

**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

THIRD JOINT STATUS REPORT

I. Introduction

On August 7, 2017, Plaintiff Knight First Amendment Institute at Columbia University (“Knight Institute”) submitted a multi-item request (the “Request”) under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, to Defendants, the U.S. Department of Homeland Security (“DHS”), U.S. Customs and Border Protection (“CBP”), U.S. Immigration and Customs Enforcement (“ICE”), U.S. Citizenship and Immigration Services (“USCIS”), U.S. Department of Justice (“DOJ”),¹ and U.S. Department of State (“DOS”), for records concerning any new policies for vetting individuals seeking to enter or remain in the United States and records concerning the

¹ Specifically, the Knight Institute submitted the Request to the DOJ Office of Public Affairs (“DOJ-OPA”), Office of Information Policy (“DOJ-OIP”), and Office of Legal Counsel (“DOJ-OLC”).

government's understanding of its authority to base immigration decisions on individuals' speech, beliefs, or associations. ECF No. 42-2 at 2–3. After negotiations with counsel for the defendant agencies, the Knight Institute provisionally agreed to narrow the Request. *See* Joint Status Report (“Apr. 9 JSR”), ECF No. 48. The defendant agencies largely completed their productions of responsive records in response to the narrowed request by the fall of 2018, and the parties completed briefing on two cross-motions for partial summary judgment on May 31, 2019. *See* Pl.’s Ltr., ECF No. 123.

On February 25, 2019, before Defendants filed their first motion for summary judgment, DHS determined that it had incorrectly limited the time frame of its search, and it agreed to conduct a new search. The parties have been negotiating in good faith since then regarding the scope of DHS’s new search. The Court held a status conference on July 16, 2019, to address the status of those negotiations. During the status conference, the Court directed the parties to file a joint status report by July 19, 2019, updating the Court on the parties’ anticipated agreement regarding DHS’s new search. The Court further directed the parties to file a second joint status report by August 2, 2019, updating the Court on the results of DHS’s new search. *See* Order (“July 17 Order”), ECF No. 128. This joint status report sets forth the agreed-upon terms and the timeline for DHS’s new search.

II. The Parties’ Agreement Regarding DHS’s New Search

A. Items 2, 3, 4, 6(a) and 6(e) of the Request (“Search 1”)

1. The Knight Institute provisionally agreed to narrow its request for records responsive to Items 2–5 to “final policy memoranda and equivalent records that . . . represent final guidance,” Apr. 9 JSR ¶ 2.b, and to narrow its request for records responsive to Item 6 to “the records sought in Item 6(a), statistical data and reports on the application, waiver, or contemplated

application or waiver of the endorse or espouse and foreign policy . . . ; and Item 6(e), notifications or reports from the Secretary of Homeland Security or Secretary of State . . . , concerning waivers of the endorse or espouse provision pursuant to 8 U.S.C. § 1182(d)(3)(B)(ii),” *id.* ¶ 2.d.

2. Program Office Search. DHS will search email records dating after May 2015 in each of the following program offices: the Office of the General Counsel; the Office of Civil Rights & Civil Liberties; the Office of the Secretary (including the Chief of Staff, Executive Secretary, etc.); and the Office of Strategy, Policy, and Plans. DHS will run two distinct searches using the following two sets of search terms:

Search 1(a): (immigrant OR immigrants OR immigration OR visa OR asylum OR asylee OR exclude OR excludes OR excluding OR exclusion OR deny OR denial OR denials OR refusal OR refusing OR refuse OR refuses OR refused OR removal OR removals OR remove OR removes OR removed OR removing OR removable OR vet OR vetting) AND (“endorse or espouse” OR “endorses or espouses” OR “endorsed or espoused” OR “endorsing or espousing” OR “foreign policy consequences” OR “ideological screening” OR “first amendment” OR “1st amendment” OR “protected speech” OR “political speech” OR “political belief” OR “political beliefs” OR “political association” OR “political associations”).

