

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

OPEN SOCIETY JUSTICE INITIATIVE,

Plaintiff,

v.

Civil Action No. _____

DEPARTMENT OF HEALTH AND
HUMAN SERVICES,
CENTERS FOR DISEASE CONTROL AND
PREVENTION,
FOOD AND DRUG ADMINISTRATION,
NATIONAL INSTITUTES OF HEALTH,
NATIONAL INSTITUTE OF ALLERGY
AND INFECTIOUS DISEASES,
DEPARTMENT OF HOMELAND
SECURITY, and
FEDERAL EMERGENCY MANAGEMENT
AGENCY,

Defendants.

COMPLAINT FOR INJUNCTIVE RELIEF

INTRODUCTION

1. This case is about the public’s right, under the Freedom of Information Act (“FOIA”), to access records critical for assessing the government’s response to the COVID-19 pandemic. Today, the United States has the largest number of reported COVID-19 cases in the world. In contrast to several countries in Europe and Asia where infections are declining, in the U.S., the pandemic is resurging. Over 162,000 people in the United States have died of the disease, over 5 million are infected, and these numbers are projected to rise in the coming months.¹

¹ Centers for Disease Control and Prevention, *Coronavirus Disease 2019: Cases in the US* (Aug. 11, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>.

Defendants have failed to comply with their obligations under FOIA and obstructed the public's access to vital information about the government's competence to combat the virus and protect lives.

2. Accordingly, this is an action under FOIA, 5 U.S.C. § 552, seeking injunctive relief to compel Defendant Department of Health and Human Services ("HHS") and its Office of Global Affairs ("OGS"), Office of the Assistant Secretary for Preparedness and Response ("ASPR"), Office of the Surgeon General ("OSG"), and Public Health Service ("PHS") (collectively, "HHS and its Components"), HHS agency, Defendant Centers for Disease Control and Prevention ("CDC"), HHS agency, Defendant Food and Drug Administration ("FDA"), HHS agency, Defendant National Institutes of Health ("NIH") and Defendant National Institute of Allergy and Infectious Diseases ("NIAID"), Defendant Department of Homeland Security ("DHS") and its agency, Defendant Federal Emergency Management Agency ("FEMA"), to immediately release records responsive to Plaintiff's FOIA requests regarding the timing and substance of the Executive Branch's response to the COVID-19 pandemic.

3. Plaintiff brings this action because the statutory time limit for action has passed, but Defendants have neither issued final determinations on Plaintiff's requests nor disclosed any responsive records.

JURISDICTION AND VENUE

4. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B) because Plaintiff's principal place of business is in this district.

PARTIES

5. The Open Society Justice Initiative (“OSJI”) is a public interest law center dedicated to upholding human rights and the rule of law through litigation, advocacy, research, and technical assistance. It is part of the Open Society Institute, a tax-exempt, non-partisan, not-for-profit organization headquartered in New York City. OSJI is a “person” within the meaning of 5 U.S.C. § 551(2). Disseminating information is among OSJI’s core activities. OSJI maintains a website, <http://www.justiceinitiative.org>, through which it disseminates publications, articles, and multimedia files relating to its mission. It also directly distributes hard copies of publications and disseminates information through quarterly email newsletters, blogs, Twitter, Facebook, and other media.

6. Defendant HHS is an “agency” within the meaning of 5 U.S.C. § 552(f)(1) and is therefore subject to FOIA. OGA, ASPR, OSG, and PHS are components of HHS. HHS and its Components have possession and control over some or all of the requested records.

7. Defendant CDC is an “agency” within the meaning of 5 U.S.C. § 552(f)(1) and is therefore subject to FOIA. CDC is also an agency of HHS. CDC has possession and control over some or all of the requested records.

8. Defendant FDA is an “agency” within the meaning of 5 U.S.C. § 552(f)(1) and is therefore subject to FOIA. FDA is also an agency of HHS. FDA has possession and control over some or all of the requested records.

9. Defendant NIH is an “agency” within the meaning of 5 U.S.C. § 552(f)(1) and is therefore subject to FOIA. NIH is also an agency of HHS. NIH has possession and control over some or all of the requested records.

10. Defendant NIAID is an “agency” within the meaning of 5 U.S.C. § 552(f)(1) and

is therefore subject to FOIA. NIAID is also an agency of HHS and part of NIH. NIAID has possession and control over some or all of the requested records.

11. Defendant DHS is an “agency” within the meaning of 5 U.S.C. § 552(f)(1) and is therefore subject to FOIA. DHS has possession and control over some or all of the requested records.

12. Defendant FEMA is an “agency” within the meaning of 5 U.S.C. § 552(f)(1) and is therefore subject to FOIA. FEMA is also an agency of DHS. FEMA has possession and control over some or all of the requested records.

STATEMENT OF FACTS

13. The earliest known case of COVID-19 (the disease caused by what is now known as SARS-CoV-2) reportedly can be traced back to November 17, 2019, in Hubei province, China.² By December 31, 2019, health officials in Wuhan posted a notice that they were investigating an outbreak of pneumonia in the city, and the World Health Organization (“WHO”) acknowledged that on that date it “was informed of a cluster of cases of pneumonia of unknown cause.”³ As of January 3, 2020, Chinese authorities reported to the WHO a total of 44 patients with pneumonia of unknown etiology.⁴

14. Media reports provide varying accounts of when the Executive Branch first

² Helen Davidson, *First Covid-19 case happened in November, China government records show*, The Guardian (Mar. 13, 2020), <https://www.theguardian.com/world/2020/mar/13/first-covid-19-case-happened-in-november-china-government-records-show-report>.

³ Wuhan Municipal Health Commission on the current situation of pneumonia in our city (*translated from Mandarin*), Dec. 31, 2019, *available at* <http://www.wuhan.gov.cn/front/web/showDetail/2019123108989>; World Health Organization, *Coronavirus disease (COVID-2019) R&D*, *available at* <https://www.who.int/blueprint/priority-diseases/key-action/novel-coronavirus/en/>.

⁴ World Health Organization, *Pneumonia of unknown cause – China* (Jan. 5, 2020), <https://www.who.int/csr/don/05-january-2020-pneumonia-of-unkown-cause-china/en/>.

received notice of what is now known as SARS-CoV-2. According to the *Washington Post*, on January 3, 2020, a Chinese official informed CDC Director Robert Redfield of the outbreak of a respiratory illness in the city of Wuhan.⁵ Redfield relayed the report to HHS Secretary Alex Azar who reportedly relayed it to the White House.⁶

15. Although the Executive Branch has publicly promised transparency, the White House reportedly ordered federal health officials to treat top-level coronavirus meetings as classified to keep meeting participation low and minimize leaks.⁷ Classification prevented relevant officials from attending the meetings because they did not possess the requisite security clearances.⁸

16. On January 21, 2020, the CDC publicly confirmed the first U.S. novel coronavirus case, what is now known as SARS-CoV-2, in the state of Washington.⁹ On January 29, 2020, the White House announced the formation of “a coronavirus task force,” while noting that “[t]he risk of infection for Americans remains low.”¹⁰ On January 30, 2020, the WHO declared the outbreak

⁵ Yasmeen Abutaleb et al., *The U.S. was beset by denial and dysfunction as the coronavirus raged*, Wash. Post (Apr. 4, 2020), <https://www.washingtonpost.com/national-security/2020/04/04/coronavirus-government-dysfunction>.

⁶ *Id.*

⁷ Aram Roston & Marisa Taylor, *Exclusive: White House told federal health agency to classify coronavirus deliberations – sources*, Reuters (Mar. 11, 2020), <https://www.reuters.com/article/us-health-coronavirus-secrecy-exclusive/exclusive-white-house-told-federal-health-agency-to-classify-coronavirus-deliberations-sources-idUSKBN20Y2LM>.

