

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

AMERICAN CIVIL LIBERTIES UNION OF)
VIRGINIA, AMERICAN CIVIL LIBERTIES)
UNION OF MARYLAND, AMERICAN CIVIL)
LIBERTIES UNION OF PENNSYLVANIA,)
and AMERICAN CIVIL LIBERTIES UNION)
OF DELAWARE,)

Case No. 1:17-cv-00441-LMB-IDD

Plaintiffs,)

v.)

U.S. DEPARTMENT OF HOMELAND)
SECURITY and U.S. CUSTOMS AND)
BORDER PROTECTION,)

Defendants.)

**PLAINTIFFS’ MEMORANDUM IN OPPOSITION
TO DEFENDANTS’ MOTION TO STAY PROCEEDINGS PENDING
DECISION ON MOTION TO TRANSFER**

I. INTRODUCTION

U.S. Customs and Border Protection (“CBP”) and the Department of Homeland Security (“DHS”), (collectively, “Defendants”), ask this Court to enter a stay pending a ruling by the Judicial Panel on Multidistrict Litigation (“JPML”) on their motion to transfer this case to an as-yet-to-be-created MDL. Defs. Motion to Stay, 1. But four months have passed since Plaintiffs (collectively “ACLU”) submitted requests under the Freedom of Information Act (“FOIA”) to the CBP’s Baltimore Field Office for public records about an issue of significant and ongoing public import: the manner in which local federal authorities interpreted and implemented President Trump’s Executive Orders barring refugees and other individuals from several predominantly Muslim countries from entering local ports of entry. Four months passed with no

response from Defendants to Plaintiffs' FOIA request, despite Defendants' statutory obligations to respond; Defendants finally responded five days ago, with what amounts to a generic non-response response. Defendants' request to further delay a substantive response via a stay of this litigation would unnecessarily further impede access to these public documents and undermine FOIA's central purpose of assuring an informed citizenry and an accountable government. Accordingly, Plaintiffs respectfully ask this Court to deny Defendants' Motion.

II. BACKGROUND

A. Executive Orders Nos. 1 and 2

On January 27, 2017, the nascent Trump Administration instituted an Executive Order entitled "Protecting the Nation From Foreign Terrorist Entry Into the United States," Exec. Order No. 13769, 82 Fed. Reg. 8977 (Feb. 1, 2017) ("Executive Order No. 1"). Among other things, Executive Order No. 1 purported to halt refugee admissions and bar entrants from several predominantly Muslim countries from entering the United States. Complaint (Dkt. No. 1 at ¶ 4). Included with Executive Order No. 1 were various directives guiding its execution.

Defendants' implementation of Executive Order No. 1 was chaotic and lacking in clarity and direction. Compl. ¶ 7. That chaos was evident at Washington Dulles International Airport ("Dulles") and Philadelphia International Airport ("PIA"). *Id.* at ¶ 11. For example, Yemeni individuals flying to Dulles with valid, government-issued visas when Executive Order No. 1 took effect had their visas cancelled upon landing at Dulles and were refused entry into the United States. *Id.* Additionally, while several courts entered orders that required attorney access to detained travelers, CBP officials at Dulles appeared to ignore the orders. *Id.* at ¶ 12. Similarly, Syrian families with valid immigrant visas arrived at PIA the morning of January 28, 2017. *Id.* at ¶ 13. CBP agents removed them from the plane and gave them two options: (1) leave the United

States immediately or (2) be arrested and imprisoned with their visas taken away. *Id.* Terrified, they purchased tickets for the return flight and left the U.S. *Id.* Several other travelers were detained at PIA, *id.*, and lawyers retained by the detained families were not allowed to speak with their clients. *Id.* at ¶¶ 14-16.

In the month following issuance of Executive Order No. 1, litigation ensued that led to several judicial orders placing temporary restraints on the implementation of sections of the Order. Compl., ¶ 6. The Trump Administration responded with a revised but identically titled Executive Order on March 6, 2017, Exec. Order No. 13780, 82 Fed. Reg. 13209 (Mar. 6, 2017) (“Executive Order No. 2). *Id.* at ¶ 2. Like Executive Order No. 1, Executive Order No. 2 similarly seeks to halt refugee admissions and bar entrants from several predominantly Muslim countries from entering the United States. *Id.* at ¶ 4.

