

1 James L. Day (State Bar No. 197158)
jday@fbm.com
2 Vanessa K. Ing (State Bar No. 329577)
ving@fbm.com
3 FARELLA BRAUN + MARTEL LLP
One Bush Street, Suite 900
4 San Francisco, California 94104
Telephone: (415) 954-4400
5 Facsimile: (415) 954-4480

6 Eva L. Bitran (State Bar No. 302081)
ebitran@aclu.org
7 ACLU FOUNDATION OF SOUTHERN
CALIFORNIA
8 1313 W. 8th Street
Los Angeles, CA 90017
9 Telephone: (909) 380-7505

10 Eunice Cho (*pro hac vice* forthcoming)
echo@aclu.org
11 AMERICAN CIVIL LIBERTIES UNION FOUNDATION
NATIONAL PRISON PROJECT
12 915 Fifteenth Street NW, 7th Floor
Washington, DC 20005
13 Telephone: (202) 548-6616

14 Attorneys for Plaintiff
(*additional counsel information on next page*)

15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION
17

18 AMERICAN CIVIL LIBERTIES
19 UNION FOUNDATION OF
20 SOUTHERN CALIFORNIA,

21 Plaintiff,

22 vs.

23 FEDERAL BUREAU OF PRISONS,
UNITED STATES CUSTOMS AND
24 BORDER PROTECTION, UNITED
STATES DEPARTMENT OF
25 HOMELAND SECURITY OFFICE OF
CIVIL RIGHTS AND CIVIL
26 LIBERTIES, and UNITED STATES
DEPARTMENT OF HOMELAND
27 SECURITY,

28 Defendants.

Case No. 2:24-cv-09123

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

1 Kyle Virgien (State Bar No. 278747)
kvirgien@aclu.org
2 AMERICAN CIVIL LIBERTIES UNION FOUNDATION
3 NATIONAL PRISON PROJECT
425 California Street, 7th Floor
San Francisco, CA 94104
4 Telephone: 415-343-0770

5 My Khanh Ngo (State Bar No. 317817)
mngo@aclu.org
6 AMERICAN CIVIL LIBERTIES UNION FOUNDATION
7 IMMIGRANTS' RIGHTS PROJECT
425 California Street, 7th Floor
San Francisco, CA 94104
8 Telephone: 415-343-0770

9 Attorneys for Plaintiff

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **INTRODUCTION**

2 1. This action under the Freedom of Information Act (“FOIA”) seeks the
3 timely release of agency records by defendants Federal Bureau of Prisons (“BOP”),
4 United States Customs and Border Protection (“CBP”), Department of Homeland
5 Security Office of Civil Rights and Civil Liberties (“CRCL”), and United States
6 Department of Homeland Security (“DHS”) (collectively, “Defendants”).
7 Specifically, this action seeks disclosure of records related to the use of BOP
8 facilities for immigration detention and the use of soft-sided temporary facilities
9 (tent-like structures) by CBP for holding and processing migrants in Texas.

10 2. The records sought address a matter of great public concern. Both the
11 use of federal prisons run by BOP for immigration detention and CBP’s use of tent-
12 like structures in Texas to detain immigrants have caused significant civil rights
13 violations in the past, prompting several complaints and investigations. In 2018, the
14 ACLU sued then-President Trump, U.S. Immigration and Customs Enforcement
15 (“ICE”), and BOP for violating the constitutional rights of immigrants detained at a
16 federal prison in California, arguing that detention at the BOP facility caused
17 needless harm and suffering to immigrants who were held there.¹ Media outlets
18 have also reported on concerns regarding conditions of confinement at tented
19 facilities in Texas.² If a future presidential administration were to initiate a program
20 of mass detention and deportation, the government might turn to tent-like structures
21 or BOP facilities to expand its capacity to hold migrants. The information Plaintiff
22

23 ¹ Complaint, *Teneng v. Trump*, No. 5:18-cv-01609 (C.D. Cal. Aug. 1, 2018), ECF
24 No. 1; Complaint, *Rodriguez Castillo v. Nielsen*, No. 5:18-cv-01609 (C.D. Cal. June
25 19, 2019), ECF No. 1.

