

DAVIS WRIGHT TREMAINE LLP

1 Thomas R. Burke (State Bar No. 141930)  
thomasburke@dwt.com  
2 DAVIS WRIGHT TREMAINE LLP  
505 Montgomery Street, Suite 800  
3 San Francisco, CA 94111  
Telephone: (415) 276-6500  
4 Facsimile: (415) 276-6599

5 Linda Lye (State Bar No. 215584)  
llye@aclunc.org  
6 AMERICAN CIVIL LIBERTIES UNION FOUNDATION  
OF NORTHERN CALIFORNIA  
7 39 Drumm Street  
San Francisco, CA 94111  
8 Telephone: (415) 621-2493

9 Mateo Caballero (*admission pro hac vice forthcoming*)  
mcaballero@acluhawaii.org  
10 AMERICAN CIVIL LIBERTIES UNION OF HAWAI'I FOUNDATION  
P.O. Box 3410  
11 Honolulu, HI 96801  
Telephone: (808) 522-5908

12 Leah Farrell (*admission pro hac vice forthcoming*)  
lfarrell@acluutah.org  
13 AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF UTAH  
14 355 North 300 West  
Salt Lake City, UT 84103  
15 (801) 521-9862

16 Attorneys for Plaintiffs

17  
18 IN THE UNITED STATES DISTRICT COURT  
19 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
20 SAN FRANCISCO-OAKLAND DIVISION

21 AMERICAN CIVIL LIBERTIES UNION OF  
NORTHERN CALIFORNIA, AMERICAN  
22 CIVIL LIBERTIES UNION OF HAWAI'I,  
AND AMERICAN CIVIL LIBERTIES UNION  
23 OF UTAH,

24 Plaintiffs,

25 v.

26 U.S. DEPARTMENT OF HOMELAND  
SECURITY and U.S. CUSTOMS AND  
27 BORDER PROTECTION,

28 Defendants.

Case No. 3:17-cv-01970

**COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF FOR VIOLATION  
OF THE FREEDOM OF INFORMATION  
ACT, 5 U.S.C. § 552 et seq.**

**INTRODUCTION**

1  
2 1. The American Civil Liberties Union of Northern California, American Civil  
3 Liberties Union of Hawai‘i, and American Civil Liberties Union of Utah (collectively, “Plaintiffs”  
4 or “ACLU”) bring this action under the Freedom of Information Act, 5 U.S.C. § 552 *et seq.*, as  
5 amended (“FOIA”), to obtain injunctive and other appropriate relief requiring Defendants U.S.  
6 Department of Homeland Security (“DHS”) and U.S. Customs and Border Protection (“CBP”)  
7 (collectively, “Defendants”) to respond to a FOIA request sent by Plaintiffs on February 2, 2017,  
8 and amended by letter dated February 3, 2017 (collectively, “Request”), and to promptly disclose  
9 the requested records.

10 2. The Request seeks records concerning CBP’s local implementation of President  
11 Trump’s January 27, 2017 Executive Order titled “Protecting the Nation From Foreign Terrorist  
12 Entry Into the United States,” Exec. Order No. 13769, 82 Fed. Reg. 8977 (Feb. 1, 2017)  
13 (“Executive Order No. 1”), as well as any other judicial order or executive directive issued  
14 regarding Executive Order No.1, including President Trump’s March 6, 2017 Executive Order,  
15 identically titled, Exec. Order No. 13780, 82 Fed. Reg. 13209 (Mar. 6, 2017) (“Executive Order  
16 No. 2”) (collectively, “Executive Orders”). A true and correct copy of the Request is attached as  
17 **Exhibit A.**

18 3. Specifically, the Request seeks records concerning CBP’s local implementation of  
19 the Executive Orders at international airports within the purview of CBP’s San Francisco Field  
20 Office. These airports include Honolulu International Airport, Kona International Airport, Salt  
21 Lake City International Airport, San Francisco International Airport, and San Jose International  
22 Airport.

