

1 GIBSON, DUNN & CRUTCHER LLP  
2 ETHAN D. DETTMER, SBN 196046  
3 EDettmer@gibsondunn.com  
4 555 Mission Street, Suite 3000  
5 San Francisco, California 94105-2933  
6 Telephone: 415.393.8200  
7 Facsimile: 415.393.8306

8 *Additional counsel on following page*

9 **UNITED STATES DISTRICT COURT**  
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 JUSTICE ACTION CENTER,  
12 Plaintiff,

13 v.

14 U.S. DEPARTMENT OF  
15 HOMELAND SECURITY,  
16 U.S. CITIZENSHIP AND  
17 IMMIGRATION SERVICES,  
18 U.S. IMMIGRATION AND  
19 CUSTOMS ENFORCEMENT,  
20 and  
21 U.S. DEPARTMENT OF JUSTICE,  
22 Defendants.

CASE NO. \_\_\_\_\_

**COMPLAINT**

1 HARVARD IMMIGRATION AND  
2 REFUGEE CLINICAL PROGRAM,  
3 HARVARD LAW SCHOOL  
4 SABRINEH ARDALAN (*pro hac vice* forthcoming)  
5 sardalan@law.harvard.edu  
6 SAMEER AHMED, SBN 319609  
7 sahmed@law.harvard.edu  
8 6 Everett Street; Wasserstein 3103  
9 Cambridge, Massachusetts 02138  
10 Telephone: 617.384.7504

11 JUSTICE ACTION CENTER  
12 ESTHER H. SUNG, SBN 255962  
13 Esther.Sung@justiceactioncenter.org  
14 KAREN C. TUMLIN, SBN 234691  
15 Karen.Tumlin@justiceactioncenter.org  
16 P.O. Box 27280  
17 Los Angeles, California 90027  
18 Telephone: 323.316.0944  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 INTRODUCTION

2 1. Plaintiff Justice Action Center (“JAC”) brings this action against  
3 Defendants United States Department of Homeland Security (“DHS”) and its  
4 components, the United States Citizenship and Immigration Services (“USCIS”) and the  
5 United States Immigration and Customs Enforcement (“ICE”), and the United States  
6 Department of Justice (“DOJ”) to compel compliance with the Freedom of Information  
7 Act (“FOIA”), 5 U.S.C. § 552.

8 2. As further alleged below, JAC has sought information from Defendants  
9 about the Deferred Action for Childhood Arrivals (“DACA”) policy that is directly  
10 relevant to JAC’s mission to fight for greater justice for immigrant communities by  
11 combining litigation and storytelling. Specifically, since January 2020, JAC has sought  
12 limited information on the federal government’s policies and instructions regarding the  
13 recalendaring of removal proceedings involving DACA recipients that had been  
14 administratively closed, as well as the scale of such recalendaring (the “JAC FOIA  
15 Request”).

16 3. The Trump Administration has already reopened thousands of  
17 administratively closed immigration cases, including many involving DACA recipients,  
18 and has recalendared those cases, restarting their removal proceedings. Moreover, in  
19 response to the Supreme Court’s recent decision finding DHS’s rescission of the DACA  
20 policy unlawful, *see DHS v. Regents of Univ. of Cal.*, 140 S. Ct. 1891 (2020), the Trump  
21 Administration has already threatened multiple times to reinstate its effort to terminate  
22 the DACA policy. Most recently, the Administration issued a memorandum curtailing  
23 the DACA policy while it claims to be engaged in full reconsideration. Accordingly,  
24 JAC’s targeted request seeks to educate the public, including legal services providers  
25 and thousands of DACA recipients, on how to respond to the Trump Administration’s  
26 threats of deportation.

27 4. Despite the clear statutory requirement that an agency respond to a FOIA  
28 request within 20 days, and despite JAC’s repeated inquiries, Defendants have not

1 produced any documents in response to the JAC FOIA Request submitted over five  
2 months ago. Defendants also have failed to conduct a reasonable search in response to  
3 the JAC FOIA Request. All the while, Defendants have not claimed that the requested  
4 information is subject to any FOIA exceptions or privileges, and have not advanced any  
5 other reason why it should not be disclosed.

