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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

ELECTRONIC FRONTIER FOUNDATION, Plaintiff, v. UNITED STATES DEPARTMENT OF JUSTICE, Defendant.	Case No. 3:17-cv-03263-VC **DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT** Date: December 20, 2018 Time: 10:00 am Place: Courtroom 4 - 17th Floor Hon. Vince Chhabria

NOTICE OF MOTION

PLEASE TAKE NOTICE that on December 20, 2018, at 10:00 a.m. in Courtroom 4, 17th Floor, United States Courthouse, 450 Golden Gate Avenue, San Francisco, California 94102, Defendant United States Department of Justice, by and through undersigned counsel, will move this Court for partial summary judgment in the above-captioned action.

MOTION FOR PARTIAL SUMMARY JUDGMENT

Defendant United States Department of Justice hereby moves the Court for partial summary judgment regarding information it has withheld pursuant to Exemptions 3, 6, 7(A), (7)(C), and (7)(E) of the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552(b), for the reasons more fully set forth in the following Memorandum of Points and Authorities.

Dated: September 24, 2018

Respectfully submitted,

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I. INTRODUCTION

The FBI has primary responsibility for conducting domestic counterintelligence and counterterrorism investigations. Such investigations are typically long-range, forward-looking, and preventive in nature, focused on anticipating and disrupting clandestine intelligence activities or terrorist attacks on the United States before they occur. In the course of such investigations, the FBI may issue National Security Letters ("NSLs"), a kind of administrative subpoena, to gather information. Information thus obtained can constitute evidence that will, for example, support surveillance under the Foreign Intelligence Surveillance Act ("FISA"); enable agents to close an existing investigation; or provide grounds to initiate a new investigation. In short, NSLs constitute fundamental building blocks in multiple facets of the FBI's work.

Recognizing that secrecy is often essential to effective counterterrorism and counterintelligence investigations—as the targets of national security investigations and others who seek to harm the United States will take countermeasures to avoid detection—Congress empowered the FBI to impose nondisclosure requirements on recipients of NSLs under certain circumstances. *See* 18 U.S.C. § 2709(c). In November 2015, the FBI promulgated its Termination Procedures for [NSL] Nondisclosure Requirement ("Termination Procedures"), which were designed to ensure that nondisclosure requirements accompanying NSLs do not remain in place longer than necessary. Pursuant to those procedures, nondisclosure obligations are reviewed, and terminated if the FBI determines that secrecy is no longer necessary in that individual investigation.

At issue in this case is a Freedom of Information Act ("FOIA") request submitted by Plaintiff to the FBI for records related to the FBI's implementation of the Termination Procedures, not in one specific case, but in the aggregate. Thus, the responsive documents at issue here include sample memoranda assessing whether nondisclosure obligations attendant to

certain NSLs must remain in place;[1] all of the letters sent to recipients of NSLs to notify them when the FBI determined that the nondisclosure obligations accompanying those NSLs could be terminated; and spreadsheets aggregating data regarding the FBI's use of NSLs and the implementation of the Termination Procedures, as well as emails to which those spreadsheets were attached. As explained in the Declaration of Michael G. Seidel, the Acting Section Chief of the Record/Information Dissemination Section, of the FBI's Records Management Division,[2] Ex. 1 hereto, the FBI processed these records in an effort to achieve maximum disclosure consistent with the access provisions of the FOIA. Of the responsive materials, the FBI withheld in full just 69 pages, many because they were duplicates of materials produced to Plaintiff; released in part 1667 pages; and released in whole one page. Within those materials, the FBI withheld information pursuant to FOIA Exemptions 3, 5, 6, and 7.

As explained below, the majority of those withholdings reflect the reality that the extensive detail contained in these materials, taken together, "reveal[s] specific information" about the FBI's methods of using NSLs that is "not publicly known and, if revealed, would compromise the ability of the FBI to use those techniques." *ACLU of N. Cal. v. U.S. Dep't of Justice*, 880 F.3d 473, 491 (9th Cir. 2018). The withheld information contains rich detail regarding, *inter alia*, the timeframe, geography, and investigative focus of the investigations in which the FBI has issued NSLs. As Mr. Seidel explains, disclosure of such information would risk damage, not only to those investigations in which the NSLs were issued, but also to subsequent situations in which criminals or adversaries could learn from this information how best to alter their behavior to avoid detection or otherwise disrupt the FBI's work. Another judge

[1] With respect to the instant partial summary judgment briefing, the parties have reserved the question of whether Defendant should be required to process each and every such memorandum. Instead, at this time, briefing is focused solely on the propriety of the withholdings in these two sample memoranda.

[2] Mr. Seidel is the Assistant Section Chief of the Record/Information Dissemination Section, of the Records Management Division, and, in the absence of the Section Chief, David M. Hardy, serves as the Acting Section Chief. *See* Seidel Decl. ¶¶ 1, 2.

of this Court recently held that materials that "not only identified NSLs as an investigative technique, but also described information such as the circumstances under which the techniques should be used . . . and the current focus of the FBI's investigations" was properly protected from disclosure under FOIA. *Freedom of the Press Found. v. U.S. Dep't of Justice*, 241 F. Supp. 3d 986, 1003 (N.D. Cal. 2017). Much of the information withheld in this case, when aggregated, reveals nothing less.

Other information withheld in this case reflects FBI employees' internal deliberations, as well as sensitive information identifying FBI special agents and support personnel. For all the reasons explained herein and in the Declaration of Mr. Seidel, Defendant respectfully asks that this Court find that FOIA exempts from disclosure the information withheld in this case, and enter partial judgment for the Defendant as to the application of Exemptions 3, 5, 6, and 7.

