

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

HERITAGE FOUNDATION)	
214 Massachusetts Ave. N.E.)	
Washington, D.C. 20002)	
)	
MIKE HOWELL)	
214 Massachusetts Ave. N.E.)	
Washington, D.C. 20002)	
)	
<i>Plaintiffs,</i>)	
v.)	Case No. 24-cv-2791
)	
U.S. DEPARTMENT OF HOMELAND SECURITY)	
2707 Martin Luther King Jr., Ave., S.E.)	
Washington, D.C. 20528)	
)	
<i>Defendant.</i>)	
)	

**COMPLAINT AND PRAYER FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Plaintiffs THE HERITAGE FOUNDATION and MIKE HOWELL (collectively “Plaintiffs”) for their complaint against Defendant U.S. DEPARTMENT OF HOMELAND SECURITY (“DHS”) Defendant, allege on knowledge as to Plaintiffs, and on information and belief as to all other matters, follows:

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C § 552, to compel the production of all communications between U.S. Customs and Border Protection (“CBP”) and the Executive Office of the Vice President (“EOVP”) concerning the southwest border or illegal immigration. *See* Plaintiffs’ FOIA Request, CBP-FO-2024-172591 (Sept. 18, 2024) (“CBP Request” or “Plaintiffs’ CBP FOIA Request”) (Ex. 1).

PARTIES

2. Plaintiff The Heritage Foundation is a Washington, D.C.-based nonpartisan public policy organization with a national and international reputation whose mission is to “formulate and promote public policies based on the principles of free enterprise, limited government, individual freedom, traditional American values, and a strong national defense.” Heritage Foundation, *About Heritage*, <https://www.heritage.org/about-heritage/mission> (last visited Oct. 1, 2024). Heritage is a not-for-profit section 501(c)(3) organization which engages in substantial dissemination of information to the public.

3. Plaintiff Mike Howell leads The Heritage Foundation’s Oversight Project and is an investigative columnist for *The Daily Signal*, a national news outlet. The Oversight Project is an initiative aimed at obtaining information via FOIA requests and other means to best inform the public and Congress for the purposes of Congressional oversight. “The requests and analyses of information are informed by Heritage’s deep policy expertise. By its nature, the Oversight Project is primarily engaged in disseminating information to the public.” Oversight Project, <https://www.heritage.org/oversight> (last visited Oct. 1, 2024); Oversight Project (@OversightPR), X (last visited Oct. 1, 2024), <https://twitter.com/OversightPR>. Staff for the Oversight Project routinely appear on television, radio, print, and other forms of media to provide expert commentary on salient issues in the national debate.

4. Defendant DHS is a federal agency of the United States within the meaning of 5 U.S.C. § 552(f)(1) whose mission statement is “[w]ith honor and integrity, we will safeguard the American people, our homeland, and our values.” Department of Homeland Security, *About DHS*, <https://www.dhs.gov/mission> (last visited Oct. 1, 2024).

5. CBP is a component of DHS whose mission statement is to “[p]rotect the American people, safeguard our borders, and enhance the nation’s economic prosperity.” U.S. Customs and Border Protection, About CBP, <https://www.cbp.gov/about> (last visited Oct. 1, 2024).

JURISDICTION AND VENUE

6. This Court has jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B) because this action is brought in the District of Columbia and 28 U.S.C. § 1331 because the resolution of disputes under FOIA presents a federal question.

7. Venue is proper in this Court under 28 U.S.C. § 1391(b) because Defendant’s principal place of business is in the District of Columbia.

PLAINTIFFS’ FOIA REQUEST

8. Plaintiffs submitted the Request to Defendant on September 18, 2024.

9. The Request sought: “All documents and communications between U.S. Customs and Border Protection and the Executive Office of the Vice President related to the southwest border or illegal immigration” from January 20, 2021, to the present. Request at 1.

10. The Request sought a fee waiver based on Heritage’s status as a not-for-profit and the fact that a purpose of the Request was to allow Heritage to gather information on a matter of public interest for (among other things) use by authors of *The Daily Signal*, which is a major news outlet. *Id.*

11. The Request also sought production of records in partial responses as soon as they became available. *Id.* at 4.

REQUEST FOR EXPEDITED PROCESSING

12. Plaintiffs requested Expedited Processing for the Request. *See* Request at 5. The factual and legal basis for the Application was explained in a four-page submission.

