UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

COOK COUNTY, ILLINOIS, et al., Plaintiffs, v. CHAD F. WOLF, in his official capacity as Acting Secretary of U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY, et al., Defendants.	Case No. 19-cv-6334 Judge Gary Feinerman

JOINT STATUS REPORT

Pursuant to Paragraph 3 of this Court's Order dated June 23, 2020 (ECF No. 170), Plaintiff ICIRR and Defendants submit the following joint status report regarding the agreements reached with respect to Defendants' responses and objections to ICIRR's request for production of documents, as well as the parties' respective positions on the remaining disputes.

I. Agreed Items

A. Non-Electronic Documents

Due to limited staffing and the difficulty of accessing paper documents during the COVID-19 crisis, the parties have agreed that Defendants need review only electronic documents at this time. The parties can address whether and if Defendants need to conduct a review of hard copy documents once Defendants have completed productions from electronic document sources.

B. Privilege Log

The parties tentatively agreed to proceed with a privilege log that lists each document over which Defendants assert privilege as its own individual entry in the privilege log. The parties agreed to reassess this issue once the scope of the privilege assertions in this case is better known,

with the understanding that DHS reserves the right to assert that it may group privilege assertions if the same basis for privilege applies to multiple documents, and ICIRR reserves the right to disagree with that assertion.

C. Definition of "WHITE HOUSE"

Defendants have objected to ICIRR's definition of "WHITE HOUSE" as overbroad. ICIRR agreed to remove the President and Vice President from its definition. The Parties agreed that resolution of this issue turns in part on the custodian list. DHS agrees that, to the extent it asserts privilege over communications involving White House personnel, DHS will log those communications in the privilege log.

D. Protective Order

The parties are negotiating over an appropriate protective order. ICIRR sent Defendants a draft protective order for their review on July 8, 2020.

E. Publicly-Available Material

Defendants objected to ICIRR's request to produce materials to the extent they are publicly available. The parties have agreed that, to the extent publicly-available materials are part of the family of a responsive document, Defendants will produce such documents, and not break families and exclude such materials on that basis. Moreover, the parties have agreed that draft versions of materials that are only publicly-available in final form will not be excluded on this ground if they are otherwise responsive and not privileged.

F. Request Nos. 1-3 – Effect Language

Defendants objected to Requests Nos. 1-3 as vague and overbroad to the extent they request documents concerning the "purpose, effect, or potential impact of the PUBLIC CHARGE RULE on individuals by national origin, race, or ethnic group." Defendants agreed to produce non-privileged documents "concerning any disproportionate effect of the Rule on persons of a certain race, ethnic group, or nationality." During the meet-and-confer, ICIRR expressed concern that Defendants' formulation would give Defendants discretion to determine what constitutes a "disproportionate effect" and also exclude any raw data that the agency considered about the impact of the rule on particular groups. Accordingly, the parties agreed that Defendants will produce any documents that reference the PUBLIC CHARGE RULE's intended or potential effects on individuals by national origin, race, or ethnic group. Documents that generally reference the impact of the public charge rule on all aliens regardless of their national origin, race, or ethnic group will not be considered responsive.

G. Request No. 3 – Other Agencies

Defendants generally objected to ICIRR's requests for documents involving agencies that are not parties to this lawsuit and specifically objected to Request No. 3 to the extent it seeks documents involving other agencies, including the Department of State, the United States Department of Health and Human Services, the United States Department of Agriculture, the United States Department of Housing and Urban Development, and/or the Centers for Medicare and Medicaid Services. During the meet-and-confer, Defendants agreed that they will not exclude otherwise responsive documents involving agreed-upon custodians on the ground that they involve communications with other agencies.

