

**UNITED STATES DISTRICT COURT
For the Northern District of Illinois –
Eastern Division**

Jacqueline Stevens)
Plaintiff,)
v.)
)
United States Immigration and Customs)
Enforcement and United States)
Department Of Homeland Security)
Defendants.)
)

Case No.: 20 cv 2725

FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act, (“FOIA”) 5 U.S.C. § 552, the Declaratory Judgments Act, 22 U.S.C. §2201 et seq., and the Administrative Procedures Act, 5 USC §551 et seq. (APA), pertaining to (1) wrongfully withheld agency records relating to conditions of detention and medical treatment of individuals held in detention by U.S. Immigration and Customs Enforcement (“ICE”) and U.S. Department of Homeland Security (“DHS”); and (2) a nationwide pattern and practice of failing to make determinations regarding FOIA requests and inter-DHS components referrals within the time frames mandated by Congress within the FOIA.

2. This complaint in Counts II and III seeks declaratory and injunctive relief to remedy Defendant ICE’s pattern and practice of systemic violations of FOIA which includes: (1) failure to make determinations concerning FOIA requests within the mandated statutory time periods; (2) failure to conduct proper searches to locate documents responsive to FOIA requests; (3) failure to segregate non-exempt material in records to which ICE had applied redactions; and (4) failure to allocate sufficient resources to address its ever growing FOIA backlog. Counts I and II do not seek the production of documents withheld in response to individual FOIA requests.

3. Plaintiff Stevens has been irreparably harmed by Defendants' repeated and deliberate violations of the Act: she needs the withheld records for her scholarship and journalism analyzing professional and criminal misconduct in government agencies and corporations that implement policies on behalf of U.S. national sovereignty. Plaintiff Stevens also has been harmed in the past and will continue to be harmed in the future by Defendants' uniform practices challenged by this complaint: Plaintiff has many pending FOIA requests and as part of her work will continue to make additional requests for DHS and ICE records as part of her scholarship and journalism.

Jurisdiction and Venue

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 522(a)(4)(B). This Court has further jurisdiction to grant declaratory relief pursuant to 28 U.S.C. §2201-2202.

5. Venue is proper under 5 U.S.C. § 552(a)(4)(B) because Plaintiff Stevens resides within this District.

Parties

6. Plaintiff is a professor of political science and the director of the Deportation Research Clinic at Northwestern University, in Cook County, Illinois. Stevens' office and principal residence are in Cook County, Illinois.

7. In 2011, Stevens published a scholarly article in the *Virginia Journal of Social Policy & the Law* detailing the U.S. government's unlawful detention and deportation of U.S. citizens. The article estimated that from 2003 to 2010, "more than 20,000 U.S. Citizens were detained or deported," and identified as the cause, "laws and regulations mandating detention and

deportation of hundreds of thousands of incarcerated people without attorneys.”¹ This article was featured in several publications and drew attention to the practice.² Stevens also wrote an opinion piece published in the *New York Times* on the issue.³

8. Since 2011, Stevens has continued to research, investigate, and publish on the subject of deportation of U.S. Citizens. In 2012, she founded the Deportation Research Clinic for the purpose of studying government misconduct in deportation proceedings.⁴ In 2013 she was awarded a Guggenheim fellowship to support her research on the deportation of U.S. citizens.⁵ In 2017 her co-edited book *Citizenship in Question: Evidentiary Birthright and Statelessness* was published by Duke University Press. Duke sold the copyright to a non-profit librarian-run consortium Knowledge Unlatched through which the collection is available worldwide at no cost.⁶ Stevens’ contribution was awarded “Best Chapter” of 2017 by the Citizenship and Migration Section of the American Political Science Association.⁷ Many of the cases she

¹Jacqueline Stevens, “U.S Government Unlawfully Detaining and Deporting U.S. Citizens as Aliens,” *Virginia Journal of Social Policy & the Law*, Spring, 2011, available at <http://jacquelinestevens.org/StevensVSP18.32011.pdf>.

²*New York Times*, “Immigration Crackdown Snares Americans” December, 2011, available at <http://www.nytimes.com/2011/12/14/us/measures-to-capture-illegal-aliens-nabcitizens.html?pagewanted=all> ; Christian Science Monitor, “Deported teen returns to U.S. How many Americans are mistakenly banned” January, 2012, available at <http://www.csmonitor.com/USA/2012/0107/Deported-teen-returns-to-US.-How-many-Americans-are-mistakenly-banished>.

³Jacqueline Stevens, “Citizenship to Go,” *New York Times* May, 2012, available at <http://www.nytimes.com/2012/05/18/opinion/citizenship-to-go.html>.

⁴ Jacqueline Stevens, “Forensic Intelligence and the Deportation Research Clinic: Toward a New Paradigm,” *Perspectives on Politics*, September, 2015, available at <https://www.cambridge.org/core/journals/perspectives-on-politics/article/forensic-intelligenceand-the-deportation-research-clinic-toward-a-newparadigm/0ABA0DEA34330E5F755A628FAB0C5CCB>

⁵ Guggenheim Fellow announcement, 2013, <https://www.gf.org/fellows/all-fellows/jacqueline-stevens/>.

⁶ *Citizenship in Question* (2017), <http://library.oapen.org/handle/20.500.12657/31762>.

⁷ Best Chapter Award, <https://www.apsanet.org/MEMBERSHIP/Organized-Sections/Organized-Section-Awards/Section-43#chapter>.

studied have become lawsuits on behalf of the detained U.S. citizens and have been widely reported.⁸

9. Stevens' past publications using documents obtained under the FOIA have been used to draw national attention to secret ICE detention facilities in unmarked office parks and urban buildings, the unlawful detention and deportation of U.S. citizens as aliens, migrant children misidentified as adults based on dental radiographs, and major violations by private prisons of state employment laws and the Trafficking Victims Protection Act, including forced labor.⁹ In addition to scholarship and media coverage, the FOIA records she obtained and analyzed has become the basis for litigation.¹⁰

10. Stevens has spent years researching conditions of detention in ICE detention facilities, working to identify systemic protocols and misconduct underlying the deportation of U.S. citizens and the violation of civil and constitutional rights of those detained. A primary tool in

⁸ See, e.g., William Finnigan, "The Deportation Machine," *New Yorker*, April 29, 2013, <https://www.newyorker.com/magazine/2013/04/29/the-deportation-machine>; Mary Sanchez, "How Broken is Our System? We Deport Citizens," June 9, 2015, <https://www.chicagotribune.com/columns/sns-201506091930—tms--msanchezctnms-a20150609-20150609-column.html>; NPR, "You Say You're An American, But What If You Had to Prove it or be Deported?" December, 2016 available at <http://www.npr.org/sections/thetwo-way/2016/12/22/504031635/you-say-you-re-an-american-but-what-if-you-had-to-prove-it-or-bedeported>; *States Without Nations* blogpost, available at <http://stateswithoutnations.blogspot.com/2016/02/how-many-us-attorneys-and-assistant.html>; NPR "In Rush to Deport, Expelling U.S. citizens" <http://www.npr.org/2011/10/24/141500145/in-the-rush-to-deport-expelling-u-s-citizens>;

