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**ATTORNEYS FOR DEFENDANTS/
UNITED STATES OF AMERICA**

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION**

**AMERICAN CIVIL LIBERTIES
UNION, AMERICAN CIVIL
LIBERTIES UNION FOUNDATION,
and AMERICAN CIVIL LIBERTIES
UNION OF MONTANA
FOUNDATION, INC.,**

Plaintiffs,

vs.

**DEPARTMENT OF DEFENSE,
DEPARTMENT OF HOMELAND
SECURITY, DEPARTMENT OF
THE INTERIOR, and
DEPARTMENT OF JUSTICE,**

Defendants.

CV 18-154-M-DWM

**UNITED STATES' ANSWER TO
COMPLAINT**

Comes now the United States and responds to the complaint in the above-captioned matter using the same paragraph numbers as in the complaint. All allegations in the complaint, including relief sought, are denied except when specifically admitted. Defendant admits, denies, and otherwise responds as follows:

1. The first paragraph characterizes plaintiffs' claims and requested relief, and requires no response. To the extent a further response may be required, the United States admits plaintiffs seek the specified relief under the identified authorities, but denies they are entitled to such relief.

2. In response to the first sentence of paragraph 2, admit President Trump announced approval of the Keystone XL Pipeline in March, 2017. Deny second sentence for lack of knowledge. Deny third sentence for lack of knowledge of how plaintiffs use terms like "sustained response from law enforcement," "shut down," and "surveil." Deny fourth sentence for lack of knowledge of what was documented in *The Intercept*.

3. The United States denies the first sentence of paragraph 3 for lack of knowledge of what protests are "expected," and what law enforcement coordination plaintiffs are anticipating. Deny second sentence for lack of

knowledge what the referenced newspaper reported on the date in question, or the accuracy of that reporting.

4. The United States denies paragraph 4 for lack of knowledge of what documentation plaintiffs have obtained.

4a.-4b. The United States admits paragraphs 4a-4b.

4c. The United States denies paragraph 4c for lack of knowledge how plaintiffs use the term “hosted.”

4d. The United States admits paragraph 4d.

4e. The United States denies paragraph 4e.

4f. The United States denies paragraph 4f for lack of knowledge.

5. The United States denies paragraph 5.

6. The United States denies for lack of knowledge the first sentence of paragraph 6. In response to the second sentence, the United States denies that purportedly “limited publicly available evidence” suggest anything about federal agencies. Deny third sentence except to admit it accurately recaps what plaintiffs seek by their complaint.

7. The United States denies paragraph 7 for lack of knowledge what plaintiffs believe.

8. The United States denies paragraph 8.

9. Paragraph 9 consists of legal conclusions and requires no response. To the extent a further response may be deemed required, admit 5 U.S.C. § 552(a)(4)(B) contains a grant of jurisdiction. Deny 28 U.S.C. § 1331 confers jurisdiction where it otherwise does not exist.

10.-14. The United States denies paragraphs 10-14 for lack of knowledge.

15. The United States admits paragraph 15.

16. The United States denies the first, second, and third sentences of paragraph 16 for lack of knowledge when plaintiffs submitted the requests.

17. Paragraph 17 purports to quote from several information requests, which speak for themselves and are the best evidence of their content. Deny the quote accurately portrays the referenced part of the information requests.

18.-20. Paragraphs 18-20 purport to characterize plaintiffs' written information requests, which speak for themselves and are the best evidence of their content. The United States admits plaintiffs sought a fee waiver, a limitation of fees, and expedited processing on the grounds specified, but denies the partial quotes accurately reflect the unabridged document.

21. The United States admits paragraph 21.

22. The United States denies the first sentence of paragraph 22 for lack of

knowledge when plaintiffs received the referenced letter. The first sentence also purports to characterize a letter, which speaks for itself and is the best evidence of its content. The United States admits the Army Corps of Engineers (ACE) withheld one email under exemptions 5, 6, and 7(A), and redacted others based on exemption 6.

23. In response to the first sentence of paragraph 23, admit plaintiffs submitted a letter to ACE dated August 3, 2018, where they sought an appeal for the specified reasons. Deny second sentence for lack of knowledge of what plaintiffs have received.

24. Paragraph 24 consists of a legal conclusion that requires no response. To the extent a further response may be deemed required, the United States denies the allegation for lack of knowledge.

25.-26. The United States denies the allegations in paragraphs 25-26.

27. Paragraph 27 purports to characterize a January 26, 2018 letter, which speaks for itself and is the best evidence of its content. To the extent any further response may be deemed required, admit the allegations are consistent with the letter. Deny they accurately depict the unabridged letter.

28. Paragraph 28 purports to characterize a March 23, 2018 letter, which speaks for itself and is the best evidence of its content. To the extent any further

response may be deemed required, admit the allegations are consistent with the letter. Deny they accurately depict the unabridged letter.

29. The United States denies the first sentence of paragraph 29, except to admit plaintiffs filed a timely administrative appeal. Admit second and third sentences.

30. Paragraph 30 consists of a legal conclusion and requires no response. To the extent a further response may be deemed required, the United States denies the allegations in paragraph 30.

