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9 IMMIGRANT DEFENDERS LAW
10 CENTER

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12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 JUSTICE ACTION CENTER and
15 IMMIGRANT DEFENDERS LAW
16 CENTER,

17 Plaintiffs,

18 v.

19 U.S. DEPARTMENT OF
20 HOMELAND SECURITY,

21 U.S. IMMIGRATION AND
22 CUSTOMS ENFORCEMENT,

23 U.S. CUSTOMS AND BORDER
24 PROTECTION,

25 U.S. OFFICE OF REFUGEE
26 RESETTLEMENT,

27 U.S. DEPARTMENT OF HEALTH
28 AND HUMAN SERVICES, and

U.S. CENTERS FOR DISEASE
CONTROL AND PREVENTION,

Defendants.

CASE NO.: 2:21-cv-7592

COMPLAINT

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INTRODUCTION

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2 1. Plaintiffs Justice Action Center (“JAC”) and Immigrant Defenders Law
3 Center (“ImmDef”) (collectively, “Plaintiffs”) bring this action against Defendants
4 United States Department of Homeland Security (“DHS”), the United States
5 Immigration and Customs Enforcement (“ICE”), the United States Customs and Border
6 Protection (“CBP”), the United States Office of Refugee Resettlement (“ORR”), the
7 United States Department of Health and Human Services (“HHS”), and the United States
8 Centers for Disease Control and Prevention (“CDC”) (collectively, “Defendants”) to
9 compel compliance with the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552.

10 2. As further alleged below, Plaintiffs have sought, pursuant to FOIA requests
11 (“FOIA Requests”) information from Defendants about their policy of immediately
12 turning away asylum seekers and expelling them back to Mexico or to their home
13 countries, pursuant to 42 U.S.C. § 265, purportedly to prevent the spread of COVID-19
14 (the “Title 42 policy”). The Title 42 policy is directly relevant to Plaintiffs’ missions to
15 advance the civil and human rights of immigrants to the United States and to represent
16 clients affected by the administration’s policies and practices.

17 3. Plaintiffs seek information on Defendants’ policies and actions regarding
18 children who are apprehended at the border in the company of adults, particularly when
19 either the child or the adult states that they are related to each other. Specifically,
20 Plaintiffs seek to understand the scope and extent of the administration’s policies that
21 separate families when a child’s primary caregiver is a relative who is not a parent or
22 legal guardian. Of great concern, children who seek asylum are being separated from
23 their primary caregivers in ways that significantly impair the chance of their
24 reunification simply because the shape of their family is deemed “non-traditional.” The
25 requested information relates to an ongoing humanitarian crisis created by Defendants’
26 Title 42 policy and is of immediate interest to the public and to Plaintiffs.

27 4. Plaintiffs served their FOIA requests on Defendants on July 16, 2021.
28 Despite the clear statutory requirement that an agency respond to a FOIA request within

1 20 working days, and despite Plaintiffs' subsequent inquiries, Defendants have not
2 notified Plaintiffs whether and when they will comply with Plaintiffs' FOIA Requests
3 or produced any documents in response to Plaintiffs' FOIA Requests. Defendants have
4 not claimed that the requested information is subject to any FOIA exceptions or
5 privileges or advanced any other reason why it should not be disclosed.

6 5. Plaintiffs seek to compel Defendants to comply with their obligations under
7 FOIA and promptly produce the requested information.

8 JURISDICTION AND VENUE

9 6. This Court has jurisdiction under 28 U.S.C. § 1331 and 5 U.S.C.
10 § 552(a)(4)(B).

11 7. Because Defendants failed to comply with the requirements to respond, as
12 set forth in 5 U.S.C. § 552(a)(6)(A), Plaintiffs have constructively exhausted their
13 administrative remedies and are entitled to proceed with this judicial action pursuant to
14 5 U.S.C. § 552(a)(6)(C)(i).

