

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

JANE DOE 2, *et al.*,

Plaintiffs

v.

DONALD J. TRUMP, *et al.*,

Defendants

Civil Action No. 17-1597 (CKK)

**ORDER**

(June 19, 2018)

On June 13, 2018, Defendants contacted chambers via e-mail to notify the Court of a discovery dispute.<sup>1</sup> Plaintiffs seek to depose Rear Admiral (soon to be Vice Admiral) David Kriete, Deputy Commander of U.S. Strategic Command. Defendants argue that the deposition should not go forward at this time. Defendants claim that the Rear Admiral is a high-ranking official that should not have to make himself available for a deposition at this point in this litigation. Defendants also contend that the testimony Plaintiffs would seek from the Rear Admiral is privileged. Plaintiffs acknowledge that the Rear Admiral is a high-ranking official, but contend that he is uniquely situated to provide them key information. Plaintiffs also dispute that the Rear Admiral's testimony would be privileged.

The Court will hold this dispute in abeyance. As the Court has previously noted, Defendants have refused to provide much of the discovery Plaintiffs have sought in this case based on seemingly blanket assertions of several privileges. Nonetheless, despite Defendants' refusal to provide large portions of the discovery requested by Plaintiffs, both parties have filed motions arguing that the current record presents a sufficient basis to entitle them to summary judgment. The parties' disputes about privilege will be addressed, if necessary, after these dispositive motions have been resolved. If summary judgment is granted for either party, there will be no need to resolve the questions of privilege that the parties have raised, which implicate serious separation-of-powers issues and would require additional briefing. This approach will not prejudice Plaintiffs, because the Court's preliminary injunction remains in place and the discovery deadline has been vacated. If the Court determines that the discovery Defendants have refused to provide is relevant to any issue necessary to the resolution of the pending motions, the Court will deny or delay ruling on those motions until these privilege issues can be resolved. The Court will not require the Rear Admiral to sit for a deposition at this time.

**SO ORDERED.**

/s/

COLLEEN KOLLAR-KOTELLY  
United States District Judge

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<sup>1</sup> The parties' e-mails are attached to this Order as Exhibit A.

# **Exhibit A**



RE: Doe v. Trump, Case No. 17-01597

McFadden, Daniel L

to:

Kollar-Kotelly\_Chambers@dcd.uscourts.gov

06/19/2018 10:30 AM

Cc:

Alan Schoenfeld, "Laporte, Claire", "Enlow, Courtney D. (CIV)", "Miller, Matt", "Wolfson, Paul", "Norway, Robert M. (CIV)", "Milgroom, Lauren Godles", "Carmichael, Andrew E. (CIV)"

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From: "McFadden, Daniel L" <DMcFadden@foleyhoag.com> Sort List...

To: "Kollar-Kotelly\_Chambers@dcd.uscourts.gov" <Kollar-Kotelly\_Chambers@dcd.uscourts.gov>

Cc: Alan Schoenfeld <Alan.Schoenfeld@wilmerhale.com>, "Laporte, Claire" <CLL@foleyhoag.com>, "Enlow, Courtney D. (CIV)" <Courtney.D.Enlow@usdoj.gov>, "Miller, Matt" <MMiller@foleyhoag.com>, "Wolfson, Paul" <Paul.Wolfson@wilmerhale.com>, "Norway, Robert M. (CIV)" <Robert.M.Norway@usdoj.gov>, "Milgroom, Lauren Godles" <lmilgroom@foleyhoag.com>, "Carmichael, Andrew E. (CIV)" <Andrew.E.Carmichael@usdoj.gov>

Dear Chambers of Judge Kollar-Kotelly,

I am counsel for Plaintiffs in *Doe v. Trump*, Case No. 17-01597, and have included Defendants' counsel on this email.

In response to the Court's question in its June 18, 2018 email: Yes, it is Plaintiffs' position that Plaintiffs are entitled to summary judgment on the current record.

