

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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PROPERTY OF THE PEOPLE, INC., <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 1:17-cv-01193-JEB
)	
UNITED STATES DEPARTMENT OF)	
JUSTICE,)	
)	
Defendant.)	
_____)	

FIRST DECLARATION OF MICHAEL G. SEIDEL

I, Michael G. Seidel, declare as follows:

(1) I am the Section Chief of the Record/Information Dissemination Section (“RIDS”), Information Management Division (“IMD”), Federal Bureau of Investigation (“FBI”), Winchester, Virginia. I joined the FBI in September 2011, and prior to my current position, I was the Assistant Section Chief of RIDS from June 2016 to July 2020; Unit Chief, RIDS Litigation Support Unit from November 2012 to June 2016; and an Assistant General Counsel, FBI Office of General Counsel, Freedom of Information Act (“FOIA”) Litigation Unit, from September 2011 to November 2012. In those capacities, I had management oversight or agency counsel responsibility for FBI FOIA and Privacy Act (“FOIPA”) litigation cases nationwide. Prior to my joining the FBI, I served as a Senior Attorney, U.S. Drug Enforcement Administration (“DEA”) from September 2006 to September 2011, where among myriad legal responsibilities, I advised on FOIPA matters and served as agency counsel representing the DEA in FOIPA suits nationwide. I also served as a U.S. Army Judge Advocate General’s Corps Officer in various assignments from 1994 to September 2006 culminating in

my assignment as Chief, General Litigation Branch, U.S. Army Litigation Division where I oversaw FOIA/PA litigation for the U.S. Army. I am an attorney registered in the State of Ohio and the District of Columbia.

(2) In my official capacity as Section Chief of RIDS, I supervise approximately 237 FBI employees, supported by approximately 95 contractors, who staff a total of twelve (12) Federal Bureau of Investigation Headquarters (“FBIHQ”) units and two (2) field operational service center units whose collective mission is to effectively plan, develop, direct, and manage responses to requests for access to FBI records and information pursuant to the FOIA as amended by the OPEN Government Act of 2007, the OPEN FOIA Act of 2009, and the FOIA Improvement Act of 2016; the Privacy Act of 1974; Executive Order 13526; Presidential, Attorney General, and FBI policies and procedures; judicial decisions; and Presidential and Congressional directives. The statements contained in this declaration are based upon my personal knowledge, upon information provided to me in my official capacity, and upon conclusions and determinations reached and made in accordance therewith.

(3) Due to the nature of my official duties, I am familiar with the procedures followed by the FBI in responding to requests for information from its files pursuant to the provisions of the FOIA, 5 U.S.C. § 552. Specifically, I am familiar with the FBI’s handling of Plaintiffs’ multi-part FOIA request to the FBI for particular FBI file numbers and information related to Mr. Donald John Trump.

(4) This declaration incorporates previous declarations filed in this case dated November 15, 2017 (hereinafter “First Hardy Declaration”) and January 29, 2018 (hereinafter “Second Hardy Declaration”). It also discusses (i) the FBI’s interpretation of Plaintiffs’ request; (ii) the FBI’s *Glomar* response vis-a-vis the processing of Trump Organization records; (iii)

provides a description of the FBI's Central Record System ("CRS"); (iv) explains search efforts in *Jason Leopold and Ryan Noah Shapiro v. DOJ*, 16-cv-02182 (DDC) for Trump-related organizations and explains the FBI's willingness to conduct an additional, similar search for Trump related organizations, and finally; (v) explains the extraordinary step of searching the CRS for "non-investigative" records about Donald Trump. In accordance with *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), the FBI is submitting this declaration prior to briefing to explain the procedures used to search for, review, and process the responsive records, and the FBI's justification for withholding information in full or in part pursuant to FOIA Exemptions (b)(3), (b)(5), (b)(6), (b)(7)(A), (b)(7)(C), (b)(7)(D), and (b)(7)(E). Accordingly, the FBI located 4,205 total pages of responsive administrative material consisting of 1,663 pages released in full ("RIF"), 1,554 pages released in part ("RIP"), and 988 pages withheld in full ("WIF") pursuant to the FOIA Exemptions above, or as duplicates of other pages.

(5) In addition, this declaration documents the FBI's review of responsive documents, and justifies the FBI's assertion of FOIA Exemptions (b)(7)(D) and (b)(7)(E) to categorically withhold records responsive to Plaintiffs' request relating to file numbers 137-NY-19967 and 137-22152 (Items C & D, *infra*). Lastly, it also addresses the FBI's efforts to conduct searches of an exhaustive list of additional search terms related to Mr. Trump provided by Plaintiffs.

ADMINISTRATIVE HISTORY¹

(6) By facsimile dated March 16, 2017, Plaintiffs submitted a multi-part FOIA request² to the FBI seeking access to:

- A. Any and all records that constitute, mention, or refer to FBI file 194-NK-88595.
- B. Any and all records that constitute, mention, or refer to FBI file 166-LV-29911.
- C. Any and all records that constitute, mention, or refer to FBI file 137-NY-19967.
- D. Any and all records that constitute, mention, or refer to FBI file 137-22152.
- E. Any and all records that constitute, mention, or refer to any and all files identified but redacted in the attached "Addendum E".
- F. Any and all records that mention or refer to the FBI's investigation of possible extortion detailed in Addendum E.³
- G. Any and all records that constitute, mention, or refer to FBI file 92-PH-99239.
- H. Any and all records mentioning or referring to the living person Donald John Trump.⁴ (*See Exhibit A.*)

¹ The First and Second Hardy Declarations in this case addressed issues related solely to Item H (FOIA Request Number 1369375-0). This declaration addresses the remaining seven issues in this case (Items A-G). Included here is the table from the First Hardy Declaration at ¶¶ 5-6 further describing the FOIA request in this case.

² Plaintiffs also requested a fee waiver and news media status. The FBI granted news media status meaning Plaintiffs will not be charged search fees but will still be responsible for duplication fees.

³ Plaintiffs advised the chronological scope of this portion of the FOIA request was February 18, 2009 to present.

⁴ Plaintiffs advised the chronological scope of this portion of the FOIA request was June 14, 1946 to June 15, 2015.

(7) For administrative convenience, the FBI opened eight separate cases in its FOIPA Document Processing System ("FDPS"):⁵

FOIA REQUEST NUMBER	ITEM OF FOIA REQUEST LETTER (<i>See ¶ 6A-H, SUPRA</i>)
1369350-0	Item A
1369355-0	Item B
1369366-0	Item C
1369371-0	Item D
NFP-69160 ⁶	Item E
NFP-69199	Item F
1369358-0	Item G
1369375-0	Item H

FOIA REQUEST NUMBERS 1369350, 1369355, & 1369358 (ITEMS A, B & G)

(8) By letters dated March 23, 2017, the FBI acknowledged receipt of Plaintiffs' multi-part request and advised that it was aggregating FOIA Request Numbers 1369350-000; 1369355-000; and 1369358-000 due to the subjects (specific FBI File Numbers) of the request being similar in nature. The FBI also advised that Plaintiffs' could reduce the scope of their request, and that unusual circumstances applied for the FOIA request. Lastly, the FBI notified Plaintiffs of their right to appeal the FBI's decision to Department of Justice ("DOJ"), Office of Information Policy ("OIP") within sixty (60) days from the date of the response letter. (*See Exhibit B.*)

⁵ FDPS is the internal repository and application utilized by RIDS to process, track, and respond to FOIA and/or Privacy Act ("FOIPA") requests received by FBI. It stores FOIPA related records.

⁶ NFP stands for "Non-FOIPA": The FBI assigns these numbers when it deems a request as not a proper FOIA or Privacy Act request. The FBI may deem a request as improper for a variety of reasons to include (but not limited to): the request being too vague, too broad, or not reasonably described to trigger a search of the FBI's CRS.

FOIA REQUEST NUMBERS 1369366 & 1369371 (ITEMS C & D)

(9) By letters dated March 23, 2017, the FBI acknowledged receipt of Plaintiffs' request and issued a "*Glomar*" denial.⁷ Specifically, the FBI neither confirmed nor denied the existence of any records responsive to Plaintiffs' request, which, if they existed, would be exempt from disclosure pursuant to FOIA Exemption (b)(7)(E). Lastly, the FBI notified Plaintiffs that they could appeal the FBI's determination by filing an administrative appeal with OIP within ninety (90) days from the date of its letter, or seek dispute resolution services by contacting the Office of Government Information Services ("OGIS"), by telephone or by email at ogis@nara.gov. **(See Exhibit C.)**

(10) By letters dated May 5, 2017, Plaintiffs appealed the FBI's *Glomar* denial decision. **(See Exhibit D.)**

(11) By letter dated May 12, 2017, OIP acknowledged receipt of Plaintiffs' appeal and assigned it appeal number DOJ-AP-2017-004070. **(See Exhibit E.)**

(12) By letter dated May 12, 2017, OIP acknowledged receipt of Plaintiffs' appeal and assigned it appeal number DOJ-AP-2017-004069. **(See Exhibit F.)**

(13) By letters dated July 19, 2017, OIP advised Plaintiffs it was closing both of their appeals (DOJ-AP-2017-004069 and DOJ-AP-2017-004070) due to their active litigation. **(See Exhibit G.)**

⁷ The phrase "*Glomar* response" stems from a case in which a FOIA requester sought information concerning a ship named the "Hughes *Glomar* Explorer," and the CIA refused to confirm or deny its relationship with the *Glomar* vessel because to do so would compromise the national security or divulge intelligence sources and methods. *Phillipi v. CIA*, 655 F.2d 1325 (D.C. Cir. 1981). *Glomar* responses are proper "if the fact of the existence or nonexistence of agency records falls within a FOIA exemption." *Wolf v. C.I.A.*, 473 F.3d 370, 374 (D.C. Cir. 2007).

NON-FOIPA NUMBERS NFP-69160 & NFP-69199 (ITEMS E & F)

(14) By letter dated March 29, 2017, the FBI advised Plaintiffs that “the non-identified records that you seek have been properly reviewed and withheld pursuant to the provisions of the Freedom of Information and Privacy Acts, 5 U.S.C. § Sections 552 and 552A. Your ‘request’ for the very information exempted from responsive records in prior processed requests does not reasonably describe records to trigger a search. Additionally, the FOIA does not require federal agencies to answer inquiries, create records, conduct research, or draw conclusions concerning queried data. Rather, the FOIA requires agencies to provide access to reasonably described, nonexempt records. The questions posed in the referenced letter are not FOIA requests because they do not comply with the FOIA and its regulations.” The FBI assigned Request No. NFP-69160 to this part of the request. Additionally, the FBI notified Plaintiffs that they could appeal the FBI’s determination by filing an administrative appeal with OIP within ninety (90) days from the date of its letter, or seek dispute resolution services by contacting the OGIS by telephone or by email at ogis@nara.gov. **(See Exhibit H.)**

(15) By letter dated March 30, 2017, the FBI advised Plaintiffs that this part of the request was not reasonably described, overly broad in scope, and seeks information in vague and undefined terms. The FBI assigned Request No. NFP-69199 to this part of the request. Additionally, the FBI notified Plaintiffs that they could appeal the FBI’s determination by filing an administrative appeal with OIP within ninety (90) days from the date of its letter, or seek dispute resolution services by contacting the OGIS by telephone or by email at ogis@nara.gov. **(See Exhibit I.)**

RESPONSIVE MATERIAL PRODUCTION HISTORY FOR FOIA REQUEST NUMBERS 1369350, 1369355, 1369358, 1369366 & 1369371 (ITEMS A-D & G)

(16) By letter dated October 20, 2017, the FBI advised it reviewed 517 pages and released 334 pages of responsive material in full or in part to Plaintiffs with certain information withheld pursuant to FOIA Exemptions (b)(3), (b)(5), (b)(6), (b)(7)(C), (b)(7)(D), and (b)(7)(E). The FBI advised Plaintiffs they could appeal the FBI's determination by filing an administrative appeal with OIP within ninety (90) days. **(See Exhibit J.)**

(17) By letter dated November 20, 2017, the FBI advised it reviewed 534 pages and released 525 pages of responsive material in part or in full to Plaintiffs with certain information withheld pursuant to FOIA Exemptions (b)(6), (b)(7)(A), (b)(7)(C), and (b)(7)(E). The FBI advised Plaintiffs they could appeal the FBI's determination by filing an administrative appeal with OIP within ninety (90) days. **(See Exhibit K.)**

(18) By letter dated December 20, 2017, the FBI advised it reviewed 522 pages and released 99 pages of responsive material in part or in full to Plaintiffs with certain information withheld pursuant to FOIA Exemptions (b)(6), (b)(7)(A), (b)(7)(C), (b)(7)(D), and (b)(7)(E). The FBI advised Plaintiffs they could appeal the FBI's determination by filing an administrative appeal with OIP within ninety (90) days. **(See Exhibit L.)**

(19) By letter dated January 19, 2018, the FBI advised it reviewed 594 pages and released 397 pages of responsive material in part or in full to Plaintiffs with certain information withheld pursuant to FOIA Exemptions (b)(3), (b)(6), (b)(7)(A), (b)(7)(C), (b)(7)(D), and (b)(7)(E). The FBI advised Plaintiffs they could appeal the FBI's determination by filing an administrative appeal with OIP within ninety (90) days. **(See Exhibit M.)**

(20) By letter dated February 20, 2018, the FBI advised it reviewed 500 pages and released 455 pages of responsive material in part or in full to Plaintiffs with certain information

withheld pursuant to FOIA Exemptions (b)(3), (b)(6), (b)(7)(C), (b)(7)(D), and (b)(7)(E). The FBI advised Plaintiffs they could appeal the FBI's determination by filing an administrative appeal with OIP within ninety (90) days. **(See Exhibit N.)**

(21) By letter dated March 20, 2018, the FBI advised it reviewed 509 pages and released 135 pages of responsive material in part or in full to Plaintiffs with certain information withheld pursuant to FOIA Exemptions (b)(6), (b)(7)(C), and (b)(7)(D). The FBI advised Plaintiffs they could appeal the FBI's determination by filing an administrative appeal with OIP within ninety (90) days. **(See Exhibit O.)**

(22) By letter dated April 20, 2018, the FBI advised it reviewed 530 pages and released 461 pages of responsive material in part or in full to Plaintiffs with certain information withheld pursuant to FOIA Exemptions (b)(6) and (b)(7)(C). The FBI advised Plaintiffs they could appeal the FBI's determination by filing an administrative appeal with OIP within ninety (90) days. **(See Exhibit P.)**

(23) By letter dated May 21, 2018, the FBI advised it reviewed 492 pages and released 459 pages of responsive material in part or in full to Plaintiffs with certain information withheld pursuant to FOIA Exemptions (b)(3), (b)(6), (b)(7)(C), (b)(7)(D), and (b)(7)(E). The FBI advised Plaintiffs they could appeal the FBI's determination by filing an administrative appeal with OIP within ninety (90) days. **(See Exhibit Q.)**

(24) By letter dated June 20, 2018, the FBI advised documents representing the ninth interim release of information were categorically exempt under FOIA Exemptions (b)(7)(D) and (b)(7)(E). In addition, the FBI advised it was also asserting underlying FOIA Exemptions (b)(3), (b)(6), (b)(7)(C), (b)(7)(D) to the underlying material. The FBI advised Plaintiffs they could appeal the FBI's determination by filing an administrative appeal with OIP within ninety

(90) days. (**See Exhibit R.**)

(25) By letter dated July 23, 2018, the FBI advised documents representing the tenth interim release of information were categorically exempt under FOIA Exemptions (b)(7)(D) and (b)(7)(E). In addition, the FBI advised it was also asserting underlying FOIA Exemptions (b)(3), (b)(6), (b)(7)(C), (b)(7)(D) to the underlying material. The FBI advised Plaintiffs they could appeal the FBI's determination by filing an administrative appeal with OIP within ninety (90) days. (**See Exhibit S.**)

(26) By letter dated August 20, 2018, the FBI advised it reviewed 2 pages and released 2 pages of responsive material in part to Plaintiffs with certain information withheld pursuant to FOIA Exemptions (b)(6) and (b)(7)(C).⁸ The FBI advised Plaintiffs they could appeal the FBI's determination by filing an administrative appeal with OIP within ninety (90) days. (**See Exhibit T.**)

(27) By letter dated September 11, 2018, the FBI advised it was releasing 17 pages of responsive material previously referred to the U.S. Immigration and Customs Enforcement ("ICE") to Plaintiffs with certain information withheld pursuant to FOIA Exemptions (b)(4), (b)(6), (b)(7)(C), and (b)(7)(E) per ICE. The FBI advised Plaintiffs if they wished to appeal ICE's denials, they could write directly to that agency. (**See Exhibit U.**)

(28) By letter dated December 27, 2018, the FBI advised that it previously referred 308 pages of material to the Executive Office for United States Attorneys ("EOUSA") for direct

⁸ The FBI also advised in this letter that it was providing 43 pages of responsive material (bates pages People-190-232) which it previously consulted with the U.S. Customs and Border Protection ("CBP").

response to Plaintiffs.⁹ EOUSA decided to instead treat this direct referral as a consultation and advised that of the approximately 308 pages of responsive material, the FBI could release 288 pages in full to Plaintiffs with certain information withheld in full on the remaining pages pursuant to FOIA Exemptions (b)(3), (b)(5), (b)(6), and (b)(7)(C).¹⁰ The FBI also advised in this letter that it was releasing information previously withheld pursuant to FOIA Exemption (b)(7)(E) on bates pages People-1578 and People-1809. Lastly, the FBI advised Plaintiffs if they wished to appeal EOUSA's denials, they could write directly to EOUSA. (**See Exhibit V.**)

(29) By letter dated May 8, 2019, the FBI advised it had located material as a result of additional searches the FBI had conducted for Trump-related organizations provided by Plaintiffs.¹¹ The FBI reviewed five (5) pages and released two (2) pages in full or in part pursuant to FOIA Exemptions (b)(6), (b)(7)(A), and (b)(7)(C). (**See Exhibit W.**)

**INTERPRETATION OF PLAINTIFFS' REQUEST FOR
INFORMATION RELATED TO DONALD J. TRUMP**

(30) Plaintiffs' request sought any and all records mentioning or referring to Donald J. Trump for a specific time frame. As the nation's chief law enforcement agency, the FBI originally construed the four corners of Plaintiffs' request as seeking any responsive investigative records about Mr. Trump. As the Court aptly noted in its April 23, 2018 Opinion

⁹ The FBI initially referred bates pages People-1859-1865, 2180-2182, 2243-2278, and 2725-2986.

