

1 STEPHANIE M. HINDS (CABN 154284)  
Acting United States Attorney  
2 SARA WINSLOW (DCBN 457643)  
Chief, Civil Division  
3 SAVITH IYENGAR (CABN 268342)  
Assistant United States Attorney

4 450 Golden Gate Avenue, Box 36045  
5 San Francisco, California 94102  
Telephone: (415) 436-7200  
6 Facsimile: (415) 436-7234  
savith.iyengar@usdoj.gov

7 Attorneys for Defendants

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 OAKLAND DIVISION

11 AMERICAN CIVIL LIBERTIES UNION OF )  
12 NORTHERN CALIFORNIA, *et al.*, )

No. 4:21-cv-02632-DMR

13 Plaintiffs, )

**DEFENDANTS' ANSWER TO COMPLAINT**

14 v. )

15 U.S. IMMIGRATION AND CUSTOMS )  
16 ENFORCEMENT, *et al.*, )

17 Defendants. )

18 Defendants United States Immigration and Customs Enforcement (“ICE”), United States  
19 Customs and Border Protection (“CBP”), and United States Department of Homeland Security (“DHS”)  
20 (collectively, “Defendants”), by and through counsel, respectfully respond to the Complaint for  
21 Declaratory and Injunctive Relief (“Complaint”) filed by plaintiffs American Civil Liberties Union of  
22 Northern California, Mijente Support Committee, Just Futures Law, and Immigrant Defense Project  
23 (“Plaintiffs”), ECF No. 1, as follows:

24 **DEFENDANTS' RESPONSES TO THE NUMBERED PARAGRAPHS**

25 Defendants respond below to the separately numbered paragraphs and demand for relief  
26 contained in the Complaint.<sup>1</sup> To the extent any allegation is not explicitly admitted herein, it is

27 <sup>1</sup> The headings and numbered paragraphs of this Answer correspond to the headings and  
28 numbered paragraphs of the Complaint. Defendants do not waive any defensive theory or agree to or  
admit that Plaintiffs’ headings are accurate, appropriate, or substantiated.

1 denied. Moreover, to the extent the Complaint refers to or quotes from external documents, statutes, or  
2 other sources, Defendants may refer to such materials for their accurate and complete contents; however,  
3 Defendants' references are not intended to be, and should not be construed to be, an admission that the  
4 cited materials are correctly cited or quoted by Plaintiffs, are relevant to this, or any other, action, or are  
5 admissible in this, or any other, action.

6 **INTRODUCTION**

7 1. The allegations contained in Paragraph 1 constitute Plaintiffs' characterization of this  
8 action brought pursuant to the Freedom of Information Act ("FOIA") and their reasons for bringing this  
9 action, to which no response is required. To the extent any response is required, Defendants admit that  
10 Plaintiffs purport to bring this action under FOIA.

11 2. The allegations contained in Paragraph 2 constitute Plaintiffs' opinions and/or subjective  
12 characterizations, interpretations, speculation, and generalizations to which no response is required, and  
13 do not set forth a claim for relief or aver facts in support of a claim to which an answer is required. To  
14 the extent any response is required, Defendants lack sufficient information or knowledge to form a belief  
15 as to the truth or falsity of the allegations contained in Paragraph 2, and on that basis deny them.

16 3. The allegations contained in Paragraph 3 constitute Plaintiffs' opinions and/or subjective  
17 characterizations, interpretations, speculation, and generalizations to which no response is required, and  
18 do not set forth a claim for relief or aver facts in support of a claim to which an answer is required. To  
19 the extent any response is required, Defendants lack sufficient information or knowledge to form a belief  
20 as to the truth or falsity of the allegations contained in Paragraph 3, and on that basis deny them.

