

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

MUSLIM ADVOCATES, *et al.*

Plaintiffs,

v.

UNITED STATES DEPARTMENT
OF STATE, *et al.*,

Defendants.

Civil Action No. 18-1546 (TSC)

JOINT STATUS REPORT

Defendants, the United States Department of State (“DOS”), United States Department of Homeland Security (“DHS”), United States Customs and Border Protection (“CBP”), United States Citizenship and Immigration Services (“USCIS”) and Plaintiffs, Muslim Advocates and Center for Constitutional Rights (“CCR”), each by its undersigned counsel, submit this joint status report in response to the Court’s Minute Order dated October 24, 2018.

1. On June 27, 2018, Muslim Advocates and CCR filed a complaint alleging that DOS, DHS, CBP, and USCIS had failed to respond to Freedom of Information Act (“FOIA”) requests seeking records related to the waiver provisions* set forth in President Donald Trump’s September 24, 2017 Proclamation 9645 (hereinafter “the Proclamation”) that concern guidance, interpretation, implementation, or enforcement of the Proclamation’s waiver provision by DHS, CBP, DOS, or any other component agency of the federal government.

* Plaintiff provides this summary of the Proclamation: The Proclamation allows for case-by-case waivers from the ban on entry to the United States; these waivers can be granted to foreign nationals seeking entry into the United States by a consular officer, the Commissioner, CBP, or the Commissioner’s designee in certain circumstances.

2. Defendants filed a motion for extension of time to answer on August 14, 2018. On August 17, 2018, this Court granted Defendants' request by minute order and reset the deadline for answer as September 5, 2018. Defendants filed their answer September 5, 2018.

3. On September 24, 2018, Plaintiffs spoke with Assistant United States Attorney Mark Nebeker and attorneys or representatives for CBP and DHS regarding the status of Defendants' searches and productions. CBP represented that it had found 3 documents responsive to Plaintiffs' request and would produce them in October. Plaintiffs were informed that DOS productions would begin in October and move forward on a monthly basis. Plaintiffs were also told updates on DHS and USCIS searches would follow shortly.

4. By minute order on October 24, 2018, the Court instructed the parties to "meet, confer, and propose a scheduling for proceeding in this matter" and address "the status of Plaintiffs' FOIA request, the anticipated number of documents responsive to Plaintiffs' FOIA request, the anticipated date(s) for release of the documents requested by Plaintiffs, whether a motion for an Open America stay is likely in this case, whether a Vaughn Index will be required in this case, whether and when either party anticipates filing a dispositive motion, and any other pertinent issues."

5. On October 24, 2018 DOS produced to Plaintiffs 51 pages of responsive documents, primarily consisting of some e-mails and agency guidance.

6. On November 16-19, 2018, Defendants provided Plaintiffs with the following updates regarding their responses to Plaintiffs' FOIA requests.

a. DOS: On October 24, 2018, DOS made available to Plaintiffs the first of its productions. DOS intends to continue providing rolling productions of non-exempt, responsive material to Plaintiffs at a monthly rate. DOS has not completed its search for responsive documents

and does not have a number of responsive documents. DOS does not anticipate utilizing an Open America stay and will discuss whether a Vaughn Index will be needed after Plaintiffs have reviewed the completed production.

b. USCIS: USCIS's search for documents responsive to Plaintiffs' request is nearly complete and, thus far, has uncovered 345 potentially responsive pages. Those materials have not yet undergone a review to determine whether each is responsive to Plaintiffs' request. USCIS anticipates that the searches will be completed by the end of November. USCIS also anticipates that production should begin in December and that it will make rolling disclosures until processing is complete. Assuming that the number of responsive pages does not change drastically, USCIS anticipates that it can complete its production by mid-January 2019. USCIS does not anticipate the need for an Open America stay. The parties do not know whether a Vaughn Index will be required yet, since the documents have not been processed. The parties intend to consult again after the final production.

c. CBP: CBP has identified three responsive documents: a muster issued to all CBP Field Operations employees setting forth implementation guidance for Presidential Proclamation 9645 (including guidance on the waiver provision), a memo setting forth that implementation guidance, and a delegation order in which the CBP Commissioner delegated his authority to approve waivers on a case by case basis to certain CBP officials. CBP intends to release these documents to Plaintiffs within 30 days of this filing. CBP does not anticipate utilizing an Open America stay and will discuss whether a Vaughn Index will be needed after Plaintiffs have reviewed the production.

d. DHS: The status of Plaintiffs' FOIA request with DHS is that the search is complete, and after a preliminary review for responsiveness, DHS has identified as many as

3675 potentially responsive pages. DHS will make the final determination regarding the responsiveness of each document while processing the records for release. DHS anticipates that document production should begin by December 15, 2018, and anticipates making monthly rolling disclosures, processing 350 pages per month. DHS does not anticipate the need for a stay. The parties do not know whether a Vaughn Index will be required yet, since the documents have not all been processed. The parties intend to consult again after the final production.

7. Plaintiffs' Statement.

a. In consideration of the length of time this request has been pending, Plaintiffs expect and hope that all Defendants will move quickly to meaningfully respond and produce documents.

b. Plaintiffs have not yet received, per the Court's October 24, 2018 minute order, the "anticipated number of documents responsive to Plaintiffs' FOIA request," for DOS and USCIS. While Plaintiffs appreciate DOS's October production and promise of forthcoming rolling productions, Plaintiffs request information regarding the total number of anticipated documents from DOS.

c. In order to fulfill the Court's October 24, 2018 minute order, Plaintiffs ask that Defendants provide Plaintiffs with anticipated total numbers of responsive documents for DOS and USCIS by December 3, 2018.

d. In light of Defendants' ongoing searches for and releases of records responsive to Plaintiffs' FOIA request, the parties respectfully request that the Court defer the entry of a briefing schedule at this time and instead order the parties to submit another joint status report updating the Court on the status of Defendants' responses to Plaintiffs' FOIA requests within 31 days: on or before December 20, 2018.

Respectfully submitted,

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Dated: November 19, 2018

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