Respectfully submitted,

Daniel L. McFadden

Daniel McFadden | Associate

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**From:** Alec\_Levy@dcd.uscourts.gov <Alec\_Levy@dcd.uscourts.gov> **On Behalf Of** Kollar-Kotelly\_Chambers@dcd.uscourts.gov

**Sent:** Monday, June 18, 2018 4:18 PM

**To:** Carmichael, Andrew E. (CIV) <Andrew.E.Carmichael@usdoj.gov>

**Cc:** Alan Schoenfeld <Alan.Schoenfeld@wilmerhale.com>; Laporte, Claire <CLL@foleyhoag.com>; Enlow, Courtney D. (CIV) <Courtney.D.Enlow@usdoj.gov>; McFadden, Daniel L <DMcFadden@foleyhoag.com>; Miller, Matt <MMiller@foleyhoag.com>; Wolfson, Paul <Paul.Wolfson@wilmerhale.com>; Norway, Robert M. (CIV) <Robert.M.Norway@usdoj.gov>; Milgroom, Lauren Godles <lmilgroom@foleyhoag.com>

**Subject:** RE: Doe v. Trump, Case No. 17-01597

Plaintiffs' Counsel,

The Court understands Plaintiffs' position to be that Plaintiffs are entitled to summary judgment on the current record, without the addition of any testimony that could be obtained through the deposition of Rear Admiral Kriete (or other discovery Defendants have refused to provide). By no later than **noon** tomorrow, **June 19, 2018**, Plaintiffs shall indicate whether the Court's understanding is correct.

Thank you.

-----  
Chambers of the Hon. Colleen Kollar-Kotelly  
United States District Judge  
United States District Court for the District of Columbia  
202-354-3340

From: "Carmichael, Andrew E. (CIV)" <[Andrew.E.Carmichael@usdoj.gov](mailto:Andrew.E.Carmichael@usdoj.gov)>  
To: "Kollar-Kotelly Chambers@dcd.uscourts.gov" <[Kollar-Kotelly\\_Chambers@dcd.uscourts.gov](mailto:Kollar-Kotelly_Chambers@dcd.uscourts.gov)>  
Cc: Alan Schoenfeld <[Alan.Schoenfeld@wilmerhale.com](mailto:Alan.Schoenfeld@wilmerhale.com)>, "Laporte, Claire" <[CLL@foleyhoag.com](mailto:CLL@foleyhoag.com)>, "Enlow, Courtney D. (CIV)" <[Courtney.D.Enlow@usdoj.gov](mailto:Courtney.D.Enlow@usdoj.gov)>, "McFadden, Daniel L" <[DMcFadden@foleyhoag.com](mailto:DMcFadden@foleyhoag.com)>, "Miller, Matt" <[MMiller@foleyhoag.com](mailto:MMiller@foleyhoag.com)>, "Wolfson, Paul" <[Paul.Wolfson@wilmerhale.com](mailto:Paul.Wolfson@wilmerhale.com)>, "Norway, Robert M. (CIV)" <[Robert.M.Norway@usdoj.gov](mailto:Robert.M.Norway@usdoj.gov)>, "Milgroom, Lauren Godles" <[lmilgroom@foleyhoag.com](mailto:lmilgroom@foleyhoag.com)>  
Date: 06/15/2018 03:00 PM  
Subject: RE: Doe v. Trump, Case No. 17-01597

Dear Chambers of Judge Kollar-Kotelly,

I am counsel for Defendants in *Doe v. Trump*, Case No. 17-01597, and have included Plaintiffs' counsel on this email. I write in response to the Court's email of June 14, 2018.

