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IMMIGRATION LAWYERS ASSOCIATION;

18 **UNITED STATES DISTRICT COURT**

19 **NORTHERN DISTRICT OF CALIFORNIA**

20 LAWYERS' COMMITTEE FOR CIVIL RIGHTS) Case No.:
21 OF THE SAN FRANCISCO BAY AREA; CENTER)
FOR GENDER & REFUGEE STUDIES;) **COMPLAINT UNDER THE**
22 COMMUNITY LEGAL SERVICES IN EAST) **FREEDOM OF INFORMATION**
PALO ALTO; AMERICAN IMMIGRATION) **ACT FOR DECLARATORY AND**
23 LAWYERS ASSOCIATION,) **INJUNCTIVE RELIEF**
)
24 Plaintiffs,)
)
25 v.)
)
26 EXECUTIVE OFFICE FOR IMMIGRATION)
REVIEW; UNITED STATES DEPARTMENT OF)
27 JUSTICE,)
)
Defendants.)

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1 **INTRODUCTION**

2 1. This is an action under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, for
3 declaratory, injunctive, and other appropriate relief. By this action, Plaintiffs seek the immediate
4 processing and release of agency records unlawfully withheld by the Executive Office for
5 Immigration Review (EOIR), the agency of the United States Department of Justice that oversees
6 the nation’s immigration courts.

7 2. The records at issue pertain to policies, procedures, standards, and criteria developed
8 and applied to expedited dockets announced for immigration courts across the country on July 9,
9 2014, and set in motion shortly thereafter, for the specific purpose of fast-tracking the cases of
10 families and unaccompanied children who recently arrived in the United States, primarily from
11 Central America, seeking protection from harm in their home countries. These expedited dockets,
12 also known as “surge,” “priority,” or “rocket” dockets, were instituted by the federal government
13 with minimal notice and still less explanation of the standards, policies, and procedures that would
14 be employed for these dockets and the vulnerable children and families whose cases would be
15 assigned to them. From the start, attorneys and other advocates expressed grave concerns with the
16 expedited dockets and the dramatically compressed timelines they created for vulnerable, poor, and
17 traumatized young children and families to search for counsel and prepare and present often-
18 complex legal claims.

19 3. The public's interest in EOIR's policies and practices as to the priority dockets has
20 only increased since January 4, 2016, when Department of Homeland Security (DHS) Secretary Jeh
21 Johnson announced raids targeting Central Americans deported through the priority dockets, both
22 adults with children and unaccompanied minors. *See* Statement by Secretary Jeh C. Johnson on
23 Southwest Border Security (Jan. 4, 2016), available at
24 <http://www.dhs.gov/news/2016/01/04/statement-secretary-jeh-c-johnson-southwest-border-security>.
25 Numerous media reports have highlighted the consequences of Secretary Johnson's announcement
26 on those ordered deported under the priority dockets. *See, e.g.,* Julia Preston, A Rush of Central
27 Americans Complicates Obama's Immigration Task, New York Times (Jan. 8, 2016), available at

1 [http://www.nytimes.com/2016/01/09/us/a-rush-of-central-americans-compounds-obamas-](http://www.nytimes.com/2016/01/09/us/a-rush-of-central-americans-compounds-obamas-immigration-task.html?_r=0)
2 [immigration-task.html?_r=0](http://www.nytimes.com/2016/01/09/us/a-rush-of-central-americans-compounds-obamas-immigration-task.html?_r=0); Hansi Lo Wang, Raids on Unauthorized Immigrants Won't Let Up,
3 Homeland Security Says, National Public Radio (Jan. 6, 2016), available at
4 [http://www.npr.org/2016/01/06/462114310/raids-on-unauthorized-immigrants-won-t-let-up-](http://www.npr.org/2016/01/06/462114310/raids-on-unauthorized-immigrants-won-t-let-up-homeland-security-says)
5 [homeland-security-says](http://www.npr.org/2016/01/06/462114310/raids-on-unauthorized-immigrants-won-t-let-up-homeland-security-says); Jerry Markon & David Nakamura, U.S. plans raids to deport families who
6 surged across border, Washington Post (Dec. 23, 2015), available at
7 [https://www.washingtonpost.com/politics/us-plans-raids-to-deport-families-who-surged-across-](https://www.washingtonpost.com/politics/us-plans-raids-to-deport-families-who-surged-across-border/2015/12/23/034fc954-a9bd-11e5-8058-480b572b4aae_story.html)
8 [border/2015/12/23/034fc954-a9bd-11e5-8058-480b572b4aae_story.html](https://www.washingtonpost.com/politics/us-plans-raids-to-deport-families-who-surged-across-border/2015/12/23/034fc954-a9bd-11e5-8058-480b572b4aae_story.html). The raids have triggered
9 protests across the country. *See, e.g.*, Joe Heim, Activists protest plan to deport Central Americans
10 with White House march, Washington Post (Dec. 30, 2015), available at
11 [https://www.washingtonpost.com/local/immigration-activists-protest-dhs-deportation-plan-with-](https://www.washingtonpost.com/local/immigration-activists-protest-dhs-deportation-plan-with-white-house-march/2015/12/30/535fbb90-af15-11e5-b820-eea4d64be2a1_story.html)
12 [white-house-march/2015/12/30/535fbb90-af15-11e5-b820-eea4d64be2a1_story.html](https://www.washingtonpost.com/local/immigration-activists-protest-dhs-deportation-plan-with-white-house-march/2015/12/30/535fbb90-af15-11e5-b820-eea4d64be2a1_story.html). Media reports
13 also suggest that the United States is experiencing another spike in Central American migrants
14 fleeing violence and persecution in their countries of origins. *See, e.g.*, Ian Gordon, Thousands of
15 Central American Kids Are Back at Our Border: Here's What You Need to Know, Mother Jones
16 (Dec. 17, 2015), available at [http://www.motherjones.com/politics/2015/12/new-central-american-](http://www.motherjones.com/politics/2015/12/new-central-american-kids-families-migrant-surge)
17 [kids-families-migrant-surge](http://www.motherjones.com/politics/2015/12/new-central-american-kids-families-migrant-surge); Jerry Markon & Joshua Partlow, Unaccompanied children crossing
18 southern border in greater numbers again, raising fears of new migrant crisis, Washington Post
19 (Dec. 16, 2015), available at [https://www.washingtonpost.com/news/federal-](https://www.washingtonpost.com/news/federal-eye/wp/2015/12/16/unaccompanied-children-crossing-southern-border-in-greater-numbers-again-raising-fears-of-new-migrant-crisis/)
20 [eye/wp/2015/12/16/unaccompanied-children-crossing-southern-border-in-greater-numbers-again-](https://www.washingtonpost.com/news/federal-eye/wp/2015/12/16/unaccompanied-children-crossing-southern-border-in-greater-numbers-again-raising-fears-of-new-migrant-crisis/)
21 [raising-fears-of-new-migrant-crisis/](https://www.washingtonpost.com/news/federal-eye/wp/2015/12/16/unaccompanied-children-crossing-southern-border-in-greater-numbers-again-raising-fears-of-new-migrant-crisis/). It is likely that EOIR will continue to handle these individuals'
22 cases through expedited dockets.

