

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CENTER FOR IMMIGRATION
STUDIES,

Plaintiff,

v.

U.S. CUSTOMS AND BORDER
PROTECTION,

Defendant.

Civil Action No. 23-1115 (ACR)

JOINT STATUS REPORT

Pursuant to the Court’s January 24, 2024, Minute Order, Plaintiff, Center for Immigration Studies, and Defendant, U.S. Customs and Border Protection (“CBP”) (collectively, “the Parties”), by and through undersigned counsel, respectfully submit the following joint status report in this Freedom of Information Act (“FOIA”) case.

Defendant’s Report:

Plaintiff filed the complaint underlying this case on April 21, 2023, which concerns its March 8, 2023, FOIA request. In Plaintiff’s FOIA request, it requested expedited administrative processing, and Defendant declined to expedite the request. Defendant made its first interim production on August 17, 2023. As previously reported, after receiving several interim productions, Plaintiff clarified its request on October 2, 2023, *see* ECF No. 15, following multiple emails and telephonic meetings to determine what information Plaintiff sought as part of its FOIA request. Following additional interim productions made from October 2023 through January 2024,

Defendant made its final production in this matter, its seventh interim production, on February 12, 2024.¹

On February 12, 2024, and as confirmed on February 13, 2024, Plaintiff asked Defendant to produce a draft *Vaughn* index of certain entries made in the second and seventh interim productions, including the redacted “Port Name (Code)” and “Last Foreign Airport Name” columns as exemplified on the first page of the seventh interim production (the “CBP One Air ATA” spreadsheet) and the redacted “Port of Entry (‘POE’)” exemplified in the second column of the four spreadsheets produced in the second interim production. On February 15, 2024, Defendant provided a draft *Vaughn* index for the requested redactions, noting that the redactions were made pursuant to FOIA Exemption 7(E).

On Saturday, February 17, 2024, Plaintiff requested additional *Vaughn* index entries for the “Port Name (Code)” beginning on page 171 (“CBP One SWB” spreadsheet) and on page 301 (“Family Reunification Parole” spreadsheet) of the seventh interim production. Plaintiff also identified various issues it had with the February 15, 2024, draft *Vaughn* index. To address those concerns, Defendant provided an edited draft *Vaughn* index on February 20, 2024, which noted that the information was redacted pursuant to FOIA Exemption 7(E) to protect the identifying information for air ports of entry, which if disclosed, would reveal information about the relative number of individuals arriving, and thus resources expended, at particular air ports of entry which would, either standing alone or combined with other information, reveal operational vulnerabilities that could be exploited. Defendant also redacted identifying information for the last foreign airport name pursuant to FOIA Exemption 7(E) to protect the information, which, if disclosed, would

¹ Defendant has processed approximately 14,000 pages of information on a monthly basis in outstanding FOIA litigation from August 2023 through February 2024, the time during which it has also processed Plaintiff’s FOIA request and made interim productions in this case.

reveal information about the relative number of individuals arriving from particular foreign airports, and thus the resources expended toward travelers arriving from particular airports which could, either standing alone or combined with other information, enable bad actors to extrapolate relevant port of arrival and resources utilized at those ports of entry and the resources utilized at those ports of entry.

Consistent with the Court's January 24, 2024, Minute Order, on February 20, 2024, the Parties met in person to confer regarding the outstanding issues in the litigation and attempted, in good faith negotiations, to resolve this matter.

On February 21, 2024, Defendant began to communicate with its internal stakeholders to determine if any of the information Plaintiff has requested can be unredacted to settle the case.

On February 22, 2024, Defendant also clarified with Plaintiff that the "POE" data in the CBP One Air ATA spreadsheet does not differ from the data redacted in the "Family Reunification Parole" spreadsheet and that the "Last Foreign Airport Name" represented the last airport travelled from before arriving in the United States.

On February 22, 2024, Defendant communicated to Plaintiff that CBP is unwilling to produce the unredacted information Plaintiff has requested because of the sensitivity of the information as articulated in its draft *Vaughn* index.

Plaintiff's Report:

Plaintiff received the seventh interim production on February 12, 2024, and Defendant later confirmed it was their final production of responsive records. Plaintiff quickly reviewed the production and requested a draft *Vaughn* Index on February 12, 2024 for three categories of redactions: one category (a redacted column of data titled "POE") found in four spreadsheets produced in the second interim production, and two categories (redacted columns of data titled

“Port Name (Code)” & “Last Foreign Airport Name”) found throughout most of the seventh interim production.

Defendant produced, and Plaintiff thoroughly reviewed the draft *Vaughn* Index prior to the parties’ in-person meeting held on February 20, 2024. At the meeting, the parties discussed the redactions and shared information in attempts to avoid the need to set a briefing schedule. Over the next couple days, the parties continued to engage in good faith settlement discussions. Late on February 22, 2024, Defendant emailed Plaintiff, through counsel, stating “for the reasons articulated in the *Vaughn* index and the sensitivity of the information which will be explained in conjunction with briefing through a supporting declaration, it is unwilling to release the [redacted] information that [Plaintiff] sought.”

Given that the parties were unable to resolve the disputed redactions despite exhausting settlement negotiations, to avoid any further delays in setting a briefing schedule for the parties’ respective motions for summary judgment – pursuant to the Court’s Standing Order – Plaintiff, on February 23, 2024, notified the Court via ECF of its request to schedule a pre-motion conference. Plaintiff hopes Defendant will timely file its response so the Court can schedule the pre-motion conference as soon as practicable.

Dated: February 26, 2024

Respectfully submitted,

/s/ Julie B. Axelrod

Julie B. Axelrod, D.C. Bar No. 1001557
Colin M. Farnsworth, D.C. Bar No. OR0022
Center for Immigration Studies
1629 K Street, NW, Suite 600
Washington DC, 20006
Telephone: 202-466-8185
FAX (202) 466-8076
Email: jba@cis.org

Counsel for Plaintiff

MATTHEW M. GRAVES, D.C. Bar #481052
United States Attorney

BRIAN P. HUDAK
Chief, Civil Division

By: /s/ Dedra S. Curteman
DEDRA S. CURTEMAN, D.C. Bar #90021492
Assistant United States Attorney
601 D Street, N.W.
Washington, D.C. 20530
Telephone: (202) 252-2550
dedra.curteman@usdoj.gov

Counsel for the United States of America