IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CAMPAIGN LEGAL CENTER, Plaintiff, v. UNITED STATES DEPARTMENT OF JUSTICE, Defendant.	Civil Action No. 18-1187 (TSC)

REPLY IN SUPPORT OF PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

The Department of Justice ("DOJ") has failed to disclose relevant documents in its possession at every stage of responding to Plaintiff Campaign Legal Center's ("CLC's") FOIA request and this proceeding. Despite its supplemental declaration and production, DOJ still has not met its burden to conduct a reasonable search for the requested materials. Rather, the supplemental declaration raises additional questions regarding the adequacy of the search and completeness of DOJ's response.

DOJ's search was deficient in numerous respects. CLC provided DOJ with a narrow set of eight proposed search terms and suggested that those terms be searched within particular DOJ components for a limited date range. DOJ rejected **all** of the proposed search terms. Instead, its search consisted of running one search term – the word "census" – against the emails of one single DOJ employee, along with an additional undescribed search of a second employee's emails. DOJ has offered no support for its extremely narrow approach, which undoubtedly failed

to locate responsive materials in this matter of extreme public importance. DOJ objects to a few of CLC's proposed terms but fails to explain how the other proposed terms—such as "citizenship question"—would produce unresponsive documents. Further, DOJ claims that CLC's proposed searches would yield results beyond the scope of the FOIA request, but failed to support that assertion. Similarly, DOJ failed to search for correspondence with certain Census officials, as requested by CLC. Nor does DOJ appear to have thoroughly conducted the search it describes. Recent disclosures in another case demonstrate that DOJ has failed to produce known documents that should have been included in its search. DOJ also recently produced 11 pages of documents that it previously "inadvertently overlooked" without any explanation as to why the materials were not originally released or how they were found at this juncture. DOJ has thus failed to fulfill its obligations to interpret FOIA requests liberally and to conduct a reasonable search.

In addition to its inadequate search, DOJ has also improperly withheld many of the documents that it did locate pursuant to Exemption 5. These documents were neither predecisional nor deliberative because the record shows that they were created after the relevant agency decisions had been made. DOJ's position that the documents may be withheld simply because they are drafts is untenable and contrary to law.

Therefore, summary judgment for DOJ is inappropriate and instead the Court should grant summary judgment for CLC and order DOJ to complete a reasonable search and produce all responsive documents not properly subject to a FOIA exemption.

ARGUMENT

I. DOJ Failed to Conduct A Reasonable Search and Glaring Deficiencies Remain

DOJ has not met its burden to "demonstrate beyond material doubt that its search was reasonably calculated to uncover ***all*** relevant documents." *Palmieri v. United States*, 194 F. Supp. 3d 12, 17 (D.D.C. 2016) (internal quotation marks omitted) (emphasis added).

A. DOJ Impermissibly Narrowed CLC's FOIA Request

DOJ has not undertaken a "search reasonably calculated to discover all relevant documents" because it selected a narrow interpretation of CLC's request and accordingly narrowed its search by: 1) limiting the terms used and staff records searched, 2) refusing to search for requested correspondence between DOJ and Census personnel, and 3) excluding requested topics.

DOJ's use of a single search term rather than CLC's reasonable and narrowly tailored search terms does not "pass muster under a standard of reasonableness" because it unjustifiably excluded a range of responsive documents. *Coffey v. Bureau of Land Management*, 249 F. Supp. 3d 488, 498 (D.D.C. 2017). CLC provided DOJ with a reasonable and narrowly tailored list of eight terms with date restrictions that it believed would identify responsive documents. *See* Motion for Summary Judgment ("DOJ MSJ"), Doc. #12 Ex. A (CLC FOIA Request) (CLC sought documents containing the following phrases from January 20, 2017 to the present: "2020 census," "long form," "citizenship question," "question regarding citizenship," "ACS," "American Community Survey," "citizen voting age population," or "CVAP."). Instead of using any of the terms or parameters requested by CLC, DOJ searched the Outlook inbox of only one

official using only the single term "census."[1] *See* Supplemental Declaration of Tink Cooper ("2nd Cooper Decl."), Doc #19-1 at ¶¶ 7, 9. While DOJ may have discretion to use a list of search terms it believes is reasonably expected to produce the information requested rather than those requested by the FOIA submitter, "that discretion … is not boundless; the search terms must pass muster under a standard of reasonableness." *See Coffey v. Bureau of Land Management*, 249 F. Supp. 3d 488, 498 (D.D.C. 2017) (internal quotes omitted).

