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### *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 As Defendants reported in their June 26, 2020 report, email records for all  
18 custodians have been collected. The emails for those custodians have been batched for  
19 review by the Department of Justice.

20 Although email records are expected to constitute the vast majority of documents  
21 subject to the Court's Order, Defendants are also working to collect non-email electronic  
22 documents and paper documents, if any, that do not also exist in electronic form. At this

1 time, due to the COVID-19 crisis and the telework status of most agency personnel,  
2 Defendants cannot determine whether there are any paper documents that will need to be  
3 collected, as those documents are physically located in agency offices and are therefore  
4 currently inaccessible.

5 **Logging Privileged Documents**

6 Third, the Court ordered Defendants to report on their progress in logging  
7 privileged documents pursuant to Fed. R. Civ. P. 26(b)(5)(A). Order at 6. As of  
8 September 18, 2020, 48,339 documents have been batched for review in the DOJ  
9 document review platform. 15,765 of those documents have been reviewed and 198 are  
10 listed on the privilege log.<sup>1</sup> In addition, several documents have been identified that  
11 contain third party equities and which Defendants expect to include in future installments  
12 of the privilege log after consulting with the appropriate third parties.

13  
14 Dated: September 18, 2020

Respectfully submitted,

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Acting Assistant Attorney General

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18 WILLIAM D. HYSLOP  
United States Attorney

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20 ALEXANDER K. HAAS  
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22 <sup>1</sup> In percentage terms, roughly 32% of the batched documents have been reviewed. As noted above, additional documents may be added to the review platform.

/s/ Joshua M. Kolsky  
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## **CERTIFICATE OF SERVICE**

I hereby certify that on September 18, 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  
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