

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**CITIZENS FOR RESPONSIBILITY
AND ETHICS IN WASHINGTON,**

Plaintiff,

v.

U.S. DEPARTMENT OF JUSTICE,

Defendant.

Case No. 1:19-cv-2267-EGS

**DEFENDANT U.S. DEPARTMENT OF JUSTICE'S
MOTION FOR SUMMARY JUDGMENT**

Pursuant to Rule 56(a) of the Federal Rules of Civil Procedure, Defendant United States Department of Justice (“Defendant”) moves this Court to enter summary judgment in its favor. Attached in support of Defendant’s motion are (1) a memorandum of law, (2) declarations and accompanying exhibits, (3) a statement of undisputed facts, and (4) a proposed order.

DATED: July 30, 2021

Respectfully submitted,

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**DEFENDANT U.S. DEPARTMENT OF JUSTICE'S
MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

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INTRODUCTION

This case concerns a set of Freedom of Information Act (“FOIA”) requests sent by Citizens for Responsibility and Ethics in Washington (“CREW” or “Plaintiff”) to various components of the Department of Justice (“the Department” or “Defendant”). The FOIA requests sought documents relating to the investigation into (1) who, besides Michael Cohen, was involved in and may be liable for the campaign finance violations to which Mr. Cohen pled guilty, and (2) whether certain individuals made false statements, gave false testimony, or obstructed justice in connection with the investigation.

After conducting a search for responsive documents, the Department produced various documents, or portions of documents, to Plaintiff. But given the subject matter of Plaintiff’s FOIA request – which seeks records relating to a federal law enforcement investigation and prosecution – much of the responsive information was naturally subject to several of FOIA’s exemptions that apply despite the fact that Mr. Cohen’s criminal case is over. Accordingly, the Department withheld material to protect attorney work product, government deliberations, grand jury information, law enforcement techniques, and the privacy of individuals mentioned in law enforcement files.

The parties have met and conferred and agreed that the only issues remaining in dispute are the appropriateness of the Department’s withholdings pursuant to FOIA Exemptions 5, 6, and 7(C). The Department’s search and its withholdings pursuant to Exemption 3 and Federal Rule of Criminal Procedure 6(e) (among other things) are *not* in dispute. The documents that remain in dispute generally fall into four categories: (1) records memorializing prosecutors’ and investigative agents’ summaries and notes of witness interviews; (2) documents used during those interviews; (3) documents related to search warrant applications; and (4) internal emails and memoranda concerning the investigations and prosecution.

The Department has properly withheld these documents in full or in part because they contain information that is exempt from production under FOIA. *First*, the notes and summaries of witness interviews have been withheld in full or in part under Exemption 5 because these documents constitute attorney work product, and they also have been properly withheld in full or in

part pursuant to Exemption 6 and Exemption 7(C) to protect the privacy of the cooperating witnesses and third parties. *Second*, documents used during those interviews have also been properly withheld in full because they constitute attorney work product, and they also have been withheld in full or in part pursuant to Exemptions 6 and 7(C) to protect the privacy of the witnesses and third parties. *Third*, documents relating to search warrant applications have been withheld in full under Exemptions 6 and 7(C) because disclosure of these documents, even in part, would likely reveal the undisclosed identities of the individuals whose property was the subject of the search warrants. *Fourth*, the internal emails and memoranda have been withheld in full or in part under Exemption 5 because they are attorney work product, and also because disclosure of many of these documents would reveal protected government deliberations. Information contained within this final category of documents also is protected by Exemptions 6 and 7(C) because disclosure would result in an unwarranted invasion of personal privacy.

As discussed below, the Department has submitted declarations from various departmental components that justify its withholdings. The Department is entitled to summary judgment.

BACKGROUND

I. The Campaign Finance Investigation and Related Investigation

In 2018 and early 2019, a team of SDNY prosecutors, together with Special Agents of the FBI and SDNY, conducted an investigation of potential campaign finance violations by Michael Cohen and others (the “campaign finance investigation”). Ex. A, Decl. of AUSA Thomas McKay (“McKay Decl.”), ¶ 6. This investigation resulted in Mr. Cohen being charged pursuant to a criminal Information with one count of causing an unlawful corporate contribution and one count of making an excessive campaign contribution. *Id.* ¶ 7. Mr. Cohen was also charged with five counts of tax evasion and one count of making false statements to a bank. *Id.* On August 21, 2018, Mr. Cohen pleaded guilty before the Hon. William H. Pauley III pursuant to a plea agreement. *Id.* ¶ 8. Mr. Cohen was sentenced and a judgment of conviction was entered on December 12, 2019. *Id.* No other individuals were charged as a result of SDNY’s campaign finance investigation. *Id.* ¶ 7.

SDNY prosecutors, assisted by Special Agents of the FBI and SDNY, also conducted an investigation (the “related investigation”) into whether certain individuals made false statements, gave false testimony, or otherwise obstructed justice in connection with the underlying investigation. McKay Decl. ¶ 9. No individuals were charged as a result of the related investigation. *Id.*

Other than Mr. Cohen, the government has not acknowledged the particular individual or individuals who were the subjects of the SDNY’s investigations. McKay Decl. ¶ 25. It is the SDNY’s general practice not to publicly identify subjects of criminal investigation, or other persons of investigative interest, who are not charged. *Id.* Likewise, the SDNY generally does not disclose or acknowledge whether or not specific individuals have provided interviews or otherwise cooperated with an investigation. *Id.* ¶ 24. The government is aware that four individuals have publicly acknowledged that they provided statements to the government as part of the SDNY’s investigations: Michael Cohen, Keith Davidson, John Gauger, and Robert Costello. *Id.* ¶ 22.

II. Plaintiff’s FOIA Requests

On July 18, 2019, Plaintiff submitted the four FOIA requests at issue. The requests were sent to different components of the Department of Justice, specifically the Criminal Division, the Executive Office of U.S. Attorneys (“EOUSA”), the Federal Bureau of Investigation (“FBI”), and the Office of Information Policy (“OIP”). Each request stated that it was seeking records “related to the now closed investigation conducted by the U.S. Attorney’s Office for the Southern District of New York into (1) who, besides Michael Cohen, was involved in and may be criminally liable for the two campaign finance violations to which Mr. Cohen pled guilty; and (2) whether certain individuals made false statements, gave false testimony, or otherwise obstructed justice in connection with the investigation.”

III. The Instant Litigation

On July 30, 2019, Plaintiff filed its first complaint in this matter. ECF No. 1. Plaintiff filed an amended complaint on August 23, 2019. ECF No. 6. After Defendant answered the amended complaint (ECF No. 8), the parties met and conferred and agreed to narrow the scope of Defendant’s searches for potentially responsive documents. ECF No. 9. Ultimately, Defendant agreed to

search for certain categories of documents, including: FD-302s and other witness statements, search warrant applications and supporting affidavits, prosecution memoranda, other memoranda relating to the investigation, and certain records that were sent to or from former Attorney General William Barr or former Deputy Attorney General Rod Rosenstein. *Id.*

Defendant made its first production of records on February 7, 2020, and continued making periodic productions through December 23, 2020. Defendant made a supplemental production to Plaintiff on July 30, 2021. Defendant withheld various records in whole or in part pursuant to FOIA exemptions 3, 5, 6, 7(A), 7(C), and 7(E). On March 3, 2021, the parties filed a joint status report indicating that they had met and conferred and determined that Plaintiff would not challenge the adequacy of Defendant's search for responsive records, and that the only items that remain in dispute are the appropriateness of Defendant's withholdings pursuant to FOIA Exemptions 5, 6, 7(A), and 7(C). ECF No. 21. Plaintiff further indicated that it did not challenge Defendant's withholdings made pursuant to Exemption 3 and Federal Rule of Criminal Procedure 6(e) or FOIA Exemption 7(E).¹ Because the FBI is no longer asserting Exemption 7(A), that Exemption is no longer at issue.² Seidel Decl. ¶ 12 n.3. Subsequently, Plaintiff agreed not to challenge withholdings of identifying information of lower-level government employees.

The Criminal Division processed 133 pages of records, 25 of which were referred to EOUSA. Ex. C, Declaration of Drew Lavine, ¶ 18 ("Lavine Decl."). Withholdings of the other Criminal Division records that remain at issue are principally discussed in the Lavine Declaration and associated *Vaughn* Index. *See* Ex. C-3 (Criminal Division index). The Lavine Declaration and associated index do not address withholdings made pursuant to exemptions that are no longer at issue, namely material protected by Exemption 3 and Federal Rule of Criminal Procedure 6(e), or

¹ In later discussions among the parties, Plaintiff inquired into one Exemption 7(E) redaction, and Defendant offered to discuss that redaction in its *Vaughn* index and declarations. The relevant discussion occurs at Ex. D, Declaration of Michael Seidel ("Seidel Decl."), ¶ 34.

² The material previously withheld under Exemption 7(A) continues to be withheld under Exemption 7(E). Seidel Decl. ¶ 12 n.3.

names and identifying information of lower-level government employees protected by Exemptions 6 and 7(C). *See* Lavine Decl. ¶¶ 20, 42 n.6. OIP processed 96 pages of record, 59 of which were referred to FBI and 37 of which were referred to EOUSA. Ex. E, Declaration of Timothy Ziese, ¶ 6 (“Ziese Decl.”). The 59 pages referred to FBI were all withheld pursuant to Exemption 3 and Federal Rule of Criminal Procedure 6(e), and therefore are no longer at issue. Seidel Decl. ¶ 8. FBI processed a total of 1,924 pages of records, including the 59 pages referred from OIP. *Id.* ¶ 4. The remainder of the records processed by FBI were either duplicates or were referred to EOUSA after FBI noted proposed redactions. *Id.* ¶¶ 4, 10-11. EOUSA located and processed various interview records, prosecution memoranda, and search warrant materials. Ex. B, Declaration of Ebony Griffin, ¶¶ 10-12 (“Griffin Decl.”).

The EOUSA index lists all of the documents that remain at issue except for the documents for which the Criminal Division conducted the final processing.³ Those documents are listed on the Criminal Division index. Thus, the complete list of records that remain at issue consists of the documents listed in the Criminal Division index and the EOUSA index. However, the declarations and indices from other components are cited herein to justify the Department’s withholdings.⁴

STANDARD OF REVIEW

Although the Freedom of Information Act “strongly favors prompt disclosure, its nine enumerated exemptions are designed to protect those ‘legitimate governmental and private interests’ that might be ‘harmed by release of certain types of information.’” *August v. FBI*, 328 F.3d 697, 699 (D.C. Cir. 2003) (quoting *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 152 (1989)). “FOIA expressly recognizes that important interests are served by its exemptions, and those exemptions are as much a part of FOIA’s purposes and policies as the statute’s disclosure require-

³ The EOUSA index lists only records that were (1) ultimately processed by EOUSA, and (2) not fully covered by an unchallenged withholding. Griffin Decl. ¶ 5.

⁴ Should any of the withholdings that the Department believes are no longer challenged by Plaintiff later be disputed, the Department reserves the right to assert all exemptions that may be applicable to the withheld information.

ment.” *Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356, 2366 (2019) (cleaned up) (quoting *FBI v. Abramson*, 456 U.S. 615, 630-31 (1981) and *Encino Motorcars, LLC v. Navarro*, 138 S. Ct. 1134, 1142 (2018)). The Department bears the burden of justifying its withholdings of materials responsive to Plaintiff’s FOIA request, and this Court reviews the Department’s response to that request *de novo*. See 5 U.S.C. § 552(a)(4)(B).

“Most FOIA cases are appropriately resolved on motions for summary judgment.” *Gilliam v. U.S. Dep’t of Justice*, 128 F. Supp. 3d 134, 138 (D.D.C. 2015) (citing *Brayton v. Off. of the U.S. Trade Rep.*, 641 F.3d 521, 527 (D.C. Cir. 2011)). Summary judgment is warranted “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). “The defendant in a FOIA case must show . . . that any exemptions claimed actually apply, and that any reasonably segregable non-exempt parts of records have been disclosed after redaction of exempt information.” *Light v. U.S. Dep’t of Justice*, 968 F. Supp. 2d 11, 23 (D.D.C. 2013).

A court may award summary judgment in a FOIA action solely on the basis of information provided by the agency through declarations that describe “the documents and the justifications for nondisclosure with reasonably specific detail,” that “demonstrate that the information withheld logically falls within the claimed exemption[s],” and that are “not controverted by either contrary evidence in the record nor by evidence of agency bad faith.” *Military Audit Project v. Casey*, 656 F.2d 724, 738 (D.C. Cir. 1981) (footnote omitted). “Ultimately, an agency’s justification for invoking a FOIA exemption is sufficient if it appears logical or plausible.” *Judicial Watch, Inc. v. U.S. Dep’t of Def.*, 715 F.3d 937, 941 (D.C. Cir. 2013) (per curiam).

ARGUMENT

I. The Department Properly Withheld Interview Reports

As a result of their searches for potentially responsive documents, the FBI and SDNY located various reports and notes of interviews conducted as part of the SDNY’s campaign finance and related investigations. These materials (collectively, the “interview reports”) include FBI Form

FD-302 (“FD-302”) reports of interviews, interview memoranda prepared by SDNY Special Agents, and handwritten notes.⁵ See McKay Decl. ¶¶ 5(a), 11-13. The Department released redacted versions of interview reports for interviews of individuals who publicly acknowledged their participation in the investigation, while the interview reports concerning interviews of witnesses who did not acknowledge their participation have been withheld in full. Griffin Decl. ¶¶ 21-22.

A. The Interview Reports Were Properly Withheld Under Exemption 5 as Attorney Work Product

Exemption 5 protects from disclosure “inter-agency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency[.]” 5 U.S.C. § 552(b)(5). Thus, “Exemption 5 incorporates the privileges available to Government agencies in civil litigation, such as the deliberative process privilege, attorney-client privilege, and” – as relevant here – “[the] attorney work-product privilege.” *U.S. Fish & Wildlife Serv. v. Sierra Club, Inc.*, 141 S. Ct. 777, 783 (2021).

“The work-product doctrine protects materials ‘prepared in anticipation of litigation or for trial by or for another party or its representative.’” *Judicial Watch, Inc. v. U.S. Dep’t of Homeland Sec.*, 926 F. Supp. 2d 121, 137 (D.D.C. 2013) (quoting Fed. R. Civ. P. 26(b)(3)(A)). The doctrine covers “the mental impressions, conclusions, opinions, or legal theories of an attorney,” as well as “factual materials prepared in anticipation of litigation.” *Tax Analysts v. IRS*, 117 F.3d 607, 620 (D.C. Cir. 1997); see also *Martin v. Off. of Special Counsel, Merit Sys. Prot. Bd.*, 819 F.2d 1181, 1187 (D.C. Cir. 1987) (“The work-product privilege simply does not distinguish between factual and deliberative material.”). Although the work-product doctrine applies most frequently when civil litigation is anticipated, the doctrine’s “role in assuring the proper functioning of the criminal justice system is even more vital.” *United States v. Nobles*, 422 U.S. 225, 238 (1975). Accordingly, documents prepared in anticipation of criminal prosecutions may be withheld as attorney work product. See, e.g., *Winterstein v. U.S. Dep’t of Justice, Off. of Info. & Privacy*, 89 F. Supp. 2d 79,

⁵ The interview memoranda prepared by SDNY Special Agents are functionally very similar to the FD-302s prepared by FBI Special Agents. Both types of records document what occurred in the interviews. McKay Decl. ¶ 10.

79, 81 (D.D.C. 2000) (concluding there was “no question” that a DOJ Office of Special Investigations memo “prepared during the course of an investigation” was prepared in anticipation of litigation given “the contemplated prosecution” of the investigation’s target).

In both the civil discovery and FOIA contexts, the D.C. Circuit has instructed that the attorney work product doctrine “should be interpreted broadly and held largely inviolate.” *Judicial Watch, Inc. v. U.S. Dep’t of Justice*, 432 F.3d 366, 369-70 (D.C. Cir. 2005) (citing *Hickman v. Taylor*, 329 U.S. 495, 510-11) (1947)). Although it is true that in civil discovery “work product protection may be overcome for cause,” that is not the case in FOIA. *Williams & Connolly v. SEC*, 662 F.3d 1240, 1243 (D.C. Cir. 2011). To the contrary, since work product materials “are not ‘routinely’ or ‘normally’ discoverable,” they always “are exempt under FOIA.” *Id.*; see also *FTC v. Grolier Inc.*, 462 U.S. 19, 27 (1983) (“Whether its immunity from discovery is absolute or qualified, a protected document cannot be said to be subject to ‘routine’ disclosure.”). An agency need not segregate material that is fully protected as work product, as “there are no non-exempt portions left to segregate.” *Nat’l Assn’ of Crim. Def. Lawyers v. U.S. Dep’t of Justice*, 844 F.3d 246, 256 (D.C. Cir. 2016).

1. Numerous Recent Decisions Recognize that FD-302s and Other Reports of Interviews May Be Withheld as Attorney Work Product

In light of these principles, it is unsurprising that many courts – including the D.C. Circuit – have held that FD-302s in circumstances similar to this case constitute attorney work product and are properly withheld under Exemption 5. For example, in *Judicial Watch, Inc. v. U.S. Department of Justice*, Judge Collyer considered the Department’s withholding of FD-302s that had been prepared during the criminal investigation of former Illinois Governor Rod Blagojevich. 391 F. Supp. 3d 43, 47 (D.D.C. 2019). The FD-302s memorialized interviews of then-President Barack Obama, his former chief of staff Rahm Emanuel, and former senior adviser Valerie Jarrett. *Id.* The Department submitted a declaration prepared by a member of the prosecution team indicating that the interviews memorialized in the FD-302s took place the same month as Mr. Blagojevich’s arrest and had been conducted “for the purpose of gathering evidence that could be presented to a grand

jury and that could factor into the case to be presented at the trial.” *Id.* at 51. Relying on that declaration, Judge Collyer held that the FD-302s “were prepared in anticipation of litigation,” *id.*, and accordingly “are records exempt from FOIA release as attorney work product under Exemption 5,” *id.* at 53.

The D.C. Circuit unanimously affirmed. Like Judge Collyer, the panel noted that the three interviews at issue took place around the time of Mr. Blagojevich’s arrest and were “undertaken ‘for the purpose of gathering evidence that could be presented to a grand jury and that could factor into the case to be presented at the trial.’” *Judicial Watch, Inc. v. U.S. Dep’t of Justice*, 806 F. App’x 5, 7 (D.C. Cir. 2020) (per curiam) (mem.). Recognizing that the interviews were conducted at the direction of career prosecutors, and that prosecutors had “participated in determining the investigative strategy for each interview and in questioning the witnesses,” the court of appeals held that the FD-302s thus “reflect ‘the thoughts and opinions of counsel developed in anticipation of litigation’ so as to fall within the attorney work-product privilege.” *Id.* (quoting *United States v. Deloitte, LLP*, 610 F.3d 129, 136 (D.C. Cir. 2010)). “Consequently,” the D.C. Circuit “affirm[ed] the district court’s determination that the FD-302s are fully exempt from disclosure under FOIA Exemption 5.” *Id.*

In *Leopold v. U.S. Department of Justice*, Judge Walton considered the Department’s withholdings of FD-302s that had been compiled as part of Special Counsel Robert Mueller’s investigation into Russian interference in the 2016 presidential election. 487 F. Supp. 3d 1, 7 (D.D.C. 2020). The Department had submitted a declaration stating that attorneys and FBI personnel associated with the Special Counsel’s Office had conducted “approximately 500 witness interviews during its investigation,” and that these interviews were conducted “for the purpose of gathering or otherwise assessing the extent to which evidence could be obtained to support criminal charges and that therefore could be presented to a grand jury and at trial.” *Id.* at 11. Relying on that declaration, Judge Walton held that “the information withheld by the Department from the FD-302s pursuant to Exemption 5 based on the attorney work product privilege falls squarely within the scope of the privilege.” *Id.*

The same was true in *New York Times Co. v. U.S. Department of Justice*, 138 F. Supp. 3d 462 (S.D.N.Y. 2015), *aff'd in part, rev'd in part, and remanded on other grounds*, 939 F.3d 479 (2d Cir. 2019).⁶ In that case, plaintiffs sought FD-302s and other records created during the investigation into “the destruction of videotapes of CIA interrogations and into the deaths of detainees in CIA custody.” *Id.* at 466. Judge Oetken endorsed the Department’s withholding of the FD-302s, noting that “[t]he mere selection of whom to interview reveals a great deal about [the attorney’s] strategy,” and that “[s]imilarly, the questions he or his subordinates ask witnesses almost certainly reveal his thinking about the substance of the case.” *Id.* at 475-76. Judge Oetken concluded that “[i]t is impossible for DOJ to disclose the FD-302s without revealing protected information about . . . case analysis and strategy,” and that “[a]s such, the FD-302s are exempt from disclosure under FOIA Exemption 5.” *Id.* at 476.⁷

Finally, and just a few months ago, Judge Schofield of the Southern District of New York endorsed the Department’s withholding of many of the very same interview records at issue in this case. *Am. Oversight v. U.S. Dep’t of Justice*, 19-cv-8215, 2021 WL 964220 (S.D.N.Y. Mar. 15, 2021), *appeal filed*, No. 21-1266 (2d Cir. May 13, 2021). In that case, the plaintiff sought 27 interview records – which are also at issue here – including “twenty-one FBI Form 302s prepared by FBI Special Agents, three interview memoranda prepared by SDNY Special Agents, two sets of handwritten notes prepared by prosecutors and one set of handwritten notes prepared by an FBI

⁶ The plaintiffs did not appeal the district court’s determination that the FD-302s were properly withheld under Exemption 5 as attorney work product.

⁷ Judge Oetken stated that “witness statements are sometimes but not always work product,” and that the proper test was whether the statements “reveal an attorney’s strategic impressions and mental processes.” *N.Y. Times Co.*, 138 F. Supp. 3d at 472. However, the D.C. Circuit has rejected the argument that an agency may assert work product “*only* [as to]. . . text concerning the mental impressions, conclusions, opinions, or legal theories of an attorney” because the work product doctrine “also protects factual materials prepared in anticipation of litigation.” *Tax Analysts*, 117 F.3d at 620; *see also Martin*, 819 F.2d at 1187 (“The work-product privilege simply does not distinguish between factual and deliberative material.”). In any event, the distinction is irrelevant here, as revealing the interview records would reveal the prosecutors’ legal strategy and mental impressions. *See infra*.

Special Agent.” *Id.* at *1; *see* Griffin Decl. ¶ 23. Judge Schofield noted that an SDNY prosecutor provided a declaration indicating that each of these interview records “were prepared in anticipation of litigation, specifically for the prosecutors to evaluate whether criminal prosecutions were warranted.” *Am. Oversight*, 2021 WL 964220, at *3. The declaration also noted that the interview records had been prepared by FBI or SDNY Special Agents “acting under the substantial direction of prosecutors and were reviewed by prosecutors,” and that “[d]isclosure of the records would reveal prosecutors’ selection of witnesses to interview, as well as their mental impressions, legal theories, case analysis, and strategic decisions regarding the investigation.” *Id.* (quoting declaration). The declaration further stated that the records had not been disclosed in any judicial or administrative proceeding and had not “otherwise been publicly disclosed.” *Id.* Accordingly, Judge Schofield held that “the DOJ has shown that the twenty-seven responsive interview records are protected from disclosure under Exemption 5 under the attorney work-product doctrine.” *Id.*

2. The Interview Reports Were Properly Withheld Under Exemption 5 As Attorney Work Product

Just as in *Judicial Watch*, *Leopold*, *New York Times*, and *American Oversight*, the interview reports at issue here are all attorney work product and have been properly withheld in full or in part under Exemption 5. The responsive FD-302s, interview memoranda prepared by SDNY Special Agents, and handwritten notes associated with the witness interviews bear the same hallmarks that led other courts to recognize that these materials were prepared in anticipation of litigation and constitute attorney work product.⁸ These records were generated as part of SDNY’s investigations, *see* McKay Decl. ¶ 10, and the interviews that led to the creation of the records “were conducted and recorded to gather and assess the extent to which evidence could be obtained to support criminal charges and that could be presented to a grand jury or at trial,” *id.* ¶ 15. Moreover, “[t]he prosecutors anticipated the potential for criminal charges during the investigation and

⁸ Indeed, Judge Schofield in *American Oversight* already held that 27 interview records at issue here are protected by the attorney work product privilege. Griffin Decl. ¶ 23. Those 27 records are noted in the EOUSA index with the identifier “upheld in AO.” *Id.* The Department’s work product assertion with respect to one record was upheld in both *American Oversight* and a separate case. *See* Griffin Decl. ¶ 23.

at the time the witness interviews leading to the creation of interview reports . . . were conducted.” *Id.* Thus, “[t]he reports and notes were generated . . . because of the prospect of litigation.” *Id.*

Moreover, “[d]isclosure of the interview reports[and] handwritten notes . . . would reveal the prosecutors’ selection of witnesses to interview, as well as prosecutors’ mental impressions, legal theories, case analysis, and strategic decisions regarding the investigation.” *Id.* ¶ 16. AUSA McKay further notes that “none of the interview reports . . . identified on the EOUSA Index have been disclosed in connection with any judicial or administrative proceedings to any person outside of the government or have otherwise been publicly disclosed.” *Id.* ¶ 18. Nor were they “shared with the respective witnesses or their counsel” or produced in criminal discovery, as “Cohen pleaded guilty . . . before any criminal discovery obligations were triggered.” *Id.*

Although most of the interview reports were prepared by either FBI or SDNY Special Agents rather than attorneys, *see* McKay Decl. ¶ 12, that in no way changes the fact that these materials qualify as attorney work product. Courts have long recognized that the attorney work product doctrine extends to materials beyond those prepared by attorneys themselves. The Supreme Court has noted that “the doctrine is an intensely practical one, grounded in the realities of litigation,” and that “[o]ne of those realities is that attorneys must rely on the assistance of investigators and other agents in the compilation of materials in preparation for trial.” *Nobles*, 422 U.S. at 238. Accordingly, “[i]t is therefore necessary that the doctrine protect material prepared by agents for the attorney as well as those prepared by the attorney himself.” *Id.* at 238-39; *see* Fed. R. Civ. P. 26(b)(3)(A) (“Ordinarily, a party may not discover documents . . . that are prepared in anticipation of litigation or for trial by or for another party or its representative (including the other party’s attorney . . . or agent).”).

Here, although many of the interview records were prepared by non-attorneys, they still qualify as attorney work product because they were prepared under the overall direction of attorneys in anticipation of litigation. As AUSA McKay explains, “SDNY prosecutors selected the witnesses to interview, discussed and determined in advance the investigative strategy for witness interviews, and in most cases led the interviews.” McKay Decl. ¶ 10; *see also id.* ¶ 15 (“Prosecutors

and/or Special Agents acting at the substantial direction of prosecutors conducted the witness interviews in connection with the prosecutors' evaluation of whether criminal prosecutions were warranted." "For all but five of th[e] interviews, SDNY prosecutors conducted the questioning reflected in the interview reports and associated handwritten notes," and for these interviews the prosecutors also "selected which documents (if any) would be used during the interviews." *Id.* ¶ 16. For the remaining five interviews, while Special Agents conducted the questioning, prosecutors had "coordinated with the Special Agents in advance of the interviews and discussed with them the topics to be covered and certain questions to be asked." *Id.* ¶ 17.⁹ Finally, the FD-302s and interview memoranda were reviewed by prosecutors. *Id.* ¶ 10. Accordingly, even though Special Agents prepared many of the FD-302s, interview memoranda, and handwritten notes, these agents were acting under the substantial direction of the prosecutors, and these interview records accordingly fall squarely within the scope of the attorney work product doctrine. Indeed, in several of the cases noted above the courts specifically held that FD-302s and other interview reports drafted by non-attorneys could constitute work product and those courts upheld the withholdings under Exemption 5. *See Judicial Watch*, 806 F. App'x at 7-8; *Am. Oversight*, 2021 WL 964220, at *4; *Leopold*, 487 F. Supp. 3d at 11-12.

B. The Interview Reports Were Also Properly Withheld in Full or in Part Under Exemptions 6 and 7(C) To Protect Personal Privacy

Because the Department's withholdings of the interview records are justified under Exemption 5, there is no need for the Court to consider the Department's alternative withholdings. *See, e.g., Am. Oversight*, 2021 WL 964220 at *4 (declining to consider privacy-related withholdings of FD-302s and other interview records after determining the records were attorney work product). But in any event the interview reports are also properly withheld in full or in part pursuant to Exemptions 6 and 7(C).

⁹ In addition, for one of these Special Agent-led interviews, a prosecutor participated in the interview by phone. McKay Decl. ¶ 17.

Exemption 6 allows an agency to withhold information about individuals in “personnel and medical files and similar files” when the disclosure of such information “would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6). For this exemption to apply, the information at issue must be maintained in a government file and apply to a particular individual. *U.S. Dep’t of State v. Washington Post Co.*, 456 U.S. 595, 602 (1982). Once this threshold requirement is met, Exemption 6 requires the agency to balance the individual’s right to privacy against the public’s interest in disclosure. *See Dep’t of Air Force v. Rose*, 425 U.S. 352, 372 (1976).

Similarly, Exemption 7(C) exempts from disclosure “records or information compiled for law enforcement purposes . . . to the extent that production of such law enforcement records or information . . . could reasonably be expected to constitute an unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(7)(C). As a threshold matter, for Exemption 7(C) to apply the records at issue must have been compiled for law enforcement purposes. *Schoenman v. FBI*, 575 F. Supp. 2d 166, 174 (D.D.C. 2008).

Once it has been determined that a record was compiled for law enforcement purposes, Exemption 7(C) – like Exemption 6 – requires individual privacy rights to be balanced against the public interest in disclosure. *See, e.g., U.S. Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 762 (1989). However, courts have consistently held that Exemption 7(C) “is more protective of privacy than Exemption 6.” *U.S. Dep’t of Def. v. FLRA*, 510 U.S. 487, 496 n.6 (1994); *see Nat’l Archives & Recs. Admin. v. Favish*, 541 U.S. 157, 165-66 (2004) (comparing statutory language of Exemptions 6 and 7(C)). Accordingly, “[w]hen an agency invokes both exemptions, courts ‘focus’ on Exemption 7(C) because it ‘establishes a lower bar for withholding material.’” *Nova Oculus Partners, LLC v. SEC*, 486 F. Supp. 3d 280, 288 (D.D.C. 2020) (quoting *CREW v. U.S. Dep’t of Justice*, 746 F.3d 1082, 1091 n.2 (D.C. Cir. 2014) (hereinafter “*CREW P*”). Nonetheless, given the similarities between Exemptions 6 and 7(C), case law pertaining to one is often germane to the other. *See Reed v. NLRB*, 927 F.2d 1249, 1251 (D.C. Cir. 1991).

The interview records at issue squarely meet the threshold requirements of both Exemption 6 and Exemption 7(C). They qualify as “similar files” under Exemption 6 because the protected

information applies to a particular individual and is contained in government records. *Washington Post*, 456 U.S. at 602. With respect to Exemption 7(C), the materials were also “compiled for law enforcement purposes” since they were prepared in the course of an active criminal law enforcement investigation. *See* McKay Decl. ¶ 15; Seidel Decl. ¶ 18; Griffin Decl. ¶ 40. Because, as discussed below, the privacy interests at stake in these documents outweigh the potential interest in disclosure, the Department’s invocations of Exemptions 6 and 7(C) should be affirmed.

1. The Cooperating Witnesses and Third Parties Mentioned in the Interview Reports Have Compelling Privacy Interests in Avoiding Disclosure

The Department withheld information in the interview reports to protect the privacy of numerous individuals, including the cooperating witnesses, third parties of investigative interest mentioned in the interviews, and other third parties mentioned in the interviews. *See* McKay Decl. ¶ 21; Seidel Decl. ¶¶ 22-30; Griffin Decl. ¶¶ 42-45. The Department has produced redacted versions of the interview records for the four individuals who have publicly acknowledged that they provided interviews as part of the investigation, including Mr. Cohen.¹⁰ *See* McKay Decl. ¶ 22; *see* Griffin Decl. ¶ 21. To the best of the government’s knowledge, none of the other witnesses have acknowledged their cooperation with the government’s investigation, and it is the SDNY’s general practice not to acknowledge whether or not specific individuals have provided interviews or otherwise cooperated with an investigation. *See* McKay Decl. ¶¶ 22, 24. Aside from Mr. Cohen, none of the witnesses were charged with any crime related to the SDNY’s investigations. *Id.* ¶¶ 7, 9.

In these circumstances, the Department properly withheld the interview records in full or in part pursuant to Exemptions 6 and 7(C). Courts have long recognized the enormous privacy interests at stake when an individual could be associated with a criminal investigation. *See, e.g., Nation Magazine v. U.S. Customs Serv.*, 71 F.3d 885, 894 (D.C. Cir. 1995) (“In a number of cases,

¹⁰ In general, the redacted interview reports reveal the names of witnesses and certain information about the interview (such as the date and location). The substance of the redacted interviews is generally redacted, although in one instance the Department released an excerpt of an FD-302 where the excerpted information had been publicly disclosed in the Mueller Report. Griffin Decl. ¶ 21.

this court has found that individuals have an obvious privacy interest cognizable under Exemption 7(C) in keeping secret the fact that they were subjects of a law enforcement investigation.”). That is so because “[i]t is surely beyond dispute that ‘the mention of an individual’s name in a law enforcement file will engender comment and speculation and carries a stigmatizing connotation.’” *Fitzgibbon v. CIA*, 911 F.2d 755, 767 (D.C. Cir. 1990) (quoting *Branch v. FBI*, 658 F. Supp. 204, 209 (D.D.C. 1987)); accord *Stern v. FBI*, 737 F.2d 84, 92 (D.C. Cir. 1984) (“A FOIA disclosure that would ‘announce to the world that . . . certain individuals were targets of an FBI investigation,’ albeit never prosecuted, may make those persons the subjects of rumor and innuendo, possibly resulting in serious damage to their reputations.” (quoting *Fund for Const. Gov’t v. Nat’l Archives & Records Serv.*, 656 F.2d 856, 864 (D.C. Cir. 1981))).

For these reasons, the witnesses who have not publicly disclosed that they sat for interviews with prosecutors or investigators possess a strong interest in keeping their cooperation secret. Indeed, the D.C. Circuit has held that, absent narrow exceptions, names and identifying information of individuals appearing in law enforcement files are “categorically . . . exempt from disclosure.” *SafeCard Servs., Inc. v. SEC*, 926 F.2d 1197, 1206 (D.C. Cir. 1991); see *Nation Magazine*, 71 F.3d at 896 (“[*SafeCard*] is one in a long line of FOIA cases holding that disclosure of the *identities* of private citizens mentioned in law enforcement files constitutes an unwarranted invasion of privacy and is thus exempt under 7(C).”). Although the *SafeCard* categorical rule does not apply for “individuals who have already been publicly identified – either through agency press releases or testimony in open court – as having been charged, convicted or otherwise implicated in connection with the . . . investigation,” *CREW v. U.S. Dep’t of Justice*, 854 F.3d 675, 682 (D.C. Cir. 2017) (hereinafter “*CREW IP*”), even in those circumstances, courts recognize that these individuals retain substantial interests in avoiding the disclosure of additional facts regarding the nature of their involvement in the criminal investigation.¹¹ See, e.g., *CREW I*, 746 F.3d at 1092 (noting that even

¹¹ Certain documents that the government filed in relation to Mr. Cohen’s prosecution mention the names of some of the individuals who sat for interviews – thereby associating them with the criminal investigation – but those documents do not reveal, nor have the witnesses or the government disclosed, that the individuals cooperated with the investigation by providing an interview.

though the former Majority Leader of the U.S. House of Representatives had disclosed “the *fact* that he was under investigation,” he nonetheless “retained a second, distinct privacy interest in the *contents* of the investigative files”); *Nova Oculus*, 486 F. Supp. 3d at 289 (“[T]he fact that the individuals’ identities have been publicly connected with a law enforcement matter does not ‘waive all [] interest in keeping the contents of the [investigative] file[s] confidential’ because those individuals still have a ‘privacy interest . . . in avoiding disclosure of the details of the investigation.’” (quoting *Kimberlin v. U.S. Dep’t of Justice*, 139 F.3d 944, 949 (D.C. Cir. 1998))).

Recognizing these well-established privacy interests, the Department properly withheld information contained in the interview records pursuant to Exemptions 6 and 7(C). In light of how much information is already publicly available about the investigation and prosecution of Mr. Cohen, nearly all of the individuals who sat for interviews would likely be identifiable if the interview records were released, even if the witnesses’ names, addresses, and other personally identifying information were redacted. McKay Decl. ¶ 26 (explaining that about half of the witnesses would likely be identifiable by the general public, that all but one of the others likely would be identifiable by personal or business associates, and that the interview report of the final witness contains little substantive information about a lead that turned out to be a dead end). Moreover, releasing these records would tend to reveal the conduct that was of particular interest to prosecutors, which could expose “which individual(s) were the subject(s) of the investigations or otherwise of investigative interest.” *Id.* ¶ 25. There are few privacy interests more substantial than the interest in keeping confidential the fact that someone who was never charged with a crime had been a subject of a criminal law enforcement investigation. *See, e.g., Stern*, 737 F.2d at 92.

In addition to protecting the identities of the witnesses and persons of investigative interest, the Department also withheld information pursuant to Exemptions 6 and 7(C) in order to protect the privacy interests implicated by statements contained within the interview records. Records of

McKay Decl. ¶ 18 n.4; Griffin Decl. ¶ 43. For those individuals, the government does not contend the *SafeCard* categorical rule applies. But for the reasons stated herein, the balancing test still favors nondisclosure of information related to these individuals.

interviews conducted by prosecutors and investigators can contain a large amount of personal information, and these records are no exception. Griffin Decl. ¶ 42. Courts routinely recognize the privacy interests of all of these individuals, underscoring the weightiness of the privacy interests on one side of the balance.¹² See *Nation Magazine*, 71 F.3d at 894 (“[The] privacy interest also extends to third parties who may be mentioned in investigatory files, as well as to witnesses . . . who provided information during the course of an investigation.”).

2. Disclosure of the Interview Records Would Provide Little Public Benefit

On the other side of the ledger, to overcome a privacy interest under Exemption 7(C), “a FOIA requester must (1) ‘show that the public interest sought to be advanced [by disclosure] is a significant one, an interest more specific than having the information for its own sake,’ and (2) ‘show the information is likely to advance that interest.’” *Boyd v. Crim. Div. of U.S. Dep’t of Justice*, 475 F.3d 381, 387 (D.C. Cir. 2007) (quoting *Favish*, 541 U.S. at 172). In its FOIA requests, Plaintiff contended that disclosure would serve the public interest in the following way:

[T]he requested records would shed light on the extent, if any, that President Donald Trump or any of his businesses or associates has violated campaign finance laws and, if so, why the government has closed its investigation without prosecuting these crimes, with the exception of Michael Cohen. The American people deserve to know whether their president and his business associates have complied fully with the laws of our land and if they have not, why DOJ declined to prosecute them. The president is the most powerful and visible official of our country, and the truth about his actions and those of his campaign, businesses, and associates should not be shielded from public scrutiny.

EOUSA FOIA Request, Ex. B-2, at 2.

“The only relevant public interest in the FOIA balancing analysis,” however, “is the extent to which disclosure of the information sought would shed light on an agency’s performance of its

¹² Two interviews were undertaken to pursue a lead that turned out to be a dead end. McKay Decl. ¶ 27. Disclosure of the information in these interview records would be particularly invasive of the personal privacy of the witnesses and third parties mentioned in the document given that the information could not be verified or substantiated. *Id.*; cf. *Favish*, 541 U.S. at 166 (“Law enforcement documents obtained by Government investigators often contain information about persons interviewed as witnesses . . . whose link to the official inquiry may be the result of mere happenstance. There is special reason . . . to give protection to this intimate personal data[.]”).

statutory duties or otherwise let citizens know what their government is up to.” *CREW I*, 746 F.3d at 1093 (quoting *FLRA*, 510 U.S. at 497) (cleaned up). “That purpose . . . is not fostered by disclosure of information about private citizens that is accumulated in various governmental files but that reveals little or nothing about an agency’s own conduct.” *FLRA*, 510 U.S. at 496. Accordingly, Plaintiff’s interest in the activities of candidate Trump or his associates during the campaign are not relevant to the Exemption 6 and 7(C) balancing analysis; instead, the only relevant public interest is the extent to which disclosure would inform the public about *agency* activities. *See CREW I*, 746 F.3d at 1093 (“[T]he relevant public interest is *not* to find out what [House Majority Leader] DeLay himself was ‘up to’ but rather how the FBI and the DOJ carried out their respective statutory duties to investigate and prosecute criminal conduct.”).

Thus, the only arguably cognizable public interest identified by Plaintiff is its suggestion that disclosure of the requested records would inform the public about why the Department declined to prosecute any individuals besides Mr. Cohen. *See* EOUSA FOIA Request, Ex. B-2, at 2. To be sure, the D.C. Circuit has recognized that disclosure of the contents of an investigative file, including FD-302s, could in some circumstances serve a public interest by informing the public about “the manner in which the DOJ carries out substantive law enforcement policy,” including whether the government “pulled its punches.” *CREW I*, 746 F.3d at 1093; *see also CREW II*, 854 F.3d at 682. But the D.C. Circuit also made clear that it was the FOIA requester’s burden to demonstrate that disclosure would advance the public interest in disclosure. *CREW II*, 854 F.3d at 683.

Plaintiff cannot carry that burden. The records and information withheld under Exemptions 6 and 7(C) would not shed significant light on the operations or activities of DOJ or the FBI. *See* Seidel Decl. ¶¶ 25-26, 28; McKay Decl. ¶ 19; Griffin Decl. ¶ 44. Disclosure of the *identities* of who was interviewed would provide little insight into the conduct of the investigation or why the Department declined to prosecute additional individuals. *See, e.g., FLRA*, 510 U.S. at 496. Nor would disclosure of the *contents* of the interview records be “likely to advance” Plaintiff’s asserted public interest. *Favish*, 541 U.S. at 172. The interview records memorialize the interviews of witnesses; while they certainly reflect and reveal attorney work product and strategy, they do not

weigh evidence or contain prosecutors’ reasoning as to whether or not to actually bring charges against any particular individual. McKay Decl. ¶ 19. Thus, factual information in the records would not shine any significant light on “why DOJ declined to prosecute” former President Donald Trump, or his businesses or associates. EOUSA FOIA Request, Ex. B-2, at 2.

Moreover, substantial information about the conduct of Mr. Cohen and others has been made publicly available in public filings in the criminal case. *See U.S. Dep’t of State v. Ray*, 502 U.S. 164, 178 (1991) (affirming withholding of information where “[t]he addition of the redacted identifying information would not shed any additional light on the Government’s conduct” in light of other public disclosures). For example, the government has publicly disclosed Mr. Cohen’s charging document, the transcript of his plea, the government’s sentencing submission, as well as copies of search warrant applications, affidavits, and other documents relating to the search and seizure of Mr. Cohen’s property. McKay Decl. ¶ 23. In light of the information that is already publicly available, Plaintiff cannot carry its burden to show that disclosure of the interview records would be likely to “significantly” advance the public’s understanding of the government’s conduct of the investigation. *FLRA*, 510 U.S. at 495.

3. The Balance Tips Strongly In Favor of Withholding the Interview Records

In this case, on one side of the balance lies the substantial privacy interests of witnesses who cooperated in a law enforcement investigation by providing interviews to investigators and prosecutors, and third parties mentioned in those interviews. Except for Mr. Cohen, none of these individuals were charged with a crime as a result of the investigations. McKay Decl. ¶¶ 7, 9. And aside from Mr. Cohen and three additional individuals, none of the witnesses have acknowledged their participation in the interviews. *Id.* ¶ 22. Precedent recognizes that such information contained in criminal investigatory records implicates some of the most profound privacy interests that can be threatened by disclosure of government records. *See, e.g., Nation Magazine*, 71 F.3d at 893.

On the other side of the balance, Plaintiff cannot show that disclosure of the interview records would shed significant light on the only cognizable public interest identified by Plaintiff, *i.e.*, “why the government . . . closed its investigation without prosecuting” individuals besides Mr.

Cohen who might have committed crimes. Ex. B-2, at 2. The interview reports are not analytical documents weighing the law and evidence in order to determine whether it would be proper to file criminal charges; rather, the reports, if released, would provide only a snapshot of uncontextualized evidence. *See* McKay Decl. ¶ 19. While disclosure of such documents could certainly (and improperly) reveal attorneys' mental impressions and other work product, *see supra*, Plaintiff has not and cannot demonstrate that their disclosure would shine significant additional light on the conduct of the government's investigations, especially in light of the substantial information already available about the conduct of Mr. Cohen and his associates.

In these circumstances, the clear and weighty privacy interests of the cooperating witnesses and third parties easily outweigh the weak and speculative public interest in disclosure. Because the balance strongly weighs in favor of protecting the privacy interests of the cooperating witnesses and third parties, the Court should sustain the Department's withholdings under Exemptions 6 and 7(C) of information contained in the interview reports (if it reaches this issue).

II. The Department Properly Withheld Records Discussed in the Interviews

The Department's search located certain documents that were used or discussed in some of the interviews that generated the interview reports discussed above. *See* McKay Decl. ¶¶ 13, 18. Although these documents were shown to the witnesses, they were then collected before the end of the interview, and neither the witnesses nor their counsel were allowed to keep copies. *Id.* ¶ 18. Some of these records are no longer in dispute because they were obtained via grand jury subpoena and have been withheld pursuant to Exemption 3 and Federal Rule of Criminal Procedure 6(e). *See* Griffin Decl. ¶ 22 n.4. The records that remain at issue have been withheld in full because they are attorney work product and fall under Exemption 5, and many of these records also are withheld in full or in part pursuant to Exemptions 6 and 7(C). McKay Decl. ¶¶ 15, 21.

A. Documents Selected for Use in Interviews Constitute Attorney Work Product

Prosecutors selected the documents to be used during specific interviews, and production of the documents would reveal topics discussed during the interviews, the focus and emphasis of

the prosecutors, and their thinking about the substance of the case. McKay Decl. ¶ 16. Accordingly, these documents are protected by the attorney work product privilege for reasons similar to the interview reports discussed above.

Unlike the interview reports themselves, these documents were shown (temporarily) to the witnesses during the course of the interviews. McKay Decl. ¶ 18. While it is generally true that any disclosure of an attorney-client communication to a third party waives the *attorney-client* privilege, that is not the case for the work product privilege. *See In re Sealed Case*, 676 F.2d 793, 818 (D.C. Cir. 1982). That is so because the privileges serve different purposes, and a privilege is waived only “when the party claiming the privilege seeks to use it in a way that is not consistent with the purpose of the privilege.” *Id.* Because the attorney-client privilege is meant to protect a confidential relationship, any disclosure to a third party is inconsistent with that privilege. *Id.* But the purpose of the work product privilege is not to protect a confidential relationship, “but rather to promote the adversary system by safeguarding the fruits of an attorney’s trial preparations from the discovery attempts of the opponent.” *United States v. AT&T*, 642 F.2d 1285, 1299 (D.C. Cir. 1980). Accordingly, courts recognize that disclosure of work product does not waive the privilege when the disclosure is “not inconsistent” with the purposes of the doctrine. *See, e.g., Sealed Case*, 676 F.2d at 818.

In determining whether disclosure of work product constitutes waiver, courts generally look to whether the disclosure was made in a way that is “inconsistent” with (1) the privilege’s purpose of fostering effective trial preparation, and (2) maintaining secrecy against litigation adversaries. *See, e.g., AT&T*, 642 F.2d at 1299 (“A disclosure made in the pursuit of [] trial preparation, and not inconsistent with maintaining secrecy against opponents, should be allowed without waiver of the privilege.”). “What constitutes a waiver with respect to work-product materials depends, of course, upon the circumstances.” *Nobles*, 422 U.S. at 239 n.14. Moreover, on multiple occasions the D.C. Circuit has noted that it has “allowed ‘selective disclosure’ of protected documents ‘*even in some circumstances to an adversary*’ in formal litigation.” *Rockwell Int’l Corp. v. U.S. Dep’t of Justice*, 235 F.3d 598, 607 (D.C. Cir. 2001) (*italics added*) (quoting *In re*

Sealed Case, 676 F.2d at 818); *see also Williams & Connolly*, 662 F.3d at 1244 (again noting that disclosure to an adversary does not necessarily waive privilege).¹³

In the circumstances of this case, there is no reason to find waiver of the work product privilege. Most importantly, the SDNY’s decision to show these documents to the cooperating witnesses was fully consistent with the fundamental purpose of the privilege: to encourage effective trial preparation. *Cf. AT&T*, 642 F.2d at 1300 (finding no waiver when “transfer is consistent with the promotion of trial preparation within the adversary system”). The SDNY prosecutors and investigators discussed these documents with cooperating witnesses as part of their investigation in order to gain a better understanding of the facts of the case, with the ultimate goal of helping the Department determine whether to bring criminal charges. McKay Decl. ¶ 20. That purpose is fully consistent with the goal of fostering effective trial preparation.

