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10
11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

14 NATIONAL LAWYERS' GUILD SAN
FRANCISCO CHAPTER, et al.,

15 Plaintiffs,
16

17 v.

18 U.S. DEPARTMENT OF HOMELAND
SECURITY, et al.,

19 Defendants.
20 _____/

No. C 08-5137 CRB

**ANSWER TO COMPLAINT FOR
INJUNCTIVE RELIEF**

21 Defendants, the U.S. Department of Homeland Security ("DHS"), U.S. Immigration and
22 Customs Enforcement ("ICE"), U.S. Customs and Border Protection ("CBP"), U.S. Citizenship and
23 Immigration Services ("CIS"), the Office of the Inspector General of the U.S. Department of
24 Homeland Security ("DHS-OIG"), the U.S. Department of Justice ("DOJ"), and the Executive Office
25 for Immigration Review ("EOIR"), by undersigned counsel, hereby answer Plaintiffs' Complaint for
26 Injunctive Relief for Violation of the Freedom of Information Act, 5 U.S.C. § 552 ("Complaint"),
27 as follows:
28

1 **INTRODUCTION**

2 1. Paragraph 1 contains Plaintiffs' characterization of this lawsuit and not allegations
3 of fact, and thus no response is required. To the extent a response is deemed necessary, Defendants
4 deny the allegations in Paragraph 1 except to admit that Plaintiffs raise claims for injunctive relief
5 under the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA").

6 2. Paragraph 2 contains Plaintiffs' characterization of this lawsuit and not allegations
7 of fact, and thus no response is required. To the extent a response is deemed necessary, Defendants
8 deny the allegations in Paragraph 2 except to admit that the Immigration Committee for the San
9 Francisco Bay Area Chapter of the National Lawyers' Guild filed a FOIA request with ICE dated
10 December 15, 2005, and that Plaintiffs filed a FOIA request with DHS, ICE, CBP, DHS-OIG, and
11 EOIR dated February 27, 2008.

12 **JURISDICTION**

13 3. Paragraph 3 contains conclusions of law, not allegations of fact, and thus no response
14 is required. To the extent a response is deemed necessary, Defendants deny any characterization of
15 the cited statutory provisions, which speak for themselves, and respectfully refer the Court to the
16 cited provisions for a complete and accurate statement of their contents.

17 **VENUE AND INTRADISTRICT ASSIGNMENT**

18 4. Paragraph 4 contains conclusions of law, not allegations of fact, and thus no response
19 is required. To the extent a response is deemed necessary, Defendants deny any characterization of
20 the cited statutory provisions, which speak for themselves, and respectfully refer the Court to the
21 cited provisions for a complete and accurate statement of their contents.

22 5. Paragraph 5 contains conclusions of law, not allegations of fact, and thus no response
23 is required. To the extent a response is deemed necessary, Defendants deny any characterization of
24 the cited local rule, which speaks for itself, and respectfully refer the Court to the cited rule for a
25 complete and accurate statement of its contents.

26 **PARTIES**

27 6. Defendants lack sufficient knowledge or information to form a belief as to the truth
28 of the allegations in Paragraph 6.

1 7. Defendants lack sufficient knowledge or information to form a belief as to the truth
2 of the allegations in Paragraph 7.

3 8. Defendants lack sufficient knowledge or information to form a belief as to the truth
4 of the allegations in Paragraph 8.

5 9. The first two sentences of Paragraph 9 contain conclusions of law, not allegations of
6 fact, and thus no response is required. To the extent a response is deemed necessary, Defendants
7 admit that DHS is an “agency” within the meaning of 5 U.S.C. § 552(f), and further admit that ICE,
8 CBP, CIS, and DHS-OIG are components of DHS. The third sentence of Paragraph 9 is denied
9 except to admit that ICE processes aliens who stipulate to removal pursuant to 8 C.F.R.
10 § 1003.25(b).

11 10. The first two sentences of Paragraph 10 contain conclusions of law, not allegations
12 of fact, and thus no response is required. To the extent a response is deemed necessary, Defendants
13 admit that DOJ is an “agency” within the meaning of 5 U.S.C. § 552(f), and further admit that EOIR
14 is a component of DOJ. The third sentence of Paragraph 10 likewise contains conclusions of law,
15 not allegations of fact, and thus no response is required. To the extent a response is deemed
16 necessary, Defendants deny any characterization of the cited regulatory provision, which speaks for
17 itself, and respectfully refer the Court to the cited provision for a complete and accurate statement
18 of its contents.

19 **STATUTORY FRAMEWORK**

20 11. Paragraph 11 contains conclusions of law, not allegations of fact, and thus no
21 response is required. To the extent a response is deemed necessary, Defendants deny any
22 characterization of the cited statutory provision, which speaks for itself, and respectfully refer the
23 Court to the cited provision for a complete and accurate statement of its contents.