B. Plaintiffs’ FOIA Request

On February 2, 2017, Plaintiffs submitted a request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 522 *et seq.*, to CBP’s Baltimore Field Office and CBP’s FOIA Officer at CBP Headquarters. *Id.* at ¶ 26. These requests sought records concerning Local Offices’ implementation of the Executive Orders at airports and ports of entry within the Local Offices’ jurisdiction. Specifically, Plaintiffs sought records from the Baltimore Field Office regarding its implementation of the Executive Orders at Dulles, Baltimore Washington Airport, PIA, Pittsburg International Airport and ports of entry at Baltimore, Philadelphia, the Port of Washington-Dulles, and Wilmington. *See* Compl., Ex. A. The FOIA request specifically excluded records held at “CBP Headquarters.” *Id.* at 8.

Under the FOIA statute, an entity typically has 20 days to respond to a FOIA request. 5 U.S.C. § 552(a)(6)(A)(i). Plaintiffs, though, asked for expedited processing on the basis that

there is a “compelling need” for the records under 5 U.S.C. §522(a)(6)(E)(v)(II), as the information requested was urgently needed by an organization primarily engaged in disseminating information “to inform the public concerning actual or alleged Federal Government activity.” Compl., Ex. A.

Defendants failed to respond on an expedited bases, or even within 20 days. Instead, they ignored the FOIA request altogether, until just five days ago. *See* Exhibit 1. On May 26, 2017, Defendants provided a generic response to all ACLU FOIA requests nationwide and failed to provide any timeline for the production of documents.

Having ignored the ACLU’s FOIA request for 113 days, responding only after the filing of this litigation, and having secured an extension of time to respond to the Complaint, Defendants now ask this Court for still more time based on a motion to transfer filed with the JPML that has yet to even be set for argument. In effect, Defendants ask for *more time* in a case about their failure to respond *in time*. This Court should deny that request.

III. ARGUMENT

A. Legal Standard

Stays are within the inherent power of a court. *Landis v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936). However, not all stays are favored. Specifically, the JPML states that “the use of stay orders by the district courts, particularly in the area of discovery, is usually undesirable.” *Sehler v. Prospect Mortg., LLC*, No. 1:13-cv-473 JCC/TRJ, 2013 WL 5184216, at *3 (E.D. Va. Sept. 16, 2013) (quoting *In re Penn Central Securities Litigation*, 333 F. Supp. 382, 384 n. 4 (J.P.M.L.1971)). *See also Litchfield Co., LLC v. BP, P.L.C.*, No. 2:10-cv-01462, 2010 WL 2802498, at *1 (D. S.C. July 14, 2010) (“A pending transfer motion before the MDL panel does not deprive the district court in which the action is then pending of jurisdiction over pretrial

matters”). Accordingly, courts have denied requests for stays in circumstances similar to those present here. *See, e.g., Sullivan v. Cottrell, Inc.*, No. 11CV1076S, 2012 WL 694825, at *4 (W.D. N.Y. Feb. 29, 2012); *St. Joe Co. v. Transocean Offshore Deepwater Drilling Inc.*, 774 F. Supp. 2d 596, 601 (D. Del. 2011); *Barber v. BP PLC*, No. 10-0263-WS-B, 2010 WL 2266760, at *2 (S.D. Ala. June 4, 2010).

When considering whether to issue a stay pending a transfer to an MDL, a district court should consider three factors:

- (1) whether judicial resources will be saved and duplicative litigation avoided if the case is consolidated in an MDL;
- (2) prejudice to the party opposing the stay; and[,]
- (3) the moving party’s hardship and inequity if the action is not stayed.

Commonwealth of Virginia ex rel. Integra Rec LLC v. Countrywide Sec. Corp., No. 3:14-cv-706, 2015 WL 222312, at *3 (E.D. Va. Jan. 14, 2015) (quoting *Wood v. Johnson & Johnson*, No. WDQ-12-1572, 2012 WL 3240934, at *2 (D. Md. Aug. 3, 2012)).

B. Interests of Judicial Economy Do Not Warrant a Stay

Defendants urge this Court to grant the stay for purposes of judicial economy. But they raise false alarms, arguing that this Court could issue orders that conflict with orders of one or more of the district courts with related FOIA cases before them.