13. The Request attached three appendices totaling 1,334 pages that included two proposed pieces of legislation addressing Vice President Harris’s role in the on-going immigration crisis, a compilation of news articles about Vice President Harris’s designation as the border czar, and a copy of a congressional records request from Chairman James Comer to Troy A. Miller, Senior Official Performing the Duties of the Commissioner, concerning communications between CBP and the EOVP. The foregoing coverage was “widespread and exceptional” and surfaces “questions about the Government’s integrity that affect public confidence.” 6 C.F.R. § 5.5(e)(1)(iv).

**DEFENDANT’S CONSTRUCTIVE DENIAL OF
EXPEDITED PROCESSING & THE REQUEST**

14. Defendant acknowledged receipt of the Request on September 18, 2024. *See* Email Correspondence between Mike Howell and CBP FOIA, Privacy Office (Sept. 23, 2024) (“Email Correspondence” or “Email Corr.”) (Ex. 2).

15. Defendant purported to have administratively closed the Request because according to the FOIA Portal there were “(No Documents Sent)” without informing Plaintiffs via the SecureRelease Portal. *Id.*

16. On September 23, 2024, Plaintiffs contacted Defendant demanding the request be processed according to law because it appeared Defendant’s “office inadvertently closed our FOIA request” *Id.*

17. Following this instruction, Defendant informed Plaintiffs:

CBP FOIA closed the case as insufficient. The request is lacking information needed to conduct a valid search. CBP would need the names of the CBP employees from whom you are seeking emails, as well as the email domain(s) of the Executive Vice President. Also, please consider specific key terms about the Southwest Border and Illegal Immigration. Both are broad topics. A search could yield many records that may not be on your specific topic.

We apologize that this was not made clear in our previous correspondence. You are welcome to refile this request with the required information for CBP to conduct a valid search.

Email Corr. at 1.

18. Plaintiffs notified Defendant that this response was “not a valid determination”, requested that Defendant promptly deny the request if it planned to do so, and finally pointed out the inconsistency between the determination of vagueness for this Request in light of a similar “threatened subpoena from the House Committee on Oversight & Accountability.” *Id.*

19. The Email Correspondence does not constitute a “determination” within the meaning of *CREW v. Fed. Elec. Comm’n*, 711 F.3d 180, 188 (D.C. Cir. 2013) (“Rather, in order to make a ‘determination’ and thereby trigger the administrative exhaustion requirement, the agency must at least: (i) gather and review the documents; (ii) determine and communicate the scope of the documents it intends to produce and withhold, and the reasons for withholding any documents; and (iii) inform the requester that it can appeal whatever portion of the ‘determination’ is adverse.”).

20. Defendant has constructively denied Plaintiffs application for expedited processing.

21. Defendant has constructively denied Plaintiffs’ FOIA Request.

22. Ten calendar days from September 18, 2024 is September 28, 2024.

FIRST CLAIM FOR RELIEF
Violation of FOIA, 5 U.S.C. § 552
Wrongful Denial of Expedited Processing

23. Plaintiffs re-allege the foregoing paragraphs as if fully set out herein.

24. FOIA requires all doubts to be resolved in favor of disclosure. “Transparency in government operations is a priority of th[e Biden] . . . Administration.” Attorney General,

Memorandum for Heads of Executive Departments and Agencies: Freedom of Information Act Guidelines, at 4 (Mar. 15, 2022).

25. Plaintiffs properly requested records within the possession, custody, or control of Defendant.

26. Plaintiffs properly asked that DHS expedite the processing of Plaintiffs' FOIA Request, based upon Plaintiffs' showing that the foregoing coverage was "widespread and exceptional" and surfaces "questions about the Government's integrity that affect public confidence." 6 C.F.R. § 5.5(e)(1)(iv).

27. Defendant did not pass on Plaintiffs' request for expedited processing, and is not processing the Request "as soon as practicable." 5 U.S.C. § 552(a)(6)(E)(iii).

