

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

JUDICIAL WATCH, INC.,	)	
425 Third Street SW, Suite 800	)	
Washington, DC 20024,	)	
	)	
Plaintiff,	)	
v.	)	Civil Action No.
	)	
U.S. DEPARTMENT OF	)	
HOMELAND SECURITY,	)	
Office of the General Counsel	)	
2707 Martin Luther King Jr. Avenue SE	)	
Mailstop 0485	)	
Washington, DC 20528-0485,	)	
	)	
Defendant.	)	
	)	

**COMPLAINT**

Plaintiff Judicial Watch, Inc. brings this action against Defendant U.S. Department of Homeland Security to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”). As grounds therefor, Plaintiff alleges as follows:

**JURISDICTION AND VENUE**

1. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.
2. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e).

**PARTIES**

3. Plaintiff Judicial Watch, Inc. is a not-for-profit, educational organization incorporated under the laws of the District of Columbia and headquartered at 425 Third Street SW, Suite 800, Washington, DC 20024. Plaintiff seeks to promote transparency, integrity, and accountability in government and fidelity to the rule of law. As part of its mission, Plaintiff regularly requests records from federal agencies pursuant to FOIA. Plaintiff analyzes the

agencies' responses and disseminates both its findings and the requested records to the American public to inform them about "what their government is up to."

4. Defendant U.S. Department of Homeland Security is an agency of the U.S. Government and is headquartered at 245 Murray Lane SW, Washington, DC 20528. Defendant has possession, custody, and control of records to which Plaintiff seeks access.

### **STATEMENT OF FACTS**

5. On March 18, 2021, Plaintiff served a FOIA request to the Department of Homeland Security (DHS) seeking access to the following records:

Records reflecting the number of enrollees in the Migrant Protection Program who have been charged with crimes after entering the United States under MPP, the nature of the charges, the disposition of the charges, and demographic data of those enrollees charged, such as age, sex, country of origin, etc.

The time frame of the request was identified as "Jan. 1, 2021 through the present."

6. By letter dated April 5, 2021, DHS acknowledged receiving Plaintiff's request on March 18, 2021. The letter advised Plaintiff that the request had been transferred to the FOIA offices of the following DHS components for processing: U.S. Customs and Border Protection (CBP), U.S. Citizenship and Immigrant Services (CIS), and U.S. Immigration and Customs Enforcement (ICE).

7. In subsequent communications, CBP, CIS, and ICE each acknowledged receiving Plaintiff's request on April 6, April 5, and April 28, 2021, respectively. CBP advised Plaintiff that the request had been assigned tracking number CBP-2021-049839. CIS advised Plaintiff that the request had been assigned tracking number COW2021001256, and ICE advised Plaintiff that the request had been assigned tracking number 2021-ICFO-34302. Each component invoked FOIA's 10-day extension of time provision for "unusual circumstances."

8. On April 14, 2021, CIS advised Plaintiff that it had located no records responsive to the request. Plaintiff does not challenge CIS's determination.

9. As of the date of this Complaint, CBP and ICE have failed to: (i) determine whether to comply with the request; (ii) notify Plaintiff of any such determination or the reasons therefor; (iii) advise Plaintiff of the right to appeal any adverse determination; or (iv) produce the requested records or otherwise demonstrate that the requested records are exempt from production.

**COUNT I**  
**(Violation of FOIA, 5 U.S.C. § 552)**

10. Plaintiff realleges paragraphs 1 through 9 as if fully stated herein.

11. Defendant's components CPB and ICE are in violation of FOIA and therefore Defendant is in violation of FOIA.

12. Plaintiff is being irreparably harmed by Defendant's violation of FOIA, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to comply with the law.

13. Plaintiff has no adequate remedy at law.

14. To trigger FOIA's administrative exhaustion requirement, CBP was required to make a final determination on Plaintiff's request by May 18, 2021 at the latest, and ICE was required to make a final determination on Plaintiff's request by June 10, 2021 at the latest.

15. Because Defendant failed to make a final determination on Plaintiff's request within the time limits set by FOIA, Plaintiff is deemed to have exhausted its administrative appeal remedies.

WHEREFORE, Plaintiff respectfully requests that the Court: (1) order Defendant to search for any and all records responsive to Plaintiff's FOIA request and demonstrate that it

employed search methods reasonably calculated to uncover all records responsive to the request; (2) order Defendant to produce, by a date certain, any and all non-exempt records responsive to Plaintiff's FOIA request and a Vaughn index of any responsive records withheld under claim of exemption; (3) enjoin Defendant from continuing to withhold any and all non-exempt records responsive to Plaintiff's FOIA request; (4) grant Plaintiff an award of attorneys' fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and (5) grant Plaintiff such other relief as the Court deems just and proper.

Dated: July 16, 2021

Respectfully submitted,

/s/ Paul J. Orfanedes

Paul J. Orfanedes

D.C. Bar No. 429716

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