

EXHIBIT 85

JAMES D. NEALON - 08/22/2018

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO

Case No. 3:18-cv-1554-EMC

- - - - - x

CRISTA RAMOS, et al.,
Plaintiffs,

v.

KIRSTJEN NIELSEN, et al.,
Defendants.

- - - - - x

VOLUME II

VIDEOTAPED DEPOSITION OF JAMES D. NEALON

Wednesday, August 22, 2018 1:15 p.m.

Sidley Austin LLP

60 State Street, Boston, MA 02109

Reported by:

Janet Sambataro, RMR, CRR, CLR

JOB NO. LA-189184

1 little more specific? Just restate the question 13:19:51

2 another way? 13:19:53

3 Q. Yes. 13:19:54

4 A. It's easier to answer. 13:19:55

5 Q. Yes. 13:19:56

6 Are you aware that there were any 13:19:57

7 conversations with anyone who worked at the White 13:19:58

8 House in any capacity with anyone in the 13:20:01

9 Department of Homeland Security -- we'll start 13:20:05

10 there -- related to Temporary Protected Status? 13:20:07

11 A. Yes. 13:20:09

12 Q. And who were the people from the White 13:20:10

13 House who you know or have reason to believe were 13:20:12

14 involved in conversations related to Temporary 13:20:16

15 Protected Status? 13:20:18

16 A. So I was told that Stephen Miller, from 13:20:20

17 the White House, was in touch with Chad Wolf, who 13:20:26

18 was the Secretary's Chief of Staff, regarding 13:20:29

19 TPS. 13:20:36

20 Q. And who told you that? 13:20:37

21 A. Chad Wolf. 13:20:38

22 Q. And do you have an understanding of 13:20:40

23 approximately how many times Stephen Miller had 13:20:43

24 communications with Chad Wolf? 13:20:48

25 A. I don't. I don't have a number. Chad 13:20:50

1 Wolf told me that he was in frequent touch with 13:20:53
2 Stephen Miller. 13:20:57

3 Q. And -- 13:20:59

4 A. Or, better said, that Stephen Miller 13:20:59
5 was in frequent touch with him. 13:21:01

6 Q. So is it your understanding that Chad 13:21:02
7 Wolf reached out to Stephen Miller or that 13:21:06
8 Stephen Miller reached out to Chad Wolf? 13:21:09

9 A. My understanding, from a very brief 13:21:11
10 conversation with Chad Wolf, is that 13:21:14
11 Stephen Miller was reaching out to Chad Wolf. 13:21:16

12 Q. Okay. And when Stephen Miller was 13:21:19
13 reaching out to Chad Wolf, from what you 13:21:21
14 understand from that conversation with Mr. Wolf, 13:21:23
15 was that conversation -- was the outreach 13:21:27
16 specifically related to Temporary Protected 13:21:29
17 Status? 13:21:30

18 MR. KIRSCHNER: Objection. Calls for 13:21:31
19 hearsay testimony. 13:21:33

20 A. So I had one conversation, a very brief 13:21:38
21 conversation with Chad Wolf, in which he told me 13:21:41
22 that Stephen Miller had been reaching out to him 13:21:43
23 frequently regarding TPS. 13:21:46

24 Q. Do you remember approximately when that 13:21:49
25 conversation took place? 13:21:50

1 else in the Department of Homeland Security about 13:32:04
2 the fact that Mr. Miller had communications 13:32:06
3 regarding TPS? 13:32:10

4 A. So I don't have a specific memory but 13:32:12
5 it wouldn't be unusual for me to -- to give a 13:32:14
6 very small selective group of staff a readout of 13:32:19
7 an important meeting. 13:32:22

8 Q. From -- so before I go there, was there 13:32:24
9 anyone else that you recall communicating that 13:32:28
10 they were having -- that they had had 13:32:31
11 conversations with Mr. Miller regarding TPS? 13:32:34

