

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

BLACK ALLIANCE FOR JUST
IMMIGRATION; AMERICAN
IMMIGRATION COUNCIL; AMERICAN
CIVIL LIBERTIES UNION OF SAN DIEGO
& IMPERIAL COUNTIES AND
AMERICAN CIVIL LIBERTIES UNION OF
TEXAS,

Plaintiffs,

v.

U.S. CUSTOMS AND BORDER
PROTECTION,

Defendant.

ANSWER

Civil Action No.
20-cv-5198 (CBA)(RLM)

Defendant U.S. CUSTOMS AND BORDER PROTECTION (“Defendant” or “CBP”), by and through its attorney, Seth D. DuCharme, Acting United States Attorney, Eastern District of New York, and Dara A. Olds, Assistant United States Attorney, of counsel, answers the correspondingly numbered paragraphs of the Complaint filed by Black Alliance for Just Immigration (“BAJI”), American Immigration Council (“AIC”), American Civil Liberties Union of San Diego & Imperial Counties (“ACLU SDIC”) and American Civil Liberties Union of Texas (“ACLU of Texas”) (collectively “Plaintiffs”), upon information and belief, as follows:

IN ANSWER TO THE SECTION TITLED “INTRODUCTION”

1. Paragraph 1 sets forth Plaintiffs’ characterization of the nature and purpose of this action, to which no response is required. To the extent that a response is required, Defendant denies the allegations.

2. Defendant denies, except admits only that CBP, a sub-component of the Department of Homeland Security (“DHS”), is a federal law enforcement agency.

3. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence of this paragraph. In addition, the paragraph contains Plaintiffs' characterization of CBP's actions, the Plaintiffs' intentions, and Plaintiffs' characterizations of the FOIA, to which no response is required. To the extent that a response is required, Defendant denies the allegations.

4. Regarding the first sentence in Paragraph 4, Defendant admits that it received a FOIA request from Plaintiffs on July 27, 2020, that the Plaintiffs requested that CBP expedite the request, denies the remaining allegations and respectfully refers the Court to that request for a full and accurate statement of its contents. Regarding the second sentence, Defendant admits that it acknowledged the Plaintiffs' July 27, 2020 request on July 28, 2020, granting the request for expedited processing, and respectfully refers the Court to that response for a full and accurate statement of its contents. Defendant denies the remaining allegations. The third sentence of this paragraph contains legal conclusions and therefore no response is required.

IN ANSWER TO THE SECTION TITLED "JURISDICTION AND VENUE"

5. Paragraph 5 sets forth legal conclusions to which no response is required.

6. Paragraph 6 sets forth legal conclusions to which no response is required.

7. Paragraph 7 sets forth legal conclusions to which no response is required. As to the factual allegations, Defendant denies knowledge or information sufficient to admit or deny the allegation that Plaintiff BAJI has its principal place of business in this District.

IN ANSWER TO THE SECTION TITLED "PARTIES"

8. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8.

9. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 9.

10. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 10. The last sentence of Paragraph 10 contains a characterization of CBP to which no response is required.

11. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11.

12. Defendant admits that CBP is a federal agency within the meaning of 5 U.S.C. § 552(f)(1) and that it is a component of the Department of Homeland Security. The remainder Paragraph 8 contains either conclusions of law or characterizations of Defendant, not allegations of fact, for which no response is required.

IN ANSWER TO THE SECTION TITLED “STATEMENT OF FACTS”

13. Defendant admits the first sentence of Paragraph 13. Defendant denies the allegations contained in the second sentence.

14. Paragraph 14, which sets forth Plaintiffs’ characterizations of reporting and statements concerning CBP, violates Fed. R. Civ. P. 8(a), and should be struck. To the extent that a response is required, Defendant denies the allegations.

15. Paragraph 15, which sets forth Plaintiffs’ characterizations of reporting and statements concerning CBP, violates Fed. R. Civ. P. 8(a), and should be struck. To the extent that a response is required, Defendant denies the allegations.

16. Paragraph 16, which sets forth Plaintiffs’ characterizations of reporting and statements concerning CBP, violates Fed. R. Civ. P. 8(a), and should be struck. To the extent that a response is required, Defendant denies the allegations.

17. Paragraph 17, which sets forth Plaintiffs' characterizations of reporting and statements concerning CBP, violates Fed. R. Civ. P. 8(a), and should be struck. To the extent that a response is required, Defendant denies the allegations.

18. Defendant admits that CBP has been designated as a Security Agency under the Office of Personnel Management's official Data Release Policy, which protects all CBP employee names from responses to Freedom of Information Act requests or other public disclosures for CBP employee data.

19. Paragraph 19, which sets forth Plaintiffs' characterizations of reporting and statements concerning CBP, violates Fed. R. Civ. P. 8(a), and should be struck. To the extent that a response is required, Defendant denies the allegations.

