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. Pursuant to the Court's order, *see* ECF No. 162, 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' remaining searches for and productions of records responsive to the Institute's Freedom of Information Act ("FOIA") request (the "Request"), *see* Am. Compl. Ex. B 3–4, ECF No. 42-2, and ICE, UCSIS, and State's appeal of the Court's Opinions and Orders entered on September 13 and 23, 2019, and September 14, 2020, *see* ECF No. 166.

Item 1 Productions

2. As detailed in the parties' 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.

3. As summarized in the parties' October 20, 2020 Joint Status Report ("Oct. 20 JSR"), DHS, CBP, USCIS, and DOJ's Office of Information Policy ("OIP") completed their searches for and processing of any responsive records by July 30, 2020. ECF No. 161 ¶¶ 3–4.

4. On November 13, 2020, State reported that it had completed its processing of Item 1 of the Request. Having located an additional 27 responsive records, State determined that two records could be released in full, 14 records could be released in part, and 11 records must be withheld in full, pursuant to FOIA Exemptions 5 and 6.

ICE's Productions

5. For the components not subject to the Defendants' motion for clarification and partial reconsideration, ECF No. 144, ICE conducted searches for records responsive to Item 1 of the Request, as well as for records responsive to Items 2–4 of the Request, pursuant to search terms agreed to by the parties. *See* Oct. 20 JSR ¶ 5. ICE continues to process and produce those records.

6. On November 13, 2020, ICE reported that it had referred approximately 100 pages of records to DHS' Privacy Office and Office of the Inspector General, USCIS, CBP, and DOS for direct response to Plaintiff. ICE is currently waiting for responses regarding approximately 270 pages of records referred to the DHS Privacy Office and State for consultation. ICE continues to work with the agencies and components to which it has sent records for consultation and/or referral.

7. In the October 20 JSR, ICE indicated that it "expects to complete processing the documents sent for consult by December 5, 2020." Oct. 20 JSR ¶ 7. ICE has not produced any such records to the Knight Institute and continues to work with the relevant agencies and components. ICE will provide a status update to the Institute on December 18, 2020.

ICE's New Searches

8. Pursuant 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, ECF No. 158, ICE has conducted new searches within the Immigration Law and Practice Division ("ILPD"), National Security Law Section ("NSLS"), Field Legal Operations ("FLO"), Human Rights Violators Law Division ("HRVLD") and Office of the Executive Deputy Principal Legal Advisor ("EDPLA") using search terms previously agreed upon by the parties, *see* Oct. 20 JSR ¶ 15. ICE also re-tasked the Enforcement and Removal Operations Law Division ("EROLD") to conduct a search using the same agreed-upon search terms.

9. ICE completed those searches and informed the Knight Institute of the results of those searches on December 9, 2020. Specifically, and after de-duplicating, the searches returned at least 263,857 potentially responsive documents (not pages). ICE and the Knight Institute have agreed to meet and confer regarding ways to revise the search terms in order to potentially narrow the searches and thus the universe of potentially responsive documents.

10. After the parties narrow the search terms and ICE re-runs the searches, the parties will meet and confer regarding a timeframe for processing and producing responsive documents.

ICE, USCIS, and State's Appeal

11. On November 10, 2020, ICE, USCIS, and State filed a notice of appeal of the Opinions and Orders entered by the Court on September 13, 2019, September 23, 2019, and September 14, 2020. ECF No. 166.

12. Specifically, ICE and USCIS seek appellate review of the Court's Orders to the extent they require disclosure of information withheld from three documents under Exemption 5 and the deliberative process privilege and information withheld from certain documents (including the TRIG Questions and FAM, as defined in ECF No. 158) under Exemption 7(E). *See* Appellants' Civil Appeal Pre-Argument Statement (Form C), Add. A, *Knight First Amend. Inst. v. U.S. Dep't of Homeland Sec.*, No. 20-3837 (2d Cir. Nov. 25, 2020), ECF No. 17.

13. On December 9, 2020, ICE, USCIS, and State filed a letter asking this Court to clarify that the agencies need not seek a stay of its disclosure orders pending resolution of the appeal, or alternatively, if the Court determines a stay is necessary, for a stay pending appeal. ECF No. 169. On December 10, 2020, the Court stayed production of the records subject to appeal pending disposition of the appeal. ECF No. 170.

Proposed Next Step

14. The parties have agreed to submit a joint status report by February 9, 2021, providing the Court with further updates regarding the status of ICE's new searches and productions of responsive records.

Dated: December 11, 2020

Sincerely,

/s/ Carrie DeCell

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