15 8. Venue is proper in the Central District of California under 5 U.S.C.
16 § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

17 PARTIES

18 9. Plaintiff JAC is a 501(c)(3) nonprofit corporation incorporated under the
19 laws of California and headquartered in Los Angeles, California. JAC is dedicated to
20 advancing the civil and human rights of immigrants in the United States through a
21 combination of impact litigation, communications, and digital strategies. It provides
22 related support to select partner nonprofit organizations that have immigrant members
23 or that provide direct legal services to immigrant communities. JAC employs an
24 innovative model that advances the rights of immigrant communities by connecting
25 cutting-edge impact litigation and storytelling.

26 10. JAC has developed a multi-pronged approach to use information obtained
27 through FOIA requests to educate the public and further the aforementioned goals. First,
28 JAC uses the expertise and experience of its own staff to target members of the public

1 most affected by the information. For example, JAC advises organizations providing
2 legal services to children and families apprehended at the border and has also
3 represented such children in litigation to advocate for their statutory and constitutional
4 rights. JAC will use its own social media and website resources to publish the
5 information received through this request. Second, JAC partners with well-established
6 immigration advocacy groups to ensure dissemination to key communities, such as
7 Families Belong Together and FWD.us. Finally, JAC works with newspaper and
8 broadcast media to report on the released information. Using this multi-pronged
9 approach, JAC will educate the public with the information it obtains through this FOIA
10 request.

11 11. Plaintiff ImmDef is a 501(c)(3) nonprofit corporation incorporated under
12 the laws of California and headquartered in Los Angeles, California. Its mission is to
13 achieve universal representation for immigrants in removal proceedings. ImmDef is the
14 largest legal services provider in Southern California and serves Southern California's
15 most marginalized immigrant and refugee communities through legal education,
16 community empowerment, strategic litigation, and direct representation before USCIS,
17 the immigration courts, and the Ninth Circuit. ImmDef provides full-scale legal
18 representation, case management support, and other legal services to more than 900
19 unaccompanied children annually.

20 12. The Children's Representation Project is ImmDef's largest direct
21 representation program and ImmDef uses information obtained through the FOIA
22 process to assist in the representation of, and advocacy for, our clients and impacted
23 communities. This information is also used for purposes of education, advocacy, and
24 public outreach. The Children's Representation Project represents children who become
25 unaccompanied after Defendants' policies separate them from their relative caregivers,
26 including aunts and grandparents, at the border.

27 13. Defendants DHS and its components ICE and CBP are agencies of the
28 United States of America under 5 U.S.C. § 552(f)(1) and 5 U.S.C. § 551(1).

1 14. Defendant HHS and its components ORR and CDC are agencies of the
2 United States of America under 5 U.S.C. § 552(f)(1) and 5 U.S.C. § 551(1).

3 15. DHS and its components (USCIS and ICE) and HHS and its components
4 (ORR and CDC) are the federal agencies with possession, custody, and control of the
5 requested records and are responsible for responding to Plaintiffs' FOIA Requests.

6 **STATUTORY FRAMEWORK**

7 16. FOIA, 5 U.S.C. § 552, mandates disclosure of records held by a federal
8 agency, in response to a request for such records by a member of the public, unless
9 records fall within certain narrow statutory exemptions.

10 17. As the Supreme Court has recognized, "the basic purpose of [FOIA] is 'to
11 open agency action to the light of public scrutiny.'" *Dep't of Air Force v. Rose*, 425 U.S.
12 352, 372 (1976). Such scrutiny improves the public's understanding of governmental
13 operations and thus enables a vibrant and functioning democracy.

14 18. Accordingly, Plaintiffs submitted their FOIA Requests to DHS, ICE, CBP,
15 HHS, ORR, and CDC to educate the public on the federal government's policies and
16 actions regarding children who are apprehended at the border in the company of adults,
17 particularly when either the child or the adult states that they are related to each other.

