IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRENNAN CENTER FOR JUSTICE, *Plaintiff,* v. UNITED STATES DEPARTMENT OF COMMERCE, *et al.*, *Defendants*.	Case No. 1:20-cv-02674 (TJK)

DEFENDANTS' OPPOSITION TO
PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

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INTRODUCTION

The Court should deny the motion for preliminary injunction filed by the Brennan Center for Justice ("Plaintiff") seeking broad swaths of information from nine different government components (collectively, "Defendants") on an accelerated, unrealistic timetable pursuant to the Freedom of Information Act ("FOIA"). This Court has consistently denied requests for a preliminary injunction in the FOIA context. And for good reason. Precedent dictates that for Plaintiff to demonstrate irreparable harm when seeking a mandatory injunction, the organization must meet an exceedingly high bar that has not been satisfied in this case. Plaintiff has not shown that without preliminary relief, it cannot utilize responsive, non-exempt information provided by Defendants—on a reasonable processing timetable—to foster public dialogue about the census and reapportionment. Moreover, Plaintiff has not established a likelihood that the organization will succeed on the merits of its claims. While Plaintiff had the statutory authority to initiate this litigation, it does not have the right to demand that Defendants search for, process, and release responsive, non-exempt information on an untenable schedule. Further, Plaintiff has not shown that any of the government components erred by declining to grant expedited consideration of its requests. Indeed, Plaintiff submitted its FOIA requests approximately one year after the event that allegedly precipitated the demands—the signing of Executive Order 13880 in July 2019. 84 Fed. Reg. 33821. Even if Plaintiff prevails, the organization is only entitled to judicial supervision of the processing of its requests. Defendants have been, consistent with their statutory obligations, processing Plaintiff's expansive requests as quickly as practicable given their other FOIA obligations. And Plaintiff cannot rebut the reality that authorizing its preferred outcome will marginalize other FOIA requestors who have acknowledged the backlog of requests, exhibited patience, and waited their turn in the FOIA queue. The Court, therefore, should deny Plaintiff's request for preliminary relief.

BACKGROUND

I. Statutory and Regulatory Background

Agencies ordinarily process FOIA requests for agency records on a first-in, first-out basis. *See, e.g.*, 15 C.F.R. § 4.6(a) (providing that Department of Commerce "[c]omponents ordinarily shall respond to requests according to their order of receipt"); *see also Open Am. v. Watergate Special Prosecution Force*, 547 F.2d 605, 614-16 (D.C. Cir. 1976) (holding that the first-in/first-out approach is generally consistent with an agency's responsibilities under FOIA). In 1996, Congress amended FOIA to provide for "expedited processing" of certain categories of requests. *See* Electronic Freedom of Information Act Amendments of 1996 ("EFOIA"), Pub. L. No. 104-231, § 8, 110 Stat. 3048, 3051 (1996) (codified as amended at 5 U.S.C. § 552(a)(6)(E)). Expedition, when granted, entitles requestors to move immediately to the front of an agency processing queue, ahead of requests filed previously by other persons (but still behind any already expedited requests). *See* Declaration of Vanessa R. Brinkmann ("Brinkmann Decl.") ¶¶ 13, 21; Declaration of Paul P. Colborn ("Colborn Decl.") ¶¶ 9-15; Declaration of Vernon E. Curry ("Curry Decl.") ¶ 21; Declaration of Kilian Kagle ("Kagle Decl.") ¶ 9; Declaration of Heather V. Walsh ("Walsh Decl.") ¶¶ 14-15.

As part of EFOIA, Congress directed agencies to promulgate regulations providing for expedited processing of requests for records in the following circumstances: (i) "in cases in which the person requesting the records demonstrates a compelling need," 5 U.S.C. § 552(a)(6)(E)(i)(I); and (ii) "in other cases determined by the agency," *id.* § 552(a)(6)(E)(i)(II). Congress defined "compelling need" to include, *inter alia*, "urgency to inform the public concerning actual or alleged Federal Government activity" with regard to "a request made by a person primarily engaged in disseminating information." 5 U.S.C. § 552(a)(6)(E)(v)(II). The "other cases determined by the agency" provision (subparagraph (E)(i)(II)) gives agencies "'latitude to expand the criteria for expedited access' beyond cases of 'compelling need.'" *Al Fayed v. Cent. Intelligence Agency*, 254 F.3d 300, 307 n. 7 (D.C. Cir. 2001) (quoting Electronic Freedom of Information Amendments of 1996, H.R. Rep. No. 104-795, at 26 (1996), reprinted in 1996 U.S.C.C.A.N 3448, 3469).

In enacting EFOIA, Congress specified that the expedited processing categories should be "'narrowly applied.'" *Al-Fayed*, 254 F.3d at 310 (quoting H.R. Rep. No. 104-795, at 26). As the D.C. Circuit explained in *Al-Fayed*, "Congress' rationale for a narrow application is clear: 'Given the finite resources generally available for fulfilling FOIA requests, unduly generous use of the expedited processing procedure would unfairly disadvantage other requestors who do not qualify for its treatment.' . . . Indeed, an unduly generous approach would also disadvantage those requestors who do qualify for expedition, because prioritizing all requests would effectively prioritize none." 254 F.3d at 310 (quoting H.R. Rep. No. 104-795, at 26).

When a request for expedited processing is filed, the agency must determine whether to grant the request, and give notice of the determination, within ten days of the request. *See* 5 U.S.C. § 552(a)(6)(E)(ii)(I). An agency's failure to respond will constitute constructive exhaustion of the requestor's administrative remedies as to that request. *See Judicial Watch, Inc. v. U.S. Naval Observatory*, 160 F. Supp. 2d 111, 113 (D.D.C. 2001).

II. Plaintiff's FOIA Requests

In early July 2020, Plaintiff submitted substantively identical FOIA requests to nine separate government components. *See, e.g.*, Compl. Ex. A, Request to the Dep't of Commerce, ECF No. 1-1. To begin, Plaintiff seeks "[a]ll records created on or after June 27, 2019, pertaining to how any of the citizenship-status data collected pursuant to Executive Order 13880" could be used in the following activities:

- Calculating or otherwise formulating the 2020 total national population;
- Calculating or otherwise formulating the 2020 state-population totals to be used to apportion the United States House of Representatives as contemplated by 13 U.S.C. § 141(b) (hereinafter, the "2020 state-population totals");
- Reporting the 2020 state-population totals to President Trump by the Secretary of Commerce as required under 13 U.S.C. § 141(b);
- Reporting by President Trump to Congress the 2020 state-population totals and number of congressional representatives to which each state is entitled, as required under 2 U.S.C. § 2a(a);

- Changing the Census Bureau's policy for calculating the 2020 state population totals, which currently states the 2020 state-population totals will be calculated using the Census Unedited File;

- Changing the Census Bureau's policy for creating the Census Unedited File, which currently states the Census Unedited File will not contain any citizenship status data.

