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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY  DEPUTY

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

EMILIO REYES,
Plaintiff in Pro Se,
v.

UNITED STATES DEPARTMENT OF
THE INTERIOR; BUREAU OF INDIAN
AFFAIRS, SOUTHERN CALIFORNIA
AGENCY,

UNITED STATES DEPARTMENT OF
THE INTERIOR; OFFICE OF THE
SOLICITOR,
Defendants.

Case No.: 17-CV-1612 JAH (RBB)

**MEMORANDUM IN OPPOSITION
TO DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT AND IN
SUPPORT OF PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT, OPPOSITION TO
DECLARATION OF HARLEY
LONG**

DATE: June 10, 2019

TIME: 2:30 p.m.

CTRM: 13B (Carter/Keep)

The Hon. John A. Houston

Plaintiff Emilio Reyes proceeding *pro se* respectfully opposes Defendants U.S. Department of the Interior; Bureau of Indian Affairs and U.S. Office of the Solicitor's Motion for Summary Judgment (EFC No. 29). In support of this opposition, Plaintiff submits the following Memorandum in Opposition to Defendant's Motion for Summary

Judgment, Opposition to the Declaration of Javin Moore, Opposition to the Declaration of Harley Long, and non-opposition to Defendant's motion to consolidate.

DATED: May 23, 2019

Respectfully submitted,



Emilio Reyes

Plaintiff in Pro Se

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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10
11

12 EMILIO REYES,
13 Plaintiff in Pro Se,
14 v.

15 UNITED STATES DEPARTMENT OF
16 THE INTERIOR; BUREAU OF INDIAN
17 AFFAIRS, SOUTHERN CALIFORNIA
18 AGENCY,

19 UNITED STATES DEPARTMENT OF
20 THE INTERIOR; OFFICE OF THE
21 SOLICITOR,
22 Defendants.
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**[ORAL ARGUMENT NOT
REQUESTED]**

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I. INTRODUCTION

This is a Freedom of Information Act (FOIA) proceeding in which Plaintiff *pro se* Emilio Reyes seeks disclosure to documents in the possession of the Bureau of Indian Affairs ("BIA") concerning two (2) FOIA requests pertaining to information available in the public domain. Defendant United States Department of the Interior; Bureau of Indian Affairs, Southern California Agency have denied Plaintiff access to these records on grounds that the requested records is exempt from FOIA processing under certain Exemptions. However, in this case, Defendant BIA has improperly invoked these records' exemptions and is in violation of the Freedom of Information Act. 5 U.S.C. § 552. As explained below, the designation of the requested records is contrary to the language of the exemption statute, which excludes disseminated records, such as available records in the public domain.

II. BACKGROUND

a. The Purpose Of The FOIA Requests

Plaintiff extensive research includes the records of the Bureau of Indian Affairs, especially records in relation to the California Indian Rolls. Plaintiff's research has been able to locate many inconsistencies in the roll authorized by Congress under the Act of May 18, 1928, as Amended, Approved May 16-17, 1933.

The Act of 1928 lists about 584 applicants as "Unknown Tribe," 97 applicants as "Tribe Not Given," 70 applicants as "Mission Tribe" and 5 applicants as "California Tribe."

The records seeking in this FOIA request lists the applicants as Unknown Tribe. Furthermore, the BIA has processed some descendants' applications and corrected their rolls to reflect the correct tribe, however, has refused to correct other descendants' applications correct tribal affiliations.

1 In this case, a special interest exists because the BIA has proven special treatment
 2 to some individuals while neglecting to conduct their tasks as representatives of the U.S.
 3 Government.

4 **b. Case No. 17-cv-1612: Plaintiff's FOIA Request: FOIA BIA-2017-01494**

5
 6 In Case No. 17-cv-1612, Plaintiff submitted a FOIA request to the BIA on June 15,
 7 2017 and June 23, 2017 and assigned FOIA BIA-2017-01494. The BIA provided an
 8 acknowledgement and final letter on July 03, 2017, refusing to provide 20 pages of
 9 responsive records to this FOIA Requests.

10 In the June 15th Request Plaintiff seeks: "All records to the 1928 California Indian
 11 applications of Lena Mae Montes (Lawson), application number 9686, and all related
 12 records to her enrollment on the revised roll of 1948. Please include, any and all related
 13 records relating to the department's consideration of Lena's membership and enrollment
 14 in the Miwok Tribe. Please also include all related records to Lena's genealogy and
 15 family tree charts in the possession of the Pacific Regional Office and the Central
 16 California Agency of the Bureau of Indian Affairs."

17 Further, in the June 23rd Request, Plaintiff seeks: "1928 California Indian
 18 application for Cleveland R Adams #7405 and Frances M. Adams #7406.

19 On about July 10, 2018 Defendants provided eighteen (18) pages of responsive
 20 records and on July 23, 2018 provided two (2) pages of responsive records in part.

