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10
11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

14 AMERICAN CIVIL LIBERTIES UNION)
15 FOUNDATION; AMERICAN CIVIL)
LIBERTIES UNION FOUNDATION)
16 OF NORTHERN CALIFORNIA,)

17 Plaintiffs,)

18 v.)

19 DEPARTMENT OF JUSTICE; FEDERAL)
BUREAU OF INVESTIGATION;)
20 DEPARTMENT OF HOMELAND)
SECURITY; U.S. CUSTOMS AND)
21 BORDER PROTECTION; U.S.)
CITIZENSHIP AND IMMIGRATION)
SERVICES; U.S. IMMIGRATION AND)
22 CUSTOMS ENFORCEMENT;)
DEPARTMENT OF STATE,)

23 Defendants.)

No. 19-cv-290-EMC

ANSWER

24
25 Defendants Department of Justice (“DOJ”), Federal Bureau of Investigation (“FBI”),
26 Department of Homeland Security (“DHS”), U.S. Customs and Border Protection (“CBP”), U.S.
27 Citizenship and Immigration Services (“USCIS”), U.S. Immigration and Customs Enforcement

1 (“ICE”), and Department of State (“State Department”) (together, “Defendants”), by and through
2 their undersigned attorneys, answer the complaint on information and belief as follows:

3 1. Paragraph 1 consists of a characterization of this action, to which no response is
4 required.

5 2. The allegations in paragraph 2 do not set forth a claim for relief or aver facts in
6 support of a claim to which a response is required.

7 3. The allegations in paragraph 3 do not set forth a claim for relief or aver facts in
8 support of a claim to which a response is required.

9 4. Admit that Plaintiffs submitted a FOIA request dated May 24, 2018, to the
10 Defendants. The remaining allegations in paragraph 4 consist of a characterization of Plaintiffs’
11 FOIA request, and Defendants respectfully refer the Court to that document for a true and
12 complete statement of its contents.

13 5. Admitted.

14 6. The allegations in the first sentence of paragraph 6 do not set forth a claim for
15 relief or aver facts in support of a claim to which a response is required; to the extent a response
16 is deemed required, Defendants deny the allegations. The second and third sentences in
17 paragraph 6 are denied. The fourth sentence of paragraph 6 consists of a legal conclusion
18 regarding Plaintiffs’ purported entitlement to relief, to which no response is required; to the
19 extent a response is deemed required, Defendants deny that Plaintiffs are entitled to the relief
20 sought or any relief.

21 7. Paragraph 7 consists of legal conclusions regarding the Court’s jurisdiction, to
22 which no response is required.

23 8. Paragraph 8 consists of a legal conclusion regarding venue, to which no response
24 is required.

25 9. Paragraph 9 consists of a legal conclusion regarding venue, to which no response
26 is required.

27 10. Defendants lack knowledge or information sufficient to form a belief as to the
28 truth of the allegations in paragraph 10.

1 11. Admit that DOJ is an agency of the federal government. The remaining
2 allegations in paragraph 11 consist of a legal conclusion, to which no response is required.

3 12. Admit that FBI is a component of DOJ. The remaining allegations in paragraph
4 12 consist of a legal conclusion, to which no response is required.

5 13. Admit that DHS is an agency of the federal government. The remaining
6 allegations in paragraph 13 consist of a legal conclusion, to which no response is required.

7 14. Admit that defendant CBP is a component of DHS. The remaining allegations in
8 paragraph 14 consist of a legal conclusion, to which no response is required.

9 15. Admit that USCIS is a component of DHS. The remaining allegations in
10 paragraph 15 consist of a legal conclusion, to which no response is required.

11 16. Admit that ICE is a component of DHS. The remaining allegations in paragraph
12 16 consist of a legal conclusion, to which no response is required.

13 17. Admit that the State Department is an agency of the federal government. The
14 remaining allegations in paragraph 17 consist of a legal conclusion, to which no response is
15 required.

16 18-31. The allegations in paragraphs 18 through 31 do not set forth a claim for relief or
17 aver facts in support of a claim to which a response is required.

18 32. Admit that the ACLU submitted a FOIA request dated May 24, 2018, to
19 Defendants. The remaining allegations in paragraph 32 characterize the ACLU's FOIA request,
20 and Defendants respectfully refer the Court to that document for a true and complete statement
21 of its contents.

22 33. Defendants lack knowledge or information sufficient to form a belief as to the
23 truth of the allegations in paragraph 33 to the extent they purport to describe the ACLU's actual
24 reasons for seeking expedited processing. Paragraph 33 otherwise characterizes the ACLU's
25 FOIA request, and Defendants respectfully refer the Court to that document for a true and
26 complete statement of its contents.