23 4. Within days of the start of the so-called rocket dockets at the San Francisco
24 Immigration Court and immigration courts located elsewhere in the country, Plaintiffs—American
25 Immigration Lawyers Association (AILA), Center for Gender & Refugee Studies (CGRS),
26 Community Legal Services in East Palo Alto (CLSEPA), and Lawyers' Committee for Civil Rights
27 of the San Francisco Bay Area (LCCR)—requested that the Executive Office for Immigration
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1 Review, within the United States Department of Justice, produce records pertaining to the expedited
2 dockets for unaccompanied children and families. The request, first made on August 4, 2014, and
3 renewed on August 12, 2015, under the Freedom of Information Act, sought expedited processing
4 due to the serious due process concerns that were raised in the earliest days of the expedited dockets
5 and the attendant urgent need that the public be informed about these dockets.

6 5. Despite the ongoing pressing need for the requested records, and despite the passage
7 of more than a year past the statutory deadline to respond, Defendants have failed to produce any of
8 the requested records, but for two charts, released on November 13, 2015, listing the courts that
9 handle cases involving unaccompanied children and families, and including statistics on the number
10 of initial case receipts at each court location. All the while, the expedited dockets for children and
11 families continue, leaving the rights of thousands at risk and severely hampering the ability of
12 Plaintiffs, immigration attorneys and other advocates, and members of the public to discern and
13 share crucial information about the functioning of these dockets. Already, thousands of parents
14 with children and unaccompanied children have faced removal to dangerous conditions without
15 sufficient opportunity to seek and secure counsel and to prepare and present their claims for
16 protection.

17 6. The immediate disclosure of the requested records is needed to remedy the dearth of
18 information available to attorneys, to the larger public, and to the children and families most
19 immediately at risk. Plaintiffs accordingly bring this suit under the Freedom of Information Act for
20 declaratory, injunctive, and other appropriate relief.

21 **JURISDICTION & VENUE**

22 7. This Court has subject matter jurisdiction over this action and personal jurisdiction
23 over the parties pursuant to 5 U.S.C. § 552(a)(4)(B), (6)(C)(i), and (6)(E)(iii). This Court also has
24 subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331.

25 8. Venue is proper in this district under 5 U.S.C. § 552(a)(4)(B), as Plaintiffs Center for
26 Gender & Refugee Studies (CGRS), Community Legal Services in East Palo Alto (CLSEPA), and
27 Lawyers' Committee for Civil Rights of the San Francisco Bay Area (LCCR) have their respective
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1 principal places of business in this district. Additionally, Plaintiff American Immigration Lawyers
2 Association (AILA) has a Northern California chapter, with more than 875 practicing immigration
3 attorney members. Because a substantial part of the events or omissions giving rise to this action
4 occurred within this district, where Plaintiffs CGRS, CLSEPA, and LCCR maintain their principle
5 places of business, and where the San Francisco Immigration Court is located, venue is also proper
6 under 28 U.S.C. § 1391(e).

