

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

10 *Attorneys for Defendants*

11
 12 **UNITED STATES DISTRICT COURT**
EASTERN DISTRICT OF WASHINGTON
 13 **AT SPOKANE**

14 STATE OF WASHINGTON, *et al.*,

15 Plaintiffs,

No. 4:19-cv-5210-RMP

16 v.

REPORT PURSUANT TO MAY 13,
2020 ORDER

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

19 Defendants

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.

5
6 Dated: June 12, 2020

Respectfully submitted,

7 JOSEPH H. HUNT
8 Assistant Attorney General

9 WILLIAM D. HYSLOP
10 United States Attorney

11 ALEXANDER K. HAAS
12 Branch Director

13 */s/ Joshua M. Kolsky*

14 ERIC J. SOSKIN
15 Senior Trial Counsel
16 KERI L. BERMAN
17 KUNTAL V. CHOLERA
18 JOSHUA M. KOLSKY, DC Bar No. 993430
19 JASON C. LYNCH
20 JORDAN L. VON BOKERN
21 Trial Attorneys
22 United States Department of Justice
Civil Division, Federal Programs Branch
1100 L Street NW
Washington, D.C. 20005
Tel: (202) 305-7664

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.

Fax: (202) 616-8460
Joshua.kolsky@usdoj.gov

Attorneys for Defendants

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on June 12, 2020, I electronically filed the foregoing with the
3 Clerk of the Court using the CM/ECF system, which will send notification of such
4 filing to all users receiving ECF notices for this case.

5 */s/ Joshua Kolsky* _____
6 JOSHUA KOLSKY
7 United States Department of Justice
8 Civil Division, Federal Programs Branch
9 1100 L Street, NW
10 Washington, D.C. 20005

11 *Attorney for Defendants*

12
13
14
15
16
17
18
19
20
21
22