

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICAN IMMIGRATION COUNCIL and
TAHIRIH JUSTICE CENTER,

Plaintiffs,

v.

U.S. CUSTOMS AND BORDER
PROTECTION; U.S. CITIZENSHIP AND
IMMIGRATION SERVICES; and U.S.
DEPARTMENT OF HOMELAND
SECURITY,

Defendants.

Civil Action No. 19-2965 (RC)

**DEFENDANTS' ANSWER TO PLAINTIFFS' COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Pursuant to Fed. R. Civ. P. 8, Defendants, U.S. Customs and Border Protection (“CBP”), U.S. Citizenship and Immigration Services (“USCIS”), and U.S. Department of Homeland Security (“DHS”) (collectively, “Defendants”), by and through the undersigned counsel, respectfully submit this Answer and Defenses in response to Plaintiffs’ Complaint for Declaratory and Injunctive Relief (“Complaint”), filed on October 2, 2019, and state as follows:

DEFENDANTS' RESPONSES TO THE NUMBERED PARAGRAPHS

Defendants deny each and every allegation contained in the Complaint not expressly admitted in this Answer. Defendants respectfully request and reserve the right to amend, alter, and supplement the responses and defenses contained in this Answer as additional facts become known to Defendants. In response to each paragraph of the Complaint, using the same headings and numbering, Defendants admit, deny, and otherwise aver as follows. Defendants deny allegations in those headings that may be construed to contain factual allegations.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. Paragraph 1 contains Plaintiffs' characterization of this action to which no response is required.

2. Paragraph 2 contains allegations that are immaterial to this action to which no response is required.

3. Paragraph 3 contains allegations that are immaterial to this action, to which no response is required.

4. Paragraph 4 contains allegations that are immaterial to this action, to which no response is required.

5. Paragraph 5 contains allegations that are immaterial to this action to which no response is required.

6. Paragraph 6 contains allegations that are immaterial to this action to which no response is required.

7. Defendants admit that Plaintiff American Immigration Council ("AIC") submitted Freedom of Information Act ("FOIA") Requests to Defendants on May 20, 2019. Plaintiff AIC's request speaks for itself and is the best evidence of its contents. Defendants respectfully refer the Court to the referenced requests and deny any allegation inconsistent with the request's plain language, meaning, or context.

8. Defendants admit that Plaintiff Tahirih Justice Center ("TJC") submitted two FOIA Requests to Defendants by August 2, 2019. Plaintiff TJC's requests speak for themselves and are the best evidence of its contents. Defendants respectfully refer the Court to the referenced requests and deny any allegation inconsistent with the request's plain language, meaning, or context.

9. Paragraph 9 constitutes conclusions of law and allegations that are immaterial to this action to which no response is required.

JURISDICTION AND VENUE

10. The allegations in Paragraph 10 constitute conclusions of law to which no response is required.

11. The allegations in Paragraph 11 constitute conclusions of law to which no response is required.

12. The allegations in Paragraph 12 constitute conclusions of law to which no response is required.

PARTIES

13. The allegations contained in Paragraph 13 consist of Plaintiff AIC's characterization of itself and do not set forth a claim for relief or aver facts in support of a claim to which a response is required.

14. The allegations contained in Paragraph 14 consist of Plaintiff TJC's characterization of itself and do not set forth a claim for relief or aver facts in support of a claim to which a response is required.

15. Defendant U.S. Department of Homeland Security ("DHS") admits only that DHS is an agency of the United States government. The remaining allegations in Paragraph 15 constitute conclusions of law and allegations that are immaterial to this action to which no response is required.

16. Defendants admit only that U.S. Customs and Border Protection ("CBP") is a component agency of the DHS headquartered in Washington, D.C. The remaining allegations in Paragraph 16 constitute conclusions of law and allegations that are immaterial to this action to which no response is required.

17. Defendant U.S. Citizenship and Immigration Services (“USCIS”) admits only that USCIS is a component agency of DHS headquartered in Washington, D.C. The remaining allegations in Paragraph 17 constitute conclusions of law and allegations that are immaterial to this action to which no response is required.

18. The allegations contained in Paragraph 18 consist of Plaintiffs’ conclusions of law to which no response is required. To the extent that a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 18, and on that basis, deny the allegations.

STATEMENT OF FACTS

Expedited Removal and the Credible Fear Screening Process

19. Paragraph 19 and its corresponding footnote contains allegations that are immaterial to this action and constitute conclusions of law to which no response is required.

20. Paragraph 20 contains Plaintiffs’ conclusions of law and allegations that are immaterial to this action to which no response is required.

21. Paragraph 21 contains Plaintiffs’ conclusions of law and allegations that are immaterial to this action to which no response is required.