24 12. Paragraph 12 contains conclusions of law, not allegations of fact, and thus no
25 response is required. To the extent a response is deemed necessary, Defendants deny any
26 characterization of the referenced statutory scheme, which speaks for itself, and respectfully refer
27 the Court to the FOIA for a complete and accurate statement of its contents.

1 13. Paragraph 13 contains conclusions of law, not allegations of fact, and thus no
2 response is required. To the extent a response is deemed necessary, Defendants deny any
3 characterization of the cited statutory provision, which speaks for itself, and respectfully refer the
4 Court to the cited provision for a complete and accurate statement of its contents.

5 14. Paragraph 14 contains conclusions of law, not allegations of fact, and thus no
6 response is required. To the extent a response is deemed necessary, Defendants deny any
7 characterization of the cited statutory provision, which speaks for itself, and respectfully refer the
8 Court to the cited provision for a complete and accurate statement of its contents.

9 15. Paragraph 15 contains conclusions of law, not allegations of fact, and thus no
10 response is required. To the extent a response is deemed necessary, Defendants deny any
11 characterization of the cited statutory provision, which speaks for itself, and respectfully refer the
12 Court to the cited provision for a complete and accurate statement of its contents.

13 16. Paragraph 16 contains conclusions of law, not allegations of fact, and thus no
14 response is required. To the extent a response is deemed necessary, Defendants deny any
15 characterization of the cited statutory provisions and case law, which speak for themselves, and
16 respectfully refer the Court to the cited provisions and case law for a complete and accurate
17 statement of their contents.

18 17. Paragraph 17 contains conclusions of law, not allegations of fact, and thus no
19 response is required. To the extent a response is deemed necessary, Defendants deny any
20 characterization of the cited statutory provision, which speaks for itself, and respectfully refer the
21 Court to the cited provision for a complete and accurate statement of its contents.

22 **FACTUAL ALLEGATIONS**

23 18. Paragraph 18 contains conclusions of law, not allegations of fact, and thus no
24 response is required. To the extent a response is deemed necessary, Defendants deny any
25 characterization of the cited statutory and regulatory provisions, which speak for themselves, and
26 respectfully refer the Court to the cited provisions for a complete and accurate statement of their
27 contents.
28

1 19. Defendants admit that data released by EOIR in response to Plaintiffs' February 2008
2 request indicate that approximately 96,241 stipulated removal orders were entered between October
3 29, 1999, and June 11, 2008.

4 20. The first sentence of Paragraph 20 consists of legal argument, not allegations of fact,
5 and thus no response is required. As to the second and third sentences, Defendants lack sufficient
6 knowledge or information to form a belief as to the truth of the allegation that the vast majority of
7 detained aliens are not represented by counsel. Defendants admit that most aliens who stipulate to
8 removal are already in detention, but otherwise deny the characterizations in the balance of the
9 paragraph.

10 21. Defendants lack sufficient knowledge or information to form a belief as to the truth
11 of the allegations in Paragraph 21. To the extent a response is deemed necessary, Defendants
12 respectfully refer the Court to the cited newspaper articles, which speak for themselves, for a
13 complete and accurate statement of their contents.

14 22. Defendants lack sufficient knowledge or information to form a belief as to the truth
15 of the allegations in Paragraph 22. To the extent a response is deemed necessary, Defendants
16 respectfully refer the Court to the letters attached as Exhibits A and B to the Complaint for a
17 complete and accurate statement of their contents.

18 23. Defendants lack sufficient knowledge or information to form a belief as to the truth
19 of the allegations in Paragraph 23. To the extent a response is deemed necessary, Defendants
20 respectfully refer the Court to the cited documents for a complete and accurate statement of their
21 contents.

22 24. Paragraph 24 consists of legal argument and Plaintiffs' characterization of the
23 congressional testimony of various DHS and DOJ officials, to which no response is required. To
24 the extent a response is deemed necessary, Defendants respectfully refer the Court to the documents
25 attached as Exhibits C, D, and E to the Complaint for a complete and accurate statement of their
26 contents.

27 25. Defendants admit that former Chief Immigration Judge Michael J. Creppy issued a
28 memorandum dated June 16, 2005, bearing the subject line "Operating Policies and Procedures

1 Memorandum (OPPM) 05-07: Definitions and Use of Adjournment, Call-up and Case Identification
2 Codes,” that is referenced in Paragraph 25, and respectfully refer the Court to <http://www.usdoj.gov/eoir/efoia/ocij/oppm05/05-07.pdf> for a complete and accurate statement of its contents.