20. Paragraph 20, which sets forth Plaintiffs' characterizations of reporting and statements concerning CBP, violates Fed. R. Civ. P. 8(a), and should be struck. To the extent that a response is required, Defendant denies the allegations.

21. Paragraph 21, which sets forth Plaintiffs' characterizations of reporting and statements concerning CBP, violates Fed. R. Civ. P. 8(a), and should be struck. To the extent that a response is required, Defendant denies the allegations.

22. Paragraph 22, which sets forth Plaintiffs' characterizations of reporting and statements, violates Fed. R. Civ. P. 8(a), and should be struck. To the extent that a response is required, Defendant denies knowledge or information sufficient to form a belief as to the alleged actions of local law enforcement.

23. Paragraph 23, which sets forth Plaintiffs' characterizations of reporting and statements concerning CBP, violates Fed. R. Civ. P. 8(a), and should be struck. To the extent that

a response is required, Defendant denies the allegations and refers the Court to the media reports cited for the full the contents of those media reports.

24. Defendant admits that President Trump issued Executive Order 13933 on June 26, 2020, entitled “Protecting American Monuments, Memorials, and Statutes and Combating Recent Criminal Violence” and denies the remaining allegations.

25. Defendant admits that CBP participated in the Protecting American Communities Task Force (PACT) via Rapid Deployment Teams or Rapid Deployment Forces (RDTs or RDFs), which were deployed to protect federal property during Operation Diligent Valor. The rest of the paragraph contains characterizations and involves agencies other than CBP and thus no response is required. To the extent that a response is required, Defendant denies the allegations.

26. Paragraph 26, which sets forth Plaintiffs’ characterizations of reporting and statements concerning CBP, violates Fed. R. Civ. P. 8(a), and should be struck. To the extent that a response is required, Defendant denies the allegations.

27. Paragraph 27, which sets forth Plaintiffs’ characterizations of reporting and statements concerning CBP, violates Fed. R. Civ. P. 8(a), and should be struck. To the extent that a response is required, Defendant denies the allegations.

28. Paragraph 28, which sets forth Plaintiffs’ characterizations of CBP, violates Fed. R. Civ. P. 8(a), and should be struck. To the extent that a response is required, Defendant denies the allegations.

29. To the extent that Paragraph 29 contains Plaintiffs’ characterization of the FOIA request, Defendant respectfully refers the Court to the document for its complete and accurate contents. To the extent that this paragraph contains allegations concerning Plaintiffs’ motivations

in making their FOIA request, Defendant denies knowledge or information sufficient to form a belief as to the truth of those allegations.

30. Defendant admits that it received a FOIA request from Plaintiffs, dated July 27, 2020. Defendant respectfully refers the Court to the request itself for a full and accurate statement of its contents.

31. Defendant admits that it received a FOIA request from Plaintiffs, dated July 27, 2020. Defendant respectfully refers the Court to the request itself for a full and accurate statement of its contents.

32. Defendant admits that Plaintiffs' FOIA request, dated July 27, 2020, provided a definition of "Floyd Protests." Defendant respectfully refers the Court to the request itself for a full and accurate statement of Plaintiffs' definition.

33. Defendant admits that Plaintiffs' FOIA request, dated July 27, 2020, provided a definition of "deployment of CBP to U.S. cities." Defendant respectfully refers the Court to the request itself for a full and accurate statement of Plaintiffs' definition.

34. Defendant admits that Plaintiffs requested a fee waiver in their FOIA request, dated July 27, 2020. Defendant respectfully refers the Court to the fee waiver request for a full and accurate statement of its contents.

35. Defendant admits that Plaintiffs' FOIA request, dated July 27, 2020, requested expedited processing. Defendant respectfully refers the Court to the request for expedited processing for a full and accurate statement of its contents. To the extent that this paragraph includes Plaintiffs' legal conclusions concerning their reasons for the request to expedite, no response is required.

36. Defendant admits that CBP sent Claudia Valenzuela from Plaintiff AIC an email on July 27, 2020 confirming Plaintiffs' July 27, 2020 FOIA request.

37. Defendant admits that CBP issued a notice to Claudia Valenzuela from Plaintiff AIC on July 28, 2020, acknowledging receipt of Plaintiffs' July 27, 2020 FOIA request. Defendant respectfully refers the Court to that notice for a full and accurate statement of its contents.

38. Defendant admits that in CBP's July 28, 2020, notice to Claudia Valenzuela, it invoked a 10-day extension of time regarding its response to Plaintiffs' FOIA request, dated July 27, 2020 and assigned Tracking Number CBP-2020-068594. Defendant respectfully refers the Court to that notice for a full and accurate statement of its contents.

39. Defendant admits on that July 28, 2020 CBP sent email communications to Claudia Valenzuela.

40. Defendant admits that a July 28, 2020 email explained that CBP modified the summary description for FOIA Request CBP-2020-068594. Defendant respectfully refers the Court to that email for a full and accurate statement of its contents.