First, contrary to Plaintiffs' suggestion, Counsel for Defendants did not agree in writing that the deposition of Rear Admiral Kriete should go forward, and Defendants have not waived their objection to proceeding with the deposition. Plaintiffs noticed the deposition of Rear Admiral Kriete for a date chosen by Plaintiffs, giving Rear Admiral Kriete, a two-star admiral at the time, only two weeks of advance notice. Rear Admiral Kriete was unavailable on the noticed date. Because Plaintiffs indicated that they would withdraw the deposition notice only upon selecting a new date, Defendants worked with Plaintiffs to coordinate scheduling and logistics in case the deposition were to go forward. Defendants indicated that Rear Admiral Kriete would be available on June 27, 2018 in Omaha, NE, where Rear Admiral Kriete is second in command at U.S. Strategic Command (USSTRATCOM), but Defendants did not agree to the deposition going forward without objection. The scheduling of a revised date for a noticed deposition does not foreclose a party from seeking a protective order. Accordingly, on June 13, 2018, Counsel for Defendants emailed Plaintiffs stating: "After consulting with the team we have decided to seek relief from the Court regarding RADM Kriete's deposition." Exh. A. Defendants did not "refuse[] to proceed with the deposition," as Plaintiffs contend. In that same June 13 email, Defendants stated that "we will continue to make all preparations for his deposition on June 27, unless the Court decides to defer that deposition at our request." Exh. A. In sum, until relief from the deposition is granted, Defendants will continue to work on scheduling logistics and have indicated as much to Plaintiffs' counsel.

Second, Defendants have not proposed a lower-ranking official who would be able to provide the testimony that Plaintiffs seek from Rear Admiral Kriete because we do not believe this is a viable alternative. The topics on which Plaintiffs seek to question Rear Admiral Kriete implicate information that is at the heart of

presidential decisionmaking and deliberations. For example, Plaintiffs indicate that they seek to question Rear Admiral Kriete about “the decision-making processes . . . at the NSC and White House,” the “process” behind the President’s “decision,” and any communications Rear Admiral Kriete may have had with Department of Defense personnel “on this subject.” In short, they seek to question Rear Admiral Kriete, whose work on the National Security Council staff was done to advise the National Security Advisor and the President, about the decisionmaking process within the White House and of the President himself. This line of inquiry directly implicates the issues in Defendants’ pending Motion for a Protective Order, Dkt. 89, and in particular puts at issue information that is subject to the presidential communications privilege, as well as the deliberative process privilege. As set forth in Defendants’ motion, seeking the same privileged information from another lower-ranking official would not resolve these concerns, *see* Dkt. 89 at 21–22; instead, Plaintiffs should seek discovery that would not intrude upon presidential communications and deliberations. *See Cheney v. U.S. Dist. Court for the Dist. of Columbia*, 542 U.S. 367, 388–90 (2004).

Finally, while Defendants could object on privilege grounds at the deposition, we do not believe that would be an appropriate course in the present circumstances. Rear Admiral Kriete holds a high-ranking position as second in command at USSTRATCOM, where he works to deter strategic attacks on the United States and is responsible for nuclear operations and missile defense. Defendants believe that it would be inappropriate and unduly burdensome for Rear Admiral Kriete to take time away from his military responsibilities for a deposition in which he cannot answer the majority of the questions. Defendants refrained from seeking a protective order to preclude the deposition of Ms. Jennifer Hay, and instead asserted privilege as appropriate during the questioning, because it appeared that Ms. Hay could have relevant, non-privileged information from her work at the Department of Defense on the issues related to this case, including during the prior Administration. In contrast, Plaintiffs seek information from Rear Admiral Kriete *solely* from his work on the NSC staff at the White House for the July-August 2017 period, which again directly implicates the issues raised in Defendants’ pending motion for a protective order. Although Plaintiffs acknowledge that Rear Admiral Kriete is a high-level agency official, they nevertheless contend that a “very short deposition” in which Defendants “assert privilege for every question” “will impose no burden on anybody.” It would be unduly burdensome for Rear Admiral Kriete to take a full day away from his duties at USSTRATCOM to sit for the deposition where it is apparent now that no meaningful, relevant testimony will be provided.

