

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE

AMERICAN CIVIL LIBERTIES UNION )  
FOUNDATION OF NEW HAMPSHIRE, )

Plaintiff, )

v. )

No. 1:19-cv-00977-LM

UNITED STATES CUSTOMS AND )  
BORDER PROTECTION, )

Defendant. )  
\_\_\_\_\_ )

ANSWER TO PLAINTIFF'S COMPLAINT

United States Customs and Border Protection (CBP) answers Plaintiff's Amended  
Complaint as follows:

FIRST DEFENSE

The plaintiff has failed to state a claim upon which this Court may grant relief.

SECOND DEFENSE

This Court lacks subject matter jurisdiction over Plaintiff's action because the defendant  
has not improperly withheld any records. See 5 U.S.C. § 552(a)(4)(B).

THIRD DEFENSE

The documents withheld in response to Plaintiff's Freedom of Information Act ("FOIA")  
request were exempt from disclosure under one or more of the statutory exemptions of the  
Freedom of Information Act, 5 U.S.C. § 552(b).

FOURTH DEFENSE

The defendant further answers Plaintiff's Amended Complaint by answering specifically the numbered paragraphs<sup>1</sup> of Plaintiff's Amended Complaint as follows:

1. Defendant denies that this Court has subject matter jurisdiction over this action because the defendant has not improperly withheld any records under the Freedom of Information Act, 5 U.S.C. § 552(a)(4)(B). Defendant admits the remaining allegations contained in paragraph 1 of Plaintiff's Amended Complaint.

2. Defendant admits that this Court has venue over this action. Defendant denies any remaining allegations contained in paragraph 2 of Plaintiff's Amended Complaint.

3. Defendant is without sufficient knowledge of information to form a belief as to the truth of the allegations contained in paragraph 3 of Plaintiff's Amended Complaint and, on that basis, denies them.

4. Defendant admits the allegations contained in paragraph 4 of Plaintiff's Amended Complaint.

5. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 5 of Plaintiff's Amended Complaint and, on that basis, denies them.

6. Defendant is without sufficient knowledge of information to form a belief as to the reasons for Plaintiff's FOIA requests, what it has seen in the immigration enforcement in New Hampshire and what is concerning to them and, on that basis, denies those allegations.

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<sup>1</sup> The unnumbered paragraphs on pages 1-2 of the Amended Complaint contain the Plaintiff's characterization of this lawsuit and conclusions of law to which no response is required but, insofar as an answer is deemed necessary, Defendant denies each and every factual allegation unless specifically admitted below and, further, denies that Plaintiff is entitled to the relief requested or to any other relief

Defendant specifically denies that it has engaged in unlawful immigration enforcement or that there is a lack of transparency or oversight of Customs and Border Protection's enforcement practices. Defendant denies any remaining allegations contained in paragraph of the Amended Complaint.

7. Defendant admits that CBP conducted lawful checkpoints on I-93 in Woodstock, NH in August 2017; September 2017; June 15-17, 2018; August 21-23, 2018; September 27, 2018; June 9, 2018; and May 27-29, 2018. Defendant further admits that CBP conducted lawful checkpoints on I-89 in Lebanon, NH on September 25, 2019. Defendant, at this time, does not have knowledge or information sufficient to form a belief as to the truth of the remaining allegations as set forth in paragraph 7 of the Amended Complaint and, on that basis, denies them.

8. Defendant admits that CBP conducts lawful patrols in New Hampshire, which may result in individuals being stopped, questioned or detained. Defendant denies any remaining allegations contained in paragraph 8 of Plaintiff's Amended Complaint.

9. Defendant admits that CBP conducted a lawful operation in Lebanon, NH in March of 2019. Defendant further admits that Florentin Avila Lucas was arrested during that operation. Defendant further admits that CBP personnel utilize civilian attire and unmarked vehicles. Defendant is without sufficient knowledge or information at this time to form a belief as to the truth of the remaining allegations contained in paragraph 9 of Plaintiff's Amended Complaint and, on that basis, denies them.

10. Defendant admits that, in April of 2019, Chef Juan Pu was arrested by CBP during a lawful patrol operation in Littleton, New Hampshire. Defendant further admits that CBP personnel utilize civilian attire and unmarked vehicles. Defendant, at this time, is without

knowledge or information sufficient to form a belief as to the truth of the remaining allegations as set forth in paragraph 10 and, on that basis, denies them.

11. Defendant admits that CBP conducted a legal operation from July 29, 2019 to August 1, 2019 in Lebanon, New Hampshire, and that 18 illegal aliens were arrested during this period. Defendant further admits that CBP personnel utilized unmarked vehicles and civilian attire during this operation. Defendant, at this time, does not have knowledge or information sufficient to form a belief as to the truth of the allegations regarding “Jose” as more than one individual was named “Jose,” and, on that basis denies the remaining allegations contained in paragraph 11 of Plaintiff’s Amended Complaint.

12. Defendant admits that during a lawful CBP operation from August 7, 2019 to August 9, 2019 in Lebanon, New Hampshire, nine illegal aliens were arrested. Defendant denies any remaining allegations contained in paragraph 13 of Plaintiff’s Amended Complaint.

