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.

17 Civ. 7572 (ALC)

MEMORANDUM OF LAW IN FURTHER SUPPORT OF THE MOTION OF UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT AND UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES FOR SUMMARY JUDGMENT AND IN OPPOSITION TO PLAINTIFF'S CROSS-MOTION

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PRELIMINARY STATEMENT

Defendants United States Immigration and Customs Enforcement ("ICE") and United States Citizenship and Immigration Services ("USCIS") (together, the "agencies" or the "government") respectfully submit this reply memorandum of law in further support of their motion for summary judgment in this action, and in opposition to plaintiff's cross-motion for summary judgment.[1]

As to ICE, plaintiff has withdrawn its challenges to ICE's application of Exemptions 7(C) and 7(E), and narrowed its challenges to ICE's application of Exemption 5 to four records withheld in full or in part. ICE's initial declaration and its supplemental declaration submitted herewith demonstrate that ICE properly withheld three records in full or in part pursuant to the deliberative process, attorney-client, and work product privileges.[2] In addition, while the *Vaughn* index ICE submitted on March 15, 2019, contains explanations for the exemptions applied to the approximately three thousand pages that ICE has processed in this matter, *see* Dkt. No. 98-1, ICE inadvertently omitted explanations concerning the exemptions applied to three memoranda, totaling sixteen pages. ICE has now submitted a supplemental declaration of Toni Fuentes, dated May 17, 2019, and accompanying supplemental *Vaughn* index to address those records; the supplemental declaration and *Vaughn* index logically and plausibly demonstrate that the three memoranda are exempt from disclosure in full or in part pursuant to Exemptions 5 and/or 7(E).

As to USCIS, the declaration of Jill Eggleston, dated March 15, 2019, Dkt. No. 97, and the supplemental declaration of Jill Eggleston, dated May 14, 2019, logically and plausibly

[1] This memorandum employs the same abbreviations as those employed and defined in the government's moving brief, Docket No. 96.

[2] ICE is withdrawing its application of Exemption 5 to the fourth record, a "Memo Discussing Whether the Taliban Is a Terrorist Organization Under the INA" ("Taliban Memo") (2018-ICAP-00118, at 859–69), *see* ICE Vaughn Index 45, and will re-produce that document to plaintiff (maintaining the redactions pursuant to Exemptions 6 and 7(C), which plaintiff does not challenge).

demonstrate that USCIS has properly withheld three memoranda in part pursuant to Exemption 5, and various training materials in part pursuant to Exemption 7(E). Further, the declaration of Elliot Viker, dated May 17, 2019, logically and plausibly demonstrates that USCIS properly withheld in full fifteen pages referred to it by ICE on July 27, 2018, pursuant to Exemptions 7(A), 7(C) and 7(E). Accordingly, ICE and USCIS are entitled to summary judgment.

ARGUMENT

I. ICE PROPERLY WITHHELD RECORDS PURSUANT TO FOIA'S EXEMPTIONS

A. ICE Properly Withheld Three Records in Full or in Part Pursuant To Exemption 5

Plaintiff has narrowed its challenges to ICE's withholding determinations as to information in four sets of records.[3] ICE has withdrawn its assertion of Exemption 5 to the Taliban Memo and will produce that document with redactions pursuant to other exemptions; in addition, ICE has withdrawn its assertion of attorney-client privilege to the Foreign Policy Provision Memo. The March 15 Fuentes Declaration and accompanying Vaughn Index, Dkt. No. 98, along with the supplemental May 17 Fuentes declaration logically and plausibly justify the application of the remaining privileges to these records: specifically, the application of the deliberative process privilege to all three records, and the additional application of the attorney-client and work product privileges to the INA § 235c Memo and the First Amendment Concerns Memo. Plaintiff's arguments to the contrary are unavailing.

[3] Specifically: (1) "Removal of National Security Threat Aliens" and accompanying emails ("INA § 235(c) Memo") (2018-ICAP-00118, at 298–306), *see* ICE Vaughn Index 26–28; (2) "Inadmissibility Based on Endorsing or Espousing Terrorist Activity: First Amendment Concerns" ("First Amendment Concerns Memo") (2018-ICAP-00118, at 307–19, 515–23, 698–706, 711–30, 736–54, 758–61), *see* ICE Vaughn Index 28–30, 32–34, 41–43; (3) the Taliban Memo; and (4) "ICE Ability to Use 212(a)(3)(C) Foreign Policy Charge" ("Foreign Policy Provision Memo") (2018-ICAP-00118, at 870–73), *see* ICE Vaughn Index 45–46.

1. Deliberative Process Privilege

ICE withheld three records in full or in part pursuant the deliberative process privilege because they are pre-decisional and deliberative. *See, e.g., Grand Central P'ship, Inc. v. Cuomo*, 166 F.3d 473, 482 (2d Cir. 1999) (an agency record must satisfy two criteria to qualify for the deliberative process privilege: it "must be both 'predecisional' and 'deliberative'") (citations omitted). A document is "predecisional" when it is "prepared in order to assist an agency decisionmaker in arriving at his decision." *Tigue v. DOJ*, 312 F.3d 70, 80 (2d Cir. 2002). "A document is 'deliberative' when it is actually . . . related to the process by which policies are formulated," such as where it contains the opinions of the author rather than the policy of the agency, or where it might "inaccurately reflect upon or prematurely disclose the views of the agency." *Grand Central*, 166 F.3d at 482-83 (citation omitted). Pre-decisional, deliberative documents include "documents 'reflecting advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated.'" *Hopkins v. HUD*, 929 F.2d 81, 84-85 (2d Cir. 1991) (citation omitted).