23 4. Among other things, the Executive Orders purport to halt refugee admissions and  
24 bar entrants from several predominantly Muslim countries from entering the United States.

25 5. Defendants’ implementation of the Executive Orders has been the subject of  
26 significant public concern, as reflected by mass protests around the country, substantial news  
27 coverage, and numerous lawsuits filed following the President’s signing of each Executive Order.  
28

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1           6.       Over the weekend of January 27–29, 2017, at least five lawsuits resulted in  
2 emergency court orders enjoining implementation of various sections of Executive Order No. 1.<sup>1</sup>  
3 On March 15, 2017, a district court enjoined implementation of Sections 2 and 6 of Executive  
4 Order No. 2.<sup>2</sup>

5           7.       News reports described Defendants’ implementation of the Executive Orders as  
6 “chaotic” and “total[ly] lack[ing] . . . clarity and direction.” Official DHS statements reflected this  
7 confusion.<sup>3</sup>

8           8.       Official DHS statements reflected this confusion. For example, DHS stated on  
9 January 28 that Executive Order No. 1 would “bar green card holders.”<sup>4</sup> The next day, however,  
10 DHS Secretary John Kelly deemed “the entry of lawful permanent residents to be in the national  
11 interest”<sup>5</sup> and the government clarified that Executive Order No. 1 did *not* apply to green card  
12 holders.<sup>6</sup>

13           9.       Reportedly spurred by this chaos, on January 29, Senators Tammy Duckworth and  
14 Dick Durbin called upon the Office of the Inspector General of the Department of Homeland  
15 Security to investigate Defendants’ implementation of Executive Order No. 1.<sup>7</sup> The Senators

17 <sup>1</sup> *Vayeghan v. Kelly*, No. CV 17-0702, 2017 WL 396531 (C.D. Cal. Jan. 29, 2017); *Tootkaboni v.*  
18 *Trump*, No. 17-CV-10154, 2017 WL 386550 (D. Mass. Jan. 29, 2017); *Doe v. Trump*, No. C17-  
19 126, 2017 WL 388532 (W.D. Wash. Jan. 28, 2017); *Aziz v. Trump*, No. 1:17-CV-116, 2017 WL  
20 386549 (E.D. Va. Jan. 28, 2017); *Darweesh v. Trump*, No. 17 CIV. 480 (AMD), 2017 WL 388504  
(E.D.N.Y. Jan. 28, 2017).

21 <sup>2</sup> *Hawai’i v. Trump*, No. CV 17-00050 DKW-KSC, 2017 WL 1011673 (D. Haw. Mar. 15, 2017).

22 <sup>3</sup> See, e.g., Ryan Devereaux *et al.*, *Homeland Security Inspector General Opens Investigation of*  
23 *Muslim Ban, Orders Document Preservation*, THE INTERCEPT, Feb. 1, 2017, available at  
24 [https://theintercept.com/2017/02/01/homeland-security-inspector-general-opens-investigation-of-](https://theintercept.com/2017/02/01/homeland-security-inspector-general-opens-investigation-of-muslim-ban-rollout-orders-document-preservation/)  
25 [muslim-ban-rollout-orders-document-preservation/](https://theintercept.com/2017/02/01/homeland-security-inspector-general-opens-investigation-of-muslim-ban-rollout-orders-document-preservation/).

26 <sup>4</sup> See Max Greenwood, *Immigration Ban Includes Green Card Holders: DHS*, THE HILL, Jan. 28,  
27 2017, available at [http://thehill.com/policy/national-security/316670-trump-refugee-ban-bars-](http://thehill.com/policy/national-security/316670-trump-refugee-ban-bars-green-card-holders-report)  
28 [green-card-holders-report](http://thehill.com/policy/national-security/316670-trump-refugee-ban-bars-green-card-holders-report).

