

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

ACLU OF VIRGINIA, ACLU OF MARYLAND, ACLU OF PENNSYLVANIA, ACLU OF DELAWARE

(b) County of Residence of First Listed Plaintiff Richmond City
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Hunton & Williams
951 E. Byrd St.
Richmond, Va. 23229 (804) 788-8200

DEFENDANTS

U.S. DEPARTMENT OF HOMELAND SECURITY and U.S. CUSTOMS AND BORDER PROTECTION

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input checked="" type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 et seq.

Brief description of cause:
FOIA Action relating to DHS and CBP's failure to comply

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

April 12, 2017

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

AMERICAN CIVIL LIBERTIES UNION OF
VIRGINIA, AMERICAN CIVIL LIBERTIES
UNION OF MARYLAND, AMERICAN CIVIL
LIBERTIES UNION OF PENNSYLVANIA,
and AMERICAN CIVIL LIBERTIES UNION
OF DELAWARE,

Plaintiffs,

v.

U.S. DEPARTMENT OF HOMELAND
SECURITY and U.S. CUSTOMS AND
BORDER PROTECTION,

Defendants.

Case No. _____

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF FOR
VIOLATION OF THE FREEDOM OF
INFORMATION ACT, 5 U.S.C. § 552
et seq.**

INTRODUCTION

1. The American Civil Liberties Union of Virginia, American Civil Liberties Union of Maryland, American Civil Liberties Union of Pennsylvania, and American Civil Liberties Union of Delaware (collectively, “Plaintiffs” or “ACLU”) bring this action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, as amended, to obtain injunctive and other appropriate relief requiring Defendants U.S. Department of Homeland Security (“DHS”) and U.S. Customs and Border Protection (“CBP”) (collectively, “Defendants”) to respond to a FOIA request sent by Plaintiffs on February 2, 2017 (“Request”), and to promptly disclose the requested records.

2. The Request seeks records concerning CBP’s local implementation of President Trump’s January 27, 2017 Executive Order titled “Protecting the Nation From Foreign Terrorist Entry Into the United States,” Exec. Order No. 13769, 82 Fed. Reg. 8977 (Feb. 1, 2017) (“Executive Order No. 1”), as well as any other judicial order or executive directive issued regarding Executive Order No. 1, including President Trump’s March 6, 2017 Executive Order,

identically titled, Exec. Order No. 13780, 82 Fed. Reg. 13209 (Mar. 6, 2017) (“Executive Order No. 2”) (collectively, “Executive Orders”). A true and correct copy of the Request is attached as **Exhibit A**.

3. Specifically, the Request seeks records concerning CBP’s local implementation of the Executive Orders at sites within the purview of CBP’s Baltimore Field Office. These include Washington Dulles International Airport, Baltimore Washington International Airport, and Philadelphia International Airport, and Pittsburgh International Airport (“Local International Airports”) and Baltimore, Philadelphia, Pittsburgh, Port of Washington-Dulles and Wilmington (“Port of Entry Offices”).

4. Among other things, the Executive Orders purport to halt refugee admissions and bar entrants from several predominantly Muslim countries from entering the United States.

5. Defendants’ implementation of the Executive Orders has been the subject of significant public concern, as reflected by mass protests around the country, substantial news coverage, and numerous lawsuits filed following the President’s signing of each Executive Order.

6. Over the weekend of January 27–29, 2017, at least five lawsuits resulted in emergency court orders enjoining implementation of various sections of Executive Order No. 1.¹ On March 15, 2017, a district court enjoined implementation of Sections 2 and 6 of Executive Order No. 2.²

7. News reports described Defendants’ implementation of the Executive Orders as “chaotic” and “total[ly] lack[ing] . . . clarity and direction.”³

¹ *Vayeghan v. Kelly*, No. CV 17-0702, 2017 WL 396531 (C.D. Cal. Jan. 29, 2017); *Tootkaboni v. Trump*, No. 17-CV-10154, 2017 WL 386550 (D. Mass. Jan. 29, 2017); *Doe v. Trump*, No. C17-126, 2017 WL 388532 (W.D. Wash. Jan. 28, 2017); *Aziz v. Trump*, No. 1:17-CV-116, 2017 WL 386549 (E.D. Va. Jan. 28, 2017); *Darweesh v. Trump*, No. 17 CIV. 480 (AMD), 2017 WL 388504 (E.D.N.Y. Jan. 28, 2017).

