

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

INFORMED CONSENT ACTION NETWORK,

Plaintiff,

-against-

NATIONAL INSTITUTES OF HEALTH,

Defendant.

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

Plaintiff, as for its Complaint regarding a Freedom of Information Act request against the above-captioned Defendant, alleges as follows:

INTRODUCTION

1. A novel coronavirus, SARS-CoV-2, the first cases of which were reported in Wuhan, China, has resulted in federal government officials recommending numerous restrictions on everyday life in America. In response, all fifty states have implemented the recommended restrictions to varying degrees, many of which press deeply upon cherished fundamental constitutional rights.¹

2. The origin of SARS-CoV-2 has therefore received widespread media attention. While the origin of this virus remains in dispute, many scientists have argued that the virus leaked from the Wuhan Institute of Virology (the “**Wuhan Lab**”).²

¹ See generally, e.g., <https://www.cnbc.com/2021/08/05/dr-fauci-things-will-get-worse-amid-covid-delta-surge-unvaccinated.html> (discussing mask guidance, social distancing, and vaccines) (last visited 8/31/2021).

² See generally <https://abc7chicago.com/fauci-rand-paul-video-exchange-covid-wuhan-lab-senator-and-dr/10901142/> (embedded video discussing the origins of the SARS-CoV-2 pandemic and the lab-leak theory); <https://www.rollcall.com/2021/07/23/experts-weigh-in-on-risky-wuhan-study-that-fauci-paul-debated/> (noting that Senator Rand Paul is “a proponent of a theory that the coronavirus that caused the COVID-19 crisis escaped from the Wuhan lab”); <https://www.wbko.com/2021/07/22/sen-rand-paul-fauci-not-honest-about-wuhan-lab-funding-covid-19-origins/> (video of Senator Rand Paul discussing the lab-leak theory) (last visited 8/31/2021); <https://www.cnbc.com/2021/07/20/if-anybody-is-lying-here-senator-it-is-you-fauci-tells-sen-paul-in-heated-exchange-at-senate-hearing.html> (“The World Health Organization led the first phase of an investigation into the origins of Covid-19 and the possibility it could have leaked from that lab.”).

3. The National Institute of Allergy and Infectious Diseases (“**NIAID**”) is at the center of the federal government’s response to COVID-19. NIAID is an institute within the National Institutes of Health (“**Defendant**” or “**NIH**”). Dr. Anthony S. Fauci (“**Dr. Fauci**”) serves as NIAID’s Director.

4. The NIH claims that one of its goals is “to exemplify and promote the highest level of scientific integrity, public accountability, and social responsibility in the conduct of science.”³

5. Senator Rand Paul (“**Senator Paul**”) and Dr. Fauci have publicly debated whether certain research at the Wuhan Lab that was funded by the NIH meets the definition of gain-of-function, which is “a type of research that modifies a biological agent so that it confers new or enhanced activity to that agent.”⁴

6. During a Senate hearing on July 20, 2021, Senator Paul accused Dr. Fauci of lying when he testified at a prior Congressional hearing that the NIH never funded gain-of-function research at the Wuhan Lab.⁵ Senator Paul held up a paper titled “*A SARS-like cluster of circulating bat coronaviruses shows potential for human emergence*” (the “**2015 Paper**”) ⁶ which he stated proved that NIH had funded gain-of-function research at the Wuhan Lab. In response, Dr. Fauci claimed that the “paper that you are referring to was judged by qualified staff up and down the chain [at NIH] as not being gain-of-function.”

³ <https://www.nih.gov/about-nih/what-we-do/mission-goals> (last visited 8/30/2021).

⁴ <https://www.nih.gov/news-events/gain-function-research-involving-potential-pandemic-pathogens> (last visited 8/30/2021).

⁵ The exchanges referred to above can be viewed at <https://www.c-span.org/video/?c4962333/senator-paul-dr-fauci-clash-research-funding-wuhan-lab> (May 11, 2021) (last visited 8/30/2021); and <https://www.youtube.com/watch?v=IqUOcVwRUtc> (July 20, 2021) (last visited 8/30/2021).

⁶ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4797993/> (last visited 8/30/2021).

7. Dr. Fauci's statements regarding the Wuhan Lab and the 2015 Paper dominated the media in the weeks that followed.⁷

8. Plaintiff Informed Consent Action Network ("**Plaintiff**" or "**ICAN**") is a non-profit organization that advocates for informed consent and disseminates information necessary for same with regard to all medical interventions.

