

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

AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION,

*Plaintiff,*

v.

UNITED STATES IMMIGRATION AND  
CUSTOMS ENFORCEMENT, UNITED  
STATES DEPARTMENT OF HOMELAND  
SECURITY, UNITED STATES CUSTOMS  
AND BORDER PROTECTION, UNITED  
STATES DEPARTMENT OF JUSTICE

*Defendants.*

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

Case No. 24-cv-07444

**INTRODUCTION**

1. This action under the Freedom of Information Act (“FOIA”) seeks the timely release of agency records concerning the infrastructure and capacity of Defendants United States Immigration and Customs Enforcement (“ICE”), United States Department of Homeland Security (“DHS”), United States Department of Justice (“DOJ”), and United States Customs and Border Protection (“CBP”) to implement mass detention and deportation nationwide.

2. The records sought are a matter of great public concern regarding the federal government’s infrastructure for immigration detention and deportation. The government spends billions of taxpayer dollars each year to fund this infrastructure, which is consistently a topic of significant public debate. However, much of the specific information about how this detention and deportation apparatus operates is unavailable to the public. The information Plaintiff seeks through

these requests will help the public to understand the extent of this infrastructure, and how it might be used to implement a mass detention and deportation policy.

3. Plaintiff, a non-profit, non-partisan civil liberties advocacy organization, submitted FOIA requests (the “Requests”) to the Defendants on August 7, 2024, seeking the release of records relating to the implementation of these operations. To date, none of the Defendants have released any responsive records, notwithstanding the FOIA’s requirement that agencies respond to requests within, at most, 30 working days.

4. Plaintiff now asks the Court for injunctive and other appropriate relief requiring Defendants to conduct a thorough search for all responsive records and to immediately process and release any responsive records. Plaintiff also seeks an order enjoining Defendants from withholding non-exempt, responsive records.

### **JURISDICTION AND VENUE**

5. The Court has subject-matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). The Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. §§ 701–06.

6. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B). Plaintiff resides and has its principal place of business in this district.

### **PARTIES**

7. Plaintiff American Civil Liberties Union Foundation (“ACLU”) is a nationwide, non-profit, nonpartisan 26 U.S.C. § 501(c)(3) organization, with its principal place of business in New York City. The ACLU’s mission is to maintain and advance civil rights and civil liberties and to ensure that the U.S. government acts in compliance with the Constitution and laws of the United States. The ACLU is also committed to principles of transparency and accountability in

government, and seeks to ensure that the American public is informed about the conduct of its government in matters that affect civil liberties and human rights. Obtaining information about governmental activity, analyzing that information, and widely publishing and disseminating it to the press and the public is a critical and substantial component of the ACLU's work and one of its primary activities.

8. Defendant ICE is an agency of the U.S. government within the meaning of 5 U.S.C. § 551(1), 5 U.S.C. § 552(f), and 5 U.S.C. § 702. ICE has possession, custody, and control of the records that the ACLU seeks.

9. Defendant DHS is an agency of the U.S. government within the meaning of 5 U.S.C. §§ 551(1), 552(f), and 702. DHS has possession, custody, and control of the records that the ACLU seeks, including through its component office ICE.

10. Defendant CBP is an agency of the U.S. government within the meaning of 5 U.S.C. § 551(1), 5 U.S.C. § 552(f), and 5 U.S.C. § 702. CBP has possession, custody, and control of the records that the ACLU seeks.

11. Defendant DOJ is an agency of the U.S. government within the meaning of 5 U.S.C. § 551(1), 5 U.S.C. § 552(f), and 5 U.S.C. § 702. DOJ has possession, custody, and control of the records that the ACLU seeks.

