

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

<p>HARVARD IMMIGRATION AND REFUGEE CLINICAL PROGRAM,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>UNITED STATES DEPARTMENT OF HOMELAND SECURITY,</p> <p>UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT,</p> <p>UNITED STATES CUSTOMS AND BORDER PROTECTION,</p> <p>UNITED STATES DEPARTMENT OF JUSTICE,</p> <p>and</p> <p>EXECUTIVE OFFICE FOR IMMIGRATION REVIEW,</p> <p style="text-align: center;">Defendants.</p>
--

Docket No.

**COMPLAINT FOR INJUNCTIVE  
RELIEF**

**INTRODUCTION**

1. Plaintiff Harvard Immigration and Refugee Clinical Program (“HIRC”), by and through its undersigned attorneys, brings this action against Defendants United States Department of Homeland Security (“DHS”) and its components, the United States Immigration and Customs Enforcement (“ICE”) and the United States Customs and Border Protection (“CBP”), and the United States Department of Justice (“DOJ”) and its component, the Executive Office for Immigration Review (“EOIR”), as follows:

2. This is an action under the Freedom of Information Act, 5 U.S.C. § 552 *et seq.* (“FOIA”), for injunctive and other relief to compel the disclosure and release of documents to Plaintiff. The documents in question relate to the two FOIA requests submitted to Defendants on October 21, 2020. One FOIA request was submitted to DHS, ICE, and CBP, and the other FOIA request was submitted to DOJ and EOIR.
3. HIRC’s FOIA requests seek information related to the implementation of the Nationwide Policy and National Qualified Representative Program (“NQRP”) by Defendants to provide enhanced procedural protections to certain unrepresented and detained individuals in removal proceedings with serious mental disorders or conditions that may render them incompetent to represent themselves in immigration proceedings.
4. Without the Nationwide Policy and NQRP, these individuals typically remain unrepresented by counsel and impaired by serious mental health conditions. This results in unfair immigration proceedings in which they are much more likely to be deported without due process or the capacity to represent themselves.<sup>1</sup>
5. These detained individuals are also at a higher risk for prolonged immigration proceedings, and some have been detained for years.<sup>2</sup>
6. Additionally, these individuals are generally involved in high-stakes immigration proceedings, often facing persecution and torture in their home countries as a result of their mental illnesses.<sup>3</sup>

---

<sup>1</sup> See Ingrid V. Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. PA. L. REV. 1, 9 (2015) (“Detained immigrants with counsel obtained a successful outcome (i.e., case termination or relief) in 21% of cases, ten-and-a-half times greater than the 2% rate for their pro se counterparts.”). See also VERA INST. JUST., *Why Does Representation Matter? The Impact of Legal Representation in Immigration Court* (2018), <https://www.vera.org/downloads/publications/why-does-representation-matter.pdf> (“95 percent of successful [deportation] cases were represented”).

<sup>2</sup> Eagly & Shafer, *supra* note 1.

<sup>3</sup> *Id.*

7. FOIA, 5 U.S.C. § 552 *et seq.*, mandates disclosure of records held by a federal agency in response to a request for such records by a member of the public, unless records fall within certain narrow statutory exemptions.
8. As the Supreme Court has recognized, “the basic purpose of [FOIA] is ‘to open agency action to the light of public scrutiny.’” *Dep’t of Air Force v. Rose*, 425 U.S. 352, 372 (1976). Such scrutiny improves the public’s understanding of governmental operations and, thus, enables a vibrant and functioning democracy.
9. HIRC submitted its FOIA requests to Defendants to obtain information to further the public’s understanding of federal immigration policies and practices regarding enhanced procedural protections, including competency inquiries, mental health examinations, and bond hearings, to certain unrepresented and detained individuals with serious mental disorders and conditions that may render them incompetent to represent themselves in immigration proceedings.
10. Yet, despite Defendants’ statutory obligation to respond to a FOIA request within 20 days, Defendants have failed to conduct a reasonable search and adequately respond to HIRC’s FOIA requests.
11. Accordingly, HIRC seeks to compel Defendants to comply with their obligations under FOIA and produce the relevant documents.

### **THE PARTIES**

12. Plaintiff HIRC is a clinical program at Harvard Law School, with its principal place of business in Cambridge, Massachusetts. HIRC engages in the direct representation of individuals applying for immigration relief and seeking release from immigration detention, as well as impact and appellate litigation, and policy advocacy.
13. Defendants DHS and its components ICE and CBP are agencies of the United States of America under 5 U.S.C. § 552(f)(1) and 5 U.S.C. § 551(1).

14. Defendants DOJ and its component EOIR are agencies of the United States of America under 5 U.S.C. § 552(f)(1) and 5 U.S.C. § 551(1).
15. DHS, ICE, CBP, DOJ, and EOIR are the federal agencies with possession, custody, and control of the requested records and are responsible for responding to HIRC's FOIA requests.

### **JURISDICTION AND VENUE**

16. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.
17. Venue is appropriate in the District of Massachusetts pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e), because it is the district in which HIRC has its principal place of business and because Defendants are agencies acting in their official capacity.
18. After filing administrative appeals with Defendants, and Defendants' failure to adequately and timely respond to those appeals, HIRC has exhausted all required administrative remedies and is entitled to proceed with this judicial action pursuant to 5 U.S.C. § 552(a)(6)(C)(i).

### **FACTS**

#### **Background**

19. In April 2013, DHS, ICE, DOJ, and EOIR collaborated to create the Nationwide Policy, which provides "enhanced procedural protections, including competency inquiries, mental health examinations, and bond hearings to certain unrepresented and detained respondents with serious mental disorders or conditions that may render them incompetent to represent themselves in immigration proceedings."<sup>4</sup>

---

<sup>4</sup> U.S. DEP'T JUST., *National Qualified Representative Program* (Feb. 18, 2020), <https://www.justice.gov/eoir/national-qualified-representative-program-nqrp>.

