

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

_____)	
AMERICAN IMMIGRATION COUNCIL, et al.,)	
)	
Plaintiffs,)	
)	
v.)	No. 3:12-cv-00355-WWE
)	
DEPARTMENT OF HOMELAND SECURITY,)	
)	
Defendant.)	
_____)	

DEFENDANT’S ANSWER TO PLAINTIFFS’ COMPLAINT

Defendant Department of Homeland Security (“DHS”), through its undersigned counsel, sets forth its affirmative defenses and answers plaintiffs’ Complaint as follows.

Affirmative Defenses

Plaintiffs have failed to exhaust their administrative remedies.

Plaintiffs have failed to state a claim upon which relief can be granted.

Defendant responds to the unnumbered introductory paragraphs of plaintiffs’ Complaint as follows. The allegations in these paragraphs consist of plaintiffs’ characterization of their Complaint, to which no response is required. The allegations in these paragraphs also do not set forth a claim for relief or aver facts in support of a claim to which an answer is required.

Defendant responds to the numbered paragraphs of plaintiffs’ Complaint as set forth below.

1. The allegations in this paragraph consist of plaintiffs’ legal conclusions regarding jurisdiction, to which no response is required.

2. The allegations in this paragraph consist of plaintiffs' legal conclusions regarding venue, to which no response is required.

3-15. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in these paragraphs.

16. Regarding the first and third sentences of this paragraph, defendant admits that U.S. Immigration and Customs Enforcement ("ICE") is a component of DHS and that part of DHS and ICE's mission is to enforce the nation's immigration laws. Defendant admits the allegations in the second sentence of this paragraph.

17-35. The allegations in these paragraphs do not set forth a claim for relief or aver facts in support of a claim to which an answer is required.

36. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

37. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, due to the vagueness of the phrase "ICE's internal procedures."

38. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, due to the vagueness of the phrase "further information and analysis of CAP."

39-40. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in these paragraphs.

41. Defendant admits that plaintiffs submitted a FOIA request to ICE by letter dated November 29, 2011. Defendant respectfully refers the Court to the November 29, 2011 FOIA

request for a complete and accurate statement of its contents.

42. Admit.

43. Defendant admits that a copy of plaintiffs' FOIA request was sent by facsimile on November 29, 2011.

44. Admit.

45. Admit. Defendant respectfully refers the Court to the November 29, 2011 FOIA request for a complete and accurate statement of its contents.

46. Defendant admits that plaintiffs sought a waiver of search fees, alleging that they qualify as representatives of the news media. Defendant respectfully refers the Court to the November 29, 2011 FOIA request for a complete and accurate statement of its contents. Defendant denies that each plaintiff independently qualifies as a representative of the news media.

47-48. The allegations in these paragraphs consist of conclusions of law, to which no response is required. To the extent a response is required, defendant denies those allegations.

49. Defendant admits that ICE acknowledged receipt of plaintiffs' FOIA request by letter dated November 30, 2011 and that it invoked a 10-day statutory extension of the time to respond to the request. Defendant respectfully refers the Court to the November 30, 2011 acknowledgment letter for a complete and accurate statement of its contents.

50. Defendant admits that by letter dated November 30, 2011, ICE denied plaintiffs' request for a fee waiver, denies plaintiffs' characterization of that letter, and respectfully refers the Court to the letter for a complete and accurate statement of its contents.

51. The allegations in this paragraph consist of conclusions of law, to which no

response is required. Defendant admits that in a letter dated November 30, 2011, ICE denied plaintiffs' request for a fee waiver, denies plaintiffs' characterization of that letter, and respectfully refers the Court to the letter for a complete and accurate statement of its contents.

52. The allegations in this paragraph do not set forth a claim for relief or aver facts in support of a claim to which an answer is required.

53. Defendant denies that ICE's fee waiver denial was erroneous as a matter of law. Defendant admits that plaintiffs appealed the denial by letter dated December 16, 2011. Defendant respectfully refers the Court to the December 16, 2011 appeal letter for a complete and accurate statement of its contents.

54. Admit.

55. Admit.

56. Defendant admits that by letter dated January 27, 2012, ICE responded to plaintiffs' FOIA request by informing plaintiffs that their request was not perfected and sought corrective action by plaintiffs to perfect their request, including inviting plaintiffs to narrow the scope of their request. This letter was unrelated to plaintiffs' fee waiver request. Defendant respectfully refers the Court to the January 27, 2012 letter for a complete and accurate statement of its contents.

57. Defendant admits that ICE has not provided records to plaintiffs but denies that ICE had an obligation to respond to plaintiffs' unperfected request within 30 working days. To date, plaintiffs have not perfected their FOIA request.

58. The allegations in this paragraph consist of conclusions of law, to which no response is required. To the extent a response is required, defendant denies those allegations.

59. The allegations in this paragraph consist of conclusions of law, to which no response is required. To the extent a response is required, defendant denies those allegations.

60. Deny.

61. The allegations in this paragraph consist of conclusions of law, to which no response is required. To the extent a response is required, defendant denies those allegations.

62. The answers to all preceding paragraphs are incorporated herein by reference.

63. The allegations in this paragraph consist of conclusions of law, to which no response is required. To the extent a response is required, defendant denies those allegations.

64. The answers to all preceding paragraphs are incorporated herein by reference.

65. The allegations in this paragraph consist of conclusions of law, to which no response is required. To the extent a response is required, defendant denies those allegations.

66. The answers to all preceding paragraphs are incorporated herein by reference.

67. The allegations in this paragraph consist of conclusions of law, to which no response is required. To the extent a response is required, defendant denies those allegations.

Defendant denies that plaintiffs are entitled to the relief requested in their Prayer for Relief, or to any relief whatsoever.

WHEREFORE, defendant respectfully requests that this action be dismissed with prejudice and that the Court grant defendant such other relief as may be appropriate.

Respectfully Submitted,

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/s/ Marcia Berman
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CERTIFICATE OF SERVICE

I hereby certify that on May 10, 2012, a copy of the within and foregoing was filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Marcia Berman

MARCIA BERMAN
Senior Trial Counsel