IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA UNIVERSITY, *et al.*	)	
Plaintiffs,	)	Civil Action No. 18-1129 (EGS)
v.	)	
DEPARTMENT OF DEFENSE, *et al.*	)	
Defendants.	)	

JOINT STATUS REPORT

Plaintiffs Knight First Amendment Institute at Columbia University, American Civil Liberties Union, and American Civil Liberties Union Foundation (collectively, "Plaintiffs"), and Defendants Department of Defense ("DOD"), Department of the Army ("Army"), Central Intelligence Agency ("CIA"), Department of Justice ("DOJ"), DOJ, Office of Legal Counsel ("OLC"), DOJ, National Security Division ("NSD"), Federal Bureau of Investigation ("FBI"), Department of State ("State"), Office of the Director of National Intelligence ("ODNI"), Department of the Air Force ("Air Force"), United States Coast Guard ("Coast Guard"), Drug Enforcement Administration ("DEA"), Department of Homeland Security ("DHS"), Defense Intelligence Agency ("DIA"), Department of Energy ("DOE"), Department of the Treasury ("Treasury"), Marine Corps ("Marines"), Department of the Navy ("Navy"), National Geospatial-Intelligence Agency ("NGIA"), National Reconnaissance Office ("NRO"), and National Security Agency ("NSA") (collectively, "Defendants") respectfully submit this Joint Status Report, pursuant to the Court's Order of August 6, 2019. *See* Minute Order (Aug. 6, 2019).

I. The Status of the FOIA Requests, the Anticipated Number of Responsive Records, and the Anticipated Dates by Which Responsive Information Will Be Produced

This lawsuit involves three separate FOIA requests, which together seek records from twenty (20) separate Executive Branch agencies related to their respective pre-publication review processes—the policies and procedures governing the review of written materials drafted or prepared by current or former federal government employees, which discuss or reference their federal government service, prior to public release. *See* Compl. ¶¶ 1, 14–123.

FOIA Request 1 was submitted to ten (10) separate Defendant agencies—DOD, Army, NSA, CIA, DOJ, DOJ-OLC, DOJ-NSD,[1] the FBI, DOS (State), and ODNI—on May 9, 2017. FOIA Request 1 contains three separate requests that broadly request all written communications, inter- and intra-agency correspondence, and records reflecting interim, final, or after appeal decisions related to the pre-publication review processes of each of the ten (10) Defendant agencies in connection with pre-publication requests submitted by twenty-two (22) separately identified individuals. *See id.* ¶¶ 14–18.

FOIA Request 2 was submitted to nineteen (19) of the Defendant agencies—CIA,[2] DOD, DIA, Army, Air Force, Navy, NGIA, NRO, NSA, the Marines, DOE, DHS, Coast Guard, DOJ, DEA, FBI, DOS, Treasury, and ODNI—on December 13, 2017. *See id.* ¶¶ 14, 43. FOIA Request 2 generally contains three separate requests, one of which has three

[1] In addition to DOJ, DOJ-OLC, and DOJ-NSD, Plaintiffs submitted FOIA Request 1 to DOJ Office of the Attorney General ("OAG").

[2] In addition to the CIA, Plaintiffs submitted FOIA Request 2 to the CIA Office of Inspector General.

separate subparts, seeking all records related to non-disclosure agreements or any other agreements, administrative appeals, and sanctions related to pre-publication review from each of the 19 Defendant agencies. *See id.* ¶¶ 43–44. In addition to these specific requests, FOIA Request 2, which was submitted to Defendants CIA, DHS, and ODNI, contained a fourth paragraph that requests additional records related to pre-publication review policies attributed to the CIA, DHS, and ODNI respectively. *See id.* ¶¶ 44–47.

Finally, FOIA Request 3 was submitted to three Defendant agencies—DOJ, NSD, and the FBI—on March 27, 2018. *See id.* ¶¶ 14, 114. FOIA Request 3 generally seeks all correspondence, inter- and intra-agency correspondence, and documents reflecting decisions related to the pre-publication review process undertaken by Mr. James Comey in relation to the publication of his memoir, *A Higher Loyalty*. *See id.* ¶¶ 114–15.

A. Agencies That Have Completed Production

As stated in greater detail in the parties' last Joint Status Report, dated July 18, 2019, ECF No. 41, the following agencies have completed all processing and production of the relevant requests: Air Force, Navy, Marines, State, FBI, DEA, ODNI, DOJ-NSD, DOJ-OAG, DOJ-OLC, DIA, NSA, NGIA, NRO, Coast Guard, Treasury, DOE, NNSA, and DHS.

B. DoD

As of the date of this filing, DoD is continuing to process records responsive to Request 1, and Items 2 and 3 of Request 2. DoD makes the following commitments. First, DoD will process and produce the remaining approximately 425 pages of records responsive to Request 1 by September 20, 2019. Second, DoD will provide a final response to Item 3 of Request 2 by September 30, 2019. Finally, with respect to Item 2 of Request

2, DoD has located approximately 2,200 pages of records responsive to this request. DoD will process and produce these records on a rolling basis at the end of October, November, and December 2019, respectively. DoD anticipates that the December 2019 production will be a final production.

C. Army

As of the date of this filing, Army is continuing to process records responsive to Request 2. Army will provide a final response by September 30, 2019.

D. CIA

As of the date of this filing, the CIA is continuting to process records responsive to Requests 1 and 2. On August 6, 2019, the Court ordered the CIA to process records responsive to Plaintiffs' requests at a rate of at least 400 pages per month, with the first production to take place no later than September 13, 2019. In accordance with the order, the CIA issued its first production on September 13, 2019. The production reflected a review of 212 responsive documents. 74 documents were released in part and withheld in part. 134 documents were withheld in full. The remaining 4 documents were not originated by the CIA and have been referred to the originating agencies for review and direct response to Plaintiffs.

The CIA is currently working on processing documents in preparation for its next production scheduled for October 15, 2019,[3] and will continue to process and produce documents in accordance with the Court-ordered schedule until such time as its production is complete.

[3] Under the terms of the Court's August 6, 2019 Order, CIA's next production deadline falls on the Sunday before Columbus Day, a federal holiday. CIA will accordingly make its next rolling production no later than Tuesday, October 15, 2019.

VII. A proposed briefing schedule for dispositive motions, if applicable

Although some of the Defendant agencies have completed processing, three have not. Accordingly, the parties are not yet in a position to proposed a dispositive briefing schedule. The parties respectfully request additional time in which to resolve any issues that may arise regarding Defendants' processing of non-exempt, responsive records (or the portions thereof), including whether the parties are able to resolve many (if not all) of the issues that remain to be litigated outside of litigation. To that end, the parties suggest that they file a Joint Status Report on or before January 17, 2020, that informs the Court about the status of the efforts to resolve this matter outside of litigation, or alternatively, proposes a briefing schedule to resolve Plaintiffs' remaining claims.

Dated: September 17, 2019

Respectfully submitted,

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