4 26. Defendants admit that ICE issued the press releases attached as Exhibits F-P to
5 Plaintiffs’ Complaint. Defendants deny Plaintiffs’ characterization of those press releases, which
6 speak for themselves, and respectfully refer the Court to the copies of those press releases for a
7 complete and accurate statement of their contents.

8 27. The first sentence of Paragraph 27 is denied. As to the second and third sentences,
9 Defendants admit that the Immigration Committee for the San Francisco Bay Area Chapter of the
10 National Lawyers’ Guild filed a FOIA request with ICE dated December 15, 2005, and respectfully
11 refer the Court to the copy of the letter attached as Exhibit Q to the Complaint for a complete and
12 accurate statement of its contents.

13 28. Defendants admit that Plaintiffs filed a FOIA request with DHS, ICE, CBP, DHS-
14 OIG, and EOIR dated February 27, 2008. Defendants respectfully refer the Court to the copy of the
15 letter attached as Exhibit R to the Complaint for a complete and accurate statement of its contents.

16 29. Defendants admit that Plaintiffs filed a FOIA request with DHS, ICE, CBP, DHS-
17 OIG, and EOIR dated February 27, 2008. Defendants respectfully refer the Court to the copy of the
18 letter attached as Exhibit R to the Complaint for a complete and accurate statement of its contents.

19 30. The first, underlined sentence of Paragraph 30 consists of legal argument, not
20 allegations of fact, and thus no response is required. As to the second, third, and fourth sentences,
21 Defendants admit that DHS employee Vania Lockett confirmed DHS’s receipt of Plaintiffs’
22 February 2008 request in a telephone conversation with Plaintiffs on March 13, 2008, but deny any
23 characterization of that conversation, including any characterization contained in the letter attached
24 as Exhibit S to the Complaint. As to the fifth and sixth sentences, Defendants admit that DHS sent
25 Plaintiffs a letter dated March 18, 2008, that formally acknowledged receipt of Plaintiffs’ February
26 2008 request and stated that DHS would refer the request to DHS’s Office of the General Counsel
27 (“DHS-OGC”) and would query the DHS Executive Secretariat for responsive records. Defendants
28 respectfully refer the Court to the copy of the letter attached as Exhibit T to the Complaint for a

1 complete and accurate statement of its contents.

2 31. As to the first and second sentences of Paragraph 31, Defendants admit that DHS sent
3 Plaintiffs a letter dated March 27, 2008, that stated that DHS would also refer Plaintiffs' February
4 2008 request to CIS. Defendants respectfully refer the Court to the copy of the letter attached as
5 Exhibit U to the Complaint for a complete and accurate statement of its contents. As to the third and
6 fourth sentences, Defendants admit that Plaintiffs sent DHS a letter dated April 8, 2008, and
7 respectfully refer the Court to the copy of the letter attached as Exhibit V to the Complaint for a
8 complete and accurate statement of its contents.

9 32. Defendants admit that DHS sent Plaintiffs a letter dated April 25, 2008, that stated
10 that a search of the DHS Executive Secretariat had been conducted but no responsive records were
11 found. Defendants respectfully refer the Court to the copy of the letter attached as Exhibit W to the
12 Complaint for a complete and accurate statement of its contents.

13 33. Defendants admit that Plaintiffs sent DHS-OGC a letter dated May 12, 2008, that
14 appealed DHS's response to Plaintiffs' February 2008 FOIA request, and respectfully refer the Court
15 to the copy of the letter attached as Exhibit X to the Complaint for a complete and accurate statement
16 of its contents.

17 34. Defendants admit that DHS-OGC sent Plaintiffs a letter dated June 9, 2008, that
18 acknowledged receipt of Plaintiffs' appeal, and respectfully refer the Court to the copy of the letter
19 attached as Exhibit Y to the Complaint for a complete and accurate statement of its contents.

20 35. The first and third sentences of Paragraph 35 contain conclusions of law, not
21 allegations of fact, and thus no response is required. To the extent a response is deemed necessary,
22 Defendants deny any characterization of the cited statutory provision, which speaks for itself, and
23 respectfully refer the Court to the cited provision for a complete and accurate statement of its
24 contents. As to the second sentence, Defendants admit that DHS-OGC has not yet responded to
25 Plaintiffs' appeal of DHS's response to Plaintiffs' February 2008 request.

26 36. Denied.

27 37. Denied.

1 38. The first, underlined sentence of Paragraph 38 consists of legal argument, not
2 allegations of fact, and thus no response is required. As to the second, third, and fourth sentences,
3 Defendants admit that DHS forwarded Plaintiffs' February 2008 request to CIS, and that CIS sent
4 Plaintiffs a letter dated April 9, 2008, that acknowledged receipt of that request. Defendants
5 respectfully refer the Court to the copy of the letter attached as Exhibit Z to the Complaint for a
6 complete and accurate statement of its contents.