Here, the INA § 235c Memo (withheld in part) is pre-decisional because it discusses proposed revisions to Section 235(c), and deliberative because it contains opinions and analyses by OPLA attorneys recommending certain courses of action. *See* May 17 2019 Fuentes Decl. at ¶¶ 7-11. The First Amendment Concerns Memo (withheld in full) is pre-decisional because it contains recommendations concerning a potential decision "about expanding any reliance on [Section 212(a)(3)(B)(i)(VII) as a ground of] inadmissibility," including a recommendation to seek the views of the Department of Justice prior to making any final decision, and because the document is itself a draft; it was "still being reviewed, commented, and edited by various stakeholders." *Id.* at ¶¶ 16-18; *see ACLU v. DOJ*, 844 F.3d 126, 133 (2d Cir. 2016) (upholding

assertion of Exemption 5 to draft opinion editorial that was never finalized, on the ground that "it is a draft and for that reason predecisional").[4] The memo is also deliberative because it was related to the process by which the government evaluated "concerns that may arise when applying the security-related ground of inadmissibility under Section 212(a)(3)(B)(i)(VII) of the INA." *Id.* And the Foreign Policy Provision Memo (withheld in part) is pre-decisional because it was prepared to assist the Secretary of State to consider in determining whether Section 212(a)(3)(C) can be used to render an alien inadmissible, and deliberative because it provides factors for the Secretary's consideration and "the employee's opinion." *Id.* at ¶¶ 25-27; *see also* Vaughn Index at 45.

Contrary to plaintiff's argument, *see* Dkt. No. 2018 at 9, the government need not "identify a specific decision" made by the agency to establish the pre-decisional nature of a particular record, *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 151 n.18 (1975). Rather, so long as the document "was prepared to assist [agency] decisionmaking on a specific issue," *Tigue*, 312 F.3d at 80, the document is pre-decisional. Here, ICE has identified a "specific issue" to which each document relates. *Id*. Specifically, the INA § 235c Memo was prepared to assist ICE in making a decision regarding proposed revisions to Section 235(c); the First Amendment Concerns Memo was prepared to assist ICE in making a decision regarding whether to expand reliance on Section 212(a)(3)(B)(i)(VII) as a ground for inadmissibility; and the Foreign Policy Provision Memo was prepared to assist ICE in making a decision regarding whether and when the Secretary of State can apply Section 212(a)(3)(C). *See* Vaughn Index at 45 & May 17 2019 Fuentes Decl, at ¶¶ 7-27. Plaintiff appears to concede that the Section 235(c) and First Amendment Concerns Memos are

[4] Although plaintiff is correct that a "final version" of the First Amendment Concerns is referenced in a released email, Dkt. No. 108 at 10, ICE has not withheld any such final version. Rather, the reference to a "final version" is to the "most recent version [that] was being sent back to the Department of Homeland Security[] for another round of review before ultimately sending to DOJ for review." May 17 2019 Fuentes Decl. at ¶ 13.

deliberative, arguing only that the Foreign Policy Provision Memo is not. That is incorrect; the agency's declaration and *Vaughn* index establish that the Foreign Policy Provision was drafted by OPLA attorneys to provide guidance and legal advice, which is a quintessential deliberative function. *See* Vaughn Index at 46; May 17 2019 Fuentes Decl. at ¶¶ 25-27 (the memo "supplies factors for consideration while providing analysis," as well as "notes supporting the employee's opinions"); *Hopkins*, 929 F.2d at 84-85 ("advisory opinions [or] recommendations" are deliberative); *Brinton v. Dep't of State*, 636 F.2d 600, 604 (D.C. Cir. 1980) ("There can be no doubt that such legal advice, given in the form of intra-agency memoranda prior to any agency decision on the issues involved, fits exactly within the deliberative process rationale[.]").

None of these records constitutes a final agency decision binding on the agency, and thus they are not "working law." *See Brennan Center for Justice v. DOJ*, 697 F.3d 184, 196 (2d Cir. 2012) (working law doctrine requires disclosure of otherwise privileged documents only if they have become an agency's "effective law and policy" – that is, a record that has "'the force and effect of law'") (quoting *Sears*, 421 U.S. at 153). An advisor's discussion or description of law or policy in the course of providing advice or analysis of various legal options, as contained in the instant records, is not sufficient: the document must be "effectively binding on the agency," *Brennan Center*, 697 F.3d at 203 ("suggestions or recommendations as to what agency policy should be," "advice to a superior," or "suggested dispositions of a case" are not working law) (citations omitted); *compare Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854, 869 (D.C. Cir. 1980) (an agency's legal department's memoranda constituted working law because the memoranda "were routinely used by agency staff as guidance in conducting their audits, and were retained and referred to as precedent"); *see also Afshar v. Dep't of State*, 702 F.2d 1125, 1141 (D.C. Cir. 1983) (to constitute working law, the document must "create or determine the extent of

the substantive rights and liabilities of a person") (internal citations and quotation marks omitted). Here, each document was drafted by ICE attorneys for consideration by policymakers, contains legal analysis, discusses options and/or makes recommendations, and did not bind the agency to take a particular action or have the "force and effect of law." *Brennan Center*, 697 F.3d at 203; May 17 2019 Fuentes Decl. at ¶¶ 8, 12, 17 & 20. As a result, none of these records constitutes ICE's "working law."

Finally, also contrary to plaintiff's argument, ICE has demonstrated that it conducted a segregability analysis for each document and determined that all factual information that was reasonably segrebable was released. *See* May 17 2019 Fuentes Decl. at ¶¶ 44-46; *see also* Dkt. No. 98 at ¶¶ 39-41. Non-exempt information is not reasonably segregable when it is "inextricably intertwined" with the exempt information in a document "such that disclosure would compromise the confidentiality of [exempt] information that is entitled to protection." *Hopkins*, 929 F.2d at 86 (citation and internal quotation marks omitted). Moreover, ICE released portions of two of these documents – withholding only the First Amendment Concerns Memo in full – demonstrating its good faith effort to segregate and release factual material. Especially in light of the fact that an agency's declaration in support of its withholding determinations is "accorded a presumption of good faith," ICE has met its burden that it segregated and released all reasonably segregable material in these records. *Carney v. DOJ*, 19 F.3d 807, 812 (2d Cir. 1994) (footnote omitted); *ACLU v. DOJ*, 252 F. Supp. 3d 217, 229 (S.D.N.Y. 2017) ("Based upon these declarations, the Court concludes that the DOJ has sufficiently demonstrated that the records do not contain reasonably segregable non-exempt material. Moreover, the ACLU has not provided any basis to defeat the presumption of good faith to which these declarations are entitled. The DOJ is entitled

to summary judgment on the issue of segregability as to all documents it has withheld under FOIA Exemption 5 in response to the ACLU's request.").

