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** Pro hac vice motions forthcoming*
*** Admitted pursuant to Ariz. Sup. Ct. R.*
38(f)

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

17 AMERICAN CIVIL LIBERTIES UNION OF)
18 ARIZONA; AMERICAN CIVIL LIBERTIES)
19 UNION OF SAN DIEGO AND IMPERIAL)
20 COUNTIES,)

Plaintiffs)

21 v.)

22 OFFICE FOR CIVIL RIGHTS AND CIVIL)
23 LIBERTIES, U. S. DEPARTMENT OF)
24 HOMELAND SECURITY; OFFICE OF)
25 INSPECTOR GENERAL, U.S. DEPARTMENT)
26 OF HOMELAND SECURITY; UNITED STATES)
27 CUSTOMS AND BORDER PROTECTION;)
28 UNITED STATES IMMIGRATION AND)
DEPARTMENT OF HOMELAND SECURITY,)

Defendants

CASE NO.:

**COMPLAINT FOR
INJUNCTIVE RELIEF**

INTRODUCTION

1
2 1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C.
3 § 552, for injunctive and other appropriate relief, seeking the immediate processing and
4 release of agency records improperly withheld by Defendants United States Department of
5 Homeland Security (“DHS”) and its sub-agencies Immigration and Customs Enforcement
6 (“ICE”), United States Customs and Border Protection (“CBP”), the DHS Office of
7 Inspector General (“OIG), and the DHS Office for Civil Rights and Civil Liberties
8 (“CRCL”) (collectively “Defendants”) in response to FOIA requests properly made by
9 Plaintiffs American Civil Liberties Union of Arizona (“ACLU of Arizona”) and American
10 Civil Liberties Union of San Diego and Imperial Counties (“ACLU of San Diego”).

11 2. On December 3, 2014, Plaintiffs submitted a FOIA request (the “Request”)
12 to Defendant DHS seeking records related to abuse and mistreatment of children in the
13 custody of Defendant CBP and its sub-agency, the Office of Border Patrol. A copy of the
14 Request is attached hereto as Exhibit A. Plaintiffs seek the requested records in order to
15 shed light on longstanding allegations of abusive treatment of children by Border Patrol,
16 including prolonged detention in degrading and inhumane conditions, as well as DHS
17 oversight agencies’ handling of those allegations.

18 3. To date, Defendants have not responded to Plaintiffs’ Request.

JURISDICTION AND VENUE

19
20 4. This Court has both subject matter jurisdiction over this action and personal
21 jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

22 5. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

23 6. Defendants have failed to respond to Plaintiffs’ Request within the statutory
24 time limit, such that Plaintiffs are deemed to have exhausted the applicable administrative
25 remedies. 5 U.S.C. § 552(a)(6)(C)(i).

PARTIES

1
2 7. Plaintiffs are state affiliate organizations of the national American Civil
3 Liberties Union (“National ACLU”), with over 7,000 supporters in Arizona and 15,000
4 supporters in San Diego and Imperial Counties. National ACLU is a nationwide, non-profit,
5 non-partisan organization dedicated to protecting civil liberties and human rights in the
6 United States. It is the largest civil liberties organization in the country, with offices in fifty
7 states and over 500,000 members. The ACLU works daily in courts, legislatures, and
8 communities to defend and preserve the individual rights and liberties that the Constitution
9 and laws of the United States guarantee everyone in this country. The organization has a
10 particular commitment to ensuring that fundamental constitutional protections of due
11 process and equal protection are extended to every person, regardless of citizenship or
12 immigration status, and that the government respects the civil and human rights of all
13 people.

14 8. Plaintiffs publish newsletters, news briefings, right-to-know handbooks, and
15 other materials that are disseminated to the public. These materials are widely available to
16 everyone, including tax-exempt organizations, non-profit groups, and law students and
17 faculty, for no cost. The ACLU also disseminates information through its websites,
18 including www.aclu.org, www.acluaz.org, and www.aclusandiego.org. These websites
19 address civil liberties issues in depth, provide features on civil liberties issues in the news,
20 and contain hundreds of documents that relate to issues addressed by the ACLU, including
21 documents obtained through the FOIA. The ACLU also publishes a widely-read blog and
22 electronic newsletter, which is distributed to subscribers by e-mail.

