

1 Stacy Tolchin (CA SBN 217431)
2 Law Offices of Stacy Tolchin
3 634 S. Spring St., Suite 500A
4 Los Angeles, CA 90014
5 Telephone: (213) 622-7450
6 Facsimile: (213) 622-7233
7 Email: Stacy@Tolchinimmigration.com

8 *(continued on next page)*

9 UNITED STATES DISTRICT COURT FOR THE
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO/ OAKLAND DIVISION

12 Meredith R. BROWN; Jorge RODRIGUEZ-
13 CHOI; Lizz CANNON; Kelly RYAN; Jeri
14 FLYNN; Arturo DOMINGUEZ COBOS; Isidro
15 de Jesus RODRIGUEZ SANCHEZ; Nelida
16 ORNELAS RENTERIA; Manuel CRUZ
17 RENDON; Orlanda URBINA; Juan de DIOS
18 CRUZ ROJAS; Maria de Jesus CALDERON
19 RUIZ; Cristina Lucero RAMIREZ; Carolina
20 CASTOR-LARA; Efren ESCOBEDO; Delmy
21 GONZALEZ-ORDENEZ; Artemio Alejandro
22 PICHARDO-DELGADO; and Farook ASRALI,

23 Plaintiffs,

24 v.

25 UNITED STATES CUSTOMS AND BORDER
26 PROTECTION; and DEPARTMENT OF HOMELAND
27 SECURITY,

28 Defendants.

Case No. CV 15-01181-JD

**First Amended Complaint
for Declaratory and
Injunctive Relief Under the
Freedom of Information Act**

Class Action

1 (counsel for Plaintiffs continued)

2 Matt Adams, WSBA No. 28287
3 (admitted *pro hac vice*)
4 Northwest Immigrant Rights Project
5 615 Second Avenue, Suite 400
6 Seattle, WA 98104
7 Telephone: (206) 957-8611
8 Facsimile: (206) 587-4025
9 Email: matt@nwirp.org

7 Trina Realmuto (CA SBN 201088)
8 National Immigration Project
9 of the National Lawyers Guild
10 14 Beacon St., Suite 602
11 Boston, MA 02108
12 Telephone: (617) 227-9727 ext. 8
13 Facsimile: (617) 227-5495
14 Email: trina@nipnlg.org

12 Mary Kenney (WV Bar 2011)
13 Melissa Crow (DC Bar 453487)
14 (admitted *pro hac vice*)
15 American Immigration Council
16 1331 G Street NW, Suite 200
17 Washington, DC 20005
18 Telephone: (202) 507-7512
19 Facsimile: (202) 742-5619
20 Email: mkenney@immcouncil.org

18 Counsel for Plaintiffs

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INTRODUCTION

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2 1. Plaintiffs are five immigration attorneys and thirteen noncitizens who
3 filed Freedom of Information Act (“FOIA”) requests with Defendant United States
4 Customs And Border Protection (“CBP”), an agency within the Department of Homeland
5 Security (“DHS”). Each of the Plaintiffs have waited for more than twenty days for his
6 or her FOIA request(s) to be processed by Defendants, and most have waited for over a
7 year. Plaintiffs seek information that is critical to determining their eligibility or—in the
8 case of the attorney Plaintiffs—their clients’ eligibility for lawful permanent residence or
9 other immigration relief. Plaintiffs’ efforts to determine eligibility or file immigration
10 applications are stymied for as long as their FOIA requests continue to linger—
11 unprocessed—at CBP.
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14 2. FOIA mandates that an agency issue a response within 20 business days of
15 receiving a FOIA request, *see* 5 U.S.C. § 552(a)(6)(A)(I).

16 3. CBP routinely fails to respond to FOIA requests within the statutory
17 period.

18 4. Plaintiffs seek to represent a national class of individuals who have filed
19 FOIA requests with CBP, but have not received a response from CBP within 20 business
20 days. CBP’s FOIA backlog has grown exponentially. At the close of fiscal year (“FY”)
21 2014, CBP had 34,307 FOIA requests that had been pending for more than 20 business
22 days.¹ The FY 2014 backlog was almost eight times greater than it had been just three
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26 ¹ See Second Declaration of Stacy Tolchin in Support of Amended Complaint for
27 Declaratory and Injunctive Relief Under the Freedom of Information Act and Motion for
28 Class Certification (“Second Tolchin Dec.”) at Exh. F, Department of Homeland
Security, Privacy Office, 2014 Freedom of Information Act Report to the Attorney
General of the United States (“DHS FOIA Annual Report 2014”) at 19.

1 years earlier, at the close of FY 2011.²

2 5. CBP contributed to this ever-growing backlog by processing fewer cases each
3 year between FY 2011 and 2013.³ In FY 2014, CBP processed 51,056 requests,
4 substantially more than the 26,571 requests processed in FY 2013 and the 27,818 requests
5 processed in FY 2012.⁴ Yet CBP's 2014 processing did not substantially reduce its FOIA
6 backlog, which was 37,848 in FY 2013 and 34,307 in FY 2014, a reduction of only 3,795
7 requests, less than ten percent.⁵

9 6. CBP has significantly more funding than its two counterparts within DHS—
10 United States Citizenship and Immigration Services (“USCIS”) and United States
11 Immigration and Customs Enforcement (“ICE”).⁶ Despite this, its FOIA backlog is
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15 ² Id. at 19; Second Tolchin Dec. at Exh. C, Department of Homeland Security, Privacy
16 Office, 2011 Freedom of Information Act Report to the Attorney General of the United States
17 (“DHS FOIA Annual Report 2011”) at 19.