¹⁰ The FBI withheld its information in part on bates pages People-2182, 2243-2278, 2725-2986 pursuant to FOIA Exemptions (b)(6) and (b)(7)(C). EOUSA withheld its information in full on bates pages People-1859-1865, 2180-2182, 2243-2245, 2259-2261, 2266-2267, and 2272-2273 pursuant to FOIA Exemptions (b)(3), (b)(5), (b)(6), and (b)(7)(C).

¹¹ On or about January 31, 2019, Plaintiffs provided a list of specific organizations which President Trump acted in his official capacity as chief executive. The FBI conducted a search for records that met this criteria, located responsive material and processed them for release. *See*

(“Opinion”), to the extent Plaintiffs seek “non-investigative” records, the FBI’s index search methodology of the Central Record System (“CRS”)—the standard search employed to reasonably locate records about individuals—extends beyond locating only “investigative” records; the search also comprises administrative, and general files. *See* Opinion, pg. 10. Consistent with the Opinion and in discussion with Plaintiffs, the FBI performed an additional CRS index search for non-investigative records as detailed below, which pierced the extension of *Glomar* to any non-investigative records unique to the facts of this case, and an additional CRS index search for records associated with Mr. Trump as a chief executive in his official capacity. The Court upheld the FBI’s *Glomar* response to the existence or nonexistence of any law enforcement records. Thus, beyond those exact records previously released per the search process for records about four Trump related organizations in *Jason Leopold and Ryan Noah Shapiro v. DOJ*, Civil Action No. 16-cv-02182 (D.D.C.), as detailed herein, the FBI maintains its *Glomar*.

THE FBI’S GLOMAR RESPONSE AND PRIOR REQUESTS FOR ORGANIZATIONAL RECORDS

(31) The Opinion holds that the FBI may issue a narrow Exemption 7(C) privacy “*Glomar*” response neither confirming nor denying the existence of law enforcement records about Donald Trump from June 14, 1946 to June 15, 2015, except for the exact records previously released. As the Opinion notes, there is a privacy distinction between a “*Glomar*” response seeking records about an individual and a request which seek records about an organization, or here, various Trump organizations. In fact, Plaintiffs already submitted FOIA requests in a previous litigation, *Leopold*, 16-cv-02182 (DDC),¹² for the following Trump

¹² In that case, both parties reached a settlement agreement and therefore no briefing was necessary.

organizations: Trump Entertainment Resorts, Donald J. Trump Foundation, Trump University, and Trump Organization for specific time frames.¹³ In response to those requests, the FBI conducted index searches of its CRS to identify responsive records. Responsive records were processed, and non-exempt information was released to Plaintiffs. As explained in the First Hardy Declaration, while processing these requests, the FBI released Donald Trump's name only when mentioned in his official capacity as chief executive of his organizations. For clarity, the release of his name in this capacity was the result of individualized balancing of the public interest in disclosure versus the reasonable expectation of an unwarranted invasion of privacy within the context of those requests and records; it was not a wholesale approach where any and all investigative records "mentioning Trump in his official capacity" were categorically segregated for release. *See* Opinion, pg. 20.

(32) However, in a good faith effort and in conferring with Plaintiffs, the FBI afforded Plaintiffs the opportunity to provide a list of organizations associated with Donald Trump as a chief executive in his official capacity. On or about January 31, 2019, Plaintiffs provided a list consisting of 124 organizations for the FBI to search. The FBI subsequently conducted searches for these organizations and located responsive material. Therefore, below is the description of the CRS, the prior organizational searches, the additional search for "non-investigative" records about Donald Trump, and finally the additional searches of these 124 organizations for references indexed to Donald Trump in his official capacity as a chief executive therein.

¹³ *See* ¶¶ 46-49, *infra* for a further description of the specific date ranges for each Trump Organization.

THE FBI'S CENTRAL RECORDS SYSTEM

(33) The CRS is an extensive system of records consisting of applicant, investigative, intelligence, personnel, administrative, and general files compiled and maintained by the FBI in the course of fulfilling its integrated missions and functions as a law enforcement, counterterrorism, and intelligence agency to include performance of administrative and personnel functions. The CRS spans the entire FBI organization and encompasses the records of FBI Headquarters (“FBIHQ”), FBI Field Offices, and FBI Legal Attaché Offices (“Legats”) worldwide.

(34) The CRS consists of a numerical sequence of files, called FBI “classifications,” which are organized according to designated subject categories. The broad array of CRS file classification categories includes types of criminal conduct and investigations conducted by the FBI, as well as categorical subjects pertaining to counterterrorism, intelligence, counterintelligence, personnel, and administrative matters. For identification and retrieval purposes across the FBI, when a case file is opened, it is assigned a Universal Case File Number (“UCFN”) consisting of three sequential components: (a) the CRS file classification number, (b) the abbreviation of the FBI Office of Origin (“OO”) initiating the file, and (c) the assigned individual case file number for that particular subject matter.¹⁴ Within each case file, pertinent documents of interest are “serialized,” or assigned a document number in the order which the document is added to the file, typically in chronological order.

THE CRS GENERAL INDICES AND INDEXING

(35) The general indices to the CRS are the index or “key” to locating records within

¹⁴ For example, in a fictitious file number of “11Z-HQ-56789;” the “11Z” component indicates the file classification, “HQ” indicates that FBI Headquarters is the FBI OO of the file, and “56789” is the assigned case specific file number.

the enormous amount of information contained in the CRS. The CRS is indexed in a manner which meets the FBI's investigative needs and priorities and allows FBI personnel to reasonably and adequately locate pertinent files in the performance of their law enforcement duties. The general indices are arranged in alphabetical order and comprise an index on a variety of subject matters to include individuals, organizations, events, or other subjects of investigative interest that are indexed for future retrieval. The entries in the general indices fall into two category types:

- (a) Main entry. A main index entry is created for each individual or non-individual that is the subject or focus of an investigation. The main subject(s) are identified in the case title of most documents in a file.
- (b) Reference entry. A reference index entry is created for individuals or non-individuals associated with the case but are not the main subject(s) or focus of an investigation. Reference subjects are typically not identified in the case title of a file.

(36) FBI employees may index information in the CRS by individual (persons), by organization (organizational entities, places, and things), and by event (*e.g.*, a terrorist attack or bank robbery). Indexing information in the CRS is done at the discretion of FBI investigators when information is deemed of sufficient significance to warrant indexing for future retrieval. Accordingly, the FBI does not index every individual name or other subject matter in the general indices.

AUTOMATED CASE SUPPORT

(37) Automated Case Support ("ACS") was an electronic, integrated case management system that became effective for FBIHQ and all FBI Field Offices and Legats on October 1, 1995. As part of the ACS implementation process, over 105 million CRS records were converted from automated systems previously utilized by the FBI into a single, consolidated case management system accessible by all FBI offices. ACS had an operational purpose and

design to enable the FBI to locate, retrieve, and maintain information in its files in the performance of its myriad missions and functions.¹⁵

(38) The Universal Index (“UNI”) was the automated index of the CRS and provided all offices of the FBI a centralized, electronic means of indexing pertinent investigative information to FBI files for future retrieval via index searching. Individual names were recorded with applicable identifying information such as date of birth, race, sex, locality, Social Security Number, address, and/or date of an event. Moreover, ACS implementation built upon and incorporated prior automated FBI indices; therefore, a search employing the UNI application of ACS encompassed data that was already indexed into the prior automated systems superseded by ACS. As such, a UNI index search in ACS was capable of locating FBI records created before its 1995 FBI-wide implementation in both paper and electronic format.¹⁶

ACS AND SENTINEL

(39) Sentinel is the FBI’s next generation case management system that became effective FBI-wide on July 1, 2012. Sentinel provides a web-based interface to FBI users, and it includes the same automated applications that were utilized in ACS. After July 1, 2012, all FBI generated records are created electronically in case files via Sentinel; however, Sentinel did not replace ACS and its relevance as an important FBI search mechanism. Just as pertinent

¹⁵ ACS was, and the next generation Sentinel system is, relied upon by the FBI daily to fulfill essential functions such as conducting criminal, counterterrorism, and national security investigations; background investigations; citizenship and employment queries, and security screening, to include Presidential protection.

¹⁶ Older CRS records that were not indexed into UNI as a result of the 1995 ACS consolidation remain searchable by manual review of index cards, known as the “manual indices.” A search of the manual indices is triggered for requests on individuals if the person was born on or before January 1, 1958; and for requests seeking information about organizations or events on or before January 1, 1973. Records created after these dates would be captured through a UNI search.

information was indexed into UNI for records generated in ACS before July 1, 2012, when a record is generated in Sentinel, information is indexed for future retrieval. Additionally, in the time frame in which both systems were operation, any information indexed within Sentinel was backfilled in ACS.

(40) On August 1, 2018, the ACS case management system was decommissioned, and ACS data was migrated into Sentinel, including the ACS indices data and digitized investigative records formerly available in ACS. Moreover, Sentinel retains the index search methodology and function whereby the CRS is queried via Sentinel for pertinent index main or reference entries in case files. All CRS index data from the UNI application previously searched via ACS is now searched through the “ACS Search” function within Sentinel.

(41) Considering ACS was still operational at the time the FBI conducted searches for Plaintiffs’ request, RIDS practice was to begin its FOIPA searching efforts by conducting an index search via ACS/UNI. When appropriate (when records were reasonably expected to have been created on or after July 1, 2012) RIDS then built on its ACS index search by conducting an index search of Sentinel records to ensure it captured all relevant data indexed after the implementation of Sentinel. These two index searches, in most cases represented the most reasonable means for the FBI to locate records potentially responsive to FOIPA requests. This is because these automated indices offered access to a comprehensive, agency-wide set of indexed data on a wide variety of investigative and administrative subjects. Currently, the FBI’s automated indices consists of millions of searchable records and are updated daily with material newly indexed in Sentinel.

(42) Additionally, it is important to note the location of records indexed to the subject of a FOIPA request does not automatically mean the indexed records are responsive to the

subject. Index searches are the means by which potentially responsive records are located, but ultimately, a FOIPA analyst must consider potentially responsive indexed records against the specific parameters of individual requests. Responsiveness determinations are made once indexed records are gathered, analyzed, and sorted by FOIPA analysts who then make informed scoping decisions to determine the total pool of records responsive to an individual request.

(43) Index Searching. To locate CRS information, RIDS employs an index search methodology. Index searches of the CRS are reasonably expected to locate responsive material within the vast CRS since the FBI indexes pertinent information into the CRS to facilitate retrieval based on operational necessity. Given the broad range of indexed material in terms of both time frame and subject matter that it can locate in FBI files, the automated UNI application of ACS is the mechanism RIDS employs to conduct CRS index searches.

(44) As discussed *supra*, UNI was the automated index for the FBI's CRS, and allowed index searches to be completed in ACS. Sentinel is another FBI case management system that provided a supplemental method of searching FBI records. On August 1, 2018, the ACS case management system was decommissioned, and ACS data was migrated into Sentinel, including the ACS indices data and digitized investigative records formerly available therein. This migration replaced the UNI search methodology; therefore, all CRS index data from the UNI application previously searched via ACS is now searched through the "ACS index search" function within Sentinel. Sentinel is now the platform used to query ACS indexed main or reference entries in case files.

SEARCH FOR RECORDS IN LEOPOLD, 16-CV-02182 (D.D.C.)

(45) As discussed at ¶¶ 30-31 *supra*, records previously processed in *Leopold* were also responsive to Plaintiffs' request at issue here. Due to the specific nature of these requests,

the FBI conducted “on the nose” (“OTN”) searches¹⁷ and/or string (“ST”) searches¹⁸ for the terms described below. The FBI provides the descriptions of the search efforts for these terms to demonstrate how the FBI located responsive material in the *Leopold* litigation and show the methodology used for the additional 124 Trump-related organizations provided by Plaintiffs.

TRUMP ENTERTAINMENT RESORTS, INC.

(46) In response to Plaintiffs’ request, RIDS conducted a CRS index search for responsive records employing the UNI application of ACS and Sentinel by using the following search terms: “Trump Entertainment Resorts, Inc.,” “Trump Entertainment Resorts;” “TER;” “Trump Hotel and Casino Resorts;” and “THCR.” The FBI’s search included an OTN search using each of these terms. The FBI used the date range provided by Plaintiffs (January 1, 1980 to the date of the first substantive search for records)¹⁹ to facilitate the identification of responsive records. As a result of these searches, the FBI located, reviewed, and released in full or part all non-exempt material by letters dated March 9, 2017, March 31, 2017, and July 10, 2017.

DONALD J. TRUMP FOUNDATION

(47) In response to Plaintiffs’ request, RIDS conducted a CRS index search for responsive records employing the UNI application of ACS and Sentinel by using the following search terms: “Donald J. Trump Foundation” and “Trump Foundation.” The FBI’s search

¹⁷ On-the-nose phonetic search (“OTN” search) – the FBI used the phonetic search capabilities of ACS to conduct an OTN search of these terms. This means the computer will search exactly the name or term entered in the name/term field and only that name or term, without any derivatives.

¹⁸ A string (“ST”) search is a search of all names and/or terms whose starting characters match the characters typed into the name field; such a search will automatically capture variations of the names and/or terms searched.

¹⁹ The FBI conducted its searches on October 21, 2016.

included an OTN search using each of these terms. The FBI used the date range provided by Plaintiffs (January 1, 1988 to the date of the first substantive search for records)²⁰ to facilitate the identification of responsive records. As a result of these searches, the FBI advised it was unable to identify records responsive to their FOIA request. However, the FBI advised Plaintiffs that if they had any additional details pertaining to the subject they believed would be of investigative interest to the Bureau, to provide that information and the FBI would conduct an additional search. To date, Plaintiffs have not provided any additional information and the FBI closed the request administratively.

TRUMP UNIVERSITY

(48) In response to Plaintiffs' request, RIDS conducted a CRS index search for responsive records employing the UNI application of ACS and Sentinel by using the following search terms: "Trump University;" "Trump University, LLC;" "Trump Wealth Institute;" "Trump Entrepreneur Initiative;" and "Trump Entrepreneur Initiative, LLC." The FBI's search included ST and OTN searches using each of these terms. The FBI used the date range provided by Plaintiffs (January 1, 2004 to the date of the first substantive search for records)²¹ to facilitate the identification of responsive records. As a result of these searches, the FBI located, reviewed and released in full or part all non-exempt material by letters dated March 28, 2017 and March 31, 2017.

TRUMP ORGANIZATION

(49) In response to Plaintiffs' request, RIDS conducted a CRS index search for responsive records employing the UNI application of ACS and Sentinel by using the following

²⁰ *Ibid.*

²¹ *Ibid.*

search terms: “Trump Organization” and “Elizabeth Trump and Son.” The FBI’s search included ST and OTN searches using each of these terms. The FBI used the date range provided by Plaintiffs (January 1, 1923 to the date of the first substantive search for records)²² to facilitate the identification of responsive records. As a result of these searches, the FBI located, reviewed and released in full or part all non-exempt material by letters dated April 20, 2017, April 27, 2017 and July 10, 2017.

(50) In sum, the FBI conducted OTN and ST searches for the approximately 14 search terms requested by Plaintiffs for the specific organizations owned and/or operated by Donald Trump for the specific time frame requested. As a result of these search efforts, the FBI produced all non-exempt records indexed under these specifically requested Trump organizations. The time frame of these requests is different for each request and does not cover the exact time frame of the request for Donald Trump at issue in the instant litigation.

PRIOR PROCESSING METHODOLOGY AND OTHER “TRUMP” ORGANIZATIONS

(51) As noted above, in *Leopold*, 16-cv-2182 (D.D.C.), the FBI released limited records containing Donald Trump’s name in his capacity as a Trump organization executive where the public interest in disclosure outweighed any counter veiling privacy interests. This individualized public interest versus privacy interest balancing—applied to the identities of all third-party individuals within FBI investigative records—was performed in the context of standard third-party identity processing within the records where the name was located; here, records **indexed** to various Trump organizations, but not Donald Trump himself. To further clarify, the Court affirmed the FBI’s *Glomar* response neither confirming nor denying the existence of any law enforcement investigative records indexed to the name “Donald Trump,”

²² *Ibid.*

regardless of the “capacity” which mentioned. As explained above, the FBI relies on a CRS index search when responding to most FOIA requests, and a search for law enforcement/ investigative records of the CRS indexed to the name “Donald Trump” would undermine the purpose and rationale of the *Glomar* response as it would be tantamount to confirming or denying which records about the individual exists.

(52) Mr. Trump, as noted in previous declarations and by his position as President of the United States, is a very public figure; however, he still maintains a privacy interest as recognized by the Court. *See* Opinion, pp. 13-14. The Court has already held in this case, the FBI’s long-standing practice with respect to the existence of records about anyone within its investigative files. Therefore, a privacy *Glomar* remains intact for investigative records, if any, indexed by his name. As a result, without a privacy waiver from Mr. Trump, conducting a search for Mr. Trump as an individual to locate material, if any, only referencing him in his “official capacity” as an executive of a Trump Organization, would reveal whether or not Mr. Trump’s name is indexed to FBI law enforcement investigative records.

(53) Nevertheless, in a good faith effort to locate, process, and produce any additional material responsive to records that may mention Mr. Trump “in the context of his official capacity as chief executive of specific organizations,” where the public interest in disclosure outweigh privacy interests, the FBI performed additional searches for the desired timeframe of Trump-related organizations provided by Plaintiffs. Upon receipt of the additional organization names, the FBI conducted searches using similar methodologies as outlined at ¶¶ 45-50, *supra*, and produced five (5) pages of non-exempt responsive material subject to the FOIA to Plaintiffs.

CRS SEARCH FOR TRUMP-RELATED RECORDS

(54) Given the unique facts of this case, the limited piercing of the privacy *Glomar* in

the investigative records category with respect to records about Trump Organizations, and the Court's finding (*see* Opinion, pg. 11) that the FBI's privacy *Glomar* may be unwarranted in the non-investigative context with respect to Mr. Trump, the FBI took the extraordinary step of performing searches of the CRS for records indexed to Mr. Trump limited to any non-investigative files of an administrative or general type and for similar records with regard to the list of additional Trump-related organizations provided by Plaintiffs.

