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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

CORA CURRIER,

Plaintiff,

v.

DEPARTMENT OF HOMELAND SECURITY,
DEPARTMENT OF STATE,
DEPARTMENT OF JUSTICE, and
DEPARTMENT OF DEFENSE,
Defendants.

Case No. 3:17-cv-01799-JSC

DEFENDANTS' OPPOSITION TO
PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION

Date: August 24, 2017
Time: 9:00 a.m.
Place: Courtroom F, 15th Floor
Magistrate Judge Jacqueline Scott Corley

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1 Plaintiff Cora Currier seeks an extraordinary, mandatory preliminary injunction
2 compelling Defendants, the Departments of Justice (“DOJ”), Defense (“DOD”), State (“DOS”),
3 and Homeland Security (“DHS”), to complete their processing of Plaintiff’s multiple requests
4 under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, by September 5, 2017—within
5 7 business days of the hearing on her Motion—and to produce document-by-document indices
6 justifying any withholdings within 30 days of the Court’s order. The Motion should be denied.

7 As set forth in the detailed declarations accompanying this Opposition,¹ every Defendant
8 has expedited its processing of Plaintiff’s requests, and is diligently working to process her
9 requests as soon as practicable, ahead of earlier-filed non-expedited requests. But Defendants’
10 resources are limited, Plaintiff’s requests are very broad, and hers are not the only requests that
11 Defendants are working to process expeditiously—all at a time when Defendants have been
12 receiving an escalating number of FOIA requests. Nevertheless, every Defendant has begun
13 releasing records responsive to Plaintiff’s requests or plans to begin doing so shortly. Some
14 agencies—USMS and DHS-OIG—have already completed their searches for responsive records
15 subject to FOIA and released all non-exempt information. Some agencies—FBI and EOUSA—
16 anticipate that they can complete their responses by September 5, with the possible exception of
17 records requiring interagency review. The others—agencies that have already located large
18 volumes of potentially responsive records, are still searching for more records, and/or are dealing
19 with classified or otherwise sensitive information—simply need more time.

20 In this context, the Court should resist Plaintiff’s invitation to impose an omnibus, one-
21 size-fits-all deadline for every Defendant to complete its processing of Plaintiff’s requests,
22 regardless of the progress that has been made to date, the amount of work that remains to be done,
23

24 ¹ There are more declarations than Defendants because Defendants have multiple components that
25 process FOIA requests, depending on the component(s) from which records are requested. The
26 components of DOJ and DHS that are processing Plaintiff’s requests are: (1) the Executive Office
27 for United States Attorneys (“EOUSA”); (2) the Federal Bureau of Investigation (“FBI”); (3) the
28 Office of Legal Counsel (“OLC”); (4) the Office of Information Privacy (“OIP”); (5) the U.S.
Marshals Service (“USMS”); (6) the DHS Privacy Office (“DHS-PRIV”); (7) U.S. Customs and
Border Protection (“CBP”); and (8) DHS’s Office of the Inspector General (“DHS-OIG”).

1 and the other (no less important) requests that Defendants are also working to fulfill. Instead, the
2 Court should allow Defendants to continue their efforts to respond to Plaintiff's FOIA requests as
3 soon as practicable, while directing Defendants to file quarterly or monthly status reports in order
4 to monitor Defendants' progress, and if the Court finds that an agency is not proceeding diligently,
5 to consider agency-specific relief tailored to the circumstances. The Court should further direct
6 Plaintiff to consider additional ways to clarify and narrow her requests to focus on the discrete
7 categories of records of greatest interest to her, in order to facilitate Defendants' processing and to
8 bring this litigation to an earlier end.

9 None of the preliminary injunction factors supports Plaintiff's alternative approach. First,
10 Plaintiff is incorrect that the FOIA generally requires agencies to release all non-exempt records
11 that are responsive to a request within 20 business days (and less time if the request qualifies for
12 expedited processing). The statute requires agencies to process requests "promptly," *id.*
13 § 552(a)(3)(A), (a)(6)(C)(i), and expedited requests "as soon as practicable," *id.*
14 § 552(a)(6)(E)(iii). Applying these standards depends on the nature of a plaintiff's FOIA request
15 and the competing demands of other requesters, among other factors. Because Defendants are
16 working diligently to process Plaintiff's broad requests as soon as practicable, Plaintiff cannot
17 show that she is likely to prevail on the merits.

18 Second, the requested injunction is not necessary to prevent irreparable harm to Plaintiff.
19 That an agency has not finished processing a FOIA request does not constitute *per se* irreparable
20 harm for purposes of a preliminary injunction, and Plaintiff has failed to make a case-specific
21 showing that she personally will suffer serious harm if Defendants' ongoing, expedited processing
22 of her FOIA requests continues beyond September 5. Moreover, none of the many other FOIA
23 requesters seeking records relating to the same subject matter have requested similar relief, a fact
24 that substantially undermines Plaintiff's claims of irreparable harm.

25 Third, the equities and public interest weigh against a mandatory injunction directing
26 Defendants to complete processing by September 5. Forcing Defendants to process Plaintiff's
27 requests on an arbitrary and infeasible timeline would disadvantage other FOIA requesters—
28

including many whose expedited requests were submitted prior to Plaintiff's—and would risk inadvertent disclosure of sensitive and otherwise exempt information. Plaintiff's analysis of the public interest fails to account for these considerations and instead rests on speculation regarding the content of non-exempt records that she might receive. Moreover, the relief Plaintiff seeks—the release of records—is effectively the ultimate relief sought in this lawsuit, not preliminary relief designed to protect the status quo. It is inappropriate and premature at this time.

Finally, Plaintiff has not shown that she is entitled to an index of information withheld from Defendants' releases within 30 days of the Court's order. Such an index is not required in every FOIA case, and Plaintiff has not articulated why any of the preliminary injunction factors warrants an order directing any Defendant to produce one before it seeks summary judgment.

STATEMENT OF ISSUES

1. Where Defendants have already granted Plaintiff's FOIA requests expedited processing, have begun releasing responsive records, and have been working diligently to locate and process additional records as soon as practicable, whether Plaintiff is entitled to a mandatory injunction compelling Defendants to complete their productions by an arbitrary date that is only seven business days after the hearing on her Motion.
2. Whether Plaintiff is entitled to a document-by-document index of all information withheld by Defendants on a similarly arbitrary timetable.

BACKGROUND

A. Statutory and Regulatory Framework

With certain exceptions, the FOIA requires federal agencies to make requested records “promptly available” to any person upon receiving a request which “(i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed.” 5 U.S.C. § 552(a)(3)(A); *see also id.* § 552(a)(6)(C)(i).²

Processing a FOIA request takes time. An agency must search for and retrieve all responsive records, and the duration of the search will depend on the scope and nature of the

² Defendants' regulations establish procedures for submitting FOIA requests, which illustrate the kind of specific information requesters should provide. *See* 28 C.F.R. § 16.3 (DOJ) (“the date, title or name, author, recipient, subject matter of the record, case number, file designation, or reference number”); *see also* 6 C.F.R. § 5.3 (DHS); 22 C.F.R. § 171.4 (DOS); 32 C.F.R. § 286.5 (DOD).

1 request. Once an agency has completed its search and located responsive records, it must process
2 them for potential release. This process requires careful review of responsive records to excise and
3 withhold information falling within any of the nine statutory exemptions from disclosure, 5 U.S.C.
4 § 552(b), including classified information, *id.* § 552(b)(1), information “the disclosure of which
5 would constitute a clearly unwarranted invasion of personal privacy,” *id.* § 552(b)(6), information
6 compiled for law enforcement purposes, *id.* § 552(b)(7), and privileged information, *id.*
7 § 552(b)(5), among other categories. When an agency that receives a request locates records that
8 involve another agency’s equities, the former agency also needs to consult with the latter agency
9 before releasing the records, and these consultations take time. *See id.* § 552(a)(6)(B)(iii)(III).

10 As a default rule, agencies must “determine within 20 days (excepting Saturdays, Sundays,
11 and legal public holidays)” of receiving a proper FOIA request “whether to comply with such
12 request.” *Id.* § 552(a)(6)(A)(i). And they must then “immediately notify the person making such
13 request of . . . such determination and the reasons therefore,” among other information. *Id.*

14 These “precise time limits,” however, “bear no relation in actual practice to the multiple
15 demands placed upon [an agency], or to the capacity of the [agency] work force to do the careful
16 and thorough examination required on each such demand.” *Exner v. FBI*, 542 F.2d 1121, 1122
17 (9th Cir. 1976). In order to accommodate the competing demands of multiple requesters, therefore,
18 agencies ordinarily process requests on a first-in, first-out basis. *See, e.g., id.* at 1123.

19 In 1996, Congress amended the FOIA to provide for “expedited processing” of certain
20 categories of requests. *See* Electronic FOIA Amendments of 1996, Pub. L. No. 104-231, § 8, 110
21 Stat. 3048 (codified at 5 U.S.C. § 552(a)(6)(E)). If an agency grants a request for expedited
22 processing, the FOIA provides that it shall process the request “as soon as practicable,” 5 U.S.C.
23 § 552(a)(6)(E)(iii), rather than just “promptly.” Generally, expedition entitles requesters to move
24 to the front of the agency’s processing queue, ahead of earlier-filed non-expedited requests, but
25 after other earlier-filed expedited requests. *See* 6 C.F.R. § 5.5(b), (e)(4) (DHS); 22 C.F.R.
26 § 171.11(f), (h) (DOS); 28 C.F.R. § 16.5(b), (e)(4) (DOJ); 32 C.F.R. § 286.8(b), (e)(4) (DOD).

Under the terms of the statute, the only consequence “if the agency fails to comply with the applicable time limit provisions” (e.g., fails to make a determination within 20 business days) is that the requester “shall be deemed to have exhausted his administrative remedies.” 5 U.S.C. § 552(a)(6)(C)(i). An agency may still need more time to process the request, in light of the nature of the request or other considerations. In that case, “the court (if suit has been filed) will supervise the agency’s ongoing progress, ensuring that the agency continues to exercise due diligence in processing the request.” *CREW v. FEC*, 711 F.3d 180, 189 (D.C. Cir. 2013).

B. Plaintiff’s FOIA Requests

Plaintiff submitted FOIA requests, dated February 1, 2017, to DHS, DOJ, and DOS (the “February Requests”). Pl. Exs. 1, 2, 4.³ The February Requests seek records from multiple agency components. From DHS, Plaintiff requested records from “DHS Headquarters” and CBP. Pl. Ex. 1. From DOJ, Plaintiff requested records from OLC, USMS, the Office of the Attorney General (“OAG”), the Office of the Deputy Attorney General (“ODAG”), and the Office of Legislative Affairs (“OLA”). Pl. Ex. 2. Plaintiff later expanded the scope of the request to include the Office of Public Affairs (“PAO”), in response to a query from OIP, which processes FOIA requests on behalf of OAG, ODAG, OLA, and PAO, among other DOJ components. Pl. Ex. 3. Plaintiff’s request to DOS did not specify what offices might possess the records sought. Pl. Ex. 4.

In substance, each of the February Requests seeks “all agency records from January 20, 2017 to present concerning the agency’s analysis and implementation of [Executive Order 13,769].” Each February Request then goes on to identify multiple categories of records that “[t]his request includes, but is not limited to.” Many of those categories are themselves broad and vague (e.g., “[r]ecords related to . . . communications . . . [a]mong [agency] personnel”).

Plaintiff later filed another set of requests, each dated April 3, 2017 (the “April Requests”). See Pl. Exs. 9-15. The April Requests added DOD, two additional DOJ components (the FBI and

³ The February Requests were submitted on behalf of both Plaintiff and another journalist, Jenna McLaughlin. See Pl. Exs. 1, 2, 4. Ms. McLaughlin did not join Plaintiff in submitting the April Requests or in pursuing any of the requests in litigation. See Pl. Exs. 9-15.

EOUSA), and one additional DHS component (DHS-OIG) to the list of agencies from which Plaintiff seeks records. *See* Pl. Exs. 9, 13-15. From DOD and the FBI, Plaintiff requested “records from January 20, 2017 to the present concerning [the agency’s] analysis of the impact of Executive Order No. 13,769 and Executive Order No. 13,780.” Pl. Exs. 13, 15. From EOUSA, Plaintiff requested all “records from January 20, 2017 to the present concerning Executive Order No. 13,769 and Executive Order No. 13,780.” Pl. Ex. 14. With respect to DHS, DOS, and all DOJ components included in the February Requests, Plaintiff’s April Requests sought “all agency records from February 1, 2017 to the present concerning the agency’s analysis and implementation of Executive Order No. 13,769 and Executive Order No. 13,780.” Pl. Exs. 9-12. Again, each April Request identified multiple categories of records that the “request includes, but is not limited to.”⁴

Plaintiff asked that each of her requests receive expedited processing. *See* Pl. Exs. 1-2, 4, 9-15. Each of her requests for expedited processing was granted, either initially or after Plaintiff appealed, though not necessarily on every ground asserted in her requests. *See* Pl. Ex. 5-8, 16-22.

Plaintiff was promptly advised, however, that her requests would “require a thorough and wide-ranging search,” and she was invited “to narrow the scope of [her] request.” Pl. Ex. 5; *see also* Pl. Ex. 6 (“The time needed to process your request will necessarily depend on the complexity of our records search and the volume and complexity of any records located.”).

C. The Instant Litigation

Plaintiff did not receive the requested records as quickly as she would have liked, and rather than narrow her requests to focus on the records of greatest interest to her, filed suit on March 31, 2017. *See* Complaint, ECF No. 1. Then, on May 19, Plaintiff filed an Amended Complaint, ECF No. 14, which added claims related to her April Requests and added DOD as a Defendant. On July 20, Plaintiff filed the instant Motion in the midst of the parties’ discussion of production schedules.

⁴ Though DHS rules direct requesters to “write directly to the FOIA office of the component that maintains the records sought” so that the request can “receive the quickest possible response,” 6 C.F.R. § 5.3(a)(1), Plaintiff directed her requests for CBP and OIG records to the DHS Privacy Office.

D. Defendants' Releases and Current Processing Status

Two agencies have now fully responded to Plaintiff's FOIA requests by releasing all non-exempt records subject to FOIA and located in their searches:

- USMS completed its processing of Plaintiff's requests before she filed her Motion, and Plaintiff seeks no relief as to USMS. *See* Pl.'s Mem. in Supp. of Mot. for Prelim. Inj. at 6 n.8 (July 20, 2017), ECF No. 20 ("Mem.").
- DHS-OIG has released, in full or in part, 207 pages responsive to Plaintiff's April Request for records from that agency component. On August 3, 2017, DHS-OIG advised Plaintiff that, in light of DHS-OIG's ongoing investigation, all of its remaining records are currently exempt from disclosure under FOIA Exemption 7(A). *See* Ex. B.

Two agencies in DOJ—the FBI and EOUSA—have not completed their responses but anticipate releasing all non-exempt records subject to FOIA and responsive to Plaintiff's requests by September 5, with the potential exception of records requiring interagency review. While the timing of interagency review would be beyond their control, the agencies commit to concluding the process as soon as practicable. *See* Ex. C ¶ 7 (FBI); Ex. D ¶ 5 (EOUSA).

Of the two remaining DOJ components, OIP and OLC have nearly completed their searches, and both have begun rolling releases, with OLC making its first release on August 2 and OIP making its first release on August 10. *See* Ex. E ¶¶ 26-27, 30 n.4 (OIP); Ex. F ¶¶ 24-32 (OLC). OIP has located over 16,000 potentially responsive records requiring further review, Ex. E ¶ 27, while OLC has located over 26,000, Ex. F ¶ 30. OIP estimates that it can complete processing by January 2018, Ex. E ¶ 30, while OLC is not yet able to estimate a completion date. *See* Ex. F ¶¶ 24-33. But neither can practicably complete its processing by September 5.

DOS, DOD, DHS-PRIV, and CBP have each begun searching for records responsive to Plaintiff's requests and begun releasing responsive records. In light of the breadth of Plaintiff's requests and the agencies' limited resources, however, these agencies' searches remain ongoing. These agencies will continue processing Plaintiff's requests on an expedited basis and making rolling releases of responsive, non-exempt records while their expedited searches are underway. *See* Ex. G ¶¶ 13-15 (DOS); Ex. H ¶¶ 22-32 (DOD); Ex. I ¶¶ 14-17 (DHS-PRIV); Ex. J ¶¶ 21-31 (CBP).

LEGAL STANDARD

Under any circumstances, a preliminary injunction is “an extraordinary and drastic remedy” that should not be granted “unless the movant, *by a clear showing*, carries the burden of persuasion.” *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012). The movant “must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20 (2008).

Here, Plaintiff must satisfy an even more demanding standard because she seeks an order directing Defendants to take action. Such “a mandatory injunction goes well beyond simply maintaining the status quo *pendente lite* [and] is particularly disfavored.” *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015). Mandatory injunctions should be denied “unless the facts and law clearly favor the moving party,” *id.*, “are not granted unless extreme or very serious damage will result and are not issued in doubtful cases.” *Am. Freedom Def. Initiative v. King Cty.*, 796 F.3d 1165, 1173 (9th Cir. 2015) (“AFDI”), *cert. denied sub nom.* 136 S. Ct. 1022 (2016); *Animal Legal Def. Fund v. Dep’t of Agric.*, No. 17-cv-949, 2017 WL 2352009, at *3 (N.D. Cal. May 31, 2017).

Even more problematic, Plaintiff seeks relief that would be irreversible, and thus not really “preliminary” at all. As the Ninth Circuit has explained, in setting aside a preliminary injunction requiring the federal Government to release data, “that kind of judgment on the merits in the guise of preliminary relief” is “highly inappropriate.” *Senate of Cal. v. Mosbacher*, 968 F.2d 974, 978 (9th Cir. 1992); *see Daily Caller v. DOS*, 152 F. Supp. 3d 1, 6-7 (D.D.C. 2015) (describing immediate processing of FOIA requests as “the full relief [a plaintiff] seeks in filing its underlying Complaint”).⁵

⁵ Plaintiff also cannot satisfy the “serious questions” standard for preliminary relief, Mem. 7-8, which is of doubtful validity in any event, *Campbell v. Feld Entm’t Inc.*, No. 12-cv-4233, 2013 WL 4510629, at *4 (N.D. Cal. Aug. 22, 2013), particularly in the context of a mandatory injunction, *see, e.g., Doe v. Samuel Merritt Univ.*, 921 F. Supp. 2d 958, 962-63 (N.D. Cal. 2013).

ARGUMENT

I. PLAINTIFF HAS NOT SHOWN THAT SHE IS ENTITLED TO A MANDATORY INJUNCTION COMPELLING DEFENDANTS TO PROCESS HER COMPLEX FOIA REQUESTS BY THE ARBITRARY DEADLINE OF SEPTEMBER 5

Plaintiff's demand that Defendants complete their processing of each of her FOIA requests by September 5 fails each of the preliminary injunction requirements. Defendants have been diligently working to process Plaintiff's requests as soon as practicable (as demonstrated in their declarations) and have begun releasing records. The FOIA does not require more. In any event, Plaintiff has shown neither that she is likely to suffer irreparable harm if Defendants' processing of her FOIA requests continues at its current expedited pace nor that the equities and public interest favor imposing an omnibus September 5 deadline for every Defendant.

A. Plaintiff Has Not Shown That She Is Likely To Prevail On Her Claim That She Is Entitled To All Responsive, Non-exempt Records Immediately

Plaintiff has not demonstrated a likelihood of success on her argument that she is "entitled to the immediate processing and release of the requested records." Mem. 10. Plaintiff's argument rests heavily on *EPIC v. DOJ*, 416 F. Supp. 2d 30 (D.D.C. 2006) ("*EPIC I*"), in which the court created a presumption that "an agency that violates the twenty-day deadline applicable to standard FOIA requests presumptively also fails to process an expedited request 'as soon as practicable,'" *id.* at 39, and on three cases from this district that followed *EPIC I*. See Mem. 9-10 (citing *Elec. Frontier Found. v. ODNI*, No. 07-cv-5278, 2007 WL 4208311 (N.D. Cal. Nov. 27, 2007) ("*EFF I*"); *Elec. Frontier Found. v. ODNI*, 542 F. Supp. 2d 1181 (N.D. Cal. 2008) ("*EFF II*"); and *Gerstein v. CIA*, No. 06-cv-4643, 2006 WL 3462659 (N.D. Cal. Nov. 29, 2006)).

But the *EPIC I* line of cases has been undermined by more recent decisions recognizing that the FOIA's default 20-business-day deadline for making a determination on a request does not require the agency to release all non-exempt records within that time. Rather, it is an exhaustion provision that "serves primarily as a means to obtain immediate judicial supervision over an agency's response to an outstanding FOIA request." *Daily Caller*, 152 F. Supp. 3d at 10. In any event, the *EPIC I* line of cases is distinguishable here because Defendants have demonstrated progress in processing Plaintiff's broad FOIA requests as quickly as practicable.

1. FOIA’s expedited processing provisions require that expedited requests be processed as soon as practicable, not within any time certain

Underlying Plaintiff’s argument that she is entitled to the release of all responsive, non-exempt records within seven business days of the motion hearing is Plaintiff’s incorrect assertion that the FOIA’s expedited processing provision requires an agency to complete its processing within a specific number of days. But “[t]he statute does not assign any particular time frame to release . . . the records sought.” *Landmark Legal Found. v. EPA*, 910 F. Supp. 2d 270, 275 (D.D.C. 2012). As explained in the Senate Report accompanying the FOIA amendments that inserted the expedited processing provision, the point of expedition is to give certain requests *priority*, not to require that they be processed within a specific period of time:

[Once] the request for expedited [processing] is granted, the agency must then proceed to process the request “as soon as practicable.” *No specific number of days for compliance is imposed by the bill* since, depending on the complexity of the request, the time needed for compliance may vary. *The goal is not to get the request . . . processed within a specific time frame, but to give the request priority for processing more quickly than otherwise would occur.*

S. Rep. No. 104-272, at 17 (1996) (emphasis added); *see also* H.R. Rep. No. 104-795, at 18 (1996) (“certain categories of requesters would receive priority treatment of their requests”). Thus, the expedited processing provision is simply an ordering mechanism that allows certain FOIA requests to jump to a faster processing queue.⁶

Once a request is in the expedited queue, the FOIA requires only that the agency process the request “as soon as practicable.” 5 U.S.C. § 552(a)(6)(E)(iii). What is practicable—and hence what is required by the statute—will vary depending on the size, scope, detail, and complexity of issues presented by the request; the number of offices with responsive documents; other agencies or components which must be consulted or to which documents might have to be referred for additional review; exemption issues; and the resources available to process the request.

⁶ Defendants’ regulations confirm that the result of expedition is that a request is moved to an expedited queue where it is processed as soon as practicable, ahead of non-expedited requests but generally behind earlier-filed expedited requests. *See supra* at 4. Although Plaintiff repeatedly asserts that Defendants have violated their “own regulations,” Mem. 1, 8, 11, 13, the only regulations she cites describe the standards that a requester must satisfy in order to qualify for expedited processing, *id.* at 5, 9. No regulation states that Defendants will complete processing an expedited request within a specific time frame.

1 Ignoring the plain language of the statute and the clear legislative intent, Plaintiff attempts
 2 to invent a time limit applicable to her expedited requests by asserting that “an agency
 3 presumptively violates the ‘expedited processing’ provisions of the FOIA when it fails to meet the
 4 generally applicable 20-working-day deadline imposed by the FOIA for processing a non-
 5 expedited request.” Mem. 9. But this argument reflects Plaintiff’s misunderstanding of 5 U.S.C.
 6 § 552(a)(6)(A)(i), which provides that an agency shall “determine within 20 days (excepting
 7 Saturdays, Sundays, and legal public holidays) after the receipt of [a proper] request whether to
 8 comply with such request.” Under Plaintiff’s theory, § 552(a)(6)(A)(i) requires agencies to release
 9 all non-exempt records responsive to a FOIA request within 20 business days, and because
 10 expedited requests must be processed faster, the failure to process an expedited request in *less than*
 11 20 business days violates the statute (at least presumptively). *See* Mem. 9. Although *EPIC I*
 12 endorsed the presumption Plaintiff advocates, and Defendants agree with Plaintiff that this Court
 13 should look to D.C. Circuit law for guidance, as judges on this Court have in the past, the more
 14 recent and better authority from that jurisdiction undermines *EPIC I* and Plaintiff’s reliance on it.⁷

15 Most notably, the D.C. Circuit’s 2013 decision in *CREW* made clear that the 20-day
 16 deadline under FOIA is *not* a deadline for the release of records. *See CREW*, 711 F.3d at 188.
 17 Rather, it is the deadline for the agency to make a “‘determination’” whether to comply with a
 18 request. *Id.* at 182-83 (quoting 5 U.S.C. § 552(a)(6)(A)(i)(I)). Because, “a distinction exists
 19 between a ‘determination’ and subsequent production,” the 20-business-day window for making a
 20 “‘determination’ does not require actual *production* of the records” within that period. *Id.* at 188;
 21 *accord Daily Caller*, 152 F. Supp. 3d at 10 (“[T]he agency is plainly correct that FOIA does not
 22 require production of all responsive, non-exempt documents within twenty days of receiving a
 23 request.”). With respect to the actual release of records, the statute imposes standards, not a

24 ⁷ FOIA decisions of the D.C. Circuit and District Court “are entitled to appropriate deference”
 25 because of their experience and expertise in applying the statute. *Our Children’s Earth Found. v.*
 26 *EPA*, No. 08-cv-1461, 2008 WL 3181583, at *6 (N.D. Cal. Aug. 4, 2008); *cf. Estate of Abduljaami*
 27 *v. DOS*, No. 14-cv-7902, 2016 WL 94140, at *5 n.2 (S.D.N.Y. Jan. 7, 2016) (“considerable
 experience”); *Gaylor v. DOJ*, No. 05-cv-414, 2006 WL 1644681, at *1 (D.N.H. June 14, 2006)
 (“special expertise”); S. Rep. No. 93-854, at 165 (1974) (“substantial expertise”).

1 deadline of a specific number of days: all requests must be processed “promptly,” 5 U.S.C.
 2 § 552(a)(3)(A), (a)(6)(C)(i), and expedited requests “as soon as practicable,” *id.*
 3 § 552(a)(6)(E)(iii). As such, the FOIA does not require that expedited requests be fully processed
 4 in less than 20 business days (“presumptively” or otherwise); *cf. CREW*, 711 F.3d at 189 (“[I]t
 5 would be a practical impossibility for agencies to process all [FOIA] requests completely within
 6 twenty days.”); *Exner*, 542 F.2d at 1122 (similar).

