

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

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IMMIGRANT DEFENSE PROJECT,  
HISPANIC INTEREST  
COALITION OF ALABAMA, and the  
CENTER FOR CONSTITUTIONAL  
RIGHTS,

*Plaintiffs,*

Civil Action No.

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

v.

UNITED STATES IMMIGRATION  
AND CUSTOMS ENFORCEMENT and  
UNITED STATES DEPARTMENT OF  
HOMELAND SECURITY,

*Defendants.*

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**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, *et seq.*, for declaratory, injunctive, and other appropriate relief to compel the release of agency records improperly withheld from Plaintiffs, Immigrant Defense Project (“IDP”), Center for Constitutional Rights (“CCR”), and Hispanic Interest Coalition of Alabama (“HICA”) (collectively “Plaintiffs”), by Defendants, U.S. Department of Homeland Security (“DHS”) and several offices and components of DHS, including but not limited to: U.S. Immigration and Customs Enforcement (“ICE”); Office of Civil Rights and Civil Liberties (“CRCL”); Federal Law Enforcement Training Center (“FLETC”); National Records Center; Office of Public

Affairs; Office of Detention Policy and Planning; Office of Detention Oversight; and Office of State, Local, and Tribal Coordination.

2. Plaintiffs submitted a FOIA request to Defendants on October 17, 2013, seeking records related to a time-sensitive public policy matter: home-based immigration enforcement operations and their impact on local communities. *See* October 17, 2013 FOIA Request Letter from IDP, CCR, and HICA (“Plaintiffs’ Request”), attached as Exhibit 1. Plaintiffs sought records including policies, procedures, and statistical information relating to home-based enforcement from January 20, 2009 to the present.

3. Home enforcement operations are ICE enforcement actions to arrest individuals, typically for civil immigration operations, in, at, or around homes or residences, often with children present. The tactic of arresting individuals for civil immigration violations in residential homes, typically without judicial warrants, was the subject of widespread controversy during the Bush Administration. ICE has continued to use the tactic of conducting home enforcement operations during the Obama Administration, and public protest and criticism of the tactic has continued.

4. Targets and witnesses of home raids have reported serious constitutional and human rights violations during home enforcement operations. These violations range from unlawful entry into homes, to physical damage of property during raids, to use of racial slurs, to threatening to arrest U.S. citizen children if they do not disclose the location of their parents. Advocates and civil rights groups have documented and litigated violations arising from home enforcement operations across the country. Yet despite communications with CRCL and other components of DHS and ICE about such incidents, advocates have been kept in the dark as to any past or ongoing investigations into related misconduct.

5. Little information is known to the public about ICE home enforcement operations under the Obama and Bush Administrations. ICE has released minimal, if any, information about its current guidelines and practices for conducting home enforcement operations, reports of misconduct, or the data and statistics collected by the agency and relied upon for its decision-making.

6. Plaintiffs' Request sought a fee waiver and expedited processing. Plaintiffs' need for information regarding home-based enforcement operations is urgent and time-sensitive due to widespread public interest, media attention, and political demonstrations regarding such operations and potential civil rights violations. The public has an urgent interest in understanding how home-based enforcement operations are planned and executed, in order to understand whether policies are in effect to protect vital constitutional rights and privacy interests during warrantless enforcement actions that routinely involve entry into homes, as well as how and to what extent misconduct is investigated. The public also has an urgent interest in obtaining this information in order to meaningfully participate in current appropriations debates regarding funding for future ICE enforcement actions.

7. Defendants have failed to substantively respond to Plaintiffs' Request beyond the production of 26 pages of training documents from a single office within DHS, despite clear indications identified in the Request that a substantial number of additional documents exist.

8. To vindicate the public's right to information about immigration enforcement practices and policies, Plaintiffs seek declaratory, injunctive, and other appropriate relief to compel Defendants to immediately process Plaintiffs' Request and release records that have been unlawfully withheld.

### **JURISDICTION AND VENUE**

9. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. §§ 552(a)(4)(B) and 552(a)(6)(C)(i). This Court also has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1346(a)(2).

10. Venue lies in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1391(e) and 1402(a) as IDP and CCR reside in this district.

### **PARTIES**

11. Plaintiff IDP is a non-profit organization whose mission is to promote fundamental fairness for immigrants accused or convicted of crimes. IDP seeks to minimize the harsh and disproportionate immigration consequences of contact with the criminal justice system by 1) working to transform unjust deportation laws and policies and 2) educating and advising immigrants, their criminal defenders, and other advocates. IDP disseminates information about the immigration system to the public in accessible ways and is a leader in providing training and support for legal practitioners and community members. IDP's education efforts have included developing a 1500+ page manual about the criminal-immigration system and designing and presenting a curriculum on the criminal-immigration system.

12. Plaintiff HICA is a non-profit, public interest, and public education organization dedicated to the social, civic and economic integration of Hispanic families and individuals in Alabama. HICA engages and empowers Alabama's Hispanic community and its numerous cultures as an economic and civic integrator, social-resource connector, and statewide educator. HICA connects families to community resources, helps immigrants file for citizenship and open small businesses, and promotes leadership development and civic engagement. Through relationships established with state and national organizations including the Alabama Coalition for Immigrant Justice, the National Council of La Raza, The Mexican American Legal and

Education Defense Fund, The National Immigration Forum, The National Immigration Law Center, and the Center for Community Change, HICA has been involved in advocacy and public education at the national, state, and local levels.

13. Plaintiff CCR is a non-profit, public interest, legal, and public education organization that produces publications in the fields of civil and international human rights and engages in litigation and public advocacy. CCR's diverse dockets include litigation and advocacy around immigration detention, post-9/11 and other immigration enforcement policies, policing, and racial and ethnic profiling. CCR is a member of immigrant rights networks nationally and provides legal support to immigrant rights movements. CCR publishes newsletters, know-your-rights handbooks, legal analysis of current immigration law issues, and other similar materials for public dissemination. These and other materials are available through CCR's Development, Communications, and Education & Outreach Departments. CCR operates a website, [www.ccrjustice.org](http://www.ccrjustice.org), which addresses the issues on which the Center works. The website includes material on topical civil and immigrants' rights issues and material concerning CCR's work. All of this material is freely available to the public. In addition, CCR regularly issues press releases, operates an e-mail list of over 50,000 members and issues "action alerts" that notify supporters and the general public about developments and operations pertaining to CCR's work. CCR staff members often serve as sources for journalist and media outlets, including on immigrant rights. The office and principal place of business of CCR is located in New York County, New York.

14. Defendant DHS is a Department of the Executive Branch of the United States tasked with overseeing, inter alia, immigration enforcement, border security, immigration detention, and immigration and citizenship benefits. Its component offices include the Bureau of

Immigration and Customs Enforcement (ICE), the Federal Law Enforcement Training Center (FLETC), and the Office of Civil Rights and Civil Liberties (CRCL).

15. Defendant ICE is a component of DHS that enforces immigration and customs laws and is responsible for the detention and removal of immigrants. It has offices in all 50 states.

16. Both DHS and ICE are “agencies” within the meaning of 5 U.S.C. § 552(f)(1).

## **STATEMENT OF FACTS**

### **Background on Immigration Enforcement**

17. Every day, hundreds of individuals are arrested for immigration processing, detained, and/or deported. The number of immigrants deported has more than doubled between 2002 and 2012 to approximately 400,000 individuals per year. Despite the Obama Administration’s assertions of focusing on dangerous criminals and repeat immigration offenders, ICE still sweeps up and deports tens of thousands of immigrants with no previous criminal or immigration violations.

18. Since President Obama was elected, DHS has increased its use of local law enforcement agencies to arrest and detain non-citizens. Programs such as 287(g) and Secure Communities have been criticized for deputizing local police into immigration agents. Over the last five years, enforcement of immigration law has become a joint effort between federal, state and local law enforcement authorities. This record-breaking increase in enforcement and arrests is occurring at the same time as ICE is implementing home enforcement operations. Information about home enforcement operations is crucial for public understanding and evaluation of the connection between agency enforcement practices and the protection of constitutional rights.

### **Home-Based Enforcement Operations**

19. ICE home raid operations gained widespread notoriety during the Bush Administration as a method to locate and arrest individuals suspected of civil immigration law violations. *See, e.g.*, Julia Preston, “No Need for a Warrant, You’re An Immigrant,” *New York Times*, (October 14, 2007), <http://www.nytimes.com/2007/10/14/weekinreview/14preston.html> (last visited July 28, 2014). Many of these raids involve pre-dawn tactical entry into homes by heavily armed ICE agents. ICE concedes that these raids are warrantless and that consent is required to enter homes. Numerous civil rights violations have been reported in the media and litigated throughout the country. *See, e.g.*, *Aguilar et al v. ICE et al.*, 07-Civ-8224 (S.D.N.Y. filed Sept. 20, 2007); *Argueta et al v. ICE et al.*, (08-cv-1652 (D.N.J.); *Diaz-Bernal v. Myers et al* 09-cv-1734 (filed Oct. 28, 2009) (D. Conn. Filed Oct. 28, 2009). Courts have found that a number of these incidents indicate evidence of “egregious” Fourth Amendment violations. *See, e.g.*, *Sicajau Cotzojay v. Holder*, 725 F.2d 172, 177-78 (2d Cir. 2013); *Pretzantzin v. Holder*, 736 F.3d 641, 652 (2d Cir. 2013).

20. Despite the widespread public criticism of raiding homes in search of undocumented immigrants, the Obama Administration has continued this controversial practice. *See* Exhibit 1 at 17-18 (Plaintiffs’ Request Exhibit B, Letter from SPLC Legal Director Mary Bauer to DHS Secretary Janet Napolitano, describing brutal raids of residential homes and trailers in Alabama in December, 2011); *Escobar et al. v. Gaines et al.*, 11-cv-994 (M.D. Tenn., filed Oct. 19, 2011) (challenging raids that took place in Nashville, Tennessee in October, 2010); Simone Wilson, “ICE Raids L.A. Home for Drugs; Finding None, Agents Allegedly Beat Up Bonilla Family, Try to Deport Them,” *L.A. Weekly* (Aug. 1, 2011), <http://www.laweekly.com/informer/2011/08/01/ice-raids-la-home-for-drugs-finding-none-agents-allegedly-beat-up-bonilla-family-try-to-deport-them> (last visited July 28, 2014); Janet

DiGiacomo & Cindy Y. Rodriguez, “Agents take mother of immigration activist in night raid,” CNN (January 12, 2013), <http://www.cnn.com/2013/01/12/us/immigration-activist-mother-detained> (last visited July 28, 2014) (reporting the home raid and arrest of an Arizona DREAM Act advocate’s mother and brother); Julia Preston, “Sweep Coincides With Delay in Deportation Policy Changes,” *New York Times* (May 29, 2014) (describing home operations that in Milwaukee in May, 2014), <http://www.nytimes.com/2014/05/30/us/politics/immigrant-raid-coincides-with-deportation-policy-delay.html> (last visited July 28, 2014).

21. Although such raids typically purport to apprehend high-priority targets, ICE agents have been observed to routinely question and detain family members and bystanders as well, sometimes seizing all occupants of a residence without a legal basis. ICE has executed indiscriminate roundups of undocumented citizens with no criminal or removal histories. In New York, ICE has raided homes and, unable to find supposed targets, removed people who happened to live there, although they had no connection to or knowledge of the target being sought. *See, e.g.*, Exhibit 1 at 14-15 (Plaintiffs’ Request Exhibit A, Aracely Cruz, “Will Congress Bring My Husband Back?” *New York Times* (June 12, 2013) (recounting ICE’s removal and deportation of a man in front of his wife and children, although he was not a target)). In other cases, the targets themselves have not fallen under any of the purported classifications. *See, e.g.*, Albor Ruiz, “Cold ICE policy has U.S.-born boy sleepless in Jackson Heights as father faces deportation,” *New York Daily News* (May 6, 2012) (describing pre-dawn home raid targeting father with no criminal record in Queens), <http://www.nydailynews.com/new-york/ice-cold-policy-u-s-born-boy-sleepless-astoria-father-faces-deportation-article-1.1072746> (last visited July 28, 2014).

**The Public Has Been Deprived of Information Regarding  
Revealing Defendants’ Home Enforcement Policies, Practices, and Misconduct**

22. Defendants have withheld from the public even the most basic information about home-based enforcement operations, including, but not limited to: (1) policies, procedures, or objectives of home enforcement operations regarding such issues as target identification, rules of conduct, information sharing, performance goals or quotas, and misconduct; and (2) data and statistics of home enforcement operations, including operations conducted, arrests, detentions, removals, contraband, misconduct, and supervision.

23. Defendants have released little to no information about their current policies and practices for conducting home enforcement operations, including how decisions to initiate raids are made or protocols for selecting individuals targeted for arrest and arresting individuals who have not been targeted.

24. Information is also unavailable regarding the number of people that have been apprehended, arrested and/or detained from home enforcement operations since January 2009. Defendants' policies and protocols regarding determining how and whether to conduct home enforcement operations, particularly when children are present, is unknown. There is no clear information available to the public regarding who is targeted and how those individuals are identified, as well as how state and local entities are involved in such actions. Further, the public has no information about the constitutional compliance of home enforcement operations and whether and to what extent people affected by home enforcement operations are experiencing Fourth and Fifth Amendment violations and other abuses. ICE's guidelines and practices for monitoring and enforcement of constitutional compliance, including how complaints are handled, are likewise unknown. If any investigations into misconduct during home enforcement operations have been undertaken, the substance and outcomes of those investigations are currently unavailable.

25. There is also limited public information about what recourse is available to people seeking to complain about the abuses they suffered as a result of Defendants' practices. ICE has an Office of Professional Responsibility that provides complaint hotlines and addresses, but some of the information on the website is outdated, such as the ICE National Detention Standards Compliance Report, which is unavailable past 2007. Recently, Defendants have revised their corruption and misconduct review practices by transferring backlogged cases from DHS' Office of Inspector General to ICE and U.S. Customs and Border Protection, thus leaving the agencies to review their own misconduct. *See Unresolved Internal Investigations at DHS: Oversight of Investigation Management in the Office of the DHS OIG* 112<sup>th</sup> Cong. (2012), <http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg75642/pdf/CHRG-112hhrg75642.pdf> (last visited July 28, 2014). This transition calls into question the transparency, efficiency, and impartiality of such reviews and thus highlights the need for public access comprehensive information about the misconduct complaint and review process.

### **Plaintiffs and the Public Have a Compelling Need for Records Sought**

26. The continuing use of home enforcement operations by DHS and ICE is of crucial interest to the public, and there is a compelling need to inform the public of agency policies and decision-making regarding these tactics. Records and documents about such policies are crucial to public understanding of the ways in which communities are impacted by home enforcement operations and the extent to which constitutional violations occur and are reported or investigated.

27. Obtaining clear documentation about the guidelines for ICE agents in conducting enforcement operations at homes, including policies and procedures for conducting operations, documentation of misconduct or complaints of misconduct, the number of individuals

apprehended, arrested and/or detained during such operations, and the impact on families and children, would “significantly” contribute to the public’s understanding of Defendants’ home enforcement activities and how they fit within Defendants’ broader immigration enforcement agenda. These issues “unquestionably implicate[] important individual liberties and privacy concerns which are of immediate public interest.” *Am. Civil Liberties Union v. U.S. Dep’t of Justice*, 321 F. Supp. 2d 24, 29 (D.D.C. 2004).

28. As Plaintiffs’ Request documented, home enforcement operations are a continuing source of protest around the country. In the past eighteen months, ICE has entered into several expensive settlements to resolve lawsuits alleging widespread misconduct during home raid operations and reportedly has changed some guidelines to agents conducting home enforcement operations. *See, e.g.*, Kirk Semple, *U.S. Agrees to New Rules for Immigration Raids*, N.Y. Times (Apr. 4, 2013), <http://www.nytimes.com/2013/04/05/nyregion/us-agrees-to-set-new-rules-for-immigration-raids.html> (describing settlement of \$1 million dollar settlement to victims of home raid operations and agreement to modify guidelines for agents conducting home enforcement operations) (last visited July 28, 2014).

29. Since the filing of Plaintiffs’ Request in October of 2013, public questioning of immigration agents’ enforcement conduct has only grown. For example, on December 19, 2013, the New Orleans Workers’ Center for Racial Justice published a report, *The Criminal Alien Removal Initiative in New Orleans: The Obama Administration’s Brutal New Frontier in Immigration Enforcement*, <http://nowcrj.org/wp-content/uploads/2008/11/CARI-report-final.pdf> (last visited July 28, 2014), documenting widespread misconduct during raids of Latino communities, including descriptions of race-based and retaliatory raids taking place at residential homes and apartment complexes. The report engendered wide media coverage across the

country. The *New York Times* reported on the controversy on its front page, and stated that ICE claimed that “random stops of Latinos were not consistent with agency guidelines.” See Julia Preston, *Amid Steady Deportation, Fear and Worry Multiply Among Immigrants*, N.Y. Times (Dec. 22, 2013), <http://www.nytimes.com/2013/12/23/us/fears-multiply-amid-a-surge-in-deportation.html> (last visited July 28, 2014).

30. Protests and campaigns highlighting ICE’s actions in residences continue to inflame the public. See, e.g., *Father of 6-Month Old Placed in Deportation After ICE Raids Chicago Apartment Building, Not One More*, <http://www.notonemoredeportation.com/portfolio/anibal/> (last visited August 4, 2014) (reporting on a home raid operation in a Chicago apartment complex on December 6, 2013 that resulted in the detention of a father of an infant). From New York to Alabama, from Chicago to Los Angeles, community protests against ICE’s home raids and enforcement operations have been a source of current controversy.

31. Thus, it is clear that even as Defendants claim that their guidelines prohibit the kinds of misconduct that are regularly reported, the public has no access to what those guidelines are, how often those guidelines are violated, how misconduct is addressed within the agency, and who is affected by Defendants’ enforcement choices. These topics command continuing public attention and are a matter of urgency as Defendants’ enforcement activities continue unabated.

32. Further, the current Congressional appropriations debate presents a crucial opportunity to discuss resources devoted to Defendants’ enforcement activities. The appropriations debate began with the release of the President’s budget on March 4, 2014, and it is paramount that the public have the requested information to meaningfully engage in the public debate surrounding the cost of and appropriateness of Defendants’ enforcement activities.

Indeed, Plaintiff IDP sits on the Steering Committee of the national Campaign for Accountable, Moral and Balanced Immigration Overhaul (CAMBIO). One of CAMBIO's top priorities is engaging in the appropriations process to reduce funding for wasteful ICE enforcement operations that tear families apart. Similarly, HICA is an active member of the Alabama Coalition for Immigrant Justice, which advocates for immigration reform and fights for immigrants' rights at the federal as well as state level. In order to fully engage in the Congressional appropriations debates and educate community members about budget lines that will have direct impact on the communities Plaintiffs serve, it is urgent that Plaintiffs and the public gain a full understanding of Defendants' guidelines for enforcement.

33. Information about home enforcement operations practices is also crucial for engagement in local budget and policy debates, particularly in New York City, where the City Council recently funded a pilot project to assist unrepresented immigrants in removal proceedings. IDP is engaging in efforts to accurately educate local officials, including the new Mayor, about the legal needs of New Yorkers given DHS's current practices in order to advocate for funding for universal representation of immigrants in removal proceedings. To support public engagement in the local budget process and policy-making, it is essential for Plaintiffs to understand DHS's policies, guidelines, and actual practices in determining how and where to use home enforcement operations, and when and why DHS makes decisions to separate families.

34. The urgent need for the information requested is no less crucial for the Plaintiffs' community outreach and public education efforts. IDP and HICA give several trainings a month to community members at community-based organizations and houses of worship. In the coming months, IDP will launch an interactive Know Your Rights guide to protecting immigrants from

deportation after an arrest. In order for these presentations to be accurate and effective, Plaintiffs must ensure that we have the latest information on ICE enforcement practices.

35. Similarly, Plaintiffs IDP and HICA actively engage local communities in helping them advocate for individuals who have been arrested or detained by immigration authorities, both through community intake and free legal hotlines that receive thousands of calls per year. Since October 2013, Plaintiff IDP has seen a significant increase in calls from individuals who were placed in removal proceedings as a result of a home raid. In order to accurately advise the attorneys and community members who call Plaintiffs' hotlines with emergency concerns, accurate information about the increasing use of home enforcement operations is essential and urgent. HICA similarly works in local communities across Alabama to advocate for immigrant detainees and must have accurate information on arrests, detentions, and home enforcement operations practices in order to effectively engage in grassroots advocacy.

36. The use of local jails and correctional facilities as well as private correctional facilities and federal Service Processing Centers to detain non-citizens in civil immigration detention is a matter of concern to the Plaintiffs and the general public.

37. Accordingly, Plaintiffs' Request and the present action are necessary in order to vindicate the public's right to be informed of its government's operations, and to correct Defendants' refusal to be open, transparent, and responsive regarding their home-based enforcement operations.

#### **Plaintiffs' FOIA Requests to Defendants**

38. On October 17, 2013, Plaintiffs sent Requests pursuant to FOIA, 5 U.S.C. § 552, *et seq.*, to Defendants via Federal Express.

39. Plaintiffs' Request seeks records from January 20, 2009 to the present related to or containing: (1) policies, procedures, or objectives of home enforcement operations, including overview documents; target identification; rules and protocols for home enforcement conduct; information sharing; performance goals or quotas; and misconduct; and (2) data and statistics of home enforcement operations, including operations conducted; arrest, detention, and removal data for particular counties; landlord participation; contraband; misconduct; and supervision.

40. Plaintiffs' Request sought expedited processing under 5 U.S.C. § 552 (a)(6)(E)(i)(I), citing a "compelling need" for the information because it is essential in order for the public to meaningfully engage in the public debate regarding immigration enforcement and Fourth Amendment protections.

41. Plaintiffs' Request also sought a waiver of applicable fees under 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k), because "disclosure of the requested records is in the public interest because it is likely to contribute significantly to the public understanding of the activities or operations of the government and is not primarily in the commercial interest of the requester." *See* 5 U.S.C. § 552(a)(4)(A)(iii). IDP, CCR, and HICA are non-profit entities with no commercial interest in the records requested, which are crucial to public understanding of DHS' and ICE's operations.

### **Agency Responses**

42. On October 18, 2013, Plaintiffs confirmed delivery of their request via Federal Express to DHS and ICE.

### **ICE's Response**

43. ICE acknowledged, in a letter dated October 29, that it had received the request on October 25. *See* Exhibit 2. In this letter, ICE invoked a 10-day extension pursuant to 5 U.S.C.

