

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

NATIONAL ASSOCIATION OF CRIMINAL  
DEFENSE LAWYERS,

Plaintiff,

v.

FEDERAL BUREAU OF PRISONS

and

DEPARTMENT OF JUSTICE,

Defendants.

Civil Action No. 18-2399 (KBJ)

**SEVENTH JOINT STATUS REPORT**

Per the Court's order, Plaintiff National Association of Criminal Defense Lawyers ("NACDL") and Defendants Federal Bureau of Prisons ("BOP") and Department of Justice ("DOJ") respectfully submit this Seventh Joint Status Report. *See* Minute Order, July 8, 2019.

**Overview**

1. At issue in this case are three Freedom of Information Act ("FOIA") requests filed by NACDL with various of Defendants' component offices.

2. On August 2, 2018, NACDL filed a FOIA request with the BOP ("the BOP Request") seeking, among other things, information about technical features of the BOP's inmate email system and related policies. *See* Ex. A to Am. Compl., ECF No. 9-2.

3. On August 2, 2018, NACDL filed a FOIA request with DOJ's Office of Information Policy ("OIP"), Office of Legal Counsel ("OLC"), and Criminal Division seeking, among other

things, policies and guidance regarding the circumstances under which prosecutors may access emails between inmates and their attorneys. *See* Ex. B to Am. Compl., ECF No. 9-3.

4. On August 2, 2018, NACDL filed a FOIA request with the Executive Office for United States Attorneys (“the EOUSA Request”) seeking, among other things, records regarding the practices of different U.S. Attorney’s Offices for obtaining emails between inmates and their attorneys. *See* Ex. C to Am. Compl., ECF No. 9-4.

5. On October 18, 2018, NACDL sued to enforce the BOP Request and the Main Justice Request. *See* Compl., ECF No. 1. On November 15, 2018, NACDL filed an Amended Complaint to enforce all three Requests. *See* Am. Compl., ECF No. 9. Defendants filed an Answer on February 11, 2019. *See* Ans., ECF No. 18.

6. The parties have since filed six previous Joint Status Reports that provide more detail about their negotiations and the agencies’ productions to date. *See* Joint Status Report (“1st JSR”), ECF No. 20; Joint Status Report, ECF No. 22; 3d Joint Status Report, ECF No. 23; 4th Joint Status Report, ECF No. 24; 5th Joint Status Report, ECF No. 25; 6th Joint Status Report (“6th JSR”), ECF No. 26.

### **The BOP Request**

7. As described previously, the parties agreed that the BOP would process responsive records at a rate of 200 pages per week and would make monthly releases to NACDL. 1st JSR ¶¶ 7, 15.

8. The parties’ Sixth Joint Status Report discusses the details of the BOP’s first three releases in detail. *See* 6th JSR ¶¶ 14–16.

9. On July 2, 2019, the BOP made its fourth production to NACDL. In the letter accompanying the production, the BOP stated that the release included the processing of a total of

859 pages. After removal of nonresponsive pages and pages created as a result of the search process, a total of forty-one pages were responsive to the FOIA request. Of those forty-one pages, two pages were released in full, nineteen pages were released in part, and twenty pages were duplicative of records that had already been produced. The production also included the release of eight pages that had been referred to EOUSA, two of which were released in full and six of which were released in part. Finally, the production included seventy-one pages that had been referred to the BOP by EOUSA. Of those seventy-one pages, fifty-four pages were released in full, and nine pages were duplicative of other records in the production. The remaining eight pages from EOUSA's referral were held for processing as part of the BOP's fifth production.

10. On August 1, 2019, the BOP made its fifth production to NACDL. In the letter accompanying the production, the BOP stated that the release included the processing of a total of 792 pages. After removal of nonresponsive pages and pages created as a result of the search process, a total of twenty-eight pages were responsive to the FOIA request. Of those twenty-eight pages, fifteen pages were released in part, two pages were withheld in full, and eleven pages were duplicative of records that had already been produced. Additionally, the BOP processed the remaining eight pages of EOUSA's referral. Of those pages, one page was released in part and seven were referred back to EOUSA because they were not BOP records.

11. The BOP is on target to complete its review and final records release determination during September. After the final rolling release, the BOP will submit a final release summary of all of the releases.

### **The Main Justice Request**

12. **OIP.** As described in earlier Joint Status Reports, the parties agreed that OIP would complete its search by March 25, 2019, and would complete production of any non-exempt

responsive records by May 24, 2019. 1st JSR ¶¶ 8, 16. On May 23, 2019, OIP informed NACDL that it had located no records responsive to the Main Justice Request. *See* 6th JSR ¶ 18.

13. **OLC.** On March 22, OLC informed NACDL that it had found no records responsive to the Main Justice Request. *See* 6th JSR ¶ 19.

**14. The Criminal Division.**

a. The Criminal Division ran three searches, which the parties are referring to as Search 1, Search 2, and Search 3, corresponding to the three categories of records sought in the Main Justice Request.

b. Search 1 and Search 3 collectively encompass approximately 600 pages of responsive records. *See* Def.'s Resp. to Order of the Court, at 1 n.1, ECF No. 28.

c. On August 13, 2019, the Court ordered the Criminal Division to “process and produce records responsive to Searches 1 and 3 at a rate of no fewer than 500 pages per month” and to “make monthly productions of documents, with the first such production occurring on or before 8/30/2019.” Minute Order, Aug. 13, 2019 (“Aug. 13 Order”).

d. The Criminal Division made the first such production on August 30, 2019, per the Court's order, having reviewed 647 pages of materials gathered in Search 3. The Criminal Division concluded that 113 pages were non-responsive, 400 pages were duplicates of other materials that were processed, two pages were released in full, three pages were released in part with redactions based on Exemptions 6 and 7(C), fifty-six pages were withheld in full based on Exemption 5 (in conjunction with the deliberative process privilege and attorney work product doctrine). The Criminal Division has also referred fifty-five pages to EOUSA and eighteen pages to the BOP for a direct response to NACDL.

e. The parties plan to meet and confer about “refining search terms or otherwise narrowing the scope of records at issue,” Aug. 13 Order, in Search 2 once NACDL has reviewed the Criminal Division’s first production.

15. **EOUSA.** Based on the Criminal Division’s August 24, 2018 letter acknowledging receipt of the Main Justice Request, it is NACDL’s understanding that the Criminal Division referred the Main Justice Request to EOUSA to search for responsive records. Records responsive to the Main Justice Request located by EOUSA have not yet been released to NACDL.

#### **The EOUSA Request**

16. EOUSA identified 233 pages of records responsive to the EOUSA Request. On June 12, 2019, EOUSA released thirty-eight pages in full, released nine pages in part, and withheld forty-three pages in full. EOUSA also indicated that it has referred records to the BOP and Criminal Division for review and release. *See* 6th JSR ¶¶ 22–24.

#### **Potential Future Litigation**

17. The parties have begun discussions about the likely motions for summary judgment that will be necessary in this case.

18. **Adequacy of Defendants’ Searches.** NACDL may challenge the adequacy of some of the searches conducted. Defendants have continued sharing information about the searches they ran, and the parties plan to continue their negotiations on this front. Based on the information received to date, and unless circumstances substantially change, NACDL does not plan to challenge the adequacy of OLC’s search.

19. **Defendants’ Withholdings.** NACDL may challenge some of Defendants’ withholdings of information. The parties will continue negotiating in an attempt to narrow their