Moreover, as the purpose of the work product doctrine is “not to protect any interest of the attorney, but to protect the adversary trial process itself,” *Coastal States Gas Corp. v. U.S. Dep’t of Energy*, 617 F.2d 854, 864 (D.C. Cir. 1980), waiver should generally be limited to circumstances where a party makes a selective disclosure of work product to gain an unfair litigation advantage. *Cf. Sealed Case*, 676 F.2d at 818 (noting waiver is appropriate when “tactics . . . degenerate into ‘sharp practices’ inimical to a healthy adversary system”). Similar reasoning played a role in *Rockwell*, where the plaintiff argued that FOIA required the disclosure of work product-protected documents that had been quoted in a public report at the center of a dispute between Congress and the Executive Branch. 235 F.3d at 601. The D.C. Circuit rejected the plaintiff’s argument that work product had been waived after noting that in each of the cases cited by the plaintiff, disclosure had been “required . . . at least in part because their particular circumstances made doing so necessary to protect the adversary system.” *Id.* at 606. Specifically, in the

¹³ As noted above, SDNY does not disclose whether an uncharged individual was a subject or person of investigative interest. McKay Decl. ¶ 25. Accordingly, the Department does not say whether any of the witnesses shown documents qualify as an “adversary” within the meaning of the caselaw. But for the reasons discussed in this brief, even if these individuals were “adversaries,” waiver would be inappropriate under the circumstances.

cases discussed by the *Rockwell* court, waiver was found when (1) a party allowed a witness to testify but then asserted work product to deny access to interview notes that the prosecutor was entitled to use in cross-examination (*Nobles*), (2) a company attempted to invoke work product in a way that would have threatened a criminal defendant's constitutional right to favorable evidence (*In re Martin Marietta Corp.*, 856 F.2d 619 (4th Cir. 1988)), and (3) a company disclosed work product to gain lenient treatment from the SEC as part of a voluntary disclosure program, but then sought to use the privilege to prevent the same documents from being disclosed to other litigation adversaries (*Sealed Case*). See *Rockwell*, 235 F.3d at 605-07. Finding no comparable conduct by the government, the *Rockwell* court held that work product had not been waived. *Id.* at 607. The same result should follow here. By discussing some documents with witnesses during the SDNY's investigation, the government did not seek a litigation advantage for which fairness requires a disclosure elsewhere to protect the health of the adversarial process. Accordingly, there is no waiver.

Nor is there any reason to find waiver on the ground that the government's actions were "inconsistent with the maintenance of secrecy from the disclosing party's adversary." See *Deloitte*, 610 F.3d at 140 (quoting *Rockwell*, 235 F.3d at 605).¹⁴ Here the circumstances of this case are again very different from instances in which courts have found waiver of the work product privilege. Typically, in cases where courts found waiver, the receiving party was granted full access to the disclosed documents. See, e.g., *In re Subpoenas Duces Tecum*, 738 F.2d 1367, 1369 (D.C. Cir. 1984) (finding work product waived after company provided internal report and several binders of corporate records to the SEC); cf. *Judicial Watch v. U.S. Dep't of Def.*, 963 F.

¹⁴ Although *Deloitte* at one point states that "the voluntary disclosure of attorney work product to an adversary or a conduit to an adversary waives work-product protection," 610 F.3d at 140, that statement is best understood as a rule of thumb for the typical case, and cannot be read to mean that *every* such disclosure *always* waives work product protection. As noted above, the D.C. Circuit has on numerous occasions (including after *Deloitte*) stated that disclosure to an adversary does not necessarily waive the privilege. Moreover, nothing in *Deloitte* suggests that the D.C. Circuit meant to displace the general rule that a privilege is waived only when it is used in a way contrary to the purposes of the privilege.

Supp. 2d 6 (D.D.C. 2013) (declining to order production in Exemption 3 case when information sought had been shown to some non-government officials but not made widely available). By contrast, here the cooperating witnesses were only allowed to look at the documents during the interview, and then the documents were taken back at the end of the interview. McKay Decl.

¶ 18. In addition, with respect to the documents that remain in dispute because they were not covered by an unchallenged exemption, the prosecutors and investigators only showed witnesses records that were either publicly available or records that the prosecutors believed the witnesses were already aware of. McKay Decl. ¶ 20. Given that the records shown to witnesses were *already* available or known to them, it can hardly be said that the government was acting “inconsistent with the maintenance of secrecy” by discussing the documents with the cooperating witnesses.

Waiver is especially inappropriate here given the strong protection courts provide to documents connected with preparation of witness interviews. Indeed, in the foundational case on the work product doctrine, the Supreme Court even extended work product protection to documents shown to and *signed* by witnesses. *See Hickman*, 329 U.S. at 498, 508. Although the witnesses in *Hickman* were not specifically described by the Court as being adverse to the party represented by the lawyer, their status as potential adversaries is fairly inferred from the facts of the case: a tugboat sank and five of the nine crew members drowned, after which the owners of the tug hired a lawyer “to defend them against potential suits by representatives of the deceased crew members,” and the lawyer received witness statements from the surviving crew members, who presumably could have raised a claim against the tug owners as well. *Id.* at 498.

Finally, the fact that this is a FOIA case – as opposed to a case in which a party adversary is seeking to compel production through discovery – further makes disclosure unwarranted. If the Department had ultimately prosecuted any of the witnesses, then the rules of criminal discovery might have given that witness a right to discover the documents at issue. But “[i]n criminal trials, evidentiary privileges may give way for any number of reasons,” and the question in a *FOIA* case depends “on whether a document would usually be discoverable in a civil case.” *Williams &*

Connolly, 662 F.3d at 1244-45. Here, there is no basis to conclude that the Department’s decision to temporarily show cooperating witnesses certain documents during investigatory interviews would render those documents “routinely” or “normally” disclosable in a civil case, which is the relevant test under Exemption 5. *Rockwell*, 235 F.3d at 607.

B. Many of the Documents Are Also Subject to Exemptions 6 and 7(C)

Many of these records were also withheld in full or in part pursuant to Exemptions 6 and 7(C) to protect the personal privacy of the cooperating witnesses and third parties discussed in these records.¹⁵ See McKay Decl. ¶ 21; Griffin Decl. ¶ 42. Specifically, the Department has withheld information in these records that would tend to disclose the identity of the individual who was being interviewed, identify third parties (including uncharged subjects of the investigation or other individuals of investigative interest), and/or reveal undisclosed personal information about third parties. McKay Decl. ¶ 28. For the same reasons as discussed above concerning the interview reports, these individuals have a strong privacy interest in avoiding disclosure of such information. *See supra*; see also Seidel Decl. ¶¶ 25-28. As these records comprise only the documents shown to some of the witnesses during the interviews, any cognizable public interest in their release would be even more attenuated than disclosure of the interview reports themselves. Plaintiff simply cannot show that disclosure of these materials would “significantly” advance the public’s understanding of the government’s investigation. *FLRA*, 510 U.S. at 495. That is particularly true given the amount of other information that is publicly available about the conduct of Mr. Cohen and others. See McKay Decl. ¶ 23. Thus, similar to the interview reports discussed above, the well-established privacy rights of the cooperating witnesses and third parties mentioned in these records easily outweigh the weak interest in disclosure, and the Court should accordingly affirm the Department’s withholdings.

¹⁵ These records, which were used or discussed in the interviews that led to the creation of the interview reports, meet the threshold requirements of Exemption 6 and 7(C) for similar reasons as the interview reports themselves. Griffin Decl. ¶¶ 39-40.

III. The Department Properly Withheld Materials Related to Search Warrants

The Department located certain records relating to search warrants that are responsive to Plaintiff's FOIA requests. Specifically, SDNY and the FBI located search warrant applications, supporting affidavits, executed search warrants, and additional FD-302s that document the execution of the search warrants. McKay Decl. ¶ 47. Although the government has previously released redacted documents that concern search warrants issued with regard to Mr. Cohen's property, *see id.* ¶¶ 23, 48, 52, the government has not acknowledged or disclosed the identities of any other individual whose property has been the subject of search warrants or other process in connection with the SDNY's investigation, *id.* ¶ 52.¹⁶ The individuals whose property was seized pursuant to these search warrants were not charged as a result of the SDNY's investigation, and their identities have not been acknowledged or disclosed. *See id.* ¶¶ 7, 9, 52-53. The search warrant records that remain at issue meet the threshold requirements of Exemptions 6 and 7(C) for similar reasons as the interview records discussed above. *See supra.*

As discussed in the McKay Declaration, disclosure of the search warrant materials – even in redacted form – would likely lead to the public identification of the subjects of the search warrants. McKay Decl. ¶¶ 53, 55. As AUSA McKay explains, if the documents were released with redactions, the identities of the subjects of the search warrant would likely be apparent by comparing the documents together and alongside information that is already publicly available. *Id.* ¶ 55.

In light of this, the government properly withheld the search warrant records in full under Exemptions 6 and 7(C). As discussed in detail above, avoiding disclosure of unknown connections to a criminal investigation stands at the apex of protectable privacy interests under Exemptions 6 and 7(C). *See, e.g., SafeCard*; 926 F.2d at 1206; *Nation Magazine*, 71 F.3d at 893; *Stern*, 737 F.2d at 92. Accordingly, all the reasons discussed above concerning why an individual has an interest

¹⁶ One or more of the individual(s) subject to these search warrants have been mentioned in publicly disclosed government documents related to the investigations. However, neither the government nor the individual(s) have acknowledged or disclosed that the individual or individuals' property was seized pursuant to a search warrant. McKay Decl. ¶ 52 n.13; Griffin Decl. ¶ 43.

in avoiding disclosure of the fact they were interviewed by prosecutors or the FBI apply with equal force to individuals whose property was seized by federal investigators. Indeed, the privacy interests may be even more acute in the context of the search warrant documents. Since search warrants are issued by magistrates when there is probable cause to believe that a search will yield evidence or fruits of a crime, *see* Fed. R. Crim. P. 41(c)-(d), publicly revealing that an individual's property was the subject of a search warrant could lead the public to associate an individual with criminal activity in a particularly acute way, and here that could occur in the context of a high-profile matter. *See* Griffin Decl. ¶ 50; *Cf. Senate of Puerto Rico v. U.S. Dep't of Justice*, 823 F.2d 574, 588 (D.C. Cir. 1987) ("There is little question that disclosing the identity of targets of law-enforcement investigations can lead to embarrassment and potentially more serious reputational harm."). Moreover, these individuals have a substantial privacy interest in avoiding public disclosure of the fact that the government seized their personal communications in connection with the government's investigations. McKay Decl. ¶ 56.

Turning to the other side of the balance, once again any cognizable public benefit in disclosure of these materials would be minimal. The government has already released redacted versions of search warrant materials relating to Mr. Cohen's property, and those materials contain an extensive discussion of Mr. Cohen's activities, including substantial discussion of the campaign finance scheme. *See* McKay Decl. ¶ 54. The search warrant records at issue were also executed to obtain evidence in furtherance of the campaign finance investigation. *Id.* ¶¶ 49-50. Given that substantial information is already available concerning the search of Mr. Cohen's property in the context of the campaign finance investigation, *see id.* ¶¶ 23, 54, Plaintiff cannot show that the additional disclosure of the other search warrant materials would meaningfully contribute to the public's understanding of the government's investigations. *See Ray*, 502 U.S. at 178 (considering other publicly available information when weighing public benefit of disclosure of additional documents). In light of this weak public interest and the fact that disclosure would tend to reveal the identities of individuals whose property was seized pursuant to search warrants during a high-

profile investigation, the balance strongly tips in favor of nondisclosure and the Department's withholdings should be upheld.

IV. The Department Properly Withheld Internal Emails and Memoranda

Several components of the Department located responsive emails and memoranda that discuss various aspects of the campaign finance investigation and related investigation. For example, the Criminal Division identified emails and memoranda concerning SDNY requests for authorization to take certain investigative steps. Lavine Decl. ¶ 23. The Criminal Division also identified five "filter" memoranda that were referred to SDNY for processing, two of which remain at issue. McKay Decl. ¶ 30 & n.8; Lavine Decl. ¶ 35. In total, SDNY processed thirteen memoranda that remain at issue, which include the two Criminal Division filter memoranda, five records identified by SDNY that would arguably constitute responsive "prosecution memoranda," and six responsive emails and memoranda identified by OIP (and referred to SDNY). McKay Decl. ¶¶ 29-30. Eight of these records have been withheld in full, and five have been released in part. Griffin Decl. ¶ 24. These records fall into several discrete categories, which are each discussed in turn.

A. The Criminal Division Records Were Properly Withheld Under Exemption 5 Pursuant to the Attorney Work Product and Deliberative Process Privileges

As part of their investigation and prosecution of Michael Cohen, SDNY prosecutors sought authorization to use certain tools and/or take certain investigative steps for which authorization may have been required, and accordingly requested permission from the appropriate office within the Department, the Office of Enforcement Operations ("OEO"). Lavine Decl. ¶ 23. The Department located 133 pages of emails and memoranda relating to the SDNY prosecutors' authorization requests, of which 108 pages were processed directly by the Criminal Division (the remaining 25 pages were referred to SDNY and are discussed below). *Id.* ¶ 18. After removing records that are no longer in dispute, the Criminal Division identified 61 pages that remain at issue ("the OEO records"). *See id.* ¶ 20. All of the OEO records have been properly withheld in full under Exemption 5 as attorney work product, *id.* ¶ 25, and many have also been withheld in full or in part under Exemption 5 because they are covered by the deliberative process privilege, *id.* ¶ 29.

As an initial matter, all of the OEO records meet the threshold requirements of Exemption 5. Specifically, the OEO records are communications exchanged within the Department of Justice, and therefore qualify as “intra-agency memorandums or letters” that fall under Exemption 5’s threshold requirement. Lavine Decl. ¶ 21.

The OEO records were all properly withheld in full as attorney work product. As discussed above, “[t]he work-product doctrine protects materials ‘prepared in anticipation of litigation or for trial by or for another party or its representative.’” *Judicial Watch*, 926 F. Supp. 2d at 137 (quoting Fed. R. Civ. P. 26(b)(3)(A)). Here, there can be no question that the OEO records were all prepared in anticipation of litigation. The records were prepared by attorneys or at the direction of attorneys, *see* Lavine Decl. ¶ 25, and all relate to SDNY requests for authorization to use certain law enforcement tools or to take certain investigative steps, *see id.* ¶¶ 23-28. Moreover, the records contain discussions of the facts and evidence regarding the campaign finance investigation, legal analysis applying facts to the relevant regulations under which SDNY prosecutors sought authorization, and information reflecting the prosecutors’ theory of the case and direction of the underlying investigation and potential litigation. *Id.* ¶¶ 26-27. In short, these records were prepared in anticipation of the prosecution of Michael Cohen and potentially others, *id.* ¶ 28, and accordingly were properly withheld in full under Exemption 5 as attorney work product.

Many of these records were also properly withheld in full or in part pursuant to the deliberative process privilege. *See* Lavine Decl. ¶¶ 29-35. The deliberative process “covers documents reflecting advisory opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated.” *Sourgoutsis v. U.S. Capitol Police*, 323 F.R.D. 100, 107 (D.D.C. 2017). To qualify for this privilege, documents must be both “pre-decisional” and “deliberative.” “Documents are ‘predecisional’ if they were generated before the agency’s final decision on the matter, and they are ‘deliberative’ if they were prepared to help the agency formulate its position.” *Sierra Club*, 141 S. Ct. at 786.

As discussed in the Lavine Declaration, the documents identified as deliberative in the Criminal Division’s *Vaughn* index reflect predecisional discussions between and within the Criminal Division and SDNY concerning SDNY’s request for authorization to take various investigative steps or to use certain law enforcement tools. Lavine Decl. ¶¶ 30-33. The records generally consist of (1) memoranda that either request this authorization or analyze these requests for authorization, *see id.* ¶ 30-31, or (2) emails discussing or commenting on those requests, *see id.* ¶ 32. The withheld portions of these records contain deliberative communications and analysis that occurred prior to a final decision being made about the requests. *See id.* ¶¶ 30-34. These records contain “opinions and recommendations regarding the sufficiency of the information provided to support the authorization requests,” and also “include opinions, evaluations, and deliberations comprising the attorneys’ legal analysis regarding the authorization requests.” *Id.* ¶ 33. As explained in the Lavine Declaration, “[t]he information contained in the records contributed to the decision-making processes of both the Criminal Division . . . and the multiple components of DOJ with regard to the underlying investigation.” *Id.* In short, “[t]he records at issue are part of the exchange that accompanies all decision-making and reflect the preliminary legal analysis of DOJ attorneys, which are ultimately submitted to senior officials for review.” *Id.* Accordingly, the Department has properly withheld these records in full or in part pursuant to the deliberative process privilege.

B. The Filter Memoranda Were Properly Withheld Under Exemption 5 Pursuant to the Attorney Work Product and Deliberative Process Privileges

The two “filter” memoranda remaining at issue were prepared by SDNY as part of a process to ensure that investigators were not improperly exposed to certain protected information. *See McKay Decl.* ¶ 44; *see also id.* ¶ 30 & n.8; Lavine Decl. ¶ 35. Specifically, the SDNY’s “investigative” team drafted these memoranda to be used by a separate “filter” team (or teams). McKay Decl. ¶ 44. The filter team(s) were “responsible for reviewing materials obtained via search warrants to identify, and filter out, any privileged or otherwise protected information.” *Id.* The mem-

oranda contained background information about the case and the relevant individuals, and explained to the filter team what they were being asked to do. *Id.* Accordingly, the filter memoranda “were prepared in anticipation of the prosecution of Michael Cohen,” *id.*, and therefore constitute attorney work product.

In addition, the filter memoranda are also protected by the deliberative process privilege. The memoranda were prepared and submitted to the Criminal Division as part of SDNY’s request for authorization to take certain investigative steps. McKay Decl. ¶ 45. As AUSA McKay explains, the SDNY team understood that as part of that approval process, SDNY was required to submit appropriate filter memoranda, and that the Criminal Division would consider those memoranda as part of its process of determining whether to grant the requested authorization. *Id.*; *see also* Lavine Decl. ¶ 35 (noting that the Criminal Division, in deciding whether to authorize SDNY to take certain investigative steps, considered the filter memoranda in examining whether sufficient steps were being taken to ensure that privileged communications would not be provided to the investigative team). Accordingly, these memoranda are both predecisional and deliberative and protected by the deliberative process privilege. McKay Decl. ¶ 45; Lavine Dec. ¶ 35.

Because the filter memoranda are both attorney work product and are covered by the deliberative process privilege, the memoranda were properly withheld in full.

C. The Prosecution Memoranda, Other Memoranda, And Related Emails Were Properly Withheld Under Exemption 5 Pursuant to the Attorney Work Product and Deliberative Process Privileges

The Department has also withheld, in full or in part, eleven additional emails and memoranda, as reflected on the SDNY’s *Vaughn* index. The records that remain at issue in this category include five “prosecution memoranda” that were located by SDNY, and six emails (or email chains) and memoranda located by OIP. *See* McKay Decl. ¶¶ 29-30; Griffin Decl. ¶ 24. Each of these records were withheld, in full or in part, because they are protected under the attorney work product privilege and the deliberative process privilege. McKay Decl. ¶ 31. The eleven records broadly fall into three different categories, which are discussed in detail below. All of these records

meet the threshold requirements of Exemption 5 because they were exchanged within the Department of Justice and thus qualify as “intra-agency memorandums or letters.” Griffin Decl. ¶ 26.

1. The March 30, 2018, August 9, 2018, and August 18, 2018 Prosecution Memoranda

According to AUSA McKay, these records are “classic prosecution memoranda” that discuss either potential or proposed charges against Michael Cohen. McKay Decl. ¶¶ 32-33. Specifically, the memoranda contain SDNY’s analysis as to “whether or not the evidence available to prosecutors at the time of each memorandum is or may be sufficient to support specific criminal charges.” *Id.* ¶ 33. The earliest memorandum (dated March 30) “was prepared for the principal purpose of determining whether [SDNY] had sufficient evidence to warrant the significant overt investigative step of conducting searches on premises and electronic devices possessed by Cohen.” *Id.* The two later memoranda (dated August 9 and August 18) “contain recommendations as to which charges should be instituted.” *Id.* Accordingly, all three memoranda constitute attorney work product because they “were prepared in anticipation of a potential prosecution.” *Id.*

These records are also protected by the deliberative process privilege. Each memorandum “preceded the Deputy U.S. Attorney’s determination to institute criminal charges against Cohen,” and the March 30 memorandum also “preceded the decision to take overt investigative steps in the campaign finance investigation.” McKay Decl. ¶ 34. The three memoranda are also deliberative because “they consider and evaluate whether or not the available evidence justifies the institution of criminal charges and/or the taking of specific investigative steps,” and they “formed an important part of the consultative process of deciding whether to institute campaign finance charges against Cohen, and in the case of the March 30, 2018 memorandum, whether to proceed to seek search warrants for Cohen’s property.” *Id.*; *see also* Ziese Decl. ¶ 15 (describing August 18 memorandum’s role in deliberations of senior Departmental officials). Because the memoranda are pre-decisional and deliberative, they are protected by the deliberative process privilege.

Accordingly, these records were properly withheld in full under Exemption 5.

2. The November 29, 2018 Email and December 15, 2018 Memorandum and Related Email

In approximately late November, 2018, the Office of the Deputy Attorney General (“ODAG”) requested that SDNY provide a list of certain open investigations and their current status and anticipated investigative steps. McKay Decl. ¶ 36; Ziese Decl. ¶ 17. That request led to the creation of the next set of records at issue: an email dated November 29, 2018, a memorandum dated December 15, 2018, and an email exchange that occurred on December 15, 2018. *See* McKay Decl. ¶¶ 35-40.

In response to ODAG’s request, the Deputy U.S. Attorney and the prosecution team prepared the list contained in the November 29, 2018 email. McKay Decl. ¶ 35. This list identified five then-pending investigations, including the campaign finance investigation and the related investigation.¹⁷ *Id.* ¶ 36. For each item in the list, the email provides a description of the investigation, its status, and anticipated investigative steps. *Id.*

Sometime after receiving the November 29, 2018 email, ODAG asked SDNY to prepare memoranda addressing certain SDNY investigations. *Id.* ¶ 37. This request led to the creation of the December 15, 2018 memorandum. *Id.* That memo was also prepared by the Deputy U.S. Attorney and the prosecution team, *id.* ¶ 35, and it discusses four then-pending SDNY investigations, including the campaign finance and related investigations. *Id.* ¶ 38.

The November 29, 2018 email and the December 15, 2018 memorandum constitute attorney work product because they were “prepared by attorneys in anticipation of litigation, specifically, the potential prosecution of individuals other than Michael Cohen for campaign finance violations or for making false statements, giving false testimony, or otherwise obstructing justice in connection with the campaign finance investigation.” *Id.* ¶ 39. ODAG directly supervises the

¹⁷ Both the November 29, 2018 email and the December 15, 2018 memorandum contain sections that discuss other investigations that are not responsive to Plaintiff’s FOIA request. *See* McKay Decl. ¶ 35 n.10. The parties have agreed that Defendant need not process segregable, non-responsive sections of memos that are about entirely different topics than those responsive to Plaintiff’s FOIA requests. In addition, portions of these records have been withheld pursuant to Exemption 3 and Federal Rule of Criminal Procedure 6(e), and they therefore are no longer at issue. *See* ECF No. 21, at 1.

ninety-three United States Attorneys and the Department's law enforcement agencies and has the authority to weigh in on contemplated prosecutive decisions. Ziese Decl. ¶ 12. When Department components provide information to ODAG about pending or proposed Department actions, that exchange is part of a process that allows ODAG to determine whether and how to exercise its supervisory functions over Department activities, including whether to endorse, modify, or reject the contemplated actions. *See id.* ¶¶ 12-13. This is particularly true when the exchange of information concerns actions that are important, sensitive, or high-profile, as is the case for the investigations at issue here. *See id.* ¶¶ 12-15. Accordingly, SDNY's response to ODAG's request for information was prepared in anticipation of litigation and therefore constitutes attorney work product.

The November 29, 2018 email and the December 15, 2018 memorandum are also predecisional and deliberative, and therefore protected by the deliberative process privilege. These records were provided to senior officials to provide insight into several sensitive ongoing investigations. Ziese Decl. ¶ 17; McKay Decl. ¶ 40. As explained in the Ziese Declaration, when information is given to senior officials such as those in ODAG about sensitive Department activities, that exchange of information is part of a deliberative process in which senior Department leaders may exercise their supervisory capacity to endorse, modify, or reject the contemplated actions of other Department officials. *See* Ziese Decl. ¶¶ 11-14, 17. In responding to ODAG's request for information about sensitive investigations, SDNY was participating in a deliberative process in which ODAG was gathering information to prepare for upcoming meetings, knowing that decisions could be taken by DOJ senior leadership concerning the matters discussed in those meetings. *See id.* ¶ 17.

Because the December 15, 2018 memorandum is entirely protected by the attorney work product and deliberative process privileges, the Department appropriately withheld it in full under Exemption 5. The redacted portions of the November 29, 2018 email have been appropriately withheld pursuant to the same privileges.

The last record at issue in this set is a December 15, 2018 email chain that attaches and forwards the December 15 memorandum. This email chain has been released in part, with a small redaction of material that is both deliberative and attorney work product. The withheld portion of this email was prepared by prosecutors in anticipation of the potential prosecutions addressed in the memoranda attached to the email, and the withheld portion also discusses the nature of a request by senior Department leaders for information regarding the status of pending and sensitive investigations. McKay Decl. ¶¶ 39-40; Ziese Decl. ¶ 17.

3. The February 22, 2019 and March 1, 2019 Memoranda and Related Emails

In late February 2019, the Deputy U.S. Attorney for SDNY met with then-Attorney General Barr, who had recently taken office. McKay Decl. ¶ 41; *see* Ziese Decl. ¶ 18 & n.2. The Deputy U.S. Attorney and the prosecution team, at the request of the Attorney General or his staff, prepared the February 22, 2019 Memorandum in advance of that meeting and provided it to senior Department leadership in advance of the meeting. McKay Decl. ¶ 41. That memorandum summarized certain sensitive, then-pending investigations being conducted by SDNY, including the related investigation, in order to brief the Attorney General about these investigations in preparation for the meeting. *Id.*; Ziese Decl. ¶ 18. The March 1, 2019 Memorandum was prepared to provide additional information and to respond to questions asked by the Attorney General at the late February meeting. McKay Decl. ¶ 41; Ziese Decl. ¶ 18.

These memoranda constitute attorney work product. The responsive portions of the February 22 memorandum and the March 1 memorandum were prepared in anticipation of the potential prosecution of one or more individuals for making false statements, giving false testimony, or otherwise obstructing justice. McKay Decl. ¶ 42. In addition, the March 1 memorandum was also prepared in anticipation of potential litigation related to the campaign finance investigation and prosecution of Mr. Cohen. *Id.* Because the memoranda were provided to officials within the offices of the Attorney General and Deputy Attorney General, these records were also subject to an understanding that senior Department leadership might exercise their supervisory authority to make

decisions relevant to the conduct of the sensitive investigations at issue. *See* Ziese Decl. ¶¶ 11-14, 18.

The memoranda are also protected by the deliberative process privilege. The February 22 memorandum was prepared to brief the Attorney General about the status of, and contemplated investigative steps, in certain pending SDNY investigations in advance of a meeting between the Attorney General and the Deputy U.S. Attorney. McKay Decl. ¶ 43. The March 1 memorandum was prepared to respond to the Attorney General's request for additional information and to respond to questions asked in the late February meeting. *Id.* Both memoranda were prepared at the request of the Attorney General or his staff to facilitate the Attorney General's deliberations and decisions with regard to the campaign finance investigation and the related investigation. *Id.*; *see* Ziese Decl. ¶¶ 19-20.

Emails attaching and discussing the February 22, 2019 and March 1, 2019 memoranda have been produced with redactions. One email chain, spanning February 22 to February 24, 2019 and attaching the February 22, 2019 memorandum, has been produced with a small redaction of information protected by Exemption 5 and the attorney work product and deliberative process privileges because it was prepared in anticipation of litigation and would identify an additional topic about which Department leadership solicited information.¹⁸ Ziese Decl. ¶ 21. The other email chain, spanning March 1 to March 2, 2019, contains a small amount of redacted text that has been withheld pursuant to the attorney work product and deliberative process privileges because the redacted information was drafted in anticipation of litigation, identifies aspects of the fully privileged March 1, 2019 memorandum, and would reveal deliberative information relating to the March 1, 2019 memorandum. Ziese Decl. ¶ 22; *see* McKay Decl. ¶¶ 42-43.

¹⁸ The Department also redacted the names of non-responsive attachments to the email pursuant to the parties' agreement that segregable, non-responsive sections contained in memoranda need not be processed. Ziese Decl. ¶ 21.

D. The Emails and Memoranda Are Subject to Other Partial Withholdings

Most of the emails and memoranda discussed above are also subject to partial withholdings pursuant to Exemptions 6 and 7(C) to protect the personal privacy of subjects of investigative interest and third parties mentioned in the relevant materials. Griffin Decl. ¶¶ 47-49; McKay Decl. ¶ 46. For reasons similar to those discussed in detail *supra*, disclosure of identifying information or other personal information of these individuals would result in an unwarranted invasion of personal privacy. *See* McKay Decl. ¶ 46; Lavine Decl. ¶¶ 43-44; Griffin Decl. ¶¶ 47-50.

V. Disclosure of the Withheld Information Would Harm Interests Protected by FOIA Exemptions

Under the FOIA Improvement Act of 2016, in order to justify the withholding of a responsive record, the government must show that “the agency reasonably foresees that disclosure would harm an interest protected by an exemption described in subsection (b) [of FOIA],” or that “disclosure is prohibited by law.” 5 U.S.C. § 552(a)(8)(A)(i); *see Reporters’ Comm. for Freedom of the Press v. FBI*, --- F.4th ---, 2021 WL 2753938, at *11-12 (D.C. Cir. July 2, 2021) (discussing foreseeable harm standard). The legislative history of this amendment acknowledges that the provision “does not alter the scope of information that is covered under an exemption.” H.R. Rep. No. 114-391, at 10 (2016). Indeed, the amendment codified existing government policy that had been in place for years. *See id.* at 9 (noting that the policy was established by executive memoranda in 2009); S. Rep. No. 114-4, at 8 (same); Freedom of Information Act, 74 Fed. Reg. 4683 (Jan. 21, 2009) (presidential memorandum). And the Department already employed this standard when defending agency withholdings in litigation. *See* H.R. Rep. No. 114-391, at 9; *accord* Attorney General Holder’s Mem. for Heads of Exec. Dep’ts & Agencies Concerning the Freedom of Information Act, at 1-2 (Mar. 19, 2009), *available at* <http://www.usdoj.gov/ag/foia/memo-march2009.pdf>. As recently described by the D.C. Circuit, to satisfy the foreseeable harm requirement, the agency must “articulate both the nature of the harm [from release] and the link between the specified harm and specific information contained in the material withheld.” *Reporters’ Comm.*, 2021 WL 2753938 at *11.

Foreseeable harm analysis first requires identification of the interests protected by the relevant FOIA exemptions. The attorney work product doctrine, available under Exemption 5, aims to “protect the adversary trial process itself” as “the integrity of our system would suffer if adversaries were entitled to probe each other’s thoughts and plans concerning the case.” *Rockwell*, 235 F.3d at 604-05 (quoting *Coastal States*, 617 F.2d at 864). The deliberative process privilege – also available through Exemption 5 – aims to “protect[] the public from the confusion that would result from premature exposure to discussions occurring before” a final decision has been made. *Russell v. Dep’t of the Air Force*, 682 F.2d 1045, 1048 (D.C. Cir. 1982) (quoting *Jordan v. U.S. Dep’t of Justice*, 591 F.2d 753, 772-73 (D.C. Cir. 1978)). The deliberative process privilege also “prevent[s] injury to the quality of agency decisions.” *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 151 (1975). The Department’s declarations explain how disclosure of the information at issue would foreseeably harm these interests.

Disclosure of the interview reports would harm an interest protected by Exemption 5 and the attorney work product privilege. The entire purpose of the work product privilege is to allow a lawyer “a certain degree of privacy, free from unnecessary intrusion by opposing parties and their counsel.” *Hickman*, 329 U.S. at 510. The Supreme Court recognized this protection is “essential to an orderly working of our system of legal procedure,” *id.* at 512, because “[p]roper preparation of a client’s case demands that [the lawyer] assemble information, sift what he considers to be the relevant from the irrelevant facts, prepare his legal theories and plan his strategy without undue and needless interference,” *id.* at 511.

As the Department’s declarations explain, disclosure of the interview reports would reveal the prosecutors’ mental impressions and legal theories of the case, as well as the prosecutors’ strategic decisions about who to interview, what topics to cover (and not cover), and what to focus on with each witness. See McKay Decl. ¶¶ 16-17; see also Griffin Decl. ¶ 34. These are precisely the types of revelations that the Supreme Court in *Hickman* recognized as needing the protection of the work product doctrine. More recently, the D.C. Circuit noted that the purpose of the attorney

work product doctrine was to “promote[] the adversary process by insulating an attorney’s litigation preparation from discovery.” *Deloitte*, 610 F.3d at 139-40. If material that clearly constitutes work product – such as the FD-302s, interview memoranda, and handwritten notes at issue here – could be requested by any person through FOIA, then such a framework would deprive government attorneys (and only government attorneys) of the “degree of privacy” and freedom from “undue and needless interference” that courts have long recognized as critical to the orderly conduct of litigation. The government attorney would be put in a fishbowl, constantly wondering whether documents created while anticipating litigation could be disclosed through FOIA, even when the same material would undoubtedly be protected if prepared by a private lawyer.

Disclosure would also eliminate the Department’s ability to assert a discovery privilege over the interview reports if these records were sought in future civil litigation, causing another harm protected by an exemption. Griffin Decl. ¶ 34. Consider, for example, a situation where a future litigant sues the government and issues a discovery request for which one of the FD-302s is responsive. In party discovery, the government could resist disclosing the document because of its status as work product. But that privilege would be meaningless if the litigant (or Plaintiff here) could simply demand the document through FOIA. *See Martin*, 819 F.2d at 1186 (rejecting understanding of work product doctrine that would “effectively allow[] FOIA to be used as a supplement to civil discovery”). Accordingly, allowing the disclosure of the interview reports would cause a foreseeable harm in that it would effectively deny the government the ability to make a viable privilege assertion against adversaries in future civil litigation. *Cf. AT&T*, 642 F.2d at 1299 (“The purpose of the work product doctrine is to protect information against opposing parties[.]”).

In addition, disclosure of the interview reports could harm the ability of prosecutors to pursue future investigations. *See Fund for Const’l Gov’t v. Nat’l Archives & Records Serv.*, 485 F. Supp. 1, 14 (D.D.C. 1978) (“[D]isclosure of information generated during a prosecutor’s assessment of particular cases would be extremely detrimental to the prosecutor’s free exercise of discretion.”); *see also Grolier*, 462 U.S. at 30 (Brennan J., concurring in part and concurring in the

judgment) (“It would be of substantial benefit to an opposing party (and of corresponding detriment to an agency) if the party could obtain work product generated by the agency in connection with earlier, similar litigation against other persons.”). The SDNY’s investigations encompassed a range of potential criminal violations, including campaign finance violations, bank fraud, tax evasion, obstruction of justice, false statements, and perjury. Griffin Decl. ¶ 34; *see* McKay Decl. ¶¶ 6-9. As these types of criminal investigations occur frequently in U.S. Attorneys’ Offices throughout the country, publicly releasing the contents of the interview reports could inhibit the flexibility with which future prosecutors might structure and pursue similar investigations. Griffin Decl. ¶ 34. *See Leopold*, 487 F. Supp. 3d at 10 n.4 (rejecting Plaintiff’s foreseeable harm argument in light of the Department’s declaration stating that “disclosing the contents of the FD-302s at issue here would [] indirectly reveal the mental impressions, assessments, and thought processes of the attorneys involved in the investigation and of the Special Counsel in particular, contrary to the purpose of the attorney work product doctrine”).

Likewise, disclosure of the various emails and memoranda that constitute attorney work product would harm an interest protected by that doctrine and Exemption 5. For example, disclosure of the OEO records would reveal attorneys’ assessments of facts and issues pertaining to the authorization requests and attorneys’ mental impressions and evaluation of evidence pertaining to the underlying investigation, among other sensitive topics. Lavine Decl. ¶ 26. Similarly, the filter memorandum contains background information about the case that was prepared by the SDNY investigative team and instructs the filter team how to perform an important part of the SDNY’s investigation. *See* McKay Decl. ¶ 44; Griffin Decl. ¶ 38. The prosecution memoranda contain prosecutors’ analysis concerning whether the evidence gathered in this case would be sufficient to support specific criminal charges. McKay Decl. ¶ 33; Griffin Decl. ¶ 36. Finally, the other memoranda and emails involve SDNY providing information about contemplated litigation to senior Department leaders who are charged with supervisory authority over SDNY’s prosecutive decisions. *See* Ziese Decl. ¶¶ 11-23; Griffin Decl. ¶ 37; *see also Reporters’ Comm.*, 2021 WL 2753938

at *14 (noting highly sensitive nature of government deliberations in finding “manifest” foreseeable harm).

Each of the above categories of documents were prepared in anticipation of litigation. If such materials were subject to disclosure under FOIA, it would foreclose the opportunity to assert a viable privilege assertion in future civil litigation, as well as preventing Department lawyers from enjoying the traditional protection afforded to lawyers to allow them to diligently oversee litigation without undue interference. *See* Griffin Decl. ¶¶ 35-38; Lavine Decl. ¶¶ 25, 36-39; *see Hickman*, 329 U.S. at 510 (“In performing his various duties . . . it is essential that a lawyer work with a certain degree of privacy, free from unnecessary intrusion by opposing parties and their counsel.”).

Disclosure of any of the deliberative records would also harm an interest protected by Exemption 5. For example, disclosure of deliberative material concerning the OEO records and filter memoranda “would have a chilling effect on DOJ attorneys, who would no longer be comfortable documenting their legal strategies and recommendations.” Lavine Decl. ¶ 37. Release of the preliminary assessments and opinions contained in the OEO records could make Criminal Division personnel “more circumspect in their discussions with each other,” and make them “no longer feel free to discuss their ideas and advice in email messages,” which would “degrade the quality of agency decisions” and “impair the Department’s ability to foster the forthright, internal discussions necessary for efficient and proper decision making.” *Id.*; *see generally id.* ¶¶ 36-39 (describing foreseeable harm).

Likewise, revealing materials such as the emails and memoranda exchanged between SDNY and senior Department leadership would harm the quality of the Department’s deliberations. These records involve discussions among SDNY and the most senior leaders of the Department, including the Attorney General, the Deputy Attorney General, and their staffs. *See Ziese* Decl. ¶¶ 11-23. The records concern the oversight of particularly sensitive Department investigations and prosecutions. *See id.* Specifically, these records include discussions of proposed and contemplated charges (McKay Decl. ¶¶ 32-34), updates regarding the status of sensitive investi-

gations specifically asked about by ODAG (*id.* ¶¶ 35-38), and updates regarding the status of sensitive investigations and prosecutions and responses to follow-up questions by the Attorney General (*id.* ¶¶ 41-43). Given the highly sensitive nature of these records and the senior level of the decisionmakers involved, it is no surprise that the Department concluded that disclosure of the records “would hinder Department staff’s ability to provide candid evaluations of topics for Department leadership,” which would in turn hinder “Department leadership’s ability to . . . make executive decisions regarding sensitive investigations of Departmental interest.” Ziese Decl. ¶ 23. These concerns are of particular importance in the context of this case, since “the deliberations at issue touch on some of the most sensitive investigations and prosecutions of the Department, and involve the highest levels of Department leadership.” *Id.*; *see Reporters’ Comm.*, 2021 WL 2753938 at *14 (considering the sensitivity of deliberations and the senior level of the decisionmakers in finding that the record supported a finding of foreseeable harm). Moreover, and similar to the concerns expressed by the Criminal Division, the Ziese Declaration warns that if these deliberative materials were released for public consumption, Executive Branch personnel “would be more circumspect in expressing the necessary information to decision-makers who utilize and rely on such material, foreseeably and adversely impacting the quality of decision-making.” Ziese Decl. ¶ 23; *see also* Griffin Decl. ¶¶ 35-38.

VI. The Department Released All Reasonably Segregable, Non-Exempt Information

FOIA requires that “[a]ny reasonably segregable portion of a record shall be provided to any person requesting such records after deletion of the portions which are exempt.” 5 U.S.C. § 552(b). Accordingly, “non-exempt portions of a document must be disclosed unless they are inextricably intertwined with non-exempt portions.” *Mead Data Cent., Inc. v. Dep’t of the Air Force*, 566 F.2d 242, 260 (D.C. Cir. 1977). But this provision does not require disclosure of records in which the non-exempt information that remains is meaningless. *See Nat’l Sec. Archive Fund*,

Inc. v. CIA, 402 F. Supp. 2d 211, 221 (D.D.C. 2005). And a court “may rely on government affidavits that show with reasonable specificity why documents withheld pursuant to a valid exemption cannot be further segregated.” *Juarez v. Dep’t of Justice*, 518 F.3d 54, 61 (D.C. Cir. 2008).

The Department’s declarations establish that it has complied with its obligation to produce reasonably segregable, non-exempt information. *See* Lavine Decl. ¶ 49; Griffin Decl. ¶¶ 51-58. With respect to the interview reports, the Department has released portions of those records that identify witnesses who have publicly disclosed that they participated in interviews, but the remainder of these records have properly been withheld as work product. Griffin Decl. ¶ 54; *see Judicial Watch*, 806 F. App’x at 7 (“We also affirm the district court’s conclusion that, because the ‘entire contents of the [FD-302s] at issue here constitute attorney work product . . . there is no segregable information.’”). Similarly, the documents used in interviews, the OEO records, the filter memoranda, and the various other memoranda have all properly been withheld in full pursuant to the attorney work product privilege. *See Nat’l Ass’n of Criminal Def. Lawyers*, 844 F.3d at 256 (noting that when material is fully protected as work product, “the entire record is exempt from disclosure” and “there are no non-exempt portions left to segregate,” except in circumstances not applicable here). With respect to the emails that were produced in part, with redactions made for attorney work product, deliberative material, and personal privacy, the Department’s declarations state that all segregable, non-exempt material has been produced. *See* Griffin Decl. ¶ 51; Lavine Decl. ¶ 49.

As for the search warrant materials, AUSA McKay explained in detail that even if the documents were released in redacted form, with the names, addresses, and other identifying information redacted, that could lead to the unwarranted disclosure of the identities of the individuals who were the subjects of the search warrant. McKay Decl. ¶ 55. Accordingly, the Department complied with its obligation to release all segregable, non-exempt information.

CONCLUSION

For the foregoing reasons, the Court should grant Defendant's motion for summary judgment.

DATED: July 30, 2021

Respectfully submitted,

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EXHIBIT A

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

----- X
CITIZENS FOR RESPONSIBILITY AND ETHICS
IN WASHINGTON,

Plaintiff,

19 Civ. 2267 (EGS)

-against-

UNITED STATES DEPARTMENT OF JUSTICE,

Defendant.
----- X

DECLARATION OF THOMAS McKAY

I, Thomas McKay, pursuant to 28 U.S.C. § 1746, declare the following:

1. I am an Assistant United States Attorney (“AUSA”) in the Office of the United States Attorney for the Southern District of New York (“SDNY”). I have been employed as a federal prosecutor in the SDNY since 2014. I was a member of the team of SDNY prosecutors responsible for the prosecution of Michael Cohen, *United States v. Cohen*, 18 Cr. 602 (WHP) (S.D.N.Y.).

2. The statements made in this declaration are based on my personal knowledge, as well as information obtained and reviewed in the course of my official duties.

3. I understand that the plaintiff in this action, Citizens for Responsibility and Ethics in Washington (“CREW”), submitted a Freedom of Information Act (“FOIA”) request to the Executive Office of United States Attorneys (“EOUSA”) on or about July 18, 2019. The FOIA request to EOUSA sought records related to the SDNY’s investigation of (1) who, besides Michael Cohen, was involved in, and may be criminally liable for, the two campaign finance violations to which Mr. Cohen pleaded guilty, and (2) whether certain individuals made false

statements, gave false testimony, or otherwise obstructed justice in connection with that investigation. I understand that this request was subsequently narrowed, through negotiation, to three categories of responsive records: (a) interview reports, (b) prosecution memoranda, and (c) search warrants and associated applications.

4. I understand that CREW also submitted FOIA requests to the Federal Bureau of Investigation (“FBI”), the Department of Justice’s (“DOJ’s”) Office of Information Policy (“OIP”), and DOJ’s Criminal Division, seeking records concerning the same SDNY investigations. I further understand that FBI, OIP and the Criminal Division referred records responsive to those respective FOIA requests to EOUSA/SDNY for processing.

5. I submit this declaration in support of defendant’s motion for summary judgment in this case, to provide information concerning the records that I understand remain at issue in this case, which are identified in the attached index (“EOUSA Index”). The records remaining at issue generally fall into three categories:

- a. (a) *Interview Records*, including FBI form FD-302 (“302”) reports of interviews, SDNY interview memoranda, handwritten notes, and documents associated with witness interviews, identified by the SDNY and/or FBI;
- b. (b) *Memoranda*, including prosecution memoranda identified by the SDNY, other memoranda and emails identified by OIP, and filter review memoranda identified by the Criminal Division; and
- c. (c) *Search Warrant Materials*, including applications and supporting affidavits, search warrants and associated sealing orders, and FBI 302 reports of execution of search warrants, identified by SDNY and/or FBI.

The SDNY Investigations at Issue

6. In 2018 and early 2019, a team of SDNY prosecutors, together with Special Agents of the FBI and the SDNY, conducted an investigation of potential campaign finance violations by Michael Cohen and others (the “campaign finance investigation”).

7. As a result of this investigation, Michael Cohen was charged, by Information, with one count of causing an unlawful corporate contribution, in violation 52 U.S.C. §§ 30118(a) & 30109(d)(1)(A), and 18 U.S.C. § 2(b), and one count of making an excessive campaign contribution, in violation of 52 U.S.C. §§ 30116(a)(1)(A) & 30116(a)(7), 30109(d)(1)(A), and 18 U.S.C. § 2(b). Cohen was also charged with five counts of evasion of assessment of income tax liability, in violation of 26 U.S.C. § 7201, and one count of false statements to a bank, in violation of 18 U.S.C. §§ 1014 & 2. *See* Information, 18 Cr. 602, ECF No. 2. No other individuals were charged as a result of the SDNY’s campaign finance investigation.

8. On August 21, 2018, Michael Cohen pleaded guilty before the Hon. William H. Pauley III to the eight-count Information, pursuant to a plea agreement. 18 Cr. 602, ECF No. 7. On December 12, 2018, Judge Pauley sentenced Mr. Cohen to 36 months’ imprisonment (to be served concurrently with a sentence imposed by Judge Pauley in a separate criminal matter), 3 years of supervised release, restitution, forfeiture, and a fine. Judgment of conviction was entered on December 12, 2018. *See* 18 Cr. 602, ECF Nos. 29, 31.

9. In addition to the campaign finance investigation, I and other SDNY prosecutors, assisted by Special Agents of the FBI and SDNY, conducted a related investigation of whether certain individuals made false statements, gave false testimony or otherwise obstructed justice in connection with the campaign finance investigation (the “related investigation”). *See* July 15,

2019 Status Letter, 18 Cr. 602, ECF No. 48, Exh. 9 at 1 n.1. No individuals were charged as a result of the related investigation.

The Responsive Interview Records

10. In furtherance of the campaign finance and related investigations, prosecutors and/or Special Agents conducted a series of interviews of potential witnesses. SDNY prosecutors selected the witnesses to interview, discussed and determined in advance the investigative strategy for witness interviews, and in most cases led the interviews. In most cases, the interviews were memorialized in either a 302 prepared by an FBI Special Agent or an SDNY interview memo prepared by an SDNY Special Agent. The 302s and SDNY interview memos were prepared by FBI or SDNY Special Agents acting under the substantial direction of the prosecutors, and they were reviewed by prosecutors. The interview memoranda prepared by SDNY Special Agents are functionally very similar to the 302s prepared by FBI Special Agents. Both types of records document what occurred in the interviews.

11. EOUSA forwarded CREW's FOIA request to SDNY, as well as a FOIA request by another organization, American Oversight, which also sought interview records from the SDNY's campaign finance and related investigations. In response to both FOIA requests, I conducted a search for responsive 302s or other interview records in the possession of the SDNY. As a result of this search, I located a total of 30 interview records potentially responsive to one or both FOIA requests. In a few instances, the only record of an interview that I located consisted of handwritten notes prepared by a prosecutor or agent. It is my understanding that only 27 of the 30 interview records located by the SDNY remain at issue in this case.¹

¹ Two of the remaining three interview records were withheld in full pursuant to FOIA Exemption 3, 5 U.S.C. § 552(b)(3) ("Exemption 3"), and Federal Rule of Criminal Procedure 6(e) ("Rule 6(e)"). My understanding is that CREW is not challenging the Department's withholdings under Exemption 3 and Rule 6(e). The third interview record is a memorandum of interview prepared by a Special Agent with

12. These 27 interview records located by SDNY consist of 21 302s prepared by FBI Special Agents, three interview memoranda prepared by SDNY Special Agents, and three sets of handwritten notes, two of which were prepared by prosecutors (for the interviews dated 4/19/2018 and 1/14/2019, as identified on the EOUSA Index) and one of which was prepared by an FBI Special Agent (for the interview dated 4/6/2018, as identified on the EOUSA Index).

13. In addition to the interview records located by the SDNY, I understand that the FBI referred additional interview records (or sets of records) to EOUSA/SDNY for processing. The interview records referred by FBI consist of handwritten notes and/or documents associated with the 20 302s located in the SDNY's search, one 302 corresponding to a set of handwritten notes located in the SDNY's search, and five 302s relating to other witness interviews and any associated handwritten notes and/or documents shown to those witnesses. The 302s, handwritten notes, and the documents associated with the 302s that FBI referred to EOUSA/SDNY are reflected on the EOUSA Index.²

14. I have personally reviewed the responsive interview records (or sets of records) identified on the EOUSA Index, either in the course of the investigation, in response to the FOIA request, or both.