⁸ *Id.*

⁹ Centers for Disease Control and Prevention, *First Travel-related Case of 2019 Novel Coronavirus Detected in United States* (Jan. 21, 2020), <https://www.cdc.gov/media/releases/2020/p0121-novel-coronavirus-travel-case.html>.

¹⁰ White House, *Statement from the Press Secretary Regarding the President’s Coronavirus Task Force* (Jan. 29, 2020), <https://www.whitehouse.gov/briefings-statements/statement-press-secretary-regarding-presidents-coronavirus-task-force/>.

a “Public Health Emergency of International Concern.”¹¹ Hours after that declaration, President Trump said during a speech on trade at a Michigan manufacturing plant that the virus was “going to have a very good ending for us. So that I can assure you.”¹²

17. The WHO began supplying diagnostic test kits to various countries in January, but the United States opted not to use that test, choosing to develop its own.¹³ Contrary to an April 2018 agreement between the CDC and three of the biggest associations involved in lab testing, the Executive Branch reportedly prevented non-government laboratories from assisting in testing.¹⁴ The CDC released a flawed test in February 2020 that took weeks to correct.¹⁵

18. The Executive Branch has responded disparately to state governors’ requests for drugs, medical supplies and equipment, prompting questions about whether politics influenced their allocation across states.¹⁶

19. Since January 2020, President Trump has repeatedly downplayed the threat posed by the novel coronavirus.¹⁷ On January 22, President Trump said he was not worried about a

¹¹ World Health Organization, *Statement on the second meeting of the International Health Regulations (2005) Emergency Committee regarding the outbreak of novel coronavirus (2019-nCoV)* (Jan. 30, 2020), [https://www.who.int/news-room/detail/30-01-2020-statement-on-the-second-meeting-of-the-international-health-regulations-\(2005\)-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-\(2019-ncov\)](https://www.who.int/news-room/detail/30-01-2020-statement-on-the-second-meeting-of-the-international-health-regulations-(2005)-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-(2019-ncov)).

¹² Caitlin Oprysko, *Trump: Coronavirus will have ‘a very good ending for us’* Politico (Jan. 30, 2020), <https://www.politico.com/news/2020/01/30/trump-close-cooperation-china-coronavirus-109701>.

¹³ Donald McNeil, *Did Federal Officials Really Question W.H.O. Tests for Coronavirus?*, N.Y. Times (Mar. 17, 2020), <https://www.nytimes.com/2020/03/17/health/coronavirus-tests-who.html>.

¹⁴ Bob Ortega et al., *How the government delayed coronavirus testing*, CNN (Apr. 9, 2020), <https://www.cnn.com/2020/04/09/politics/coronavirus-testing-cdc-fda-red-tape-invs/index.html>.

¹⁵ *Id.*

¹⁶ Toluse Olorunnipa et al., *Governors plead for medical equipment from federal stockpile plagued by shortages and confusion*, Wash. Post (Mar. 31, 2020), https://www.washingtonpost.com/politics/governors-plead-for-medical-equipment-from-federal-stockpile-plagued-by-shortages-and-confusion/2020/03/31/18aadda0-728d-11ea-87da-77a8136c1a6d_story.html.

¹⁷ David Leonhardt, *A Complete List of Trump’s Attempts to Play Down Coronavirus*, N.Y. Times (Mar. 15, 2020),

pandemic, stating, “We have it totally under control It’s one person coming in from China, and we have it under control. It’s going to be just fine.”¹⁸ On January 24, President Trump tweeted that the “United States greatly appreciates [China’s] efforts and transparency,” and “[i]t will all work out well.”¹⁹ On February 7, 2020, he tweeted that “as the weather starts to warm . . . the virus hopefully becomes weaker, and then gone.”²⁰ On February 10, he stated at a New Hampshire rally, “looks like, by April, you know, in theory, when it gets a little warmer, it miraculously goes away.”²¹ On February 24, he tweeted that “[t]he Coronavirus is very much under control in the USA.”²² On March 7, President Trump stated that “anybody that needs a test gets a test. We – [t]hey’re there. They have the tests. And the tests are beautiful.”²³

20. In March 2020, Jared Kushner, President Trump’s son-in-law and senior adviser, reportedly created his own team of government allies and private industry representatives to work alongside the official coronavirus task force.²⁴ Kushner’s outside advisers were reportedly

<https://www.nytimes.com/2020/03/15/opinion/trump-coronavirus.html>.

¹⁸ Matthew J. Belvedere, *Trump says he trusts China’s Xi on coronavirus and the US has it ‘totally under control’*, CNBC (Jan. 22, 2020), <https://www.cnbc.com/2020/01/22/trump-on-coronavirus-from-china-we-have-it-totally-under-control.html>.

¹⁹ Donald J. Trump (@realDonaldTrump), Twitter (Jan. 24, 2020, 4:18 PM), <https://twitter.com/realdonaldtrump/status/1220818115354923009>.

²⁰ Donald J. Trump (@realDonaldTrump), Twitter (Feb. 7, 2020, 5:31 AM), <https://twitter.com/realdonaldtrump/status/1225728756456808448>.

²¹ David Leonhardt, *A Complete List of Trump’s Attempts to Play Down Coronavirus*, N.Y. Times (Mar. 15, 2020), <https://www.nytimes.com/2020/03/15/opinion/trump-coronavirus.html>.

²² Donald J. Trump (@realDonaldTrump), Twitter (Feb. 24, 2020, 4:42 PM), <https://twitter.com/realdonaldtrump/status/1232058127740174339>.

²³ White House, *Remarks by President Trump After Tour of the Centers for Disease Control and Prevention, Atlanta, GA* (Mar. 6, 2020), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-tour-centers-disease-control-prevention-atlanta-ga/>.

²⁴ Yasmeen Abutaleb et al., *Kushner coronavirus team sparks confusion, plaudits inside White House response efforts*, Wash. Post (Mar. 18, 2020), <https://www.washingtonpost.com/politics/kushner-coronavirus-team->

emailing large groups of government employees from private email addresses.²⁵ Kushner reportedly was also the White House “point person” for “Project Airbridge,” which purports to work with private companies to bring medical supplies from other countries to the United States.²⁶

21. During his March 19 coronavirus briefing, President Trump suggested that the drugs chloroquine and hydroxychloroquine were a possible “game changer” for treating COVID-19,²⁷ despite insufficient evidence of their efficacy.²⁸ A few days later, a man died and his wife was hospitalized after the couple ingested a form of chloroquine.²⁹

22. On April 3, 2020, President Trump reversed previous guidance on masks while announcing that people in the U.S. should wear face coverings in public to slow the spread of what is now known as SARS-CoV-2.³⁰ On April 14, contrary to his previous praise for China’s “efforts

sparks-confusion-plaudits-inside-white-house-response-efforts/2020/03/18/02038a16-6874-11ea-9923-57073adce27c_story.html.

²⁵ *Id.*

²⁶ Kathryn Watson, *What is Project Airbridge?*, CBS News (Mar. 30, 2020), <https://www.cbsnews.com/news/coronavirus-what-is-project-airbridge/>.

²⁷ White House, *Remarks by President Trump, Vice President Pence, and Members of the Coronavirus Task Force in Press Briefing* (Mar. 19, 2020), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-vice-president-pence-members-coronavirus-task-force-press-briefing-6/>.