² *Hawai’i v. Trump*, No. CV 17-00050 DKW-KSC, 2017 WL 1011673 (D. Haw. Mar. 15, 2017).

³ See, e.g., Ryan Devereaux *et al.*, *Homeland Security Inspector General Opens Investigation of Muslim Ban, Orders Document Preservation*, THE INTERCEPT, Feb. 1, 2017, available at

8. Official DHS statements reflected this confusion. For example, DHS stated on January 28 that Executive Order No. 1 would “bar green card holders.”⁴ The next day, however, DHS Secretary John Kelly deemed “the entry of lawful permanent residents to be in the national interest”⁵ and the government clarified that Executive Order No. 1 did *not* apply to green card holders.⁶

9. Reportedly spurred by this chaos, on January 29, Virginia Senators Mark Warner and Tim Kaine called upon the Office of the Inspector General of the Department of Homeland Security to investigate Defendants’ implementation of Executive Order No. 1.⁷ The Senators specifically sought information regarding: any guidance Defendants provided to the White House in developing the order; any directions that were provided to Defendants in implementing it; whether CBP officers complied with the relevant court orders; and whether DHS and CBP officers kept a list of individuals that they had detained at ports of entry under the order. In response, the Inspector General directed Defendants’ personnel to preserve all records “that might reasonably lead to the discovery of relevant information relating the implementation of” Executive Order No. 1.⁸

<https://theintercept.com/2017/02/01/homeland-security-inspector-general-opens-investigation-of-muslim-ban-rollout-orders-document-preservation/>.

⁴ See Max Greenwood, *Immigration Ban Includes Green Card Holders: DHS*, THE HILL, Jan. 28, 2017, available at <http://thehill.com/policy/national-security/316670-trump-refugee-ban-bars-green-card-holders-report>.

⁵ *Statement By Secretary John Kelly On The Entry Of Lawful Permanent Residents Into The United States*, DEP’T OF HOMELAND SECURITY (Jan. 29, 2017), available at <https://www.dhs.gov/news/2017/01/29/statement-secretary-john-kelly-entry-lawful-permanent-residents-united-states>.

⁶ See Robert Mackey, *As Protests Escalate, Trump Retreats From Barring Green Card Holders*, THE INTERCEPT, Jan. 29, 2017, available at <https://theintercept.com/2017/01/29/trumps-executive-order-no-longer-bars-green-card-holders/>.

⁷ See Warner & Kaine Demand Answers About Status of Detained Travelers at Dulles and Across the Country, available at http://www.warner.senate.gov/public/index.cfm/pressreleases?ContentRecord_id=E31578D6-A777-40F7-96E7-703B80603CBD.

⁸ See Ryan Devereaux et al., *Homeland Security Inspector General Opens Investigation of*

10. Examples of this chaos could be seen at Washington Dulles International Airport and Philadelphia International Airport.