21 4. The allegations contained in Paragraph 4 constitute Plaintiffs' opinions and/or subjective  
22 characterizations, interpretations, speculation, and generalizations to which no response is required, and  
23 do not set forth a claim for relief or aver facts in support of a claim to which an answer is required. To  
24 the extent any response is required, Defendants lack sufficient information or knowledge to form a belief  
25 as to the truth or falsity of the allegations contained in Paragraph 4, and on that basis deny them, and  
26 Defendant ICE further denies the allegation that "ICE has used the technology to mine state driver  
27 license databases and identify immigrants for deportation."

28 5. The allegations contained in Paragraph 5 constitute Plaintiffs' opinions and/or subjective

1 characterizations, interpretations, speculation, and generalizations to which no response is required, and  
2 do not set forth a claim for relief or aver facts in support of a claim to which an answer is required. To  
3 the extent any response is required, Defendants lack sufficient information or knowledge to form a belief  
4 as to the truth or falsity of the allegations contained in Paragraph 5, and on that basis deny them.

5 6. The allegations contained in Paragraph 6 constitute Plaintiffs’ opinions and/or subjective  
6 characterizations, interpretations, speculation, and generalizations to which no response is required, and  
7 do not set forth a claim for relief or aver facts in support of a claim to which an answer is required. To  
8 the extent any response is required, Defendants lack sufficient information or knowledge to form a belief  
9 as to the truth or falsity of the allegations regarding what the “public learned,” and on that basis deny  
10 them, and Defendants deny the remaining allegations of Paragraph 6.

11 7. The allegations contained in Paragraph 7 constitute Plaintiffs’ opinions and/or subjective  
12 characterizations, interpretations, speculation, and generalizations to which no response is required, and  
13 do not set forth a claim for relief or aver facts in support of a claim to which an answer is required. To  
14 the extent any response is required, Defendants lack sufficient information or knowledge to form a belief  
15 as to the truth or falsity of the allegations contained in Paragraph 7, and on that basis deny them, and  
16 Defendant ICE further denies the allegation that “ICE’s use of facial recognition weaponizes these  
17 relationships into a conduit for arrest and deportation.”

18 8. The allegations contained in Paragraph 8 constitute Plaintiffs’ opinions and/or subjective  
19 characterizations, interpretations, speculation, and generalizations to which no response is required, and  
20 do not set forth a claim for relief or aver facts in support of a claim to which an answer is required. To  
21 the extent any response is required, Defendants deny the allegations.

22 9. Defendants admit that Plaintiffs submitted one FOIA request dated October 19, 2020.  
23 The remaining allegations contained in Paragraph 9 consist of Plaintiffs’ characterization of their  
24 request, to which no response is required. Defendants respectfully refer the Court to the text of  
25 Plaintiffs’ FOIA request for a full and accurate statement of its contents, and deny all allegations  
26 inconsistent therewith.

27 10. Defendants ICE and CBP admit that as of the date of Plaintiffs’ Complaint, they had not  
28 produced records in response to Plaintiffs’ FOIA request, and otherwise deny the allegations contained

1 in Paragraph 10. Defendant DHS denies the allegations contained in Paragraph 10.

2 11. Paragraph 11 consists of Plaintiffs' legal conclusions, to which no response is required.  
3 To the extent any response is required, Defendants respectfully direct the Court to the provisions of  
4 FOIA and deny all allegations inconsistent therewith.

5 **PARTIES**

6 12. The allegations contained in Paragraph 12 consist of Plaintiffs' characterization of  
7 themselves, to which no response is required. To the extent any response is required, Defendants lack  
8 sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained  
9 in Paragraph 12, and on that basis deny them.

10 13. The allegations contained in Paragraph 13 consist of Plaintiffs' characterization of  
11 themselves, to which no response is required. To the extent any response is required, Defendants lack  
12 sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained  
13 in Paragraph 13, and on that basis deny them.

14 14. The allegations contained in Paragraph 14 consist of Plaintiffs' characterization of  
15 themselves, to which no response is required. To the extent any response is required, Defendants lack  
16 sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained  
17 in Paragraph 14, and on that basis deny them.

