

Mitra Ebadolahi (SBN 275157)
mebadolahi@aclusandiego.org
David Loy (SBN 229235)
davidloy@aclusandiego.org
**ACLU FOUNDATION OF SAN DIEGO &
IMPERIAL COUNTIES**
P.O. Box 87131
San Diego, CA 92138-7131
Telephone: 619.232.2121
Facsimile: 619.232.0036

Attorneys for Plaintiff STELLA BONIN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

STELLA BONIN,

Plaintiff,

v.

U.S. BORDER PATROL AGENT
ALDANA, FNU; U.S. BORDER
PATROL AGENT GOMEZ, FNU; U.S.
BORDER PATROL AGENT
CONSTANCE, FNU; DOE U.S.
BORDER PATROL AGENTS #1 through
#4, each sued in their individual
capacities; U.S. DEPARTMENT OF
HOMELAND SECURITY; and U.S.
CUSTOMS AND BORDER
PROTECTION,

Defendants.

Case No.: **'17CV0265 DMS WVG**
COMPLAINT FOR DAMAGES
(VIOLATION OF FOURTH
AMENDMENT RIGHTS) AND
DECLARATORY AND INJUNCTIVE
RELIEF (VIOLATION OF
FREEDOM OF INFORMATION
ACT):
1. Unconstitutional Stop (4th Amend.)
2. Unconstitutional Arrest (4th
Amend.)
3. Unconstitutional Search
(4th Amend.)
4. Violation of Freedom of Information
Act, 5 U.S.C. § 552 et seq.
DEMAND FOR JURY TRIAL

Plaintiff Stella Bonin ("Ms. Bonin" or "Plaintiff") brings this action against U.S.
Border Patrol Agents Aldana, Gomez, and Constance, and Doe U.S. Border Patrol

1 Agents #1 through #4 (collectively, “Individual Defendants”), in their individual
2 capacities; and the United States Department of Homeland Security (“DHS”) and United
3 States Customs and Border Protection (“CBP”) (collectively, “FOIA Defendants”), and
4 alleges as follows:

5 **INTRODUCTION**

6 1. Stella Bonin is a 58-year-old U.S. citizen and resident of Maricopa County,
7 Arizona. She is a licensed real estate agent in California and Arizona who for many
8 years has conducted business in both states.

9 2. On February 11, 2015, while attempting to drive her seriously ill dog to an
10 emergency veterinarian, Ms. Bonin was pulled over and interrogated by U.S. Border
11 Patrol agents. Ms. Bonin was then made to drive her vehicle under Border Patrol escort
12 to the Campo Border Patrol Station, where she was interrogated further.

13 3. At the Campo Border Patrol Station, U.S. Border Patrol agents also searched
14 Ms. Bonin’s vehicle without her consent.

15 4. In all, Ms. Bonin was detained for nearly two hours without legal
16 justification, while her dog remained in distress and in need of emergency veterinary
17 attention.

18 5. The Individual Defendants’ conduct violated Ms. Bonin’s Fourth
19 Amendment rights to be free from an unlawful stop, unlawful arrest, and unlawful search.
20 The FOIA Defendants have unlawfully withheld records responsive to Ms. Bonin’s
21 Freedom of Information Act request. Ms. Bonin brings this lawsuit to vindicate her
22 rights and remedy these violations.

23 6. Accordingly, through this action, Ms. Bonin seeks money damages from the
24 Individual Defendants pursuant to *Bivens v. Six Unknown Named Agents of Fed. Bureau*
25 *of Narcotics*, 403 U.S. 388 (1971), for violation of her rights under the Fourth
26 Amendment to the U.S. Constitution, and declaratory, injunctive, and other appropriate
27 relief pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*
28

JURISDICTION AND VENUE

7. This court has subject matter jurisdiction over Ms. Bonin's constitutional claims under 28 U.S.C. § 1331. Additionally, it has subject matter jurisdiction over Ms. Bonin's FOIA claims under 5 U.S.C. § 552(a)(4)(B) and 5 U.S.C. §§ 701–706.

8. This court has personal jurisdiction over all Defendants.

9. This court has the power to award money damages for constitutional violations pursuant to *Bivens, supra*; to grant declaratory and injunctive relief pursuant to the FOIA, 5 U.S.C. § 552(a)(4)(B); and to grant any other appropriate declaratory relief pursuant to 28 U.S.C. § 2201.

10. Venue is proper in the Southern District of California pursuant to 28 U.S.C. §§ 1391(b) and 1391(e), because the events which give rise to this action occurred within this district. Venue also lies in this district under 5 U.S.C. § 552(a)(4)(B).

PARTIES

11. Plaintiff Stella Bonin is, and at all times relevant was, a U.S. citizen residing primarily in Maricopa County, Arizona.

12. Upon information and belief, Defendant Agent Aldana (first name unknown) is, and at all times relevant was, a U.S. Border Patrol agent.

13. Upon information and belief, Defendant Agent Gomez (first name unknown) is, and at all times relevant was, a U.S. Border Patrol agent.

14. Upon information and belief, Defendant Agent Constance (first name unknown) is, and at all times relevant was, a U.S. Border Patrol agent.

15. Upon information and belief, Doe Defendant Agents #1 through #4 are, and at all times relevant were, U.S. Border Patrol agents.

16. Plaintiff is ignorant of the true names of Doe Defendants #1 through #4. Plaintiff therefore sues said Defendants by said fictitious names. Upon information and belief, Doe Defendants #1 through #4 were at all relevant times U.S. Border Patrol personnel in San Diego Sector or El Centro Sector, acting under color of law and within the course and scope of their authority.

17. Plaintiff will amend this complaint to show the Individual Defendants' true names and capacities when the same have been ascertained. Plaintiff believes, and based thereon alleges, that the Individual Defendants sued as Defendant Agent Aldana (first name unknown), Defendant Agent Gomez (first name unknown), Defendant Agent Constance (first name unknown), and Doe Defendant U.S. Border Patrol Agents #1 through #4 are responsible for the acts and injuries alleged herein, either through their own actions or their failure to prevent unconstitutional actions despite reasonable opportunity to do so.

18. All Individual Defendants are sued in their individual capacities for damages.

19. Defendant DHS is a Department of the Executive Branch of the United States government and an “agency” within the meaning of 5 U.S.C. § 552(f)(1). DHS is headquartered in Washington, D.C.

20. Defendant CBP is a component of DHS and an “agency” within the meaning of 5 U.S.C. § 552(f)(1). It is headquartered in Washington, D.C., and has field offices throughout the country.

FACTUAL ALLEGATIONS

Ms. Bonin's Drive from Phoenix, Arizona to Campo, California

21. On February 11, 2015, Ms. Bonin attempted to take her elderly miniature schnauzer, Jake, from Phoenix, Arizona, to El Cajon, California to receive emergency veterinary care.

22. The previous day, Jake had been hospitalized at the Arizona Humane Society's Veterinary Clinic. There, veterinarian Alondra Velez, DVM, advised Ms. Bonin to transport Jake immediately to the East County Animal Hospital in El Cajon, California, so he could receive specialized treatment. The East County Animal Hospital had treated Jake since he was a puppy.

23. Accordingly, at approximately 8:20 a.m. Mountain Standard Time on February 11, Ms. Bonin set out for California driving west on Interstate 8 with Jake.

1 24. En route to California, Ms. Bonin stopped in Gila Bend and Yuma, Arizona,
2 and El Centro and Campo, California. At each stop, Ms. Bonin gave Jake water and
3 walked him briefly so that he could relieve himself if needed.

4 25. Nearing Campo on Old Highway 80, Ms. Bonin saw a U.S. Border Patrol
5 vehicle driving in the opposite direction. As she passed this vehicle, Ms. Bonin noticed
6 that both the driver and passenger looked at her. She then saw the vehicle make a U-turn
7 and begin to follow her.

8 26. Shortly thereafter, around 1:45 p.m. Pacific Standard Time, Ms. Bonin
9 pulled into a parking lot adjacent to the Golden Acorn Casino supermarket. The Border
10 Patrol vehicle stopped behind her.

11 27. Ms. Bonin went into the supermarket to use the restroom. She then drove to
12 the edge of the supermarket parking lot and parked to try to walk Jake, whose condition
13 had continued to deteriorate.