27 34. Defendants lack knowledge or information sufficient to form a belief as to the
28 truth of the allegations in paragraph 34 to the extent they purport to describe the ACLU's actual

1 reasons for seeking fee waivers. Paragraph 34 otherwise characterizes the ACLU's FOIA
2 request, and Defendants respectfully refer the Court to that document for a true and complete
3 statement of its contents.

4 35. Admit that Defendants have not yet released any records in response to the
5 ACLU's FOIA request; otherwise deny the allegations in paragraph 35.

6 36. Admit that DOJ has acknowledged receipt of the ACLU's FOIA request. The
7 remaining allegations in paragraph 36 characterize a June 13, 2018, letter from DOJ, and
8 Defendants respectfully refer the Court to that document for a true and complete statement of its
9 contents.

10 37. The allegations in paragraph 37 characterize a June 13, 2018, letter from DOJ,
11 and Defendants respectfully refer the Court to that document for a true and complete statement
12 of its contents.

13 38. Admit that the ACLU's FOIA request was dated May 24, 2018, and that DOJ has
14 not released any records in response to that request; otherwise deny the allegations in paragraph
15 38.

16 39. Admit that the FBI has acknowledged receipt of the ACLU's FOIA request; the
17 remaining allegations in paragraph 39 characterize a letter from the FBI dated June 8, 2018, and
18 Defendants respectfully refer the Court to that document for a true and complete statement of its
19 contents.

20 40. The allegations in paragraph 40 characterize a June 8, 2018, letter from the FBI,
21 and Defendants respectfully refer the Court to that letter for a true and complete statement of its
22 contents.

23 41. Admit that the ACLU administratively appealed the FBI's response to its FOIA
24 request. The remaining allegations in paragraph 41 characterize a July 18, 2018, letter from the
25 ACLU, and Defendants respectfully refer the Court to that document for a true and complete
26 statement of its contents.

1 42. Deny. Aver that the letter dated July 23, 2018 is a letter from DOJ's Office of
2 Information Policy ("OIP"), not the FBI. Defendants respectfully refer the Court to that
3 document for a true and complete statement of its contents.

4 43. Deny. Aver that OIP responded to Plaintiffs' administrative appeal and remanded
5 the matter to the FBI.

6 44. Admit that the State Department acknowledged receipt of the ACLU's FOIA
7 request. The remaining allegations in paragraph 44 characterize a letter from the State
8 Department dated June 22, 2018, and Defendants respectfully refer the Court to that document
9 for a true and complete statement of its contents.

10 45. Admit that the ACLU filed an administrative appeal with the State Department
11 and that the State Department acknowledged receipt of that appeal. The remaining allegations in
12 paragraph 45 characterize a letter from the ACLU dated September 19, 2018, and a letter from
13 the State Department dated September 27, 2018, and Defendants respectfully refer the Court to
14 those documents for true and complete statements of their contents.

15 46. Deny that the State Department rejected the ACLU's administrative appeal. Aver
16 that the State Department processed the appeal. Admit that the State Department upheld the
17 original decision. The remaining allegations in paragraph 46 characterize a letter from the State
18 Department dated October 30, 2018, and Defendants respectfully refer the Court to that letter for
19 a true and complete statement of its contents.

20 47. Admit that DHS acknowledged receipt of the ACLU's FOIA request. The
21 remaining allegations in paragraph 47 characterize a letter from DHS dated May 30, 2018, and
22 Defendants respectfully refer the Court to that document for a true and complete statement of its
23 contents.

24 48. Admit that the ACLU filed an administrative appeal with DHS. The remaining
25 allegations in paragraph 48 characterize a letter from the ACLU dated June 29, 2018, and a letter
26 from DHS dated July 2, 2018, and Defendants respectfully refer the Court to those documents
27 for true and complete statements of their contents.

1 49. Paragraph 49 characterizes a letter from DHS dated December 18, 2018, and
2 Defendants respectfully refer the Court to that letter for a true and complete statement of its
3 contents.

4 50. Admit that DHS has not released any records in response to Plaintiffs' FOIA
5 request. Aver that the remand of Plaintiffs' FOIA request was issued three days before relevant
6 DHS employees were furloughed due to the lapse in appropriations, and that Plaintiffs filed this
7 lawsuit on January 19, 2019, while the furlough was still ongoing.

