

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

AMERICAN CIVIL LIBERTIES UNION AND
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION,

Plaintiffs,

v.

DEPARTMENT OF JUSTICE, FEDERAL
BUREAU OF INVESTIGATION, AND
DEPARTMENT OF HOMELAND SECURITY,

Defendants.

24 Civ. 5722 (JSR)

DECLARATION OF CATRINA M. PAVLIK-KEENAN

I. INTRODUCTION

I, Catrina M. Pavlik-Keenan, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am the Deputy Chief Freedom of Information Act (“FOIA”) Officer for the Department of Homeland Security (“DHS”) Privacy Office (“Privacy Office” or “DHS-PRIV”).

2. In this capacity, I am the DHS official responsible for implementing FOIA policy across DHS and responding to requests for records under the FOIA, 5 U.S.C. § 552, the Privacy Act, 5 U.S.C. § 552a, and other applicable records access provisions. I have been employed by the DHS Privacy Office in this capacity since July 4, 2021. Prior to holding that position, I worked for approximately four years in the FOIA office at the Transportation Security Administration - first as a Supervisory FOIA Analyst, then as Deputy Director for two years, and finally as Director.

3. I make this declaration in support of Defendant DHS's Motion for Summary Judgment. The statements contained in this declaration are based upon my personal knowledge, my review of the documents kept by the DHS-PRIV in the ordinary course of business, and information provided to me by other DHS Headquarters ("DHS-HQ") employees in the course of my official duties.

4. Through the exercise of my official duties, I am familiar with DHS-PRIV's receipt and handling of the nine-part FOIA request dated May 21, 2024 (the "FOIA Request") submitted by the American Civil Liberties Union and American Civil Liberties Union Foundation ("ACLU" or "Plaintiffs"), and the steps taken to respond to the FOIA Request.

5. The statements contained in this declaration are based upon my personal knowledge, my review of records kept by DHS PRIV in the ordinary course of business, and information provided to me by other DHS PRIV employees in the course of my official duties.

6. This declaration provides a description of DHS PRIV's search in response to Plaintiffs' FOIA request 2024-HQFO-01500 and the Department's withholdings made pursuant to Exemption 5 of the FOIA. Exemption 5 protects "inter-agency and intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." 5 U.S.C. § 552(b)(5).

II. PROCEDURAL HISTORY OF THE PLAINTIFF'S FOIA REQUEST DHS FOIA PROCESS

7. The FOIA Request, which was dated May 21, 2024, sent via Secure Release, was received by DHS-PRIV on May 21, 2024, and assigned number 2024-HQFO-01500. The request

states in pertinent part:

“REQUEST FOR INFORMATION

“The Requestor seeks:

(1) All final policies, guidance, procedures, directives, advisories, memoranda, agreements, training materials, and/or legal opinions created from January 20, 2017, to the present, pertaining to:

- a. The use of JTTFs and/or fusion centers to collect information about, monitor, surveil, observe, question, interrogate, and/or investigate individuals or organizations engaged in protest;
- b. The activities and/or predicate criteria that trigger JTTF and/or fusion center involvement, including the legal justification and/or factual showing required;
- c. Intra-agency correspondence and correspondence among federal, state, and local law enforcement agencies pertaining to monitoring, surveilling, observing, questioning, interrogating, and/or otherwise investigating individuals or groups engaged in protest through or by JTTFs and/or fusion centers;
- d. The collection, storage, use, and/or dissemination of data (including photographs, videos, and electronic surveillance records) obtained during and/or in connection with monitoring of individuals or groups engaged in protest through or by JTTFs and/or fusion centers; and
- e. JTTFs and fusion centers' protection of privacy, civil rights, and civil liberties.

