

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

AMERICAN CIVIL LIBERTIES UNION;  
AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION; AMERICAN ASSOCIATION  
OF UNIVERSITY PROFESSORS; PEN  
AMERICAN CENTER

Plaintiffs,

v.

DEPARTMENT OF STATE; DEPARTMENT  
OF HOMELAND SECURITY;  
DEPARTMENT OF JUSTICE; CENTRAL  
INTELLIGENCE AGENCY,

Defendants.

**COMPLAINT FOR INJUNCTIVE  
RELIEF**

Civ. Action No.

**COMPLAINT FOR INJUNCTIVE RELIEF**

**Preliminary Statement**

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for injunctive and other appropriate relief, seeking, principally, the immediate processing and release of agency records requested by plaintiffs American Civil Liberties Union and American Civil Liberties Union Foundation (collectively “ACLU”), American Association of University Professors (“AAUP”) and PEN American Center (“PEN”) from defendants Department of State (“DOS”), Department of Homeland Security (“DHS”), Department of Justice (“DOJ”) and Central Intelligence Agency (“CIA”).

2. In March 2005, plaintiff ACLU submitted a FOIA request (“March 2005 Request” or “Request”) seeking records concerning the exclusion of prominent non-citizen scholars and intellectuals from the United States because of their political views

and/or expressive activity. The March 2005 Request sought, among other things, records concerning the government's use and implementation of Section 411(a)(1)(A)(iii) of the USA PATRIOT Act, Pub. Law No. 107-56 ("Section 411"), a provision that authorizes the government to refuse admission to individuals who, in the government's view, "have used [their] position of prominence within any country to endorse or espouse terrorist activity, or to persuade others to support terrorist activity or a terrorist organization, in a way that the Secretary of State has determined undermines United States efforts to reduce or eliminate terrorist activities."

3. While Section 411 is ostensibly directed at those who support terrorism, plaintiffs believe that the government has invoked the provision to exclude and stigmatize prominent critics of U.S. foreign policy – individuals who may have never supported terrorism and in at least some cases have vocally opposed it. The exclusion of such individuals deprives Americans of the opportunity to engage in debate and dialogue with widely respected scholars and intellectuals and distorts public debate about matters of significant political importance. In addition, the government's use of its visa power to limit the range of ideas American citizens are allowed to hear violates rights protected by the First Amendment.

4. Plaintiffs are entitled to the records they seek. Although more than seven months have passed since plaintiffs filed the Request, only one defendant agency has produced any record in response, and that agency has produced only one record. There is no legal basis for defendants' refusal to respond to plaintiffs' March 2005 Request in a timely fashion, nor for their refusal to disclose the records sought.

5. Plaintiffs seek an injunction requiring defendant agencies and their components to process plaintiffs' March 2005 Request and to release records that have been unlawfully withheld. Plaintiffs also seek an order enjoining defendants from assessing fees for the processing of the Request.

#### **Jurisdiction and Venue**

6. This Court has subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(A)(vii) and 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. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

#### **Parties**

7. Plaintiff American Civil Liberties Union is a national, non-profit, nonpartisan, 501(c)(4) organization with over 400,000 members, dedicated to the constitutional principles of free speech, liberty and equality. The American Civil Liberties Union educates the public about government activity concerning civil liberties and about the civil liberties implications of pending and proposed state and federal legislation, provides analyses of such legislation, and lobbies legislators directly and through its members.

8. Plaintiff American Civil Liberties Union Foundation is a separate 501(c)(3) organization that provides legal representation free of charge to individuals and organizations in civil rights and civil liberties cases and educates the public about civil rights and civil liberties issues.

9. Plaintiff American Association of University Professors ("AAUP") is an organization of approximately 45,000 faculty members and research scholars in all academic disciplines, based in Washington, D.C. Founded in 1915, AAUP is committed

to the defense of academic freedom and the free exchange of ideas in scholarly and creative work throughout the world. The AAUP has long held that the free circulation of scholars and the unfettered search for knowledge is an inseparable part of academic freedom. To this end, the AAUP and its members regularly invite foreign scholars to speak in United States. Since September 11, 2001, AAUP has turned its attention to academic freedom in the wake of growing national security concerns and has advocated for the freedom to gain access to information and conduct research without the chilling effect of governmental oversight. Plaintiff AAUP joined the FOIA request of the ACLU by letter to defendants dated November 7, 2005.