Compl. ¶ 46, ECF No. 1. Plaintiff further requests "[a]ll records . . . pertaining to" how the Secretary of Commerce will report the 2020 state population totals to the President. *Id*. In addition, Plaintiff demands "[a]ll records . . . pertaining to the process by which" the President will report the 2020 state population totals to Congress. *Id*. And finally, Plaintiff seeks "records of communications related to the 2020 Census between persons or entities in the Trump Administration and" and approximately 50 different "individuals, think tanks, policy organizations, and political groups." *Id*. ¶ 47; *see, e.g.*, Compl., ECF No. 1-1.

Plaintiff also sought expedited processing of its broad FOIA requests, "renewing and supplementing" its demand with each government component on August 13, 2020. Compl. ¶¶ 48, 50; *see also, e.g.*, 15 C.F.R. § 4.6(f) (Department of Commerce expedited consideration regulation). The Department of Justice, Civil Rights Division, Office of Information Policy ("OIP"),[1] and Office of Legal Counsel ("OLC") granted Plaintiff's request for expedited consideration in its entirety. Brinkmann Decl. ¶ 5; Colborn Decl. ¶ 9; Kagle Decl. ¶ 9. The Department of Commerce ("Commerce") and the United States Census Bureau ("Census Bureau") administratively consolidated the requests they received from Plaintiff, after which they granted expedited consideration for parts 1-3 of the requests and denied expedition with regard to part 4.[2] Curry Decl. ¶¶ 10, 13-14. The Office of Management and Budget ("OMB") did not reach a

[1] OIP, which handles FOIA requests for the Office of the Attorney General, Office of the Associate Attorney General, Office of the Deputy Attorney General, and Office of Legal Policy, granted Plaintiff's request on September 4, 2020. *See* Brinkmann Decl. ¶¶ 1, 9.

[2] Commerce and the Census Bureau granted Plaintiff's requests for expedited consideration for parts 1-3 of Plaintiff's FOIA requests after Plaintiff initiated this lawsuit. *See* Curry Decl. ¶ 13.

determination regarding Plaintiff's request for expedited processing prior to the initiation of this lawsuit.[3] Walsh Decl. ¶ 9.

All of the government components have started the process of searching for materials potentially responsive to Plaintiff's requests. All components within the Department of Justice have started their respective searches. Brinkmann Decl. ¶¶ 12-15; Kagle Decl. ¶¶ 10-19; Colborn Decl. ¶¶ 19-22. In addition, OMB reports that it has similarly started its search for responsive materials. Walsh Decl. ¶ 8. As mentioned above, Commerce and the Census Bureau have consolidated their FOIA cases; they have started their administrative process to search for potentially responsive records in the consolidated matter. Curry Decl. ¶¶ 18-19.

III. FOIA Burdens on Defendants

The Plaintiff's FOIA requests will unduly burden the government components tasked with processing the requests.

FOIA requests submitted to the Office of the Attorney General, Office of the Associate Attorney General, Office of the Deputy Attorney General, and Office of Legal Policy are processed by the Initial Request staff of the Office of Information Policy ("OIP"), Department of Justice. Brinkmann Decl. ¶ 1. OIP has 1,890 open FOIA requests, including 139 FOIA requests that were granted expedited review prior to Plaintiff's submissions, 10 of which still have pending searches. *Id.* ¶¶ 13, 17. FOIA requestors initiated 98 lawsuits naming OIP as a defendant, 71 cases of which are before this Court or the United States Court of Appeals for the District of Columbia Circuit. *Id.* ¶ 20. Seven full-time employees process the non-litigation requests and a further seven full-time employees process those inquiries that are the subject of litigation. *Id.* ¶¶ 18-19. The number of lawsuits handled by OIP increased by 40% from February of 2019 to February of 2020, just before its staff began maximum telework status in response to the COVID-19 pandemic. *Id.* ¶ 20. In light of the their burgeoning caseload, OIP cannot process the Plaintiff's FOIA request by

[3] While OMB has not reached a decision on the merits of Plaintiff's request for expedited consideration, it has developed a processing plan and remains committed to responding to the FOIA request in a timely and reasonable manner. Walsh Decl. ¶ 9.

November 2, 2020, without harming other equally-meritorious FOIA requests granted expedited processing received prior to the Plaintiff's request. *Id.* ¶ 5.

The Department of Justice Civil Rights Division's FOIA Office is comprised of two attorneys and five administrative staff members. Kagle Decl. ¶ 4. The Civil Rights FOIA office coordinates its search effort with the Office of the Assistant Attorney General, the Office of the Deputy Attorney General, and the relevant litigation section, here the Voting Section. *Id.* ¶¶ 10, 18. The Civil Rights Division's two FOIA attorneys are currently handling eight FOIA lawsuits, including three with expedited document production schedules. *Id.* ¶ 4. The Civil Rights Division receives hundreds of FOIA requests and Privacy Act requests yearly. *Id.* ¶ 3. The Civil Rights Division has numerous other requests that have been granted expedited review ahead of the instant request—such as one from Plaintiff on tangentially related topics. *Id.* ¶ 9. The Civil Rights Division cannot meet Plaintiff's proposed production schedule without displacing other equally-meritorious requests that pre-date Plaintiff's and which are expedited or in litigation. *Id.* ¶ 4.

The Office of General Counsel handles OMB's FOIA requests. *See* Walsh. Decl. ¶ 2. The agency currently has over 600 open FOIA requests and more than 40 active lawsuits, significant increases from 70 pending requests at the end of Fiscal Year 2016 and a total of seven lawsuits in Fiscal Years 2015 and 2016. *Id.* ¶ 12. The agency presently has nine cases with court-imposed or court-approved rolling production schedules. *Id.* ¶ 13. At least two other FOIA requesters are seeking the same or similar information related to the Census, and their requests are ahead of Plaintiff's in the queue. *Id.* ¶ 14. OMB started its search for responsive materials on October 8, 2020, by transmitting its search parameters to the agency's eDiscovery support staff. *Id.* ¶ 8.