23 9. Defendant DHS is an Office of the Executive Branch of the United States
24 Government. DHS is an “agency” within the meaning of FOIA, 5 U.S.C. § 552(f)(1). DHS
25 includes Immigration and Customs Enforcement (“ICE”), Customs and Border Protection
26 (“CBP”) and the Office of Border Patrol, as well as DHS oversight agencies including the
27 Office of Inspector General (“OIG”), CBP Internal Affairs, ICE Office of Professional
28

1 Responsibility, and the Office for Civil Rights and Civil Liberties (“CRCL”). Upon
2 information and belief, DHS has possession and control over the records sought by
3 Plaintiffs.

4 10. Defendant ICE is a component of DHS and an “agency” within the meaning
5 of FOIA, 5 U.S.C. § 552(f)(1). Upon information and belief, ICE has possession and control
6 over records sought by Plaintiffs.

7 11. Defendant CBP is a component of DHS and includes sub-agency Office of
8 Border Patrol. CBP is an “agency” within the meaning of FOIA, 5 U.S.C. § 552(f)(1). Upon
9 information and belief, CBP has possession and control over records sought by Plaintiffs.

10 12. Defendant OIG is a component of DHS and is an “agency” within the
11 meaning of FOIA, 5 U.S.C. § 552(f)(1). Upon information and belief, OIG has possession
12 and control over records sought by Plaintiffs.

13 13. Defendant CRCL is a component of DHS with responsibility for investigating
14 civil rights complaints involving DHS policies and personnel. CRCL is an “agency” within
15 the meaning of FOIA, 5 U.S.C. § 552(f)(1). Upon information and belief, CRCL has
16 possession and control over records sought by Plaintiffs.

17 **FACTS**

18 14. The abuse and mistreatment of children in U.S. Border Patrol custody is well-
19 documented. Numerous reports and hundreds of complaints filed with DHS oversight
20 bodies have consistently described physical and verbal abuse and deplorable conditions in
21 Border Patrol hold rooms—including harsh temperatures, severe overcrowding, and denial
22 of adequate hygiene supplies, bedding, food, water, and medical care.¹ Border Patrol hold

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24 ¹ See, e.g., NATIONAL IMMIGRANT JUSTICE CENTER, UNACCOMPANIED IMMIGRANT
25 CHILDREN: A POLICY BRIEF (2014), available at <http://bit.ly/1o2RT4B>; AMERICANS FOR
26 IMMIGRANT JUSTICE, THE HIELERAS (2013), available at <http://bit.ly/1AcleeW>; THE
27 CENTER FOR LATIN AMERICAN STUDIES, UNIV. OF ARIZONA, IN THE SHADOW OF THE
28 WALL: FAMILY SEPARATION, IMMIGRATION ENFORCEMENT AND SECURITY (2013),
available at <http://bit.ly/1n0QRRt>; KINO BORDER INITIATIVE, DOCUMENTED FAILURES:
THE CONSEQUENCES OF IMMIGRATION POLICY AT THE U.S.-MEXICO BORDER (2013),
available at <http://bit.ly/1pa3UVo>; Daniel E. Martinez et al., BORDERING ON CRIMINAL:

1 rooms are not designed for prolonged detention—there are no beds or showers, and
2 detainees are denied recreation—yet children, including infants and toddlers, are detained
3 in these degrading conditions for days on end.²

4 15. On June 11, 2014, the ACLU and partner organizations submitted a complaint
5 on behalf of 116 unaccompanied immigrant children to Defendants CRCL and OIG,
6 alleging abuse and mistreatment of children in Border Patrol custody.³ One quarter of these
7 children reported physical abuse, including sexual assault, beatings, and the use of stress
8 positions by Border Patrol agents, and more than half reported various forms of verbal

