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13 **IN THE UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 AMERICAN CIVIL LIBERTIES
UNION OF SAN DIEGO AND
16 IMPERIAL COUNTIES, AMERICAN
CIVIL LIBERTIES UNION OF
17 SOUTHERN CALIFORNIA, ANNE
LAI, and SAMEER ASHAR,
18

19 Plaintiffs,

20 v.

21 UNITED STATES DEPARTMENT
OF HOMELAND SECURITY and
22 UNITED STATES CUSTOMS AND
BORDER PROTECTION,
23

24 Defendants.
25

Case No. 8:15-cv-00229-JLS-RNB

**DEFENDANTS' ANSWER TO
FIRST AMENDED COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF**

26 Defendants, the United States Department of Homeland Security ("DHS")
27 and United States Customs and Border Protection ("CBP"), hereby answer
28 Plaintiffs' First Amended Complaint for Declaratory and Injunctive Relief as

1 follows. Plaintiffs' inclusion of footnotes throughout the First Amended
2 Complaint does not comply with Federal Rule of Civil Procedure 10(b), requiring
3 that allegations be stated "in numbered paragraphs, each limited as far as
4 practicable to a single set of circumstances." As such, no response is required to
5 these footnotes.

6 1. This paragraph contains Plaintiffs' characterizations of this lawsuit
7 and conclusions of law, to which no response is required.

8 2. Defendants admit that, on July 3, 2014, Plaintiffs submitted a FOIA
9 request to each of DHS and CBP, copies of which are attached to the First
10 Amended Complaint as Exhibits A and B. Defendants deny any characterization
11 of the request, which speaks for itself, and respectfully refer the Court to the
12 request for a complete and accurate statement of its contents.

13 3. The first sentence of this paragraph contains Plaintiffs'
14 characterization of this lawsuit, to which no response is required. The second
15 sentence contains Plaintiffs' conclusions of law, to which no response is required.

16 4. This paragraph contains Plaintiffs' characterizations of this lawsuit, to
17 which no response is required.

18 **JURISDICTION AND VENUE**

19 5. This paragraph contains Plaintiffs' conclusions of law, to which no
20 response is required.

21 6. The first sentence of this paragraph contains Plaintiffs' conclusions of
22 law, to which no response is required. Defendants lack knowledge or information
23 sufficient to form a belief as to the truth of the allegations in the second and third
24 sentences of this paragraph.

25 7. This paragraph contains Plaintiffs' conclusions of law, to which no
26 response is required.

27 **PARTIES**

28 8. Defendants lack knowledge or information sufficient to form a belief

1 as to the truth of the allegations in this paragraph.

2 9. Defendants lack knowledge or information sufficient to form a belief
3 as to the truth of the allegations in this paragraph.

4 10. Defendants lack knowledge or information sufficient to form a belief
5 as to the truth of the allegations in this paragraph.

6 11. Defendants lack knowledge or information sufficient to form a belief
7 as to the truth of the allegations in this paragraph.

8 12. Defendants admit that DHS is a Department of the Executive Branch
9 of the United States government. The remainder of the first sentence of this
10 paragraph contains Plaintiffs' conclusion of law, to which no response is required.
11 Defendants admit the second sentence of this paragraph.

12 13. Defendants admit that CBP is a component of DHS. The remainder
13 of the first sentence of this paragraph contains Plaintiffs' conclusion of law, to
14 which no response is required. With respect to the second sentence, Defendants
15 admit that CBP is headquartered in Washington, D.C. and has various offices in
16 the United States, but otherwise deny Plaintiffs' allegations.

17 **FACTUAL BACKGROUND**

18 14. This paragraph contains Plaintiffs' characterizations of facts unrelated
19 to their legal claims—rather than facts showing that Plaintiffs are entitled to relief
20 under FOIA, as required by Federal Rule of Civil Procedure 8(a)(2)—and therefore
21 no response is required.