14 28. Ms. Bonin then left the parking lot and returned to the westbound Interstate
15 8, where she noticed an unmarked white truck parked on the left shoulder of the highway.
16 When she passed this truck, the driver began to follow her. This made Ms. Bonin
17 extremely nervous.

18 29. The white truck continued to follow Ms. Bonin at a close distance for
19 approximately six miles, or about five minutes. During this time, Ms. Bonin applied her
20 brakes several times to ensure that her sports utility vehicle did not exceed the posted
21 speed limit; this was necessary as the terrain in the area is rather hilly. The unmarked
22 white truck eventually passed Ms. Bonin's vehicle.

23 30. A short while later, Ms. Bonin saw the truck at the Descanso exit, where it
24 was with a marked U.S. Border Patrol vehicle.

25 31. As Ms. Bonin passed these vehicles, the unmarked white truck turned on
26 sirens and signaled for her to stop.

27 32. Ms. Bonin immediately pulled over to the right shoulder on Interstate 8 and
28 stopped her vehicle. Both the unmarked white truck and the marked U.S. Border Patrol

1 vehicle also stopped alongside the highway. The approximate time was between 2:55
2 and 3 p.m. Pacific Standard Time.

3 33. No reasonable suspicion or probable cause existed for U.S. Border Patrol
4 agents to stop Ms. Bonin.

5 Initial Vehicle Stop and Field Interrogation and Seizure by U.S. Border Patrol Agents

6 34. Ms. Bonin was approached by two U.S. Border Patrol agents, Defendant
7 Agents Aldana and Gomez.

8 35. Defendant Agent Aldana asked Ms. Bonin, in Spanish, for her identification.
9 Ms. Bonin handed him her California driver's license.

10 36. Defendant Agent Aldana never asked Ms. Bonin her citizenship status.

11 37. Ms. Bonin volunteered her passport card to Defendant Agent Gomez and
12 informed him that she was a U.S. citizen. When Ms. Bonin told Defendant Agent Aldana
13 that she was a U.S. citizen, he replied that he loved to stop and arrest U.S. citizens, "too."

14 38. Ms. Bonin felt intimidated and mistreated by Defendant Agents Aldana and
15 Gomez. She asked to speak with a supervisor.

16 39. Approximately ten minutes after Ms. Bonin first pulled over, a third U.S.
17 Border Patrol agent, Defendant Agent Constance, arrived on site. He, too, proceeded to
18 make Ms. Bonin feel unsafe and bullied.

19 40. Ms. Bonin asked the agents why they had stopped her. Defendant Agent
20 Aldana replied that he was not required to give her a reason for the stop.

21 41. Ms. Bonin asked again for an explanation for the stop. Defendant Agent
22 Gomez told her that she had been driving "too slowly."

23 42. The agents interrogated Ms. Bonin about whether she had ever been
24 arrested; why she had a real estate badge; why she had stopped at the Golden Acorn
25 Casino; why she had stopped "so many times" en route to El Cajon; when she had first
26 started living in the United States; why she was so nervous; and why she didn't return to
27 her country of origin, Uruguay. During this interrogation, none of the agents asked Ms.
28 Bonin any questions relevant to her citizenship status.

1 43. Ms. Bonin asked the agents if she was being arrested. Defendant Agent
2 Aldana replied, “No, you are not being arrested.”

3 44. Ms. Bonin then asked, “Can I leave?” Defendant Agent Aldana replied,
4 “No, you are detained by the Border Patrol.”

5 45. One of the agents accused Ms. Bonin of being under the influence of
6 medication. Ms. Bonin replied that she did not take any medication, and stated that she
7 was nervous and desperate because she feared her dog was dying from a glucose crisis.
8 She explained to the agents that she had to get Jake to the East County Animal Hospital
9 before 5 p.m. Pacific Standard Time.

10 46. Ms. Bonin again asked Defendant Agent Gomez why she had been stopped.
11 Defendant Agent Gomez replied, “Everybody gets stopped.”

12 47. Defendant Agent Aldana then asked Ms. Bonin again whether she was on
13 medication or on drugs. Ms. Bonin repeated that she did not use any medication or
14 drugs.

15 48. Ms. Bonin again asked whether she was being arrested. The agents told her
16 she was not under arrest. Ms. Bonin asked whether she could leave. The agents again
17 told her, “No, you are detained by Border Patrol.”

18 49. Throughout this interrogation, Ms. Bonin repeatedly attempted to explain the
19 purpose of her emergency trip to the agents. Defendant Agent Gomez told Ms. Bonin
20 that it was “stupid” to transport her dog from Arizona to California for care.

21 50. Ms. Bonin pleaded with the agents to allow her to telephone her husband so
22 that he could retrieve Jake and transport him to the animal hospital. The agents denied
23 this request.

24 51. Ms. Bonin also pleaded with the agents to allow her to call 911 for
25 assistance for Jake. The agents also denied this request.

26 52. Ms. Bonin was not permitted to make any telephone calls, including a call to
27 an attorney.
28

Coerced Removal to Campo Border Patrol Station

53. Ms. Bonin's roadside interrogation lasted approximately thirty to thirty-five minutes, at which point Defendant Agents Aldana, Gomez, and Constance directed Ms. Bonin to drive herself to the Campo Station. Each of the Defendant Agents was aware of this order, and failed to prevent it.

54. Defendant Agent Constance told Ms. Bonin that if she did not stop at the Campo Station, he would "spike" her car tires.

55. Ms. Bonin, who did not feel free to leave, complied with this order under compulsion of official authority and due to the threats made against her. No reasonable suspicion or probable cause existed to justify extending the stop or moving Ms. Bonin to the Campo Station.

56. As Ms. Bonin drove to the Campo Station, one Border Patrol agent drove in front of her and another behind her.

Second Interrogation and Unconsented Vehicle Search

57. When Ms. Bonin arrived at Campo Station, Defendant Agents Aldana and Gomez resumed interrogating her.

58. Upon information and belief, additional Defendants Does #1 through #4 joined Agents Aldana, Gomez, and Constance in the interrogation during the time Ms. Bonin was detained at Campo Station.

59. Ms. Bonin repeatedly asked Defendant Agents Aldana and Gomez whether she was under arrest; although the agents told her she was not under arrest, they also refused to let her go.

60. One or more of the Individual Defendants then told Ms. Bonin that they were going to search her car. Each Individual Defendant was aware of this statement, and none of them took any steps to countermand it.

61. One or more of the Individual Defendants directed Ms. Bonin to move her vehicle over to two nearby trailers. Each Individual Defendant was aware of this order,

1 and none of them took any steps to countermand it. Ms. Bonin complied under
2 compulsion of official authority and exited her vehicle.

3 62. Ms. Bonin, who had asked to use a bathroom, was directed to a bathroom
4 but forced to leave the door open. A camera was trained on the front of the bathroom
5 stall door. Defendant Agent Gomez stood nearby while Ms. Bonin used the facility.
6 Upon information and belief, Defendant Agent Gomez watched Ms. Bonin while she
7 used the bathroom.

8 63. After Ms. Bonin exited the bathroom, one or more of the Individual
9 Defendants again told her they wanted to search her vehicle. Each Individual Defendant
10 was aware of this statement, and none of them took any steps to countermand it. Ms.
11 Bonin refused to consent to a vehicle search.

12 64. In response, Defendant Agents Constance and Gomez became agitated.
13 Defendant Agent Gomez brought a canine over to Ms. Bonin's vehicle.

14 65. Ms. Bonin watched Defendant Agent Gomez scratch an area of her car near
15 the front tire, appearing to give the canine a command to jump up. The dog did jump up
16 and began to react excitedly. Defendant Agent Gomez then shouted to the other agents,
17 "I knew that she had drugs!"

18 66. Upon information and belief, Defendant Agent Gomez wrongly induced the
19 canine to alert to Ms. Bonin's car, and as a result, the canine alert did not furnish
20 probable cause to justify a search of her car.

21 67. One or more of the Individual Defendants ordered Ms. Bonin to remove Jake
22 from the vehicle. She did so.

23 68. One or more of the Individual Defendants then proceeded to search and
24 ransack Ms. Bonin's car. Upon information and belief, additional defendants Does #1
25 through #4 joined Agents Aldana, Gomez, and Constance in this unlawful search of Ms.
26 Bonin's vehicle.

