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10 UNITED STATES DISTRICT COURT FOR THE  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN FRANCISCO/OAKLAND DIVISION

13  
14 Jose Armando CAUICH CASTILLO,

15 Plaintiff,

16 v.

17 U.S. CUSTOMS AND BORDER PROTECTION,

18 Defendant.  
19  
20  
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Case No. \_\_\_\_\_

**Complaint for Declaratory  
and Injunctive Relief Under  
the Freedom of Information  
Act**

**INTRODUCTION**

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2 1. Plaintiff Jose Armando Cauich Castillo (Mr. Cauich Castillo) brings this action  
3 against Defendant U.S. Customs and Border Protection (CBP) under the Freedom of Information  
4 Act (FOIA), 5 U.S.C. § 552 *et seq.*, to compel the disclosure of records in Defendant’s  
5 possession. Mr. Cauich Castillo filed a FOIA request with CBP on April 7, 2023. The statutory  
6 deadline for CBP to respond to Mr. Cauich Castillo’s FOIA request has expired, but CBP has  
7 failed to make a determination on the request, in violation of FOIA.  
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9 **JURISDICTION AND VENUE**

10 2. This Court has jurisdiction under 5 U.S.C. § 552, *et seq.* (FOIA statute), 28  
11 U.S.C. § 1331 (federal question), and 28 U.S.C. §§ 2201-2202 (Declaratory Judgment Act).

12 3. Venue is proper under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e)(1)  
13 because this is a civil action in which Defendants are federal agencies; Plaintiff resides in this  
14 District; and there is no real property involved in this action.  
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16 4. Because Defendants failed to comply with the applicable statutory time  
17 limitations in responding to Mr. Cauich Castillo’s FOIA request, Mr. Cauich Castillo is deemed  
18 to have exhausted his administrative remedies. 5 U.S.C. § 552(a)(6)(C)(i).

19 **INTRADISTRICT ASSIGNMENT**

20 5. Plaintiff’s claims arise in Marin County, in the city of San Rafael. Therefore,  
21 assignment to the San Francisco or Oakland Division is proper under Local Rule 3-2(d).  
22

23 **PARTIES**

24 6. Plaintiff Jose Armando Cauich Castillo is a citizen of Mexico who resides in San  
25 Rafael, California. Mr. Cauich Castillo currently has a FOIA request filed with CBP that has  
26 been pending beyond the 20- or 30-business days permitted by statute.

27 7. Defendant CBP is a component agency of DHS and is an agency within the  
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1 meaning of 5 U.S.C. § 552(f)(1). Among other duties, CBP is responsible immigration  
2 enforcement along the U.S. borders, including at San Diego, California, the location where the  
3 incident that formed the basis for the FOIA request at issue in this case occurred.

4 **LEGAL BACKGROUND**

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6 8. FOIA requires each agency, upon a request for records: (a) to conduct a search  
7 reasonably calculated to uncover all responsive documents, (b) to make the records available in  
8 the form or format requested if they are readily reproducible in that format, and (c) to promptly  
9 make available responsive records. 5 U.S.C. § 552(a)(3)(A)-(C).

10 9. FOIA also requires the agency to make a determination of whether it will comply  
11 with the request within 20 business days. 5 U.S.C. § 552(a)(6)(A)(i); 6 C.F.R. § 5.6(c).

12 10. If the agency finds that unusual circumstances apply, it must request, by written  
13 notice, no more than an additional 10 business days to issue its determination. 5 U.S.C. §  
14 552(a)(6)(B)(i).

15  
16 11. If an agency fails to comply with the time periods set forth in the statute, the  
17 requester is “deemed to have exhausted his administrative remedies” and may seek judicial  
18 review. 5 U.S.C. § 552(a)(6)(C)(i). The agency will not be permitted to assess search fees if it  
19 fails to comply with the applicable time limits. 5 U.S.C. § 552(a)(4)(A)(viii)(I); 6 C.F.R. §  
20 5.11(d)(2).

21 **FACTUAL ALLEGATIONS**

22 ***Mr. Cauch Castillo’s CBP FOIA Request***

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24 12. On April 7, 2023, through counsel, Mr. Cauch.Castillo submitted a FOIA request  
25 via the SecureRelease online portal to CBP. *See* Exhibit A.

26 13. The request seeks “[a]ny and all agency records (including but not limited to  
27 documents, video or audio recordings, and requests for medical assistance) pertaining to Jose  
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1 Armando Cauich Castillo in March 2022 and April 2022.” *Id.*

2 14. Mr. Cauich Castillo requested expedited processing for the FOIA request. He  
3 indicated that expedited processing was warranted because the requested records “are pertinent to  
4 an administrative claim under the Federal Tort Claims Act, for which there is a statute of  
5 limitations under 28 U.S.C. § 2401(b) that will run in March 2024.” *Id.*

7 15. As of June 23, 2023, CBP’s SecureRelease online portal for FOIA requests  
8 indicated that Mr. Cauich Castillo’s request had the status: “Submitted – Pending Review” and  
9 that his request for expedited processing had been “Declined.” *See* Exhibit B.