6 5. JAC seeks to compel Defendants to comply with their obligations under  
7 FOIA and promptly produce the requested information.

### 8 JURISDICTION AND VENUE

9 6. This Court has jurisdiction under 28 U.S.C. § 1331 and 5 U.S.C.  
10 § 552(a)(4)(B).

11 7. Because Defendants failed to comply with the requirements to respond, as  
12 set forth in 5 U.S.C. § 552(a)(4)(B), JAC has constructively exhausted its administrative  
13 remedies and is entitled to proceed with this judicial action pursuant to 5 U.S.C.  
14 § 552(a)(6)(C)(i).

15 8. Venue is proper in the Central District of California under 5 U.S.C.  
16 § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

### 17 PARTIES

18 9. Plaintiff JAC is a 501(c)(3) nonprofit corporation incorporated under the  
19 laws of California, and headquartered in Los Angeles, California. JAC is dedicated to  
20 advancing the civil and human rights of immigrants in the United States through a  
21 combination of impact litigation, communications, and digital strategies. It provides  
22 related support to select partner nonprofit organizations that have immigrant members  
23 or that provide direct legal services to immigrant communities. JAC, in partnership with  
24 other nonprofits, conducts substantial work on DACA and with DACA recipients. It is  
25 part of the leadership of Home is Here ([www.homeishere.us](http://www.homeishere.us)), a national campaign  
26 highlighting the legality of DACA and the many benefits it brings to our communities  
27 and our Nation.

1 10. Defendants DHS and its components USCIS and ICE are agencies of the  
2 United States of America under 5 U.S.C. § 552(f)(1) and 5 U.S.C. § 551(1).

3 11. Defendant DOJ is an agency of the United States of America under 5 U.S.C.  
4 § 552(f)(1) and 5 U.S.C. § 551(1).

5 12. DHS and its components (USCIS and ICE) and DOJ are the federal  
6 agencies with possession, custody, and control of the requested records and are  
7 responsible for responding to JAC's FOIA Request.

### 8 **STATUTORY FRAMEWORK**

9 13. FOIA, 5 U.S.C. § 552, mandates disclosure of records held by a federal  
10 agency, in response to a request for such records by a member of the public, unless  
11 records fall within certain narrow statutory exemptions.

12 14. As the Supreme Court has recognized, "the basic purpose of [FOIA] is 'to  
13 open agency action to the light of public scrutiny.'" *Dep't of Air Force v. Rose*, 425 U.S.  
14 352, 372 (1976). Such scrutiny improves the public's understanding of governmental  
15 operations and, thus, enables a vibrant and functioning democracy.

16 15. Accordingly, JAC submitted its FOIA Request to DHS, USCIS, ICE and  
17 DOJ to educate the public on the federal government's policies and instructions  
18 regarding the recalendaring of administratively closed cases involving DACA  
19 recipients, and the scale of such recalendaring.

### 20 **FACTUAL ALLEGATIONS**

#### 21 **A. BACKGROUND**

22 16. At the inception of DACA, individuals were able to apply for DACA even  
23 if they were in removal proceedings at the time.<sup>1</sup> During these proceedings, numerous  
24  
25  
26

27 \_\_\_\_\_  
28 <sup>1</sup> See *Frequently Asked Questions*, U.S. Citizenship and Immigration Services,  
<https://tinyurl.com/y9xgrhek> (last visited July 13, 2020) (questions 9-10; 15-17).

1 DACA recipients were granted relief in the form of administrative closure, which has  
2 the effect of closing immigration removal proceedings.<sup>2</sup>

3 17. Administrative closure has been used for decades in immigration removal  
4 proceedings and has been recognized by federal courts as “a procedural mechanism  
5 primarily employed for the convenience of the adjudicator (namely, [immigration judges  
6 (“IJs”) and the Board of Immigration Appeals (“BIA”)]) in order to allow cases to be  
7 removed from the active dockets of immigration courts, often so that individuals can  
8 pursue alternate immigration remedies.” *Romero v. Barr*, 937 F.3d 282, 286-87 (4th Cir.  
9 2019). Administrations have long used administrative closure as a tool to suspend an  
10 individual’s deportation proceedings when the administration reviews an individual’s  
11 case and decides not to pursue removal. Historically, government attorneys often joined  
12 motions to administratively close cases or affirmatively recommended administrative  
13 closure to the immigration court.

