

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 1:17-cv-21382-DPG

AMERICAN CIVIL LIBERTIES UNION OF
FLORIDA,

Plaintiff,

v.

U.S. DEPARTMENT OF HOMELAND
SECURITY and U.S. CUSTOMS AND
BORDER PROTECTION,

Defendants.

JOINT STATUS REPORT

Pursuant to the Court's Endorsed Order dated December 15, 2017, ECF No. 37, Plaintiff American Civil Liberties Union of Florida ("Plaintiff"), and Defendants U.S. Department of Homeland Security ("DHS") and U.S. Customs and Border Protection ("CBP") (collectively, "Defendants"), submit the following Joint Status Report.

1. This matter involves Plaintiff's requests under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, submitted to CBP, a component of DHS, on February 2, 2017. *See* ECF No. 1, Exs. A-B. Plaintiff seeks from CBP records related to the local implementation and enforcement of Executive Order No. 13,769, titled "Protecting the Nation from Foreign Terrorist Entry into the United States," at what Plaintiff describes as sites within the purview of CBP's Miami Field Office and CBP's Tampa Field Office. The FOIA requests are attached to Plaintiff's Complaint as Exhibits A and B, and speak for themselves.

2. Plaintiff filed its Complaint on April 12, 2017, ECF No. 1, and Defendants filed their Answer on September 6, 2017, ECF No. 29. The parties filed a Joint Scheduling Report on November 16, 2017, ECF No. 31, and a Joint Status Report on December 15, 2017, ECF No. 36.

3. Plaintiff is one of 18 ACLU affiliates that submitted FOIA requests seeking similar categories of records from CBP Field Offices around the country. Fifteen of those requests are now in litigation in 13 cases filed in 13 district courts throughout the country. *See* Defs.' Mem. in Support of Mot. for Transfer, Ex. 2 (ECF No. 11-2). According to Defendants, as of January 3, 2018, CBP has processed over 20,000 pages of potentially responsive records and made nine releases of responsive, non-exempt records, totaling over 7,900 pages, to the ACLU affiliates. *See* Declaration of Patrick Howard, *ACLU of Arizona v. DHS*, No. 2-17-cv-01083 (D. Ariz. Jan. 3, 2018) (ECF No. 42-1) ¶ 37. These releases included 329 pages of non-exempt records specifically responsive to Plaintiff's requests, including 53 pages released on January 2, 2018.

4. As of December 12, 2017, CBP had estimated that it could process, on average, approximately 6,500 pages of potentially responsive records per month across all of the 18 ACLU affiliate field office requests, of which Plaintiff's are two. *See* Declaration of Patrick Howard, *ACLU of Virginia v. DHS*, No. 1-17-cv-00441 (E.D. Va. Dec. 12, 2017) (ECF No. 49-1) ¶ 37. The agency expected that, each month, the processed pages would likely include records from each field office, so some fraction (which would vary from month to month) would contain records collected from custodians in the Miami and Tampa Field Offices. *Id.* This estimated processing rate for the ACLU affiliate cases was nearly double the rate that Defendants initially presented in the parties' November 16, 2017 Joint Scheduling Report (ECF No. 31) (estimating a processing rate of 3,575 pages per month).

5. On December 13, 2017, two of the 12 other district courts in which other ACLU affiliates filed suit entered orders imposing case-specific processing requirements on Defendants. *See Order, ACLU of S. Cal. v. DHS*, No. 2:17-cv-2778 (C.D. Cal. Dec. 13, 2017) (ECF No. 61) (ordering processing of all remaining potentially responsive documents, which exceed 7,800 pages, by February 28, 2018); *Order, ACLU of Georgia v. DHS*, No. 1:17-cv-1309 (N.D. Ga. Dec. 13, 2017) (ECF No. 39) (ordering processing of 1,000 pages per month, with production of all responsive documents by June 17, 2018). These orders are in addition to those previously entered by five other district courts in which other ACLU affiliates filed suit. *See Order, ACLU of Washington v. DHS*, No. C17-00562-MJP (W.D. Wash. Oct. 20, 2017) (ECF No. 36) (ordering processing of 1,000 pages in each of the following two months, and remaining approximately 4,100 pages by January 16, 2018); *Order, ACLU of Michigan v. DHS*, No. 17-cv-11149 (E.D. Mich. Oct. 26, 2017) (ECF No. 42) (ordering processing of 820 pages per month and productions on rolling basis until complete); *Order, ACLU of San Diego v. DHS*, No. 3:17-cv-00733 (S.D. Cal. Nov. 6, 2017) (ECF No. 53) (ordering processing of 1,000 pages per month until complete); *Order, ACLU of Oregon v. DHS*, 3:17-cv-00575 (D. Or. Nov. 13, 2017) (ECF No. 31) (ordering production of all responsive documents, which exceed 5,200 pages, by May 31, 2018, with a “significant amount” of these documents processed by March 1, 2018); *Order, ACLU of Illinois v. DHS*, 1:17-cv-02768 (N.D. Ill. Nov. 21, 2017) (ECF No. 73) (ordering processing of 950 pages per month until complete). Collectively, these seven court orders require the agency to process over 9,000 pages of potentially responsive records in January 2018, and over 8,000 pages of potentially responsive records in February 2018, thereby imposing processing obligations on the agency that exceed its previous estimate that it could process 6,500 pages per month across all of the 18 ACLU affiliate field office requests.

6. Given this context, CBP currently estimates that it can commit to processing 300 pages of potentially responsive records for Plaintiff's requests by February 28, 2018. After February 28, 2018, the agency anticipates a significant increase in its processing capabilities because, by March 2018, it will have satisfied the court orders in the Western District of Washington and the Central District of California cases. Assuming no prohibitive burden emerges before March 2018, CBP should then be able to increase its processing rate in the instant case in a manner that will be specified in a subsequent joint status report.

7. Based on the foregoing, the parties propose the following: (1) CBP will process 300 pages of records identified as potentially responsive to Plaintiff's requests, and produce to Plaintiff those records deemed responsive and non-exempt, by February 28, 2018; (2) the parties will submit a joint status report by March 7, 2018, to update the Court on the status of Defendants' progress towards completion of responsive, non-exempt records and any discussions between the parties regarding a potential narrowing of the issues in dispute. A proposed order is attached.

Dated: January 8, 2018

Respectfully submitted,

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