7 Moreover, if an agency fails to make a “determination” within this 20-day period, the
 8 consequence is not the immediate release of all responsive records, as Plaintiff argues. Rather, “[i]f
 9 the agency does not adhere to FOIA’s explicit timelines, the ‘penalty’ is that the agency cannot
 10 rely on the administrative exhaustion requirement to keep cases from getting into court.” *CREW*,
 11 711 F.3d at 189. In other words, as many decisions since *CREW* have recognized, “the impact of
 12 blowing the 20-day deadline relates *only to the requester’s ability to get into court.*” *Elec. Privacy*
 13 *Information Ctr. v. DOJ*, 15 F. Supp. 3d 32, 41 (D.D.C. 2014) (“*EPIC II*”); *see, e.g., Our*
 14 *Children’s Earth Found. v. Nat’l Marine Fisheries Serv.*, 85 F. Supp. 3d 1074, 1090 (N.D. Cal.
 15 2015) (describing *CREW*’s analysis as “persuasive” and concluding that “[a]s a matter of statutory
 16 interpretation it is clear that the only legal consequence that flows directly from an agency’s failure
 17 to provide a determination within the statutory time limits is the waiver of the administrative
 18 exhaustion requirement.”); *Navigators Ins. Co. v. DOJ*, 155 F. Supp. 3d 157, 167 (D. Conn. 2016)
 19 (“Many courts, including several in this Circuit, have held that untimeliness is not a *per se* statutory
 20 violation [under FOIA] entitling the requester to any specific remedy.”); *Cnty. Ass’n for*
 21 *Restoration of the Env’t, Inc. v. EPA*, 36 F. Supp. 3d 1039, 1049 (E.D. Wash. 2014) (relying on
 22 *CREW* to reject plaintiff’s argument that agency’s failure to provide a timely determination
 23 constitutes an improper withholding under FOIA).⁸

24 _____
 25 ⁸ Plaintiff relies on the broad proposition stated in *Gilmore v. Dep’t of Energy*, 33 F. Supp. 2d
 26 1184, 1187 (N.D. Cal. 1998), that “an agency’s failure to comply with the FOIA’s time limits is,
 27 by itself, a violation of the FOIA, and is an improper withholding of the requested documents.”
 28 *See* Mem. 8. But, in addition to being inconsistent with the weight of more recent authority,
Gilmore was addressing the issue of when a pattern and practice claim is cognizable under the

Once a FOIA requester files suit, “the agency may continue to process the request, and the court . . . will supervise the agency’s ongoing progress, ensuring that the agency continues to exercise due diligence in processing the request.” *CREW*, 711 F.3d at 189 (citing 5 U.S.C. § 552(a)(6)(C)). And for an expedited request, the court ensures that the agency is working to process the request as soon as practicable. *See Protect Democracy Project, Inc. v. DOD*, No. 17-cv-00842, 2017 WL 2992076, at *5 (D.D.C. July 13, 2017) (explaining that, once a FOIA request qualifies for expedition, the only question is whether “the agency is processing [the request] as quickly as practicable”). Thus, Plaintiff is not likely to prevail on her argument that she is entitled to the immediate release of all non-exempt responsive records because Defendants did not complete their processing within less than 20 business days.

2. The outdated district court decisions on which Plaintiff relies are distinguishable because Defendants here are diligently working to process Plaintiff’s requests as soon as practicable

Instead of acknowledging the recent case law, Plaintiff relies heavily on the outdated *EPIC I* line of cases. As is evident from the above discussion, however, the reasoning of *EPIC I* is not supported by the statutory text or legislative history, and more recent and higher authority undermines whatever persuasive value it once had. *See, e.g., EPIC II*, 15 F. Supp. 3d at 41-42 (rejecting *EPIC I*’s “rebuttable presumption” that the passage of more than 20 business days entitles the requester to immediate processing); *Daily Caller*, 152 F. Supp. 3d at 11 (same).⁹

In any event, *EPIC I*, *EFF I*, *EFF II*, and *Gerstein* are easily distinguishable. As one judge in this district has observed, “[i]n all of those cases, the plaintiffs had not yet received *any* records from the defendants when the requests for preliminary injunction were granted.” Order at 4, *ACLU of N. Cal. v. DEA*, No. 11-cv-01997 (N.D. Cal. May 23, 2011), ECF No. 26. Here, by contrast, every Defendant has begun releasing records to Plaintiff and is actively working to release more.

FOIA. *Gilmore* cannot reasonably be read to stand for the proposition that the passage of 20 business days entitles requesters to an injunction requiring immediate completion of all processing.

⁹ Indeed, recent decisions have noted that *EPIC I* was cast into doubt nearly at its inception. The court quickly reconsidered its decision and ultimately granted the agencies up to 120 additional days to process the requests. *See Protect Democracy Project*, 2017 WL 2992076, at *5 n.7 (discounting *EPIC I* in part based on this history); *Daily Caller*, 152 F. Supp. 3d at 11 (same).

1 The *EPIC I* line of cases also is distinguishable because the defendants in those cases failed
2 to present *any* evidence suggesting that complete processing within 20 business days would be
3 impracticable. *See Daily Caller*, 152 F. Supp. 3d at 11; *see, e.g., EPIC I*, 416 F. Supp. 2d at 39-40
4 (agency did not “present evidence that processing EPIC’s FOIA requests within the next twenty
5 days would be impracticable”); *Gerstein*, 2006 WL 3462659, at *3 (defendants submitted “no
6 evidence as to the reasons for their delay in processing Gerstein’s requests, and no evidence that
7 they are exercising due diligence”).

8 Here, in contrast, Defendants have submitted multiple detailed declarations that provide
9 specific (and compelling) reasons why Plaintiff’s request for immediate relief is unreasonable and
10 impracticable under the circumstances. While many reasons are agency-specific, and described at
11 length in the declarations, relevant circumstances include: the volume of still-pending expedited
12 requests filed before Plaintiff’s, Ex. E ¶¶ 23-24 (OIP); Ex. F ¶ 18 (OLC); Ex. H ¶ 21 (DOD); Ex.
13 I ¶ 12 (DHS-PRIV); recent increases in the number of FOIA requests and lawsuits, with resulting
14 court-ordered production schedules, Ex. E ¶ 13 (OIP); Ex. F ¶¶ 11-12 (OLC); Ex. G ¶¶ 20, 26-29
15 (DOS); Ex. H ¶¶ 13-14 (DOD); Ex. I ¶¶ 11-13 (DHS-PRIV); Ex. J ¶ 14-15 (CBP); staffing
16 limitations in the agencies’ FOIA offices, Ex. E ¶ 14(OIP); Ex. G ¶¶ 30-33 (DOS); Ex. H ¶ 16
17 (DOD); Ex. I ¶ 22 (DHS-PRIV); Ex. J. ¶ 16 (CBP); the number of offices and custodians that must
18 be searched, Ex. G ¶ 16 (DOS); Ex. H ¶ 23 (DOD); Ex. J ¶ 27 (CBP); the volume of potentially
19 responsive records already located, Ex. E ¶ 27 (OIP: “more than 16,500”); Ex. F ¶ 30 (OLC: “more
20 than 26,000”); Ex. G ¶ 19 (DOS: “tens of thousands of documents”); Ex. J ¶ 5 (CBP: “over
21 125,000”); Ex. I ¶ 14 (DHS-PRIV: approximately 3,000 pages for the February Request); and the
22 classified or otherwise sensitive nature that responsive records can be expected to include, Ex. G
23 ¶ 18 (DOS); Ex. H ¶¶ 22, 27 (DOD); Ex. J ¶ 26 (CBP); Ex. I ¶ 18 (DHS-PRIV). These declarations
24 make clear that the agencies are not “drag[ging] their feet and pay[ing] lip service” to expedited
25 processing, Mem. 10, but really are diligently working to process Plaintiff’s requests as soon as
26 practicable.

1 Finally, the nature of Plaintiff's FOIA requests is clearly a factor in the amount of time
 2 Defendants need to process them. Each of Plaintiff's requests broadly seeks all agency records
 3 from four of the largest government agencies "concerning" the Executive Orders (or the agency's
 4 analysis/interpretation of them), which makes her requests exceedingly broad and vague, and
 5 raises the question of whether they reasonably describe the records sought.¹⁰ While Plaintiff
 6 eventually accepted some of Defendants' proposals to exclude narrow categories of records from
 7 the scope of her otherwise very broad requests, the requests still remain problematically broad and
 8 vague, and impose significant burdens on the agencies that were most involved in developing
 9 and/or implementing one or both of the Executive Orders.

10 For all of these reasons, Plaintiff has not established that she is likely to prevail on the
 11 argument that she is entitled to receive all requested, non-exempt records "immediately."

12 **B. Plaintiff Has Failed To Establish That She Will Suffer Irreparable Harm If She**
 13 **Does Not Receive All Responsive, Non-exempt Records Immediately**

14 Plaintiff similarly cannot show that irreparable injury to her is "likely in the absence of an
 15 injunction." *Winter*, 555 U.S. at 22. "A plaintiff must do more than merely allege imminent harm
 16 sufficient to establish standing; a plaintiff must demonstrate immediate threatened injury as a
 17 prerequisite to preliminary injunctive relief." *Boardman v. Pac. Seafood Grp.*, 822 F.3d 1011,
 18 1022 (9th Cir. 2016). "Speculative injury cannot be the basis for a finding of irreparable harm." *In*
 19 *re Excel Innovations, Inc.*, 502 F.3d 1086, 1098 (9th Cir. 2007). The injury must be "real and
 20 concrete." *L.A. Mem'l Coliseum Comm'n v. NFL*, 634 F.2d 1197, 1201 (9th Cir. 1980). And, in

21
 22
 23 ¹⁰ See *Marks v. DOJ*, 578 F.2d 261, 263 (9th Cir. 1978) ("[B]road, sweeping requests lacking
 24 specificity are not permissible."); see, e.g., *Mason v. Calloway*, 554 F.2d 129, 131 (4th Cir. 1977)
 25 (finding that request for "all correspondence, documents, memoranda, tape recordings, notes, and
 26 any other material pertaining to the atrocities committed against plaintiffs, . . . including, but not
 27 limited to, the files of [various government offices] . . . typifies the lack of specificity that Congress
 28 sought to preclude in the requirement of 5 U.S.C. § 552(a)(3) that records sought be reasonably
 described."); *Dale v. IRS*, 238 F. Supp. 2d 99, 104 (D.D.C. 2002) ("[C]ourts have found that FOIA
 requests for *all* documents concerning a requester are too broad."); *Massachusetts v. HHS*, 727 F.
 Supp. 35, 36 n.2 (D. Mass. 1989) (noting that "[a] request for all documents 'relating to' a subject
 is usually subject to criticism as overbroad" and "ought to be objectionable under the [FOIA]").

1 the mandatory injunction context, the harm must arise to “extreme or very serious damage.” *AFDI*,
2 796 F.3d at 1173.

3 Significantly, Plaintiff is the only FOIA litigant of the many who are seeking records
4 relating to one or both of the Executive Orders to seek preliminary injunctive relief, casting serious
5 doubt on her claim of irreparable harm. Defendants have received hundreds of FOIA requests
6 seeking various categories of records on the subject, and have more than twenty related FOIA
7 cases in litigation. *See* Ex. A (chart of pending cases). No other plaintiff has requested an order
8 directing an agency to make rolling productions, let alone complete processing by a particular date.
9 *See id.* That no other FOIA requester (among many similarly situated) has asked a court for relief
10 remotely approaching what Plaintiff seeks here undermines her claim that irreparable harm will
11 befall her if Defendants’ processing of her requests continues past September 5.

12 Plaintiff makes two general claims that she will be irreparably injured unless Defendants
13 complete their processing of her requests by September 5: (1) that her “right to expedition under
14 the FOIA will be irretrievably lost”; and (2) that she “hopes to write articles based on these records
15 while they are still newsworthy.” Mem. 10-11. These claims fail to satisfy Plaintiff’s heavy burden
16 to demonstrate harm warranting a mandatory preliminary injunction.

17 First, Plaintiff’s claim that she could somehow lose her “right to expedition” without
18 immediate production is contradicted by the fact that Defendant agencies have all *granted*
19 *expedition* of Plaintiff’s FOIA requests, have accordingly promoted her requests ahead of earlier-
20 filed non-expedited requests that otherwise would have been processed first, have begun making
21 releases, and are working to process her requests as soon as practicable – which is all that her
22 “right to expedition” entails. *Cf. EPIC II*, 15 F. Supp. 3d at 45 (no irreparable harm where agency
23 had expedited the plaintiff’s FOIA request, even if it could not complete processing within 20-day
24 timeframe). Plaintiff’s subjective opinion of what constitutes timely processing, “is not, and cannot
25 be, the standard that governs the Court’s evaluation of irreparable harm.” *Id.* at 44.

26 Plaintiff argues that any delay itself constitutes irreparable harm when a FOIA request
27 qualifies for expedition because, due to the “very nature” of expedited processing, “time is of the
28

1 essence.” Mem. 10. If that were the correct standard, however, mandatory injunctions requiring
2 immediate processing of FOIA requests would become pervasive. Congress provided that a FOIA
3 request may qualify for expedition when the request demonstrates an “urgency to inform the public
4 concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E). The balance
5 struck by Congress was to allow requests meeting this standard to move ahead of non-expedited
6 requests, not to authorize mandatory injunctions like the one Plaintiff seeks here.

7 Further, expedition is granted based on the subject matter of the request, not an assessment
8 of the non-exempt information that may be responsive to the request. Plaintiff’s assertion that,
9 because her requests qualify for expedition, she “will be irreparably harmed unless [she] receives
10 the requested records quickly so that the public can participate fully in [an] ongoing debate is not
11 only unproven, it is also fundamentally flawed because it ignores the well-established statutory
12 FOIA process, which permits government agencies to withhold certain requested documents and
13 to engage in subsequent litigation over them, without regard to the resulting production delay.”
14 *EPIC II*, 15 F. Supp. 3d at 44. Plaintiff cannot show that she will be irreparably harmed if she
15 receives non-exempt records responsive to her broad requests on an expedited basis, but not all of
16 them by September 5.

17 Recent, well-reasoned decisions have rejected similar claims that FOIA plaintiffs suffer
18 irreparable harm whenever an agency does not finish processing expedited requests immediately.
19 *See, e.g., Allied Progress v. CFPB*, No. 17-cv-686, 2017 WL 1750263, at *5-6 (D.D.C. May 4,
20 2017) (“[S]imply because a request for expedited treatment is ‘time-sensitive,’ does not mean that,
21 ipso facto, failing to grant injunctive relief mandating expedited processing would lead to
22 irreparable harm.”); *Daily Caller*, 152 F. Supp. 3d at 9-10 (holding that such an argument “finds
23 no support in either the statute or binding precedent”); *EPIC II*, 15 F. Supp. 3d at 44–47 (rejecting
24 claim of irreparable harm on the basis that the “right the expedition . . . will be irretrievably lost”).
25 Thus, in light of the fact that Plaintiff’s requests are being expedited by all Defendants, Plaintiff
26 has shown no denial of expedition, much less an immediate threat of extreme or very serious
27 damage absent an injunction.

1 Second, there is no merit to Plaintiff's argument that, if Defendants' expedited processing
2 of her requests continues beyond September 5, her "hopes to write articles based on these records
3 while they are still newsworthy" will be irreparably harmed. Mem. 11. This speculative allegation
4 lacks any factual support. While Plaintiff claims September 5 as the necessary production date,
5 she can only speculate as to the "newsworth[iness]" of non-exempt responsive records, and
6 provides no reason why they would no longer be newsworthy after that date. In cases like this one,
7 where the plaintiff merely hopes to publish articles and contribute to an ongoing public discussion,
8 courts have found similar conclusory claims of harm to be lacking. *See, e.g., Daily Caller*, 152 F.
9 Supp. 3d at 13 (rejecting similar claim regarding FOIA requests for records concerning Secretary
10 Clinton's use of a private email server during her time at DOS); *EPIC II*, 15 F. Supp. 3d at 44–47
11 (rejecting similar claim based on desire for "public [to] participate fully in the ongoing debate," as
12 "fundamentally flawed because it ignores the well-established statutory FOIA process").

13 Furthermore, Defendants have already made multiple productions of responsive
14 documents, totaling hundreds of pages, such that "the plaintiff has not been entirely stymied in
15 [her] ability to review and provide press coverage of the records that are the subject of [her] FOIA
16 requests." *Daily Caller*, 152 F. Supp. 3d at 13. And given the fact that Plaintiff can only speculate
17 as to what non-exempt information she may eventually receive in response to her FOIA requests,
18 and whether such information would be newsworthy, Plaintiff cannot meet her burden to establish
19 that she will be irreparably harmed if she fails to receive her requested documents by September
20 5. *See Landmark Legal Found.*, 910 F. Supp. 2d at 278 (declining to find irreparable injury because
21 "even if the Court were to order production of records, many of these could fall under exemptions
22 to the FOIA and thus be withheld or redacted," so "there is no guarantee, even if the Court were
23 to issue a preliminary injunction that the records [the plaintiff] seeks would be disclosed"); *The*
24 *Nation Magazine v. DOS*, 805 F. Supp. 68, 74 (D.D.C. 1992) (similar). Plaintiff appears to
25 acknowledge as much, arguing only that she "hopes" to write future articles based on the records.
26 Mem. 11. Such speculative and contingent desires cannot support a showing of irreparable harm.

Relatedly, Plaintiff makes reference to pending litigation involving Executive Order No. 13780, including Supreme Court litigation involving certain provisions of that Executive Order, in her discussion of the public interest. *See* Mem. 12; *see also* Mem. 4. But Plaintiff does not appear to claim that these proceedings contribute to her alleged irreparable harm, and any such claim would fail. Where a requester is not directly involved in a legal matter, irreparable harm cannot be founded on the chance that some other unknown party may use produced materials in court. *See Long v. DHS*, 436 F. Supp. 2d 38, 43 (D.D.C. 2006) (finding no irreparable harm where requester failed to identify “any particular person or entity [which] plans on filing an amicus brief . . . or that any potential non-party filer has requested information from [the requester]”). In any event, even if Plaintiff were herself involved in the pending litigation, “providing discovery is not a sufficient basis for preliminary injunctive relief.” *City & Cty. of Honolulu v. EPA*, No. 08-cv-404, 2009 WL 855896, at *9–10 (D. Haw. Mar. 27, 2009); *cf. Renegotiation Bd. v. Bannercraft Clothing Co.*, 415 U.S. 1, 24 (1974) (FOIA not meant to offer “discovery for litigation purposes”).

While Plaintiff’s wish to receive immediate responses to her requests “is understandable, that desire without more, is insufficient to constitute irreparable harm necessary to justify the extraordinary relief requested here.” *Judicial Watch Inc. v. DHS*, 514 F. Supp. 2d 7, 10 (D.D.C. 2007). Because Plaintiff has not come close to showing that immediate and extreme damage would befall her without an injunction requiring processing by September 5, she is not entitled to one.

C. The Remaining Preliminary Injunction Factors Weigh Strongly Against Plaintiff

Plaintiff’s inability to demonstrate that she likely will prevail on the merits, or that she likely will suffer irreparable harm if Defendants do not finish processing her FOIA requests by September 5, makes it unnecessary to consider the remaining preliminary injunction factors. In this case, however, Plaintiff has not carried her burden to demonstrate that the balance of equities and the public’s interest weigh in favor of granting her the requested mandatory injunction.

Balance of Equities. Contrary to Plaintiff’s conclusory claim, Mem. 11, an injunction would of course burden Defendants. An agency’s processing of a request like Plaintiff’s is necessarily multilayered and complicated, including searching the offices and files likely to

1 contain responsive records, reviewing responsive materials for claims of exemption, and
 2 consulting with the appropriate components or other entities with equities in the information at
 3 issue prior to releasing any non-exempt, responsive documents. *See, e.g.*, Ex. F ¶ 31; Ex. G ¶ 18.
 4 For agencies that cannot practicably process Plaintiff's requests in the time she proposes, a court
 5 order directing them to do so would undermine the integrity of their FOIA operations, prejudicing
 6 other FOIA requesters and risking inadvertent disclosure of protected information.

7 Plaintiff's requested injunction would "clearly impose an undue hardship on other FOIA
 8 requesters and would do serious damage to the [agency's] orderly administration of FOIA
 9 requests." *EPIC II*, 15 F. Supp. 3d at 47. For instance, when there are still-pending expedited
 10 requests ahead of the plaintiff's in the queue, the "plaintiff's effort to accelerate review of its
 11 requests necessarily will displace in processing priority those of third parties who submitted
 12 equally urgent requests *before* the plaintiff." *Daily Caller*, 152 F. Supp. at 15. Here, multiple
 13 agencies are working to process expedited requests submitted by other requesters before Plaintiff
 14 submitted her own, and those requesters would be prejudiced if Plaintiff were to jump the line.
 15 *See, e.g.*, Ex. E ¶¶ 23-24 (OIP has 59 still-pending expedited requests submitted before Plaintiff's
 16 first request and 83 submitted before her second); Ex. F ¶ 18 (OLC has 29 still-pending expedited
 17 requests submitted before Plaintiff's first request and 37 submitted before her second); Ex. H ¶ 21
 18 (DOD); Ex. I ¶ 12 (DHS-PRIV). At the same time, in order to attempt to comply with Plaintiff's
 19 requested injunction—if that were even possible with all agency FOIA resources devoted
 20 exclusively to Plaintiff's requests—Defendants would need to divert significant resources away
 21 from other FOIA requests, disrupting the orderly administration of their FOIA programs, and
 22 putting certain agencies in jeopardy of being in contempt of orders from other courts. *See, e.g.*,
 23 Ex. G ¶ 35 (court order would "limit [DOS's] ability to meet its existing FOIA obligations"); Ex.
 24 I ¶¶ 13, 22 (DHS-PRIV).¹¹

25
 26 ¹¹ *EPIC II*, 15 F. Supp. 3d at 47 ("[A]llowing EPIC to jump to the head of the line would upset the
 27 agency's processes and be detrimental to the other expedited requesters, some of whom may have
 28 even more pressing needs."); *The Nation Magazine*, 805 F. Supp. at 74 (entry of a preliminary

Compelling productions on a truncated timetable also “raises a significant risk of harm to the public and private interests served by the thorough processing of responsive agency records prior to their ultimate production,” particularly through “inadvertent disclosure of records properly subject to exemption under FOIA.” *Daily Caller*, 152 F. Supp. 3d. at 15; *see also Allied Progress*, 2017 WL 1750263, at *7 (“[O]rdering production by a date-certain would impugn the . . . interest in ensuring that agencies have sufficient time to review materials for responsiveness and exemptions”); *Protect Democracy Project*, 2017 WL 2992076, at *6 (“Imposing on Defendants an arbitrary deadline for processing would run the risk of overburdening them, and could even lead to the mistaken release of protected information.”); *Animal Legal Def. Fund*, 2017 WL 2352009, at *9 (recognizing the governmental and private interests in avoiding improper disclosure of private information). The Court’s balancing of the equities must take into account Defendants’ “responsibility” to “safeguard[] potentially sensitive information” when processing FOIA requests, *Daily Caller*, 152 F. Supp. 3d at 14, particularly in a FOIA case that involves a vast number of records, some of which may contain classified or otherwise sensitive information. *See, e.g.,* Ex. H ¶ 22, 27 (DOD search located classified material); Ex. G ¶ 18 (rushed processing without sufficient time for careful review “will risk inadvertent exposure of sensitive information”); Ex. F ¶ 31 (discussing sensitive information in records collected); Ex. J ¶ 26 (same); Ex. I ¶ 18 (injunction would “inevitably risk the inadvertent release of sensitive information”).

Plaintiff’s arguments regarding the equities cannot outweigh these considerations. Plaintiff seeks to minimize the burden a September 5 deadline would impose on Defendants by asserting that her requested injunction would require “nothing more of the government than what the law already mandates: the expedited processing of her FOIA requests.” Mem. 11 (citing *EFF I*, 2007

injunction expediting a FOIA request over other pending requests “would severely jeopardize the public’s interest in an orderly, fair, and efficient administration of the FOIA”); *see also Allied Progress*, 2017 WL 1750263, at *7 (“[O]rdering production by a date-certain would impugn the . . . interest of other third-parties in not having their FOIA requests bumped down in the queue and consequently delayed.”); *Protect Democracy Project*, 2017 WL 2992076, at *6 (“[R]equiring production by a date certain, without any factual basis for doing so, might actually *disrupt* FOIA’s expedited processing regime rather than implement it.”).

1 WL 4208311, at *7); *see also id.* at 13 (same argument as to public interest). As set forth above,
2 however, Plaintiff is mistaken about what the law requires. Moreover, there is a “tension between
3 the public’s interest in an agency complying with its statutory mandate to release certain
4 documents[,] the public’s interest in security,” *EPIC II*, 15 F. Supp. at 48, and the Government’s
5 interest in efficiently administering its FOIA operations in a manner that is fair to all requesters.

6 Plaintiff’s conclusory and speculative assertions of her own interest in more quickly
7 receiving records cannot outweigh the significant burden that Plaintiff’s requested injunction
8 would impose on Defendants and their strong interests in maintaining the integrity and order of
9 their FOIA operations. *Cf. Animal Legal Def. Fund*, 2017 WL 2352009, at *10 (finding the interest
10 in immediate availability of government records “outweighed by the [agency’s] interest in
11 ensuring that these records do not improperly disclose private information”).

12 Public Interest. The public-interest factor favors Defendants for many of the reasons that
13 the equities weigh in their favor. That is so because “where the government is a party, the public
14 interest and the balance of the equities merge.” *LivingWell Med. Clinic, Inc. v. Harris*, No. 15-cv-
15 04939, 2015 WL 13187682, at *6 (N.D. Cal. Dec. 18, 2015) (citing *Drakes Bay Oyster Co. v.*
16 *Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014)); *cf. Nken v. Holder*, 556 U.S. 418, 435 (2009).
17 Plaintiff offers two public-interest arguments not already rebutted above, but neither is persuasive.

18 First, Plaintiff offers speculation that “release of the information may help inform judicial
19 review by courts around the country,” citing the Supreme Court briefing schedule as the only basis
20 for this claim. Mem. 12. Regardless of the production date, however, Plaintiff does not explain
21 how any new information produced in response to her FOIA requests could be added to the
22 evidentiary record currently before the Supreme Court. *See, e.g., Hazel-Atlas Glass Co. v.*
23 *Hartford-Empire Co.*, 322 U.S. 238, 258 (1944) (“Neither this court nor a circuit court of appeals
24 may hear new evidence in a cause appealable from a lower court.”). Further, concerning the other
25 cases in “courts around the country,” Plaintiff does not show that she is a party or even potential
26 amicus in any of these cases, nor does she explain why any of these pending matters warrants
27 immediate and complete responses to her FOIA requests. Plaintiff’s unfounded speculation that
28

1 she may obtain records that may be used by some unspecified party in some unspecified case, does
 2 not suffice to demonstrate the public interest in immediate disclosure of these records.¹²

3 Second, Plaintiff makes a generalized claim that these records could help to foster
 4 “democratic debate.” Mem. 12. But Plaintiff’s “bald reliance on [her] own interest in obtaining the
 5 sought-after records and the more generalized public interest in the disclosure of those records”
 6 does little to distinguish her request from any other expedited FOIA request. *Daily Caller*, 152 F.
 7 Supp. 3d at 15. Moreover, the mere allegation that the topic pertaining to Plaintiff’s FOIA request
 8 has received public attention, even if considerable, does not mean that the public’s interest would
 9 be served by the Court granting the extraordinary relief Plaintiff requests. *See EPIC II*, 15 F. Supp.
 10 3d at 47-48; *Judicial Watch*, 514 F. Supp. 2d at 11.

11 A mandatory injunction would threaten the interests of other FOIA requesters, the security
 12 of government documents, and agencies’ orderly and efficient administration of the FOIA. Neither
 13 the balance of the equities nor the public interest supports Plaintiff’s requested injunction.