H. Definition of "Public Charge Rule"

Defendants have objected to ICIRR's definition of "PUBLIC CHARGE RULE" as used in ICIRR's request to the extent it references any draft executive order, and thus Defendants did not agree to search for or produce documents related to that order. ICIRR maintains that a draft executive order dated January 23, 2017 titled "Protecting Taxpayer Resources by Ensuring Our Immigration laws Promote Accountability and Responsibility," which instructed DHS to "establish new standards and regulations for determining when aliens will become subject to the public charge grounds of inadmissibility and deportability,"[1] should be included in the definition of "PUBLIC CHARGE RULE" for the purpose of identifying responsive documents. The parties have conferred about this issue and Defendants will agree to produce non-privileged documents concerning any executive order to the extent it references the intended or potential effects of the public charge rule on individuals by national origin, race, or ethnic group.

I. Request No. 4

Defendants have objected to ICIRR's request for documents and communications related to the Federation for American Immigration Reform, Center for Immigration Studies, or Immigration Reform Law Institute. Defendants objected that the request is overbroad, disproportionate to the needs of the case, insufficiently related to ICIRR's equal protection claim, and would sweep in documents unrelated to the public charge rule. ICIRR responded that these outside think tanks have played an important role in advocating for and informing the Administration's immigration agenda. ICIRR notes that public reporting has described an "alliance" between Stephen Miller and these groups, and he has relied on statistics and reports published by them in public media appearances.[2] In addition, administration staff are former employees of these outside groups (including Jon Feere, formerly of the Center for Immigration Studies, and John Zadrozny and Elizabeth Ann Jacobs, formerly of the Federation for American Immigration Reform). ICIRR further responds that its proposed search terms list includes

[1] Plaintiff represents that the draft executive order is available here: http://apps.washingtonpost.com/g/documents/national/draft-executive-orders-on-immigration/2315/ .

mandatory search terms related to the Public Charge Rule (including "public charge") and that a document should not even be pulled into the review universe unless it hits on at least one of those terms, which should resolve Defendants' objection. The parties have conferred about this issue and Defendants will agree to produce non-privileged documents and communications related to the Federation for American Immigration Reform, Center for Immigration Studies, or Immigration Reform Law Institute, so long as they also relate to the Rule.

II. Items in Dispute

A. Time Range

ICIRR initially proposed a timeframe applicable to its requests for production of January 1, 2017 to the present. Defendants proposed narrowing the timeframe to January 20, 2017 through July 31, 2019 (the date the Rule was signed by the Acting Secretary of Homeland Security). During the meet-and-confer, Defendants stated that the timeframe used for documents collected in parallel litigation was January 2017 until approximately August 15, 2019, and Defendants agreed to confirm the precise dates. On the afternoon of July 10, 2020, Defendants informed ICIRR that they already collected data for the *Washington* case for the time period of January 1, 2017 through August 14, 2019 and agreed to use the same date range here.

ICIRR: ICIRR is willing to agree to a time period of January 1, 2017 through August 31, 2019. However, ICIRR contends that it is inappropriate to cut off document collection at August 14, 2019 because there likely will be documents and communications relevant to discriminatory animus at or around the time of the Final Rule's issuance. Indeed, this Court already has held that Defendant Cuccinelli's statement on August 13, 2019 about the Lazarus poem is evidence of animus. Given the public and media response to Cuccinelli's statement, there are likely relevant communications in the time period immediately following his statement that shed light on discriminatory animus. Although Defendants will need to collect an additional two weeks' worth of custodians' emails and log privileged communications during that time, an end date of August 31, 2019 is absolutely necessary in light of Cuccinelli's statement on August 13, 2019. Moreover, the Defendant agencies were still in the process of implementing the rule after it was formally issued, as evidenced by the fact that the Form I-944—the form agency officials use to actually conduct the public charge inquiry—was not even issued until October 15, 2019.

DHS: Defendants will agree to beginning the relevant time period on January 1, 2017, as Plaintiff proposes, even though that is before the current administration took office. However, Defendants do not agree to Plaintiff's proposed end date of August 31, 2019. Instead, Defendants propose an end date of August 14, 2019, the date the Rule was issued. Plaintiff's equal

protection claim relates to the decision to promulgate the Rule – that decision became final on July 31, 2019, when Acting Secretary Kevin McAleenan signed the Rule. Defendants' proposed end date, therefore, covers the time period when the decision was made and also extends until the Rule was promulgated on August 14, 2019.

