

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IMMIGRANT DEFENSE PROJECT and
CENTER FOR CONSTITUTIONAL RIGHTS,

Plaintiffs,

v.

UNITED STATES CUSTOMS AND BORDER
PROTECTION and UNITED STATES
DEPARTMENT OF HOMELAND
SECURITY,

Defendants.

Civil Action No. _____

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

1. Plaintiffs Immigrant Defense Project (IDP) and Center for Constitutional Rights (CCR) bring this action under the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq.*, to compel the release of agency records improperly withheld by Defendants, United States Department of Homeland Security (DHS) and its component agency, United States Customs and Border Protection (CBP).

2. Plaintiffs filed two FOIA requests with each of the Defendants in May and June 2022, seeking information and documents about CBP's role in immigration policing operations run by CBP's companion agency, United States Immigration and Customs Enforcement (ICE), in U.S. cities. Plaintiffs sought this information about Operation Palladium—a 2020 policing operation publicized by CBP and ICE to the *New York Times*—and about several other named and unnamed immigration policing operations. Defendants have produced no responsive documents or information to Plaintiffs, and have far surpassed their obligatory statutory deadline for doing so. For this reason, Plaintiffs have initiated this action.

3. This action relates to a FOIA matter currently pending before Judge Ronnie Abrams. *See IDP et al. v. DHS et al.*, No. 20-cv-10625 (S.D.N.Y., filed December 16, 2020). There, Plaintiffs had filed a FOIA request with Defendant DHS and ICE in 2020, requesting documents and information related to Operation Palladium and other immigration policing surge operations. Plaintiffs filed that FOIA request after being contacted by *New York Times* reporters asking about CBP participation in immigration policing operations in U.S. cities. Plaintiffs then read statements by CBP and ICE officials in the *Times* about Operation Palladium and surge operations involving CBP, ICE, and other DHS agents. After months of negotiation, the defendants in that case produced limited documents to Plaintiffs that contain numerous references to CBP's role in Operation Palladium and other DHS and ICE policing operations.

4. Nevertheless, in that case Defendant DHS has refused to arrange for a search of CBP records or to refer the FOIA request to CBP's FOIA office. Plaintiffs sued DHS and ICE for this failure to search, prompting *IDP et al. v. DHS et al.* Cross-summary judgment motions in that case are now pending in the Southern District of New York.

5. Plaintiffs are immigrant and civil rights organizations that study and document immigration policing activity to educate community members about their constitutional and statutory rights in policing encounters, and to educate local government officials, journalists, and attorneys and advocates about immigration policing and policy. Plaintiffs have engaged in this work for several decades, have filed multiple FOIA and other document requests with state and federal government agencies responsible for these issues, and regularly engage with stakeholders about immigration policing work nationally, and especially in New York City and State.

6. The announcement of Operation Palladium introduced a new idea into the scale and impact of immigration policing: collaborations between CBP and ICE inside U.S. cities, and

the deployment of border agent tactical units—i.e., BORTAC, “immigration SWAT teams”¹—and equipment into U.S. cities to support ICE and DHS “surge” operations of unusual scale. The announcement followed verified reports of an escalation of aggressive DHS civil enforcement policing tactics, including a rifle-armed CBP agent inside a Bronx, New York apartment building, and a DHS agent shooting a bystander in the face during an arrest operation.² The government made clear this escalation in ICE policing in cities was to challenge and undermine so-called sanctuary policies.³

7. Given Plaintiffs’ role in advising community members and policymakers on immigration policing matters, obtaining more information about these incidents and planned operations is crucial to Plaintiffs’ work. As a result, Plaintiffs filed the FOIA request and currently pending lawsuit in *IDP et al. v. DHS et al.* But despite revealing the existence of other CBP-ICE surge-operations collaborations inside U.S. cities such as “SUB zERO” and “50/50 CBP Assist,” Defendants have revealed little else about the current and future use of this method of immigration policing.⁴

8. Because DHS and ICE refused to provide any of this requested information, Plaintiffs filed two new FOIA requests in May and June 2022 seeking the information directly from CBP and DHS. *See* Ex. 1, FOIA Request Letter from IDP and CCR (dated May 24, 2022);

¹ Caitlin Dickerson, Zolan Kanno-Youngs & Annie Correal, ‘Flood the Streets’: ICE Targets Sanctuary Cities with Increased Surveillance, N.Y. Times (March 5, 2020), available at <https://www.nytimes.com/2020/03/05/us/ICE-BORTAC-sanctuary-cities.html> (hereinafter, “Flood the Streets”).

