

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NEW HAMPSHIRE

Plaintiff,

v.

UNITED STATES CUSTOMS AND
BORDER PROTECTION

Defendant.

Case No.: 1:23-cv-00282-JL

**AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF FOR
VIOLATION OF THE FREEDOM OF INFORMATION ACT, 5 U.S.C. § 552 et seq.**

The American Civil Liberties Union Foundation of New Hampshire (“Plaintiff” or “ACLU-NH”) brings this action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, as amended, to obtain injunctive and other appropriate relief requiring the United States Customs and Border Protection (“CBP” or “Defendant”) to release records about the Swanton Sector of CBP apprehensions and encounters in New Hampshire from October 1, 2022 to January 31, 2023 (hereinafter “the Request”). Exhibit A.

INTRODUCTION

The Swanton Sector of CBP covers (i) the entire State of Vermont, (ii) Clinton, Essex, Franklin, St. Lawrence and Herkimer counties in New York, and (iii) Coos, Grafton, and Carroll counties in New Hampshire.

For the period from October 1, 2022 to December 31, 2022, the Request seeks records sufficient to identify (1) how many of the apprehensions occurred in New Hampshire—including in the New Hampshire counties of the Swanton Sector (Coos, Grafton, and Carroll Counties)—

relative to the total number of apprehensions by the Sector, (2) the municipality where the apprehensions occurred, and (3) the nationality of individuals apprehended. Exhibit A. For the period of January 2023, the Request similarly seeks records sufficient to identify (1) how many of the Swanton Sector's 367 January 2023 apprehensions occurred in New Hampshire, (2) the municipality where the apprehensions occurred, and (3) the nationality of the individuals apprehended. Exhibit A.

On January 25, 2023, CBP publicly stated that apprehensions in the CBP's Swanton Sector have increased from October 1, 2022 to December 31, 2022 compared to the same period in the prior year. On February 13, 2023, CBP also publicly announced that the "Swanton Sector recorded 367 apprehensions and encounters during January of fiscal year 2023," and "January's total surpassed the preceding January apprehensions for the past 12 years combined (Total: 344)." However, these statistics are not specific to New Hampshire, but rather cover the entire Swanton Sector. Notwithstanding this data's lack of a specific nexus to the New Hampshire/Canada border, the New Hampshire Department of Safety and the Governor of New Hampshire have used CBP's public statements to advocate for a \$1,435,384 budgetary proposal for the fiscal year ending June 30, 2023 that would create and fund a Northern Border Alliance Program.

However, to date, no concrete evidence indicates that apprehensions have significantly increased at the New Hampshire/Canada border. In light of State officials' use of CBP's data to promote the purported need for the Northern Border Alliance Program, the ACLU-NH submitted public records requests to both the Department of Safety and the Office of the Governor seeking information on New Hampshire apprehensions by CBP. The responses from these state actors confirm what was suspected: that these state officials have no records in their possession concerning CBP apprehensions at the New Hampshire/Canada border that would justify this over

\$1.4 million appropriation. In recognition of this reality, the New Hampshire House of Representatives stripped this Program out of the budget. However, the Senate Finance Committee recently voted to restore this funding to the budget in a proposal that will soon be voted on by the Senate.

The production of this information is in the public interest. This FOIA request seeks information in possession of CBP that is similar to the information the ACLU-NH previously requested from state officials (but that these state officials did not have). This information will help the public continue to evaluate the propriety of this proposed over \$1.4 million appropriation for a “Northern Border Alliance Program.” And CBP is the only entity that possesses accurate data concerning the nature of apprehensions at the border.

But in the face of this obvious public interest, CBP categorically rejected the ACLU-NH’s request under FOIA Exemptions (b)(6) (unwarranted invasion of personal privacy of the individuals involved), (b)(7)(C) (unwarranted invasion of personal privacy of a third party/parties), (b)(7)(E) (disclosure of techniques and procedures for law enforcement investigations or prosecutions), and (b)(7)(F) (endangering the life or physical safety of an individual). Exhibit B. None of these exemptions are proper.