10. Plaintiff PEN American Center (“PEN”) is an association of authors, editors and translators based in New York, New York, with approximately 2,900 members, which strives for the unimpeded flow of ideas and information throughout the world. PEN is the largest of the 141 centers of International PEN, the world’s oldest human rights organization and the oldest international literary organization. PEN sponsors public literary programs and educational forums, including PEN World Voices, and regularly invites writers from around the world to participate in those events. As part of its Core Freedoms Campaign, PEN seeks to protect public access to both governmental information and a full range of voices from the United States and around the world. Plaintiff PEN American Center joined the FOIA request of the ACLU by letter to defendants dated November 1, 2005.

11. Defendant Department of State (“DOS”) is a Department of the

Executive Branch of the United States government. The DOS is an agency within the meaning of 5 U.S.C. § 552(f)(1). The components of DOS include the Office of Visa Services.

12. Defendant Department of Homeland Security (“DHS”) is a Department of the Executive Branch of the United States government. The DHS is an agency within the meaning of 5 U.S.C. § 552(f)(1). The components of DHS include the U.S. Citizenship and Immigration Services and the U.S. Customs and Border Protection.

13. Defendant Department of Justice (“DOJ”) is a Department of the Executive Branch of the United States government. The DOJ is an agency within the meaning of 5 U.S.C. § 552(f)(1). The components of DOJ include the Federal Bureau of Investigation (“FBI”), the Office of the Attorney General and the Office of the Associate Attorney General.

14. Defendant Central Intelligence Agency (“CIA”) is a Department of the Executive Branch of the United States government. The CIA is an agency within the meaning of 5 U.S.C. § 552(f)(1).

### **The March 2005 Request**

15. The March 2005 Request sought records concerning the exclusion of prominent non-citizen scholars and intellectuals from the United States based on their political views and/or expressive activity. The March 2005 Request specifically sought: (1) records concerning the government’s use of Section 411; and (2) records concerning the use of laws other than Section 411 to exclude individuals from the U.S. because of their alleged political views and/or expressive or associational activity.

16. Plaintiffs requested a limitation of processing fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) and corresponding agency regulations based on plaintiffs' status as a representative of the news media.

17. Plaintiffs also requested a waiver of processing fees pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and corresponding agency regulations on the grounds that disclosure would be in the public interest as it would contribute to public understanding of the operations and activities of the government.

18. Plaintiffs filed the Request in the wake of reports suggesting that defendants have adopted a policy or practice of denying entry to prominent non-citizen scholars and intellectuals who are critics of U.S. foreign policy.

19. In August 2004, Defendants revoked the visa of Professor Tariq Ramadan, a prominent Swiss intellectual who is widely regarded as a leading scholar of the Muslim world. As a result, Professor Ramadan, who in the past had traveled frequently to the United States to address U.S. audiences, was forced to abandon a teaching position at the University of Notre Dame. *See, e.g.,* Peter Slevin, *Lacking Visa, Islamic Scholar Resigns Post at Notre Dame*, WASH. POST, Dec. 15, 2004, at A6 (reporting that Professor Ramadan was excluded under "an anti-terrorism law" and that the details behind the visa revocation "remain confidential"); Caryle Murphy, *For Muslims, A Beleaguered Feeling*, WASH. POST, Oct. 15, 2004, at B1 (reporting on Professor Ramadan's visa revocation); Don Wycliff, *Constricting Our Freedoms*, CHICAGO TRIB., Oct. 14, 2004, at 27 (criticizing DHS's decision to exclude Professor Ramadan without sufficient explanation); Doug Cassel, *Peace of Mind's Price*, CHICAGO TRIB., Oct. 10, 2004, at 1 (reporting that the U.S. government had "denied a visa to Europe's leading moderate

Muslim intellectual”); Deborah Sontag, *Mystery of the Islamic Scholar Who Was Barred By the U.S.*, N.Y. TIMES, Oct. 6, 2004 (reporting on Professor Ramadan’s visa revocation); Associated Press, *Muslim Scheduled to Teach at Notre Dame Has Visa Revoked*, L.A. TIMES, Aug. 25, 2004, at A23 (same).