13. Defendant denies the allegations contained in paragraph 13 of Plaintiff’s Amended Complaint.

14. Defendant admits the allegations contained in paragraph 14 of Plaintiff’s Amended Complaint.

15. Defendant admits the allegations contained in the first sentence of paragraph 15 of Plaintiff’s Amended Complaint. Defendant denies that an adequate search for responsive records has not been completed, that the period covered by the request is ongoing and any other allegation contained in the second sentence of paragraph 15 of Plaintiff’s Amended Complaint.

16. Defendant admits that Exhibit A to the Amended Complaint is an accurate depiction of Plaintiff’s March 25, 2019 FOIA Request. Exhibit A speaks for itself and no

response is required to all parts of paragraph 16 of Plaintiff's Amended Complaint. To the extent this Court deems a response is required, Defendant denies those allegations.

17. Defendant admits that Exhibit B to the Amended Complaint is an accurate depiction of Plaintiff's October 18, 2019 FOIA Request. Exhibit B speaks for itself and no response is required to all parts of paragraph 16 of Plaintiff's Amended Complaint. To the extent this Court deems a response is required, Defendant denies those allegations.

18. Defendant admits the allegations contained in the first sentence of paragraph 18 of Plaintiff's Amended Complaint. Defendant denies the allegations contained in the second sentence of paragraph 18 of Plaintiff's Amended Complaint.

19. Exhibits A and B speak for themselves and no response is required. To the extent this Court deems a response is required, Defendant admits the allegations contained in paragraph 19 of Plaintiff's Amended Complaint.

20. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20 of Plaintiff's Amended Complaint and, on that basis, denies them.

21. Exhibits A and B speak for themselves and no response is required. To the extent this Court deems a response is required, Defendant denies the allegations contained in paragraph 21 of Plaintiff's Amended Complaint.

22. Exhibits A and B speak for themselves and no response is required. To the extent this Court deems a response is required, Defendant admits the allegations contained in paragraph 22 of Plaintiff's Amended Complaint.

23. Defendant admits that Exhibit F is an accurate depiction of CBP's March 26, 2019 correspondence to Plaintiff; that Exhibit F speaks for itself; and that no response is required. To the extent this Court deems a response is required, Defendant denies the allegations contained in paragraph 23 of Plaintiff's Amended Complaint.

24. Defendant admits the allegations contained in paragraph 24 of Plaintiff's Amended Complaint.

25. Defendant admits the allegations contained in paragraph 25 of Plaintiff's Amended Complaint.

26. Defendant denies that it is required to provide an unsolicited, detailed explanation of the scope and method of its search for responsive documents, as well as any further allegations contained in paragraph 26 of Plaintiff's Amended Complaint.

27. Defendant admits that Exhibit I is an accurate depiction of CBP's October 20, 2019 correspondence to Plaintiff; that Exhibit I speaks for itself; and that no response is required. To the extent this Court deems a response is required, Defendant denies the allegations contained in paragraph 27 of Plaintiff's Amended Complaint.

28. Defendant admits that on October 20, 2019, CPB granted the request for expedited treatment and fee waiver with respect to the October 17, 2019 FOIA request and did not state when it expected to respond to the request. Defendant denies the remaining allegations contained in paragraph 28 of Plaintiff's Amended Complaint.

29. Defendant denies that the allegations contained in paragraph 29 of Plaintiff's Amended Complaint are an accurate reflection of the status of Plaintiff's October 17, 2019 FOIA Request, as well as any remaining allegations contained therein.

30. Defendant is without knowledge or information to form a belief as to the truth of the allegations contained in paragraph 30 of Plaintiff's Amended Complaint and, on that basis, denies them.

31. Defendant is without knowledge or information to form a belief as to the truth of the allegations contained in paragraph 31 of Plaintiff's Amended Complaint and, on that basis, denies them.

32. Defendant denies the allegations contained in paragraph 32 of Plaintiff's Amended Complaint.

33. Defendant denies the allegations contained in the first sentence of paragraph 33 of Plaintiff's Amended Complaint. Defendant admits that the FOIA provides the public access to records regarding the operations of CBP which are not exempted from disclosure. Defendant denies any remaining allegations contained in the second sentence of paragraph 33 of Plaintiff's Amended Complaint.

34. Defendant incorporates by reference its responses to paragraphs 1 through 33 above.

35. Defendant admits that CPB did not timely respond to Plaintiff's FOIA request, but denies that such a violation entitles Plaintiff to anything other than injunctive relief of an order requiring a response to the FOIA request. Defendant further states that it has since responded to the FOIA Requests and, therefore, the available relief is moot.

36. Defendant incorporates by reference its responses to paragraphs 1 through 35 above.

37. Defendant denies that it did not make an adequate search for the requested records and any further allegations contained in paragraph 37 of Plaintiff's Amended Complaint.

To the extent that the defendant has not specifically admitted the allegations contained in Plaintiff's Complaint, the defendant denies those allegations.

Therefore, Defendant requests that the Court dismiss this action with prejudice and that Defendant be awarded its costs.

Respectfully submitted,

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