12 A. No. I don't have a specific memory of 13:32:48
13 anyone else telling me that they had had a 13:32:50
14 conversation with Stephen Miller about TPS. 13:32:52

15 Q. Did it have any significance to you 13:32:59
16 when you heard that Mr. Miller was communicating 13:33:02
17 with Mr. Wolf and Mr. Hamilton about TPS? 13:33:05

18 A. Did it have any significance for me? 13:33:11

19 Q. Yes. 13:33:13

20 A. Yes. You know, that's important 13:33:14
21 information that an important adviser to the 13:33:16
22 President and the White House has an opinion 13:33:19
23 about an important policy decision. 13:33:21

24 Q. And in what way was that significant to 13:33:25
25 you that an important adviser to the President 13:33:27

1 had an opinion about TPS? 13:33:29

2 MR. KIRSCHNER: Objection. Vague. The 13:33:31

3 word "significant" is vague. 13:33:35

4 A. You know, as government employees, we 13:33:46

5 all ultimately work for the President. And so 13:33:49

6 having policy input from people from the White 13:33:53

7 House is a -- is a normal and important thing. 13:33:56

8 And so -- so, yes, it's significant. 13:34:03

9 Q. Was it your sense that Mr. Miller was 13:34:11

10 conveying a position from the White House when 13:34:13

11 you heard that? 13:34:15

12 A. So I'm not quite sure how to answer 13:34:21

13 that question. I don't know if Mr. Miller was 13:34:26

14 conveying someone else's opinion or his own 13:34:29

15 opinion, if that's -- if that's what you're 13:34:32

16 asking. 13:34:34

17 Q. Was it your sense at the time that 13:34:35

18 Mr. Miller was conveying an opinion of the White 13:34:37

19 House? 13:34:41

20 MR. KIRSCHNER: Objection. Calls for 13:34:43

21 speculation. 13:34:44

22 A. If I could ask for a clarification. 13:34:46

23 Q. Yes. 13:34:48

24 A. I'm not sure what you mean by "the 13:34:48

25 White House." Stephen Miller works in the White 13:34:50

1 House. So I suppose, by definition, an opinion 13:34:52
2 of Mr. Miller's is an opinion of someone who 13:34:54
3 works in the White House. 13:34:57

4 Q. Did you believe that Mr. Miller was 13:34:59
5 conveying a position that was a position that was 13:35:01
6 not just Mr. Miller's personal opinion? 13:35:06

7 MR. KIRSCHNER: Objection. Calls for 13:35:10
8 speculation. 13:35:10

9 A. You know, I don't know. I really don't 13:35:16
10 know how to answer that question. 13:35:18

11 Q. Okay. We may come back to that. 13:35:20

12 Did you believe that Mr. Miller was speaking 13:35:27
13 on behalf of the White House when you heard that? 13:35:29

14 MR. KIRSCHNER: Objection. Asked and 13:35:31
15 answered. Calls for speculation. 13:35:32

16 A. Yeah. Again, I don't know how to 13:35:38
17 answer that, because, you know, I worked for the 13:35:40
18 government for 34 years and sometimes you would 13:35:42
19 hear from someone from the Department of Defense 13:35:45
20 and someone from the Department of Justice and 13:35:46
21 someone from the White House, and sometimes 13:35:48
22 they're giving you their opinion; sometimes 13:35:57
23 they're speaking in a broader sense on -- on the 13:36:00
24 part of the Administration. But, you know, at 13:36:02
25 the end of the day, Stephen Miller is an 13:36:05

1 important actor in the White House, so what he 13:36:07
2 says about an important policy matter is 13:36:12
3 significant, whether he is speaking for himself 13:36:16
4 or speaking for -- in the name of the 13:36:20
5 Administration. 13:36:24