First, while DOJ quibbles with the terms "ACS" and "CVAP," notably, it does not explain why it refused to use other proposed search terms such as "citizenship question," or "question regarding citizenship." These latter terms would clearly produce responsive documents. And DOJ's insistence on limiting its search to just the word "census" ignores the obvious reality that DOJ employees working on this issue would likely not use the word "census" in every single exchange on this topic, rather than beginning discussions from a common place of knowledge and referencing specific subtopics or individuals.

Second, in addition to ignoring all of CLC's proposed search terms, DOJ also refused to search for any documents to, from, or mentioning two Census Bureau employees who were unlikely to have interacted with DOJ in any context other than the addition of the citizenship question. DOJ does not even address this failure, because it cannot explain how a search for such documents would be overbroad or outside the scope of the request. *See Am. Ctr. for Equitable Treatment, Inc. v. Office of Management and Budget*, 284 F. Supp. 3d 144, 152 (D.D.C. 2017) ("[T]he failure of the agency to explain its choices [to ignore the FOIA requester's suggested

[1] DOJ also states one other official "undertook a search of his Outlook" but provides no further description of the search parameters. 2nd Cooper Decl. at ¶ 4. Presumably, the search did not utilize CLC's requested search terms and therefore likely overlooked responsive documents. *See* infra. I.B.

search terms] prevents the court from evaluating the reasonableness of the agency's search method.").

Third, in objecting to the terms "ACS" and "CVAP," DOJ misconstrues the scope of CLC's FOIA request to argue that some of CLC's proposed search terms relate to topics outside the scope of its request. *See* Reply in Support of Defendant's Motion for Summary Judgment and Opposition to Plaintiff's Cross Motion for Summary Judgment ("DOJ Reply"), Doc. #19 at 5. CLC requested "all records *pertaining to* Arthur E. Gary's December 12, 2017 request to the Census Bureau to add a Citizenship question to the 2020 Census Questionnaire." *See* DOJ MSJ Ex. A; *Nation Magazine, Washington Bureau v. U.S. Customs Service*, 71 F.3d 885, 890 (D.C. Cir. 1995) ("The words 'pertaining to,' coupled with the inclusion of references to [a specific document]," meant that the "request should be interpreted to include subject matter files on topics of interest to [requestors]."). Mr. Gary's letter stated that the citizenship question needed to be added to the census to provide DOJ with reliable data for purposes of enforcing Section 2 of the Voting Rights Act. *See* Plaintiff's Cross Motion for Summary Judgment and Opposition to Defendant's Motion for Summary Judgment ("CLC Mot."), Doc. #15 Ex. 2 (Dec. 12 Letter). Accordingly, CLC proposed search terms that were narrowly tailored to, among other things, identify documents showing whether DOJ employees had previously opined, within the requested date range, that existing data is deficient for that purpose. CLC Mot. at 13. DOJ's refusal to even search for such documents impermissibly narrows the scope of CLC's FOIA request to exclude requested information. *See Conservation Force v. Ashe*, 979 F. Supp. 2d 90, 102 (D.D.C. 2013) (The agency "had a duty under FOIA to select the interpretation that would likely yield the greatest number of responsive documents.").

While DOJ also argues that CLC's requested search terms are slightly overbroad, it never bothered to check to see how many documents they would identify for review. Nor does DOJ's argument take into consideration that the number of documents those terms would produce is greatly narrowed by the restrictions to the timeframe and custodians searched.[2] DOJ's limited interpretation of CLC's request is contrary to its "duty to construe a FOIA request liberally." *Nation Magazine, Washington Bureau v. U.S. Customs Service,* 71 F.3d 885, 890 (D.C. Cir. 1995). *See also Wilderness Soc'y v. U.S. Bureau of Land Management*, No. 01-2210, 2003 WL 255971, at *5 (D.D.C. Jan. 15, 2003) (agency's search was inadequate because "responsive documents [possibly maintained] in the locations searched may not have been produced as a result of the [agency's] narrow interpretation of plaintiffs' request.").