Search for Non-Investigative Material Indexed to Mr. Trump

(55) The FBI conducted an additional index search of the CRS limited to only non-investigative records indexed to Donald Trump: personnel, general, and administrative files. As a result of this search effort, the FBI identified responsive records. The FBI ultimately processed two (2) pages (bates pages People-4199 through People-4200) from serial 61418 from file number 190-HQ-0 and released non-exempt information to Plaintiffs on August 20, 2018. Additional identified responsive records were destroyed prior to receipt of the FOIA request at issue here. One of these files, 190-HQ-46002 serial 207x, was damaged and ultimately destroyed in 2013 during a hurricane and subsequent flood of the FBI's Alexandria Records Center ("ARC") in Alexandria, Virginia. Per Sentinel, the subject of this file is "Agres, Ted" and it was opened on October 15, 1984 and closed on April 22, 1999. RIDS searched FDPS for the record but did not locate any previously scanned or processed copies of the file. The other file, 190-WF-C1-E, section 11, serial 742, was destroyed in 2006 in accordance with General Records Schedule 14 item 13B. Per Sentinel, the subject of this file is "FBIHQ Response Letters to Requesters" and it was opened on February 17, 1977 and closed on February 5, 2004. RIDS searched FDPS for the record but did not locate any previously scanned or processed copies of the file. These additional index search efforts of the CRS were

reasonably calculated to locate non-investigative records, avoiding the type of limitless search for any and all records related to Donald Trump entailing an overly broad, unduly burdensome search of FBI records as explained in the Second Hardy Declaration at ¶ 9.

Search for Additional Trump-related Organizations

(56) The FBI conducted additional index searches of the CRS for these 124 organizations limited to material solely for records related to Mr. Trump “in the context of his official capacity as chief executive of specific organizations,” where the public interest in disclosure outweigh privacy interests. As a result of this search effort, the FBI identified five (5) pages of responsive records. The FBI ultimately processed two (2) pages (bates pages People-4201 through People-4202) for release in full and withheld three (3) pages (bates pages People-4203 through People-4205) in full pursuant to FOIA Exemptions (b)(6), (b)(7)(A), and (b)(7)(C).

**SEARCH FOR RECORDS OF SPECIFIC INVESTIGATIVE FILES
REFERENCED IN PLAINTIFFS’ REQUEST**

(57) It is the FBI practice to search the CRS to determine if the FBI has records about a particular subject in response to most FOIPA requests. The FBI relies on the CRS because it is an extensive system of records consisting of applicant, investigative, intelligence, personnel, administrative, and general files compiled and maintained by the FBI in the course of fulfilling its integrated missions and functions as a law enforcement, counterterrorism, and intelligence agency to include performance of administrative and personnel functions. In this particular case, some subjects of Plaintiffs’ multi-part FOIA request pertained to specific investigative files.²³ Therefore, the FBI searched the CRS only to confirm those files at issue. A search of

²³ See Items A, B, & G at ¶ 6 *supra*.

the CRS confirmed these files were maintained there.

JUSTIFICATION FOR NONDISCLOSURE UNDER THE FOIA

(58) The paragraphs that follow explain the FBI's basis for withholding information within the responsive records. Part I provides justifications for specific exemption categories asserted within records that were processed and released, as well as within some records withheld in full. See ¶¶ 60-152, *infra*. Part II provides justification applicable only to the records categorically exempted pursuant to FOIA Exemptions (b)(7)(D) and (b)(7)(E)²⁴ See ¶¶ 153-165iii, *infra*.

(59) All documents responsive to Plaintiffs' request were processed to achieve maximum disclosure consistent with the access provisions of the FOIA. Every effort was made to provide Plaintiffs with all material in the public domain and with all reasonably segregable, non-exempt information in the responsive records. No reasonably segregable, nonexempt portions have been withheld from Plaintiffs. Further description of the information withheld, beyond what is provided in this declaration could identify the actual exempt information that the FBI has protected. Copies of the pages released in part and in full have been consecutively numbered "People-1 through People-4205" at the bottom of each page. Additionally, the FBI is including an index at **Exhibit X** to explain where within its productions of responsive records it withheld pages in their entirety and its reasoning for doing so; and to explain on which pages it asserted various FOIA exemptions. Pages withheld in their entirety (*e.g.*, removed per FOIA Exemption, duplicative of another responsive page, or referred to other government agencies

²⁴ Pursuant to *Maydak v. U.S. Department of Justice*, 218 F. 3d 760 (D.C. Cir. 2000), the FBI also explains its reasoning for applying underlying exemptions to the records categorically exempted pursuant to FOIA Exemptions (b)(7)(D) & (b)(7)(E).

("OGAs")) were replaced by a "Deleted Page Information Sheet" ("DPIS"), which identifies the reason and/or the applicable FOIA exemptions relied upon to withhold the page in full, as well as the bates numbers for the withheld material. The DPISs and bates-numbered pages that were released in part have been provided to Plaintiffs by letters at Exhibits J-W; and may be made available to the Court upon request. See ¶¶ 16-29, *supra*. The FOIA Exemptions asserted by the FBI as grounds for non-disclosure of portions of documents are (b)(3), (b)(5), (b)(6), (b)(7)(A), (b)(7)(C), (b)(7)(D), and (b)(7)(E).

PART I

Explanation of the Coded Format Used to Describe and Justify Withholdings

(60) The bates-numbered documents contain, on their faces, coded categories of exemptions that detail the nature of the information withheld pursuant to the provisions of the FOIA. The coded categories are provided to aid the Court's and Plaintiffs' review of the FBI's explanations of the FOIA exemptions it has asserted to withhold the material. The coded, bates-numbered pages together with this declaration demonstrate that all material withheld by the FBI is exempt from disclosure pursuant to the cited FOIA exemptions, or is so intertwined with protected material that segregation is not possible without revealing the underlying protected material.

(61) Each instance of information withheld on the bates-numbered pages is accompanied by a coded designation that corresponds to the categories listed below. For example, if "(b)(7)(C)-1" appears on a document, the "(b)(7)(C)" designation refers to FOIA Exemption 7(C) protecting against unwarranted invasions of personal privacy. The numerical designation of "1" following the "(b)(7)(C)" narrows the main category into a more specific subcategory, such as "Names and/or Identifying Information of FBI Special

Agents/Professional Staff.”

(62) Listed below are the categories used to explain the FOIA exemptions asserted to withhold the protected material in Part I.

SUMMARY OF JUSTIFICATION CATEGORIES²⁵	
CODED CATEGORIES	INFORMATION WITHHELD
Category (b)(3)	INFORMATION PROTECTED BY STATUTE
(b)(3)-1	Federal Grand Jury Information (Federal Rule of Criminal Procedure 6(e))
(b)(3)-2	Bank Secrecy Act [31 USC, Section 5319]
(b)(3)-3	Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. §§ 2510-2520
Category (b)(5)	PRIVILEGED INFORMATION
(b)(5)-1	Attorney-Client Privilege
(b)(5)-2	Deliberative Process Privilege
(b)(5)-3	Attorney Work Product Privilege
Category (b)(6) and (b)(7)(C)	CLEARLY UNWARRANTED INVASION OF PRIVACY AND UNWARRANTED INVASION OF PERSONAL PRIVACY
(b)(6)-1 and (b)(7)(C)-1	Names and Identifying Information of FBI Special Agents/Professional Staff
(b)(6)-2 and (b)(7)(C)-2	Names and Identifying Information of Third Parties of Investigative Interest
(b)(6)-3 and (b)(7)(C)-3	Names and Identifying Information of Local Law Enforcement Personnel
(b)(6)-4 and (b)(7)(C)-4	Names and Identifying Information of Non-FBI Federal Government Personnel
(b)(6)-5 and (b)(7)(C)-5	Names and Identifying Information of Third Parties who Provided Information to the FBI
(b)(6)-6 and (b)(7)(C)-6	Names and Identifying Information of Third Parties Merely Mentioned
Category (b)(7)(A)	PENDING LAW ENFORCEMENT PROCEEDINGS

²⁵ In the following paragraphs, there are several exemption categories that are not listed on this chart. These categories apply only to records categorically exempt pursuant to FOIA Exemptions (b)(7)(D) & (b)(7)(E). These categories were not “coded” as such on the documents, since the documents are categorically denied.

SUMMARY OF JUSTIFICATION CATEGORIES²⁵	
CODED CATEGORIES	INFORMATION WITHHELD
(b)(7)(A)-1	Information Which, if Disclosed, Could Reasonably be Expected to Interfere with Pending Law Enforcement Proceedings
Category (b)(7)(D)²⁶	CONFIDENTIAL SOURCE INFORMATION
(b)(7)(D)-1	Names, Identifying Data and Information Provided by Individuals Under an Implied Assurance of Confidentiality
(b)(7)(D)-3 ²⁷	Foreign Government Agency Information Under Express Confidentiality
(b)(7)(D)-4	Confidential Source Symbol Numbers
(b)(7)(D)-5	Confidential Source File Numbers
(b)(7)(D)-6	Names, Identifying Information About, and Information Provided by Sources Under Express Assurances of Confidentiality
Category (b)(7)(E)^{28, 29}	INVESTIGATIVE TECHNIQUES AND PROCEDURES
(b)(7)(E)-1	Sensitive File Numbers and Sub-file Names
(b)(7)(E)-2	Information Regarding Targets, Dates, and Scope of Surveillance
(b)(7)(E)-3	Database Identifiers and/or Printouts
(b)(7)(E)-4	Collection / Analysis of Information
(b)(7)(E)-6	Identity and/or Location of FBI or Joint Units, Squads, and Divisions

²⁶ Upon further review, the FBI is asserting category (b)(7)(D)-3 in all instances it had previously asserted (b)(7)(D)-2.

²⁷ The FBI originally withheld information on bates pages People-5, 44-46, 48-51, and 469 under "Other Pursuant to Sealed Court Order." Upon further review, the FBI determined this is no longer applicable to the information being withheld. However, this determination did not result in the release of any additional, reasonably segregable information as it is protected under Category (b)(7)(D)-3, in conjunction with Category (b)(6)-2 and (b)(7)(C)-2 and/or Category (b)(6)-4 and (b)(7)(C)-4.

²⁸ The FBI initially cited Category (b)(7)(E)-7 for Dates / Types of Investigations (Preliminary / Full Investigations) on bates pages People-1578 and 1809; however upon further review the FBI determined the information withheld pursuant to this category should be released in the supplemental described at ¶ 28.

²⁹ The FBI initially cited Category (b)(7)(E)-5 on only bates page People-350. However, upon further review, the FBI determined FOIA Exemption (b)(7)(E) does not apply on this page, but that no additional information should be disclosed.

SUMMARY OF JUSTIFICATION CATEGORIES²⁵	
CODED CATEGORIES	INFORMATION WITHHELD
(b)(7)(E)-8	FBI Internal Non-Public Intranet Web Address
(b)(7)(E)-9	Undercover Operation Information
(b)(7)(E)-10	Source Reporting Documents (FBI Forms FD-209)

EXEMPTION 3 – INFORMATION PROTECTED BY STATUTE

(63) Exemption 3 exempts information when another federal statute prohibits its disclosure provided that either the statute “requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue,” or the statute “establishes particular criteria for withholding or refers to particular types of matters to be withheld.” 5 U.S.C. § 552(b)(3). Moreover, if the withholding statute was enacted after October 28, 2009 (the date of enactment of the OPEN FOIA Act of 2009), then it must specifically cite to § 552(b)(3).

(b)(3)-1 Federal Grand Jury Information (Federal Rule of Criminal Procedure 6(e))

(64) In Category (b)(3)-1, the FBI protected information exempt from disclosure pursuant to FOIA Exemption (b)(3), as this information is protected under Federal Rule of Criminal Procedure 6(e). As relevant to 5 U.S.C. § 552(b)(3)(B), Rule 6(e) is a statute enacted before the date of enactment of the OPEN FOIA Act of 2009.³⁰ Rule 6(e) embodies a broad, sweeping policy of preserving the secrecy of grand jury material regardless of the substance in which it is contained. More specifically, Rule 6(e) states

[u]nless these rules provide otherwise, the following persons must not disclose a matter occurring before the grand jury: (i) a grand juror; (ii) an interpreter; (iii) a court reporter; (iv) an operator of a recording device; (v) a person who transcribes recorded testimony; (vi) an attorney for the government; or (vii) a person to whom disclosure is made under Rule 6(e)(3)(A)(ii) or (iii).

³⁰ The OPEN FOIA Act of 2009 was enacted October 28, 2009. *See* Pub.L. 111-83, 123 Stat. 2142, 2184.

Fed. R. Crim. P. 6(e).

(65) Federal Grand Jury proceedings are closed to the public and conducted ex parte to preserve confidentiality. The secrecy rule is an integral part of the criminal justice system and vital to the investigative function of the grand jury. Secrecy applies to every aspect of the proceeding to protect the existence, target, scope and direction of a grand jury investigation; the nature of the evidence produced; and views expressed by grand jury members. It serves both public and private interests because it safeguards jurors from extraneous pressure, examination and ridicule; it promotes freedom in jury deliberation; protects the anonymity of witnesses and jurors; and prevents the Federal Grand Jury from becoming a tool for civil discovery. The secrecy rule also assists with FBI investigations because it compels witnesses to testify and requires the production of business records, documents and physical evidence in response to grand jury subpoenas.

(66) Rule 6(e) protects the private, inner workings of the Federal Grand Jury and the material produced. Grand jury material in general includes lists of investigative targets; witness subpoenas; subpoenas duces tecum; physical evidence; summaries and analyses of grand jury testimony; and questions posed by jury members. Public disclosure would frustrate the purpose and function of the Federal Grand Jury. A breach of the secrecy rule would (1) have a chilling effect on witness participation as they would be less likely to come forward to authorities; (2) stifle full and frank witness testimony for fear of public inspection and retaliation; (3) cause jury members not to serve for fear their identity could be later released; (4) detrimentally impact juror participation because questions posed could undergo public examination and ridicule; and (5) reveal the identity of those wrongly accused. Thus, the secrecy protected by Rule 6(e) of the Federal Rules of Criminal Procedure is imperative to the existence and effectiveness of the Federal Grand Jury.

(67) The records responsive to Plaintiffs' request reflect that one or more federal grand juries were empaneled in relation to the investigation(s) at issue here, and information in the investigative files responsive to Plaintiffs' request reveal matters occurring before the grand jury/juries. Specifically, information in the investigative files here that was withheld consists of information that identifies specific records subpoenaed by a federal grand jury; and copies of specific records provided to a federal grand jury in response to federal grand jury subpoenas. Any disclosure of this information would clearly violate the secrecy of the grand jury proceedings and could reveal the inner workings of a federal grand jury. Accordingly, this information is exempt from disclosure pursuant to FOIA Exemption (b)(3), in conjunction with Rule 6(e).³¹

(b)(3)-2 Bank Secrecy Act [31 U.S.C. § 5319]

(68) The U.S. Department of the Treasury established the Financial Crimes Enforcement Network ("FinCEN") in 1990 to provide a government-wide multisource financial intelligence and analysis network. FinCEN's mission is to enhance U.S. national security, deter and detect criminal activity, and safeguard financial systems from abuse by promoting transparency in the U.S. and international financial systems. FinCEN has primary responsibility for implementation of the provisions of the Bank Secrecy Act ("BSA"), 12 U.S.C. § 1829b, 12 U.S.C. §§ 1951-1959, and 31 U.S.C. §§ 5311-5332. As relevant to 5 U.S.C. § 552 (b)(3)(B), the BSA is a statute enacted before the date of enactment of the OPEN FOIA Act of 2009.

(69) The BSA authorizes the Secretary of the Treasury, inter alia, to issue regulations

³¹ The FBI asserted Category (b)(3)-1 on the following bates pages within Part I: People-305-306, 321-323, 352, 393, 402, 1870-1891, 3719-3722, 3726, 3745-3746, 3768-3770, 3774-3778, 3795, 3809, 3812, 3815, 3820-3821, 3825, 3869, and 3900. The FBI also asserted Category (b)(3)-1 to protect information in the records within Part II.

requiring financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, and to implement anti-money laundering programs and compliance procedures. The BSA specifically provides that reports collected pursuant to the BSA, and records of those reports, are exempt from disclosure under the FOIA. See 31 U.S.C. § 5319.

(70) Hundreds of thousands of financial institutions are subject to the BSA reporting and record-keeping requirements. These include depository institutions (e.g., banks, credit unions and thrifts); brokers or dealers in securities; insurance companies that issue or underwrite certain products; money services businesses (e.g., money transmitters; issuers, redeemers and sellers of money orders and travelers' checks; check cashers and currency exchangers); casinos and card clubs; and dealers in precious metals, stones, or jewels. Reports filed pursuant to the BSA, and records of reports, are exempt from disclosure under the FOIA, 5 U.S.C. § 552. (See 31 U.S.C. § 5319).

(71) Within the responsive material at issue there exists BSA records obtained during the course of criminal investigative activities. The FBI obtained this information from FinCEN. The BSA provision found at 31 U.S.C. § 5319 provides that "a [BSA] report and records of reports are exempt from disclosure under section 552 of title 5." Pursuant to this statutory authority, FinCEN promulgated a regulation, found at 31 C.F.R. § 103.54, which specifically exempts BSA records from FOIA disclosure. The FBI is statutorily prohibited from identifying anything regarding the particular information withheld in these records. Therefore, information within the pending investigative files is exempt from disclosure pursuant to FOIA Exemption

(b)(3), in conjunction with the BSA.³²

(b)(3)-3 Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. §§ 2510-2520

(72) The FBI asserted Exemption (b)(3) to protect information that is specifically exempt pursuant to Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. §§ 2510-2520 (“Title III”), concerning the Court-ordered lawful interception and recording of telephone communications and vocal communications recorded by electronic microphone surveillance by a federal law enforcement agency in criminal investigations. As relevant to 5 U.S.C. § 552 (b)(3)(B), the Omnibus Crime Control and Safe Streets Act of 1968 is a statute enacted before the date of enactment of the OPEN FOIA Act of 2009.

(73) The Title III statute specifically exempts from disclosure certain criteria of information concerning Court-ordered interceptions and recordings by federal law enforcement agencies, including the identities of targeted individuals, targeted locations of microphones, the identities of participants in intercepted and/or recorded conversations, and the content of these intercepted and recorded conversations. Essentially, Title III protects from release the “who, what, when, where, and how” of the intercept. Specifically, Title III (T III) identifies intercepted communications as the subject of its disclosure limitations, and apart from those instances where judges may release intercepted material to parties overheard, Section 2517 limits disclosure of intercepted communications to only three circumstances, none of which apply to the withheld Title III information herein. As relevant here, the FBI is asserting Exemption 3 to protect information gathered through the use of lawful recording of telephonic communications in support of the criminal investigations at issue here. Consequently, the FBI

³² The FBI asserted Category (b)(3)-2 on the following bates pages within Part I: People-142, 144-147, 156-157, 179-180, and 184.

must assert Exemption 3 to protect this information from unauthorized disclosure.³³

**Additional Exemption 3 Sub-Categories Applicable Only to the Records
Categorically Exempt Pursuant to (b)(7)(D) & (b)(7)(E) – See Part II**

National Security Act of 1947, 50 U.S.C. § 3024 (i)(1)

(74) Within the categorically exempt records at issue, there exists information exempt pursuant to Section 102A(i)(1) of the National Security Act of 1947 (“NSA”), as amended by the Intelligence Reform and Terrorism Prevention Act of 2004 (“IRTPA”), 50 U.S.C. § 3024(i)(1), which provides that the Director of National Intelligence (“DNI”) “shall protect from unauthorized disclosure intelligence sources and methods.” As relevant to U.S.C. § 552(b)(3)(B), the National Security Act of 1947 was enacted before the date of enactment of the OPEN FOIA Act of 2009. On its face, this federal statute leaves no discretion to agencies about withholding from the public information about intelligence sources and methods. Thus, the protection afforded to intelligence sources and methods by 50 U.S.C. § 3024(i)(1) is absolute. *See CIA v. Sims*, 471 U.S. 159 (1985).

