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8 *(continued on next page)*

9 UNITED STATES DISTRICT COURT FOR THE
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO/ OAKLAND DIVISION

12 Meredith R. BROWN; Kelly RYAN; Jeri
13 FLYNN; Isidro de Jesus RODRIGUEZ
14 SANCHEZ; Nelida ORNELAS RENTERIA;
15 Santos Miguel FLORES AGUILAR; Emma
16 QUEZADA; Manuel CRUZ RENDON; Orlanda
17 URBINA; Juan de DIOS CRUZ ROJAS; Maria
18 de Jesus CALDERON RUIZ; Cristina Lucero
19 RAMIREZ; Noe ZARAGOZA-QUIROZ; Maico
20 MONTOYA-ARELLANO,

21 Plaintiffs,

22 v.

23 UNITED STATES CUSTOMS AND BORDER
24 PROTECTION,

25 Defendant.

Case No. _____

**Complaint for Declaratory
and Injunctive Relief Under
the Freedom of Information
Act**

Class Action

1 (counsel for Plaintiffs continued)

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3 (application for *pro hac vice* admission forthcoming)
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INTRODUCTION

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2 1. Plaintiffs are three immigration attorneys and eleven noncitizens who
3 filed Freedom of Information Act (“FOIA”) requests with Defendant UNITED STATES
4 CUSTOMS AND BORDER PROTECTION (“CBP”), an agency within the Department
5 of Homeland Security (“DHS”). Each of the Plaintiffs have waited for more than twenty
6 days for their FOIA request(s) to be processed by CBP, and most have waited for over a
7 year. Plaintiffs seek information that is critical to determining their eligibility or—in the
8 case of the attorney Plaintiffs—their clients’ eligibility for lawful permanent residence or
9 other immigration relief. Plaintiffs’ efforts to determine eligibility or file immigration
10 applications are stymied for as long as their FOIA requests continue to linger—
11 unprocessed—at CBP.

12
13 2. Despite FOIA’s mandate that an agency issue a response within 20
14 business days of a FOIA request, CBP routinely fails to respond to FOIA requests within
15 the statutory period. Plaintiffs seek to represent a national class of individuals who have
16 filed FOIA requests with CBP, but have not received a response from CBP within 20
17 business days, the period mandated by FOIA. 5 U.S.C. § 552(a)(6)(A)(I).

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19 3. CBP’s FOIA backlog has grown exponentially. At the close of fiscal year
20 (“FY”) 2013, CBP had close to 38,000 FOIA requests that had been pending for more
21 than 20 business days.¹ The FY 2013 backlog was more than nine times greater than it
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25 ¹ See Declaration of Stacy Tolchin in Support of Complaint for Declaratory and
26 Injunctive Relief Under the Freedom of Information Act (“Tolchin Dec.”) at Exh. A,
27 Department of Homeland Security, Privacy Office, 2013 Freedom of Information Act Report to
28 the Attorney General of the United States (“DHS FOIA Annual Report 2013”) at 18. DHS has
not yet published its FY 2014 FOIA Annual Report; FY 2013 statistics are the most recent figures
available.

1 had been just two years earlier, at the close of FY 2011.²

2 4. CBP contributed to this ever-growing backlog by processing fewer cases
3 each year between FY 2011 and 2013.³

4 5. CBP has significantly more funding than its two counterparts within
5 DHS—United States Citizenship and Immigration Services (“USCIS”) and Immigration
6 and Customs Enforcement (“ICE”).⁴ Despite this, its FOIA backlog is significantly
7 greater than either agency.⁵ In fact, although CBP received only 41,381 FOIA requests in
8 FY 2013, in comparison with 132,797 requests received by USCIS, CBP’s backlog grew
9 during that year while USCIS reduced its backlog.⁶

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11 6. Plaintiffs and the Proposed Class suffer harm due to CBP’s failure to
12 respond to their requests because—without the information that they requested through
13 FOIA—they are unable to ascertain the legal significance of their or their clients’ past
14 interactions with border officials. CBP’s delay also prevents Plaintiffs and the Proposed
15 Class from moving forward with applications for which they or their clients may be
16 eligible, and causes unnecessary emotional hardship for those left in legal limbo while
17 they wait to obtain the records that hold the key to assessing their immigration options in
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20 ² *Id.* at 18; Tolchin Dec. at Exh. C, Department of Homeland Security, Privacy Office, 2011
21 Freedom of Information Act Report to the Attorney General of the United States (“DHS FOIA
22 Annual Report 2011”) at 19.