⁹ See e.g., Nadia Reiman, "My Very Unhappy Birthday," *This American Life*, <https://www.thisamericanlife.org/679/save-the-girl/act-one-6>; On the prison litigation; Jacqueline Stevens, "When Migrants are Treated Like Slaves," *New York Times* (April 4, 2018) <https://www.nytimes.com/2018/04/04/opinion/migrants-detention-forced-labor.html>; Jacqueline Stevens, *Citizenship In Question: Evidentiary Birthright and Citizenship*, "The Alien Who is a Citizen" (2017); Jacqueline Stevens, "One Dollar Per Day: The Slaving Wages of Immigration Jail, 1942 to Present," *Georgetown Immigration Law Journal* (2015);

¹⁰ See *Gonzalez v. CORECIVIC, Inc.*, case no: 1:18-cv-00169 (filed 2/22/2018); *Barrientos, et al. v. CORECIVIC, Inc.*, case no: 4:18-cv-00070-CDL (filed 4/17/2018); *Raul Novoa, et al v. The GEO Group, Inc.*, case no: 5:17-cv-02514 (filed 12/20/2017); *Chao Chen v. The GEO Group, Inc.*, case no. 3:17-cv-05769 (filed 9/26/2017); *State of Washington v. The GEO Group, Inc.*, case no. 17-2-11422 (09/20/2017); *Alejandro Menocal et al. v. GEO Group, Inc.*, case no. 1-14-cv-02887 (filed 10/21/2014)); *Sylvester Owino and Jonathan Gomez et al. v. CoreCivic*, case no. 3:17-cv-01112-jls-nls (filed 05/31/2017).

her research efforts has been obtaining and reviewing U.S. government documents pursuant to FOIA requests.

11. Under the current and Trump administrations, government misconduct in deportation proceedings has generated additional media and Congressional attention to ICE policies and procedures, including those surrounding the deportation of U.S. Citizens.¹¹ ICE's response has been to further decrease transparency, leaving FOIA as the primary tool for researchers and journalists to uncover changes in policy and practice and abuses by the agency.

12. Defendant ICE is an executive agency of the United States government and is principally responsible for enforcing federal immigration laws. ICE is an agency within the meaning of 5 U.S.C. § 522(f)(1). ICE is an agency within the U.S. Department of Homeland Security ("DHS").

13. ICE has custody, possession, and control over the records sought by Stevens under the Act, and ICE had such custody, possession, and control at the time the records were requested.

14. The U.S. Department of Homeland Security ("DHS") is a cabinet department of the United States federal government and an executive agency with the primary mission of securing the United States. DHS is an agency within the meaning of 5 U.S.C. § 522(f)(1).

¹¹ See Tom Hals, "U.S. to ramp up rapid deportations with sweeping new rule," Reuters, July 22, 2019, <https://www.reuters.com/article/us-usa-immigration-deportation/us-to-ramp-up-rapid-deportations-with-sweeping-new-rule-idUSKCN1UH275>; *The Daily Beast*, "American Citizen Trapped in ICE Jail" March, 2017, <http://www.thedailybeast.com/articles/2017/03/31/american-citizen-trapped-in-ice-jail.html>; Prison Legal News, "Ignorance, Bureaucracy and Red Tape: U.S. Citizens Mistakenly Deported" April, 2017, <https://www.prisonlegalnews.org/news/2017/apr/3/ignorancebureaucracy-and-red-tape-us-citizens-mistakenly-deported/>; Asbury Park Press, "How ICE Can Detain U.S. Citizens," March, 2017, <http://www.app.com/story/news/local/publicsafety/2017/03/23/immigration-know-your-rights-trump-freehold/99459216/>. Stevens in 2020 assisted the Government Accountability Office in its research for a report being prepared at the request of Rep. Jerry Nadler (D-NY), Chair, House Judiciary.

15. DHS may have custody, possession, and control over some of the records sought by Stevens under the Act, and DHS may have had such custody, possession, and control at the time the records were requested.

16. DHS and ICE apply and have applied the practices challenged in Counts II and III to FOIA requests made by Plaintiff and other requestors.

Plaintiff's FOIA Requests

Request no. 1 – Subfield office locations

17. On August 6, 2018, Stevens submitted a request to ICE for the following, pursuant to FOIA:

- 1) A list of all ICE Enforcement and Removal Field and Subfield offices by control city, including the complete phone numbers and addresses of these offices in the United States and abroad and information on holding cells in these locations, as well as the number of unique individuals in custody at that location between Monday, July 30 and August 5, 2018. Please include as well all locations at which individuals were held for more than 24 hours and the dates on which that occurred between January 1, 2016 and the day of the release of information.
- 2) Please include the Excel spreadsheet and screen shots of the data base interface used to produce the search results.
- 3) A list of addresses for locations listed as "unavailable" in the release to the NIJC of 11/6/2017 (https://immigrantjustice.org/sites/default/files/uploaded-files/no-content-type/2018-06/ICE_Facility_List_11-06-2017-web.xlsx).

18. On September 5, 2018, the ICE FOIA Office sent an email to Stevens referencing **2018-ICFO-56530** as the case **number** assigned to the request and stating as follows:

In conducting a search for responsive records, the ICE FOIA office has determined that further clarification is needed regarding your request. Please describe what you mean by "information on holding cells" and "unique individuals in custody at that location." Please provide the ICE FOIA office with a response as soon as possible to avoid any further delay in the processing of your request. If a response is not received within 30 days, your request will be administratively closed.

19. This inquiry is evidence of ICE's pattern and practice of triggering unwarranted and unjustified delays within the FOIA determination process. There is no lawful basis for tolling the 20 days imposed by Congress for responding to this and other requests.

20. On September 5, 2018, within an hour of ICE sending their inquiry, Stevens clarified both points of professed confusion by stating the following:

1) "Holding cells" is the term of art used by ICE and federal courts to refer to areas where people arrested by ICE or other components of DHS are held. Hence the name "holding cells." e.g., here is a reference in an ICE document to "holding cells."

https://www.ice.gov/doclib/foia/prea_audit/losAngelesStagingFacilityMar14_15_2017.pdf (Just use control/f.) You can find dozens more references on your own website, if you go to ice.gov and type "holding cells" into the search box. Please see this reference as well from an ICE spokesperson.

<https://www.kansas.com/news/business/bizcolumnsblogs/carrie-rengers/article1114192.html>.