27 69. Ms. Bonin witnessed the Border Patrol agents using screw drivers on the
28 underside of the vehicle, and saw her possessions strewn about on the ground.

70. Each Individual Defendant was aware the search of Ms. Bonin's car was unjustified by probable cause. Each Individual Defendant either participated in or was aware of the search and had reasonable opportunity to prevent it, yet none of them took any steps to countermand or prevent the search.

71. When the search was done, Ms. Bonin noticed that the Lincoln Navigator logo had been pulled off her car and not replaced. In addition, Ms. Bonin noticed that several mechanical light notifications which had not been previously lit were now illuminated on her dashboard.

72. No contraband of any kind was found during the Individual Defendants' unauthorized and unlawful search of Ms. Bonin's vehicle.

73. Ms. Bonin was ultimately released around 4:15 p.m. Pacific Standard Time. She was given no paperwork or any other record of her detention or the search of her vehicle before she was released.

74. Ms. Bonin was never charged with any crime.

Freedom of Information Act Request

75. On June 4, 2015, the American Civil Liberties Union of San Diego and Imperial Counties (“ACLU”) submitted a FOIA request (“Request”) on behalf of Ms. Bonin, seeking any and all DHS records, including audio and video recordings, pertaining to Ms. Bonin’s detention and arrest by Defendants. The Request specifically sought all records pertaining to the time period encompassing Ms. Bonin’s initial roving patrol stop on Interstate 8 on the afternoon of February 11, 2015, through her escort to Campo Border Patrol Station and the unauthorized search of her vehicle, as well as any post-release investigations regarding Ms. Bonin conducted by DHS, CBP, and/or U.S. Border Patrol from February 11, 2015 to the present. A true and correct copy of the request sent to DHS is attached hereto as Exhibit A and hereby incorporated by reference.

76. Ms. Bonin sought a waiver of search, review, and reproduction fees on the grounds that disclosure of the requested records “is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of

1 the government,” and disclosure is “not primarily in the commercial interest of the
2 requester.” *See* 5 U.S.C. § 552(a)(4)(A)(iii); 6 C.F.R. § 5.11(k)(1). Ms. Bonin further
3 sought a waiver of search and review fees on the grounds that the ACLU qualifies as a
4 “representative of the news media” and the requested records are not sought for
5 commercial use. *See* 5 U.S.C. § 552(a)(4)(A)(ii); 6 C.F.R. § 5.11(d)(1).

6 77. On June 4, 2015, Ms. Bonin submitted the Request to DHS via email
7 at foia@dhs.gov and foia@hq.dhs.gov. Also on June 4, 2015, Ms. Bonin mailed a hard
8 copy of the Request to DHS via Federal Express Standard Overnight.

9 78. According to Federal Express, DHS received the mailed copy of Ms.
10 Bonin’s request on June 5, 2015.

11 79. By letter dated June 25, 2015, the DHS Privacy Office acknowledged receipt
12 of the Request and informed ACLU Staff Attorney Mitra Ebadolahi that the Request had
13 been forwarded to CBP, the DHS Office of the Inspector General (“OIG”), the DHS
14 Office of Civil Rights and Civil Liberties (“CRCL”), and U.S. Immigration and Customs
15 Enforcement (“ICE”) for processing. A true and correct copy of the DHS receipt
16 confirmation letter is attached hereto as Exhibit B and hereby incorporated by reference.

17 80. On July 9, 2015, OIG issued a final response letter stating that the agency
18 had no records responsive to the Request and informing Ms. Bonin of her statutory right
19 to appeal. A true and correct copy of the OIG final response letter is attached hereto as
20 Exhibit C and hereby incorporated by reference. Ms. Bonin submitted an administrative
21 appeal on August 25, 2015. A true and correct copy of Ms. Bonin’s administrative
22 appeal is attached hereto as Exhibit D and hereby incorporated by reference. In a letter
23 dated September 30, 2016, OIG denied the appeal (No. 2015-A19). A true and correct
24 copy of the OIG administrative appeal response letter is attached hereto as Exhibit E and
25 hereby incorporated by reference.

26 81. On July 29, 2015, ICE issued a final response letter stating that the agency
27 had no records responsive to the Request and informing Ms. Bonin of her statutory right
28 to appeal. Ms. Bonin decided not to administratively appeal ICE’s final determination.

82. To date, CBP has not responded to Ms. Bonin's Request.

83. The twenty-day statutory period to respond to Ms. Bonin's Request thus has elapsed with no response or determination from CBP or any DHS entity other than OIG and ICE. *See* 5 U.S.C. § 552(a)(6)(A)(i); 6 C.F.R. § 5.6.

84. Because CBP and other DHS entities other than OIG and ICE have failed to provide a determination as to Ms. Bonin's FOIA Request in the time allotted by the statute, as required by 5 U.S.C. § 552(a)(6)(A)(i) and 6 C.F.R. § 5.6, Ms. Bonin has constructively exhausted all administrative remedies and is entitled to file suit with this court to enforce compliance with FOIA. *See* 5 U.S.C. § 552(a)(4)(B), (a)(6)(C).

85. Ms. Bonin's FOIA claims lie against all DHS entities other than ICE.

CLAIMS FOR RELIEF

Plaintiff incorporates by reference the allegations of paragraphs 1 through 85, above, as though fully set forth herein.

FIRST CLAIM FOR RELIEF

Unconstitutional Stop—Fourth Amendment to the U.S. Constitution (*Bivens*)

Against All Individual Defendants, For Damages

86. Defendants unjustifiably stopped Plaintiff and prolonged the stop without reasonable suspicion or probable cause.

87. Defendants' stop of Plaintiff thus constituted an unreasonable seizure in violation of clearly established rights under the Fourth Amendment to the U.S. Constitution.

88. Any Defendant present at the scene of the unconstitutional stop who did not participate in making it was aware of the unconstitutional stop and failed to prevent it despite reasonable opportunity to do so.

SECOND CLAIM FOR RELIEF

**Unconstitutional Detention and Arrest—Fourth Amendment to the U.S.
Constitution (*Bivens*)**

Against All Individual Defendants, For Damages

89. By compelling the transport of Plaintiff to the Campo Station and then detaining her there, Defendants arrested Plaintiff without probable cause, or failed to prevent her arrest without probable cause despite reasonable opportunity to do so.

90. The arrest of Plaintiff constituted an unreasonable seizure in violation of clearly established rights under the Fourth Amendment to the U.S. Constitution.

91. Any Defendant present during the coerced transport of Plaintiff to Campo Station and her subsequent detention there who did not participate in making this unconstitutional arrest was aware of it and failed to prevent it despite reasonable opportunity to do so.

THIRD CLAIM FOR RELIEF

Unconstitutional Search—Fourth Amendment to the U.S. Constitution (*Bivens*)

Against All Individual Defendants, For Damages

92. The search of Plaintiff's vehicle violated clearly established rights under the Fourth Amendment to the U.S. Constitution, because it was conducted without a warrant in the absence of any valid exception to the warrant requirement. It was unjustified as a search incident to arrest, because Defendants lacked probable cause to make an arrest. It was unjustified as an automobile search, because Defendants lacked valid probable cause to believe the vehicle contained any contraband. It was unjustified by consent because Ms. Bonin did not give any knowing or voluntary consent to the search. It was unjustified as a frisk for weapons because Defendants lacked reasonable suspicion that Ms. Bonin was armed and dangerous, and even if such suspicion had existed, the search exceeded the scope of any valid frisk.

1 93. Any Defendant who did not conduct the unconstitutional search was aware
2 of it and failed to prevent the unconstitutional search despite reasonable opportunity to do
3 so.

4
5 **FOURTH CLAIM FOR RELIEF**

6 **Violation of the Freedom of Information Act, 5 U.S.C. § 552**

7 **Against DHS and CBP, For Declaratory and Injunctive Relief**

8 94. DHS and CBP's failure to make a reasonable effort to search for the records
9 Ms. Bonin requested violates FOIA, 5 U.S.C. § 552(a)(3), and DHS's corresponding
10 regulations, *see* 6 C.F.R. § 5.4.

11 95. DHS and CBP's failure to promptly make available the records Ms. Bonin
12 requested violates FOIA, 5 U.S.C. § 552(a)(6)(A), and DHS's corresponding regulations,
13 *see* 6 C.F.R. § 5.6.