7 39. Defendants admit that CIS sent Plaintiffs a letter dated April 24, 2008, that stated that
8 CIS does not compile information pertaining to stipulated removals and advised that ICE is the DHS
9 component more likely to maintain such information. Defendants respectfully refer the Court to the
10 copy of the letter attached as Exhibit AA to the Complaint for a complete and accurate statement of
11 its contents.

12 40. As to the first and second sentences of Paragraph 40, Defendants admit that Plaintiffs
13 sent CIS a letter dated April 29, 2008, that appealed CIS's April 24, 2008, response to Plaintiffs'
14 February 2008 FOIA request. Defendants respectfully refer the Court to the copy of the letter
15 attached as Exhibit BB to the Complaint for a complete and accurate statement of its contents. As
16 to the third and fourth sentences, Defendants admit that CIS sent Plaintiffs a letter dated May 9,
17 2008, that stated that CIS had conducted a search but no responsive records were found. Defendants
18 respectfully refer the Court to the copy of the letter attached as Exhibit CC to the Complaint for a
19 complete and accurate statement of its contents. As to the fifth and sixth sentences, Defendants
20 admit that Plaintiffs sent CIS a letter dated May 15, 2008, that appealed CIS's May 9, 2008, response
21 to Plaintiffs' February 2008 FOIA request. Defendants respectfully refer the Court to the copy of
22 the letter attached as Exhibit DD to the Complaint for a complete and accurate statement of its
23 contents.

24 41. Defendants admit that CIS sent Plaintiff a letter dated May 19, 2008, that
25 acknowledged receipt of Plaintiffs' April 29, 2008, appeal letter. Defendants respectfully refer the
26 Court to the copy of the letter attached as Exhibit EE to the Complaint for a complete and accurate
27 statement of its contents.

1 42. Defendants admit that CIS sent Plaintiff a letter dated August 28, 2008, that stated
2 that, after consideration on appeal, Plaintiffs' request had been remanded for a second search.
3 Defendants respectfully refer the Court to the copy of the letter attached as Exhibit FF to the
4 Complaint for a complete and accurate statement of its contents.

5 43. The first and third sentences of Paragraph 43 contain conclusions of law, not
6 allegations of fact, and thus no response is required. To the extent a response is deemed necessary,
7 Defendants deny any characterization of the cited statutory provision, which speaks for itself, and
8 respectfully refer the Court to the cited provision for a complete and accurate statement of its
9 contents. As to the second sentence, Defendants lack sufficient knowledge or information to form
10 a belief as to the truth of the allegation that "Plaintiffs have yet to receive a response" to their appeal.
11 Defendants aver that CIS sent Plaintiffs a letter dated August 18, 2008, that stated that, after
12 consideration on appeal, CIS had decided to remand Plaintiffs' request for a second search.

13 44. Defendants admit that CIS sent Plaintiffs a letter dated October 28, 2008, that stated
14 that responsive records were under the purview of ICE but did not indicate whether CIS had
15 performed a second search. Defendants respectfully refer the Court to a copy of the letter attached
16 as Exhibit GG to the Complaint for a complete and accurate statement of its contents.

17 45. Denied.

18 46. Denied.

19 47. The first, underlined sentence of Paragraph 47 consists of legal argument, not
20 allegations of fact, and thus no response is required. As to the second, third, and fourth sentences,
21 Defendants admit that CBP sent Plaintiffs a letter dated March 3, 2008, that acknowledged receipt
22 of Plaintiffs' February 2008 request, and respectfully refer the Court to the copy of the letter
23 attached as Exhibit HH to the Complaint for a complete and accurate statement of its contents.

24 48. Defendants lack sufficient knowledge or information to form a belief as to the truth
25 of the allegations in Paragraph 48.

26 49. Defendants admit that Plaintiffs sent DHS-OGC a letter dated April 17, 2008, that
27 appealed CBP's lack of response to Plaintiffs' February 2008 request, and respectfully refer the
28 Court to the copy of the letter attached as Exhibit JJ to the Complaint for a complete and accurate

1 statement of its contents.

2 50. Defendants admit that CBP sent Plaintiffs a letter dated June 11, 2008, that
3 acknowledged receipt of Plaintiffs' appeal, and respectfully refer the Court to the copy of the letter
4 attached as Exhibit KK to the Complaint for a complete and accurate statement of its contents.

5 51. Defendants admit that CBP employee Leandra Ollie exchanged e-mails with Plaintiffs
6 on July 22 and August 19, 2008, but deny any characterization of the content of those e-mails.