2) Per the American Heritage Dictionary, A "unique individual" is one distinguishable human being. ICE maintains data on this, and I included a link to this data.

21. On September 10, 2018, Stevens checked the status of the request on the FOIA online tracking platform. The platform reported the status of her request was "On Hold - Other". To address this, Stevens sent an email to the ICE FOIA Office stating the following:

Can you please advise as to the estimated date of completion, insofar as the agency has gone beyond the time allowed by statute? I am not sure about the nature of this delay. The information I am seeking is any description of the facility holding people, i.e., the square feet, availability of a toilet, security, access to visitors. And I want to know how many people are held in these facilities in a particular time frame, per my request.

22. The email went unanswered by ICE.

23. On March 15, 2019, ICE issued a "final response" to Steven's request, stating that the search of the ICE Office of Enforcement and Removal Operations (ERO) for records produced one spreadsheet responsive to her request.

24. On May 1, 2019, Stevens appealed the determination as the production was not a responsive document as contemplated by FOIA; the response included only the city locations of

the offices and omitted the full addresses and phone numbers of the locations as well as other information responsive to her request, while the cover letter included no legal grounds for this omission.

25. On May 20, 2019, the Government Information Law Division of DHS sent Plaintiff a letter claiming to have received the appeal on May 20, 2019, and assigning it case number 2019-ICAP-00377.

26. In a letter dated June 18, 2019, ICE issued a response summarizing the appeal tracked as **2019-ICAP-00377** and then stating: "ICE is therefore remanding your appeal to the ICE FOIA Office for the completion of processing, including tasking to the appropriate agency/office(s) to obtain any responsive documents, and a direct response to you."

27. As of February 7, 2022, 754 business days have lapsed since the appeal was remanded but Plaintiff's request has not been completed.

Request No. 2 – Lauren Underwood and Electronic Health Records

28. On November 22, 2019, Stevens submitted to the Department of Homeland Security through an online portal a request for the following information:

1) all communications and related materials created, received, or maintained by the Department of Homeland Security to which Rep. Lauren Underwood(D-IL), or any member of her staff were a party. This includes but is not limited to all email, text messages, notes, reports, memorandums, proposed bill texts, and bill evaluations. In a floor speech of 9/26/2019 Rep. Underwood stated she received information from the "Department of Homeland Security" indicating a request for an integrated Electronic Health Records System she referenced as "EHR." She refers to this in her remarks on HR 3525 as a "direct ask from medical officers at the Department of Homeland Security."

2) DHS communications and related materials created by or received from other components of DHS or the Department of Health and Human Services Office of Refugee Resettlement about the use of Electronic Health Records systems already in place as well as the establishment of an EHR for the use by offices of CBP.

3) Information on meetings and communications with private individuals, including but not limited to lobbyists or company officials related to past, current, or potential "enterprise" or other information technologies for collecting, coordinating, or maintaining health records data for those encountered or detained by DHS or any

component of DHS. Technical reports, email, text messages, or other communications with the private sector tied to past, current, or potential contracts tied to EHR systems.

The time frame of this request is January 1, 2017 to the present, by which I mean the date a search is initiated by the tasked component.¹²

29. On December 2, 2019 Stevens received by email letter from DHS restating her request and assigning it case number **2020-HQFO-00215**. The letter, signed by James Holzer, Deputy Chief Privacy Officer, Deputy Chief FOIA Officer, DHS, stated:

Due to the subject matter of your request, I am transferring this request to the FOIA Officers for United States Immigration and Customs Enforcement (ICE), and U.S. Customs and Border Protection (CBP), for processing under the FOIA and direct response to you.

30. On January 22, 2020, Stevens received an email referencing her FOIA request with a new tracking number: **2020-ICFO-18634**. The correspondence stated in relevant part as follows:

we determined that your request is too broad in scope, did not specifically identify the records which you are seeking, or only posed questions to the agency. Records must be described in reasonably sufficient detail to enable government employees who are familiar with the subject area to locate records without placing an unreasonable burden upon the agency.... Please resubmit your request containing a reasonable description of the records you are seeking. Upon receipt of a perfected request, you will be advised as to the status of your request. If we do not hear from you within 30 days from the date of this letter, we will assume you are no longer interested in this FOIA request, and the case will be administratively closed. Please be advised that this action is not a denial of your request and will not preclude you from filing other requests in the future.

31. That same day, January 22, 2020, Stevens replied: "This is a very specific description of the records I am seeking. Please produce the responsive documents immediately; the response time already has exceeded the statutory limit."

32. Stevens received no further reply.

¹²Stevens co-authored, "Democratic Representative Pushed to Create a Massive Migrant Health Database that No One Wants," *The Intercept*, Jan. 4, 2020, <https://theintercept.com/2020/01/04/border-patrol-cbp-migrant-health-database>. She seeks these records for her ongoing investigations of government corruption.

33. Plaintiff attempted repeatedly to contact ICE via the phone number provided. On January 23, 2020, she sent the following email to ice-foia@dhs.gov with subject line *2020-ICFO-18634 and problem with ICE telephonic service, in violation of the FOIA statute*:

To whom it may concern, Over the past seven months, including today, I have attempted to contact this office over the phone. So far, I have been unable to do either, as my calls are dropped each time. When I call the number provided both on the cover letter of the FOIA response and on your .gov website for the ICE/FOIA PA headquarters office (866-633-1182), I am directed to press 1 (for english), press 3 (for questions regarding my FOIA case), and hold as I am transferred to two different lines until the call is dropped. This has happened on previous occasions, indicating the problem seems to be systematic. I would very much appreciate a response to this email as soon as possible 1) explaining why I cannot get in contact over the phone; 2) providing a responsive phone number for me to contact; and 3) providing me immediate response to the email I sent yesterday re: 2020-ICFO-18634 and ICE's unlawful refusal even to initiate a search for a legally valid request in the statutory time frame much less produce responsive documents. I am trying to clear this up with the agency to avoid the need to bring another lawsuit against ICE and needless waste taxpayer and judicial resources. Please let me know if ICE will be conducting the search. If not I will be forced to include this case in my upcoming FOIA complaint. Thank you, Jackie.”

34. Stevens received no documents and no further communication from Defendant regarding this properly submitted FOIA request.

35. As of February 7, 2022, 543 business days have lapsed since Stevens submitted her request.

Request No. 3 – Butler County Jail

36. On March 25, 2019, Stevens submitted a FOIA request for the following information:

All documents ICE has referencing the Butler County Jail work program for detainees, including but not limited to documents with the language about porters Chief Dwyer stated he had personally read in an IGSA, as well as all other correspondence about the Butler County's use of people held under immigration law to perform work in and around the facility. People likely to have or have access to responsive documents include but are not limited to Tae Johnson and Kevin Landy.