<sup>5</sup> *Statement By Secretary John Kelly On The Entry Of Lawful Permanent Residents Into The*  
29 *United States*, DEP’T OF HOMELAND SECURITY (Jan. 29, 2017), available at  
30 [https://www.dhs.gov/news/2017/01/29/statement-secretary-john-kelly-entry-lawful-permanent-](https://www.dhs.gov/news/2017/01/29/statement-secretary-john-kelly-entry-lawful-permanent-residents-united-states)  
31 [residents-united-states](https://www.dhs.gov/news/2017/01/29/statement-secretary-john-kelly-entry-lawful-permanent-residents-united-states).

<sup>6</sup> See Robert Mackey, *As Protests Escalate, Trump Retreats From Barring Green Card Holders*,  
32 THE INTERCEPT, Jan. 29, 2017, available at [https://theintercept.com/2017/01/29/trumps-executive-](https://theintercept.com/2017/01/29/trumps-executive-order-no-longer-bars-green-card-holders/)  
33 [order-no-longer-bars-green-card-holders/](https://theintercept.com/2017/01/29/trumps-executive-order-no-longer-bars-green-card-holders/).

<sup>7</sup> See Ryan Devereaux *et al.*, *Homeland Security Inspector General Opens Investigation of Muslim*  
34 *Ban, Orders Document Preservation*, THE INTERCEPT, Feb. 1, 2017, available at  
35 [https://theintercept.com/2017/02/01/homeland-security-inspector-general-opens-investigation-of-](https://theintercept.com/2017/02/01/homeland-security-inspector-general-opens-investigation-of-muslim-ban-rollout-orders-document-preservation/)  
36 [muslim-ban-rollout-orders-document-preservation/](https://theintercept.com/2017/02/01/homeland-security-inspector-general-opens-investigation-of-muslim-ban-rollout-orders-document-preservation/).

1 specifically sought information regarding: any guidance Defendants provided to the White House  
 2 in developing the order; any directions that were provided to Defendants in implementing it;  
 3 whether CBP officers complied with the relevant court orders; and whether DHS and CBP officers  
 4 kept a list of individuals that they had detained at ports of entry under the order. In response, the  
 5 Inspector General directed Defendants' personnel to preserve all records "that might reasonably  
 6 lead to the discovery of relevant information relating the implementation of" Executive Order  
 7 No. 1.<sup>8</sup>

8 10. CBP officials across the country detained an estimated 100 to 200 individuals at  
 9 airports throughout the United States, including San Francisco International Airport.<sup>9</sup>

10 11. Disclosure of the records Plaintiffs seek through this action would facilitate the  
 11 public's understanding of how Defendants implemented and enforced the Executive Orders here in  
 12 the San Francisco Field Office, including in particular at San Francisco International Airport. Such  
 13 information is critical to the public's ability to hold the government accountable.

14 12. This action is necessary because Defendants have failed to provide Plaintiffs with a  
 15 determination as to whether they will comply with the Request, although more than 30 business  
 16 days have elapsed since Defendants received the Request.

### JURISDICTION

17 13. This Court has subject-matter jurisdiction over this action and personal jurisdiction  
 18 over the parties under 5 U.S.C. § 552(a)(4)(B), 5 U.S.C. § 701–706, and 28 U.S.C. § 1331.

### VENUE

19 14. Venue in the Northern District of California is proper under 5 U.S.C.  
 20 § 552(a)(4)(B) as the requested agency records are, upon information and belief, situated within  
 21