11. For example, Yemeni individuals flying to Dulles with valid, government-issued visas when Executive Order No. 1 took effect had their visas cancelled upon landing at Dulles and were refused entry into the United States.⁹

12. Additionally, after several courts entered orders that, among other things, required that detained travelers have access to attorneys, CBP officials at Dulles appeared to ignore the orders.¹⁰

13. Similarly, two Syrian families with valid immigrant visas arrived at the Philadelphia International Airport the morning of January 28, 2017 to join their relatives who live near Allentown, Pennsylvania. They were removed from the plane by a CBP agent who refused to let them contact their waiting relative, but told them they could: 1) leave the U.S. on the same plane on which they had just traveled; or 2) they would be arrested and imprisoned with their visas taken away, with the result that they would not be allowed to re-enter the U.S. for five years. Terrified of what the alternative would mean, they purchased tickets on the return flight to Qatar.¹¹ The experience was so frightening that one of the family members had to have oxygen administered to him on the return flight because of faintness and possible heart palpitations. At

Muslim Ban, Orders Document Preservation, The Intercept, Feb. 1, 2017, available at <https://theintercept.com/2017/02/01/homeland-security-inspector-general-opens-investigation-of-muslim-ban-rollout-orders-document-preservation/>.

⁹ See *Barred Travelers Arrive At Dulles: 'America Is For Everybody'*, available at <http://wtop.com/loudoun-county/2017/02/families-barred-by-trump-travel-ban-due-at-dulles/slide/1/>.

¹⁰ See *Border Agents Defy Courts On Trump Travel Ban, Congressmen And Lawyers Say*, available at <https://www.theguardian.com/us-news/2017/jan/29/customs-border-protection-agents-trump-muslim-country-travel-ban>.

¹¹ See Julie Shaw, Justine McDaniel & Aubrey Whelan, *2 Christian Syrian families detained at PHL, returned to Qatar; other migrants detained at PHL*, PHILLY.COM, January 31, 2017, available at <http://www.philly.com/philly/blogs/real-time/2-Syrian-families-detained-at-PHL-returned-to-Qatar.html>.

least five other travelers were detained at the Philadelphia airport that day.¹²

14. Lawyers retained by the families of those in detention were not allowed to speak with their clients, despite demands by Philadelphia Mayor James Kenney, U.S. Representative Robert Brady and U.S. Senator Robert Casey.

15. Governor Tom Wolf, U.S. Rep. Dwight Evans, and State Reps. Jordan Harris and Brian Sims also went to the Philadelphia airport in an effort to get the detainees released.¹³

16. Three of the detainees were eventually transported from the Philadelphia airport to the Delaware County Correctional facility, where they spent the night. Finally, at about 1:00 A.M. on Sunday, January 29, lawyers for the detained travelers were given assurance by lawyers for the U.S. that the detainees would be released the next day – but not one of the detained individuals was allowed to speak to counsel before being released.¹⁴

17. Disclosure of the records Plaintiffs seek through this action would facilitate the public's understanding of how Defendants implemented and enforced the Executive Orders in the Baltimore Field Office, including in particular at Washington Dulles International Airport and Philadelphia International Airport. Such information is critical to the public's ability to hold the government accountable.

18. This action is necessary because Defendants have failed to provide Plaintiffs with a determination as to whether they will comply with the Request, although more than 20 business days have elapsed since Defendants received the Request.

¹² See *Daughters say ex-schoolteacher denied entry to Philadelphia International Airport*, THE MORNING CALL, Jan. 31, 2017, available at <http://www.mcall.com/news/nationworld/pennsylvania/mc-pa--trump-travel-ban-philadelphia-01312017-2-20170131-story.html/>.

¹³ See Julie Shaw, Justine McDaniel, Aubrey Whelan and Chris Mondics, *At Phila. airport, protest, detentions, anger, and hope*, PHILLY.COM, January 29, 2017, available at http://www.philly.com/philly/news/20170129_Order_prompts_protest_local_detentions.html.

¹⁴ See *Immigrants Detained at Philadelphia Airport to be Released Sunday*, January 29, 2017, available at <https://www.aclupa.org/news/2017/01/29/immigrants-detained-philadelphia-airport-be-released-sunday>.

JURISDICTION

19. This Court has subject-matter jurisdiction over this action and personal jurisdiction over the parties under 5 U.S.C. § 552(a)(4)(B), 5 U.S.C. §§ 701–706, and 28 U.S.C. § 1331.

