your cooperation in this matter.

Sincerely,

Tim M. Durkin
Assistant United States Attorney
P.O. Box 1494
Spokane, WA 99210-1494
(509) 353-2767

Notice: This e-mail is the property of the sender and/or United States. You are not authorized to use, copy, forward, distribute or disclose the contents or existence of this e-mail without the express written consent of sender. See 18 U.S.C. Sect. 641. If you are not the intended recipient, immediately contact the sender and destroy and delete this e-mail, its attachments, and any and all copies. Please contact the sender should you have any further questions. Thank you for your cooperation in this regard.

From: Schenck, Chris [mailto:CSchenck@kilpatricktownsend.com]
Sent: Thursday, January 29, 2015 11:48 AM
To: Durkin, Tim M. (USAWAE)
Cc: Matt Adams (matt@nwirp.org); Glenda M. Aldana Madrid (glenda@nwirp.org); Blair, Stephanie; Martinez, Stephanie
Subject: RE: Lanuza v. USA, et al.: Plaintiff Lanuza's First Set of Discovery Requests

Tim,

Just following up on this, since I don't think we ever got a response.

Thanks.

CS

Chris Schenck
Kilpatrick Townsend & Stockton LLP
Suite 4400 | 1420 Fifth Avenue | Seattle, WA 98101
office 206 516 3081 | cell 206 549 5964 | fax 206 374 8108
cschenck@kilpatricktownsend.com | [My Profile](#) | [vCard](#)

From: Schenck, Chris
Sent: Tuesday, January 20, 2015 4:16 PM

To: 'Durkin, Tim M. (USAWAE)'

Cc: Matt Adams (matt@nwirp.org); Glenda M. Aldana Madrid (glenda@nwirp.org); Blair, Stephanie; Martinez, Stephanie

Subject: RE: Lanuza v. USA, et al.: Plaintiff Lanuza's First Set of Discovery Requests

Tim,

At this point, I don't think we can agree to 30 days after the rulings you mention (since we don't know when those rulings will come), but we're certainly happy to give you an extension to 30 days after the current response deadline.

Please let us know if that'd be acceptable.

Thanks.

Chris

Chris Schenck

Kilpatrick Townsend & Stockton LLP

Suite 4400 | 1420 Fifth Avenue | Seattle, WA 98101
office 206 516 3081 | cell 206 549 5964 | fax 206 374 8108
cschenck@kilpatricktownsend.com | [My Profile](#) | [vCard](#)

From: Durkin, Tim M. (USAWAE) [<mailto:Tim.Durkin@usdoj.gov>]

Sent: Tuesday, January 20, 2015 2:54 PM

To: Schenck, Chris

Cc: Matt Adams (matt@nwirp.org); Glenda M. Aldana Madrid (glenda@nwirp.org)

Subject: RE: Lanuza v. USA, et al.: Plaintiff Lanuza's First Set of Discovery Requests

Chris:

In light of the pending motions, can we please agree to extend to the due date for responses on this discovery until 30 days after the Judge Pechman enters here rulings on the motion to dismiss and motion to stay Rule 29 Disclosures (which you know the United States (ICE) did provide)?

My Agency's counsel has advised that he's slammed with litigation and discovery demands, and this set will require some extra work? I would like to resolve this issue without the need to file a motion. Please let me know at your earliest convenience.

Please call me at (509) 835-6324 if you would like to discuss further.

Thank you Chris for your cooperation in this regard.

Tim M. Durkin

Assistant United States Attorney

P.O. Box 1494

Spokane, WA 99210-1494

(509) 353-2767

Notice: This e-mail is the property of the sender and/or United States. You are not authorized to use, copy, forward, distribute or disclose the contents or existence of this e-mail without the express written consent of sender. See 18 U.S.C. Sect. 641. If you are not the intended recipient, immediately contact the sender and destroy and delete this e-mail, its attachments, and any and all copies. Please contact the sender should you have any further questions. Thank you for your cooperation in this regard.

From: Blair, Stephanie [<mailto:SBlair@kilpatricktownsend.com>]

Sent: Thursday, January 08, 2015 5:22 PM

To: Durkin, Tim M. (USAWAE)

Cc: Schenck, Chris; Martinez, Stephanie; Machleidt, Dario; Matt Adams (matt@nwirp.org); Glenda M. Aldana Madrid (glenda@nwirp.org)

Subject: Lanuza v. USA, et al.: Plaintiff Lanuza's First Set of Discovery Requests

Counsel,

Attached please find your service copies of the following documents:

- 2015-01-08 Lanuza First Set of ROGs to USA
- 2015-01-08 Lanuza First Set of RFPs to USA
- 2015-01-08 Lanuza First Set of RFAs to USA

Hard copies of these documents will also be sent today via United States Postal Service.



Stephanie Blair

Paralegal

Kilpatrick Townsend & Stockton LLP

Suite 4400 | 1420 Fifth Avenue | Seattle, WA 98101

office 206 516 3089 | fax 206 623 6793

sblair@kilpatricktownsend.com | www.kilpatricktownsend.com

Confidentiality Notice:

This communication constitutes an electronic communication within the meaning of the Electronic Communications Privacy Act, 18 U.S.C. Section 2510, and its disclosure is strictly limited to the recipient intended by the sender of this message. This transmission, and any attachments, may contain confidential attorney-client privileged information and attorney work product. If you are not the intended recipient, any disclosure, copying, distribution or use of any of the information contained in or attached to this transmission is STRICTLY PROHIBITED. Please contact us immediately by return e-mail or at 404 815 6500, and destroy the original transmission and its attachments without reading or saving in any manner.

DISCLAIMER Per Treasury Department Circular 230: Any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.