14 **II. PLAINTIFF HAS NOT SHOWN THAT SHE IS ENTITLED TO A VAUGHN**
 15 **INDEX, LET ALONE ON HER ABBREVIATED TIME TABLE**

16 Plaintiff also demands that the Court order Defendants to “provide [her] with [a] document
 17 index and declaration, as specified in *Vaughn v. Rosen*, stating the justification for the withholding
 18 of any documents responsive to [her] requests within 30 days of the date of the Court’s order.”
 19 Mem. 15. This demand—buried in the last half-sentence before the Conclusion of the Motion—is

21 ¹² In contrast with Plaintiff’s request for immediate processing of her FOIA requests, many of the
 22 courts hearing challenges to the Executive Order have stayed further district court proceedings,
 23 including any discovery, pending the Supreme Court’s decision. *See, e.g., Pars Equality Ctr. v.*
 24 *Trump*, No. 17-cv-00255 (D.D.C. June 20, 2017), ECF No. 91; *Washington v. Trump*, No. 17-cv-
 25 141, 2017 WL 2172020 (W.D. Wash. May 17, 2017). Even in the cases currently before the
 26 Supreme Court, no further merits proceedings are scheduled in district court until after the
 27 Supreme Court’s decision. *See Hawaii v. Trump*, No. 17-cv-00050 (D. Haw.), ECF Nos. 279 (order
 28 staying proceedings), 295 & 335 (partially lifting the stay to consider certain non-discovery
 motions); *IRAP v. Trump*, No. 17-cv-00361 (D. Md.), ECF No. 174 (plaintiffs’ withdrawal of
 motions seeking discovery) & 184 (order staying deadline to respond to complaint). And while the
 ACLU and certain of its affiliates both represent the plaintiff-respondents in *IRAP*, and have
 pending FOIA requests and/or litigation relating to Executive Order 13769, even they have not
 requested relief remotely approaching the relief Plaintiff seeks here. *See Ex. A* (rows 5 to 17).

entirely unjustified. Plaintiff cannot—and does not even attempt to—demonstrate that the four preliminary injunction factors support granting her such relief.

Plaintiff has not established that she has any right to a *Vaughn* index, let alone on the timetable she proposes. A *Vaughn* index is typically a list of “each document withheld, the statutory exemption[s] claimed, and a particularized explanation of how disclosure of the particular document[s] would damage the interest[s] protected by the claimed exemption[s].” *Wiener v. FBI*, 943 F.2d 972, 977 (9th Cir. 1991). “[T]here is no statutory requirement of a *Vaughn* index,” *Fiduccia v. DOJ*, 185 F.3d 1035, 1045 (9th Cir. 1999), and the Ninth Circuit has repeatedly held that “*Vaughn* indices ... are not appropriate in all FOIA cases,” *Minier v. CIA*, 88 F.3d 796, 804 (9th Cir. 1996).¹³

Even where a full index proves necessary for the agency to sustain its application of the statutory exemptions, “the preparation of a *Vaughn* Index would be premature before the filing of dispositive motions.” *Stimac v. DOJ*, 620 F. Supp. 212, 213 (D.D.C. 1985); accord *Miscavige v. IRS*, 2 F.3d 366, 369 (11th Cir. 1993). “[T]he purpose of a *Vaughn* index is to aid a district court in its ruling on claimed exemptions to FOIA,” *Lewis*, 823 F.2d at 380, and courts ordinarily consider the validity of the agency’s exemption claims at summary judgment, *see, e.g., Lane v. Dep’t of Interior*, 523 F.3d 1128, 1134-35 (9th Cir. 2008). Plaintiff has not justified her proposed departure from the manner in which FOIA litigation is ordinary sequenced, and her premature demand for an expedited *Vaughn* index should be denied on that basis. *Cf. Gerstein*, 2006 WL 3462659, at *5 (denying plaintiff’s request for a *Vaughn* index in a preliminary injunction motion).

Plaintiff fails even to mention the remaining preliminary injunction factors in connection with her demand that Defendants be required to justify their withholdings in a *Vaughn* index and

¹³ A document-by-document index is unnecessary, for example, when the agency invokes an exemption “dependent on the category of the requested records rather than the individual subject matters contained within each document,” *Lewis v. IRS*, 823 F.2d 375, 380 (9th Cir. 1987) (discussing Exemption 7(A)), and when context from partially released records demonstrates the nature of the information withheld, *see, e.g., Fiduccia*, 185 F.3d at 1042-45; *Weiner*, 943 F.2d at 978 n.5. And in cases with a large number of records, courts may accept an index of a sample of them in order to reduce the burden on the agency and the court. *See Shannahan v. IRS*, 672 F.3d 1142, 1150-51 (9th Cir. 2012); *Meeropol v. Meese*, 790 F.2d 942, 958-59 (D.C. Cir. 1986).

1 declaration within 30 days of the ruling on her Motion. Plaintiff does not attempt to show that she
2 will suffer irreparable harm in the absence of such an order, or that the balance of equities and the
3 public interest support her demand. Writing explanations of withheld information sufficient to
4 justify exemptions is a time-consuming endeavor in run-of-the-mill FOIA cases. Given the breadth
5 of Plaintiff's FOIA requests, the large volumes of responsive or potentially responsive records
6 located so far, and the likelihood of significant withholdings, Defendants expect that preparing a
7 document-by-document index of withholdings will be a large undertaking, and consume time that
8 Defendants could otherwise dedicate to processing records for release to other requesters. In her
9 half-sentence demand for an early *Vaughn* index, Plaintiff utterly fails to carry her burden to
10 demonstrate that she is entitled to this relief.

11 CONCLUSION

12 For all these reasons, Defendants respectfully request that Plaintiff's Motion be denied,
13 and that Defendants be permitted to continue processing Plaintiff's FOIA requests expeditiously
14 while filing periodic status reports.

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1 Date: August 10, 2017

Respectfully Submitted,

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5
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Defendants' Exhibit List

Exhibit	Description
A	Pending FOIA Litigation Involving Executive Order No. 13,769 and/or Executive Order No. 13,780
B	Declaration of Drew Lavine, Department of Homeland Security Office of Inspector General
C	Declaration of David M. Hardy, Federal Bureau of Investigation
D	Declaration of John W. Kornmeier, Executive Office of United States Attorneys
E	Declaration of Daniel R. Castellano, Office of Information Privacy
F	Declaration of Paul P. Colborn, Office of Legal Counsel
G	Declaration of Eric F. Stein, Department of State
H	Declaration of Paul J. Jacobsmeyer, Department of Defense
I	Declaration of James V.M.L. Holzer, Department of Homeland Security Privacy Office
J	Declaration of Patrick A. Howard, U.S. Customs and Border Protection

Cora Currier v. U.S. Department of Homeland Security, et al.

No. 3:17-cv-01799-JSC

LIST OF EXHIBITS TO DEFENDANTS' OPPOSITION TO
PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

Exhibit A

Pending FOIA Litigation Involving Executive Order No. 13,769 and/or Executive Order No. 13,780

Cora Currier v. U.S. Department of Homeland Security, et al.

No. 3:17-cv-01799-JSC

EXHIBITS TO DEFENDANTS' OPPOSITION TO
PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

#	Plaintiff(s)/Requester(s)	Case No. & District	Request Date(s)	Agency(ies) Receiving Request(s) in Litigation	Records Requested (as described in the complaint)	Recent Litigation Events
1	James Madison Project Ken Vogel Josh Gerstein	17-cv-00388 D.D.C.	1/31/17	DHS-PRIV DHS-TSA DHS-CBP DHS-ICE DHS-USCIS	<p>1) Guidance provided by [the agency] to private and commercial airlines operating at U.S. airports with respect to admission, denial of admission, and/or deportation of individuals subject to [Executive Order No. 13,769];</p> <p>2) Communications (that are not encompassed by category #1) between [the agency] and private and/or commercial airlines operating at U.S. airports with respect to implementation of [Executive Order No. 13,769];</p> <p>3) Communications (that are not encompassed by categories #1 or #2) between [the agency] and private and/or commercial airlines operating at U.S. airports with respect to the judicial rulings imposing emergency stays and/or restraining orders enjoining [Executive Order No. 13,769].</p> <p>[Date Range: Beginning January 20, 2017]</p>	A Joint Status Report (JSR) filed on July 21 proposed that the parties file another JSR by September 5. ECF No. 8. The court adopted the proposal by minute order.

#	Plaintiff(s)/Requester(s)	Case No. & District	Request Date(s)	Agency(ies) Receiving Request(s) in Litigation	Records Requested (as described in the complaint)	Recent Litigation Events
2	James Madison Project Noah Shachtman	17-cv-00390 D.D.C.	1/31/17; 3/24/17	DOJ-OLC DHS-PRIV DHS-TSA DHS-CBP DHS-ICE DHS-USCIS	<p>1) Any records memorializing discussions between [agency] staff and private staff, Presidential transition staff, and/or White House staff of [President Trump] regarding the legality of (and recommended means of implementing) an Executive Order barring entry of certain categories of foreign nationals based strictly on their nationality, including, but not limited to, individuals who qualify as refugees, U.S. legal permanent residents, and holders of a valid U.S. visa;</p> <p>2) Any records memorializing discussions between [agency] staff and other Federal agencies regarding an Executive Order that falls within the scope of category #1 . . . ;</p> <p>3) Any records memorializing discussions among [agency] staff regarding an Executive Order that falls within the scope of category #1 . . . ;</p> <p>4) Any records memorializing discussions between [agency] staff and Members of Congress (as well as Congressional staff members) regarding an Executive Order that falls within the scope of category #1 . . . ;</p> <p>5) Any records memorializing final determinations by [agency] staff regarding the extent to which an Executive Order that falls within the scope of category #1 would apply to U.S. citizens who hold dual citizenship;</p> <p>6) Any records memorializing final determinations by [agency] staff regarding the legality of an Executive Order that falls within the scope of category #1.</p> <p>[Date Range: Beginning November 8, 2016]</p>	A JSR filed on July 21 proposed that the parties file another JSR by September 5. ECF No. 8. The court adopted the proposal by minute order.

#	Plaintiff(s)/Requester(s)	Case No. & District	Request Date(s)	Agency(ies) Receiving Request(s) in Litigation	Records Requested (as described in the complaint)	Recent Litigation Events
3	Protect Democracy Project	17-cv-00814 D.D.C.	2/15/17	OMB	<p>1) Any and all records . . . indicating that [Executive Order No. 13,769] was reviewed by any federal agency personnel prior to the Order's issuance on January 27, 2017, including but not limited to any record indicating that [Executive Order No. 13,769] was reviewed for lawfulness, or deemed lawful or unlawful, by the Department of Justice.</p> <p>2) Any and all records . . . transmitting [Executive Order No. 13,769] to any federal agency for review, comment, or awareness, including but not limited to the Department of Homeland Security or the Department of Justice.</p> <p>3) Any and all records . . . related to the decision to seek or not seek input from federal agency personnel on the creation or implementation of [Executive Order No. 13,769], including but not limited to the Department of Homeland Security or the Department of Justice.</p> <p>4) Any and all records . . . related to the process for obtaining agency input regarding [Executive Order No. 13,769].</p> <p>[Date Range: January 20 – February 15, 2017]</p>	On July 10, the Court ordered the parties to file a monthly JSR. The last JSR was filed on August 8, ECF No. 16, and the next JSR is due on September 12.

#	Plaintiff(s)/Requester(s)	Case No. & District	Request Date(s)	Agency(ies) Receiving Request(s) in Litigation	Records Requested (as described in the complaint)	Recent Litigation Events
4	Protect Democracy Project	17cv-00815 D.D.C.	2/15/17	DOJ-OLC	<p>1) Any and all records . . . indicating that [Executive Order No. 13,769] was reviewed by the Department of Justice prior to the Order's issuance on January 27, 2017.</p> <p>2) Any and all records . . . transmitting [Executive Order No. 13,769] to the Department of Justice for review, comment, or awareness.</p> <p>3) Any and all records . . . related to the decision to seek or not seek input from the Department of Justice on the creation or implementation of [Executive Order No. 13,769].</p> <p>4) Any and all records . . . related to the process for obtaining Department of Justice review of [Executive Order No. 13,769].</p> <p>5) Any and all records . . . indicating that [Executive Order No. 13,769] was reviewed by any other federal agency personnel prior to the Order's issuance on January 27, 2017.</p> <p>[Date Range: January 20 – February 15, 2017]</p>	This case is consolidated with 17-cv-00814. On July 10, the Court ordered the parties to file a monthly JSR. The last JSR was filed on August 8, ECF No. 16, and the next JSR is due on September 12.

#	Plaintiff(s)/Requester(s)	Case No. & District	Request Date(s)	Agency(ies) Receiving Request(s) in Litigation	Records Requested (as described in the complaint)	Recent Litigation Events
5	ACLU of Washington ACLU of Montana ACLU of North Dakota	17-cv-00562 W.D. Wash.	2/2/17	DHS-CBP	<p>1) Records created on or after January 27, 2017 concerning CBP's interpretation, enforcement, and implementation of the following at [the Local International Airport(s)]: [Executive Order No. 13,769, specified statements and guidance issued by agency officials following the issuance of Executive Order No. 13,769, and specified court orders relating to Executive Order No. 13,769];</p> <p>2) Records concerning the number of individuals who were detained or subjected to secondary screening, extending questioning, an enforcement examination, or consideration for a waiver at [the Local International Airports(s)] pursuant to the Executive Order . . . ;</p> <p>3) Records concerning the number of individuals who have been removed from [the Local International Airport(s)] from January 27, 2017 to date pursuant to the Executive Order;</p> <p>4) Records concerning the number of individuals who arrived at [the Local International Airport(s)] from January 27, 2017 to date with valid visas or green cards who subsequently agreed voluntarily to return;</p> <p>5) Records containing the 'guidance' that was 'provided to DHS field personnel shortly' after President Trump signed the Executive Order.</p> <p>[The request states that it seeks records from CBP's Seattle Field Office and certain airports and ports of entry under its supervision, not from CBP headquarters.]</p>	On July 20, 2017, the parties filed a JSR in which they proposed to file another JSR by August 25, 2017. ECF Nos. 26 & 27.

#	Plaintiff(s)/Requester(s)	Case No. & District	Request Date(s)	Agency(ies) Receiving Request(s) in Litigation	Records Requested (as described in the complaint)	Recent Litigation Events
6	ACLU of Oregon ACLU of Alaska ACLU of Colorado ACLU of Idaho ACLU of Wyoming	17-cv-00575 D. Or.	2/2/17	DHS-CBP	The request at issue in this case seeks the same categories of records as the request at issue in Case #5 above, but defines the term "Local International Airport(s)" to identify one or more different airports, and it seeks records from CBP's Portland Field Office (and related airport(s) and port(s) of entry).	On July 31, the parties filed a joint motion to extend the deadline for the parties to complete their initial conference until August 30 and to set September 6 as the deadline for the parties to submit a proposed schedule for further proceedings. ECF No. 19. The court granted the parties' motion. ECF No. 20.
7	ACLU of Michigan	17-cv-11149 E.D. Mich.	2/2/17; 2/10/17	DHS-CBP	The two requests at issue in this case seek the same categories of records as the request at issue in Case #5 above, but one defines the term "Local International Airport(s)" to identify one or more different airports, while the other seeks records relating to four land border crossings, and both seek records from CBP's Detroit Field Office (and related airport(s) and port(s) of entry).	On August 4, 2017, the parties filed a Joint Case Management Report and Discovery Plan in which they proposed to file a JSR on August 28, and requested that the court set a scheduling conference for a date in early September. ECF No. 32. The scheduling conference is now set for September 7.
8	ACLU of N. California ACLU of Hawaii ACLU of Utah	17-cv-01970 N.D. Cal.	2/2/17; 2/3/17	DHS-CBP	The request at issue in this case seeks the same categories of records as the request at issue in Case #5 above, but defines the term "Local International Airport(s)" to identify one or more different airports, and it seeks records from CBP's San Francisco Field Office (and related airport(s) and port(s) of entry).	The initial case management conference is scheduled for August 30. ECF No. 18.
9	ACLU of San Diego & Imperial Counties	17-cv-00733 S.D. Cal.	2/2/17	DHS-CBP	The request at issue in this case seeks the same categories of records as the request at issue in Case #5 above, but defines the term "Local International Airport(s)" to identify one or more different airports, and it seeks records from CBP's San Diego Field Office (and related airport(s) and port(s) of entry).	The government filed its answer on June 30. ECF No. 32.

#	Plaintiff(s)/Requester(s)	Case No. & District	Request Date(s)	Agency(ies) Receiving Request(s) in Litigation	Records Requested (as described in the complaint)	Recent Litigation Events
10	ACLU of S. California ACLU of Nevada	17-cv-02778 C.D. Cal.	2/2/17	DHS-CBP	The request at issue in this case seeks the same categories of records as the request at issue in Case #5 above, but defines the term "Local International Airport(s)" to identify one or more different airports, and it seeks records from CBP's Los Angeles Field Office (and related airport(s) and port(s) of entry).	Proceedings were stayed pending a decision on the defendants' motion for transfer pursuant to 28 U.S.C. § 1407, which was denied on August 2. The parties are required to file a JSR by August 20. ECF No. 27.
11	ACLU of Arizona	17-cv-01083 D. Ariz.	2/2/17	DHS-CBP	The request at issue in this case seeks the same categories of records as the request at issue in Case #5 above, but defines the term "Local International Airport(s)" to identify one or more different airports, and it seeks records from CBP's Tucson Field Office (and related airport(s) and port(s) of entry).	The government filed its answer on July 10. ECF No. 32.
12	ACLU of Virginia ACLU of Maryland ACLU of Pennsylvania ACLU of Delaware	17-cv-00441 E.D. Va.	2/2/17	DHS-CBP	The request at issue in this case seeks the same categories of records as the request at issue in Case #5 above, but defines the term "Local International Airport(s)" to identify one or more different airports, and it seeks records from CBP's Baltimore Field (and related airport(s) and port(s) of entry).	Proceedings were stayed pending a decision on the defendants' motion for transfer pursuant to 28 U.S.C. § 1407, which was denied on August 2. The defendants have not yet responded to the complaint.
13	ACLU of Georgia, Inc. ACLU of N.C., Inc. ACLU of S.C., Inc. ACLU of W. Va., Inc.	17-cv-01309 N.D. Ga.	2/2/17	DHS-CBP	The request at issue in this case seeks the same categories of records as the request at issue in Case #5 above, but defines the term "Local International Airport(s)" to identify one or more different airports, and it seeks records from CBP's College Park/Atlanta Field Office (and related airport(s) and port(s) of entry).	Proceedings were stayed pending a decision on the defendants' motion for transfer pursuant to 28 U.S.C. § 1407, which was denied on August 2. On August 7, the court ordered defendants to respond to the complaint by August 22. ECF No. 26.

#	Plaintiff(s)/Requester(s)	Case No. & District	Request Date(s)	Agency(ies) Receiving Request(s) in Litigation	Records Requested (as described in the complaint)	Recent Litigation Events
14	ACLU of Illinois ACLU of Indiana ACLU of Iowa ACLU of Kentucky ACLU of Minnesota ACLU of Missouri ACLU of Nebraska ACLU of Ohio ACLU of South Dakota ACLU of Wisconsin	17-cv-02768 N.D. Ill.	2/2/17	DHS-CBP	The request at issue in this case seeks the same categories of records as the request at issue in Case #5 above, but defines the term "Local International Airport(s)" to identify one or more different airports, and it seeks records from CBP's Chicago Field Office (and related airport(s) and port(s) of entry).	Proceedings were stayed pending a decision on the defendants' motion for transfer pursuant to 28 U.S.C. § 1407, which was denied on August 2. On August 4, the court scheduled a status hearing for August 10. ECF No. 45.
15	ACLU of Florida	17-cv-21382 S.D. Fla.	2/2/17	DHS-CBP	The two requests at issue in this case seek the same categories of records as the request at issue in Case #5 above, but define the term "Local International Airport(s)" to identify different airports and seek records from CBP's Miami and Tampa Field Offices (and related airport(s) and port(s) of entry).	Proceedings were stayed pending a decision on the defendants' motion for transfer pursuant to 28 U.S.C. § 1407, which was denied on August 2. On August 8, plaintiff filed an agreed-upon motion to lift the stay and set August 22 as the deadline for defendants to respond to the complaint. ECF No. 26.
16	ACLU of Maine ACLU of N.H. ACLU of Vermont ACLU of Mass. ACLU of Conn. ACLU of Rhode Island	17-cv-132 D. Me.	2/2/17	DHS-CBP	The request at issue in this case seeks the same categories of records as the request at issue in Case #5 above, but defines the term "Local International Airport(s)" to identify one or more different airports, and it seeks records from CBP's Boston Field Office (and related airport(s) and port(s) of entry).	Proceedings were stayed pending a decision on the defendants' motion for transfer pursuant to 28 U.S.C. § 1407, which was denied on August 2. On August 3, the court ordered the defendants to respond to the complaint by August 24. ECF No. 22.

#	Plaintiff(s)/Requester(s)	Case No. & District	Request Date(s)	Agency(ies) Receiving Request(s) in Litigation	Records Requested (as described in the complaint)	Recent Litigation Events
17	ACLU Found. of Texas	17-cv-00820 S.D. Tex.	2/2/17	DHS-CBP	The request at issue in this case seeks the same categories of records as the request at issue in Case #5 above, but defines the term "Local International Airport(s)" to identify one or more different airports, and it seeks records from CBP's Houston Field Office (and related airport(s) and port(s) of entry).	Proceedings were stayed, with the plaintiff's consent, pending a decision on the defendants' motion for transfer pursuant to 28 U.S.C. § 1407, which was denied on August 2. The defendants' response to the complaint is now due by August 16. ECF No. 17.
18	Muslim Advocates	17-cv-00820 D.D.C.	3/7/17	DHS-PRIV DHS-CBP DHS-TSA	1) Records created on or after January 24, 2017 related to eligibility for Trusted Traveler Programs – including Global Entry, NEXUS, SENTRI, and FAST – and TSA PreCheck, and the revocation and/or reinstatement of Trusted Traveler Program and TSA PreCheck memberships; 2) Records created on or after February 27, 2017 that pertain to [Executive Order No. 13,780] and are otherwise responsive to the first request; 3) Records created on or after February 27, 2017 regarding the development and implementation of guidance provided in the answer to question 14 in the March 6, 2017 DHS Office of Public Affairs document entitled "Q&A: Protecting the Nation From Foreign Terrorist Entry to the United States," which addresses [Executive Order No. 13,780's] impact on Trusted Traveler Program Membership.	The government filed its answer on July 13. ECF No. 14. A status report is due by August 11. ECF No. 14.

#	Plaintiff(s)/Requester(s)	Case No. & District	Request Date(s)	Agency(ies) Receiving Request(s) in Litigation	Records Requested (as described in the complaint)	Recent Litigation Events
19	Am.-Arab Anti-Discrimination Comm.	17-cv-00708 D.D.C.	3/8/17; 3/9/17	DHS-CBP	<p>1) All agency records relating to each revocation, suspension, or termination of Global Entry System (GES) participation from November 9, 2016 to the date of the agency's response to this request;</p> <p>2) All agency records showing the annual total of revocations, suspensions, or terminations of (GES) permissions between January 1, 2012 and November 8, 2016.</p> <p>3) All agency records showing reversal or confirmation of CBP's GES revocation decisions by the CBP Ombudsman's office;</p> <p>4) Any agency policy, practice, memorandum, training, guidance, communication, or other similar record created on or after November 9, 2017 relating to the suspension, revocation, or termination of GES;</p> <p>5) Any agency policy, practice, memorandum, training, communication or other similar record created on or after November 9, 2016 that alters, modifies, or in any way affects CBP's prior practices and policies with respect to GES screening, investigation, or revocation;</p> <p>6) Any agency records created on or after November 9, 2016 relating to operation or functioning of the GES program containing any of the following the words or phrases, whether in their singular or plural forms: "Muslim", "Arab", "Ban", "Muslim Ban", or "Travel Ban."</p>	On July 20, the parties submitted a JSR proposing that CBP would make its first release of responsive, non-exempt records on or around August 15 and that the parties file another JSR by August 31. ECF No. 8. The court endorsed these proposals.

#	Plaintiff(s)/Requester(s)	Case No. & District	Request Date(s)	Agency(ies) Receiving Request(s) in Litigation	Records Requested (as described in the complaint)	Recent Litigation Events
20	Muslim Advocates	17-cv-00813 D.D.C.	3/7/17	DHS-PRIV DHS-CBP	1) Records created on or after January 24, 2017 related to CBP's search, review, retention, and dissemination of information located on or accessed through electronic devices in the possession of individuals who are encountered by CBP at the border, functional equivalent of the border, or extended border; 2) Records created on or after February 27, 2017 that pertain to [Executive Order No. 13,780] and are otherwise responsive to the first request.	The parties filed a JSR on August 4, ECF No. 18, and have been directed to file another JSR by October 4.
21	Council on Am.-Islamic Relations – Conn. Make the Road N.Y.	17-cv-01061 D. Conn.	4/12/17	DHS-CBP DHS-USCIS DOS	“The requests seek disclosure of agency policies, communications, and statistics related to visa processing and visa issuances for individuals applying abroad; to adjudication of entry document applications; and to screening and searching of individuals arriving at U.S. ports of entry. The requests are not limited to policies, communications, and statistics produced pursuant to, or as a result of, the President's travel ban orders, but encompass immigration enforcement policies broadly.”	On August 8, defendants filed a consent motion to extend their deadline for responding to the complaint by 30 days, until September 13. ECF No. 9.

#	Plaintiff(s)/Requester(s)	Case No. & District	Request Date(s)	Agency(ies) Receiving Request(s) in Litigation	Records Requested (as described in the complaint)	Recent Litigation Events
22	James Madison Project Noah Shachtman Betsy Woodruff	17-cv-01281 D.D.C.	3/3/17	DHS-CBP DHS-TSA DHS-USCIS	<p>1) Instructions or guidelines – including verbal instructions memorialized in writing – provided to [agency] officials with respect to agency practice for presenting I-407 forms to individuals impacted by Executive Order 13769;</p> <p>2) Communications between [agency] officials – including verbal communications memorializing in writing – mentioning I-407 forms between January 27, 2017, and February 5, 2017;</p> <p>3) Any documentation tabulating or calculating the number of individuals who signed I-407 forms between January 27, 2017, and February 5, 2017;</p> <p>4) Copies of the actual I-407 forms that were signed between January 27, 2017, and February 5, 2017.</p>	On August 8, defendants filed a consent motion to extend their deadline for responding to the complaint by 14 days, until August 23, ECF No. 4, which the court granted on August 9.

#	Plaintiff(s)/Requester(s)	Case No. & District	Request Date(s)	Agency(ies) Receiving Request(s) in Litigation	Records Requested (as described in the complaint)	Recent Litigation Events
23	New York Times Co. Charlie Savage	17-cv-01946 S.D.N.Y.	1/28/17	DOJ-OLC	<p>1) All e-mails, memos, and other documents related to . . . [OLC] review of proposed Trump administration executive orders for form and legality, including during the transition period;</p> <p>2) All e-mails, memos, and other documents related to . . . [OLC] review of other proposed Trump White House matters, including during the transition period, including but not limited to whether the appointment of Jared Kushner to a White House role would violate anti-nepotism laws and whether the president's ongoing business operations would violate the emoluments clause of the Constitution.</p>	On July 12, the parties jointly proposed that the agency “will complete its initial searches in response to Plaintiffs’ FOIA requests no later than August 31, 2017,” and that “[n]o later than September 11, 2017, the parties will provide a further status update to the Court, in which the parties anticipate either requesting the Court’s endorsement of an agreed schedule for the release of responsive documents and summary judgment briefing, if necessary, or requesting that the Court schedule a conference to resolve disputes between the parties.” ECF No. 10. The court endorsed the parties’ proposal and set an initial conference for October 6. ECF No. 11.