18 15. The allegations contained in Paragraph 15 consist of Plaintiffs' characterization of  
19 themselves, to which no response is required. To the extent any response is required, Defendants lack  
20 sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained  
21 in Paragraph 15, and on that basis deny them.

22 16. Defendant DHS admits the allegations contained in Paragraph 16.

23 17. Defendant ICE admits the allegations contained in Paragraph 17.

24 18. Defendant CBP admits the allegations contained in Paragraph 18.

25 **JURISDICTION**

26 19. Paragraph 19 contains Plaintiffs' legal conclusions regarding jurisdiction, to which no  
27 response is required. To the extent any response is required, Defendants admit that this Court has  
28 subject matter jurisdiction over FOIA claims subject to the terms and limitations of FOIA.

1 **VENUE AND INTRADISTRICT ASSIGNMENT**

2 20. Paragraph 20 contains Plaintiffs' legal conclusions regarding venue, to which no response  
3 is required. To the extent any response is required, Defendants admit that 5 U.S.C. § 552(a)(4)(B)  
4 governs venue in actions brought pursuant to FOIA, and that venue is proper in this Court.

5 21. Paragraph 21 contains Plaintiffs' legal conclusions regarding intradistrict assignment, to  
6 which no response is required. To the extent any response is required, Defendants respectfully direct the  
7 Court to the cited provisions and deny all allegations inconsistent therewith.

8 **FACTUAL ALLEGATIONS**

9 **The Federal Government's Use of Clearview AI Facial Recognition Technology to Identify,**  
10 **Track, and Locate Individuals is a Matter of Significant Public Interest**

11 22. The allegations contained in Paragraph 22 constitute Plaintiffs' opinions and/or  
12 subjective characterizations, interpretations, speculation, and generalizations to which no response is  
13 required, and do not set forth a claim for relief or aver facts in support of a claim to which an answer is  
14 required. To the extent any response is required, Defendants lack sufficient information or knowledge  
15 to form a belief as to the truth or falsity of the allegations contained in Paragraph 22, and on that basis  
16 deny them.

17 23. The allegations contained in Paragraph 23 constitute Plaintiffs' opinions and/or  
18 subjective characterizations, interpretations, speculation, and generalizations to which no response is  
19 required, and do not set forth a claim for relief or aver facts in support of a claim to which an answer is  
20 required. To the extent any response is required, Defendants lack sufficient information or knowledge  
21 to form a belief as to the truth or falsity of the allegations contained in Paragraph 23, and on that basis  
22 deny them.

23 24. The allegations contained in Paragraph 24 constitute Plaintiffs' opinions and/or  
24 subjective characterizations, interpretations, speculation, and generalizations to which no response is  
25 required, including Plaintiffs' characterization of information from a website, and do not set forth a  
26 claim for relief or aver facts in support of a claim to which an answer is required. With respect to the  
27 website Plaintiffs characterize, Defendants respectfully refer the Court to the website for full and  
28 accurate statements of its contents. To the extent any response is required, Defendants lack sufficient

1 information or knowledge to form a belief as to the truth or falsity of the allegations contained in  
2 Paragraph 24, and on that basis deny them.

3         25. The allegations contained in Paragraph 25 constitute Plaintiffs' opinions and/or  
4 subjective characterizations, interpretations, speculation, and generalizations to which no response is  
5 required, including Plaintiffs' characterization of information from websites, and do not set forth a claim  
6 for relief or aver facts in support of a claim to which an answer is required. With respect to the websites  
7 Plaintiffs characterize, Defendants respectfully refer the Court to the websites for full and accurate  
8 statements of their contents. To the extent any response is required, Defendants lack sufficient  
9 information or knowledge to form a belief as to the truth or falsity of the allegations contained in  
10 Paragraph 25, and on that basis deny them.

