

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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OPEN SOCIETY JUSTICE INITIATIVE	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 1:20-cv-00706-RC
	)	
UNITED STATES DEPARTMENT OF	)	
JUSTICE, CRIMINAL DIVISION et al.,	)	
	)	
Defendants.	)	

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**MOTION TO ESTABLISH A BRIEFING SCHEDULE**

The Court’s Minute Order dated July 14, 2020 (the “Order”) directed the parties to file a joint status report on or before August 27, 2020. Plaintiff is Open Society Justice Initiative (“Plaintiff” or “OSJI”), and Defendants are U.S. Department of Justice, Criminal Division (“DOJ-Criminal”); the United States Department of Justice, Civil Division (“DOJ-Civil”); and United States Citizenship and Immigration Services (“USCIS”).

Despite Plaintiff’s good faith efforts to take productive steps forward with Defendants, including the suggestion of search terms to facilitate Defendants’ searches, Defendants have failed to provide any documents or substantive updates regarding their efforts to locate responsive documents. Nor have they provided any concrete production schedule, despite Plaintiff’s repeated requests for one. Accordingly, Plaintiff, by and through its undersigned counsel, respectfully moves the Court to establish a briefing schedule for summary judgment motions. In support of the motion, Plaintiff states as follows:

1. On March 11, 2020, Plaintiff commenced this action by filing a Complaint alleging that Defendants had largely failed to produce documents that they were required to

produce in response to Plaintiff's Freedom of Information Act Request (the "Request"). The Request sought information related to denaturalization and statelessness under relevant civil and criminal statutes. (ECF No. 1.)

2. On April 16, 2020, Defendants filed an Answer (ECF No. 28) and by minute order that same day, the Court instructed the parties to "meet, confer, and jointly submit a proposed briefing schedule to govern further proceedings in this case, on or before May 1, 2020."

3. On April 20, 2020, Plaintiff proffered a proposed briefing schedule via e-mail to counsel for Defendants. Alternatively, Plaintiff proposed delaying any motion practice if Defendants would be willing to produce responsive documents. That same day, Defendants suggested that the parties confer via telephone and wait to see if any of the agencies had responsive records before moving forward with motion practice.

4. In accordance with the Court's Order, the parties met and conferred by telephone on April 29, 2020, regarding the briefing schedule. Plaintiff stated that it would be willing to delay its proposed briefing schedule by 14 days if Defendants would release an initial set of records responsive to the Request by the end of that period.

5. On May 1 and May 15, 2020, the parties submitted Joint Status Reports (JSRs) informing the court that the parties remained in ongoing discussions and seeking to defer the entry of a briefing schedule, which the court granted.

6. Even after the initial 14 days, when Defendants asked for more time, Plaintiff continued to work with Defendants in good faith. The parties conferred telephonically on April 29, 2020, May 27, 2020, and June 18, 2020. The parties filed joint status reports on May 1,

2020, May 15, 2020, June 12, 2020, and July 14, 2020, updating the Court regarding the parties' continued negotiations.

7. As explained in further detail below, despite Plaintiff's best efforts to engage Defendants in productive and timely discussions, Defendants have persistently stymied progress by refusing to provide any concrete production timelines or other requested information regarding Defendants' document searches.

8. DOJ-Criminal. On May 14, 2020, Defendant represented that it would undertake a search for relevant documents and provide an update in 30 days. In order to facilitate the search process, Plaintiff provided DOJ-Criminal with an initial set of search terms (the "Proposed Search Terms") on June 4. Defendant responded on June 12 that it would employ the Proposed Search Terms as appropriate in its searches and anticipated its searches to be completed by August 12, 60 days from June 12. In response to Plaintiff's follow-up e-mails on June 12 and June 26, Defendant reconfirmed that searches would be completed by August 12 but provided no additional information. Yet, despite having two months to conduct its promised searches, Defendant DOJ-Criminal responded a week after its promised deadline (and after another follow-up email from Plaintiff on August 13), asserting that it had finished the "primary search" but still needed to run "supplemental searches." DOJ-Criminal did not produce any documents, and informed Plaintiff that it had used the two-month period only to *search* for documents, not to *review* them. Moreover, this was the first time DOJ-Criminal had described a "supplemental" search that would extend past August 12. The agency has since refused to provide an estimated end date to their protracted search and review process. Defendant has failed to engage with any of Plaintiff's suggestions for a productive means forward. Most recently, on August 21, Plaintiff asked the agency to advise how many documents Defendant had uncovered from its search so