20. While Professor Ramadan is a prominent critic of some U.S. policies, his opposition to terrorism is well-documented. *See, e.g.*, Andrew Hussey, *Not a Fanatic After All?*, NEW STATESMAN, Sept. 12, 2005 (reporting Professor Ramadan’s “unequivocal . . . condemnation of the London bombings,” and his condemnation of suicide bombings generally); Tariq Ramadan, *Too Scary for the Classroom?*, N.Y. TIMES, Sept. 1, 2004 (Op-Ed in which Professor Ramadan responded to his visa revocation by emphasizing that he has consistently “insist[ed] that [his] fellow Muslims unequivocally condemn radical views and acts of extremism,” called on Muslims to condemn the 9/11 attacks, and taught that “terrorists betray[ ] the Islamic message”). Indeed, Professor Ramadan was recently invited to sit on the British Government’s task force committed to studying and eradicating the roots of Islamic extremism in Britain. *See* Martin Bright, *Revealed: MI6 Plan to Infiltrate Extremists*, THE OBSERVER, Sept. 4, 2005; Tom Hundley, *Barred in U.S., Scholar May Join British Panel*, CHICAGO TRIB., Sept. 1, 2005; Vikram Dodd, *Blair Backs Banned Muslim Scholar*, THE GUARDIAN, Aug. 31, 2005.

21. Although Professor Ramadan’s opposition to terrorism is clear, news reports indicate that defendants revoked Professor Ramadan’s visa under Section 411, which authorizes the government to refuse admission to individuals who, in the government’s view, “have used [their] position of prominence within any country to endorse or espouse

terrorist activity, or to persuade others to support terrorist activity or a terrorist organization, in a way that the Secretary of State has determined undermines United States efforts to reduce or eliminate terrorist activities.” Associated Press, *Muslim Scheduled to Teach at Notre Dame Has Visa Revoked*, L.A. TIMES, Aug. 25, 2004, at A23 (quoting a DHS spokesman as saying that Ramadan’s “visa was revoked because of a section of federal law that applies to aliens who have used a ‘position of prominence within any country to endorse or espouse terrorist activity.’”); see also “Nation in Brief,” WASH. POST, Aug. 25, 2004, at A18 (reporting the same DHS statement); Stephanie Nebehay, *Islamic Scholar, Visa Withheld, Gives Up U.S. Post*, REUTERS NEWS, Dec. 14, 2004 (reporting that the U.S. government had invoked the Patriot Act in revoking Professor Ramadan’s visa); Caryle Murphy, *For Muslims, A Beleaguered Feeling*, WASH. POST, Oct. 15, 2004, at B1 (reporting that Professor Ramadan’s visa was revoked under Section 411 of the Patriot Act).

22. In January 2005, defendants denied a visa to Professor Dora Maria Tellez, a prominent Nicaraguan scholar and former government official. As a result, Professor Tellez was forced to abandon a teaching position at Harvard University. See, e.g., *Overkill Scholar Not a Terrorist*, CHARLESTON GAZETTE, Mar. 23, 2005, at 4A (reporting on the exclusion of Professor Tellez); Kathleen Burge, *Nicaraguan Bows Out of Teaching Post*, BOSTON GLOBE, Mar. 8, 2005, at B2 (reporting that the U.S. denied a visa to Professor Tellez and that she was no longer scheduled to teach at Harvard in the spring); Duncan Campbell, *US Bars Nicaragua Heroine as ‘Terrorist’*, THE GUARDIAN, Mar. 4, 2005 (reporting that the U.S. denied a visa to Professor Tellez).



