

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

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MAKE THE ROAD NEW YORK and  
CENTER FOR CONSTITUTIONAL RIGHTS,  
*Plaintiffs,*

v.

**COMPLAINT**

UNITED STATES DEPARTMENT OF  
HOMELAND SECURITY, UNITED  
STATES CITIZENSHIP AND  
IMMIGRATION SERVICES, UNITED STATES  
IMMIGRATION & CUSTOMS ENFORCEMENT,  
and the EXECUTIVE OFFICE  
OF IMMIGRATION REVIEW of the  
UNITED STATES DEPARTMENT OF JUSTICE

*Defendants.*

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**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. §§ 552, *et seq.*, for declaratory, injunctive, and other appropriate relief to compel the release of agency records improperly withheld from Plaintiffs Make the Road New York (“MRNY”) and Center for Constitutional Rights by Defendants, U.S. Department of Homeland Security (“DHS”), United States Citizenship and Immigration Services (USCIS), U.S. Immigration and Customs Enforcement (“ICE”) and the Executive Office of Immigration Review (EOIR) of the United States Department of Justice (DOJ).

2. The Trump Administration has altered or signaled its intent to alter an array of regulations and policies impacting how immigrants are deemed to be a “public charge” and thus either ineligible for future immigration benefits or deportable from the United States despite holding lawful immigration status. Defendant agencies are responsible for proposing and implementing these changes, which would impact millions of families across the country and have generated tremendous public attention and interest. Yet these agencies have withheld *all* documents responsive to a series of FOIA requests filed to obtain information about these highly controversial changes.

3. Plaintiffs here seek to compel production of documents responsive to 3 requests pertaining to these changes and submitted from June 2018 through May 2019. *See* Exhibits A-C. These requests all seek communications and analyses related to the current proposed changes, including previous versions, and historical data on how “public charge” assessments have been made and implemented in the past two decades.

4. To date, none of the agencies have produced a single document in response to Plaintiffs’ Requests.

5. Obtaining responses to Plaintiffs’ FOIA requests is crucial to facilitating public debate and accountability and preparing for the effects of these changes, which include a notice of proposed rulemaking (NPRM) titled “Inadmissibility on Public Charge Grounds,” published for public comment on October 10, 2018, and a forthcoming change in the regulations governing deportability on public charge grounds, sent to the Office of Budget Management for review in May 2019. Although public interest in these changes is extremely high, the government has released little information about the reasoning and decision-making process that went into developing them. DHS has also released only minimal, if any, information about the impact that

these changes will have on the public. This is despite the enormous public and press interest particularly in the NPRM, its dramatic impact on the immigration system and on immigrant communities, and the widespread reports of high pressure from the White House on federal agency decision-making related to the NPRM.

6. Plaintiffs' Requests sought fee waivers and expedited processing in view of the compelling public interest in these documents. The public has an urgent interest in understanding why the "public charge" policies are being altered and exactly how many individuals will be impacted by the changes, in order to ensure democratic accountability and the protection of vital constitutional protections for the millions who will be impacted by the final version of the NPRM and the millions that have already been impacted by its predecessor. Plaintiffs' need for information regarding the NPRM is urgent and time-sensitive due to the fact that DHS could release the final version of the NPRM any day, commencing a period of intense efforts to educate the public and prepare local government, neighborhoods, and families for the public health ramifications of the final rule. Announcement of a separate rule relating to deportability is also reported to be imminent, which will necessitate an informed public response.

7. To vindicate the public's right to information about the changes to DHS's administration of rules related to "public charge," Plaintiffs' seek declaratory, injunctive, and other appropriate relief to compel Defendants to immediately process the Requests and release records that have been unlawfully withheld.

### **JURISDICTION AND VENUE**

8. This court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. §§ 552(a)(4)(B) and 552(a)(6)(C)(i). This Court also have jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1346(a)(2).

9. Venue lies in this district pursuant to 5 USC. § 552(a)(4)(B) and 28 U.S.C. §§ 1391(e) and 1402(a) as MRNY resides in this district.

