

**KNIGHT
FIRST AMENDMENT
INSTITUTE**

at Columbia University

June 28, 2019

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 (the “Knight Institute”) respectfully submits this letter to summarize the parties’ recent summary judgment briefing, request oral argument, and update the Court on the status of the new search that the Department of Homeland Security (“DHS”) agreed to conduct.

SUMMARY JUDGMENT BRIEFING

Per the Court’s order, the parties submitted two rounds of summary judgment briefing addressing the searches conducted by the United States Immigration and Customs Enforcement (“ICE”) and the United States Department of Justice’s Office of Legal Counsel (“OLC”), as well as the withholding of responsive records the United States Department of State (“DOS”), the United States Citizenship and Immigration Services (“USCIS”), and ICE. *See* ECF No. 87.

The first round of summary judgment briefing addressed the adequacy of ICE’s and OLC’s searches, as well as the validity of DOS’s withholding of responsive records. The related filings are:

- Government’s Motion for Partial Summary Judgment and Summary Judgment, ECF No. 89;
- Government’s Memorandum in Support of Motion, ECF No. 90;
 - Declaration of Toni Fuentes (ICE), ECF No. 91;
 - Declaration of Paul P. Colborn (OLC), ECF No. 92;
 - Declaration of Eric F. Stein (DOS), ECF No. 93;
- Knight Institute’s Cross-Motion for Partial Summary Judgment and Summary Judgment, ECF No. 100;

- Knight Institute’s Opposition and Memorandum in Support of Cross-Motion, ECF No. 101;
 - Declaration of Carrie DeCell, ECF No. 102;
- Government’s Reply and Opposition to Cross-Motion, ECF No. 114;
 - Supplemental Declaration of Eric F. Stein (DOS), ECF No. 112;
 - Supplemental Declaration of Toni Fuentes (ICE), ECF No. 113; and
- Knight Institute’s Reply to Cross-Motion, ECF No. 117.

The second round of summary judgment briefing addressed the validity of USCIS’s and ICE’s withholding of responsive records. The related filings are:

- Government’s Motion for Summary Judgment, ECF No. 95;
- Government’s Memorandum in Support of Motion, ECF No. 96;
 - Declaration of Jill A. Eggleston (USCIS), ECF No. 97;
 - 2d Declaration of Toni Fuentes (ICE), ECF No. 98;
- Knight Institute’s Cross-Motion for Summary Judgment, ECF No. 104;
- Knight Institute’s Opposition and Memorandum in Support of Cross-Motion, ECF No. 108;
 - Declaration of Carrie DeCell, ECF No. 109;
- Government’s Reply and Opposition to Cross-Motion, ECF No. 118;
 - Supplemental Declaration of Jill A. Eggleston (USCIS), ECF No. 119;
 - Declaration of Elliot B. Viker (USCIS), ECF No. 120
 - Supplemental Declaration of Toni Fuentes (ICE), ECF No. 121; and
- Knight Institute’s Reply to Cross-Motion, ECF No. 122.

REQUEST FOR ORAL ARGUMENT

Per the Court’s Individual Practices 2(F), the Knight Institute respectfully requests oral argument on both rounds of summary judgment briefing. Defendants’ counsel has indicated that Defendants do not oppose this request.

DHS'S NEW SEARCH

On February 26, 2019, Defendants informed the Court that DHS would voluntarily run a new search for responsive records. *See* ECF No. 88. DHS indicated that it would file a status update with the Court “regarding any proposed future briefing” on April 1, 2019. *Id.* DHS did not, however, file such a status update then, and it has not filed one since.

Despite negotiations between the parties regarding proposed search terms, there remains a lack of clarity about the search DHS is running and what records it has located—if any—are actually responsive to the Request.

* * *

We thank the Court for its attention to this matter.

Respectfully,

/s/ *Adi Kamdar*

Adi Kamdar (*pro hac vice*)
Carrie DeCell (CD-0731)
Jameel Jaffer (JJ-4653)
Alex Abdo (AA-0527)
Knight First Amendment Institute at
Columbia University
475 Riverside Drive, Suite 302
New York, NY 10115
carrie.decell@knightcolumbia.org
(646) 745-8500

Counsel for Plaintiff

/s/ *Megan Graham*

Megan Graham (*pro hac vice*)
Catherine Crump (CC-4067)
Samuelson Law, Technology &
Public Policy Clinic
U.C. Berkeley School of Law
354 Boalt Hall
Berkeley, CA 94720-7200
mgraham@clinical.law.berkeley.edu
(510) 664-4381

Counsel for Plaintiff

cc: Ellen Blain, Esq. (via Email)