All formal and informal compliance reports and follow-up correspondence, including but not limited to email, attachments, grievances or complaints, and contract addenda for Butler County, in particular associated with the deficiencies noted in the reports.

All data tracking the length of time people are held in the Butler County facility; if there is a db with the number of days/alien please send me an output from that db with the individually identifying information redacted but including the date of arrival and transfer from the facility, as well as the status of the case at the time of transfer,

i.e., VD, removal, termination, transfer to another ICE facility. The date for this request is April 11, 2014 through the time documents are submitted from the component to the ICE FOIA office for redaction or the time frame when the documents are produced in litigation, whichever is most contemporary to their production to me.

37. On April 8, 2019, ICE responded via email confirming receipt of the request and assigning it tracking number **2019-ICFO-33429**. Defendant invoked a 10-day extension of the mandated FOIA response period due to the fact that Stevens request “seeks numerous documents that will necessitate a thorough and wide-ranging search.”

38. On August 16, 2019, a research assistant working under the supervision of Plaintiff checked the status of the request on the DHS FOIA status website. The platform reported that the request’s status as “Request for Docs Sent.”

39. On October 7, 2020, Plaintiff, pursuant to litigation, received a “first production” of responsive documents. The cover letter referenced combined withholdings for 2019-ICFO-29171 and 2019-ICFO-33429 of a total of “556 pages of a potentially responsive document”; no effort was made to indicate how many pages for each production were located or withheld. Numerous large chunks were redacted from the records responsive to the request for information.

40. On November 24, 2020, Plaintiff, pursuant to litigation, received a “second production” of responsive documents. The cover letter stated that for two separate requests of 2019-ICFO-24680 and 2019-ICFO-33429, “510 pages of a potentially responsive documents were reviewed.” No effort was made to indicate how many pages for each production were located or withheld. Numerous large chunks were redacted from the records responsive to the request for information. No statement was made indicating that the records produced reflected all records that could be located from a search of locations reasonably likely to obtain responsive records. On information and belief numerous responsive records have been withheld or not produced.

41. On January 6, 2021, Plaintiff, pursuant to litigation, received a “third production” of responsive documents. The cover letter referenced reviewing for 2019-ICFO-29171 and 2019-

ICFO-33429 a total of “309 pages and three excels of a potentially responsive documents”; no effort was made to indicate how many pages for each production were located or withheld. Numerous large chunks were redacted from the records responsive to the request for information.

42. No statement was made indicating that the records produced reflected all records that could be located from a search of locations reasonably likely to obtain responsive records. On information and belief numerous responsive records have been withheld or not produced for no legal reason.

43. As of February 7, 2022, 703 business days have lapsed since ICE acknowledged receipt of the request on April 8, 2019 and responsive records have been withheld or not located.

Request No. 4: Kenosha Jail

44. On January 16, 2019, Stevens submitted the following FOIA request to Defendant:

for the following maintained, received, or required to be produced by ICE related to health care services at the Kenosha County, WI jail for individuals held under immigration laws. The component most likely to have responsive records is the ICE Health Service Corps, though contract and civil rights monitoring components of ICE also are likely locations for such records.

1. All contracts and associated attachments, memorandums of understanding, email, and all other items associated with the submission; acceptance, and review of detainee health with Kenosha County, WI for health care provided to people held under immigration laws.
2. All logs of grievances (oral and written) submitted by people detained at the Kenosha County facility.
3. All medical expense reports submitted to ICE for the Kenosha County facility.
4. All reviews and reports on health care services provided to people held under immigration laws at the Kenosha County facility, including regular reports, ad hoc reports, and those based on specific grievances or complaints generated by any source.
5. All reports of hunger strikes.
6. All reports of hospitalization outside of the Kenosha County facility for people held under immigration laws by Hudson County. The time frame of this request is January 1, 2015 to the present.

Databases that may have information responsive to this request include but are not limited to: CaseTrakker, MedEZ, Dental XRay System, Criminal Institution Pharmacy System, Medical Payment Authorization Request Web System (MedPAR) and Medical Classification Database.

45. On February 26, 2019, Stevens received a tracking number for the request: **2019-ICFO-2917**.

46. On June 10, 2019, Stevens received a “final response” of just 15 pages.

47. On August 16, 2019, Stevens appealed the response, stating in part:

I noted in my request that the component most likely to have responsive records is the ICE Health Service Corps, though contract and civil rights monitoring components of ICE also are likely locations for such records. It was assigned case no 2019-ICFO-29171. I write here to appeal the “final response,” received on June 10, 2019.

The June 10 response claims to have found 15 pages responsive to my request. However, it is missing a number of responsive documents. These include but are not limited to: all contracts and associated attachments, memorandums of understanding, email, and all other items associated with the submission, acceptance, and review of detainee health with Kenosha County, WI for health care provided to people held under immigration laws, all logs of grievances (oral and written) submitted by people detained at the Kenosha County facility, all reports of hunger strikes, and all reports of hospitalization outside of the Kenosha County facility for people held under immigration laws by Hudson County [sic].

Upon information and belief your agency does in fact possess documents enumerated above, I would appreciate it if you would produce records responsive to my request as soon as possible or state legal reasons for not producing it.

48. On September 26, 2019, Defendant asserted that the appeal was received on August 29, 2019 and assigned it case number **2019-ICAP-00567**. The letter stated in part:

Please note the contract between ICE and Kenosha County specifically pertains to detention and/or transportation services, not medical services. ICE does not maintain records regarding medical services for detention centers that are not Service Processing Centers. Therefore, in order to receive records that are responsive to the portions of your request pertaining to medical services, you should submit a request directly to the Kenosha County detention facility.

With that said, however, and upon a complete review of the administrative record and the search documentation, ICE has determined that a new search(s), or modifications to the existing search(s), could be made specifically pertaining to those portions of your request that do not seek medical service records. ICE is therefore remanding your appeal to the ICE FOIA Office for processing and re-tasking to the appropriate agency/office(s) to obtain any responsive records.

49. Accompanying a cover letter dated October 7, 2020, Plaintiff, pursuant to litigation, received a “first production” of responsive documents. The cover letter referenced combined withholdings for 2019-ICFO-29171 and 2019-ICFO-33429 of a total of “556 pages of a potentially responsive document”; no effort was made to indicate how many pages for each production were located or withheld. Numerous large chunks were redacted from the records responsive to the request for information. No statement was made indicating that the records produced reflected all records that could be located from a search of locations reasonably likely to obtain responsive records. On information and belief numerous responsive records have been withheld or not produced.

