

3. This Request seeks records concerning CBP's citizenship checkpoints and other operations in Maine, and CBP's coordination with federal, state, and local law enforcement. A true and correct copy of the Request is attached as **Exhibit A**.

4. There is significant public interest in these records, as demonstrated by passengers and members of the public who have spoken up about CBP's intrusive operations. Disclosure of the requested records would facilitate the public's understanding of citizenship checks and other CBP operations in Maine. Such information is critical to the public's ability to hold the government accountable.

5. This action is necessary because, months after receiving the Request, Defendants have failed to provide any response at all. Defendants have failed to comply with their legal obligations to timely determine whether to provide expedited processing or to comply with the Request.

JURISDICTION

6. This Court has subject-matter jurisdiction over this action and personal jurisdiction 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

7. Venue in the District of Maine is proper under 5 U.S.C. § 552(a)(4)(B) because Plaintiff's principal place of business is in the District of Maine and because the withheld records at issue in this litigation relate to Defendants' operations in the District of Maine. For the same reasons, venue also is proper under 28 U.S.C. § 1391(e).

PARTIES

8. Plaintiff ACLU of Maine is a non-profit 26 U.S.C. § 501(c)(3) organization that provides legal representation free of charge to individuals and organizations in civil rights and civil liberties cases and educates the public about civil rights and civil liberties issues across the country.

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

10. Defendant U.S. Customs and Border Protection (“CBP”) is a component of DHS and is a federal agency within the meaning of 5 U.S.C. § 552(f)(1). Border Patrol agents operate under the umbrella of CBP.

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

FACTS

I. Public Concern with Defendants’ Citizenship Interdiction

12. This lawsuit arises from nationwide reports of U.S. Border Patrol agents stopping bus passengers to check their immigration status. In one incident, a video of a “routine” security checkpoint in Florida showed Border Patrol agents boarding a bus and asking passengers to present U.S. identification or passports.² The agents later arrested a female passenger and turned her over to Immigration and Customs Enforcement for removal proceedings.³

13. Closer to home, there have been reports of CBP engaging in random immigration checkpoints in Maine. For example, on January 14, 2018, U.S. Border Patrol agents targeted a Concord Coach bus at the Bangor Transportation Center, stopping passengers to ask about their citizenship status.⁴

² Samantha Schmidt, *Video Shows Border Patrol Officers Asking Greyhound Passengers for IDs, Taking Woman into Custody*, Washington Post, (Jan. 23, 2018), https://www.washingtonpost.com/news/morning-mix/wp/2018/01/23/video-shows-border-patrol-officers-asking-greyhound-passengers-for-ids-taking-woman-into-custody/?utm_term=.60fbe3f47acf.

³ *Id.*

⁴ Megan Doyle, *Citizenship Screening at Maine Bus Station Stirs Mixed Feelings, Legal Questions*, Portland Press Herald (Jan. 29, 2018), <https://www.pressherald.com/2018/01/26/citizenship-screening-at-maine-bus-station-stirs-mixed-feelings-legal-questions/>.

14. One bus passenger, Peter Homer, stated that he rode the Concord Coach from Bangor to Boston approximately once a month, and that January 14, 2018, was the first time that he saw CBP officials present and questioning passengers about their citizenship status. According to Mr. Homer, the Border Patrol agents blocked the front door to the bus to ask passengers whether they were United States citizens.⁵

15. There is ongoing interest in the issue of CBP's random immigration checkpoints. For example, on March 21, 2018, the ACLU of Maine joined other ACLU affiliates nationwide in signing a letter urging Greyhound Lines Inc. ("Greyhound") to change its policies of allowing CBP to conduct warrantless raids on its buses.⁶ The letter is attached as **Exhibit B**.

16. On April 19, 2018, the ACLU of Maine and other ACLU affiliates in New England sent letters to regional bus companies Concord Coach Lines and Peter Pan Bus Lines, asking them to cease providing consent to CBP's warrantless bus raids. The letters to Concord Coach Lines and Peter Pan Bus Lines are attached as **Exhibit C** and **Exhibit D**, respectively.