26 ² *E.g.*, *Congressman Releases Photos of Migrant Detention Facilities at US Border*,
27 Voice of America (Mar. 22, 2021),
28 https://www.voanews.com/a/usa_immigration_congressman-releases-photos-migrant-detention-facilities-us-border/6203633.html.

1 seeks through these requests will help to inform the public of the risks that would
2 result if the government were to use these types of detention.

3 3. Plaintiff, which is a nonprofit, nonpartisan civil liberties advocacy
4 organization, submitted FOIA requests (the “Requests”) to the Defendants on
5 September 10, 2024, seeking the release of records relating to the implementation of
6 these operations. To date, only one of the Defendants has released any responsive
7 records, notwithstanding the FOIA’s requirement that agencies respond to requests
8 within, at most, 30 working days.

9 4. Plaintiff now asks the Court for injunctive and other appropriate relief
10 requiring Defendants to conduct a thorough search for all responsive records and to
11 immediately process and release any responsive records. Plaintiff also seeks an
12 order enjoining Defendants from withholding non-exempt, responsive records.
13 Finally, Plaintiff seeks an order that Defendants immediately and expeditiously
14 process and release any responsive records and immediately and unconditionally
15 waive all fees associated with responding to Plaintiff’s FOIA Requests.

16 **JURISDICTION AND VENUE**

17 5. The Court has subject-matter jurisdiction over this action and personal
18 jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). The Court also has
19 jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. §§ 701-06.

20 6. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B). Plaintiff
21 resides and has its principal place of business in this district.

22 **PARTIES**

23 7. Plaintiff American Civil Liberties Union Foundation of Southern
24 California (“ACLU SoCal” or “Plaintiff”) is a nonprofit, nonpartisan organization
25 under the laws of California with over 120,000 members. As an affiliate of the
26 national American Civil Liberties Union Foundation, ACLU SoCal is dedicated to
27 the principles of liberty and equality embodied in the constitutions of the United
28 States and California, as well as our nation’s civil rights laws. ACLU SoCal is also

1 committed to principles of transparency and accountability in government, and
2 seeks to ensure that the American public is informed about the conduct of its
3 government in matters that affect civil liberties and human rights. Obtaining
4 information about governmental activity, analyzing that information, and widely
5 publishing and disseminating it to the press and public is a critical and substantial
6 component of the ACLU's work and one of its primary activities.

7 8. Defendant BOP is an agency of the U.S. government within the
8 meaning of 5 U.S.C. § 551(1), 5 U.S.C. § 552(f), and 5 U.S.C. § 702. BOP has
9 possession, custody, and control of records that ACLU SoCal seeks.

10 9. Defendant CBP is an agency of the U.S. government within the
11 meaning of 5 U.S.C. § 551(1), 5 U.S.C. § 552(f), and 5 U.S.C. § 702. CBP has
12 possession, custody, and control of records that ACLU SoCal seeks.

13 10. Defendant CRCL is an agency of the U.S. government within the
14 meaning of 5 U.S.C. § 551(1), 5 U.S.C. § 552(f), and 5 U.S.C. § 702. CRCL has
15 possession, custody, and control of records that ACLU SoCal seeks.

16 11. Defendant DHS is an agency of the U.S. government within the
17 meaning of 5 U.S.C. § 551(1), 5 U.S.C. § 552(f), and 5 U.S.C. § 702. DHS has
18 possession, custody, and control of records that ACLU SoCal seeks, including
19 through its component or subcomponent offices CBP, the Privacy Office, and
20 CRCL.