§ 552(a)(6)(B). *See id.* ICE constructively denied expedited processing by stating that the request would be addressed after 6,461 other requests ahead of it. *See id.* ICE also constructively denied the fee waiver request in part by stating that Plaintiffs would be charged for the Request as a non-commercial request under 5 U.S.C. § 552(a)(4)(ii) instead of a request for information in the public interest under 5 U.S.C. § 552(a)(4)(iii). *See id.*

44. On November 19, Plaintiffs appealed the expedited processing and fee waiver requests in a letter to ICE. *See* Exhibit 3.

45. ICE acknowledged receipt of this appeal in a letter dated November 25. *See* Exhibit 4. In a letter dated November 27, 2013, but postmarked December 4, 2013, ICE sent another letter stating that the agency had not yet issued determinations on the fee waiver and expedited processing and “remanding” these issues for further consideration. *See* Exhibit 5.

46. In two letters dated December 13, ICE granted the fee waiver request and denied the expedited processing request, arguing that there was no urgent need to inform the public. *See* Exhibit 6.

47. Plaintiffs appealed the denial of expedited processing issue on February 5, 2014. *See* Exhibit 7.

48. ICE denied Plaintiffs’ administrative appeal by a letter dated March 10, 2014, stating that “ICE has searched for responsive records to your FOIA request and is working on processing those records.” *See* Exhibit 8.

49. To date, ICE has not produced a single document in response to Plaintiffs’ Request.

50. Therefore, Plaintiffs have exhausted their administrative remedies against ICE as to the substance of the request as well as the issue of expedited processing.

## **DHS' Response**

51. DHS acknowledged, via an e-mail sent on October 31, 2013, that Plaintiffs' Request was received on October 21. *See* Exhibit 9.

52. DHS made no response as of December 9, 2013, at which point Plaintiffs e-mailed to inquire into the status of the response.

53. In a letter dated December 10, 2013, DHS invoked a ten-day extension, denied the request for expedited processing, and "held in abeyance" Plaintiffs' request for a fee waiver. *See* Exhibit 10.

54. Plaintiffs appealed both these determinations on February 5, 2014. *See* Exhibit 11.

55. In a letter dated February 21, 2014, the United States Coast Guard Office of the Administrative Law Judge responded on behalf of DHS, denying the fee waiver and expedited processing requests *inter alia* as moot, stating that responsive records had allegedly been delivered on February 7, 2014. *See* Exhibit 12.

56. Plaintiffs had never received such a response, and asked for a copy of the alleged February 7 response by a letter on March 3. *See* Exhibit 13.

57. DHS responded on March 7 with an email to which 26 pages of training documents from FLETC were attached, 22 of which were partially redacted. *See* Exhibit 14 (DHS response to Plaintiffs' query, attached without exhibits). The letter stated that a search of CRCL and USCIS was conducted but no responsive records found, and that ICE had been tasked to do its own search which it had not completed. *See id.* The letter did not indicate that searches had been conducted of the National Records Center; Office of Public Affairs; Office of Detention Policy and Planning; Office of Detention Oversight; or Office of State, Local, and Tribal Coordination. Plaintiffs have received no response from these offices to date.

58. Plaintiffs appealed this determination on April 3, 2014 and supplemented the appeal with a letter dated April 22, 2014. *See* Exhibit 15 (Plaintiffs' Appeal to DHS, attached without exhibits). Plaintiffs contended that the search was inadequate as to all agencies and offices involved. For example, DHS claimed that no responsive documents had been discovered within CRCL, despite the fact that Plaintiffs' Request had noted particular home enforcement incidents involving alleged and litigated civil rights violations CRCL had likely investigated. Plaintiffs' Request had identified, for example, an enforcement action conducted on December 10, 2011 in Alabama involving home entries without consent and threats to U.S. citizen children, and had attached a communication from Mary Bauer, the Legal Director for the Southern Poverty Law Center, to CRCL requesting information relating to an investigation of the incident CRCL had reportedly launched. *See* Exhibit 1 at 17-18 (Plaintiffs' Request Exhibit B). Nonetheless, CRCL has failed to produce any documents related to this event or any other home enforcement incident in response to Plaintiffs' Request.

59. Plaintiffs also contended that it was implausible that FLETC, the central federal officer training organization, had only 26 pages of documents relating to home enforcement actions. *See* Exhibit 15. Plaintiffs noted that FLETC conducts training on field operations and the Fourth Amendment for thousands of ICE agents and had developed an "ICE Academy" dedicated to the training of such agents. *See id.* Additionally, a case involving civil rights violations resulting from home enforcement operations in 2007 uncovered over 12,000 training documents in discovery, and part of the settlement required ICE to issue a communication to officers regarding home enforcement operation techniques. *See id.* It is implausible that a reasonable search of FLETC would fail to turn up these documents.

60. On June 11, 2014, DHS responded to Plaintiffs' appeal by stating that (a) the agency was upholding DHS' determination that it had performed an adequate search for documents; and (b) that the appeal to FLETC was moot, claiming, erroneously, that FLETC had responded on November 18, 2013. *See* Exhibit 16. In fact, as discussed in ¶57, *supra*, FLETC had first responded to Plaintiffs' FOIA Request on March 7, 2014, and had made no production or decision on November 18, 2014.

61. Plaintiffs have exhausted administrative remedies against DHS as to the substance of the request as well as the fee waiver and expedited processing determinations.

62. Plaintiffs have a statutory right to the records they seek and there is no legal basis for Defendants' failure to disclose them in full.

63. Defendants' withholding of records is unlawful both in refusing to release documents and in causing unreasonable delay in the time it takes Plaintiffs to receive documents.

### **FIRST CLAIM FOR RELIEF**

#### **Violation of FOIA for Failure to Disclose and Release Records Responsive to Plaintiffs' Request**

64. Plaintiffs repeat and re-allege each and every allegation contained in paragraphs 1 through 63 as if repeated and incorporated herein.

65. By failing to disclose and release the requested records, and by failing to conduct an adequate search reasonably calculated to uncover responsive records, Defendants have violated the public's right, advanced by the Plaintiffs, to agency records under 5 U.S.C. § 552.

### **SECOND CLAIM FOR RELIEF**

#### **Defendants Improperly Denied Plaintiffs' Request for Expedited Processing**

66. Plaintiffs repeat and re-allege each and every allegation contained in paragraphs 1 through 65 as if repeated and incorporated herein.

67. Defendants have violated Plaintiffs' rights to expedited processing under 5 U.S.C. § 552(a)(6)(E) and Defendants' own regulations, 6 C.F.R. § 5.5(d).

### **THIRD CLAIM FOR RELIEF**

#### **Defendant DHS Has Improperly Deemed Plaintiffs' Request for a Fee Waiver as Moot**

68. Plaintiffs repeat and re-allege each and every allegation contained in paragraphs 1 through 67 as if repeated and incorporated herein.

69. Defendant DHS has denied Plaintiffs' rights to a fee waiver as moot, based on DHS' failure to uncover more than 26 pages of documents, in violation of 5 U.S.C. 552(a)(4)(A)(iii) and Defendants' own regulations, 6 C.F.R. § 5.11(k).

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that this Court:

- 1) Order Defendants immediately to make a full, adequate, and expedited search for the requested records;
- 2) Order Defendants to engage in expedited processing in this action;
- 3) Enjoin Defendant DHS from assessing fees or costs for the processing of the FOIA Request;
- 4) Order Defendants, to disclose the requested records in their entirety and make copies available to Plaintiffs no later than ten days after the Court's order;
- 5) Award Plaintiffs their costs and reasonable attorney's fees incurred in this action as provided by 5 U.S.C. § 552(a)(4)(E); and

6) Grant each other and further relief as this Court may deem just and proper.

Respectfully submitted,

Date: August 5, 2014  
New York, New York

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Attorney for Plaintiffs

# EXHIBIT 1

October 17, 2013

Freedom of Information Act Request  
U.S. Immigration and Customs Enforcement  
500 12<sup>th</sup> Street SW, Stop 5009  
Washington, DC 20536-5009  
Attn: Catrina Pavlik-Keenan, FOIA Director

National Records Center (NRC)  
Freedom of Information Act Division  
P.O. Box 648010  
Lee's Summit, MO 64064-5570

Freedom of Information Act Request  
U.S. Department of Homeland Security  
245 Murray Drive SW  
STOP-0655  
Washington, D.C. 20528-0655

Office of Civil Rights and Civil Liberties  
U.S. Department of Homeland Security  
Washington, D.C. 20528

Federal Law Enforcement Training Center (FLETC)  
Freedom of Information Act Officer  
Build #681, Suite 187B  
Glynco, GA 31524

**Re: Freedom of Information Act Request**

To Whom It May Concern:

This is a request under the Freedom of Information Act, 5 U.S.C. Sec. 552 ("FOIA"), on behalf of the Immigrant Defense Project ("IDP"), the Center for Constitutional Rights ("CCR"), and the Hispanic Interest Coalition of Alabama ("HICA") (collectively "the Requesters") for information regarding U.S. Immigration and Customs Enforcement agency ("ICE") and Department of Homeland Security ("DHS") home-based enforcement operations. We ask that you please direct this request to all appropriate offices and departments within ICE and DHS, including, but not limited to, the Office of Civil Rights and Civil Liberties, the Office of Public Affairs, the Office of Detention Policy and Planning, the Office of Detention Oversight, the Federal Law Enforcement Training Center and the Office of State, Local and Tribal Coordination.

## **Purpose of Request**

The purpose of this request is to obtain information for the public about ICE home enforcement operations (defined below) and their impact on local communities. This information will enable the public to monitor ICE home enforcement operations and ensure that the operations uphold individuals' constitutional rights. ICE has been conducting home enforcement operations during the Obama Administration as well as the Bush Administration.<sup>1</sup>

Little information is known to the public about ICE home enforcement operations under the Obama Administration. ICE has released minimal, if any, information about its current guidelines and practices for conducting home enforcement operations, including how decisions to initiate raids are made. Information is also unavailable regarding the number of people that have been apprehended, arrested, and/or detained from home enforcement operations since January 2009. Generally speaking, the impact of home enforcement operations on families and children, particularly when children are present during a home enforcement operation, is unclear. It is also unknown to the public who is targeted and how those individuals are identified. Further, the public has no information about the constitutional compliance of home enforcement operations and whether and to what extent people affected by home enforcement operations are experiencing Fourth and Fifth Amendment violations and other abuses. ICE's guidelines and practices for monitoring and enforcement of constitutional compliance, including how complaints are handled, are unknown. If any investigations into misconduct during home enforcement operations have been undertaken, the substance and outcomes of those investigations are currently unavailable.

### **A. Definitions**

- 1) **Home enforcement operation(s).** In this request, the term "home enforcement operations" is defined as ICE enforcement operations in, at, or around homes or residences. "Home enforcement operations" include, but may not be limited to, any ICE entry in, at, or around any place of residence, including but not limited to houses, apartments, boarding houses, rooming houses, shelters or motels where individuals reside, whether temporarily or permanently. Includes any enforcement operation that involves entry into a place of residence, and may include enforcement operations that also combine street arrests, entry into a workplace, or enforcement at other locations.
- 2) **Target(s).** In this request, the term "target" is defined as an individual specifically sought for enforcement in a home enforcement operation, who has been identified for enforcement by ICE prior to arrival at the home.
- 3) **Non-target(s) or collateral(s).** In this request, the term "non-target" or "collateral" is defined as any individual encountered in a home enforcement operation who is not a target, and is apprehended, arrested, or otherwise subject to enforcement action by ICE.
- 4) **Law Enforcement Agency.** In this request, the term "Law Enforcement Agency" includes, but is not limited to, any state, city, county, or local police agency, department of corrections, sheriff's office, jail, or other holding facility.

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<sup>1</sup> See Exhibit A, "Will Congress Bring My Husband Back?," *New York Times*, June 12, 2013, and Exhibit B, "Letter from Southern Poverty Law Center to Scott Sutterfield" and "Letter from Southern Poverty Law Center to Janet Napolitano."

- 5) **Record(s).** In this request the term “Record(s)” includes, but is not limited to, all Records or communications preserved in electronic or written form, such as correspondences, emails, documents, data, videotapes, audio tapes, faxes, files, guidance, guidelines, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, legal opinions, protocols, reports, rules, technical manuals, technical specifications, training manuals, studies, or any other Record of any kind.
- 6) **Database(s).** In this request the term “Database(s)” includes, but is not limited to, all Records that store, compile, or collect information, regardless of the format, size, or type of program utilized. May include, but is not limited to, information contained in spreadsheet, list, or chart format.
- 7) **Complaints.** In this request the term “complaint(s)” includes any expression of grievance, allegation of misconduct, request for investigation, or request for disciplinary action related to enforcement operations in homes made by any governmental or non-governmental agency, or by any individual. “Complaint(s)” includes but is not limited to Office of Civil Rights and Civil Liberties, Office of Professional Responsibility, and Office of Principal Legal Adviser complaints, informal complaints made by civilian individuals, including detainees or prisoners in local, state or ICE facilities or IGSA contract facilities; complaints lodged by law enforcement officers; internal complaints made by individuals employed by ICE, legal complaints; and complaints made by other governmental agencies or elected officials.

**B. Acronyms**

Law Enforcement Agency	LEA
Federal Bureau of Investigation	FBI
Department of Homeland Security	DHS
Immigration and Customs Enforcement	ICE
DHS Office of Civil Rights and Civil Liberties	CRCL

**C. Request for Information**

**1) Policies, Procedures, and Objectives**

Any and all Records received, maintained, or created by any government agency or subdivision, related to the policies, procedures, or objectives of home enforcement operations from January 20, 2009, to the present. Such records include but are not limited to:

- a. **Overview Documents:** policies, operating procedures, rules, internal policy guidance, monitoring mechanisms, training materials and legal opinions or memoranda referencing home enforcement operations or discussing the goals, objectives, function responsibility, purpose, and implementation of home enforcement operations.
- b. **Identification of Targets:** any and all Records related to how targets of home enforcement operations are identified.



required, whether consent must be informed, and the language in which consent may be obtained.

- vii. Any Record, including but not limited to legal memoranda, containing policies, rules, guidance, protocols, or procedures related to ICE's definition of exigent circumstances, what constitutes exigent circumstances, and when the exigent circumstances exception to requirements for obtaining consent or a warrant before entering a home may be invoked. Any Record providing information about the practices of invoking the exigent circumstances exception to requirements for obtaining consent or a warrant before entering a home.

**d. Information Sharing, Gathering, & Management:**

- i. Any and all Records reflecting or memorializing ICE protocol for obtaining information or data from any and all agencies that is used for home enforcement operations, including but not limited to protocols for obtaining information or data from LEAs, district attorney offices, parole offices, departments of corrections, and probation offices. Any and all Records reflecting ICE protocol for requesting information or data used for home enforcement operations from any and all governmental agencies.
- ii. Any and all Records reflecting or memorializing ICE protocol for use of post-conviction relief motions to identify and target individuals in home enforcement operations.
- iii. Any and all Records reflecting or memorializing ICE protocol for use of the Homeland Security Initiative Tip Form, and information gathered therein, to identify targets of home enforcement operations.
- iv. Any and all names of databases created or used by ICE to identify targets of home enforcement operations, including databases supplied to ICE by other government agencies.
- v. Any and all names of databases created or used by ICE for home enforcement operations that identify or in any way indicate gang membership or gang affiliation of individuals, including but not limited to databases created by other federal agencies or LEAs and shared with ICE.

**e. Performance Goals or Quotas:** any and all Records reflecting, constituting, memorializing, documenting, or concerning any ICE performance goals or quotas for arrests at national, state, regional, and/or local levels, including but not limited to:

- i. Any and all policy memoranda, emails, protocols, communications, or guidance that supersedes the the Memorandum entitled "National Fugitive Operations Program: Priorities, Goals, and Expectations" dated December 8, 2009<sup>2</sup>, the Memorandum entitled "Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens" dated June 30, 2010<sup>3</sup>, and any policy memoranda, emails, protocols, communications, or guidance used by Enforcement and Removal Operations, Homeland Security Investigations, or any other branch of ICE.

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<sup>2</sup> Attached hereto as Exhibit C.

<sup>3</sup> Attached hereto as Exhibit D.

- ii. Any and all policy memoranda, emails, protocols, communications, or guidance that instruct agents, officers, or employees in methods of meeting such performance goals or quotas, including but not limited to identifying additional targets through the Law Enforcement Support Center and any of its programs, services, or initiatives; the Secure Communities, the Criminal Alien Program, 287g, the Alien Absconder Initiative, and the National Fugitive Operations Program; ICE Agreements of Cooperation in Communities to Enhance Safety and Security (“ACCESS”), terrorism watch lists, Deportable Alien Control System databases, Fugitive Case Management System and Apprehension Reports, Enforce Alien Removal Module; and lists, classifications, or categories generated by DHS or any other governmental agency or local and state law enforcement agencies.
- f. **Misconduct:** any and all Records related to ICE standards for conducting enforcement operations in homes and documentation of and responses to misconduct during home enforcement operations.
- i. Any and all Records containing training materials, briefing, guidance, procedures, rules, or other informational materials for ICE agents on compliance with constitutional, statutory, regulatory, or other external rules.
  - ii. Any and all Records containing legal memoranda or briefing on the constitutional, statutory, regulatory, or other legal rules for conducting home enforcement operations, including but not limited to legal memoranda discussing or in any way concerning the legal authority of ICE to conduct home enforcement operations in the period before, during, and after the passage of HB56.
  - iii. Any and all Records related to ICE procedures, or practices for monitoring or plans to monitor compliance of home enforcement operations with constitutional, statutory, regulatory, or other legal rules.
  - iv. Any and all Records related to ICE protocols, procedures, or practices for monitoring or plans to monitor compliance of home enforcement operations with ICE internal policies, rules, protocols, procedures, or practices.
  - v. Any and all Records related to ICE policies, rules, protocols, processes, procedures, or practices for receiving civilian complaints of misconduct during home enforcement operations, including but not limited to any complaint form that supersedes the Civil Right Complaint form that was last updated on March 15, 2011.<sup>4</sup>
  - vi. Any and all Records related to ICE policies, rules, protocols, procedures, or practices for responding to complaints of misconduct during home enforcement operations, including but not limited to complaints of constitutional violations.

## 2) Data & Statistical Information

Any and all Records, excluding Records from individual alien files, containing data or statistics prepared, compiled, or maintained by ICE or any agency or subdivision thereof related to or pertaining to individuals apprehended, arrested, and/or detained from home enforcement operations and any misconduct during home enforcement operations alleged or disciplined beginning January 20, 2009 through the present. Unless otherwise specified, the requests below seek data or statistics from all

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<sup>4</sup> Attached hereto as Exhibit E.

geographical areas that fall within the jurisdictions of the Buffalo, New York; New York, New York; and New Orleans, Louisiana ICE field offices. Such Records should include, but not be limited to:

- a. **Home enforcement operations conducted:** Any and all Records that contain data or statistical information indicating the number of home enforcement operations undertaken by ICE since January 20, 2009 broken out by year, the year(s) in which the home enforcement operations were conducted, and the locations of the home enforcement operations.
  
- b. **Arrests in home enforcement operations in each county in New York State and in the Alabama counties of Cherokee, Chilton, DeKalb, Jackson, Jefferson, Shelby, and Tuscaloosa:** Any and all Records that contain data or statistical information indicating the number of people arrested in home enforcement operations and the reasons stated for arrest. Any and all records that provide a list of categories of data kept on individuals arrested. Any and all Records documenting the zip codes in which arrests during home enforcement operations take place. Any and all Records that contain data or statistical information indicating the number of target arrests and/or the number of non-target arrests made in home enforcement operations. Any and all Records that contain data or statistical information indicating:
  - i. the number of children taken into ICE custody as a result of home enforcement operations
  - ii. the number of minor children taken into the custody of local or state child protective services agencies as a result of arrests of parents or custodians
  - iii. the number of parents of minor children taken into ICE custody as a result of enforcement operations in homes
  - iv. the number of parents taken into ICE custody whose minor children are U.S. citizens.
  - v. the number of individuals arrested in home enforcement operations broken down by race, ethnicity, nationality, gender, and/or age.
  - vi. the number of individuals arrested in home enforcement operations who are identified on terrorism watch lists.
  - vii. the number of individuals arrested in home enforcement operations purported to be members of gangs.
  - viii. the number of individuals arrested in home enforcement operations purported to be associates or affiliates of gangs.
  - ix. the number of individuals arrested in home enforcement operations with violent crime convictions (as defined by the FBI to include murder and non-negligent manslaughter, forcible rape, robbery, and aggravated assault), with other felony convictions, and with misdemeanor convictions between January 20, 2009 and the present. See "FBI Violent Crime Definition," attached hereto as Exhibit G, broken down by category.
  - x. the number of individuals arrested in home enforcement operations with prior orders of removal and/or deportation (including those subject to expedited removal).
  - xi. the number of individuals arrested in home enforcement operations with convictions for drug-related offenses, broken down by convictions for possession, intent to sell, and trafficking.

