

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

NOELLE LLAMAS and  
KEN KLIPPENSTIEN,

Plaintiffs,

v.

Case No. 6:21-cv-01169-RBD-LRH

U.S. CUSTOMS AND BORDER  
PROTECTION, *et al.*,

Defendants.

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**FEDERAL DEFENDANTS’  
ANSWER AND AFFIRMATIVE DEFENSES**

Federal Defendants, U.S. Customs and Border Protection (“CBP”), U.S. Immigration and Customs Enforcement (“ICE”), U.S. Department of Homeland Security (“DHS”), the Federal Bureau of Investigation (“FBI”), U.S. Marshals Service (“USMS”), and U.S. Department of Justice (“DOJ”) (collectively the “Federal Defendants”), by and through the undersigned Assistant United States Attorney, answer Plaintiffs’ allegations in their complaint as follows:

1. Admit Plaintiffs seek relief in this action under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), with respect to the Federal Defendants. Deny the remaining allegations of paragraph one and deny that Plaintiffs are entitled the relief they seek.

2. Admit that CBP, ICE, DHS, USMS and DOJ are federal agencies. Admit that the FBI is a component of the DOJ and is subject to the requirements of

the FOIA. Aver that the FBI is not an agency within the meaning of 5 U.S.C. § 552(f). Except as specifically admitted the remaining allegations of paragraph 2 are denied.

3. The Federal Defendants lack sufficient information to admit or deny the allegations in paragraph 3.

4. The Federal Defendants lack sufficient information to admit or deny the allegations in paragraph 4.

5. Deny.

6. The Federal Defendants lack sufficient information to admit or deny the allegations in paragraph 6.

7. The allegations in this paragraph consist of irrelevant factual assertions, to which no response is required. The allegations in this paragraph also do not set forth a claim for relief or aver facts in support of a claim to which an answer is required. *See Michigan Immigrant Rights Ctr. v. United States Dep't of Homeland Sec.*, No. 16-14192, 2017 WL 2471277, at \*2-\*3 (E.D. Mich. June 8, 2017).

8. The allegations in this paragraph consist of irrelevant factual assertions, to which no response is required. The allegations in this paragraph also do not set forth a claim for relief or aver facts in support of a claim to which an answer is required. *See Michigan Immigrant Rights Ctr. v. United States Dep't of Homeland Sec.*, No. 16-14192, 2017 WL 2471277, at \*2-\*3 (E.D. Mich. June 8, 2017).

9. Admit CBP and ICE are components of DHS. Admit USMS and the FBI are components of DOJ.

10. Admit each Defendant has respective offices and/or employees responsible for media communications. Except as specifically admitted the remaining allegations of paragraph 10 are denied.

11. Defendants admit that they received FOIA requests from Plaintiffs dated January 1 or 2, 2021. Defendants refer the Court to the FOIA requests for a complete and accurate statement of their contents.

12. Admit that Plaintiffs' respective FOIA requests each included a request for a fee waiver. Defendants refer the Court to the FOIA requests for a complete and accurate statement of their contents.

13. Admit that as of the date of the complaint, none of the Federal Defendants had issued a final determination response to Plaintiffs' respective FOIA requests nor released any documents in response thereto.

14. This paragraph is one of incorporation, to which no response is required. To the extent a response is required, Defendants incorporate their responses to the prior paragraphs.

15. Admit.

16. Deny to the extent the allegations are inconsistent with the language of 5 U.S.C. § 552(a).

17. Defendants admit that they received FOIA requests from Plaintiffs dated January 1 or 2, 2021. Deny the remaining allegations of paragraph 17.

18. Admit.

19. Deny.

20. Denied, it explicitly being denied that Plaintiffs are entitled to the relief they seek.

**First Count: CBP**

21. Admit that CBP received a FOIA request from Plaintiffs dated January 2, 2021. Admit that the quoted language was included in the request. Defendant refers the Court to the FOIA request itself for a complete and accurate statement of the FOIA request's contents. Except as specifically admitted, the remainder of paragraph is denied.