7 9. Assignment to the San Francisco Division is proper pursuant to Civil Local Rule 3-
8 2(c) and (d) because a substantial portion of the events giving rise to this action occurred in San
9 Francisco and San Mateo Counties, where Plaintiffs CGRS, CLSEPA, and LCCR each maintain
10 their principal places of business, and where the San Francisco Immigration Court is located.

11 **PARTIES**

12 10. Plaintiff Lawyers' Committee for Civil Rights of the San Francisco Bay Area
13 (LCCR) is a non-profit legal services and social justice organization that works in partnership with
14 the private pro bono bar to protect and advance the rights and status of people of color, low-income
15 communities, and immigrants and refugees through direct legal services, impact litigation, and
16 policy advocacy. Through its pro bono Asylum Program, LCCR annually provides legal services to
17 hundreds of asylum seekers. Throughout each year, LCCR provides trainings on asylum law and
18 procedure and related immigration law topics, an updated resource manual, and close mentorship to
19 pro bono attorneys representing noncitizens before the San Francisco Immigration Court, U.S.
20 Citizenship and Immigration Services, the Board of Immigration Appeals, and the Courts of
21 Appeals. LCCR also disseminates information through its website, www.lccr.com, and social
22 media. LCCR maintains its principal place of business in San Francisco, California.

23 11. Plaintiff Center for Gender & Refugee Studies (CGRS), housed at the University of
24 California Hastings College of the Law in San Francisco, California, is dedicated to protecting the
25 fundamental human rights of refugee women, children, LGBT individuals, and others who flee
26 persecution in their home countries through the provision of expert technical assistance, training,
27 impact litigation, policy development, research, and in-country fact-finding. Through its technical
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1 assistance program, CGRS each year advises hundreds of attorneys about asylum law and procedure
2 and provides case materials such as country conditions evidence, expert declarations, sample briefs,
3 and unpublished immigration decisions that CGRS collects, analyzes, and shares. In addition to
4 providing technical assistance and mentorship that is tailored to individual cases at all levels, CGRS
5 disseminates broadly applicable information on asylum topics through its website,
6 <http://cgrs.uchastings.edu>, and social media, as well as other sources such as reports and practice
7 advisories and through webinars and in-person trainings. CGRS annually trains hundreds of
8 immigration attorneys, pro bono attorneys, and others interested in asylum law topics.

9 12. Plaintiff Community Legal Services in East Palo Alto (CLSEPA) provides legal
10 assistance to low-income individuals and families in East Palo Alto and surrounding communities.
11 Its immigration law practice provides direct legal representation to hundreds of adults and children
12 each year. It has played a key role in responding to the needs that have arisen in connection with
13 the expedited dockets for unaccompanied minors and families who recently arrived in the United
14 States and have cases pending before the San Francisco Immigration Court. In addition to its
15 provision of direct legal services to children and families on the expedited dockets of the San
16 Francisco Immigration Court, CLSEPA helps staff the “Attorney of the Day” (AOD) program
17 through the Bar Association of San Francisco, which involves having a pro bono attorney or team of
18 attorneys in the courtroom for master calendar hearings, including in particular those conducted for
19 the expedited dockets. Among other tasks, AODs assist unrepresented individuals in seeking
20 continuances to allow time to secure counsel and prepare their cases for presentation to the
21 immigration court. CLSEPA is also involved in training other attorneys to serve as AODs for the
22 expedited docket. CLSEPA maintains a website, <http://www.clsepa.org>, and additionally
23 disseminates information about immigration court matters and the expedited dockets for
24 unaccompanied minors and families through community presentations and through its partnerships
25 with the private pro bono bar. CLSEPA is located in East Palo Alto, California.

26 13. Plaintiff American Immigration Lawyers Association (AILA) is a non-partisan, not-
27 for-profit national association of approximately 14,000 attorneys and law professors who practice
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1 and teach U.S. immigration and nationality law. AILA member attorneys represent individual
2 noncitizens, U.S. families seeking permanent residence for close family members, and U.S.
3 businesses in immigration matters before the Executive Office for Immigration Review, including
4 the nation's immigration courts and the Board of Immigration Appeals, Department of Homeland
5 Security, State Department, Department of Labor, federal District and Circuit Courts, and the
6 Supreme Court. AILA provides continuing legal education, information, professional services, and
7 expertise through its 39 chapters and more than 50 national committees. AILA maintains a website,
8 www.aila.org, through which it disseminates a substantial amount of information to its members
9 and the larger public and also maintains a searchable online research library, known as InfoNet,
10 which contains thousands of current and historical immigration law and policy documents. Material
11 available through AILA's website includes reports and studies, information about immigration court
12 practices, practice advisories, agency guidance, agency liaison meeting notes, administrative agency
13 and court decisions, and a wealth of immigration data and statistics. AILA is headquartered in
14 Washington, DC, but maintains chapters across the country, including its Northern California
15 chapter.