- xii. the number of individuals arrested in home enforcement operations with convictions related to sexual misconduct.
  - xiii. the number of individuals arrested in home enforcement operations who were identified by, or using data from, Secure Communities, 287(g), or the Criminal Alien Program, broken down by category.
  - xiv. the number of individuals arrested in home enforcement operations who were identified by, or using data from, LEAs.
  - xv. the number of individuals arrested whose prior convictions were for crimes charged prior to January 1, 2003; the number of individuals whose prior convictions were for crimes charged after January 1, 2003; and the number of individuals who have prior convictions but for whom ICE does not have information regarding the charge date.
- c. Individuals detained and/or subject to removal proceedings in each county in New York State and in the Alabama counties of Cherokee, Chilton, DeKalb, Jackson, Jefferson, Shelby, and Tuscaloosa:** Any and all Records that contain data or statistical information indicating the numbers of individuals who were arrested in home enforcement operations and who were:
- i. placed in removal proceedings, including but not limited to expedited removal, administrative removal, reinstatement of removal, and removal proceedings pursuant to Section 240 of the INA, broken down by category
  - ii. detained and the length of their detentions, including but not limited to the number of people subject to mandatory detention under 236(c) of the INA
  - iii. released on bond
  - iv. issued a bond; the number whose bond amount was set at \$5000 or above; and the number whose bond amount was set at \$10,000 or above
  - v. granted prosecutorial discretion
  - vi. granted administrative closure
  - vii. granted any other form of judicial relief or legal status, broken down by type of relief
  - viii. removed.
  - ix. granted voluntary departure.
- d. Landlord participation in home enforcement operations:** Any and all Records that reflect or constitute instances of coordination, collaboration, cooperation, or the sharing of information between ICE and any private landlord, property manager, employer-based housing management authority or public housing authority. Includes but may not be limited to the provision of security services, access, and/or surveillance, or assistance in planning or execution of a home enforcement operation, by a landlord, property manager, or public housing authority.
- e. Contraband:** Any and all Records that contain information related to or documenting illegal substances, contraband, or illegal weapons found and/or collected in home enforcement operations.
- f. Misconduct:** Any and all Records that contain data or statistical information related to misconduct of ICE agents during home enforcement operations, including but not limited to

information related to misconduct for violations of constitutional, statutory, regulatory, or internal standards, or for other abuses. Records may include, but are not limited to:

- i. Any and all Records containing information, including but not limited to narrative information, statistical information, or interviews, on complaints, reports, lawsuits, or allegations of misconduct by ICE agents during home enforcement operations.
  - ii. Any and all Records containing data or statistical information on investigations into misconduct by ICE agents during home enforcement operations.
  - iii. Any and all Records that contain data or statistical information on the number of ICE agents that have been subject to investigations or disciplinary proceedings.
  - iv. Any and all Records that contain data or statistical information on the outcomes of any and all disciplinary proceedings of ICE agents for misconduct during home enforcement operations.
  - v. Any and all Records that contain data or statistical information on investigations of misconduct during home enforcement operations.
  - vi. Any and all Records related to DHS Office of Civil Rights and Civil Liberties handling of misconduct, or allegations of misconduct, during home enforcement operations. Includes but may not be limited to gathering of information, issuance of memoranda or guidance, investigations, reports, or inquiries made by CRCL related to home enforcement operations. Any and all Records held at or by CRCL related to home enforcement operations.
  - vii. Any and all Records related to disciplinary action taken against individual officers for abuses or misconduct during home enforcement operations, included but not limited to disciplinary action taken for violations of constitutional limitations or for violations of or deviance from internal ICE rules, protocols, procedures, or practices.
- g. **Supervision of home raids:** Any and all Records that contain information indicating the names and/or titles of ICE agents who supervised enforcement operations in homes. Any and all Records that contain information indicating the names and/or titles of ICE agents who in any way participated in the planning, coordination, or overseeing of home enforcement operations.

#### **D. Format of Production**

Please search for responsive records regardless of format, medium, or physical characteristics, and including electronic records. Please provide the requested documents in the following format:

- Saved on a CD, CD-ROM or DVD;
- In PDF or TIF format wherever possible;
- Electronically searchable wherever possible;
- Each paper record in a separately saved file;
- “Parent-child” relationships maintained, meaning that the requester must be able to identify the attachments with emails;
- Any data records in native format (i.e. Excel spreadsheets in Excel);
- Emails should include BCC and any other hidden fields;
- With any other metadata preserved.

## **E. The Requesters**

*The Center for Constitutional Rights ("CCR")* is a non-profit, public interest, legal, and public education organization that engages in litigation, public advocacy, and the production of publications in the fields of civil and international human rights. CCR's diverse dockets include litigation and advocacy around immigration detention, post-9/11 immigration enforcement policies, policing, and racial and ethnic profiling. CCR is a member of immigrant rights networks nationally and provides legal support to immigrant rights movements. One of CCR's primary activities is the publication of newsletters, know-you-rights handbooks, legal analysis of current immigration law issues, and other similar materials for public dissemination. These and other materials are available through CCR's Development, Communications, and Education & Outreach Departments. CCR operates a website, [www.ccrjustice.org](http://www.ccrjustice.org), which addresses the issues on which the Center works. The website includes material on topical civil and human rights issues and material concerning CCR's work. All of this material is freely available to the public. In addition, CCR regularly issues press releases and operates a listserv of over 50,000 members and issues "action alerts" that notify supporters and the general public about developments and operations pertaining to CCR's work. CCR staff members often serve as sources for journalist and media outlets, including on immigrant rights.

*The Hispanic Interest Coalition ("HICA")* is a non-profit, public interest, and public education organization dedicated to the social, civic and economic integration of Hispanic families and individuals in Alabama. HICA engages and empowers Alabama's Hispanic community and its numerous cultures as an economic and civic integrator, social-resource connector, and statewide educator. HICA has published and distributed over 25,000 *Bienvenidos a Birmingham* resource guides, the first comprehensive Spanish-language resource guide for Birmingham. Through relationships established with state and national organizations including the Alabama Coalition for Immigrant Justice, the National Council of La Raza, The Mexican American Legal and Education Defense Fund, The National Immigration Forum, The National Immigration Law Center and the Center for Community Change, HICA has been involved in advocacy and public education at the national, state, and local levels.

*The Immigrant Defense Project ("IDP")* is a non-profit organization whose mission is to promote fundamental fairness for immigrants accused or convicted of crimes. IDP seeks to minimize the harsh and disproportionate immigration consequences of contact with the criminal justice system by 1) working to transform unjust deportation laws and policies and 2) educating and advising immigrants, their criminal defenders, and other advocates. IDP disseminates information about the immigration system to the public in accessible ways and is a leader in providing training and support for legal practitioners and community members. IDP's education efforts have included developing a 1500+ page manual about the criminal-immigration system and designing and presenting a curriculum on the criminal-immigration system.

## **F. Fee Waiver**

The Requesters are entitled to a fee waiver pursuant to 5 U.S.C.(a)(4)(A)(iii) and 6 C.F.R. §5.11(k) on the grounds that "disclosure of the requested records is in the public interest because it is likely to contribute significantly to the public understanding of the activities or operations of the government and is not primarily in the commercial interest of the requester[s]." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 6

C.F.R. § 5.11(k) (records furnished without charge if the information is in the public interest, and disclosure is not in the commercial interest of institution). *See, e.g., McClellan Ecological v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987). Requesters meet the requirements of 6 C.F.R. § 5.11(k) because the subject of the request concerns the operations or activities of the government; the disclosure of the information is likely to contribute to a significant public understanding of government operations or activities due to the requesters' expertise in the subject area and ability to convey the information; the Requesters' primary interest is in disclosure; and they have no commercial interest in the information. In addition, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), the Requesters qualify as a "representatives of the news media," defined as "any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." 5 U.S.C. § 552(a)(4)(A)(ii).

As described in Part E above, the Requesters are non-profit organizations dedicated to civil rights, human rights, and immigrant rights, and have a proven track-record of compiling and disseminating information and reports to the public about government functions and activities, including the government's record and position on immigrants' rights and policy matters. The Requesters have undertaken this work in the public interest and not for any private commercial interest. Similarly, the primary purpose of this FOIA request is to obtain information to further the public's understanding of federal immigration enforcement actions and policies. Access to this information is crucial for the Requesters and the communities they serve to evaluate immigration enforcement actions and their potential detrimental efforts.

The public has an interest in knowing about the manner in which ICE conducts home enforcement operations, including how decisions to initiate raids are made, what policies and guidelines govern ICE agents' conduct, and how ICE involves state and local entities in such actions. The public also has an interest in knowing the number of people that have been apprehended, arrested, and/or detained from home enforcement operations since January 2009 and the impact on families and children. Further, the public has an interest in knowing whether and to what extent people affected by home enforcement operations are experiencing Fourth Amendment violations and other abuses; ICE's guidelines and practices for monitoring and enforcement of constitutional compliance; and how complaints of and investigations of misconduct are handled. The records sought in this request will inform the public of the scope of ICE's home enforcement operations, their effect on public safety, and the manner in which ICE holds itself and its agents accountable for complaints of constitutional misconduct.

As stated above, the Requesters have no commercial interest in this matter. The Requesters will make any information that they receive as a result of this FOIA request available to the public, including the press, at no cost. Disclosure in this case therefore meets the statutory criteria, and a fee waiver would fulfill Congress' legislative intent in amending FOIA. *See Judicial Watch Inc. v. Rossotti*, 326 F.3d 1309 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be 'liberally construed in favor of waivers of noncommercial requesters.'").

In the alternative, we request a limitation of processing fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II). ("[F]ees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by . . . a representative of the news media."). *See* also 6 C.F.R. § 5.11(d). If no fee waiver is granted and the fees exceed \$250.00, please contact the Requesters' undersigned counsel to obtain consent to incur additional fees.

### G. Expedited Processing

The Requesters are entitled to expedited processing of this request because there is a “compelling need” for the information. 5 U.S.C. § 552(a)(6)(E)(i)(I). A “compelling need” is established when there exists an “urgency to inform the public concerning actual or alleged Federal Government activity,” when the requester is a “person primarily engaged in disseminating information,” 6 C.F.R. § 5.5(d)(ii).

There is an urgent need to inform the public of the policies, procedures, guidelines, action, responses, instructions and data regarding ICE’s home enforcement operations. Courts have found that the manner in which ICE has conducted home enforcement operations violated the Fourth Amendment,<sup>5</sup> yet little information is available to the public regarding current guidance in conducting home operations or accountability for complaints of misconduct. The number of Fugitive Operations Teams (“FOTs”), the entity responsible for many operations in homes, has increased from 8 in 2003 to 129 in 2013. In FY 2012, these teams alone accounted for more than 37,000 arrests.<sup>6</sup> As ICE continues to conduct home enforcement operations across the country, the public has an urgent need to know how ICE chooses targets, conducts operations, and holds its agents accountable for constitutional violations.

### H. Certification & Conclusion

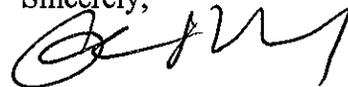
The Requester certifies that the above information is true and correct to the best of the Requesters’ knowledge. *See* 6 C.F.R. § 5.5(d)(3). If this Request is denied in whole or in part, the Requesters ask that the Department of Homeland Security and ICE justify all deletions by reference to specific exemptions of FOIA. The Requester expects DHS and ICE to release all segregable portions of otherwise exempt material, and reserves the right to appeal a decision to withhold any records or to deny the within application for expedited processing and waiver of fees.

Please furnish all applicable Records to:

Ghita Schwarz, Center for Constitutional Rights, 666 Broadway, 7<sup>th</sup> Floor, New York, NY 10012.

If you have any questions regarding the processing of this request, please contact Ghita Schwarz at (212) 614-6445, or Ian Head at (212) 614-6470. Thank you for your consideration.

Sincerely,



Ghita Schwarz, Esq.  
Center for Constitutional Rights  
666 Broadway, 7<sup>th</sup> Floor  
New York, NY 10012  
[gschwarz@ccrjustice.org](mailto:gschwarz@ccrjustice.org)

On Behalf of the Requesters

<sup>5</sup> *See, e.g., Sicajau Cotzojay v. Holder*, 2013 U.S. App. LEXIS 15626 (2d Cir., July 31, 2013); *Pretzantzin v. Holder*, 2013 U.S. App. LEXIS 15627 (2d Cir. July 31, 2013).

<sup>6</sup> *See* Exhibit F, “Fact Sheet: ICE Fugitive Operations Teams,” available at <http://www.ice.gov/news/library/factsheets/fugops.htm>.

# Exhibit A

June 12, 2013

## **Will Congress Bring My Husband Back?**

By **ARACELY CRUZ**

“THAT person doesn’t live here,” I told the Immigration and Customs Enforcement officials when they knocked on my door in Queens early on April 17, 2012, looking for someone I’d never heard of. I was afraid, because my husband and I did not have papers. But I let them come in anyway.

They didn’t find the man they were looking for, but they took my husband, Jose Luis Vivas, instead. Our daughters, Ariana, now 9, and Leslie, now 7, were watching. I didn’t know what to tell them, so I said that the men were their father’s friends, playing a game, and that he’d be back soon. He wasn’t.

After six months in detention in New Jersey, he accepted voluntary departure, and was expelled in November.

The Senate is debating an immigration reform that would give fathers like Jose the opportunity to reunite with their families and give us both a path to citizenship. Congress should pass it.

I was born in a small town in Oaxaca State, in Mexico. I never knew my father. I lived with my grandparents, while my mother worked in Mexico City to support our family, until after sixth grade, when I joined my mother. I wanted to get additional schooling, but we couldn’t afford the supplies. It was then that I became determined to come to the United States to help my mother and younger sister. I felt like a burden. I was 14 when I crossed the border, on my second attempt, with other migrants and help from a guide. That was 14 years ago, in June 1999.

When I got to New York, it was hard to find work, but I did, in perfume factories and dry cleaners, and cleaning offices. In 2001 I met Jose in Queens. He was from Puebla State, which borders Oaxaca, and had come to the United States in 1998. He knew my cousin’s husband, and we were just friends at first, but then much more. We didn’t officially marry — we joked we would if we were still together at 50 — but we were committed to being a family. He has given me unconditional support, in our most difficult moments.

In 2001, my mother came to the United States, and two years later, we all moved in together in Cincinnati. But then my mother died in a car accident. Jose helped me survive my grief. Soon after, I brought my little sister up from Mexico. Then my daughter Ariana was born; two years later, we had Leslie. We had started the family I never had.

Jose is a very responsible and hardworking man. He worked six days a week at a grocery store. We celebrated birthdays, baptisms, Christmas and New Year's, and always went to church together. Saturday was his only day off. The girls and I would wait for him on Friday nights in a park near the grocery store, so we could spend the most time possible with him.

During the months when Jose was detained, at the Monmouth County Correctional Institution, in Freehold, N.J., we'd talk on the phone about once a month, for only 8 to 10 minutes because the calls were expensive. Several times, we traveled for two hours to visit him. We were permitted to see him only for 15 minutes, behind glass. My daughters wanted to kiss him and hug him, and they couldn't. Jose eventually agreed to return to Mexico. He was here undocumented and thought he would have lost his legal case.

In June 2012, President Obama announced a program to defer deportations of undocumented immigrants like me who are in high school or have graduated, are younger than 31, entered the country before age 16 and have continuously lived here at least five years. My application is pending, and I'm working toward a G.E.D. It's possible Jose might have qualified, but we didn't know that before he agreed to leave.

Sometimes I think about how I tried to keep my daughters from experiencing what I went through, growing up without a father. I wonder if I've failed.

I've considered taking my daughters to Mexico to be together with Jose. But I would never do it. Mexico is a foreign country to them. I don't want to expose them to the violence there today. I don't want to take away their opportunities for a better life. My daughters are citizens and have the right to grow up here.

This is the second year that our daughters will not hug their dad on Father's Day. When they ask where he is, I don't know if I should tell the truth, or lie. It's affecting my younger daughter's studies. It's possible that she won't be promoted to third grade. They hope he'll return to go over their homework with them, to enjoy the drawings that Ariana makes and laugh at Leslie's mischief and to go to the park together when their dad gets off work, so the weekend can start.

Aracely Cruz, an undocumented immigrant, told this story to staff members at Make the Road New York, an immigrants' rights organization, which translated it from the Spanish.

# Exhibit B

December 21, 2011

Scott Sutterfield  
Field Office Director  
ICE Office of Enforcement and  
Removal Operations in New Orleans.  
Department of Homeland Security  
New Orleans Field Office  
1250 Poydras Suite 325  
New Orleans, LA 70113

Dear Mr. Sutterfield:

We are investigating an enforcement action by ICE that took place in and around Ft. Payne, Scottsboro and Collinsville, Alabama during the weekend of December 10, 2011. We have been in touch with the Office of the Secretary of the Department of Homeland Security (DHS) and with DHS's Office of Civil Rights and Civil Liberties (OCRCL) about this enforcement action. It is our understanding that OCRCL has launched an investigation into the possible civil rights violations that may have occurred during the course of these operations.

We wanted to make you aware of our concerns about this enforcement action. Enclosed please find a letter that we sent to Secretary Napolitano last week regarding the action that details those some of those concerns.

We are also writing to you to request a list of individuals who were arrested and detained during this enforcement action in and the current location of those that remain detained. We are working with Louisiana-based NGO's, including the LSU law school immigration clinic, to secure legal counsel for those individuals. In order to ensure each of these individuals has access to legal counsel, we need to know the current location of each person. We also need your assistance to set up group and/or individual meetings with each of the individuals who remain in your custody.

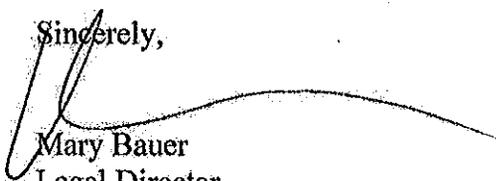
It is extremely important that none of these individuals be removed until they have had the opportunity to be interviewed by an attorney and by the OCRCL. We are thus requesting that you ensure that no immediate action is taken to remove the individuals detained in this raid.

Finally, we are deeply concerned about the risk that individuals who were involved in this raid and/or their families might fall victim to retaliation for having spoken about this immigration enforcement action. Therefore, we call on you to ensure the safety and well-being of those individuals who remain in detention. We also request

that you take measures to ensure that the individuals who have been released and their families do not suffer any retaliation by your office or your agents for having asserted their rights.

Please do not hesitate to contact me should you have any questions. We would like to meet with you to discuss our concerns related to this matter. Please advise when you will be available to meet with us.

Sincerely,



Mary Bauer  
Legal Director

Enclosure

December 16, 2011

The Honorable Janet Napolitano  
United States Secretary of Homeland Security  
U.S. Department of Homeland Security  
Washington, DC 20528

Dear Secretary Napolitano:

I write to express my profound concern about an enforcement action conducted by the Immigration and Customs Enforcement ("ICE") last weekend in Alabama. Armed ICE agents went to trailer parks and apartment complexes in Fort Payne and Collinsville, entering homes without permission and terrorizing families. Children—citizens and non-citizens alike—were traumatized. In more than one case, ICE agents interrogated young children about the whereabouts of their parents.

Alabama's Latino community has been devastated by Alabama's extraordinarily harsh anti-immigrant law, known as HB56. In the aftermath of that law taking effect, the federal government has devoted significant resources to reassuring the Latino community that it is dedicated to protecting Alabamian's civil rights. The Department of Justice has sued to block the law and has stated that it believes the law to be unconstitutional. Tom Perez, chief of the Civil Rights Division of the Department of Justice, has repeatedly visited Alabama and met with community leaders to hear their stories and has promised to actively oppose HB56. Similarly, high-level officials from other agencies, including the Departments of Education and Labor, have visited Alabama and have offered reassuring words about their commitment to protect the rights of individuals in this state. You have stated that the Department of Homeland Security will not help Alabama implement this law.

We believe that this series of ICE raids has profoundly undermined the efforts of other federal agencies to reassure the Latino community in Alabama that the federal government seeks to protect the civil rights of all persons. Home raids are a particularly destructive means of conducting enforcement actions; they terrorize communities and are particularly frightening to children, who are forced to watch family members arrested and detained. The family members who have been left behind are afraid to be in their own homes and to live in this community. They have been driven even further underground. The reports we've heard from the people who witnessed the raids suggest that agents engaged in disturbing and illegal conduct—including threatening to arrest U.S. citizen children if those children did not disclose the whereabouts of their parents. Although the agents appeared to be looking for a few specific individuals, they went far beyond what was necessary to locate those persons, and arrested many others who simply happened to

be in the vicinity. That ICE took this action just before Christmas in this already decimated community is heart wrenching.

We call upon you to cease these kinds of enforcement actions in this state. We also call upon you to conduct a thorough investigation of the civil rights violations that may have taken place in the course of these raids. We once again ask that you to visit Alabama and to meet with people who live here to hear their stories.

We would appreciate the opportunity to meet with you to discuss these issues.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mary Bauer', with a long horizontal line extending to the right.

Mary Bauer  
Legal Director

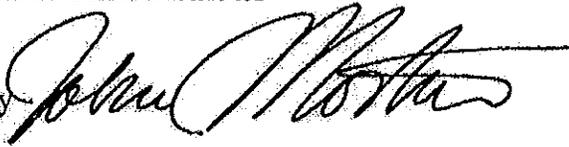
# Exhibit C



U.S. Immigration  
and Customs  
Enforcement

DEC 08 2009

MEMORANDUM FOR: Field Office Directors and  
All Fugitive Operation Team Members

FROM: John Morton  
Assistant Secretary 

SUBJECT: National Fugitive Operations Program: Priorities, Goals, and  
Expectations

Purpose

This memorandum serves to clarify the enforcement priorities of the National Fugitive Operations Program (hereinafter the program) within the Office of Detention and Removal Operations (DRO) and supersedes previously issued fugitive operations guidance. The existence and continuation of this program are essential to the integrity of the immigration and border controls. Good government is poorly served if, after much time and the expenditure of government resources, final orders of removal are ignored without consequence. Indeed, the sound administration of the nation's immigration system depends on an efficient, fair, and meaningful removal process. As a result, it is the clear policy of this agency that final orders of removal should be enforced and that those who knowingly disobey or evade a final order of removal should be apprehended and removed.

In order to ensure that the program's resources are used efficiently and as envisioned by Congress, it is the policy of this agency that the program focus on its core mission—the apprehension and removal of fugitive aliens.<sup>1</sup> In the interest of public safety and the rule of law, the program's resources may also be used to apprehend and remove (1) aliens who have been removed previously from the United States and then return illegally, and (2) criminal or otherwise dangerous aliens living at large in our communities. As a general rule, the program's resources should not be used to target other classes of removable aliens, although fugitive operations teams may apprehend and remove such aliens if encountered during normal operations.

<sup>1</sup> A fugitive is any alien who has failed to leave the United States following the issuance of a final order of removal, deportation, or exclusion or has failed to report to ICE after receiving notice to do so.

### Enforcement Priorities

The following three tiers reflect, in order of priority, how fugitive operations teams should focus their resources. Teams must focus the vast majority of resources, at least 70%, on tier 1 fugitives. The remainder should be directed to tiers 2 and 3. The priorities within each tier are also listed below, with level I generally warranting more attention than level II, and so forth. These tiers and levels provide clear guidance to the field but should not be applied so rigidly as to undermine sound judgment when exceptions are warranted by circumstance.<sup>2</sup> Similarly, the tiers should not be so rigidly interpreted to prevent prioritizing an illegal reentrant with a serious criminal conviction over a fugitive with no criminal history.