20. At the same time, and as part of the Nationwide Policy’s enhanced procedural protections, EOIR also implemented the NQRP, “a nationwide program to provide Qualified Representatives (‘QRs’) to certain unrepresented and detained respondents who are found by an Immigration Judge or the BIA [(Board of Immigration Appeals)] to be mentally incompetent to represent themselves in immigration proceedings.”<sup>5</sup>
21. The Nationwide Policy and NQRP provide important legal services to a specific vulnerable population facing deportation: detained, unrepresented individuals with serious mental disorders or conditions that may render them incompetent to represent themselves in immigration proceedings.<sup>6</sup>
22. In a joint press release issued by the DOJ and DHS in April 2013, DOJ and DHS stated that the Nationwide Policy and NQRP require Immigration Judges to convene competency hearings to determine whether certain immigration detainees are competent to represent themselves in immigration proceedings.<sup>7</sup>
23. In addition, DOJ and DHS indicated that EOIR will make a Qualified Representative available for unrepresented detainees who are deemed mentally incompetent to represent themselves. DOJ and DHS will also afford a bond hearing to certain immigrants detained for more than six months.<sup>8</sup>

---

<sup>5</sup> *Id.* According to ICE, the Nationwide Policy “supplements all previous guidance distributed by ICE pursuant to the Board of Immigration Appeals’ decision in *Matter of M-A-M-*, 25 I. & N. Dec. 474 (BIA 2011).” Ex. 1 at Ex. A (JOHN MORTON, CIVIL IMMIGRATION DETENTION: GUIDANCE FOR NEW IDENTIFICATION AND INFORMATION-SHARING PROCEDURES RELATED TO UNREPRESENTED DETAINEES WITH SERIOUS MENTAL DISORDERS OR CONDITIONS (Apr. 22, 2013), available at [https://www.ice.gov/doclib/detention-reform/pdf/11063.1\\_current\\_id\\_and\\_infosharing\\_detainees\\_mental\\_disorders.pdf](https://www.ice.gov/doclib/detention-reform/pdf/11063.1_current_id_and_infosharing_detainees_mental_disorders.pdf)).

<sup>6</sup> VERA INST. JUST., *National Qualified Representative Program Overview* (2020), <https://www.vera.org/projects/national-qualified-representative-program/overview>; U.S. DEP’T JUST., *supra* note 4.

<sup>7</sup> U.S. DEP’T JUST., *Department of Justice and the Department of Homeland Security Announce Safeguards for Unrepresented Immigration Detainees with Serious Mental Disorders or Conditions* (Apr. 22, 2013), <https://www.justice.gov/eoir/pages/attachments/2015/04/21/safeguards-unrepresented-immigration-detainees.pdf>.

<sup>8</sup> *Id.*

24. DOJ and DHS “expect[ed] these new procedures to be fully operational on a national basis by the end of 2013.”<sup>9</sup>

**A. DHS, ICE, and CBP**

25. On April 22, 2013, then-ICE Director John Morton issued a memorandum directing that procedures be put in place to ensure that ICE and detention facility staff screen individuals detained in ICE custody who may be mentally incompetent to represent themselves in removal proceedings, and, where appropriate, provide them with access to new procedures being implemented by EOIR.<sup>10</sup>

26. On May 7, 2014, then-ICE Executive Associate Director Thomas Homan issued another memorandum that sets forth procedures that ICE must use pursuant to the Nationwide Policy, including by providing mental health screenings at detention facilities to identify detainees with serious mental disorders or conditions.<sup>11</sup>

27. A subsequent court order requires ICE to collect relevant information regarding detainees who may have serious mental disorders or conditions that may impact their ability to represent themselves in immigration proceedings by utilizing a toll-free telephone hotline and by accepting relevant information and documents from family members, social workers, or treatment providers (hereinafter “Third Party Notifications”). ICE must then provide these Third Party Notifications to the mental health provider performing the mental health screenings at the detention facility.<sup>12</sup>

28. Because CBP also detains individuals placed in immigration proceedings and is a subcomponent of DHS, CBP may also implement similar procedures for individuals in its custody who have serious mental disorders or conditions.

---

<sup>9</sup> *Id.*

<sup>10</sup> Ex. 1 at Ex. A.

<sup>11</sup> Ex. 1 at Ex. B (THOMAS HOMAN, IDENTIFICATION OF DETAINEES WITH SERIOUS MENTAL DISORDERS OR CONDITIONS (May 7, 2014)).

<sup>12</sup> *Franco-Gonzalez v. Holder*, No. CV-10-02211 DMG DTBX, 2014 WL 5475097, at \*4 (C.D. Cal. Oct. 29, 2014).

29. However, little is publicly known about the procedures and guidance that DHS, ICE, and CBP provide to detention facility personnel and mental health providers performing mental health screenings at detention facilities to implement the NQRP and Nationwide Policy and ensure their essential procedural protections are being applied consistently and uniformly across the United States.
30. To remedy this information deficit, HIRC filed a request under FOIA, further described below, to understand how DHS, ICE, and CBP provide enhanced procedural protections to certain unrepresented and detained individuals in removal proceedings with serious mental disorders or conditions that may render them incompetent to represent themselves in immigration proceedings.

**B. DOJ and EOIR**

31. On August 15, 2013, EOIR began Phase I of the Nationwide Policy “in order to test aspects of the plan,” and subsequently issued its final guidance for Phase I.<sup>13</sup> The Phase I guidance “sets forth principles by which Immigration Judges assess competency within the context of EOIR’s nationwide plan to provide enhanced procedural protections to unrepresented, detained respondents with mental disorders.”<sup>14</sup>
32. While the Phase I guidance stated that EOIR “also intends to issue a Notice of Proposed Rulemaking on this subject and, upon receipt and review of public comment, a Final Rule,”<sup>15</sup> to date, EOIR has not issued a Notice of Proposed Rulemaking or a Final Rule regarding the Nationwide Policy or NQRP.

---

<sup>13</sup> Ex. 2 at Ex. A (EOIR, *Phase I of Plan to Provide Enhanced Procedural Protections to Unrepresented Detained Respondents with Mental Disorders* (2013), available at <https://immigrationreports.files.wordpress.com/2014/01/eoir-phase-i-guidance.pdf>).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

33. In 2014, EOIR contracted with the Vera Institute of Justice to set up program services and to provide training, technical support, and program analysis for NQRP and the Nationwide Policy.<sup>16</sup>
34. However, little is publicly known about the procedures and guidance that DOJ and EOIR provide to Immigration Judges to implement the programs and ensure their essential procedural protections are being applied consistently and uniformly across the United States.
35. To remedy this information deficit, HIRC filed a request under FOIA, further described below, to understand how DOJ and EOIR provide enhanced procedural protections to certain unrepresented and detained individuals in removal proceedings with serious mental disorders or conditions that may render them incompetent to represent themselves in immigration proceedings.

### **Plaintiff's FOIA Requests**

#### **A. DHS, ICE, and CBP**

36. On October 21, 2020, Plaintiff submitted a FOIA request to DHS, ICE, and CBP. *See* Exhibit 1. Plaintiff sought the following records from the period beginning April 1, 2013 to the present regarding the implementation of the Nationwide Policy and the NQRP:
- I. All directives, orders, training materials, memoranda, guidance, briefings, instructions, policies, procedures, rules, regulations, e-mail, other electronic communications and/or any other communications, whether issued verbally or in writing, regarding DHS's, ICE's, and CBP's implementation of the Nationwide Policy and the National Qualified Representative Program, including the following:
    - a. Implementation of procedures put into place in accordance with the April 22, 2013 memorandum from ICE Director John Morton.
    - b. Implementation of procedures put into place in accordance with the May 7, 2014 memorandum from ICE Executive Associate Director Thomas Homan.