For these reasons, Plaintiffs should not be permitted to depose Rear Admiral Kriete at this time. Although the Court denied Defendants’ motion for a protective order to stay discovery generally pending resolution of Defendants’ motion to dissolve the preliminary injunction on April 18, 2018, the circumstances of the case have since changed. Plaintiffs cross-moved for summary judgment on May 11, 2018, making their claimed need for this deposition even more tenuous. As the Court stated in its June 13, 2018 email, if the Court decides this case based on the pending dispositive cross-motions for summary judgment, there may be no need for the Court to resolve this or other discovery disputes, including Defendants’ motion for a protective order for discovery related to presidential deliberations and communications. And given that the Court has not set an end-date for the close of discovery, Plaintiffs will not be prejudiced by putting off this deposition at this time. Defendants therefore respectfully request that the Court order that Plaintiffs may not depose Rear Admiral Kriete until after the Court rules on pending motions that may affect discovery related to presidential deliberations and communications, including dispositive cross-motions for summary judgment, Dkt. 115, 131, and Defendants’ motion for a protective order for discovery related to presidential deliberations and communications, Dkt. 89.

Respectfully,

Andrew E. Carmichael  
Trial Attorney  
Federal Programs Branch, Civil Division

U.S. Department of Justice  
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**From:** [Alec.Levy@dcd.uscourts.gov](mailto:Alec.Levy@dcd.uscourts.gov) [mailto:[Alec.Levy@dcd.uscourts.gov](mailto:Alec.Levy@dcd.uscourts.gov)] **On Behalf Of** [Kollar-Kotelly\\_Chambers@dcd.uscourts.gov](mailto:Kollar-Kotelly_Chambers@dcd.uscourts.gov)  
**Sent:** Thursday, June 14, 2018 5:13 PM  
**To:** Milgroom, Lauren Godles <[lmilgroom@foleyhoag.com](mailto:lmilgroom@foleyhoag.com)>  
**Cc:** Alan Schoenfeld <[Alan.Schoenfeld@wilmerhale.com](mailto:Alan.Schoenfeld@wilmerhale.com)>; Carmichael, Andrew E. (CIV) <[ancarmic@CIV.USDOJ.GOV](mailto:ancarmic@CIV.USDOJ.GOV)>; Laporte, Claire <[CLL@foleyhoag.com](mailto:CLL@foleyhoag.com)>; Enlow, Courtney D. (CIV) <[cenlow@CIV.USDOJ.GOV](mailto:cenlow@CIV.USDOJ.GOV)>; McFadden, Daniel L <[DMcFadden@foleyhoag.com](mailto:DMcFadden@foleyhoag.com)>; Miller, Matt <[MMiller@foleyhoag.com](mailto:MMiller@foleyhoag.com)>; Wolfson, Paul <[Paul.Wolfson@wilmerhale.com](mailto:Paul.Wolfson@wilmerhale.com)>; Norway, Robert M. (CIV) <[rnorway@CIV.USDOJ.GOV](mailto:rnorway@CIV.USDOJ.GOV)>  
**Subject:** Re: Doe v. Trump, Case No. 17-01597

Defense Counsel,

Please respond briefly to Plaintiffs' e-mail by no later than **close of business** tomorrow, **June 15, 2018**. Indicate whether it is accurate that Defendants agreed in writing to Rear Admiral Kriete being deposed on June 27, 2018 in Omaha, and that the date and location of that deposition were chosen by Defendants. If that is correct, explain why Defendants' position on this deposition has changed. In addition, indicate whether Plaintiffs' assertion that there are no alternative, lower ranking officials who would be able to provide the testimony that they seek from Rear Admiral Kriete is correct, and that no such lower-ranking official has been proposed by Defendants. Based on Plaintiffs' e-mail, it appears that Rear Admiral Kriete has knowledge relating to a particular period of time that no other witness would have. Plaintiffs apparently deposed a Ms. Jennifer Hay, who would have had similar knowledge, but she departed in July of 2017 and her duties were assumed by Rear Admiral Kriete. Lastly, with respect to Defendants' assertions of privilege, explain why Defendants cannot attend the deposition, and simply assert privilege as appropriate during the questioning.

