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*Attorneys for Plaintiff Van Der Hout LLP (continued on next page)*

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

VAN DER HOUT LLP,  
  
Plaintiff,

v.

U.S. DEPARTMENT OF HOMELAND  
SECURITY; U.S. DEPARTMENT OF  
STATE,  
  
Defendants.

No. 3:24-cv-1095

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

1 *[Caption Page Continued – Additional Attorneys for Plaintiff Van Der Hout LLP]*

2 Christopher Godshall-Bennett\*  
3 American-Arab Anti-Discrimination Committee  
4 1705 DeSales Street, NW, Suite 500  
5 Washington, D.C. 20036  
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7 cgb@adc.org

8 \* *Pro Hac Vice* application forthcoming  
9 † not admitted in D.C.; working remotely from and admitted in Louisiana only

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**INTRODUCTION**

1  
2 1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. §§  
3 552, *et seq.*, to compel the Defendants, the U.S. Department of Homeland Security (“DHS”) and  
4 the U.S. Department of State (“DOS”) (collectively, “Defendants”), to produce agency records  
5 that have been improperly withheld from Plaintiff, Van Der Hout LLP (“VDH”). Plaintiff’s  
6 FOIA request seeks copies of specific documents pertaining to the federal government’s  
7 designation of Israel as eligible to participate in the Visa Waiver Program. *See* Declaration of  
8 Johnny Sinodis (Sinodis Decl.) at Exhibit (“Exh.”) A (VDH’s FOIA Request, dated Oct. 27,  
9 2023).

10 2. The Visa Waiver Program allows nationals from designated countries to enter the  
11 United States for stays of up to 90 days for tourism or business purposes without undergoing the  
12 normal process of applying for a visa from a U.S. embassy or consulate. Defendant DHS, in  
13 consultation with Defendant DOS, has the authority to designate countries for participation in the  
14 Visa Waiver Program. In order to be eligible for designation, a country must comply with an  
15 extensive list of conditions set forth by the Immigration and Nationality Act (“INA”). One of the  
16 central requirements is that the foreign country must offer reciprocal privileges to U.S. citizens,  
17 also known as the “Blue is Blue” requirement. In other words, the foreign country must treat all  
18 blue U.S. passports equally and must not discriminate against classes of U.S. citizens for  
19 purposes of determining entry into the foreign country.

20 3. For over a decade, Israel has sought to be admitted into the Visa Waiver Program,  
21 but the United States has consistently refused those requests, partly because of Israel’s insistence  
22 on subjecting Palestinian Americans to a different set of rules.

23 4. On July 19, 2023, the United States signed a Memorandum of Understanding  
24 (“MOU”) with Israel specifying the conditions under which Israel would be allowed to enter the  
25 Visa Waiver Program. The terms of the MOU, according to DOS’s official communications,  
26 allow Israel to discriminate against Palestinian Americans, subjecting them to a different set of  
27 enhanced requirements for entry into Israel from other Americans.  
28



1 administrative remedies. 5 U.S.C. § 552(a)(6)(C)(i). Plaintiff VDH is therefore entitled to seek  
2 relief directly from this Court. 5 U.S.C. § 552(a)(4)(B).

3 **DIVISIONAL ASSIGNMENT**

4 13. Pursuant to Local Rule 3-2(c) and (d), assignment to the San Francisco/Oakland  
5 division is proper because Plaintiff VDH is headquartered in San Francisco.

6 **PARTIES**

7 14. Plaintiff Van Der Hout LLP (“VDH”) is a nationally recognized, full-service  
8 immigration law firm representing individuals, families, and employers in the Bay Area,  
9 throughout California, and across the country and globe in a broad range of immigration and visa  
10 concerns. Since its founding in 1980, the firm has represented thousands of individuals, litigated  
11 cases of national significance, including many pro bono cases, and helped clients and entities to  
12 understand U.S. immigration law provisions and policies. VDH’s office and principal place of  
13 business is located in San Francisco, California.