### **PARTIES**

10. Plaintiff MRNY is a non-profit organization whose mission is to build the power of immigrant and working class communities to achieve dignity and justice. MRNY engages and empowers New York's immigrant and working-class communities as a civic integrator, social-resource connector, and statewide educator. MRNY provides adult literacy programs, direct legal representation, and educates the public by providing vital workshops. MRNY has more than 23,000 members residing in New York City, Westchester County and Long Island. Its mission includes educating the public about civil rights issues affecting working-class and immigrant communities through electronic newsletters, reports, fact sheets, trainings, curricula, classes, and other educational and informational material. MRNY regularly conducts research and analysis and publishes reports, fact sheets, and other informational material on issues important to the immigrant, Latino, and working-class communities it serves. MRNY conducted dozens of public education and know your rights workshops on public charge inadmissibility following the release of the NPRM. MRNY also disseminates information and analyses on pending and proposed legislation and mobilizes community members to advocate to their legislators, and engages in organizing and public-policy advocacy efforts; these efforts include substantial outreach to policymakers and communication with the media. As part of these efforts, MRNY commented on the NPRM and assisted approximately 300 of its members in submitting individual comments. MRNY also frequently releases media statements, and disseminates information about local, state, and national issues to its thousands of members and to the public at large. MRNY has offices in Brooklyn, Queens, Staten Island, Brentwood, and White Plains, New York.

11. Plaintiff CCR is a non-profit, public interest, legal, and public education organization that produces publications in the fields of civil and international human rights and engages in litigation and public advocacy. CCR's diverse dockets include litigation and advocacy around immigration detention, post-9/11 and other immigration enforcement policies, policing, and racial and ethnic profiling. CCR is a member of immigrant rights networks nationally and provides legal support to immigrant rights movements. CCR publishes newsletters, know-your-rights handbooks, legal analysis of current immigration law issues, and other similar materials for public dissemination. These and other materials are available through CCR's Development, Communications, and Education & Outreach Departments. CCR operates a website, [www.ccrjustice.org](http://www.ccrjustice.org), which addresses the issues on which the Center works. The website includes material on topical civil and immigrants' rights issues and material concerning CCR's work. All of this material is freely available to the public. In addition, CCR regularly issues press releases, operates an e-mail list of over 50,000 members and issues "action alerts" that notify supporters and the general public about developments and operations pertaining to CCR's work. CCR staff members often serve as sources for journalist and media outlets, including on immigrant rights. The office and principal place of business of CCR is located in New York County, New York.

12. Defendant DHS is a cabinet-level Department of the Executive Branch of the United States government tasked with overseeing, inter alia, immigration enforcement, border security, immigration detention, and immigration and citizenship benefits. Its component offices include the United States Citizenship and Immigration Services (USCIS), the Bureau of Immigration and Customs Enforcement (ICE), the Federal Law Enforcement Training Center (FLETC), and the Office of Civil Rights and Civil Liberties (CRCL).

13. Defendant USCIS is the component of DHS responsible for the administration of applications for immigrant and non-immigrant visas and the adjudication of adjustment of status applications pursuant to the INA. It has primary responsibility for overseeing the promulgation of the DHS' public charge regulation.

14. Within DHS, Defendant ICE is a component of DHS that enforces immigration and customs law and is responsible for the detention and removal of immigrants.

15. Defendant EOIR is an office within the Department of Justice (DOJ) tasked with administering the nation's immigration courts. The DOJ is a cabinet-level Department of the Executive Branch tasked with investigating criminal, terrorist and foreign intelligence threats, providing criminal justice services to local law enforcement, and prosecuting federal criminal cases as well as civil immigration offenses.

16. USCIS, DHS, ICE, and EOIR are "agencies" within the meaning of 5 U.S.C. § 552(f)(1).

## **STATEMENT OF FACTS**

### **Background on the "Public Charge" Regulations**

17. Since at least the week of his inauguration in January of 2017, the Trump Administration has discussed and proposed dramatic changes to the immigration system that would drastically transform and limit the ability of immigrants to adjust their status to lawful permanent residence. The Administration has planned to achieve this in part through dramatic change to regulations that define certain immigrants as "public charge."