22. Admit.

23. Admit that CBP sent Plaintiff four (4) messages on January 4, 2021. Admit that the correspondence generally concerned the topics identified. Defendant refers the Court to the messages themselves for a complete and accurate statement of their contents. Except as specifically admitted, the remainder of paragraph is denied.

24. Admit that on January 13, 2021, CBP left a voicemail and sent a message to Plaintiff via email with the addresses identified. Admit the email included generally the identified information. Defendant refers the Court to the email message itself for a complete and accurate statement of its contents. Except as specifically admitted, the remainder of paragraph is denied.

25. Admit that CBP sent a message to Plaintiff on February 2, 2021 via email. Admit the email inquired regarding search terms. Defendant refers the Court

to the email message itself for a complete and accurate statement of its contents.

Defendant is without knowledge whether Plaintiff returned the voicemail or immediately responded to the January 13, 2021, email. Except as specifically admitted, the remainder of paragraph is denied.

26. Admit that on March 10, 2021, CBP sent Plaintiff a message via email. Admit the email concerned changing tracking numbers. Defendant refers the Court to the email message itself for a complete and accurate statement of its contents. Except as specifically admitted, the remainder of paragraph is denied.

27. Admit that on March 10, 2021, CBP sent Plaintiff a message via email. Admit the email inquired regarding search terms. Defendant refers the Court to the email message itself for a complete and accurate statement of its contents. Defendants are without knowledge or information sufficient to form a belief as to the truth of the second sentence of this paragraph. Except as specifically admitted, the remainder of paragraph is denied.

28. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

29. Admit that on March 12, 2021, CBP received a FOIA Online system generated Notice from the Plaintiff. Admit the notice contained a statement that Plaintiff was seeking a blanket release and that he did not wish to use search terms. Defendant refers the Court to the email message itself for a complete and accurate statement of its contents. Defendant is without knowledge or information sufficient

to form a belief as to the truth of what actions Plaintiff took to send the email.

Except as specifically admitted, the remainder of paragraph is denied.

30. Admit that on April 5, 2021, CBP sent Plaintiff a message via email.

Admit the email concerned changing tracking numbers. Defendant refers the Court to the email message itself for a complete and accurate statement of its contents.

Except as specifically admitted, the remainder of paragraph is denied.

31. Admit that on July 8, 2021, CBP received an FOIA Online system

generated notice from the Plaintiff. Admit that generally Plaintiff included the identified subjects in the email. Defendant refers the Court to the notice itself for a complete and accurate statement of its contents. Defendant is without knowledge or information sufficient to form a belief as to the truth of what actions Plaintiff took to send the FOIA Online system generated notice. Except as specifically admitted, the remainder of paragraph is denied.

32. Admit only that CBP has not sent Plaintiff any further communications

since April 5, 2021.

33. Admit that, as of the date of the Complaint, CBP had not issued a final

determination response to Plaintiff's request nor provided any documents in response to the request. Except as specifically admitted, the remainder of paragraph is denied.

34. Admit that, as of the date of the Complaint, CBP had not issued a final

determination response to Plaintiff's FOIA request. Except as specifically admitted, the remainder of paragraph is denied.

35. Admit the first sentence of this paragraph. Except as specifically admitted, the remainder of paragraph is denied.

**Second Count: ICE**

36. Admit that ICE received a FOIA request from Plaintiffs dated January 1, 2021 and that the quoted language was included in the request. Defendant refers the Court to the FOIA request itself for a complete and accurate statement of the FOIA request's contents.

37. Admit.

38. Admit.

39. ICE lacks information to admit or deny the allegations in paragraph 39.

40. Admit ICE has not sent Plaintiff any further communications since April 28, 2021.

41. Admit as of the date of the Complaint, ICE had not issued a final determination response to Plaintiffs' FOIA request nor provided any documents in response to the request.

42. Admit that, as of the date of the Complaint, ICE had not provided any documents in response to the request. Except as specifically admitted, the remainder of paragraph is denied.

43. Admit the first sentence of this paragraph. Except as specifically admitted, the remainder of paragraph is denied.

**Third Count: DHS**

44. Admit that DHS received a FOIA request from Plaintiffs dated January 1, 2021 and that the quoted language was included in the request. Defendant refers the Court to the FOIA request itself for a complete and accurate statement of the FOIA request's contents. Except as specifically admitted, the remainder of paragraph is denied.