14 15. Defendant Department of Homeland Security (“DHS”) is a department of the  
15 Executive Branch of the United States government and is an agency within the meaning of 5  
16 U.S.C. § 552(f)(1).

17 16. Defendant Department of State (“DOS”) is a department of the Executive Branch  
18 of the United States government and is an agency within the meaning of 5 U.S.C. § 552(f)(1).

19 **FACTUAL BACKGROUND**

20 **Visa Waiver Program**

21 17. Generally, foreign nationals who want to temporarily visit the United States for  
22 business or pleasure must obtain a B nonimmigrant visa from DOS’s officers at consular posts  
23 abroad before traveling to the United States. This can often be a lengthy process, requiring  
24 individuals in some countries to wait over a year just to obtain a consular interview. One  
25 exception to this general rule is for nationals of a select list of countries that participate in the  
26 Visa Waiver Program.

27 18. The Visa Waiver Program, originally established in 1986 as a pilot program and  
28 made permanent in 2000 (P.L. 106-396), allows nationals from 41 countries to enter the United

1 States as temporary visitors for business or pleasure without first obtaining a visa.

2 19. Nationals from participating Visa Waiver Program countries can use a web-based  
3 system, called the Electronic System for Travel Authorization (“ESTA”), to get electronic travel  
4 authorization before embarking to the United States without first having to get approval from a  
5 consular post for a visa.

6 20. Countries that seek to qualify for the Visa Waiver Program must, *inter alia*, offer  
7 reciprocal privileges to U.S. citizens—that is, they must allow visa-free entry to all U.S. citizens  
8 and cannot discriminate between classes of U.S. citizens. This reciprocity requirement is also  
9 referred to as “Blue is Blue.”

10 21. DHS, in consultation with DOS, has the authority to designate countries as  
11 eligible to participate in the Visa Waiver Program. DHS additionally must certify that the  
12 country meets all of the requirements.

### 13 **Israel’s Designation Under the Visa Waiver Program**

14 22. For at least a decade, the Israeli government has sought inclusion in the Visa  
15 Waiver Program.<sup>1</sup> Despite the reciprocity requirement, the Israeli government has insisted that it  
16 be allowed to discriminate against Americans who are on the Palestinian population registry and  
17 still be allowed to participate in the Visa Waiver Program. However, the U.S. government has  
18 historically maintained that Israel could not be included in the Visa Waiver Program without a  
19 guarantee that it would not discriminate against U.S. nationals of Palestinian descent.

20 23. For example, in 2014, DOS spokesperson Jen Psaki under the Obama  
21 administration stated that Israel will not be admitted into the Visa Waiver Program until it treats  
22 all American visa applicants equally.<sup>2</sup>

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24 <sup>1</sup> See e.g., Bradley Klapper and Matthew Lee, “Congress, administration disagree on Israeli  
25 visas,” Associated Press (Jul. 15, 2013), <https://apnews.com/united-states-government-1f13d4bc1aff484596af33d5339cceb0>; Ron Kampeas, “Israeli policy complicates push for visa-  
26 free entry to the US,” The Times of Israel (Apr. 14, 2013),  
<https://www.timesofisrael.com/israeli-policy-complicates-push-for-visa-free-entry-to-us/>.

27 <sup>2</sup> Ann Gearan, “Lawmakers pushing to add Israel to visa-waiver program,” The Washington Post  
28 (Apr. 26, 2014), <https://www.washingtonpost.com/world/national-security/lawmakers-pushing-to-add-israel-to-visa-waiver-program/2014/04/26/4c99f2d8-ccb-11e3-93eb->

1           24.     Likewise, in 2017, a Trump administration DOS spokesperson stated, in response  
2 to Israel’s push to be included in the Visa Waiver Program, that, “[i]n general, the U.S.  
3 administration requires that every U.S. citizen receive the same treatment upon arrival in foreign  
4 countries, and benefit from unrestricted freedom of movement, regardless of their ethnic  
5 affiliation and country of origin. . . Specifically, the administration in Washington continues to  
6 be concerned about the unequal treatments given to U.S. Muslims at entry points and  
7 checkpoints (at roadblocks in the West Bank, R.D.). We regularly raise the issue of equal  
8 treatment of all U.S. citizens at entry points to Israel with the authorities in Israel.”<sup>3</sup>

