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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA UNIVERSITY, Plaintiff, v. FEDERAL BUREAU OF PRISONS and U.S. DEPARTMENT OF JUSTICE, Defendants.	21 Civ. 6579 (JMF) **ANSWER**

Defendants the Federal Bureau of Prisons ("BOP") and the United States Department of Justice ("DOJ") (collectively, "Defendants"), by their attorney, Audrey Strauss, United States Attorney for the Southern District of New York, answer the complaint filed August 4, 2021, by plaintiff the Knight First Amendment Institute at Columbia University ("Plaintiff"), upon information and belief as follows:

1. Paragraph 1 of the complaint contains a characterization of the action to which no response is required.

2. Paragraph 2 of the complaint consists of argument and allegations that are unrelated to the resolution of the claims in this action brought pursuant to FOIA to which no response is required.

3. With respect the allegations in the first sentence of paragraph 3 of the complaint, admit only that in-person visitation was suspended in March 2020 due to the COVID-19 pandemic, deny the remainder, and aver that a mail scanning Pilot program was activated at FCI Beckley and USP Canaan on or around March 2020. Deny the allegations in the second sentence of paragraph 3 of the complaint, and aver that the BOP "Statement of Work" for Mail Scanning Installation and Support at USP Canaan and FCI Beckley provides, "Contractor shall hold original physical inmate mail at the processing center for 30 calendar days from the date it was scanned. Individual pieces of mail identified by BOP staff may be selected to be pulled and held for longer periods if justified (for example for a court proceeding). Individual pieces of mail may be requested to be forwarded to a BOP facility or other designated location if necessary. After the holding period has expired, contractor shall dispose of the physical original mail by securely shredding it and optionally recycling the resulting shredded paper."

4. Paragraph 4 of the complaint consists of argument to which no response is required.

5. Paragraph 5 of the complaint consists of argument to which no response is required.

6. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 6 of the complaint, except admit that Plaintiff submitted a FOIA request to BOP on June 25, 2021, and respectfully refer to the Court to referenced document for its true and complete contents.

7. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 7 of the complaint concerning Plaintiff's reasons for commencing this

action, deny that Defendants failed to process and release records responsive to the Request within the timeline mandated by FOIA, and deny that Plaintiff is entitled to the requested relief.

8. Paragraph 8 of the complaint consists of legal conclusions to which no response is required.

9. Paragraph 9 of the complaint consists of legal conclusions to which no response is required.

10. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in the first two sentences of paragraph 10 of the complaint. The third sentence of paragraph 10 of the complaint is a legal conclusion to which no response is required.

11. Admit the allegations in the first sentence of paragraph 11 of the complaint. The second sentence of paragraph 11 of the complaint is a legal conclusion to which no response is required.

12. Admit the allegations in the first sentence of paragraph 12 of the complaint. The second sentence of paragraph 12 of the complaint is a legal conclusion to which no response is required.

13. Deny the allegations in the first sentence of paragraph 13 of the complaint, and aver that BOP had a pilot mail digitization program with independent contractor Sysorex Government Services, Inc., beginning in March 2020 and ending in June 2021, and further aver that the pilot program was confined to FCI Beckley and USP Canaan and ended in June 2021. Deny the allegations in the second sentence of paragraph 13 of the complaint, and aver that the BOP "Statement of Work" for Mail Scanning Installation and Support at USP Canaan and FCI Beckley provides, "Contractor shall hold original physical inmate mail at the processing center for 30 calendar days from the date it was scanned. Individual pieces of mail identified by BOP

staff may be selected to be pulled and held for longer periods if justified (for example for a court proceeding). Individual pieces of mail may be requested to be forwarded to a BOP facility or other designated location if necessary. After the holding period has expired, contractor shall dispose of the physical original mail by securely shredding it and optionally recycling the resulting shredded paper."

14. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 14 of the complaint, and respectfully refer the Court to the referenced advertising documents for their true and complete contents.

15. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 15 of the complaint, and respectfully refer the Court to the referenced advertising documents for their true and complete contents.

16. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of paragraph 16 of the complaint. The second and third sentences of paragraph 16 of the complaint purport to describe the contents of media reporting, to which no response is required; to the extent a response is deemed required, Defendants respectfully refer the Court to the referenced document for its true and complete contents.

