

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

COLOR OF CHANGE and CENTER FOR
CONSTITUTIONAL RIGHTS,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY and FEDERAL
BUREAU OF INVESTIGATION,

Defendants.

No. 16 Civ. 8215 (WHP)

STIPULATION AND [PROPOSED] ORDER OF SETTLEMENT AND DISMISSAL

WHEREAS, Plaintiffs filed a complaint in this action seeking the release of certain records by the United States Department of Homeland Security (“DHS”) and the Federal Bureau of Investigation (“FBI”) (together, “Defendants”), pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”);

WHEREAS, the allegations in the complaint concern FOIA requests dated July 5, 2016, that Plaintiffs submitted to Defendants (the “FOIA Requests”);

WHEREAS, DHS (specifically, its components the Federal Emergency Management Agency (“FEMA”), the Office of Intelligence and Analysis (“I&A”), and the Cybersecurity and Infrastructure Security Agency (“CISA”), previously known as the National Protection and Programs Directorate¹) and FBI searched for, processed, and released non-exempt portions of records responsive to the FOIA Requests;

¹ In accordance with the Cybersecurity and Infrastructure Security Agency Act of 2018, on November 16, 2018, the DHS National Protection and Programs Directorate became the Cybersecurity and Infrastructure Security Agency. *See* Pub. L. No. 115-278, 132 Stat. 4168, 4169 (2018).

WHEREAS, in March 2018 and April 2018, the parties filed cross-motions for partial summary judgment relating to the exemptions claimed by DHS with respect to certain documents produced by DHS with redactions in full or in part (collectively, the “Challenged Documents”);

WHEREAS, by Opinion and Order dated July 9, 2018 (Dkt. No. 67), the Court upheld DHS’s withholdings of the Challenged Documents pursuant to Exemption 5 of FOIA, 5 U.S.C. § 552(b)(5), granted Defendants’ partial motion for summary judgment, and denied Plaintiffs’ motion for partial summary judgment;

WHEREAS, on August 8, 2018, the Court endorsed a Stipulation and Order of Partial Dismissal (Dkt. No. 71), which dismissed with prejudice any and all claims seeking the release of documents other than the Challenged Documents; any and all challenges to the adequacy of Defendants’ search for records responsive to the FOIA Requests; and any and all challenges to Defendants’ assertion of any exemption applied to documents other than the Challenged Documents;

WHEREAS, the parties agree that the only remaining issue in this matter concerns Plaintiffs’ claim of entitlement to attorney’s fees and litigation costs reasonably incurred in this case pursuant to 5 U.S.C. § 552(a)(4)(E); and

WHEREAS, the parties wish to resolve Plaintiffs’ claim for attorney’s fees and litigation costs consensually without further litigation;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the parties, as follows:

1. Pursuant to 5 U.S.C. § 552(a)(4)(E), as soon as reasonably practicable after the Court has endorsed and docketed this Stipulation and Order, FBI shall pay to Plaintiffs the sum of \$12,527.11, FEMA shall pay to Plaintiffs the sum of \$1,742.81, CISA shall pay to Plaintiffs

the sum of \$11,655.40, and I&A shall pay to Plaintiffs the sum of \$11,655.40 (collectively, the “Settlement Amounts”), which sums Plaintiffs agree to accept as full payment of any costs and/or fees they have incurred in or in connection with this matter.

2. Effective upon payment of the Settlement Amounts set forth in Paragraph 1, Plaintiffs release the United States, its agencies, departments, officers, employees, servants, and agents, including Defendants, from any claims for attorney’s fees, costs, and expenses of any kind, and however denominated, relating to services performed in connection with this matter.

3. Nothing in this Stipulation and Order shall constitute an admission by the United States or its agencies, including Defendants, that Plaintiffs “substantially prevailed” in this case under 5 U.S.C. § 552(a)(4)(E).

4. The parties understand and agree that this Stipulation and Order contains the entire agreement between them. No statements, representations, promises, agreements, or negotiations, oral or otherwise, between the parties or their counsel that are not included herein shall be of any force or effect.

5. This action is hereby dismissed with prejudice, provided that the Court shall retain jurisdiction over any issues that may arise relating to this Stipulation and Order.

6. This stipulation may be executed in counterparts. Facsimile or PDF signatures shall have the same force and effect as original signatures.

Date: New York, NY
April 5, 2019

CENTER FOR CONSTITUTIONAL
RIGHTS



Omar Farah
Ghita Schwarz
666 Broadway, 7th Floor
New York, NY 11201
(212) 614-6427
ofarah@ccrjustice.org
Attorneys for Plaintiffs

Date: New York, NY
April 4, 2019

GEOFFREY S. BERMAN
United States Attorney for the
Southern District of New York

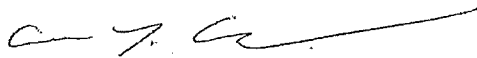
By:



JENNIFER JUDE
TOMOKO ONOZAWA
Assistant U.S. Attorneys
86 Chambers Street, 3rd Floor
New York, New York 10007
Tel.: (212) 637-2663 / 2721
jennifer.jude@usdoj.gov
tomoko.onozawa@usdoj.gov
Attorneys for Defendants

Date: Cleveland, OH
April 5, 2019

MILTON A. KRAMER LAW CLINIC
CENTER



Avidan Y. Cover
Case Western Reserve University
School of Law
11075 East Boulevard
Cleveland, OH 44106
(216) 368-2766
ayc30@case.edu
Attorneys for Plaintiffs

SO ORDERED:

HON. WILLIAM H. PAULEY III
UNITED STATES DISTRICT JUDGE