

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION; AMERICAN CIVIL
LIBERTIES UNION OF NORTHERN
CALIFORNIA,

Plaintiffs,

v.

DEPARTMENT OF JUSTICE; FEDERAL
BUREAU OF INVESTIGATION;
DEPARTMENT OF HOMELAND
SECURITY; U.S. CUSTOMS AND
BORDER PROTECTION; U.S.
CITIZENSHIP AND IMMIGRATION
SERVICES; U.S. IMMIGRATION AND
CUSTOMS ENFORCEMENT;
DEPARTMENT OF STATE,

Defendants.

No. 19-cv-290-EMC

DECLARATION OF TERRI WHITE

1 I, TERRI WHITE, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury:

2 1. I am the Acting Associate Center Director in the Freedom of Information and
3 Privacy Act (FOIA/PA) Unit, National Records Center (NRC), United States
4 Citizenship and Immigration Services (USCIS), within the United States
5 Department of Homeland Security (DHS), in Lee’s Summit, Missouri. I have held
6 the position of Acting Associate Center Director since January 1, 2021, and
7 previously served as the Chief of the Significant Interest Group since June 2019. I
8 am also an attorney, licensed to practice law by the State of Missouri in 2006. Prior
9 to joining DHS in 2019, I served as an attorney with the United States Bureau of
10 Prisons (BOP) under the United States Department of Justice (DOJ) for almost
11 seven years. As part of my duties with the BOP, among other things, I provided
12 legal advice to the agency on the release of information sought under the FOIA.

13
14 2. As Acting FOIA Officer for USCIS, I supervise over 200 information access
15 professionals who are responsible for the orderly processing of all public,
16 congressional, judicial, and inter-/intra-agency requests or demands for access to
17 USCIS records and information pursuant to the FOIA, Privacy Act, Executive
18 Orders, departmental directives, regulations and compulsory legal process.

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3. Through the exercise of my official duties as Acting Associate Center Director, I am familiar with USCIS's standard process for responding to FOIA requests, including search procedures for locating agency records.
4. The statements contained in this declaration are based on my personal knowledge, my review of relevant documents kept by USCIS in the course of ordinary business, and upon information provided to me by other USCIS employees in the course of my official duties.
5. This declaration is submitted in support of USCIS's Motion for Summary Judgment in this matter. This declaration describes, generally, agency procedures for processing FOIA requests for access to agency records and, more specifically, agency action taken in response to Plaintiffs American Civil Liberties Union Foundation and American Civil Liberties Union Foundation of Northern California's FOIA request.

USCIS'S STANDARD FOIA OPERATING PROCEDURES

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6. USCIS routinely and consistently processes FOIA requests in compliance with DHS implementing regulations found at 6 C.F.R. Part 5 and Management Directive No. 0460.1.¹ Specifically, when the agency receives a FOIA request for USCIS information or documents, the agency's standard procedure includes the following:
 - a) after determining the nature, scope, and contours of a valid FOIA request, a preliminary search is conducted to locate potentially responsive records;

¹ DHS requirements for submitting a FOIA request for an individual's records include the following:

1. All FOIA requests must be submitted in writing and signed by the requester. 6 C.F.R. § 5.3(a).
2. If the requester seeks records about him/herself the requester must verify identity by submitting, in writing, a statement containing his/her full name, current address, date of birth and place of birth. This statement must be signed, and the signature must either be notarized or submitted under 28 U.S.C. § 1746 (penalty of perjury in lieu of notarized signature). This signature must be submitted along with the FOIA request. 6 C.F.R. §§ 5.3(a), 5.21(d).
3. The FOIA request must describe the records that are being sought in sufficient detail to enable DHS personnel to locate them with a reasonable amount of effort. 6 C.F.R. § 5.3(b).