(2) Records created from January 20, 2017 to the present, indicating:

- a. The number of individuals whose activities have been investigated through or by JTTFs and/or fusion centers in connection with protests; and
- b. The number and names of groups whose activities have been investigated through or by JTTFs and/or fusion centers in connection with protests; and

(3) Records created from January 20, 2017, to the present concerning the definition of the following terms as used and applied by JTTFs and/or fusion centers:

- a. "Racially or Ethnically Motivated Violent Extremism";
- b. "Anti-Government or Anti-Authority Violent Extremism";
- c. "Animal Rights or Environmental Violent Extremism";
- d. "All Other Domestic Terrorism Threats";
- e. "Abortion-Related Violent Extremism";
- f. "Domestic violent extremism";
- g. "Domestic terrorism";
- h. "Anarchist violent extremism";
- i. "Radical agitators";

- j. "Criminal organizers and instigators";
- k. "Violent instigators";
- l. "Antifa"; and
- m. "Far-left extremists."

(4) Records describing the process and/or procedures individuals may use to find out whether and what information about themselves has been collected and maintained by JTTFs and fusion centers, and the process by which any inaccurate information may be challenged and expunged.

8 DHS-PRIV carefully reviewed the FOIA Request, and in accordance with DHS regulations, at 6 C.F.R. § 5.3(a)(2), determined that DHS Headquarters Office of Intelligence and Analysis (I&A), U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE) are the DHS components most likely to maintain responsive records. On May 30, 2024, DHS-PRIV provided Plaintiff with a final response in which DHS-PRIV acknowledged receipt of the FOIA request and notified Plaintiff of its determination that “the records sought, should they exist, would not be under purview of the DHS Privacy Office. Any responsive records would be held by the DHS Headquarters Office of Intelligence and Analysis (I&A), U.S. Customs and Border Protection (CBP) and Immigration Customs Enforcement (ICE).” The notification explained that “As you have already submitted your request to the aforementioned office[s], we are closing your Privacy Office request and will defer to the I&A, CBP and ICE’s response(s). We have included contact information for the I&A, CBP and ICE FOIA offices below for your convenience.”

9. Having properly determined that responsive records, should they exist, would most likely be held by the I&A, CBP and ICE, and with the understanding that Plaintiff had already submitted its request to those offices, DHS-PRIV administratively closed this case on May 30,

2024, with no further action. At no time prior to administratively closing the FOIA Request did DHS-PRIV process the FOIA Request or supervise the processing of the FOIA Request by the referred components. Nor does DHS-PRIV have an ongoing obligation to supervise another component's processing of a FOIA request directed or referred to it.

11. On June 26, 2024, Plaintiffs submitted an appeal in Secure Release. Plaintiffs appealed DHS's refusal to search DHS's Privacy Office and other DHS components' records for responsive materials. On July 12, 2024, DHS-PRIV sent an appeal acknowledgement letter to the requestor and assigned it number 2024-HQAP-00656.

12. On July 29, 2024, Plaintiffs filed a Complaint for Injunctive Relief Case No. 24-cv-5722, for which FOIA request 2024-HQFO-01500 is subject to this case.

13. As part of this litigation, the Plaintiff alleged that the request should have been also referred to CRCL. After receiving confirmation from CRCL that they would potentially have responsive records, the complaint was referred to CRCL on October 23, 2024. After further discussions with the Plaintiff, it was also determined that the DHS Office of the Inspector General ("OIG") would have responsive records, and thus the DHS Privacy Office also referred the complaint to OIG on January 7, 2025.

III. DHS PRIV'S STANDARD PROCEDURE FOR INITIATING SEARCHES IN RESPONSE TO FOIA REQUESTS

14. Section 5.1(c) of DHS's FOIA regulations provides that "DHS has a decentralized system for processing FOIA requests, with each component handling requests for its records." 6 C.F.R. § 5.1(c). Accordingly, and except for the Cybersecurity and Infrastructure Security Agency

(“CISA”), DHS-PRIV does not respond to or process FOIA requests on behalf of other operational DHS components.

