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14 **UNITED STATES DISTRICT COURT**
 15 **CENTRAL DISTRICT OF CALIFORNIA**

17 NATIONAL IMMIGRATION LAW
 18 CENTER,

19 Plaintiff,

20 v.

21 UNITED STATES DEPARTMENT OF
 22 HOMELAND SECURITY, and
 23 UNITED STATES IMMIGRATION
 AND CUSTOMS ENFORCEMENT, a
 component of the Department of
 24 Homeland Security,

25 Defendants.

CASE NO. 2:14-cv-09632

**COMPLAINT FOR
 DECLARATORY AND
 INJUNCTIVE RELIEF**

Freedom of Information Act,
 5 U.S.C. § 552

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INTRODUCTION

1
2 1. This is an action under the Freedom of Information Act (“FOIA”), 5
3 U.S.C. § 552, to compel the Department of Homeland Security (“DHS”) and
4 U.S. Immigration and Customs Enforcement (“ICE”) to conduct a proper search for
5 and disclose documents and records related to information sharing between these
6 government agencies and state driver’s license agencies for immigration
7 enforcement purposes.

8 2. The documents have been requested by the National Immigration Law
9 Center (“NILC”), a nonprofit, nonpartisan organization dedicated to the defense
10 and advancement of the rights of low-income immigrants and their families.
11 Policymakers, community organizers, legal advocates, and the commercial media
12 recognize NILC as a highly credible source of information and analysis on a wide
13 range of issues that affect the lives of immigrants in the United States and rely upon
14 information and reports developed and disseminated by NILC on the real-life
15 impact of immigration-related laws and policies.

16 3. More than five months have passed since NILC made its initial FOIA
17 requests, accompanied by a request for expedited processing, to DHS and ICE
18 seeking information regarding a reported plan or program by ICE to use state
19 driver’s license records as an investigative tool to target immigrants for
20 enforcement action. DHS and ICE have rejected NILC’s request for expedited
21 processing, and have failed to conduct a diligent search for or, in the case of DHS,
22 to respond substantively to the requests for records.

23 4. The materials sought by NILC’s FOIA requests are urgently needed to
24 better inform the public (or dispel unfounded concerns) about the direct and
25 collateral impacts of federal immigration enforcement initiatives that could deter
26 immigrants from taking advantage of state programs to become qualified and
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1 licensed drivers, thereby potentially frustrating the public safety aims of those state
2 initiatives.

3 5. Effective January 2, 2015, California will begin issuing driver's
4 licenses to residents who cannot show proof of authorized presence. In so doing,
5 California joins nine other states, plus the District of Columbia and Puerto Rico,
6 that have enacted laws making individuals eligible for driver's licenses or driving
7 privileges regardless of immigration status.¹ The legislatures of these states have
8 determined that issuing licenses regardless of immigration status is essential to
9 protecting public safety. In California alone, about 1.4 million residents are
10 expected to apply for driver's licenses pursuant to the new law.

11 6. NILC's request for information comes at a time when news reports
12 across the country have raised concern among undocumented immigrants who are
13 considering applying for licenses that the state driving authority to which they
14 provide proof of residency may share this information with ICE for immigration
15 enforcement purposes. ICE and DHS have refused to reveal the contours of their
16 use of state driver's license records for immigration enforcement, and have refused
17 to substantively and adequately respond to NILC's urgent request for information.

18 **JURISDICTION AND VENUE**

19 7. This Court has subject matter jurisdiction over this action and personal
20 jurisdiction over the parties pursuant to 5 U.S.C. §§ 552(a)(4)(B) and (a)(6)(E)(iii).
21 Because this action arises under the federal laws of the United States, this Court
22 also has jurisdiction pursuant to 28 U.S.C. § 1331.

23 _____
24 ¹ These states are: Colorado, Connecticut, Illinois, Maryland, New Mexico,
25 Nevada, Utah, Vermont, and Washington. Declaration of Plaintiff In Support of
26 Motion for Preliminary Injunction ("Keaney Decl.") at ¶ 20(n), Exhibit X, Esther
27 Yu-Hsi Lee, "Oregon Voters Deny Driver's Licenses to Undocumented
28 Immigrants," Think Progress (Nov. 5, 2014),
<http://thinkprogress.org/immigration/2014/11/05/3589326/oregon-voters-drivers-licenses-no-go>

1 14. Defendant DHS is a department of the executive branch of the United
2 States government and is an agency within the meaning of 5 U.S.C. § 552(f)(1).
3 DHS is responsible for administering and enforcing federal immigration laws.
4 Upon information and belief, DHS has possession and control over records
5 requested by NILC.