18 ³ Second Tolchin Dec. at Exh. A, Department of Homeland Security, Privacy Office, 2013
19 Freedom of Information Act Report to the Attorney General of the United States (“DHS FOIA
20 Annual Report 2013”) at 3; Second Tolchin Dec. at Exh. C, DHS FOIA Annual Report 2011 at 3;
21 Second Tolchin Dec. at Exh. B, Department of Homeland Security, Privacy Office, 2012
22 Freedom of Information Act Report to the Attorney General of the United States (“DHS FOIA
23 Annual Report 2012”) at 3.

24 ⁴ Second Tolchin Dec. at Exh. F, DHS FOIA Annual Report 2014 at 4; Second Tolchin
25 Dec. at Exh. A, DHS FOIA Annual Report 2013 at 3; Second Tolchin Dec. at Exh. C, DHS FOIA
26 Annual Report 2012 at 3.

27 ⁵ Second Tolchin Dec. at Exh. A, DHS FOIA Annual Report 2013 at 18; Second Tolchin
28 Dec. at Exh. F, DHS FOIA Annual Report 2014 at 19.

⁶ For at least the last three fiscal years, CBP's budget was almost double that of ICE and
almost three times as much as USCIS. CBP received between 11 and 12.5 million dollars each of
these years, while ICE received less than 6 million, and USCIS less than 3.5 million. See Second
Tolchin Dec. at Exh. E, DHS Budget in Brief, Fiscal Year 2014 at 6; Second Tolchin Dec. at Exh.
D, DHS Budget in Brief, Fiscal Year 2015 at 7.

1 significantly greater than USCIS.⁷

2 7. Plaintiffs and the Proposed Class suffer harm due to Defendants' failure to
3 respond to their requests because—without the information that they have requested
4 through FOIA—they are unable to ascertain the legal significance of their or their clients'
5 past interactions with border officials. Defendants' delay also prevents Plaintiffs and the
6 Proposed Class from moving forward with applications for which they or their clients may
7 be eligible, and causes unnecessary emotional hardship for those left in legal limbo while
8 they wait to obtain the records that hold the key to assessing their immigration options in
9 the United States.

11 8. Due to this backlog and the ensuing harm it causes, Plaintiffs seek class
12 certification, declaratory relief, and injunctive relief ordering CBP to respond to FOIA
13 requests which have been pending for more than 20 business days, and ordering CBP to
14 timely process future requests as required by FOIA. 5 U.S.C. §§ 552(a)(6); 552(a)(3).

16 **JURISDICTION AND VENUE**

17 9. This Court has jurisdiction under 5 U.S.C. § 552 *et seq.* (FOIA statute), 28
18 U.S.C. § 1331 (federal question), and 28 U.S.C. § 2201 (declaratory judgment).

19 10. Venue is proper under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e)(1)
20 because this is a civil action in which Defendant is a national agency; because Plaintiffs
21 Jorge Rodriguez-Choi, Arturo Dominguez Cobos, Isidro de Jesus Rodriguez Sanchez,
22 and Nelida Ornelas Renteria, reside in this judicial district; and there is no real property
23 involved in this action.

25 11. Plaintiffs have exhausted any and all administrative remedies in
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27 ⁷ Second Tolchin Dec. at Exh. A, DHS FOIA Annual Report 2013 at 16.

1 connection with their FOIA requests, as detailed below.

2 **PARTIES**

3 12. Plaintiff Meredith R. BROWN is an immigration attorney in Glendale,
4 California. She currently has numerous FOIA requests filed with CBP on behalf of her
5 clients that have been pending for over 20 business days.

6 13. Plaintiff Jorge RODRIGUEZ-CHOI is an immigration attorney with
7 offices in San Francisco and Oakland, California. He currently has numerous FOIA
8 requests filed with CBP on behalf of his clients that have been pending for over 20
9 business days.

10 14. Plaintiff Lizz CANNON is an immigration attorney in Cambridge,
11 Massachusetts. She currently has numerous FOIA requests filed with CBP on behalf of
12 her clients that have been pending for over 20 business days.

13 15. Plaintiff Kelly RYAN is an immigration attorney in Denver, Colorado.
14 She had numerous FOIA requests filed with CBP on behalf of her clients that were
15 pending for over 20 business days at the time of the initial filing of this lawsuit on March
16 12, 2015.

17 16. Plaintiff Jeri FLYNN is an immigration attorney in Baton Rouge,
18 Louisiana. She currently has numerous FOIA requests filed with CBP on behalf of her
19 clients that have been pending for over 20 business days.

20 17. Plaintiff Arturo DOMINGUEZ COBOS resides in San Francisco,
21 California. He currently has a FOIA request filed with CBP that has been pending for
22 over 20 business days.

23 18. Plaintiff Isidro de Jesus RODRIGUEZ SANCHEZ resides in Hayward,
24 California. He currently has a FOIA request filed with CBP that has been pending for
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1 over 20 business days.

2 19. Plaintiff Nelida Ornelas RENTERIA resides in Oakland, California. She
3 currently has a FOIA request filed with CBP that has been pending for over 20 business
4 days.