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10 THE ROUTINE ABUSE OF MIGRANTS IN THE REMOVAL SYSTEM (2012), *available at*
11 <http://bit.ly/1cBbxwb>; WOMEN’S REFUGEE COMMISSION, FORCED FROM HOME: THE LOST
12 BOYS AND GIRLS OF CENTRAL AMERICA (2012), *available at* <http://bit.ly/1idNuUo>; NO
13 MORE DEATHS, A CULTURE OF CRUELTY: ABUSE AND IMPUNITY IN SHORT-TERM U.S.
14 BORDER PATROL CUSTODY (2011), *available at* <http://bit.ly/1prx9z>; APPLESEED,
15 CHILDREN AT THE BORDER: THE SCREENING, PROTECTION AND REPATRIATION OF
16 UNACCOMPANIED MEXICAN MINORS (2011), *available at* <http://bit.ly/1mt5hbi>; FLORENCE
17 IMMIGRANT AND REFUGEE RIGHTS PROJECT, SEEKING PROTECTION, ENDURING
18 PROSECUTION: THE TREATMENT AND ABUSE OF UNACCOMPANIED UNDOCUMENTED
19 CHILDREN IN SHORT-TERM IMMIGRATION DETENTION (2009), *available at*
20 <http://bit.ly/1prCKx>; WOMEN’S REFUGEE COMMISSION, HALFWAY HOME:
21 UNACCOMPANIED IMMIGRANT CHILDREN IN IMMIGRATION CUSTODY (2008), *available at*
22 <http://bit.ly/1hvPc8M>; NO MORE DEATHS, CROSSING THE LINE: HUMAN RIGHTS ABUSES OF
23 MIGRANTS IN SHORT-TERM CUSTODY ON THE ARIZONA/SONORA BORDER (2008),
24 *available at* <http://bit.ly/1ztSVvF>; *see also, e.g.*, Ed Pilkington, *Freezing Cells and Sleep*
25 *Deprivation: The Brutal Conditions Migrants Still Face After Capture*, GUARDIAN, Dec.
26 12, 2014, *available at* <http://bit.ly/1uxlzVi> (“Among those subjected to harsh treatment...
27 are numerous children. Children have described temperatures in the cells that turned their
28 lips blue and made their fingers number.”).

22 ² *See, e.g.*, Ed Pilkington, ‘*It Was Cold, Very Cold*’: Migrant Children Endure Border
23 Patrol ‘Ice Boxes’, GUARDIAN, Jan. 26, 2015, *available at* <http://bit.ly/1H4xZzf> (“Tatiana
24 was 16 at the time of her detention, a child herself. ‘The room was so cold you almost
25 couldn’t breathe, it made your nose hurt,’ she said. There was no bedding, not even a
26 blanket, and she slept fitfully with [her infant son] Rafael in her arms. After a few days the
27 baby caught a cold and stopped eating solids, and for a couple of days he wouldn’t even
28 take his mother’s milk. His weight fell from 23lbs when he arrived at the border station to
15lbs.”).

27 ³ *See* ACLU, COMPLAINT AND REQUEST FOR INVESTIGATION, June 11, 2014, *available at*
28 <http://bit.ly/XqyyOt>.

1 abuse, including death threats. Many reported being denied blankets and bedding and
2 attempting to sleep on the floors of unsanitary, overcrowded, and frigid cells. Roughly half
3 of the children reported being denied medical care, including several who eventually
4 required hospitalization. Eighty percent described inadequate provision of food and water,
5 and nearly as many were detained by Border Patrol beyond the legally mandated seventy-
6 two hour maximum. These children’s allegations were consistent with numerous NGO
7 reports and hundreds of complaints dating back several years.

