

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

AMERICAN CIVIL LIBERTIES	:	
UNION OF GEORGIA, INC.,	:	
AMERICAN CIVIL LIBERTIES	:	
UNION OF NORTH CAROLINA,	:	
INC., AMERICAN CIVIL	:	CIVIL ACTION NO.
LIBERTIES UNION OF SOUTH	:	1:17-CV-1309-RWS
CAROLINA, INC., and	:	
AMERICAN CIVIL LIBERTIES	:	
UNION OF WEST VIRGINIA,	:	
INC.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
	:	
U.S. DEPARTMENT OF	:	
HOMELAND SECURITY and	:	
U.S. CUSTOMS AND BORDER	:	
PROTECTION,	:	
	:	
	:	
Defendants.	:	
	:	

**ORDER**

This case comes before the Court on Defendants’ Proposed Production Schedule [37] and Plaintiffs’ Response in Opposition [38]. After reviewing the record and considering the parties’ arguments in their briefs, the Court enters the following Order.

## Background

On February 2, 2017, Plaintiffs sent Defendants a Freedom of Information Act (“FOIA”) request, seeking records concerning local implementation of President Trump’s January 27, 2017 Executive Order titled “Protecting the Nation From Foreign Terrorists Entry Into the United States” and any related judicial or executive order. (Compl., Dkt. [1] ¶¶ 1–2.) On April 12, 2017, Plaintiffs filed this action alleging that Defendants violated FOIA by (1) failing to timely determine whether they would comply with Plaintiffs’ request; (2) failing to make the requested records available; and (3) failing to timely determine whether they would expedite the processing of Plaintiffs’ request.

On June 30, 2017, pursuant to the Court’s Order [23], this action was stayed pending a decision from the Judicial Panel on Multidistrict Litigation (“JPML”) as to whether this case would be consolidated with twelve other related cases. On August 2, 2017, the JPML issued an order denying transfer of this action (see Dkt. [25]), and the Court lifted its stay shortly thereafter (see Dkt. [26]).

On November 3, 2017, the Parties filed a Joint Status Report [35] in

which Defendants described their process of obtaining, reviewing, and producing documents responsive to Plaintiff's request. The Court permitted Defendants to continue with this process, but deemed it appropriate to establish a timetable for production. (See Dkt. [36].)

Pursuant to the Court's Order, Defendants submitted the Proposed Production Schedule [37] currently before the Court. In it, Defendants stress the time- and resource-intensive nature of processing Plaintiffs' request, especially in the context of seventeen similar requests filed by the American Civil Liberties Union ("ACLU") and its affiliates, which Defendants have consolidated to identify records responsive to all of the requests and avoid duplicating efforts. Through this process, Defendants have identified approximately 275,000 pages spanning 103,000 records and 25,000 emails that are potentially responsive to the ACLU requests. Of those, approximately 17,131 pages are responsive to Plaintiffs' request, in particular.

To date, Defendants have released approximately 1,276 pages of responsive records, total—that is, to Plaintiffs and the other ACLU affiliates. Moving forward, Defendants estimate that they can process and produce approximately 6,500 pages per month, total, some of which, presumably, will

be responsive to Plaintiffs' request. Defendants now ask the Court to enter an order permitting them to produce documents at a rate commensurate with those projections.

In their response [38], Plaintiffs assert that they “and the public have an urgent need for the records at issue so that its members, media organizations, community groups, and ordinary citizens can have the information necessary to participate in the ongoing debate over the Orders at a time when they can still influence public policy.” (Resp. [38] at 11.) They note that “[c]ourts consistently require expedited disclosure in cases like this one that involve requests for documents about matters that are subjects of intense media scrutiny and ongoing public debate.” (Id. at 10.) They request that the Court set February 2, 2018, as the date by which all documents must be produced.

### **Discussion**

FOIA requires a federal agency, upon a request for records that reasonably describes documents held by that agency, to make those documents promptly available to any person unless the information within the records is protected from disclosure by a statutory exemption. See 5 U.S.C. § 552(a)(3), (b); see also Allen v. EEOC, 366 F. App'x 972, 973 (11th Cir. 2010). After

suit is filed against the agency, “[t]he Court then has the authority to oversee and supervise the agency’s progress in responding to the request. Seavey v. Dep’t of Justice, No. CV 15-1303, 2017 WL 3112816, at \*2 (D.D.C. July 20, 2017). Exactly how much time is required to respond to a FOIA request is context dependent; however, at least one court of appeals has indicated that it should “typically be within days or a few weeks of” the agency’s initial determination, “not months or years.” Id. (quoting Citizens for Responsibility & Ethics in Wash. v. Fed. Election Comm’n, 711 F.3d 180 (D.C. Cir. 2013)) (internal quotations omitted).

Here, Plaintiff’s request was made on February 2, 2017. Since then, Defendants have identified 17,131 pages of potentially responsive documents. Yet—rapidly approaching the one-year anniversary of Plaintiff’s request—Defendants have produced only 1,276 pages across all eighteen ACLU requests. Even assuming Defendants quintuple that total and continue at the requested rate, there is still no guarantee that Plaintiffs’ request will be completed in a timely fashion. The Court, therefore, finds Defendants’ Proposed Production Schedule [37] inadequate. Instead, the Court **ORDERS** the following:

1. By no later than **January 16, 2018**, Defendants shall process no less than 1,000 pages of the records identified as potentially responsive to Plaintiffs' FOIA request and (i) produce to Plaintiff all responsive, non-exempt records identified in this review and (ii) identify any asserted exemptions.

2. **Each month thereafter**, Defendants shall repeat this process, processing no less than 1,000 pages of the records identified as potentially responsive to Plaintiffs' FOIA request and, by the 16th of each month, (i) produce to Plaintiff all responsive, non-exempt records identified in this review and (ii) identify any asserted exemptions.

3. By no later than **June 17, 2018**, Defendants shall have fully responded to Plaintiff's request, having reviewed all records identified as potentially responsive to Plaintiffs' FOIA request and (i) produced to Plaintiff all responsive, non-exempt records identified and (ii) identified any asserted exemptions.

4. By **June 17, 2018**, the Parties shall submit a joint status report and proposed case schedule to the Court, addressing: (i) the status of Defendants' response to Plaintiffs' FOIA request; and (ii) a proposed briefing schedule for dispositive motions, if appropriate.

**SO ORDERED**, this 13th day of December, 2017.

A handwritten signature in black ink, reading "Richard W. Story". The signature is written in a cursive style with a large, stylized initial "R".

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**RICHARD W. STORY**  
United States District Judge