16 14. Defendant Executive Office for Immigration Review (EOIR) is an agency of the
17 United States Department of Justice. EOIR is responsible for the adjudication of immigration cases
18 and interpretation and administration of federal immigration laws. Under delegated authority from
19 the Attorney General, EOIR conducts immigration court proceedings, appellate reviews, and
20 administrative hearings. EOIR's Office of the Chief Immigration Judge (OCIJ) encompasses and
21 provides overall program direction, articulates policies and procedures, and establishes priorities for
22 approximately 250 immigration judges who conduct administrative court proceedings, called
23 removal proceedings, in 58 immigration courts across the country. EOIR's appellate component, the
24 Board of Immigration Appeals (BIA), primarily decides appeals of immigration judge decisions. It
25 is the highest administrative tribunal for interpreting and applying U.S. immigration law.

26 15. Defendant United States Department of Justice, overseen by the Attorney General, is
27 charged with enforcing federal law. Its mission includes ensuring the fair and impartial

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1 administration of justice. Defendant EOIR is an agency of the Department of Justice. The Deputy
2 Attorney General within the Department of Justice is responsible for direct oversight of EOIR. The
3 Attorney General can overrule or modify decisions of the BIA and possesses hiring and firing
4 authority over EOIR employees.

5 FACTS

6 **I. *Background – Fast-Tracking for Vulnerable Children and Families Without Clear*** 7 ***Guidelines***

8 16. In recent years, as conditions in countries such as El Salvador, Guatemala, and
9 Honduras have declined and extreme violence has gone unchecked, the United States has seen a
10 significant increase in the number of children, young adults, families, and other vulnerable
11 individuals fleeing their home countries and seeking safety here. In Fiscal Year 2013, 38,833
12 unaccompanied children and 15,056 family units came into the custody of the U.S. Border Patrol.
13 *See* CBP BORDER SECURITY REPORT: FISCAL YEAR 2014 (hereafter 2014 CBP REPORT) at 1
14 (Dec. 19, 2014), available at
15 [http://www.cbp.gov/sites/default/files/documents/FINAL%20Draft%20CBP%20FY14%20Report_](http://www.cbp.gov/sites/default/files/documents/FINAL%20Draft%20CBP%20FY14%20Report_20141218.pdf)
16 [20141218.pdf](http://www.cbp.gov/sites/default/files/documents/FINAL%20Draft%20CBP%20FY14%20Report_20141218.pdf). In Fiscal Year 2014, these numbers were, respectively, 68,631 and 68,684, with a
17 substantial number of individuals turning themselves in to border officers; the year thus saw a 76%
18 increase in the number of unaccompanied children and a 356% increase in the number of families
19 coming into Border Patrol custody. *See* 2014 CBP Report at 1. In June 2014, the Obama
20 Administration recognized the increase in unaccompanied children coming across the U.S.-Mexico
21 Border as being an “urgent humanitarian situation.” *See* Presidential Memorandum – Response to
22 the Influx of Unaccompanied Alien Children Across the Southwest Border (June 2, 2014), available
23 at [http://www.whitehouse.gov/the-press-office/2014/06/02/presidential-memorandum-response-](http://www.whitehouse.gov/the-press-office/2014/06/02/presidential-memorandum-response-influx-unaccompanied-alien-children-acr)
24 [influx-unaccompanied-alien-children-acr](http://www.whitehouse.gov/the-press-office/2014/06/02/presidential-memorandum-response-influx-unaccompanied-alien-children-acr). The number of unaccompanied children and families
25 coming into custody along the southwest border subsequently declined from the historic highs of
26 FY 2014 (to 39,399 unaccompanied children and 38,639 family units, *see*
27 <http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children>), but even with this

1 drop, thousands more joined the ranks of those whom the government sought to deport. *See*
2 <http://www.wola.org/es/node/4999>

3 17. A substantial number of these children and parents (primarily mothers) have had
4 credible claims for protection under the laws of the United States. Nonetheless, as the media
5 increasingly focused its attention on the rising numbers, the Administration sought to stem the
6 arrival of migrants and send a message to those who might be considering making the trip or
7 supporting loved ones fleeing the violence and journeying to the United States.

8 18. Among the measures adopted to send a message to migrants was the institution of
9 expedited dockets to speed the adjudication and removal process for unaccompanied children and
10 families. On or about July 9, 2014, the Administration announced that it would re-prioritize the
11 immigration court dockets to focus on “recent border crossers.” *See* DEPARTMENT OF JUSTICE
12 ACTIONS TO ADDRESS THE INFLUX OF MIGRANTS CROSSING THE SOUTHWEST BORDER IN THE UNITED
13 STATES (July 9, 2014), available at

14 <http://www.justice.gov/iso/opa/resources/214201479112444959.pdf>. According to the announce-
15 ment, these “priorities” would include unaccompanied children who recently crossed the southern
16 border, families held in detention, families who recently crossed the border and were released on
17 “alternatives to detention,” and other detained cases. EOIR allocated resources to meet these new
18 priorities by reassigning immigration judges in immigration courts across the country from their
19 regular dockets to the new expedited dockets. At the same time, despite its already significant
20 backlog, EOIR indicated that cases falling outside these priorities could be rescheduled to make
21 room for the higher priority cases of recently arrived unaccompanied children and adults with
22 children, who were to be moved ahead in the line.

