

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

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<b>CLEAR, AMERICAN CIVIL LIBERTIES</b>	)	)	
<b>UNION, AMERICAN CIVIL LIBERTIES</b>	)	)	
<b>UNION FOUNDATION,</b>	)	)	<b>No. 19-CV-7079 (EK/RER)</b>
	)	)	
<b>Plaintiffs,</b>	)	)	<b>(Komitee, J.)</b>
<b>v.</b>	)	)	<b>(Reyes, M.J.)</b>
	)	)	
<b>UNITED STATES CUSTOMS AND BORDER</b>	)	)	
<b>PROTECTION,</b>	)	)	<b><u>ANSWER</u></b>
	)	)	
<b>Defendant.</b>	)	)	
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Defendant United States Customs and Border Protection (“CBP”), by its undersigned counsel (the “Government” or “Defendant”), hereby answers and avers, upon information and belief, in response to the allegations and averments contained in the correspondingly numbered paragraphs of the Complaint filed by plaintiffs Creating Law Enforcement Accountability and Responsibility Project (“CLEAR”), American Civil Liberties Union (“ACLU”), and American Civil Liberties Union Foundation (“ACLUF”) (“Plaintiffs”), as follows:

1. This paragraph sets forth Plaintiffs’ characterizations of the nature and purpose of this action, and of the Tactical Terrorism Response Teams (“TTRTs”), to none of which is a response required. To the extent this paragraph can be read to allege facts to which a response may be required, denied.

2. This paragraph sets forth, by way of background, Plaintiffs’ characterization of the nature and actions of TTRTs – characterizations which are not relevant to the claims or defenses in this action, and to which no response is required. To the extent this paragraph can be read to allege facts to which a response may be required, denied.

3. This paragraph sets forth, by way of background, Plaintiffs' characterization of the nature and actions of TTRTs – characterizations which are not relevant to the claims or defenses in this action, and to which no response is required. To the extent this paragraph can be read to allege facts to which a response may be required, denied.

4. In response to the first sentence, CBP admits it did not provide Plaintiffs with all responsive, nonexempt records to Plaintiffs within twenty working days of receiving their FOIA request; otherwise, denied. The second sentence sets forth Plaintiffs' alleged motivations for bringing this suit, to which no response is required; to the extent this sentence can be read to allege facts to which a response may be required, denied.

5. This paragraph sets forth Plaintiffs' legal opinions and conclusions as to the Court's subject matter jurisdiction, to which no response is required.

6. This paragraph sets forth Plaintiffs' legal opinions and conclusions as to venue in this District, to which no answer is required. Defendant denies knowledge or information sufficient to admit or deny the allegation that Plaintiff CLEAR has its principal place of business in this District but does not contest the propriety of venue in the Eastern District of New York.

7. This paragraph sets forth background information about the nature and purpose of Plaintiff CLEAR, as well as characterizations of the nature and purpose of this action and CLEAR's alleged motivations for bringing it, to none of which is a response required. To the extent this paragraph can be read to allege facts to which a response may be required, denied, except Defendant denies knowledge or information sufficient to admit or deny the background information about CLEAR.

8. This paragraph sets forth background information about the nature and purpose of Plaintiff ACLU, as well as characterizations of the nature and purpose of this action and ACLU's

alleged motivations for bringing it, to none of which is a response required. To the extent this paragraph can be read to allege facts to which a response may be required, denied, except Defendant denies knowledge or information sufficient to admit or deny the background information about ACLU.

9. This paragraph sets forth background information about the nature and purpose of Plaintiff ACLUF, as well as characterizations of the nature and purpose of this action and ACLUF's alleged motivations for bringing it, to none of which is a response required. To the extent this paragraph can be read to allege facts to which a response may be required, denied, except Defendant denies knowledge or information sufficient to admit or deny the background information about ACLUF.

10. Admitted that CBP is a component of DHS. The second sentence is a legal conclusion to which no response is required.

11. Admitted.

12. Admitted.

13. This paragraph sets forth Plaintiffs' characterization of the nature and actions of TTRTs – characterizations which are not relevant to the claims or defenses in this action, and to which no response is required. To the extent this paragraph can be read to allege facts to which a response may be required, denied.

14. This paragraph sets forth Plaintiffs' characterization of the nature and actions of TTRTs – characterizations which are not relevant to the claims or defenses in this action, and to which no response is required. To the extent this paragraph can be read to allege facts to which a response may be required, denied.

15. This paragraph sets forth Plaintiffs' characterization of the nature and actions of TTRTs – characterizations which are not relevant to the claims or defenses in this action, and to which no response is required. To the extent this paragraph can be read to allege facts to which a response may be required, denied.

16. This paragraph sets forth Plaintiffs' and a third-party media report's characterization of the nature and purpose of TTRTs – characterizations which are not relevant to the claims or defenses in this action, and to which no response is required. To the extent this paragraph can be read to allege facts to which a response may be required, denied, and Defendant notes that the paragraph contains a misquoted statement from Kevin K. McAleenan, former Commissioner of CBP.

17. This paragraph sets forth Plaintiffs' characterization of the nature and actions of TTRTs – characterizations which are not relevant to the claims or defenses in this action, and to which no response is required. To the extent this paragraph can be read to allege facts to which a response may be required, denied.

18. This paragraph sets forth Plaintiffs' characterization of the nature and actions of TTRTs – characterizations which are not relevant to the claims or defenses in this action, and to which no response is required. To the extent this paragraph can be read to allege facts to which a response may be required, denied.

