

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

AMERICAN IMMIGRATION COUNCIL
1331 G Street, N.W., Suite 200
Washington, DC 20005-3141

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY
Office of General Counsel
United States Department of Homeland Security
Washington, DC 20528

and

UNITED STATES CUSTOMS AND BORDER
PROTECTION
Office of the Chief Counsel
1300 Pennsylvania Avenue, N.W.
Washington, DC 20229

Defendants.

Civil Action No.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Introduction

1. This Action seeks to compel the United States Customs and Border Protection (“CBP”), a component of the United States Department of Homeland Security (“DHS”), to disclose records the Plaintiff American Immigration Council (“Immigration Council”) requested under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, relating to CBP’s complaint process and actions taken in response to complaints made to CBP concerning its agents and officers since January 1, 2012. The Immigration Council seeks declaratory, injunctive, and other appropriate relief in view of Defendants’ unlawful withholding of these documents.

2. CBP is the largest law enforcement agency in the United States, with the United States Border Patrol (“USBP”), a division of CBP, employing more than 20,000 agents in fiscal year 2015.¹ Over the years, there have been numerous reports of abuse or misconduct by USBP agents,² but CBP historically has not been held accountable for the misconduct of its agents and has often tried to shield such misconduct from public scrutiny.³

3. Pursuant to an earlier FOIA request, the Immigration Council obtained data from CBP concerning 809 complaints of abuse lodged against USBP agents between January 2009 and January 2012. The Immigration Council published an analysis of the data obtained from that previous FOIA request in a May 2014 report entitled *No Action Taken: Lack of CBP Accountability in Responding to Complaints of Abuse*.⁴ The data analysis revealed that the recorded outcome in 97% of the cases CBP claimed to have resolved was “No Action.” The data further showed that “physical abuse” by USBP agents was the most prevalent reason given for filing a complaint (cited in 40% of the complaints), with “excessive use of force” running a close second (referenced in 38%). Overall, the data led the authors of the *No Action Taken* report to conclude that the high incidence of complaints, and the near-absence of corrective action, were

¹ See United States Border Patrol, Border Patrol Agent Staffing by Fiscal Year, <https://www.cbp.gov/sites/default/files/documents/BP%20Staffing%20FY1992-FY2015.pdf>.

² See, e.g., No More Deaths, *Culture of Cruelty: Abuse and Impunity In Short-Term U.S. Border Patrol Custody*, (2011), available at <http://forms.nomoredeaths.org/wp-content/uploads/2014/10/CultureOfCruelty-full.compressed.pdf>.

³ See, e.g., Garrett M. Graff, *The Green Monster: How the Border Patrol Became America's Most Out-of-Control Law Enforcement Agency*, Politico (Nov./Dec. 2014), available at <http://www.politico.com/magazine/story/2014/10/border-patrol-the-greenmonster-112220.html#.VW4iv2ktGUI> (DHS oversight agencies have been criticized for failing to investigate civil rights complaints, which they classify as lower priority, “non-mission-compromising corruption.”); Andrew Becker, *Border Agency's Former Watchdog Says Officials Impeded His Efforts*, Wash. Post (Aug. 16, 2014), <http://www.washingtonpost.com/politics/border-agencys-former-watchdog-says-officials-impeded-his-efforts/2014/08/16/ce143288-2304-11e4-8593-da634b334390-story.html> (former head of CBP Internal Affairs describing CBP as an agency “rife with coverups and corruption” where officials have “distorted facts to try to hide any missteps”).

⁴ Daniel E. Martinez, Guillermo Cantor, Walter A. Ewing, *No Action Taken: Lack of CBP Accountability in Responding to Complaints of Abuse*. American Immigration Council Special Report, May 2014, available at http://www.americanimmigrationcouncil.org/sites/default/files/No%20Action%20Taken_Final.pdf.

systemic byproducts of CBP's lack of transparency and accountability, exacerbated by a confusing and ineffective system for processing complaints.

4. In keeping with FOIA's aim of facilitating increased public awareness of government operations, the Immigration Council published the *No Action Taken* report, which received widespread media attention. The Immigration Council's analysis of the data covering complaints against USBP agents between 2009 and 2012 has been cited as "a blueprint for action" to enhance transparency and accountability in CBP, including by creating uniform and reliable procedures for processing complaints, thereby ensuring that abuses are swiftly investigated and dealt with appropriately.⁵

5. Seeking to measure any progress made since January 2012, the Immigration Council delivered a follow-up FOIA request to CBP on October 2, 2015 ("2015 FOIA Request"), asking for documentation concerning complaints made against CBP agents and officers since January 1, 2012, as well as the process CBP has used to investigate and resolve the complaints filed within that timeframe. A copy of the 2015 FOIA Request is appended hereto as **Exhibit A**.

6. Although more than eight months have passed since CBP received the Immigration Council's 2015 FOIA Request, CBP has not provided any responsive documents, notwithstanding the Immigration Council's filing of an administrative appeal. CBP's failure to produce the requested records violates FOIA and is impeding the Immigration Council's efforts to assess and inform the public about CBP's progress, or lack thereof, in developing meaningful and transparent procedures for investigating and resolving complaints of abuse by USBP agents.

⁵ Editorial, *Impunity and the Border Patrol*, N.Y. TIMES, May 12, 2014, at A22, available at http://www.nytimes.com/2014/05/12/opinion/impunity-and-the-border-patrol.html?_r=0.

Jurisdiction and Venue

7. This Court has subject matter jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

8. Venue properly rests with this Court pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e)(1)(C) because Plaintiff's principal place of business is in the District of Columbia.

9. The Plaintiff has exhausted any and all administrative remedies in connection with the 2015 FOIA Request.

The Parties

10. The Immigration Council is a tax-exempt, not-for-profit educational and charitable organization under § 501(c)(3) of the Internal Revenue Code.

11. The Immigration Council's principal place of business is at 1331 G Street, N.W., Suite 200, Washington, DC 20005.

12. Founded in 1987, the Immigration Council was established to increase public understanding of immigration law and policy, advocate for the fair and just administration of our immigration laws, protect the legal rights of noncitizens, and educate the public about the enduring contributions of America's immigrants.