11         26. The allegations contained in Paragraph 26 constitute Plaintiffs' opinions and/or  
12 subjective characterizations, interpretations, speculation, and generalizations to which no response is  
13 required, and do not set forth a claim for relief or aver facts in support of a claim to which an answer is  
14 required. To the extent any response is required, Defendants lack sufficient information or knowledge  
15 to form a belief as to the truth or falsity of the allegations contained in Paragraph 26, and on that basis  
16 deny them.

17         27. The allegations contained in Paragraph 27 constitute Plaintiffs' opinions and/or  
18 subjective characterizations, interpretations, speculation, and generalizations to which no response is  
19 required, including Plaintiffs' characterization of information from a website, and do not set forth a  
20 claim for relief or aver facts in support of a claim to which an answer is required. With respect to the  
21 website Plaintiffs characterize, Defendants respectfully refer the Court to the website for full and  
22 accurate statements of its contents. To the extent any response is required, Defendants lack sufficient  
23 information or knowledge to form a belief as to the truth or falsity of the allegations contained in  
24 Paragraph 27, and on that basis deny them.

25         28. The allegations contained in Paragraph 28 constitute Plaintiffs' opinions and/or  
26 subjective characterizations, interpretations, speculation, and generalizations to which no response is  
27 required, including Plaintiffs' characterization of information from websites, and do not set forth a claim  
28 for relief or aver facts in support of a claim to which an answer is required. With respect to the websites

1 Plaintiffs characterize, Defendants respectfully refer the Court to the websites for full and accurate  
2 statements of their contents. To the extent any response is required, Defendants lack sufficient  
3 information or knowledge to form a belief as to the truth or falsity of the allegations contained in  
4 Paragraph 28, and on that basis deny them.

5 29. With respect to the allegation in the first sentence of Paragraph 29, Defendant ICE admits  
6 that in August 2020, Defendant ICE and Clearview AI executed a contract under the alleged ID number.  
7 The remaining allegations contained in Paragraph 29 constitute Plaintiffs' opinions and/or subjective  
8 characterizations, interpretations, speculation, and generalizations to which no response is required, and  
9 do not set forth a claim for relief or aver facts in support of a claim to which an answer is required. To  
10 the extent any response is required, Defendants lack sufficient information or knowledge to form a belief  
11 as to the truth or falsity of the allegations contained in Paragraph 29, and on that basis deny them.

12 30. The allegations contained in Paragraph 30 constitute Plaintiffs' opinions and/or  
13 subjective characterizations, interpretations, speculation, and generalizations to which no response is  
14 required, including Plaintiffs' characterization of information from websites, and do not set forth a claim  
15 for relief or aver facts in support of a claim to which an answer is required. With respect to the websites  
16 Plaintiffs characterize, Defendant CBP respectfully refers the Court to the websites for full and accurate  
17 statements of their contents. To the extent any response is required, Defendant CBP denies the  
18 allegations contained in Paragraph 30.

19 31. The allegations contained in Paragraph 31 constitute Plaintiffs' opinions and/or  
20 subjective characterizations, interpretations, speculation, and generalizations to which no response is  
21 required, including Plaintiffs' characterization of information from a website, and do not set forth a  
22 claim for relief or aver facts in support of a claim to which an answer is required. With respect to the  
23 website Plaintiffs characterize, Defendant DHS respectfully refers the Court to the website for full and  
24 accurate statements of its contents, and denies all allegations inconsistent therewith.

25 32. The allegations contained in Paragraph 32 constitute Plaintiffs' opinions and/or  
26 subjective characterizations, interpretations, speculation, and generalizations to which no response is  
27 required, and do not set forth a claim for relief or aver facts in support of a claim to which an answer is  
28 required. To the extent any response is required, Defendants lack sufficient information or knowledge

1 to form a belief as to the truth or falsity of the allegations contained in Paragraph 32, and on that basis  
2 deny them.