### **FACTUAL BACKGROUND**

12. On August 7, 2024, the ACLU submitted FOIA Requests to Defendants, seeking:

- Records from ICE sufficient to show all currently operational or contracted ICE detention facilities, along with their maximum bed space available to ICE. (**Exhibit A**). Specifically, this request seeks the following records:

- “DOCUMENTS sufficient to show all currently operational or contracted IMMIGRATION DETENTION FACILITIES, along with their MAXIMUM BED SPACE AVAILABLE TO ICE.” *Id.*
- Records from ICE related to detention of noncitizens at commercial lodging facilities. (**Exhibit B**). Specifically, this request seeks the following records, for the period from January 1, 2023 through the present:
  - “ICE contracts in effect during any portion of the designated time period for hotels, motels, or other commercial lodging providers to detain noncitizens.” *Id.*
  - “Memoranda, guidance, or any other documents regarding ICE’s policies or protocols for detaining noncitizens (including single adults, noncitizen children and family units) in hotels, motels, or other commercial lodging facilities.” *Id.*
  - “Documents sufficient to show the total number of beds currently—i.e., as of the date of the agency’s last response to this request—available at hotels, motels, or other commercial lodging facilities to detain noncitizens.” *Id.*
- Records from DHS explaining its policies and its components’ policies related to detailing personnel from one component to another. (**Exhibit C**). Specifically, this request seeks the following records, for the period from January 1, 2023 through the present:
  - “Memoranda, policies, guidance, or any other document from DHS, or any component or subcomponent thereof (including without limitation

FEMA and HSI), regarding policies for detailing an employee or contractor from DHS, any component, or any subcomponent to a different component or subcomponent.” (*Id.*)

- “Memoranda, policies, guidance, or any other document from any DHS component or subcomponent (including without limitation CBP, ICE, and USCIS) regarding policies for receiving an employee or contractor detailed from DHS or a component or subcomponent thereof.” (*Id.*)
- Records from CBP related to its ground transportation of noncitizens between detention centers and to airports for removal. (**Exhibit D**). Specifically, this request seeks the following records, for the period from January 1, 2023 through the present:
  - “All CBP contracts for ground transportation to transfer noncitizens to airports for removal flights.” *Id.*
  - “Documents sufficient to show the capacity and location of CBP-owned or CBP-contracted buses available to assist with transporting noncitizens to airports for removal, as well as the total number of buses.” *Id.*
  - “Memoranda, guidance, or any other documents regarding CBP’s policies and procedures for transporting noncitizens, including unaccompanied children, to removal flights.” *Id.*
- Legal memoranda from DHS and DOJ discussing the meaning of the Mass Influx Provision, 8 U.S.C. § 1103(a)(10). (**Exhibit E**). Specifically, this request

seeks the following records, for the period of January 1, 1995 through the present:

- “Any legal memoranda from the federal government, including without limitation, the Department of Justice (‘DOJ’), Department of Homeland Security (‘DHS’), their components, and any preexisting agencies, discussing the meaning of the Mass Influx Provision, 8 U.S.C. § 1103(a)(10).” *Id.*

13. Plaintiff sought a waiver of search, review, and reproduction fees on the ground that disclosure of the requested records is “in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 6 C.F.R. § 5.11(k); 28 C.F.R. § 16.10(k).

14. Plaintiff also sought a waiver of search and review fees on the grounds that the ACLU qualifies as a “representative of the news media” and that the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 6 C.F.R. § 5.11(d)(1); 28 C.F.R. §§ 16.10(c)(1)(i), (d)(1).

15. In addition, Plaintiff sought expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E), 6 C.F.R. § 5.5(e), and 28 C.F.R. § 16.5(e) because there is a “compelling need” for these records. As an organization that routinely disseminates information to the public and advocates for government transparency and accountability, especially as to potential government abuses of civil rights and civil liberties, Plaintiff has an urgent need to obtain these records so it can inform the public about the federal government’s activities with respect to its treatment of noncitizens.

### **Defendants' Responses to the FOIA Requests**

#### United States Department of Homeland Security

16. DHS responded to the FOIA request attached as Exhibit C on August 12, 2024, by email. This response constructively denied Plaintiff's request for expedited processing by not responding to it, conditionally granted Plaintiff's request for a fee waiver, and invoked a 10-business-day extension for DHS's response under 5 U.S.C. § 552(a)(6)(B). (**Exhibit F**).

17. DHS responded to the FOIA request attached as Exhibit E on August 8, 2024, by email. This response constructively denied Plaintiff's request for expedited processing by not responding to it, conditionally granted Plaintiff's request for a fee waiver, and invoked a 10-business-day extension for DHS's response under 5 U.S.C. § 552(a)(6)(B). (**Exhibit G**).