15. I understand that DOJ has withheld all of the interview reports (including 302s and SDNY interview memoranda), handwritten notes taken during interviews, and the compiled sets of documents used during the interviews in whole or in part pursuant to Exemption 5 of FOIA, 5

the Department of Treasury, Internal Revenue Service, Criminal Investigation Division. That interview memorandum is not responsive to CREW's FOIA request, and in any event would be withheld in full pursuant to Exemption 3 and 26 U.S.C. § 6103.

² The EOUSA Index does not identify documents that were obtained via grand jury subpoena, which were withheld in full pursuant to Exemption 3 and Rule 6(e) and I understand are no longer at issue. Similarly, the EOUSA Index does not identify documents that were covered by Exemption 7(E), which I understand is generally no longer at issue.

U.S.C. § 552(b)(5) (“Exemption 5”), and the work product privilege, as identified on the EOUSA Index. All of these records were prepared or compiled in anticipation of litigation. Prosecutors and/or Special Agents acting at the substantial direction of prosecutors conducted the witness interviews in connection with the prosecutors’ evaluation of whether criminal prosecutions were warranted. The interviews were conducted and recorded to gather and assess the extent to which evidence could be obtained to support criminal charges and that could be presented to a grand jury or at trial, and the document sets were compiled to facilitate the witness interviews. The prosecutors anticipated the potential for criminal charges during the investigation and at the time the witness interviews leading to the creation of interview reports and handwritten notes were conducted. The reports and notes were generated or compiled because of the prospect of litigation.

16. Disclosure of the interview reports, handwritten notes, and compiled document sets would reveal the prosecutors’ selection of witnesses to interview, as well as prosecutors’ mental impressions, legal theories, case analysis, and strategic decisions regarding the investigation. For all but five of those interviews, SDNY prosecutors conducted the questioning reflected in the interview reports and associated handwritten notes. Prosecutors also selected which documents (if any) would be used during the interviews, which are reflected in the groups of documents associated with certain interviews as reflected on the EOUSA Index.³ Disclosure of the questions asked or the documents used during the interview would reveal the topics discussed (and not discussed) with each witness, the focus and emphasis of the prosecutors, and their thinking about the substance of the case.

³ However, as stated above, I understand that the EOUSA Index does not reflect documents that are subject to FOIA exemptions that are not challenged by Plaintiff.

17. For the remaining five interviews, which were conducted on 4/10/2018, 4/20/2018, 5/17/2018 (two interviews), and 5/27/2018, Special Agents conducted the questioning reflected in the interview reports and handwritten notes, although in one case a prosecutor participated in the interview by telephone. With regard to the interviews conducted by Special Agents, prosecutors coordinated with the Special Agents in advance of the interviews and discussed with them the topics to be covered and certain questions to be asked. Accordingly, disclosure of these interview reports and notes would also reveal the topics, information, and conduct of particular interest to prosecutors, and their thinking about the substance of the case.

18. To the best of my knowledge, none of the interview reports or handwritten notes identified on the EOUSA Index have been disclosed in connection with any judicial or administrative proceedings to any person outside of the government or have otherwise been publicly disclosed.⁴ None of the reports or notes were shared with the respective witnesses or their counsel during the SDNY's investigation or Mr. Cohen's criminal case. With regard to the documents associated with particular witness interviews, the documents were shared with respective witnesses and their counsel during the interviews, but the witnesses and their counsel were not permitted to retain copies after the interviews. The government did not produce any criminal discovery relating to the campaign finance charges to Mr. Cohen or his counsel. Mr. Cohen pleaded guilty to the Information before any criminal discovery obligations were triggered. Mr. Cohen himself was not interviewed by prosecutors in the SDNY investigation until October 2018, after he pleaded guilty to the Information in August 2018.

⁴ The names of some of the individuals who sat for interviews have been mentioned in publicly disclosed government documents relating to the SDNY's investigation and prosecution. However, to the best of my knowledge, those individuals' participation in the interviews has not been publicly disclosed by the individuals or acknowledged by the government.

19. The interview reports and notes reflect the substance of the discussions that occurred during the interviews. Accordingly, and as discussed above, release of the interview reports would reveal prosecutors' mental impressions, legal theories, case analysis, and strategic decisions regarding the investigation. However, the interview reports do not weigh evidence or analyze the law, nor do they discuss prosecutors' reasoning as to whether or not to bring charges against any individual. If released, the interview reports would provide only a snapshot of uncontextualized evidence.

20. With respect to the sets of documents used during the interviews, the SDNY prosecutors and investigators discussed these documents with the witnesses as part of the SDNY's investigations in order to gain a better understanding of the facts of the case, with the ultimate goal of helping SDNY prosecutors determine whether it would be appropriate to bring criminal charges as a result of the investigations. Within this category, I understand that the documents that remain at issue in this case were either publicly available or were records that the prosecutors or investigators believed that the witnesses would have already been aware of.

21. I understand that DOJ has withheld the responsive interview reports identified on the EOUSA Index—including 302s, SDNY interview memoranda, handwritten notes, and documents shown to witnesses—in whole or in part pursuant to Exemptions 6 and 7(C), to protect the personal privacy of the witnesses who provided the interviews, third parties of investigative interest, including uncharged subjects of investigation, and/or other third parties mentioned in the documents.

22. I am aware that four of the witnesses whose interviews are reflected in the interview records remaining at issue—Michael Cohen, Keith Davidson, John Gauger, and Robert Costello—have publicly acknowledged that they cooperated with the investigation by providing

interviews to prosecutors and/or investigators. I understand that DOJ has released redacted records (specifically, 302s and associated handwritten notes) reflecting interviews with Mr. Cohen, Mr. Davidson, Mr. Gauger, and Mr. Costello, as identified on the EOUSA Index. Other than Mr. Cohen, Mr. Davidson, Mr. Gauger, and Mr. Costello, I am not aware that any witnesses whose interviews are reflected in the interview records identified on the EOUSA Index have made public statements disclosing or acknowledging their cooperation.

23. Substantial information about the conduct of Mr. Cohen and others has been publicly released in the criminal case. *See* 18 Cr. 602, ECF Nos. 2 (information), 7 (transcript of plea), 27 (government's sentencing submission), 48 (search warrant applications, affidavits and warrants for premises, cell phones, hotel room, email and i-Cloud accounts, and devices associated with Michael Cohen, disclosed in response to unsealing motion and court order).

24. However, apart from Mr. Cohen and (as a result of DOJ's FOIA releases) Mr. Davidson, Mr. Gauger, and Mr. Costello, the government has not publicly disclosed or acknowledged that any other individual cooperated in the investigation by providing statements to investigators. Except as necessary to conduct a prosecution, the SDNY generally does not disclose or acknowledge whether or not specific individuals have provided interviews or otherwise cooperated with an investigation. In my experience as a prosecutor, many witnesses would be reluctant to voluntarily provide information in the course of an investigation if they believed their statements would become public as a matter of course under FOIA.

25. The government also has not acknowledged which individual(s), other than Mr. Cohen, were the subject(s) of the SDNY's campaign finance investigation or the related investigation. It is the SDNY's general practice not to publicly identify individual subjects of criminal investigation, or other persons of investigative interest, who are not charged. If the

substance of the interview records were released, the questions asked of the witnesses would tend to reveal which conduct was of particular interest to prosecutors, and thus which individual(s) were the subject(s) of the investigations or otherwise of investigative interest.

26. Particularly in light of the information that has been made public in the criminal case and media reporting on that matter, I believe all but one of the individuals whose interviews are withheld in full would be identifiable based on the substantive content of the interview reports even if their names and other personally identifying information (such as addresses or places of employment) were redacted. I believe roughly half of the interviewees would be identifiable by the general public based on the context of the interviews, the topics covered during the interviews, information made public in Cohen's criminal case, and media reporting on the case. The rest, with one exception, may not be identifiable by the general public, but I believe they likely would be identifiable to their personal or business associates based on the context and content of the interviews and publicly available information. One individual likely would not be identifiable, but that witness's interview report contains very little substantive information and pertained to a lead that turned out to be a dead end, as described below.

27. Two of the interviews conducted by Special Agents, both of which took place on 5/17/2018 as identified on the EOUSA Index, were undertaken to follow up on a lead that turned out to be a dead end. Disclosure of the information in those two interviews would be particularly invasive of the personal privacy of the witnesses and third parties mentioned in the document given that the information could not be verified or substantiated.

28. With regard to the documents shown to witnesses identified on the EOUSA Index, release of these documents would tend to identify either the individual who was being interviewed or third parties, including uncharged subjects of the investigation or other

individuals of investigative interest, and/or reveal other undisclosed personal information about third parties. For many of these documents, I believe that in light of the context and substantive content of the interviews together with other publicly available information, even release of redacted versions of these documents would tend to identify the witnesses being interviewed and/or uncharged subjects of investigation or other individuals of investigative interest, reveal other personal information about third parties, or both.

The Responsive Memoranda and Emails

29. After EOUSA forwarded the FOIA request to SDNY, SDNY identified a total of seven records that would arguably constitute “prosecution memoranda” responsive to the FOIA request.⁵ In searching for and processing this category of records, the Department broadly construed the term “prosecution memorandum” to include any memorandum that analyzes potential charges that could be brought against a potential defendant, or the functional equivalent of such memorandum. I understand that five prosecution memoranda remain at issue, dated March 30, 2008, August 9, 2018, August 18, 2018, February 22, 2019, and March 1, 2019, as reflected on the EOUSA Index.⁶

30. I understand that OIP also referred certain memoranda and emails to EOUSA for processing.⁷ As reflected on the EOUSA Index, I understand that the following non-duplicative,

⁵ In some cases, only discrete portions of the identified records were responsive to the FOIA request, and only those responsive portions were processed under FOIA.

⁶ The other two memoranda located by SDNY, or the responsive portions of such memos, were withheld in full under Exemption 3 and Rule 6(e), and I understand are no longer at issue.

⁷ Some of the memoranda referred by OIP were duplicative of the prosecution memoranda identified by the SDNY, and therefore were excluded from processing. Other emails and memoranda referred by OIP, or the responsive portions of such records, were withheld in full under Exemption 3 and Rule 6(e), and I understand are no longer at issue.

responsive OIP records (or groups of records) remain at issue: (i) an email dated November 29, 2018, summarizing certain pending investigations; (ii) a memorandum dated December 15, 2019, summarizing certain investigations; (iii) an email forwarding the December 15, 2019 memorandum; (iv) an email chain dated February 24, 2019, forwarding the February 22, 2019 prosecution memorandum; and (v)-(vi) two email chains dated March 1-2, 2019, forwarding the March 1, 2019 prosecution memorandum. I also understand that DOJ's Criminal Division also referred five filter review memoranda to EOUSA for processing, of which two remain at issue.⁸

31. It is my understanding that the Department withheld all of the responsive memoranda in full under Exemption 5 because they are protected by the work product privilege and the deliberative process privilege. As explained below, all of the memoranda were prepared in anticipation of litigation and would reflect prosecutors' mental impressions and strategies. In addition, all of the memoranda are both predecisional and deliberative. Certain emails were also withheld in part under Exemption 5 and the work product and deliberative process privileges.

32. The March 30, 2018, August 9, 2018, and August 18, 2018 Prosecution Memoranda: As set forth on the EOUSA Index, each of these memoranda analyzes potential (March 30) or proposed (August 9 and 18) charges against Michael Cohen based upon the information available to prosecutors at the time. The March 30 and August 9, 2018 memoranda were internal to SDNY. They were prepared by AUSAs for review by SDNY Executive Staff, including the Deputy U.S. Attorney who was acting as the U.S. Attorney for the campaign finance investigation because the U.S. Attorney was recused from the investigation. The August 18, 2018 memorandum was prepared by the Deputy U.S. Attorney and the prosecution team for review and consideration by the Deputy Attorney General and certain of his staff.

⁸ The remaining three filter memoranda referred by the Criminal Division were withheld in full pursuant to Exemption 3 and Rule 6(e).

33. These three memoranda are classic prosecution memoranda. They evaluate whether or not the evidence available to prosecutors at the time of each memorandum is or may be sufficient to support specific criminal charges. The August 9 and 18, 2018 memoranda contain recommendations as to which charges should be instituted, and the March 30, 2018 memorandum was prepared for the principal purpose of determining whether we had sufficient evidence to warrant the significant overt investigative step of conducting searches on premises and electronic devices possessed by Cohen. They were prepared in anticipation of a potential prosecution of Michael Cohen for campaign finance violations.

34. All three memoranda are also predecisional and deliberative. All three are prosecution memoranda that preceded the Deputy U.S. Attorney's determination to institute criminal charges against Cohen.⁹ The March 30, 2018 memorandum also preceded the decision to take overt investigative steps in the campaign finance investigation. Search warrants were subsequently obtained and executed on April 9, 2018. The memoranda are deliberative because they consider and evaluate whether or not the available evidence justifies the institution of criminal charges and/or the taking of specific investigative steps. They formed an important part of the consultative process of deciding whether to institute campaign finance charges against Cohen, and in the case of the March 30, 2018 memorandum, whether to proceed to seek search warrants for Cohen's property.

35. The November 29, 2018 Email and the December 15, 2018 Memorandum and Email:
The November 29, 2018 email and December 15, 2018 memorandum were prepared by the Deputy U.S. Attorney and the prosecution team at the request of senior officials in the Office of

⁹ Although the decision to institute charges against Cohen was made by the Deputy U.S. Attorney, it is my understanding that the August 18, 2018 memorandum evaluating the proposed charges was provided to the Deputy Attorney General, for his consideration and any input, prior to the filing of any criminal charges.

the Deputy Attorney General (“ODAG”). Each describes the status of the campaign finance and related investigations, among other sensitive investigations, as well as contemplated investigative steps.¹⁰ The December 15, 2018 email also contains privileged information regarding a request from ODAG to SDNY.

36. On or about November 29, 2018, SDNY received a request from ODAG to provide a list of certain current open investigations, along with current investigative steps. The November 29, 2018 email, from the Deputy U.S. Attorney to an official at ODAG, contains the requested list. The email identifies five then-pending investigations, including the campaign finance investigation and the related investigation. Each entry in the list contains a brief description of the investigation, its status, and anticipated investigative steps. The entry referring to the campaign finance investigation contains three sentences.

37. SDNY was subsequently asked by ODAG to prepare memoranda addressing certain investigations then being conducted by the SDNY. On December 15, 2018, the Deputy U.S. Attorney sent two memoranda to a senior ODAG official by email.¹¹ I understand the December 15, 2018 email from the Deputy U.S. Attorney has been produced to CREW with certain redactions.

38. The December 15, 2018 memorandum, from the Deputy U.S. Attorney to the Deputy Attorney General, was prepared in response to ODAG’s request. It addresses the current status of four then-pending investigations being conducted by SDNY, including the campaign finance

¹⁰ The portions of the email and memorandum concerning the related investigation were withheld in full under Exemption 3 and Rule 6(e), and therefore are no longer at issue. The email and memorandum also contain summaries of other then-pending investigations that are not responsive to the FOIA request and therefore were not processed for exemptions other than Exemption 5.

¹¹ Only one of the two memoranda attached to the December 15, 2018 email is responsive to CREW’s FOIA request.

and related investigations. The section of the memorandum addressing the campaign finance investigation contains two paragraphs.

39. The responsive portions of the November 29, 2018 email and the December 15, 2018 memorandum were prepared in anticipation of litigation, specifically, the potential prosecution of individuals other than Michael Cohen for campaign finance violations or for making false statements, giving false testimony, or otherwise obstructing justice in connection with the campaign finance investigation. The withheld portions of the Deputy U.S. Attorney's December 15, 2018 email were also prepared in anticipation of the potential prosecutions addressed in the memoranda attached to the email.

40. The November 29, 2018 email and December 15, 2018 memorandum are also predecisional and deliberative. It is my understanding that they were prepared at the request of ODAG for the purpose of briefing Department leadership regarding the status and contemplated investigative steps in the campaign finance and related investigations, among other sensitive investigations. The withheld portions of the Deputy U.S. Attorney's December 15, 2018 email are also predecisional and deliberative. They reveal a request by ODAG for information regarding the status of certain pending and sensitive investigations, for the purpose of briefing senior DOJ leadership.

41. The February 22, 2019 Memorandum and the March 1, 2019 Memorandum and Email: The February 22 and March 1, 2019 memoranda were prepared by the Deputy U.S. Attorney and the prosecution team at the request of the Attorney General or his staff, in connection with a meeting between the Attorney General and the Deputy U.S. Attorney on or about February 25, 2019. The February 22, 2019 memorandum summarized certain then-pending sensitive investigations being conducted by the SDNY, including the related

investigation. It is my understanding that the meeting between the Attorney General and the Deputy U.S. Attorney took place on or about February 25, 2019. The March 1, 2019 memorandum was prepared to provide additional information and to respond to certain questions asked by the Attorney General at the February 25 meeting. On March 1, 2019, the Deputy U.S. Attorney sent the March 1, 2019 memorandum to a senior ODAG official by email. I understand the March 1, 2019 email from the Deputy U.S. Attorney has been produced to CREW with certain redactions, including a description of the analysis set forth in the memorandum.

42. The February 22 and March 1, 2019 prosecution memoranda and the withheld portions of the March 1, 2019 email from the Deputy U.S. Attorney were prepared in anticipation of litigation. Specifically, the responsive portions of the February 22, 2019 memorandum and the March 1, 2019 memorandum were prepared in anticipation of the potential prosecution of one or more individuals for making false statements, giving false testimony or otherwise obstructing justice in connection with the campaign finance investigation. The March 1, 2019 memorandum and the withheld portions of the March 1, 2019 email were also prepared in anticipation of potential litigation related to the campaign finance investigation and prosecution of Mr. Cohen. I am unable to publicly provide specific information regarding the nature of the potential litigation without revealing privileged information. If the Court deems it necessary, I can provide more detailed information in an additional declaration provided ex parte and under seal.

43. The February 22 and March 1, 2019 prosecution memoranda and the withheld portions of the March 1, 2019 email are also predecisional and deliberative. As noted, the February 22, 2019 memorandum was prepared to brief the Attorney General about the status of, and contemplated investigative steps in, certain pending SDNY investigations, including the

related investigation, in advance of a meeting between the Attorney General and the Deputy U.S. Attorney on or about February 25, 2019. The March 1, 2019 memorandum was prepared to provide additional information and respond to certain questions asked during the February 25 meeting. Both memoranda were prepared by the SDNY, at the request of the Attorney General or his staff, to facilitate the Attorney General's deliberations and decisions with regard to the campaign finance investigation and prosecution and the related investigation. The withheld portions of the Deputy U.S. Attorney's March 1, 2019 email are also predecisional and deliberative. They reveal the nature of a request for additional information and analysis, to inform deliberations by the Attorney General. I am unable to provide specific information about the nature of the deliberations and decisions at issue without revealing privileged information. If the Court deems it necessary, I can provide more detailed information in an additional declaration provided ex parte and under seal.

44. The April 8, 2018 and June 12, 2018 Filter Team Memoranda: The April 8, 2018 and June 12, 2018 memoranda (collectively, the "filter team memoranda") were prepared by the SDNY investigative team for the SDNY filter team(s) responsible for reviewing materials obtained via search warrants to identify, and filter out, any privileged or otherwise protected information. Each of these memoranda contains background information about the case and the individual(s) involved, and describes what the filter team is being asked to do. The filter team memoranda were prepared in anticipation of the prosecution of Michael Cohen for campaign finance charges, to permit the SDNY to appropriately review documents obtained via search warrants.

45. The filter team memoranda are also predecisional and deliberative. They were prepared in part to support the SDNY investigative team's request to the Criminal Division's

Office of Enforcement Operations (“OEO”), for authorization of certain investigative steps. As part of its approval process, OEO requires that requests for authorization be accompanied by appropriate filter team memoranda. It is my understanding that OEO considers such memoranda, along with other information, in determining whether to authorize certain investigative steps. I understand that additional information concerning OEO’s deliberative process is provided in the Declaration of Drew Lavine, U.S. Department of Justice Criminal Division.

46. I understand that portions of the above-described memoranda and emails were withheld under Exemptions 6 and 7(C) because they would reveal several categories of personal information, including: (a) who else, besides Mr. Cohen, were the subject(s) of, or person(s) of investigation interest in, the campaign finance investigation and the related investigation, but were never charged, (b) the identities of, and information about, individuals, other than Mr. Cohen, whose property was the subject of a search warrant, (c) the identities of individuals, other than Cohen, Davidson, Gauger, and Costello, who cooperated with the SDNY’s investigations by providing interviews or other information, and information provided by such individuals, and (d) the identities of and personal information about other third parties identified in the records.

The Responsive Search Warrant Materials

47. Both SDNY and FBI identified search warrant materials, including applications and supporting affidavits, executed search warrants, and FBI 302s documenting the execution of the search warrants, that are responsive to the FOIA requests to EOUSA and/or FBI. I understand that the parties agreed that search warrant returns, that is, the materials obtained pursuant to the

search warrants, need not be searched for, reviewed, or processed. The search warrant materials remaining at issue are reflected on the EOUSA Index.¹²

48. As reflected on the public docket of Mr. Cohen's criminal case, investigators sought and obtained search warrants on April 8, 2018, to search various property of Mr. Cohen to obtain evidence in furtherance of the campaign finance investigation. Those warrants were executed on April 9, 2018.

49. At or about the same time that search warrants were obtained and executed with regard to Mr. Cohen's property, investigators also sought, obtained and executed search warrants with regard to certain property—namely, the cellphones of certain third parties—to obtain evidence in furtherance of the campaign finance investigation.

50. On or about July 6, 2018, investigators sought, obtained, and executed additional search warrants with regard to certain property—namely, the email accounts and stored electronic communications of certain third parties—in furtherance of the campaign finance investigation.

51. All of the responsive search warrant materials reflected on the EOUSA index were filed or issued under seal and remain under seal.

52. As noted above, materials related to the execution of search warrants with regard to property of Michael Cohen have been publicly filed in redacted form in Mr. Cohen's criminal cases. However, to the best of my knowledge, the government has not officially acknowledged or disclosed who else besides Mr. Cohen was the subject of search warrants or other process in connection with the SDNY's investigation.¹³

¹² Certain search warrant materials were withheld in full under Exemption 3 and Rule 6(e), and therefore are no longer at issue.

¹³ One or more of the individual(s) subject to these search warrants have been mentioned in publicly disclosed government documents related to the SDNY's investigation and prosecution.

53. The search warrant materials reflected on the EOUSA index were withheld in full under Exemptions 6 and 7(C) because their release would likely reveal the identities of individuals, other than Mr. Cohen, whose property was seized in connection with that investigation and/or who were subject(s) of or person(s) of investigative interest in the campaign finance investigation.

54. The search warrant applications submitted on April 8, 2018, to seize certain property of certain third parties are in many respects very similar to the search warrant applications that were filed in redacted form in Mr. Cohen's criminal case. In particular, the Cohen search warrant applications and the third-party search warrant applications contain a section describing the campaign finance scheme in substantial detail. The search warrant applications submitted on or about July 6, 2018, to seize certain property of certain third parties are also similar to the search warrant applications that were filed in redacted form in Mr. Cohen's criminal case, although they refer to certain additional information gathered by investigators between April and July 2018.

55. I have evaluated whether the search warrant documents that remain at issue can be released with redactions in a way that would avoid identifying the subjects of the search warrants. I have concluded that even if their names, cell phone numbers, and addresses were redacted, the redacted materials would still tend to identify the individuals whose property was seized pursuant to the search warrants. Even with redactions, when these documents are considered together and alongside other publicly available information (including but not limited to the search warrant materials for Mr. Cohen's property that were publicly filed in redacted form on the docket in Mr. Cohen's criminal case), a reader would likely be able to identify the

However, to the best of my knowledge, neither the government nor the individual(s) have publicly acknowledged or disclosed that property of the individual(s) was seized pursuant to a search warrant.

subjects of the search warrants. This judgment is based on my belief that when these documents are viewed as a set, they offer various contextual clues from which readers could piece together the likely subjects of the search warrants, especially when compared with available public information. I cannot discuss these clues with further specificity without revealing the identities of the subjects of the search warrants.

56. I have also determined that these individuals retain substantial privacy interests in avoiding disclosure of the fact that their personal communications were seized in connection with the SDNY's investigation. This is true notwithstanding the public disclosures about the investigation in the context of Mr. Cohen's criminal case.

[SIGNATURE PAGE TO FOLLOW]

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 23rd day of July, 2021.
New York, New York


THOMAS McKAY

EXHIBIT B

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

----- X
CITIZENS FOR RESPONSIBILITY AND ETHICS
IN WASHINGTON,

Plaintiff,

19 Civ. 2267 (EGS)

-VS-

UNITED STATES DEPARTMENT OF JUSTICE,

Defendant.
----- X

DECLARATION OF EBONY GRIFFIN

I, Ebony Griffin, pursuant to 28 U.S.C. § 1746, declare the following:

1. I am an Attorney-Advisor with Freedom of Information Act/Privacy Act (“FOIA/PA”) staff of the Executive Office for United States Attorneys (“EOUSA”), United States Department of Justice (“DOJ” or “the Department”). I have been employed in this capacity since December 2018.
2. As an attorney with EOUSA, I work as a liaison among divisions and offices of DOJ, providing advice on responding to requests for access to information located in the United States Attorney’s Office (“USAO”) in each of the 93 districts. Further, I review the adequacy of searches conducted in response to FOIA requests and the determinations made by EOUSA staff to ensure that the processing of records and EOUSA’s determinations to disclose or withhold responsive records are made in accordance with the FOIA, Privacy Act, and DOJ regulations at 28 C.F.R. § 16.3 *et. seq.* and § 16.40 *et seq.*, and pursuant to 5 U.S.C. § 552 and 5 U.S.C. § 552a.

3. The statements made in this declaration are based on my personal knowledge, as well as information obtained and reviewed in the course of my official duties.

4. I submit this declaration to provide information concerning the July 18, 2019 FOIA request submitted to EOUSA by plaintiff Citizens for Responsibility and Ethics in Washington (“CREW” or “plaintiff”), and EOUSA’s processing of documents deemed potentially responsive to that request.

5. Enclosed as **Exhibit 1** is an index (“EOUSA index”) describing the records processed by EOUSA in this case that remain in dispute. As discussed below, EOUSA processed records that were located by EOUSA’s own search, as well as records that were located by other Department components and that were subsequently referred to EOUSA. Further, as discussed below, I understand that plaintiff does not challenge certain withholdings made by the Department, and the EOUSA index does not address those unchallenged withholdings. Accordingly, the EOUSA index consists only of the records that were (1) ultimately processed by EOUSA, and (2) not fully covered by an unchallenged withholding.

6. The records discussed in the EOUSA index generally fall into three categories:

a. (a) *Interview Records*, including Federal Bureau of Investigation (“FBI”) form FD-302 (“302”) reports of interviews, interview memoranda, handwritten notes, and documents associated with witness interviews, identified by the Southern District of New York (“SDNY”) and/or FBI;

b. (b) *Internal Memoranda and Emails*, including prosecution memoranda identified by the SDNY, other memoranda and emails identified by the Department’s Office of Information Policy (“OIP”), and filter review memoranda identified by the Department’s Criminal Division; and

c. (c) *Search Warrant Materials*, including applications and supporting affidavits, search warrants and associated sealing orders, and FD-302 reports of execution of search warrants, identified by SDNY and/or FBI.

ADMINISTRATIVE HISTORY OF PLAINTIFF'S FOIA REQUEST

7. Plaintiff submitted a FOIA request to EOUSA on July 18, 2019. The FOIA request sought records related to the SDNY's investigation of (1) who, besides Michael Cohen, was involved in, and may be criminally liable for, the two campaign finance violations to which Mr. Cohen pleaded guilty, and (2) whether certain individuals made false statements, gave false testimony, or otherwise obstructed justice in connection with that investigation. A true and accurate copy of Plaintiff's request is attached as **Exhibit 2**.

8. The parties subsequently agreed that EOUSA would search for three categories of responsive records: (a) interview reports, (b) prosecution memoranda, and (c) search warrant applications and supporting affidavits. ECF No. 9.

9. Plaintiff also submitted FOIA requests to FBI, the Department's Office of Information Policy ("OIP"), and the Department's Criminal Division, seeking records concerning the same SDNY investigations. FBI, OIP, and the Criminal Division referred certain records to EOUSA for processing.

10. By letter dated February 7, 2020, SDNY noted that it had located and processed 30 interview records. These interview records consisted of either interview reports or handwritten notes associated with interviews. EOUSA produced five responsive records in part and withheld 25 responsive records in full. On June 19, 2020, two of those records were reprocessed and produced in part.

11. By letter dated March 20, 2020, SDNY noted that it had located and processed seven arguably responsive prosecution memoranda. The letter noted that for purposes of identifying potentially responsive records in this context, SDNY had treated as a prosecution memorandum any non-draft memorandum that analyzes potential charges that could be brought against a potential defendant, or the functional equivalent of such a memorandum. These memoranda were withheld in full.

12. By letters dated November 24, 2020 and December 23, 2020, SDNY noted that it had located and processed certain search warrant materials that were being withheld in full. The November 24, 2020 letter covered 169 pages of records, and the December 23, 2020 letter covered 18 pages of records.

13. By letter dated March 20, 2020, SDNY informed plaintiff that the Criminal Division had referred five memoranda to EOUSA for processing, and that EOUSA was withholding these records in full.

14. By letter dated April 21, 2021, SDNY informed plaintiff that OIP had referred 37 pages of records to EOUSA for processing, that only 9 of those pages were responsive to plaintiff's FOIA requests and were not duplicates, and that these 9 pages were withheld in full.

15. By letters dated July 22, September 3, September 30, October 26, and November 24, 2020, SDNY informed plaintiff that FBI had referred certain records to EOUSA for processing. These documents comprised certain interview records and materials related to search warrants. EOUSA processed these records and produced non-exempt portions thereof to plaintiff.

16. As described below, EOUSA made certain withholdings of information that is covered by one or more of FOIA's statutory exemptions. I understand that plaintiff does not

challenge some of the Department's withholdings. Specifically, the parties filed a joint status report indicating that plaintiff does not challenge the Department's withholdings made pursuant to Exemption 3 and Federal Rule of Criminal Procedure 6(e) and Exemption 7(E).¹ ECF No. 21. I further understand that plaintiff does not challenge the Department's withholdings of names of certain lower-level government employees under Exemptions 6 and 7(C). This declaration, as well as the EOUSA index, do not further discuss materials that have been withheld pursuant to unchallenged exemptions.² In addition, I understand that plaintiff has agreed that the Department need not process segregable sections of memoranda that concern entirely different topics than those responsive to plaintiff's FOIA request. For example, if an email or memorandum referred to multiple investigations, SDNY only processed the responsive sections relating to the campaign finance investigation or the related investigation into perjury, obstruction of justice, and similar crimes.³

EOUSA'S SEARCH FOR POTENTIALLY RESPONSIVE RECORDS

17. EOUSA forwarded CREW's FOIA request to SDNY. In response to the FOIA request, SDNY conducted a search for responsive records in the possession of the SDNY. The Declaration of Thomas McKay ("McKay Declaration"), Assistant United States Attorney ("AUSA") in the Office of the United States Attorney for the Southern District of New York ("SDNY"), filed contemporaneously with this declaration, describes the scope of the search for responsive records that was performed by the SDNY.

¹ I understand that plaintiff inquired into one of the Department's redactions made pursuant to Exemption 7(E). That withholding is principally discussed in the Declaration of Michael G. Seidel ("Seidel Declaration"), which has been contemporaneously filed with this declaration.

² Should any of these withholdings later be disputed, EOUSA reserves the right to submit additional declarations justifying the application of any and all applicable exemptions to information covered by exemptions that EOUSA currently understands are no longer at issue.

³ These investigations are discussed further in the Declaration of Assistant U.S. Attorney Thomas McKay.

18. Plaintiff does not challenge the adequacy of the Department's search. *See* ECF No. 21.

EOUSA'S PROCESSING OF RESPONSIVE RECORDS

19. As noted above, the records that remain at issue and are identified on the EOUSA index generally fall into three categories: (a) interview records, (b) internal memoranda and emails, and (c) search warrant materials.

20. **Interview Records.** EOUSA processed responsive interview records that were located by either SDNY, FBI, or both, and then referred to EOUSA. Of the interview records that remain at issue, 16 have been released in part, and the rest have been withheld in full.

21. The records that have been released in part consist of 302s, interview memoranda, and handwritten notes that are associated with interviews for which the witnesses have publicly acknowledged that they provided interviews as part of the investigation. For these records, the Department generally produced redacted versions that revealed the names of the witnesses and certain information about the interview (such as date and location information), while redacting the substance of what was said in the interviews. However, in one instance, the Department also produced an excerpt of a 302 memorializing an interview of Mr. Cohen, where the excerpted information had been publicly disclosed in the Mueller Report. The redacted material has been withheld pursuant to Exemption 5 and the attorney work product privilege. The redacted material of these records is also withheld (in whole or in part) pursuant to Exemptions 6 and 7(C).

22. The remaining interview records – which comprise the remaining 302s, interview memoranda, and handwritten notes associated with interviews for which neither the witnesses nor the government have publicly acknowledged the witnesses' participation in interviews, as

well as certain documents discussed with witnesses during interviews⁴ – have been withheld in full pursuant to Exemption 5 and the attorney work product privilege. Many of these records were also withheld in full or in part pursuant to Exemptions 6 and 7(C) to protect the personal privacy of the witnesses or third parties. The specific exemptions applied to each record are noted on the EOUSA Declaration, with the exception of Exemptions 3 (Fed. R. Crim. P. 6(e)) and 7(E), which are no longer at issue.

23. I understand that 27 interview records at issue here were also at issue in a separate FOIA case pending in the Southern District of New York. *See Am. Oversight v. U.S. Dep’t of Justice*, 19-cv-8215, 2021 WL 964220 (S.D.N.Y. Mar. 15, 2021), *appeal filed* ECF No. 48 (S.D.N.Y. May 13, 2021). These records include: 21 302s prepared by FBI Special Agents, 3 interview memoranda prepared by FBI Special Agents, 2 sets of handwritten notes prepared by prosecutors, and 1 set of handwritten notes prepared by an FBI Special Agent. I understand that the *American Oversight* court upheld the Department’s decision to withhold these records in full or in part as attorney work product. *See Am. Oversight*, 2021 WL 964220, at *4. The EOUSA index identifies these records by stating “upheld in AO” in the column denoting the Department’s work product assertions. In addition, the Department’s work product assertion for one record was also upheld in a separate case, *Leopold v. U.S. Dep’t of Justice*, 487 F. Supp. 3d 1, 15 (D.D.C. 2020). The EOUSA index identifies that record by stating “upheld in AO and Leopold” in the column denoting the Department’s work product assertions.

⁴ With respect to the documents discussed with witnesses during interviews, some of these records are no longer in dispute because they were obtained via grand jury subpoena and have been withheld pursuant to Exemption 3 and Federal Rule of Criminal Procedure 6(e) and/or Exemption 7(E).

24. **Internal Memoranda and Emails.**⁵ Thirteen memoranda and emails or email chains remain at issue and are reflected on the EOUSA Index. These records were either located by SDNY, or were located by OIP or the Criminal Division and then referred to EOUSA/SDNY for processing. Five of these records are emails or email chains, which have been released in part. The remaining eight records are memoranda that have been withheld in full. The Department withheld the information contained within these records pursuant to Exemption 5 and the attorney work product and deliberative process privileges.⁶ Some of the material in the memoranda and emails is also withheld pursuant to Exemptions 6 and 7(C). Two of these records are “filter” memoranda located by the Criminal Division.

25. **Search Warrant Materials.** Both SDNY and FBI identified search warrant materials, including applications and supporting affidavits, executed search warrants, and FBI 302s documenting the execution of the search warrants, that are responsive to the FOIA requests to EOUSA and/or FBI. All search warrant materials were withheld in full pursuant to FOIA Exemptions 6 and 7(C).⁷

DESCRIPTION OF INFORMATION WITHHELD AND RATIONALE FOR WITHHOLDING

Exemption 5 – Attorney Work Product and Deliberative Process Privilege

26. Exemption 5 exempts from disclosure “inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.” 5 U.S.C. § 552(b)(5). All the records withheld in this instance are

⁵ In some instances, the Department only processed responsive sections of memoranda pursuant to the parties’ agreement noted in paragraph 16.

⁶ Additional discussion of these materials and the applicable privileges appears in the Declaration of Timothy Ziese (“Ziese Declaration”) and the Declaration of Drew Lavine (“Lavine Declaration”), filed contemporaneously with this declaration.

⁷ Certain search warrant materials were withheld pursuant to Exemption 3 and Rule 6(e), and therefore are no longer at issue

inter-agency or intra-agency communications exchanged within the Department and, accordingly, satisfy the threshold requirement of Exemption 5.

27. Both the attorney work-product privilege and the deliberative process privilege fall within the scope of a privilege against civil discovery covered by Exemption 5.

28. The attorney work-product privilege shields material that is “prepared in anticipation of litigation” by or for a “party or its representative,” including the party’s attorney or agent. *See* Fed. R. Civ. P. 26(b)(3)(A). The work product privilege is intended to permit attorneys to assemble information, separate relevant from irrelevant facts, prepare legal theories, and develop trial strategies without undue interference. Because the work product doctrine protects any part of a document prepared in anticipation, records withheld pursuant to the work product privilege are often withheld in their entirety under Exemption 5.

29. The deliberative process privilege protects the quality of agency decision-making by permitting open and frank discussion between subordinates and superiors, protecting against premature disclosure of proposed policies, and protecting against the public confusion that might result from disclosure of reasons and rationales that were not in fact ultimately grounds for an agency’s action. To qualify for the deliberative process privilege, an agency record must be both “pre-decisional” and “deliberative.” Information is predecisional if it was generated as part of an agency’s deliberative process, prior to a relevant decision. Information is deliberative if it reflects the opinions, recommendations, and deliberations that are part of the give and take by which the government made its decision.

30. **Interview Records.** The withheld portions of the interview records were withheld pursuant to Exemption 5 and the attorney work product privilege. The withheld portions of the

interview records constitute attorney work product for the reasons set forth in the McKay Declaration.

31. **Filter Memoranda.** The filter memoranda located by the Criminal Division and referred to EOUSA have been withheld pursuant to Exemption 5 and the attorney work product privilege and the deliberative process privilege. These memoranda were prepared in anticipation of litigation and thus constitute attorney work product for the reasons set forth in the McKay Declaration and the Lavine Declaration. These memoranda are also predecisional and deliberative and thus protected by the deliberative process privilege for the reasons set forth in the McKay Declaration and the Lavine Declaration.

32. **Other Memoranda and Emails.** The remaining memoranda and emails, which are identified on the EOUSA index as having been located by SDNY or the Criminal Division, were withheld in full or in part pursuant to Exemption 5 and the attorney work product privilege and the deliberative process privilege. The relevant portions of these records were prepared in anticipation of litigation and therefore constitute attorney work product for the reasons set forth in the McKay Declaration and the Ziese Declaration. The relevant portions of these records are also predecisional and deliberative and thus protected by the deliberative process privilege for the reasons set forth in the McKay Declaration and the Ziese Declaration.

Foreseeable Harm

33. Disclosure of the portions of these records withheld under Exemption 5 would foreseeably result in a harm to an interest protected by Exemption 5 and the work product privilege and/or deliberative process privilege, for the reasons set forth below.

34. Release of the interview records (including 302s, interview memoranda, handwritten notes, and documents discussed during the interviews) would reasonably be

expected to harm an interest protected by Exemption 5 and the work product privilege. Disclosure of these records would reveal the mental impressions, assessments, strategies, and legal theories of the prosecutors involved in the investigation, contrary to the attorney work product doctrine's purpose of allowing attorneys to create trial preparation materials without undue fear of the materials being discoverable. Prosecutors' decisions regarding whom to interview and when, the topics to cover or avoid during the interview, and the specific areas of emphasis could be revealed by reading and analyzing the interview records. SDNY's investigations encompassed a variety of potential criminal violations, including campaign finance violations, bank fraud, tax evasion, obstruction of justice, false statements, and perjury. Criminal investigations of these types of violations occur frequently in U.S. Attorneys' Offices throughout the country. Public disclosure of the contents of the interview records at issue in this case, and others like them, would inhibit the flexibility with which future prosecutors might structure and pursue similar investigations. In addition, should these documents be publicly disclosed, it would foreclose the Department from being able to assert a viable litigation privilege to shield them from discovery to the extent they are sought in future civil litigation.

35. Disclosure of the emails and memoranda that are protected by the attorney work product and deliberative process privileges would also harm an interest protected by Exemption 5 and the attorney work product and deliberative process privileges. For all categories of emails and memoranda discussed below, disclosure of attorney work product-protected material would harm an interest protected by Exemption 5 because it would prevent the Department from being able to assert a viable privilege to the extent these records are sought in future civil litigation. Additional harms are discussed below.

36. As discussed in the McKay Declaration, some of the memoranda withheld by the Department consist of “classic” prosecution memoranda that evaluate whether available evidence would be sufficient to support specific criminal charges. The information contained in such memoranda, prepared before a prosecution is initiated, is sensitive in that it discusses a prosecutor’s views of whether an as-yet uncharged individual should face criminal prosecution. Disclosure of these documents would reveal the prosecutors’ views of the strengths and weaknesses of a potential criminal case, the prosecutors’ theory of the case, and the prosecutors’ general litigation strategy and assessments. This type of information is at the core of information protected by the attorney work product doctrine. These memoranda are also deliberative insofar as they are part of a process to determine whether to pursue criminal charges and/or whether to take certain investigative steps. Given the sensitive nature of determining whether or not to take such actions, disclosure of these materials would infringe on core interests protected by the deliberative process privilege, as disclosure would likely cause similarly situated attorneys to be more circumspect in their preparation of similar memoranda in the future, thereby inhibiting candid and accurate assessments of the advisability of potential prosecutions or investigatory steps.

37. The McKay Declaration also discusses various emails and memoranda that were sent among or between SDNY and senior DOJ leadership regarding certain investigations or prosecutions. Disclosure of the withheld portions of these documents would harm an interest protected by the attorney work product doctrine. As discussed in the McKay and Ziese Declarations, these records reflect SDNY providing information and responding to questions about pending, sensitive criminal investigations to the most senior Department leaders, including the Attorney General, the Deputy Attorney General, or members of their staffs. If it were known

that communications sent to or among senior leadership offices about sensitive cases were likely to be publicly disclosed under FOIA, future prosecution teams would likely be less candid and comprehensive in the information they provide in writing to high-ranking Department leaders. Accordingly, disclosure of these records would harm interests protected by both the attorney work product privilege and the deliberative process privilege by chilling the candor of communications between prosecution teams and senior Department leadership offices, and by improperly intruding into an attorney's pre-litigation work by creating an undue worry that materials prepared with an eye toward litigation may be discoverable.

38. Disclosure of the filter memoranda would harm an interest protected by the attorney work product privilege because disclosure would reveal the material that the SDNY's investigative team proposed providing to the SDNY's filter team to carry out an important aspect of the investigation. The attorney work product privilege typically protects materials prepared by an attorney in anticipation of litigation would not be subject to forced disclosure. The filter memoranda were prepared in anticipation of litigation, and thus fall under the protection of the privilege. Because these documents were prepared as part of a deliberative process to determine whether SDNY would be authorized by the Criminal Division's Office of Enforcement Operations ("OEO") to undertake certain investigative steps (as discussed in the McKay Declaration and the Lavine Declaration), disclosure would also hinder the open and frank discussions among and between Department components regarding matters requiring OEO authorization.

Exemptions 6 and 7(C) - Privacy Interests

39. Exemption 6 protects from disclosure "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal

privacy.” 5 U.S.C. § 552(b)(6). The information withheld pursuant to Exemption 6 satisfies the “similar files” threshold because it is associated with a specific individual or individuals.

40. Exemption 7(C) protects information “compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . could reasonably be expected to constitute an unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(7)(C). The information withheld pursuant to Exemption 7(C) was “compiled for law enforcement purposes” because the records at issue were generated or compiled in the course of a law enforcement investigation conducted by SDNY prosecutors and the FBI.

41. To determine whether disclosure of information “would constitute a clearly unwarranted invasion of privacy” under Exemption 6 or “could reasonably be expected to constitute an unwarranted invasion of personal privacy” under Exemption 7(C), EOUSA is required to balance the privacy interests of the individuals at issue against the public interest in disclosure. The only relevant public interest in disclosure to be weighed in this balance is the extent to which disclosure would serve the core purpose of the FOIA, which is contributing significantly to public understanding of the operations or activities of the government. In asserting these exemptions, each item of information was examined to determine the degree and nature of the privacy interest of every individual whose name or other personal information appears in these records.

Interview Reports, Handwritten Notes, and Documents Discussed With Witnesses

42. DOJ withheld the interview records identified on the EOUSA Index—including 302s, SDNY interview memoranda, handwritten notes, and documents discussed with witnesses—in whole or in part pursuant to Exemptions 6 and 7(C). These withholdings were made to protect the personal privacy of the witnesses who provided the interviews, third parties

of investigative interest, including uncharged subjects of investigation, and/or other third parties mentioned in the documents. Records of interviews conducted by prosecutors and Special Agents can contain a substantial amount of personal information, and these records are no exception. Disclosure of the withheld names, identifying information, and other personal information withheld under Exemptions 6 and 7(C) could reasonably be expected to subject the witnesses and third parties to stigma, embarrassment, harm to their reputation or careers, and potential harassment or retaliation, particularly in light of the high-profile nature of the investigations at issue. Disclosure of this personal information could also discourage future witnesses from voluntarily cooperating with federal law enforcement investigations for fear that their identities, and the information they provide, will be made public.

43. In some instances, the Department withheld personal information concerning individuals who have been named or identified in certain public government documents relating to this investigation. In light of these previous government disclosures, these individuals have been publicly associated in some way with the investigations at issue. However, these individuals retain substantial privacy interests in the information that the government has withheld pursuant to Exemptions 6 and 7(C). For example, some of these individuals sat for interviews with prosecutors or Special Agents. Although, as discussed above, these individuals have been associated with the government's investigation in some way, their decision to cooperate with the investigation and participate in an interview has not been officially publicly disclosed. Likewise, one or more of the individual(s) whose property was the subject of search warrants have been associated with the government's investigation in some way, although the fact that their property was subject to a search warrant is not acknowledged. In addition, and more generally, for all individuals the government has withheld under Exemptions 6 and 7(C)

material concerning: the specific information witnesses provided to prosecutors, information that would tend to show whether an uncharged individual was a subject of the investigation or a person of investigative interest, and undisclosed personal information about third parties, none of which has been officially publicly disclosed. Individuals have strong privacy interests in all of these types of information, regardless of whether the individual has already been publicly associated with the investigation in some way.

44. On the other side of the balance, it was determined that disclosure of the records and information withheld under Exemptions 6 and 7(C) would not shed significant light on the operations or activities of federal agencies. This is particularly true given that substantial information about the conduct of Mr. Cohen has been publicly released in Mr. Cohen's criminal case.

45. As explained in the McKay Declaration, the government is aware that four witnesses' participation in the interviews— Mr. Cohen, Keith Davidson, John Gauger, and Robert Costello – has been acknowledged or publicly disclosed. As reflected in the EOUSA index, the Department has partially released sixteen interview records relating to these individuals, in most cases revealing only their names and the dates and locations of the interviews. Portions of these records have been withheld pursuant to Exemptions 6 and 7(C) because they would reveal non-public personal information about the witnesses and/or the identities and other personal information about third parties mentioned in the records. The reports and notes relating to interviews of the remaining witnesses, and many of the documents shown to witnesses, have been withheld pursuant to Exemption 6 and 7(C) because disclosure would disclose or acknowledge that the witnesses cooperated with the investigation by providing interviews, as explained in the McKay Declaration, and reveal the information these witnesses provided.

Portions of the interview records relating to unacknowledged witnesses are also withheld pursuant to Exemptions 6 and 7(C) because they contain personal information about third parties.

46. Accordingly, release of the withheld interview records and information would result in a clearly unwarranted invasion of privacy, and could reasonably be expected to result in an unwarranted invasion of the privacy interests of both the witnesses and third parties mentioned in the records.

Memoranda and Emails located by SDNY and OIP

47. In addition to the exemptions noted above, information contained within the responsive memoranda and emails located by SDNY and OIP was withheld pursuant to Exemptions 6 and 7(C) in order to protect the personal privacy of uncharged subjects or persons of investigative interest, and other third parties.

48. Uncharged subjects, persons of investigative interest, and other third parties whose names or identifying information appear in these records share the privacy interests of equivalent categories of persons discussed above in relation to the interview reports. Similarly, it was determined that release of information in these documents protected by EOUSA's Exemption 6 and 7(C) withholdings would not significantly advance the public's understanding of governmental conduct, especially given the amount of information already released in Mr. Cohen's criminal case. Accordingly, release of this information would be an unwarranted invasion of the privacy rights of the uncharged subjects, persons of investigative interest, and other third parties whose names or identifying information appear in these records.

Filter Memoranda and Search Warrant Materials

49. The filter memoranda were withheld in part, and the search warrant materials were withheld in full, pursuant to Exemptions 6 and 7(C) to protect personal privacy of

individuals whose property was seized, uncharged subjects or persons of investigative interest, and other third parties.

50. The privacy interests of the individuals whose names or other personal information appear in these records are similar to the privacy interests discussed above in relation to the interview records. Since they relate to searches performed pursuant to a warrant issued in connection with a criminal law enforcement investigation, the privacy interests are particularly acute. Search warrants are authorized by magistrates when there is probable cause to believe that a search will reveal evidence, fruits, or instrumentalities of a crime. Therefore, disclosing that a person's property was the subject of a search warrant could make the public associate an individual with potential criminal activity in a particularly acute way. There are substantial privacy interests in avoiding disclosure of the fact that one's property has been seized in the context of a criminal investigation. The search warrant materials also contain a substantial amount of personal information concerning the individuals whose property was a subject of the search warrants, as well as other third parties. As for the other categories of records discussed above, it was determined that release of the information in these records protected by EOUSA's Exemption 6 and 7(C) withholdings would not significantly advance the public's understanding of governmental conduct, especially given the amount of information already released in Mr. Cohen's criminal case. Accordingly, release of this information would be an unwarranted invasion of the privacy rights of the individuals whose property was seized, uncharged subjects or persons of investigative interest, and other third parties.