2. Attorney-Client Privilege

ICE also withheld the Section 235c Memo in part, and First Amendment Concerns Memo in full, pursuant to the attorney client privilege. Both records were drafted by attorneys. *See* May 17 2019 Fuentes Decl. at ¶ 10 (Section 235(c) memo drafted by Acting Deputy Chief of the ICE National Security Law Section of the Office of the Principal Legal Advisor); *id.* at ¶ 20 (First Amendment Concerns Memo contains "confidential communications between ICE attorneys and attorneys from other agencies"). Each record was explicitly marked as "privileged" and "attorney-client communication," indicating that each was intended to be kept confidential. *See* May 17 2019 Fuentes Dec. at ¶¶ 10, 23. Contrary to plaintiff's statement, ICE is not necessarily required to identify every author and every recipient of each document in order to logically and plausibly justify the application of the attorney-client privilege to the records at issue. *See* Dkt. No. 108 at 13. Rather, the "burden is on the agency to demonstrate that confidentiality was expected in the handling of these communications and that it was reasonably careful to keep this confidential information protected from general disclosure." *Amnesty Int'l USA v. CIA*, 728 F. Supp. 2d 479, 519 (S.D.N.Y. 2010) (citing *Coastal States Gas Corp.*, 617 F.2d at 863). Here, Toni Fuentes, Deputy Officer of ICE's FOIA Office, has specifically attested that each of these records was, to the best of her knowledge, intended to be and was kept confidential – an assertion bolstered by the markings on the documents themselves and the fact that each record contains advice and recommendations provided by attorneys. May 17 2019 Fuentes Decl. at ¶¶ 13, 20. *See, e.g.*, *Jordan v. DOL*, 273 F. Supp. 3d 214, 232 (D.D.C. 2017), *reconsideration denied*, 308 F. Supp. 3d 24 (D.D.C. 2018), *aff'd*, No. 18-5128, 2018 WL 5819393 (D.C. Cir. Oct. 19, 2018) (finding emails

subject to attorney-client privilege because they were "marked 'Subject to Attorney Client Privilege'" and contained attorney advice).

3. Work Product Privilege

ICE further withheld in part two of these records, the Section 235(c) Memo and the First Amendment Memo, pursuant to the work product privilege. That doctrine protects documents "prepared in anticipation of litigation or for trial by or for another party or its representative," as well as "mental impressions, conclusions, opinions, or legal theories of a party's attorney or other representative concerning the litigation." Fed. R. Civ. P. 26(b)(3)(A), (B). Both of these documents were prepared in anticipation of litigation: the Section 235(c) Memo provides recommendations on whether to use Section 235(c) as a basis for removing aliens "who present a threat to national security," and "contemplates the rise of legal challenges if a certain path is taken," May 17 2019 Fuentes Decl. at ¶ 15,[5] and the First Amendment Memo, created in April 2017, was "prepared by agency attorneys . . . regarding the impact of the First Amendment on this particular inadmissibility ground," and prepared "in anticipating of litigation given the rise in challenges to the current Administration's immigrations practices," *id.* at ¶ 22.[6] These documents explicitly contemplate litigation and address concrete concerns that litigation would arise from these issues. Indeed, they reflect the mental impressions, opinions, conclusions and legal theories of ICE's

[5] Although the Section 235(c) Memo contains factual background in addition to legal analyses and recommendations, the entirety of the withheld information qualifies as work product because "[a]ny part of [a document] prepared in anticipation of litigation, not just the portions concerning opinions, legal theories, and the like, is protected by the work product doctrine and falls under exemption 5." *ACLU*, 252 F. Supp. 3d at 227 (internal quotation marks omitted) (alteration in original) (quoting *Tax Analysts v. IRS*, 117 F.3d 607, 620 (D.C. Cir. 1997)).

[6] Any inconsistent application of the work production exemption to this group of documents is minor and results from the agency's review of thousands of pages of documents in this matter. *See SafeCard Servs., Inc. v. SEC*, 926 F.2d 1197, 1202 (D.C. Cir. 1991) ("SafeCard's claim that there are "troubling inconsistencies" in the SEC affidavits and briefs refers us only to trivial matters, such as typographical errors and minor ambiguities undeserving of extended treatment here," such as differences between the Vaughn index submitted to the district court versus the circuit)

counsel, *see id.* at ¶¶ 15, 22—the category of work product entitled to the highest level of protection. *See, e.g., Judicial Watch, Inc. v. Dep't of Justice*, 432 F.3d 366, 369 (D.C. Cir. 2005) ("the doctrine should be interpreted broadly and held largely inviolate") (citation omitted)).

B. ICE Properly Withheld Three Records in Full or in Part in Its September 28, 2017, Production

As described in the Declaration of Toni Fuentes dated May 3, 2019, Dkt. No. 113, ICE has produced to plaintiff or referred to other agencies a total of more than three thousand pages of records in this matter. Dkt. No. 113 at ¶ 25. In the *Vaughn* index submitted on March 15, 2019, Dkt. No. 98-1, however, ICE inadvertently omitted descriptions of three records which ICE withheld in full or in part in a production to plaintiff on or about September 28, 2017.[7] Accordingly, in the May 17 2019 Fuentes Declaration and accompanying supplemental *Vaughn* index ("Suppl. Vaughn Index"), ICE has now provided an explanation for its application of Exemptions 5 and/or 7(E) to those documents, logically and plausibly justifying the withholdings.

First, ICE withheld in full, pursuant to Exemptions 5 and 7(E), a draft memorandum containing four questions and corresponding answers regarding recent updates of "several ICE Homeland Security Investigations (HSI) Programs, including the Counterterrorism and Criminal Exploitation Unit (CTCEU), the National Counterterrorism Center, the Visa Security Program (VSP), and the Biometric Identification Transnational Migration Alert program (BITMAP)." Suppl. Vaughn Index at 2. This document is pre-decisional because it is a draft and because it relates to "options being considered to expand the[] implementation" of several HSI programs, and deliberative because it formed part of the agency's process of deciding the continuance of pilot

[7] Specifically, and as discussed *infra*: (1) a three page draft memorandum concerning Homeland Security investigations (2017-ICFO-43023; Suppl. Vaughn at 2) withheld in full pursuant to Exemptions 5 and 7(E); (2) a three page memorandum concerning vetting (2017-ICFO-43023; Suppl. Vaughn at 3) withheld in part pursuant to Exemptions 5 and 7(E); and (3) a ten page memorandum concerning Executive Orders (2017-ICFO-43023, Suppl. Vaughn at 4) withheld in part pursuant to Exemption 5.

