

**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 ELIMAN JUSSARA SOLORZANO

I. INTRODUCTION

I, Eliman Jussara Solorzano, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am the Special Assistant to the Chief of Staff in the Enforcement and Removal Operations (“ERO”) component of the U.S. Immigration and Customs Enforcement (“ICE”). I have held this position since July 2015, and I have been employed by ICE since November 2010. I make this declaration based on personal knowledge and/or on information and belief based on information available to me in the course of my professional duties.

2. On or about November 9, 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 Outlook files of the Deputy Executive Associate Director for responsive records (I have access to his Outlook files). I also determined that I should search the Deputy Executive Associate Director’s personal

computer for responsive records, as a result of which search I determined that he does not keep any records on his computer.

5. I further determined that the following terms or phrases were reasonably calculated to retrieve responsive documents: “removal policies” (each term of which I also searched for separately, as explained below), “Removal terrorist” (each term of which I also searched for separately), “Executive Order” (each term of which I also searched for separately), “13780,” “WH.gov,” “Removal speech” (each term of which I also searched for separately), “Removal belief” (each term of which I also searched for separately), and “Removal association” (each term of which I also searched for separately).

6. I concluded that those terms were reasonably calculated to retrieve responsive documents because the FOIA request sought information concerning two Executive Orders, and specifically requested: (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) “legal implications of excluding or removing individuals based on their *speech, beliefs, or associations*”; (c) “legal or policy memoranda” concerning “*beliefs, statements or associations*”; (d) records and policy memoranda concerning “the application or waiver of the endorse or espouse provisions or the foreign policy provision”; and (e) records concerning removing individuals based on “*beliefs, statements or associations*[.]” *Id.* (emphases added).

7. Thus, in response to request number 1, I included the email address “WH.gov,” indicating correspondence with the White House, because plaintiffs sought such communications. In response to request numbers 1, 2, 3 and 6, I included terms with “speech,” “belief,” or

“association,” each of which connected separately to the term “removal,” because speech, belief and association appear some or all of those requests, and because plaintiff seeks information regarding the removal of individuals based on speech, belief or association. In response to request number 4, I included the term “policies” because that request includes the term policies and sought the agency’s implementation of Executive Orders. In response to all requests, I included the term “terrorist” connected to the term “removal,” because I understood that the policies sought by plaintiff concern provisions of the Immigration and Nationality Act, including the provisions quoted by plaintiff: 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. § 1225(c), providing for removal of various classes of aliens[.]” Dkt. No. 91-1 at 3 n.2. Finally, I included the terms “Executive Order” and “13780” because plaintiffs seek polices promulgated as a result of two Executive Orders, including Executive Order 13,780.

8. In the Outlook email system, I typed each of those words or phrases surrounded by quotation marks. Specifically, for those terms with one word, such as “13780,” I typed “13780” in the Outlook Search tool, with quotation marks around those numbers. I understood that such a search would retrieve any document containing the term 13780 (or any word encompassing those numbers).

9. For those terms with more than one word, such as “endorse provision,” I conducted two separate searches. First, typed the phrase into 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 “removal” and “policies” next to each other in that order. Second, I typed each word separately, with quotations around each word and a space between them (i.e.,

“removal” “policies”). I understood that such a search would retrieve any document containing both of those words, but in any order and in any place within the document (i.e., “removal” could appear on page 1 of a document and “policies” on page 2 of the same document; similarly, the search “removal” “speech” would retrieve documents with both words in the document but not necessarily connected). In addition, each term, when typed separately per the second search, would retrieve documents with any variation of that root term (i.e., “speech” would return “speeches,” “belief” would return “beliefs,” etc.).

10. I found documents responsive to the searches, and provided those documents to the ICE FOIA Office on November 14, 2017.

11. I conducted these searches in a good faith effort to retrieve responsive documents. I declare under penalty of perjury that the forgoing is true and correct. Signed this 7th day of August, 2019, Washington, D.C.



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