8 16. The sheer volume and consistency of these complaints point to systemic
9 deficiencies in Border Patrol’s detention policies and practices, and yet the full extent of
10 these problems is still unknown. Border Patrol restricts access to detention facilities such
11 that attorneys, advocates, and family members are generally prohibited from meeting with
12 detainees, many of whom are held incommunicado for days. Immigrant children—like all
13 immigrants—have no guarantee of legal counsel in removal proceedings; without legal
14 representation, children are far less likely to report abuse or pursue civil rights complaints
15 involving government officials. Additionally, the Office of Refugee Resettlement
16 (“ORR”)—which houses large numbers of unaccompanied children following their
17 apprehension by Border Patrol—lacks clear and consistent guidelines for detecting and
18 reporting child abuse allegations involving Border Patrol, though such complaints are
19 common.⁴ For these reasons, it is likely that much if not most abuse involving children in
20 Border Patrol custody goes unreported.

21
22 ⁴ In 2014, the Houston Chronicle obtained a series of ORR special incident reports which
23 contained approximately eighty-two separate cases of children alleging abuse by
24 immigration officials, the vast majority involving Border Patrol. Children described being
25 denied food, water, and medical care; being subjected to verbal and physical assaults and
26 inhumane detention conditions; and having their personal property destroyed. Some of
27 these cases were reported by shelter workers to child protection agencies, while others were
28 not. The incident reports do not indicate whether those agencies, CBP, or any other part of
DHS investigated or otherwise followed up on any of the allegations. *See also* Jessica
Bakeman, *New York quietly expands role in caring for immigrant children*, CAPITAL NEW
YORK, Oct. 20, 2014, available at <http://bit.ly/1wn2zOU> (“When the children arrive at New
York-area airports from the federal facilities, they often require extensive medical care for

1 17. DHS officials are well aware that Border Patrol detains children in inhumane
2 conditions, yet have allowed those conditions to persist. In response to the ACLU’s June
3 2014 complaint, CBP Commissioner Gil Kerlikowske acknowledged that complaints
4 regarding Border Patrol hold room conditions were “absolutely spot-on.”⁵ Commissioner
5 Kerlikowske and DHS’s OIG initially indicated they would conduct a thorough
6 investigation.⁶ Notwithstanding the agency’s acknowledgment of “recurring problems” in
7 CBP detention facilities, however, on October 6, 2014—less than four months after
8 announcing its investigation—OIG reported it would be “curtailing routine inspections,”
9 and has issued no subsequent findings or taken any other public action in response to the
10 complaint.⁷

11 18. The failure of DHS to address complaints of child abuse and mistreatment by
12 Border Patrol reflects broader dysfunction within the agency. DHS oversight agencies have
13 not kept pace with Border Patrol’s rapid growth and are ill-equipped to provide transparent
14 and effective oversight and accountability for rights violations by agents.⁸

15 _____
16 broken bones that healed improperly or illnesses such as appendicitis and pneumonia,
17 nonprofit officials said . . . ‘Some of them have not eaten for long periods of time,’ said
18 Henry Ackermann, chief development officer at [ORR subcontracted] Abbott House . . .
19 ‘They come to us malnourished. They come to us sometimes with unset broken arms or
20 legs, with bronchial or respiratory issues.’”).

21 ⁵ National Public Radio, *Transcript: Commissioner Kerlikowske’s Full Interview*, July 18,
22 2014, available at <http://n.pr/1kCh2wg>.

23 ⁶ See *Unaccompanied Minor Children*, CSPAN, June 12, 2014, <http://cs.pn/YWfJEr>.

24 ⁷ Press Release, Department of Homeland Security Office of Inspector General,
25 Improvements Continue at Detention Centers (Oct. 6, 2014), available at
26 <http://1.usa.gov/1oKw2Kq>.

27 ⁸ Following the ouster of CBP’s Office of Internal Affairs chief, James Tomsheck, in June
28 2014, several high ranking U.S. government officials described CBP’s consistent efforts to
thwart meaningful 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>. Tomsheck
himself described CBP as an agency “rife with coverups and corruption” where officials
have “distorted facts to try to hide any missteps.” Andrew Becker, *Border Agency’s Former
Watchdog Says Officials Impeded His Efforts*, WASH. POST, Aug. 16, 2014, available at