#	Plaintiff(s)/Requester(s)	Case No. & District	Request Date(s)	Agency(ies) Receiving Request(s) in Litigation	Records Requested (as described in the complaint)	Recent Litigation Events
24	Cora Currier	17-cv-01799 N.D. Cal.	2/1/17; 4/3/17	DHS-PRIV DHS-OIG DHS-CBP DOS DOJ-OIP DOJ-OLC DOJ-USMS DOJ-FBI DOJ-EOUSA DOD	<p><u>2/1/17</u> Requests to <u>DHS-PRIV, DHS-CBP, DOS, DOJ-OIP, DOJ-USMS, and DOJ-OLC</u>: “all agency records from January 20, 2017 to the present concerning the agency’s analysis and implementation of [Executive Order No. 13,769].”</p> <p><u>4/3/17</u> Requests to <u>DHS-PRIV, DHS-CBP, DHS-OIG, DOS, DOJ-OIP, DOJ-USMS, and DOJ-OLC</u>: “all agency records from February 1, 2017 to the present concerning the agency’s analysis and implementation of Executive Order No. 13,769 and Executive Order No. 13,780.”</p> <p><u>4/3/17</u> Request to <u>DOD</u>: “all agency records from January 20, 2017 to the present concerning the agency’s analysis of the impact of Executive Order No. 13,769 and Executive Order No. 13,780.”</p> <p><u>4/3/17</u> Request to <u>DOJ-EOUSA</u>: “all agency records from January 20, 2017 to the present concerning Executive Order No. 13,769 and Executive Order No. 13,780.”</p> <p><u>4/3/17</u> Request to <u>DOJ-FBI</u>: “agency records from January 20, 2017 to the present concerning the FBI’s analysis of the impact of Executive Order No. 13,769 and Executive Order No. 13,780.”</p> <p>[Each request states that the request “includes, but is not limited to,” several categories of records]</p>	On July 20, plaintiff filed a motion for a preliminary injunction ordering defendants to complete all processing of her requests by September 5. ECF No. 20.

Legend:

DHS = U.S. Department of Homeland Security
DHS-CBP = U.S. Customs and Border Protection
DHS-ICE = U.S. Immigration and Customs Enforcement
DHS-OIG = Office of the Inspector General for DHS
DHS-PRIV = DHS Privacy Office
DHS-TSA = Transportation Security Administration
DHS-USCIS = U.S. Citizenship and Immigration Services
DOD = U.S. Department of Defense
DOJ = U.S. Department of Justice
DOJ-EQUISA = Executive Office for United States Attorneys
DOJ-FBI = Federal Bureau of Investigation
DOJ-OIP = Office of Information Policy
DOJ-OLC = Office of Legal Counsel
DOJ-USMS = U.S. Marshals Service
DOS = U.S. Department of State
OMB = Office of Management and Budget

Exhibit B

DHS-OIG Declaration

Cora Currier v. U.S. Department of Homeland Security, et al.
No. 3:17-cv-01799-JSC
EXHIBITS TO DEFENDANTS' OPPOSITION TO
PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

CORA CURRIER,

Plaintiff,

v.

DEPARTMENT OF HOMELAND SECURITY,
DEPARTMENT OF STATE,
DEPARTMENT OF JUSTICE, and
DEPARTMENT OF DEFENSE,

Defendants.

Case No. 3:17-cv-01799-JSC

DECLARATION OF
DREW LAVINE

Pursuant to 28 U.S.C. § 1746, I, Drew Lavine, hereby declare as follows:

1. I make this declaration in support of Defendants' Opposition to Plaintiff's Motion for Preliminary Injunction on the basis of my personal knowledge, information provided to me in my official capacity, and conclusions and determinations made in accordance therewith.

2. I am an Assistant Counsel for Information Law and Disclosure within the Office of Counsel to the Inspector General at the U.S. Department of Homeland Security ("DHS") Office of Inspector General ("OIG"). DHS-OIG conducts independent criminal, civil, and administrative investigations, as well as audits, inspections, and special reviews of DHS personnel, programs, and operations to detect and deter waste, fraud, and abuse, and to promote integrity, economy, and efficiency within DHS.

3. I have worked for DHS-OIG Office of Counsel since February 2017. In this capacity, my responsibilities include providing legal counsel to the DHS-OIG Freedom of Information Act (FOIA) Unit; processing initial FOIA requests under the FOIA (5 U.S.C. § 552), the Privacy Act (5 U.S.C. § 552a) and applicable DHS regulations (6 C.F.R. Part 5); conducting attorney reviews of outgoing FOIA responses; and providing assistance in litigating FOIA cases.

4. I serve as Agency Counsel for the above captioned matter. Accordingly, I am familiar with Plaintiff's Motion for Preliminary Injunction. *See generally* Plaintiff's Motion for Preliminary Injunction.

1 5. On April 3, 2017, Ms. Hoffman, on behalf of Plaintiff, sent a FOIA request to
2 DHS' Privacy Office ("PRIV"). The request sought records "from February 1, 2017 to the
3 present concerning the agency's analysis and implementation of Executive Order No. 13,769 and
4 Executive Order No. 13,780." *Id.* at 1. With respect to OIG, item 'F' of the request sought "any
5 records related to the Inspector General's review of the implementation of Executive Order No.
6 13,769, including directives to DHS staff about the retention of records relevant to the
7 investigation." *Id.* at 3.¹

8 6. On April 26, 2017, PRIV tasked OIG with collecting records responsive to item
9 'F' of Plaintiff's request and transmitting any responsive records to PRIV. Upon receipt of
10 PRIV's request for documents, OIG's FOIA Unit ("the FOIA Unit") opened a file numbered
11 2017-IGFO-00089 for purposes of searching for records responsive to Plaintiff's request. As
12 PRIV did not formally refer the request to OIG for processing and direct response to the
13 requester, the FOIA Unit did not communicate with the requester at this juncture.

14 7. In order to discover records responsive to Plaintiff's request, the FOIA Unit
15 followed its regular procedure for conducting a FOIA search. When DHS-OIG receives a FOIA
16 request, the analyst assigned to the request identifies all OIG program offices likely to possess
17 responsive records and prepares a FOIA search request for each office. The search request
18 includes a general summary of what the requester seeks; proposed search terms; and a reminder
19 that the program office should review the request, conduct a search, and return and responsive
20 records to the FOIA Unit.

21 8. Based on the FOIA Unit's experience and knowledge of DHS OIG operations, it
22 determined that the offices likely to possess documents responsive to item 'F' of Plaintiff's
23 request are the Office of Investigations ("INV") and Office of Counsel ("OC"), the two program
24 offices within OIG which are jointly conducting the investigation referenced in Plaintiff's
25

26 ¹ DHS regulations instruct requesters to "write directly to the FOIA office of the component that
27 maintains the records sought" so that their request can "receive the quickest possible response."
28 6 C.F.R. 5.3(a). Plaintiff, however, submitted her requests for OIG records to DHS Privacy.

1 request, and the OIG Front Office. The Front Office includes the OIG leadership (the Inspector
2 General and Deputy Inspector General) and their assistants/record-keepers. The Front Office
3 serves as the primary point-of-contact between OIG and DHS components, and occasionally as a
4 point-of-contact between OIG and Congress.

5 9. On May 4, 2017, the FOIA Unit sent a search request to the Front Office
6 suggesting a targeted search based on the Front Office's knowledge of the investigation. The
7 Special Assistant to the IG then searched the Front Office's shared drives for records related to
8 the investigation referenced in Plaintiff's request. This search resulted in 20 pages of responsive
9 records which were returned to the FOIA Unit.

10 10. Based on a review of the responsive records produced by the Front Office, the
11 FOIA Unit elected to send a supplemental search to the OIG Office of Legislative Affairs
12 (OLA). OLA serves as the primary liaison between OIG and Congressional committees,
13 Members of Congress, and Members' staff.

14 11. The FOIA Unit sent a search request to OLA requesting a targeted search of OLA
15 files based on OLA's knowledge of the investigation in question. The Director of OLA and
16 former Acting Director of OLA searched their Outlook accounts and OLA shared folders. This
17 search resulted in 207 pages of responsive records which were returned to the FOIA Unit; these
18 records consisted of OIG's communications with Congress and Congressional staff and internal
19 OLA emails. The FOIA Unit processed these records and applied redactions pursuant to FOIA
20 Exemption 6. 5 U.S.C. § 552(b)(6). Further, the FOIA Unit exercised its administrative
21 discretion to release deliberative process material found in these records. 5 U.S.C. § 552(b)(5).

22 12. By email dated August 2, 2017, the FOIA Unit transmitted the 207 pages of
23 responsive OLA records and an interim response letter to Plaintiff's Counsel, thus providing a
24 partial response to Plaintiff's April 3, 2017 request. *See* Exhibit 1. In its letter, the FOIA Unit
25 advised Plaintiff of her right to file an administrative appeal of OIG's interim response.

26 13. The investigation referenced by Plaintiff's request is ongoing, and as noted, is
27 being conducted as a joint investigation among two program offices within OIG: INV and OC.
28

1 With respect to INV and OC records, the FOIA Unit issued an interim response to Plaintiff on
2 August 3, 2017 indicating that the records are currently exempt from production under FOIA
3 exemption 7(A). 5 U.S.C. § 552(b)(7)(A). *See* Exhibit 2. However, acknowledging that
4 exemption 7(A) is temporal in nature and that OIG's investigation will likely conclude in the
5 near future, OIG anticipates that it will begin making rolling interim productions of responsive
6 records subject to the FOIA after the investigation has concluded and after processing these
7 records pursuant to all applicable FOIA exemptions. The 20 pages of responsive records
8 produced by the Front Office, addressed in paragraph 9, are either subject to exemption 7(A)
9 protection or are duplicative of OLA records that were released to Plaintiff.

10 14. Thus, as of the date of this declaration, OIG has released all OIG records subject
11 to FOIA that were located in OIG's search, that are responsive to Plaintiff's request, and that are
12 not currently exempt from disclosure.

13 I declare under penalty of perjury that the foregoing is true and correct, to the best of my
14 knowledge and belief.
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EXECUTED: August 4, 2017



DREW LAVINE
Assistant Counsel for Information Law and
Disclosure
Office of Inspector General
U.S. Department of Homeland Security

Exhibit 1



OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

August 2, 2017

Marcia Hoffman
Zeitgeist Law PC
25 Taylor St.
San Francisco, CA 94102

Subject: OIG Freedom of Information Act Request No. 2017-IGFO-00089
 First Interim Response

Dear Ms. Hoffman:

This is an interim response to your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS) Privacy Office (PRIV), dated April 3, 2017, seeking records related to Executive Orders 13,769 and 13,780. PRIV referred a portion of your request to the DHS Office of Inspector General (OIG) for processing. OIG received that referral on April 26, 2017.

Enclosed are 207 pages of records responsive to your request. We reviewed the responsive records under the FOIA to determine whether they may be disclosed to you. Based on that review, this office is providing the following:

99 page(s) are released in full (RIF);
108 page(s) are released in part (RIP).

These records are Bates stamped DHS-OIG 0001 to DHS-OIG 0207. The exemptions cited for withholding records or portions of records are marked below.

Freedom of Information Act, 5 U.S.C. § 552			Privacy Act, 5 U.S.C. § 552a
<input type="checkbox"/> 552(b)(1)	<input type="checkbox"/> 552(b)(5)	<input type="checkbox"/> 552(b)(7)(C)	<input type="checkbox"/> 552a(j)(2)
<input type="checkbox"/> 552(b)(2)	<input checked="" type="checkbox"/> 552(b)(6)	<input type="checkbox"/> 552(b)(7)(D)	<input type="checkbox"/> 552a(k)(2)
<input type="checkbox"/> 552(b)(3)	<input type="checkbox"/> 552(b)(7)(A)	<input type="checkbox"/> 552(b)(7)(E)	<input type="checkbox"/> 552a(k)(5)
<input type="checkbox"/> 552(b)(4)	<input type="checkbox"/> 552(b)(7)(B)	<input type="checkbox"/> 552(b)(7)(F)	<input type="checkbox"/> Other:

OIG redacted from the enclosed documents, names and identifying information of third parties to protect the identities of these individuals. Absent a Privacy Act waiver, the release of such information concerning the third parties named in these records would result in an unwarranted invasion of personal privacy in



OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

violation of the Privacy Act. Information is also protected from disclosure pursuant to Exemption 6 of the FOIA further discussed below.

Exemption 6, 5 U.S.C. § 552(b)(6)

Exemption 6 allows withholding of “personnel and medical files and *similar files* the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6)(emphasis added). DHS-OIG is invoking Exemption 6 to protect the contact information of third parties and any information that could reasonably be expected to identify such individuals.

Exemption 5, 5 U.S.C. § 552(b)(5)

Exemption 5 of the FOIA protects “inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.” 5 U.S.C. § 552(b)(5). Please note that as a matter of administrative discretion, I am releasing certain information that falls under the umbrella of this exemption.

Appeal

Although I am aware that your request is the subject of ongoing litigation and appeals are not ordinarily acted on in such situations, I am required by statute and regulation to inform you of your right to file an administrative appeal.¹ If you choose to file an administrative appeal it must be in writing and received within 90 days after the date of this response. Please address any appeal to:

FOIA/PA Appeals Unit
DHS-OIG Office of Counsel
Stop 0305
245 Murray Lane, SW
Washington, DC 20528-0305

Both the envelope and letter of appeal must be clearly marked “Freedom of Information Act Appeal.” Your appeal letter must also clearly identify the OIG’s response. Additional information on submitting an appeal is set forth in the DHS regulations at 6 C.F.R. § 5.8.

¹ For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. 5 U.S.C. 552(c) (2006 & Supp. IV 2010). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.



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Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

Because this matter is in litigation, please contact Trial Attorney Matthew J. Berns, 202-616-8016 or matthew.j.berns@usdoj.gov, if you have any questions.

Sincerely,

Drew Lavine

Drew Lavine
OIG Office of Counsel

Enclosures

Exhibit 2



OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

August 3, 2017

Marcia Hoffman
Zeitgeist Law PC
25 Taylor Street
San Francisco, CA 94102

Subject: OIG Freedom of Information Act Request No. 2017-IGFO-00089
 Second Interim Response

Dear Ms. Hoffman:

This is the second interim response to your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS) Privacy Office (PRIV), dated April 3, 2017, seeking records related to Executive Orders 13,769 and 13,780. PRIV referred a portion of your request to the DHS Office of Inspector General (OIG) for processing. OIG received that referral on April 26, 2017.

The DHS-OIG investigation in this matter is ongoing at this time and has not been concluded. DHS-OIG, therefore, invokes Exemption 7(A) of the FOIA, 5 U.S.C. § 552 (b)(7)(A) for these records. Exemption 7(A) authorizes the withholding of “records or information compiled for law enforcement purposes . . . to the extent that production of such law enforcement records or information . . . could reasonably be expected to interfere with enforcement proceedings.”

We acknowledge that Exemption 7(A) is temporal in nature, and that the investigation in this matter will likely conclude in the near future. Therefore, we will provide you with responsive, non-exempt records subject to FOIA upon completion of the above-referenced investigation if the litigation has not already reached summary judgment briefing. Although other exemptions may be applicable to these records, DHS-OIG is not in a position to assert other exemptions at this time since the matter is still pending.

Appeal

Although I am aware that your request is the subject of ongoing litigation and appeals are not ordinarily acted on in such situations, I am required by statute and regulation to inform you of your right to file an administrative appeal.¹ If

¹ For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. 5 U.S.C. 552(c) (2006 & Supp. IV 2010). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.



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Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

you choose to file an administrative appeal it must be in writing and received within 90 days after the date of this response. Please address any appeal to:

FOIA/PA Appeals Unit
DHS-OIG Office of Counsel
Stop 0305
245 Murray Lane, SW
Washington, DC 20528-0305

Both the envelope and letter of appeal must be clearly marked "Freedom of Information Act Appeal." Your appeal letter must also clearly identify the OIG's response. Additional information on submitting an appeal is set forth in the DHS regulations at 6 C.F.R. § 5.8.

Because this matter is in litigation, please contact Trial Attorney Matthew J. Berns, 202-616-8016 or matthew.j.berns@usdoj.gov, if you have any questions.

Sincerely,

Drew Lavine

Drew Lavine
OIG Office of Counsel

Exhibit C

FBI Declaration

Cora Currier v. U.S. Department of Homeland Security, et al.

No. 3:17-cv-01799-JSC

EXHIBITS TO DEFENDANTS' OPPOSITION TO
PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CORA CURRIER,

Plaintiff,

v.

DEPARTMENT OF HOMELAND SECURITY,
DEPARTMENT OF STATE,
DEPARTMENT OF JUSTICE, and
DEPARTMENT OF DEFENSE,

Defendants.

Case No. 3:17-cv-01799-JSC

DECLARATION OF
DAVID M. HARDY

I, David M. Hardy, declare as follows:

(1) I am the Section Chief of the Record/Information Dissemination Section ("RIDS"), Records Management Division ("RMD"), in Winchester, Virginia. I have held this position since August 1, 2002. Prior to my joining the Federal Bureau of Investigation ("FBI"), from May 1, 2001 to July 31, 2002, I was the Assistant Judge Advocate General of the Navy for Civil Law. In that capacity, I had direct oversight of Freedom of Information Act ("FOIA") policy, procedures, appeals, and litigation for the Navy. From October 1, 1980 to April 30, 2001, I served as a Navy Judge Advocate at various commands and routinely worked with FOIA matters. I am also an attorney who has been licensed to practice law in the State of Texas since 1980.

(2) In my official capacity as Section Chief of RIDS, I supervise approximately 249 employees who staff a total of ten (10) Federal Bureau of Investigation Headquarters ("FBIHQ") units and two (2) field operational service center units whose collective mission is to effectively plan, develop, direct, and manage responses to requests for access to FBI records and information pursuant to the FOIA as amended by the OPEN Government Act of 2007 and the OPEN FOIA Act of 2009; the Privacy Act of 1974; Executive Order 13526; Presidential, Attorney General, and FBI policies and procedures; judicial decisions; and Presidential and

1 Congressional directives. The statements contained in this declaration are based upon my
2 personal knowledge, upon information provided to me in my official capacity, and upon
3 conclusions and determinations reached and made in accordance therewith.

4 (3) Due to the nature of my official duties, I am familiar with the procedures followed
5 by the FBI in responding to requests for information from its files pursuant to the provisions of
6 the FOIA, 5 U.S.C. § 552, and the Privacy Act of 1974, 5 U.S.C. § 552a. Specifically, I am
7 aware of the FBI's handling of Plaintiff's request for the FBI's Analysis of Impact of Executive
8 Orders 13769 and 13780 (January 20, 2017 – Present).

9
10 (4) The FBI submits this declaration to explain the current status of Plaintiff's
11 request.

12 **SEARCH FOR RECORDS RESPONSIVE TO PLAINTIFF'S REQUEST**

13 (5) The FBI has completed its search for records responsive to Plaintiff's FOIA
14 request. Specific details of the FBI's search efforts and its recordkeeping system will be
15 provided in an additional declaration, should the FBI need to explain the adequacy of its search.

16 **CURRENT STATUS OF DOCUMENT PRODUCTION**

17 (6) The FBI's search located approximately 11 potentially responsive pages.
18 Currently, the FBI is (a) reviewing and evaluating the retrieved records to ensure responsiveness;
19 and (b) processing the responsive material (i.e., applying FOIA exemptions, sending documents
20 to other government agencies for consultation, as necessary, and coordinating the pre-release
21 review with the originating Office, Division and/or Field Office).

22 **CONCLUSION**

23 (7) The FBI is, and has been, working diligently to respond fully to Plaintiff's FOIA
24 request and litigation as soon as practicable. The FBI projects that it can complete its processing
25
26
27
28

1 and review of all responsive records and release non-exempt material subject to FOIA to Plaintiff
2 on or before August 24, 2017. If the FBI needs to send documents to one or more other
3 government agencies for consultation, so that they may advise the FBI as to the applicability of
4 the FOIA's exemptions to information in which those agencies have equities, this may delay the
5 completion of processing. Documents are sent for consultation when the FBI locates documents
6 that contain information concerning or originating with another government agency, or may
7 implicate privileged material, because in that event, the FBI may not itself possess information
8 needed to appropriately evaluate whether the records are exempt from disclosure. In that event,
9 the FBI will release any non-exempt material subject to FOIA that does not require interagency
10 review on or before August 24, 2017, and the remaining non-exempt material will be provided as
11 soon as practicable thereafter.
12

13
14 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true
15 and correct.
16

17 Executed this 9th day of August, 2017.
18

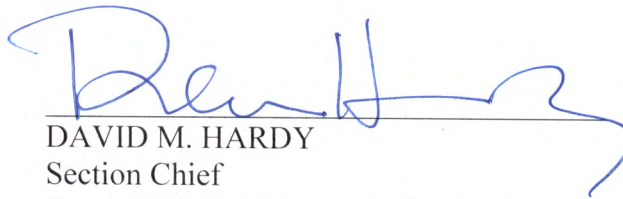
19
20 
21 DAVID M. HARDY
22 Section Chief
23 Record/Information Dissemination Section
24 Records Management Division
25 Federal Bureau of Investigation
26 Winchester, VA
27
28

Exhibit D

EOUSA Declaration

Cora Currier v. U.S. Department of Homeland Security, et al.
No. 3:17-cv-01799-JSC
EXHIBITS TO DEFENDANTS' OPPOSITION TO
PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CORA CURRIER,

Plaintiff,

v.

DEPARTMENT OF HOMELAND SECURITY,
DEPARTMENT OF STATE,
DEPARTMENT OF JUSTICE, and
DEPARTMENT OF DEFENSE,

Defendants.

Case No. 3:17-cv-01799-JSC

DECLARATION OF
JOHN W. KORNMEIER

1) I, John W. Kornmeier, am an Attorney-Advisor with the Executive Office for United States Attorneys ("EOUSA"), United States Department of Justice. I am assigned to the component of EOUSA designated to administer the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, amended by the OPEN Government Act of 2007, Pub. L. No. 110-175, 121 Stat. 2524, and the Privacy Act of 1974 ("PA"), 5 U.S.C. § 552a. In that capacity, my responsibilities include: acting as a liaison with other divisions and offices of the Department of Justice ("DOJ") in responding to access requests and the litigation filed under both the FOIA and the PA; the review of FOIA/PA requests for access to records located in this office and 94 United States Attorney and the case files arising therefrom; the review of correspondence related to requests; the review of searches conducted in response to access requests; and the preparation of EOUSA's responses thereto to ensure that determinations to withhold or release responsive records are in accordance with the provisions of both the FOIA and the PA, as well as with DOJ regulations (28 C.F.R. §§ 16.3 and 16.40).

2) As an Attorney-Advisor of EOUSA's FOIA/PA Staff, I have authority to release and/or withhold records requested under the FOIA/PA, and to explain the rationale for EOUSA's disclosure determinations. I have access to the files of EOUSA. The statements I make

1 hereinafter are based on my review of the official files and records of EOUSA, my own personal
2 knowledge, or information acquired by me through the performance of my official duties. Due
3 to the nature of my official duties, I am familiar with the procedures followed by EOUSA in
4 responding to FOIA requests. EOUSA submits this declaration to explain the current status of
5 Plaintiff's request.

6 **SEARCH FOR RECORDS RESPONSIVE TO PLAINTIFF'S REQUEST**

7
8 3) EOUSA has completed its search for records responsive to Plaintiff's FOIA
9 request. EOUSA has had to sort through a large amount of documents to find responsive ones.
10 Specific details of EOUSA's search efforts and its recordkeeping system will be provided in an
11 additional declaration, should EOUSA need to explain the adequacy of its search.

12 **CURRENT STATUS OF DOCUMENT PRODUCTION**

13 4) Currently, EOUSA is (a) reviewing and evaluating 113 documents to ensure
14 responsiveness; and (b) processing the responsive material (i.e., applying FOIA exemptions,
15 sending documents to other government agencies for consultation, as necessary, and
16 coordinating the pre-release review with the appropriate offices including the Office of the
17 Director of EOUSA, the Office of Information Policy, and the Civil Division of the U.S.
18 Department of Justice.

19
20 **CONCLUSION**

21 5) EOUSA is and has been working diligently to respond fully to Plaintiff's FOIA
22 request and litigation as soon as practicable. EOUSA projects that it can complete its processing
23 and review of all responsive records and release material not exempt under the FOIA to Plaintiff
24 by September 5, 2017. If EOUSA needs to send documents to one or more other government
25 agencies for consultation, so that they may advise EOUSA as to the applicability of the FOIA's
26

1 exemptions to information in which those agencies have equities, this may delay the completion
2 of processing. In that event, EOUSA will release any non-exempt material subject to FOIA that
3 does not require review by other offices on or before September 5, 2015 and the remaining non-
4 exempt material, will be provided as soon as practicable thereafter.

5
6 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is
7 true and correct.
8

9 Executed this 9th day of August, 2017.

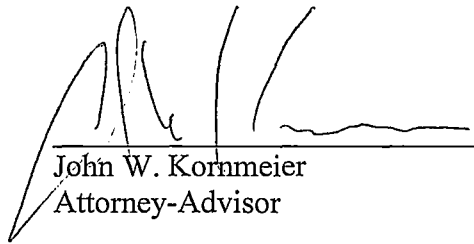
10
11 
12 _____
13 John W. Kornmeier
14 Attorney-Advisor

Exhibit E

OIP Declaration

Cora Currier v. U.S. Department of Homeland Security, et al.
No. 3:17-cv-01799-JSC
EXHIBITS TO DEFENDANTS' OPPOSITION TO
PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

CORA CURRIER,

Plaintiff,

v.

DEPARTMENT OF HOMELAND SECURITY,
DEPARTMENT OF STATE,
DEPARTMENT OF JUSTICE, and
DEPARTMENT OF DEFENSE,

Defendants.

Case No. 3:17-cv-01799-JSC

DECLARATION OF
DANIEL R. CASTELLANO

I, Daniel R. Castellano, declare as follows:

1. I am a Senior Attorney in the Office of Information Policy (OIP), United States Department of Justice (DOJ). In this capacity, I am responsible for supervising the handling of Freedom of Information Act (FOIA) requests processed by the Initial Request Staff (IR Staff) of OIP that are in litigation. The IR Staff of OIP is responsible for processing FOIA requests seeking records from within OIP and from six senior leadership offices of the Department of Justice, specifically the Offices of the Attorney General (OAG), Deputy Attorney General (ODAG), Associate Attorney General (OASG), Legal Policy (OLP), Legislative Affairs (OLA), and Public Affairs (PAO). The IR Staff determines whether records responsive to access requests exist and, if so, whether they can be released in accordance with the FOIA. In processing such requests, the IR Staff consults with personnel in the senior leadership offices and, when appropriate, with other components within the Department of Justice, as well as with other Executive Branch agencies.

2. I make the statements herein on the basis of personal knowledge, as well as on information acquired by me in the course of performing my official duties.

3. The purpose of this declaration is to respond to Plaintiff's Motion for Preliminary Injunction, dated July 20, 2017, requesting that the Court order Defendants to complete the expedited processing of Plaintiff's FOIA request and produce all responsive documents by September 5, 2017. *See* Motion for Preliminary Injunction, ECF No. 20, at 1, 2, 12, 15.

4. This declaration provides the basis for OIP's conclusion that Plaintiff's requested September 5, 2017 production deadline would be exceedingly burdensome, impracticable, and infeasible to adhere to without risking the inadvertent exposure of information that qualifies for withholding, disadvantaging other requesters (including those granted expedited processing), and compromising OIP's ability to meet other existing litigation deadlines.

OIP Receipt of Plaintiff's FOIA Request

5. By letter dated February 1, 2017, Plaintiff submitted a FOIA request to OIP seeking all agency records from January 20, 2017, to the date of the request concerning DOJ's analysis and implementation of Executive Order 13769. Plaintiff requested expedited processing, pursuant to the Department's standards permitting expedition for requests involving "[a]n urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information," and records relating to "[a] matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence." *See* 28 C.F.R. §§ 16.5(e)(1)(ii) and (iv). A copy of Plaintiff's FOIA request, dated February 1, 2017, is attached to Plaintiff's Motion for Preliminary Injunction as Exhibit 2.

