UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA UNIVERSITY,	)	
Plaintiff,	)	
v.	)	**No. 1:17-cv-00548-TSC**
DEPARTMENT OF HOMELAND SECURITY, *et al.,*	)	
Defendants.	)	

ELEVENTH JOINT STATUS REPORT

The following events have taken place in this case since the filing on December 10, 2018, of the Tenth Joint Status Report, ECF No. 34:

1. Defendant U.S. Customs and Border Protection (CBP) took the following actions on December 21, 2018, with respect to the 106 pages processed by CBP in December 2018 that were potentially responsive to Items 4 or 5 of the request of plaintiff Knight First Amendment Institute at Columbia University: produced 77 pages with redactions pursuant to FOIA Exemptions 6, 7(C) and/or 7(E); withheld two pages in full pursuant to FOIA Exemption 3; and determined that 27 pages were not responsive to the request.

2. The appropriations act that had funded CBP and defendants Department of Homeland Security (DHS) and U.S. Immigrations and Customs Enforcement (ICE) expired at the end of the day on December 21, 2018.

3. DHS, CBP, and ICE moved for a stay of all proceedings in this case on January 21, 2019, in light of the lapse in appropriations. Granting their motion by minute order dated January 22, 2019, the Court stayed all proceedings in this case until appropriations had been

restored; extended "all current deadlines in this case . . . commensurate with the duration of the lapse in appropriations"; and directed DHS, CBP, and ICE to "file a notice advising the Court within 14 days after appropriations are restored."

4. Congress enacted the Further Additional Continuing Appropriations Act, 2019, H.J. Res. 28, on January 25, 2019. Ending a lapse in appropriations that had lasted for 35 days, the Act restored appropriations to DHS, CBP, and ICE through February 15, 2019. *See* Act § 101(1).

5. DHS, CBP, and ICE advised the Court of the restoration of appropriations by notice dated January 30, 2019, ECF No. 37, and advised the Court by the same notice that the extension by 35 days of "all current deadlines in this case" meant that DHS' next production of records, which otherwise would have been due on December 31, 2018, was now due on February 4, 2019; that the date by which DHS was required to complete its processing of records responsive to Items 1, 4, 5, 6, and 7 of the request, which otherwise would have been February 1, 2019, was now March 8, 2019; that the date by which CBP and ICE were required to complete their processing of the records referred to them by DHS during the period September – November 2018, which otherwise would have been February 8, 2019, was now March 15, 2019; that the eleventh joint status report, which otherwise would have been due on February 15, 2019, was now due on March 22, 2019; that the parties had discussed these revised deadlines by exchange of emails; and that plaintiff had advised defendants of its concurrence in the revised deadlines by email dated January 30, 2019.

6. The 36 pages referred to ICE by DHS during the period September – November 2018, were produced to plaintiff by ICE on February 6, 2019, with redactions pursuant to FOIA Exemption 7(E).

7. Plaintiff inquired by email dated February 11, 2019, about "the status of the DHS production due by February 4, which we have not yet received."

8. DHS advised plaintiff by email of its undersigned counsel dated February 12, 2019, that it did not make a production on February 4, 2019. It further advised plaintiff that the actions it had taken on November 30, 2018, with respect to the pages it had processed in November 2018, *see* ECF No. 34 at 2, marked the completion of its processing of records in this case, except records of the DHS Office for Civil Rights and Civil Liberties (CRCL) responsive to Item 5 of the request; that its search for those records had not yet been completed; and that it continued to anticipate completing its processing of those records by March 8, 2019, the deadline for doing so. *See* ECF No. 37 at 1.

CBP advised plaintiff by the same email that the actions it had taken on December 21, 2018, with respect to the pages potentially responsive to Items 4 or 5 of the request marked the completion of its processing of records in this case, except its processing of records marked for referral by DHS during the period September – November 2018.