II. Plaintiffs' FOIA Request

17. On January 24, 2018, the ACLU of Maine sent the Request via United States Certified Mail to CBP Headquarters in Washington, D.C., and to the CBP offices in Hodgdon, Maine. **Exhs. A, E**.

18. The Request seeks all records relating to Defendants' security checkpoints in Maine and related cooperation with local, state, and federal law enforcement, from January 1, 2017, to the present. Because no adequate search has yet been completed, the period covered by the Request is ongoing.

19. Specifically, the Request seeks:

⁵ Megan Doyle, *Citizenship Screening at Maine Bus Station Stirs Mixed Feelings, Legal Questions*, Portland Press Herald (Jan. 26, 2018), <https://www.pressherald.com/2018/01/26/citizenship-screening-at-maine-bus-station-stirs-mixed-feelings-legal-questions/>.

⁶ ACLU of Maine Joins ACLU Affiliates Around the Nation on Letter to Bus Company, ACLU of Maine (Mar. 21, 2018), <https://www.aclumaine.org/en/press-releases/aclu-greyhound-must-stop-giving-border-patrol-permission-conduct-bus-raids>.

- A. Records containing descriptions of CBP operations at Bangor Transportation Center or Portland Transportation Center, including the dates, times, and exact locations at which CBP agents were deployed; and the number, titles, and job ranks of CBP officers involved on each date and at each location;
- B. Records from CBP or other federal agencies authorizing the operations at Bangor Transportation Center or Portland Transportation Center, or addressing the legality of stops, questioning, seizures, or searches conducted by CBP;
- C. Records of Maine State or local law enforcement agency involvement with CBP, including, but not limited to, participating in any secondary screening of bus passengers;
- D. Records sent by CBP to any federal, state, or local government agencies, including but not limited to U.S. Immigration and Customs Enforcement, the Federal Bureau of Investigation, U.S. Department of Homeland Security, and Maine State Police, relating to the purpose, methods, conduct, or results from the citizenship inquiries;
- E. With regard to persons subjected to additional questioning beyond the initial citizenship inquiry, records showing: a) the total number of people questioned; b) the country of origin of people questioned; c) the race and/or ethnicity of people questioned; d) the criminal or immigration charges filed against the person questioned, if applicable; e) the location and duration of the person's detention, if applicable; f) the date of the person's voluntary departure from the United States, if applicable; g) the date of the person's removal from the United States, if applicable. **Exh. A at 2.**

20. The Request includes an application for expedited processing based upon a “compelling need” for the requested records under 5 U.S.C. § 552(a)(6)(E)(v)(II), because the ACLU of Maine is an organization “primarily engaged in disseminating information,” and because of the urgency “to inform the public concerning actual or alleged government activity.” **Exh. A at 3-4.**

21. The Request explains that the ACLU is primarily engaged in disseminating information within the meaning of 5 U.S.C. § 552(a)(6)(E)(v), given that a critical and substantial aspect of the ACLU's mission is to obtain information about government activity, analyze that information, and publish and disseminate it widely to the press and public. **Exh. A at 3-4.**

22. The Request described examples of the ACLU's information-dissemination function, including publishing blogs, newsletters, news briefings, "Know Your Rights" documents, and other educational and informational materials. **Exh. A at 3-4.**

23. The Request also includes an application for a fee waiver under 5 U.S.C. § 552(a)(4)(A)(iii) on the grounds that disclosure of the requested records is in the public interest and is "likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." **Exh. A at 4-5.**

24. Finally, the Request applied for a waiver of search fees under 5 U.S.C. § 552(a)(4)(A)(ii)(II) for the additional reason that Plaintiffs qualify as "representatives of the news media" and the records are not sought for commercial use, given the ACLU's non-profit mission and substantial activities to publish information for dissemination to the public, as discussed in greater detail in ¶¶ 21-22 above. **Exh. A at 4-6.**

III. Agency's Response

25. Defendants have a legal duty under FOIA to determine whether to comply with a request within 20 days (excepting Saturdays, Sundays, and legal public holidays) after receiving the request, and also have a legal duty to notify a requester of the agency's determination and the reasons therefor within the same 20 days. 5 U.S.C. § 552(a)(6)(A)(i).