² *See* Memorandum in Support of Plaintiffs’ Cross-Motion for Summary Judgment and in Opposition to Defendants’ Motion for Summary Judgment at 4, *IDP et al. v. DHS et al.*, No. 20-cv-10625 (S.D.N.Y. May 2, 2022), ECF No. 51.

³ *See* Dickerson, ‘Flood the Streets’.

⁴ *See* Memorandum in Support of Plaintiffs’ Cross-Motion for Summary Judgment and in Opposition to Defendants’ Motion for Summary Judgment at 19, *IDP et al. v. DHS et al.*, No. 20-cv-10625 (S.D.N.Y. May 2, 2022), ECF No. 51.

Ex. 2, FOIA Request Letter from IDP and CCR (dated June 3, 2022). Nevertheless, Defendants DHS and CBP have also impeded Plaintiffs' information-gathering attempts, by both ignoring our FOIA requests altogether in most instances, and in one case by offering three blatantly insufficient justifications for closure and denial.

9. Through this complaint, Plaintiffs seek additional information and documents about collaborations between ICE, CBP, and DHS in immigration policing operations inside U.S. cities. Defendant DHS has refused to provide such information in this case and in *IDP et al. v. DHS et al.* Defendant CBP and ICE have likewise refused to provide the information sought here in response to Plaintiffs' requests.

JURISDICTION AND VENUE

10. 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).

11. 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.

12. Plaintiffs respectfully request that this action be related to the pending action in *IDP et al. v. DHS et al.*, as doing so would serve the interests of justice and efficiency.

PARTIES

13. Plaintiffs IDP and CCR are the two plaintiffs in *IDP et al. v. DHS et al.*

14. IDP is a non-profit organization whose mission is to promote fundamental fairness for immigrants who have contact with the criminal legal system. IDP engages in litigation, advocacy, and training to carry out its mission. Additionally, IDP disseminates information about the immigration system—including materials obtained through FOIA

requests—in accessible ways and is a leader in providing training and support for legal practitioners, community-based organizations, and community members. IDP provides expert information and community-based education on ICE and DHS tactics, including surveillance practices, and possible legal and policy remedies. IDP has been tracking ICE and DHS's community arrests and raid activity in the New York City area since 2013 to monitor and analyze trends in immigration surveillance, arrests, and detention, in order to share that information with community members, advocates, and elected officials. In July 2018, IDP, in partnership with Plaintiff CCR, launched ICEwatch, <https://raidsmap.immdefense.org>, an interactive map that visualizes the tactics and trends of ICE arrests based on the reports received and verified by IDP.

15. Plaintiff CCR is a non-profit, public interest legal and advocacy organization that engages in the fields of civil and international human rights. CCR's diverse issue areas include litigation and advocacy around immigration, as well as racial and ethnic profiling. One of CCR's primary activities is the publication of 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 Advocacy Departments. CCR operates a website, <https://ccrjustice.org>, which addresses the issues on which the Center works. CCR staff members often serve as sources for journalist and media outlets, including on issues related to racial justice, police brutality, racial discrimination, and the right to dissent. In addition, CCR regularly issues press releases, has an active social media presence with thousands of followers, and also issues regular email updates sent to 50,000 supporters about developments and news pertaining to CCR's work.

16. Defendant DHS is one of two defendants (the other being ICE) in *IDP et al. v. DHS et al.* 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 agencies include CBP, ICE, and its offices include the Office of Intelligence and Analysis (I&A).

