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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**(San Francisco Division)**

JUSTICE & DIVERSITY CENTER OF THE  
BAR ASSOCIATION OF SAN FRANCISCO,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF  
HOMELAND SECURITY; UNITED  
STATES IMMIGRATION AND CUSTOMS  
ENFORCEMENT,

Defendants.

Case No.

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF UNDER THE  
FREEDOM OF INFORMATION ACT  
(FOIA), 5 U.S.C. § 552**

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<sup>1</sup> Stanford Law School Immigrants' Rights students (Kwan Kim, Meghan Koushik, Daniel Martinez, and Derin McLeod) participated in the preparation and drafting of the FOIA complaint.

## INTRODUCTION

1  
2 1. In 2017, as part of a wave of new immigration policies announced by executive  
3 order, the Trump Administration announced plans to dramatically expand the Institutional  
4 Hearing Program (“IHP”) with the stated goal of “speed[ing] the process of deporting  
5 incarcerated criminal aliens.”<sup>2</sup> The Administration’s expansion of IHP has impacted thousands of  
6 noncitizens, many of whom are longtime residents with U.S. citizen family members. The  
7 Administration targets these individuals for fast-tracked removal proceedings while the  
8 individuals are still serving their criminal sentences in remote prisons far from their families and  
9 communities. The individuals the Administration places into IHP are four times less likely to be  
10 represented by counsel than other immigrants facing removal.  
11

12 2. The Trump Administration has expanded IHP under a shroud of secrecy,  
13 providing virtually no information to the public about the program. The Trump Administration’s  
14 decision to expand IHP would necessarily require creating, at a minimum, contracts with prisons,  
15 memoranda facilitating extra staffing, and policy directives. Yet, the Trump Administration has  
16 neither shared these records with those directly impacted by the program nor with the general  
17 public.  
18

19 3. To uncover more information about IHP, the Justice and Diversity Center of the  
20 Bar Association of San Francisco (“JDC”) (“Plaintiff”) sent the Administration a request under  
21 the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, as amended. Plaintiff sought  
22 records about IHP from U.S. Immigration and Customs Enforcement (“ICE”), the sub-agency  
23 within the Department of Homeland Security (“DHS”) responsible for immigration enforcement  
24  
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26 <sup>2</sup> See Press Release, U.S. Dep’t of Justice, Attorney General Sessions Announces Expansion and  
27 Modernization of Program to Deport Criminal Aliens Housed in Federal Correctional Facilities (Mar. 30,  
28 2017) [hereinafter 2017 Press Release].

1 nationwide (collectively, “Defendants”). Yet after over seven months, Defendants have not  
2 produced a single sheet of paper in response to Plaintiff’s FOIA request, even after Plaintiff filed  
3 administrative appeals. Plaintiff now brings this action under FOIA seeking an order that  
4 Defendants immediately search and disclose records pursuant to Plaintiff’s FOIA request.

5  
6 **JURISDICTION, VENUE & INTRADISTRICT ASSIGNMENT**

7 4. This Court has subject matter jurisdiction over this action and personal  
8 jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). This Court also has subject  
9 matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. §§ 701-06.

10 5. Venue is proper in this district under 5. U.S.C. § 552(a)(4)(B) because JDC has its  
11 principal places of business in this district. Venue is also proper under 28 U.S.C. § 1391(e)  
12 because a substantial part of the events or omissions giving rise to this action occurred in this  
13 district.

14  
15 6. Assignment to the San Francisco Division is proper pursuant to Civil Local Rules  
16 3-2(c) and (d); because a substantial part of the events which give rise to the claims occurred in  
17 San Francisco County. The San Francisco Immigration Court, where IHP proceedings occur, is  
18 located in San Francisco County, and Plaintiff JDC is headquartered there.