50. Accompanying a cover letter dated January 6, 2021, Plaintiff, received a “third production” of responsive documents. The cover letter referenced reviewing for 2019-ICFO-29171 and 2019-ICFO-33429 a total of “309 pages and three excels of a potentially responsive documents”; no effort was made to indicate how many pages for each production were located or withheld. Numerous large chunks were redacted from the records responsive to the request for information.

51. As of February 7, 2022, 583 business days have lapsed since the appeal was remanded but Plaintiff’s request has not been completed.

Request No. 5 – Jail Services Costs Statements

52. On August 23, 2018, Stevens submitted a request via email to ICE for the following information:

A. The most recent Jail Services Costs Statement (JSCS) for the following facilities ICE uses to hold people under immigration laws:

- 1) the Berks County Residential Center, Berks County, PA;
- 2) South Texas Family Residential Center, Dilley, TX;
- 3) Hudson County Jail, Hudson County, NJ;
- 4) Stewart County, GA, (CoreCivic);
- 5) Aurora, Colorado (GEO)
- 6) Tacoma, WA (GEO)

- 7) Otay Mesa, CA (CoreCivic)
- 8) Eloy, EZ (CoreCivic)
- 9) Pinal County Jail, AZ
- 10) Otero County Processing Center, NM (MTC)
- 11) Joe Corley Detention Facility, Conroe TX (GEO)
- 12) Houston, TX (CoreCivic on Export Drive)
- 13) IAH, Secure Adult Detention Center (MTC) (Livingstone, TX)
- 14) LaSalle, LA

B. Memorandum from Michael J. Davidson, Chief, CALD, OPLA, ICE to William C. Randolph, Director and Head of Contracting Activity, OAQ, ICE, Funding Intergovernmental Service Agreements (Feb. 7, 2013).

C. All information in any medium including but but (sic) not limited to e-mail, text messages, reports, contracts, memoranda, letters, or faxes signed by, from, to OR about Charlie Dent, John McCormack, Eric Ruth, Matthew Lerch, Judith Kraine, Mark Baldwin, William Dennis, Thomas Gajewski, Judith Schwank, Mark Scott in ICE components that handle Berks County, PA ICE Intergovernmental Service Agreements (IGSAs) and not responsive to previous requests. This means any document under ICE control associated with detention or removal operations, facility leases, purchases, sales, or services rendered in Berks County, PA that references any of the individuals listed above is responsive to this request. Please make sure to inquire of any ICE component responsible for any negotiations with Berks County. The time frame of this request is 2000 to the present. The most likely location of records responsive to this request are offices responsible for the Berks County, PA operations, contracts, and reviews, including but not limited to litigation for that facility. In particular, there should be communications in 2006 about ICE-contracted facility firings based on allegations of unlawful actions. Components within ICE that are alerted about misconduct or possible litigation should be searched for responsive records.

D. All grievance logs and grievances for Berks County, PA, Hudson County, NJ, and Otero County Processing Center, January 1, 2010 to present (Names and other Personally Identifying information is of course exempt and may be redacted.)

E. All Jail Services Costs Statements for Berks County Family Facility and Hudson County, NJ 2001 to present.?

F. Since January 1, 1999, the earliest first 100 pages of documents associated with the IGSA for:

1. Berks County, PA
2. Hudson County, NJ

For "F" please request documents of the component of ICE predecessor INS that would initiate discussions of IGSAs for the purposes of holding people under immigration laws.

I am seeking the first information referencing these county governments as suitable detention locations by an INS component in any medium, including but not limited to emails, letters, proposals, memorandums, or reports.

G. All Evaluations associated with contracts for facilities below, including technical and performance evaluations by the Contracting Officers and ICE Detention Planning and Acquisition Unit and ongoing performance and renewals by contract officers EXCEPT Inspector reports. The time frame for this request is January 1, 2000 or the first year of the facility's submission of the JCSC through the present.

- 1) the Berks County Residential Center, Berks County, PA;
- 2) South Texas Family Residential Center, Dilley, TX;
- 3) Hudson County Jail, Hudson County, NJ;
- 4) Stewart County, GA, (CoreCivic);
- 5) Aurora, Colorado (GEO)
- 6) Tacoma, WA (GEO)
- 7) Otay Mesa, CA (CoreCivic)
- 8) Eloy, EZ (CoreCivic)
- 9) Pinal County Jail, AZ
- 10) Otero County Processing Center, NM (MTC)
- 11) Joe Corley Detention Facility, Conroe TX (GEO)
- 12) Houston, TX (CoreCivic on Export Drive)
- 13) IAH, Secure Adult Detention Center (MTC) (Livingstone, TX)
- 14) LaSalle, LA

H. Evaluations of JCSCs by Contracting Officers and ICE Detention Planning and Acquisition Unit for all detention contracts since January 1, 2008.

I. Evaluations of the FIRST JCSCs by Contracting Officers and ICE Detention Planning and Acquisition Units (or their predecessors) for all currently operating ICE/INS detention facilities except as covered by (H).

53. On September 5, 2018, ICE sent Stevens an acknowledgement for her request and assigned it reference number **2018-ICFO-59138**.

54. On October 25, 2018, ICE sent a "final response" letter stating the following:

ICE has conducted a search of the ICE Office of Enforcement and Removal Operations (ERO) and the ICE Office of Acquisitions (OAQ) for records responsive to your request and no records were found.

55. On October 31, 2018, Stevens submitted a timely appeal from the October 25, 2018 determination challenging the adequacy of the search.

56. On November 26, 2018, the Government Information Law Division of DHS sent a letter to Plaintiff claiming to have received the appeal on November 23, 2018. The letter acknowledged the appeal and assigned it case number **2019-ICAP-00109**.

57. On February 19, 2019, ICE issued a "final response" via email, stating the following:

Upon a complete review of the administrative record, ICE has determined that new search(s) or modifications to the existing search(s), could be made. Therefore, ICE is remanding your request to the ICE FOIA Office for processing and re-tasking to the appropriate agency/office(s) to obtain any responsive documents.

58. On February 7, 2020, ICE sent Stevens by electronic mail a cover letter signed by Catrina M. Pavlik-Keenan and one document responsive to Plaintiff's request which consists of a seven-page memorandum dated February 7, 2013. Six of the seven pages were redacted in their entirety save the words "IGSA Funding" in the header. The only exemption cited is b(5).

59. The cover letter from Ms. Pavlik-Keenan, dated February 4, 2019, states: "After review of the documents on remand, I have determined that portions of documents will be withheld pursuant to exemptions of the FOIA as described below. The letter invoked exemption 5, 6, 7(c). Pavlik-Keenan does not state how the search was conducted, nor the total number of records responsive to the request that were withheld.

60. Accompanying a cover letter dated April 21, 2021, Plaintiff pursuant to litigation received a fifth production. The cover letter states ICE had reviewed 500 pages of "potentially responsive documents" and was releasing 438. The letter was signed by Ms. Pavlik-Keenan. No indication was made of the total number of pages located nor the portion of the initial request to which these records were responsive.