9. In furtherance of its mission, and in an effort to ensure that NIH acts in furtherance of its goal of public accountability, Plaintiff made a request to NIH pursuant to the Freedom of Information Act (5 U.S.C. § 552, as amended) ("**FOIA**") for "all documents reflecting the judgment and/or conclusions by the 'qualified staff' to which Dr. Fauci was referring which concluded that the [2015 Paper] is 'not . . . gain-of-function'" (the "**FOIA Request**").

10. The public, whose taxes funded any NIH grants, has a substantial interest in learning the truth about the NIH's potential role in the etiology and funding of research that may have contributed to the SARS-CoV-2 pandemic. The public's need for this information is urgent given the current unfolding story regarding the U.S. government's funding of research conducted in the Wuhan Lab. In an effort to disseminate this information to the public as expeditiously as possible, ICAN requested expedited processing of the FOIA Request pursuant to 5 U.S.C. § 552(a)(6)(E)(v)(II).

11. More than ten days have passed since ICAN submitted the FOIA Request. However, NIH has failed to inform ICAN of whether it intends to process the FOIA Request on

⁷ See, e.g., <https://www.cnn.com/2021/07/20/politics/anthony-fauci-rand-paul-debate/index.html> (last visited 8/30/2021); <https://www.businessinsider.com/fauci-rand-paul-you-do-not-know-what-talking-about-2021-7> (last visited 8/30/2021); <https://www.nbcnews.com/politics/congress/fauci-blasts-rand-paul-s-wuhan-lab-funding-claim-you-n1274489> (last visited 8/30/2021); <https://news.yahoo.com/rand-paul-accuses-fauci-lying-152837337.html> (last visited 8/30/2021); <https://www.washingtonexaminer.com/opinion/bet-on-rand-paul-against-anthony-fauci> (last visited 8/30/2021); <https://www.newsweek.com/sen-rand-paul-dr-fauci-right-about-gain-function-research-funding-wuhan-1612371> (last visited 8/30/2021).

an expedited basis as required by 5 U.S.C. § 552(a)(6)(E)(ii)(I). Accordingly, ICAN seeks an order compelling NIH to produce responsive records on an expedited basis.

PARTIES

12. ICAN is a not-for-profit organization with an office located at 140 Broadway, 46th Floor, New York, New York 10005.

13. NIH is an agency within the Executive Branch of the United States Government, organized within the Department of Health and Human Services. The NIH is an agency within the meaning of 5 U.S.C. § 552(f).

JURISDICTION AND VENUE

14. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331. Venue is proper within this District pursuant to 5 U.S.C. §§ 552(a)(4)(B) and (a)(4)(E)(iii) and 28 U.S.C. § 1391.

FACTS

A. Dr. Fauci's Role in the SARS-CoV-2 Pandemic

15. Dr. Fauci, as Director of NIAID, is one of the most prominent public health officials in the country.⁸ He has played and continues to play a critical role in the country's response to the SARS-CoV-2 pandemic, frequently appearing across numerous mainstream media outlets to discuss the government's response to the pandemic.⁹

⁸ See <https://thehill.com/homenews/administration/554617-jill-biden-recognizes-dr-fauci-as-an-american-hero> (quoting Jill Biden referring to Dr. Fauci as an "American hero") (last visited 8/31/2021).

⁹ See, e.g., <https://www.npr.org/sections/coronavirus-live-updates/2021/08/10/1026384528/fauci-teachers-vaccination-mandates-schools-students-covid> (quoting Dr. Fauci stating "I think we should [require teacher vaccinations]") (last visited 8/30/2021; https://edition.cnn.com/us/live-news/coronavirus-pandemic-vaccine-updates-08-12-21/h_6b660bfe77c9a0a242cbe2171bb9b489 (last visited 8/30/2021) (discussing booster shots) (last visited 8/30/2021); <https://www.cnbc.com/2021/08/19/fauci-says-us-is-expanding-covid-vaccine-manufacturing-to-donate-shots-to-the-world.html> (discussing donating SARS-CoV-2 vaccines to other countries) (last visited 8/30/2021); <https://www.cnn.com/2021/07/25/politics/anthony-fauci-covid-19-unvaccinated-cnntv/index.html> (quoting Dr. Fauci saying that the United States is "going in the wrong direction") (last visited 8/30/2021); <https://www.9news.com/video/news/nation-world/drfauci-addresses-delta-covid-variant-vaccine-efficiency/507->

16. For example, on July 25, 2021, CNN quoted Dr. Fauci stating that updated guidance regarding masks was under “active consideration” and that he was included in discussions.¹⁰ Dr. Fauci has also called for state and local governments to mandate vaccines for teachers.¹¹

17. In addition to his role in the country’s response to the SARS-CoV-2 pandemic, mainstream media outlets heavily cover Dr. Fauci’s comments about the origins of the virus.

