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

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

AMERICAN IMMIGRATION COUNCIL and) No. 3:23-CV-05270-SK) ANSWER)))))))))
CENTER FOR GENDER AND REFUGEE	
STUDIES,	
Plaintiffs,	
v.	
U.S. CUSTOMS AND BORDER	
PROTECTION and U.S. DEPARTMENT OF	
HOMELAND SECURITY,	
Defendants.	

Defendants U.S. Customs and Border Protection and U.S. Department of Homeland Security (“Defendants”), by and through counsel, respectfully respond to the Complaint filed by plaintiffs American Immigration Council and Center for Gender and Refugee Studies (“Plaintiffs”), ECF No. 1 (“Complaint”), as follows:¹

¹ The headings and numbered paragraphs of this Answer correspond to the headings and numbered paragraphs of the Complaint. Defendants do not waive any defensive theory or agree to or admit that Plaintiff’s headings are accurate, appropriate, or substantiated.

INTRODUCTION

1
2 1. Defendants admit that U.S. Customs and Border Protection (“CBP”) is a component of
3 the U.S. Department of Homeland Security (“DHS”). The remaining allegations of this paragraph
4 constitute Plaintiffs’ characterization of this action brought pursuant to the Freedom of Information Act
5 (“FOIA”) and their reasons for bringing this action, to which no response is required. To the extent any
6 further response is required, Defendants admit that Plaintiffs purport to bring this action under FOIA.
7 Defendants deny the remaining allegations.

8 2. Defendants admit that beginning on May 12, 2023, noncitizens without documents
9 sufficient for admission to the United States were able to use CBP One to schedule an appointment for
10 inspection at certain ports of entry. The remaining allegations in this paragraph contain Plaintiffs’
11 characterization of purported factual background to which no response is required. To the extent a
12 response is required, Defendants deny the remaining allegations in this paragraph.

13 3. This paragraph contains Plaintiffs’ characterization of purported factual background to
14 which no response is required. To the extent a response is required, Defendants deny the remaining
15 allegations in this paragraph.

16 4. Defendants admit only that Plaintiffs submitted a FOIA request to CBP on July 11, 2023.
17 The remaining allegations of this paragraph contain Plaintiffs’ characterization of purported factual
18 background to which no response is required. To the extent a response is required, Defendants deny the
19 remaining allegations in this paragraph.

20 5. Defendants admit the allegations set forth in this paragraph, and respectfully refer the
21 Court to the referenced FOIA request as the best evidence of its contents.

22 6. Defendants admit that CBP has not issued a final response to Plaintiffs’ FOIA request as
23 of the filing of the Complaint. Defendants aver that CBP sent a notice on July 12, 2023, denying
24 Plaintiff’s request for expedited processing.

25 7. Defendants lack knowledge or information sufficient to form a belief as to the allegations
26 set forth in this paragraph, and on that basis deny them.

27 8. Defendants admit the allegations set forth in this paragraph, and respectfully refer the
28 Court to the Complaint as the best evidence of its contents.

JURISDICTION

9. This paragraph consists of Plaintiffs' legal conclusions, to which no response is required. To the extent any response is required, Defendants respectfully direct the Court to the provisions of FOIA and deny all allegations inconsistent therewith.

10. This paragraph consists of Plaintiffs' legal conclusions, to which no response is required. To the extent any response is required, Defendants respectfully direct the Court to the provisions of FOIA and deny all allegations inconsistent therewith.

11. This paragraph consists of Plaintiffs' legal conclusions, to which no response is required. To the extent any response is required, Defendants respectfully direct the Court to the provisions of FOIA and deny all allegations inconsistent therewith.

VENUE

12. Defendants lack knowledge or information sufficient to form a belief as to the allegations set forth in this paragraph, and on that basis deny them.

INTRADISTRICT ASSIGNMENT

13. Defendants lack knowledge or information sufficient to form a belief as to the allegations set forth in this paragraph, and on that basis deny them.

PARTIES

14. This paragraph constitutes Plaintiffs' characterization of their respective organizations, to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the allegations set forth in this paragraph, and on that basis deny them.

15. This paragraph constitutes Plaintiffs' characterization of their respective organizations, to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the allegations set forth in this paragraph, and on that basis deny them.

16. Defendants admit that DHS is an agency of the United States government and respectfully directs the Court to 5 U.S.C. § 552(f). Defendants deny all allegations inconsistent therewith.