1 19. In May 2014, the American Immigration Council reported that ninety-seven
2 percent of the 809 abuse complaints filed against Border Patrol agents between January
3 2009 and January 2012 resulted in the classification “no action taken.”⁹ Approximately
4 sixty of these complaints involved abuse of immigrant children, including one case in which
5 a child reported that an agent “hit him on the head with a metal flashlight 20 times, kicked
6 him five times, and pushed him down a hill.”¹⁰ DHS’s lack of response in these cases is
7 consistent with the experiences of advocates who have filed numerous complaints with
8 DHS, only to be dismissed or ignored outright.¹¹

9 20. Despite the overwhelming number of abuse allegations, few Border Patrol
10 agents are known to have faced any disciplinary action for abusing children in custody.¹²

11 _____
12 <http://wapo.st/1wGHdc9>; see also Carrie Johnson, *Former Border Protection Insider*
13 *Alleges Corruption, Distortion in Agency*, NPR, Aug. 28, 2014, available at
14 <http://n.pr/1wGGPdy> (“‘I believe the system was clearly engineered to interfere with our
15 efforts to hold the Border Patrol accountable,’ [Tomsheck] says.”); Anne Werner, *Border*
16 *Patrol Killings Face Renewed Scrutiny*, CBS NEWS, Aug. 18, 2014, available at
17 <http://cbsn.ws/XXNUui> (“‘There were certainly many cases where border patrol agents or
18 certainly CBP officers engaged in excessive use of force or abuse of migrants at the border
19 that should have resulted in discipline where it did not,’ Tomsheck says.”).

20 ⁹ AMERICAN IMMIGRATION COUNCIL, NO ACTION TAKEN: LACK OF CBP ACCOUNTABILITY
21 IN RESPONDING TO COMPLAINTS OF ABUSE 8 (2014), available at <http://bit.ly/1ozFidd>.

22 ¹⁰ Damien Cave, *Complaints of Abuse by Border Agents Often Ignored, Records Show*, N.Y.
23 TIMES, May 5, 2014, available at <http://nyti.ms/1iTzDY5>.

24 ¹¹ See, e.g., CULTURE OF CRUELTY *supra* n.2, at 44 (“[S]ince January 2010, Arizona
25 organizations . . . have filed more than *seventy-five* complaints of Border Patrol abuse with
26 the Department of Homeland Security’s Office of Civil Rights and Civil Liberties . . . To
27 our knowledge, DHS has taken no action to redress the abuse detailed in these
28 complaints.”). The ACLU is still waiting for substantive responses to multiple civil rights
complaints filed with OIG and CRCL—including a January 15, 2014 complaint filed on
behalf of fifteen individuals describing abuse and harassment at Border Patrol interior
checkpoints; an October 9, 2013 complaint on behalf of five individuals alleging rights
violations arising from Border Patrol “roving patrol” operations; and a complaint filed May
9, 2012 on behalf of eleven individuals reporting various abuses by CBP agents at southern
Ports of Entry.

¹² In one recent case—the only example known to Plaintiffs of an agent facing disciplinary
action for abusing children—Border Patrol agent Aldo Francisco Arteaga was reported by
supervisors after being caught on a surveillance camera punching a child in custody. See

1 By failing to meaningfully investigate or otherwise respond to consistent reports of systemic
2 abuse, DHS and CBP officials have demonstrated a continuing disregard for the civil and
3 human rights of children in their custody, and may have violated state and federal child
4 abuse reporting laws.¹³

5 21. The failure of DHS to produce the documents requested by Plaintiffs violates
6 the FOIA and impedes Plaintiffs' efforts to educate the public on matters of pressing public
7 concern—namely, the mistreatment of children in Border Patrol custody and the adequacy
8 of DHS oversight mechanisms to detect and respond to recurring allegations of misconduct
9 by officials of the largest law enforcement agency in the country.

10 **PLAINTIFFS' FOIA REQUEST**

11 22. In letters sent by e-mail and certified postal mail to Defendant DHS's FOIA
12 Officer Karen Neuman on December 3, 2014, Plaintiffs submitted a FOIA request for
13 records concerning allegations of abuse and mistreatment of children in Border Patrol
14 custody and the handling of those allegations by DHS oversight agencies. A copy of the
15 Request is attached hereto as Exhibit A, and the Request is hereby incorporated by
16 reference.