5 20. Plaintiff Manuel Cruz RENDON resides in Los Angeles, California. He
6 currently has a FOIA request filed with CBP that has been pending for over 20 business
7 days.

8 21. Plaintiff Orlanda URBINA resides in North Hollywood, California. She
9 currently has a FOIA request filed with CBP that has been pending for over 20 business
10 days.

11 22. Plaintiff Juan de DIOS CRUZ ROJAS resides in Picabo, Idaho. He
12 currently has a FOIA request filed with CBP that has been pending for over 20 business
13 days.

14 23. Plaintiff Maria de Jesus CALDERON RUIZ resides in Alpaugh,
15 California. She currently has a FOIA request filed with CBP that has been pending for
16 over 20 business days.

17 24. Plaintiff Cristina Lucero RAMIREZ resides in Carthage, North Carolina.
18 She currently has a FOIA request filed with CBP that has been pending for over 20
19 business days.

20 25. Plaintiff Carolina CASTOR-LARA resides in Antioch, Tennessee. She
21 currently has a FOIA request filed with CBP that has been pending for over 20 business
22 days.

23 26. Plaintiff Efren ESCOBEDO resides in Garland, Texas. He currently has a
24 FOIA request filed with CBP that has been pending for over 20 business days.
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1 27. Plaintiff Delmy GONZALEZ-ORDONEZ resides in Aurora, Colorado.
2 She currently has a FOIA request filed with CBP that has been pending for over 20
3 business days.

4 28. Plaintiff Artemio Alejandro PICHARDO-DELGADO resides in
5 Indianapolis, Indiana. He currently has a FOIA request filed with CBP that has been
6 pending for over 20 business days.

7 29. Plaintiff Farook ASRALI resides in Sunrise, Florida. He currently has a
8 FOIA request filed with CBP that has been pending for over 20 business days.

9 30. Defendant CBP is a component agency of DHS and is an agency within
10 the meaning of 5 U.S.C. § 552(f)(1). Among other duties, CBP is responsible for
11 enforcing immigration laws at the borders and other ports of entry to the United States.
12 CBP inspects all individuals seeking entry to the United States, including U.S. citizens,
13 lawful permanent residents, nonimmigrants, and asylum seekers. CBP has authority to
14 admit or exclude individuals, issue “expedited removal” orders, parole noncitizens into
15 the United States, and permit them to withdraw applications for admission. CBP has in
16 its possession, custody, and control the records Plaintiffs seek.

17 31. Defendant DHS is an executive agency of the United States with
18 responsibility for enforcing the immigration laws of the United States. In addition to
19 CBP, DHS houses at least two additional immigration-related component agencies: ICE
20 and USCIS.
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FACTUAL ALLEGATIONS

CBP's Processing Times and Backlog

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3 32. The statutory time period for a FOIA response is 20 business days. 5
4 U.S.C. § 552(a)(6)(A)(i).

5
6 33. At the close of FY 2014, there were 34,307 requests pending at CBP.
7 CBP's average FOIA processing times and its backlog grew substantially from FY 2011-
8 2013, and has remained roughly the same in FY 2014.

9 34. DHS defines "backlog" as the "number of requests or administrative
10 appeals pending at an agency at the end of the fiscal year that are beyond the statutory
11 time period for a response."⁸

12 35. DHS reported that CBP received 32,107 FOIA requests in FY 2011,
13 33,243 FOIA requests in FY 2012, 41,381 FOIA requests in FY 2013, and 47,261 FOIA
14 requests in FY 2014.⁹

15
16 36. DHS reported that CBP had a backlog of 4,365 requests at the close of FY
17 2011.¹⁰ In FY 2012, this number increased to 10,648 pending requests.¹¹ By the end of
18 FY 2013, the backlog grew exponentially to 37,848 pending FOIA requests.¹² In FY
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22 ⁸ Second Tolchin Dec. at Exh. A, DHS FOIA Annual Report 2013 at vii.

23 ⁹ Second Tolchin Dec. at Exh. A, DHS FOIA Annual Report 2013 at 3; Second Tolchin
24 Dec. at Exh. B, DHS FOIA Annual Report 2012 at 3; Second Tolchin Dec. at Exh. C, DHS FOIA
Annual Report 2011 at 3. Tolchin Dec at Exh. F., DHS FOIA Annual Report 2014 at 4.

25 ¹⁰ Second Tolchin Dec. at Exh. C, DHS FOIA Annual Report 2011 at 16.

26 ¹¹ Second Tolchin Dec. at Exh. B, DHS FOIA Annual Report 2012 at 16.

27 ¹² Second Tolchin Dec. at Exh. A, DHS FOIA Annual Report 2013 at 16.
28

1 2014, the backlog remained roughly the same at 34,307 decreasing less than ten percent.¹³
2 *Over the course of these four fiscal years, the backlog grew by a total of 29,942 requests;*
3 *consequently, in FY 2014, the backlog was almost eight times larger than it was in 2011.*

4 37. The increase in the number of FOIA requests filed in FY 2011 through FY
5 2013 is much less than the increase in backlogged requests during this same period.
6 Indeed, DHS reported a dramatic *decrease* in the number of requests that CBP processed
7 each year: from 27,818 requests processed in FY 2011 down to only 14,635 requests
8 processed in FY 2013.¹⁴ In FY 2014, CBP processed 51,056 requests, after having
9 received 47,261 that year, but only marginally reduced its backlog.¹⁵

10
11 38. Any effort that CBP has made to clear this backlog has been wholly
12 inadequate and ineffectual. Even were CBP able to continue to reduce its backlog at the
13 pace set in FY 2014—which is questionable given its documented history of failing to
14 address its backlog in prior years—CBP would not dispose of its current backlog for 9.6
15 years.¹⁶

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17 39. CBP’s backlog is almost seven times larger than the backlog for USCIS
18 (the agency responsible for adjudicating immigration applications and for processing
19 FOIA requests seeking copies of an individual’s “alien registration file”—commonly
20 referred to as the “A file”), even though DHS reported a backlog of just 5,026 cases for
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23 ¹³ Second Tolchin Dec. at Exh. F, DHS FOIA Annual Report 2014 at 19.