B. The Senate Hearings

18. Senator Paul has publicly questioned Dr. Fauci about the NIH’s funding of research that may have contributed to the SARS-CoV-2 outbreak.

19. At a Senate hearing on May 11, 2021 (the “**May Hearing**”),¹² Senator Paul discussed the use of taxpayer dollars to fund gain-of-function research at the Wuhan Lab:

Dr. Fauci, we don’t know whether the pandemic started in a lab in Wuhan or evolved naturally, but we should want to know. Three million people have died from this pandemic and that should cause us to explore all possibilities. Instead, government authorities, self-interested in continuing gain-of-function research, say there’s nothing to see here. Gain of function research, as you know, is juicing up naturally occurring animal viruses to infect humans. To arrive at the truth, the US government should admit that the Wuhan Virology Institute was experimenting to enhance the coronavirus’ ability to infect humans.

Juicing up super viruses is not new. Scientists in the U.S. have long known how to mutate animal viruses to infect humans. Dr. Ralph Baric, a virologist in the U.S., has been collaborating with Dr. Shi Zhengli of the Wuhan Virology Institute, sharing his discoveries about how to create super viruses. This gain-of-function research

[0bb21a1b-bcec-406f-846b-dcb903a77e6b](#) (discussing infection with SARS-CoV-2 after vaccination) (last visited 8/30/2021); <https://www.yahoo.com/lifestyle/cdc-hasn-t-changed-biden-082455962.html> (quoting Dr. Fauci saying that “[t]he CDC hasn’t changed, and the CDC hasn’t really flip-flopped at all”) (last visited 8/30/2021).

¹⁰ See <https://www.cnn.com/2021/07/25/politics/anthony-fauci-covid-19-unvaccinated-cnntv/index.html> (quoting Dr. Fauci saying that the United States is “going in the wrong direction”) (last visited 8/30/2021).

¹¹ <https://www.npr.org/sections/coronavirus-live-updates/2021/08/10/1026384528/fauci-teachers-vaccination-mandates-schools-students-covid> (last visited 8/30/2021).

¹² The relevant portion of the May Hearing can be viewed at <https://www.c-span.org/video/?c4962333/senator-paul-dr-fauci-clash-research-funding-wuhan-lab> (last visited August 19, 2021).

has been funded by the NIH. The collaboration between the U.S. and the Wuhan Virology Institute continues. Drs. Barrack and Shi worked together to insert bat virus spike protein into the backbone of the deadly SARS virus, and then used this man-made super virus to infect human airway cells. Think about that for a moment.

...

Do you still support funding of the NIH funding of the lab in Wuhan?

20. In response, Dr. Fauci stated that “the NIH has not ever and does not now fund gain-of-function research in the Wuhan Institute of Virology.”

21. At another Senate hearing on July 20, 2021 (the “**July Hearing**”),¹³ Dr. Fauci had another exchange with Senator Paul regarding the 2015 Paper.

22. In the Acknowledgments section of the 2015 Paper, the authors stated:

Research in this manuscript was supported by grants from the National Institute of Allergy & Infectious Disease and the National Institute of Aging of the US National Institutes of Health (NIH) under awards U19AI109761 (R.S.B.), U19AI107810 (R.S.B.), AI085524 (W.A.M.), F32AI102561 (V.D.M.) and K99AG049092 (V.D.M.)

23. Senator Paul claims that the 2015 Paper meets the definition of gain-of-function research, which is, according to the NIH, “a type of research that modifies a biological agent so that it confers new or enhanced activity to that agent.”¹⁴ Senator Paul explained that the 2015 Paper met this definition because it “took two bat coronavirus genes, spike genes, and combined them with a SARS related backbone . . . in the Wuhan lab to gain the function of infecting humans,” whereas prior to this lab manipulation these bat viruses could “only infect animals.”

¹³ <https://www.c-span.org/video/?c4970412/senator-rand-paul-accuses-dr-fauci-lying-gain-function-research-wuhan-lab> (last visited 8/30/2021).

¹⁴ <https://www.nih.gov/news-events/gain-function-research-involving-potential-pandemic-pathogens> (last visited 8/30/2021).

24. At the July Hearing, Senator Paul held up the 2015 Paper and stated:

Dr. Fauci . . . do you wish to retract your statement of May 11 where you claimed that the NIH never funded gain-of-function research in Wuhan?

25. Dr. Fauci responded as follows:

Senator Paul, I have never lied before the Congress, and I do not retract that statement. This paper that you are referring to was judged by qualified staff up and down the chain as not being gain-of-function.