19  
20 **PARTIES**

21 7. The Justice and Diversity Center of The Bar Association of San Francisco  
22 (“JDC”) is a non-profit organization that advances fairness and equality by providing pro bono  
23 legal services to low-income people. JDC’s Immigrant Legal Defense Program seeks to protect  
24 the due process rights of low-income and unrepresented immigrants facing deportation. The  
25 Immigrant Legal Defense Program houses the legal leadership positions of multiple  
26 collaboratives that work to build legal capacity and resources in the jurisdiction of the San  
27

1 Francisco Immigration Court so organizations can better defend individuals in deportation  
2 proceedings in the San Francisco region. JDC regularly represents IHP respondents before the  
3 San Francisco Immigration Court through the Attorney of the Day program, providing  
4 respondents with individual consultations, initial legal advice, same-day limited scope pro bono  
5 representation before the San Francisco Immigration Court, and subsequent referrals to other  
6 non-profit legal service providers and private bar immigration attorneys.

7  
8 8. Defendant, the United States Department of Homeland Security (“DHS”) is a  
9 federal agency within the meaning of 5 U.S.C. § 552(f). It is tasked with administering and  
10 enforcing the federal immigration laws. Defendant, Immigration and Customs Enforcement  
11 (“ICE”) is a sub-agency within DHS that identifies individuals to be placed in IHP, interviews  
12 those individuals, and initiates removal proceedings through IHP. ICE’s Office of the Chief  
13 Counsel also serves the prosecutorial function for all IHP removal proceedings. Upon  
14 information and belief, given their central role in the program’s operation and administration,  
15 DHS and ICE have the requested records in their possession, custody, or control.

16  
17 **FACTS**

18 **I. IHP IS A BROAD-RANGING, NEWLY-EXPANDED PROGRAM THAT HAS**  
19 **NEGATIVELY IMPACTED IMMIGRANT COMMUNITIES NATIONWIDE.**

20 9. IHP allows ICE to commence removal proceedings while an individual is  
21 criminally incarcerated, often in remote facilities across the country. The Trump Administration  
22 has pursued initiating removal proceedings through IHP “to the maximum extent possible.”  
23 Memorandum from John Kelly, Sec’y, U.S. Dep’t of Homeland Sec., on Enforcement of  
24 Immigration Laws to Serve the National Interest (Feb. 20, 2017) [hereinafter Kelly  
25  
26  
27  
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1 Memorandum].<sup>3</sup> IHP currently operates in at least twenty-one prisons across the country. Fact  
2 Sheet, Dep't of Justice, Exec. Office for Immigration Review, Institutional Hearing Program  
3 (Jan. 2018)<sup>4</sup> [hereinafter Fact Sheet]. Since the individuals ICE subjects to IHP are in custody in  
4 remote prisons, ICE often conducts their removal proceedings via video-teleconferencing. *See*  
5 2017 Press Release, *supra*.<sup>5</sup> For immigrants processed through IHP, if an immigration judge  
6 enters a final order of removal, ICE immediately deports them upon completion of their criminal  
7 sentences. *See* Exec. Order No. 13,768, 82 Fed. Reg. 8799 (Jan. 27, 2017).

8  
9 10. IHP results in the unwarranted deportation of noncitizens at risk of persecution  
10 and torture if forced to return to their home countries, many of whom may well have meritorious  
11 claims to relief. Letter from Immigrant Defense Project et al. to Juan P. Osuna, Dir., Exec. Office  
12 for Immig. Rev. 2 (Apr. 6, 2017) [hereinafter IDP Letter to EOIR].<sup>6</sup> In addition, many  
13 noncitizens facing removal through IHP are lawful permanent residents, and they are serving  
14 sentences for offenses that do not preclude relief from removal. *Id.*

15  
16 11. Noncitizens facing removal through IHP face insurmountable barriers to  
17 obtaining counsel even though access to qualified counsel is the single greatest determinant of  
18 success in removal proceedings. The Immigration and Nationality Act ("INA") guarantees all  
19 noncitizens in removal proceedings the right to retain counsel. 8 U.S.C. § 1362 (2018).  
20 Immigrants in detention who are represented by counsel are nearly eleven times more likely to  
21 seek relief, such as asylum, than those without representation. INGRID EAGLY & STEVEN SHAFER,  
22

23  
24 <sup>3</sup> [https://www.dhs.gov/sites/default/files/publications/17\\_0220\\_S1\\_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf](https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf).