22 15. This paragraph contains Plaintiffs' characterizations of facts unrelated
23 to their legal claims—rather than facts showing that Plaintiffs are entitled to relief
24 under FOIA, as required by Federal Rule of Civil Procedure 8(a)(2)—and therefore
25 no response is required. To the extent a response is deemed necessary, Defendants
26 deny any characterization of the referenced documents, which speak for
27 themselves, and respectfully refer the Court to those documents for a complete and
28 accurate statement of their contents.

1 16. This paragraph contains Plaintiffs’ characterizations of facts unrelated
2 to their legal claims—rather than facts showing that Plaintiffs are entitled to relief
3 under FOIA, as required by Federal Rule of Civil Procedure 8(a)(2)—to which no
4 response is required. This paragraph further contains Plaintiffs’ conclusions of
5 law, to which no response is required.

6 17. This paragraph contains Plaintiffs’ characterizations of facts unrelated
7 to their legal claims—rather than facts showing that Plaintiffs are entitled to relief
8 under FOIA, as required by Federal Rule of Civil Procedure 8(a)(2)—and therefore
9 no response is required. To the extent a response is deemed necessary, Defendants
10 deny any characterization of the referenced press articles, which speak for
11 themselves, and respectfully refer the Court to those documents for a complete and
12 accurate statement of their contents.

13 18. This paragraph contains Plaintiffs’ characterizations of facts unrelated
14 to their legal claims—rather than facts showing that Plaintiffs are entitled to relief
15 under FOIA, as required by Federal Rule of Civil Procedure 8(a)(2)—and therefore
16 no response is required. To the extent a response is deemed necessary, Defendants
17 deny any characterization of the referenced court documents, which speak for
18 themselves, and respectfully refer the Court to those court documents for a
19 complete and accurate statement of their contents.

20 19. This paragraph contains Plaintiffs’ characterizations of facts unrelated
21 to their legal claims—rather than facts showing that Plaintiffs are entitled to relief
22 under FOIA, as required by Federal Rule of Civil Procedure 8(a)(2)—and therefore
23 no response is required. To the extent a response is deemed necessary, Defendants
24 deny any characterization of the referenced documents, which speak for
25 themselves, and respectfully refer the Court to those documents for a complete and
26 accurate statement of their contents.

27 20. Plaintiffs’ allegation that “[t]he failure of DHS and CBP to produce
28 the documents requested by Plaintiffs violates the FOIA” is Plaintiffs’ conclusion

1 of law, to which no response is required. Defendants lack knowledge or
2 information sufficient to form a belief as to the truth of the remaining allegation in
3 this paragraph.

4 **FOIA REQUEST**

5 21. Defendants admit that, on July 3, 2014, Plaintiffs submitted a FOIA
6 request to each of DHS and CBP. Defendants deny any characterization of the
7 request, which speaks for itself, and respectfully refer the Court to the request for a
8 complete and accurate statement of its contents.

9 22. Defendants admit that Plaintiffs sought expedited processing of their
10 FOIA request. Defendants respectfully refer the Court to the FOIA request and to
11 the cited statutory and regulatory provisions for a complete and accurate statement
12 of their contents.

13 23. Defendants admit that Plaintiffs sought a waiver of fees for their
14 FOIA request. Defendants respectfully refer the Court to the FOIA request and to
15 the cited statutory and regulatory provisions for a complete and accurate statement
16 of their contents.

17 24. Admitted.

18 25. Defendants admit the first and second sentences of this paragraph.
19 Defendants lack knowledge or information sufficient to form a belief as to the
20 remaining allegations of this paragraph.

21 26. Admitted.

22 **PROCESSING OF PLAINTIFFS' FOIA REQUEST**

23 27. Defendants admit this paragraph, but respectfully refer the Court to
24 the referenced email for a complete and accurate statement of its contents.

25 28. Defendants admit this paragraph, but respectfully refer the Court to
26 the referenced email for a complete and accurate statement of its contents.

27 29. Defendants admit this paragraph, but respectfully refer the Court to
28 the referenced email for a complete and accurate statement of its contents.