61. Accompanying a cover letter dated May 21, 2021, Plaintiff received a sixth production. The cover letter states ICE had reviewed 511 pages of "potentially responsive documents" and was releasing 492. No indication was made of the total number of pages located nor the portion of the initial request to which these records were responsive.

62. Accompanying a cover letter dated July 1, 2021, Plaintiff received a seventh production. The cover letter states ICE had reviewed 569 pages of "potentially responsive documents" and was releasing 526. No indication was made of the total number of pages located nor the portion of the initial request to which these records were responsive.

63. Accompanying a cover letter dated August 26, 2021, Plaintiff received an eighth production. The cover letter states ICE had reviewed 641 pages of “potentially responsive documents” and was releasing 635. No indication was made of the total number of pages located nor the portion of the initial request to which these records were responsive.

64. Accompanying a cover letter dated October 19, 2021, Plaintiff received an eighth production. The cover letter states ICE had reviewed 521 pages of “potentially responsive documents” and was releasing 521. No indication was made of the total number of pages located nor the portion of the initial request to which these records were responsive.

65. Accompanying a cover letter dated January 20, 2022, Plaintiff received an eleventh production. The cover letter states ICE had reviewed 519 pages of “potentially responsive documents” and was releasing 268 and referring 108 to an unnamed “outside agency.” No indication was made of the total number of pages located nor the portion of the initial request to which these records were responsive.

66. Accompanying a cover letter dated January 20, 2022 [sic], Plaintiff received a “twelfth production.” The cover letter states ICE had reviewed 511 pages of “potentially responsive documents” and was releasing 498. No indication was made of the total number of pages located nor the portion of the initial request to which these records were responsive.

Request No. 6 -Hudson County Jail

67. On December 16, 2018, Stevens submitted a FOIA request seeking all items maintained, received, or required to be produced by ICE related to health care services at the Hudson County jail for individuals held under immigration laws, including:

All contracts and associated attachments, memorandums of understanding, e-mail, and all other items associated with the submission, acceptance, and review of the CFG Health Systems, LLC, contracts with Hudson County for health care provided to people held under immigration laws.

All logs of grievances (oral and written) submitted by people detained at the Hudson County facility.

All medical expense reports submitted to ICE, including via Hudson County.

All reviews and reports on health care services provided to people held under immigration laws at the Hudson County facility, including regular reports, ad hoc reports, and those based on specific grievances or complaints generated by any source.

All reports of hunger strikes.

All reports of hospitalization outside of the Hudson County facility for people held under immigration laws by Hudson County.

68. On December 17, 2018, ICE sent Stevens a confirmation receipt for her request and assigned it tracking number **2019-ICFO-24680**.

69. On February 27, 2019, a research assistant looked up the status of the request on the FOIA online platform. The system reported that “There is no FOIA request in the system for that number.”

70. On July 5, 2019, a research assistant checked the platform again, and the system reported that the status is “request for docs sent” with an estimated delivery date as February 22, 2019.

71. On September 18, 2019, Stevens received by electronic mail a cover letter signed by Catrina M. Pavlik-Keenan and production of six pages plus an Excel spread sheet.

72. On or about October 3, 2019 Stevens sent ICE an appeal of the response and indicated it was her belief that numerous documents responsive to her request had not been produced.

73. On November 4, 2019, ICE indicated that it had received the appeal on November 4, 2019 and assigned it tracking number **2020-ICAP-00063**.

74. On December 4, 2019, Stevens received by electronic mail a letter with the same date signed by Shiraz Panthaky, Chief Government Information Law Division. The letter states in part: “Upon a complete review of the administrative record, ICE has determined that a new search(s) or modifications to the existing search(s), could be made. Therefore, ICE is remanding your request to the ICE FOIA Office for processing and re-tasking to the appropriate agency/office(s) to obtain any responsive records, should they exist.”

75. Plaintiff received no additional records after the remand.

76. Accompanying a cover letter dated November 24, 2020, Plaintiff, pursuant to litigation, received a “second production” of responsive documents. The cover letter stated that for two separate requests of 2019-ICFO-24680 and 2019-ICFO-33429, “510 pages of a potentially responsive documents were reviewed.” No effort was made to indicate how many pages for each production were located or withheld. Numerous large chunks were redacted from the records responsive to the request for information. No statement was made indicating that the records produced reflected all records that could be located from a search of locations reasonably likely to obtain responsive records. On information and belief numerous responsive records have been withheld or not produced.

77. As of February 7, 2022 537 business days have lapsed since the appeal was remanded and Plaintiff’s request has not been completed.

Claims for Relief

Count I – Violation of FOIA

78. All previous paragraphs are incorporated as though fully set forth herein.

79. Plaintiff has a statutory right under the Act to obtain the agency records properly requested in her six requests identified above.

80. No legal basis exists for Defendants DHS and ICE’s failure to promptly docket, process, respond, and produce responsive agency records in accordance with the timing and other requirements of the Act.

81. DHS and ICE’s failure to disclose all responsive agency records in connection with Stevens’ six requests identified above, as well as its failure to (1) docket and process Stevens’ 22 November, 2019 request for records [Request No. 2]; (2) timely respond to her March 25, 2019 [Request No. 3] and 22 November, 2019 [Request No. 2] requests; (3) process on remand and respond to the August 6, 2018 [Request No. 1], January 19, 2019 [Request No. 4], and December

16, 2018 [Request No. 6], requests; (4) provide a legally sufficient appellate response to Request Nos. 2 and 5; and (5) conduct proper searches to locate documents responsive to the six FOIA requests, each violate the Act, as well as regulations promulgated by DHS.

82. As of the date of this Complaint, Defendants has failed to produce all records requested by Plaintiff in her six FOIA requests or to demonstrate that such records are lawfully exempt from production. *See* 5 U.S.C. § 552(a)(6)(C). Nor have Defendants notified Plaintiff of the scope of any responsive records it intends to produce or withhold and the reasons for any withholdings, nor informed Plaintiff that it may appeal any specific, adverse determination.

83. By failing to timely process and respond to Plaintiff's requests within the statutorily prescribed time limits, Defendants have violated their respective duties under the FOIA, including but not limited to their duties to conduct a reasonable search for responsive records and to produce all responsive, reasonably segregable, non-exempt information. Therefore, Defendants are unlawfully withholding records requested by Plaintiff pursuant to 5 U.S.C. § 552.

84. Plaintiff is being irreparably harmed by reason of Defendants' unlawful withholding of records responsive to Plaintiff's FOIA requests and their failure to comply with their respective obligations under FOIA, and Plaintiff will continue to be irreparably harmed unless Defendants are compelled to conform its conduct to the requirements of the law.