26. Like all of Dr. Fauci's comments relating to the pandemic, his comments to Senator Paul at the above-referenced congressional hearings regarding the Wuhan Lab, gain-of-function research and the 2015 Paper received media coverage across the largest mainstream media platforms, including CNN,¹⁵ Fox News,¹⁶ Forbes,¹⁷ Business Insider,¹⁸ NBC News,¹⁹ The Hill,²⁰ Yahoo News,²¹ Washington Examiner,²² Newsweek,²³ and others.²⁴

¹⁵ <https://www.cnn.com/2021/07/20/politics/anthony-fauci-rand-paul-debate/index.html> (last visited 8/30/2021).

¹⁶ <https://www.foxnews.com/media/sen-rand-paul-torches-fauci-explains-asking-doj-referral> (last visited 8/30/2021).

¹⁷ <https://www.forbes.com/sites/joewalsh/2021/07/20/fauci-and-rand-paul-accuse-each-other-of-lying-in-tense-testimony-over-covid-origins/?sh=7aefca604c73> (last visited 8/30/2021).

¹⁸ <https://www.businessinsider.com/fauci-rand-paul-you-do-not-know-what-talking-about-2021-7> (last visited 8/30/2021).

¹⁹ <https://www.nbcnews.com/politics/congress/fauci-blasts-rand-paul-s-wuhan-lab-funding-claim-you-n1274489> (last visited 8/30/2021).

²⁰ <https://thehill.com/changing-america/well-being/prevention-cures/564803-rand-paul-sends-official-criminal-referral-on> (last visited 8/30/2021).

²¹ <https://news.yahoo.com/rand-paul-accuses-fauci-lying-152837337.html> (last visited 8/30/2021).

²² <https://www.washingtonexaminer.com/opinion/bet-on-rand-paul-against-anthony-fauci> (last visited 8/30/2021).

²³ <https://www.newsweek.com/sen-rand-paul-dr-fauci-right-about-gain-function-research-funding-wuhan-1612371> (last visited 8/30/2021).

²⁴ ICAN included a list of a number of news articles discussing these issues as an exhibit to the FOIA Request.

C. The FOIA Request

27. In furtherance of ICAN’s mission to disseminate information to the public, and in an effort to ensure that NIH acts in furtherance of its goal of public accountability, on August 3, 2021, ICAN submitted the FOIA Request to the NIH. Pursuant to the FOIA Request, ICAN requested that the following documents be produced on an expedited basis:

At a July 20, 2021 Senate hearing at which Dr. Anthony Fauci (“Dr. Fauci”) appeared and had an exchange with Senator Rand Paul (“Senator Paul”) regarding a paper titled *A SARS-like cluster of circulating bat coronaviruses shows potential for human emergence* (the “paper”),²⁵ Dr. Fauci stated: “This paper that you are referring to was judged by qualified staff up and down the chain as not being gain-of-function.”²⁶

Please provide any and all documents reflecting the judgment and/or conclusions by the “qualified staff” to which Dr. Fauci was referring which concluded that the paper is “not ... gain-of-function.”

(Exhibit A.1.)²⁷

28. Upon submitting the FOIA Request, ICAN received a notification that the request was submitted successfully. **(Exhibit A.2.)**

29. On August 20, 2021, NIH issued an acknowledgment and assigned case number 56917 to the FOIA Request. **(Exhibit A.3.)**

²⁵ The exchange referred to above can be viewed at <https://www.youtube.com/watch?v=IqUOcVwRUtc> (last visited 8/19/2021).

²⁶ A copy of the paper can be viewed here <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4797993/> (last visited 8/19/2021).

²⁷ All “Exhibits” referenced herein are attached to this Complaint.

D. Request for Expedited Processing

30. In the FOIA Request, ICAN requested that the NIH process the request on an expedited basis pursuant to 5 U.S.C. § 552(a)(6)(E)(v)(II).

31. NIH has failed, within the statutory time period, to inform ICAN of whether it intends to process the FOIA Request on an expedited basis as required by 5 U.S.C. § 552(a)(6)(E)(ii)(I).

ARGUMENT

32. FOIA provides for “expedited processing of requests for records” upon a showing of “compelling need.” 5 U.S.C. § 552(a)(6)(E)(i)(I). When the person requesting information is “primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity” constitutes a “compelling need” for expedited processing. 5 U.S.C. § 552(a)(6)(E)(v)(II).

33. ICAN is a non-profit organization that advocates for informed consent. ICAN’s mission is to raise public awareness about public health and safety and to provide the public with information to give informed consent regarding related health interventions and precautions. As part of its mission, ICAN disseminates information to an audience of more than 5 million people. Therefore, ICAN is “primarily engaged in disseminating information” to the general public.