22. Paragraph 22 contains Plaintiffs’ conclusions of law and allegations that are immaterial to this action to which no response is required.

23. Paragraph 23 contains Plaintiffs’ conclusions of law and allegations that are immaterial to this action to which no response is required.

24. Paragraph 24 contains Plaintiffs’ conclusions of law and allegations that are immaterial to this action to which no response is required.

25. Paragraph 25 contains Plaintiffs’ conclusions of law and allegations that are immaterial to this action to which no response is required.

26. Paragraph 26 contains Plaintiffs' conclusions of law and allegations that are immaterial to this action to which no response is required.

The Role of USCIS Asylum Officers in the Credible Fear Review Process

27. Paragraph 27 contains Plaintiffs' conclusions of law and allegations that are immaterial to this action to which no response is required.

28. Paragraph 28 contains Plaintiffs' conclusions of law and allegations that are immaterial to this action to which no response is required.

USCIS and Reasonable Fear Interviews

29. Paragraph 29 contains Plaintiffs' conclusions of law and allegations that are immaterial to this action to which no response is required.

30. Paragraph 30 contains allegations that are immaterial to this action to which no response is required.

CBP's Law Enforcement Role and History of Mistreatment of Asylum Seekers

31. Paragraph 31 contains allegations that are immaterial to this action to which no response is required.

32. Paragraph 32 contains allegations that are immaterial to this action to which no response is required.

33. Paragraph 33 contains allegations that are immaterial to this action to which no response is required.

34. Paragraph 34 contains allegations that are immaterial to this action to which no response is required.

35. Paragraph 35 contains allegations that are immaterial to this action to which no response is required.

DHS Instructs CBP to Conduct Credible Fear Interviews

36. Paragraph 36 allegations that are immaterial to this action to which no response is required.

37. Paragraph 37 contains allegations that are immaterial to this action to which no response is required.

38. Paragraph 38 contains allegations that are immaterial to this action to which no response is required.

39. Paragraph 39 contains allegations that are immaterial to this action to which no response is required.

40. Paragraph 40 contains allegations that are immaterial to this action to which no response is required.

41. Paragraph 41 contains allegations that are immaterial to this action to which no response is required.

42. Paragraph 42 contains allegations that are immaterial to this action to which no response is required. Regarding the third sentence of Paragraph 42, Defendants admit to the extent that Acting Secretary McAleenan testified before Congress on July 18, 2019. Defendants respectfully refer the Court to the referenced testimony and deny any allegation inconsistent with the text of the testimony.

43. Paragraph 43 contains allegations that are immaterial to this action to which no response is required.

Plaintiff American Immigration Council's FOIA Request and Defendants' Response

44. Defendants admit that a FOIA Request dated May 20, 2019 was submitted by Plaintiff AIC to DHS, CBP, and USCIS. Plaintiff AIC's request speaks for itself and is the best evidence of its contents. Defendants respectfully refer the Court to the referenced requests and deny any allegation inconsistent with the request's plain language, meaning, or context.

45. Defendants admit that a FOIA Request dated May 20, 2019 was submitted by Plaintiff AIC DHS, CBP, and USCIS. Plaintiff AIC's request speaks for itself and is the best evidence of its contents. Defendants respectfully refer the Court to the referenced requests and deny any allegation inconsistent with the request's plain language, meaning, or context.

46. Defendants admit that Plaintiff AIC requested expedited processing of its FOIA request dated May 20, 2019. Plaintiff AIC's request speaks for itself and is the best evidence of its contents. Defendants respectfully refer the Court to the referenced requests and deny any allegation inconsistent with the request's plain language, meaning, or context.

47. Defendant USCIS respectfully refers the Court to the cited material. Defendant DHS admits that AIC's request was received. However, Defendant DHS denies that it sent AIC an e-mail delivery confirmation receipt. To the contrary, according to Plaintiffs' Exhibit C, "no delivery notification was sent by the destination server."

48. Defendants admit that Defendant CBP acknowledged Plaintiff AIC's request in a letter dated May 21, 2019. Defendant CBP's letter speaks for itself and is the best evidence of its contents. Defendants respectfully refer the Court to the referenced letter and deny any allegation inconsistent with the letter's plain language, meaning, or context.

49. Defendants admit that Defendant CBP sent Plaintiff AIC three emails dated May 21, 2019. Defendant CBP's emails speaks for themselves and are the best evidence of their contents. Defendants respectfully refer the Court to the referenced emails and deny any allegation inconsistent with the emails' plain language, meaning, or context.

50. Defendants admit that Defendant CBP sent Plaintiff AIC an email dated June 16, 2019. Defendant CBP's email speaks for itself and is the best evidence of its contents. Defendants respectfully refer the Court to the referenced email and deny any allegation inconsistent with the email's plain language, meaning, or context.