---

<sup>16</sup> VERA INST. JUST., *National Qualified Representative Program: Learn More* (2020), <https://www.vera.org/projects/national-qualified-representative-program/learn-more>.

- c. Implementation of identification and assessment procedures at facilities that are staffed by the ICE Health Service Corps (“IHSC”) to ensure that “all immigration detainees will be initially screened when they enter the facility and will receive a more thorough medical and mental health assessment within 14 days of their admission.”
- d. Implementation of identification and assessment procedures at facilities that are not staffed by IHSC personnel to “identify detainees with serious mental disorders or conditions that may impact their ability to participate in their removal proceedings, including through use of a national telephone hotline for detainees and family members to report and provide information regarding detainees.”
- e. Implementation of procedures that “provide that if a detainee is identified as having serious mental disorders or conditions, ICE will request that either a qualified mental health provider complete a mental health review report or the facility provide the detainee’s medical records within the facility’s possession to ICE for further review.”
- f. Implementation of information-sharing procedures to “ensure that documents related to an unrepresented detainee’s mental competency, including a mental health review report and mental health records in ICE’s possession, are provided to the applicable Office of Chief Counsel (OCC).”
- g. Implementation of the ICE Office of Chief Counsel’s procedures “to ensure that relevant information in its possession that would inform the immigration court about the detainee’s mental competency is made available to the IJ.”
- h. Implementation of procedures that “[w]hen an IJ orders a competency exam for a detained alien, ICE will ensure that the independent examiner has the necessary access to the detained alien to conduct the competency exam.”
- i. Implementation of procedures for “ICE trial counsel [to] participate in custody hearings to unrepresented detained aliens who were identified as having a serious mental disorder or condition that may render them incompetent to represent themselves and have been detained in ICE custody for six months or longer.”
- j. Implementation of procedures for “ICE trial counsel [to] work with ... qualified representatives to detainees who are found to be mentally incompetent to represent themselves” “consistent with treatment afforded any respondent’s representative-of-record, in removal proceedings before EOIR.”
- k. Implementation of procedures to ensure that ICE trial counsel only use Mental Health Information “to determine a detainee’s mental competency to participate or represent oneself in an immigration proceeding,” and not to “establish the truth of allegations or charges against the detainee, or to establish ineligibility for relief.”

- II. Records responsive to Section I that indicate whether they have been provided to personnel at each ICE Enforcement and Removal Operations Field Office, including the Boston Field Office, at each ICE Office of Chief Counsel, including the Boston ICE Office of Chief Counsel, and at each CBP Field Office.
- III. Records responsive to Section I that indicate whether they have been provided to personnel at each detention facility holding ICE detainees, including all facilities in Massachusetts and/or facilities where detainees have immigration proceedings before the Boston Immigration Court.
- IV. Records responsive to Section I that indicate whether they have been provided to IHSC personnel, including the IHSC Field Medical Coordinator and any IHSC personnel serving all detention facilities holding ICE detainees in Massachusetts and/or facilities where detainees have immigration proceedings before the Boston Immigration Court. For facilities staffed by non-IHSC medical personnel, please provide records responsive to Section I that indicate whether they have been provided to non-IHSC medical personnel, including such personnel serving all detention facilities holding ICE detainees in Massachusetts and/or facilities where detainees have immigration proceedings before the Boston Immigration Court.
- V. Records disclosing the number of ICE detainees who may be mentally incompetent to represent themselves in immigration proceedings, including records disclosing the requested information in the following enumerated categories. For each category, please provide records disclosing the requested information at each detention facility holding ICE detainees, including all facilities in Massachusetts and/or facilities where detainees have immigration proceedings before the Boston Immigration Court. Please provide these records broken down by how many detainees have been in each category each year from 2013 to the present.
  - a. The total number of ICE detainees who have been identified with serious mental disorders or conditions that may impact their ability to participate in their immigration proceedings.
  - b. The total number of ICE detainees who have been identified with serious mental disorders or conditions through Third Party Notifications.
  - c. The total number of ICE detainees who have been identified with serious mental disorders or conditions via the ICE's toll-free telephone hotline "for detainees, family members, and others to report and provide relevant information regarding detainees who have serious mental disorders or conditions that may impact their ability to represent themselves in immigration proceedings."
  - d. The total number of ICE detainees identified as having serious mental disorders or conditions where ICE has requested that a qualified mental health provider complete a mental health review report.

- e. The total number of ICE detainees identified as having serious mental disorders or conditions where ICE has requested that the facility provide the detainee's medical records within the facility's possession to ICE for further review.
- f. The total number of ICE detainees where documents related to a detainee's mental competency, including a mental health review report and mental health records in ICE's possession, have been provided to the applicable Office of Chief Counsel (OCC).
- g. The total number of ICE detainees where the ICE Office of Chief Counsel provided relevant information in its possession to inform the Board of Immigration Appeals or the Immigration Court about the detainee's mental competency.
- h. The total number of ICE detainees where the Immigration Judge found indicia resulting in a "bona fide doubt" that the detainee has a mental disorder impairing his or her ability to represent him- or herself in an immigration proceeding and the date of such finding.
- i. The total number of ICE detainees where an Immigration Judge held a competency inquiry to determine whether the detainee has a serious mental disorder or condition that may render them incompetent to represent themselves in immigration proceedings, including the date the judicial inquiry was conducted and whether the Immigration Judge found "reasonable cause" to believe the detainee has a mental disorder impairing his or her ability to perform the functions listed in the definition of competence to represent him- or herself.
- j. The total number of ICE detainees where the Immigration Judge held a competency inquiry and determined that the detainee (1) was competent, (2) was not competent, or (3) there was insufficient evidence to decide if the detainee was competent, and the date of the competence determination.
- k. The total number of ICE detainees where an Immigration Judge referred the detainee for a mental health or competency examination to be conducted by an independent examiner, and the date of the referral.
- l. The total number of ICE detainees where the Language Services Unit of the Office of the Chief Immigration Judge was notified so that arrangements were made to secure the services of a qualified interpreter for a mental health or competency examination for the detainee.
- m. The total number of ICE detainees where an Immigration Judge ordered that the detainee be provided a custody hearing because the detainee was identified as having a serious mental disorder or condition that may render them incompetent to represent themselves and had been detained in ICE custody for six months or longer.
- n. The total number of ICE detainees where an Immigration Judge ordered that the detainee be provided bond after receiving a custody hearing because the detainee was identified as having a serious mental disorder or condition that may render them

incompetent to represent themselves and had been detained in ICE custody for six months or longer, as well as the amount of the bond provided.