28. Defendant is in violation of FOIA.

29. Plaintiffs are being irreparably harmed by reason of Defendant's violation of FOIA. Plaintiffs are being denied information to which they are statutorily entitled to on an expedited basis and that is important to carrying out Plaintiffs' functions as a non-partisan research and educational institution and publisher of news. Plaintiffs will continue to be irreparably harmed unless Defendant is compelled to comply with the law.

30. Plaintiffs have no adequate remedy at law.

31. Plaintiffs have exhausted all required administrative remedies with respect to Defendant's failure to make a determination on Plaintiffs' request for expedition.

WHEREFORE as a result of the foregoing, Plaintiffs pray that this Court:

A. Enter a preliminary and permanent injunction compelling Defendant to process Plaintiffs' FOIA Request on an expedited basis;

B. Award Plaintiffs their costs and reasonable attorneys' fees in this action as

provided by 5 U.S.C. § 522(a)(4)(E); and

C. Grant such other and further relief as this Court may deem just and proper.

Dated: October 2, 2024

Respectfully submitted,

/s/ Eric Neal Cornett
ERIC NEAL CORNETT
(No. 1660201)
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Email: neal@cornettlegal.com

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(No. 90019809)
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Email: maxmatheu@outlook.com

Counsel for Plaintiffs

CIVIL COVER SHEET

JS-44 (Rev. 11/2020 DC)

I. (a) PLAINTIFFS Mike Howell & The Heritage Foundation (b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF _____ (EXCEPT IN U.S. PLAINTIFF CASES)	DEFENDANTS U.S. Department of Homeland Security COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____ (IN U.S. PLAINTIFF CASES ONLY) <small>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED</small>
(c) ATTORNEYS (FIRMNAME, ADDRESS, AND TELEPHONE NUMBER) Eric Neal Cornett Law Office of Eric Neal Cornett 70 I Street SE, 525 Washington, DC 20003	ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY)	III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) FOR DIVERSITY CASES ONLY!																								
<input type="radio"/> 1 U.S. Government Plaintiff <input checked="" type="radio"/> 2 U.S. Government Defendant <input type="radio"/> 3 Federal Question (U.S. Government Not a Party) <input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)	<table style="width:100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DFT</th> <th></th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DFT</th> </tr> </thead> <tbody> <tr> <td>Citizen of this State</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td style="text-align: center;"><input type="radio"/> 4</td> <td style="text-align: center;"><input type="radio"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="radio"/> 5</td> <td style="text-align: center;"><input type="radio"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="radio"/> 6</td> <td style="text-align: center;"><input type="radio"/> 6</td> </tr> </tbody> </table>		PTF	DFT		PTF	DFT	Citizen of this State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input type="radio"/> 4	<input type="radio"/> 4	Citizen of Another State	<input type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input type="radio"/> 5	<input type="radio"/> 5	Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6
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Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6																				

IV. CASE ASSIGNMENT AND NATURE OF SUIT

(Place an X in one category, A-N, that best represents your Cause of Action and one in a corresponding Nature of Suit)

<input type="radio"/> A. Antitrust <input type="checkbox"/> 410 Antitrust	<input type="radio"/> B. Personal Injury/Malpractice <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Medical Malpractice <input type="checkbox"/> 365 Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Product Liability	<input type="radio"/> C. Administrative Agency Review <input type="checkbox"/> 151 Medicare Act <u>Social Security</u> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <u>Other Statutes</u> <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 890 Other Statutory Actions (If Administrative Agency is Involved)	<input type="radio"/> D. Temporary Restraining Order/Preliminary Injunction Any nature of suit from any category may be selected for this category of case assignment. *(If Antitrust, then A governs)*
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<input type="radio"/> E. General Civil (Other)		OR	<input type="radio"/> F. Pro Se General Civil	
<u>Real Property</u> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent, Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property <u>Personal Property</u> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<u>Bankruptcy</u> <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <u>Prisoner Petitions</u> <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Conditions <input type="checkbox"/> 560 Civil Detainee – Conditions of Confinement <u>Property Rights</u> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent – Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 (DTSA)	<u>Federal Tax Suits</u> <input type="checkbox"/> 870 Taxes (US plaintiff or defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609 <u>Forfeiture/Penalty</u> <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <u>Other Statutes</u> <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 430 Banks & Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 465 Other Immigration Actions <input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organization <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act (TCPA) <input type="checkbox"/> 490 Cable/Satellite TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions (if not administrative agency review or Privacy Act)	

