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 CATRINA PAVLIK-KEENAN IN SUPPORT OF U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT AGENCY'S REQUEST FOR ORDER SETTING PROCESSING RATES

I. INTRODUCTION

I, Catrina Pavlik-Keenan, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am the Director and Freedom of Information Act ("FOIA") Officer of the Freedom of Information Act Office (the "ICE FOIA Office") at U.S. Immigration and Customs Enforcement ("ICE"). I have been the Director of the ICE FOIA Office since that office was created on December 18, 2006. Prior to holding this position, I worked for approximately four years in the FOIA office at the Transportation Security Administration - first as a Supervisory FOIA Analyst, then as Deputy Director for two years, and finally as Director. In total, I have 23 years of experience processing FOIA requests.

2. The ICE FOIA Office is responsible for processing and responding to all FOIA, 5 U.S.C. § 552, and Privacy Act ("PA"), 5 U.S.C. § 552a, requests received at ICE. The ICE FOIA Office mailing address is 500 12th Street, S.W., STOP 5900, Washington, D.C. 20536-5009.

3. As the Director and FOIA Officer, my official duties and responsibilities include the general management, oversight, and supervision of the ICE FOIA Office. I manage and supervise a staff of ICE FOIA Paralegal Specialists who report to me regarding the processing of FOIA and PA requests received by ICE. In connection with my official duties and responsibilities, I am familiar with ICE's procedures for responding to requests for information pursuant to the FOIA and the PA. In that respect, I am familiar with ICE's processing of the FOIA request that the Knight First Amendment Institute submitted to ICE that is the subject of this litigation.

4. I make this declaration in support of ICE's Request for Order Setting Processing Rates in the above-captioned action. The statements contained in this declaration are based upon my personal knowledge, my review of documents kept by ICE in the ordinary course of business, and information provided to me by other ICE employees in the course of my official duties.

II. RECEIPT AND PROCESSING OF PLAINTIFF'S AUGUST 7, 2017 FOIA REQUEST

5. Plaintiff submitted a FOIA request to ICE on August 7, 2017, seeking, inter alia, various records related to any new vetting policies, and about the government's understanding of its authority to base immigration and/or removal decisions on individuals' speech, beliefs, or associations. The time frame of the request was May 11, 2005, to the present for 5 of the 6 subparts, and January 19, 2017, to present for the remaining subpart. ICE assigned this Case No. 2017-ICFO-43023. **A true and complete copy of Plaintiff's FOIA request is attached to this declaration as Exhibit 1.**

6. In a letter to Plaintiff dated August 23, 2017, the ICE FOIA Office acknowledged receipt of the FOIA request and assigned it ICE FOIA case number 2017-ICFO-43023. In addition, ICE granted Plaintiff's request for fee waiver but denied Plaintiff's request for expedited

processing. **A true and complete copy of August 23, 2017 acknowledgment letter is attached to this declaration as Exhibit 2.**

7. In a letter dated August 31, 2017, which ICE received on September 7, 2017, Plaintiff appealed the ICE FOIA Office's denial of Plaintiff's request for expedited processing. **A true and complete copy of the August 31, 2017 letter is attached to this declaration as Exhibit 3.**

8. In a letter dated September 26, 2017, the ICE Office of the Principal Legal Advisor (OPLA) acknowledged receipt of the Plaintiff's appeal of ICE FOIA case number 2017-ICFO-43023 and assigned the appeal case number 2017-ICAP-00549. OPLA granted Plaintiff's request for expedited processing and then remanded the appeal back to the ICE FOIA Office to have ICE FOIA case number 2017-ICFO-43023 processed accordingly. **A true and complete copy of the September 26, 2017 letter is attached to this declaration as Exhibit 4.**