To confirm the inapplicability of these exemptions, one need to look no further than the fact that CBP has placed this information directly in the public sphere by not only issuing self-serving press releases that the public is entitled to vet, but also because CBP has already (i) disclosed to the New Hampshire Department of Safety that there has been a “slight increase” in the number of illegal crossings into the United States from the Canada/New Hampshire border (*see Exhibits F, G*), and (ii) disclosed to *WMUR* that no crossing was “recorded in New Hampshire” between October 2022 and January 2023 (*see Exhibit J*). Indeed, the Swanton Sector of CBP

routinely publishes and discloses, for their own communications purposes, the location where they apprehend individuals and the arrestees' nationalities through press releases and social media.¹

CBP cannot have it both ways. CBP cannot make disclosures concerning the nature of its enforcement operations (including in New Hampshire) and then reject the public's efforts to evaluate those statements, especially where (i) these statements have become the basis of an over \$1.4 million policy proposed by New Hampshire officials and (ii) CBP has disclosed similar information in the past. CBP is accountable to taxpayers who pay for its operations. And the taxpayers are entitled to vet CBP's statements, including evaluating whether this appropriation is a good use of state taxpayer funds.

For these reasons, CBP is unlawfully withholding the requested information under the FOIA statute. The ACLU-NH further alleges as follows:

¹ CBP, *Buffalo and Swanton Sector Border Patrol Prevents a Human Smuggling Attempt* (Nov. 15, 2022) (explaining that CBP agents stopped a vehicle and arrested alleged human trafficking smugglers "on State Route 11 near Philadelphia, NY"), available at <https://www.cbp.gov/newsroom/local-media-release/buffalo-and-swanton-sector-border-patrol-prevents-human-smuggling>; Swanton Sector Chief Patrol Agent Robert Garcia, *Twitter* (June 6, 2023) ("15 subjects apprehended in Champlain, NY" who were among "illegal border crossers from 15 different countries"), available at <https://twitter.com/USBPChiefSWB/status/1666026464679018498?s=20>; *id.* (Apr. 25, 2023) ("the two [of undocumented noncitizens] were lost in the woods near Ft. Covington, NY, after illegally crossing into the U.S. around 2 a.m."), available at <https://twitter.com/USBPChiefSWB/status/1650829763651485698?s=20>; *id.* (Mar. 28, 2023) ("After picking up 4 Guatemalan citizens who illegally entered the U.S., a NJ man was arrested by #BorderPatrol Agents near East Berkshire, VT."), available at <https://twitter.com/USBPChiefSWB/status/1640657566916128768?s=20>; *id.* (Mar. 20, 2023) ("Following his illegal entry into the U.S. near Mooers Forks, NY, this citizen of Bulgaria decided to make another unlawful entry into a privately owned cabin."), available at <https://twitter.com/USBPChiefSWB/status/1637828511246188548?s=20>; *id.* (Mar. 10, 2023) ("On Tuesday morning, [K-9] assisted in locating 7 citizens of Mexico who illegally entered the U.S. from Canada near Mooers, New York."), available at <https://twitter.com/USBPChiefSWB/status/1634148124829556736?s=20>; US Border Patrol Swanton Sector, *Facebook* (June 6, 2023) ("Friday-Sunday, Swanton Sector US Border Patrol Agents were busy securing our 295-mile stretch of border with Canada, tallying 111 arrests of illegal border crossers from 15 different countries, including: Colombia, Congo, Dominican Republic, England, Guatemala, India, Mexico, North Korea, Romania, Senegal, South Korea, Tajikistan, Turkey, Uzbekistan, Venezuela[.] PHOTOS: 15 subjects apprehended in Champlain, NY."), available at [https://www.facebook.com/USBPSwantonSector/posts/pfbid02S64TTJYV55Ewn3VX5uxZ9fiNYEcfuU1hkHcSP7mL2CQYZ11juyFMhQPXfGJSLgZDI?_cft__\[0\]=AZXGjc_hx0HEOnzPt6US5gO9OcqH94fA5VzWimfRHuvGVYzBFOxWA87dWiSHLLAEnmuT1341iWbJW6icwLKAjVw5vlnnaKDRKisfJ52j685xxia2VJsduV1k725zwwQA_wPfZWciSyR1icWN9hKB5ad9PG6hO5TQVh5J9_Crar0hfGpt7XXsHhvP37cmoFkNnxIdziAAQojXuvOTyboro5qOb&_tn_=-UK-R\]-R](https://www.facebook.com/USBPSwantonSector/posts/pfbid02S64TTJYV55Ewn3VX5uxZ9fiNYEcfuU1hkHcSP7mL2CQYZ11juyFMhQPXfGJSLgZDI?_cft__[0]=AZXGjc_hx0HEOnzPt6US5gO9OcqH94fA5VzWimfRHuvGVYzBFOxWA87dWiSHLLAEnmuT1341iWbJW6icwLKAjVw5vlnnaKDRKisfJ52j685xxia2VJsduV1k725zwwQA_wPfZWciSyR1icWN9hKB5ad9PG6hO5TQVh5J9_Crar0hfGpt7XXsHhvP37cmoFkNnxIdziAAQojXuvOTyboro5qOb&_tn_=-UK-R]-R).