II. BACKGROUND

A. Statutory and Procedural Background Regarding the FBI's Use of NSLs

In 1986, Congress enacted 18 U.S.C. § 2709 to assist the FBI in obtaining information for national security investigations. Section 2709 empowers the FBI to issue an NSL. NSLs are indispensable investigative tools that serve as building blocks in many FBI counterterrorism and counterintelligence investigations. *See* Seidel Decl. ¶ 13. They have various uses, including obtaining evidence to support FISA applications for electronic surveillance, pen register/trap and trace devices, or physical searches; developing communication or financial links between subjects of FBI investigations and between those subjects and others; providing evidence to initiate new investigations, expand national security investigations, or enable agents to close investigations; providing investigation leads; and corroborating information obtained by use of other investigative techniques. *See id.* For example, the FBI used NSLs extensively, in lieu of grand jury subpoenas, during its investigation of the ten Russian spies arrested in the United States in 2010. *See id.* ¶ 14. The FBI used NSLs in that investigation specifically because the nondisclosure provision provided assurance that the information about the subjects of the investigation and the providers from which information was being obtained would not be

revealed. *Id.*

The FBI may impose a nondisclosure requirement on the recipient of an NSL only after certification by the head of an authorized investigative agency, or an appropriate designee, that one of the statutory standards for nondisclosure is satisfied; that is, where there is good reason to believe disclosure may endanger the national security of the United States; interfere with a criminal, counterterrorism, or counterintelligence investigation; interfere with diplomatic relations; or endanger the life or physical safety of any person. *See id.* ¶ 15 (discussing 18 U.S.C. § 2709(c)). The nondisclosure requirement prohibits the recipient of an NSL from disclosing information protected by the nondisclosure requirement to anyone other than: (i) those persons to whom disclosure is necessary in order to comply with the request; (ii) an attorney in order to obtain legal advice or assistance regarding the request; or (iii) other persons as permitted by the head of the authorized investigative agency, or a designee, described in the respective statute. *See id.*

As explained in the FBI's Termination Procedures, an NSL may issue, and a nondisclosure requirement may be imposed, only after rigorous review and approval at a high level. *See* Seidel Decl., Ex. A, at 1. With respect to the NSL itself, an agent must justify in writing why the NSL is needed, providing a detailed explanation of the reason for the investigation as well as the relevance of the information sought. *See id.* That written explanation, as well as the proposed NSL itself and any associated nondisclosure requirement, must be reviewed and approved by the Supervisory Special Agent, Chief or Associate Division Counsel, Assistant Special Agent in Charge, and Special Agent in Charge, or the equivalent-level officials at FBI Headquarters (FBIHQ). *See id.*

In November 2015, the FBI promulgated the Termination Procedures, setting forth the process governing the review of the nondisclosure requirement in NSLs and termination of the requirement when the facts of that particular investigation no longer support nondisclosure. *See* Seidel Decl. ¶ 17. Under those procedures, the agent or analyst, Supervisory Special Agent, Chief or Associate Division Counsel, Assistant Special Agent in Charge, and Special Agent in

Charge must assess whether the facts no longer support the nondisclosure requirement included in an NSL. Seidel Decl., Ex. A, at 2. If the facts no longer support the nondisclosure requirement, the FBI will send a letter, providing notice to the recipient of the NSL when the nondisclosure requirement has been terminated. Seidel Decl., Ex. A, at 4. Plaintiff's FOIA request seeks information related to the Termination Procedures, and the responsive documents at issue in this matter include: letters notifying NSL recipients of the termination of their nondisclosure obligations; memoranda reflecting determinations regarding whether to maintain nondisclosure orders accompanying NSLs; and an email discussing how best to track and present information related to the FBI's use of NSLs and the termination of NSL nondisclosure obligations, and three spreadsheets attached thereto, tracking the FBI's use of NSLs and its implementation of the Termination Procedures. *See* Seidel Decl., ¶ 18. All of these materials include sensitive information regarding the FBI's use of this important investigative tool. *Id.*

B. Procedural Background

Plaintiff submitted the FOIA request at issue here via a letter dated September 7, 2016. *Id.* ¶ 5. In its request, Plaintiff sought "[a]ny and all records created between November 2015 and present regarding the FBI's NSL termination procedures that show" various enumerated categories of information related to the FBI's implementation of the Termination Procedures, as well as "[a]ny and all records showing the length of time between when the FBI's case management system notifies agents that an NSL must be reviewed under the termination procedures and the date upon which such review is completed," and " [g]uidance, directives, memoranda, or other instructions for using [any system] to review NSL nondisclosure orders pursuant to the FBI's termination procedures." *Id.* (quoting Plaintiff's request).

By letter dated September 15, 2016, the FBI acknowledged receipt of Plaintiff's request and advised, *inter alia*, that it was searching the indices of the Central Records System ("CRS") for information responsive to Plaintiff's request. *See id.* ¶ 6. Then, by letter dated March 7, 2017, the FBI notified Plaintiff that it conducted a search of the CRS and was unable to identify main file records responsive to Plaintiff's FOIA request. *See id.*

Plaintiff initiated the instant action on June 7, 2017, 2017. *See* ECF No. 1. During the course of these proceedings, the FBI agreed to conduct additional searches, beyond that described in its March 7, 2017 letter, for two categories of information: (i) records that document or reflect FBI agents' determinations regarding whether to maintain or terminate nondisclosure orders accompanying NSLs reviewed subject to the FBI's NSL review procedures, including written memoranda, and (ii) all letters sent to third parties when FBI agents determine that nondisclosure orders accompanying NSLs are no longer necessary. *See* Seidel Decl. ¶ 8. The FBI searched for and identified the materials in category (ii), all letters sent to third parties when FBI agents determine that nondisclosure orders accompanying NSLs are no longer necessary, and produced the non-exempt portions of those documents to Plaintiff on a rolling basis, in four installments, with productions of nonexempt responsive material on December 28, 2017; January 29, 2018; February 28, 2018; and March 15, 2018. *See id.* ¶ 9. On each of those dates, the FBI released in part, respectively: 480 pages, 484 pages, 468 pages, and 70 pages. *See id.* Within these documents, the FBI withheld information pursuant to FOIA Exemptions (b)(6), (b)(7)(C), and (b)(7)(E). *See id.* With respect to these documents, Plaintiff has indicated that it is challenging only the withholdings, based on Exemption (b)(7)(E), of information identifying the companies that received these letters.

Furthermore, as to category (i) described above, records that document or reflect FBI agents' determinations regarding whether to maintain or terminate nondisclosure orders accompanying NSLs reviewed subject to the FBI's NSL review procedures: after a search procedure that the parties had agreed upon failed to identify any responsive records, the parties agreed that the FBI would identify a sample of each type of memorandum, one that concludes a nondisclosure obligation accompanying an NSL must be maintained, and one that concludes that it should be terminated. *See* Seidel Decl. ¶ 10. The FBI identified, processed, and produced a sample of each type of memorandum, four pages in total, and released them in part to Plaintiff on June 8, 2018. The FBI advised Plaintiff that it withheld information in those documents pursuant to FOIA Exemptions (b)(3), (b)(6), (b)(7)(C), and (b)(7)(E). *See id.* As to these records, too,

Plaintiff has indicated that it is challenging only withholdings pursuant to Exemption (b)(7)(E).

