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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.*
15
16

Case No. 19-CV-00290-EMC

JOINT STATUS REPORT

17 Pursuant to the Court’s order of November 19, 2020 (ECF No. 88), the
18 parties jointly submit this status report to address the status of searches and
19 processing of records by the Department of Justice’s Office of Information Policy
20 (“OIP”), the Federal Bureau of Investigation (“FBI”), the State Department
21 (“State”), the Department of Homeland Security’s Office of Intelligence &
22 Analysis (“I&A”) and the DHS Privacy Office (“DHS”).

23 **Defendants’ Report**

24 I. OIP

25 OIP has completed its productions, with the exception of records pending
26 consultation with other Department components and Executive Branch agencies.
27 OIP will be issuing additional responses once these consultations are completed.
28

1 II. FBI

2 The FBI issued its 14th release on November 30, 2020. Approximately 1,557
3 pages remain to be processed following that release. The FBI anticipates
4 processing approximately 537 pages and releasing non-exempt information on or
5 about December 30, 2020.

6 III. State Department

7 On July 27, 2020, the Department entered Phase Two of its three-phase
8 process for the resumption of normal operations. Between July 27 and November
9 25, 2020, bureaus were no longer required to maximize telework but were
10 encouraged to continue maximizing telework and extending telework
11 flexibilities. However, in light of rising COVID-19 cases across the country, the
12 Department announced on November 25, 2020, that it was reverting to a more
13 restrictive policy that would maximize telework through January 3, 2021, and
14 directing that employees should only come to the office to perform required duties
15 that cannot be accomplished while teleworking. On December 21, 2021, the
16 Department announced that its National Capital Region offices would be
17 regressing to Phase One until January 18, 2021. This and other unforeseen
18 developments related to the pandemic have hindered the Department's ability to
19 carry out its plan to transfer the unclassified, potentially responsive documents in
20 this case from a classified system to an unclassified system. Accordingly, it is
21 uncertain whether the Department can meet the December 30 production
22 deadline. The Department will confer with Plaintiffs in advance of the deadline in
23 the event that it determines it cannot make the scheduled production.

24 IV. DHS Privacy Office ("DHS")

25 DHS is still working on ingesting the files resulting from the search
26 conducted by the Office of the Chief Information Officer (OCIO). DHS is
27 ingesting the data in 10 GB increments. Once the ingestion is complete, DHS will
28 be able to determine a total page count of potentially responsive records, and

1 address a production schedule.

2 V. DHS I&A

3 I&A has continued to make monthly productions and anticipates that it will
4 complete its processing this month.

5 **Plaintiffs' Report**

6 The Court ordered DHS Privacy to “commence the search, processing, and
7 production of records responsive to the Request by October 2, 2020.” ECF No. 77.
8 To date, DHS Privacy still has not produced a single page of responsive material,
9 and it is now clear that DHS Privacy has not even initiated a *search* for responsive
10 records, aside from the limited search that it says it conducted regarding Part 1 of
11 the Request. *See* ECF No. 87 at 2. These continued delays are unexplained and at
12 odds with FOIA’s clear command to make records “promptly available.” *See* 5
13 U.S.C. § 552(a)(3)(A); *see also Long v. IRS*, 693 F.2d 907, 910 (9th Cir. 1982)
14 (concluding that an agency’s unreasonable delay in disclosing documents violated
15 the FOIA and that “courts have a duty to prevent these abuses”). Plaintiffs again
16 respectfully request that DHS Privacy be required to produce all responsive records
17 promptly and by a date certain, so that Plaintiffs may seek any necessary further
18 relief from the Court regarding DHS Privacy’s search and production of records.

19 Regarding the State Department’s status report, Plaintiffs are not insensitive
20 to the constraints that the pandemic has imposed on work environments
21 nationwide, and Plaintiffs will confer with the State Department to the extent
22 necessary. However, Plaintiffs again note that other agencies, including all other
23 Defendants herein, have demonstrated the ability to devise contingency plans and
24 continue FOIA-related operations notwithstanding the pandemic. More than nine
25 months into the pandemic, the State Department must do the same.

26 **Next Steps**

27 Plaintiffs have requested specific relief as to DHS Privacy, as set forth
28 above. DHS objects to Plaintiffs’ demand and would request an opportunity to

1 submit a formal response prior to the Court ordering any relief.

2 The parties jointly propose filing a further joint status report in 30 days.

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4 Respectfully submitted,

5 DATED: December 21, 2020

6 /s/
7 Hugh Handeyside
8 American Civil Liberties Union Foundation
9 125 Broad Street, 18th Floor
10 New York, NY 10004
11 Telephone: 212-549-2500
12 hhandeyside@aclu.org

13 Matthew Cagle
14 American Civil Liberties Union Foundation
15 of Northern California
16 39 Drumm Street
17 San Francisco, CA 94111
18 Telephone: 415-621-2493
19 mcagle@aclunc.org

20 *Attorneys for Plaintiffs*

21 JEFFREY BOSSERT CLARK
22 Acting Assistant Attorney General

23 ELIZABETH J. SHAPIRO (D.C. Bar No.
24 418925)
25 Deputy Branch Director

26 /s/
27 ELIZABETH TULIS (NY Bar)
28 Trial Attorney
U.S. Department of Justice,
Civil Division, Federal Programs Branch
1100 L Street, NW
Washington, D.C. 20005
Telephone: (202) 514-9237
elizabeth.tulis@usdoj.gov

Attorneys for Defendants