22 \_\_\_\_\_  
 23 <sup>8</sup> *Id.*

24 <sup>9</sup> *See, e.g.,* Michael D. Shear *et al.*, *Judge Blocks Trump Order on Refugees Amid Chaos and*  
 25 *Outcry Worldwide*, N.Y. TIMES, Jan. 28, 2017, available at [https://www.nytimes.com/2017/](https://www.nytimes.com/2017/01/28/us/refugees-detained-at-us-airports-prompting-legal-challenges-to-trumps-immigration-order.html)  
 26 *order.html*; Emma Brown *et al.*, *Refugees Detained at U.S. airports, including SFO, challenge*  
 27 *Trump executive order*, SAN JOSE MERCURY NEWS, Jan. 28, 2017, available at  
 28 [http://www.mercurynews.com/2017/01/28/refugees-detained-at-u-s-airports-challenge-trumps-](http://www.mercurynews.com/2017/01/28/refugees-detained-at-u-s-airports-challenge-trumps-executive-order/)  
[executive-order/](http://www.mercurynews.com/2017/01/28/refugees-detained-at-u-s-airports-challenge-trumps-executive-order/); Joe Fitzgerald Rodriguez, *Detainees released from SFO as thousands protest*  
*Trump refugee orders*, Jan. 29, 2017, available at [http://www.sfexaminer.com/detainees-released-](http://www.sfexaminer.com/detainees-released-sfo-thousands-protest-trump-refugee-orders/)  
[sfo-thousands-protest-trump-refugee-orders/](http://www.sfexaminer.com/detainees-released-sfo-thousands-protest-trump-refugee-orders/).

1 this District at CBP facilities at or near San Francisco International Airport and San Jose  
2 International Airport and because Plaintiff American Civil Liberties Union of Northern  
3 California's principal place of business is in this district. For the same reasons, venue also is  
4 proper under 28 U.S.C. § 1391(e).

5 15. Pursuant to Local Rule 3-2(c) and (d), assignment to the San Francisco Division is  
6 proper because a substantial portion of the events giving rise to this action occurred at San  
7 Francisco International Airport, which is in San Mateo County, and because Plaintiff American  
8 Civil Liberties Union of Northern California is headquartered in San Francisco.

9 **PARTIES**

10 16. The American Civil Liberties Union of Northern California, American Civil  
11 Liberties Union of Hawaii, and American Civil Liberties Union of Utah are non-profit, 501(c)(4)  
12 membership organizations that educate the public about the civil liberties implications of pending  
13 and proposed state and federal legislation, provide analysis of pending and proposed legislation,  
14 directly lobby legislators, and mobilize their members to lobby their legislators.

15 17. Defendant Department of Homeland Security is a department of the executive  
16 branch of the U.S. government and is an agency within the meaning of 5 U.S.C. § 552(f)(1).

17 18. Defendant U.S. Customs and Border Protection is a component of DHS and is a  
18 federal agency within the meaning of 5 U.S.C. § 552(f)(1).

19 19. Plaintiffs are informed and therefore believe that Defendants have possession,  
20 custody, or control of the requested records.

21 **FACTS**

22 20. On February 2, 2017, Plaintiffs sent the Request to CBP's San Francisco Field  
23 Office and CBP's FOIA Officer at CBP Headquarters via certified, trackable United States mail,  
24 with United States Postal Service tracking numbers of 70162070000003798167 (request to San  
25 Francisco Field Office) and 70162070000003798150 (request to CBP Headquarters). On  
26 February 3, 2017, Plaintiffs sent an amendment to the Request to CBP's San Francisco Field  
27 Office and CBP's FOIA Officer at CBP Headquarters via first class mail. Copies of the February 3  
28 amendment to the Request were later mailed a second time to CBP's San Francisco Field Office

1 and CBP's FOIA Officer at CBP Headquarters via priority express, trackable United States mail,  
2 with a United States Postal Service tracking number of EL378106957US (to San Francisco Field  
3 Office) and EL378106965US (to CBP Headquarters) on February 15, 2017.

4 21. The Request sought copies of CBP's local interpretation and enforcement of the  
5 Executive Order at: 1) certain airports specified in the Request, including Honolulu International  
6 Airport, Kona International Airport, Salt Lake City International Airport, San Francisco  
7 International Airport, and San Jose International Airport ("Local International Airports"); and 2)  
8 certain Port of Entry offices specified in the Request, including Honolulu International Airport,  
9 Kona International Airport, Salt Lake City International Airport, San Francisco International Airport,  
10 and San Jose International Airport ("Port of Entry Offices"). The Request expressly did *not* seek  
11 information held in the records of CBP Headquarters.