Obligation To Produce Reasonably Segregable Information

51. All reasonably segregable, non-exempt information has been released to the requester.

52. The EOUSA's Index describes the withheld records and sets forth the basis for withholding the records in whole or in part. During the review of the records at issue here, the Department carefully reviewed each of the pages of records to determine whether any non-exempt information could be segregated for release.

53. In each instance where information was withheld pursuant to Exemption 5, only that information which is protected by the attorney work-product privilege and/or the deliberative process privilege was withheld, and it is reasonably foreseeable that disclosure of this information would harm an interest protected by Exemption 5. In general, segregation is not required when a record is withheld pursuant to the attorney work product privilege because the privilege applies to the entire document prepared in anticipation of litigation.

54. With respect to records that document interviews conducted by prosecutors or Special Agents (*i.e.*, 302s, interview memoranda, and handwritten notes associated with interviews), these records were released in part where the government and/or the interviewee has publicly acknowledged or confirmed that the individual participated in an interview. Otherwise, these records were withheld in full because they were prepared in anticipation of litigation and their disclosure would reveal privileged attorney work product (including the selection of whom to interview). The withheld portions of the redacted records cannot be further segregated because all of the withheld information constitutes privileged attorney work product. The McKay Declaration describes why these records are protected by the attorney work product privilege. Moreover, as explained in the McKay Declaration, all but one of the interview reports and notes withheld in full would reveal the identity of the witness being interviewed even if the names and addresses of the witnesses were redacted. The remaining interview concerns a lead that turned

out to be a dead end, and its disclosure would be particularly invasive of the privacy of a third party.

55. With respect to the sets of records discussed with witnesses during interviews, these materials have been withheld in full because they were compiled in anticipation of litigation and their release would reveal privileged attorney work product. The McKay Declaration describes why these sets of records are protected by the attorney work product privilege. Some of these records would also reveal the identities of the unacknowledged witnesses with whom they were discussed.

56. With respect to the memoranda identified above as being withheld in full, all portions of the memoranda constitute attorney work product and therefore there is no reasonably segregable material. These memoranda are also protected by the deliberative process privilege.

57. With respect to the emails released in part, only privileged material (and material that is non-responsive or withheld pursuant to unchallenged exemptions) has been withheld.

58. With respect to the search warrant materials, as discussed in the McKay Declaration, the Department has determined that the information cannot be reasonably released in part without tending to identify the individuals whose property was searched. Accordingly, the Department withheld these records in full.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 30th day of July, 2021.



Ebony Griffin

EXHIBIT 1

FBI Bates Numbers or Number of Pages			Date	Description of Document	Located By	Released in Part	Exemption 5 Deliberative Process Privilege Asserted	Exemption 5 Work Product Privilege Asserted	Exemptions 6 and 7(C) Asserted
INTERVIEW RECORDS									
14-22 (19cv8215)	2/14/2018	302		SDNY				X (upheld in AO)	X
206-221	2/14/2018	Handwritten Notes		FBI				X	X
5 pages	2/14/2018	SDNY Memo		SDNY				X (upheld in AO)	X
197-206 (19cv8215)	4/6/2018	Handwritten Notes		SDNY				X (upheld in AO)	X
94-95 (19cv8215)	4/10/2018	302		SDNY				X (upheld in AO)	X
3 pages	4/19/2018	Handwritten Notes		SDNY				X (upheld in AO)	X
107-112 (19cv8215)	4/20/2018	302		SDNY				X (upheld in AO)	X
671-675	4/20/2018	Handwritten Notes		FBI				X	X
2 pages	5/4/2018	SDNY Memo (John Gauger)		SDNY	X			X (upheld in AO)	X
80-81 (19cv8215)	5/17/2018	302		SDNY				X (upheld in AO)	X
68-69	5/17/2018	Handwritten Notes		FBI				X	X
54-55 (19cv8215)	5/17/2018	302		SDNY				X (upheld in AO)	X
129-145 (19cv8215)	5/25/2018	302 (Keith Davidson)		SDNY	X			X (upheld in AO)	X
70-97	5/25/2018	Handwritten Notes		FBI	X			X	X
109	5/25/2018	Documents Associated with Witness Interview		FBI				X	X
30-42 (19cv8215)	6/4/2018	302 (Keith Davidson)		SDNY	X			X (upheld in AO)	X
111-113-128	6/4/2018	Handwritten Notes		FBI	X			X	X
898-904	6/5/2018	302		FBI				X	X
905-907	6/20/2018	302		FBI				X	X
908-911	6/20/2018	Handwritten Notes		FBI				X	X
96-106 (19cv8215)	6/26/2018	302		SDNY				X (upheld in AO)	X
532-543	6/26/2018	Handwritten Notes		FBI				X	X
576	6/26/2018	Documents Associated with Witness Interview		FBI				X	X
N/A- 11 pages	6/27/2018	SDNY Memo		SDNY				X (upheld in AO)	X
48-53 (19cv8215)	7/9/2018	302 (John Gauger)		SDNY	X			X (upheld in AO)	X
334-345	7/9/2018	Handwritten Notes		FBI	X			X	X
43-47 (19cv8215)	7/12/2018	302		SDNY				X (upheld in AO)	X
317-321	7/12/2018	Handwritten Notes		FBI				X	X
118-128 (19cv8215)	7/23/2018	302		SDNY				X (upheld in AO)	X
578-590	7/23/2018	Handwritten Notes		FBI				X	X
598-602	7/23/2018	Documents Associated with Witness Interview		FBI				X	X
146-171 (19cv8215)	7/26/2018	302		SDNY				X (upheld in AO)	X
621-648	7/26/2018	Handwritten Notes		FBI				X	X
172-181 (19cv8215)	8/2/2018	302		SDNY				X (upheld in AO)	X
649-670	8/2/2018	Handwritten Notes		FBI				X	X
23-29 (19cv8215)	8/3/2018	302 (Keith Davidson)		SDNY	X			X (upheld in AO)	X
197-205	8/3/2018	Handwritten Notes		FBI	X			X	X
82-93 (19cv8215)	8/8/2018	302		SDNY				X (upheld in AO)	X

FBI Bates Numbers or Number of Pages	Date	Description of Document	Located By	Released in Part	Exemption 5 Deliberative Process Privilege	Exemption 5 Work Product Privilege	Exemptions 6 and 7(C)
					Asserted	Asserted	Asserted
500-515	8/8/2018	Handwritten Notes	FBI			X	X
493-497, 516-518, 522-523	8/8/2018	Documents Associated with Witness Interview	FBI			X	X
182-189 (19cv8215)	8/9/2018	302	SDNY			X (upheld in AO)	X
676-682	8/9/2018	Handwritten Notes	FBI			X	X
683, 690, 693-700	8/9/2018	Documents Associated with Witness Interview	FBI			X	X
1188-1193	8/15/2018	302	FBI			X	X
1196-1197, 1202-1204, 1210-1212	8/15/2018	Documents Associated with Witness Interview	FBI			X	X
1213-1220	8/15/2018	Handwritten Notes	FBI			X	X
190-196 (19cv8215)	8/16/2018	302	SDNY			X (upheld in AO)	X
701-713	8/16/2018	Handwritten Notes	FBI			X	X
56-79 (19cv8215)	8/17/2018	302	SDNY			X (upheld in AO)	X
346-373	8/17/2018	Handwritten Notes	FBI			X	X
113-117 (19cv8215)	8/17/2018	302	SDNY			X (upheld in AO)	X
714-720	8/17/2018	Handwritten Notes	FBI			X	X
721-722, 751-53	8/17/2018	Documents Associated with Witness Interview	FBI			X	X
#1-13 (19cv8215)	10/8/2018	302 (Michael Cohen)	SDNY	X		X (upheld in AO)	X
1237-1251	10/8/2018	Handwritten Notes	FBI	X		X	X
1270-1274	10/8/2018	Documents Associated with Witness Interview	FBI			X	X
1924-1935 (19cv1278)	10/17/2018	302 (Michael Cohen)	SDNY	X		X (upheld in AO and Leopold)	X
1278-1291	10/17/2018	Handwritten Notes	FBI	X		X	X
1296-1300, 1310-1312	10/17/2018	Documents Associated with Witness Interview	FBI			X	X
619-620	1/14/2019	302	FBI			X	X
2 pages	1/14/2019	Handwritten Notes	SDNY			X (upheld in AO)	X
824	3/7/2019	302 (Robert Costello)	FBI	X		X	X
825-836	4/3/2019	302 (Robert Costello)	FBI	X		X	X
837-853, 878-881	4/3/2019	Handwritten Notes	FBI	X		X	X
MEMORANDA AND EMAILS							
43 pages	3/30/2018	Memorandum from Line AUSAs to Acting U.S. Attorney Robert Khuzami, Chief Counsel Audrey Strauss, Criminal Division Chief Lisa Zornberg, and Supervisory AUSAs, re Potential Charges Against Michael Cohen	SDNY		X	X	X
51 pages	8/9/2018	Memorandum from Line AUSAs to Acting U.S. Attorney Khuzami, A. Strauss, L. Zornberg, and Supervisory AUSAs, re Proposed Campaign Finance Charges Against Michael Cohen	SDNY		X	X	X

FBI Bates Numbers or Number of Pages	Date	Description of Document	Located By	Released in Part	Exemption 5 Deliberative Process Privilege	Exemption 5 Work Product Privilege	Exemptions 6 and 7(C)
					Asserted	Asserted	Asserted
8 pages	8/18/2018	Memorandum from Acting U.S. Attorney Khuzami, A. Strauss, L. Zornberg, and Supervisory and Line AUSAs to Deputy Attorney General Rod Rosenstein, Principal Associate DAG Edward O'Callaghan, and Associate DAG Iris Lan re Proposed Charges Against Michael Cohen	SDNY/OIP		X	X	X
2 pages	11/29/2018	Email from Acting U.S. Attorney Khuzami to I. Lan, forwarded by I. Lan to E. O'Callaghan, containing requested summaries of certain pending investigations, including the Cohen campaign finance investigation and related investigation	OIP	X	X	X	X
1 page	12/15/2018	Email from Acting U.S. Attorney Khuzami to I. Lan, forwarded by I. Lan to E. O'Callaghan, and forwarded by E. O'Callaghan to DAG Rosenstein, Corey Ellis, Andrew Peterson, and Maya Suero, attaching two SDNY memoranda in advance of SDNY briefing (only one attached memo responsive)	OIP	X	X	X	X
3 pages	12/15/2018	Memorandum from Deputy U.S. Attorney Khuzami to DAG Rosenstein, with cc to E. O'Callaghan and I. Lan, summarizing certain pending investigations	OIP		X	X	X
7 pages	2/22/2019	Memorandum from Deputy U.S. Attorney Khuzami to Attorney General Barr, with cc to DAG Rosenstein, E. O'Callaghan, and I. Lan, summarizing certain pending investigations	SDNY/OIP		X	X	X
1 page	2/22-24/2019	2/22/2019 email from I. Lan to E. O'Callaghan, C. Ellis, A. Peterson, and M. Suero, forwarded by E. O'Callaghan to DAG Rosenstein on 2/24/2019, attaching memos from SDNY in advance of meeting on 2/25/2019 (only one attached memo responsive; responsive memo not processed as duplicative)	OIP	X	X	X	
13 pages	3/1/2019	Memorandum from Deputy U.S. Attorney Khuzami to Attorney General Barr providing additional information and responding to questions raised at February 25 meeting	SDNY/OIP		X	X	X
1 page	3/1-2/2019	3/1/2019 email from Deputy U.S. Attorney to E. O'Callaghan, forwarded by E. O'Callaghan to DAG Rosenstein and Brian Rabbit on 3/2/2019, attaching 3/1/2019 memorandum requested at February 25 meeting (attached memo not processed as duplicative)	OIP	X	X	X	
1 page	3/1-2/2019	3/1-2/2019 email chain with additional reply email from DAG Rosenstein to E. O'Callaghan and B. Rabbit on 3/2/2019	OIP	X	X	X	
3 pages	8-Apr-18	Memorandum from SDNY Investigative Team to Filter Team re Filter Team Instructions for review of records obtained via search warrant	Crim		X	X	X

FBI Bates Numbers or Number of Pages	Date	Description of Document	Located By	Released in Part	Exemption 5		
					Deliberative Process Privilege Asserted	Exemption 5 Work Product Privilege Asserted	Exemptions 6 and 7(C) Asserted
N/A- 3 pages	12-Jun-18	Memorandum from SDNY Investigative Team to SDNY Filter Team re Protocol for Review of records obtained via search warrant	Crim		X	X	X
SEARCH WARRANT RECORDS							
1221-1225, 1355, 1357-1359, 1363-1397, 1400-1402, 1436, 1441-1455	4/8-9/2018	Search and Seizure Warrants for 3 cellphones , with associated applications, affidavits, and sealing orders, and 302 Regarding Execution of Search Warrant	SDNY/FBI				X
1032-1099, 1109-1113, 1122, 1186-1187	4/8-9/2018	302 Regarding Execution of Search Warrants for cellphone , with associated Search and Seizure Warrant, application, affidavit, and sealing order	SDNY/FBI				X
919-970	7/6/2018	302 Regarding Execution of Search Warrant for email account , with associated Search Warrant and Non-Disclosure Order, application and affidavit	SDNY/FBI				X
971-1031	7/6/2018	302 Regarding Execution of Search Warrant for stored electronic communications , with associated Search Warrant and Non-Disclosure Order, application and affidavit	SDNY/FBI				X

EXHIBIT 2

FAX COVER SHEET

TO	Kevin Krebs
COMPANY	EOUSA
FAX NUMBER	12022526048
FROM	Komal Choudhary
DATE	2019-07-18 20:44:40 GMT
RE	Expedited FOIA Request

COVER MESSAGE

Enclosed please find an expedited FOIA request.

CREW | citizens for responsibility and ethics in washington

1101 K St., N.W., Suite 201
Washington, DC 20005
Phone: 202-408-5565
Fax: 202-588-5020

FACSIMILE TRANSMITTAL SHEET

TO:

Kevin Krebs, Assistant Director,
FOIA/Privacy Unit

FROM:

Anne L. Weismann

COMPANY:

Executive Office for United States
Attorneys, U.S. Department of Justice

DATE: JULY 18, 2019

RECIPIENT'S FAX NUMBER:

202-252-6048

PAGE 1 OF 9

RECIPIENT'S PHONE NUMBER:

RE:

Please see enclosed expedited FOIA request

NOTES/COMMENTS:

Pages transmitted are privileged and confidential.

CREW | citizens for responsibility and ethics in washington

July 18, 2019

By Facsimile: (202) 252-6048

Kevin Krebs
Assistant Director
FOIA/Privacy Unit
Executive Office for United States Attorneys
Department of Justice
175 N Street, N.E.
Suite 5.400
Washington, D.C. 20530-0001

Re: Expedited Freedom of Information Act Request

Dear Mr. Krebs:

Citizens for Responsibility and Ethics in Washington ("CREW") makes this expedited request for records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and U.S. Department of Justice ("DOJ") regulations.

Specifically, CREW requests all records related to the now closed investigation conducted by the U.S. Attorney's Office for the Southern District of New York into (1) who, besides Michael Cohen, was involved in and may be criminally liable for the two campaign finance violations to which Mr. Cohen pled guilty; and (2) whether certain individuals made false statements, gave false testimony, or otherwise obstructed justice in connection with this investigation. The nature of this investigation is outlined in the attached letter submitted on July 15, 2019, to U.S. District Court Judge William H. Pauley III in *United States v. Cohen*, Crim. No. 18-cr-602 (S.D.N.Y.). For your convenience a copy of this letter is attached. This request includes, but is not limited to witness statements, investigative reports, prosecution memoranda, and FBI 302s.

Please search for responsive records regardless of format, medium, or physical characteristics. We seek records of any kind, including paper records, electronic records, audiotapes, videotapes, photographs, data, and graphical material. Our request includes without limitation all correspondence, letters, emails, text messages, facsimiles, telephone messages, voice mail messages, and transcripts, notes, or minutes of any meetings, telephone conversations, or discussions. Our request also includes any attachments to emails and other records, as well as those who were cc'ed or bcc'ed on any emails.

If it is your position any portion of the requested records is exempt from disclosure, CREW requests that you provide it with an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). If some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the

Kevin Krebs
July 18, 2019
Page 2

requested records. *See* 5 U.S.C. § 552(b). If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document. *See Mead Data Central v. U.S. Dep't of the Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977).

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A) and Department of Justice regulations, CREW requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures likely will contribute to a better understanding of relevant government procedures by CREW and the general public in a significant way. *See* 5 U.S.C. § 552(a)(4)(A)(iii). Moreover, the request primarily and fundamentally is for non-commercial purposes. *See, e.g., McClellan Ecological v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987).

In his memorandum opinion and order of July 17, 2019 (attached), ordering the unsealing of a subset of the documents requested here, Judge Pauley described the campaign finance violations that were under investigation as “a matter of national importance.” He also deemed it “time that every American has an opportunity to scrutinize the Materials,” referencing the documents related to the campaign finance investigation. Like the records Judge Pauley ordered be unsealed, the requested records would shed light on the extent, if any, that President Donald Trump or any of his businesses or associates has violated campaign finance laws and, if so, why the government has closed its investigation without prosecuting these crimes, with the exception of Michael Cohen. The American people deserve to know whether their president and his business associates have complied fully with the laws of our land and if they have not, why DOJ declined to prosecute them. The president is the most powerful and visible official of our country, and the truth about his actions and those of his campaign, businesses, and associates should not be shielded from public scrutiny.

CREW is a non-profit corporation, organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the public’s right to be aware of the activities of government officials, to ensuring the integrity of those officials, and to highlighting and working to reduce the influence of money on politics. CREW uses a combination of research, litigation, and advocacy to advance its mission. CREW intends to analyze the information responsive to this request and to share its analysis with the public through reports, press releases, or other means. In addition, CREW will disseminate any documents it acquires from this request to the public through its website, www.citizensforethics.org. The release of information obtained through this request is not in CREW’s financial interest.

CREW further requests that it not be charged search or review fees for this request pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) because CREW qualifies as a member of the news media. *See Nat’l Sec. Archive v. U.S. Dep’t of Defense*, 880 F.2d 1381, 1386 (D.C. Cir. 1989) (holding non-profit a “representative of the news media” and broadly interpreting the term to

Kevin Krebs
July 18, 2019
Page 3

include "any person or organization which regularly publishes or disseminates information to the public").

CREW routinely and systematically disseminates information to the public in several ways. CREW's website receives tens of thousands of page views every month. The website includes blog posts that report on and analyze newsworthy developments regarding government ethics, corruption, and money in politics, as well as numerous reports CREW has published to educate the public about these issues. In addition, CREW posts the documents it receives under the FOIA on its website, and those documents have been visited hundreds of thousands of times.

Under these circumstances, CREW satisfies fully the criteria for a fee waiver.

Request for Expedition

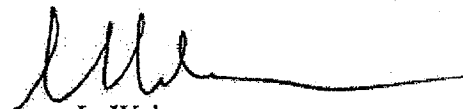
Finally, please be advised that CREW also has requested expedition of this request because its subject matter is of widespread and exceptional media interest and the requested information involves possible questions about the government's integrity that affect public confidence. Pursuant to 28 C.F.R. § 16.5(e)(2), CREW submitted that request to DOJ's Director of Public Affairs; a copy of that request is enclosed.

Conclusion

If you have any questions about this request or foresee any problems in fully releasing the requested records, please contact me at (202) 408-5565 or aweismann@citizensforethics.org. Also, if CREW's request for a fee waiver is not granted in full, please contact our office immediately upon making such a determination.

Where possible, please produce records in electronic format. Please send the requested records to me either at aweismann@citizensforethics.org or at Anne L. Weismann, Citizens for Responsibility and Ethics in Washington, 1101 K Street, N.W., Suite 201, Washington, D.C. 20005. Thank you for your assistance in this matter.

Sincerely,



Anne L. Weismann
Chief FOIA Counsel

Encls.



Case 1:18-cr-00602-WHP Document 48-9 Filed 07/18/19 Page 1 of 2

U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

July 15, 2019

EX PARTE and UNDER SEAL

BY EMAIL and HAND

The Honorable William H. Pauley III
United States District Judge
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: **United States v. Michael Cohen, 18 Cr. 602 (WHP)**

Dear Judge Pauley:

Pursuant to the Court's February 7, 2019 opinion and order (the "Order") and May 21, 2019 order, the Government respectfully submits this sealed, *ex parte* status report explaining the need for continued redaction of the materials subject to the Order. (See Order at 30).

By way of background, several media organizations filed a request to unseal the affidavits, warrants, and riders associated with several different searches that were conducted in connection with a grand jury investigation into Michael Cohen and others (the "Materials"). The Government opposed that request, citing the need to protect an ongoing investigation and the personal privacy of certain individuals named in the Materials. On February 7, 2019, this Court granted the motion in part and denied it in part. Although the Court directed that certain parts of the Materials be unsealed (with limited redactions to protect privacy interests), the Court denied the motion to unseal all of the Materials. Relevant here, the Court held that "the portions of the Materials relating to Cohen's campaign finance crimes shall be redacted" to protect the ongoing law enforcement investigation. (Order at 11). On May 21, 2019, after receiving a status update from the Government on the need for continued sealing, the Court issued an order permitting continued sealing of the campaign finance portions of the Materials to protect an ongoing investigation, and directed that the Government provide another update by this date.

The Government is no longer seeking to maintain the campaign finance portions of the Materials under seal in order to protect an ongoing investigation.¹ However, while the majority of

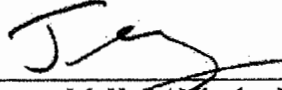
¹ The Government has effectively concluded its investigations of (1) who, besides Michael Cohen, was involved in and may be criminally liable for the two campaign finance violations to which Cohen pled guilty [REDACTED]; and (2) whether certain individuals, [REDACTED], made false statements, gave false testimony or otherwise obstructed justice in connection with this investigation [REDACTED]

the campaign finance portions of the Materials can now be unsealed, the Government respectfully submits that some redactions should be maintained in order to protect the personal privacy of certain individuals. In particular, consistent with the Court's prior Order, the Government seeks to redact references to individuals who are either (1) "'peripheral characters' for whom the Materials raise little discernable inference of criminal conduct" but who "may nonetheless be 'stigmatized'" by their inclusion in the Materials; or (2) people "around Cohen from which the public might infer criminal complicity." (Order at 14). However, while most references to such individuals are redacted, the Government does not seek to redact references to those individuals that are either (a) facts that have been publicly confirmed, either by the individual in public statements or the Government in public filings; or (b) facts sourced from publicly available materials. (See Order at 15 ("Shielding third parties from unwanted attention arising from an issue that is already public knowledge is not a sufficiently compelling reason to justify withholding judicial documents from public scrutiny.")).

Together with this letter, the Government has transmitted a copy of one of the search warrant affidavits with the proposed redactions marked. See Ex. A, at 38-57, 66-67, 71, 73-74, 83-101. (The proposed redactions also include the privacy-based redactions previously authorized in the bank and tax portions of the Materials.) The Government respectfully requests that the Court approve these redactions, and will submit corresponding redactions to the other affidavits (which are substantially similar to the attached affidavit) once the Court has ruled on these proposed redactions.

Respectfully submitted,

AUDREY STRAUSS
Attorney for the United States,
Acting Under Authority Conferred by
28 U.S.C. § 515

By: 
Thomas McKay / Nicolas Roos
Assistant United States Attorneys
(212) 637-2200

cc: Counsel of Record (by ECF)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

MICHAEL COHEN,

Defendant.

18cr602

MEMORANDUM & ORDER

WILLIAM H. PAULEY III, Senior United States District Judge:

On April 9, 2018, the FBI executed searches of Defendant Michael Cohen's residence, hotel room, office, safe deposit box, cell phones, and electronic communications pursuant to warrants authorized under Rule 41 of the Federal Rules of Criminal Procedure and 18 U.S.C. § 2703. The New York Times Company, the American Broadcasting Companies, Inc., the Associated Press, Cable News Network, Inc., Daily News, L.P., Dow Jones & Co., Inc., Newsday LLC, NYP Holdings, Inc., and CBS Broadcasting, Inc. sought to unseal copies of the warrants, warrant applications, and supporting affidavits and riders relating to the April 9, 2018 searches (the "Materials").

On February 7, 2019, this Court granted in part and denied in part the unsealing requests. In that Opinion & Order, this Court directed the Government to submit proposed redactions to the Materials, which were then publicly filed in redacted form on March 19, 2019 pursuant to an order dated March 18, 2019. The February 7, 2019 Opinion & Order also directed the Government to submit a status report by May 15, 2019 explaining the need for continued redaction of the Materials. United States v. Cohen, 366 F. Supp. 3d 612, 634 (S.D.N.Y. 2019).

On May 21, 2019, this Court authorized the continued redaction of portions of the Materials relating to Cohen's campaign finance violations to protect the Government's ongoing

investigation. The May 21, 2019 Order also directed the Government to submit a further status report by July 15, 2019 explaining the need for continued redaction of the Materials.

On July 15, 2019, the Government submitted a status report and proposed redactions to the Materials ex parte and under seal. The Government now represents that it has concluded the aspects of its investigation that justified the continued sealing of the portions of the Materials relating to Cohen's campaign finance violations. Although the Government agrees that the majority of the campaign finance portions of the Materials may be unsealed, it requests limited redactions to those portions to protect third-party privacy interests.

After reviewing the Government's status report and proposed redactions, this Court denies the Government's request. In particular—and in contrast to the private nature of Cohen's business transactions—the weighty public ramifications of the conduct described in the campaign finance portions warrant disclosure. See United States v. Amodio, 71 F.3d 1044, 1051 (2d Cir. 1995) (explaining that “financial records of a wholly owned business, family affairs, illnesses, embarrassing conduct with no public ramifications, and similar matters will weigh more heavily against access than conduct affecting a substantial portion of the public”). Moreover, the involvement of most of the relevant third-party actors is now public knowledge, undercutting the need for continued secrecy. See United States v. Basciano, 2010 WL 1685810, at *4 (E.D.N.Y. Apr. 23, 2010) (“Shielding third parties from unwanted attention arising from an issue that is already public knowledge is not a sufficiently compelling reason to justify withholding judicial documents from public scrutiny.”). On balance, the “strong presumption of public access” to search warrants and search warrant materials under the common law far outweighs the weakened privacy interests at play here. See Cohen, 366 F. Supp. 3d at 621-22 (collecting cases).

The campaign finance violations discussed in the Materials are a matter of national importance. Now that the Government's investigation into those violations has concluded, it is time that every American has an opportunity to scrutinize the Materials. Indeed, the common law right of access—a right so enshrined in our identity that it “predate[s] even the Constitution itself”—derives from the public's right to “learn of, monitor, and respond to the actions of their representatives and representative institutions.” United States v. Erie Cty., 763 F.3d 235, 238-39 (2d Cir. 2014).

Accordingly, the Government is directed to file the July 15, 2019 status report and the Materials on the public docket on **July 18, 2019 at 11:00 a.m.** The July 15, 2019 status report shall be unredacted in its entirety, except that limited references in the footnote to an uncharged third-party may remain redacted. See United States v. Smith, 985 F. Supp. 2d 506, 526 (S.D.N.Y. 2013). The Materials shall be unredacted in their entirety, except that the names of law enforcement investigators, references to individuals who purportedly engaged in business transactions or contemplated business transactions with Cohen relating to taxi medallions, see Cohen, 366 F. Supp. 3d at 625, and personal information referenced in this Court's March 18, 2019 Order may remain redacted.

Dated: July 17, 2019
New York, New York

SO ORDERED:


WILLIAM H. PAULEY III
U.S.D.J.

EXHIBIT C

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CITIZENS FOR RESPONSIBILITY
AND ETHICS IN WASHINGTON,

Plaintiff,

v.

U.S. DEPARTMENT OF JUSTICE,

Defendant.

Civil Action No. 1:19-cv-2267

DECLARATION OF DREW LAVINE

I, Drew Lavine, declare the following to be a true and correct statement of facts:

1. I am a Trial Attorney in the Freedom of Information Act (“FOIA”)/Privacy Act (“PA”) Unit within the Office of Enforcement Operations in the Criminal Division of the United States Department of Justice (the “Criminal Division”). I have held this position since June of 2020.

2. The FOIA/PA Unit is responsible for processing FOIA/PA requests seeking information from the Criminal Division.¹ FOIA/PA Unit staff determine whether the Criminal Division maintains records responsive to FOIA requests, and if so, whether they can be released in accordance with the FOIA/PA. In processing such requests, the FOIA/PA Unit consults with personnel in the other Sections of the Criminal Division, and when appropriate, with other

¹ The Criminal Division is comprised of seventeen Sections: the Office of the Assistant Attorney General, the Appellate Section, the Computer Crimes Section, the Fraud Section, the Human Rights and Special Prosecutions Section, the International Criminal Investigative Training Assistance Program, the Money Laundering and Asset Recovery Section, the Narcotic and Dangerous Drug Section, the Organized Crime and Gang Section, the Office of Enforcement Operations, the Office of International Affairs, the Office of Overseas Prosecutorial Development, Assistance and Training, the Office of Policy and Legislation, the Office of Administration, and the Public Integrity Section.

components within the Department of Justice (“DOJ” or “Department”), as well as with other Executive Branch agencies.

3. In my capacity as a Trial Attorney in the FOIA/PA Unit, and in conjunction with the Chief and Deputy Chief of the FOIA/PA Unit, I assist in the handling of FOIA and PA requests processed by the FOIA/PA Unit. I am also responsible for providing litigation support and assistance to Assistant United States Attorneys and DOJ Civil Division Trial Attorneys who represent the DOJ in lawsuits filed in federal court under the FOIA, 5 U.S.C. § 552, and the PA, 5 U.S.C. § 552a, stemming from requests for Criminal Division records.

4. In providing such support and assistance, I review and process files compiled in response to FOIA/PA requests received by the Criminal Division to determine whether searches were properly conducted and whether decisions to withhold or release Criminal Division records were in accordance with the FOIA, the PA, and DOJ regulations at 28 C.F.R. §§ 16.1 *et seq.* and §§ 16.40 *et seq.* If searches are incomplete and/or records have not been processed, I ensure that searches are completed and/or records are processed. Then, I take the lead in the completion of any pending searches or processing of Criminal Division documents. I regularly consult with the Chief and Deputy Chief of the FOIA/PA Unit, other attorneys in the FOIA/PA Unit, and Government Information Specialists about the Criminal Division’s searches and processing of FOIA/PA requests. I also consult with officials and employees in Criminal Division Sections where responsive records are located and in other DOJ components that have equities in responsive records.

5. Due to the nature of my official duties, I am familiar with the procedures followed by the Criminal Division in responding to requests for information from its files pursuant to the provisions of the FOIA and the PA. Specifically, I am familiar with the FOIA request submitted

by Plaintiff, Citizens for Responsibility and Ethics in Washington (“CREW”), to the Criminal Division, and the Criminal Division’s response to the request.

6. The statements that follow are made on the basis of my review of the Criminal Division’s official files and records, my personal knowledge, and information I acquired in the course of performing my official duties in the FOIA/PA Unit.

Plaintiff’s FOIA Request

7. Plaintiff submitted a FOIA request, by email dated July 18, 2019, to the Criminal Division. Plaintiff’s FOIA request sought “all records related to the now closed investigation conducted by the U.S. Attorney’s Office for the Southern District of New York into (1) who, besides Michael Cohen, was involved in and may be criminally liable for the two campaign finance violations to which Mr. Cohen pled guilty; and (2) whether certain individuals made false statements, gave false testimony, or otherwise obstructed justice in connection with this investigation.” A true and accurate copy of Plaintiff’s request is attached as Exhibit 1. The Criminal Division emailed a letter to Plaintiff on August 1, 2019 acknowledging Plaintiff’s request.

Description of FOIA/PA Unit Search Methods

8. When processing a FOIA or PA request for one or more of the Criminal Division Sections, the FOIA/PA Unit typically initiates records searches by sending an email to a designated point-of-contact in the Section who serves as the liaison between the FOIA/PA Unit and the Section or the FOIA/PA Unit sends a search request through its electronic FOIA Tracking Database, Activator, to the specific sections(s). The search request, whether by email or through Activator, notifies the Section(s) of the receipt of the request and the need to conduct a search.

9. The Criminal Division Sections, as the custodians of their own records and the best authorities on what records they would maintain, conduct their own searches depending on the manner in which they maintain their records and the records management database systems they use. The designated point-of-contact of each Section, after consultation with their supervisor(s), then advise the FOIA/PA Unit if they (1) have no records responsive to the request; (2) have potentially responsive material which will be provided directly to the FOIA/PA Unit for review and processing; or (3) have potentially responsive material for which they request the FOIA/PA Unit conduct a search of electronic records, i.e., the email or computer system administered by the Criminal Division's Information Technology Management ("ITM") Unit staff.

10. Once the review of the search request and accompanying FOIA request is completed in the Section(s), the designated point-of-contact responds to the FOIA/PA Unit records search request on behalf of the Section(s), and the FOIA/PA Unit takes next steps – e.g., conducting electronic searches of identified records custodians, or reviewing records returned to the FOIA/PA Unit – as appropriate. The FOIA/PA Unit also determines whether searches for records were adequate based on the sections(s) description of its search including the databases searched, "keywords" used, date range, and discussions with section personnel familiar with the day-to-day operations of the section.²

Search Conducted by the FOIA/PA Unit in Response to Plaintiff's Request

11. Based on a review of Plaintiff's request, knowledge of the Criminal Division, and knowledge of and research into the subject of Plaintiff's requests, the FOIA/PA Unit determined

² The initial determination regarding where to search is not always final. Rather, throughout the life cycle of a request, staff of the FOIA/PA Unit will assess whether additional or supplemental searches are appropriate. This is based on a review of records that are located in initial searches, discussions with Criminal Division personnel, and other pertinent factors.

that the Office of Enforcement Operations' Policy and Statutory Enforcement Unit ("PSEU") was the Criminal Division office most likely to maintain records responsive to Plaintiff's request.

12. On July 24, 2019, the FOIA/PA Unit Deputy Chief emailed the Deputy Chief of PSEU to notify that office regarding Plaintiff's request. On September 26, 2019, a FOIA/PA Unit attorney again emailed the Deputy Chief of PSEU, and asked that PSEU provide potential records custodians and the appropriate date range for an electronic records search.

13. On October 28, 2019, after receiving the names of the appropriate custodians and the search parameters from PSEU, a FOIA/PA Unit attorney emailed a search request to ITM. On November 11, 2019, ITM notified the FOIA/PA Unit that potentially responsive records resulting from the search request had been uploaded into Clearwell, the FOIA/PA Unit's document review platform.

14. After reviewing the search results in Clearwell, the FOIA/PA Unit identified 133 pages of records responsive to Plaintiff's request.

15. None of the records reviewed indicated that a search of the records of additional custodians would be appropriate in this case, or that additional searches of electronic or paper files would produce additional responsive records. No other Sections within the Criminal Division were likely to have any additional responsive records since the subject of the request lies outside of the scope of the other Criminal Division Section's law enforcement responsibilities.

16. Each step in the handling of Plaintiff's request has been consistent with the FOIA/PA Unit's procedures, which were adopted to ensure an equitable response to all persons seeking records under the FOIA PA.

17. As reflected in a joint status report filed on the docket on March 3, 2021, Plaintiff advised that they do not challenge the sufficiency of DOJ's search for responsive records. See ECF No. 21.

Final Response to Plaintiff's FOIA Request

18. On February 20, 2020, the Criminal Division sent its final response to Plaintiff, notifying Plaintiff that 133 pages of records were located that are responsive to its request, that twenty-five (25) pages of records responsive to its request were referred to the Executive Office for United States Attorneys (EOUSA) for processing and direct response to the Plaintiff, and that the remaining responsive records are exempt from disclosure pursuant to 5 U.S.C. §§ 552(b)(3), (b)(5), (b)(6), and (b)(7)(C). A copy of the FOIA/PA Unit's final response to Plaintiff is attached as Exhibit 2.

19. Attached to this declaration (Exhibit 3) is a *Vaughn* Index containing descriptions of the responsive records and the FOIA exemptions identified in the March 3, 2021 joint status report as the exemptions that Plaintiff is challenging.

The Criminal Division Properly Withheld Exempt Information

Exemption (b)(3)

20. The Criminal Division reviewed fifty-seven (57) pages of responsive records that would reveal the strategy or direction of grand jury investigations or matters occurring before a grand jury. Plaintiff has not challenged Defendant's withholdings made pursuant to FOIA Exemption 3 and Federal Rule of Criminal Procedure 6(e).³ Therefore, this declaration does not address records withheld in full pursuant to Exemption 3 and Federal Rule of Criminal Procedure 6(e). For this reason, records entirely withheld under Exemption 3 are not included on the

³ See ECF 21, Joint Status Report.

Vaughn Index. However, records that are partially withheld under Exemption 3 in conjunction with other exemptions, are addressed in the *Vaughn* Index, but Exemption 3 withholdings are not addressed. If any such records were ordered to be released because the Court found the other exemptions insufficient, the Criminal Division would apply Exemption 3 redactions before production as necessary.⁴ The Criminal Division's *Vaughn* Index identifies the sixty-one (61) pages that remain at issue after removing the pages that are fully protected by Exemption 3 and the Federal Rules of Criminal Procedure 6(e) and are therefore no longer at issue.

Exemption (b)(5)

Threshold Requirement

21. The Criminal Division is withholding all the records described in the attached *Vaughn* Index pursuant to FOIA Exemption 5. Exemption 5 permits the withholding of "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." 5 U.S.C. § 552(b)(5). To qualify for withholding under Exemption 5, a document's source must be a government agency and the documents or information must be normally privileged in the civil discovery context. All the records withheld in this instance are inter-agency communications exchanged within the Department and, accordingly, satisfy the threshold requirement of Exemption 5.

Applicable Privileges

22. Both the attorney work-product privilege and the deliberative process privilege, relied upon by the Criminal Division to withhold the responsive records, fall within the ambit of a privilege against discovery covered by Exemption 5.

⁴ For one page of one record, all information contained in that page was either protected by Exemption 3/Federal Rule of Criminal Procedure 6(e) or was duplicative of another processed page (identified at Page 17 of the *Vaughn* Index). Accordingly, this page is not listed in the *Vaughn* Index.

23. The records described in this declaration and the attached *Vaughn* Index pertain to requests that SDNY directed to the Office of Enforcement Operations (“OEO”) within the Criminal Division, which sought authorization to use certain law enforcement tools pursuant to 28 C.F.R. § 50.10, which provides regulations concerning obtaining information from, or records of, members of the news media; and requests for authorization to use certain law enforcement tools pursuant to 28 C.F.R. § 59.4, which provides regulations concerning obtaining information from, or records of, an attorney who is not a subject of an investigation (“authorization requests”). The Criminal Division, by way of OEO, is responsible for reviewing, analyzing, and approving these requests.

24. The authorization requests described in the records remaining at issue in this case pertain to the investigation of Michael Cohen and others for potential campaign finance violations. In August 2018, Cohen pled guilty to eight counts of criminal tax evasion, bank fraud, and campaign finance violations. (See United States v. Michael Cohen, 18-cr-00602 (S.D.N.Y.)⁵). The withheld records include draft versions of letters and memoranda describing authorization requests relating to legal process pursuant to 28 C.F.R. § 50.10 and 28 C.F.R. § 59.4, final letters and memoranda providing Criminal Division approval for legal process, and email records discussing the requests for legal process, letters, and memoranda.

Attorney Work-Product Privilege

25. The Criminal Division determined that all of the responsive records remaining at issue are protected by the attorney work-product privilege, which is intended to permit attorneys to assemble information, separate relevant from irrelevant facts, prepare legal theories, and develop trial strategies without undue interference. In this case, the responsive records were

⁵ Available at <https://www.justice.gov/usao-sdny/pr/michael-cohen-pleads-guilty-manhattan-federal-court-eight-counts-including-criminal-tax>.

prepared by an attorney, or at the direction of an attorney in connection with the investigation of Michael Cohen and others.

26. The memoranda and letters described in the *Vaughn* Index contain discussions of the underlying investigation, facts and evidence regarding the underlying investigation, legal analyses applying the facts related to the authorization requests determination, and opinions and recommendations regarding approval of the authorization requests. They also contain information regarding the Department's theories and direction of the underlying investigation, attorneys' assessments of facts and issues pertaining to the authorization requests, and their mental impressions and evaluation of the evidence pertaining to the underlying investigation as it relates to the authorization requests.

27. In addition to the memoranda and letters, the inter-agency email communications contain information constituting the legal analysis of DOJ attorneys, the DOJ prosecutors' theory of the case being investigated and evaluation of the evidence, and the DOJ attorneys' assessments of facts and issues pertaining to the authorization requests. The email records are part of the exchange of ideas and suggestions that accompany all decision-making. Email operates as a way for individual Department employees to communicate with each other and with other agency employees about current matters without having to leave their offices. These discussions, memorialized in writing, most resemble conversations between staff members which are part of the give and take of agency deliberations.

28. The records withheld on the basis of the attorney work-product privilege of Exemption 5 were prepared in anticipation of the prosecution of Michael Cohen and potentially others. The pages include documents and information shared between attorneys from the Criminal Division and the United States Attorney's Office for the Southern District of New York

regarding the investigation of Cohen and others. The records reveal the legal strategies and the opinions of DOJ attorneys, particularly those relevant to the authorization requests.

Accordingly, the Criminal Division determined that the records qualified as attorney work products and should be withheld in full. Records in this category are not appropriate for segregation.

Deliberative Process Privilege

29. The Criminal Division also determined that fifty-four (54) pages of responsive records described in the attached *Vaughn* Index are also protected by the deliberative privilege in full or in part. To qualify for the deliberative process privilege, an agency record must be both “pre-decisional” and “deliberative.” The deliberative process privilege protects the quality of agency decision-making by permitting open and frank discussion between subordinate and superiors, protecting against premature disclosure of proposed policies, and protecting against the public confusion that might result from disclosure of reasons and rationales that were not in fact ultimately grounds for an agency’s action. Information is predecisional if it would reveal an agency’s deliberations prior to the decision about which it pertains and if it is prepared or compiled to assist decision makers in reaching that decision. Information is deliberative if it reflects the opinions, recommendations, and deliberations that are part of the give and take by which the Department made its decision.

30. Part of the decision-making processes within the Criminal Division regarding the authorization requests involves the creation and exchange of draft documents. The draft memoranda and letters described in the *Vaughn* Index are drafts containing the thought processes of staff attorneys within the Department in formulating recommendations for the Office of the Assistant Attorney General for the Criminal Division to consider in determining whether to

authorize the requests for legal process. The draft documents are part of the back and forth development of investigative and litigation strategy as it relates to obtaining approval to make such requests. DOJ attorneys submit these requests to PSEU, who responds with thoughts, guidance, or revisions. The documents are then reviewed by supervisory officials in the Office of Enforcement Operations and in the Office of the Assistant Attorney General for the Criminal Division. Disclosure of draft documents would severely hamper the efficient day-to-day, internal workings of the Criminal Division, as individuals would no longer feel free to candidly present their views and ideas, and to advise on investigative and litigation strategy. By their very nature as drafts, these documents are pre-decisional, preliminary versions of what will later become a final document. The process by which a draft evolves into a final document is itself a deliberative process.

31. The Criminal Division also withheld pages 82-92 identified on the attached *Vaughn* Index under the deliberative process privilege. The document contains deliberative, pre-decisional recommendations prepared for the purpose of assisting the decision-maker in deciding whether to approve or deny the authorization request by setting forth the pertinent facts and legal arguments supporting the recommendation. This document represents the attorneys' distillation of facts, legal analyses, opinions, and recommendations regarding whether to approve or deny the authorization request. The document also includes a supervisory signature that indicates approval of the recommendations without comment by the supervisor. The signature is not withheld under the deliberative process privilege.

32. In addition to the memoranda described above, email messages pertaining to the memoranda and letters, as described in the attached *Vaughn* Index, are protected by the deliberative process privilege. The email messages contain commentaries on, and a discussion

of, the memoranda and letters, including substantive suggestions and recommendations. The emails identified on pages 5, 6, 7, and 65 in the attached *Vaughn* Index are withheld in part under the deliberative process privilege because certain information contained in the email chains reflects deliberation prior to a final decision on the authorization requests.

33. The information contained in all the records described above expresses the authors' opinions and recommendations regarding the sufficiency of the information provided to support the authorization requests. The records also include opinions, evaluations, and deliberations comprising the attorneys' legal analysis regarding the authorization requests. The information contained in the records contributed to the decision-making processes of both the Criminal Division with regard to the authorization requests, and the multiple components of DOJ with regard to the underlying investigation. The records at issue are part of the exchange that accompanies all decision-making and reflect the preliminary legal analysis of DOJ attorneys, which are ultimately submitted to senior officials for review.

34. Further, the records remaining at issue are pre-decisional in full or in part because they are antecedent to the Criminal Division's final decision regarding SDNY's authorization requests. The Criminal Division considered, relied upon, and/or created the records at issue while analyzing the legal issues and formulating its final response to SDNY's authorization requests.

35. As noted above, the Criminal Division referred twenty-five pages of responsive records to EOUSA for processing and direct response to the plaintiff. Six of these pages consist of the April 8, 2018 and June 12, 2018 Filter Team Memoranda (the "filter team memoranda"), which are addressed in SDNY's *Vaughn* Index and the Declaration of Thomas McKay. See SDNY's Declaration of Thomas McKay and *Vaughn* Index. The filter team memoranda are

being withheld pursuant to the deliberative process privilege (as well as the attorney work-product privilege) as explained in the McKay Declaration. These materials were drafted and forwarded to PSEU along with SDNY requests for authorization to obtain records pursuant to search warrants, for consideration by the applicable PSEU attorneys and senior DOJ officials in making a determination regarding the request for authorization. The filter team memoranda are predecisional because they preceded the decision by senior DOJ officials regarding whether or not to authorize the requested search warrants. In effect, these were memoranda that the prosecutors proposed to provide to filter teams for use in reviewing search warrant returns in the event that the prosecutors were authorized to proceed with seeking the search warrants. The filter team memoranda are deliberative because they formed part of the package of information considered by PSEU and DOJ senior officials in deciding whether to authorize the requests. Specifically, in considering whether to authorize the requests, one factor that was considered was whether sufficient steps would be taken—as evidenced by the proposed filter team memoranda—to ensure that any privileged communications were filtered out and not provided to the investigative team. One of the filter team memoranda contains handwritten markings which highlight certain information, further evidencing their deliberative nature. Disclosure of these materials would reveal the process by which PSEU attorneys review the universe of facts, protocols, and possible issues arising on the topic at hand, and the factors that PSEU attorneys and senior DOJ decision-makers considered in deciding whether to authorize SDNY’s requests, which is an important part of the deliberative process.

Exemption 5: Harm in Disclosure

36. The records in this case relate both to a core function of PSEU, to analyze requests or consultations from Department attorneys for authorization to use certain investigative

tools, and the core functions of the Department, to enforce the law and seek just punishment for those guilty of unlawful behavior. Release of the information contained in these records would create a foreseeable harm as disclosure of the records, and the facts selected for and contained within them, would reveal individual assessments of what was deemed significant in the course of the investigation, and the decisions regarding the attorneys' recommendations to approve or deny the authorization requests.

37. Because the information contained in these records contributes to the decision-making process, disclosure of this information would have a chilling effect on DOJ attorneys, who would no longer be comfortable documenting their legal strategies and recommendations. If the records, containing preliminary assessments and opinions regarding a core function of PSEU, are released to the public, the Criminal Division personnel will be more circumspect in their discussions with each other and in providing all pertinent information and viewpoints to senior officials in a timely manner, which would severely hamper the efficient day-to-day workings of the Department. Individuals may no longer feel free to discuss their ideas and advice in email messages. Such self-censorship would degrade the quality of agency decisions, thus compromising the integrity of the Department's ability to conduct investigations on behalf of the United States. This lack of candor will seriously impair the Department's ability to foster the forthright, internal discussions necessary for efficient and proper decision making.

38. The records remaining at issue reflect the confidential thought processes of PSEU attorneys and Criminal Division senior leadership regarding whether the Criminal Division should approve SDNY's authorization requests based on the material provided in the authorization requests. The records reflect candid, analytical deliberations among Criminal Division personnel and communications between the Criminal Division and SDNY. Release of

such communications would reasonably result in harm to these decision-making processes in the future because it would potentially confuse or mislead the public into believing that pre-decisional views reflect the ultimate rationale for the final decision, and because the release of such material would impact the quality of future written communications, as Department employees would tend to be more circumspect in their discussions of high-profile, sensitive legal questions if they knew such analysis could be subject to future disclosure under FOIA.

39. The release of attorney work-product material in this instance would also cause a reasonably foreseeable harm to Criminal Division operations. Release of the withheld records would impact the Criminal Division's ability to assert the attorney work-product privilege over the responsive records to the extent they are sought in any future civil litigation. Further, attorneys require a degree of protection that their work-product will not be releasable in order to adequately prepare a case for prosecution. The release of the Criminal Division attorneys' emails and recommendation memoranda created in furtherance of an ongoing investigation and ongoing prosecution would hamstring the ability of Criminal Division attorneys to candidly prepare similar analysis and recommendations in response to future authorization requests.

