

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
BRENNAN CENTER FOR JUSTICE AT NEW
YORK UNIVERSITY SCHOOL OF LAW,

Plaintiff,

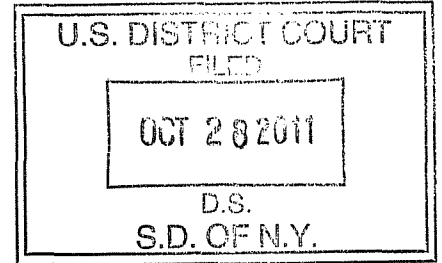
v.

UNITED STATES DEPARTMENT OF JUSTICE,
UNITED STATES DEPARTMENT OF HEALTH
AND HUMAN SERVICES, and U.S. AGENCY
FOR INTERNATIONAL DEVELOPMENT,

Defendants.
-----X

09 Civ. 8756 (VM)

NOTICE OF APPEAL



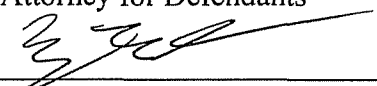
Notice is hereby given that defendants United States Department of Justice, United States Department of Health and Human Services, and U.S. Agency for International Development hereby appeal to the United States Court of Appeals for the Second Circuit from the Decision and Order entered on the docket on August 30, 2011.

Dated: New York, New York
October 28, 2011

Respectfully submitted,

PREET BHARARA
United States Attorney for the
Southern District of New York
Attorney for Defendants

By:


BENJAMIN H. TORRANCE
Assistant United States Attorney
86 Chambers Street
New York, New York 10007
Telephone: 212.637.2703
Fax: 212.637.2702
E-mail: benjamin.torrance@usdoj.gov

TO: Clerk of Court
United States Court of Appeals for the Second Circuit
United States Courthouse
500 Pearl Street
New York, New York 10007

Dorothy Heyl, Esq.
Milbank Tweed Hadley & McCloy LLP
Attorney for Plaintiff
1 Chase Manhattan Plaza
New York, New York 10005

**U.S. District Court
Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:09-cv-08756-VM**

Brennan Center For Justice At New York University School Of Law v. United States Department of Justice et al
Assigned to: Judge Victor Marrero
Related Case: [1:05-cv-08209-VM](#)
Cause: 05:552 Freedom of Information Act

Date Filed: 10/15/2009
Jury Demand: None
Nature of Suit: 895 Freedom of Information Act
Jurisdiction: U.S. Government Defendant

Plaintiff

Brennan Center For Justice At New York University School Of Law

represented by **Dorothy Heyl**
Milbank, Tweed, Hadley & McCloy LLP (NYC)
1 Chase Manhattan Plaza
New York, NY 10005
(212)530-5000
Fax: (212)530-5219
Email: dhey1@milbank.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Elizabeth Mary Virga
Milbank, Tweed, Hadley & McCloy LLP (NYC)
1 Chase Manhattan Plaza
New York, NY 10005
(212)-530-5000
Fax: (212)-822-5646
Email: evirga@milbank.com
ATTORNEY TO BE NOTICED

V.

Defendant

United States Department of Justice

represented by **Benjamin H. Torrance**
U.S. Attorney's Office, SDNY (Chambers Street)
86 Chambers Street
New York, NY 10007
212-637-2703
Fax: 212-637-2702
Email: benjamin.torrance@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

United States Department of Health and Human Services

represented by **Benjamin H. Torrance**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