<input type="radio"/> G. Habeas Corpus/ 2255 <input type="checkbox"/> 530 Habeas Corpus – General <input type="checkbox"/> 510 Motion/Vacate Sentence <input type="checkbox"/> 463 Habeas Corpus – Alien Detainee	<input type="radio"/> H. Employment Discrimination <input type="checkbox"/> 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation) *(If pro se, select this deck)*	<input type="radio"/> I. FOIA/Privacy Act <input checked="" type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act) *(If pro se, select this deck)*	<input type="radio"/> J. Student Loan <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (excluding veterans)
<input type="radio"/> K. Labor/ERISA (non-employment) <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> L. Other Civil Rights (non-employment) <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Americans w/Disabilities – Employment <input type="checkbox"/> 446 Americans w/Disabilities – Other <input type="checkbox"/> 448 Education	<input type="radio"/> M. Contract <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran’s Benefits <input type="checkbox"/> 160 Stockholder’s Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> N. Three-Judge Court <input type="checkbox"/> 441 Civil Rights – Voting (if Voting Rights Act)

V. ORIGIN
 1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify)
 6 Multi-district Litigation
 7 Appeal to District Judge from Mag. Judge
 8 Multi-district Litigation – Direct File

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)
 5 U.S.C. § 552

VII. REQUESTED IN COMPLAINT	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$ JURY DEMAND:	Check YES only if demanded in complaint YES <input type="checkbox"/> NO <input type="checkbox"/>
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VIII. RELATED CASE(S) IF ANY	(See instruction)	YES <input type="checkbox"/>	NO <input type="checkbox"/>	If yes, please complete related case form
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DATE: 10/02/2024	SIGNATURE OF ATTORNEY OF RECORD: /s/ Eric Neal Cornett
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INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil coversheet. These tips coincide with the Roman Numerals on the cover sheet.

- I. COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III. CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV. CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI. CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII. RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk’s Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

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

_____)
 Plaintiff)
)
 v.) Civil Action No.
)
_____)
 Defendant)

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify):* _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

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

_____)
 Plaintiff)
)
 v.) Civil Action No.
)
_____)
 Defendant)

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

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

_____)
 Plaintiff)
)
 v.) Civil Action No.
)
_____)
 Defendant)

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify):* _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

EXHIBIT 1

The Oversight Project



SENT VIA: foia@hq.dhs.gov

September 18, 2024

FOIA Officer
CBP FOIA
90 K Street NE
MS 1181
Washington, DC 20229

Re: Communications between U.S. Customs and Border Protection and the Executive Office of the Vice President

Dear FOIA Officer,

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and the implementing FOIA regulations of the Department of Homeland Security (DHS), 6 C.F.R. Part 5:

All documents and communications between U.S. Customs and Border Protection and the Executive Office of the Vice President related to the southwest border or illegal immigration.

The time period for this request is January 20, 2021, through the present.

To further narrow down the scope of the request, requester does not seek correspondence that merely forwards press clippings, such as news accounts or opinion pieces, newsletters, and published or docketed materials, if that correspondence has no comment or no substantive comment added by any party in the thread.

The terms “pertaining to,” “referring,” “relating,” or “concerning” with respect to any given subject means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.

The term “record” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications,

The Oversight Project



electronic mail (emails), MMS or SMS text messages, instant messages, messaging systems (such as iMessage, Microsoft Teams, WhatsApp, Telegram, Signal, Google Chat, Twitter direct messages, Lync, Slack, and Facebook Messenger), contracts, cables, telexes, notations of any type of conversation, telephone call, voicemail, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electronic records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A record bearing any notation not a part of the original text is to be considered a separate record. A draft or non-identical copy is a separate record within the meaning of this term. By definition a “communication” (as that term is defined herein) is also a “record” if the means of communication is any written, recorded, or graphic matter of any sort whatsoever, regardless of how recorded, and whether original or copy.

The terms “and” and “or” should be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The terms “all,” “any,” and “each” should each be construed as 'encompassing any and all. The singular includes the plural number, and vice versa. The present tense includes the past and vice versa. The masculine includes the feminine and neuter genders.

