



U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

December 13, 2023

By ECF

The Honorable Naomi Reice Buchwald
United States District Judge
Daniel Patrick Moynihan
United States Courthouse
500 Pearl St.
New York, NY 10007-1312

Re: *Center for Constitutional Rights v. United States Department of Defense et al.*,
23 Civ. 7689 (NRB)

Dear Judge Buchwald:

This Office represents the United States Department of Defense (“DOD”), the United States Department of State (“DOS”), and the United States Department of Homeland Security (“DHS”) (collectively, the “Government”), defendants in this action brought pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”). This case concerns a FOIA request submitted by Plaintiff to DOD, DOS, and DHS pertaining to specific locations where Plaintiff alleges the United States transferred and detained Afghan evacuees (the “FOIA Request”) and seeking records related to alleged transfers, detentions, and locations. We write jointly with Plaintiff’s counsel to provide the Court with a status report.

The parties met and conferred to discuss the FOIA Request on December 6, 2023. As discussed between the parties on December 6, DOD, DOS, and DHS are actively engaged in conducting searches for documents responsive to the FOIA Request and/or gathering information within their respective agencies in order to formulate searches. The Office of the Secretary Defense (“OSD”) is determining which components will process particular portions of Plaintiff’s FOIA Request. OSD has, so far, directed portions of the FOIA Request to its Office of Public Affairs. DOS, furthermore, has begun processing responsive records and expects to make its first release of responsive, non-exempt documents on the week of December 11. DOS further anticipates making its second release of responsive, non-exempt documents sometime in January 2024. DHS has referred portions of the FOIA Request to the United States Citizenship and Immigration Services and the United States Customs and Border Protection. The parties intend to continue to work cooperatively with regard to the processing of this FOIA Request and plan to meet and confer on January 10, 2024.

The parties respectfully submit that because this is an action filed pursuant to FOIA, it is unlikely to require discovery or trial. Rather, like most FOIA cases, any contested issues with regard to the agencies’ searches or withholdings in this case likely will be ultimately resolved through cross-motions for summary judgment based on agency declarations. *See Carney v. DOJ*,

19 F.3d 807, 812 (2d Cir. 1994). Moreover, pursuant to Local Civil Rule 16.1, the case is exempt from the requirement of a mandatory scheduling order contained in Fed. R. Civ. P. 16(b).

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The parties thank the Court for its consideration of this joint status report and propose to file their next joint status report within 60 days, or by February 12, 2024.

Respectfully,

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Southern District of New York

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