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"), and Central Intelligence Agency ("CIA")[1] respectfully submit this Joint Status Report, pursuant to the Court's Order of September 18, 2019. *See* Minute Order (Sept. 18, 2019).

I. Plaintiffs' FOIA Requests

[1] As stated in greater detail in the parties' prior Joint Status Reports, of July 18, 2019, ECF No. 41, and September 17, 2019, ECF No. 43, the following agencies which are also named Defendants to this suit completed all processing and production of the relevant requests prior to the filing of the parties's last (September 17, 2019) Joint Status Report: Department of Justice ("DOJ"), 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"). Accordingly, there are no updates to provide the Court with respect to any of these Defendant agencies at this time.

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,[2] 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,[3] 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 separate subparts, seeking all records related to non-disclosure agreements or any other agreements, administrative appeals, and sanctions related to pre-publication review from

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

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

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.

II. Subsequent to the Submission of the Parties' Last JSR, Army Has Completed Production

Subequent to the filing of the parties's last (September 17, 2019) Joint Status Report, Army made a number of further interim productions, and on October 4, 2019, provided a final response to Plaintiffs.

III. The Status of the Remaining FOIA Requests and the Anticipated Dates by Which Responsive Information Will Be Produced

CIA and DoD continue to process records responsive to Plaintiffs' FOIA requests, and provide the following respective updates on their progress.

A. CIA

As of the date of this filing, the CIA is continuting to process records responsive to FOIA 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 has made interim productions to Plaintiffs in mid-September, October, November,

and December 2019, as well as mid-January 2020. The CIA will continue to process and produce documents in accordance with the Court-ordered schedule, and presently anticipates that it will complete production by the end of May or June 2020.

B. DoD

In the interim since the parties' last Joint Status Report, DoD made final productions in response to FOIA Request 1 (on September 23, 2019), as well Item 3 of FOIA Request 2 (on September 30, 2019).

Only Item 2 of FOIA Request 2 remains outstanding. As DoD reported in the parties' last Joint Status Report, it has located approximately 2,200 pages of records responsive to this request.[4] DoD made interim productions of documents responsive to this request on October 31, 2019 and December 5, 2019.[5] DoD commits to making rolling interim productions of all non-exempt documents at the conclusion of every month going forward, beginning with and inclusive of January 2020, until such time as production is concluded. DoD presently anticpates that it will complete production by the end of June 2020.

[4] Prior to the filing of the parties' last Joint Status Report, the parties mutually agreed to exclude draft manuscripts from DoD's processing of additional records responsive to Item 2 of Request 2. DoD expects this exclusion to meaningfully reduce the overall total page count of documents responsive to this request.

[5] DoD did not make a further interim production at the end of December, as it had proposed doing in the parties' last Joint Status report. *See* ECF no. 43 § I.B. DoD apologizes for its failure to meet this commitment, and avers by way of explanation that this oversight was the result of limited staffing during the holiday season, as well the necessary prioritization of certain other high-profile expedited reviews related to requests surrounding the impeachment inquiry. As set forth above, DoD has returned to actively moving forward with the remaining work to be done in conjunction with Plaintiffs' remaining FOIA request, and commits to making rolling end-of-month interim productions every month going forward until such time as production is complete.

IV. A Proposed Briefing Schedule for Dispositive Motions, If Applicable

Although most of the Defendant agencies have completed processing, two have not. Accordingly, the parties are not yet in a position to propose 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 jointly propose that they file a Joint Status Report on or before July 31, 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: January 17, 2020

Respectfully submitted,

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