14 96. DHS and CBP's failure to grant Ms. Bonin's request for a waiver of search,
15 review, and duplication fees as to the Request violates FOIA, 5 U.S.C. § 552(a)(4), and
16 DHS's corresponding regulations, *see* 6 C.F.R. §§ 5.6(c) and 5.11(k).

17 97. DHS and CBP's failure to grant Ms. Bonin's request for a limitation of fees
18 as to the Request violates FOIA, 5 U.S.C. § 552(a)(4), and DHS's corresponding
19 regulations, *see* 6 C.F.R. §§ 5.6(c) and 5.11(d).

20
21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff prays for relief and judgment as follows:

- 23 1. Awarding general and compensatory damages against Defendants, in an
24 amount to be proven at trial;
- 25 2. Awarding punitive damages against Defendants, in an amount to be proven
26 at trial;
- 27 3. Declaring Defendants' conduct to be unlawful;
- 28 4. Awarding Plaintiff the costs and fees incurred in this litigation;

5. Prejudgment interest;

6. Declaring that DHS and CBP's failure to timely respond to Ms. Bonin's FOIA Request; to conduct a reasonable search; to waive or limit search, review, and duplication fees; and/or to disclose the requested records is unlawful;

7. Issuing an injunction ordering DHS and CBP to immediately disclose the requested records and to make copies available to Ms. Bonin at no charge;

8. Awarding Ms. Bonin costs and reasonable attorneys' fees incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and

9. Granting such other relief as the court deems appropriate and just.

JURY DEMAND

Plaintiff hereby demands a trial by jury for all issues so triable.

Respectfully submitted,

Dated: February 10, 2017

ACLU FOUNDATION OF SAN DIEGO
& IMPERIAL COUNTIES

By /s/ Mitra Ebadolahi
Mitra Ebadolahi (SBN 275157)
Attorney for Plaintiff

Bonin v US Border Patrol Agent Aldana, et al

EXHIBITS TO COMPLAINT

TABLE OF CONTENTS

EXHIBIT	DOCUMENT	PAGES
A	June 4, 2015 FOIA request	17-28
B	June 25, 2015 DHS receipt letter	29-31
C	July 9, 2015 OIG final response letter	32-34
D	August 25, 2015 Appeal to OIG	35-37
E	September 30, 2016 OIG final response	38-40

EXHIBIT A

TO COMPLAINT

**Bonin v US Border Patrol Agent Aldana,
et al**



The ACLU's Border Litigation Project investigates, documents, and litigates civil and human rights violations in the U.S.-Mexico border region.

June 4, 2015

Karen Neuman, Chief Privacy Officer/Chief FOIA Officer
The Privacy Office
U.S. Department of Homeland Security
Stop – 0655
245 Murray Lane, SW
Washington, D.C. 20528-0655
Email: foia@dhs.gov; foia@hq.dhs.gov

via electronic mail and Federal Express

RE: Freedom of Information Act & Privacy Act Requests On Behalf of Stella Bonin

To Whom It May Concern:

This letter constitutes a request (“Request”) pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, and the relevant implementing regulations, *see* 6 C.F.R. § 5 *et seq.* (Department of Homeland Security (“DHS”), Disclosure of Records and Information), and also under the Privacy Act, 5 U.S.C. § 552a *et seq.*, and the relevant DHS implementing regulations, *see* 6 C.F.R. § 5.20 *et seq.* The Request is submitted by the American Civil Liberties Union of San Diego and Imperial Counties (“ACLU” or “Requester”).¹

The ACLU represents Stella Bonin, a U.S. citizen whom U.S. Border Patrol agents subjected to a roving patrol stop on February 11, 2015.² In connection with this representation,

¹ The American Civil Liberties Union is a non-profit, 26 U.S.C. § 501(c)(4) membership organization that educates the public about the civil liberties implications of pending and proposed state and federal legislation, provides analysis of pending and proposed legislation, directly lobbies legislators, and mobilizes its members to lobby their legislators. The American Civil Liberties Union Foundation is a separate 26 U.S.C. § 501(c)(3) organization that provides legal representation free of charge to individuals and organizations in civil rights and civil liberties cases, educates the public about civil rights and civil liberties issues across the country, provides analyses of pending and proposed legislation, directly lobbies legislators, and mobilizes the American Civil Liberties Union’s members to lobby their legislators.

² On April 1, 2015, the ACLU sent a spoliation letter via facsimile and Federal Express Overnight Delivery to U.S. Customs and Border Protection’s Assistant Chief Counsel (San Diego) in Chula Vista, California. *See* Exh. B (copy

the ACLU now seeks the disclosure of all records in DHS's possession—including but not limited to all records in the possession of DHS component agencies U.S. Customs and Border Protection ("CBP"), U.S. Border Patrol, and/or the Office of the Inspector General ("OIG")—mentioning or referring to Ms. Bonin. The ACLU also seeks all records stored in DHS "systems of records," as defined in the Privacy Act, 5 U.S.C. § 552a(a)(5), under Ms. Bonin's name or any unique identifying number, symbol, or other identifying particular assigned to Ms. Bonin.

This Request is made on behalf of, and is supported by, Ms. Bonin herself. Ms. Bonin's affidavit supporting this Request and verifying her identity is submitted along with this Request, and is made a part of it by reference. *See* Exh. A; *see also* 28 U.S.C. § 1746, 6 C.F.R. § 5.21(d).

BACKGROUND

The incidence of civil rights violations associated with Border Patrol's interior enforcement operations, which include interior checkpoints and "roving patrol" stops, is a matter of pressing public concern. Since 2006, CBP's budget has more than doubled, from \$6 billion to \$12.9 billion in Fiscal Year 2014. In the same time period, the U.S. Border Patrol—a sub-agency within CBP—has nearly doubled in size, from approximately 12,000 agents to over 21,000 agents today.³

Simultaneously, reports of Border Patrol abuses along the U.S.-Mexico border and throughout the interior of the United States have increased. According to the former head of CBP Internal Affairs, Border Patrol views itself as a "paramilitary border security force" that believes it is not beholden to "constitutional constraints."⁴ Since January 2010, at least forty-one individuals have died as a result of an encounter with CBP officials.⁵ At least thirty-five of

of correspondence and confirmations of receipt). The ACLU simultaneously sent the spoliation letter to U.S. Customs and Border Protection's Deputy Assistant Chief Counsel (San Diego) in San Diego, California. *See* Exh. C (copy of correspondence and confirmations of receipt). The ACLU also sent a copy of this correspondence to CBP Chief Counsel Scott K. Falk in Washington, D.C.

³ The U.S. Border Patrol "is the mobile, uniformed law enforcement arm of U.S. Customs and Border Protection within the Department of Homeland Security responsible for securing U.S. borders between ports of entry." *See* U.S. Customs and Border Protection, Along U.S. Borders, <http://1.usa.gov/UIaKFe> (last visited June 2, 2015).

⁴ Andrew Becker, *Border Agency's Former Watchdog Says Officials Impeded His Efforts*, WASH. POST, Aug. 16, 2014, available at <http://wapo.st/1wGHdc9> (former head of CBP Internal Affairs describing CBP as an agency "rife with coverups and corruption" where officials have "distorted facts to try to hide any missteps").

⁵ Statistics compiled by the ACLU of New Mexico's Regional Center for Border Rights. *See* <https://www.aclu-nm.org/what-we-do/regional-center-for-border-rights/> [hereinafter, RCBR Statistics].