22 ³ Tolchin Dec. at Exh. A, DHS FOIA Annual Report 2013 at 3; Tolchin Dec. at Exh. C, DHS
23 FOIA Annual Report 2011 at 3; Tolchin Dec. at Exh. B, Department of Homeland Security,
24 Privacy Office, 2012 Freedom of Information Act Report to the Attorney General of the United
25 States (“DHS FOIA Annual Report 2012”) at 3.

24 ⁴ For at least the last three fiscal years, CBP’s budget was almost double that of ICE and almost
25 three times as much as USCIS. CBP received between 11 and 12.5 million dollars each of these
26 years, while ICE received less than 6 million, and USCIS less than 3.5 million. *See* Tolchin Dec.
27 at Exh. E, “DHS Budget in Brief, Fiscal Year 2014” at 6; Tolchin Dec. at Exh. D, “DHS Budget
28 in Brief, Fiscal Year 2015” at 7.

⁵ Tolchin Dec. at Exh. A, DHS FOIA Annual Report 2013 at 16.

⁶ *Id.* at 3, 16.

1 the United States.

2 7. Due to this backlog and the ensuing harm it causes, Plaintiffs seek class
3 certification, declaratory, and injunctive relief ordering CBP to respond to FOIA requests
4 which have been pending for more than 20 business days, and ordering CBP to timely
5 process future requests as required by FOIA. 5 U.S.C. §§ 552(a)(6); 552(a)(3).
6

7 **JURISDICTION AND VENUE**

8 8. This Court has jurisdiction under 5 U.S.C. § 552 *et seq.* (FOIA statute), 28
9 U.S.C. § 1331 (federal question), and 28 U.S.C. § 2201 (declaratory judgment).

10 9. Venue is proper under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e)(1)
11 because this is a civil action in which Defendant is a national agency; because Plaintiffs
12 Isidro de Jesus Rodriguez Sanchez, Nelida Ornelas Renteria, and Santos Miguel Flores
13 Aguilar reside in this judicial district; and there is no real property involved in this action.
14

15 10. Plaintiffs have exhausted any and all administrative remedies in
16 connection with their FOIA requests, as detailed below.

17 **PARTIES**

18 11. Plaintiff Meredith R. BROWN is an immigration attorney in Glendale,
19 California. She currently has numerous FOIA requests filed with CBP on behalf of her
20 clients that have been pending for over 20 business days.
21

22 12. Plaintiff Kelly RYAN is an immigration attorney in Denver, Colorado.
23 She currently has numerous FOIA requests filed with CBP on behalf of her clients that
24 have been pending for over 20 business days.

25 13. Plaintiff Jeri FLYNN is an immigration attorney in Baton Rouge,
26 Louisiana. She currently has numerous FOIA requests filed with CBP on behalf of her
27 clients that have been pending for over 20 business days.
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1 14. Plaintiff Isidro de Jesus RODRIGUEZ SANCHEZ resides in Hayward,
2 California. He currently has a FOIA request filed with CBP that has been pending for
3 over 20 business days.

4 15. Plaintiff Nelida Ornelas RENTERIA resides in Oakland, California. She
5 currently has a FOIA request filed with CBP that has been pending for over 20 business
6 days.
7

8 16. Plaintiff Santos Miguel FLORES AGUILAR resides in San Jose,
9 California. He currently has a FOIA request filed with CBP that has been pending for
10 over 20 business days.

11 17. Plaintiff Emma QUEZADA resides in Murietta, California. She currently has a
12 FOIA request filed with CBP that has been pending for over 20 business days.
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14 18. Plaintiff Manuel Cruz RENDON resides in Los Angeles, California. He
15 currently has a FOIA request filed with CBP that has been pending for over 20 business
16 days.

17 19. Plaintiff Orlanda URBINA resides in North Hollywood, California. She
18 currently has a FOIA request filed with CBP that has been pending for over 20 business
19 days.
20

21 20. Plaintiff Juan de DOIS CRUZ ROJAS resides in Picabo, Idaho. He
22 currently has a FOIA request filed with CBP that has been pending for over 20 business
23 days.