OLC represents "a very small component of the Department of Justice," employing only one attorney at the line attorney level having the title FOIA and Records Management Attorney. Colborn Decl. ¶ 5. Yet, "[o]ver the five-year period covering Fiscal Years 2012 to 2016, OLC received an average of approximately 106 [FOIA] requests per fiscal year." *Id.* ¶ 7. Presently, OLC has 422 earlier-received requests in its processing queue, "including 22 earlier-received expedited requests." *Id.* ¶ 13. "Many of these earlier-received, earlier-expedited FOIA requests

are no less complicated" than the request submitted by Plaintiff that "seek records on issues that are similarly high-profile." *Id.* ¶ 14.

The Census Bureau and Commerce are facing similar burdens. In particular, Commerce has a backlog of 800 FOIA requests. Curry Decl. ¶ 22. And the Census Bureau currently has 5 active lawsuits seeking census documents. *Id.* ¶ 15. The Curry Declaration explains that granting Plaintiff the preliminary relief that it seeks would necessarily "divert resources from processing the FOIA requests at issue in those cases, and result in delayed production for their requests." *Id.* ¶ 23. Further, the ability of Commerce and Census Bureau employees to review non-electronic records has been curtailed by the current maximum telework status in light of the COVID-19 pandemic. *Id.* ¶ 20.

ARGUMENT

I. Preliminary Injunctions are Generally Not Appropriate in FOIA Cases

The courts generally do not award the extraordinary remedy of preliminary injunctive relief in FOIA cases.

First, FOIA establishes its own specialized procedural framework controlling the processing of FOIA requests and procedures for FOIA litigation. *See, e.g.*, 5 U.S.C. § 552(a)(3)(A) (providing that a FOIA request must reasonably describe the records sought and must be filed in accordance with published rules and procedures); 5 U.S.C. § 552(a)(4)(C) (requiring responsive filing within thirty days of service of a complaint). The courts should not casually sidestep this statutory framework through issuance of preliminary relief.

Second, the traditional purpose of a preliminary injunction is to "preserve the status quo" so that the court can issue a meaningful decision on the merits. *Cobell v. Kempthorne*, 455 F.3d 301, 314 (D.C. Cir. 2006) (citation omitted). Therefore, when, as here, a movant seeks mandatory injunctive relief—*i.e.*, an injunction that "would alter, rather than preserve, the status quo by commanding some positive act"—the moving party must meet a higher standard than in the ordinary case by showing clearly that he or she is entitled to relief or that extreme or very serious damage will result from the denial of the injunction." *Elec. Info. Privacy Ctr. v. Dep't of Justice*,

15 F. Supp. 3d 32, 39 (D.D.C. 2014) (citations omitted); *see also Nat'l Conf. on Ministry to the Armed Forces v. James*, 278 F. Supp. 2d 37, 43 (D.D.C. 2003) ("A district court should not issue a mandatory preliminary injunction unless the facts and law clearly favor the moving party." (citation omitted)). An order compelling processing of a FOIA request would not merely preserve the status quo but would force specific action by nine government components.

Third, because preliminary injunctive relief is not intended to provide plaintiffs with a means to bypass the litigation process and achieve rapid victory, "a preliminary injunction should not work to give a party essentially the full relief he seeks on the merits." *Dorfmann v. Boozer*, 414 F.2d 1168, 1173 n. 13 (D.C. Cir. 1969) (per curiam); *see also Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981) ("[I]t is generally inappropriate for a federal court at the preliminary-injunction stage to give a final judgment on the merits."). Here, Plaintiff expressly demands this precise form of relief at the outset of this litigation—a preliminary injunction requiring nine government components to produce responsive records by November 2, 2020, along with corresponding Vaughn indices. *See* Memorandum of Points and Authorities in Support of Plaintiff's Motion for Preliminary Injunction ("Pl.'s Mot."), ECF No. 12, at 20, 43. Plaintiff's motion is a thinly veiled tactic to circumvent the standard FOIA litigation process. *See Daily Caller v. Dep't of State*, 152 F. Supp. 3d 1, 6-7 (D.D.C. 2015) (noting that "in seeking a preliminary order requiring the State Department to process fully the plaintiff's outstanding FOIA requests, and produce all responsive non-exempt documents within twenty business days, the plaintiff essentially requests the full relief it seeks in filing its underlying Complaint").

For these reasons, the courts in this jurisdiction routinely deny requests for preliminary injunctions in FOIA cases. *See, e.g.*, *Baker v. Consumer Fin. Prot. Bureau*, Civ. A. No. 18-2403, 2018 WL 5723146, at *6 (D.D.C. Nov. 1, 2018) (denying plaintiffs' motion for preliminary injunction granting release of documents by a date certain); *Elec. Privacy Info. Ctr.*, 15 F. Supp. 3d at 49 (denying plaintiffs' motion for preliminary injunction seeking immediate release of documents); *Long v. U.S. Dep't of Homeland Sec.*, 436 F. Supp. 2d 38, 44 (D.D.C. 2006) (denying motion for preliminary injunction to compel processing within twenty days).

II. In Any Event, Plaintiff has Failed to Carry Its Heavy Burden to Establish Entitlement to a Preliminary Injunction

"A preliminary injunction is an extraordinary and drastic remedy" and should "never be awarded as of right." *Munaf v. Geren*, 553 U.S. 674, 689-90 (2008) (citation omitted). A movant is entitled to such an "extraordinary remedy" only "upon a clear showing" that it is "entitled to such relief." *Winter v. Nat. Res. Def. Council, Inc.*, U U.S. 7, 22 (2008). To establish such entitlement, a movant must demonstrate that (1) it is likely to succeed on the merits; (2) it is likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in its favor; and (4) an injunction is in the public interest. *Id.* at 20. The last two factors merge when the government is the opposing party. *Guedes v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 920 F.3d 1, 10 (D.C. Cir. 2019), *cert. denied*, 140 S. Ct. 789 2020); *accord Pub. Citizen Health Research Grp. v. Acosta*, 363 F. Supp. 3d 1, 20 (D.D.C. 2018). "[P]laintiffs bear the burden of persuasion on all four preliminary injunction factors in order to secure such an 'extraordinary remedy.'" *Open Top Sightseeing USA v. Mr. Sightseeing, LLC*, 48 F. Supp. 3d 87, 90 (D.D.C. 2014). As discussed more fully below, Plaintiff has failed to do so here.