34. Further, there is an “urgency to inform the public concerning actual or alleged Federal Government activity,” namely, whether taxpayer funds were used to fund research that may have contributed to the worldwide SARS-CoV-2 pandemic.

35. In determining whether there is a “compelling need” for expedited processing, courts consider: “(1) whether the request concerns a matter of current exigency to the American public; (2) whether the consequences of delaying a response would compromise a significant

recognized interest; and (3) whether the request concerns federal government activity.” *Al-Fayed v. CIA*, 254 F.3d 300, 310 (D.D.C. 2001). All three factors are present here.

36. The FOIA Request concerns a matter of current exigency to the American public. The origin of the coronavirus pandemic, which has many times over the last 18 months dominated mainstream media, is a matter of current exigency. This is evidenced by the media coverage of the May Hearing and the July Hearing, and Senator Paul’s allegations regarding the use of NIH grants to fund gain-of-function research at the Wuhan Lab. The judgments and conclusions of the “qualified staff” at NIH that Dr. Fauci claims determined that the 2015 Paper did not meet the definition of gain-of-function are therefore of critical public importance because of the substantial media coverage regarding gain-of-function research at the Wuhan Lab and of the May Hearing and the July Hearing.

37. Critical to this public debate is whether the 2015 Paper does in fact meet the definition of gain-of-function. There is no question that the NIH funded research at the Wuhan Lab²⁸ – the only question is whether that research meets the definition of gain-of-function. The answer to this question is of particularly urgent public interest because Senator Paul raised concerns that gain-of-function research at the Wuhan Lab may have contributed to causing the SARS-CoV-2 pandemic.

38. According to Senator Paul, gain-of-function research, like the research at issue in the 2015 Paper, “can lead to viruses that cause pandemics.”²⁹ Senator Paul claims that “there is a

²⁸ The authors of the 2015 Paper expressly acknowledge that the research underlying the paper was funded by grants from the NIH. Further, although Dr. Fauci denies that the NIH funded gain-of-function research at the Wuhan Lab, he has publicly admitted that the NIH funded research conducted at the Wuhan Lab to study the transmissibility of bat coronaviruses to humans. <https://nypost.com/2021/05/25/fauci-admits-nih-funding-of-wuhan-lab-denies-gain-of-function/> (last visited 8/30/2021).

²⁹ <https://www.wbko.com/2021/07/22/sen-rand-paul-fauci-not-honest-about-wuhan-lab-funding-covid-19-origins/> (last visited 8/30/2021).

lot of evidence” pointing to the fact that SARS-CoV-2 may have emerged from the Wuhan Lab.³⁰ Without admitting Senator Paul’s allegations, Dr. Fauci himself has called for further investigation into the origin of SARS-CoV-2.³¹ The public has a substantial and ongoing interest in learning the truth about the origins of SARS-CoV-2,³² especially because taxpayer funds, as disclosed in the 2015 Paper, were admittedly used to fund research at the Wuhan Lab to modify bat viruses that were not transmissible to humans to make them transmissible to humans, which research could have contributed to causing SARS-CoV-2 and the deaths of Americans.

39. Given the government imposed restrictions on everyday life in many parts of this country,³³ U.S. taxpayers have an immediate interest in learning whether risky research funded by the NIH contributed to causing the current pandemic.

40. Moreover, an understanding of the origin of the SARS-CoV-2 pandemic may enable the scientific community to immediately begin working towards a plan to prevent future pandemics, which could save countless lives across the globe.³⁴

³⁰ <https://www.wbko.com/2021/07/22/sen-rand-paul-fauci-not-honest-about-wuhan-lab-funding-covid-19-origins/> (last visited 8/30/2021).

³¹ <https://thehill.com/policy/healthcare/552857-rand-paul-clashes-with-fauci-over-coronavirus-origins> (last visited 8/31/2021); <https://www.politifact.com/article/2021/may/11/united-facts-america-fauci-disputes-sen-rand-paul/> (last visited 8/31/2021).

³² See <https://thehill.com/hilltv/rising/553406-rep-mike-gallagher-wuhan-investigation-is-needed-or-well-never-be-able-to> (quoting Representative Mike Gallagher stating “I think the American people just want to know – not to assign blame – want to know what the heck happened, if for no other reason then [sic] we want to prevent this from happening again.”) (last visited 8/30/2021).

³³ See, e.g., <https://www.npr.org/sections/coronavirus-live-updates/2021/08/10/1026384528/fauci-teachers-vaccination-mandates-schools-students-covid> (discussing vaccine mandates at the local level for teachers) (last visited 8/31/2021); <https://news.yahoo.com/cdc-didn-t-change-anthony-000430540.html> (discussing the CDC’s mask guidance) (last visited 8/31/2021).