The term “communication” means each manner or means of disclosure or exchange of information (in the form of facts, ideas, inquiries, or otherwise), regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in an in-person meeting, by telephone, facsimile, e-mail (desktop or mobile device), text message, MMS or SMS message, messaging systems (such as iMessage, Microsoft Teams, WhatsApp, Telegram, Signal, Google Chat, Twitter direct messages, Lync, Slack, and Facebook Messenger), regular mail, telexes, releases, or otherwise.

The Oversight Project



“Communications with,” “communications from,” and “communications between” means any communication involving the related parties, regardless of whether other persons were involved in the communication, and includes, but is not limited to, communications where one party is cc’d or bcc’d, both parties are cc’d or bcc’d, or some combination thereof.

Please consider all members of a document “family” to be responsive to the request if any single “member” of that “family” is responsive, regardless of whether the “family member” in question is “parent” or “child.”

In the interest of expediency and to minimize the research and/or duplication burden on your staff, please send records electronically if possible. If this is not possible, please notify me before sending to the mailing address listed below. If access to this request will take longer than twenty business days, please let me know when I might receive records or be able to inspect the requested records. Please produce responsive documents as soon as they become available. In all cases, please communicate with me at the below email address.

Please comply fully with 5 U.S.C. § 552(b). Accordingly, without limitation to the foregoing, if any portion of this request is denied for any reason, please provide written notice of the records or portions of records that are being withheld and cite each specific exemption of the Freedom of Information Act on which the agency relies. Moreover, to the extent that responsive records may be withheld in part produce all reasonably segregable portions of those records. Additionally, please provide all responsive documents even if they are redacted in full.

Fee Waiver Request

This request is primarily and fundamentally for non-commercial purposes. As a 501(c)(3) nonprofit, Heritage Foundation does not have a commercial purpose and the release of the information requested is not in Heritage Foundation’s commercial interest. Heritage Foundation’s mission is to is to formulate and promote public policies based on the principles of free enterprise, limited government, individual freedom, traditional American values, and a strong national defense. Heritage Foundation uses the information requested and

The Oversight Project



analyzes it in order to educate the public through social media,¹ broadcast media² (traditional and nontraditional) and press releases.³ The requested information is in the public interest because there has been immense press coverage and congressional scrutiny concerning the failures of current Vice President Kamala Harris's role as the border czar and her ineffectiveness to provide any protections against the massive wave of illegal immigration that has swelled our country with illegal aliens.

Because this is a request by a member of the news media for information of public interest, made in my capacity as an author for the Daily Signal⁴ (a major news outlet⁵), I actively gather information of potential interest to our Daily Signal audience, and I use my editorial skills to turn raw materials into a distinct work, and I distribute that work to our Daily Signal audience through podcasts⁶ or articles. I also post our distinct work on our Oversight Project social media page.⁷ By function, the Oversight Project is primarily engaged in disseminating information to the public. Staff members for the Oversight Project regularly appear in television, radio, print, and other forms of media to provide expert commentary on salient issues in the national debate. I request that you waive all applicable fees associated with this request.

If you deny this request for a fee waiver, please advise me in advance of the estimated charges if they are to exceed \$50. Please send me a detailed and itemized explanation of those charges.

Request for Expedited Processing

¹ Heritage Foundation on X. [@Heritage] (Accessed: 2023, October 16). 677.2K followers. <https://twitter.com/Heritage>

² Fox News. (Accessed: 2023, October 16). Heritage Foundation launches Conservative Oversight Project aimed at 'exposing' Biden admin, leftist policies. <https://www.foxnews.com/politics/heritage-conservative-oversight-project-biden-admin-leftist-policies>

³ Heritage Foundation. (Accessed: 2023, October 16). Press. <https://www.heritage.org/press>.