9. In a letter dated September 28, 2017, the ICE FOIA Office responded to Plaintiff's August 7, 2017 FOIA request with responsive records from OPLA and the ICE Office of Policy. The ICE FOIA Office produced 1,666 pages with 1,653 of the pages withheld in full pursuant to FOIA Exemptions 5, 6, 7(C), and 7(E). **A true and complete copy of the September 28, 2017 is attached to this declaration as Exhibit 5.**

10. Without administratively challenging ICE's FOIA response, on October 4, 2017, Plaintiff filed a Complaint in the United States District Court for the Southern District of New York for injunctive and other appropriate relief. Plaintiff alleged that ICE and other agencies failed to release records in response to its FOIA request. As a result of the intervening litigation, the ICE FOIA Office administratively closed Plaintiff's August 7, 2017 FOIA request in accordance with the ICE FOIA Office's standard operating procedures.

11. On December 22, 2017, Plaintiff filed an appeal of its August 7, 2017 FOIA request. On January 5, 2018, Plaintiff amended its appeal. **A true and complete copy of the December 22, 2017 and January 5, 2018 letters are attached to this declaration as Exhibit 6.**

12. On January 11, 2018, Plaintiff agreed to dismiss ICE from this action. As a result, ICE continued to process Plaintiff's appeal of its August 7, 2017 FOIA request.

13. In a letter dated December 27, 2017, OPLA acknowledged receipt of the Plaintiff's appeal of ICE FOIA case number 2017-ICFO-43023 and assigned the appeal case number 2018-ICAP-00118. **A true and complete copy of the December 27, 2017 letter is attached to this declaration as Exhibit 7.**

14. In a letter dated February 6, 2018, OPLA responded to Plaintiff's appeal of 2017-ICFO-43023. OPLA affirmed the FOIA exemptions applied by the ICE FOIA Office in its September 28, 2017 letter. However, OPLA remanded the appeal back to the ICE FOIA Office for processing and for additional searches to be completed. **A true and complete copy of the February 6, 2018 letter is attached to this declaration as Exhibit 8.**

15. In a letter dated February 13, 2018, the ICE FOIA Office informed Plaintiff that approximately 14,000 potentially responsive pages were found in response to the FOIA request. The ICE FOIA Office also informed Plaintiff that due to the high volume of records, it would review and process a minimum of 500 pages per month in order to start rolling productions to Plaintiffs. **A true and complete copy of the February 13, 2018 letter is attached to this declaration as Exhibit 9.**

16. In a letter dated March 7, 2018, the ICE FOIA Office released its first production to Plaintiff. 560 pages were reviewed and processed, which resulted 463 responsive pages being

released to Plaintiff. **A true and complete copy of the March 7, 2018 letter is attached to this declaration as Exhibit 10.**

III. THE ICE FOIA OFFICE'S RESOURCE CAPACITY TO PROCESS RECORDS FOR FOIA LITIGATIONS

17. The ICE FOIA Office has an increasingly heavy workload. Accordingly, ICE FOIA has adopted the court-sanctioned practice of generally handling backlogged requests on a "first-in, first-out basis." The ICE FOIA Office receives requests for ICE records directly from myriad requesters including, but not limited to, individuals, media outlets, nonprofit organizations, and researchers ("direct FOIA requests"). The ICE FOIA Office also receives a high volume of FOIA requests referred to ICE by U.S. Citizenship and Immigration Services (USCIS) FOIA Office. The ICE FOIA Office is responsible for processing these referred requests, which typically consist of ICE documents from an individual's Alien File (A- file), and then responding directly to the requester.

18. The ICE FOIA Office tracks all of the requests it receives, both directly and through referral, through a tracking program termed "FOIAXpress."

19. By January 31, 2018, over the first four months of year Fiscal Year (FY) 2018, ICE had received 54,651 new FOIA requests, and also had a backlog of approximately 27,024 FOIA requests (meaning that the requests were pending for more than 20 business days). These numbers represent a substantial increase in the number of FOIA requests received by ICE in previous years.