³⁴ See generally <https://thehill.com/hilltv/rising/553406-rep-mike-gallagher-wuhan-investigation-is-needed-or-well-never-be-able-to> (quoting Representative Mike Gallagher stating “And if we can’t get to the origin, we’ll never be able to prevent the next pandemic.”) (last visited 8/30/2021); [Fauci and Rand Paul clash over NIH funding for Wuhan Institute of Virology - Axios](#) (“whether the virus spilled over from an animal . . . or because of an accident in a lab, finding the answer matters for preventing the next pandemic”) (last visited 8/30/2021). See also <https://abc7chicago.com/fauci-rand-paul-video-exchange-covid-wuhan-lab-senator-and-dr/10901142/> (last visited 8/31/2021).

41. Because SARS-CoV-2 was first detected in Wuhan and some experts and government officials question whether the virus could have leaked from the Wuhan Lab, the current unfolding story regarding the U.S. government's funding of the Wuhan Lab is of critical public importance. ICAN will forthwith disseminate any information it obtains in response to the instant FOIA Request. ICAN, as a media outlet, has a recognized interest in timely contributing to the ongoing public debate regarding whether NIH has funded gain-of-function research at the Wuhan Lab, especially given Dr. Fauci's claim that this never occurred.

42. Finally, the information ICAN seeks concerns actual or alleged federal government activity – namely, whether the NIH funded gain-of-function research at the Wuhan Lab. The NIH, which claims that it strives “to exemplify and promote the highest level of . . . public accountability,”³⁵ should immediately release the information ICAN seeks in the FOIA Request.

43. Because the NIH did not respond to ICAN's request for expedited processing, ICAN is entitled to immediately seek relief in this Court. 5 U.S.C. § 552(a)(6)(E)(iii).

Requested Relief

WHEREFORE, Plaintiff prays that this Court:

- a. Provide for expeditious proceedings in this action;
- b. Enter an Order directing the NIH to produce all documents responsive to the FOIA Request on an expedited basis and in no event later than 10 days from the date of any such order;
- c. Award Plaintiff its costs and reasonable attorneys' fees incurred in this action as provided by 5 U.S.C. § 552(a)(4)(E); and
- d. Grant such other and further relief as the Court may deem just and proper.

³⁵ <https://www.nih.gov/about-nih/what-we-do/mission-goals> (last visited 8/30/2021).

Dated: August 31, 2021

SIRI & GLIMSTAD LLP



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Exhibit A.1

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FREEDOM OF INFORMATION ACT REQUEST **EXPEDITED PROCESSING REQUESTED**

VIA ONLINE PORTAL

August 20, 2021

Gorka Garcia-Malene
Freedom of Information Act Officer
National Institutes of Health
Building 31 Room 5B35
9000 Rockville Pike
Bethesda, Maryland 20892

Re: *Documents Regarding the 2015 Paper (IR#0545)*

Dear Mr. Garcia-Malene:

This firm represents the Informed Consent Action Network (“ICAN”). On behalf of ICAN, please provide the following records to foia@sirillp.com in electronic form:

At a July 20, 2021 Senate hearing at which Dr. Anthony Fauci (“Dr. Fauci”) appeared and had an exchange with Senator Rand Paul (“Senator Paul”) regarding a paper titled *A SARS-like cluster of circulating bat coronaviruses shows potential for human emergence* (the “paper”),¹ Dr. Fauci stated: “This paper that you are referring to was judged by qualified staff up and down the chain as not being gain-of-function.”²

Please provide any and all documents reflecting the judgment and/or conclusions by the “qualified staff” to which Dr. Fauci was referring which concluded that the paper is “not ... gain-of-function.”

Expedited Processing

ICAN requests expedited processing for this request. FOIA provides for “expedited processing of requests for records” upon a showing of “compelling need.” 5 U.S.C.

¹ The exchange referred to above can be viewed at <https://www.youtube.com/watch?v=IqUOcVwRUtc> (last visited 8/19/2021).

² A copy of the paper can be viewed here <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4797993/> (last visited 8/19/2021).

§ 552(a)(6)(E)(i)(II). When the person requesting information is “primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity” constitutes a “compelling need” for expedited processing. 5 U.S.C. § 552(a)(6)(E)(v)(II).

ICAN is a non-profit organization that advocates for informed consent. ICAN’s mission is to raise public awareness about public health and safety and to provide the public with information to give informed consent regarding related health interventions and precautions. As part of its mission, ICAN disseminates information to an audience of more than 5 million people. Therefore, ICAN is “primarily engaged in disseminating information to the general public.” Further, as explained below, there is an “urgency to inform the public concerning actual or alleged Federal Government activity.” Accordingly, expedited processing of this request is warranted.

