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8 **UNITED STATES DISTRICT COURT**  
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
10 **SAN FRANCISCO DIVISION**

11  
12 ELECTRONIC FRONTIER FOUNDATION, )  
13 )  
14 Plaintiff, ) **COMPLAINT FOR INJUNCTIVE**  
15 v. ) **RELIEF FOR VIOLATION OF THE**  
16 DEPARTMENT OF HOMELAND SECURITY, ) **FREEDOM OF INFORMATION ACT,**  
17 Defendant. ) **5 U.S.C. § 552**  
18 )  
19 )

20 **INTRODUCTION**

21 1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for  
22 injunctive and other appropriate relief. Plaintiff, the Electronic Frontier Foundation (“EFF”) seeks the  
23 release of records requested from Defendant Department of Homeland Security (“DHS”). Specifically,  
24 EFF seeks the release of records about the Visa Lifecycle Vetting Initiative (VLVI), an immigration  
25 screening and vetting program that evolved from former President Donald Trump’s “extreme vetting”  
26 proposal.

27 **JURISDICTION AND VENUE AND INTRADISTRICT ASSIGNMENT**

28 2. This Court has both subject matter jurisdiction over this action and personal jurisdiction

1 over the parties pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §1331.

2 3. Venue is proper in this district under 5 U.S.C. § 552(a)(4)(B).

3 4. Assignment to the San Francisco division is proper pursuant to Local Rule 3-2(c) and  
4 (d) because a substantial portion of the events giving rise to this action occurred in this district and  
5 division, where EFF is headquartered.

6 **PARTIES**

7 5. Plaintiff EFF is a not-for-profit organization headquartered in San Francisco,  
8 California. EFF informs the public, the press, and lawmakers about civil liberties and technology  
9 issues and defends those liberties. To support its mission, EFF uses FOIA to obtain and publish  
10 information about the activities of federal agencies. EFF is a “person” within the meaning of 5 U.S.C.  
11 § 551(2).

12 6. Defendant DHS is a Department of the Executive Branch of the United States  
13 Government and is an “agency” within the meaning of 5 U.S.C. § 552(f). DHS has possession and  
14 control over the requested records. ICE is a component of DHS.

15 **BACKGROUND**

16 7. VLVI evolved from former President Trump’s controversial “extreme vetting”  
17 immigration proposal that purported to determine the threat posed by potential immigrants based on  
18 their social media and internet presence.<sup>1</sup> DHS entered into at least two contracts and blanket purchase  
19 agreements (BPA) with SRA International to provide support for VLVI.<sup>2</sup> The BPAs cover August 19,  
20 2018, to August 19, 2023, with a total obligated amount of approximately \$42.1 million. DHS seems  
21 to have continued paying the agreements under President Joseph R. Biden, with a transaction of  
22 approximately \$4.8 million on May 4, 2021.<sup>3</sup>

23 \_\_\_\_\_  
24 <sup>1</sup> Drew Harwell, Nick Miroff, *ICE just abandoned its dream of ‘extreme vetting’ software  
25 that could predict whether a foreign visitor would become a terrorist*, Washington Post  
26 (May 17, 2018), <https://www.washingtonpost.com/news/the-switch/wp/2018/05/17/ice-just-abandoned-its-dream-of-extreme-vetting-software-that-could-predict-whether-a-foreign-visitor-would-become-a-terrorist/>.

27 <sup>2</sup> BPA 70CMSD18A00000003, <https://www.usaspending.gov/award/68975297>.

28 <sup>3</sup> BPA 70CMSD19FC0000020, [https://www.usaspending.gov/award/CONT\\_AWD\\_70CMSD19FC0000020\\_7012\\_70CMSD18A00000003\\_7012](https://www.usaspending.gov/award/CONT_AWD_70CMSD19FC0000020_7012_70CMSD18A00000003_7012).

1 8. When first proposed, civil rights advocates roundly criticized “extreme vetting” as  
2 ineffective and discriminatory.<sup>4</sup> The old proposal, and its evolution as VLVI, offers no evidence that  
3 scouring potential immigrants’ online statements will help keep the country safe. Rather, programs  
4 like VLVI are likely to chill expression that the First Amendment protects and allow the government  
5 to punish people for speech it doesn’t like. The opacity of VLVI—how it operates is completely  
6 unknown to the public—worsens these problems.

7 **EFF’s FOIA Request and Request for Fee Waiver**

8 9. On November 12, 2021, EFF submitted a FOIA request via email to DHS and ICE for  
9 records on VLVI. The FOIA request sought:

- 10 • All agreements with SRA International pursuant to the VLVI. This includes but is not  
11 limited to agreements pursuant to BPAs 70CMSD18A00000003,  
12 70CMSD21FC0000011, or 70CMSD19FC0000020.
  - 13 ○ SRA International includes any aliases, such as Systems Research and  
14 Applications, CSRA, and General Dynamics
  - 15 ○ Agreements include: Contracts (including non-disclosure agreements), statements  
16 of work, warranties, liability waivers, insurance agreements, intergovernmental  
17 services agreements, licensing agreements, memorandums of understanding,  
18 nondisclosure agreements, and informal agreements regarding or relevant to  
19 VLVI or the relationship between this agency and SRA International.
- 20 • Documents related to the May 4, 2021, transaction of approximately \$4.8 million  
21 pursuant to BPA 70CMSD19FC0000020.
- 22 • Documents related to the June 4, 2021, transaction of approximately \$0 pursuant to BPA  
23 70CMSD21FC0000011.
- 24 • All Performance Work Statements for VLVI.
- 25 • Any input training data for the VLVI or related algorithms or programs.