24 21. Plaintiff Maria de Jesus CALDERON RUIZ resides in Alpaugh,
25 California. She currently has a FOIA request filed with CBP that has been pending for
26 over 20 business days.

27 22. Plaintiff Cristina Lucero ROMERO resides in Carthage, North Carolina.
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1 She currently has a FOIA request filed with CBP that has been pending for over 20
2 business days.

3 23. Plaintiff Noe ZARAGOZA-QUIROZ resides in Nashville, Tennessee. He
4 currently has a FOIA request filed with CBP that has been pending for over 20 business
5 days.

6 24. Plaintiff Maico MONTOYA-ARELLANO resides in Nashville,
7 Tennessee. He currently has a FOIA request filed with CBP that has been pending for
8 over 20 business days.

9 25. Defendant UNITED STATES CUSTOMS AND BORDER
10 PROTECTION (“CBP”) is a component agency of DHS and is an agency within the
11 meaning of 5 U.S.C. § 552(f)(1). Among other duties, CBP is responsible for enforcing
12 immigration laws at the borders and other ports of entry to the United States. CBP
13 inspects all individuals seeking entry to the United States, including U.S. citizens, lawful
14 permanent residents, nonimmigrants, and asylum seekers. CBP has authority to admit or
15 exclude individuals, issue “expedited removal” orders, parole noncitizens into the United
16 States, and permit them to withdraw applications for admission. CBP has in its
17 possession, custody, and control the records Plaintiffs seek.
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21 **FACTUAL ALLEGATIONS**

22 **CBP’s Processing Times and Backlog**

23 26. The statutory time period for a FOIA response is 20 business days. 5
24 U.S.C. § 552(a)(6)(A)(i).
25

26 27. At the close of fiscal year (“FY”) 2013, there were close to 38,000
27 requests pending at CBP. CBP’s average FOIA processing times and its backlog have
28

1 been growing substantially for at least the past three years.

2 28. DHS defines “backlog” as the “number of requests or administrative
3 appeals pending at an agency at the end of the fiscal year that are beyond the statutory
4 time period for a response.”⁷

5 29. DHS reported that CBP received 32,107 FOIA requests in FY 2011,
6 33,243 FOIA requests in FY 2012, and 41,381 FOIA requests in FY 2013.⁸

7 30. DHS reported that CBP had a backlog of 4,365 requests at the close of FY
8 2011.⁹ In FY 2012, this number increased to 10,648 pending requests.¹⁰ By the end of
9 FY 2013, the backlog grew exponentially to 37,848 pending FOIA requests.¹¹ *Over the*
10 *course of these three fiscal years, the backlog grew by a total of 23,213 requests;*
11 *consequently, in FY 2013, the backlog was over nine times larger than it was in 2011.*

12 31. The increase in the number of FOIA requests filed in FY 2011 through
13 FY 2013 is much less than the increase in backlogged requests during this same period.
14 Indeed, DHS reported a dramatic *decrease* in the number of requests that CBP processed
15 each year: from 27,818 requests processed in FY 2011 down to only 14,635 requests
16 processed in FY 2013.¹²

17 32. Upon information and belief, CBP is not practicing a “first come-first
18 served” policy in responding to FOIA requests, and instead is processing newer requests
19 in a more expeditious manner than those already present in the backlog. For instance, the
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24 ⁷ Tolchin Dec. at Exh. A, DHS FOIA Annual Report 2013 at vii.

25 ⁸ Tolchin Dec. at Exh. A, DHS FOIA Annual Report 2013 at 3; Tolchin Dec. at Exh. B, DHS
FOIA Annual Report 2012 at 3; Tolchin Dec. at Exh. C, DHS FOIA Annual Report 2011 at 3.

26 ⁹ Tolchin Dec. at Exh. C, DHS FOIA Annual Report 2011 at 16.

27 ¹⁰ Tolchin Dec. at Exh. B, DHS FOIA Annual Report 2012 at 16.

28 ¹¹ Tolchin Dec. at Exh. A, DHS FOIA Annual Report 2013 at 16.

¹² Tolchin Dec. at Exh. A, DHS FOIA Annual Report 2013 at 3; Tolchin Dec. at Exh. B, DHS
FOIA Annual Report 2012 at 3; Tolchin Dec. at Exh. C, DHS FOIA Annual Report 2011 at 3.