programs. *Id.* In addition, this document was compiled for law enforcement purposes and contains "sensitive information about several HSI programs," including "information regarding evaluating and/or methods for accessing certain social media platforms, while also" informing such parties the current limitations of the programs." *Id.*; *see also* May 17 2019 Fuentes Decl. at ¶ 40 (noting that pursuant to 8 U.S.C. § 1103, "the Secretary of Homeland Security is charged with the administration and enforcement of laws relating to the immigration and naturalization of aliens," and "ICE is the largest investigative arm of DHS, [] responsible for identifying and eliminating vulnerabilities within the nation's borders"; further noting that the withheld information was compiled for law enforcement purposes). Accordingly, this record is also properly withheld pursuant to Exemption 7(E). *See, e.g.*, *Long v. ICE*, 149 F. Supp. 3d 39, 50 (D.D.C. 2015) ("internal database codes, fields, and other types of identifiers used by law enforcement agencies to conduct, organize, and manage investigations and prosecutions qualify, at least, as law enforcement guidelines, if not also law enforcement methods and techniques") (collecting cases).

Second, ICE withheld in part, pursuant to Exemption 5 and 7(E), a three-page memorandum drafted by the Assistant Director for HSI's National Security Investigations Division and entitled "Extreme Vetting – Visa Security Program (VSP) – Pre-Adjudication Threat Recognition and Intelligence Operations Team (PATRIOT)." Suppl. Vaughn Index at 3. The withheld information includes proposals for "initiatives to meet executive mandates concerning future capabilities of the VSP PATRIOT program," as well as "funding information and a recommended approach toward any expansion." *Id.* This information is pre-decisional because it is a draft and contains proposals for implementing the VSP PATRIOT program, and deliberative because it contains proposals that are "under consideration and may be changed as ICE offices and ICE employees deliberate." *Id.* Accordingly, ICE properly withheld this information pursuant to

the deliberative process privilege. *See Hopkins*, 929 F.2d at 84-85. Further, ICE properly withheld "sensitive information about HSI's PATRIOT program" in this memorandum pursuant to Exemption 7(E), because the information was compiled for law enforcement purposes and contains "detailed requirements for worldwide expansion of the VSP, the challenges that VSP faces, funding needs to sustain and expand the program, and descriptions of other programs (e.g., social media expansion) working in conjunction with VSP to help identify visa applicants with some nexus to terrorism or criminal activity," and "explains the operational needs of those programs." May 17 2019 Fuentes Decl. at ¶¶ 39-40.

Third, ICE withheld in part, pursuant to the deliberative process privilege, a ten-page draft memorandum with the subject heading, "ICE Implementation Plan for Executive Orders." Suppl. Vaughn Index at 4. "The document is watermarked 'DRAFT' and contains comment bubbles, red-lines track changes, newly proposed language." *Id.* This memorandum is pre-decisional because it "proposes implementation plans for ICE regarding Executive Orders entitled 'Border Security and Immigration Enforcement Improvements' and 'Enhancing Public Safety in the Interior of the United States' issued by the President on January 25, 2017," and deliberative because the proposed "plans and edits [] were under review and being changed as ICE offices and ICE employees provided edits, comments, and recommendations on the proposed draft." *Id.* Accordingly, ICE properly applied the deliberative process privilege to this document. *See Tigue*, 312 F.3d at 76 (opinions, recommendations, and deliberations satisfy Exemption 5); *Coastal States Gas Corp.*, 617 F.2d at 866 ("recommendations, draft documents, proposals, [and] suggestions" subject to the deliberative process privilege); *Grand Central Partnership*, 166 F.3d at 482. As a result, ICE has logically and plausibly justified the application of Exemption 5 to these three memoranda, and Exemption 7(E) to two of the memoranda.

II. USCIS PROPERLY WITHHELD RECORDS PURSUANT TO FOIA'S EXEMPTIONS

A. USCIS Properly Withheld Three Records in Part Pursuant to Exemption 5

USCIS withheld three records in part pursuant the deliberative process privilege.[8] The March 14, 2019 declaration of Jill Eggleston and accompanying *Vaughn* index, Dkt. No. 97, along with the supplemental declaration of Jill Eggleston, dated May 14, 2019 ("May 2019 Eggleston Decl."), submitted herewith, logically and plausibly justify the application of the deliberative process privilege. Plaintiff's challenges to USCIS's Exemption 5 withholdings miss the mark.

As explained in the agency's declarations, the Acting Director Memo is pre-decisional because it contains "discussions and recommendations from USCIS staff to senior agency management regarding a proposed revision to the USCIS TRIG implementation policy," and deliberative because it provides information "regarding cases currently being held by USCIS pursuant to the existing USCIS TRIG hold policy and a review of relevant considerations for determining whether these cases should continue to be held or released for adjudication." May 2019 Eggleston Decl. at ¶ 5. The agency further explains that the "withheld portions do not reflect positions that are or became binding on the agency, but rather, contain recommendations and analyses concerning revisions to TRIG exceptions and the possible application of such revisions to certain asylum applications." *Id.*

Similarly, the Senior Policy Council Paper is pre-decisional because it is an "internal agency briefing paper [that] was prepared by agency personnel for senior agency management and

[8] Those records are: (1) "Briefing Memo for the Acting Director: Recommendations to Eliminate the USCIS Terrorism-Related Inadmissibility Grounds (TRIG)" ("Acting Director Memo"), *see* Eggleston Decl. ¶ 23; Apr. 16 DeCell Decl. Ex. C, at 1–5; (2) "Senior Policy Council—Briefing Paper: TRIG Exemptions & INA § 318" ("Senior Policy Council Paper"), *see* Eggleston Decl. ¶ 24; Apr. 16 DeCell Decl. Ex. C, at 6–10; and (3) "Options Paper: Exercise of Authority Relating to the Terrorism-Related Inadmissibility Grounds" ("TRIG Options Paper"), *see* Eggleston Decl. ¶ 25.

discusses specific TRIG exemptions and how they could be interpreted and applied to specific types of applicants who seek immigration benefits from USCIS," and deliberative because it "contains a recommendation for senior agency management concerning agency policy." *Id.* at ¶6. It does not "reflect positions that bound the agency, but rather, contain[s] legal analysis and a recommendation regarding what the agency policy should be." *Id.*