6 15. Defendant ICE is a component of DHS and an agency within the
7 meaning of 5 U.S.C. § 552(f)(1). ICE is the largest investigative arm of DHS and,
8 among other duties, operates, oversees, and executes the removal of noncitizens.
9 Upon information and belief, ICE has possession and control over records
10 requested by NILC.

11 **BACKGROUND**

12 16. In 2013, California passed Assembly Bill 60 (“AB 60”), providing
13 California residents access to driver’s licenses without regard to immigration status.
14 This new law goes into effect on January 2, 2015.⁴

15 17. In passing this law, California joined nine states, and the District of
16 Columbia and Puerto Rico, that have passed similar legislation in recent years.⁵
17 State lawmakers have recognized that the inability of undocumented residents to
18 obtain driver’s licenses has created a large population of untested, unlicensed, and
19 uninsured drivers on the roads, which has severely impacted public safety.⁶

20 18. These new driver’s license laws recognize that undocumented
21 residents need to drive to meet their daily needs, and therefore are likely to continue
22

23 ⁴ See Declaration of California Assemblymember Luis Alejo in Support of
24 Plaintiff’s Motion for Preliminary Injunction (“Alejo Decl.”) at ¶ 4.

25 ⁵ See Keaney Decl. at ¶ 18.

26 ⁶ See Alejo Decl. at ¶¶ 4-5; see also Keaney Decl. at ¶ 20(b), Exhibit L, Text of
27 California AB 60 at Section 1, enacted in 2013, available at:
28 <http://legiscan.com/CA/text/AB60/2013> (“It is our responsibility to ensure that all California drivers are properly trained, tested, and insured in order to make our roads safer.”).

1 to operate vehicles even if not allowed to obtain driver's licenses and insurance. In
 2 order to serve public safety interests, these laws help ensure that drivers on the road
 3 are properly trained and have passed a driving test.⁷ These laws also increase
 4 drivers' access to car insurance (as driver's licenses are typically required to obtain
 5 insurance), and they reduce the costs of covering accidents involving uninsured
 6 motorists, potentially reducing insurance rates for everyone.⁸

7 19. For example, according to a report by California's Department of
 8 Motor Vehicles ("DMV") (relied upon by the California legislature in enacting
 9 AB 60), unlicensed drivers are nearly three times more likely to cause a fatal crash.⁹
 10 From 1998 to 2007, the number of fatal crashes involving drivers without valid
 11 licenses increased by 17 percent nationally. In California, such fatal crashes
 12 increased by 49 percent.¹⁰

13 20. Such new driver's license laws are expected to have a particularly
 14 positive impact in states, such as California, where there are potentially 1.4 million
 15 drivers who are expected to apply for driver's licenses.¹¹

16 _____
 17 ⁷ See Alejo Decl. at ¶ 5; see also Declaration of San Francisco District Attorney
 18 George Gascón in Support of Plaintiff's Motion for Preliminary Injunction
 ("Gascón Decl.") at ¶ 8.

19 ⁸ In California, for example, insurance companies paid out \$634 million in claims
 20 for collisions related to uninsured motorists in 2009. See Keaney Decl., at ¶ 20(m),
 21 Exhibit W, Amanda Peterson Beadle, "How Allowing Undocumented Immigrants
 22 to Obtain Driver's Licenses Can Save Lives," Think Progress (Jan. 16, 2013),
<http://thinkprogress.org/justice/2013/01/16/1455661/how-allowing-undocumented-immigrants-to-obtain-drivers-licenses-can-save-lives>.

23 ⁹ See *id.* at ¶ 20(e), Exhibit O at p. 17, "Estimation of Fatal Crash Rates for
 24 Suspended/Revoked and Unlicensed Drivers in California," State of California,
 Dep't of Motor Vehicles, *available at*
 25 http://apps.dmv.ca.gov/about/profile/rd/r_d_report/Section_6/S6-238.pdf.

26 ¹⁰ See *id.* at ¶ 20(f), Exhibit P, Albert Sabat, "Highest Fatality Rates from
 27 Unlicensed Drivers in California," ABC News (Jan. 17, 2013),
http://abcnews.go.com/ABC_Univision/News/unlicensed-drivers-higher-rates-fatal-crashes-california/print?id=18239481.

28 ¹¹ See *id.* at ¶ 20(b), Exhibit L at Section 1; see also Alejo Decl. at ¶ 5.