7 52. The first sentence of Paragraph 52 contains conclusions of law, not allegations of fact,
8 and thus no response is required. To the extent a response is deemed necessary, Defendants deny
9 any characterization of the cited statutory provision, which speaks for itself, and respectfully refer
10 the Court to the cited provision for a complete and accurate statement of its contents. As to the
11 second, third, fourth, and sixth sentences, Defendants admit that CBP sent Plaintiffs a letter dated
12 September 5, 2008, that responded to Plaintiffs' appeal and enclosed 21 pages of material.
13 Defendants respectfully refer the Court to the copy of the letter attached as Exhibit LL to the
14 Complaint for a complete and accurate statement of its contents. The fifth sentence contains legal
15 argument and Plaintiffs' characterization of records that CBP produced in response to Plaintiffs'
16 February 2008 request, and thus no response is required. To the extent a response is deemed
17 necessary, denied.

18 53. Paragraph 53 contains conclusions of law, not allegations of fact, and thus no
19 response is required. To the extent a response is deemed necessary, denied.

20 54. Denied.

21 55. Denied.

22 56. Denied.

23 57. The first, underlined sentence of Paragraph 57 consists of legal argument, not
24 allegations of fact, and thus no response is required. As to the second sentence, Defendants admit
25 that the Immigration Committee for the San Francisco Bay Area Chapter of the National Lawyers'
26 Guild ("NLG-SF") filed a FOIA request with ICE dated December 15, 2005, and that Plaintiffs filed
27 a FOIA request with DHS, ICE, CBP, DHS-OIG, and EOIR dated February 27, 2008. As to the third
28 sentence, Defendants respectfully refer the Court to the copy of the letter attached as Exhibit Q to

1 the Complaint for a complete and accurate statement of the contents of Plaintiff NLG-SF's
2 December 2005 request.

3 58. Defendants admit that ICE sent Plaintiff NLG-SF a letter dated August 27, 2007, that
4 responded to Plaintiff NLG-SF's December 2005 request and enclosed 11 pages of material.
5 Defendants respectfully refer the Court to the copy of the letter attached as Exhibit MM to the
6 Complaint for a complete and accurate statement of its contents.

7 59. Defendants admit that ICE sent Plaintiff NLG-SF a letter dated August 27, 2007, that
8 responded to Plaintiff NLG-SF's December 2005 request. Defendants respectfully refer the Court
9 to the copy of the letter attached as Exhibit MM to the Complaint for a complete and accurate
10 statement of its contents.

11 60. Defendants admit that Plaintiff NLG-SF sent DHS-OGC a letter dated October 25,
12 2007, that appealed ICE's response to Plaintiff NLG-SF's December 2005 request, and respectfully
13 refer the Court to the copy of the letter attached as Exhibit NN to the Complaint for a complete and
14 accurate statement of its contents. Defendants admit that DHS-OGC sent Plaintiff NLG-SF a letter
15 dated November 9, 2007, that acknowledged receipt of Plaintiff NLG-SF's appeal, and respectfully
16 refer the Court to the copy of the letter attached as Exhibit OO to the Complaint for a complete and
17 accurate statement of its contents.

18 61. The first and third sentences of Paragraph 61 contain conclusions of law, not
19 allegations of fact, and thus no response is required. To the extent a response is deemed necessary,
20 Defendants deny any characterization of the cited statutory provision, which speaks for itself, and
21 respectfully refer the Court to the cited provision for a complete and accurate statement of its
22 contents. As to the second sentence, Defendants admit that DHS-OGC has not yet responded to
23 Plaintiff NLG-SF's appeal of ICE's response to Plaintiff NLG-SF's December 2005 request.

24 62. Denied.

25 63. Denied.

26 64. Denied.

27 65. The first, underlined sentence of Paragraph 65 consists of legal argument, not
28 allegations of fact, and thus no response is required. As to the second sentence, Defendants admit

1 that Plaintiffs filed a FOIA request with ICE dated February 27, 2008. As to the third, fourth, and
2 fifth sentences, Defendants admit that ICE sent Plaintiffs a letter dated February 29, 2008, that
3 acknowledged receipt of Plaintiffs' February 2008 request, and respectfully refer the Court to the
4 copy of the letter attached as Exhibit PP to the Complaint for a complete and accurate statement of
5 its contents.

6 66. Defendants admit that Plaintiffs sent DHS-OGC a letter dated April 17, 2008, that
7 appealed ICE's lack of response to Plaintiffs' February 2008 request, and respectfully refer the Court
8 to the copy of the letter attached as Exhibit QQ to the Complaint for a complete and accurate
9 statement of its contents.