#### Tier 1 Fugitive aliens

- I. Fugitives who pose a threat to national security
- II. Fugitives convicted of violent crimes or who otherwise pose a threat to the community
- III. Fugitives with a criminal conviction other than a violent crime
- IV. Fugitives with no criminal conviction

#### Tier 2 Previously removed aliens

- I. Previously removed aliens who pose a threat to national security
- II. Previously removed aliens convicted of violent crimes or who otherwise pose a threat to the community
- III. Previously removed aliens with a criminal conviction other than a violent crime
- IV. Previously removed aliens with no criminal conviction

#### Tier 3 Removable aliens convicted of crimes

- I. Aliens convicted of level 1 offenses, as defined for purpose of Secure Communities
- II. Aliens convicted of level 2 offenses, as defined for purposes of Secure Communities
- III. Aliens convicted of level 3 offenses, as defined for purposes of Secure Communities

With respect to non-criminal fugitive targets in Tier 1, level IV, the Fugitive Operations Support Center (FOSC) and teams should consider that aliens who are the subject of in absentia orders and aliens with pending applications for relief before U.S. Citizenship and Immigration Services are more likely to have viable motions to reopen. For that reason, resources—particularly detention resources—may be better focused on other targets, unless aggravating circumstances offset the possibility of reopening or prolonged proceedings.

To promote efficiency, teams are expected to focus resources on cases with the most current investigative leads, including cases with the most recently issued final orders as these are most

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<sup>2</sup> These guidelines and priorities are not intended to, do not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.

likely to contain up-to-date contact information. These should be targeted as soon as possible to limit the opportunity for a fugitive to relocate. Teams are expected to act expeditiously if they receive current, time-sensitive leads.

As resources are best spent on cases with the freshest and most reliable leads, FOSC has created a cold case docket for those cases without any investigative leads in the past decade. FOSC will review the cold case docket twice a year to determine if new information has surfaced. New information may cause FOSC to conclude the case is resolved (for instance, because the case was reopened) or return it to the active fugitive docket (for instance, because of new information about the alien's location).

Teams will receive Fourth Amendment training every six months which will focus on the special considerations when apprehending fugitives at their home. Any team member with questions should consult his or her supervisors and consult with the Office of Chief Counsel. Team members are encouraged to engage in surveillance both to promote officer safety and increase the likelihood the team will encounter the targeted alien—rather than aliens who are not in the tiers above and would not otherwise have been the focus of limited government resources.

If during the course of operations teams encounter removable aliens, teams may place those aliens into removal proceedings, even if they are not in one of the three tiers. However, this should not detract attention away from the reason Congress mandated and funded fugitive operation teams—the apprehension and removal of fugitive aliens. In any event, detention resources shall be focused on aliens in the three tiers above and aliens subject to mandatory detention by law. Absent extraordinary circumstances, team members should not detain aliens who are physically or mentally ill, disabled, elderly, pregnant, nursing, or the sole caretaker(s) of children or the infirm. To detain aliens in those categories, team members must secure approval from the Field Office Director and send a significant event notice (SEN) to headquarters.

### Measuring Success

As apprehending and removing fugitives is the program's core mission, field offices' performance will be measured in part by the reduction in the fugitive docket and by compliance with priorities. Each field office and the FOSC should strive to reduce the pool of fugitives by 5% more in FY 2010 than it did in FY 2009. A field office may increase productivity—the reduction in the fugitive pool—by apprehending fugitives or otherwise resolving fugitive cases, even if no arrest is involved. This includes resolving cases by determining that a target has departed the country on his or her own or determining that the case was reopened or the target has since received an immigration benefit. Field offices should not feel such pressure to meet this goal that they lose focus on the priorities and sound use of resources. This goal does not constitute a quota; rather, this goal allows the teams to gage their productivity.

The field should not focus on numbers to the detriment of targeting and arresting the most egregious, violent offenders in their area of responsibility (AOR). To acknowledge the tiered prioritization above, DRO also will track fugitive arrests, by tier, using EARM/FCMS/TECS. Arrests will be separated by tiers, criminal and non-criminal arrests, and indictments and

convictions attributed to teams during operations. This system will credit teams for locating high priority aliens, even if those cases require more time to investigate and close.

Field offices are expected to focus not simply on the apprehension of aliens, but also on their removal. Headquarters will evaluate removals in addition to the metrics above. When fugitives are taken into custody, officers should pay attention to lawful avenues to secure the person's travel documents to reduce detention times and facilitate removal.

### Field and National Operations

Field offices have the discretion to conduct operations to advance the program's priorities and accomplish the goal of reducing the fugitive pool. Field offices are encouraged to participate in Operation Cross Check and Operation Secure Streets in collaboration with local United States Attorney's offices. These operations are important as they identify criminal aliens who fall within the three tiers above. Field offices also will be called on to participate in national and strategic headquarters-driven operations. Major operations, whether driven by the field or headquarters, will be coordinated with the Office of the Principal Legal Advisor.

### Building Partnerships

Field Office Directors and team members are encouraged to maintain and build positive relationships with federal, state, local, and tribal law enforcement agencies in their AOR. This includes information sharing, consistent with law and policy. Team members are encouraged to advise, and cooperate with, local law enforcement partners when conducting operations. Field Office Directors will coordinate with any local participants in the task force model of the 287(g) program to share information and avoid duplication of efforts.

Field Office Directors also are expected to build relationships with community groups to identify and address concerns about the conduct of fugitive operations. Allegations of misconduct and wrongdoing are referable to the Joint Intake Center (JIC).

# Exhibit D

Policy Number: 10072.1  
FEA Number: 601-14

Office of the Assistant Secretary

U.S. Department of Homeland Security  
500 12th Street, SW  
Washington, D.C. 20536

JUN 30 2010



U.S. Immigration  
and Customs  
Enforcement

MEMORANDUM FOR: All ICE Employees

FROM: John Morton  
Assistant Secretary 

SUBJECT: Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens

Purpose

This memorandum outlines the civil immigration enforcement priorities of U.S. Immigration and Customs Enforcement (ICE) as they relate to the apprehension, detention, and removal of aliens. These priorities shall apply across all ICE programs and shall inform enforcement activity, detention decisions, budget requests and execution, and strategic planning.

*A. Priorities for the apprehension, detention, and removal of aliens*

In addition to our important criminal investigative responsibilities, ICE is charged with enforcing the nation's civil immigration laws. This is a critical mission and one with direct significance for our national security, public safety, and the integrity of our border and immigration controls. ICE, however, only has resources to remove approximately 400,000 aliens per year, less than 4 percent of the estimated illegal alien population in the United States. In light of the large number of administrative violations the agency is charged with addressing and the limited enforcement resources the agency has available, ICE must prioritize the use of its enforcement personnel, detention space, and removal resources to ensure that the removals the agency does conduct promote the agency's highest enforcement priorities, namely national security, public safety, and border security.

To that end, the following shall constitute ICE's civil enforcement priorities, with the first being the highest priority and the second and third constituting equal, but lower, priorities.

**Priority 1. Aliens who pose a danger to national security or a risk to public safety**

The removal of aliens who pose a danger to national security or a risk to public safety shall be ICE's highest immigration enforcement priority. These aliens include, but are not limited to:

**Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens**  
Page 2

- aliens engaged in or suspected of terrorism or espionage, or who otherwise pose a danger to national security;
- aliens convicted of crimes, with a particular emphasis on violent criminals, felons, and repeat offenders;
- aliens not younger than 16 years of age who participated in organized criminal gangs;
- aliens subject to outstanding criminal warrants; and
- aliens who otherwise pose a serious risk to public safety.<sup>1</sup>

For purposes of prioritizing the removal of aliens convicted of crimes, ICE personnel should refer to the following new offense levels defined by the Secure Communities Program, with Level 1 and Level 2 offenders receiving principal attention. These new Secure Communities levels are given in rank order and shall replace the existing Secure Communities levels of offenses.<sup>2</sup>

- Level 1 offenders: aliens convicted of “aggravated felonies,” as defined in § 101(a)(43) of the Immigration and Nationality Act,<sup>3</sup> or two or more crimes each punishable by more than one year, commonly referred to as “felonies”;
- Level 2 offenders: aliens convicted of any felony or three or more crimes each punishable by less than one year, commonly referred to as “misdemeanors”; and
- Level 3 offenders: aliens convicted of crimes punishable by less than one year.<sup>4</sup>

**Priority 2. Recent illegal entrants**

In order to maintain control at the border and at ports of entry, and to avoid a return to the prior practice commonly and historically referred to as “catch and release,” the removal of aliens who have recently violated immigration controls at the border, at ports of entry, or through the knowing abuse of the visa and visa waiver programs shall be a priority.

**Priority 3. Aliens who are fugitives or otherwise obstruct immigration controls**

In order to ensure the integrity of the removal and immigration adjudication processes, the removal of aliens who are subject to a final order of removal and abscond, fail to depart, or intentionally obstruct immigration controls, shall be a priority. These aliens include:

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<sup>1</sup> This provision is not intended to be read broadly, and officers, agents, and attorneys should rely on this provision only when serious and articulable public safety issues exist.

<sup>2</sup> The new levels should be used immediately for purposes of enforcement operations. DRO will work with Secure Communities and the Office of the Chief Information Officer to revise the related computer coding by October 1, 2010.

<sup>3</sup> As the definition of “aggravated felony” includes serious, violent offenses and less serious, non-violent offenses, agents, officers, and attorneys should focus particular attention on the most serious of the aggravated felonies when prioritizing among level one offenses.

<sup>4</sup> Some misdemeanors are relatively minor and do not warrant the same degree of focus as others. ICE agents and officers should exercise particular discretion when dealing with minor traffic offenses such as driving without a license.

## Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens

Page 3

- fugitive aliens, in descending priority as follows:<sup>5</sup>
  - fugitive aliens who pose a danger to national security;
  - fugitives aliens convicted of violent crimes or who otherwise pose a threat to the community;
  - fugitive aliens with criminal convictions other than a violent crime;
  - fugitive aliens who have not been convicted of a crime;
- aliens who reenter the country illegally after removal, in descending priority as follows:
  - previously removed aliens who pose a danger to national security;
  - previously removed aliens convicted of violent crimes or who otherwise pose a threat to the community;
  - previously removed aliens with criminal convictions other than a violent crime;
  - previously removed aliens who have not been convicted of a crime; and
- aliens who obtain admission or status by visa, identification, or immigration benefit fraud.<sup>6</sup>

The guidance to the National Fugitive Operations Program: Priorities, Goals and Expectations, issued on December 8, 2009, remains in effect and shall continue to apply for all purposes, including how Fugitive Operation Teams allocate resources among fugitive aliens, previously removed aliens, and criminal aliens.

### *B. Apprehension, detention, and removal of other aliens unlawfully in the United States*

Nothing in this memorandum should be construed to prohibit or discourage the apprehension, detention, or removal of other aliens unlawfully in the United States. ICE special agents, officers, and attorneys may pursue the removal of any alien unlawfully in the United States, although attention to these aliens should not displace or disrupt the resources needed to remove aliens who are a higher priority. Resources should be committed primarily to advancing the priorities set forth above in order to best protect national security and public safety and to secure the border.

### *C. Detention*

As a general rule, ICE detention resources should be used to support the enforcement priorities noted above or for aliens subject to mandatory detention by law. Absent extraordinary circumstances or the requirements of mandatory detention, field office directors should not expend detention resources on aliens who are known to be suffering from serious physical or mental illness, or who are disabled, elderly, pregnant, or nursing, or demonstrate that they are

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<sup>5</sup> Some fugitives may fall into both this priority and priority 1.

<sup>6</sup> ICE officers and special agents should proceed cautiously when encountering aliens who may have engaged in fraud in an attempt to enter but present themselves without delay to the authorities and indicate a fear of persecution or torture. See Convention relating to the Status of Refugees, art. 31, *opened for signature* July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 137. In such instances, officers and agents should contact their local Office of the Chief Counsel.

primary caretakers of children or an infirm person, or whose detention is otherwise not in the public interest. To detain aliens in those categories who are not subject to mandatory detention, ICE officers or special agents must obtain approval from the field office director. If an alien falls within the above categories and is subject to mandatory detention, field office directors are encouraged to contact their local Office of Chief Counsel for guidance.

*D. Prosecutorial discretion*

The rapidly increasing number of criminal aliens who may come to ICE's attention heightens the need for ICE employees to exercise sound judgment and discretion consistent with these priorities when conducting enforcement operations, making detention decisions, making decisions about release on supervision pursuant to the Alternatives to Detention Program, and litigating cases. Particular care should be given when dealing with lawful permanent residents, juveniles, and the immediate family members of U.S. citizens. Additional guidance on prosecutorial discretion is forthcoming. In the meantime, ICE officers and attorneys should continue to be guided by the November 17, 2000 prosecutorial discretion memorandum from then-INS Commissioner Doris Meissner; the October 24, 2005 Memorandum from Principal Legal Advisor William Howard; and the November 7, 2007 Memorandum from then-Assistant Secretary Julie Myers.

*E. Implementation*

ICE personnel shall follow the priorities set forth in this memorandum immediately. Further, ICE programs shall develop appropriate measures and methods for recording and evaluating their effectiveness in implementing the priorities. As this may require updates to data tracking systems and methods, ICE will ensure that reporting capabilities for these priorities allow for such reporting as soon as practicable, but not later than October 1, 2010.

# Exhibit E



The purpose of this form is to assist you in filing a civil rights/civil liberties complaint with the Department of Homeland Security (DHS) Office for Civil Rights and Civil Liberties (CRCL) regarding DHS programs and activities. This form is not intended to be used for complaints about employment with DHS. You are not required to use this form to file a complaint; a letter with the same information is sufficient. However, if you file a complaint by letter, you should include the same information that is requested in the form.

**CRCL Mission:**

The DHS Office for Civil Rights and Civil Liberties (CRCL) supports the Department as it secures the nation while preserving individual liberty, fairness, and equality under the law. We investigate claims of civil rights and civil liberties abuses, to help DHS improve protections and programs.

**Do you have a DHS civil rights or civil liberties complaint? If you believe that DHS personnel or a DHS program or activity has violated your rights, we want to hear from you. Fill out this form, or write us an email or letter.**

In connection with a DHS program, activity, or policy, have you experienced:

- Discrimination based on your race, ethnicity, national origin (including language proficiency), religion, gender, or disability? (Note: do not use this form to make a complaint about employment discrimination; see [www.dhs.gov/eo](http://www.dhs.gov/eo).)
- Denial of meaningful access to DHS or DHS-supported programs, activities, or services due to limited English proficiency?
- Violation of your rights while in immigration detention or as a subject of immigration enforcement?
- Discrimination or inappropriate questioning related to entry into the United States?
- Violation of your right to due process, such as your right to timely notice of charges or access to your lawyer?
- Violation of the Violence Against Women Act's confidentiality requirements?
- Physical abuse or any other type of abuse inflicted upon you?
- Any other civil rights or civil liberties violation related to a DHS program or activity?

**Notes on Confidentiality and Anonymity:**

- A) You may remain anonymous by not filling in your name, below. However, CRCL may not be able to investigate your complaint unless you provide enough information to conduct an investigation.
- B) Disclosure of the information you provide, including your identity, is on a "need-to-know" basis, and is discussed in the Privacy Statement at the end of this document. **IF YOU CHECK THE BOX BELOW, WE WILL NOT DISCLOSE YOUR IDENTITY TO OTHER OFFICES, IN OR OUT OF DHS (unless it is necessary for investigation of criminal misconduct).** Note, however, that this will in many situations make it very difficult or impossible, practically speaking, for us to investigate the allegations you raise.  
 I do NOT want CRCL to disclose my name to other offices, and understand this decision will often make it impossible for an investigation to take place.
- C) Reprisal against complainants to CRCL is unlawful; if you feel you have been a victim of reprisal, CALL US. 1-866-644-8360.

## Complaint Information

If you don't speak/write English, CRCL has access to interpreters and can talk to you in any language.

① **Information about the person who experienced the civil rights/civil liberties violation**

(fill in what you can)

Name: \_\_\_\_\_  
*First and Middle* *Last*

Phone #: Cell: \_\_\_\_\_ Home: \_\_\_\_\_ Work: \_\_\_\_\_

Please note that we may contact you at the provided numbers.

Mailing Address: \_\_\_\_\_  
*PO Box or Street address* *City* *State* *Zip*

Date of Birth: \_\_\_\_\_ Email (optional): \_\_\_\_\_

Alien Registration #. (if you have one and it's available): \_\_\_\_\_

Check here if you are in detention now.

Which facility? \_\_\_\_\_  
*Facility name* *Facility address*

Check here if you are represented by an attorney in this matter. If so please provide the attorney's name and contact information \_\_\_\_\_

② **Are you filling in this complaint form on behalf of another individual?** If yes, please provide *your* information.

Name: \_\_\_\_\_  
*First* *Last* *Job title*

Organization (if any): \_\_\_\_\_

Phone #: Cell: \_\_\_\_\_ Home: \_\_\_\_\_ Work: \_\_\_\_\_

Mailing Address: \_\_\_\_\_  
*PO Box or Street address* *City* *State* *Zip*

③ **What happened?** Describe your complaint. Give as much detail about your experience as possible.

*Continue on an additional page, if needed.*

**When did this happen? If ongoing, please indicate when the problem began.**

*(If it happened on more than one date, list all dates):*

**Where did this happen?**

Place *(for example, name the detention facility, airport, other)*: \_\_\_\_\_

City: \_\_\_\_\_ State or Country: \_\_\_\_\_

**④ Who treated you unfairly?**

An employee, contractor, or officer of *(check as many as apply)*:

- Citizenship and Immigration Services (USCIS)
- Customs and Border Protection (CBP)\*
  - Customs Officer
  - Border Patrol Agent
- Federal Emergency Management Agency (FEMA)
- Immigration and Customs Enforcement (ICE)
- Secret Service (USSS)
- Transportation Security Administration (TSA)\*
- U.S. Coast Guard (USCG)
- Other DHS program *(specify)* : \_\_\_\_\_
- Not sure which DHS office
- Non-DHS employee working under the authority of DHS (e.g., 287g officer) specify: \_\_\_\_\_

\*If your complaint is about an incident at an airport, train station, or border crossing, you may also file a complaint with the Department of Homeland Security's Traveler Redress Inquiry Program (TRIP). TRIP and this Office will review your complaint together, resulting in a faster response. Go to: [www.dhs.gov/trip](http://www.dhs.gov/trip).

**⑤ List anyone else who may have seen or heard what happened.**

*(If you do not know their names, provide whatever details you can)*

Names (or other information, e.g., agency): \_\_\_\_\_

Mailing Address: \_\_\_\_\_  
PO Box or Street address City State or Country Zip

Phone No.: \_\_\_\_\_ Email: \_\_\_\_\_

Names (or other information, e.g., agency): \_\_\_\_\_

Mailing Address: \_\_\_\_\_  
PO Box or Street address City State or Country Zip

Phone No.: \_\_\_\_\_ Email: \_\_\_\_\_

*Continue on an additional page, if needed.*

⑥ **Have you contacted any other DHS component or other federal, state, or local government agency or court about this complaint?**

**Yes:** Agency/Office/Court \_\_\_\_\_ Date: \_\_\_\_\_

**No**

**If so, has anyone responded to your complaint?**

**Yes**  **No**

If Yes, describe what has been done to respond to your complaint:

*Continue on an additional page, if needed.*

⑦ **Is there any other information you want us to know about or consider?**

*Continue on an additional page, if needed.*

⑧ **If you are not proficient in English, please indicate the language in which you prefer we communicate with you.**

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⑨ **If you have problems understanding this form or any other question, contact CRCL:**

E-mail: [crcl@dhs.gov](mailto:crcl@dhs.gov)

Phone: Local: 202-401-1474 or

Toll Free: 866-644-8360

TTY: Local TTY: 202-401-0470

Toll Free TTY: 866-644-8361

Fax: 202-401-4708

**By U.S. Postal Service:**

Department of Homeland Security

CRCL/Compliance Branch

245 Murray Lane, SW

Building 410, Mail Stop #0190

Washington, DC 20528

*Note:* Because of security measures, it can take up to 4 weeks for us to receive U.S. mail.

⑩ **To submit this form by email, please save, attach, and send to [crcl@dhs.gov](mailto:crcl@dhs.gov). Please attach or send all information that supports your complaint, such as documents, photos, medical records, grievances, or witness statements.**

Submit copies, not originals; put your name and the date of this complaint on each document. (Fax to: 202-401-4708, or email scans of your documents to [crcl@dhs.gov](mailto:crcl@dhs.gov), or mail to the address listed above.)

**Keep a copy of this complaint for your records.**

#### **Privacy Act Statement**

Under 6 U.S.C. § 345 and 42 U.S.C. § 2000ee-1, the Office for Civil Rights and Civil Liberties (CRCL) is authorized to investigate complaints and information from the public about possible violations of civil rights or civil liberties related to DHS employees, programs, or activities. A federal law, called the Privacy Act, says we must explain how we protect your information while processing your complaint.

If your complaint is more appropriately handled by a different federal office, we will refer it to that office. In order to investigate your complaint, CRCL will disclose the information regarding your complaint to other appropriate DHS offices, including the Office of the Inspector General. CRCL may also disclose certain information from your complaint if we are required by law to do so or if there is no privacy impact. For example, we send reports to Congress every three months about complaints submitted by the public. Those reports describe the **types** of complaints, and **do not include personal information**. To read our past reports, go to [www.dhs.gov/crcl](http://www.dhs.gov/crcl).

To learn more about the Privacy Act go to the Federal Information Center, [www.pueblo.gsa.gov](http://www.pueblo.gsa.gov).

**You may use the following pages to include additional information about your complaint if needed. Please specify which number(s) above you are continuing.**

*Continue on this page, if needed.*

*Continue on this page, if needed.*

# Exhibit F



- Recent Releases
- Library
- Faces of ICE
- Press Releases
- Federal Register Notices and Regulations
- Forms
- Freedom of Information Act (FOIA) Library
- Photo of the Week
- Policies
- Reports
- Speeches & Testimonies
- Top Stories
- Images and Videos
- Legal Notices
- Media Kit
- Widgets

Enforcement & Removal » Fugitive Operations

## Fact Sheet: ICE Fugitive Operations Program



JULY 2, 2013

### Background

U.S. Immigration and Customs Enforcement (ICE) established the first Fugitive Operations Teams (FOTs) in 2003 to dramatically expand the agency's efforts to locate, arrest and remove fugitive aliens from the United States. An ICE fugitive is defined as an alien who has failed to leave the United States based upon a final order of removal, deportation or exclusion, or who has failed to report to ICE after receiving notice to do so.

In 2009, the responsibilities of ICE's FOTs were expanded to include cases involving at-large convicted criminal aliens who pose a threat to national security and community safety, including members of transnational street gangs, child sex offenders, and aliens with prior convictions for violent crimes. The FOT officers and agents use intelligence-based information and leads to locate and arrest aliens. They also prioritize their work based on goals and expectations set forth by ICE and Department of Homeland Security (DHS) leadership.