Exemptions (b)(6) and (b)(7)(C)

Personal Privacy Interests

40. The Criminal Division also based its non-disclosure of certain information in the records on Exemptions 6 and 7(C). The FOIA exempts from disclosure information related to third parties if release of the information could be expected to constitute an unwarranted invasion of personal privacy. Specifically, 5 U.S.C. § 552(b)(6) exempts from disclosure "personnel and medical files and similar files when the disclosure of such information would constitute a clearly unwarranted invasion of personal privacy." The term "similar files" is generally read broadly to

encompass any file containing information that applies to a particular person. Here, the records constitute “similar files” as they contain the names of Department personnel and third-party individuals. FOIA Exemption 7(C) protects information “compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information...could reasonably be expected to constitute an unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(7)(C). The practice of the Criminal Division is to assert Exemption 6 in conjunction with Exemption 7(C) where, as in this case, the release of certain information contained in law enforcement records would constitute a clearly unwarranted invasion of personal privacy, in violation of Section 552(b)(6), and could reasonably be expected to constitute an unwarranted invasion of personal privacy, in violation of Section 552(b)(7)(C).

Exemption (b)(7) Threshold

41. Exemption 7 of the FOIA protects from mandatory disclosure records or information compiled for law enforcement purposes, but only to the extent that disclosure could reasonably be expected to cause one of the harms enumerated in the subpart of the exemption. *See* 5 U.S.C. § 552(b)(7). In this case, the harm that could reasonably be expected to result from disclosure concerns invasion of personal privacy (5 U.S.C. § 552(b)(7)(C)). Before an agency can invoke any of the harms enumerated in Exemption 7(C), it first must demonstrate that the records or information at issue were compiled for law enforcement purposes. Law enforcement components such as the Criminal Division must demonstrate that the records at issue are related to the enforcement of federal laws and that the enforcement activity is within the law enforcement duties of that agency. The records remaining at issue in this case were created by or at the behest of Department attorneys as part of an investigation being conducted by the

Department. Accordingly, the FOIA/PA Unit determined that the records remaining at issue here meet the threshold requirement of FOIA Exemption 7.

FOIA Privacy Rights

42. The FOIA/PA Unit has decided not to withhold under Exemptions 6 and 7(C) the names of certain Criminal Division employees serving in a public-facing, supervisory capacity, that hold positions of leadership within the Department, or that otherwise do not have a privacy interest in their name appearing the course of performing their federal employment. Those names appear in the *Vaughn* Index. As discussed below, the FOIA/PA Unit has determined that other information warrants protection pursuant to Exemptions 6 and 7(C).⁶

43. The FOIA/PA Unit has withheld information of non-governmental third parties. These third parties have a substantial interest in the nondisclosure of their names and/or personal information and maintain a substantial (more than *de minimus*) privacy interest in not being identified with further aspects of a criminal law enforcement investigation. None of these third parties have themselves voluntarily waived any of their privacy interests with respect to Plaintiff's FOIA request. Associating these individuals with a criminal investigation, or with a particular search warrant application, can subject them to innuendo, embarrassment, stigmatization, or even harassment, retaliation, and reprisals.

44. Accordingly, the FOIA/PA Unit determined that the third parties described above who are named in the records have a measurable privacy interest in the nondisclosure of their names and other personal information, thereby requiring it to balance the privacy interests against the public interest to determine whether disclosure is required under the FOIA.

FOIA Public Interest

⁶ Plaintiff has not challenged Defendant's withholdings of the names or identifying information of line attorneys or other lower-level government employees under FOIA Exemptions (b)(6) and (b)(7)(C).

45. Where, as in this case, the Department is relying on Exemptions 6 and 7(C) to protect the privacy rights of non-governmental third parties, the meaning of “public interest” is specifically limited to the FOIA’s basic purpose of opening agency action to the light of public scrutiny and thereby furthering the citizens’ right to be informed about their government’s actions. The FOIA/PA Unit has not identified any significant and cognizable public interest in disclosure of the information protected in this case. Revealing additional non-public personal information about non-governmental third parties is unlikely to significantly add to the public’s understanding of how the Department works.

Balancing FOIA Public Interest in Disclosure with Third Party Privacy Interests

46. Exemptions 6 and 7(C) each require a balancing of the individual’s rights to personal privacy against the public’s interest in shedding light on an agency’s performance of its statutory duties. In this case, the FOIA/PA Unit has withheld the identifying and personal information of non-governmental third parties. Releasing the personal information of non-governmental third parties to the public could subject the individuals to harassment or embarrassment, as well as undue public attention. In addition, revealing such information is unlikely to add to the public’s understanding of how the Department works or how well it performs its statutory duties. Thus, the substantial privacy interest protected by withholding this information outweighs the minimal public interest that might be served by its release.

47. Accordingly, the FOIA/PA Unit determined that release of this information regarding non-governmental third parties named in the withheld records would constitute a clearly unwarranted invasion of their personal privacy pursuant to FOIA Exemption 6, and could reasonably be expected to constitute an unwarranted invasion of their personal privacy pursuant to FOIA Exemption 7(C).

Exemptions 6 and 7(C): Harm in Disclosure

48. On the basis of Exemptions 6 and 7(C), the FOIA/PA Unit protected records that would present a specific foreseeable harm in release: information the disclosure of which would have a real and meaningful adverse impact on the personal privacy of non-governmental third parties, and would not further the FOIA public interest. It is foreseeable that disclosure of such information would lead to unwarranted publicity and the non-governmental third parties would be subjected to innuendo, embarrassment, and reputational damage. As a result of the foreseeable harm, release of this information regarding non-governmental third parties named or described in the records related to a high-profile investigation and prosecution would constitute an unwarranted invasion of their personal privacy as described above.

Duty to Segregate Nonexempt Information

49. The Criminal Division's *Vaughn* Index describes the records withheld and sets forth the basis for withholding the records. During the FOIA/PA Unit's review of the records at issue here, FOIA/PA Unit personnel carefully reviewed each of the pages of withheld records to determine whether any non-exempt information could be segregated for release. In each instance where information was withheld pursuant to Exemption 5, only that information which is protected by the attorney work-product privilege and/or the deliberative process privilege was withheld, and it is reasonably foreseeable that disclosure of this information would harm the interests protected by Exemption 5. No nonexempt information was withheld pursuant to this exemption because the deliberative process privilege was asserted in conjunction with the attorney work-product privilege and thus further segregation was not possible. Additionally, information protected by Exemptions 6 and 7(C) also is protected under Exemption 5, so further segregation was not possible.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this July 30, 2021.

Drew Lavine

Drew Lavine

EXHIBIT 1

CREW

**citizens for responsibility
and ethics in washington**

July 18, 2019

By Email: crm.foia@usdoj.gov

Amanda M. Jones
Chief, FOIA/PA Unit
Criminal Division
U.S. Department of Justice
Suite 1127, Keeney Building
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

Re: Expedited Freedom of Information Act Request

Dear Ms. Jones:

Citizens for Responsibility and Ethics in Washington ("CREW") makes this expedited request for records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and U.S. Department of Justice ("DOJ") regulations.

Specifically, CREW requests all records related to the now closed investigation conducted by the U.S. Attorney's Office for the Southern District of New York into (1) who, besides Michael Cohen, was involved in and may be criminally liable for the two campaign finance violations to which Mr. Cohen pled guilty; and (2) whether certain individuals made false statements, gave false testimony, or otherwise obstructed justice in connection with this investigation. The nature of this investigation is outlined in the attached letter submitted on July 15, 2019, to U.S. District Court Judge William H. Pauley III in *United States v. Cohen*, Crim. No. 18-cr-602 (S.D.N.Y.). For your convenience a copy of this letter is attached. This request includes, but is not limited to witness statements, investigative reports, prosecution memoranda, and FBI 302s.

Please search for responsive records regardless of format, medium, or physical characteristics. We seek records of any kind, including paper records, electronic records, audiotapes, videotapes, photographs, data, and graphical material. Our request includes without limitation all correspondence, letters, emails, text messages, facsimiles, telephone messages, voice mail messages, and transcripts, notes, or minutes of any meetings, telephone conversations, or discussions. Our request also includes any attachments to emails and other records, as well as those who were cc'ed or bcc'ed on any emails.

If it is your position any portion of the requested records is exempt from disclosure, CREW requests that you provide it with an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). If some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. See 5 U.S.C. § 552(b). If it is your position that a document contains non-

Amanda Jones

July 18, 2019

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exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document. *See Mead Data Central v. U.S. Dep't of the Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977).

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A) and Department of Justice regulations, CREW requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures likely will contribute to a better understanding of relevant government procedures by CREW and the general public in a significant way. *See* 5 U.S.C. § 552(a)(4)(A)(iii). Moreover, the request primarily and fundamentally is for non-commercial purposes. *See, e.g., McClellan Ecological v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987).

In his memorandum opinion and order of July 17, 2019 (attached), ordering the unsealing of a subset of the documents requested here, Judge Pauley described the campaign finance violations that were under investigation as “a matter of national importance.” He also deemed it “time that every American has an opportunity to scrutinize the Materials,” referencing the documents related to the campaign finance investigation. Like the records Judge Pauley ordered be unsealed, the requested records would shed light on the extent, if any, that President Donald Trump or any of his businesses or associates has violated campaign finance laws and, if so, why the government has closed its investigation without prosecuting these crimes, with the exception of Michael Cohen. The American people deserve to know whether their president and his business associates have complied fully with the laws of our land and if they have not, why DOJ declined to prosecute them. The president is the most powerful and visible official of our country, and the truth about his actions and those of his campaign, businesses, and associates should not be shielded from public scrutiny.

CREW is a non-profit corporation, organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the public’s right to be aware of the activities of government officials, to ensuring the integrity of those officials, and to highlighting and working to reduce the influence of money on politics. CREW uses a combination of research, litigation, and advocacy to advance its mission. CREW intends to analyze the information responsive to this request and to share its analysis with the public through reports, press releases, or other means. In addition, CREW will disseminate any documents it acquires from this request to the public through its website, www.citizensforethics.org. The release of information obtained through this request is not in CREW’s financial interest.

CREW further requests that it not be charged search or review fees for this request pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) because CREW qualifies as a member of the news media. *See Nat’l Sec. Archive v. U.S. Dep’t of Defense*, 880 F.2d 1381, 1386 (D.C. Cir. 1989) (holding non-profit a “representative of the news media” and broadly interpreting the term to

Amanda Jones
July 18, 2019
Page 3

include “any person or organization which regularly publishes or disseminates information to the public”).

CREW routinely and systematically disseminates information to the public in several ways. CREW’s website receives tens of thousands of page views every month. The website includes blog posts that report on and analyze newsworthy developments regarding government ethics, corruption, and money in politics, as well as numerous reports CREW has published to educate the public about these issues. In addition, CREW posts the documents it receives under the FOIA on its website, and those documents have been visited hundreds of thousands of times.

Under these circumstances, CREW satisfies fully the criteria for a fee waiver.

Request for Expedition

Finally, please be advised that CREW also has requested expedition of this request because its subject matter is of widespread and exceptional media interest and the requested information involves possible questions about the government’s integrity that affect public confidence. Pursuant to 28 C.F.R. § 16.5(e)(2), CREW submitted that request to DOJ’s Director of Public Affairs; a copy of that request is enclosed.

Conclusion

If you have any questions about this request or foresee any problems in fully releasing the requested records, please contact me at (202) 408-5565 or aweismann@citizensforethics.org. Also, if CREW’s request for a fee waiver is not granted in full, please contact our office immediately upon making such a determination.

Where possible, please produce records in electronic format. Please send the requested records to me either at aweismann@citizensforethics.org or at Anne L. Weismann, Citizens for Responsibility and Ethics in Washington, 1101 K Street, N.W., Suite 201, Washington, D.C. 20005. Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Anne L. Weismann', with a long horizontal flourish extending to the right.

Anne L. Weismann
Chief FOIA Counsel

Encls.



United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

July 15, 2019

EX PARTE and UNDER SEAL

BY EMAIL and HAND

The Honorable William H. Pauley III
United States District Judge
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: United States v. Michael Cohen, 18 Cr. 602 (WHP)

Dear Judge Pauley:

Pursuant to the Court's February 7, 2019 opinion and order (the "Order") and May 21, 2019 order, the Government respectfully submits this sealed, *ex parte* status report explaining the need for continued redaction of the materials subject to the Order. (*See* Order at 30).

By way of background, several media organizations filed a request to unseal the affidavits, warrants, and riders associated with several different searches that were conducted in connection with a grand jury investigation into Michael Cohen and others (the "Materials"). The Government opposed that request, citing the need to protect an ongoing investigation and the personal privacy of certain individuals named in the Materials. On February 7, 2019, this Court granted the motion in part and denied it in part. Although the Court directed that certain parts of the Materials be unsealed (with limited redactions to protect privacy interests), the Court denied the motion to unseal all of the Materials. Relevant here, the Court held that "the portions of the Materials relating to Cohen's campaign finance crimes shall be redacted" to protect the ongoing law enforcement investigation. (Order at 11). On May 21, 2019, after receiving a status update from the Government on the need for continued sealing, the Court issued an order permitting continued sealing of the campaign finance portions of the Materials to protect an ongoing investigation, and directed that the Government provide another update by this date.

The Government is no longer seeking to maintain the campaign finance portions of the Materials under seal in order to protect an ongoing investigation.¹ However, while the majority of

¹ The Government has effectively concluded its investigations of (1) who, besides Michael Cohen, was involved in and may be criminally liable for the two campaign finance violations to which Cohen pled guilty [REDACTED]; and (2) whether certain individuals, [REDACTED], made false statements, gave false testimony or otherwise obstructed justice in connection with this investigation [REDACTED]

the campaign finance portions of the Materials can now be unsealed, the Government respectfully submits that some redactions should be maintained in order to protect the personal privacy of certain individuals. In particular, consistent with the Court's prior Order, the Government seeks to redact references to individuals who are either (1) "'peripheral characters' for whom the Materials raise little discernable inference of criminal conduct" but who "may nonetheless be 'stigmatized'" by their inclusion in the Materials; or (2) people "around Cohen from which the public might infer criminal complicity." (Order at 14). However, while most references to such individuals are redacted, the Government does not seek to redact references to those individuals that are either (a) facts that have been publicly confirmed, either by the individual in public statements or the Government in public filings; or (b) facts sourced from publicly available materials. (See Order at 15 ("Shielding third parties from unwanted attention arising from an issue that is already public knowledge is not a sufficiently compelling reason to justify withholding judicial documents from public scrutiny.")).

Together with this letter, the Government has transmitted a copy of one of the search warrant affidavits with the proposed redactions marked. See Ex. A, at 38-57, 66-67, 71, 73-74, 83-101. (The proposed redactions also include the privacy-based redactions previously authorized in the bank and tax portions of the Materials.) The Government respectfully requests that the Court approve these redactions, and will submit corresponding redactions to the other affidavits (which are substantially similar to the attached affidavit) once the Court has ruled on these proposed redactions.

Respectfully submitted,

AUDREY STRAUSS
Attorney for the United States,
Acting Under Authority Conferred by
28 U.S.C. § 515

By: 

Thomas McKay / Nicolas Roos
Assistant United States Attorneys
(212) 637-2200

cc: Counsel of Record (by ECF)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

investigation. The May 21, 2019 Order also directed the Government to submit a further status report by July 15, 2019 explaining the need for continued redaction of the Materials.

On July 15, 2019, the Government submitted a status report and proposed redactions to the Materials ex parte and under seal. The Government now represents that it has concluded the aspects of its investigation that justified the continued sealing of the portions of the Materials relating to Cohen's campaign finance violations. Although the Government agrees that the majority of the campaign finance portions of the Materials may be unsealed, it requests limited redactions to those portions to protect third-party privacy interests.

After reviewing the Government's status report and proposed redactions, this Court denies the Government's request. In particular—and in contrast to the private nature of Cohen's business transactions—the weighty public ramifications of the conduct described in the campaign finance portions warrant disclosure. See United States v. Amodeo, 71 F.3d 1044, 1051 (2d Cir. 1995) (explaining that “financial records of a wholly owned business, family affairs, illnesses, embarrassing conduct with no public ramifications, and similar matters will weigh more heavily against access than conduct affecting a substantial portion of the public”). Moreover, the involvement of most of the relevant third-party actors is now public knowledge, undercutting the need for continued secrecy. See United States v. Basciano, 2010 WL 1685810, at *4 (E.D.N.Y. Apr. 23, 2010) (“Shielding third parties from unwanted attention arising from an issue that is already public knowledge is not a sufficiently compelling reason to justify withholding judicial documents from public scrutiny.”). On balance, the “strong presumption of public access” to search warrants and search warrant materials under the common law far outweighs the weakened privacy interests at play here. See Cohen, 366 F. Supp. 3d at 621-22 (collecting cases).

The campaign finance violations discussed in the Materials are a matter of national importance. Now that the Government's investigation into those violations has concluded, it is time that every American has an opportunity to scrutinize the Materials. Indeed, the common law right of access—a right so enshrined in our identity that it “predate[s] even the Constitution itself”—derives from the public's right to “learn of, monitor, and respond to the actions of their representatives and representative institutions.” United States v. Erie Cty., 763 F.3d 235, 238-39 (2d Cir. 2014).

Accordingly, the Government is directed to file the July 15, 2019 status report and the Materials on the public docket on **July 18, 2019 at 11:00 a.m.** The July 15, 2019 status report shall be unredacted in its entirety, except that limited references in the footnote to an uncharged third-party may remain redacted. See United States v. Smith, 985 F. Supp. 2d 506, 526 (S.D.N.Y. 2013). The Materials shall be unredacted in their entirety, except that the names of law enforcement investigators, references to individuals who purportedly engaged in business transactions or contemplated business transactions with Cohen relating to taxi medallions, see Cohen, 366 F. Supp. 3d at 625, and personal information referenced in this Court's March 18, 2019 Order may remain redacted.

Dated: July 17, 2019
New York, New York

SO ORDERED:


WILLIAM H. PAULEY III
U.S.D.J.

EXHIBIT 2



U.S. Department of Justice

Criminal Division

Office of Enforcement Operations

Washington, D.C. 20530

VIA Electronic Mail

February 20, 2020

Ms. Anne Weismann
Suite 201
1101 K Street NW
Washington, D.C. 20005
aweismann@citizensforethics.org

Request No. CRM-300792435
CREW v. DOJ, 19-cv-2267 (D.D.C.)

Dear Ms. Weismann:

This serves as the Criminal Division's final response to your Freedom of Information Act request dated July 18, 2019, for records related to the now closed investigation conducted by the U.S. Attorney's Office for the Southern District of New York into Michael Cohen.

Please be advised that searches have been conducted in the appropriate section, and 108 pages of records were located that are responsive to your request.

After carefully reviewing the records responsive to your request, I have determined that they are exempt from disclosure pursuant to:

5 U.S.C. § 552(b)(3), which concerns matters specifically exempted from release by statute (in this instance, Rule 6(e), Fed. R. Crim. P., which pertains to grand jury material);

5 U.S.C. § 552(b)(5), which concerns certain inter- and intra-agency communications protected by the attorney work-product privilege and the deliberative process privilege;

5 U.S.C. § 552(b)(6), which concerns material the release of which would constitute a clearly unwarranted invasion of the personal privacy of third parties; and

5 U.S.C. § 552(b)(7)(C), which concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to constitute an unwarranted invasion of the personal privacy of third parties.

Additionally, we have located twenty-five pages of responsive records which originated with the Executive Office for United States Attorneys (EOUSA). In accordance with 28 C.F.R. § 16.4(d) (2019), this Office has referred that material to EOUSA for processing and direct response to you.

You may contact Trial Attorney Joshua C. Abbuhl by phone at (202) 616-8366, by email at joshua.abbuhl@usdoj.gov, or by mail at the Civil Division – Federal Programs Branch, United

States Department of Justice, 1100 L Street, N.W., Washington, D.C. 20005, for any further assistance and to discuss any aspect of your request or the EOUSA referral.

Although I am aware that your request is the subject of ongoing litigation and that appeals are not ordinarily acted on in such situations, I am required by statute and regulation to inform you of your right to an administrative appeal of this determination. If you are not satisfied with my response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, 441 G Street, NW, 6th Floor, Washington, D.C. 20530, or you may submit an appeal through OIP's FOIA STAR portal by creating an account on the following website: <https://foiastar.doj.gov>. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

A handwritten signature in black ink, appearing to read "Amanda Marchand Jones".

Amanda Marchand Jones
Chief
FOIA/PA Unit

cc: Joshua C. Abbuhl
United States Department of Justice
Civil Division – Federal Programs Branch
1100 L Street NW
Washington, DC 20005
joshua.abbuhl@usdoj.gov

EXHIBIT 3

Citizens for Responsibility and Ethics in Washington v. United States Department of Justice, Civil Action No. 1:19-cv-02267 (D.D.C.)

Criminal Division's *Vaughn* Index

This index contains a description of the sixty-one pages of records protected in full by the Criminal Division¹, pursuant to Freedom of Information Act (FOIA), 5 (attorney work-product privilege and deliberative process privilege), 6, and 7(C). The descriptions of each document within this *Vaughn* Index are meant to be read in tandem with the accompanying Criminal Division declaration, which provides a more fulsome explanation of the basis for withholding the information at issue.

Acronyms/Abbreviations Used in this Index:

WIF = Withheld in Full

DOJ = United States Department of Justice

CRM = Criminal Division

DOJ-CRM = United States Department of Justice, Criminal Division

OEO = Criminal Division's Office of Enforcement Operations

PSEU = CRM Office of Enforcement Operations' Policy and Statutory Enforcement Unit

USAO-SDNY = United States Attorney's Office for the Southern District of New York

AUSA = Assistant United States Attorney

Individuals Identified in this Index

Hulser = Ray Hulser, Deputy Assistant Attorney General, CRM

Driscoll = Kevin Driscoll, Acting Deputy Assistant Attorney General, CRM

Sorkin = Deborah Sorkin, Chief, PSEU, CRM

Zeeman = Jeffrey Zeeman, Trial Attorney, PSEU, CRM

Peirce = Lara Pierce, Deputy Chief, PSEU, CRM

Bryden = Robert Bryden, Deputy Director, OEO, CRM

Hodge = Jennifer Hodge, Director, OEO, CRM

Cronan = John Cronan, Acting Assistant Attorney General, CRM

FOIA Exemptions²:

Exemption (b)(5) = Concerns certain inter- and intra-agency communications protected by the attorney work-product privilege ("AWP") and the deliberative process privilege ("DPP").

Exemption (b)(6) = Concerns material the release of which would constitute a clearly unwarranted invasion of the personal privacy of third parties.

Exemption (b)(7)(C) = Concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to constitute an unwarranted invasion of the personal privacy of third parties.

¹ Certain pages of responsive records do not appear on this Index. The missing pages were withheld under FOIA Exemption (b)(3) and were not challenged by Plaintiff. These withholdings are discussed further in the Declaration of Drew Lavine.

² Plaintiff has not challenged Defendant's withholdings of the names or identifying information of line attorneys or other lower-level government employees under FOIA Exemptions (b)(6) and (b)(7)(C); therefore, these withholdings do not appear on this Index.

PAGE NUMBER(S)	DATE SENT	AUTHOR(S)	RECIPIENT(S)	DESCRIPTION OF WITHHELD MATERIAL	EX(S)
1	February 23, 2018; February 7, 2018	SDNY AUSA; Sorkin	Sorkin; SDNY AUSAs	Email chain discussing SDNY's consultation with OEO regarding approval of a search warrant.	(b)(5)(AWP and DPP); (b)(6); (b)(7)(C) The names of third parties are withheld under (b)(6), (b)(7)(C).
2	Undated	Hodge	USAO-SDNY	Memorandum from OEO to SDNY discussing SDNY's consultation with OEO regarding approval of search warrants.	(b)(5)(AWP); (b)(6); (b)(7)(C) The names and email addresses of third parties are withheld under (b)(6), (b)(7)(C).
3	Undated	Hodge	USAO-SDNY	Memorandum from OEO to SDNY discussing SDNY's consultation with OEO regarding approval of search warrants.	(b)(5)(AWP); (b)(6); (b)(7)(C) The names of third parties are withheld under (b)(6), (b)(7)(C).
4	April 7, 2018	Hodge	Sorkin	Email chain discussing an SDNY search warrant consultation request to OEO.	(b)(5)(AWP and DPP); (b)(6); (b)(7)(C) The names and identifying information of third parties are withheld under (b)(6), (b)(7)(C).
5	April 7, 2018	Sorkin; AUSA	SDNY AUSAs; Sorkin	Email chain discussing an SDNY search warrant consultation request to OEO.	(b)(5)(AWP and DPP); (b)(6); (b)(7)(C) The names of third parties are withheld under (b)(6), (b)(7)(C).
6	April 7, 2018	Hodge; Sorkin; AUSA	Sorkin; Hodge	Email chain discussing an SDNY search warrant consultation request to OEO.	(b)(5)(AWP and DPP)

PAGE NUMBER(S)	DATE SENT	AUTHOR(S)	RECIPIENT(S)	DESCRIPTION OF WITHHELD MATERIAL	Ex(s)
7	April 7, 2018	Sorkin; Hulser	Hulser; Sorkin	Email chain discussing an SDNY search warrant consultation request to OEO.	(b)(5)(AWP) and DPP); (b)(6); (b)(7)(C) The names of third parties are withheld under (b)(6), (b)(7)(C).
18	April 9, 2018	Hulser	USAO-SDNY	Letter from Hulser to USAO-SDNY approving SDNY application for a search warrant.	(b)(5)(AWP); (b)(6); (b)(7)(C) The names of third parties are withheld under (b)(6), (b)(7)(C).
19	April 9, 2018	Hulser	USAO-SDNY	Unsigned Letter from Hulser to USAO-SDNY approving SDNY application for a search warrant.	(b)(5)(AWP and DPP); (b)(6); (b)(7)(C) The names of third parties are withheld under (b)(6), (b)(7)(C).
20	April 10, 2018	Hulser	USAO-SDNY	Letter from Hulser to USAO-SDNY approving SDNY application for a search warrant.	(b)(5)(AWP); (b)(6); (b)(7)(C) The name of a third party is withheld under (b)(6), (b)(7)(C).
25	April 30, 2018	Hodge	USAO-SDNY	Letter from Hodge to USAO-SDNY discussing an SDNY request for consultation regarding a search warrant.	(b)(5)(AWP); (b)(6); (b)(7)(C) The name of a third party is withheld under (b)(6), (b)(7)(C).
26	April 30, 2018	Hodge	USAO-SDNY	Letter from Hodge to USAO-SDNY discussing an SDNY request for consultation regarding a search warrant.	(b)(5)(AWP); (b)(6); (b)(7)(C) The name of a third party is withheld under (b)(6), (b)(7)(C).
27-28	May 16, 2018	Sorkin; SDNY AUSA	Hodge; Sorkin;	Email chain discussing consultation request	(b)(5)(AWP and DPP); (b)(6); (b)(7)(C)

PAGE NUMBER(S)	DATE SENT	AUTHOR(S)	RECIPIENT(S)	DESCRIPTION OF WITHHELD MATERIAL	Ex(s)
			SDNY AUSAs	from SDNY regarding a proposed interview.	The names and other identifying information of third parties is withheld under (b)(6), (b)(7)(C).
29-30	May 16, 2018	Sorkin; Hodge; SDNY AUSA	Sorkin; Hodge; SDNY AUSAs	Email chain discussing consultation request from SDNY regarding a proposed interview.	(b)(5)(AWP and DPP); (b)(6); (b)(7)(C) The name of a third party and personal medical information regarding a DOJ attorney are withheld under (b)(6), (b)(7)(C).
31-33	May 16, 2018	Sorkin; SDNY AUSA	Sorkin; SDNY AUSAs	Email chain discussing consultation request from SDNY regarding a proposed interview.	(b)(5)(AWP and DPP); (b)(6); (b)(7)(C) The name of a third party is withheld under (b)(6), (b)(7)(C).
34-36	May 16, 2018	SDNY AUSA	Sorkin; SDNY AUSAs	Email chain discussing consultation request from SDNY regarding a proposed interview.	(b)(5)(AWP and DPP); (b)(6); (b)(7)(C) The name and other identifying information of third parties is withheld under (b)(6), (b)(7)(C).
40-42	June 12, 2018	SDNY AUSA; Zeeman	SDNY AUSAs; Zeeman; Sorkin	Email chain among PSEU and SDNY AUSAs discussing an SDNY request to issue a search warrant.	(b)(5)(AWP and DPP); (b)(6); (b)(7)(C) The names and other identifying information of third parties is withheld under (b)(6), (b)(7)(C).

PAGE NUMBER(S)	DATE SENT	AUTHOR(S)	RECIPIENT(S)	DESCRIPTION OF WITHHELD MATERIAL	Ex(s)
43	June 13, 2018	SDNY AUSA	Sorkin; Zeeman; SDNY AUSAs	Email discussing SDNY request to execute a search warrant.	(b)(5)(AWP and DPP); (b)(6); (b)(7)(C) The names of third parties are withheld under (b)(6), (b)(7)(C).
57-64	Undated	Hodge	Hulser	Unapproved/unsigned legal memorandum analyzing a USAO-SDNY request to obtain a search warrant.	(b)(5)(AWP and DPP); (b)(6); (b)(7)(C) The names and identifying information of third parties are withheld under (b)(6), (b)(7)(C).
65	June 22, 2018	Zeeman	Sorkin; SDNY AUSAs	Email discussing the SDNY requests to obtain a search warrant.	(b)(5)(AWP and DPP); (b)(6); (b)(7)(C) The name of a third party is withheld under (b)(6), (b)(7)(C).
66-79	undated	Hodge	Hulser	Unapproved/unsigned legal memorandum analyzing USAO-SDNY requests to obtain search warrants.	(b)(5)(AWP and DPP); (b)(6); (b)(7)(C) The names, identifying information, and phone numbers of third parties are withheld under (b)(6), (b)(7)(C).
80	July 3, 2018	Hulser	USAO-SDNY	Letter approving an SDNY request to obtain a search warrant.	(b)(5)(AWP); (b)(6); (b)(7)(C) The names of third parties are withheld under (b)(6), (b)(7)(C).

PAGE NUMBER(S)	DATE SENT	AUTHOR(S)	RECIPIENT(S)	DESCRIPTION OF WITHHELD MATERIAL	Ex(s)
82-92	July 6, 2018	Hodge	Hulser	Approved legal memorandum analyzing USAO-SDNY requests to obtain search warrants.	(b)(5)(AWP and DPP); (b)(6); (b)(7)(C) The names and identifying information of third parties are withheld under (b)(6), (b)(7)(C).

EXHIBIT D

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CITIZENS FOR RESPONSIBILITY AND
ETHICS IN WASHINGTON,

Plaintiff,

v.

U.S DEPARTMENT OF JUSTICE,

Defendant.

Civil Action No. 1:19-cv-02267-EGS

DECLARATION OF MICHAEL G. SEIDEL

I, Michael G. Seidel, declare as follows:

(1) I am the Section Chief of the Record/Information Dissemination Section (“RIDS”), Information Management Division (“IMD”), Federal Bureau of Investigation (“FBI”), Winchester, Virginia. I joined the FBI in September 2011, and prior to my current position, I was the Assistant Section Chief of RIDS from June 2016 to July 2020; Unit Chief, RIDS Litigation Support Unit from November 2012 to June 2016; and an Assistant General Counsel, FBI Office of the General Counsel, Freedom of Information Act (“FOIA”) Litigation Unit, from September 2011 to November 2012. In those capacities, I had management oversight or agency counsel responsibility for FBI FOIA and Privacy Act (“FOIPA”) litigation cases nationwide. Prior to my joining the FBI, I served as a Senior Attorney, U.S. Drug Enforcement Administration (“DEA”) from September 2006 to September 2011, where among myriad legal responsibilities, I advised on FOIPA matters and served as agency counsel representing the DEA in FOIPA suits nationwide. I also served as a U.S. Army Judge Advocate General’s Corps

Officer in various assignments from 1994 to September 2006 culminating in my assignment as Chief, General Litigation Branch, U.S. Army Litigation Division where I oversaw FOIPA litigation for the U.S. Army. I am an attorney registered in the State of Ohio and the District of Columbia.

(2) In my official capacity as Section Chief of RIDS, I supervise approximately 244 FBI employees, supported by approximately 89 contractors, who staff a total of ten (10) Federal Bureau of Investigation Headquarters ("FBIHQ") units and two (2) field operational service center units whose collective mission is to effectively plan, develop, direct, and manage responses to requests for access to FBI records and information pursuant to the FOIA as amended by the OPEN Government Act of 2007, the OPEN FOIA Act of 2009, and the FOIA Improvement Act of 2016; the Privacy Act of 1974; Executive Order 13526; Presidential, Attorney General, and FBI policies and procedures; judicial decisions; and Presidential and Congressional directives. The statements contained in this declaration are based upon my personal knowledge, upon information provided to me in my official capacity, and upon conclusions and determinations reached and made in accordance therewith.

(3) Because of the nature of my official duties, I am familiar with the procedures followed by the FBI in responding to requests for information from its files pursuant to the provisions of the FOIA, 5 U.S.C. § 552, and the Privacy Act of 1974, 5 U.S.C. §552a. Specifically, I am aware of the FBI's handling of Plaintiff's FOIA request for records related to the investigation conducted by the U.S Attorney's Office for the Southern District of New York into (1) who, besides Michael Cohen, was involved in and may be criminally liable for the two campaign finance violations to which Mr. Cohen pled guilty, and (2) whether certain individuals made false statements, gave false testimony, or otherwise obstructed justice in connection with

the investigation. Additionally, I am also familiar with the FBI's coordination and consultation with the Department of Justice's ("DOJ's") Executive Office of the United States Attorneys ("EOUSA") and the U.S Attorney's Office for the Southern District of New York ("SDNY") concerning the handling of these records.

(4) In response to Plaintiff's request, the FBI processed an overall total of 1,924 pages of responsive records subject to the FOIA. The FBI processed 1,354 pages of records located in response to the search.¹ In addition, FBI provided to Plaintiff 218 pages previously processed for other FOIA litigations. The FBI also reviewed 293 pages of records that were referred to FBI by SDNY/EOUSA and 59 pages referred from DOJ/OIP.² All 1,924 pages were withheld in full because the pages were found to be duplicative of pages accounted for elsewhere in the FBI's production and/or the pages were referred to or directly handled by EOUSA/SDNY for release to Plaintiff. In accordance with *Vaughn v. Rosen*, 424 F.2d 820 (D.C. Cir. 1973), this declaration is submitted in support of Defendant's motion for summary judgment, and provides the Court with a summary of the administrative history of Plaintiff's request; the procedures used to search for, review, and process responsive records; and the FBI's justification for withholding information in part or in full pursuant to FOIA Exemptions 6, 7(C), and 7(E), 5 U.S.C. §§ 552 (b)(6), (b)(7)(C) and (b)(7)(E).

¹ Plaintiff is not challenging FBI's search. (ECF. No. 21)

² FBI assigned the 293 pages of records SDNY referred to FBI as Bates FBI(19-cv-2267)-1355 through FBI(19-cv-2267)-1647 and addressed the 59 pages of records OIP referred to FBI as Bates FBI(19-cv-2267)-1648 through FBI(19-cv-2267)-1706.

**ADMINISTRATIVE HISTORY OF PLAINTIFF'S REQUEST
FBI REQUEST NUMBER 1443149**

(5) By facsimile ("fax") dated July 18, 2019, Plaintiff submitted a FOIA request to the FBI seeking any and all records pertaining to "[t]he now closed investigation conducted by the U.S Attorney's Office for the Southern District of New York into (1) who, besides Michael Cohen, was involved in and may be criminally liable for the two campaign finance violations to which Mr. Cohen pled guilty; and (2) whether certain individuals made false statements, gave false testimony, or otherwise obstructed justice in connection with this investigation." Additionally, Plaintiff requested a waiver of all fees associated with the processing of its request. To justify Plaintiff's fee waiver request, Plaintiff stated "CREW qualifies as a member of the news media". Plaintiff also requested that their request be granted expedited processing pursuant to 5 U.S.C. § 522(a)(6)(E)(i)(II). To justify Plaintiff's request for expedited processing, Plaintiff stated "subject matter is of widespread and exceptional media interest and the requested information involves possible questions about the government's integrity that affect public confidence". (Ex. 1.)

(6) By letter dated July 31, 2019, the FBI acknowledged receipt of Plaintiff's FOIA request, and notified Plaintiff it had assigned it Request Number 14433149-000. The FBI also informed Plaintiff of the following: Plaintiff's fee waiver was under consideration, and Plaintiff would be advised of the decision at a later date, and if Plaintiff's fee waiver was not granted, Plaintiff would be responsible for applicable fees; and for the purpose of assessing fees, the FBI determined as an education institution, noncommercial scientific institution or representative of the news media requester, Plaintiff would be charged applicable duplication fees. Additionally, the FBI informed the Plaintiff it could check the status of its request and/or contact the FBI with any questions at www.fbi.gov/foia. Furthermore, Plaintiff could appeal the FBI's response to the

DOJ Office of Information Policy ("OIP") within ninety (90) days of its letter, contact the FBI's FOIA public liaison, and/or seek dispute resolution services by contacting the Office of Government Information Services ("OGIS"). **(Ex. 2.)**

(7) By letter dated August 1, 2019, the FBI notified Plaintiff its request for expedited processing had been granted based on 28 C.F.R §16.5(e)(1)(iii). Additionally, the FBI informed Plaintiff it could contact the FBI with any questions at www.fbi.gov/foia. Furthermore, Plaintiff could appeal the FBI's response to DOJ/OIP within ninety (90) days of its letter, contact the FBI's FOIA public liaison, and/or seek dispute resolution services by contacting OGIS. **(Ex. 3.)**

(8) On April 21, 2020, the FBI received 59 pages of responsive records from DOJ/OIP for processing and direct response to the Plaintiff. The FBI reviewed its equities and consulted with EOUSA/SDNY concerning their equities. After completion of the consultation, the FBI processed the records and by letter dated June 22, 2020, Plaintiff was advised all 59 pages were being withheld in full pursuant to Exemption 3 and Federal Rule of Criminal Procedure 6(e), as well as a Federal Court Sealing Order. **(Ex. 4.)**

(9) Plaintiff filed the instant Complaint on July 30, 2019. **(ECF No. 1.)**

(10) The FBI located 1,354 pages of responsive records as a result of its search, processed the records, and determined the records contained EOUSA/SDNY equities requiring referral to the Executive Office for the United States Attorney's Office and the Southern District of New York for further processing and direct response to Plaintiff.

(11) On December 18, 2020, the FBI received an additional 293 pages from EOUSA/SDNY for consultation. The FBI reviewed these pages for applicable redactions. FBI returned its recommendations to EOUSA/SDNY for further processing and release directly to Plaintiff.

(12) After completion of processing of the above records, and as a result of negotiations between the Parties, Plaintiff narrowed its challenges to information withheld pursuant to FOIA Exemptions (b)(5), (b)(6), (b)(7)(A) and (b)(7)(C).³ (ECF No. 21.) Subsequently, Plaintiff inquired about the application of FOIA Exemption 7(E)-2 on page FBI(19-cv-2267)-1227.⁴ From the 1,924 pages reviewed, the FBI withheld information pursuant to FOIA Exemptions 6, 7(C), 5 U.S.C. §§ 552 (b)(6), (b)(7)(C) on 1333 of these pages.⁵ Accordingly, this declaration will address only the pages containing the exemptions currently at issue in this litigation, and also discusses the 7(E)-2 assertion noted above.

JUSTIFICATION FOR NONDISCLOSURE UNDER THE FOIA

(13) The FBI processed all documents responsive to Plaintiff's request to achieve maximum disclosure consistent with the access provisions of the FOIA. Every effort was made to provide Plaintiff with all reasonably segregable, non-exempt information. The FBI did not withhold any reasonably segregable, nonexempt portions from Plaintiff. Further description of the information withheld, beyond what is provided in this declaration, could identify the actual exempt information protected by the FBI. The FBI numbered all pages of its production consecutively as "FBI(19cv2267)-1 through FBI(19cv2267)-1354". The FBI also provided

³ FBI did not assert FOIA Exemption (b)(5) and is no longer asserting (b)(7)(A); however, the same information previously withheld pursuant to (b)(7)(A) continues to be withheld pursuant to (b)(7)(E).

⁴ Since the challenge is singular in nature to a specific page, it is not represented on FBI's Indexes. (Ex. 6.)

⁵ The FBI determined FOIA Exemptions 6 and 7(C) applied to 1115 Pages from pages Bates FBI(19-cv-2267), 206 pages from pages Bates stamped with the prefix FBI(19-cv-8215) and accounted for on the FBI's indexes. In addition, the FBI applied FOIA Exemptions 6 and 7(C) applied to 12 pages Bates stamped with the prefix FBI(19-cv-1278) which was released and accounted for in 19-cv-8215. (Ex. 5.)

Plaintiff with responsive material previously processed in response to two other FOIA requests. Those pages are Bates numbered as follows: FBI(19cv1278)-1924 through FBI(19cv1278)-1934, and FBI(19cv8215)-1 through FBI(19cv8215)-206. On the pages released in full or in part, these numbers are typically located at the bottom of each page. Additionally, the FBI is including two indexes at **Exhibit E** to explain where within its productions of responsive records it withheld information pursuant to FOIA Exemptions (b)(6) and (b)(7)(C) and its reasoning for doing so.⁶

(14) Additionally, on the Bates-numbered documents provided to Plaintiff, and on pages withheld in full and accounted for in the FBI's indexes, the FBI further categorized its application of Exemptions (b)(6) and (b)(7)(C) to better explain the nature of the information withheld pursuant to the provisions of the FOIA. Specifically, the FBI applied numerical codes that coincide with various categories of exempt information. These coded categories are provided to aid the Court's and Plaintiff's review of the FBI's explanations of the FOIA Exemptions it has asserted to withhold the material. The coded, Bates-numbered pages together with this declaration demonstrate that all material withheld by the FBI is exempt from disclosure pursuant to the cited FOIA exemptions or is so intertwined with protected material segregation is not possible without revealing the underlying protected material.

(15) Each instance of information withheld pursuant to a FOIA exemption is accompanied by a coded designation that corresponds to the categories listed below. For example, if "(b)(7)(C)-1" appears on a document, the "(b)(7)(C)" designation refers to FOIA

⁶ The first index covers Bates numbered pages FBI(19cv2267)-1 - FBI(19cv2267)-1647 containing FBI withholdings pursuant to FOIA Exemption (b)(6) and (b)(7)(C). The second index covers pages previously processed for another requester in FBI(19cv8215) which were also provided to Plaintiff and are dually responsive to Plaintiff's request.

Exemption 7(C) protecting against unwarranted invasions of personal privacy. The numerical designation of “1” following the “(b)(7)(C)” narrows the main category into a more specific subcategory, such as “Names and Identifying Information of FBI Special Agents and Professional Staff.”

(16) Listed below are the categories used to explain the FOIA exemptions the FBI asserted to withhold information:⁷

SUMMARY OF EXEMPTION JUSTIFICATION CATEGORIES	
CODED CATEGORIES	INFORMATION WITHHELD
Exemptions 6 & 7(C)	Unwarranted/Clearly Unwarranted Invasion of Personal Privacy
(b)(6)-1 and (b)(7)(C)-1	Names and Identifying Information of FBI Special Agents and Professional Staff
(b)(6)-2 and (b)(7)(C)-2	Names and Identifying Information of Third Parties of Investigative Interest
(b)(6)-3 and (b)(7)(C)-3	Names and Identifying Information of Third Parties Merely Mentioned
(b)(6)-4 and (b)(7)(C)-4	Names and Identifying Information of Third Parties who Provided Information
(b)(6)-5 and (b)(7)(C)-5	Names and Identifying Information of Non-FBI Federal Government Personnel
(b)(6)-6 and (b)(7)(C)-6	Names and Identifying Information of Local Law Enforcement Personnel
Exemptions 7(E)	Investigative Techniques and Procedures
(b)(7)(E)-2	Collection and Analysis of Information

EXEMPTION 7 THRESHHOLD

(17) Before an agency can invoke any of the harms enumerated in Exemption (b)(7), it must first demonstrate that the records or information at issue were compiled for law enforcement purposes. Pursuant to 28 USC §§ 533, 534, and Executive Order 12,333 as implemented by the Attorney General’s Guidelines for Domestic FBI Operations (AGG-DOM) and 28 CFR § 0.85, the FBI is the primary investigative agency of the federal government with

⁷ Plaintiff is only challenging FBI’s application of (b)(6) and (b)(7)(C) throughout the production, and also inquired into one instance of (b)(7)(E)-2 on Bates Stamped FBI(19-cv-2267)-1227. (ECF. No. 21.)

authority and responsibility to investigate all violations of federal law not exclusively assigned to another agency, to conduct investigations and activities to protect the United States and its people from terrorism and threats to national security, and further the foreign intelligence objectives of the United States. Under this investigative authority, the responsive records herein were compiled for the following specific law enforcement purpose.

(18) The records at issue were compiled in furtherance of the FBI's and SDNY's investigation of Michael Cohen and others for campaign finance violations, including, but not limited to: Causing an Unlawful Corporate Contribution in violation of Title 52, United States Code, Sections 30118(a) and 30109(d)(1)(A), and Title 18, United States Code, Section 2(b); and Excessive Campaign Contribution in violation of Title 52, United States Code, Sections 30116(a)(1)(A), 30109(d)(1)(A), and Title 18, United States Code, Section 2(b), as well as an investigation of potential criminal violations related to the underlying investigation. *See United States of America v. Cohen*, 1:18-cr-00602, ECF No. 2 (SDNY). Considering these records were compiled in furtherance of the FBI's and SDNY's investigation of potential crimes, the FBI determined they were compiled for law enforcement purposes.

**FOIA EXEMPTIONS (b)(6) AND (b)(7)(C)
CLEARLY UNWARRANTED INVASION OF PERSONAL PRIVACY AND
UNWARRANTED INVASION OF PERSONAL PRIVACY**

(19) Exemption 6 exempts from disclosure "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). All information that applies to a particular person falls within the scope of Exemption 6.

(20) Exemption 7(C) similarly exempts from disclosure “records or information compiled for law enforcement purposes [when disclosure] could reasonably be expected to constitute an unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(7)(C).⁸

(21) When withholding information pursuant to these two exemptions, the FBI is required to balance the privacy interests of the individuals mentioned in these records against any public interest in disclosure. In asserting these exemptions, each piece of information was scrutinized to determine the nature and strength of the privacy interest of every individual whose name and/or identifying information appears in the documents at issue. When withholding the information, the individual’s privacy interest was balanced against the public’s interest in disclosure. For purposes of these exemptions, a public interest exists only when information about an individual, their name, or their identifying information would shed light on the FBI’s performance of its mission to protect and defend the United States against terrorist and foreign intelligence threats, to uphold and enforce the criminal laws of the United States, and to provide leadership and criminal justice services to federal, state, municipal, and international agencies and partners. In each instance wherein information was withheld pursuant to Exemptions 6 and 7(C), the FBI determined that the individuals’ privacy interests outweighed any public interest in disclosure.

⁸ The practice of the FBI is to assert Exemption 6 in conjunction with Exemption 7(C). Although the balancing test for Exemption 6 uses a “would constitute a clearly unwarranted invasion of personal privacy” standard and the test for Exemption 7(C) uses the lower standard of “could reasonably be expected to constitute an unwarranted invasion of personal privacy,” the analysis and balancing required by both exemptions is sufficiently similar to warrant a consolidated discussion. The privacy interests are balanced against the public’s interest in disclosure under both exemptions.

(b)(6)-1 and (b)(7)(C)-1: NAMES AND IDENTIFYING INFORMATION OF
FBI SPECIAL AGENTS AND PROFESSIONAL STAFF⁹

(22) Within Exemption category (b)(6)-1 and (b)(7)(C)-1, the FBI protected the names and identifying information of FBI Special Agents (“SAs”) and professional staff. These FBI SAs and professional staff were responsible for conducting, supervising, and/or maintaining the investigation/investigative activities/administrative activities related to the investigation into potential campaign finance violations by Michael Cohen and others, as reflected in the documents responsive to Plaintiff’s request. These responsibilities included, but are not limited to, the following: coordinating/completing tasks in support of the FBI’s investigative and administrative functions, compiling information, conducting interviews, and/or reporting on the status of the investigation.

(23) Assignments of SAs to any particular investigation are not by choice. Publicity, adverse or otherwise, arising from a particular investigation, may seriously prejudice their effectiveness in conducting other investigations or performing their day-to-day work. The privacy consideration is also applied to protect FBI SAs, as individuals, from unnecessary, unofficial questioning as to the conduct of this or other investigation, whether or not they are currently employed by the FBI. FBI SAs conduct official inquiries into various criminal and national security violation cases. The publicity associated with the release of an SA’s identity in connection with a particular investigation could trigger hostility toward a particular SA. During the course of an investigation, an SA may engage with all strata of society, conducting searches and making arrests, both of which result in reasonable but nonetheless serious disturbances to people and their lives. Persons targeted by such investigations/investigative activities, and/or

⁹ In the records provided to Plaintiff and previously processed in response to 19-cv-8215 and 19-cv-1278, this code is identified as (b)(6)-2 and (b)(7)(C)-2.

those sympathetic to those targeted, could seek to inflict violence on an SA based on their participation in an investigation. This is because an individual targeted by such law enforcement actions may carry a grudge against those involved with the investigation, which may last for years. These individuals may seek revenge on SAs and other federal employees involved in a particular investigation. There is no public interest served by disclosing the SA's identities because their identities would not, themselves, significantly increase the public's understanding of the FBI's operations and activities. Thus, disclosure of this information would constitute a clearly unwarranted invasion of their personal privacy; and the FBI properly withheld the names and identifying information of FBI SAs pursuant to Exemptions 6 and 7(C).