9           25.     Congress has also attempted to add Israel to the Visa Waiver Program but has  
10 never been successful due to Israel’s failure to guarantee reciprocity for all U.S. citizens.<sup>4</sup>

11           26.     In August 2023, however, DOS announced that, on July 19, 2023, the United  
12 States and Israel “signed a Memorandum of Understanding on the Extension of Reciprocal  
13 Privileges and the Visa Waiver Program (MOU on Reciprocity), which details the steps Israel is  
14 committed to take to extend reciprocal privileges to all U.S. citizens and nationals traveling to or  
15 through Israel for short-term travel for business, tourism, or transit as required for participation  
16 in the Visa Waiver Program.” Dep’t of State, “Israel’s Commitments to Extend Reciprocal  
17 Privileges to All U.S. Citizens” (Aug. 24, 2023), [https://www.state.gov/israels-commitments-to-  
18 extend-reciprocal-privileges-to-all-u-s-citizens/](https://www.state.gov/israels-commitments-to-extend-reciprocal-privileges-to-all-u-s-citizens/).

19           27.     DOS’s description of the terms of the MOU is, on its face, discriminatory against  
20 Palestinian Americans seeking to enter Israel under the Visa Waiver Program. DOS’s  
21 announcement stated:

22 \_\_\_\_\_  
23  
24 6c0037dde2ad\_story.html; *see also* Adam Taylor, “These accounts from Arab Americans show  
25 why an Israeli visa waiver plan is so controversial,” *The Washington Post* (Apr. 27, 2014),  
26 [https://www.washingtonpost.com/news/worldviews/wp/2014/04/27/these-accounts-from-arab-  
americans-show-why-an-israeli-visa-waiver-plan-is-so-controversial/](https://www.washingtonpost.com/news/worldviews/wp/2014/04/27/these-accounts-from-arab-americans-show-why-an-israeli-visa-waiver-plan-is-so-controversial/).

27 <sup>3</sup> Ran Dagoni, “U.S. State Dep’t: Israel Won’t Get Visa Waiver So Fast,” *Globes* (Nov. 15,  
28 2017), [https://en.globes.co.il/en/article-us-state-dept-israel-wont-get-visa-waiver-so-fast-  
1001211881](https://en.globes.co.il/en/article-us-state-dept-israel-wont-get-visa-waiver-so-fast-1001211881).

<sup>4</sup> *See supra* note 1.

- 1 a. “U.S. citizens who are residents of Gaza will not be eligible at this time for visa-  
2 free travel directly from Gaza to Israel via the Erez border crossing. Israel will  
3 instead establish new procedures for U.S. citizens residing in Gaza to request a  
4 permit or visa for short term visits, including transit and tourism, directly from  
5 Gaza to Israel via the Erez border crossing.”
- 6 b. “Those U.S. citizens who are residents of Gaza and are denied a permit or visa to  
7 enter Israel via the Erez border crossing may apply to travel securely between  
8 Gaza and the Allenby Bridge border crossing. Request for such travel needs to be  
9 made at least 45 days in advance and also needs approval from the Palestinian  
10 Authority. Israel also will facilitate entry permits into Gaza for travel once a year  
11 by U.S. citizens who are first-degree relatives of a resident in Gaza.”
- 12 c. “Israel will launch its new ‘Marom’ travel authorization system for all foreign  
13 visitors to Israel, including U.S. citizens. When the ‘Marom’ system is fully  
14 operational (currently planned for May 2024), all U.S. citizens – including those  
15 residing in the West Bank – will be able to utilize that system for travel to and  
16 through Israel. As an interim step, Israel has made available an application  
17 managed by the Coordinator of Government Activities in the Territories  
18 (COGAT) for U.S. citizens residing in the West Bank.”