23 19. Under the policy of fast-tracking the cases of these vulnerable children and families,
24 unaccompanied children were scheduled to have their first immigration court hearing, known as a
25 master calendar hearing, within 21 days of the government filing the Notice to Appear (NTA), the
26 charging document that initiates removal proceedings, with the immigration court. For families on
27 the expedited docket, the policy requires that the first master calendar hearing be held within 28

1 days of the filing of the NTA. Juan Osuna, Director of EOIR, recently testified before Congress
2 that the time frame for scheduling initial hearings after the filing of NTAs will increase to 30-90
3 days (rather than 21-28 days), but this change has not yet been implemented.

4 20. Before the institution of the expedited children and family dockets, a non-detained
5 individual in immigration court proceedings would typically wait several months, and depending on
6 the court, possibly more than a year, before his or her first master calendar hearing. While there are
7 drawbacks to such a gap in time, the lengthier period afforded more time for children and parents
8 and guardians to seek legal representation, which is frequently very difficult for children and recent
9 arrivals to secure. Currently, the government's position is that neither adults nor children have the
10 right to appointed counsel in immigration court proceedings despite the high-stakes, adversarial
11 nature of those proceedings, the presence of an attorney representing the government in all cases,
12 and the significant barriers that noncitizens tend to face in effectively presenting their cases without
13 the assistance of counsel.

14 21. The first master calendar hearings for children and families on the expedited dockets
15 were held at the end of July 2014, a mere three weeks after EOIR first announced the plan to create
16 such dockets. Most children and families received notice of their hearing dates only days in
17 advance of their hearings, despite there often being long travel distances involved for children and
18 families to reach the court to which their cases were assigned. In some cases, notice was not
19 received prior to the hearing date.

20 22. Once the unaccompanied children and adults with children began appearing for
21 hearings on these dockets, immigration judges routinely granted only brief continuances before the
22 respondents were required to appear for their next hearing – a significant departure from what was
23 prior practice in non-detained cases. Often immigration judges granted only a few weeks of time for
24 unrepresented parents and unaccompanied children on the expedited dockets to find counsel in
25 between master calendar hearings. Immigration judges also indicated that they would only grant a
26 limited number of continuances for this purpose. While some judges have relaxed these time limits in
27 individual cases, other judges have continued to adhere strictly to a policy of granting only short

1 continuances. As time has passed, even in the minority of cases in which children and families have
2 been able to obtain counsel, immigration judges have required that cases proceed on an accelerated
3 schedule. In contrast, at a first master calendar hearing and even at many subsequent master calendar
4 hearings for non-expedited immigration court cases, continuances of several months have been, and
5 continue to be, common. Indeed, thousands who are not on the expedited dockets have to wait years
6 for their individual merits hearings. See [http://www.washingtontimes.com/news/2015/oct/21/surge-](http://www.washingtontimes.com/news/2015/oct/21/surge-illegal-children-families-accelerates/?page=all)
7 [illegal-children-families-accelerates/?page=all](http://www.washingtontimes.com/news/2015/oct/21/surge-illegal-children-families-accelerates/?page=all); [http://www.ibtimes.com/immigration-reform-2015-](http://www.ibtimes.com/immigration-reform-2015-immigrant-families-surg-ing-again-us-border-homeland-security-2043891)
8 [immigrant-families-surg-ing-again-us-border-homeland-security-2043891](http://www.ibtimes.com/immigration-reform-2015-immigrant-families-surg-ing-again-us-border-homeland-security-2043891); and
9 [http://www.migrationpolicy.org/research/unaccompanied-child-migrants-us-communities-](http://www.migrationpolicy.org/research/unaccompanied-child-migrants-us-communities-immigration-court-and-schools)
10 [immigration-court-and-schools](http://www.migrationpolicy.org/research/unaccompanied-child-migrants-us-communities-immigration-court-and-schools).

11 23. The volume and the compressed time schedule for cases on the expedited dockets
12 heightened already-serious concerns about due process for the unaccompanied children and families
13 on these dockets. Across the country, nonprofit immigration legal services providers and technical
14 support centers, such as Plaintiffs CGRS, CLSEPA, LCCR, and pro bono attorneys, many members
15 of Plaintiff AILA, scrambled to try to meet the escalating and urgent need for representation and for
16 support services for the affected population. Numerous media outlets published reports on the new
17 “rocket” dockets as they became a matter of serious public concern.

18 24. Despite the magnitude of the shift in fast-tracking the cases of recently arrived
19 unaccompanied children and families, the special vulnerabilities of the targeted population, and the
20 lack of adequate resources to meet their legal representation needs, EOIR made very little
21 information about the expedited dockets available to the public or the immigration attorneys seeking
22 to assist immigrants with representation. In particular, in the course of implementing these changes
23 nationwide, EOIR did not publicly release any information regarding specific standards, procedures,
24 and protocols that immigration judges were to employ for the expedited dockets. And as time went
25 on, attorneys and pro se individuals across the country received conflicting information from
26 different immigration judges as to the same questions, including in particular whether continuances
27 of ordinary length and multiple continuances could be granted for the purpose of finding an
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1 attorney. The responses to these questions appeared to vary depending on the day, the court, or the
2 individual judge presiding over the matter.