Yet, the FOIA request at issue in this case differs from those that are the subject of cases pending in other courts, and vice versa. This case involves requests for the ***CBP Baltimore Field Office’s “local interpretation and enforcement”*** of the Executive Order, at ***specific locations*** within its purview. Compl., ¶ 27. Requests for the “local interpretation and enforcement” of the Baltimore Field Office at airports and points of entry within its jurisdiction by definition cannot overlap with the local interpretation and enforcement of the Atlanta, El Paso, Portland, or other

Field Offices. To the extent that this Court and another federal court rule differently on related FOIA requests, these rulings would not conflict, because the requests themselves seek different documents.

Moreover, while Defendants assert that allowing this case to proceed could duplicate work that will be done by an MDL transfer court, it is uncontrovertible that no MDL exists. The JPML has not even scheduled a hearing on Defendants' motion. While Defendants "anticipate that the JPML will hold argument" on Defendants' transfer motion in late July, Defs.' Br. in Supp. of Mot. to Stay at 8, their "anticipation" is little more than hope at this point. As this Court held in *Sehler*, a stay should not issue based on the mere hope that a case will be transferred, especially when the JPML has not heard oral argument on the transfer, or consolidated any of the cases addressing the same matter. *Sehler*, 2013 WL 5184216 at *4 ("Here, by contrast, there has been no conditional transfer of the case. Indeed, the JPML has not heard Defendants' argument regarding transfer nor consolidated any of the cases in this matter. This is in contrast to many instances where district courts have granted stays pending transfer to MDLs already created.").

Defendants also urge a stay because "CBP's headquarters in Washington, DC is coordinating the agency's search for records responsive to all of the requests at issue in the related actions[.]" Motion at 5. While Defendants are free to coordinate their efforts, doing so will not result in judicial efficiency. As explained above, Plaintiffs' FOIA request seeks records held by CBP employees in the Baltimore Field Office regarding its implementation of the Executive Orders at Dulles, Baltimore Washington Airport, PIA, Pittsburg International Airport and ports of entry at Baltimore, Philadelphia, the Port of Washington-Dulles, and Wilmington. Compl., Ex. A. Indeed, records held at "CBP headquarters" were explicitly excluded from the FOIA request at issue in this case. *Id.* at 8. Thus, transfer will not obviate the need for

Defendants here to account in this litigation for the records held (or withheld) by CBP in Baltimore, or the search for such records conducted in the Baltimore Field Office. The requested stay will serve only to delay that accounting, and the public's access to these crucial records.

C. Defendants Will Suffer No Hardship or Inequity

In *Sehler*, this court drew a distinction between cases that have been conditionally transferred to an MDL and those that have not. *Id.* Defendants ignore this distinction. They cite several cases for the proposition that pretrial rulings by this court could conflict with rulings by the transferee court causing hardship to Defendants, or that a stay so early in the proceedings would not cause hardship to Plaintiffs. *See* Motion at 3 (citing *Commonwealth of Virginia ex rel. Integra Rec. LLC v. Countrywide Securities Corp.*, No. 3:14-cv-706, 2015 WL 222312 (E.D. Va. Jan. 14, 2015)); 7 (citing *C.A. ex rel. Allen v. Pfizer, Inc.*, No. C13-4087, 2013 WL 6091766 (N.D. Cal. Nov. 19, 2013)). However, in both of these cases the JPML had either transferred or conditionally transferred the case to a pre-existing MDL, or at least scheduled a hearing on a transfer motion. *Countrywide Securities Corp.*, 2015 WL 222312 at *2; *C.A. ex rel. Allen*, 2013 WL 6091766 at *1.¹ That is not the case here. Instead, Defendants rest their argument for a stay on their mere motion to transfer, in spite of the facts that: (1) there is no pre-existing MDL for FOIA requests related to the Executive Orders; and (2) the JPML has not scheduled a hearing on Defendants' motion.

¹ Nor are these the only distinguishable cases Defendants cite in their brief. First, in *In re Musha Cay Litig.*, 330 F. Supp. 2d 1364 (J.P.M.L. 2004), the plaintiffs' claims arose from the same commercial transaction and shared legal claims. While Plaintiffs bring FOIA claims that arise from the same government act – the Executive Orders – as plaintiffs in other cases, these requests all seek different information. Second, in *In re Air Crash Near Kirksville, Mo.*, 383 F. Supp. 2d 1382, 1383 (J.P.M.L. 2005), the plaintiffs' claims all arose from the same plane crash. There the plaintiffs would in fact refer to the exact same facts to make their claims. By contrast, Plaintiffs here will rely on facts about the **local implementation** of the Executive Orders, which would not be relevant in FOIA litigation regarding other Local Offices' implementation. Finally, both of these cases addressed motions to consolidate, not a motions to stay.