18. Under Section 212(a)(4) of the Immigration and Nationality Act (INA), an alien may be denied admission or adjustment of status if she is likely to become a public charge. 8 U.S.C. §§ 1182(a)(4)(A) (the "Admissibility Statute"). Under Section 237(a)(5) of the INA, a

person with lawful status may be removed from the U.S. if she becomes a public charge within five years of entry into the United States based on causes not affirmatively shown to have arisen since entry. 1227(a)(5) (the “Removal Statute”).

19. For decades, those deemed public charges have been limited to those “primarily dependent on the government for subsistence as demonstrated by either the receipt of public cash assistance for income maintenance or institutionalization for long-term care at government expense.” *Field Guidance on Deportability and Inadmissibility on Public Charge Grounds*, 64 FR 28689 (May 26, 1999). The government considered only means-tested cash assistance as a trigger for this determination, and did not view such non-cash assistance as Medicaid the Children’s Health Insurance Program (CHIP) or housing assistance as subject to the “public charge” determination.

20. The Trump Administration now seeks to transform this definition and to capture hundreds of thousands of intending immigrants in this definition, and to chill many more eligible immigrants from accessing benefits to which they are entitled.

21. In January of 2017, an Executive Order titled “Protecting Taxpayer Resources by Ensuring Our Immigration Laws Promote Accountability and Responsibility” was leaked to the public. The leaked Executive Order, which was never signed, sought to expand the definition of a “public charge” in order to include any individual who is likely to receive any public benefits.

22. The leaked Executive Order caused widespread fear among immigrants and communities due to potential impacts of the order, as many families utilize public benefits that were not previously included in the public charge test. In addition, the Executive Order garnered

significant media attention as the number of people impacted by the order was estimated to be in the millions.<sup>1</sup>

23. The Executive Order was never signed. However, on March 29, 2018, Defendant DHS submitted a draft NPRM to the White House's Office of Management and Budget. This draft NPRM, like the draft Executive Order, sought to drastically alter how a public charge determination was made.

24. The draft NPRM defined a public charge as "an alien who receives one or more public benefits" and it expanded the list of public benefits to include certain health, nutrition, and housing programs that were previously excluded from the public charge determination. The NPRM sought to include non-emergency Medicaid, receipt of the earned-income tax credit, the Medicare Part D Low-Income Subsidy Program, the Supplemental Nutrition Assistance Program (SNAP), Women, Infants, and Children (WIC), and several housing programs.

25. The draft NPRM garnered widespread attention due to the immense number of people potentially affected by its reach. According to the NPRM nearly 9.5 million immigrants accepted non-cash benefits, with the majority accepting SNAP and Medicaid. All of those people could be impacted by the NPRM if they ever sought to adjust their immigration status, simply because they took advantage of programs they were entitled to.

26. Further, the fears generated by the leaking of the draft NPRM promised a far greater impact. Over 19 million children—one in four in the United States—live with an immigrant parent.

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<sup>1</sup> See Caitlin Dewey, *Trump's Draft Plan to Cut off Food Stamps for Immigrants Could Cause Some U.S. Citizens to go Hungry*, The Washington Post (Feb. 3, 2017), available at [https://www.washingtonpost.com/news/wonk/wp/2017/02/03/trumps-draft-plan-to-cut-off-food-stamps-for-immigrants-could-cause-some-u-s-citizens-to-go-hungry/?utm\\_term=.183901a85e3c](https://www.washingtonpost.com/news/wonk/wp/2017/02/03/trumps-draft-plan-to-cut-off-food-stamps-for-immigrants-could-cause-some-u-s-citizens-to-go-hungry/?utm_term=.183901a85e3c); Dara Lind, *A Leaked Trump Order Suggests he's Planning to Deport more Legal Immigrants for Using Social Services*, Vox (Jan. 31, 2017), available at <https://www.vox.com/policy-and-politics/2017/1/31/14457678/trump-order-immigrants-welfare>.

Nearly 90% of those children are citizens.<sup>2</sup> These children may lose access to services due to families' fears of losing the chance at permanent legal status and eventual deportation.