3 33. The allegations contained in Paragraph 33 constitute Plaintiffs' opinions and/or  
4 subjective characterizations, interpretations, speculation, and generalizations to which no response is  
5 required, and do not set forth a claim for relief or aver facts in support of a claim to which an answer is  
6 required. To the extent any response is required, Defendants lack sufficient information or knowledge  
7 to form a belief as to the truth or falsity of the allegations contained in Paragraph 33, and on that basis  
8 deny them.

9 **Defendants Have Failed to Produce Any Records in Response to Plaintiffs' FOIA Request**

10 34. Defendants admit that Plaintiffs submitted one FOIA request dated October 19, 2020.  
11 The remaining allegations contained in Paragraph 34 consist of Plaintiffs' characterization of their  
12 request, to which no response is required. Defendants respectfully refer the Court to the text of  
13 Plaintiffs' FOIA request for a full and accurate statement of its contents, and deny all allegations  
14 inconsistent therewith.

15 35. The allegations contained in Paragraph 35 consist of Plaintiffs' characterization of their  
16 FOIA request, to which no response is required. Defendants respectfully refer the Court to the text of  
17 Plaintiffs' FOIA request for a full and accurate statement of its contents, and deny all allegations  
18 inconsistent therewith.

19 36. The allegations contained in Paragraph 36 consist of Plaintiffs' characterization of  
20 Defendant CBP's acknowledgment of Plaintiffs' FOIA request, to which no response is required. To the  
21 extent any response is required, Defendant CBP admits that it acknowledged receipt of the request on  
22 October 20, 2020, assigned tracking number CBP-2021-008288, and invoked a 10-day extension.  
23 Defendant CBP respectfully refers the Court to the text of Defendant CBP's acknowledgment of  
24 Plaintiffs' FOIA request for a full and accurate statement of its contents, and denies all allegations  
25 inconsistent therewith.

26 37. Defendant CBP admits the allegations contained in Paragraph 37.

27 38. Defendant CBP admits the allegations contained in Paragraph 38.

28 39. Defendant CBP admits the allegations contained in Paragraph 39.



1           40.     The allegations contained in Paragraph 40 consist of Plaintiffs' characterization of  
2 Defendant ICE's acknowledgment of Plaintiffs' FOIA request, to which no response is required. To the  
3 extent any response is required, Defendant ICE admits that it acknowledged receipt of the request on  
4 December 1, 2020, assigned tracking number 2021-ICFO-12708, and invoked a 10-day extension.  
5 Defendant ICE respectfully refers the Court to the text of Defendant ICE's acknowledgment of  
6 Plaintiffs' FOIA request for a full and accurate statement of its contents, and denies all allegations  
7 inconsistent therewith.

8           41.     Defendant ICE admits the allegations contained in Paragraph 41.

9           42.     Defendant ICE admits the allegations contained in Paragraph 42.

10          43.     Defendant ICE admits the allegations contained in Paragraph 43.

11          44.     Defendant DHS admits the allegations contained in Paragraph 44.

12          45.     Defendant DHS admits the allegations in the first and third sentences of Paragraph 45.  
13 The remaining allegations contained in Paragraph 45 constitute Plaintiffs' characterization of their  
14 appeal, to which no response is required. Defendants respectfully refer the Court to the text of  
15 Plaintiffs' appeal for a full and accurate statement of its contents, and deny all allegations inconsistent  
16 therewith.

17          46.     Defendant DHS admits the allegations contained in Paragraph 46.

18          47.     Defendant DHS admits that Plaintiffs have not received a response to their appeal or a  
19 determination from DHS as to whether it will grant the appeal. The remaining allegation contained in  
20 Paragraph 47 consists of Plaintiffs' legal conclusions, to which no response is required. To the extent  
21 any response is required, Defendants respectfully direct the Court to the provisions of FOIA and deny all  
22 allegations inconsistent therewith.