17. Defendant CBP is the largest law enforcement agency within DHS. CBP is tasked with enforcing federal customs and immigration laws at or near borders and ports of entry. It often does so via patrols, interrogation, penalties, search, seizure, arrest, and detention.

18. DHS and CBP are “agenc[ies]” within the meaning of 5 U.S.C. § 552(f)(1).

STATEMENT OF FACTS

I. Background

Observed Immigration Policing Trends in 2020, and New York Times Coverage

19. In 2020, Plaintiff IDP and community members in New York City witnessed a significant uptick in ICE raids and arrests in New York City as well as several notable public incidents involving the use of force and presence of weapons in immigration policing.⁵ IDP submitted letters to the New York City Council about this, and testified at a subsequent City Council hearing.⁶

20. In March of that year, the *New York Times* published two articles about large-scale interior immigration policing operations that would involve collaboration between ICE and CBP.⁷ The “surge” operation would involve long hours of in-person surveillance by ICE and CBP officers, including elite border patrol tactical units. The articles were based on interviews

⁵ See Complaint for Declaratory and Injunctive Relief at 6, *IDP et al. v. DHS et al.*, No. 20-cv-10625 (S.D.N.Y. May 2, 2022), ECF No. 1.

⁶ See *id.*

⁷ See Memorandum in Support of Plaintiffs’ Cross-Motion for Summary Judgment and in Opposition to Defendants’ Motion for Summary Judgment at 2, *IDP et al. v. DHS et al.*, No. 20-cv-10625 (S.D.N.Y. May 2, 2022), ECF No. 51.

with some of the highest ranking officials within CBP leadership, then-acting head of CBP Mark Morgan; chief patrol agent for Border Patrol Tactical Unit (“BORTAC”) Tim Sullivan; CBP spokesman Lawrence Payne; and former CBP commissioner Gil Kerlikowske.⁸ The articles also referenced internal emails from CBP and DHS relating to this Operation Palladium. According to these articles and sources, officials launched Operation Palladium as a “supercharged arrest operation” to “crack[] down on so-called sanctuary cities” such as New York.⁹

21. As the *Times* was developing these articles, *Times* reporters contacted Plaintiff IDP with questions about CBP deployment into U.S. cities as an immigration policing tactic.¹⁰ Plaintiffs subsequently read about Operation Palladium and surge operations in the *Times* articles.

Plaintiffs’ First FOIA Request in 2020, Leading to IDP et al. v. DHS et al.

22. Following the *Times* articles, and with no further information about Palladium or surge operations being released to the public by DHS, ICE, or CBP, Plaintiffs filed a FOIA request (hereinafter “FOIA 1”) with DHS and ICE in June 2020 to obtain more information about Operation Palladium. Plaintiffs requested that Defendants forward their request to all sub-entities that could have responsive information.¹¹

23. DHS and ICE produced no documents in response to that Request. Once the statutory response period had lapsed, Plaintiffs filed a lawsuit under FOIA.

Plaintiffs File IDP et al. v. DHS et al. in 2020

⁸ *See id.*

⁹ *See id.*

¹⁰ *See id.* at 4.

¹¹ *See id.* at 11.

24. Plaintiffs filed *IDP et al. v. DHS et al.* on December 16, 2020.¹² The matter is currently pending before Judge Ronnie Abrams.

25. In that lawsuit, over months of negotiation the named defendants, DHS and ICE, produced approximately 1274 pages of documents and spreadsheets, with substantial redactions.¹³ When negotiations over search parameters, adequacy of search, and scope of redactions reached their endpoint, the parties filed cross-motions for summary judgment. Those motions remain pending before Judge Abrams. Even despite the inadequacy of the defendants' search in that case and the excessive use of redactions, the documents produced nevertheless made apparent that Operation Palladium was just one instance of surge immigration policing operations involving collaborations between ICE, CBP, and DHS officers, and likely with local police departments as well.¹⁴ The documents referenced other named and planned operations of this nature.