1 2013 DHS Annual FOIA Report shows that CBP processed 1,730 new FOIA requests
2 within the 20 day statutory period, while its backlog grew exponentially.¹³

3 33. The statistics demonstrate that CBP is not prioritizing reducing its backlog
4 of pending FOIA requests.

5 34. Any effort that CBP has made to clear this backlog has been wholly
6 inadequate and ineffectual.

7 35. CBP's backlog is ten times larger than the backlog for USCIS, the agency
8 responsible for adjudicating immigration applications and for processing FOIA requests
9 seeking copies of an individual's "alien registration file" (commonly referred to as the "A
10 file"). Although USCIS received almost three times the number of FOIA requests as CBP
11 in FY 2013—132,797 requests in comparison to CBP's 41,381—it was able to reduce its
12 backlog of pending cases by more than two-thirds.¹⁴ As a result, DHS reported a backlog
13 of just 3,394 cases for USCIS at the close of FY 2013, compared to the 37,848 cases for
14 CBP.¹⁵

15 36. CBP's backlog is nine times greater than the backlog for ICE, the agency
16 responsible for prosecuting immigration cases and enforcing immigration laws, even
17 though CBP received only roughly 20 percent more FOIA requests in 2013 (CBP
18 received 41,381 requests compared to ICE's 34,161).¹⁶

19 37. No exceptional circumstances exist warranting a delay in processing CBP
20 FOIA requests. An agency's failure to keep up with the pace of FOIA requests is not an
21 "exceptional circumstance." Indeed, USCIS received a much greater increase in the
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26 ¹³ Tolchin Dec. at Exh. A, DHS FOIA Annual Report 2013 at 11.

27 ¹⁴ *Id.* at 3, 18.

28 ¹⁵ *Id.* at 16.

¹⁶ *Id.* at 18.

1 number of requests in 2013 but was still able to reduce its backlog. 5 U.S.C. §
2 552(a)(6)(C)(i).

3 38. CBP has failed to timely respond to Plaintiffs' FOIA requests in the 20
4 business days required by statute, and has a pattern and practice of failing to do so with
5 respect to the majority of FOIA requests it receives. CBP has not demonstrated due
6 diligence in responding to Plaintiffs' FOIA requests or in clearing out the backlog of
7 overdue FOIA requests.

9 39. Moreover, CBP has more funding than any of the fourteen agencies within
10 DHS, including USCIS, ICE, FEMA, the U.S. Coast Guard, and the U.S. Secret
11 Service.¹⁷ Further, in the last two fiscal years, CBP received the second largest increase
12 in funding of the 14 other agencies within DHS.¹⁸

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15 **Harm to Plaintiffs and Proposed Class Members**

16 40. CBP records often are critical evidence in immigration cases. A
17 noncitizen's past interactions with CBP may affect his or her ability to qualify for lawful
18 permanent resident status. For example, to adjust to lawful permanent resident status, a
19 noncitizen must document that he or she was "inspected and admitted or paroled" into the
20 United States. 8 U.S.C. § 1255(a). At all U.S. ports of entry, CBP is the agency
21 responsible for determining who is to be admitted or paroled into the United States. CBP
22 maintains records of many of the admission and parole decisions it makes with respect to
23 noncitizens. In many adjustment of status cases, these records are the only evidence that
24 the applicant can produce to demonstrate that he or she was admitted or paroled and
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27 ¹⁷ Tolchin Dec. at Exh. D, DHS Budget in Brief, Fiscal Year 2015 at 7.

28 ¹⁸ Tolchin Dec. at Exh. E, DHS Budget in Brief, Fiscal Year 2014 at 6; Tolchin Dec. at Exh. D,
DHS Budget in Brief, Fiscal Year 2015 at 7.

1 therefore eligible for lawful permanent resident status.

