

For Immediate Release

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CBP Settles FOIA Fight with Immigration Attorneys, Noncitizens

By Kelly Knaub

Law360, New York (October 4, 2016, 2:39 PM EDT) -- [U.S. Customs and Border Protection](#) has settled a proposed class action alleging the agency responds too slowly to Freedom of Information Act requests to the detriment of noncitizens, according to court documents filed in California federal court Monday.

U.S. District Judge James Donato signed off on a joint stipulation of dismissal filed Friday by CBP and the suing immigration lawyers and noncitizens, ending their class allegations that CBP has a “staggeringly high” backlog of FOIA requests and that the agency’s failure to respond to them causes noncitizens unnecessary hardship and puts them in legal limbo while they try to assess their immigration options.

The terms of the agreement were not publicly available, and an attorney for the plaintiffs did not respond to a request for comment Tuesday. A [U.S. Department of Justice](#) spokeswoman said the agency declined to comment.

The suit was [first filed](#) in March 2015, with an amended complaint the next month alleging that noncitizens have waiting five to 25 months for CBP to provide them information necessary for lawful permanent resident status applications. Immigration attorneys routinely file FOIA requests with CBP on behalf of clients, to obtain information as part of a defense against deportation orders or for permanent resident status applications, according to the amended complaint.

The government [objected](#) in August 2015 to the putative class’s certification motion, saying the plaintiffs did not state a cognizable pattern-and-practice claim under FOIA, because its timeline creates not an independent cause of action but an exhaustion requirement in which an individual’s only remedy when the agency takes longer than 20 days to respond to a request is to seek a district court’s oversight of that request.

[In September 2015](#), Judge Donato ruled that CBP must face the suit, saying the agency’s

argument that violating the FOIA response deadline was not a cognizable claim “flies in the face” of the act's plain meaning.

The parties advised the court they were negotiating a deal in March 2016, and a settlement in principle was reached during a conference in early May, according to the federal court docket.

The proposed class sought to represent all individuals who filed FOIA requests with CBP that have been pending over 20 business days and all individuals who will file FOIA requests with CBP and experience similar delays

The plaintiffs are represented by Stacy Tolchin of The Law Offices of Stacy Tolchin, Matt Adams of the Northwest Immigrant Rights Project, Trina Realmuto of the National Immigration Project of the National Lawyers Guild, and Mary Kenney and Melissa Crow of the [American Immigration Council](#).

U.S. Customs and Border Protection and the [U.S. Department of Homeland Security](#) are represented by Benjamin Mizer, Elizabeth Shapiro and Emily B. Nestler of the U.S. Department of Justice.

The case is Brown et al. v. U.S. Customs and Border Protection et al., case number [3:15-cv-01181](#), in the U.S. District Court for the Northern District of California.

--Additional reporting by Kevin Penton, Matthew Bultman and Dani Meyer. Editing by Edrienne Su.

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