Importantly, Defendants fail to identify any real hardship that would result from this Court denying their motion. Hardship is a prerequisite for a stay. *Scott v. Clarke*, No 3:12-cv-00036, 2014 WL 3734327 (W.D. Va. Jul. 28, 2014) (“[t]he suppliant for a stay must make out a clear case of hardship or inequity in being required to go forward, if there is even a fair possibility that the stay for which he prays will work damage to someone else.”) (quoting *Williford v. Armstrong World Industries, Inc.*, 715 F.2d 124, 127 (4th Cir. 1983)) (internal quotations omitted). Defendants broadly cite the chance of “rulings on pretrial issues that conflict with those of other districts or of the transferee court” and worry about having to “engage in simultaneous and duplicative pretrial practice, including responding to thirteen separate complaints that are materially identical.” Motion at 7, 6.

Notably, Defendants do not identify the potential conflicts they fear, or explain why these conflicts are likely to occur absent a stay. Defendants also mischaracterize the various FOIA complaints submitted by plaintiffs across the country as “materially identical.” As explained above, they are not. Rather, these complaints are brought by different plaintiffs and seek records regarding the *local implementation* of the Executive Orders. Compl., ¶¶ 3–4. For example, the actions taken by CBP agents against Yemini individuals at Dulles, and Syrian families at PIA, were instigated by agents under the jurisdiction and direction of the Baltimore Local Office. *Id.* at ¶¶ 11–13. The records of any other Local Office are necessarily irrelevant to this case. Thus, it would not matter if this Court and another federal court facing a similar FOIA suit against CBP ruled differently on the FOIA requests. These rulings would not conflict because the requests themselves seek wholly different documents.

For the same reason, Defendants incorrectly assert that discovery here would overlap with discovery in other FOIA cases arising from the Executive Orders. Again, the local nature of

Plaintiffs' request distinguishes it from information requested in other cases. In short, the harm Defendants claim is speculative at best and does not outweigh the risk of prejudice to Plaintiffs and the public from further delay.

D. A Stay Would Prejudice Plaintiffs and the Public

This case differs from many of those Defendants cite in their brief. That is because the harm in FOIA litigation is inherently tied to the delay in a governmental entity's response to the request. A stay only exacerbates this harm.

The central purpose of FOIA is to "serve the citizens' right to be informed about what their government is up to." *United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 773 (1989). This right is not a "convenient formalism" but a "structural necessity in a real democracy." *Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157, 172 (2004). Because awareness must be timely to be useful, "Congress has recognized that delay in complying with FOIA requests is 'tantamount to denial.'" *Elec. Privacy Info. Ctr. v. DOJ*, 416 F. Supp. 2d 30, 40 (D.C. Dist. Ct. 2006) (quoting H.R. Rep. No. 93-876, at 6 (1974)).

The FOIA statute recognizes the importance of prompt disclosure by requiring agencies to respond to requests within 20 days, absent "unusual" or "exceptional" circumstances. 5 U.S.C. § 552(a)(6)(A)(i). In "unusual circumstances" the agency can extend its time to respond by 10 days, but must give the requester notice of the circumstances and identify a date on which it will respond. *See Citizens for Responsibility & Ethics in Wash. v. United States DOJ*, 820 F. Supp. 2d 39, 47 (D.D.C. 2011) (citing 5 U.S.C. § 552(a)(6)(B)). Failure to respond within 20 days, or provide notice and an explanation of the need for an additional 10 days to respond, is

unreasonable. *Id.* (failure to respond to a request until the plaintiffs filed suit deemed “hardly reasonable”).²

Moreover, agencies must expedite processing and respond “as soon as practicable” where, as here, a requester shows “urgency to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. §552(a)(6)(E)(i). “[E]xpedited processing of a FOIA request is a statutory right, not just a matter of court procedure.” *Edmonds v. FBI*, 417 F.3d 1319, 1323 (D.C. Cir. 2005). Courts consistently require expedited disclosure in cases like this, involving requests for documents about matters that are the subjects of intense media scrutiny and ongoing public debate. For example, in *EPIC v. DOJ*, the court found that “given the great public and media attention that the government’s warrantless surveillance program has garnered and the recent hearings before the Senate Judiciary committee, the public interest is particularly well-served by the timely release of the requested documents.” 416 F. Supp. 2d 30, 42 (D.D.C. 2006); *See also Gerstein v. CIA*, No. C-06-4643, 2006 U.S. Dist. LEXIS 89847, at *20–21 (N.D. Cal. 2006) (collecting cases regarding FOIA requests that could affect reauthorization of the Voting Rights Act and the Patriot Act).