U.S. Agency For International Development

represented by **Benjamin H. Torrance**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
10/15/2009	<u>1</u>	COMPLAINT against United States Department of Justice, United States Department of Health and Human Services, U.S. Agency For International Development. (Filing Fee \$ 350.00, Receipt Number 702875) Document filed by Brennan Center For Justice At New York University School Of Law. (Attachments: # <u>1</u> exhibits)(ama) (Entered: 10/16/2009)
10/15/2009		SUMMONS ISSUED as to United States Department of Justice, United States Department of Health and Human Services, U.S. Agency For International Development. (ama) (Entered: 10/16/2009)
10/15/2009		CASE REFERRED TO Judge Victor Marrero as possibly Related to 1:05-cv-8209. (ama) (Entered: 10/16/2009)
10/15/2009		Case Designated ECF. (ama) (Entered: 10/16/2009)
10/20/2009	<u>2</u>	FILING ERROR – DEFICIENT DOCKET ENTRY (SEE DOCKET ENTRY NO. <u>6</u>) – SUMMONS RETURNED EXECUTED Summons and Complaint, served. United States Department of Justice served on 10/16/2009, answer due 11/5/2009. Service was accepted by KAREN BROWN. Service was made by MAIL. Document filed by Brennan Center For Justice At New York University School Of Law. (Heyl, Dorothy) Modified on 10/23/2009 (kkc). (Entered: 10/20/2009)
10/20/2009	<u>3</u>	FILING ERROR – DEFICIENT DOCKET ENTRY (SEE DOCKET ENTRY NO. <u>7</u>) – SUMMONS RETURNED EXECUTED Summons and Complaint, served. U.S. Agency For International Development served on 10/15/2009, answer due 11/4/2009. Service was accepted by KAREN BROWN. Service was made by MAIL. Document filed by Brennan Center For Justice At New York University School Of Law. (Heyl, Dorothy) Modified on 10/23/2009 (kkc). (Entered: 10/20/2009)
10/20/2009	<u>4</u>	FILING ERROR – DEFICIENT DOCKET ENTRY (SEE DOCKET ENTRY NO. <u>8</u>) – SUMMONS RETURNED EXECUTED Summons and Complaint, served. United States Department of Health and Human Services served on 10/15/2009, answer due 11/4/2009. Service was accepted by KAREN BROWN. Service was made by MAIL. Document filed by Brennan Center For Justice At New York University School Of Law. (Heyl, Dorothy) Modified on 10/23/2009 (kkc). (Entered: 10/20/2009)
10/21/2009		CASE ACCEPTED AS RELATED. Create association to 1:05-cv-08209-VM. Notice of Assignment to follow. (ldi) (Entered: 10/22/2009)
10/21/2009	<u>5</u>	NOTICE OF CASE ASSIGNMENT to Judge Victor Marrero. Judge Unassigned is no longer assigned to the case. (ldi) (Entered: 10/22/2009)
10/21/2009		Magistrate Judge Debra Freeman is so designated. (ldi) (Entered: 10/22/2009)
10/22/2009	<u>6</u>	CERTIFICATE OF SERVICE of Summons and Complaint served on Department of Justice on 10/15/2009. Service was accepted by Karen Brown. Service was made by MAIL. Document filed by Brennan Center For Justice At New York University School Of Law. (Heyl, Dorothy) (Entered: 10/22/2009)
10/22/2009	<u>7</u>	CERTIFICATE OF SERVICE of Summons and Complaint served on U.S. Agency for International Development on 10/15/09. Service was accepted by Karen Brown. Service was made by MAIL. Document filed by Brennan Center For Justice At New York University School Of Law. (Heyl, Dorothy) (Entered: 10/22/2009)
10/22/2009	<u>8</u>	CERTIFICATE OF SERVICE of Summons and Complaint served on United States Department of Health and Human Services on 10/15/09. Service was accepted by Karen Brown. Service was made by MAIL. Document filed by Brennan Center For Justice At New York University School Of Law. (Heyl, Dorothy) (Entered: 10/22/2009)
11/16/2009	<u>9</u>	ENDORSED LETTER addressed to Judge Victor Marrero from Benjamin H. Torrance dated 11/16/2009 re: Counsel request an extension of time to answer or move with respect to the complaint until 12/1/2009. ENDORSEMENT: Request GRANTED. The time for defendant(s) to answer or otherwise move with respect to