10 67. Defendants admit that DHS-OGC sent Plaintiffs a letter dated May 16, 2008, that
11 acknowledged receipt of Plaintiffs' April 17, 2008, appeal letter. Defendants respectfully refer the
12 Court to the copy of the letter attached as Exhibit RR to the Complaint for a complete and accurate
13 statement of its contents.

14 68. Paragraph 68 contains conclusions of law, not allegations of fact, and thus no
15 response is required. To the extent a response is deemed necessary, Defendants deny any
16 characterization of the cited statutory provision, which speaks for itself, and respectfully refer the
17 Court to the cited provision for a complete and accurate statement of its contents.

18 69. As to the first, second, and third sentences of Paragraph 69, Defendants admit that
19 ICE sent Plaintiffs a letter dated September 22, 2008, that acknowledged receipt of certain records
20 that CBP had referred to ICE for processing, and respectfully refer the Court to the copy of the letter
21 attached as Exhibit SS to the Complaint for a complete and accurate statement of its contents. As
22 to the fourth and fifth sentences, Defendants admit that Plaintiffs sent DHS-OGC a letter dated
23 October 1, 2008, and respectfully refer the Court to the copy of the letter attached as Exhibit TT to
24 the Complaint for a complete and accurate statement of its contents.

25 70. Defendants admit that ICE sent Plaintiffs a letter dated September 30, 2008, that
26 responded to the February 2008 request that Plaintiffs submitted directly to ICE, but otherwise deny
27 the allegations in Paragraph 70.

1 71. Paragraph 71 contains legal argument and Plaintiffs' characterization of records that
2 ICE produced in response to Plaintiffs' February 2008 request, and thus no response is required. To
3 the extent a response is deemed necessary, Defendants deny any characterization of the produced
4 records, which speak for themselves.

5 72. Paragraph 72 contains legal argument and Plaintiffs' characterization of records that
6 ICE produced in response to Plaintiffs' February 2008 request, and thus no response is required. To
7 the extent a response is deemed necessary, Defendants deny any characterization of the produced
8 records, which speak for themselves.

9 73. Denied.

10 74. Defendants admit that ICE sent Plaintiffs a letter dated September 30, 2008, that
11 responded to CBP's referral of certain records to ICE for processing and enclosed 8 pages of
12 material, but otherwise deny the allegations in Paragraph 74.

13 75. The first sentence of Paragraph 75 contains conclusions of law, not allegations of fact,
14 and thus no response is required. To the extent a response is deemed necessary, denied. As to the
15 second, third, and fourth sentences, Defendants admit that Plaintiffs sent DHS-OGC a letter dated
16 October 15, 2008, that appealed ICE's response to Plaintiffs' February 2008 request, and respectfully
17 refer the Court to the copy of the letter attached as Exhibit UU to the complaint for a complete and
18 accurate statement of its contents.

19 76. Denied.

20 77. Denied.

21 78. Denied.

22 79. The first, underlined sentence of Paragraph 79 consists of legal argument, not
23 allegations of fact, and thus no response is required. As to the second, third, and fourth sentences,
24 Defendants admit that DHS-OIG employee Stephanie Kuehn confirmed DHS-OIG's receipt of
25 Plaintiffs' February 2008 request in a telephone conversation with Plaintiffs on March 19, 2008, but
26 deny any characterization of that conversation, including any characterization contained in the letter
27 attached as Exhibit VV to the Complaint.

1 80. Defendants admit that DHS-OIG sent Plaintiffs a letter dated March 20, 2008, that
2 formally acknowledged receipt of Plaintiffs' February 2008 request. Defendants respectfully refer
3 the Court to the copy of the letter attached as Exhibit WW to the Complaint for a complete and
4 accurate statement of its contents.

5 81. The first sentence of Paragraph 81 contains Plaintiffs' characterization of a telephone
6 conversation with DHS-OIG employee Stephanie Kuehn on March 19, 2008, which Defendants
7 deny. As to the balance of the paragraph, Defendants admit that DHS-OIG sent Plaintiffs a letter
8 dated March 25, 2008, that stated that DHS-OIG had conducted a search but no responsive records
9 were found. That letter also stated that DHS-OIG does not compile information pertaining to
10 stipulated removals and advised that ICE is the DHS component more likely to maintain such
11 information. Defendants respectfully refer the Court to the copy of the letter attached as Exhibit XX
12 to the Complaint for a complete and accurate statement of its contents.

13 82. Defendants admit that Plaintiffs sent DHS-OGC a letter dated April 8, 2008, that
14 appealed DHS-OIG's response to Plaintiffs' February 2008 FOIA request. Defendants respectfully
15 refer the Court to the copy of the letter attached as Exhibit YY to the Complaint for a complete and
16 accurate statement of its contents.