- 44 b) because FOIA requests are generally processed by the NRC on a first-
45 in/first-out basis, the request is logged in the approximate order of its receipt
46 into a computerized case tracking and retrieval system which automatically
47 assigns a control number and tracks the file created;
48
- 49 c) an acknowledgement letter is contemporaneously mailed to the requester,
50 advising of the control number, processing fee arrangement, processing
51 options, and contact information, and addressing any collateral requests
52 made by requester;
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- 54 d) during any abeyance in processing, periodic system inquiries are
55 conducted to maintain updated information concerning the disposition of
56 agency records that are subject to the pending FOIA request;
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- 58 e) if relevant records are in the possession of an office or agency other than
59 the responding office, a request for the production of the records is sent to
60 the records' custodian(s) for that office or agency;
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- 62 f) during the course of processing, the FOIA request and any responsive
63 records are subjected to rigorous analyses to arrive at the proper final
64 agency determination; and finally;
65
- 66 g) the NRC sends its response to the requester, granting or denying, in whole
67 or in part, access to requested records, and advising of any additional rights
68 that may have vested in the requester by virtue of the final agency
69 determination.
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- 71 7. In recent years, USCIS has experienced a significant increase in the amount of
72 FOIA requests received and processed by the agency. USCIS is only one of ninety-
73 nine federal agencies subject to the FOIA, but it receives more than one-fifth of the
74 total requests received. For example, during FY 2019, USCIS received 200,174
75 total requests, which represents more than half of the total requests received by
76 DHS and over 22 percent of the total requests received government-wide in FY
77 2019. See <http://www.foia.gov>.
78
- 79 8. Given the significant number of FOIA requests received by USCIS and in an effort
80 to process FOIA requests in a manner designed to be fair and expeditious, USCIS
81 has adopted a policy of processing such requests on a first-in/first-out basis. This
82 process is further enhanced by the implementation of a regulation providing for
83 expedited processing of requests under given circumstances, and the adoption of a
84 multi-track system of processing which not only allows the agency to process
85 requests on a first-in/first-out basis within each track, but also permits the USCIS
86 to respond to relatively simple requests more quickly than requests involving

- 87 complex and/or voluminous records. USCIS’s first-in/first-out and multi-track
 88 processing is consistent with the requirements set forth in Open America v.
 89 Watergate Special Prosecution Force, 547 F.2d 605 (D.C. Cir. 1976) and Exner v.
 90 FBI, 612 F.2d 1202, 1980 U.S. App. LEXIS 20856, February 4, 1980.
- 91
- 92 9. The majority of the FOIA/PA requests that USCIS receives seek immigration
 93 records located in an individual’s Alien File (A-file).² USCIS also receives a
 94 significant volume of requests seeking non A-file records, such as USCIS policy
 95 documents.
- 96
- 97 10. The NRC’s Significant Interest Group (SIG) team handles all FOIA/PA requests
 98 for non-alien file records on behalf of the agency. Upon receipt of such a request,
 99 a SIG team reviews the request and determines its precise nature and scope, and
 100 any and all agency offices that may have potentially responsive records based on
 101 the specific missions and work of each office and Directorate.
- 102
- 103 11. After a member of the SIG team has identified any and all agency offices that may
 104 have potentially responsive records, he or she then forwards the request to those
 105 offices for a search and response. In addition to searching its own records, those
 106 offices are generally asked to identify any other agency offices that it believes could
 107 have potentially responsive records. The objective of this process is to devise and
 108 conduct a search that is reasonably calculated to uncover all potentially relevant
 109 and responsive records.
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PLAINTIFFS’ MAY 24, 2018 FOIA REQUEST

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- 113 12. On May 29, 2018, USCIS’s FOIA office received a FOIA request dated May 24,
 114 2018, which had been submitted to seven government agencies, including USCIS.
 115 The request was submitted by Hugh Handeyside, on behalf of the American Civil
 116 Liberties Union Foundation and American Civil Liberties Union Foundation of
 117 Northern California (“Plaintiffs” or “ACLU”). The request sought a copy of

² An A-File and ELIS make up the official government record that contain information regarding transactions involving an individual as he/she passes through the U.S. immigration and inspection process. *See* 82 Fed. Reg. 43556 (September 18, 2017). The Alien File/Central Index System is a centralized and consolidated electronic system of records through which A-Files are stored, maintained, updated, tracked, and retrieved. Although USCIS is the official custodian of all A-Files and the system manager for the Alien File/Central Index System, both the files and systems are shared with U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection, all of which create and contribute documents to A-Files. A-Files are maintained under and retrievable by reference to an individual’s name and Alien number, and date of birth, or combination thereof.

