

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

SANTA FE DREAMERS PROJECT,

Plaintiff,

CIVIL ACTION NO:

v.

1:20-CV-00490-LF-KK

**U.S. CUSTOMS AND BORDER
PROTECTION**

Defendant.

DEFENDANT'S ANSWER

COMES NOW, THE UNITED STATES OF AMERICA, by and through John C. Anderson, United States Attorney for the District of New Mexico, and Manuel Lucero, Assistant U.S. Attorney, and hereby respectfully files this Answer to Plaintiff's Original Complaint in the above-styled and numbered action. In support hereof, Defendant, without waiving any defenses or affirmative defenses to which Defendant may be entitled, hereby admits, denies, and affirmatively asserts as follows:

1. Defendant, at this time, does not have knowledge or information sufficient to either admit or deny the allegations as set forth in Paragraph 1 of the Complaint.

2. Defendant, at this time, does not have knowledge or information sufficient to either admit or deny the allegations as set forth in Paragraph 2 of the Complaint.

3. Defendant, at this time, does not have knowledge or information sufficient

to either admit or deny the allegations as set forth in Paragraph 3 of the Complaint.

4. Defendant admits only so much of Paragraph 4 of the Complaint that alleges that Allegra Love, the Executive Director of the Santa Fe Dreamers Project submitted a request for information under the Freedom of Information Act ("FOIA"). Defendant denies the remaining allegations of paragraph 4 of the Complaint.

5. Defendant admits Paragraph 5 of the Complaint that alleges that the "basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the government accountable to the governed." *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978).

6. Defendant admits Paragraph 6 of the Complaint that alleges that when a FOIA request is made, the agency must communicate a determination regarding the request and " the reasons there for" within 20 working days of the original request or, in "unusual circumstances," within 30 working days. 5 U.S.C. § 552(a)(6)(A)(i), (a)(6)(B)(i). After this determination, the agency must make the documents "promptly available," which depending on the circumstances typically would mean within days or a few weeks of a 'determination,' not months or years." *Citizens for Responsibility and Ethics in Washington v. Fed. Election Com'n*, 711 F.3d 180, 188 (D.C. Cir. 2013) (citing 5 U.S.C. § 552(a)(3)(A), a(6)(C)(i)).

7. Defendant denies the allegations of Paragraph 7 of the Complaint.

8. In response to Paragraph 8 of the Complaint, Defendant asserts that, to the extent that the Plaintiff invokes this Court's jurisdiction under the provisions of the 28 U.S.C. §§1331 (federal question), 2201(a), and 2202, and 5 U.S.C. § 552(a)(4)(B) (FOIA), and to the extent that the Plaintiff the question of whether such jurisdiction exists is a conclusion of law which is reserved to the Court for determination and to which no response is required. To the extent that the allegation can be construed to constitute an allegation of material fact to which a response is required, the allegation is denied.

9. In response to Paragraph 9 of the Complaint, Defendant asserts that, to the extent venue is proper in this Court pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1391(b)(1), (b)(2), and (e)(1) the question of whether venue is proper is a conclusion of law which is reserved to the Court for determination and to which no response is required. To the extent that the allegation can be construed to constitute an allegation of material fact to which a response is required, the allegation is denied.

10. No response is required to the allegation in Paragraph 10 of the complaint.

11. Defendant, at this time, does not have knowledge or information sufficient to either admit or deny the allegations as set forth in Paragraph 11 of the complaint.

12. Defendant, at this time, does not have knowledge or information sufficient to either admit or deny the allegations as set forth in Paragraph 12 of the Complaint.

13. Defendant, at this time, does not have knowledge or information sufficient

to either admit or deny the allegations as set forth in Paragraph 13 of the Complaint.

14. Defendant, at this time, does not have knowledge or information sufficient to either admit or deny the allegations as set forth in Paragraph 14 of the Complaint.

15. Defendant admits the allegations set forth in Paragraph 15 of the Complaint, which allege that Defendant U.S. Customs and Border Protection ("CBP") is an executive agency component of the U.S. Department of Homeland Security ("DHS") and an "agency" within the meaning of 5 U.S.C. § 552(f)(1).

16. Defendant denies the allegations of Paragraph 16 of the Complaint.

17. The allegations of Paragraph 17 of the Complaint require no answer of Defendant.

18. Defendant denies the allegations of Paragraph 18 of the Complaint.

19. Defendant denies the allegations of Paragraph 19 of the Complaint.

20. Defendant denies the allegations of Paragraph 20 of the Complaint.

21. Defendant denies the allegations of Paragraph 21 of the Complaint.

22. Defendant denies the allegations of Paragraph 22 of the Complaint.

23. Defendant, at this time, does not have knowledge or information sufficient to either admit or deny the allegations as set forth in Paragraph 23 of the Complaint.

24. Defendant denies the allegations of Paragraph 24 of the Complaint.

25. Defendant, at this time, does not have knowledge or information sufficient

to either admit or deny the allegations as set forth in Paragraph 25 of the Complaint.

26. The allegations of Paragraph 26 of the Complaint require no answer of Defendant but to the extent that they require an answer, Defendant denies those allegations.

27. The allegations of Paragraph 27 of the Complaint require no answer of Defendant but to the extent that they require an answer, Defendant denies those allegations.