2 41. Additionally, pursuant to 8 U.S.C. § 1225(b), CBP issues “expedited
3 removal orders” against some individuals apprehended at the border who attempted entry
4 without proper documentation. Other individuals are permitted to withdraw their
5 applications for admission and depart the United States without having an expedited
6 removal order entered against them. 8 U.S.C. § 1225(a)(4). Many individuals who are
7 turned away at the border are uncertain if they were issued expedited removal orders or
8 simply permitted to withdraw their applications for admission.
9

10 42. For those individuals who are issued expedited removal orders, they are, at
11 a minimum, inadmissible to the United States for a five-year period and, consequently,
12 ineligible for an immigrant or nonimmigrant visa and ineligible to adjust status during this
13 period. In addition, if CBP documentation shows that the expedited removal order was
14 issued based on an allegedly false claim to U.S. citizenship, the person may be found to be
15 permanently inadmissible. See 8 U.S.C. § 1182(a)(6)(C)(ii). Moreover, even if the five-
16 year period has elapsed, the existence of the prior expedited removal order may affect
17 future visa and adjustment applications that have a discretionary component.
18

19 43. Individuals who have returned to the United States after prior interactions
20 with CBP, and their attorneys, are harmed by CBP’s failure to timely process their FOIA
21 requests. To understand their situations, assess their options, and make life decisions,
22 these individuals, as well as lawyers advising them, need to know if CBP previously
23 admitted or paroled them into the United States or issued an expedited removal order. If
24 the FOIA production reveals that CBP issued an expedited removal order, these
25 individuals potentially face additional grounds of inadmissibility, some of which may
26 require an additional waiver application. Other individuals who have returned to the
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1 United States may potentially face criminal prosecution, see 8 U.S.C. §§ 1325 and 1326,
2 and a similar summary removal process known as reinstatement of removal, see 8 U.S.C.
3 § 1231(a)(5).

4 **Plaintiffs' FOIA Requests**

5 44. Plaintiff Brown is an immigration attorney in Glendale, California who
6 represents clients before component agencies of DHS and the Executive Office for
7 Immigration Review (EOIR), which consists of the immigration courts and the Board of
8 Immigration Appeals. She has been practicing immigration law for approximately 17
9 years.
10

11 45. Plaintiff Brown regularly files FOIA requests on behalf of and at the
12 request of her clients, who seek information maintained by DHS agencies, including CBP.
13 Plaintiff Brown requires the information requested from CBP in order to adequately
14 advise and represent her clients, including in defending against removal from the United
15 States and applying for affirmative immigration benefits, such as applications for lawful
16 permanent resident status. The requested information may affect her clients' eligibility for
17 different forms of immigration benefits; it is therefore essential that she obtain the
18 information from CBP before filing for any immigration benefits.
19

20 46. Plaintiff Brown currently has approximately 32 CBP FOIA requests that
21 have been pending for more than 14 months.
22

23 47. Plaintiff Ryan is an immigration attorney in Denver, Colorado who
24 represents clients before component agencies of DHS and EOIR. She has been practicing
25 immigration law for approximately seven years.

26 48. Plaintiff Ryan regularly files FOIA requests on behalf of and at the request
27 of her clients, who seek information maintained by DHS agencies, including CBP.
28

1 Plaintiff Ryan requires the information requested from CBP in order to adequately advise
2 and represent her clients, including in defending against removal from the United States
3 and applying for affirmative immigration benefits, such as applications for lawful
4 permanent resident status. The requested information may affect her clients' eligibility for
5 different forms of immigration benefits; it is therefore essential that she obtain the
6 information from CBP before filing for any immigration benefits.
7

8 49. Plaintiff Ryan currently has approximately 25 CBP FOIA requests that
9 have been pending for more than 20 business days, including at least nine requests that
10 have been pending for more than a year.

11 50. Plaintiff Jeri Flynn is an immigration attorney in Baton Rouge, Louisiana
12 who represents clients before component agencies of DHS and EOIR. She has been
13 practicing law for approximately 36 years.
14

15 51. Plaintiff Flynn regularly files FOIA requests on behalf of and at the request of her
16 clients, who seek information maintained by DHS agencies, including CBP. Plaintiff Flynn
17 requires the information requested from CBP in order to adequately advise and represent her
18 clients, including in defending against removal from the United States and applying for affirmative
19 immigration benefits, such as applications for lawful permanent resident status. The requested
20 information may affect her clients' eligibility for different forms of immigration benefits; it is
21 therefore essential that she obtain the information from CBP before filing for any immigration
22 benefits.
23

24 52. Plaintiff Flynn currently has approximately seven CBP FOIA requests that
25 have been pending for more than 20 business days, including 7 that have been pending for
26 over a year.

