

JOSEPH H. HUNT
Assistant Attorney General
WILLIAM D. HYSLOP
United States Attorney
ALEXANDER K. HAAS
Branch Director
ERIC J. SOSKIN
Senior Trial Counsel
KERI L. BERMAN
KUNTAL V. CHOLERA
JOSHUA M. KOLSKY, DC Bar No. 993430
JASON C. LYNCH
JORDAN L. VON BOKERN
Trial Attorneys
United States Department of Justice
Civil Division, Federal Programs Branch

Attorneys for Defendants

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
AT SPOKANE

STATE OF WASHINGTON, *et al.*,

Plaintiffs.

V.

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY, *et al.*

Defendants

No. 4:19-cv-5210-RMP

**REPORT PURSUANT TO MAY 13,
2020 ORDER**

1 Defendants respectfully submit this report pursuant to the Court's May 13, 2020
 2 Order Denying in Part and Granting in Part Defendants' Motion to Stay Discovery Order
 3 re: Privilege Log ("Order"). ECF No. 219. The Court ordered Defendants to produce a
 4 privilege log pertaining to Defendants' administrative record on a rolling basis starting
 5 on June 12, 2020. *Id.* at 6. The Court further ordered Defendants to make reports to the
 6 Court and Plaintiffs every other Friday, on their progress toward completion of the
 7 privilege log. *Id.*

8 **Notifying Custodians of Obligation to Preserve Documents**

9 First, the Court ordered Defendants to report on their progress in "notifying
 10 potential custodians of their obligation to preserve potentially relevant documents, even
 11 if assertedly privileged[.]" Order at 6. As discussed in Defendants' June 12, 2020 report,
 12 Defendants have notified all potential custodians of their obligation to preserve
 13 potentially relevant documents, even if assertedly privileged.

14 **Segregating Privileged Documents for Review**

15 Second, the Court ordered Defendants to report on their progress in "segregating
 16 all assertedly privileged documents for review." Order at 6.

17 Defendants reported in their June 12, 2020 report that they had collected email
 18 records from 49 custodians. Since then, Defendants have collected email records from
 19 five additional custodians and collected additional email records from two of the 49
 20 custodians. Accordingly, email records for all custodians have now been collected. The
 21 emails for those custodians have been batched for review by the Department of Justice,
 22 except for approximately five custodians whose documents will soon be added to the

1 review batches.

2 Although email records are expected to constitute the vast majority of documents
 3 subject to the Court's Order, Defendants are also working to collect non-email electronic
 4 documents and paper documents, if any, that do not also exist in electronic form. At this
 5 time, due to the COVID-19 crisis and the telework status of most agency personnel,
 6 Defendants cannot determine whether there are any paper documents that will need to be
 7 collected, as those documents are physically located in agency offices and are therefore
 8 currently inaccessible.

9 **Logging Privileged Documents**

10 Third, the Court ordered Defendants to report on their progress in logging
 11 privileged documents pursuant to Fed. R. Civ. P. 26(b)(5)(A). Order at 6. As of June 26,
 12 2020, 41,882 documents have been batched for review in the DOJ document review
 13 platform. 2,595 of those documents have been reviewed and 40 are listed on the privilege
 14 log.¹ In addition, several documents have been identified that contain third party equities
 15 and which Defendants expect to include in future installments of the privilege log after
 16 consulting with the appropriate third parties.

17
 18 Dated: June 26, 2020

Respectfully submitted,

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 20 JOSEPH H. HUNT
 Assistant Attorney General

21 ¹ In percentage terms, roughly 6.2% of the batched documents have been reviewed. As
 22 noted above, additional documents will be added to the review platform.

1 WILLIAM D. HYSLOP
2 United States Attorney

3 ALEXANDER K. HAAS
4 Branch Director

5 /s/ Joshua M. Kolsky
6 ERIC J. SOSKIN
7 Senior Trial Counsel
8 KERI L. BERMAN
9 KUNTAL V. CHOLERA
10 JOSHUA M. KOLSKY, DC Bar No. 993430
11 JASON C. LYNCH
12 JORDAN L. VON BOKERN
13 Trial Attorneys
14 United States Department of Justice
15 Civil Division, Federal Programs Branch
16 1100 L Street NW
17 Washington, D.C. 20005
18 Tel: (202) 305-7664
19 Fax: (202) 616-8460
20 Joshua.kolsky@usdoj.gov

21 *Attorneys for Defendants*

CERTIFICATE OF SERVICE

I hereby certify that on June 26, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all users receiving ECF notices for this case.

/s/ Joshua Kolsky
JOSHUA KOLSKY
United States Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, NW
Washington, D.C. 20005

Attorney for Defendants