

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JOHN AND JANE DOES 1-9, et al.,

Plaintiffs,

v.

DEPARTMENT OF JUSTICE,

Defendant.

Civil Action No. 25-0325 (JMC)

FEDERAL BUREAU OF INVESTIGATION
AGENTS ASSOCIATION, et al.,

Plaintiffs,

v.

DEPARTMENT OF JUSTICE, et al.,

Defendants.

Civil Action No. 25-0328 (JMC)

PLAINTIFFS' REVISED MOTION FOR EXPEDITED DISCOVERY

The above-captioned consolidated Plaintiffs hereby file this motion and accompanying memorandum for expedited discovery in the above-captioned matter, which is a revision of the motion filed at ECF No. 20, denied without prejudice to refile. Plaintiffs respectfully request Defendants provide discovery within a timeframe that accommodates the preliminary hearing currently scheduled for March 27, 2025. As explained in the supporting memorandum of law attached hereto, the requested discovery materials have been narrowed in response to the Court's February 28, 2025 Minute Order, are limited in scope, are for good cause, and should be easily retrievable by the Government. Plaintiffs' revised discovery requests are attached hereto as Exhibit A. Plaintiffs' per-item justification for those requests is attached hereto as Exhibit B.

In accordance with Local Civil Rule 7(m), at 9:00 a.m. on March 5, 2025, the parties met via videoconference to conduct a meet-and-confer regarding the Plaintiffs' revised requests. Following that meeting, Plaintiffs further reduced their revised requests and resubmitted them to the Government for consideration on March 10, 2025. The Government opposed the revised disclosures and submitted the following statement: "Defendants oppose Plaintiffs' revised request for expedited discovery and intend to file an opposition setting forth the reasons for its opposition on or before March 18, 2025. In conferring with Plaintiffs on this motion, Defendants understand that Plaintiffs do not object to this response date." Plaintiffs do not object to this response date.

WHEREFORE, Plaintiffs respectfully request that the Court enter an order allowing for such limited expedited discovery, as set forth in the attached Proposed Order.

March 10, 2025

Respectfully submitted,

LAW OFFICE OF MARK S. ZAID, P.C.

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Civil Action No. 25-0328 (JMC)

PLAINTIFFS' REVISED MOTION FOR EXPEDITED DISCOVERY

Plaintiffs the Federal Bureau of Investigation Agents Association (“FBIAA”), John Does 1, 3, and 4 and Jane Does 1-3 (“the 328 Doe Plaintiffs”) and John and Jane Does 1-9 et al. (“the 325 Doe Plaintiffs”), collectively, “Plaintiffs” or the “consolidated Plaintiffs,” respectfully submit this revised motion to seek limited, expedited discovery in support of Plaintiffs’ Motion for Preliminary Injunction, set to be heard by this Court on March 27, 2025. *See* ECF No. 25-1.

I. Background

On February 17, 2025, Plaintiffs filed a Motion for Expedited Discovery. *See* ECF No. 20. On February 24, 2025, Plaintiffs filed a Motion for a Preliminary Injunction alleging Privacy Act,

Administrative Procedures Act, and First and Fifth Amendment violations. *See* ECF No. 25-1. They requested two forms of injunctive relief. First, they requested that the Defendants be enjoined “from publicly disclosing the Plaintiffs’ identities, along with the identities of those similarly situated, either directly or indirectly, to any third parties.” *See* ECF No. 25-2. Second, they requested that the Defendants be enjoined “from taking any additional action which would infringe on Plaintiffs’ Constitutional rights, as the Court determines.” *Id.*

On February 28, 2025, this Court denied the Plaintiffs’ original Motion for Expedited Discovery without prejudice. *See* Minute Order, February 28, 2025. The Court noted that it would “entertain a narrowed motion for discovery on discrete issues concerning this Court’s jurisdiction or issues essential to Plaintiffs’ motion for preliminary injunction.” *Id.* This filing revises the Plaintiffs’ first motion for expedited discovery, ECF No. 20, in an attempt to narrow the requested information, particularly in light of the Court’s February 28, 2025 Minute Order.

In accordance with Local Civil Rule 7(m), at 9:00 a.m. on March 5, 2025, the parties met via videoconference to conduct a meet-and-confer regarding the Plaintiffs’ revised requests. Following that meeting, Plaintiffs further reduced their revised requests and resubmitted to the Government for consideration on March 10, 2025. The Government opposed the revised disclosures and submitted the following statement: “Defendants oppose Plaintiffs’ revised request for expedited discovery and intend to file an opposition setting forth the reasons for its opposition on or before March 18, 2025. In conferring with Plaintiffs on this motion, Defendants understand that Plaintiffs do not object to this response date.” Plaintiffs do not object to this response date.