13. The Immigration Council's policy department researches issues related to immigration, and regularly provides information to leaders on Capitol Hill, the media, and the general public.

14. The Immigration Council's legal department works with other immigrants' rights organizations and immigration attorneys across the United States to advance the fair administration of our immigration laws, including those relating to the removal process.

15. Defendant DHS is a department of the executive branch of the United States government and is an agency within the meaning of 5 U.S.C. § 552(f).

16. DHS is responsible for enforcing federal immigration laws.

17. Upon information and belief, DHS has possession and control over the records sought by the Immigration Council in the 2015 FOIA Request.

18. Defendant CBP is a branch of DHS and is likewise an agency within the meaning of 5 U.S.C. § 552(f).

19. Among other duties, CBP is responsible for enforcing immigration laws at the borders and other ports of entry to the United States.

20. CBP inspects individuals seeking entry into the United States, including U.S. citizens, lawful permanent residents, nonimmigrants, and asylum seekers.

21. CBP has authority to admit or exclude individuals, issue “expedited removal” orders, make arrests, and detain noncitizens.

22. CBP also facilitates “voluntary returns” whereby noncitizens in the United States give up their right to contest removal and are immediately returned to their home countries.

23. Upon information and belief, CBP has possession of and control over records requested by Plaintiff.

The Immigration Council’s 2015 FOIA Request

24. On October 2, 2015, the Immigration Council submitted its 2015 FOIA Request to CBP, seeking three categories of records:

1. Records concerning each incident of alleged misconduct referenced in complaints filed with CBP since January 1, 2012. More specifically, the Immigration Council sought production of records containing information relating to 15 particular categories of information concerning each complaint (e.g., date of alleged

misconduct, age and gender of the complainant, summary of allegations),⁶ and asked that data responsive to those categories be produced in a workable format, such as an Excel spreadsheet.

2. Records that explain CBP's process for handling complaints, including protocols for receiving, reviewing, responding to, investigating, referring, and resolving complaints, and the identification of all departments or components involved in the receipt or handling of complaints and the specific responsibilities of each such department or component.

3. Records used by CBP to inform the public, including individuals apprehended or detained by CBP, about the process of filing a complaint against CBP or its personnel.

CBP's Failure to Respond as Required

25. On October 2, 2015, CBP sent the Immigration Council an email acknowledging receipt of the Immigration Council's 2015 FOIA Request. (A copy of CBP's October 2, 2015 email is appended hereto as **Exhibit B**).

26. On October 21, 2015, CBP sent the Immigration Council another email, to which CBP attached a "PDF" of a letter, also dated October 21, 2015. (A copy of the text of CBP's email dated October 21, 2015 is appended hereto as **Exhibit C** and a copy of the letter attached as a PDF to that email is appended hereto as **Exhibit D**).

27. The letter attached to CBP's October 21, 2015 email confirmed that the Immigration Council's "FOIA request has been received by CBP and will be processed in the order it was received."

28. The letter attached to CBP's October 21, 2015 email further advised that the Immigration Council would "be notified electronically" by CBP's FOIA Division when "records

⁶ In full, the 2015 FOIA Request sought the following with respect to each incident referenced in a complaint: case number; date the alleged misconduct took place; date the complaint was received; complainant's age or date of birth; complainant's nationality or country of birth; complainant's gender; complainant's primary language; position title of the agent against whom the complaint was made; subject office (or border sector); primary field description code; allegation summary; charge description; decision action; decision date; and the department or component that investigated the complaint.

are available to view,” but cautioned that CBP “has a significant backlog of FOIA requests,” so the “expected response time” might be as long as “9 – 12 months.”

29. The text of the email CBP sent on October 21, 2015, likewise stated that the Immigration Council’s “FOIA request has been received by CBP and will be processed in the order it was received.” (See **Exhibit C**).

30. Unlike the letter attached as a PDF, however, the text of CBP’s email sent on October 21, 2015 purported to provide a “partial response” to the Immigration Council’s request for records used by CBP to inform “the public about the process of filing a complaint against CBP.”

31. CBP’s email sent on October 21, 2015 referenced and attached a Microsoft Word file (a printout of which is appended hereto as **Exhibit E**) that displayed a “list of links” to five webpages. The text of the email explained that the “the first four links” – all to webpages on CBP’s own website, www.cbp.gov – were obtained by CBP using Google’s search engine “with the search terms ‘file complaint with CBP.’” CBP’s email sent on October 21, 2015 explained that the “final link” reflected search results obtained by CBP when using the search function on CBP’s own website and searching simply for the term “complaint.”

32. Following the Immigration Council’s receipt of CBP’s email dated October 21, 2015, CBP has provided no further response to the Immigration Council’s 2015 FOIA Request.

The Immigration Council’s Administrative Appeal

33. On January 6, 2016, the Immigration Council filed an administrative appeal based on CBP’s failure to respond to the 2015 FOIA Request within the statutory time frame. (A copy of the January 6, 2016 filing is appended hereto as **Exhibit F**).

34. CBP responded to the Immigration Council’s appeal in a letter dated January 14,

2016, signed by Shari Suzuki, as Chief of the FOIA Appeals, Policy and Litigation Branch. (A copy of the January 14, 2016 letter is appended hereto as **Exhibit G**).

35. CBP's January 14, 2016 letter agreed that CBP's "FOIA division ha[d] not yet processed" the Immigration Council's 2015 FOIA Request.

36. The appeals branch of CBP remanded the request to CBP's FOIA Division for processing, with instructions that, within 20 days after the date of Ms. Suzuki's letter (*i.e.*, by February 3, 2016), the FOIA Division provide the Immigration Council with an estimate of the time it would take for CBP to process the Immigration Council's request.

37. Ms. Suzuki's letter of January 14, 2016, also advised the Immigration Council that it "may immediately challenge FOIA Division's failure to respond to your request in district court."

38. The Immigration Council has received no communication from CBP in the four months since the January 14, 2016 letter from CBP.