(24) The FBI also withheld the names and identifying information of FBI professional staff pursuant to Exemptions 6 and 7(C). These FBI professional staff were assigned to handle tasks related to the investigation of Michael Cohen and others potential campaign finance violations. Similar to FBI SAs, these FBI employees could be targeted for reprisal based on their involvement in specific investigations/investigative activities. Furthermore, these FBI professional staff were, and possibly are, in positions of access to information regarding official law enforcement investigations, and therefore could become targets of harassing inquiries for unauthorized access to investigations if their identities were released. Thus, these individuals maintain substantial privacy interests in not having their identities disclosed. In contrast, the FBI concluded that no public interest would be served by disclosing the identities of these FBI professional staff to the general public because their identities would not, themselves, significantly increase the public's understanding of the FBI's operations and activities. Accordingly, after balancing these profession staff employees' substantial privacy interests against the non-existent public interest, the FBI determined disclosure of their identities would

constitute a clearly unwarranted invasion of their personal privacy. Therefore, the FBI properly withheld the names and identifying information of FBI professional staff pursuant to Exemptions 6 and 7(C).

(b)(6)-2 and (b)(7)(C)-2: NAMES AND IDENTIFYING INFORMATION OF THIRD PARTIES OF INVESTIGATIVE INTEREST¹⁰

(25) In Exemption category (b)(6)-2 and (b)(7)(C)-2, the FBI protected the names and identifying information of third parties who were of investigative interest to the FBI. Being identified as a subject of FBI investigative interest carries a strong negative connotation and a stigma, whether or not these individuals ever committed criminal acts. Release of the identities of these individuals to the public could subject them to harassment or embarrassment, as well as undue public attention. Furthermore, it could result in professional and social repercussions, due to resulting negative stigmas. Accordingly, the FBI determined these individuals maintain substantial privacy interests in not having their identities disclosed. In contrast, disclosing personal information about these individuals would not significantly increase the public's understanding of the FBI's performance of its mission and so the FBI concluded that there was no public interest here sufficient to override these individuals' substantial privacy interests. For these reasons, the FBI properly withheld this information pursuant to Exemptions 6 and 7(C).

(b)(6)-3 and (b)(7)(C)-3: NAMES AND IDENTIFYING INFORMATION OF THIRD PARTIES MERELY MENTIONED¹¹

(26) In Exemption category (b)(6)-3 and (b)(7)(C)-3, the FBI protected the names and identifying information of third parties who were merely mentioned in the investigative records

¹⁰ In the records provided to Plaintiff and previously processed in response to 19-cv-8215 and 19-cv-1278, this code is identified as (b)(6)-1 and (b)(7)(C)-1.

¹¹ In the records provided to Plaintiff and previously processed in response to 19-cv-8215 and 19-cv-1278, this code is identified as (b)(6)-4 and (b)(7)(C)-4.

responsive to Plaintiff's request. The FBI has information about these third parties in its files because these individuals were mentioned in conjunction with FBI investigative efforts, appearing here in the context of information provided during the interview of a third party or contained in investigative matters related to search warrants. These third parties maintain legitimate privacy interests in not having specific information obtained about them from other third parties during an FBI investigation publicly disclosed. Disclosure of these third parties' names and/or identifying information as provided by a third party in connection with an FBI investigation may automatically carry a negative connotation, whether the information is found to be of investigative use or not. Disclosure of their identities or the information provided about them could subject these individuals to possible harassment or criticism and focus derogatory inferences and suspicion on them. The FBI considered whether there was any public interest that would override these third parties' legitimate privacy interests and concluded that disclosing information about individuals who were merely mentioned by a third party during an investigative interview would not significantly increase the public's understanding of the operations and activities of the FBI itself. Accordingly, the FBI properly protected these individuals' privacy interests pursuant to FOIA Exemptions 6 and 7(C).

(b)(6)-4 and (b)(7)(C)-4: NAMES AND IDENTIFYING INFORMATION OF THIRD
PARTIES WHO PROVIDED INFORMATION¹²

(27) In Exemption category (b)(6)-4 and (b)(7)(C)-4, the FBI protected the names and identifying information of individuals who were interviewed, and/or provided information by

¹² In the records provided to Plaintiff and previously processed in response to 19-cv-8215 and 19-cv-1278, this code is identified as (b)(6)-5 and (b)(7)(C)-5.

other means, to the FBI or to the AUSAs in the presence of FBI SA's during its investigation into campaign finance violations by Michael Cohen and others.

(28) The FBI has found information provided by individuals based on their personal knowledge is one of the most productive investigative tools for law enforcement agencies. The largest obstacle to successfully obtaining such information critical to FBI investigations, through an interview or otherwise, is fear by the individuals providing the information their identities will be exposed. Such exposure, in conjunction with their cooperation with law enforcement, could lead to harassment, intimidation by investigative subjects, legal or economic detriment, possible physical harm, or even death. To surmount their fear of reprisal, and the resulting tendency to withhold information, persons who provide such information to the FBI must be assured their names and other identifying information will be held in the strictest confidence. Thus, the FBI has determined these individuals maintain substantial privacy interests in not having their identities or personal information disclosed. Even in those instances where it has been acknowledged that an individual was interviewed, as in the case of Michael Cohen, Keith Davidson, and John Gauger, the FBI withheld non-public details and personal information. In contrast, the FBI could identify no public interest in the disclosure of the information withheld in this category because disclosure of these third parties' names and identifying or other non-public personal information would not shed light on or significantly increase the public's understanding of the operations and activities of the FBI. Furthermore, the continued access by the FBI to persons willing to honestly relate pertinent facts bearing upon a particular investigation far outweighs any benefit the public might derive from disclosure of the names, identifying information and/or other non-public personal information of those who cooperated with the FBI.

Accordingly, the FBI properly protected these individuals' privacy interests pursuant to Exemptions 6 and 7(C).

(b)(6)-5 and (b)(7)(C)-5: NAMES AND IDENTIFYING INFORMATION OF NON-FBI
FEDERAL GOVERNMENT PERSONNEL¹³

(29) In Category (b)(6)-5 and (b)(7)(C)-5, the FBI protected the names and identifying information of personnel from non-FBI, federal government agencies who provided information to or otherwise assisted the FBI in its investigation of Michael Cohen and others for possible campaign finance violations. The rationale for protecting the identities of other government employees is the same as the rationale for protecting the identities of FBI employees. *See* ¶¶ 22-24, *supra*. Publicity, adverse or otherwise, concerning the assistance of these other agency employees in an FBI investigation would seriously impair their effectiveness in assisting or participating in future FBI investigations. The privacy consideration also protects these individuals from unnecessary, unofficial questioning as to the FBI investigation. It is possible for a person targeted by law enforcement action to carry a grudge which may last for years, and to seek revenge on the personnel involved in the investigations at issue in these FBI records. The publicity associated with the release of their names and/or identifying information in connection with these investigations could trigger hostility towards them by such persons. Therefore, these employees maintain substantial privacy interests in not having their identities disclosed in this context. In contrast, there is no public interest to be served by the disclosure of these employees' names and/or identifying information because their identities, by themselves, would not demonstrate how the FBI performed its statutory mission and thus, would not significantly

¹³ In the records provided to Plaintiff and previously processed in response to 19-cv-8215 and 19-cv-1278, this code is identified as (b)(6)-3 and (b)(7)(C)-3.

increase the public's understanding of the FBI's operations and activities. Accordingly, the FBI properly protected these employees' privacy interests pursuant to FOIA Exemptions 6 and 7(C).

(b)(6)-6 and (b)(7)(C)-6: NAMES AND IDENTIFYING INFORMATION OF LOCAL LAW ENFORCEMENT PERSONNEL

(30) In Exemption Category (b)(6)-6 and (b)(7)(C)-6, the FBI protected the names and identifying information of local law enforcement employees. These employees were acting in their official capacities and aided the FBI in the law enforcement investigative activities reflected in the records responsive to plaintiff's requests. The rationale for protecting the identities of FBI SAs and professional staff discussed in ¶¶ 22-24, *supra*, applies equally to the names and identifying information of these local law enforcement employees. Release of the identities of these law enforcement employees could subject them as individuals to unnecessary and unwelcome harassment that would invade their privacy and could cause them to be targeted for reprisal. In contrast, disclosure of this information would serve no public interest because it would not shed light on the operations and activities of the FBI. Accordingly, the FBI properly withheld this information pursuant to Exemptions 6 and 7(C).

EXEMPTION (b)(7)(E) INVESTIGATIVE TECHNIQUES AND PROCEDURES

(31) 5 U.S.C. § 552(b)(7)(E) provides protection for:

law enforcement records [which]...would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

(32) Exemption (b)(7)(E) has been asserted to protect information from these records, the release of which would disclose techniques and/or procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

(33) Within the responsive documents, the FBI applied Exemption (b)(7)(E) to non-public investigative techniques and procedures utilized by the FBI to pursue its law enforcement mission, and also to non-public details about techniques and procedures that are otherwise known to the public. Specifically, the FBI asserted Exemption 7(E) on the page that Plaintiff inquired about to protect the following categories of information.

(b)(7)(E)-2: COLLECTION AND ANALYSIS OF INFORMATION

(34) In Exemption category (b)(7)(E)-2 on Bates-numbered page FBI(19-cv-2267)-1227, the FBI protected specific details concerning methods the FBI uses to collect and analyze information it obtains for investigative purposes from a cellular phone and the specific identified areas of analytical interest here. The release of this information would disclose the identity of the methods used in the collection and analysis of information from cellular phones and other electronic items as well as targeted information here and the technical capabilities available to extract certain information, and the methodologies employed to analyze it once collected. Such disclosures would enable subjects of FBI investigations to circumvent similar currently used techniques. The relative utility of these techniques could be diminished if the actual techniques were released in this matter. This in turn would facilitate the accumulation of information by investigative subjects regarding the circumstances under which the specific techniques were used or requested and the usefulness of the information obtained. Release of this type of information would enable criminals to educate themselves about the techniques employed for the collection and analysis of information and therefore allow these individuals to take countermeasures to circumvent the effectiveness of these techniques and to continue to violate the law and engage in intelligence, terrorist, and criminal activities. Accordingly, the FBI has properly withheld this information pursuant to FOIA Exemption 7(E).

CONSULTATIONS & REFERRALS

(35) As described in ¶ 8, the FBI received 59 pages from OIP for review and application of exemptions. The FBI further consulted with EOUSA/SDNY, and determined all 59 pages were sealed pursuant to a Federal Court Sealing Order and were covered by Exemption 3 and Federal Rule of Criminal Procedure 6(e). The FBI advised Plaintiff of its determination by letter dated June 22, 2020.

(36) As described in ¶ 10, the FBI located 1354 pages as a result of its search, reviewed these pages for FBI equities, and determined the records contained equities of EOUSA/SDNY. The FBI forwarded the records and recommendations for withholding of certain FBI equity to EOUSA/SDNY for further processing and release directly to the Plaintiff.

(37) On December 18, 2020, the FBI received an additional 293 pages from EOUSA/SDNY for consultation. The FBI reviewed these pages for applicable redactions. FBI returned its recommendations to EOUSA/SDNY.

SEGREGABILITY

(38) As discussed in ¶ 4 *supra*, the FBI reviewed and processed a total of 1924 pages. From these 1,924 pages, Plaintiff narrowed his challenges to FBI withholdings on 1333 pages. The FBI conducted a page by page, line by line, review of its withholdings, and determined all FBI information withheld on these pages was either fully covered by one or more of the cited FOIA exemptions, or determined that any non-exempt FBI information on these pages was so intertwined with exempt material, no information could be reasonably segregated for release without triggering foreseeable harm to one or more of the cited FOIA exemptions.

CONCLUSION

(39) The FBI performed adequate and reasonable searches for responsive records, processed all such records, and either released all reasonably segregable non-exempt information, or provided its recommendations for withholdings to EOUSA/SNDY by consult or referral for the purpose of releasing all reasonably segregable non-exempt information from documents responsive to Plaintiff's FOIA request that are subject to FOIA. Information was properly withheld by the FBI pursuant to FOIA Exemptions 6, 7(C), and 7(E). The FBI carefully examined the documents and determined the information withheld from Plaintiff in this case, if disclosed, would cause a clearly unwarranted invasion of the personal privacy; could reasonably be expected to constitute an unwarranted invasion of personal privacy; and would disclose techniques and procedures for law enforcement investigations. After extensive review of the contested documents at issue, the FBI determined that there is no further non-exempt FBI information that can be reasonably segregated and released without revealing exempt information.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct, and that Exhibit 1 through 6 attached hereto is a true and correct copy.

Executed this 29th day of July 2021.

A handwritten signature in blue ink, appearing to read "M. G. Seidel", written over a horizontal line.

MICHAEL G. SEIDEL
Section Chief
Record/Information Dissemination Section
Information Management Division
Federal Bureau of Investigation
Winchester, Virginia

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CITIZENS FOR RESPONSIBILITY AND
ETHICS IN WASHINGTON,

Plaintiff,

v.

U.S DEPARTMENT OF JUSTICE,

Defendant.

Civil Action No. 1:19-cv-02267-EGS

EXHIBIT 1

FAX COVER SHEET

TO	FOIA Officer Record/Information Dissemination Section, FBI
COMPANY	
FAX NUMBER	15408684997
FROM	Komal Choudhary
DATE	2019-07-18 20:52:44 GMT
RE	Expedited FOIA Request

COVER MESSAGE

Enclosed please find an expedited FOIA request.

JUL 23 2019

CREW | citizens for responsibility and ethics in washington

1101 K St., N.W., Suite 201
Washington, DC 20005
Phone: 202-408-5565
Fax: 202-588-5020

FACSIMILE TRANSMITTAL SHEET

TO:

FOIA Officer, Record/Information
Dissemination Section

FROM:

Anne L. Weismann

COMPANY:

Federal Bureau of Investigation

DATE: JULY 18, 2019

RECIPIENT'S FAX NUMBER:

540-868-4391/4997

PAGE 1 OF 9

RECIPIENT'S PHONE NUMBER:

RE:

Please see enclosed expedited FOIA request

NOTES/COMMENTS:

Pages transmitted are privileged and confidential.

CREW | citizens for responsibility and ethics in washington

July 18, 2019

By Facsimile: (540) 868-4391/4997

Federal Bureau of Investigation
Attn: FOI/PA Request
Record/Information Dissemination Section
170 Marcel Drive
Winchester, VA 22602-4843

Re: Expedited Freedom of Information Act Request

Dear FOIA Officer:

Citizens for Responsibility and Ethics in Washington ("CREW") makes this expedited request for records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and U.S. Department of Justice ("DOJ") regulations.

Specifically, CREW requests all records related to the now closed investigation conducted by the U.S. Attorney's Office for the Southern District of New York into (1) who, besides Michael Cohen, was involved in and may be criminally liable for the two campaign finance violations to which Mr. Cohen pled guilty; and (2) whether certain individuals made false statements, gave false testimony, or otherwise obstructed justice in connection with this investigation. The nature of this investigation is outlined in the attached letter submitted on July 15, 2019, to U.S. District Court Judge William H. Pauley III in *United States v. Cohen*, Crim. No. 18-cr-602 (S.D.N.Y.). For your convenience a copy of this letter is attached. This request includes, but is not limited to witness statements, investigative reports, prosecution memoranda, and FBI 302s.

Please search for responsive records regardless of format, medium, or physical characteristics. We seek records of any kind, including paper records, electronic records, audiotapes, videotapes, photographs, data, and graphical material. Our request includes without limitation all correspondence, letters, emails, text messages, facsimiles, telephone messages, voice mail messages, and transcripts, notes, or minutes of any meetings, telephone conversations, or discussions. Our request also includes any attachments to emails and other records, as well as those who were cc'ed or bcc'ed on any emails.

If it is your position any portion of the requested records is exempt from disclosure, CREW requests that you provide it with an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). If some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. See 5 U.S.C. § 552(b). If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and

FOIA Officer

July 18, 2019

Page 2

how the material is dispersed throughout the document. *See Mead Data Central v. U.S. Dep't of the Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977).

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A) and Department of Justice regulations, CREW requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures likely will contribute to a better understanding of relevant government procedures by CREW and the general public in a significant way. *See* 5 U.S.C. § 552(a)(4)(A)(iii). Moreover, the request primarily and fundamentally is for non-commercial purposes. *See, e.g., McClellan Ecological v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987).

In his memorandum opinion and order of July 17, 2019 (attached), ordering the unsealing of a subset of the documents requested here, Judge Pauley described the campaign finance violations that were under investigation as "a matter of national importance." He also deemed it "time that every American has an opportunity to scrutinize the Materials," referencing the documents related to the campaign finance investigation. Like the records Judge Pauley ordered be unsealed, the requested records would shed light on the extent, if any, that President Donald Trump or any of his businesses or associates has violated campaign finance laws and, if so, why the government has closed its investigation without prosecuting these crimes, with the exception of Michael Cohen. The American people deserve to know whether their president and his business associates have complied fully with the laws of our land and if they have not, why DOJ declined to prosecute them. The president is the most powerful and visible official of our country, and the truth about his actions and those of his campaign, businesses, and associates should not be shielded from public scrutiny.

CREW is a non-profit corporation, organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the public's right to be aware of the activities of government officials, to ensuring the integrity of those officials, and to highlighting and working to reduce the influence of money on politics. CREW uses a combination of research, litigation, and advocacy to advance its mission. CREW intends to analyze the information responsive to this request and to share its analysis with the public through reports, press releases, or other means. In addition, CREW will disseminate any documents it acquires from this request to the public through its website, www.citizensforethics.org. The release of information obtained through this request is not in CREW's financial interest.

CREW further requests that it not be charged search or review fees for this request pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) because CREW qualifies as a member of the news media. *See Nat'l Sec. Archive v. U.S. Dep't of Defense*, 880 F.2d 1381, 1386 (D.C. Cir. 1989) (holding non-profit a "representative of the news media" and broadly interpreting the term to include "any person or organization which regularly publishes or disseminates information to the public").

FOIA Officer
July 18, 2019
Page 3

CREW routinely and systematically disseminates information to the public in several ways. CREW's website receives tens of thousands of page views every month. The website includes blog posts that report on and analyze newsworthy developments regarding government ethics, corruption, and money in politics, as well as numerous reports CREW has published to educate the public about these issues. In addition, CREW posts the documents it receives under the FOIA on its website, and those documents have been visited hundreds of thousands of times.

Under these circumstances, CREW satisfies fully the criteria for a fee waiver.

Request for Expedition

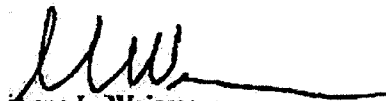
Finally, please be advised that CREW also has requested expedition of this request because its subject matter is of widespread and exceptional media interest and the requested information involves possible questions about the government's integrity that affect public confidence. Pursuant to 28 C.F.R. § 16.5(e)(2), CREW submitted that request to DOJ's Director of Public Affairs; a copy of that request is enclosed.

Conclusion

If you have any questions about this request or foresee any problems in fully releasing the requested records, please contact me at (202) 408-5565 or aweismann@citizensforethics.org. Also, if CREW's request for a fee waiver is not granted in full, please contact our office immediately upon making such a determination.

Where possible, please produce records in electronic format. Please send the requested records to me either at aweismann@citizensforethics.org or at Anne L. Weismann, Citizens for Responsibility and Ethics in Washington, 1101 K Street, N.W., Suite 201, Washington, D.C. 20005. Thank you for your assistance in this matter.

Sincerely,



Anne L. Weismann
Chief FOIA Counsel

Encls.



Case 1:18-cr-00602-WHP Document 48-9 Filed 07/18/19 Page 1 of 2
U.S. Department of Justice

*United States Attorney
Southern District of New York*

*The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007*

July 15, 2019

EX PARTE and UNDER SEAL

BY EMAIL and HAND

The Honorable William H. Pauley III
United States District Judge
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: **United States v. Michael Cohen**, 18 Cr. 602 (WHP)

Dear Judge Pauley:

Pursuant to the Court's February 7, 2019 opinion and order (the "Order") and May 21, 2019 order, the Government respectfully submits this sealed, *ex parte* status report explaining the need for continued redaction of the materials subject to the Order. (See Order at 30).

By way of background, several media organizations filed a request to unseal the affidavits, warrants, and riders associated with several different searches that were conducted in connection with a grand jury investigation into Michael Cohen and others (the "Materials"). The Government opposed that request, citing the need to protect an ongoing investigation and the personal privacy of certain individuals named in the Materials. On February 7, 2019, this Court granted the motion in part and denied it in part. Although the Court directed that certain parts of the Materials be unsealed (with limited redactions to protect privacy interests), the Court denied the motion to unseal all of the Materials. Relevant here, the Court held that "the portions of the Materials relating to Cohen's campaign finance crimes shall be redacted" to protect the ongoing law enforcement investigation. (Order at 11). On May 21, 2019, after receiving a status update from the Government on the need for continued sealing, the Court issued an order permitting continued sealing of the campaign finance portions of the Materials to protect an ongoing investigation, and directed that the Government provide another update by this date.

The Government is no longer seeking to maintain the campaign finance portions of the Materials under seal in order to protect an ongoing investigation.¹ However, while the majority of

¹ The Government has effectively concluded its investigations of (1) who, besides Michael Cohen, was involved in and may be criminally liable for the two campaign finance violations to which Cohen pled guilty, [REDACTED]; and (2) whether certain individuals, [REDACTED], made false statements, gave false testimony or otherwise obstructed justice in connection with this investigation [REDACTED].

the campaign finance portions of the Materials can now be unsealed, the Government respectfully submits that some redactions should be maintained in order to protect the personal privacy of certain individuals. In particular, consistent with the Court's prior Order, the Government seeks to redact references to individuals who are either (1) "peripheral characters" for whom the Materials raise little discernable inference of criminal conduct" but who "may nonetheless be 'stigmatized'" by their inclusion in the Materials; or (2) people "around Cohen from which the public might infer criminal complicity." (Order at 14). However, while most references to such individuals are redacted, the Government does not seek to redact references to those individuals that are either (a) facts that have been publicly confirmed, either by the individual in public statements or the Government in public filings; or (b) facts sourced from publicly available materials. (See Order at 15 ("Shielding third parties from unwanted attention arising from an issue that is already public knowledge is not a sufficiently compelling reason to justify withholding judicial documents from public scrutiny.")).

Together with this letter, the Government has transmitted a copy of one of the search warrant affidavits with the proposed redactions marked. See Ex. A, at 38-57, 66-67, 71, 73-74, 83-101. (The proposed redactions also include the privacy-based redactions previously authorized in the bank and tax portions of the Materials.) The Government respectfully requests that the Court approve these redactions, and will submit corresponding redactions to the other affidavits (which are substantially similar to the attached affidavit) once the Court has ruled on these proposed redactions.

Respectfully submitted,

AUDREY STRAUSS
Attorney for the United States,
Acting Under Authority Conferred by
28 U.S.C. § 515

By: 

Thomas McKay / Nicolas Roos
Assistant United States Attorneys
(212) 637-2200

cc: Counsel of Record (by ECF)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

MICHAEL COHEN,

Defendant.

18cr602

MEMORANDUM & ORDER

WILLIAM H. PAULEY III, Senior United States District Judge:

On April 9, 2018, the FBI executed searches of Defendant Michael Cohen's residence, hotel room, office, safe deposit box, cell phones, and electronic communications pursuant to warrants authorized under Rule 41 of the Federal Rules of Criminal Procedure and 18 U.S.C. § 2703. The New York Times Company, the American Broadcasting Companies, Inc., the Associated Press, Cable News Network, Inc., Daily News, L.P., Dow Jones & Co., Inc., Newsday LLC, NYP Holdings, Inc., and CBS Broadcasting, Inc. sought to unseal copies of the warrants, warrant applications, and supporting affidavits and riders relating to the April 9, 2018 searches (the "Materials").

On February 7, 2019, this Court granted in part and denied in part the unsealing requests. In that Opinion & Order, this Court directed the Government to submit proposed redactions to the Materials, which were then publicly filed in redacted form on March 19, 2019 pursuant to an order dated March 18, 2019. The February 7, 2019 Opinion & Order also directed the Government to submit a status report by May 15, 2019 explaining the need for continued redaction of the Materials. United States v. Cohen, 366 F. Supp. 3d 612, 634 (S.D.N.Y. 2019).

On May 21, 2019, this Court authorized the continued redaction of portions of the Materials relating to Cohen's campaign finance violations to protect the Government's ongoing

investigation. The May 21, 2019 Order also directed the Government to submit a further status report by July 15, 2019 explaining the need for continued redaction of the Materials.

On July 15, 2019, the Government submitted a status report and proposed redactions to the Materials ex parte and under seal. The Government now represents that it has concluded the aspects of its investigation that justified the continued sealing of the portions of the Materials relating to Cohen's campaign finance violations. Although the Government agrees that the majority of the campaign finance portions of the Materials may be unsealed, it requests limited redactions to those portions to protect third-party privacy interests.

After reviewing the Government's status report and proposed redactions, this Court denies the Government's request. In particular—and in contrast to the private nature of Cohen's business transactions—the weighty public ramifications of the conduct described in the campaign finance portions warrant disclosure. See United States v. Amodeo, 71 F.3d 1044, 1051 (2d Cir. 1995) (explaining that “financial records of a wholly owned business, family affairs, illnesses, embarrassing conduct with no public ramifications, and similar matters will weigh more heavily against access than conduct affecting a substantial portion of the public”). Moreover, the involvement of most of the relevant third-party actors is now public knowledge, undercutting the need for continued secrecy. See United States v. Basciano, 2010 WL 1685810, at *4 (E.D.N.Y. Apr. 23, 2010) (“Shielding third parties from unwanted attention arising from an issue that is already public knowledge is not a sufficiently compelling reason to justify withholding judicial documents from public scrutiny.”). On balance, the “strong presumption of public access” to search warrants and search warrant materials under the common law far outweighs the weakened privacy interests at play here. See Cohen, 366 F. Supp. 3d at 621-22 (collecting cases).

Case 1:18-cr-00602-WHP Document 47 Filed 07/17/19 Page 3 of 3

The campaign finance violations discussed in the Materials are a matter of national importance. Now that the Government's investigation into those violations has concluded, it is time that every American has an opportunity to scrutinize the Materials. Indeed, the common law right of access—a right so enshrined in our identity that it “predate[s] even the Constitution itself”—derives from the public's right to “learn of, monitor, and respond to the actions of their representatives and representative institutions.” United States v. Eric Cty., 763 F.3d 235, 238-39 (2d Cir. 2014).

Accordingly, the Government is directed to file the July 15, 2019 status report and the Materials on the public docket on July 18, 2019 at 11:00 a.m. The July 15, 2019 status report shall be unredacted in its entirety, except that limited references in the footnote to an uncharged third-party may remain redacted. See United States v. Smith, 985 F. Supp. 2d 506, 526 (S.D.N.Y. 2013). The Materials shall be unredacted in their entirety, except that the names of law enforcement investigators, references to individuals who purportedly engaged in business transactions or contemplated business transactions with Cohen relating to taxi medallions, see Cohen, 366 F. Supp. 3d at 625, and personal information referenced in this Court's March 18, 2019 Order may remain redacted.

Dated: July 17, 2019
New York, New York

SO ORDERED:


WILLIAM H. PAULEY III
U.S.D.J.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CITIZENS FOR RESPONSIBILITY AND
ETHICS IN WASHINGTON,

Plaintiff,

v.

U.S DEPARTMENT OF JUSTICE,

Defendant.

Civil Action No. 1:19-cv-02267-EGS

EXHIBIT 2



U.S. Department of Justice

Federal Bureau of Investigation
Washington, D.C. 20535

July 31, 2019

MS. ANNE L. WEISMANN
CITIZENS FOR RESPONSIBILITY AND ETHICS IN WASHINGTON
SUITE 201
1101 K STREET NW
WASHINGTON, DC 20005

FOIPA Request No.: 1443149-000
Subject: All records of individuals involved in
campaign finance violations

Dear Ms. Weismann:

This acknowledges receipt of your Freedom of Information/Privacy Acts (FOIPA) request to the FBI. Below you will find check boxes and informational paragraphs about your request, as well as specific determinations required by these statutes. Please read each one carefully.

- ☒ Your request has been received at FBI Headquarters for processing.
- ☐ You submitted your request via the FBI's eFOIPA system.
 - ☐ We have reviewed your request and determined it is consistent with the FBI eFOIPA terms of service. Future correspondence about your FOIPA request will be provided in an email link unless the record's file type is not supported by the eFOIPA system.
 - ☐ We have reviewed your request and determined it is not consistent with the FBI eFOIPA terms of service. Future correspondence about your FOIPA request will be sent through standard mail.
- ☐ The subject of your request is currently being processed and documents will be released to you upon completion.
- ☐ Release of responsive records will be posted to the FBI's electronic FOIA Library (The Vault), <http://vault.fbi.gov>, and you will be contacted when the release is posted.
- ☒ Your request for a public interest fee waiver is under consideration and you will be advised of the decision if fees are applicable. If your fee waiver is not granted, you will be responsible for applicable fees per your designated requester fee category below.
- ☒ For the purpose of assessing any fees, we have determined:
 - ☐ As a commercial use requester, you will be charged applicable search, review, and duplication fees in accordance with 5 USC § 552 (a)(4)(A)(ii)(I).
 - ☒ As an educational institution, noncommercial scientific institution or representative of the news media requester, you will be charged applicable duplication fees in accordance with 5 USC § 552 (a)(4)(A)(ii)(II).
 - ☐ As a general (all others) requester, you will be charged applicable search and duplication fees in accordance with 5 USC § 552 (a)(4)(A)(ii)(III).

Please check the status of your FOIPA request at www.fbi.gov/foia by clicking on **FOIPA Status** and entering your FOIPA Request Number. Status updates are adjusted weekly. The status of newly assigned requests may not be available until the next weekly update. If the FOIPA has been closed the notice will indicate that appropriate correspondence has been mailed to the address on file.

For questions regarding our determinations, visit the www.fbi.gov/foia website under "Contact Us." The FOIPA Request number listed above has been assigned to your request. Please use this number in all correspondence concerning your request.

You may file an appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's FOIA online portal by creating an account on the following web site: <https://www.foiaonline.gov/foiaonline/action/public/home>. Your appeal must be postmarked or electronically transmitted within ninety (90) days from the date of this letter in order to be considered timely. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." Please cite the FOIPA Request Number assigned to your request so it may be easily identified.

You may seek dispute resolution services by contacting the Office of Government Information Services (OGIS). The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769. Alternatively, you may contact the FBI's FOIA Public Liaison by emailing foipaquestions@fbi.gov. If you submit your dispute resolution correspondence by email, the subject heading should clearly state "Dispute Resolution Services." Please also cite the FOIPA Request Number assigned to your request so it may be easily identified.

Sincerely,



David M. Hardy
Section Chief,
Record/Information
Dissemination Section
Information Management Division

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CITIZENS FOR RESPONSIBILITY AND
ETHICS IN WASHINGTON,

Plaintiff,

v.

U.S DEPARTMENT OF JUSTICE,

Defendant.

Civil Action No. 1:19-cv-02267-EGS

EXHIBIT 3



U.S. Department of Justice

Federal Bureau of Investigation
Washington, D.C. 20535

August 1, 2019

MS. ANNE L. WEISMANN
CITIZENS FOR RESPONSIBILITY AND ETHICS IN WASHINGTON
SUITE 201
1101 K STREET NW
WASHINGTON, DC 20005

FOIPA Request No.: 1443149-000
Subject: All records of individuals involved in
campaign finance violations

Dear Ms. Weismann:

This is in reference to your letter directed to the Federal Bureau of Investigation (FBI), in which you requested expedited processing for the above-referenced Freedom of Information/Privacy Acts (FOIPA) request. Pursuant to the Department of Justice (DOJ) standards permitting expedition, expedited processing can only be granted when it is determined that a FOIPA request involves one or more of the below categories.

You have requested expedited processing according to:

- ☐ **28 C.F.R. §16.5 (e)(1)(i):** "Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual."
- ☒ **28 C.F.R. §16.5 (e)(1)(ii):** "An urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information."
- ☐ **28 C.F.R. §16.5 (e)(1)(iii):** "The loss of substantial due process of rights."
- ☐ **28 C.F.R. §16.5 (e)(1)(iv):** "A matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence."

You have provided enough information concerning the statutory requirements permitting expedition; therefore, your request is approved.

For questions regarding our determinations, visit the www.fbi.gov/foia website under "Contact Us." The FOIPA Request number listed above has been assigned to your request. Please use this number in all correspondence concerning your request.

You may file an appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's FOIA online portal by creating an account on the following web site: <https://www.foiaonline.gov/foiaonline/action/public/home>. Your appeal must be postmarked or electronically transmitted within ninety (90) days from the date of this letter in order to be considered timely. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." Please cite the FOIPA Request Number assigned to your request so it may be easily identified.

You may seek dispute resolution services by contacting the Office of Government Information Services (OGIS). The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769. Alternatively, you may contact the FBI's FOIA Public Liaison by emailing foipaquestions@fbi.gov. If you submit your dispute resolution correspondence by email, the subject heading should clearly state "Dispute Resolution Services." Please also cite the FOIPA Request Number assigned to your request so it may be easily identified.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Hardy", followed by a stylized flourish or number "3".

David M. Hardy
Section Chief
Record/Information
Dissemination Section
Information Management Division

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CITIZENS FOR RESPONSIBILITY AND
ETHICS IN WASHINGTON,

Plaintiff,

v.

U.S DEPARTMENT OF JUSTICE,

Defendant.

Civil Action No. 1:19-cv-02267-EGS

EXHIBIT 4



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

June 22, 2020

MS. ANNE L. WEISMANN
CITIZENS FOR RESPONSIBILITY AND ETHICS IN WASHINGTON
SUITE 201
1101 K STREET NW
WASHINGTON, DC 20005

Civil Action No.: 19-cv-2267
FOIPA Request No.: 1443149-000
Subject: All Records of Individuals Involved in
Campaign Finance Violations

Dear Ms. Weismann:

The enclosed documents were reviewed under the Freedom of Information/Privacy Acts (FOIPA), Title 5, United States Code, Section 552/552a. Below you will find checked boxes under applicable statutes for the exemptions asserted to protect information exempt from disclosure. The appropriate exemptions are noted on the processed pages next to redacted information. In addition, a deleted page information sheet was inserted to indicate where pages were withheld entirely pursuant to applicable exemptions. An Explanation of Exemptions is enclosed to further explain justification for withheld information.

Section 552☐ (b)(1)☐ (b)(2)☒ (b)(3)Fed. R. Crim. P. 6(e)☐ (b)(4)☐ (b)(5)☒ (b)(6)☐ (b)(7)(A)☐ (b)(7)(B)☒ (b)(7)(C)☐ (b)(7)(D)☒ (b)(7)(E)☐ (b)(7)(F)☐ (b)(8)☐ (b)(9)**Section 552a**☐ (d)(5)☐ (j)(2)☐ (k)(1)☐ (k)(2)☐ (k)(3)☐ (k)(4)☐ (k)(5)☐ (k)(6)☐ (k)(7)

59 pages were reviewed and 0 pages are being released.

Please see the paragraphs below for relevant information specific to your request and the enclosed FBI FOIPA Addendum for standard responses applicable to all requests.

☐ Document(s) were located which originated with, or contained information concerning, other Government Agency (ies) [OGA].

☐ This information has been referred to the OGA(s) for review and direct response to you.

☐ We are consulting with another agency. The FBI will correspond with you regarding this information when the consultation is completed.

Please refer to the enclosed FBI FOIPA Addendum for additional standard responses applicable to your request. "Part 1" of the Addendum includes standard responses that apply to all requests. "Part 2" includes additional standard responses that apply to all requests for records about yourself or any third party individuals.

"Part 3" includes general information about FBI records that you may find useful. Also enclosed is our Explanation of Exemptions.

Although your request is in litigation, if you are not satisfied with the Federal Bureau of Investigation's determination in response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, 441 G Street, NW, 6th Floor, Washington, D.C. 20530, or you may submit an appeal through OIP's FOIA STAR portal by creating an account following the instructions on OIP's website: <https://www.justice.gov/oip/submit-and-track-request-or-appeal>. Your appeal must be postmarked or electronically transmitted within ninety (90) days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." Please cite the FOIPA Request Number assigned to your request so it may be easily identified.

You may seek dispute resolution services by contacting the Office of Government Information Services (OGIS). The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769. Alternatively, you may contact the FBI's FOIA Public Liaison by emailing foipaquestions@fbi.gov. If you submit your dispute resolution correspondence by email, the subject heading should clearly state "Dispute Resolution Services." Please also cite the FOIPA Request Number assigned to your request so it may be easily identified.

Please direct any further inquiries about this case to the Attorney representing the Government in this matter. Please use the FOIPA Request Number and/or Civil Action Number in all correspondence or inquiries concerning your request.



See additional information which follows.

Sincerely,



Michael G. Seidel
Acting Section Chief
Record/Information
Dissemination Section
Information Management Division

Enclosure(s)

This represents the second interim release of information responsive to your Freedom of Information/Privacy Acts (FOIPA) request. DOJ/OIP referred 59 pages to the FBI for review and processing in response to your request. The FBI conferred with the United States Executive Office for U.S Attorneys and determined all 59 pages remain sealed pursuant to a Federal Court Order; therefore they are not eligible for release under the Freedom of Information Act. Also included in this release are two documents (8 pages) of previously processed material. This material was provided to you in the FBI's first interim release, and has since been revised to release additional information.

Please be advised that as of June 8, the Record Information/Dissemination Section (RIDS) resumed operating at full staffing levels amidst the ongoing COVID-19 national emergency. The enclosed FOIPA release represents a work product that could be generated for you under these unprecedented circumstances and the limited time we were fully staffed during the month of June. We appreciate your patience and understanding as we work to release as much information, to as many requesters as possible, as this emergency continues.

FBI FOIPA Addendum

As referenced in our letter responding to your Freedom of Information/Privacy Acts (FOIPA) request, the FBI FOIPA Addendum provides information applicable to your request. Part 1 of the Addendum includes standard responses that apply to all requests. Part 2 includes standard responses that apply to requests for records about individuals to the extent your request seeks the listed information. Part 3 includes general information about FBI records, searches, and programs.

Part 1: The standard responses below apply to all requests:

- (i) **5 U.S.C. § 552(c).** Congress excluded three categories of law enforcement and national security records from the requirements of the FOIPA [5 U.S.C. § 552(c)]. FBI responses are limited to those records subject to the requirements of the FOIPA. Additional information about the FBI and the FOIPA can be found on the www.fbi.gov/foia website.
- (ii) **Intelligence Records.** To the extent your request seeks records of intelligence sources, methods, or activities, the FBI can neither confirm nor deny the existence of records pursuant to FOIA exemptions (b)(1), (b)(3), and as applicable to requests for records about individuals, PA exemption (j)(2) [5 U.S.C. §§ 552/552a (b)(1), (b)(3), and (j)(2)]. The mere acknowledgment of the existence or nonexistence of such records is itself a classified fact protected by FOIA exemption (b)(1) and/or would reveal intelligence sources, methods, or activities protected by exemption (b)(3) [50 USC § 3024(i)(1)]. This is a standard response and should not be read to indicate that any such records do or do not exist.

Part 2: The standard responses below apply to all requests for records on individuals:

- (i) **Requests for Records about any Individual—Watch Lists.** The FBI can neither confirm nor deny the existence of any individual's name on a watch list pursuant to FOIA exemption (b)(7)(E) and PA exemption (j)(2) [5 U.S.C. §§ 552/552a (b)(7)(E), (j)(2)]. This is a standard response and should not be read to indicate that watch list records do or do not exist.
- (ii) **Requests for Records about any Individual—Witness Security Program Records.** The FBI can neither confirm nor deny the existence of records which could identify any participant in the Witness Security Program pursuant to FOIA exemption (b)(3) and PA exemption (j)(2) [5 U.S.C. §§ 552/552a (b)(3), 18 U.S.C. 3521, and (j)(2)]. This is a standard response and should not be read to indicate that such records do or do not exist.
- (iii) **Requests for Records for Incarcerated Individuals.** The FBI can neither confirm nor deny the existence of records which could reasonably be expected to endanger the life or physical safety of any incarcerated individual pursuant to FOIA exemptions (b)(7)(E), (b)(7)(F), and PA exemption (j)(2) [5 U.S.C. §§ 552/552a (b)(7)(E), (b)(7)(F), and (j)(2)]. This is a standard response and should not be read to indicate that such records do or do not exist.

Part 3: General Information:

- (i) **Record Searches.** The Record/Information Dissemination Section (RIDS) searches for reasonably described records by searching systems or locations where responsive records would reasonably be found. A standard search normally consists of a search for main files in the Central Records System (CRS), an extensive system of records consisting of applicant, investigative, intelligence, personnel, administrative, and general files compiled by the FBI per its law enforcement, intelligence, and administrative functions. The CRS spans the entire FBI organization, comprising records of FBI Headquarters, FBI Field Offices, and FBI Legal Attaché Offices (Legats) worldwide; Electronic Surveillance (ELSUR) records are included in the CRS. Unless specifically requested, a standard search does not include references, administrative records of previous FOIPA requests, or civil litigation files. For additional information about our record searches, visit www.fbi.gov/services/information-management/foipa/requesting-fbi-records.
- (ii) **FBI Records.** Founded in 1908, the FBI carries out a dual law enforcement and national security mission. As part of this dual mission, the FBI creates and maintains records on various subjects; however, the FBI does not maintain records on every person, subject, or entity.
- (iii) **Requests for Criminal History Records or Rap Sheets.** The Criminal Justice Information Services (CJIS) Division provides Identity History Summary Checks – often referred to as a criminal history record or rap sheet. These criminal history records are not the same as material in an investigative "FBI file." An Identity History Summary Check is a listing of information taken from fingerprint cards and documents submitted to the FBI in connection with arrests, federal employment, naturalization, or military service. For a fee, individuals can request a copy of their Identity History Summary Check. Forms and directions can be accessed at www.fbi.gov/about-us/cjis/identity-history-summary-checks. Additionally, requests can be submitted electronically at www.edo.cjis.gov. For additional information, please contact CJIS directly at (304) 625-5590.
- (iv) **National Name Check Program (NNCP).** The mission of NNCP is to analyze and report information in response to name check requests received from federal agencies, for the purpose of protecting the United States from foreign and domestic threats to national security. Please be advised that this is a service provided to other federal agencies. Private Citizens cannot request a name check.

EXPLANATION OF EXEMPTIONS**SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552**

- (b)(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified to such Executive order;
- (b)(2) related solely to the internal personnel rules and practices of an agency;
- (b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) geological and geophysical information and data, including maps, concerning wells.

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5) information compiled in reasonable anticipation of a civil action proceeding;
- (j)(2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;
- (k)(1) information which is currently and properly classified pursuant to an Executive order in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;
- (k)(2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;
- (k)(4) required by statute to be maintained and used solely as statistical records;
- (k)(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;
- (k)(7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his/her identity would be held in confidence.

FBI/DOJ

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CITIZENS FOR RESPONSIBILITY AND
ETHICS IN WASHINGTON,

Plaintiff,

v.

U.S DEPARTMENT OF JUSTICE,

Defendant.