19 28. The terms of the MOU effectively create a special exception to exempt Israel  
20 from the Visa Waiver Program’s long-standing reciprocity requirement.

21 29. On September 8, 2023, fifteen U.S. Senators wrote a letter to U.S. Secretary of  
22 State Blinken sharing their concerns that Israel is not in compliance with the core “Blue is Blue”  
23 reciprocity requirements of the Visa Waiver Program and is not on track to meet those  
24 requirements prior to September 30, 2023. *See* Senator Chris Van Hollen, “Van Hollen, Schatz  
25 Lead More Than A Dozen Colleagues In Letter To Administration On Israel’s Non-Compliance  
26 With Key Visa Waiver Program Requirements” (Sept. 8, 2023),  
27 <https://www.vanhollen.senate.gov/news/press-releases/van-hollen-schatz-lead-more-than-a->  
28



1 dozen-colleagues-in-letter-to-administration-on-israels-non-compliance-with-key-visa-waiver-  
2 program-requirements.

3 30. Despite these concerns, on September 26, 2023, DHS, in consultation with DOS,  
4 designated Israel as a country that is eligible to participate in the Visa Waiver Program. *See*  
5 Designation of Israel for the Visa Waiver Program, 88 Fed. Reg. 67,063 (Sept. 29, 2023) (to be  
6 codified at 8 C.F.R. pt. 217).

7 31. DHS and DOS released statements designating Israel into the Visa Waiver  
8 Program, which referenced “updates” made by Israel “to its entry policies to meet the [Visa  
9 Waiver Program] requirement to extend reciprocal privileges to all U.S. citizens without regard  
10 to national origin, religion, or ethnicity.” *See* DHS, “Secretary Mayorkas and Secretary Blinken  
11 Announce Designation of Israel into the Visa Waiver Program” (Sept. 27, 2023),  
12 [https://www.dhs.gov/news/2023/09/27/secretary-mayorkas-and-secretary-blinken-announce-](https://www.dhs.gov/news/2023/09/27/secretary-mayorkas-and-secretary-blinken-announce-designation-israel-visa-waiver)  
13 [designation-israel-visa-waiver](https://www.dhs.gov/news/2023/09/27/secretary-mayorkas-and-secretary-blinken-announce-designation-israel-visa-waiver).

14 32. The day after DHS’s decision to designate Israel’s eligibility under the Visa  
15 Waiver Program, U.S. Senators Van Hollen, Schatz, Merkley, and Welch issued a statement  
16 reiterating that “Israel has failed to meet the ‘Blue is Blue’ requirement.” *See* Senator Chris Van  
17 Hollen, “Van Hollen, Schatz, Merkley, Welch Release Statement On Designation Of Israel To  
18 Visa Waiver Program” (Sept. 27, 2023), [https://www.vanhollen.senate.gov/news/press-](https://www.vanhollen.senate.gov/news/press-releases/van-hollen-schatz-merkley-welch-release-statement-on-designation-of-israel-to-visa-waiver-program)  
19 [releases/van-hollen-schatz-merkley-welch-release-statement-on-designation-of-israel-to-visa-](https://www.vanhollen.senate.gov/news/press-releases/van-hollen-schatz-merkley-welch-release-statement-on-designation-of-israel-to-visa-waiver-program)  
20 [waiver-program](https://www.vanhollen.senate.gov/news/press-releases/van-hollen-schatz-merkley-welch-release-statement-on-designation-of-israel-to-visa-waiver-program).

