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

12 THE CENTER FOR INVESTIGATIVE) Case No. _____
13 REPORTING,)
14 Plaintiff,) **COMPLAINT FOR INJUNCTIVE**
15 v.) **RELIEF**
16 UNITED STATES DEPARTMENT OF)
17 HOMELAND SECURITY,)
18 Defendant.)

19 **INTRODUCTION**

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21 1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552,
22 for injunctive and other appropriate relief. The Center for Investigative Reporting (“CIR” or
23 “Plaintiff”) seeks expedited processing and release of agency records requested from Defendant the
24 United States Department of Homeland Security (“DHS”).

25 2. On March 21, 2017, Plaintiff submitted a Freedom of Information Act request (the
26 “Request”) to Customs and Border Protection (“CBP”), a component of DHS seeking records
27 related to the federal government’s land acquisition at the United States border and related real
28 estate costs.

1 3. To date, Defendant has failed to comply with statutory deadlines and has provided
2 no response to Plaintiff.

3 4. DHS’s failure to provide any response is of particular concern because of the
4 immense public importance involving land acquisition at the U.S. border. Indeed, since the
5 presidential debates there has been extensive reporting and public concern over the government’s
6 land operations at the border wall.

7 5. At the same time, the public interest in the release of the DHS records, which detail
8 information about public funds amounting to potentially millions, if not billions of tax dollars is
9 substantial.

10 6. Plaintiff now asks the Court for an injunction requiring DHS to promptly release the
11 withheld records.

12 **PARTIES**

13 7. Plaintiff CIR publishes *Reveal*, an online news site at revealnews.org, and *Reveal*, a
14 weekly public radio show with approximately 1 million listeners a week. Founded in 1977, as the
15 first national investigative news organization, CIR has received multiple awards for its reporting.
16 CIR is a nonprofit established under the laws of the State of California, with its primary office in
17 Emeryville, California.

18 8. Defendant DHS is a department of the executive branch of the U.S. government and
19 an “agency” within the meaning of 5 U.S.C. §552(f)(1). CBP is a component of DHS. DHS has its
20 headquarters in Washington, D.C., and offices all over the country, including in Oakland and San
21 Francisco, California.

22 **JURISDICTION**

23 9. The Court has subject matter jurisdiction over this action and personal jurisdiction
24 over the parties pursuant to 5 U.S.C. §§ 552(a)(4)(B) and 552(a)(6)(C)(i). This Court also has
25 jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1436, and 5 U.S.C. §§ 701–706.

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VENUE AND INTRADISTRICT ASSIGNMENT

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2 10. Venue is proper in this district under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§
3 1391(e) and 1402. Plaintiff CIR has its principal place of business in this district.

4 11. Assignment to the Oakland Division is proper pursuant to Local Rule 3-2(c) and (d)
5 because a substantial portion of the events giving rise to this action occurred in Alameda County,
6 where Plaintiff's principal place of business is located.

7 **FACTUAL BACKGROUND**

8 **Policies at the United States border wall**

9 12. On October 26, 2006, President George W. Bush signed the Secure Fence Act of
10 2006, Pub. L. 109-367, 120 Stat. 2638 into law stating, "This bill will help protect the American
11 people." Press Release, The White House, Fact Sheet: The Secure Fence Act of 2006, (Oct. 26,
12 2006), <https://georgewbush-whitehouse.archives.gov/news/releases/2006/10/20061026-1.html>.

13 13. The White House stated that, among other things, the Act "Authorizes the
14 construction of hundreds of miles of additional fencing along our Southern border[.]" *Id.*

15 14. As a consequence of the Secure Fence Act, for the next decade, the federal
16 government initiated hundreds of eminent domain cases to acquire land at the border. *See* John
17 Burnett, *Landowners Likely To Bring More Lawsuits As Trump Moves On Border Wall*, NPR.ORG,
18 Feb. 23, 2017, <http://n.pr/2oKweVA>; Andrew Becker and David Rodriguez, *Feds hunt down*
19 *mystery landowners in bid to build border wall*, REVEAL, June 21, 2017, <http://bit.ly/2ttx5sh>.

20 15. The federal government also pursued land purchases to acquire border property. *Id.*
21 In addition, contractors working for the federal government constructed hundreds of miles of
22 border fence. *Id.* The fence segments were built on federal land, as well as land acquired from
23 state and local governments, and many private citizens. *Id.*

24 16. Upon taking office, President Barack Obama continued pursuit of land acquisition
25 and fence construction at the border. April Reese, *U.S. Mexico Fence Building Continues Despite*
26 *Obama's Promise to Review Effects*, N.Y. TIMES, April 16, 2009, <http://nyti.ms/2oQ85Nq>.

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1 17. In 2011, President Obama announced in a speech delivered in El Paso, Texas that
2 the border fence was “basically now complete.” See Robert Farley, *Obama says the border fence*
3 *is 'now basically complete'*, POLITIFACT, May 16, 2011, <http://bit.ly/1XreKWg>.