27. Indeed, within months of the leaking of the draft NPRM, many individuals forewent crucial, life-saving benefits for fear that their receipt will be used against them. These benefits include SNAP and even Free or Reduced Price Lunch programs.<sup>3</sup>

28. DHS formally released an official NPRM on October 5, 2018 and opened it for public comment on October 10, 2018. In the 60-day comment window the rule received over 266,000 comments from a range of state and local government officials, non-profit legal, social welfare, and educational organizations, health care and medical associations and individuals.

29. The regulation is a high priority for the Trump Administration. As has been widely reported, President Trump forced Secretary Nielsen's resignation due to his asserted belief that she was not aggressive enough in pursuing his efforts to restrict immigration from low-income, predominantly nonwhite countries—including by not moving quickly enough to adopt the challenged Rule.<sup>4</sup> Stephen Miller, Senior Advisor to the President for Policy, is reported to have told DHS personnel, referring to the proposed Rule, that “[y]ou ought to be working on this regulation all day every day. It should be the first thought you have when you wake up. And it should be the last thought you have before you go to bed. And sometimes you shouldn't go to

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<sup>2</sup> See Kaiser Family Foundation Analysis, *Proposed Changes to “Public Charge” Policies for Immigrants: Implications for Health Coverage*, KFF (Sept. 24, 2018), available at [https://www.kff.org/disparities-policy/fact-sheet/proposed-changes-to-public-charge-policies-for-immigrants-implications-for-health-coverage/#endnote\\_link\\_274689-4](https://www.kff.org/disparities-policy/fact-sheet/proposed-changes-to-public-charge-policies-for-immigrants-implications-for-health-coverage/#endnote_link_274689-4).

<sup>3</sup> Samantha Ariga and Barbara Lyons, *Family Consequences of Detention/Deportation: Effects on Finances, Health, and Well-Being*, Kaiser Family Foundation (Sept. 18, 2018), available at <https://www.kff.org/disparities-policy/issue-brief/family-consequences-of-detention-deportation-effects-on-finances-health-and-well-being/>.

<sup>4</sup> Jonathan Blitzer, *Kirstjen Nielsen's Inevitable Resignation from the Department of Homeland Security*, *The New Yorker* (Apr. 8, 2019), available at <https://www.newyorker.com/news/news-desk/kirstjen-nielsens-inevitable-resignation-from-the-department-of-homeland-security>.

bed.”<sup>5</sup> According to the *New York Times*, the administration’s removal of Secretary Nielsen and other senior DHS officials “was the culmination of months of clashes with Mr. Miller and others around the president who have repeatedly demanded implementation of policies that were legally questionable, impractical, unethical, or unreasonable.”<sup>6</sup>

30. Shortly thereafter, the Director of USCIS, Lee Francis Cissna, was also forced out, purportedly because his approach to the public charge regulatory changes was deemed too slow.<sup>7</sup> Indeed, in recent days, publicly-released communications to former Director Cissna have revealed intense pressure from the White House to push the public charge regulation forward. Writing to Cissna in June 2018 in the leadup to the publication of the proposed rule, Miller called the pace “unacceptable” and an “embarrassment.”<sup>8</sup>

31. In May of 2019, Reuters reported seeing a draft regulation from DOJ which would “dramatically expand the category of [green card holders] who could be subject to deportation on” public charge grounds. Yeganeh Torbati, *Trump Administration Proposal Would Make it Easier to Deport Immigrants Who Use Public Benefits*, Reuters (May 3, 2019).<sup>9</sup> Subsequently, DOJ sent a NPRM titled “Inadmissibility and Deportability on Public Charge Grounds,” to OMB for official review. Once OMB has completed their review DOJ will likely open the regulation to public comment. The forthcoming DOJ rule will have significant and

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<sup>5</sup> Eileen Sullivan & Michael D. Shear, *Trump Sees an Obstacle to Getting His Way on Immigration: His Own Officials*, N.Y. Times (Apr. 14, 2019), available at <https://www.nytimes.com/2019/04/14/us/politics/trump-immigration-stephen-miller.html?action=click&module=Top%20Stories&pgtype=Homepage>.