3 **II. *Plaintiffs' Request for Crucial Records Under the Freedom of Information Act***

4 25. Against this backdrop, on August 4, 2014, Plaintiffs first filed a request under the
5 Freedom of Information Act, 5 U.S.C. § 552, seeking EOIR records pertaining to the expedited
6 dockets; reflecting the urgency of the subject matter involved, the request sought expedited
7 processing by the agency. A copy of this request is attached as Exhibit (Exh.) A. On August 12,
8 2015, after not receiving a single responsive document in response to their August 2014 request or
9 even a determination as to whether responsive records would be produced, Plaintiffs filed a second
10 request, which expressly referenced and incorporated their first request and sought more current
11 information. A copy of Plaintiffs' second request is attached as Exh. B.

12 26. By their requests, Plaintiffs sought records pertaining to the operation of the
13 expedited dockets for unaccompanied children and families and in particular the various standards,
14 criteria, policies and procedures that would be employed for the dockets and the individuals with
15 cases assigned to the dockets. For example, Plaintiffs requested records concerning “[s]tandards
16 and processes for explaining the removal procedure to unaccompanied children” and “[s]tandards
17 and procedures regarding removal proceedings for unaccompanied children . . . under the age of
18 10.” Request, Exh. A. at 2; Exh. B at 3-4. Plaintiffs also sought records reflecting the number of
19 days that would be allowed between first master calendar hearings and continued master calendar
20 hearings and those addressing “[a]ny cap on the number of continuances that will be permitted to
21 secure legal counsel after one continuance has been granted.” Exh. A at 3; Exh. B at 4. The
22 requests also sought records pertaining to guidelines and standards for the administrative closure of
23 cases on the expedited docket as well as for the issuance of *in absentia* removal orders, among other
24 matters directly related to the expedited dockets, such as the location of the immigration courts
25 participating in the expedited dockets. Exh. A at 2-3; Exh. B at 4.

26 27. Plaintiffs notified Defendant EOIR that disclosure of the requested information “will
27 contribute significantly to public understanding of government operations and activities related to
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1 removal processing of unaccompanied minor[s] and families in removal proceedings.” Exh. A. at 4;
2 Exh. B at 5.

3 28. Plaintiffs in their second request further notified Defendant EOIR that the “need for
4 such information remains extremely high for these individuals and attorneys and other legal
5 representatives who seek to assist them. Indeed, thousands on these dockets have been ordered
6 removed while policies and procedures have been left unclear and basic procedural safeguards have
7 not been in place. The larger public also continues to have a substantial interest in these dockets
8 and in transparency and accountability for their manner of operation and their impact.” Exh. B at
9 1-2 (citations omitted). Because of this ongoing interest, the second request underscored the need
10 for a timely response by Defendant EOIR.

11 29. Plaintiffs also sought a waiver of fees associated with their request. Exh. A at 4-6;
12 Exh. B at 5.

13 30. Plaintiffs have established their entitlement to a fee waiver as a matter of law.

14 **III. Defendant’s Failure To Timely Respond to Plaintiffs’ FOIA Requests**

15 31. To ensure government transparency and accountability, the Freedom of Information
16 Act imposes several statutory duties upon government agencies. After receiving a FOIA request
17 with a request for expedited processing, an agency must make a “determination of whether to
18 provide expedited processing” and provide “notice of the determination” to the requestor “within 10
19 days after the date of the request.” 5 U.S.C. § 552(a)(6)(E)(ii)(I). If the agency grants the request
20 for expedited processing, it is to “process” it “as soon as practicable.” *Id.* § 552(a)(6)(E)(ii)(II). *In*
21 *all cases*, expedited or not, the agency must make a “determin[ation] . . . whether to comply” with
22 the request within 20 days, *id.* § 552(a)(6)(A)(i), and make the responsive records “promptly
23 available” thereafter. *Citizens for Responsibility & Ethics in Wash. v. FEC*, 711 F.3d 180, 188 (D.C.
24 Cir. 2012). A ten-day extension of the 20-day statutory time period for responding to non-expedited
25 requests is permitted in “unusual circumstances.” 5 U.S.C. § 552(a)(6)(B). In general, records are
26 made “promptly available” when they are produced “within days or a few weeks of a
27 ‘determination,’ not months or years.” 711 F.3d at 189.

1 32. Defendants here have failed to comply with its fundamental obligations under the
2 Act. Of greatest import, Defendants did not issue a “determination” within 20 days of the initial
3 August 4, 2014 request, nor did it produce any responsive records despite the passage of more than
4 a year after filing the initial request.

5 33. Plaintiffs’ second request, filed with Defendant EOIR on August 12, 2015, has
6 produced little action and yielded negligible records. Defendants acknowledged receipt of
7 Plaintiffs’ August 12, 2015 FOIA request in a letter dated August 24, 2015, a copy of which is
8 attached hereto as Exhibit C. The acknowledgement letter explained that the fee waiver request and
9 expedite request would be addressed in a separate letter and that Plaintiffs’ request had been
10 assigned to the “complex track” that would “necessarily take longer” than the one and a half months
11 that it normally takes to respond to simple requests. Exh. C. The letter advised Plaintiffs that
12 Defendant EOIR was extending the 20-day statutory time period for responding by ten days due to
13 “unusual circumstances.” Specifically, Defendant EOIR noted that Plaintiffs’ request “either
14 requires the collection of records from field offices, or involves a search for numerous documents
15 that will necessitate a thorough and wide-range search of records at headquarters.” Exh. C.