25 <sup>4</sup> <http://www.aila.org/infonet/eoir-fact-sheet-on-the-institutional-hearing>.

26 <sup>5</sup> <https://www.justice.gov/opa/pr/attorney-general-sessions-announces-expansion-and-modernization-program-deport-criminal>.

27 <sup>6</sup> [https://www.immigrantjustice.org/sites/default/files/content-type/research-item/documents/2017-04/NGOLetter-IHPExpansion\\_4-6-17.pdf](https://www.immigrantjustice.org/sites/default/files/content-type/research-item/documents/2017-04/NGOLetter-IHPExpansion_4-6-17.pdf).

1 ACCESS TO COUNSEL IN IMMIGRATION COURT 2-3 (2016). Represented immigrants in detention  
2 are twice as likely to obtain immigration relief when they seek it. *Id.* Nonetheless, noncitizens  
3 ICE targets through IHP are “very unlikely” to obtain counsel: just 9% of noncitizens facing  
4 removal through IHP are represented in their removal proceedings. Ingrid V. Eagly & Steven  
5 Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. PA. L. REV. 1, 24,  
6 24 n.101 (2015).

7  
8 12. Individuals facing removal through IHP face significantly greater barriers to  
9 mounting an adequate defense in removal proceedings. IHP facilities impose communication  
10 barriers that prevent detained immigrants from locating counsel, working with counsel even if  
11 retained, or even pursuing their own cases pro se. They are therefore ordered removed at  
12 drastically higher rates than similarly situated individuals in ordinary removal proceedings.  
13 Without information about the scope and procedural details of IHP, immigrants, immigrants’  
14 families and communities, and immigrants’ rights advocates such as Plaintiff cannot hope to  
15 ameliorate the situation of noncitizens facing removal through IHP.  
16

17 **II. THE TRUMP ADMINISTRATION HAS DRAMATICALLY EXPANDED IHP**  
18 **WITHOUT TELLING THE PUBLIC HOW THIS EXPANSION WILL**  
19 **OPERATE.**

20 13. Beyond announcing its intention to expand IHP, the Trump Administration has  
21 released very little information about the program to the public. On January 25, 2017, President  
22 Trump issued Executive Order 13767, “Border Security and Immigration Enforcement,” which  
23 prioritized the removal of noncitizens with criminal convictions. One month later, on February  
24 20, 2017, then-DHS Secretary John Kelly issued a memorandum stating that to “the maximum  
25 extent possible . . . removal proceedings shall be initiated against aliens incarcerated . . . under  
26 the Institutional Hearing and Removal Program.” Kelly Memorandum at 1, *supra*. The  
27  
28

1 memorandum further directs that its guidance should “inform enforcement and removal  
2 activities, detention decisions, administrative litigation, budget requests and execution, and  
3 strategic planning.” *Id.*