### Key ICE Fugitive Operations Initiatives

- ✦ The National Fugitive Operations Program (NFOP) is responsible for reducing the fugitive alien population in the United States. ICE's databases show the targeted enforcement strategy is paying off as the nation's fugitive alien population continues to decline. At the end of fiscal year (FY) 2012, there were approximately 469,157 fugitive alien cases — a decrease of more than 10,616 since the beginning of the fiscal year.
- ✦ Much of the credit for these results can be attributed to the rapid expansion of the program and the establishment of the Fugitive Operations Support Center (FOSC). The initiative launched in 2003 with eight Fugitive Operations Teams (FOTs) nationwide. Today, ICE has 129 FOTs deployed nationwide to pursue these types of cases. In FY 2012, these teams accounted for more than 37,000 arrests.
- ✦ ICE established the Fugitive Operations Support Center (FOSC) in June of 2006, located in Williston, Vermont. The FOSC is a key element in ERO's strategy to address enforcement of arrest and removal warrants to include fugitives, aliens who have illegally reentered the U.S. after removal, and aliens posing a variety of threats to our communities within the U.S. and abroad.
- ✦ Through the use of technology and partnerships with law enforcement agencies, the FOSC serves as a specialized unit that focuses on analyzing the nature and characteristics of the fugitive and at-large criminal alien populations as recorded in the Enforce Alien Removal Module (EARM). Over the several years of its existence, these efforts have steadily reduced the reported number of existing fugitives by reconciling records to eliminate those who have left the country voluntarily, successfully adjusted their status, or were discovered to be incarcerated, and therefore are no longer fugitives. Also, the FOSC provides vital assistance by serving as a national enforcement operations center providing ICE FOTs in the field with critical information on the identity, immigration history, criminal case history, and location of high-priority removable aliens in the United States, thereby assisting in criminal arrest percentages over the last several years.



# EXHIBIT 2



**U.S. Immigration  
and Customs  
Enforcement**

October 29, 2013

GHITA SCHWARZ, ESQ.  
CENTER FOR CONSTITUTIONAL RIGHTS  
666 BROADWAY, 7TH FLOOR  
NEW YORK, NY 10012

**Re: 2014FOIA1578**

Dear Schwarz, Esq.:

This acknowledges receipt of your October 17, 2013, Freedom of Information Act (FOIA) request to the Immigration and Customs Enforcement (ICE), for information pertaining to ICE home enforcement operations and their local communities. Specially you seek 1) policies, procedures, objectives and etc. 2) data & statistical information as defined by your request. Your request was received in this office on October 25, 2013.

Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Per Section 5.5(a) of the DHS FOIA regulations, 6 C.F.R. Part 5, the Department processes FOIA requests according to their order of receipt. Although DHS' goal is to respond within 20 business days of receipt of your request, the FOIA does permit a 10-day extension of this time period. As your request seeks numerous documents that will necessitate a thorough and wide-ranging search, DHS will invoke a 10-day extension for your request, as allowed by Title 5 U.S.C. § 552(a)(6)(B). If you care to narrow the scope of your request, please contact our office. We will make every effort to comply with your request in a timely manner; however, there are currently 6461 open requests ahead of yours.

Provisions of the Act allow us to recover part of the cost of complying with your request. We shall charge you for records in accordance with the DHS Interim FOIA regulations as they apply to non-commercial requesters. As a non-commercial requester you will be charged 10-cents a page for duplication, although the first 100 pages are free, as are the first two hours of search time, after which you will pay the quarter-hour rate (\$4.00, \$7.00, \$10.25) of the searcher. We will construe the submission of your request as an agreement to pay up to \$25.00. You will be contacted before any further fees are accrued.

We have queried the appropriate program offices within ICE for responsive records. If any responsive records are located, they will be reviewed for determination of releasability. Please be assured that one of the processors in our office will respond to your request as expeditiously as possible. We appreciate your patience as we proceed

with your request.

Your request has been assigned reference number **2014FOIA1578**. Please refer to this identifier in any future correspondence. You may contact this office at (866) 633-1182. Our mailing address is 500 12th Street, S.W., Stop 5009, Washington, D.C. 20536-5009.

Sincerely,



Catrina M. Pavlik-Keenan  
FOIA Officer



# EXHIBIT 3

November 19, 2013

Freedom of Information Policy Office  
ATTN: Catrina Pavlik-Keenan  
FOIA Officer  
500 12<sup>th</sup> Street, S.W., Stop 5009  
Washington, DC 20536-5009

Re: **FREEDOM OF INFORMATION ACT APPEAL – Case No. 2014FOIA1578**

Dear Ms. Pavlik-Keenan,

This is a Freedom of Information Act (“FOIA”) appeal of the determination of Immigration and Customs Enforcement (“ICE”) to deny a fee waiver in connection with FOIA Request 2014FOIA1578 (“the request”), dated October 17, 2013. The request seeks information on behalf of the Immigrant Defense Project (“IDP”), the Center for Constitutional Rights (“CCR”), and the Hispanic Interest Coalition of Alabama (“HICA”) (collectively “the Requesters”) for information regarding U.S. Immigration and Customs Enforcement agency (“ICE”) and Department of Homeland Security (“DHS”) home-based enforcement operations.

ICE denied our request for a fee waiver in a letter dated October 29, 2013, postmarked October 30, 2013 and received on November 1, 2013 (“ICE Partial Denial.”). The denial contained no findings, but instead construed our request for a fee waiver as consent for limitation of processing fees. In addition, because the letter from ICE did not deny our request for expedited processing, we understand ICE to have granted our request and expect to receive the requested information from ICE in an expedited manner.

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552(a)(6), CCR hereby appeals ICE’s denials of our requests for a fee waiver.

### **Fee Waiver**

The Requesters qualify for a fee waiver on the grounds that the information we seek “is in the public interest because it is likely to contribute significantly to the public understanding of the activities or operations of the government and is not primarily in the commercial interest of the requester[s],” 5 U.S.C. § 552(a)(4)(A)(iii) as well as because CCR is a representative of the news media, as it engaged in the dissemination of information to the public as one of its primary activities. *See* 5 U.S.C. § 552(a)(4)(A)(ii)(II). As demonstrated herein, ICE erred in appearing to conclude that the Requesters do not qualify for a fee waiver under either of these provisions.

**1. The Requesters qualify for a fee waiver on the grounds that disclosure will contribute to the public understanding of government activities.**

ICE denied the fee waiver without making any findings that Requesters did not qualify under the law. The Requesters qualify for a fee waiver on the grounds that disclosure of the requested records is in the public interest and because disclosure “is likely to contribute significantly to the public understanding of the activities or operations of the government and is not primarily in the commercial interest of the requester[s].” 5 U.S.C. § 552(a)(4)(A)(iii). Disclosure in this case meets the statutory criteria, and a fee waiver would fulfill Congress’s legislative intent in amending FOIA. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” (citation omitted)).

There is no question that public interest in the conduct of ICE at private homes remains high. In our October 17, 2013 request, Requesters documented longstanding public interest in ICE’s conduct at private homes. Even since the filing of our Request, public demonstrations of ICE enforcement operations, including protests of the actions of the New Orleans, Louisiana Field Office, have garnered widespread news attention. *See, e.g.*, Bill Quigley, “Why I stand with the immigrant workers who rebuilt New Orleans,” Times-Picayune of Greater New Orleans, Nov. 15, 2013 available at [http://www.nola.com/opinions/index.ssf/2013/11/why\\_i\\_stand\\_with\\_the\\_immigrant.html](http://www.nola.com/opinions/index.ssf/2013/11/why_i_stand_with_the_immigrant.html) and “ICE Raids Leave Broken Homes in Their Wake,” Inter Press Service, Oct. 29, 2013, available at <http://www.ipsnews.net/2013/10/ice-raids-leave-broken-homes-in-their-wake-2/>. These protests and news coverage reinforce our position that the public has an interest in knowing about the manner in which ICE conducts home enforcement operations, including how decisions to initiate raids are made, what policies and guidelines govern ICE agents’ conduct, and how ICE involves state and local entities in such actions. The public also has an interest in knowing the number of people that have been apprehended, arrested, and/or detained from home enforcement operations since January 2009 and the impact on families and children. Further, the public has an interest in knowing whether and to what extent people affected by home enforcement operations are experiencing Fourth Amendment violations and other abuses; ICE’s guidelines and practices for monitoring and enforcement of constitutional compliance; and how complaints of and investigations of misconduct are handled. The records sought in this request will inform the public of the scope of ICE’s home enforcement operations, their effect on public safety, and the manner in which ICE holds itself and its agents accountable for complaints of constitutional misconduct.

The Department of Justice has promulgated regulations setting forth various factors to be considered in determining whether the statutory criteria are met. 28 C.F.R § 16.11(k). As set forth below, when applied to the facts of this case, all of the regulatory factors militate in favor of granting a fee waiver:

(4) *The significance of the contribution to public understanding:* While there is widespread public interest in how ICE conducts enforcement operations at residential homes, there is virtually no information about it in the public domain. Obtaining clear documentation about the guidelines for ICE agents in conducting enforcement operations at homes, including policies and procedures for conducting operations, documentation of misconduct or complaints of misconduct, the number of individuals apprehended, arrested and/or detained during such operations, and the impact on families and children would “significantly” contribute to the public’s understanding of ICE’s home enforcement activities and how they fit within ICE’s broader immigration enforcement agenda. 28 C.F.R § 16.11(k)(1)(iv).

(5) *The existence and magnitude of a commercial interest:* The Requesters have absolutely no commercial interest that would be furthered by the requested disclosure. 28 C.F.R § 16.11(k)(3)(i).

(6) *The primary interest in disclosure:* This factor is not relevant since the Requesters have no commercial interest that would be furthered by the requested disclosure. 28 C.F.R § 16.11(k)(3)(ii).

Since all factors militate in favor of finding that “disclosure of the information 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), a full fee waiver should be granted.

## **2. The Requesters are entitled to a fee waiver as organizations engaged in the dissemination of information to the public.**

The Requesters are also entitled to a fee waiver as organizations engaged in the dissemination of information to the public as it is a “representative of the news media.” 5 U.S.C. §552(a)(4)(A)(ii)(II). A “representative of the news media” either means any person or entity that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience,” 5 U.S.C. §552(a)(4)(A)(ii) or “refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public.” 32 CFR 286.28 (e)(7)(i). 5 U.S.C. §552(a)(4)(A)(ii) explicitly recognizes “electronic dissemination” as a method of delivery of news.

A public interest organization engaged in litigation and advocacy can qualify as a “representative of the news media.” In *Electronic Privacy Info. Center v. DOD*, 241 F Supp. 2d 5, 11 (D.D.C. 2003), the court determined that the Electronic Privacy Information Center (EPIC), a public interest research organization, was a representative of the news media for the purposes of a fee waiver. In making this determination, the critical question is whether the entity in question “gathers information of potential

interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience.” *EPIC*, 241 F. Supp. 2d at 11.

The Requesters regularly gather information of potential interest to a segment of the public and publish in-depth reports, briefing guides, and fact sheets on subjects such as the Secure Communities program (CCR); access to resources for immigrants in Alabama (HICA); and the representation of immigrants in deportation proceedings (IDP). In addition to publishing detailed reports, we inform the news media, issue press releases, publicize our concerns in leaflets, pamphlets, posters, advertisements, newsletters, know-your-rights handbooks and websites including through social media, raise awareness by mounting public action campaigns, and host and participate in events to inform the public of civil and human rights issues.

CCR also disseminates information through its heavily trafficked website, [www.ccrjustice.org](http://www.ccrjustice.org), and operates an electronic membership list of over 50,000 members that issues “action alerts” that notify supporters and the general public about developments and operations pertaining to CCR’s work. Our website addresses civil and human rights issues in depth, and serves as an invaluable resource to disseminate information to the public. In relation to the subject-matter of this request, CCR has issued various press releases and open letters on its web-site,<sup>1</sup> and for over two years CCR operated the website [www.uncovertheruth.org](http://www.uncovertheruth.org), which disseminated information regarding ICE’s Secure Communities program.<sup>2</sup> Similarly, HICA’s website, [www.hispanicinterest.org](http://www.hispanicinterest.org), publishes resources and fact sheets for immigrants, including information on deferred action, federal immigration reform, and state and local immigration enforcement efforts. Likewise, IDP’s website, [www.immigrantdefenseproject.org](http://www.immigrantdefenseproject.org), publishes numerous guides and policy updates on immigration reform, deportation, and the Secure Communities program, and its telephone hotline disseminates information by responding to over 2,000 annual calls from the public.

Even if a fee waiver required that one of the Requesters’ primary activities is dissemination of information to the public, CCR, HICA and IDP meet this requirement as well. CCR, HICA and IDP are not-for-profit legal and educational organizations that engage in litigation, public advocacy, and the production of publications in the fields of civil and international human rights, Our missions therefore fundamentally depend on disseminating information to the public.<sup>3</sup>

Courts have determined that entities similar to the Requesters are primarily engaged in dissemination of information. *See, e.g., EPIC*, 241 F. Supp. 2d at 11 (plaintiff, a non-profit educational institution, who published seven books and issued a bi-weekly electronic newsletter for eight years and nothing else, qualified as a representative

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<sup>1</sup> See <http://ccrjustice.org/ourcases/argueta-v-ice> and <http://ccrjustice.org/ourcases/aguilar-v-ice>

<sup>2</sup> See, e.g., [www.ccrjustice.org/securecommunities](http://www.ccrjustice.org/securecommunities) and <http://uncoverthetruth.org/category/foia-documents/> (FOIA requests related to the “Secure Communities” ICE program).

<sup>3</sup> Available at [www.ccrjustice.org/missionhistory](http://www.ccrjustice.org/missionhistory) and [www.ccrjustice.org/movement-support](http://www.ccrjustice.org/movement-support); <http://www.hispanicinterest.org/about/>; <http://immigrantdefenseproject.org/community-education>.

of the news media). *See also Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005); *ACLU v. Dep't of Justice*, 321 F. Supp. 2d 24, 29 n. 5 (D.D.C. 2004). A fee waiver because the Requesters are representatives of the news media would also satisfy case law and Congressional intent. (See Senator Leahy's remarks: "any person or organization which regularly publishes or disseminates information to the public. . . should qualify for waivers as a 'representative of the news media.'" *National Sec. Archive v. DOD*, 880 F.2d 1381, 1386 (D.C. Cir. 1989); 132 Cong.Rec. S14298 (daily ed. Sept. 30, 1986).

Given the context of the Requesters' wide range of activities engaged in disseminating and publishing information through the methods and mechanisms described above, the Requesters qualify as representatives of the news media and are "primarily engaged in disseminating information."

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For all these reasons, the Requesters are entitled to a full fee waiver under both 5 U.S.C. § 552(a)(4)(A)(iii) and 5 U.S.C. § 552(a)(4)(A)(ii)(II).

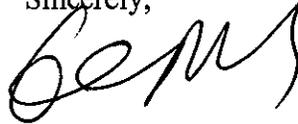
### **Expedited Processing**

ICE's October 29, 2013 letter stated that it would need ten additional days to fulfill our request, but did not deny our request for expedited processing. Based on ICE's claim that the request was received on October 25, 2013, we understand, that ICE will respond to our request no later than December 10, 2013.

\*\*\*\*

The Requesters are available to discuss the fee waiver and can be contacted at (212) 614-6445.

Sincerely,



Ghita Schwarz  
Senior Staff Attorney  
Center for Constitutional Rights  
666 Broadway, 7<sup>th</sup> Floor  
New York, NY 10012  
Phone: (212) 614-6445

# EXHIBIT 4

U.S. Department of Homeland Security  
500 12<sup>th</sup> ST. SW; STOP 5009  
Washington, DC 20536-5009



**U.S. Immigration  
and Customs  
Enforcement**

November 25, 2013

Ghita Schwarz  
Center for Constitutional Rights  
666 Broadway, 7<sup>th</sup> Floor  
New York, NY 10012

Dear Sir or Madam:

The Department of Homeland Security has received your letter appealing the adverse determination of your Freedom of Information Act/Privacy Act (FOIA/PA) request by U.S. Immigration and Customs Enforcement seeking information pertaining to ICE home enforcement operations and their local communities. Specifically you seek 1) policies, procedures, objectives, etc. and 2) data & statistical information as defined by your request. Your appeal, dated November 19, 2013 was received on November 20, 2013.

On behalf of the Chief for the Government Information Law Division, we acknowledge your appeal request of **2014FOIA1578** and are assigning it number **OPLA14-1016** for tracking purposes. Please reference this number in any future communications about your appeal.

A high number of FOIA/PA requests have been received by the Department. Accordingly, we have adopted the court-sanctioned practice of generally handling backlogged appeals on a first-in, first-out basis.<sup>1</sup> While we will make every effort to process your appeal on a timely basis, there may be some delay in resolving this matter. Should you have any questions concerning the processing of your appeal, please contact ICE FOIA at (866) 633-1182, or by email at [ice-foia@dhs.gov](mailto:ice-foia@dhs.gov).

Sincerely,

A handwritten signature in cursive script, appearing to read "R. Meltzer".

Abby Meltzer  
Acting Chief   
Government Information Law Division  
ICE Office of the Principal Legal Advisor  
Department of Homeland Security

---

<sup>1</sup> Appeals of expedited treatment denials will be handled on an expedited basis.

# EXHIBIT 5



U.S. Immigration  
and Customs  
Enforcement

November 27, 2013

Ghita Schwarz, Esq.  
Senior Staff Attorney  
Center for Constitutional Rights  
666 Broadway, 7<sup>th</sup> Floor  
New York, NY 10012

**RE: OPLA14-1016, 2014FOIA1578**

Dear Ms. Schwarz:

This is in response to your letter dated November 19, 2013, appealing the response of your October 17, 2013 Freedom of Information Act/Privacy Act (FOIA/PA) request, particularly to your requests for fee waiver and expedited processing. Your October 17, 2013 request asked for all information surrounding law enforcement operations in homes or residences as further defined in your request.

U.S. Immigration and Customs Enforcement (ICE) have reviewed the administrative record for this case and the basis of your appeal.

Fee Waiver

The statutory standard for evaluating fee waiver requests provide that fees shall be waived or reduced "if disclosure of the information 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). In determining whether you have satisfied this statutory standard, ICE is required to consider the six factors set out in the Department of Homeland Security regulation that puts this statutory standard into effect. Pursuant to DHS regulation, 6 C.F.R. §5.11 (k)(1) fee waivers are properly granted if the requestor has demonstrated that (1) the requested information is likely to contribute significantly to the public understanding of government activities, and (2) the disclosure of the information is not primarily in the commercial interest of the requestor. DHS regulations require that ICE analyze the following six factors to determine whether the applicable legal standard for a fee waiver has been met. Those six factors are as follows:

1. whether the subject of the requested records concerns "the operations or activities of the government";

2. whether the disclosure is "likely to contribute" to an understanding of government operations or activities;
3. whether disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requestor of a narrow segment of interested persons;
4. whether the contribution to public understanding of government operations or activities will be significant;
5. whether the requestor has a commercial interest that would be furthered by the requested disclosure; and
6. whether the magnitude of any identified commercial interest to the requestor is sufficiently large

### Expedited Processing

Pursuant to DHS regulation, 6 C.F.R. §5.5(d)(1), FOIA requests can be granted expedited processing when either (1) the denial of expedited treatment could be expected to pose an imminent threat to life or physical safety of an individual, or (2) where there is an urgency to inform the public about an actual or alleged activity by the federal government, if the requestor is primarily engaged in disseminating information. DHS regulation, 6 C.F.R. §5.11(d)(3) also requires that if a requestor falls within the second requirement of 5.11(d)(1), and is not a full-time member of the news media, the requestor must establish that its main activity or occupation is information dissemination, although it need not be the requestor's sole activity or occupation.

### Conclusion

As you have indicated the ICE FOIA Office has not responded to your request for a waiver of fees or request for expedited processing. Therefore, ICE is remanding your request to the ICE FOIA Office to:

1. provide you with an opportunity to provide the information required to support the basis for your request for a fee waiver and request for expedited processing; and
2. for the ICE FOIA office, based upon the information you provide to it in support of your request for a waiver of duplication fees and request for expedited processing, to respond to your request for a waiver of duplication fees and request for expedited processing.

The ICE FOIA Office's determination of your request for a waiver of fees and request for expedited processing will be based on the factors set forth in the DHS regulations cited above.

Should you have any questions regarding this appeal closure, please contact ICE at [ice-foia@dhs.gov](mailto:ice-foia@dhs.gov). In the subject line of the email please include your appeal number, which is **OPLA14-1016**, and the FOIA case number, which is **2014FOIA1578**.

Sincerely,

*Catherine Gonzalez Gallego for*

Abby L. Meltzer

Acting Chief

Government Information Law Division

ICE Office of the Principal Legal Advisor

Department of Homeland Security



U.S. Immigration  
and Customs  
Enforcement

500 12th St SW, MS 5009  
Washington, DC 20536-5009

OFFICIAL BUSINESS  
PENALTY FOR PRIVATE USE \$300



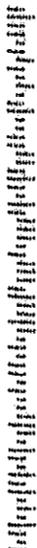
US OFFICIAL MAIL  
\$300 Penalty  
For Private Use

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\$00.460  
Mailed From 20743  
12/04/2013  
US POSTAGE

Hasler

Grita Schwarz, Esq.  
Senior Staff Attorney  
Center for Constitutional Rights  
666 Broadway, 7th Floor  
New York, NY 10012

1001282393



# EXHIBIT 6



U.S. Immigration  
and Customs  
Enforcement

December 13, 2013

GHITA SCHWARZ  
CENTER FOR CONSTITUTIONAL RIGHTS  
666 BROADWAY, 7<sup>TH</sup> FLOOR  
NEW YORK, NY 10012

**RE: FOIA Case Number 2014FOIA1578**

Dear Ms. Schwarz:

This letter responds to your request for a waiver of fees in the processing of your Freedom of Information Act (FOIA) request dated October 7, 2013 and received by this office on October 25, 2013. You have requested information pertaining to ICE home enforcement operations and their local communities. Specially you seek 1) policies, procedures, objectives and etc. 2) data & statistical information as defined by your request.