23. News reports indicate that defendants denied Professor Tellez's visa on the grounds that she has engaged in terrorist activity. *See, e.g.,* Duncan Campbell, *US Bars Nicaragua Heroine as 'Terrorist'*, THE GUARDIAN, Mar. 4, 2005 (reporting a State Department spokesperson confirmed that Professor Tellez had been denied a visa under terrorism exclusion provisions); Tim Dowling, *They Shall Not Pass*, THE GUARDIAN, Mar. 23, 2005, at 6 (reporting Professor Tellez's visa was denied because of past involvement with "terrorist acts"). News reports have suggested, however, that defendants' reliance on terrorism laws was pretextual and that defendants may have denied Professor Tellez's visa because of her perceived political views. *See* Hugh Dellios, *Sandinista Scholar: A Hero to Some, A Terrorist to Others*, CHICAGO TRIB., Jun. 5, 2005 (reporting on Professor Tellez's role in Nicaraguan politics and her frequent visits to the United States); Duncan Campbell, *US Bars Nicaragua Heroine as 'Terrorist'*, THE GUARDIAN, Mar. 4, 2005 (reporting Professor Tellez's role in the overthrow of Somoza and her past visits to the United States).

24. Over the past four years, numerous other non-citizens have been excluded from the United States for what appear to be ideological reasons. *See, e.g.,* Nina Bernstein, *U.S. Denies Cuban Scholars Entry to Attend a Meeting*, N.Y. TIMES, Oct. 1, 2004, at A15 (reporting that among those Cubans denied entry to the U.S. were "poets, sociologists, art historians and economists, among them a professor who was a visiting scholar at Harvard last fall and others who [had] frequently lectured at leading American universities"); Shelley Murphy, *Pop Singer is Forced to Leave U.S.*, BOSTON GLOBE, Sept. 23, 2004, at B1 (reporting on the exclusion of Yusuf Islam); Andrea Rodriguez, *Cuban Musicians Nominated for Grammy Awards Denied U.S. Visas*, ASSOCIATED

PRESS, Feb. 5, 2004 (reporting on the exclusion of five Cuban acts nominated for Grammy Awards); Burton Bollag, *Closing the Gates: A Cuban Scholar Shut Out*, CHRONICLE OF HIGHER EDUCATION, Apr. 11, 2003, at p.16 (discussing the exclusion of Cuban scholars from a Latin American Studies Association International Congress conference in Dallas).

25. Plaintiffs believe that the exclusion of Professors Ramadan and Tellez is part of a broader practice of using immigration laws to exclude and stigmatize critics of U.S. foreign policies.

26. The practice appears to have continued since the March 2005 Request was filed, as reports indicate that defendants excluded from the country a number of prominent non-citizens who are critics of U.S. policy, and particularly critics of the U.S. “war on terror.” *See, e.g.*, Andrew Buncombe, *Pandora in America*, THE INDEPENDENT, Apr. 4, 2005, at 15 (reporting the exclusion of prominent human rights lawyer Fernando Rodriguez and noting his criticism of the U.S.’s increasing use of the “so-called war on terror to demonise indigenous groups who are critical of U.S. promoted free-market and coca-eradication policies”); Global News Wire, *The Maulana and U.S. Intelligence*, INDIAN EXPRESS, Apr. 1, 2005 (reporting that the U.S. had denied entry to Kalbe Sadiq, a well-respected Shia cleric); Reed Lindsay, *Bolivian Human Rights Lawyer Barred From Entering U.S.*, WASH. TIMES, Mar. 30, 2005 (reporting the exclusion of Fernando Rodriguez and noting suggestion by some Bolivians that the exclusion was motivated by Rodriguez’s political ideology); *Muslim Panel Sore Over Denial of U.S. Entry to Cleric*, INDO-ASIAN NEWS SERVICE, Mar. 27, 2005 (reporting the exclusion of Kalbe Sadiq and stating that some believed that the denial of entry “was probably prompted because of