39. The Immigration Council has exhausted its administrative remedies in connection with its 2015 FOIA Request.

40. Defendants have failed to make reasonable efforts to search for responsive records.

41. Defendants have violated the applicable statutory time limit for the processing of FOIA requests.

Plaintiff's Entitlement to a Waiver of Processing Fees

42. In its 2015 FOIA Request, the Immigration Council asked that CBP waive all fees associated with responding to the request because disclosure of the requested records 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 requestor.” 5 U.S.C. § 552(a)(4)(A)(iii).

43. On October 20, 2015, CBP sent the Immigration Council an email stating that the Immigration Council’s request for a fee waiver “has been determined to be not applicable as the request is not billable.” (A copy of this email is attached as **Exhibit H**).

44. The Immigration Council assumes that this October 20, 2015, email means that CBP will *not* seek to collect from the Immigration Council any fees associated with responding to the 2015 FOIA Request.

45. Should the Immigration Council’s interpretation of CBP’s October 20, 2015 email be mistaken, and CBP in fact intends to bill the Immigration Council for fees associated with responding to the 2015 FOIA Request, the Immigration Council asks the Court to determine that the Immigration Council is entitled to the fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), based on the following facts, all of which were referenced in the Immigration Council’s 2015 FOIA Request:

a. As the Immigration Council explained in its FOIA request, the disclosure of the information sought through its 2015 FOIA Request is in the public interest because the disclosed records stand to inform the general public regarding complaints of misconduct by CBP agents, and any progress (or lack thereof) CBP may have made in processing such complaints in order to achieve greater transparency and accountability.

b. Historically, the Immigration Council has synthesized and widely disseminated information received in response to FOIA requests, including prior requests to CBP concerning discipline of officers, to facilitate the sharing of this information with a broad public audience. The Immigration Council has the capacity to do the same in this instance should the information ultimately produced by CBP appear to be in the public interest.

c. The Immigration Council does not seek the requested information for commercial gain, but rather for the purpose of educating immigration attorneys, noncitizens, and other interested members of the public.

FIRST CAUSE OF ACTION

**Violation of Freedom of Information Act
for Failure to Respond within the Time Required**

46. The Immigration Council repeats, alleges and incorporates the allegations in ¶¶ 1-45, above, as if fully set forth herein.

47. Within 20 days after receiving the 2015 FOIA Request (excluding Saturdays, Sundays, and legal public holidays), CBP was under 5 U.S.C. § 552(a)(6)(A)(i) to determine whether to comply with the request and to notify the Immigration Council of its determination and the reasons therefor and of its rights to appeal any adverse determination.

48. None of the communications that the Immigration Council received from CBP in October 2015 (as outlined in ¶¶ 25-32, above) contained the notification required by 5 U.S.C. § 552(a)(6)(A)(i).

49. CBP has not subsequently provided the requisite notification to the Immigration Council as required by 5 U.S.C. § 552(a)(6)(A)(i).

50. CBP has likewise failed to comply with the January 14, 2016 instruction of the Chief of the FOIA Appeals, Policy and Litigation Branch of CBP that the Immigration Council be provided within 20 days an estimate of the time it will take CBP's FOIA Division to process the Immigration Council's request.

51. Defendants' failure to respond within the statutory time limit violated 5 U.S.C. § 552(a)(6)(A), as well as the regulations promulgated thereunder.

SECOND CAUSE OF ACTION

**Violation of Freedom of Information Act for Failure to Conduct
a Reasonable Search and to Disclose Responsive Records**

52. The Immigration Council repeats, alleges and incorporates the allegations in ¶¶ 1-51, above, as if fully set forth herein.

53. Defendants were obligated under 5 U.S.C. § 552(a)(3) to conduct a reasonable search for records responsive to the Immigration Council's 2015 FOIA Request, and to promptly produce them to the Immigration Council, including in the format requested by the Immigration Council if they are readily reproducible in that format.

54. CBP has not conducted a reasonable search for records responsive to the 2015 FOIA Request.

55. CBP has not produced any records responsive to the 2015 FOIA Request.

56. CBP has not produced any responsive records in the format requested by the Immigration Council.

57. The Immigration Council has a legal right to obtain the records requested in the 2015 FOIA Request, and no legal basis exists for Defendants' failure to search for and disclose them.

58. Defendants' failure to conduct a reasonable search for and to produce records responsive to the Immigration Council's request violates 5 U.S.C. §§ 552(a)(3), as well as the regulations promulgated thereunder.

THIRD CAUSE OF ACTION

**Violation of the Freedom of Information Act for
Failure to Grant Plaintiff's Public Interest Fee Waiver Request**

59. The Immigration Council repeats, alleges and incorporates the allegations in ¶¶ 1-58, above, as if fully set forth herein.

60. Based on the facts outlined in ¶¶ 45(a)-45(c), above, the Immigration Council was entitled to a waiver of fees associated with responding to the 2015 FOIA Request pursuant to 5 U.S.C. § 552(a)(4)(A)(iii).

61. Pursuant to 5 U.S.C. § 552(a)(4)(A)(viii), the Immigration Council is independently entitled to a waiver of fees associated with searching for records responsive to the 2015 FOIA Request because (a) Defendants failed to respond to the 2015 FOIA Request within the statutory time limit, and (b) no unusual or exceptional circumstances (as defined in 5 U.S.C. § 552(a)(6)(B) and (C)) excuse Defendants' delay in responding.

62. Any denial of the Immigration Council's request for a fee waiver violates 5 U.S.C. §§ 552(a)(4)(A)(iii) and (viii) and the regulations promulgated thereunder.