14 18. On May 17, 2018, then-Attorney General Jefferson Sessions issued *Matter*  
15 *of Castro-Tum*, 27 I. & N. Dec. 271, 271 (A.G. 2018), which declared that IJs and the  
16 BIA lacked “the general authority to suspend indefinitely immigration proceedings by  
17 administrative closure” unless directed by a regulation or judicially approved settlement.  
18 The Fourth and Seventh Circuits have rejected *Castro-Tum*, finding that IJs “are not  
19 precluded from administratively closing cases when appropriate.” *Morales v. Barr*, 963  
20 F.3d 629, 641 (7th Cir. 2020); *see also Romero*, 937 F.3d at 297.

21 19. Nonetheless, in August 2018, pursuant to *Matter of Castro-Tum*, DOJ  
22 issued a memorandum requiring immigration courts to re-open some 350,000 previously  
23  
24  
25

---

26  
27 <sup>2</sup> See Memorandum from Brian M. O’Leary, Chief Immigration Judge, Executive  
28 Office of Immigration Review, Dep’t of Justice, on Continuances and Administrative  
Closure, at 4-5 (Mar. 7, 2013), <https://bit.ly/37GiY78> (encouraging immigration  
courts to grant administrative closure where the respondent in removal proceedings  
has received DACA).

1 administratively closed cases.<sup>3</sup> Since then, DACA recipients have been among the  
2 individuals whose cases have been recalendared.

3 20. Indeed, in December 2019, ICE confirmed that “all DACA recipients  
4 whose deportation cases have been administratively closed can expect to see them  
5 reopened” and that this “re-calendaring of administratively closed cases is occurring  
6 nationwide and not isolated to a particular state or region.”<sup>4</sup>

7 21. And, according to March 2020 testimony of DHS Acting Secretary Chad  
8 Wolf, those most at risk to be deported include DACA recipients who were in removal  
9 proceedings when they received DACA and those who have final removal orders.<sup>5</sup>

10 22. On June 18, 2020, the Supreme Court ruled that DHS’s rescission of the  
11 DACA policy was arbitrary and capricious under the Administrative Procedure Act.  
12 *Regents*, 140 S. Ct. at 1915. Specifically, the Court found that the agency offered no  
13 reason for terminating forbearance—the “defining feature” of DACA—and failed to  
14 consider the reliance interests of DACA recipients and their families, schools,  
15 employers, and communities. *Id.* at 1911-15. Accordingly, the Court remanded the  
16 action, explaining that “when so much is at stake, . . . ‘the Government should turn  
17 square corners in dealing with the people.’” *Id.* at 1909 (quoting *St. Regis Paper Co. v.*  
18 *United States*, 368 U.S. 208, 229 (1961) (Black, J., dissenting)).

19 23. The Supreme Court did not “decide whether DACA or its rescission are  
20 sound policies” only “whether the agency complied with the procedural requirement that  
21 it provide a reasoned explanation for its action.” *Regents*, 140 S. Ct. at 1916. In response,  
22  
23

---

24  
25 <sup>3</sup> See Jazmine Ulloa, L.A. Times, *Federal immigration lawyers have asked to*  
26 *reactivate thousands of closed deportation cases* (Aug. 17, 2018),  
<https://tinyurl.com/wo9g3xa>.

27 <sup>4</sup> Bob Ortega, CNN, *ICE reopening long-closed deportation cases against Dreamers*  
(Dec. 21, 2019), <https://tinyurl.com/uoh4hm4>.

28 <sup>5</sup> Letter from Senator R. Durbin, Senator K. Harris, and Congresswoman A. Pressley  
to Acting Secretary of DHS, C. Wolf (Mar. 19, 2020), <https://tinyurl.com/yalr63tw>.