4 18. During the 2016 presidential campaign, candidate Donald Trump once more
5 reignited conversations about expanding the existing border wall. See, e.g., Kurtis Lee, *Trump and*
6 *Clinton clash over border security and U.S.-Mexico relations*, L.A. TIMES, Oct. 19, 2016,
7 <http://lat.ms/2eupcdN>; *Trump's border wall, immigration plans re-emerge at top of national*
8 *debate*, FOX NEWS, Aug. 5, 2017, <http://fxn.ws/2vAulqT>.

9 19. Since taking office, tensions have heightened as President Trump has made building
10 the border wall a national priority. On January 25, 2017, President Trump released two Executive
11 Orders involving the U.S. border. Executive Order No. 13767, among other things, demanded new
12 construction of a physical wall along parts of the nearly 2,000-mile southern border of the United
13 States as well as additional resources to Border Patrol agents. See *Border Security and*
14 *Immigration Enforcement Improvements*, 82 Fed. Reg. 8793 (Jan. 25, 2017).¹

15 20. In February 2017, President Trump released a budget asking Congress for an
16 amount of \$21.6 billion to build new walls or replace existing barriers. Rachel Chason, *California*
17 *takes aim at one of Trump's key campaign promises*, THE WASHINGTON POST, Sept. 21, 2017,
18 <http://wapo.st/2CGzmnx>; Michael Corey and Andrew Becker, *Senate Democrats answer questions,*
19 *raise concerns with Trump's wall*, REVEAL, April 19, 2017, <http://bit.ly/2oNOYDz>; Andrew
20 Becker, *Trump's wall is wrong path for immigration reform, analysts say*, REVEAL, Jan. 25, 2017,
21 <http://bit.ly/2kKpAJM>.

22 21. In response, public outcry over the amount of federal dollars to be spent on the
23 border wall reached a fever pitch. See, e.g., Alicia Caldwell, *U.S. Warns Border Wall Construction*
24 *Could Spark Large-Scale Protests*, THE WALL ST. JOURNAL, Sept. 12, 2017,
25 <http://on.wsj.com/2oN5N1D>.

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28 ¹ Available at <https://www.whitehouse.gov/the-press-office/2017/01/25/executive-order-border-security-and-immigration-enforcement-improvements>.

1 22. In addition, Democratic and Republican members of Congress began to publicly
2 oppose the plan. *See* Laura Meckler and Kristina Peterson, *Border Lawmakers Balk at Donald*
3 *Trump's Wall Request*, *Wall St. Journal*, April 21, 2017, <http://on.wsj.com/2p49oH0>.

4 23. While Congress has allocated small amounts of money for prototype projects, there
5 has been intense Congressional debate about whether large scale expansion of the border fence is
6 economically prudent or strategically valuable, especially as estimates have reached up to \$70
7 billion dollars. Ron Nixon, *Border Wall Could Cost 3 Times Estimates*, *Senate Democrats' Report*
8 *Says*, N.Y. TIMES, April 18, 2017, <http://nyti.ms/2kmA82d>; Michael Corey and Andrew Becker,
9 *Senate Democrats answer questions, raise concerns with Trump's wall*, REVEAL.ORG, April 19,
10 2017, <http://bit.ly/2oNOYDz>.

11 24. CIR has repeatedly written on this subject in over the past year. *See, e.g.*, Michael
12 Corey and Andrew Becker, *The wall: Building a continuous US-Mexico barrier would be a tall*
13 *order*, REVEAL, Jan. 22, 2017, <http://bit.ly/2k7vX8S>; Andrew Becker, *The Cost of Trump's Border*
14 *'Wall' is Going Up*, REVEAL, Feb. 10, 2017, <http://bit.ly/2kmyRsa>; Neena Satija and Kiah Collier,
15 *Scientists say Trump's border wall would devastate wildlife habitat*, REVEAL, March 4, 2017,
16 <http://bit.ly/2nk6TN3>.

17 25. Any information on the amount of federal dollars spent on the border wall is vital to
18 the ongoing public interest, congressional debates, and news reports on this subject. *See generally*
19 T. Christian Miller, Kiah Collier and Julian Aguilar, *The Taking*, PROPUBLICA, Dec. 14, 2017,
20 <http://bit.ly/2BJ9xXl>.

21 26. In pursuit of this information, on May 26, 2017, CIR sent a FOIA request to the
22 Department of Army ("DOA"), among other agencies, seeking records documenting the federal
23 purchases of land at the United States border, similar to the request at issue here. On November 2,
24 2017, DOA agents released responsive documents containing the amount of money paid to private
25 landowners to acquire border fence property. A true and correct copy of some of those records are
26 attached as Exhibit 1.