8 51. Admit that CBP acknowledged receipt of the ACLU's FOIA request. The
9 remaining allegations in paragraph 51 characterize a letter from CBP dated May 25, 2018, and
10 Defendants respectfully refer the Court to that document for a true and complete statement of its
11 contents.

12 52. Admit that the May 25, 2018, letter was the last communication from CBP to the
13 ACLU regarding the ACLU's FOIA request. Admit that CBP has not released any records in
14 response to Plaintiffs' FOIA request. The remaining allegations in paragraph 52 are denied.

15 53. Admit that ICE acknowledged receipt of the ACLU's FOIA request. The
16 remaining allegations in paragraph 53 characterize a May 31, 2018, letter from ICE, and
17 Defendants respectfully refer the Court to that document for a true and complete statement of its
18 contents.

19 54. Admit that ICE has not yet released any records in response to the ACLU's FOIA
20 request and that ICE has not communicated with the ACLU regarding the FOIA request since
21 May 31, 2018; otherwise deny the allegations in paragraph 54.

22 55. Admit that USCIS acknowledged receipt of the ACLU's FOIA request. The
23 remaining allegations in paragraph 55 characterize a June 6, 2018, letter from USCIS, and
24 Defendants respectfully refer the Court to that letter for a true and complete statement of its
25 contents.

26 56. Deny the ACLU's characterization of the telephone communications between
27 USCIS and the ACLU, and aver that during a phone call on January 7, 2019, the ACLU agreed
28 that USCIS would limit its search for items 3 and 4 in the FOIA request to USCIS's Office of

1 Information Technology (“OIT”) and Contracting office. The remaining allegations in paragraph
2 56 characterize email correspondence between USCIS and the ACLU, and Defendants
3 respectfully refer the Court to the referenced emails for true and complete statements of their
4 contents.

5 57. Admit that USCIS has not yet released any records in response to the ACLU’s
6 FOIA request; otherwise deny the allegations in paragraph 57.

7 58. The allegations in paragraph 58 consist of legal conclusions to which no response
8 is required. To the extent a response is required, Defendants deny the allegations in paragraph
9 58.

10 59. The allegations in paragraph 59 consist of legal conclusions to which no response
11 is required. To the extent a response is required, Defendants deny the allegations in paragraph
12 59.

13 60. The allegations in paragraph 60 consist of legal conclusions to which no response
14 is required. To the extent a response is required, Defendants deny the allegations in paragraph
15 60.

16 61. The allegations in paragraph 61 consist of legal conclusions to which no response
17 is required. To the extent a response is required, Defendants deny the allegations in paragraph
18 61.

19 62. The allegations in paragraph 62 consist of legal conclusions to which no response
20 is required. To the extent a response is required, Defendants deny the allegations in paragraph
21 62.

22 63. The paragraph beginning “WHEREFORE” and subparagraphs numbered (1)
23 through (5) consist of Plaintiffs’ prayer for relief, to which no response is required. To the extent
24 a response is deemed necessary, Defendants deny that Plaintiffs are entitled to the relief sought
25 or to any relief.

26 DEFENSES

27 Any allegations not specifically admitted, denied, or otherwise answered are hereby
28 denied. For further defenses, Defendants allege as follows:

1 **First Defense**

2 FBI, USCIS, ICE, and CBP are not “agencies” for purposes of FOIA, and the Court
3 therefore lacks subject matter jurisdiction over Plaintiffs’ claims against those Defendants.

4 **Second Defense**

5 Plaintiffs’ FOIA request does not reasonably describe the records sought from one or
6 more Defendants. *See* 5 U.S.C. § 552(a)(3)(A).

7 **Third Defense**

8 Whether or not one or more Defendants possesses documents responsive to Plaintiffs’
9 FOIA request is information that is exempt from public disclosure. *See* 5 U.S.C. § 552(b).

10 **Fourth Defense**

11 Defendants have exercised due diligence in processing the FOIA request, and exceptional
12 circumstances exist that necessitate additional time for Defendants to complete their processing
13 of the FOIA request. *See* 5 U.S.C. § 552(a)(6)(C).

14 **Fifth Defense**

15 Plaintiffs are not entitled to compel production of records exempt from disclosure by one
16 or more exemptions of the FOIA, 5 U.S.C. § 552.

17 DATED: March 25, 2019

Respectfully submitted,

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19 Assistant Attorney General

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21 Deputy Branch Director

22 /s/ Elizabeth Tulis
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Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 25, 2019, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of electronic filing to the parties.

/s/ Elizabeth Tulis
ELIZABETH TULIS