1 the Trump Administration indicated that it “will be submitting enhanced papers shortly  
2 in order to properly fulfil [sic] the Supreme Court’s ruling.”<sup>6</sup>

3 24. On July 28, 2020, DHS Acting Secretary Wolf issued a directive “making  
4 certain immediate changes to the DACA policy to facilitate [his] thorough consideration  
5 of how to address DACA in light of the Supreme Court’s decision.”<sup>7</sup> As a result, the  
6 fate of DACA and thus the Dreamers remains unknown for an unspecified period of  
7 time.

8 25. To date, the Trump Administration has failed to provide any information  
9 regarding the extent of recalendaring DACA recipients’ cases that were administratively  
10 closed. Thus, the public is unaware of how many DACA recipients’ cases have been  
11 recalendared. The public is also unaware of what policies or guidance the Trump  
12 Administration has issued to various federal agencies regarding the recalendaring of  
13 DACA recipients’ removal proceedings.

14 26. To remedy this information deficit, JAC filed a FOIA request, further  
15 described below, to obtain this critical information to inform and advise the public,  
16 including DACA recipients and legal service providers, on how to respond to the Trump  
17 Administration’s threats of deportation. JAC seeks the information to ensure that DACA  
18 recipients, their families, and communities can be protected to the fullest extent possible  
19 because of the Trump Administration’s plans to recalendar administratively closed cases  
20 involving DACA recipients.

21 27. The information JAC seeks, therefore, is of tremendous public importance.  
22 JAC and the public have a right to know how many DACA recipients have already had  
23

---

24  
25 <sup>6</sup> Joshua Gallu, *Trump Vows to Submit ‘Enhanced Papers’ After Supreme Court DACA*  
26 *Ruling* Bloomberg (June 19, 2020), <https://tinyurl.com/ycb514vc>; *see also* Brett  
Samuels, *Trump expected to refile paperwork to end DACA this week* (July 6, 2020),  
<https://tinyurl.com/y9zur8d7>.

27 <sup>7</sup> Memorandum from Chad F. Wolf, Acting Secretary, on Reconsideration of the June  
28 15, 2012 Memorandum Entitled “Exercising Prosecutorial Discretion with Respect  
to Individuals Who Came to the United States as Children” (July 28, 2020),  
<https://tinyurl.com/yyotzfv7>.



1 their removal proceedings recalendared as well as the extent of the Trump  
2 Administration's policies and procedures regarding the recalendaring of DACA  
3 recipients' removal proceedings.

4 **B. JAC'S FOIA REQUEST**

5 28. On January 30, 2020, JAC submitted the JAC FOIA Request to DHS,  
6 USCIS, ICE, and DOJ, seeking seven categories of requested records:

- 7 (1) All policies, guidance, or correspondence (including emails  
8 and attachments thereto) related to the re-calendaring of  
9 previously administratively closed removal proceedings for  
10 DACA recipients.
- 11 (2) All policies, guidance, or correspondence (including emails  
12 and attachments thereto) created or issued since September  
13 2017 related to the processing of DACA renewals.
- 14 (3) All policies, guidance, documents and correspondence  
15 (including emails and attachments thereto) discussing re-  
16 calendaring, including the legality thereof, of previously  
17 administratively closed removal proceedings for current  
18 DACA recipients.
- 19 (4) All documents, correspondence (including emails and  
20 attachments thereto), and statistical or other analyses  
21 discussing the impact of proposals to re-calendar removal  
22 proceedings for current DACA renewal recipients.
- 23 (5) All reports, including data in any database, showing any of  
24 the following: (a) the number of current DACA recipients  
25 whose removal proceedings were administratively closed  
26 prior to or after being granted DACA status; (b) the number  
27 of DACA recipients who have been sent re-calendaring  
28 requests since September 2017; (c) the number of DACA  
recipients who have been ordered removed or otherwise been  
removed after their removal proceedings were re-calendared;  
and (d) the number of DACA recipients who have been  
ordered removed or otherwise been removed after receiving  
DACA regardless of whether their removal proceedings were  
re-calendared.
- (6) For DACA recipients enumerated in the response to (5)  
above, all reports showing the state of residence, location of

1 removal proceedings, or other geographic information, and  
 2 the status of those immigration hearings, including but not  
 3 limited to whether removal proceedings have been re-  
 4 calendared and whether any DACA recipients have received  
 5 orders of removal or otherwise been removed as a result of  
 6 this re-calendaring.