45. Admit that by an email dated January 12, 2021, it acknowledged receipt of Plaintiffs' January 1, 2021 FOIA request, and assigned this request tracking number 2021-HQFO-00087. Except as specifically admitted, the remainder of paragraph is denied.

46. Admit DHS received Plaintiff's July 8, 2021 email and respectfully refers the Court to this correspondence for a complete and accurate statement of its contents. Except as specifically admitted, the remainder of paragraph is denied.

47. Admit DHS provided a response to Plaintiff's July 8, 2021 email on July 9, 2021, and that the quoted language was included in the email. DHS respectfully refers the Court to this correspondence for a complete and accurate statement of its contents. Except as specifically admitted, the remainder of paragraph is denied.

48. Admit as of the date of the Complaint, DHS had not issued a final determination response to Plaintiffs' FOIA request nor provided any documents in response to the request. Except as specifically admitted, the remainder of paragraph is denied.



49. Admit that, as of the date of the Complaint, DHS had not provided any documents in response to the request. Except as specifically admitted, the remainder of paragraph is denied.

50. Admit the first sentence of this paragraph. Except as specifically admitted, the remainder of paragraph is denied.

**Fourth Count: FBI**

51. Admit that the FBI received a FOIA request from Plaintiffs dated January 1, 2021 and that the quoted language was included in the request. Defendant refers the Court to the FOIA request itself for a complete and accurate statement of the FOIA request's contents. Except as specifically admitted, the remainder of paragraph is denied.

52. Admit.

53. Admit that the FBI sent a letter to Plaintiffs dated January 22, 2021 that referenced fees and a fee waiver request, as well as a tracking number. The FBI respectfully refers the Court to the letter for a complete and accurate statement of its contents. Except as specifically admitted, the remainder of paragraph is denied.

54. Admit that the FBI received an email from Plaintiff Klippenstein dated July 8, 2021, which included an inquiry regarding a timeline. The FBI respectfully refers the Court to that correspondence for a complete and accurate statement of its contents. Except as specifically admitted, the remainder of paragraph is denied.

55. Admit that the FBI sent an email to Plaintiff dated July 9, 2021 which included a discussion of an estimated timeline to process the request. The FBI respectfully refers the Court to the request for a complete and accurate statement of its contents. Except as specifically admitted, the remainder of paragraph is denied.

56. Admit that, as of the date of the Complaint, the FBI had not issued a final determination in response to Plaintiffs' request, nor provided any documents in response to the request. Except as specifically admitted, the remainder of paragraph is denied.

57. Admit only that, as of the date of the Complaint, the FBI had not issued a final determination in response to Plaintiffs' request. Except as specifically admitted, the remainder of paragraph is denied.

58. As to the first sentence, admit. Except as specifically admitted, the remainder of paragraph is denied.

**Fifth Count: USMS**

59. Admit that USMS received a FOIA request from Plaintiffs dated January 1, 2021 and that the quoted language was included in the request. Defendant refers the Court to the FOIA request itself for a complete and accurate statement of the FOIA request's contents. Except as specifically admitted, the remainder of paragraph is denied.

60. Defendant USMS admits that it issued an acknowledgment letter to Plaintiff dated February 17, 2021. Defendant USMS admits that it assigned Plaintiffs'

FOIA request No. 2021USMS35922. Defendant USMS respectfully refers the Court to the acknowledgement letter for a full and accurate statement of its contents. Except as specifically admitted, the remainder of paragraph is denied.

61. Defendant USMS admits that on April 23, 2021, Defendant sent an email communication to Plaintiff requesting that Plaintiff scope the FOIA request submitted to USMS. Defendant USMS respectfully refers the Court to the email for a full and accurate statement of its contents. Except as specifically admitted, the remainder of paragraph is denied.

62. Defendant USMS admits that on April 26, 2021 Plaintiff emailed USMS and declined to scope the contents of his initial FOIA request. Defendant USMS respectfully refers the Court to the email for a full and accurate statement of its contents. Except as specifically admitted, the remainder of paragraph is denied.