- o. The total number of ICE detainees where an Immigration Judge ordered that the detainee be provided a Qualified Representative because they were found incompetent to represent themselves.
  - p. The total number of ICE detainees where the detainee received a Qualified Representative after the Immigration Judge ordered it, and the date when the Qualified Representative was assigned to the detainee.
  - q. The total number of ICE detainees where the Immigration Judge ordered the detainee's case to be administratively closed or terminated because the detainee had a serious mental disorder or condition.
  - r. The total number of ICE detainees where the detainee was transferred to a mental health unit or facility because the detainee had a serious mental disorder or condition. This includes detainees that were transferred to local hospitals and private mental health facilities contractually used by ICE to provide short-term mental health care, such as the Alvarado Parkway Institute in La Mesa, CA, and the Columbia Regional Care Center in Columbia, SC.
  - s. The total number of ICE detainees where the detainee was transferred to another immigration detention facility after receiving a Qualified Representative.
  - t. The total number of ICE detainees with serious mental disorders or conditions where the detainee was placed in any form of segregation for any reason, the reason for that placement, when it occurred, and the length of time each detainee was placed in segregation.
- VI. All records disclosing whether each detention facility holding ICE detainees is staffed by IHSC personnel, including all facilities in Massachusetts and/or facilities where detainees have immigration proceedings before the Boston Immigration Court.
- VII. All screening forms and materials used by ICE, CBP, and detention facility personnel to screen and evaluate ICE detainees for serious mental disorders or conditions at each detention facility holding ICE detainees, including all facilities in Massachusetts and/or facilities where detainees have immigration proceeding before the Boston Immigration Court.
- VIII. All records indicating what training has been provided regarding the implementation of the Nationwide Policy and the NQRP and when such training has occurred, including training provided to:
- a. Personnel at all facilities holding ICE detainees, including medical staff that are privately contracted by facilities.

- b. ICE personnel, including at all Enforcement and Removal Operations Field Offices, all IHSC personnel, and all Office of the Principal Legal Advisor Field Locations.
  - c. CBP personnel, including at all CBP Field Offices.
  - d. EOIR personnel, including Immigration Judges, Appellate Immigration Judges of the Board of Immigration Appeals, and Immigration Court clerks and administrators, as well as the names of each Immigration Judge, Appellate Immigration Judge, clerk, and administrator that has received such training.
  - e. Mental health professionals required to be qualified to conduct mental health examinations in immigration proceedings.
- IX. All records disclosing any information received through ICE's toll-free telephone hotline created for "detainees, family members, and others to report and provide relevant information regarding detainees who have serious mental disorders or conditions that may impact their ability to represent themselves in immigration proceedings." Any responsive records should include the dates and times at which any of the information was received by ICE.
- X. All records disclosing whether ICE or DHS has identified any detention facilities holding ICE detainees as "mental health hub" facilities or any facilities that focus on individuals with mental health concerns.
- XI. All Mental Health Examination Referral forms completed by Immigration Judges to refer an ICE detainee for a mental health examination.
- XII. All Third Party Notifications received by ICE, CBP, or detention facility personnel at each detention facility holding ICE detainees, including all facilities in Massachusetts and/or facilities where detainees have immigration proceedings before the Boston Immigration Court.
37. A copy of Plaintiff's FOIA request to DHS, ICE, and CBP is attached as Exhibit 1.

**B. DOJ and EOIR**

38. On October 21, 2020, Plaintiff submitted a FOIA request to DOJ and EOIR. *See* Exhibit 2.

Plaintiff sought the following records from the period beginning April 1, 2013 to the present regarding the implementation of the Nationwide Policy and the NQRP:

- I. All records, directives, orders, training materials, memoranda, guidance, briefings, instructions, handouts, flyers, policies, procedures, rules, regulations, email, other electronic communications and/or any other communications, whether issued

verbally or in writing, regarding DOJ's and EOIR's implementation of the Nationwide Policy and the National Qualified Representative Program, including the following:

- a. Implementation of procedures put into place by EOIR to provide "enhanced procedural protections, including competency inquiries, mental health examinations, and bond hearings to certain unrepresented and detained respondents with serious mental disorders or conditions that may render them incompetent to represent themselves in immigration proceedings."
  - b. Implementation of procedures put into place by EOIR to provide "Qualified Representatives (QRs) to certain unrepresented and detained respondents who are found by an Immigration Judge or the BIA to be mentally incompetent to represent themselves in immigration proceedings."
  - c. Implementation of procedures authorizing Immigration Judges "to order competency exams for detained aliens where there are indicia of mental incompetency and the immigration judge believes that he or she cannot render a competency determination in the absence of an exam."
  - d. Implementation of procedures authorizing Immigration Judges to provide "custody hearings to unrepresented detained aliens who were identified as having a serious mental disorder or condition that may render them incompetent to represent themselves and have been detained in ICE custody for six months or longer."
- II. Records responsive to Section I that indicate whether they have been provided to personnel at each Immigration Court, including the Boston Immigration Court.
  - III. Records responsive to Section I that indicate whether they have been provided to personnel at the Board of Immigration Appeals.
  - IV. All documents provided to or completed by Immigration Judges when implementing any part of the NQRP or Nationwide Policy, including any and all Competency Worksheets completed by Immigration Judges at each Immigration Court, including the Boston Immigration Court.
  - V. All information contained in the "Mental Competence" or "MC" section in EOIR's database, including information that tracks decisions and results during the competency determination process, from the initial identification of indicia of mental incompetence to the ultimate decision on competence.
  - VI. Records disclosing the number of ICE detainees who may be mentally incompetent to represent themselves in immigration proceedings, including records disclosing the requested information in the following enumerated categories. For each category, please provide records disclosing the requested information at each Immigration Court, including the Boston Immigration Court, and at

the Board of Immigration Appeals. Please provide these records broken down by how many detainees have been in each category each year from 2013 to the present.