In sum, DOJ has unduly narrowed the scope of its search in both the search terms it used, topics it deemed relevant, and by failing to search for correspondence with certain Census officials. It has undoubtedly failed to identify relevant information and thus has failed to meet its obligation of making a "good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested." *See Nat'l Sec. Counselors v. CIA*, 849 F. Supp. 2d 6, 12 (D.D.C. 2012); *Reporters Comm. for Freedom of Press v. FBI*, 788 F.3d 399, 402 (D.C. Cir. 2017).

[2] Moreover, DOJ's explanation as to why one of those terms is be inappropriate is unpersuasive in light of its enforcement history. DOJ contends that "CVAP" could "potentially encompass many records unrelated to the 2020 Census" because "CVAP" is a term used "in certain claims involving the Voting Rights Act." DOJ Reply at 5. However, DOJ has brought no claims under the relevant provision of the Voting Rights Act in the requested time period. *See* https://www.justice.gov/crt/voting-section-litigation.

B. Subsequent Events and DOJ's Declarations Raise Substantial Doubt as to the Search's Adequacy

Recent public disclosures demonstrate that DOJ has also failed to provide known documents that should have been discovered even by its inadequate search. On November 16, in a filing in another case on this issue, Plaintiffs made public an email produced by DOJ from Ben Aguiñaga to John Gore that was sent within the time frame of DOJ's search and discussed the census and the citizenship question specifically. *See* Ex. 9 attached to Declaration of Nadav Ariel in Support of Plaintiff's Reply, (June 12, 2018 email from Ben Aguiñaga to John Gore). The email and attachment both include the search term "census." The perplexing and unexplained failure to disclose this document in response to CLC's FOIA request raises further doubts as to the reasonableness and thoroughness of DOJ's search.

This omission, however, is not all that surprising. At every step of this proceeding, DOJ has needed to update, supplement, or walk back its previous positions. In response to CLC's FOIA request, DOJ initially informed CLC in February 2018 that all responsive documents were subject to FOIA Exemption 5, despite failing to complete a reasonable search for responsive documents. *See* DOJ MSJ Ex. B (Feb. 1, 2018 Response to FOIA Request). Only after CLC filed this lawsuit did DOJ conduct a slightly more thorough electronic search in July 2018 and release a limited number of heavily redacted documents. *See* DOJ MSJ Ex. D (Sept. 26, 2018 Supplemental Response Letter); 2nd Cooper Decl. at ¶ 9. Then, in response to CLC's Opposition and Cross-Motion for Summary Judgment, DOJ provided a supplemental declaration correcting errors in its first declaration regarding the scope of the search, disclosing additional documents, and abandoning a previously asserted exemption over responsive materials. 2nd Cooper Decl. at ¶

12-13; DOJ Reply at 7. But even this latest Declaration is inadequate in its description of the process used to search records.

DOJ's latest declaration references the recent disclosure of an additional 11 pages that were "inadvertently overlooked in CRT's prior release." 2nd Cooper Decl. at ¶ 12. DOJ offers no explanation as to how these latest pages were originally overlooked. Nor does DOJ explain when or how these additional records were located, whether they were discovered in the initial search or in a more recent search, perhaps executed differently from the original. DOJ's failure to explain where these materials came from or why they were not originally disclosed suggests there may be additional materials DOJ has not disclosed.

Likewise, the recent declaration reveals that the Voting Section actually did locate responsive documents in its possession despite prior attestations to the contrary.[3] Apparently, the Voting Section Chief, Mr. Herren, "undertook a search of his Outlook," but the declaration fails to "set[] forth the search terms and the type of search performed" as required to establish the reasonableness of the search. 2nd Cooper Decl. at ¶ 4; *DeBrew v. Atwood*, 792 F.3d 118, 122 (D.C. Cir. 2015) (citations omitted). Presumably, this search also ignored CLC's requested search terms.

Similarly, the declaration concedes that Bethany Pickett possessed responsive documents but claims that no search of her email accounts or other files is necessary. 2nd Cooper Decl. at ¶ 4. Without a search of Ms. Pickett's email, it is impossible to know if the email identified through the search of Mr. Herren and Mr. Gore's email production is the only responsive

[3] *See* Declaration of Tink Cooper, Doc. # 12-2 at ¶ 6 ("[O]n February 5, 2018, the Civil Rights Division referred a copy of Plaintiff's FOIA request to the Division's Voting Section. In response … the FOI/PA Branch was advised that the Section did not have any responsive records[.]").

document within her files. Additionally, another Civil Rights Division official, Ben Aguiñaga, exchanged emails with John Gore discussing the December 12, 2017 Letter. *See* DOJ Reply Ex. A ("DOJ Suppl. Disc."), Doc. # 19-2 at 57-59. However, DOJ makes no mention of Mr. Aguiñaga in its description of its search.