PRAYER FOR RELIEF

WHEREFORE, the Immigration Council requests that judgment be entered in its favor and against Defendants, and that the Court:

(a) Declare that Defendants' failure to respond to the Immigration Council's 2015 FOIA Request within the statutory time limit, their failure to search for records responsive to the Immigration Council's request, and their failure to disclose such responsive records violate FOIA;

(b) Order Defendants and any of Defendants' departments, components, other organizational structures, agents, or other persons acting by, through, for, or on behalf of Defendants to conduct a prompt, reasonable search for records responsive to the Immigration Council's 2015 FOIA Request;

(c) Enjoin Defendants and any of Defendants' departments, components, other organizational structures, agents, or other persons acting by, through, for, or on behalf of either

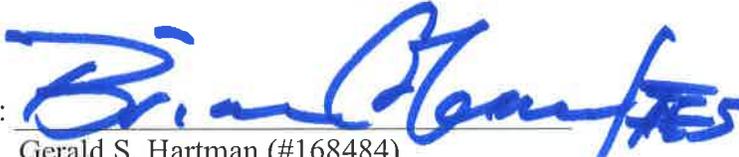
Defendant from withholding records responsive to the Immigration Council's 2015 FOIA Request and order Defendants to promptly produce the same;

(d) Order Defendants to waive the fees associated with the Immigration Council's 2015 FOIA Request;

(e) Award the Immigration Council its reasonable attorneys' fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E) and 28 U.S.C. § 2412; and

(f) Grant all other such relief to the Immigration Council as the Court deems just and equitable.

Dated: June 6, 2016

By: 

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Attorneys for Plaintiff AMERICAN
IMMIGRATION COUNCIL



October 2, 2015

VIA ELECTRONIC MAIL

U.S. Customs and Border Protection
FOIA Division
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CBPFOIA@cbp.dhs.gov

Also filed through FOIA Online Portal,

<https://foiaonline.regulations.gov/foia/action/public/request/publicPreCreate>

Re: Freedom of Information Act (FOIA) Request

Dear FOIA Officer:

The American Immigration Council (“Immigration Council”) submits this letter as a request for information under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, *et seq.* In addition, we ask for a fee waiver.

Request for Information

The Immigration Council seeks disclosure of the below specified records¹ that were prepared, received, transmitted, collected and/or maintained by the U.S. Department of Homeland Security (DHS) and/or U.S. Customs and Border Protection (CBP)² regarding CBP’s complaint process and the actions taken by CBP in response to complaints against its agents and officers. The Immigration Council has obtained similar records in the past. *See* File Numbers 2011F13090.

¹ The term “records” as used herein includes all records or communications preserved in electronic or written form, including but not limited to correspondence, regulations, directives, documents, data, videotapes, audiotapes, e-mails, faxes, files, guidance, guidelines, standards, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, manuals, technical specifications, training materials or studies, including records kept in written form, or electronic format on computers and/or other electronic storage devices, electronic communications and/or videotapes, as well as any reproductions thereof that differ in any way from any other reproduction, such as copies containing marginal notations.

² The term “CBP” as used herein means CBP headquarters offices, including any divisions, subdivisions or sections therein; CBP field operations offices, including any U.S. Border Patrol or other sectors, sub-sectors, stations, substations, forward operating bases, divisions, subdivisions or sections therein; CBP offices at ports of entry, including any divisions, subdivisions or sections therein; and/or any other CBP organizational structures.

Requesters seek:

(1) A spreadsheet containing data reflecting the following for each individual incident referenced in a complaint filed with CBP's Office of Internal Affairs between January 1, 2012 and the date that an adequate search in response to this request is completed:

- a) Case number
- b) The date the alleged misconduct took place
- c) The date the complaint was received
- d) The complainant's age or date of birth
- e) The complainant's nationality or country of birth
- f) The complainant's gender
- g) The complainant's primary language
- h) Position title of the agent against whom the complaint was made
- i) Subject office (or border sector)
- j) Primary field description code
- k) Allegation summary
- l) Charge description
- m) Decision action
- n) Decision date
- o) The department or component which investigated each complaint

The Immigration Council seeks this data in a workable format, such as Excel but also seeks all records, as defined above, which respond to this request.

(2) Any records that explain the complaint process including protocols for receiving, reviewing, responding to, investigating, referring, and resolving complaints, including but not limited to the responsibility of all departments or components involved in the receipt or handling of complaints.

(3) Any records used by any CBP component or department that in any way provides information to the public, including but not limited to individuals apprehended and/or detained by CBP, about the process of filing a complaint against CBP, its components, or its agents or officers.

Request for Waiver of Fees

We ask that the agency waive all fees associated with this FOIA request. Such a waiver is warranted because disclosure of the information 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); *see also* 6 C.F.R. § 5.11(k) (records furnished without charge or at a reduced rate if the information is in the public interest, and disclosure is not in commercial interest of institution). In addition, the Immigration Council has the ability to widely disseminate the requested information. *See Judicial Watch v. Rossotti*, 326 F.3d 1309 (D.C. Cir. 2003) (finding a fee waiver appropriate when the requester explained, in detailed and non-conclusory terms, how and to whom it would disseminate the information it received).

A. Disclosure of the Information Is in the Public Interest

Disclosure of the requested information will contribute significantly to public understanding of CBP, its complaint process, and the disciplinary and other actions taken as a result of complaints lodged against the agency. Such information is of great public interest. Over at least the last decade there have been a large number of allegations of abuse and misconduct by CBP officers, including Border Patrol agents; a high incidence of the use of deadly force; and a widespread perception that the agency's is insufficiently transparent and accountable.³ Reports about the lack of discipline of border agents have created concerns about current policies and practices.⁴

³ *See, e.g.,* Bob Ortega, *CBP: No Action Taken Against Border Agents in Deadly-Force Cases*, The Arizona Republic (Jun. 8, 2015), <http://goo.gl/Jq8gBy>; Charles Davis, *U.S. Customs and Border Protection Has Killed Nearly 50 People in 10 Years. Most Were Unarmed.*, The New Republic (Jan. 4, 2015), <http://goo.gl/fBuLc8>; Joesph Tanfani, *Border Agents Rarely Disciplined in Shooting Cases, Official Says*, Los Angeles Times (Sept. 12, 2014), <http://goo.gl/KSAMz7>; Bob Ortega, *Border Killings, 46 people Killed, No Agents Disciplined*, The Arizona Republic (Sept. 14, 2014), <http://goo.gl/y3aFvj>; American Civil Liberties Union San Diego & Imperial Counties, American Immigration Council, National Immigration Project, Northwest Immigrant Rights Project, *Hold CBP Accountable Stopping U.S. Customs and Border Protection (CBP) Abuse*, <http://holdcbpaccountable.org/>.