41. Defendant admits that CBP sent Claudia Valenzuela an email message on July 28, 2020 explaining that it determined the fee waiver request for FOIA Request CBP-2020-068594 was not applicable as the request was not billable. Defendant respectfully refers the Court to that email for a full and accurate statement of its contents.

42. Defendant admits that CBP sent Claudia Valenzuela an email message on July 28, 2020 granting the request to expedite processing of FOIA Request CBP-2020-068594. Defendant respectfully refers the Court to that email for a full and accurate statement of its contents.

43. Defendant admits that CBP did not send correspondence to Plaintiffs after July 28, 2020, and avers that this was because it was still processing Plaintiffs' FOI request and no final determination had been made about responsive documents.

44. Paragraph 44 contains conclusions of law, for which no response is required.

45. Defendant denies the allegations in Paragraph 45 contains conclusions of law to which no response is required. To the extent a response is deemed necessary, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 45.

IN ANSWER TO THE SECTION TITLED "FIRST CAUSE OF ACTION"

46. Defendant incorporates and re-alleges its responses to Paragraphs 1 through 45 as if fully restated herein.

47. Paragraph 47 contains conclusions of law, to which no response is required.

48. Paragraph 48 contains conclusions of law, to which no response is required. To the extent that a response is required, Defendant denies the allegations.

49. Paragraph 49 contains conclusions of law, to which no response is required. To the extent that a response is required, Defendant denies the allegations.

50. Paragraph 50 contains conclusions of law, to which no response is required.

IN ANSWER TO THE SECTION TITLED "SECOND CAUSE OF ACTION"

51. Defendant incorporates and re-alleges its responses to Paragraphs 1 through 50 as if fully restated herein.

52. Defendant admits that the Plaintiffs requested expedited processing of their FOIA request. Defendant respectfully refers the Court to the request for a full and accurate statement of its contents.

53. Defendant admits that on July 28, 2020, CBP granted the Plaintiffs' request for expedited processing of their FOIA request. Defendant respectfully refers the Court to that response for a full and accurate statement of its contents.

54. Defendant denies the allegations in Paragraph 54.

55. Paragraph 55 contains conclusions of law, to which no response is required.

IN ANSWER TO THE SECTION TITLED "THIRD CAUSE OF ACTION"

56. Defendant incorporates and re-alleges its responses to Paragraphs 1 through 55 as if fully restated herein.

57. Paragraph 57 contains conclusions of law, to which no response is required.

58. To the extent Paragraph 58 contains conclusions of law, no response is required.

To the extent that a response is required, Defendant admits that it did not make a final determination regarding Plaintiffs' request within 30 days of receipt.

59. Paragraph 59 contains conclusions of law, to which no response is required.

60. Defendant denies the allegations in Paragraph 60.

61. Paragraph 61 contains conclusions of law, to which no response is required.

The remaining paragraphs of the Complaint contain Plaintiffs' prayer for relief, which no response is required. To the extent that this portion of the Complaint contains factual allegations to which a response is required, Defendant denies.

Defendant denies any and all allegations not expressly admitted herein.

DEFENSES

Without limitation or waiving any defenses available to it, the Defendant hereby asserts the following in response to Plaintiffs' claims:

FIRST DEFENSE

Plaintiffs' Complaint for Declaratory and Injunctive Relief fails to state a claim upon which relief may be granted under the Freedom of Information Act, 5 U.S.C. § 552, or the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, or 28 U.S.C. § 1331

SECOND DEFENSE

Any agency records or information that Defendant has withheld, or will withhold, in response to Plaintiffs' FOIA request may be exempt in whole or in part from public disclosure under the FOIA, 5 U.S.C. § 552 et seq.

THIRD DEFENSE

Plaintiffs are not entitled to compel production of records exempt from disclosure by one or more exemptions to the FOIA.

FOURTH DEFENSE

The Court lacks subject matter jurisdiction.

FIFTH DEFENSE

Plaintiffs have not alleged sufficient factual and/or legal bases for their request for costs and/or attorney's fees.

SIXTH DEFENSE

Plaintiffs' request submitted under FOIA, 5 U.S.C. § 552, as amended, does not reasonably describe the records sought.

SEVENTH DEFENSE

To the extent that the Complaint refers to or quotes from external documents, statutes, or other sources, Defendant may refer to such materials for their accurate and complete contents in response; however, Defendant's references are not intended to be, and should not be construed to

be, an admission that the cited materials: (a) are correctly cited or quoted by Plaintiffs; (b) are relevant to this, or any other, action; or (c) are admissible in this, or any other, action.

EIGHTH DEFENSE

At all times alleged in the Complaint, Defendant acted in good faith and with justification.

Dated: Brooklyn, New York
January 6, 2021

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