21
 22 **III. THE FREEDOM OF INFORMATION ACT AND SUMMARY**
 23 **JUDGMENT**

24 The Freedom of Information Act is a law that gives the American people the right
 25 to access information from the federal government. It is often described as the law that
 26 keeps citizens in the know about their government. *See* 5 U.S.C. § 552, *see also* 43
 27 C.F.R. FOIA provides a 'statutory right of public access to documents and records' held
 28

1 by federal government agencies. *See Citizens for Responsibility & Ethics in Washington*
2 *v. DOJ*, 602 F. Supp. 2d 121, 123 (D.D.C. 2009). 5 U.S.C. § 552, This makes almost every
3 record possessed by a federal agency disclosable to the public unless it is specifically
4 exempted from disclosure or excluded from the Act's coverage. *NLRB v. Sears, Roebuck*
5 *& Co.*, 421 U.S. 132, 136 (1975).

6 The Act provides that any person has a right which is enforceable in federal court,
7 to maintain access to records of any federal agency, except for those documents which are
8 exempt from disclosure by one of nine specific exemptions. One of the goals implemented
9 by the passage of the Act in 1966 was to ensure transparency in the governance of our
10 country. The only mechanism by which we can assure governmental integrity is to have a
11 clear understanding of what government is doing. The Public has an interest simply in
12 knowing "what [the] government is up to." *See U.S. Dept. of Justice v. Reporters*
13 *Committee for Freedom of the Press*, 489 U.S. at 773.

14 You can use the Act to illuminate, and to subject to public scrutiny, those records
15 which concern controversial political and policy issues. *See Center for National Security*
16 *Studies v. CIA*, 711 F. 2d. 409, 410 (D.C. Cir. 1983). (Public interest group uses FOIA to
17 stimulate discussion of activities and functions of CIA). You can use the Act to ensure
18 agency performance of statutory responsibilities or expose governmental wrongdoing. *See*
19 *FBI v. Abramson*, 456 U.S. 615, 618 (1982). *See Int'l B. Elec. Workers Local 41 v. HUD*,
20 763 F2d 435 (D.C. Cir. 1985) see also *Miller v. Reilly*, Civ. No. 91-6357-JO (D. Or. 1991).

21 You can use the Act to invalidate agency action, similar to Administrative Procedure
22 Act, 5 U.S.C. § 553 *et seq.*, in that FOIA requires agency to follow specific procedures
23 when performing rulemaking functions, in this instance, publication in Federal Register.

24 A Party may move for summary judgment pursuant Rule 56 of the Federal Rules of
25 Civil Procedure. Where the government has not provided sufficient information for a court
26 to make this *de novo* determination, the court should deny the government summary
27 judgment. *See Wiener v. FBI*, 943 F. 2d 972, 988 (9th Cir. 1991). In *Wiener*, the Ninth
28

1 Circuit reversed a district court's award of summary judgment to the government and
2 remanded for consideration of, *inter alia*, plaintiff's allegation that the requested
3 information was improperly withheld under Exemption 1 to conceal unlawful government
4 operations. *Id.* The Defendants have yet to provide convincing evidence for a wrongful
5 tribal affiliation change and must therefore now be deemed as conceding this point.

6 IV. ARGUMENT

7 a. BIA Cannot Withhold Any of the Requested Records Under Exemption 8 (b)(6)

9
10 FOIA's "strong presumption in favor of disclosure places the burden on the agency
11 to justify the withholdings of any requested documents." See *U.S. Dep't of State v. Ray*,
12 502 U.S. 164, 173 (1991). To discharge this burden, "the agency must prove that each
13 document that falls within the class requested either has been produced, is unidentifiable,
14 or is wholly exempt from the Act's inspection requirements." *Nat'l Cable Television*
15 *Ass'n, Inc. v. FCC*, 479 F.2d 183, 186 (D.C. Cir. 1973). The court gives no deference to
16 the agency's reasoning for withholding the information and must decide *de novo* whether
17 the exemption applies.² 5 U.S.C. § 552(a)(4B)(B); *see also Mead Data Cent., INC. v.*
18 *U.S. Dep't of the Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977) ("[T]he agency's opinion
19 carry no more weight than those of any other litigant in an adversarial contest before a
20 court.") If the government does not "carry its burden of convincing the court that one of
21 the statutory exemptions apply, the requested records must be disclosed. *See Goldberg v.*
22 *U.S. Dep't of State*, 818 F.2d 71, 76 (D.C. Cir. 1987).¹

23
24 ¹ If the Court concludes that BIA has met its burden of demonstrating that the withheld
25 records contain some exempt material, Plaintiff Reyes requests that the Court order defendant to
26 release all withheld records and conduct an *in camera* review of such records to determine what
27 other segregable material they contain to ensure FOIA's policy of government transparency. See
28 5 U.S.C. § 552(a)(4)(B) (permitting in camera review.)