27 53. Plaintiff Isidro de Jesus Rodriguez Sanchez, through his attorney, filed a
28

1 FOIA request with CBP on June 17, 2013, seeking information about a possible past
2 expedited removal order issued by CBP at the United States border. CBP issued a receipt
3 for his FOIA request, number CBP-2013-019829. Although Plaintiff Rodriguez
4 Sanchez's FOIA has been pending with CBP for 20 months, he has not received the
5 requested information.
6

7 54. Plaintiff Rodriguez Sanchez has been in the United States for 14 years and
8 has three United States citizen children. His attorney requires a response to his pending
9 FOIA request to determine if he is eligible for lawful permanent resident status.

10 55. Plaintiff Nelida Ornelas Renteria, through her attorney, filed a FOIA
11 request with CBP on April 1, 2013, seeking information about a past encounter with CBP,
12 and whether it disqualifies her from applying for lawful permanent resident status. CBP
13 issued a receipt for her FOIA request, number CBP-2013-011307. Although Plaintiff
14 Ornelas Renteria's FOIA has been pending with CBP for 23 months, she has not received
15 the requested information.
16

17 56. Plaintiff Ornelas Renteria has been in the United States since 2003 and is
18 married to a United States citizen. Her attorney requires the information sought in the
19 FOIA request filed with CBP in order to determine her eligibility for lawful permanent
20 resident status.
21

22 57. Plaintiff Santos Miguel Flores Aguilar, through his attorney, filed a FOIA
23 request with CBP on April 10, 2013, inquiring about a past encounter with border patrol,
24 in order to determine whether any such encounter would disqualify him from applying for
25 lawful permanent resident status. CBP issued a receipt for his FOIA request, number CBP-
26 2013-014823. Although Plaintiff Flores Aguilar's FOIA has been pending with CBP for
27 almost 23 months, he has not yet received the requested information.
28

1 58. Plaintiff Flores Aguilar has resided in the United States since 2006, is
2 married to a United States citizen, and has one United States citizen child. The requested
3 information will enable his attorney to determine whether his wife can petition for a visa
4 on his behalf, and whether he can then apply for lawful permanent residence.

5 59. Plaintiff Emma Quezada, through her attorney, filed a FOIA request with
6 CBP on May 1, 2013, seeking information from CBP records about entries into and exits
7 from the United States that she made at the United States/Mexico border. CBP issued a
8 temporary receipt for her FOIA request, Number 4071. Although Plaintiff Quezada's
9 FOIA has been pending with CBP for 22 months, she has not received the requested
10 information.

11 60. Plaintiff Quezada has applied to USCIS to adjust her status to lawful
12 permanent resident. In order for USCIS to approve her application, she must provide
13 evidence of her admission into the United States by CBP in 2005. Her FOIA request
14 seeks information from CBP records documenting this admission. A USCIS officer
15 specifically requested such documentation at her January 26, 2015 interview on her
16 adjustment application. Plaintiff Quezada will not be able to continue with her adjustment
17 application without this documentation. Plaintiff Quezada has three United States citizen
18 children and owns a home in the United States.

19 61. Plaintiff Manuel Cruz Rendon, through his attorney, filed a FOIA request
20 with CBP on March 2, 2013, seeking information from CBP records regarding his
21 encounters with CBP agents at the United States/Mexico border. CBP issued a receipt for
22 his FOIA request, number CBP-2014-015797. Although Plaintiff Cruz Rendon's FOIA
23 has been pending with CBP for 24 months, he has not received the requested information.

24 62. Plaintiff Cruz Rendon wishes to apply to adjust his status to lawful
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1 permanent resident. His wife is prepared to submit a visa petition on his behalf, a
2 necessary prerequisite to his filing an adjustment of status application with USCIS.

3 Plaintiff Cruz Rendon seeks the requested information to determine if he will be eligible
4 to adjust his status.

5
6 63. Plaintiff Orlanda Urbina, through her attorney, filed a FOIA request with
7 CBP on October 21, 2013, seeking any information from CBP records regarding
8 interactions she may have had with CBP officers from 1999 to the present. CBP did not
9 issue a FOIA receipt. Although Plaintiff Urbina's FOIA has been pending with CBP for
10 16 months, she has not received the requested information.

11 64. Plaintiff Urbina has a United States citizen daughter, United States citizen
12 mother, and lawful permanent resident father. The requested information is necessary for
13 her attorney to assess her eligibility for immigration benefits.