		the complaint in this action is extended to 12/1/09. So Ordered. (Signed by Judge Victor Marrero on 11/16/2009) (jfe) (Entered: 11/16/2009)
12/01/2009	<u>10</u>	ANSWER to Complaint. Document filed by United States Department of Justice, United States Department of Health and Human Services, U.S. Agency For International Development.(Torrance, Benjamin) (Entered: 12/01/2009)
12/14/2009	<u>11</u>	NOTICE OF INITIAL CONFERENCE (Initial Conference set for 1/8/2010 at 09:45 AM in Courtroom 20B, 500 Pearl Street, New York, NY 10007 before Judge Victor Marrero.) (Signed by Judge Victor Marrero on 12/11/2009) (jmi) (Entered: 12/14/2009)
01/08/2010		Minute Entry for proceedings held before Judge Victor Marrero: Initial Pretrial Conference held on 1/8/2010. Gov't to produce Vargh Index by 1/15/2010. Plaintiff to review and advise whether issues remain. Court to schedule conference and in camera review, if necessary. (tro) (Entered: 01/13/2010)
02/05/2010	<u>12</u>	ENDORSED LETTER addressed to Judge Victor Marrero from Dorothy Heyl dated 2/5/10 re: The government is continuing to withhold whole documents on the basis of privilege, rather than discrete portions. ENDORSEMENT: The Government is directed to respond by 2/11/10 to the matter set forth above by plaintiff. (Signed by Judge Victor Marrero on 2/5/10) (cd) (Entered: 02/08/2010)
02/11/2010	<u>13</u>	ENDORSED LETTER addressed to Judge Victor Marrero from Benjamin H. Torrance dated 2/9/2010 re: Requesting an extension of time to respond to plaintiffs letter of February 5, 2010. ENDORSEMENT: Request GRANTED. The time for the Government to respond to the plaintiffs letter dated 2/5/2010 is extended to 2/22/2010. (Signed by Judge Victor Marrero on 2/9/2010) (jpo) (Entered: 02/11/2010)
03/23/2010		Minute Entry for proceedings held before Judge Victor Marrero: Telephone Conference held on 3/23/2010. Government to confer and inform the Court about possibility of in camera review. (mro) (Entered: 03/31/2010)
04/09/2010	<u>14</u>	ENDORSED LETTER addressed to Judge Victor Marrero from Benjamin H. Torrance dated 3/30/2010 re: Counsel for the government defendants in this action consent to the Court's in camera review of the documents at issue in this matter. ENDORSEMENT: The Government is directed to submit to the Court by 4/14/2010 for in camera review the documents at issue in this action. (Signed by Judge Victor Marrero on 4/9/2010) (tro) (Entered: 04/09/2010)
04/14/2010		Minute Entry for proceedings held before Judge Victor Marrero: Telephone Conference held on 4/14/2010. Court to schedule in camera review of documents with the Government. Government to review documents in light of discussion at conference. (tro) (Entered: 04/21/2010)
04/22/2010		Minute Entry for proceedings held before Judge Victor Marrero: Status Conference held on 4/22/2010. Ex parte in camera review of Vaughn index documents with government. (mro) (Entered: 04/27/2010)
05/13/2010	<u>15</u>	SEALED DOCUMENT placed in vault.(nm) (Entered: 05/13/2010)
07/01/2010	<u>16</u>	ORDER. The Clerk of Court is directed to file the attached documents on the public docket of this case; and it is further ORDERED that plaintiff Brennan Center for Justice at New York University School of Law is directed to inform the Court by July 15, 2010, of its intentions with respect to any further litigation of this matter. (Signed by Judge Victor Marrero on 7/1/10) (rjm) (Additional attachment(s) added on 7/1/2010: # <u>1</u> Part 2, # <u>2</u> Part 3) (rjm). (Entered: 07/01/2010)
12/22/2010	<u>17</u>	ORDER. It is hereby ORDERED that plaintiff Brennan Center for Justice is directed to respond to this Order by December 27, 2010, by letter not to exceed three pages, showing cause why this action should not be dismissed. In the event no timely response to this Order is made the case will be dismissed without further notice. (Signed by Judge Victor Marrero on 12/21/10) (rjm) (Entered: 12/22/2010)
12/29/2010	<u>18</u>	ENDORSED LETTER addressed to Judge Victor Marrero from Dorothy Heyl dated 7/15/10 re: As directed in the Court's order of July 1, 2010 (the "Order"), we