- a. The total number of ICE detainees where the ICE Office of Chief Counsel provided relevant information in its possession to inform the Board of Immigration Appeals or the Immigration Court about the detainee's mental competency.
- b. The total number of ICE detainees where Third Party Notifications were submitted to the Immigration Judge.
- c. The total number of ICE detainees where the Immigration Judge used Third Party Notifications to find indicia resulting in a "bona fide doubt" that the detainee has a mental disorder impairing his or her ability to represent him- or herself in an immigration proceeding.
- d. The total number of ICE detainees where the Immigration Judge used Third Party Notifications to find that the detainee was not competent to represent him- or herself in an immigration proceeding.
- e. The total number of ICE detainees where the Immigration Judge found indicia resulting in a "bona fide doubt" that the detainee has a mental disorder impairing his or her ability to represent him- or herself in an immigration proceeding and the date of such finding.
- f. The total number of ICE detainees who have any information included in "Mental Competence" section of EOIR's database.
- g. The total number of ICE detainees where an Immigration Judge held a competency inquiry to determine whether the detainee has a serious mental disorder or condition that may render them incompetent to represent themselves in immigration proceedings, including the date the judicial inquiry was conducted and whether the Immigration Judge found "reasonable cause" to believe the detainee has a mental disorder impairing his or her ability to perform the functions listed in the definition of competence to represent him- or herself.
- h. The total number of ICE detainees where the Immigration Judge held a competency inquiry and determined that the detainee (1) was competent, (2) was not competent, or (3) there was insufficient evidence to decide if the detainee was competent, and the date of the competence determination.
- i. The total number of ICE detainees where an Immigration Judge referred the detainee for a mental health or competency examination to be conducted by an independent examiner, and the date of the referral.
- j. The total number of ICE detainees where the Language Services Unit of the Office of the Chief Immigration Judge was notified so that arrangements were made to secure the services of a qualified interpreter for a mental health or competency examination for the detainee.
- k. The total number of ICE detainees where an Immigration Judge ordered that the detainee be provided a custody hearing because

the detainee was identified as having a serious mental disorder or condition that may render them incompetent to represent themselves and had been detained in ICE custody for six months or longer.

- l. The total number of ICE detainees where an Immigration Judge ordered that the detainee be provided bond after receiving a custody hearing because the detainee was identified as having a serious mental disorder or condition that may render them incompetent to represent themselves and had been detained in ICE custody for six months or longer, as well as the amount of the bond provided.
  - m. The total number of ICE detainees where an Immigration Judge ordered that the detainee be provided a Qualified Representative because they were found incompetent to represent themselves.
  - n. The total number of ICE detainees where the detainee received a Qualified Representative after the Immigration Judge ordered it, and the date when the Qualified Representative was assigned to the detainee.
  - o. The total number of ICE detainees where the Immigration Judge ordered the detainee's case to be administratively closed or terminated because the detainee had a serious mental disorder or condition.
- VII. All records indicating what training has been provided regarding the implementation of the Nationwide Policy and the NQRP and when such training has occurred, including training provided to:
- a. Personnel at all facilities holding ICE detainees, including medical staff that are privately contracted by the facilities.
  - b. ICE personnel, including at all Enforcement and Removal Operations Field Offices, all IHSC personnel, and all Office of the Principal Legal Advisor Field Locations.
  - c. EOIR personnel, including Immigration Judges, Appellate Immigration Judges of the Board of Immigration Appeals, and Immigration Court clerks and administrators, as well as the names of each Immigration Judge, Appellate Immigration Judge, clerk, and administrator that has received such training.
  - d. Mental health professionals required to be qualified to conduct mental health examinations in immigration proceedings.
- VIII. All training materials provided to Immigration Judges related to the implementation of the Nationwide Policy, NQRP, and the federal district court's orders in *Franco-Gonzalez v. Holder*, No. CV-10-02211 DMG DTBX (C.D. Cal.), including the required "on-board [Immigration Judge] training regarding Franco, including the pro se competency standard and how to apply the bona fide doubt standard for Class Membership" and the "full multi-hour Franco training."
- IX. All records disclosing the existence of specific "mental health dockets" at different Immigration Courts, the existence of a "mental health panel" at the Board of Immigration Appeals, the names of all

Immigration Judges on such dockets and panels, and how Immigration Judges are selected for such dockets and panels.

- X. All Mental Health Examination Referral forms completed by Immigration Judges to refer an ICE detainee for a mental health examination.
- XI. Records disclosing the names and business addresses of all Qualified Representatives approved to take cases pursuant to the NQRP and Nationwide Policy.
- XII. All Third Party Notifications received by the Board of Immigration Appeals and all Immigration Judges at each Immigration Court, including the Boston Immigration Court.

39. A copy of Plaintiff's FOIA request to DOJ and EOIR is attached as Exhibit 2.

### **Defendants' Responses and HIRC's Administrative Appeals**

#### **A. DHS**

- 40. On October 29, 2020, DHS acknowledged receiving the FOIA request (assigning it Case Number 2021-HQFO-00093) and transferred the request to CBP and ICE "[d]ue to the subject matter" of the request. *See* Exhibit 3.
- 41. While CBP and ICE may possess some of the records described in HIRC's FOIA request, DHS failed to conduct an adequate search of its own records, and is therefore in violation of its obligations under FOIA. 5 U.S.C. § 552(a)(3)(A). For example, DHS likely issued policy guidance documents regarding the Nationwide Policy and NQRP, and such records would have originated at DHS's headquarters.
- 42. On December 1, 2020, HIRC administratively appealed DHS's response because it was improper and insufficient. *See* Exhibit 4. In the administrative appeal, HIRC requested that DHS conduct an "adequate search for responsive records and produce all non-exempt portions of those records as soon as possible." *Id.*

43. Other than DHS's acknowledgement and transfer letter to HIRC's initial request, HIRC has received no further response from DHS related to the initial request or the administrative appeal.
44. DHS therefore has failed to "make reasonable efforts to search" for responsive records. 5 U.S.C. § 552(a)(3)(C).
45. DHS also has failed to release all non-exempt records responsive to the request. 5 U.S.C. § 552(a)(3)(A).
46. DHS further failed to make a final determination regarding the administrative appeal within 20 days after the receipt of such appeal as required by 5 U.S.C. § 552(a)(6)(A)(ii).

**B. ICE**

47. Pursuant to FOIA, within 20 working days of receipt of HIRC's FOIA request, ICE was required to "determine . . . whether to comply with such request" and to "immediately notify" HIRC of "such determination and the reasons therefor," and, in the case of an adverse determination, HIRC's appeal rights. 5 U.S.C. § 552(a)(6)(A)(i).
48. ICE failed to acknowledge or respond to the FOIA request within 20 working days as required under 5 U.S.C. § 552(a)(6)(A)(i).
49. On December 1, 2020, HIRC administratively appealed ICE's failure to comply with the 20-day statutory time limit for responding to initial requests and ICE's failure to release all non-exempt records responsive to the request. *See* Exhibit 5.
50. On December 2, 2020, ICE acknowledged receiving the FOIA request (assigning it Case Number 2021-ICFO-12985). *See* Exhibit 6.
51. On December 28, 2020, ICE acknowledged receiving the administrative appeal (assigning it Case Number 2021-ICAP-00272). *See* Exhibit 7.
52. Other than ICE's acknowledgement letters, HIRC has received no further response from ICE related to the initial request or the administrative appeal.