VENUE

20. Venue in the Eastern District of Virginia is proper under 5 U.S.C. § 552(a)(4)(B) as Plaintiff ACLU of Virginia’s principal place of business is in the Eastern District of Virginia. Additionally, at least some of the requested agency records are, upon information and belief, situated within this District, and a substantial part of the events or omissions giving rise to the claims set forth below occurred there. For example, numerous people were detained at Washington Dulles International Airport as a result of Executive Order No. 1.¹⁵ For the same reasons, venue also is proper under 28 U.S.C. § 1391(e).

21. Assignment to the Alexandria Division is proper under Local Civil Rule 3 because Washington Dulles International Airport is within this Division, at least some of the requested agency records are, upon information and belief, situated within this Division, and a substantial part of the events or omissions giving rise to the claims set forth below occurred there, including the detention of numerous people at Washington Dulles International Airport as a result of Executive Order No. 1.¹⁶

¹⁵ See, e.g., *Customs And Border Officials Defy Court Order on Lawful Residents*, available at http://www.huffingtonpost.com/entry/dulles-airport-feds-violated-court-order_us_588d7274e4b08a14f7e67bcf; *Virginia Demands More Details On Travel Ban Detentions at Dulles International Airport*, available at https://www.washingtonpost.com/local/public-safety/va-demands-more-details-on-travel-ban-detentions-at-dulles-international-airport/2017/02/01/f10aef32-e8de-11e6-80c2-30e57e57e05d_story.html?utm_term=.7dd108163be0; <http://wjla.com/news/local/video-mother-from-iran-5-year-old-son-reunited-after-he-was-detained-at-dulles-airport>.

¹⁶ *Id.*

PARTIES

22. Plaintiffs are non-profit, 501(c)(4) membership organizations that educate the public about the civil liberties implications of pending and proposed state and federal legislation, provide analysis of pending and proposed legislation, directly lobby legislators, and mobilize their members to lobby their legislators.

23. Defendant Department of Homeland Security is a department of the executive branch of the U.S. government and is an agency within the meaning of 5 U.S.C. § 552(f)(1).

24. Defendant U.S. Customs and Border Protection is a component of DHS and is a federal agency within the meaning of 5 U.S.C. § 552(f)(1).

25. Plaintiffs are informed and therefore believe that Defendants have possession, custody, or control of the requested records.

FACTS

26. On February 2, 2017, Plaintiffs sent the Request to CBP's Baltimore Field Office and CBP's FOIA Officer at CBP Headquarters via certified, trackable mail, with tracking numbers of 778343009715 and 778343090418.

27. The Request sought copies of CBP's local interpretation and enforcement of the Executive Order at: 1) certain airports specified in the Request, including Washington Dulles International Airport, Baltimore Washington International Airport, and Philadelphia International Airport, and Pittsburgh International Airport ("Local International Airports"); and 2) certain Port of Entry offices specified in the Request, including Baltimore, Philadelphia, Pittsburgh, Port of Washington-Dulles and Wilmington ("Port of Entry Offices"). The Request expressly did *not* seek information held in the records of CBP Headquarters.

28. Specifically, the Request sought the following:

1. "Records created on or after January 27, 2017 concerning CBP's interpretation, enforcement, and implementation of the following at Local International Airports:

- a. President Trump’s Executive Order, signed on January 27, 2017 and titled ‘Protecting the Nation From Foreign Terrorist Entry Into the United States’;
- b. Any guidance ‘provided to DHS field personnel shortly’ after President Trump signed the Executive Order, as referenced in CBP’s online FAQ;¹⁷
- c. Associate Director of Field Operations for U.S. Citizenship and Immigration Services Daniel M. Renaud’s email, sent at 11:12 A.M. on January 27, 2017, instructing DHS employees that they could not adjudicate any immigration claims from the seven targeted countries;¹⁸
- d. Judge Donnelly’s Decision and Order granting an Emergency Motion for Stay of Removal, issued in the Eastern District of New York on January 28, 2017, including records related to CBP’s efforts to comply with the court’s oral order requiring prompt production of a list of all class members detained by CBP;¹⁹
- e. Judge Brinkema’s Temporary Restraining Order, issued in the Eastern District of Virginia on January 28, 2017;²⁰