Finally, during the course of this litigation, the FBI identified four documents, comprising 163 pages that were not identified in the FBI's initial search for responsive records: an email pertaining to the termination of NSL nondisclosure obligations, and three spreadsheets attached thereto, tracking the FBI's use of NSLs and its implementation of the Termination Procedures. *See id.* ¶ 11. Although the FBI initially had withheld in full the majority of the pages comprising those documents, and released in part two pages on April 27, 2018, the FBI reprocessed those materials, and, on July 13, 2018, released in part 160 additional pages. *See id.* In this final set of materials, the FBI has withheld information based on FOIA Exemptions (b)(3), (b)(5), (b)(6), (b)(7)(A), (b)(7)(C), and (b)(7)(E). *See id.* As to these records, Plaintiff has indicated that it has not yet determined which of the withholdings in these documents it will challenge. Accordingly, all of these exemptions are addressed herein.

III. ARGUMENT

A. FOIA Statutory Background and Standard of Review

FOIA "seeks to ensure an informed citizenry, vital to the functioning of a democratic society." *ACLU of N. Cal. v. F.B.I.*, 881 F.3d 776, 778 (9th Cir. 2018). To that end, it "requires that federal agencies make records within their possession promptly available to citizens upon request." *Id.* "But, this command is not absolute." *Id.* "Rather, because 'Congress recognized . . . transparency may come at the cost of legitimate governmental and privacy interests . . . [FOIA] provides for nine specific exemptions.'" *Id.* Despite the "liberal congressional purpose" of FOIA, the Supreme Court has recognized that these exemptions are intended to have "meaningful reach and application." *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 152 (1989). "A district court only has jurisdiction to compel an agency to disclose improperly withheld agency records," *i.e.*, records that do "not fall within an exemption." *Minier v. C.I.A.*, 88 F.3d 796, 803 (9th Cir. 1996). Thus, "[r]equiring an agency to disclose exempt information is not authorized by FOIA." *Id.*

"Because facts in FOIA cases are rarely in dispute, most such cases are decided on

motions for summary judgment." *Yonemoto v. Dep't of Veterans Affairs*, 686 F.3d 681, 688 (9th Cir. 2012). Discovery is seldom necessary or appropriate. *See Shannahan v. IRS*, 672 F.3d 1142, 1151 (9th Cir. 2012) (holding that district court "properly denied . . . discovery requests for information concerning the nature and origins of documents" because FOIA cases "revolve[] around the propriety of revealing certain documents"). A court reviews an agency's response to a FOIA request de novo. 5 U.S.C. § 552(a)(4)(B). "FOIA's strong presumption in favor of disclosure places the burden on the government to show that an exemption properly applies to the records it seeks to withhold." *Freedom of the Press Found.* 241 F. Supp. 3d at 996.

The Government may meet that "burden by submitting a detailed affidavit showing that the information logically falls within the claimed exemptions." *Minier*, 88 F.3d at 800. "Where the government invokes FOIA exemptions in cases involving national security issues, [courts] are required to accord substantial weight to the agency's affidavits." *Freedom of the Press Found.*, 241 F. Supp. 3d at 997; *see also id.* at 995 ("[b]ecause of courts' limited institutional expertise on intelligence matters' and the risk of adversaries aggregating even small pieces of intelligence data, [a]ffidavits submitted by an agency to demonstrate the adequacy of its response are presumed to be in good faith when submitted in the national security context."). The agency affidavits "must describe the justifications for nondisclosure with reasonably specific detail, demonstrate that the information withheld logically falls within the claimed exemptions, and show that the justifications are not controverted by contrary evidence in the record or by evidence of [agency] bad faith.'" *Id.* at 997.

However, while the Government "may not rely upon conclusory and generalized allegations of exemptions," it "need not specify its objections in such detail as to compromise the secrecy of the information." *Binion v. U.S. Dep't of Justice*, 695 F.2d 1189, 1193 (9th Cir. 1983). Indeed, "[i]n the area of national security," "it is conceivable that the mere explanation of why information must be withheld can convey valuable information to a foreign intelligence agency." *Freedom of the Press Found.*, 241 F. Supp. 3d at 997. "[A]n agency's justification for invoking a FOIA exemption is sufficient if it appears logical or plausible." *Id.* at 998. "If the

affidavits contain reasonably detailed descriptions of the documents and allege facts sufficient to establish an exemption, the district court need look no further." *Id.*

For the reasons set forth below, the attached detailed declaration amply demonstrates that the Government has appropriately withheld the information at issue in this case.

B. Defendant Properly Withheld the Information at Issue Under Exemption 3.

The Government has properly invoked Exemption 3, which "protects information 'specifically exempted from disclosure by statute . . . if that statute (A)(i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld; and (B) if enacted after the date of enactment of the OPEN FOIA Act of 2009, specifically cites to the paragraph.'"[3] *Freedom of the Press Found.*, 241 F. Supp. 3d at 998 (quoting 5 U.S.C. § 552(b)(3)). In promulgating FOIA, Congress included Exemption 3 to recognize the existence of collateral statutes that limit the disclosure of information held by the Government, and to incorporate such statutes within FOIA's exemptions. *See Baldrige v. Shapiro*, 455 U.S. 345, 352–53 (1982); *Hamdan v. U.S. Dep't of Justice*, 797 F.3d 759, 775 (9th Cir. 2015) ("Exemption 3 protects records exempt from disclosure pursuant to a separate statute."). "In determining whether information has been properly withheld under Exemption 3, the Court asks whether the statute identified by the agency is a statute of exemption within the meaning of Exemption 3 and whether the withheld records satisfy the criteria of the exemption statute." *Freedom of the Press Found.*, 241 F. Supp. 3d at 998–99 (quotation omitted).

In this case, the Government has withheld information from three spreadsheets concerning the Government's use of NSLs based on Section 102A(i)(1) of the National Security

[3] FOIA requires that, if the Exemption 3 statute was enacted after the date of enactment of the OPEN FOIA Act of 2009, the subsequently enacted statute must specifically cite to 5 U.S.C. section 552(b)(3). The OPEN FOIA Act of 2009 was enacted on October 28, 2009, Pub. L. 111-83, 123 Stat. 2142, 2184; 5 U.S.C. § 552(b)(3)(B), after the Exemption 3 statute upon which the Government relies here. Accordingly, the OPEN FOIA Act requirement has no application in this case.