(75) In order to fulfill its obligation of protecting intelligence sources and methods, the DNI is authorized to establish and implement guidelines for the Intelligence Community (“IC”) for the classification of information under applicable laws, Executive Orders, or other Presidential Directives, and for access to and dissemination of intelligence. 50 U.S.C. § 3024(i)(1). In implementing this authority, the DNI promulgated Intelligence Community Directive 700, which provides that IC elements shall protect “national intelligence and

³³ The FBI asserted Category (b)(3)-3 on the following bates pages within Part I: People-1655-1674, 2627, 3774, 3793-3794, 3806-3807, 3810-3813, 3832, 3837-3839, 3841, 3850, 3854, 3874-3875, 3885-3886, 3888-3891, 3909, 3913-3914, 3982-3983, 3985-3988, 3990-3993, 3995-4001, 4003-4004, 4006-4010, 4012-4014, 4190-4191, and 4194. The FBI also asserted Category (b)(3)-3 to protect information in the records within Part II.

intelligence sources and methods and activities from unauthorized disclosure.” The FBI is one of 17 member agencies comprising the IC, and as such must protect intelligence sources and methods.

(76) Given the plain Congressional mandate to protect the IC’s sources and methods of gathering intelligence, the FBI has determined that intelligence sources and methods would be revealed if any of the withheld information is disclosed to Plaintiffs. Therefore, the FBI is prohibited from disclosing such information under § 3024 (i)(1).

(77) The FBI is asserting Exemption 3 in this case to protect information that would reveal intelligence sources and methods. In some instances, information was protected under Exemption 7(E) because unclassified intelligence sources and methods were employed as law enforcement techniques, procedures or guidelines and thus would qualify as both an intelligence source and method under Exemption 3 and a law enforcement technique under Exemption 7(E). Notably, § 3024 (i)(1) protects sources and methods regardless of whether they are classified. *See Sims*, 471 U.S. at 176. This information also has been withheld under the categorical application of Exemptions 7(D) and 7(E), thus, if the Court upholds the application of those categorical exemptions, it need not reach the application of Exemption 3 here.

EXEMPTION 5 – PRIVILEGED INFORMATION

(78) FOIA Exemption 5 has been construed to exempt documents or information normally privileged in the civil discovery context, and incorporates the attorney work product, attorney-client, and deliberative process privileges. Generally, the attorney-client privilege protects confidential communications from a client to an attorney and from an attorney to a client for the purpose of seeking and providing legal advice. The privilege covers client-supplied information and opinions given by an attorney based on and reflecting that

information. The deliberative process privilege protects predecisional, deliberative communications that are part of a process by which agency decisions are made. It protects opinions, advice, evaluations, deliberations, proposals, or recommendations that form part of an agency decision-making process, as well as the selection and sorting of factual information relied upon as part of the decision-making process.

(79) In order to apply Exemption 5, agencies must first satisfy the threshold requirement – *i.e.*, show that the information protected consists of “inter-agency or intra-agency” information. Once the threshold is satisfied, agencies must satisfy the elements of the pertinent privilege. With respect to the attorney-client privilege, agencies must show that the withheld information concerns confidential information shared by a client with an attorney for the purpose of obtaining legal advice or assistance, or legal advice or assistance provided by an attorney to a client reflecting confidential information. With respect to the deliberative process privilege, agencies must show that the withheld information was both predecisional – *i.e.*, antecedent to a final agency decision – and deliberative – *i.e.*, part of the process in which the agency engaged in an effort to reach a final decision (whether or not any final decision was ever reached).

(b)(5)-1 Attorney-Client Privilege

(80) In Category (b)(5)-1, the FBI asserted the attorney-client privilege to protect confidential inter-agency or intra-agency communications between U.S. government employees providing legal advice and services in their capacities as lawyers, within the records at issue. The attorney-client privilege encompasses confidential communications between these agency attorneys and FBI employees seeking legal advice. These communications between clients and attorneys were made in confidence, were not shared with or circulated to individuals outside the

attorney-client relationship and were made for the purpose of securing legal assistance or advice. People-463-464 is a two-page electronic communication (“EC”) summarizing a meeting between an Assistant United States Attorney (“AUSA”) and case agents where the case agent disclosed certain information deemed relevant to the case. Specifically, the information withheld includes the specific selective facts that led to the AUSA’s recommendation and decision concerning potential prosecution. Disclosure of these communications between the FBI attorneys and their clients would inhibit candor between the clients and their attorneys in relation to the issues about which they are seeking legal advice. Such candor and full disclosure are necessary in order to ensure that thorough and sound legal advice is provided. Such communications are permanently protected from disclosure by the legal adviser unless the client waives the protection. The FBI has not waived that protection; therefore, this information is exempt from disclosure pursuant to FOIA Exemption (b)(5).³⁴

(b)(5)-2 Deliberative Process Privilege

(81) To invoke the deliberative process privilege, an agency must show that an allegedly exempt document or information is both (a) “pre-decisional” – antecedent to the adoption of agency policy; and agency must also pinpoint agency decision or policy to which document contributed or identify a decision making process to which a document contributed – and (b) “deliberative” – a direct part of the deliberative process in that it makes recommendations or express opinions on legal or policy matters, reflects the give and take of the consultative process, and bears on the formulation or exercise of agency policy-oriented judgment. Furthermore, an agency must identify the role of a contested document in a specific

³⁴ The FBI asserted Category (b)(5)-1 on the following bates pages within Part I: People-463 and 464. Upon further review, the FBI is no longer asserting Category (b)(5)-1 on bates pages People-327-330 or 467. This did not result in the release of any additional information.

deliberative process. The FBI has relied on Exemption 5 pursuant to the deliberative process privilege, as discussed below.

(82) In Category (b)(5)-2, the FBI asserted Exemption (b)(5) to protect privileged deliberative materials. This privilege protects the internal deliberations of the government by exempting from release recommendations, analyses, speculation and other non-factual information prepared in anticipation of agency decision-making. The general purpose of the deliberative process privilege is to prevent injury to the quality of agency decisions. Thus, material containing or prepared in connection with the formulation of opinions, advice, evaluations, deliberations, policy formulation, proposals, conclusions or recommendations may properly be withheld. Specifically, the FBI withheld information pursuant to this privilege on two (2) pages (People-463 and 3912) because it details internal discussions concerning investigations at issue in FBI files 166-LV-29911 and 194A-NK-88595. As discussed *supra*, in FBI file 166-LV-29911, People-463 is page one of an electronic communication (“EC”) summarizing a meeting between the AUSA and case agents where the case agent disclosed certain information deemed relevant to the case. The deliberative process privilege here protects the information and opinions provided by the SA to the AUSA for the purpose of making the determination whether or not to prosecute. In FBI file 194A-NK-88595, the deliberative information withheld consists of a summary page from a draft operation proposal. Draft documents are inherently part of the deliberative process, as they predate final agency decisions and reflect the give and take of deliberations through the editing process, which leads to final, refined products. In both instances, this information is pre-decisional as it discusses investigative material which was gathered prior to any action being taken, and similarly it is part of the investigative deliberation process because it discusses steps and information gathered at

various points of these investigations, as well as opinions based on the information gathered. Accordingly, release of this type of information would have an inhibitive effect upon the development of policy and administrative direction of an agency because it would chill the full and frank discussion between agency personnel regarding a decision. If agency personnel knew that their preliminary opinions, evaluations and comments would be released for public consumption, they may be more circumspect in what they put in writing, and thereby, impede a candid discussion of the issues surrounding a decision. Therefore, this information is exempt from disclosure pursuant to FOIA Exemption (b)(5).³⁵

(b)(5)-3 Attorney Work Product Privilege

(83) In Category (b)(5)-3, the FBI protected privileged attorney work products. The attorney work product privilege protects such tangible and intangible items as interviews, memoranda, correspondence, mental impressions, and personal beliefs prepared or developed by an attorney, or at the direction of an attorney, in reasonable anticipation of litigation. The privilege is predicated on the recognition proper preparation of a case depends on an attorney's ability to assemble information, sort relevant from irrelevant facts, and prepare his/her legal theories and strategies without intrusive or needless scrutiny.

(84) In FBI file 166-LV-29911, the FBI protected information on bates pages People-327-330, 464, and 467. People-327-330 consists of a four-page FD-302 interview record, documenting the interview of a third party led by an AUSA. The contents of the interview are a direct result of the questions prepared and asked by the AUSA. As discussed *supra*, People-464 is page two of an EC summarizing a meeting between the AUSA and case agents and describes

³⁵ The FBI asserted Category (b)(5)-2 on the following bates pages within Part I: People-463 and 3912.

the AUSA's analysis and reasoning behind his decision to decline prosecution. Similarly, People-467 is a letter from the AUSA to the Special Agent communicating the AUSA's opinion and analysis of the case circumstances, and the resulting recommendation and ultimate decision to decline prosecution.

(85) The FBI relied on the attorney work product privilege to protect both inter-agency and intra-agency materials created both by an attorney and at the direction of an attorney in reasonable anticipation of litigation. Specifically, the FBI protected People-327-330 and 464 which were created at the direction of an attorney, and People-467, which was created by an attorney and sent to the FBI. The information withheld on these pages satisfies Exemption 5's threshold because these records were either exchanged within the FBI (*i.e.* between FBI personnel) or exchanged within the Department of Justice (*i.e.*, between the FBI and a U.S. Attorney's Office), respectively. Furthermore, these records are quintessential attorney work product and readily satisfy the elements of the attorney work product privilege because they were created both by an attorney and at the direction of an attorney involved in the potential criminal litigation against the individuals associated with the Mirage Hotel and Casino as described in FBI file 166-LV-29911. As described *supra*, release of this type of information would interfere with government attorneys' ability to properly prepare their legal theories and strategies and hinder them in proving the best possible representation of their client, the government. Finally, because the attorney work product privilege protects both factual and deliberative material, segregation is not required. Accordingly, the FBI properly withheld this information pursuant to Exemption 5.³⁶

³⁶ Upon further review, the FBI is asserting Category (b)(5)-3 on the following bates pages within Part I: People-327-330, 464, and 467.

EXEMPTION 7 THRESHOLD

(86) Before an agency can invoke any of the harms enumerated in FOIA Exemption (b)(7), it must first demonstrate that the records or information at issue were compiled for law enforcement purposes. Pursuant to 28 U.S.C. §§ 533 and 534, and Executive Order 12,333 as implemented by the Attorney General's Guidelines for Domestic FBI Operations and 28 C.F.R. § 0.85, the FBI is the primary investigative agency of the federal government with authority and responsibility to investigate all violations of federal law not exclusively assigned to another agency, to conduct investigations and activities to protect the United States and its people from terrorism and threats to national security, and further the foreign intelligence objectives of the United States. Under this investigative authority, the FBI created the responsive records pertaining to the specific file numbers in furtherance of the FBI's investigation into public corruption, activities related to legalized gambling, and racketeering. For the responsive material categorically exempt, the FBI created these records in furtherance of its Confidential Human Source ("CHS") program which allows the FBI to use the assistance of individuals, referred to as Human Intelligence, to obtain investigative leads to progress FBI cases.

(87) Thus, all the records at issue here were compiled for a law enforcement purpose and they squarely fall within the law enforcement duties of the FBI. Therefore, the information readily meets the threshold requirement of Exemption 7.

EXEMPTIONS 6 AND 7(C) –INVASIONS OF PERSONAL PRIVACY

(88) Exemption 6 exempts from disclosure "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). All information that applies to a particular person falls within the scope of Exemption 6.

(89) Exemption 7(C) similarly exempts from disclosure “records or information compiled for law enforcement purposes [when disclosure] could reasonably be expected to constitute an unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(7)(C).

(90) When withholding information pursuant to these two exemptions, the FBI is required to balance the privacy interests of the individuals mentioned in these records against any public interest in disclosure. In asserting these exemptions, each piece of information was scrutinized to determine the nature and strength of the privacy interest of every individual whose name and/or identifying information appears in the documents at issue. When withholding the information, the individual’s privacy interest was balanced against the public’s interest in disclosure. For purposes of these exemptions, a public interest exists only when information about an individual would shed light on the FBI’s performance of its mission to protect and defend the United States against terrorist and foreign intelligence threats, to uphold and enforce the criminal laws of the United States, and to provide leadership and criminal justice services to federal, state, municipal, and international agencies and partners. In each instance where information was withheld pursuant to Exemptions 6 and 7(C), the FBI determined that the individuals’ privacy interests outweighed any public interest in disclosure.

(b)(6)-1 and (b)(7)(C)-1 Names and Identifying Information of FBI Special Agents / Professional Staff

(91) In Category (b)(6)-1 and (b)(7)(C)-1, the FBI protected the names and identifying information of FBI Special Agents (“SAs”) and professional staff who were responsible for conducting, supervising, and/or maintaining the investigative activities reflected in the documents responsive to Plaintiffs’ FOIA request. These responsibilities included conducting interviews and compiling information, as well as reporting on the status of the investigations. Assignments of SAs to any particular investigation are not by choice. Publicity (adverse or

otherwise) regarding any particular investigation to which they have been assigned may seriously prejudice their effectiveness in conducting other investigations. The privacy consideration is also to protect FBI SAs, as individuals, from unnecessary, unofficial questioning as to the conduct of this or other investigations, whether or not they are currently employed by the FBI. FBI SAs conduct official inquiries into various criminal and national security violation cases. They come into contact with all strata of society, conducting searches and making arrests, both of which result in reasonable but nonetheless serious disturbances to people and their lives. It is possible for an individual targeted by such law enforcement actions to carry a grudge which may last for years. These individuals may seek revenge on the agents and other federal employees involved in a particular investigation. The publicity associated with the release of an agent's identity in connection with a particular investigation could trigger hostility toward a particular agent. Thus, SAs maintain substantial privacy interests in information about them in criminal investigative files. In contrast, there is no public interest to be served by disclosing the identities of the SAs to the public because their identities would not, themselves, significantly increase the public's understanding of the FBI's operations and activities. Accordingly, after balancing these SAs' substantial privacy interests against the non-existent public interest, the FBI properly protected the names of SAs pursuant to Exemptions 6 and 7(C).

(92) The names of FBI support employees were also protected. Professional staff are assigned to handle tasks related to the official investigations reflected in the documents responsive to Plaintiffs' FOIA request. They were, and possibly are, in position of access to information regarding official law enforcement investigations, and therefore could become targets of harassing inquiries for unauthorized access to investigations if their identities were

released.

(93) The documents contain the names of FBI SAs and professional staff. The FBI balanced the SA's and professional staff's privacy interests against the public interest in disclosure and determined the release would not significantly increase the public's understanding of FBI operations and activities. Disclosure of the information would constitute a clearly unwarranted and unwarranted invasion of their personal privacy. Thus, these individuals maintain substantial privacy interests in not having their identities disclosed. Accordingly, after balancing these employees' substantial privacy interests against the non-existent public interest, the FBI properly protected the names and identifying information of SAs and professional staff pursuant to coded categories (b)(6)-1 and (b)(7)(C)-1.³⁷

(b)(6)-2 and (b)(7)(C)-2 Names and Identifying Information of Third Parties of Investigative Interest

(94) In Category (b)(6)-2 and (b)(7)(C)-2, the FBI protected the names and identifying information of third-party individuals who were of investigative interest to the FBI. Being

³⁷ The FBI asserted Categories (b)(6)-1 and (b)(7)(C)-1 on the following bates pages within Part I: People-1-4, 7, 18, 23, 34, 40, 44, 47-48, 52-60, 62, 64, 66, 68-69, 109-115, 186, 188-189, 233, 288, 291-293, 295-296, 298-299, 305-307, 321, 323-324, 326-327, 331-332, 334, 348, 351, 353, 393, 395, 402-403, 463, 466-470, 476, 481-482, 832, 939, 942, 945, 948, 951, 954-955, 959, 962, 966, 974, 978-979, 983, 986, 991, 997, 1001, 1004, 1008, 1011-1012, 1015, 1018, 1021, 1052-1062, 1448-1449, 1483, 1520-1524, 1527, 1536, 1539, 1561, 1570-1571, 1575-1576, 1624, 1626, 1628-1630, 1632-1636, 1638, 1643-1644, 1646, 1652-1654, 1675, 1706, 1709-1713, 1715-1716, 1718-1726, 1729-1732, 1789, 1805, 1810, 1812, 1834, 1844-1845, 1855-1856, 1869, 1895-1899, 1902-1904, 1909-1910, 1930, 1942-1943, 1948, 1961, 1979-1982, 2168, 2176-2179, 2182-2183, 2208, 2243, 2258-2259, 2278-2279, 2281-2282, 2284-2285, 2289, 2295, 2618, 2621, 2623, 2625, 2627-2628, 2636-2637, 2639-2640, 2643-2647, 2653-2655, 2657-2658, 2661, 2665-2667, 2669, 2674, 2677, 2689, 2702, 2707, 2722-2725, 2987, 2998, 3013, 3116, 3174-3176, 3289, 3852, 3909, 3911, 3913, 3916-3917, 3957, 3961, 3963, 3966-3967, 3969, 3971-3977, 3980, 3982, 3985, 3990, 3994-3995, 4002-4003, 4005-4006, 4011-4012, 4018, 4020, 4166-4167, 4169, 4171-4172, 4189-4194, 4196-4197, and 4203. The FBI also asserted Categories (b)(6)-1 and (b)(7)(C)-1 to protect information in the records within Part II.

linked with any law enforcement investigation carries a strong negative connotation and a stigma. To release the identities of these individuals to the public in this context could subject them to harassment or embarrassment, as well as undue public attention, whether or not they ever actually committed a crime. Accordingly, the FBI has determined these individuals maintain a substantial privacy interest in not having their identities disclosed. In making a determination whether to release the names and/or personal information concerning these third parties, the public's interest in disclosure was balanced against the individuals' right to privacy. The FBI determined this information would not enlighten the public on how the agency conducts its internal operations and investigations. Accordingly, the FBI concluded the disclosure of this information would constitute a clearly unwarranted and unwarranted invasion of their personal privacy. The FBI properly protected the names and identifying information of third parties of investigative interest pursuant to Coded Categories (b)(6)-2 and (b)(7)(C)-2.³⁸

³⁸ The FBI asserted Categories (b)(6)-2 and (b)(7)(C)-2 on the following bates pages within Part I: People-2-16, 18-20, 22-23, 25-46, 48-49, 51-60, 62, 64, 66, 69-90, 109-110, 112-115, 119-120, 125-126, 128, 132-133, 137-159, 162-163, 168, 175-184, 186-187, 233-234, 239, 241-242, 263, 271, 282-283, 285, 287-294, 298-322, 324-341, 348-352, 393-394, 396-402, 463-469, 1525, 1574, 1578, 1626-1627, 1630-1631, 1635, 1637-1638, 1643-1644, 1646-1648, 1651, 1653-1655, 1657-1658, 1660-1661, 1666, 1669-1671, 1674-1675, 1713-1714, 1716-1717, 1722-1723, 1726-1727, 1806-1808, 1812, 1855-1857, 1869, 1895, 1897-1900, 1902, 1913-1914, 1928, 1932-1938, 1945, 1948, 1950, 1958, 1966, 1971, 1974-1976, 1982-1983, 2171-2173, 2175, 2178, 2286-2288, 2290-2293, 2616-2617, 2624, 2627-2628, 2640-2641, 2646, 2655-2657, 2678-2682, 2684-2688, 2704-2705, 2713, 2716, 2720, 2990, 3024, 3049, 3064-3066, 3071, 3077-3079, 3091-3099, 3101, 3013-3104, 3109, 3111-3112, 3707-3712, 3714-3720, 3722-3727, 3729, 3745-3749, 3752, 3755, 3767, 3771, 3773-3778, 3791-3795, 3806-3822, 3824-3827, 3829-3846, 3849-3858, 3869, 3871-3880, 3882-3905, 3909-3910, 3912-3914, 3957-3958, 3960, 3967, 3969, 3973, 3975, 3977, 3982-3983, 3985-3988, 3990-3993, 3995-4001, 4003-4004, 4006-4010, 4012-4014, 4018, 4020, 4189-4194, 4196, and 4203-4205. The FBI also asserted Categories (b)(6)-2 and (b)(7)(C)-2 to protect information in the records within Part II.