²⁸ Charles Ornstein, *What We Know — and Don’t Know — About Possible Coronavirus Treatments Promoted by Trump*, Politico (Mar. 29, 2020), <https://www.propublica.org/article/what-we-know-and-dont-know-about-possible-coronavirus-treatments-promoted-by-trump>; see also Michael Crowley et al., *Ignoring Expert Opinion, Trump Again Promotes Use of Hydroxychloroquine*, N.Y. Times (Apr. 5, 2020), <https://www.nytimes.com/2020/04/05/us/politics/trump-hydroxychloroquine-coronavirus.html>; Peter Baker et al., *Trump’s Aggressive Advocacy of Malaria Drug for Treating Coronavirus Divides Medical Community*, N.Y. Times (Apr. 6, 2020), <https://www.nytimes.com/2020/04/06/us/politics/coronavirus-trump-malaria-drug.html>.

²⁹ Scott Neuman, *Man Dies, Woman Hospitalized After Taking Form Of Chloroquine To Prevent COVID-19*, NPR (Mar. 24, 2020), <https://www.npr.org/sections/coronavirus-live-updates/2020/03/24/820512107/man-dies-woman-hospitalized-after-taking-form-of-chloroquine-to-prevent-covid-19>.

³⁰ Lena Sun & Josh Dawsey, *New face mask guidance comes after battle between White House and CDC*, Wash. Post (Apr. 4, 2020), <https://www.washingtonpost.com/health/2020/04/03/white-house-cdc-turf-battle-over-guidance-broad-use-face-masks-fight-coronavirus/>.

and transparency,”³¹ President Trump announced that he had instructed the Executive Branch to suspend funding to the WHO because it “willingly took China’s assurances to face value” and “pushed China’s misinformation.”³²

23. On April 16, 2020, after the White House released nonbinding guidelines recommending how and when states and localities should begin to reopen parts of the economy, President Trump stated that governors could reopen businesses by May 1 or earlier if they believed it prudent.³³ On April 22, 2020, Dr. Rick Bright, former director of HHS Biomedical Advanced Research and Development Authority and ASPR deputy assistant secretary, said that he was dismissed from his positions and transferred to the NIH after he pressed for rigorous vetting of hydroxychloroquine, the drug embraced by President Trump for treating the virus.³⁴

24. On April 23, 2020, President Trump suggested at a White House briefing that an “injection inside” the human body with a disinfectant could help combat COVID-19.³⁵ The same day, the Environmental Protection Agency issued a press release warning against ingesting disinfectants or applying them on the human body.³⁶ The day after the President suggested that a

³¹ Donald J. Trump (@realDonaldTrump), Twitter (Jan. 24, 2020, 4:18 PM), <https://twitter.com/realdonaldtrump/status/1220818115354923009>.

³² White House, *Remarks by President Trump in Press Briefing* (Apr. 14, 2020), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-press-briefing/>.

³³ Peter Baker & Michael D. Shear, *Trump Says States Can Start Reopening While Acknowledging the Decision Is Theirs*, N.Y. Times (Apr. 16, 2020), <https://www.nytimes.com/2020/04/16/us/politics/coronavirus-trump-guidelines.html>.

³⁴ *A doctor says he was removed from his federal post after pressing for rigorous vetting of treatments embraced by Trump*, N.Y. Times (Apr. 22, 2020), <https://www.nytimes.com/2020/04/22/us/coronavirus-live-coverage.html#link-652aa9c3>.

³⁵ White House, *Remarks by President Trump, Vice President Pence, and Members of the Coronavirus Task Force in Press Briefing* (Apr. 23, 2020), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-vice-president-pence-members-coronavirus-task-force-press-briefing-31/>.

³⁶ Environmental Protection Agency, *EPA provides critical information to the American public about safe*

disinfectant injection could counter the virus, New York City's poison control center reported receiving a higher-than-normal number of calls, many of them relating to exposure to disinfectants.³⁷

25. On June 20, 2020, President Trump hosted a rally in Tulsa, Oklahoma, despite concerns about rising numbers of coronavirus cases in the area and concerns about the event becoming a "super-spreader."³⁸ At the rally, President Trump referred to widespread testing as a "double-edged sword."³⁹ He added: "When you do testing to that extent, you're gonna find more people, you're going to find more cases. So I said to my people, 'slow the testing down, please.'"⁴⁰

26. As of August 11, 2020, there are over 5 million confirmed cases of COVID-19 in the U.S. and over 162,000 have died of the disease in the U.S.⁴¹ The CDC projects that by August 29, 2020, there will be between 175,000 and 190,000 reported COVID-19 deaths in the U.S.⁴²

27. As the U.S. braces for a "second wave" of the virus, public debate about the

disinfectant use (Apr. 23, 2020), <https://www.epa.gov/newsreleases/epa-provides-critical-information-american-public-about-safe-disinfectant-use>.

³⁷ Jason Slotkin, *NYC Poison Control Sees Uptick In Calls After Trump's Disinfectant Comments*, NPR (Apr. 25, 2020), <https://www.npr.org/sections/coronavirus-live-updates/2020/04/25/845015236/nyc-poison-control-sees-uptick-in-calls-after-trumps-disinfectant-comments>.

³⁸ Dareh Gregorian, *Trump supporters crowd Tulsa ahead of Saturday rally*, NBC News (June 18, 2020), <https://www.nbcnews.com/politics/2020-election/trump-supporters-crowd-tulsa-ahead-saturday-rally-n1231454>.

³⁹ *Trump urges slowdown in COVID-19 testing, calling it a 'double-edge sword'*, Reuters (June 21, 2020), <https://www.reuters.com/article/us-health-coronavirus-trump-testing/trump-urges-slowdown-in-covid-19-testing-calling-it-a-double-edge-sword-idUSKBN23S0B4>.

⁴⁰ *Id.*

⁴¹ Centers for Disease Control and Prevention, *Coronavirus Disease 2019: Cases in the US* (Aug. 11, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>.

⁴² Centers for Disease Control and Prevention, *Coronavirus Disease 2019: Forecasts of Total Deaths* (Aug. 11, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/forecasting-us.html>.

administration's response (or lack thereof) to the disease continues unabated.⁴³ Already, COVID-19 infections have surged in parts of the country this summer while President Trump insisted that the outbreak "will go away like things go away."⁴⁴ On August 4, President Trump stated, "You know there are those that say you can test too much" and claimed the COVID-19 outbreak was "under control as much as you can control it."⁴⁵ When asked about the fact that the United States was averaging over 1,000 deaths per day in the same interview, President Trump responded, "it is what it is."⁴⁶

28. The immediate release of the requested records is critical for the public to evaluate the administration's response to the pandemic.

PLAINTIFF'S FOIA REQUESTS

29. On April 27, 2020, Plaintiff submitted FOIA requests to Defendant NIAID and Defendant NIH regarding COVID-19. These requests are incorporated by reference and attached as Exhibit A (NIAID) and Exhibit B (NIH).

30. On May 1, 2020, Plaintiff submitted a FOIA request to Defendant FDA regarding COVID-19. That request is incorporated by reference and attached as Exhibit C.

⁴³ See, e.g., Amy Goldstein, *Fauci worries U.S. covid-19 cases could climb to 100,000 daily*, Wash. Post (June 30, 2020), https://www.washingtonpost.com/health/fauci-worries-us-covid-19-cases-could-climb-to-100000-daily/2020/06/30/917617ba-bafc-11ea-80b9-40ece9a701dc_story.html.

⁴⁴ David Jackson, *Trump says schools should reopen because children are 'virtually immune'* (Aug. 5, 2020), <https://www.usatoday.com/story/news/politics/2020/08/05/coronavirus-trump-pushes-reopening-saying-children-immune/3297255001/>.