21 FACTUAL BACKGROUND

22 12. On September 10, 2024, ACLU SoCal submitted a FOIA Request to
23 Defendant BOP, seeking records related to the use of BOP facilities for immigration
24 detention from the period of January 1, 2017 through the present, including but not
25 limited to policy memoranda, detention standards, contracts, and any other
26 documents regarding the use of BOP facilities to hold people in the custody of ICE.
27 *See Exhibit A*, "FOIA Request to BOP." Specifically, this Request seeks the
28 following records:

- 1 • (1) “DOCUMENTS sufficient to show all DETENTION
2 STANDARDS that have applied, from January 1, 2017 through the
3 present, to people who are in the legal custody of ICE but who are held
4 in a BOP FACILITY.” *See id.* at 3.
- 5 • (2) “All contracts or agreements between ICE and BOP, dated between
6 January 1, 2017 and the present, regarding the use of BOP
7 FACILITIES to hold people who are in the legal custody of ICE[.]”
8 *See id.*
- 9 • (3) “Policy memoranda and other DOCUMENTS, effective between
10 January 1, 2017 and the present, setting out BOP policy with respect to
11 holding people in the legal custody of other agencies (such as ICE or
12 the U.S. Marshals Service) in BOP facilities.” *See id.*

13 13. On September 10, 2024, ACLU SoCal also submitted a FOIA Request
14 to Defendants CBP, CRCL, and DHS (via its privacy office). *See Exhibit B*, “FOIA
15 Request to CBP.” This Request seeks records regarding the use of soft-sided
16 temporary facilities used by CBP for holding and processing migrants in Texas,
17 including, but not limited to, detention standards, contracts, and inspection and
18 investigative reports resulting from examinations or investigations conducted by
19 CRCL and the Office of Immigration Detention Ombudsman (“OIDO”) of such
20 facilities, as well as records related to CBP’s assessments of U.S. Department of
21 Defense sites for additional temporary soft-sided facilities. *See id.* Specifically, this
22 Request seeks the following records:

- 23 • (1) “DOCUMENTS sufficient to show all DETENTION
24 STANDARDS that have applied, from January 1, 2019 through the
25 present, to people who are held in DHS custody at CBP’s temporary
26 soft-sided facilities in Texas, including, but not limited to facilities in
27 the Rio Grande Valley, Laredo, and Del Rio, Texas sectors.” *See id.* at
28 4.
- (2) “CBP contracts or agreements in effect from January 1, 2019, to the
present, for temporary soft-sided facilities, including, but not limited to
their construction and use, equipment, rent, utilities, and support
services such as meals, medical care, childcare, and janitorial services.”
See id.
- (3) “All inspection and investigative reports from CRCL examinations
of temporary soft-sided detention facilities under the auspices of CBP
from January 1, 2019 to the present, excluding personal identifying
information about employees and detainees of detention facilities.” *See*
id.

- 1 • (4) “All inspection and investigative reports from OIDO examinations
2 of temporary soft-sided detention facilities under the auspices of CBP
3 from January 1, 2019 to the present, excluding personal identifying
information about employees and detainees of detention facilities.” *See*
id.
- 4 • (5) “CBP’s assessments of DOD sites for additional temporary soft-
5 sided facilities, including, but not limited to the assessment referenced
6 in DHS Secretary Mayorkas’s April 26, 2022 Memorandum titled
‘DHS Plan for Southwest Border Security and Preparedness.’” *See id.*

7 14. Plaintiff sought a waiver of any fees associated with responding to its
8 FOIA Requests, including any search, review, and reproduction fees, on the ground
9 that disclosure of the requested records is “in the public interest because it is likely
10 to contribute significantly to public understanding of the operations or activities of
11 the government and is not primarily in the commercial interest of the requester.”
12 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 6 C.F.R. § 5.11(k); 28 C.F.R. § 16.10(k).

13 15. Plaintiff also sought a waiver of any fees associated with responding to
14 its FOIA Requests, including any search and review fees, on the grounds that the
15 ACLU qualifies as a “representative of the news media” and that the records are not
16 sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 6 C.F.R.
17 § 5.11(d)(1); 28 C.F.R. §§ 16.10(c)(1)(i), (d)(1).