Search 1(b): “1182(a)(3)(B)(i)(VII)” OR “212(a)(3)(B)(i)(VII)” OR “1182(a)(3)(B)(i)(IV)(bb)” OR “212(a)(3)(B)(i)(IV)(bb)” OR “1182(a)(3)(C)(i)” OR “212(a)(3)(C)(i)” OR “1182(a)(3)(C)(iii)” OR “212(a)(3)(C)(iii)” OR “1225(c)” OR “235(c)” OR “1227(a)(4)(B)” OR “237(a)(4)(B)” OR “1227(a)(4)(C)” OR “237(a)(4)(C)” OR “1158(b)(2)(A)(v)” OR “208(b)(2)(A)(v)”.

The Knight Institute will have an opportunity to request specific records dating after May 11, 2005, and before May 2015, based on information learned from DHS’s production of responsive records from Search 1 of email records dating after May 2015. The parties will include in DHS’s processing schedule a meet-and-confer to address any such requests.

B. Item 1 of the Request (“Search 2”)

3. Item 1 seeks “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 exclude or remove individuals from the United States." Apr. 9 JSR ¶ 1.a. Item 1 is not limited to final policy memoranda and equivalent records.

4. Program Office Search. DHS will search email records dating after May 2015 in each of the following program offices: the Office of the General Counsel; the Office of Civil Rights & Civil Liberties; the Office of the Secretary (including the Chief of Staff, Executive Secretary, etc.); and the Office of Strategy, Policy, and Plans. DHS will run two distinct searches using the following two sets of terms:

Search 2(a): (vetting OR exclude OR excludes OR excluding OR exclusion OR deny OR denies OR denial OR denials OR refusal OR refusing OR refuse OR refuses OR refused OR removal OR removals OR remove OR removes OR removed OR removing OR removable OR "additional scrutiny" OR "heightened scrutiny" OR "national security and public safety information" OR "national security and public-safety risk assessment") AND ("social media" OR ideology OR ideological OR "first amendment" OR "1st amendment" OR "protected speech" OR "political speech" OR "political belief" OR "political beliefs" OR "political association" OR "political associations" OR "civil liberties").

Search 2(b): "extreme vetting" OR "enhanced vetting" OR "visa lifecycle vetting" OR "13769" OR "13,769" OR "Protecting the Nation from Foreign Terrorist Entry into the United States" OR "13780" OR "13,780" OR "9645" OR "9,645" OR "Enhancing Vetting Capabilities and Processes" OR "9723" OR "9,723" OR "Maintaining Enhanced Vetting Capabilities and Processes" OR "Optimizing the Use of Federal Government Information" OR "National Vetting Enterprise" OR "National Vetting Center" OR "Visa Security".

5. IQ Policy Database Search. In April 2019, DHS searched its IQ Policy Database using an earlier set of proposed Search 1 terms, some of which overlap with the Search 2 terms listed above. To avoid duplicating DHS's April search of the IQ Policy Database, DHS will search the IQ Policy Database for records responsive to Item 1 using the following subset of the Search 2 terms ("July 19 Terms"):

"additional scrutiny," "heightened scrutiny," "national security and public safety information," "national security and public-safety risk assessment," "social media," "ideology," "ideological," "civil liberties," "extreme vetting," "enhanced vetting,"

“visa lifecycle vetting,” “13769,” “13,769,” “Protecting the Nation from Foreign Terrorist Entry into the United States,” “13780,” “13,780,” “9645,” “9,645,” “9723,” “9,723,” “Enhancing Vetting Capabilities and Processes,” “Maintaining Enhanced Vetting Capabilities and Processes,” “Optimizing the Use of Federal Government Information,” “National Vetting Enterprise,” “National Vetting Center,” and “Visa Security.”

C. Search Timeline

6. DHS will run the agreed-upon searches in the following order:
 - a. DHS will search the IQ Policy Database using the July 19 Terms.
 - b. DHS will search its program offices in the following order: Search 2(a), Search 2(b), Search 1(b), Search 1(a).
 - c. The parties will be in communication regarding DHS’s progress in conducting these searches, and DHS will report on the results of these searches in the joint status report to be filed by August 2, 2019.

July 19, 2019

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