NATIONAL SECURITY PROJECT

AMERICAN CIVIL LIBERTIES UNION FOUNDATION

Memo Endorsed

June 3, 2015

The parties' proposed schedule is hereby adopted.
So ordered.

J. PAUL OETKEN
United States District Judge

6/4/15

The Honorable J. Paul Oetken
United States District Judge
United States District Court
40 Foley Square, Room 2101
New York, NY 10007

Re: *American Civil Liberties Union, et al. vs. TSA*, No. 1:15-cv-02061-JPO
Stipulated Letter Motion to Set Production and Briefing Schedule

Dear Judge Oetken:

Plaintiffs write on behalf of both parties to request that the Court adopt the schedule set forth below for the production of documents and, if necessary, subsequent summary judgment briefing in this matter.

This case concerns a request under the Freedom of Information Act ("FOIA") that Plaintiffs submitted to the Transportation Security Administration ("TSA") on October 1, 2014 ("Request"). In their Request, Plaintiffs sought records concerning TSA's behavior detection activities, including the Screening Passengers by Observation Techniques program. On March 19, 2015, having received no substantive response to the Request, Plaintiffs filed this lawsuit to compel TSA to process the Request and disclose responsive documents under FOIA. TSA answered Plaintiffs' Complaint on April 22, 2015. ECF No. 12.

The parties have conferred on several occasions in order to facilitate TSA's timely processing of the Request and the production of responsive documents. During the course of those discussions, Plaintiffs clarified, and in some cases agreed to narrow, the scope of some of their requests based on initial input from TSA.

Specifically, Plaintiffs have agreed to limit Request No. 7 to:

> Records created since January 1, 2007 concerning (a) complaints about, investigations of, and/or disciplinary actions related to the work of behavior detection officers in applying the SPOT program or misusing behavior detection techniques, including any alleged racial, ethnic, religious, or national origin profiling, and (b) any investigations and/or reported legal violations concerning the implementation of the program.

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Plaintiffs also identified certain requests that TSA agreed to prioritize for earlier production. But to the extent TSA is able to finish processing non-priority documents while priority documents are still under review, TSA will produce the documents and any associated draft *Vaughn*[1] indices for the non-priority documents as they are ready rather than wait for the completion of the priority documents.

TSA has informed Plaintiffs that it is continuing to search for and gather responsive documents and that it has started processing documents it has already gathered, and is prepared to produce responsive documents and any associated draft *Vaughn* indices on a rolling basis, as set forth below.

The parties have agreed upon, and jointly request that the Court adopt, the following schedule for the production of documents and draft *Vaughn* indices:

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- TSA will make an initial production of documents within two weeks of the Court's approval of this Stipulation.
- TSA will provide a draft *Vaughn* index related to its initial production within ten calendar days of that production.
- TSA will process 800 or more pages of documents at 30-day intervals following the initial production and will prioritize the processing of documents responsive to Request Nos. 2(A), (E), (F), (G), 4(B), (C), (D), 5(C), 7, and 8.
- TSA will provide draft *Vaughn* indices related to each production within ten calendar days of the production.
- For Request Nos. 5(A), (B), and (C), 7, and 9(A), (B), and (C), the parties have agreed, at this juncture, that TSA will review responsive documents generated in 2012, 2013, and 2014 only, subject to the parameters set forth below.
  - TSA will make all reasonable efforts to produce documents and any associated draft *Vaughn* indices describing documents and the bases for withholding the documents or portions thereof under FOIA for 2014 by August 24, 2015.

[1] *See Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974) (requiring agencies to identify documents withheld under FOIA, state the statutory exemption claimed, and explain how disclosure would damage the interests protected by the claimed exemption).

- Within 14 days of the production of the 2014 documents and any associated draft *Vaughn* index for each of Request Nos. 5(A), (B), and (C), 7, and 9(A), (B), and (C), the parties will confer regarding whether TSA should wait to process the remaining documents until after briefing and a decision on any withholdings TSA has made that would apply to the 2012 and 2013 documents as well.

- If Plaintiffs determine that TSA should process the documents from 2012 and 2013 prior to briefing, and TSA determines that an extension of the time agreed to herein to complete the processing of documents is necessary, the parties will confer in an effort to agree on a reasonable extension of time and a corresponding extension of the briefing schedule. If the parties cannot agree on such an extension, TSA may seek relief from the Court and Plaintiffs may oppose any such relief.

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- TSA will make all reasonable efforts to complete its processing of documents responsive to the Request, and provide a final *Vaughn* index, no later than January 29, 2016.

- To the extent that TSA determines that it will require additional time to complete its processing of the documents, the parties will confer in an effort to limit the number of remaining documents TSA must process and/or agree on a reasonable extension of time and a corresponding extension of the briefing schedule. If the parties cannot agree on such a limitation or extension, TSA may seek relief from the Court and Plaintiffs may oppose any such relief.

The parties contemplate that, at the completion of this production timeline, any remaining disputes as to the adequacy of TSA's search, processing, and production of documents, and its assertion of exemptions under FOIA, will most appropriately be addressed through cross-motions for summary judgment.[2] The parties therefore jointly request that the Court set the following briefing schedule:

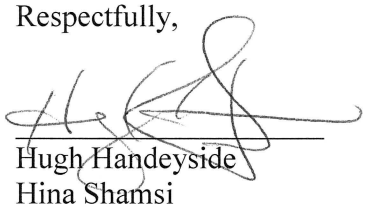
February 26, 2016: Plaintiffs' motion for summary judgment due.

[2] TSA has informed Plaintiffs that, to the extent Plaintiffs seek to challenge TSA's designation of information as Sensitive Security Information pursuant to section 114(r) (formerly 114(s)) of title 49, it is TSA's position that the federal circuit courts have exclusive jurisdiction over any such challenge. Plaintiffs reserve the right to seek a ruling from this Court on the issue of jurisdiction over any such challenges.

March 25, 2016:	Defendant's cross-motion for summary judgment and brief in opposition to Plaintiffs' motion due.
April 22, 2016:	Plaintiffs' reply and brief in opposition to Defendants' motion due.
May 6, 2016:	Defendant's reply due.

We thank the Court for its consideration of this request.

Respectfully,



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Cc by ECF: Christine S. Poscablo, Esq., counsel for Defendant