⁴⁵ Sam Baker, *Trump: Coronavirus is "under control"*, Axios (Aug. 4, 2020), <https://www.axios.com/trump-coronavirus-under-control-5f114a16-9952-428c-bc07-3cfa360b0977.html>.

⁴⁶ William Cummings & Courtney Subramanian, *'It is what it is,' Trump says of rising coronavirus death toll as he insists outbreak is 'under control'*, USA Today (Aug. 4, 2020), <https://www.usatoday.com/story/news/politics/2020/08/04/trump-tells-axios-rising-covid-19-death-toll-is-what-is/5579765002/>.

31. On June 24, 2020, Plaintiff submitted FOIA requests to Defendant HHS and its Components, Defendant CDC, Defendant DHS, and Defendant FEMA regarding COVID-19. These requests are incorporated by reference and attached as Exhibit D (HHS and its Components), Exhibit E (CDC), and Exhibit F (DHS and FEMA).

32. Plaintiff requested expedited processing of all of the requests on the grounds that it is an organization “primarily engaged in disseminating information” and because the records sought contain information “urgently needed to inform the public about actual or alleged government activity.” *See* Ex. D at 7-8 (citing 5 U.S.C. § 552(a)(6)(E)(v)(I)-(II)); Ex. E at 6-8 (same); Ex. C at 6-8 (same); Ex. B at 7-9 (same); Ex. A at 7-9 (same); Ex. F at 5-7 (same). Given the public health concerns at issue, Plaintiff further requested expedition on the grounds that failure to obtain the requested records on an expedited basis could “reasonably be expected to pose an imminent threat to the life or physical safety of an individual.” *See id.* (citing 5 U.S.C. § 552(a)(6)(E)(v)(I)).

33. Plaintiff requested fee waivers for all of the requests on the grounds that it is a “representative of the news media” within the meaning of FOIA, *see* Ex. D at 9 (citing 5 U.S.C. §§ 552(a)(4)(A)(ii)(II)); Ex. E at 8-9 (same); Ex. C at 8-9 (same); Ex. B at 9-10 (same); Ex. A at 9-10 (same); Ex. F at 8 (same), and that disclosure of the requested records is in the public interest because it 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.” *Id.* (citing 5 U.S.C. § 552(a)(4)(A)(iii)).

AGENCY RESPONSES

National Institutes of Health

34. On May 14, 2020, NIH acknowledged its receipt of Plaintiff’s request to NIH. A

copy of this correspondence is incorporated by reference and attached as Exhibit G.

35. On May 18, 2020, NIH requested that Plaintiff consolidate its request to NIH with Plaintiff's request to NIAID. A copy of this correspondence is incorporated by reference and attached as Exhibit H.

36. On May 19, 2020, Plaintiff replied to NIH, seeking to clarify that a consolidated request would capture all records responsive to both requests and stating Plaintiff would have no objection to consolidation of the requests if that were the case. Ex. H.

37. On May 19, 2020, NIH replied confirming that the consolidated request would include all records responsive to both requests. Ex. H.

38. On May 19, 2020, Plaintiff consented to the consolidation. Ex. H.

39. To date, NIH has not made a determination on Plaintiff's request as required by FOIA and has not disclosed any responsive records.

40. Plaintiff has constructively exhausted administrative remedies on account of NIH's failure to comply with the 20-day time limit for making a determination on Plaintiff's request as required by FOIA.

National Institute of Allergy and Infectious Diseases

41. On May 18, 2020, NIH, responding in part on behalf of NIAID, requested that Plaintiff consolidate its request to NIH with its request to NIAID. Ex. H.

42. On May 19, 2020, Plaintiff replied to NIH, seeking to clarify that a consolidated request would capture all records responsive to both requests and stating Plaintiff would have no objection to consolidation of the requests if that were the case. Ex. H.

43. On May 19, 2020, NIH replied confirming that the consolidated request would include all records responsive to both requests. Ex. H.

44. On May 19, 2020, Plaintiff consented to the consolidation. Ex. H.

45. To date, NIAID has not made a determination on Plaintiff's request as required by FOIA and has not disclosed any responsive records.

46. Plaintiff has constructively exhausted administrative remedies on account of NIH's failure to comply with the 20-day time limit for making a determination on Plaintiff's request as required by FOIA.

Food and Drug Administration

47. On May 1, 2020, FDA acknowledged receipt of Plaintiff's request to FDA. Ex. I.

48. On May 4, 2020, FDA requested clarification regarding whether Plaintiff's request included records for Dr. Peter Marks or Dr. Jeffrey Shuren. A copy of this correspondence is incorporated by reference and attached as Exhibit J.

49. On May 4, 2020, Plaintiff responded to that inquiry and stated that Plaintiff's request included records for both Dr. Marks and Dr. Shuren. A copy of this correspondence is incorporated by reference and attached as Exhibit J.

50. On May 5, 2020, FDA again acknowledged receipt of Plaintiff's request to FDA. In its response, FDA stated it may charge Plaintiff a fee for processing the request and that it may be unable to comply with FOIA's timeline. A copy of this correspondence is incorporated by reference and attached as Exhibit K.

51. On May 6, 2020, FDA granted Plaintiff's request for expedited processing. A copy of that correspondence is incorporated by reference and attached as Exhibit L.

52. To date, FDA has not made a determination on Plaintiff's request as required by FOIA and has not disclosed any responsive records.

53. Plaintiff has constructively exhausted administrative remedies on account of FDA's

failure to comply with the 20-day time limit for making a determination on Plaintiff's request as required by FOIA.

Department of Health and Human Services and Its Components

54. On June 25, 2020, HHS acknowledged receipt of Plaintiff's request to HHS and its Components. A copy of this correspondence is incorporated by reference and attached as Exhibit M.

55. To date, HHS and its Components have not made a determination on Plaintiff's request as required by FOIA and have not disclosed any responsive records.

56. Plaintiff has constructively exhausted administrative remedies on account of HHS and its Components' failure to comply with the 20-day time limit for making a determination on Plaintiff's request as required by FOIA.

Centers for Disease Control and Prevention

57. On June 26, 2020, CDC acknowledged receipt of Plaintiff's request and assigned it internal tracking number 20-01876-FOIA. CDC also denied Plaintiff expedited processing, stating that Plaintiff had "failed to show that there is an imminent threat to the life or physical safety of an individual" and had not "demonstrated that [Plaintiff is] a person primarily engaged in disseminating information." Citing "unusual circumstances," CDC stated that it would need more than 30 working days to respond to Plaintiff's FOIA request. A copy of CDC's June 26 letter is incorporated by reference and attached as Exhibit N.

58. Plaintiff has constructively exhausted administrative remedies on account of CDC's failure to comply with the 20-day time limit, even with a ten-day "unusual circumstances"

extension, for making a determination on Plaintiff's request as required by FOIA.⁴⁷

Department of Homeland Security and Federal Emergency Management Agency

59. On June 25, 2020, Defendant DHS responded to Plaintiff's request, acknowledging, on behalf of both DHS and FEMA, that the request was received on June 24, 2020, assigning reference number 2020-HQFO-01313, granting expedited processing, and conditionally granting the request for a fee waiver, pending a sampling of responsive documents. DHS also stated that it would invoke a ten-day extension, pursuant to 6 C.F.R. Part 5 § 5.5(c), for responding to Plaintiff's FOIA request. A copy of DHS's June 25 letter is incorporated by reference and attached as Exhibit O.