1 Here, the BIA claims that some of the requested records are exempt under FOIA
2 Exemption 6, which exempts records that are “personal and medical and similar files the
3 disclosure of which would constitute a clearly unwarranted invasion of personal privacy.”
4 5 U.S.C. § 552(b)(6).²

5 The Supreme Court in *Washington Post Co.* did not explicitly define the “personal
6 information” which Exemption 6 was intended to protect. However, it is believed it
7 implicitly did so in also nothing that Exemption 6 was intended to cover government
8 records or an individual which could be identified as applying to that individual. *See U.S.*
9 *Department of State v. Washington Post Co.*, 456 U.S. 595, 602 (1982). Under FOIA,
10 “[w]hen disclosure of information which applies to a particular individual is sought from
11 Government records, courts must determine whether release of the information would
12 constitute a clearly unwarranted invasion of that person’s privacy,” *Id.* To make a
13 determination, the Federal courts balance the public interests served by disclosure against
14 the harm caused by privacy interest. *See Getman v National Labor Relations Board* (D.C.
15 Cir. 1971), 450 F. 2d 670. Specifically, they balance four factors in the determination: (1)
16 The plaintiff’s interest in disclosure; (2) the public interest in disclosure [180 Ill.App.3d
17 1090]; (3) the degree of invasion of personal privacy and (4) the availability of alternative
18 means of obtaining the requested information, *See Minnis v. United States Department of*
19 *Agriculture* (9th Cir. 1984), 737 F 2d. 784, cert. denied (1985), 471 U.S. 1053, 105 S Ct.
20 2112, 85L.Ed.2d 477.

21 In narrowly constructing the applicability of the FOIA exemptions, it is essential to
22 remember that the Act’s central purpose is “to ensure an informed citizenry, vital to the
23 functioning of a democratic society, needed to check against corruption and hold the
24

25 ² The BIA claims all the information withheld under FOIA Exemption 6 consisted of
26 personal identifying information relating to private individuals (i.e. dates of birth, addresses, tribal
27 affiliations, etc). (Long Decl. at □ 7).

1 governors accountable to be governed,” *See NLRB v. Robbins Tire & Rubber Co.*, 437 U.S.
2 214, 242 (1978). In order to further that purpose federal agencies claiming applicability of
3 any FOIA’s exemptions beat the burden of providing a “relatively detailed justification for
4 assertion of an exemption, and must demonstrate to a reviewing court that records withheld
5 are clearly exempt.” *See Birch v. U.S. Postal Service*, 803 F.2d 1206, 1209 (D.C. Cir.
6 1986), *see also Kimberlin v. U.S. Department of Justice*, 139 F.3d 944, 950 (D.C. Cir.
7 1998). In short, the procedures established in the *Vaughn Index* is to permit adequate
8 adversary testing of the agency’s claimed right to an exemption. Further, the Requestor has
9 a full opportunity to challenge those claims, and the court – not the agency – makes the
10 final decision as to the legality of the Government’s claims, *See Schriller v. NLRB*, 964
11 F.2d 1205, 1209 (D.C. Cir 1992).

12 In order to demonstrate a significant privacy interest, the Government must
13 produce specific evidence concerning the foregoing (or similar) factors. Here, the
14 Government’s declarations are simply insufficient to establish that a significant privacy
15 interest would be clearly threatened by disclosure of these records.³ Here, Defendants tried
16 every possible way and refused to provide any records because of the possible negative
17 effects that could come from revealing such “intimate details,” but “Exemption 6 was
18 directed at threats to privacy interests more palpable than possibilities.” *See Department of*
19 *the Air Force v. Rose*, 425 U.S. at 380 n.19. The Government must affirmatively show that
20 release would cause an invasion of privacy. Here, the sought records in these requests are
21 records available in the public domain of the National Archives and the World Wide Web,
22 therefore, Exemption 6 does not apply. Additionally, FOIA was enacted not only to shed
23 light on the Government’s mistakes, it was enacted to “ensure an informed citizenry,” *See*
24 *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978).

25
26 ³Birth, death and marriage records are available in the public domain of the
27 Assessor/Recorder/County Clerk. *See* Code of Civil Procedure Section 130(h).

1 Plaintiff Reyes and members of the public have demonstrated to the Defendants that
2 a public interest exists since the records sought in this request pertains to Native American
3 records researching and correcting tribal affiliations and blood degrees. While some
4 individuals of the public research these records to verify tribal affiliations and blood
5 degrees, others need these records to pursue federal recognition as an Indian tribe. *See* 25
6 CFR Part 8. The "public interest in disclosure is not diminished by the possibility or even
7 the probability that [the State Department] is doing its... job right," *See Washington Post*
8 *Co. v. HHS*, 690 F.2d at 264. The Public has an interest simply in knowing "what [the]
9 government is up to." *See U.S. Dept. of Justice v. Reporters Committee for Freedom of the*
10 *Press*, 489 U.S. at 773. In some cases, the similar records are needed to trace genealogy to
11 obtain a Certificate Degree of Indian Blood ("CDIB") thru the BIA. Without a CDIB,
12 Native Americans descendants would be ineligible for Indian Health Service ("HIS") or
13 BIA services. *See* 43 C.F.R. § 136.12; *see also* 25 U.S.C. § 479a-1(a)

14 Finally, the withheld records are not predominantly internal, and they neither relate
15 solely to trivial administrative matters nor would their release risk circumvention of any
16 law or regulation. Accordingly, they cannot be withheld under Exemption 6. Summary
17 judgment thus should be granted to Plaintiff Emilio Reyes, and the requested records
18 should be released.