Thank you.

-----  
Chambers of the Hon. Colleen Kollar-Kotelly  
United States District Judge  
United States District Court for the District of Columbia  
202-354-3340

From: "Milgroom, Lauren Godles" <[lmilgroom@foleyhoag.com](mailto:lmilgroom@foleyhoag.com)>  
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Date: 06/14/2018 03:24 PM  
Subject: Doe v. Trump, Case No. 17-01597

Dear Chambers of Judge Kollar-Kotelly,

I am counsel for Plaintiffs in *Doe v. Trump*, No. 17-01597. Defendants' counsel is included on this email. I write in response to the Defendants' email to the Court of June 13, 2018, in which Defendants request to postpone the deposition of Rear Admiral David Kriete. Plaintiffs oppose that request.

First, any objection to proceeding with the deposition is waived by the Defendants' prior written agreement, from which they have now inexplicably withdrawn. On April 18th, the Court denied Defendants' motion to halt discovery in this case and ordered that "[d]iscovery shall continue." D.E. 114. On May 15th, Plaintiffs first noticed the deposition of Rear Admiral Kriete to occur on May 30th in Washington, D.C. *See Ex. A.* On May 24th, the Defendants informed Plaintiffs that Rear Admiral Kriete "is available on the 27th and 28th of June in Omaha, NE" and requested that the deposition be rescheduled for one of those days at that location. *See Ex. B.* On May 25th, the parties agreed in writing that the deposition would go forward on June 27th in Omaha. *See id.* In reliance on this agreement, Plaintiffs agreed not to proceed with the deposition on May 30th. *See id.* On May 29th, Counsel for Plaintiffs purchased non-refundable airline tickets to Omaha for the agreed day. It was not until June 8th that the Defendants suddenly reversed their position and refused to proceed with the deposition. *See Ex. C.* There were no intervening events that would support Defendants' change of position. They should not be permitted to disrupt the discovery process by renegeing on their written commitments. And they certainly should not be heard to complain about the "time and resources" required to travel to Omaha when it was the Defendants themselves who requested that location.

Second, although it is true that Rear Admiral Kriete is a high ranking military officer, he is also uniquely situated to provide key information. As the Defendants note in their email, Plaintiffs' counsel deposed Ms. Jennifer Hay on May 11th. She served as a Director of Defense Policy and Strategy at the National Security Council (the "NSC") from January 2016 until July 5, 2017. Ms. Hay testified that President Trump himself established specific procedures to govern the interagency process for national security policy development and decision-making within the White House, including for issues of military personnel and readiness. These procedures were contained in National Security Presidential Memoranda ("NSPM") Nos. 2 and 4. *See Exs. D & E.* Among other things, the NSPMs establish the NSC, its principals and deputies committees, its policy coordination committees, and its staff, as well as various procedures for the operation of these bodies. While at the NSC, Ms. Hay's portfolio of responsibilities included leading this interagency process for issues of military personnel and readiness, including transgender military service. When Ms. Hay departed the NSC on July 5, 2017, her replacement had not yet arrived. To fill the gap, Rear Admiral Kriete (who was working at the NSC as an expert in nuclear weapons policy) was temporarily assigned the portion of Ms. Hay's portfolio relating to transgender military service. Rear Admiral Kriete was, therefore, the person responsible for this issue at the NSC when the President announced his ban via Twitter on July 26, 2017, as well as for several weeks before and perhaps a month or more after. He is uniquely situated to testify concerning a variety of topics, including the decision-making processes and personnel assignments at the NSC and White House during that time period, whether the decision announced in the tweets was the product of the mandated process, external communications with third parties and personnel outside the Executive branch, and various events that occurred in the aftermath of the tweets (including, for example, his communications with DoD personnel on this subject immediately following the tweets, the existence of which is strongly suggested by metadata produced by the Defendants). There does not appear to be any alternative, lower ranking witness who is similarly situated, and Defendants have never suggested that any such alternate witness exists.