24 ¹⁴ Second Tolchin Dec. at Exh. A, DHS FOIA Annual Report 2013 at 3; Second Tolchin
25 Dec. at Exh. B, DHS FOIA Annual Report 2012 at 3; Second Tolchin Dec. at Exh. C, DHS FOIA
Annual Report 2011 at 3.

26 ¹⁵ Second Tolchin Dec. at Exh. F, DHS FOIA Annual Report 2014 at 4.

27 ¹⁶ Second Tolchin Dec. at Exh. F, DHS FOIA Annual Report 2014 at 4, 19.
28

1 USCIS at the close of FY 2014, compared to the 34,307 cases for CBP.¹⁷

2 40. No exceptional circumstances exist warranting a delay in processing CBP
3 FOIA requests. An agency's failure to keep up with the pace of FOIA requests is not an
4 "exceptional circumstance."
5

6 41. CBP has failed to timely respond to Plaintiffs' FOIA requests in the 20
7 business days required by statute, and has a pattern or practice of failing to do so with
8 respect to the majority of FOIA requests it receives. CBP has not demonstrated due
9 diligence in responding to Plaintiffs' FOIA requests or in clearing out the backlog of
10 overdue FOIA requests.

11 42. Moreover, CBP has more funding than any of the fourteen agencies within
12 DHS, including USCIS, ICE, FEMA, the U.S. Coast Guard, and the U.S. Secret
13 Service.¹⁸ Further, in the last two fiscal years, CBP received the second largest increase
14 in funding of the 14 other agencies within DHS.¹⁹
15

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17 **Harm to Plaintiffs and Proposed Class Members**

18 43. CBP records often are critical evidence in immigration cases. A
19 noncitizen's past interactions with CBP may affect his or her ability to qualify for lawful
20 permanent resident status. For example, to adjust to lawful permanent resident status, a
21 noncitizen must document that he or she was "inspected and admitted or paroled" into the
22 United States. 8 U.S.C. § 1255(a). At all U.S. ports of entry, CBP is the agency
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25 ¹⁷ Id. at 16.

26 ¹⁸ Second Tolchin Dec. at Exh. D, DHS Budget in Brief, Fiscal Year 2015 at 7.

27 ¹⁹ Second Tolchin Dec. at Exh. E, DHS Budget in Brief, Fiscal Year 2014 at 6; Second
28 Tolchin Dec. at Exh. D, DHS Budget in Brief, Fiscal Year 2015 at 7.

1 responsible for determining who is to be admitted or paroled into the United States. CBP
2 maintains records of many of the admission and parole decisions it makes with respect to
3 noncitizens. In many adjustment of status cases, these records are the only evidence that
4 the applicant can produce to demonstrate that he or she was admitted or paroled and
5 therefore eligible for lawful permanent resident status.
6

7 44. Additionally, pursuant to 8 U.S.C. § 1225(b), CBP issues “expedited
8 removal orders” against some individuals apprehended at the border who attempted entry
9 without proper documentation. Other individuals are permitted to withdraw their
10 applications for admission and depart the United States without having an expedited
11 removal order entered against them. 8 U.S.C. § 1225(a)(4). Many individuals who are
12 turned away at the border are uncertain if they were issued expedited removal orders or
13 simply permitted to withdraw their applications for admission.
14

15 45. Those individuals who are issued expedited removal orders are, at a
16 minimum, inadmissible to the United States for a five-year period and, consequently,
17 ineligible for an immigrant or nonimmigrant visa and ineligible to adjust status during this
18 period. In addition, if CBP documentation shows that the expedited removal order was
19 issued based on an allegedly false claim to U.S. citizenship, the person may be found to be
20 permanently inadmissible. See 8 U.S.C. § 1182(a)(6)(C)(ii). Moreover, even if the five-
21 year period has elapsed, the existence of the prior expedited removal order may affect
22 future visa and adjustment applications that have a discretionary component.
23

24 46. Individuals who have returned to the United States after prior interactions
25 with CBP, and their attorneys, are harmed by CBP’s failure to timely process their FOIA
26 requests. To understand their situations, assess their options, and make life decisions,
27 these individuals, as well as lawyers advising them, need to know if CBP previously
28

1 admitted or paroled them into the United States or issued an expedited removal order. If
2 the FOIA production reveals that CBP issued an expedited removal order, these
3 individuals potentially face additional grounds of inadmissibility, some of which may
4 require an additional waiver application. Other individuals who have returned to the
5 United States may potentially face criminal prosecution, see 8 U.S.C. §§ 1325 and 1326,
6 and a summary removal process known as reinstatement of removal, see 8 U.S.C. §
7 1231(a)(5).
8