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- e. The precise location, including parcel/tracts numbers, geolocation data and owners involving all acquisitions related to border-fence construction.
- f. The total amount of real estate related costs associated with border fence and/wall construction to date, with a breakdown by type of expense, date of expense, funding source, place of performance.

31. Plaintiff sought expedited processing of the Request on the grounds that there is a “compelling need” for these records because the information requested is urgently needed by an organization primarily engaged in disseminating information in order to inform the public about actual or alleged federal government activity. 5 U.S.C. § 522(a)(6)(E).

32. Plaintiff sought a waiver of search, review, and reproduction fees on the grounds that disclosure of the requested records is “in the public interest because it 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.” *Id.* § 552(a)(4)(A)(iii).

33. Plaintiff also sought a waiver of search and review fees on the grounds that it qualifies as a “representative of the news media” and that the records are not sought for commercial use. *Id.* § 552(a)(4)(A)(ii).

34. By letter dated March 22, 2017, CBP sent a letter acknowledging the Request. A true and correct copy of that response is attached as Exhibit 3.

35. On May 23, 2017, CBP sent an email requesting a timeframe clarification. A true and correct copy of that response is attached as Exhibit 4.

36. The next day, on May 24, 2017, Mr. Becker emailed CBP offering a timeframe clarification. A true and correct copy of that response is attached as Exhibit 5.

37. On June 7, 2017, Mr. Becker received an email with a final disposition as to the request for a fee waiver and expedited processing and was told his case was closed because he did not provide a timeframe clarification. A true and correct copy of that response is attached as Exhibit 6.

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1 38. On June 9, 2017 Mr. Becker appealed the final disposition and that same day
2 received an acknowledgement letter with tracking number CBP-AP-2017-064364. A true and
3 correct copy of that response is attached as Exhibit 7.

4 39. On June 19, 2017, Mr. Becker received a determination from the appeals office
5 remanding the request back to the FOIA division, and stating CBP should process the Request
6 within 20 days, and if not Mr. Becker should be notified. A true and correct copy of that response
7 is attached as Exhibit 8.

8 40. The next day, on June 20, 2017, Mr. Becker received a letter from CBP apologizing
9 for the miscommunication and stating there was no record of correspondence pertaining to Mr.
10 Becker's timeframe clarification. A true and correct copy of the communication is attached as
11 Exhibit 9.

12 41. On November 20, 2017, CIR General Counsel, D. Victoria Baranetsky sent a letter
13 to CBP notifying it that the DOA had disclosed records responsive to a similar request and alerting
14 CBP that it likely holds more complete responsive documents. A true and correct copy of the letter
15 (without attachments) is attached as Exhibit 10. The letter requested an immediate response and
16 processing of the Request. Plaintiff received no response from CBP.

17 42. In a letter dated November 29, 2017, CBP FOIA Appeals division once more
18 remanded the request to CBP's FOIA Division for processing within twenty days and notified
19 Plaintiff that it may immediately challenge a failure to respond. A true and correct copy of that
20 response is attached as Exhibit 11.

21 43. To date, CBP has made no final determination on the Request.

22 44. DHS has twice failed to comply with FOIA's requirement that an agency will
23 respond to the Request within the 20 business days.

24 45. Having exhausted all administrative remedies, Plaintiff now seeks injunctive relief.

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CAUSE OF ACTION

Violation of Freedom of Information Act

46. Plaintiff repeats and realleges paragraphs 1-45.

47. DHS is subject to FOIA and must therefore release in response to a FOIA request any disclosable records in its possession at the time of the request and provide a lawful reason for withholding any materials as to which it is claiming an exemption.

48. DHS has no lawful basis for declining to release the records requested by Plaintiff under FOIA.

49. DHS has failed to act on Plaintiff's Request within the 20 business days required by FOIA. *See* 5 U.S.C. § 552(a)(6)(A)(i). Accordingly, Plaintiff is deemed to have exhausted its administrative remedies under FOIA.

50. Plaintiff is entitled to an order compelling DHS to produce records responsive to the Request.

REQUESTED RELIEF

WHEREFORE, Plaintiff prays that this Court:

1. Declare that Defendant DHS violated FOIA by failing to comply with the 20 business days required by FOIA and notifying Plaintiff of any determination;

2. Declare that DHS violated FOIA by failing to determine whether to provide expedited processing within 10 days and thereafter notifying Plaintiff of such determination;

3. Declare that the documents sought by their FOIA request, as described in the foregoing paragraphs, are public under 5 U.S.C. § 552 and must be disclosed;

4. Order Defendant DHS to provide the requested documents to Plaintiff within 20 business days of the Court's order, or in the alternative, provide for expedited proceedings to adjudicate Plaintiff's rights under FOIA;


5. Award Plaintiff the costs of this proceeding, including reasonable attorneys' fees, as expressly permitted by FOIA; and

6. Grant Plaintiff such other and further relief as this Court may deem just and proper.

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DATED: January 3, 2018

Respectfully submitted,

By: 

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