15. DHS-PRIV receives and processes FOIA requests for the following DHS-HQ Offices only: Office of the Executive Secretary, Management Directorate, Office of Strategy, Policy, and Plans, Office of Operations Coordination, Office of Partnership and Engagement, Privacy Office, Civil Rights and Civil Liberties, Center for Prevention Programs and Partnerships, Office of the General Counsel, Office of Legislative Affairs, Office of Public Affairs, Office of the Citizenship and Immigration Services Ombudsman, Office of the Immigration Detention Ombudsman, Office of the Secretary, and Office of Biometric Identity Management (“OBIM”). Additionally, as indicated in Paragraph 5 above, DHS-PRIV, in accordance with an internal agreement, receives and processes FOIA requests for operational component CISA.

16. The DHS FOIA regulations, at 6 C.F.R. Part 5, Subpart A, set out the steps for a FOIA requester to submit a FOIA request to DHS-HQ Offices as well as all DHS components. The DHS FOIA regulations also describe how DHS handles referrals to other agencies and to other DHS components.

17. Subsection 5.1(a)(1) of the DHS FOIA regulations states that “[t]his subpart contains the rules that the Department of Homeland Security follows in processing requests for records under the Freedom of Information Act.”

18. Subsection 5.3(b) of the DHS FOIA regulations states: “Requesters must describe the records sought in sufficient detail to enable DHS personnel to locate them with a reasonable amount of effort. A reasonable description contains sufficient information to permit an organized,

non-random search for the record based on the component's filing arrangements and existing retrieval systems. To the extent possible, requesters should include specific information that may assist a component in identifying the requested records, such as the date, title or name, author, recipient, subject matter of the record, case number, file designation, or reference number."

19. Subsection 5.3(a)(2) of the DHS FOIA regulations states that the "Privacy Office will forward the request to the component(s) that it determines to be the most likely, as of the date of the request for information, to maintain the records that are sought" and that all referrals are to be handled consistent with subsection 5.4(d)(3), that is "the component may refer the responsibility for responding to the request or portion of the request to the component or agency best able to determine whether to disclose the relevant records, or to the agency that created or initially acquired the record as long as that agency is subject to the FOIA. Ordinarily, the component or agency that created or initially acquired the record will be presumed to be best able to make the disclosure determination. The referring component shall document the referral and maintain a copy of the records that it refers." DHS has a decentralized system for processing FOIA requests, which means that most DHS components are independently responsible for handling and processing requests for their records. 6 C.F.R. § 5.1(c). After discussion with Plaintiffs, the DHS Privacy Office agreed to run a search for potentially responsive documents maintained by the DHS Office of Partnership and Engagement ("OPE"), the DHS Office for State and Local Law Enforcement ("OSLLE"), Office of Policy ("PLCY"), Executive Secretary ("Exec Sec") and the DHS Privacy Office ("PRIV"). The DHS Privacy Office sent requests to these components to search for potentially responsive records created January 20, 2017, to the present on January 7, 2025.

IV. GENERAL DESCRIPTION OF DHS, HQ, PRIV, AND OTHER COMPONENTS TASKED WITH SEARCHING FOR RECORDS IN RESPONSE TO PLAINTIFF’S FOIA REQUEST 2024-HQFO-015, AND EXPLANATION OF SEARCHES CONDUCTED

20. In response to Plaintiff’s FOIA request, DHS Headquarters initiated a coordinated manual search across all relevant components to locate records pertaining to the use of Joint Terrorism Task Forces (JTTFs) and fusion centers in connection with protest-related activities. The search tasking was disseminated to DHS components that maintain records likely to address issues raised in the request, as well as to additional offices for completeness on January 7, 2025. The following summarizes the involvement and findings of each component:

21. DHS, PRIV Office of Partnership and Engagement (“OPE”): OPE is responsible for managing interagency partnerships and engagements, particularly with state and local law enforcement. Because of its role in documenting external collaborations and associated agreements, it was determined that OPE was reasonably likely to have records responsive to Plaintiffs’ FOIA request. OPE therefore conducted a search of the following file types for all OPE employees: emails, shared drive folders, hard drives, desktops, personal files and office central files for records that were potentially responsive to the FOIA request. The search terms used included:

“Joint Terrorism Task Force”; “JTTF”; “protest” + “JTTF”; “First Amendment” + “JTTF” ; “privacy” + “JTTF” ; “civil rights” + JTTF” ; “Fusion Center” ; “protest & protest with “terrorism” ; “monitor and collect information” ; “people engaged in protest activity” ; “associate protest with terrorism” ; “ACLU” ; “George Floyd” ; “JTTF(s)” ; “Fusion Center(s)” ; “Un-aliving” ; “Excessive Force” ; “BLM” ; “Minnesota Police” ; “Riots” ; “Civil Disturbance” ; “Looting” ; “Police Brutality” ; Iowa” ; Missouri” ; Michael Brown” ; “Racially or Ethically Motivated” ; “Violent Extremism” ; “Anti-Government or Anti-

Authority”; “Violent Extremism”; “Animal RIGHTS OR environmental”; “Violent Extremism”; “All Other Domestic Terrorist Threats”; “Abortion-related Violent Extremism”; “Domestic Violent Extremism”; “Domestic Terrorist”; “Anarchist Violent Extremism”; “Radical Agitators”; “Criminal Organizers and Instigators”; “Violent Instigators”; “Antifa”; and “Far-Left Extremists”.

OPE responded on January 23, 2025, indicating that no responsive records were found.

22. DHS Office for State and Local Law Enforcement (“OSLLE”): OSLLE oversees the coordination between DHS and state/local agencies. As a result, it was determined that OSLLE was reasonably likely to have records responsive to Plaintiffs’ FOIA request. OSLLE conducted a search of the following file types for all OSLLE employees: emails, personal and electronic shared drives, and desktops for records that could potentially be responsive to the request. The search terms used included:

“Joint Terrorism Task Force”; “JTTF”; “protest” + “JTTF”; “First Amendment” + “JTTF”; “privacy” + “JTTF”; “civil rights” + JTTF”; “Fusion Center”; “protest & protest with terrorism”; “monitor and collect information”; “people engaged in protest activity”; “associate protest with terrorism”; “ACLU”; “George Floyd”; “JTTF(s)”; “Fusion Center(s)”; “Un-aliving”; “Excessive Force”; “BLM”; “Minnesota Police”; “Riots”; “Civil Disturbance”; “Looting”; “Police Brutality”; Iowa”; Missouri”; Michael Brown”; “Racially or Ethically Motivated”; “Violent Extremism”; “Anti-Government or Anti-Authority”; “Violent Extremism”; “Animal RIGHTS OR environmental”; “Violent Extremism”; “All Other Domestic Terrorist Threats”; “Abortion-related Violent Extremism”; “Domestic Violent Extremism”; “Domestic Terrorist”; “Anarchist Violent Extremism”; “Radical Agitators”; “Criminal Organizers and Instigators”; “Violent Instigators”; “Antifa”; and “Far-Left Extremists”.

OSLLE conducted a systematic review of electronic files and hardcopy files. OSLLE identified 124 pages of responsive records on February 12, 2025.

23. Office of Policy (“PLCY”): PLCY is charged with formulating and issuing policies,

procedures, directives, and training materials. Given that many of the documents sought by Plaintiff (including legal opinions and directives) fall within the scope of policy development, PLCY performed an extensive search of the following file types for all PLCY employees: emails, personal and electronic shared drives, and desktops that could be responsive to the request. The search terms used included:

“Joint Terrorism Task Force”; “JTTF”; “protest” + “JTTF”; “First Amendment” + “JTTF” ; “privacy” + “JTTF” ; “civil rights” + JTTF” ; “Fusion Center” ; “protest & protest with terrorism” ; “monitor and collect information” ; “people engaged in protest activity” ; “associate protest with terrorism” ; “ACLU” ; “George Floyd” ; “JTTF(s)” ; “Fusion Center(s)” ; “Un-aliving” ; “Excessive Force” ; “BLM” ; “Minnesota Police” ; “Riots” ; “Civil Disturbance” ; “Looting” ; “Police Brutality” ; Iowa” ; Missouri” ; Michael Brown” ; “Racially or Ethically Motivated” ; “Violent Extremism” ; “Anti-Government or Anti-Authority” ; “Violent Extremism” ; “Animal RIGHTS OR environmental” ; “Violent Extremism” ; “All Other Domestic Terrorist Threats” ; “Abortion-related Violent Extremism” ; “Domestic Violent Extremism” ; “Domestic Terrorist” ; “Anarchist Violent Extremism” ; “Radical Agitators” ; “Criminal Organizers and Instigators” ; “Violent Instigators” ; “Antifa” ; and “Far-Left Extremists”.