Civil Action No. 1:19-cv-02267-EGS

EXHIBIT 5

Citizens for Responsibility and Ethics in Washington v. U.S Department of Justice
19-cv-2267

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Vaughn Index

<u>SUMMARY OF FOIA EXEMPTION JUSTIFICATION CATEGORIES</u>	
CODED CATEGORIES	INFORMATION WITHHELD
EXEMPTION (b)(6) and EXEMPTION (b)(7)(C)	CLEARLY UNWARRANTED INVASION OF PERSONAL PRIVACY AND UNWARRANTED INVASION OF PERSONAL PRIVACY
(b)(6)-1 and (b)(7)(C)-1	Names and Identifying Information of FBI Special Agents and Professional Staff
(b)(6)-2 and (b)(7)(C)-2	Names and Identifying Data of Third Parties of Investigative Interest
(b)(6)-3 and (b)(7)(C)-3	Names and Identifying Information of Third Parties Merely Mentioned
(b)(6)-4 and (b)(7)(C)-4	Names and Identifying Information of 3rd Parties who Provided Information
(b)(6)-5 and (b)(7)(C)-5	Names and Identifying Information of Non-FBI Federal Government Personnel
(b)(6)-6 and (b)(7)(C)-6	Names and Identifying Information of Local Law Enforcement Personnel

INDEX KEY

RD: Referral Direct - Page was withheld in full as it was sent to another government agency for direct response to Plaintiff

FBI DOCUMENT TYPES

<ul style="list-style-type: none"> • Handwritten Interview Notes: These are the original handwritten notes of FBI personnel who conducted interviews in the course of FBI investigations. These notes are almost always transposed into FD-302s and are utilized by the FBI in the same manner.
<ul style="list-style-type: none"> • FD-302s: FD-302s are internal FBI forms in which evidence is often documented, usually the results of FBI interviews. Such evidence and/or interview information may later be used as testimony or evidence in court proceedings/trials. Additionally, these evidence/interview forms are often incorporated in other FBI documents which disseminate intelligence/investigative information, and can be utilized to set leads in furtherance of the FBI's investigative efforts.
<ul style="list-style-type: none"> • Other Government Agency Information: These are documents provided to the FBI by other federal government agencies. This information can be incorporated in FBI documents which disseminate intelligence/investigative information, and can be utilized to set leads in furtherance of the FBI's investigative efforts

Document Description	Bates	6/7C	6/7C	6/7C	6/7C	6/7C	6/7C	6/7C	6/7C	WIF by FBI	Referral
		1	2	3	4	5	6	Exemptions	Direct		
FD-302 documenting execution of a Search Warrant	1	x	x								x
Email executing Search Warrant	2	x									x
Sealed Search Warrant and Non-Disclosure Order and Attachment	3	x	x							x	x
	5		x								x
	7		x	x							x
	8		x	x						x	x
Handwritten notes from a third party interview	68			x	x					x	x
	69			x	x					x	x
	70	x		x	x	x					x
	71			x	x						x
	72			x	x						x
	73				x						x
	74				x					x	x
	75			x	x					x	x
	76				x						x
	77				x						x
	78				x						x
	79				x						x
	80				x						x
	81				x						x
	82				x						x
	83				x						x
	84				x						x
	85				x					x	x
	86				x					x	x
	87			x	x						x
	88			x	x						x
	89				x						x
	90				x						x
	91			x	x					x	x
	92			x	x					x	x
	93			x	x					x	x
	94			x	x						x
	95			x	x						x
	96			x	x						x
	97			x	x					x	x

Handwritten notes from interview on 5/25/2018 of Keith Davidson at the U.S. Attorney's Office pursuant to a Proffer Agreement

Document Description	Bates	6/7C 1	6/7C 2	6/7C 3	6/7C 4	6/7C 5	6/7C 6	WIF by FBI Exemptions	Referral Direct
Documents utilized during the interview on 5/25/2018 of Keith Davidson at the U.S. Attorney's Office pursuant to a Proffer Agreement	98				X			X	X
	99				X			X	X
	100				X			X	X
	101			X	X			X	X
	102				X			X	X
	103				X			X	X
	104			X	X			X	X
	105				X			X	X
	106		X		X			X	X
	107				X			X	X
Handwritten notes from interview of Keith Davidson on 06/04/2018 pursuant to a proffer agreement	108				X			X	X
	109		X		X				X
	110		X	X	X			X	X
	113	X		X	X	X			X
	114			X	X			X	X
	115			X	X			X	X
	116				X	X		X	X
	117			X	X			X	X
	118				X			X	X
	119				X			X	X
Documents utilized during the interview of Keith Davidson on 06/04/2018 pursuant to a proffer agreement	120			X	X			X	X
	121			X	X			X	X
	122				X			X	X
	123			X	X			X	X
	124			X	X			X	X
	125			X	X			X	X
	126			X	X			X	X
	127			X	X				X
	128			X	X			X	X
	129			X	X			X	X
Documents utilized during the interview of Keith Davidson on 06/04/2018 pursuant to a proffer agreement	130				X				X
	131				X			X	X
	132				X			X	X
	133				X				X
	134				X				X
	135				X				X
	136			X	X				X
	137				X				X
	138				X			X	X
	139				X			X	X

Document Description	Bates	6/7C 1	6/7C 2	6/7C 3	6/7C 4	6/7C 5	6/7C 6	WIF by FBI Exemptions	Referral Direct
Documents utilized during the interview of Keith Davidson on 06/04/2018 pursuant to a proffer agreement Cont.	140				X				X
	141				X			X	X
	142				X			X	X
	144		X	X	X			X	X
	146			X	X			X	X
	147		X	X	X			X	X
	148		X	X	X			X	X
	149		X	X	X			X	X
	150		X	X	X			X	X
	151		X	X	X			X	X
	152		X	X	X			X	X
	153		X	X	X			X	X
	154		X	X	X			X	X
	155		X	X	X			X	X
	156		X	X	X			X	X
	157		X	X	X			X	X
	158			X	X			X	X
	159			X	X			X	X
	160			X	X			X	X
	161			X	X			X	X
	162			X	X			X	X
	163			X	X			X	X
	164			X	X			X	X
	165			X	X			X	X
	166			X	X			X	X
	167			X	X			X	X
	168			X	X			X	X
	169			X	X			X	X
	170			X	X			X	X
	171			X	X			X	X
	172			X	X			X	X
	173			X	X			X	X
	174			X	X			X	X
	175			X	X			X	X
	176			X	X			X	X
	177			X	X			X	X
	178			X	X			X	X
	179			X	X			X	X
	180			X	X			X	X
	181			X	X			X	X
	182			X	X			X	X

Document Description	Bates	6/7C						6/7C						WIF by FBI		Referral
		1	2	3	4	5	6	6/7C	6/7C	6/7C	6/7C	6/7C	6/7C	Exemptions	Direct	
Documents utilized during the interview of Keith Davidson on 06/04/2018 pursuant to a proffer agreement Cont.	183			x	x									x		x
	184			x	x									x		x
	185			x	x									x		x
	186			x	x									x		x
	187			x	x									x		x
	188			x	x									x		x
	189			x	x									x		x
	190			x	x									x		x
	191			x	x									x		x
	192			x	x									x		x
Handwritten notes from interview of Keith Davidson on 08/03/2018 pursuant to a proffer agreement	193			x	x									x		x
	194			x	x									x		x
	195			x	x									x		x
	196			x	x									x		x
	197			x	x											x
	198			x	x									x		x
	199			x	x									x		x
	200				x											x
	201				x											x
	202			x	x											x
Handwritten notes from a third party interview	203				x									x		x
	204	x		x	x	x										x
	205				x									x		x
	206	x		x	x	x										x
	207			x	x											x
	208		x	x	x											x
	209		x	x	x											x
	210		x	x	x											x
	211		x		x											x
	212		x		x											x
	213		x		x											x
	214		x		x											x
	215		x	x	x											x
	216		x	x	x											x
	217		x	x	x											x
	218	x		x	x											x
	219		x	x	x											x
	220		x	x	x											x
	221			x	x											x

Document Description	Bates	67C 1	67C 2	67C 3	67C 4	67C 5	67C 6	WIF by FBI Exemptions	Referral Direct
Documents utilized during the interview of a third party	222		x	x	x			x	x
	223		x	x	x				x
	224		x						x
	225		x						x
	228		x						x
	230		x	x					x
	232		x						x
	233		x						x
	235			x	x				x
	238		x	x					x
	239		x						x
	241		x						x
	242		x	x	x			x	x
	243		x		x			x	x
	244		x						x
	246		x						x
	247		x						x
	249		x						x
	250			x	x			x	x
	251			x	x			x	x
	252		x	x				x	x
	253		x	x				x	x
	254		x	x	x			x	x
	255		x	x				x	x
	256		x	x				x	x
	257		x	x				x	x
	258		x	x					x
	259		x	x	x				x
	260		x	x					x
	261		x	x	x			x	x
	262		x	x	x			x	x
	264		x	x				x	x
	265		x					x	x
	266		x						x
	267		x						x
	269		x	x				x	x
	270		x						x
	271		x						x
	272		x						x
	273		x	x	x			x	x
	274		x						x

Document Description	Bates	67C						WIF by FBI Exemptions	Referral Direct
		1	2	3	4	5	6		
Documents utilized during the interview of a third party Cont.	275		x						x
	276		x	x	x			x	x
	277		x	x				x	x
	278		x	x				x	x
	279		x	x					x
	280		x						x
	281		x	x	x			x	x
	282		x	x				x	x
	283		x	x				x	x
	284		x	x					x
	285								x
	286		x	x	x			x	x
	287		x	x				x	x
	288		x	x					x
	289		x	x	x				x
	290		x	x					x
	291		x	x	x			x	x
	292		x	x					x
	293		x					x	x
	294		x	x				x	x
	295		x	x					x
	296		x	x				x	x
	297		x	x				x	x
	298		x	x					x
	299		x					x	x
	300		x	x				x	x
	301		x	x				x	x
	302		x	x					x
	303		x	x				x	x
	304		x	x				x	x
	305		x	x					x
	306		x	x				x	x
	307		x	x				x	x
	308		x	x					x
	309		x	x				x	x
	310		x	x				x	x
	311		x	x					x
	312		x						x
	313		x						x
	314		x						x
	315		x	x					x
	316		x	x				x	x

Document Description	Bates	67C						67C						WIF by FBI		Referral	
		1	2	3	4	5	6	1	2	3	4	5	6	Exemptions	Direct	Direct	Direct
Handwritten notes from a third party interview	317				X	X										X	
	318		X		X	X										X	
	319		X	X	X	X										X	
	320		X	X	X	X										X	
	321		X	X	X	X										X	
Documents utilized during the interview of a third party	322		X		X											X	
	323		X	X												X	
	324		X											X		X	
	325		X	X	X									X		X	
	326		X	X										X		X	
Documents utilized during the interview of John Gauger on 07/09/2018	327		X	X										X		X	
	328		X			X					X					X	
	329		X		X						X					X	
	330		X		X						X					X	
	331		X			X					X					X	
Handwritten notes from interview of John Gauger on 07/09/2018	332		X			X					X					X	
	333					X					X					X	
	334	X				X	X				X					X	
	335			X	X						X					X	
	336			X	X						X					X	
	337			X	X						X					X	
	338			X	X						X					X	
	339			X	X						X					X	
	340			X	X						X					X	
	341			X	X						X					X	
	342			X	X						X					X	
	343			X	X						X					X	
	344				X						X					X	
	345			X	X						X					X	
	346	X		X	X	X					X					X	
Handwritten notes from a third party interview	347			X	X						X			X		X	
	348			X	X						X			X		X	
	349			X	X						X			X		X	
	350			X	X						X			X		X	
	351			X	X						X			X		X	
	352			X	X						X			X		X	
	353			X	X						X			X		X	
	354			X	X						X			X		X	
	355				X						X			X		X	
	356			X	X						X			X		X	
	357			X	X						X			X		X	
	358			X	X						X			X		X	

Document Description	Bates	6/7C						6/7C						WIF by FBI						Referral	
		1	2	3	4	5	6	1	2	3	4	5	6	Exemptions	Direct	Indirect	Exemptions	Direct	Indirect	Exemptions	Direct
Handwritten notes from a third party interview Cont.	359			X	X					X	X				X					X	
	360			X	X					X	X				X					X	
	361				X						X				X					X	
	362			X	X					X	X				X					X	
	363			X	X					X	X				X					X	
	364			X	X					X	X				X					X	
	365			X	X					X	X				X					X	
	366			X	X					X	X				X					X	
	367			X	X					X	X				X					X	
	368				X						X				X					X	
	369			X	X					X	X				X					X	
	370			X	X					X	X				X					X	
	371				X						X				X					X	
	372				X					X	X				X					X	
	373				X					X	X				X					X	
	374				X						X				X					X	
	375				X					X	X				X					X	
Documents utilized during the interview of a third party	376			X	X					X	X				X					X	
	377			X	X					X	X				X					X	
	378			X	X					X	X				X					X	
	379			X	X					X	X				X					X	
	380		X	X	X					X	X				X					X	
	381		X	X	X					X	X				X					X	
	382		X	X	X					X	X				X					X	
	383		X	X	X					X	X				X					X	
	384			X	X					X	X				X					X	
	385			X	X					X	X				X					X	
	386		X	X	X					X	X				X					X	
	387			X	X					X	X				X					X	
	388			X	X					X	X				X					X	
	389			X	X					X	X				X					X	
	390			X	X					X	X				X					X	
	391			X	X					X	X				X					X	
	392			X	X					X	X				X					X	
	393			X	X					X	X				X					X	
	394		X	X	X					X	X				X					X	
	395		X	X	X					X	X				X					X	
	396		X	X	X					X	X				X					X	
	397		X	X	X					X	X				X					X	
	398		X	X	X					X	X				X					X	
	399			X	X					X	X				X					X	
	400			X	X					X	X				X					X	

Document Description	Bates	6/7C						6/7C						WIF by FBI		Referral	
		1	2	3	4	5	6	1	2	3	4	5	6	Exemptions	Direct	Exemptions	Direct
	401		X	X	X									X		X	
	402			X	X									X		X	
	403			X	X									X		X	
	404			X	X									X		X	
	405			X	X									X		X	
	406			X	X									X		X	
	407			X	X									X		X	
	408			X	X									X		X	
	409			X	X									X		X	
	410			X	X									X		X	
	411		X	X	X									X		X	
	412			X	X									X		X	
	413			X	X									X		X	
	414		X	X	X									X		X	
	415			X	X									X		X	
	416			X	X									X		X	
	417			X	X									X		X	
	418		X	X	X									X		X	
	419			X	X									X		X	
	420			X	X									X		X	
	421			X	X									X		X	
	422			X	X									X		X	
	423			X	X									X		X	
	424			X	X									X		X	
	425			X	X									X		X	
	426			X	X									X		X	
	427			X	X									X		X	
	428			X	X									X		X	
	429			X	X									X		X	
	430			X	X									X		X	
	431			X	X									X		X	
	432			X	X									X		X	
	433			X	X									X		X	
	434			X	X									X		X	
	435			X	X									X		X	
	436			X	X									X		X	
	437			X	X									X		X	
	438			X	X									X		X	
	439			X	X									X		X	
	440			X	X									X		X	
	441			X	X									X		X	
	442			X	X									X		X	

Documents utilized during
the interview of a third party
Cont.

Document Description	Baers	67C 1	67C 2	67C 3	67C 4	67C 5	67C 6	WIF by FBI Exemptions	Referral Direct
	443			X	X			X	X
	444			X	X			X	X
	445			X	X			X	X
	446			X	X			X	X
	447			X	X			X	X
	448			X	X			X	X
	449			X	X			X	X
	450			X	X			X	X
	451			X	X			X	X
	452			X	X			X	X
	453			X	X			X	X
	454			X	X			X	X
	455			X	X			X	X
	456			X	X			X	X
	457			X	X			X	X
	458			X	X			X	X
	459			X	X			X	X
	460			X	X			X	X
	461			X	X			X	X
	462			X	X			X	X
	463			X	X			X	X
	464			X	X			X	X
	465			X	X			X	X
	466			X	X			X	X
	467			X	X			X	X
	468			X	X			X	X
	469			X	X			X	X
	470			X	X			X	X
	471			X	X			X	X
	472			X	X			X	X
	473			X	X			X	X
	474			X	X			X	X
	475			X	X			X	X
	476			X	X			X	X
	477			X	X			X	X
	478			X	X			X	X
	479			X	X			X	X
	480			X	X			X	X
	481			X	X			X	X
	482			X	X			X	X
	483			X	X			X	X
	484			X	X			X	X

Documents utilized during
the interview of a third party
Cont.

Document Description	Bates	6/7C	6/7C	6/7C	6/7C	6/7C	6/7C	6/7C	6/7C	6/7C	WIF by FBI	Referral
		1	2	3	4	5	6	Exemptions	Direct			
Documents utilized during the interview of a third party Cont.	485		x	x	x			x	x			
	486		x	x	x			x	x			
	487				x			x	x			
	488			x	x			x	x			
	489				x			x	x			
	490				x			x	x			
	491			x	x			x	x			
	492		x	x	x			x	x			
	500	x		x	x	x			x			
	501				x			x	x			
Handwritten notes from a third party interview	502			x	x				x			
	503			x	x				x			
	504			x	x				x			
	505				x				x			
	506				x				x			
	507				x				x			
	508				x				x			
	509				x				x			
	510				x				x			
	511				x				x			
Documents utilized during the interview of a third party	512			x	x				x			
	513				x				x			
	514			x	x				x			
	515			x	x				x			
	516			x	x				x			
	518				x				x			
	519				x							
	520			x	x							
	521			x	x							
	522		x		x							
Handwritten notes from a third party interview	524				x							
	525				x							
	526				x							
	527				x							
	528			x	x							
	529				x				x			
	530			x	x							
	531				x				x			
	532	x		x	x	x						
	533			x	x				x			
	534			x	x							
	535			x	x							

Document Description	Bates	67C						WIF by FBI Exemptions	Referral Direct
		1	2	3	4	5	6		
Handwritten notes from a third party interview Cont.	536			X	X				X
	537			X	X			X	X
	538			X	X				X
	539			X	X				X
	540			X	X				X
	541			X	X				X
	542			X	X				X
	543			X	X				X
	544			X	X				X
	545			X	X				X
Documents utilized during the interview of a third party	546				X			X	X
	547				X			X	X
	548			X	X				X
	549			X	X				X
	550				X				X
	551				X			X	X
	552			X	X			X	X
	553			X	X			X	X
	554				X				X
	555			X	X				X
	556			X	X				X
	557			X	X				X
	558			X	X				X
	559			X	X				X
	560			X	X			X	X
	561				X			X	X
	562			X	X			X	X
	563			X	X			X	X
	564			X	X				X
Handwritten notes from a third party interview	570			X	X				X
	571			X	X			X	X
	572			X	X				X
	573			X	X			X	X
	574			X	X				X
	575			X	X				X
	577			X	X			X	X
	578	X			X	X			X
	579			X	X			X	X
	580			X	X			X	X
	581			X	X			X	X
	582				X				X
	583			X	X				X

Document Description	Bates	67C 1	67C 2	67C 3	67C 4	67C 5	67C 6	WIF by FBI Exemptions	Referral Direct
Handwritten notes from a third party interview Cont.	584			X	X				X
	585			X	X				X
	586			X	X				X
	587			X	X				X
	588				X				X
	589				X			X	X
	590				X			X	X
Documents utilized during the interview of a third party	591			X	X				X
	592		X	X	X				X
	593		X	X	X				X
	594			X				X	X
	595		X	X	X				X
	597			X	X				X
	603		X	X	X				X
	604		X	X	X				X
	605		X	X	X				X
	606			X	X				X
	607		X	X	X				X
	608		X	X	X				X
	609		X	X	X				X
	610			X	X				X
	612			X	X				X
	614			X	X				X
	615			X				X	X
	616			X	X				X
FD-302 form documenting interview of a third party	619	X		X	X	X			X
	620			X	X				X
Handwritten notes from a third party interview	621	X		X	X	X			X
	622			X	X				X
	623			X	X				X
	624			X	X				X
	625			X	X			X	X
	626			X	X			X	X
	627			X	X			X	X
	628			X	X			X	X
	629			X	X				X
	630			X	X			X	X
	631			X	X			X	X
	632			X	X			X	X
	633			X	X			X	X

Document Description	Bates	6/7C	6/7C	6/7C	6/7C	6/7C	6/7C	6/7C	6/7C	6/7C	WIF by FBI	Referral
		1	2	3	4	5	6	Exemptions	Direct			
Handwritten notes from a third party interview Cont.	634			X	X			X	X			X
	635			X	X			X	X			X
	636				X			X	X			X
	637			X	X			X	X			X
	638			X	X				X			X
	639			X	X			X	X			X
	640				X			X	X			X
	641			X	X			X	X			X
	642				X				X			X
	643			X	X			X	X			X
	644			X	X			X	X			X
	645			X	X			X	X			X
	646			X	X			X	X			X
	647			X	X			X	X			X
	648			X	X			X	X			X
Handwritten notes from a third party interview	649			X	X				X			X
	650			X	X				X			X
	651			X	X				X			X
	652			X	X				X			X
	653			X	X				X			X
	654				X				X			X
	655			X	X				X			X
	656				X				X			X
	657			X	X				X			X
	658			X	X				X			X
	659			X	X				X			X
	660			X	X				X			X
	661		X	X	X				X			X
	662		X	X	X				X			X
	663			X	X				X			X
	664			X	X				X			X
Handwritten notes from a third party interview	665			X	X				X			X
	666			X	X				X			X
	667				X				X			X
	668			X	X				X			X
	669				X				X			X
	670		X	X	X				X			X
	671	X		X	X	X						X
	672			X	X				X			X
	673			X	X				X			X
	674			X	X				X			X
	675			X	X				X			X

Document Description	Bates	67C 1	67C 2	67C 3	67C 4	67C 5	67C 6	WIF by FBI Exemptions	Referral Direct
Handwritten notes from a third party interview	676			X	X				X
	677			X	X			X	X
	678			X	X			X	X
	679			X	X			X	X
	680			X	X			X	X
	681			X	X			X	X
	682			X	X			X	X
	683			X	X			X	X
Documents utilized during the interview of a third party	684			X	X			X	X
	685			X	X			X	X
	686				X			X	X
	687				X			X	X
	688				X			X	X
	689				X				X
	690		X						X
	691		X	X	X			X	X
Handwritten notes from a third party interview	692		X		X			X	X
	693			X	X			X	X
	694				X			X	X
	695				X			X	X
	696				X			X	X
	697				X				X
	699		X		X				X
	701	X		X	X	X			X
	702				X			X	X
	703				X			X	X
	704				X			X	X
Handwritten notes from a third party interview	705				X			X	X
	706				X			X	X
	707				X			X	X
	708				X			X	X
	709				X			X	X
	710			X	X			X	X
	711			X	X			X	X
	712			X	X			X	X
Handwritten notes from a third party interview	713			X	X			X	X
	714	X		X	X	X			X
	715			X	X			X	X
	716			X	X			X	X

Document Description	Bates	6/7C 1	6/7C 2	6/7C 3	6/7C 4	6/7C 5	6/7C 6	WIF by FBI Exemptions	Referral Direct
Handwritten notes from a third party interview Cont.	717			X	X			X	X
	718			X	X			X	X
	719			X	X			X	X
	720			X	X			X	X
	721			X	X			X	X
	722			X				X	X
	723			X	X			X	X
	724			X	X			X	X
	732				X			X	X
	733				X			X	X
Documents utilized during the interview of a third party	734				X			X	X
	735				X			X	X
	736				X			X	X
	737				X			X	X
	738				X			X	X
	739				X			X	X
	740				X			X	X
	741				X			X	X
	742			X	X			X	X
	743				X			X	X
	744				X			X	X
	745				X			X	X
	746				X			X	X
	747				X			X	X
	748				X			X	X
	749			X	X			X	X
	750			X	X			X	X
	754			X	X				X
Handwritten notes from a third party interview	754			X	X				X
Documents utilized during the interview of a third party	755	X		X	X				X
	756			X					X
Other Government Agency Information	757				X	X			X
	759				X				X
Other Government Agency Information	760	X							X
	761				X				X
Handwritten notes from a third party interview	762	X			X				X
	763				X			X	X
	764		X		X			X	X
	824	X		X	X	X			X
FD-302 form documenting interview of a third party	824	X		X	X	X			X

Document Description	Bates	67C						67C						WIF by FBI		Referral	
		1	2	3	4	5	6	1	2	3	4	5	6	Exemptions	Direct	Indirect	Referral
FD-302 form documenting interview of a third party	825	x			x	x											x
	826				x	x											x
	827				x	x											x
	828				x	x											x
	829				x	x											x
	830				x	x											x
	831				x	x											x
	832				x	x											x
	833				x	x											x
	834				x	x											x
	835				x	x											x
	836				x	x											x
Handwritten notes from a third party interview	837	x			x	x											x
	838				x	x											x
	839				x	x											x
	840				x	x											x
	841				x	x											x
	842				x	x											x
	843				x	x											x
	844				x	x											x
	845				x	x											x
	846				x	x											x
	847				x	x											x
	848				x	x											x
	849				x	x											x
	850				x	x											x
	851				x	x											x
	852				x	x											x
	853				x	x											x
Documents utilized during the interview of a third party	854		x	x	x	x								x			x
	855		x	x	x	x								x			x
	856		x	x	x	x								x			x
	857				x	x								x			x
	858				x	x								x			x
	859				x	x								x			x
	860			x	x	x								x			x
	861				x	x								x			x
	862			x	x	x								x			x

Document Description	Bates	6/7C	6/7C	6/7C	6/7C	6/7C	6/7C	6/7C	6/7C	WIF by FBI	Referral
		1	2	3	4	5	6	Exemptions	Direct		
Documents utilized during the interview of a third party Cont.	863		x	x	x			x	x		x
	864			x	x			x	x		x
	865			x	x			x	x		x
	866			x	x			x	x		x
	867			x	x			x	x		x
	868				x			x	x		x
	869		x	x	x			x	x		x
	870		x	x	x			x	x		x
	871		x	x	x			x	x		x
	872		x	x	x			x	x		x
	873		x		x			x	x		x
	874				x			x	x		x
	875				x			x	x		x
Handwritten notes utilized during the interview of a third party	876			x	x			x	x		x
	877				x			x	x		x
	878			x	x			x	x		x
	879				x			x	x		x
	880			x	x						x
	881			x	x			x	x		x
	882			x	x			x	x		x
	883			x	x			x	x		x
	884			x	x			x	x		x
	885			x	x			x	x		x
	886				x			x	x		x
	887			x	x			x	x		x
	888			x	x			x	x		x
Documents utilized during the interview of a third party	889			x	x			x	x		x
	890				x			x	x		x
	891			x	x			x	x		x
	892			x	x			x	x		x
	893			x	x			x	x		x
	894			x	x			x	x		x
	895			x	x			x	x		x
	896			x	x			x	x		x
	897			x	x			x	x		x
	919	x	x								x
FD-302 documenting execution of a Search Warrant											

Document Description	Bates	6/7C						WIF by FBI Exemptions	Referral Direct
		1	2	3	4	5	6		
Email executing Search Warrant	920	x	x						x
Sealed Search Warrant and Non-Disclosure Order and Attachment	921	x	x						x
	923		x						x
	925		x					x	x
Sealed Agent Affidavit in support of Application for Search Warrant	926	x	x						x
	927		x						x
	929		x						x
	930		x						x
	932		x						x
	933		x	x					x
	934		x						x
	935		x					x	x
	936		x	x				x	x
	937		x					x	x
	938		x	x				x	x
	939		x	x				x	x
	940		x						x
	941		x						x
	942		x						x
	945		x						x
	946		x						x
	947		x						x
	948		x		x				x
	949		x						x
	950		x						x
	955		x						x
	958		x						x
	959		x						x
	960		x	x	x			x	x
	961		x	x					x
	962		x						x
	964		x		x				x
	965		x						x
	966		x						x
	967		x						x
	968		x						x
	969		x						x
	970	x							x

Document Description	Bates	6/7C 1	6/7C 2	6/7C 3	6/7C 4	6/7C 5	6/7C 6	WIF by FBI Exemptions	Referral Direct
FD-302 documenting execution of Search Warrant	971	x	x						x
Email executing Search Warrant	972	x	x						x
Sealed Search Warrant and Non-Disclosure Order and Attachment	973	x	x						x
	975		x						x
	978		x					x	x
	979		x					x	x
	980	x	x						x
	981		x						x
	982		x						x
	983		x						x
	990		x						x
	991		x	x					x
	992		x						x
	993		x	x				x	x
	994		x					x	x
	995		x	x				x	x
	996		x					x	x
	997		x	x				x	x
	998		x						x
	999		x						x
Sealed Agent Affidavit in support of Application for Search Warrant	1002		x						x
	1003		x						x
	1004		x						x
	1005		x		x				x
	1006		x						x
	1007		x						x
	1012		x						x
	1015		x						x
	1016		x						x
	1017		x	x	x			x	x
	1018		x	x					x
	1019		x						x
	1021		x		x				x
	1022		x						x
	1023		x					x	x
	1024		x					x	x
	1025		x					x	x
	1026		x						x

Document Description	Bates	67C 1	67C 2	67C 3	67C 4	67C 5	67C 6	W/F by FBI Exemptions	Referral Direct
Sealed Agent Affidavit in support of Application for Search Warrant Cont.	1027		x						x
	1028		x					x	x
	1030		x						x
	1031	x							x
FD-302 documenting execution of Search Warrants	1032	x	x				x		x
	1033	x	x						x
	1034		x			x			x
	1035		x			x			x
Sealed Search and Seizure Warrant and Attachments	1036		x						x
	1037		x						x
	1038		x					x	x
	1039		x						x
	1045	x	x			x			x
	1046	x	x						x
	1047	x	x						x
Sealed Application for Search Warrant and Attachments	1048	x							x
	1049	x							x
	1050	x							x
	1051		x						x
	1052		x						x
	1053		x						x
	1054		x						x
	1057		x						x
	1059		x						x
	1060		x						x
	1064		x						x
	1065		x						x
	1066		x						x
	1068		x						x
	1071		x						x
	1072		x						x
	1074		x						x
	1075		x						x
	1081		x						x
	1082		x						x
	1083		x						x
	1084		x						x
	1085		x						x
	1089		x						x
	1090		x						x

Document Description	Bates	67C						67C						WIF by FBI		Referral	
		1	2	3	4	5	6	1	2	3	4	5	6	Exemptions	Direct	Indirect	Direct
Sealed Application for Search Warrant and Attachments Cont.	1092		x														x
	1098		x														x
	1099	x	x														x
	1109		x									x					x
Sealing Order for Search Warrant and Application	1110											x					x
Sealed Search and Seizure Warrant and Attachments	1111		x									x					x
	1112		x									x					x
	1113		x														x
	1122	x	x									x					x
Sealed Application for Search Warrant and Attachments	1186																
Sealing Order for Search Warrant and Application	1187											x					x
FD-302 form documenting interview of a third party	1188	x			x	x											x
	1189				x	x											x
	1190				x	x											x
	1191				x	x											x
	1192				x	x											x
	1193				x	x											x
	1196				x	x											x
	1202				x	x								x			x
Documents utilized during the interview of a third party	1203		x		x	x											x
	1204				x												x
	1210				x												x
	1211				x												x
	1212				x												x
	1213	x			x	x						x					x
	1214				x	x								x			x
	1215				x	x											x
Handwritten notes from a third party interview	1216				x	x											x
	1217				x	x											x
	1218				x	x											x
	1219				x	x											x
	1220				x	x											x
	1221	x			x									x			x
	1222		x														x
	1223				x												x
FD-302 documenting execution of a Search Warrant	1224				x												x
	1225				x												x

Document Description	Bates	6/7C						6/7C						WIF by FBI Exemptions	Referral Direct
		1	2	3	4	5	6	1	2	3	4	5	6		
FD-1057 documenting items seized from Search Warrant	1226	x													x
	1228	x	x												x
	1229		x	x											x
FD-302 documenting execution of a Search Warrant and Attachment	1230	x	x												x
	1231	x	x												x
	1232	x	x											x	x
FD-302 documenting execution of a Search Warrant	1233	x	x												x
	1234		x												x
FD-302 documenting execution of a Search Warrant	1235	x	x												x
	1236	x													x
Handwritten notes from interview of Michael Cohen on 10/8/2018 pursuant to a proffer agreement	1237	x	x	x											x
	1238			x											x
	1239		x	x											x
	1240		x	x											x
	1241		x	x											x
	1242		x	x											x
	1243		x	x											x
	1244		x	x										x	x
	1245		x	x											x
	1246		x	x											x
	1247		x	x											x
	1248		x	x											x
	1249		x	x											x
	1250		x	x											x
Documents utilized during the interview of Michael Cohen on 10/8/2018 pursuant to a proffer agreement	1251			x											x
	1252		x	x										x	x
	1253		x	x										x	x
	1254		x	x										x	x
	1255		x	x										x	x
	1256		x	x										x	x
	1257		x	x										x	x
	1258		x	x										x	x
	1259		x	x										x	x
	1260		x	x										x	x
	1261		x	x										x	x
	1262		x	x										x	x

Document Description	Bates	67C 1	67C 2	67C 3	67C 4	67C 5	67C 6	WIF by FBI Exemptions	Referral Direct
Documents utilized during the interview of Michael Cohen on 10/8/2018 pursuant to a proffer agreement Cont.	1263		X	X				X	X
	1264		X	X				X	X
	1265		X	X				X	X
	1266		X	X				X	X
	1267		X	X				X	X
	1268		X	X				X	X
	1269		X	X				X	X
	1270			X					X
	1271		X						X
	1275		X	X				X	X
	1276		X	X				X	X
	1277		X	X				X	X
	1278			X					X
	1279		X	X					X
	1280		X	X					X
	1281		X	X					X
	1282		X	X					X
	1283		X	X					X
	1284		X	X					X
	1285		X	X				X	X
Handwritten notes from a third party interview	1286		X	X				X	X
	1287		X	X					X
	1288		X	X					X
	1289		X	X					X
	1290		X	X					X
	1291			X					X
	1292		X	X				X	X
	1293		X	X				X	X
	1294		X	X				X	X
	1295		X	X				X	X
Documents utilized during the interview of a third party	1301		X	X					X
	1302		X	X				X	X
	1303		X	X					X
	1304		X	X					X
	1305		X	X					X
	1306		X					X	X
	1307		X					X	X
	1308		X	X				X	X
	1309		X	X					X
	FD-302 documenting items seized pursuant to Search Warrant	1313	X	X	X				

Document Description	Bates	67C		67C		67C		67C		67C		67C		67C		WIF by FBI		Referral	
		1	2	3	4	5	6	Exemptions	Direct										
Sealed Search and Seizure Warrant and Attachment	1314		x															x	
	1316		x															x	
Documents utilized during the interview of a third party	1317				x											x		x	
	1318				x											x		x	
	1319				x											x		x	
	1320				x											x		x	
	1321				x											x		x	
	1322			x	x											x		x	
	1323			x	x											x		x	
	1324			x	x											x		x	
	1325			x	x											x		x	
	1326			x	x											x		x	
	1327			x	x											x		x	
	1328			x	x											x		x	
	1329				x											x		x	
	1330				x											x		x	
	1331				x											x		x	
	1332				x											x		x	
	1333				x											x		x	
	1334				x											x		x	
Documents utilized during the interview of a third party	1335		x		x											x		x	
	1336		x		x											x		x	
	1337		x	x	x											x		x	
	1338		x	x	x											x		x	
	1339		x	x	x											x		x	
	1340		x	x	x											x		x	
	1341		x	x	x											x		x	
	1342		x	x	x											x		x	
	1343		x	x	x											x		x	
	1344		x		x											x		x	
	1345		x	x	x											x		x	
	1346			x	x											x		x	
	1347			x	x											x		x	
	1348		x		x											x		x	
	1349		x	x	x											x		x	
	1350		x	x	x											x		x	
	1351		x													x		x	
	1352		x	x	x											x		x	
	1353		x	x	x											x		x	
	1354		x	x	x											x		x	

Document Description	Bates	6/7C 1	6/7C 2	6/7C 3	6/7C 4	6/7C 5	6/7C 6	WIF by FBI Exemptions	Referral Direct
SNDY Nov Production									
Sealed Search and Seizure Warrant and Attachment	1355		x						x
	1357		x						x
	1358		x						x
Sealed Search and Seizure Warrant	1359		x						x
Sealed Application for Search and Seizure Warrant	1363	x	x						x
Sealed Agent Affidavit in support of Application for Search Warrant	1364	x	x						x
	1365		x						x
	1366		x						x
	1367		x						x
	1368		x						x
	1373		x						x
	1387		x						x
	1388		x						x
	1389		x						x
	1390		x						x
	1393		x						x
	1394		x						x
Sealed Application for Search and Seizure Warrant	1396		x						x
	1397	x							x
	1400		x	x					x
	1402	x	x						x
Sealed Agent Affidavit in support of Application for Search Warrant	1436	x							x
Sealed Court Sealing Order	1441		x						x
Sealed Application for Search Warrant	1443	x	x						x
Sealed Agent Affidavit in support of Application for Search Warrant	1445	x	x						x
	1446		x						x
	1448	x	x						x
	1449		x	x					x
	1450		x	x					x

Document Description	Bates	6/7C 1	6/7C 2	6/7C 3	6/7C 4	6/7C 5	6/7C 6	WIF by FBI Exemptions	Referral Direct
Sealed Agent Affidavit in support of Application for Search Warrant Cont.	1451		x						x
	1452		x						x
	1453		x						x
	1454		x						x
	1455	x							x
Sealed Application for Warrant	1459		x					x	x
Sealed Agent Affidavit in support of Warrant	1466		x					x	x
	1467		x					x	x
	1468		x					x	x
	1470		x					x	x
	1471		x					x	x
	1473		x					x	x
	1474		x	x				x	x
	1475		x	x				x	x
	1476		x	x				x	x
	1477		x	x				x	x
	1478		x	x				x	x
	1479		x	x				x	x
	1481		x					x	x
	1482		x	x				x	x
	1483		x					x	x
	1484		x	x				x	x
	1485		x	x				x	x
	1486		x	x				x	x
	1487		x	x				x	x
	1488		x	x				x	x
	1489		x	x				x	x
Warrant Sealing and Non-Disclosure Order	1492		x					x	x
Warrant Sealing and Non-Disclosure Order	1497		x					x	x
Warrant Sealing and Non-Disclosure Order	1532		x					x	x
Warrant Sealing and Non-Disclosure Order	1537		x					x	x
SNDY Dec Production									
Sealed Application for Search Warrant	1546	x	x						x
Sealed Application for Warrant	1588		x						x

Document Description	Bates	6/7C						6/7C						WIF by FBI		Referral	
		1	2	3	4	5	6	1	2	3	4	5	6	Exemptions	Direct	Direct	Direct
Sealed Agent Affidavit in support of Application for Warrant	1593	x	x											x			x
	1594		x											x			x
	1596		x											x			x
	1597		x											x			x
	1598	x												x			x
Warrant Sealing and Non-Disclosure Order	1599		x											x			x
Sealed Agent Affidavit in support of Application for Search Warrant	1604	x	x														x
	1643	x															x
OIP Direct Referral																	
Sealed Agent Affidavit in support of Application for Search Warrant	1648	x	x														x
	1649		x														x
	1657		x														x
	1658		x														x
	1659		x	x													x
	1660		x														x
	1661		x														x
	1662		x														x
	1663		x														x
	1664		x														x
	1665	x															x
	1667	x	x														x
Sealed Agent Affidavit in support of Application for Search Warrant	1668		x														x
	1669		x														x
	1671		x														x
	1672		x														x
	1673		x														x
	1674				x												x
	1675				x												x
	1676				x												x
	1677				x												x
	1678		x		x												x
	1679			x	x												x
	1680			x													x
	1681			x	x												x
	1682				x												x
	1683			x													x
	1684			x													x
	1685			x													x
	1686		x	x													x
	1687				x												x

Document Description	Bates	6/7C 1	6/7C 2	6/7C 3	6/7C 4	6/7C 5	6/7C 6	WIF by FBI Exemptions	Referral Direct
Sealed Agent Affidavit in support of Application for Search Warrant Cont.	1688		x	x	x				x
	1689		x	x					x
	1690		x						x
	1691		x						x
	1692		x						x
	1693		x						x
	1694		x						x
	1695		x	x					x
	1696		x						x
	1697		x						x
	1698		x	x					x
	1699		x						x
	1700		x						x
	1701		x						x
	1702		x						x
	1703		x						x
	1705		x						x
	1706	x							x

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Page Disposition Totals

Page Disposition Totals	
<u>Total:</u> 1112	
WIF: 1112	
• Referral Direct:	1112

- **FD-302s:** FD-302s are internal FBI forms in which evidence is often documented, usually the results of FBI interviews. Such evidence and/or interview information may later be used as testimony or evidence in court proceedings/trials. Additionally, these evidence/interview forms are often incorporated in other FBI documents which disseminate intelligence/investigative information, and can be utilized to set leads in furtherance of the FBI's investigative efforts.
- **Electronic Communications (ECs)/ FD-1057s:** ECs replaced the traditional FBI correspondence (i.e., Memoranda and Letters) as the primary vehicle of correspondence within the FBI. The purpose of an EC is to communicate within the FBI in a consistent format that can be uploaded by the originating Division or office, transmitted, and downloaded by recipient Divisions or offices within the FBI's internal computer network. These forms are often utilized to record and disseminate
- **FD-515s:** These are forms used by FBI SAs to report investigative accomplishments such as the recovery of stolen person to another within an FBI field office. They serve to assist in the overall supervision of a case by summarizing pertinent details of an investigation.

Confidential Human Sources ("CHS"). This CHS provided information may later be used as testimony or evidence in court proceedings/trials. Additionally, this information can be incorporated in other FBI documents which disseminate intelligence/investigative information, and can be utilized to set leads in furtherance of the FBI's investigative efforts.

- **FBI Letters:** The FBI letter is the formal correspondence format used to communicate with non-FBI entities, including but not limited to, other federal agencies, other non-federal law enforcement agencies, commercial businesses, and/or private citizens. Its format is identical to business letters utilized by commercial agencies, except that it contains the FBI Seal at the
- **Sentinel Leads:** These are investigative directives, disseminated internally between FBI personnel, through Sentinel.
- **Teletypes:** Teletypes are an electronic means of disseminating law enforcement/intelligence information between FBI field offices, FBIHQ and the United States intelligence and law enforcement agencies.

coordination and investigation administration.

This information can be incorporated in FBI documents which disseminate intelligence/investigative information, and can be utilized to set leads in furtherance of the FBI's investigative efforts

- **Electronic Mail Messages (E-mails):** These documents consist of E-mails between FBI personnel, between FBI personnel and private citizens/corporations, between FBI personnel and Other Government Agency (OGA) personnel, and/or between
- **FD-1054, 1055 and other Surveillance Logs:** These types of documents are utilized to document physical surveillance ("FISUR") of investigative subjects. These surveillance logs include subjects/activities of subjects observed, the times these observations occurred, and the FBI personnel conducting the FISUR. These surveillance logs are often used as evidence, are incorporated in other FBI documents which disseminate intelligence/investigative information, and are utilized to set leads in
- **FD-340 - 1A Envelopes:** These envelopes are used to organize and store documents that need to be stored separately from the FBI file to which they are attached, due to their size. They usually contain handwritten notes of interviews, photographs,
- **Court Documents:** These are documents that have been filed with a court or otherwise made part of the court record.
- **Handwritten Interview Notes:** These are the original handwritten notes of FBI personnel who conducted interviews in the course of FBI investigations. These notes are almost always transposed into FD-302s and are utilized by the FBI in the same
- **Other Evidentiary Documents:** This category consists of any evidentiary documents gathered during the course of FBI investigations. The information in these documents is often incorporated in other FBI documents which disseminate intelligence/investigative information, and can be utilized to set leads in furtherance of the FBI's investigative efforts.
- **State and Local Law Enforcement Documents:** This category consists of documents provided to the FBI by state and local law enforcement agencies. These documents can be used as evidence in court proceedings, are often incorporated in other FBI documents which disseminate intelligence/investigative information, and can be utilized to set leads in furtherance of the FBI's
- **Internal Electronic Mail Messages (E-mails):** These documents consist of E-mails between FBI personnel discussing
- **FBI Records Checks:** These documents are printout of queries of internal FBI databases. These documents are often incorporated in other FBI documents which disseminate intelligence/investigative information, and can be utilized to set leads
- **Miscellaneous Administrative Documents:** This category consists of all informal, internal documents utilized to administer FBI coordination and investigation administration.

case administrative system, Sentinel.

- **Teletypes:** Teletypes are an electronic means of disseminating law enforcement/intelligence information between FBI field offices, FBIHQ and the United States intelligence and law enforcement agencies.
- **Sentinel Leads:** These are investigative directives, disseminated internally between FBI personnel, through Sentinel.
- **Photographs:** This category consists of photographs taken and or collected in the course of the FBI investigations. enforcement operations. These forms document operation specifics, including objectives, suspects/targets, dates, times, equipment used, safety precautions, and the FBI/law enforcement personnel involved.
- **FD-704 Payment Requests:** FD-704s are used to request payment to implement particular techniques or reimburse FBI units/squads/employees who their own funds to implement particular techniques.

- Documents Implementing Sensitive Investigative Technique: These documents were utilized to implement a specific, sensitive, investigative technique. Describing these documents further would reveal this technique or sensitive data concerning enforcement operations. These forms document operation specifics, including objectives, suspects/targets, dates, times, equipment used, safety precautions, and the FBI/law enforcement personnel involved.
- FD-941 – Consent to Search Forms: These documents were provided to and signed by individuals who consented to FBI searches of their persons/property.
- FD-5 Serial Charge Outs: These are administrative documents that explain why certain serials have been removed/replaced
- Interview Audio/Video: This category consists of audio/video recordings of interviews. Like FD-302s, this information may later be used as testimony or evidence in court proceedings/trials. Additionally, the results of these interviews are often incorporated in other FBI documents which disseminate intelligence/investigative information, and are utilized to set leads in
- FD-472 Consent to Monitor: These forms are signed by individuals to document their consent to the FBI monitoring their
- FBI Translations: These are translations of foreign language documents, conducted by FBI linguists. This information can be used as evidence in court proceedings, can be incorporated in FBI documents which disseminate intelligence/investigative information, and can be utilized to set leads in furtherance of the FBI's investigative efforts.
- Foreign Government Information: These are documents that were provided to the FBI by foreign governments. This information within these documents can be incorporated in FBI documents which disseminate intelligence/investigative

Document RIF

Duplicate Document

AMERICAN OVERSIGHT v. DOJ

19-cv-8215

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Vaughn Index

<u>SUMMARY OF FOIA EXEMPTION JUSTIFICATION CATEGORIES</u>	
CODED CATEGORIES	INFORMATION WITHHELD
EXEMPTION (b)(6) and EXEMPTION (b)(7)(C)	CLEARLY UNWARRANTED INVASION OF PERSONAL PRIVACY AND UNWARRANTED INVASION OF PERSONAL PRIVACY
(b)(6)-1 and (b)(7)(C)-1	Names and Identifying Data of Third Parties of Investigative Interest
(b)(6)-2 and (b)(7)(C)-2	Names and Identifying Information of FBI Special Agents and Professional Staff
(b)(6)-3 and (b)(7)(C)-3	Names and Identifying Information of Non-FBI Federal Government Personnel
(b)(6)-4 and (b)(7)(C)-4	Names and Identifying Information of Third Parties Merely Mentioned
(b)(6)-5 and (b)(7)(C)-5	Names and Identifying Information of Third Parties who Provided Information

INDEX KEY

RIP: Released in Part

WIF by DOJ/ EOUSA: Withheld in full pursuant to DOJ/EOUSA (SDNY)

FBI DOCUMENT TYPES

• FD-302s: FD-302s are internal FBI forms in which evidence is often documented, usually the results of FBI interviews. Such evidence and/or interview information may later be used as testimony or evidence in court proceedings/trials. Additionally, these evidence/interview forms are often incorporated in other FBI documents which disseminate intelligence/investigative information, and can be utilized to set leads in furtherance of the FBI's investigative efforts.

Document Description	Bates	6/7C 1	6/7C 2	6/7C 3	6/7C 4	6/7C 5	RIP	WIF by DOJ/ EOUSA (SDNY)
FD-302 interview of Michael Cohen on 10/8/2018 pursuant to a proffer agreement	1	x	x	x			x	
	2	x			x	x	x	
	3				x	x	x	
	4				x	x	x	
	5	x			x	x	x	
	6				x	x	x	
	7				x	x	x	
	8				x	x	x	
	9				x	x	x	
	10				x	x	x	
	11				x	x	x	
	12				x	x	x	
	13				x	x	x	
	14		x	x	x	x		x
FD-302 form documenting interview of a third party	15				x	x		x
	16	x			x	x		x
	17	x			x	x		x
	18	x				x		x
	19	x			x	x		x
	20	x			x	x		x
	21	x			x	x		x
	22				x	x		x
	23		x	x	x	x	x	
	24				x	x	x	
	25				x	x	x	
	26					x	x	
	27					x	x	
	28					x	x	
FD-302 interview of Keith Davidson on 08/03/2018 pursuant to a proffer agreement	29			x			x	
	30		x	x	x	x	x	
	31				x	x	x	
	32				x	x	x	
	33				x	x	x	
	34				x	x	x	
	35					x	x	
	36				x	x	x	
	37				x	x	x	
	38				x	x	x	
FD-302 interview of Keith Davidson on 06/04/2018 pursuant to a proffer agreement								

Document Description	Bates	6/7C 1	6/7C 2	6/7C 3	6/7C 4	6/7C 5	RIP	WIF by DOJ/ EOUSA (SDNY)
FD-302 interview of Keith Davidson on 06/04/2018 Cont.	39					X	X	
	40				X	X	X	
	41				X	X	X	
	42					X	X	
FD-302 form documenting interview of a third party	43		X	X	X	X		X
	44	X			X	X		X
	45	X		X		X		X
	46	X			X	X		X
	47	X			X	X		X
FD-302 interview of John Gauger on 07/09/2018	48			X	X	X		X
	49				X	X		X
	50				X	X		X
	51				X	X		X
	52				X	X		X
	53					X		X
FD-302 form documenting interview of a third party	54		X		X	X		X
	55					X		X
FD-302 form documenting interview of a third party	56		X	X	X	X		X
	57				X	X		X
	58				X	X		X
	59				X	X		X
	60				X	X		X
	61				X	X		X
	62				X	X		X
	63				X	X		X
	64					X		X
	65					X		X
	66				X	X		X
	67				X	X		X
	68				X	X		X
	69				X	X		X
	70				X	X		X
	71					X		X
	72				X	X		X
	73				X	X		X
	74					X		X

Document Description	Bates	6/7C 1	6/7C 2	6/7C 3	6/7C 4	6/7C 5	RIP	WIF by DOJ/ EOUSA (SDNY)
FD-302 form documenting interview of a third party Cont.	75				x	x		x
	76				x	x		x
	77					x		x
	78			x		x		x
	79		x			x		x
FD-302 form documenting interview of a third party	80		x		x	x		x
	81				x	x		x
FD-302 form documenting interview of a third party	82		x	x	x	x		x
	83				x	x		x
	84				x	x		x
	85				x	x		x
	86					x		x
	87					x		x
	88					x		x
	89					x		x
FD-302 form documenting interview of a third party	90					x		x
	91				x	x		x
	92					x		x
	93				x	x		x
	94		x		x	x		x
FD-302 form documenting interview of a third party	95					x		x
	96		x	x	x	x		x
	97				x	x		x
	98				x	x		x
	99				x	x		x
	100				x	x		x
	101				x	x		x
	102				x	x		x
	103				x	x		x
	104				x	x		x
	105				x	x		x
	106				x	x		x

Document Description	Bates	6/7C 1	6/7C 2	6/7C 3	6/7C 4	6/7C 5	RIP	WIF by DOJ/ EOUSA (SDNY)
FD-302 form documenting interview of a third party	107		x	x	x	x		x
	108				x	x		x
	109				x	x		x
	110				x	x		x
	111				x	x		x
	112				x	x		x
FD-302 form documenting interview of a third party	113		x	x	x	x		x
	114				x	x		x
	115				x	x		x
	116				x	x		x
	117					x		x
FD-302 form documenting interview of a third party	118		x	x		x		x
	119				x	x		x
	120				x	x		x
	121				x	x		x
	122				x	x		x
	123				x	x		x
	124				x	x		x
	125				x	x		x
	126					x		x
	127					x		x
	128					x		x
FD-302 interview on 5/25/2018 of Keith Davidson at the U.S. Attorney's Office pursuant to a Proffer Agreement	129		x	x	x	x	x	
	130				x	x	x	
	131				x	x	x	
	132					x	x	
	133				x	x	x	
	134					x	x	
	135					x	x	
	136					x	x	
	137					x	x	
	138				x	x	x	
	139					x	x	
	140				x	x	x	
	141				x	x	x	
	142				x	x	x	
	143				x	x	x	

Document Description	Bates	6/7C 1	6/7C 2	6/7C 3	6/7C 4	6/7C 5	RIP	WIF by DOJ/ EOUSA (SDNY)
FD-302 interview on 5/25/2018 Cont.	144				X	X	X	
	145					X	X	
FD-302 form documenting interview of a third party	146		X	X	X	X		X
	147				X	X		X
	148				X	X		X
	149				X	X		X
	150				X	X		X
	151				X	X		X
	152				X	X		X
	153				X	X		X
	154				X	X		X
	155				X	X		X
FD-302 form documenting interview of a third party Cont.	156				X	X		X
	157				X	X		X
	158				X	X		X
	159					X		X
	160				X	X		X
	161					X		X
	162					X		X
	163				X	X		X
	164				X	X		X
	165					X		X
	166				X	X		X
	167					X		X
	168					X		X
	169				X	X		X
	170				X	X		X
	171				X	X		X
	172		X	X	X	X		X
FD-302 form documenting interview of a third party	173					X		X
	174					X		X
	175				X	X		X
	176				X	X		X
	177				X	X		X
	178				X	X		X
	179	X			X	X		X
	180	X			X	X		X
	181				X	X		X

Document Description	Bates	6/7C 1	6/7C 2	6/7C 3	6/7C 4	6/7C 5	RIP	WIF by DOJ/ EOUSA (SDNY)
FD-302 form documenting interview of a third party	182		x	x	x	x		x
	183				x	x		x
	184				x	x		x
	185					x		x
	186					x		x
	187				x	x		x
	188				x	x		x
	189				x	x		x
	190		x	x	x	x		x
FD-302 form documenting interview of a third party	191					x		x
	192					x		x
	193					x		x
	194					x		x
	195				x	x		x
	196				x	x		x
	197		x	x		x		x
Handwritten notes from a third party interview	198					x		x
	199					x		x
	200					x		x
	201				x	x		x
	202				x	x		x
	203				x	x		x
	204				x	x		x
	205					x		x
	206				x	x		x
Documents from 19ev12/78								
FD-302 interview of Michael Cohen on 10/17/2018 pursuant to a proffer agreement	1924	x	x	x			x	
	1925				x		x	
	1926				x		x	
	1927	x			x		x	
	1928	x			x		x	
	1929	x			x		x	
	1930	x			x		x	
	1931	x			x		x	
	1932	x			x		x	
	1933	x			x		x	
	1934	x			x		x	
	1935	x			x		x	

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Page Disposition Totals

Page Disposition Totals	
<u>Total:</u> 218	
RIP: 62	
WIF: 156	
• WIF by DOJ/ EOUSA (SDNY):	156

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CITIZENS FOR RESPONSIBILITY AND
ETHICS IN WASHINGTON,

Plaintiff,

v.

U.S DEPARTMENT OF JUSTICE,

Defendant.

Civil Action No. 1:19-cv-02267-EGS

EXHIBIT 6

[REDACTED]

b7E -3

UNCLASSIFIED//~~FOUO~~

Title: (U) Request for [REDACTED]
Re: [REDACTED] 08/16/2018

b7E -2,3

laws. COHEN was involved in both these attempts to keep the women silent.

In the course of the investigation of COHEN for the campaign finance violations and other violations such as bank fraud, searches of COHEN's properties were conducted. One of the items seized was an iPhone owned by COHEN [REDACTED]

b7E -2

[REDACTED]

[REDACTED]

b7E -2

[REDACTED]

b7E -2

Legal Authority Supporting Request:

Item seized pursuant to search warrant. Attached is the applicable search warrant.

