

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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KNIGHT FIRST AMENDMENT	:
INSTITUTE AT COLUMBIA	:
UNIVERSITY,	:
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Plaintiff,	:
	:
-against-	:
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U.S. DEPARTMENT OF HOMELAND	:
SECURITY, ET AL.,	:
	:
Defendants.	:
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	:
	:
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1:17-cv-7572 (ALC)
ORDER

ANDREW L. CARTER, JR., United States District Judge:

Plaintiff filed this action on October 4, 2017 following a Freedom of Information Act (“FOIA”) request seeking records related to the exclusion or removal of individuals from the United States based on their speech, beliefs, or associations. ECF No. 1. Before this Court are the parties’ letter motions regarding a production schedule for documents from Defendant U.S. Department of State (“DOS”). For the reasons discussed below, DOS must produce all responsive documents by June 28, 2018.

I. BACKGROUND

On April 9, 2018, DOS indicated that an initial search for relevant records revealed 850 emails, containing an unknown number of pages, and 674 pages of other potentially responsive documents. ECF No. 48 at 8. Plaintiff sought production of such documents by May 30, 2018, while DOS sought production at a rate of 300 pages per month. ECF Nos. 52-56.

Plaintiff urged the Court to adopt its proposed schedule because it has been granted expedited processing and since, on March 30, 2018, DOS published notices in the Federal

Register proposing to include new questions on electronic applications for all immigrant and non-immigrant visas that would require applicants to provide information about their social media accounts from the preceding five years. ECF No. 55. The proposal could take effect as soon as June 30, 2018. *Id.* Plaintiff further contends that its proposed schedule is practicable and that DOS has not demonstrated the existence of exceptional circumstances. *Id.*; *see also* ECF No. 58. DOS asserts that Plaintiff's proposed schedule is impracticable and that the agency faces exceptional circumstances due to a drastic and unexpected increase in the number of FOIA requests and related litigation in recent years, as well as steps taken by the agency to reduce the backlog. ECF No. 52; *see also* ECF No. 62.

On May 14, 2018, the Court held a status conference in this matter. During the conference, DOS stated that it had reviewed 475 records, totaling 27,809 pages. *See* ECF No. 58. Since the number of pages at issue had not previously been known, the Court ordered the parties to confer regarding processing schedules and to submit a joint status report by May 21, 2018. ECF No. 57.

Following the conference, Plaintiff submitted a letter stating that it since learned that only 39 of the 475 records that DOS reviewed, or 990 pages, were responsive to Plaintiff's request. ECF No. 58. Accordingly, Plaintiff sought production of all such documents by June 15, 2018. *Id.*

DOS filed a response the following day indicating that it could identify the precise number of responsive pages by May 17, 2018. ECF No. 59. Following an Order by this Court, on May 18, 2018 DOS filed a letter stating that 72 documents, totaling 1,719 pages, are most likely responsive to Plaintiff's request. ECF No. 62. DOS reiterated its request for a schedule

of 300 pages per month. ECF No. 62.

II. DISCUSSION

“The purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed.” *Clemente v. Fed. Bureau of Investigation*, 71 F. Supp. 3d 262, 268 (D.D.C. 2014) (citation and internal quotation marks omitted). Where expedited processing has been granted, the agency must process records “as soon as practicable.” 5 U.S.C. § 552(a)(6)(E)(iii). “The legislative history of the [statute] makes clear that, although Congress opted not to impose a specific deadline on agencies processing expedited requests, its intent was to ‘give the request priority for processing more quickly than otherwise would occur.’” *Elec. Privacy Info. Ctr. v. Dep’t of Justice*, 416 F. Supp. 2d 30, 39 (D.D.C. 2006) (citing S. Rep. No. 104-272 at 17 (1996)). In order to seek additional time, the agency must “present[] credible evidence that disclosure within such time period is not truly practicable.” *Id.* at 40.

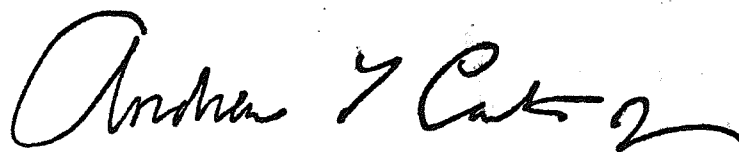
Additionally, “the Court may extend an agency’s response time if it is able demonstrate ‘exceptional circumstances’ to the Court.” *Nat’l Day Laborer Org. Network v. United States Immigration and Customs Enforcement*, 236 F. Supp. 3d 810, 819 (S.D.N.Y. 2017) (citing, *inter alia*, 5 U.S.C. § 552(a)(6)(C)(i)). “Exceptional circumstances exist where: (1) the agency is deluged with a volume of requests for information on a level unanticipated by Congress; (2) existing agency resources are inadequate to deal with the volume of requests within the time limits established by [the statute]; and (3) the agency can show that it is exercising due diligence in processing the request.” *Id.* (citations omitted). “The statute [] makes clear that ‘the term ‘exceptional circumstances’ does not include a delay that results from a predictable agency

workload' of requests." *Bloomberg, L.P. v. United States Food and Drug Admin.*, 500 F. Supp. 2d 371, 374 (S.D.N.Y. 2007) (quoting 5 U.S.C. § 552(a)(6)(C)(ii)).

Having considered the respective parties' proposals and the various arguments made, the Court hereby ORDERS Defendant DOS to complete its processing and production of all responsive documents no later than June 28, 2018. Furthermore, DOS should produce those documents that they identify as responsive to Plaintiff's request on a rolling basis. The Court determines that this schedule provides a reasonable time frame for DOS to respond to Plaintiff's request.

SO ORDERED.

Dated: May 18, 2018
New York, New York

A handwritten signature in black ink, appearing to read "Andrew L. Carter, Jr.", written in a cursive style.

ANDREW L. CARTER, JR.
United States District Judge