



U.S. Department of Justice  
Civil Division, Federal Programs Branch  
1100 L St. NW  
Washington, DC 20530

**By ECF**

February 5, 2020

The Honorable Alison J. Nathan  
United States District Judge  
Southern District of New York  
Thurgood Marshall Courthouse  
40 Foley Square  
New York, New York 10007

Re: *NAACP Legal Defense & Educational Fund, Inc. v. U.S. Dep't of Justice*, No. 18-cv-9363 (AJN)

Dear Judge Nathan:

On January 21, 2020, Plaintiff filed its third letter concerning this case since the close of briefing. Plaintiff's most recent letter discusses two issues that are removed from the instant FOIA case—a search of former Principal Deputy Assistant Attorney General and former Acting Assistant Attorney General John Gore's emails in a separate FOIA action, and discovery issues in a substantive, non-FOIA lawsuit concerning the citizenship question. Letter from Austin R. Evers and Sherrilyn A. Ifill to the Honorable Judge Nathan (Letter) (Jan. 21, 2020), ECF No. 35. Plaintiff did not seek any specific relief in its letter but concludes that its pending cross-motion for summary judgment "is warranted and justified." Letter 3.

Defendant the United States Department of Justice respectfully provides the following brief response.

Plaintiff first raises the search of Mr. Gore's personal emails records in *American Oversight v. Dep't of Justice*, 19-cv-265 (D.D.C.). As Defendant noted in its previous letter response, ECF No. 34, the request in the *American Oversight* case sought different documents, and Plaintiffs provide no example showing that Mr. Gore's personal email contains records relating to *this* FOIA request. Nor did Plaintiff raise any concerns about personal email during the briefing in this case. In any event, CRT has reviewed the documents identified from Mr. Gore's personal email in the *American Oversight* litigation, and none are responsive to Plaintiff's request here. 3d Supp. Cooper Decl. ¶ 3, attached as Ex. A. That case therefore offers no reason to believe that CRT's search here was inadequate.

Plaintiff also raises discovery issues in *New York v. Department of Commerce*, 18-cv-2921 (S.D.N.Y.), a substantive lawsuit about the citizenship question. As described in Defendant's declarations and briefing, the primary searches in this case occurred directly within the Voting Section and the Office of the Assistant Attorney General for Civil Rights (OAAG), not within the census collection database. Cooper Decl. ¶¶ 10-19, ECF No. 24. The supplemental search performed in the discovery database for this case was a purely precautionary exercise to ensure that all responsive documents were identified. Cooper Decl. ¶¶ 20-23. Indeed, as expected, the supplemental search of the census collection database "did not locate any additional responsive documents," Cooper Decl. ¶ 23, compared to the primary searches. The agency's primary searches—performed directly within CRT and OAAG's systems—were reasonably calculated to identify all responsive documents, and that fundamental reasonableness would not be altered by any potential issues with the census collection database.

Accordingly, Defendant has searched all locations reasonably likely to contain records responsive to Plaintiff's FOIA request. Defendant is therefore entitled to summary judgment on the adequacy of its search.

Respectfully submitted,

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