21 33. On October 19, 2023, DHS announced “the start of visa-free travel for short term  
22 visits to the United States for eligible Israeli citizens and nationals following Israel’s admission  
23 into the U.S. Visa Waiver Program.” *See* DHS, “DHS Announces Start of Applications for Visa-  
24 Free Travel to U.S. for Eligible Israeli Travel to U.S. For Eligible Israeli Citizens and Nationals”  
25 (Oct. 19, 2023), [https://www.dhs.gov/news/2023/10/19/dhs-announces-start-applications-visa-](https://www.dhs.gov/news/2023/10/19/dhs-announces-start-applications-visa-free-travel-us-eligible-israeli-citizens-and)  
26 [free-travel-us-eligible-israeli-citizens-and](https://www.dhs.gov/news/2023/10/19/dhs-announces-start-applications-visa-free-travel-us-eligible-israeli-citizens-and).

27 34. Within weeks of Israel’s admission, the New York Times reported that “Israel is  
28 preventing Palestinian Americans from entering the country from the West Bank, an apparent

1 violation of a recent agreement in which citizens from the United States and Israel can travel to  
2 the other nation without a visa.” Eileen Sullivan, Edward Wong and Patrick Kingsley, “Israel  
3 Blocks Palestinian Americans From Entering From West Bank,” N.Y TIMES (Nov. 16, 2023),  
4 <https://www.nytimes.com/2023/11/16/us/politics/israel-palestinian-americans-west-bank.html>.

5 35. The U.S. Ambassador to Israel reportedly told an Israeli national security advisor  
6 that “Israel is violating the visa waiver agreement by not allowing Palestinian Americans from  
7 the West Bank to enter the country” following the Israeli government’s decision to close its  
8 border crossings into the West Bank. Barak Ravid, “Scoop: U.S. warns Israel it’s violating visa  
9 waiver deal with West Bank closure,” AXIOS (Nov. 15, 2023),  
10 <https://www.axios.com/2023/11/16/israel-visa-waiver-palestinian-americans-us-violation>.

11 36. Only recently has the Israeli government reportedly begun to allow Palestinian  
12 Americans entry into Israel from the West Bank. *See* U.S. Embassy in Israel, “U.S. Citizens  
13 with a Palestinian Authority (PA) ID/Passport Can Apply for Permits for Short-Term Visits to  
14 Israel Beginning December 8,” (Dec. 10, 2023), [https://il.usembassy.gov/message-to-u-s-](https://il.usembassy.gov/message-to-u-s-citizens-u-s-embassy-jerusalem-december-10-2023/)  
15 [citizens-u-s-embassy-jerusalem-december-10-2023/](https://il.usembassy.gov/message-to-u-s-citizens-u-s-embassy-jerusalem-december-10-2023/).

16 37. To date, the United States has failed to provide the public with information about  
17 the terms under which it agreed to allow Israel to participate in the Visa Waiver Program and  
18 how the United States is monitoring Israel’s compliance with the Visa Waiver Program’s  
19 requirements.

20 38. There is an immediate need for transparency regarding the terms under which  
21 Israel was allowed to enter the Visa Waiver Program. Based on statements from U.S. Senators  
22 and media reports, DHS designated Israel as eligible under the Visa Waiver Program without an  
23 assurance that Israel met the requirements of the Visa Waiver Program at the time of its  
24 designation.<sup>5</sup> Since that time, Israel implemented a closure of the West Bank – barring anyone,  
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26 <sup>5</sup> *See* Senator Chris Van Hollen, “Van Hollen, Schatz, Merkley, Welch Release Statement On  
27 Designation Of Israel To Visa Waiver Program” (Sept. 27, 2023),  
28 [https://www.vanhollen.senate.gov/news/press-releases/van-hollen-schatz-merkley-welch-release-](https://www.vanhollen.senate.gov/news/press-releases/van-hollen-schatz-merkley-welch-release-statement-on-designation-of-israel-to-visa-waiver-program)  
[statement-on-designation-of-israel-to-visa-waiver-program](https://www.vanhollen.senate.gov/news/press-releases/van-hollen-schatz-merkley-welch-release-statement-on-designation-of-israel-to-visa-waiver-program); American-Arab Anti-Discrimination

1 including tens of thousands of Palestinian Americans, from entering or leaving.<sup>6</sup> Moreover, less  
 2 than two months after Israel’s designation, the federal government expressed concerns to the  
 3 Israeli government that Israel is violating the MOU by not allowing Palestinian Americans from  
 4 the West Bank to enter the country.<sup>7</sup> The records sought will assist Plaintiff, other immigration  
 5 law practitioners, including those representing individuals eligible for travel under the Visa  
 6 Waiver Program, and the general public in understanding the means by which the federal  
 7 government will ensure that it is meeting Congress’ directive that countries designated under the  
 8 Visa Waiver Program meet the basic requirements of the program.

