

**KNIGHT
FIRST AMENDMENT
INSTITUTE**

at Columbia University

October 5, 2018

Via ECF and Email

The Honorable Andrew L. Carter, Jr.
United States District Court
Southern District of New York
40 Foley Square, Room 435
New York, NY 10007

**Re: *Knight First Amendment Institute v. U.S. Department of
Homeland Security, et al., Case No. 17-CV-7572 (ALC)***

Dear Judge Carter:

The Knight First Amendment Institute at Columbia University (“Knight Institute”) respectfully submits this letter to update the Court on the status of the defendant government agencies’ (“Defendants”) productions in this matter and on the parties’ plan to propose a briefing schedule for summary judgment proceedings.

The Freedom of Information Act (“FOIA”) request underlying this action (“Request”), ECF No. 42-2, seeks records necessary to inform the public debate surrounding significant developments in the Trump Administration’s “Extreme Vetting” program. Defendants have provided what they describe as final productions of responsive records. In recent weeks, the parties have negotiated the production of draft search descriptions and draft *Vaughn* indices, *see Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), which most agencies have agreed to provide on or before November 5, 2018. The parties therefore anticipate filing a letter on November 9, 2018, requesting a pre-motion conference and presenting either a jointly proposed schedule or their respective proposed dates for summary judgment briefing.

BACKGROUND

The Knight Institute submitted the Request to the United States Department of Homeland Security (“DHS”), United States Customs and Border Protection (“CBP”), United States Immigration and Customs Enforcement (“ICE”), United States Citizenship and Immigration Services

(“USCIS”), United States Department of Justice (“DOJ”),¹ and United States Department of State (“DOS”) on August 7, 2017. The Request seeks, among other things, information about any new policies for vetting individuals seeking to enter or remain in the United States and about the government’s understanding of its authority to base immigration decisions on individuals’ speech, beliefs, or associations. The Knight Institute filed suit on October 4, 2017, *see* ECF No. 1, and an amended complaint on March 14, 2018, ECF No. 42, to ensure the timely release of the requested records, which are necessary to inform the ongoing public debate surrounding the government’s “Extreme Vetting” program.

Defendants have now completed all scheduled productions to the Knight Institute. Their responses are as follows:

- **DHS:** DHS produced 88 pages of records responsive to the Request. It withheld all 88 pages in full. It did not refer any pages to other agencies for review. 2d Joint Status Report ¶ 20, May 21, 2018, ECF No. 64.
- **CBP:** CBP produced two pages of non-public records responsive to the Request. It produced those pages in full. It did not refer any pages to other agencies for review. Joint Status Report ¶¶ 5–6, Apr. 9, 2018, ECF No. 48.
- **ICE:** ICE has produced 2,677 pages of records responsive to the Request. It withheld the majority of these pages in part or in full. It referred 101 pages to other agencies.²
- **USCIS:** USCIS has produced 1,296 pages of records and one Excel spreadsheet responsive to the Request. It released many of these pages in full, but withheld 338 pages in part or in full. USCIS referred 18 pages to CBP for review.
- **DOJ:**
 - **DOJ-OIP:** DOJ-OIP identified no non-public pages of records responsive to the Request.
 - **DOJ-OLC:** DOJ-OLC produced 128 pages of records responsive to the Request. It withheld all 128 pages in full. It did not refer any pages to other agencies for review.
- **DOS:** DOS produced 1,719 pages of records responsive to the Request. It produced 91 records in full, withheld 126 records in

¹ The Request was sent to the following DOJ components: the Office of Information Policy (“DOJ-OIP”), the Office of Public Affairs (“DOJ-OPA”), and the Office of Legal Counsel (“DOJ-OLC”). DOJ-OIP processed the request on behalf of DOJ-OPA.

² We have included pages referred to other agencies in the referring agency’s total page count.

part, and withheld 25 records in full.³ It referred 11 records to other agencies for review.

POST-PRODUCTION NEGOTIATIONS

This action has been pending for nearly a year. In an effort to facilitate an efficient resolution of this matter and to narrow the scope of the parties' summary judgment briefing, the Knight Institute requested preliminary search descriptions from all agencies and draft *Vaughn* indices from DHS, ICE, USCIS, DOJ-OLC, and DOS. The parties have agreed to a production schedule for those drafts, as follows:

- **DHS:** DHS will produce a draft search description and draft *Vaughn* index by mid-October 2018.
- **CBP:** CBP will produce a draft search description by the first week of October 2018.
- **ICE:** ICE will produce a draft search description by October 12, 2018, and will produce a draft *Vaughn* index by December 4, 2018.
- **USCIS:** USCIS and the Knight Institute are continuing negotiations over a timeline for production of a draft search description and draft *Vaughn* index.
- **DOJ:**
 - **DOJ-OIP:** DOJ-OIP will produce a draft search description by the first week of October 2018.
 - **DOJ-OLC:** DOJ-OLC will produce a draft search description and draft *Vaughn* index by the end of October 2018.
- **DOS:** DOS will produce a draft search description and draft *Vaughn* index by November 5, 2018.

PROPOSED PATH FORWARD

In light of the foregoing agreements, the parties propose filing a letter on November 9, 2018, requesting a pre-motion conference and presenting either a jointly proposed schedule or their respective proposed dates for summary judgment briefing. Depending on the information provided in Defendants' draft search descriptions and *Vaughn* indices, the Knight Institute expects to challenge the adequacy of some Defendants'

³ Throughout this litigation, DOS has discussed the volume of responsive records in terms of numbers of pages for certain subsets and in terms of numbers of records for others. Here, consistent with its summaries of other Defendants' productions, the Knight Institute provides the total number of pages DOS has produced (1,719). With respect to the amount of information DOS has withheld, however, the Knight Institute can only provide the number of records because DOS has not disclosed the corresponding number of pages.

searches for responsive records and the legality of some Defendants' withholding and redaction of responsive records. The parties hope to complete summary judgment briefing before the end of 2018, but will provide more detail in their November 9, 2018 letter.

We thank the Court for its attention to this matter.

Respectfully,

/s/ Carrie DeCell

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