JURISDICTION AND VENUE

1. This Court has subject-matter jurisdiction over this action and personal jurisdiction over the parties under 5 U.S.C. § 552(a)(4)(B), 5 U.S.C. §§ 701-706, and 28 U.S.C. § 1331.

2. The venue is proper in the District of New Hampshire under 5 U.S.C. § 552(a)(4)(B) because ACLU-NH's principal place of business is the District of New Hampshire and because a substantial portion of the requested records related to immigration enforcement and communications occurs in the District of New Hampshire. For the same reasons, the venue is also proper under 28 U.S.C. § 1391(e).

PARTIES

3. Plaintiff American Civil Liberties Union Foundation of New Hampshire ("ACLU-NH") is a non-profit 26 U.S.C. § 501(c)(3) organization that provides legal representation free of charge to individuals and organizations in civil rights and civil liberties cases and educates that public about civil rights and civil liberty issues across New Hampshire. ACLU-NH is headquartered in Concord, New Hampshire.

4. Defendant U.S. Customs and Border Protection ("CBP") is a federal agency within the meaning of 5 U.S.C. § 552(f)(1).

FACTS

Public Concern with CBP's New Hampshire Border Crossing Data

5. The Request arises from CBP's recent claim that the number of apprehensions and encounters at the Canadian/United States Swanton Sector border has significantly increased, along with CBP's apparent claim that there has been a "slight increase" in the number of illegal crossings into the United States from the Canada/New Hampshire border. Exhibits A-C, F-G.

6. On January 25, 2023, CBP issued a press release stating that "[b]etween October

1, 2022, and December 31, 2022, [CBP's] Swanton Sector recorded an approximate 743% increase in apprehensions and encounters compared to the same period of the year prior." Exhibit D. On February 13, 2023, CBP also publicly announced that the "Swanton Sector recorded 367 apprehensions and encounters during January of fiscal year 2023," and "January's total surpassed the preceding January apprehensions for the past 12 years combined (Total: 344)." Exhibit E.

7. However, these statistics are not specific to New Hampshire. Instead, they cover the entire Swanton Sector: (i) the entire State of Vermont, (ii) Clinton, Essex, Franklin, St. Lawrence and Herkimer counties in New York, and (iii) Coos, Grafton, and Carroll counties in New Hampshire.² And the New Hampshire/Canadian border only constitutes about 58 of the 295 miles of Canadian border in the Swanton Sector. Further, these statistics referenced by CBP do not seem to be limited to cross-border apprehensions but rather seem to cover apprehensions in the entire Sector and potentially deep into the interior of New England. This would include, if they actually occurred, apprehensions deep in the interior of New Hampshire in Grafton and Carroll Counties—far from the border.