60. On June 29, 2020, DHS contacted Plaintiff to request that Plaintiff limit certain requests "to the decision makers that would shed a light on our agency's operations; that would be GS 15, the Senior Executive Services (SES), and Political Appointees (PA)[,]" citing the volume of data initially retrieved. A copy of that request for clarification is incorporated by reference and attached as Exhibit P.

61. Plaintiff provided that clarification the next day, on June 30, 2020, stating its willingness "to limit the search as [] recommend[ed,]" provided that DHS would provide a "reasonable timeline for processing responsive records." In the spirit of cooperation, Plaintiff further stated it would be willing to receive rolling productions. A copy of that reply is incorporated by reference and attached as Exhibit Q.

⁴⁷ Although Plaintiff filed an administrative appeal of CDC's denial of expedited processing, it was not required to do so. *See Judicial Watch, Inc. v. F.B.I.*, No. CIV.A. 01-1216 RBW, 2002 WL 34339771, at *3 n.5 (D.D.C. July 26, 2002) ("Congress certainly did not envision that constructive exhaustion would apply to expedited processing requests . . ."). Accordingly, Plaintiff has constructively exhausted its administrative remedies regarding CDC's denial of expedited processing.

62. To date, DHS has not acknowledged Plaintiff's willingness to limit the search, nor has DHS provided a reasonable timeline, or addressed Plaintiff's proposal for rolling productions.

63. On July 1, 2020, FEMA acknowledged that it had received Plaintiff's FOIA request on June 24, 2020, and stated that DHS would process the request and contact Plaintiff regarding its release determination. A copy of this correspondence is incorporated by reference and attached as Exhibit R.

64. On July 6, 2020, FEMA asserted that it was meeting its FOIA obligations to Plaintiff through DHS and referred Plaintiff to DHS for any additional questions. A copy of this correspondence is incorporated by reference and attached as Exhibit S.

65. On July 7, 2020, DHS issued another request for clarification and narrowing to Plaintiff, asking Plaintiff to provide more information, narrow certain timeframes "and/or provide key search terms," and "provide the specific program office and/or FEMA employees [Plaintiff] would like [DHS] to search as well as key search terms." DHS further stated that it was placing its searches on hold until Plaintiff responded. A copy of this second request for clarification is incorporated by reference and attached as Exhibit T.

66. On July 10, 2020, Plaintiff responded to DHS's July 7, 2020 request, objecting to DHS placing the searches on hold because DHS had "no reason" to do so and stating Plaintiff's expectation that the searches had been continuing. Plaintiff pointed out that DHS "did not specify which program office required more information[,] making it difficult for Plaintiff to respond. Plaintiff stated that it would be "happy to work with [DHS] on this," but noted the obvious that "DHS and its components are in a better position to know where responsive records are located and how best to search for them." Again, in the spirit of cooperation, Plaintiff nonetheless provided suggestions and additional background, but noted the suggestions were "non-exhaustive"

and would not limit its request. A copy of this correspondence is incorporated by reference and attached as Exhibit U.

67. On July 14, 2020, DHS acknowledged that it had received Plaintiff's July 10, 2020 clarification email and would "sen[d] it over to the program office searching for responsive records." A copy of this correspondence is incorporated by reference and attached as Exhibit V.

68. To date, DHS and FEMA have not issued determinations on Plaintiff's request as required by FOIA and have not disclosed any responsive records.

69. Plaintiff has constructively exhausted administrative remedies on account of the failure of DHS and FEMA to comply with the 20-day time limit, even with the ten-day "unusual circumstances" extension for making a determination on Plaintiff's request as required by FOIA.

CAUSES OF ACTION

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

1. Plaintiff repeats, re-alleges, and incorporates the foregoing paragraphs as if set forth in full.
2. Defendants' failure to comply with the statutory time limit for rendering a determination on Plaintiff's FOIA requests violates 5 U.S.C. § 552(a)(6)(A)(i) and Defendants' corresponding regulations.
3. Defendants' failure to make reasonable efforts to search for records responsive to Plaintiff's requests violates FOIA, 5 U.S.C. § 552(a)(3)(C), and Defendants' corresponding regulations.
4. Defendants' failure to promptly disclose records responsive to Plaintiff's requests violates FOIA, 5 U.S.C. § 552(a)(3)(A), and Defendants' corresponding regulations.
5. The failure of Defendants HHS and its Components, CDC, NIH, and NIAID to grant Plaintiff's requests for expedited processing violates FOIA, 5 U.S.C. § 552(a)(6)(E), and Defendants' corresponding regulations.
6. The failure of Defendants HHS and its Components, FDA, NIH, NIAID, DHS, and FEMA to grant Plaintiff's request for a waiver of search, review, and duplication fees violates FOIA, 5 U.S.C. § 552(a)(4)(A)(iii), and Defendants' corresponding regulations.
7. Plaintiff has exhausted all applicable administrative remedies.
8. Plaintiff is entitled to injunctive relief with respect to the prompt disclosure of the requested documents.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

- A. Expedite its consideration of this action pursuant to 28 U.S.C. § 1657(a);
- B. Order Defendants to immediately conduct a thorough search for records responsive to Plaintiff's requests;
- C. Order Defendants to immediately process any responsive records for disclosure and produce such records to Plaintiff;
- D. Enjoin Defendants HHS and its Components, FDA, NIH, NIAID, DHS, and FEMA from charging Plaintiff search, review, and duplication fees relating to the requests;
- E. Award Plaintiff its costs and reasonable attorneys' fees incurred in this action; and
- F. Grant such other relief as the Court may deem just and proper.

Dated: August 12, 2020
Washington, D.C.

Respectfully submitted,

/s/ Mark F. Mendelsohn

Mark F. Mendelsohn
Tanya Manno (admitted *pro hac vice*)
Joseph Granzotto (admitted *pro hac vice*)
Brian Shiue (admitted *pro hac vice*)
PAUL, WEISS, RIFKIND, WHARTON
& GARRISON LLP
2001 K Street, NW
Washington, DC 20006
mmendelsohn@paulweiss.com
(202) 223-7300

Eric Alan Stone
Daniel J. Klein
PAUL, WEISS, RIFKIND, WHARTON
& GARRISON LLP
1285 Avenue of the Americas
New York, NY 10019
(212) 373-3000

Amrit Singh
Natasha Arnpriester
Malcolm Dort
James A. Goldston
Open Society Justice Initiative
224 West 57th Street
New York, NY 10019
amrit.singh@opensocietyfoundations.org
(212) 548-0600

*Attorneys for plaintiff Open Society Justice
Initiative*

United States District Court
for the
Southern District of New York
Related Case Statement

Full Caption of Later Filed Case:

OPEN SOCIETY JUSTICE INITIATIVE

Plaintiff vs. DEPARTMENT OF HEALTH AND HUMAN SERVICES, CENTERS FOR DISEASE CONTROL AND PREVENTION, FOOD AND DRUG ADMINISTRATION, NATIONAL INSTITUTES OF HEALTH, NATIONAL INSTITUTE OF ALLERGY AND INFECTIOUS DISEASES, DEPARTMENT OF HOMELAND SECURITY, and FEDERAL EMERGENCY MANAGEMENT AGENCY	Case Number
Defendant	

Full Caption of Earlier Filed Case:

(including in bankruptcy appeals the relevant adversary proceeding)

OPEN SOCIETY JUSTICE INITIATIVE

Plaintiff vs. DEPARTMENT OF DEFENSE, DEFENSE INTELLIGENCE AGENCY, UNITED STATES INDO-PACIFIC COMMAND, DEPARTMENT OF STATE, DEPARTMENT OF TREASURY OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE, and CENTRAL INTELLIGENCE AGENCY	Case Number No. 20-cv-05096 (JMF)
Defendant	

Status of Earlier Filed Case:

Closed

(If so, set forth the procedure which resulted in closure, e.g., voluntary dismissal, settlement, court decision. Also, state whether there is an appeal pending.)