(b)(6)-3 and (b)(7)(C)-3 **Names and Identifying Information of Local Law Enforcement Personnel**

(95) In Category (b)(6)-3 and (b)(7)(C)-3, the FBI withheld the names and identifying information of local law enforcement personnel. These employees were acting in their official capacity and aided the FBI in the law enforcement investigative records responsive to Plaintiffs' request. The rationale for protecting the identities of FBI SAs and professional staff discussed *supra*, also supports withholding the names and identifying information of these local law enforcement personnel. To release the identities of these law enforcement personnel could subject them as individuals to unnecessary, unwarranted harassment which would constitute an unwarranted invasion of privacy. Furthermore, these individuals could become a prime target for compromise if their identities were known. The FBI balanced these privacy interests against the interest in disclosure. There is no public interest to be served in releasing the identities of these individuals, because such a release would not shed light on the operations or activities of the federal government. The FBI concluded that the disclosure of this information would constitute a clearly unwarranted and an unwarranted invasion of their personal privacy. The FBI has properly withheld this information pursuant to Coded Categories (b)(6)-3 and (b)(7)(C)-3.³⁹

(b)(6)-4 and (b)(7)(C)-4 **Names and Identifying Information of Non-FBI Federal Government Personnel**

(96) In Category (b)(6)-4 and (b)(7)(C)-4, the FBI protected the names and identifying

³⁹ The FBI asserted Categories (b)(6)-3 and (b)(7)(C)-3 on the following bates pages within Part I: People-2-3, 66, 77, 80, 90, 109-110, 114, 289, 348, 351, 393, 483, 503, 507, 539, 544-545, 547, 1524-1525, 1654, 1677, 1763, 1788, 1812, 1835, 1846, 1903-1904, 2169, 2627, 2654-2655, 2657, 2659, 2709, 3057-3058, 3060-3063, 3917, and 4197. The FBI also asserted Categories (b)(6)-3 and (b)(7)(C)-3 to protect information in the records within Part II.

information of non-FBI federal government personnel mentioned in records responsive to Plaintiffs' request. Specifically, the FBI protected the names of Department of Justice and U.S. Customs and Border Protection personnel. The relevant inquiry here is whether public access to this information would violate a viable privacy interest of these individuals, and whether there is a public interest in releasing their identities. Disclosure of these individuals' identities and identifying information could subject these personnel to unauthorized inquiries and harassment and would constitute a clearly unwarranted invasion of their personal privacy. The rationale for protecting non-FBI federal employees is the same as that for FBI employees discussed *supra*.

(97) In balancing the legitimate privacy interest of these individuals against any public interest in disclosure, the FBI determined that there is a complete lack of bona fide public interest in this information because its disclosure will not shed light on the operations and activities of the federal government. Accordingly, the FBI has concluded that the disclosure of this information would constitute a clearly unwarranted and unwarranted invasion of these individuals' personal privacy. The FBI properly protected the names and identifying information of non-FBI federal government personnel pursuant to Coded Categories (b)(6)-4 and (b)(7)(C)-4.⁴⁰

⁴⁰ The FBI asserted Categories (b)(6)-4 and (b)(7)(C)-4 on the following bates pages within Part I: People-2, 5, 45-46, 48-50, 66, 76-77, 88-90, 109-110, 113-115, 187, 288-289, 292-293, 305, 307, 322, 327, 341, 348-351, 353, 393-395, 402, 463-464, 466-469, 1637, 1654, 1660, 1715, 1763, 1788-1789, 1834-1835, 1844, 1846, 1934-1935, 1940, 1985, 1987, 1989, 1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009, 2011, 2013, 2015, 2017, 2019, 2021, 2023, 2025, 2027, 2029, 2031, 2033, 2035, 2037, 2039, 2041, 2043, 2045, 2047, 2049, 2052, 2054, 2056, 2058, 2060, 2062, 2064, 2066, 2068, 2070, 2072, 2074, 2076, 2078, 2080, 2082, 2086, 2089, 2091, 2094, 2096, 2098, 2102, 2104, 2106, 2108, 2110, 2112, 2114, 2116, 2118, 2121, 2123, 2125, 2127, 2129, 2131, 2133, 2135, 2137, 2139, 2141, 2143, 2145, 2147, 2149, 2151, 2154, 2156, 2158, 2160, 2162, 2164, 2166, 2182-2183, 2207-2208, 2214-2215, 2225-2226, 2242, 2296, 2318, 2328, 2338, 2352, 2374, 2382, 2407, 2419, 2476, 2525, 2555, 2566, 2583, 2591, 2624, 2628, and 2656. The FBI also asserted Categories (b)(6)-4 and (b)(7)(C)-4 to protect information in the records within Part II.

(b)(6)-5 and (b)(7)(C)-5 Names and Identifying Information of Third Parties who Provided Information to the FBI

(98) In Category (b)(6)-5 and (b)(7)(C)-5, the FBI protected the names and identifying information of individuals who were interviewed by the FBI and subsequently provided information during the course of the investigations at issue here. The FBI has found that information provided by individuals during an interview is one of the most productive investigative tools used by law enforcement agencies. The largest roadblock to successfully obtaining the desired information through an interview is fear by the interviewee that his/her identity will possibly be exposed and consequently that he/she could be harassed, intimidated, or threatened with legal or economic reprisal, or possible physical harm. To surmount these obstacles, persons interviewed by the FBI must be assured that their names and personal identifying information will be held in the strictest confidence. Thus, the FBI has determined that the third-party interviewees maintain substantial privacy interests in not having their identities disclosed. In contrast, the FBI could not identify any public interest in the disclosure of this information because the disclosure of these third parties' names and identifying information would not shed light on the operations and activities of the federal government. Accordingly, the FBI concluded that the disclosure of this information would unwarrantedly invade these individuals' personal privacy interests; therefore, this information is exempt from disclosure pursuant to Coded Categories (b)(6)-5 and (b)(7)(C)-5.⁴¹

⁴¹ The FBI asserted Categories (b)(6)-5 and (b)(7)(C)-5 on the following bates pages within Part I: People-2-3, 5-16, 18-33, 35-43, 48, 52-60, 62, 64, 66, 70, 77, 79-89, 109-110, 113-115, 119-120, 125-126, 132-133, 137-140, 143-145, 148-159, 181, 186-187, 287-294, 300-319, 326-330, 332-340, 349-351, 393-402, 463-464, 467-468, 1449-1450, 1536-1538, 1549-1552, 1554-1557, 1634, 1856-1857, 2289-2293, 3792, 3816, 4197-4198, and 4203-4205. The FBI also asserted Categories (b)(6)-5 and (b)(7)(C)-5 to protect information in the records within Part II.

(b)(6)-6 and (b)(7)(C)-6 Names and Identifying Information of Third Parties Merely Mentioned

(99) In Category (b)(6)-6 and (b)(7)(C)-6, the FBI protected the names and identifying information of third parties who were merely mentioned in the responsive documents. The FBI has information about these third parties in its files because these individuals were related either directly or indirectly with the investigations into the predicated reasons noted above, *supra*, and the categorically exempt records at issue here. These individuals were not of investigative interest to the FBI. Despite the age of the documents, these third parties maintain substantial and legitimate privacy interests in avoiding disclosure of this information and thereby being connected with a criminal investigation. Disclosure of these third-parties' names and/or identifying information in connection with an FBI investigation carries an extremely negative connotation. Disclosure of their identities would subject these individuals to possible harassment or criticism and focus derogatory inferences and suspicion on them. The FBI also considered whether there was any public interest that would override these privacy interests, and concluded that disclosing information about individuals merely mentioned in an FBI file would not significantly increase the public's understanding of the operations and activities of the federal government. Accordingly, the FBI properly protected these individuals' privacy interests pursuant to Coded Categories (b)(6)-6 and (b)(7)(C)-6.⁴²

⁴² The FBI asserted Categories (b)(6)-6 and (b)(7)(C)-6 on the following bates pages within Part I: People-8-16, 25-27, 29-39, 41-43, 47, 64, 66, 68, 74-80, 84, 88, 90, 109-110, 112-115, 119-120, 139, 141-143, 145, 147, 151, 154-156, 158-159, 161, 163, 166, 176-180, 182, 184-185, 187, 233-234, 236-237, 239, 241-245, 247, 250-251, 263, 271, 276, 280-283, 285, 299-300, 303-310, 313, 320, 323-325, 335-340, 351, 353-354, 393, 398-400, 402-403, 468-469, 481-482, 484-491, 494-495, 497-505, 507-517, 537-545, 547, 1054, 1062-1100, 1102-1231, 1233-1381, 1383-1412, 1414-1450, 1482-1483, 1524-1525, 1536-1537, 1550-1560, 1570-1573, 1610, 1624, 1626-1629, 1632-1635, 1643-1644, 1646-1647, 1651, 1653, 1658, 1664, 1677-1701, 1708-1710, 1713-1714, 1716-1717, 1721-1723, 1726-1729, 1731, 1739-1777, 1779-1788, 1806, 1808, 1812, 1835-1843, 1846-1854, 1856-1857, 1869, 1895-1897, 1899-1903, 1908, 1913-1914, 1930-1938, 1940-1941,

EXEMPTION 7(A)—PENDING LAW ENFORCEMENT PROCEEDINGS

(100) 5 U.S.C. § 552 (b)(7)(A) exempts from disclosure:

records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information...could reasonably be expected to interfere with enforcement proceedings.

(101) Application of this exemption requires: the existence of law enforcement records; a pending or prospective law enforcement proceeding; and a determination that release of the information could reasonably be expected to interfere with the enforcement proceeding. Often, the FBI asserts Exemption 7(A) categorically to withhold a variety of different documents in an investigative file, which the FBI then groups into functional categories and describes in greater detail. In this case, however, the FBI asserted Exemption 7(A) in a limited fashion to protect file numbers of pending investigations, as well as a serial from an ongoing pending investigation, consisting of an interview of a third party. The release of this information would reveal unknown information concerning pending enforcement procedures, to include the existence of unknown investigations and proceedings. The FBI determined release of any of this material would provide criminals with information about the government's investigation/enforcement strategies in ongoing matters, allow them predict and potentially thwart these strategies, and/or allow them to discover/tamper with witnesses and/or destroy

1943-1948, 1950-1959, 1963, 1966-1967, 1970-1971, 1973-1978, 1982-1983, 1985-2176, 2178, 2183-2241, 2244-2277, 2289-2290, 2293, 2296-2530, 2532-2564, 2566-2581, 2583-2608, 2610-2615, 2625-2627, 2648, 2655-2656, 2658-2665, 2668-2700, 2702-2710, 2712-2714, 2717-2721, 2726-2989, 2991, 2993-3006, 3017, 3021, 3023-3025, 3027-3029, 3033-3034, 3037-3042, 3045-3047, 3049-3050, 3052, 3056, 3058-3065, 3067-3071, 3073-3084, 3087-3105, 3107-3113, 3713, 3716, 3718, 3723-3736, 3738-3739, 3743-3746, 3749-3755, 3767-3778, 3791-3795, 3806-3817, 3825, 3828-3830, 3832-3834, 3842-3844, 3846-3847, 3849-3862, 3864, 3866-3867, 3869-3870, 3881-3891, 3897-3899, 3901, 3903-3905, 3912, 3914-3917, 3958, 3960, 3962-3964, 3967, 3969, 3971, 3973, 3975, 3977, 3982-3983, 3985-3988, 3990-3993, 3995-4001, 4003-4004, 4006-4010, 4012-4014, 4190-4194, 4197-4198, and 4203-4205. The FBI also asserted Categories (b)(6)-6 and (b)(7)(C)-6 to protect information in the records within Part II.

evidence. As such, revealing this information could reasonably be expected to interfere with pending enforcement proceedings. Thus, the FBI has applied Exemption 7(A) to protect this information. The FBI is also relying on Exemptions 3, 6, 7(C) and 7(E) to protect this information in many instances.

(b)(7)(A)-1 Information Which, if Disclosed, Could Reasonably be Expected to Interfere with Pending Law Enforcement Proceedings

(102) In the records within Part I, the FBI protected file numbers directly related to the specific requested file numbers on the following bates pages: People-1021, 1556-1557, 1654-1655, 1950, 1959, 3862. The FBI is asserting Exemption 7(A) to exempt both the file numbers and the subject matter pertaining to pending investigations. Additionally, the FBI protected a cross reference from a pending investigative file on bates pages People-4203-4205.

(103) Release of the various file numbers and their associated identifying information (such as the subjects of the related file numbers) of on-going criminal investigations, within the context of these investigative records, could result in both the acknowledgment of the existence of a particular investigation as well as in the identification of suspects, thus jeopardizing the investigation and prosecution of suspects.

(104) If an entire serial from an ongoing investigation was released and became part of the public domain, information concerning the investigation could reach the individual who is under investigation. This would allow the individual to critically analyze the information in the documents pertinent to the investigation of himself/herself. This individual possesses the unique advantage of knowing the details surrounding the investigation, the identities of potential witnesses, direct and circumstantial evidence, etc., and could use the released information to his/her advantage. In this regard, the following potential harms from the release of this documents concerning this pending investigation may exist:

- (a) the identification of individuals, sources, and potential witnesses who possess information relative to the investigation(s) and possible harm to, or intimidation of, these individuals;
- (b) the use of information released to counteract evidence developed by investigators, to alter or destroy potential evidence, and/or to create false evidence;
- (c) the use of released information by any subject of the investigation to assess the likelihood that he or she may be prosecuted and/or convicted in connection with an investigation and then take steps to avoid detection and capture;
- (d) the identification of other third parties who may also be under investigation; and
- (e) the geographic location(s) where the FBI may be focusing its investigation and collection of investigative and source material.

(105) Furthermore, the public release of these investigatory matters could allow third parties to interfere with the pending proceedings by harassing or intimidating witnesses and/or creating false evidence to counter facts already obtained during the FBI's investigation(s). Once a release is made to the plaintiff under the FOIA, the use and dissemination of the same information is unrestricted.

(106) Historically, the FBI has responded to requests for pending FBI investigatory files, or portions thereof, with great regard for the intent of the FOIA. The FBI makes every effort to provide information that will not interfere with the pending enforcement proceedings. Here, however, the FBI concluded that no information could be released without compromising

the FBI's pending investigation of the third party.

EXEMPTION (b)(7)(D) – CONFIDENTIAL SOURCE INFORMATION

(107) Exemption 7(D) protects “records or information compiled for law enforcement purposes [when disclosure] could reasonably be expected to disclose the identity of a confidential source, including a state, local or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source.” 5 U.S.C. § 552(b)(7)(D).

(108) Numerous confidential sources report to the FBI on a regular basis and are “informants” within the common meaning of the term; these sources provide information under an express assurance of confidentiality. Still other individuals are interviewed under circumstances from which an assurance of confidentiality can reasonably be inferred. These individuals are considered to be confidential sources because they furnished information only with the understanding that their identities and the information provided would not be released outside the FBI. Information provided by these individuals is singular in nature, and if released, could reveal their identity.

(b)(7)(D)-1 Names, Identifying Data and Information Provided by Individuals Under an Implied Assurance of Confidentiality

(109) In Category (b)(7)(D)-1, the FBI protected the names and identifying information of third parties, primarily individuals within companies, that provided information to the FBI under implied assurances of confidentiality. The FBI also relied on Exemption (b)(7)(D) to protect the information provided by these sources. These sources provided specific detailed information that is singular in nature concerning the investigations at issue. The disclosure of

the identities of these individuals could have disastrous consequences.