18 **FACTUAL ALLEGATIONS**

19 **A. BACKGROUND**

20 19. Section 265 of Title 42 is a little-known provision of U.S. health law that
21 ostensibly permits the Surgeon General to suspend the entry of individuals to the United
22 States when necessary to prevent the spread of a communicable disease. Former
23 President Trump used the ongoing COVID-19 pandemic as a pretext for closing the
24 border to asylum seekers and authorizing their categorical and summary expulsion under
25 Title 42.

26 20. Under President Biden, Defendants have continued former President
27 Trump's policy of Title 42 expulsions. A federal court recently found that this policy is
28 "likely unlawful" and preliminarily enjoined the Biden administration from enforcing it

1 against certain types of families. *Huisha-Huisha et al. v. Gaynor et al.*, No. 1:21-cv-
2 00100-EGS (D.D.C. Sept. 16, 2021) Memorandum Opinion at 57. Not only is the
3 administration currently appealing this ruling in an effort to keep the Title 42 policy in
4 place, but the ruling also does not affect many of the types of families at issue in
5 Plaintiffs’ requests, because the order is limited to situations where the child is
6 accompanied by a parent or legal guardian. Defendants’ treatment of families with minor
7 children under Title 42—particularly children apprehended with a non-parental family
8 member, such as an aunt or uncle, grandparent, or adult cousin or sibling—has raised
9 serious concern among immigration and child-welfare advocates. These children are
10 being forcibly and often irreparably separated from their families merely because their
11 caregiver may be an aunt or a grandfather or older sibling rather than a parent or legal
12 guardian. In many cases this non-parental caregiver is the only caregiver the minor child
13 has.

14 21. An “unaccompanied alien child” (herein, an “unaccompanied child”) is
15 defined as a minor under 18 who has no legal immigration status in the United States
16 and no accompanying parent or legal guardian. 6 U.S.C. § 279(g)(2).

17 22. Because children apprehended with a non-parental family member are
18 legally classified as “unaccompanied children,” they have historically been separated
19 from their non-parental family member(s) upon apprehension and taken into the custody
20 of Defendant ORR. Before the adoption of the Title 42 policy (as well as the Trump
21 Administration’s Migrant Protection Protocols (“MPP”)), the non-parental family
22 member was usually taken into the custody of Defendant ICE and placed in immigration
23 proceedings, which include the opportunity to seek asylum and the possibility of being
24 released or paroled into the United States to await an immigration-court hearing.
25 Children who were separated from their non-parental family members had the
26 opportunity to be released from ORR custody to the care of a vetted U.S. sponsor, which
27 could involve reuniting with the family member from whom they had been separated.

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1 23. Under former President Trump’s Title 42 expulsion policy, all asylum
2 seekers, including both children who were not accompanied by an adult and children in
3 the company of adults, were categorically returned to Mexico or their home countries.
4 President Biden has continued this expulsion policy but has exempted unaccompanied
5 children from expulsion. As a result, children apprehended with a non-parental family
6 member, who continue to be classified as “unaccompanied children,” are still
7 involuntarily separated from their family members. And those family members, rather
8 than being taken into ICE’s custody and placed in immigration proceedings in the U.S.,
9 are still being expelled back to Mexico or their home countries, prolonging the family
10 separation.

11 24. Not only is this prolonged separation traumatic for these children and their
12 family members, it can also mean that, if such a child is eligible for release from ORR
13 custody to a sponsor in the United States, the child may not be released to the most
14 suitable sponsor because the family member who brought the child and may be the
15 child’s primary caregiver has been expelled from the country, with no ability to enter
16 the U.S. and care for the child. It can also mean that some children have no available
17 sponsor at all and can be placed in long-term foster care or deported back to their home
18 country, both of which exacerbate and prolong the child’s trauma and family separation.
19 Ultimately, this policy causes immeasurable and irreparable harm by imposing an
20 exceedingly narrow and unrealistic view of what a family looks like.