In the draft Joint Status Report that Plaintiff sent to Defendants on the evening of July 9, 2010, Plaintiff proposed using "the date the Complaint was filed in this case, on September 23, 2019" as the end-date. By proposing the date Plaintiff's complaint was filed as the end-date, Plaintiff implicitly recognized that once litigation begins, there are likely to be many privileged communications with counsel that are not discoverable. But Plaintiff ignores that seven other complaints challenging the public charge rule were filed before Plaintiff's complaint – the first on August 13, 2019. *See City and Cty. of San Francisco v. USCIS*, No. 19-4717, ECF No. 1 (N.D. Cal. Aug. 13, 2019). After Defendants noted this point, Plaintiff revised their proposed end-date to August 31, 2019. But that does not resolve the problem. Using Plaintiff's proposed end-date still will likely draw-in significant quantities of attorney-client privileged communications about the public charge litigation, which would unnecessarily lengthen the review process.

Finally, when DHS and USCIS collected certain electronic documents in the *Washington v. DHS* case, they used August 14, 2019 as the end date. Expanding the relevant time period past August 14, 2019 would require the agencies to go back and re-do searches for certain custodians in order to gather additional documents. As Defendants explained in their Opposition to Plaintiff's Motion for Expedited Discovery, gathering electronic documents takes a significant amount of time. Accordingly, performing additional searches to obtain documents dated between August 15, 2019 and September 23, 2019 would significantly delay the completion of document productions in this case. It would be an unfortunate waste of public resources for the agencies to have to perform additional electronic searches only to gather 17 days of documents, all of which post-date the Rule and all of which post-date the start of public charge litigation.

B. DHS Components

Defendants objected to ICIRR's requests to the extent they seek documents involving "DHS's components," defined to include U.S. Citizenship and Immigration Services (USCIS), Customs and Border Protection (CBP), and Immigration and Customs Enforcement (ICE). The resolution of this issue turns somewhat on the custodian list.

ICIRR: DHS and its sub-agency USCIS are parties to this litigation. Moreover, Defendants admit in their answer that CBP and ICE are "components" of DHS. Dkt. 179 ¶ 16. Accordingly, ICIRR's requests for communications within, between, or among "DHS or DHS's components" are proper. This issue is intertwined with the custodian list because some of ICIRR's proposed custodians—for example, Mr. Feere and Mr. Vitiello, to which Defendants also object—are current or former employees of ICE.

DHS: Like the parties' dispute over the definition of WHITE HOUSE, Defendants believe this dispute will be resolved at the custodian-level. If, once a document universe is established based on a set of custodians and search terms, Defendants will not exclude an otherwise responsive, non-privileged document because it involves a DHS component. Defendants maintain, however, that requiring Defendants to collect documents from custodians affiliated with CBP and ICE—which are housed in additional systems—would be burdensome and disproportionate to the needs of this case.

C. Custodians

On July 8, 2020, after the meet-and-confer, Defendants provided responses to ICIRR's proposed custodian list. Defendants agreed to the following custodians: John Mitnick, John Zadrozny (USCIS only), Kathy Nuebel Kovarik, Robert Law, Lee Francis Cissna (USCIS only), Kenneth Cuccinelli (USCIS only), Chad Wolf, Gene Hamilton, and Kirstjen Nielsen.

Defendants objected to proposed custodians Stephen Miller, Ronald Vitiello, Jon Feere, Theodore Wold, David Wetmore, Zina Bash, and Mick Mulvaney on the ground that they are not current or former employees of any party.

Defendants objected to Claire Grady, Mark Koumans, Elizabeth Ann Jacobs, and Julie Kirchner on the grounds that they were not significantly involved in the rulemaking.

