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9 **UNITED STATES DISTRICT COURT**  
10 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**  
11 **WESTERN DIVISION**

12 ALIANZA NACIONAL DE CAMPESINAS, )  
13 HISPANIC FEDERATION, )  
14 GREENLATINOS, and LABOR COUNCIL )  
15 FOR LATIN AMERICAN ADVANCEMENT )

16 Plaintiffs,

17 vs.

18 UNITED STATES DEPARTMENT OF )  
19 HEALTH AND HUMAN SERVICES, )

20 Defendant.

Civ. No. 2:20-CV-8463

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

21 **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

22 **INTRODUCTION**

23 Plaintiffs Alianza Nacional de Campesinas, Hispanic Federation, GreenLatinos,  
24 and Labor Council for Latin American Advancement (collectively, “Plaintiffs”) assert  
25 violations of the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, by Defendant  
26 United States Department of Health and Human Services (“HHS”) for improperly  
27 withholding requested agency records concerning plans to expand the United States  
28 Government’s migrant child detention facility (“Tornillo facility”) located in Tornillo,  
Texas.

1 The Tornillo facility was a temporary detention center for migrant children  
2 overseen by HHS and operated by a private contractor, from June 2018 until the  
3 facility closed in January 2019 amidst health and safety concerns. At its peak, the  
4 Tornillo facility held more than 2,700 children, drawing repeated protests and  
5 becoming a focal point for critics of the Trump Administration's inhumane border  
6 policies.

7 At the time Plaintiffs submitted the FOIA request, the Tornillo facility had  
8 expanded from being capable of detaining 400 children in June 2018 to nearly 4,000  
9 children and plans were in place to keep the facility open until the end of the year or  
10 longer, if necessary. See Julia Ainsley & Annie Rose Ramos, *Inside Tornillo: The*  
11 *expanded tent city for migrant children*, NBC NEWS (Oct. 12, 2018),  
12 [https://www.nbcnews.com/politics/immigration/inside-tornillo-expanded-tent-city-](https://www.nbcnews.com/politics/immigration/inside-tornillo-expanded-tent-city-migrant-children-n919431)  
13 [migrant-children-n919431](https://www.nbcnews.com/politics/immigration/inside-tornillo-expanded-tent-city-migrant-children-n919431). Although the Tornillo child detention facility has closed,  
14 the Trump Administration opened a new 2,500-bed holding facility for adult migrants  
15 on the same site in August 2019. See Nicole Chavez, *Inside the new Border Patrol*  
16 *tent facility for migrants in Tornillo, Texas*, CNN (Aug. 16, 2019),  
17 <https://www.cnn.com/2019/08/16/politics/tornillo-texas-border-facility/index.html>.

18 On December 5, 2018, Plaintiffs submitted a FOIA request to HHS for records  
19 concerning, amongst other issues, environmental review and analysis concerning the  
20 expansion of the Tornillo facility. Plaintiffs asked that the FOIA request be processed  
21 on an expedited basis pursuant to 5 U.S.C. § 552(a)(6)(E) and 45 C.F.R. § 5.27(b)(2)  
22 in light of the urgent need to inform their members and the public about imminent  
23 government plans to expand the temporary detention center in Tornillo to add the  
24 capacity to detain thousands of minors at the facility.

25 On January 4, 2019, HHS acknowledged receipt of Plaintiffs' FOIA request and  
26 stated that the request was "being processed as expeditiously as possible." HHS did  
27 not acknowledge or respond to Plaintiffs' request for expedited processing.

28

1 As of the date of this filing, HHS has not provided any documents to Plaintiffs  
2 in response to their request.

3 HHS has failed to provide Plaintiffs with a complete and lawful response to  
4 their FOIA request within the timeframe required by FOIA.

5  
6 **JURISDICTION AND VENUE**

7 This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and  
8 5 U.S.C. § 552(a)(4)(B).

9 Venue is proper in this district because Plaintiff Alianza Nacional de  
10 Campesinas has its principal place of business in this judicial district. 5 U.S.C. §  
11 552(a)(4)(B).