53. ICE therefore has failed to “make reasonable efforts to search” for responsive records. 5 U.S.C. § 552(a)(3)(C).
54. ICE also has failed to release all non-exempt records responsive to the request. 5 U.S.C. § 552(a)(3)(A).
55. ICE further failed to make a final determination regarding the administrative appeal within 20 days after the receipt of such appeal as required by 5 U.S.C. § 552(a)(6)(A)(ii).

**C. CBP**

56. On October 22, 2020, CBP acknowledged receiving the FOIA request (assigning it Case Number CBP-2021-005336). *See* Exhibit 8.
57. On November 4, 2020, CBP sent a duplicative acknowledgement receipt of the FOIA request (assigning it Case Number CBP-2021-008315). *See* Exhibit 9. Other than letters sent to HIRC on November 4, 2020 denying HIRC expedited processing and a fee waiver, *see* Exhibit 10; Exhibit 11, no further communications were made with regard to Case Number CBP-2021-008315.
58. On December 3, 2020, CBP made a final determination regarding HIRC’s FOIA request. *See* Exhibit 12. The response indicated that CBP was “unable to locate or identify any responsive records, based upon the information [HIRC] provided in [HIRC’s] request.” *Id.*
59. However, CBP’s response was insufficient to demonstrate that it had conducted an adequate search in response to HIRC’s FOIA request. For example, CBP failed to explain what components of CBP were searched or what CBP databases were searched. *See, e.g., Oglesby v. U.S. Dep’t of Army*, 920 F.2d 57, 68 (D.C. Cir. 1990) (“[T]he agency cannot limit its search to only one record system if there are others that are likely to turn up the information requested.”); *id.* (holding that agency “was required to explain . . . that no other record system was likely to produce responsive documents”).

60. On December 7, 2020, HIRC administratively appealed CBP's response because it was improper and insufficient. *See* Exhibit 13. In the administrative appeal, HIRC requested that CBP conduct an "adequate search for responsive records and produce all non-exempt portions of those records as soon as possible." *Id.*
61. On December 30, 2020, CBP acknowledged receiving the administrative appeal (assigning it Case Number CBP-2021-015913).<sup>17</sup> *See* Exhibit 14.
62. On January 5, 2021, CBP made a final determination regarding HIRC's administrative appeal. The response indicated that CBP's final disposition was "Improper FOIA Request for Other Reasons." *See* Exhibit 15.
63. However, CBP failed to identify the "Other Reasons" why the FOIA request was deemed improper. *See, e.g., Citizens for Responsibility & Ethics in Washington v. Fed. Election Comm'n*, 711 F.3d 180, 189 (D.C. Cir. 2013) (explaining that an agency usually has 20 business days to make a determination with "adequate specificity"); *Fiduccia v. U.S. Dep't of Justice*, 185 F.3d 1035, 1043 (9th Cir. 1999) (requiring the responding agency to "provide enough information, presented with sufficient detail, clarity, and verification, so that the requester can fairly determine what has not been produced and why, and the court can decide whether the exemptions claimed justify the nondisclosure").
64. CBP therefore has failed to notify HIRC of "such determination and the reasons therefor" as required by 5 U.S.C. § 552(a)(6)(A)(i)(I).
65. Moreover, CBP's response was insufficient to demonstrate that it had conducted an adequate search in response to HIRC's FOIA request.
66. CBP therefore has failed to "make reasonable efforts to search" for responsive records. 5 U.S.C. § 552(a)(3)(C).

---

<sup>17</sup> While the acknowledgement email indicated that the tracking number will be changed to CBP-AP-2021-020862, all subsequent communications made by CBP referred to Case Number CBP-2021-015913.

67. CBP also has failed to release all non-exempt records responsive to the request. 5 U.S.C. § 552(a)(3)(A).

**D. DOJ**

68. On October 30, 2020, DOJ acknowledged receiving the FOIA request (assigning it Case Number FOIA-2021-00127). *See* Exhibit 16.

69. Other than DOJ's acknowledgement letter, HIRC received no further response from DOJ related to the FOIA request.

70. On December 7, 2020, HIRC administratively appealed DOJ's failure to comply with the 20-day statutory time limit for responding to initial requests and DOJ's failure to release all non-exempt records responsive to the request. *See* Exhibit 17.

71. On December 7, 2020, DOJ acknowledged receiving the administrative appeal (assigning it Case Number A-2021-00520). *See* Exhibit 18.

72. On December 14, 2020, DOJ made a final determination regarding HIRC's administrative appeal. *See* Exhibit 19. The response indicated that the initial request is "currently being processed" and that DOJ is "closing [HIRC's] underlying appeal within ten calendar days." *Id.*

73. However, DOJ's response was inadequate because DOJ had already failed to meet the 20-day statutory time limit for responding to initial requests and to release all non-exempt records responsive to the request. 5 U.S.C. § 552(a)(3); 5 U.S.C. § 552(6)(A)(i).

74. Other than DOJ's acknowledgement letter and administrative appeal response letter, HIRC has received no further response from DOJ related to the administrative appeal.

75. DOJ therefore has failed to "make reasonable efforts to search" for responsive records. 5 U.S.C. § 552(a)(3)(C).

76. DOJ also has failed to release all non-exempt records responsive to the request. 5 U.S.C. § 552(a)(3)(A).

**D. EOIR**

77. On November 4, 2020, EOIR acknowledged receiving the FOIA request (assigning it Case Number 2021-03376). *See* Exhibit 20.
78. On November 19, 2020, EOIR sent HIRC a response letter indicating that “[w]ith respect to paragraphs 4 and 5 of [HIRC’s] request and to the extent such records exist, [EOIR is] denying these portions of [HIRC’s] request in their entirety in accordance with FOIA Exemption 6, 5 U.S.C. § 552(b)(6), which concerns material the release of which would constitute a clearly unwarranted invasion of the personal privacy of third parties.” *See* Exhibit 21. Paragraph 4 of HIRC’s request seeks “[a]ll documents provided to or completed by Immigration Judges when implementing any part of the NQRP or Nationwide Policy,” and paragraph 5 requests “[a]ll information contained in the ‘Mental Competence’ or ‘MC’ section in EOIR’s database.” *See* Exhibit 2.
79. EOIR’s response letter further stated that paragraphs 4 and 5 of HIRC’s request were improper because “[i]dentifying, collecting, and processing such records would be unduly burdensome” since, “to the extent mental competency records . . . exist,” the records “would reside in individual hard-copy” at Immigration Courts and Federal Record Centers geographically located throughout the United States. *See* Exhibit 21.
80. EOIR’s denial of the requests in paragraphs 4 and 5 in their entirety was improper because FOIA requires that “[a]ny reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt.” 5 U.S.C. § 552(b). HIRC’s request does not seek the disclosure of personal identifying information of any individual. The information requested in paragraphs 4 and 5 can still be provided by redacting any personal identifying information of third parties. *See, e.g., Dep’t of State v. Ray*, 502 U.S. 164, 174 (1991) (“The redaction procedure is . . . expressly authorized by FOIA. Congress thus recognized that the policy of informing the public about

the operation of its Government can be adequately served in some cases without unnecessarily compromising individual interests in privacy.”).