1 21. Other positive effects of these new driver's license laws include:
2 (i) benefits to the U.S. economy through a more mobile labor force,¹² (ii) providing
3 greater safety and accountability by giving police the ability to use the license to
4 identify the individuals they are assisting,¹³ (iii) giving drivers greater incentive to
5 stay at the scene of an accident, and (iv) reducing the burden on courts and jails of
6 drivers who are there solely for driving without a license or insurance.¹⁴

7 22. There is, however, fear and deep mistrust among those eligible for
8 driver's licenses under these new state laws that their personal information provided
9 to state DMVs will be shared with and used by DHS and ICE for immigration
10 enforcement purposes.¹⁵ Such a fear may dramatically reduce the number of
11 applicants who would otherwise have the right to apply for a driver's license and
12 frustrate the public safety purposes of these laws.

13 23. Across the country, numerous immigrants have expressed their fear
14 that the DMV may coordinate with ICE and share personal information from their
15 applications to deport them.¹⁶ As a Nevada Department of Motor Vehicles
16 spokesman said regarding the new Nevada law, "There is a high level of
17 distrust. . . . People were convinced that no matter what we were saying, once we
18

19 ¹² See Keaney Decl. at ¶ 20(u), Exhibit EE, Maria Pabon Lopez, "More Than a
20 License to Drive: State Restrictions on the Use of Driver's Licenses by Non
21 Citizens," 19 S. Ill. U. L.J. 91 (2005).

22 ¹³ See Gascón Decl. at ¶ 9.

23 ¹⁴ See Keaney Decl. at ¶ 20(n), Exhibit X; *see also* Gascón Decl. at ¶ 9.

24 ¹⁵ See Declaration of Coalition for Humane Immigrant Rights of Los Angeles
25 (CHIRLA) Director of Policy & Advocacy Joseph Villela in Support of Plaintiff's
26 Motion for Preliminary Injunction ("Villela Decl.") at ¶ 5; Declaration of CASA
27 Director of Health and Human Services George Escobar in Support of Plaintiff's
28 Motion for Preliminary Injunction ("Escobar Decl.") at ¶ 7.

¹⁶ See Keaney Decl. at ¶ 20(c), Exhibit M, Ian Lovett, "California Driver's License
Program Hits an Unexpected Hurdle," The New York Times (Mar. 4, 2014),
[http://www.nytimes.com/2014/03/05/us/california-drivers-license-program-hits-an-
unexpected-snag.html](http://www.nytimes.com/2014/03/05/us/california-drivers-license-program-hits-an-unexpected-snag.html).

1 had them in our system, we would pass their information on and someone would be
2 there to round them up.”¹⁷

3 24. Heightening such fears were emails obtained through a FOIA request
4 by the American Civil Liberties Union of North Carolina uncovering a proposed
5 plan by the ICE Atlanta Office to boost the number of undocumented immigrant
6 deportations using information obtained from state DMV databases. To meet its
7 aggressive quotas for deportations, the ICE Atlanta office proposed a plan for ICE
8 “HQ” to reach out to each state’s DMV or Driver’s Services Bureau to obtain
9 records of denied driver’s license applications and temporary licenses issued to
10 foreign-born applicants.¹⁸ According to these emails, ICE “HQ...directed [the
11 Atlanta field office] to implement this plan and to REALLOCATE ALL
12 AVAILABLE RESOURCES...to attaining this year’s criminal-alien removal
13 target.”¹⁹

14 25. NILC’s FOIA requests to DHS and ICE seek information relating to
15 these agencies’ access to and use of information from state DMV databases for
16 immigration enforcement purposes. These requests were denied.

17 26. Without disclosure of the requested information, apprehension among
18 immigrants will continue to grow. Recent news articles highlight the importance of
19 the information sought in NILC’s FOIA request to the community. For example, in
20 Illinois, a man was put into deportation proceedings after the information he
21 provided to the state in order to obtain the state’s new temporary visitors driver’s
22 license was shared with ICE and was used to locate and arrest him.²⁰ Similarly, in
23

24 ¹⁷ *Id.* at p. 3.

25 ¹⁸ *See id.* at ¶ 20(j), Exhibit T, Internal ICE document, “ERO Atlanta Field Office:
26 Prospective Criminal Apprehension Initiatives,” dated April 18, 2012, *available at*
<http://www.documentcloud.org/documents/603861-ice-documents.html>.

27 ¹⁹ *Id.*, Internal ICE email dated May 4, 2012 (emphasis in original).

28 ²⁰ *See id.* at ¶ 20(k), Exhibit U, Juan Perez, Jr., “License application leads to
immigration bust,” *Chicago Tribune* (Sept. 8, 2014),

1 Maryland, ICE used the state's DMV database to locate specific individuals who
2 had applied under that state's new driver's license law.²¹

3 27. Although ICE has denied implementing a plan to troll state DMV
4 databases for immigration enforcement purposes,²² such denials do little to ease
5 immigrants' fears in the face of news reports to the contrary.