19 **b. The 72-year Rule Applies Within Statutory Law**

20 The records of the Bureau of Indian Affairs are subject to FOIA, *See* 43 C.F.R.
21 When a FOIA requestor seeks records about another person; the Requestor may receive
22 greater access by submitting proof that the person either: (1) consented to the release of the
23 records to the Requestor, or (2) proof of death. The Bureau can require to supply additional
24 information from a FOIA Requestor if necessary to verify that a particular person has
25 consented to disclosure or is deceased, *See* 43 C.F.R. § 2.9. Additionally, some federal
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1 agencies have established "The 72-year Rule" to release records to the public. *See* 92 Stat.
2 915; Public Law 95-416; October 5, 1978.

3 In addition, the National Archives is an independent agency of the United States
4 government charged with preserving and documenting government and historical records,
5 also increasing public access to those records. Their repository holds millions of Native
6 American records that are available to the public and of the public interest. The records of
7 the BIA include Indian tribal matters such as tribal membership and enrollment, blood
8 degrees, genealogical records, probates and estate, land and allotments, financial payments,
9 Indian censuses, birth records, death records, correspondence and more. Additionally, the
10 National Archives uses 75 years of an individual, or the record if the person's age cannot
11 be determined to open those records to the public. The assumption is that individuals over
12 75 years of age are likely no longer living, so the release of information is less likely to be
13 personally damaging or to constitute an "unwarranted invasion of personal privacy."
14 (Exhibit 1) For this reason, the Government cannot claim Exemption 6 to the records on
15 these FOIA requests; because those same records in the possession of the Bureau of Indian
16 Affairs, are the same – without BIA notations – and "similar files" of personal nature, that
17 are open in the public domain of the National Archives and in the World Wide Web;
18 Ancestry.com. (Exhibit 2). Therefore, disclosure of such information could not lead to
19 harassment, discrimination, embarrassment, or any other negative effects that could come
20 from revealing such details. *See* NARA 1601 (2002).

21 **c. Complaints Regarding Unexplainable Delays Are Not Moot**

22 In the Case No. 17-cv-1612, the BIA acted in a capricious and arbitrary behavior by
23 withholding the records in full at the time of the initial request. *See* 5 U.S.C. 552. The FOIA
24 Requests were submitted to the BIA on June 15, 2017 and June 23, 2017. On July 03, 2017,
25 the BIA provided a final response and decided to withhold the records in full. (Exhibit 3).
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1 On July 11, 2017, an administrative appeal was sent to the SOL. The SOL made no attempt
2 to resolve this dispute. *See* 43 C.F.R. 2.62.

3 Defendant's unreasonable delays and unreasonable withholdings have brought
4 multiple Complaints before this District Court. Plaintiff believes the BIA's capricious and
5 arbitrary behavior is due to retaliation for being vocal on many Native American issues
6 and being a BIA watchdog. When the BIA found out Plaintiff's involvement in the
7 movement of Stop Tribal Genocide and Stop Disenrollment, the BIA retaliated against the
8 Plaintiff, redacting almost all records, denying records and their unlawful practice is
9 ongoing.⁴

10 Additionally, according to the Department of the Interior 2018 annual report, the
11 BIA has invoked Exemption 5, 70 times and Exemption 6, 342 times of 1,736 of the
12 number of requests processed in fiscal year. (Exhibit 4).

13 Even though the agency has processed the records, their ongoing patterns and
14 capricious behavior conclude that delays are not moot. In *Payne Enterprises v. United*
15 *States*, the Court of Appeals for the District of Columbia Circuit held that when records are
16 routinely withheld at the initial processing level, but consistently released after an
17 administrative appeal, and when this situation results in continuing injury to the requester,
18 a lawsuit challenging that practice is ripe for adjudication and is not subject to dismissal
19 on the basis of mootness. *See Payne Enters.*, 837 F.2d at 491; *see also, e.g., Hercules, Inc.*
20 *v. Marsh*, 839 F.2d 1027, 1028 (4th Cir. 1988) (holding that threat of disclosure of agency
21 telephone directory not mooted by release because new request for subsequent directory
22

23 ⁴ Plaintiff has filed 11 other FOIA Complaints before this District Court. Please see: 17-cv-1190
24 JAH (RBB), 17-cv-1191 JAH (RBB), 17-cv-1192 JAH (RBB), 17-cv-1195 JAH (RBB), 17-cv-1196 JAH
25 (RBB), 17-cv-1417 JAH (RBB) , 17-cv-1418 JAH (RBB), 17-cv-1571 JAH (RBB), 17-cv-2120 JAH
26 (RBB). Please also see: 18-cv-0366 JAH (RBB), consisting of 2 FOIA Requests and 18-cv-0367 JAH
27 (RBB) consisting of 12 FOIA Requests.
28

1 pending; agency action thus “capable of repetition yet evading review.”) *see also, Pub.*
 2 *Citizen v. Office of the United States Trade Representative*, 804 F. Supp. 385, 387 (D.D.C.
 3 1992) (stating that despite the disclosure of the specific records requested, a court retains
 4 jurisdiction when a plaintiff challenges an “agency’s policy to withhold temporarily, on a
 5 regular basis, certain type of documents”).

