



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PROJECT SOUTH, et al.,

Plaintiffs,

-against-

UNITED STATES IMMIGRATION AND
CUSTOMS ENFORCEMENT, et al.,

Defendants.

21-CV-8440 (ALC) (BCM)

ORDER

BARBARA MOSES, United States Magistrate Judge.

This is a Freedom of Information Act (FOIA) action, filed October 13, 2021, in which plaintiffs seek records regarding the allegedly accelerated deportation of Cameroonian nationals in late 2020 and early 2021 notwithstanding "the dire and unsafe situation in Cameroon" at that time. Compl. (Dkt. No. 1) ¶ 18. Plaintiffs submitted their FOIA requests to six federal agencies in April and June of 2021, seeking expedited processing, *see id.* ¶¶ 2, 33-37, and filed this action on October 13, 2021, at which point plaintiffs had received only "1 set of spreadsheets" and "a 1-page partially redacted pdf." *Id.* ¶ 40.

By Order dated April 25, 2022 (Dkt. No. 41), entered after consultation with the parties, the Court set October 25, 2022 as the date for them to file their summary judgment motions, if necessary, and directed them to submit status updates every approximately 60 days as to the progress of the defendant agencies' document searches, processing, and production. In their June 27, 2022 status update letter (Joint Ltr.) (Dkt. No. 44), defendants advise that two of the six defendant agencies – Immigration and Customs Enforcement (ICE) and the Department of State (State) – do not anticipate that they will be able to process and produce all potentially responsive documents before the summary judgment deadline.

ICE reports that the parties have reached agreement on search terms and custodians and that its "searches are largely complete," Joint Ltr. at 1, but the pace of production has been slow. Thus far, ICE has processed 1,133 pages and produced 621 pages (in whole or in part), over three productions on March 22, May 23, and June 17, 2022. *Id.* ICE states that it has roughly 3,300 pages left to process. *Id.* at 2. At the current rate (assuming that processing began at least one month prior to the March 22 production), processing the remaining pages and producing the responsive records could take another year. ICE does not explain why it cannot move faster. Plaintiffs, for their part, request that ICE be ordered to "produce – not process – a minimum of 1,100 pages to Plaintiffs in July, August, and September." *Id.*

State reports that, after developing and applying a modified version of the search terms proposed by plaintiffs, certain of its searches remain outstanding. Joint Ltr. at 4. It further reports that it has processed 450 pages thus far and that it produced (in part) 5 responsive records on June 15, 2022. *Id.* at 5. State makes no promise or prediction as to the number of pages that it will locate as a result of its ongoing searches or the pace at which it will process or produce those pages. Plaintiffs request that State be ordered to "process and produce all required records on a monthly basis through September 2022," so that summary judgment briefing can begin in October as scheduled. *Id.*

Plaintiffs contend that there is some urgency to their requests, pointing out that the government recently granted Cameroonians in the United States Temporary Protected Status (TPS) in recognition to the ongoing armed conflict in Cameroon. Joint Ltr. at 2 n.1. The TPS designation, they say, reinforces the "need to investigate" decision-making policies in 2020 and early 2021 that "resulted in sending vulnerable populations back to danger" and sparked an ongoing campaign to "ensure humanitarian parole" for the deported Cameroonians. *Id.*

Assuming without deciding that expedited processing is warranted here, pursuant to 5 U.S.C. § 552(a)(6)(E)(i), the agency receiving the FOIA request must process it "as soon as practicable." 5 U.S.C. § 552 (a)(6)(E)(iii). It is the agency's burden to show that production on the schedule requested by the plaintiff is "truly not practicable." *Brennan Ctr. for Just. at N.Y. Univ. Sch. of L. v. U.S. Dep't of State*, 300 F. Supp. 3d 540, 549 (S.D.N.Y. 2018) (quoting *Elec. Priv. Info. Ctr. v. Dep't of Just.*, 416 F. Supp. 2d 30, 39 (D.D.C. 2006)). However, the Court has "broad discretion to determine a reasonable processing rate for a FOIA request[.]" *Documented NY v. U.S. Dep't of State*, 2021 U.S. Dist. LEXIS 176553, at *13 (S.D.N.Y. Sep. 16, 2021) (quoting *Colbert v. Fed. Bureau of Investigation*, 2018 U.S. Dist. LEXIS 233651, 2018 WL 6299966, at *3 (D.D.C. Sept. 3, 2018)).

Until now, the Court has refrained from imposing specific monthly quotas on any of the agencies at issue in this action. However, the pace of processing and production by ICE and State appears to lag even the usual glacial pace seen in FOIA litigation. *See, e.g., ACLU v. U. S. Dep't of Homeland Sec.*, 2021 U.S. Dist. LEXIS 227089, at *2 (S.D.N.Y. Nov. 19, 2021) (accepting ICE's representations as to its "limited resources" and heavy FOIA docket and directing it to process 500 pages per month); *Documented NY*, 2021 U.S. Dist. LEXIS 176553, at *8 (noting State's representation that processing 300 pages of documents each month was its "standard pre-pandemic rate," but in light of improving public health conditions ordering it to process 400 pages per month). Consequently, it is hereby ORDERED that, on a going-forward basis:

1. ICE shall process no less than 500 pages per month, producing the responsive pages to plaintiffs no later than the last business day of each month.
2. State shall process no less than 400 pages per month, producing the responsive pages to plaintiffs no later than the last business day of the month.

3. The due date for the parties' next status letter is EXTENDED to **September 9, 2022**.
In the letter, the parties shall (i) update the Court on an agency by agency basis as to the progress of defendants' searches, processing, and production, as previously ordered; (ii) address whether and when defendants should produce a *Vaughn* index; and (iii) propose a modified summary judgment schedule, if necessary.

Dated: New York, New York
July 7, 2022

SO ORDERED.



BARBARA MOSES
United States Magistrate Judge