26. In that case, Plaintiffs requested that DHS arrange for searches of CBP as an agency likely to have responsive records about joint enforcement operations between ICE and CBP. Defendant DHS would not do so, instead contending that Plaintiffs would have to request the information and documents from CBP directly.¹⁵

¹² See Complaint for Declaratory and Injunctive Relief at 14, *IDP et al. v. DHS et al.*, No. 20-cv-10625 (S.D.N.Y. May 2, 2022), ECF No. 1.

¹³ See Memorandum in Support of Plaintiffs' Cross-Motion for Summary Judgment and in Opposition to Defendants' Motion for Summary Judgment at 5, *IDP et al. v. DHS et al.*, No. 20-cv-10625 (S.D.N.Y. May 2, 2022), ECF No. 51.

¹⁴ See *id.* at 14.

¹⁵ See Reply Memorandum of Law in Support of Defendants' Motion for Summary Judgment and in Opposition to Plaintiffs' Cross Motion for Summary Judgment at 2, *IDP et al. v. DHS et al.*, No. 20-cv-10625 (S.D.N.Y. May 27, 2022), ECF No. 56.

27. This led Plaintiffs to file requests directly with Defendants CBP and DHS in May and June 2022.¹⁶

II. Plaintiffs File Two FOIA Requests in 2022

28. Plaintiffs submitted two FOIA requests in May and June 2022 with CBP and DHS (hereinafter “FOIA 2” and “FOIA 3”).

29. FOIA 2, dated May 24, 2022, seeks the following records:

- Emails that reference “Palladium,” “SUB-zERO,” “50/50 CBP Assist” (and related acronyms and abbreviations) between DHS or CBP and any other federal agency, from December 1, 2019, to March 31, 2020;
- Emails that reference “Palladium,” “SUB-zERO,” “50/50 CBP Assist” (and related acronyms and abbreviations) between DHS or CBP and the New York Police Department, from December 1, 2019, to March 31, 2020;
- Emails or other communications by CBP or DHS regarding subject matter reported on in the article by Caitlin Dickerson and Zolan Kanno-Youngs, “Border Patrol Will Deploy Elite Tactical Agents to Sanctuary Cities,” published in the New York Times on February 14, 2020.
- Emails or other communications by CBP or DHS regarding subject matter reported on in the article by Caitlin Dickerson, Zolan Kanno-Youngs, and Annie Correal, “Flood the Streets’: ICE Targets Sanctuary Cities With Increased Surveillance,” published in the New York Times on March 5, 2020.

See Ex. 1, FOIA Request Letter from IDP and CCR (dated May 24, 2022).

30. FOIA 3, dated June 3, 2022, seeks the following records:

- CBP policies, memos or guidances relating to CBP support of ICE enforcement operations, including any operations involving ICE’s Enforcement and Removal Operations (“ERO”), such as “Operation SUB zERO,” “50/50 CBP Assist,” and “Operation Palladium.”

¹⁶ *See Ex. 1, FOIA Request Letter from IDP and CCR (dated May 24, 2022); Ex. 2, FOIA Request Letter from IDP and CCR (dated June 3, 2022). See also Reply Memorandum of Law in Further Support of Plaintiffs’ Cross-Motion for Summary Judgment and in Opposition to Defendants’ Motion for Summary Judgment at 8 n.12, IDP et al. v. DHS et al., No. 20-cv-10625 (S.D.N.Y. June 13, 2022), ECF No. 57.*

- CBP policies, memos or guidances relating to CBP support of ICE enforcement operations, including any operations involving ICE's Enforcement and Removal Operations ("ERO"), such as "Operation SUB zERO", "50/50 CBP Assist," and "Operation Palladium." This includes policies, operating procedures, rules, internal policy guidance, training materials, monitoring mechanisms, legal opinions or memoranda, and protocols regarding information-sharing. Requesters are interested in those policies, memos, guidances and other records related to and/or held by field offices or other agency offices and/or components in the "7 AORs" that were part of Operation Palladium including: New York City, Newark, San Francisco, Chicago, Los Angeles, Philadelphia, and San Antonio.
- CBP policies, memos, training materials or guidances relating to surveillance tactics which were in effect between September 1, 2019 and May 1, 2020.
- Any and all Records regarding the process CBP uses to determine who to target as part of surge operations such as "Operation SUB zERO", "50/50 CBP Assist," and "Operation Palladium."
- Data from any Operation Palladium, Operation SUB zERO and/or 50/50 CBP Assist-related target list in CBP's possession, including but not limited to arrest date, disposition, comments, nexus, and criminal history between January 1, 2020 and April 1, 2020.