(110) These sources provided information of value to the FBI pertaining to possible criminal activities to include public corruption and racketeering, and in doing so, placed themselves in harm's way should the public become aware of their cooperation with the FBI. Specifically, within the responsive documents, the FBI inferred that individuals provided information to the FBI only because they believed their cooperation with the FBI, and the information they provided, would remain confidential. The FBI determined that based on these sources' closeness to those on whom they provided information, their social positions, and/or status within the business community because they face high risks for retaliation if their cooperation with the FBI was released in this context. Potential forms of retaliation could include the following: embarrassment within communities where cooperation with law enforcement carries negative connotations; harassment by the media and those interested in the investigations at issue; ridicule by friends and/or family for informing on those close to the sources; intimidation by criminals wishing to dissuade people from cooperating with law enforcement; financial consequences for corporate employees willing to share key information with law enforcement concerning their customers/employers/coworkers/employees; and/or physical harm by the subjects under investigation in the records at issue. Accordingly, it is reasonable in these investigations to infer that each of these sources provided information to the FBI under circumstances from which an assurance of confidentiality may be implied. The identities of those providing information and the information they provided warrants protections under Exemption FOIA Exemption (b)(7)(D). The preservation of the confidentiality of the identities of and information provided by sources is essential to effective law enforcement. Disclosure could have a disastrous impact upon the ability to obtain this kind of information in

the future and would have a chilling effect upon the free flow of information essential to pursue and resolve criminal investigations. Thus, this information is exempt from disclosure pursuant to FOIA Exemption (b)(7)(D).⁴³

(b)(7)(D)-3 Foreign Government Agency Information Under Express Confidentiality

(111) In Category (b)(7)(D)-3, the FBI protected the identities of and information provided to the FBI by foreign law enforcement/intelligence authorities under express assurances of confidentiality. During the course of the FBI's law enforcement and intelligence investigations and information-gathering, it receives information from foreign government entities regarding on-going investigations. The FBI has many agreements with foreign governments under which security and/or criminal law enforcement information is exchanged. These agreements specify the extent of confidentiality requested by the respective foreign government entity. The confidentiality of certain foreign law enforcement/intelligence authorities in their dealings with FBI and in regard to the information they provide to the FBI is memorialized in the Foreign Government Information Classification Guide #1 (The "G-1 Guide"). The G-1 Guide is issued in accordance with E.O. 13526, 75 Fed. Reg. 707 (2010) and 75 Fed. Reg. 1013 (2010); the National Archives and Records Administration ("NARA") Information Security Oversight Office ("ISOO") Implementing Directive Number One; the FBI Security Policy Manual (rev. Apr. 3, 2006); and the designated Original Classification Authority ("OCA") of the Executive Assistant Director, FBI National Security Branch. The G-1 Guide governs classification of foreign government information that foreign governments

⁴³ The FBI asserted Category (b)(7)(D)-1 on the following bates pages within Part I: People-2-3, 5-16, 52-60, 62, 64, 66, 80-82, 84, 110, 113-115, 143-144, 148-149, 151, 155-156, 158-159, 186-187, 287-290, 292-294, 305-306, 317-319, 327-330, 335-340, 349-350, 395, 397, 463, 1525, 1806, 1808, 3854, 3856, and 4192.

have asked the FBI to protect over the course of time. The FBI uses the G-1 Guide to determine the level and duration of derivative classification of foreign government information, including unmarked internal FBI documents which are being reviewed for possible classification.

(112) While ostensibly a classification document, the G-1 Guide also provides for confidentiality in non-national security areas. Specifically, it provides that the relationships between certain foreign law enforcement/intelligence entities and the FBI will not be disclosed and will remain confidential, at the request of those foreign entities. As relevant here, according to the G-1 Guide, the foreign agencies referenced in the records at issue here did not request their relationship with the FBI be classified, but they did request the relationship not be disclosed. Therefore, the fact that the foreign government agencies here specifically requested their relationship with the FBI not be disclosed demonstrates that they expected and continue to expect confidentiality in their interactions with the FBI and with regard to the information they provide to the FBI for law enforcement/national security purposes under applicable information sharing agreements. The FBI's agreements with these foreign government entities provide express assurances that the FBI will not disclose their identities, the identities of their personnel, or the information that they provided to the FBI. The release of official United States Government documents revealing the existence of such confidential relationships with long-term foreign government partners, in contravention of law enforcement/national security information sharing agreements, reasonably could be expected to strain relations between the United States and the foreign government and lead to negative diplomatic, political, or economic repercussions. Furthermore, a breach of these relationships can be expected to have a chilling effect on the free flow of vital law enforcement/national security information to the FBI, which would impede the FBI's effectiveness in countering/solving crimes and protecting

our national security. Such a disclosure would also have a chilling effect on the FBI's relationships with other foreign law enforcement agencies that have entered into similar agreements with the FBI.

(113) For the reasons explained above, the FBI properly concluded that the foreign government agencies whose identities and information were protected in Category (b)(7)(D)-3 expected confidentiality in their dealings with the FBI, and consequently, that there were express assurances of confidentiality here.⁴⁴

(b)(7)(D)-4 Confidential Source Symbol Numbers

(114) In Category (b)(7)(D)-4, the FBI protected from disclosure the permanent source symbol numbers of confidential sources of the FBI. Although since the investigations at issue here (circa 1990's) the FBI has slightly changed the format in which it creates permanent source symbols numbers, in this case the FBI assigned permanent source symbol numbers in sequential order to confidential informants who report information to the FBI on a regular basis pursuant to an express assurance of confidentiality. Here, the FBI did not refer to these confidential sources by their true name. Instead, the source was referred to only by their individually assigned permanent source symbol number. The FBI obtained information from these confidential sources regarding activities of investigative interest in the specific files responsive to Plaintiffs' request.

(115) If the FBI disclosed these confidential source symbol numbers for these informants, their identities could be ascertained by persons knowledgeable of the FBI's

⁴⁴ The FBI asserted Category (b)(7)(D)-3 on the following bates pages within Part I: People-2-3, 5, 44-46, 48-51, 74, 76-85, 87-89, 109, 149-151, 175, 181, 183, 289, 317-319, 335-340, 393, 468-469, 1574, 1630-1631, 1635, 1637-1638, and 1675-1676. Upon further review, the FBI is no longer asserting Categories (b)(7)(D)-2 or (b)(7)(D)-3 (*see* FN 26) on bates pages People-4004 and 4194, however, no additional information should be disclosed.

investigations of the subjects of these files. Furthermore, if the FBI disclosed their identity, the informants, as well as their families, could be subjected to embarrassment, humiliation, and/or physical or mental harm. Disclosure of a source symbol number at various times and in various documents could identify a confidential FBI source because such disclosure would reveal the connections of the confidential informant to the subject matter of these documents. Repeated release of the confidential source symbol number along with the information provided by the corresponding confidential source would narrow the possibilities of their true identity. This is especially true inasmuch as each confidential source symbol number is assigned to only one confidential informant.

(116) Moreover, the disclosure of a confidential informant's identity would have a chilling effect on the activities and cooperation of other FBI confidential informants. The FBI has found that it is only with the understanding of complete confidentiality that the aid of such informants can be enlisted, and only through this confidence that informants can be persuaded to continue providing valuable assistance in the future. Accordingly, the FBI properly withheld this information pursuant to FOIA Exemption (b)(7)(D).⁴⁵

(b)(7)(D)-5 Confidential Source File Numbers

(117) In Category (b)(7)(D)-5, the FBI protected the confidential source file numbers of permanent confidential sources of the FBI. Confidential source file numbers are administrative tools that facilitate the retrieval of information supplied by a source. Similar in usage to the confidential source symbol numbers (discussed below), confidential source file numbers are

⁴⁵ The FBI asserted Category (b)(7)(D)-4 on the following bates pages within Part I: People-111, 3729, 3744, 3747-3749, 3752-3755, 3768, 3773-3778, 3791, 3793-3794, 3807-3813, 3817, 3819, 3847, 3858, 3957, 3960, 3963, 3972, 3974, and 3976. The FBI also asserted Category (b)(7)(D)-4 to protect information in the records within Part II.

assigned in sequential order to confidential informants who report information to the FBI on a regular basis pursuant to an express assurance of confidentiality. Confidential source files are unique to a particular confidential informant and are used only in documentation relating to that particular informant.

(118) Disclosure of confidential source file numbers at various times and in various documents could ultimately identify these sources because it would reveal the connections of confidential informants to the information provided by them. Repeated release of confidential source file numbers along with the information provided by these confidential informants would narrow the possibilities of the informants' true identities. This is especially true because each confidential source file number is assigned to only one confidential informant.

(119) The disclosure of the identity of these confidential sources would have a chilling effect on the activities and cooperation of other confidential informants. It is only with the understanding of complete confidentiality that the aid of such informant can be enlisted, and only through this assurance of confidentiality that these informants can be persuaded to continue their assistance in providing information to the FBI in the future. Accordingly, the disclosure of confidential source file numbers could reasonably be expected to identify permanent confidential sources of the FBI. The FBI properly withheld this information pursuant to Exemption 7(D).⁴⁶

(b)(7)(D)-6 Names, Identifying Information About, and Information Provided by Sources Under Express Assurances of Confidentiality

(120) In Category (b)(7)(D)-6, the FBI protected from disclosure the names, identifying

⁴⁶ The FBI asserted Category (b)(7)(D)-5 on the following bates pages within Part I: People-111, 324-326, 332, 1062, 1626, 1634, 1653, 1716-1717, 1898, and 1910. The FBI also asserted Category (b)(7)(D)-5 to protect information in the records within Part II.

information about, and information provided by third parties to the FBI and/or law enforcement during the course of the investigations at issue here under express grants of confidentiality. In this case, these individuals, who provided specific and detailed information that is singular in nature, specifically requested that their identities not be revealed due to fear of reprisal. The FBI and/or law enforcement officials expressly promised these third parties that their identities and the information they provided would not be disclosed. The FBI therefore properly protected the identities of these third parties as well as the information they provided pursuant to FOIA Exemption (b)(7)(D).⁴⁷

EXEMPTION 7(E) – INVESTIGATIVE TECHNIQUES AND PROCEDURES

(121) Exemption 7(E) protects records and information compiled for law enforcement purposes that “would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.” 5 U.S.C. § 552 (b)(7)(E).

(122) Exemption 7(E) has been asserted to protect information from these documents, the release of which would disclose techniques and/or procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, that could reasonably be expected to risk circumvention of the law. This

⁴⁷ The FBI asserted Category (b)(7)(D)-6 on the following bates pages within Part I: People-112, 324-325, 332-333, 350, 1062-1447, 1626-1627, 1634, 1653, 1658, 1716-1717, 1727, 1729, 1806, 1808, 1812, 1855-1857, 1898-1901, 1910-1911, 1913-1929, 1950, 1955, 1970-1978, 2286, 2640, 2656, 2674-2676, 3013-3115, 3746-3750, 3752-3755, 3767-3769, 3773-3778, 3791-3795, 3806-3813, 3816-3817, 3819-3820, 3831-3833, 3835-3841, 3845-3847, 3858, 3870, 3872-3880, 3882-3884, 3888, 3909, 3912-3914, 3957-3960, 3963-3964, 3966-3967, 3969, 3972-3977, 3982-3983, 3985-3988, 3990-3993, 3995-4001, 4003-4004, 4006-4010, 4012-4014, and 4190-4194. The FBI also asserted Category (b)(7)(D)-6 to protect information in the records within Part II.

exemption affords categorical protection to techniques and procedures used in law enforcement investigations; it protects techniques and procedures that are not well-known to the public as well as non-public details about the use of well-known techniques and procedures.

(b)(7)(E)-1 Sensitive File Numbers and Sub-file Names

(123) In Category (b)(7)(E)-1, the FBI protected sensitive case file numbers or sub-files. The FBI has determined that this exemption is appropriate for protecting these file numbers. FBI file numbers are created solely because of FBI investigations and as such the FBI has asserted protection for file numbers related to other sensitive criminal and/or national security investigations because those numbers exist solely because of the FBI's exercise of its law enforcement functions. Additionally, the release of file numbering convention identifies the investigative interest or priority given to such matters. Applying a mosaic analysis, suspects could use these numbers (indicative of investigative priority), in conjunction with other information known about other individuals and/or techniques, to change their pattern of activity to avoid detection, apprehension, or create alibis for suspected activities, etc. It is the assemblage of file numbers that risks harm if disclosed, not generally a single classification code in total isolation.

(124) This accumulation of file numbers is the crux of the "sensitive" term used here to describe the withheld file numbers or sub file names. The word "sensitive" in this context speaks to not only the potential harm to investigative focuses for future investigations categorized under these classification codes or the types of investigation which are taking or have already taken place, but also the circumvention of the law. To determine the sensitivity of certain file numbers, the FBI conducts a case-by-case analysis when determining whether to release a file number. Many factors go into this analysis such as the type or program under

which the file number falls, whether the file is pending or closed, the subject or focus of the file, whether a file number has been previously released, and its interrelatedness with other criminal and/or national security investigations. These contextual factors become a type of litmus test to determine on a case-by-case basis if a file number can be released without harm or must be redacted. In this case, the FBI released some file numbers that did not meet some of these thresholds (i.e. 196D-NK-99809, 183A-NK-2305, 29E-NH-24296, etc.) while redacting others it deemed “sensitive” because they did meet these thresholds. Thus, the FBI properly protected this information from disclosure pursuant to FOIA Exemption 7(E).⁴⁸

(b)(7)(E)-2 Information Regarding Targets, Dates, and Scope of Surveillance

(125) In Category (b)(7)(E)-2, the FBI protected information concerning the locations, monitoring, and types of devices utilized in surveillances conducted by the FBI in relation to the investigations at issue here. The FBI utilized these surveillances to obtain investigative intelligence relevant to the investigation of the allegations of racketeering and public corruption in these cases. The law enforcement techniques used to conduct these surveillances are the same techniques utilized by the FBI in current criminal and national security investigations. It is certainly publicly known that the FBI and other law enforcement agencies engage in different types of surveillance in furtherance of investigations. However, disclosure of non-public details about when, how, and under what circumstances the FBI conducts surveillance would allow current and future subjects of FBI investigations and other potential criminals to develop and utilize countermeasures to defeat or avoid different types of surveillances, thus rendering the techniques useless to the FBI and other law enforcement agencies. Accordingly, because the

⁴⁸ The FBI asserted Category (b)(7)(E)-1 on the following bates pages within Part I: People-2, 465, 468, 471, 477, 479, 835, 838, 842, 1553, 1654, 1856, 1905, 1950, and 2644-2645. The FBI also asserted Category (b)(7)(E)-1 to protect information in the records within Part II.

disclosure of this information could reasonably be expected to reveal non-public details about law enforcement techniques that are still being used by the FBI and risk circumvention of the law, the FBI has properly withheld this information pursuant to FOIA Exemption 7(E).⁴⁹

(b)(7)(E)-3 Database Identifiers and/or Printouts

(126) In coded category (b)(7)(E)-3, the FBI protected database search results located through non-public databases used for official law enforcement purposes by the FBI and/or law enforcement personnel. These non-public databases serve as repositories for counterterrorism and investigative data. They are essentially “one-stop” shops that allow law enforcement to query information and develop investigative leads from a variety of source data using state-of-the-art analytical tools. FBI personnel as well as task force members from local, state and other federal agencies have access to these databases. Disclosure of the printouts or information compiled from these search results could educate criminals as to the types of information/evidence most useful to the FBI, based on the nature of the FBI’s investigative databases and the information they house. It would also reveal the FBI’s abilities and limitations in regards to what types of investigative information it can track and later query when developing investigative/law enforcement strategies. Revealing this information would allow criminals to employ countermeasures to deprive the FBI of critical investigative data and/or predict FBI investigative responses in particular investigative situations, thus jeopardizing the FBI’s investigative mission. Because disclosure would impede the FBI’s effectiveness and potentially aid in circumvention of the techniques, the FBI properly withheld

⁴⁹ The FBI asserted Category (b)(7)(E)-2 on the following bates pages within Part I: People-52-57, 60, 62, 64, 287-288, 290, 292-294, 1654-1655, 1903, 3772, 3777, 3795, 3811, 3813, 3856, 3871, 3884, 3909-3910, 3960, 4018, 4020-4021, and 4196. The FBI also asserted Category (b)(7)(E)-2 to protect information in the records within Part II.

this information pursuant to Exemption 7(E).⁵⁰

(b)(7)(E)-4 Collection / Analysis of Information

(127) In coded category (b)(7)(E)-4, the FBI protected methods that the FBI uses to collect and analyze the information that it obtains for investigative purposes. The release of this information would disclose the identity of methods used in the collection and analysis of information, including how and from where the FBI collects information and the methodologies employed to analyze it once collected. Such disclosures would enable subjects of FBI investigations to circumvent similar currently used techniques. The relative utility of these techniques could be diminished if the actual techniques were released in this matter. This in turn would facilitate the accumulation of information by investigative subjects regarding the circumstances under which the specific techniques were used or requested and the usefulness of the information obtained. Release of this type of information would enable criminals to educate themselves about the techniques employed for the collection and analysis of information and therefore allow these individuals to take countermeasures to circumvent the effectiveness of these techniques and to continue to violate the law and engage in intelligence, terrorist, and criminal activities. The FBI has properly withheld this information pursuant to FOIA Exemption 7(E).⁵¹

(b)(7)(E)-6 Identity and/or Location of FBI or Joint Units, Squads, and Divisions

(128) In coded category (b)(7)(E)-6, the FBI protected the names, numbers, and alpha designators of certain sensitive FBI squads and units. Information identifying units and office

⁵⁰ The FBI asserted coded category (b)(7)(E)-3 on the following bates pages within Part I: People-142 and 463.

⁵¹ The FBI asserted Category (b)(7)(E)-4 on the following bates pages within Part I: People-1451-1482, 1564-1569, 1905-1908, 1950-1960, 2658-2663, 3709-3710, 3773, and 3863.

locations is usually found in the administrative headings of internal FBI documents or at times in the email signature blocks of FBI personnel assigned to these units; such information was reproduced in some instances in the responsive processing notes and search slips here. The existence of these particular squads and units is not known to the general public. Revealing their names, numbers, and alpha designators would reveal the level of focus the FBI has applied to certain areas within the assigned enforcement activity, and as relevant here, to the investigative realm of domestic and international terrorism.

(129) While the harm of releasing the identity of a particular FBI operational unit may not be self-evident from the face of these records, the release of these unit identities could reasonably be expected to risk circumvention of the law as follows. Disclosure would provide a piece of information about the application and focus of FBI investigative capabilities and presence in the associated geographical area(s). This piece of information alone identifies the particular unit's internal designation, its geographical disposition, and its primary activity. When combined with other information in a mosaic fashion, this piece of information provides key insight into limited FBI resources that are employed in this type of enforcement activity in a particular area. If adversaries are provided the pieces necessary to construct this mosaic, then the method of the investigative process revealed by the mosaic would be disrupted and the FBI would be deprived of valuable information. For example, the knowledge that the FBI has an internal unit designation of "Squad X" in a particular area for a particular type of investigative activity could reasonably be applied by criminal elements or terrorists to plan and structure their activities in a manner that avoids detection and disruption by the FBI, thus enhancing their ability to circumvent the law. Because disclosure of this information could reasonably be expected to impede the FBI's effectiveness and potentially aid in circumvention of the law, the

FBI withheld this information pursuant to FOIA Exemption 7(E).⁵²

(b)(7)(E)-8 FBI Internal Non-Public Intranet Web Address

(130) In coded category (b)(7)(E)-8, the FBI protected an internal non-public Intranet web address specific to the FBI. Release of this type of information could allow individuals to exploit the FBI's Information Technology system to gain unauthorized access to, view and manipulate data on, or otherwise interfere with the FBI's unclassified, but non-public Intranet protocol. Such actions could arm individuals with the information or ability to circumvent the law. Additionally, release of this information would allow individuals to disrupt official FBI business. Thus, the FBI properly protected this information from disclosure pursuant to FOIA Exemption 7(E).⁵³

(b)(7)(E)-9 Undercover Operation Information

(131) In coded category (b)(7)(E)-9, the FBI protected non-public information pertaining to FBI undercover operations. The FBI relies on undercover operations as a useful investigative technique to conduct investigations. Although it is publicly known that the FBI and other law enforcement agencies conduct undercover operations, the specific details of particular operations are not known. The specific ways in which an undercover operation is conducted may vary and may be exclusive to a particular investigation. In this case, the FBI protected the existence of undercover operations referenced in responsive material here. If these non-publicly known details of these undercover operations at issue are disclosed, it could

⁵² The FBI asserted coded category (b)(7)(E)-6 on the following bates pages within Part I: People-1706, 1710-1711, 1904, 1949, 1961, 1979, and 1981.