In an extensive, three-part investigative report, *The Arizona Republic* concluded that, from February 2005 through December 2013, forty-two individuals had been killed by on-duty CBP officers, including U.S. Border Patrol agents. *See* Bob Ortega and Rob O'Dell, *Deadly Border Agent Incidents Cloaked in Silence*, ARIZ. REPUBLIC, Dec. 15, 2013, available at <http://bit.ly/1kFNx08>. *The Arizona Republic* found that "[i]n none of the 42 deaths is any agent or officer publicly known to have faced consequences—not from Border Patrol, not from Customs and Border Protection or Homeland Security, not from the Department of Justice, and not, ultimately, from criminal or civil courts." *Id.* The investigation concluded that the "appearance of a lack of accountability has been fed by a culture of secrecy about agents' use of deadly force." *Id.*

these deaths resulted from the use of lethal force, and at least sixteen of these victims were U.S. citizens.⁶

DHS oversight agencies have not kept pace with Border Patrol's rapid growth and are ill-equipped to provide transparent and effective oversight and accountability for rights violations by agents.⁷ To date, for example, not a single CBP officer or U.S. Border Patrol agent has been indicted, much less convicted of a crime, for involvement in an incident involving alleged excessive use of force.⁸

This Request pertains to Stella Bonin, a U.S. citizen. On February 11, 2015, Ms. Bonin was driving from Phoenix, Arizona to El Cajon, California. The previous day, Ms. Bonin's elderly dog, Jake, had been hospitalized at the Arizona Humane Society's Veterinary Clinic, in the care of Dr. Alondra Velez, DVM. Jake is a diabetic, deaf, fifteen-year-old miniature schnauzer whom Ms. Bonin considers part of her family. Dr. Velez advised Ms. Bonin to transport Jake to the East County Animal Hospital in El Cajon, California, so he could receive specialized treatment. Accordingly, at approximately 8 a.m. MST on February 11, Ms. Bonin set out for California, driving west on Interstate 8 with Jake and her other miniature schnauzer, Tara. Both Jake and Tara have been patients at the East County Animal Hospital in El Cajon since they were puppies.

En route to El Cajon, at approximately 2 p.m. PST, Ms. Bonin was pulled over by two Border Patrol agents, Agent Aldana and Agent Gomez, in a remote mountainous region of Interstate 8 near Campo, California. Neither agent asked Ms. Bonin her citizenship status. When Ms. Bonin volunteered that she was a U.S. citizen, the agents asked her to exit her vehicle. Ms. Bonin, who felt intimidated and unsafe, refused. Eventually, the agents directed Ms. Bonin to drive to the Campo Border Patrol Station; she did so, with one agent driving in front and another behind her vehicle. At the station, Border Patrol agents searched Ms. Bonin's car without her consent. In all, Ms. Bonin was detained for more than two hours, all the while

⁶ RCBP Statistics, *supra* note 5.

⁷ Following the June 2014 ouster of CBP's Office of Internal Affairs chief, James Tomsheck, several high-ranking officials described CBP's consistent efforts to thwart investigations into misconduct within the agency. *See* Andrew Becker, *Removal of Border Agency's Internal Affairs Chief Raises Alarms*, CTR. FOR INVESTIGATIVE REPORTING, June 12, 2014, available at <http://bit.ly/1odP2Rr>. *See also, e.g.*, Carrie Johnson, *Former Border Protection Insider Alleges Corruption, Distortion in Agency*, NPR, Aug. 28, 2014, available at <http://n.pr/1wGGPdV> ("I believe the system was clearly engineered to interfere with our efforts to hold the Border Patrol accountable," [Tomsheck] says."); Anne Werner, *Border Patrol Killings Face Renewed Scrutiny*, CBS NEWS, Aug. 18, 2014, available at <http://cbsn.ws/XXNUui> ("There were certainly many cases where border patrol agents or certainly CBP officers engaged in excessive use of force or abuse of migrants at the border that should have resulted in discipline where it did not," Tomsheck says.).

⁸ *See, e.g.*, Charles Davis, *U.S. Customs and Border Protection Has Killed Nearly 50 People in 10 Years. Most Were Unarmed*, NEW REPUBLIC, Jan. 4, 2015, available at <http://bit.ly/1BBYcyn>.

deeply concerned about Jake's deteriorating condition. She was finally released shortly after 4 p.m. PST.

REQUESTER

The American Civil Liberties Union is a national, non-partisan organization of more than a half million members, countless additional activists and supporters, and fifty-three affiliates nationwide. The American Civil Liberties Union is dedicated to the defense of civil rights and civil liberties and to holding the U.S. government accountable to principles of due process and of the U.S. Constitution in general. The ACLU of San Diego & Imperial Counties is one of the American Civil Liberties Union's local affiliates.

DEFINITIONS

"Records" includes all records or communications preserved in electronic or written form, including but not limited to: advisories; agreements; analyses; audio tapes; audits; correspondence; criteria; critiques; data; directives; disciplinary actions; documents; emails; evaluations; faxes; files; forms; guidance; guidelines; instructions; internal memoranda; investigations; legal opinions; letters; logs; manuals; messages; notes; orders; policies; procedures; protocols; records; reports; reviews; rules; specifications; standards; studies; training materials; videotapes; or other communications.

"Incident" refers to the time period encompassing Ms. Bonin's initial stop by roving Border Patrol agents on Interstate 8 on the afternoon of February 11, 2015 through her roadside detention and escort to the Campo Border Patrol Station and eventual release, as well as any post-release investigations regarding Ms. Bonin conducted by DHS, CBP, and/or U.S. Border Patrol, from February 11, 2015 to the present.

"DHS" includes any sub-agency within the Department of Homeland Security, including but not limited to: CBP, U.S. Border Patrol, Immigration and Customs Enforcement ("ICE"), and all DHS oversight agencies (including the Office of Inspector General ("OIG"), CBP Internal Affairs, the Office of Civil Rights and Civil Liberties ("CRCL"), and ICE Office of Professional Responsibility).

PRIVACY ACT REQUEST

Ms. Bonin hereby requests the opportunity to access and review all records in DHS's possession that may be associated with her through her name, identifying number, symbol or other identifying particular, including but not limited to any fingerprints, photographs, or audio or visual recordings. *See* 5 U.S.C. § 552a(a)(4) (defining "records"). This request includes, but is not limited to, the following types of records:

- Apprehension by Border Patrol between Official Ports of Entry
- CBP Background Investigation
- Detention by Border Patrol or at Ports of Entry

In particular, Ms. Bonin asks that DHS search any and all potentially relevant Systems of Records for any records created on or after February 11, 2015, mentioning or referring to this Incident. At a minimum, the search should include, but not be limited to, any electronic system for which there exists a Privacy Impact Assessment, as well as the following Systems of Records:⁹

- DHS/OIG-002—Department of Homeland Security Office of Inspector General Investigative Records; and
- DHS/ALL-001—Department of Homeland Security Freedom of Information Act and Privacy Act Record System; and
- DHS/ALL-002—Department of Homeland Security Mailing and Other Lists System; and
- DHS/ALL-013—Department of Homeland Security Claims Records; and
- DHS/ALL-016—Department of Homeland Security Correspondence Records; and
- DHS/ALL-017—Department of Homeland Security General Legal Records; and
- DHS/ALL-018—Department of Homeland Security Grievances, Appeals, and Disciplinary Action; and
- DHS/ALL-020—Department of Homeland Security Internal Affairs Records; and
- DHS/ALL-029—Department of Homeland Security Civil Rights and Civil Liberties Records; and
- DHS/CPB-012—Department of Homeland Security Customs and Border Protection Closed Circuit Television System; and
- DHS/ICE-008—Department of Homeland Security Immigration and Customs Enforcement Search, Arrest, and Seizure Records; *and*
- any and all other DHS Systems of Records containing records associated with Ms. Bonin.

See 5 U.S.C. § 552a(a)(5) (defining “system of records”); 6 C.F.R. § 5.21(b) (“Description of Records Sought”).

Pursuant to 5 U.S.C. § 552a(d)(1), (f)(1)–(5), Ms. Bonin seeks prompt access to all records pertaining to herself in DHS’s possession in a reasonable time and manner, to be accompanied by her named legal representative, and to be given access to review and copy said records.

⁹ *See* Department of Homeland Security, Systems of Records Published Between January 3, 2012 and December 31, 2013, available at <http://1.usa.gov/19tdk9A> (last visited Mar. 16, 2015). To the extent any of the DHS Systems of Records listed here have been superseded by merger, reclassification or any other categorical change, this Request extends to the newly formed, merged, reclassified, or otherwise altered Systems of Records.

Attached hereto as Exhibit A, please find a Verification of Identity signed by Ms. Bonin under 28 U.S.C. § 1746, authorizing release of the requested information to Mitra Ebadolahi, Ms. Bonin's attorney representative at the ACLU. *See* 6 C.F.R. § 5.21(d) ("Verification of Identity"); *id.* § 5.21(f) ("Verification in case of third party information requests").

Because this Privacy Act Request implicates various potential DHS Systems of Records, it is being sent to DHS's Chief Privacy Officer for further distribution to various DHS components as appropriate.