6 28. There is insufficient public information about the scope of ICE's
7 access to or use of state DMV records. Without adequate information to educate
8 the public, there will be continued fear in the immigrant community over the risks
9 of applying for a driver's license in each of the ten states that have passed laws
10 expanding access to driver's licenses for undocumented residents, thereby
11 frustrating the public safety objectives these laws were intended to address, and
12 there will be a continued inability for organizations, like NILC, who work on
13 driver's license issues to adequately inform clients on the risks of applying for a
14 driver's license.²³ Indeed, because of the lack of information, some advocacy
15 groups have had to warn potential applicants that they should assume that ICE may
16 use driver's license data for immigration enforcement purposes.²⁴

17 29. The confusion and lack of information is particularly problematic in
18 California, which has the highest number of undocumented immigrants, and whose
19 new driver's license law becomes effective on January 2, 2015.

20

[http://www.chicagotribune.com/news/ct-drivers-license-deportation-met-20140908-](http://www.chicagotribune.com/news/ct-drivers-license-deportation-met-20140908-story.html)
21 [story.html](http://www.chicagotribune.com/news/ct-drivers-license-deportation-met-20140908-story.html).

22 ²¹ See *id.* at ¶ 20(l), Exhibit V, John Fritze "Raid spurs fear of driver's licenses
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24 [http://articles.baltimoresun.com/2014-09-20/news/bs-md-immigrant-licenses-](http://articles.baltimoresun.com/2014-09-20/news/bs-md-immigrant-licenses-20140920_1_immigrants-mva-advocacy-group)
25 [20140920_1_immigrants-mva-advocacy-group](http://articles.baltimoresun.com/2014-09-20/news/bs-md-immigrant-licenses-20140920_1_immigrants-mva-advocacy-group).

26 ²² See *id.* at ¶ 20(i), Exhibit S, Brad Heath, "ICE Says It Never Acted on Plans to
27 Mine Driver Records," USA Today (Feb. 15, 2013),
28 [http://www.usatoday.com/story/news/nation/2013/02/15/immigration-deportation-](http://www.usatoday.com/story/news/nation/2013/02/15/immigration-deportation-tactics/1923931)
[tactics/1923931](http://www.usatoday.com/story/news/nation/2013/02/15/immigration-deportation-tactics/1923931).

²³ See Vilella Decl. at ¶ 7; Escobar Decl. at ¶ 10.

²⁴ See Escobar Decl. at ¶ 8.

STATEMENT OF FACTS

A. NILC's FOIA Request

30. On April 24, 2014, NILC submitted identical FOIA requests to Defendants DHS and ICE seeking records related to information sharing between Defendants and state driver's license agencies for immigration enforcement purposes. See Keaney Decl. at ¶ 6, Exhibit A.

31. The request sought disclosure of records "prepared, received, transmitted, collected and/or maintained by DHS and ICE relating or referring to information sharing between state driver's license agencies (both governmental and non-governmental) and ICE for immigration enforcement purposes." The records requested included, but were not limited to:

- i. DHS and ICE records from January 1, 2009, to the present regarding the criteria, mechanisms, and process for ICE to gain access to or use state driver's license databases or records for immigration enforcement purposes.
- ii. DHS and ICE records, including but not limited to records concerning the National Law Enforcement Telecommunications System (NLETS), from January 1, 2009, to the present regarding the criteria, mechanisms, and process for DHS and ICE to obtain state driver's license records of individual driver's license applicants or license holders for immigration enforcement purposes.
- iii. DHS and ICE records from January 1, 2009, to the present regarding any outreach to, agreements (whether formal or informal) with, or communications by DHS and ICE with state driver's license agencies regarding identification of driver's license applicants or driver's license holders for immigration enforcement purposes.
- iv. DHS and ICE records from January 1, 2009, to the present regarding reporting by employees or agents of state driver's license agencies (both governmental and non-governmental) to DHS and ICE of persons who are applying for or have been issued a driver's license and whom the employees or

1 agents suspect of lacking federal authorization to be present
2 in the United States.

3 32. Expressly excluded from NILC's request were records related to state
4 DMV use of the Systematic Alien Verification of Entitlements system operated by
5 ICE to verify the immigration status of driver's license applicants.²⁵

6 **B. Request for Expedited Processing**

7 33. In addition to making its FOIA request, NILC also requested that each
8 Defendant expedite processing of its request.²⁶ Pursuant to 5 U.S.C. §
9 552(a)(6)(E)(v)(II), agencies shall provide expedited processing when there is an
10 "urgency to inform the public concerning [an] actual or alleged Federal
11 Government activity" by organizations "primarily engaged in disseminating
12 information."

13 34. Plaintiff NILC is an organization that is "primarily engaged in
14 disseminating information." See 5 U.S.C. § 552(a)(6)(E)(v)(II); *see also supra* at
15 ¶¶ 10-13.