Defendants suggest that all of Rear Admiral Kriete's testimony would be subject to the Presidential

Communications Privilege. To be sure, the Defendants instructed Ms. Hay not to answer multiple questions based on assertion of the Presidential Communications Privilege. Among other things, Ms. Hay was not allowed to provide any evidence of whether the White House followed or deviated from the procedures mandated by the NSPMs in reaching the decision to ban transgender people from the military. Nor was she permitted to testify whether she ever communicated with President Trump at all regarding transgender military service. Plaintiffs reserve their rights to challenge these assertions of privilege at the appropriate time and/or to use them to argue that Defendants are estopped from disputing that the decision that led to the tweets was of “an unusual character” suggesting that it “was not driven by genuine concerns regarding military efficacy.” *See* Mem. Opinion re: PI (Docket No. 61) at 68. But, in any event, Ms. Hay was able to respond to many non-privileged lines of inquiry, as the transcript reflects. (The Hay transcript is not confidential, and Defendants are prepared to submit it at the Court’s request.) Further, on multiple occasions, Defendants actually withdrew or narrowed assertions of privilege during the deposition itself, which resulted in useful additional testimony. As described above, Plaintiffs can pursue multiple, non-privileged lines of inquiry with Rear Admiral Kriete, as well. And, even if Defendants had a basis to assert privilege for every question (which they will not), then it would be a very short deposition that will impose no burden on anybody, and which would make a useful record for the Court’s consideration at a later time, if needed. (Plaintiffs have also proposed procedures to streamline the Defendants’ privilege objections during the deposition to move things along more quickly. *See* Ex. C.)

In summary, given that Defendants agreed to this deposition in writing, that it is scheduled to occur on the date and at the location that Defendants specifically requested, that Counsel for Plaintiffs have already purchased non-refundable airfare to and from that location, that there is no dispute that Rear Admiral Kriete is still available at that time and place, and that there is no dispute that Rear Admiral Kriete is uniquely situated as the person within the National Security Council responsible for the issue of transgender military service at and around the time of the tweets, Plaintiffs respectfully oppose Defendants’ request to postpone his deposition.

Sincerely,

Lauren Godles Milgroom | Associate  
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For more information about Foley Hoag LLP, please visit us at [www.foleyhoag.com](http://www.foleyhoag.com). [attachment "Exh A - Email and Kriete\_Depo\_Notice.pdf" deleted by Alec Levy/DCD/DC/USCOURTS] [attachment "Exh B - Email Regarding Scheduling.pdf" deleted by Alec Levy/DCD/DC/USCOURTS] [attachment "Exh C - Email and updated Deposition Notice.pdf" deleted by Alec Levy/DCD/DC/USCOURTS] [attachment "Exh D - NSPM No 2.pdf" deleted by Alec Levy/DCD/DC/USCOURTS] [attachment "Exh E - NSPM No 4.pdf" deleted by Alec Levy/DCD/DC/USCOURTS] [attachment "Exh A - 6.13.18 Email Regarding Scheduling.pdf" deleted by Alec Levy/DCD/DC/USCOURTS]



Doe v. Trump, Case 1:17-cv-01597-CKK

Carmichael, Andrew E. (CIV)

to:

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06/13/2018 11:23 AM

Cc:

Alan Schoenfeld, "McFadden, Daniel L", "Laporte, Claire"

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From: "Carmichael, Andrew E. (CIV)" <Andrew.E.Carmichael@usdoj.gov>

To: "Kollar-Kotelly\_Chambers@dcd.uscourts.gov" <Kollar-Kotelly\_Chambers@dcd.uscourts.gov>

Cc: Alan Schoenfeld <Alan.Schoenfeld@wilmerhale.com>, "McFadden, Daniel L" <DMcFadden@foleyhoag.com>, "Laporte, Claire" <CLL@foleyhoag.com>

History: This message has been replied to and forwarded.