4 14. On March 30, 2017, then-Attorney General Jeff Sessions announced a plan to  
5 implement Executive Order 13767 and expand the use of IHP to “speed the process of deporting  
6 incarcerated criminal aliens.” 2017 Press Release, *supra*. Then-Attorney General Sessions  
7 announced three main plans for expanding IHP, specifically 1) an “increase in the number of  
8 active facilities with the program to a total of 14 Federal Bureau of Prisons (“BOP”) and 6 BOP  
9 contract facilities”; 2) an “increase in each facility’s VTC capabilities”; and 3) the “finaliz[ing]  
10 of a new and uniform intake policy.” The Press Release noted that the Executive Office of  
11 Immigration Review (“EOIR”) and ICE expected to have reached agreement on this new intake  
12 process by April 6, 2017. Subsequently, EOIR announced in a series of press releases an  
13 additional ten IHP hearing sites around the country, a nearly 50% increase since the issuance of  
14 the Executive Order.<sup>7</sup> Additionally, in a 2018 memorandum, EOIR established a goal of 85%  
15 completion of all IHP removal cases “prior to the alien’s release from detention by IHP  
16 custodian.” Memorandum from James R. McHenry III, Dir., Exec. Off. Immig. Rev., to Off. of  
17 the Chief Immig. Judge (Jan. 17, 2018).<sup>8</sup>

18 15. Beyond the Trump Administration’s memoranda generally about the planned  
19 expansion of IHP, the Administration has not released information about the specifics of its  
20 expansion. These records undoubtedly exist. On information and belief, increasing the number of  
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22  
23

24 <sup>7</sup> See, e.g.,

25 <https://www.justice.gov/sites/default/files/pages/attachments/2017/03/24/noticenewhearinglocations03242017.pdf> and

26 [https://www.justice.gov/sites/default/files/pages/attachments/2017/03/17/noticeresixhls\\_03172017\\_1.pdf](https://www.justice.gov/sites/default/files/pages/attachments/2017/03/17/noticeresixhls_03172017_1.pdf)

27 <sup>8</sup> <https://www.justice.gov/eoir/page/file/1026721/download>

1 IHP hearing sites requires formal agreements between various federal agencies, including, at  
2 least, ICE, EOIR, BOP, and private correctional facilities. On information and belief, such  
3 agreements require extensive inter- and intra-agency communication in advance of their  
4 formalization. Similarly, expanding the use of video teleconferencing at the new IHP sites likely  
5 requires the development of contracts with companies to establish the required  
6 telecommunications links and set up the required hardware. It likely also requires interagency  
7 cooperation of the kind facilitated through memoranda of understanding and other formal  
8 documentation.  
9

10 16. On information and belief, the size and speed of IHP's expansion should have  
11 generated thousands of pages of documents including, for example, discussions of how new  
12 federal and state prisons were selected as IHP sites; guidance to prison administrators and  
13 officials on administering IHP hearings at their sites; contracts and agreements with the new  
14 facilities; and information on the increase in IHP cases and whether this increase is in line with  
15 Defendants' anticipated case completion metrics. More than two years into this expansion,  
16 Defendants have failed to inform the public about these specifics.  
17

18 **III. THE PUBLIC HAS AN URGENT NEED FOR INFORMATION CONCERNING**  
19 **IHP, GIVEN THE GRAVE DUE PROCESS AND CIVIL RIGHTS**  
20 **IMPLICATIONS OF SUCH POLICY CHANGES.**

21 17. Under the Trump Administration, the detention and incarceration of immigrants is  
22 at an "all-time high." Spencer Ackerman, *ICE Is Detaining 50,000 People, an All-Time High*,  
23 *DAILY BEAST* (Mar. 8, 2019).<sup>9</sup> The Trump Administration has also taken a number of steps to  
24 expand immigration detention and to speed the removal of detained immigrants. *See, e.g.*, Ron  
25 Nixon, *Immigration Arrests and Deportations Are Rising, I.C.E. Data Show*, *N.Y. TIMES* (Dec.  
26

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27 <sup>9</sup> <https://www.thedailybeast.com/ice-is-detaining-50000-people-a-new-all-time-high>  
28