PLCY responded on February 6, 2025, that they did not have any records responsive to the request.

24. Executive Secretary (“Exec Sec”): The Executive Secretary supports DHS administrative processes and maintains records of interdepartmental communications. Its review involved a search of internal correspondence, scheduling records, and other documentation that might reflect the administrative coordination behind decisions relevant to the request. Exec Sec conducted a search of the following file types for all Exec Sec employees: emails, personal and electronic shared drives, and desktops that could be responsive to the request. The search terms used included:

“Joint Terrorism Task Force”; “JTTF”; “protest” + “JTTF”; “First Amendment” + “JTTF” ; “privacy” + “JTTF” ; “civil rights” + JTTF” ; “Fusion Center” ; “protest & protest with “terrorism” ; “monitor and collect information” ; “people engaged in protest activity” ; “associate protest with terrorism” ; “ACLU” ; “George Floyd” ; “JTTF(s)” ; “Fusion Center(s)” ; “Un-aliving” ; “Excessive Force” ; “BLM” ; “Minnesota Police” ; “Riots” ; “Civil Disturbance” ; “Looting” ; “Police Brutality” ; Iowa” ; Missouri” ; Michael Brown” ; “Racially or Ethically Motivated” ; “Violent Extremism” ; “Anti-Government or Anti-Authority”; “Violent Extremism” ; “Animal RIGHTS OR environmental” ; “Violent Extremism” ; “All Other Domestic Terrorist Threats” ; “Abortion-related Violent Extremism” ; “Domestic Violent Extremism” ; “Domestic Terrorist” ; “Anarchist Violent Extremism” ; “Radical Agitators” ; “Criminal Organizers and Instigators” ; “Violent Instigators” ; “Antifa” ; and “Far-Left Extremists”.

Exec Sec conducted a systematic review of electronic files and hardcopy files. Exec Sec identified 35 pages of records, including a document titled, “Cyber Integration for Fusion Centers an Appendix to *Baseline Capabilities for State and Major Urban Area Fusion Centers.*”

25. DHS Privacy Office (“PRIV”): PRIV is charged with ensuring the protection of privacy, civil rights, and civil liberties. Given its mission, it was determined that PRIV was reasonably likely to have records responsive to Plaintiffs’ FOIA request. PRIV therefore conducted a search of the following file types for all DHS PRIV employees: emails, personal and electronic shared drives, and desktops that could be responsive to the request. The search terms used included:

“Joint Terrorism Task Force”; “JTTF”; “protest” + “JTTF”; “First Amendment” + “JTTF” ; “privacy” + “JTTF” ; “civil rights” + JTTF” ; “Fusion Center” ; “protest & protest with “terrorism” ; “monitor and collect information” ; “people engaged in protest activity” ; “associate protest with terrorism” ; “ACLU” ; “George Floyd” ; “JTTF(s)” ; “Fusion Center(s)” ; “Un-aliving” ; “Excessive Force” ; “BLM” ; “Minnesota Police” ; “Riots” ; “Civil Disturbance” ; “Looting” ; “Police Brutality” ; Iowa” ; Missouri” ; Michael Brown” ; “Racially or Ethically Motivated” ; “Violent Extremism” ; “Anti-Government or Anti-Authority”; “Violent Extremism” ; “Animal RIGHTS OR environmental” ; “Violent Extremism” ; “All Other Domestic Terrorist Threats” ; “Abortion-related Violent Extremism” ; “Domestic Violent Extremism” ; “Domestic Terrorist” ; “Anarchist Violent Extremism” ;

“Radical Agitators” ; “Criminal Organizers and Instigators” ; “Violent Instigators” ; “Antifa” ; and “Far-Left Extremists”.