II. Revised Requests

Attached hereto as “Exhibit A” are Plaintiffs’ revised requests for discovery. Attached hereto as “Exhibit B” is an annotated version of the requests which include short narratives

intended to be responsive to the Court’s February 28, 2025 Order to “identify, for each item of discovery sought, why Plaintiffs require that information to litigate the motions before the Court and why Plaintiffs cannot obtain that information, or respond to Defendants’ legal arguments, absent discovery.”

The requests are intended to focus specifically on factual matters relevant to the issue of determining the Court’s jurisdiction. The requests also seek to establish a full record on which to consider the two categories of requested relief (non-disclosure of agents’ names and ceasing all other constitutional violations). Plaintiffs’ narrowly tailored-discovery—which does not (yet) request deposition testimony and focuses modestly on documents and information—is not overly burdensome to the Defendants, nor is it untimely.

III. Discussion

Distilled to its essence, the Defendants’ argument opposing discovery is that because they refuse to explain their intentions for the January 6 Survey, Plaintiffs will be unable to prove what those intentions might be. Thus, according to Defendants, the case should be dismissed and discovery should be denied. In a case where disclosure of the list would be so obviously harmful, the fact that the Department of Justice (“DOJ”) ardently opposes a request to simply identify a lawful basis under which it could ever such a disclosure should raise serious concerns.

This case is one of several pending in federal districts across the country where representatives from DOJ have been unable to provide answers or explanations to basic factual matters. In some cases, the Government’s answers have been vague or even conflicting with the public record. Given these unusual circumstances, limited discovery is warranted in advance of substantive hearings. This Court should take the measured approach employed by other federal judges who have confronted similar scenarios, both in this District and elsewhere. Limited

discovery here would benefit the Court by “helping it decide additional factual questions necessary to resolving other critical legal issues.” *See American Federal of Labor (“AFL”) et al. v. Department of Labor (“DOL”) et al.*, Civ. No. 1:25-cv-0339 (JDB), ECF Nos. 43, 48, (D.D.C., February 19, 2025); *American Federation of Government Employees, AFL-CIO (“AFL-CIO”), et al., v. United States Office of Personnel Management (“OPM”)*, Civ. No. 3:25-cv-01780 (WHA), ECF No. 41 (N.D.C.A., February 27, 2025) (ordering Government to produce expedited discovery).

Here, the DOJ has stated on the record that it does not know key facts about its own activities. *See, e.g.*, Draft Transcript (“Tr.”) at 36:15-18; 39:24-25, 40:1-16. In fact, at the time of the February 6, 2025 hearing, Government counsel seemed unaware that Acting Deputy Attorney General (“A/DAG”) Emil Bove was contemporaneously demanding the names of the Survey respondents (as opposed to their employee identification numbers (“EIN”)) even as his own lawyers were in court agreeing that only EINs had been provided. *See* Tr, 66:2-4 (Government counsel: “I understand [the Plaintiffs] to be complaining about a list that was provided to the Department of Justice that doesn’t even identify people’s names.”); Tr. 66:16-8 (The Court: “And, again, the DOJ wanted names and my understanding is the FBI didn't provide names.”); ECF No. 21, ¶ 2 (Notice of Proposed Order) (“[G]overnment counsel notified Plaintiffs’ counsel that it had learned [the evening of the February 6 hearing] that a record that pairs the unique identifiers on the list at issue in this case with the corresponding names of the FBI personnel had been provided to the Department by the FBI.”).

“Courts typically apply a “reasonableness” test to determine whether to grant expedited discovery.” *Garnett v. Zeilinger*, No. 17-CV-1757 (CRC), 2017 WL 8944640, at *1 (D.D.C. Dec. 15, 2017). “Under the reasonableness approach, the Court considers the reasonableness of the

request in light of all of the surrounding circumstances, which include: (1) whether a preliminary injunction is pending; (2) the breadth of the discovery requests; (3) the purpose for requesting the expedited discovery; (4) the burden on the defendants to comply with the requests; and (5) how far in advance of the typical discovery process the request was made.” *Guttenberg v. Emery*, 26 F. Supp. 3d 88, 98 (D.D.C. 2014) (internal quotations and citation omitted).

All of the reasonableness factors here weigh in favor of limited discovery. First, a preliminary injunction is pending, and this factor weighs in favor of the Plaintiffs. *Garnett* at *2. It is of no moment that the Plaintiffs’ opening motion has been briefed since a reply brief is forthcoming and the hearing, where additional information can certainly be addressed, is scheduled for March 27, 2025. The requested discovery will remain relevant up through and after these events.