51. Paragraph 51 contains allegations that set forth conclusions of law to which no response is required. Defendants admit only that no final responses to AIC's May 20, 2019 request have been issued.

52. Paragraph 52 contains allegations that set forth conclusions of law to which no response is required.

53. Paragraph 53 contains Plaintiffs' characterization of itself and does not set forth a claim for relief or aver facts in support of a claim to which a response is required.

54. Defendant DHS and USCIS admit only that no responses to AIC's May 20, 2019 request to expedite processing has been issued.

55. The allegations in Paragraph 55 constitute conclusions of law to which no response is required. CBP admits only that no final response to AIC's May 20, 2019 FOIA request has been issued.

56. The allegations in Paragraph 56 constitute conclusions of law to which no response is required.

57. The allegations in Paragraph 57 constitute conclusions of law to which no response is required.

58. The allegations in Paragraph 58 constitute conclusions of law to which no response is required.

59. The allegations in Paragraph 59 constitute conclusions of law to which no response is required.

60. The allegations in Paragraph 60 contains Plaintiffs' conclusion of law to which no response is required.

Plaintiff Tahirih Justice Center's FOIA Requests and Defendants' Response

61. Defendants admit to the extent that Plaintiff TJC submitted a FOIA Request to Defendants DHS and USCIS dated July 5, 2019, and submitted an electronic FOIA request to Defendant CBP on July 22, 2019. Plaintiff TJC's requests speak for themselves and are the best evidence of its contents. Defendants respectfully refer the Court to the referenced requests and deny any allegation inconsistent with the request's plain language, meaning, or context.

62. Defendants admit to the extent that Plaintiff TJC submitted a FOIA request to Defendants DHS and USCIS dated July 5, 2019, and submitted an electronic FOIA request to Defendant CBP on July 22, 2019. Plaintiff TJC's requests speak for themselves and are the best evidence of its contents. Defendants respectfully refer the Court to the referenced requests and deny any allegation inconsistent with the request's plain language, meaning, or context.

63. Defendants admit to the extent that Plaintiff TJC submitted a second FOIA Request dated August 2, 2019 to each Defendant. Plaintiff TJC's requests speak for themselves and are the best evidence of its contents. Defendants respectfully refer the Court to the

referenced requests and deny any allegation inconsistent with the request's plain language, meaning, or context.

64. Defendants admit only that Plaintiff TJC submitted a second FOIA Request dated August 2, 2019 to each Defendant. Plaintiff TJC's requests speak for themselves and are the best evidence of its contents. Defendants respectfully refer the Court to the referenced requests and deny any allegation inconsistent with the request's plain language, meaning, or context.

65. Defendants admit that DHS acknowledged Plaintiff TJC's request in a letter dated July 10, 2019. Defendant DHS's letter speaks for itself and is the best evidence of its contents. Defendants respectfully refer the Court to the referenced letter and deny any allegation inconsistent with the email and letter's plain language, meaning, or context.

66. Defendants admit that CBP acknowledged Plaintiff TJC's request in an email dated July 22, 2019. Defendants also admit that CBP acknowledged Plaintiff TJC's supplemental request in a letter dated August 5, 2019. Defendant CBP's email and letter speak for themselves and are the best evidence of their contents. Defendants respectfully refer the Court to the referenced email and letter and deny any allegation inconsistent with the email and letter's plain language, meaning, or context.

67. Defendants admit only that no final responses to Plaintiff TJC's FOIA requests dated July 5, 2019, and July 22, 2019, have been issued.

68. Plaintiff TJC's referenced materials speak for themselves and are the best evidence of its contents. Defendants respectfully refer the Court to the referenced materials and deny any allegation inconsistent with their plain language, meaning, or context.

69. Plaintiff TJC's referenced materials speak for themselves and are the best evidence of its contents. Defendants respectfully refer the Court to the referenced materials and deny any allegation inconsistent with their plain language, meaning, or context.

70. Plaintiff TJC's referenced materials speak for themselves are the best evidence of its contents. Defendants respectfully refer the Court to the referenced materials and deny any allegation inconsistent with their plain language, meaning, or context.