1 14, 2018) (discussing “significant step[s]” up in arrests and deportations of undocumented  
2 immigrants, even those detained for “for minor violations, or who pose no security threat”);<sup>10</sup>  
3 Ted Hesson, *DHS Draft Proposal Would Speed Deportations*, POLITICO (Apr. 25, 2019)  
4 (discussing impact of expanding expedited removal nationwide);<sup>11</sup> Jack Herrera, *Trump Wants to*  
5 *Deport More People Without Hearings*, PAC. STD (Apr. 25, 2019);<sup>12</sup> Katie Reilly, *Family*  
6 *Separation: 460 Parents Might Have Been Deported Without Their Children*, TIME (July 24,  
7 2018) (discussing impact of the Trump administration’s “zero tolerance” forcible separation  
8 policy for families).<sup>13</sup>  
9

10 18. In this context, immigrants’ rights organizations have raised the alarm about the  
11 Trump Administration’s expansion of IHP. The American Immigration Lawyers Association  
12 (“AILA”) has warned that IHP’s expansion has clear and significant ramifications on  
13 noncitizens’ ability to mount an adequate defense in removal proceedings. AILA has publicly  
14 stated that the Trump Administration has imposed considerable pressure on immigration judges  
15 to hear and resolve IHP proceedings cases far more quickly than other removal proceedings,  
16 “treating the complex process of judging like an assembly line” and virtually guaranteeing that  
17 immigrants in IHP proceedings will have less time to find legal counsel and build their cases  
18 effectively. Press Release, Am. Immig. Lawyers’ Assoc., FOIA Reveals EOIR’s Failed Plan for  
19 Fixing the Immigration Court Backlog 1 (Feb. 21, 2019).<sup>14</sup> These measures have “eroded the  
20 court’s ability to ensure due process” by pressuring judges to rule “at a breakneck pace” on  
21  
22  
23

24 <sup>10</sup> [https://www.nytimes.com/2018/12/14/us/politics/illegal-immigrant-arrests-deportations-  
25 rise.html](https://www.nytimes.com/2018/12/14/us/politics/illegal-immigrant-arrests-deportations-rise.html)

26 <sup>11</sup> <https://www.politico.com/story/2019/04/25/deportation-undocumented-immigrants-1380380>

27 <sup>12</sup> <https://psmag.com/news/trump-wants-to-deport-more-people-without-hearings>

28 <sup>13</sup> <http://time.com/5347015/trump-family-separation-parents-deported/>

<sup>14</sup> <https://www.aila.org/File/DownloadEmbeddedFile/79301>

1 whether an immigrant should be removed from the United States. *Id.*; *see also* Molly O’Toole,  
2 *Trump Plan Fails to Cut Immigration Backlog, as Caseload Soars More Than 26%*, L.A. TIMES  
3 (Feb. 21, 2019).<sup>15</sup>

4 19. The expansion of IHP program is of great concern to Plaintiff and other  
5 immigration organizations that regularly represent noncitizens in removal proceedings. Plaintiff  
6 seeks to provide legal representation to noncitizens facing removal in the San Francisco  
7 Immigration Court, including IHP respondents. Plaintiff works in partnership with family  
8 members and community groups anxious to learn more about IHP.  
9

10 **IV. GIVEN THE SIGNIFICANT CONCERNS OVER IHP’S EXPANSION,**  
11 **PLAINTIFF SUBMITTED A FOIA REQUEST REGARDING DEFENDANTS’**  
12 **EXPANSION OF IHP.**

13 20. In response to the Trump Administration’s secrecy and lack of transparency over  
14 IHP’s expansion, Plaintiff submitted a request for records pursuant to the Freedom of  
15 Information Act, 5 U.S.C. § 552, dated November 30, 2018, pertaining to Defendants’  
16 administration and relevant policies involving IHP, including Defendants’ treatment of persons  
17 placed in IHP. *See Exhibit A.*

18 21. Plaintiff sought “[a]ll records that reference site selection for IHP,” and “[a]ll  
19 records that reference the criteria that ICE uses to designate any . . . correctional facilities as IHP  
20 hearing sites . . . .” *Id.* at 2. They also sought records “that describe which federal BOP facilities,  
21 private contract facilities, state prisons, and/or county jails are considered IHP ‘release sites.’”  
22 *Id.* Plaintiff additionally sought records “describing how IHP hearing sites . . . are prioritized and  
23 defining the criterial for such prioritization.” *Id.* at 3.  
24  
25