17 23. Plaintiffs requested Expedited Processing of the Request pursuant to 5 U.S.C.
18 § 552(a)(6)(E)(i) and 5 U.S.C. § 552(a)(6)(E)(v). Plaintiffs also requested a Fee Waiver for
19 the Request pursuant to 6 C.F.R. § 5.11(b)(4) and (d)(1), and alternatively, 6 C.F.R. §
20 5.11(k). *See* Exhibit A.

21 24. Upon information and belief, Defendant DHS received the Request described
22 in ¶ 22 no later than December 11, 2014,¹⁴ and subsequently forwarded the Request or

23 _____
24 Brian Bennett and Cindy Carcamo, *Border Patrol Agents Charged in Assault on 14-Year-Old Boy*, L.A. TIMES, Sept. 25, 2014, available at <http://lat.ms/1rGH1Ii>.

25 ¹³ *See, e.g.*, Victims of Child Abuse Act of 1990; 42 U.S.C. § 13031; 28 C.F.R. § 81.2–81.3.

26 ¹⁴ On January 22, 2015, Plaintiffs received an e-mail from Defendant OIG. That e-mail
27 included as an attachment a copy of Plaintiffs' FOIA Request, with a file stamp indicating
28 it was received by Defendant DHS on December 11, 2014. Thus, although Plaintiffs
submitted the Request to DHS via e-mail on December 3, 2014, for purposes of this

1 portions of the Request to various DHS sub-agencies, including Defendants CBP, ICE,
2 CRCL and OIG.

3 25. On December 16, 2014, Plaintiffs received an acknowledgment of receipt via
4 e-mail from Defendant CRCL. A copy of that e-mail is attached hereto as Exhibit B.

5 26. On December 19, 2014, Plaintiffs received an e-mail from Defendant ICE
6 denying Plaintiffs' request for expedited processing and waiver of fees, and invoking a ten-
7 day extension to respond to the Request under 5 U.S.C. § 552(a)(6)(B). A copy of that e-
8 mail is attached hereto as Exhibit C.

9 27. On January 9, 2015, Plaintiffs received a second e-mail from CRCL, which
10 did not commit to producing the requested documents and instead sought a modification of
11 Plaintiffs' Request, and a follow up e-mail on January 20, 2015. Copies of those e-mails
12 are attached hereto as Exhibit D and Exhibit E, respectively.

13 28. On January 22, 2015, Plaintiffs received a letter from Defendant OIG,
14 denying Plaintiffs' request for expedited processing, and invoking a ten-day extension to
15 respond to the Request under 5 U.S.C. § 552(a)(6)(B).¹⁵ A copy of that letter is attached
16 hereto as Exhibit F.

17 29. On January 26, 2015, Plaintiffs responded via e-mail to CRCL, declining the
18 agency's request to narrow the scope of Plaintiffs' FOIA Request. A copy of that e-mail is
19 attached hereto as Exhibit G.

20 30. To date, other than the aforementioned correspondence, Plaintiffs have
21 received no other communication regarding their Request from DHS or any of its
22 component agencies. Specifically, Plaintiffs have not received a determination regarding
23 their Request from Defendants or any of DHS's other component agencies.

24 _____
25 Complaint, Plaintiffs will assume DHS received the Request on or before December 11,
26 2014.

26 ¹⁵ In its letter, OIG states that it received Plaintiffs' Request from DHS on January 15, 2015.
27 DHS, however, was required to forward the Request to the relevant component agencies
28 within ten business days of receipt—in this case, no later than December 26, 2014. 5 U.S.C.
§ 552(a)(6)(A)(ii).

1 31. Defendants therefore have not responded to Plaintiffs' Request as required by
2 statute. 5 U.S.C. § 552(a)(6)(A)(i).

3 32. Defendant DHS received the Request no later than December 11, 2014, and
4 its deadline to respond to the Request therefore elapsed on or before January 12, 2015.