FREEDOM OF INFORMATION ACT REQUEST

The ACLU hereby seeks disclosure of all DHS records pertaining to this Incident, including but not limited to:

1. Records describing, mentioning or referring to the Incident.
2. Records stating or containing or mentioning or referring to the name(s), agent number(s), rank(s), and/or position(s) of any DHS, CBP and/or U.S. Border Patrol personnel (including any supervisors and/or managers during any part of Ms. Bonin's stop, arrest or detention), contractors, subcontractors, or any other individuals who had contact with Ms. Bonin or who were in any way involved in this Incident. At a minimum, this includes records mentioning or referring to Border Patrol Agent Aldana, Border Patrol Agent Gomez, and Border Patrol Agent Constance—the three agents Ms. Bonin was able to identify during her ordeal.
3. Records referring to any investigation or disciplinary action taken in relation to this Incident, including any reference to misconduct or other wrongdoing by the individual(s) identified in Item 2 above.
4. Records cataloguing, documenting, or otherwise mentioning or referring to Ms. Bonin's personal property, including records documenting or otherwise mentioning or referring to the search of Ms. Bonin's vehicle at the Campo Border Patrol Station.
5. All DHS records, including but not limited to CBP and/or U.S. Border Patrol records, mentioning or referring to any criminal investigation(s) of Ms. Bonin on or after February 11, 2015.
6. All records mentioning or referring to any DHS surveillance, tracking, or monitoring of Ms. Bonin within or outside the United States.

7. Any guidelines, procedures, or policies in effect on February 11, 2015 that describe the detention, transport, custody, and/or care of U.S. citizens or other individuals by CBP and/or U.S. Border Patrol in San Diego Sector.¹⁰
8. Any guidelines, procedures, or policies in effect on February 11, 2015 that describe the detention, transport, custody, and/or care of U.S. citizens or other individuals by CBP and/or U.S. Border Patrol in El Centro Sector.¹¹

If any records responsive or potentially responsive to our Request have been destroyed, our Request includes, but is not limited to, any and all records relating or referring to the destruction of those records. This includes, but is not limited to, any and all records relating or referring to the events leading to the destruction of those records.

We request that searches of all electronic and paper/manual indices, filing systems, and locations for any and all records relating or referring to the subject of our Request be conducted.

In addition, please search for emails relating to the subject matter of our Request. Your search should include the personal email accounts of all employees and former employees who may have sent or received emails regarding the subject matter of this Request, as well as all institutional, shared, group, duty, task force, and all other joint and/or multi-user email accounts which may have been utilized by each such employee or former employee. Additionally, for each relevant email account identified, all storage areas must be searched, including the inbox “folder” (and all subfolders therein), sent folder, deleted folder, and all relevant archive files.

As required by the relevant case law, the agency should follow any leads it discovers during the conduct of its searches and should perform additional searches when said leads indicate that records may be located in another system. Failure to follow clear leads is a violation of FOIA.

We request that, in conducting its search, the agency disclose releasable records even if those records are available publicly through other sources outside the agency, such as the U.S. National Archives and Records Administration (“NARA”).

¹⁰ U.S. Border Patrol’s San Diego Sector includes Imperial Beach Station, Brown Field Station, Campo Station, San Clemente Station, El Cajon Station, Theodore L. Newton, Jr. and George F. Azrak (Murrieta) Station, Chula Vista Station, and Boulevard Station. *See* U.S. Customs and Border Protection, Border Patrol Sectors, <http://1.usa.gov/1lxfAT> (last visited June 2, 2015).

¹¹ U.S. Border Patrol’s El Centro Sector includes El Centro Station, Calexico Station, Riverside Station, and Indio Station. *See* U.S. Customs and Border Protection, Border Patrol Sectors, <http://1.usa.gov/1lxfAT> (last visited June 2, 2015).

With respect to the form of production, *see* 5 U.S.C. § 552(a)(3)(B), we request that responsive records be provided electronically in text-searchable, static-image format (PDF), in the best image quality in the agency's possession. We further request that reasonable metadata be transmitted along with responsive documents, including but not limited to email attachments, author and recipient information, date and time stamps, and the like. We request that any photographs or other visual materials responsive to our Request be released to us in their original or comparable forms, quality, and resolution. For example, if a photograph was taken digitally, or if the agency maintains a photograph digitally, we request disclosure of the original digital image file, not a reduced resolution version of that image file nor a printout and scan of that image file. Likewise, if a photograph was originally taken as a color photograph, we request disclosure of that photograph as a color image, not a black and white image.

REQUEST FOR A WAIVER OR LIMITATION OF SEARCH AND REVIEW FEES

The ACLU seeks a waiver of processing (search and review) fees because disclosure of the requested records is in the public interest, and because the ACLU qualifies as a "representative of the news media." *See* 5 U.S.C. § 552(a)(4)(A)(iii) ("Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it 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."); 6 C.F.R. § 5.11(d)(1) (search fees shall not be charged "for requests by educational institutions [. . .] or representatives of the news media"); *id.* § 5.11(k)(1) ("Records responsive to a request will be furnished without charge or at a charge reduced below that established under paragraph (c) of this section where a component determines, based on all available information, that the requester has demonstrated that (i) disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government; and (ii) disclosure of the information is not primarily in the commercial interest of the requester."). As discussed below, federal agencies routinely grant such fee waivers for FOIA requests made by the ACLU for these reasons.

At a minimum, should a total fee waiver be denied, "fees should be limited to reasonable standard charges for document duplication" because the ACLU is a "representative of the news media" and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

A. Release of the requested records is in the public interest.

The records requested will contribute significantly to public understanding of the government's operations or activities. Under 6 C.F.R. § 5.11(k)(2), the following factors are to be considered in determining whether a disclosure is in the public interest: (i) whether the subject of the requested records concerns "the operations or activities of the government"; (ii) whether the disclosure is "likely to contribute" to an understanding of government operations or

activities; (iii) whether disclosure of the requested information will contribute to “public understanding,” that is, “the understanding of a reasonably broad audience of persons interested in the subject”; and (iv) whether disclosure is likely to contribute “significantly” to public understanding of government operations or activities. *See* 6 C.F.R. § 5.11(k)(2)(i)–(iv). Each of these requirements is satisfied here.

First, the records requested pertain directly to the operations and activities of the federal government (specifically, U.S. Border Patrol’s interior enforcement operations).

Second, this Request is “likely to contribute” to an understanding of government operations or activities, specifically by helping the public understand: (1) how individuals, including U.S. citizens, are treated when encountering or being apprehended or detained by CBP or the U.S. Border Patrol, (2) whether such treatment comports with the U.S. Constitution and other federal laws, and (3) whether CBP personnel and/or contractors are properly investigated and held accountable when they fail to respect those laws.

Third, disclosure of the requested information will contribute to “the understanding of a reasonably broad audience of persons interested in the subject” of the treatment of individuals, including U.S. citizens, subjected to U.S. Border Patrol’s interior enforcement operations. Among other things, the ACLU intends to publish responsive records and analyze specific documents to raise public awareness of Border Patrol roving patrols, generally.

Finally, disclosure will contribute “significantly” to the public’s understanding of CBP and U.S. Border Patrol interior enforcement operations, including these agencies’ treatment of U.S. citizens stopped and held in their custody. Significant and sustained public and media attention has focused on rights abuses perpetuated by U.S. Border Patrol agents in the interior of the United States, yet much remains unknown about this critical human rights issue.

The ACLU has thus established, “with reasonable specificity[,] that its request pertains to operations of the government,” and “the informative value of a request depends not on there being certainty of what the documents will reveal, but rather on the requesting party having explained with reasonable specificity how those documents would increase public knowledge of the functions of the government.” *Citizens for Responsibility and Ethics in Washington v. Department of Health and Human Services*, 481 F. Supp. 2d 99, 107–109 (D.D.C. 2006).

B. Disclosure of the information requested is not in the ACLU’s commercial interest.

Disclosure of the information requested is not in the ACLU’s commercial interest. Any information obtained as a result of this FOIA request will be made available to the public at no cost.