6. Plaintiff's FOIA request, dated February 1, 2017, identified three offices within OIP's purview that Plaintiff wanted searched for responsive records: OAG, ODAG, and OLA. On February 14, 2017, in response to an inquiry from an Attorney-Advisor in OIP, Plaintiff, through her attorney, expanded the scope of her request to include PAO. A copy of this correspondence is attached to Plaintiff's Motion for Preliminary Injunction as Exhibit 3.¹

7. By letter dated February 17, 2017, OIP acknowledged Plaintiff's FOIA request, assigned it OIP tracking numbers DOJ-2017-002176, DOJ-2017-002177, DOJ-2017-002178,

¹ Plaintiff's FOIA request, dated February 1, 2017, included the Acting Director of PAO among the addressees, although the request did not seek records from PAO. This is consistent with DOJ's FOIA regulations, which require FOIA requesters who seek expedited processing based on 28 C.F.R. § 16.5(a)(1)(iv) to submit their request to the Director of PAO, regardless of whether they actually seek records from PAO. *See* 28 C.F.R. § 16.5(e)(2).

1 and DOJ-2017-002179, and informed Plaintiff that records searches had been initiated in OAG,
2 ODAG, OLA, and PAO. In this acknowledgement letter, OIP further advised Plaintiff that her
3 FOIA request had been granted expedited processing pursuant to 28 C.F.R. §§ 16.5(e)(1)(ii) and
4 had been placed in OIP's expedited processing track. A copy of OIP's acknowledgement letter,
5 dated February 17, 2017, is attached to Plaintiff's Motion for Preliminary Injunction as Exhibit
6 6.

7 8. On March 31, 2017, Plaintiff filed a complaint for injunctive relief in connection
8 with her February 1, 2017, FOIA request. *See* Complaint, ECF No. 1.

9 9. On April 3, 2017, Plaintiff submitted a second FOIA request to OIP via the
10 FOIAonline request portal, seeking all agency records from February 1, 2017, to the date of the
11 request concerning the agency's analysis and implementation of Executive Orders 13769 and
12 13780. Plaintiff again requested expedited processing, pursuant to the Department's standards
13 permitting expedition for requests involving "[a]n urgency to inform the public about an actual
14 or alleged federal government activity, if made by a person primarily engaged in disseminating
15 information," and records relating to "[a] matter of widespread and exceptional media interest in
16 which there exist possible questions about the government's integrity which affect public
17 confidence." *See* 28 C.F.R. §§ 16.5(e)(1)(ii) and (iv). A copy of Plaintiff's FOIA request, dated
18 April 3, 2017, is attached to Plaintiff's Motion for Preliminary Injunction as Exhibit 10.

19 10. By letter dated April 13, 2017, OIP acknowledged Plaintiff's FOIA request, assigned
20 it OIP tracking numbers DOJ-2017-003341, DOJ-2017-003345, DOJ-2017-003346. DOJ-2017-
21 003347, and informed Plaintiff that record searches had been initiated in OAG, ODAG, OLA,
22 and PAO. In this acknowledgement letter, OIP further advised Plaintiff that her FOIA requests
23 had been granted expedited processing pursuant to 28 C.F.R. §§ 16.5(e)(1)(ii) and had been
24 placed in OIP's expedited processing track. A copy of OIP's acknowledgement letter, dated
25 April 13, 2017, is attached to Plaintiff's Motion for Preliminary Injunction as Exhibit 18.

26 11. On May 19, 2017, Plaintiff filed an amended complaint for injunctive relief in
27 connection with her updated April 3, 2017, request. *See* Complaint, ECF No. 14.
28

OIP makes determinations upon receipt of a FOIA request, both as to the appropriate senior leadership office or offices in which to conduct initial records searches and the records repositories and search methods to use in conducting records searches on behalf of the designated senior leadership offices. Assessments of where responsive records are likely maintained are based on a review of the content of the request itself and the nature of the records sought therein, as well as our familiarity with the types and location of records that each senior leadership office maintains, discussions with knowledgeable personnel in the senior leadership offices, and any research that OIP staff may conduct on the topic of the request. When searching the records of leadership office custodians identified as having potentially responsive material, OIP staff employ any one of a variety of search methods, or a combination of methods, depending on a number of factors, including the type of records systems implicated in the search. Potentially responsive records may be located in email systems, computer hard drives, and/or hard copy (paper) files.

17. If a FOIA request enters litigation, it is transferred to an Attorney-Advisor, who handles both any remaining processing of records, as well as the response to litigation deadlines. Once the GIS has collected all potentially responsive documents, the GIS or Attorney-Advisor will coordinate the review process conducted by the appropriate reviewer or senior attorney.

18. OIP employs a dual-level review in processing most FOIA requests to ensure that all information that must be protected is properly withheld and that all information that can be, or must be, released is provided accordingly. This two-tier process is especially important where, as here, the FOIA request at issue may implicate sensitive topics relating to internal agency advice and deliberations, including classified information. Regarding FOIA requests in litigation, the Attorney-Advisor assigned to the matter conducts an initial review of each document. Next, a senior attorney, who has significant experience with both the FOIA and the particular policies and procedures necessary to process such requests in litigation, performs an additional quality assurance review.

request, within each phase of the review process, behind the requests already being processed within the expedited track. Of these requests, fifty-nine are still pending.²

24. At the time Plaintiff submitted her updated FOIA request on April 3, 2017, OIP was processing ninety-seven requests on an expedited basis. Of these, eighty-three are still pending. These requests also seek records pertaining to similarly high-profile topics of great public interest, including, but not limited to: Attorney General Sessions' communications with DOJ prior to his confirmation as Attorney General, records regarding the dismissal of former FBI Director James Comey, documents concerning the investigation into Hillary Clinton's use of a private email server while Secretary of State, and information related to Executive Order 13768, *Enhancing Public Safety in the Interior of the United States*.

OIP's Processing of Plaintiff's FOIA Request

25. For Fiscal Year 2017, OIP has significantly more requests in the expedited processing track than it did in prior years. In fact, for Fiscal Year 2017, OIP is currently on pace to have more than four times as many requests in the expedited processing track than Fiscal Year 2016.³ Notably, between October 1, 2016 and April 3, 2017, alone, seventy-two requests were granted expedition.

26. OIP has been working diligently to review and process records in response to Plaintiff's FOIA requests as soon as practicable. Following submission of Plaintiff's first FOIA request on February 1, 2017, OIP completed initial searches of relevant OAG, ODAG, OLA, and PAO staff, as well as of the Departmental Executive Secretariat, which is the official repository for Department records. After Plaintiff submitted her updated FOIA request on April 3, 2017, OIP ran the above-referenced searches again, adding additional search terms and date ranges per the text of the request.

² This procedure was also followed when Plaintiff submitted her second FOIA request on April 3, 2017.

³ OIP granted fifty-one requests for expedited processing in Fiscal Year 2016.

1 27. Despite OIP's diligence, the sheer breadth of the subject matter and records sought
2 in these requests impose significant burdens on OIP's processing capacity. Plaintiff's requests
3 encompass all records from multiple DOJ offices regarding the analysis and implementation of
4 Executive Orders 13769 and 13780. Further, Plaintiff's requests seek not only information and
5 conversations shared among DOJ personnel, but also all communications with certain media
6 outlets and non-profit organizations. For example, because the date ranges outlined in Plaintiff's
7 requests covered the tenure of two Attorneys General and the changeover of multiple senior
8 leadership positions within OAG, ODAG, OLA, and PAO, OIP conducted searches of more than
9 eighty custodians in order to ensure all responsive material was captured. As a result, the initial
10 search of these custodians' electronic records alone returned more than 16,500 potentially
11 responsive emails—all of which will need to be reviewed for responsiveness, processed to
12 determine applicable FOIA withholdings, and forwarded to numerous DOJ components and
13 executive branch agencies for their review and clearance regarding information containing those
14 offices' equities.

15 28. Requiring OIP to finalize the processing of this information within a matter of weeks
16 risks the inadvertent exposure of information that would qualify for withholding under one of
17 FOIA's nine exemptions. Specifically, in light of the subject matter, responding to Plaintiff's
18 requests will require OIP to process voluminous amounts of sensitive, privileged information,
19 (including attorney-client communications, attorney work product, information subject to the
20 deliberative process privilege, and potentially classified information) that will require a detailed
21 review in order to determine whether any non-privileged information can reasonably be
22 segregated and released.

23 29. OIP's eventual releases will likely also include large amounts of information that is
24 not sensitive, but the substance of which is likely already public. For example, Plaintiff seeks
25 correspondence between PAO and reporters concerning the Executive Orders. In my experience,
26 FOIA requesters often ask OIP to exclude these kinds of records from the scope of their requests
27 because such records are not likely to reveal significant information.

1 30. Nonetheless, OIP continues to actively and efficiently process Plaintiff's FOIA
2 requests.⁴ For the reasons discussed above, it would be unduly burdensome, impracticable, and
3 infeasible to complete the processing of these requests by Plaintiff's proposed September 5, 2017
4 deadline. Given OIP's available resources, the estimated time necessary to complete the review
5 of records at issue in Plaintiff's FOIA requests, and OIP's other FOIA obligations, OIP
6 anticipates, based on the information currently available, that it can complete production of all
7 responsive, non-exempt records by January 10, 2018.

8
9 I declare under penalty of perjury that the foregoing is true and correct.

10 Executed: August 10, 2017

11
12 

13 DANIEL R. CASTELLANO
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26 ⁴ In fact, OIP located and fully processed a number of records pertaining to item 6 of Plaintiff's
27 requests, and provided an interim response to Plaintiff on August 10, 2017. A true and correct
28 copy of the cover letter for the interim response is attached hereto as Exhibit 1.

EXHIBIT 1



U.S. Department of Justice
Office of Information Policy
Suite 11050
1425 New York Avenue, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

August 10, 2017

Ms. Marcia Hofmann	Re: DOJ-2017-002176 (AG)	DOJ-2017-003341 (AG)
Zeitgeist Law, P.C.	DOJ-2017-002177 (DAG)	DOJ-2017-003345 (DAG)
25 Taylor Street	DOJ-2017-002178 (PAO)	DOJ-2017-003346 (OLA)
San Francisco, CA 94102	DOJ-2017-002179 (OLA)	DOJ-2017-003347 (PAO)
marcia@zeitgeist.law		17-cv-01799 (N.D. Cal.)
		DRC:ACS

Dear Ms. Hofmann:

This is an interim response to your Freedom of Information Act (FOIA) requests on behalf of Cora Currier, dated and received in this Office on February 1, 2017, and April 3, 2017, in which you requested records pertaining to Executive Order 13769 and its successor, Executive Order 13780, "Protecting the Nation From Foreign Terrorist Entry Into the United States." This response is made on behalf of the Offices of the Attorney General, Deputy Attorney General, Legislative Affairs, and Public Affairs.

Please be advised that searches are ongoing in the Offices of the Attorney General, Deputy Attorney General, Legislative Affairs and Public Affairs. As a result of these searches, records responsive to your request have been located. At this time, I have determined that eleven pages are appropriate for release without excision, and copies of these records are enclosed.

We are still finalizing the above-referenced searches and continuing to process material that is responsive to your request. As this material contains information of interest to other entities, we can respond only after consulting with them regarding their information. *See* 28 C.F.R. § 16.4(c)(1) (2017).

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. *See* 5 U.S.C. § 552(c) (2015) (amended 2016). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

-2-

If you have any questions regarding this response, please contact Matthew Berns of the Department's Civil Division, Federal Programs Branch at 202-616-8016.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel Castellano", with a stylized flourish at the end.

Daniel R. Castellano
Senior Attorney

Enclosures

Exhibit F

OLC Declaration

Cora Currier v. U.S. Department of Homeland Security, et al.
No. 3:17-cv-01799-JSC
EXHIBITS TO DEFENDANTS' OPPOSITION TO
PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

CORA CURRIER,

Plaintiff,

v.

DEPARTMENT OF HOMELAND SECURITY,
DEPARTMENT OF STATE,
DEPARTMENT OF JUSTICE, and
DEPARTMENT OF DEFENSE,

Defendants.

Case No. 3:17-cv-01799-JSC

DECLARATION OF
PAUL P. COLBORN

I, Paul P. Colborn, declare as follows:

1. I am a Special Counsel in the Office of Legal Counsel (“OLC”) of the United States Department of Justice (the “Department”) and a career member of the Senior Executive Service. I joined OLC in 1986, and since 1987 I have had the responsibility, among other things, of supervising OLC’s responses to requests it receives under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. I submit this declaration in support of the Government’s Opposition to Plaintiff’s Motion for Preliminary Injunction. The statements that follow are based on my personal knowledge, as well as on information provided to me by OLC attorneys and staff working under my direction, and by others with knowledge of the documents at issue in this case.

2. The purpose of this declaration is to respond to Plaintiff’s Motion for Preliminary Injunction, dated July 20, 2017, requesting that the Court order Defendants to complete the processing of Plaintiff’s two FOIA requests and produce all responsive documents by September 5, 2017. *See* Plaintiff Cora Currier’s Notice of Motion and Motion for Preliminary Injunction; Memorandum in Support of Motion for Preliminary Injunction, ECF No. 20, at 1, 2, 12, 15.

3. This declaration provides the basis for DOJ’s conclusion that Plaintiff’s requested production deadline would be exceedingly burdensome, impracticable, and not feasible to adhere to without severely compromising OLC’s ability to meet existing FOIA litigation deadlines and directly disadvantaging other FOIA requesters, as well as OLC’s ability to perform its

1 substantive duties as legal adviser to the President and executive branch. For the reasons set forth
2 below, OLC simply does not currently maintain the resources to achieve Plaintiff's proposed
3 deadline to complete processing of her FOIA requests without adversely impacting other
4 substantive and FOIA obligations, including other requests granted expedited processing and
5 cases in litigation.

6 **OLC RECEIPT OF PLAINTIFF'S FOIA REQUESTS**

7 4. By letter transmitted via Priority Mail, dated February 1, 2017 and received by
8 OLC on February 8, 2017, Plaintiff submitted a FOIA request to OLC and others seeking "all
9 agency records from January 20, 2017 to the present concerning the agency's analysis and
10 implementation" of a January 27, 2017 Executive Order entitled "Protecting the Nation from
11 Foreign Terrorist Entry into the United States." Although already seeking "all agency records"
12 concerning the subject matter, Plaintiff went on to state that her request "includes, but is not
13 limited to" several particular subcategories of communications. Plaintiff also requested
14 expedited processing for the request under two standards pursuant to Department regulations: 28
15 C.F.R. § 16.5(e)(1)(ii), (iv). A copy of Plaintiff's first FOIA request ("First Request") is
16 attached to Plaintiff's Motion for Preliminary Injunction as Exhibit 2.

17 5. By letter dated February 14, 2017 and transmitted via email the same day, I
18 acknowledged receipt of the First Request by OLC and informed Plaintiff that it had been
19 assigned tracking number FY17-104. I further informed Plaintiff that the First Request had been
20 granted expedited status and had therefore been placed in OLC's expedited processing track. A
21 copy of OLC's first acknowledgment letter is attached to Plaintiff's Motion for Preliminary
22 Injunction as Exhibit 7.

23 6. By letter dated April 3, 2017, and received by OLC via email the same day,
24 Plaintiff submitted a second FOIA request to OLC, seeking "all agency records from February 1,
25 2017 to the present concerning the agency's analysis and implementation of Executive Order No.
26 13,769 and Executive Order No. 13,780." Again, in addition to requesting "all agency records"
27 concerning the subject matter, Plaintiff specified several subcategories of records that the search
28

1 should “include[], but is not limited to,” and requested expedited processing under the same two
2 standards. A copy of Plaintiff’s second FOIA request (“Second Request”) is attached to
3 Plaintiff’s Motion for Preliminary Injunction as Exhibit 11.

4 7. By letter dated April 5, 2017 and transmitted via email the same day, I
5 acknowledged receipt of the Second Request by OLC and informed Plaintiff that it had been
6 assigned tracking number FY17-184. I further informed Plaintiff that the Second Request had
7 been granted expedited status and had therefore been placed in OLC’s expedited processing
8 track. A copy of OLC’s second acknowledgment letter is attached to Plaintiff’s Motion for
9 Preliminary Injunction as Exhibit 19.

10 **OLC’S LEGAL ADVICE ROLE AND ITS PROCESSING OF FOIA REQUESTS**

11 8. The principal function of OLC is to assist the Attorney General in his role as legal
12 adviser to the President of the United States and to departments and agencies of the Executive
13 Branch. OLC provides advice and prepares opinions addressing a wide range of legal questions
14 involving the operations of the Executive Branch.

15 9. OLC is a very small component of the Department of Justice, employing
16 approximately 18 to 25 attorneys at any one time, although staffing levels have varied as a result
17 of vacancies and fiscal circumstances. During the past year, the Office has had approximately
18 eight to twelve line attorneys (Attorney Advisers), as well as approximately four more senior
19 attorneys with the title of Senior Counsel or Special Counsel, and approximately four Deputy
20 Assistant Attorneys General. Since 2015, OLC has also employed one attorney at the line
21 attorney level having the title FOIA and Records Management Attorney (the “FOIA Attorney”).
22 OLC also employs four paralegals, with one having the title of Supervisory Paralegal, and one
23 having the title of Lead Paralegal.

24 10. With the exception of the FOIA Attorney, the primary responsibility of the
25 Office’s attorneys, including its Attorney Advisers, is to assist in the preparation of the Office’s
26 legal advice to the President, the Attorney General, and the agencies and departments of the
27 United States. The work of processing and responding to FOIA requests directed or referred to
28

1 OLC, as well as the work of coordinating OLC's FOIA litigation matters with the Department's
2 litigating components, is carried out by the FOIA Attorney, under my supervision and with the
3 assistance of OLC's paralegals. The paralegals likewise have a number of other important
4 duties, including research and cite-checking assistance in connection with the Office's legal
5 advice; processing the Department's interactions with the Federal Register; maintaining records
6 relating to Attorney General orders and Department regulations; and assisting with litigation or
7 congressional oversight in connection with which the Office is playing a role, including FOIA
8 litigation.

9 11. Over the last several years, on average OLC has received between 75 and 125
10 FOIA requests per fiscal year. Despite the limited resources available to OLC for processing
11 FOIA requests, over the last five years OLC has processed the substantial majority of requests
12 received, reduced a significant outstanding FOIA processing backlog, and maintained a
13 relatively small backlog. In Fiscal Year 2012 (October 1, 2011 – September 30, 2012), OLC
14 received 130 FOIA requests and had a year-end backlog of 23 requests. In FY2013, OLC
15 received 86 FOIA requests and had a year-end backlog of 34 requests. In FY2014, OLC
16 received 91 FOIA requests and had a year-end backlog of 35 requests. In FY2015, OLC
17 received 111 FOIA requests and had a year-end backlog of 49 requests. In FY2016, OLC
18 received 111 FOIA requests and had a year-end backlog of 60 requests. In total over the course
19 of those five years, OLC received 529 FOIA requests and processed 503 FOIA requests,
20 notwithstanding the limited resources of the Office, the sequester, the Department's hiring
21 freeze, and the government shutdown.

22 12. In contrast, in FY2017 (beginning October 1, 2016), OLC has already received
23 275 FOIA requests, which puts the Office on pace to receive approximately 322 requests in the
24 fiscal year. This represents more than three times the average number of requests received per
25 year over the previous five years, imposing a considerable burden on OLC's ability to meet its
26 FOIA obligations.

EXPEDITED PROCESSING

13. In processing requests, OLC acts pursuant to the Department's governing regulations, which state that "[c]omponents ordinarily will respond to requests according to their order of receipt." 28 C.F.R. § 16.5(a). OLC uses multitrack processing, as permitted by 28 C.F.R. § 16.5(b), and designates all requests into the Expedited, Simple, or Complex processing tracks. Accordingly, OLC's general practice is to assign requests to begin search and processing within each track according to their order of receipt. Typically, an initial search is conducted at that time, usually by searching OLC's internal database of final legal advice and/or by inquiring with OLC's attorneys to determine whether responsive records are likely to exist. Subsequent searching, including the identification of custodians and development of keywords for electronic searches, is then carried out as needed based on the results of that initial search. These subsequent searches are prioritized by processing track, date of receipt, and available resources.

14. Because some requests are by their nature less complicated than others—including because records responsive to some requests may be easier to locate and identify, easier to process, or require less intra- or inter-Departmental consultation—the processing of requests may be completed out of order, notwithstanding the order of their assignment for processing. For example, although the expedited track is not further subdivided by complexity, the nature of this process is such that a simple or narrowly targeted expedited request can often be closed fairly quickly if the initial search identifies few or no potentially responsive records.

15. In the absence of a court order establishing deadlines that require a later-received request to be processed out of order ahead of earlier-received requests, OLC's policy is to process FOIA requests in order according to Department regulations—that is, in the order of receipt within their respective queue—even where a request is the subject of litigation, so as not to unfairly favor more litigious requesters over other members of the public who have made FOIA requests but lack the interest, resources, or expertise to engage in litigation regarding OLC's response to their FOIA request. This policy is intended to ensure that OLC's limited

resources for FOIA processing are allocated and prioritized in a manner that is fair to all FOIA requesters.

16. When OLC received the First Request on February 8, 2017, there were 54 other requests in OLC's queue that had either already been granted expedited processing or were granted expedited processing at roughly the same time as the First Request but were received earlier.

17. When OLC received the Second Request on April 3, 2017, there were 62 previously-received requests in OLC's expedited queue.

18. OLC was recently able to close several expedited requests that sought a much simpler set of records. Accordingly, there are currently 49 requests in OLC's expedited queue. Of these 49 expedited requests, 29 were received by OLC before the First Request, and 37 (including the First Request) were received before the Second Request.

19. Many of these earlier-received expedited FOIA requests are no less complicated than Plaintiff's requests, and seek records on issues that are similarly high-profile. For example, FY13-056 seeks records "regarding all programs of warrantless mass or dragnet surveillance that operate by impact and effect to collect information and data on United States Persons"; FY14-042 seeks multiple categories of records "concerning the policies and procedures governing the acquisition, retention, dissemination, and use of information gathered as part of various government surveillance programs"; and FY14-088 seeks any records "that helped provide the legal basis for the Obama administration's determination that the 2001 Authorization for Use of Military Force against al Qaida and the Taliban and the 2002 AUMF against Iraq now allow the U.S. military to conduct air strikes, drone missile attacks and other military actions against Islamic State (aka the Islamic State of Iraq and the Levant) forces in both Iraq and Syria."

20. The average processing time for expedited requests closed by OLC in FY2016 was approximately 210 business days, or 10.5 months.

21. While, as noted above, OLC has received roughly three times as many requests in FY2017 as in previous years, the volume of expedited requests has increased at a far greater rate.

1 In FY2016, OLC received only six requests for expedited processing, of which it granted two. In
2 FY2015, OLC received 13 requests, and granted six. In FY2017, by comparison, OLC has
3 received 107 requests for expedited processing, with 65 such requests granted to date—more
4 than 30 times the number granted in the previous year.

5 **OLC'S FOIA LITIGATION DOCKET**

6 22. In addition to a substantial FOIA request processing workload, OLC has
7 increasingly become the subject of FOIA litigation, as requesters turn to the courts more often
8 and more quickly than in prior years.

9 23. Including this case, OLC is currently a named defendant in more than 25 active
10 lawsuits seeking records. Of these cases, more than 10 were—like this one—filed within
11 calendar year 2017 and seek responses to requests that were also filed in calendar year 2017.
12 These attempts to bypass the ordinary FOIA processing queue by seeking court ordered
13 production deadlines far in advance of the ordinary course do significant damage to OLC's
14 ability to complete its FOIA processing in a fair and orderly manner. Every time OLC must
15 allocate its sparse FOIA resources to defending these cases or attempting to meet a court-ordered
16 production deadline, the result is further delay suffered by all other requesters.

17 **OLC'S PROCESSING OF PLAINTIFF'S FOIA REQUESTS**

18 24. OLC has been working diligently to provide a final response to Plaintiff's FOIA
19 requests as soon as practicable.

20 25. Although broader than many other requests, Plaintiff's requests are not the only
21 requests seeking records from OLC regarding the two Executive Orders that are their subject.
22 Between January 30, 2017, and May 10, 2017, OLC received 31 requests primarily seeking
23 records about one or both of the Executive Orders titled "Protecting the Nation from Foreign
24 Terrorist Entry into the United States."

25 26. Of those 31 requests, six requests were sufficiently narrow that they could be
26 satisfied with a production of one record. OLC released that record as a matter of discretion in
27 response to those six requests on February 6, 2017, closing those requests.

1 27. In order to most efficiently process the remaining 25 related requests, including
2 Plaintiff's First and Second Requests, OLC designed a broad, inclusive email search covering 11
3 custodians and including 35 keywords or keyword variations. This search was designed to
4 capture all records that were potentially responsive to any of the requests. Given the amount of
5 overlap between these requests, this is the fastest method available to process all of the requests.
6 This is especially so because the different requests seek records across different date ranges, and
7 with slightly different areas of focus or requested keywords. Alternative methods would require
8 repetitive, overlapping searches and/or repetitive processing of the same records, increasing the
9 overall time that OLC would need to dedicate to this group of related requests.

10 28. Of the 25 related requests covered by the consolidated search, Plaintiff's First
11 Request is the 14th-earliest received, and Plaintiff's Second Request is the 23rd-earliest received.
12 Accordingly, OLC's decision to process Plaintiff's requests together with requests that would
13 otherwise be higher in the queue advantages Plaintiff.

14 29. Plaintiffs' two requests are not the only of these requests to enter litigation.
15 Request FY17-135 is at issue in *Protect Democracy Project v. Dep't of Justice*, No. 17-cv-815
16 (D.D.C. filed May 2, 2017), and request FY17-174 is at issue *James Madison Project v. Dep't of*
17 *Justice*, No. 17-cv-390 (D.D.C. filed March 3, 2017). The requests in each of these cases are
18 slightly different, but with significant overlap of subject and the set of potentially responsive
19 records.

20 30. The consolidated email search described above is still in the early stages of
21 processing, because of other requests on other topics, but the initial search has been completed.
22 Although the records have not yet been reviewed for responsiveness, the search identified over
23 14,000 documents, including emails and stand-alone files. With attachments to those emails
24 included in the count, the number of potentially responsive records that must be reviewed for
25 responsiveness totals more than 26,000.


26 31. Although the responsiveness review has not been completed, the nature of the
27 request and a cursory review of the records has made clear that the vast majority contain material
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1 exempt from mandatory disclosure under the FOIA, particularly under Exemption Five, 5 U.S.C.
2 §552(b)(5). This includes material that is subject to the attorney-client, deliberative process, and
3 presidential communication privileges, as well as a considerable volume of litigation-related
4 material covered by the work product doctrine. The records will require close inspection to
5 avoid inadvertently releasing exempt material, and will also require consultation with a number
6 of other government entities with equities in the documents. It is not possible for OLC to make
7 release determinations on behalf of these other entities, and consultation is required before any
8 final determination may be made, pursuant to practice and regulation. *See* 28 U.S.C. § 16.4(d).

9 32. In addition to searching for potentially responsive email records, on August 2,
10 2017, OLC released to Plaintiff and multiple other FOIA requesters 13 pages of records, which
11 include letters from the Acting Assistant Attorney General for OLC to the President of the
12 United States, dated January 27, 2017 and March 6, 2017, advising the President that the first
13 and second Executive Orders entitled “Protecting the Nation from Foreign Terrorist Entry into
14 the United States” were approved with respect to form and legality, as well as the final
15 memoranda underlying those determinations. Plaintiff was informed that this production
16 constituted the completion of OLC’s search for final OLC legal advice documents. A true and
17 correct copy of the cover letter for the August 2 release is attached hereto as Exhibit 1.

