

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

FEDERATION FOR AMERICAN	)	
IMMIGRATION REFORM	)	
25 Massachusetts Ave, N.W., Suite 335	)	
Washington, D.C. 20001	)	Civil Action No.
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
FEDERAL BUREAU OF	)	
INVESTIGATION	)	
935 Pennsylvania Ave., N.W.	)	
Washington, D.C. 20535	)	
	)	
and	)	
	)	
FEDERAL BUREAU OF PRISONS	)	
320 1 <sup>st</sup> Street, N.W.	)	
Washington, D.C. 20534	)	
	)	
and	)	
	)	
OFFICE OF JUSTICE PROGRAMS	)	
810 7 <sup>th</sup> Street, N.W.	)	
Washington, D.C. 20531	)	
	)	
Defendants.	)	
_____	)	

**COMPLAINT**

Plaintiff Federation for American Immigration Reform (“FAIR”) brings this action against the Federal Bureau of Investigation (“FBI”), the Federal Bureau of Prisons (“BOP”), and

the Office of Justice Programs (“OJP”) to compel compliance with the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. Plaintiff alleges the following grounds:

### **JURISDICTION AND VENUE**

1. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.
2. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e).

### **PARTIES**

3. Plaintiff FAIR is a non-profit, educational foundation organized under the laws of the District of Columbia and having its principal place of business at 25 Massachusetts Ave., N.W., Suite 330, Washington, D.C. 20001. Plaintiff seeks to educate the citizenry and increase public awareness of immigration issues and hold the nation’s leaders accountable for enforcing the nation’s immigration laws. In furtherance of its public interest mission, Plaintiff regularly requests access to the public records of federal agencies, entities, and offices, and disseminates its findings to the public. FAIR submitted this FOIA request on behalf of Don Rosenberg, a resident of California. Don Rosenberg’s son, Drew Rosenberg, was killed by an illegal alien in 2010.

4. Defendant FBI is an agency of the U.S. Government and is headquartered at 935 Pennsylvania Ave., N.W., Washington, D.C. 20535. Defendant BOP is also an agency of the U.S. Government and is headquartered at 320 1st Street, N.W., Washington, D.C. 20534. Defendant OJP is also an agency of the U.S. Government and is headquartered at 810 7th Street, N.W., Washington, D.C. 20531. FBI, BOP, and OJP have possession, custody, and control of certain public records to which Plaintiff seeks access.

### **STATEMENT OF FACTS**

5. On September 8, 2016, Plaintiff submitted a FOIA request to FBI (the “September 8, 2016 FBI FOIA request”), by email, seeking access to the following public records:

1. Any and all records of Integrated Automatic Fingerprint Identification System data provided to the Government Accountability Office (GAO) showing or relating to criminal aliens with arrests dating from August 1955 to April 2010. If available, we seek the immigration status (i.e. whether legal or illegal) of those criminal aliens. If not regularly tracked, it is requested the agency attempt to pull this information.

6. Plaintiff received an acknowledgement letter dated September 21, 2016, from FBI confirming receipt of Plaintiff’s September 8, 2016 FOIA request, assigning the control number 1358283-000.

7. On September 8, 2016, Plaintiff submitted a FOIA request to BOP (the “September 8, 2016 BOP FOIA request”), by mail, seeking access to the following public records:

1. Any and all State Criminal Alien Assistance Program (SCAAP) data provided to the Government Accountability Office (GAO) referring or relating to criminal alien incarceration-figures.

- a. Any and all records detailing the immigration-status (i.e. legal alien, illegal alien) of those criminal aliens whose information was provided to GAO.

2. Any and all records provided at the request of GAO to ascertain country-of-citizenship information of criminal aliens incarcerated in federal prisons.

- a. Any and all records detailing the immigration-status (i.e. legal alien, illegal alien) of those criminal aliens whose information was provided to GAO.

8. Plaintiff received an acknowledgement letter from BOP dated September 12, 2016, confirming receipt of Plaintiff’s September 8, 2016 FOIA request, assigning the control number 2016-07292.

9. On September 8, 2016, Plaintiff submitted a FOIA request to OJP (the “September 8, 2016 OJP FOIA request”), by mail, seeking access to the following public records:

1. Any and all State Criminal Alien Assistance Program (SCAAP) data provided to the Government Accountability Office (GAO) referring or relating to criminal alien incarceration figures.

a. Any and all records detailing the immigration-status (i.e. legal alien, illegal alien) of those criminal aliens whose information was provided to GAO.

2. Any and all records of data provided to GAO relating or referring to Arizona, California, Florida, New York, and Texas State Convictions for SCAAP Illegal Aliens for Fiscal Year 2008. If available, it is requested that this include data covering illegal aliens convicted of one misdemeanor and/or served less than four consecutive days (and thus were not SCAAP-qualifying).

10. Plaintiff received an acknowledgement letter dated October 6, 2016, from OJP confirming receipt of Plaintiff’s September 8, 2016 FOIA request, assigning the control number 16-00362.

11. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), FBI, BOP, and OJP were required to determine whether to comply with each of Plaintiff’s FOIA requests within twenty (20) working days after receipt of each request and to notify Plaintiff immediately of its determination, the reasons therefor, and the right to appeal any adverse determination. Accordingly, FBI’s, BOP’s, and OJP’s determinations of the September 8, 2016 FOIA requests were all due by October 6, 2016.

12. As of the date of this Complaint, FBI, BOP, and OJP have failed to: (i) determine whether to comply with Plaintiff’s September 8, 2016 FOIA requests; (ii) notify Plaintiff of any such determination or the reasons for such determination; (iii) advise Plaintiff of the right to

appeal any adverse determination; or (iv) produce the requested records or otherwise demonstrate that the requested records are exempt from production.

13. Because FBI, BOP, and OJP have failed to comply with the time limit set forth in 5 U.S.C. § 552(a)(6)(A) with respect to the FOIA requests, Plaintiff is deemed to have exhausted any and all administrative remedies with respect to that request, pursuant to 5 U.S.C. § 552(a)(6)(C).

**COUNT 1**

(Violation of FOIA, 5 U.S.C. § 552)

14. Plaintiff re-alleges paragraphs 1 through 13 as if fully stated herein.

15. Defendants are unlawfully withholding public records requested by Plaintiff pursuant to 5 U.S.C. § 552.

16. Plaintiff is being irreparably harmed by reason of Defendants' unlawful withholding of the requested public records, and Plaintiff will continue to be irreparably harmed unless Defendants are compelled to conform their conduct to the requirements of the law.

WHEREFORE, Plaintiff respectfully requests that the Court: (1) order Defendants to conduct a search for any and all records responsive to Plaintiff's FOIA requests and demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to Plaintiff's FOIA requests; (2) order Defendants to produce, by a date certain, any and all non-exempt records responsive to Plaintiff's FOIA requests and a Vaughn index of any responsive records withheld under claim of exemption; (3) enjoin Defendants from continuing to withhold any and all non-exempt records responsive to Plaintiff's FOIA requests; (4) grant Plaintiff an award of attorneys' fees and other litigation costs reasonably incurred in this action pursuant to

5 U.S.C. § 552(a)(4)(E); and (5) grant Plaintiff such other relief as the Court deems just and proper.

Dated: November 1, 2016

Respectfully submitted,

/s/ Julie B. Axelrod  
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