

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

KNIGHT FIRST AMENDMENT INSTITUTE
AT COLUMBIA UNIVERSITY,

Plaintiff,

v.

U.S. DEPARTMENT OF HOMELAND
SECURITY, et al.

Defendants.

Civil Action No. 1:17-CV-07572-ALC

DECLARATION OF ALEXANDER CHOE

I. INTRODUCTION

I, Alexander Choe, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am the Special Assistant to the Chief of Staff of the Director of the U.S. Immigration and Customs Enforcement (“ICE”). I have held this position since July 2017, and I have been employed in various positions by the United States Department of Homeland Security since May 2010. I make this declaration based on my personal knowledge and/or on information and belief based on information that is available to me in the course of my official duties.

2. On or about November 30, 2017, the ICE Freedom of Information Act Office (“ICE FOIA Office”) emailed me a copy of plaintiff’s FOIA request at issue in this litigation. The ICE FOIA Office did not suggest any particular search terms to employ; as a result, and pursuant to my

standard practice, I reviewed the FOIA request to determine where to search for potentially responsive documents and which search terms to use.

3. The FOIA request stated that the President, on January 27, 2017, and March 6, 2017, issued Executive Order 13,769 and Executive Order 13,780, directing various agencies “to develop a more robust vetting program for aliens seeking entry into the United States.” Dkt. No. 91-1. Plaintiff noted that various provisions of the Immigration and Nationality Act provide grounds for inadmissibility and removal. *See id.* Plaintiff therefore sought:

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 *exclude or remove* individuals from the United States.
2. All memoranda concerning the legal implications of *excluding or removing* individuals from the United States based on their *speech, beliefs, or associations*.
3. All legal or policy memoranda concerning the *endorse or espouse provisions, or the foreign policy provision* as it relates to “*beliefs, statements or associations.*”
4. All records containing policies, procedures, or guidance regarding the *application or waiver* of the *endorse or espouse provisions* or the *foreign policy provision*. Such records would include policies, procedures, or guidance concerning the entry or retrieval of data relevant to the endorse or espouse provisions or the foreign policy provision into or from an electronic or computer database.
5. All Foreign Affairs Manual sections (current and former) relating to the endorse or espouse provisions or the foreign policy provision, as well as records discussing, interpreting, or providing guidance regarding such sections.
6. All records concerning the application, waiver, or contemplated *application or waiver* of the *endorse or espouse provisions* to

exclude or remove individuals from the United States, or the application, waiver, or contemplated application or waiver of the *foreign policy provision* to exclude or remove individuals from the United States based on “*beliefs, statements or associations,*” including:

- a. Statistical data or statistical reports regarding such application, waiver, or contemplated application or waiver;
- b. Records 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;
- c. Records concerning any determination made by the Attorney General pursuant to 8 U.S.C. § 1225(c) regarding the admissibility of arriving aliens under the endorse or espouse provisions or the foreign policy provision;
- d. Department of Homeland Security and Department of Justice records concerning consultation between the Secretary of State, the Secretary of Homeland Security, and/or the Attorney General (or their designees) relating to any waiver or contemplated waiver of the endorse or espouse provisions pursuant to 8 U.S.C. §§ 1158(b)(2)(v), 1182(d)(3)(A), or 1182(d)(3)(B)(i); and
- e. Notifications or reports from the Secretary of Homeland Security or the Secretary of State concerning waivers of the endorse or espouse provision pursuant to 8 U.S.C. §1182(d)(3)(B)(ii).

.....

Dkt. No. 91-1 (emphases added).

4. After reviewing the request, I first determined that I should search the Director's emails for responsive records, as well as the Director's electronic files (I have access to both sets of documents).

5. I further determined that the following terms or phrases were reasonably calculated to retrieve responsive documents: "Exclude," "Remove," "Speech," "Beliefs," "Associations," "Endorse Provision," "Espouse Provision," "Foreign Policy Provision," "Waiver," and "Application."

6. I concluded that those terms were reasonably calculated to retrieve responsive documents because the FOIA request sought: (a) communications from the White House "regarding consideration of individuals' *speech, beliefs, or associations* in connection with immigration determinations, including decisions to *exclude or remove* individuals from the United States"; (b) "memoranda concerning the legal implications of *excluding or removing* individuals"; (c) "memoranda concerning the *endorse or espouse provisions, or the foreign policy provision*"; (d) records regarding "the application or waiver of the *endorse or espouse provisions* or the *foreign policy provision*"; and (e) records concerning the *application or waiver* of the *endorse or espouse provisions* to exclude or remove individuals from the United States, or the application, waiver, or contemplated application or waiver of the *foreign policy provision*["].” *Id.* (emphases added). Thus, in request numbers 3, 4 and 6, the clauses "foreign policy provision," or "endorse . . . provision," or "espouse provision" appear. In addition, those phrases are also included in the provisions of the Immigration and Nationality Act quoted by plaintiff in the FOIA request: 8 U.S.C. § 1182(a)(3)(i)(VII) (providing that an individual who "endorses or espouses . . . terrorist activity" is inadmissible) and 8 U.S.C. § 1182(a)(3)(C)(iii) (providing that an "alien whose entry .

. . would have potentially serious adverse foreign policy consequences” is admissible”). Dkt. No. 91-1 at 3 n.2. Further, in request numbers 4 and 6, plaintiff sought information concerning the “application” and “waiver” of those provisions; in request numbers 1, 2, 3 and 6, plaintiff sought documents concerning “speech,” “beliefs,” or “associations”; and in request numbers 1, 2 and 6, plaintiff sought documents concerning decisions to “exclude” or “remove” individuals. I therefore designed a search reasonably calculated to return documents containing each of those terms or phrases. (I understood that ICE would not have documents responsive to request number 5, because ICE does not create Foreign Affairs Manuals.)

7. In the Director’s Outlook email system, I typed each of those words or phrases surrounded by quotation marks. Specifically, for those terms with one word, such as “exclude,” I typed “exclude” in the Outlook Search tool, with quotation marks around the word. I understood that such a search would retrieve any document containing the word exclude (or versions of that word, such as “excludes” or “excluded”).

8. For those terms with more one word, such as “endorse provision,” I typed the phrase in the Outlook Search tool, with quotation marks around the entire phrase. I understood that such a search would retrieve any document containing that exact phrase; i.e., the words “endorse” and “provision” next to each other in that order.

9. In the Director’s computer system, I typed those same words or phrases into the Search tool in the exact same way; i.e., with quotation marks around the words and also the phrases.

10. For those terms with one word, I understood that such a search would retrieve any document containing that word (or versions of the word).

11. For those terms with more than one word, I understood that such a search would retrieve any document containing that exact phrase; i.e., the words “endorse” and “provision” right next to each other in that order.

12. I found documents responsive to those searches, and provided those documents to ICE FOIA on November 30, 2017.

13. As I do with every FOIA search that I am asked to perform, I conducted those searches in a good faith effort to retrieve responsive documents. Indeed, I often contact ICE’s Information Technology Department to ask for additional suggestions for searching to ensure that I conduct as good faith and as reasonable a search as possible.

I declare under penalty of perjury that the forgoing is true and correct. Signed this 7 day of August, 2019, Washington, D.C.



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