6 The defendant’s agency’s “voluntary cessation” of that practice in Payne did not
 7 moot the case when the plaintiff challenged the agency’s policy as an unlawful, continuing
 8 wrong. As we see here, Plaintiff has brought multiple pleads before this District on FOIA
 9 actions. Unless enjoined and made subject to a declaration of Plaintiff’s legal rights by this
 10 Court, the BIA and SOL will continue to violate the rights of Plaintiff and others entrusted
 11 to serve to receive public records under FOIA and the Privacy Act. The Defendants have
 12 implemented an impermissible practice and noncompliant responses to FOIA requests. For
 13 these reasons, Complaints regarding delays are not moot due to unreasonable delays.

14 V. CONCLUSION

15 For the foregoing reasons, this court should deny the Defendant’s motion for summary
 16 judgment and review *in camera* the records withheld from the Plaintiff. Additionally,
 17 Plaintiff respectfully seeks a judgment against Defendants’ BIA and SOL, together with
 18 applicable costs for the refusal and failure under FOIA and respectfully requests to
 19 GRANT such other and further relief as the Court may deem just and proper.
 20

21 DATED: May 23, 2019

22 Respectfully submitted,

23 

24 Emilio Reyes

25 Plaintiff in Pro Se
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Exhibit 1

Reyes, Emilio

From: John Seamans <john.seamans@nara.gov>
Sent: Tuesday, May 14, 2019 12:59 PM
To: Reyes, Emilio
Subject: California Judgment Roll (1928)

Good Afternoon Emilio!

The 1928 applications to the California Judgment Rolls are fully open to the public. The index is actually available on ancestry.com now. The best way to find it is to click on "New Collection" and then type "1928 California Indian" in the Keywords Field. We would need the application number as that's how they are arranged on the microfilm (I32), or you can just send me a list and I'll run them.

Regards,

JOHN SEAMANS
Archives Technician
National Archives at San Francisco
1000 Commodore Drive
San Bruno, California 94066-2350
E-Mail: john.seamans@nara.gov
Phone: (650)238-3506

Reyes, Emilio

From: Gwen Granados <gwen.granados@nara.gov>
Sent: Wednesday, August 02, 2017 2:12 PM
To: Reyes, Emilio
Subject: NARA Policy on FOIA (b)(6) exemption (Privacy)

Dear Mr. Reyes,

As always, it is good to hear from you. I am writing this message in response to your request for information, dated July 31, 2017, regarding NARA's policy involving the "75 year rule." To answer your question, it is both a policy and a law. The law is the Freedom of Information Act (FOIA), which governs the release of Federal government information to the public. There are 9 exemptions which would allow the Federal government to withhold information from a requester. The exemption for which we apply the "75 year rule" is 5 U.S.C. 552(b)(6), which covers personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The NARA Policy that deals with this is our directive 1601, which states:

- You must spot-check records between 30 years and 75 years old concerning individuals to determine the sensitivity of the information or the likelihood that individuals may be deceased. Sample random containers or containers whose subjects appear to contain potentially exempted information. The majority of the current case law states that the privacy of the dead is not protected. In a few very limited situations, such as for the families of the astronauts killed in the Apollo 1 fire or the Space Shuttle Challenger, we have extended privacy protection to the families of the decedents. If you locate sensitive information during spot-checking, screen the records more carefully.
- We consider some personal information less sensitive if it concerns individuals who are well-known nationally, regionally, or locally (e.g., politicians and celebrities) because individuals in the public eye generally have less claim to privacy than private citizens. Screening of this kind can be relatively subjective. If you have questions regarding specific cases of what may constitute "in the public eye," consult with your supervisor.
- The protection afforded by personal privacy is limited to living, specifically identifiable, persons. The FOIA's personal privacy exemptions do not protect actions of corporations, associations, or Governments.
- Social Security numbers of living persons are exempt from disclosure under FOIA. We screen records that are name retrievable or that have been requested under FOIA for Social Security numbers. We generally do not screen records for Social Security numbers if the records are not name retrievable. For example, if records are arranged chronologically or by subject, such as military operations reports, screen them for Social Security numbers only if otherwise screening. We also do not screen for Social Security numbers in records that have previously been made available to the public by the originating agency.

We use 75 years of age of the individual, or of the record if the person's age cannot be determined. The assumption is that individuals over 75 years of age are likely no longer working, so the release of information is less likely to be personally damaging or to constitute an "unwarranted invasion of personal privacy." However privacy screening is subjective, and many archivists choose to hold information until the records are 75 years of age, especially when the information is highly

sensitive. If an individual is deceased, the records would not be restricted as the courts have held that there is no longer a right to privacy after death.

I hope that this information has been useful. Please feel free to contact me with any questions in the future.

Sincerely,

Gwen

GWEN E. GRANADOS, CA
Director
The National Archives at Riverside
23123 Cajalco Road
Perris, CA 92570
(951) 956-2040
(951) 956-2049 fax

Follow us on [Facebook](#), [Tumblr](#) and [Twitter](#)!