6 Q. And what made you think that Mr. Miller 13:36:25
7 was an important actor in the White House? 13:36:26

8 MR. KIRSCHNER: Objection. Calls for 13:36:30
9 speculation. 13:36:32

10 A. You know, I can't point to anything 13:36:39
11 specific. It was well known, was and is well 13:36:40
12 known that he was and is. 13:36:43

13 Q. Is it -- was it well known at the time 13:36:46
14 that you were working in the Department of 13:36:49
15 Homeland Security that he was very close to the 13:36:50
16 President? 13:36:53

17 MR. KIRSCHNER: Objection. Assumes 13:36:53
18 facts not in evidence. Calls for speculation. 13:36:55

19 A. So I don't know for a fact that he's 13:37:00
20 very close to the President, but I certainly know 13:37:01
21 that -- that people believe he's close to the 13:37:03
22 President. 13:37:08

23 Q. You communicated in the previous 13:37:17
24 deposition that you were in a couple of meetings 13:37:20
25 with Mr. Miller and a gentleman named John 13:37:22

1 A. So a PC is different from a PCC. A PC 14:38:03
2 is a principals committee meeting. And a 14:38:07
3 principals committee meeting is a -- generally a 14:38:10
4 cabinet-level meeting. It's not -- it's not a 14:38:15
5 cabinet meeting. It's a meeting of people at the 14:38:21
6 cabinet level to coordinate policy. 14:38:23

7 Q. So who -- and -- 14:38:26

8 A. And, sorry, just to finish. 14:38:29

9 A paper PC would be a virtual meeting that 14:38:31
10 takes place on paper rather than convening those 14:38:36
11 people in a meeting. 14:38:41

12 Q. Okay. And then two e-mails up, 14:38:48
13 Mr. Hamilton is speaking about three different 14:38:52
14 types of convenings, either convenings on paper, 14:38:56
15 I imagine, or convenings in person, that PCC and 14:39:00
16 the PC which we spoke about, and then also a DC. 14:39:04

17 Do you see that? 14:39:06

18 A. I do. 14:39:07

19 Q. What does a DC refer to? 14:39:08

20 A. A DC is a deputies committee meeting. 14:39:11

21 Q. And what is that? 14:39:15

22 A. So there's a -- there's an order to 14:39:18
23 these things. A PCC is the lowest level of the 14:39:20
24 three. As I say, it takes place at the -- sort 14:39:25
25 of high-working level. A deputies committee 14:39:28

1 just don't have a vivid memory of it. 14:49:57

2 Q. You don't -- do you know either from 14:49:59

3 your recollection of recognizing that it is 14:50:02

4 incomplete or from your understanding of how 14:50:05

5 principals committee work -- how principals 14:50:08

6 committees work who would have been the author of 14:50:12

7 this document, which does not have an author? 14:50:14

8 MR. KIRSCHNER: Objection. Calls for 14:50:17

9 speculation. 14:50:17

10 A. Right. So I don't know who would have 14:50:21

11 been the author of this document. My assumption, 14:50:24

12 and it's -- it is an assumption, is that the 14:50:28

13 document would -- would have been produced by the 14:50:32

14 White House for discussion by the principals. 14:50:35

15 Q. What gives you that suspicion? 14:50:38

16 A. That would be a -- a normal procedure. 14:50:42

17 Q. Is that a normal procedure for 14:50:47

18 principals committees? 14:50:49

19 A. That's a normal procedure for meetings 14:50:51

20 convened by the White House for discussion with 14:50:54

21 the inner agency. 14:50:56

22 Q. So the document has two pages that have 14:51:00

23 text on them. I think you don't need to go over 14:51:03

24 the first page and a half, which I think probably 14:51:08

25 generally will be familiar with you from all the 14:51:10

1 whoever.

15:59:53

2 But I do recall having conversations with
3 people at State Department about the fact that
4 the paperwork seemed to be stuck in the policy
5 planning office and wondering if that was because
6 they didn't like the recommendation that had come
7 forward or -- or if they were putting their own
8 political stamp on it or what. But it seemed
9 unusual to me that the paperwork seemed to be
10 stuck in that office for such a long time.