20. In FY 2015, ICE FOIA received 44,748 FOIA requests, and carried over into FY 2016 a backlog of approximately 841 FOIA requests. In FY 2016, ICE FOIA received 63,385 FOIA requests, and carried over into FY 2017 a backlog of approximately 621 FOIA requests. In FY 2017, ICE FOIA received 47,839 FOIA requests, and carried over into FY 2018 a backlog of approximately 535 FOIA requests. Accordingly, as of January 2018, ICE has 55,186 FOIA

requests (54,651 new requests plus a backlog of 535 old requests). ICE, therefore, has received approximately 10,000 more FOIA requests in the first four months of FY 2018 than it received in the entire FY 2015.

21. The dramatic increase in the ICE FOIA Office's workload over the course of three years is mainly due to an increase in the number of referrals received from USCIS. Prior to FY 2012, USCIS had an agreement with ICE, whereby USCIS agreed to process certain types of non-investigatory ICE records located within an A-File pursuant to a FOIA request for A-File records. During the course of FY 2012, that agreement was changed, and USCIS began referring ICE records contained in the A-File to ICE for processing and direct response to the requestor.

22. In addition to the increase in USCIS referrals of documents contained in A-Files, ICE has also experienced an increase in the number and complexity of FOIA requests, such as Plaintiffs' request, which seek documents other than those typically found in an A-File. These FOIA requests take considerably longer to process due to the extensive search that is usually required and the intricacies of the documents or data produced. In FY 2017, one FOIA requestor alone - a data clearing house - filed more than 270 FOIA requests seeking extensive data extracts. As of January 31, 2018, the ICE FOIA Office has received 620 similar FOIA requests from the same requestor in FY 2018 alone, 388 of which remain open.

23. A consequence of the increasing complexity and volume of ICE's FOIA workload is that more of those FOIA requests become the subject of litigation in U.S. District Court. The ICE FOIA litigation processing unit consists of three individuals, all three of whom are occasionally required to assist other units within ICE FOIA on the processing of incoming FOIA requests, congressional inquiries and other projects at any given time. Each team member can process on average 100-300 pages per day, depending on the complexity of the documents.

24. Since January 31, 2018, the ICE FOIA litigation processing unit has been working on 54 active FOIA litigations. The ICE FOIA Office is currently processing documents for rolling production in 17 of those cases with an additional 3 cases that are scheduled to be added shortly. The current total average monthly litigation production page count is between 9,000 to 10,500 pages per month. The additional 3 cases are expected to contribute a combined total of 2,500 pages per month. This will put the total workload for litigation unit in ICE FOIA at reviewing and processing between 10,500 to 13,000 per month.

25. In order to meet its obligations for all cases in litigation with the resources that the office currently has, the ICE FOIA Office typically cannot process more than 500 pages per month for each case, including the case at issue here.

26. If the Court were to order the ICE FOIA Office to process 3000 pages per month, as I understand Plaintiffs seek, then this matter would represent approximately one-third of the entire FOIA litigation processing review for the ICE FOIA Office.

IV. ICE FOIA'S PROPOSED PRODUCTION SCHEDULE

27. In negotiating with Plaintiff, the ICE FOIA Office offered to produce 500 pages per month on a rolling basis. In an effort to try and reach an agreement on this case, the ICE FOIA Office offered to reallocate resources and shift workload to allow for 750 pages per month on a rolling basis, starting with the third production on May 7, 2018, and subsequent productions following on the 7th of each month thereafter. Plaintiffs rejected that proposal. In a further effort to reach a compromise, the ICE FOIA Office all offered to prioritize processing by date range as well as origin of the document (*i.e.*, the ICE component housing the potentially responsive document), if Plaintiffs would agree to a processing rate. Unfortunately, Plaintiffs rejected that offer as well, and the parties have not reached an agreement with respect to a production schedule.

V. JURAT CLAUSE

I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge and belief. Signed this 20th day of April, 2018.

Catrina Pavlik-Keenan, FOIA Officer
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U.S. Immigration and Customs Enforcement
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