21 25. For example, Plaintiff ImmDef serves a three-year-old child from Honduras
22 who was separated from his grandfather while seeking asylum. The young boy’s
23 grandfather was expelled to Mexico while the toddler was processed as
24 “unaccompanied.” They are still separated.

25 26. These policies are still separating families today. Thousands of asylum
26 seekers, primarily from Haiti are currently living in a camp in Del Rio, Texas. On
27 information and belief, Defendants are currently applying the Title 42 policy to separate
28 thousands of Haitian unaccompanied minor children from family members, while those

1 family members are expelled to Haiti despite the unstable and unsafe conditions in that
2 country, which have been recognized by the U.S. government’s recent actions to
3 authorize Temporary Protected Status for Haitian refugees.

4 27. The information Plaintiffs seek is of tremendous public importance.
5 Plaintiffs and the public have a right to know what Defendants’ policies and practices
6 are with respect to children who are apprehended at the border in the company of adults,
7 particularly when either the child or the adult states that they are related to each other,
8 and how many children and families have been subjected to those policies and practices.
9 Plaintiffs have a right to know if Defendants’ policies cause prolonged family separation
10 simply because the size or shape of the family does not meet what Defendants prioritize
11 as the “traditional” definition of a family.

12 **B. PLAINTIFFS’ FOIA REQUESTS**

13 28. On July 16, 2021, Plaintiffs submitted the FOIA Requests to DHS, ICE,
14 CBP, HHS, ORR, and CDC, seeking ten categories (each including sub-categories) of
15 requested records. A true and correct copy of the July 16, 2021, letter setting forth
16 Plaintiffs’ FOIA Requests, is attached hereto as Exhibit A and incorporated herein by
17 reference.

18 **C. DEFENDANTS’ FAILURE TO RESPOND**

19 29. Pursuant to FOIA, within twenty business days, excluding public holidays,
20 of receipt of Plaintiffs’ FOIA Requests—that is, no later than August 13, 2021—
21 Defendants were required to “determine . . . whether to comply with such request” and
22 to “immediately notify” Plaintiffs of “such determination and the reasons therefor” and,
23 in the case of an adverse determination, Plaintiffs’ appeal rights. 5 U.S.C. §
24 552(a)(6)(A)(i). In “unusual circumstances,” an agency is allowed to take one extension
25 of time, not to exceed ten business days. 5 U.S.C. § 552(a)(6)(B)(i). Here, any such
26 extension would have expired on August 27, 2021.
27
28

1 30. On July 16, 2021, DHS acknowledged receiving Plaintiffs’ FOIA Requests
2 and assigned them Request Number 2021-HQFO-01222.

3 31. On July 16, 2021, ICE acknowledged receiving Plaintiffs’ FOIA Requests
4 and assigned them Request Number 2021-ICFO-37783.

5 32. On July 16, 2021, CBP acknowledged receiving Plaintiffs’ FOIA Requests
6 and assigned them Tracking Number CBP-2021-085029.

7 33. On July 16, 2021, HHS acknowledged receiving Plaintiffs’ FOIA Requests
8 and assigned them Case Number 2021-01442-FOIA-OS.

9 34. On July 21, 2021, Plaintiffs received a letter from CDC expressly stating
10 that the agency would not comply with its statutory obligation to respond to the FOIA
11 Requests within twenty or, at most, thirty working days. CDC stated that it would
12 “require more than thirty working days to respond” to the FOIA Requests. This letter
13 also puzzlingly stated that Plaintiffs’ fee waiver request was “granted” but also noted
14 that Plaintiffs were considered a “commercial requestor” and that the CDC “may charge
15 reduced fees instead of waiving all fees.” A true and correct copy of this letter is attached
16 as Exhibit B.