⁴ Daily Signal. (Accessed: 2023, October 16). Mike Howell. <https://www.dailysignal.com/author/mike-howell/>

⁵ Daily Signal on X. [@DailySignal] (Accessed: 2023, October 16). 84.4K Followers. <https://twitter.com/DailySignal>

⁶ Apple. (Accessed: 2023, October 16). The Daily Signal Podcast. <https://podcasts.apple.com/us/podcast/the-daily-signal-podcast/id1313611947>

⁷ Oversight Project on X. [@OversightPR] (Accessed: 2023, October 16). 8,756 Followers. <https://twitter.com/oversightpr>

The Oversight Project



Pursuant to 6 C.F.R. § 5.5(e)(1)(iv), I request expedited processing for this request. I certify the following statement of facts in support of expedited processing to be true and correct pursuant to 6 C.F.R. § 5.5(e)(1)(iv).

Background:

On April 14, 2021, President Joseph R. Biden announced that Vice President Harris would be appointed as his “border czar.”⁸ Effectively, this meant Vice President Harris would be responsible for overseeing and coordinating border security policies and operations. The insurmountable task, left wide open by the Biden Administration’s open-border policies, left Vice President Harris to sort out the root causes of illegal immigration.

On July 21, 2024, President Biden suspended his presidential campaign and endorsed Vice President Harris. However, there has been considerable confusion on whether or not Harris was actually a border czar, and conversely, whether the massive failure of the Biden Administration’s immigration policies was Harris’s fault.

The following factual Appendices are attached and expressly incorporated herein and made part of this request (as are the factual sources cited therein):

- Appendix A is a compilation of news articles discussing Vice President Harris’s role as border czar
- Appendix B is a copy of Rep. Ronny Jackson’s legislation addressing Vice President Harris’s role in the immigration crisis.
- Appendix C is a copy of Rep. Elise Stefanik’s legislation addressing Vice President Harris’s role in the immigration crisis.
- Appendix D is a copy of Rep. James Comer’s letter to Troy Miller of U.S. Customs and Border Protection.

The connection between Harris and her role as border czar has generated an enormous amount of press. *See App. A.*

Expedited Processing is Warranted under 6 C.F.R. § 5.5(e)(1)(iv).

⁸ Shawna Chen, *Harris Will Visit Mexico and Guatemala to Address the “Root Causes” of Border Crossings*, Axios (2021), <https://www.axios.com/2021/04/14/harris-immigration-visit-mexico-guatemala> (last visited Jul 24, 2024).

The Oversight Project



1. This provision provides that expedited processing shall be granted regarding: “A matter of widespread and exceptional media interest in which there exists possible questions about the government’s integrity which affect public confidence.”

Section 6 C.F.R. § 5.5(e)(1)(iv) mirrors the Department of Justice regulation governing expedited processing, 28 C.F.R. § 16.5(e)(1)(iv), which provides that expedited processing shall be granted regarding “[a] matter of widespread and exceptional media interest in which there exists possible questions about the government’s integrity which affect public confidence.”

Courts have held that the DOJ Regulation requires the requester to show: (1) that the request involves a “matter of widespread and exceptional media interest” (28 C.F.R. § 16.5(e)(1)(iv)); and (2) that the matter is one “in which there exists possible questions about the integrity of the government that affect public confidence” (*id.*). See *Edmonds v. FBI*, No. 02-cv-1294 (ESH), 2002 WL 32539613, *3 (D.D.C. Dec. 3, 2002). It is not necessary to show “prejudice or a matter of current exigency to the American public.” *Id.*

First, the DOJ Regulation requires showing that the matter about which questions of integrity have been raised is the subject of widespread national media attention. See *Am. Oversight v. DOJ*, 292 F.Supp.3d 501, 507–508 (D.D.C. 2018) (denying motion for expedited processing because general media interest in Solicitor General’s nomination is insufficient to show media interest in possible ethics questions concerning the nomination). There need not be a showing that the disclosure would shed considerable light on agency operations; only that there is “exceptional” and “widespread” media interest. See *CREW v. DOJ*, 870 F.Supp.2d 70, 81 (D.D.C. 2012), *rev’d on other grounds*, 746 F.3d 1082 (D.C. Cir. 2014). While the media interest need be “widespread” and “exceptional” it need not be overwhelming. See *ACLU*, 321 F.Supp.2d at 31–32 (rejecting DOJ’s position that requester’s citation to what the court described as “only a handful of articles” was insufficient to show “widespread and exceptional media interest” because those articles “were published in a variety of publications and repeatedly reference the ongoing national discussion about the Patriot Act and Section 215” (second quotation added)); *Edmonds*, 2002 WL 32539613, at *3 (numerous national newspaper and network television broadcasts concerning whistleblower’s allegations of security lapses in FBI translator program met test).⁹

⁹ *Cf.* 28 C.F.R. § 16.5(e)(3) (“The existence of numerous articles published on a given subject can be helpful in establishing the requirement that there be an ‘urgency to inform’ the public on the topic.”).