12 22. Specifically, the Request sought the following:

- 13 1. "Records created on or after January 27, 2017 concerning CBP's interpretation,  
14 enforcement, and implementation of the following at Local International Airports:
  - 15 a. President Trump's Executive Order, signed on January 27, 2017 and titled  
16 'Protecting the Nation From Foreign Terrorist Entry Into the United States';
  - 17 b. Any guidance 'provided to DHS field personnel shortly' after President  
18 Trump signed the Executive Order, as referenced in CBP's online FAQ;<sup>10</sup>
  - 19 c. Associate Director of Field Operations for U.S. Citizenship and  
20 Immigration Services Daniel M. Renaud's email, sent at 11:12 A.M. on  
21 January 27, 2017, instructing DHS employees that they could not adjudicate  
22 any immigration claims from the seven targeted countries;<sup>11</sup>

23  
24 <sup>10</sup> To assist CBP in responding, the Request included the following information in a footnote for  
25 reference: "*Protecting the Nation from Foreign Terrorist Entry into the United States*, U.S.  
26 CUSTOMS AND BORDER PROTECTION (Jan. 31, 2017), available at <https://www.cbp.gov/border-security/protecting-nation-foreign-terrorist-entry-united-states> ('The Executive Order and the instructions therein were effective at the time of the order's signing. *Guidance was provided to DHS field personnel shortly thereafter.*') (emphasis added)."

27 <sup>11</sup> The following footnote was included for reference: "*See Alice Speri and Ryan Devereaux, Turmoil at DHS and State Department—'There Are People Literally Crying in the Office Here,'*  
28 THE INTERCEPT, Jan. 30, 2017, available at <https://theintercept.com/2017/01/30/asylum-officials-and-state-department-in-turmoil-there-are-people-literally-crying-in-the-office-here/>."

- 1 d. Judge Donnelly’s Decision and Order granting an Emergency Motion for  
 2 Stay of Removal, issued in the Eastern District of New York on January 27,  
 3 2017, including records related to CBP’s efforts to comply with the court’s  
 4 oral order requiring prompt production of a list of all class members  
 5 detained by CBP;<sup>12</sup>
- 6 e. Judge Brinkema’s Temporary Restraining Order, issued in the Eastern  
 7 District of Virginia on January 28, 2017;<sup>13</sup>
- 8 f. Judge Zilly’s Order Granting Emergency Motion for Stay of Removal,  
 9 issued in the Western District of Washington on January 28, 2017;<sup>14</sup>
- 10 g. Judge Burroughs’ Temporary Restraining Order, issued in the District of  
 11 Massachusetts on January 29, 2017;<sup>15</sup>
- 12 h. Judge Gee’s Order granting an Amended *Ex Parte* Application for  
 13 Temporary Restraining Order, issued in the Central District of California on  
 14 January 29, 2017;<sup>16</sup>
- 15 i. Assurances from the U.S. Attorney’s Office for the Eastern District of  
 16 Pennsylvania that all individuals detained at Philadelphia International  
 17 Airport under the Executive Order would be admitted to the United States  
 18 and released from custody on Sunday, January 29, 2017;

19  
 20 \_\_\_\_\_  
 21 <sup>12</sup> The following footnote was included for reference: “Decision and Order, *Darweesh v. Trump*,  
 No. 17 Civ. 480 (AMD) (E.D.N.Y. Jan. 28, 2017), available at [https://www.aclu.org/legal-](https://www.aclu.org/legal-document/darweesh-v-trump-decision-and-order)  
 document/darweesh-v-trump-decision-and-order.”

22 <sup>13</sup> The following footnote was included for reference: “Temporary Restraining Order, *Aziz v.*  
 23 *Trump*, No. 1:17-cv-116 (E.D. Va. Jan. 28, 2017), available at [https://www.justice4all.org/wp-](https://www.justice4all.org/wp-content/uploads/2017/01/TRO-order-signed.pdf)  
 content/uploads/2017/01/TRO-order-signed.pdf.”