18. DHS has produced no records or any other response. To date, DHS has neither released responsive records nor explained its basis for withholding them.

19. Plaintiff has exhausted all administrative remedies because DHS has failed to comply with the time limit of 30 working days to respond to the Request under the FOIA.

#### United States Immigration and Customs Enforcement

20. ICE responded to the FOIA request attached as Exhibit A on August 13, 2024, by email. This response denied Plaintiff's request for expedited processing, granted Plaintiff's request for a fee waiver, and invoked a 10-business-day extension for ICE's response under 5 U.S.C. § 552(a)(6)(B). (**Exhibit H**).

21. ICE responded to the FOIA request attached as Exhibit B on August 14, 2024, by email. This response denied Plaintiff's request for expedited processing, granted Plaintiff's request for a fee waiver, and invoked a 10-business-day extension for ICE's response under 5 U.S.C. § 552(a)(6)(B). (**Exhibit I**).

22. ICE has produced no records or any other response. To date, ICE has neither released responsive records nor explained its basis for withholding them.

23. Plaintiff has exhausted all administrative remedies because ICE has failed to comply with the time limit of 30 working days to respond to the Request under the FOIA.

United States Customs and Border Protection

24. CBP has produced no records or any other response. To date, CBP has neither released responsive records nor explained its basis for withholding them.

25. Plaintiff has exhausted all administrative remedies because CBP has failed to comply with the time limit of 20 working days to respond to the Request under the FOIA.

United States Department of Justice

26. DOJ responded to the FOIA request attached as Exhibit E on August 28, 2024, by email. This response denied Plaintiff's request for expedited processing, did not reach a determination on Plaintiff's request for a fee waiver, and stated that DOJ "likely will be unable to comply with the twenty-day statutory deadline" to respond. (**Exhibit J**).

27. DOJ has produced no records or any other response. To date, DOJ has neither released responsive records nor explained its basis for withholding them.

28. Plaintiff has exhausted all administrative remedies because DOJ has failed to comply with the time limit of 30 working days to respond to the Request under the FOIA.

**Statutory Requirements**

29. "The Freedom of Information Act was enacted to facilitate public access to government documents." *U.S. Dep't of State v. Ray*, 502 U.S. 164, 173 (1991) (citing *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 151 (1989)). Its basic purpose is "to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and

hold the governors accountable to the governed.” *See NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978).

30. With that purpose in mind, the FOIA statute requires federal agencies like Defendants to disclose records within 20 working days in response to FOIA Requests. 5 U.S.C. § 552(a)(6)(A)(i).

31. If there are “unusual circumstances,” an agency may extend the time limit by no more than 10 working days. *Id.* § 552(a)(6)(B)(i). To invoke that extension, the agency must provide “written notice . . . setting forth the unusual circumstances for such extension and the date on which a determination is expected to be dispatched.” *Id.*

32. An agency can extend its processing time beyond the additional 10 days only if it provides written notice and “an opportunity to limit the scope of the request so that it may be processed within that time limit or an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request.” *Id.* § 552(a)(6)(B)(ii).

33. More than 20 working days have passed since Plaintiff filed the Requests, and Defendant CBP has not provided the written notice required for an extension. More than 30 working days have passed since Defendants DHS, ICE, and DOJ invoked the 10-day extension, but those Defendants still have not provided any records. The statutory time period has elapsed for all Defendants.

34. A district court has jurisdiction to enjoin the agency from withholding records and to order production of records that are subject to disclosure. 5 U.S.C. § 552(a)(4)(B).

35. FOIA also allows for requesters to ask for expedited processing of their request for records if they can demonstrate a compelling need. 5 U.S.C. § 552(a)(6)(E)(i). The term “compelling need” applies to requesters who are primarily engaged in disseminating information

and possess the urgency to inform the public concerning actual or alleged Federal government activity. 5 U.S.C. § 552(a)(6)(E)(v)(II).

## **CLAIMS FOR RELIEF**

### **CLAIM I** **(Against All Defendants)**

#### **5 U.S.C. § 552(a)(6)(A)** **Failure to Timely Respond to the Requests**

36. Plaintiff incorporates by reference the above paragraphs as if fully set forth herein.

37. Plaintiff properly submitted the FOIA Requests on August 7, 2024 requesting records within the possession, custody, and control of Defendants.

