

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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NATIONAL ASSOCIATION OF CRIMINAL	)		
DEFENSE LAWYERS,	)		
	)	No. 18-cv-2399-KBJ	
Plaintiff,	)		
	)		
v.	)		
	)		
FEDERAL BUREAU OF PRISONS, <i>et al.</i>	)		
	)		
Defendants.	)		
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**PLAINTIFF’S COMBINED STATEMENT OF  
MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE DISPUTE AND  
RESPONSE TO DEFENDANTS’ STATEMENT OF MATERIAL FACTS**

Pursuant to Local Rule 7(h), Plaintiff National Association of Criminal Defense Lawyers (“Plaintiff” or “NACDL”) hereby submits this combined statement of material facts as to which there is no genuine issue and response to the statement of material facts submitted by Defendants Bureau of Prisons (“BOP”) and Department of Justice (“DOJ”) (collectively, “Defendants”).<sup>1</sup>

**PROCEDURAL HISTORY**

1. Disputed in part. Undisputed that NACDL submitted Freedom of Information Act (“FOIA”) requests to BOP, the listed DOJ components, and the Executive Office for United States Attorneys (“EOUSA”). Disputed that NACDL submitted these requests on August 2, 2020. The requests were submitted on August 2, 2018. *See* 2d Am. Compl. Ex. A, ECF No. 42-2 (request submitted to BOP); 2d Am. Compl. Ex. B, ECF No. 42-3 (request submitted to the Criminal

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<sup>1</sup> The numbered paragraphs in NACDL’s response below correspond to those in the Defendants’ Statement of Material Facts.

Division, Office of Information Policy, and Office of Legal Counsel); Compl. Ex. C, ECF No. 42-4 (request submitted to EOUSA).

2. Undisputed.

3. Disputed in part. Undisputed that NACDL sent a FOIA request to the Criminal Division, Office of Information Policy, and Office of Legal Counsel. Disputed that the request sought six categories of agency records. The request sought three categories of agency records. *See* 2d Am. Compl. Ex. B, ECF No. 42-3 (FOIA request sent to the Criminal Division, Office of Information Policy, and Office of Legal Counsel).

4. Disputed in part. Undisputed that some of the categories of records sought in the FOIA request sent to the Criminal Division, Office of Information Policy, and Office of Legal Counsel overlap with some of the categories of records sought in the request sent to EOUSA. Disputed that the two requests are identical. The request sent to EOUSA seeks six categories of information from twenty-seven United States Attorney's Offices. *Compare* 2d Am. Compl. Ex. B, ECF No. 42-3 (seeking three categories of records), *with* 2d Am. Compl. Ex. C, ECF No. 42-4 (seeking six categories of records).

5. Disputed in part. Undisputed that NACDL initiated this lawsuit. Disputed that NACDL filed suit on October 18, 2019. NACDL filed suit on October 18, 2018. ECF No. 1.

6. Disputed in part. Undisputed that NACDL filed an Amended Complaint. Disputed that NACDL filed the Amended Complaint on November 15, 2019. NACDL filed the Amended Complaint on November 15, 2018. ECF No. 1.

7–9. Undisputed.

#### **BOP'S RESPONSE TO PLAINTIFF'S FOIA REQUEST**

10–12. Undisputed.

**PLAINTIFF’S CHALLENGES TO BOP’S WITHHOLDINGS**

13. Disputed in part. Undisputed that NACDL is challenging certain BOP withholdings made pursuant to 5 U.S.C. §§ 552(b)(4), (b)(5), (b)(7)(E), and (b)(7)(F). Disputed that NACDL is challenging BOP withholdings made pursuant to 5 U.S.C. §§ 552(b)(6) or (b)(7)(C). NACDL is not challenging such withholdings.

**CRIMINAL DIVISION’S RESPONSE TO PLAINTIFF’S FOIA REQUEST**

14–18. Undisputed.

**PLAINTIFF’S CHALLENGES TO THE CRIMINAL DIVISION’S WITHHOLDINGS**

19. Disputed in part. Undisputed that NACDL is challenging certain Criminal Division withholdings made pursuant to 5 U.S.C. § 552(b)(5). Disputed NACDL is challenging the Criminal Division’s withholdings made pursuant to 5 U.S.C. §§ 552(b)(6) or (b)(7)(C). NACDL is not challenging such withholdings.

**EOUSA’S RESPONSE TO PLAINTIFF’S FOIA REQUEST**

20. Undisputed.

21. Disputed in part. Undisputed that the twenty-seven United States Attorney’s Offices were tasked to conduct a search for responsive records. Undisputed which offices were listed in NACDL’s FOIA request. Disputed that the offices were tasked to conduct searches “[u]pon receive of Plaintiff’s FOIA” request. *See, e.g.,* Aff. of Thomas M. Woods (indicating that the United States Attorney’s Office for the Western District of Washington received the request from EOUSA on May 4, 2020).

22–26. Undisputed.

**PLAINTIFF’S CHALLENGES TO EOUSA’S SEARCHES**

27. Undisputed.

## PLAINTIFF'S CHALLENGES TO EOUSA'S WITHHOLDINGS

28. Disputed in part. Undisputed that NACDL is challenging certain EOUSA withholdings made pursuant to 5 U.S.C. § 552(b)(5). Disputed that NACDL is challenging EOUSA's withholdings made pursuant to 5 U.S.C. §§ 552(b)(6) or (b)(7)(C). NACDL is not challenging such withholdings.

## SEGREGATION OF NONEXEMPT INFORMATION

29. Disputed in part. Undisputed that Defendants conducted a segregability analysis. Disputed that the assessments made during such analyses were proper and that the Defendants have released all non-exempt information. To the extent that Defendants' Statement of Material Facts ¶ 29 contains argument and/or conclusions of law, they should be disregarded by the Court.<sup>2</sup>

30. Undisputed.

31. Disputed in part. Undisputed that the Criminal Division conducted a foreseeable harm analysis and determined that it had released all segregable material. Disputed that the Criminal Division's assessment was proper. To the extent that Defendants' Statement of Material Facts ¶ 31 contains argument and/or conclusions of law, they should be disregarded by the Court. *See supra* n.2.

32. Disputed in part. Undisputed that BOP conducted a foreseeable harm analysis and determined that it had released all segregable material. Disputed that BOP's assessment was proper. To the extent that Defendants' Statement of Material Facts ¶ 32 contains argument and/or conclusions of law, they should be disregarded by the Court. *See supra* n.2.

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<sup>2</sup> See LCvR 7(h)(1) (stating that a motion for summary judgment "shall be accompanied by a statement of material facts as to which the moving party contends there is no genuine issue . . ." (emphasis added); *Jackson v. Finnegan, Henderson, Farabow, Garrett & Dunner*, 101 F.3d 145, 153 (D.C. Cir. 1996) (indicating that material statements of fact that "blend[] factual assertions with legal argument" should be disregarded).

**NACDL'S STATEMENT OF MATERIAL FACTS  
AS TO WHICH THERE IS NO GENUINE DISPUTE**

33. In addition to the EOUSA productions discussed above, NACDL received a cover letter from EOUSA on June 19, 2019, which mentioned the processing of two records referred to EOUSA by the Criminal Division. NACDL also received a subsequent production from EOUSA in November 2020.

Dated: December 3, 2020

Respectfully submitted,

/s/ Megan Graham

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