16 35. Expedited processing of this FOIA request is justified as this request
17 implicates a matter of urgent public concern—the federal government's use of state
18 driver's license records and data for immigration enforcement. The release of the
19 requested information is urgent for several reasons.

20 36. First, new driver's license laws that provide U.S. residents with the
21 right to apply for driver's licenses without regard to immigration status were
22 enacted to ensure the safety of drivers, pedestrians, and public roads, in general.²⁷
23 California and nine other states, as well as the District of Columbia and Puerto
24 Rico, are part of a growing trend that recognizes the importance to public safety of
25 ensuring that drivers are properly educated and licensed regardless of their

26 _____
27 ²⁵ See Keaney Decl. at ¶ 6, Exhibit A at p. 3.

28 ²⁶ See *id.* at p. 6.

²⁷ See Alejo Decl. at ¶ 5; *see also* Gascón Decl. at ¶¶ 8-10.

1 immigration status. However, as explained in Paragraphs ¶¶ 22-29 *supra*, there is
2 deep mistrust among undocumented residents as to what will be done with such
3 information despite assurances that such information is protected: undocumented
4 immigrants who may otherwise apply for a driver's license under these new state
5 laws are concerned that information they will supply in their application will be
6 used by the federal government to deport them. Without proper information as to
7 the government's use or non-use of state driver's license agency data, eligible
8 applicants may be discouraged from applying for their driver's license, and these
9 new laws are unlikely to achieve their intended objectives. There is, therefore, "an
10 urgency to inform the public."

11 37. Because a majority of these state laws have gone into effect in the past
12 year or are expected to go into effect by early 2015 (*e.g.*, California and
13 Connecticut), informed public discussions about the possible use of driver's license
14 records by ICE and DHS need to occur. The urgency of disclosure of such
15 information is particularly acute in California, where an estimated 1.4 million
16 residents are expected to apply for licenses under the new law beginning January 2,
17 2015. The federal government's refusal to disclose the requested information
18 frustrates the purpose of California's and other states' driver's license laws.

19 38. Second, in order to properly advise clients and would-be applicants
20 about the risks of applying for driver's licenses under these new laws, attorneys and
21 legal advocates need to understand the relevant policies, procedures, and practices
22 of DHS and ICE with respect to the use of state driver's license information for
23 immigration enforcement.

24 39. Third, there has been increasing public interest in ICE's use of state
25 driver's license records for purpose of immigration enforcement.²⁸ With ten states,

26
27 ²⁸ *See, e.g.*, Keaney Decl. at ¶ 20(o), Exhibit Y, Brad Heath, "Immigration Tactics
28 Aimed at Boosting Deportations," USA Today (Feb. 17, 2013); *id.* at ¶ 20(g),
Exhibit Q, Aura Bogado "ICE's Latest Stop for Deportations: The DMV," The

1 the District of Columbia, and Puerto Rico having passed laws that would make
 2 driving privileges available to residents regardless of their status, and federal
 3 immigration enforcement at the forefront of the national policy debate regarding
 4 immigration policy, the information requested is urgently needed to inform the
 5 current dialogue more generally.²⁹

6 **C. Request for Waiver of Fees**

7 40. NILC also requested a fee waiver pursuant to 5 U.S.C. §
 8 552(a)(4)(A)(iii). Under that provision, “[d]ocuments shall be furnished without
 9 any charge ... if disclosure of the information is in the public interest because it is
 10 likely to contribute significantly to public understanding of the operations or
 11 activities of the government and is not primarily in the commercial interest of the
 12 requester.”

13 41. NILC’s request qualifies for a fee waiver under this provision of the
 14 FOIA statute. As discussed *supra* at ¶¶ 10-13, NILC is a nonprofit national legal
 15 advocacy organization that engages in policy analysis, education, advocacy, and
 16

17 Nation (Feb. 15, 2013); *id.* at ¶ 20(p), Exhibit Z, Richard Winton, Hector Becerra &
 18 Kate Mather, “Driver’s Licenses for Undocumented Immigrants Stir Debate,” Los
 19 Angeles Times (Sept. 13, 2013); *id.* at ¶ 20(q), Exhibit AA, Mike Debonis, “Illegal
 20 Immigrants Can Soon Apply for D.C. Driver’s Licenses,” The Washington Post
 21 (Apr. 18, 2014); *id.* at ¶ 20(r), Exhibit BB, Kari D’Ottavio, “Deferred Action for
 22 Childhood Arrivals: Why Granting Driver’s Licenses to DACA Beneficiaries
 23 Makes Constitutional and Political Sense,” 72 Md. L. Rev. 931 (2013); *id.* at ¶
 24 20(s), Exhibit CC, Vallerye Masquera, “Driving While Undocumented: Chapter
 25 524 Allows Undocumented Immigrants to Apply for California Driver’s Licenses,”
 26 45 McGeorge L. Rev. 617 (2014); *id.* at ¶ 20(t), Exhibit DD, Tung Sing Wong,
 27 “Branded to Drive: Obstacle Preemption of North Carolina Driver’s Licenses for
 28 DACA Grantees,” 37 Hamline L. Rev. 81 (2014); *id.* at ¶ 20(u), Exhibit EE, Maria
 Pabon Lopez, “More Than a License to Drive: State Restrictions on the Use of
 Driver’s Licenses by Noncitizens,” 19 S. Ill. U. L.J. 91 (2005).

