

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

)
IMMIGRANT DEFENSE PROJECT,)
HISPANIC INTEREST COALITION)
OF ALABAMA, and the CENTER FOR)
CONSTITUTIONAL RIGHTS,)
)
Plaintiffs)
)
v.)
)
UNITED STATES IMMIGRATION)
AND CUSTOMS ENFORCEMENT and)
UNITED STATES DEPARTMENT OF)
HOMELAND SECURITY,)
)
Defendants)
)

Civil Action No.: 14-cv-06117

**DEFENDANT’S ANSWER TO COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF, AND AFFIRMATIVE DEFENSES**

Defendants United States Department of Homeland Security (“DHS”), and United States Immigration and Customs Enforcement (“ICE”), by and through undersigned counsel, respectfully submit this Answer to plaintiffs’ complaint. Defendants respond specifically to each numbered paragraph of the complaint by admitting, denying, and averring as follows:

1. The allegations of paragraph 1 constitute plaintiffs’ characterization of this action, to which no response is required. To the extent a response is required, defendants deny the allegations of paragraph 1, except admit that this action purports to be brought under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, and further admit that U.S. Immigration and Customs Enforcement (“ICE”), the Office of Civil Rights and Civil Liberties (“CRCL”), the Federal Law Enforcement Training Center (“FLETC”), the National Records

Center, the Office of Public Affairs, the Office of Detention Policy and Planning, the Office of Detention Oversight, and the Office of State, Local and Tribal Coordination are component offices of DHS.

2. Admit that plaintiffs filed a FOIA request (the “Request”), dated October 17, 2013, and respectfully refer the Court to the Request for a complete and accurate description of its contents, and deny the remaining allegations of paragraph 2.

3. The allegations contained in paragraph 3 constitute plaintiffs’ characterization of the enforcement of immigration law, which is irrelevant to this action, and to which no response is required. To the extent a response is required, defendants admit that part of ICE’s mission is to identify, arrest, and remove aliens who present a danger to national security or are a risk to public safety, as well as those who enter the United States illegally or otherwise undermine the integrity of our immigration laws and our border control efforts, and otherwise deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 because plaintiffs do not define the terms used, including “typically,” “often,” “widespread controversy,” and “public protest and criticism.”

4. The allegations contained in paragraph 4 constitute plaintiffs’ characterization of the enforcement of immigration law, which is irrelevant to this action, and to which no response is required. To the extent a response is required, defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in sentences 3 and 4 of paragraph 4 because plaintiffs do not define or specify the “litigated violations,” “communications,” “incidents,” or “investigations,” and otherwise deny the allegations contained in paragraph 4.

5. The allegations contained in paragraph 5 constitute plaintiffs' characterization of the enforcement of immigration law, which is irrelevant to this action, and to which no response is required. To the extent a response is required, defendants deny that ICE has not provided the public with information regarding its enforcement of the immigration laws, and otherwise deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5

6. Admit the allegations of the first sentence of paragraph 6 and deny the remaining allegations of paragraph 6.

7. Paragraph 7 constitutes plaintiff's conclusions of law, to which no response is required. To the extent that a response is required, defendants deny the allegations of paragraph 7.

8. Paragraph 8 constitutes plaintiffs' prayer for relief to which no response is required. To the extent that a response is required, defendants deny the allegations of paragraph 8 and deny that plaintiffs are entitled to any relief.

9. The allegations contained in paragraph 9 constitute plaintiffs' conclusions of law regarding subject matter jurisdiction, to which no response is required. To the extent that a response is required, defendants deny the allegations of paragraph 9.

10. The allegations contained in paragraph 10 constitute plaintiffs' conclusions of law regarding venue, to which no response is required. To the extent that a response is required, defendants deny the allegations of paragraph 10.

11. Paragraph 11 contains plaintiff's characterization of IDP and its activities. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 11.

12. Paragraph 12 contains plaintiff's characterization of HICA and its activities. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 12.

13. Paragraph 13 contains plaintiff's characterization of CCR and its activities. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 13.

14. Admit the allegations of paragraph 14.

15. Paragraph 15 contains plaintiff's characterization of ICE. Defendants admit that ICE is a component of DHS; that ICE's primary mission is to promote homeland security and public safety through the criminal and civil enforcement of federal laws governing border control, customs, trade, and immigration; and that ICE has offices in all 50 states; but denies the remaining allegations of paragraph 15.

16. Admit the allegations of paragraph 16.

17. The allegations contained in paragraph 17 constitute plaintiffs' characterization of the enforcement of immigration law, which is irrelevant to this action, and to which no response is required. To the extent that a response is required, defendants deny the allegations of paragraph 17.

18. The allegations contained in paragraph 18 constitute plaintiffs' characterization of the enforcement of immigration law, which is irrelevant to this action, and to which no response

is required. To the extent a response is required, defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 18 because plaintiffs do not define the terms used, including “criticized,” “record-breaking increase,” and “crucial for public understanding and evaluation.”

