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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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NO MORE DEATHS and CENTER FOR	:	
CONSTITUTIONAL RIGHTS,	:	
	:	21 Civ. 954 (JPC)
Plaintiffs,	:	
	:	
v.	:	ANSWER
	:	
UNITED STATES CUSTOMS AND BORDER	:	
PROTECTION,	:	
	:	
Defendant.	:	
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Defendant United States Customs and Border Protection (“CBP”), by its attorney, Audrey Strauss, United States Attorney for the Southern District of New York, answers the complaint of plaintiffs No More Deaths and Center for Constitutional Rights (together, “Plaintiffs”), dated February 3, 2021, as follows:

1. Paragraph 1 consists of Plaintiffs’ characterization of this lawsuit, to which no response is required. To the extent a response is required, Defendant denies the allegations contained in paragraph 1 of the complaint, except admit that Plaintiffs seek relief pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552; that Plaintiffs sent a FOIA request on April 19, 2019; and that CBP has not yet produced documents in response to this request.

2. Admits that Plaintiffs filed a FOIA request on April 19, 2019. The remainder of Paragraph 2 consists of Plaintiffs' characterization of the request, to which CBP respectfully refers the Court for the best evidence of its contents.

3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence of paragraph 3 of the complaint. Admits that migrants die traversing the Sonoran Desert region each year. The third sentence of paragraph 3 consists of Plaintiffs' characterization of unidentified government records, to which CBP respectfully refers the Court for the best evidence of their contents. Denies the fourth sentence of paragraph 3 as argumentative.

4. Admits.

5. Denies the first sentence of paragraph 5 as vague and argumentative. The second sentence of paragraph 5 states a legal argument, to which no response is required. Denies the third sentence of paragraph 5 as vague and argumentative. Admits that Border Patrol may withhold information on search and rescue operations during their pendency; denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in the fourth sentence of paragraph 5. Denies the fifth sentence of paragraph 5 as vague and argumentative.

6. Admits that the cited sources support the first sentence of paragraph 6. The remaining sentences of paragraph 6 state a legal argument, to which no response is required.

7. Denies the first sentence of paragraph 7. Admits that CBP assigned three tracking numbers to Plaintiffs' requests, but denies the remaining allegations of the second sentence of paragraph 7 as vague and argumentative. Admits that CBP consolidated the requests and informed

CCR that it was processing Plaintiffs' requests, but denies the remaining allegations of the third sentence of paragraph 7.

8. Denies.

9. The allegations of paragraph 9 consist of Plaintiffs' characterization of this action and their motive in undertaking it, to which no response is required.

10. Paragraph 10 states a legal conclusion, to which no response is required. To the extent a response is required, denies knowledge or information sufficient to form a belief as to the truth of the allegations concerning Plaintiffs' residence.

11. Paragraph 11 states a legal conclusion, to which no response is required. To the extent a response is required, CBP admits that it has not issued a final determination in this case.

12. Denies knowledge or information sufficient to form a belief as to the truth of the allegations concerning Plaintiff No More Deaths.

13. Denies knowledge or information sufficient to form a belief as to the truth of the allegations concerning Plaintiff Center for Constitutional Rights.

14. Admits.

15. Denies knowledge or information sufficient to form a belief as to the truth of the allegations regarding the plaintiffs' beliefs.

16. Paragraph 16 characterizes 5 U.S.C. § 552, to which CBP respectfully refers the Court for the best evidence of its contents.

17. Paragraph 17 characterizes 5 U.S.C. § 552(a)(6)(A)(i) and constitute legal argument, to which no response is required. CBP admits that the quoted portions are accurate but respectfully refers the Court to the statutory text for the best evidence of its contents.

18. Paragraph 18 characterizes 5 U.S.C. § 552(a)(6)(B) and constitute legal argument, to which no response is required. CBP admits that the quoted portions are accurate but respectfully refers the Court to the statutory text for the best evidence of its contents.

19. Paragraph 19 characterizes 5 U.S.C. § 552(a)(4)(B) and constitute legal argument, to which no response is required. CBP admits that the quoted portions are accurate but respectfully refers the Court to the statutory text for the best evidence of its contents.

20. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence of paragraph 20 of the complaint. Admits that migrants die traversing the Sonoran Desert region each year. The third sentence of paragraph 20 consists of Plaintiffs' characterization of unidentified government records; CBP admits that thousands of migrants have died or disappeared in U.S. deserts since 1994, but respectfully refers the Court to the cited government records for the best evidence of their contents. Admits the fourth sentence of paragraph 20. The fifth sentence of paragraph 20 consists of Plaintiffs' characterization of reports from Physicians for Human Rights, to which CBP respectfully refers the Court for the best evidence of their contents. The sixth and seventh sentences of paragraph 20 consist of Plaintiffs' characterization of reports from the Colibri Center for Human Rights, to which CBP respectfully refers the Court for the best evidence of their contents.

21. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence of paragraph 21 of the complaint. The second and third sentences of paragraph 21 consists of Plaintiffs' characterization of the Border Patrol's 1994 strategic plan; CBP admits that the quoted portions are accurate, but respectfully refers the Court to the strategic plan for the best evidence of its contents. The fourth sentence of paragraph 21 consists of a legal argument to which no response is required.

22. Defendant lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 22, which characterize Plaintiff No More Deaths' own records. Denies the allegation that Border Patrol has struggled to carry out its search and rescue responsibility.

23. Defendant lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 23 characterizing Plaintiff No More Deaths' own records as well as those of unidentified local human rights organizations. Otherwise, denies the allegations.

24. Denies the allegations in paragraph 24.

25. Defendant lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in the first six sentences of paragraph 25, which characterize Plaintiff No More Deaths' own records as well as unidentified federal court testimony. Further denies those allegations as argumentative. Denies that Border Patrol releases almost no information to the public regarding the efficacy of its efforts. Admits that Congress mandated a report on search and rescue activities in 2017, but respectfully refers the Court to H.R. 114-215 for the best evidence of its contents. Denies that the report released did not provide data on searches, and respectfully refers the Court to the Search and Rescue Efforts for FY 2016 report, available at <https://www.dhs.gov/sites/default/files/publications/CBP%20-%20Search%20and%20Rescue%20Efforts%20for%202016.pdf>, for the best evidence of its contents. Denies that Border Patrol has released no further reports on search and rescue efforts since the above-cited report.

26. Denies as argumentative the allegations in paragraph 26 of the complaint.

27. Denies as vague and argumentative the allegations in the first and last sentences of paragraph 27. The remaining allegations consist of Plaintiffs' characterization of the Missing Persons and Unidentified Remains Act and legal argument, to which no response is required. CBP respectfully refers the Court to the statute for the best evidence of its contents.

28. Denies as vague and argumentative the allegations in paragraph 28 of the complaint.

29. Admits that Plaintiffs submitted a FOIA request on April 19, 2019, a copy of which is attached the complaint as Exhibit A. CBP respectfully refers the Court to Exhibit A for the best evidence of its contents.

30. Admits that Plaintiffs sought expedited processing on the grounds asserted in paragraph 30 of the complaint.

31. Admits that Plaintiffs sought a fee waiver on the grounds asserted in paragraph 31 of the complaint.

32. Admits.

33. Admits that CBP initially assigned three tracking numbers and consolidated those by letter dated July 19, 2019. Otherwise, denies the allegations in Paragraph 33.

34. Admits.

35. Lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 35 of the complaint.

36. Admits that Mr. Guisado called on May 29, 2019, to ask about expedited processing. Lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in paragraph 36 of the complaint.

37. Denies. By way of further answer, CBP avers that it informed Mr. Guisado on October 20, 2019, that it had granted his request for expedited processing.

38. Denies, except admits that CBP provided an automated message confirming receipt of a FOIA request on or about May 31, 2019, but avers that this was related to the CBP-2019-056580 FOIA request.

39. Admits, except avers that the response was three days after the CBP-2019-056580 FOIA Request was generated.

40. Admits.

41. Admits.

42. Admits, except avers that this message was with respect to the FOIA request sent by mail, and was 54 days after receipt of this request.

43. Admits, except avers that this message was sent 78 days after the mailed FOIA request was received.

44. Admits.

45. Admits.

46. Admits that Mr. Guisado and CBP reached agreed upon search terms on or about September 19, 2019, after roughly two months of correspondence. Denies the allegations of paragraph 46 attributing fault to CBP.