Kalbe Sadiq's strong views against the U.S. attack on Iraq and its people" and noted that Sadiq had "also been critical of the U.S. bombing of Shia religious towns like Najaf."); *Muslim Personal Law Board Functionary Deported*, WeeklyVoice.com, Mar. 26, 2005 (reporting the exclusion of Kalbe Sadiq); Global News Wire, *AIMPLB Member Quizzed at Chicago Airport, Two Others Deported*, THE STATESMAN (India), Mar. 25, 2005 (same); *Sadiq Issue Part of a Bigger U.S. Game Plan*, HINDUSTAN TIMES, Mar. 24, 2005 (same); *Shia Scholar Detained in U.S., Informs Son*, HINDUSTAN TIMES, Mar. 25, 2005 (same).

27. Indeed, members of the House Judiciary Committee recently voiced concern about the possible abuse of Section 411 of Patriot Act to exclude prominent foreign scholars who do not support or endorse terrorism:

Section 411 of the PATRIOT Act allows the government to revoke visas. It expanded the reasons for inadmissibility to include association with a designated terror group, whether the person actually knew that the people or group he was associating with were linked to terrorism. We are concerned that this section applies retroactively, and has been abused against peaceful alien visitors years after their so-called association with terrorists:

For example, Professor Tariq Ramadan's visa to teach at Notre Dame was revoked upon charges that he supported terrorism; Notre Dame, Scotland Yard, and Swiss intelligence all agree the charges were groundless. Similarly, Nicaraguan Professor Dora Maria Tellez was denied her visa to teach at Harvard due to her association with the Sandinistas in the 1980s, where she helped to overthrow a brutal dictator whom the U.S. supported.

H.R. Rep. 109-174(1) (July 18, 2005) (dissenting views) (footnotes omitted).

### Agency Responses

#### **Department of State**

28. More than seven months have elapsed and except for one document released and one withheld, neither DOS nor its components has made any determination

concerning the withholding or release of documents in response to plaintiffs' March 2005 Request, nor produced any records in response to the Request.

29. The DOS Requester Communications Branch granted plaintiffs' request for a waiver of processing fees by letter dated March 31, 2005.

30. On May 13, 2005, DOS' Office of Information Programs and Services informed plaintiffs that a search for responsive records had been initiated in three separate DOS record systems: Central Foreign Policy Records ("CFPR"), Office of the Legal Adviser, and Office of Visa Services. The May 13, 2005 letter further informed plaintiffs that the search for records in the CFPR system was complete and had yielded two responsive documents. One responsive document was released to the ACLU in full and attached to the May 13, 2005 letter. The second responsive document was withheld in its entirety.

31. On July 8, 2005, plaintiffs timely appealed the withholding of the CFPR document.

32. Plaintiffs received a letter dated July 13, 2005, acknowledging DOS' receipt of the appeal. The statutory deadline for deciding the appeal has passed but DOS has not acted on the appeal.

#### **Department of Justice and the Federal Bureau of Investigation**

33. More than seven months have elapsed and neither DOJ nor its components has produced any records in response to plaintiffs' March 2005 Request.

34. By letter dated August 16, 2005, the DOJ Office of Information and Privacy informed plaintiffs that a search of records located in the Offices of the Attorney General and Associate Attorney General yielded no responsive documents. On September 8,

2005, plaintiffs timely appealed the adequacy of that search and DOJ's failure to produce responsive documents. By letter dated October 3, 2005, the DOJ Office of Information and Privacy denied plaintiffs' appeal.

35. By letter dated July 7, 2005, the FBI informed plaintiffs that a search of various records systems yielded no responsive documents. On September 8, 2005, plaintiffs timely appealed the adequacy of those searches and the FBI's failure to produce responsive documents. The statutory deadline for deciding the appeal has passed but the FBI has not acted on the appeal.

36. Neither DOJ nor the FBI has considered plaintiffs' request for a waiver of processing fees. By letter dated March 24, 2005, the DOJ Office of Information and Privacy stated that it would do so at some unspecified point in the future. By letter dated June 8, 2005, the FBI Record/Information Dissemination Section stated that it would do so once the "records search is completed."