The TRIG Options Paper is pre-decisional because it is an "internal agency memorandum [] prepared by agency personnel for senior agency management [regarding] implementing an Executive Order that directed the Secretaries of State and DHS to consider rescinding the TRIG exemptions permitted by Section 212 of the INA (EO 13780 – Protecting the Nation from Foreign Terrorist Entry into the United States, March 9, 2017)," and deliberative because it discusses three options for such implementation. *Id.* at ¶ 7. "These options did not constitute final policy guidance or imposed a binding position on the agency, but rather, contain analyses of different possible positions." *Id.*

These documents do not contain USCIS's "effective law and policy," such that they have "the force and effect of law." *Brennan Center*, 697 F.3d at 196 (citation omitted). Rather, they contain "suggestions or recommendations as to what agency policy should be" and "advice to a superior," and do not constitute working law. *Id.*; *see also Afshar*, 702 F.2d at 1141. Plaintiff's arguments to the contrary are based on pure speculation, which is insufficient to overcome the presumption of good faith accorded to agency declarations. *See, e.g.*, *Carney*, 19 F.3d at 812.

Plaintiff's argument that USCIS has withheld segregable factual material from the TRIG Options Paper is also incorrect. *See* Dkt. No. 108 at 16. As Ms. Eggleston attests, the factual material "is inextricably intertwined with deliberative material and analysis such that it cannot reasonably be segregated and released." May 2019 Eggleston Decl. at ¶ 7. For example, "in the

'Background' and 'Methodology' sections of the Options Paper, the drafters discuss specific asylum applications and the agency's various methods for analyzing those applications, thus intertwining the facts of specific cases with the agency's deliberations and analyses." *Id.* An attempt to segregate and release such facts would "result in incomplete, unintelligible and fragmented sentences," *id.*, and therefore is not required under FOIA, *see, e.g., Inner City Press/Community on the Move v. Fed. Reserve*, 463 F.3d 239, 249 n.10 (2d Cir. 2006); *Carney*, 19 F.3d at 812; *ACLU*, 252 F. Supp. 3d at 229. USCIS has thus logically and plausibly demonstrated that the information withheld from these three records were properly withheld under the deliberative process privilege, and that all reasonably segregable factual material was released.

B. USCIS Properly Withheld Information Pursuant to Exemption 7(E)

USCIS has also logically and plausibly justified the application of Exemption 7(E). USCIS properly withheld information contained in 12 documents and 4 power points pursuant to Exemption 7(E). *See* Eggleston Decl. ¶¶ 22, 26-41. These consist of officer training manuals (¶¶ 26, 27, 41), course instructor guides (¶¶ 22, 28, 32, 36, 39), student participant guides (¶¶ 29, 33, 37, 40), and power point slides (¶¶ 31, 34, 35, 38) related to training USCIS immigration officials to identify and evaluate potential TRIG exemptions when conducting applicant interviews. This information was compiled for law enforcement purposes, and constitutes either "techniques and procedures for law enforcement investigations," or "guidelines for law enforcement investigations" the disclosure of which "could reasonably be expected to risk circumvention of the law, and thus falls under Exemption 7(E). 5 U.S.C. § 552(b)(7)(E). Plaintiff's conjecture that these materials are not used to prevent criminal activity is belied by the record.

As an initial matter, USCIS properly withheld model or sample questions provided to immigration officers for use when screening applicants for possible terrorist ties. *See* Eggleston

Decl. at ¶¶ 22, 26-41. For example, pages 485 and 502 of the TRIG Instructor Guide, May 2017 revision, "contain suggested questions for immigration officers to use to determine whether an applicant provides material support for terrorism, and to determine whether an applicant provides support to a terrorist organization under duress." May 2019 Eggleston Decl. at ¶ 11; *see also* Eggleston Decl. at ¶ 39. While it is correct, as plaintiff notes, *see* Dkt. No. 108 at 19, that "the fact that immigration officers screen for terrorist ties is generally known to the public," these "specific questions and the actual questioning techniques are not generally known to the public," May 2019 Eggleston Decl. at ¶ 12. "These questions reflect specialized methods that USCIS has refined through its decades of enforcing United States immigration laws," and thus reflect calculated techniques used to screen for terrorist ties or exceptions to apply to potential terrorist ties. May 2019 Eggleston Decl. at ¶ 11. Indeed, Ms. Eggleston attests that the "particular information the questions and follow-ups were designed to elicit includes information that would shed light on terrorist organizations' activities and help determine whether the applicant had any ties to such terrorist organizations and activities." May 2019 Eggleston Decl. at ¶ 12. Accordingly, the specific questions and follow-ups that have been withheld from these materials fall within the scope of information protected by Exemption 7(E). *See, e.g.*, *Barouch v. DOJ*, 87 F. Supp. 3d 10, 30 (D.D.C. 2015) (finding proper withholding of report of interview of suspect where agency affirmed that release of report would reveal questioning techniques used by law enforcement agents); *Am. Immigration Lawyers Ass'n v. DHS*, 852 F. Supp. 2d 66, 77 (D.D.C. 2012) (finding that Exemption 7(E) was properly invoked with respect to Compliance Review Report listing questions asked onsite by USCIS inspectors investigating potential fraud); *Asian Law Caucus v. DHS*, No. C 08-00842-CW, 2008 WL 5047839, at *5 (N.D. Cal. Nov. 24, 2008) (upholding redaction of topics CBP uses for questioning travelers regarding political views, religious practices, and other

activities potentially covered by the First Amendment, even though "[r]eleasing the subset of topics for questioning would not permit persons to devise strategies to circumvent the law in the same way that releasing the questions themselves would").

