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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

AT PORTLAND

AMERICAN CIVIL LIBERTIES UNION OF OREGON; AMERICAN CIVIL LIBERTIES UNION OF ALASKA; AMERICAN CIVIL LIBERTIES UNION OF COLORADO; AMERICAN CIVIL LIBERTIES UNION OF IDAHO; and AMERICAN CIVIL LIBERTIES UNION OF WYOMING,

PLAINTIFFS,

v.

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

Case No. _____

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

DEFENDANTS.

INTRODUCTION

1. The American Civil Liberties Union of Oregon, American Civil Liberties Union of Alaska, American Civil Liberties Union of Colorado, American Civil Liberties Union of Idaho, and American Civil Liberties Union of Wyoming (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 1**.

3. Specifically, the Request seeks records concerning CBP’s local implementation of the Executive Orders at sites within the purview of CBP’s Portland Field Office. These include the Portland International Airport, Denver International Airport, Ted Stevens International Airport, Boise International Airport, and Casper/Natrona County International Airport (“Local International Airports”), and the Anchorage, Denver, Boise, Portland, and Casper ports of entry (“Port of Entry Offices”).

4. Among other things, these 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

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

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 <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>.

holders.⁶

9. Reportedly spurred by this chaos, on January 29, Senators Tammy Duckworth and Dick Durbin 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

10. Denver International Airport ranks as the sixth busiest airport nationally and the nineteenth busiest airport globally.⁹ It is the main hub for Frontier Airlines and Great Lakes Airlines and is the fourth largest hub for United Airlines, and receives international arrivals from Belize, Canada, Germany, Iceland, Japan, Mexico, Panama, and the United Kingdom.¹⁰ In 2016,

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 Ryan Devereaux *et al.*, *Homeland Security Inspector General Opens Investigation of 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/>.

⁸ *Id.*

⁹ *Year to Date Passenger Traffic*, AIRPORTS COUNCIL INTERNATIONAL, (April 11, 2016) available at <http://www.aci.aero/Data-Centre/Monthly-Traffic-Data/Passenger-Summary/Year-to-date>.

¹⁰ *Nonstop Destinations Served from Denver (DEN)*, City & County of Denver Department of Aviation, <http://www.flydenver.com/sites/default/files/services/denNonstopDestinations.pdf>.

2,304,253 passengers deplaned from international flights at Denver International Airport.¹¹

11. Portland International Airport is Oregon's largest airport and accounts for nearly all of the state's public flight travel. It is a secondary hub for Alaska Airlines and Horizon Air, and receives international arrivals from Canada, Germany, Iceland, Japan, Mexico, the Netherlands, and the United Kingdom.¹² In 2016, 343,370 passengers deplaned from international flights at Portland International Airport.¹³

12. On January 29, 2017, a lawful permanent resident was detained and questioned for several hours at Portland International Airport under the Executive Order because he was Iranian. Despite the availability of pro bono counsel, he was denied access to an immigration attorney. CBP ultimately determined that he was allowed to enter the United States and he was released.

13. More recently, on March 28, 2017, at Portland International Airport, an Iranian woman traveling on a lawful nonimmigrant visa was detained and interrogated for several hours. Without counsel present, CBP adjudicated her nonimmigrant visa invalid and determined that she would be removed from the United States on the next available flight to Iran, which was not until the next day. Because Portland International Airport lacks overnight facilities, she was transported to Northern Oregon Regional Correctional Facility ("NORCOR"), a county jail in Oregon that rents beds to DHS for detention. CBP continued to deny her access to counsel while at NORCOR and until she was transported back to Portland International Airport on March 29, 2017. CBP intended to send her back to Iran on March 29, 2017 and only did not do so because

¹¹ *Denver International Airport Total Operations and Traffic*, City & County of Denver Department of Aviation, <http://www.flydenver.com/sites/default/files/downloads/Dec%202016%20Management%20Monthly%20Flydenver.pdf>.

¹² *Arrivals and Departures*, Port of Portland, <http://www.flypdx.com/PDX/Flights>.

¹³ *Portland International Airport (PDX) Monthly Traffic Report December, 2016: Calendar Year Report*, Port of Portland, <http://cdn.portofportland.com/pdfs/Dec2016webstats.pdf>.

she pled a fear of returning.

14. Detention, interrogation, and adjudication without counsel—despite the availability of pro bono counsel—occurred several times at Portland International Airport throughout the weekend of January 28, 2017, and appears to be continuing. Upon information and belief, this is a result of Defendants’ local implementation of the Executive Orders.

15. Disclosure of the records Plaintiffs seek through this action thus would facilitate the public’s understanding of how Defendants have implemented and enforced the Executive Orders in the Portland Field Office, including in particular at Portland International Airport. Such information is critical to the public’s ability to hold the government accountable.

16. 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.

JURISDICTION

17. 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

18. Venue in the District of Oregon is proper under 5 U.S.C. § 552(a)(4)(B) as the requested agency records are, upon information and belief, situated within this District at CBP facilities at or near Portland International Airport, 7000 NE Airport Way, Portland, OR 97218, and the Port of Portland, 8337 NE Alderwood Road, Portland, OR 97220, and because Plaintiff ACLU of Oregon’s principal place of business is in the District of Oregon. For the same reasons, venue also is proper under 28 U.S.C. § 1391(e).