81. Consistent with the strong burden of presumption in favor of disclosure under FOIA’s “basic policy of ‘full agency disclosure unless information is exempted under clearly delineated statutory language,’” all other non-identifying information in paragraphs 4 and 5 should be rightly produced under FOIA. *Dep’t of Justice v. Reporters Comm.*, 489 U.S. 749, 773 (1989) (quoting *Dep’t of Air Force v. Rose*, 425 U.S. 352, 360-61 (1976) (holding that FOIA required disclosure of summaries of disciplinary proceedings with personal references or other identifying information deleted)).
82. EOIR also failed to explain what components of EOIR were searched or what EOIR databases were searched in order to determine HIRC’s requests in paragraphs 4 and 5 were unreasonable. *See, e.g., Oglesby v. Dep’t of Army*, 920 F.2d 57, 68 (D.C. Cir. 1990) (“[T]he agency cannot limit its search to only one record system if there are others that are likely to turn up the information requested.”); *id.* (holding that agency “was required to explain . . . that no other record system was likely to produce responsive documents”).
83. In addition, if the reasonableness of a search is questioned, the burden is on the agency to “provide a sufficient explanation why a search . . . would be unreasonably burdensome.” *Public Citizen, Inc. v. Dep’t of Educ.*, 292 F. Supp. 2d 1, 6 (D.D.C. 2003).
84. EOIR’s response speculates about the difficulty of collecting the records in question without providing sufficient details such as the method of search, the number of files to be searched, an estimate of time required to conduct the search, or the cost of such a search. *See Nation Magazine v. United States Customs Serv.*, 71 F.3d 885, 892 (D.C. Cir. 1995) (requiring agency to provide “additional information on the question of whether it maintains topical or subject matter files, and if so, whether these files are likely to contain records responsive to appellants’ request” and “further affidavits explaining why a search

. . . would be too laborious” to demonstrate “why such a search would be unreasonably burdensome”); *Pinson v. Dep’t of Justice*, 80 F.Supp.3d 211, 217 (D.D.C. 2015) (rejecting sufficiency of agency assertion of undue burden where the agency had merely “state[d] that all Civil Division files would need to be searched” without including any “estimate of the time required to conduct [the] requested search, the cost of such a search, or the number of files that would have to be manually searched”).

85. Other than EOIR’s preliminary response letter, HIRC received no further response from EOIR related to HIRC’s FOIA request.
86. On December 7, 2020, HIRC administratively appealed EOIR’s response because it was improper and insufficient. *See* Exhibit 22. In the administrative appeal, HIRC requested that EOIR conduct an “adequate search for responsive records and produce all non-exempt portions of those records as soon as possible.” *Id.*
87. On December 7, 2020, EOIR acknowledged receiving the administrative appeal (assigning it Case Number A-2021-00519). *See* Exhibit 23.
88. Other than EOIR’s acknowledgement letter and a letter sent to HIRC on December 14, 2020, reconfirming the denial of expedited processing for the initial request and denying HIRC expedited processing for the administrative appeal, *see* Exhibit 24, HIRC has received no further response from EOIR related to the administrative appeal.
89. EOIR therefore has failed to “make reasonable efforts to search” for responsive records. 5 U.S.C. § 552(a)(3)(C).
90. EOIR also has failed to release all non-exempt records responsive to the request. 5 U.S.C. § 552(a)(3)(A).
91. EOIR further failed to make a final determination regarding the administrative appeal within 20 days after the receipt of such appeal as required by 5 U.S.C. § 552(a)(6)(A)(ii).

**Failure to Provide Expedited Processing**

92. HIRC's FOIA requests also sought expedited processing because the request shows a compelling need. 5 U.S.C. § 552(a)(6)(E)(i)(I).
93. As HIRC's FOIA requests explained, "as this request is being processed, many unrepresented ICE detainees have serious mental disorders or conditions that impact their ability to participate in their removal proceedings." *See* Exhibit 1; Exhibit 2. "Many of these unrepresented ICE detainees have not been afforded the procedural protections that should be provided to them by the Nationwide Policy and NQRP. As a result, these vulnerable unrepresented detainees have been and will continue to be detained without due process and be placed into unfair immigration proceedings without necessary legal representation. These vulnerable unrepresented ICE detainees are seriously harmed because they have been and will continue to be deported without receiving crucial procedural protections that should be provided to them by DHS, ICE, CBP, DOJ, and EOIR." *Id.*
94. DHS constructively denied HIRC's request for expedited processing by transferring the request to CBP and ICE on October 29, 2020. *See* Exhibit 3.
95. To date, ICE has failed to respond to HIRC's request for expedited processing.
96. DHS and ICE have therefore violated 5 U.S.C. § 552(a)(6)(E)(ii)(I), which requires "that a determination of whether to provide expedited processing shall be made, and notice of the determination shall be provided to the person making the request, within 10 days after the date of the request."
97. CBP explicitly denied HIRC's request for expedited processing for both the initial request and the administrative appeal on October 22, 2020 and January 5, 2021, respectively. *See* Exhibit 25; Exhibit 26.
98. However, CBP failed to provide adequate justification for its denials.

99. CBP also failed to respond to the expedited processing request with regard to the administrative appeal within 10 days after the date of the request as required by 5 U.S.C. § 552(a)(6)(E)(ii)(I).
100. DOJ also denied HIRC's request for expedited processing for the initial request on October 30, 2020. *See* Exhibit 16. In addition, on December 14, 2020, DOJ notified HIRC that the expedited processing request for the administrative appeal has become "moot" because the underlying appeal will be closed within ten calendar days. *See* Exhibit 19; Exhibit 27.
101. EOIR also denied HIRC's request for expedited processing for both the initial request on November 4, 2020 and reconfirmed the denial on December 14, 2020, and denied expedited processing for the administrative appeal on December 14, 2020. *See* Exhibit 24; Exhibit 28; Exhibit 29.
102. However, DOJ and EOIR also failed to provide adequate justifications for their denials.
103. Therefore, because HIRC has demonstrated a compelling need for its FOIA request, HIRC should be granted expedited processing. 5 U.S.C. § 552(a)(6)(E)(i)(I).