¹⁷ To assist CBP in responding, the Request included the following information in a footnote for reference: “*Protecting the Nation from Foreign Terrorist Entry into the United States*, U.S. CUSTOMS AND BORDER PROTECTION (Jan. 31, 2017), available at <https://www.cbp.gov/border-security/protecting-nation-foreign-terrorist-entry-united-states> (‘The Executive Order and the instructions therein were effective at the time of the order’s signing. *Guidance was provided to DHS field personnel shortly thereafter.*’) (emphasis added).”

¹⁸ The following footnote was included for reference: “*See Alice Speri and Ryan Devereaux, Turmoil at DHS and State Department—‘There Are People Literally Crying in the Office Here,’* THE INTERCEPT, Jan. 30, 2017, available at <https://theintercept.com/2017/01/30/asylum-officials-and-state-department-in-turmoil-there-are-people-literally-crying-in-the-office-here/>.”

¹⁹ The following footnote was included for reference: “Decision and Order, *Darweesh v. Trump*, No. 17 Civ. 480 (AMD) (E.D.N.Y. Jan. 28, 2017), available at <https://www.aclu.org/legal-document/darweesh-v-trump-decision-and-order>.”

²⁰ The following footnote was included for reference: “Temporary Restraining Order, *Aziz v. Trump*, No. 1:17-cv-116 (E.D. Va. Jan. 28, 2017), available at <https://www.justice4all.org/wp-content/uploads/2017/01/TRO-order-signed.pdf>.”

- f. Judge Zilly’s Order Granting Emergency Motion for Stay of Removal, issued in the Western District of Washington on January 28, 2017;²¹
- g. Judge Burroughs’ Temporary Restraining Order, issued in the District of Massachusetts on January 29, 2017;²²
- h. Judge Gee’s Order granting an Amended *Ex Parte* Application for Temporary Restraining Order, issued in the Central District of California on January 29, 2017;²³
- i. Assurances from the U.S. Attorney’s Office for the Eastern District of Pennsylvania that all individuals detained at Philadelphia International Airport under the Executive Order would be admitted to the United States and released from custody on Sunday, January 29, 2017;
- j. DHS’s ‘Response to Recent Litigation’ statement, issued on January 29, 2017;²⁴
- k. DHS Secretary John Kelly’s ‘Statement on the Entry of Lawful Permanent Residents Into the United States,’ issued on January 29, 2017;²⁵

²¹ The following footnote was included for reference: “Order Granting Emergency Motion for Stay of Removal, *Doe v. Trump*, No. C17-126 (W.D. Wash. Jan. 28, 2017), *available at* <https://www.justsecurity.org/wpcontent/uploads/2017/01/Seattle-Order.pdf>.”

²² The following footnote was included for reference: “Temporary Restraining Order, *Tootkaboni v. Trump*, No. 17-cv-10154 (D. Mass. Jan. 29, 2017), *available at* <https://aclum.org/wp-content/uploads/2017/01/6-TRO-Jan-29-2017.pdf>.”

²³ The following footnote was included for reference: “Order, *Vayeghan v. Trump*, No. CV 17-0702 (C.D. Cal. Jan. 29, 2017), *available at* https://www.aclusocal.org/sites/default/files/vayeghan_-_order_re_tro.pdf.”

²⁴ The following footnote was included for reference: “*Department of Homeland Security Response to Recent Litigation*, DEP’T OF HOMELAND SECURITY (Jan. 29, 2017), *available at* <https://www.dhs.gov/news/2017/01/29/department-homeland-security-response-recent-litigation>.”