18 16. In addition, Plaintiff sought expedited processing pursuant to 5 U.S.C.
19 § 552(a)(6)(E), 6 C.F.R. § 5.5(e), and 28 C.F.R. § 16.5(e) because there is a
20 “compelling need” for these records. As an organization that routinely disseminates
21 information to the public and advocates for government transparency and
22 accountability, especially as to potential government abuses of civil rights and civil
23 liberties, Plaintiff has an urgent need to obtain these records so it can inform the
24 public about the federal government’s activities with respect to its treatment of
25 noncitizens.

26 Defendants’ Responses to the FOIA Requests

27 Federal Bureau of Prisons

28 17. BOP acknowledged receipt of the FOIA Request attached as Exhibit A

1 on September 19, 2024, by email. *See Exhibit C* (“Email Correspondence with
2 BOP”). While BOP acknowledged that Plaintiff’s request met the requirement for
3 expedited processing, BOP stated that processing Plaintiff’s request might take up to
4 six months. *See id.* at 2. BOP then invoked a 10-business-day extension for its
5 response under 5 U.S.C. § 552(a)(6)(B). *See id.* Because BOP did not address
6 Plaintiff’s request for a fee waiver, Plaintiff sent a request on September 19, 2024,
7 asking BOP to issue a formal determination on the fee waiver request. *See id.* at 1.
8 On September 24, 2024, BOP stated in response that any decision with regard to
9 fees would be made only after determining whether fees would be implicated in the
10 request. *See id.* Therefore, there has been no final determination on Plaintiff’s fee
11 waiver request.

12 18. To date, BOP has produced no records and has not responded to the
13 Request. BOP has neither released responsive records nor explained its basis for
14 withholding them.

15 19. Plaintiff has exhausted all administrative remedies because BOP has
16 failed to respond to the Request within the FOIA’s time limit of 30 working days.

17 United States Customs and Border Protection

18 20. CBP acknowledged receipt of the FOIA Request attached as Exhibit B
19 on September 11, 2024, by email. *See Exhibit D* (“Email Correspondence with
20 CBP”). CBP invoked a 10-business-day extension for the request pursuant to
21 6 C.F.R. § 5.5(c) and did not address Plaintiff’s request for expedited processing.
22 *See id.* at 3. Plaintiff responded on September 12, 2024, referring CBP to the
23 request for a fee waiver and asking for a formal determination. *See id.* at 1-3. CBP
24 never provided a formal determination on Plaintiff’s request for a fee waiver.

25 21. On October 16, 2024, CBP provided Plaintiff with an update on the
26 FOIA Request. *See Exhibit E* (“October 16, 2024 Email from CBP”). First, with
27 respect to Item 1 of the Request, CBP provided a publicly available link to its
28

1 National Standards on Transport, Escort, Detention, and Search,³ but provided no
2 other documents, including additional known responsive documents. CBP also
3 stated that it deferred Item 3 to DHS. For the remaining Items 2, 4, and 5, CBP
4 stated that it is still searching for records. On October 21, CBP sent another email
5 informing Plaintiff that the status of its FOIA request is “Processing: Searching for
6 Records,” and notified Plaintiff that “once a response is made available, you will be
7 notified electronically.” *See Exhibit F* (“October 21, 2024 Email from CBP to
8 ACLU”). In neither of its emails did CBP provide further details as to what
9 information the agency would release or not release, or information regarding
10 administrative appeal for Item 1.

11 22. To date, other than the singular document provided in response to
12 Item 1, CBP has produced no records responsive to the Request nor explained its
13 basis for withholding them.

14 23. Plaintiff has exhausted all administrative remedies, because CBP has
15 failed to comply with the time limit of 30 working days to respond to the Request
16 under the FOIA.

17 Office of Civil Rights and Civil Liberties

18 24. CRCL acknowledged Plaintiff’s FOIA Request attached as Exhibit B
19 on September 10, 2024, by email. *See Exhibit G* (“Email Correspondence with
20 CRCL”). CRCL stated that for Items 1, 2, 4, and 5, it determined those records
21 would be under the purview of the DHS Privacy Office and CBP, and directed the
22 request to them. *See id.* at 1. CRCL did not address Plaintiff’s requests for a fee
23 waiver or for expedited processing. *See id.* This response also did not invoke any
24 extension for responding to the FOIA Request. *See id.*

25 25. To date, CRCL has produced no records nor any other response.
26

27 _____
28 ³ *See* <https://www.cbp.gov/document/directives/cbp-national-standards-transport-escort-detention-and-search>.