8. Notwithstanding this ambiguity, the Commissioner of the New Hampshire Department of Safety Robert Quinn recently testified before the U.S. House of Representatives Committee on Homeland Security Subcommittee on Oversight, Investigations, and Accountability on March 28, 2023 that "New Hampshire has seen an increase in crossings." Exhibit F. As reported in the *Boston Globe*, Commissioner Quinn also appeared on Fox News on March 27, 2023 and told viewers that New Hampshire had seen a "slight increase" in illegal crossings. Exhibit G.

9. Commissioner Quinn's statements are related to New Hampshire Governor

² <https://www.cbp.gov/border-security/along-us-borders/border-patrol-sectors/swanton-sector-vermont>

Christopher Sununu’s earlier letter to Secretary of Homeland Security Alejandro Mayorkas, which also noted “the recent rise in [CBP] agents encountering and apprehending individuals illegally crossing the international border in this [Swanton] Sector.” Exhibit H.

10. These state officials have also used CBP’s public statements to advocate for a \$1,435,384 budgetary proposal for the fiscal year ending June 30, 2023 that would create and fund a Northern Border Alliance Program. Under this proposed Program, the Department of Safety would “make grants available to other state, county, and local law enforcement agencies, and also provide funding for the division of state police to reduce the instance of crimes and illicit activity in close proximity to the Canadian border.” Exhibit I.

11. After Commissioner Quinn’s public statements, the *Boston Globe* inquired about the data supporting Commissioner’s statement that there has been a “slight increase” in illegal crossings at the New Hampshire/Canada border. Exhibit G. The spokesperson for the Department of Safety indicated to the *Boston Globe* that a CBP supervisor provided this information—presumably orally³—to the New Hampshire Information and Analysis Center, indicating that there has been a slight increase in the number of illegal crossings into the United States from Canada along New Hampshire’s border. This was the sole basis of Commissioner Quinn’s “slight increase” statement. Exhibit F. Further, according to *WMUR*, no crossing was “recorded in New Hampshire” between October 2022 and January 2023. Exhibit J. The *WMUR* article also indicated that “[t]here were 94 people from 11 different countries taken into custody across Vermont and New York.” *Id.* Presumably, CBP provided this data, which was state specific, to *WMUR*. See also Amanda Gokee, “N.H. ACLU Files Lawsuit Seeking Border Crossing Data,” *Boston Globe* (May 22, 2023)

³ The ACLU-NH asked the Department of Safety for documentation supporting this “slight increase” comment. The Department stated on April 10, 2023 that “Commissioner Quinn’s ‘slight increase’ comment was not based on any written/electronic document and was the product of only verbal communication from CBP.”

(“WMUR reported in March that there were no encounters or apprehensions in New Hampshire between October and January. *Ryan Brissette, a Customs and Border Protection spokesperson, told the Globe in March [2023] the agency had recorded zero or minimal encounters in the state of New Hampshire in that time frame*, but said he needed to verify this was not due to an error in the reporting system. Brissette said in April he had not been able to verify that information and did not respond to a request for comment for this story.”) (emphasis added).

12. To have access to the exact number of border crossings between Canada and New Hampshire, the ACLU-NH submitted a right-to-know request under RSA 91-A to the New Hampshire Department of Safety and under the New Hampshire Constitution to the New Hampshire Governor’s Office on March 16, 2023. Exhibit K; Exhibit L.

13. On March 23, 2023, the New Hampshire Governor’s Office indicated that the office was “not in possession of any governmental records that would be responsive to [the ACLU-NH’s] request.” Exhibit M.

14. On March 22, 2023, the New Hampshire Department of Safety responded that “the State Police was unable to locate any records responsive to [ACLU-NH’s] requests pertaining to CBP apprehensions in the Swanton Sector during the months of October through December 2022.” Exhibit N.