ACLU v. United States DOJ, 321 F. Supp. 2d 24 (D.D.C. 2004) is instructive here. In that case, the ACLU sought expedited processing of a FOIA request related to the federal government’s implementation of the Patriot Act. The court ordered expedited processing of the ACLU’s request. *Id.* at 31–33. The court noted the articles cited in the ACLU’s brief, which “demonstrate that the manner and frequency of the government’s use of [the Patriot Act] are

² It also is worth noting that the plaintiffs in *Citizens for Responsibility* filed two similar but separate FOIA requests with the Department of Justice (“DOJ”). 820 F. Supp. 2d at 42. The DOJ responded to the first request but ignored the second. *Id.* at 42. Thus, the plaintiffs in that case actually had established some contact with DOJ; nonetheless, the court still found DOJ’s actions unreasonable. By contrast, Plaintiffs here heard nothing from Defendants until just five days ago, after the filing of this lawsuit, and even then received only a generic response with no information on when documents will be produced.

matters of ‘widespread and exceptional media interest.’” *Id.* at 31–32 (internal citation omitted). There were “dozens of additional news articles” that cited “the controversy surrounding the Act.” *Id.* at 32. In fact, even the Attorney General had acknowledged the “troubling amount of public distortion and misinformation” about the Act. *Id.* (internal citation omitted).

Plaintiffs have cited similar circumstances here. There was great confusion in the interpretation and implementation of the Executive Orders. *See* Compl., ¶¶ 7–16, n. 3–14. Director Kelly of DHS acknowledged that there was confusion as to whether the Executive Orders applied to green card holders, and reversed earlier guidance by DHS officials saying the Executive Orders did apply these individuals. *Id.* at ¶ 8, n. 4–6. News reports described Defendants’ implementation as “chaotic” and “total[ly] lack[ing] . . . clarity and direction.” *Id.* at ¶ 7, n. 3. Further, there were large public demonstrations at airports and protests around the country. It is safe to say that the implementation of the Executive Orders was a controversial issue that caused confusion and garnered significant public attention.

Accordingly, Plaintiffs sought expedited processing of their FOIA requests to provide the public with information about how the Baltimore CBP Field Office read and implemented the Executive Orders. This has been, and continues to be, a hotly contested public issue. As noted above and in the Complaint, the local implementation resulted in mass protests, widespread media coverage, calls for action by elected officials, and extensive litigation. Compl., ¶¶ 5-16. Without full disclosure of the facts behind the implementation of the Executive Orders locally, it is impossible for the public to fully appreciate the merits or demerits of the policies. And once public debate advances on issues of vital national importance such as these, this debate “cannot be restarted or wound back” to account for supplemental facts. *Elec. Frontier Found. v. Office of the Dir. Of Nat’l Intelligence*, 2007 U.S. Dist. LEXIS 89585, at *19 (N.D. Cal. Nov. 27, 2007)

(citations omitted). The delayed disclosure of these facts renders them “little more than a historical footnote.” *Gerstein*, 2006 U.S. Dist. LEXIS, at *21 (citation omitted).³

Whether Defendants intend to reduce the ACLU’s request to a “historical footnote,” one thing is clear: Defendants have yet to provide a substantive response to Plaintiffs’ FOIA request. Defendants never sought an extension or even contacted the ACLU regarding the request. This delay already prejudices the ACLU and the public and certainly does not comport with FOIA’s purpose and Plaintiffs’ statutory right to expedited access to the requested records. Now Defendants seek to add to their delay based on their hope that the JPML will soon consider and grant their transfer motion. A stay would guarantee that the public will be deprived of the information for many more months. Even if the JPML hears Defendants’ transfer motion on July 27, there is no telling when the JPML will rule on the matter. All the while, the public debate on issues of immigration, national security, and civil liberties related to the Executive Orders proceeds, uninformed of relevant and important facts.