Second, as demonstrated in greater detail in Exhibit B, the breadth of the discovery requests has been significantly narrowed from Plaintiffs’ original motion. For example, one of the original requests related to information from 2017 to present where the DOJ has implemented similar data collection on its employees, if ever. *See* Minute Order, February 28, 2025. While this proposed interrogatory was meant to elicit any examples which might constitute a “routine use,” the Plaintiffs note that the heart of this request can be encompassed more concisely by the revised interrogatories. Plaintiffs have endeavored to further tailor their revised requests to just those matters that relate to the Survey itself (as opposed to the Government’s broader implementation of the Weaponization Memo) and the DOJ’s intent behind the Survey.

Third, the purpose of this request is to establish a reliable factual record, which would assist the Court in rendering determinations of fact before making consequential rulings. As outlined above, an evidentiary hearing where Government counsel has no authority to make key factual

representations about the disclosures of the list, the intent behind the list, or descriptions of the purported “review process” is unhelpful towards any resolution of the litigated issues. Moreover, to the extent that the requests focus on documents, this allows for a more credible factual record to be established without the (present) need for deposition testimony. Indeed, the discovery requests at issue mirror some of the same questions the Court posed as relevant and necessary to defendants’ counsel at the hearing on February 6, 2025, on Plaintiffs’ Motion for a Temporary Restraining Order:

For the government, I have questions about the First Amendment issue, and I want to talk about Privacy Act. There was some representation at some point today about whether or not the survey or information gathered constituted a system of records. But I also have questions about the survey itself, including what it’s being used for. A response to the argument that nothing on the face of the survey provides any indication or information about misconduct. So I do have questions about the survey. Particularly because I’m interested in routine use potential exemption under the Privacy Act. So I want to know what the government plans to do with the information. I want to know what is being investigated, what is this review process, and more about routine use.

Draft Hearing Tr. at 98:2-14; *see also* Draft Hearing Tr. At 98:25-99:3.

Fourth, the burden on the defendants to comply with the request is low. For example, a written explanation of why or how the questions on the Survey could possibly aid in a “Weaponization” review—or even a written definition of “weaponization” itself—will likely take less time than it took to create the 13-question Survey in the first place. Moreover, the revised requested documents or communications would all have been generated within the past seven weeks and should be easily retrievable. In any event, the Court possesses the discretion to limit and tailor the discovery in a manner it finds reasonable and which reduces the professed burden on the Government. *See In re Marco Technology, Inc. Sec. Lit.*, 264 F.R.D. 7, 10 (D.D.C. 2010) (explaining that the Court “is authorized to impose reasonable conditions and restrictions” with respect to material being sought via expedited discovery); *see also F.T.C. v. Invention Submission*

Corp., 965 F. 2d 1086, 1091-92 (D.C. Cir. 1992) (“A district court may impose reasonable conditions and restrictions with respect to the production of the subpoenaed material if the demand is unduly burdensome.”) (internal quotation omitted).¹

As to the final factor, this revised request is tethered to the hearing itself, scheduled for March 27, 2025, and is meant to be “narrowed” to the “discrete issues” of jurisdiction and other issues essential to the Plaintiffs’ anticipated arguments at the preliminary injunction. Minute Order, February 28, 2025. Based on the date of this filing, the Government will have over two weeks to provide what could be short, written answers to basic factual questions that will speak directly to these issues.

IV. Conclusion

Limited discovery here would provide the Court with a more complete record to assess the matters before it and assist it in making determinations of fact, truth, and reliability of the parties’ representations and evidence. For the foregoing reasons, Plaintiffs respectfully request that the Court grant their Revised Motion for Expedited Discovery.

¹ As explained in Plaintiffs’ original Motion for Expedited Discovery, the expedited discovery requested here is also in line with, or less burdensome than, what courts in this and other circuits have ordered in other cases. *See* ECF 20-1 at 8 (citing various cases in which similar or broader expedited discovery was granted).

Date: March 10, 2025

Respectfully submitted,

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Civil Action No. 25-0328 (JMC)

EXHIBIT A: PLAINTIFFS' REVISED REQUESTS FOR EXPEDITED DISCOVERY

Pursuant to Fed. R. Civ. P. 33 and 34, the above-captioned consolidated Plaintiffs respectfully request that the Defendants, the Department of Justice and the United States of America, (a) answer under oath the following written interrogatories and requests for documents, separately and fully in writing; and (b) produce the requested documents to counsel for the Plaintiffs, within a timeframe that accommodates the preliminary hearing currently scheduled for March 27, 2025.