24 <sup>14</sup> The following footnote was included for reference: “Order Granting Emergency Motion for  
 25 Stay of Removal, *Doe v. Trump*, No. C17-126 (W.D. Wash. Jan. 28, 2017), available at  
<https://www.justsecurity.org/wpcontent/uploads/2017/01/Seattle-Order.pdf>.”

26 <sup>15</sup> The following footnote was included for reference: “Temporary Restraining Order, *Tootkaboni*  
 27 *v. Trump*, No. 17-cv-10154 (D. Mass. Jan. 29, 2017), available at [https://aclum.org/wp-](https://aclum.org/wp-content/uploads/2017/01/6-TRO-Jan-29-2017.pdf)  
 content/uploads/2017/01/6-TRO-Jan-29-2017.pdf.”

28 <sup>16</sup> The following footnote was included for reference: “Order, *Vayeghan v. Trump*, No. CV 17-  
 0702 (C.D. Cal. Jan. 28, 2017), available at  
[https://www.aclusocal.org/sites/default/files/vayeghan\\_-\\_order\\_re\\_tro.pdf](https://www.aclusocal.org/sites/default/files/vayeghan_-_order_re_tro.pdf).”

- 1 j. DHS's 'Response to Recent Litigation' statement, issued on January 29,  
2 2017;<sup>17</sup>
- 3 k. DHS Secretary John Kelly's 'Statement on the Entry of Lawful Permanent  
4 Residents Into the United States,' issued on January 29, 2017;<sup>18</sup>
- 5 l. DHS's 'Statement on Compliance with Court Orders and the President's  
6 Executive Order,' issued on January 29, 2017;<sup>19</sup> and
- 7 m. Any other judicial order or executive directive issued regarding the  
8 Executive Order on or after January 27, 2017.
- 9 2. Records concerning the number of individuals who were detained or subjected to  
10 secondary screening, extending questioning, an enforcement examination, or  
11 consideration for a waiver at Local International Airports pursuant to the Executive  
12 Order, including:
- 13 a. The total number of individuals who remain detained or subject to  
14 secondary screening, extending questioning, an enforcement examination,  
15 or consideration for a waiver at Local International Airports both as of the  
16 date of this request and as of the date on which this request is processed;  
17 and
- 18 b. The total number of individuals who have been detained or subjected to  
19 secondary screening, extending questioning, an enforcement examination,  
20 or consideration for a waiver for any length of time at Local International  
21

22

23 <sup>17</sup> The following footnote was included for reference: "*Department of Homeland Security*  
24 *Response to Recent Litigation*, DEP'T OF HOMELAND SECURITY (Jan. 29, 2017), available at  
<https://www.dhs.gov/news/2017/01/29/department-homeland-security-response-recent-litigation>."

25 <sup>18</sup> The following footnote was included for reference: "*Statement from Secretary Kelly on the*  
26 *President's Appointment of Thomas D. Homan as Acting ICE Director*, DEP'T OF HOMELAND  
SECURITY (Jan. 30, 2017), available at [https://www.dhs.gov/news/2017/01/30/statement-](https://www.dhs.gov/news/2017/01/30/statement-secretary-kelly-presidents-appointment-thomas-d-homan-acting-ice-director)  
secretary-kelly-presidents-appointment-thomas-d-homan-acting-ice-director."

27 <sup>19</sup> The following footnote was included for reference: "*DHS Statement On Compliance With Court*  
28 *Orders And The President's Executive Order*, DEP'T OF HOMELAND SECURITY (Jan. 29, 2017),  
available at [https://www.dhs.gov/news/2017/01/29/dhs-statement-compliance-court-orders-and-](https://www.dhs.gov/news/2017/01/29/dhs-statement-compliance-court-orders-and-presidents-executive-order)  
presidents-executive-order."