118 various records and information “pertaining to social media surveillance,
119 including the monitoring and retention of immigrants' and visa applicants' social
120 media information for the purpose of conducting ‘extreme vetting.’” See
121 Plaintiffs’ FOIA request, Exhibit A.
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123 13. Specifically, Plaintiffs’ FOIA request sought the following records:
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- 125 a. All policies, guidance, procedures, directives, advisories, memoranda,
126 and/or legal opinions pertaining to the agency's search, analysis, filtering,
127 monitoring, or collection of content available on any social media
128 network;
- 129 b. All records created since January 1, 2015 concerning the purchase of,
130 acquisition of, subscription to, payment for, or agreement to use any
131 product or service that searches, analyzes, filters, monitors, or collects
132 content available on any social media network, including but not limited
133 to:
 - 134 I. Records concerning any product or service capable of using social
135 media content in assessing applications for immigration benefits or
136 admission to the United States;
 - 137 II. Records concerning any product or service capable of using social
138 media content for immigration enforcement purposes;
 - 139 III. Records concerning any product or service capable of using social
140 media content for border or transportation screening purposes;
 - 141 IV. Records concerning any product or service capable of using social
142 media content in the investigation of potential criminal conduct;
- 143 c. All communications to or from any private business and/or its employees
144 since January 1, 2015 concerning any product or service that searches,
145 analyzes, filters, monitors, or collects content available on any social
146 media network;
- 147 d. All communications to or from employees or representatives of any social
148 media network (e.g., Twitter, Facebook, YouTube, LinkedIn, WhatsApp)
149 since January 1, 2015 concerning the search, analysis, filtering,
150 monitoring, or collection of social media content; and
- 151 e. All records concerning the use or incorporation of social media content
152 into systems or programs that make use of targeting algorithms, machine
153 learning processes, and/or data analytics for the purpose of (a) assessing
154 risk, (b) predicting illegal activity or criminality, and/or (c) identifying
155 possible subjects of investigation or immigration enforcement actions.
156 See Plaintiffs’ FOIA request, Exhibit A.
157

158 14. In a letter to the Plaintiffs dated June 6, 2018, in accordance with its normal
159 procedures, the NRC acknowledged receipt of the Plaintiffs’ FOIA request, and

160 advised Plaintiffs that their request was assigned case number
161 COW2018000654. See USCIS FOIA Acknowledgement letter, Exhibit B.

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163 **USCIS’S SEARCH FOR RECORDS AND**
164 **PROCESSING OF PLAINTIFFS’ FOIA REQUEST**
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166 15. After reviewing Plaintiffs’ request, the NRC determined that the request sought
167 non-alien file records. Accordingly, this request was assigned to the SIG team,
168 who followed the USCIS’s standard procedures for processing a FOIA request.

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170 16. Based on the SIG team’s review of this request, they determined that documents
171 responsive to the request would most likely be maintained by the following
172 USCIS offices:

- 173
174 a. Office of Chief Counsel (OCC): OCC is responsible for providing legal
175 advice to senior leadership within USCIS on all aspects of immigration
176 law, including issues related to vetting and screening processes that are
177 part of the adjudication of applications and petitions for immigration
178 benefits. Given the mission and nature of OCC’s work, and because
179 OCC had assigned specific attorneys to be part of the USCIS Social
180 Media Working Group, the USCIS FOIA office felt that OCC might
181 have documents responsive to the request.
- 182 b. Office of Information Technology (OIT): OIT leads USCIS in the
183 design, development, and deployment of IT services and solutions to
184 support USCIS’s mission and role in the nation's immigration process.
185 OIT often provides support on FOIA requests involving email searches.
- 186 c. Fraud Detection and National Security (FDNS): FDNS protects
187 national security by leading agency efforts aimed at enhancing the
188 integrity of the legal immigration system. FDNS develops and maintains
189 efficient and effective anti-fraud and screening programs, leading
190 information sharing and collaboration activities and supporting law
191 enforcement and intelligence communities. Given the mission and
192 nature of FDNS’s work, specifically as it relates to FDNS’s role in the
193 collection of social media information as part of USCIS’s vetting and
194 screening processes, the USCIS FOIA office felt that FDNS might have
195 documents responsive to the request.
- 196 d. Office of Policy and Strategy (OP&S): OP&S serves as the principal
197 policy advisor for the Director and USCIS, manages the USCIS Policy
198 Manual, coordinates USCIS strategic goals and objectives, and oversees
199 the regulatory development process to ensure compliance with the
200 policy goals of USCIS, DHS, and the Administration. OP&S also
201 coordinates the developing of USCIS’s immigration policies, including
202 the social media vetting process and the proposed policy options. Given

203 the mission and nature of OPS's work, and because OPS was
 204 responsible for leading and coordinating the efforts of the USCIS Social
 205 Media Working Group, the USCIS FOIA office felt that OPS might
 206 have documents responsive to the request.

207 e. Executive Secretariat (EXSO): EXSO manages the USCIS policy
 208 review and decision-making processes, coordinating the development,
 209 clearance, and submission of all policy documents for the Director's
 210 review and approval. In support of the Director and Deputy Director,
 211 EXSO governs official communications between those offices and
 212 Congress, DHS headquarters, and other DHS components. EXSO also
 213 manages the flow, format, and substance of all written correspondence,
 214 both to and from the Director. Given the mission and nature of EXSO's
 215 work, and because of the high-level coordination that they provide for
 216 reviewing draft policy documents, the USCIS FOIA office felt that
 217 EXSO might have documents responsive to the request.

218 f. Office of Contracting: The Office of Contracting is responsible for
 219 planning, awarding, and administering the agency's contracts to ensure
 220 that all contracts deliver the best value products and services to USCIS
 221 on a timely basis while maintaining the public's trust and fulfilling
 222 public policy objectives. Given the mission and nature of the Office of
 223 Contracting's work, and because of the potential options being
 224 considered that may have involved the use of contractors as part of the
 225 vetting process, the USCIS FOIA office felt that the Office of
 226 Contracting might have documents responsive to the request.

227
 228 17. In June 2018, the SIG team forwarded the request to each office, and requested
 229 that staff in those offices conduct a search of their records for any responsive
 230 documents. Each office was provided with a copy of the request, which
 231 included the specific records being sought by Plaintiffs. Since each employee
 232 conducting a search may have a different organization system or way of
 233 phrasing a topic that could be responsive, all employees were instructed to read
 234 the request and use those search terms that would reasonably be calculated to
 235 locate any records responsive to the request.

236
 237 18. In an email dated November 20, 2018, one of the Senior Government
 238 Information Specialists in the USCIS FOIA Office reached out to Plaintiffs to
 239 advise them that the agency was unable to conduct a search for two of the items
 240 in Plaintiffs' request, because the items were overbroad. The two items include
 241 the following:

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 243 a. All communications to or from any private business and/or its employees
 244 since January 1, 2015 concerning any product or service that searches,

245 analyzes, filters, monitors, or collects content available on any social
 246 media network;
 247 b. All communications to or from employees or representatives of any social
 248 media network (e.g., Twitter, Facebook, YouTube, LinkedIn, WhatsApp)
 249 since January 1, 2015 concerning the search, analysis, filtering,
 250 monitoring, or collection of social media content; and

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252 The email advised Plaintiffs that these two requested items were too broad, and
 253 would require the agency to conduct an unduly burdensome search. The email
 254 also advised Plaintiffs that USCIS would be willing to conduct a search if the
 255 Plaintiffs would be willing to narrow the scope of these two items to specific
 256 USCIS employees or positions in a USCIS offices, or in any other way that would
 257 allow USCIS to conduct a reasonable search. See USCIS and Plaintiffs' Emails
 258 Regarding Scope of FOIA Request, Exhibit C.