The Oversight Project



Second, the DOJ Regulation requires showing that “there exists *possible* questions about the government’s integrity that affect public confidence.” *CREW v. DOJ*, 436 F.Supp.3d 354, 361 (D.D.C. 2020) (*quoting* 28 C.F.R. § 16.5(e)(1)(4)) (emphasis by Court).¹⁰ It does not “require the requester to prove wrongdoing by the government in order to obtain documents on an expedited basis.” *Id.* at 362. “The primary way to determine whether such possible questions exist is by examining the state of public coverage of the matter at issue, and whether that coverage surfaces possible ethics issues so potentially significant as to reduce public confidence in governmental institutions.” *Am. Oversight v. DOJ*, 292 F.Supp.3d 501, 508 (D.D.C. 2018). This is not an extraordinarily high bar. *See, e.g.*, *CREW*, 436 F.Supp.3d at 361 (complaint sufficient to survive a motion to dismiss where it alleged Attorney General’s action regarding disclosure of Mueller Report “supported an inference that at best, the Attorney General undertook to frame the public discussion on his own terms, and at worst that he distorted the truth”); *ACLU v. DOJ*, 321 F.Supp.2d 24, 32 (D.D.C. 2004) (allegations in press that Section 215 of the Patriot Act may be unconstitutional and reports that Members of Congress have alleged abuses of Section 215 “implicate[] government integrity” and hence are sufficient to meet test); *Edmonds*, 2002 WL 32539613, at *3–4 (test met where plaintiff alleged security lapses in FBI translators program, national news covered the issue, and two Senators expressed concern regarding “the significant security issues raised by plaintiff’s allegations and the integrity of the FBI”).¹¹

2. The facts amply support expedition here. The immense news media interest¹² in Harris’s role as the border czar and the utter failings of the Biden

¹⁰ To be sure, this standard does not require expedition of any questions concerning government integrity. *See, e.g.*, *White v. DOJ*, 16 F.4th 539, 544 (7th Cir. 2021) (test not met in case where records sought to cast doubt on requestors’ criminal conviction where requestor claimed he was subject to an elaborate government sting operation).

¹¹ DOJ has granted expedition under the DOJ Regulation in a number of circumstances. *See, e.g.*, *CREW v. DOJ*, 870 F.Supp.2d at 81 n. 14 (expedition granted to request seeking records on FBI’s closed investigation of Congressman DeLay for misconduct which did not result in charges, but received considerable media attention (subsequent history omitted)); *CREW v. DOJ*, 820 F.Supp.2d 39, 42, 46 (D.D.C. 2011) (expedition granted to request seeking information concerning possible deletion of Office of Legal Counsel emails where the possible deletion was flagged as a hindrance in an internal investigation, covered in the media, and was the subject of Congressional concerns); *Elec. Frontier Found. v. DOJ*, 565 F.Supp.2d 188, 189–91 (D.D.C. 2008) (expedition granted to request seeking information regarding storage of information obtained by National Security Letters in FBI’s Data Warehouse); *CREW v. DOJ*, No. 05-cv-2078 (EGS), 2006 WL 1518964, *1 (D.D.C. June 1, 2006) (expedition granted to request concerning government’s decision to seek a reduced penalty in tobacco litigation where government’s decision was subject to intensive news coverage and prompted concern from “several Congressman” which caused a request for an Inspector General investigation of “improper political interference” with the decision).

¹² *See* Appendix A.

The Oversight Project



Administration's border policies are connected. These failings have prompted congressional scrutiny. *See* App. B, C, & D. The ultimate question, is who is responsible for these failings? If Vice President Harris was the border czar, then these failings rest solely with Harris.