ICIRR: With respect to the first category of objections, ICIRR contends that it has demonstrated a clear connection between the individuals identified and the Final Rule and contends that its list of proposed custodians is proper. Each individual identified played an important role in the development of federal immigration policy, including the Public Charge Rule, irrespective of whether they were or are employees of a party. Extensive public reporting has indicated that Stephen Miller plays a key role in the development of the Administration's immigration policy and previously cited emails clearly demonstrate that he had authority over DHS and USCIS with respect to the Public Charge Rule. The same emails also demonstrate the involvement of

other White House officials, such as Chief of Staff Mulvaney.[3] These emails, as well as others, demonstrate that the White House's domestic policy team played a key role in developing and directing the Public Charge Rule. White House advisors such as Zina Bash (Special Assistant to the President for regulatory reform legal and immigration policy), Theodore Wold (Special Assistant to the President for domestic policy, part of a working group on immigration reform) and David Wetmore (Immigration Advisor to the White House Domestic Policy Council) were all important components of the White House team tasked with developing the Administration's immigration policy, of which the Public Charge Rule is a central part. Additional publicly-released emails show that this team of individuals within the White House, primarily Stephen Miller, routinely communicated about the Administration's immigration policy platform with individuals in other agencies, such as Jon Feere, with whom he routinely exchanged emails containing articles and editorials about various immigration topics. Finally, Ronald Vitiello, the former acting director of US Customs and Immigration Enforcement, was part of a team of DHS sub-agency officials (including Cissna) instrumental in developing the Administration's regulatory agenda on immigration but who were eventually replaced with individuals more closely allied with Mr. Miller's agenda. *See Kleen Prod. LLC v. Packaging Corp. of Am.*, No. 10 C 5711, 2012 WL 4498465, at *15 (N.D. Ill. Sept. 28, 2012) ("The selection of custodians must be designed to respond fully to document requests and to produce responsive, nonduplicative documents during the relevant period."); *Major Tours, Inc. v. Colorel*, No. 05-3091, 2009 WL 3446761, at *2 (D.N.J. Oct. 20, 2009) ("Pursuant to [Rule 26], defendants must produce electronically stored information that is relevant, not privileged, and reasonably accessible.").

With respect to the second category of objections, ICIRR is willing to remove Mark Koumans and Julie Kirchner from the custodian list. However, Claire Grady and Elizabeth Ann Jacobs both have a clear connection to the Rule. Grady worked for DHS for 28 years, and she began working as the under-secretary to Kirstjen Neilsen in 2017.[4] In March of 2018, Grady testified alongside then-acting-deputy commissioner of US Customs and Border Control Ronald Vitiello wherein Grady advocated for the Administration's proposals to "expand the criteria that render aliens

[3] *See, e.g.*, Emails between Stephen Miller, Senior Policy Advisor to the President, and DHS Officials (June 8, 2018) (on file at http://www.politico.com/f/?id=0000016c-5349-de87-affd-7bc9eff20001) (containing an email concerning immigration policy from Stephen Miller explaining that "Mick promised the president").

[4] https://www.dhs.gov/person/claire-m-grady

inadmissible."[5] Elizabeth Jacobs has served as Senior Advisor to the Chief Counsel of USCIS since February 20, 2018.[6] Prior to her appointment with USCIS, Jacobs worked as a lobbyist in her position as Senior Manager for Government Relations at FAIR. Jacobs also authored a blog post titled "Trump Administration Releases Regulatory Agenda," in which she discussed the Trump Administration's plans to redefine "public charge."[7] She wrote: "To conform policy to existing federal law and protect American taxpayers, the agency will propose regulations to define this term regarding the inadmissibility of an alien who is likely to become a cost to the public or dependent on public assistance."