17 35. On July 28, 2021, Plaintiffs received two letters from DHS. One letter
18 notified Plaintiffs that their request for expedited treatment had been denied; the other
19 letter notified Plaintiffs that their request for a fee waiver had been “conditionally”
20 granted. In both letters, DHS purported to invoke a ten-day extension to respond to
21 Plaintiffs’ FOIA Requests pursuant to 6 C.F.R. Part 5 § 5.5(a). *See* 5 U.S.C.
22 § 552(a)(6)(B)(i) (allowing an extension of no more than ten working days). That
23 extension would have given DHS until August 27, 2021, in which to “determine . . .
24 whether to comply with such request” and to “immediately notify” Plaintiffs of “such
25 determination and the reasons therefor” and, in the case of an adverse determination,
26 Plaintiffs’ appeal rights. 5 U.S.C. § 552(a)(6)(A)(i). True and correct copies of the letters
27 from DHS are attached hereto as Exhibits C and D.

28

1 36. On August 23, 2021, Plaintiffs sent the following message by email to each
2 of the Defendants, except CBP:

3 On Friday, July 16, 2021, we delivered to you, on behalf of our
4 clients the Justice Action Center and the Immigrant Defenders Law
5 Center, requests under the Freedom of Information Act (“FOIA”), 5
6 U.S.C. sec. 552. Pursuant to Section 552 (a)(6)(A), you were required,
7 within 20 days (excluding Saturdays, Sundays, and legal public holidays)
8 after receipt of those requests, to determine whether to comply with them
9 and to immediately notify us of that determination, the reasons for it, and
10 various rights our clients have under FOIA. That deadline was Friday,
11 August 13, 2021, but we have not received any communication from you
12 with respect to any determination or the reasons for it. Please provide us
13 with the required notice within 5 business days – no later than Monday,
14 August 30, 2021. If we do not receive such notice by that date, we will
15 treat your failure as a denial of our requests and proceed accordingly.

16 37. On August 24, 2021, Plaintiffs received an email from DHS expressly
17 stating that the agency would not comply with its statutory obligation to respond to the
18 FOIA Requests within twenty or, at most, thirty working days. DHS stated that “[its]
19 general expectation is that we will be able to send you a final response within 3-4
20 months” and that “there may be additional delays.” That same day, Plaintiffs sent an
21 email to DHS, pointing out that FOIA allows an agency to extend the twenty-day period
22 specified in 5 U.S.C. § 552(a)(6)(A) for no more than ten days. On September 3, 2021,
23 Plaintiffs received an email from DHS stating that circumstances “often make it
24 impossible to respond within the law’s timeframe”—thus admitting that the agency
25 regularly violates the law—and reiterating that the agency’s “best estimate” was that it
26 would be able to respond in “three to four months.”

27 38. On August 25, 2021, Plaintiffs received an email from CDC stating that “in
28 unusual circumstances, an agency can extend the twenty-working day limit to respond
to a FOIA [request]” but failing to acknowledge that such extension must be no more
than ten working days. *See* 5 U.S.C. § 552(a)(6)(B)(i).

 39. On August 26, 2021, Plaintiffs received an email from ICE purporting to
invoke a ten-day extension to respond to Plaintiffs’ FOIA Requests pursuant to 6 C.F.R.
Part 5 § 5.5(a). *See* 5 U.S.C. § 552(a)(6)(B)(i) (allowing an extension of no more than
ten working days). That extension would have given ICE until August 27, 2021, in which

1 to “determine . . . whether to comply with such request” and to “immediately notify”
2 Plaintiffs of “such determination and the reasons therefor” and, in the case of an adverse
3 determination, Plaintiffs’ appeal rights. 5 U.S.C. § 552(a)(6)(A)(i). A true and correct
4 copy of this email is attached hereto as Exhibit E.

5 40. Other than as alleged above, Plaintiffs have received no responses to their
6 FOIA Requests. No Defendant has, within the time limits prescribed by FOIA, notified
7 Plaintiffs of the agency’s determination whether to comply with the FOIA Requests or
8 the reasons for that determination. 5 U.S.C. § 552(a)(6)(A)(i).

9 41. On information and belief, Defendants have failed to “make reasonable
10 efforts to search” for records responsive to Plaintiffs’ FOIA Requests. 5 U.S.C.
11 § 552(a)(3)(C).