9 **Plaintiffs' FOIA Requests**

10 47. Plaintiff Brown is an immigration attorney in Glendale, California who
11 represents clients before component agencies of DHS and the Executive Office for
12 Immigration Review (EOIR), which consists of the immigration courts and the Board of
13 Immigration Appeals. She has been practicing immigration law for approximately 17
14 years.
15

16 48. Plaintiff Brown regularly files FOIA requests on behalf of and at the
17 request of her clients, who seek information maintained by DHS agencies, including CBP.
18 Plaintiff Brown requires the information requested from CBP in order to adequately
19 advise and represent her clients, including in defending against removal from the United
20 States and applying for affirmative immigration benefits, such as applications for lawful
21 permanent resident status. The requested information may affect her clients' eligibility for
22 different forms of immigration benefits; it is therefore essential that she obtain the
23 information from CBP before filing for any immigration benefits.
24

25 49. Plaintiff Brown currently has approximately 45 CBP FOIA requests that
26 have been pending for more than 20 business days. After Plaintiffs filed the original
27 complaint in this case on March 12, 2015, Plaintiff Brown received a slew of responses to
28

1 pending CBP FOIA requests. Between March 23 and March 31, 2015, she received
2 approximately 20 responses to FOIA requests that were filed on behalf of her clients.
3 Upon information and belief, these responses were issued in response to this lawsuit.
4 Plaintiff Brown continues to file CBP FOIA requests on behalf of her clients,

5
6 50. Plaintiff Rodriguez-Choi is an immigration attorney with offices in San
7 Francisco and Oakland, California who represents clients before component agencies of
8 DHS and EOIR. He has been practicing immigration law for approximately 17 years.

9 51. Plaintiff Rodriguez-Choi regularly files FOIA request on behalf of and at
10 the request of his clients, who seek information maintained by DHS agencies, including
11 CBP. Plaintiff Rodriguez-Choi requires the information requested from CBP in order to
12 adequately advise and represent his clients, including defending against removal from the
13 United States and applying for affirmative immigration benefits, such as applications for
14 lawful permanent resident status. The requested information may affect his clients'
15 eligibility for different forms of immigration benefits; it is therefore essential that he
16 obtain the information from CBP before filing for any immigration benefits.
17

18 52. Plaintiff Rodriguez-Choi currently has approximately 15 CBP FOIA
19 requests that have been pending for more than 20 business days.
20

21 53. Plaintiff Cannon is an immigration attorney in Cambridge, Massachusetts
22 who represents clients before component agencies of DHS and EOIR. She has been
23 practicing immigration law for approximately 6 years.

24 54. Plaintiff Cannon regularly files FOIA request on behalf of and at the
25 request of her clients, who seek information maintained by DHS agencies, including CBP.
26 Plaintiff Cannon requires the information requested from CBP in order to adequately
27 advise and represent her clients, including defending against removal from the United
28

1 States and applying for affirmative immigration benefits, such as applications for lawful
2 permanent resident status. The requested information may affect her clients' eligibility for
3 different forms of immigration benefits; it is therefore essential that she obtain the
4 information from CBP before filing for any immigration benefits.

5
6 55. Plaintiff Cannon currently has approximately seven CBP FOIA requests
7 that have been pending for more than 20 business days, including at least two requests that
8 have been pending for a year or more.

9 56. Plaintiff Ryan is an immigration attorney in Denver, Colorado who
10 represents clients before component agencies of DHS and EOIR. She has been practicing
11 immigration law for approximately seven years.

12 57. Plaintiff Ryan regularly files FOIA requests on behalf of and at the request
13 of her clients, who seek information maintained by DHS agencies, including CBP.
14 Plaintiff Ryan requires the information requested from CBP in order to adequately advise
15 and represent her clients, including in defending against removal from the United States
16 and applying for affirmative immigration benefits, such as applications for lawful
17 permanent resident status. The requested information may affect her clients' eligibility for
18 different forms of immigration benefits; it is therefore essential that she obtain the
19 information from CBP before filing for any immigration benefits.
20

21
22 58. At the time of the initial filing of this case, Plaintiff Ryan had
23 approximately 13 CBP FOIA requests that had been pending for more than 20 business
24 days. After the March 12, 2015 filing of this case, Plaintiff Ryan received a slew of
25 responses to pending CBP FOIA requests, including responses to at least nine requests
26 that had been pending for more than one year. Between March 23 and March 25, 2015,
27 she received 11 responses to FOIA requests that were filed on behalf of her clients. Upon
28

1 information and belief, these responses were issued in response to this lawsuit. Plaintiff
2 Ryan will continue to file CBP FOIA requests on behalf of her clients,

3 59. Plaintiff Flynn is an immigration attorney in Baton Rouge, Louisiana who
4 represents clients before component agencies of DHS and EOIR. She has been practicing
5 law for approximately 36 years.

6 60. Plaintiff Flynn regularly files FOIA requests on behalf of and at the request of her
7 clients, who seek information maintained by DHS agencies, including CBP. Plaintiff Flynn
8 requires the information requested from CBP in order to adequately advise and represent her
9 clients, including in defending against removal from the United States and applying for affirmative
10 immigration benefits, such as applications for lawful permanent resident status. The requested
11 information may affect her clients' eligibility for different forms of immigration benefits; it is
12 therefore essential that she obtain the information from CBP before filing for any immigration
13 benefits.
14

15 61. Plaintiff Flynn currently has approximately four CBP FOIA requests that
16 have been pending for more than 20 business days, including one that has been pending
17 for more than two years.