<sup>6</sup> *Id.*

<sup>7</sup> See Molly O’Toole, “Trump’s Homeland Security purge claims another victim, head of citizenship agency,” *Los Angeles Times* (May 28, 2019), available at <https://www.politico.com/story/2019/08/02/stephen-miller-green-card-immigration-1630406>.

<sup>8</sup> Ted Hesson, *Emails show Miller pushed hard to limit green cards*, Politico (August 2, 2019), available at <https://www.politico.com/story/2019/08/02/stephen-miller-green-card-immigration-1630406>.

<sup>9</sup> Available at <https://www.reuters.com/article/us-usa-immigration-benefits-exclusive/exclusive-trump-administration-proposal-would-make-it-easier-to-deport-immigrants-who-use-public-benefits-idUSKCN1S91UR>.

grievous impacts on legal immigrants in this Country as it targets green card holders. The DOJ rule further exemplifies this Administrations mission—to cause widespread fear and panic in immigrant communities.

32. Final release of the public charge rule on inadmissibility is imminent. On July 31, 2019, the Office of Information and Regulatory Affairs, a component of the White House Office of Management and Budget, posted on its website that its review of the final rule had been completed, indicating that the final rule could be released at any time in the coming days or weeks.

33. Release of the public charge rule on deportability, for notice and comment, is also imminent, as the OMB review of the proposed regulation commenced in May 2019.

#### **Plaintiffs' Urgent Need for Records on Public Charge**

34. There is an urgent need to inform the public of agency reasoning and planning regarding the changes to how an individual is deemed a public charge. Records and documents about this policy are crucial to public understanding of how the NPRM, the final rule on admissibility and the forthcoming rule on deportability came about and how the government's own analyses and data suggest that the changes will impact public health and safety and government spending.

35. The enormous volume of comments on the NPRM—as noted, more than 266,000 individuals and organizations submitted comments through the public comment process—and news coverage indicate that this is a matter of significant interest and exigency to the public.

36. Widespread media coverage further supports the fact that there is widespread interest in the public charge regulation and any changes to how immigrants obtain admission or

permanent lawful status. This included numerous news and opinion pieces in leading news outlets throughout the country.<sup>10</sup>

37. The imminent release of the final version of the inadmissibility rule, which is expected to take effect within 60 days of its release, heightens the urgency of Plaintiffs' Requests because of the need to educate the public about the final rule's origins and anticipated effects and consequences.

38. It is paramount that the public have the requested information to engage in informed political discussion about the rule; seek accountability through the political process; and meaningfully prepare their local government, neighborhoods, and families for the public health ramifications of the final rule. MRNY's health and organizing teams anticipate undertaking a significant public education campaign following the release of the rule. The documents sought here are directly relevant and essential to those efforts.

39. The purging of high-level officials from DHS in order to pressure the release of the NPRM and the final inadmissibility rule also heightens the public's urgent need for the information sought by MRNY and CCR. The information sought in the Requests will serve an important goal—informing the public of the motivations and pressures behind the dramatic change to the system for obtaining lawful permanent residence.

40. In addition, the expected release by the Department of Justice of a separate proposed rule pertaining to deportability on public charge grounds contributes to the public's

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<sup>10</sup> See e.g. Sung Yeon, *The Public Charge Rule Is Another Tactic to Strike Fear Among Immigrant Families*, The Hill (December 7, 2018), available at <https://thehill.com/opinion/immigration/419951-the-public-charge-rule-is-another-tactic-to-strike-fear-among-immigrant-families>; Alicia Wilson and Catalina Sol, *A Proposed New 'Public Charge' Rule puts Children's Health Insurance at Risk*, The Washington Post (December 18, 2018), available at [https://www.washingtonpost.com/outlook/2018/12/18/proposed-new-public-charge-rule-puts-childrens-health-insurance-risk/?noredirect=on&utm\\_term=.0d510df835ec](https://www.washingtonpost.com/outlook/2018/12/18/proposed-new-public-charge-rule-puts-childrens-health-insurance-risk/?noredirect=on&utm_term=.0d510df835ec); Uncovered California, *Will Undocumented Immigrants Avoid New State Health Benefits*, Los Angeles Daily News (April 17, 2019), available at <https://www.dailynews.com/2019/04/17/will-undocumented-immigrants-avoid-new-state-health-benefits/>.