12 **PARTIES**

13 Plaintiff Alianza Nacional de Campesinas (“Alianza”) is a national farmworker  
14 women’s organization that was founded in 2011 to address and advance the rights of  
15 more than 700,000 farmworker women in the United States through its national  
16 coalition. Since it was founded in 2011, Alianza has called for the fair treatment of  
17 immigrant women and children, including refugees and asylees, improved  
18 immigration protections, and more expedient processing of immigration petitions for  
19 those seeking relief.

20 As a part of its immigration advocacy efforts, Alianza has been a part of a broad  
21 coalition that has advocated closing family detention centers, and it has raised  
22 concerns about violence against immigrant women and children in immigration  
23 detention. Most recently, it has called on the U.S. Government to respect the rights  
24 afforded to refugee and asylum seekers as provided under U.S. immigration law, and  
25 it has repeatedly raised its concerns about the safety of the immigrant children who  
26 have been separated from their parents under the Trump Administration’s “zero  
27 tolerance” policy.  
28

1 Alianza is a non-profit, social good organization. Alianza intends to share the  
2 information that it obtains through this request to educate farmworker women and  
3 other community members. Alianza will disseminate this information through its  
4 social media platforms and through direct educational efforts with its members across  
5 the country. Alianza will also disseminate this information to its media contacts and  
6 through mass distribution using its mailing list, among other efforts.

7 Hispanic Federation (“HF”), founded in 1990, is one of the nation’s leading  
8 Latino nonprofit membership organizations with 100-plus member organizations.  
9 With headquarters in New York, offices in Washington, D.C., Connecticut, Florida,  
10 and Puerto Rico, and a program footprint in twenty states with significant Latino and  
11 immigrant populations, HF works to support Hispanic and immigrant families and  
12 strengthen Latino institutions in the areas of education, health, immigration, civic  
13 engagement, economic empowerment, and the environment.

14 HF has worked for years using both legislative and grassroots advocacy to  
15 support passage of immigration policies that are humane and that provide solutions to  
16 fix our broken immigration system. As co-chair of both the Energy and Environment  
17 and Immigration Committees of the National Hispanic Leadership Agenda, a broad  
18 coalition of 46 national Latino organizations, HF has been a leading Latino voice in  
19 rapid response efforts regarding anti-immigrant legislation as well as legislation that  
20 causes environmental harm. HF has been present at every major mobilization in  
21 support of Dreamers in Washington, D.C., and has participated in protests at the  
22 Tornillo facility.

23 HF is a nonprofit organization with a mission to protect and promote the public  
24 interest especially as it relates to immigrant and Latino communities. HF has  
25 extensive outlets for public education and information dissemination and intends to  
26 make any information received available to its constituents, and to the broader public,  
27 as widely as possible, and at no charge. HF intends to use its mailing lists, social  
28

1 media platforms, website, and broad network of member organizations, political  
2 colleagues and press to disseminate information it receives.

3 GreenLatinos is a national nonprofit organization that convenes a broad  
4 coalition of Latino leaders committed to addressing national, regional and local  
5 environmental, natural resources and conservation issues that significantly affect the  
6 health and welfare of the Latino community in the United States. GreenLatinos seeks  
7 to provide an inclusive table at which its members establish collaborative partnerships  
8 and networks to improve the environment; protect and promote conservation of land  
9 and other natural resources; amplify the voices of minority, low-income and tribal  
10 communities; and train, mentor, and promote the current and future generations of  
11 Latino environmental leaders for the benefit of the Latino community and beyond.

12 GreenLatinos has demonstrated the ability and clear intent to timely  
13 disseminate information received from this FOIA request to a broad audience of  
14 persons interested in the subject – including its members, national and local ally  
15 organizations who have significant memberships and constituencies interested in this  
16 issue, and members of the media who regularly cover immigrant detention. In  
17 addition, GreenLatinos has the ability and intent to share the information it obtains to  
18 the public by means of email, website posts, social media posts, and in-person  
19 communication including at the organization’s National Summit.