Open

(If so, set forth procedural status and summarize any court rulings.)

On July 2, 2020, Plaintiff Open Society Justice Initiative ("OSJI") filed its Complaint against Defendants Department of Defense ("DoD"), including its components Defense Intelligence Agency Agency ("DIA") and United States Indo-Pacific Command ("Indo-Pac"), Department of State ("State"), Department of Treasury ("Treasury"), Office of the Director of National Intelligence ("ODNI") and Central Intelligence Agency ("CIA"). In a July 20, 2020 letter endorsed by the Court, the parties proposed that they would submit another status letter on or before August 20, 2020 requesting a status conference at the Court's convenience. On August 6, 2020, Defendants filed an Answer to Plaintiff's Complaint.

Explain in detail the reasons for your position that the newly filed case is related to the earlier filed case.

The earlier filed and newly filed cases concern substantially similar parties, substantially similar transactions and events, and substantial factual overlap. Both cases generally concern claims against various agencies, components, and offices within the federal government for failure to comply with Freedom of Information Act requests seeking information about the Executive Branch's response to, and management of, the novel coronavirus pandemic. The subject matter of the Freedom of Information Act requests to which Defendants are alleged to have failed to provide statutorily adequate responses are similar, and in many cases identical, across all Defendants.

Furthermore, a substantial duplication of expense and effort, as well as unnecessary burden on the Court, is likely to result in the absence of a determination of relatedness because the issues the Court is likely to be presented with in both cases are expected to be similar, if not identical, given the overlapping subject matter of the Freedom of Information Act requests at the heart of these cases.

Signature: /s/ Mark F. Mendelsohn

Date: 8/12/2020

Paul, Weiss, Rifkind, Wharton & Garrison LLP

Firm: _____

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service 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 use of the Clerk of Court for the purpose of initiating the civil docket sheet.

PLAINTIFFS

DEFENDANTS

OPEN SOCIETY JUSTICE INITIATIVE

DEPARTMENT OF HEALTH AND HUMAN SERVICES, et al. (See Schedule A)

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
Mark F. Mendelsohn, Paul, Weiss, Rifkind, Wharton & Garrison LLP
2001 K Street, NW, Washington, D.C. 20006
(202) 223-7300

ATTORNEYS (IF KNOWN)
U.S. Attorney
1 St. Andrew's Plaza, New York, NY 10007
(212) 637-2800

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)
(DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Action under the Freedom of Information Act, 5 U.S.C. 552, to order the production of agency records.

Has this action, case, or proceeding, or one essentially the same been previously filed in SDNY at any time? No Yes Judge Previously Assigned
Hon. Jesse Furman

If yes, was this case Vol. Invol. Dismissed. No Yes If yes, give date _____ & Case No. _____

IS THIS AN INTERNATIONAL ARBITRATION CASE? No Yes

(PLACE AN [x] IN ONE BOX ONLY)

NATURE OF SUIT

TORTS

ACTIONS UNDER STATUTES

CONTRACT

PERSONAL INJURY

PERSONAL INJURY

FORFEITURE/PENALTY

BANKRUPTCY

OTHER STATUTES

- 110 INSURANCE
- 120 MARINE
- 130 MILLER ACT
- 140 NEGOTIABLE INSTRUMENT
- 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT
- 151 MEDICARE ACT
- 152 RECOVERY OF DEFAULTED STUDENT LOANS (EXCL VETERANS)
- 153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS
- 160 STOCKHOLDERS SUITS
- 190 OTHER CONTRACT
- 195 CONTRACT PRODUCT LIABILITY
- 196 FRANCHISE

- 310 AIRPLANE
- 315 AIRPLANE PRODUCT LIABILITY
- 320 ASSAULT, LIBEL & SLANDER
- 330 FEDERAL EMPLOYERS' LIABILITY
- 340 MARINE
- 345 MARINE PRODUCT LIABILITY
- 350 MOTOR VEHICLE
- 355 MOTOR VEHICLE PRODUCT LIABILITY
- 360 OTHER PERSONAL INJURY
- 362 PERSONAL INJURY - MED MALPRACTICE

- 367 HEALTHCARE/ PHARMACEUTICAL PERSONAL INJURY/PRODUCT LIABILITY
- 365 PERSONAL INJURY PRODUCT LIABILITY
- 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY
- 370 OTHER FRAUD
- 371 TRUTH IN LENDING
- 380 OTHER PERSONAL PROPERTY DAMAGE
- 385 PROPERTY DAMAGE PRODUCT LIABILITY
- 463 ALIEN DETAINEE
- 510 MOTIONS TO VACATE SENTENCE
- 530 HABEAS CORPUS
- 535 DEATH PENALTY
- 540 MANDAMUS & OTHER

- 625 DRUG RELATED SEIZURE OF PROPERTY
- 690 OTHER
- 820 COPYRIGHTS
- 830 PATENT
- 835 PATENT-ABBREVIATED NEW DRUG APPLICATION
- 840 TRADEMARK
- 710 FAIR LABOR STANDARDS ACT
- 720 LABOR/MGMT RELATIONS
- 740 RAILWAY LABOR ACT
- 751 FAMILY MEDICAL LEAVE ACT (FMLA)
- 790 OTHER LABOR LITIGATION
- 791 EMPL RET INC SECURITY ACT (ERISA)

- 422 APPEAL
- 423 WITHDRAWAL
- 861 HIA (1395ff)
- 862 BLACK LUNG (923)
- 863 DIWC/DIWW (405(g))
- 864 SSID TITLE XVI
- 865 RSI (405(g))
- 870 TAXES (U.S. Plaintiff or Defendant)
- 871 IRS-THIRD PARTY

- 375 FALSE CLAIMS
- 376 QUI TAM
- 400 STATE REAPPORTIONMENT
- 410 ANTI TRUST
- 430 BANKS & BANKING
- 450 COMMERCE
- 460 DEPORTATION
- 470 RACKETEER INFLUENCED & CORRUPT ORGANIZATION ACT (RICO)
- 480 CONSUMER CREDIT
- 490 CABLE/SATELLITE TV
- 850 SECURITIES/ COMMODITIES/ EXCHANGE
- 890 OTHER STATUTORY ACTIONS
- 891 AGRICULTURAL ACTS
- 893 ENVIRONMENTAL MATTERS
- 895 FREEDOM OF INFORMATION ACT
- 896 ARBITRATION
- 899 ADMINISTRATIVE PROCEDURE ACT/REVIEW OR APPEAL OF AGENCY DECISION
- 950 CONSTITUTIONALITY OF STATE STATUTES

REAL PROPERTY

ACTIONS UNDER STATUTES

CIVIL RIGHTS

- 440 OTHER CIVIL RIGHTS (Non-Prisoner)

- 441 VOTING
- 442 EMPLOYMENT
- 443 HOUSING/ ACCOMMODATIONS
- 445 AMERICANS WITH DISABILITIES - EMPLOYMENT
- 446 AMERICANS WITH DISABILITIES -OTHER
- 448 EDUCATION

PRISONER CIVIL RIGHTS

- 550 CIVIL RIGHTS
- 555 PRISON CONDITION
- 560 CIVIL DETAINEE CONDITIONS OF CONFINEMENT

IMMIGRATION

- 462 NATURALIZATION APPLICATION
- 465 OTHER IMMIGRATION ACTIONS

Check if demanded in complaint:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y. AS DEFINED BY LOCAL RULE FOR DIVISION OF BUSINESS 13? IF SO, STATE:

DEMAND \$ _____ OTHER _____ JUDGE Hon. Jesse M. Furman DOCKET NUMBER 1:20-cv-05096

Check YES only if demanded in complaint

JURY DEMAND: YES NO

NOTE: You must also submit at the time of filing the Statement of Relatedness form (Form IH-32).