17 83. Defendants admit that DHS-OGC sent Plaintiffs a letter dated April 21, 2008, that
18 acknowledged receipt of Plaintiffs' appeal, and respectfully refer the Court to the copy of the letter
19 attached as Exhibit ZZ to the Complaint for a complete and accurate statement of its contents.

20 84. The first and third sentences of Paragraph 84 contain conclusions of law, not
21 allegations of fact, and thus no response is required. To the extent a response is deemed necessary,
22 Defendants deny any characterization of the cited statutory provision, which speaks for itself, and
23 respectfully refer the Court to the cited provision for a complete and accurate statement of its
24 contents. As to the second sentence, Defendants admit that DHS-OGC has not yet responded to
25 Plaintiffs' appeal of DHS-OIG's response to Plaintiffs' February 2008 request.

26 85. Denied.

27 86. Denied.

1 87. The first, underlined sentence of Paragraph 87 consists of legal argument, not
2 allegations of fact, and thus no response is required. As to the second, third, and fourth sentences,
3 Defendants admit that EOIR sent Plaintiffs a letter dated March 3, 2008, that acknowledged receipt
4 of Plaintiffs' February 2008 request, and respectfully refer the Court to the copy of the letter attached
5 as Exhibit AAA to the Complaint for a complete and accurate statement of its contents.

6 88. Defendants admit that Plaintiffs sent EOIR a letter dated March 20, 2008, and
7 respectfully refer the Court to the copy of the letter attached as Exhibit BBB to the Complaint for
8 a complete and accurate statement of its contents.

9 89. Defendants admit that former EOIR employee Cecelia Espenoza confirmed EOIR's
10 receipt of Plaintiffs' February 2008 request in a telephone conversation with Plaintiffs on April 22,
11 2008, but deny any characterization of that conversation, including any characterization contained
12 in the letter attached as Exhibit CCC to the Complaint.

13 90. Defendants lack sufficient knowledge or information to form a belief as to the truth
14 of the allegations in Paragraph 90.

15 91. Defendants lack sufficient knowledge or information to form a belief as to the truth
16 of the allegations in Paragraph 91.

17 92. Defendants lack sufficient knowledge or information to form a belief as to the truth
18 of the allegations in the first and second sentences of Paragraph 92. As to the third sentence,
19 Defendants admit that EOIR sent Plaintiffs a letter dated June 2, 2008, that responded to Plaintiffs'
20 February 2008 request.

21 93. Paragraph 93 contains Plaintiffs' characterization of records that EOIR produced in
22 response to Plaintiffs' February 2008 request, and thus no response is required. To the extent a
23 response is deemed necessary, Defendants admit that EOIR's June 2, 2008, response enclosed 108
24 pages of material and a CD-ROM containing statistical data, but otherwise deny Plaintiffs'
25 characterization of the records that EOIR produced.

26 94. Denied.

27 95. Paragraph 95 contains Plaintiffs' characterization of records that EOIR produced in
28 response to Plaintiffs' February 2008 request, and thus no response is required. To the extent a

1 response is deemed necessary, denied.

2 96. Defendants admit that former EOIR employee Cecelia Espenosa had a telephone
3 conversation with Plaintiffs on June 11, 2008, but otherwise deny the allegations in Paragraph 96.

4 97. As to the first and second sentences of Paragraph 97, Defendants admit that Plaintiffs
5 filed a separate FOIA request with EOIR dated June 12, 2008, and respectfully refer the Court to the
6 copy of the letter attached as Exhibit DDD to the Complaint for a complete and accurate statement
7 of its contents. The third sentence is admitted.

8 98. Defendants admit that EOIR sent Plaintiffs a letter dated June 16, 2008, that
9 acknowledged receipt of Plaintiffs' June 2008 request, and respectfully refer the Court to the copy
10 of the letter attached as Exhibit EEE to the Complaint for a complete and accurate statement of its
11 contents. Defendants admit that EOIR sent Plaintiffs a letter dated June 23, 2008, that responded
12 to Plaintiffs' June 2008 request and enclosed a CD-ROM containing statistical data.

13 99. Paragraph 99 contains Plaintiffs' characterization of records that EOIR produced in
14 response to Plaintiffs' February 2008 and June 2008 requests, and thus no response is required. To
15 the extent a response is deemed necessary, denied.

16 100. Defendants admit that Plaintiffs sent DOJ's Office of Information and Privacy ("DOJ-
17 OIP") a letter dated July 10, 2008, that appealed EOIR's responses to Plaintiffs' February 2008 and
18 June 2008 requests. Defendants respectfully refer the Court to the copy of the letter attached as
19 Exhibit FFF to the Complaint for a complete and accurate statement of its contents.

