

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

The Honorable James L. Robart

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

Maria Mora-Villalpando,

Plaintiff,

v.

U.S. Immigration and Customs Enforcement  
and U.S. Customs and Border Protection,  
and U.S. Citizenship and Immigration  
Services,

Defendants.

CASE NO. C18-655-JLR

JOINT STATUS REPORT

The parties hereby file this Joint Status Report as required by the Court's Order on the parties' previous joint status report (Dkt. #55). The Court ordered the parties to provide a joint status report within two months concerning their progress with the Court's rulings.

With respect to the Second Request, U.S. Immigration and Customs Enforcement ("ICE") is conducting a search of the Office of Principal Legal Advisor ("OPLA") Case Management System ("OCMS PLANet") as ordered by the Court. The parties agreed to search terms on December 6, 2019. No production schedule has been set.

JOINT STATUS REPORT  
C18-655-JLR - 1

UNITED STATES ATTORNEY  
700 STEWART STREET, SUITE 5220  
SEATTLE, WASHINGTON 98101  
(206) 553-7970

1 Below the parties provide separate statements with respect to the Third Request and searches  
2 in EDMS where their positions diverge. Following the summary judgment order, the parties agreed  
3 to a modified Third Request with specific search terms. The Third Request would require searches of  
4 I-213 forms based on the agreed upon search terms.

5  
6 Plaintiff: Parties diverge on two issues.

7 First, Plaintiff takes the position that Defendant must search both the EDMS database and the  
8 OCMS PLANet OPLA database for records responsive to the Third Request. The summary judgment  
9 order expressly agrees with Plaintiff's argument that "because A-Files contain I-213 forms and other  
10 key information tied to enforcement operations, [the OCMS database] is likely to contain records  
11 responsive to the Second and *Third Requests*." See Summary Judgment Order (Dkt. #52) at 22 n.10  
12 (emphasis added) (citations omitted). Accordingly, Plaintiff requests that Defendant be ordered to  
13 search the OPLA database for records responsive to the Third Request.

14  
15  
16 Second, Defendants now take the position that a search of EDMS as was initially envisioned  
17 is not feasible because EDMS is a legacy database in the process of being decommissioned, the  
18 project to digitize records in the database stopped in 2016, and that it is not keyword searchable.  
19 Defendant proposed an alternative search to address these issues. The assertions that the EDMS  
20 database is a legacy database and that it is not keyword searchable are contradicted by several  
21 publicly available documents issued by DHS. According to a DHS' System of Records Notices  
22 ("SORN"), EDMS is specifically designed to be key word searchable. The SORN specific to EDMS  
23 states that the "[d]igitized A-files maintained in EDMS can be searched and retrieved . . . "[t]hrough  
24 a full text-based search of records contained in the digitized A-File (based on optical character  
25 recognition of the scanned images)." 76 Fed. Reg. at 34239 (June 13, 2011); see also Summary  
26 Judgment Order (Dkt. #52) at 20. Additionally, multiple DHS privacy impact assessments post-  
27  
28

1 2016 reference EDMS as a database that is currently in use. *See, e.g.*, DHS/USCIS/PIA-003(b) -  
2 Integrated Digitization Document Management Program (IDDMP) (February 2017) at 2, available at  
3 <https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis-003-b-iddmp-april2017.pdf>;  
4  
5 DHS/USCIS/PIA-008(a) - Privacy Impact Assessment for the Enterprise Service Bus 2 (ESB 2)  
6 (March 2019) at 2, available at [https://www.dhs.gov/sites/default/files/publications/privacy-pia-](https://www.dhs.gov/sites/default/files/publications/privacy-pia-008a-USCIS-ESB2-March2018.pdf)  
7 [008a-USCIS-ESB2-March2018.pdf](https://www.dhs.gov/sites/default/files/publications/privacy-pia-008a-USCIS-ESB2-March2018.pdf).

8 Therefore, Plaintiff cannot agree with Defendant's proposal without further clarification of  
9 these seeming contradictions between DHS documents and Defendant's position. While parties have  
10 discussed these matters, given the highly technical issues involved, Plaintiff requests that Defendant  
11 provide a declaration by an expert explaining why the searches cannot be made and if EDMS is a  
12 legacy database, where I-213s are stored digitally.

13  
14 Defendant:

15 Regarding the first issue plaintiff has identified, ICE disagrees that it is required to search the  
16 OCMS PLANet database for I-213 forms. The Court has already ruled on the parties' cross-motions  
17 for summary judgment regarding the scope of the search. That order addressed plaintiff's three  
18 FOIA requests.<sup>1</sup> The Court noted that the Second Request "sought documents related to ICE  
19 enforcement operations against other activists and individuals who speak out to the media" including  
20 guidance, policy statements, directives and similar documents. Dkt. #52 (the "Order") at p. 4-5.  
21 Plaintiff's Third Request sought I-213 forms. *Id.* at p. 5 ("The third part of Ms. Mora-Villalpando's  
22 FOIA request sought I-213 forms pertaining to other activists and individuals who speak out of the  
23  
24  
25  
26  
27

28 <sup>1</sup> The First Request is not at issue.

1 media ('Third Request'); *see also* Dkt. #16 (First Amended Complaint) at ¶ 45 (setting forth the  
2 Third Request, which sought "Copies of any I-213s ....").