DOJ fails to offer any non-conclusory explanation for its refusal to search in any locations other than the emails of John Gore and Chris Herren. *See* 2nd Decl. at ¶ 4, 7. In so doing, DOJ consciously ignores the fact that these individuals were likely to have responsive materials in locations other than email (such as paper files or hard drive copies of documents) and that other DOJ officials, such as Bethany Pickett and Ben Aguiñaga, were involved in these efforts and are therefore likely to have responsive information. *See* DOJ Suppl. Disc. at 56-59.

This pattern indicates that DOJ's original search was not a "good faith effort to conduct a search for the requested records," and that it has not remedied that initial deficiency. *Reporters Comm. for Freedom of Press v. FBI*, 788 F.3d 399, 402 (D.C. Cir. 2017).

II. DOJ Has Not Met Its Burden to Show that Withheld Materials Fall Into Exemption 5

DOJ withheld many documents on the ground that any draft letter pre-dating the final version is "plainly pre-decisional and deliberative" because it reflects deliberations about the contents of the letter. DOJ Reply at 10. Under DOJ's strained interpretation of the case law, every draft document would automatically be pre-decisional and deliberative because it reflects deliberations about its contents. This is not the law.

As this court and others have made clear, "drafts are *not* presumptively privileged." *Judicial Watch, Inc. v. U.S. Postal Service*, 297 F. Supp. 2d 252, 260 (D.D.C. 2004) (emphasis added). "A post-decisional document, draft or no, by definition cannot be 'predecisional.'" *Id.*; *see also Lee v. F.D.I.C.*, 923 F. sup. 451, 458 (S.D.N.Y. 1996) ("The mere fact that a document

is a draft … is not sufficient reason to automatically exempt it from disclosure."). Rather, a draft must still be both predecisional and deliberative to qualify for exemption from FOIA's policy of disclosure. *See Arthur Andersen & Co. v. IRS*, 679 F.2d 254, 257-58 (D.C. Cir. 1982) ("The designation of the documents here as 'drafts' does not end the inquiry, however… Even if a document is a 'draft of what will become a final document,' the court must ascertain 'whether the document is deliberative in nature.'").

The refusal to give draft status a talismanic importance makes sense in light of FOIA's policy of promoting transparency. If every document subject to future revision were included in Exemption 5, it would swallow FOIA whole. The draft letters and emails at issue here were neither predecisional nor deliberative, and therefore are not properly withheld under Exemption 5, despite their draft status.

Contrary to DOJ's unsupported contention, the relevant agency decision at issue was the decision to add the citizenship question to the census, or possibly DOJ's decision to accede to the Commerce Department's request that DOJ send a letter requesting the addition of the citizenship question. *See* DOJ Reply at 8-9; *Hooker v. U.S. Dept. of Health and Human Services*, 889 F.2d 1118, 1120 (D.D.C. 2012) ("The D.C. Circuit has found that where a plaintiff requests records of correspondence surrounding or leading up to an agency publication, the relevant agency decision for purposes of applying the deliberative process privilege is the decision to publish.") (*citing Formaldehyde Inst. v. Dept. of Health and Human Services*, 889 F.2d 1118, 1120 (D.C. Cir. 1989) (overruled on other grounds).

The record here clearly shows that the withheld materials were created after those decisions were made. On May 2, 2017, a Commerce Department official informed Secretary Ross that "we will get [the citizenship question] in place… We need to work with Justice to get

them to request that citizenship be added[.]" CLC Mot. Ex. 4. Later, on September 17, 2017, a DOJ official informed the Commerce Department that "we can do whatever you all need us to do and the delay was due to a miscommunication. The AG is eager to assist." CLC. Mot. Ex. 7. All of the withheld materials now at issue were created after these decisions had been made, finalized, and communicated. Thus, DOJ has not and cannot meet its burden to prove that the withheld materials were made prior to the decision to send the letter.[4]