14
15 65. Plaintiff Juan de Dios Cruz Rojas, through his attorney, filed a FOIA
16 request with CBP on July 26, 2013, seeking information about any encounters he may
17 have had with CBP agents. CBP issued a receipt for his FOIA request, number CBP-2013-
18 024525. Although Plaintiff Cruz Rojas' FOIA has been pending with CBP for 20 months,
19 he has not received the requested information.

20
21 66. Plaintiff Cruz Rojas has lived in the United States for 15 years and has
22 three U.S. citizen children, two U.S. citizen siblings, lawful permanent resident parents
23 and sibling, and U.S. citizen in-laws. The requested information is necessary for his
24 attorney to assess his eligibility for immigration benefits.

25 67. Plaintiff Maria de Jesus Calderon Ruiz, through her attorney, filed a FOIA
26 request with CBP on June 26, 2013, inquiring as to any records issued by CBP in
27 approximately 1993 in San Ysidro, California. CBP issued a receipt for this FOIA
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1 request, number CBP-2013-021129. Although her FOIA has been pending with CBP for
2 20 months, she has not yet received the requested information.

3 68. Plaintiff Calderon Ruiz has resided in the United States since
4 approximately 1993 and is married to a United States citizen. She has three United States
5 citizen children. Her attorney seeks a response to the FOIA request to determine whether
6 Plaintiff's Calderon Ruiz's husband may file a visa petition on her behalf and whether she
7 can apply for lawful permanent residence.
8

9 69. Plaintiff Cristina Lucero Romero, through her attorney, filed a FOIA
10 request with CBP on August 7, 2014, inquiring as to any CBP records evidencing an order
11 of expedited removal. CBP issued a receipt for the FOIA, number CBP-2014-041050.
12 Although her FOIA has been pending for 7 months, she has not yet received the requested
13 records.
14

15 70. Plaintiff Lucero Romero is married to a United States citizen and has two
16 United States citizen children. One of her children is currently hospitalized due to
17 anorexia nervosa. Her attorney requires the requested information in order to counsel
18 Plaintiff Lucero Romero's husband about filing a visa petition on her behalf, and to
19 counsel her about filing an application for lawful permanent residence.
20

21 71. Plaintiff Noe Zaragoza-Quiroz, through his attorney, filed a FOIA request
22 with CBP on February 26, 2014, requesting records regarding his exact date of entry into
23 the United States so that he could apply for lawful permanent residence. CBP issued a
24 receipt for the FOIA, number CBP-2014-015234. His FOIA request has been pending for
25 one year and he has not received a response.

26 72. Plaintiff Zaragoza-Quiroz is married to a United States citizen and has two
27 United States citizen children from a prior marriage, of whom he has sole custody. His
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1 United States citizen wife is suffering from a significant back injury, and he cares for her
2 as well. Information from Plaintiff Noe Zaragoza-Quiroz's CBP FOIA request is vital to
3 determining his eligibility for permanent resident status; if he returned to the United States
4 prior to April 1, 1998, he is eligible for residency.

5
6 73. Plaintiff Maico Montoya-Arellano Maico, through his attorney, filed a
7 FOIA request with CBP on March 21, 2014, requesting records regarding his date of entry
8 into the United States so that he can become a lawful permanent resident. CBP issued a
9 receipt for the FOIA, number CBP-2014-018093. His FOIA request has been pending for
10 almost one year, and he has not received a response.

11 74. Plaintiff Montoya-Arellano Maico is married to a United States citizen and
12 has two U.S. citizen children from this marriage. He has worked as a contractor for the
13 same company for many years. He cannot move forward on his application for lawful
14 permanent resident status until the response to the FOIA is received.
15

16 17 **CLASS ACTION ALLEGATIONS**

18 75. Pursuant to Federal Rules of Civil Procedure 23(a) and (b), Plaintiffs bring
19 this action on behalf of themselves and all other similarly situated individuals. Plaintiffs
20 seek injunctive relief that applies generally to the Proposed Class, as described below.
21

22 76. The Proposed Class consists of:

23 All individuals who have filed FOIA requests with CBP which have been pending
24 for more than 20 business days and all individuals who will file FOIA requests
with CBP.

25 77. The Proposed Class is so numerous that joinder of all members is
26 impracticable. The number of individuals who filed FOIA requests with CBP is not
27 known with precision by Plaintiffs, but is easily ascertainable by Defendant. DHS' 2013
28

1 FOIA Annual Report indicates that there were 37,848 pending requests in the CBP
2 backlog. Of that group, it is unknown how many requests are still pending. Hence,
3 Plaintiffs estimate that the number of requests pending for more than 20 business days is
4 in the thousands.