(PLACE AN x IN ONE BOX ONLY)

ORIGIN

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from (Specify District)
- 6 Multidistrict Litigation (Transferred)
- 7 Appeal to District Judge from Magistrate Judge
- a. all parties represented
- b. At least one party is pro se.
- 8 Multidistrict Litigation (Direct File)

(PLACE AN x IN ONE BOX ONLY)

BASIS OF JURISDICTION

IF DIVERSITY, INDICATE CITIZENSHIP BELOW.

- 1 U.S. PLAINTIFF
- 2 U.S. DEFENDANT
- 3 FEDERAL QUESTION (U.S. NOT A PARTY)
- 4 DIVERSITY

CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

CITIZEN OF THIS STATE	PTF [] 1	DEF [] 1	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	PTF [] 3	DEF [] 3	INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	PTF [] 5	DEF [] 5
CITIZEN OF ANOTHER STATE	[] 2	[] 2	INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE	[] 4	[] 4	FOREIGN NATION	[] 6	[] 6

PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

224 West 57th Street
New York, NY 10019
New York County

DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

See Schedule A

DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

COURTHOUSE ASSIGNMENT

I hereby certify that this case should be assigned to the courthouse indicated below pursuant to Local Rule for Division of Business 18, 20 or 21.

Check one: THIS ACTION SHOULD BE ASSIGNED TO: WHITE PLAINS MANHATTAN

DATE 8/12/2020 SIGNATURE OF ATTORNEY OF RECORD

RECEIPT # /s/ Mark F. Mendelsohn

ADMITTED TO PRACTICE IN THIS DISTRICT
[] NO
[x] YES (DATE ADMITTED Mo. August Yr. 1995)
Attorney Bar Code # MM6253

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge _____ is so Designated.

Ruby J. Krajick, Clerk of Court by _____ Deputy Clerk, DATED _____.

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)

Schedule A

Department of Health and Human Services
Office of the General Counsel
200 Independence Avenue, S.W.
Washington, D.C. 20201

Centers for Disease Control and Prevention
1600 Clifton Road
Atlanta, GA 30329-4027

Food and Drug Administration
10903 New Hampshire Ave.
Silver Spring, MD 20993-0002

National Institutes of Health
Office of the General Counsel
200 Independence Avenue, S.W.
Washington, D.C. 20201

National Institute of Allergy and Infectious Diseases
Office of the General Counsel
200 Independence Avenue, S.W.
Washington, D.C. 20201

Department of Homeland Security
Office of the General Counsel
2707 Martin Luther King Jr. Ave, SE
Mail Stop 0485
Washington, D.C. 20528-0485

Federal Emergency Management Agency
Office of the Chief Counsel
500 C Street SW
Washington, D.C. 20472

UNITED STATES DISTRICT COURT
for the
Southern District of New York

OPEN SOCIETY JUSTICE INITIATIVE

Plaintiff

v.

DEPARTMENT OF HEALTH AND HUMAN SERVICES
See full list of defendants on Schedule A

Defendant

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Civil Action No. _____

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)
Department of Health and Human
Services
c/o Office of the General Counsel
200 Independence Avenue, S.W.
Washington, D.C. 20201 +
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:

Mark F. Mendelsohn
Paul, Weiss, Rifkind, Wharton &
Garrison LLP
2001 K Street, NW
Washington, D.C. 20006-1047

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.

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:

Schedule A

Department of Health and Human Services
Office of the General Counsel
200 Independence Avenue, S.W.
Washington, D.C. 20201

Centers for Disease Control and Prevention
1600 Clifton Road
Atlanta, GA 30329-4027

Food and Drug Administration
10903 New Hampshire Ave.
Silver Spring, MD 20993-0002

National Institutes of Health
Office of the General Counsel
200 Independence Avenue, S.W.
Washington, D.C. 20201

National Institute of Allergy and Infectious Diseases
Office of the General Counsel
200 Independence Avenue, S.W.
Washington, D.C. 20201

Department of Homeland Security
Office of the General Counsel
2707 Martin Luther King Jr. Ave, SE
Mail Stop 0485
Washington, D.C. 20528-0485

Federal Emergency Management Agency
Office of the Chief Counsel
500 C Street SW
Washington, D.C. 20472

UNITED STATES DISTRICT COURT
for the
Southern District of New York

OPEN SOCIETY JUSTICE INITIATIVE

Plaintiff

v.

DEPARTMENT OF HEALTH AND HUMAN SERVICES
See full list of defendants on Schedule A

Defendant

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Civil Action No. _____

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)
Centers for Disease Control and
Prevention
1600 Clifton Road
Atlanta, GA 30329-4027



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:

Mark F. Mendelsohn
Paul, Weiss, Rifkind, Wharton &
Garrison LLP
2001 K Street, NW
Washington, D.C. 20006-1047

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.

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:

Schedule A

Department of Health and Human Services
Office of the General Counsel
200 Independence Avenue, S.W.
Washington, D.C. 20201

Centers for Disease Control and Prevention
1600 Clifton Road
Atlanta, GA 30329-4027

Food and Drug Administration
10903 New Hampshire Ave.
Silver Spring, MD 20993-0002

National Institutes of Health
Office of the General Counsel
200 Independence Avenue, S.W.
Washington, D.C. 20201

National Institute of Allergy and Infectious Diseases
Office of the General Counsel
200 Independence Avenue, S.W.
Washington, D.C. 20201

Department of Homeland Security
Office of the General Counsel
2707 Martin Luther King Jr. Ave, SE
Mail Stop 0485
Washington, D.C. 20528-0485

Federal Emergency Management Agency
Office of the Chief Counsel
500 C Street SW
Washington, D.C. 20472

UNITED STATES DISTRICT COURT
for the
Southern District of New York

OPEN SOCIETY JUSTICE INITIATIVE

Plaintiff

v.

DEPARTMENT OF HEALTH AND HUMAN SERVICES
See full list of defendants on Schedule A

Defendant

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Civil Action No. _____

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)
Food and Drug Administration
10903 New Hampshire Ave.
Silver Spring, MD 20993-0002

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:

Mark F. Mendelsohn
Paul, Weiss, Rifkind, Wharton &
Garrison LLP
2001 K Street, NW
Washington, D.C. 20006-1047

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.

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:

Schedule A

Department of Health and Human Services
Office of the General Counsel
200 Independence Avenue, S.W.
Washington, D.C. 20201

Centers for Disease Control and Prevention
1600 Clifton Road
Atlanta, GA 30329-4027

Food and Drug Administration
10903 New Hampshire Ave.
Silver Spring, MD 20993-0002

National Institutes of Health
Office of the General Counsel
200 Independence Avenue, S.W.
Washington, D.C. 20201

National Institute of Allergy and Infectious Diseases
Office of the General Counsel
200 Independence Avenue, S.W.
Washington, D.C. 20201

Department of Homeland Security
Office of the General Counsel
2707 Martin Luther King Jr. Ave, SE
Mail Stop 0485
Washington, D.C. 20528-0485

Federal Emergency Management Agency
Office of the Chief Counsel
500 C Street SW
Washington, D.C. 20472

FOIA Summons IH form 4

4/17

UNITED STATES DISTRICT COURT
for the
Southern District of New York

OPEN SOCIETY JUSTICE INITIATIVE

Plaintiff

v.