18 33. OLC has been and continues to process Plaintiff’s FOIA requests as soon as
19 practicable. For the reasons discussed above, it would be unduly burdensome, impracticable,
20 and infeasible to complete the processing of Plaintiff’s FOIA requests within the abbreviated
21 time frame she seeks.

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3 I declare under penalty of perjury that the foregoing is true and correct.
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6 PAUL P. COLBORN
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Exhibit 1



U.S. Department of Justice

Office of Legal Counsel

Washington, D.C. 20530

August 2, 2017

Marcia Hofmann
Zeitgeist Law
O.B.O. The Intercept
marcia@zeitgeist.law

**Re: FOIA Nos. FY17-104 & FY17-184;
Cora Currier v. DHS et al., No. 3:17-cv-01799-JSC (N.D. Cal.)**

Dear Ms. Hofmann:

This letter partially responds to your Freedom of Information Act ("FOIA") requests to the Office of Legal Counsel ("OLC") on behalf of The Intercept regarding Executive Orders 13769 and 13780, which were assigned tracking numbers FY17-104 and FY17-184. As you know, the requests also are the subject of the above-captioned litigation.

We have completed our search for final OLC legal advice documents responsive to your requests and have identified two responsive records. The records are protected by the attorney-client and presidential communications privileges and exempt from mandatory disclosure pursuant to FOIA Exemption Five, 5 U.S.C. § 552(b)(5), but we are releasing them to you as a matter of discretion. Copies of the two records are enclosed. We are continuing to search for responsive records other than final OLC legal advice.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. *See* 5 U.S.C. § 552(c). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

You may contact Matthew Berns of the Civil Division, Federal Programs Branch, at 202-616-8016, for any further assistance and to discuss any aspect of your requests. Additionally, you may contact the Office of Government Information Services ("OGIS") at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Although your requests are the subject of ongoing litigation, and administrative appeals are not ordinarily acted upon in such situations, I am required by statute and regulation to inform you of your right to file an administrative appeal. You may administratively appeal by writing to

the Director, Office of Information Policy ("OIP"), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account on the following web site: <https://foiaonline.regulations.gov/foia/action/public/home>. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

A handwritten signature in blue ink that reads "Paul P. Colborn". The signature is fluid and cursive, with the first name "Paul" being the most prominent.

Paul P. Colborn
Special Counsel

Enclosures

cc: Matthew Berns, Trial Attorney
Civil Division, Federal Programs Branch

Exhibit G

DOS Declaration

Cora Currier v. U.S. Department of Homeland Security, et al.
No. 3:17-cv-01799-JSC
EXHIBITS TO DEFENDANTS' OPPOSITION TO
PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CORA CURRIER,

Plaintiff,

v.

DEPARTMENT OF HOMELAND SECURITY,
DEPARTMENT OF STATE,
DEPARTMENT OF JUSTICE, and
DEPARTMENT OF DEFENSE,

Defendants.

Case No. 3:17-cv-01799-JSC

DECLARATION OF
ERIC F. STEIN

Pursuant to 28 U.S.C. § 1746, I, Eric F. Stein, declare and state as follows:

1. I am the Director of the Office of Information Programs and Services ("IPS") of the United States Department of State (the "Department" or "State") and have served in this capacity since January 22, 2017. Previously, I was the Acting Co-Director since March 21, 2016.

2. The core responsibilities of IPS include: (1) responding to records access requests made by the public (including under the Freedom of Information Act, the Privacy Act, and the mandatory declassification review requirements of Executive Order No. 13526 of December 29, 2009, governing classified national security information), by members of Congress, by other government agencies, and those made pursuant to judicial process; such as subpoenas, court orders and discovery requests; (2) records management; (3) privacy protection; (4) national security classification management and declassification review; (5) corporate records archives management; (6) research; (7) operation and management of the Department's library; and (8) technology applications that support these activities.

1 3. In my current capacity, I am the Department official immediately responsible for
2 responding to requests for records under the Freedom of Information Act (the "FOIA"), 5 U.S.C.
3 § 552, the Privacy Act of 1974, 5 U.S.C. § 552a, and other records access provisions.

4 4. Prior to serving in this capacity, from April 2013, I worked directly for the
5 Department's Deputy Assistant Secretary ("DAS") for Global Information Services ("GIS") and
6 served as a senior advisor and deputy to the DAS on all issues related to GIS offices and
7 programs, which include IPS. As the Director of IPS, I have original classification authority and
8 am authorized to classify and declassify national security information.

9 5. I make the following statements based upon my personal knowledge, which in
10 turn is based upon information furnished to me in the course of my official duties. I am familiar
11 with the efforts of Department personnel to process the subject request, and I am in charge of
12 coordinating the agency's search and recovery efforts with respect to that request.

13 6. The purpose of this declaration is to provide the Court with information
14 concerning IPS' structure and resources, and its ongoing processing of Plaintiff's FOIA requests,
15 and to support Defendants' Opposition to Plaintiff's Motion for Preliminary Injunction.

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18 **Summary of Plaintiff's FOIA Request**

19 7. By letter dated February 1, 2017, Plaintiff submitted a first FOIA request to the
20 Department seeking "all agency records from January 20, 2017 to the present concerning the
21 agency's analysis and implementation of [the executive order entitled "Protecting the Nation
22 From Foreign Terrorist Entry Into the United States" signed on January 27, 2017]." The request
23 "include[d], but [was] not limited to":

- 24
25 A. Records related to briefings, discussions, talking points, emails (whether through .gov
26 email addresses or private third-party services such as Gmail) or other
27 communications:
28

1. Among DOS personnel, including consular officials, supervisors, officers, managers, and union representatives;
 2. From or about visa applicants or dual citizens asking for clarification or about the ban's effect;
 3. Between DOS officials and the Executive Office of the President or other White House offices;
 4. Between DOS and members of Congress or congressional staffers, including aides to the House Judiciary Committee; and
 5. Between DOS officials and non-government representatives and outside consultants, including nonprofits, policy think tanks such as the Center for Immigration Studies and Federation for American Immigration Reform, and private firms such as Giuliani Partners.
- B. Records reflecting analysis and response of DOS officials to judicial orders staying the enforcement of the executive order, including discussions of legal liability for failing to follow those orders.
- C. Records from the Dissent Channel related to the executive order.
- D. Records reflecting analysis and response of DOS officials to responses by other countries to the executive order, including but not limited to Iran and Iraq."

8. Plaintiff sought expedited processing of this first FOIA request.

9. By letter dated February 9, 2017, IPS acknowledged Plaintiff's first-request, assigned it Case Control No. F-2017-02483, and granted expedited processing.

10. By letter dated April 3, 2017, Plaintiff submitted a second FOIA request to the Department seeking "all agency records from February 1, 2017 to the present concerning the agency's analysis and implementation of Executive Order No. 13,769 and Executive Order No. 13,780." This request "include[d], but [was] not limited to":

- A. Records related to briefings, discussions, talking points, emails (whether through .gov email addresses or private third-party services such as Gmail) or other communications:
1. Among DOS personnel, including consular officials, supervisors, officers, managers, and union representatives;
 2. From or about visa applicants or dual citizens asking for clarification or about the ban's effect;
 3. Between DOS officials and the Executive Office of the President or other White House offices;
 4. Between DOS and members of Congress or congressional staffers, including aides to the House Judiciary Committee; and
 5. Between DOS officials and non-government representatives and outside consultants, including nonprofits, policy think tanks such as the Center for

Immigration Studies and Federation for American Immigration Reform, the Center for Security Policies, the Heritage Foundation, the Investigative Project on Terrorism; and State Department officials and private firms such as Giuliani Partners and Renaissance Technologies.

- B. Records reflecting analysis and response of DOS officials to judicial orders staying the enforcement of the executive order, including discussions of legal liability for failing to follow those orders.
- C. Records from the Dissent Channel related to the executive orders.
- D. Records reflecting analysis and response of DOS officials to responses by other countries to the executive orders, including but not limited to Iran and Iraq.
- E. Directives, memos, or cables advising consular officials how to handle queries from travelers about their legal status or travel plans in light of the executive orders.
- F. Memos, analyses, or communications (including correspondence with Iraqi officials) about the decision to remove Iraq from the list of countries covered by the travel restrictions in Executive Order No. 13,780.
- G. Analyses, reports, or assessments of the security risks posed by individuals from the nations whose citizens were covered by the executive orders.
- H. Analyses, reports, or assessments of the impact of the travel restrictions on national security or diplomatic relationships.”

11. Plaintiff again sought expedited processing.

12. By letter dated April 4, 2017, IPS acknowledged Plaintiff’s second request, assigned it Case Control No. F-2017-08348, and granted expedited processing.

13. By letter dated August 9, 2017, IPS informed Plaintiff that the Department had retrieved six documents responsive to her requests, one of which was released in full, four of which were withheld in part, and one of which was withheld in full. A true and correct copy of the cover letter for that release is attached hereto as Exhibit 1.

14. The Department’s search for, and processing of, records responsive to Plaintiff’s requests remains ongoing, and the Department is working diligently to complete its processing of Plaintiff’s requests as soon as practicable.

15. For reasons further discussed below, currently the Department is not able to estimate when it can complete its processing of Plaintiff’s requests. However, the Department is able to process an average of 300 pages per month, without unduly interfering with the

1 Department's ability to respond to other FOIA requests, including many requests that are in
2 litigation and have court-ordered production schedules already in place. If Plaintiff were to
3 further limit the scope of her requests to focus on more discrete categories of records, I anticipate
4 that the Department could complete its processing of her requests more quickly.

5 **Estimated Volume of Plaintiff's FOIA Request**

6 16. IPS has determined that more than twenty components throughout the Department
7 have been involved in the analysis and/or implementation of Executive Orders 13769 and 13780,
8 and these components collectively employ thousands of State Department personnel. As a result,
9 responding to Plaintiff's requests requires IPS to coordinate a wide-ranging search involving
10 many offices and possible custodians, each of which has obligations beyond responding to FOIA
11 requests.
12

13 17. These Executive Orders have also engendered much public interest: to date the
14 Department has received at least 18 FOIA requests for documents involving the Executive
15 Orders. Twelve of these requests have been granted expedited processing. Three (all of which
16 were granted expedited processing) were received before Plaintiff's First Request (F-2017-
17 02483), six (of which four were granted expedited processing) were received after Plaintiff's first
18 request but before her Second Request (F-2017-08348), and nine (of which five were granted
19 expedited processing) were received after her second request. One other request related to both
20 Executive Orders is currently in litigation (Council on American-Islamic Relations, request F-
21 2017-09834, civil action number 1:17-cv-1061 (D. Conn.)).
22

23 18. Plaintiff's FOIA request asks for a broad range of documents, and required
24 tasking more than twenty components within the State Department. The breadth of Plaintiff's
25 requests and the nature of the records at issue make searching for and processing responsive
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1 records especially challenging. Moreover, the requested documents are likely to contain a wide
2 range of sensitive information, including classified information, attorney-client communications,
3 attorney work product, deliberative material, and personal information. Also, as identified by
4 Plaintiff when she requested documents from multiple agencies, the documents at issue implicate
5 equities across the federal government, and processing these documents will require extensive
6 inter-agency consultation. Requiring the Department to process these records without sufficient
7 time for careful review and consultation will risk inadvertent exposure of sensitive information.
8

9 19. Currently, IPS has received 26.2 gigabytes of data in response to the request,
10 which is estimated to contain tens of thousands of documents. Twelve components are still
11 conducting searches, so the total volume of potentially responsive documents is not currently
12 known.

13 **The Department's FOIA Caseload**
14 **and Document Review Process**

15 20. Over the past several years, the Department's FOIA caseload has greatly
16 increased. In Fiscal Year 2008 ("FY 2008"), the Department received fewer than 6,000 new
17 FOIA and Privacy Act requests; that number of new FOIA and Privacy Act requests annually
18 increased, reaching nearly 28,000 in FY 2016 (an increase of over 350%). By the end of FY
19 2016, the Department had a backlog of approximately 22,600 FOIA and Privacy Act requests
20 pending. The Department currently has approximately 15,200 FOIA and Privacy Act requests
21 pending and is engaged in approximately 105 FOIA litigation cases, many of which involve
22 court-ordered document production schedules. Despite the dramatic increase in the FOIA
23 caseload during this time period, the funds available to process FOIA requests have remained
24 nearly unchanged for most of this time. It was only in recent years that there has been an
25 increase in resources. For instance, the Department spent approximately \$16.5 million in FY
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1 2013, \$15.9 million in FY 2014, about \$16 million in FY 2015, and about \$21 million in FY
2 2016 on FOIA personnel costs associated with processing FOIA requests.

3 21. The FOIA review process undertaken by IPS, which coordinates searches
4 throughout the Department for potentially responsive documents, is involved and complex.
5 Once the search process is complete, each potentially responsive document must be ingested,
6 either electronically or by scanning printed material, into IPS's document review system, known
7 as FREEDOMS 2 ("F2"). Each document is then assigned a unique identification number, and
8 an IPS employee manually inputs certain bibliographic data associated with each document, such
9 as the date, to, from, and subject line (if available). IPS then assigns those documents for review
10 to an IPS employee, or reviewer, with appropriate clearance and subject matter expertise to
11 handle that set of documents.
12

13 22. The reviewer performs a line-by-line review of the document to determine
14 whether the document is responsive to the request, whether it contains any classified or other
15 sensitive information that must be withheld under one of the nine FOIA exemptions, and whether
16 it contains information belonging to other federal agencies. During this process, the reviewer
17 may consult other Department employees (including, for example, employees in regional
18 bureaus or attorneys) as s/he sees fit. These consultations often occur more than once in the
19 process and are extremely important, particularly when the documents being reviewed were
20 created around the same time they were requested under the FOIA. The employees being
21 consulted are the most knowledgeable parties concerning the sensitivity of the documents or
22 subject matter at issue. For instance, documents may concern the views or activities of
23 individuals who could suffer reprisals if their identities or opinions are revealed. Documents
24 may also reflect certain policies, activities, or other information of a heightened sensitivity to
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1 U.S. foreign relations. Consequently, for documents containing substantive information that
2 were created within the previous five years, IPS's general policy is to clear those documents with
3 the relevant bureaus or offices within the Department prior to finalizing release determinations.

4 23. Additionally, if the reviewer determines that a document originated with the
5 Department, but contains another federal agency's information (or "equities"), an IPS employee
6 will send that document to the relevant federal agency for consultation. If the reviewer
7 determines that a document originated with another federal agency, s/he redacts any Department
8 information that must be withheld under the FOIA, and sends the document to that federal
9 agency for review and direct reply to the requester. The Department will also refer a document
10 to an outside organization whenever the organization's confidential business information may be
11 at issue, in accordance with Executive Order 12600 and 22 C.F.R. § 171.12, to allow that
12 organization the opportunity to object to the disclosure of the information on the basis that the
13 information in the document is exempt from disclosure under FOIA Exemption 4, 15 U.S.C.
14 § 552(b)(4). Finally, for cases that are in litigation, documents proposed for release must be
15 reviewed by Attorney-Advisers within the Office of the Legal Adviser, a process that often
16 involves consultations between the Attorney-Advisers and IPS as well as other Department
17 offices.
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20 24. After completing the internal and external consultation processes, the reviewer
21 redacts any information that must be withheld under the FOIA and marks documents that the
22 Department will release in full or in part with the required stamps, indicating the release
23 determinations and FOIA exemptions applied. If the reviewer completing this process is
24 relatively inexperienced, then his or her work must undergo second-level review by a senior
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1 reviewer to ensure that FOIA exemptions were properly applied to the document and that
2 consultations with relevant Department bureaus and federal agencies occurred.

3 25. After this process is completed, the Department provides those documents to the
4 requester with a cover letter indicating that responsive documents were located, which (if any)
5 exemptions were applied to documents withheld in full (including a list of the available FOIA
6 exemptions), and whether the requester should expect to receive additional release
7 determinations from the Department. The Department also provides an explanatory letter in the
8 event that no responsive documents were located or all responsive documents were withheld in
9 full.
10

11 **The Department's Quantifiable FOIA Processing Capabilities and Concerns**

12 26. The Department's FOIA resources have been over-burdened for several years
13 now. This over-commitment is evident in the Department's FOIA request volume and in the
14 queue of FOIA litigation cases, both of which have grown significantly over the past four years.
15 The Department currently has a FOIA and Privacy Act backlog of approximately 15,200 requests
16 and is a defendant in approximately 105 FOIA litigation cases.
17

18 27. FOIA requests subject to litigation comprise approximately 1% of all FOIA
19 requests at the Department, but demand a disproportionate share of IPS resources. Over the past
20 three fiscal years, not including the current one, the Department's FOIA backlog has grown
21 significantly due to exceptionally demanding court orders in several FOIA litigation cases. From
22 FY 2014 to FY 2016, the Department experienced extraordinary FOIA litigation demands,
23 including court-ordered production of approximately 30,000 emails from former Secretary
24 Clinton in under one year, additional court orders for productions of the tens of thousands of
25 Secretary Clinton's emails provided to the Department by the FBI in the summer of 2016, and an
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1 order to complete a *Vaughn* Index for 10,000 pages of records within six weeks, also in the
2 summer of 2016.¹

3 28. In all of these and many other situations, the Department has met its obligations;
4 however, these accomplishments were done at the expense of all other requesters seeking
5 information from the government. The FOIA backlog increased from 10,045 cases in FY 2014
6 to 20,626 in FY 2015. The backlog increased again to 22,664 in FY 2016. There is a direct
7 correlation between the Department's FOIA litigation demands and its FOIA backlog.
8 Additionally, the increased backlog increases the risk of future litigation and, more importantly,
9 results in long delays between requests for information and the production of that information.

10 29. The Department is currently the subject of court orders in 15 different litigations
11 that in total require it to process approximately 8,400 pages per month.² It is also committed to
12 making monthly or bi-monthly productions in 18 additional litigations, and anticipates beginning
13 monthly productions soon in another 4 current litigations, in addition to this case. (See Exhibit
14 2). Court cases that do not have regular productions also require resources for various tasks such
15 as drafting and reviewing *Vaughn* indices or conducting searches for, and ingestion of,
16 potentially responsive material. At the same time, the Department must continue to use its
17 resources to process the thousands of requests that are not the subject of litigation.

18 30. In July 2016, the Department quantified its FOIA processing capability to
19 determine how many pages it could process each month. The Department determined that each
20 FOIA reviewer could process about 300 pages per month after those records were located
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25 ¹ The Department can usually commit to completing a *Vaughn* index for about 100 documents per month with
26 existing resources.

27 ² This number is approximate because in one case, *Leopold v. Dep't of State*, No. 14-cv-1771, (D.D.C.), the
28 Department is required to process an average of 700 pages of material per month.

1 through the Department's search.³ See *Citizens United v. State*, No. 16-cv-0108 (D.D.C.), ECF
2 No. 11-1 (discussing how many pages the Department can finalize). At that time (July 2016),
3 IPS had approximately 70 reviewers.

4 31. IPS's reviewer staff has decreased to approximately 44 reviewers as of the most
5 recent pay period—a majority of whom are part-time employees. I have been informed by my
6 managers that the number of Department's reviewers may decrease in the coming months for
7 various reasons. The Department's current hiring freeze precludes the hiring of new Department
8 employees to fulfill these roles without seeking special permission to hire (which we are
9 pursuing). The Department is also pursuing alternative means to increase its number of
10 reviewers using existing Department resources.

12 32. IPS's ability to increase the number of reviewers is further constrained by the
13 availability of existing financial resources and also by the need for reviewers to possess the
14 necessary security clearances and subject matter expertise to review materials related to U.S.
15 foreign relations and diplomacy that may be responsive to FOIA requests. IPS cannot determine,
16 based on a request alone, whether any of the responsive material will be classified. Moreover,
17 pursuant to its authority under Executive Order 13526, IPS may determine that information
18 responsive to a FOIA request needs to be classified (for example, IPS may determine that certain
19 unmarked information must be classified at the "confidential" or "secret" level). Finally, F2
20 operates on a classified network, which requires any reviewers using the system to hold a
21 security clearance of at least the SECRET level. Consequently, IPS reviewers must have
22
23
24

25 ³ "Processing" a document encompasses the full review, including the decision to produce the document or deny its
26 production after being fully vetted within the appropriate Department offices, with other federal agencies, and with
27 any other offices or organizations that would need to review the documents.

1 clearances because they cannot know from the outset whether they will be handling classified
2 information and because they need the clearances to operate in F2, the document review system.

3 33. Given the number of reviewers at the moment, I estimate that the Department has
4 the ability to process approximately 13,200 pages per month for all FOIA requests, including
5 both litigation and non-litigation. This estimate assumes that one reviewer can process about
6 300 pages per month. Reviewers are managing multiple FOIA litigation cases as well as dozens
7 of FOIA requests that are not the subject of litigation. The reviewers also perform work
8 necessary to produce other documents to the court such as *Vaughn* indices. Since July 2016,
9 additional demands on the Department's FOIA program and more accurate information on its
10 processing capability, has resulted in subsequent offers to "process" documents being reduced
11 from 500 pages per month to 400 pages per month and ultimately 300 pages per month in new
12 litigation cases.
13

14 34. Exceptionally demanding FOIA litigation court orders for monthly productions
15 result in the prioritization of those requests in litigation over all other pending requests, even
16 those for information that the public may consider "compelling" or "more compelling" than that
17 which is the subject of the litigation.⁴ In this situation, the biggest challenges for the Department
18 are: (1) how to use limited resources to accommodate the diverse requests the Department
19 receives, which encompass a broad range of subjects and document types because of the
20 Department's global mission and the broad range of programs and activities in which the
21 Department is involved, and (2) how to cope with the exponentially growing volume of
22
23

24
25 ⁴ Current expedited requests at the Department include requests for: emails from and to Secretary Rex Tillerson on
26 the subject of North Korea, for March 2017; records and communications between agency officials and the Trump
27 Presidential Transition Team, from September 1, 2016 to the present; and records pertaining to the authority under
28 domestic and international law of the President of the United States to use U.S. military force in Syria with strikes
that began on April 6, 2017, on the Shayrat Airfield in Homs Governorate, Syria.

1 electronic records which are now accessible and need to be reviewed for sensitive information,
2 such as privacy or classified information, prior to public release. During my tenure in this
3 position, we have made every effort to use available resources to comply with these many,
4 diverse requests while also demonstrating a willingness to work with requesters, including
5 plaintiffs, when there are large volumes of electronic records involved, especially emails.

6 35. In sum, the Department has the capacity to process an average of 300 pages per
7 month in this case. The Department cannot responsibly offer to produce more than this volume
8 at this time given the existing workload and the current state of available FOIA review resources.
9 Simply put, any increase beyond the 300 pages per month average that the Department will
10 aspire to review in this case would limit the Department's ability to meet its existing FOIA
11 obligations.
12

13 ***
14

15
16 I declare under penalty of perjury that the foregoing is true and correct to the best of my
17 knowledge.
18

19 Executed this 10th day of August 2017, Washington, D.C.
20

21 
22

23 Eric F. Stein
24
25
26
27
28



United States Department of State

Washington, D.C. 20520

August 9, 2017

Case No.: F-2017-08348; F-2017-02483

Segment: ER-0002

Marcia Hoffman, Esq.
Zeitgeist Law, P.C.
25 Taylor Street
San Francisco, CA 94102

Dear Ms. Hoffman:

In response to your requests dated February 1, 2017, and April 3, 2017, under the Freedom of Information Act (the "FOIA"), 5 U.S.C. §552, the Department has processed over 300 pages and located six responsive documents. After reviewing these documents we have determined that one may be released in full, four may be released in part, and one must be denied in full. All released material is enclosed.

Where documents are released to you in part, all non-exempt material that is reasonably segregable from the exempt material has been released. Where we have made excisions, the applicable exemptions are marked on each document. The document denied in full was withheld under FOIA Exemption 1, 5 U.S.C. §552(b)(1). An enclosure provides information on FOIA exemptions and other grounds for withholding material.

We will keep you advised as your case progresses. If you have any questions, your attorney may contact Trial Attorney Matthew Berns at (202) 616-8016 or matthew.j.berns@usdoj.gov.

Sincerely,

Susan C. Williams for

Eric F. Stein, Director
Office of Information Programs and Services

Enclosures: As stated.

Currier v. Dep't of Homeland Security, et al.
3:17-cv-01799-JSC
Stein Declaration
EXHIBIT 1

FOIA LITIGATION CASES IN WHICH THE DEPARTMENT OF STATE IS COMMITTED ¹ TO A PRODUCTION SCHEDULE				
Case No.	Court	Case Name	Judge	Processing Rate/Production Frequency
15-cv-02117	D.D.C.	<i>Leopold v. DOJ</i>	Moss	1,850 pages/month
16-cv-01975	D.D.C.	<i>ACLJ v. State</i>	Sullivan	1,000 pages/month
14-cv-01760	D.D.C.	<i>Leopold v. State</i>	Chutkan	700 pages/month
14-cv-01771	D.D.C.	<i>Leopold v. State</i>	Jackson	700 pages/month on average
16-cv-00423	D.D.C.	<i>Citizens United v. State</i>	Mehta	650 pages/month
15-cv-01720	D.D.C.	<i>Citizens United v. State</i>	Collyer	500 pages/month
15-cv-00687	D.D.C.	<i>Judicial Watch v. State</i>	Boasberg	500 pages/month
15-cv-01264	D.D.C.	<i>Freedom Watch v. State</i>	Mehta	500 pages/month
14-cv-01770	D.D.C.	<i>Leopold v. State</i>	Bates	400 pages/month
16-cv-02516	D.D.C.	<i>ACLJ v. State</i>	Boasberg	400 pages/month
17-cv-01012	D.D.C.	<i>Judicial Watch v. State</i>	Jackson	400 pages/month
16-cv-00067	D.D.C.	<i>Citizens United v. State</i>	Cooper	300 pages/month
17-cv-00189	D.D.C.	<i>Stein v. CIA et al.</i>	Chutkan	300 pages/month
16-cv-00221	D.D.C.	<i>ACLU v. DHS, et al.</i>	Kollar-Kotelly	300 pages/month
17-cv-00205	D.D.C.	<i>Judicial Watch v. State</i>	Cooper	300 pages/month
15-cv-00423	E.D. VA	<i>EELI v. State</i>	O'Grady	Monthly productions; no monthly min
15-cv-00999	D.D.C.	<i>Leopold, et al. v. NSA, et al.</i>	Mehta	Monthly productions; no monthly min
15-cv-01459	D.D.C.	<i>Brown v. State</i>	Kollar-Kotelly	Monthly productions; no monthly min
15-cv-01478	D.D.C.	<i>James Madison Project, et al. v. State</i>	Jackson	Monthly productions; no monthly min
15-cv-02210	D.D.C.	<i>Ryan James v. State</i>	Collyer	Monthly productions; no monthly min
16-cv-00656	D.D.C.	<i>Judicial Watch v. State</i>	Sullivan	Monthly productions; no monthly min
16-cv-02074	D.D.C.	<i>Cause of Action Institute v. State</i>	Contreras	Monthly productions; no monthly min

¹ This list includes cases in which a production schedule has either been ordered by a District Court or in which the Department has represented to the Court that it will produce documents on a certain schedule.