12 **D. FAILURE TO PROVIDE FEE WAIVER**

13 42. In their FOIA Request, Plaintiffs sought a fee waiver of all costs incurred
14 by Defendants in answering the request because the information sought is “likely to
15 contribute significantly to public understanding of the operations or activities of the
16 government and [was] not primarily in the [Plaintiff’s] commercial interest.” 5 U.S.C.
17 § 552(a)(4)(A)(iii).

18 43. As stated in the FOIA Requests, Plaintiffs will make any information that
19 they receive as a result of the FOIA requests available to the public, including the press,
20 at no cost. The issue of family separation and how children and families are treated at
21 the border are of significant public interest in general, and the issue of how the federal
22 government treats unaccompanied children who may have been separated from adult
23 family members is of significant interest in particular.

24 44. Plaintiffs have undertaken this work in the public interest and not for any
25 private commercial interest. The primary purpose of the FOIA Requests is to obtain
26 information to further the public’s understanding of federal immigration policies and
27 practices. Access to this information is necessary for the public to meaningfully evaluate
28 the costs and consequences of federal immigration policies. Thus, the agencies must

1 waive or reduce any fees because Plaintiffs do not have a commercial interest in the
2 requested information and instead request this information to educate the public at large
3 regarding the Defendant agencies' operations and activities. *See* 5 U.S.C.
4 § 552(a)(4)(A)(iii). *See* Ex. A, at 11.

5 45. On July 19, 2021, Plaintiffs received an email from CBP stating that their
6 request for a fee waiver “has been denied.”

7 46. On July 21, 2021, Plaintiffs received a letter from CDC stating that
8 Plaintiffs' request for a waiver “is granted” but stating also that “we may charge reduced
9 fees instead of waiving all fees.” The letter further stated that Plaintiffs “are considered
10 a ‘Commercial Requester’” that would “be charged for search, review and duplication
11 fees.”

12 47. On July 28, 2021, Plaintiffs received a letter from DHS stating that the
13 agency “has determine that it will conditionally grant your request for a fee waiver” but
14 that, “[i]n the event that your fee waiver is denied,” the agency would “charge you for
15 records pursuant to DHS FOIA regulations as they apply to non-commercial requesters.”

16 48. On August 26, 2021, Plaintiffs received an email from ICE stating that that
17 agency “shall charge you for records in accordance with the DHS Interim FOIA
18 regulations as they apply to educational [*i.e.*, non-commercial] requesters.”

19 49. To date, Defendants have failed to provide Plaintiffs a fee waiver, in
20 violation of 5 U.S.C. § 552(a)(4)(A)(iii) (fees “shall” be waived if criteria are met); *see*
21 *also* 6 C.F.R. § 5.11(k)(1) (fees “shall” be waived when “[d]isclosure of the requested
22 information is in the public interest . . . and [d]isclosure of the information is not
23 primarily in the commercial interest of the requester”); 28 C.F.R. § 16.10(k)(1)
24 (“[r]equester[] may seek a waiver of fees by . . . demonstrating how disclosure of the
25 requested information is in the public interest because it is likely to contribute
26 significantly to public understanding of the operations or activities of the government
27 and is not primarily in the commercial interest of the requester”).

28

1 50. Because Defendants have failed to comply with the time limits specified in
2 5 U.S.C. § 552(a)(6) for their responses to the FOIA Requests, Defendants may not
3 assess any search fees or duplication fees to Plaintiffs. 5 U.S.C. § 552(a)(4)(A)(viii)(I).

4 **FIRST CAUSE OF ACTION**
5 **Violation Of 5 U.S.C. § 552(a)(6)(A)(ii) For**
6 **Failure To Comply With Statutory Deadlines**

7 1. Plaintiffs incorporate each of the foregoing paragraphs of this Complaint.