⁴ *See, e.g.,* CBP Integrity Advisory Panel, *Interim Report of the CBP Integrity Advisory Panel*, Homeland Security Advisory Panel (June 29, 2015), <http://goo.gl/KpgRHS>; American Immigration Council, *No Action Taken: Lack of CBP Accountability in Responding to Complaints of Abuse*, (May 2014), <http://goo.gl/I9280u>; Bob Ortega, *Secrecy Continues to Shroud Killings by Border Agents*, The Arizona Republic (Sept. 14, 2014), <http://goo.gl/3nRBja>; Garrett Graf, *The Green Monster How Border Patrol Became America's Most Out of Control Law Enforcement Agency*, Politico Magazine (October 29, 2014), <http://goo.gl/Spw72R>.

These incidents and concerns have prompted lawsuits and legislation.⁵ Though CBP use-of-force incidents have garnered increasing attention, much remains unknown about CBP's complaint process and disciplinary practices.

As discussed below, the Immigration Council has the capacity, intent and demonstrated ability to disseminate the requested information to a broad cross-section of the public, including the segment of the public most interested in and concerned about these immigration issues.

The Immigration Council is a non-profit organization established to increase public understanding of immigration law and policy, advocate for the fair and just administration of our immigration laws, protect the legal rights of noncitizens, and educate the public about the enduring contributions of America's immigrants. Our policy department researches issues related to immigration, and regularly provides information to leaders on Capitol Hill, the media, and the general public. Our legal department works with other immigrants' rights organizations and immigration attorneys across the United States to advance the fair administration of our immigration laws, including those relating to the removal process. The Council has synthesized and disseminated information from prior FOIA requests—including a prior request regarding discipline of officers⁶—to facilitate the sharing of this information with a broad public audience.⁷

The Immigration Council will analyze and post the information obtained through this FOIA request on its publicly accessible websites. The Immigration Council's website has received 2.6 million page views so far this year. If the responsive information is voluminous, the Immigration Council also will publish a summary analysis of such information and will disseminate that summary through its established networks. Finally, the Immigration Council has regular contact with national print and news media and plans to share information gleaned from FOIA disclosures with interested media.

B. Disclosure of the Information Is Not Primarily in the Commercial Interest of the Immigration Council

⁵ See e.g., American Civil Liberties Union San Diego & Imperial Counties, American Immigration Council, National Immigration Project, Northwest Immigrant Rights Project, *Hold CBP Accountable Stopping U.S. Customs and Border Protection (CBP) Abuse*, <http://holdcbpaccountable.org/>; H.R. REP. NO. 113-481, at 42 (2015). United States Customs and Border Protection Authorization Act, H.R. 878, 114th Cong. § 2(a) (2014); Border Enforcement Accountability, Oversight, and Community Engagement Act of 2014, H.R. 4303, 113th Cong. (2014).

⁶ American Immigration Council, *No Action Taken: Lack of CBP Accountability in Responding to Complaints of Abuse*, (May 2014), <http://goo.gl/I9280u>.

⁷ See also American Immigration Council, Fact Sheet, CBP Restrictions on Access to Counsel, available at <http://legalactioncenter.org/sites/default/Final%20CBP%20access%20to%20counsel%20FOIA%20factsheet%20%282%29.pdf>.

The Immigration Council is a not-for-profit organization. We seek the requested information for the purpose of disseminating it to members of the public who have access to our public website and other free publications, and not for the purpose of commercial gain.

* * *

Thank you for your prompt attention to this request. If you have any questions, please do not hesitate to contact us by telephone or email.

Sincerely,

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gcantor@immcouncil.org

On behalf of the American Immigration Council
1331 G Street NW, Suite 200
Washington, DC 20005

From: Melissa Crow <MCrow@immcouncil.org>
Sent: Tuesday, May 31, 2016 9:27 PM
To: Mary Kenney
Subject: FW: FOIA Request CBP-2016-000254 Submitted

Melissa Crow, Legal Director
American Immigration Council
(202) 507-7523

From: CBPFOIA@cbp.dhs.gov [<mailto:CBPFOIA@cbp.dhs.gov>]
Sent: Friday, October 02, 2015 12:12 PM
To: Melissa Crow
Subject: FOIA Request CBP-2016-000254 Submitted

This message is to confirm your request submission to the FOIAonline application: [View Request](#). Request information is as follows:

- Tracking Number: CBP-2016-000254
- Requester Name: Melissa Crow
- Date Submitted: 10/02/2015
- Request Status: Submitted
- Description: Please see attached supporting file, "FOIA Follow up to No Action Taken"

From: Melissa Crow <MCrow@immcouncil.org>
Sent: Wednesday, October 21, 2015 10:30 AM
To: Mary Kenney
Cc: Catalina Restrepo; Beth Werlin
Subject: FW: CBP-IA-2016-000254 - Status letter
Attachments: CBP-IA-2016-000254 - Status letter.pdf; CBP-2016-000254 list of links.docx

Follow Up Flag: Follow up
Flag Status: Flagged

Melissa Crow, Legal Director
American Immigration Council
(202) 507-7523

From: CBPFOIA@cbp.dhs.gov [<mailto:CBPFOIA@cbp.dhs.gov>]
Sent: Wednesday, October 21, 2015 10:09 AM
To: Melissa Crow
Subject: CBP-IA-2016-000254 - Status letter

10/21/2015

Melissa Crow

1331 G Street NW Suite 200 Washington DC 20005

Dear Melissa Crow

This letter is to confirm that your FOIA request has been received by CBP and will be processed in the order it was received.

In partial response to your request for records used by any CBP component or department that in any way provides information to the public about the process of filing a complaint against CBP we have attached a list of links. The first four links were obtained by using Google with the search terms "file complaint with CBP." The final link leads to other links on CBP.gov. It was obtained with the search term "complaint" being used in the search section of CBP.gov.