17. The first sentence of paragraph 17 of the complaint consists of argument to which no response is required. The second and third sentences of paragraph 17 of the complaint purport to describe the contents of media reporting, to which no response is required; to the extent a response is deemed required, Defendants respectfully refer the Court to the referenced documents for their true and complete contents.

18. Defendant is unable to respond to the allegations in the first three sentences of paragraph 18 of the complaint because they are vague and consist of argument. The fourth and

fifth sentences of paragraph 18 of the complaint purport to describe the contents of media reporting, to which no response is required; to the extent a response is deemed required, Defendants respectfully refer the Court to the referenced documents for their true and complete contents.

19. The allegations of paragraph 19 are vague, and thus no response is required. To the extent a response is deemed required, deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 19 of the complaint.

20. The first sentence of paragraph 20 of the complaint consists of argument to which no response is required. The second and third sentences of paragraph 20 of the complaint purport to describe the contents of media reporting, to which no response is required; to the extent a response is deemed required, Defendants respectfully refer the Court to the referenced documents for their true and complete contents.

21. Paragraph 21 of the complaint consists of argument and allegations that are unrelated to the resolution of the claims in this action brought pursuant to FOIA to which no response is required. To the extent a response is deemed necessary, deny the allegations and aver that the pilot program at USP Canaan and FCI Beckley ended in June 2021.

22. Admit that Plaintiff submitted a FOIA request to BOP on June 25, 2021, and respectfully refer the Court to referenced document for its true and complete contents.

23. Admit that Plaintiff requested expedited processing of the Request, and respectfully refer the Court to referenced document for its true and complete contents.

24. Admit that Plaintiff requested fee waiver regarding the Request, and respectfully refer the Court to referenced document for its true and complete contents.

25. Admit that BOP sent Plaintiff a letter dated June 29, 2021, and respectfully refer the Court to referenced document for its true and complete contents.

26. Deny that BOP has not yet released any records responsive to the Request, and aver that at least four responsive national BOP policies are responsive to the Request and available publicly on the BOP website.

27. Paragraph 27 of the complaint consists of legal conclusions to which no response is required. To the extent a response is deemed required, deny the allegations.

28. Paragraph 28 of the complaint consists of legal conclusions to which no response is required. To the extent a response is deemed required, deny the allegations.

29. Paragraph 29 of the complaint consists of legal conclusions to which no response is required. To the extent a response is deemed required, deny the allegations.

PRAYER FOR RELIEF

30. The unnumbered paragraph beginning with "PRAYER FOR RELIEF" on page 9 of the complaint constitutes a prayer for relief to which no response is required; to the extent a response is deemed necessary, deny that Plaintiff is entitled to the requested relief or any relief.

DEFENSES

FIRST DEFENSE

The complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

Plaintiff failed to exhaust its administrative remedies prior to filing this action.

THIRD DEFENSE

Some or all of the requested records are records protected from disclosure by any applicable FOIA exemptions or exclusions. 5 U.S.C. § 552(b).

FOURTH DEFENSE

The FOIA claims should be dismissed because processing the vast quantity of potentially responsive records in response to Plaintiff's request would impose an unreasonable and undue burden.

FIFTH DEFENSE

At all times alleged in the complaint, Defendants acted in good faith, with justification, and pursuant to authority.

SIXTH DEFENSE

The Court lacks subject matter jurisdiction to the extent Plaintiff's request for relief exceeds the relief authorized under FOIA. 5 U.S.C. § 552.

SEVENTH DEFENSE

Plaintiff is not entitled to declaratory relief. 5 U.S.C. § 552(a)(4)(B).

EIGHTH DEFENSE

To the extent that Defendants have exercised due diligence in processing Plaintiff's FOIA requests and exceptional circumstances exist, Defendants should be allowed additional time to process the request. 5 U.S.C. § 552(a)(6)(C).

NINTH DEFENSE

Defendants assert that they have, or may have, additional affirmative defenses which are not known to Defendants at this time, but which may be ascertained during litigation. Defendants specifically preserve these and other affirmative defenses as they are ascertained during litigation, including those required by Fed. R. Civ. P. 8 and 12.

WHEREFORE, Defendants respectfully requests this Court to dismiss the Complaint with prejudice, enter judgment in favor of Defendants, award costs for defense of this action, and grant such other relief as may be just and equitable.

Dated: New York, New York
September 17, 2021

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