C. The ACLU qualifies as a representative of the news media.

The ACLU meets the statutory and regulatory definitions of a “representative of the news media” because it is an “entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(ii)(II); *see also, e.g., National Security Archive v. Department of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989). The ACLU is a “representative of the news media” for the same reasons that it is “primarily engaged in the dissemination of information.” *See Electronic Privacy Information Center v. Department of Defense*, 241 F. Supp. 2d 5, 10–15 (D.D.C. 2003) (finding non-profit public interest group that disseminated an electronic newsletter and published books was a “representative of the news media” for FOIA purposes); *ACLU v. Department of Justice*, 321 F. Supp. 2d 24, 30 n.5 (D.D.C. 2004) (finding non-profit public interest group to be “primarily engaged in disseminating information”).¹² Various federal courts have held that the ACLU is a “representative of the news media.” *See, e.g., Service Women’s Action Network v. Department of Defense*, 888 F. Supp. 2d 282, 287–88 (D. Conn. 2012); *American Civil Liberties Union of Washington v. Department of Justice*, No. C09–0642RSL, 2011 WL 887731, at *10 (W.D. Wash. Mar. 10, 2011) (finding ACLU of Washington to be a “representative of the news media”), *reconsidered in part on other grounds*, 2011 WL 1900140 (W.D. Wash. May 19, 2011).

For the foregoing reasons, a fee waiver or limitation should be granted. A fee waiver would also fulfill Congress’s legislative intent in amending FOIA, namely to ensure that the Act is liberally construed in favor of granting waivers for noncommercial requesters and to effectuate disclosure of documents of public importance. *See Judicial Watch Inc. v. Rossotti*, 326 F.3d

¹² On account of these factors, fees associated with responding to FOIA requests are regularly waived for the ACLU. For example, in May 2012, the Bureau of Prisons granted a fee waiver to the ACLU for a FOIA request seeking documents concerning isolated confinement of prisoners in BOP custody. In March 2012, the Department of Justice Criminal Division granted a fee waiver to the ACLU for a FOIA request seeking records about the government’s access to the contents of individuals’ private electronic communications. In June 2011, the National Security Division of the Department of Justice granted a fee waiver to the ACLU with respect to a request for documents relating to the interpretation and implementation of a section of the PATRIOT Act. In October 2010, the Department of the Navy granted a fee waiver to the ACLU with respect to a request for documents regarding the deaths of detainees in U.S. custody. In January 2009, the CIA granted a fee waiver with respect to the same request. In March 2009, the State Department granted a fee waiver to the ACLU with regard to a FOIA request submitted in December 2008. The Department of Justice granted a fee waiver to the ACLU with regard to the same FOIA request. In November 2006, the Department of Health and Human Services granted a fee waiver to the ACLU with regard to a FOIA request submitted in November of 2006. In May 2005, the U.S. Department of Commerce granted a fee waiver to the ACLU with respect to its request for information regarding the radio-frequency identification chips in United States passports. In March 2005, the Department of State granted a fee waiver to the ACLU with regard to a request regarding the use of immigration laws to exclude prominent non-citizen scholars and intellectuals from the country because of their political views, statements, or associations. In addition, the Department of Defense did not charge the ACLU fees associated with FOIA requests submitted by the ACLU in April 2007, June 2006, February 2006, and October 2003. The Department of Justice did not charge the ACLU fees associated with FOIA requests submitted by the ACLU in November 2007, December 2005, and December 2004. Finally, three separate agencies—the Federal Bureau of Investigation, the Office of Intelligence Policy and Review, and the Office of Information and Privacy in the Department of Justice—did not charge the ACLU fees associated with a FOIA request submitted by the ACLU in August 2002.

ACLU SDIC Bonin FOIA/Privacy Act Request

1309, 1312 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it be liberally construed in favor of waivers for noncommercial requesters.” (internal quotation marks and citation omitted)); OPEN Government Act of 2007, Pub. L. No. 110-175, § 2, 121 Stat. 2524 (finding that “disclosure, not secrecy, is the dominant objective of the Act,” quoting *Department of Air Force v. Rose*, 425 U.S. 352, 361 (1976)).

Should a total waiver be denied, fees should be “limited to reasonable standard charges for document duplication.” 5 U.S.C. § 552(a)(4)(A)(ii)(II). In the event a fee waiver or reduction of costs is denied, please notify us in advance if the anticipated costs associated with this Request exceed \$100.00.

Pursuant to the applicable statute and regulations, we expect your reply to this Request within twenty (20) days, as required under 5 U.S.C. § 552(a)(6)(A)(i). If the Request is denied in whole or in part, we ask that you justify all withholdings by reference to specific exemptions to the FOIA. We also ask that you release all segregable portions of otherwise exempt material.

We reserve the right to appeal a decision to withhold any information or deny a waiver of fees.

Please furnish the requested records to:

ACLU of San Diego & Imperial Counties
c/o Mitra Ebadolahi, Staff Attorney
P.O. Box 87131
San Diego, CA 92138-7131
mebadolahi@aclusandiego.org

Should you need to communicate with the ACLU regarding this Request, please contact us by email at the address above, or by phone at the number listed below. Thank you in advance for your prompt assistance.

Sincerely,



Mitra Ebadolahi
Staff Attorney
ACLU of San Diego & Imperial Counties
619.398.4187

EXHIBIT B

TO COMPLAINT

**Bonin v US Border Patrol Agent Aldana,
et al**



**Homeland
Security**

Privacy Office, Mail Stop 0655

June 25, 2015

Mitra Ebadolahi
Staff Attorney
ACLU of San Diego & Imperial Counties
PO Box 87131

San Diego, CA 92138-7131

Re: **2015-HQFO-00506**

Dear Ms.Ebadolahi:

This letters acknowledges receipt of your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), Privacy Office, dated June 04, 2015, and received in this office on June 08, 2015. You requested documents regarding access and review all records in DHS's possession that may be associated through your client, Stella Bonin, any identifying number, symbol or other identifying particular, including but not limited to any fingerprints, photographs, or audio or visual recordings. This request includes, but is not limited to, the following types of records: Apprehension by Border Patrol between Official Ports of Entry, CBP Background Investigation, and Detention by Border Patrol or at Ports of Entry, any and all potentially relevant Systems of Records for any records created on or after February 11, 2015, mentioning or referring to this Incident. At a minimum, the search should include, but not be limited to, any electronic system for which there exists a Privacy Impact Assessment, as well as the following Systems of Records: DHS/OIG-002-Department of Homeland Security Office of Inspector General Investigative Records; and DHS/ALL-001 -Department of Homeland Security Freedom of Information Act and Privacy Act Record System; and DHS/ALL-002-Department of Homeland Security Mailing and Other Lists System; and DHS/ALL-013-Department of Homeland Security Claims Records; and DHS/ALL-016- Department of Homeland Security Correspondence Records; and DHS/ALL-017-Department of Homeland Security General Legal Records; and DHS/ALL-018-Department of Homeland Security Grievances, Appeals, and Disciplinary Action; and DHS/ALL-020-Department of Homeland Security Internal Affairs Records; and DHS/ALL-029-Department of Homeland Security Civil Rights and Civil Liberties Records; and DHS/CBP-012-Department of Homeland Security Customs and Border Protection Closed Circuit Television System; and DHS/ICE-008-Department of Homeland Security Immigration and Customs Enforcement Search, Arrest, and Seizure Records; and any and all other DHS Systems of Records containing records associated with your client, Ms. Bonin. Additionally, the ACLU hereby seeks disclosure of all DHS records pertaining to this Incident, including but not limited to: 1. Records describing, mentioning or referring to

the Incident. 2. Records stating or containing or mentioning or referring to the name(s), agent number(s), rank(s), and/or position(s) of any DHS, CBP and/or U.S. Border Patrol personnel (including any supervisors and/or managers during any part of Ms. Bonin's stop, arrest or detention), contractors, subcontractors, or any other individuals who had contact with Ms. Bonin or who were in any way involved in this Incident. At a minimum, this includes records mentioning or referring to Border Patrol Agent Aldana, Border Patrol Agent Gomez, and Border Patrol Agent Constance-the three agents Ms. Bonin was able to identify during her ordeal. 3. Records referring to any investigation or disciplinary action taken in relation to this Incident, including any reference to misconduct or other wrongdoing by the individual(s) identified in Item 2 above. 4. Records cataloguing, documenting, or otherwise mentioning or referring to Ms. Bonin's personal property, including records documenting or otherwise mentioning or referring to the search of Ms. Bonin's vehicle at the Campo Border Patrol Station. 5. All DHS records, including but not limited to CBP and/or U.S. Border Patrol records, mentioning or referring to any criminal investigation(s) of Ms. Bonin on or after February 11, 2015. 6. All records mentioning or referring to any DHS surveillance, tracking, or monitoring of Ms. Bonin within or outside the United States. 7. Any guideline, procedures, or policies in effect on February 11, 2015 that describe the detention, transport, custody and/or care of U.S. citizens or other individuals by CBP and/or U.S. Border Patrol in San Diego Sector. 8. Any guidelines, procedures, or policies in effect on February 11, 2015 that describe the detention, transport, custody, and/or care of U.S. citizens or other individuals by CBP and/or U.S. Border Patrol in El Centro Sector.

