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17 UNITED STATES DEPARTMENT OF HOMELAND SECURITY;

18 UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT,

19 **UNITED STATES DISTRICT COURT**

20 **NORTHERN DISTRICT OF CALIFORNIA**

21 IMMIGRANT LEGAL RESOURCE)
22 CENTER,)

23 Plaintiff,)

24 vs.)

25 UNITED STATES DEPARTMENT OF)
26 HOMELAND SECURITY; UNITED)
STATES IMMIGRATION AND CUSTOMS)
ENFORCEMENT,)

27 Defendants.)

Case Number: 17-cv-06029-DMR

THIRD JOINT CASE MANAGEMENT
STATEMENT & PROPOSED ORDER

CMC Date: August 15, 2018

Time: 1:30 p.m.

1 The parties to the above-entitled action jointly submit this JOINT CASE
2 MANAGEMENT STATEMENT & PROPOSED ORDER pursuant to the Standing Order for All
3 Judges of the Northern District of California dated July 1, 2011, and Civil Local Rule 16-9.

4 1. Jurisdiction & Service

5 This Court has subject matter jurisdiction over this Freedom of Information Act (FOIA)
6 action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B), (6)(C)(i),
7 and (6)(E)(iii). This Court also has subject matter jurisdiction over this action pursuant to 28
8 U.S.C. § 1331. There are no issues regarding personal jurisdiction or venue. Both Defendants
9 have been served.

10 2. Facts

11 The following facts are not disputed.

12 On June 22, 2017, pursuant to FOIA, Immigrant Legal Resource Center (ILRC)
13 requested that Immigration and Customs Enforcement (ICE), an agency within the Department
14 of Homeland Security (DHS), produce records pertaining to involvement of city and county law
15 enforcement in detention and deportation of immigrants and other ICE enforcement activities.

16 ICE responded by e-mail on June 28, 2017, acknowledging receipt of the request and
17 invoking the ten-day delay period for response provided in 5 U.S.C. § 552(a)(6)(B), giving the
18 agency a total of thirty days to respond to the request with a determination of how it would
19 comply.

20 On September 15, 2017, having received no further response from ICE within the
21 required statutory time period provided in 5 U.S.C. § 552(a)(6)(A)(i), ILRC submitted an
22 administrative appeal of the constructive denial of the request.

23 On October 11, 2017, ICE remanded the appeal without producing or ordering the
24 production of documents, explaining that “[i]n many instances, an agency cannot meet . . . time
25 limits due to a high volume of requests, resource limitations and other reasons.”

26 On October 20, 2017, Plaintiff ILRC filed a complaint under FOIA, alleging that
27 Defendants DHS and ICE failed to comply with their fundamental obligations under FOIA by
28 neither issuing a determination within 30 days of the request nor producing responsive records.

1 On November 24, 2017, Defendants filed an answer admitting “that ICE did not provide
2 a response to the FOIA request within thirty days of the initial June 22, 2017 request and did not
3 release any records to Plaintiff” and asserting several affirmative defenses, including that the
4 Court lacks jurisdiction “to the extent Plaintiff failed to satisfy prerequisites to suit” and
5 “because no records have been improperly withheld.”

6 On December 15, 2017, Defendants produced 232 pages of documents and 10
7 spreadsheets to Plaintiff, with portions withheld pursuant to FOIA exemptions (b)(5), (b)(6),
8 (b)(7)(C), and (b)(7)(E).

9 On January 8, 2018, Defendants represented that they had completed their production and
10 provided Plaintiff with a summary of the search conducted.

11 On March 1 and April 5, 2018, the parties met and conferred regarding the scope of
12 searches conducted. Plaintiff requested that additional searches be performed with regard to
13 certain requests. Among these was a request that Defendants search local field offices in order to
14 fully comply with sections (B)(iv), (B)(v), (C)(ii), (C)(iii), and (D)(ii) of Plaintiff’s original
15 request. Plaintiffs also asked for additional information regarding certain redacted portions of
16 Defendants December 17, 2017 production. Defendants agreed to provide an “informal” *Vaughn*
17 index describing the bases for the redactions in question.

18 On May 14, 2018, Plaintiff sent Defendants an email regarding its request that the agency
19 conduct additional searches or provide additional information about sections (B)(iii) (B)(iv),
20 (B)(v), (C)(ii), (C)(iii), and (D)(ii) of its original FOIA request in order to complete its response
21 to those requests. Plaintiff also renewed its request for additional information regarding the
22 bases for certain redactions. On May 18, 2018, Defendants produced an “informal” *Vaughn*
23 index in response to Plaintiff’s request for information about redactions.