Your answers should include all information known up to the date on which you serve your responses. Under Fed. R. Civ. P. 26(e), the Defendants have an ongoing duty to supplement all

disclosures with any additional responsive information or documents that may become known to them prior to the scheduled hearing for this action, including if the Defendants discover that any information disclosed is incomplete or incorrect.

If the Defendants are not in possession of any document requested, the Defendants must take all appropriate steps to aid the recovery of the document from other sources, including by providing authorizations or waivers or releases, where required. Defendants should list each document withheld based on any privilege on a privilege log pursuant to Fed. R. Civ. P. 26(b)(5).

The instructions, definitions, and rules of construction set forth in Fed. R. Civ. P. 33 and 34 and the District of Columbia's Local Rule 26.2, and as set forth below, govern these discovery requests.

DEFINITIONS

1. "Department of Justice" ("DOJ") means the Executive Branch department of the United States Government. Any reference to DOJ also includes all subordinate component law enforcement agencies, including but not limited to the Federal Bureau of Investigation ("FBI"), the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF"), the Drug Enforcement Administration ("DEA"), the Federal Bureau of Prisons ("BOP"), and the United States Marshals Services ("USMS"). The DOJ includes all 93 United States Attorney's Offices across the 94 federal districts, as well as the Executive Office of United States Attorneys. The DOJ includes the Offices of the Deputy Attorney General, the Solicitor General, and the Associate Attorney General. It further includes the Office of Legal Counsel, the Office of Legal Policy, the Office of Legislative Affairs, the Office of Public Affairs, and the Office of Tribal Justice. It includes all components, and subcomponents thereof, identified in the DOJ's current organization chart depicted at <https://www.justice.gov/agencies/chart/map>. Any reference to Department of Justice also includes any members of the Department of Government Efficiency, Special Government Employees ("SGEs"), to include SGEs or those purporting to be SGEs who are employed by or affiliated with one of Mr. Elon Musk's companies, e.g., SpaceX, or White House transition team members detailed to, embedded with, or otherwise operating in active concert or participation with the DOJ.
2. "United States of America" ("USA") means all components and members of the Executive Branch of the United States Government. Any reference to USA also includes any members of the so-called Department of Government Efficiency, Special Government Employees ("SGEs"), or White House transition team members detailed to, embedded with, or otherwise operating in active concert or participation with the USA. USA includes

the President of the United States, the White House, and all components and subcomponents thereof, and the employees therein.

3. The “Government” or the “Defendants” means both the DOJ and USA.
4. The “Complaint” means the Plaintiffs’ Complaint filed on February 4, 2024, and any subsequent Amended Complaint that was filed prior to production of Defendants’ discovery responses.
5. “Document” is used herein in the broadest sense of the term and means all records, written proof, and other tangible media of expression of whatever nature however and wherever created, produced, or stored (manually, mechanically, electronically, or otherwise), including without limitation all versions whether draft or final, all annotated or nonconforming or other copies, electronic mail (“e-mail”), instant messages (“Skype,” “Teams,” or other instant chat functions), text messages, Social Media posts, Social Media messages, wireless device messages, voicemail, calendars, date books, appointment books, diaries, books, papers, files, notes, confirmations, account statements, correspondence, memoranda, reports, records, journals, registers, analyses, plans, manuals, policies, photographs, telegrams, faxes, telexes, wires, telephone logs, telephone messages, message slips, minutes, notes or records or transcriptions of conversations or communications or meetings, tape recordings, videotapes, disks, and other electronic media, microfilm, microfiche, storage devices, press releases, contracts, agreements, notices, and summaries.
 - a. Any non-identical version of a Document constitutes a separate Document within this definition, including without limitation drafts or copies bearing any notation, edit, comment, marginalia, underscoring, highlighting, marking, or any other alteration of any kind resulting in any difference between two or more otherwise identical Documents. In the case of Documents bearing any notation or other marking made by highlighting ink, the term Document means the original version bearing the highlighting ink, which original must be produced as opposed to any copy thereof.
 - b. If any Document requested herein is withheld under a claim of privilege, for each such document withheld provide: (a) a description of the Document, i.e., whether it is a letter, memorandum, report, etc.; (b) the name(s) of the author(s); (c) the name(s) of the addressee(s) and all recipients; (d) a brief description of the subject of the document; and (e) the privilege upon which you are relying on in withholding the Document and a statement as to the reason why you contend that privilege is applicable to the particular Document.
6. “You” and “Your” mean DOJ and USA, including any and all parties, officers, agents, servants, employees, and attorneys, and any other persons (including SGEs) who are in active concert or participation with DOJ and USA.
7. The terms “and” and “or” should be read conjunctively to bring within the scope of these requests any documents which might otherwise be outside its scope.
8. The term “Communications” means Communications made by any means, including, but

not limited to, written and oral Communications, and includes those Communication methods outlined above for the term “Document.”