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260 19. In January 2019, USCIS FOIA staff had a phone call with Mr. Handeyside to
 261 discuss the scope of the two items. During that call, Mr. Handeyside agreed to
 262 limit the search for these two items to records maintained by OIT and the Office
 263 of Contracting.

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265 20. Pursuant to Mr. Handeyside's agreement to limit the scope of the search for
 266 these two items, the USCIS FOIA office sent updated search requests to OIT
 267 and the Office of Contracting on January 7, 2019.

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269 21. On January 17, 2019, Plaintiffs filed a Complaint in the Northern District of
 270 California, challenging the Defendants', including USCIS's, failure to provide
 271 information in response to Plaintiffs' FOIA request within the statutory
 272 timeframe required by the FOIA. See Plaintiffs' Complaint (ECF No. 1).

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274 22. Subsequent to the filing of the Plaintiffs' Complaint, USCIS continued to search
 275 for and process records responsive to Plaintiffs' request. After receiving
 276 records from the assigned offices, the SIG team reviewed all documents to
 277 determine whether the search was reasonably calculated to locate records
 278 responsive to Plaintiffs' FOIA request. Based upon the SIG team's review of
 279 the Plaintiffs' FOIA request and its particular subject matter, along with the
 280 responsive records received, the agency determined that it had identified all of
 281 the appropriate Directorates and program offices within USCIS, and each office
 282 had received all of the information needed to perform a search that was
 283 reasonably calculated to locate any records responsive to this request.
 284 Additionally, after reviewing the responses from each office, the USCIS FOIA
 285 office determined that staff within the offices searched all files that were
 286 reasonably likely to contain records responsive to the Plaintiffs' FOIA request.
 287 Based on the SIG team's review of this information, it determined that the

288 search was adequate, and that it was unlikely that any of the other USCIS
289 Directorates or program offices would have records responsive to this request.
290

291 23. Records were provided as part of a monthly rolling production in two parts.
292 The first production occurred on July 10, 2019, and the second production
293 occurred on August 7, 2019. In total, USCIS produced 2,645 pages in response
294 to Plaintiffs' request, of which 306 were released in their entirety, 2234 released
295 in part, and 64 pages withheld in full. Additionally, USCIS notified Plaintiffs
296 that it had referred 8 pages to DHS and 30 pages to U.S. Immigration and
297 Customs Enforcement (ICE) for their review and direct response to Plaintiffs.
298 See Final Action letters dated July 10, 2019 and August 7, 2019, Exhibit D.
299

300 24. In the letters provided with each monthly production, USCIS provided the total
301 amount of pages provided, and the exemptions applied to each production,
302 pursuant to 5 U.S.C. § 552(b)(5), (b)(6), (b)(7)(C) and (b)(7)(E) of the FOIA
303 and provided Plaintiff with a description of the referenced exemptions that
304 served as the basis for the withholdings. See Final Action letters dated July 10,
305 2019 and August 7, 2019, Exhibit D.
306

307 25. On August 20, 2020, in order to allow the parties to attempt to narrow the issues
308 in dispute, USCIS provided Plaintiffs with a "Sample Redaction Index." During
309 the drafting of the index, USCIS identified multiple pages that contained
310 information that could be provided as a supplemental disclosure. Specifically,
311 a few months after USCIS completed its original production, USCIS released
312 information on its website about the agency's social media vetting process that
313 previously was not publicly available. As a result, many of the exemptions
314 previously applied were no longer applicable, including deliberative
315 information that had not been finalized at the time USCIS made its original
316 release. Therefore, USCIS advised Plaintiffs that it would reprocess the records
317 previously provided to Plaintiffs and would provide a supplemental production.
318 See September 10, 2020 Joint Status Report (ECF No. 74).
319