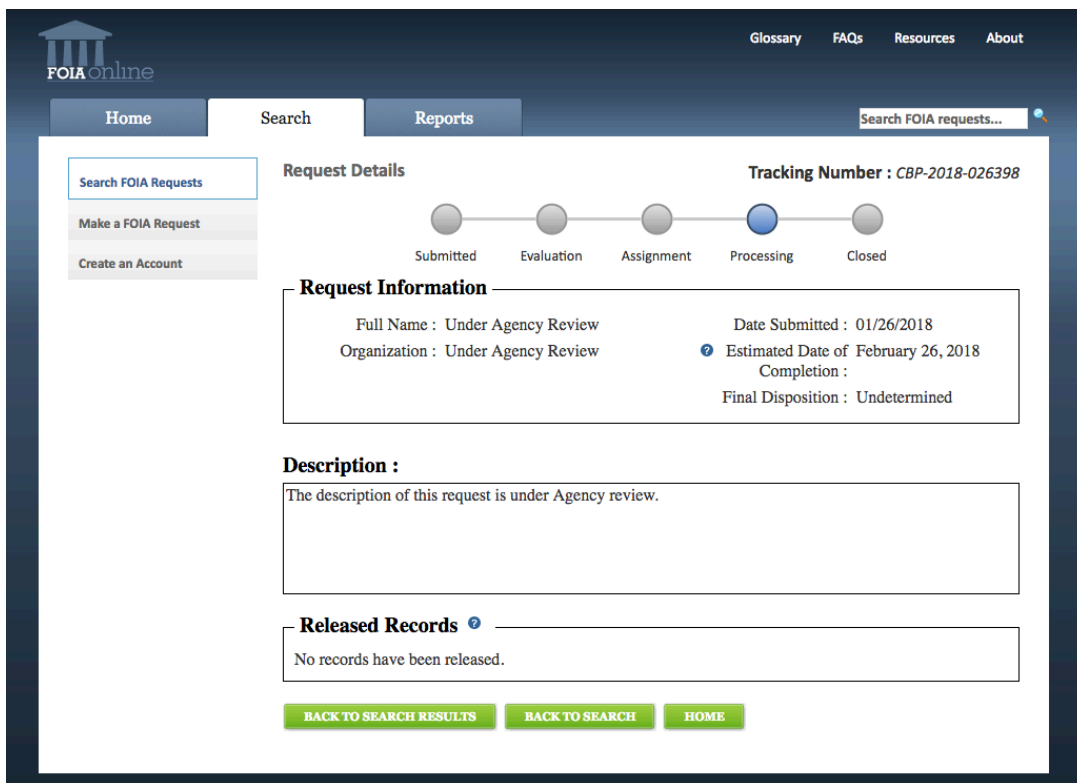
26. In other words, "[t]he statute requires that, within the relevant time period, an agency must determine whether to comply with a request—*that is, whether a requester will receive all the documents the requester seeks.*" *Citizens for Responsibility & Ethics in Washington v. Fed. Election Comm'n*, 711 F.3d 180, 186 (D.C. Cir. 2013) (emphasis added).

27. Additionally, Defendants also have a legal duty under FOIA to determine whether to provide expedited processing, and to provide notice of that determination to the requester, within 10 days after the request. 5 U.S.C. § 552(6)(E)(ii)(I).

28. As of the date of this Complaint, Defendants have failed to provide any response to the Request. Defendants have failed to provide any determination with respect to expedited

processing. They have also failed to provide any determination with respect to whether to comply with the request. Accordingly, they have violated their statutory deadlines under FOIA.

29. Defendants’ own records confirm that they have failed to comply with the applicable statutory deadlines. According to a CBP employee contacted by phone, the internal tracking number associated with the Request is CBP-2018-026398. The government’s FOIA website states that the tracking number CBP-2018-026398 was submitted on January 26, 2018.⁷



30. The deadline for Defendants to determine whether to provide expedited processing was 10 days after the Request. Accordingly, even using the January 26, 2018 date listed on the FOIA website, the 10-day deadline passed on February 15, 2018.