15. On April 10, 2023, the New Hampshire Department of Safety further shared to the *Boston Globe* that “Commission Quinn’s statement [concerning the ‘slight increase’ in the New Hampshire border crossing] was based solely upon information from a supervisor of the United States Border Patrol in the Swanton Sector, provided to the New Hampshire Information and Analysis Center . . .” Exhibit O (emphasis added).

16. The Department suggested that the *Globe* would “have to contact U.S. Border Patrol

through their CBP spokesperson for an explanation, and to clarify any of [ACLU-NH's] questions on statistics" Exhibit O.

Plaintiff's FOIA Request

17. On April 5, 2023, ACLU-NH submitted the Request to CBP. Exhibit A.
18. The Request sought the following data:
 - October 1, 2022 to December 31, 2022
 - o Records sufficient to identify how many of the apprehensions from October 1, 2022 to December 31, 2022 occurred in New Hampshire—including in the New Hampshire counties of the Swanton sector (Coos, Grafton, and Carroll Counties)—relative to the total number of apprehensions by the sector during that three-month time period.
 - o Records sufficient to identify (1) how many of the 367 January 2023 apprehensions occurred in New Hampshire, (2) the municipality where the apprehensions occurred, and (3) the nationality of the individuals apprehended.
 - January 2023
 - o Records sufficient to identify how many of the 367 January 2023 apprehensions occurred in New Hampshire, including in the New Hampshire counties of the Swanton sector (Coos, Grafton, and Carroll Counties).
 - o Of these January 2023 apprehensions in New Hampshire identified in Request No. 3, records sufficient to identify (i) the municipality where the apprehension occurred, and (ii) the nationality of the person apprehended.

Agency's Initial Response

19. On April 18, 2023, CBP categorically denied the Request. Exhibit B.
20. CBP explained that "CBP does not release enforcement statistics and/or enforcement data at less than a Sector of Field Office level." *Id.*
21. However, CBP failed to cite any statutory exemption for this position. *Id.*
22. CBP also noted that CBP "may have applied FOIR Exemption 6 to protect PII of DHS employees, including names and contact information." *Id.*
23. However, CBP failed to explain how Exemption 6 is pertinent to the Request. The Request did not seek any names or contact information. *Cf. Exhibit A*.

Plaintiff's Administrative Appeal

24. On April 18, 2023, ACLU-NH administratively appealed CBP's categorical denial. Exhibit C.

25. ACLU-NH raised two arguments. First, ACLU-NH asserted that CBP failed to carry the burden of establishing the applicability of proper exemptions. *See Stalcup v. CIA*, 768 F.3d 65, 70 (1st Cir. 2014) (“[t]he government carries the burden of establishing the applicability of the exemption”). Second, ACLU-NH argued that CBP failed to release any data that was not covered by Exemption 6. Nor did CBP explain how the Request is subject to Exemption 6, especially where CBP has released similar data publicly for its own benefit (as reflected in the press release cited in the original request, and as possibly reflected in the *WMUR* story).

Agency's Final Determination

26. CBP affirmed its initial determination in its June 2, 2023 final determination. Exhibit B.

27. CBP categorically withheld the responsive record in full under Exemptions (b)(6), (b)(6), (b)(7)(C), (b)(7)(E), and (b)(7)(F). Exhibit B.