Act of 1947, as amended, 50 U.S.C. § 3024(i)(1). *See* Seidel Decl. ¶¶ 24–26. This statute mandates that the DNI "shall protect intelligence sources and methods from unauthorized disclosure," 50 U.S.C. § 3024(i)(1), and it indisputably qualifies as an Exemption 3 statute. *See ACLU v. Dep't of Defense*, 628 F.3d 612, 619 (D.C. Cir. 2011); *N.Y. Times Co. v. Dep't of Justice*, 872 F. Supp. 2d 309, 316–17 (S.D.N.Y. 2012). The court in *N.Y. Times Co. v. U.S. Dep't of Justice* recently recognized that aggregated information (from the years 2003 to 2005) regarding the FBI's use of NSLs, was appropriately protected from disclosure under, *inter alia*, 50 U.S.C. § 3024(i)(1), as an Exemption 3 statute. *N.Y. Times Co. v. U.S. Dep't of Justice*, 2016 WL 5946711, at *6, 9 (S.D.N.Y. Aug. 18, 2016).

As Mr. Seidel explains in his declaration, the aggregated information that the FBI withheld under Exemption 3 here also would reveal intelligence methods of the FBI. *See* Seidel Decl. ¶ 26. Specifically, the FBI relied upon Exemption (b)(3), in conjunction with other exemptions, when withholding from three spreadsheets that aggregate information about the FBI's use of NSLs: the division/squad responsible for each NSL, the case file number, the status of the NSL, and the dates associated with the utilization of the NSL. *Id.* Especially if presented in the aggregate, as it appears in the documents at issue here, such detail would reveal key information about how the FBI utilizes the NSL, an important method in national security investigations. *See supra* 3–5. For example, aggregating the dates on which specific FBI offices utilized NSLs would create a roadmap of the FBI's investigative focus—or reveal the absence of an investigative focus—that a sophisticated adversary could employ to its advantage. *See* Seidel Decl. ¶ 26. Such information could be used to track what nefarious activities the FBI likely was or was not aware of at a given time, and to help an adversary discern which locations are more likely to be "safe," and which should be avoided to evade detection. *See id.* Aggregating the case file numbers or the division or squad responsible for the NSL also would reveal the types of investigations that utilize NSLs as a tool, *see id.*, because, as explained below, FBI units may have specific areas of expertise that may be deduced by sophisticated adversaries. *See infra*, 21.

Because the information withheld pursuant to Exemption 3 in this case would reveal FBI

methods in using NSLs, and thus would reveal information shielded from disclosure under 50 U.S.C. § 3024(i)(1), this information is appropriately protected from disclosure.

C. Defendant Properly Withheld the Information at Issue Under Exemption 5.

Exemption 5 shields 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). This exemption protects Government materials that "fall within a recognized litigation privilege" such as the deliberative process privilege, on which Defendant relies here. *Kowack v. U.S. Forest Serv.*, 766 F.3d 1130, 1135 (9th Cir. 2014).

The purpose of the deliberative process privilege "is to prevent injury to the quality of agency decisions." *Maricopa Audubon Soc'y v. U.S. Forest Serv.*, 108 F.3d 1089, 1092 (9th Cir. 1997) (quoting *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 150–51 (1975)). "Congress [has] expressed concern that if agencies were forced to 'operate in a fishbowl,' candid exchange of ideas within an agency would cease and the quality of decisions would suffer." *Assembly of the State of Cal. v. U.S. Dep't of Commerce*, 968 F.2d 916, 920 (9th Cir. 1992) (quoting S. Rep. No. 813, 89th Cong. 1st Sess. 9 (1965)). Thus, this privilege "shields certain intra-agency communications from disclosure to allow agencies freely to explore possibilities, engage in internal debates, or play devil's advocate without fear of public scrutiny." *Freedom of the Press Found.*, 241 F. Supp. 3d at 1000 (quotation omitted).

Specifically, the deliberative process privilege, under Exemption 5, "shields from disclosure documents that are both 'predecisional' and part of the agency's 'deliberative process.'" *Kowack*, 766 F.3d at 1135; *see also, e.g.*, *Maricopa Audubon Soc'y*, 108 F.3d at 1093. Predecisional documents—in contrast to "documents explaining or interpreting [a] decision after the fact," *Assembly of the State of Cal.*, 968 F.2d at 920—are "prepared in order to assist an agency decisionmaker in arriving at his decision and may include recommendations [and] draft documents." *Maricopa Audubon Soc'y*, 108 F.3d at 1093 (quotation omitted). Predecisional materials are "deliberative" if "disclosure of the materials would expose [the] agency's decisionmaking process in such a way as to discourage candid discussions within the agency and

thereby undermine the agency's ability to perform its functions." *Kowack*, 766 F.3d at 1135.

The materials withheld under Exemption 5 fall squarely within this privilege. In this case, the FBI withheld under Exemption 5 information in intra-agency emails among FBI attorneys comprising preliminary opinions, evaluations, and comments regarding the tracking of NSLs and how to develop further documents to organize such data to inform the policymakers on the National Security Council ("NSC"). *See* Seidel Decl. ¶ 34. One email, dated August 16, 2017, contains a discussion between two FBI attorneys regarding the organization of data pertaining to NSLs, such as providers who have received them and updating that data. *See id.* A previous email, dated August 31, 2016, includes the discussion of data pertaining to the implementation of the Termination Procedures, and the best manner in which to provide that data to the NSC. *See id.* The information within these records is pre-decisional and deliberative because the discussions therein consist of FBI staff providing advice, asking questions, and deliberating to determine a final decision or course of action with respect to their presentation of the information in question. *See id.*

As Mr. Seidel explains, release of this type of information would endanger the FBI's deliberative process because it would show a willingness on the part of the FBI to release to the public raw, unrefined opinions and discussions between its line employees. *See id.*, ¶ 35. This would make FBI employees hesitant to share and memorialize this type of deliberative information, greatly reducing the FBI's ability to sort through and develop procedural options and develop best practices. *Id.* For all these reasons, the information withheld from the FBI emails at issue here is appropriately protected from disclosure under Exemption 5.