compelling need for information. Insight into communications between the White House and the DOJ, and data and analyses in the government's exclusive control, is essential for Plaintiffs to educate the public and facilitate an informed response when this rule is formally proposed. MRNY anticipates conducting significant public education and advocacy efforts on the deportability rule, just as it did following the publication of the NPRM when MRNY assisted hundreds of members in submitting comments. The documents sought here are essential to ensuring that public education and advocacy is as informed and effective as possible.

41. Plaintiffs have a consistent and strong record of disseminating information about government policies to educate the public and advocate for change, including through the publication of reports, know your rights materials, toolkits, and other public-facing documents. For example, in the area of immigration advocacy alone, MRNY has developed numerous know-your-rights videos, flyers, and newsletters in English and Spanish, published a widely disseminated Deportation Defense Manual, and led multiple campaigns on behalf of immigrant workers facing wage theft and discrimination.<sup>11</sup> MRNY has held dozens of public education workshops on the public charge issue and published resources on public charge in English and Spanish. CCR has used documents obtained in FOIA litigation to publish reports on the detention contracting system, to produce toolkits for immigrant communities facing controversial ICE enforcement tactics, and to educate the public about the devastating effects of the Secure Communities program.<sup>12</sup>

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<sup>11</sup> See, e.g., "Know Your Rights," Make the Road New York, available at <https://maketheroadny.org/know-your-rights/> (linking to over a dozen public education resources in English and Spanish posted since late 2018).

<sup>12</sup> See, e.g., *Defend Against ICE Raids and Community Arrests: A Toolkit to Prepare and Protect Our Communities* (January 2017) (toolkit co-authored with Immigrant Defense Project), available at <https://www.immigrantdefenseproject.org/raids-toolkit/>; *Banking on Detention: Local Lockups and the Immigrant Dragnet* (June 2015) (report co-authored with Detention Watch Network) available at <https://www.detentionwatchnetwork.org/sites/default/files/reports/DWN%20CCR%20Banking%20on%20Detention%20Report.pdf>; *Uncovering the Truth: ICE and Police Collaborations* (2012) (website co-published with National Day Laborer Organizing Network and the Immigration Justice Clinic at Cardozo School of Law), at [www.uncoverthetruth.org](http://www.uncoverthetruth.org).

42. MRNY and CCR are non-profit entities with no commercial interest in the records requested, who seek this information for the purpose of educating the public about the background and impacts of the public charge regulation.

43. Accordingly, Plaintiffs' Requests and the present action are necessary in order to vindicate the public's right to be informed of its government's operations, and to correct Defendants' refusal to be open, transparent, and responsive regarding the effects of the NPRM and the considerations taken before implementing the rule.

**MRNY's June 2018 FOIA Requests to Defendants DHS, USCIS and ICE**

44. On June 21, 2018, Plaintiff MRNY sent a Request pursuant to FOIA, 5 U.S.C. §552, *et seq.*, via overnight mail and email to Defendants DHS, ICE and USCIS. *See* Exhibit A.

45. Plaintiff MRNY's June 2018 Request sought:

- a. "All emails, communications and analyses related to the NPRM sent by the DHS (including [USCIS]) to the Office of Information and Regulatory Affairs ("OIRA") and/or OMB; and
- b. any other emails, communications and analyses related to the NPRM between or among DHS and/or (a) any part of the Executive Branch; (b) Congressional member of staff, and/or (c) any other person or entity outside the Executive Branch."

46. Plaintiff MRNYs June 2018 Request sought expedited processing under 5 U.S.C. § 552 (a)(6)(E)(i)(I), citing a "compelling need" for the information because it is essential in order to protect immigrants and their families from the harm that could occur if they are denied adjustment, deported or are unable to receive vital public benefits.