20 Labor Council for Latin American Advancement (“LCLAA”) is the leading  
21 national organization for Latino(a) workers and their families. LCLAA was born in  
22 1972 out of the need to educate, organize and mobilize Latinos in the labor movement  
23 and has expanded its influence to organize Latinos in an effort to impact workers’  
24 rights and their influence in the political process. LCLAA represents the interest of  
25 more than two million Latino workers in the American Federation of Labor-Congress  
26 of Industrial Organizations (“AFL-CIO”), the Change to Win Federation, Independent  
27 Unions and all its membership.

28

1 LCLAA is a non-profit organization with a mission to defend and work for  
2 immigrant and working family rights. LCLAA plans to disseminate this information  
3 for free through its fifty-two chapters in twenty-three states, thus further helping to  
4 inform the public across the country about this crucial issue. LCLAA will also  
5 circulate this information through its social media platforms, and will reach out to  
6 national and international media outlets.

7 Plaintiffs use FOIA to obtain information from federal agencies in order to  
8 inform their members and the public about immigration, public health, and  
9 environmental issues. Plaintiffs regularly convey important information to their  
10 members and the public through publications and press releases, as well as by publicly  
11 releasing information and documents obtained through FOIA requests.

12 Plaintiffs bring this action on their own behalf and on behalf of their members.  
13 Plaintiffs and their members have been and continue to be injured by Defendant's  
14 failure to timely respond to Plaintiffs' request for documents within the timeframe  
15 mandated by FOIA. The requested relief will redress these injuries.

16 Defendant HHS is a federal agency within the meaning of FOIA,  
17 5 U.S.C. § 552(f)(1), and has possession or control of the records Plaintiffs seek in  
18 this action.

## 19 LEGAL BACKGROUND

20 Enacted in 1966, the Freedom of Information Act "requires that government  
21 agencies disclose to the public any requested documents," and the statute was  
22 designed to "encourage disclosure." *Assembly of State of Cal. v. U.S. Dep't of*  
23 *Commerce*, 968 F.2d 916, 920 (9th Cir. 1992) (as amended on denial of reh'g). To  
24 this end, FOIA requires agencies of the federal government to release, upon request,  
25 information to the public, unless one of nine specific statutory exemptions applies. 5  
26 U.S.C. § 552(a)(3)(A). These exemptions are narrowly construed, and the agency  
27 bears the burden of establishing the applicability of each exemption as to each record  
28

1 for which it is claimed. *See Carter v. U.S. Dep't of Commerce*, 307 F.3d 1084, 1088  
2 (9th Cir. 2002).

3       Upon receiving a FOIA request, an agency has twenty working days to respond  
4 by determining whether responsive documents exist and whether the agency will  
5 release them. 5 U.S.C. § 552(a)(6)(A). Once a determination is made, FOIA further  
6 requires agencies to make the requested records themselves “promptly available” to  
7 requesting parties. *Id.* § 552(a)(3)(A). An agency may delay an initial determination  
8 by ten working days only if the agency can demonstrate that it faces “unusual  
9 circumstances.” *Id.* § 552(a)(6)(B); 45 C.F.R. § 5.24(f)(2).

10       Over and above these statutory mandates for all FOIA requests, FOIA requires  
11 agencies to provide for expedited processing of requests for records in cases in which  
12 the requester demonstrates a compelling need and in other cases determined by the  
13 agency. 5 U.S.C. § 552(a)(6)(E). A compelling need exists when the failure to obtain  
14 expedited processing could reasonably be expected to pose an imminent threat to the  
15 life or physical safety of an individual, or when there is an urgency to inform the  
16 public concerning an actual or alleged Government activity on a request that is made  
17 by an individual primarily engaged in disseminating information. 5 U.S.C. §  
18 552(a)(6)(E)(v); 45 C.F.R. § 5.27(b).

19       Upon receiving a request for expedited processing, an agency must provide a  
20 determination of whether the request for expedited processing will be granted within  
21 ten calendar days after the date of the request. 5 U.S.C. § 552(a)(6)(E)(ii)(I); 45  
22 C.F.R. § 5.27(c). An agency shall process as soon as practicable any request for  
23 records to which the agency has granted expedited processing. 5 U.S.C. §  
24 552(a)(6)(E)(iii); 45 C.F.R. § 5.27(c).