1 CRCL has neither released responsive records nor explained its basis for
2 withholding them.

3 26. Plaintiff has exhausted all administrative remedies because CRCL has
4 failed to comply with the time limit of 20 working days to respond to the Request
5 under the FOIA.

6 United States Department of Homeland Security

7 27. On September 12, 2024, DHS's Privacy Office acknowledged receipt
8 of the FOIA Request attached as Exhibit B. *See Exhibit H* ("September 12, 2024
9 Letter from DHS"). DHS transferred Items 1, 2, and 5 of the Request to the FOIA
10 Officer for CBP. *See id.* at 1-2. It also noted that Item 3 would be under the
11 purview of CRCL. *See id.* at 2. As to Item 4, DHS invoked a 10-business-day
12 extension for responding to the FOIA Request under 6 C.F.R. § 5.5(c). Lastly, DHS
13 conditionally granted Plaintiff's request for a fee waiver, but did not address
14 Plaintiff's request for expedited processing. *See id.* at 2-3.

15 28. On September 17, 2024, DHS's Privacy Office emailed Plaintiff
16 requesting clarification of Item 4 of the FOIA Request, specifically requesting that
17 Plaintiff define what it means by "'inspection and investigative' reports." *See*
18 **Exhibit I** ("September 17, 2024 Email from DHS"). Plaintiff wrote back on
19 September 18 with a detailed clarification, which served to perfect Item 4 of
20 Plaintiff's FOIA Request submitted September 10. *See Exhibit J* ("September 18,
21 2024 Clarification Email Re: FOIA Request"). Plaintiff offered to provide further
22 clarification if needed. No response was received.

23 29. To date, DHS has produced no records nor any other response. DHS
24 has neither released responsive records nor explained its basis for withholding them.

25 30. Plaintiff has exhausted all administrative remedies because DHS has
26 failed to comply with the time limit of 30 working days to respond to the Request
27 under the FOIA.

28

1 **Statutory Requirements**

2 31. “The Freedom of Information Act was enacted to facilitate public
3 access to government documents.” *U.S. Dep’t of State v. Ray*, 502 U.S. 164, 173
4 (1991) (citing *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 151 (1989)). Its
5 basic purpose is “to ensure an informed citizenry, vital to the functioning of a
6 democratic society, needed to check against corruption and hold the governors
7 accountable to the governed.” *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214,
8 242 (1978).

9 32. With that purpose in mind, the FOIA statute requires federal agencies
10 like Defendants to disclose records within 20 working days in response to FOIA
11 Requests. 5 U.S.C. § 552(a)(6)(A)(i). If there are “unusual circumstances,” an
12 agency may extend the time limit by no more than 10 working days. *Id.*
13 § 552(a)(6)(B)(i). To invoke that extension, the agency must provide “written
14 notice . . . setting forth the unusual circumstances for such extension and the date on
15 which a determination is expected to be dispatched.” *Id.* An agency can extend its
16 processing time beyond the additional 10 days only if it provides written notice and
17 “an opportunity to limit the scope of the request so that it may be processed within
18 that time limit or an opportunity to arrange with the agency an alternative time
19 frame for processing the request or a modified request.” *Id.* § 552(a)(6)(B)(ii).

20 33. More than 30 working days have passed since Defendants BOP, CBP,
21 and DHS received Plaintiff’s Requests, but, with the exception of CBP as to Item 1
22 of Plaintiff’s Request, these Defendants still have not provided any records.

23 34. More than 20 working days have passed since Defendant CRCL
24 received Plaintiff’s Request, but this Defendant still has not provided any records.

25 35. The statutory time period has thus elapsed for all Defendants.

26 36. A district court has jurisdiction to enjoin an agency from withholding
27 records and to order production of records that are subject to disclosure. 5 U.S.C.
28 § 552(a)(4)(B).