47. Admits.

48. Admits that Mr. Guisado corresponded with CBP regarding the search in October 2019. Admits that on or about October 21, 2019, CBP estimated that the search would be completed by the end of November 2019. Denies that CBP refused to provide any meaningful update. Denies that CBP failed to provide a determination regarding Plaintiffs' request for fee

waiver and expedited processing. Avers that the search is ongoing. Denies the remaining allegations.

49. Admits the second and fourth sentences of paragraph 49. Denies the first and third sentences of paragraph 49.

50. Defendant lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 50.

51. Defendant lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 51.

52. Admits that CBP has not produced documents in response to Plaintiffs' FOIA request. Denies the remaining allegations in paragraph 52 as vague and argumentative.

53. Paragraph 53 states a legal conclusion, to which no response is required.

54. Defendants repeat and incorporate by reference each and every response set forth herein to the allegations contained in paragraphs 1 through 53 of the complaint.

55. Paragraph 55 of the complaint consists of Plaintiffs' legal opinions and conclusions, to which no response is required.

56. Admits that CBP has not determined or communicated the scope of intended production or withholding, or communicated the right to appeal. Denies that CBP has failed to provide any status update on Plaintiffs' FOIA request.

57. Paragraph 57 of the complaint consist of Plaintiffs' legal opinions and conclusions, to which no response is required. To the extent a response is required, denies.

58. Defendants repeat and incorporate by reference each and every response set forth herein to the allegations contained in paragraphs 1 through 53 of the complaint.

59. Paragraph 59 of the complaint consist of Plaintiffs' legal opinions and conclusions, to which no response is required. To the extent a response is required, CBP admits that it has produced no records nor claimed any statutory exemptions, but denies that it has refused to provide status updates.

60. Paragraph 60 of the complaint consists of Plaintiffs' legal opinions and conclusions, to which no response is required.

61. Defendants repeat and incorporate by reference each and every response set forth herein to the allegations contained in paragraphs 1 through 53 of the complaint.

62. Paragraph 62 of the complaint consists of Plaintiffs' legal opinions and conclusions, to which no response is required.

63. Paragraph 63 of the complaint consists of Plaintiffs' legal opinions and conclusions, to which no response is required.

64. Admits the allegations in the first sentence of paragraph 64. The second sentence of paragraph 64 of the complaint consists of Plaintiffs' legal opinions and conclusions, to which no response is required. Denies as vague and argumentative the allegations in the third sentence of paragraph 64. Admits the allegations in the fourth, sixth, and seventh sentences of paragraph 64. Denies that the duplicate tracking numbers caused agency delay, as alleged in the fifth sentence of paragraph 64. Denies as vague and argumentative the allegations in the eighth and ninth sentences of paragraph 64.

65. Admits the allegations in the second, third, and fourth sentences of paragraph 65. Denies the allegations in the first and fifth sentences of paragraph 65.

66. Paragraph 66 of the complaint consists of Plaintiffs' legal opinions and conclusions, to which no response is required. To the extent a response is required, denies.

67. Defendants repeat and incorporate by reference each and every response set forth herein to the allegations contained in paragraphs 1 through 53 of the complaint.

68. Admits.

69. Denies. By way of further answer, avers that CBP denied Plaintiffs' request for a fee waiver.

70. Paragraph 70 of the complaint consists of Plaintiffs' legal opinions and conclusions, to which no response is required. To the extent a response is required, denies.

The remaining paragraphs of the complaint consist of Plaintiffs' request for relief, to which no response is required. To the extent a response is required, CBP denies that Plaintiff is entitled to the requested relief, or to any relief whatsoever.

DEFENSES

FIRST DEFENSE

The Court lacks subject matter jurisdiction over Plaintiffs' requests for relief that exceed the relief authorized by statute under FOIA, 5 U.S.C. § 552.

SECOND DEFENSE

The requested records are exempt, in full or in part, from disclosure. *See* 5 U.S.C. § 552(b).

THIRD DEFENSE

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

FOURTH DEFENSE

Defendants reserve the right to amend this answer to assert any other matter that constitutes an avoidance or affirmative defense under Rule 8(c) of the Federal Rules of Civil Procedure.

WHEREFORE, Defendant respectfully requests that the Court: (1) dismiss the complaint with prejudice; (2) enter judgment in favor of Defendant; and (3) grant such further relief as the Court deems just and proper.

Dated: New York, New York
March 19, 2021

Respectfully submitted,

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