A. Plaintiff has not Demonstrated that It Will Suffer Irreparable Harm

"[T]he basis of injunctive relief in the federal courts has always been irreparable harm." *CityFed Fin. Corp. v. Office of Thrift Supervision*, 58 F.3d 738, 747 (D.C. Cir. 1995) (quoting *Sampson v. Murray*, 415 U.S. 61, 88 (1974)). The D.C. Circuit "has set a high standard for irreparable injury." *In re Navy Chaplaincy*, 534 F.3d 756, 766 (D.C. Cir. 2008) (citation omitted). The harm must be "certain and great, actual and not theoretical, and so imminent that there is a clear and present need for equitable relief to prevent irreparable harm." *League of Women Voters v. Newby*, 838 F.3d 1, 7-8 (D.C. Cir. 2016) (citation and alteration omitted). In the context of a mandatory injunction, like the one sought here, Plaintiff "must meet a higher standard than in the ordinary case by showing clearly that [the movant] is entitled to relief or that extreme or very

serious damage will result from the denial of the injunction."[4] *Elec. Privacy Info. Ctr.*, 15 F. Supp. 3d at 39 (quoting *Columbia Hosp. for Women Found., Inc. v. Bank of Tokyo–Mitsubishi Ltd.*, 15 F. Supp. 2d 1, 4 (D.D.C. 1997)).

Plaintiff has the burden to put forth sufficient evidence to satisfy this high standard. "The movant cannot simply make 'broad conclusory statements' about the existence of harm. Rather, [the movant] must 'submit[ ] . . . competent evidence into the record . . . that would permit the Court to assess whether [the movant], in fact, faces irreparable harm . . . . '" *Aviles-Wynkoop v. Neal*, 978 F. Supp. 2d 15, 21 (D.D.C. 2013) (quoting *Cornish v. Dudas*, 540 F. Supp. 2d 61, 65 (D.D.C. 2008)); *see also id.* (concluding that plaintiff failed to make a showing of sufficient irreparable harm where she submitted no competent evidence).

Here, in contrast, Plaintiff has not presented evidence that "extreme or very serious damage will result from the denial of the injunction." *Elec. Privacy Info. Ctr.*, 15 F. Supp. 3d at 39. At bottom, Plaintiff argues that the organization will be irreparably harmed because it will be "deprived of the opportunity to engage in well-informed discourse on the issues in advance of reapportionment[.]" Pl.'s Mot. at 20. Plaintiff claims that it needs to receive and review the requested materials in order "to write and disseminate articles and analyses" for the public to "receive, digest, and debate information concerning an issue of highest national importance." *Id.* at 20, 39. Plaintiff, however, does not put forth any evidence that explains why this public discussion must be completed within the compressed time period. *See Aviles-Wynkoop*, 978 F. Supp. 2d at 21 ("The movant cannot simply make 'broad conclusory statements' about the existence of harm[.]"). While Plaintiff submits the Declaration of Michael Waldman ("Waldman Declaration") to address how Plaintiff intends to influence the public dialogue with the responsive materials, the submission does not discuss why a failure to utilize the information in the next two months would lead to irreparable harm. *See Elec. Privacy Info. Ctr.*, 15 F. Supp. 3d at 46-47

[4] A mandatory injunction is one "where its terms would alter, rather than preserve, the status quo by commanding some positive act," such as the release of responsive, non-exempt materials in the FOIA context. *Elec. Privacy Info. Ctr.*, 15 F. Supp. 3d at 39.

(stating that it is "clear from case law that a movant's general interest in being able to engage in an ongoing public debate using information that it has requested under FOIA is not sufficient to establish that irreparable harm will occur unless the movant receives immediate access to that information").

Rather, Plaintiff unpersuasively argues—in its motion for preliminary injunction—that responsive materials must be released well in advance of the December 31, 2020 statutory deadline, and a failure to do so will cause irreparable harm.[5] *See* Pl.'s Mot. at 6, 31, 38-39. Plaintiff accurately notes that pursuant to 13 U.S.C. § 141(b), the Department of Commerce must complete all census data collection and deliver state population totals to the President by December 31, 2020.[6] *See* Pl.'s Mot. at 6. But Plaintiff has not and cannot demonstrate that this deadline should require nine government components to search for, process, and release all responsive, non-exempt information in a matter of weeks.[7] Indeed, the December 31 deadline does not end the

[5] To be sure, when the courts have granted preliminary injunctions in FOIA cases, they have done so upon a finding that the movant has demonstrated imminent irreparable harm based on an actual, impending deadline. *See, e.g.*, *Wash. Post v. Dep't of Homeland Sec.*, 459 F. Supp. 2d 61, 75 (D.D.C. 2006) ("Because the urgency with which the plaintiff makes its FOIA request is predicated on a matter of current national debate, due to the impending election, a likelihood for irreparable harm exists[.]"); *Aguilera v. Fed. Bureau of Investigation*, 941 F. Supp. 144, 151-52 (D.D.C. 1996) (finding that a preliminary injunction requiring the government to expedite the processing of plaintiff's FOIA request was warranted when the documents at issue were key evidence in an evidentiary hearing scheduled for the near future regarding the requester's conviction for murder); *Cleaver v. Kelley*, 427 F. Supp. 80, 81-82 (D.D.C. 1976) (granting a preliminary injunction and ordering expedited processing of plaintiff's FOIA request where plaintiff had been indicted for attempted murder and assault and the trial was scheduled to begin in a month). But as discussed herein, Plaintiff cannot demonstrate such irreparable harm regardless of its identification of a deadline.

[6] The United States District Court for the Northern District of California initially stayed the December 31, 2020 deadline, among other things. *see Nat'l Urban League v. Ross*, --- F. Supp. 3d --- , 2020 WL 5739144, at *47 (N.D. Cal. Sept. 24, 2020); *see also* Pl.'s Mot. at 7. On October 7, 2020, the United States Court of Appeals for the Ninth Circuit stayed the district court's injunction of this deadline pending appeal. --- F.3d ---- , 2020 WL 5940346, at *8 (9th Cir. Oct. 7, 2020).