16 34. On September 2, 2015, a second letter, attached hereto as Exhibit D, was sent to
17 Plaintiffs and provided additional information on the EOIR FOIA processing tracks, but failed to
18 provide any information or decision on Plaintiff’s fee waiver request. This second letter informed
19 Plaintiffs that their request was placed in Track three, which is reserved “for those requests which
20 involve voluminous records and for which lengthy or numerous consultations are required, or those
21 requests which may involve sensitive records.” Exh. D. The letter stated that by virtue of its Track
22 three designation, Defendant EOIR was extending the 20 day statutory time period by an additional
23 10 working days due to “unusual circumstances.” Finally, the letter advised Plaintiffs that Track
24 three requests “generally take 6 months to one year for EOIR to process, and noted that Defendant
25 EOIR would contact Plaintiffs regarding their willingness to modify or narrow the scope of the
26 request, which “may result in your request being processed sooner.” Exh. D.

1 dramatically faster schedule than is typical, even though the types of claims involved can require
2 substantial time and resources to develop.

3 38. The disconnect between Defendants' limited statements regarding the expedited
4 dockets and the manner in which these dockets have actually operated, coupled with Defendants'
5 failure and refusal to produce records responsive to Plaintiffs' FOIA requests, have made it
6 extraordinarily difficult for attorneys to plan and manage their representation of children and
7 families on these dockets, to litigate cases in a manner appropriate for their individual
8 circumstances, and to educate and counsel clients about their proceedings. Plaintiffs in particular
9 have been hamstrung in their ability to provide the information, guidance, training, and other
10 technical assistance they would be able to afford to their respective members, pro bono partners,
11 clients, and the larger public if Defendants were to produce the policies, standards, guidelines, and
12 related records Plaintiffs have requested.

13 39. As confusion, uncertainty, and concerns about the expedited dockets have persisted,
14 more than 50 organizations sent a letter, dated February 9, 2015, to the Director of EOIR, Assistant
15 Secretary of Homeland Security, and Acting Director of the Administration for Children and
16 Families. *See* Letter to Juan Osuna, Director of the Executive Office for Immigration Review,
17 Sarah Saldaña, Assistant Secretary, Department of Homeland Security, and Ken Tota, Acting
18 Director, Administration for Children and Families, signed by 57 legal services providers, legal
19 advocacy organizations, and others (Feb. 9, 2015) (AILA Doc. No. 15030961). A copy of this letter
20 is attached as Exhibit F. Key among the concerns raised in this letter is the issuance of *in absentia*
21 removal orders against children—many of whom are unrepresented and may not have received
22 proper notice and who in any event may be powerless to get themselves to hearings. Records
23 pertaining to this subject were included among those requested under FOIA by Plaintiffs. *See*
24 Exhs. A-B.

25 40. Not surprisingly, with the advent of the expedited dockets, there has been a
26 substantial increase in the already disturbingly high rate at which unaccompanied children go
27 without legal representation. Children who face proceedings with an adult family member are also
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1 suffering, as are the adults in these expedited proceedings. Through June of 2015, there were
2 44,948 “priority” removal immigration court cases involving women with children. A third of these
3 cases were closed as of the end of June. For cases concluded, “the odds of being allowed to remain
4 in this country were increased more than fourteen-fold if women and children had representation.”
5 *See* TRAC, REPRESENTATION MAKES FOURTEEN-FOLD DIFFERENCE IN OUTCOME: IMMIGRATION
6 COURT “WOMEN WITH CHILDREN” CASES, *available at* <http://trac.syr.edu/immigration/reports/396/>
7 (July 15, 2015). The compressed timeline for the cases of adults with children on the expedited
8 docket and the problems thereby caused, along with the lack of clear guidelines, undoubtedly has
9 had an impact that for many may mean return to grave harm. The depressed rate of representation
10 occasioned by the fast-tracking of these cases alone has a devastating impact. Recent analysis of
11 these cases found that, through January 2015, “[w]ithout representation, women with children
12 almost never prevail even after they are able to demonstrate ‘credible fear’ [of persecution or torture
13 if] return[ed] to their own country—*only 1.5 percent were allowed to stay.* While few decisions
14 have occurred in represented cases, the win rate thus far has been 26.3 percent.” *See* TRAC,
15 REPRESENTATION IS KEY IN IMMIGRATION PROCEEDINGS INVOLVING WOMEN WITH CHILDREN,
16 *available at* <http://trac.syr.edu/immigration/reports/377/> (Feb. 18, 2015) (emphasis added).