320 26. On October 8, 2020, USCIS provided the updated production, which
321 encompassed all pages previously released to Plaintiffs, including the pages
322 with supplemental releases. Specifically, after reprocessing the 2,645 pages of
323 records responsive to Plaintiffs' request, 543 pages were released in their
324 entirety, 2058 pages were released in part, and 6 pages were withheld in full.
325 38 pages were referred to other agencies for their review and direct response to
326 Plaintiffs. The remaining redacted portions were withheld pursuant to 5 U.S.C.
327 § 552(b)(5), (b)(6), (b)(7)(C) and (b)(7)(E) of the FOIA.
328

329 27. After reviewing the reprocessed records, the parties conferred to discuss the
330 redactions at issue. By email dated November 6, 2020, Plaintiffs advised

331 Defendants that they would not be challenging any redactions under
332 Exemptions (b)(6) or (b)(7)(C). Accordingly, the only remaining redactions at
333 issue are those under Exemptions (b)(5) or (b)(7)(E). See Handeyside
334 November 6, 2020 Email, Exhibit E.
335

336 28. Exemption 5 was invoked to protect inter-agency or intra-agency
337 memorandums, emails, PowerPoint presentations, briefing papers, talking
338 points, and letters, which would not be available by law to a party other than an
339 agency in litigation with the agency. Here, USCIS withheld the information as
340 exempt from disclosure under three privileges contemplated by Exemption 5:
341 (1) deliberative process, (2) attorney-client, and (3) attorney work-product.
342

343 29. The deliberative process privilege was invoked to protect USCIS's decision-
344 making process in connection with the development of USCIS's procedures for
345 the operational use of social media as part of the immigration adjudication
346 process. The privilege was applied to documents reflecting advisory opinions,
347 as well as recommendations and deliberations related to these social media use
348 issues. The material withheld included information prepared to assist USCIS in
349 decision making on the use of social media in adjudications, such as how it
350 would be used, which employees would be authorized for operational use, what
351 technological tools would best fit the agency's operational needs. The types of
352 records in which information was withheld pursuant to the deliberative process
353 privilege included draft delegation documents, privacy compliance documents,
354 testimony drafts, legal opinions, meeting summaries, memoranda, briefing
355 papers, training materials, emails, and other draft documents. For example, in
356 draft documents, USCIS redacted information such as comments and edits
357 made by USCIS employees and attorneys reflecting draft revisions, additions,
358 re-wordings, suggestions, clarifications, questions, about accuracy, statements
359 of uncertainty, and requests for additional information. Similarly, USCIS
360 withheld information in emails that reflected deliberative exchanges regarding
361 potential policies and procedures for operational use of social media, options
362 for implementation of operational social media use, and discussions regarding
363 information sharing with law enforcement and the intelligence community. For
364 example, at page 1694 to 1695, which consist of emails between USCIS OCC
365 and USCIS employees discussing draft responses to questions from Chairman
366 McCaul related to potential restrictions on DHS's use of publicly available
367 social media information, USCIS withheld a summary of specific operational
368 and legal issues, draft responses to the questions, and discussions of which
369 restrictions should be considered in the operational use of social media.
370

371 30. Disclosure of the deliberative, pre-decisional information withheld by USCIS
372 would reveal the internal deliberations of federal agency employees and
373 decrease the quality of USCIS decision-making.