3           After considering extensive briefing and declarations, the Court did not order ICE to search  
4 OCMS PLANet for copies of I-213 forms or for her Third Request. Instead, the Court ordered "ICE  
5 to perform additional searches for documents responsive to Ms. Mora-Villalpando's *Second Request*  
6 in the EDMS and OPLA databases as described herein." Order at p. 29 (emphasis added). With  
7 respect to the Third Request (for I-213 forms), the Court found that the request did not reasonably  
8 describe what was sought, and stayed the proceedings to allow the parties an opportunity to work out  
9 a revised Third Request. *Id.* The Court's order went on to state, "Assuming the parties are able to  
10 do so, the court ORDERS Defendants to conduct a reasonable search for the revised Third Request  
11 in the EDMS database." *Id.* Nowhere in the order did the Court require ICE to search the OCMS  
12 PLANet database for the Third Request.

13           In addition to the Conclusion section of the order, other portions of the order demonstrate  
14 that the Court ordered ICE to perform an additional search of the OCMS PLANet database only for  
15 the Second Request. Plaintiff cites to footnote 10 of the Court's order, but that footnote is in the  
16 section of the order regarding the Second Request, not the Third Request. Order at p. 22 n. 10. In  
17 the body of the order where the footnote appears, the Court made findings regarding the Second  
18 Request. *Id.* at p. 22; *id.* at p. 24 ("In sum, the court concludes that ICE's search for documents  
19 responsive to Ms. Mora-Villalpando's Second Request was reasonable except for its failures to  
20 search the EDMS database and to conduct keyword searches of OPLA's databases as described  
21 above" and ordered ICE to perform additional searches "responsive to Ms. Mora-Villalpando's  
22 Second Request in the EDMS and OPLA databases as described."). Thus, the Court did not order  
23  
24  
25  
26  
27  
28

1 defendants to search the OCMS PLANet database for the Third Request. Plaintiff's belated request  
2 that the Court now alter and expand its order is essentially an untimely motion for reconsideration.

3  
4 Moreover, apart from the fact that the Court's summary judgment ruling did not require a  
5 search for I-213 forms in OCMS PLANet, a search of that database would not be reasonable. OCMS  
6 PLANet is a case management system that primarily houses immigration case specific information.  
7 Dkt. #45-1 at ¶ 38, 39. OCMS PLANet does not house A-files. Instead, A-files reside with USCIS,  
8 who is the custodian for and houses A-Files, and final I-213 forms are stored in individual A-files.  
9 Dkt. # 50 at ¶ 7. While it is possible that some I-213 forms are in OCMS PLANet, such as exhibits  
10 to specific immigration case filings, OCMS PLANet is not the repository for those forms. FOIA  
11 does not require agencies to search all places where documents might be. *See, e.g.*, Order at p. 23.  
12 Instead, ICE is required to conduct a reasonable search, as it has done as detailed in the summary  
13 judgment briefing and declarations. ICE is also searching OCMS PLANet for over 250 search  
14 strings per the Court's order with search terms requested by the Plaintiff and agreed upon by the  
15 parties for plaintiff's Second Request. Therefore, ICE is conducting a reasonable search, and no  
16 additional search should be required.  
17  
18

19 Regarding the second issue plaintiff raised, USCIS agrees to provide a declaration as plaintiff  
20 has requested from a knowledgeable person who will explain the difficulties with conducting the  
21 searches in EDMS.  
22

23 To keep the Court apprised, the parties propose to provide the Court with another Joint Status  
24 Report within 60 days of this Joint Status Report, unless the Court orders otherwise.  
25

26 //  
27 //  
28 //

1 Dated this 24<sup>th</sup> day of January, 2020.

2 /s/ Khaled Alrabe

3 Khaled Alrabe, NY Bar Reg. 5542311  
4 (admitted *pro hac vice*)  
5 National Immigration Project  
6 of the National Lawyers Guild  
7 89 South St. Suite 603  
8 Boston, MA 02111  
9 Ph. (617) 412-6794  
10 Em. [khaled@nipnlg.org](mailto:khaled@nipnlg.org)

11 /s/ Devin T. Theriot-Orr

12 Devin T. Theriot-Orr, WSBA #33995  
13 OPEN SKY LAW, PLLC  
14 20415 72nd Ave. S., Ste. 110  
15 Kent, WA 98032  
16 Ph. (206) 962-5052  
17 Fax (206) 681-9663  
18 Em. [devin@opensky.law](mailto:devin@opensky.law)

19 BRIAN T. MORAN  
20 United States Attorney

21 s/ Brian C. Kipnis

22 BRIAN C. KIPNIS, CA SBA #105161

23 s/ Sarah K. Morehead

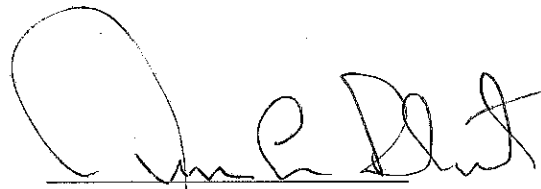
24 SARAH K. MOREHEAD, WSBA #29680  
25 Assistant United States Attorneys  
26 Office of the United States Attorney  
27 Suite 5220, United States Courthouse  
28 700 Stewart Street  
Seattle, Washington 98101-1271  
Phone: 206-553-7970  
Fax: 206-553-4073  
Email: [brian.kipnis@usdoj.gov](mailto:brian.kipnis@usdoj.gov)  
Email: [sarah.morehead@usdoj.gov](mailto:sarah.morehead@usdoj.gov)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**ORDER**

The parties will submit another joint status report within 60 days of the date of this order.

Dated this 5<sup>th</sup> day of February, 2020.



James L. Robart  
United States District Judge