D. Defendant Properly Withheld the Information at Issue Under Exemptions 7 and 6.

FOIA Exemption 7 protects from disclosure "records or information compiled for law enforcement purposes" when production of the records or information "would cause one of six enumerated harms." *ACLU*, 881 F.3d at 778. "Thus a court must first decide whether a document was 'compiled for law enforcement purposes' before turning to whether an

enumerated harm exists." *Id.* The Ninth Circuit has "stressed" that "an agency which has a clear law enforcement mandate, such as the FBI, need only establish a 'rational nexus' between enforcement of a federal law and the document for which an exemption is claimed . . . or a 'rational nexus' between [the agency's] law enforcement duties and such documents." *Id.* The Court of Appeals further instructs that "[l]aw enforcement agencies such as the FBI should be accorded special deference in an Exemption 7 determination." *Id.*

Here, there is a rational nexus between the NSL-related records responsive to Plaintiff's request and the enforcement of federal law. The information protected by Exemption 7 here appears in records pertaining to the FBI's integrated mission and function as a law enforcement, counterterrorism, and intelligence agency. *See* Seidel Decl. ¶ 37. The records include the administrative practices relating to the FBI's use of NSLs as a investigative technique. *See id.* Although the documents pertain to how the FBI manages and tracks the termination of the nondisclosure requirement of the NSLs, which on its face appears as an administrative function, the withheld information in those documents reveals information pertaining to the FBI's use of NSLs in specific law enforcement or national security investigations, as well as, more broadly, how the FBI utilizes this law enforcement and national security tool in its integrated mission and function. *See id.* Thus, these records readily meet the threshold requirement of Exemption 7.

Once an agency has shown that the information in question was compiled for law enforcement purposes, it must demonstrate that production of such information would cause one of the harms enumerated in Section 552(b)(7)(A)-(F). Here, the harms identified in subsection 7(A), 7(C), and 7(E) are likely to result from the disclosure of the document at issue. Exemption 7(C), which protects against unwarranted invasions of personal privacy, often is considered together Exemption 6, which focuses on similar interests. Exemptions 7(A), 7(C) and 6, and 7(E) are discussed, in turn, below. As to each category, Mr. Seidel notes that this information has not previously been publicly disclosed to the best of FBI's knowledge. Seidel Decl. ¶ 38.

1. Exemption 7(A)

Records compiled for law enforcement purposes are properly withheld under Exemption

7(A) if disclosure of those records "could reasonably be expected to interfere with enforcement proceedings." 5 U.S.C. § 552(b)(7)(A). "Foremost among the purposes of this Exemption was to prevent harm to the Government's case in court." *Shannahan*, 672 F.3d at 1150 (quoting *N.L.R.B. v. Robbins Tire & Rubber Company*, 437 U.S. 214, 224 (1978)).

"Under Exemption 7(A) the government is not required to make a specific factual showing with respect to each withheld document that disclosure would *actually interfere* with a particular enforcement proceeding." *Id.* Rather, an agency "need only make a general showing that disclosure of its investigatory records would interfere with its enforcement proceedings." *Id.* This is because "Congress intended that Exemption 7(A) would allow the federal courts to determine that, with respect to particular kinds of enforcement proceedings, disclosure of particular kinds of investigatory records while a case is pending would generally interfere with enforcement proceedings." *Id.*; *see also id.* (characterizing Exemption 7(A) as "a general exclusion" . . . "which is dependent on the category of the requested records rather than the individual subject matters contained within each document").

Here, the FBI withheld under Exemption 7(A) the FBI investigative file numbers present on the spreadsheets aggregating information about the FBI's use of NSLs, when it found the associated FBI criminal and national security investigations to be ongoing and active.[4] Seidel Decl. ¶ 40. A typical file number consists of three components; the file classification, the office of origin, and the unique case number. *Id.* ¶ 58. The file classifications, at times, also contain an alpha designator, identifying an even more specific category of investigation within the file classification. *Id.* The office of origin identifies the geographical location where the investigation was initiated, and the last numeric portion identifies the number assigned to the specific investigation. *Id.* Many file classification codes are already in the public domain, and could be used to interpret FBI file numbers if they were disclosed. *See id.*

For this reason—due to the revealing nature of a file number and the presence of some

[4] This information also was withheld pursuant to Exemption category (7)(E),as discussed below. *See infra*, 19–20.

classification codes in the public domain—disclosure of these file numbers associated with active, ongoing investigations can prematurely disclose a national security or criminal investigation to the subject of the investigation. For example, if a subject notices that an investigation of the kind of activity in which the subject is engaged is active in the subject's region, the subject's realization that an investigation is ongoing—or even a suspicion that an investigation may be ongoing—likely would cause that subject to change his or her behavior to thwart detection. *See id.* ¶ 40. Such disclosure also could cause surveillance techniques to be compromised or result in a danger to undercover FBI employees or confidential sources; cause the subject of the investigation or a material witness to flee or to destroy or tamper with evidence; or result in publicity that makes it difficult for the subject of the investigation or others to receive a fair trial. *See id.* For all these reasons, the FBI determined that disclosure of this information, in the midst of these active and ongoing investigations, is reasonably expected to interfere with those investigations as well as any resulting prosecutions. *See id.* Therefore, Exemption 7(A) protects from disclosure these FBI file numbers associated with active cases.

2. Exemption 7(C) and Exemption 6

Exemptions 6 and 7(C) exempt from disclosure personal, private information. Exemption 6 provides that an agency may withhold "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). Its more expansive law-enforcement counterpart, Exemption 7(C), permits withholding of "records or information compiled for law enforcement purposes" to the extent that "production of such law enforcement records . . . could reasonably be expected to constitute an unwarranted invasion of personal privacy." *Id.* § 552(b)(7)(C); *see Yonemoto v. Dep't of Veterans Affairs*, 686 F.3d 681, 693 n.7 (9th Cir. 2012) (describing Exemption 7(C)'s broader protections). Both exceptions are often considered together. *See Yonemoto*, 686 F.3d at 693 n.7.