15:59:54

15:59:57

16:00:02

16:00:06

16:00:18

16:00:20

16:00:25

16:00:28

16:00:34

11 Q. And did you get any response from
12 anyone in the State Department about whether your
13 presumption that that was strange was a shared
14 assumption or was accurate?

16:00:37

16:00:40

16:00:43

16:00:47

15 A. Again, you know, these are
16 conversations between old friends and colleagues.
17 And, you know, I recall talking about this --

16:00:50

16:00:51

16:00:54

18 Q. Mm-hmm.

16:00:59

19 A. -- I -- I don't recall either of the
20 two gentlemen we've discussed saying, yeah, this
21 is how it is there. I remember us postulating,
22 wondering, you know, thinking out loud. But I
23 don't recall anyone saying, yes, the -- this is
24 now a political process and that office is
25 politicized.

16:01:00

16:01:02

16:01:05

16:01:09

16:01:12

16:01:17

16:01:22

1 Q. Do you recall that they -- that any one 16:01:22
2 of the people that you were in touch with at the 16:01:25
3 State Department had a feeling, suspicion that 16:01:27
4 the process had become politicized in some way? 16:01:32

5 MR. KIRSCHNER: Objection. Calls for 16:01:35
6 speculation. 16:01:35

7 A. Yeah. Again, I don't recall anyone 16:01:36
8 saying that to me. I recall discussing the 16:01:39
9 issue. 16:01:42

10 Q. Do you recall what others at the State 16:01:44
11 Department were saying about the issue? 16:01:45

12 MR. KIRSCHNER: Objection. Calls for 16:01:47
13 speculation. 16:01:48

14 A. You mean other people? 16:01:49

15 Q. Yeah. I mean, the people -- either the 16:01:50
16 people that you have mentioned already or other 16:01:52
17 people. But whether -- I mean, you expressed 16:01:53
18 your feelings about this. And, obviously, as we 16:01:56
19 talked about in the previous deposition, there 16:01:59
20 were extraordinary delays even though there were 16:02:01
21 records that, you know, the recommendation had 16:02:03
22 been sitting at a very high level in the 16:02:05
23 Secretary's office or the Office of Policy 16:02:08
24 Planning for an extended period of time. So, you 16:02:09
25 know, did you have an understanding from any of 16:02:14

1 these people what their suspicions were? 16:02:17

2 MR. KIRSCHNER: Objection. Calls for 16:02:20

3 speculation. 16:02:21

4 A. No. I mean, I think I understand the 16:02:24

5 question. And, again, there -- there was a lot 16:02:26

6 of frustration expressed all around. 16:02:33

7 Q. Mm-hmm. 16:02:35

8 A. Because I kept calling and they kept 16:02:36

9 having to take my calls because we're friends, 16:02:40

10 and they had to keep giving me the same answer, 16:02:42

11 which was that they didn't know when the memo was 16:02:45

12 going to pop out and they didn't know what it was 16:02:48

13 going to say. 16:02:51

14 And so there was frustration all around. 16:02:52

15 And that sort of became the tenor of the 16:02:55

16 discussions as time went on, as the deadline 16:02:57

17 loomed. 16:03:01

18 Q. What gave you the suspicion that there 16:03:01

19 had been some politicalization or political stamp 16:03:02

20 that was put on the decision-making process at 16:03:07

21 the State Department? 16:03:09

22 MR. KIRSCHNER: Objection. 16:03:10

23 Mischaracterizes testimony. Assumes facts not in 16:03:10

24 evidence. 16:03:13

25 A. So I thought that this wasn't the most 16:03:22

1 consequential decision that Secretary Tillerson 16:03:33
2 would ever make and that, you know, if you look 16:03:36
3 at the range of things that are on his plate 16:03:39
4 every day, this isn't one that should take a 16:03:41
5 really long time to -- for him to sign. 16:03:45