[7] Plaintiff also asks the nine government components to complete Vaughn indices at the same time they are searching for materials responsive to Plaintiff's expansive FOIA requests and processing any responsive documents. *See* Pl.'s Mot. at 1-2, 43. But Defendants do not need to submit Vaughn indices until the summary judgment phase of litigation. *See Muhammad v. Exec.*

reapportionment process. Thereafter, the President is required to transmit a statement to Congress that reports "the whole number of persons in each State . . . and the number of Representatives to which each State would be entitled." *See* 2 U.S.C. § 2a(a). And then the Clerk of the House of Representatives still must "send to the executive of each State a certificate of the number of Representatives to which such State is entitled." *See* 2 U.S.C. § 2a(b). Plaintiff has not explained why the organization cannot use any responsive information it receives from Defendants to advance the public discussion of reapportionment and the census in the interim. *See* 13 U.S.C. § 141(b). In sum, Plaintiff can hardly argue that the public dialogue about reapportionment cannot occur once Defendants release responsive, non-exempt information on a more reasonable timetable. *See Long*, 436 F. Supp. 2d at 44 (finding failure to demonstrate irreparable harm because "plaintiffs have failed to identify a time frame in which the requested information would no longer be valuable.").

Plaintiff also fails to explain the relevance of the December 31 deadline given that it has not put forth evidence clarifying how public dialogue would change the ultimate outcome of the reapportionment process such that the deprivation of this discourse would cause irreparable harm. *See Allied Progress v. Consumer Fin. Prot. Bureau*, Civ. A. No. 17-686, 2017 WL 1750263, at *6 (D.D.C. May 4, 2017) ("[C]ourts in this Circuit have also recognized that simply because a request for expedited treatment is 'time-sensitive,' does not mean that, *ipso facto*, failing to grant injunctive relief mandating expedited processing would lead to irreparable harm."). While fostering public discourse is no doubt a worthy endeavor, Plaintiff has not demonstrated that such dialogue will have any effect on the instant policy prerogatives of the Executive. *See Franklin v. Massachusetts*, 505 U.S. 788, 799 (1992) (rejecting argument that "the President exercises no

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Office of U.S. Attorneys, 453 F. Supp. 3d 160, 165 (D.D.C. 2020) ("[T]he vast majority of FOIA cases can be resolved on summary judgment.") (quoting *Brayton v. Office of the U.S. Trade Representative*, 641 F.3d 521, 527 (D.C. Cir. 2011)). Indeed, it is during summary judgment that the Government must demonstrate that it properly invoked a FOIA exemption when it withheld particular information, which can be done through affidavits that have "reasonably specific detail[.]" *Id.*

discretion in calculating the numbers of Representatives" and acknowledging that 2 U.S.C. § 2a "does not curtail the President's authority to direct the Secretary in making policy judgments that result in 'the decennial census'"). In fact, Plaintiff largely relies on speculative statements in its motion to support the theoretical conclusion that such a public dialogue could affect reapportionment. *See* Pl.'s Mot. at 2 (arguing that the public should be afforded the opportunity to "fully consider, analyze, and *perhaps* alter the Administration's planned actions") (emphasis added); *id.* at 4 ("The Administration's willingness to depart so radically . . . raises valid suspicions that the Administration *may be* planning other, similarly illegal or improper ways to manipulate the apportionment calculation.") (emphasis added); *id.* at 35 (alleging that the public will be deprived "of any meaningful opportunity to *potentially* effect a reversal of the Administration's plans before a reapportionment occurs") (emphasis added). Accordingly, Plaintiff should not be afforded preliminary relief when the purported irreparable harm is abstract, at best.

The cases cited by Plaintiff add little value. *See* Pl.'s Mot. at 37-38. In *Center for Public Integrity v. Department of Defense*, 411 F. Supp. 3d 5, 10 (D.D.C. 2019), the district court considered the plaintiff's request to disclose information to the public that could potentially sway members of Congress during ongoing impeachment proceedings. And in *Washington Post*, 459 F. Supp. 2d at 74-75, the requestors, a national publication, sought to influence the electorate in the run up to imminent congressional elections. Likewise in *Electronic Privacy Information Center v. Department of Justice*, 416 F. Supp. 2d 30, 40-41 (D.D.C. 2006), the district court found expedition prudent in the midst of a public discussion about the Patriot Act, and particular, upcoming congressional hearings about the legislation. In contrast, Plaintiff has not demonstrated that the information it seeks could influence a cognizable body of decision-makers prior to a debate during which the discourse may influence the ultimate outcome, like the aforementioned cases. Thus, if Plaintiff's argument succeeds, anyone with a policy-driven agenda and the intent of fostering public discussion about any government initiative would successfully obtain preliminary relief in the FOIA context. *See Elec. Privacy Info. Ctr.*, 15 F. Supp. 3d at 46-47 (stating that "a

movant's general interest in being able to engage in an ongoing public debate using information that it has requested under FOIA is not sufficient to establish that irreparable harm").

Further, Plaintiff should not be permitted to use FOIA as a means to circumvent the ordinary civil discovery process attendant to the legal challenges brought by the organization in another district court. *See* Pl.'s Mot. at 7. Plaintiff acknowledges that the "Brennan Center is counsel for several plaintiffs" in *Nat'l Urban League v. Ross*, Civ. A. No. 20-5799 (N.D. Cal.). *Id.* According to Plaintiff, that lawsuit seeks "injunctive relief that would vacate the [Census] Bureau's accelerated Census-related deadlines and reinstate the" prior deadline, including the December 31, 2020 deadline. *Id.* But this Court has consistently concluded that "[t]he primary purpose of the FOIA was not to benefit private litigants or to serve as a substitute for civil discovery." *Baldridge v. Shapiro*, 455 U.S. 345, 360 n. 14 (1982); *see also, e.g.*, *Urban Air Initiative, Inc. v. Envtl. Prot. Agency*, 442 F. Supp. 3d 301, 317 (D.D.C. 2020) (same); *Reyes v. U.S. Nat'l Archives & Records Admin.*, 356 F. Supp. 3d 155, 165 (D.D.C. 2018) (same). Thus, to the extent Plaintiff attempts to use this preliminary injunction motion as a run around to discovery in other litigation, this jurisdiction does not permit such gamesmanship.

