

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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CLEAR, AMERICAN CIVIL LIBERTIES UNION,
and AMERICAN CIVIL LIBERTIES FOUNDATION,

Plaintiffs,

-against -

UNITED STATES CUSTOMS AND BORDER
PROTECTION,

Defendant.

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**STIPULATION AND
ORDER OF DISMISSAL
AND FOR ATTORNEYS'
FEES AND COSTS**

Civil Action No. 19-CV-7079
(Reyes, M.J.)

WHEREAS, Plaintiffs CLEAR, AMERICAN CIVIL LIBERTIES UNION, and AMERICAN CIVIL LIBERTIES FOUNDATION filed this action pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552a, on December 18, 2019, seeking to compel Defendant UNITED STATES CUSTOMS AND BORDER PROTECTION to respond to their request for agency records that was filed electronically on November 7, 2019;

WHEREAS, Defendant filed its answer on March 13, 2020;

WHEREAS, between March 13, 2020 and August 7, 2020, Defendant made five rolling releases totaling 875 pages of responsive records in full or with portions redacted and withheld 32 documents in full;

WHEREAS, after the releases were completed, Plaintiffs challenged Defendant’s assertions of FOIA Exemption 7(E), 5 U.S.C. § 552(b)(7)(E), to withhold 16 documents in full and to redact information from ten other documents released in part, and the assertion of FOIA Exemption 3, 5 U.S.C. § 552(b)(3), to redact information from one document;

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WHEREAS, by Memorandum & Order dated November 2, 2022, the Court granted in part and denied in part the parties' respective motions for summary judgment, set forth specific findings as to the applicability of FOIA Exemption 7(E) and segregability, and directed Defendant to submit supplemental declarations;

WHEREAS, Defendant re-processed the disputed records in accordance with the Memorandum & Order dated November 2, 2022, determined that it would continue to withhold one document in full, a portion of one document pursuant to Exemption 3 and portions of the remaining documents pursuant to Exemption 7(E), and submitted supplemental declarations;

WHEREAS, after Plaintiffs raised issues with Defendant's release following re-processing, Defendant further re-processed some documents to remove certain redactions;

WHEREAS, on March 7, 2023, Plaintiffs informed the Court that following the parties' discussions of Defendants' responses, the parties have resolved all issues related to search and processing in this matter, and the parties agreed that the only outstanding issues in the case is Plaintiffs' claim for attorneys' fees and costs; and

WHEREAS, the parties wish to resolve Plaintiffs' claims for attorneys' fees and costs consensually and disposed of this matter without further litigation.

IT IS HEREBY STIPULATED AND AGREED by and between counsel for Plaintiffs and counsel for Defendant, as follows:

1. Pursuant to under the FOIA, 5 U.S.C. § 552(a)(4)(E), as soon as reasonably practicable after the Court has approved and docketed this Stipulation and Order, Defendant shall pay to Plaintiffs the sum of \$120,000.00 (One Hundred Twenty Thousand Dollars and No Cents) in attorneys' fees and litigation costs, \$91,795.5 of which will be paid to the

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American Civil Liberties Union Foundation, \$23,758.54 of which will be paid to Main Street Legal Services, and \$4,445.89 of which will be paid to the New York Civil Liberties Union Foundation. Plaintiffs agree to accept this total sum as full payment and satisfaction of any attorneys' fees and costs Plaintiffs have incurred or will incur in this action for services performed up to the date of this Stipulation and Order. Any subsequent claim for attorneys' fees and costs in connection with this matter will be limited to a claim for fees and/or costs in connection with any future application to enforce the Stipulation and Order. Payment shall be made by electronic funds transfers, and counsel for Plaintiffs will provide the necessary information to counsel for Defendant to effectuate the transfers. Defendant shall make its best effort to make payment to Plaintiffs within 90 days following dismissal of this action.

2. This action is dismissed with prejudice pursuant to Fed. R. Civ. P. 41(a)(1), provided that the Court shall retain jurisdiction over any issue that might arise relating to the enforcement of this Stipulation and Order.

3. This Stipulation and Order contains the entire agreement between the parties, and no statement, representation, promise, or agreement, oral or otherwise, between the parties or their counsel that is not included herein shall have any force or effect.

Dated: August 24, 2023

/s/ Scarlet Kim
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Dated: Brooklyn, New York
August 25, 2023

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SO ORDERED:

HONORABLE RAMON E. REYES, JR.
UNITED STATES MAGISTRATE JUDGE