19. Assignment to the Portland Division is proper under District of Oregon LR 3-2 Divisions of Court because Portland International Airport, the Port of Portland, and the ACLU of Oregon are all located in Multnomah County, which falls within the divisional venue of the

Portland Division.

PARTIES

20. Plaintiffs are nonprofit, 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.

21. 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).

22. 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).

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

FACTS

24. On February 2, 2017, Plaintiffs sent the Request to CBP's Portland Field Office, CBP's San Francisco Field Office, and CBP's FOIA Officer at CBP Headquarters via FedEx Priority Overnight with a tracking numbers 810251509055, 810251509066 and 810251509077, respectively.

25. The Request sought copies of CBP's local interpretation and enforcement of the Executive Order at: (1) certain airports specified in the Request, including Portland International Airport, Denver International Airport, Ted Stevens International Airport, and Boise International Airport, Casper/Natrona County International Airport; and (2) certain Port of Entry offices specified in the Request, including Anchorage, Denver, Boise, Portland, and Casper. The Request expressly did *not* seek information held in the records of CBP Headquarters.

26. 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;¹⁴

“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;¹⁵

“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;¹⁶

“e. Judge Brinkema’s Temporary Restraining Order, issued in the Eastern District of Virginia on January 28, 2017;¹⁷

¹⁴ 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).”

¹⁵ 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/>.”

¹⁶ 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>.”

¹⁷ 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;¹⁸

“g. Judge Burroughs’ Temporary Restraining Order, issued in the District of Massachusetts on January 29, 2017;¹⁹

“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;²⁰

“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;²¹

“k. DHS Secretary John Kelly’s ‘Statement on the Entry of Lawful Permanent Residents Into the United States,’ issued on January 29, 2017;²²

“l. DHS’s ‘Statement on Compliance with Court Orders and the President’s Executive Order,’ issued on January 29, 2017;²³ and

¹⁸ 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>.”

¹⁹ 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>.”

²⁰ 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.”

²¹ 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>.”

²² The following footnote was included for reference: “*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>.” Note: The corresponding footnote in the Request, footnote 30, incorrectly referred to a different statement by DHS.

²³ 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-on-compliance-with-court-orders-and-the-president-s-executive-order>.”

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“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;

“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.”²⁴

Exhibit 1 at 5-7.

27. The Request included an application for expedited processing, on the grounds that

2017), available at <https://www.dhs.gov/news/2017/01/29/dhs-statement-compliance-court-orders-and-presidents-executive-order>.”

²⁴ 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).”

there is a “compelling need” for these records under 5 U.S.C. § 552(a)(6)(E)(v)(II) because the information requested is “urgen[tly]” needed by an organization primarily engaged in disseminating information “to inform the public concerning actual or alleged Federal Government activity.” **Exhibit 1** at 8.

28. 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. **Exhibit 1** at 8-11.

29. The Request described examples of the ACLU’s information-dissemination function. **Exhibit 1** at 8-11.

30. The Request also included an application for a fee waiver or limitation under 5 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. **Exhibit 1** at 11.

31. 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 nonprofit mission and substantial activities to publish information for dissemination to the public, as discussed in greater detail in ¶ 29 above.

32. CBP received the Request on February 3, 2017. *See* **Exhibit 2**.

33. To date, Plaintiffs have not received any acknowledgement of receipt of the Request.

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

35. 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.

36. 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

37. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 36 above, inclusive.

38. 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.

39. 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

40. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 36 above, inclusive.

41. 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.

42. 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.

43. 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**

44. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 36 above, inclusive.

45. 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.

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

47. 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
6. Grant such other relief as the Court may deem just and proper.

DATED this 12th day of April, 2017.

DAVIS WRIGHT TREMAINE LLP

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JS 44 (Rev. 07/16)

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
 American Civil Liberties Union of Oregon, American Civil Liberties Union of Alaska, American Civil Liberties Union of Colorado, American Civil Liberties Union of Idaho, and American Civil Liberties Union of Wyoming
(b) County of Residence of First Listed Plaintiff Multnomah
 (EXCEPT IN U.S. PLAINTIFF CASES)
(c) Attorneys (Firm Name, Address, and Telephone Number)
 Davis Wright Tremaine LLP, 1300 SW 5th Ave Ste 2400, Portland, OR 97201, 503-241-2300; and American Civil Liberties Union of Oregon, PO Box 40585, Portland, OR 97240, 503-227-6928

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)
 U.S. Attorney for Oregon, 1000 SW 3rd Ave Ste 600, Portland, OR 97204, 503-727-1000

II. BASIS OF JURISDICTION (Place an "X" in one Box Only)
 1 U.S. Government Plaintiff
 2 U.S. Government Defendant
 3 Federal Question (U.S. Government Not a Party)
 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)

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):
 5 U.S.C. Section 552, et seq.
 Brief description of cause:
 Enforce Freedom of Information Act Request

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: 04/12/2017
 SIGNATURE OF ATTORNEY OF RECORD: _____

FOR OFFICE USE ONLY
 RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.