18 62. Plaintiff Dominguez Cobos, through his attorney, filed a FOIA request
19 with CBP on August 18, 2014, seeking information about his entry into the United States
20 to support his application for lawful permanent residence. CBP issued a receipt for his
21 FOIA request, number CBP-2014-041458. Although Plaintiff Dominguez Cobos' FOIA
22 request has been pending for 8 months, he has not received the requested information.
23

24 63. Plaintiff Dominguez Cobos, who has lived in the United States since 2000,
25 is married to a United States citizen. The requested information is necessary to determine
26 if he is eligible for lawful permanent residence.
27
28

1 64. Plaintiff Rodriguez Sanchez, through his attorney, filed a FOIA request
2 with CBP on June 17, 2013, seeking information about a possible past expedited removal
3 order issued by CBP at the United States border. CBP issued a receipt for his FOIA
4 request, number CBP-2013-019829. Although Plaintiff Rodriguez Sanchez's FOIA
5 request has been pending with CBP for 19 months, he has not received the requested
6 information.
7

8 65. Plaintiff Rodriguez Sanchez has been in the United States for 14 years and
9 has three United States citizen children. His attorney requires a response to his pending
10 FOIA request to determine if he is eligible for lawful permanent resident status.
11

12 66. Plaintiff Ornelas Renteria, through her attorney, filed a FOIA request with
13 CBP on April 1, 2013, seeking information about a past encounter with CBP, and whether
14 it disqualifies her from applying for lawful permanent resident status. CBP issued a
15 receipt for her FOIA request, number CBP-2013-011307. Although Plaintiff Ornelas
16 Renteria's FOIA request has been pending with CBP for 24 months, she has not received
17 the requested information.

18 67. Plaintiff Ornelas Renteria has been in the United States since 2003 and is
19 married to a United States citizen. Her attorney requires the information sought in the
20 FOIA request filed with CBP in order to determine her eligibility for lawful permanent
21 resident status.
22

23 68. Plaintiff Cruz Rendon, through his attorney, filed a FOIA request with
24 CBP on March 2, 2013, seeking information regarding his encounters with CBP agents at
25 the United States/Mexico border. CBP issued a receipt for his FOIA request, number
26 CBP-2014-015797. Although Plaintiff Cruz Rendon's FOIA request has been pending
27 with CBP for 25 months, he has not received the requested information.
28

1 69. Plaintiff Cruz Rendon wishes to apply to adjust his status to lawful
2 permanent resident. His wife is prepared to submit a visa petition on his behalf, a
3 necessary prerequisite to his filing an adjustment of status application with USCIS.
4 Plaintiff Cruz Rendon seeks the requested information to determine if he will be eligible
5 to adjust his status.
6

7 70. Plaintiff Urbina, through her attorney, filed a FOIA request with CBP on
8 October 21, 2013, seeking information regarding any interactions she may have had with
9 CBP officers from 1999 to the present. CBP did not issue a FOIA receipt. Although
10 Plaintiff Urbina's FOIA request has been pending with CBP for 17 months, she has not
11 received the requested information.
12

13 71. Plaintiff Urbina has a United States citizen daughter, United States citizen
14 mother, and lawful permanent resident father. The requested information is necessary for
15 her attorney to assess her eligibility for immigration benefits.

16 72. Plaintiff Cruz Rojas, through his attorney, filed a FOIA request with CBP
17 on July 26, 2013, seeking information about any encounters he may have had with CBP
18 agents. CBP issued a receipt for his FOIA request, number CBP-2013-024525. Although
19 Plaintiff Cruz Rojas' FOIA has been pending with CBP for 20 months, he has not received
20 the requested information.
21

22 73. Plaintiff Cruz Rojas has lived in the United States for 15 years and has
23 three U.S. citizen children, two U.S. citizen siblings, lawful permanent resident parents
24 and sibling, and U.S. citizen in-laws. The requested information is necessary for his
25 attorney to assess his eligibility for immigration benefits.

26 74. Plaintiff Calderon Ruiz, through her attorney, filed a FOIA request with
27 CBP on June 26, 2013, inquiring as to any records issued by CBP in approximately 1993
28

1 in San Ysidro, California. CBP issued a receipt for this FOIA request, number CBP-2013-
2 021129. Although her FOIA request has been pending with CBP for 19 months, she has
3 not yet received the requested information.

4 75. Plaintiff Calderon Ruiz has resided in the United States since
5 approximately 1993 and is married to a United States citizen. She has three United States
6 citizen children. Her attorney seeks a response to the FOIA request to determine whether
7 Plaintiff Calderon Ruiz's husband may file a visa petition on her behalf and whether she
8 can apply for lawful permanent residence.

9
10 76. Plaintiff Lucero Ramirez, through her attorney, filed a FOIA request with
11 CBP on August 7, 2014, inquiring as to any CBP records evidencing an order of expedited
12 removal. CBP issued a receipt for the FOIA, number CBP-2014-041050. Although her
13 FOIA request has been pending for 8 months, she has not yet received the requested
14 records.