28. First, CBP withheld the requested information to protect law enforcement techniques and procedures under Exemption (b)(7)(E) and to protect the safety of CBP personnel and other individuals under Exemption (b)(7)(F). From CBP's view, disclosure of the requested information “would allow someone to construct a mosaic of CBP law enforcement techniques, procedure, and guidelines practiced in the State of New Hampshire and endanger CBP personnel and other individuals, including innocent bystanders” Exhibit B at 3. CBP's main concern was that “individuals could compare the number and extent of law enforcement activities at one station and compare it to surrounding stations to learn which areas of the border the agency deploys

its resources and targets its focus. *Id.* at 5. As a result, CBP believed that “non-citizens without legal status to enter, or remain, in the United States might avoid certain areas along the border or target other areas along the border to circumvent adherence to immigration law requirements.” *Id.* CBP further noted that “the location of each apprehension would disclose techniques and procedures for law enforcement investigations or prosecutions.” *Id.*

29. This reasoning is baseless.⁴ Nothing about ACLU-NH’s Request implicates law enforcement techniques or safety. The Request simply seeks the number of apprehensions in New Hampshire, and the nationality and municipality of the apprehension (here, the municipality will help ACLU-NH assess how far the apprehension occurred from the New Hampshire/Canada border). The request does not seek anything more. The Request does not seek how the apprehension was conducted, any tactics used, the names of the CBP agents involved, or the numbers of agents placed at any Swanton Sector station that could cause staffing levels to be extrapolated. The Request does not even seek whether the apprehension occurred at a port of entry, occurred at a specific Swanton Sector station, was the subject of a roving patrol, or was the subject of a border checkpoint. *See Families for Freedom v. United States Customs & Border Prot.*, 797 F. Supp. 2d 375, 391 (S.D.N.Y. 2011) (“I find that defendants must release the portions of the six Buffalo Sector Daily Reports that indicate the total number of all arrests made by the Rochester Station for each year, and the total number of transportation raid arrests within the Buffalo Sector. Such statistics are neither ‘techniques or procedures’ nor ‘guidelines,’ such that they could be properly exempt under 7(E).”) (emphasis added); *ACLU v. DHS*, 243 F. Supp. 3d 393, 403-05 (S.D.N.Y. 2017) (finding that questions asked of alien juveniles suspected of smuggling did not

⁴ Plaintiff’s responses in this Amended Complaint to CBP’s position are not exhaustive. The burden to satisfy a FOIA exemption is on CBP. Plaintiff will fully respond accordingly after CBP files a motion for summary judgment consistent with its burden to justify why this information should be kept secret from the public.

constitute “a specialized, calculated technique”); *ACLU of Wash. v. DOJ*, No. 09-0642, 2012 U.S. Dist. LEXIS 137204, at *17-19 (W.D. Wash. Sept. 21, 2012) (ordering release of characteristics of individuals suspected of illegal activity as well as internal agency telephone number associated with Terrorist Watch List because such information does not constitute law enforcement techniques or procedures, regardless of harm associated with releasing such information).

30. Even if it was true that “[r]ecords showing the number of apprehensions in a state *broken down by the municipality where the apprehension occurred*” might somehow reveal techniques, *see id.* at 4 (emphasis added)—and it is not—here CBP’s position is so extreme that it is refusing to even produce statewide apprehension data (i) that excludes the municipality of apprehension and (ii) that would cover 58 miles of the Canadian border. Would disclosure of this statewide information reveal techniques or implicate agent safety? No. Would disclosure of this statewide information help the public understand whether there is a justification for the proposed Northern Border Alliance Program? Yes.

31. In any event, it seems that CBP’s concern about producing New Hampshire apprehension data by municipality is borne of a concern that such disclosure would allow undocumented noncitizens to avoid the apprehended area. But this rationale is belied by the fact that the Swanton Sector of CBP routinely discloses and publishes the municipality where apprehensions occur through press releases and social media.⁵ Further, the Swanton Sector

