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December 21, 2021

VIA ECF

Catherine O'Hagan Wolfe
Clerk of Court
U.S. Court of Appeals for the Second Circuit
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Re: ***Knight First Amendment Institute at Columbia University v. U.S. Citizenship and Immigration Services, et al.*, No. 20-3837**

Plaintiff-Appellee's Notice of Supplemental Authority

Dear Ms. Wolfe,

Pursuant to Federal Rule of Appellate Procedure 28(j), Plaintiff-Appellee writes to apprise the Court of *Judicial Watch, Inc. v. United States Department of Justice*, No. 20-5304 (D.C. Cir. Dec. 10, 2021), attached as Exhibit A. In *Judicial Watch*, the D.C. Circuit held that when invoking the deliberative process privilege, incorporated into FOIA Exemption Five, 5 U.S.C. § 552(b)(5), an agency seeking to demonstrate that a document is deliberative must offer a detailed explanation of the document's role in the deliberative process. Ex. A at *9. Characterizing past cases in which the government's explanation was sufficient, the court explained:

> We knew the "who," i.e., the roles of the document drafters and recipients and their places in the chain of command; the "what," i.e., the nature of the withheld content; the "where," i.e., the stage within the broader deliberative process in which the withheld material operates; and the "how," i.e., the way in which the withheld material facilitated agency deliberation.

Id.

In this case, Plaintiff-Appellee argued for affirmance of the district court's holding that the Foreign Policy Provision Memo did not fall within the deliberative process privilege, in part because ICE failed to show that the document was deliberative. *See* Br. of Plaintiff-Appellee at 54–56. The overly conclusory nature of Defendant's *Vaughn* entries are further apparent when contrasted with the D.C. Circuit's description of the elements of an adequate explanation in *Judicial Watch*.

Respectfully submitted,

/s/ Catherine Crump

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