DHS: ICIRR cannot request expedited discovery and simultaneously demand a custodian list so expansive that it would be overbroad even for a standard discovery process. Defendants immediately agreed to *nine* custodians, including Kenneth Cuccinelli (Senior Official Performing the Duties of Director of U.S. Citizenship and Immigration Services), Chad Wolf (current Acting Secretary of Homeland Security), Kirstjen Nielsen (former Secretary of Homeland Security), and Lee Francis Cissna (former Director of USCIS)—individuals who were either the head of DHS or USCIS. Several of these custodians were also referenced in the Complaint. This is a reasonable custodian list that accounts for the circumstances of expedited discovery, and the needs of the case. ICIRR however, demands that Defendants *double* this list, and add an additional nine custodians. This request is facially unreasonable, and ICIRR's arguments for their inclusion make it no less so.

With respect to the requested White House custodians, ICIRR does not address a fundamental problem: no member of the White House is a defendant in this action. ICIRR mistakenly believes that a lawsuit against any government agency entitles a plaintiff to discovery from any part of the government. The defendants in this action are DHS, USCIS, and two individuals affiliated with one or both of these agencies. Additionally, inclusion of White House custodians is unnecessary. To the extent these White House officials corresponded with the custodians Defendants have already agreed upon, and those e-mails hit on an agreed-upon search term, then those e-mails will be in the relevant review population. ICIRR does not explain why Defendants must seek to collect documents directly from these

[5] https://docs.house.gov/meetings/HM/HM11/20180315/106926/HHRG-115-HM11-Wstate-VitielloR-20180315.pdf

[6] https://projects.propublica.org/trump-town/staffers/elizabeth-ann-jacobs

[7] https://www.fairus.org/legislation/presidential-administration/trump-administration-releases-regulatory-agenda

White House officials.

As for Claire Grady and Elizabeth Ann Jacobs, there is simply no allegation—not one—suggesting that either of these individuals played a material role in the development of the Public Charge Rule, or harbored any animus, or were involved in any communications reflecting animus. Nor is there any indication of why these individuals would uniquely be involved in relevant communications that do not include any of the custodians Defendants have agreed to. ICIRR's request is based only on general allegations that these individuals voiced support for regulatory change. This is too tenuous a justification to permit an expansion of the document review population.

Similarly, Plaintiff offers nothing but speculation to suggest that Jon Feere or Ronald Vitiello played any material role in the development of the Rule. Notably, Mr. Feere and Mr. Vitiello are current or former employees of U.S. Immigration and Customs Enforcement—not DHS or USCIS. Plaintiff does not identify any fact suggesting that Mr. Feere, Mr. Vitiello, or ICE generally was significantly involved in the policymaking decisions challenged in this case. Instead, Plaintiff merely claims that White House personnel "routinely communicated about the Administration's immigration policy platform with individuals in other agencies, such as Jon Feere, with whom he routinely exchanged emails containing articles and editorials about various immigration topics." Likewise, Plaintiff argues that Mr. Vitiello "was part of a team of DHS sub-agency officials (including Cissna) instrumental in developing the Administration's regulatory agenda on immigration but who were eventually replaced with individuals more closely allied with Mr. Miller's agenda." Thus, Plaintiff is simply speculating that these individuals were involved in any meaningful way in the rulemaking.

D. Search Terms

Defendants provided ICIRR with their responses and objections on July 1, 2020. At that time, Defendants generally objected to ICIRR's proposed list of custodians and search terms as "overbroad and unduly burdensome." On July 6, 2020, ICIRR requested that Defendants provide specific objections to its proposed list of custodians and search terms before the parties' meet-and-confer scheduled for the following day. Defendants did not immediately provide a concrete list of custodians or search terms that they would agree to, and noted that any search term and custodian list would have to be (i) based on the agreed-upon responsiveness criteria—which the parties thus far had not agreed to—and (ii) subject to hit-count data.