#### **Central Intelligence Agency**

37. More than seven months have elapsed and neither the CIA nor its components has made any determination concerning the withholding or release of documents in response to plaintiffs' March 2005 Request, nor produced any records in response the Request.

38. By letter dated April 1, 2005, the CIA Information and Privacy Coordinator ("CIA IPC") denied plaintiffs' request for a limitation of processing fees on the basis that the ACLU is not a "representative of the news media."

39. In the same letter, the CIA IPC also denied plaintiffs' request for a waiver of

processing fees because release of the requested information “would not be likely to contribute significantly to public understanding of the operations and activities of the United States Government.”

40. On May 11, 2005, plaintiffs timely appealed the CIA ICP’s determinations with regard to the limitation and waiver of processing fees to the CIA Agency Release Panel. By letter dated July 5, 2005, the CIA Agency Release Panel denied plaintiffs’ appeal.

#### **Department of Homeland Security**

41. More than seven months have elapsed and neither DHS nor its components has made any determination concerning the withholding or release of documents in response to plaintiffs’ March 2005 Request, nor produced any records in response to the Request.

42. Neither the Department of Homeland Security, nor its components to which plaintiffs’ request was referred, have responded to plaintiffs’ request for a limitation of processing fees, or waiver of processing fees.

#### **Plaintiffs’ Entitlement to a Limitation of Processing Fees**

43. The ACLU is entitled to a limitation of processing fees because the records sought by the March 2005 Request are “not sought for commercial use and the request is made by . . . a representative of the news media.” 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 22 C.F.R. § 171.15(c) (DOS); 6 C.F.R. § 5.11(d) (DHS); 28 C.F.R. §§ 16.11(c)(1)(i), 16.11(d)(1) (DOJ); 32 C.F.R. § 1900.13(i)(2) (CIA).

44. The ACLU is a representative of the news media for the purposes of FOIA

because it is an entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience. The ACLU publishes newsletters, news briefs, right-to know documents, and other educational and informational materials that are routinely and widely disseminated to the public through a variety of channels. Through these and other channels, the ACLU routinely summarizes, explains and disseminates information obtained through the FOIA. *See, e.g.*, [www.aclu.org/patriotfoia](http://www.aclu.org/patriotfoia); [www.aclu.org/torturefoia](http://www.aclu.org/torturefoia); [www.aclu.org/spyfiles](http://www.aclu.org/spyfiles). The ACLU provides all of this information at no cost to the public.

#### **Plaintiffs' Entitlement to a Waiver of Processing Fees**

45. The ACLU is entitled to a waiver of processing fees because the disclosure of the information sought by this Request “is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government,” and disclosure is not in the ACLU’s “commercial interest.” 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 22 C.F.R. § 171.17(a) (DOS); 6 C.F.R. §§5.11(k)(1) (DHS); 28 C.F.R. §§ 16.11(k)(1) (DOJ); 32 C.F.R. §1900.13(b)(2) (CIA). Disclosure of the requested information will further public understanding of the government’s use of its visa authority to deny visas to prominent individuals who are critics of U.S. policy. The government’s use of its visa authority in this manner, and any denial of a visa on the basis of an individual’s political views, statements, or associations, implicates the government’s core immigration function, the integrity of the political process, which depends on the free flow of ideas, and the potential infringement of core First Amendment rights.