25       If an agency withholds responsive records, in whole or in part, the burden is on  
26 the agency to prove that an exemption applies and that it outweighs FOIA’s policy of  
27 disclosure. *See, e.g.*, 5 U.S.C. § 552(a)(4)(B); *Nat’l Wildlife Fed’n v. U.S. Forest*  
28 *Serv.*, 861 F.2d 1114, 1116 (9th Cir. 1988).

1 Whenever an agency determines that a portion of a record should be withheld  
2 under one of FOIA's exemptions, the agency must still release to the public any  
3 portions of that record that contain "reasonably segregable" non-exempt information.  
4 5 U.S.C. § 552(b) ("Any reasonably segregable portion of a record shall be provided  
5 to any person requesting such record after deletion of the portions which are exempt  
6 under this subsection.").

7 FOIA provides that the district court shall have jurisdiction "to enjoin [an]  
8 agency from withholding agency records and to order the production of any agency  
9 records improperly withheld from the complainant." 5 U.S.C. § 552(a)(4)(B).

### 10 **FACTUAL BACKGROUND**

11 Upon information and belief, in May 2018, the Trump Administration  
12 announced its "zero-tolerance" immigration policy, under which the U.S. Government  
13 would take a stricter stance on illegal crossings at the Mexico border, including  
14 increased detention of immigrants and separation of children from their parents or  
15 guardians.

16 In June 2018, the U.S. Government constructed the Tornillo facility, a  
17 temporary immigrant detention facility for children overseen by HHS's  
18 Administration for Children and Families division and operated by BCFS Health and  
19 Human Services, a San Antonio-based private contractor originally under a one-month  
20 contract. The Tornillo facility was intended to detain unaccompanied immigrant  
21 children who had crossed the southern border of the United States and children  
22 separated from their parents or families by the U.S. Government. The original  
23 capacity was 400 minor immigrants.

24 In September 2018, the Tornillo facility significantly expanded its capacity to  
25 nearly 4,000 minor immigrants and plans were in place to keep the facility open until  
26 the end of the year or longer, if necessary. With other shelters throughout the country  
27 at capacity, migrant children were being transported into the Tornillo facility in the  
28



1 middle of the night. During this period, public concern grew as the public became  
2 aware of the Tornillo facility's severely lacking mental health and educational  
3 services and inadequate employee background checks.

4 On December 5, 2018, Plaintiffs submitted a FOIA request to HHS seeking  
5 several categories of records concerning the area and surrounding area of the Tornillo  
6 facility. Plaintiffs' request is attached as Exhibit 1. Specifically, Plaintiffs' FOIA  
7 request sought all records since January 1, 2017 related to:

- 8 • any National Environmental Policy Act-based review or analysis  
9 concerning the Tornillo facility, including the continued expansion of the  
10 facility;
- 11 • emergency or disaster response planning concerning the area and  
12 surrounding area of the Tornillo facility;
- 13 • the evaluation or analysis of flooding in the area and surrounding area of  
14 the Tornillo facility;
- 15 • the provision of drinking water for the Tornillo facility, including any  
16 information related to drinking water quality and compliance with federal  
17 and state drinking water standards;
- 18 • the provision of electricity for the Tornillo facility;
- 19 • sanitation, sewage treatment, and the disposal of wastewater at the  
20 Tornillo facility;
- 21 • the heating and cooling of the Tornillo facility; and
- 22 • any health and safety inspections conducted at the Tornillo facility.

23 Plaintiffs' FOIA request also sought all records concerning the vetting of potential  
24 employees at the Tornillo facility, including the procedures for conducting checks of  
25 employees and potential employees; and all records reflecting communications  
26 concerning the Tornillo facility, including the continued expansion of the facility,  
27 between or among any officer, representative, or agent of HHS and any member of the  
28 White House and/or White House staff, the United States Congress and/or

1 congressional staff, the United States Department of Homeland Security, or any other  
2 federal agency.

3 Plaintiffs also asked that HHS process the FOIA request on an expedited basis  
4 pursuant to 5 U.S.C. § 552(a)(6)(E) and 45 C.F.R. § 5.27(b)(2) in light of the urgent  
5 need to inform their members and the public about imminent government plans to  
6 expand the temporary detention center in Tornillo to add the capacity to detain  
7 thousands of unaccompanied minors at the facility. Plaintiffs' request for expedited  
8 processing was in conformance with the requirements for such requests set forth in  
9 FOIA and Defendant's regulations.