²⁹ *Id.* at ¶ 20(v), Exhibit FF, Gilberto Soriano Mendoza, “States Offering Driver’s
 Licenses to Immigrants,” National Conference of State Legislatures (April 2014),
 available at http://ncsl.org/documents/immig/DL_Enacted_TableApril2014.pdf.

1 litigation to promote and advance the rights of low-income immigrants. NILC
2 intends to synthesize and disseminate the information it obtains from this FOIA
3 request to educate the public about DHS and ICE's policies and procedures
4 regarding access to and use of state driver's license records in immigration
5 enforcement.

6 42. NILC has the capacity, intent, and legal expertise to synthesize,
7 analyze, and widely disseminate the requested information to the public. NILC
8 uses many approaches in disseminating information for the public's benefit,
9 including sharing information with local, regional, and national media through
10 press releases and media interviews, publishing reports and memoranda through the
11 Internet, and emails to individuals and organizations working on immigration
12 issues. NILC intends to use various media to disseminate information obtained
13 from this request, including its publicly accessible website.

14 43. NILC does not have a commercial interest in the records requested—
15 NILC intends to disseminate the information it receives pursuant to this FOIA
16 request to the public at no cost. *See* 6 C.F.R. § 5.11(k). The requested information
17 is of great interest to the public at large, but is not available in the public domain.

18 44. NILC is routinely granted fee waivers by government agencies and,
19 notably, Defendants DHS and ICE have granted NILC fee waivers for prior FOIA
20 requests (2013-HQFO-00730 and 2013-HQFO-00907).

21 **D. Request for Fee Reduction**

22 45. NILC also requested a limitation of processing fees pursuant to 5
23 U.S.C. § 552(a)(4)(A)(ii)(II) in the event that its request for a fee waiver was
24 denied. *See* Keaney Decl. at ¶ 6, Exhibit A at page 6. This request also was
25 denied.

26 46. Fee reductions are warranted when the “records are not sought for
27 commercial use and the request is made by ... a representative of the news media.”
28

1 5 U.S.C. § 552(a)(4)(A)(ii)(II). As explained in Paragraphs 10-13, *supra*, NILC is
2 a nonprofit organization and has no commercial interest in the information sought
3 by the FOIA request. Further, NILC is considered “a representative of the news
4 media” for purposes of a fee reduction as it often serves as the primary reporter to
5 the public on issues pertaining to immigration enforcement and government
6 policies.³⁰

7 **E. Defendants’ Responses to NILC’s Requests**

8 47. Each Defendant was required to make a determination on a request for
9 expedited processing within ten days of receiving NILC’s request, and each was
10 required to ensure “expeditious consideration” of appeals of such determinations.
11 *See* 5 U.S.C. § 552(a)(6)(E)(ii).

12 48. Each Defendant was also required to respond in writing within 20 days
13 after receiving NILC’s request and notify NILC whether or not the defendant
14 intended to comply with the request, *see* 5 U.S.C. § 552(a)(6)(A), or in “unusual
15 circumstances” could extend the time for making such a determination by up to ten
16 working days. *See* 5 U.S.C. § 552(a)(6)(B).

17 **F. Defendant ICE’s Response to NILC’s FOIA Request**

18 49. On April 30, 2014, ICE mailed three separate letters to NILC
19 acknowledging receipt of NILC’s FOIA request and denying NILC’s requests for a
20 fee waiver, fee reduction, and expedited processing of the FOIA request. *See*

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22
23 ³⁰ *See, e.g.*, Keaney Decl. at ¶ 17, Exhibit J, collecting: Tanya Broder et al.,
24 Inclusive Policies Advance Dramatically in the States: Immigrants’ Access to
25 Driver’s Licenses, Higher Education, Workers’ Rights, and Community Policing
26 (October 2013); Karen Tumlin et al., A Broken System: Confidential Reports
27 Reveal Failure in U.S. Immigration Detention Centers (July 2009); NILC, Release
28 of Customs and Border Protections Report a Good First Step Towards
Transparency (May 30, 2014); NILC, Immigrant Families Will Not Be Penalized
for Affordable Care Act Glitches (March 27, 2014).

