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. 177, 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.

Non-ICE Productions

2. The parties provided comprehensive updates as to the status of the non-ICE searches in the February 9, 2021 Joint Status Report ("Feb. 9 JSR"). *See* ECF No. 172 ¶¶ 2–3.

ICE's Productions for Components Not Subject to the Motion for Clarification and Partial Reconsideration

3. As noted in the April 14, 2021 Joint Status Report ("Apr. 14 JSR"), ICE, DHS, USCIS, CBP, and State have completed their processing and production of records sent for consult or referral by ICE that were responsive to Item 1 of the Request and not subject to the Defendants' motion for clarification and partial reconsideration or pending appeal. *See* ECF No. 176 ¶ 6.

ICE's New Searches

4. As explained in the December 11, 2020 Joint Status Report ("Dec. 11 JSR"), 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 conducted new searches. *See* ECF No. 171 ¶ 8.

5. As previously explained, ICE completed those searches and informed the Knight Institute of the initial results, and the parties have been working since then to attempt to narrow the search criteria. *See* Dec. 11 JSR ¶ 9; Feb. 9 JSR ¶¶ 11–12; Apr. 14 JSR ¶ 9.

6. The parties ultimately narrowed the potentially responsive documents by custodian and year; and ICE agreed to review and process 650 pages; produce to the Institute any responsive, non-exempt material; and propose criteria based on that review to narrow the universe of potentially responsive documents by June 10, 2021. *See* Apr. 14 JSR ¶ 9.

7. On June 7, 2021, ICE reported it had reviewed 661 pages of potentially responsive records. It found 399 pages were duplicative or non-responsive and referred another 204 pages to

DOJ, DHS, and CBP for further review. ICE produced 58 pages to the Knight Institute, withholding information in part or in full pursuant to FOIA Exemptions 5, 6, and 7(C).

8. On June 10, 2021, the Executive Office for Immigration Review ("EOIR") of DOJ produced 12 pages in full based on its review of referred pages.

9. ICE will contact the other agencies to obtain an estimated timeframe by which those agencies will complete processing of the remaining referred pages to the Knight Institute.

10. ICE has been working to provide suggestions for new search criteria to further narrow the universe of potentially responsive documents as agreed upon in the April 14 JSR, but has had technical difficulties in doing so. Those have now been resolved, and the agency will provide such suggestions by June 18, 2021.

ICE, USCIS, and State's Appeal

11. As detailed in the December 11 JSR, ICE, USCIS, and State filed a notice of appeal on November 10, 2020 of the Opinions and Orders entered by the Court on September 13, 2019, September 23, 2019, and September 14, 2020. Dec. 11 JSR ¶¶ 11–12. The Court stayed production of the records subject to appeal pending disposition of the appeal. *Id.* ¶ 13.

12. As noted in the April 14 JSR, ICE, USCIS, and State filed their opening brief on February 23, 2021. *See* Apr. 14 JSR ¶ 11.

13. On April 22, 2021, the Knight Institute withdrew the Request as it relates to two USCIS records that were initially at issue on appeal: what the parties and Court have called the Acting Director Memo and the Senior Policy Council Paper.

14. On May 19, 2021, the Knight Institute filed its opposition brief.

15. On June 9, 2021, ICE, USCIS, and State filed their reply brief. The case is now pending oral argument.

Proposed Next Step

16. The parties have agreed to submit a joint status report by July 6, 2021, providing the Court with further updates regarding the status of ICE's processing of responsive records.

Dated: June 14, 2021

Sincerely,

AUDREY STRAUSS
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) 637-2743

Counsel for Defendants

/s/ Xiangnong Wang

Xiangnong Wang (*pro hac vice*)
Carrie DeCell (CD-0731)
Jameel Jaffer (JJ-4653)
Alex Abdo (AA-0527)
Knight First Amendment Institute
at Columbia University
475 Riverside Drive, Suite 302
New York, NY 10115
george.wang@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