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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 BRENNAN CENTER,

4 Plaintiff,

New York, N.Y.

5 v.

21 CV 2443 (JSR)

6 U.S.A. ICE,

7 Defendant.

8 -----x

Teleconference

9 April 12, 2021  
10 11:15 a.m.

11 Before:

12 HON. JED S. RAKOFF,

13 District Judge

14 APPEARANCES

15  
16 DAVIS WRIGHT TREMAINE, LLP  
17 Attorneys for Plaintiff  
18 BY: NIMRA AZMI

19 AUDREY STRAUSS  
20 United States Attorney for the  
21 Southern District of New York  
22 REBECCA FRIEDMAN  
23 Assistant United States Attorney for Defendant  
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1 THE COURT: This is Judge Rakoff. Counsel, please  
2 identify themselves.

3 MS. AZMI: Good morning, Judge Rakoff. My name is  
4 Nimra Azmi and I'm counsel for plaintiff Brennan Center.

5 THE COURT: Good morning.

6 MS. FRIEDMAN: This Rebecca Friedman for the  
7 government.

8 THE COURT: Good morning. So, we need to set a  
9 schedule, and FOIA is usually competing summary judgment  
10 motions. Is that what you guys had in mind?

11 MS. AZMI: Your Honor, so, Ms. Friedman and I spoke  
12 last week, and she can correct me to the extent I misrepresent  
13 their position. We had discussed at this stage putting  
14 together more so a schedule around production, and following  
15 completed production, at that point, I think discussing whether  
16 or not summary judgment makes sense.

17 Actually, Ms. Friedman, can I ask for you to lay out  
18 what ICE's position is, and then we can say what our position  
19 is. It starts with you guys.

20 MS. FRIEDMAN: Sure. This is Rebecca Friedman. So,  
21 the FOIA request contained two distinct things, and the search  
22 has not yet been completed. So, we conferred with opposing  
23 counsel and we have proposed and the parties have agreed that  
24 the searches will be completed by April 26. Then the parties  
25 will confer by May 3, and after the documents have been

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1 uploaded into the system, and the parties will get a page count  
2 and determine how many productions this will take. The parties  
3 do not anticipate that this will be a large number of  
4 productions. But since we don't have a page count yet, we  
5 don't know whether this is going to be one production or  
6 multiple productions.

7 And then the parties conferred, but were not able to  
8 reach an agreement on a proposed initial production date. The  
9 government proposed a June 10 initial production date, and that  
10 was just to allow time to upload into the system, remove dupes,  
11 and then the multilayer review to start as well as any  
12 redactions. And plaintiffs had an earlier initial production  
13 date. But again, the parties can't yet set a schedule for  
14 summary judgment because we don't know how many productions.

15 THE COURT: So, this complaint was filed back last  
16 year, right?

17 MS. AZMI: Sorry. The complaint was filed in March.  
18 The FOIA request is from earlier, late last year. And --

19 THE COURT: That's -- excuse me. That's what I meant.  
20 Thank you. And according to what plaintiff has alleged, ICE  
21 was supposed to respond by December 17, but never did.

22 So, I'm glad that the search will be completed by  
23 April 26, something like, what, five months after the request  
24 was made? But, there is no way I'm going to extend production  
25 to June 10. In my courtroom we don't proceed on the leisurely

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1 pace that apparently the government is proceeding on in this  
2 case, notwithstanding that FOIA itself contemplates promptness.

3 So, what date did the plaintiff have for production?

4 MS. AZMI: Your Honor, I do want, I believe that ICE  
5 has completed the search for the first request. So there is  
6 two components to the FOIA request, one is the for HSI  
7 handbooks, and second is for HSI training. So my understanding  
8 is that first search was already done, and it is the second  
9 search that will be done by 4/26.

10 ICE's policy is only when both searches are completed  
11 that they will upload the results to the server and begin  
12 reviewing.

13 You know, we had initially said maybe June 1st, but I  
14 also do believe that given the first search is done and they're  
15 simply waiting until April 26 to actually begin the process,  
16 the process can begin now at the very least with that first  
17 completed search. And within let's say a month, or potentially  
18 earlier, that that first production can be done and then a  
19 follow-up production for the training and any productions after  
20 that. But because that search is completed --

21 THE COURT: I'm hearing lots of talk, forgive me, but  
22 I'm not hearing what I asked for, which is a date. A date for  
23 when the final production will be completed.

24 MS. AZMI: The final production?

25 THE COURT: Yes.

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1 MS. AZMI: Your Honor, I think in some ways it is hard  
2 to say when that final production will be completed because we  
3 don't know what the universe of documents is and how many there  
4 are. But, if you were to ask me for a date --

5 THE COURT: Let me ask the government. How many  
6 documents were produced from the first search that's completed?

7 MS. FRIEDMAN: Nothing has been produced yet, your  
8 Honor.

9 THE COURT: How many documents are we talking about?

10 MS. FRIEDMAN: Oh. The request in part one, it  
11 requested approximately I believe five or six handbooks, and  
12 then request two requested memorandum and training materials  
13 associated with those. I don't have a page count yet. But the  
14 parties had contemplated --

15 THE COURT: It doesn't sound to me like very  
16 voluminous materials.

17 MS. FRIEDMAN: Again, I don't have a page count, but  
18 the parties don't anticipate this -- which is why when we had  
19 discussed last week, opposing counsel had proposed  
20 conferring -- we agreed on conferring in May on the page count  
21 and the production schedule.

22 THE COURT: I'm delighted that you are conferring and  
23 agreeing. But it's not satisfactory for the pace that I  
24 require. It has nothing to do with you. It has to do with my  
25 view of FOIA requests and my experience over the last 25 years

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1 that, while Congress contemplated they would be done swiftly,  
2 the parties seem to have contemplated that they will be a  
3 generation or two after the request is made.

4 So, I will ask plaintiff's counsel once again, I hope  
5 she will respond, give me a date that you propose, final, fixed  
6 and binding, when the entire production, first and second  
7 parts, will be completed.

8 MS. AZMI: Sure, your Honor. I think given the pace  
9 that your Court and honestly I prefer as well, having worked  
10 with different agencies, it is often difficult to get them to  
11 comply in the manner that I agree I think FOIA does require,  
12 which is pretty expeditiously. Something by two-and-a-half  
13 months from now. Does that work for you? So I guess July 2nd.

14 THE COURT: Wait a minute. Maybe I misunderstood. I  
15 thought the government was proposing June 10.

16 MS. AZMI: For the first production.

17 THE COURT: All right. I don't care about when the  
18 first production occurs or the second production occurs. I  
19 want a fixed and final date that you both understand will not  
20 be moved, must be complied with, and so we will fix that date,  
21 at plaintiff's request, we'll fix that date at July 15.

22 MS. AZMI: Okay.

23 THE COURT: On July 16, counsel for both sides will  
24 call the Court at 12 noon and give me your proposed summary  
25 judgment schedule or whatever schedule you propose. And please

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1 don't tell me, oh, we're still busy reviewing. Please don't  
2 tell me we're having conversations. Please don't tell me there  
3 is something still outstanding. I will want a fixed, firm  
4 schedule. Understood?

5 MS. AZMI: Understood, your Honor.

6 THE COURT: Understood?

7 MS. FRIEDMAN: Understood.

8 THE COURT: Very good. Thanks a lot. Bye-bye.

9 (Adjourned)

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