1 37. FOIA also allows for requesters to ask for expedited processing of their
2 request for records if they can demonstrate a compelling need. 5 U.S.C.
3 §552(a)(6)(E)(i). The term “compelling need” applies to requesters who are
4 primarily engaged in disseminating information and possess the urgency to inform
5 the public concerning actual or alleged Federal government activity. 5 U.S.C.
6 § 552(a)(6)(E)(v)(II).

7 38. FOIA, and its implementing regulations, further permits requesters to
8 seek a waiver of fees associated with responding to their request for records,
9 including any search, review, and reproduction fees, on the ground that disclosure of
10 the requested records is “in the public interest because it is likely to contribute
11 significantly to public understanding of the operations or activities of the
12 government and is not primarily in the commercial interest of the requester.”
13 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 6 C.F.R. § 5.11(k); 28 C.F.R. § 16.10(k).

14 39. Under FOIA and its implementing regulations, a requester may also
15 seek a waiver of search and review fees on the grounds that it qualifies as a
16 “representative of the news media” and that the records are not sought for
17 commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 6 C.F.R. § 5.11(d)(1);
18 28 C.F.R. §§ 16.10(c)(1)(i), (d)(1).

19 **CLAIMS FOR RELIEF**

20 **CLAIM I**
21 **(Against All Defendants)**

22 **5 U.S.C. § 552(a)(6)(A)**
23 **Failure to Timely Respond to the Requests**

24 40. Plaintiff incorporates by reference the above paragraphs as if fully set
25 forth herein.

26 41. Plaintiff properly submitted the FOIA Requests on September 10,
27 2024, requesting records within the possession, custody, and control of Defendants.

28 42. Defendants are obligated under 5 U.S.C. § 552(a)(3) to produce records

1 responsive to Plaintiff's FOIA Requests.

2 43. To date, Defendants have not provided a determination on the FOIA
3 Requests for disclosure of the requested records to Plaintiff.

4 44. No basis exists for Defendants' failure to provide a response to
5 Plaintiff's FOIA Requests.

6 45. Defendants' failure to provide a determination within the statutory
7 period is a violation of 5 U.S.C. § 552(a)(6)(A) and the agencies' corresponding
8 regulations. By failing to disclose and release the requested records, Defendants
9 have violated Plaintiff's rights to Defendants' records under 5 U.S.C. § 552.

10
11 **CLAIM II**
12 **(Against All Defendants)**

13 **5 U.S.C. § 552(a)(3)(A)-(D)**
14 **Failure to Make a Reasonable Effort to Search for and Promptly**
15 **Release Records**

16 46. Plaintiff incorporates by reference the above paragraphs as if fully set
17 forth herein.

18 47. Defendants are agencies subject to and within the meaning of FOIA,
19 and they must therefore make reasonable efforts to search for requested records.

20 48. Upon information and belief, Defendants have in their possession
21 responsive documents, including those specifically identified in Plaintiff's FOIA
22 Requests, that they have failed to produce.

23 49. The failure of Defendants to make a reasonable effort to search for
24 records responsive to the Requests violates the FOIA, 5 U.S.C. § 552(a)(3), and
25 Defendants' corresponding regulations.

26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CLAIM III
(Against All Defendants)

5 U.S.C. § 552(a)(3)(A)-(D), (a)(8)(A), (b)
Failure to Promptly Release Non-Exempt Records

50. Plaintiff incorporates by reference the above paragraphs as if fully set forth herein.

51. Defendants are agencies subject to and within the meaning of FOIA, and they must therefore promptly release all non-exempt records.

52. Upon information and belief, Defendants have in their possession responsive, non-exempt documents, including those specifically identified in Plaintiff's FOIA Requests, that they have failed to produce.

53. Defendants have violated the FOIA, 5 U.S.C. § 552, and Defendants' corresponding regulations, by withholding non-exempt agency records subject to the Requests.