Count II – Declaratory and Injunctive Relief against ICE and DHS

85. Plaintiff re-alleges and incorporates paragraphs 1 through 77 and 84 above.

86. 5 U.S.C. § 552(a)(6)(A)(i) provides that “[e]ach agency, . . . , shall—(i) determine within 20 days . . . after the receipt of [a FOIA] request whether to comply with such request and shall immediately notify the person making such request . . .”.

87. 5 U.S.C. § 552(a)(6)(B)(i), in turn, provides that if “unusual circumstances” are present an agency may extend its response time by “no more than ten working days,” provided it sends

the requestor “written notice” setting forth the unusual circumstances for such extension and the date on which a determination is expected to be dispatched.

88. 5 U.S.C. § 552(a)(6)(A)(ii) mandates that each agency must “make a determination with respect to any appeal within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal.”

89. In enacting FOIA Congress, thus, mandated that agencies make determinations on initial FOIA requests within, at most, thirty business days, including when ICE refers all or a portion of an individual FOIA request to another DHS component or agency, such as USCIS or CBP. 5 U.S.C. §§ 552(a)(6)(A) &(B); 6 C.F.R. §§ 5.4(d)(3) &(g).

90. When Congress extended the original 10-day FOIA deadline to twenty business days, it did so by recognizing that “[l]ong delays in access can mean no access at all,” and urged agencies to “respond to requests in a timely manner.” H. REP. NO. 104-795, at 16-23, *as reprinted in* 1996 U.S.C.C.A.N. 3459, 3466. The complex and detailed Congressional pronouncements pertaining to proper and timely processing of FOIA requests do not allow for agencies to disregard their statutory obligations and violate the Act --routinely and intentionally - - claiming lack of resources or increased backlogs. Rather, it is incumbent on agencies to “inform Congress of the additional resources needed to fully comply with the FOIA.” H. REP. NO. 104-795, *as reprinted in* 1996 U.S.C.C.A.N. 3448, 3472.1.

91. Despite the unambiguous language of the Act, since approximately 2010 Defendants DHS and ICE have taken the position that 5 U.S.C. § 552(a)(6)(A)(i) does not impose an affirmative obligation or require the agency to make determinations on FOIA requests within the 20-business day statutory timeframe. This position permeates ICE FOIA standard operating procedures, its written internal rules, and its uniform practice pertaining to responding to FOIA

requests and retrieving and processing of responsive documents [hereinafter referred collectively as “Challenged Rules and Practice”].¹³

92. ICE persistently fails to request that Congress provide funds for technologies and staff necessary to meet its statutory FOIA obligations, unlike its funding requests for programs that require similar information technology and staffing, such as data mining and analysis for surveillance purposes.¹⁴

93. ICE field offices across the country slow-walks productions and delays proceedings. A district court judge in Washington, D.C., exasperated by ICE inconsistencies and delays in FOIA litigation, stated during an evidentiary hearing on redactions, “It’s as if nobody heard a word I had to say last time we were here. I am literally at a loss. I have never, in my judicial career, had

¹³CE FOIA Officer Catrina Pavlik-Keenan acknowledge persistent and substantial backlogs in the office’s processing of FOIA requests and averred in a 2018 Declaration that ICE has a “practice of generally handling backlogged requests on a ‘first-in-first-out basis.’” Case 1:18-cv-000302, August 6, 2018, Doc 25, ¶5. She further averred a “dramatic increase in the ICE FOIA Office’s workload over the course of three years” due to the “referrals received from USCIS.” *Id.* at 10. Pavlik’s Declaration describes known staffing shortages to explain why the “ICE FOIA Office typically cannot process more than 500 pages per month for each case.” *Id.* ¶15. Despite the known backlog, ICE in its budget request for FY2017 indicated no request to increase funding for FOIA operations, “Congressional Budget Justification FY 2017—Volume II,” pt ii, p. 10, https://www.dhs.gov/sites/default/files/publications/FY%202017%20Congressional%20Budget%20Justification%20-%20Volume%202_1.pdf

¹⁴ Of the \$6.7 billion Congress appropriated for ICE in 2017, ICE spent just \$6.45 million on FOIA operations and proposed an increase to just \$9.627 million for FY 2018 and FY 2019. Department of Homeland Security, “U.S. Immigration and Customs Enforcement, Budget Overview, Congressional Justification, FY2019,” p. 24, <https://www.dhs.gov/sites/default/files/publications/U.S.%20Immigration%20and%20Customs%20Enforcement.pdf>. ICE does not break out its FOIA request in its FY 2018 budget, but does note that FOIA requests are likely to “triple from 2014 levels.” Based on FY2018 data published in the FY2019 request, ICE appears to have requested an increase of about one-third, not 300%. ICE does not break out its request for FOIA funds in its FY2021 budget. In its budget for FY2020, ICE notes the increase in FOIA requests but does not request any increase in its budget to address it. Department of Homeland Security, “U.S. Immigration and Customs Enforcement, Budget Overview, Congressional Justification, FY2020,” ICE-O&S -22, https://www.dhs.gov/sites/default/files/publications/19_0318_MGMT_CBJ-Immigration-Customs-Enforcement_0.pdf. In its fy2021 budget request, ICE indicates no increase in requests for expenditures for its FOIA operations, Department of Homeland Security, “U.S. Immigration and Customs Enforcement, Budget Overview, Congressional Justification, FY2021.” https://www.dhs.gov/sites/default/files/publications/u.s._immigration_and_customs_enforcement_0.pdf. And the FY2022 budget request, ICE states it is requesting a small increase of \$\$782,000. Department of Homeland Security, “U.S. Immigration and Customs Enforcement, Budget Overview, Congressional Justification, FY2022,” ICE-O&S-12, https://www.dhs.gov/sites/default/files/publications/u.s._immigration_and_customs_enforcement.pdf

an agency respond to a judicial order in the way that ICE has responded to this order in this case.”¹⁵

94. As a result of the Challenged Rules and Practice as described in paragraph 91 above ICE has failed to make determinations on FOIA requests, appeals, and remands within the timeframes required by statute, including but not limited to many of Plaintiff’s own FOIA requests. Furthermore, pursuant to said Challenged Rules and Practice Defendant does not and did not notify Plaintiff and other requestors of the scope of any responsive records it intends to produce or withhold and the reasons for any withholdings when administrative appeals are remanded back to the agency.

95. Defendants’ failures are part of a pattern and practice of such deliberate violations of FOIA.

96. Exceptional circumstances do not justify ICE’s delay in processing FOIA requests and responses to remanded appeals.

97. Defendants ICE and DHS were also on notice that Congress tightened the definition of “exceptional circumstances” in the 1996 amendments to the FOIA statute to provide as follows: “For purposes of this subparagraph, the term ‘exceptional circumstances’ does not include a delay that results from a *predictable agency workload* of requests under this section, unless the agency demonstrates *reasonable progress* in reducing its backlog of pending requests.” 5 U.S.C. § 552(a)(6)(C)(ii) (emphasis added).