⁵ CBP, *Buffalo and Swanton Sector Border Patrol Prevents a Human Smuggling Attempt* (Nov. 15, 2022) (explaining that CBP agents stopped a vehicle and arrested alleged human trafficking smugglers “on State Route 11 near Philadelphia, NY”), available at <https://www.cbp.gov/newsroom/local-media-release/buffalo-and-swanton-sector-border-patrol-prevents-human-smuggling>; Swanton Sector Chief Patrol Agent Robert Garcia, *Twitter* (June 6, 2023) (“15 subjects apprehended in Champlain, NY” who were among “illegal border crossers from 15 different countries”), available at <https://twitter.com/USBPChiefSWB/status/1666026464679018498?s=20>; *id.* (Apr. 25, 2023) (“the two [of undocumented noncitizens] were lost in the woods near Ft. Covington, NY, after illegally crossing into the U.S. around 2 a.m.”), available at <https://twitter.com/USBPChiefSWB/status/1650829763651485698?s=20>; *id.* (Mar. 28, 2023) (“After picking up 4

previously disclosed the exact number of apprehensions divided by border patrol stations and the apprehension locations.⁶ The Swanton Sector has also published apprehension numbers (and corresponding nationalities) for interior border patrol checkpoints conducted in New Hampshire.⁷ See *Rugiero v. U.S. Dep't of Just.*, 257 F.3d 534, 551 (6th Cir. 2001) (noting that Exemption (b)(7)(E) “only protects techniques and procedures not already well-known to the public”). If CBP’s justification for secrecy had any merit here (and it does not), then CBP would elect not to

Guatemalan citizens who illegally entered the U.S., a NJ man was arrested by #BorderPatrol Agents near East Berkshire, VT.”), available at <https://twitter.com/USBPChiefSWB/status/1640657566916128768?s=20>; *id.* (Mar. 20, 2023) (“Following his illegal entry into the U.S. near Mooers Forks, NY, this citizen of Bulgaria decided to make another unlawful entry into a privately owned cabin.”), available at <https://twitter.com/USBPChiefSWB/status/1637828511246188548?s=20>; *id.* (Mar. 10, 2023) (“On Tuesday morning, [K-9] assisted in locating 7 citizens of Mexico who illegally entered the U.S. from Canada near Mooers, New York.”), available at <https://twitter.com/USBPChiefSWB/status/1634148124829556736?s=20>; US Border Patrol Swanton Sector, *Facebook* (June 6, 2023) (“Friday-Sunday, Swanton Sector US Border Patrol Agents were busy securing our 295-mile stretch of border with Canada, tallying 111 arrests of illegal border crossers from 15 different countries, including: Colombia, Congo, Dominican Republic, England, Guatemala, India, Mexico, North Korea, Romania, Senegal, South Korea, Tajikistan, Turkey, Uzbekistan, Venezuela[.] PHOTOS: 15 subjects apprehended in Champlain, NY.”), available at [https://www.facebook.com/USBPSwantonSector/posts/pfbid02S64TTJYV55Ewn3VX5uxZ9fiNYEcfuU1hkHeSP7mL2CQYZ11juyFMhQPXfGJSLgZDI?_cft_\[0\]=AZXGjc_hx0HEOnzPt6US5gO9OcqH94fA5VzWimfRHuvGVYzBFOxWA87dWi5HLLAEnmuT1341iWbJW6icwLKAjVw5v1nnaKDRKisfJ52j685xxia2VJsduV1k725zwwQAwPfZWciSyR1icWN9hKB5ad9PG6hO5TQVh5J9_Crar0hfGpt7XXsHhvp37cmoFkNnxIdziAAQojXuvOTyboro5qQb&_tn_=-UK-R\]-R](https://www.facebook.com/USBPSwantonSector/posts/pfbid02S64TTJYV55Ewn3VX5uxZ9fiNYEcfuU1hkHeSP7mL2CQYZ11juyFMhQPXfGJSLgZDI?_cft_[0]=AZXGjc_hx0HEOnzPt6US5gO9OcqH94fA5VzWimfRHuvGVYzBFOxWA87dWi5HLLAEnmuT1341iWbJW6icwLKAjVw5v1nnaKDRKisfJ52j685xxia2VJsduV1k725zwwQAwPfZWciSyR1icWN9hKB5ad9PG6hO5TQVh5J9_Crar0hfGpt7XXsHhvp37cmoFkNnxIdziAAQojXuvOTyboro5qQb&_tn_=-UK-R]-R).

