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6 UNITED STATES DISTRICT COURT
7 NORTHERN DISTRICT OF CALIFORNIA
8 SAN FRANCISCO-OAKLAND DIVISION

9 AMERICAN CIVIL LIBERTIES
10 UNION FOUNDATION, *et al.*,

11 *Plaintiffs,*

12 v.

13 DEPARTMENT OF JUSTICE, *et al.*,

14 *Defendants.*
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Case No. 19-CV-00290-EMC

JOINT STATUS REPORT

17 The parties jointly submit this status report pursuant to the January 16, 2020
18 order issued by Judge Chen (ECF No. 41) and the March 18, 2020 order issued by
19 Judge Illman (ECF No. 47).

20 Three DHS components—U.S Citizenship and Immigration Services, U.S.
21 Immigration and Customs Enforcement, and U.S. Customs and Border
22 Protection—have completed their searches, processing, and productions in
23 response to Plaintiffs’ FOIA request.

24 The FBI and the State Department have temporarily paused their processing
25 of documents responsive to the request, due to circumstances associated with the
26 ongoing COVID-19 pandemic.

27 The FBI states that its Office of Records and Information Dissemination
28

1 Services (“RIDS”) currently is closed through at least April 27, and that because
2 the documents for FOIA processing reside on classified networks, processing
3 cannot be done remotely.

4 The State Department states that its FOIA office is maximizing telework for
5 its employees, and the personnel assigned to this case are not working on-site in
6 State Department offices. In particular, review of documents located in response to
7 FOIA requests is primarily handled by retired Foreign Service Officers, who are
8 currently not able to access their State Department offices for two reasons. First,
9 the State Department has determined that FOIA processing is not a mission-critical
10 function, and does not fit into any of the exceptions identified in the most recent
11 Office of Management and Budget Circular governing agency operations during
12 this pandemic. Second, many of the retired Foreign Service Officers who process
13 the records fall into age groups that have been identified as higher risk for COVID-
14 19, and the State Department has therefore paused scheduling them to work on-site
15 at State Department offices. As with the FBI, because all the potentially responsive
16 State Department documents in this case reside on classified networks, personnel
17 cannot complete such processing remotely.

18 Plaintiffs do not object to a 45-day pause, beginning on the date of this
19 filing, in the FBI’s and the State Department’s processing due to the COVID-19
20 pandemic. However, if the Court requires further information regarding the
21 agencies’ constraints, the FBI and the State Department can provide additional
22 details via a declaration. The FBI and the State Department agree to provide
23 Plaintiffs with a status update regarding COVID-19-related constraints on or
24 before May 1.

25 The DHS Office of Intelligence and Analysis (“I&A”) states that it has
26 completed its search in response to Plaintiffs’ FOIA request and processed an
27 initial set of documents located by I&A personnel in their manual searches. All
28 responsive documents in this set originated outside I&A and have been referred to

1 the appropriate agency or component(s). Plaintiffs and I&A have agreed that I&A
2 will prioritize its processing of the potentially responsive documents located in
3 I&A personnel’s manual searches, which total approximately 850 pages, and I&A
4 expects to be able to complete its processing of those documents by April 30,
5 2020. However, that timeline would not include final processing and
6 production/withholding of documents originating outside of I&A that must be
7 referred to other agencies or components. The parties have agreed that, once I&A
8 completes its processing of this first set of documents, it will turn to the 14,000+
9 pages located in email searches, reviewing those records for responsiveness and
10 processing any responsive records. (I&A does not expect many of the documents
11 located in its email search to ultimately be responsive.) I&A previously proposed,
12 and Plaintiffs have agreed, that I&A will complete its review and processing of this
13 second, larger set of documents by December 31, 2020. Currently, I&A has the
14 capacity to process the documents at issue remotely and expects to be able to
15 complete its review and processing in the timeframes set forth above.

16 The Department of Justice’s Office of Information Policy (“OIP”) states that
17 it is facing a number of COVID-19-related resource constraints, but has the
18 capacity to process the documents at issue remotely. Currently, OIP anticipates that
19 it will be able to complete a responsiveness review of the 25,000+ potentially
20 responsive documents located in its search by July 3, 2020, as previously indicated.
21 OIP currently anticipates that, as previously indicated, it will be able to process any
22 documents determined to be responsive at a rate of 250 pages per month. The
23 parties’ differing positions as to OIP’s search and processing of the request
24 notwithstanding COVID-19-related issues are set forth in their February 19, 2020
25 letter briefs. ECF Nos. 45, 46.

26 The DHS Privacy Office (“DHS”) states that it is facing severe resource
27 constraints, which have been compounded by the COVID-19 pandemic. DHS has
28 the capability to process documents remotely and is attempting to continue

1 processing FOIA requests. Given unanticipated family responsibilities faced by
2 DHS personnel, however, and the strain on DHS information technology systems
3 caused by the huge number of individuals working remotely, DHS's FOIA
4 processing capacity is now more limited. The searches initially run by DHS
5 returned an unworkably large volume of data, and DHS is currently working with
6 Plaintiffs to negotiate a narrower scope of search. The parties' differing positions
7 as to DHS's search and processing of the request notwithstanding COVID-19-
8 related issues are set forth in their letter briefs to the Court. ECF Nos. 45, 46.

9 Plaintiffs and Defendants have agreed that they will meet and confer again
10 by May 8, 2020, and provide another status report to the Court at that point.

11 Respectfully submitted,

12 DATED: April 9, 2020

13 /s/
14 _____
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/s/
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