These questions are readily distinguishable from those at issue in *ACLU v. DHS*. There, CBP applied Exemption 7(E) to "twenty-five to thirty questions that CBP routinely asks" as part of a pilot program (later terminated after an OIG investigation) to elicit information from minors arrested at the border "about smuggling and other criminal activity" in which the minors may have been involved. 243 F. Supp. 3d 393, 396 (S.D.N.Y. 2017). The court concluded that such routine questions did not constitute a "technique or procedure" subject to Exemption 7(E) because the questions were "generally known to the public." *Id.* at 404 (citing *Doherty v. DOJ*, 775 F.2d 49, 52 (2d Cir. 1985)). The court based that conclusion on the "substantial evidence" showing that the questions were revealed in "numerous episodes of [the television show] 'Border Wars," that at least 800 children were asked these questions, including 500 who had returned to Mexico, and that CBP had provided copies of the questions to lawyers for the minors. *Id.* at 400, 404. The court determined that, in light of the fact that a "57-episode Border Wars series documents the questions CBP asks smugglers," any damage done by revealing the questions was due "in large part [to] CBP's own initiative." *Id.* at 404-05. The court also distinguished the questions posed to minors arrested at the border from other questions that may be protected by Exemption 7(E), noting that the questions asked of minors were not "used to ferret out fraud or terrorism from otherwise innocuous conduct." *Id.* at 403 (citing *Am. Immigration Lawyers Ass'n*, 852 F. Supp. 2d at 77; *Asian Law Caucus*, 2008 WL 5047839 at *5). Here, on the other hand, plaintiff can demonstrate no large-scale disclosure of USCIS's questions, nor can plaintiff demonstrate that USCIS provided these questions to lawyers of applicants. In addition, unlike questions posed to individuals arrested

at the border, the questions at issue here are posed by USCIS immigration officers to individuals seeking lawful entry, and thus are used specifically to "ferret out fraud or terrorism from otherwise innocuous conduct." *Id.* at 403. Accordingly, questions used by USCIS immigration officers to detect terrorist ties properly fall within the ambit of Exemption 7(E). *See Am. Immigration Lawyers Ass'n*, 852 F. Supp. 2d at 77-79 ("the mere fact that the public may know about site visits generally, or may know some information about fraud indicators does not mean that defendants must disclose all details concerning fraud indicators," such as criteria "used by adjudicators to determine which cases of suspected fraud to refer for further investigation"; crediting agency declaration that "[a]nyone in possession of this document would have, essentially, a roadmap [] they could follow to avoid attracting attention and close scrutiny by [] 'doctoring' their H-1B applications").

Second, USCIS also properly withheld information in certain records concerning when an applicant qualifies for a TRIG exemption. *See* Eggleston Declaration at ¶¶ 26, 36. As Ms. Eggleston attests, "[i]f an applicant were to review these criteria, applicants could tailor their testimony to meet the requirements for a particular exemption." May 14 2019 Eggleston Decl. at ¶ 13. Contrary to plaintiff's argument, "the listed criteria do[] more than mirror the TRIG statute; the criteria provide guidance for how to interpret the statute in various factual circumstances." *Id*. For example, USCIS withheld a "non-exhaustive list of appropriate factors" to evaluate in such a "discretionary analysis," Dkt. No. 109-3 at 68, noting that the factors are not "requirements" but rather "factors to be considered." These criteria are therefore applied on a discretionary basis and thus reflect more than mere "knowledge of the law," as plaintiff speculates. Dkt. No. 108 at 20. Rather, "[r]eleasing those factors would enable applicants to tailor their answers to meet such

criteria – criteria which is not otherwise available and known to the public." May 14 2019 Eggleston Decl. at ¶ 13.

Third, plaintiff is wrong that the information withheld in certain records under the heading "What is reasonable lack of knowledge?" contains only "definitions or legal interpretations[.]" Dkt. No. 109 at 21. Instead, that information contains "examples of factual scenarios where an applicant has demonstrated that he or she reasonably did not know that a certain organization was a terrorist organization," and the agency specifically attests that the "withheld information is not definitional or a legal interpretation, and its release would provide applicants with guidance as to how to tailor their testimony." May 14 2019 Eggleston Decl. at ¶ 14.

Finally, USCIS released all segregable factual portions from these training materials. Plaintiff notes that the information withheld in Chapter 13.1 in the RAIO Directorate – Officer Training Manual contains section headings, and asserts that the chapter "likely" contains segregable material. Dkt. No. 108 at 21. The withheld information, however, "describes the process under the Controlled Application Review and Resolution Program, including subsections concerning: (1) the identification of a national security concern; (2) internal vetting and eligibility assessment procedures; (3) external vetting procedures; and (4) final adjudication processes." May 14 2019 Eggleston Decl. at ¶ 15. While USCIS redacted the subsection names in the text of the chapter, USCIS included them in the text of the table of contents, thus providing plaintiff with the releasable information. *See id.* While "the chapter contains some factual information, [] it is minimal and interwoven with guidance, procedures and techniques used to process cases with national security concerns, in the context of the Controlled Application Review and Resolution Program," including providing "procedures for inter-agency coordination, techniques for reviewing internal databases, and procedures for coordinating with other agencies." *Id.*

D. USCIS Properly Withheld Two Records in Full in Its July 27, 2018, Production

On July 26, 2018, as a result of searches ICE conducted for documents responsive to plaintiff's FOIA request, ICE referred two documents, consisting of 15 pages, to USCIS for review and processing. *See* Dkt. No. 108 at 22. On July 26, 2018, USCIS notified plaintiff that it had determined to withhold the documents in full, pursuant to FOIA Exemptions 7(C) and 7(E). *See* Declaration of Elliot B. Viker, dated May 17, 2019 ("Viker Decl."). As described in the Viker Declaration, these documents "were deemed responsive to Plaintiff's FOIA request that gave rise to this action, without regard to the fact that the records are not responsive to Plaintiff's narrowed FOIA request." *Id.* at ¶ 6. Specifically, these records concern the application of the INA to two immigration applications submitted by an individual suspected of committing immigration fraud, and are thus responsive to item 6(b) of Plaintiff's original request. *See id.* at ¶¶ 4-8 (item 6(b) seeks "[r]ecords reflecting the application, waiver, or contemplated application or waiver of the endorse or espouse provisions or foreign affairs provision by an immigration officer, a border officer, a Department of Homeland Security official or a Department of justice official"). Plaintiff subsequently narrowed its FOIA request to exclude, *inter alia*, item 6(b). *See id.* at ¶ 5. Nevertheless, ICE deemed these records responsive to Plaintiff's FOIA request without regard to the fact that the records are not responsive to Plaintiff's narrowed FOIA request, and USCIS duly processed them, withholding both documents in full pursuant to Exemptions 7(C) and 7(E). *See id.* at ¶ 7. The Viker declaration demonstrates that USCIS logically and plausibly applied these exemptions to both records, as well as Exemption 7(A) to one.[9]

[9] Although USCIS did not originally apply Exemption 7(A) to this document, an agency may assert in litigation a FOIA exemption that was not asserted at the administrative stage. *See Ahmed v. USCIS*, No. 11 Civ. 6230 (CBA), 2013 WL 27697, at n.8 (E.D.N.Y. January 2, 2013) (permitting agency to assert exemption for first time in a reply brief).

