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APPENDIX A
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**United States Court of Appeals
for the District of Columbia Circuit**

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Argued June 2, 2020   Decided August 31, 2020

No. 20-5056

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IN RE: HILLARY RODHAM CLINTON AND
CHERYL MILLS, PETITIONERS

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On Panel Rehearing
Of Petition for Writ of Mandamus
(No. 1:14-cv-01242)

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Before: GRIFFITH, PILLARD and WILKINS, *Circuit Judges*.

Opinion for the Court filed by *Circuit Judge* WILKINS.

WILKINS, *Circuit Judge*: This petition arises from a Freedom of Information Act ("FOIA") case brought by

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Judicial Watch, Inc. against the U.S. Department of State. *See Judicial Watch, Inc. v. Dep't of State*, No. 1:14-cv-1242 (D.D.C. filed July 21, 2014). Petitioners are former Secretary of State Hillary Rodham Clinton (a third-party intervenor in the case), and Secretary Clinton's former Chief of Staff, Cheryl Mills (a nonparty respondent in the case). On March 2, 2020, the District Court granted Judicial Watch's request to depose each Petitioner on a limited set of topics. On March 13, 2020, Secretary Clinton and Ms. Mills petitioned this Court for a writ of mandamus to prevent the ordered depositions. For the reasons detailed herein, we grant the petition in part and deny it in part – finding that although Secretary Clinton meets all three requirements for mandamus, Ms. Mills does not. *See Cheney v. U.S. Dist. Court,* 542 U.S. 367, 380 (2004).

I.

On May 13, 2014, Judicial Watch submitted a FOIA request to the State Department for records in the Office of the Secretary regarding Ambassador Susan Rice's September 16, 2012 television appearances. The request sought:

> Copies of any updates and/or talking points given to Ambassador Rice by the White House or any federal agency concerning, regarding, or related to the September 11, 2012 attack on the U.S. consulate in Benghazi, Libya.

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Any and all records or communications
concerning, regarding, or relating to
talking points or updates on the
Benghazi attack given to Ambassador
Rice by the White House or any federal
agency.

Complaint at 2 ¶ 5, No. 1:14-cv-1242, ECF No. 1 (July
21, 2014) (lettering omitted). After the State
Department failed to timely respond, Judicial Watch
filed suit in the United States District Court for the
District of Columbia on July 21, 2014, and the case
was assigned to Judge Lamberth. *See id.* at ¶¶ 5-9.
The State Department produced four responsive
documents to Judicial Watch in November 2014 and
provided a draft *Vaughn* Index in December 2014,
Pl.'s Mot. for Status Conf. at 4 ¶ 5, No. 1:14-cv-1242,
ECF No. 12 (Mar. 16, 2015). Judicial Watch
subsequently requested a declaration describing the
Department's search. S*ee* Third Joint Status Rep. at
2 ¶ 3(c), No. 1:14-cv-1242, ECF No. 16 (May 1, 2015).
In joint status reports filed on December 31, 2014 and
February 2, 2015, the parties informed the court that
they might be able to settle the case or narrow the
issues before the court, but that the State Department
would first conduct additional searches for responsive
documents by April 2015. *See* Joint Status Rep., No.
1:14-cv-1242, ECF No. 10 (Dec. 31, 2014); Joint Status
Rep., No. 1:14-cv-1242, ECF No. 11 (Feb. 2, 2015).

   In early March 2015, Judicial Watch learned that
Secretary Clinton had used a private email server to
conduct official government business during her
tenure as Secretary of State. *See* Emergency Mot. at

3 ¶ 3, No. 1:14-cv-1242, ECF No. 13 (Mar. 16, 2015). And on August 21, 2015, it moved for limited discovery related to the State Department's recordkeeping system during Secretary Clinton's tenure. *See* Mot. for Discovery at 6, No. 1:14-cv-1242, ECF No. 22 (Aug. 21, 2015). Contemporaneously, another district court judge, Judge Sullivan, was supervising a separate FOIA case between the same parties and considering similar discovery requests. *Judicial Watch, Inc. v. Dep't of State*, No. 1:13-cv-1363 (D.D.C. filed Sept. 10, 2013). In addition, the State Department's Inspector General, the FBI, and the House Select Committee on Benghazi were conducting independent investigations of Secretary Clinton's use of a private email server. As a result, Judge Lamberth delayed consideration of Judicial Watch's discovery request. Mem. and Order at 2-3, No. 1:14-cv-1242, ECF No. 39 (Mar. 29, 2016). Judge Sullivan ultimately granted Judicial Watch's request for discovery on the use of the private email server, ordered the disclosure of federal records from Ms. Mills and Huma Abedin (Secretary Clinton's former Deputy Chief of Staff), and authorized Judicial Watch to send interrogatories to Secretary Clinton and to depose Ms. Mills, among others. Mem. Order at 13-14, No. 13-cv-1363, ECF No. 73 (May 4, 2016).

On December 6, 2018, after the parties substantially completed discovery before Judge Sullivan and the government investigations had concluded, Judge Lamberth ordered additional discovery in this case. Mem. Op. at 1, 4-5, 9, No. 1:14-cv-1242, ECF No. 54 (Dec. 6, 2018). Although discovery in FOIA cases is rare, Judge Lamberth

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ordered the parties to develop a discovery plan regarding whether Secretary Clinton's "use of a private email [server] while Secretary of State was an intentional attempt to evade FOIA," "whether the State Department's attempts to settle this case in late 2014 and early 2015 amounted to bad faith," and "whether State ha[d] adequately searched for records responsive to Judicial Watch's request." Order, No. 1:14-cv-1242, ECF No. 55 (Dec. 6, 2018). On January 15, 2019, the District Court entered a discovery plan permitting Judicial Watch to: depose "the State Department," several former government officials and employees, and a former Clinton Foundation employee; serve interrogatories on several other government officials; obtain via interrogatories the identities of individuals who conducted the search of the records; and discover unredacted copies of various relevant documents and any records related to the State Department's conclusion about the need to continue searching for responsive records. Mem. Op. and Order, No. 1:14-cv-1242, ECF No. 65 (Jan. 15, 2019). The District Court reserved a decision on whether to permit Judicial Watch to depose Petitioners, *id.* at 2, and Secretary Clinton subsequently intervened, Mot. to Intervene, No. 1:14-cv-1242, ECF No. 128 (Aug. 20, 2019); *see also* Order, No. 1:14-cv-1242, ECF No. 129 (Aug. 21, 2019) (granting the unopposed motion to intervene).

On March 2, 2020, after the January 15, 2019 round of discovery was substantially complete, the District Court authorized yet another round of discovery, including the depositions of Petitioners. *See* Mem. Order, No. 1:14-cv-1242, ECF No. 161 (Mar.

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