In short, this case is about prejudice to the ACLU and the public from Defendants’ failure to timely and statutorily respond to the ACLU’s FOIA request. In effect, Defendants seek to delay a case about its own delays. Meanwhile, continued delay prejudices the ACLU and the public. This Court should deny Defendants’ motion to stay.

III. CONCLUSION

Accordingly, and for the reasons stated above, the ACLU respectfully requests that this Court deny Defendants’ Motion to Stay.

³ Courts recognize the importance of timely FOIA disclosures in informing and enhancing public debate on similar issues. *See, e.g., EPIC*, 416 F. Supp. 2d at 42; *Gerstein*, 2006 U.S. Dist. LEXIS 89847, at *20–21. Just as timely FOIA disclosures could inform public debate on those issues, they could do so here.

DATED this 31st day of May, 2017.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on May 31, 2017, a true and correct copy of the foregoing PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION TO STAY PROCEEDINGS PENDING DECISION ON MOTION TO TRANSFER was electronically filed via the CM/ECF system, to be served via electronic notification on counsel of record for all parties.

Dated: May 31, 2017

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May 26, 2017

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Re: 2017-HQFO-00594

Dear Ms. Ebadolahi and Mr. Caballero:

This letter concerns the eighteen Freedom of Information Act (FOIA) requests dated February 2, 2017, and submitted to U.S. Customs and Border Protection (CBP) by the American

Civil Liberties Union and numerous affiliated entities.¹ Each of these requests asks that the requested records be furnished to Ms. Ebadolahi.

¹ These entities include: The American Civil Liberties Union Federation; the American Civil Liberties Union of the District of Columbia; the American Civil Liberties Union Fund of the District of Columbia; the American Civil Liberties Union of Alabama; the American Civil Liberties Union of Arkansas; the American Civil Liberties Union of Kansas; the American Civil Liberties Union of Louisiana; the American Civil Liberties Union of Mississippi; the American Civil Liberties Union of Tennessee; the American Civil Liberties Union Foundation of Alabama; the American Civil Liberties Union Foundation of Arkansas; the American Civil Liberties Union Foundation of Kansas; the American Civil Liberties Union Foundation of Louisiana; the American Civil Liberties Union Foundation of Mississippi; the American Civil Liberties Union Foundation of Tennessee; the American Civil Liberties Union of New Jersey; the American Civil Liberties Union of New Jersey Foundation; the New York Civil Liberties Union; the New York Civil Liberties Foundation; the American Civil Liberties Union of New Mexico; the American Civil Liberties Union Foundation of New Mexico; the American Civil Liberties Union Foundation of Texas; the American Civil Liberties Union of Maine; the American Civil Liberties Union of New Hampshire; the American Civil Liberties Union of Vermont; the American Civil Liberties Union of Massachusetts; the American Civil Liberties Union of Connecticut; the American Civil Liberties Union of Rhode Island; the American Civil Liberties Union Foundation of Maine; the American Civil Liberties Union Foundation of New Hampshire; the American Civil Liberties Union Foundation of Vermont; the American Civil Liberties Union Foundation of Massachusetts; the American Civil Liberties Union Foundation of Connecticut; the American Civil Liberties Union Foundation of Rhode Island; the American Civil Liberties Union of San Diego and Imperial Counties; the American Civil Liberties Union of San Diego and Imperial Counties Foundation; the American Civil Liberties Union of Florida; the American Civil Liberties Union of Washington; the American Civil Liberties Union of Montana; the American Civil Liberties Union of North Dakota; the American Civil Liberties Union of Washington Foundation; the American Civil Liberties Union of Montana Foundation; the American Civil Liberties Union of Arizona; the American Civil Liberties Union Foundation of Arizona; the American Civil Liberties Union of Virginia; the American Civil Liberties Union of Maryland; the American Civil Liberties Union of Pennsylvania; the American Civil Liberties Union of Delaware; the American Civil Liberties Union Foundation of Virginia; the American Civil Liberties Union Foundation of Maryland; the American Civil Liberties Union Foundation of Pennsylvania; the American Civil Liberties Union Foundation of Delaware; the American Civil Liberties Union of Illinois; the American Civil Liberties Union of Indiana; the American Civil Liberties Union of Iowa; the American Civil Liberties Union of Kentucky; the American Civil Liberties Union of Minnesota; the American Civil Liberties Union of Missouri; the American Civil Liberties Union of Nebraska; the American Civil Liberties Union of Ohio; the American Civil Liberties Union of South Dakota; the American Civil Liberties Union of Wisconsin; the American Civil Liberties Union Foundation of Illinois; the American Civil Liberties Union Foundation of Indiana; the American Civil Liberties Union Foundation of Iowa; the American Civil Liberties Union Foundation of Kentucky; the American Civil Liberties Union Foundation of Minnesota; the American Civil Liberties Union Foundation of Missouri; the American Civil Liberties Union Foundation of Nebraska; the American Civil Liberties Union Foundation of Ohio; the American Civil Liberties Union Foundation of South Dakota; the American Civil Liberties Union Foundation of Wisconsin; the American Civil Liberties Union of Northern California; the American Civil Liberties Union of Hawaii; the American Civil Liberties Union of Utah; the American Civil Liberties Union of Oregon; the American Civil Liberties Union of Alaska; the American Civil Liberties Union