And finally, the timing of Plaintiff's FOIA request and this motion runs counter to the notion that "extreme or very serious damage will result" without a preliminary injunction. *Elec. Privacy Info. Ctr.*, 15 F. Supp. 3d at 39. As Plaintiff recognizes, President Trump signed Executive Order 13880 on July 11, 2019, directing the Census Bureau to "collect pre-existing administrative records on citizenship from other federal agencies." Pl.'s Mot. at 5. On the same day, the "Attorney General stated that the Administration would be 'studying' whether the citizenship data collected by the Census Bureau would be 'relevant' to whether 'illegal aliens can be included for apportionment purposes.'" *Id.* Plaintiff's FOIA requests similarly seek, among other things, "[a]ll records . . . pertaining to how any of the citizenship status data collected pursuant to Executive Order 13880 can, could, should, or may be used, incorporated, referenced, or considered" in certain census-related activities." *Id.* at 8. Yet Plaintiff did not submit its FOIA request to the nine government components until approximately one year later on July 1-2, 2020. *See id*. Plaintiff's

delay in submitting its FOIA requests undermines the organization's conjecture that irreparable harm will result without preliminary relief.

B. Plaintiff has Also Failed to Establish a Likelihood of Success on the Merits

"It is particularly important for the movant to demonstrate a substantial likelihood of success on the merits," because "absent a substantial indication of likely success on the merits, there would be no justification for the court's intrusion into the ordinary processes of administration and judicial review." *Hubbard v. United States*, 496 F. Supp. 2d 194, 198 (D.D.C. 2007) (citation omitted). As discussed more fully below, Plaintiff has neither demonstrated that Defendants have failed to meet its statutory obligations nor established that some of the government components improperly denied its expedited consideration request.

1. Plaintiff has not Demonstrated that Defendants Failed to Meet Their Statutory Obligations

Plaintiff argues that it is likely to succeed on its FOIA claims because it "has submitted proper FOIA requests to each of the Defendants and is entitled to all rights that the FOIA provides a requester." Pl.'s Mot. at 22. Plaintiff cannot show entitlement to the production of records just because Defendants have not responded to the requests within the typical 20-day statutory timeframe for responding to a request. Agencies are not required to make all records available within the 20 days but rather to make them "promptly available." 5 U.S.C. § 552(a)(3)(A). And even when an agency fails to respond to the request within 20 days, the requester is simply deemed to have exhausted administrative remedies for purposes of seeking immediate judicial review of the agency's processing of the FOIA request. *See Citizens for Responsibility & Ethics in Wash. v. Fed. Election Comm'n*, 711 F.3d 180, 189 (D.C. Cir. 2013) ("If the agency does not adhere to FOIA's explicit timelines, the 'penalty' is that the agency cannot rely on the administrative exhaustion requirement to keep cases from getting into court."); *Daily Caller*, 152 F. Supp. 3d at 11 ("Standing alone, [the agency's failure to issue a determination within 20 days] does not conclusively demonstrate that the plaintiff is likely to prevail in its underlying effort to accelerate the processing of its FOIA requests and the ultimate production of any responsive, non-exempt

records."); *Elec. Privacy Info. Ctr.*, 15 F. Supp. 3d at 40 ("[N]othing in the FOIA statute establishes that an agency's failure to comply with this 20-day deadline automatically results in the agency's having to produce the requested documents without continued processing, as EPIC suggests."). Thus, it is not the law, as Plaintiff argues, that it has an immediate right to the requested records based upon the lack of response within the statutory timeframes. *See Daily Caller*, 152 F. Supp. 3d at 10 (noting that once a requester is properly in court "the agency may continue to process the request, and the court . . . will supervise the agency's ongoing progress, ensuring that the agency continues to exercise due diligence in processing the request" rather than requiring immediate production of records (quoting *Citizens for Responsibility & Ethics in Wash.*, 711 F.3d at 188, 189).

2. Plaintiff has not Established that Some of the Government Components Improperly Denied Aspects of its Requests for Expedited Consideration

Plaintiff alleges that some of the government components improperly denied expedited consideration for parts of its FOIA requests because those requests: (1) pertained to a "'matter of widespread and exceptional . . . interest' as to which there are possible 'questions' 'about the [g]overnment's integrity[,]'" as provided for in the applicable government regulations[8]; and (2) involved an "urgency to inform the public concerning actual or alleged Federal Government activity" made by an entity "primarily engaged in disseminating information," as provided for by 5 U.S.C. § 552(a)(6)(E)(v)(II). *See* Pl.'s Mot. at 23-36. The government components in question have since largely granted Plaintiff's requests for expedited consideration, thus rendering these

[8] *See* 15 C.F.R. § 4.6(f)(1) (Commerce and Census Bureau) ("Requests and appeals shall be taken out of order and given expedited treatment whenever it is determined that they involve: … (iii) [a] matter of widespread and exceptional media interest involving questions about the Government's integrity which affect public confidence . . . . ").

arguments moot.[9] And for those facets of the above arguments that remain relevant, Plaintiff cannot demonstrate that the government components erred by denying expedition.

a. Widespread and Exceptional Interest

The declaration submitted on behalf of Commerce and the Census Bureau establishes that Plaintiff did not submit sufficient evidence to demonstrate the merits of expedited consideration for a part of its FOIA request. The statute provides that "judicial review shall be based on the record before the agency at the time of the determination." 5 U.S.C. § 552(a)(6)(E)(iii). Here, the Curry Declaration explains that Plaintiff did not put forth sufficient evidence for part 4 of its request to justify expedited consideration. In particular, the Curry Declaration observed that Plaintiff claimed that expedited consideration was warranted for all aspects of its request based on "actual or alleged activity [of] collecting citizenship data in conjunction with the 2020 Census." Curry. Decl. ¶ 14. Yet part 4 seeks "[a]ll records . . . relating to the 2020 Census in which there is any mention of, involvement in, or communication with" approximately 50 people and entities. Compl., Ex A, ECF No. 1-2, at 4; *see* Curry Decl. ¶ 14. Thus, the Census Bureau understandably concluded that part 4 of the request was far broader than the purported basis for expedition. Curry Decl. ¶ 14. Relatedly, the Curry Declaration further explained that Plaintiff failed to demonstrate that *all* records pertaining to the identified persons and entities involve a matter of widespread and exceptional media interest. *Id.*; *see* 15 C.F.R. § 4.6(f)(1)(iii). While some of the sought communications may conceivably involve a "matter of widespread and exceptional media interest," Plaintiff has not shown that all of these communications would fall under this umbrella