Dear Chambers of Judge Kollar-Kotelly,

I am counsel for Defendants in Doe v. Trump, Case No. 17-01597, and have included Plaintiffs' counsel on this email. Plaintiffs have asked to depose Rear Admiral (soon to be Vice Admiral) Dave Kriete, Deputy Commander of U.S. Strategic Command on June 27 in Omaha, Nebraska, where Rear Admiral Kriete is currently stationed.

As we informed Plaintiffs, we do not believe that this deposition should proceed at this time for several reasons.

First, Rear Admiral Kriete will not be able to provide any relevant non-privileged information. *See In re Cheney*, 544 F.3d 311, 314 (D.C. Cir. 2008); *Simplex Time Recorder Co. v. Sec'y of Labor*, 766 F.2d 575, 586 (D.C. Cir. 1985); *Alexander v. FBI*, 186 F.R.D. 1, 4 (D.D.C. 1998). Rear Admiral Kriete worked on issues related to military service by transgender individuals in July-August 2017 during his tenure on the National Security Council staff. And since his work on the NSC staff was done to advise the National Security Advisor and the President, any information about the deliberative process within the White House is subject to the presidential communications privilege, and much of this information is also protected by the deliberative process privilege. The Court has not yet ruled on our pending motion for a protective order for discovery related to presidential deliberations and communications. Dkt. 89. If this deposition were to go forward, the government would object to any questions about the details of Rear Admiral Kriete's work on the National Security Council staff that would call for information subject to the presidential communications privilege, and would instruct the witness not to answer. As was the case with the deposition of Jennifer Hay on May 11, 2018, this would result in Rear Admiral Kriete not being able to answer the majority of Plaintiffs' questions. As set forth in our motion for a protective order, Dkt. 89, Plaintiffs should first, at a minimum, exhaust non-privileged alternatives of discovery.

Second, Rear Admiral Kriete is a high-ranking position government official. Specifically, he is second in command at U.S. Strategic Command (USSTRATCOM), which is responsible for the global command and control of U.S. strategic forces to meet decisive national security objectives, providing a broad range of strategic capabilities and options for the President and Secretary of Defense. USSTRATCOM's focus is to deter strategic attack on the United States and its allies, and it is also responsible for nuclear operations, missile defense, and more. As second in command, Rear Admiral Kriete leads nearly 184,000 active duty, reserve, and civilian service members supporting the USSTRATCOM mission. He will be promoted to Vice Admiral, a three-star position, later this month. "[I]n the D.C. Circuit, there is a presumption against deposing high-ranking government officials." *Kelley v. FBI*, No. CV 13-0825 (ABJ), 2015 WL 13648073, at \*1 (D.D.C. July 16, 2015). While we appreciate Plaintiffs' willingness to work around Rear Admiral Kriete's

schedule by letting Defendants choose the upcoming date and location that works best with his schedule we still believe that it would be inappropriate and unduly burdensome for Rear Admiral Kriete to have to take time away from his military responsibilities for a deposition in which he cannot answer the majority of the questions.

Third, this deposition may not be necessary at all if the Court decides this case based on the pending cross-motions for summary judgment, Dkt. 115, 131.

For these reasons, we requested that Plaintiffs agree to defer the deposition of Rear Admiral Kriete until after the Court rules on pending motions that may affect discovery related to presidential deliberations and communications, including dispositive cross-motions for summary judgment, Dkt. 115, 131, and Defendants' motion for a protective order for discovery related to presidential deliberations and communications, Dkt. 89.

We believe that it would be in the interest of both parties to avoid devoting time and resources to traveling to Omaha for a deposition at this time. *See* Fed. R. Civ. P. 1.

As Plaintiffs have declined to withdraw their request to depose Rear Admiral Kriete at this time, Defendants respectfully request a telephone conference to discuss this matter with the Court.

Respectfully,

Drew Carmichael  
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