◆◆

UNCLASSIFIED//~~FOUO~~

EXHIBIT E

DECLARATION OF TIMOTHY A. ZIESE

1. I am a Senior Supervisory Attorney in the Office of Information Policy ("OIP"), United States Department of Justice ("DOJ" or "Department"). In this capacity, I am responsible for supervising the handling of the Freedom of Information Act ("FOIA") requests subject to litigation processed by the Initial Request Staff ("IR Staff") of OIP - a role in which I have served since 2018. Prior to becoming a Senior Supervisory Attorney, I served as an Attorney-Advisor on the Appeals Staff at OIP from 2013-2018. The IR Staff of OIP is responsible for processing FOIA requests seeking records from within OIP and from six senior leadership offices of the Department of Justice, specifically the Offices of the Attorney General ("OAG"), Deputy Attorney General ("ODAG"), Associate Attorney General ("OASG"), Legal Policy ("OLP"), Legislative Affairs ("OLA"), and Public Affairs ("PAO"). The IR Staff determines whether records responsive to access requests exist and, if so, whether they can be released in accordance with the FOIA. In processing such requests, the IR Staff consults with personnel in

the senior leadership offices and, when appropriate, with other components within the Department of Justice, as well as with other Executive Branch agencies.

2. I make the statements herein on the basis of personal knowledge, including my extensive experience with the FOIA, with OIP, and in handling requests for senior leadership office records, as well as on information acquired by me in the course of performing my official duties, including information provided to me by others within the Department with knowledge of the types of records at issue in this case.

I. Plaintiff's Initial FOIA Request to OIP

3. By letter dated July 18, 2019, Plaintiff submitted a FOIA request to OIP seeking "records related to the now closed investigation conducted by the U.S. Attorney's Office for the Southern District of New York into (1) who, besides Michael Cohen, was involved in and may be criminally liable for the two campaign finance violations to which Mr. Cohen pled guilty; and (2) whether certain individuals made false statements, gave false testimony, or otherwise obstructed justice in connection with this investigation." A copy of Plaintiff's FOIA request dated July 18, 2019 is attached hereto as Exhibit 1.

4. By letter dated July 26, 2019, OIP acknowledged receipt of Plaintiff's July 18, 2019 FOIA request, and assigned administrative tracking number DOJ-2019-005973. A copy of OIP's July 26, 2019 acknowledgment letter is attached hereto as Exhibit 2.

5. On July 30, 2019, Plaintiff filed suit in connection with its July 18, 2019 FOIA request. *See* Complaint for Injunctive and Declaratory Relief, ECF No. 1. Plaintiff subsequently filed an Amended Complaint on August 23, 2019. *See* First Amended Complaint for Injunctive and Declaratory Relief, ECF No. 6.

II. OIP's Response to Plaintiff's FOIA Request

6. By letter dated April 21, 2020, OIP provided its final response to Plaintiff's FOIA request. OIP informed Plaintiff that searches had been conducted in response to Plaintiff's FOIA request, and that ninety-six pages were located that contained records responsive to Plaintiff's request. Further, OIP advised that, of the ninety-six pages located, fifty-nine pages were being referred to the Federal Bureau of Investigation ("FBI"), and the remaining thirty-seven pages were being referred to the Executive Office for United States Attorneys ("EOUSA") for processing and direct response to Plaintiff. A copy of OIP's final response letter, dated April 21, 2020, is attached hereto as Exhibit 3. By letter dated the same date, EOUSA, by and through the Office of the United States Attorney for the Southern District of New York ("SDNY"), provided Plaintiff its response regarding the material referred to it by OIP.

III. Additional Explanation of Information Withheld by EOUSA

7. This declaration should be read in tandem with Assistant United States Attorney Thomas McKay's contemporaneously filed declaration, which provides information regarding SDNY/EOUSA's withholding of certain documents pursuant to the attorney work-product and deliberative process privileges. OIP provides further justification and/or supplemental context for withholding of the following documents identified in EOUSA's *Vaughn* Index and accompanying declaration of Mr. McKay, pursuant to the deliberative process privilege and attorney work-product privilege encompassed in Exemption 5 of the FOIA:

- August 18, 2018¹ Memorandum from Acting U.S. Attorney Khuzami, A. Strauss, L. Zornberg, and Supervisory and Line Assistant United States Attorneys (AUSAs) to

¹ The filename of this electronic document reflects that this document was written on August 18, 2018. However, the body of the document itself states that the document was written on February 13, 2020. The February 13, 2020 date is incorrect, as the document was located as a

Deputy Attorney General ("DAG") Rod Rosenstein, Principal Associate DAG Edward O'Callaghan, and Associate DAG Iris Lan re Proposed Charges Against Michael Cohen.

- November 29, 2018 Email from Acting U.S. Attorney Khuzami to I. Lan, forwarded by I. Lan to E. O'Callaghan, containing requested summaries of certain pending investigations, including the Cohen campaign finance investigation and related investigation.
- December 15, 2018 Email from Acting U.S. Attorney Khuzami to I. Lan, forwarded by I. Lan to E. O'Callaghan, and forwarded by E. O'Callaghan to DAG Rosenstein, Corey Ellis, Andrew Peterson, and Maya Suero, attaching two SDNY memoranda in advance of SDNY briefing (only one attached memo responsive)
- December 15, 2018 Memorandum from Deputy U.S. Attorney Khuzami to DAG Rosenstein, with cc to E. O'Callaghan and I. Lan, summarizing certain pending investigations.
- February 22, 2019 Memorandum from Deputy U.S. Attorney Khuzami to Attorney General William Barr, with cc to DAG Rosenstein, E. O'Callaghan, and I. Lan, summarizing certain pending investigations.
- February 22, 2019 Email from I. Lan to E. O'Callaghan, C. Ellis, and A. Peterson, forwarded by E. O'Callaghan to DAG Rosenstein on 2/24/2019, attaching memos from SDNY in advance of meeting on 2/25/2019 (only one attached memo responsive; responsive memo not processed as duplicative)

Word document that contained an automatic date function that updated to the current date whenever the document was opened, and the February 13, 2020 date reflects when the document was converted to PDF version for its processing by SDNY/EOUSA in this FOIA litigation.

- March 1, 2019 Memorandum from Deputy U.S. Attorney Khuzami to Attorney General Barr providing additional information and responding to questions raised at February 25 meeting.
- March 1, 2019 Email from Deputy U.S. Attorney to E. O'Callaghan, forwarded by E. O'Callaghan to DAG Rosenstein and Brian Rabbit on 3/2/2019, attaching 3/1/2019 memorandum requested at February 25 meeting (attached memo not processed as duplicative)
- March 1-2, 2019 Email chain with additional reply email from DAG Rosenstein to E. O'Callaghan and B. Rabbit on 3/2/2019

A. Exemption 5

8. Exemption 5 of the FOIA exempts from mandatory disclosure “inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.” 5 U.S.C. § 552(b)(5). As discussed in detail *infra*, all of the information withheld by EOUSA pursuant to FOIA Exemption 5, both as described in the McKay declaration as well as for the further reasons set forth herein, is protected in full pursuant to a combination of the deliberative process privilege and the attorney work-product privilege. The McKay declaration addresses the application of both the deliberative process privilege and the attorney work-product privilege to these records, and this declaration is intended to provide further information supporting the application of those privileges.

B. Exemption 5: Inter-/Intra-Agency Threshold

9. In order to withhold records from release pursuant to Exemption 5 of the FOIA, the records must be inter- or intra-agency records. Here, all information cited above withheld from Plaintiff pursuant to this exemption consists of communications and memoranda generated

by, exchanged within, and wholly internal to, OAG, ODAG, and SDNY. All of these organizational entities sit within the Department of Justice. As such, the records or portions of records withheld under FOIA Exemption 5 are intra-agency documents within the meaning of the FOIA Exemption 5 threshold.

C. Exemption 5: Deliberative Process Privilege

10. The deliberative process privilege is intended to protect the decision-making processes of government agencies from public scrutiny, in order to enhance the quality of agency decisions and to encourage and facilitate candid discussions among Executive Branch employees. To be protected by the deliberative process privilege, the information at issue must, in addition to satisfying the Exemption 5 threshold described above, be both “pre-decisional” and “deliberative.” Internal Department deliberations are most effective when agency personnel can be candid in debating the merits of potential agency decisions, and when agency personnel can marshal any facts they determine relevant to making those decisions. By contrast, if Department personnel knew that such deliberative communications could be made public through the FOIA, Department employees would be much more cautious in their discussions with each other and in providing all pertinent information and viewpoints in a timely manner to agency decision-makers. This lack of candor would seriously impair the Department’s ability to foster the forthright, internal discussions necessary for efficient and proper Departmental decision-making and could undermine the effective administration of criminal justice.

11. The Attorney General (“AG”) of the United States is the head of the Department of Justice, and as such, has general supervisory responsibilities over all parts of the Department.²

² See generally “Office of the Attorney General – About the Office”, <https://www.justice.gov/ag/about-office>.

12. The Deputy Attorney General ("DAG") advises and assists the AG in formulating and implementing Departmental policies and programs and in providing overall supervision and direction to all organizational units of the Department. Of particular relevance here, the DAG directly supervises the ninety-three United States Attorneys and the Department's law enforcement agencies, and the DAG has the authority to supervise and weigh in on any pending or contemplated prosecutorial decisions or investigations.³

13. When Department components, such as the United States Attorney's Offices, report to OAG and ODAG about pending or proposed Departmental actions, including investigations or prosecutions, it is within the authority of the AG or DAG to decide whether and how to exercise their supervisory authority to weigh in on those pending or proposed actions, including, under appropriate circumstances, to endorse those pending actions, to recommend modifications to them, or even to reject other Department officials' contemplated actions. Therefore, when components of the Department provide this kind of information to OAG or ODAG regarding their pending or prospective activities, this exchange is part of an OAG or ODAG pre-decisional and deliberative process in furtherance of their leadership and management role over the Department of Justice. This informs OAG and ODAG deliberations as to whether and how they should exercise their supervisory functions over Departmental decisions, particularly those decisions which are especially important, sensitive, and high-profile.

14. The documents responsive to the general subject matter of Plaintiff's FOIA request, which was the investigation conducted by SDNY into "(1) who, besides Michael Cohen, was involved in and may be criminally liable for the two campaign finance violations to which

³ See generally "Office of the Deputy Attorney General – About the Office", <https://www.justice.gov/dag/about-office>.

Mr. Cohen pled guilty; and (2) whether certain individuals made false statements, gave false testimony, or otherwise obstructed justice in connection with this investigation” pertain to a sensitive and high-profile investigation on which OAG and ODAG officials were briefed. When SDNY provided relevant information to Department leadership, these exchanges were part of the Department's deliberative process, as further described below.

15. The August 18, 2018 memorandum described in EOUSA's *Vaughn* Index as “Memorandum from Acting U.S. Attorney Khuzami, A. Strauss, L. Zornberg, and Supervisory and Line AUSAs to Deputy Attorney General Rod Rosenstein, Principal Associate DAG Edward O’Callaghan, and Associate DAG Iris Lan re Proposed Charges against Michael Cohen” outlined the then-current status of the Cohen investigation, provided evidence adduced as part of the investigation, described the proposed charges, and provided analysis to support those proposals. The McKay Declaration sets forth that this memorandum is protected by the deliberative process and attorney work-product privileges. In addition to the bases for the application of those privileges, this memorandum was also part and parcel of a broader Departmental Leadership deliberative process as outlined above. Specifically, the memorandum was pre-decisional, as it was provided to ODAG prior in time to the contemplated future decision by ODAG as to whether and how to exercise its supervisory authority as it pertained to the Cohen matter. Additionally, the memorandum was deliberative, as it was provided to ODAG in furtherance of the contemplated future ODAG decision. The recommendations contained in the memorandum functioned as recommendations to ODAG as to what actions the Department should take. Additionally, the selection of particular facts to include in this memorandum also reflects the deliberative process, as the facts presented reveal the thought processes and judgment of the memorandum's authors as they cull what they see as the most important facts from a broader

spectrum of investigatory details, analyze those facts, and distill them down for presentation to the decision-maker. As such, the August 18, 2018 memorandum aided in the Senior Leadership review and Departmental decision-making process regarding the contemplated filing of criminal charges against Michael Cohen, and is fully protected by the deliberative process privilege.

16. Disclosure of any information within the document would foreseeably harm the core legal advice and analysis that the attorney work-product and deliberative process privileges are meant to protect. Disclosure of internal Departmental briefing materials pertaining to the status of especially important, sensitive, or high-profile investigations, recommendations of charges, and analysis of such recommendations, would have a real and meaningful adverse impact, and would hinder the Department's ability to conduct investigations and prosecution on behalf of the United States, and the ability of Senior Leadership to exercise its supervisory authority over Departmental investigations and prosecutions. Further, the lack of candor which would foreseeably result from public disclosure of these types of materials would adversely affect the ability of Departmental leadership to supervise the Department as a whole. The AG and DAG, alongside other officials in OAG and ODAG, must necessarily rely almost entirely upon the candor of their Departmental subordinates to learn crucial details about Departmental activities, upon which Departmental leadership supervisory decisions could be taken. Without candor in these communications, Departmental decisions on the most important, sensitive, or high-profile matters would be adversely affected.

17. The November 29, 2018 email described in EOUSA's *Vaughn* Index as "Email from Acting U.S. Attorney Khuzami to I. Lan, forwarded by I. Lan to E. O'Callaghan, containing requested summaries of certain pending investigations, including the Cohen campaign finance investigation and related investigation," as well as the December 15, 2018 memorandum

described as "Memorandum from Deputy U.S. Attorney Khuzami to DAG Rosenstein, with cc to E. O'Callaghan and I. Lan, summarizing certain pending investigations" were withheld in full, or in significant portion, pursuant to the deliberative process and attorney work-product privileges. As it relates to the application of the deliberative process privilege, the McKay declaration notes that these documents were provided to ODAG, at ODAG's request, "for the purpose of briefing Department leadership regarding the status and contemplated investigative steps in the campaign finance and related investigations, among other sensitive investigations." McKay Decl. ¶ 40. Specifically, the documents were requested by ODAG to brief senior officials in ODAG, as well as the DAG himself, and to provide insight as to several sensitive ongoing investigations. Such briefing materials are pre-decisional because they are drafted in advance of, and in preparation for, discussions of the investigations at issue at relevant meetings, with the understanding that Departmental leadership would use this information to subsequently inform its part of the deliberative process as to whether and how to exercise its supervisory authority over the information contained in the briefing materials. They are deliberative because a critical part of the decision-making process consists of the drafting and preparing of briefing material to aid in the development of Departmental positions as it relates to sensitive investigations, and to prepare Senior Leadership officials to address various aspects of those investigations that may arise in during the course of anticipated meetings. Further, they are also deliberative because they represent the authors' selections of information and identification of ongoing investigative steps, and reflect an attempt to succinctly summarize ongoing sensitive investigations, identify important issues, and provide key background information in a concise format (here, summarized down to a mere paragraph each in the email), all necessary to provide the requesting DOJ leadership officials the necessary information related to their request. It is crucial that

Department components feel free to offer candid information and assessments on what is happening within their offices, and contemplated steps to be taken in pending investigations, and equally important that staff in Senior Leadership offices receive comprehensive and candid information from the components which they oversee, so that this information can be relied upon by Departmental leadership in deliberating about how and when to exercise their supervisory leadership function within the Department. The information withheld consists of such material. In addition, the December 15, 2018 memorandum was sent from SDNY to ODAG in an email on the same date. The email was produced in part to Plaintiff, but contains a small amount of redacted material that has been withheld pursuant to the attorney work product and deliberative process privileges. The redacted material is prepared in anticipation of litigation because it discusses the nature of ODAG's request for information regarding the status of particular investigations and prosecutions of interest to ODAG. It is also pre-decisional and deliberative in that it discusses the nature of ODAG's request for information regarding certain sensitive investigations, in anticipation of future ODAG decisions as to how to exercise supervisory authority over such investigations.

18. The February 22, 2019 memorandum described in EOUSA's *Vaughn* Index as "Memorandum from Deputy U.S. Attorney Khuzami to Attorney General Barr, with cc to DAG Rosenstein, E. O'Callaghan, and I. Lan, summarizing certain pending investigations," as well as the March 1, 2019 memorandum described as "Memorandum from Deputy U.S. Attorney Khuzami to Attorney General Barr providing additional information and responding to questions raised at February 25 meeting" were withheld in full pursuant to the deliberative process and attorney work-product privileges. As it relates to the application of the deliberative process privilege, the McKay declaration explains that the February 22, 2019 memorandum was

provided to OAG and ODAG, at their request, to brief the then-newly sworn-in AG⁴ regarding various sensitive investigations in advance of a meeting, and the March 1, 2019 memorandum was then prepared for the AG, at his request, to provide responses to requests for information given during that meeting. McKay Decl. ¶ 41. The February 22, 2019 briefing memorandum, and the subsequent March 1, 2019 response memorandum each played an important role in the deliberative decision-making process of the Department's Senior Leadership related to matters of sensitive investigations of Departmental concern. As discussed above, when providing information in response to a request from senior Department leaders such as the AG or DAG, there is an understanding that the senior Department leaders might exercise their supervisory authority to make decisions relevant to the matters for which information is requested, and that this is particularly true for sensitive or high-profile matters.

19. Similar to the November 29, 2018 email and December 15, 2018 memorandum discussed above, the February 22, 2019 briefing memorandum is pre-decisional because it was drafted in advance of, and in preparation for, discussions at a February 25, 2019 meeting, and was drafted in advance of, and in preparation for, the AG and Departmental leadership's contemplated future decisions as to how to exercise their supervisory functions. As previously stated, a critical part of the decision-making process consists of the drafting and preparing of briefing material to aid in the development of Departmental positions related to sensitive investigations, and to prepare Senior Leadership officials to address various aspects of those investigations that may arise in during the course of anticipated meetings. Therefore, this memorandum is deliberative because it represents the authors' selections of information and

⁴ Former Attorney General William Barr was sworn in as the 85th Attorney General on February 14, 2019.

ongoing investigative steps, and reflects an attempt to identify important issues and provide key background information in a concise format, all necessary to provide the requesting officials the necessary information related to their request, and to prepare those senior officials in their future decisions pertaining to those investigations.

20. The March 1, 2019 memorandum was also pre-decisional because it temporally preceded the AG's contemplated determinations over matters raised and discussed at the February 25, 2019 meeting, for which the AG requested the additional information contained within the memorandum. It is classically deliberative, inasmuch as it reflects the authors' considered responses to questions and analysis of issues and topics specifically raised by the head of the Department, the AG, and was prepared to assist him by providing information and analysis relevant to matters of Departmental decision-making regarding campaign finance investigation and prosecution, and the related investigation.

21. Within the February 24, 2019 email from E. O'Callaghan to DAG Rosenstein, a small amount of material is marked as "Not Responsive Records" in the attachments line, while a small portion of the body of the email was withheld pursuant to the attorney work-product and deliberative process privileges encompassed in Exemption 5. The "Not Responsive Records" markings contained in the attachments line of this email identify memoranda unrelated to the Cohen matter, and their excision as not responsive is intended to give effect to the parties' agreement that Defendant need not process non-responsive, segregable sections of memoranda that discuss entirely different topics. The material withheld pursuant to Exemption 5 in the body of the email identifies a matter discussed at the OAG/SDNY meeting which, although unrelated to the Cohen matter or the matter that is the subject of Plaintiff's request, consists of a non-responsive portion of an otherwise-responsive record. Therefore, it is protected pursuant to the

attorney work-product privilege because this portion of the email was authored by a Department attorney (O'Callaghan) in reasonable anticipation of litigation, over the matter identified. It is protected by the deliberative process privilege insofar as it would identify an additional subject about which the Departmental leadership solicited information, which is pre-decisional to any eventual contemplated decision by leadership as to whether or how to exercise their supervisory functions within the Department, and is deliberative in that it reflects what matters Departmental leadership might exercise their supervisory and leadership authority over.

22. Within the March 1, 2019 email from Deputy U.S. Attorney Khuzami to E. O'Callaghan, the following March 2, 2019 email from E. O'Callaghan to DAG Rosenstein and B. Rabbitt, and the email from DAG Rosenstein to E. O'Callaghan and B. Rabbitt, a small amount of material is withheld under the attorney work-product and deliberative process privileges. These passages do pertain generally to matters that are the subject of Plaintiff's request. However, these passages more specifically identify discrete aspects and the content of the subject of the March 1, 2019 memorandum, which was drafted to respond to specific questions raised by the AG. These passages were withheld under the attorney work-product and deliberative process privileges. They are attorney work-product because these passages were drafted by Departmental attorneys (Deputy U.S. Attorney Khuzami and E. O'Callaghan) in reasonable anticipation of litigation, in the same manner as was the March 1, 2019 memorandum itself, as described in the McKay declaration. In a similar manner, this information is protected pursuant to the deliberative process privilege inasmuch as its disclosure would reveal deliberative information protected by the deliberative process privilege relating to the memorandum.

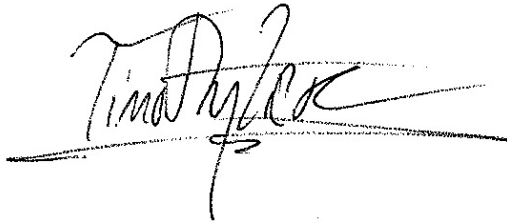
23. There is a reasonably foreseeable harm in disclosure of such materials as the November 29, 2018 email and the December 15, 2020, February 22, 2019, and March 1, 2019 memoranda, respectively, as well as the information withheld in the emails transmitting and in response to the former three memoranda, inasmuch as their disclosure would hinder Department staff's ability to provide candid evaluations of topics for Department leadership and by extension, Department leadership's ability to prepare for meetings and discussions, to provide informed input, and make executive decisions regarding sensitive investigations of Departmental interest. If Department personnel who engage in the pre-decisional process of providing briefing and background materials discerned that such material could be released for public consumption, they would be more circumspect in expressing the necessary information to decision-makers who utilize and rely on such material, foreseeably and adversely impacting the quality of decision-making. Disclosure of internal Department communications regarding a high-profile, sensitive, and/or particularly significant matter, such as the Cohen campaign finance investigation and related investigation, would have a particularly heightened chilling effect on Departmental deliberations because employees would be subjected to increased public scrutiny and the prospect of controversy for their proposals and nascent views. Again, these concerns are magnified when – as here – the deliberations at issue touch on some of the most sensitive investigations and prosecutions of the Department, and involve the highest levels of Department leadership.

24. Finally, I have reviewed all of the withheld material, and no withheld information is segregable for release to Plaintiff. While the deliberative process privilege generally requires segregation of non-exempt material, inasmuch as all of the information at issue is fully protected by the attorney work-product privilege, there is no non-exempt information that can be

segregated. Release of any portion of this material would foreseeably harm the interests protected by the deliberative process privilege and attorney work-product privilege encompassed by FOIA Exemption 5. It would hinder Departmental leadership in its ability to receive candid and fulsome information from components of the Department of Justice in furtherance of its deliberations over whether and how to exercise its supervisory function over the Department, in especially important, sensitive, and high-profile cases. Additionally, it would hinder Department attorneys in their efforts to communicate internally about litigation matters, because it would reveal attorneys' work in preparation for ongoing and actual litigation.

Pursuant to 28 U.S.C. § 1746, I declare under the penalty of perjury that the foregoing is true and correct, to the best of my knowledge and belief.

Executed this 30th day of July 2021.

A handwritten signature in black ink, appearing to read "Timothy A. Ziese", with a long horizontal line extending from the end of the signature.

Timothy A. Ziese
Senior Supervisory Attorney

Exhibit 1

CREW

**citizens for responsibility
and ethics in washington**

July 18, 2019

By Facsimile: (202) 514-1009

Laurie Day
Chief, Initial Request Staff
Office of Information Policy
U.S. Department of Justice
Suite 11050
1425 New York Avenue, N.W.
Washington, D.C. 20530-0001

Re: Expedited Freedom of Information Act Request

Dear Ms. Day:

Citizens for Responsibility and Ethics in Washington ("CREW") makes this request for records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and U.S. Department of Justice ("DOJ") regulations.

Specifically, CREW requests all records related to the now closed investigation conducted by the U.S. Attorney's Office for the Southern District of New York into (1) who, besides Michael Cohen, was involved in and may be criminally liable for the two campaign finance violations to which Mr. Cohen pled guilty; and (2) whether certain individuals made false statements, gave false testimony, or otherwise obstructed justice in connection with this investigation. The nature of this investigation is outlined in the attached letter submitted on July 15, 2019, to U.S. District Court Judge William H. Pauley III in *United States v. Cohen*, Crim. No. 18-cr-602 (S.D.N.Y.). For your convenience a copy of this letter is attached. This request includes, but is not limited to, records sent or received by then-Deputy Attorney General Rod Rosenstein or Attorney General William Barr concerning any aspect of this investigation.

Please search for responsive records regardless of format, medium, or physical characteristics. We seek records of any kind, including paper records, electronic records, audiotapes, videotapes, photographs, data, and graphical material. Our request includes without limitation all correspondence, letters, emails, text messages, facsimiles, telephone messages, voice mail messages, and transcripts, notes, or minutes of any meetings, telephone conversations, or discussions. Our request also includes any attachments to emails and other records, as well as those who were cc'ed or bcc'ed on any emails.

If it is your position any portion of the requested records is exempt from disclosure, CREW requests that you provide it with an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). If some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. See 5 U.S.C. § 552(b). If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document

as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document. *See Mead Data Central v. U.S. Dep't of the Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977).

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A) and Department of Justice regulations, CREW requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures likely will contribute to a better understanding of relevant government procedures by CREW and the general public in a significant way. *See* 5 U.S.C. § 552(a)(4)(A)(iii). Moreover, the request primarily and fundamentally is for non-commercial purposes. *See, e.g., McClellan Ecological v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987).

In his memorandum opinion and order of July 17, 2019 (attached), ordering the unsealing of a subset of the documents requested here, Judge Pauley described the campaign finance violations that were under investigation as "a matter of national importance." He also deemed it "time that every American has an opportunity to scrutinize the Materials," referencing the documents related to the campaign finance investigation. Like the records Judge Pauley ordered be unsealed, the requested records would shed light on the extent, if any, that President Donald Trump or any of his businesses or associates has violated campaign finance laws and, if so, why the government has closed its investigation without prosecuting these crimes, with the exception of Michael Cohen. The American people deserve to know whether their president and his business associates have complied fully with the laws of our land and if they have not, why DOJ declined to prosecute them. The president is the most powerful and visible official of our country, and the truth about his actions and those of his campaign, businesses, and associates should not be shielded from public scrutiny.

CREW is a non-profit corporation, organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the public's right to be aware of the activities of government officials, to ensuring the integrity of those officials, and to highlighting and working to reduce the influence of money on politics. CREW uses a combination of research, litigation, and advocacy to advance its mission. CREW intends to analyze the information responsive to this request and to share its analysis with the public through reports, press releases, or other means. In addition, CREW will disseminate any documents it acquires from this request to the public through its website, www.citizensforethics.org. The release of information obtained through this request is not in CREW's financial interest.

CREW further requests that it not be charged search or review fees for this request pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) because CREW qualifies as a member of the news media. *See Nat'l Sec. Archive v. U.S. Dep't of Defense*, 880 F.2d 1381, 1386 (D.C. Cir. 1989) (holding non-profit a "representative of the news media" and broadly interpreting the term to include "any person or organization which regularly publishes or disseminates information to the public").

CREW routinely and systematically disseminates information to the public in several ways. CREW's website receives tens of thousands of page views every month. The website includes blog posts that report on and analyze newsworthy developments regarding government ethics, corruption, and money in politics, as well as numerous reports CREW has published to educate the public about these issues. In addition, CREW posts the documents it receives under the FOIA on its website, and those documents have been visited hundreds of thousands of times.

Under these circumstances, CREW satisfies fully the criteria for a fee waiver.

Request for Expedition

Finally, please be advised that CREW also has requested expedition of this request because its subject matter is of widespread and exceptional media interest and the requested information involves possible questions about the government's integrity that affect public confidence. Pursuant to 28.C.F.R. § 16.5(e)(2), CREW submitted that request to DOJ's Director of Public Affairs; a copy of that request is enclosed.

Conclusion

If you have any questions about this request or foresee any problems in fully releasing the requested records, please contact me at (202) 408-5565 or aweismann@citizensforethics.org. Also, if CREW's request for a fee waiver is not granted in full, please contact our office immediately upon making such a determination.

Where possible, please produce records in electronic format. Please send the requested records to me either at aweismann@citizensforethics.org or at Anne L. Weismann, Citizens for Responsibility and Ethics in Washington, 1101 K Street, N.W., Suite 201, Washington, D.C. 20005. Thank you for your assistance in this matter.

Sincerely,



Anne L. Weismann
Chief FOIA Counsel

Encls.



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U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

July 15, 2019

EX PARTE and UNDER SEAL

BY EMAIL and HAND

The Honorable William H. Pauley III
United States District Judge
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: United States v. Michael Cohen, 18 Cr. 602 (WHP)

Dear Judge Pauley:

Pursuant to the Court's February 7, 2019 opinion and order (the "Order") and May 21, 2019 order, the Government respectfully submits this sealed, *ex parte* status report explaining the need for continued redaction of the materials subject to the Order. (See Order at 30).

By way of background, several media organizations filed a request to unseal the affidavits, warrants, and riders associated with several different searches that were conducted in connection with a grand jury investigation into Michael Cohen and others (the "Materials"). The Government opposed that request, citing the need to protect an ongoing investigation and the personal privacy of certain individuals named in the Materials. On February 7, 2019, this Court granted the motion in part and denied it in part. Although the Court directed that certain parts of the Materials be unsealed (with limited redactions to protect privacy interests), the Court denied the motion to unseal all of the Materials. Relevant here, the Court held that "the portions of the Materials relating to Cohen's campaign finance crimes shall be redacted" to protect the ongoing law enforcement investigation. (Order at 11). On May 21, 2019, after receiving a status update from the Government on the need for continued sealing, the Court issued an order permitting continued sealing of the campaign finance portions of the Materials to protect an ongoing investigation, and directed that the Government provide another update by this date.

The Government is no longer seeking to maintain the campaign finance portions of the Materials under seal in order to protect an ongoing investigation.¹ However, while the majority of

¹ The Government has effectively concluded its investigations of (1) who, besides Michael Cohen, was involved in and may be criminally liable for the two campaign finance violations to which Cohen pled guilty [REDACTED]; and (2) whether certain individuals, [REDACTED], made false statements, gave false testimony or otherwise obstructed justice in connection with this investigation [REDACTED]

the campaign finance portions of the Materials can now be unsealed, the Government respectfully submits that some redactions should be maintained in order to protect the personal privacy of certain individuals. In particular, consistent with the Court's prior Order, the Government seeks to redact references to individuals who are either (1) "peripheral characters" for whom the Materials raise little discernable inference of criminal conduct" but who "may nonetheless be 'stigmatized'" by their inclusion in the Materials; or (2) people "around Cohen from which the public might infer criminal complicity." (Order at 14). However, while most references to such individuals are redacted, the Government does not seek to redact references to those individuals that are either (a) facts that have been publicly confirmed, either by the individual in public statements or the Government in public filings; or (b) facts sourced from publicly available materials. (See Order at 15 ("Shielding third parties from unwanted attention arising from an issue that is already public knowledge is not a sufficiently compelling reason to justify withholding judicial documents from public scrutiny.")).

Together with this letter, the Government has transmitted a copy of one of the search warrant affidavits with the proposed redactions marked. See Ex. A, at 38-57, 66-67, 71, 73-74, 83-101. (The proposed redactions also include the privacy-based redactions previously authorized in the bank and tax portions of the Materials.) The Government respectfully requests that the Court approve these redactions, and will submit corresponding redactions to the other affidavits (which are substantially similar to the attached affidavit) once the Court has ruled on these proposed redactions.

Respectfully submitted,

AUDREY STRAUSS

Attorney for the United States,
Acting Under Authority Conferred by
28 U.S.C. § 515

By: 

Thomas McKay / Nicolas Roos
Assistant United States Attorneys
(212) 637-2200

cc: Counsel of Record (by ECF)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

MICHAEL COHEN,

Defendant.

18cr602

MEMORANDUM & ORDER

WILLIAM H. PAULEY III, Senior United States District Judge:

On April 9, 2018, the FBI executed searches of Defendant Michael Cohen's residence, hotel room, office, safe deposit box, cell phones, and electronic communications pursuant to warrants authorized under Rule 41 of the Federal Rules of Criminal Procedure and 18 U.S.C. § 2703. The New York Times Company, the American Broadcasting Companies, Inc., the Associated Press, Cable News Network, Inc., Daily News, L.P., Dow Jones & Co., Inc., Newsday LLC, NYP Holdings, Inc., and CBS Broadcasting, Inc. sought to unseal copies of the warrants, warrant applications, and supporting affidavits and riders relating to the April 9, 2018 searches (the "Materials").

On February 7, 2019, this Court granted in part and denied in part the unsealing requests. In that Opinion & Order, this Court directed the Government to submit proposed redactions to the Materials, which were then publicly filed in redacted form on March 19, 2019 pursuant to an order dated March 18, 2019. The February 7, 2019 Opinion & Order also directed the Government to submit a status report by May 15, 2019 explaining the need for continued redaction of the Materials. United States v. Cohen, 366 F. Supp. 3d 612, 634 (S.D.N.Y. 2019).

On May 21, 2019, this Court authorized the continued redaction of portions of the Materials relating to Cohen's campaign finance violations to protect the Government's ongoing

investigation. The May 21, 2019 Order also directed the Government to submit a further status report by July 15, 2019 explaining the need for continued redaction of the Materials.

On July 15, 2019, the Government submitted a status report and proposed redactions to the Materials ex parte and under seal. The Government now represents that it has concluded the aspects of its investigation that justified the continued sealing of the portions of the Materials relating to Cohen's campaign finance violations. Although the Government agrees that the majority of the campaign finance portions of the Materials may be unsealed, it requests limited redactions to those portions to protect third-party privacy interests.

After reviewing the Government's status report and proposed redactions, this Court denies the Government's request. In particular—and in contrast to the private nature of Cohen's business transactions—the weighty public ramifications of the conduct described in the campaign finance portions warrant disclosure. See United States v. Amodeo, 71 F.3d 1044, 1051 (2d Cir. 1995) (explaining that “financial records of a wholly owned business, family affairs, illnesses, embarrassing conduct with no public ramifications, and similar matters will weigh more heavily against access than conduct affecting a substantial portion of the public”). Moreover, the involvement of most of the relevant third-party actors is now public knowledge, undercutting the need for continued secrecy. See United States v. Basciano, 2010 WL 1685810, at *4 (E.D.N.Y. Apr. 23, 2010) (“Shielding third parties from unwanted attention arising from an issue that is already public knowledge is not a sufficiently compelling reason to justify withholding judicial documents from public scrutiny.”). On balance, the “strong presumption of public access” to search warrants and search warrant materials under the common law far outweighs the weakened privacy interests at play here. See Cohen, 366 F. Supp. 3d at 621-22 (collecting cases).

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The campaign finance violations discussed in the Materials are a matter of national importance. Now that the Government's investigation into those violations has concluded, it is time that every American has an opportunity to scrutinize the Materials. Indeed, the common law right of access—a right so enshrined in our identity that it “predate[s] even the Constitution itself”—derives from the public's right to “learn of, monitor, and respond to the actions of their representatives and representative institutions.” United States v. Erie Cty., 763 F.3d 235, 238-39 (2d Cir. 2014).

Accordingly, the Government is directed to file the July 15, 2019 status report and the Materials on the public docket on July 18, 2019 at 11:00 a.m. The July 15, 2019 status report shall be unredacted in its entirety, except that limited references in the footnote to an uncharged third-party may remain redacted. See United States v. Smith, 985 F. Supp. 2d 506, 526 (S.D.N.Y. 2013). The Materials shall be unredacted in their entirety, except that the names of law enforcement investigators, references to individuals who purportedly engaged in business transactions or contemplated business transactions with Cohen relating to taxi medallions, see Cohen, 366 F. Supp. 3d at 625, and personal information referenced in this Court's March 18, 2019 Order may remain redacted.

Dated: July 17, 2019
New York, New York

SO ORDERED:


WILLIAM H. PAULEY III
U.S.D.J.

CREW | citizens for responsibility and ethics in washington

July 18, 2019

By facsimile: (202) 514-1009

Kerri Kupec
Director, Office of Public Affairs
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

Re: Request for Expedition of Freedom of Information Act Request

Dear Ms. Kupec;

Pursuant to Department of Justice ("DOJ") regulations, 28 C.F.R. § 16.5(e)(2), Citizens for Responsibility and Ethics in Washington ("CREW") requests that you authorize the expedition of Freedom of Information Act ("FOIA") requests CREW made today to the Criminal Division, the FBI, the Executive Office for United States Attorneys, and the Office of Information Privacy. I have enclosed copies of these requests.

The FOIA requests seek all records related to the now closed investigation conducted by the U.S. Attorney's Office for the Southern District of New York into (1) who, besides Michael Cohen, was involved in and may be criminally liable for the two campaign finance violations to which Mr. Cohen pled guilty; and (2) whether certain individuals made false statements, gave false testimony, or otherwise obstructed justice in connection with this investigation. The nature of this investigation is outlined in a letter the government submitted on July 15, 2019, to U.S. District Court Judge William H. Pauley III in *United States v. Cohen*, Crim. No. 18-cr-602 (S.D.N.Y.).

CREW seeks expedition because the subject matter of the request is of widespread and exceptional media interest and the requested information involves possible questions about the government's integrity, which clearly affect public confidence. Following the issuance of yesterday's order, there was widespread media coverage about the conclusion of the campaign finance investigation. *See, e.g.,* Matt Zapotosky, *Prosecutors have 'concluded' Michael Cohen campaign finance probe, judge says*, *Washington Post*, July 17, 2019, available at https://www.washingtonpost.com/national-security/prosecutors-have-concluded-michael-cohen-campaign-finance-probe-judge-says/2019/07/17/733391a0-a8b1-11e9-9214-246e594de5d5_story.html?utm_term=.5ce7de7b993a; Darren Samulsohn, *Feds' probe into Trump hush money payments is over, judge says*, *Politico*, July 17, 2019, available at <https://www.politico.com/story/2019/07/17/trump-hush-money-payments-prove-over-1418074>; Kristine Phillips and Kevin Johnson, *Justice Department ends inquiry of hush-money payments in final months of Donald Trump's campaign, judge says*, *USA Today*, July 17, 2019, available at <https://www.usatoday.com/story/news/politics/2019/07/17/doj-ends-investigation-hush-payments-involving-donald-trump-michael-cohen/1755046001/>.

Moreover, as the *Politico* story noted, "Trump himself was implicated in Cohen's crimes, which involved hush money payments to women that federal prosecutors have said were designed to sway the presidential election." Samulsohn, *Politico*, July 17, 2019. This is the very definition of a matter raising serious questions about the government's integrity – including the integrity of the President – that clearly affect public confidence in both President Trump and the Justice Department, which closed the investigation without any further prosecutions beyond Michael Cohen. Judge Pauley explicitly recognized the enormous public interest and what is at stake in his order of July 17, 2019, mandating disclosure of sealed documents pertaining to Michael Cohen:

The campaign finance violations discussed in the Materials are a matter of national importance. Now that the Government's investigation into those violations has concluded, it is time that every American has an opportunity to scrutinize the Materials. Indeed, the common law right of access – a right enshrined in our identity that it 'predate[s] even the Constitution itself' – derives from the public's right to 'learn or, monitor, and respond to the actions of their representatives and representative institutions.'¹

Expediting CREW's requests will ensure those rights are fully realized by the American public.

CREW's primary purpose is to inform and educate the public about the activities of government officials and those who influence public officials. Toward that end, CREW uses statutes like the FOIA to gather information the public needs to hold public officials accountable. The requests for which CREW seeks expedition will further those goals.

I certify the following is true and correct.

Sincerely,



Anne L. Weismann
Chief FOIA Counsel

Encls.

¹ This letter is included with the enclosed FOIA requests.

Exhibit 2



U.S. Department of Justice
Office of Information Policy
Suite 11050
1425 New York Avenue, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

July 26, 2019

Anne L. Weismann, Esq.
CREW
1101 K Street NW, Suite 201
Washington, DC 20005
aweismann@citizensforethics.org

Re: DOJ-2019-005973
DRH:VAV:AKT

Dear Anne L. Weismann:

This is to acknowledge receipt of your Freedom of Information Act (FOIA) request dated and received in this Office on July 19, 2019, in which you requested records pertaining to the closed investigation by the U.S. Attorney's Office for the Southern District of New York in *United States v. Cohen*.

You have requested expedited processing of your request pursuant to the Department's standard involving "[a] matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence." See 28 C.F.R. § 16.5(e)(1)(iv) (2018). Pursuant to Department policy, we directed your request to the Director of Public Affairs, who makes the decision whether to grant or deny expedited processing under this standard. See id. § 16.5(e)(2). The Director has determined that your request for expedited processing should be denied. Please be advised that, although your request for expedited processing has been denied, it has been assigned to an analyst in this Office and our processing of it has been initiated.

To the extent that your request requires a search in another Office, consultations with other Department components or another agency, and/or involves a voluminous amount of material, your request falls within "unusual circumstances." See 5 U.S.C. 552 § (a)(6)(B)(i)-(iii) (2012 & Supp. V 2017). Accordingly, we will need to extend the time limit to respond to your request beyond the ten additional days provided by the statute. For your information, we use multiple tracks to process requests, but within those tracks we work in an agile manner, and the time needed to complete our work on your request will necessarily depend on a variety of factors, including the complexity of our records search, the volume and complexity of any material located, and the order of receipt of your request. At this time we have assigned your request to the complex track. In an effort to speed up our process, you may wish to narrow the scope of your request to limit the number of potentially responsive records so that it can be placed in a different processing track. You can also agree to an alternative time frame for processing, should records be located, or you may wish to await the completion of our records search to discuss either of these options. Any decision with regard to the application of fees will be made only after we determine whether fees will be implicated for this request.

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If you have any questions or wish to discuss reformulation or an alternative time frame for the processing of your request, you may contact the analyst handing your request, Amanda Toner, by telephone at the above number or you may write to them at the above address. You may also contact our FOIA Public Liaison, Valeree Villanueva, for any further assistance and to discuss any aspect of your request at: Office of Information Policy, United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001; telephone at 202-514-3642; or facsimile at 202-514-1009.

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with my response to this request for expedited processing, you may administratively appeal by writing to the Director, Office of Information Policy, United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP's FOIAonline portal at <https://www.foiaonline.gov/foiaonline/action/public/home>. Your appeal must be postmarked or electronically submitted within ninety days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

A handwritten signature in blue ink that reads "Valeree L. Villanueva". The signature is stylized with a large "V" and a cursive "L".

Douglas R. Hibbard
Chief, Initial Request Staff

Exhibit 3



U.S. Department of Justice
Office of Information Policy
441 G Street, NW
Sixth Floor
Washington, DC 20530

Telephone: (202) 514-3642

April 21, 2020

Anne L. Weismann
Citizens for Responsibility and
Ethics in Washington
1101 K Street, NW
Suite # 201
Washington, DC 20005
aweismann@citizensforethics.org

Re: DOJ-2019-005973
19-cv-2267 (D.D.C.)
TAZ:JMS

Dear Anne Weismann:

This responds to your Freedom of Information Act (FOIA) request dated and received in this Office on July 18, 2019, in which you requested certain records related to a specified, now closed, investigation by the U.S. Attorney's Office for the Southern District of New York. This response is made on behalf of the Offices of the Attorney General (OAG) and Deputy Attorney General (ODAG).

Please be advised that searches have been conducted on behalf of OAG and ODAG, and ninety-six pages were located that contain records responsive to your request. Because fifty-nine pages originated with or are of primary interest to the Federal Bureau of Investigation (FBI), we have referred that material to the FBI for processing and direct response to you. Further, because thirty-seven pages originated with or are of primary interest to the Executive Office for United States Attorneys (EOUSA), we have referred that material to EOUSA for processing and direct response to you. Contact information for FBI and EOUSA are as follows:

Federal Bureau of Investigation
Attn: FOI/PA Request
Record/Information Dissemination Section
170 Marcel Drive
Winchester, VA 22602-4843
Fax: (540) 868-4391/4997

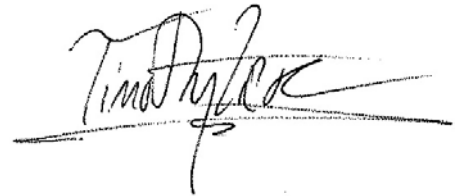
-2-

Executive Office for United States Attorneys
FOIA/Privacy Staff
Department of Justice
175 N Street, NE
Suite 5.400
Washington, DC 20530-0001
(202) 252-6020

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2018). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

If you have any questions regarding this response, please contact Joshua Abbuhl of the Department's Civil Division, Federal Programs Branch, at (202) 616-8366.

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy Ziese", with a long horizontal flourish extending to the right.

Timothy Ziese
Senior Supervisory Attorney
for
Vanessa R. Brinkmann
Senior Counsel

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**CITIZENS FOR RESPONSIBILITY
AND ETHICS IN WASHINGTON,**

Plaintiff,

v.

U.S. DEPARTMENT OF JUSTICE,

Defendant.

Case No. 1:19-cv-2267-EGS

**DEFENDANT U.S. DEPARTMENT OF JUSTICE’S STATEMENT OF
MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE DISPUTE**

Defendant’s Statement of Undisputed Facts	
1. Plaintiff filed four FOIA requests on July 18, 2019. The requests were directed to various components of the U.S. Department of Justice (“the Department”), specifically: the Criminal Division, the Executive Office of U.S. Attorneys (“EOUSA”), the Federal Bureau of Investigation (“FBI”), and the Office of Information Policy (“OIP”). <i>See</i> Ex. B-2 (EOUSA FOIA Request); Ex. C-1 (Criminal Division FOIA Request); Ex. D-1 (FBI FOIA Request); Ex. E-1 (OIP FOIA Request).	
2. Each request stated that it was requesting records “related to the now closed investigation conducted by the U.S. Attorney’s Office for the Southern District of New York into (1) who, besides Michael Cohen, was involved in and may be criminally liable for the two campaign finance violations to which Mr. Cohen pled guilty; and (2) whether certain individuals	

made false statements, gave false testimony, or otherwise obstructed justice in connection with the investigation.” <i>See</i> Ex. B-2 (EOUSA FOIA Request); Ex. C-1 (Criminal Division FOIA Request); Ex. D-1 (FBI FOIA Request); Ex. E-1 (OIP FOIA Request).	
3. Defendant properly withheld material pursuant to exemptions 3, 5, 6, 7(C), and 7(E). <i>See</i> Ex. B, Griffin Decl., ¶¶ 20-25; Ex. C, Lavine Decl., ¶ 18; Ex. D, Seidel Decl., ¶ 4.	
4. Defendant properly withheld responsive interview reports pursuant to exemptions 5, 6, and 7(C). <i>See</i> Ex. A, McKay Decl., ¶¶ 15, 21; Ex. B, Griffin Decl., ¶¶ 30, 42; Ex. D, Seidel Decl., ¶ 4.	
5. Defendant properly withheld documents used during interviews pursuant to exemptions 5, 6, and 7(C). <i>See</i> Ex. A, McKay Decl. ¶¶ 15, 21; Ex. B, Griffin Decl. ¶¶ 30, 42; Ex. D, Seidel Decl. ¶ 4.	
6. Defendant properly withheld documents related to search warrants pursuant to exemptions 6 and 7(C). <i>See</i> Ex. A, McKay Decl. ¶¶ 47-56; Ex. B, Griffin Decl. ¶¶ 49-50.	
7. Defendant properly withheld internal emails and memoranda pursuant to exemptions 5, 6, and 7(C). <i>See</i> Ex. A, McKay Decl. ¶¶ 29-46; Ex. B, Griffin Decl. ¶¶ 31-32, 47-50; Ex. C, Lavine Decl., ¶¶ 25-35, 42-47; Ex. E, Ziese Decl. ¶¶ 9-23.	
8. Release of any of the withheld information would result in a foreseeable harm to an interest protected by a FOIA exemption. <i>See</i> Ex. B, Griffin Decl. ¶¶ 33-38, 42-50; Ex. C, Lavine Decl. ¶¶ 36-39, 48; Ex. E, Ziese Decl. ¶¶ 11-24.	
9. Defendant has released all reasonably segregable information. Ex. B, Griffin Decl. ¶ 51; Ex. C, Lavine Decl. ¶ 49.	

DATED: July 30, 2021

Respectfully submitted,

BRIAN D. NETTER
Deputy Assistant Attorney General

MARCIA BERMAN
Assistant Branch Director

/s/ Joshua C. Abbuhl
JOSHUA C. ABBUHL
D.C. Bar No. 1044782
Trial Attorney
U.S. Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, N.W.
Washington, D.C. 20005
Telephone: (202) 616-8366
Facsimile: (202) 616-8470
joshua.abbuhl@usdoj.gov
Counsel for Defendants

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**CITIZENS FOR RESPONSIBILITY
AND ETHICS IN WASHINGTON,**

Plaintiff,

v.

U.S. DEPARTMENT OF JUSTICE,

Defendant.

Case No. 1:19-cv-02267-EGS

[PROPOSED] ORDER

Upon consideration of Defendant's Motion for Summary Judgment, the Court **GRANTS** the Motion.

ORDERED that Defendant's Motion for Summary Judgment is **GRANTED**.

Dated: _____

The Honorable Emmet G. Sullivan
UNITED STATES DISTRICT JUDGE