

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

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Federation for American  
Immigration Reform  
25 Massachusetts Ave., NW  
Suite 330  
Washington DC 20001

United States Customs and Border  
Protection  
Office of Chief Counsel  
U.S. Customs and Border Protection  
1300 Pennsylvania Avenue  
Suite 4.4-B  
Washington, D.C. 20229;

United States Department of  
Homeland Security  
Office of the General Counsel  
2707 Martin Luther King Jr. Ave, SE  
Washington, DC 20528-0485

Civil Action No. 22-709

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**COMPLAINT**

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for injunctive and other appropriate relief and seeking the disclosure and release of agency records improperly withheld from plaintiff by defendant United States Customs and Border Protection (CBP) and United States Department of Homeland Security (DHS).

### **Jurisdiction and Venue**

2. This Court has subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. §§ 701–706.
3. This Court has jurisdiction to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*
4. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).
5. Plaintiff Federation for American Immigration Reform (“FAIR”) is a non-profit, educational non-profit organized under the laws of the District of Columbia and having its principal place of business at 25 Massachusetts Ave, NW, Suite 330, Washington, DC 20001. Plaintiff seeks to educate the citizenry and increase public awareness of immigration issues and hold the nation’s leaders accountable for enforcing the nation’s immigration laws. In furtherance of its public interest mission, Plaintiff regularly requests access to the public records of federal agencies, entities, and offices, and disseminates its findings to the public.
6. Defendant United States Customs and Border Protection (“CBP”) is an agency of the U.S. Government and is headquartered at 90 K St. NW, Washington DC 20229. CBP is a component of the United States Department of Homeland Security (“DHS”). CBP’s address for service is Office of Chief Counsel, U.S. Customs and Border

Protection, 1300 Pennsylvania Avenue Suite 4.4 B, Washington, D.C. 20229, cbpserviceintake@cbp.dhs.gov. CBP has possession, custody, and control of certain public records to which FAIR seeks access.

### **FAIR's FOIA Request**

7. On or about July 15, 2020 FAIR submitted a FOIA Request (the "FOIA Request") to CBP requesting the following information:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, FAIR hereby requests that you produce the following records. Note: This FOIA Request is not seeking the disclosure of Personally Identifiable Information (PII) of individual illegal aliens.

1. All records calculating, stating, indicating, or estimating the number of illegal aliens who crossed the U.S. Border and tested positive for any infectious diseases, including COVID-19, from and including October 1, 2019 and up to and including June 19, 2020.
- U.S. Customs and Border Protection FOIA Officer July 15, 2020
2. Copies of all policies, procedures, standards, and guidelines that provide direction for tracking and processing illegal aliens who crossed the U.S. Border carrying any infectious diseases, including COVID-19, from October 1, 2019 up to and including June 1, 2020.
3. Copies of all policies, procedures, standards, and guidelines to determine if those policies, procedures, standards, and guidelines are consistently implemented at the U.S. Border, from and including October 1, 2019 up to and including June 1, 2020.
4. All records for the following outline:
  - a. Location of entry
  - b. Country of origin
  - c. History of repeated illegal entries
  - d. Identity of possible sponsor or support groups
  - e. Type of infectious disease(s)
  - f. Severity of symptom(s)
  - g. Medical treatment provided
  - h. Provider of medical treatment
  - i. Cost of treatment and funding source
  - j. Type of lodging and funding source
  - k. Were family

members supported during treatment l. Status of illegal alien and family after treatment has concluded.

8. On or about July 24, 2020 CBP acknowledged receipt of the request and assigned request number 2020-HQFO-01586.
9. On or about July 16, 2020 FAIR submitted a FOIA Request for the same information to United States Immigration and Customs Enforcement (“ICE”) for the same information.
10. On or about July 22, 2020, ICE determined that the information requested was under the purview of CBP and transferred the request to CBP.
11. On or about August 5, 2020, FAIR received a letter from the DHS Privacy Office stating that the FOIA Request to CBP had been transferred to the DHS Privacy Office .
12. On or about February 26, 2021, FAIR received a letter from the DHS Privacy Office stating that the FOIA request originally submitted to CBP had been transferred back to CBP.
13. On or about May 3, 2021 CBP produced a final response to the FOIA Request. The final response simply provided public links to the DHS website and did not address the actual CBP internal agency information as requested.
14. CBP has closed the FOIA Request without any requested production to FAIR.

**COUNT 1**

15. All prior allegations are incorporated by reference.
16. CBP and DHS failed to respond to the FOIA Request within the statutory deadlines imposed by FOIA. As a result, CBP and DHS violated FAIR's rights under FOIA, including but not limited to those set forth in 5 U.S.C. § 552(a)(6).
17. CBP and DHS failed to determine whether to comply with the FOIA Request within twenty (20) working days after receipt of the request and to notify FAIR of its determination, the supporting reasons, and the right to appeal any adverse determination.
18. CBP and DHS failed to timely invoke the provisions of FOIA providing for an extension of time based on "unusual circumstances" in response to the FOIA Request. CBP and DHS failed to provide an expected date of determination, or the date by which the agencies expected to complete processing the FOIA Request, as required by 5 U.S.C. § 552(a)(6)(B)(i) and agency regulations. As a result, CBP and DHS violated FAIR's rights under its regulations and under FOIA, including , but not limited to, the provisions of 5 U.S.C. § 552(a)(6).

**PRAYER FOR RELIEF**

WHEREFORE, FAIR respectfully requests that the Court:

1. Expedite consideration of this action, pursuant to 28 U.S.C. § 1657; find and declare that CBP and DHS violated FOIA by

failing to respond timely to the FOIA Request, by failing to follow the procedures required by FOIA, and by failing to disclose and release records in response to the FOIA Request;

2. Order CBP and DHS to conduct an adequate search for any and all records responsive to the FOIA Request, and require CBP and DHS to show that it employed search methods reasonably likely to lead to the discovery of the records responsive to the FOIA Request;
3. Order CBP and DHS to produce and release all non-exempt records responsive to the FOIA Request within twenty (20) business days of the Court's Order in this action and to provide FAIR with a *Vaughn* index of any responsive records, material, or information withheld under claim of exemption;
4. Enjoin CBP and DHS from continuing to withhold any and all non-exempt records responsive to the FOIA Request; Enjoin CBP and DHS from charging fees or costs for the processing of the FOIA Request (including any fees or costs for the search, review, and production of records);
5. Award FAIR its reasonable attorneys' fees and other litigation costs in this action, pursuant to 5 U.S.C. §552(a)(4)(E); and
6. Grant FAIR such other relief as the Court may deem just and proper.

Respectfully Submitted,  
March 15, 2022

/s/ John M. Miano

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John M. Miano

D.C. #1003068

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Immigration Reform

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