9. The term “Statement” means a Statement made by any means, including, but not limited to, written and oral statements.
10. The term “identify,” when used in reference to a person means to set forth the following information:
 - a. The person’s full name;
 - b. The person’s full title and position at the time of the events in question;
 - c. The person’s full present title and position;
 - d. The person’s current or last known business address(es), telephone number(s), employer, and area of responsibility.
11. The term “identify,” when used in reference to an entity that is not an individual, means to set forth the entity’s full name, current or last known address(es) and telephone number(s).
12. The term “identify,” when used in reference to an object means to set forth the type, physical description and estimated value.
13. The term “identify,” when used in reference to a Document or Communication means to set forth the following information:
 - a. The date of the Document or Communication;
 - b. A description of the type of Document;
 - c. A summary of the Document’s contents or the substance of the Communication;
 - d. The place of the Communication;
 - e. The identity of all persons present during the Communication;
 - f. The present location of the original and all existing copies of the Document;
 - g. A list of all intended recipients of the Document, including, but not limited to, all addressees and all persons who were supposed to receive a copy of the Document (i.e., through “cc” or “bcc”); and
 - h. The level of classification at the time in question, the name of the classifying official and the date on which it was classified.
14. The term “identify,” when used in reference to an event or occurrence, means to set forth the following information:
 - a. The date and place of the event or occurrence;
 - b. The identity of all persons present during the event or occurrence;
 - c. The precise nature of that event or occurrence.
15. “Relating to” or “pertaining to” means having any relationship or connection to,

concerning, being connected to, commenting on, responding to, containing, evidencing, showing, memorializing, describing, analyzing, reflecting, comprising, constituting, or otherwise establishing any reasonable, logical or causal connection.

16. The “Survey” or the “January 6 Survey” means the Survey sent to FBI personnel on or about February 2, 2025. The “Survey Results” means the data collected from the January 6 Survey and later conveyed from the FBI to DOJ. The “Survey Results” includes both the results as initially provided (i.e., denoting only Employee Identification Numbers (“EINs”)) and any subsequent versions of that data (i.e., associating employees’ names with EINs).
17. “Employee identifying data” includes the names, EINs, and any other personally identifying information of FBI employees.
18. “January 6 investigations” means any criminal investigation conducted by the Government into the facts and circumstances surrounding the attacks on the U.S. Capitol that took place on January 6, 2021.
19. The “Weaponization Executive Order” or “Weaponization EO” means the Executive Order 14147, dated January 20, 2025.
20. The “Restoring Integrity Memo” means the Memorandum for All Department [of Justice] Employees, from the Attorney General Pam Bondi, Subject: Restoring the Integrity and Credibility of the Department of Justice, dated February 5, 2025.
21. The “Terminations Memo” means the Memorandum for Acting Director, Federal Bureau of Investigation, from the Acting Deputy Attorney General, Subject: Terminations, dated January 31, 2025.
22. The “February 5, 2025 Message from the Acting Deputy Attorney General” or “February 5, 2025 Message from A/DAG” means the entirety of the email sent from the email account for the Acting Deputy Attorney General on or about February 5, 2025, subject: Follow-Up to 1/31/2025 Memo to FBI Acting Director. “Colleagues: I write with additional information regarding the memo that I sent to the FBI’s actin director on January 31, 2025” and concludes with “Thanks, Emil [] Bcc: All FBI Federal Employees.”
23. The “Acting Deputy Attorney General” or “A/DAG” means Mr. Emil Bove III. He may also be referred to as “Mr. Bove” or “A/DAG Bove.”
24. The “Department of Government Efficiency” or “DOGE” means the Department of Government Efficiency established by Executive Order 14158, dated January 20, 2025, and all members of affiliates thereof.