17. Defendants admit that CBP is a branch of DHS. The remainder of this paragraph consists of Plaintiffs' legal conclusions, to which no response is required. To the extent any response is required, Defendants respectfully direct the Court to 5 U.S.C. § 552(f) and deny all allegations inconsistent therewith.

18. This paragraph constitutes Plaintiff's legal conclusions, to which no response is required. To the extent any response is required, Defendants respectfully direct the Court to the provisions of the Immigration and Nationality Act and deny all allegations inconsistent therewith.

STATEMENT OF FACTS

19. This paragraph contains Plaintiffs' characterization of purported factual background to which no response is required. To the extent a response is required, Defendants deny the remaining allegations in this paragraph.

20. This paragraph contains Plaintiffs' characterization of purported factual background to which no response is required. To the extent a response is required, Defendants deny the remaining allegations in this paragraph.

21. This paragraph contains Plaintiffs' characterization of purported factual background to which no response is required. To the extent a response is required, Defendants deny the remaining allegations in this paragraph.

22. This paragraph constitutes Plaintiff's legal conclusions, to which no response is required. To the extent any response is required, Defendants respectfully directs the Court to 8 U.S.C. § 1225(a)(3), 1182(a), 1158(a)(1), 1225(b)(1), 1229, and 1229a and deny all allegations inconsistent therewith.

23. This paragraph contains Plaintiffs' characterization of purported factual background to which no response is required. To the extent a response is required, Defendants deny the remaining allegations in this paragraph.

24. Defendants admit only that the government terminated the implementation of the Title 42 restrictions on May 11, 2023, and to the extent a response is required, Defendants deny the remaining allegations in this paragraph.

25. This paragraph contains Plaintiffs' characterization of purported factual background to

1 which no response is required. To the extent a response is required, Defendants deny the remaining
2 allegations in this paragraph.

3 26. This paragraph and corresponding footnote 1 contain Plaintiffs' characterization of
4 purported factual background to which no response is required. To the extent a response is required,
5 Defendants deny the allegations set forth in this paragraph.

6 27. This paragraph and corresponding footnotes 2 and 3 contain Plaintiffs' characterization
7 of purported factual background to which no response is required. To the extent a response is required,
8 Defendants deny the allegations set forth in this paragraph.

9 28. This paragraph contains Plaintiffs' characterization of purported factual background to
10 which no response is required. To the extent a response is required, Defendants deny the allegations set
11 forth in this paragraph.

12 29. This paragraph contains Plaintiffs' characterization of purported factual background to
13 which no response is required. To the extent a response is required, Defendants deny the allegations set
14 forth in this paragraph.

15 30. Defendants admit the allegations set forth in this paragraph, and respectfully refer the
16 Court to the referenced FOIA request as the best evidence of its contents.

17 31. Defendants admit the allegations set forth in this paragraph, and respectfully refer the
18 Court to the referenced FOIA request as the best evidence of its contents.

19 32. Defendants admit the allegations set forth in this paragraph, and respectfully refer the
20 Court to the referenced FOIA request as the best evidence of its contents.

21 33. Defendants admit the allegations set forth in this paragraph, and respectfully refer the
22 Court to the referenced FOIA request as the best evidence of its contents.

23 34. Defendants admit the allegations set forth in this paragraph.

24 35. Defendants aver that CBP sent a notice on July 12, 2023, denying Plaintiffs' request for
25 an expedited processing. Defendants also aver that CBP sent a notice on July 12, 2023, responding to
26 Plaintiffs' request for a fee waiver as "Not Applicable."

27 36. Defendants admit only that CBP has not issued a final response to Plaintiffs' FOIA
28 request as of the filing of the Complaint, and to the extent any further response is required, deny the

1 remaining allegations in this paragraph.

2 37. Defendants admit only that CBP has not issued a final response to Plaintiffs' FOIA
3 request as of the filing of the Complaint. To the extent any response is required, Defendants respectfully
4 direct the Court to the provisions of FOIA and deny all allegations inconsistent therewith.

5 38. This paragraph constitutes Plaintiffs' legal conclusions and Plaintiffs' characterization of
6 purported factual background to which no response is required. To the extent any response is required,
7 Defendants respectfully direct the Court to the provisions of FOIA and deny all allegations inconsistent
8 therewith.

9 **CLAIM FOR RELIEF**

10 **FIRST CAUSE OF ACTION**

11 39. Defendants incorporate by reference their responses to Paragraphs 1 through 38.