PRIV conducted a systematic review of electronic files and hardcopy files. PRIV’s response on February 6, 2025, provided a link to responsive documents that are available and accessible to the public at [Policy | Homeland Security](#). This site contains all Privacy Act policies, procedures, trainings and resources provided and available to JTTFs and fusion centers.

26. For each component that was determined reasonably likely to possess responsive records, a designated FOIA point of contact and Subject Matter Expert (SME) conducted searches. Each component searched for records created from January 20, 2017 through the date of the search. All documents identified as potentially responsive were forwarded to the DHS FOIA processing unit for subsequent review, redaction, and additional handling in accordance with applicable statutory and regulatory guidelines.

27. In summary, the DHS Privacy Office received back the following responses: OPE (no records); PRIV (no records aside from those publicly available online); PLCY (no records), OSLLE (124 pages of potentially responsive records found); Exec Sec (35 pages of potentially responsive records found). In total, 159 pages of potentially responsive records were identified. DHS processed these records and provided Plaintiff with a production and response letter on April 7, 2025; for which 106 pages were released in full, 45 pages released in part, and 8 pages withheld in full pursuant to FOIA exemptions (b)(5) and (b)(6).

V. U.S. Department of Homeland Security Withholdings under FOIA Exemption 5

28. DHS Headquarters Privacy Office made a response to Plaintiff on April 7, 2025. Specifically, of the 159 pages that DHS reviewed, DHS released 106 pages in full, released 45 pages in part, and withheld 8 pages in full pursuant to FOIA exemptions (b)(5) and (b)(6). The 159 pages provided are numbered DHS-001-05722-000001 to DHS-001-05722-000159. In addition, the DHS Headquarters Privacy Office explained that we considered the foreseeable harm standard when reviewing the record set and applied the FOIA exemptions as required by the statute and the Attorney General's guidance.¹

30. The records Bates stamped DHS-001-05722-000003 to -000006, and -000009 to 000012 (8 pages in total) were withheld in full pursuant to Exemption 5. These records, which are duplicates, were withheld in full because they are the draft remarks of John Cohen, the former Counterterrorism Coordinator and Assistant Secretary for Counterterrorism and Threat Prevention for the DHS Office of Strategy, Policy, and Plans, for a Congressional hearing. The records contain comments in track changes. Although the remarks were withheld in full, the DHS Headquarters Privacy Office indicated at the top of DHS-001-05722-000003 that: "The final version is available online at:

<https://www.congress.gov/117/meeting/house/112530/witnesses/HHRG-117-HM05-WstateCohenJ-20210429.pdf>."

¹ It is my understanding that Plaintiff is not objecting to DHS' assertion of Exemption 6 to the extent it was applied solely to names, addresses, and telephone numbers. This declaration therefore focuses on DHS' assertion of withholdings pursuant to Exemption 5.

31. Similarly, the records Bates stamped DHS-001-05722-000017 to -00019 were partially withheld pursuant to Exemption 5. The withheld portions of these records consist of draft discussion points for a meeting with the New York City Police Department on March 3, 2021. DHS Privacy Office released the non-exempt portions of the records, which included the overview of the meeting, along with the staff responsible for the briefing, but withheld draft discussion points, as they included comments in track changes.

32. The documents Bates stamped DHS-001-05722-000020 to -00025 were also partially withheld pursuant to Exemption 5. These records contain the draft remarks of former DHS Secretary Alejandro Mayorkas for the International Counterterrorism Conference held in Las Vegas on May 31, 2023. DHS released the non-exempt portions of those records, which included the key messages, numbered one through 5. *See* on DHS-001-05722-000020. Furthermore, the DHS Headquarters Privacy Office marked the following on the top of the page Bates stamped DHS-001-05722-000020: “The final version is available online at: <https://www.dhs.gov/archive/news/2023/05/31/secretary-mayorkas-remarks-2023-internationalcounterterrorismconference>.” The documents Bates stamped DHS-001-05722-000027 to 00031 were also partially withheld and withheld in full pursuant to Exemption 5. These records contain a draft of the “Remarks Outline” referenced above with comments in track changes on all sections of the document.