20 101. Defendants admit that DOJ-OIP sent Plaintiffs a letter dated July 24, 2008, that
21 acknowledged receipt of Plaintiffs' appeal of EOIR's response to Plaintiffs' June 2008 request, and
22 respectfully refer the Court to the copy of the letter attached as Exhibit GGG to the Complaint for
23 a complete and accurate statement of its contents. Defendants admit that DOJ-OIP sent Plaintiffs
24 a letter dated July 28, 2008, that acknowledged receipt of Plaintiffs' appeal of EOIR's response to
25 Plaintiffs' February 2008 request, and respectfully refer the Court to the copy of the letter attached
26 as Exhibit HHH to the Complaint for a complete and accurate statement of its contents.

27 102. The first and third sentences of Paragraph 102 contain conclusions of law, not
28 allegations of fact, and thus no response is required. To the extent a response is deemed necessary,

1 Defendants deny any characterization of the cited statutory provision, which speaks for itself, and
2 respectfully refer the Court to the cited provision for a complete and accurate statement of its
3 contents. As to the second sentence, Defendants admit that DOJ-OIP has not yet responded to
4 Plaintiffs' appeals of EOIR's responses to Plaintiffs' February 2008 and June 2008 requests.

5 103. Denied.

6 104. Denied.

7 105. Denied.

8 106. Defendants admit that Plaintiffs' February 2008 FOIA request contained a fee waiver
9 request, and respectfully refer the Court to the copy of the letter attached as Exhibit R to the
10 Complaint for a complete and accurate statement of the basis for that fee waiver request. Defendants
11 deny any characterization of the cited statutory and regulatory provisions, which speak for
12 themselves, and respectfully refer the Court to the cited provisions for a complete and accurate
13 statement of their contents.

14 107. Defendants lack sufficient knowledge or information to form a belief as to the truth
15 of the allegations in Paragraph 107.

16 108. As to the first sentence of Paragraph 108, Defendants admit that ICE sent Plaintiffs
17 a letter dated February 29, 2008, that acknowledged receipt of Plaintiffs' February 2008 request and
18 granted Stanford Law School's Immigrants' Rights Clinic a fee waiver. Defendants respectfully
19 refer the Court to the copy of the letter attached as Exhibit PP to the Complaint for a complete and
20 accurate statement of its contents. As to the second sentence, Defendants admit that EOIR granted
21 Plaintiffs a fee waiver for their February 2008 request. However, to the extent this paragraph calls
22 for a legal conclusion about the propriety of either fee waiver, Defendants respectfully refer the
23 Court to the FOIA and its implementing regulations.

24 109. As to the first sentence of Paragraph 109, Defendants admit that neither DHS, CBP,
25 CIS, nor DHS-OIG has explicitly denied Plaintiffs' February 2008 fee waiver request. The second
26 and third sentences contain conclusions of law, not allegations of fact, and thus no response is
27 required. To the extent a response is deemed necessary, Defendants admit that Plaintiffs sent the
28 letters attached as Exhibits V, X, BB, DD, JJ, QQ, TT, UU, CCC, and DDD to the Complaint, and

1 respectfully refer the Court to the copies of those letters for a complete and accurate statement of
2 their contents.

3 **CAUSES OF ACTION**

4 **CLAIM ONE**

5 **(Wrongful Withholding)**

6 110. Defendants restate and incorporate by reference the responses contained in all
7 preceding paragraphs.

8 111-118. Denied.

9 **CLAIM TWO**

10 **(Inadequate Search)**

11 119. Defendants restate and incorporate by reference the responses contained in all
12 preceding paragraphs.

13 120-121. Denied.

14 **CLAIM THREE¹**

15 **(Improper Denial of Fee Waiver)**

16 122. Defendants restate and incorporate by reference the responses contained in all
17 preceding paragraphs.

18 123-124. Denied.

19 **PRAYER FOR RELIEF**

20 The remaining paragraphs of the Complaint contain a Prayer for Relief, to which no response
21 is required. To the extent a response is deemed necessary, Defendants deny the allegations contained
22 in the remainder of the Complaint and further aver that Plaintiffs are not entitled to the requested
23 relief or any other relief from Defendants.

24 Defendants deny any and all allegations in the Complaint not expressly admitted herein to
25 which a response is deemed required.

26
27 ¹ Defendants note that, with respect to Claim Three, Paragraphs 122-124 of this Answer
28 correspond to Paragraphs 1-3 on page 20 of the Complaint.

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2. Defendants' actions did not violate the FOIA or any other statutory or regulatory provision.
3. Plaintiffs are not entitled to compel production of records protected from disclosure by one or more exemptions to the FOIA.

WHEREFORE, having fully answered, Defendants respectfully request that the Court enter judgment dismissing this action with prejudice and awarding Defendants costs and such other relief as the Court may deem appropriate.

Respectfully submitted,

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