⁵³ The FBI asserted coded category (b)(7)(E)-8 on the following bates page within Part I: People-1980.

provide insight into the actual undercover operation. Criminals can use this information to their advantage and can develop countermeasures to circumvent the technique in the future.

Accordingly, because the disclosure would impede the FBI's effectiveness by publicly revealing information that could be used to circumvent the FBI's use of undercover operations, the FBI properly protected the information pursuant to FOIA Exemption 7(E).⁵⁴

(b)(7)(E)-10 Source Reporting Documents (FBI Forms FD-209⁵⁵)

(132) In Category (b)(7)(E)-10, the FBI protected certain source reporting documents (FD-209s) the FBI uses to record its use of confidential human sources. The FBI uses these forms to identify, memorialize, and describe specific information and sensitive strategies and techniques for recruiting and maintaining effective Confidential Human Sources ("CHSs"). Providing the information on the FD-209s in this case would allow criminals to predict the FBI's CHS recruitment strategies and gain insight regarding which of their associates might be likely recruitment targets, and whom they should intimidate, coerce, or even eliminate to prevent detection by the FBI's CHS program. It would also allow criminals to pose as potentially valuable CHSs and feed the FBI faulty intelligence aimed at redirecting the FBI away from their own criminal activities. Additionally, providing these forms in this particular case would provide criminals with an idea of the mechanism and frequency the FBI contacts/interacts with its CHSs. This would allow criminals the chance to uncover or intercept the FBI's communication with its sources, expose CHSs' confidential relationships with the FBI

⁵⁴ The FBI asserted coded category (b)(7)(E)-9 on the following bates pages within Part I: People-3707, 3849-3854, 3873, 3880, 3885-3887, 3890-3891, and 3911-3912.

⁵⁵ FBI Forms FD-209 are internal FBI memorandums which record contact with FBI informants or cooperating witnesses. These forms contain confidential source file numbers and source symbol numbers and are used to track statistical accomplishments regarding FBI Special Agent's handling of these types of confidential sources.

and deprive the FBI of critical CHS derived intelligence. As releasing these sensitive strategies and techniques for recruiting/maintaining effective CHSs could undermine the law enforcement purpose of the FBI's CHS program, enabling criminals to circumvent the law, this information is exempt from disclosure pursuant to FOIA Exemption (b)(7)(E).⁵⁶

Additional Underlying Exemption 7(E) Sub-Categories Applicable Only to the Records Categorically Exempt Pursuant to (b)(7)(D) & (b)(7)(E) (Part II)

Operational Directives

(133) Within the categorically exempt records at issue, the FBI protected certain information contained in Operational Directives responsive to Plaintiffs' request. This law enforcement material comprises operational directives that provide information and instruct FBI employees on the proper use of certain sensitive non-public FBI procedures, techniques, and guidance for conducting investigations to include the handling of Confidential Human Sources. In the course of providing these instructions, these guides identify the procedures, techniques, and strategies at issue. Specifically, the protected information falls within law enforcement information concerning the handling of sensitive CHS investigative techniques and strategies. Releasing such information would not only provide sensitive, unknown investigative techniques, it would also reveal sensitive unknown uses of these specific techniques and procedures. If released, the information would provide individuals and entities with a unique look inside the FBI's law enforcement "playbooks." Armed with such information, criminals could predict how and when the FBI will respond to certain suspicious/criminal activities, and the investigative techniques the FBI is most likely to employ in those situations. This would

⁵⁶ The FBI asserted coded category (b)(7)(E)-10 on the following bates pages within Part I: People-3966, 3972, 3974, and 3976. The FBI also asserted coded category (b)(7)(E)-10 to protect information in the records within Part II.

afford criminals the ability to preemptively modify their behavior in a manner that avoids detection and disrupt the very investigative procedures, techniques, and strategies that this FBI guide is intended to protect. Consequently, the release of this information would increase the risk that targets of criminal investigations could develop countermeasures and avoid detection by interfering with the FBI's ability to effectively use these important law enforcement techniques. Release of this information would allow individuals and entities seeking to commit crimes an opportunity to avoid detection and circumvent the law. Accordingly, the FBI has properly withheld this information pursuant to FOIA Exemption (b)(7)(E).

Money Allocated for Certain Investigative Techniques

(134) Within the categorically exempt documents at issue, there are listings of the amounts of money that was spent by the FBI to implement particular investigative techniques. The FBI has limited resources and must strategically allocate those resources to the locales and on the investigative efforts it sees as most useful to its law enforcement and intelligence gathering missions. Revealing the dollar amount spent on this technique would subsequently reveal the importance of the information gathered via this technique. While relatively insignificant on its own, combined with other bits of information released to the public by the FBI, this information could become a piece of a much larger understanding of the FBI's priorities and investigative efforts. Providing this information would allow criminals to gauge how they should modify their behavior to avoid/exploit the most effective/ineffective FBI techniques. As releasing this information would increase criminals' understandings of the FBI's strengths and weaknesses and allow them to utilize this understanding to circumvent the law, this information is exempt from disclosure pursuant to FOIA Exemption (b)(7)(E).

Indices Checks / Results

(135) Within the categorically exempt documents at issue, the FBI protected forms documenting indices checks and/or the results for the purpose of conducting investigations to include the handling of Confidential Human Sources. These checks may contain identifying information, including but not limited to, full name, alias, race, sex, weight, height, date of birth, place of birth, social security number, address/locality, telephone number, FBI Number and/or identifiers specific to the subject-matter and/or associated with a specific event searched. They may also contain details of the different indices searched by the FBI, the date of the search, FBI personnel names/initials, and specific details concerning potentially responsive material located through its search, such as file numbers and the current status of files (i.e., ongoing or closed investigation). Providing the details contained in FBI indices checks and/or the results could identify classified or sensitive files numbers that reveal the file classification (type of investigation) and field office location involved with specific investigations. Additionally, this material could reveal the number of investigations pertaining to a particular subject/event of investigation to the FBI and/or law enforcement. In other words, the indices checks and/or the results provide an investigative roadmap revealing the size, nature, location(s), sensitivity, classification, and the status of a particular investigative subject/event. Moreover, even the release of small pieces of information from the indices checks and/or the results could establish a pattern or “mosaic” which would allow targets to avoid or circumvent specific locations, especially if one or more location appeared with frequency on an indices check and/or the results concerning a specific subject of investigation. Once this information is identified, the field office with expertise in a particular type of investigation would be known to targets. This knowledge could allow a subject to employ countermeasures targeted toward

concealing particular types of behavior and/or to avoid altogether activities in a particular location to avoid detection. Lastly, the release of file numbers associated with a particular subject/event could also reveal classified/sensitive source file numbers associated with particular investigations and/or field office locations which could harm the FBI's informant program.

Information Related to Polygraphs

(136) Within the categorically exempt documents at issue, the FBI protected procedures and techniques used by FBI agents to conduct polygraph examinations, to include detailed non-public information about the use of polygraphs for operational purposes. Exemption 7(E) was cited to protect information detailing the use of polygraphs in specific instances including charts showing the results of such polygraphs. While the FBI's use of polygraph examinations is publicly known, the details about its use that have been protected here are not publicly known. Disclosure of this information could enable individuals subject to polygraph examinations – including applicants, employees, and individuals related to law enforcement investigations – to circumvent currently used techniques and procedures for conducting pre-employment and operational polygraphs. Disclosure of these actual techniques and procedures employed by the FBI would diminish the relative benefit of polygraph examinations currently and into the future. This, in turn, could facilitate individuals' accumulation of information regarding the circumstances under which polygraph examinations were conducted and would indicate and signal the value of the specific information. Release of this type of information would enable any potential examinees to educate themselves about pre-employment and operational polygraph examinations to develop countermeasures which circumvent the effectiveness of polygraph examinations. Thus, the FBI properly protected this information from disclosure

pursuant to FOIA Exemption 7(E).

DOCUMENTS REFERRED TO OGAs FOR CONSULTATION WITH THE FBI

(137) The FBI also identified pages, some in their entireties and some in part, containing information and/or equities originating with OGAs in the processed responsive material (Part I). In accordance with DOJ regulations, 28 C.F.R. § 16.4(c), the FBI coordinated with these OGAs to determine how they wanted the FBI to treat its information contained within the responsive FBI documents.

CBP

(138) In December 2017, the FBI sent approximately 58 pages for consultation. These pages are identifiable as People-92-108 and People-190-232. In July 2018, CBP advised that 17 pages (bates pages People-92-108) pertained to the U.S. Department of Homeland Security Immigration and Customs Enforcement (“ICE”) and forwarded those pages to that agency. As for the remaining pages (People-190-232), CBP determined that information could be released in part pursuant to FOIA Exemptions (b)(6), (b)(7)(C), and (b)(7)(E).⁵⁷ CBP provided justification for their agency’s withholdings at ¶¶ 139-141, *infra*, and in a *Vaughn* index. (**See Exhibit Y.**)

(139) Exemption (b)(6) exempts from disclosure personnel or medical files and similar files the release of which would cause a clearly unwarranted invasion of personal privacy. This requires a balancing of the public’s right to disclosure against the individual’s right to privacy. The types of documents and/or information that we have withheld may consist of birth certificates, naturalization certificates, driver license, social security numbers, home addresses,

⁵⁷ CBP originally asserted Exemption (b)(4) on the records, but after further review, is no longer asserting this Exemption. The FBI reprocessed and rereleased the pages on which it consulted with CBP by letter dated October 5, 2020.

dates of birth, or various other documents and/or information belonging to a third party that are considered personal. The privacy interests of the individuals in the records you have requested outweigh any minimal public interest in disclosure of the information. Any private interest you may have in that information does not factor into the aforementioned balancing test. CBP also advised there is no public interest which outweighs the privacy interest, and PII, of individuals in these records. Law Enforcement Personnel (such as CBP employees) have additional privacy interests based on their specific line of work because their identity could expose them to harassment and annoyance in the conduct of their official duties and in their private lives.

(140) Exemption (b)(7)(C) protects records or information compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy. This exemption takes particular note of the strong interests of individuals, whether they are suspects, witnesses, or investigators, in not being unwarrantably associated with alleged criminal activity. That interest extends to persons who are not only the subjects of the investigation, but those who may have their privacy invaded by having their identities and information about them revealed in connection with an investigation. Based upon the traditional recognition of strong privacy interest in law enforcement records, categorical withholding of information that identifies third parties in law enforcement records is ordinarily appropriate. CBP also advised there is no public interest which outweighs the privacy interest, and PII, of individuals in these records. Law Enforcement Personnel (such as CBP employees) have additional privacy interests based on their specific line of work because their identity could expose them to harassment and annoyance in the conduct of their official duties and in their private lives.

(141) Finally, Exemption (b)(7)(E) protects records compiled for law enforcement

purposes, the release of which would disclose techniques and/or procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law. CPB advised it protected internal agency codes, databases, drives, group email addresses, links, document identification numbers and reference codes. Releasing this type of information could, among other things, enable bad actors to exploit CBP's cybersecurity infrastructure, gain unauthorized access to view, manipulate or interfere with CBP data and websites, disrupt official business practices, and subject employees to harassing emails and or faxes.

ICE

(142) In July 2018, CBP advised it was forwarding approximately 17 pages (People-92-108) of the FBI's consultation to ICE as these documents pertained to that agency. On August 28, 2018, ICE advised that information could be released in part pursuant to FOIA Exemptions (b)(6), (b)(7)(C), and (b)(7)(E). On or about December 14, 2018, ICE provided justification for their agency's withholdings at ¶¶ 143-150, *infra*.

(143) ICE provided the following: FOIA Exemption 6 allows the withholding of information found in "personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6) (Exemption 6). Records that apply to or describe a particular individual, including investigative records, qualify as "personnel," "medical" or "similar files" under Exemption 6. When applying this exemption to responsive documentation, the agency must balance the individual's personal privacy interest against the public need for the information.

(144) FOIA Exemption 7(C) similarly protects from disclosure records or information "compiled for law enforcement purposes" if a release of the records or information "could

reasonably be expected to constitute an unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(7)(C) (Exemption 7(C)). When asserting Exemptions 6 and 7(C), an individual’s personal privacy interest is balanced against the public’s interest in shedding light on ICE’s performance of its statutory duties.

(145) Here, Exemption 6 in conjunction with Exemption 7(C) were applied to protect from disclosure the names, signatures, biometric information, contact information, phone numbers, postal addresses, email addresses, photographs, dates of birth, state and federal identification numbers, immigration history, and/or other identifying information of third parties. Such information, if disclosed to the public or to a third-party requester without the permission of the individual, could expose the individual to identity theft and may reasonably lead to unwanted contact from persons that might seek to harm the individual.

(146) Furthermore, third party individuals have a recognized privacy interest in not being publicly associated with law enforcement investigations through the release of records compiled for law enforcement purposes. The identities of persons named in law enforcement files (whether or not the named individual is the target of investigations or law enforcement actions) are properly withheld under Exemptions 6 and 7(C) in recognition of the stigmatizing connotation carried by the mere mention of individuals in law enforcement files. The individuals’ privacy interest in the information contained in the record outweighs any minimal public interest in the disclosure of the information. Plaintiffs have not articulated a sufficient public interest or public need to justify release of this information. The disclosure of this personally identifiable information (PII) serves no public benefit and would not assist the public in understanding how ICE is carrying out its statutory responsibilities. Finally, the third parties mentioned in the law enforcement records did not consent to the disclosure of their PII.

Disclosure of such information would constitute a clearly unwarranted invasion of personal privacy and thus Exemption 6 applied. In addition, disclosure of the information described, which was compiled for law enforcement purposes, could reasonably be expected to constitute an unwarranted invasion of personal privacy, and thus Exemption 7(C) applied.

(147) Having determined that the individuals identified in the responsive records have a cognizable privacy interest in not having their information released, the interest in safeguarding the individuals' privacy from unnecessary public scrutiny was balanced against the public's interest in shedding light on the operations and activities in the performance of its statutory duties. Exemptions 6 and 7(C) were applied to prevent disclosure of third-party identities, PII, and immigration status as well as the identities of ICE personnel. In each instance where Exemptions 6 and 7(C) were applied, the redaction was limited to the individual's specific PII, which if released, would not shed any further light as to the operations or activities of ICE. In some redactions, the information surrounding the redactions was released and the limited extent of the redaction is readily apparent from the context of the records.

(148) Based upon the traditional recognition of strong privacy interests in law enforcement records, the categorical withholding of third-party information identified in law enforcement records is appropriate. Moreover, the third parties identified in these records have not provided consent to the release of their personally identifying information as required by 6 C.F.R. §§ 5.3(a) & 5.21(d).

(149) FOIA Exemption (b)(7)(E), 5 U.S.C. §552(b)(7)(E), protects from disclosure records compiled for law enforcement purposes, the release of which would disclose techniques and/or procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could

reasonably be expected to risk circumvention of the law. It also protects from disclosure techniques and procedures that are not well known to the public.

(150) Here, FOIA Exemption (b)(7)(E) was applied to protect from disclosure Law Enforcement Sensitive (“LES”) information, such as law enforcement databases and codes, identification numbers, serial numbers, operation names, background checks, and FBI numbers. Disclosure of this information could assist third parties in deciphering the meanings of the codes and/or could enable an individual to navigate, alter, and/or manipulate law enforcement databases were they to gain access to the system. Disclosure of these techniques and practices in navigating the databases could assist those seeking to violate or circumvent the law by taking proactive steps to counter operational and investigative actions taken during enforcement operations, potentially interfering with ongoing investigations and operations. Further, how law enforcement officers access databases, evaluate cases and perform background checks is a law enforcement technique and procedure that is not commonly known. The release of this information could also reasonably be expected to allow a person to breach sensitive law enforcement systems and to potentially circumvent detection or manipulate law enforcement sensitive information, thus placing law enforcement officers and the public at risk, or to attempt to sabotage their removal or ICE enforcement proceedings. The disclosure of this information, which is not readily known by the public, would serve no public benefit and would not assist the public in understanding how the agency is executing its statutory responsibilities.

EOUSA

(151) Initially on or about May 29, 2018, the FBI referred 308 pages of material to the EOUSA for direct response to Plaintiffs.⁵⁸ As of November 2018, EOUSA advised the FBI

⁵⁸ Bates pages People-1859-1865, 2180-2182, 2243-2278, and 2725-2986.

that EOUSA instead treated this direct referral as a consultation and stated that of the approximately 308 pages of responsive material, the FBI could release 288 pages in full to Plaintiffs with certain information withheld in full on the remaining pages pursuant to FOIA Exemptions (b)(3), (b)(5), (b)(6), and (b)(7)(C).⁵⁹ The justification for the withholdings will be addressed in the EOUSA's *Vaughn* submissions in this case. (**See Exhibit Z.**)

PART II

ASSERTION OF UNDERLYING EXEMPTIONS UNDER THE FOIA

(152) With the exception of the processed material related to specific file numbers, the non-investigative material related to Donald Trump, and the responsive material related to Donald Trump acting in his official capacity as a chief executive of one of the organizations provided by Plaintiffs, the two (2) other main files responsive to Plaintiffs' request, 137-NY-19967 and 137-22152, have been denied in their entirety pursuant to FOIA Exemptions (b)(7)(D) & (b)(7)(E). Simply stated, RIDS was unable to confirm that these records were placed in the public domain by the FBI; moreover, the FBI does not routinely release third party informant records to the public, as such would undermine the FBI's protection of confidential sources. Therefore, RIDS determined these records were not the product of an authorized official disclosure by the agency, and denied them in their entirety. In light of the D.C. Circuit's ruling in *Maydak v. U.S. Department of Justice*, 218 F.3d 760 (D.C. Cir. 2000), however, FOIA Exemptions (b)(3), (b)(6), (b)(7)(C), (b)(7)(D), and (b)(7)(E), described *supra*, of the FOIA are also being asserted as additional basis for protecting information in the records

⁵⁹ EOUSA withheld its information in full on bates pages People-1859-1865, 2180-2182, 2243-2245, 2259-2261, 2266-2267, and 2272-2273 pursuant to FOIA Exemptions (b)(3), (b)(5), (b)(6) and (b)(7)(C).

categorically exempt pursuant to FOIA Exemption (b)(7)(D) & (b)(7)(E) (as described in this Part II at ¶¶ 153-165iii, *infra*).