Here, the FBI withheld under Exemptions 6 and 7(C) the names and identifying information of FBI Special Agents ("SAs") and support personnel. *See* Seidel Decl. ¶¶ 43–45. As to the first category, the FBI withheld information identifying the SAs who were responsible

for conducting, supervising, and/or maintaining the investigative activities reflected in the documents responsive to Plaintiff's FOIA request, as well as managing the day to day administrative functions necessary for the FBI to operate. *See id.* ¶ 43. These responsibilities included conducting interviews and compiling information, as well as reporting on the status of investigations. *See id.* Assignments of SAs to any particular investigation are not by choice. *See id.* Publicity (adverse or otherwise) regarding any particular investigation to which they have been assigned may seriously prejudice their effectiveness in conducting other investigations. *See id.* Protecting information identifying SAs also is important to shield them, as individuals, from unnecessary, unofficial questioning as to the conduct of this or other investigations, whether or not they are currently employed by the FBI. *See id.* FBI SAs conduct official inquiries into various criminal and national security cases. *See id.* They come into contact 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. *See id.* It is possible for an individual targeted by such law enforcement actions to carry a grudge which may last for years. *See id.* These individuals may seek revenge on the agents and other federal employees involved in a particular investigation. *See id.* The publicity associated with the release of an SA's identity in connection with a particular investigation could trigger hostility toward that SA. *See id.* Thus, SAs maintain substantial privacy interests in information about them in criminal investigative files. *See id.*

Turning to the second category noted above, the FBI also withheld under Exemption 6 and 7(C) information identifying support employees who were assigned to handle tasks related to the official investigations reflected in the documents responsive to Plaintiff's FOIA request. *See id.* ¶ 44. These support employees 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. *See id.* Thus, these individuals, like FBI SAs, maintain substantial privacy interests in not having their identities disclosed. *See id.*

While the privacy interests of public servants are, in some respects, reduced somewhat, "individuals do not waive all privacy interests in information relating to them simply by taking an oath of public office." *Lahr v. Nat'l Transp. Safety Bd.*, 569 F.3d 964, 977 (9th Cir. 2009). It is well-settled that federal employees involved in law enforcement—and FBI employees in particular—possess protectable privacy interests in their identities. *See*, *e.g.*, *Hunt v. F.B.I.*, 972 F.2d 286, 288 (9th Cir. 1992) ("FBI agents have a legitimate interest in keeping private matters that could conceivably subject them to annoyance or harassment."). Thus, in *Lahr*, the Ninth Circuit reversed a district court's decision that FBI agents' identities must be disclosed, holding "the case law compels the conclusion that the FBI agents have a cognizable privacy interest in withholding their names in the requested documents." 569 F.3d at 977.

Once a non-trivial, non-speculative privacy interest is present, then Exemptions 6 and 7(C) shield information from disclosure unless "the public interests in disclosing the particular information requested outweigh those privacy interests." *Yonemoto*, 686 F.3d at 694. This balances the privacy interest against the asserted public interest. "[T]he *only* relevant public interest in the FOIA balancing analysis," however "is the extent to which disclosure of the information sought would she[d] light on an agency's performance of its statutory duties or otherwise let citizens know what their government is up to." *Id.* (quoting *Bibles v. Or. Natural Desert Ass'n*, 519 U.S. 355, 355–56 (1997)). "Where there are relevant privacy interests at stake, a requester must demonstrate that the interest served by disclosure 'is a significant one, an interest more specific than having the information for its own sake,' and that disclosure is likely to advance that interest." *Id.* (quoting *Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157, 172 (2004)). Here, there is no public interest served—much less a significant one—by revealing withheld identities of FBI SAs and support personnel, because the disclosure of such information would not shed any light on how the FBI executes its statutory duties. *See* Seidel Decl. ¶ 45.

For all these reasons, Exemptions 6 and 7(C) protect such information from disclosure.

3. Exemption 7(E)

"Exemption 7(E) protects from disclosure 'records or information compiled for law

enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . 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.'" *ACLU*, 880 F.3d at 491. "The statutory requirement that the government show that disclosure 'could reasonably be expected to risk circumvention of the law' applies only to guidelines for law enforcement investigations or prosecutions, not to techniques and procedures." *Id.*

"Exemption 7(E) only exempts investigative techniques not generally known to the public." *Id.* (quoting *Rosenfeld v. U.S. Dep't of Justice*, 57 F.3d 803, 815 (9th Cir. 1995)). "If an agency record discusses 'the application of [a publicly known technique] to . . . particular facts,' the document is not exempt under 7(E)." *Id.* "But if a record describes a 'specific means . . . rather than an application' of deploying a particular investigative technique, the record is exempt from disclosure" under this exemption. *Id.* Under this test, documents are exempt from disclosure if "they reveal[] specific information about law enforcement methods" that is "not publicly known and, if revealed, would compromise the ability of the FBI to use those techniques." *Id.* (describing *Hamdan*, 797 F.3d at 778).

Thus, for example, in *Freedom of the Press Foundation*, the court held that certain records related to the FBI's procedures for issuing NSLs were exempt from disclosure under Exemption 7(E), because, although NSLs are a known investigative technique, the records in question "described information such as the circumstances under which [those] techniques should be used, how to analyze the information gathered through these techniques, and the current focus of the FBI's investigations." 241 F. Supp. 3d at 1003. The FBI has protected analogous information regarding NSLs here.

Under Exemption 7(E) the FBI has protected eight categories of information that is not publicly known, related to the FBI's use of NSLs. *See* Seidel Decl. ¶¶ 47–61. Those eight categories, discussed below, range from information that would reveal to adversaries the dates and frequency with which NSLs were issued, to what geographic areas to avoid frequenting, or

which businesses to avoid patronizing, when seeking to evade detection. *See id.* Such information, especially when aggregated, would paint a broad, detailed picture of the FBI's methods in deploying this important investigative technique, thus providing valuable insight to those seeking to circumvent detection by the FBI, diminishing the effectiveness of this, and, by extension, potentially other FBI investigative techniques. *See id.* ¶ 47. Indeed, disclosure of the rich mosaic of information contained in these documents could reveal the FBI's investigative focus to a target or subject of surveillance, and result in the loss of valuable intelligence and even endanger FBI agents engaged in that investigation on the ground. *Id.*

While certain details contained in these documents, taken alone, might not appear to be of significance, the FBI has long been aware that sophisticated adversaries and criminals are able to piece together slivers of publicly-disclosed information, and use such details to alter their behavior to circumvent surveillance, and courts have long recognized that information that may not seem significant in isolation may well be important to protect in the national security context. *Id.* The Supreme Court has observed "what may seem trivial to the uninformed, may appear of great moment to one who has a broad view of the scene and may put the questioned item of information in its proper context." *CIA v. Sims*, 471 U.S. 159, 178 (1985) (quotation omitted); *see also id.* ("the very nature of the intelligence apparatus of any country is to try to find out the concerns of others; bits and pieces of data may aid in piecing together bits of other information even when the individual piece is not of obvious importance in itself") (quotation omitted).

