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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 CASE MANAGEMENT
STATEMENT**

17 Pursuant to the Court’s order of September 17, 2020 (ECF No. 76), the
18 parties jointly submit this case management statement to address the status of
19 searches and processing of records by the Department of Justice’s Office of
20 Information Policy (“OIP”), the Federal Bureau of Investigation (“FBI”), the State
21 Department (“State”), the Department of Homeland Security’s Office of
22 Intelligence & Analysis (“I&A”), and the DHS Privacy Office (“DHS”).

23 **Defendants’ Status**

24 I. OIP

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

1 completed.

2 II. FBI

3 The FBI issued its 15th release on December 30, 2020. The FBI is
4 processing approximately 260 pages for this month and anticipates releasing non-
5 exempt information on or about January 29, 2021. Approximately 760 pages
6 remain to be processed following that release. Due to COVID-19 work
7 disruptions, the FBI's Record/Information Dissemination Section ("RIDS") has
8 experienced a reduction of approximately 50% of in-person staff, which has
9 resulted in a reduction of the standard processing rate.

10 III. State Department

11 State previously reported that it anticipated resuming production on
12 December 30 but that unforeseen developments related to the pandemic had
13 hindered its ability to carry out its plan to transfer the unclassified, potentially
14 responsive documents in this case from a classified system to an unclassified
15 system. For the aforementioned reasons, State was unable to make the production
16 on December 30 and advised Plaintiffs that it would make the production by
17 January 13. State made the production on January 13, informing Plaintiffs that
18 eight additional responsive records had been processed and all had been withheld
19 in full. State is endeavoring to make its next production by February 24, and will
20 endeavor to make productions every six weeks thereafter. However, State has
21 continued to experience technical difficulties transferring the potentially
22 responsive documents into the review platform on the unclassified system. State
23 will confer with Plaintiffs in advance of the February 24 deadline in the event that
24 it determines it cannot make the scheduled production. State requests the
25 opportunity to provide additional background about its processing capabilities
26 before the Court enters any specific relief.

27 IV. DHS Privacy Office

28 Regarding Part 1 of Plaintiff's request, on September 30, 2020, DHS sent the

1 Office of Policy a revised tasking to conduct a targeted search using the
2 keywords/filters suggested by Plaintiff for this search tasking: “social media AND
3 (collect* OR monitor* OR search)” and the date range of May 1, 2015 through
4 September 8, 2020. This search is now complete and has resulted in 659 pages.

5 For Parts 2, 3, and 5 of Plaintiff’s request, DHS tasked OCIO to conduct a
6 search on October 1, 2020, using the date parameters January 1, 2018 through
7 January 14, 2020 and the keywords/filters: (1) (Purchase or subscription or
8 acquisition or payment or agreement) AND (Product or service) AND
9 (Immigration Benefits or immigration enforcement or border screening or
10 transportation screening or criminal conduct) AND (social media AND collect*)
11 AND (monitor OR search) and (2) social media AND investigat* AND (risk or
12 illegal or enforce* or target* or predict* or algorithm* or vetting). DHS continues
13 to work on ingesting the data resulted from the OCIO search in 10 GB increments.
14 DHS has ingested the first 10 GB and reports that it has located responsive records.
15 DHS has ingested the second and third parts into FOIAXpress and these parts are
16 still being reviewed for responsiveness. DHS is currently in the process on
17 ingesting part 4 of 38 parts into FOIAXpress. DHS will not know the total number
18 of pages until it completes the process of ingesting all 38 parts into FOIAXpress.

19 V. DHS I&A

20 I&A has completed its processing of records and made its final production to
21 Plaintiffs on January 4, 2021, through counsel.

22 VI. ICE, CBP, and USCIS

23 Pursuant to the schedule entered by the Court on January 13, 2021, ICE,
24 CBP, and USCIS will file their motion for summary judgment as to the adequacy
25 of their search for records and application of FOIA exemptions today, January 28,
26 2021.

27 **Plaintiffs’ Report**

28 1. DHS Privacy

1 As Plaintiffs set forth in previous status reports, DHS Privacy has
2 chronically delayed its processing of the FOIA request and has entirely failed to
3 produce records in accordance with its FOIA obligations. *See, e.g.*, ECF Nos. 91,
4 87, 80, 79. The Court previously ordered DHS Privacy to “commence the search,
5 processing, and production of records responsive to the Request by October 2,
6 2020.” ECF No. 77. To date, however, DHS Privacy still has not produced a single
7 page of responsive material, despite having completed a search that yielded
8 responsive records. Nor does DHS Privacy even have an anticipated production
9 schedule for the remaining parts of the search it was directed to conduct nearly
10 four months ago.

11 These continued delays are unexplained and wholly at odds with FOIA’s
12 clear command to make records “promptly available.” *See* 5 U.S.C. §
13 552(a)(3)(A); *see also Long v. IRS*, 693 F.2d 907, 910 (9th Cir. 1982) (concluding
14 that an agency’s unreasonable delay in disclosing documents violated the FOIA
15 and that “courts have a duty to prevent these abuses”). Plaintiffs respectfully renew
16 their request that DHS Privacy be required to process responsive records without
17 further delay. Plaintiffs also renew their request that DHS Privacy be directed to
18 complete its production by a date certain—April 30, 2021—so that Plaintiffs may
19 seek any necessary further relief from the Court regarding DHS Privacy’s search
20 and production of records.

21 2. State Department

22 The State Department also lags well behind other Defendants in resuming
23 processing of the FOIA request. Plaintiffs understand that the pandemic has
24 imposed constraints on work environments nationwide, and Plaintiffs will confer
25 with the State Department to the extent necessary. However, Plaintiffs again note
26 that the State Department has not even set forth an anticipated production schedule
27 for responsive records. Other agencies, including other Defendants herein, have
28 demonstrated the ability to devise contingency plans and continue FOIA-related

1 operations notwithstanding the pandemic. More than ten months into the
2 pandemic, the State Department must do the same.

3 Plaintiffs therefore respectfully request that the State Department be directed
4 to expedite the processing of responsive records and complete its production by
5 April 30, 2021.

6 **Next Steps**

7 Plaintiffs have requested specific relief as set forth above.

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

9 Respectfully submitted,

10 DATED: January 28, 2021

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