



June 30, 2017

BY ECF

The Honorable Paul A. Engelmayer
United States District Court
Southern District of New York
40 Foley Square, Room 2201
New York, NY 10007

Re: *ACLU et al. v. DOD et al.*, No. 17 Civ. 3391 (PAE)

Dear Judge Engelmayer,

We regret taking up the Court's time with this matter. When we saw the government's individual filing (ECF No. 24) this afternoon, we were taken by surprise, as we understood that the parties were still conferring in an attempt to reach agreement on the proposed scheduling order requested by the Court.

The government is correct that the disputed issue is a narrow one. Plaintiffs sought to have the parties' positions with respect to the provision of a draft *Vaughn* index reflected in the proposed order because the index was a focus of discussion at the initial conference. There, the government had indicated that it would consider providing one. The initial draft order the government sent us yesterday evening included language stating that the defendant agencies would not provide a draft *Vaughn* index. The government informed us today that the agencies' position would not change. To avoid the appearance of endorsing that position in a joint filing, Plaintiffs proposed modified draft language, to which the government objected. Discussion continued until we saw the government had filed its individual letter and proposed order. The government's now-filed proposed order omits any reference to a draft *Vaughn* index.

We respectfully defer to the Court about how it wishes in its order to achieve the goal that we understood the proposed order should achieve—clarity about how this litigation will proceed. Again, we regret having to address this issue before the Court in this manner.

Respectfully,

/s/ Brett Max Kaufman

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