6 And so what that told me, rightly or 16:03:49
7 wrongly, is that -- is that politics had entered 16:03:53
8 the game and that the thing had gotten stuck. 16:03:59

9 Q. Thank you. I understand that's not, 16:04:12
10 you know, definite, but it's obviously informed 16:04:14
11 understanding. 16:04:18

12 MR. KIRSCHNER: Objection. Counsel is 16:04:18
13 testifying. 16:04:19

14 BY MS. MacLEAN: 16:04:25

15 Q. So you testified previously that 16:04:43
16 Secretary Tillerson -- or that you were aware 16:04:45
17 that then Secretary Tillerson had communicated 16:04:48
18 with both Chad Wolf and Secretary Duke regarding 16:04:55
19 TPS as had been publicly reported? 16:05:01

20 MR. KIRSCHNER: Objection. I'm -- I'm 16:05:04
21 not sure that -- I -- 16:05:07

22 MS. MacLEAN: I don't want to 16:05:09
23 mischaracterize. 16:05:10

24 MR. KIRSCHNER: -- don't want you to 16:05:10
25 mischaracterize evidence, so I just -- if you 16:05:11

1 have a perfect -- a cite to the testimony 16:05:12

2 previously, that Ambassador Nealon said, I would 16:05:16

3 prefer to do that. 16:05:19

4 BY MS. MacLEAN: 16:05:21

5 Q. So on Page 158, Line 5, and it was in 16:05:25

6 reference to the exhibit that is marked 16:05:40

7 Exhibit 35, which you have in front of you as 16:05:43

8 well. 16:05:45

9 "Tillerson told Homeland Security's Acting 16:05:49

10 Secretary Elaine Duke that conditions in Central 16:05:53

11 America and Haiti had improved." 16:05:54

12 That was a direct quote from the article. 16:05:56

13 And I asked: 16:05:59

14 "QUESTION: Are you aware" -- 16:06:03

15 The direct quote is, in quotes from the 16:06:04

16 article, "Tillerson told Homeland Security's 16:06:06

17 Acting Secretary Elaine Duke that conditions in 16:06:08

18 Central America and Haiti had improved and that 16:06:11

19 TPS protections were no longer warranted. When 16:06:13

20 the two spoke by phone, Tillerson told Duke 16:06:16

21 ending TPS 'was just something she had to do.'" 16:06:19

22 And I asked: 16:06:21

23 "QUESTION: Are you aware of conversation 16:06:22

24 like the conversation that's described in this 16:06:23

25 paragraph?" 16:06:26

1 C E R T I F I C A T E

2 COMMONWEALTH OF MASSACHUSETTS

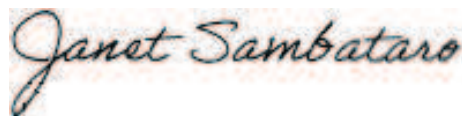
3 SUFFOLK, SS.

4 I, Janet M. Sambataro, a Registered Merit
5 Reporter and a Notary Public within and for the
6 Commonwealth of Massachusetts do hereby certify:

7 THAT JAMES NEALON, the witness whose testimony
8 is hereinbefore set forth, was duly sworn by me and
9 that such testimony is a true and accurate record of
10 my stenotype notes taken in the foregoing matter, to
11 the best of my knowledge, skill and ability; that
12 before completion of the deposition review of the
13 transcript was requested.

14 I further certify that I am not related to any
15 parties to this action by blood or marriage; and that
16 I am in no way interested in the outcome of this
17 matter.

18 IN WITNESS WHEREOF, I have hereunto set my hand
19 this 23rd day of August, 2018.

20 

21 _____
22 JANET M. SAMBATARO
23 Notary Public

24 My Commission Expires:
25 July 16, 2021