Application of Exemption (b)(7)(D) & (b)(7)(E) to Categorically Exempt Records Pursuant to the FBI's CHS Program

EXEMPTIONS (b)(7)(D) & (b)(7)(E) – CATEGORICAL DENIAL

(153) The FBI applied FOIA Exemptions (b)(7)(D) & (b)(7)(E) to categorically exempt two (2) files specifically requested by Plaintiffs.⁶⁰ First, as previously demonstrated, these are law enforcement records compiled in furtherance of the FBI's Confidential Human Source ("CHS") program which allows the FBI to leverage Human Intelligence to obtain investigative leads to progress FBI cases. Second, disclosure of the records would undermine this integral and sensitive FBI program. This determination extends to the volume of responsive records in these two files because such information would reveal the scope and extent of the FBI's use and strategies for CHSs in FBI investigations, which would also interfere with ongoing operations.

(154) The FBI's strategies and techniques for maintaining effective CHSs outlined in the records at issue are not publicly known. Releasing this type of information would reveal to criminals when and how the FBI will most likely utilize CHSs in its operations. This would alert criminals as to when they should most likely expect FBI CHSs to be employed and allow them to judge when they should shore up any weaknesses in their operations to prevent penetration by FBI CHSs. Revealing the FBI's strategies and documentation for CHS implementation would also reveal to criminals which individuals are or may potentially become FBI informants, based on what types of information the FBI plans to gather through its CHS program.

⁶⁰ See ¶ 6B & C, *supra*.

(155) As background, the FBI's informant program is one of the FBI's most effective means for gathering information relative to its law enforcement and intelligence gathering missions. Intelligence provided by FBI Confidential Human Sources ("CHSs") and/or informants is critical to a plethora of FBI law enforcement initiatives. The viability of the FBI's informant program is directly connected to the FBI's ability to keep identities of CHSs confidential; and the FBI's ability to keep its informant operations covert so they cannot be detected/predicted by criminals. In order to preserve the integrity of this program, the FBI closely guards the nature of its informant program to include who, why, and when it seeks to recruit particular individuals as FBI informants; how it is able to covertly communicate with its CHSs; and the investigative initiatives for which the FBI uses CHS intelligence gathering. Thus, in some instances, the mere confirmation or denial of the existence or nonexistence of records responsive to a FOIA request related to the FBI's CHS program would itself reveal information detrimental to the FBI's law enforcement mission – e.g., whether or not the FBI maintains/maintained informants in certain areas; and whether or not the FBI pursues/pursued informant recruiting and training efforts/initiatives aimed at recruiting and/or training informants at particular areas.

(156) As relevant to the second prong of the categorical denial, FOIA Exemption (b)(7)(E) allows for the protection of "records or information compiled for law enforcement purposes [when disclosure] would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law." The FBI asserts Exemption (b)(7)(E) in concert with (b)(7)(D) to categorically deny these files in order to further preserve the integrity of the FBI's CHS program. From a functional

standpoint, the use of sources is a law enforcement technique integral to the CHS program. Disclosing these techniques and procedures in the context of these files could reasonably be expected to circumvent the law.

(157) First, armed with this information, criminals would know who among them are most likely to become FBI informants. This would allow them to alienate, intimidate, or even eliminate these individuals in order to thwart the FBI's efforts to gather investigative intelligence through CHSs. Second, releasing these sensitive techniques and strategies for utilizing CHSs could undermine the law enforcement purpose of the FBI's CHS program, thus enabling criminals to circumvent the law. Accordingly, this information is categorically exempt from disclosure pursuant to FOIA Exemptions (b)(7)(D) & (b)(7)(E).

TYPES OF DOCUMENTS

(158) Providing any further detailed document-by-document description or listing of the records contained in the investigative files responsive to Plaintiffs' request besides the information *infra* would undermine the very interests that the FBI seeks to protect under Exemptions (b)(7)(D) & (b)(7)(E), in addition to the other exemptions identified in this declaration *supra* as applying to those records. In order to protect these interests, the FBI has described the types of responsive records from the investigative files that are being categorically exempted pursuant to FOIA Exemptions (b)(7)(D) & (b)(7)(E). The investigative files at issue contains the following types of documents:

a) Interview Forms (Form FD-302): FD-302s are internal FBI forms in which evidence is often documented, usually the results of FBI interviews. Such evidence and/or interview information may later be used as testimony or evidence in court proceedings/trials. Additionally, these evidence/interview forms are often incorporated in other FBI documents

which disseminate intelligence/investigative information and can be utilized to set leads in furtherance of the FBI's investigative efforts.

b) FD-340 - 1A Envelopes: These envelopes are used to organize and store documents that need to be stored separately from the FBI file to which they are attached, due to their size. They usually contain handwritten notes of interviews, photographs, and other various evidentiary documents.

c) Court Documents: These are documents that have been filed with a court or otherwise made part of the court record.⁶¹

d) FD-515 (Accomplishment Report): These types of documents are used by FBI SAs to report investigative accomplishments. They are submitted at various stages of an investigation to report statistically important events such as an arrest, conviction, sentencing, asset seizure, drug seizure, and/or disruption/dismantlement of a criminal enterprise.

e) FBI Forms FD-209: Internal FBI memorandums which record contact with FBI informants or cooperating witnesses. These forms contain confidential source file numbers and source symbol numbers and are used to track statistical accomplishments regarding FBI Special Agent's handling of these types of confidential sources.

f) Letterhead Memorandum ("LHM"): This memorandum is an interim summary that reports information, usually derived from FD-302s, concerning the subject of an investigation. It is designed to alert other field offices and/or FBIHQ about pertinent developments in an investigation. Usually, an LHM is attached to a cover sheet, which is

⁶¹ Although the FBI would normally segregate these types of documents, here, the material was provided by a CHS. Thus, this material remains within the realm of the categorically exempt material pursuant to Exemptions 7(D) and 7(E).

typically an FBI letter. The LHM can also be detached from the cover sheet and disseminated to other Government agencies, as a “Law Enforcement Sensitive/For Official Use Only” document.

g) Miscellaneous Administrative Documents: The FBI uses various types of forms throughout a criminal investigation, which include storage envelopes, indices search slips, bulky exhibit cover sheets, transmittal forms (i.e., facsimile cover sheets), letters, and routing slips. Also included are forms that are placed in a file to document when a serial has been removed and placed elsewhere. For example, an FD-5A (Automated Serial Permanent Charge-Out) is placed in a file to show that a serial was transferred to a sub-file. Other documents in this category include notes, memoranda, letters, telegrams, and other attachments of an administrative nature which do not fall into an official government format.

Reasonable Expectation of Interference

(159) In processing requests, the FBI has established procedures to implement the FOIA as efficiently as possible. When the FBI receives a request for records which it determines relates to specific sensitive investigative programs, in this case its CHS program, it commonly will categorically exempt records pursuant to FOIA Exemptions. Here the FBI is categorically exempted the requested material pursuant to (b)(7)(D) & (b)(7)(E) to protect the inner mechanisms, recruitment and maintenance of this CHS program. Nonetheless, in such situations, the FBI reviews the records to identify and release any reasonably segregable information contained in the responsive file(s) that would not jeopardize these sensitive programs. The FBI has reviewed all responsive records here for the two (2) files and concluded that it cannot release or provide specific information without potentially jeopardizing its CHS program.

(160) The FBI’s mission could not be accomplished without confidential human

sources. The CHS Program is comprised of methods, techniques, and procedures for recruitment and utilization of confidential informants as well as the way the FBI manages leverages this human intelligence to maximize the execution of its law enforcement purposes. As such, it compiles specific files to house the relevant information for each source. Among other things, the type of information in these types of files may include: when an individual should be treated as a confidential human source; how potential confidential human sources should be identified and evaluated, and techniques for their recruitment; applicable standards for and methods of payments of a confidential human source; standards for communicating with confidential human source; techniques for utilization of confidential human sources; what approvals are needed within the FBI for various utilizations of a confidential human source; methods for acquiring information from confidential human sources; and standards that apply when utilizing confidential human sources in joint operations with other government agencies. These files also discern methods and procedures for validating information collected from confidential informants. Therefore, the FBI's CHS program as characterized in the material here could fairly be characterized as consisting of records release of which would disclose investigative procedures, and thus are eligible for exemption under FOIA Exemptions (b)(7)(D) & (b)(7)(E) in their entirety.

(161) Thus, the disclosure of any information in these materials would likely reveal the techniques the FBI uses to identify potential individuals as sources of information, cooperating witnesses, potential witnesses who possess information relative to FBI investigations who could then be targeted for potential intimidation and/or physical harm in the future. Moreover, once this information is released to the Plaintiffs and in the public domain, its use and dissemination is unrestricted.

(162) The FBI has reviewed and categorized the types of exempt records into two categories - Evidentiary/Investigative Materials and Administrative Materials. Both categories will be discussed in more detail below.

(163) The record can fall into one or more functional categories as described in the below paragraphs. For example, a record, such as an FBI Investigative Report, may serve several purposes and may contain multiple categories of information, such as witness statements, administrative directions, and/or evidentiary materials. Therefore, the information in each record could be included in both categories.

Category I: Evidentiary/Investigative Materials

(164) This category includes copies of records or evidence, analyses of evidence, and derivative communications discussing or incorporating evidence. A derivative communication describes, verbatim or in summary, the contents of the original record, how it was obtained, and how it relates to the investigation. Other derivative communications report this information to other FBI field offices, other law enforcement agencies, or other Federal agencies, either to advise them about the progress of the investigation, or to elicit their assistance in handling investigative leads. The following subparagraphs describe the types of evidentiary materials in the responsive records and the anticipated harm that could reasonably result from the release of the materials.

- (i) Confidential Source and Witness Statements: Confidential source and witness statements are one of the principal tools used in proving the facts that form the basis for a prosecution. These statements contain information obtained from confidential informants, records custodians, and other third-party individuals

who have knowledge of the criminal activities in the FBI investigations at issue here. If this information was released, the witnesses and/or confidential sources that have chosen to cooperate with law enforcement could be subjected to retaliation, intimidation, or physical or mental harm. This could have a chilling effect on the future investigative efforts and prosecutions in this and other cases inasmuch as potential witnesses and/or confidential sources might fear exposure and reprisals from the subjects of these investigations. Implicit in conducting interviews in investigations of this nature is the notion that an individual's identity and the information provided by them will be afforded confidentiality. The FBI goes to great lengths to protect and maintain an individual's confidentiality since it is an integral part of a successful investigation and prosecution. The release of witness statements and confidential source statements would disrupt and harm future investigative and/or prosecutive actions.

Category 2: Administrative Materials

(165) Materials falling within this category include items such as case captions, serial numbers, identities of FBI field offices, dates of investigations, and detailed instructions designed to ensure that investigative procedures are conducted within the appropriate FBI and DOJ guidelines. The following subparagraphs describe the types of administrative materials contained in the files and the anticipated harms that could reasonably result from the disclosure of such materials to any prospective prosecutions. In many instances, administrative

information is contained at the beginning or end of correspondence or documents that fall within other categories of documents; therefore, to release details on this category of information would also reveal the investigative interests of the FBI and could enable suspects to discern a “road map” of the investigation or law enforcement strategy.

- (ii) Reporting Communications: These communications permit an agency to monitor the progress of the investigation and to facilitate its conduct. These communications have the potential to reveal or confirm the cooperation of other local, state, federal, or foreign government agencies in this investigation. These communications are replete with detailed information about the FBI’s investigative activities as well as detailed information about potential witnesses/confidential sources for interview. Additionally, they contain background information about third party individuals, the origins of pertinent information connecting them to the investigation, and their connections to subjects and their relationship with FBI investigations. The release of this information would reveal the nature and scope of investigations by revealing: the investigative steps taken to obtain witness and source interviews; techniques and investigative methods used to compile and/or solicit information from various sources; and any potential or perceived challenges in the investigations.
- (iii) Miscellaneous Administrative Documents: These materials include items such as storage envelopes, transmittal forms, and

standardized forms used for a variety of purposes. These types of materials have been used throughout this investigation for many routine purposes; however, the manner in which they have been used and organized in the files also reveals information of investigative value. The premature disclosure of this information could undermine this pending and ongoing investigation as well as pending and prospective prosecutions. An example is the evidentiary envelope used to store records obtained from a confidential source or witness. While the envelope is not specific to this investigation, handwritten notations on the envelope identify dates, places, and the persons who provided information. In addition, the mere fact that an FBI Special Agent used an envelope for the storage of records he/she has obtained from a source is revealing on its own. The disclosure of these materials could harm the investigation by providing details that, when viewed in conjunction with knowledge possessed by subjects, would provide information useful in identifying witnesses, investigative and prosecutorial strategies, and items of evidence.

SEGREGABILITY

(166) All documents were processed to achieve maximum disclosure consistent with the access provisions of the FOIA. Every effort was made to provide Plaintiffs with all material in the public domain and with all reasonably segregable portions of releasable material. No reasonably segregable, nonexempt portions were withheld from Plaintiffs.

(167) As discussed in ¶ 4 *supra*, there were 4,205 total pages of responsive administrative material consisting of 1,663 pages released in full (“RIF”), 1,554 pages released in part (“RIP”), and 988 pages withheld in full (“WIF”). Each of these categories is discussed below to further address segregability.

- A. Pages RIF. Following the segregability review, RIDS determined that 1,663 pages could be released in full without redaction as there was no foreseeable harm to an interest protected by a FOIA exemption.
- B. Pages RIP. Following the segregability review, RIDS determined that 1,554 pages could be released in part with redactions per the identified FOIA exemptions herein. These pages comprise a mixture of material that could be segregated for release and material that was withheld as release would trigger foreseeable harm to one or more interests protected by the cited FOIA exemptions on these pages.
- C. Pages WIF. Following the segregability review, RIDS determined that 988 pages were required to be withheld in their entirety. Of these, 95 pages were withheld in their entirety because they were duplicative of other pages,⁶² and 893 pages were withheld in their entirety because RIDS determined that all information on these pages was fully covered by FOIA Exemptions.⁶³ RIDS determined that any

⁶² The FBI withheld the following bates pages because they were duplicate to other responsive pages: People-342-347, 602, 603, 605-608, 610, 611, 883, 1640-1642, 1892-1894, 3600, 3639-3706, 3965, 3978-3979, and 4015-4016.

⁶³ The FBI withheld the following bates pages because the information therein was fully covered by one or more of the FOIA Exemptions discussed, *supra*: People-8-16, 19-22, 24-33, 35-39, 41-43, 45-46, 49-51, 60, 62, 64, 70-90, 111-112, 287-288, 292-294, 299-304, 307-310, 314-319, 325, 327-330, 333, 335-340, 397-401, 468-469, 502-505, 507-517, 1063-1447, 1451-1482, 1564-1569, 1637-1638, 1656-1674, 1678-1701, 1739-1762, 1764-1777, 1779-1787, 1836-1843, 1847-

non-exempt information on these pages was so intertwined with exempt material, that no information could be reasonably segregated for release. Any further segregation of this intertwined material would employ finite resources only to produce disjointed words, phrases, or sentences, that taken separately or together, would have minimal or no informational content.

CONCLUSION

(168) The FBI performed adequate and reasonable searches for responsive records; processed all such records and released all reasonably segregable non-exempt information from documents responsive to Plaintiffs' FOIA request that are subject to FOIA. The FBI processed the records under the access provisions of the FOIA to achieve maximum disclosure.

(169) The FBI identified 4,205 pages of responsive records that it processed for release with redactions based on FOIA Exemptions (b)(3), (b)(5), (b)(6), (b)(7)(A), (b)(7)(C), (b)(7)(D), and (b)(7)(E) (Part I). The FBI carefully examined the documents and determined that the information withheld from Plaintiffs in this case, if disclosed: would reveal statutorily protected information; privileged information; could reasonably be expected to interfere with pending or prospective enforcement proceedings; would cause a clearly unwarranted invasion of personal privacy, or could reasonably be expected to constitute an unwarranted invasion of personal privacy; could reasonably be expected to disclose confidential source information; and would disclose techniques and procedures for law enforcement investigations. No reasonably segregable nonexempt portions of these pages were withheld from Plaintiffs.

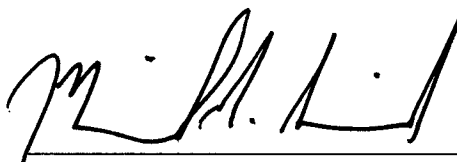
1854, 1856-1857, 1859-1865, 1870-1891, 1899-1901, 1905-1908, 1913-1929, 1950-1960, 1967, 1970-1978, 2084-2085, 2088, 2092, 2099-2100, 2153, 2180-2182, 2243-2245, 2259-2261, 2266-2267, 2272-2273, 2658-2663, 2675-2676, 2690-2691, 3000-3005, 3014-3115, 3912, 3958-3959, 3964, 3966, 3972, 3974, 3976, 3983, 3986-3988, 3991-3993, 3996-4001, 4004, 4007-4010, 4013-4014, and 4203-4205.

(170) The FBI also determined responsive records pertaining to its CHS program could not be released at this time without adversely affecting this sensitive program, and therefore categorically exempted them pursuant to FOIA Exemptions (b)(7)(D) & (b)(7)(E) (Part II). Upon review, the FBI determined that no nonexempt information existed that could be reasonably segregated without adversely affecting the CHS program. In these categorically exempt records, the FBI also applied FOIA Exemptions (b)(3), (b)(6), (b)(7)(C), (b)(7)(D), and (b)(7)(E) to protect information prohibited from disclosure by Rule 6(e), TIII, and the National Security Act of 1947; information that if disclosed, would cause a clearly unwarranted invasion of the personal privacy, or could reasonably be expected to constitute an unwarranted invasion of personal privacy; information that, if disclosed, could reasonably be expected to disclose the identities of confidential sources and the information they provided; and information, if disclosed, would disclose techniques and procedures for law enforcement investigations.

(171) Therefore, after extensive review of the documents at issue, the FBI determined that there is no further non-exempt information that can be reasonably segregated and released without revealing exempt information.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct, and that Exhibits A-Z are true and correct copies.

Executed this 6th day of October, 2020.



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