26 \_\_\_\_\_  
27 <sup>15</sup> Available at <https://www.latimes.com/politics/la-na-pol-immigration-court-backlog-worsens-20190221-story.html>  
28

1           22. Plaintiff also sought records “describing or including policies, procedures,  
2 memoranda, communications, or other records describing the criteria to be used for identifying  
3 which federal or state prisoners should be placed in removal proceedings through IHP,” and  
4 records “describing ICE’s current intake policy for IHP.” *Id.* Plaintiff then sought records  
5 “describing when, during a noncitizen’s criminal sentence, he or she should be placed into  
6 removal proceedings at an IHP location.” *Id.*

7           23. Plaintiff then requested records “describing the obligations, protocols and  
8 practices of . . . administrators to provide information about IHP to noncitizens who have been  
9 placed in the program” and records “describing or including policies . . . concerning when and  
10 how noncitizens are notified that they are being placed in IHP,” including “what information  
11 they are provided about the program and whether they are advised of their rights in the  
12 program.” *Id.* Plaintiff also sought records “describing what rights, privileges, and protections  
13 are afforded to noncitizens placed in IHP.” *Id.* Plaintiff further sought records describing “federal  
14 or state conditions, detention, or imprisonment standards that apply to noncitizens by virtue of  
15 their being placed in removal proceedings through IHP.” *Id.* Plaintiff also sought records  
16 pertaining to the ability of attorneys to meet and speak with detained clients held at IHP hearing  
17 sites in California. *Id.* at 4.

18           24. Plaintiff then sought information regarding agreements between DHS and BOP as  
19 to the operation and administration of IHP hearing sites within California. Plaintiff also sought  
20 records pertaining to audits, inspections, or reviews conducted of IHP program at California  
21 hearing sites. *Id.* at 4.

22           25. Finally, Plaintiff requested, for the period of October 1991 onwards, the number  
23 of respondents who were issued a Notice to Appear (NTA) as part of IHP at five California sites,  
24  
25  
26  
27  
28

1 and information about respondents' country of citizenship, age, immigration status, charges, and  
2 factual allegations regarding inadmissibility or deportability. *Id.* at 4-5.

3 26. Plaintiff based its request on Executive Order 13767 and an implementing  
4 memorandum issued by the Trump Administration. It also sought a waiver of fees associated  
5 with their request. *Id.* at 5-6.

6  
7 **V. DEFENDANTS FAILED TO MAKE A TIMELY DETERMINATION OF**  
8 **PLAINTIFF'S FOIA REQUEST AND FAILED TO CONDUCT A REASONABLE**  
9 **SEARCH.**

10 27. Despite acknowledging receipt of Plaintiff's FOIA request on December 6, 2018,  
11 Defendants have failed to respond to Plaintiff's request within the twenty days afforded by the  
12 FOIA statute, 5 U.S.C. § 552(a)(6)(A)(i), or the ten additional days if there is an "unusual  
13 circumstance" § 552(a)(6)(B); 28 C.F.R. § 16.5(c). A copy of this acknowledgment of receipt is  
14 attached as **Exhibit B**.

15 28. In a letter dated December 20, 2018, Plaintiff appealed Defendants' constructive  
16 denial of the request. A copy of this letter is attached as **Exhibit C**.

17 29. On February 4, 2019, Defendants finally responded to Plaintiff's FOIA request,  
18 granting a fee waiver and requesting an additional ten days to produce records. A copy of this  
19 letter is attached as **Exhibit D**. Despite this, Defendants never followed up within the promised  
20 ten days with the requested records.

