

**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

JOINT STATUS REPORT

1. Pursuant to the Court's order, *see* ECF No. 175, the Knight First Amendment Institute at Columbia University (the "Knight Institute" or "Institute") and Defendants 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"), and U.S. Department of State ("State"), respectfully submit this Joint Status Report to update the Court regarding the progress of Defendants' remaining searches for and productions of records responsive to the Institute's Freedom of Information Act ("FOIA") request (the "Request"), *see* Am. Compl. Ex. B 3-4, ECF No. 42-2, and ICE, UCSIS, and State's appeal of the Court's Opinions and Orders entered on September 13 and 23, 2019, and September 14, 2020, *see* ECF No. 166.

Non-ICE Productions

2. The parties provided comprehensive updates as to the status of the non-ICE searches in the February 9, 2021 Joint Status Report (“Feb. 9 JSR”). *See* ECF No. 172 ¶¶ 2–3.

ICE’s Productions for Components Not Subject to the Motion for Clarification and Partial Reconsideration

3. The parties described ICE’s processing of records for components not subject to the Defendants’ motion for clarification and partial reconsideration in detail in the February 9 JSR. *See* Feb. 9 JSR ¶¶ 4–8.

4. As noted in the February 9 JSR, ICE completed its production of the pages that it had previously sent for consult to DHS’s Office of the Inspector General (“DHS OIG”), USCIS, CBP, and State. *See* Feb. 9 JSR ¶ 8. In this production, DHS OIG released 62 pages in full; USCIS released 8 pages in full and withheld 20 pages in part, applying FOIA Exemptions (b)(5), (b)(6), and (b)(7)(C); CBP withheld 7 pages in part, applying FOIA Exemptions (b)(5) and (b)(6); and State released 5 pages in full and withheld 5 pages in part, applying FOIA Exemptions (b)(6), (b)(7)(C), and (b)(7)(E).

5. On February 10, 2021, DHS completed processing of 247 pages of responsive records previously referred to the DHS Privacy Office. Of these pages, DHS determined that 91 pages must be withheld in full, pursuant to FOIA Exemption (b)(5), and that 68 pages could be released in part and withheld in part, pursuant to FOIA Exemptions (b)(5), (b)(6), (b)(7)(C), and (b)(7)(E).

6. ICE, DHS, USCIS, CBP, and State have completed their processing and production of records sent for consult or referral by ICE that were responsive to Item 1 of the Request and not subject to the Defendants’ motion for clarification and partial reconsideration.

ICE's New Searches

7. Pursuant to the Court's September 13, 2020 Opinion and Order clarifying the Court's September 13 and 23, 2019 Orders and denying the Defendants' motion for partial reconsideration, ECF No. 158, ICE conducted new searches within the Immigration Law and Practice Division ("ILPD"), National Security Law Section ("NSLS"), Field Legal Operations ("FLO"), Human Rights Violators Law Division ("HRVLD") and Office of the Executive Deputy Principal Legal Advisor ("EDPLA") using search terms previously agreed upon by the parties, and re-tasked the Enforcement and Removal Operations Law Division ("EROLD") to conduct a search using the same agreed-upon search terms. *See* Dec. 11 JSR ¶ 8.

8. As detailed in the December 11 JSR, ICE completed those searches and informed the Knight Institute of the initial results, indicating that the search had returned at least 263,857 potentially responsive documents (not pages) after de-duplication. *See* Dec. 11 JSR ¶ 9. As noted in the February 9 JSR, the Knight Institute proposed measures to provisionally narrow the parameters of ICE's new searches, which ICE agreed to apply. *See* Feb. 9 JSR ¶ 11–12.

9. On February 19, 2021, ICE reported that its revised search returned 128,164 documents. ICE indicated that it would take the agency years to review and process such a volume of records. Subsequently, the Knight Institute and ICE entered into negotiations to provisionally refine and narrow the search parameters in order to reduce the set of potentially responsive records; the parties narrowed the potentially responsive documents by custodian and year; and ICE has agreed to process and review 650 pages, produce to the Institute any responsive, non-exempt material, and propose criteria based on that review to narrow the universe of potentially responsive documents. ICE will use best efforts to do so by June 4, and in any event will complete the production and propose narrowing criteria by June 10, 2021.

ICE, USCIS, and State’s Appeal

10. As detailed in the December 11th JSR, ICE, USCIS, and State filed a notice of appeal on November 10, 2020 of the Opinions and Orders entered by the Court on September 13, 2019, September 23, 2019, and September 14, 2020. Dec. 11 JSR ¶¶ 11–12. The Court stayed production of the records subject to appeal pending disposition of the appeal. *Id.* ¶ 13.

11. On February 23, 2021, ICE, USCIS, and State filed their opening brief; the Knight Institute’s opposition brief is due by May 5, 2021.

12. On March 24, 2021, after a further review of 11 records at issue in its appeal, State produced additional material from those documents to the Knight Institute.

Proposed Next Step

13. The parties have agreed to submit a joint status report by June 14, 2021, providing the Court with further updates regarding the status of ICE’s new searches and productions of responsive records.

Dated: April 14, 2021

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