Ex. 2, FOIA Request Letter from IDP and CCR (dated June 3, 2022)

31. Plaintiffs sought expedited processing for both FOIA requests under 5 U.S.C. § 552(a)(6)(E)(i)(I), citing two compelling needs: (1) the "crucial" role of said information in Plaintiffs' "ongoing work advising and supporting communities and individuals impacted" by Operation Palladium and related raids and enforcement actions by DHS; and (2) the fact that DHS would have "similar staffing capacity to conduct surge forces similar to Palladium in the near future."

32. Plaintiffs also sought a waiver of applicable fees for FOIA 2 and FOIA 3 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" and "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.” Plaintiffs IDP and CCR are non-profit entities with no commercial interest in the records requested, and both play crucial roles in public education of Defendants’ operations.

III. Defendants’ Constructive Denial and Failure to Respond

FOIA 2

33. On May 24, 2022, Plaintiffs filed FOIA 2 with CBP through CBP’s FOIA Online portal, and with DHS via Federal Express.

34. The next day, on May 25, 2022, CBP administratively closed FOIA 2 on the basis that Plaintiffs failed to provide “[n]ame(s) and or e-mail address(es) of individual(s) receiving or sending the email.”

35. However, because the FOIA statute does not require a requester to provide “email addresses” or even names of agency officials when submitting a request,¹⁷ Plaintiffs believed CBP’s rationale must have been an error and resubmitted FOIA 2 via Federal Express on May 25, 2022.

36. On June 7, 2022, Defendant CBP responded to the resubmitted FOIA 2, again rejecting and administratively closing the request by saying it was duplicative and had already been filed.

37. On June 14, 2022, Plaintiffs resubmitted FOIA 2 for a third time to CBP and attached CBP’s two previous letters that rejected or administratively closed the requests, along with a cover letter explaining that CBP was in error in doing so.

¹⁷ See 5 U.S.C. § 552(a)(1)(A)-(E); U.S. Department of Homeland Security, *Steps to File a FOIA Request*, <https://www.dhs.gov/steps-file-foia>; U.S. Customs and Border Protection, *Freedom of Information Act (FOIA) Frequently Asked Questions*, <https://www.cbp.gov/site-policy-notices/foia/faq-foia>.

38. On July 1, 2022, Plaintiffs received notice that CBP had “closed” their request. CBP’s stated rationale for the “insufficien[cy]” of Plaintiffs’ FOIA request was that the FOIA request “did not include a date of birth.”

39. However, the FOIA statute does not require a date of birth for such requests. This reason for closure lacked any basis. FOIA 2 is not a Privacy Act request for personal information. Plaintiffs did not request any individual records where a date of birth would be relevant information.

40. On August 4, 2022, Plaintiffs appealed the constructive denial of FOIA 2.

41. On August 12, 2022, CBP acknowledged receipt of the appeal.

42. On August 18, 2022, CBP contacted Plaintiffs to discuss the appeal and the “scope” of the FOIA 2 request.

43. In late August and September 2022, Plaintiffs and CBP engaged in email discussions about potential search terms and custodians in regards to FOIA 2.

44. Following this correspondence between Plaintiffs and CBP, Defendant CBP responded to Plaintiffs’ administrative appeal on September 29, 2022, remanding the appeal and agreeing that Plaintiffs’ keyword requests in FOIA 2 provided Defendants with “sufficient clarity” to perform a search.

45. On October 4, 2022, CBP sent Plaintiffs a new acknowledgement letter via email, and invoked the FOIA statute’s 10-day extension to respond to Plaintiffs’ FOIA 2 request.