28. Defendant denies the allegations of Paragraph 28 of the Complaint.

29. Defendant denies the allegations of Paragraph 29 of the Complaint.

30. Defendant denies the allegations of Paragraph 30 of the Complaint.

31. Defendant denies the allegations of Paragraph 31 of the Complaint.

32. Defendant denies the allegations of Paragraph 32 of the Complaint.

33. In response to paragraph 33 of Plaintiff's Complaint, Defendant admits On April 9, 2019, Plaintiff submitted FOIA request no. CBP-2019-043146 to CBP via the agency's online portal seeking:

all agency records relating to secondary inspections involving Taylor Levy and/or Hector Ruiz between December 1, 2018 to January 30, 2019 at or around the Paso del Norte Port of Entry in El Paso, Texas ...

all other agency records reflecting any research or investigation of Taylor Levy and/or Hector Ruiz by CBP or any other law enforcement agency if CBP maintains records of such research or investigation . . .

all agency records reflecting CBP's compliance with Section 5.2 of CBP Directive 3340-049A between December 1, 2018 to January 30, 2019 at or around Paso del Norte Port of Entry in El Paso, Texas.
<https://www.cbp.gov/sites/default/files/assets/documents/2018-Jan/CBP-Directive-3340-049A-Border-Search-of-Electronic-Media-Compliant.pdf> ...

all significant event notifications, significant incident reports, EAGLE, IDENT/ENFORCE, PLANet, or other database entries regarding secondary inspection of Taylor Levy and/or Hector Ruiz between December 1, 2018 to January 30, 2019 ...

all communications sent or received by any CBP official in the El Paso Sector regarding or referencing the following news story:
<https://www.nbcnews.com/politics/immigration/more-lawyers-reporter-stopped-questioned-border-u-s-officials-n984256> ...

34. In response to paragraph 34 of Plaintiff's Complaint, CBP admits Plaintiff received an automated response on April 9, 2019 confirming CBP's receipt of FOIA request number CBP-2019-043146. CBP respectfully refers the Court to the document for a complete and accurate description of its contents.

35. In response to paragraph 35 of Plaintiff's Complaint, Defendant admits that on May 10, 2019, CBP responded to FOIA request no. CBP-2019-043146, claiming that it must deny the entire FOIA request because Plaintiff did not provide a G-28 or record authorization from the two persons mentioned in the request - Ms. Levy and Mr. Ruiz. CBP respectfully refers the Court to the document for a complete and accurate description of its contents. Defendant denies the remaining allegations of paragraph 35 of the Complaint.

36. Defendant admits only so much of Paragraph 36 of the Complaint that alleges that Plaintiff, on June 12, 2019, submitted a second request to CBP seeking identical records to those sought in FOIA request no. CBP-2019-043146. Defendant denies the remaining allegations of paragraph 36 of the Complaint.

37. In response to paragraph 37 of Plaintiff's Complaint, Defendant admits CBP responded to Plaintiff stating that it would be reassigning the request to U.S. Citizenship and Immigration Services (USCIS) and that it would "only process

Taylor Levy as you are only authorized to send one request per FOIA request." CBP respectfully refers the Court to the document for a complete and accurate description of its contents.

38. Defendant denies the allegations of Paragraph 38 of the Complaint.

39. Defendant denies the allegations of Paragraph 39 of the Complaint.

40. In response to paragraph 40 of Plaintiff's Complaint, Defendant asserts that no response is required. Defendant

41. Defendant admits only so much of Paragraph 41 of the Complaint that alleges that on October 1, 2019, CBP responded to Plaintiff's appeal. Defendant denies the remaining allegations of paragraph 41 of the Complaint.

42. In response to paragraph 42 of the Complaint, Defendant admits only that the FOIA Appeals office continued to maintain that they would only search "for one of the clients and advise you to submit a second request for the second client." CBP respectfully refers the Court to the document for a complete and accurate description of its contents. Defendant denies the remaining allegations of paragraph 42 of the Complaint.

43. The allegations of Paragraph 43 of the Complaint require no answer of Defendant.

44. In response to paragraph 44 of the Complaint, Defendant admits only that on October 12, 2019, CBP responded claiming that it could not find responsive records "on behalf of your client/relative." CBP respectfully refers the Court to the document for a complete and accurate description of its contents. Defendant denies the remaining allegations of paragraph 44 of the Complaint.

45. Defendant denies the allegations of Paragraph 45 of the Complaint.

46. Defendant denies the allegations of Paragraph 46 of the Complaint.

AFFIRMATIVE DEFENSES

47. The Complaint fails to state a claim on which relief can be granted.

48. The Court lacks subject matter jurisdiction over Plaintiff's request for relief to the extent that it exceeds the relief authorized by statute under FOIA, 5 U.S.C. § 552.

49. The FOIA request that is the subject of this lawsuit implicates certain information that is protected from disclosure by one or more statutory exemptions. Disclosure of such information is not required

50. There is no provision of the FOIA for obtaining declaratory relief. At all times alleged in the Complaint, Defendants were acting in good faith, with justification, and pursuant to authority. Defendants respectfully request and reserve the right to amend, alter, and supplement the defenses contained in this Answer as the facts and circumstances giving rise to the Complaint become known through the course of the litigation.

51. Defendant has, or may have, additional affirmative defenses which are not known to it at this time, but which may be ascertained through discovery. Defendant specifically preserves these and other affirmative defenses as they are ascertained through discovery. Defendant reserves the right to raise additional defenses that become apparent through the factual development of the case.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that this answer be deemed good and sufficient and all claims by Plaintiff against Defendant be dismissed, with prejudice, and such other and further relief, legal and equitable, including attorney's fees, be awarded Defendant.

Respectfully submitted,

JOHN C. ANDERSON
UNITED STATES ATTORNEY
DISTRICT OF NEW MEXICO

/s/ Electronically filed June 24, 2020

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CERTIFICATE OF SERVICE

I hereby certify that on June 24, 2020, I filed the foregoing pleading electronically through the CM/ECF system which caused all parties or counsel to be served by electronic means as more fully reflected on the Notice of Electronic Filing.

/s/ Manuel Lucero 6/24/20
MANUEL LUCERO
Assistant United States Attorney