



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

*271-A Cadman Plaza East
Brooklyn, New York 11201*

July 12, 2023

BY ECF

Honorable Ramon E. Reyes, Jr.
United States Magistrate Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *CLEAR, et al. v. United States Customs and Border Protection,*
Civil Action No. 19-CV-07079 (RER)

Dear Judge Reyes:

This letter is jointly submitted by the parties in accordance with Your Honor's Order dated June 13, 2023, in the above-referenced action pursuant to the Freedom of Information Act, 5 U.S.C. § 552.

By letter dated February 17, 2023 (Dkt. #60), Plaintiffs advised the Court that the parties had been discussing issues related to Defendant's supplemental submissions concerning the disputed documents (Dkt. #57, #57-1, #57-2) and Defendant's recent productions to identify any remaining issues. At the March 7, 2023 conference, Plaintiffs reported that there were no further challenges to Defendant's responses but they would be seeking attorneys' fees and costs. The parties agreed that they would engage in negotiations and attempt to obviate the need for further motion practice. Your Honor directed the parties to submit either a status report or stipulation of dismissal on May 12, 2023.

As set forth in the parties' status reports dated May 12, 2023 and June 12, 2023, Plaintiffs have provided Defendant with their proposal regarding attorneys' fees and costs, and the parties have been discussing settlement. Your Honor directed the parties submit a further status report or proposed briefing schedule for a motion for attorneys' fees and costs by today.

The parties continue to explore settlement and believe that this is the most productive path to resolving this case at this time. The discussions have taken much longer than anticipated because high level of approvals are necessary due to the fact that the payment will come out of the agency's budget. That process has been delayed due to the approval official's

recent departure. Nevertheless, the parties would prefer to continue to attempt to resolve the attorneys' fees and costs rather than burden the Court with motion practice.

Therefore, the parties respectfully propose that they provide either a further status report or a proposed briefing schedule for a motion for attorneys' fees and costs in forty-five days, *i.e.*, by August 25, 2023.

Thank you for Your Honor's consideration of this submission.

Respectfully submitted,

BREON PEACE
United States Attorney
Attorney for Defendant

By: s/*Kathleen A. Mahoney*
KATHLEEN A. MAHONEY
Senior Litigation Counsel
Assistant U.S. Attorney
(718) 254-6026
kathleen.mahoney@usdoj.gov

cc: (By ECF)
Counsel for Plaintiffs

Scarlet Kim
Patrick Toomey
American Civil Liberties Union Foundation

Robert Hodgson
Christopher Dunn
New York Civil Liberties Union Foundation

Tarek Ismail
CUNY School of Law