Pertaining to the rest of your request, once responsive records are available, you will be notified electronically by CBP FOIA that records are available to view via your FOIAonline account. If you already have a FOIAonline account, you can view or print responsive records from your account. If you do not already have a FOIAonline account, please create one by taking the following steps:

- Simply go to your search engine (i.e., google, etc.) and type FOIAonline, then hit enter, that will take you to the FOIAonline site.

- From there, press the green button on the right “Create an Account” and follow the prompts to create a FOIAonline account.
- Make sure when creating your account you use the same email address that you provided when submitting your original FOIA request – that way the email addresses in your original FOIA request can be synched with the FOIAonline account you create.

Submitting a FOIA request online is the preferred method (vs. postal mail) for many reasons:

- You immediately receive a unique FOIA tracking number and acknowledgment that your FOIA request was received by CBP.
- You can track your FOIA request any day/any time through your FOIAonline account.
- When responsive records become available, you receive an email letting you know records can be viewed via your FOIAonline account,
- You can view all of your historical FOIA requests via the “dashboard” in your FOIAonline account.

In the future, please use your FOIAonline account to submit future FOIA requests to CBP. Please note that all FOIA requests for official travel records on an individual must include 1) the subject’s name, 2) the subject’s date of birth, and 3) third party consent. If this information is not provided with the original FOIA request, it will be considered “insufficient”, and will not be processed.

Finally, the CBP FOIA office has a significant backlog of FOIA requests. The expected response time for a FOIA request for travel documents is 9 – 12 months. If you do not receive a response to your FOIA request within 20 business days, please do not resubmit the same FOIA request as it creates further delays. We are working very hard to clear the FOIA backlog and we thank you in advance for your cooperation.

CBP FOIA Division

1300 Pennsylvania Ave
RRB 8th Fl
Washington, DC 20229

Melissa Crow
American Immigration Council
1331 G Street NW
Suite 200
Washington, DC 20005

October 21, 2015

Dear Melissa Crow,

10/21/2015

Melissa Crow

1331 G Street NW Suite 200 Washington DC 20005

Dear Melissa Crow

The U.S. Customs and Border Protection (CBP) Freedom of Information Act (FOIA) Division received your letter inquiring about a FOIA request that you previously submitted to CBP reference FOIA number CBP-IA-2016-000254.

This letter is to confirm that your FOIA request has been received by CBP and will be processed in the order it was received. Once responsive records are available, you will be notified electronically by CBP FOIA that records are available to view via your FOIAonline account. If you already have a FOIAonline account, you can view or print responsive records from your account. If you do not already have a FOIAonline account, please create one by taking the following steps:

- Simply go to your search engine (i.e., google, etc.) and type FOIAonline, then hit enter, that will take you to the FOIAonline site.
- From there, press the green button on the right "Create an Account" and follow the prompts to create a FOIAonline account.
- Make sure when creating your account you use the same email address that you provided when submitting your original FOIA request – that way the email addresses in your original FOIA request can be synched with the FOIAonline account you create.

Submitting a FOIA request online is the preferred method (vs. postal mail) for many reasons:

- You immediately receive a unique FOIA tracking number and acknowledgment that your FOIA request was received by CBP.
 - You can track your FOIA request any day/any time through your FOIAonline account.
 - When responsive records become available, you receive an email letting you know records can be viewed via your FOIAonline account,
 - You can view all of your historical FOIA requests via the "dashboard" in your FOIAonline account.
- In the future, please use your FOIAonline account to submit future FOIA requests to CBP. Please note that all FOIA requests for official travel records on an individual must include 1) the subject's name, 2) the subject's date of birth, and 3) third party consent. If this information is not provided with the original FOIA request, it will be considered "insufficient", and will not be processed.

Finally, the CBP FOIA office has a significant backlog of FOIA requests. The expected response time for a FOIA request for travel documents is 9 – 12 months. If you do not receive a response to your FOIA request within 20 business days, please do not resubmit the same FOIA request as it creates further delays. We are working very hard to clear the FOIA backlog and we thank you in advance for your cooperation.

CBP FOIA Division

Sincerely,

Andrea Kepple
Office of Internal Affairs (IA)

<http://www.cbp.gov/travel/customer-service/handle-complaints>

<https://help.cbp.gov/app/forms/complaint>

https://help.cbp.gov/app/forms/complaint_selector

[https://help.cbp.gov/app/answers/detail/a_id/175/~complaint-of-rude-and-unprofessional-treatment](https://help.cbp.gov/app/answers/detail/a_id/175/~/complaint-of-rude-and-unprofessional-treatment)

<http://search.usa.gov/search?query=complaint&op=Search&affiliate=cbpgov>



January 6, 2016

VIA FEDERAL EXPRESS

FOIA Appeals, Policy and Litigation Branch
U.S. Customs and Border Protection
90 K Street, NE
Washington, DC 20229-1177

Re: Freedom of Information Act Case Tracking Number CBP-2016-000254
Appeal of Constructive Denial of Request

Dear Sir or Madam:

The American Immigration Council (“Immigration Council” or “Requester”) is in receipt of the October 2, 2015, email notice from CBP FOIA acknowledging receipt of our October 2, 2015 request for records that were prepared, received, transmitted, collected and/or maintained by the Department of Homeland Security and/or the Customs and Border Protection (CBP) regarding CBP’s complaint process and the actions taken by CBP in response to complaints against its agents and officers. Please see our October 2, 2015 FOIA request for a detailed description of the records we seek. Since then, we have received three further communications regarding this FOIA, none of which was a complete response within the meaning of the statute. These include an October 2, 2015 email acknowledgement of receipt of the FOIA request; an October 20, 2015 email determining that the FOIA request was not billable and that the fee waiver request was therefore not applicable; and an October 21, 2015 email with attached letter and list of website links reaffirming receipt of the FOIA, indicating that it would be processed in the order in which it was received, and purporting to be a “partial response” because it included links to the CBP website that the FOIA office located following a “google” search.