		are writing on behalf of plaintiff Brennan Center for Justice at New York University of Law ("Brennan Center") to inform the Court of the Brennan Center's intentions with respect to further litigation of this matter. ENDORSEMENT: The Clerk of Court is directed to enter into the public record of this action the letter above submitted to the Court by plaintiff. So ordered. (Signed by Judge Victor Marrero on 12/23/10) (rjm) (Entered: 12/29/2010)
12/29/2010	<u>19</u>	ENDORSED LETTER addressed to Judge Victor Marrero from Dorothy Heyl dated 12/23/10 re: This letter responds to the order issued on 12/22/10, concerning the requirement that we submit a letter by 7/15/10, stating out intentions with respect to this lawsuit. ENDORSEMENT: So Ordered. The parties are directed to submit a proposed briefing schedule for the motion described above. (Signed by Judge Victor Marrero on 12/23/10) (rjm) (Entered: 12/29/2010)
01/05/2011	<u>20</u>	STIPULATION AND ORDER REGARDING MOTIONS FOR SUMMARY JUDGMENT Defendants' Cross Motion due by 3/4/2011. Plaintiff's Motion due by 1/28/2011. Defendants' Response due by 3/4/2011. Plaintiff's Reply due by 3/18/2011. (Signed by Judge Victor Marrero on 1/5/11) (cd) (Entered: 01/05/2011)
01/28/2011	<u>21</u>	MOTION for Summary Judgment <i>and Rule 56.1 Statement</i> . Document filed by Brennan Center For Justice At New York University School Of Law. Responses due by 3/4/2011 (Attachments: # <u>1</u> Plaintiff's Memorandum of Law in Support of its Motion for Summary Judgment, # <u>2</u> Affidavit Declaration of Elizabeth M. Virga in Support of Plaintiff's Motion for Summary Judgment, # <u>3</u> Exhibit Exhibits 1–18 to the Declaration of Elizabeth M. Virga, # <u>4</u> Exhibit Exhibits 19–46 to the Declaration of Elizabeth M. Virga)(Virga, Elizabeth) (Entered: 01/28/2011)
03/02/2011	<u>22</u>	ENDORSED LETTER addressed to Judge Victor Marrero from Benjamin H. Torrance dated 3/1/2011 re: Requesting an extension to March 11 (and that plaintiff's reply papers, now due March 18, be correspondingly extended to March 25). ENDORSEMENT: Request GRANTED. The briefing schedule with regard to the motions for summary judgment herein is extended as set forth herein: motion papers submitted by Government on 3/11/2011; response by plaintiff 3/25/2011. (Signed by Judge Victor Marrero on 3/1/2011) (jpo) (Entered: 03/02/2011)
03/11/2011	<u>23</u>	CROSS MOTION for Summary Judgment. Document filed by U.S. Agency For International Development, United States Department of Health and Human Services, United States Department of Justice. Responses due by 3/25/2011(Torrance, Benjamin) (Entered: 03/11/2011)
03/11/2011	<u>24</u>	DECLARATION of Paul P. Colborn in Support re: <u>23</u> CROSS MOTION for Summary Judgment.. Document filed by U.S. Agency For International Development, United States Department of Health and Human Services, United States Department of Justice. (Torrance, Benjamin) (Entered: 03/11/2011)
03/11/2011	<u>25</u>	MEMORANDUM OF LAW in Support re: <u>23</u> CROSS MOTION for Summary Judgment. <i>and in opposition to <u>21</u> plaintiff's motion for summary judgment</i> . Document filed by U.S. Agency For International Development, United States Department of Health and Human Services, United States Department of Justice. (Torrance, Benjamin) (Entered: 03/11/2011)
03/22/2011	<u>26</u>	ENDORSED LETTER addressed to Judge Victor Marrero from Elizabeth M. Virga dated 3/22/2011, re: We represent the Plaintiff Brennan Center for Justice at New York University School of Law (the "Plaintiff") in the above-referenced action. We write to request an extension of time to file our Reply Brief in Further Support of Plaintiffs Motion for Summary Judgment, now due on March 25. Due to 10 unanticipated travel requirements, I respectfully request an extension to April 1. This is the Plaintiff's first request for such an extension. Counsel for Defendants has consented to this request. ENDORSEMENT: Request GRANTED. The briefing schedule with regard to the motion for summary judgment herein is extended as set forth herein: reply 4–1–11. SO ORDERED. (Reply due by 4/1/2011) (Signed by Judge Victor Marrero on 3/22/2011) (lnl) (Entered: 03/22/2011)
04/01/2011	<u>27</u>	REPLY MEMORANDUM OF LAW in Support re: <u>21</u> MOTION for Summary Judgment <i>and Rule 56.1 Statement. and in Opposition to the Government's Cross Motion for Summary Judgment</i> . Document filed by Brennan Center For Justice At

