

1 JEFFREY BOSSERT CLARK
 Acting 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 Trial Attorneys
 8 United States Department of Justice
 Civil Division, Federal Programs Branch
 9
 10 *Attorneys for Defendants*

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

14 STATE OF WASHINGTON, *et al.*,

15 Plaintiffs,

16 v.

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

19 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
6 November 25, 2020, 49,439 documents have been batched for review in the DOJ
7 document review platform. 49,363 (*i.e.*, 99.8%) of those documents have undergone an
8 initial review. 4,947 of the documents require final review by agency counsel and, as
9 necessary, by counsel at the Department of Justice. The documents awaiting final level
10 review include many documents that contain third party equities and which Defendants
11 expect to include in future installments of the privilege log after consulting with the
12 appropriate third parties. Similarly, some of the documents that underwent final review
13 since the last status report contain third party equities and require consultation with third
14 parties. 469 documents are currently listed on the privilege log.

15
16 Dated: November 27, 2020

Respectfully submitted,

17 JEFFREY BOSSERT CLARK
Acting Assistant Attorney General

18 WILLIAM D. HYSLOP
United States Attorney

19 ALEXANDER K. HAAS
Branch Director

20
21
22 /s/ Joshua M. Kolsky

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

ERIC J. SOSKIN
Senior Trial Counsel
KERI L. BERMAN
KUNTAL V. CHOLERA
JOSHUA M. KOLSKY, DC Bar No. 993430
JASON C. LYNCH
Trial Attorneys
United States Department of Justice
Civil Division, Federal Programs Branch
1100 L Street NW
Washington, D.C. 20005
Tel: (202) 305-7664
Fax: (202) 616-8460
Joshua.kolsky@usdoj.gov

Attorneys for Defendants

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on November 27, 2020, I electronically filed the foregoing
3 with the Clerk of the Court using the CM/ECF system, which will send notification of
4 such 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