7 (7) All records produced subject to any other FOIA requests by  
 8 other requesters related to recalendaring under *Matter of*  
 9 *Castro-Tum*, including but not limited to re-calendaring  
 10 related to DACA recipients.<sup>8</sup>

11 29. A true and correct copy of the JAC FOIA Request is attached as Exhibit A.

## 12 C. DEFENDANTS FAIL TO RESPOND

### 13 1. DHS, ICE, and USCIS

14 30. Pursuant to FOIA, within 20 business days, excluding public holidays, of  
 15 receipt of the JAC FOIA Request—that is, no later than February 28, 2020—DHS,  
 16 USCIS, and ICE were required to “determine . . . whether to comply with such request”  
 17 and to “immediately notify” JAC of “such determination and the reasons therefor,” and,  
 18 in the case of an adverse determination, JAC’s appeal rights. 5 U.S.C. § 552(a)(6)(A)(i).

19 31. On February 12, 2020, DHS acknowledged receiving the JAC FOIA  
 20 Request (assigning it Case Number 2020-HQFO-00481), and inexplicably transferred  
 21 the request to ICE and USCIS. A true and correct copy of DHS’s letter is attached as  
 22 Exhibit B.

23 32. Other than DHS’s acknowledgement and transfer letter, JAC has received  
 24 no further response from DHS related to the JAC FOIA Request.

25 33. DHS failed to “make reasonable efforts to search” for records, as evidenced  
 26 by its decision to transfer the JAC FOIA Request. 5 U.S.C. § 552(a)(3)(C).

27 34. DHS further failed to make a final determination regarding the JAC FOIA  
 28 Request within the time limits prescribed by FOIA, 5 U.S.C. § 552(a)(6)(A)(i).

35. USCIS did not acknowledge or respond to the JAC FOIA Request.

---

<sup>8</sup> JAC no longer seeks a response regarding Request No. 2.

1           36. USCIS therefore failed to “make reasonable efforts to search” for records  
2 to respond to the JAC FOIA Request. 5 U.S.C. § 552(a)(3)(C).

3           37. USCIS further failed to make a final determination regarding the JAC  
4 FOIA Request within the time limits prescribed by FOIA, 5 U.S.C. § 552(a)(6)(A)(i).

5           38. ICE responded to the JAC FOIA Request on March 4, 2020 (assigning it  
6 Case Number 2020-ICFO-26046). ICE claimed that the JAC FOIA Request was “too  
7 broad in scope” and asked that JAC “resubmit [its] request containing a reasonable  
8 description of the records [JAC is] seeking. Upon receipt of a perfected request, [JAC]  
9 will be advised as to the status of [its] request.” A true and correct copy of ICE’s  
10 response is attached as Exhibit C.

11           39. Although the JAC FOIA Request was not too broad in scope and contained  
12 a reasonable description of the records JAC is seeking, JAC complied with ICE’s request  
13 and submitted an amended request on April 1, 2020 to provide further specificity to  
14 facilitate ICE’s search for responsive records (the “Amended FOIA Request”). The  
15 Amended FOIA Request seeks the following records:

- 16           (1) All policies, guidance documents, or correspondence  
17 (including emails and attachments thereto) regarding those  
18 policies or guidance documents related to the re-  
19 calendaring, including the legality thereof, of previously  
20 administratively closed removal proceedings for current  
21 DACA recipients. For example, “policies” and “guidance  
22 documents” include, but are not limited to, the contingency  
23 plans referred to by the acting Homeland Security Secretary  
24 to the Senate Homeland Security Committee on March 4,  
25 2020, and “correspondence” includes, but is not limited to,  
26 emails and attachments discussing those contingency plans.  
27           (2) All documents, statistical analyses, or correspondence  
28 (including emails and attachments thereto) regarding those  
documents and statistical analyses, discussing the impact of  
proposals to re-calendar removal proceedings for current  
DACA recipients.