10 By letter dated January 4, 2019, attached as Exhibit 2, HHS acknowledged  
11 receipt of Plaintiffs' FOIA request and stated that the request was "being processed as  
12 expeditiously as possible." HHS did not acknowledge or respond to Plaintiffs' request  
13 for expedited processing.

14 On May 14, 2019, in response to an email inquiry from Plaintiffs' counsel,  
15 FOIA staff for HHS stated "[o]ur apologies for the delay. Your request is in process,  
16 meaning the records are being reviewed. We have nearly 600 requests, so we try to  
17 finish them as quickly as we can. Once review is complete, we will send you a final  
18 response." A copy of the email is attached as Exhibit 3.

19 Between the months of May and December 2019, Plaintiffs' counsel made  
20 several additional attempts by phone to speak with HHS FOIA staff to seek  
21 information concerning the status of Plaintiffs' FOIA request. During this period,  
22 Plaintiffs' counsel were never able to obtain any information regarding the status of  
23 Plaintiffs' FOIA request from HHS FOIA staff.

24 Plaintiffs' counsel last spoke with HHS by phone on December 18, 2019.  
25 During that conversation, HHS FOIA staff stated that a search for records responsive  
26 to Plaintiffs' FOIA request had been conducted and the results were "in queue," which  
27 meant the records had been identified and needed to be reviewed for responsiveness  
28 and redactions, according to the HHS FOIA staff member.

1 As of the date of this filing, over a year and a half after submitting their FOIA  
2 request, Plaintiffs have yet to receive any records from HHS.

3  
4 **CLAIM FOR RELIEF**

5 Plaintiffs re-allege and incorporate the allegations of all preceding paragraphs  
6 of this Complaint, as well as all exhibits, as if fully set forth herein.

7 By failing to timely respond to Plaintiffs' request for expedited processing of  
8 their December 5, 2018 FOIA request, HHS has violated FOIA and HHS's regulations  
9 promulgated thereunder. 5 U.S.C. § 552(a)(6)(E)(ii); 45 C.F.R. § 5.27(c).

10 By failing to release records responsive to Plaintiffs' FOIA request within the  
11 timeframe required by the statute, *see* 5 U.S.C. § 552(a)(3)(A), (a)(6), and HHS's  
12 regulations, 45 C.F.R. § 5.24, HHS has violated FOIA's mandate to "promptly"  
13 release agency records to the public. *See* 5 U.S.C. § 552(a)(3)(A), (a)(6).

14 FOIA authorizes Plaintiffs to seek judicial review of HHS's failure to timely  
15 respond to Plaintiffs' request for expediting processing and failure to release records  
16 responsive to Plaintiffs' FOIA request without further exhausting any administrative  
17 remedies.

18 Plaintiffs are entitled to expedited processing of their FOIA request under the  
19 standards contained in FOIA and HHS's regulations.

20 Plaintiffs are entitled to obtain the requested records from HHS as soon as is  
21 practicable.

22 **REQUEST FOR RELIEF**

23 **WHEREFORE**, Plaintiffs request that this Court enter a judgment:

24 (1) declaring that HHS has violated FOIA by failing to timely respond to  
25 Plaintiffs' request for expedited processing of their FOIA request;

26 (2) declaring that HHS has violated FOIA by failing to timely respond to  
27 Plaintiffs' FOIA request;

1 (3) ordering that HHS process Plaintiffs' FOIA request as soon as is  
2 practicable;

3 (4) ordering that HHS, upon completion of such expedited processing, make  
4 all requested records available to Plaintiffs promptly;

5 (5) retaining jurisdiction over this case to rule on any assertions by HHS that  
6 any responsive records, in whole or in part, are exempt from disclosure;

7 (6) awarding Plaintiffs' litigation costs and reasonable attorneys' fees in this  
8 action; and

9 (7) ordering such other relief as the Court may deem just and proper.

10  
11 DATED: September 16, 2020

Respectfully Submitted,

12 /s/ Mychal R. Ozaeta

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27  
28