46. Over one month later, CBP has produced no documents or information whatsoever to Plaintiffs.

47. Defendant DHS received FOIA 2 on May 26, 2022. According to Federal Express, it was signed for by “JAY MCCRAY.”

48. As of this filing, Plaintiffs have received no response from DHS to FOIA 2.

FOIA 3

49. On June 3, 2022, Plaintiffs filed FOIA 3 via Federal Express.

50. On June 6, 2022, FOIA 3 was received by CBP and signed for by “J. MCCRAY,” according to Federal Express.

51. As of this filing, CBP has never responded or acknowledged the filing of FOIA 3. Accordingly, Defendant CBP has constructively denied FOIA 3.

52. On June 6, 2022, FOIA 3 was received by DHS and signed for by “J. MCCRAY,” according to Federal Express.

53. As of this filing, DHS has never responded or acknowledged the filing of FOIA 3. Accordingly, Defendant DHS has constructively denied FOIA 3.

IV. Compelling Necessity for Records Sought

54. There is a compelling and urgent need to inform the public of the policies and decision-making rationales behind immigration surge policing operations such as Palladium, SUB zERO, and the named and unnamed operations Plaintiffs have begun to learn about through the articles published in the *Times* and the information uncovered through the document productions in *IDP et al. v. DHS et al.* This is true for six principal reasons.

55. First, the issue of ICE policing continues to be a concern to the public, particularly in New York City, and the threat of surge force operations at the scale of Operation Palladium present potentially significant harm to immigrant and urban communities. The potential that CBP or ICE leadership could reinstitute mass-surge operations is a concern for all New Yorkers, including U.S. citizens and elected officials. The presence of federal immigration agents armed with rifles in New York City streets and apartments has an impact on the safety

and comfort of the broader community. But other than a splash of news media in 2020, Operation Palladium remains a mystery to the public.¹⁸

56. Second, Operation Palladium threatened to undermine New York City’s laws protecting immigrant community members, and had potentially grave impacts on the public trust in government agencies. Public interest in limiting collaborations between local police and immigration enforcement agencies remains high; indeed, there are currently three bills pending before the New York City Council that limit the City’s entanglement with DHS and ICE.¹⁹ Public trust in local government—including unhindered access to critical public resources—is undermined when people are unclear about the threat of immigration policing operations in the City. This information would significantly contribute to the public’s understanding of ICE surge force operations such as Operation Palladium and how it fits within Defendants’ broader immigration enforcement agenda—issues that “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). But Defendants have not cited a legitimate reason for refusing to divulge this information.

57. Third, the stated intention of initiatives like Operation Palladium to deploy BORTAC agents—the Border Patrol’s version of a SWAT team—in a dense urban setting to

¹⁸ See, e.g., ‘Flood the Streets’, *supra* note 1; Alexandra Kelley, *ICE officers Deployed to ‘Flood the Streets’ of Sanctuary Cities: Report*, The Hill (Mar. 5, 2020), available at <https://thehill.com/changing-america/resilience/refugees/486129-ice-deploying-hundreds-of-additional-officers-to> (last visited Nov. 19, 2022); Editorial Board, *Trump’s Immigration Policies Have Already Put Lives at Risk*, Washington Post, (Mar. 22, 2020), available at https://www.washingtonpost.com/opinions/trumps-immigration-policies-have-already-put-lives-at-risk/2020/03/22/54593c3a-6a1c-11ea-9923-57073adce27c_story.html (last visited Nov. 19, 2022).

¹⁹ See B. 0158-2022, N.Y. City Council; B. 0185-2022, N.Y. City Council; B. 0184-2022, N.Y. City Council.

conduct civil arrests is extremely concerning. The federal government relocating agents from border regions present a very different context for encounters between immigration agents and members of the public.²⁰ Yet Defendants have provided no information whatsoever regarding the training of these agents.