“Concerning” means relating to, referring to, describing, evidencing, or constituting

INTERROGATORIES (REVISED)

Unless otherwise noted, all interrogatories below relate to the time period of January 20, 2025, up through and including the date of any response:

- 1. Identify every non-DOJ person, including White House personnel and DOGE personnel, who is known to have, or had, access to the data collected pursuant to the Survey.**
- 2. Identify any additional information (meaning, beyond or in addition to the information compiled in the Survey) Defendants intend to collect about the Survey respondents which they plan to use to identify whether FBI personnel had “partisan intent” or engaged in “weaponization,” as well as how those terms are defined by Defendants.**
- 3. Identify every purpose and routine use for which the Government claims it can lawfully publicly disclose any employee data collected pursuant to the Survey.**
- 4. In both the Terminations Memo and the February 5, 2025 Message from A/DAG Bove, Mr. Bove stated that DOJ is undertaking a “process” to review the conduct of FBI personnel who participated in the January 6 investigations. Identify and describe the “process” identified by Mr. Bove and any lawful basis pursuant to which it is authorized.**

REQUESTS FOR PRODUCTION (REVISED)

Unless otherwise noted, all requests for production (“RFP”) below relate to the time period of January 20, 2025, up through and including the date of any response:

- 1. Any Document that relates to the Government’s intent for any potential future disclosure or use of the Survey.**
- 2. Any Document that relates to the Government’s Responses to any of the Interrogatories above.**

March 10, 2025

Respectfully Submitted,

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JOHN AND JANE DOES 1-9, et al.,

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DEPARTMENT OF JUSTICE,

Defendant.

Civil Action No. 25-0325 (JMC)

FEDERAL BUREAU OF INVESTIGATION
AGENTS ASSOCIATION, et al.,

Plaintiffs,

v.

DEPARTMENT OF JUSTICE, et al.,

Defendants.

Civil Action No. 25-0328 (JMC)

**EXHIBIT B: PLAINTIFFS' INDIVIDUAL JUSTIFICATONS FOR REVISED
REQUESTS FOR EXPEDITED DISCVOERY**

In accordance with the Court's Minute Order dated February 28, 2025, Plaintiffs submit the following information specific to each revised discovery request. *See* Minute Order, February 28, 2025 ("Any such motion must specifically identify, for each item of discovery sought, why Plaintiffs require that information to litigate the motions before the Court and why Plaintiffs cannot obtain that information, or respond to Defendants' legal arguments, absent discovery.").

INTERROGATORIES (REVISED)

Unless otherwise noted, all interrogatories below relate to the time period of January 20, 2025, up through and including the date of any response:

- 1. Identify every non-DOJ person, including White House personnel and DOGE personnel, who is known to have, or had, access to the data collected pursuant to the Survey.**

Discovery on this point would establish essential facts about the current disclosure status of the Survey. It would allow the Court to ascertain the Government's own knowledge of and control over this data. Confirming current access to the collected information is necessary because the Government was unable to provide basic information on this point at the February 6 hearing. The exchange between Government counsel and the Court takes on even more significance now that a key point of the discussion—whether the DOJ possessed only employee identification numbers or full names at the time of the hearing—was later shown to be inaccurate.

THE COURT: Okay. Are you in a position this [sic] confirm where this information is? It's relevant -- I mean, it was a question that will come up in the merits hearing. So it's a relevant merits question as well. What is the purpose of the survey? What is the investigation? Because they're claiming there's no legitimate purpose. So that's squarely a merits issue. So I'm going to get into all of that if we continue. So are you in a position to indicate where this information is?

GOVERNMENT COUNSEL: All I can state is there's nothing in the record to indicate that it's gone outside the DOJ. An affirmative representation, you know -- beyond what's in the record, I'm not in a position to make to the Court --

THE COURT: Well, the record includes the arguments of the parties and what comes out at the hearing. So I'm asking the government, which I think -- again, I was going to get into this anyway. The FBI provided this information to the DOJ. **My understanding is not names but identification numbers.** So my question for the government is has the DOJ disseminated further that information that was provided by the FBI in response to these surveys beyond any DOJ component or division, branch, whatever you want to call it?

GOVERNMENT COUNSEL: Yes, Your Honor. Standing here today, all I can say is that there's nothing to indicate that that has occurred in the record.

THE COURT: But has it occurred? Do you not know if it's occurred?

GOVERNMENT COUNSEL: I don't have reason to believe it has occurred but I can't make definitive representation.

THE COURT: I don't know if it's occurred is a full and complete answer. You can say "I don't know."

GOVERNMENT COUNSEL: I don't know.

THE COURT: So who -- are you able to find that out? Because it's relevant to the merits of -- if I get into the merits of the TRO, not only do I need to discuss harm, discuss the statutory and constitutional allegations, discuss the likelihood that this information will be released, but under Privacy Act I have to get into routine use. So I need to know kind of what -- where this information has gone and why. And so it's something that will come up if we continue. So I think either way we should get the answer to that question.