Exhibit 2



California, Index to Census Roll of Indians, 1928-1933

<input type="button" value="Search"/> <input type="checkbox"/> Match all terms exactly		
First & Middle Name(s)		Last Name
Birth <div> <input type="text"/> <input type="text"/> <input type="text" value="Year"/> </div>		
Lived In <input type="text" value="City, County, State, Country"/>		
Any Event <div> <input type="text" value="Year"/> </div> <input type="text" value="City, County, State, Country"/>		
Keyword <input type="text"/>		
e.g. pilot or "Flying Tigers" ▼		
Relationship <input type="text"/>		
Tribe <input type="text"/>		
Gender <input type="text" value="-- Select --"/>		
Census Date <input type="text" value="Year"/>		
<input type="button" value="Search"/> <input type="button" value="Clear search"/>		

Source Information

Ancestry.com. *California, Index to Census Roll of Indians, 1928-1933* [database on-line]. Provo, UT, USA: Ancestry.com Operations, Inc., 2016.
 Original data: *Indians of California Census Rolls Authorized Under the Act of May 18, 1928 As Amended, Approved May 16-17, 1933* (NARA microfilm publication M1853, 1 roll); Records of the Bureau of Indian Affairs, Record Group 75; National Archives, Washington, D.C.

About California, Index to Census Roll of Indians, 1928-1933

This database contains an index to the California Indian census rolls from 1928 to 1933. Information contained in the index typically includes the following.

- Name (Indian and/or English)
- Gender
- Age
- Birth date

- Census date
- Relationship to head of family
- Marital status
- Tribe name

Additional information about an individual such as degree of Indian blood, where enrolled, amount and kind of property owned, or other remarks, may be available on the original record. Be sure to view the corresponding image in order to obtain all possible information about an individual.

The Indian Census schedules are census rolls usually submitted each year by agents or superintendents in charge of Indian reservations, as required by an act of 4 July 1884 (23 Stat. 98). The data on the rolls varies to some extent.

There is not a census for every reservation or group of Indians for every year. Only persons who maintained a formal affiliation with a tribe under federal supervision are listed on these census rolls.

Notes about Searching the Censuses:

When browsing this collection, it is important to note the following:

- 1) Family groups are listed together and are sometimes listed alphabetically by surname of the head of the family, but often there is often no discernible order to the listing of families.
- 2) Currently accepted spellings of tribal names have been used in the list below. In the census rolls themselves, obsolete spellings are often used; and the name of a tribe may be spelled several ways in different rolls. Sometimes even the name used for a tribe was changed from year to year.

Some of the above information was taken from:

Curt B. Witcher and George J. Nixon, "Tracking Native American Family History," in *The Source: A Guidebook of American Genealogy*, ed. Loretto Dennis Szucs and Sandra Hargreaves Luebking (Salt Lake City: Ancestry, 1997).



Provided in
association with
National Archives
and Records
Administration

Browse this collection

To browse this image set, select from the options below.

Description

Indians of California Census Rolls Authorized Under the Act of 1928 As Amended, Approved 1933

Related data collections

Native American Records

Native American Records

U.S., Schedules of Special Census of Indians, 1880

A special census of these Native Americans "not taxed" (living on reservations) was taken in 1880. Here's who was counted.

U.S., Indian Census Rolls, 1885-1940

This database contains an index to the Indian census rolls from 1885-1940. Information contained in this database includes: name (Indian and/or English), gender, age, birth date, relationship to head of family, marital status, tribe name, agency name, and reservation name.

Exhibit 3



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Pacific Regional Office

2800 Cottage Way

Sacramento, California 95825

IN REPLY REFER TO:

Tribal Government Services

JUL 03 2017

Certified Mail No: 7015 3010 0000 3622 3168

Return Receipt Requested

FOIA BIA-2017-01494

Emilio Reyes

P.O. Box 1670

National City, California 91951

Dear Mr. Reyes:

This is in response to your Freedom of Information Act (FOIA) requests, received by this Office on June 15, 2017 and June 23, 2017. Your FOIA requests have been combined assigned control number BIA-2017-01494; please reference this number in any future correspondence related to your request. In your June 15, 2017, request you state that you are seeking records regarding the following:

All records related to the 1928 California Indian application of Lena Mae Montes (Lawson), application number 9686, and all related records to her enrollment on the revised roll of 1948. Please include, any and all related records relating to the department's consideration of Lena's membership and enrollment in the Miwok tribe. Please also include all related records to Lena's genealogy and family tree charts in the possession of the Pacific Regional Office and the Central California Agency of the Bureau of Indian Affairs.

Further, in your June 23, 2017, request, you indicate that you are seeking records regarding the following:

1928 California Indian application for Cleveland R Adams #7405 and Frances M Adams #7406.

Based on the information provided in your request, Staff was able to locate twenty (20) pages of records responsive to your request. As a result of this Office's review, all pages have been withheld in full under FOIA Exemption 6. Exemption 6 allows an agency to withhold "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." See 5 U.S.C. § 552(b)(6).