19. This paragraph sets forth Plaintiffs' characterization of the nature and actions of TTRTs – characterizations which are not relevant to the claims or defenses in this action, and to which no response is required. To the extent this paragraph can be read to allege facts to which a response may be required, denied.

20. This paragraph sets forth Plaintiffs' characterization of, and opinions, speculations, and legal conclusions concerning, the nature and actions of TTRTs – characterizations, opinions, speculations, and legal conclusions which are not relevant to the claims or defenses in this action, and to which no response is required. To the extent this paragraph can be read to allege facts to which a response may be required, denied.

21. This paragraph sets forth Plaintiffs' characterization of, and opinions, speculations, and legal conclusions concerning, the nature and actions of TTRTs – characterizations, opinions, speculations, and legal conclusions which are not relevant to the claims or defenses in this action, and to which no response is required. To the extent this paragraph can be read to allege facts to which a response may be required, denied.

22. This paragraph sets forth Plaintiffs' characterization of, and opinions, speculations, and legal conclusions concerning, the nature and actions of TTRTs – characterizations, opinions, speculations, and legal conclusions which are not relevant to the claims or defenses in this action, and to which no response is required. To the extent this paragraph can be read to allege facts to which a response may be required, denied.

23. This paragraph sets forth Plaintiffs' characterization of, and opinions, speculations, and legal conclusions concerning, the nature and actions of TTRTs – characterizations, opinions, speculations, and legal conclusions which are not relevant to the claims or defenses in this action, and to which no response is required. To the extent this paragraph can be read to allege facts to which a response may be required, denied.

24. This paragraph sets forth Plaintiffs' characterization of, and opinions, speculations, and legal conclusions concerning, the nature and actions of TTRTs – characterizations, opinions, speculations, and legal conclusions which are not relevant to the claims or defenses in this action,

and to which no response is required. To the extent this paragraph can be read to allege facts to which a response may be required, denied.

25. This paragraph sets forth Plaintiffs' characterization of, and opinions, speculations, and legal conclusions concerning, the nature and actions of TTRTs, as well as of Plaintiffs' motivation for seeking the requested information – characterizations, opinions, speculations, legal conclusions, and motivations which are not relevant to the claims or defenses in this action, and to which no response is required. To the extent this paragraph can be read to allege facts to which a response may be required, denied, except admitted that broadly speaking CBP has not made information about TTRTs publicly available, for reasons consistent with the statutory exemptions under FOIA.

26. Admitted.

27. This paragraph attempts to characterize the contents of Plaintiffs' FOIA request; Defendant denies such characterizations and refers to the document itself as the best evidence of its own contents.

28. Defendant admits that Plaintiffs' FOIA request included a request for expedited processing. The remainder of this paragraph sets forth Plaintiffs' opinions and legal conclusions as to why expedited processing was appropriate, to which no response is required. To the extent this paragraph can be read to allege facts to which a response may be required (other than the existence of an expedited processing request), Defendant denies those allegations and denies that Plaintiffs are entitled to expedited processing.

29. This paragraph sets forth allegations relating to Plaintiffs' alleged request for a public interest and news media fee reduction under FOIA and CBP regulations. As Defendant has not sought and is not seeking to collect a fee from Plaintiffs in connection with processing and

responding to their FOIA request, this paragraph is not relevant to any claims or defenses in this action, and no response to it is required.

30. Admitted.

31. This paragraph sets forth conclusions of law, to which no response is required.

32. This paragraph sets forth conclusions of law, to which no response is required.

33. This paragraph sets forth conclusions of law, to which no response is required.

34. Denied, except admitted that CBP did not provide all responsive, nonexempt records to Plaintiffs within twenty working days of receiving their FOIA request.

35. This paragraph sets forth conclusions of law, to which no response is required.

36. Denied.

37. Denied.

38. Denied.

39. Denied.

40. Denied.

41. Denied.

42. Defendant denies any allegations in the Complaint to which a response is required, except insofar as Defendant has expressly admitted such allegation herein.

43. To the extent that an answer is required to Plaintiffs' Prayer for Relief, Defendant denies it in its entirety and denies that Plaintiffs are entitled to the relief sought or any other relief.

### **DEFENSES**

1. Plaintiffs' Complaint fails to state claims upon which relief may be granted.

2. Defendant is exercising due diligence and conducting reasonable and adequate searches for nonexempt documents responsive to Plaintiffs' FOIA request, and will fully comply

with 5 U.S.C. § 552 and the applicable regulations in processing and responding to that request. Any documents and materials that are responsive to Plaintiffs' request, but exempt under 5 U.S.C. § 552(b), will properly be withheld or redacted under said exemptions.

3. Defendant may have additional defenses which are not known at this time, but which may become known through further proceedings. Accordingly, Defendant reserves the right to assert each and every affirmative or other defense that may be available, including any defenses available pursuant to Rules 8 and 12 of the Federal Rules of Civil Procedure.

WHEREFORE, Defendant respectfully requests that Plaintiffs' prayers for relief be rejected, that this action be dismissed with prejudice, and that Defendant be awarded its costs and such other and further relief as may be appropriate.

Dated: Brooklyn, New York  
March 13, 2020

RICHARD P. DONOGHUE  
United States Attorney  
Eastern District of New York

By: /s/ {FILED ELECTRONICALLY}  
F. FRANKLIN AMANAT  
Senior Counsel  
*Attorney for Defendant*  
271A Cadman Plaza East, 7<sup>th</sup> Floor  
Brooklyn, NY 11201-2776  
(718) 254-7000  
[franklin.amanat@usdoj.gov](mailto:franklin.amanat@usdoj.gov)