It has been more than 90 business days since you initially acknowledged receipt of our FOIA request. When a party submits a FOIA request, the agency has 20 business days to determine whether to produce records responsive to the request. 5 U.S.C. § 552(a)(6)(A)(i). In unusual circumstances, this deadline may be extended by no more than 10 additional business days. 5 U.S.C. § 552(a)(6)(B)(i). When an agency fails to meet the response times required by FOIA, requesting parties may deem the agency’s delay a denial of the FOIA request and appeal the denial. *See, e.g., Coleman v. Drug Enforcement Admin.*, 714 F.3d 816, 823 (4th Cir. 2013) (constructive exhaustion applies even if the agency’s failure to meet the FOIA time limits is due to delay caused by earlier-filed requests); *Ruotolo v. Dep’t. of Justice*, 53 F.3d 4, 8 (2d Cir. 1995) (“[A]dministrative remedies are ‘deemed exhausted’ if the agency fails to comply with the ‘applicable time limit’ provisions of the FOIA.”); *Voinche v. Fed. Bureau of Investigation*, 999 F.2d 962, 963 (5th Cir. 1993) (“If an agency has not complied within the statutory time limits of an FOIA request, the requester shall be deemed to have exhausted his administrative remedies and [may] bring suit.”).

You failed to respond to our FOIA request within the 20 days provided under the FOIA statute. Accordingly, please consider this letter an administrative appeal of your constructive denial of our FOIA request.

Sincerely,

A handwritten signature in black ink, appearing to read "Mary Kenney". The signature is fluid and cursive, with a large initial "M" and "K".

Mary Kenney
Senior Attorney
(202) 507-7512
mkenney@immcouncil.org



U.S. Customs and
Border Protection

JAN 14 2016

DIS-3 OT:RR:RDL:FAPL
CBP-AP-2016-015101 AML

Ms. Mary Kenney, Senior Attorney
American Immigration Council
Suite 200
1331 G Street, N.W.
Washington, D.C. 20005-3141

Re: Remand of Freedom of Information Act Request U.S. Customs and Border
Protection (CBP) CBP-IA-2016-000254; Failure to respond

Dear Ms. Kenney:

This is in reply to your correspondence dated January 6, 2016, concerning the failure of U.S. Customs and Border Protection's (CBP) Freedom of Information Act (FOIA) Division, Privacy and Diversity Office (PDO), to respond to your October 2, 2015, initial request for records on behalf of your organization under case number CBP-IA-2016-000254. In the October 2015 initial request your organization indicated that it "seeks disclosure of the below specified records [footnote omitted] that were prepared, received, transmitted, collected and/or maintained by the U.S. Department of Homeland Security (DHS) and/or U.S. Customs and Border Protection (CBP) [footnote omitted] regarding CBP's complaint process and the actions taken by CBP in response to complaints against its agents and officers."¹

The FOIA provides that a requester shall be deemed to have exhausted its administrative remedies if the agency fails to comply with the time limits established by

¹ You elaborate that "Requesters seek: (1) A spreadsheet containing data reflecting the following for each individual incident referenced in a complaint filed with CBP's Office of Internal Affairs between January 1, 2012 and the date that an adequate search in response to this request is completed: a) Case number; b) The date the alleged misconduct took place; c) The date the complaint was received; d) The complainant's age or date of birth; e) The complainant's nationality or country of birth; f) The complainant's gender; g) The complainant's primary language; h) Position title of the agent against whom the complaint was made; i) Subject office (or border sector); j) Primary field description code; k) Allegation summary; l) Charge description; m) Decision action; n) Decision date; o) The department or component which investigated each complaint. The Immigration Council seeks this data in a workable format, such as Excel but also seeks all records, as defined above, which respond to this request. (2) Any records that explain the complaint process including protocols for receiving, reviewing, responding to, investigating, referring, and resolving complaints, including but not limited to the responsibility of all departments or components involved in the receipt or handling of complaints. (3) Any records used by any CBP component or department that in any way provides information to the public, including but not limited to individuals apprehended and/or detained by CBP, about the process of filing a complaint against CBP, its components, or its agents or officers."

the statute. See 5 U.S.C. § 552 (a)(6)(C)(i)². This means that a requester may proceed directly to district court if an agency fails to respond to an initial request within the time period prescribed by the FOIA.

Under the FOIA's administrative appeal provision, a requester has the right to administratively appeal any adverse determination that an agency makes on the requester's initial request. See 5 U.S.C. § 552 (a)(6)(A). Under Department of Homeland Security (DHS) regulations, adverse determinations include denials of requests for records in full or in part, "no records" responses, denials of requests for fee waivers and denials of requests for expedited processing. See 6 CFR 5.6(c)³. We note that the definition of adverse determinations does not explicitly include failure to timely respond.

The administrative appeal process is important to agencies and requesters because the appeal process provides an agency with an opportunity to review the initial action taken in response to an initial request to determine whether corrective steps are necessary. The appeals process allows CBP to review the initial determinations and to correct any mistakes that may have been made at lower levels, thereby obviating unnecessary judicial review. In this case, there is no administrative record to review because, as you are aware, the FOIA Division has not yet processed the initial request.

Accordingly, we are remanding your request to CBP's FOIA Division for processing with instructions that the FOIA Division should provide you an estimate of the length of time required to process the exceptionally broad request within twenty (20) days of the date of this letter. Given the breadth, depth and complexity of the request, and in consideration of the fact that CBP's FOIA Division has a considerable backlog that is delaying the processing of initial requests, it is unlikely that the initial request will be processed within the temporal parameters set forth in the FOIA. Nevertheless, the FOIA Division should advise you of the time it estimates will be required to respond to the request.

As mentioned above, you may immediately challenge FOIA Division's failure to respond to your request in district court. Pursuant to 5 U.S.C. §552(a)(4)(B), you may do so in the U.S. District Court in the district in which you reside or have a principal place of business, or in which the agency records are situated, or in the U.S. District Court for the District of Columbia.

² 5 U.S.C. § 552(a)(6)(C)(i) states: Any person making a request to any agency for records under paragraph (1), (2), or (3) of this subsection shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph.

³ 6 CFR 5.6(c) states: Adverse determinations, or denials of requests, consist of: A determination to withhold any requested record in whole or in part; a determination that a requested record does not exist or cannot be located; a determination that a record is not readily reproducible in the form or format sought by the requester; a determination that what has been requested is not a record subject to the FOIA; a determination on any disputed fee matter, including a denial of a request for a fee waiver; and a denial of a request for expedited processing.