1 Keaney Decl. at ¶ 7, Exhibit B. ICE also invoked the statutorily permitted 10-day
2 extension under 5 U.S.C. § 552(a)(6)(B)(i).

3 50. By letter dated June 27, 2014, NILC timely appealed ICE's denial of
4 its request for a full waiver of fees or a fee reduction and the denial of NILC's
5 request for expedited processing. *See* Keaney Decl. at ¶ 10, Exhibit E. As of the
6 filing of this Complaint, ICE has not responded to NILC's appeal of ICE's denial of
7 its request for fee waiver or fee reduction and expedited processing.

8 51. On June 11, 2014, ICE submitted the only substantive response to
9 NILC's FOIA request indicating that "[a] search of the ICE Office of Enforcement
10 and Removal Operations (ERO) and Office of Homeland Security Investigations
11 (HSI) was conducted and no records responsive to [NILC's] request were found."
12 *See* Keaney Decl. at ¶ 9, Exhibit D.

13 52. On August 6, 2014, NILC appealed ICE's response that no records
14 responsive to NILC's request were located, and challenged the adequacy of the
15 agency's search. *See* Keaney Decl. at ¶ 12, Exhibit G.

16 53. On September 8, 2014, ICE sent a letter to NILC acknowledging
17 receipt of the August 6, 2014 appeal. *See* Keaney Decl. at ¶ 13, Exhibit H. In this
18 letter, ICE conceded that "additional responsive records may be found in locations
19 the agency has not yet searched," and remanded NILC's appeal to "ICE FOIA for
20 processing and re-tasking to the appropriate agency/office(s) to obtain any
21 responsive documents." *Id.*

22 54. ICE was required to make a determination on NILC's request for
23 documents by October 3, 2014 (within 20 working days of September 8, 2014). As
24 of the filing of this Complaint, however, ICE has not notified NILC of any further
25 determination on NILC's request.

1 **G. Defendant DHS's Response to NILC's FOIA Request**

2 55. On May 12, 2014, DHS acknowledged receipt of NILC's request,
3 invoked the statutory 10-day extension, and denied expedited processing. *See*
4 Keaney Decl. at ¶ 8, Exhibit C. DHS conditionally granted, however, NILC's fee
5 waiver request.

6 56. On June 27, 2014, NILC appealed DHS's denial of expedited
7 processing and fee waiver request. *See* Keaney Decl. at ¶ 10, Exhibit E.

8 57. By invoking the statutory 10-day extension, DHS's response to
9 NILC's FOIA request became due within 30 working days, or June 5, 2014.

10 58. DHS did not respond within the statutory time limit. Pursuant to 5
11 U.S.C. § 552(a)(6)(A), the failure of an agency to respond to a FOIA request within
12 the statutory time limit may be deemed a constructive denial of the request.

13 59. On October 13, 2014, NILC sent a letter to DHS via UPS Next Day
14 Air, appealing the constructive denial of its FOIA request. *See* Keaney Decl. at ¶
15 14, Exhibit I.

16 60. Although a written response to NILC's October 13, 2014 appeal letter
17 was due on November 10, 2014 (20 working days after the appeal letter was
18 received), *see* 5 U.S.C. § 552(a)(6)(A)(ii), DHS has not responded to NILC's
19 appeal.

20 **COUNT ONE**

21 **(Violation of the Freedom of Information Act for**
22 **Denial of FOIA Request) (DHS and ICE)**

23 61. NILC repeats each allegation in Paragraphs 1 - 60, as if fully set forth
24 herein.

25 62. On April 24, 2014, NILC made a request under FOIA to Defendants
26 DHS and ICE for responsive records related to information sharing between state
27 driver's license agencies and DHS or ICE for immigration enforcement purposes.

28

1 63. DHS and ICE were each obligated under 5 U.S.C. § 552(a)(3) to
 2 conduct a reasonable search for records responsive to NILC’s requests and to issue
 3 a determination concerning NILC’s request within the time period set forth in 5
 4 U.S.C § 552(a)(6)—20 working days, to be extended by no more than 10 working
 5 days in the event that the agency finds the existence of “unusual circumstances.”

6 64. Defendants failed to conduct a reasonable search within the statutory
 7 time period for records responsive to NILC’s request. And there exists no legal
 8 basis justifying Defendants’ failure to search for these records within the statutory
 9 time period.

10 65. By failing to conduct a reasonable search for records responsive to
 11 NILC’s FOIA request and to disclose responsive records, Defendants violated 5
 12 U.S.C. §§ 552(a)(3)(A), (a)(3)(C), and (a)(6)(A), as well as the regulations
 13 promulgated thereunder.