The information withheld under Exemption 6 consists of personal information, such as home addresses and tribal blood degrees, and it has been determined that the individuals to whom this information pertains have a substantial privacy interest in withholding it. Under FOIA Exemption 6, a record subject to privacy interest may be released if the public interest outweighs the privacy interest in the record. There is no evidence in your request to attest to the public interest outweighing the privacy interest in releasing this information.

Harley Long, Pacific Regional Office Tribal Government Officer is responsible for this denial. Kevin Mack, Assistant Regional Solicitor in the Office of the Solicitor was consulted.

You may appeal this response to the Department's FOIA/Privacy Act Appeals Officer. If you choose to appeal, the FOIA/Privacy Act Appeals Officer must receive your FOIA appeal **no later than 90 workdays** from the date of this letter. Appeals arriving or delivered after 5 P.M. Eastern Time, Monday through Friday, will be deemed received on the next workday.

Your appeal must be made in writing. You may submit your appeal and accompanying materials to the FOIA/Privacy Act Appeals Officer by mail, courier service, fax, or email. All communications concerning your appeal should be clearly marked with the words "FREEDOM OF INFORMATION APPEAL." You must include an explanation of why you believe the Bureau's response is in error. You must also include with your appeal copies of all correspondence between you and the Bureau concerning your FOIA request, including your original FOIA request and the Bureau's response. Failure to include with your appeal all correspondence between you and the Bureau will result in the Department's rejection of your appeal, unless the FOIA/Privacy Act Appeals Officer determines (in the FOIA/Privacy Act Appeals Officer's sole discretion) that good cause exists to accept the defective appeal.

Please include your name and daytime telephone number (or the name and telephone number of an appropriate contact), email address and fax number (if available) in case the FOIA/Privacy Act Appeals Officer needs additional information or clarification of your appeal.

DOI FOIA/Privacy Act Appeals Office Contact Information

Department of the Interior
Office of the Solicitor 1849 C Street,
N.W. MS-6556 MIB
Washington, DC 20240
Attn: FOIA/Privacy Act Appeals Office
Telephone: (202) 208-5339
Fax: (202) 208-6677
Email: FOIA.Appeals@sol.doi.gov

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of FOIA. See 5 U.S.C. 522(c). This response is limited to those

records that are subject to the requirements of FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that the excluded records do, or do not, exist.

The 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road - OGIS
College Park, MD 20740-6001
E-mail: ogis@nara.gov
Web: <https://ogis.archives.gov>
Telephone: 202-741-5770
Fax: 202-741-5769
Toll-free: 1-877-684-6448

Please note that using OGIS services does not affect the timing of filing an appeal with the Department's FOIA & Privacy Act Appeals Officer. You also may seek dispute resolution services from the Indian Affairs FOIA Officer, Jessica R. Rogers, at (202) 208-4223.

Should you have any questions, please contact Shawnte Dutschke, Tribal Government Assistant, at (916) 978-6063, or Douglas Garcia, Regional FOIA Coordinator, at (916) 978-6052.

Sincerely,



Regional Director

cc: FOIA Coordinator, Pacific Regional Office.

Exhibit 4

DEPARTMENT OF THE INTERIOR
Freedom of Information Act 2018 Annual Report
(October 1, 2017 – September 30, 2018)

I. BASIC INFORMATION REGARDING REPORT

1. Questions about this Report should be directed to:

Cindy Cafaro
Departmental FOIA Officer
Office of the Executive Secretariat and Regulatory Affairs (OS/OES)
Department of the Interior (DOI)
1849 C. ST., NW
Washington, D.C. 20240
202-208-5342 (p)

2. The electronic address for this Report on DOI's FOIA website is:
<https://www.doi.gov/foia/DOI-FOIA-Annual-Reports>

3. A copy of this Report in paper form may be obtained by contacting the Departmental FOIA Officer (see above).

V.B.(3). DISPOSITION OF FOIA REQUESTS -- NUMBER OF TIMES EXEMPTIONS APPLIED

Agency / Component	Ex. 1	Ex. 2	Ex. 3	Ex. 4	Ex. 5	Ex. 6	Ex. 7(A)	Ex. 7(B)	Ex. 7(C)	Ex. 7(D)	Ex. 7(E)	Ex. 7(F)	Ex. 8	Ex. 9
BIA	0	0	6	69	70	342	80	1	193	0	7	6	0	0
BLM	0	8	37	42	174	197	13	0	34	3	4	1	0	9
BOEM	0	0	0	3	23	18	0	0	1	0	0	1	0	0
BOR	0	0	2	13	17	26	0	0	2	0	2	6	0	0
BSSEE	0	0	2	14	21	49	0	0	2	0	0	0	0	2
FWS	0	0	3	47	155	252	15	0	100	8	24	5	0	0
NPS	0	16	29	30	88	382	36	1	215	1	26	10	0	0
OIG	0	0	5	13	16	8	11	0	153	8	9	0	0	0
OS	0	0	2	10	42	62	0	0	5	0	0	0	0	0
OSMRE	0	0	0	11	22	16	0	0	0	0	0	0	0	0
SOL	0	0	0	0	22	6	0	0	0	0	0	0	0	0
USGS	0	0	4	4	15	24	0	0	3	0	0	2	0	0
AGENCY OVERALL	0	24	90	256	665	1,382	155	2	708	20	72	31	0	11