47. Plaintiff MRNYs June 2018 Request also sought a waiver of applicable fees under 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k), because the information "is likely to contribute significantly to the public understanding of the activities or operations of the government and is not primarily in the commercial interest of the requester."

**Agency Responses to Plaintiff MRNY's June 2018 Request**

48. Defendant DHS has provided no response whatsoever to Plaintiff's Request.

49. ICE acknowledged receipt of Plaintiff MRNY's Request in an email sent on July 26, 2018.

50. In the email ICE acknowledged receiving Plaintiff MRNY's June 29, 2018 request and claimed that Plaintiff's Request was too broad.

51. On August 1, 2018 Plaintiff sent an email requesting to speak to FOIA officer concerning the determination by ICE. Plaintiff received no response.

52. Again, on September 5, 2018 Plaintiff sent an email requesting to speak to a FOIA officer in attempt to challenge the determination by ICE. Again, Plaintiff received no response.

53. On November 28, 2018, nearly 5 months after Plaintiff MRNY's Request was sent, Defendant USCIS sent an email requesting to speak to Plaintiff about their FOIA request. The email did not provide any acknowledgment or decision regarding Plaintiff's request for documents, fee waiver, or expedited processing.

54. To date, Defendants have not provided any documents in response to Plaintiff's Request.

**MRNY's April 2019 FOIA Requests to Defendants DHS, USCIS and ICE**

55. On April 25, 2019, Plaintiff MRNY sent a Request pursuant to FOIA, 5 U.S.C. §§552, *et seq.*, to Defendants DHS, ICE and USCIS via overnight mail. *See* Exhibit B.

56. MRNY's Request related to NPRM sought:

- a. "All emails, communications and analyses related to the NPRM sent by the DHS (including [USCIS]) to the Office of Information and Regulatory Affairs ("OIRA") and/or OMB";
- b. "any other emails, communications and analyses related to the NPRM between or among DHS and/or (a) any part of the Executive Branch; (b) Congressional

member of staff, and/or (c) any other person or entity outside the Executive Branch”; and

- c. data documenting the number of individuals denied admission into the United States, denied adjustment of status, referred for removal, or removed from 1999 to the present based on a determination that they had become or were likely to become a public charge.

57. Plaintiff MRNY’s April 2019 Request sought expedited processing under 5 U.S.C. § 552 (a)(6)(E)(i)(I), citing a “compelling need” for the information because it is essential in order to protect immigrants and their families from the harm that could occur if they are denied adjustment, deported or are unable to receive vital public benefits.

58. Plaintiff MRNY’s April 2019 Request also sought a waiver of applicable fees under 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k), because the information “is likely to contribute significantly to the public understanding of the activities or operations of the government and is not primarily in the commercial interest of the requester.” MRNY is a non-profit entity with no commercial interest in the records requested.

**Agency Responses to Plaintiff MRNY’s April 2019 Requests**

59. Defendant DHS provided no response whatsoever to Plaintiff MRNY’s April 2019 Request.

60. USCIS acknowledged receiving Plaintiff MRNY’s Request in a letter dated May 9, 2019.

61. In the letter USCIS acknowledged receipt of Plaintiff MRNY’s Request and granted MRNY’s request for a fee waiver but denied Plaintiff’s request for expedited processing.

62. On June 11, 2019 Plaintiff MRNY sent USCIS a letter appealing their decision to deny Plaintiff’s request for expedited processing.

63. Defendant ICE has provided no response to MRNY’s April, 2019 Request.

64. To date, Defendants have not provided any documents in response to these requests.

**Plaintiffs MRNY's & CCR's May 8, 2019 Request to EOIR**

65. On May 8, 2019, Plaintiffs sent a Request pursuant to FOIA, 5 U.S.C. §§ 552, *et seq.*, to Defendant EOIR. *See* Exhibit C.