Alternatively, the Office of Government Information Services (OGIS) offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You can contact OGIS in any of the following ways (see <https://ogis.archives.gov/mediation-program/requesting-assistance.htm>): Email: ogis@nara.gov or Fax: 202-741-5769 or Mail: Office of Government Information Services (OGIS), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001; or call 202-741-5770.

Sincerely,

A handwritten signature in black ink, appearing to read 'Shari Suzuki', written in a cursive style.

Shari Suzuki, Chief
FOIA Appeals, Policy and Litigation Branch

[REDACTED]

From: Beth Werlin <BWerlin@immcouncil.org>
Sent: Tuesday, October 20, 2015 8:43 PM
To: Melissa Crow
Cc: Catalina Restrepo; Mary Kenney
Subject: RE: FOIA Fee Waiver Disposition Reached for CBP-IA-2016-000254

Follow Up Flag: Flag for follow up
Flag Status: Flagged

[REDACTED]

From: Melissa Crow
Sent: Tuesday, October 20, 2015 8:40 PM
To: Beth Werlin
Cc: Catalina Restrepo; Mary Kenney
Subject: FW: FOIA Fee Waiver Disposition Reached for CBP-IA-2016-000254

[REDACTED]

Melissa Crow, Legal Director
American Immigration Council
(202) 507-7523

From: CBPFOIA@cbp.dhs.gov [<mailto:CBPFOIA@cbp.dhs.gov>]
Sent: Tuesday, October 20, 2015 4:48 PM
To: Melissa Crow
Subject: FOIA Fee Waiver Disposition Reached for CBP-IA-2016-000254

Your request for Fee Waiver for the FOIA request CBP-IA-2016-000254 has been determined to be not applicable as the request is not billable. Additional details for this request are as follows:

- Request Created on: 10/02/2015
- Request Long Description: Please see attached supporting file, "FOIA Follow up to No Action Taken"

<input type="radio"/> G. Habeas Corpus/ 2255 <input type="checkbox"/> 530 Habeas Corpus – General <input type="checkbox"/> 510 Motion/Vacate Sentence <input type="checkbox"/> 463 Habeas Corpus – Alien Detainee	<input type="radio"/> H. Employment Discrimination <input type="checkbox"/> 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation) *(If pro se, select this deck)*	<input checked="" type="radio"/> I. FOIA/Privacy Act <input checked="" type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act) *(If pro se, select this deck)*	<input type="radio"/> J. Student Loan <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (excluding veterans)
<input type="radio"/> K. Labor/ERISA (non-employment) <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> L. Other Civil Rights (non-employment) <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Americans w/Disabilities – Employment <input type="checkbox"/> 446 Americans w/Disabilities – Other <input type="checkbox"/> 448 Education	<input type="radio"/> M. Contract <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholder's Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> N. Three-Judge Court <input type="checkbox"/> 441 Civil Rights – Voting (if Voting Rights Act)

V. ORIGIN
 1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify)
 6 Multi-district Litigation
 7 Appeal to District Judge from Mag. Judge

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)
 5 U.S.C. § 552: Action to compel production of records requested under FOIA.

VII. REQUESTED IN COMPLAINT	CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 <input type="checkbox"/>	DEMAND \$ atty's fees & costs	JURY DEMAND: YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
VIII. RELATED CASE(S) IF ANY	(See instruction)	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	If yes, please complete related case form

DATE: 6/6/2016 SIGNATURE OF ATTORNEY OF RECORD:

INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the cover sheet.

- I. COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III. CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV. CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI. CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII. RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk's Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

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

AMERICAN IMMIGRATION COUNCIL

Plaintiff

v.

U.S. DEPARTMENT OF HOMELAND SECURITY

Defendant

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Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

UNITED STATES CUSTOMS AND BORDER PROTECTION
Office of the Chief Counsel
1300 Pennsylvania Avenue, N.W.
Washington, DC 20229

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Thomas E. Starnes
Drinker Biddle & Reath LLP
1500 K St. NW, Suite 1100
Washington, DC 20005

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify):* _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

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

AMERICAN IMMIGRATION COUNCIL

Plaintiff

v.

U.S. DEPARTMENT OF HOMELAND SECURITY

Defendant

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Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

UNITED STATES CUSTOMS AND BORDER PROTECTION
Office of the Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Thomas E. Starnes
Drinker Biddle & Reath LLP
1500 K St. NW, Suite 1100
Washington, DC 20005

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify):* _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

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

AMERICAN IMMIGRATION COUNCIL

Plaintiff

v.

U.S. DEPARTMENT OF HOMELAND SECURITY

Defendant

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Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

UNITED STATES CUSTOMS AND BORDER PROTECTION
United States Attorney's Office
Judiciary Center Building
555 Fourth Street, NW
Washington, DC 20530

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Thomas E. Starnes
Drinker Biddle & Reath LLP
1500 K St. NW, Suite 1100
Washington, DC 20005

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify):* _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

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

AMERICAN IMMIGRATION COUNCIL

Plaintiff

v.

U.S. DEPARTMENT OF HOMELAND SECURITY

Defendant

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Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

UNITED STATES DEPARTMENT OF HOMELAND SECURITY
Office of General Counsel
United States Department of Homeland Security
Washington, DC 20528

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Thomas E. Starnes
Drinker Biddle & Reath LLP
1500 K St. NW
Washington, DC 20005

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify):* _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify):* _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

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

AMERICAN IMMIGRATION COUNCIL

Plaintiff

v.

U.S. DEPARTMENT OF HOMELAND SECURITY

Defendant

)
)
)
)
)
)
)
)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

UNITED STATES DEPARTMENT OF HOMELAND SECURITY
United States Attorney's Office
Judiciary Center Building
555 Fourth Street, NW
Washington, DC 20530

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Thomas E. Starnes
Drinker Biddle & Reath LLP
1500 K St. NW, Suite 1100
Washington, DC 20005

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

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_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify):* _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: