

**U.S. District Court  
District of Columbia (Washington, DC)  
CIVIL DOCKET FOR CASE #: 1:23-cv-02683-DLF**

FEDERATION FOR AMERICAN IMMIGRATION REFORM  
v. U.S. CUSTOMS AND BORDER PROTECTION  
Assigned to: Judge Dabney L. Friedrich  
Cause: 05:552 Freedom of Information Act

Date Filed: 09/13/2023  
Jury Demand: None  
Nature of Suit: 895 Freedom of Information Act  
Jurisdiction: U.S. Government Defendant

**Plaintiff**

**FEDERATION FOR AMERICAN  
IMMIGRATION REFORM**

represented by **Matthew James O'Brien**  
IMMIGRATION REFORM LAW  
INSTITUTE  
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*ATTORNEY TO BE NOTICED*

V.

**Defendant**

**U.S. CUSTOMS AND BORDER  
PROTECTION**

represented by **John Bardo**  
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*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

Date Filed	#	Docket Text
09/13/2023	<u>1</u>	COMPLAINT against CUSTOMS AND BORDER PROTECTION ( Filing fee \$ 402 receipt number ADCDC-10348753) filed by FEDERATION FOR AMERICAN IMMIGRATION REFORM. (Attachments: # <u>1</u> Civil Cover Sheet, # <u>2</u> Summons, # <u>3</u> Summons, # <u>4</u> Summons)(O'Brien, Matthew) (Entered: 09/13/2023)
09/13/2023	<u>2</u>	NOTICE of Appearance by Matthew James O'Brien on behalf of FEDERATION FOR AMERICAN IMMIGRATION REFORM (O'Brien, Matthew) (Entered: 09/13/2023)
09/13/2023	<u>3</u>	LCvR 26.1 CERTIFICATE OF DISCLOSURE of Corporate Affiliations and Financial Interests by FEDERATION FOR AMERICAN IMMIGRATION REFORM (O'Brien, Matthew) (Entered: 09/13/2023)
09/13/2023		Case Assigned to Judge Dabney L. Friedrich. (zrtw) (Entered: 09/13/2023)
09/13/2023	<u>4</u>	SUMMONS (3) Issued Electronically as to U.S. CUSTOMS AND BORDER PROTECTION, U.S. Attorney and U.S. Attorney General (Attachments: # <u>1</u> Notice and Consent)(zrtw) (Entered: 09/13/2023)
09/13/2023	<u>5</u>	STANDARD ORDER for Civil Cases. See text for details. Signed by Judge Dabney L. Friedrich on September 13, 2023. (lclfl1) (Entered: 09/13/2023)
09/26/2023	<u>6</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to the United States Attorney. Date of Service Upon United States Attorney on 9/20/2023. Answer due for ALL FEDERAL DEFENDANTS by 10/20/2023. (O'Brien, Matthew) (Entered: 09/26/2023)

10/03/2023	<u>7</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed on United States Attorney General. Date of Service Upon United States Attorney General 9/22/2023. (O'Brien, Matthew) (Entered: 10/03/2023)
10/12/2023	<u>8</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed. U.S. CUSTOMS AND BORDER PROTECTION served on 9/20/2023 (O'Brien, Matthew) (Entered: 10/12/2023)
10/17/2023	<u>9</u>	Consent MOTION for Extension of Time to <i>Respond to Complaint</i> by U.S. CUSTOMS AND BORDER PROTECTION. (Attachments: # <u>1</u> Text of Proposed Order)(Bardo, John) (Entered: 10/17/2023)
10/17/2023		MINUTE ORDER. Upon consideration of the defendant's <u>9</u> Consent Motion for Extension of Time, the motion is GRANTED. The defendant shall answer or otherwise respond to the complaint on or before November 20, 2023. So Ordered by Judge Dabney L. Friedrich on October 17, 2023. (lcldf1) (Entered: 10/17/2023)
11/20/2023	<u>10</u>	MOTION to Dismiss by U.S. CUSTOMS AND BORDER PROTECTION. (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Text of Proposed Order)(Bardo, John) (Entered: 11/20/2023)
12/13/2023		MINUTE ORDER. The defendant filed a <u>10</u> Motion to Dismiss on November 20, 2023. The Court's Rules provide that an opposing party must respond to a motion to dismiss "[w]ithin 14 days of the date of service or at such other time as the Court may direct." LCvR 7(b). This Court has not directed any extension of that deadline. Nonetheless, as of December 13, 2023, the plaintiff has neither filed an opposition to the government's motion nor requested an extension for doing so. Accordingly, the plaintiff is ORDERED to show cause, on or before December 27, 2023, for why this Court should not construe the plaintiff's failure to respond as consent to the government's motion. So Ordered by Judge Dabney L. Friedrich on December 13, 2023. (lcldf1) (Entered: 12/13/2023)
12/13/2023		Set/Reset Deadlines: Response to Show Cause due by 12/27/2023. (zjch, ) (Entered: 12/14/2023)
01/04/2024		<p>MINUTE ORDER. Upon consideration of the defendant's <u>10</u> Motion to Dismiss, the Court will grant the motion. The Freedom of Information Act (FOIA) guarantees access to certain agency "records." 5 U.S.C. 552(a)(3)(D). But the plaintiff's FOIA request, which seeks statistics on "the total number of family units" and "the total number of minors" separated by Customs and Border Patrol during 2022, does not request access to a "record" — that is, to agency "books, papers, maps, photographs, machine readable materials, or other documentary materials." <i>Forsham v. Harris</i>, 445 U.S. 169, 183 (1980) (quoting 44 U.S.C. 3301). Instead, it asks the government to calculate a statistic based on records in its possession, a request that falls outside FOIA's perimeter. <i>Cf. Powell v. IRS</i>, 255 F. Supp. 3d 33, 43 (D.D.C. 2017) ("FOIA only requires that an agency turn over records, not that it provide a requestor with specific information or answer questions.").</p> <p>The plaintiff does not offer persuasive arguments otherwise. Indeed, the plaintiff has not filed an opposition to the defendant's motion to dismiss at all, despite the Court's order on December 13, 2023 that it "show cause, on or before December 27, 2023, for why this Court should not construe the plaintiff's failure to respond as consent to the government's motion." Accordingly, the Court deems the plaintiff's contrary substantive arguments forfeited. <i>See Cohen v. Bd. of Trustees of the Univ. of the Dist. of Columbia</i>, 819 F.3d 476, 480–81 (D.C. Cir. 2016).</p> <p>For these reasons, the defendant's <u>10</u> Motion to Dismiss is GRANTED. On February 3, 2024, the Court will dismiss this action without prejudice and direct the Clerk of Court to close the case, absent a submission by the plaintiff showing cause to do otherwise. <i>Cf. Fed. R. Civ. P. 41; Cohen</i>, 819 F.3d at 481–82. So Ordered by Judge Dabney L. Friedrich on January 4, 2024. (lcldf1) (Entered: 01/04/2024)</p>
01/11/2024	<u>11</u>	NOTICE of Consent to Dismissal by FEDERATION FOR AMERICAN IMMIGRATION REFORM (O'Brien, Matthew) (Entered: 01/11/2024)
01/11/2024		MINUTE ORDER. Upon consideration of the plaintiff's <u>11</u> Notice, and consistent with the Court's January 4, 2024 minute order granting the defendant's <u>10</u> Motion to

Dismiss, this action is DISMISSED without prejudice. The Clerk of Court is directed to close this case. So Ordered by Judge Dabney L. Friedrich on January 11, 2024. (lcdlf1) (Entered: 01/11/2024)