26  
27 <sup>4</sup> Letter to Acting Secretary of Homeland Security Elaine Duke, November 16, 2017,  
28 <https://www.brennancenter.org/sites/default/files/Coalition%20Letter%20to%20DHS%20Opposing%20the%20Extreme%20Vetting%20Initiative%20-%202011.15.17.pdf>.

- For the aspects of the VLVI that require an input (for example, to compute a value), please provide:
  - a copy of the five most recent sets of data that were used for input; and
  - the five most recent outputs of the VLVI in their native formats
- If these inputs or outputs include exempt information, please provide all material save for specific information that is specifically exempted by law. Please also provide a description of input and output data fields that will aid in understanding the type of information that is submitted to the VLVI and that is produced by the VLVI.

- Training materials governing the use, sharing, or access to any related data related to or collected by VLVI, including the legal standard that is required before using VLVI. This includes all instructional materials, presentations and presentation materials (including recorded video and audio, PowerPoint files, prepared remarks, and slides formats), and other guidance on the use of this technology. This includes any notes taken during meetings that discussed the use of the program, any explanations (whether internally or externally generated) of how VLVI works, and any other document that has been used to help explain the use of VLVI to any party, including internal documentation, public relations materials, and executive summaries. This also includes any description of input and output data fields that will aid in understanding the type of information that is submitted to the VLVI, and that is produced by VLVI.
- Materials that describe the function of VLVI considered or in use by this agency, including emails, handouts, PowerPoint presentations, advertisements, or specification documents. Please also provide all privacy impact assessments, use policies, standard operating procedures, legal opinions. Please also provide a copy of any funding opportunity announcements, grant applications and grantor status/progress reports, reports to legislative bodies, annual reports that mention the use of VLVI, as well as audit records, including but not limited to security audits of the VLVI, misuse reports, and reports to oversight bodies.

1 10. The FOIA request also sought fee waivers because EFF “qualifies as a representative  
2 of the news media” and the “disclosure of the requested information is in the public interest.” *See* 5  
3 U.S.C. §§ 552(4)(A)(i)-(iii). The request included documentation that several federal agencies,  
4 including DHS, previously recognized EFF’s status as a news media representative.

5 11. On December 13, 2021, DHS informed EFF by email that it transferred the FOIA  
6 request to ICE.

7 12. On December 14, 2021, the deadline for DHS and ICE to each respond to the FOIA  
8 request lapsed. 5 U.S.C. §§ 552(a)(6)(A).

9 13. On December 20, 2021, ICE confirmed receipt by email of the FOIA request  
10 transferred from DHS.

11 14. To date, DHS and ICE have not responded to EFF’s FOIA request.

12 15. To date, DHS and ICE have not released any records responsive to EFF’s FOIA  
13 request.

14 16. DHS has exceeded statutory deadline for the processing of any FOIA request.

15 17. EFF has exhausted the applicable administrative remedies with respect to its FOIA  
16 request to DHS.

17 18. DHS has wrongfully withheld the requested records from EFF.

18 **CAUSES OF ACTION**

19 **Violation of the Freedom of Information Act for Failure to Waive Fees**

20 19. EFF repeats and realleges paragraphs 1-18.

21 20. DHS has violated FOIA by denying EFF’s fee waiver request as a representative of the  
22 news media and EFF’s public interest fee waiver request.

23 21. EFF has exhausted the applicable administrative remedies with respect to DHS’s failure  
24 to waive fees.

25 22. EFF is entitled to injunctive relief with respect to its fee waiver requests.

26 **Violation of the Freedom of Information Act for Wrongful Withholding of Agency Records**

27 23. EFF repeats and realleges paragraphs 1-22.

28 24. DHS has wrongfully withheld agency records requested by EFF by failing to comply

1 with the statutory deadline for the processing of any FOIA request.

2 25. EFF has exhausted the applicable administrative remedies with respect to DHS's  
3 wrongful withholding of the requested records.

4 26. EFF is entitled to injunctive relief with respect to the release and disclosure of the  
5 requested records.

6 **REQUESTED RELIEF**

7 WHEREFORE, EFF respectfully requests that this Court:

- 8 1. order DHS to process immediately the requested records in their entirety;  
9 2. order DHS to disclose the requested records in their entirety and make copies available  
10 to EFF;  
11 3. order DHS to waive all fees associated with the processing and release of the requested  
12 records;  
13 4. provide for expeditious proceedings in this action;  
14 5. award EFF its costs and reasonable attorney's fees incurred in this action; and  
15 6. grant such other relief as the Court may deem just and proper.

16 DATED: March 28, 2022

By: /s/ Mukund Rathi

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