33. The records Bates stamped DHS-001-05722-000076, -000078, -000079, -000081, -000092, -000094, -000097, -000102, -000104, -000106, 100111-112 were partially withheld

pursuant to Exemption 5 to redact comments made in track changes and specific text to a draft FBI/DHS Strategic Intelligence Assessment and Data and Domestic Terrorism report. The DHS Privacy Office released all non-exempt portions of the report, as well as a full version of the final report. *See* DHS-001-05722-000035 to -000072.

34. The records Bates stamped DHS-001-05722-0000121 to -000124 were partially withheld and withheld in full pursuant to Exemption 5. These records contain the draft talking points of Secretary Alejandro Mayorkas and Fayrouz Saad Assistant Secretary, Office of Partnership and Engagement for a meeting with the President and CEO of the Leadership Conference on Civil and Human Rights, which was to be held on September 13, 2024. DHS Privacy Office released the non-exempt portions of the records, which included the subject of the meeting, the logistics of the meeting, and background on the meeting, but withheld the section that contained proposed talking points because it included comments in track changes.

35. DHS applied Exemption 5 to protect these drafts and draft comments pursuant to the deliberative process privilege. These documents contain pre-decisional and deliberative information discussing the contents of reports, proposed meetings, and remarks that were considered in drafting these documents. DHS applied Exemption 5 to withhold and protect information pursuant to the deliberative process privilege because (1) the nature of the specific deliberative process involved a discussion between decision-makers on these types of records; (2) the function and significance of these documents and remarks was that it served as a deliberation with track changes and recommendations on language to be used and talking points to consider,

and (3) the nature of the decision-making authority was vested in the personnel who finalized the remarks and who made decisions on which talking points to raise during those meetings and conference. The full and partial withholding of these records satisfies both prongs of FOIA Exemption 5 because they contain intra-agency communications internal to DHS and is protected by deliberative process privilege.

36. In addition, the release of information currently withheld would cause foreseeable and identifiable harm to the Department. The identifiable and foreseeable harm in disclosing this information would be the chilling effect on the ability of agency personnel to provide candid discussion of issues between employees, which would compromise the ability of the DHS decision-makers to be fully informed in order to make quality decisions on making public remarks and meeting with individuals, and in drafting final reports. Deliberations amongst agency personnel regarding such decisions require total candor. Disclosure of such communications would significantly impair the Department's decision-making process and have a strong chilling effect. To properly assess and deliver reports and communicate during proposed meetings, DHS Leadership must feel free to receive candid assessments.

37. DHS conducted a page-by-page, line-by-line review of all responsive information contained in documents Bates stamped DHS-001-5722-000001 through and -000159 and has released all reasonably segregable, non-exempt information to Plaintiff. For example, DHS released a large majority of a draft report contained in on Bates stamped DHS-001-5722-000076 to DHS-001-05722-0000120.

VI. U.S. Department of Homeland Security Review of FBI Consult for Records Bates Stamped 24-cv-5722-249 Through 258

38. On March 25, 2025, the FBI provided the U.S. Department of Homeland Security (“DHS”) with a 10-page consult packet with records Bates stamped 24-cv-5722-249 through 258 for DHS review. The record set consisted of a joint intelligence bulleting authored by both DHS and FBI. Although the FBI consulted with DHS regarding this record set, the FBI indicated its clear intent to withhold the record in full. Accordingly, DHS deferred to FBI’s determination and did not conduct an independent withholding assessment.

V. JURAT CLAUSE

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Signed this 14th day of April 2025.

CATRINA M
PAVLIK KEENAN

Digitally signed by CATRINA
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Catrina M. Pavlik-Keenan
Deputy Chief FOIA Officer
Privacy Office
U.S. Department of Homeland Security