		New York University School Of Law. (Virga, Elizabeth) (Entered: 04/01/2011)
08/30/2011	<u>28</u>	DECISION AND ORDER: granting <u>21</u> Plaintiff's Motion for Summary Judgment; denying <u>23</u> Defendants' Cross Motion for Summary Judgment. It is hereby ordered that the Government is directed to produce to the Brennan Center versions of Document Nos. 3, 13, and 15 listed in the Government's Vaughn Index dated January 15, 2010, that disclose fully any and all material referring, explicitly or implicitly, in whole or in part, to the "organization restrictions" or "organization-wide restrictions"; and it is ordered that the Brennan Center is directed to inform the Court within fourteen days of its receipt of the above-referenced documents as to its contemplation with regard to further prosecution of this action. (Signed by Judge Victor Marrero on 8/29/2011) (lmb) Modified on 8/30/2011 (lmb). (Entered: 08/30/2011)
10/24/2011	<u>29</u>	ENDORSED LETTER addressed to Judge Victor Marrero from Dorothy Heyl dated 9/14/11 re: Counsel for the plaintiff writes to advise the Court that they have not received any of the documents that the Government was ordered to produce. ENDORSEMENT: The Clerk of Court is directed to enter into the public record of this action the letter above submitted to the Court by plaintiff. So ordered. (Signed by Judge Victor Marrero on 10/24/2011) (mro) (Entered: 10/24/2011)
10/28/2011	<u>30</u>	NOTICE OF APPEAL from <u>28</u> Order on Motion for Summary Judgment. Document filed by U.S. Agency For International Development, United States Department of Health and Human Services, United States Department of Justice. (tp) (Entered: 10/28/2011)
10/28/2011		Appeal Remark as to <u>30</u> Notice of Appeal filed by United States Department of Health and Human Services, United States Department of Justice, U.S. Agency For International Development. NO FEE. USA. (tp) (Entered: 10/28/2011)
10/28/2011		Transmission of Notice of Appeal to the District Judge re: <u>30</u> Notice of Appeal. (tp) (Entered: 10/28/2011)
10/28/2011		Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: <u>30</u> Notice of Appeal. (tp) (Entered: 10/28/2011)
10/28/2011		Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files for <u>20</u> Stipulation and Order, Set Deadlines/Hearings, <u>13</u> Endorsed Letter, Set Deadlines/Hearings, <u>5</u> Notice of Case Assignment/Reassignment, <u>22</u> Endorsed Letter, Set Deadlines/Hearings, <u>10</u> Answer to Complaint filed by United States Department of Health and Human Services, United States Department of Justice, U.S. Agency For International Development, <u>30</u> Notice of Appeal filed by United States Department of Health and Human Services, United States Department of Justice, U.S. Agency For International Development, <u>3</u> Summons Returned Executed, filed by Brennan Center For Justice At New York University School Of Law, <u>14</u> Endorsed Letter, <u>23</u> CROSS MOTION for Summary Judgment. filed by United States Department of Health and Human Services, United States Department of Justice, U.S. Agency For International Development, <u>26</u> Endorsed Letter, Set Deadlines, <u>29</u> Endorsed Letter, <u>9</u> Endorsed Letter, Set Deadlines, <u>18</u> Endorsed Letter, <u>25</u> Memorandum of Law in Support of Motion, filed by United States Department of Health and Human Services, United States Department of Justice, U.S. Agency For International Development, <u>4</u> Summons Returned Executed, filed by Brennan Center For Justice At New York University School Of Law, <u>16</u> Order, <u>19</u> Endorsed Letter, <u>24</u> Declaration in Support of Motion, filed by United States Department of Health and Human Services, United States Department of Justice, U.S. Agency For International Development, <u>21</u> MOTION for Summary Judgment <i>and Rule 56.1 Statement</i> . filed by Brennan Center For Justice At New York University School Of Law, <u>27</u> Reply Memorandum of Law in Support of Motion, filed by Brennan Center For Justice At New York University School Of Law, <u>11</u> Order, Set Hearings, <u>1</u> Complaint, filed by Brennan Center For Justice At New York University School Of Law, <u>7</u> Certificate of Service Other, filed by Brennan Center For Justice At New York University School Of Law, <u>17</u> Order, <u>28</u> Order on Motion for Summary Judgment, <u>2</u> Summons Returned Executed, filed by Brennan Center For Justice At New York University School Of Law, <u>8</u> Certificate of Service Other, filed by Brennan Center For Justice At New York University School Of Law, <u>6</u>

		Certificate of Service Other, filed by Brennan Center For Justice At New York University School Of Law, <u>12</u> Endorsed Letter, were transmitted to the U.S. Court of Appeals. (tp) (Entered: 10/28/2011)
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