1. Exemptions 7(A) and 7(C)

Exemption 7(A) protects from disclosure records or information compiled for law enforcement purposes "to the extent that the production of such law enforcement records or information . . . could reasonably be expected to interfere with enforcement proceedings." 5 U.S.C. § 552(b)(7)(A). An investigatory record must therefore "meet two criteria to fall within Exemption 7(A): first, it must be compiled for law enforcement purposes, and second, its release must interfere with enforcement proceedings." *Conti v. DHS*, No. 12 Civ. 5827 (AT), 2014 WL 1274517, at *22 (S.D.N.Y. Mar. 24, 2014) (citation omitted).

Exemption 7(C) exempts from disclosure "records or information complied for law enforcement purposes" that "could reasonably be expected to constitute an unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(7)(C).[10] In determining whether personal information is exempt from disclosure under Exemption 7(C), the Court must balance the public's need for this information against the individual's privacy interest. *See AP v. DOD*, 554 F.3d 274, 284 (2d Cir. 2009). Because FOIA did not intend unwarranted "disclosure of records regarding private citizens, identifiable by name," courts have found that the privacy interest protected by this exemption "encompass[es] the individual's control of information concerning his or her person." *DOJ v. Reporters Comm. For Freedom of Press*, 489 U.S. 749, 763-65 (1989); *Fed. Labor Relations Auth. v. U.S. Dep't of Veterans Affairs*, 958 F.2d 503, 510 (2d Cir. 1992); *AP*, 554 F.3d at 285 ("It is

[10] This is similar to Exemption 6, which protects "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy," 5 U.S.C. § 522(b)(6), but the standard the government must meet under Exemption 7(C) is lower, *see, e.g.*, *ACLU v. DOD*, 389 F. Supp. 2d 547, 569 (S.D.N.Y. 2005). Under Exemption 7(C), information is protected if its release "reasonably can be expected to constitute" an "unwarranted" invasion of privacy, whereas Exemption 6 requires a demonstration that release "would constitute" a "clearly unwarranted" invasion of privacy. Thus, Exemption 7(C) "is more protective of privacy" than Exemption 6. *AP v. DOJ*, No. 06 Civ. 1758 (LAP), 2007 WL 737476 at *4 (S.D.N.Y. Mar. 7, 2007), *aff'd* 549 F.3d 62 (2d Cir. 2008).

well established that identifying information such as names, addresses, and other personal information falls within the ambit of privacy concerns under FOIA.").

2. USCIS Properly Withheld Two Records in Full Pursuant to Exemptions 7(A), 7(C) and/or 7(E)

Here, USCIS withheld in full a three-page document pursuant to Exemptions 7(C) and 7(E), and a twelve page document pursuant to Exemptions 7(A), 7(C) and 7(E); both records concern an immigration application submitted by an individual suspected of immigration fraud.

Immigration Systems History Report: The first document, withheld in full pursuant to Exemptions 7(C) and 7(E), is an Immigration Systems History Report, dated July 17, 2016, prepared by a Branch Chief with the USCIS Fraud Detection and National Security Directorate (FDNS) Intelligence Division. *See* Viker Decl. at ¶¶ 21-22.[11] This report was intended "to rapidly provide basic immigration history on an individual as derived from electronic systems checks," and "contains a compilation of highly sensitive law enforcement database systems checks on a particular individual who is a national from a foreign country." *Id.* at ¶ 21. "The report details the individual's name, date of birth, alien number, and country of origin, along with a photograph of the individual," as well as the "specific immigration application this individual had pending with USCIS, as of July 2016." *Id.* The report further contains "a detailed chronology of this individual's immigration history vis-a-vis the United States and highlights a number of items of derogatory information found as a result of the law enforcement systems database checks that concern this individual's activities and associations, including suspected criminal conduct." *Id.*

[11] FDNS is a "specialized law enforcement arm of USCIS. It was created in 2004 in order to strengthen USCIS's efforts to ensure immigration benefits are not granted to individuals who pose a threat to national security or public safety, or who seek to defraud our immigration system. FDNS has been officially delegated by the Department of Homeland Security, through the USCIS Director, to conduct law enforcement activities." Viker Decl. at ¶ 21 (citing See Department of Homeland Security (DHS) Delegation Number 15002, Revision 00, Delegation to the Director of U.S. Citizenship and Immigration Services to Conduct Certain Law Enforcement Activities; 8 C.F.R. § 2.1).

Moreover, "[a]s reflected in the document, the FDNS official checked several highly sensitive federal law enforcement database systems for any derogatory information," and its disclosure would "reveal a large number of law enforcement techniques used by DHS officials when investigating an immigration applicant's background – including a description of database systems and the materials collected by those systems[.]" *Id.*

This document was properly withheld pursuant to Exemption 7(C). First, it was compiled for law enforcement purposes, as FDNS created this document "to determine whether the individual poses a national security risk, to detect possible immigration fraud, and to determine whether the individual is eligible for immigration benefits." *Id.*; *see Assadi v. USCIS*, No. 12 CIV. 1374 (RLE), 2013 WL 230126, at *1, 6 (S.D.N.Y. Jan. 22, 2013) (concluding that Summary of Findings reports created by USCIS officers at FDNS in connection with reviewing immigration applications suspected of fraud are compiled for law enforcement purposes); *Wolfson v. United States*, 672 F. Supp. 2d 20, 31-2 (D.D.C. 2009) (records "compiled in connection with a criminal investigation into violations of federal law," including securities fraud, were compiled for law enforcement purposes) (internal quotation marks and citation omitted). Second, releasing this document "could reasonably be expected to constitute an unwarranted invasion of personal privacy," 5 U.S.C. § 552(b)(7)(C), because it contains "derogatory law enforcement information about the individual and details highly personal information about him, his travels, his activities, and his associations, as well as specific personally identifiable information," Viker Decl. at ¶ 21. *See Assadi*, 2013 WL 230126, at *6-7 (concluding that release of FDNS reports would constitute an invasion of privacy, even if released to the applicant's lawyer); *see also Schrecker v. DOJ*, 349 F.3d 657, 666 (D.C. Cir. 2003) (it is "long recognized" that the "mention of an individual's name in a law enforcement file will engender comment and speculation and carries a stigmatizing

connotation," such that targets of law-enforcement investigations as well witnesses, informants, and investigating agents have a substantial interest in ensuring that their relationship to the investigations remains secret) (citations and quotation marks omitted).