38. Defendants are obligated under 5 U.S.C. § 552(a)(3) to produce records responsive to Plaintiff's FOIA Requests.

39. To date, Defendants have not provided a determination on the FOIA Requests for disclosure of the requested records to Plaintiff.

40. No basis exists for Defendants' failure to provide a response to Plaintiff's Requests.

41. Defendants' failure to provide a determination within the statutory period is a violation of 5 U.S.C. § 552(a)(6)(A) and the agencies' corresponding regulations. By failing to disclose and release the requested records, Defendants have violated Plaintiff's rights to Defendants' records under 5 U.S.C. § 552.

### **CLAIM II** **(Against All Defendants)**

#### **5 U.S.C. § 552(a)(3)(A)-(D)** **Failure to Make a Reasonable Effort to Search for and Promptly Release Records**

42. Plaintiff incorporates by reference the above paragraphs as if fully set forth herein.

43. Defendants are agencies subject to and within the meaning of FOIA, and they must therefore make reasonable efforts to search for requested records.

44. Upon information and belief, Defendants have in their possession responsive documents, including those specifically identified in Plaintiffs' requests, that they have failed to produce.

45. The failure of Defendants to make a reasonable effort to search for records responsive to the Requests violates the FOIA, 5 U.S.C. § 552(a)(3), and Defendants' corresponding regulations.

**CLAIM III**  
**(Against All Defendants)**

**5 U.S.C. § 552(a)(3)(A)-(D), (a)(8)(A), (b)**  
**Failure to Promptly Release Non-Exempt Records**

46. Plaintiff incorporates by reference the above paragraphs as if fully set forth herein.

47. Defendants are agencies subject to and within the meaning of FOIA, and they must therefore promptly release all non-exempt records.

48. Upon information and belief, Defendants have in their possession responsive, non-exempt documents, including those specifically identified in Plaintiffs' requests, that they have failed to produce.

49. Defendants' withholding of non-exempt agency records subject to the Request violates the FOIA, 5 U.S.C. § 552, and Defendants' corresponding regulations.

**CLAIM IV**  
**(Against All Defendants)**

**5 U.S.C. § 552(a)(6)(E)**  
**Failure to Process Plaintiff's Requests Expeditiously and as Soon as Practicable**

50. Plaintiff incorporates by reference the above paragraphs as if fully set forth herein.

51. Defendants are agencies subject to and within the meaning of FOIA, and they must therefore release all responsive, non-exempt records in an expedited timeframe when a basis exists to do so.

52. Plaintiff is primarily engaged in disseminating information to the public. Plaintiff has the ability and intention to widely disseminate the requested information through a variety of sources, including reports, newsletters, news briefings, right-to-know handbooks, and other materials, to the public at no cost. Indeed, obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public are critical and substantial components of the ACLU's work and are among its primary activities.

53. The requested records pertain to the federal government's immigration detention and deportation network and the ways in which DHS spends its significant detention budget. This is a matter of widespread media and public interest, and the requested records will inform the public of pressing and urgent federal governmental activities, actual or alleged.

54. The failure of Defendants to process Plaintiff's Requests expeditiously and as soon as practicable violates the FOIA, 5 U.S.C. § 552(a)(6)(E), and Defendants' corresponding regulations.

### **REQUESTED RELIEF**

WHEREFORE, Plaintiff respectfully request that this Court:

- a) Declare that Defendants' failure to respond and produce the requested records is unlawful;
- b) Order Defendants to conduct a full, adequate, and expedited search for all responsive records;

- c) Order Defendants to immediately and expeditiously process and release any responsive records;
- d) Declare that the requested Records are not exempt from disclosure under the Freedom of Information Act;
- e) Enjoin Defendants from withholding non-exempt, responsive records;
- f) Award Plaintiff its costs and reasonable attorneys' fees incurred in this action; and
- g) Grant such other relief as the Court deems just and proper.

Respectfully submitted this 2nd day of October, 2024,

/s/ Linnea Cipriano  
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