KNIGHT
FIRST AMENDMENT
INSTITUTE
at Columbia University

November 9, 2018

Via ECF and Email

The Honorable Andrew L. Carter, Jr.
United States District Court
Southern District of New York
40 Foley Square, Room 435
New York, NY 10007

Re: ***Knight First Amendment Institute v. U.S. Department of Homeland Security, et al.,*** **Case No. 17-CV-7572 (ALC)**

Dear Judge Carter:

The Knight First Amendment Institute at Columbia University ("Knight Institute" or "Institute") respectfully submits this letter to the Court to request a pre-motion conference and present the parties' proposed schedule for partial summary judgment briefing in the above-referenced matter. The Freedom of Information Act ("FOIA") request underlying this action ("Request"), ECF No. 42-2, seeks records necessary to inform the public debate surrounding significant developments in the Trump Administration's "Extreme Vetting" program. With one exception discussed below, the defendant government agencies ("Defendants") have provided what they describe as final productions of responsive records and, in recent weeks, have begun to provide draft search descriptions and draft *Vaughn* indices. *See Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). The Knight Institute expects to challenge the adequacy of some Defendants' searches for responsive records and the legality of some Defendants' withholdings of responsive records.

BACKGROUND

The Knight Institute submitted the Request to the United States Department of Homeland Security ("DHS"), United States Customs and Border Protection ("CBP"), United States Immigration and Customs Enforcement ("ICE"), United States Citizenship and Immigration Services ("USCIS"), United States Department of Justice ("DOJ"),[1] and United States Department of State ("DOS") on August 7, 2017.

[1] The Request was sent to the following DOJ components: the Office of Information Policy ("DOJ-OIP"), the Office of Public Affairs ("DOJ-OPA"), and the Office of Legal Counsel ("DOJ-OLC"). DOJ-OIP processed the request on behalf of DOJ-OPA.

In mid-August 2018, the Knight Institute requested that Defendants provide draft search descriptions and draft *Vaughn* indices in an effort to narrow the scope of any challenges to Defendants' final responses to the Request. Since the Institute's October 5, 2018 status update to the Court, ECF No. 78, most Defendants have produced draft search descriptions and draft *Vaughn* indices:

- **DHS:** DHS produced a draft search description and draft *Vaughn* index on October 30, 2018.
- **CBP:** CBP produced a draft search description on October 5, 2018. No *Vaughn* index was requested. On November 9, 2018, CBP agreed to conduct a new search based on search terms to be proposed by the Knight Institute, and to complete the new search within two weeks of an agreement on those terms.
- **ICE:** ICE produced a draft search description on October 12, 2018. ICE has agreed to produce a draft *Vaughn* index by December 4, 2018.
- **USCIS:** USCIS produced a draft search description on October 19, 2018. USCIS proposed conducting a re-review of the 339 pages that it had withheld in part or in full before producing a draft *Vaughn* index addressing any remaining withholdings.[2] The parties negotiated in good faith but failed to reach an agreement on the draft *Vaughn* index. In the course of those negotiations, however, the Knight Institute agreed not to challenge the adequacy of USCIS's search, withholdings under FOIA Exemption 6, or withholdings under FOIA Exemption 7(C) with the exception of one record.
- **DOJ:**
  - **DOJ-OIP:** DOJ-OIP produced a draft search description on October 5, 2018. No draft *Vaughn* index was requested.
  - **DOJ-OLC:** DOJ-OLC produced a draft search description and draft *Vaughn* index on November 2, 2018.
- **DOS:** DOS produced a draft search description and draft *Vaughn* index on November 7, 2018.

The Knight Institute has made good faith efforts to narrow the scope of its challenges to Defendants' responses to the Request, but issues regarding certain Defendants' searches and certain Defendants' withholdings remain.

[2] The Knight Institute's October 5, 2018 status update to the Court mistakenly stated that USCIS had withheld 338 pages in part or in full; the correct total is 339 pages.

PROPOSED BRIEFING SCHEDULE

The parties have conferred and jointly propose the following briefing schedule for partial summary judgment:

- By **January 15, 2019**, Defendants shall serve their motion for partial summary judgment;
- By **February 14, 2019**, the Knight Institute shall serve its cross-motion for partial summary judgment and opposition to Defendants' motion;
- By **March 18, 2019**, Defendants shall serve their reply to the Knight Institute's opposition and their opposition to the Knight Institute's cross-motion; and
- By **April 1, 2019**, the Knight Institute shall serve its reply to Defendants' opposition.

In an effort to resolve this matter as efficiently as possible, the Knight Institute expects to address all challenges to the adequacy of the agencies' searches in this round of briefing, along with challenges to withholdings only by those agencies whose searches it does *not* challenge. Specifically, the Knight Institute expects to challenge the adequacy of searches conducted by DHS, ICE, and DOJ-OLC, as well as withholdings by USCIS and DOS. The Institute anticipates a single, subsequent round of summary judgment briefing addressing any remaining challenges to Defendants' withholdings, with a proposed schedule forthcoming.

We thank the Court for its attention to this matter.

Respectfully,

/s/ Megan Graham

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