Immigration and Customs Enforcement (ICE) evaluates fee waiver requests under the legal standard set forth above and the fee waiver policy guidance issued by the Department of Justice on April 2, 1987, as incorporated into the Department of Homeland Security's Freedom of Information Act regulations<sup>1</sup>. These regulations set forth six factors to examine in determining whether the applicable legal standard for fee waiver has been met. I have considered the following factors in my evaluation of your request for a fee waiver: (1) whether the subject of the requested records concerns "the operations or activities of the government"; (2) whether the disclosure is "likely to contribute" to an understanding of government operations or activities; (3) whether disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requestor of a narrow segment of interested persons; (4) whether the contribution to public understanding of government operations or activities will be "significant"; (5) whether the requestor has a commercial interest that would be furthered by the requested disclosure; and (6) whether the magnitude of any identified commercial interest to the requestor is sufficiently large in comparison with the public interest in disclosure that disclosure is primarily in the commercial interest of the requestor.

Upon review of your request and a careful consideration of the factors listed above, I have determined to grant your request for a fee waiver.

---

<sup>1</sup> 6 CFR § 5.11(k).

If you have any questions pertaining to your request, please contact the FOIA Office at (866) 633-1182.

Sincerely,



Catrina M. Pavlik-Keenan  
FOIA Officer



U.S. Immigration  
and Customs  
Enforcement

December 13, 2013

GHITA SCHWARZ  
CENTER FOR CONSTITUTIONAL RIGHTS  
666 BROADWAY, 7TH FLOOR  
NEW YORK, NY 10012

**Re: 2014FOIA1578**

Dear Ms. Schwarz:

This acknowledges receipt of your October 17, 2013 Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), seeking information pertaining to ICE home enforcement operations and their local communities. Specially you seek 1) policies, procedures, objectives and etc. 2) data & statistical information as defined by your request. Your request was received in this office on October 25, 2013.

As it relates to your request for expedited treatment, your request is denied.

Under the DHS FOIA regulations, expedited processing of a FOIA request is warranted if the request involves "circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual," 6 C.F.R. § 5.5(d)(1)(i), or "an urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information," 6 C.F.R. § 5.5(d)(1)(ii). Requesters that seek expedited processing must submit a statement explaining in detail the basis for the request, and that statement must be certified by the requester to be true and correct. 6 C.F.R. § 5.5(d)(3).

Your request for expedited processing is denied because you do not qualify for either category. You failed to demonstrate a particular urgency to inform the public about the government activity involved in the request beyond the public's right to know about government activity generally. Your letter was conclusory in nature and did not present any facts to justify a grant of expedited processing under the applicable standards.

If you deem the decision to deny expedited treatment of your request an adverse determination, you may exercise your appeal rights. Should you wish to do so, you must send your appeal and a copy of this letter within 60 days of receipt of this letter to: Associate General Counsel (General Law),

U.S. Department of Homeland Security, Washington, D.C. 20528, following the procedures outlined in Subpart A, Section 5.9, of the DHS Regulations. Your envelope and letter should be marked "Freedom of Information Act Appeal." Copies of the DHS regulations are available at: [www.dhs.gov/foia](http://www.dhs.gov/foia).

We will construe the submission of your request as an agreement to pay up to \$25.00. You will be contacted before any further fees are accrued.

We have queried the appropriate component of ICE for responsive records. If any responsive records are located, they will be reviewed for determination of releasability. Please be assured that one of the processors in our office will respond to your request as expeditiously as possible. We appreciate your patience as we proceed with your request.

Your request has been assigned reference number **2014FOIA1578**. Please refer to this identifier in any future correspondence. You may contact this office at (866) 633-1182. Our mailing address is 500 12th Street, S.W., Stop 5009, Washington, D.C. 20536-5009.

Sincerely,

A handwritten signature in blue ink, appearing to read "C. Keenan", with a large, stylized flourish at the end.

Catrina M. Pavlik-Keenan  
FOIA Officer

# EXHIBIT 7

February 5, 2014

*Via Federal Express*

Freedom of Information Policy Office  
Associate General Counsel (General Law)  
U.S. Department of Homeland Security  
Mailstop 0655  
Washington, D.C. 20528

Re: **FREEDOM OF INFORMATION ACT APPEAL – ICE Case No. 2014-FOIA-1578**

To Whom It May Concern:

This is a Freedom of Information Act (“FOIA”) appeal of the determination of Immigration and Customs Enforcement (“ICE”) to deny a fee waiver and expedited processing in connection with FOIA Request **2014-FOIA-1578** (“the request”), dated October 17, 2013. The request seeks information on behalf of the Immigrant Defense Project (“IDP”), the Center for Constitutional Rights (“CCR”), and the Hispanic Interest Coalition of Alabama (“HICA”) (collectively “the Requesters”) for information regarding U.S. Immigration and Customs Enforcement agency (“ICE”) and Department of Homeland Security (“DHS”) home-based enforcement operations.

ICE denied our request for expedited processing in a letter dated December 13, 2013 (“ICE Denial.”) and postmarked December 18, 2013. The denial wrongly claimed that we had failed to establish the need and urgency for expedited processing.

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552(a)(6), CCR hereby appeals DHS’s denials of our request expedited processing.

### **Expedited Processing**

ICE’s December 13, 2013 letter denied our request for expedited processing. The ten days have passed, and in any case DHS was wrong to deny our request for expedited processing.

ICE denied our request by citing 6 C.F.R. § 5.5(d)(1) and stating that “you do not qualify for either category.. You failed to demonstrate a particular urgency to inform the public about the government activity involved in the request beyond the public’s right to know about government activity generally.” ICE Denial at 1. This contention is wrong. The Requesters have indeed demonstrated that an urgent need exists to inform the public about DHS’ and ICE’s use of home enforcement operations, which continue to engender widespread controversy across the country.

As our FOIA Request documented, home enforcement operations are a continuing source of protest around the country. See Request at 1, 12 and Exhibits A-B, E. In addition, courts have found ICE's conduct in home enforcement operations not only unconstitutional, but also "egregious" in several recent cases. See *Sicajau-Cotzojay v. Holder*, 2013 U.S. App. LEXIS 15646; *Pretzantzin v. Holder*, 2013 U.S. App. LEXIS 15627, both cited in Request at 12 n.5. In the past year, ICE has entered into several expensive settlements to resolve lawsuits alleging widespread misconduct during home raid operations and reportedly has changed some guidelines to agents conducting home enforcement operations. See, e.g., <http://www.nytimes.com/2013/04/05/nyregion/us-agrees-to-set-new-rules-for-immigration-raids.html> (describing settlement of \$1 million dollar settlement to victims of home raid operations and agreement to modify guidelines for agents conducting home enforcement operations).

Since our filing of the Request, public questioning of immigration agents' enforcement conduct has only grown. For example, on December 19, 2013, the New Orleans Workers' Center for Racial Justice published a report, "The Criminal Alien Removal Initiative in New Orleans," documenting widespread misconduct during raids of Latino communities, including descriptions of race-based raids taking place at residential homes and apartment complexes. See Exhibit 1, attached. The report engendered wide media coverage across the country. The *New York Times* reported on the controversy on its front page, and stated that ICE claimed that "random stops of Latinos were not consistent with agency guidelines." See Julia Preston, "Amid Steady Deportation, Fear and Worry Multiply Among Immigrants," *New York Times* at A1, December 23, 2013, attached as Exhibit 2.

Protests and campaigns highlighting ICE's actions in residences continue to inflame the public. See, e.g., <http://www.notonemoredeportation.com/portfolio/anibal/> (reporting on a home raid operation in a Chicago apartment complex on December 6, 2013 that resulted in the detention of a father of an infant). From New York to Alabama, from Chicago to Los Angeles, community protests against ICE's home raids and enforcement operations have been a source of urgent controversy.

Thus, it is clear that even as ICE and DHS continue to claim that their guidelines prohibit the kinds of misconduct that are regularly reported, the public has no access to what those guidelines are, how often those guidelines are violated, how misconduct is addressed within the agency, and who is affected by ICE's enforcement choices. These topics command continuing public attention and are a matter of urgency as ICE's enforcement activities continue unabated.

Further, the upcoming Congressional appropriations debate presents a crucial opportunity to discuss resources devoted to ICE's enforcement activities. The appropriations debate will begin as soon as March, 2014, and it is paramount that the public have the requested information to meaningfully engage in the public debate surrounding the cost of and appropriateness of ICE's enforcement activities. Indeed, Requester IDP sits on the Steering Committee of the national Campaign for Accountable, Moral and Balanced Immigration Overhaul (CAMBIO). One of CAMBIO's top priorities is engaging in the appropriations process to reduce funding for wasteful ICE enforcement operations that tear apart families. Similarly, HICA is an active member of the

Alabama Coalition for Immigrant Justice, which advocates for immigration reform and fights for immigrants' rights at the federal as well as state level. In order to fully engage in the Congressional appropriations debates and educate community members about budget lines that will have direct impact on the communities Requesters serve, it is urgent that Requesters and the public gain a full understanding of DHS' guidelines for enforcement.

Information about home enforcement operations practices is also crucial for engagement in local budget and policy debates, particularly in New York City, where the City Council recently funded a pilot project to assist unrepresented immigrants in removal proceedings. IDP is engaging in efforts to accurately educate local officials, including the new Mayor about the legal needs of New Yorkers given ICE's current practices in order to advocate for funding for universal representation of immigrants in removal proceedings. To support public engagement in the local budget process, expected to begin in the spring of 2014, it is essential for Requesters to understand ICE's policies, guidelines, and actual practices in determining how and where to use home enforcement operations, and when and why ICE makes decisions to separate families.

The urgent need for the information requested is no less crucial for the Requesters' community outreach and public education efforts. IDP and HICA give several trainings a month to community members at community-based organizations and houses of worship. In the coming months, IDP will launch an interactive Know Your Rights guide to protecting immigrants from deportation after an arrest. In order for these presentations to be accurate and effective, Requesters must ensure that we have the latest information on ICE enforcement practices.

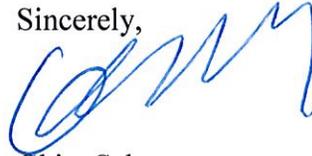
Similarly, Requesters IDP and HICA actively engage local communities in helping them advocate for individuals who have been arrested or detained by immigration authorities, both through community intake and free legal hotlines that receive thousands of calls per year. Since October, 2013, Requester IDP has seen a significant increase in calls from individuals who were placed in removal proceedings as a result of a home raid. In order to accurately advise the attorneys and community members who call Requesters' hotlines with emergency concerns, accurate information about the increasing use of home enforcement operations is essential and urgent. HICA similarly works in local communities across Alabama to advocate for immigrant detainees and must have accurate information on arrests, detentions, and home enforcement operations practices in order to effectively engage in grassroots advocacy.

In sum, Requesters easily demonstrate that there is a compelling need for the information requested, because of "urgency to inform the public regarding actual or alleged [the] Federal government activity" discussed in our Request. *See* 5 USC §552 (a)(6)(E), 6 CFR §5.5(d). As organizations primarily engaged in disseminating information to the public, such information is crucial to our work in informing and engaging the public in debates about DHS' and ICE's activities.

\*\*\*\*

I certify that the information relayed above is true and accurate to the best of my knowledge. The Requesters are available to discuss the fee waiver and expedited processing and can be contacted at (212) 614-6445.

Sincerely,



Ghita Schwarz  
Senior Staff Attorney  
Center for Constitutional Rights  
666 Broadway, 7<sup>th</sup> Floor  
New York, NY 10012  
Phone: (212) 614-6445

# EXHIBIT 8



**U.S. Immigration  
and Customs  
Enforcement**

March 10, 2014

Ghita Schwarz  
Center for Constitutional Rights  
666 Broadway, 7<sup>th</sup> Floor  
New York, NY 10012

**RE: OPLA14-1100, 2014FOIA1578**

Dear Ms. Schwarz:

This is in response to your letter, dated February 5, 2014, appealing the adverse determination by the U.S. Immigration and Customs Enforcement (ICE), Freedom of Information Act (FOIA) Office concerning your request for expedited processing.

In a letter from ICE FOIA Office dated December 13, 2013, they denied your request, in part, by denying your request for expedited processing. You have appealed the decision to deny your request for expedited processing. ICE has further reviewed your request in question that gave rise to this partial denial of your request. Our analysis follows.

In order for a requestor to qualify for expedited processing, a compelling need must be shown.<sup>1</sup> In the present instance, no showing has been made that the failure to obtain the records quickly could reasonably be expected to pose an imminent threat to life or physical safety.<sup>2</sup> You have argued that there is an urgency to inform the public regarding DHS' and ICE's use of home enforcement operations because "...such information is crucial to our work in informing and engaging the public in debates about DHS' and ICE's activities." While you cite case law and internet articles to demonstrate your need for expedited processing, we find the urgency to expedite release records fails to satisfy the "urgency" requirement of 5 U.S.C. § 552(a)(6)(E)(v)(II).

In your appeal letter dated February 5, 2014, you appealed "the determination of Immigration and Customs Enforcement ("ICE") to deny a fee waiver and expedited processing in connection with FOIA Request 2014-FOIA-1578..." By letter dated December 13, 2013, ICE FOIA granted your request for a fee waiver. ICE has searched for responsive records to your FOIA request and is working on processing those records.

This decision is the final action of U.S. Immigration and Customs Enforcement concerning your FOIA. Inasmuch as you consider this to be a denial of your appeal, you may obtain judicial review of this decision pursuant to the provisions of 5 U.S.C. § 552(a)(4)(B) in the United States District Court in the district in which you reside, or have a principal place of business, or in which the agency records are situated, or in the District of Columbia.

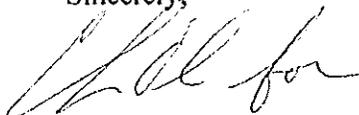
<sup>1</sup> See 5 U.S.C. § 552(a)(6)(E)

<sup>2</sup> 5 U.S.C. § 552(a)(6)(E)(v)(I)

The Office of Government Information Services (OGIS) also mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. If you wish to contact OGIS, you may email them at [ogis@nara.gov](mailto:ogis@nara.gov) or call 1-877-684-6448.

Should you have any questions regarding this appeal closure, please contact ICE at [ice-foia@dhs.gov](mailto:ice-foia@dhs.gov). In the subject line of the email please include the word "appeal", your appeal number, which is **OPLA14-1100** and the FOIA case number, which is **2014FOIA1578**.

Sincerely,



Debbie Seguin  
Chief  
Government Information Law Division  
ICE Office of the Principal Legal Advisor  
Department of Homeland Security



U.S. Immigration  
and Customs  
Enforcement

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Ghita Schwarz  
Center for Constitutional Rights  
666 Broadway, 7th Floor  
New York, NY 10012

10012239999



# EXHIBIT 9

## Ian Head

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**From:** Carr, Ayanna <Ayanna.Carr@HQ.DHS.GOV>  
**Sent:** Thursday, October 31, 2013 12:24 PM  
**To:** Ian Head  
**Cc:** FOIA  
**Subject:** Request

Good Afternoon Mr. Head,

We do have your request in our system it has been assigned request number **2014-HQFO-00035**. We received it by email on October 21, 2013. The confusion came from looking for the request under your name; the request can be found under Ghita Schwarz, which is the name on the original request. We do apologize for any confusion.

If you have any more questions or concerns please feel free to contact us.

Thank you.

*Ayanna Carr*  
**FOIA Specialist**  
**Privacy Office**  
**U.S. Department of Homeland Security**  
**245 Murray Drive, SW , STOP 0655**  
**Washington, DC 20528**  
**Main FOIA: 202-343-1743**  
**Voice: (202)-343-1674**  
**Fax: (202) 343-4011**  
[\*Ayanna.Carr@hq.dhs.gov\*](mailto:Ayanna.Carr@hq.dhs.gov)  
*Great is Thy Faithfulness*

# EXHIBIT 10



# Homeland Security

*Privacy Office, Mail Stop 0655*

December 10, 2013

Ms. Ghita Schwarz  
Center for Constitutional Rights  
666 Broadway, 7th Floor  
New York, NY 10012

Re: 2014-HQFO-00035

Dear Ms. Schwarz:

This letter acknowledges receipt of your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), dated October 17, 2013 and to your request for expedited treatment and a waiver of all assessable FOIA fees. This office received your request on October 21, 2013. Specifically, you requested for information regarding U.S. Immigration and Customs Enforcement agency ("ICE") and Department of Homeland Security ("DHS") home-based enforcement operations.

Your request for expedited treatment is hereby denied.

Under the DHS FOIA regulations, expedited processing of a FOIA request is warranted if the request involves "circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual," 6 C.F.R. § 5.5(d)(1)(i), or "an urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information," 6 C.F.R. § 5.5(d)(1)(ii).

Your request for expedited processing is denied because you do not qualify for either category under 6 C.F.R. § 5.5(d)(1). You failed to demonstrate a particular urgency to inform the public about the government activity involved in the request beyond the public's right to know about government activity generally. Your letter was conclusory in nature and did not present any facts to justify a grant of expedited processing under the applicable standards.

Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Consistent with 6 C.F.R. § 5.5(a) of the DHS FOIA regulations, the Department processes FOIA requests according to their order of receipt. Although DHS' goal is to respond within 20 business days of receipt of your request, FOIA does permit a 10-day extension of this time period in certain circumstances. As the subject matter of your request is of substantial interest to two or more components of this Department or of substantial interest to another agency, we will need to consult with those entities before we issue a final response. Due to these unusual circumstances, DHS will invoke a 10-day extension for your request pursuant to 5 U.S.C. § 552(a)(6)(B). If you would like to narrow the scope of your request, please contact our office. We will make every effort to comply with your request in a timely manner.

As it relates to your fee waiver request, your request will be held in abeyance pending the quantification of responsive records. The DHS FOIA Regulations, 6 CFR § 5.11(k)(2), set forth six factors to examine in determining whether the applicable legal standard for a fee waiver has been met: (1) Whether the subject of the requested records concerns “the operations or activities of the government;” (2) Whether the disclosure is “likely to contribute” to an understanding of government operations or activities; (3) Whether disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requestor or a narrow segment of interested persons; (4) Whether the contribution to public understanding of government operations or activities will be "significant;" (5) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and (6) Whether the magnitude of any identified commercial interest to the requestor is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requestor. If any responsive records are located, we will consider these factors in our evaluation of your request for a fee waiver.

Provisions of the FOIA allow us to recover part of the cost of complying with your request. We shall charge you for records in accordance with the DHS Interim FOIA regulations, as they apply to media requesters. As a media requester, you will be charged 10 cents per page for duplication; the first 100 pages are free. You stated in your request that you are willing to pay assessable fees up to \$ 250.00. This office will contact you before accruing any additional fees.

You have the right to appeal the determination to deny your request for expedited treatment and a fee waiver. Should you wish to do so, you must **send your appeal within 60 days of the date of this letter** to: Associate General Counsel (General Law), U.S. Department of Homeland Security, Mailstop 0655, Washington, D.C. 20528, following the procedures outlined in 6 C.F.R. § 5.9. Your envelope and letter should be marked “Freedom of Information Act Appeal.” Copies of FOIA and the Department’s FOIA regulations are available at [www.DHS.gov/FOIA](http://www.DHS.gov/FOIA).

We have queried the appropriate component(s) of DHS for responsive records. If any responsive records are located, they will be reviewed for determination of releasability. Please be assured that one of the processors in our office will respond to your request as expeditiously as possible. We appreciate your patience as we proceed with your request.

Your request has been assigned reference number **2014-HQFO-00035**. Please refer to this identifier in any future correspondence. If you have any questions, or would like to discuss this matter, please feel free to contact this office at 1-866-431-0486 or 202-343-1743.

Sincerely,



Lashawn Schmidt  
FOIA Program Specialist

# EXHIBIT 11

February 5, 2014

*Via Email and Federal Express*

Freedom of Information Policy Office  
Associate General Counsel (General Law)  
U.S. Department of Homeland Security  
Mailstop 0655  
Washington, D.C. 20528

Re: **FREEDOM OF INFORMATION ACT APPEAL – Case No. 2014-HQFO-00035**

To Whom It May Concern:

This is a Freedom of Information Act (“FOIA”) appeal of the determination of the Department of Homeland Security (“DHS”) to deny a fee waiver and expedited processing in connection with FOIA Request **2014-HQFO-00035** (“the request”), dated October 17, 2013. The request seeks information on behalf of the Immigrant Defense Project (“IDP”), the Center for Constitutional Rights (“CCR”), and the Hispanic Interest Coalition of Alabama (“HICA”) (collectively “the Requesters”) for information regarding U.S. Immigration and Customs Enforcement agency (“ICE”) and Department of Homeland Security (“DHS”) home-based enforcement operations.

DHS denied our request for a fee waiver and expedited processing in a letter dated December 10, 2013 (“DHS Denial.”). The denial contained no findings regarding the fee waiver, but instead determined that the decision would be “held in abeyance pending the quantification of responsive records” and in addition construed our request for a fee waiver as consent for limitation of processing fees. The denial also wrongly claimed that we had failed to establish the need and urgency for expedited processing.

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552(a)(6), CCR hereby appeals DHS’s denials of our requests for a fee waiver and expedited processing.

### **Fee Waiver**

The Requesters qualify for a fee waiver on the grounds that the information we seek “is in the public interest because it is likely to contribute significantly to the public understanding of the activities or operations of the government and is not primarily in the commercial interest of the requester[s],” 5 U.S.C. § 552(a)(4)(A)(iii) as well as because CCR is a representative of the news media, as it engaged in the dissemination of information to the public as one of its primary activities. *See* 5 U.S.C. § 552(a)(4)(A)(ii)(II). As demonstrated herein, DHS erred in appearing to conclude that the Requesters do not qualify for a fee waiver under either of these provisions.

**1. The Requesters qualify for a fee waiver on the grounds that disclosure will contribute to the public understanding of government activities.**

ICE granted Requesters a fee waiver for this Request on December 13, 2013. But DHS denied the fee waiver without making any specific findings that Requesters did not qualify under the law. The Requesters qualify for a fee waiver on the grounds that disclosure of the requested records is in the public interest and because disclosure “is likely to contribute significantly to the public understanding of the activities or operations of the government and is not primarily in the commercial interest of the requester[s].” 5 U.S.C. § 552(a)(4)(A)(iii). Disclosure in this case meets the statutory criteria, and a fee waiver would fulfill Congress’s legislative intent in amending FOIA. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” (citation omitted)).