1 (3) Data from any pre-existing database that shows: (a) DACA  
2 recipients whose removal proceedings were  
3 administratively closed prior to or after being granted  
4 DACA status; (b) DACA recipients who have been sent re-  
5 calendaring requests since May 1, 2018; (c) DACA  
6 recipients who have been ordered removed or otherwise  
7 been removed after their removal proceedings were re-  
8 calendared; and (d) DACA recipients who have been  
9 ordered removed or otherwise been removed after receiving  
10 DACA regardless of whether their removal proceedings  
11 were re-calendared.

12 (4) For DACA recipients enumerated in the response to (3)  
13 above, data from any pre-existing database that shows: (a)  
14 the state of residence, location of removal proceedings, or  
15 other geographic information; and (b) the status of those  
16 immigration hearings, including, but not limited to, whether  
17 removal proceedings have been re-calendared and whether  
18 any DACA recipients have received orders of removal or  
19 otherwise been removed as a result of this re-calendaring.

20 40. A true and correct copy of the Amended FOIA Request is attached as  
21 Exhibit D.

22 41. On April 7, 2020, ICE acknowledged receipt of JAC's Amended FOIA  
23 Request (Case Number 2020-ICFO-26046). ICE indicated that it would invoke a 10-day  
24 extension to its 20-day deadline to respond to the Amended FOIA Request, making its  
25 deadline to respond May 19, 2020. A true and correct copy of ICE's acknowledgement  
26 email is attached as Exhibit E.

27 42. On May 26, 2020, JAC's counsel accessed DHS's FOIA website to check  
28 the status of the Amended FOIA Request. The website indicated that the "Request  
Status" was "Closed" on April 28, 2020, and the "Estimated Delivery Date" was May  
10, 2020. Despite this information, JAC, to date, has not received a response from ICE  
regarding the Amended FOIA Request and has not received any documents. A true and  
correct copy of a screenshot of the status of the Amended FOIA Request is attached as  
Exhibit F.

1           43. On May 29, 2020, JAC emailed ICE regarding the information posted on  
2 DHS's FOIA website. The email explained that "[t]he on-line DHS website indicates  
3 that this request may have been closed and that there should have been an email or hard  
4 copy letter estimated to be received on May 10, 2020. . . . We have not received any  
5 such email or hard copy letter." JAC then requested ICE to "provide any such response  
6 via email or let us know if this entry is in error." A true and correct copy of JAC's email  
7 is attached as Exhibit G.

8           44. To date, ICE has not responded to JAC's May 29, 2020 email.

9           45. ICE therefore failed to "make reasonable efforts to search" for records. 5  
10 U.S.C. § 552(a)(3)(C).

11           46. ICE further failed to make a final determination regarding the Amended  
12 FOIA Request within the time limits prescribed by FOIA, 5 U.S.C. § 552(a)(6)(A)(i).

13           47. Therefore, DHS, USCIS, and ICE have failed to conduct an adequate search  
14 for responsive records to the JAC FOIA Request or the Amended FOIA Request, and  
15 have failed to produce any responsive records.

## 16           **2. DOJ**

17           48. Plaintiff also submitted the JAC FOIA Request to DOJ, requesting  
18 responsive records from "the Office of the Attorney General, the Office of the Deputy  
19 Attorney General, and the Office of the Associate Attorney General, and any other  
20 components likely to have responsive documents." *See* Ex. A, at 1.

21           49. To date, DOJ has not acknowledged or responded to the JAC FOIA  
22 Request.<sup>9</sup>

23           50. DOJ therefore failed to "make reasonable efforts to search" for records to  
24 respond to the JAC FOIA Request. 5 U.S.C. § 552(a)(3)(C).

---

25  
26 <sup>9</sup> Plaintiff also separately submitted the JAC FOIA Request to the Executive Office for  
27 Immigration Review ("EOIR"). EOIR provided a response to the JAC FOIA Request.  
28 On July 1, 2020, JAC administratively appealed EOIR's response because EOIR had  
failed to adequately search and release all non-exempt records responsive to the JAC  
FOIA Request. 5 U.S.C. § 552(a)(3). On July 2, 2020, DOJ acknowledged receipt of  
the administrative appeal.