Due to the subject matter of your request, I am transferring this request to the FOIA Officer for U. S. Customs and Border Protection (CPB), U.S. Department of Homeland Security, 90 K Street, NE, 9th Floor, Washington, D.C. 20528, for processing under the FOIA and direct response to you. You may contact Sabrina Burroughs office directly at 202-325-0150.

Furthermore, we are transferring this request to the FOIA Offices for U.S. Immigration Customs Enforcement, Office of the Inspector General for The Department of Homeland Security and the Office of Civil Rights and Civil Liberties for the Department of Homeland Security as they too may have records responsive to your request.

If you need to contact our office again about this matter, please refer to **2015-HQFO-00506**. You may contact this office at 1-866-431-0486 or 202-343-1743.

Sincerely,

A handwritten signature in blue ink, appearing to read "Amy Pugh". The signature is fluid and cursive, with the first name "Amy" and last name "Pugh" clearly distinguishable.

Amy Pugh
FOIA Program Specialist

EXHIBIT C

TO COMPLAINT

**Bonin v US Border Patrol Agent Aldana,
et al**



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

July 9, 2015

Ms. Mitra Ebadolahi
ACLU of San Diego & Imperial Counties
PO Box 87131
San Diego, CA 92138

Subject: OIG Freedom of Information Act Request No. 2015-195
Privacy Office 2015-HQFO-00506
Final Response

Dear Ms. Ebadolahi:

This responds to your Freedom of Information Act/Privacy Act (FOIA/PA) request to the Department of Homeland Security (DHS) Privacy Office (PRIV), dated June 4, 2015, and seeking, in summary, all records related to a February 11, 2015 incident involving your client Stella Bonin and the U.S. Customs and Border Protection (CBP). PRIV referred your request to the Department of Homeland Security (DHS) Office of Inspector General (OIG) for processing and direct response to you. DHS-OIG received that referral on June 26, 2015, and assigned it the above-referenced FOIA tracking number.

DHS-OIG conducts independent investigations, audits, inspections, and special reviews of DHS personnel, programs, and operations to detect and deter waste, fraud, and abuse, and to promote integrity, economy, and efficiency within DHS. In response to your request, a search of DHS-OIG's investigative indices was conducted electronically; however, that search revealed no records responsive to your request.

This is the final action the DHS-OIG FOIA unit will take concerning this matter. You have the right to appeal this response.¹ Your appeal must be in writing and received within 60 days of the date of this response. Please address any appeal to:

¹ For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. 552(c) (2006 & Supp. IV 2010). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

FOIA/PA Appeals Unit
DHS-OIG Office of Counsel
STOP 0305
245 Murray Lane, SW
Washington, DC 20528-0305

Both the envelope and the letter of appeal must be clearly marked "Freedom of Information Act." Procedures for submitting an appeal are set forth in the DHS regulations at 6 C.F. R. § 5.9. If you have any questions about this response, please contact me at 202-632-0346, or Kirsten.Teal@oig.dhs.gov.

Sincerely,

Kirsten V. Teal
FOIA/PA Disclosure Specialist

EXHIBIT D

TO COMPLAINT

**Bonin v US Border Patrol Agent Aldana,
et al**



The ACLU's Border Litigation Project investigates, documents, and litigates civil and human rights violations in the U.S.-Mexico border region.

August 25, 2015

FOIA/PA Appeals Unit
DHS-OIG Office of Counsel
STOP 0305
245 Murray Lane, SW
Washington, DC 20528-0305
via Federal Express Overnight Delivery and email: FOIA.OIG@oig.dhs.gov

Re: FREEDOM OF INFORMATION ACT
APPEAL RE: FOIA REQUEST No. 2015-195
Privacy Office 2015-HQFO-00506

Dear Sir or Madam:

This letter constitutes an appeal under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552(a)(6), and is submitted to the Department of Homeland Security ("DHS") Office of Inspector General ("OIG") pursuant to the applicable DHS implementing regulations, 6 C.F.R. § 5.9. The appeal is submitted by the American Civil Liberties Union of San Diego and Imperial Counties ("ACLU" or "Requester").

On June 4, 2015, the ACLU submitted a FOIA request ("Request") to DHS seeking all records related to Stella Bonin, a U.S. citizen who was subjected to a roving patrol stop by U.S. Border Patrol agents on February 11, 2015. *See Exhibit A (Request)*. On June 25, 2015, the DHS Privacy Office referred our Request to OIG. *See Exhibit B (DHS Privacy Office Referral Letter)*.

On July 9, 2015, OIG sent the ACLU a final response to this Request. *See Exhibit C (OIG Final Response)*. In this response, OIG stated that its searches of DHS-OIG investigative indices revealed no records responsive to our Request.

The ACLU hereby appeals OIG's "final response" to this Request. We are not satisfied that OIG adequately searched for responsive records, as required by FOIA. We are similarly not satisfied that OIG has located and produced all responsive records, also as required by FOIA.

U.S. Border Patrol agents detained Ms. Bonin, without cause or provocation, while she was transporting her very sick miniature schnauzer from Arizona to San Diego for emergency medical treatment. Ms. Bonin was pulled over in a remote mountainous region of Interstate 8

near Campo, California. Border Patrol agents demanded that she exit her vehicle even after she volunteered that she was a U.S. citizen. The agents would not let Ms. Bonin leave and eventually escorted her to the Campo Border Patrol Station, where they searched her car without her consent. In all, Ms. Bonin was detained for more than two hours, all the while deeply concerned about her pet's deteriorating condition. She was never charged with any crime.

As OIG acknowledges in its "final response" to our Request, "DHS-OIG conducts independent investigations, audits, inspections, and special reviews of DHS personnel, programs, and operations to detect and deter waste, fraud, and abuse, and to promote integrity, economy, and efficiency within DHS." *See* Exhibit C. As such, OIG must have records related to Ms. Bonin's unlawful and unjustified mistreatment at the hands of DHS personnel—namely, roving Border Patrol agents near Campo.

The ACLU hereby also renews its requests for a fee waiver and expedited processing.

We look forward to your prompt response. Should you have any questions, you can contact me using the information below.

Sincerely,



Mitra Ebadolahi
Border Litigation Project Staff Attorney
ACLU of San Diego & Imperial Counties
Direct: 619.398.4187
Email: mebadolahi@aclusandiego.org

Attachments

cc: David Loy, Legal Director, ACLU-SDIC

EXHIBIT E

TO COMPLAINT

**Bonin v US Border Patrol Agent Aldana,
et al**



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

September 30, 2016

Ms. Mitra Ebadolahi
ACLU of San Diego & Imperial Counties
P.O. Box 87131
San Diego, CA 92138-7131

Re: Appeal No.: 2015-A19
Request No.: 2015-195

Dear Ms. Ebadolahi:

You appealed from the action of the Office of Inspector General (OIG) on your request for access to records pertaining to all records related to Stella Bonin, a U.S. citizen who was subjected to a roving patrol stop by U.S. Border Patrol agents on February 11, 2015. Specifically, you appealed the adequacy of the OIG's search for records responsive to your request.

In response to your appeal, the OIG conducted a second search and did not locate any records that are responsive to your request. Accordingly, I am affirming DHS-OIG's action on your request.

If you are dissatisfied with my action on your appeal, you may seek judicial review in accordance with the FOIA, 5 U.S.C. § 552(a)(4)(B).

Additionally, the 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road - OGIS
College Park, MD 20740-6001
E-mail: ogis@nara.gov
Web: <https://ogis.archives.gov>
Telephone: 202-741-5770
Fax: 202-741-5769
Toll-free: 1-877-684-6448

Sincerely,

X *Melinda Holliday McDonald*

Melinda Holliday McDonald

Assistant Counsel to the Inspector General