15
16 77. Plaintiff Lucero Ramirez is married to a United States citizen and has two
17 United States citizen children. Her attorney requires the requested information in order to
18 counsel Plaintiff Lucero Ramirez's husband about filing a visa petition on her behalf, and
19 to counsel her about filing an application for lawful permanent residence.

20
21 78. Plaintiff Castor-Lara, through her attorney, filed a FOIA request with CBP
22 on October 28, 2014, requesting records regarding her date of entry into the United States
23 in order to determine if she is eligible to apply for lawful permanent resident status. CBP
24 issued a receipt for the FOIA, number CBP-OFO-2015-003774. Although her FOIA
25 request has been pending for 5 months, she has not received a response.

26 79. Plaintiff Castor-Lara is married to a lawful permanent resident with a
27 pending application for naturalization. She has resided in the United States for 12 years
28

1 and has three United States citizen children. She requires information from CBP in order
2 for her attorney to determine if she may apply for lawful permanent resident status once
3 her husband becomes a U.S. citizen.

4 80. Plaintiff Gonzalez-Ordonez, through her attorney, filed a FOIA request
5 with CBP on April 14, 2014, seeking information about any entries into the United States
6 she may have made. CBP issued a receipt for her FOIA request, number
7 CBP2014021792. Although Plaintiff Gonzalez-Ordonez 's FOIA request has been
8 pending with CBP for 12 months, she has not received the requested information.
9

10 81. Plaintiff Gonzalez-Ordonez is married to a United States citizen. The
11 requested information is necessary for her attorney to determine if she is eligible for any
12 immigration benefit.
13

14 82. Plaintiff Pichardo-Delgado, through his attorney, filed a FOIA request
15 with CBP on July 18, 2014, seeking information about his interactions with CBP when he
16 first attempted to enter the United States 10 to 12 years ago. CBP issued a receipt for his
17 FOIA request, number CBP-2014-037520. Although Plaintiff Pichardo-Delgado's FOIA
18 request has been pending with CBP for approximately 9 months, he has not received the
19 requested information.
20

21 83. Plaintiff Pichardo-Delgado is married to a United States citizen. He and
22 his wife have two children, who also are United States citizens. They also live with his
23 two United States stepchildren. The requested information is necessary for his attorney to
24 determine if he is eligible for lawful permanent residence.

25 84. Plaintiff Asrali, through his attorney, filed a FOIA request with CBP on
26 May 12, 2014, seeking information about any entries he made into the United States and
27 copies of any CBP forms documenting these entries. CBP issued a receipt for his FOIA
28

1 request, number CBP-2014-026336. Although Plaintiff Asrali's FOIA request has been
2 pending with CBP for 11 months, he has not received the requested information.

3 85. Plaintiff Asrali has been living in the United States for 25 years. His sister
4 and his brother are applicants for lawful permanent residency. The requested information
5 is necessary for his attorney to determine if he is eligible to apply for any immigration
6 benefit.
7

8 86. On March 12, 2015, Plaintiffs filed the initial complaint in this action.
9 Santos Miguel Flores Aguilar, Emma Quezada, Maico Montoya-Arellano, and Noe
10 Zaragoza-Quiroz were previously named as plaintiffs in addition to current Plaintiffs
11 Meredith R. Brown, Kelly Ryan, Jeri Flynn, Isidro De Jesus Rodriguez Sanchez, Nelida
12 Ornelas Renteria, Manuel Cruz Rendon, Orlanda Urbina, Juan De Dios Cruz Rojas, Maria
13 De Jesus Calderon Ruiz, and Cristina Lucero Ramirez. After the filing of the March 12,
14 2015 complaint, CBP issued responses to the FOIA requests for Plaintiffs Flores Aguilar,
15 Quezada, Montoya-Arellano, and Zaragoza-Quiroz. FOIA requests for these four
16 plaintiffs had been pending before CBP for between one year and 23 months when the
17 lawsuit was filed. On information and belief, this litigation prompted CBP to issue
18 responses to these plaintiffs.
19

20 87. This First Amended Complaint includes additional plaintiffs, including
21 attorneys Rodriguez-Choi and Cannon, as well as noncitizen plaintiffs Dominguez Cobos,
22 Castor-Lara, Escobedo, Gonzalez-Ordenez, Pichardo-Delgado, and Asrali,
23
24
25
26
27
28

CLASS ACTION ALLEGATIONS

1
2 88. Pursuant to Federal Rules of Civil Procedure 23(a) and (b), Plaintiffs bring
3 this action on behalf of themselves and all other similarly situated individuals. Plaintiffs
4 seek injunctive relief that applies generally to the Proposed Class, as described below.
5

6 89. The Proposed Class consists of:

7 All individuals who have filed FOIA requests with CBP which have been pending
8 for more than 20 business days, and all individuals who will file FOIA requests
9 with CBP that will remain pending for more than 20 business days.

10 90. The Proposed Class is so numerous that joinder of all members is
11 impracticable. The number of individuals who filed FOIA requests with CBP is not
12 known with precision by Plaintiffs, but is easily ascertainable by Defendant. DHS' 2014
13 FOIA Annual Report indicates that there were 34,307 pending requests in the CBP
14 backlog. Of that group, it is unknown how many requests are still pending. Hence,
15 Plaintiffs estimate that the number of requests pending for more than 20 business days is
16 in the thousands.

