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

13 STATE OF WASHINGTON, *et al.*,

14 Plaintiffs,

15 v.

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

18 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 reported previously, Defendants believe they have collected all necessary
18 emails and other electronic documents for the privilege review. Although electronic
19 records are expected to constitute the vast majority of documents subject to the Court’s
20 Order, it is possible that there could be paper documents that do not also exist in electronic
21 form. At this time, due to the COVID-19 crisis and the telework status of most agency
22 personnel, Defendants cannot determine whether there are any paper documents that will

1 need to be collected, as those documents are physically located in agency offices and are
2 therefore currently inaccessible.

3 **Logging Privileged Documents**

4 Third, the Court ordered Defendants to report on their progress in logging
5 privileged documents pursuant to Fed. R. Civ. P. 26(b)(5)(A). Order at 6. As of October
6 30, 2020, 50,152 documents have been batched for review in the DOJ document review
7 platform. 49,585 (*i.e.*, 98.9%) of those documents have undergone an initial review. In
8 the last progress report on October 16, 2020, Defendants reported that approximately
9 8,500 documents required second level review to make further determinations about
10 whether the records fall within the scope of the Court's order and to make privilege
11 determinations. Since that time, Defendants have conducted the second level review of
12 those approximately 8,500 documents. 6,733 of those documents require final review by
13 agency counsel and, as necessary, by counsel at the Department of Justice. The
14 documents awaiting final level review include many documents that contain third party
15 equities and which Defendants expect to include in future installments of the privilege
16 log after consulting with the appropriate third parties. 259 documents are currently listed
17 on the privilege log.

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19 Dated: October 30, 2020

Respectfully submitted,

20 JEFFREY BOSSERT CLARK
Acting Assistant Attorney General

21 WILLIAM D. HYSLOP
22 United States Attorney

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

2 I hereby certify that on October 30, 2020, I electronically filed the foregoing with
3 the 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* _____
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