

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

BROWARD BULLDOG, INC. and  
DAN CHRISTENSEN,

Plaintiffs,

v.

Case No. 16-61289-CIV-ALTONAGA

U.S. DEPARTMENT OF JUSTICE  
and FEDERAL BUREAU OF  
INVESTIGATION,

Defendants.

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**JOINT STATUS REPORT REGARDING THE CONCLUSION OF THIS CASE**

Plaintiffs, Broward Bulldog, Inc., and Dan Christensen, and Defendants U.S. Department of Justice and its component, the Federal Bureau of Investigation, file this joint status report advising the Court as to how they wish to proceed to conclude the case, and if a trial is to be held, to propose a trial period.

**INTRODUCTION**

The Court's May 16, 2017 Order (DE 99) on Defendants' Motion for Summary Judgment on Count I of Plaintiffs' Complaint granted Defendants' Motion for Summary Judgment with respect to several issues pending under Count I of Plaintiff's Complaint under the Freedom of Information Act, but denied summary judgment on others. Specifically, the Court granted summary judgment with regard to the adequacy of Defendants' search for responsive records and its decision not re-produce records previously produced to Plaintiff which are the subject of another pending lawsuit, but the Court denied summary judgment on the lawfulness the FBI's

redactions of certain information from several of the records produced. Below are the parties' proposals for the conclusion of this action.

**Plaintiffs' Proposal:**

Since the Court entered its ruling on Count I of the complaint on May 6, 2017, DE-99, the FBI has not removed any of the redactions which the Court found the FBI failed to show by summary judgment were lawful redactions. When a defendant fails to obtain summary judgment all issues raised by the complaint and the plaintiff has not moved for summary judgment, the Court should set the case for trial on the remaining issues. At trial, the FBI will be required to offer admissible evidence through witnesses – not through inadmissible hearsay by declaration – to attempt to sustain the redactions. The Bulldog will have an opportunity, in accordance with due process, to cross-examine any FBI witnesses presented. If, after the direct testimony and cross-examination, the Court concludes that the FBI has established a prima facie case to sustain any of the redactions, the Bulldog will have the opportunity to present its own witnesses who also may be cross-examined by the FBI. Factual issues may remain at that point which the Court then can resolve as the trier of fact and make the factual findings that are necessary to identify and resolve those issues. Entry of summary judgment on all issues is not appropriate in light of the Court's rulings on the FBI's multiple summary judgment motions.

The plaintiffs oppose the entry of any summary judgment in part because they do not want to face the risk that rulings in their favor would be overturned by the Eleventh Circuit's conclusion that factual disputes should have been resolved at trial. Such a ruling likely would delay the ultimate disclosure of information which is critically important for the press and public to have at this time when issues regarding the 9/11 attacks are being litigated in New York and while the

U.S. Government is continuing to sell hundreds of billions of dollars of weapons to the Kingdom of Saudi Arabia.

The Bulldog proposes setting the case for a three-day, non-jury trial after July 30, 2017. Plaintiffs anticipate that they would present at the trial the testimony of Dan Christensen, former Sen. D. Robert Graham, a representative of the families of the victims of the 9/11 attacks, and possibly some of the other of the witnesses who have been listed in the pretrial stipulation. DE-47.

The Bulldog requests that the Court set the trial on a date after July 27, 2017, primarily due to the unavailability of Sen. Graham prior to that date. Sen. Graham, the Bulldog, and the Bulldog's counsel are available on the following dates:

July 31 – Aug. 2, 2017

Aug. 7 – Aug. 11, 2017

Aug. 14 – Aug. 18, 2017

Aug. 21 – Aug. 25, 2017

Aug. 28 – Sept. 1, 2017

Sept. 4 – Sept. 8, 2017

Sept. 18 – Sept. 20, 2017

Sept. 25 – Sept. 27, 2017

If the Court's schedule requires additional availability dates, the Bulldog will supply them.

**Defendants Proposal:**

In this action, Defendants had the burden of proving that they conducted an adequate search for the records Plaintiffs requested under FOIA, and of establishing that the FBI's decisions to withhold responsive information were justified by Exemptions available under FOIA. The Court

granted summary judgment in Defendants' favor on all issues except for the lawfulness of the FBI's redactions of certain individuals' names pursuant to FOIA Exemptions 6 and 7(C) and the lawfulness of redactions made to a PowerPoint slideshow ("Document 22") summarizing the FBI's 9/11 investigation on the basis of FOIA Exemption 7(E). As to these, the Court found that Defendants had failed to provide an adequate factual basis justifying the FBI's claims of exemption under FOIA. As a result of the Court's denial of summary judgment, the lawfulness of these redactions is the only issue remaining before the Court.<sup>1</sup>

Separately on this date, Defendants have filed a Motion for Reconsideration of the Court's ruling on Document 22. Defendants do not intend to offer any additional evidence in support of the remaining FOIA Exemptions on which the Court denied summary judgment. Importantly, neither Plaintiffs nor the Court's Order on Defendants' Motions for Summary Judgment identify any triable issues of fact relating to the redactions on which the Court denied summary judgment. Instead, the Court's Order reflects the Court's application of law to what are undisputed material facts, and sets forth the Court's legal conclusion that the government had not met its burden under FOIA. Because the government does not intend to offer additional evidentiary support for its claimed Exemptions and because there are no issues of fact in dispute requiring resolution, a trial is not necessary and would not be appropriate.

For these reasons, Defendants respectfully propose that the Court enter a final order based on the conclusions of law in its Order on Defendants' Motion for Summary Judgment (subject to

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<sup>1</sup> There is also question regarding the scope of the Court's ruling on the FBI's invasion-of-privacy redactions on the basis of Exemptions 6 and 7(C). Defendants interpret the ruling as applying only to the names of individuals, but not their social security numbers, home addresses, or phone numbers, where such information appears. Plaintiffs believe the Court's Order on Summary Judgment applies not only to the individuals' names but also their addresses and phone numbers.

its ruling on Defendants' Motion for Reconsideration on Document 22). Such a final order is necessary because the Court's summary judgment Orders do not include an order requiring Defendants to disclose the information on which summary judgment was denied. The issuance of such an order would avoid concerns about disclosure of information regarding individuals that is otherwise subject to the Privacy Act, 5 U.S.C. § 552a., and is a jurisdictional prerequisite in the event that Defendants seek appellate review.<sup>2</sup>

Respectfully submitted,

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<sup>2</sup> Defendants would respectfully request that such a final order also clarify the scope of the Court's ruling on the FBI's claimed privacy exemptions, i.e., whether it applies only to the names of individuals identified in the responsive records, or also to their home addresses and telephone numbers.

CERTIFICATE OF SERVICE

I hereby certify that on June 2, 2017, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF and through that filing served:

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s/ Carlos Raurell  
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