17 41. Defendants’ continued failure to produce records responsive to Plaintiffs’ requests
18 violates the Freedom of Information Act. Defendants’ failure to produce these records in the
19 particularly serious circumstances associated with the expedited dockets at the heart of Plaintiffs’
20 requests, and after having had substantial time to comply, makes its violations of the Act all the
21 more egregious. Given the massive re-direction of resources to institute the expedited dockets, their
22 operation across the country, their scope, and the patterns of problems seen across jurisdictions,
23 there simply have to be records of the sort that Plaintiffs have requested and not received in
24 response to their long-pending FOIA requests. And if such records do not exist despite the
25 nationwide scale of Defendants’ program and the grave stakes involved, then this too the public
26 deserves to know. The interest of attorneys and the larger public in better understanding the
27 expedited dockets and their impact on vulnerable immigrant families and unaccompanied children

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1 remains high, and media outlets continue to cover the subject. *See*
2 <http://www.unhcr.org/5630f24c6.html>; [http://www.theguardian.com/world/2015/oct/28/refugee-](http://www.theguardian.com/world/2015/oct/28/refugee-crisis-grows-in-latin-america-women-children)
3 [crisis-grows-in-latin-america-women-children](http://www.theguardian.com/world/2015/oct/13/mexico-central-american-migrants-journey-crackdown);
4 [http://www.theguardian.com/world/2015/oct/13/mexico-central-american-migrants-journey-](http://www.theguardian.com/world/2015/oct/13/mexico-central-american-migrants-journey-crackdown)
5 [crackdown](http://www.nytimes.com/2015/10/07/world/americas/honduras-el-salvador-guatemala-mexico-us-child-migrants.html?_r=1); [http://www.nytimes.com/2015/10/07/world/americas/honduras-el-salvador-guatemala-](http://www.nytimes.com/2015/10/07/world/americas/honduras-el-salvador-guatemala-mexico-us-child-migrants.html?_r=1)
6 [mexico-us-child-migrants.html?_r=1](http://www.npr.org/sections/goatsandsoda/2015/10/05/445985671/never-leave-your-house-survival-strategies-for-el-salvador-s-15-girls);
7 [http://www.npr.org/sections/goatsandsoda/2015/10/05/445985671/never-leave-your-house-survival-](http://www.npr.org/sections/goatsandsoda/2015/10/05/445985671/never-leave-your-house-survival-strategies-for-el-salvador-s-15-girls)
8 [strategies-for-el-salvador-s-15-girls](http://www.npr.org/sections/goatsandsoda/2015/10/05/445985671/never-leave-your-house-survival-strategies-for-el-salvador-s-15-girls). Light cannot be shed on the policies and protocols for these
9 dockets in the absence of the determination and production required under FOIA. Defendants’
10 continuing failure to comply with the Act deprives Plaintiffs of the ability to inform the public of a
11 matter of exceptional public importance as well as the ability to provide crucial information about
12 the expedited dockets to legal representatives and to the unaccompanied children and parents whose
13 lives are most directly impacted by the dockets and yet-undisclosed policies and practices of the
14 nation’s immigration courts. Plaintiffs accordingly seek necessary relief from this Court.

15 **CLAIMS FOR RELIEF**

16 **First Claim**

17 Failure To Determine Whether To Comply with the Request in Violation of FOIA

- 18 1. Plaintiffs repeat and incorporate all facts in paragraphs 1 through 41 as though set
19 forth fully herein.
- 20 2. Defendants have a statutory obligation to determine whether they will comply with
21 the Request and to communicate that determination to Plaintiffs within twenty days of receiving the
22 Requests.
- 23 3. Defendants’ failure to make such a determination and/or to communicate it to
24 Plaintiffs violates FOIA and Defendants’ own regulations. 5 U.S.C. § 552 (a)(6)(E)(iii); 28 C.F.R.
25 § 16.5(d)(4).

26 **Second Claim**

27 Improper Withholding of Agency Records in Violation of FOIA

1 4. Plaintiffs repeat and incorporate all facts in paragraphs 1 through 41 as though set
2 forth fully herein.

3 5. Defendants have failed to produce the vast majority of records in response to
4 Plaintiffs' FOIA requests.

5 6. Defendants' failure to produce these records violates their statutory obligation to
6 make requested records "promptly" available to the public. 5 U.S.C. § 552(a).

7 **Third Claim**

8 Failure To Conduct A Reasonable Search

9 7. Plaintiffs repeat and reallege all facts in paragraphs 1 through 41 as though set forth
10 fully herein.

11 8. Defendants have failed to make a reasonable effort to search for records sought by
12 Plaintiffs' requests, and that failure violates FOIA, 5 U.S.C. 552(a)(6)(A) and corresponding
13 regulations.

14 **Fourth Claim**

15 Failure To Grant A Fee Waiver

16 9. Plaintiffs repeat and reallege all facts in paragraphs 1 through 41 as though set forth
17 fully herein.

18 10. Defendants have failed to rule on Plaintiffs' August, 2015 fee waiver request.

19 11. Defendants' failure to rule on Plaintiffs' requests for a fee waiver violates their
20 statutory obligation to do so. 5 U.S.C. § 552(a)(4)(A)(iii).

21 12. Plaintiffs are entitled as a matter of law to a waiver of fees associated with searching,
22 duplicating, and making available for review the requested records.

23 13. Plaintiffs are further entitled to a fee waiver because of Defendants' failure to
24 comply with the FOIA. 5 U.S.C. § 552(a)(4)(A)(viii).

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiffs pray that this Court:
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