²⁵ *Statement By Secretary John Kelly On The Entry Of Lawful Permanent Residents Into The United States*, DEP’T OF HOMELAND SECURITY (Jan. 29, 2017), *available at* <https://www.dhs.gov/news/2017/01/29/statement-secretary-john-kelly-entry-lawful-permanent-residents-united-states>.

- l. DHS's 'Statement on Compliance with Court Orders and the President's Executive Order,' issued on January 29, 2017;²⁶ and
 - m. Any other judicial order or executive directive issued regarding the Executive Order on or after January 27, 2017.
2. Records concerning the number of individuals who were detained or subjected to secondary screening, extending questioning, an enforcement examination, or consideration for a waiver at Local International Airports pursuant to the Executive Order, including:
- a. The total number of individuals who remain detained or subject to secondary screening, extending questioning, an enforcement examination, or consideration for a waiver at Local International Airports both as of the date of this request and as of the date on which this request is processed; and
 - b. The total number of individuals who have been detained or subjected to secondary screening, extending questioning, an enforcement examination, or consideration for a waiver for any length of time at Local International Airports since January 27, 2017, including the number of individuals who have been
 - i. released,
 - ii. transferred into immigration detention, or
 - iii. removed from the United States;

²⁶ The following footnote was included for reference: "*DHS Statement On Compliance With Court Orders And The President's Executive Order*, DEP'T OF HOMELAND SECURITY (Jan. 29, 2017), available at <https://www.dhs.gov/news/2017/01/29/dhs-statement-compliance-court-orders-and-presidents-executive-order>."

3. Records concerning the number of individuals who have been removed from Local International Airports from January 27, 2017 to date pursuant to the Executive Order;
4. Records concerning the number of individuals who arrived at Local International Airports from January 27, 2017 to date with valid visas or green cards who subsequently agreed voluntarily to return; and
5. Records containing the ‘guidance’ that was ‘provided to DHS field personnel shortly’ after President Trump signed the Executive Order.”²⁷

Exh. A at 5-9.

29. The Request included an application for expedited processing, on the grounds that there is a “compelling need” for these records under 5 U.S.C. § 552(a)(6)(E)(v)(II) because the information requested is “urgently” needed by an organization primarily engaged in disseminating information “to inform the public concerning actual or alleged Federal Government activity.” Exh. A at 9.

30. The Request provided detail showing that the ACLU is primarily engaged in disseminating information within the meaning of 5 U.S.C. § 552(a)(6)(E)(v), given that a critical and substantial aspect of the ACLU’s mission is to obtain information about government activity, analyze that information, and publish and disseminate that information widely to the press and public. Exh. A at 9-11.

31. The Request described examples of the ACLU’s information-dissemination function. Exh. A at 11-15.

32. The Request also included an application for a fee waiver or limitation under 5

²⁷ The following footnote was included for reference: “*Protecting the Nation from Foreign Terrorist Entry into the United States*, U.S. CUSTOMS AND BORDER PROTECTION (Jan. 31, 2017), available at <https://www.cbp.gov/border-security/protecting-nation-foreign-terrorist-entry-united-states> (‘The Executive Order and the instructions therein were effective at the time of the order’s signing. *Guidance was provided to DHS field personnel shortly thereafter.*’) (emphasis added).”

U.S.C. § 552(a)(4)(A)(iii) on the grounds that disclosure of the requested records is in the public interest and is “likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” In particular, the ACLU emphasized that the Request would significantly contribute to public understanding on a matter of profound public importance about which scant specific information had been made public, *i.e.*, how local CBP Field Offices had enforced, and continue to enforce, the Executive Orders. The Request also made clear that the ACLU plans to disseminate the information disclosed as a result of the Request to the public at no cost. Exh. A at 15.

