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20 February 2018

The Honorable Ketanji Brown Jackson
United States District Court for the District of Columbia
333 Constitution Avenue, NW
Washington, DC 20001

Re: Request for modification of your General Order for FOIA Cases

Dear Judge Jackson:

On behalf of the signatories to this letter, I write to respectfully request that you modify the order you have issued in Freedom of Information Act (“FOIA”) cases, generally entitled “General Order and Guidelines Applicable to FOIA Cases Assigned to Judge Ketanji Brown Jackson.” Specifically, we request that you remove the following item 5(a):

Batching Motions for Summary Judgment. The parties shall not file motions for summary judgment on CM/ECF until all briefing on the motion and any cross-motion is complete.

E.g., Dkt. #10 (filed Sept. 4, 2018), *BuzzFeed Inc. v. ICE*, No. 18-1501 (D.D.C.).

The undersigned persons and organizations are a representative sample of the types of people who will be harmed by the continuation of this practice. As lawyers, journalists, and transparency advocates, they all rely on timely access to court filings. One of the key benefits of the ECF/PACER system is that any person can read any unsealed document in any federal case at the same time as parties to the case, and FOIA cases are no different. Journalists and advocates report on revelations made in filings—sometimes factual revelations, and sometimes the mere fact that a party is making a particular argument—and lawyers often rely on such filings in crafting or responding to arguments in their own cases or to discover arguments or case law which were unknown to them.

The interest in prompt public access to PACER documents is so great that Congress has even debated making it free to use through the Electronic Court Records Reform Act, which the *New York Times* lauded just last week. *See Public Records Belong to the Public*, N.Y. Times (Feb. 7, 2019), available at <https://www.nytimes.com/2019/02/07/opinion/pacer-court-records.html> (last accessed Feb. 14, 2019); *see also* Tim Zubizarreta, *House members reintroduce bill to make electronic court records free to public*, Jurist (Feb. 14, 2019), available

at <https://www.jurist.org/news/2019/02/house-members-reintroduce-bill-to-make-electronic-court-records-free-to-public/> (last accessed Feb. 14, 2019). In short, at a time when public interest in court filings is only rising, an order prohibiting parties in FOIA cases from filing their papers in ECF until briefing has ended—which often takes months—is contrary to the public interest and the general move towards a transparent judiciary.

We accordingly respectfully ask that you reconsider this General Order and allow parties to file their papers in ECF in FOIA cases in the normal manner.

Sincerely,



Kel McClanahan

Signatories:¹

David W. Brown, author and freelance national security columnist

Demand Progress

Josh Gerstein, Senior Legal Affairs Contributor, *Politico*

Government Accountability Project

Government Information Watch

James Madison Project

MuckRock

National Security Counselors

Open the Government

Public Citizen

Sharon Weinberger, Global Fellow, Woodrow Wilson International Center for Scholars

¹ Individual signatories sign in their personal capacity and not as representatives of any business. Their professional affiliations are merely listed to provide background context.