1 Airports since January 27, 2017, including the number of individuals who  
2 have been

- 3 i. released,  
4 ii. transferred into immigration detention, or  
5 iii. removed from the United States;

- 6 3. Records concerning the number of individuals who have been removed from Local  
7 International Airports from January 27, 2017 to date pursuant to the Executive  
8 Order;  
9 4. Records concerning the number of individuals who arrived at Local International  
10 Airports from January 27, 2017 to date with valid visas or green cards who  
11 subsequently agreed voluntarily to return; and  
12 5. Records containing the ‘guidance’ that was ‘provided to DHS field personnel  
13 shortly’ after President Trump signed the Executive Order.”<sup>20</sup>

14 Exh. A (February 2, 2017 request at 6-9).

15 23. The Request included an application for expedited processing, on the grounds that  
16 there is a “compelling need” for these records under 5 U.S.C. § 552(a)(6)(E)(v)(II) because the  
17 information requested is “urgen[tly]” needed by an organization primarily engaged in  
18 disseminating information “to inform the public concerning actual or alleged Federal Government  
19 activity.” Exh. A (February 2, 2017 request at 10-16).

20 24. The Request provided detail showing that the ACLU is primarily engaged in  
21 disseminating information within the meaning of 5 U.S.C. § 552(a)(6)(E)(v), given that a critical  
22 and substantial aspect of the ACLU’s mission is to obtain information about government activity,  
23 analyze that information, and publish and disseminate that information widely to the press and  
24 public. Exh. A (February 2, 2017 request at 10-15).

25  
26 \_\_\_\_\_  
27 <sup>20</sup> The following footnote was included for reference: “*Protecting the Nation from Foreign*  
28 *Terrorist Entry into the United States*, U.S. CUSTOMS AND BORDER PROTECTION (Jan. 31, 2017),  
available at [https://www.cbp.gov/border-security/protecting-nation-foreign-terrorist-entry-united-](https://www.cbp.gov/border-security/protecting-nation-foreign-terrorist-entry-united-states)  
states (“The Executive Order and the instructions therein were effective at the time of the order’s  
signing. *Guidance was provided to DHS field personnel shortly thereafter.*”) (emphasis added).”

1           25.     The Request described examples of the ACLU’s information-dissemination  
2 function. Exhibit A (February 2, 2017 request at 11-15).

3           26.     The Request also included an application for a fee waiver or limitation under 5  
4 U.S.C. § 552(a)(4)(A)(iii) on the grounds that disclosure of the requested records is in the public  
5 interest and is “likely to contribute significantly to public understanding of the operations or  
6 activities of the government and is not primarily in the commercial interest of the requester.” In  
7 particular, the ACLU emphasized that the Request would significantly contribute to public  
8 understanding on a matter of profound public importance about which scant specific information  
9 had been made public, *i.e.*, how local CBP Field Offices had enforced, and continue to enforce, the  
10 Executive Orders. The Request also made clear that the ACLU plans to disseminate the  
11 information disclosed as a result of the Request to the public at no cost. Exh. A (February 2, 2017  
12 request at 16).

13           27.     The Request also applied for a waiver of search fees under 5 U.S.C.  
14 § 552(a)(4)(A)(ii)(II) on the grounds that Plaintiffs qualify as “representatives of the news media”  
15 and the records are not sought for commercial use, given the ACLU’s non-profit mission and  
16 substantial activities to publish information for dissemination to the public, as discussed in greater  
17 detail in ¶ 25 above. Exh. A (February 2, 2017 request at 16-17).

18           28.     CBP’s San Francisco Field Office received the February 2, 2017 request on  
19 February 3, 2017, and CBP Headquarters received the February 2, 2017 request on February 6,  
20 2017. The ACLU mailed the February 3, 2017 request by first class mail on February 3, 2017. It  
21 also re-delivered the February 3, 2017 request by priority mail, and the request was received by  
22 the San Francisco Field Office on February 17, 2017, and CBP Headquarters on February 21,  
23 2017.<sup>21</sup> See **Exhibit B**.