In addition to failing to show the materials were not predecisional, DOJ has not met its burden to show the withheld materials were deliberative. Not only had DOJ already decided to send the request to Census, the policy position and reasoning DOJ would proffer had also already been decided. After Secretary Ross asked why no action had been taken on his request, a Commerce official responded "[w]e need to work with Justice to get them to request that citizenship be added back as a census question, and *we have the cases that show they need the data*." CLC Mot. Ex. 4 (emphasis added). Later, after Secretary Ross spoke to Attorney General Sessions, Sessions ordered DOJ employees to draft the letter. *See* DOJ Suppl. Discl. at 6; CLC Mot. Ex. 7. Thus the policy position and rationale had been decided, and the subsequent wordsmithing of the content of the letter by lower level DOJ officials in the documents now at issue does not constitute deliberation for purposes of Exemption 5.

A more typical and ordinary procedure would be for agency leadership to have a general policy idea and ask staff to make recommendations, in which case draft documents and emails circulating drafts would be part of a deliberative process to determine the final agency position.[5]

[4] DOJ appears to concede the point by agreeing to "withdraw the redactions pertaining solely to the addition of a citizenship question." DOJ Reply at 7.

[5] The cases cited by DOJ in its Reply in support of this principal equally demonstrate the importance of identifying whether the draft document had any role at all in the deliberative

However, the record indicates that was not what happened here.[6] The Secretary of Commerce, acting as the ultimate decisionmaker regarding addition of questions to the 2020 Census, decided to add the question and asked the Attorney General to send Commerce a request taking a certain

process. *See Brown v. Dept. of State*, 317 F. Supp. 3d 370, 376-77 (D.D.C. 2018) ("[T]he two agencies were apparently communicating for the purpose of sharing their relative expertise in an attempt to reach a quality decision."); *Krikorian v. Dept. of State*, 984 F.2d 461, 466 (D.C. Cir. 1993) (determining that letters sought by plaintiff played an important role in the deliberative process even though ultimately never used by the agency).

[6] The case law cited by DOJ in its Reply at 8-10 is inapplicable here because those cases did not involve materials drafted after superior officials dictated the decision and rationale to the junior officials charged with writing down the document at issue. Instead, they related to drafts that were part of a deliberative process, often the process of deciding on an agency public messaging position. But DOJ claims that the Dec. 12, 2017 Letter was not such a public messaging document, making these citations inapposite. *See* DOJ Reply at 13, n.3; *Judicial Watch, Inc. v. U.S. Dep't of State*, Civ. A. No. 16-885, 2018 U.S. Dist. LEXIS 170199 at *10 (D.D.C. Oct. 2, 2018) (at issue were "emails circulating and critiquing a draft letter responding to Congressional inquiries,"); *Hunton & Williams LLP v. U.S. EPA*, Civ. A. No. 15-1203, 2018 U.S. Dist. LEXIS 166174 at *9 (D.D.C. Sept. 27, 2018) (discussing "emails seeking and giving drafts of letters to [concerned non-profits] and discussing communications strategy,"); *Sierra Club v. U.S. Dep't of Interior*, 384 F. Supp. 2d 1, 20 (D.D.C. 2004) ("the specific decision [at issue] was how best to respond to a related congressional inquiry."). *See also Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854, 868 (finding materials did not fall into Exemption 5 because "[t]he documents were not suggestions or recommendations as to what agency policy should be."); *Hooker v. HHS*, 887 F. Supp. 2d. 40, 58-59 (D.D.C. 2012) (the "ongoing collaborative dialogue about the manuscript" was in regards to "which research findings and data to include"); *Blank Rome LLP v. Dep't of the Air Force*, 2016 U.S. Dist. LEXIS 128209, at *14, *35 (D.D.C. Sept. 20, 2016) (noting "defendants' designation of a document as a 'draft' does not automatically trigger proper withholding under Exemption 5" and finding documents that were properly withheld "reflect[ed] the [agency's] decisionmaking process with regards to [a] settlement proposal."); *Radiation Sterilizers, Inc. v. U.S. Dep't of Energy*, No. 90-880, 1991 U.S. Dist. LEXIS 4669 at *17 (D.D.C. Apr. 9, 1991) (no indication that superior officials had dictated rationale to be used in letter); *Skull Valley Band of Goshute Indians v. Kempthorne*, 2007 U.S. Dist. LEXIS 21079, at *40, *46 (D.D.C. Mar. 26, 2007) (court recognized Exemption 5 properly applies to "discussions among agency personnel about the relative merits of various positions which may be adopted" and gave no indication that drafts were not part of such a discussion); *Competitive Enterprise Inst. v. Office of Sci. & Tech. Policy*, 161 F. Supp. 3d 120, 131-32 (D.D.C. 2016) (recognizing need for "an agency provide information sufficient to allow a court to determine that the document is part of a deliberative process" and describing a drafting process where reviewers were, *e.g.*, confirming the agency was correct in its interpretation of another agency's guidance); *United Am. Fin., Inc. v. Potter*, 531 F. Supp. 2d 29, 44 (D.D.C. 2008) (noting the drafts at issue reflected "the give and take of the deliberative process.").