24 The parties met and conferred again on May 18 and May 31, 2018. On May 31,
25 Defendants agreed to provide additional documents in response to Plaintiff’s requests.
26 Defendants agreed to conduct a search of local field offices for documents responsive to sections
27 (B)(iv), (B)(v), (C)(iii), and (D)(ii) of Plaintiff’s request. During this call, the parties agreed to
28 allow the agency to search field offices and produce documents on a rolling basis based on an

1 order of priority to be determined by Plaintiffs. Defendants estimated that this production would
2 start in approximately one month. In addition, Defendants also agreed to provide information
3 responsive to section (C)(ii) of Plaintiff's request.

4 On or around June 20, 2018, Defendants produced a document responsive to section
5 (C)(ii) of Plaintiff's request, and also provided Plaintiff with a copy of its December 2017
6 production that removed certain redactions from produced documents.

7 On July 13, 2018, Plaintiff wrote to Defendants to inquire about the status of the
8 production of documents resulting from the search of local field offices. Defendants responded
9 that the agency had begun to conduct a simultaneous search of 27 field offices rather than the
10 rolling search that the parties had discussed on May 31. During a July 24, 2018 meet and confer
11 call, Defendants estimated that documents resulting from this search would be ready for
12 production in August. In addition, Plaintiff requested that Defendants renew their search for
13 documents in response to section (B)(iii) of Plaintiff's request. Plaintiff also asked Defendants
14 to determine whether a document produced in its December 2017 production had technical
15 problems.

16 3. Legal Issues

17 **Plaintiff's Position:**

18 Plaintiff maintains that Defendants have not yet conducted a reasonable and adequate
19 search due to their use of limited search terms and failure to include field office records in their
20 searches. *See Rosenfeld v. U.S. Dep't of Justice*, No. C 07-3240 MHP, 2010 WL 3448517, at *6
21 (N.D. Cal. Sept. 1, 2010) (denying summary judgment on search adequacy issue because, despite
22 the fact that FBI searched "those electronic databases that were most likely to contain responsive
23 documents" as well as documents maintained by some field offices, it had not sufficiently
24 justified its decision not to search other databases); *Marks v. Dep't of Justice*, 578 F.2d 261, 263
25 (9th Cir. 1978) (upholding summary judgment when FBI searched two systems "and its San
26 Francisco field records, and indicated its willingness to search the records of other specific field
27 offices upon further request"); *see also Krikorian v. Dep't of State*, 984 F.2d 461, 468 (D.C. Cir.
28 1993) (remanding on search adequacy issue where agency had not searched 11 regional offices).

1 Specifically, Plaintiff requested records and communications regarding new or proposed
2 detention facilities or contracts, pending 287(g) applications and communication with local
3 agencies about entering a 287(g) agreement, and communications with probation departments
4 about enforcement actions at probation appointments. Plaintiff notes that Defendants have
5 expressed that they are in the process of searching ICE field offices, however, as of the date of
6 this statement, Defendants have not produced any documents located as a result of these
7 searches. Plaintiff's requests cannot be answered without an adequate search of ICE field
8 offices.

9 Plaintiff has reviewed Defendants' "informal" *Vaughn* index and determined that
10 additional information is necessary with respect to certain redactions. Plaintiff expects to request
11 that Defendants prepare a *Vaughn* index with respect to certain content that has been redacted
12 from their production, as well as content that may be redacted in forthcoming productions of
13 documents located in field offices. *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973); *Weiner v.*
14 *FBI*, 943 F.2d 972 (9th Cir. 1991).

15 Defendants have expressed intent to cooperate with Plaintiffs' requests; however, as of
16 the date of this statement, Defendants have produced one additional document since their
17 December 13, 2017 production. Accordingly, Plaintiff requests the Court's assistance in
18 monitoring the pace of Defendants' production. Plaintiff requests that Defendants begin
19 producing documents identified in the search of field offices no later than August 31, 2018, and
20 that all remaining documents resulting from the search of field offices be produced to Plaintiff no
21 later than September 30, 2018.

22 **Defendants' Position:**

23 The government has made a good faith effort to locate and to produce the documents
24 Plaintiff seeks, in accordance with the FOIA. To that end, the government has done its best to
25 address each concern Plaintiff has raised. Through these efforts, the agency has conducted
26 widespread additional searches, produced additional documents, and stricken redactions.

27 As for the work that remains, there are two key issues. First, there are eight redactions
28 Plaintiff asks the government to review and to explain. The government will do so.

1 Second, the agency has conducted a massive, further search spanning 27 field offices. The
2 parties had reached what seemed to be a potential impasse in the case but then the agency agreed
3 to this further search. Before doing so, the government advised Plaintiff that it could process and
4 produce approximately 500 pages per month. The agency thought it may be able to begin
5 producing documents towards the end of July 2018. The search, though, was massive. At this
6 time the agency estimates that the production will begin at the end of this month.