Draft Transcript (“Tr.”) at 38:23-40:12 (emphasis added).

Later in the hearing, Government counsel somewhat hesitantly agreed that there had been no “known” disclosures. Tr. at 96:14-97:1. Plaintiffs (and apparently, Government counsel) later learned that a different key fact discussed at the hearing—whether the names had been provided to DOJ—was incorrect. *See* ECF No. 21, ¶ 2. The DOJ, having been the initial and only recipient of the list of names sent by the FBI following A/DAG Emil Bove’s February 6 meeting with the then-acting FBI Director, is the only entity able to know with whom it has shared this information. The Plaintiffs will have no ability to determine this information until it is by definition “too late,” e.g., when an individual makes the list public.

A current, accurate update on the above topic would be informative both on the issue of imminence and on the legality of the Survey data collection. Any full-scale disclosure of the list outside of the DOJ, including to the White House, would undermine the Government’s contention that the list compilation was in support of a “review process” related to the Weaponization Executive Order directive.

2. Identify any additional information (meaning, beyond or in addition to the information compiled in the Survey) Defendants intend to collect about the Survey respondents which they plan to use to identify whether FBI personnel had “partisan intent” or engaged in “weaponization,” as well as how those terms are defined by Defendants.

Plaintiffs note they seek not only to enjoin any disclosure of the list, but also to enjoin any further constitutional violations that have ensued since its creation. *See, e.g.*, ECF 25-2 (“Proposed Order”). Basic facts about the process by which DOJ is reviewing the list is necessary for arguments on both points. How the Government defines “weaponization” and what factors it will assess as part of its review into supposed “partisan intent” will directly bear on the Plaintiffs’ First Amendment claims. The Government’s yet-to-be-revealed definitions of these terms are solely within the possession and knowledge of the Government. Its refusal to provide mundane information central to its justification for collecting the Plaintiffs’ information should create serious doubts as to the credibility of Defendants’ arguments.

For example, if the consequence for being named on the Survey is summary termination, the process by which A/DAG Bove reviews the list would be out of line with standard FBI procedure and injury both FBIAA and individual Doe plaintiffs. *See* FAC ¶¶ 17-19. Or, if DOJ’s process involves sharing the list with non-DOJ entities for insight as to whether someone listed

was “weaponized,” this again bears on the risk for disclosure. As the Court explained at the February 6 hearing, what the list is being used for is a relevant fact:

THE COURT: For the government, I have questions about the First Amendment issue, and I want to talk about Privacy Act. There was some representation at some point today about whether or not the survey or information gathered constitutes a system of records. But I also have questions about the survey, itself, including what’s it being used for. A response to the argument that nothing on the face of the survey provides any indication or information about misconduct. So I do have questions about the survey. Particularly because I’m interested in routine use potential exemption under the Privacy Act. So I want to know what the government plans to do with the information. I want to know what is being investigated, what is this review process, and more about routine use.”

Tr. at 97:23-98:10.

FBIAA, whose primary mission is to advocate for its members, and the Doe members, who risk being punished for protected speech, are equally injured by the DOJ’s apparent deviation from standard FBI processes for misconduct reviews. The injuries from this deviation contribute to Plaintiffs’ standing arguments. See ECF No. 25-9, FBIAA Decl. at ¶¶ 6-12. Cloaking the nature of the “review” in secrecy also deprives the Plaintiffs of key facts relevant to their arguments that such a review is not routine.

3. Identify every purpose and routine use for which the Government claims it can lawfully publicly disclose any employee data collected pursuant to the Survey.

Throughout their opposition to Plaintiffs’ requested relief, and as is plainly reflected in Paragraph 2 of the current Consent Order, Defendants continue to assert a perceived legal right to publicly release the names of January 6 FBI personnel. ECF No. 22, ¶¶ 1-2. The Plaintiffs maintain that there is no such legal basis to do so. This speaks to a core issue relevant to both parties’ arguments.

An answer to this interrogatory would reflect what the Court has already identified as relevant information as to confirming the purpose of the list. As the Court explained at the February 6 hearing, any purported “routine use” or “potential exemption” which might allow disclosure of the list is going to be a relevant fact. *See* Tr. at 98:2-10. Plaintiffs submit there is no lawful basis for public disclosure, and Defendants have yet to publicly identify one.

4. In both the Terminations Memo and the February 5, 2025 Message from A/DAG Bove, Mr. Bove stated that DOJ is undertaking a “process” to review the conduct of FBI personnel who participated in the January 6 investigations. Identify and describe the “process” identified by Mr. Bove and any lawful basis pursuant to which it is authorized.