This letter also concerns the supplemental FOIA request dated February 10, 2017, and submitted to CBP by the American Civil Liberties Union of Michigan and the American Civil Liberties Union Fund of Michigan. This supplemental request asks that the requested records also be furnished to Mr. Caballero.

The foregoing FOIA requests (hereinafter, the “Coordinated Requests”) all seek the same or substantially the same categories of information regarding CBP’s interpretation and enforcement of Executive Order 13769. A single search for records responsive to all of the Coordinated Requests will be coordinated by CBP headquarters. Accordingly, we are assigning the Coordinated Requests a single reference number: 2017-HQFO-00594. This reference number supersedes any reference number previously assigned to any of the Coordinated Requests.

Although the agency’s goal is to respond within 20 business days of receipt of a FOIA request, the FOIA permits a 10-day extension of this time period in certain circumstances. As the Coordinated Requests seek categories of records that will require a thorough and wide-ranging search, the agency invokes a 10-day extension for your request pursuant to 5 U.S.C. § 552(a) (6) (B).

For the purpose of determining whether unusual circumstances warrant such an extension, the agency has aggregated the Coordinated Requests pursuant to 5 U.S.C. § 552(a)(6)(B)(iv) and 6 C.F.R. § 5.5(d). These authorities permit the agency to aggregate requests in cases where it reasonably appears that multiple requests, submitted either by a requester or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances.

Each of the Coordinated Requests includes a request for expedited processing, and each of the Coordinated Requests presents substantially the same grounds for expedition. The requests for expedited processing are granted. As a result, the Coordinated Requests will be placed in the processing track for expedited requests, where it will be given priority over non-expedited requests and later-filed expedited requests.

Although we are expediting the Coordinated Requests, we have encountered some delay in processing the Coordinated Requests due to the increasing number of FOIA requests received by this

of Colorado; the American Civil Liberties Union of Idaho; the American Civil Liberties Union of Wyoming; the American Civil Liberties Union Foundation of Colorado; the American Civil Liberties Union Foundation of Alaska; the American Civil Liberties Union Foundation of Idaho; the American Civil Liberties Union Foundation of Oregon; the American Civil Liberties Union of Michigan; the American Civil Liberties Union Fund of Michigan; the American Civil Liberties Union Foundation of Texas; the American Civil Liberties Union of Georgia; the American Civil Liberties Union of North Carolina; the American Civil Liberties Union of South Carolina; the American Civil Liberties Union of West Virginia; the American Civil Liberties Union Foundation of Georgia; the American Civil Liberties Union Foundation of North Carolina; the American Civil Liberties Union Foundation of South Carolina; the American Civil Liberties Union Foundation of West Virginia; the American Civil Liberties Union of Southern California; the American Civil Liberties Union of Nevada; the American Civil Liberties Union Foundation of Southern California; and the American Civil Liberties Union Foundation of Nevada.

office and the complexity of the Coordinated Requests. We will make every effort to process your request as soon as practicable.

As it relates to processing fees, the Coordinated Requests are subject to aggregation pursuant to 6 C.F.R. § 5.11(h). However, the agency is granting your requested fee waiver.

Because most of the Coordinated Request are now in litigation, if you need any further assistance or would like to discuss any aspect of your request, please contact Matthew J. Berns, Trial Attorney, Department of Justice, Civil Division, Federal Programs Branch.

Sincerely,

A handwritten signature in blue ink that reads "Kevin L. Tyrrell". The signature is written in a cursive style.

Kevin L. Tyrrell
Director FOIA Appeals and Litigation