### 9 **Plaintiff VDH’s FOIA Request**

10 39. On October 27, 2023, Plaintiff VDH submitted a FOIA request to DHS and DOS,  
 11 seeking a copy of the MOU and any subsequent changes to the MOU. *See* Sinodis Decl. at Exh.  
 12 A.

13 40. Specifically, Plaintiff VDH requested the following records, documents, and/or  
 14 information which were prepared, received, transmitted, collected, and/or maintained by DHS  
 15 and/or DOS<sup>8</sup>:

- 16 a. The MOU signed by DHS, DOS, and the government of Israel on July 19, 2023,  
 17 entitled “Memorandum of Understanding between The Government of the State  
 18  
 19

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20  
 21 Committee, “More than 30 organizations meet with U.S. officials to discuss Israel’s Visa Waiver  
 22 Program bid” (Jun. 5, 2023), <https://adc.org/visa-waiver/>; American-Arab Anti-Discrimination  
 23 Committee, “US & Israel Visa Waiver MOU Does NOT Guarantee Equal Treatment” (Jul. 26,  
 24 2023), <https://adc.org/us-israel-visa-waiver-mou-does-not-guarantee-equal-treatment/>; Ali Harb,  
 “US Visa Waiver Program: Why Arab Americans angered by Israel’s admission,” AL  
 25 JAZEERA (Sept. 28, 2023), [https://www.aljazeera.com/news/2023/9/28/us-visa-waiver-](https://www.aljazeera.com/news/2023/9/28/us-visa-waiver-program-why-arab-americans-angered-by-israels-admission)  
 26 [program-why-arab-americans-angered-by-israels-admission.](https://www.aljazeera.com/news/2023/9/28/us-visa-waiver-program-why-arab-americans-angered-by-israels-admission)

<sup>6</sup> Edward Wong and Patrick Kingsley, “Israel Blocks Palestinian Americans From Entering From  
 27 West Bank,” N.Y TIMES (Nov. 16, 2023),  
 28 <https://www.nytimes.com/2023/11/16/us/politics/israel-palestinian-americans-west-bank.html>

<sup>7</sup> Barak Ravid, “Scoop: U.S. warns Israel it’s violating visa waiver deal with West Bank closure,”  
 AXIOS (Nov. 15, 2023), [https://www.axios.com/2023/11/16/israel-visa-waiver-palestinian-](https://www.axios.com/2023/11/16/israel-visa-waiver-palestinian-americans-us-violation)  
 americans-us-violation

<sup>8</sup> Including components, divisions, subdivisions, or sections of the DHS and the DOS.

1 of Israel And The Government of the United States of America On Extension of  
2 Reciprocal Privileges and the Visa Waiver Program”;

3 b. The MOU signed by DHS, DOS, and the government of Israel which was in  
4 existence on September 26, 2023—the date Israel was formally designated into  
5 the Visa Waiver Program; and

6 c. Any records,<sup>9</sup> documents, or information reflecting changes to the MOU between  
7 September 26, 2023, through the date of fulfillment of this FOIA request. 22  
8 C.F.R. § 171.11(j); 6 C.F.R. § 5.4(a).

9 *See* Sinodis Decl. at Exh. A, p. 2.

10 41. Plaintiff VDH requested a fee waiver. *See id.* at p. 3.

11 42. Defendant DOS has not yet responded or communicated with Plaintiff regarding  
12 this request.

13 43. DOS has not produced any records in response to this request.

14 44. DOS has not made a determination, as required by FOIA, on this request.