66. Plaintiffs' Request sought:

- a. "All emails, communications and analyses related to the NPRM sent by the EOIR (including all subcomponents) to the Office of Information and Regulatory Affairs ("OIRA") and/or OMB;
- b. "any other emails, communications and analyses related to the NPRM between or among EOIR and/or (a) any part of the Executive Branch; (b) Congressional member of staff, and/or (c) any other person or entity outside the Executive Branch"; and
- c. data documenting the number of individuals referred for removal, placed in removal proceedings, or removed from 1999 to the present based on a determination that they had become a public charge.

67. Plaintiffs' May 2019 Request sought expedited processing under 5 U.S.C. § 552 (a)(6)(E)(i)(I), citing a "compelling need" for the information because it is essential in order to protect immigrants and their families from the harm that could occur if they are denied adjustment, deported or are unable to receive vital public benefits.

68. Plaintiffs' May 2019 Request also sought a waiver of applicable fees under 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k), because the information "is likely to contribute significantly to the public understanding of the activities or operations of the government and is not primarily in the commercial interest of the requester."

**Agency Responses to May 2019 Request to EOIR**

69. In a letter dated May 29, 2019 EOIR acknowledged receiving Plaintiffs' Request and denied being a custodian for any of the records Plaintiffs requested.

70. On June 18, 2019 Plaintiffs sent a letter to EOIR appealing the adequacy of search conducted for the documents Plaintiffs requested.

71. On June 27, 2019 EOIR acknowledged receiving Plaintiffs' appeal on June 24, 2019.

72. To date, Defendant EOIR has provided no documents in response to this request.

**First Claim for Relief**

**Defendants Have Failed to Disclose and Release Records  
Responsive to Plaintiffs' Requests**

73. Plaintiffs repeat and re-allege each and every allegation contained in paragraphs 1-72 as if repeated and incorporated herein.

74. By failing to disclose and release the requested records, Defendants have violated the public's right, advanced by the Plaintiffs, to access agency records under 5 U.S.C. § 552 and to do so within the time periods set forth by statute.

**Second Claim for Relief**

**Defendants Improperly Denied or Have not Responded to  
Plaintiff's Request for Expedited Processing**

75. Plaintiffs repeat and re-allege each and every allegation contained in paragraphs 1-74 as if repeated and incorporated herein.

76. Defendants have violated Plaintiffs' rights to expedited processing under 5 U.S.C. § 552(a)(6)(E) and Defendants' own regulations, 6 C.F.R. § 5.5(d) and 28 C.F.R. § 16.5(e).

**Third Claim for Relief**

**Defendants Improperly Denied or Have not Responded to  
Plaintiffs' Requests for a Fee Waiver**

77. Plaintiffs repeat and re-allege each and every allegation contained in paragraphs 1-76 as if repeated and incorporated herein.

78. Defendants have violated Plaintiffs' rights to a fee waiver under 5 U.S.C. § 552(a)(4)(A)(iii) and Defendants' own regulations, 6 C.F.R. § 5.11(k) and 28 C.F.R. § 16.10(k).

**Fourth Claim for Relief**

**Defendant EOIR Has Failed to Conduct an Adequate Search For Records  
Responsive to Plaintiffs' Request**

79. Plaintiffs repeat and re-allege each and every allegation contained in paragraphs 1-78 as if repeated and incorporated herein.

80. Defendant EOIR has violated Plaintiffs' rights to obtain all documents responsive to their Request by failing to conduct a reasonable search for records pursuant to 5 U.S.C. §§ 552 *et seq.*

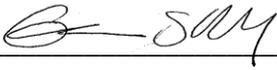
**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that this Court:

- 1) Order Defendants immediately to make a full, adequate, and expedited search for the requested records;
- 2) Order Defendants to engage in expedited processing in this action;
- 3) Order Defendants, upon completion of expedited processing, to disclose the requested records in their entirety and make copies available to Plaintiffs no later than ten days after the Court's order;
- 4) Enjoin Defendants from assessing fees or costs for the processing of the FOIA Request;
- 5) Award Plaintiffs their costs and reasonable attorney's fees incurred in this action as provided by 5 U.S.C. § 552(a)(4)(E); and
- 6) Grant such further relief as this Court may deem just and proper.

Respectfully submitted,

Date: August 9, 2019  
New York, NY



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