

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

AMERICAN CIVIL LIBERTIES UNION
OF NORTHERN CALIFORNIA;
MIJENTE SUPPORT COMMITTEE; JUST
FUTURES LAW; and IMMIGRANT
DEFENSE PROJECT,

Plaintiffs,

v.

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

Defendants.

Case No. 4:21-cv-02632-DMR

**JOINT CASE MANAGEMENT
STATEMENT**

**Case Management Conference
Date: July 21, 2021**

Time: 1:30 P.M.

Hon. Donna M. Ryu

1 The parties jointly submit this Case Management Statement and Proposed Order pursuant
2 to Civil Local Rule 16-9 and the Standing Order for All Judges of the Northern District of
3 California- Contents of Joint Case Management Statement.

4 1. Jurisdiction & Service

5 Plaintiffs brought this action under the Freedom of Information Act (FOIA), 5 U.S.C.
6 §552 *et seq.* All parties have been served. There are no issues concerning personal jurisdiction,
7 venue, or service.

8 2. Facts

9 Plaintiffs' Statement: On October 19, 2020 the American Civil Liberties Union of
10 Northern California, Mijente Support Committee, Just Futures Law, and Immigrant Defense
11 Project (together, "Plaintiffs") submitted a Freedom of Information ("FOIA") request (the
12 "Request") to the U.S. Immigration and Customs Enforcement ("ICE"), the U.S. Customs and
13 Border Protection ("CBP"), and the U.S. Department of Homeland Security ("DHS") (together,
14 "Defendants") seeking the release of records related to the use of facial recognition surveillance
15 technology to identify, locate, and track individuals. As of the date of the filing of the complaint
16 on April 13, 2021, Defendants had not released records responsive to the Request. To date,
17 Plaintiffs have not received any records. Defendants filed their Answer on May 19, 2021.

18 Defendants' Statement: Defendants are currently working to respond to the Request,
19 which contains more than nineteen subparts. *See* ECF No. 1 at 20-23. On October 20, 2020,
20 CBP acknowledged receipt of the Request, assigned it a tracking number, and invoked a 10-day
21 extension. ECF No. 16 ¶ 36. On October 29, 2020, DHS responded to the Request, assigned it a
22 tracking number and, due to its subject matter, transferred the Request to the FOIA officers for
23 ICE and CBP for processing and a direct response to Plaintiffs. *See id.* ¶ 44. On December 1,
24 2020, ICE acknowledged receipt of the request, assigned a tracking number, and invoked a 10-
25 day extension. *Id.* ¶ 40. On January 13, 2021, Plaintiffs administratively appealed DHS's
26 response, and on January 22, 2021, DHS acknowledged receipt of Plaintiffs' appeal and assigned
27 it an appeal number. *Id.* ¶¶ 45-46. As of the date of the filing of the complaint on April 13,
28 2021, DHS had not yet responded to Plaintiffs' appeal. *Id.* ¶ 47.

1 3. Legal Issues

2 Whether Defendants have violated FOIA by withholding and failing to disclosure agency
3 records and whether Plaintiffs are entitled to injunctive relief. To the extent that Defendants
4 withhold responsive records in part or in full, Plaintiffs may seek a determination of whether
5 such withholdings are permissible under FOIA.

6 4. Motions

7 There are no prior or pending motions. The parties anticipate that, if the matter is not
8 resolved through negotiations between the parties, any remaining issues will be submitted to the
9 Court via cross-motions for summary judgment.

10 5. Amendment of Pleadings

11 At this time, the parties do not anticipate amending their pleadings.

12 6. Evidence Preservation

13 The parties certify that they have reviewed the Guidelines Relating to the Discovery of
14 Electronically Stored Information (“ESI Guidelines”). The parties acknowledge their duty to
15 preserve relevant materials in accordance with applicable rules and case law.

16 7. Disclosures

17 At this time the parties do not anticipate the need for discovery in this FOIA action and
18 respectfully request that the Court excuse the parties from the initial disclosure and conference
19 requirements of Federal Rule of Civil Procedure 26.