[9] The Department of Justice components granted Plaintiff's requests for expedited consideration in their entirety. *See* Brinkmann Decl. ¶ 9; Colborn Decl. ¶¶ 9-15. Commerce and the Census Bureau granted Plaintiff's requests for expedited consideration for parts 1-3 of Plaintiff's FOIA demand, while denying the request with respect to part 4. *See* Curry Decl. ¶¶ 13-14.

and justify expedition for the entirety of part 4. Curry Decl. ¶ 14. Thus, these components did not err by denying a part of Plaintiff's request for expedition.

b. Urgency to Inform the Public

While review of an agency's decision that a request poses no "urgency to inform" is de novo, the factors are to be narrowly applied. *Al–Fayed*, 254 F.3d at 310-11; *see* 5 U.S.C. § 552(a)(6)(E)(v)(II). "[I]n determining whether requesters have demonstrated 'urgency to inform,' and hence 'compelling need,' courts must consider at least three factors: (1) whether the request concerns a matter of current exigency to the American public; (2) whether the consequences of delaying a response would compromise a significant recognized interest; and (3) whether the request concerns federal government activity." *Al–Fayed*, 254 F.3d at 310. "The public's right to know, although a significant and important value, would not by itself be sufficient to satisfy this standard." *Id.* (quoting H.R. Rep. No. 104-795, at 26 (1996)).

As previously discussed, the timing of Plaintiff's FOIA request belies the conclusion that an "urgency" warrants expedited consideration. Plaintiff acknowledges that President Trump signed Executive Order 13880 on July 11, 2019, and contemporaneously, the Attorney General stated that the Administration intended to study the citizenship data collected by the Census Bureau. *See* Pl.'s Mot. at 5. Plaintiff's FOIA requests plainly follow from these events, as it seeks records that were collected in response to the Executive Order. *Id.* at 8. But Plaintiff did not submit its FOIA request to the nine government components until approximately one year later on July 1-2, 2020. *See id.* This year-long delay in submitting the FOIA requests is antithetical to Plaintiff's allegation that there is a "current exigency to the American public."

Lastly, Plaintiff unconvincingly argues that Commerce and the Census Bureau erred in denying expedition for part 4 of Plaintiff's request because the Civil Rights Division, OIP, and

OLC reached different conclusions.[10] *See*, *e.g.*, Pl.'s Mot. at 25, 36. As the D.C. Circuit recognized in *Al-Fayed*, courts do not defer to agency interpretations of FOIA because "no one federal agency administers FOIA" and "one agency's interpretation of FOIA is therefore no more deserving of judicial respect than the interpretation of any other agency." *Al-Fayed*, 254 F.3d at 307 (citing *Tax Analysts v. IRS*, 117 F.3d 607, 613 (D.C. Cir. 1997)) (alterations omitted). Put another way, each government component made its own individualized determination about whether Plaintiff satisfied its burden to establish the appropriateness of expedition. Here, Commerce and the Census Bureau determined that Plaintiff had not met that burden, and as such, Plaintiff's argument rings hollow.

c. Regardless, Plaintiff is Not Entitled to the Compressed Timetable Sought in the Instant Motion

Even if Plaintiff could demonstrate that Commerce and the Census Bureau should have afforded expedited processing to all aspects of Plaintiff's requests, Plaintiff cannot show entitlement to an order requiring production of all responsive, non-exempt records by November 2, 2020.[11] FOIA does not dictate a specific, truncated schedule for processing expedited requests; rather, the statute directs an agency merely to "process as soon as practicable any request for records to which the agency has granted expedited processing." 5 U.S.C. § 552(a)(6)(E)(iii).

[10] Plaintiff cites *American Civil Liberties Union v. Department of Justice*, 321 F. Supp. 2d 24, 32-33 (D.D.C. 2004), in support of this argument. *See* Pl.'s Mot. at 36. But as Plaintiff acknowledges, that case involved the same agency reaching different determinations regarding expedited consideration when the two determinations involved the same requestor and substantively similar FOIA requests. *Id.* In this case, on the other hand, *different* agencies made individualized determinations based on their own regulations. Accordingly, the case cited by Plaintiff is simply inapposite.

[11] The same holds true for the government components within the Department of Justice that granted Plaintiff's request for expedited consideration, Brinkmann Decl. ¶¶ 14-15, 29; Kagle Decl. ¶ 9; Colborn Decl. ¶¶ 9-15, and for OMB that has not reached a decision. Walsh Decl. ¶ 9.

Indeed, expedited consideration entitles requesters to move immediately to the front of the applicable processing queue, but not ahead of all other requests that have already been granted expedited processing. *See* Brinkmann Decl. ¶¶ 13, 21; Kagle Decl. ¶ 9; Colborn Decl. ¶¶ 9-15. A Senate Judiciary Committee report explained the expedited processing provisions as follows:

> Once . . . the request for expedited access is granted, the agency must then proceed to process that request "as soon as practicable." No specific number of days for compliance is imposed by the bill since, depending upon the complexity of the request, the time needed for compliance may vary. The goal is not to get the request for expedited access processed within a specific time frame, but to give the request priority for processing more quickly than otherwise would occur.

Electronic Freedom of Information Improvement Act of 1995, S. Rep. No. 104-272, at 17 (1996), *available at* 1996 WL 262861. Accordingly, this Court has recognized that, consistent with the statute, when expedited treatment is warranted, "requests must be 'process[ed] as soon as practicable.'" *Protect Democracy Project, Inc. v. Dep't of Def.*, 263 F. Supp. 3d 293, 296 (D.D.C. 2017) (quoting 5 U.S.C. § 552(a)(6)(E)(iii)).

