UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA UNIVERSITY, Plaintiff, v. U.S. DEPARTMENT OF HOMELAND SECURITY, U.S. CUSTOMS AND BORDER PROTECTION, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, U.S. DEPARTMENT OF JUSTICE, and U.S. DEPARTMENT OF STATE, Defendants.	No. 1:17-cv-07572-ALC

JOINT STATUS REPORT

1. The Knight First Amendment Institute at Columbia University (the "Knight Institute" or "Institute") and Defendants U.S. Department of Homeland Security ("DHS"), U.S. Customs and Border Protection ("CBP"), U.S. Immigration and Customs Enforcement ("ICE"), U.S. Citizenship and Immigration Services ("USCIS"), U.S. Department of Justice ("DOJ"), and U.S. Department of State ("State"), respectfully submit this Joint Status Report to update the Court regarding the progress of Defendants' searches for and productions of records responsive to Item 1 of the Institute's Freedom of Information Act ("FOIA") request (the "Request"). *See* Am. Compl. Ex. B, at 3–4, ECF No. 42-2.[1]

[1] Defendants' processing of certain records responsive to other items of the Request remains on hold while Defendants' Motion for Clarification and Partial Reconsideration of the Court's Opinions and Orders Granting in Part and Denying in Part Cross-Motions for Summary Judgment, ECF No. 144, is pending. Specifically, the parties agreed to postpone new searches by certain ICE

2. As detailed in the February 24, 2020 Joint Status Report ("February 24 JSR"), the parties reached agreements regarding the terms and initial deadlines for the agencies' searches for records responsive to Item 1 of the Request. ECF No. 154 ¶¶ 3–10. The agencies have since completed those searches and begun or completed their productions of responsive records.

3. As further detailed in the parties' May 14, 2020 Joint Status Report ("May 14 JSR"), ECF No. 155, both DHS and CBP have completed their searches for and productions of any responsive records. *See* May 14 JSR, ¶¶ 2–4. DHS completed production of responsive records—including those responsive to Item 1—on January 15, 2020. *See id*. ¶ 2. On April 17, 2020, CBP informed the Knight Institute that it had completed its searches and had found no responsive records. *Id.* ¶ 4.

ICE

4. On July 28, 2020, ICE informed the Knight Institute that it had reviewed the remaining 554 pages of potentially responsive records, including 478 pages of duplicates and 13 pages that were referred to another agency. ICE produced 63 pages in full or in part, applying FOIA Exemptions (b)(5), (b)(6), (b)(7)(C), and (b)(7)(E).

5. ICE is planning to provide the next production to the Knight Institute by the end of August 2020, which will complete ICE's production of records responsive to Item 1 of the Request. In addition, ICE expects the referred documents to be processed and produced by the end of September 2020.

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component offices: Immigration Law and Practice Division, National Security Law Section, Deputy Principal Legal Advisor, and Field Legal Operations. *See* Oct. 4, 2019 Joint Letter to Hon. Carter, ECF No. 145. The motion also halted production by State and USCIS of records that the Court had concluded were improperly withheld under Exemption 7(E) in its Opinions and Orders on Summary Judgment, ECF Nos. 140, 141.

USCIS

6. On April 7, 2020, USCIS informed the Knight Institute that it had completed its searches and located approximately 1,000 pages of records potentially responsive to Item 1 of the Request. *See* May 14 JSR ¶ 9.

7. On July 30, 2020, USCIS informed the Knight Institute that it had reviewed the potentially responsive records and had concluded that none were responsive.

DOJ's Office of Information Policy ("OIP")

8. On April 6, 2020, OIP informed the Knight Institute that it had completed its responsiveness review of the records potentially responsive to Item 1 of the Request. *See* May 14 JSR ¶ 11. On May 8, 2020, OIP informed the Institute that it had determined to withhold all 49 pages of responsive records in full under FOIA Exemption 5. *See id.* ¶ 12.

9. On June 15, 2020, OIP provided the Knight Institute with a draft *Vaughn* index addressing the 49 withheld pages of responsive records.

State

10. In the February 24 JSR, the Department stated that it was processing approximately 450 pages of responsive records. February 24 JSR ¶ 10. The Department notes that it intended to state that it was processing approximately 450 pages of potentially responsive records.

11. In the May 14 JSR, State represented that it had paused the processing of the Request in response to the COVID-19 pandemic and that it would promptly notify the Knight Institute when such processing could resume. May 14 JSR ¶ 14.

12. The Department reports that, on July 27, 2020, the Department announced it was entering Phase Two of its three-phased approach toward resuming normal operations. The Department's Office of Information Programs and Services ("IPS"), which is the office responsible

for FOIA processing, is currently assessing Department guidance with respect to Phase Two and evaluating the potential increase in onsite FOIA processing resources. The Department also reports that, at the time of this filing, a small fraction of the Department's FOIA litigation processing personnel (approximately 20 percent) have returned to their Department workstations on a part-time basis. The Department further reports that the particular analysts and reviewers who have returned onsite have done so of their own volition pursuant to the Department's reopening guidance. The analysts and reviewers who have returned to their Department workstations have access to FREEDOMS 2—the document review platform on which this case is being processed—and the classified network while in the office. The Department reports that, while its FOIA processing capacity remains constrained, one of the individuals responsible for processing Plaintiff's request, a reviewer, has returned on a part-time basis to a Department worksite. Over the coming weeks, this FOIA employee will continue to assist in processing additional documents for this case. The Department reports that, although the analyst for this case has not yet returned onsite on a regular basis, the Department has been able to resume some processing of the records in this case. The Department further reports that Government-wide staffing constraints during the COVID-19 pandemic have created serious difficulties in obtaining the necessary clearances from other Department components or external Executive Branch components, and, because many of these components are operating with reduced resources and reduced access to classified systems, the Department will likely experience delays in obtaining clearances and thus in its ability to release documents requiring such clearances. Considering these factors, the Department anticipates making a production of responsive, non-exempt documents, to the extent any such documents are ready for release, on or before September 24, 2020.

Proposed Next Step

13. The parties have agreed to submit a joint status report by October 16, 2020, providing the Court with further updates regarding the status of Defendants' productions of records responsive to Item 1 of the Request.

Dated: August 13, 2020

Sincerely,

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