98. Since 2017 ICE and DHS has employed aggressive and at times novel and/or controversial immigration enforcement and deterrence policies that sparked increased media and public interest. Given the increased public engagement on immigration matters FOIA requests have increased along with the increase in immigration enforcement. These developments made an in-

¹⁵*Susan Long et al. v. Immigration and Customs Enforcement*, Transcript, p. 9, July 29, 2021, Case No. 14-cv-00109.

creasing workload predictable and expected since FOIA is the only realistic mechanism through which journalists, researchers like Plaintiff, and affected non-citizens could obtain records relevant to Defendants' operations and activities.

99. Yet, despite its ballooning backlog, ICE does not include compliance with the deadline for FOIA adjudication in its yearly department goals or use the FOIA statutory timeframes as a metric for evaluating employees' and contractors' performance. Specifically, when Defendants outsource FOIA processing pursuant to prime labor contracts DHS and its outsourcing components neither manage the contract staffs' day-to-day work, evaluates staff performance, or reserves the authority to impose specific processing goals.

100. Defendants' Challenged Rules and Practice have caused a backlog of FOIA requests for each year since 2012.

101. According to the last published DHS FOIA Report at the start of Fiscal Year 2020 ICE had 2,818 unprocessed FOIA requests. As of August 11, 2020, ICE's backlog was at 56,66 requests, inclusive of the large number of USCIS referrals. Despite last quarter push to process as many requests as possible by resorting to overtime, additional staffing, and cross-component processing, ICE ended up with a backlog of 12,847¹⁶. Plaintiff believes and hereby alleges that the backlog has continued to increase in FY 2021 and will continue in FY 2022.

102. DHS ultimately shares responsibility with its component agencies for the chronic failure to comply with the mandates of the FOIA statute. It has admitted that FOIA backlogs have continued to be a systemic problem at DHS and that "[d]ecentralization of the FOIA program at the Department causes problems in program coordination and workforce management making it difficult for the DHS FOIA enterprise to share manpower coordinate surge efforts and plan for future challenges." DHS FOIA Backlog Reduction Plan 2020-2023.

¹⁶ Plaintiff believes that the reported number does not include or account for the USCIS referrals that remained unprocessed.

103. Defendant DHS is ultimately responsible for ICE's pattern or practice of failing to make timely determinations in response to proper FOIA requests. Fully aware of ballooning backlogs, Defendant DHS failed to ensure that its components made reasonable progress in clearing out their backlogs to ensure timely determinations in response to FOIA requests. DHS further failed to ensure that sufficient resources are allocated by each component to address their FOIA backlogs.

104. Defendant's backlog demonstrates the existence of a pattern and practice of deliberate and repeated failures to make timely determinations on FOIA requests, process appeals, and promptly produce responsive records within the statutory time periods and in good faith.

105. Defendant also routinely fails to conduct good faith searches for records and redacts information that is not within the scope of to the carefully crafted statutory exceptions. As a result, Defendant is precluding the public from monitoring its actions and performance.

106. No legal ground, justification, or excuse exists for Defendants' nationwide pattern and practice of failing to meet the FOIA statutory deadlines with respect to properly submitted requests and to discharge its statutory duties in good faith.

107. An injunction and declaratory relief are appropriate and needed to prevent further violations of FOIA by Defendants.

COUNT III: Administrative Procedure Act: Agency Action That is *Ultra Vires*, Arbitrary, Capricious, or an Abuse of Discretion against ICE.

108. Plaintiff realleges paragraphs 1 through 77 and 86 through 107 above.

109. The APA empowers this Court to "hold unlawful and set aside" agency action that is "arbitrary, capricious, an abuse of discretion or not otherwise in accordance with law." 5 U.S.C. § 706(2)(A).

110. Defendant ICE has an affirmative obligation under FOIA to process FOIA requests in the timeframe mandated by the Act and to release promptly and in good faith responsive documents to requestors in response to initial requests and upon remand of successful appeals.

111. As shown above by the use and uniform application of the Challenged Rules and Practice described in paragraph 91 Defendant ICE abdicated its statutory responsibilities and has thwarted the very purpose behind the Act.

112. The implementation and uniform application of the Challenged Rules and Practice violate FOIA, in contravention of the APA. Defendant refusal to discharge its mandatory duties to timely process FOIA requests in thus ultra vires.

113. The implementation and uniform application of the Challenged Rules and Practice are also arbitrary and capricious because Defendant ICE did not consider the problem, did not take reasonable measures to reduce and prevent backlogs, and did not sufficiently consider settled expectation of requestors.

114. Defendant's action is final as there is no indication that they are in the process of re-considering or re-evaluating their position that the Act does not impose affirmative obligation on the agency to process FOIA requests within no more than 30 business days from receipt and/or to promptly process and release documents following remand from their own appellate unit.

115. Defendant's action and refusal to act in accordance with FOIA has caused and will continue to cause harm to Plaintiff and similarly situated requestors.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff requests that judgment be entered in her favor and against Defendants, and that the Court:

- A. Order Defendants and any of their agents or other persons, departments, or components acting for, with, by, through, or under them, to conduct a prompt, reasonable search for records responsive to Plaintiff's requests identified in Count I;
- B. Permanently enjoin and restrain Defendants and any of Defendants' agents or other persons, departments, or components acting for, with, by, through, or under them from withholding the agency records at issue in this case;
- C. Declare that the requested records by Plaintiff are not exempt from disclosure under FOIA, and order Defendants with custody of the records to disclose the requested records in their entirety and make copies available to the Plaintiff;
- D. Declare that Defendant ICE's pattern and practice of failing to make determinations on requests within the statutory time frames violate the Act;
- E. Declare that Defendant ICE's pattern and practice of failing to make determinations on requests remanded for further processing and promptly notify the requestor of its determinations violate the Act;
- F. Order both Defendants to take all affirmative steps necessary to remedy the effects of the illegal conduct described herein and to prevent similar occurrences in the future;
- G. Award Plaintiff reasonable attorneys' fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E);
and,
- H. Award all other relief to Plaintiff that the Court deems just, equitable, and proper.

Respectfully submitted,

s/ Nicolette Glazer Esq.

Nicolette Glazer Esq.
LAW OFFICES OF LARRY R GLAZER
1999 Avenue of the Stars #1100
Century City, CA 90067
T: 310-407-5353
F: 310-407-5354
nicolette@glazerandglazer.com
ATTORNEY FOR PLAINTIFF