12 40. This paragraph consists of Plaintiffs' legal conclusions, to which no response is required.
13 To the extent any response is required, Defendants respectfully direct the Court to the provisions of
14 FOIA and deny all allegations inconsistent therewith.

15 41. Defendants admit only that CBP has not issued a final response to Plaintiffs' FOIA
16 request as of the filing of the Complaint, and to the extent any further response is required, deny the
17 remaining allegations in this paragraph.

18 **SECOND CAUSE OF ACTION**

19 42. Defendants incorporate by reference their responses to Paragraphs 1 through 38.

20 43. Defendants admit only that CBP has not issued a final response to Plaintiffs' FOIA
21 request as of the filing of the Complaint, and to the extent any further response is required, deny the
22 remaining allegations in this paragraph.

23 **THIRD CAUSE OF ACTION**

24 44. Defendants incorporate by reference their responses to Paragraphs 1 through 38.

25 45. Defendants admit only that CBP has not issued a final response to Plaintiffs' FOIA
26 request as of the filing of the Complaint, and to the extent any further response is required, deny the
27 remaining allegations in this paragraph.

28 46. This paragraph consists of Plaintiffs' legal conclusions, to which no response is required.

1 To the extent any response is required, Defendants respectfully direct the Court to the provisions of
2 FOIA and deny all allegations inconsistent therewith.

3 47. This paragraph consists of Plaintiffs' legal conclusions, to which no response is required.
4 To the extent any response is required, Defendants respectfully direct the Court to the provisions of
5 FOIA and deny all allegations inconsistent therewith.

6 48. This paragraph consists of Plaintiffs' legal conclusions, to which no response is required.
7 To the extent any response is required, Defendants respectfully direct the Court to the provisions of
8 FOIA and deny all allegations inconsistent therewith.

9 **FOURTH CAUSE OF ACTION**

10 49. Defendants incorporate by reference their responses to Paragraphs 1 through 38.

11 50. This paragraph consists of Plaintiffs' legal conclusions, to which no response is required.
12 To the extent any response is required, Defendants aver that CBP sent a notice on July 12, 2023,
13 denying Plaintiff's request for expedited processing and deny any other remaining allegations in this
14 paragraph.

15 51. This paragraph consists of Plaintiffs' legal conclusions, to which no response is required.
16 To the extent any response is required, Defendants aver that CBP sent a notice on July 12, 2023,
17 denying Plaintiff's request for expedited processing and deny any other remaining allegations in this
18 paragraph.

19 **REQUEST FOR RELIEF**

20 The remainder of the Complaint consists of Plaintiffs' request for relief, to which no response is
21 required. To the extent these paragraphs are deemed to contain factual allegations, Defendants deny
22 those allegations and deny that Plaintiff is entitled to any relief.

23 **AFFIRMATIVE OR OTHER DEFENSES**

24 **FIRST AFFIRMATIVE DEFENSE**

25 The Complaint fails to state a claim upon which relief may be granted.

26 **SECOND AFFIRMATIVE DEFENSE**

27 The information that Defendants have withheld, or will withhold, in response to Plaintiffs' FOIA
28 request may be exempt in whole or part from public disclosure under the FOIA, 5 U.S.C. § 552(b), and

1 the Privacy Act, 5 U.S.C. § 552a, *et seq.*

2 **THIRD AFFIRMATIVE DEFENSE**

3 The Court lacks subject matter jurisdiction over any requested relief that exceeds the relief
4 authorized by FOIA.

5 **FOURTH AFFIRMATIVE DEFENSE**

6 Plaintiffs have not alleged sufficient factual and/or legal bases for its request for attorneys' fees
7 and/or costs.

8 **FIFTH AFFIRMATIVE DEFENSE**

9 The Complaint raises claims that are or will become moot.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Defendants pray that:

- 12 1. Plaintiff takes nothing by its Complaint;
13 2. The Complaint be dismissed with prejudice;
14 3. Judgment be entered in favor of Defendants;
15 4. Defendants be awarded their costs of suit;
16 5. The Court award such other and further relief as it may deem proper.

17
18 DATED: December 15, 2023

Respectfully submitted,

19 ISMAIL J. RAMSEY
20 United States Attorney

21 /s/ Michael A. Keough
22 MICHAEL A. KEOUGH
Assistant United States Attorney

23 Attorneys for Defendant
24 U.S. CUSTOMS AND BORDER
PROTECTION and U.S. DEPARTMENT OF
HOMELAND SECURITY