33. The Request also applied for a waiver of search fees under 5 U.S.C. § 552(a)(4)(A)(ii)(II) on the grounds that Plaintiffs qualify as “representatives of the news media” and the records are not sought for commercial use, given the ACLU’s non-profit mission and substantial activities to publish information for dissemination to the public, as discussed in greater detail in ¶¶29-31 above. Exh. A at 15-17.

34. CBP received the Request on February 3, 2017. *See Exhibit B.*

35. CBP has not acknowledged the Request.

36. As of April 12, 2017, more than 20 days (excepting Saturdays, Sundays, and legal public holidays) have elapsed since CBP received the Request.

37. As of the filing date of this Complaint, Defendants have not notified Plaintiffs of a determination as to whether Defendants will comply with the Request.

38. Because Defendants failed to comply with the 20-business-day time limit provision of FOIA, 5 U.S.C. § 552(a)(6)(A)(i), Plaintiffs are deemed to have exhausted their administrative remedies with respect to the Request under 5 U.S.C. § 552(a)(6)(C)(i).

**Violation of FOIA for Failure
to Provide a Determination
Within 20 Business Days**

39. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 38 above, inclusive.

40. Defendants have a legal duty under FOIA to determine whether to comply with a request within 20 days (excepting Saturdays, Sundays, and legal public holidays) after receiving the request, and also have a legal duty to immediately notify a requester of the agency's determination and the reasons therefor.

41. Defendants' failure to determine whether to comply with the Request within 20 business days after receiving it violates FOIA, 5 U.S.C. § 552(a)(6)(A)(i), and applicable regulations promulgated thereunder.

**Violation of FOIA for Failure
to Make Records Available**

42. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 38 above, inclusive.

43. Plaintiffs have a legal right under FOIA to obtain the specific agency records requested on February 2, 2017 and there exists no legal basis for Defendants' failure to promptly make the requested records available to Plaintiffs, their members, and the public.

44. Defendants' failure to promptly make available the records sought by the Request violates FOIA, 5 U.S.C. § 552(a)(3)(A), and applicable regulations promulgated thereunder.

45. On information and belief, Defendants currently have possession, custody or control of the requested records.

**Violation of FOIA for Failure to
Provide a Determination As To
Expedited Processing Within 10 Days**

46. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 38 above, inclusive.

47. Defendants have a legal duty under FOIA to determine whether to provide expedited processing, and to provide notice of that determination to Plaintiffs, within 10 days after the date of the Request.

48. Defendants' failure determine whether to provide expedited processing and to

provide notice of that determination to Plaintiffs within 10 days after the date of the Request violates FOIA, 5 U.S.C. § 552(a)(6)(E)(ii)(I), and applicable regulations promulgated thereunder.

49. Because Defendants have not provided a complete response to the Request, this Court has jurisdiction under FOIA, 5 U.S.C. § 552(a)(6)(E)(iv) to review Defendants' failure to make a determination concerning Plaintiffs' request for expedited processing.

WHEREFORE, Plaintiffs request that the Court award them the following relief:

1. Declare that Defendants violated FOIA by failing to determine whether to comply with the Request within 20 business days and by failing to immediately thereafter notify Plaintiffs of such determination and the reasons therefor;
2. Declare that Defendants violated FOIA by unlawfully withholding the requested records;
3. Declare that Defendants violated FOIA by failing to determine whether to provide expedited processing, and to provide notice of that determination to Plaintiffs, within 10 days;
4. Order Defendants to immediately disclose the requested records to the public and make copies immediately available to Plaintiffs without charge for any search or duplication fees, or, in the alternative, provide for expedited proceedings to adjudicate Plaintiffs' rights under FOIA;
5. Award Plaintiffs their reasonable costs and attorneys' fees; and Grant such other relief as the Court may deem just and proper.

DATED this 12th day of April, 2017.

Respectfully submitted,

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