⁶ CBP, *Busy Weekend for Swanton Border Patrol Agents, Apprehended 20 Individuals in 4 Incidents* (Apr. 2, 2018) (identifying “nine individuals” apprehended by the Champlain Border Patrol Station, “eight individuals” apprehended by the Newport Border Patrol Station, one individual apprehended by the Richford Border Patrol Station, and two individuals apprehended by the Becher Falls Border Patrol Station), available at <https://www.cbp.gov/newsroom/local-media-release/busy-weekend-swanton-border-patrol-agents-apprehended-20-individuals-4>.

⁷ CBP, *Swanton Sector Border Patrol Agents Arrest 25 Aliens, Seize Drugs, Paraphernalia during Checkpoint Operation* (Aug. 28, 2017) (“Lincoln, N.H. – U.S. Border Patrol agents based out of the Beecher Falls Border Patrol Station, had a busy weekend August 25 – 27, including arresting 25 illegal aliens and seizing various narcotics and drug paraphernalia. The sector established the checkpoint with the support of the Woodstock Police Department, on Interstate 93 in New Hampshire During the 3-day operation, Swanton Sector agents encountered and arrested 25 people who did not possess valid immigration status, 14 of whom were visa overstays from Colombia. Agents also arrested other illegal aliens from Colombia, Brazil, Ecuador and Mexico.”), available at <https://www.cbp.gov/newsroom/local-media-release/swanton-sector-border-patrol-agents-arrest-25-aliens-seize-drugs>; CBP, *Swanton Sector Border Patrol Agents Arrest 8, Seize Drugs, Paraphernalia during Checkpoint Operation* (Oct. 2, 2017) (“Woodstock, N.H. -- U.S. Border Patrol agents based out of the Beecher Falls Border Patrol Station, had a busy couple of days from September 26 – 28, including arresting eight illegal aliens and seizing various narcotics and drug paraphernalia. The sector established the checkpoint on Interstate 93 in New Hampshire During the 3-day operation, Swanton Sector agents encountered and arrested eight people who did not possess valid immigration status, two of whom were visa overstays. Agents arrested illegal aliens from Bulgaria, Ecuador, El Salvador and Guatemala.”), available at <https://www.cbp.gov/newsroom/local-media-release/swanton-sector-border-patrol-agents-arrest-8-seize-drugs-paraphernalia>.

publish apprehension, location, and nationality information on other occasions. But it regularly does publish this information for self-serving purposes, all while resisting disclosure here of identical information when the public seeks to learn how CBP is spending taxpayer dollars in New Hampshire.

32. Second, CBP withheld the requested information under Exemptions (b)(6) and (b)(7)(C) to protect the privacy of apprehended individuals. Exhibit B at 8-10.

33. This position is unavailing. The requested information did not cover the examples CBP relies on for the exemptions. CBP indicated that “names, addresses, and other identifying information of third parties and CBP personnel that appear in the records.” Exhibit B at 7. However, none of this information is responsive to the Request, and ACLU-NH is not seeking this information. The Request only covered the number of apprehensions that occurred in New Hampshire, the municipality where the apprehensions occurred, and the nationality of the apprehended individuals. As noted above, CBP routinely discloses this information publicly.

CLAIMS FOR RELIEF

COUNT I **VIOLATION OF FOIA**

34. All prior paragraphs are incorporated.

35. CBP’s determination to withhold the requested information violates FOIA, 5 U.S.C. § 552.

RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests that this Court:

- A. Assume jurisdiction over this matter;
- B. Declare that Defendant’s withholding of the requested information violates FOIA;
- C. Issue an injunction ordering Defendant to immediately disclose the requested

information and to make copies immediately available to Plaintiff without charge for any search or duplication fees;

D. Award reasonable costs and attorney's fees incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and

E. Grant such further relief as the Court deems just and proper.

Respectfully submitted,

By and through his attorneys affiliated with the
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