23          48.     Defendant DHS admits that as of the date of the filing of Plaintiffs' Complaint, Plaintiffs  
24 had not received any records from DHS. The remaining allegations contained in Paragraph 48 consist of  
25 Plaintiffs' legal conclusions, to which no response is required. To the extent any response is required,  
26 Defendants respectfully direct the Court to the provisions of FOIA and deny all allegations inconsistent  
27 therewith.

28          49.     The allegations contained in Paragraph 49 consist of Plaintiffs' legal conclusions, to

1 which no response is required. To the extent any response is required, Defendants respectfully direct the  
2 Court to the provisions of FOIA and deny all allegations inconsistent therewith.

3 50. The allegations contained in Paragraph 50 consist of Plaintiffs' legal conclusions, to  
4 which no response is required. To the extent any response is required, Defendants respectfully direct the  
5 Court to the provisions of FOIA and deny all allegations inconsistent therewith.

6 **FIRST CLAIM FOR RELIEF**

7 **Violation of the Freedom of Information Act for Wrongful Withholding of Agency Records**

8 51. Defendants reallege and incorporate by reference their responses to Paragraphs 1-50  
9 above as though fully set forth herein.

10 52. The allegations contained in Paragraph 52 consist of Plaintiffs' legal conclusions, to  
11 which no response is required. To the extent any response is required, Defendants respectfully direct the  
12 Court to the provisions of FOIA and deny all allegations inconsistent therewith.

13 53. The allegations contained in Paragraph 53 consist of Plaintiffs' legal conclusions, to  
14 which no response is required. To the extent any response is required, Defendants respectfully direct the  
15 Court to the provisions of FOIA and deny all allegations inconsistent therewith

16 54. The allegations contained in Paragraph 54 consist of Plaintiffs' legal conclusions, to  
17 which no response is required. To the extent any response is required, Defendants respectfully direct the  
18 Court to the provisions of FOIA and deny all allegations inconsistent therewith.

19 **PLAINTIFFS' PRAYER FOR RELIEF**

20 The remainder of the Complaint consists of Plaintiffs' request for relief, to which no response is  
21 required. To the extent these paragraphs are deemed to contain factual allegations, Defendants deny  
22 those allegations and deny that Plaintiffs are entitled to any relief.

23 **AFFIRMATIVE OR OTHER DEFENSES**

24 **FIRST AFFIRMATIVE DEFENSE**

25 The Complaint fails to state a claim upon which relief may be granted.

26 **SECOND AFFIRMATIVE DEFENSE**

27 The information that Defendants have withheld, or will withhold, in response to Plaintiffs' FOIA  
28 request may be exempt in whole or part from public disclosure under the FOIA, 5 U.S.C. § 552(b), and

1 the Privacy Act, 5 U.S.C. § 552a, *et seq.*

2 **THIRD AFFIRMATIVE DEFENSE**

3 The Court lacks subject matter jurisdiction over any requested relief that exceeds the relief  
4 authorized by FOIA.

5 **FOURTH AFFIRMATIVE DEFENSE**

6 Plaintiffs did not submit a FOIA request that reasonably describes the records sought as required  
7 by FOIA.

8 **FIFTH AFFIRMATIVE DEFENSE**

9 Plaintiffs have not alleged sufficient factual and/or legal bases for their request for attorneys'  
10 fees and/or costs.

11 \* \* \* \* \*

12 Defendants reserve the right to assert additional affirmative defenses if such affirmative defenses  
13 become appropriate.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Defendants pray that:

- 16 1. Plaintiffs take nothing by their Complaint;
- 17 2. The Complaint be dismissed with prejudice;
- 18 3. Judgment be entered in favor of Defendants;
- 19 4. Defendants be awarded their costs of suit;
- 20 5. The Court award such other and further relief as it may deem proper.

21  
22 DATED: May 19, 2021

Respectfully submitted,

23 STEPHANIE M. HINDS  
24 Acting United States Attorney

25 /s/ Savith Iyengar  
26 SAVITH IYENGAR  
Assistant United States Attorney

27 Attorneys for Defendants  
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