During the meet-and-confer on July 7, 2020, Defendants indicated that they had run

Plaintiff's proposed search terms for one of ICIRR's proposed custodians to assist in determining potentially overbroad search terms in ICIRR's request. Defendants stated they were willing to discuss custodians and the overbroad search terms during the meet-and-confer. ICIRR requested that Defendants provide their objections to specific custodians and search terms in writing and that Defendants provide the date information about data that was already collected in connection with discovery in the parallel public charge cases.

On July 8, 2020, the deadline to meet and confer, Defendants sent ICIRR via email a list of the specific custodians and search terms to which they are objecting. Defendants did not provide any hit report data at that time. Defendants also stated that they "reserve their rights to object to additional search terms as may be necessary after further searches are run." ICIRR subsequently requested that, to the extent Defendants claim particular search terms are overbroad or unduly burdensome, Defendants provide hit report data for those terms.

On July 9, 2020, Defendants provided ICIRR with hit report data for one custodian for the search terms Defendants object to as overbroad or unduly burdensome. Defendants also reminded ICIRR that ICIRR requested *expedited* discovery, and thus it is not feasible for the parties to follow ICIRR's preferred negotiation process whereby Defendants provide exhaustive hit reports, ICIRR responds with modifications to its requested search terms, and the parties then repeat this process until an agreement is reached. Defendants then noted that if ICIRR would like to follow this process, then ICIRR should consent to an extension of the discovery schedule. Otherwise, the parties must proceed to cull the search terms without the aid of exhaustive hit report data.

Appendix A lists the search terms to which Defendants have not objected. Appendix B lists the search terms to which Defendants have objected, as well as ICIRR's position on those objections.

ICIRR: Although the Court ordered the parties to meet and confer about "any objections to ICIRR's proposed custodians and search terms," Dkt. 170, Defendants did not send ICIRR their objections to specific search terms and custodians until July 8—the final day for the parties to meet and confer on those issues. Even then, Defendants did not send hit report data to support their assertion that certain search terms are overbroad until July 9, 2020—after the Court's deadline for the parties to meet and confer and the day before this joint report was due. ICIRR could not properly assess Defendants' claims that certain search terms are overbroad without seeing the results of hit reports. *Cf. Cty. of Cook v. Bank of Am. Corp.*, No. 14 C 2280, 2019 WL 5393997, at *6 (N.D. Ill. Oct. 22, 2019) (rejecting defendant's proposed modification to allegedly overbroad search terms because defendant "did no representative sampling and comparison of any of the proposed searches to determine the extent to which the burden of reviewing the collected documents that hit on Defendants' search terms is disproportionate," and thus defendant "ha[d] not given the Court any

information from which it [could] perform the balancing of benefits and burdens"). Defendants have had ICIRR's proposed search term list for a month now, and Defendants received the Court's order with the schedule for raising objections more than two weeks ago. That is more than enough time to run the search terms and get hit numbers, and Defendants' delay in getting that information has hindered the parties' ability to meaningfully confer on this issue.

Even the hit report data that Defendants belatedly provided on July 9 is inadequate because it does not provide the number of *unique* hits for each search term. In other words, some documents that hit on an objected-to search term may also hit on other search terms—whether objected to or not—and so would be pulled into the review universe regardless. Thus, the hit numbers provided by Defendants (as shown in Appendix B) likely overstate the alleged overbreadth and burden of those terms. And Defendants admit below that, in light of the overlap with other search terms that they have not objected to, removing the search terms they have objected to will not meaningfully reduce the total number of documents in the review set. That alone defeats Defendants' argument that the objected-to search terms are overly burdensome.

Moreover, because Defendants have still not provided any information about which search terms were already used to collect data in connection with the parallel public charge cases, neither ICIRR nor the Court can meaningfully assess the burden imposed by running additional search terms or collecting additional documents. Despite ICIRR's request, Defendants did not even provide the date range used to collect data in the parallel litigation until the afternoon of July 10, 2020, right before this status report was due.

ICIRR further asserts that Defendants cannot reserve their right to continue to object to additional search terms indefinitely into the future. The Court ordered the parties to confer about and raise remaining objections to specific search terms with the Court by July 10, 2020. To the extent Defendants have failed to object to certain search terms (those listed in Appendix A), those objections are waived.