15 45. On November 17, 2023, Defendant DHS acknowledged receipt of Plaintiff  
16 VDH’s FOIA request by email. *See id.* at Exh. B (Acknowledgment Letter from DHS, dated  
17 Nov. 17, 2023).

18 46. DHS “invoke[d] a 10-day extension for [the] request pursuant [to] 6 C.F.R. Part 5  
19 § 5.5(c)” because it claimed the request sought “a voluminous amount of separate and distinct  
20 records.” *Id.* at p. 1.

21 47. DHS conditionally granted Plaintiff’s request for a fee waiver. *Id.* at pp. 1-2.

22  
23  
24 <sup>9</sup> The term “records” as used herein includes all records or communications preserved in  
25 electronic or written form, including but not limited to correspondence, directives, data,  
26 videotapes, audiotapes, e-mails, faxes, files, guidance, guidelines, standards, evaluations,  
27 instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols,  
28 reports, rules, technical manuals, training manuals, technical specifications, training materials or  
studies, including records kept in written form, or electronic format on computers and/or other  
electronic storage devices, electronic communications and/or videotapes, as well as any  
reproductions thereof that differ in any way from any other reproductions, such as copies  
containing marginal notations.

1 48. DHS has not communicated with Plaintiff regarding this request since sending the  
2 acknowledgement letter.

3 49. DHS has not produced any records in response to this request.

4 50. DHS has made no determination, as required under FOIA, to this request.

5  
6 **CLAIM FOR RELIEF**

7 **Violation of 5 U.S.C. § 552**

8 51. Plaintiff repeats and re-alleges each and every allegation contained in the  
9 foregoing paragraphs as repeated and incorporated herein.

10 52. Defendants DHS and DOS improperly refused to conduct a search or to respond  
11 to Plaintiff VDH's FOIA request at all. By failing to disclose or release the requested records,  
12 and by failing to conduct timely and adequate searches reasonably calculated to uncover  
13 responsive records, Defendants DHS and DOS have violated the public's right, advanced by  
14 Plaintiff VDH, to agency records under 5 U.S.C. §§ 552 *et seq.*, and Defendants' corresponding  
15 regulations.

16 53. Plaintiff VDH requested a fee waiver of all costs pursuant to 5 U.S.C. §  
17 552(a)(4)(A)(iii) in its FOIA request. Defendants DHS and DOS failed to non-conditionally  
18 grant Plaintiff VDH's request for a fee waiver, thereby denying Plaintiff's right under 5 U.S.C. §  
19 552(a)(4)(A)(iii) and Defendants' own regulations.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff respectfully requests that the Court:

- 22 1. Order Defendants to conduct a full, adequate, and prompt search for all records  
23 responsive to Plaintiff VDH's FOIA request, with the cut-off date for such searches  
24 being the date the FOIA request is fulfilled;
- 25 2. Order Defendants to immediately process and release all records responsive to  
26 Plaintiff VDH's FOIA request;
- 27 3. Declare Defendants' failure to search for and disclose to Plaintiff VDH all records  
28 that are responsive to its FOIA request, as alleged above, is unlawful under FOIA;

- 1 4. Enjoin Defendants from charging Plaintiff search, review, or duplication fees for the
- 2 processing of the request;
- 3 5. Award Plaintiff its costs and reasonable attorneys’ fees incurred in this action as
- 4 provided by 5 U.S.C. § 552(a)(4)(E); and
- 5 6. Grant any further relief as the Court may deem just and proper.

7 Dated: February 23, 2024

Respectfully submitted,

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9  
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**VERIFICATION**

I, Johnny Sinodis, hereby declare under penalty of perjury of the laws of the State of California and the United States that the facts alleged in the foregoing Complaint for Declaratory and Injunctive Relief are to the best of my knowledge true and correct.

Executed on this 23rd day of February 2024 in San Francisco, California.

By: /s/Johnny Sinodis  
Johnny Sinodis  
Attorney for Plaintiff