CLAIM IV
(Against All Defendants)

5 U.S.C. § 552(a)(4), (a)(6)
Failure to Grant Fee Waiver

54. Plaintiff incorporates by reference the above paragraphs as if fully set forth herein.

55. The information Plaintiff seeks through the FOIA Requests is likely to contribute significantly to public understanding of the operations or activities of the government.

56. The information sought is not primarily in Plaintiff's commercial interest. Plaintiff is a nonprofit organization and has no commercial interest.

57. The requested records pertain to the federal government's immigration detention and deportation network and the ways in which Defendants spend their significant detention budgets. This is a matter of widespread media and public

1 interest, and the requested records will contribute significantly to the public
2 understanding of the operations or activities of the government.

3 58. Defendants BOP, CBP, and CRCL have not reached formal
4 determinations on Plaintiff's fee waiver requests. Defendant DHS conditionally
5 granted Plaintiff's fee waiver request.

6 59. The failure of Defendants to unconditionally grant Plaintiff's request
7 for a waiver of search, review, and duplication fees with respect to its FOIA
8 Requests violates the FOIA, 5 U.S.C. § 552(a)(4), (a)(6), and Defendants'
9 corresponding regulations.

10 **CLAIM V**
11 **(Against All Defendants)**

12 **5 U.S.C. § 552(a)(6)(E)**
13 **Failure to Process Plaintiff's Requests Expediently and as Soon as Practicable**

14 60. Plaintiff incorporates by reference the above paragraphs as if fully set
15 forth herein.

16 61. Defendants are agencies subject to and within the meaning of FOIA,
17 and they must therefore release all responsive, non-exempt records in an expedited
18 timeframe when a basis exists to do so.

19 62. Plaintiff is primarily engaged in disseminating information to the
20 public. Plaintiff has the ability and intention to widely disseminate the requested
21 information through a variety of sources, including reports, newsletters, news
22 briefings, right-to-know handbooks, and other materials, to the public at no cost.
23 Indeed, obtaining information about government activity, analyzing that
24 information, and widely publishing and disseminating that information to the press
25 and public are critical and substantial components of the ACLU's work and are
26 among its primary activities.

27 63. The requested records pertain to the federal government's immigration
28 detention and deportation network and the ways in which Defendants spend their

1 significant detention budgets. This is a matter of widespread media and public
2 interest, and the requested records will inform the public of pressing and urgent
3 federal governmental activities, actual or alleged.

4 64. Defendant BOP granted Plaintiff's request for expedited processing,
5 but it has not processed records expeditiously or as soon as practicable. Defendants
6 CBP, CRCL, and DHS did not address Plaintiff's requests for expedited processing,
7 constructively denying them.

8 65. The failure of Defendants to process Plaintiff's FOIA Requests
9 expeditiously and as soon as practicable violates the FOIA, 5 U.S.C. § 552(a)(6)(E),
10 and Defendants' corresponding regulations.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff respectfully request that this Court:

13 a) Declare that Defendants' failure to respond and produce the requested
14 records is unlawful;

15 b) Order Defendants to conduct a full, adequate, and expedited search for
16 all responsive records;

17 c) Declare that the requested Records are not exempt from disclosure under
18 the Freedom of Information Act;

19 d) Enjoin Defendants from withholding non-exempt, responsive records;

20 e) Declare that Plaintiff is entitled to immediate and expeditious processing
21 and release of any responsive records;

22 f) Order Defendants to immediately and expeditiously process and release
23 any responsive records;

24 g) Declare that Plaintiff is entitled to an unconditional waiver of all fees
25 associated with responding to Plaintiff's FOIA Requests;

26 h) Order Defendants to immediately and unconditionally waive all fees
27 associated with responding to Plaintiff's FOIA Requests;

28

1 i) Award Plaintiff its costs and reasonable attorneys' fees incurred in this
2 action; and

3 j) Grant such other relief as the Court deems just and proper.
4

5 Dated: October 23, 2024

FARELLA BRAUN + MARTEL LLP

6

7

By: /s/ James L. Day

8

James L. Day

9

Vanessa K. Ing

10

Attorneys for Plaintiff

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28