DHS: Defendants received the Court's Order authorizing expedited discovery just over two weeks ago. Since then, Defendants promptly turned to drafting and serving Responses and Objections, which would then allow the parties to negotiate over a limited and focused custodian and search term list. ICIRR assumes, however, that Defendants were required to object to search terms and custodians even before the parties' determined which documents

Defendants would be searching for. Plaintiff's preferred procedure would put the cart before the horse. Defendants explained in their Opposition to Plaintiff's Motion for Expedited discovery that Plaintiff's document "requests are confusing, poorly worded, and ungrammatical," ECF No. 165, at 11, and Plaintiff acknowledged that Defendants expressed the "need to clarify a document request," ECF No. 167 at 11. Plaintiff, however, did not make any effort to clarify their requests until the parties' July 7 meet-and-confer. It is unclear how Plaintiff believes the parties can determine search parameters before they know what to search for. In any event, Defendants offered during the meet-and-confer to discuss the terms that were facially overbroad, but Plaintiff requested that information in writing, which Defendants promptly provided.

Defendants also provided a sample hit report for a custodian that the parties could use as a reference point. Plaintiff complains that Defendants did not provide such information for all custodians (even those there is not yet agreement on who those custodians will be). Defendants could not provide a hit report for each potential custodian because Defendants do not yet have data for each of the potential custodians loaded to a review platform. Although Defendants had gathered some data for certain custodians in connection with the *Washington v. DHS* case, that data differs in certain respects from the data that may be necessary to respond to Plaintiff's requests. Shortly after Plaintiff's motion for expedited discovery was filed, Defendants began gathering additional data based on the potential that such data may become necessary in this case, and that process is ongoing.

Plaintiff also complains that the hit report did not include the number of unique hits. But there is a good reason for that. Plaintiff has proposed an extraordinary ***123 search strings*** including many terms commonly used within DHS and USCIS. As a result, the number of unique hits for almost all of these search strings is either zero or close to zero. In other words, given the very high number of search terms that overlap to a significant degree, eliminating a single term would have no meaningful impact on the overall set of documents to review. Therefore, a list of unique hit counts would have provided no useful information. Plaintiff claims above that "Defendants admit . . . that, in light of the overlap with other search terms that they have not objected to, removing the search terms they have objected to will not meaningfully reduce the total number of documents in the review set." That is clearly incorrect. Again, Defendants' position is that removing "a single term" would have no meaningful impact, given Plaintiff's excessive and overlapping search term list. However, removing *multiple* search terms, as Defendants have proposed, is likely to reduce the volume of documents.

Given that ICIRR has requested expedited discovery, it cannot demand that these negotiations include exhaustive hit report data, and an iterative process whereby Defendants first provide this data, allowing ICIRR to trim its terms and then demand another hit report. Even if this were proper in a standard discovery process, during which the parties might have several weeks to confer and refine search parameters, it is most certainly impractical for an abbreviated discovery schedule. Further, hit report data is not necessary to cull ICIRR's search term list. Although ICIRR represented to the Court that discovery would be focused, its search term listed included over 120 search strings that combine four variations of the term "public charge" and dozens of facially unreasonable search terms. Exhaustive hit data is not necessary to establish, for example, that terms such as "replace," "alien," "SNAP", and "CHIP" are obviously overbroad, as are the names of various countries that are implicated in the agencies' work on a daily basis.

Plaintiff states above that "Defendants have still not provided any information about which search terms were already used to collect data in connection with the parallel public charge cases." Defendants are not aware of any request by Plaintiff for such information. As noted above, Plaintiff asked Defendants to confirm the dates used to collect data in the *Washington* case, and Defendants provided that information.

And contrary to ICIRR's claim, Defendants have not waived objections to any search terms. The Court ordered a prompt meet-and-confer so the parties could move the process forward. The Court did not state that the parties must state and resolve all objections during its initial meet-and-confer.