There is no question that public interest in the conduct of DHS & ICE at private homes remains high. In our October 17, 2013 request, Requesters documented longstanding public interest in ICE’s conduct at private homes. Even since the filing of our Request, public demonstrations of ICE enforcement operations, including protests of the actions of the New Orleans, Louisiana Field Office, have garnered widespread news attention. *See, e.g.*, Bill Quigley, “Why I stand with the immigrant workers who rebuilt New Orleans,” Times-Picayune of Greater New Orleans, Nov. 15, 2013 available at [http://www.nola.com/opinions/index.ssf/2013/11/why\\_i\\_stand\\_with\\_the\\_immigrant.html](http://www.nola.com/opinions/index.ssf/2013/11/why_i_stand_with_the_immigrant.html) and “ICE Raids Leave Broken Homes in Their Wake,” Inter Press Service, Oct. 29, 2013, available at <http://www.ipsnews.net/2013/10/ice-raids-leave-broken-homes-in-their-wake-2/>. These protests and news coverage reinforce our position that the public has an interest in knowing about the manner in which DHS & ICE conduct home enforcement operations, including how decisions to initiate raids are made, what policies and guidelines govern ICE agents’ conduct, and how DHS & ICE involves state and local entities in such actions. The public also has an interest in knowing the number of people that have been apprehended, arrested, and/or detained from home enforcement operations since January 2009 and the impact on families and children. Further, the public has an interest in knowing whether and to what extent people affected by home enforcement operations are experiencing Fourth Amendment violations and other abuses; DHS & ICE’s guidelines and practices for monitoring and enforcement of constitutional compliance; and how complaints of and investigations of misconduct are handled. The records sought in this request will inform the public of the scope of DHS & ICE’s home enforcement operations, their effect on public safety, and the manner in which DHS & ICE holds itself and its agents accountable for complaints of constitutional misconduct.

The Department of Justice has promulgated regulations setting forth various factors to be considered in determining whether the statutory criteria are met. 28 C.F.R § 16.11(k). As set forth below, when applied to the facts of this case, all of the regulatory factors militate in favor of granting a fee waiver:

- (1) *The subject of the request*: The subject of the request here is the current and ongoing nationwide use by DHS & ICE of home enforcement operations as a tactic for arrest and

deportation. This subject clearly “concerns ‘the operations or activities of the government.’” 28 C.F.R § 16.11(k)(2)(i).

(2) *The informative value of the information to be disclosed:* The information requested will shed light on the manner in which DHS & ICE have used home enforcement operations nationally and in specific locations and the guidelines for how DHS & ICE conduct such tactics and investigates misconduct and complaints about misconduct. The requesters have pledged to make any information obtained as the result of this FOIA request available to the public at no fee. Accordingly, the information sought in the instant FOIA is very “‘likely to contribute’ to an understanding of government operations or activities.” 28 C.F.R § 16.11(k)(2)(ii).

(3) *The contribution to an understanding of the subject by the public likely to result from disclosure:* The Requesters are exceptionally well-positioned to ensure that the information obtained will “contribute to ‘public understanding.’” 28 C.F.R § 16.11(k)(1)(iii):

- The Center for Constitutional Rights is in an excellent position to disseminate information about ICE enforcement programs. CCR publishes various newsletters, handbooks and other materials for public dissemination. In addition, CCR regularly issues press releases to the general public, and email updates to over 50,000 supporters about matters such as immigration, policing and detention policies.
- IDP is a non-profit organization which disseminates information about the immigration system to the public in accessible ways and is a leader in providing training and support for legal practitioners and community members. IDP’s education efforts have included developing a 1500+ page manual about the criminal-immigration system and designing and presenting a curriculum on the criminal-immigration system on a monthly basis.
- HICA engages and empowers Alabama’s Hispanic community and its numerous cultures as an economic and civic integrator, social-resource connector, and statewide educator. Through relationships established with state and national organizations including the Alabama Coalition for Immigrant Justice, the National Council of La Raza, The Mexican American Legal and Education Defense Fund, The National Immigration Forum, The National Immigration Law Center and the Center for Community Change, HICA is involved in advocacy and public education at the national, state, and local levels.

(4) *The significance of the contribution to public understanding:* While there is widespread public interest in how DHS & ICE conduct enforcement operations at residential homes, there is virtually no information about it in the public domain. Obtaining clear documentation about the guidelines for ICE agents in conducting enforcement operations at homes, including policies and procedures for conducting operations, documentation of misconduct or complaints of misconduct, the number of

individuals apprehended, arrested and/or detained during such operations, and the impact on families and children would “significantly” contribute to the public’s understanding of DHS’ and ICE’s home enforcement activities and how they fit within DHS’ & ICE’s broader immigration enforcement agenda. 28 C.F.R § 16.11(k)(1)(iv).

(5) *The existence and magnitude of a commercial interest:* The Requesters have absolutely no commercial interest that would be furthered by the requested disclosure. 28 C.F.R § 16.11(k)(3)(i).

(6) *The primary interest in disclosure:* This factor is not relevant since the Requesters have no commercial interest that would be furthered by the requested disclosure. 28 C.F.R § 16.11(k)(3)(ii).

Since all factors militate in favor of finding that “disclosure of the information 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), a full fee waiver should be granted.

## **2. The Requesters are entitled to a fee waiver as organizations engaged in the dissemination of information to the public.**

The Requesters are also entitled to a fee waiver as organizations engaged in the dissemination of information to the public as it is a “representative of the news media.” 5 U.S.C. §552(a)(4)(A)(ii)(II). A “representative of the news media” either means any person or entity that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience,” 5 U.S.C. §552(a)(4)(A)(ii) or “refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public.” 32 CFR 286.28 (e)(7)(i). 5 U.S.C. §552(a)(4)(A)(ii) explicitly recognizes “electronic dissemination” as a method of delivery of news.

A public interest organization engaged in litigation and advocacy can qualify as a “representative of the news media.” In *Electronic Privacy Info. Center v. DOD*, 241 F Supp. 2d 5, 11 (D.D.C. 2003), the court determined that the Electronic Privacy Information Center (EPIC), a public interest research organization, was a representative of the news media for the purposes of a fee waiver. In making this determination, the critical question is whether the entity in question “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience.” *EPIC*, 241 F. Supp. 2d at 11.

The Requesters regularly gather information of potential interest to a segment of the public and publish in-depth reports, briefing guides, and fact sheets on subjects such as the Secure Communities program (CCR); access to resources for immigrants in Alabama (HICA); and the representation of immigrants in deportation proceedings (IDP). In addition to publishing detailed reports, we inform the news media, issue press releases, publicize our concerns in leaflets, pamphlets, posters, advertisements, newsletters, know-your-rights handbooks and

websites including through social media, raise awareness by mounting public action campaigns, and host and participate in events to inform the public of civil and human rights issues.

CCR also disseminates information through its heavily trafficked website, [www.ccrjustice.org](http://www.ccrjustice.org), and operates an electronic membership list of over 50,000 members that issues “action alerts” that notify supporters and the general public about developments and operations pertaining to CCR’s work. Our website addresses civil and human rights issues in depth, and serves as an invaluable resource to disseminate information to the public. In relation to the subject-matter of this request, CCR has issued various press releases and open letters on its website,<sup>1</sup> and for over two years CCR operated the website [www.uncovertheruth.org](http://www.uncovertheruth.org), which disseminated information regarding ICE’s Secure Communities program.<sup>2</sup> Similarly, HICA’s website, [www.hispanicinterest.org](http://www.hispanicinterest.org), publishes resources and fact sheets for immigrants, including information on deferred action, federal immigration reform, and state and local immigration enforcement efforts. Likewise, IDP’s website, [www.immigrantdefenseproject.org](http://www.immigrantdefenseproject.org), publishes numerous guides and policy updates on immigration reform, deportation, and the Secure Communities program, and its telephone hotline disseminates information by responding to over 2,000 annual calls from the public.

Even if a fee waiver required that one of the Requesters’ primary activities is dissemination of information to the public, CCR, HICA and IDP meet this requirement as well. CCR, HICA and IDP are not-for-profit legal and educational organizations that engage in litigation, public advocacy, and the production of publications in the fields of civil and international human rights, our missions therefore fundamentally depend on disseminating information to the public.<sup>3</sup>

Courts have determined that entities similar to the Requesters are primarily engaged in dissemination of information. *See, e.g., EPIC*, 241 F. Supp. 2d at 11 (plaintiff, a non-profit educational institution, who published seven books and issued a bi-weekly electronic newsletter for eight years and nothing else, qualified as a representative of the news media). *See also Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005); *ACLU v. Dep’t of Justice*, 321 F. Supp. 2d 24, 29 n. 5 (D.D.C. 2004). A fee waiver because the Requesters are representatives of the news media would also satisfy case law and Congressional intent. (See Senator Leahy’s remarks: “any person or organization which regularly publishes or disseminates information to the public. . . should qualify for waivers as a ‘representative of the news media.’” *National Sec. Archive v. DOD*, 880 F.2d 1381, 1386 (D.C. Cir. 1989); 132 Cong.Rec. S14298 (daily ed. Sept. 30, 1986).

Given the context of the Requesters’ wide range of activities engaged in disseminating and publishing information through the methods and mechanisms described above, the Requesters qualify as representatives of the news media and are “primarily engaged in disseminating information.”

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<sup>1</sup> See <http://ccrjustice.org/ourcases/argueta-v-ice> and <http://ccrjustice.org/ourcases/aguilar-v-ice>

<sup>2</sup> See, e.g., [www.ccrjustice.org/securecommunities](http://www.ccrjustice.org/securecommunities) and <http://uncoverthetruth.org/category/foia-documents/> (FOIA requests related to the “Secure Communities” ICE program).

<sup>3</sup> Available at [www.ccrjustice.org/missionhistory](http://www.ccrjustice.org/missionhistory) and [www.ccrjustice.org/movement-support](http://www.ccrjustice.org/movement-support); <http://www.hispanicinterest.org/about/>; <http://immigrantdefenseproject.org/community-education>.

\*\*\*

For all these reasons, the Requesters are entitled to a full fee waiver under both 5 U.S.C. § 552(a)(4)(A)(iii) and 5 U.S.C. §552(a)(4)(A)(ii)(II).

### **Expedited Processing**

DHS's December 10, 2013 letter stated that it would need ten additional days to fulfill our request and also denied our request for expedited processing. The ten days have passed, and in any case DHS was wrong to deny our request for expedited processing.

DHS denied our request by stating that "you do not qualify for either category under 6 C.F.R. § 5.5(d)(1). You failed to demonstrate a particular urgency to inform the public about the government activity involved in the request beyond the public's right to know about government activity generally." DHS Denial at 1. This contention is wrong. The Requesters have indeed demonstrated that an urgent need exists to inform the public about DHS' and ICE's use of home enforcement operations, which continue to engender widespread controversy across the country.

As our FOIA Request documented, home enforcement operations are a continuing source of protest around the country. *See* Request at 1, 12 and Exhibits A-B, E. In addition, courts have found ICE's conduct in home enforcement operations not only unconstitutional, but also "egregious" in several recent cases. *See Sicajau-Cotzojay v. Holder*, 2013 U.S. App. LEXIS 15646; *Pretzantzin v. Holder*, 2013 U.S. App. LEXIS 15627, both cited in Request at 12 n.5. In the past year, ICE has entered into several expensive settlements to resolve lawsuits alleging widespread misconduct during home raid operations and reportedly has changed some guidelines to agents conducting home enforcement operations. *See, e.g.,* <http://www.nytimes.com/2013/04/05/nyregion/us-agrees-to-set-new-rules-for-immigration-raids.html> (describing settlement of \$1 million dollar settlement to victims of home raid operations and agreement to modify guidelines for agents conducting home enforcement operations).

Since our filing of the Request, public questioning of immigration agents' enforcement conduct has only grown. For example, on December 19, 2013, the New Orleans Workers' Center for Racial Justice published a report, "The Criminal Alien Removal Initiative in New Orleans," documenting widespread misconduct during raids of Latino communities, including descriptions of race-based raids taking place at residential homes and apartment complexes. *See* Exhibit 1, attached. The report engendered wide media coverage across the country. The *New York Times* reported on the controversy on its front page, and stated that ICE claimed that "random stops of Latinos were not consistent with agency guidelines." *See* Julia Preston, "Amid Steady Deportation, Fear and Worry Multiply Among Immigrants," *New York Times* at A1, December 23, 2013, attached as Exhibit 2.

Protests and campaigns highlighting ICE's actions in residences continue to inflame the public. *See, e.g.,* <http://www.notonemoredeportation.com/portfolio/anibal/> (reporting on a home raid operation in a Chicago apartment complex on December 6, 2013 that resulted in the

detention of a father of an infant). From New York to Alabama, from Chicago to Los Angeles, community protests against ICE's home raids and enforcement operations have been a source of urgent controversy.

Thus, it is clear that even as ICE and DHS continue to claim that their guidelines prohibit the kinds of misconduct that are regularly reported, the public has no access to what those guidelines are, how often those guidelines are violated, how misconduct is addressed within the agency, and who is affected by ICE's enforcement choices. These topics command continuing public attention and are a matter of urgency as ICE's enforcement activities continue unabated.

Further, the upcoming Congressional appropriations debate presents a crucial opportunity to discuss resources devoted to ICE's enforcement activities. The appropriations debate will begin as soon as March, 2014, and it is paramount that the public have the requested information to meaningfully engage in the public debate surrounding the cost of and appropriateness of ICE's enforcement activities. Indeed, Requester IDP sits on the Steering Committee of the national Campaign for Accountable, Moral and Balanced Immigration Overhaul (CAMBIO). One of CAMBIO's top priorities is engaging in the appropriations process to reduce funding for wasteful ICE enforcement operations that tear apart families. Similarly, HICA is an active member of the Alabama Coalition for Immigrant Justice, which advocates for immigration reform and fights for immigrants' rights at the federal as well as state level. In order to fully engage in the Congressional appropriations debates and educate community members about budget lines that will have direct impact on the communities Requesters serve, it is urgent that Requesters and the public gain a full understanding of DHS' guidelines for enforcement.

Information about home enforcement operations practices is also crucial for engagement in local budget and policy debates, particularly in New York City, where the City Council recently funded a pilot project to assist unrepresented immigrants in removal proceedings. IDP is engaging in efforts to accurately educate local officials, including the new Mayor about the legal needs of New Yorkers given DHS's current practices in order to advocate for funding for universal representation of immigrants in removal proceedings. To support public engagement in the local budget process, expected to begin in the spring of 2014, it is essential for Requesters to understand DHS's policies, guidelines, and actual practices in determining how and where to use home enforcement operations, and when and why DHS makes decisions to separate families.

The urgent need for the information requested is no less crucial for the Requesters' community outreach and public education efforts. IDP and HICA give several trainings a month to community members at community-based organizations and houses of worship. In the coming months, IDP will launch an interactive Know Your Rights guide to protecting immigrants from deportation after an arrest. In order for these presentations to be accurate and effective, Requesters must ensure that we have the latest information on ICE enforcement practices.

Similarly, Requesters IDP and HICA actively engage local communities in helping them advocate for individuals who have been arrested or detained by immigration authorities, both through community intake and free legal hotlines that receive thousands of calls per year. Since October, 2013, Requester IDP has seen a significant increase in calls from individuals who were placed in removal proceedings as a result of a home raid. In order to accurately advise the

attorneys and community members who call Requesters' hotlines with emergency concerns, accurate information about the increasing use of home enforcement operations is essential and urgent. HICA similarly works in local communities across Alabama to advocate for immigrant detainees and must have accurate information on arrests, detentions, and home enforcement operations practices in order to effectively engage in grassroots advocacy.

In sum, Requesters easily demonstrate that there is a compelling need for the information requested, because of "urgency to inform the public regarding actual or alleged [the] Federal government activity" discussed in our Request. *See* 5 USC §552 (a)(6)(E), 6 CFR §5.5(d). As organizations primarily engaged in disseminating information to the public, such information is crucial to our work in informing and engaging the public in debates about DHS' and ICE's activities.

\*\*\*\*

I certify that the information relayed above is true and accurate to the best of my knowledge. The Requesters are available to discuss the fee waiver and expedited processing and can be contacted at (212) 614-6445.

Sincerely,



Ghita Schwarz  
Senior Staff Attorney  
Center for Constitutional Rights  
666 Broadway, 7<sup>th</sup> Floor  
New York, NY 10012  
Phone: (212) 614-6445

# EXHIBIT 12

U.S. Department of  
Homeland Security

United States  
Coast Guard



Office of the Administrative Law Judge  
United States Coast Guard

Hale Boggs Federal Building  
500 Poydras Street, Rm 1211  
New Orleans, LA 70130  
Staff Symbol: ALJ – NOLA  
Phone: 504-671-2210  
Fax: 504-671-2212  
Email: [Katy.J.Duke@uscg.mil](mailto:Katy.J.Duke@uscg.mil)

5720

February 21, 2014

Ghita Schwarz  
Center for Constitutional Rights  
666 Broadway, 7<sup>th</sup> Floor  
New York, NY 10012  
RE: DHS FOIA APPEAL 2014-HQAP-00029

Dear Ms. Schwarz:

This letter is in response to your correspondence dated February 5, 2014, wherein you appealed the Department of Homeland Security(DHS), Privacy Office's (Office of I&A) December 10, 2013, adverse determination<sup>1</sup> of your October 17, 2013, request for a fee waiver and expedited processing in connection with your Freedom of Information Act (FOIA) (case number 2014-HQFO-00035) request.

Pursuant to a memorandum of agreement, the United States Coast Guard Office of the Chief Administrative Law Judge is reviewing FOIA appeals for the Department of Homeland Security General Counsel's office. Therefore, the Office of the Chief Administrative Law Judge hereby renders the official appeal decision on behalf of the Department of Homeland Security.

After a thorough review of your appeal and all applicable documents, your appeal is **DENIED AS MOOT**, for the reasons set forth infra.

#### **Appeal of Expedited Processing Request**

In your request, you generally contended that you are entitled to expedited processing because of a "compelling need." As per 5 U.S.C. § 552(a)(6)(E)(i), a "compelling need" is established if either: (1) failure to obtain expedited processing would pose an "imminent threat to the life or physical safety of an individual"; or (2) the requester is "primarily engaged in disseminating information" and shows an "urgency to inform the public concerning actual or alleged Federal Government activity." 5 U.S.C. § 552(a)(6)(E)(v)(II); see also 6 C.F.R. § 5.5(d)(1)(ii). "The D.C. Circuit, in examining the legislative history of [the Electronic Freedom of Information Act Amendments, Pub. L. 104-231, § 8, 110 Stat. 3048, 3051-52], has noted that 'the specified categories for

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<sup>1</sup> "Adverse determinations, or denials of requests, consist of: A determination to withhold any requested record in whole or in part; a determination that a requested record does not exist or cannot be located; a determination that a record is not readily reproducible in the form or format sought by the requester; a determination that what has been requested is not a record subject to the FOIA; a determination on any disputed fee matter, including a denial of a request for a fee waiver; and a denial of a request for expedited processing." 6 C.F.R. §5.6(c).

compelling need are intended to be narrowly applied.” Landmark Legal Foundation v. E.P.A., 910 F.Supp.2d 270, 275 (D. D.C. 2012) (quoting Al-Fayed v. CIA, 254 F.3d 300, 310 (D.C. Cir.2001)).

In your request, you failed to show any indicia that you are a “person primarily engaged in disseminating information.” 5 U.S.C. § 552(a)(6)(E)(v)(II); 6 C.F.R. §5.5(d). “As noted in the legislative history, th[is] category should not include individuals who are engaged only incidentally in the dissemination of information. The standard of ‘primarily engaged’ requires that information dissemination be the main activity of the requestor, although it need not be their sole occupation. A requestor who only incidentally engages in information dissemination ... would not satisfy this requirement.” Id. citing H.R.Rep. No. 104–795, at 26, 1996 U.S.C.C.A.N. 3448, 3469.

Because you are not an entity primarily engaged in disseminating information, you cannot show a compelling need. However, even if you were able to demonstrate that you are “primarily engaged in disseminating information,” you have not established any “urgency to inform.”

Additionally, ‘[e]xpeditious processing requires only that an agency process the request ‘as soon as practicable.’ The statute does not assign any particular time frame to release of the records sought.” Id. Inasmuch as the Office of I&A has provided you with a final response releasing records responsive to your request, your appeal regarding expedited processing is now **MOOT**.

### **Appeal of Fee Waiver Request**

Similarly, your appeal of the Office of I&A’s determination that you are not entitled to a fee waiver is **MOOT**. On February 7, 2014, the Office of I&A issued a response to your October 17, 2013, request. Because the cost of complying with your request was less than the \$14 minimum, you were not charged anything by the Office of I&A. See Cause of Action v. Federal Trade Commission, --- F. Supp. 2d ---, 2013 WL 4406875 (D.D.C. Aug. 19, 2013) (fee waiver determination moot with respect to requester’s third request because “no fees were associated with the request”); see also Long v. DOJ, 450 F. Supp. 2d 42, 85 (D.D.C. 2006) (finding moot requester’s challenge to agency’s authority to request certain information in order to make fee category determination where no fee ultimately was assessed); Duggan v. SEC, No. 06-10458, 2007 WL 2916544, at \*9 (D. Mass. July 12, 2007) (magistrate’s recommendation) (finding that given agency’s decision to waive all fees, requester’s fee category (and fee waiver) claims are moot), adopted, (D. Mass. July 27, 2008), aff’d on other grounds, 227 F. App’x 16 (1st Cir. May 15, 2008).

Accordingly, for the reasons described supra, your appeal is **DENIED AS MOOT**. This decision is the final action concerning your appeal 2014-HQAP-00029/FOIA case number: 2014-HQFO-00035 with respect to fee waiver and expedited processing **ONLY**. You may also seek judicial review of this decision, per 5 U.S.C. §552(a)(4)(B). You may seek judicial relief in either the United States District Court: 1) where you reside; 2) the district where the pertinent agency is situated; or 3) in the District of Columbia.

You may still appeal the final determination of the Office of I&A with respect to withholdings, application of FOIA exemptions and adequacy of the search. Pursuant to 6 C.F.R. § 5.9(a) you have sixty (60) days from the date of the final response (February 7, 2014).

Sincerely,

A handwritten signature in black ink, appearing to read "Katy Duke", with a stylized flourish at the end.