Dr. Fauci is the Director of The National Institute of Allergy and Infectious Diseases (“**NIAID**”). NIAID is an institute within NIH. The NIH claims that one of its goals is “to exemplify and promote the highest level of scientific integrity, public accountability, and social responsibility in the conduct of science.”³

Dr. Fauci, as Director of NIAID, is one of the most prominent public health officials in the country.⁴ He has played and continues to play a critical role in the country’s response to the SARS-CoV-2 pandemic, frequently appearing across all mainstream media outlets to discuss issues regarding the pandemic.⁵ His appearances and statements regarding the pandemic, including his agency’s role in the potential etiology and funding of SARS-CoV-2,⁶ is of ongoing, immediate, and intense public interest in the media, the scientific community, and the public at large.

³ <https://www.nih.gov/about-nih/what-we-do/mission-goals> (last visited 8/18/2021).

⁴ See, e.g., <https://thehill.com/homenews/administration/554617-jill-biden-recognizes-dr-fauci-as-an-american-hero> (quoting Jill Biden referring to Dr. Fauci as an “American hero”).

⁵ See, e.g., <https://www.npr.org/sections/coronavirus-live-updates/2021/08/10/1026384528/fauci-teachers-vaccination-mandates-schools-students-covid> (quoting Dr. Fauci stating “I think we should [require teacher vaccinations]”) (last visited 8/18/2021); https://edition.cnn.com/us/live-news/coronavirus-pandemic-vaccine-updates-08-12-21/h_6b660bfe77c9a0a242cbe2171bb9b489 (discussing booster shots) (last visited 8/18/2021); <https://www.cnn.com/2021/08/19/fauci-says-us-is-expanding-covid-vaccine-manufacturing-to-donate-shots-to-the-world.html> (discussing donating SARS-CoV-2 vaccines to other countries) (last visited 8/18/2021); <https://www.cnn.com/2021/07/25/politics/anthony-fauci-covid-19-unvaccinated-cnntv/index.html> (quoting Dr. Fauci saying that the United States is “going in the wrong direction”); <https://www.9news.com/video/news/nation-world/dr-fauci-addresses-delta-covid-variant-vaccine-efficiency/507-0bb21a1b-bcec-406f-846b-dcb903a77e6b> (discussing infection with SARS-CoV-2 after vaccination) (last visited 8/18/2021); <https://news.yahoo.com/cdc-didn-t-change-anthony-000430540.html> (quoting Dr. Fauci saying that “[t]he CDC hasn’t changed, and the CDC hasn’t really flip-flopped at all”) (last visited 8/18/2021).

⁶ See, e.g., <https://nypost.com/2021/05/25/fauci-admits-nih-funding-of-wuhan-lab-denies-gain-of-function/> (admitting “a modest collaboration with very respectable Chinese scientists who were world experts on coronavirus”) (last visited 8/18/2021).

During a Senate hearing on July 20, 2021, Senator Paul accused Dr. Fauci of lying when he testified at a prior Congressional hearing⁷ that the NIH never funded gain-of-function⁸ research at the Wuhan Institute of Virology (the “**Wuhan Lab**”). Senator Paul held up the paper, which made plain that NIH had funded research at the Wuhan Lab that Senator Paul claims meets the definition of gain-of-function. Instead of admitting his prior statement was inaccurate, Dr. Fauci doubled down by stating that the “paper that you are referring to was judged by qualified staff up and down the chain as not being gain-of-function.” Dr. Fauci also told Senator Paul that he did “not know what [he was] talking about.”

Like all of Dr. Fauci’s comments relating to the pandemic, his comments to Senator Paul at the above-referenced congressional hearings regarding the Wuhan Lab, gain-of-function research and the 2015 Paper received media coverage across the largest mainstream media platforms, including CNN,⁹ Fox News,¹⁰ Forbes,¹¹ Business Insider,¹² NBC News,¹³ Yahoo News,¹⁴ Washington Examiner,¹⁵ Newsweek,¹⁶ BBC News,¹⁷ and others.¹⁸ In fact, the story is still being discussed today.¹⁹

The coronavirus pandemic has dominated the media for the last 18 months, and there is no indication that the pandemic will end anytime soon.²⁰ As such, all aspects of the pandemic, including the government’s response to and the origins of SARS-CoV-2, are a matter of substantial and ongoing public interest. The public’s interest in and need to understand the origins of SARS-

⁷ The relevant portion of the prior congressional hearing, which occurred on May 11, 2021, can be viewed at <https://www.c-span.org/video/?c4962333/senator-paul-dr-fauci-clash-research-funding-wuhan-lab> (last visited 8/18/2021).