7 4. Motions

8 No motions have been filed. Plaintiff anticipates filing a motion for summary judgment
9 should Defendant not produce documents that fully respond to Plaintiff's June 22, 2017 FOIA
10 request.

11 5. Amendment of Pleadings

12 At this point, there is no anticipated need to amend the pleadings, but Plaintiff requests
13 that a deadline not be set at this point when it is unknown whether some objection might be
14 raised that might require an amendment of pleadings.

15 6. Evidence Preservation

16 The parties understand their duty to preserve records, including paper and electronic
17 copies, and each party represents that it has taken reasonable steps to preserve documents in its
18 possession that it is able to determine at present as being potentially relevant to this action given
19 the current posture of this FOIA action.

20 7. Disclosures

21 The parties have not exchanged and do not anticipate exchanging initial disclosures.

22 8. Discovery

23 No formal discovery has yet been undertaken.

24 Plaintiff may at some point serve written discovery requests and/or notice the depositions
25 of Defendants' employees who undertook searches for responsive records or who determined to
26 redact or not to produce certain records.

27 9. Class Actions

28 This is not a class action.

1 10. Related Cases

2 The parties are not aware of any related cases.

3 11. Relief

4 In the complaint, Plaintiff asked that the Court:

- 5 • Order Defendants to process the requested records in their entirety, to disclose the
- 6 requested records in their entirety, and to make copies available to Plaintiff in their
- 7 entirety within thirty days;
- 8 • Order Defendants to prepare a *Vaughn* index for any documents they seek to continue
- 9 to withhold under a FOIA exemption;
- 10 • Award Plaintiff its costs and reasonable attorney's fees incurred in this action
- 11 pursuant to 5 U.S.C. § 552(a)(4)(E); and
- 12 • Order such other relief that the Court deems just and appropriate.

13 12. Settlement and ADR

14 The parties are meeting and conferring on Plaintiff's claims. The parties will seek to

15 focus any factual or legal issues that need to be decided by the Court.

16 Pursuant to an Order dated January 10, 2018, the parties were removed from the ADR

17 Multi-Option Program and excused from participating in the ADR phone conference and any

18 further formal ADR process.

19 13. Consent to Magistrate Judge for All Purposes

20 This matter has been referred to a Magistrate Judge.

21 14. Other References

22 This case is not suitable for reference to binding arbitration, a special master, or the

23 Judicial Panel on Multidistrict Litigation.

24 15. Narrowing of Issues

25 The parties will endeavor to narrow the factual and legal issues in dispute.

26 16. Expedited Trial Procedure

27 The parties do not believe this case is appropriate to be handled under the Expedited Trial

28 Procedure of General Order 64.

1 17. Scheduling

2 The parties propose that a further case management conference be set in approximately
3 60 days (e.g., October 17, 2018), at which time Plaintiff will request that the court set a briefing
4 schedule for dispositive motions if the parties are not otherwise able to resolve outstanding issues
5 by that time.

6 18. Trial

7 The disputed issues in this case will be determined by the Court. The parties anticipate
8 any disputed issues will be resolved as a matter of law without trial.

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

10 Plaintiff filed the “Certification of Interested Entities or Persons” required by Civil Local
11 Rule 3-15. The disclosure requirement in Civil Local Rule 3-16 does not apply to governmental
12 entities such as Defendants.

13 20. Professional Conduct

14 The undersigned attorneys of record for the parties have reviewed the Guidelines for
15 Professional Conduct for the Northern District of California.

16 21. Other

17 None.

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19 Dated: August 8, 2018

/s/ W. Hardy Callcott

Counsel for Plaintiff

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22 Dated: August 8, 2018

/s/ David Pereda

Counsel for Defendants

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CERTIFICATION

Pursuant to Local Rule 5-1(i)(3), the undersigned hereby attests that I have conferred with W. Hardy Callcott, counsel for Plaintiff, regarding this filing. Mr. Callcott has represented that he concurs in the filing of this document and that I am authorized to file it on his behalf.

DAVID PEREDA

Dated: August 8, 2018

/s/ David Pereda
David Pereda
Counsel for Defendants

1 CASE MANAGEMENT ORDER

2 The above JOINT CASE MANAGEMENT STATEMENT & PROPOSED ORDER is
3 approved as the Case Management Order for this case and all parties shall comply with its
4 provisions. In addition, the Court makes the further orders stated below:
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10 IT IS SO ORDERED.
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12 Dated:

13 _____
14 HONORABLE DONNA M. RYU
15 UNITED STATES MAGISTRATE JUDGE
16 NORTHERN DISTRICT OF CALIFORNIA
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