21 30. On February 20, 2019, Plaintiff sent a second letter appealing Defendants' failure  
22 to timely respond. A copy of this letter, which includes original attachments 1-3, is attached as  
23 **Exhibit E**. Defendants acknowledged receipt of Plaintiff's second appeal on February 28, 2019.  
24 A copy of this letter is attached as **Exhibit F**. Plaintiff then received a letter from the ICE Office  
25 of the Principal Legal Advisor dated March 20, 2019, stating that "in many cases, agencies  
26  
27  
28

1 cannot meet [statutory] time limits due to a high volume of requests...” and remanding the  
2 appeal to the ICE FOIA Office. Defendants invoked no statutory authority for the delay. A copy  
3 of this letter is attached as **Exhibit G**. There have been no further communications from  
4 Defendants since their communication on March 20. As of the filing of this Complaint,  
5 Defendants have failed to produce so much as a piece of paper in response to Plaintiff’s Request.

6 31. Defendants’ responses to Plaintiff’s FOIA request reveal a clear failure to conduct  
7 a search for records and to make the records available promptly. *See* 5 U.S.C. §§ 552(a)(3)(C) &  
8 (6)(C)(i).  
9

10 32. Defendants are required to conduct a “search reasonably calculated to uncover all  
11 relevant documents.” *Zemansky v. EPA*, 767 F.2d 569 (9th Cir. 1985). Upon information and  
12 belief, such a search in the context of IHP program should have yielded significant responsive  
13 records.  
14

15 **FIRST CAUSE OF ACTION**  
16 **(Freedom of Information Act—Failure to Comply with Time Limit Provision)**

17 33. Plaintiff repeats and re-alleges the factual allegations contained in paragraphs 1  
18 through 32, inclusive.

19 34. By letter dated November 30, 2018, Plaintiff submitted the Request to Defendants  
20 pursuant to the Freedom of Information Act (FOIA).

21 35. Defendants have a statutory obligation to determine whether they will comply  
22 with the FOIA request and to communicate that determination to Plaintiff. Despite  
23 acknowledging receipt of Plaintiff’s FOIA request on December 6, 2018, Defendants failed to  
24 respond to Plaintiff’s Request within the 20 days afforded under the FOIA statute, 5 U.S.C.  
25 § 552(a)(6)(A)(i), or the additional 10 days provided for “unusual circumstances,” 5 U.S.C.  
26 § 552(a)(6)(B), 6 C.F.R. § 5.5(c).  
27  
28

1 36. Defendants' failure to notify Plaintiff of their determination whether to comply  
2 with Plaintiff's requests violates 5 U.S.C. §§ 552(a)(6)(A)(i) & (a)(6)(B), and 6 C.F.R.  
3 § 5.5(c).

4 37. Plaintiff has exhausted all applicable administrative remedies with respect to  
5 Defendants' failure to determine whether they will comply with Plaintiff's request. 5 U.S.C.  
6 § 552(a)(6)(C)(i).

7 38. Plaintiff has a legal right under FOIA, 5 U.S.C. § 552(a)(6)(A)(i), 5 U.S.C.  
8 § 552(a)(6)(B), and 6 C.F.R. § 5.5(c), to timely notification from Defendants, and there exists no  
9 basis for Defendants' denial of this right.  
10

11 **SECOND CAUSE OF ACTION**  
12 **(Freedom of Information Act—Failure to Conduct a Reasonable Search for Records**  
13 **Responsive to Plaintiff's Request)**

14 39. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through  
15 32 above, inclusive.

16 40. By letter dated November 30, 2018, Plaintiff submitted the Request to Defendants  
17 pursuant to the Freedom of Information Act (FOIA).

18 41. When responding to a FOIA request, Defendants have a statutory obligation to  
19 search for "agency records for the purpose of locating those records which are responsive to a  
20 request." FOIA, 5 U.S.C. § 552(a)(3)(D). Defendants are also required to "make reasonable  
21 efforts to search for the records in electronic form or format." 5 U.S.C. § 552(a)(3)(C).