9. Plaintiff requested clarification of the above email by email dated February 12, 2019. Responding by email of its undersigned counsel dated February 13, 2019, DHS advised plaintiff that all remaining records of DHS responsive to Items 1, 4, 6, and 7 of the request were produced to plaintiff by letter of Bradley E. White of DHS dated November 30, 2018, or were addressed in that letter; that the sole records of DHS that still needed to be processed in this case, other than the records that DHS had referred to CBP, were the CRCL records responsive to Item 5 of the request; and that DHS continued to anticipate that it would be able to finish processing the CRCL records by March 8, 2019.

10. DHS advised plaintiff by email of its undersigned counsel dated March 8, 2019, that DHS would not be making a production that day, in part because the DHS Privacy Office was continuing to have difficulties loading the CRCL records into its processing system, and that plaintiff would be kept posted.

11. CBP took the following action on March 15, 2019, with respect to the 679 pages of records referred to it by DHS during the period September – November 2018: produced 282 pages with redactions pursuant to FOIA Exemptions 5, 6, 7(C), and/or 7(E); withheld 311 pages in full pursuant to FOIA Exemptions 5, 6, 7(C), and/or 7(E); and advised plaintiff that 86 pages remained to be processed because DHS did not provide CBP with information necessary for their identification until March 14, 2019.

12. Plaintiff asked by email dated March 20, 2019, how soon it could expect to receive the 86 pages referred to above and whether CBP's production of those pages would fulfill DHS' production obligation in this case. CBP advised plaintiff by email of its undersigned counsel dated March 20 that it was working to produce the 86 pages "as soon as possible, hopefully by Friday" and that the 86 pages were the last material that CBP needed to process in the case.

13. Seeking clarification by email dated March 20, plaintiff asked whether the 86 pages "contained the DHS CRCL documents we expected to receive by March 8 . . . [s]uch that they [would] satisfy DHS's remaining production obligations."

14. Responding by email of its undersigned counsel dated March 20, DHS advised plaintiff that "[t]he material that DHS referred to CBP did not include any of the CRCL records." The DHS Privacy Office (PRIV) advised plaintiff by the same email that "the CRCL Compliance Branch has a demonstration scheduled for tomorrow afternoon at which the contractor supporting the Branch's complaints database will show the Branch's personnel how to download

all at once the records responsive to Item 5" and that "PRIV is hopeful that the Branch's personnel will be able run the program/script after the demonstration takes place and thereby extract all of the records responsive to Item 5 that will need to be processed."

15. Plaintiff advised DHS of the following by email dated March 21, 2019: "Following today's demonstration, we would expect DHS to be in a position to provide a date by which they will complete the CRCL production, and we would like to include that date in the JSR [joint status report] to be filed tomorrow." Responding by email of its undersigned counsel dated March 22, 2019, DHS said that it was "not in a position to provide a date today by which it will complete the CRCL production." Explaining why, it said:

> A demonstration was conducted for CRCL yesterday of a new function being developed to specifically assist with extracting complaint files from their database. The new function is not ready to go live as of today, but will enter the test phase on Monday, March 25. CRCL does not have a date certain when this function will be ready, but the development is proceeding at an expedited pace and CRCL is hopeful that it will go live the following week. Once the test phase has been completed and the function is operational, the downloading of the records will be the first priority.

Responding by email dated March 22, 2019, plaintiff said: "Given that DHS expects the 'new function' to go live the first week of April, we ask that DHS provide us with a status update and anticipated production date by April 5, 2019 (nearly a month after the March 8 production deadline)." DHS agreed to do so by email dated March 22.

16. CBP took the following action on March 22, 2019, with respect to the remaining 86 pages of records referred to it by DHS: produced 84 pages with redactions pursuant to FOIA Exemptions 5, 6, 7(C), and/or 7(E); and withheld two pages in full pursuant to FOIA Exemptions 5, 6, 7(C), and/or 7(E).

Respectfully submitted,

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Dated: March 22, 2019

CERTIFICATE OF SERVICE

I hereby certify that I served the within report on all counsel of record by filing it with the Court by means of its ECF system on March 22, 2019.

s/ *David M. Glass*

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[PROPOSED] ORDER

It is hereby ordered in view of the joint status report filed on March 22, 2019, that the parties file another joint status report on or before May 21, 2019.

Dated: _____

_____
UNITED STATES DISTRICT JUDGE