USCIS also properly withheld this record pursuant to Exemption 7(E). First, as noted above, it was compiled for law enforcement purposes, and second, it contains "techniques and procedures for law enforcement investigations." 5 U.S.C. § 552(b)(7)(E). As Mr. Viker attests, disclosure of this document "would reveal a large number of law enforcement techniques used by DHS officials when investigating an immigration applicant's background – including a description of database systems and the materials collected by those systems," and would reveal "specific derogatory factors that would negatively impact a USCIS immigration adjudication." Viker Decl. at ¶ 21. Moreover, although not required to establish the applicability of Exemption 7(E) to "techniques and procedures," *see Allard K. Lowenstein Int'l Human Rights Project v. DHS*, 626 F.3d 678, 681 (2d Cir. 2010), USCIS has shown that disclosure of the techniques in this document would risk circumvention of the law by enabling "individuals to tailor their immigration applications and interviews with USCIS officials in such a manner as to conceal information, illicitly gain immigration benefits, and frustrate USCIS's ability to detect and deter immigration fraud and national security concerns." Viker Decl. at ¶ 21; *see, e.g.*, *Am. Immigration Lawyers Ass'n*, 852 F. Supp. 2d at 77; *Techserve All. v. Napolitano*, 803 F. Supp. 2d 16, 29 (D.D.C. 2011) (releasing "documents related to 'requests for evidence' in response to [an immigration] benefits application or petition" would "reveal the selection criteria, fraud indicators, and investigative process that USCIS and other agencies use in fraud investigations during the H–1B visa process," and the release "would potentially enable the circumvention of law and could create national and homeland security problems, which Exemption 7(e) expressly prohibits").

Request to Investigation: The second document, withheld in full pursuant to Exemptions 7(A), 7(C) and 7(E), is a twelve-page law enforcement memorandum and prepared by FDNS "addressed to another federal law enforcement agency for the purpose of requesting that the law enforcement agency undertake an investigation into a specific individual and organization affiliated with that individual for suspected immigration fraud and money laundering." Viker Decl. at ¶ __. The memorandum "indicates that several thousand immigration petitions submitted to USCIS and filed by dozens of petitioners affiliated with the suspect individual and his organization may be involved in a nationwide immigration fraud scheme deliberately designed to circumvent U.S. immigration law," and "specifically asks another federal law enforcement agency to open a criminal investigation into this individual, his organization, and possibly the suspected fraudulent immigration petitions submitted by his affiliates[.]" *Id.* It also includes "specific personally identifiable information pertaining to an individual, including his name, date of birth, social security number, and country of origin." *Id.* The memorandum further provides "a detailed and bullet-pointed list of investigative techniques recommended by FDNS for a criminal investigation," describing "specific targets for the investigation as well as suggestions about law enforcement and other sources that should be utilized during the ensuing investigation." In addition, the memorandum "contains details about derogatory evidence that another federal law enforcement agency obtained regarding the individual and his organization and discloses the manner in which the agency obtained that information." *Id.*

USCIS properly withheld this information pursuant to Exemption 7(A). The document was compiled for a law enforcement purpose, as it was drafted by an FDNS official charged with investigating immigration fraud and recommends that another law enforcement agency initiate a criminal investigation. *See id.* The memorandum contains specific investigative

recommendations, including "specific targets" and "sources that should be utilized," *id.*, such that "disclosure of the withheld records might 'reveal the scope and direction of the investigation and could allow the target to destroy or alter evidence, fabricate fraudulent alibis, and intimidate witnesses,'" *Agrama v. IRS*, No. 17-5256, 2019 WL 2067719, at *2 (D.C. Cir. Apr. 19, 2019) (citation omitted)). USCIS also properly withheld this document pursuant to Exemption 7(C) and 7(E), because it was compiled for law enforcement purposes; contains personally identifiable information of a derogatory nature, such that its disclosure could constitute an unwarranted invasion of personal privacy; and also reveals specific investigative techniques used by DHS officials when investigating an immigration applicant's background. Viker Decl. at ¶¶ 22; *see also Assadi*, 2013 WL 230126, at *6-7; *Techserve*, 803 F. Supp. 2d at 29.

III. IN CAMERA REVIEW IS NOT WARRANTED

Finally, plaintiff's request that the Court conduct an in camera review of these documents is not warranted. Although in camera review "is appropriate when agency affidavits are not sufficiently detailed to permit meaningful assessment of the exemption claims," it is "generally disfavored." *PHE, Inc. v. DOJ*, 983 F.2d 248, 252-53 (D.C. Cir. 1993). Here, the two declarations of Toni Fuentes and accompanying Vaughn indexes, dated March 15, 2019, and May 17, 2019, the two declarations of Jill A. Eggleston, dated March 14, 2019, and May 15, 2019, and the declaration of Elliot B. Viker, dated May 17, 2019, provide sufficient detail for the court to determine that ICE and USCIS logically and plausibly applied these exemptions to the documents at issue. Moreover, "*in camera* review would be of dubious utility under the circumstances," given the specialized nature of the documents and withheld information. *Sorin v. DOJ*, 280 F. Supp. 3d 550, 564 (S.D.N.Y. 2017), *aff'd*, 758 F. App'x 28 (2d Cir. 2018); *see also Nat'l Whistleblower Ctr. v. HHS*, 849 F. Supp. 2d 13, 31 (D.D.C. 2012) ("lacking the knowledge of an [ ] insider, the Court is not in a position to make line-by-line determinations").

CONCLUSION

For the reasons given above, ICE's and USCIS's motion for summary judgment should be granted, and plaintiff's cross-motion should be denied.

Dated: May 17, 2019
New York, New York

Respectfully submitted,

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