Katy J.L. Duke, Esq.  
Attorney-Advisor

Copy: Department of Homeland Office of I&A  
Sent: Via FedEx to the above address

From: (410) 962-6129  
Lauren Meus  
U.S. Coast Guard  
40 South Gay Street, Room 414  
Baltimore, MD 21202

Origin ID: ODMA



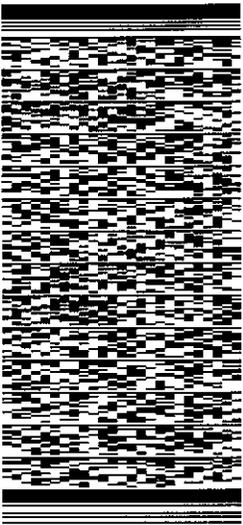
J14101402070326

SHIP TO: (410) 962-6129

BILL SENDER

**Ghita Schwarz**  
Center for Constitutional Rights  
666 Broadway, 7th Floor

NEW YORK, NY 10012



Ship Date: 21FEB14  
ActWgt: 1.0 LB  
CAD: 100901825/NET3490

Delivery Address Bar Code



Ref # 2014-HQAP-00029-FOIA Appeal  
Invoice #  
PO #  
Dept # CG HQ ALJ DOCKETING

TRK# 7979 9487 2090  
0201

TUE - 25 FEB AA  
\*\* 2DAY \*\*

**SB JWSA**

10012  
NY-US  
EWR



0001150010700

# EXHIBIT 13

centerforconstitutionalrights

on the front lines for social justice

March 3, 2014

*Via Email to:*

Katy J. L. Duke  
Hale Boggs Federal Building  
500 Poydras Street, Room 1211  
New Orleans, LA 70130  
Katy.J.Duke@uscg.mil

**RE: FOIA Request # 2014-HQFQ-00035 (Appeal # 2014-HQAP-00029)**

Dear Ms. Duke,

This letter pertains to Freedom of Information Act Request #2014-HQFQ-00035 (Appeal # 2014-HQAP-00029) filed by our office, the Center for Constitutional Rights, on October 17, 2013.

You sent a letter via Federal Express to CCR attorney Ghita Schwarz dated February 21, 2014. On page 2 of your letter, you make reference to a previous response from the DHS Privacy Office (the “Office of I & A”) to CCR dated February 7, 2014: “On February 7, 2014, the Office of I&A issued a response to your October 17, 2013 request.”

CCR has no record of receiving this February 7, 2014 response. We would ask that a copy of this February 7, 2014 response from DHS be forwarded to us via email as soon as possible. Please email us the response and any records you have of it being delivered to CCR to these email addresses: [gschwarz@ccrjustice.org](mailto:gschwarz@ccrjustice.org) and [ihead@ccrjustice.org](mailto:ihead@ccrjustice.org).

Thank you for your attention to this matter.

Sincerely,



Ghita Schwarz

# EXHIBIT 14

## Ghita Schwarz

---

**From:** Schmidt, Lashawn <Lashawn.Schmidt@hq.dhs.gov>  
**Sent:** Friday, March 07, 2014 8:53 AM  
**To:** Ghita Schwarz  
**Cc:** Lasko, Linda  
**Subject:** Final Response to Request 2014-HQFO-00035  
**Attachments:** Final Response to Request 2014-HQFO-00035.pdf; 2014-HQFO-00035.zip

Good Morning,

Please find the attached documents.

Regards,

DHS Privacy Office  
Disclosure & FOIA Program  
STOP 0655  
Department of Homeland Security  
245 Murray Drive, SW  
Washington, DC 20528-0655  
Telephone: 1-866-431-0486 or 202-343-1743  
Fax: 202-343-4011  
Visit our [FOIA website](#)

**From:** FOIA  
**Sent:** Friday, February 07, 2014 1:51 PM  
**To:** [gschwarz@ccr.justice.org](mailto:gschwarz@ccr.justice.org)  
**Subject:** Final Response to Request 2014-HQFO-00035

Good Afternoon,

Attached is our final response to your request. If you need to contact this office again concerning your request, please provide the DHS reference number. This will enable us to quickly retrieve the information you are seeking and reduce our response time. This office can be reached at 866-431-0486.

Regards,

DHS Privacy Office  
Disclosure & FOIA Program  
STOP 0655  
Department of Homeland Security  
245 Murray Drive, SW  
Washington, DC 20528-0655  
Telephone: 1-866-431-0486 or 202-343-1743  
Fax: 202-343-4011  
Visit our [FOIA website](#)

# EXHIBIT 15



April 3, 2014

Associate General Counsel (General Law)  
U.S. Department of Homeland Security  
Washington D.C. 20528

By Federal Express

Re: **FREEDOM OF INFORMATION ACT APPEAL – DHS/OS/PRIV 09-882**

Dear Associate General Counsel,

On October 17, 2013, the Center for Constitutional Rights (“CCR”), Immigrant Defense Project (“IDP”), and Hispanic Interest Coalition of Alabama (“HICA”) filed a request (“the Request”) for information under the Freedom of Information Act (“FOIA”) with the Department of Homeland Security (“DHS”) and four components of DHS: Immigration and Customs Enforcement (“ICE”), the Federal Law Enforcement Training Center (“FLETC”), the Office for Civil Rights and Civil Liberties (“CRCL”), and U.S. Customs and Immigration Services (“USCIS”). The request sought “all Records . . . related to the policies, procedures, or objectives of home enforcement operations from January 20, 2009, to the present.” The requesters also sought expedited processing under 5 U.S.C. § 552(a)(6)(E)(i)(I) and 6 C.F.R. § 5.5(d)(ii), and a fee waiver under 5 U.S.C. § (a)(4)(A)(iii) and 6 C.F.R. § 5.11(k).

Having received no substantive response from any agency or component except ICE as of December 9, 2013, CCR sent an e-mail to DHS on that date requesting an update on the status of the Request. On December 10, 2013, DHS sent a letter to CCR denying the expedited processing request and holding the fee waiver request “in abeyance pending the quantification of responsive records.” *See Ex. A.* CCR appealed both of these determinations in a letter dated February 5, 2014. *See Ex. B.* The United States Coast Guard Office of the Administrative Law Judge responded on behalf of DHS in a letter dated February 21, 2014, denying the appeals on both issues as moot based on a response to the Request allegedly sent on February 7. *See Ex. C.*

The requesters have no record of receiving the response dated February 7 by email, United States Postal Service, or any other mailing service. Because the requesters had not received the response dated February 7, CCR sent a letter on March 3, 2014 to DHS asking for a copy of the response. *See Ex. D.* A copy was provided to CCR on March 7 by email. This letter, addressed from DHS FOIA Programs Specialist Lashawn Schmidt, stated that a search was conducted within CRCL and USCIS, but no responsive

records were located or identified. *See* Ex. E. The letter also indicated that a search had been conducted within FLETC, and that 26 responsive records were located, of which 22 were partially redacted. *See id.* Finally, the letter indicated that a search of ICE's records had not yet been conducted. *See id.*

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552(a)(6), CCR hereby appeals the determination that the 26 released and partially released pages that we received comprise all of the records responsive to our Request.

### **CRCL Has Failed to Demonstrate the Adequacy of Its Search**

FOIA requires DHS to conduct a search that is “reasonably calculated to uncover all relevant documents.” *Weisberg v. Dep’t of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). CRCL has a duty to demonstrate that it exercised all reasonable efforts to ensure that it included what was requested in the search conducted. *See Amnesty Int’l USA v. CIA*, 728 F. Supp. 2d 479, 497 (S.D.N.Y. 2010). Additionally, CRCL must “construe a FOIA request liberally.” *Nation Magazine v. U.S. Customs Serv.*, 71 F.3d 885, 890 (D.C. Cir. 1995).

It is not plausible that CRCL has no relevant documents. The information provided in the Request regarding home raids and misconduct during home raids specifically indicated that CRCL had received and handled complaints about home raids and home enforcement operations in Alabama. Specifically, the requesters attached two letters to the Request which were originally sent from Legal Director of the Southern Poverty Law Center Mary Bauer to ICE and DHS Secretary Janet Napolitano. Ms. Bauer's letters addressed a December 10, 2011 ICE enforcement action in and around Ft. Payne, Scottsboro and Collinsville, Alabama. *See* Ex. F. This enforcement action occurred at trailer parks and apartment complexes and, according to witnesses, involved ICE agents “entering homes without permission” and “threatening to arrest U.S. citizen children if those children did not disclose the whereabouts of their parents.” *See id.* Ms. Bauer indicated that it was her understanding that CRCL had “launched an investigation into the possible civil rights violations that may have occurred over the course of these operations.” *See* Ex. G. Documents regarding such an investigation would clearly fall within the scope of the Request, particularly subparagraph (f), which covers “documentation of and responses to misconduct during home enforcement operations.” However, CRCL has neglected to produce any documents relating to this or any other home raid incident, even though numerous home raid enforcement operations have occurred since January 2009 and have garnered significant public attention that are likely to have been investigated by CRCL. *See, e.g., Trial Starts in Suit Against Immigration Agents in Aspen Raid*, CBS Denver (Mar. 31, 2014), <http://denver.cbslocal.com/2014/03/31/trial-starts-in-suit-against-immigration-agents-in-aspen-raid/>; *Immigration Group Questions Nashville Raid*, My Fox Memphis (Oct. 28, 2010), <http://www.myfoxmemphis.com/story/18520446/immigration-group-questions-nashville-raid#axzz2xptjFUCe..>

The DHS response contains no information about the search CRCL purports to have conducted. The DHS response wholly fails to demonstrate that “all files likely to contain responsive materials . . . were searched.” *Oglesby v. Dep’t of Army*, 920 F.2d 57, 68 (D.C. Cir. 1990). The response conclusorily states that an adequate search was carried out, with *no* detail about how the search was conducted. Without meaningful detail that would allow CCR to determine whether an adequate search has been conducted or to enable CCR to challenge the procedures that were used, DHS’s response is inadequate. *Nation Magazine*, 71 F.3d at 892 (holding that the agency had not provided sufficient information “to allow . . . review of the adequacy of [its] search”); *Weisberg*, 627 F.2d at 371 (requiring enough information to enable the requester to challenge the procedures used). Contrary to these requirements, CRCL provided *no* information about where the agency searched, what search terms were used, whether the search was conducted electronically or by hand, and why the office chose to conduct the search in the manner it did.

CRCL has the duty to demonstrate that it exercised all reasonable efforts to ensure that it included what was requested in the search conducted. *See Amnesty Int’l USA*, 728 F. Supp. 2d at 497. CCR “reasonably described” the information we sought in the Request, and CRCL did not seek further clarification about the nature or scope of the Request. Agencies may not “read the request so strictly that the requester is denied information the agency well knows exists in its files, albeit in a different form from that anticipated by the requester.” *Amnesty Int’l USA v. CIA*, No. 07 CIV. 5435 (LAP), 2008 WL 2519908, at \*12 (S.D.N.Y. June 19, 2008) (quoting *Hemenway v. Hughes*, 601 F. Supp. 1002, 1005 (D.D.C. 1985)). Lacking *any* information about the search terms used or the manner in which the search was conducted, we are not in a position to fully assess whether our Request was narrowly construed or whether the search was properly performed, although the results strongly suggest that the search was inadequate.

#### **USCIS Has Failed to Demonstrate the Adequacy of Its Search**

For the same reasons as above, USCIS’s failure to provide any information regarding the search it allegedly undertook renders its response inadequate. USCIS has not indicated what search terms were used, which databases were searched, or any other information which would enable CCR to assess or challenge the adequacy of the search. *See Weisberg*, 627 F.2d at 371.

#### **FLETC Has Failed to Demonstrate the Adequacy of Its Search**

The documents FLETC produced also suggest that a comprehensive search was not conducted. All but two of the 26 pages that FLETC sent to us because they were purported to be responsive to our Request appeared related primarily to one set of tactical scenarios, and with the exception of the phrase “raid house,” which appeared on just three pages, did not address operations at homes.

The only responsive documents provided by FLETC refer to officer training conducted in a “raid house” setting. FLETC provided no information regarding the search terms it used to discover these documents, but these documents suggest that the term

“raid house” may have been used instead of far more applicable terms such as “home enforcement operation” or “home raid” or “house raid” or “operations at homes” or “operations at residences.” Further, one of the references to “raid house” practice scenarios is followed by a handwritten note to “[r]efer to” an e-mail. Given the existence of this email regarding “raid houses,” it seems likely that numerous emails or other communications discussing training on a controversial and common enforcement tactic such as warrantless home operations also exist. Yet aside from this one document, none of the responsive documents provided are e-mails or other communications, and FLETC did not indicate that any responsive documents were found which were wholly unreleasable. This indicates that there are additional documents which should have been found had a proper search been conducted.

It is not plausible that FLETC possesses so few documents regarding a commonly used enforcement technique. FLETC is the largest federal agent training center in the country and conducts officer training for ICE and 90 other federal agencies. *Welcome to FLETC*, FLETC.gov, <https://www.fletc.gov/> (last visited Apr. 2, 2014). 4,000 ICE agents were trained by FLETC in 30 different training programs in 2010, and in 2011 FLETC opened a \$2.5 million dedicated ICE Academy. *FLETC Opens \$2.5 Million ICE Academy Classroom Complex*, FedAgent (Sept. 15, 2011), <http://www.fedagent.com/16-general-news/144-fletc-opens-25-million-ice-academy-classroom-complex>. FLETC trains ICE agents on such subjects as interviewing, detection and discovery of contraband, and arrest techniques. *Immigration & Customs Enforcement Deportation Integrated (ICE D)*, FLETC.gov, <http://www.fletc.gov/training/training-management-division/center-integrated-branch/immigration-customs-enforcement-detention-integrated-iced> (last visited Apr. 2, 2014). ICE agents also receive their Fourth Amendment training from FLETC’s Legal Division. *ICE Administrative Removal Warrants (podcast script)*, FLETC.gov, <https://www.fletc.gov/training/programs/legal-division/podcasts/hot-issues-podcasts/hot-issues-transcripts/ice-administrative-removal-warrants-podcast-transcript.html> (last visited Apr. 2, 2014).

In addition, it is apparent that officers and agents of DHS receive training in conducting operations at homes. For example, discovery in a case alleging civil rights violations in eight ICE home raid incidents in 2007 resulted in “approximately 12,000 pages of training materials.” *Aguilar v. ICE*, 811 F. Supp. 2d 803, 812 (S.D.N.Y. 2011). It is implausible that none of this training occurred within FLETC or its ICE Academy. In addition, the stipulation and order settling that case provided for ICE to communicate “to all appropriate personnel a national training policy memorandum or memoranda” regarding home enforcement techniques. *See Aguilar v. ICE*, No. 07 Civ. 8224, Dkt. 426, at \*5-6 (S.D.N.Y. Apr. 4, 2013) (attached as Ex. H). It is implausible that FLETC would not be in possession of those communications.

An agency must show a “good faith effort to search for requested documents.” *Amnesty Int’l USA*, 728 F. Supp. 2d at 497. What is important is whether “the search was reasonably calculated to discover the requested documents, not whether it actually uncovered every document extant . . . .” *Grand Cent. P’ship, Inc. v. Cuomo*, 166 F.3d 473, 489 (2d Cir. 1999). Reasonableness is considered within the context of each

particular request. *See Davis v. U.S. Dep't of Justice*, 460 F.3d 92, 103 (D.C. Cir. 2006); *Weisberg*, 745 F.2d 1476. The agency must set forth why a search of some record systems, but not others, would lead to the discovery of responsive documents. *See Oglesby*, 920 F.2d at 68; *Amnesty Int'l USA*, 728 F. Supp. 2d at 497. DHS's response on behalf of CRCL, FLETC, and USCIS fails to provide any of the required information to demonstrate the adequacy of the search.

In closing, CCR requests that you make an adequate and reasonable search for the records we requested. We request a response to this appeal within twenty (20) working days.

I certify that everything here is true and correct to the best of my knowledge.

Sincerely,

---

Ghita Schwarz  
Senior Staff Attorney  
Center for Constitutional Rights  
666 Broadway, 6<sup>th</sup> Floor  
New York, NY 10012  
Phone: (212) 614-6455



April 22, 2014

*Via electronic mail*

James Holzer, DHS Senior Director of FOIA Operations  
Linda Lasko, DHS  
Associate General Counsel (General Law)  
U.S. Department of Homeland Security  
Washington, D.C. 20528

Katy J. L. Duke, Attorney-Advisor  
Office of the Administrative Law Judge  
United States Coast Guard  
500 Poydras Street, Rm 1211  
New Orleans, LA 70130

**RE: DHS Appeal Number 2014-HQAP-00048, FOIA Request Number 2014-HQFO-00035**

To Whom It May Concern:

We seek to clarify two issues regarding our FOIA request #2014-HQFO-00035 / #2014-HQAP-00048 after receiving DHS's acknowledgment letter dated April 11, 2014 signed by James Holzer. Mr. Holzer's letter arrived attached to an April 11, 2014 email from Linda Lasko.

First, we would like to clarify that our appeal is with regard to the above-mentioned FOIA request, #2014-HQFO-00035. In the letter we received from Lashawn Schmidt, dated February 7, 2014 but not received by our office until March 7, 2014,<sup>1</sup> we were told to reference DHS/OS/PRIV 09-882 in any future communications with DHS, which is why we included that number as a reference in our April 3, 2014 appeal letter to DHS.

Second, as we wrote in our April 3 appeal letter, we maintain that DHS's searches of CRCL, FLETC and USCIS were inadequate. As DHS' letter stated that it had searched only four components, and failed to reference any searches regarding the Office of Public Affairs or any other component of DHS, such as the Office of Policy, the Operations Coordination and Planning office, or any other appropriate offices and departments within DHS that relate to our

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<sup>1</sup> Our office has no record of receiving any letter from Ms. Schmidt on or around February 7, 2014. On February 21, 2014, we received a letter from attorney Katy J.L. Duke at the U.S. Coast Guard referencing an earlier letter from Ms. Schmidt. We had no record of receiving this letter, and, we requested a copy on March 3, 2014. It was received for the first time in our office on March 7, 2014. Our appeal is therefore timely.

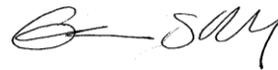
original FOIA request,<sup>2</sup> we understand that those components of DHS has failed to make a determination on our request.

In the alternative, if DHS considers its search of all relevant components to be complete, we hereby appeal that determination. FOIA requires DHS to conduct a search that is “reasonably calculated to uncover all relevant documents.” *Weisberg v. Dep’t of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). DHS’ failure to provide any information regarding the search it may have undertaken of any component other than those referenced in the letter dated February 7, 2014 (but not received by CCR until March 7, 2014) renders its response inadequate. DHS has not indicated what search terms were used, which databases were searched, or any other information which would enable requesters to assess or challenge the adequacy of the search.

FOIA requires DHS to conduct a search that is “reasonably calculated to uncover all relevant documents.” *Weisberg v. Dep’t of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983)

Thank you for your attention to this matter. Please direct any questions via email to Ghita Schwarz at [gschwarz@ccrjustice.org](mailto:gschwarz@ccrjustice.org) and Ian Head at [ihead@ccrjustice.org](mailto:ihead@ccrjustice.org).

Sincerely,



Ghita Schwarz  
Senior Staff Attorney  
Center for Constitutional Rights  
666 Broadway, 6<sup>th</sup> Floor  
New York, NY 10012  
Phone: (212) 614-6445

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<sup>2</sup> In our original October 17, 2013 FOIA request, we wrote that our request be directed “to all appropriate offices and departments within ICE and DHS, including, but not limited to, the Office of Civil Rights and Civil Liberties, the Office of Public Affairs, the Office of Detention Policy and Planning, the Office of Detention Oversight, the Federal Law Enforcement Training Center and the Office of State, Local and Tribal Coordination.”

# EXHIBIT 16

U.S. Department of  
Homeland Security

United States  
Coast Guard



Office of the Administrative Law Judge  
United States Coast Guard

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5720

June 11, 2014

Ghita Schwarz  
Center for Constitutional Rights  
666 Broadway, 6<sup>th</sup> Floor  
New York, NY 10012

Re: **DHS Appeal Number 2014-HQAP-00048**  
**FOIA Request Numbers 2014-HQFO-00035; DHS/OS/PRIV 09-882**

Dear Ms. Schwarz:

This letter is an update to my prior correspondence of June 4, 2014, wherein I remanded your April 3, 2014 appeal of the Department of Homeland Security's (DHS or Agency) February 7, 2014 adverse determination<sup>1</sup> of your October 17, 2013 request under the Freedom of Information Act (FOIA) (reference number DHS/OS/PRIV 12-0420) for:

[A]ll records . . . related to the policies, procedures, or objectives of home enforcement operations from January 20, 2009, to the present.<sup>2</sup>

Pursuant to a memorandum of agreement, the United States Coast Guard Office of the Chief Administrative Law Judge is reviewing FOIA appeals for the Department of Homeland Security's (Agency) General Counsel's office. Therefore, the Office of the Chief Administrative Law Judge hereby renders the official appeal decision on behalf of the Agency.

On June 4, 2014, I directed the Agency to provide greater detail on the search it conducted in connection with your above-described request for information. On June 5, 2014, the Privacy Office provided greater detail concerning your FOIA request. Upon review of the supplemental records provided, it is clear that the Agency, including components thereof, undertook a search that is "reasonably calculated to uncover all

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<sup>1</sup> "Adverse determinations, or denials of requests, consist of: A determination to withhold any requested record in whole or in part; a determination that a requested record does not exist or cannot be located; a determination that a record is not readily reproducible in the form or format sought by the requester; a determination that what has been requested is not a record subject to the FOIA; a determination on any disputed fee matter, including a denial of a request for a fee waiver; and a denial of a request for expedited processing." 6 C.F.R. §5.6(c).

<sup>2</sup> As your basis for appeal, as clarified in your correspondence of April 22, 2014, you contend that the DHS, together with its components, failed to demonstrate the adequacy of its search.

relevant documents.” Weisberg v. DOJ, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Accordingly, the Agency’s response is **UPHELD**.

Further, based upon review of the records provided, your appeal of the adequacy of the search performed by FLETC is **UNTIMELY** and therefore **MOOT**. FLETC directly responded to your request for information by letter dated November 18, 2013. Accordingly, your appeal dated April 3, 2014, makes any appeal of the FLETC response untimely. See 6 C.F.R. §5.9.

This decision is the final action of the Agency concerning DHS Appeal Number 2014-HQAP-00048; FOIA Request Numbers 2014-HQFO-00035; DHS/OS/PRIV 09-882. You may also seek judicial review of this decision, per 5 U.S.C. §552(a)(4)(B). You may seek judicial relief in either the United States District Court: 1) where you reside; 2) the district where the pertinent agency is situated; or 3) in the District of Columbia.

Sincerely,

A handwritten signature in black ink, appearing to read "Katy J.L. Duke". The signature is stylized and cursive.

Katy J.L. Duke, Esq.  
Attorney-Advisor

Copy: Department of Homeland Security Privacy Office  
Sent: Via FedEx to the above address