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November 15, 2017

**VIA ECF AND HAND**

Honorable Katherine B. Forrest  
Daniel Patrick Moynihan  
United States Courthouse  
500 Pearl St.  
New York, NY 10007-1312

Re: ***Brennan Center for Justice, et al. v. Dep't of Justice, et al., No. 17-cv-6335 (KBF)***

Dear Judge Forrest:

We represent Plaintiffs Brennan Center for Justice and The Protect Democracy Project in this Freedom of Information Act ("FOIA") suit. Pursuant to the Court's September 29, 2017 Order, ECF No. 21, the parties respectfully submit this joint letter proposing a briefing schedule for the case.

Plaintiffs anticipate that briefing in this case will be needed to address the timeline for record production; at a later date, the parties anticipate briefing the sufficiency of Defendants' production of records in response to Plaintiffs' FOIA requests. At this point, the parties have been unable to agree to a timeline for record production. While Plaintiffs contend that production of records in response to our May 15, 2017 and July 25, 2017 FOIA requests could reasonably be completed by the end of this year, Defendants believe that a more extended production schedule lasting at least through April of next year is necessary. Specifically, we have been informed that the relevant agencies anticipate the following production schedules:

Department of Justice – Civil Rights Division

- Has identified approximately 80 potentially responsive documents.
- Anticipated production by January 26, 2018.
- Vaughn index anticipated by the end of January 2018.

General Services Administration

- Has identified approximately 1,000 potentially responsive documents.
- Anticipated production by January 26, 2018.
- Vaughn index anticipated shortly thereafter.

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Office of Management and Budget

- Has identified approximately 1,000 potentially responsive documents.
- Anticipated production by the end of February 2018.
- Full Vaughn index of all withholdings will require at least six additional weeks; shorter timeframe possible with a limited Vaughn index.

Department of Justice – Office of Information Policy

- Has identified approximately 5,700 potentially responsive documents.
- Anticipated production by the end of April 2018, with a potential interim production before this time.
- Vaughn index anticipated approximately 30 days after production.

Department of Homeland Services

- Has identified approximately 2,500 potentially responsive documents.
- Anticipated rolling production to begin in March 2018.
- Vaughn index to follow the completion of production.

Department of Justice – Office of Legal Counsel

- Completion of initial searches for responsive records by November 20, 2017; further information to follow at that time.

The parties jointly submit that this scheduling dispute can be resolved at the Nov. 21, 2017 scheduling conference, after each side proposes in a pre-conference letter the production schedule it believes is reasonable.

Defendants' position is that they are making diligent, good faith efforts to process Plaintiffs' FOIA requests, and have been forthcoming in sharing information with Plaintiffs regarding the status of those efforts. Further, Defendants have done so at a time when their resources have been under substantial strain, in large part due to the significant increase in the number of FOIA requests each agency has received to date this year. By way of example, the Department of Justice's Office of Information Policy currently has approximately 60 FOIA requests in litigation with numerous deadlines throughout November and December. Defendants also dispute Plaintiffs' contention that Defendants' proposed production schedule would effectively moot Plaintiffs' FOIA requests. Among other things, the Presidential Advisory Commission on Election Integrity's (the "Commission's") charter provides that the Commission has until at least May 2019 to file its report.<sup>1</sup>

Plaintiffs submit that Defendants' proposed production schedule would effectively render the purpose of the FOIA requests at issue moot. The purpose of those requests is to shed light upon the origins and operations of the Presidential Advisory Commission on Election Integrity,

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<sup>1</sup> <https://www.whitehouse.gov/sites/whitehouse.gov/files/docs/commission-charter.pdf>

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which has already met twice and is scheduled to issue its recommendations in 2018.<sup>2</sup> If the Defendants' document productions are not completed until April 2018 or thereafter, any challenges to the sufficiency of those productions will not be heard and resolved until the summer of next year. Given that the Defendants have clear that the volume of documents being reviewed is very limited (below 25,000, across all of the agencies), and the fact that the requests were made in May and July of this year – i.e., many months beyond the 20-day statutory deadline imposed by FOIA – Plaintiffs submit that a firm deadline of December 31, 2017 for production is both reasonable and generous. Accordingly, Plaintiffs believe that motion practice on the timing of production may be necessary if this issue cannot be resolved at next week's conference.

If the Court concludes formal briefing is necessary, the parties would agree to the following briefing schedule to resolve the dispute regarding the timeline for production of records and required Vaughn indexes:

- Plaintiffs to file a preliminary injunction motion no later than December 1, 2017.
- Defendants to file any opposition and/or cross-motion no later than December 18, 2017.
- Plaintiffs will file any reply and/or opposition no later than December 22, 2017.

The parties expect that once a schedule is set for production of responsive documents and Vaughn indexes, they will be able to submit a joint briefing schedule to address any issues with regard to the sufficiency of Defendants' production of records.

Plaintiffs thank the Court for its attention to this matter.

Respectfully submitted,

/s/ Jeremy M. Creelan

Jeremy M. Creelan

cc: Assistant United States Attorney Casey Kyung-Se Lee

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<sup>2</sup> <https://www.whitehouse.gov/the-press-office/2017/05/11/president-announces-formation-bipartisan-presidential-commission>