

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KNIGHT FIRST AMENDMENT
INSTITUTE AT COLUMBIA UNIVERSITY,

Plaintiff,

v.

U.S. DEPARTMENT OF HOMELAND
SECURITY, U.S. CUSTOMS AND
BORDER PROTECTION, U.S.
IMMIGRATION AND CUSTOMS
ENFORCEMENT, U.S. CITIZENSHIP AND
IMMIGRATION SERVICES, U.S.
DEPARTMENT OF JUSTICE, and U.S.
DEPARTMENT OF STATE,

Defendants.

No. 1:17-cv-07572-ALC

**DECLARATION OF CARRIE DECELL IN SUPPORT OF PLAINTIFF'S
CROSS-MOTION FOR SUMMARY JUDGMENT**

Pursuant to 28 U.S.C. § 1746, I, Carrie DeCell, declare and state as follows:

1. I am a staff attorney at the Knight First Amendment Institute at Columbia University (“Knight Institute” or “Institute”). I have served in this role since July 31, 2017.
2. Along with my colleagues, I submitted identical Freedom of Information Act (“FOIA”) requests (the “Request”) to the Department of Homeland Security (“DHS”), Customs and Border Protection (“CBP”), Immigration and Customs Enforcement (“ICE”), U.S. Citizenship and Immigration Services (“USCIS”), Department of Justice (“DOJ”), and Department of State (“DOS”) (collectively, “Defendants”) on August 7, 2017. The Request sought, among other things, agency records concerning the exclusion or removal of individuals from the United States based on their speech, beliefs, or associations, and records concerning any new policies for “vetting”

individuals on these grounds.

3. The Knight Institute requested expedited processing of the Request on the ground that the records sought were urgently needed to inform the public about government activity, particularly with respect to the “extreme vetting” program President Trump has ordered federal agencies to develop.

4. Seeking the immediate release of all agency records responsive to the Request, as required by FOIA, 5 U.S.C. § 552, the Knight Institute filed a complaint in this Court on October 4, 2017. The Institute filed an amended complaint on March 14, 2018.

5. I represent the Knight Institute in this action and have served as the primary contact for Defendants’ counsel since the beginning of the litigation.

6. The purpose of this declaration is to provide the Court with information regarding ICE’s and USCIS’s responses to the Request.

Communications Relating to ICE’s Response to the Request

7. On September 29, 2017, ICE sent the Knight Institute a “final response” to the Request “for 1. All directives, memoranda, guidance, emails, or other communications sent by the White House to any federal agency since January 19, 2017, regarding consideration of individuals’ speech, beliefs, or associations in connection with immigration determinations, including decisions to exclude¹ [sic] or remove individuals from the United States (please see request for more details).” *See* First Am. Compl. Ex. C, at 3, ECF No. 42-3. Along with the letter, dated September 28, 2017, ICE released 1,666 pages of records responsive to the Request but withheld 1,653 of those pages in full, invoking FOIA exemptions. True and correct copies of the September 28, 2017 letter and the first sixteen pages of the accompanying production are attached hereto in Exhibit A.

8. I submitted an administrative appeal requesting review of ICE's response to Item 1 of the Request, on the view that ICE had responded only as to that Item. Based on ICE's subsequent characterization of its September 29, 2017 response as a final response to the entire Request, I amended the Knight Institute's administrative appeal by letter dated January 5, 2018, to request review of ICE's response to the entire Request.

9. On February 6, 2018, I received ICE's response to the Knight Institute's amended administrative appeal, in which ICE denied our challenge to the withholdings in its September 29, 2017 response but agreed to conduct a new or modified search, remanding the Request to ICE's FOIA Office for further processing and retasking.

10. Also on February 6, 2018, Defendants' counsel informed me that ICE had already remanded the appeal to the FOIA Office, completed its new search, and located approximately 14,000 pages of potentially responsive records. Defendants' counsel further informed me that ICE had begun to process the records and scheduled an initial production for March 7, 2018, and that ICE proposed to process the records at a rate of 500 pages per month and make productions on the seventh day of each month thereafter.

11. On February 13, 2018, I received an email from ICE confirming that it had located approximately 14,000 pages of potentially responsive documents, and that it would commit to processing at least 500 pages per month. ICE indicated that the first production would be made on March 7, 2018, with subsequent productions on the seventh day of each month thereafter.

12. By letter dated March 7, 2018, ICE informed me that it had processed 560 pages of records and referred eighty-seven of those pages to other agencies. Along with the letter, ICE released 463 pages, redacting certain pages and withholding others in their entirety on the basis of FOIA Exemptions 5, 6, 7(C), and 7(E).