As alleged in Plaintiffs' First Amended Complaint, DOJ appears to be deviating from standard procedures for establishing whether or not FBI personnel engaged in misconduct or otherwise should face adverse actions. *See* FAC ¶¶ 17-19. At the February 6 hearing, the Court directly asked about this process and whether it would involve any sort of public disclosure:

THE COURT: . . . And let me just ask you directly, in your papers you indicate that this information was collected as part of an internal review process and that it is not for public dissemination; is that correct?

Tr. at 22:17-20.

In response, Government counsel equivocated and gave an answer that did not answer the direct question from the Court about whether the process involves public dissemination, instead implying effectively that "it depends." *See* Tr. at 22:21-25:8.

Further discovery about the "process" will establish important factual questions like "where this information has gone and why." Tr. at 40:10; *see also* Tr. 98:8-1 ("I want to know what is being investigated, what is this review process, and more about routine use."). Plaintiffs have no way of ascertaining what this process is without discovery from DOJ. Based on the Terminations Memo, the Restoring Integrity Memo, and A/DAG Bove's February 5, 2025 email, it appears all traditional and lawful forms of adverse action review processes are being eschewed in favor of summary terminations and de facto determinations of "weaponization." If there has been any structured process to arrive at such consequential conclusions, it has not been shared with FBI personnel or anyone at FBIAA.

REQUESTS FOR PRODUCTION (REVISED)

Unless otherwise noted, all requests for production ("RFP") below relate to the time period of January 20, 2025, up through and including the date of any response:

1. Any Document that relates to the Government's intent for any potential future disclosure or use of the Survey.

For the reasons stated above, the Government's intent as to the Survey is central to this Court's determination of its lawfulness. Documents and communications currently within Plaintiffs' possession are limited to the following:

- The January 31, 2025 "Terminations" memo, which effectuated summary terminations based on "weaponization." The names of those being terminated were listed without any explanation or review process as to how they were determined to be "weaponized" or any process that DOJ undertook to establish such a finding. *See* ECF No. 25-5, Exhibit 3 ("Ex.") to Plaintiffs' Motion for Preliminary Injunction ("PI").
- The February 5, 2025 email from A/DAG Emil Bove, which conspicuously failed to address this lawsuit's accusations that A/DAG Bove would release the names of the

agents, and instead only referenced a never-before-implemented “review process” seeking out “partisan intent.” *See* ECF No. 25-6, Ex. 4 to Plaintiffs’ Motion for PI.

- The February 5, 2025 “Restoring Integrity Memo,” which similarly relied on vague terms like whether or not a person acted with “righteous spirit.” Like the Terminations Memo, the Restoring Integrity Memo referenced a “review process” to determine whether “weaponization” had occurred while simultaneously making summary findings—without any review process—that certain individuals had engaged in weaponization. *See* ECF No. 25-7, Ex. 5 to Plaintiffs’ Motion for PI.
- Numerous public statements of Acting U.S. Attorney Ed Martin, Attorney General Pam Bondi, DOGE leader Elon Musk, and others, that heavily imply that individuals will be targeted based on protected speech. *See, e.g.*, FAC ¶¶ 57-59, 82, 83, 89.

Defendants’ external (via individual leaders’ social media) and internal (via employee email or memo) communications have thus far indicated that Plaintiffs will be targeted specifically based on perceived partisanship, and that once targeted they should fear the “radical transparency” of that targeting.

If the Defendants are in possession of any other documents that provide any further clarity as to their intent for the Survey results, it is they alone who possess those documents. They should be ordered to produce them prior to the hearing to establish the key fact of their own intentions.

2. Any Document that relates to the Government’s Responses to any of the Interrogatories above.

In addition to the individual justifications for the Interrogatories referenced above, Plaintiffs note that provision of documents responsive to those Interrogatories may mitigate the need for deposition testimony, provided those documents are fulsome and reliable.

March 7, 2025

Respectfully Submitted,

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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[PROPOSED] ORDER

Upon review of the consolidated Plaintiffs' Motion for Expedited Discovery, Supporting Memorandum of Law Exhibit A, and Exhibit B, the Court hereby GRANTS the Plaintiffs' Motion.

Defendants are ordered to respond to Plaintiffs' discovery requests, as detailed in Exhibit A to the Plaintiffs' Motion and Memorandum, prior to the March 27, 2025 hearing.

SO ORDERED:

Dated

JIA M. COBB
United States District Judge