1           51. DOJ further failed to make a final determination regarding the JAC FOIA  
2 Request within the time limits prescribed by FOIA, 5 U.S.C. § 552(a)(6)(A)(i).

3           52. Therefore, DOJ has failed to conduct an adequate search for responsive  
4 records to the JAC FOIA Request, and has failed to produce any responsive records.

5 **D. FAILURE TO PROVIDE FEE WAIVER**

6           53. In the JAC FOIA Request, JAC also sought a fee waiver of all costs  
7 incurred by Defendants in answering the request because the information sought was  
8 “likely to contribute significantly to public understanding of the operations or activities  
9 of the government and [was] not primarily in the [Plaintiff’s] commercial interest.” 5  
10 U.S.C. § 552(a)(4)(A)(iii).

11           54. As the JAC FOIA Request explained, “JAC has developed a multi-pronged  
12 approach to use information obtained through FOIA requests to educate the public and  
13 further the aforementioned goals. First, JAC uses the expertise and experience of its own  
14 staff to target members of the public most affected by the information. For example, it  
15 advises DACA recipients on their rights and obligations and will use its own social  
16 media and website resources to publish the information. Second, JAC partners with well-  
17 established immigration advocacy groups to ensure dissemination to key communities,  
18 such as FWD.us and United We Dream. JAC is also part of the national HomeIsHere  
19 coalition for DACA, which distributes information to DACA recipients and legal service  
20 providers. Finally, JAC works with newspaper and broadcast media to report on the  
21 released information.” *See* Ex. A, at 4.<sup>10</sup>

22           55. Using this same multi-pronged approach, JAC will educate the public with  
23 the information it obtains through the JAC FOIA Request. JAC will make any  
24 information that it receives available to the public, including the press, at no cost. The  
25 issues of immigration removal and of the continuity of the DACA program are of  
26 significant public interest in general, and the issue of how the federal government

27  
28  

---

<sup>10</sup> *See generally* HomeIsHere, [www.homeishere.us](http://www.homeishere.us) (last visited July 13, 2020).



1 processes immigration cases is of significant interest in particular. JAC has undertaken  
2 this work in the public interest and not for any private commercial interest. The primary  
3 purpose of the JAC FOIA Request is to obtain information to further the public's  
4 understanding of federal immigration policies and practices. Access to this information  
5 is necessary for the public to meaningfully evaluate the costs and consequences of  
6 federal immigration policies.

7 56. To date, Defendants have failed to provide JAC a fee waiver in violation of  
8 5 U.S.C. § 552(a)(4)(A)(iii) (fees "shall" be waived if criteria are met); *see also* 6 C.F.R.  
9 § 5.11(k)(1) (fees "shall" be waived when "[d]isclosure of the requested information is  
10 in the public interest . . . and [d]isclosure of the information is not primarily in the  
11 commercial interest of the requester"); 28 C.F.R. § 16.10(k)(1) ("[r]equester[] may seek  
12 a waiver of fees by . . . demonstrating how disclosure of the requested information is in  
13 the public interest because it is likely to contribute significantly to public understanding  
14 of the operations or activities of the government and is not primarily in the commercial  
15 interest of the requester").

## 16 **FIRST CAUSE OF ACTION**

### 17 **Violation Of 5 U.S.C. § 552(a)(3) For** 18 **Failure To Conduct An Adequate Search For Responsive Records**

19 57. JAC incorporates each of the foregoing paragraphs of this Complaint.

20 58. Pursuant to FOIA, 5 U.S.C. § 552(a), JAC has a statutory right to access  
21 requested agency records.

22 59. Pursuant to FOIA, 5 U.S.C. § 552(a)(3)(C), Defendants must "make  
23 reasonable efforts to search" for the information requested.

24 60. Upon information and belief, Defendants possess records responsive to the  
25 JAC FOIA Request and the Amended FOIA Request that they have failed to produce  
26 without justification.

27 61. Upon information and belief, Defendants' failure to produce responsive  
28 records is a result of their failure to make reasonable efforts to search for the information  
requested.