71. Paragraph 71 contains Plaintiffs' conclusions of law to which no response is required.

72. Paragraph 72 contains Plaintiffs' conclusions of law to which no response is required.

73. Paragraph 73 contains Plaintiffs' conclusions of law to which no response is required.

74. Paragraph 74 contains Plaintiffs' conclusions of law to which no response is required.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION (All Plaintiffs v. All Defendants)

Violation of the Freedom of Information Act, 5 U.S.C. § 552: Failure to Conduct an Adequate Search for Responsive Records

75. Defendants incorporate their responses to Paragraphs 1-74 above as if fully set forth herein.

76. The allegations in Paragraph 76 constitute conclusions of law to which no response is required.

77. The allegations in Paragraph 77 constitute conclusions of law to which no response is required.

78. The allegations in Paragraph 78 constitute conclusions of law to which no response is required.

**SECOND CAUSE OF ACTION
(Plaintiff American Immigration Council v. Defendant CBP)**

**Violation of the Freedom of Information Act, 5 U.S.C. § 552:
Failure to Process Request as Soon as Practicable**

79. Defendants incorporate their responses to Paragraphs 1-78 above as if fully set forth herein.

80. The allegations in Paragraph 80 constitute conclusions of law to which no response is required.

81. The allegations in Paragraph 81 constitute conclusions of law to which no response is required.

82. Defendants admit that CBP granted Plaintiff American Immigration Council's request for expedited processing of its FOIA request. The second sentence in Paragraph 82 constitutes conclusions of law to which no response is required.

83. The allegations in Paragraph 83 constitute conclusions of law to which no response is required.

**THIRD CAUSE OF ACTION
(Plaintiff American Immigration Council v. Defendant CBP)**

**Violation of the Freedom of Information Act, 5 U.S.C. § 552:
Failure to Make a Determination and Produce Responsive Documents (Alternative Claim)**

84. Defendants incorporate their responses to Paragraphs 1-83 above as if fully set forth herein.

85. The allegations in Paragraph 85 constitute Plaintiffs' conclusions of law to which no response is required.

86. The allegations in Paragraph 86 constitute Plaintiffs' conclusions of law to which no response is required.

87. The allegations in Paragraph 87 constitute Plaintiffs' conclusions of law to which no response is required.

FOURTH CAUSE OF ACTION
(Plaintiff American Immigration Council v. Defendants DHS and USCIS)

Violation of the Freedom of Information Act, 5 U.S.C. § 552:
Failure to Make a Determination and Produce Responsive Documents

88. Defendants incorporate their responses to Paragraphs 1-87 above as if fully set forth herein.

89. The allegations in Paragraph 89 constitute Plaintiffs' conclusions of law to which no response is required.

90. The allegations in Paragraph 90 constitute Plaintiffs' conclusions of law to which no response is required.

91. The allegations in Paragraph 91 constitute Plaintiffs' conclusions of law to which no response is required.

FIFTH CAUSE OF ACTION
(Plaintiff Tahirih Justice Center v. All Defendants)

Violation of the Freedom of Information Act, 5 U.S.C. § 552:
Failure to Make a Determination and Produce Responsive Documents

92. Defendants incorporate their responses to Paragraphs 1-91 above as if fully set forth herein.

93. The allegations in Paragraph 93 constitute Plaintiffs' conclusions of law to which no response is required.

94. The allegations in Paragraph 94 constitute Plaintiffs' conclusions of law to which no response is required.

95. The allegations in Paragraph 95 constitute Plaintiffs' conclusions of law to which no response is required.

96. The allegations in Paragraph 96 constitute Plaintiffs' conclusions of law to which no response is required.

97. The allegations in Paragraph 97 constitute Plaintiffs' conclusions of law to which no response is required.

98. The allegations in Paragraph 98 constitute Plaintiffs' conclusions of law to which no response is required.

99. The allegations in Paragraph 99 constitute Plaintiffs' conclusions of law to which no response is required.

100. The allegations in Paragraph 100 constitute Plaintiffs' conclusions of law to which no response is required.

PRAYER FOR RELIEF

The remainder of Plaintiffs' Complaint consist of Plaintiffs' Prayer of Relief to which no response is required. To the extent Plaintiffs' Prayer for Relief is deemed to contain factual allegations, Defendants deny those allegations and deny that Plaintiffs are entitled to the relief requested in this section.

FIRST DEFENSE

Information requested in Plaintiffs' Freedom of Information Act ("FOIA") request is exempt in whole or in part under the FOIA.

SECOND DEFENSE

The Court lacks subject matter jurisdiction over any requested relief that exceeds the relief authorized by the FOIA.

THIRD DEFENSE

The Complaint, including Paragraphs 3-42, among others, violates Federal Rule of Civil Procedure (“Rule”) 8(a)(2) by alleging information that is unnecessary to a “short and plain” statement of the claim and thus subject to removal under Rule 12(f).

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WHEREFORE, having fully answered, Defendant respectfully requests that the Court issue an order dismissing with prejudice the above-captioned case, that costs be assessed against Plaintiff, and that Defendant be awarded such further relief as the Court deems just and proper.

Dated: November 12, 2019

Respectfully submitted,

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By: /s/ Paul A. Mussenden

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