Just so in this case. As Mr. Seidel explains, as to each of the eight categories described below, the information at issue is not publicly known, and, if disclosed, would reveal the FBI's methods in using NSLs, and would therefore permit FBI targets to more effectively craft their efforts to frustrate the Government's collection efforts. *See* Seidel Decl. ¶¶ 38, 47–61.

a. NSL Identification Numbers

The FBI withheld identification numbers used for tracking specific NSLs from each letter terminating a nondisclosure requirement associated with a specific NSL, as well as from each of the two memoranda assessing whether to continue or terminate the nondisclosure requirement in

a given NSL. *See* Seidel Decl. ¶ 48, *see id.*, Ex. B at 1–44, 46. Such NSL identification numbers are sequential, and would reveal, if disclosed alongside the other information withheld under Exemption 7(E), the number of NSLs issued concerning a particular subject of a national security investigation, which may focus on an individual engaged in terrorism or on clandestine intelligence activities for a terrorist organization or a foreign nation-state. *See id.* Because, as discussed above, such file numbers may be revealing of the geographic focus and the type of activity under investigation, the disclosure of such information could allow the subjects of investigation to deduce that their activities may be under investigation by the FBI. The number of NSLs issued, too, and their timing, may alert a subject that the FBI has or has not detected certain facets of their activities. *Id.* For example, if a substantial increase or change in activity were accompanied by the issuance of an NSL by the FBI in the same timeframe, the subject may surmise that the FBI was aware of his or her activities. *Id.* The absence of investigative focus by the FBI also may reveal that those activities have, thus far, avoided detection. *Id.* Such information would allow sophisticated adversaries to create a mosaic of what information the FBI may have (as well as may not have) obtained about their sources and human assets, and the level of FBI's investigative interest in a particular subject-matter. *Id.*

b. Identity and/or Location of FBI or Joint Units, Squads, Divisions

The FBI withheld information revealing the location and identity of FBI units and/or joint units involved in the investigations at issue in this case from the administrative headings of internal FBI documents, and from the tracking spreadsheets regarding the FBI's use of NSLs. *See id.* ¶ 50. Specifically, such information in the headings and spreadsheets identifies the locations of the office and unit that originated or received the NSLs. *See id.* Disclosure of the location of the units conducting the investigation would reveal information about the targets of that investigation, the physical areas of interest of the investigation, and when taken together with the other locations if identified, could establish a pattern or "mosaic" that identification of a single location would not. *See id.* If the locations are clusters in a particular area, that would allow hostile analysts to avoid or circumvent those locations, especially if one or more location

appeared with frequency or in a pattern. *See id.* This would disrupt the investigative process and deprive the FBI of valuable information. *See id.*

The FBI has withheld information identifying the specific units involved in investigations for similar reasons. Once identified, the unit's areas of expertise becomes known and an individual would then be aware of the FBI's specific law enforcement interest. *See id.* ¶ 51. For example, knowing that a unit whose focus is on financial crimes is involved is quite different information than knowing that the unit involved has a focus on crimes of violence. *See id.* This knowledge could allow a subject to employ countermeasures to conceal particular types of behavior and/or to avoid altogether activities in a particular location. *See id.* As Mr. Seidel explained, the revelation of the involvement of one or more units of differing focuses is critical information that can allow the adjustment of behaviors and activities to avoid detection. *See id.*

c. Information Identifying Recipients of NSLs

In this category, Plaintiff has specifically focused its challenge on the withholding of the names, addresses, and other contact information[5] of the companies that received letters terminating the nondisclosure requirements associated with NSLs those companies had received. Although the function of such letters is to discontinue nondisclosure requirements, to the best of the FBI's knowledge, the majority of the recipients of those letters have not made the letters public, and those letters have not been aggregated in any publicly available place. *See* Seidel Decl. ¶ 53. If the providers that received NSLs were disclosed and compiled in one location, the totality of the data could be used to piece together the method by which the FBI chooses to employ NSLs, and therefore could be used by criminals to circumvent the FBI's investigative techniques. *See id.*

For example, by aggregating such information a criminal or adversary could deduce that provider A of a service is more frequently targeted by the FBI for NSLs than provider B, and would utilize the information compiled to avoid detection. *See id.* Disclosing the frequency

[5] The FBI also withheld the names of employees at those companies, when addressed on the letters, under Exemptions 6 and 7(C). Plaintiff does not challenge those withholdings.

with which different companies receive NSLs could inform criminals and adversaries which companies they should (or should not) do business with in order to avoid heightened scrutiny by the FBI. *See id.* Even if the resulting picture of the FBI's methods were not complete—in that only the identities of providers whose nondisclosure obligations have been lifted are at issue here—identification of the recipients of over 700 NSLs would be a powerful roadmap for those seeking to learn the FBI's methods. *See id.*

d. Information Regarding Targets, Dates, and Scope of Surveillance

The FBI withheld information regarding the dates associated with the issuing and tracking of the NSLs, as well as the targets and scope of surveillance, in the spreadsheets addressing the FBI's use of NSLs, in the email accompanying those spreadsheets, and in the memoranda assessing whether to leave a nondisclosure obligation associated with an NSL in place. *See id.*, Ex. B at 44–46. Disclosure of these non-public details about when, how, and under what circumstances the FBI conducts surveillance—especially when such information is aggregated regarding a broad swath of cases, as it is in the spreadsheets—would allow current and future subjects of FBI investigations and other potential criminals to develop and utilize countermeasures to defeat or avoid different types of surveillance, specifically NSLs in this case, thus diminishing the utility of that technique. *See id.* ¶ 54.