**THIRD CAUSE OF ACTION**  
**Violation Of 5 U.S.C. § 552(a)(4)(A)(iii)**  
**For Failure To Grant Waiver of Fees**

72. JAC incorporates each of the foregoing paragraphs of this Complaint.

73. JAC requested a fee waiver under 5 U.S.C. § 552(a)(4)(A)(iii) on the grounds that disclosure of the requested records is in the public interest and is “likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.”

74. To date, Defendants have not granted JAC a fee waiver in this case.

75. Defendants’ failure to grant JAC a waiver of fees associated with the production of responsive documents violates 5 U.S.C. § 552(a)(4)(A)(iii).

**PRAYER FOR RELIEF**

WHEREFORE, JAC respectfully requests that this Court enter a judgment for JAC and award the following relief:

76. Injunctive relief, ordering DHS, USCIS, and DOJ to respond to the JAC FOIA Request, by a date certain, by (a) conducting a search using “reasonable effort[s]” “for the purpose of locating those records which are responsive” to the JAC FOIA Request, as required by 5 U.S.C. §§ 552(a)(3)(C)-(D); (b) demonstrating that they have conducted an adequate search; (c) producing to JAC all non-exempt records or portions of records responsive to the JAC FOIA Request, as well as a Vaughn index of any records or portions of records withheld due to a claim of exemption; and (d) precluding Defendants from withholding the requested records;

77. Injunctive relief, ordering ICE to respond to the JAC FOIA Request and the Amended FOIA Request, by a date certain, by (a) conducting a search using “reasonable effort[s]” “for the purpose of locating those records which are responsive” to the Amended FOIA Request, as required by 5 U.S.C. §§ 552(a)(3)(C)-(D); (b) demonstrating that it has conducted an adequate search; (c) producing to JAC all non-exempt records or portions of records responsive to the JAC FOIA Request and the Amended FOIA Request, as well as a Vaughn index of any records or portions of records

1 withheld due to a claim of exemption; and (d) precluding Defendant from withholding  
2 the requested records;

3 78. Order Defendants to grant JAC a waiver of fees associated with the  
4 production of the requested records;

5 79. Award JAC its costs and attorney fees reasonably incurred in this action,  
6 pursuant to 5 U.S.C. § 552(a)(4)(E); and

7 80. Grant JAC such other and further relief as the Court may deem just and  
8 proper.

9  
10 Dated: August 3, 2020

GIBSON, DUNN & CRUTCHER LLP

11 By: /s/ Ethan D. Dettmer  
12 Ethan Dettmer

13 Attorneys for Plaintiff  
14 Justice Action Center

1 **PROOF OF SERVICE**

2 I, Franklin Tipple, declare as follows:

3 I am employed in the County of Los Angeles, State of California; I am over the  
4 age of eighteen years and am not a party to this action; my business address is 333 South  
5 Grand Avenue, Los Angeles, California 90071-3197, in said County and State. On  
6 August 3, 2020, I served the following document(s):

7 **COMPLAINT**  
8 **SUMMONS**

9 On the parties stated below, by the following means of service:

10 **VIA CERTIFIED AND ELECTRONIC MAIL:**

11 Office of the General Counsel,  
12 U.S. Department of Homeland Security,  
13 2707 Martin Luther King Jr. Ave. S.E.,  
14 Washington, D.C. 20528-0485  
15 OGC@hq.dhs.gov

16 U.S. Immigration and Customs Enforcement,  
17 Office of the Principal Legal Advisor,  
18 500 12th St. SW, Mail Stop 5900,  
19 Washington, D.C. 20536-5900  
OPLAServiceIntake@ice.dhs.gov

20 U.S. Citizenship & Immigration Services,  
21 Office of the Chief Counsel,  
22 20 Massachusetts Ave. NW, Room 4210,  
23 Washington, D.C. 20529  
uscis.serviceofprocess@uscis.dhs.gov

24 **VIA CERTIFIED MAIL:**

25 Civil Process Clerk  
26 United States Attorney's Office  
27 Federal Building  
28 300 N. Los Angeles Street, Suite 7516  
Los Angeles, California 90012

