

U.S. Department of Justice



United States Attorney
Southern District of New York

MEMO ENDORSED

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DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 1/3/2023

January 3, 2023

BY ECF

The Honorable Colleen McMahon
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street, Room 2550
New York, NY 10007

1/3/2023

Correct. No need to file me post in progress

Keep progress

Colleen McMahon

Re: *Brennan Center for Justice v. United States*, No. 22 Civ. 7038 (CM)

Dear Judge McMahon:

This Office represents the defendants, the United States Department of Homeland Security (“DHS”) and United States Immigration and Customs Enforcement (“ICE,” and with DHS, “Defendants”), in the above-referenced case brought by plaintiff Brennan Center for Justice at the New York University School of Law (“Plaintiff”), pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. I write respectfully in advance of the initial pretrial conference scheduled for January 5, 2023. On behalf of the parties, we respectfully request that the Court adjourn the pretrial conference *sine die*.

Because this is an action brought under FOIA, which in essence seeks review of agency action, Local Civil Rule 16.1 exempts the parties from the requirement of a mandatory scheduling order contained in Fed. R. Civ. P. 16(b). Accordingly, the parties respectfully request that the Court relieve the parties of their obligation to file a case management plan and scheduling order pursuant to Fed. R. Civ. P. 26(f) and the Court’s September 15, 2022, Order (Dkt. No. 12). Furthermore, no discovery schedule is needed at this time because the parties expect that this case, like most FOIA cases, will be resolved through cross-motions for summary judgment following the conclusion of Defendants’ search for, and production of, responsive, non-exempt records. *See Wood v. F.B.I.*, 432 F.3d 78, 85 (2d Cir. 2005) (“[D]iscovery relating to the agency’s search and the exemptions it claims for withholding records generally is unnecessary if the agency’s submissions are adequate on their face,” and a district court may forgo discovery and award summary judgment on the basis of submitted affidavits or declarations.” (citation omitted)).

Counsel for the parties have been engaged in productive discussions since the fall, and the parties continue to work through potential issues as they arise. Defendants are conducting searches, and ICE has already begun review and production of non-exempt, responsive records. The parties believe that it may ultimately be possible to resolve this matter without the need for judicial intervention. Accordingly, the parties respectfully request that the Court relieve the

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parties of the obligation to file a case management plan and scheduling order, and further, that the Court permit the parties to submit a further status report on January 31, 2023, advising the Court of the parties' progress on this matter and whether a conference is necessary.

We thank the Court for its consideration of this request.

Respectfully submitted,

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cc: All counsel of record (via ECF)