**Failure to Provide Fee Waiver**

104. HIRC's FOIA requests also sought a fee waiver of all costs incurred by Defendants in answering the request because the information sought is "likely to contribute significantly to public understanding of the operations or activities of the government and [was] not primarily in [HIRC's] commercial interest." 5 U.S.C. § 552(a)(4)(A)(iii). *See* Exhibit 1; Exhibit 2.
105. As HIRC's FOIA requests explained, "[o]ne primary goal of HIRC is to disseminate information about and make the public aware of procedural protections guaranteed to vulnerable individuals in immigration proceedings, including unrepresented ICE detainees

with serious mental disorders and conditions, and to ensure the protections guaranteed to them by the Nationwide Policy and NQRP are being properly implemented.” *Id.*

106. DHS constructively denied HIRC’s request for a fee waiver by transferring the request to CBP and ICE on October 29, 2020. *See* Exhibit 3.
107. ICE constructively denied HIRC’s request for a fee waiver by indicating that “[ICE] will charge [HIRC] for records in accordance with the DHS Interim FOIA regulations as they apply to educational requesters” on December 2, 2020. *See* Exhibit 6.
108. CBP explicitly denied HIRC’s request for a fee waiver for both the initial request and the administrative appeal on October 22, 2020 and January 5, 2021, respectively. *See* Exhibit 30; 31.
109. DOJ constructively denied HIRC’s request for a fee waiver by indicating that “[a]ny decision with regard to the application of fees will be made only after we determine whether fees will be implicated for this request” on October 30, 2020. *See* Exhibit 16.
110. EOIR constructively denied HIRC’s request for a fee waiver by not responding to HIRC’s fee waiver request to this date.
111. However, Defendants all failed to adequately justify their denial of a fee waiver to HIRC.
112. Therefore, to the extent a fee is applicable to HIRC’s FOIA requests, a fee waiver should be granted. *See* 5 U.S.C. § 552(a)(4)(A)(iii) (fees “shall” be waived if criteria are met); *see also* 6 C.F.R. § 5.11(k)(1) (fees “shall” be waived when “[d]isclosure of the requested information is in the public interest . . . and [d]isclosure of the information is not primarily in the commercial interest of the requester”).

## **CAUSES OF ACTION**

### **FIRST CAUSE OF ACTION**

Violation of 5 U.S.C. § 552(a)(3) For  
Failure To Conduct An Adequate Search For And Produce Responsive Records

113. HIRC repeats, re-alleges, and incorporates the allegations in the foregoing paragraphs as though fully set forth herein.
114. Pursuant to FOIA, 5 U.S.C. § 552(a), HIRC has a statutory right to access the requested agency records.
115. Pursuant to FOIA, 5 U.S.C. § 552(a)(3)(C), Defendants must “make reasonable efforts to search” for the information requested.
116. Upon information and belief, Defendants possess records responsive to HIRC’s FOIA requests that Defendants have failed to produce without a legal basis for withholding such records, in violation of FOIA, including but not limited to 5 U.S.C. §§ 552(a)(3)(A) and 6(A).
117. Defendants have failed to make reasonable efforts to search for and produce records responsive to HIRC’s request, in violation of Plaintiff’s rights under FOIA, including but not limited to 5 U.S.C. § 552(a)(3).
118. Plaintiff asks that this Court “enjoin the agency from withholding agency records” and “order the[ir] production.” 5 U.S.C. § 552(a)(4)(B).

**SECOND CAUSE OF ACTION**

Violation of 5 U.S.C. § 552(a)(6)(E)(i)(I) For  
Failure To Grant Expedited Processing

119. HIRC repeats, re-alleges, and incorporates the allegations in the foregoing paragraphs as though fully set forth herein.
120. HIRC’s FOIA requests requested expedited processing on the grounds that the requests show an “exceptional need or urgency.” *See Open America v. Watergate Special Prosecution Force*, 547 F.2d 605, 616 (D.C. Cir. 1976).
121. To date, Defendants have not granted HIRC expedited processing in this case.

122. Defendants' failure to grant HIRC expedited processing violates 5 U.S.C. § 552(a)(6)(E)(i)(I).

**THIRD CAUSE OF ACTION**

Violation of 5 U.S.C. § 552(a)(4)(A)(iii) For  
Failure To Grant Waiver of Fees

123. HIRC repeats, re-alleges, and incorporates the allegations in the foregoing paragraphs as though fully set forth herein.

124. HIRC's FOIA requests requested a fee waiver under 5 U.S.C. § 552(a)(4)(A)(iii) on the grounds that the disclosure 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."

125. To date, Defendants have not granted HIRC a fee waiver in this case.

126. Defendants' failure to grant HIRC a waiver of fees associated with the production of responsive documents violates 5 U.S.C. § 552(a)(4)(A)(iii).

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff HIRC respectfully requests that this Court enter judgment for HIRC and award the following relief:

(A) Injunctive relief, ordering Defendants to respond to HIRC's FOIA requests, by a date certain, by (a) conducting a search using "reasonable effort[s]" "for the purpose of locating those records which are responsive" to HIRC's FOIA requests, as required by 5 U.S.C. §§ 552(a)(3)(C)-(D); (b) demonstrating that they have conducted an adequate search; (c) producing to HIRC all non-exempt records or portions of records responsive to HIRC's FOIA requests, as well as a Vaughn index of any records or portions of records withheld due to a claim of exemption; and (d) precluding Defendants from withholding the requested records;

- (B) Retain jurisdiction of this action to ensure no agency records are wrongfully withheld, and order Defendants to disclose any wrongfully withheld records;
- (C) Order Defendants to grant HIRC expedited processing;
- (D) Order Defendants to grant HIRC a waiver for fees associated with the production of the requested records;
- (E) Award HIRC its costs and attorney fees reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (F) Grant HIRC such other and further relief as the Court may deem just and proper.

Dated: March 22, 2021

Respectfully submitted,

By: /s/ Sameer Ahmed  
Sameer Ahmed (BBO# 688952)  
Sabrineh Ardalan (BBO# 706806)  
Sujin Kim, Law Student (law student  
appearance forthcoming)  
HARVARD IMMIGRATION AND  
REFUGEE CLINICAL PROGRAM  
HARVARD LAW SCHOOL  
6 Everett Street, Wasserstein 3103  
Cambridge, Massachusetts 02138  
Telephone: 617.384.7504  
sahmed@law.harvard.edu  
sardalan@law.harvard.edu