22 Defendants have not provided Plaintiff with any records.  
23

24 42. Defendants' failure to undertake a search reasonably calculated to uncover all  
25 relevant records sought by Plaintiff's request violates FOIA, 5 U.S.C. § 552(a)(3), and  
26 corresponding agency regulations, *see* 6 C.F.R. § 5.4.  
27  
28

1 43. Plaintiff has exhausted all required and available administrative remedies with  
2 respect to this claim. 5 U.S.C. § 552(a)(6)(C)(i).

3 44. Plaintiff has a legal right under FOIA to enforce Defendants' obligation to  
4 undertake a search reasonably calculated to uncover all relevant records that are responsive to  
5 Plaintiff's FOIA request, and there exists no basis for Defendants' denial of this right. *See* 5  
6 U.S.C. § 552(a)(4)(B).

7  
8 **THIRD CAUSE OF ACTION**  
9 **(Freedom of Information Act—Failure to Make Records Promptly Available)**

10 45. Plaintiff repeats and re-alleges the factual allegations contained in paragraphs 1  
11 through 32 above, inclusive.

12 46. Plaintiff submitted the Request to Defendants pursuant to the Freedom of  
13 Information Act (FOIA) by letter dated November 30, 2018.

14 47. On February 20, 2019 Plaintiff appealed Defendants' failure to timely respond.

15 48. On March 20, 2019 Defendants remanded the Request to the ICE FOIA office,  
16 indicating that additional time would be needed but not providing any statutory authority for the  
17 request for more time.

18 49. Defendants have a statutory obligation to make records sought by Plaintiff's  
19 request "promptly available." 5 U.S.C. § 552(a)(3)(A). Defendants have produced no responsive  
20 records whatsoever, despite acknowledging receipt of Plaintiff's request over seven months ago  
21 on December 6, 2018.

22 50. As of August 5, 2019, Defendants have neither responded following remand nor  
23 produced any records.

24 51. Defendants' failure to make records sought by Plaintiff's request "promptly  
25 available" violates FOIA. *See* 5 U.S.C. § 552(a)(3)(A).  
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1 52. Plaintiff has exhausted all required and available administrative remedies with  
2 respect to Defendants' failure to make records sought by Plaintiff's request "promptly available."  
3 5 U.S.C. § 552(a)(6)(C)(i).

4 53. Plaintiff has a legal right under FOIA to obtain the agency records they seek, and  
5 there is no legal basis for Defendants' denial of said right.

6  
7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff requests that this Court award them the following relief:

9 A. Declare, pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, that the  
10 Defendants violated the Freedom of Information Act (FOIA), 5 U.S.C. § 552;

11 B. Order all Defendants to determine whether they will comply with Plaintiff's  
12 FOIA request and to communicate that determination to Plaintiff;

13 C. Order all Defendants to conduct a reasonable search for all responsive records;

14 D. Order all Defendants to promptly disclose the requested records in their entirety  
15 and make copies available to Plaintiff;

16 E. Order Defendants to prepare an index pursuant to *Vaughn v. Rosen*, 484 F.2d 820  
17 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974), for any documents they seek to withhold  
18 under a FOIA exemption;

19 F. Provide for expeditious proceedings in this action pursuant to 28 U.S.C. § 1657;

20 G. Award Plaintiff its reasonable costs and attorneys' fees pursuant to 5 U.S.C.  
21 § 552(a)(4)(E); and  
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23 H. Order such other relief as the Court deems just and appropriate.  
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Respectfully submitted,

DATED: August 2, 2019

IMMIGRANTS’ RIGHTS CLINIC  
Mills Legal Clinic at Stanford Law School

By: /s/ Lisa Weissman-Ward  
Lisa Weissman-Ward

LISA WEISSMAN-WARD  
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