There is more than enough evidence to sustain a finding of "possible questions about the government's integrity that affect public confidence". Again, this bar is not a very high bar. For years, the immigration crisis has been at the forefront of major political and policy debates. The Biden Administration has chosen to obfuscate instead of providing the necessary transparency for determining what the American people's government is up to.

Thank you in advance for considering my request. If you have any questions, or feel you need clarification of this request please contact me at oversightproject@heritage.org.

Sincerely,

Mike Howell
Director and Investigative Columnist
at The Daily Signal
The Heritage Foundation
214 Massachusetts Ave, NE
Washington, D.C. 20002

EXHIBIT 2

From: samueldewey@sedchambers.com
To: "CBP FOIA PUBLIC LIAISON"; Roman.Jankowski@heritage.org
Cc: "BURROUGHS, SABRINA"
Subject: RE: CBP-FO-2024-172591
Date: Tuesday, September 24, 2024 10:30:57 AM
Attachments: [image001.png](#)

Understood. That is not a valid determination as you well know. If you intend to deny the Request, please do so promptly. It is also curious that you object to this Request as it tracks a threatened subpoena from the House Committee on Oversight & Accountability.

Best,

Sam

From: CBP FOIA PUBLIC LIAISON <cbpfoiapublicliaison@cbp.dhs.gov>
Sent: Tuesday, September 24, 2024 10:28 AM
To: Roman.Jankowski@heritage.org; samueldewey@sedchambers.com
Cc: BURROUGHS, SABRINA <sabrina.burroughs@cbp.dhs.gov>
Subject: RE: CBP-FO-2024-172591

Good morning,

In response to your email sent to Director Burroughs, CBP FOIA closed the case as insufficient. The request is lacking information needed to conduct a valid search. CBP would need the names of the CBP employees from whom you are seeking emails, as well as the email domain(s) of the Executive Vice President. Also, please consider specific key terms about the Southwest Border and Illegal Immigration. Both are broad topics. A search could yield many records that may not be on your specific topic.

We apologize that this was not made clear in our previous correspondence. You are welcome to refile this request with the required information for CBP to conduct a valid search.

Thank you,
 CBP FOIA

From: Jankowski, Roman <Roman.Jankowski@heritage.org>
Sent: Monday, September 23, 2024 2:03 PM
To: BURROUGHS, SABRINA <sabrina.burroughs@cbp.dhs.gov>
Cc: Samuel Dewey <samueldewey@sedchambers.com>
Subject: CBP-FO-2024-172591

You don't often get email from roman.jankowski@heritage.org. [Learn why this is important](#)
CAUTION: This email originated from outside of DHS. DO NOT click links or open attachments unless you recognize and/or trust the sender. If you feel this is a suspicious-looking email, please report by using the Report Phish button option.

Good Afternoon Sabrina,

It appears that your office inadvertently closed our FOIA request, CBP-FO-2024-172591. Can you please reopen it. We are looking forward to your determination of expedited processing.

SecureRelease™ Portal

DETAILS		CONTACT INFORMATION	DOCUMENTS	MESSAGES	APPEALS
Details of Request <small>(Read only details of request)</small>					
Request Description:	Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and the implementing FOIA regulations of the Department of Homeland Security (DHS), 6 C.F.R. Part 5. All documents and communications between U.S. Customs and Border Protection and the Executive Office of the Vice President related to the southwest border or illegal immigration. The time period for this request is January 20, 2021, through the present. To further narrow down the scope of the request, requester does not seek			Fee Waiver Requested?:	Not Billable
Agency:	Department of Homeland Security			Reason for Fee Waiver:	please see FOIA request
Component:	U.S. Customs & Border Protection			Expedited Processing?:	Not Applicable
Processing Track:	Complex			Reason for Expedited Processing:	Please see foia request
Request Type:	FOIA Request				
Submitted Date:	09/18/2024				
Request Status:	Closed (No Documents Sent)				
Identity Verification Status:	Not Requested by Agency				
Files uploaded by user					
File Name				Attachment Type	
2024-09-18 House Oversight Letter Mirror Request (002).pdf				General Documentation	
App. A.pdf				Expedition Request Documentation	
App. B..pdf				Expedition Request Documentation	
App. C..pdf				Expedition Request Documentation	
App. D.pdf				Expedition Request Documentation	

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