1 30. Defendants admit this paragraph, but respectfully refer the Court to
2 the referenced email for a complete and accurate statement of its contents.

3 31. Defendants admit this paragraph, but respectfully refer the Court to
4 the referenced email for a complete and accurate statement of its contents.

5 32. Defendants admit this paragraph, but respectfully refer the Court to
6 the referenced email and letter for a complete and accurate statement of their
7 contents.

8 33. Defendants admit this paragraph, but respectfully refer the Court to
9 the referenced email for a complete and accurate statement of its contents.

10 34. Defendants admit this paragraph, but respectfully refer the Court to
11 the referenced email for a complete and accurate statement of its contents.

12 35. Admitted.

13 36. Defendants admit the first sentence of this paragraph. Defendants
14 lack knowledge or information sufficient to form a belief as to the truth of the
15 allegations in the second sentence of this paragraph.

16 37. Defendants admit that they have not sent to Plaintiffs any other
17 correspondence on the substance of their FOIA request or released to Plaintiffs any
18 documents responsive to their FOIA request. Defendants lack knowledge or
19 information sufficient to form a belief as to the truth of the remaining allegations
20 of this paragraph.

21 38. Defendants admit that they have not responded to Plaintiffs' FOIA
22 request with a response or determination on whether they would withhold or
23 disclose any or all of the requested documents in whole or in part. The remainder
24 of this paragraph contains Plaintiff's legal conclusions to which no response is
25 required.

26 39. Defendants admit that they have not released to Plaintiffs any of the
27 requested records or explained to Plaintiffs why the requested records were not
28 released. Defendants otherwise deny the allegations of this paragraph.

1 **CLAIMS FOR RELIEF**

2 40. Defendants restate and incorporate, as though fully set forth herein,
3 their responses contained in the above paragraphs.

4 41. This paragraph contains Plaintiffs' conclusions of law, to which no
5 response is required. To the extent a response is deemed necessary, Plaintiffs deny
6 the allegations of this paragraph.

7 42. This paragraph contains Plaintiffs' conclusions of law, to which no
8 response is required. To the extent a response is deemed necessary, Plaintiffs deny
9 the allegations of this paragraph.

10 43. This paragraph contains Plaintiffs' conclusions of law, to which no
11 response is required. To the extent a response is deemed necessary, Plaintiffs deny
12 the allegations of this paragraph.

13 44. This paragraph contains Plaintiffs' conclusions of law, to which no
14 response is required. To the extent a response is deemed necessary, Plaintiffs deny
15 the allegations of this paragraph.

16 **REQUESTED RELIEF**

17 The remaining paragraphs of the First Amended Complaint set forth
18 Plaintiff's prayer for relief, to which no response is required. To the extent a
19 response is deemed required, Defendants deny that Plaintiffs are entitled to any
20 relief.

21 Each and every allegation of the First Amended Complaint not heretofore
22 expressly admitted or denied is hereby denied.

23 **DEFENSES**

24 1. Plaintiffs' claims are barred by their failure to exhaust administrative
25 remedies.

26 2. Defendants' actions did not violate the Freedom of Information Act or
27 any other applicable law.

28 3. Plaintiffs are not entitled to compel production of records protected

1 from disclosure by one or more exemptions to the Freedom of Information Act.

2 **CONCLUSION**

3 WHEREFORE, having fully answered, Defendants respectfully request that
4 the Court enter judgment dismissing this action with prejudice and awarding
5 Defendants costs and such other relief as the Court may deem appropriate.

6
7 DATED: April 13, 2015

Respectfully submitted,

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9 Acting Assistant Attorney General

10 MARCIA BERMAN
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12 U.S. Department of Justice
13 Civil Division, Federal Programs Branch

14 /s/ Arjun Garg
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CERTIFICATE OF SERVICE

I hereby certify that on April 13, 2015, I electronically filed the foregoing Answer using the Court's CM/ECF System, which will send notice of this filing to all parties.

/s/ Arjun Garg
ARJUN GARG