⁸ According to the NIH, gain-of-function research is “a type of research that modifies a biological agent so that it confers new or enhanced activity to that agent.” <https://www.nih.gov/news-events/gain-function-research-involving-potential-pandemic-pathogens> (last visited 8/18/2021).

⁹ <https://www.cnn.com/2021/07/20/politics/anthony-fauci-rand-paul-debate/index.html> (8/18/2021).

¹⁰ <https://foxnews.com/media/sen-rand-paul-torches-fauci-explains-asking-doj-referral> (last visited 8/18/2021).

¹¹ <https://www.forbes.com/sites/joewalsh/2021/07/20/fauci-and-rand-paul-accuse-each-other-of-lying-in-tense-testimony-over-covid-origins/?sh=7aefca604c73> (last visited 8/18/2021).

¹² <https://www.businessinsider.com/fauci-rand-paul-you-do-not-know-what-talking-about-2021-7> (last visited 8/18/2021).

¹³ <https://www.nbcnews.com/politics/congress/fauci-blasts-rand-paul-s-wuhan-lab-funding-claim-you-n1274489> (last visited 8/18/2021).

¹⁴ <https://news.yahoo.com/rand-paul-accuses-fauci-lying-152837337.html> (last visited 8/18/2021).

¹⁵ <https://www.washingtonexaminer.com/opinion/bet-on-rand-paul-against-anthony-fauci> (last visited 8/18/2021).

¹⁶ <https://www.newsweek.com/sen-rand-paul-dr-fauci-right-about-gain-function-research-funding-wuhan-1612371> (last visited 8/18/2021).

¹⁷ <https://www.bbc.com/news/57932699> (last visited 8/18/2021).

¹⁸ A list of other sources covering this story is attached as **Exhibit A**.

¹⁹ <https://www.talkofnews.com/2021/08/20/must-read-coronavirus-censorship-paul-vs-fauci/> (last visited 8/20/2021).

²⁰ See generally <https://www.cnbc.com/2021/08/05/dr-fauci-things-will-get-worse-amid-covid-delta-surge-unvaccinated.html> (quoting Dr. Fauci stating that “[t]hings are going to get worse.”) (last visited 8/18/2021).

CoV-2 are intensified by allegations that the United States government may have funded gain-of-function research at the Wuhan Lab, which research may have led to the origin of SARS-CoV-2 and the death of more than 600,000 Americans. Given the fact that SARS-CoV-2 was first detected in Wuhan,²¹ the current unfolding story regarding the U.S. government's funding of the Wuhan Lab is of critical public importance. ICAN seeks to disseminate the requested information to the public as expeditiously as possible.

ICAN certifies that the information in this request is true and correct to the best of ICAN's knowledge and belief.

Fees and charges for this search are to be waived pursuant to 5 U.S.C. § 552 (a)(4)(A)(iii) since ICAN is a not-for-profit 501(c)(3) organization and its mission is to raise public awareness about public health safety and provide the public with information to give informed consent regarding related health interventions. As part of its mission, ICAN investigates and disseminates information regarding public health safety issues, including through their website, and through press events and releases. ICAN is seeking the information in this FOIA request to allow it to contribute to its mission. The information requested in this FOIA request will not contribute to any commercial activities.

Please note that the FOIA provides that if only portions of a requested file are exempted from release, the remainder must still be released. We, therefore, request that we be provided with all non-exempt portions which are reasonably segregable. We further request that you describe any deleted or withheld material in detail and specify the statutory basis for the denial as well as your reasons for believing that the alleged statutory justification applies. Please also separately state your reasons for not invoking your discretionary powers to release the requested documents in the public interest. Such statements may help to avoid unnecessary appeal and litigation. ICAN of course reserves all rights to appeal the withholding or deletion of any information.

Access to the requested records should be granted within twenty (20) business days from the date of your receipt of this letter. Failure to respond in a timely manner shall be viewed as a denial of this request and ICAN may immediately file an administrative appeal.

If you would like to discuss our requests or any issues raised in this letter, please feel free to contact me at (212) 532-1091 or via email at foia@sirillp.com during normal business hours. Thank you for your time and attention to this matter.

Very truly yours,



Aaron Siri, Esq.
Elizabeth A. Brehm, Esq.
Gabrielle G. Palmer, Esq.

²¹ <https://pubmed.ncbi.nlm.nih.gov/32030925/> (last visited 8/20/2021).

Exhibit A

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Exhibit A.2

Submit Request

Request Submitted Successfully

An email notification with the request tracking number has been sent to the email address provided in your requester profile. To view your request history click on the link below or use the navigations options in the toolbar above.

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