13. On April 11, 2018, my co-counsel, Megan Graham, and I spoke with Defendants' counsel to discuss the possibility of modifying the scope of the Request in order to expedite ICE's processing. Defendants' counsel explained that ICE had conducted its new search based on the original Request, not the Request as provisionally narrowed by the parties on a January 25, 2018 call. I responded that the Knight Institute would provisionally agree to accept ICE's response to the modified Request, or to narrow the scope of the potentially responsive records it had already located on an Item-by-Item basis.

14. By letter dated April 30, 2018, ICE informed me that it had processed an additional 1,124 pages for release and referred 728 of those pages to other agencies. Along with the letter, ICE released 395 pages, redacting certain of those pages and withholding others in their entirety on the basis of FOIA Exemptions 5, 6, 7(C) and 7(E).

15. In May 2018, Defendants' counsel and I reached an agreement allowing ICE to conduct a "re-review" of the records it had identified post-remand as responsive to the initial Request to determine which of those records were responsive to the provisionally narrowed Request. ICE would then process only those records responsive to the provisionally narrowed Request.

16. By letter dated June 29, 2018, ICE informed me that following its re-review, it had identified only ninety-nine pages of records responsive to the provisionally narrowed Request. ICE referred forty-nine pages to other agencies for processing and released fifty pages to the Knight Institute, redacting certain of those pages on the basis of FOIA Exemptions 5, 6, 7(C) and 7(E).

17. Attached hereto as Exhibit B are true and correct copies of the following records contained in ICE's March 7, 2018, April 30, 2018, and June 29, 2018 releases: "Removal of National Security Threat Aliens" and accompanying emails (2018-ICAP-00118, at 298-306);

“Inadmissibility Based on Endorsing or Espousing Terrorist Activity: First Amendment Concerns” and accompanying emails (2018-ICAP-00118, at 693–706); “Memo Discussing Whether the Taliban Is a Terrorist Organization Under the INA” (2018-ICAP-00118, at 859–69); and “ICE Ability to Use 212(a)(3)(C) Foreign Policy Charge” (2018-ICAP-00118, at 870–73).

18. By email dated March 15, 2019, Defendants’ counsel informed me that, in connection with the preparation of its *Vaughn* index, ICE had decided to withdraw its application of Exemption 5 to several pages of previously released records. By email dated March 22, 2019, Defendants’ counsel sent me a supplemental release from ICE containing less-redacted versions of those records.

Communications Relating to USCIS’s Response to the Request

19. By letter dated May 30, 2018, USCIS informed me that it had completed its search, that it was reviewing and processing records responsive to the Request, and that it would produce responsive records on a rolling basis. Along with the letter, USCIS released 551 pages of responsive records, redacting certain of those pages in part on the basis of Exemptions 5, 6, and 7(E).

20. By letter dated June 29, 2018, USCIS informed me that it had processed 727 pages and one Excel spreadsheet responsive to the Request, and that it was producing a subset of those records in the second and final part of its rolling production. Along with the letter, USCIS released 578 pages and one Excel spreadsheet in their entirety, redacting 149 pages in part on the basis of Exemption 7(E).

21. Attached hereto as Exhibit C are true and correct copies of the following records contained in USCIS’s May 30, 2018 and June 29, 2018 releases: “Briefing Memo for the Acting Director: Recommendations to Eliminate the USCIS Terrorism-Related Inadmissibility Grounds

(TRIG)”; “Senior Policy Council—Briefing Paper: TRIG Exemptions & INA § 318”; “Options Paper: Exercise of Authority Relating to the Terrorism-Related Inadmissibility Grounds”; Terrorism Related Inadmissibility Grounds (TRIG) Instructor Guide, version dated May 2017; Terrorism-Related Inadmissibility Grounds Exemptions – Group-Based Exemptions / Situational Exemptions; and USCIS Refugee, Asylum and International Operations Directorate (RAIO) Officer Training – Combined Training Course on National Security, version dated Oct. 26, 2015.

22. By letter dated July 27, 2018, USCIS informed me that it had received a referral from ICE on July 26, 2018, from which it had identified fifteen pages of records responsive to the Request. USCIS withheld all fifteen pages in full on the basis of Exemptions 7(C) and 7(E). True and correct copies of the July 27, 2018 letter and the accompanying production are attached hereto in Exhibit A.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed: April 16, 2019



Carrie DeCell
Knight First Amendment Institute
at Columbia University
475 Riverside Drive, Suite 302
New York, NY 10115
carrie.decell@knightcolumbia.org
(646) 745-8500