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Respectfully submitted,

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Appendix A: ICIRR's Proposed Search Terms To Which Defendants Have Not Objected

Search Terms: ("Public Charge" or "PC reg or PC regulation or PC rule" or "1182(a)(4)") AND ([all the other terms listed below separated by "OR"]):

Amnesty
Caravan
Nigeria
Congo
Kenya
Somalia
Ethiopia
Yemen
Sudan
Myanmar
Pakistan
Syria
Terrorist-linked
VOICE
"Victims of Immigration Crime"
Muslim
Arab
"Chain Migration"
Minority
Non-White
Illegals
"Illegal Immigrant!"
"Criminal Aliens"
"Immigrant Crime"
Sharia
Birthright
"American born" or "American-born"
"U.S. born" or "U.S.-born"
"Replace us"
Richwine
Cuba
Latino
"Lift the Taboo"
"Great replacement"
"Anchor Baby"
"Gang member"
"Sex offender"
Rapist
"White Genocide"

“Drug Dealer”
Invade
Invasion
“American Renaissance”
“AmRen”
“Interracial Crime”
“Hispanic Crime”
“Black Crime”
“Mixed-Race”
Radical
“Islamic Terrorism”
“Foreign-born terrorist”
Multicultural
Mariel
IQ
European / 5 immigrant
White /5 European
White / 5 immigrant
“Drain on public funds”
“Drain on society”
“Strain on public funds”
“Strain on society”
Unskilled
Unhealthy
Shithole
Huts
“Emma Lazarus”
Genocide
Murder!
Suspect Countries
MS13
Executive Order /10 “public charge”
EO /10 “public charge”
“Protecting Taxpayer Resources by Ensuring Our Immigration Laws Promote Accountability and Responsibility”
Kris Kobach
Matthew O’Brien
John Tanton
George Borjas
Mark Krikorian
“Immigration Control”
“Radical Islam” /10 (refugee or immigrant)
Low-skill! or “low skill!”
No-skill! or “no skill!”

Appendix B: Search Terms To Which Defendants Have Objected

Proposed Search Term	Hit Count for One Custodian[8]	Defendants' Proposed Alternative	Plaintiff's Response to Defendants' Objections
PC	NA[9]	PC reg or PC regulation or PC rule	Agree to Defendants' proposed alternative
1182a4	NA		
Central America	237		
CIS	184		
El Salvador	322		
Foreign born	244		
Illegal aliens	177		
Family based immigration	20		
Northern Triangle	108		
Section 8	61		
Temporary Protected Status	103		Agree to remove
Center for Immigration Studies or CIS	281	Center for Immigration Studies	
Immigration reform or FAIR or IRLI	304	Immigration Reform OR IRLI	
Afghanistan	338		
Africa	327		
AIDS	222		
Alien	564		
Asylum	473		
Black	219	Black immigrants OR black people OR black individuals	blacks or (black w/10 immigrant! or people! or person! or individual!)
Burden	338		Agree to remove
CHIP	160		
Criminal	636		
Depend*	532		Agree to remove
Flood	348		

[8] Hit counts are based on a search using the listed search term combined with: ("public charge" or "PC" or "1182(a)(4)" or "1182a4"). The hit counts include families.

[9] Because the terms "PC" and "1182a4" were run in conjunction with each of the other search terms, we do not have hit counts for PC and 1182a4 in isolation.

Guatemala	213		
Haiti	131		
Honduras	302		
Hurricane	189		Agree to remove
Iran	375		
Latin	318		
Mexico	524		
Refugee	423		
Replace	297		Agree to remove
Replacement	263		Agree to remove
S1	209		
SNAP	109		
Terror	498		
Terrorism	457		
TPS	117		Agree to remove
Wall	491		
Welfare	346		
White	729	white immigrants OR white people OR white individuals	whites or (white w/10 immigrant! or people! or person! or individual!)