63. Admit USMS received an email from Plaintiff on July 8, 2021, regarding an estimated date of completion. Defendant USMS respectfully refers the Court to the email for a full and accurate statement of its contents. Except as specifically admitted, the remainder of paragraph is denied.

64. Defendant USMS admits that it has not responded further to Plaintiffs' FOIA request. Except as specifically admitted, the remainder of paragraph is denied.

65. Defendant USMS admits that it has not issued a final determination on Plaintiffs' FOIA request, nor provided any documents in response to the request. Except as specifically admitted, the remainder of paragraph is denied.

66. Admit only that, as of the date of the Complaint, the USMS had not issued a final determination in response to Plaintiffs' request. Except as specifically admitted, the remainder of paragraph is denied.

67. As to the first sentence, admit. Except as specifically admitted, the remainder of paragraph is denied.

**Sixth Count: DOJ**

68. Admit that the Office of Information Policy ("OIP") received a FOIA request from Plaintiffs dated January 1, 2021 and that the quoted language was included in the request. Defendant refers the Court to the FOIA request itself for a complete and accurate statement of the FOIA request's contents. Except as specifically admitted, the remainder of paragraph is denied.

69. Admit that by letter dated January 27, 2021, OIP acknowledged receipt of the January 1, 2021 FOIA request, provided tracking number FOIA-2021-00513, and informed Plaintiff that OIP was invoking "unusual circumstances." Defendant respectfully refers the Court to the January 27, 2021 letter for a full and accurate statement of its contents. Except as specifically admitted, the remainder of paragraph is denied.

70. Admit that an automated email was sent from its online portal referring to the status of the request. DOJ respectfully refers the Court to the email for a full and accurate statement of its contents. Except as specifically admitted, the remainder of paragraph is denied.

71. Admitted that OIP received an email from Plaintiff dated July 8, 2021. Admit the email referred to a status update. DOJ respectfully refers the Court to the email for a full and accurate statement of its contents. Except as specifically admitted, the remainder of paragraph is denied.

72. DOJ admits that OIP has not responded further to Plaintiffs' FOIA request. Except as specifically admitted, the remainder of paragraph is denied.

73. DOJ admits that OIP has not issued a final determination on Plaintiffs' FOIA request, nor provided any documents in response to the request. Except as specifically admitted, the remainder of paragraph is denied.

74. Admit only that, as of the date of the Complaint, OIP had not issued a final determination in response to Plaintiffs' request. Except as specifically admitted, the remainder of paragraph is denied.

75. As to the first sentence, admit. Except as specifically admitted, the remainder of paragraph is denied.

#### **REQUESTED RELIEF**

The remainder of Plaintiffs' complaint consists of Plaintiffs' requested relief, to which no response is required. To the extent a response is required, Defendants deny that Plaintiffs are entitled to the relief sought, or any relief whatsoever.

## **DEFENSES**

Defendants reserve the right to amend, alter, and supplement the defenses contained in this Answer as the facts and circumstances giving rise to this Complaint become known to Defendants through the course of this litigation.

### **FIRST DEFENSE**

Plaintiffs are not entitled to compel the production of records exempt from disclosure by one or more exemptions of the FOIA, 5 U.S.C. § 552(b), or exclusions, 5 U.S.C. § 552(c).

### **SECOND DEFENSE**

Defendants have, and continue to, search for the documents requested by Plaintiffs. Upon locating responsive documents, Defendants must determine whether any of the documents or information contained therein are exempt from production under the FOIA.

### **THIRD DEFENSE**

The Court lacks jurisdiction to award relief that exceeds that authorized by the FOIA.

### **FOURTH DEFENSE**

Plaintiffs are neither eligible for nor entitled to attorneys' fees or costs.

### **FIFTH DEFENSE**

The Federal Defendants' search for responsive records is still underway and there has been no determination on whether responsive records exist for each

request. As such, the Federal Defendants reserve the right to amend this Answer as the facts and circumstances giving rise to the Complaint become known to it through the course of the litigation.

Dated: September 20, 2021

Respectfully submitted,

KARIN HOPPMANN  
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