Defendants' supporting declarations establish that it would not be practicable to produce all responsive, non-exempt records by November 2, 2020. OIP explains that given the 1,890 open FOIA requests and 123 ongoing litigation matters, it would not be able to search for, process, and release responsive materials by Plaintiff's preferred deadline. Brinkmann Decl. ¶¶ 17, 29. "As a result of a multi-year sustained surge in the number of complex FOIA request received and despite processing innovations and staffing increases, the electronic records search for Plaintiff's request will not be returned for review and processing" within the timeline that Plaintiff requests in its motion for extraordinary relief. *Id.* ¶ 29. Similarly, OMB has a backlog of over 600 FOIA requests and it has been named as a defendant in 40 FOIA lawsuits. Walsh Decl. ¶ 12. Such a workload does not allow for expedited processing of every request, not to mention that its large number cases in litigation pay a heavy toll on the agency's "resources that greatly impact OMB's ability to timely process FOIA requests and reduce its backlog." *Id.* ¶ 13. Similarly, when OLC received Plaintiff's request, it had 508 pending requests for OLC records, 86 of which had been granted expedited

consideration, as well as 40 active lawsuits. Colborn ¶¶ 13, 17. While OLC has started the process of searching for responsive materials, "it would be unduly burdensome, impracticable, and infeasible to further expedite the processing of Plaintiff's FOIA request." *Id.* ¶¶ 19, 22. This is especially true given OLC's small workforce dedicated to FOIA matters, as well as the current maximum telework posture in light of the ongoing COVID-19 pandemic. *Id.* ¶¶ 18-20. Finally, Commerce and the Census Bureau likewise confirm that it cannot complete their processing for responsive materials by Plaintiff's preferred deadline. Curry Decl. ¶¶ 18-19. But they too have started the process of identifying custodians and formulating a plan so they can initiate their searches for responsive materials and release non-exempt information on a reasonable timetable. *Id.* With that said, the processing schedule remains in flux given Plaintiff's decision not to respond to the Census Bureau's request for clarification. *Id.* ¶¶ 11, 19.

C. The Public Interest and the Balance of Equities Also Caution against Granting Plaintiff's Request for a Preliminary Injunction

The public interest and balance of the equities "merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009). Neither the public interest nor the balance of equities favors Plaintiff's request for preliminary relief.

To begin, the courts have recognized that entry of a preliminary injunction expediting a FOIA request over other pending requests "would severely jeopardize the public's interest in an orderly, fair, and efficient administration of [ ] FOIA." *The Nation Magazine v. Dep't of State*, 805 F. Supp. 68, 74 (D.D.C. 1992); *see also Elec. Privacy Info. Ctr.*, 15 F. Supp. 3d at 47 ("[A]llowing [a plaintiff] to jump to the head of the line would upset the agency's processes and be detrimental to the other expedited requesters, some of whom may have even more pressing needs."). While Plaintiff touts the interests of the public in releasing the requested records, *see* Pl.'s' Mot. at 42, the organization ignores the public interest of the other requestors who would not be moved to the front of the line. Although those requestors are not before the Court in this case, they presumably have interests in receiving the documents that they sought in order to further the national conversations of their interest. *Cf.* 5 U.S.C. § 552(a)(6)(E)(v)(II) (stating that one of

the criteria for granting expedited processing for "request[s] made by a person primarily engaged in disseminating information" is "urgency to inform the public"); *see also Wadelton v. Dep't of State*, 941 F. Supp. 2d 120, 124 (D.D.C. 2013) ("Plaintiffs argue that a preliminary injunction will be in the public interest, based on little more than the core purpose of FOIA being to 'allow the public to be informed about 'what their government is up to' . . . . This explanation does nothing to distinguish plaintiffs' FOIA request from any other FOIA request. Therefore, the Court finds that plaintiffs fail to satisfy the public interest prong.") (citations omitted).

The declarations submitted by Defendants confirm that other requestors would be subjugated to Plaintiff's unreasonable demands. OIP granted Plaintiff expedited processing, yet there are ten other similarly-situated requests ahead of Plaintiff in the processing queue that have been likewise granted expedition and for which searches have not been conducted. Brinkmann Decl. ¶ 13. Further, OIP has fifteen cases in litigation at various stages of FOIA processing that received expedited consideration. *Id.* ¶ 21. And like Plaintiff, each of the requestors who received expedited consideration seek records that involve "high-profile topics of great interest to the public and that are no less meritorious" than Plaintiff's request. *Id.* The Department of Justice, Civil Rights Division faces a similar dilemma. Upon notification that the organization was granted expedited consideration, the Civil Rights Division informed Plaintiff that the expedition queue was "populated by prior requests of equal significance and gravity and that the requestor's current inquiry would not supplant those in the queue." Kagle Decl. ¶ 9. In fact, the Civil Rights Division expressly noted that other, tangentially related requests from Plaintiff populated the same expedited consideration queue. *Id.* Similarly, OMB reports that "[a]t least two other FOIA requesters have sought the same or similar information from OMB regarding the 2020 Census. Both requests pre-date Plaintiff's submission[.]" Walsh Decl. ¶ 14. As the Walsh Declaration explains, "[a]llowing Plaintiff to jump the queue ahead of these two other FOIA requesters seeking information on the same topic would be inconsistent with the purpose and intent of the multi-track processing methods authorized by the FOIA statute and adopted by OMB[.]" *Id.* ¶ 15. Likewise, the Colborn Declaration explains that OLC is a named defendant in 40 different ongoing FOIA

lawsuits seeking OLC records. Colborn Decl. ¶ 17. Logically, OLC explains that Plaintiff's attempt to "bypass the ordinary FOIA processing queue by seeking court-ordered production deadlines far in advance of the ordinary course do significant damage to OLC's ability to complete its FOIA processing in a fair and orderly manner." *Id.* The Census Bureau also explains that an aggressive processing schedule like the one proposed by Plaintiff "would be unfair to the other requesters who had been granted expedited processing" because such an approach would necessarily divert resources away from those requests in favor of Plaintiff who leapfrogged them in priority. Curry Decl. ¶ 21.

Finally, ordering Defendants to disclose documents, not "as soon as practicable" as dictated by FOIA, 5 U.S.C. § 552(a)(6)(E)(iii), but rather on Plaintiff's artificial, accelerated timetable, threatens to risk disclosure of statutorily exempt material, harming the public interest. *See Daily Caller*, 152 F. Supp. 3d at 14 ("Requiring the agency to process and produce [requested] materials under an abbreviated deadline raises a significant risk of inadvertent disclosure of records properly subject to exemption under FOIA."); *Protect Democracy Project, Inc.*, 263 F. Supp. 3d at 302 ("Imposing on Defendants an arbitrary deadline for processing would run the risk of overburdening them, and could even lead to the mistaken release of protected information."); *Baker*, 2018 WL 5723146, at *5 ("Ordering Defendant to process and release documents according to Plaintiff's timeline risks that, in its haste, Defendant will inadvertently release records which fall under a FOIA exception and Congress has decided should not be released.").

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CONCLUSION

For the foregoing reasons, the Court should deny Plaintiff's motion.

Dated: October 13, 2020

Respectfully submitted,

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