16-cv-02298	D.D.C.	<i>Madhiraju, et al. v. State</i>	Walton	Monthly productions; no monthly min
17-cv-00118	D.D.C.	<i>Federation of American Immigration Reform v. State</i>	Mehta	Monthly productions; no monthly min
17-cv-00340	D.D.C.	<i>EELI v. State</i>	Howell	Monthly productions; no monthly min
17-cv-00729	D.D.C.	<i>Judicial Watch v. State, et al.</i>	Contreras	Monthly productions; no monthly min
17-cv-02494	N.D. Ill	<i>Stevens v. State</i>	Lee	Monthly productions; no monthly min
16-cv-02264	D.D.C.	<i>Federation of American Immigration Reform v. State</i>	Mehta	Every 45 days; no monthly min
13-cv-01876	D.D.C.	<i>DIBC v. State, et al.</i>	Collyer	Every two months; no monthly minimum
14-cv-00268	D.D.C.	<i>Brooks v. DOJ, et al.</i>	Leon	Every eight (8) weeks; no monthly min
16-cv-01256	D.D.C.	<i>ACLU v. CIA, et al.</i>	Sullivan	Every eight(8) weeks; no monthly min
16-cv-01751	D.D.C.	<i>ACLJ v. State</i>	Kollar-Kotelly	Every six(6) weeks; no monthly min
16-cv-02517	D.D.C.	<i>Leopold, et al. v. ODNI, et al.</i>	Kollar-Kotelly	Every six(6) weeks; no monthly min

RECENTLY FILED FOIA LITIGATION CASES IN WHICH STATE ANTICIPATES IT WILL MAKE MONTHLY PRODUCTIONS

Case No.	Court	Case Name	Judge
17-cv-00066	D.D.C.	<i>Elgabrownny v. CIA et al.</i>	Chutkan
17-cv-00729	D.D.C.	<i>Judicial Watch v. State, et. al</i>	Jackson
17-cv-00770	D.D.C.	<i>National Security Archives v. State</i>	Kollar-Kotelly
17-cv-00864	D.D.C.	<i>Judicial Watch v. State</i>	Sullivan
17-cv-01799	N.D. CA	<i>Currier v. DHS et al.</i>	Corley

Exhibit H

DOD Declaration

Cora Currier v. U.S. Department of Homeland Security, et al.
No. 3:17-cv-01799-JSC
EXHIBITS TO DEFENDANTS' OPPOSITION TO
PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CORA CURRIER,

Plaintiff,

v.

DEPARTMENT OF HOMELAND SECURITY,
DEPARTMENT OF STATE,
DEPARTMENT OF JUSTICE, and
DEPARTMENT OF DEFENSE,

Defendants.

Case No. 3:17-cv-01799-JSC

DECLARATION OF
PAUL J. JACOBMEYER

I, Paul J. Jacobsmeyer, hereby declare under penalty of perjury that the following information is true and correct:

1. I am the Chief, Freedom of Information Division (FOID), Executive Services Directorate, Washington Headquarters Service, a Component of the Department of Defense (DoD), and have held that position since 2 November 2014. As Chief, I am responsible for implementation of the Office of the Secretary of Defense (OSD) Freedom of Information Act (FOIA) Program and instruction on FOIA matters for the OSD and Joint Staffs (JS). Additionally, I supervise the processing of initial FOIA requests for documents within the possession and control of the OSD Staff and the Office of the Chairman of the Joint Chiefs of Staff. I also supervise the FOID Litigation Branch, which supports the Department of Defense Office of General Counsel (DoD OGC) in processing FOIA litigations for the OSD Staff, the Joint Staff and Combatant Commands. At the request of, and under the direction of DoD OGC, the FOID Litigation Branch also facilitates administrative processing of FOIA litigation for other components of the DoD.

2. I am familiar with the subject litigation and the FOIA request submitted by Plaintiff to DoD in this case. The statements in this declaration are based upon my personal knowledge and upon review of information available to me in my official capacity.

OSD/JS Processing of FOIA Requests

3. The DoD has a decentralized system for responding to FOIA requests, with each DoD Component designating at least one FOIA Requester Service Center (RSC) to process records from that component. 32 C.F.R. § 286.3(a). For these purposes, the “DoD Components” include the OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the DoD, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD. *Id.* § 286.2.

4. DoD regulations instruct that a requester should write directly to the DoD Component that maintains the records being sought and that a requester will receive the quickest possible response if the request is addressed to the RSC of the DoD Component that maintains the records sought. *See* 32 C.F.R. § 286.3.

5. OSD/JS processes FOIA requests on behalf of itself (i.e., the Office of the Secretary of Defense and the Joint Staff) and over thirty OSD/JS components and defense agencies.¹

6. Incoming FOIA requests are logged by OSD/JS and then screened by a Senior Government Information Specialist who determines the appropriate office or offices in which to conduct initial records searches and the records repositories and search methods to use in conducting records searches on behalf of the designated components and defense agencies. Assessments of where responsive records are likely maintained are based on a review of the content of the request itself and the nature of the records sought, as well as our familiarity with

¹ These include the Criminal Investigation Task Force, Defense Acquisition University, Defense Advanced Research Projects Agency, Defense Equal Opportunity Management Institute, Defense Legal Services Agency, Defense Microelectronics Activity, Defense Media Activity, Defense POW/MIA Accounting Agency, Defense Security Cooperation Agency, Defense Technology Security Administration, Defense Travel Management Office, DoD Human Resources Activity, DoD Test Resource Management Center, Joint Improvised-Threat Defeat Agency, Missile Defense Agency, National Defense University, Office of Economic Adjustment, Pentagon Force Protection Agency, Uniform Services University of the Health Sciences, Washington Headquarters Services, and White House Military Office. 32 C.F.R. §§ 286.3(b).

1 the types and location of records that each office maintains, discussions with knowledgeable
2 personnel in the offices, and any research that OSD/JS staff may conduct on the topic of the
3 request.

4 7. After screening and determining the office(s) that likely hold(s) records, cases are
5 then assigned to an Action Officer, who acknowledges receipt of the requests and tasks them to
6 the appropriate OSD/JS component or defense agency.

7 8. Upon receipt of the FOIA request and tasker, the OSD/JS component or defense
8 agency searches for potentially responsive material, employing any one of a variety of search
9 methods, or a combination of methods, depending on a number of factors, including the type of
10 records systems implicated in the search. Potentially responsive records may be located in e-mail
11 systems, computer hard drives, and/or hard copy (paper) files. Once potentially responsive
12 records are located, the subject matter experts conduct a review of all located records to
13 determine responsiveness to the request and then conduct a line-by-line review of the responsive
14 records located to determine if exemptions apply and, if so, if there is a legitimate harm in
15 releasing potentially exempt information. If information is marked classified, the information
16 undergoes a classification review to determine whether or not the records are currently classified
17 in accordance with Executive Order 13526. A final decision must be reached regarding whether
18 the document is releasable in full, in part, or exempt from disclosure in its entirety. Any
19 documents determined not to be releasable in full must undergo a redaction process, where
20 software is used to place black boxes around the exempt material. The final response package is
21 sent to the Initial Denial Authority of the component or defense agency for review and signature.
22 The component or agency also provides a cost sheet to outline the time spent searching for and
23 reviewing documents responsive to the request. The signed package is submitted to the Action
24 Officer in the Office of Freedom of Information. This Action Officer reviews the package to
25 ensure that all items requested have been addressed, and that the package includes the signature
26 of the IDA and the cost information relative to the processing of the request in the component or
27 defense agency. The Action Officer also reviews the package to ensure that redactions are in
28

1 accordance with the Act, that redactions and release determinations are consistent, and that
 2 redactions are secure and cannot be lifted when the documents are ultimately provided
 3 electronically to the requester. It is important to note that in many instances documents
 4 responsive to a request reside in more than one component or defense agency and there may also
 5 exist instances where documents will need to be reviewed by outside equities both inside and
 6 outside of DoD.

7 OSD/JS Processing of FOIA Litigation

8 9. If a FOIA request enters litigation, it is transferred to the OSD/JS Litigation
 9 Support Office, which has staff dedicated to performing the time-sensitive tasks and specialized
 10 records, such as declarations and *Vaughn* indexes, required in litigation.

11 10. The OSD/JS Litigation Support Office is currently made up of 4 teams, Teams A,
 12 B, C, and D. Each team is made up of one full-time government employee and 4 to 5
 13 contractors.

14 11. Teams A, B, and D each process FOIA requests that were originally sent to
 15 OSD/JS that have since gone into litigation. Team C processes litigation consults and referrals
 16 from other government agencies, which were not originally also received by OSD/JS.²

17 12. Teams A, B, and D are collectively handling approximately 58 ongoing FOIA
 18 litigation matters. Team A has 12 open FOIA Litigations. One of these cases, *APPG, et al., v.*
 19 *CIA, et al.*, No. 09-cv-2375 (D.D.C.), has already resulted in the production of over 100,000
 20 pages of responsive records, and the search and production effort continues. Team B has 36
 21 open FOIA litigations. One of these cases, *Leopold v. DoD*, No. 14-cv-030 (D.D.C.), has
 22

23 ² In short, Team C facilitates the processing of records that are responsive to FOIA requests
 24 directed to an agency or office other than OSD/JS or one of the components and defense
 25 agencies on whose behalf OSD/JS processes FOIA requests. Referrals involve records that
 26 originated with OSD/JS or one of the components and defense agencies on whose behalf OSD/JS
 27 processes FOIA requests. Team C processes the referred records and releases them directly to
 28 the requester. Consults involve records in which OSD/JS (or one of the components and defense
 agencies on whose behalf OSD/JS processes FOIA requests) has equities even though the
 records originated elsewhere. Team C reviews the records sent to OSD/JS for consultation and
 advises the consulting office or agency regarding what information may be released.

1 similarly resulted in the production of over 100,000 pages of responsive records and the
2 production is not yet finished. Team D has 10 open FOIA litigations. One of these cases,
3 *National Security Archive v. DoD*, No. 17-cv-492 (D.D.C.), concerns 50,700 pages of responsive
4 records, of which only 912 pages have been processed to date, such that the production process
5 remains ongoing. In addition, Team C is currently processing 7 litigation referrals and 5
6 litigation consults. This case has been assigned to Team A, as they were best suited to handle the
7 next case when this action was filed with the Court.

8 OSD/JS's FOIA Workload

9 13. The OSD/JS receives approximately 2000 requests per fiscal year, currently has
10 over 2500 pending FOIA requests and has a staff of eight Action Officers processing initial
11 FOIA requests. Each Action Officer is carrying a workload of over 300 FOIA requests.

12 14. In addition to a substantial FOIA request processing workload in OSD/JS, the
13 Department has observed an increase in FOIA litigation against DoD in recent years, as
14 requesters have tended to turn to the courts more often and more quickly than in previous years.
15 In Fiscal Year 2009 the Department was named a defendant in 4 FOIA litigation cases, 6
16 litigations in FY 10, 8 in FY 11, 7 in FY 12, 10 in FY 13, 19 in FY 14, 8 in FY 15, and 12 in FY
17 16. So far in FY 17 the Department has been named a defendant in 12 cases, 10 of which seek
18 responses to requests which were also filed in fiscal year 2017. Including this case, the
19 Department is currently a named defendant in approximately 58 active lawsuits seeking records
20 under FOIA, many of which involve document production schedules and court-ordered
21 deadlines.

22 15. OSD/JS ordinarily uses a first-in, first-out system within its expedited and non-
23 expedited processing queues in order to complete its FOIA processing in an orderly and fair
24 manner. That process is disrupted, however, when a requester files suit before his or her request
25 arises in the processing queue and a court orders the agency to process the request in litigation
26 ahead of other requests that are before it in the relevant queue.

16. In addition to the significant volume of FOIA requests and litigation matters, OSD/JS, which has a staffing level of 28 civilian employees, currently has seven vacant billets, mostly due to the federal government-wide hiring freeze that took place during the beginning of 2017. Four of those vacancies are in the Initial FOIA processing office, one is in Appeals, and two are in the Litigation Support Office. With these resource constraints the staff is struggling to keep up with its significant workload.

OSD/JS Receipt of Plaintiff's FOIA Request

17. On or about April 3, 2017, FOID received a FOIA request from Marcia Hofmann on behalf of Cora Currier. The FOIA request sought records from January 20 to April 3, 2017, "concerning the agency's analysis of the impact of Executive Order No. 13,769 and Executive Order No. 13,780" "includ[ing], but . . . not limited to":

- A. Records reflecting analysis and response of DOD officials to responses by officials of other countries to the executive orders, including but not limited to Iran and Iraq.
- B. Memos, analyses, or communications (including correspondence with Iraqi officials) about the decision to remove Iraq from the list of countries covered by the travel restrictions in Executive Order No. 13,780.
- C. Analyses, reports or assessments produced by DOD components about the security risks posed by individuals from the nations covered by the executive orders, about the use of citizenship as an indicator of a terrorist threat to the United States, or otherwise evaluating the effectiveness of the travel ban in preventing national security threats.
- D. Any analyses, reports, or assessments about the executive orders' impact on national security or on military operations abroad.

18. A true and correct copy of the request is attached to Plaintiff's Motion for Preliminary Injunction as Exhibit 13.

19. Plaintiff requested expedited processing. On April 7, 2017, the Office of Freedom of Information (OFOI), which handles FOIA processing for initial FOIA requests, acknowledged receipt of Ms. Currier's FOIA request, denied the request for expedited treatment, informed Plaintiff that the request had been placed in the complex processing queue where it

1 would be processed based on the order in which it was received, that the current administrative
2 workload was approximately 2400 open requests, and provided appeal rights.

3 20. On May 5, 2017, OFOI informed Plaintiff that, after an additional review of her
4 request, expedited processing of the request was granted.

5 **Status of Searches and Processing for Plaintiff's Request**

6 21. At the time of Currier's FOIA submittal, OSD/JS had 2368 pending FOIA
7 requests. Because OSD/JS has few pending expedited requests, OSD/JS's decision to grant
8 Currier's request for expedited processing means that her request was advanced over thousands
9 of other pending request. At the present time, OSD/JS has four other pending expedited
10 requests, three of which were filed before Currier's request.

11 22. OSD is working diligently to process Plaintiff's request as quickly as practicable,
12 but as discussed below, her request is broad, requires searches of multiple offices (none of which
13 were specified in her request), involves classified and other sensitive information, and will likely
14 require referrals and/or consultations with other agencies. Under the circumstances, DoD cannot
15 practicably complete its processing of Plaintiff's request by her proposed deadline of September
16 5, 2017.

17 23. Thus far, OSD/JS has identified five DoD offices as likely to possess records
18 responsive to Plaintiff's request: the Executive Services Directorate (ESD); the Under Secretary
19 of Defense Policy Office (OUSDP); and the Office of General Counsel (OGC); the Office of the
20 Assistant Secretary of Defense for Homeland Defense and Global Security; and the Deputy
21 Chief Management Officer. Additional offices may need to be searched as well, but OSD/JS
22 may not be able to identify a comprehensive list of the offices to be searched until it has
23 reviewed more of the records retrieved in the initial searches.

24 **Executive Services Directorate (ESD)**

25 24. Plaintiff's request was initially tasked to the Executive Services Directorate
26 (ESD) to conduct a search for records responsive to the FOIA. ESD provides comprehensive
27 administrative management and graphics services to the Office of the Secretary of Defense and
28

1 executes federally mandated and regulatory programs, including Freedom of Information Act,
2 Security Review, Privacy Act, Records Management, Directives, Forms, Declassification
3 Review, and Information Collection, on behalf of the Secretary within the Department and
4 externally to other agencies and the general public. ESD is also responsible for valuable key
5 information collection and distribution services, including the Pentagon Library and Pentagon
6 Post Office. Services provided by ESD include Correspondence Management, DoD Directives
7 Program, Freedom of Information Act, Information Management, Official Mail Services, OSD
8 Graphics and Presentations, OSD Records management; Pentagon Library, Plain Writing Act,
9 Prepublication and Security Review; and Privacy Act and Personally Identifiable Information.
10 Upon conducting a search, ESD did not locate records responsive to the FOIA request.

11 **Under Secretary of Defense for Policy Office (OUSDP)**

12 25. On May 5, 2017, OFOI sent the office of the Under Secretary of Defense Policy
13 for Policy (OUSDP) a search tasking, along with the copy of the request.

14 26. The OUSDP FOIA team tasked the case to the office of the Assistant Secretary of
15 Defense for International Security Affairs / Middle East (ISA/MID) on May 5th, 2017. At the
16 time ISA/MID received this request, they had 57 pending FOIA requests that they were
17 processing, and this case was expedited ahead of those 57 requests.

18 27. ISA/MID completed the search request on May 25, 2017, returning 55 documents
19 from its unclassified (NIPR, Non-classified Internet Protocol Router) and classified secret (SIPR,
20 Secret Internet Protocol Router) computer networks: four documents (14 pages) from SIPR and
21 51 emails with 30 plus attachments from NIPR.

22 28. The OUSDP FOIA team is currently converting the NIPR records to an electronic
23 format that will allow them to be processed for potential release and reviewing them for
24 responsiveness. The OUSDP FOIA team has already converted the documents on SIPR into
25 PDF format and will be conducting a review alongside the NIPR documents. Once a review is
26 completed they will be tasked to ISA/MID and Homeland Defense & Global Threats Defense
27 Continuity & Mission Assurance (HD&GS/DCMA) for processing for applicable redactions.

1 29. The OUSDP FOIA team anticipates that DoD likely can complete its processing
2 of the responsive records located by OUSDP's search within 60 days. The OUSDP FOIA team
3 estimates the review to be completed for the documents located by ISA/MID by September 8,
4 2017, at which point their review will be forwarded to the OSD/JS office for determination
5 whether additional reviews either within DoD or with other government agencies are required,
6 all to be completed within the 60 day time-frame.

7 **Office of General Counsel (OGC)**

8 30. OFOI tasked OGC to search for records responsive to Plaintiff's request on May
9 5, 2017. OGC has completed its search for records and located approximately 325 pages of
10 potentially responsive records, which it is currently reviewing for responsiveness and processing.
11 In addition to an initial release described below, OGC expects to fully process all remaining
12 records located by OGC's search within 60 days. Again, this review requires review by subject
13 matter experts within OGC and then additional review by the OSD/JS FOIA office and
14 potentially other DoD components or federal agencies.

15 **Additional Searches Required**

16 31. The OUSDP FOIA team has also tasked the office of Homeland Defense &
17 Global Threats Defense Continuity & Mission Assurance (HD&GS/DCMA) to conduct searches
18 for records responsive to Plaintiff's request. That office have not yet completed its searches, but
19 estimates the completion of their additional searches by August 21, 2017. The OUSDP FOIA
20 team will then have to process, conduct a review, and task subject matter experts in
21 HD&GS/DCMA and or ISA/MID for final approval. While it's difficult to estimate the time
22 required to process potentially responsive records without knowing the volume, the OUSDP
23 FOIA team's best estimate given anticipated volume that the overall search and review of the
24 case may be completed by October 1st, 2017, at which point it will be sent to the OSD/JS FOIA
25 office for final review and coordination with other DoD components or government agencies.
26 Therefore, DoD may finish processing all responsive records subject to the FOIA within 90 days,
27 depending on the results of this final search.

First Interim Release

32. On August 9 2017, DoD sent Plaintiff an interim response letter, which explained that DoD had completed its processing of 69 pages of records from OGC, releasing 11 of those pages in full or in part, and is withholding 58 pages in full pursuant to FOIA exemptions 5 and 6. A true copy of the interim response letter is attached hereto as Exhibit 1.

Timing

33. Although DoD will likely be able to produce within 60 days the non-exempt documents subject to the FOIA and located to date by USDP and OGC, it cannot yet estimate the volume of potentially responsive records that may be located by the pending and ongoing searches in other offices within DoD and therefore cannot at this time provide an accurate estimate on when DoD likely will be able to complete its processing of Plaintiff's request.

34. Ordering immediate release of all responsive, non-exempt records, before DoD has completed its search and ascertained the volume, would risk DoD being unable to comply with the production schedule, even if resources could otherwise be reallocated to process Plaintiff's request, and would necessarily hinder DoD's ability to process other requests, including other expedited requests. It would also risk creating a situation in which DoD would be unable to complete necessary interagency consultations and appropriately review sensitive information prior to the date by which Plaintiff asks that DoD complete its processing of her requests.

Pursuant to 28 U.S. C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Signed this 9th day of August, 2017 in Alexandria, Virginia.

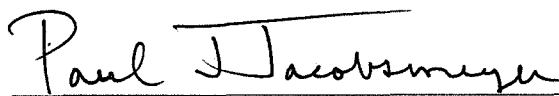

Paul J. Jacobsmeyer

Exhibit 1



DEPARTMENT OF DEFENSE
FREEDOM OF INFORMATION DIVISION
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155

09 August 2017
Ref: 17-L-0778

Ms. Marcia Hofmann
Zeitgeist Law PC
25 Taylor St.
San Francisco, CA 94102

Dear Ms. Hofmann:

This is the interim response to your April 3, 2017 Freedom of Information Act (FOIA) request submitted on behalf of Cora Currier for "all agency records concerning the agency's analysis of the impact of Executive Order No. 13,769 and Executive Order 13,780 from January 20, 2017".

The Department of Defense conducted a thorough search of their records systems and have provided the enclosed 69 pages; determined to be responsive to your request. 11 pages are being provided in part and 58 pages have been withheld in full pursuant to 5 U.S.C. § 552 (b)(5), which pertains to certain inter- or intra-agency communications protected by the deliberative process, attorney/client privilege and 5 U.S.C. § 552(b)(6), which pertains to information the release of which would constitute a clearly unwarranted invasion of the personal privacy of individuals.

Appellate rights are moot as your request is currently in litigation.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul J. Jacobsmeyer", is written over the typed name and title.

Paul J. Jacobsmeyer
Chief

Enclosures:

Exhibit I

DHS Privacy Declaration

Cora Currier v. U.S. Department of Homeland Security, et al.

No. 3:17-cv-01799-JSC

EXHIBITS TO DEFENDANTS' OPPOSITION TO
PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

CORA CURRIER,

Plaintiff,

v.

DEPARTMENT OF HOMELAND SECURITY,
DEPARTMENT OF STATE,
DEPARTMENT OF JUSTICE, and
DEPARTMENT OF DEFENSE,

Defendants.

Case No. 3:17-cv-01799-JSC

DECLARATION OF
JAMES V.M.L. HOLZER

1. I, James V.M.L. Holzer, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

2. I am the Deputy Chief Freedom of Information Act (“FOIA”) Officer for the
Department of Homeland Security (“DHS”) Privacy Office (“DHS Privacy”).

3. In this capacity, I am the DHS official responsible for implementing FOIA policy
across DHS and responding to requests for records under the FOIA, 5 U.S.C. § 552, the Privacy
Act, U.S.C. § 552a, and other applicable records access provisions. I have been employed by
DHS Privacy in this capacity since May 2016. I previously served as the Director of the Office
of Government Information Services within the National Archives and Records Administration,
and prior to that I served as the Senior Director of FOIA Operations for DHS.

4. Through the exercise of my official duties, I have become familiar with the
background of Plaintiff’s FOIA requests, dated February 1 and April 3, 2017, both of which were
granted expedited processing, and DHS’s responses and progress to date. I have also become
familiar with the background of this litigation and have read a copy of the Complaint filed by
Plaintiff.

DHS Privacy’s FOIA Process

5. DHS Privacy partners with privacy-related staff in every DHS component to
assess all new or proposed programs, systems, technologies, or rule-makings for privacy risks,

1 and to recommend privacy protections and alternative methods for handling personal information
2 to mitigate privacy risks. DHS Privacy also centralizes FOIA and Privacy Act operations to
3 provide policy and programmatic oversight, and to support implementation across the
4 Department.¹

5 6. The mission of DHS Privacy is to preserve and enhance privacy protections for all
6 individuals, to promote transparency of Department operations, and to serve as a leader in the
7 privacy community. DHS Privacy (1) evaluates Department legislative and regulatory proposals
8 involving collection, use, and disclosure of personally identifiable information (“PII”);
9 (2) centralizes FOIA and Privacy Act operations to provide policy and programmatic oversight,
10 and to support implementation across the Department; (3) operates a Department-wide Privacy
11 Incident Response Program to ensure that incidents involving PII are properly reported,
12 investigated, and mitigated, as appropriate; (4) responds to complaints of privacy violations and
13 provides redress, as appropriate; and (5) provides training, education, and outreach to build a
14 culture of privacy across the Department and transparency to the public.
15

16 7. DHS Privacy is responsible for processing all FOIA and Privacy Act requests
17 pertaining to thirteen DHS Headquarters-level offices. Those offices are: DHS Privacy; the
18 Office of the Secretary (which includes the Military Advisor’s Office and the Office of
19 Intergovernmental Affairs); the Office of the Citizenship and Immigration Services Ombudsman;
20 the Office for Civil Rights and Civil Liberties; the Domestic Nuclear Detection Office; the
21

22
23
24 ¹ DHS components include: U.S. Citizenship and Immigration Services; U.S. Customs and
25 Border Protection; the U.S. Coast Guard; the Federal Emergency Management Administration;
26 the Federal Law Enforcement Training Center; U.S. Immigration and Customs Enforcement; the
27 Transportation Security Administration; the United States Secret Service; the Directorate for
28 Management; the National Protection and Programs Directorate; the Science and Technology
Directorate; the Domestic Nuclear Detection Office, the Office of Health Affairs; the Office of
Intelligence and Analysis; the Office of Operations Coordination; the Office of Inspector
General; and the Office for Civil Rights and Civil Liberties.

1 Office of the Executive Secretary; the DHS Management Directorate; the Office of Health
2 Affairs; the Office of the General Counsel; the Office of Legislative Affairs; the Office of Public
3 Affairs; the Office of Operations Coordination; and the Office of Policy. DHS Privacy also
4 coordinates the processing of FOIA requests across DHS components when the subject matter of
5 a particular request touches on multiple components or is particularly high profile.

6 8. Each DHS component maintains its own automated case tracking system which
7 assigns case control numbers to, and tracks the status of, all FOIA and Privacy Act requests
8 received by that component. Each DHS component logs all incoming FOIA and Privacy Act
9 requests into their automated case tracking systems, and inputs information about each request
10 into the system (including, but not limited to, the requester's name and/or organization, and, in
11 the case of FOIA requests, the topic of the request). All requesters are then notified of the case
12 control numbers assigned to their requests. It is the practice of all DHS components to refer to
13 the case control numbers in all correspondence with requesters. The automated case tracking
14 systems are text searchable on a field-by-field basis.

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17 **DHS Privacy's Current Resources and Workload**

18 9. DHS Privacy's FOIA staff consists of a Deputy Chief FOIA officer, a Senior
19 Director of FOIA operations, three director level positions, a production manager, 1.5 litigation
20 analyst positions (to include one FOIA specialist whose duties are split between the litigation
21 team and the FOIA disclosure team), and eight FOIA specialist positions. The FOIA Officer for
22 the DHS Office for Civil Rights and Civil Liberties also reports to the DHS Privacy Office. As
23 of the date of this declaration, one of the FOIA specialist positions is vacant.

24
25 10. FOIA specialists handle all aspects of the FOIA request process. They receive
26 new FOIA requests, along with referrals and consultation requests from other agencies or DHS
27
28

1 components, log those new FOIA requests into the FOIA case tracking system, and send out
2 search taskers to various offices compelling them to search for records. Once those searches are
3 complete, FOIA specialists review any records located and make withholding determinations,
4 redacting any exempt information pursuant to the FOIA exemptions. FOIA specialists also send
5 out FOIA responses and work on other FOIA projects for DHS Privacy, as needed.