5
6 78. Common questions of law and fact bind the members of the Proposed
7 Class. These include, but are not limited to: whether CBP's pattern or practice of failing
8 to timely respond to FOIA requests within the 20-day statutory period violates the FOIA,
9 5 U.S.C. § 552(a)(6)(A)(i).

10 79. The claims of the named Plaintiffs are typical of the claims of the
11 Proposed Class as a whole.

12 80. Plaintiffs know of no conflict between their interests and those of the
13 Proposed Class. The members of the Proposed Class are ascertainable and identifiable
14 through notice and discovery. In defending their own rights, the individual Plaintiffs will
15 defend the rights of all class members fairly and adequately.

16 81. Plaintiffs are represented in this case by counsel with deep knowledge of
17 immigration and FOIA law, and extensive experience litigating class actions and complex
18 cases. Plaintiffs' attorneys have the requisite level of expertise to adequately prosecute this
19 case on their behalf and on behalf of the Proposed Class.
20

21 82. Defendants have failed to act on grounds generally applicable to each
22 member of the Proposed Class by failing to respond to FOIA requests in a timely fashion.
23

24 83. A class action is superior to other methods available for the fair and
25 efficient adjudication of this controversy because joinder of all members of the class is
26 impracticable.
27
28

CAUSES OF ACTION

COUNT ONE

(Violation of FOIA)

(on behalf of named Plaintiffs and the Proposed Class)

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5 84. Plaintiffs incorporate the allegations in the paragraphs above as though
6 fully set forth here.

7 85. Defendant is obligated under 5 U.S.C. § 552(a)(3) to conduct a reasonable
8 search for records responsive to FOIA requests and to issue a determination concerning
9 each request within the time period set forth in 5 U.S.C. § 552(a)(6)—20 working days, to
10 be extended by no more than 10 working days in the event that the agency notifies the
11 requester in writing of the existence of “unusual circumstances.”
12

13 86. Defendant has a nationwide pattern and practice of failing to respond to
14 FOIA requests within the statutory time period. No legal basis exists for the Defendant’s
15 nationwide pattern and practice of failing to meet the statutory deadline with respect to the
16 FOIA requests it receives.
17

18 87. Exceptional circumstances do not justify CBP’s delay in processing FOIA
19 requests, and CBP has not exercised due diligence in responding to and clearing the
20 backlog of pending FOIA requests.

21 88. Defendant has failed to respond to FOIA requests of Plaintiffs and
22 Proposed Class members, to make timely determinations concerning these requests, and to
23 disclose responsive records within the statutory time frame, in violation of 5 U.S.C. §§
24 552(a)(3) and (a)(6)(A) and the regulations promulgated thereunder.
25

26 89. Defendant’s failure to make determinations concerning Plaintiffs’ requests
27 for records within the statutory time period constitutes a constructive denial of Plaintiffs’
28

1 requests, and Plaintiffs are deemed to have exhausted their administrative remedies. 5
2 U.S.C. § 552(a)(6)(C)(i).

3
4 **PRAYER FOR RELIEF**

5
6 WHEREFORE, Plaintiffs pray that this Court grant the following relief:

- 7 (1) Certify a class pursuant to Federal Rule of Civil Procedure 23 in
8 accordance with this Complaint's allegations;
- 9 (2) Declare that CBP's failure to timely conduct reasonable and timely
10 searches for records responsive to Plaintiffs' and Proposed Class
11 members' FOIA requests and its refusal to disclose such records within
12 the statutory time frame violate the FOIA;
- 13 (3) Issue a nationwide injunction requiring Defendant to respond to CBP
14 FOIA requests that have been pending for more than 20 business days,
15 within 60 business days of the Court's order or as the Court deems
16 appropriate;
- 17 (4) Order CBP to respond to FOIA requests of Proposed Class members as
18 mandated by 5 U.S.C. § 552(a)(6)(A)(i);
- 19 (5) Award costs and reasonable attorney fees incurred under 5 U.S.C. §
20 552(a)(4)(E); and
- 21 (6) Grant such further relief as the Court deems just and proper.
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Dated: March 12, 2015

Respectfully submitted,

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