46. Release of the requested records will also contribute significantly to the public's understanding of the government's use of a controversial Patriot Act. The release of such information is in the public interest because, although the Patriot Act is a matter of intense public and Congressional debate, the public and Congress have very little information about how the Act has been implemented. *See, e.g.,* Dana Priest, *Panel Questions Patriot Act Uses*, WASH. POST, Apr. 28, 2005, at A7 (quoting Senator Olympia J. Snowe (R-Maine) stating, "I think we need to have more public disclosure in examining and assessing [the Patriot Act's] impact."); *id.* (quoting Senator Ron Wyden (D-Ore.) stating, "We are to some extent doing oversight in the dark."); Eric Lichtblau, *Senator Faults Briefing on Antiterrorism Law*, N.Y. TIMES, Apr. 13, 2005, at A17 (reporting that Senator Arlen Specter (R-Pa) had complained that the Department of Justice (DOJ) refused to reveal specific information about the use of the Patriot Act, even in closed-door briefings to Congress); Eric Lichtblau, *Bush Aide Calls Criticism of Patriot Act Uninformed*, N.Y. TIMES, Oct. 27, 2004, at A18 (describing escalating debate between government officials about provisions of the Patriot Act); Tom Maertens, *Patriot Act Ineffective and Needlessly Tosses Aside Constitutional Protections*, ST. PAUL PIONEER PRESS (MINN.), Aug. 19, 2004, at 15A (reporting that polls show "few Americans know what is in the act or that it vastly increases the government's power over American citizens"); Shaun Waterman, *Sept. 11 Commission Wants New Liberties Watchdog*, UNITED PRESS INTERNATIONAL, July 22, 2004; Editorial, *More Patriot Act Games*, Wash. Post, July 18, 2004, at B6 (criticizing Justice Department report on implementation of Patriot Act for not "offer[ing] the sort of systematic data on the



frequency of using the new powers that will be necessary to assess the act comprehensively”).

Plaintiffs do not seek the requested information for commercial reasons. The ACLU summarizes, explains and disseminates the information it gathers through FOIA at no cost to the public.

### **CAUSES OF ACTION**

#### **First Cause of Action:** **Violation of the FOIA for Failure to Make Promptly Available the** **Records Sought by Plaintiffs’ Request**

47. Defendants’ failure to make promptly available the records sought by plaintiffs’ request violates the FOIA, 5 U.S.C. § 552(a)(3)(A), and the corresponding agency regulations.

#### **Second Cause of Action:** **Violation of the FOIA for Failure Timely to** **Respond to Plaintiffs’ Request**

48. Defendants’ failure timely to respond to plaintiffs’ request violates the FOIA, 5 U.S.C. § 552(a)(6)(A), and the corresponding agency regulations.

#### **Third Cause of Action** **Violation of FOIA for Failure** **to Make a Reasonable Effort to Search for Records**

49. Defendants’ failure to make a reasonable effort to search for records responsive to the March 2005 Request violates the FOIA, 5 U.S.C. § 552(a)(3)(C), and the corresponding agency regulations.

#### **Fourth Cause of Action** **Violation of FOIA for Failure** **to Limit Processing Fees**

50. Defendants CIA, DOJ, FBI, and DHS’ failure to grant plaintiffs’ request for

a limitation of processing fees violates the FOIA, 5 U.S.C. § 552(a)(4)(A)(ii)(II), and the corresponding agency regulations.

Fifth Cause of Action  
Violation of FOIA for Failure to  
Waive Processing Fees

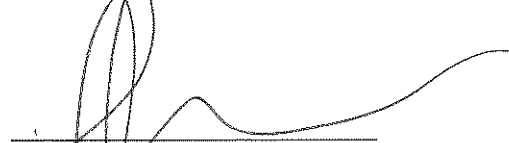
51. Defendants CIA, DOJ, FBI, and DHS' failure to grant plaintiffs' request for a waiver of processing fees violates the FOIA, 5 U.S.C. § 552(a)(4)(A)(iii), and the corresponding agency regulations.

**Requested Relief**

WHEREFORE, Plaintiffs pray that this Court:

1. Order defendants to immediately conduct a thorough search for the requested;
  2. Order defendants expeditiously to process all requested documents;
  3. Order defendants, upon completion of such processing, to disclose the requested records in their entirety and make copies available to plaintiffs;
  4. Enjoin defendants from charging plaintiffs fees for the processing of their request.
1. Award plaintiffs their costs and reasonable attorneys' fees incurred in this action; and
  2. Grant such other relief as the Court may deem just and proper.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'JAMEEL JAFFER', written over a horizontal line.

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