6 11. DHS Privacy typically receives approximately 600 to 800 FOIA requests every
7 fiscal year ("FY"). Most of these requests, about two-thirds, are categorized as complex
8 requests, which for DHS means that they require a wide-ranging search, frequently across
9 multiple offices, and involve a large number of records. In FY 2017 to date, DHS Privacy has
10 received 1,094 FOIA requests. This represents a more than 60% increase from the year-end total
11 for FY16, which was 599 requests. At this point in FY 2016, DHS Privacy had received only
12 506 FOIA requests. Three hundred ninety-eight of the 1,094 requests received to date in FY
13 2017 are currently backlogged²; of those 398 requests, over 54% of them are categorized as
14 complex.
15

16 12. As of July 10, 2017, DHS (including its components) has received 193 FOIA
17 requests pertaining to the various Executive Orders that have issued since January 20, 2017,
18 including most significantly Executive Order No.13,769 and Executive Order No. 13,780. Of
19 those Executive Order FOIA requests, 56 were received before DHS received Plaintiff's
20 February request. An additional 98 FOIA requests for records pertaining to the various
21
22

23
24 ² A request is categorized as backlogged if the request has been perfected and has not been
25 responded to within 20 days of the receipt of the request. In addition to the regular work of
26 processing FOIA requests and litigation, DHS Privacy, as the headquarters-level FOIA office for
27 DHS, also has a responsibility to assist other DHS components with their backlogged cases.
28 Currently, DHS Privacy is working on a projected 23,000 case backlog at the Office of
Biometric Information Management in the DHS National Programs and Protection Directorate.
This has occupied the resources of the Senior FOIA director as well as several FOIA specialists.
This additional work is scheduled to be completed by October 2017.

1 Executive Orders were received by DHS after receipt of Plaintiff's February 2017 request and
2 prior to DHS's receipt of Plaintiff's April 2017 request. Many of those requests were also
3 granted expedited processing and remain open. (DHS has granted expedited processing for 81
4 FOIA requests on any topic since January 20, 2017.)

5 13. DHS Privacy has experienced an increase of 65% in FOIA-related litigation since
6 FY16. DHS Privacy is currently involved in 43 active lawsuits and is responsible for
7 coordinating DHS-wide efforts on an additional 13 cases in which the FOIA requests at issue
8 (seeking various categories of records related to Executive Order No. 13,769) were directed only
9 to CBP but require extensive consultation among DHS components. Of the 43 cases in which
10 DHS Privacy is directly involved, 11 cases, including the instant case, are at the point where
11 DHS Privacy is actively facilitating the production of documents. DHS Privacy is subject to
12 court orders in three cases that collectively require DHS Privacy to process at least 2,500 pages
13 per month, and anticipates that similar court orders may be issued in one or more other pending
14 cases. In addition, DHS Privacy has been processing approximately 3,000 additional pages per
15 month for other cases that are in litigation but for which the court has not ordered DHS Privacy
16 to process a minimum number of pages per month.

17
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19 **DHS Privacy's Progress on Plaintiff's FOIA Requests**

20 14. At this time, DHS has completed its search for records in response to Plaintiff's
21 February 2017 request, and has located an estimated 3,000 pages of potentially responsive
22 records.

23 15. On August 7, 2017, DHS released in 282 pages of records responsive to
24 Plaintiff's February 2017 request. After thorough review, portions of these records were
25 withheld pursuant to Exemptions 5, 6, 7(C), and 7(E) of the FOIA. An equally thorough review
26 will be required for each of the remaining potentially responsive records, as those records are
27

1 also likely to contain privileged communications (with both attorney-client and deliberative, pre-
2 decisional content), personally identifiable information (including the names and contact
3 information of DHS employees, as well as the names, dates of birth, alien numbers and other
4 personal information of individuals encountered in airports or at the border), and sensitive
5 information pertaining to law enforcement techniques and equipment. A true and correct copy of
6 the cover letter for DHS Privacy's August 7 release is attached hereto as Exhibit 1.

7
8 16. Searches are ongoing for potentially responsive records for Plaintiff's April 2017
9 request, which in part amends and expands the February 2017 request. DHS is unable to give an
10 estimate of the full scope of potentially responsive records until the search process for that
11 request is completed.

12 17. DHS is committed to reviewing 500 pages of records each month until the
13 processing of all records is completed. Were Plaintiff to significantly narrow the scope of her
14 broad requests, it would be possible to complete the processing of these records sooner.

15 18. Placing accelerated deadlines on DHS's processing of the remaining records to
16 accommodate Plaintiff's proposed timeline would further burden DHS's already strained
17 resources and inevitably risk the inadvertent release of sensitive information.

18 19. In order to attempt to process these documents by Plaintiff's proposed deadline of
19 September 5, 2017, DHS Privacy would have to reallocate significant resources from other
20 pending FOIA requests. At a minimum, DHS Privacy would be required to process at least the
21 3,000 pages of potentially responsive material already located, minus the amount already
22 released, in addition to however many pages are revealed in further search efforts. By contrast,
23 DHS Privacy normally processes 5,000-5,500 pages per month total for all FOIA requests in
24 active litigation.
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1 20. DHS Privacy could not feasibly process Plaintiff's requested records by
2 September 5, 2017 simply by utilizing the personnel and resources specifically assigned to
3 process FOIA requests in active litigation, and I do not believe that DHS Privacy could complete
4 its search for records responsive to the April 2017 request by that time regardless of the DHS
5 Privacy resources available.

6 21. A September 5 deadline also would not allow DHS Privacy adequate time to
7 conduct the interagency reviews that I expect will be necessary for many of the records
8 responsive to Plaintiff's requests. In addition, a court order directing other DHS components or
9 Defendants to process their records on an abbreviated schedule likely would add significantly to
10 the workload of DHS Privacy, which I expect would need to be consulted regarding potential
11 releases from the other agencies.

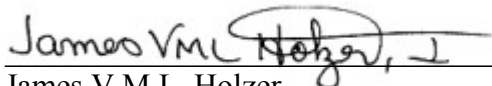
12 22. At a minimum, in order to process any DHS records already located by DHS
13 Privacy and any additional responsive records that DHS Privacy could locate and collect by
14 September 5, DHS Privacy would have to shift several FOIA specialists from processing non-
15 litigation-related requests and dedicate them to addressing Plaintiff's request. This would
16 inevitably increase DHS Privacy's FOIA backlog to the disadvantage of other members of the
17 public seeking information through the FOIA process, and may strain the resources of DHS
18 Privacy to a degree that DHS would be in jeopardy of being in contempt of orders from several
19 other courts.

20 23. In addition, granting Plaintiff's motion would require DHS Privacy to prioritize
21 Plaintiff's request over the many expedited requests that were received by DHS Privacy prior to
22 Plaintiff's requests. DHS Privacy's policy is to process requests in the order in which they were
23 received, with expedited requests being moved to a separate track where they are likewise to be
24 received, with expedited requests being moved to a separate track where they are likewise to be
25 received, with expedited requests being moved to a separate track where they are likewise to be
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28 received, with expedited requests being moved to a separate track where they are likewise to be

1 processed in the order in which they were received. While Plaintiff has been granted expedited
2 processing by DHS Privacy, such that her request will be processed before all requests not
3 expedited, the rank-order rule continues to apply to the requests already in the expedited
4 processing queue.

5 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true
6 and correct.

7 Dated the 10th day of August, 2017

8 

9 James V.M.L. Holzer
10 Deputy Chief FOIA Officer
11 DHS Privacy Office
12 U.S. Department of Homeland Security
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Homeland
Security

August 7, 2017

Marcia Hofmann
Zeitgeist Law PC
28 Taylor St.
San Francisco, CA 94102

**Re: 17-cv-01799-JSC
Currier v. DHS
First Interim Release**

Dear Ms. Hofmann:

This is our first interim response to your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), received on February 7, 2017. We understand that this information will be provided to the Court supervising the civil litigation concerning this FOIA request as well.

DHS's Production

For this production DHS reviewed 581 pages of records. After review of those 581 pages, DHS has determined that 68 pages are released in full. Further, DHS determined that pursuant to FOIA exemptions b5, b6, b7(C), and b7(E), 53 pages are withheld in full and 161 pages are withheld in part. Additionally, 253 pages were found to be duplicative or non-responsive, and will not be produced. We also located 47 pages that contained information originating from agencies outside of DHS. Those pages have been referred to the appropriate agencies for consultation. After those offices have had an opportunity to review the records, we will either release those records to you or provide a basis for why they are being withheld.

If you have any questions regarding this release, please contact Trial Attorney Matt Berns, United States Department of Justice, Federal Programs Branch, at (202) 616-8016, or by email at Matthew.J.Berns@usdoj.gov.

Sincerely,

A handwritten signature in cursive script that reads "Bradley E. White".

Bradley E. White
FOIA Program Specialist

Enclosed: 282 pages

Exhibit J

CBP Declaration

Cora Currier v. U.S. Department of Homeland Security, et al.
No. 3:17-cv-01799-JSC
EXHIBITS TO DEFENDANTS' OPPOSITION TO
PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CORA CURRIER,

Plaintiff,

v.

DEPARTMENT OF HOMELAND SECURITY,
DEPARTMENT OF STATE,
DEPARTMENT OF JUSTICE, and
DEPARTMENT OF DEFENSE,

Defendants.

Case No. 3:17-cv-01799-JSC

DECLARATION OF
PATRICK A. HOWARD

I, Patrick A. Howard, declare the following to be true and correct:

1. I am a Branch Chief within the Freedom of Information Act Division (FOIA Division) at U.S. Customs and Border Protection (CBP), U.S. Department of Homeland Security (DHS). I have been a Branch Chief in the FOIA Division since February 8, 2015. In this capacity, I have oversight of a staff of Government Information Specialists, the processing of FOIA requests submitted to CBP, and I am familiar with CBP's procedures for responding to FOIA requests. I provide technical and administrative supervision and direction to a group of FOIA specialists in processing FOIA requests, assist with FOIA/Privacy Act (PA) litigation matters, and am personally familiar with the processing of FOIA/PA responses, including by, at times, directly reviewing for adequacy, and adherence to federal laws and regulations. The FOIA Division reviews FOIA requests, determines whether responsive records exist, and, if so, whether they can be released in accordance with the FOIA. In processing such requests, the FOIA Division consults with CBP personnel and, when appropriate, with other components in DHS, as well as with other Executive Branch agencies.

2. I make the statements in this declaration on the basis of personal knowledge, as well as on information acquired by me in the course of performing my official duties.

1 3. The purpose of this declaration is to respond to Plaintiff's Motion for Preliminary
2 Injunction, dated July 20, 2017, requesting that the Court order Defendants to complete the
3 expedited processing of Plaintiff's FOIA requests and produce all responsive, non-exempt
4 documents no later than September 5, 2017. *See* Motion for Preliminary Injunction, ECF No. 20,
5 at 1, 2, 12, 15.

6 4. This declaration provides the basis for CBP's conclusion that Plaintiff's requested
7 production deadline would be exceedingly burdensome and impracticable. FOIA Division and
8 other CBP offices are actively involved in processing over 100 FOIA requests related to
9 Executive Order 13769, dated January 27, 2017, and/or Executive Order 13780, dated March 6,
10 2017, both entitled "Protecting the Nation From Foreign Terrorist Entry Into the United States".
11 Although the FOIA requests CBP has received regarding Executive Orders 13769 and 13780 are
12 not all identical to each other (they cover a variety of time periods, seek records from different
13 offices, and seek different discrete categories of records) they were submitted close in time to
14 each other, and there is significant overlap in the searches that will need to be completed and the
15 documents that will need to be processed, such that CBP has determined that it will be able to
16 respond to all of the requests most efficiently if CBP coordinates its processing of the entire
17 group of requests. Accordingly, CBP is attempting to coordinate the simultaneous processing of
18 all Executive Order 13769 and 13780 requests, to the extent practicable, so that CBP does not
19 need to repeat the process of collecting, reviewing, and releasing records separately for each
20 individual request (i.e., to search for and process the same records over and over again). While
21 CBP is working to address the specifics of each request as expeditiously as possible, Plaintiff's
22 FOIA requests are among the broadest and vaguest in terms of the categories of records sought:
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1 all agency records from January 27 to April 3, 2017 concerning the agency's analysis and
2 implementation of Executive Order 13769 and Executive Order 13780.

3 5. To date, CBP has identified over 125,000 records potentially related to the
4 implementation of Executive Order 13769. These records consist of over 25,000 emails
5 maintained by certain individuals in offices at CBP Headquarters such as the Office of the
6 Commissioner, the Office of Field Operations, and the Office of Chief Counsel. (In addition,
7 CBP has collected over 100,000 emails from personnel within local Office of Field Operations
8 and Office of Chief Counsel offices in the agency's efforts to respond to Executive Order-related
9 requests that, unlike Plaintiff's requests, seek records from specific local offices.)
10

11 6. As described in greater detail below, CBP must review each of these records to
12 determine if it is responsive, if it is a duplicate record, and what FOIA exemptions, if any, apply.
13 Where the record involves the information of a third party agency, CBP must coordinate with
14 that agency before the record can be released. Therefore, while CBP can commit to a continued
15 rolling production, CBP cannot review and process the over 125,000 potentially responsive
16 records it has identified to date by Plaintiff's proposed September 5, 2017 deadline, and cannot
17 complete its search for additional responsive records by that date.
18

19 FOIA Division's Receipt of Plaintiff's FOIA Requests

20 7. By letter dated February 1, 2017, Plaintiff, through her attorney Marcia
21 Hofmann¹, submitted a FOIA request (First FOIA request) to the DHS Privacy Office,
22 Washington, DC. The DHS Privacy Office subsequently forwarded the request to CBP. On
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27 ¹ FOIA Division logged the requestor as Marcia Hofmann and not Cora Currier.
28

1 February 17, 2017, the CBP FOIA Division received Plaintiff's FOIA request, assigned it a
2 tracking number, CBP-2017-031844, and entered it into the FOIA Division tracking system.²

3 8. Plaintiff requested "all agency records from January 20, 2017 to the present
4 concerning the agency's analysis and implementation of [Executive Order 13769, Protecting the
5 Nation From Foreign Terrorist Entry Into the United States]." Plaintiff then stated that "[t]his
6 request includes, but is not limited to" two categories of records, one of which includes seven
7 sub-categories. These categories and sub-categories include, among other things, all emails or
8 other communications among CBP personnel "concerning the agency's analysis and
9 implementation of that executive order."
10

11 9. A true and correct copy of the First FOIA request is attached to Plaintiff's
12 Preliminary Injunction Motion as Exhibit 1.

13 10. By letter dated April 3, 2017, Plaintiff submitted a FOIA request (Second FOIA
14 request) to the DHS Privacy Office, Washington, D.C. The DHS Privacy Office subsequently
15 forwarded the request to CBP. The CBP FOIA Division received Plaintiff's FOIA request and
16 associated it with the previously assigned tracking number, CBP-2017-031844. The Second
17 FOIA request seeks "all agency records from February 1, 2017 to the present concerning the
18 agency's analysis and implementation of Executive Order No. 13769 and Executive Order No.
19 13780." The Second FOIA request then goes on to state that "[t]his request includes, but is not
20 limited to" six categories of records, one of which includes nine sub-categories.
21

22 11. A true and correct copy of the Second FOIA request is attached to Plaintiff's
23 Preliminary Injunction Motion as Exhibit 9.
24

25
26 ² DHS regulations instruct requesters to "write directly to the FOIA office of the component that
27 maintains the records sought" so that their request can "receive the quickest possible response."
28 6 C.F.R. 5.3(a). Plaintiff, however, submitted her requests for CBP records to DHS Privacy.

12. Plaintiff requested expedited processing of both FOIA requests, and DHS granted Plaintiff's requests for expedited processing.

13. On March 31, 2017, Plaintiff filed a complaint for injunctive relief in connection with her First FOIA request. *See* Complaint, ECF No. 1. On May 19, 2017, Plaintiff filed an amended complaint for injunctive relief in connection with her Second FOIA request. *See* Complaint, ECF No. 14.

FOIA Division Obligations

14. FOIA Division's normally highly demanding caseload has dramatically increased over Fiscal Year 2017. FOIA Division received 66,742 FOIA requests in Fiscal Year 2016 (October 1, 2015 – September 30, 2016), and has received more than 74,261 in Fiscal Year 2017, as of July 31, 2017. At this rate, the number of FOIA requests received in Fiscal Year 2017 is on pace to exceed the number received in Fiscal Year 2016 by approximately 35 percent.

15. To date, FOIA Division has received nearly 100 requests for information pertaining to Executive Order 13769. Of these, 21 are in litigation in district courts around the country.

16. Because of this significant recent surge in both FOIA requests and FOIA litigation matters, including the many FOIA requests and litigation matters pertaining to Executive Orders 13769 and 13780, FOIA Division is under significant strain as its FOIA processing staff, which currently consists of 25 full time staff nationwide, and four supervisory employees, struggle to keep up with this notably increased workload. Furthermore, multiple CBP operational offices in the field and headquarters are having to engage in extensive coordination in responding to Plaintiff's broad FOIA requests, as well as the other FOIA requests seeking distinct categories of records relating to the same general subject matter.

FOIA Division's Processing of FOIA Requests

1
2 17. FOIA Division identifies incoming FOIA requests as either simple or complex. A
3 simple request - also referred to as a traveler request - is one where a member of the traveling
4 public requests records related to his or her travel. Examples of traveler requests include
5 records of a person's entry into and exit from the United States, I-94 records, and records of
6 inspections and interactions with CBP employees. FOIA Division has access to CBP's travel
7 database systems and is able to query the systems in order to quickly respond to simple FOIA
8 requests.
9

10 18. Complex FOIA requests – also referred to as non-traveler requests – are all other
11 types of requests received. Samples of complex requests include requests from businesses for
12 import and export records, requests for Office of Professional Responsibility (OPR) investigation
13 files, and requests from media sources or special interest groups focused on a variety of matters
14 non-specific to an individual traveler. FOIA Division rarely has direct access to responsive
15 records to complex requests. Rather, FOIA Division must first determine which CBP offices are
16 likely to have responsive information and then work with those offices to gather any responsive
17 records. Assessments of where responsive records are likely to be maintained are based on a
18 review of the content of the request itself and the nature of the records sought, as well as FOIA
19 Division's familiarity with the types and location of records that each office maintains and
20 discussions with knowledgeable agency personnel. Potentially responsive records may be
21 located in one or multiple systems of record, email systems, computer hard drives, and/or hard
22 copy (paper) files.
23
24

25 19. Plaintiff's requests are complex requests.

Processing Timelines

1 20. In Fiscal Year 2016, complex requests were processed in an average number of
2 125 days. In terms of working days, this amounts to an average time of approximately six
3 months to complete processing of a complex request. The processing rates vary based on the
4 breadth of the request and the volume of potentially responsive information at issue, which affect
5 both the time that it takes to complete the search and the time that it takes to review and process
6 potentially responsive records.

7
8 FOIA Division's Processing of Plaintiff's FOIA Requests

9 21. CBP has been working diligently to respond to Plaintiff's FOIA requests as soon
10 as practicable.

11 22. On July 17, 2017, FOIA Division issued to Plaintiff an initial partial response to
12 her FOIA request. That release included a total of 56 pages of records responsive to Plaintiff's
13 request. See Attachment 1.

14 23. On July 28, 2017, FOIA Division issued to Plaintiff a second partial response to
15 her FOIA requests. That release included a total of 184 pages of records responsive to Plaintiff's
16 requests. See Attachment 2.

17 24. As described above, CBP has already located over 125,000 records potentially
18 responsive to Plaintiff's requests and/or other FOIA requests submitted to CBP, including other
19 requests that are currently in litigation, which seek records related to Executive Order 13769
20 and/or Executive Order 13780. These records are currently being processed for potential release.
21 Meanwhile, CBP is working to locate additional potentially responsive records that, once located
22 and collected, will themselves require processing before they can be released.
23

24 25. While CBP can utilize a software program to determine, at least in part, if the
25 potentially responsive records are duplicative, there is no automated way to determine which
26
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28

1 records are responsive, and what FOIA exemptions, if any, apply. Therefore, CBP must
2 manually review and process *each* non-duplicative record.

3 26. The records CBP has located to date that are potentially responsive to Plaintiff's
4 requests include a large amount of sensitive, privileged information, including attorney-client
5 communications, attorney work product, and information subject to the deliberative process
6 privilege. These records also contain information supplied by outside agencies such as the
7 Department of State and other components of DHS, such as United States Citizenship and
8 Immigration Services (USCIS).
9

10 27. Given the complexity of the records at issue, CBP is employing a multi-office
11 review process to ensure that all information that must be protected from release is properly
12 withheld and all information that can be released is provided. This internal review process
13 consists of an initial review by the owner of the record. For example, if the record is an Office of
14 Field Operations email, the Office of Field Operations reviews the email, determines if it is
15 responsive, and what FOIA exemptions, if any, apply. Office of Field Operations employees
16 have other responsibilities in addition to reviewing such records.
17

18 28. As Plaintiff's FOIA requests are in litigation, this matter has also been assigned to
19 attorneys in the CBP Office of Chief Counsel who provide advice to the FOIA division and other
20 offices within CBP regarding processing of records as well as responses to litigation deadlines.
21 For example, after the initial review of records potentially responsive to Plaintiffs' requests by
22 the owner of the records, Office of Chief Counsel attorneys may review outstanding questions
23 regarding responsiveness or applicable FOIA exemptions and assist with identification of what,
24 if any, outside agency equities exist. No attorneys in the CBP Office of Chief Counsel are solely
25 responsible for FOIA matters; all have other responsibilities.
26
27
28

29. If outside agency equities are identified, CBP consults with the relevant agencies to ensure proper FOIA exemptions are being applied to outside agency records and the records are released in full, redacted in part, or withheld in full, as appropriate. A September 5 deadline would not allow CBP adequate time to conduct the interagency reviews that I expect will be necessary for many of the records responsive to Plaintiff's requests. In addition, a court order directing other agencies to process their records on an abbreviated schedule likely would add significantly to the workload of CBP, which I expect would need to be consulted regarding potential releases from other agencies.

30. Once any internal and third party coordination is complete, the records are provided to the FOIA Division to release, as appropriate, to Plaintiff.

31. CBP is processing Plaintiff's FOIA requests in the above manner as expeditiously as possible and is committed to a continuing rolling production. However, given the scope of Plaintiff's FOIA requests, the internal review and possible outside agency coordination required before CBP can release *any* record, and the amount of records identified as potentially responsive to Plaintiff's requests to date as well as those records yet to be identified as potentially responsive in CBP's ongoing searches, CBP cannot meet Plaintiff's proposed September 5, 2017 production deadline with its existing resources.

I declare under penalty of perjury that the foregoing is true and correct.

Paul H.

Patrick A. Howard

Executed this 10 day of August 2017.

July 17, 2017

Marcia Hofmann
Zeitgeist Law Firm
25 Taylor Street
San Francisco, CA 94102

Re: CBP-2017-031844

Dear Ms. Hofmann:

This is an initial partial response to your clients' Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), dated February 1, 2017, which seeks records from U.S. Customs and Border Protection (CBP). Your clients requested all agency records from January 20, 2017 to present concerning CBP's analysis and implementation of the Executive Order. The records included in this response have been deemed responsive to your request.

This release includes a total of 56 pages of records responsive to your clients' request, marked as EO FOIA CBP 0000000001-0000000056. CBP has determined that 53 pages of the records are partially released, pursuant to Title 5 U.S.C. § 552 (b)(5), (b)(6), (b)(7)(C) and (b)(7)(E). Three pages, marked as EO FOIA CBP 0000000025-0000000027, are being withheld in full pursuant to Title 5 U.S.C. § 552 (b)(5), (b)(6), and (b)(7)(C).

Exemption 5 protects from disclosure those inter- or intra-agency documents that are normally privileged in the civil discovery context. The three most frequently invoked privileges are the deliberative process privilege, the attorney work-product privilege, and the attorney-client privilege.

- **Deliberative Process Privilege**

The deliberative process privilege protects the integrity of the deliberative or decision-making processes within the agency by exempting from mandatory disclosure opinions, conclusions, and recommendations included within inter- or intra-agency memoranda or letters. The release of this internal information would discourage the expression of candid opinions and inhibit the free and frank exchange of information among agency personnel.

- **Attorney Work-Product Privilege**

The attorney-work product privilege protects documents and other memoranda prepared by an attorney in contemplation of litigation.

- **Attorney-Client Privilege**

The attorney-client privilege protects confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice. It applies to facts divulged by a client to his attorney, and encompasses any opinions given by an attorney to his client based upon, and thus reflecting those facts, as well as communications between

attorneys that reflect client-supplied information. The attorney-client privilege is not limited to the context of litigation.

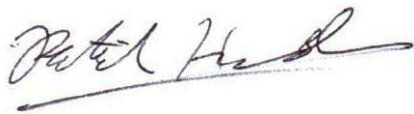
Exemption (b)(6) exempts from disclosure personnel or medical files and similar files the release of which would cause a clearly unwarranted invasion of personal privacy. This requires a balancing of the public's right to disclosure against the individual's right privacy. The types of documents and/or information that we have withheld may consist of birth certificates, naturalization certificates, driver license, social security numbers, home addresses, dates of birth, or various other documents and/or information belonging to a third party that are considered personal. The privacy interests of the individuals in the records you have requested outweigh any minimal public interest in disclosure of the information. Any private interest you may have in that information does not factor into the aforementioned balancing test.

Exemption (b)(7)(C) protects records or information compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy. This exemption takes particular note of the strong interests of individuals, whether they are suspects, witnesses, or investigators, in not being unwarrantably associated with alleged criminal activity. That interest extends to persons who are not only the subjects of the investigation, but those who may have their privacy invaded by having their identities and information about them revealed in connection with an investigation. Based upon the traditional recognition of strong privacy interest in law enforcement records, categorical withholding of information that identifies third parties in law enforcement records is ordinarily appropriate.

Exemption (b)(7)(E) protects records compiled for law enforcement purposes, the release of which would disclose techniques and/or procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

As this matter is currently in litigation, if you need further assistance or would like to discuss any aspect of this response, please contact Matthew J. Berns, Trial Attorney, Department of Justice, Civil Division, Federal Programs Branch.

Sincerely,

A handwritten signature in dark ink, appearing to read "Patrick Howard", with a horizontal line drawn underneath it.

Patrick Howard
Branch Chief
U.S. Customs and Border Protection, FOIA Division
Privacy and Diversity Office

Enclosure(s)

July 28, 2017

Marcia Hofmann
Zeitgeist Law Firm
25 Taylor Street
San Francisco, CA 94102

Re: CBP-2017-031844

Dear Ms. Hofmann:

This is a second partial response to your clients' Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), dated February 1, 2017, which seeks records from U.S. Customs and Border Protection (CBP). Your clients requested all agency records from January 20, 2017 to present concerning CBP's analysis and implementation of the Executive Order. The records included in this response have been deemed responsive to your request.

This release includes a total of 184 pages of records responsive to your clients' request, marked as EO FOIA CBP 0000000058-0000000241. CBP has determined that 180 pages of the records are partially released, pursuant to Title 5 U.S.C. § 552 (b)(5), (b)(6), (b)(7)(C) and (b)(7)(E). Four pages, marked as EO FOIA CBP 0000000079, EO FOIA CBP 0000000084, EO FOIA CBP 0000000128, and EO FOIA CBP 0000000219, are being withheld in full pursuant to Title 5 U.S.C. § 552 (b)(5), (b)(6), and (b)(7)(C).

Exemption 5 protects from disclosure those inter- or intra-agency documents that are normally privileged in the civil discovery context. The three most frequently invoked privileges are the deliberative process privilege, the attorney work-product privilege, and the attorney-client privilege.

- **Deliberative Process Privilege**

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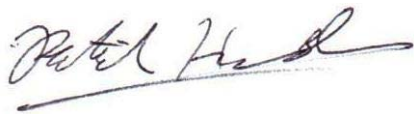
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Exemption (b)(7)(E) protects records compiled for law enforcement purposes, the release of which would disclose techniques and/or procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

As this matter is currently in litigation, if you need further assistance or would like to discuss any aspect of this response, please contact Matthew J. Berns, Trial Attorney, Department of Justice, Civil Division, Federal Programs Branch.

Sincerely,

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Patrick Howard
Branch Chief
U.S. Customs and Border Protection, FOIA Division
Privacy and Diversity Office

Enclosure(s)