19. The allegations contained in paragraph 19 constitute plaintiffs’ characterization of the enforcement of immigration law, which is irrelevant to this action, and to which no response is required. To the extent a response is required, defendants deny the allegations of paragraph 19, and, to the extent that plaintiffs’ allegations refer to news articles and court cases, defendants respectfully refer the Court to those news articles and court cases for a complete and accurate description of the contents of those news articles and court cases.

20. The allegations contained in paragraph 20 constitute plaintiffs’ characterization of the enforcement of immigration law, which is irrelevant to this action, and to which no response is required. To the extent a response is required, defendants deny the allegations of paragraph 20, and, to the extent that plaintiffs’ allegations refer to news articles and court cases, defendants respectfully refer the Court to those news articles and court cases for a complete and accurate description of the contents of those news articles and court cases.

21. The allegations contained in paragraph 21 constitute plaintiffs’ characterization of the enforcement of immigration law, which is irrelevant to this action, and to which no response is required. To the extent a response is required, defendants deny the allegations of paragraph 21, and, to the extent that plaintiffs’ allegations refer to news articles and court cases, defendants respectfully refer the Court to those news articles and court cases for a complete and accurate description of the contents of those news articles and court cases.

22. Deny the allegations of paragraph 22.

23. Deny the allegations of paragraph 23.

24. Deny the allegations of paragraph 24.

25. Defendants admit that ICE has an Office of Professional Responsibility that provides a complaint hotline and address, but deny the remainder of the allegations set forth in paragraph 25. To the extent that plaintiffs' allegations refer to Congressional Hearing Transcripts, defendants respectfully refer the Court to those Congressional Hearing Transcripts for a complete and accurate description of the contents of those Congressional Hearing Transcripts.

26. Deny the allegations of paragraph 26.

27. Deny the allegations of paragraph 27.

28. The allegations contained in paragraph 28 constitute plaintiffs' characterization of the enforcement of immigration law, which is irrelevant to this action, and to which no response is required. To the extent a response is required, defendants deny the allegations of paragraph 28, and, to the extent that plaintiffs' allegations refer to news articles and court cases, defendants respectfully refer the Court to those news articles and court cases for a complete and accurate description of the contents of those news articles and court cases.

29. The allegations contained in paragraph 29 constitute plaintiffs' characterization of the enforcement of immigration law, which is irrelevant to this action, and to which no response is required. To the extent a response is required, defendants deny the allegations of paragraph 29, and, to the extent that plaintiffs' allegations refer to news articles, defendants respectfully

refer the Court to those news articles for a complete and accurate description of the contents of those news articles.

30. The allegations contained in paragraph 30 constitute plaintiffs' characterization of the enforcement of immigration law, which is irrelevant to this action, and to which no response is required. To the extent a response is required, defendants deny the allegations of paragraph 30, and, to the extent that plaintiffs' allegations refer to news articles, defendants respectfully refer the Court to those news articles for a complete and accurate description of the contents of those news articles.

31. The allegations contained in paragraph 31 constitute plaintiffs' characterization of the enforcement of immigration law, which is irrelevant to this action, and to which no response is required. To the extent a response is required, defendants deny the allegations contained in paragraph 31.

32. The allegations contained in paragraph 32 constitute plaintiffs' characterization of the Congressional appropriations debate, which is irrelevant to this action, and to which no response is required. To the extent a response is required, defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 32.

33. The allegations contained in paragraph 33 constitute plaintiffs' characterization of local budget and policy debates, which is irrelevant to this action, and to which no response is required. To the extent a response is required, defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 33.

34. The allegations contained in paragraph 34 constitute plaintiffs' characterization of their need for information for community outreach and public education efforts, which is

irrelevant to this action, and to which no response is required. To the extent a response is required, defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 34.

35. The allegations contained in paragraph 35 constitute plaintiffs' characterization of plaintiffs' engagement in local communities, which is irrelevant to this action, and to which no response is required. To the extent a response is required, defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 35.

36. The allegations contained in paragraph 36 constitute plaintiffs' characterization of the use of local jails and correctional facilities, which is irrelevant to this action, and to which no response is required. To the extent a response is required, defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 36.

37. The allegations contained in paragraph 37 constitute plaintiffs' characterization of the necessity of the present action in order to vindicate the public's right to be informed of its government's operations. Defendants deny the allegations contained in paragraph 37.

38. Admit that plaintiffs submitted the Request to defendants.

39. Admit that plaintiffs filed the Request, and respectfully refer the Court to the Request for a complete and accurate description of its contents.

40. Admit that plaintiffs filed the Request, and respectfully refer the Court to the Request for a complete and accurate description of its contents.

41. Admit that plaintiffs filed the Request, and respectfully refer the Court to the Request for a complete and accurate description of its contents.

42. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 42 of the complaint.

43. Admit that ICE acknowledged the receipt of the Request in a letter dated October 29, 2013, and further admit that ICE invoked a 10-day extension as allowed by 5 U.S.C. §552(a)(6)(B), but deny the remainder of the allegations set forth in paragraph 43. Defendants respectfully refer the Court to Exhibit 2, for a complete and accurate description of its contents.

44. Admit the allegations in paragraph 44. Defendants respectfully refer the Court to Exhibit 3, for a complete and accurate description of its contents.

45. Admit the allegations in paragraph 45. Defendants respectfully refer the Court to Exhibits 4 and 5, for a complete and accurate description of its contents.

46. Admit the allegations in paragraph 46. Defendants respectfully refer the Court to Exhibit 6, for a complete and accurate description of its contents.

47. Admit the allegations in paragraph 47. Defendants respectfully refer the Court to Exhibit 7, for a complete and accurate description of its contents.

48. Admit the allegations in paragraph 48. Defendants respectfully refer the Court to Exhibit 8, for a complete and accurate description of its contents.

49. Admit that ICE has not produced documents in response to the request.

50. The allegations of paragraph 50 constitute plaintiffs' conclusions of law to which no response is required. To the extent a response is required, defendants deny the allegations.

51. The allegations of paragraph 51 constitute plaintiffs' characterization of an email sent on October 31, 2013, and defendants respectfully refer the Court to the email for a complete and accurate description of its contents.

52. The allegations of paragraph 52 constitute plaintiffs' characterization of an email sent on December 3, 2013, and defendants respectfully refer the Court to the email for a complete and accurate description of its contents.

53. Admit the allegations in paragraph 53.

54. Admit the allegations in paragraph 54.

55. The allegations of paragraph 55 constitute plaintiffs' characterization of a letter dated February 21, 2014, and defendants respectfully refer the Court to the letter for a complete and accurate description of its contents.

56. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 56.

57. Admit that an email containing the DHS letter, dated February 7, 2014, was transmitted to plaintiffs on March 7, 2014, and respectfully refer the Court to the copy of the February 7, 2014, DHS letter for a complete and accurate description of its contents. To the extent otherwise required, defendants deny the allegations of paragraph 57.

58. Admit that plaintiffs filed an administrative appeal by letter dated April 3, 2014, and respectfully refer the Court to the letter for a complete and accurate description of its contents. To the extent otherwise required, defendants deny the allegations of paragraph 58.

59. The allegations of paragraph 59 constitute plaintiffs' characterization of its April 3, 2014, letter and respectfully refer the Court to the letter for a complete and accurate description of its contents. To the extent otherwise required, defendants deny the allegations of paragraph 59.

60. The allegations of paragraph 60 constitute plaintiffs' characterization of a letter from DHS to plaintiffs, dated June 11, 2014, and respectfully refer the Court to the letter for a complete and accurate description of its contents. To the extent otherwise required, defendants deny the allegations of paragraph 60.

61. The allegations contained in paragraph 61 constitute plaintiffs' conclusions of the law regarding exhaustion of administrative remedies, to which no response is required. To the extent a response is required, defendants deny the allegations contained in paragraph 61.

62. Deny the allegations of paragraph 62.

63. Deny the allegations of paragraph 63.

64. Paragraph 64 "repeat[s] and reallege[s] each and every allegation" in the foregoing paragraphs of plaintiffs' complaint. Defendants incorporate by reference their answers to the relevant paragraphs.

65. Deny the allegations of paragraph 65.

66. Paragraph 66 "repeat[s] and reallege[s] each and every allegation" in the foregoing paragraphs of plaintiffs' complaint. Defendants incorporate by reference their answers to the relevant paragraphs.

67. Deny the allegations of paragraph 67.

68. Paragraph 68 "repeat[s] and reallege[s] each and every allegation" in the foregoing paragraphs of plaintiffs' complaint. Defendants incorporate by reference their answers to the relevant paragraphs.

69. Deny the allegations of paragraph 69.

The remainder of the complaint, including sub-sections 1 through 5 of the Prayer for

Relief, constitutes plaintiffs' prayer for relief to which no response is required. Defendants deny that plaintiffs are entitled to the relief sought or any other relief.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

The complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

The information that defendants have withheld, or will withhold, in response to plaintiffs' FOIA request is exempt from public disclosure under the FOIA. *See* 5 U.S.C. § 552(b).

THIRD DEFENSE

Defendants have exercised due diligence in processing plaintiffs' FOIA request and exceptional circumstances exist that necessitate additional time for defendant to complete its processing of the FOIA requests. *See* 5 U.S.C. § 552(a)(6)(C).

WHEREFORE, defendants demand judgment dismissing plaintiffs' complaint and granting such further relief as this Court deems proper, including costs and disbursements.

Dated: New York, New York
October 15, 2014

Respectfully submitted,

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