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, and the Defendants' actions in response to the Court's September 13, 2020 Opinion and Order clarifying the Court's September 13 and 23, 2019, Orders and denying the Defendants' motion for partial reconsideration, *see* ECF No. 158.

Item 1 Productions

2. As detailed in the February 24, 2020 Joint Status Report, 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 detailed in the May 14, 2020 Joint Status Report ("May 14 JSR"), both DHS and CBP have completed their searches for and productions of any responsive records. ECF No. 155 ¶¶ 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.

4. As further detailed in the August 13, 2020 Joint Status Report ("August 13 JSR"), USCIS and DOJ's Office of Information Policy ("OIP") have completed their searches for responsive records. ECF No. 156 ¶¶ 6–9. On July 30, 2020, USCIS informed the Knight Institute that it had completed its searches and had found no responsive records. *See id.* ¶ 7. OIP informed the Knight Institute on May 8, 2020 that it had completed its searches and had withheld 49 pages of responsive records in full under FOIA Exemption 5. *See id.* ¶ 8. On June 15, 2020, OIP provided the Knight Institute with a draft *Vaughn* index addressing the 49 withheld pages of responsive records. *See id.* ¶ 9.

ICE

5. For the components not subject to the motion for reconsideration, ICE has conducted searches for documents responsive to Item 1 of the Request, as well as for documents responsive to Items 2–4 of the Request, pursuant to search terms agreed to by the parties per

paragraph 16, below. ICE has been processing and producing those documents along with the documents gathered in response to the search for documents responsive to Item 1.

6. On September 15, 2020, ICE informed the Knight Institute that it had reviewed another 610 pages of potentially responsive records. ICE determined that 314 pages were either duplicative in nature or not responsive to the request. ICE referred an additional 205 pages to another agency for review. ICE produced 91 pages in full or in part, applying FOIA Exemptions 5, 6, 7(C), and 7(E).

7. ICE FOIA currently has 182 pages pending for referrals with four agencies or components and 374 pages pending for consults with six agencies or components. ICE has received comments from one agency component and expects to receive the remaining comments and complete processing the documents sent for consult by December 5, 2020, and ICE expects the agencies or components which received the documents sent for referrals to respond directly to Plaintiff. ICE will provide Plaintiff with a status update in the interim, and the parties are meeting and conferring as to a date.

State

8. 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. *See* May 14 JSR ¶ 14.

9. In the August 13 JSR, State reported that it had resumed some processing of the records in this case. *See* August 13 JSR ¶ 12. State indicated that it was processing approximately 450 pages of potentially responsive records, *see id.* ¶ 10, and that it anticipated making a production of responsive, non-exempt documents, to the extent any such documents are ready for release, on or before September 24, 2020, *see id.* ¶ 12.

10. On September 22, 2020, State informed the Knight Institute that it had located eight records responsive to Item 1 of the Request thus far. State determined that three records could be released in full, one record could be released in part, and four records must be withheld in full, pursuant to FOIA Exemptions 5 and 6. State reported that processing of the Request is ongoing.

11. State intends to complete the processing of the remaining documents potentially responsive to Item 1 by November 13, 2020.

The Court's September 2020 Order

12. On September 13, 2020, the Court issued its Opinion and Order (the "September 2020 Order") clarifying the Court's September 13 and 23, 2019, Orders and denying the Defendants' motion for partial reconsideration. *See* ECF No. 158. Pursuant to the September 2020 Order and the Court's earlier Opinions and Orders dated September 13, 2019, *see* 407 F. Supp. 3d 311 (S.D.N.Y. 2019), and September 23, 2019 (the "September 2019 Orders"), *see* 407 F.Supp.3d 334 (S.D.N.Y. 2019), the parties agree that the Court directed: (1) USCIS to conduct a further segregability analysis as to two documents (the Acting Director Memo and Senior Policy Paper); (2) ICE to conduct a further segregability analysis as to three documents (the Extreme Vetting Memo, Foreign Policy Memo, and HSI Updates Memo); (3) ICE to conduct another search; and (4) USCIS and State to release certain information withheld under FOIA Exemption 7(E).

Further Segregability Analysis

13. Regarding further segregability analysis of the Acting Director Memo and Senior Policy Paper, USCIS will complete its segregability analysis and inform the Knight Institute of the results of that analysis by October 23, 2020.

14. Regarding further segregability analysis of the Extreme Vetting Memo, Foreign Policy Memo, and HSI Updates Memo, ICE will complete its segregability analysis and inform the Knight Institute of the results of that analysis by November 2, 2020.

ICE Search

15. On October 3, 2019, ICE agreed to conduct searches using the following search terms proposed by the Knight Institute:

Search 1 (for Items 2–4 of the Request)

- Search 1(a): ((immigrant OR immigrants OR immigration OR alien OR aliens OR visa OR asylum OR asylee OR exclude OR excludes OR excluding OR exclusion OR deny OR denial OR denials OR refusal OR refusing OR refuse OR refuses OR refused OR removal OR removals OR remove OR removes OR removed OR removing OR removable OR vet OR vetting) AND ("endorse or espouse" OR "endorses or espouses" OR "endorsed or espoused" OR "endorsing or espousing" OR "foreign policy consequences" OR "ideological screening" OR "first amendment" OR "1st amendment" OR "protected speech" OR "political speech" OR "political belief" OR "political beliefs" OR "political association" OR "political associations"))
- Search 1(b): ("1182(a)(3)(B)(i)(VII)" OR "212(a)(3)(B)(i)(VII)" OR "1182(a)(3)(B)(i)(IV)(bb)" OR "212(a)(3)(B)(i)(IV)(bb)" OR "1182(a)(3)(C)(i)" OR "212(a)(3)(C)(i)" OR "1182(a)(3)(C)(iii)" OR "212(a)(3)(C)(iii)" OR "1225(c)" OR "235(c)" OR "1227(a)(4)(B)" OR "237(a)(4)(B)" OR "1227(a)(4)(C)" OR "237(a)(4)(C)" OR "1158(b)(2)(A)(v)" OR "208(b)(2)(A)(v)")

Search 2 (for Item 1 of the Request)

- Search 2(a): ((vetting OR screening OR screen OR screens OR exclude OR excludes OR excluding OR exclusion OR deny OR denies OR denial OR denials OR refusal OR refusing OR refuse OR refuses OR refused OR removal OR removals OR remove OR removes OR removed OR removing OR removable OR "additional scrutiny" OR "heightened scrutiny" OR "national security and public safety information" OR "national security and public-safety risk assessment") AND ("social media" OR Facebook OR Twitter OR tweet OR tweets OR ideology OR ideological OR "first amendment" OR "1st amendment" OR "protected speech" OR "political speech" OR "political belief" OR "political beliefs" OR "political association" OR "political associations"))
- Search 2(b): ("extreme vetting" OR "enhanced vetting" OR "visa lifecycle vetting" OR "continuous screening" OR "continuous vetting" OR "continuous monitoring" OR "13769" OR "13,769" OR "Protecting the Nation from Foreign Terrorist Entry into the United States" OR "13780" OR "13,780" OR "9645" OR "9,645" OR "Enhancing Vetting Capabilities and Processes" OR "9723" OR "9,723" OR "Maintaining Enhanced Vetting Capabilities and Processes" OR "Optimizing the Use of Federal

Government Information" OR "National Vetting Enterprise" OR "National Vetting Center" OR "Visa Security")

16. As noted above, ICE completed additional searches of several components using those search terms and is currently processing and producing responsive documents. Per the agreement between the parties, ICE was waiting for the Court's Order on the motion for clarification and partial reconsideration to determine whether it should conduct additional searches of the components at issue in the motion, specifically, the Immigration Law and Practice Division ("ILPD"), National Security Law Section ("NSLS"), Field Legal Operations ("FLO"), and the Executive Deputy Principal Legal Advisor ("EDPLA"). ICE has also re-tasked EROLD to conduct the searches outlined above. In light of the September 2020 Order, ICE is now in the process of conducting additional searches of those components, using the same agreed-upon terms as above, and anticipates completing the searches and informing the Knight Institute of the results of those searches by November 11, 2019. In light of the delays caused by COVID-19 and the intervening holidays, ICE anticipates completing processing and producing responsive documents, if any, by January 15, 2021, but cannot commit to a firm deadline at this time because it does yet know the results of the searches.

USCIS and State Withholdings

17. Regarding the release of documents and information withheld under FOIA Exemption 7(E), the September 2020 Order directed USCIS and State to produce the material "promptly," *see* September 2020 Order at 13, but did not set a deadline for production. By statute and rule, USCIS and State have 60 days to consider whether to appeal the district court's

September 2020 Order. 28 U.S.C. § 2107; Fed. R. App. P. 4(a)(1)(B).[1] The agencies are following the procedures of the Department of Justice for review of potentially appealable decisions in civil cases and for consideration of whether to seek further appellate review of the September 2019 and 2020 Orders. See 28 C.F.R. § 0.20(b).

18. The parties are meeting and conferring regarding a deadline to complete the productions of documents as promptly as possible should the agencies decide not to pursue an appeal.[2]

Proposed Next Step

19. The parties have agreed to submit a joint status report by December 11, 2020, providing the Court with further updates regarding the status of Defendants' productions of records responsive to Item 1 of the Request and Defendants' actions taken pursuant to the September 2020 Order.

[1] The appeal determination will include all records and information ordered disclosed in the September 13, 2019, September 23, 2019, and September 13, 2020, Orders, and is not limited to the records and information withheld under FOIA Exemption 7(E).

[2] The Knight Institute has communicated to the agencies its position that USCIS and State should release the documents and information withheld under Exemption 7(E) immediately following a decision not to pursue an appeal.

Dated: October 20, 2020

Sincerely,

/s/ Carrie DeCell

Carrie DeCell (CD-0731)
Xiangnong Wang (application for admission *pro hoc vice* forthcoming)
Jameel Jaffer (JJ-4653)
Alex Abdo (AA-0527)
Knight First Amendment Institute
at Columbia University
475 Riverside Drive, Suite 302
New York, NY 10115
carrie.decell@knightcolumbia.org
(646) 745-8500

Counsel for Plaintiff

/s/ Megan Graham

Megan Graham (5400460)
Catherine Crump (CC-4067)
Samuelson Law, Technology & Public Policy Clinic
353 Law Building
University of California, Berkeley, School of Law
Berkeley, CA 94720-7200
mgraham@clinical.law.berkeley.edu
(510) 664-4381

Counsel for Plaintiff

AUDREY STRAUSS
Acting United States Attorney

By: */s/ Ellen Blain*

Ellen Blain
Assistant United States Attorney
86 Chambers Street, 3rd Floor
New York, NY 10007
ellen.blain@usdoj.gov
(212) 637-2643

Counsel for Defendants