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**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.

12 On September 24, 2019, DHS contacted all 37 individuals who it determined may
 13 have documents or information requiring preservation or who were information
 14 technology or administrative personnel whose assistance may be necessary to ensure that
 15 existing document retention policies or practices do not jeopardize the preservation of
 16 records subject to the litigation hold. DHS notified those individuals that they must, *inter*
 17 *alia*, immediately preserve and retain potentially relevant information regardless of
 18 whether the information is privileged. On March 5, 2020, DHS notified one additional
 19 individual of his obligation to preserve and retain such materials. More recently, DHS
 20 has taken steps to preserve the data of a few additional employees who have left DHS or
 21 transferred to a DHS component.

22 Between September 13 and 16, 2019, USCIS contacted all 55 individuals who it

1 determined may have documents or information requiring preservation or who were
2 information technology or administrative personnel whose assistance may be necessary
3 to ensure that existing document retention policies or practices do not jeopardize the
4 preservation of records subject to the litigation hold. USCIS notified those individuals
5 that they must, *inter alia*, immediately preserve and retain potentially relevant materials
6 regardless of whether the records are privileged. On November 7, 2019, USCIS notified
7 three additional individuals of their obligation to preserve and retain such materials.

8 Accordingly, Defendants have notified all potential custodians of their obligation
9 to preserve potentially relevant documents, even if assertedly privileged.

10 **Segregating Privileged Documents for Review**

11 Second, the Court ordered Defendants to report on their progress in “segregating
12 all assertedly privileged documents for review.” Order at 6.

13 Shortly after the Court’s Order Granting Plaintiffs’ Motion to Compel, ECF No.
14 210, Defendants began working to determine which custodians may have documents that
15 fall within the scope of the Court’s Order, to determine appropriate search protocols
16 including search terms to locate such documents, to collect electronic documents from
17 those custodians, to establish a process for the review of those documents, and to begin
18 that review. Particularly given the number of custodians and the amount of data at issue,
19 it takes a significant amount of time for the agencies’ information technology personnel
20 to perform electronic searches and collect data. As of June 11, 2020, the defendant
21 agencies have collected email records from 49 custodians and are in the process of
22 collecting email records from five additional custodians. The agencies are also collecting

1 additional email records from two of the 49 custodians.

2 Once the agencies collect documents, those documents are then transmitted to the
 3 Department of Justice where they are processed, loaded to a document review platform,
 4 and assembled into batches for review by attorneys. Of the custodians whose email
 5 records have been collected, data for 37 of them have been batched for review, as of the
 6 morning of June 12, 2020.¹

7 Although email records are expected to constitute the vast majority of documents
 8 subject to the Court's Order, Defendants also intend to collect non-email electronic
 9 documents and paper documents, if any, that do not also exist in electronic form.
 10 Defendants will collect non-email electronic documents after all emails have been
 11 collected. At this time, due to the COVID-19 crisis and the telework status of most
 12 agency personnel, Defendants cannot determine whether there are any paper documents
 13 that will need to be collected, as those documents are physically located in agency offices
 14 and are therefore currently inaccessible.

15 **Logging Privileged Documents**

16 Third, the Court ordered Defendants to report on their progress in logging
 17 privileged documents pursuant to Fed. R. Civ. P. 26(b)(5)(A). Order at 6. As of the
 18 morning of June 12, 2020, 33,526 documents have been batched for review in the DOJ
 19 document review platform. 1,689 of those documents have been reviewed and 19 are
 20

21 ¹ These 37 custodians include two for whom Defendants are collecting additional email
 22 records, as stated above.

1 listed on the initial production of the privilege log.² In addition, several documents have
2 been identified that contain third party equities and which Defendants expect to include
3 in future installments of the privilege log after consulting with the appropriate third
4 parties.

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6 Dated: June 12, 2020

Respectfully submitted,

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² In percentage terms, roughly 5% of the batched documents have been reviewed. As
noted above, additional documents are being added to the review platform.

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Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on June 12, 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.

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