10 16. Mr. Cauich Castillo received no other response or acknowledgement of FOIA his  
11 request.

12 17. As of the date of this complaint, after expiration of the statutory time period for a  
13 response, CBP has failed to notify Mr. Cauich Castillo of any determination regarding the scope  
14 of any responsive records CBP intends to produce or withhold and/or whether CBP will produce  
15 the requested records or demonstrate that they are lawfully exempt from production.

17 **CAUSES OF ACTION**

18 **COUNT ONE**

19 **Violation of FOIA, 5 U.S.C. § 552 *et seq.***  
20 **Failure to Conduct an Adequate Search for Records**

21 18. Mr. Cauich Castillo incorporates the allegations in the paragraphs above as  
22 though fully set forth here.

23 19. CBP is obligated under 5 U.S.C. § 552(a)(3)(C) to conduct a reasonable search for  
24 records responsive to Mr. Cauich Castillo’s FOIA request.

25 20. Mr. Cauich Castillo has a legal right to obtain such records, and no legal basis  
26 exists for CBP’s failure to search for them.

27 21. CBP’s failure to conduct a reasonable search for records responsive to Mr. Cauich  
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1 Castillo's FOIA request violates, at a minimum, 5 U.S.C. § 552(a)(3)(C), as well as the  
2 regulations promulgated thereunder.

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4 **COUNT TWO**  
5 **Violation of FOIA, 5 U.S.C. § 552 *et seq.***  
6 **Failure to Disclose Responsive Records**

7 22. Mr. Cauch Castillo incorporates the allegations in the paragraphs above as  
8 though fully set forth here.

9 23. CBP is obligated under 5 U.S.C. § 552(a)(3)(A) to promptly produce records  
10 responsive to Mr. Cauch Castillo's FOIA request. CBP has failed to produce any records  
11 responsive to Mr. Cauch Castillo's FOIA request.

12 24. Mr. Cauch Castillo has a legal right to obtain such records, and no legal basis  
13 exists for CBP's failure to disclose them.

14 25. CBP's failure to disclose all responsive records violates, at a minimum, 5 U.S.C.  
15 § 552(a)(3)(A), as well as the regulations promulgated thereunder.

16 **COUNT THREE**  
17 **Violation of FOIA, 5 U.S.C. § 552 *et seq.***  
18 **Failure to Timely Respond**

19 26. Mr. Cauch Castillo incorporates the allegations in the paragraphs above as  
20 though fully set forth here.

21 27. CBP is obligated under 5 U.S.C. § 552(a)(6)(A)(i) to promptly make a  
22 determination about whether it will produce records responsive to Mr. Cauch Castillo's FOIA  
23 request within 20 business days of receipt or, if the agency invokes unusual circumstances  
24 through written notice, within 30 business days of receipt.

25 28. CBP has not made a determination on Mr. Cauch Castillo's FOIA request within  
26 the statutory time period under FOIA. According to CBP's own online FOIA portal, Mr. Cauch  
27 Castillo requested the records on April 7, 2023, and, therefore, CBP was required to produce the  
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1 records within 20 business days, i.e., by May 5, 2023, or if CBP invoked the 10-business-day  
2 extension, within 30 business days, i.e., by May 19, 2023. CBP has failed to produce the  
3 requested records.

4 29. Mr. Cauich Castillo has a legal right to obtain such records, and no legal basis  
5 exists for CBP's failure to disclose them.

6 30. CBP's failure to disclose all responsive records within the statutory time period  
7 violates, at a minimum, 5 U.S.C. §§ 552(a)(3)(A) and (a)(6)(A) & (B), as well as the regulations  
8 promulgated thereunder.  
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10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff prays that this Court grant the following relief:  
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- 13 (1) Assume jurisdiction over this action;
- 14 (2) Declare that Defendant's failure to conduct a reasonable search for records  
15 responsive to Mr. Cauich Castillo's FOIA request violates the FOIA;
- 16 (3) Declare that Defendant's failure to make a determination on Mr. Cauich Castillo's  
17 FOIA request within the statutory time frame violates the FOIA and the  
18 regulations promulgated thereunder;
- 19 (4) Declare that Defendant's failure to promptly produce records responsive to  
20 Cauich Castillo's request violates FOIA and the regulations promulgated  
21 thereunder;
- 22 (5) Order Defendant to expeditiously process and disclose all responsive, nonexempt  
23 records, and enjoin Defendant from improperly withholding records;
- 24 (6) Award costs and reasonable attorney fees incurred under 5 U.S.C. § 552(a)(4)(E),  
25 and any other applicable law; and
- 26 (7) Grant such further relief as the Court deems just and proper.  
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Respectfully submitted,

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Dated: June 23, 2023