17 91. Common questions of law and fact bind the members of the Proposed
18 Class. These include, but are not limited to: whether CBP's pattern or practice of failing
19 to timely respond to FOIA requests within the 20-day statutory period violates the FOIA,
20 5 U.S.C. § 552(a)(6)(A)(i).
21

22 92. The claims of the named Plaintiffs are typical of the claims of the
23 Proposed Class as a whole.

24 93. Plaintiffs know of no conflict between their interests and those of the
25 Proposed Class. The members of the Proposed Class are ascertainable and identifiable
26 through notice and discovery. In defending their own rights, the individual Plaintiffs will
27 defend the rights of all class members fairly and adequately.
28

1 94. Plaintiffs are represented in this case by counsel with deep knowledge of
2 immigration and FOIA law, and extensive experience litigating class actions and complex
3 cases. Plaintiffs' attorneys have the requisite level of expertise to adequately prosecute this
4 case on their behalf and on behalf of the Proposed Class.

5
6 95. Defendants have failed to act on grounds generally applicable to each
7 member of the Proposed Class by failing to respond to FOIA requests in a timely fashion.

8 96. A class action is superior to other methods available for the fair and
9 efficient adjudication of this controversy because joinder of all members of the class is
10 impracticable.

11 **CAUSES OF ACTION**

12 **COUNT ONE**

13 **(Violation of FOIA)**
14 **(on behalf of named Plaintiffs and the Proposed Class)**

15 97. Plaintiffs incorporate the allegations in the paragraphs above as though
16 fully set forth here.

17
18 98. Defendant is obligated under 5 U.S.C. § 552(a)(3) to conduct a reasonable
19 search for records responsive to FOIA requests and to issue a determination concerning
20 each request within the time period set forth in 5 U.S.C. § 552(a)(6)—20 working days, to
21 be extended by no more than 10 working days in the event that the agency notifies the
22 requester in writing of the existence of “unusual circumstances.”

23 99. Defendant has a nationwide pattern or practice of failing to respond to
24 FOIA requests within the statutory time period. No legal basis exists for the Defendant's
25 nationwide pattern or practice of failing to meet the statutory deadline with respect to the
26 FOIA requests it receives.
27

1 100. Exceptional circumstances do not justify CBP's delay in processing FOIA
2 requests, and CBP has not exercised due diligence in responding to and clearing the
3 backlog of pending FOIA requests.

4 101. Defendant has failed to respond to FOIA requests of Plaintiffs and
5 Proposed Class members, to make timely determinations concerning these requests, and to
6 disclose responsive records within the statutory time frame, in violation of 5 U.S.C. §§
7 552(a)(3) and (a)(6)(A) and the regulations promulgated thereunder.

8 102. Defendant's failure to make determinations concerning Plaintiffs' requests
9 for records within the statutory time period constitutes a constructive denial of Plaintiffs'
10 requests, and Plaintiffs are deemed to have exhausted their administrative remedies. 5
11 U.S.C. § 552(a)(6)(C)(i).
12
13
14

15 PRAYER FOR RELIEF

16 WHEREFORE, Plaintiffs pray that this Court grant the following relief:

- 17 (1) Certify a class pursuant to Federal Rule of Civil Procedure 23 in
18 accordance with this Complaint's allegations;
19
20 (2) Declare that CBP's failure to conduct reasonable and timely searches for
21 records responsive to Plaintiffs' and Proposed Class members' FOIA
22 requests and its refusal to disclose such records within the statutory time
23 frame violate the FOIA;
24 (3) Issue a nationwide injunction requiring Defendant to respond to CBP
25 FOIA requests that have been pending for more than 20 business days,
26 within 60 business days of the Court's order or as the Court deems
27 appropriate;
28

- 1 (4) Order CBP to respond to FOIA requests of Proposed Class members as
2 mandated by 5 U.S.C. § 552(a)(6)(A)(i);
3 (5) Award costs and reasonable attorney fees incurred under 5 U.S.C. §
4 552(a)(4)(E); and
5 (6) Grant such further relief as the Court deems just and proper.
6

7 Dated: April 22, 2015

Respectfully submitted,

8 Stacy Tolchin, (CA SBN 217431)
9 Law Offices of Stacy Tolchin
634 S. Spring St., Suite 500A
10 Los Angeles, CA 90014
Telephone: (213) 622-7450
11 Facsimile: (213) 622-7233
12 Email: Stacy@Tolchinimmigration.com

13 Matt Adams, WSBA No. 28287
(admitted *pro hac vice*)
14 Northwest Immigrant Rights Project
615 Second Avenue, Suite 400
15 Seattle, WA 98104
Telephone: (206) 957-811
16 Email: matt@nwirp.org

17 Trina Realmuto (CA SBN 201088)
18 National Immigration Project
of the National Lawyers Guild
19 14 Beacon St., Suite 602
Boston, MA 02108
20 Telephone: (617) 227-9727 ext. 8
21 Facsimile: (617) 227-5495
22 Email: trina@nipnlg.org

23 Mary Kenney (WV Bar 2011)
24 Melissa Crow (DC Bar 453487)
(admitted *pro hac vice*)
25 American Immigration Council
1331 G Street NW, Suite 200
26 Washington, DC 20005
Telephone: (202) 507-7522
27 Facsimile: (202) 742-5619 (fax)
28 Email: mkenney@immcouncil.org

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Counsel for Plaintiffs

By: s/Stacy Tolchin
Stacy Tolchin