24           29.     DHS, on behalf of its component CBP, acknowledged receipt of the Request on  
25 March 30, 2017. A true and correct copy of the CBP’s acknowledgement of receipt is attached as  
26 **Exhibit C**. The acknowledgement of receipt invoked a 10-day extension of time for the Request

27 \_\_\_\_\_  
28 <sup>21</sup> In all likelihood, the amendment mailed on February 3, 2017, via first class mail was received  
prior to these dates, but the ACLU does not have a record of when the amendment mailed on  
February 3, 2017, was actually received.

1 pursuant to 5 U.S.C. § 552(a)(6)(B) and stated that DHS would assess fees applicable to non-  
2 commercial requesters. *See* Exh. C.

3 30. In its acknowledgement of receipt, however, CBP did not provide a determination  
4 as to whether, or when, CBP will comply with the Request. *See* Exh. C.

5 31. As of the filing date of this Complaint, more than 30 days (excepting Saturdays,  
6 Sundays, and legal public holidays) have elapsed since CBP received the Request.

7 32. As of the filing date of this Complaint, Defendants have not notified Plaintiffs of a  
8 determination as to whether Defendants will comply with the Request.

9 33. Because Defendants failed to comply with the time limit provision of FOIA,  
10 Plaintiffs are deemed to have exhausted their administrative remedies with respect to the Request  
11 under 5 U.S.C. § 552(a)(6)(C)(i).

12 **Violation of FOIA for Failure**  
13 **to Provide a Determination**  
14 **Within 30 Business Days**

15 34. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 33  
16 above, inclusive.

17 35. Defendants have a legal duty under FOIA to determine whether to comply with a  
18 request within 30 days (excepting Saturdays, Sundays, and legal public holidays) after receiving  
19 the request, and also have a legal duty to immediately notify a requester of the agency's  
20 determination and the reasons therefor.

21 36. Defendants' failure to determine whether to comply with the Request within 30  
22 business days after receiving it violates FOIA, 5 U.S.C. § 552(a)(6)(A)(i), and applicable  
23 regulations promulgated thereunder.

24 **Violation of FOIA for Failure**  
25 **to Make Records Available**

26 37. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 3  
27 above, inclusive.

28

1 38. Plaintiffs have a legal right under FOIA to obtain the specific agency records  
2 sought in the Request, and there exists no legal basis for Defendants' failure to promptly make the  
3 requested records available to Plaintiffs, their members, and the public.

4 39. Defendants' failure to promptly make available the records sought by the Request  
5 violates FOIA, 5 U.S.C. § 552(a)(3)(A), and applicable regulations promulgated thereunder.

6 40. On information and belief, Defendants currently have possession, custody or  
7 control of the requested records.

8 **Violation of FOIA for Failure to**  
9 **Provide a Determination As To**  
10 **Expedited Processing Within 10 Days**

11 41. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 333  
12 above, inclusive.

13 42. Defendants have a legal duty under FOIA to determine whether to provide  
14 expedited processing, and to provide notice of that determination to Plaintiffs, within 10 days after  
15 the date of the Request.

16 43. Defendants' failure to determine whether to provide expedited processing and to  
17 provide notice of that determination to Plaintiffs within 10 days after the date of the Request  
18 violates FOIA, 5 U.S.C. § 552(a)(6)(E)(ii)(I), and applicable regulations promulgated thereunder.

19 44. Because Defendants have not provided a complete response to the Request, this  
20 Court has jurisdiction under FOIA, 5 U.S.C. § 552(a)(6)(E)(iv) to review Defendants' failure to  
21 make a determination concerning Plaintiffs' request for expedited processing.

22 **WHEREFORE**, Plaintiffs request that the Court award them the following relief:

23 1. Declare that Defendants violated FOIA by failing to determine whether to comply  
24 with the Request within 30 business days and by failing to immediately thereafter notify Plaintiffs  
25 of such determination and the reasons therefor;

26 2. Declare that Defendants violated FOIA by unlawfully withholding the requested  
27 records;

28 3. Declare that Defendants violated FOIA by failing to determine whether to provide  
expedited processing, and to provide notice of that determination to Plaintiffs, within 10 days;