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31. In making its redactions under Exemption 5 and the deliberative process privilege, USCIS segregated and released any information that reflected a final decision or finalized process that did not otherwise include any pre-decisional or deliberative information. For example, on pages 339 and 340, a final version of Delegation 15002, “Delegation to the Director of U.S. Citizenship and Immigration Services to Conduct Certain Law Enforcement Activities,” signed and dated January 15, 2017, was released in full because it reflected a final decision document and did not include any pre-decisional or deliberative information. In contrast, on pages 1423-1424, a draft revision of the Delegation includes portions of withheld information, because this information reflected proposed changes to the process and authorized use of social media to support USCIS’s mission.
32. USCIS also withheld or redacted information under Exemption 5 that was determined to be protected by the attorney-client privilege. The attorney-client privilege protects confidential information shared between an attorney and his client relating to the legal matter on which the client seeks advice. Here, this includes information in legal memoranda, draft documents, meeting summaries, and emails from agency counsel to their clients, in particular, agency policy makers, agency decision makers, and agency employees implementing policy. USCIS also redacted information divulged to the attorney by the client seeking legal advice and communications between agency counsel about the confidential information provided by the client. In addition, the attorney-client privilege was also applied to protect legal opinions provided in draft documents, where USCIS OCC attorneys provided legal responses or raised suggestions based on legal guidance in order to advise agency clients about potential legal risks with options being considered, and legal memoranda from DHS Office of General Counsel (OGC) or USCIS OCC attorneys related to legal issues and guidance pertaining to DHS and USCIS’s operational use of social media. The purpose of these memoranda was to provide legal analysis and guidance on issues related to USCIS obtaining law enforcement authority, the implementation of the operational use of social media, and the legal limitations to the use of social media. The memoranda also provided counsel’s legal opinion to the client on issues related to enforcement and intelligence activities involving online and social media monitoring, and DHS’s compliance with applicable privacy laws, civil rights and civil liberties and constitutional rights. To compel the disclosure of the attorney-client information withheld in this case would have an immediate impact and drastic chilling effect on all interactions between DHS and USCIS counsel and USCIS employees and among USCIS counsel themselves.

- 416 33. USCIS withheld documents pursuant to Exemption 7(E) that contain
417 information which would disclose techniques and procedures for law
418 enforcement investigations or prosecutions, or would disclose guidelines for
419 law enforcement investigations or prosecutions, if such disclosure could
420 reasonably be expected to risk circumvention of the law.
421
- 422 34. Exemption 7 establishes a threshold requirement that, in order to withhold
423 information on the basis of any of its subparts, the records or information must be
424 compiled for law enforcement purposes. The information for which FOIA
425 Exemption 7 has been asserted in the instant matter satisfies this threshold
426 requirement. Pursuant to the Immigration and Nationality Act codified under
427 Title 8 of the U.S. Code, the Secretary of Homeland Security is charged with the
428 administration and enforcement of laws relating to the immigration and
429 naturalization of aliens, subject to certain exceptions. *See* 8 U.S.C. § 1103.
430 USCIS is responsible for safeguarding the homeland by deterring, detecting, and
431 addressing vulnerabilities in the immigration system. As part of the agency's
432 mission, USCIS must employ and enhance rigorous security measures to
433 safeguard our nation against immigration fraud and ensure that pathways to the
434 United States are not exploited. To achieve this goal, USCIS works to identify
435 and mitigate known and unknown risks to the lawful immigration system,
436 implement and enhance uniform vetting practices, and maximize internal and
437 external information sharing with law enforcement and Intelligence Community
438 partnerships to strengthen the integrity of the lawful immigration system.
439
- 440 35. As a threshold matter, the records and information located in response to
441 Plaintiffs' FOIA request were collected and compiled by the USCIS Fraud
442 Detection and National Security Directorate, the Office of Chief Counsel, and
443 other USCIS employees that were part of the DHS and USCIS social media
444 working group, and were compiled as part of the development and
445 implementation of DHS and USCIS's social media vetting process, which was
446 established to enhance the integrity of the legal immigration system. This process
447 and the documentation related to it focuses on USCIS's anti-fraud and screening
448 programs, and the agency's information sharing and collaboration activities with
449 law enforcement and intelligence communities. Therefore, the records and
450 information located in response to the FOIA request were compiled for law
451 enforcement purposes and meet the threshold requirement of FOIA Exemption 7.
452
- 453 36. The types of documents and/or information withheld consists of training
454 materials for agency employees that would be involved in the operational use
455 of social media, background check processes, procedures for information
456 sharing and coordination with law enforcement partners and the Intelligence
457 Community, emails related to the operational use of social media and
458 implementing the process, and legal memoranda related to USCIS obtaining