far, noting that it understood “that the number may grow based on the agency’s supplemental searches.” Under threat of this Motion and the joint status report, Defendant proposed that it will (1) review those records over the course of the next 60 days to determine how many are actually responsive; (2) de-duplicate the records as part of this process; and (3) complete the supplemental search in about 30 days. This update is notable for what it does not provide: a concrete *production* deadline. Accordingly, a motion for summary judgment is appropriate.

9. DOJ-Civil. On June 18, 2020, parties met and conferred, which resulted in Plaintiff providing Proposed Search Terms to DOJ-Civil on June 26. DOJ-Civil, meanwhile, provided a limited list of cases referred to DOJ-Civil from USCIS/DHS (as requested by Plaintiff), as well as agreeing to provide Plaintiff with updated data through May 27, 2020. From July 2 to August 27, Defendant failed to provide any further updates, despite repeated requests for a production timeline and other basic information. On August 27, Defendant asked if it could reduce the custodian pool from “40 to 50” to “12 people” and remarked for the first time that some of the Proposed Search Terms were overbroad – despite having had those search terms for two months. DOJ-Civil has not provided any type of production timeline.

10. USCIS. During the May 27, 2020 meet and confer, USCIS counsel agreed to (1) email Plaintiff documents previously produced for prior FOIA requests that may be responsive to the Request; (2) check the number of denaturalization cases filed from January 20, 2017 to May 27, 2020; and (3) look into the referral process to DOJ Criminal for cases where there might be a basis for criminal denaturalization and find relevant documents. Plaintiff followed up on these concrete action items on May 29, June 4, and June 10, to no avail. On June 12, Plaintiff again asked for a timeframe for production, and Defendant asserted it needed to see the volume of search hits first to determine a timetable. Plaintiff sought status updates by e-mail on July 13,

August 10, and August 20. Under threat of this motion and the joint status report, USCIS stated on August 27, 2020, that it planned to make its first production of documents tomorrow (August 28). It has provided no further information, such as a comprehensive production schedule, or the number or percentage of documents it intends to produce tomorrow.

11. Defendants refuse to agree to any briefing schedule. The parties have met and conferred on setting a proposed briefing schedule pursuant to LCvR 7(m) but were unable to come to an agreement.

12. Because the parties have reached an impasse, Plaintiff respectfully requests that the Court establish the following briefing schedule for summary judgment:

- i. All opening briefs on any motions for summary judgment shall be filed and served no later than 30 days after the briefing schedule is entered by the Court;
- ii. Any briefs in opposition to any motions for summary judgment shall be filed and served no later than 30 days thereafter; and
- iii. Any reply briefs in further support of any motions for summary judgment shall be filed and served no later than 15 days after service of the brief in opposition.

Dated: August 27, 2020

Respectfully submitted,

/s/ Sophia M. Mancall-Bitel

Sophia M. Mancall-Bitel (*pro hac vice*)  
One Manhattan West  
New York, New York 10001  
Phone: (212) 735-2492  
sophie.mancall-bitel@probonolaw.com

David E. Carney, D.C. Bar # 472219  
1440 New York Avenue, NW  
Washington, D.C. 20005  
Phone: (202) 371-7000  
david.carney@probonolaw.com

Jeffrey A. Mishkin (*pro hac vice*)  
Elizabeth A. Molino Sauvigne (*pro hac vice*)  
One Manhattan West  
New York, New York 10001

Anthony W. Clark (*pro hac vice*)  
One Rodney Square, P.O. Box 636  
Wilmington, Delaware 19899

James A. Goldston (*pro hac vice*)  
Laura Bingham (*pro hac vice*)  
Natasha Arnpriester (*pro hac vice*)  
Open Society Foundations  
224 West 57th St.  
New York, NY 10019

*Attorneys for Plaintiff*