For example, revealing the dates on which specific NSLs were issued could provide a hostile analyst the ability to discern a timeframe for the FBI's use of specific NSLs, to compare this information with specific investigations, and to develop an understanding of whether or not the FBI used NSLs in particular circumstances. *See id.* Moreover, disclosure of the scope and targets of NSLs would not only have negative consequences related to those particular investigations—where the targets and subjects of those investigation could be alerted to alter their behavior to avoid surveillance or destroy evidence—but also would inform adversaries of the FBI's methods in deploying this investigative tool. *See id.*

e. Collection and/or Analysis of Information

The FBI also withheld information regarding how and from where the FBI collects

information, and the methodologies employed to analyze it once it is collected. *See id.* ¶ 56. Specifically, the FBI withheld the collection of the cumulative data regarding the NSLs being tracked in the three spreadsheets and email dated August 16, 2017 concerning the FBI's use of NSLs and its implementation of the Termination Procedures. *See id.* ¶ 57. The disclosure of this data in its aggregate form—such as information that identifies the agent who is associated with the NSL, the case file number, and the other information revealing how and when the FBI took action with respect to the NSL—could provide a criminal or hostile intelligence analyst for a foreign power a deeper understanding as to how the FBI utilizes NSLs, and allow them to develop countermeasures that would reduce the effectiveness of the FBI's use of NSLs. *See id.*

f. Sensitive File Numbers and Subfile Names

As discussed above, the file numbers used by the FBI can be highly revealing. *See supra*, 14–15. While the discussion above focused on the FBI's withholding of such information associated with active, ongoing investigations under Exemption 7(A), the FBI also withheld under Exemption 7(E) file numbers associated with investigations irrespective of whether they were active and ongoing, if it determined it was necessary to protect those file numbers after conducting an individualized analysis of the nature of the investigation being documented in the file, the status of the investigation at issue, the subject, the information already in the public domain, and the foreseeable harm of releasing the specific file numbers. *See* Seidel Decl. ¶ 57.

For the reasons discussed above, *see supra*, 14–15, releasing these sensitive file numbers could identify the FBI's investigative interest or priority. *See also* Seidel Decl. ¶ 59. Individuals could use this information to uncover the FBI's methodology for assigning sensitive file numbers as well as to learn important, non-public information about the FBI's investigative methodology, such as investigative targets in certain geographic areas and the different crimes it is (or is no longer) investigating. *See id.* Moreover, this information could help a hostile actor or criminal to uncover key information concerning specific, unknown FBI investigative initiatives. *See id.* In this manner, release of this information could enable criminals to predict and circumvent FBI investigations in which NSLs are utilized, diminishing the effectiveness of these critical law

enforcement techniques. *See id.*

g. The Scope of the FBI's use of National Security Letters

Within this category, coextensive with several other categories listed herein, the FBI withheld from the memoranda assessing whether to continue or terminate nondisclosure obligations associated with two NSLs, *see* Seidel Decl., Exh. B, at 46, information that may reveal the scope of the FBI's use of NSLs, including: what field offices used specific NSLs, types of investigations (*i.e.* criminal, counter-terror, counter-intelligence, etc.) in which specific NSLs were used, specific investigations associated with specific NSLs, the time frame and dates associated with the specific NSLs, and the subjects of investigations in which NSLs were used. *See id.* ¶ 60. Disclosing such information would reveal how and in what circumstances the FBI utilizes NSLs, allowing criminals to discern when they could expect their use by the FBI. *See id.* Criminals could then take measures to avoid providing the FBI key intelligence or evidence through its use of NSLs, diminish the utility of NSLs, and deprive the FBI of an effective investigative strategy in current and future investigations. *See id.*

h. Dates/Types of Investigations

Finally, the FBI protected, within the memoranda assessing whether to continue or terminate nondisclosure obligations associated with two NSLs, *see* Seidel Decl., Exh. B at 46, information pertaining to the types and dates of the investigations referenced in those records. *See* Seidel Decl. ¶ 61. Specifically, the information withheld, when referenced in connection with an actual investigation and not in general discussion, pertains to the type of investigation, whether it is a "preliminary" or "full" investigation, and the date on which it was initiated. *See id.* Disclosure of this information would allow individuals to know the types of activities that would trigger a full investigation as opposed to a preliminary investigation. *See id.* Moreover, the knowledge that a specific activity in general warrants investigation could likewise cause individuals to adjust their conduct to avoid detection. *See id.*

* * * * * * *

In sum, disclosure of the information withheld from these NSL-related records under

Exemption 7(E) would allow criminals and adversaries to piece together an understanding of "the circumstances under which [this] technique[] [is] used," and the "current focus of the FBI's investigations." *Freedom of the Press Foundation* 241 F. Supp. 3d at 1003. Because these details regarding the FBI's methods of using NSLs are "not publicly known and, if revealed, would compromise the ability of the FBI to use those techniques," the information withheld under Exemption 7(E) in this case is properly protected from disclosure. *ACLU*, 880 F.3d at 491.

E. Defendant Has Produced All Reasonably Segregable Portions of the Documents at Issue.

FOIA requires that "[a]ny reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt . . . ." 5 U.S.C. § 552(b)(9). While the Government has the burden to show that it has discharged this obligation, *see Pacific Fisheries, Inc. v. United States*, 539 F.3d 1143, 1148 (9th Cir. 2008), it is "entitled to a presumption that [it] complied with the obligation to disclose reasonably segregable material." *Freedom of the Press Found.*, 241 F. Supp. 3d at 1004. The Court "may rely on an agency's declaration in making its segregability determination" and "need not conduct a page-by-page review of an agency's work." *Id.*

The FBI has discharged this obligation by reviewing the withheld information in each of the 1737 pages identified as responsive to Plaintiff's request, and by attesting that it has disclosed all non-exempt information that reasonably could be disclosed. *See* Seidel Decl. ¶¶ 19, 62. "[E]vidence of [the Government's] good faith," *Hamdan*, 797 F.3d at 781, in this regard is shown, for example, in the Government's voluntary reprocessing of its April 27, 2018 disclosure, resulting in the release in part of an additional 160 pages on July 13, 2018. Seidel Decl. ¶ 11; *see Hamdan*, 797 F.3d at 779 ("The district court may rely on an agency's declaration in making its segregability determination."). Accordingly, Defendant has shown that it has produced all "reasonably segregable portion[s]" of the responsive records, 5 U.S.C. § 552(b).

IV. CONCLUSION

For all these reasons, the Court should enter partial judgment for the Defendant as to the information withheld pursuant to Exemptions 3, 5, 6, 7(A), 7(C), and 7(E) addressed herein.

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