⁷ FOIA Online, Request Details, <https://foiaonline.regulations.gov/foia/action/public/view/request?objectId=090004d2817c9c64>.

31. The deadline for Defendants to determine whether to comply with the Request was 20 days after the Request. Accordingly, even using the January 26, 2018 date listed on the FOIA website, the 20 day deadline passed on February 15, 2018, without any response from Defendants.

32. The government FOIA website further states that the estimated date of completion for tracking number CBP-2018-026398 was February 26, 2018.⁸ That deadline also passed without any response from Defendants.

33. In short, Defendants have provided no response or determination with respect to expedited processing or whether to comply with the FOIA request. Accordingly, Defendants have violated FOIA's requirements and failed to comply with the applicable statutory deadlines.

34. Because Defendants failed to comply with the 20-business-day time limit provision of FOIA, 5 U.S.C. § 552(a)(6)(A)(i), Plaintiffs are deemed to have exhausted their administrative remedies with respect to the Request under 5 U.S.C. § 552(a)(6)(C)(i).

FIRST CAUSE OF ACTION
Violation of FOIA for Failure
to Provide a Determination
Within 20 Business Days
(DHS, CBP)

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

36. Defendants have a legal duty under FOIA to determine whether to comply with a request within 20 days (excepting Saturdays, Sundays, and legal public holidays) after receiving the request, and also have a legal duty to immediately notify a requester of the agency's determination and the reasons therefor. 5 U.S.C. § 552(a)(6)(A)(i).

⁸ FOIA Online, Request Details, <https://foiaonline.regulations.gov/foia/action/public/view/request?objectId=090004d2817c9c64>.

37. In violation of 5 U.S.C. § 552(a)(6)(A)(i), and applicable regulations promulgated thereunder, Defendants DHS and CBP failed to determine whether to comply with the Request within 20 business days after receiving the Request.

SECOND CAUSE OF ACTION
Violation of FOIA for Failure
To Make Records Promptly Available
(DHS, CBP)

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

39. Plaintiffs have a legal right under FOIA to obtain the specific agency records requested on February 24, 2018, and there exists no legal basis for Defendants' failure to make the requested records "promptly available" to Plaintiffs, their members, and the public. 5 U.S.C. § 552(a)(3)(A).

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

41. In violation of 5 U.S.C. § 552(a)(3)(A), Defendants failed to promptly make available the records sought in the Request.

THIRD CAUSE OF ACTION
Violation of FOIA for Improperly Denying
Plaintiffs' Request for Expedited Processing
(DHS, CBP)

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

43. Plaintiffs have a legal right under FOIA and agency regulations to expedited processing because their Request involves "[a]n urgency to inform the public about an actual or alleged federal government activity, if made by a person who is primarily engaged in disseminating information." 6 C.F.R. § 5.5(e)(1)(ii).

44. Defendants have a legal duty under FOIA to determine whether to provide expedited processing, and to provide notice of that determination to Plaintiffs, within 10 days after the date of the Request. 5 U.S.C. § 552(a)(6)(E)(ii)(I).

45. By failing to determine whether to provide expedited processing and to provide notice of that determination to Plaintiffs within 10 days after the date of the Request, Defendants violated FOIA, 5 U.S.C. § 552(a)(6)(E)(ii)(I), and applicable regulations promulgated thereunder.

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

PRAYER FOR RELIEF

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

1. Declare that Defendants DHS and CBP violated FOIA by failing to make a determination whether to comply with the Request within 20 business days;
2. Declare that Defendants violated FOIA by unlawfully withholding the requested records;
3. Declare that Defendants DHS and CBP violated FOIA by failing to provide expedited processing;
4. Order Defendants to immediately disclose the requested records to the public and make copies immediately available to Plaintiffs without charge for any search or duplication fees, or, in the alternative, provide for expedited proceedings to adjudicate Plaintiffs' rights under FOIA;
5. Award Plaintiffs their reasonable costs and attorneys' fees; and
6. Grant such other relief as the Court may deem just and proper.

DATED this 1st day of May, 2018.

Respectfully submitted,
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