14 66. The Defendants’ failure to make a determination concerning NILC’s
 15 request for documents within the statutory time period constitutes a constructive
 16 denial of NILC’s request, and NILC is deemed to have exhausted its administrative
 17 remedies with respect to each Defendant. See 5 U.S.C. § 552(a)(6)(C)(i).

18 67. The interests of NILC and of the public in the requested records, as
 19 detailed above in Paragraphs 16-29 and 35-39, are irreparably harmed by
 20 Defendants’ failure to search for and disclose responsive records. That harm
 21 outweighs any burden placed on Defendants.

22 **COUNT TWO**

23 **(Violation of the Freedom of Information Act for**
 24 **Denial of NILC’s Request for Expedited Processing)**
 25 **(DHS and ICE)**

26 68. NILC repeats each allegation in Paragraphs 1 - 67 as if fully set forth
 27 herein.

28 69. In letters dated May 12, 2014, and June 11, 2014, Defendants DHS

1 and ICE, respectively, denied NILC's request for expedited processing.

2 70. NILC has administratively appealed DHS's and ICE's respective
3 denials of its request for expedited processing and has, therefore, exhausted its
4 administrative remedies.

5 71. As discussed in Paragraphs 33-39 above, NILC is entitled to expedited
6 processing because NILC is an organization that is "primarily engaged in
7 disseminating information" and there is an "urgency to inform the public
8 concerning [an] actual or alleged Federal Government activity." 5 U.S.C. §
9 552(a)(6)(E)(v)(II).

10 72. Defendants DHS's and ICE's respective denials of NILC's request for
11 expedited processing violates 5 U.S.C. § 552(a)(6)(E).

12 73. NILC's and the public's interests in the expeditious processing of the
13 requested records are irreparably harmed by the Defendants' denial of expedited
14 processing. That harm outweighs any burden placed on the Defendants in
15 expeditiously processing NILC's request.

16 **COUNT THREE**

17 **(Violation of the Freedom of Information Act for**
18 **Denial of NILC's Request for Fee Waiver or Fee Reduction)**
19 **(Defendant ICE)**

20 74. NILC repeats each allegation in Paragraphs 1 - 73 above as if fully set
21 forth herein.

22 75. NILC is entitled to a fee waiver. As discussed in Paragraphs 40 - 44
23 above, "disclosure of the information is in the public interest because it is likely to
24 contribute significantly to public understanding of the operations or activities of the
25 government and is not primarily in the commercial interest of the requester." 5
26 U.S.C. § 552(a)(4)(A)(iii). Moreover, Defendants have previously granted NILC
27 fee waivers. *See supra* at Paragraph 44.
28

1 76. At a minimum, NILC is entitled to a fee reduction as the “records are
2 not sought for commercial use and the request is made by . . . a representative of the
3 news media.” 5 U.S.C. § 552(a)(4)(ii)(II). NILC is considered “a representative of
4 the news media” for purposes of a fee reduction under this statute.

5 77. Defendant ICE’s denial of NILC’s request for a fee waiver or fee
6 reduction violates 5 U.S.C. § 552(a)(4)(A)(iii) and 5 U.S.C. § 552(a)(4)(ii)(II).

7 **PRAYER FOR RELIEF**

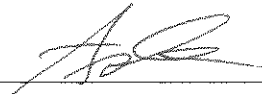
8 WHEREFORE, Plaintiff NILC respectfully requests that this Court enter
9 judgment in its favor:

- 10 i. Declaring that Defendants’ failure to conduct a reasonable and
11 timely search for records responsive to the FOIA request and their refusal to
12 disclose such records violate FOIA;
- 13 ii. Declaring that the Defendants’ denial of expedited processing of
14 NILC’s FOIA request violates the FOIA statute;
- 15 iii. Declaring that Defendant ICE’s denial of a fee waiver or fee
16 reduction violates the FOIA statute;
- 17 iv. Ordering the Defendants to conduct a reasonable search for records
18 responsive to NILC’s FOIA request on an expedited processing schedule and to
19 produce such records to NILC;
- 20 v. Enjoining the Defendants from withholding records responsive to
21 the FOIA request and ordering them to promptly produce the same;
- 22 vi. Ordering Defendant ICE to grant NILC an unconditional public
23 interest fee waiver;
- 24 vii. Awarding NILC reasonable attorneys’ fees and costs pursuant to 5
25 U.S.C. § 552(A)(4)(E) and 28 U.S.C. § 2412; and
- 26 viii. Granting all other such relief to NILC as the Court deems just and
27 proper.
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DATED: December 17, 2014

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