position and using a certain rationale. The Attorney General then decided to make that request and directed junior DOJ employees to draft the letter accordingly. *See* CLC Mot. Ex. 4; DOJ Suppl. Discl. at 6; CLC Mot. Ex. 7. By the time the withheld materials were created, all of the relevant decisions and deliberations had already taken place.

III. The Current Withholdings Contradict the Purposes of Exemption 5

Lastly, DOJ's parade of horribles that would follow from disclosure of the withheld materials has no basis in reality. Where, as here, the policy position and the rationale were already decided well before the creation of the materials at issue, there is no chance that releasing the materials could result in "premature disclosure of proposed policies before they have been finally formulated" or of "confusing the issues and misleading the public by dissemination of documents suggesting reasons and rationales for a course of action which were not in fact the ultimate reasons for the agency's action." DOJ Reply at 11 (*quoting Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980)). Further, release will not chill a "frank discussion of legal and policy matters" when the relevant legal and policy matters had already been decided by the heads of the relevant agencies. *See id. (quoting EPA v. Mink*, 410 U.S. 73, 87 (1973)).

The purposes of Exemption 5 would not be advanced by permitting withholding of the materials at issue and any continued withholding would run counter to the purpose of FOIA.[7] To the contrary, the central purpose of FOIA is "to open agency action to the light of public

[7] Nor can DOJ's reference to another court's decision regarding similar documents in a different procedural context support its position in this FOIA case. *See New York v.U.S. Dep't of Commerce*, Civ. A. No. 18-2921, 2018 U.S. Dist. LEXIS 1772468 at *20 (S.D.N.Y. Oct. 5, 2018). The parties in that case had apparently agreed that the documents at issue were post-decisional messaging documents and the court analyzed them as such. *See id.* at *16, 20. Here, however, DOJ has explicitly disclaimed that the Dec. 12, 2017 DOJ Letter was a messaging document. *See* DOJ Reply at 13, n. 3.

scrutiny." *See Nation Magazine, Washington Bureau v. U.S. Customs Service*, 71 F.3d 885, 894 (D.C. Cir. 1995) (*citing Dep't of Air Force v. Rose*, 425 U.S. 352, 372 (1976)). "The basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed." *Coffey v. Bureau of Land Management*, 249 F. Supp. 3d 488, 495 (D.D.C. 2017) (*quoting John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 152 (1989). The importance of informing the public is highlighted in this case, where government officials have given conflicting accounts about the development of the constitutionally mandated decennial census. *Compare FY19 Budget Hearing – Department of Commerce: Hearing Before the Subcomm. On Commerce, Justice, Science, and Related Agencies* of the H. Comm. on Appropriations, 115th Cong. (2018) (statement of Sec. Wilbur Ross, Commerce Sec.) (question added "solely" in response to DOJ request) *with* CLC Mot. Ex. 3 (Jun. 21, 2018 Supplemental Memorandum by Sec'y of Commerce Wilbur Ross Regarding the Administrative Record in Census Litigation) (question sought by Census far earlier than DOJ request).

CONCLUSION

For the reasons set forth above, CLC respectfully requests that the Court deny DOJ's motion for summary judgment and instead grant summary judgment in favor of CLC, order DOJ to promptly complete a reasonable search for documents responsive to the FOIA request, and order DOJ to produce all responsive previously withheld documents and remove redactions from produced documents as not properly subject to FOIA Exemption 5.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on this 10th day of December, 2018, I electronically filed the foregoing document with the Clerk of Court via ECF, which will send electronic notification of such filing to all counsel of record.

__/s/ Nadav Ariel_____

Nadav Ariel

Counsel for Plaintiff Campaign Legal Center