5 33. Pursuant to 5 U.S.C. § 552 (a)(6)(A)(ii), Defendant CBP could have received
6 the Request no later than December 26, 2014, and its deadline to respond to the Request
7 therefore elapsed on or before January 27, 2015.

8 34. Defendant CRCL received the Request on December 15, 2014, and sought a
9 modification of the Request on January 9, 2015. Plaintiffs responded to the request for
10 modification on January 26, 2015. Pursuant to 5 U.S.C. § 552(a)(6)(ii)(I), CRCL's deadline
11 to respond to the Request therefore elapsed on or before January 29, 2015.

12 35. Defendant ICE received the Request on December 19, 2014 and requested a
13 ten-day extension pursuant to 5 U.S.C. § 552 (a)(6)(B)(i). Its deadline to respond to the
14 Request therefore elapsed on or before February 4, 2015.

15 36. Pursuant to 5 U.S.C. § 552 (a)(6)(A)(ii), Defendant OIG could have received
16 the Request no later than December 26, 2014, and requested a ten-day extension pursuant
17 to 5 U.S.C. § 552 (a)(6)(B). Its deadline to respond to the Request therefore elapsed on or
18 before February 10, 2015.

19 37. Because Defendants have failed to respond within the statutory time limit,
20 Plaintiffs are deemed to have exhausted the applicable administrative remedies. 5 U.S.C.
21 § 552(a)(6)(C)(i).

22 38. Upon information and belief, Defendants are in possession and have control
23 over the records sought by Plaintiffs and have failed to make reasonable efforts to search
24 for records responsive to Plaintiffs' Request.

25 39. Defendants have wrongfully withheld requested records from Plaintiffs.
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27
28

CAUSES OF ACTION

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2 40. Plaintiffs repeat, re-allege, and incorporate the allegations in the foregoing
3 paragraphs as though fully set forth herein.

4 41. Each Defendant is an agency subject to FOIA, 5 U.S.C. § 552(f), and must
5 therefore release in response to a FOIA request any disclosable records in its possession at
6 the time of the request and provide a lawful reason for withholding any materials as to which
7 it claims an exemption, under 5 U.S.C. § 552(a)(3).

8 42. Defendants have failed to make a reasonable effort to search for records
9 sought by the Request, and that failure violates FOIA, 5 U.S.C. § 552(a)(3), and
10 Defendants' corresponding regulations.

11 43. Defendants have failed to promptly make available the records sought by the
12 Request, and that failure violates FOIA, 5 U.S.C. § 552(a)(6)(A), and Defendants'
13 corresponding regulations.

14 44. Defendants have failed to process Plaintiffs' Request as soon as practicable,
15 and that failure violates FOIA, 5 U.S.C. § 552(a)(6)(E), and Defendants' corresponding
16 regulations.

17 45. Defendants have failed to grant Plaintiffs' request for a waiver of search,
18 review, and duplication fees, and that failure violates FOIA, 5 U.S.C. § 552(a)(4), and
19 Defendants' corresponding regulations. Further, Defendants have failed to grant Plaintiffs'
20 request for a limitation of fees, and that failure violates FOIA, 5 U.S.C. § 552(a)(4)(6), and
21 Defendants' corresponding regulations.

22 **REQUESTED RELIEF**

23 WHEREFORE, Plaintiffs pray that this Court:

24 A. Order Defendants to immediately process and release all records responsive
25 to the Request;

26 B. Enjoin Defendants from charging Plaintiffs search, review, or duplication fees
27 for the processing of the Request;
28

1 C. Award Plaintiffs their costs and reasonable attorneys' fees incurred in this
2 action; and

3 D. Grant such other relief as the Court may deem just and proper.

4 DATED this 11th day of February, 2015.

5
6 ACLU FOUNDATION OF ARIZONA

7 By /s/ James Duff Lyall

8 Victoria Lopez

9 Daniel J. Pochoda

James Duff Lyall

10 ACLU FOUNDATION OF SAN DIEGO AND
11 IMPERIAL COUNTIES

12 By /s/ Mitra Ebadolahi

13 David Loy

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18 *Attorneys for Plaintiffs*

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