459 law enforcement authority and how that authority would impact the agency's
460 vetting methods, the implementation of the operational use of social media, the
461 legal limitations to the use of social media, and on issues related to enforcement
462 and intelligence activities involving online and social media monitoring, and
463 other documents containing specific guidelines or techniques and procedures
464 involved in USCIS's operational use of social media. The withheld information
465 consists of detailed background check information pertaining to specific
466 applicants that had been screened and the results of that screening, the specific
467 social media applications reviewed, which words and phrases were used to
468 search those social medias applications, guidelines for the use and operation of
469 government systems and technological tools used as part of the screening
470 process, specific challenges and vulnerabilities identified in the process of
471 social media screening and vetting, and other law enforcement information
472 related to the agency's operational use of social media. This information, if
473 disclosed, would reveal the technology resources currently being used in the
474 vetting process by law enforcement and immigration officers, and the specific
475 websites, applications, and social media that is being reviewed by immigration
476 officers for certain immigration applicants and petitioners that need additional
477 background checks or vetting. Further, information was withheld that details
478 the methods and circumstances of USCIS's coordination with other law
479 enforcement agencies, like CBP, ICE, FBI, Department of State, Department of
480 Justice, as it relates to the vetting and screening process. This information
481 reveals the types of background checks authorized to be conducted in certain
482 cases, and which techniques and procedures are involved in the enforcement of
483 specific types of immigration and national security laws and directives.
484

485 37. The withheld information also contains guidelines as to what actions should be
486 taken for certain cases where there is suspected fraud or concerns regarding
487 public safety or national security, the specific methods USCIS's immigration
488 officers are authorized to use as part of social media vetting, and what
489 limitations are placed on their collection methods. This information, if
490 disclosed, would reveal the specific methods and procedures that immigration
491 officers are authorized to use to conduct social media research for certain
492 immigration applicants and petitioners that need additional background checks
493 or vetting. The release of this information would risk circumvention of the law
494 because it would put individuals on notice as to what information is considered
495 as part of the screening and vetting process and what the limitations of access
496 are, what information is considered as part of the screening and vetting process,
497 what words and images are being searched for, the specific tools used by law
498 enforcement, and what technology is being used. The disclosure of this
499 information would reveal guidelines and procedures for the enforcement of
500 certain immigration and national security laws and directives, and could
501 reasonably be expected to risk the circumvention of law and render the

502 guidelines for additional screening measures relevant to national security,
503 public safety, and fraud prevention useless because it could allow individuals
504 to research the technology to identify vulnerabilities and limitations, which
505 could impact the effectiveness of the screening and vetting process. It could
506 also result in individuals hiding the use of certain social media platforms or
507 encouraging the use of platforms that the agency does not access to, which
508 would impact the effectiveness of screening and vetting procedures used for the
509 enforcement of certain immigration and national security laws and directives.
510 Accordingly, this material is appropriately exempt from disclosure pursuant to
511 Exemption (b)(7)(E).
512

513 38. When reviewing the redactions applied and the reprocessed records, the USCIS
514 FOIA office considered whether any information could be segregated and
515 released. Based on their review of the processed records, the agency determined
516 that no further segregation of meaningful information in the withheld documents
517 would be possible without disclosing information that warrants protection under
518 the law. The only information withheld from the Plaintiff is information that is
519 entitled to protection from disclosure.
520

521 39. To provide further detail regarding the information withheld from the agency's
522 response that is discussed above, attached to this declaration is an index
523 identifying and describing each document in which information was withheld,
524 specifying the particular exemption under which the information was withheld,
525 and explaining how the exemption applies to the information that was withheld.
526 Information regarding how non-exempt information was segregated from
527 exempt information is included in the index. See Vaughn Index, Exhibit F. I
528 am familiar with the records described in the Vaughn index. It accurately
529 describes those records, and explains USCIS's proper assertion of the
530 appropriate FOIA exemptions.
531

532 I declare under the penalty of perjury that the foregoing is true and accurate to the best
533 of my knowledge and belief.
534

535 Executed in Kansas City, Missouri, on this 28th day of January 2021.
536

537
538 *Terri White*

539 _____
TERRI WHITE

540 Acting Associate Center Director
541 Freedom of Information Act & Privacy Act Unit
542 USCIS National Records Center