DEPARTMENT OF HEALTH AND HUMAN SERVICES
See full list of defendants on Schedule A

Defendant

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)
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Civil Action No. _____

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)
National Institutes of Health
c/o Office of the General Counsel
200 Independence Avenue, S.W.
Washington, D.C. 20201



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:

Mark F. Mendelsohn
Paul, Weiss, Rifkind, Wharton &
Garrison LLP
2001 K Street, NW
Washington, D.C. 20006-1047

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.

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:

Schedule A

Department of Health and Human Services
Office of the General Counsel
200 Independence Avenue, S.W.
Washington, D.C. 20201

Centers for Disease Control and Prevention
1600 Clifton Road
Atlanta, GA 30329-4027

Food and Drug Administration
10903 New Hampshire Ave.
Silver Spring, MD 20993-0002

National Institutes of Health
Office of the General Counsel
200 Independence Avenue, S.W.
Washington, D.C. 20201

National Institute of Allergy and Infectious Diseases
Office of the General Counsel
200 Independence Avenue, S.W.
Washington, D.C. 20201

Department of Homeland Security
Office of the General Counsel
2707 Martin Luther King Jr. Ave, SE
Mail Stop 0485
Washington, D.C. 20528-0485

Federal Emergency Management Agency
Office of the Chief Counsel
500 C Street SW
Washington, D.C. 20472

UNITED STATES DISTRICT COURT
for the
Southern District of New York

OPEN SOCIETY JUSTICE INITIATIVE

Plaintiff

v.

DEPARTMENT OF HEALTH AND HUMAN SERVICES
See full list of defendants on Schedule A

Defendant

Civil Action No. _____

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

National Institute of Allergy and
Infectious Diseases
c/o Office of the General Counsel
200 Independence Avenue, S.W.
Washington, D.C. 20201
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:

Mark F. Mendelsohn
Paul, Weiss, Rifkind, Wharton &
Garrison LLP
2001 K Street, NW
Washington, D.C. 20006-1047

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.

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:

Schedule A

Department of Health and Human Services
Office of the General Counsel
200 Independence Avenue, S.W.
Washington, D.C. 20201

Centers for Disease Control and Prevention
1600 Clifton Road
Atlanta, GA 30329-4027

Food and Drug Administration
10903 New Hampshire Ave.
Silver Spring, MD 20993-0002

National Institutes of Health
Office of the General Counsel
200 Independence Avenue, S.W.
Washington, D.C. 20201

National Institute of Allergy and Infectious Diseases
Office of the General Counsel
200 Independence Avenue, S.W.
Washington, D.C. 20201

Department of Homeland Security
Office of the General Counsel
2707 Martin Luther King Jr. Ave, SE
Mail Stop 0485
Washington, D.C. 20528-0485

Federal Emergency Management Agency
Office of the Chief Counsel
500 C Street SW
Washington, D.C. 20472

UNITED STATES DISTRICT COURT
for the
Southern District of New York

OPEN SOCIETY JUSTICE INITIATIVE

Plaintiff

v.

DEPARTMENT OF HEALTH AND HUMAN SERVICES
See full list of defendants on Schedule A

Defendant

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Civil Action No. _____

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)
Department of Homeland Security
c/o Office of the General Counsel
2707 Martin Luther King Jr. Ave
SE, Mail Stop 0485
Washington, D.C. 20528-0485 +
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:

Mark F. Mendelsohn
Paul, Weiss, Rifkind, Wharton &
Garrison LLP
2001 K Street, NW
Washington, D.C. 20006-1047

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.

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))

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was received by me on *(date)* _____.

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_____ 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:

Schedule A

Department of Health and Human Services
Office of the General Counsel
200 Independence Avenue, S.W.
Washington, D.C. 20201

Centers for Disease Control and Prevention
1600 Clifton Road
Atlanta, GA 30329-4027

Food and Drug Administration
10903 New Hampshire Ave.
Silver Spring, MD 20993-0002

National Institutes of Health
Office of the General Counsel
200 Independence Avenue, S.W.
Washington, D.C. 20201

National Institute of Allergy and Infectious Diseases
Office of the General Counsel
200 Independence Avenue, S.W.
Washington, D.C. 20201

Department of Homeland Security
Office of the General Counsel
2707 Martin Luther King Jr. Ave, SE
Mail Stop 0485
Washington, D.C. 20528-0485

Federal Emergency Management Agency
Office of the Chief Counsel
500 C Street SW
Washington, D.C. 20472

UNITED STATES DISTRICT COURT
for the
Southern District of New York

OPEN SOCIETY JUSTICE INITIATIVE

Plaintiff

v.


DEPARTMENT OF HEALTH AND HUMAN SERVICES
See full list of defendants on Schedule A

Defendant

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Civil Action No. _____

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)
Federal Emergency Management
Agency
c/o Office of the Chief Counsel
500 C Street SW
Washington, D.C. 20472 
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:

Mark F. Mendelsohn
Paul, Weiss, Rifkind, Wharton &
Garrison LLP
2001 K Street, NW
Washington, D.C. 20006-1047

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.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

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▸ 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:

Schedule A

Department of Health and Human Services
Office of the General Counsel
200 Independence Avenue, S.W.
Washington, D.C. 20201

Centers for Disease Control and Prevention
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Atlanta, GA 30329-4027

Food and Drug Administration
10903 New Hampshire Ave.
Silver Spring, MD 20993-0002

National Institutes of Health
Office of the General Counsel
200 Independence Avenue, S.W.
Washington, D.C. 20201

National Institute of Allergy and Infectious Diseases
Office of the General Counsel
200 Independence Avenue, S.W.
Washington, D.C. 20201

Department of Homeland Security
Office of the General Counsel
2707 Martin Luther King Jr. Ave, SE
Mail Stop 0485
Washington, D.C. 20528-0485

Federal Emergency Management Agency
Office of the Chief Counsel
500 C Street SW
Washington, D.C. 20472

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

OPEN SOCIETY JUSTICE INITIATIVE,

Plaintiff,

v.

DEPARTMENT OF HEALTH AND
HUMAN SERVICES,
CENTERS FOR DISEASE CONTROL
AND PREVENTION,
FOOD AND DRUG
ADMINISTRATION,
NATIONAL INSTITUTES OF HEALTH,
NATIONAL INSTITUTE OF ALLERGY
AND INFECTIOUS DISEASES,
DEPARTMENT OF HOMELAND
SECURITY, and
FEDERAL EMERGENCY
MANAGEMENT AGENCY

Defendants.

Civil Action No. _____

DISCLOSURE STATEMENT PURSUANT TO FED. R. CIV. P. 7.1

Pursuant to Federal Rule of Civil Procedure 7.1 and to enable District Judges and Magistrate Judges of this Court to evaluate possible disqualification or recusal, the undersigned counsel certifies with respect to the Open Society Justice Initiative, a nongovernmental party, that the Open Society Justice Initiative is an operational program of the Open Society Institute (“OSI”), a New York State charitable trust. OSI is a nonprofit, non-partisan organization that has no parent corporation.

Because OSI does not have any stock, no publicly-held corporations owns 10% or more of its stock.

Dated: August 12, 2020
Washington, D.C.

Respectfully submitted,

/s/ Mark F. Mendelsohn

Mark F. Mendelsohn
Tanya Manno (pro hac vice application to be submitted)
Joseph Granzotto (pro hac vice application to be submitted)
Brian Shiue (pro hac vice application to be submitted)
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Natasha Arnpriester (pro hac vice application to be submitted)
Malcolm Dort
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Attorneys for plaintiff Open Society Justice Initiative