8 2. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i) & B(i), Defendants had twenty or,
9 at most, thirty business days from receipt of the FOIA Requests to notify Plaintiffs of
10 Defendants’ determination whether to comply with the requests and the reasons for that
11 determination.

12 3. To date, Defendants have not provided any notice to Plaintiffs of their
13 determination whether to comply with the FOIA Requests and the reasons for such
14 determination.

15 4. Defendants have failed to comply with the requirements to respond as set
16 forth in 5 U.S.C. § 552(a)(6)(A)(i)-(ii).

17 5. Because Defendants have failed to comply with the requirements to
18 respond as set forth in 5 U.S.C. § 552(a)(6)(A)(i) & B(i), Plaintiffs have constructively
19 exhausted their administrative remedies and are entitled to proceed with this judicial
20 action pursuant to 5 U.S.C. § 552(a)(6)(C)(i).

21 6. Under 5 U.S.C. § 552(a)(4)(B), when an agency “improperly with[o]ld[s]”
22 records, this Court may “enjoin the agency from withholding agency records” and “order
23 the[ir] production.”

24 7. Under 5 U.S.C. § 552(a)(4)(A)(viii)(I), because Defendants have failed to
25 comply with the time limits of 5 U.S.C. § 552(a)(6), they are barred from assessing any
26 search or duplication fees to Plaintiffs.

SECOND CAUSE OF ACTION
Violation Of 5 U.S.C. § 552(a)(3) For
Failure To Conduct An Adequate Search For Responsive Records

8. Plaintiffs incorporate each of the foregoing paragraphs of this Complaint.

9. Pursuant to FOIA, 5 U.S.C. § 552(a), Plaintiffs have a statutory right to access the requested agency records.

10. Pursuant to FOIA, 5 U.S.C. § 552(a)(3)(C), Defendants must “make reasonable efforts to search” for the information requested.

11. Upon information and belief, Defendants possess records responsive to Plaintiffs’ FOIA Request that they have failed to produce without justification.

12. Upon information and belief, Defendants’ failure to produce responsive records is a result of their failure to make reasonable efforts to search for the information requested.

13. Under 5 U.S.C. § 552(a)(4)(B), when an agency “improperly with[o]ld[s]” records, this Court may “enjoin the agency from withholding agency records” and “order the[ir] production.”

THIRD CAUSE OF ACTION
Violation Of 5 U.S.C. § 552(a)(4)(A)(iii)
For Failure To Grant Waiver of Fees

14. Plaintiffs incorporate each of the foregoing paragraphs of this Complaint.

15. Plaintiffs requested a fee waiver under 5 U.S.C. § 552(a)(4)(A)(iii) on the grounds that disclosure of the requested records is in the public interest and is “likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii).

16. Defendant CBP has denied Plaintiffs’ request for a fee waiver, and none of the other Defendants has unconditionally granted that request.

17. Defendants’ failure to grant Plaintiffs a waiver of fees associated with the production of responsive documents violates 5 U.S.C. § 552(a)(4)(A)(iii).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter a judgment for Plaintiffs and award the following relief:

A. Injunctive relief, ordering Defendants to respond to the FOIA Requests by a date or dates certain, by (a) immediately notifying Plaintiffs whether they will comply with the FOIA Requests and the reasons for their determination; (b) conducting a search using “reasonable effort[s]” “for the purpose of locating those records which are responsive” to the FOIA Requests, as required by 5 U.S.C. §§ 552(a)(3)(C)-(D); (c) demonstrating that they have conducted an adequate search; (d) producing to Plaintiffs all non-exempt records or portions of records responsive to the FOIA Requests, as well as a Vaughn index of any records or portions of records withheld due to a claim of exemption.

B. Injunctive relief, ordering Defendants to grant Plaintiffs a waiver of all fees associated with the search for and production of the requested records;

C. An award to Plaintiffs of their costs and attorney fees reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and

D. Such other and further relief as the Court may deem just and proper.

Dated: September 22, 2021

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