20 8. Discovery

21 To date, no discovery has been taken by any party. While the parties do not anticipate the
22 need for discovery in this FOIA action at this time, Plaintiffs note that discovery may be
23 appropriate in certain circumstances and reserve the right to seek discovery. *See, e.g., Carney v.*
24 *DOJ*, 19 F.3d 807, 812-13 (2d Cir. 1994) (discovery appropriate where a party has provided
25 “some tangible evidence that an exemption claimed by the agency should not apply or summary
26 judgment is otherwise inappropriate”). Defendant notes that discovery is generally not
27 appropriate in FOIA actions. *See Lane v. Dep’t of Interior*, 523 F.3d 1128, 1134 (9th Cir. 2008)
28 (discovery is limited in FOIA cases “because the underlying case revolves around the propriety

1 of revealing certain documents”).

2 9. Class Actions

3 This is not a class action.

4 10. Related Cases

5 Counsel for the parties are unaware of any related cases before another judge of this
6 Court.

7 11. Relief

8 Plaintiffs’ Statement: Plaintiffs seek declaratory and injunctive relief with respect to the
9 search, release and disclosure of requested agency records, as well as attorneys’ fees and costs.

10 Defendants’ Statement: Defendants deny that Plaintiffs are entitled to any relief.

11 12. Settlement and ADR

12 The parties are currently working to resolve their disputes and do not believe that ADR is
13 necessary or appropriate at this time. If the parties are unable to resolve all of the issues raised by
14 Plaintiffs’ complaint, the parties may seek referral to a United States Magistrate Judge for a
15 settlement conference at an appropriate time.

16 13. Consent to Magistrate Judge For All Purposes

17 Plaintiffs and Defendants have consented to assignment of this case to a magistrate judge
18 for all purposes.

19 14. Other References

20 The parties agree that this case is not suitable for reference to binding arbitration or a
21 special master, or reference to the Judicial Panel on Multidistrict Litigation.

22 15. Narrowing of Issues

23 The parties have conferred, and intend to continue conferring, in an effort to reach
24 agreement regarding the scope of the Request and Defendants’ processing and production of
25 responsive documents.

26 16. Expedited Trial Procedure

27 The parties anticipate that this case, as a FOIA matter, can be resolved on summary
28 judgment. The expedited trial procedure is therefore inapplicable.

1 17. Scheduling

2 Plaintiffs' Statement: From Plaintiffs' perspective, the paramount scheduling issue is the
3 setting of a date by which Defendants will produce documents under FOIA. Plaintiffs understand
4 that each Defendant will produce responsive records in separate monthly interim releases, on a
5 rolling basis going forward. If Defendants have not committed to dates by which each agency
6 will produce its first interim release to Plaintiffs by the time of the July 21, 2021 Case
7 Management Conference, Plaintiffs request that the Court set such dates. Until a production
8 schedule has been established, Plaintiffs believe that is premature to schedule other dates in the
9 case.

10 Defendants' Statement: Defendants share Plaintiffs' interest in setting a production
11 schedule for responsive, non-exempt records, and have been working to determine the scope of
12 potential records. ICE is in the process of searching the records of the Office of Policy
13 ("Policy"), Homeland Security Investigations ("HSI"), Enforcement and Removal Operations
14 ("ERO"), Office of the Principal Legal Advisor ("OPLA"), Information Governance and Privacy
15 ("IGP"), and Office of Acquisitions ("OAQ"). On July 13, 2021, ICE identified the following
16 page counts of potentially responsive records: 46 pages from Policy, 909 pages from HSI, 186
17 pages from ERO, and 48 pages from OAQ. ICE has identified approximately 2947 pages from
18 OPLA, as well as additional records from OPLA and IGP that appear to contain corrupt files that
19 are preventing the agency from completing the upload of those records. The agency is currently
20 working on resolving these technical issues in order to determine a final page count of
21 potentially responsive records.