V.B.(1). DISPOSITION OF FOIA REQUESTS -- ALL PROCESSED REQUESTS

Agency / Component	Number of Full Grants	Number of Partial Grants / Partial Denials	Number of Full Denials Based on Exemptions	Number of Full Denials Based on Reasons Other than Exemptions										TOTAL
				No Records	All Records Referred to Another Component or Agency	Request Withdrawn	Fee-Related Reason	Records not Reasonably Described	Improper FOIA Request for Other Reason	Not Agency Record	Duplicate Request	Other *Explain in Chart Below		
BIA	722	457	78	298	6	56	24	22	12	5	11	45	1,736	
BLM	256	299	12	153	11	47	11	10	10	0	26	43	878	
BOEM	51	32	0	63	1	6	0	2	1	6	5	18	185	
BOR	115	48	13	38	1	15	7	10	4	1	0	2	254	
BSEE	90	64	1	81	1	4	3	10	0	8	0	8	270	
FWS	386	320	29	134	6	47	20	11	4	4	17	15	993	
NPS	308	440	42	147	4	37	13	18	10	0	26	27	1,072	
OIG	17	139	24	107	15	9	0	2	2	0	0	2	317	
OS	176	78	0	83	1	28	39	22	1	2	15	303	748	
OSMRE	42	22	0	82	0	3	4	0	2	0	3	1	159	
SOL	55	24	0	86	2	7	0	7	5	0	4	3	193	
USGS	47	56	31	13	0	12	17	6	3	1	1	9	196	
AGENCY OVERALL	2,265	1,979	230	1,285	48	271	138	120	54	27	108	476	7,001	

Emilio Reyes
615 5TH Avenue
Chula Vista, CA 91910
Cell: 619-829-0130
Email: emiliotongva@gmail.com

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

EMILIO REYES,
Plaintiff in Pro Se,

v.

UNITED STATES DEPARTMENT OF
THE INTERIOR; BUREAU OF INDIAN
AFFAIRS, SOUTHERN CALIFORNIA
AGENCY,

UNITED STATES DEPARTMENT OF
THE INTERIOR; OFFICE OF THE
SOLICITOR,
Defendants.

Case No.: 17-CV-1418 JAH (RBB)
and Case No.: 17-CV-1571 JAH (RBB)

**PLAINTIFF'S OPPOSITION TO
DECLARATION OF HARLEY
LONG, TRIBAL GOVERNMENT
OFFICER FOR THE DEPARTMENT
OF THE INTERIOR; BUREAU OF
INDIAN AFFAIRS**

DATE: June 10, 2019
TIME: 2:30 p.m.
CTRM: 13B (Carter/Keep)
The Hon. John A. Houston

Plaintiff Emilio Reyes respectfully opposes Defendant's Bureau of Indian Affairs declaration as inaccurate, irrelevant, out of compliance with FOIA statues, vastly outranked by a higher classification authority, overly theoretical, with little to no applicability in this action of questionable veracity.

1. Undisputed.
2. Undisputed.
3. Undisputed.
4. Undisputed.
5. Undisputed.
6. Disputed/ omissions. The Plaintiff urges the Court to recognize BIA improperly invoked Exemption 6.
7. Disputed. Ibid.
8. Disputed/ omissions. The Plaintiff is not requesting a search of BIA employees who have worked on the record.
9. Disputed/ Ibid.
10. Disputed/ omissions. The Plaintiff urges the Court to recognize BIA improperly involved Exemption 6.

DATED: May 23, 2019

Respectfully submitted,



Emilio Reyes

PROOF OF SERVICE

I am employed in the County of San Diego, California. I am over the age of 18 and not a party/plaintiff to the within action; my home address is 1315 O Avenue, National City, CA 91950. On May 23, 2019, I served the foregoing documents on the interested parties in this action described as follows:

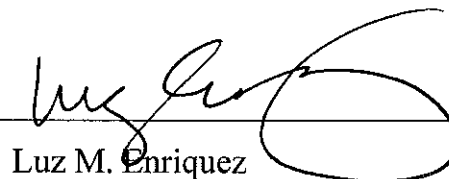
MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT, PLAINTIFF'S OPPOSITION TO DECLARATION OF HARLEY LONG

Attorneys for Defendants

Rebecca G. Church
Office of the U.S. Attorney
880 Front Street, Room 6293
San Diego, CA 92101
Tel: (619) 546-7721

☒ **BY MAIL:** I deposited such envelope in the mail by placing true copies thereof enclosed in sealed envelopes at San Diego, California. The envelope was mailed certified with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice, said correspondence is deposited with the United States Postal Service on that same day with postage thereon fully prepaid at San Diego, California in the ordinary course of business and there is delivery service by United States mail at the place so addressed.

I, declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on May 23, 2019, at San Diego, California.


Luz M. Enriquez