31. The first sentence of paragraph 31 purports to characterize a February 16, 2018 letter, which speaks for itself and is the best evidence of its content. The allegations are consistent with the referenced letter, but do not fully or fairly represent its content or other communications bearing upon said content. Admit the first sentence is consistent with the letter. Deny the second sentence, except to admit the agency stated it would search for records in three categories. Admit the third sentence is consistent with the letter.

32. Paragraph 32 purports to characterize a March 27, 2018 email and attachment, which speak for themselves and are the best evidence of their content. Admit the allegations are consistent with the referenced email, but do not fully represent its content.

33. Paragraph 33 purports to characterize a June 22, 2018 email and attachment, which speak for themselves and are the best evidence of their content. Admit the allegations are consistent with the referenced email, but do not fully represent its content.

34. The United States denies paragraph 34, except to admit that plaintiffs appealed on June 28, 2018, and that the DHS Privacy Office acknowledged Plaintiffs' appeal on July 2, 2018.

35. Paragraph 35 consists of a legal conclusion and requires no response. To the extent a further response may be deemed required, the United States denies the allegations in paragraph 35.

36. The first sentence of paragraph 36 purports to characterize a March 12, 2018 letter that speaks for itself and is the best evidence of its content. Admit the allegations are consistent with the referenced letter, but do not fully represent its content. Deny the second sentence.

37. Paragraph 37 purports to characterize a May 24, 2018 letter that speaks for itself and is the best evidence of its content. Admit the allegations are consistent with the referenced letter, but do not fully represent its content.

38. The United States denies paragraph 38.

39. Paragraph 39 consists of a legal conclusion and requires no response.

To the extent a further response may be deemed required, the United States denies the allegations in paragraph 39.

40. Paragraph 40 purports to characterize a letter from BLM dated January 29, 2018, which speaks for itself and is the best evidence of its content. The United States admits BLM acknowledged receipt of the Request by letter dated January 29, 2018, and assigned it reference number 2018-00388. The United States further admits BLM granted plaintiffs' fee waiver request, and placed the Request into the "Exceptional/Voluminous" category as requiring more than sixty days for processing. To the extent a further response may be deemed required, the allegations are denied.

41. The United States denies the first sentence of paragraph 41 for lack of knowledge what plaintiffs have received. Admit second sentence.

42. Paragraph 42 consists of conclusions of law which require no response. To the extent a further response may be deemed required, the allegations are denied.

43. Paragraph 43 purports to characterize two letters from FBI dated April 6, 2018, which speak for themselves and are the best evidence of their content. The United States admits FBI acknowledged receipt of the request, assigned the specified reference number, and notified plaintiffs their fee waiver was under

consideration. The United States further admits FBI notified plaintiffs that unusual circumstances applied to their request. The allegations of paragraph 43 are otherwise denied.

44. Paragraph 44 purports to characterize an April 24, 2018 letter from FBI, which speaks for itself and is the best evidence of its content. Admit the allegations are consistent with the letter, but deny such allegations accurately depict the unabridged letter.

45. The United States denies the first sentence of paragraph 45 for lack of knowledge what plaintiffs have received. Admit second sentence.

46. Paragraph 46 consists of conclusions of law which require no response. To the extent a further response may be deemed required, the allegations are denied.

47. Paragraph 47 purports to characterize a January 31, 2018 letter from the Department of Justice's Office of Legal Counsel (OLC), which speaks for itself and is the best evidence of its content. The United States admits the allegations are consistent with the letter in that OLC acknowledged receipt of the request, assigned the specified reference number, denied expedited processing, and notified plaintiffs their fee waiver was under consideration.

48. The United States denies paragraph 48 for lack of knowledge.

49. The first sentence of paragraph 49 purports to characterize an April 25, 2018 administrative appeal, which speaks for itself and is the best evidence of its content. The sentence also contains legal conclusions, which require no response. To the extent a further response may be deemed required, admit plaintiffs submitted an administrative appeal dated April 25, 2018. Deny the second sentence.

50. The United States denies paragraph 50 for lack of knowledge.

51. The United States denies the first sentence of paragraph 51 for lack of knowledge what plaintiffs have received. Admit second sentence.

52. Paragraph 52 consists of conclusions of law which require no response. To the extent a further response may be deemed required, the allegations are denied except to admit the denial of plaintiffs' request for expedited processing was affirmed.

53.-56. Paragraphs 53-56 consists of conclusions of law which require no response. To the extent a further response may be deemed required, the allegations are denied.

The remainder of the complaint consists of plaintiffs' prayer for relief, which requires no response. To the extent a further response may be deemed required, the United States denies plaintiffs are entitled to any of the relief

requested, or to any relief whatsoever.

GENERAL DENIAL

To the extent any allegation in the complaint requires a response under Fed. R. Civ. P. 8(b), and is not effectively responded to above, the United States hereby denies such allegation.

AFFIRMATIVE DEFENSES

1. Plaintiffs fail to state a claim upon which relief can be granted.
2. Plaintiffs are not entitled to compel the production of records exempt from disclosure under the Freedom of Information Act, 5 U.S.C. § 552.

DATED this 31st day of October, 2018.

KURT G. ALME
United States Attorney

/s/ Mark Steger Smith
Assistant U.S. Attorney
Attorney for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of October, 2018, a copy of the foregoing document was served on the following person by the following means.

<u>1-3</u>	CM/ECF
_____	Hand Delivery
_____	U.S. Mail
_____	Overnight Delivery Service
_____	Fax
_____	E-Mail

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