22 CBP is in the process of searching the records of the Office of Field Operations ("OFO")
23 Taskings, OFO Program Analysis, and Evaluation ("PPAE"), Office of Intelligence ("OI"),
24 Office of Information Technology ("OIT"), and United States Border Patrol ("USBP"). CBP has
25 identified approximately 49 pages of potentially responsive records from USBP, which may
26 change as any duplicates are removed, and has also determined that OFO Taskings and OI do not
27 have responsive records. CBP is currently working on determining a final page count of
28 potentially responsive records, including any records held by OFO PPAE and OIT and any

1 additional records held by USBP.

2 DHS previously transferred the Request to ICE and CBP due to its subject matter, as
3 noted in Paragraph 2, above. However, after the parties met and conferred on June 8, 2021, DHS
4 investigated whether any of the following eleven offices may have responsive records: (1) the
5 Office of Partnership and Engagement (“OPE”); (2) the Office of Operations Coordination and
6 Planning (“OPS”); (3) the Office of the Executive Secretary (“ESEC”); (4) the Office of
7 Biometric Identity Management (“OBIM”); (5) the Federal Protective Service (“FPS”); (6) the
8 Science and Technology Directorate (“S&T”); (7) the Office of Intelligence and Analysis
9 (“I&A”); (8) the Office of Strategy, Policy and Plans (“PLCY”); (9) the Federal Law
10 Enforcement Training Centers (“FLETC”); (10) the DHS Privacy Office (“PRIV”); and (11) the
11 Office for Civil Rights and Civil Liberties (“CRCL”). DHS has determined that OPE, OPS,
12 ESEC, FPS, PLCY, and FLETC do not have responsive records, and that CRCL has 499 pages
13 of potentially responsive records, which may change as any duplicates are removed. DHS is in
14 the process of making its determination as to whether PRIV, OBIM, S&T and I&A have
15 potentially responsive records and, if so, the page count.

16 While Defendants understand Plaintiffs’ interest in setting a production schedule in this
17 case, given the breadth of the Request and the number of agencies, components and offices
18 involved, Defendants respectfully request that the Court set a further CMC in six (6) weeks to
19 give Defendants time to complete their determination of the scope of potentially responsive
20 records and meet and confer with Plaintiffs regarding the Request and a reasonable production
21 schedule for responsive, non-exempt records. In the interim, Defendants will begin producing
22 responsive, non-exempt records to Plaintiffs on a rolling basis in monthly interim releases,
23 including responsive, non-exempt records within the pages ICE, DHS, and CBP have identified
24 through the present date, above.

25 18. Trial

26 The parties anticipate that this entire case will be resolved on summary judgment, if the
27 parties do not reach a negotiated resolution, and do not anticipate the need for trial in this case.

28 19. Disclosure of Non-party Interested Entities or Persons

1 Plaintiff has filed the Certification of Interested Entities or Persons (Dkt. No. 3).
2 Defendants are government entities that are exempt from filing a certification of Interested
3 Entities or Persons pursuant to Civil L.R. 3-15.

4 20. Professional Conduct

5 The attorneys of record for the parties have reviewed the Guidelines for Professional
6 Conduct for the Northern District of California.

7 21. Other

8 The parties are not presently aware of other matters that should be brought to the
9 attention of the Court.

10 Respectfully submitted,

11 DATED: July 14, 2021

12 /s/ Vasudha Talla
13 VASUDHA TALLA
14 American Civil Liberties Union Foundation of
15 Northern California
16 39 Drumm Street
17 San Francisco, CA 94111
18 Telephone: 415-621-2493
19 vtalla@aclunc.org

20 *Attorney for Plaintiffs*

21 STEPHANIE M. HINDS
22 Acting United States Attorney

23 /s/ Savith Iyengar
24 SAVITH IYENGAR
25 Assistant United States Attorney

26 *Attorneys for Defendants*