58. Fourth, current legal challenges to ICE priorities under the Biden Administration create the renewed possibility for an increase in ICE arrests as well as surge forces. Although the Biden Administration's current posture on ICE policing differs significantly from that of the Trump Administration, the ability for presidential administrations to set priorities on Defendants' enforcement actions is currently a matter of significant legal interest. During its summer 2022 term, the Supreme Court rejected President Biden's administrative attempt to reinstate guidelines issued by DHS Secretary Alejandro Mayorkas that would narrow the specific enforcement priorities for DHS and its sub-agencies such as ICE and CBP and that had been blocked by a lower court.²¹ As a result, DHS agents retain broad authority for selective immigration arrests and detention.

59. Fifth, despite the change in the presidential administration, there is no change in DHS policy, staffing, or mission, to suggest that a surge force operation of this nature could not

²⁰ See Human Rights Watch, *NGO Sign-On Letter to Inter-American Commission on Human Rights* (Oct. 24, 2022), available at <https://www.hrw.org/news/2022/10/24/ngo-sign-letter-inter-american-commission-human-rights> (last visited Nov. 18, 2022) (“In border communities, use of force by border agents is on the rise. According to CBP’s own data comparing 2019 and 2022, use-of-force incidents have risen from 592 to 876, even while assaults on officers, which agents claim justifies the force they use, have fallen from 484 to 462. The rise in violence comes at a time when agents at CBP are critical of attempts at reforms, they operate secret social media groups where they make xenophobic, sexist, and racist jokes with few consequences, and the former head of Border Patrol openly threatens rape in response to media reports about his role in . . . abuse and impunity.”).

²¹ *United States v. Texas*, ___ S. Ct. ___, 2022 WL 2841804 (Jul. 21, 2022) (denying stay of lower court injunction of DHS memo); *Texas v. United States*, 40 F.4th 205 (2022) (same).

happen in the future. Significant funding from the federal government has ensured high levels of staffing for immigration policing across DHS agencies. The proposed 2023 DHS budget does not indicate any reduction in DHS, ICE, or CBP policing power. Instead, the presidential budget proposal calls for an increase in the number of ICE, Border Patrol and other CBP agents.²² These continued high staffing levels ensure the possibility of aggressive enforcement actions in the future.

60. Lastly, this information is critical to enable IDP and CCR to provide the expertise that they have traditionally provided. IDP and CCR are still sought after to provide updated trends on ICE and DHS policing tactics by community members, advocates, elected officials, City and State administrators, and journalists. IDP is engaged in legislative work at the City and State level where they regularly meet with elected officials and their staff on issues related to ICE policing and risks to constituents. IDP testifies on related matters in the New York City Council, and is consulted by New York City attorneys, administrators, and elected officials for expertise on these issues.

CLAIMS FOR RELIEF

First Claim for Relief:

Violation of FOIA for Failure to Disclose and Release Responsive Records

61. Plaintiffs repeat and re-allege each and every allegation contained in paragraphs 1 through 60 as if repeated and incorporated herein.

²² See U.S.Department of Homeland, *U.S. Immigration and Customs Enforcement Budget Overview Fiscal Year 2023 Congressional Justification*, https://www.dhs.gov/sites/default/files/2022-03/U.S.%20Immigration%20and%20Customs%20Enforcement_Remediated.pdf; U.S.Department of Homeland, *U.S. Customs and Border Protection Budget Overview Fiscal Year 2023 Congressional Justification*, https://www.dhs.gov/sites/default/files/2022-03/U.S.%20Customs%20and%20Border%20Protection_Remediated.pdf.

62. By failing to make a determination on Plaintiffs' FOIA request within the mandated statutory timeframe, 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:

Violation of FOIA for Improper Denial of Plaintiffs' Requests for Expedited Processing

63. Plaintiffs repeat and re-allege each and every allegation contained in paragraphs 1 through 62 as if repeated and incorporated herein.

64. 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:

Violation of FOIA for Improper Denial of Plaintiffs' Requests for a Fee Waiver

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

66. Defendants have violated Plaintiffs' rights to a fee waiver under 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:

- (a) Order Defendants immediately to make a full, adequate, and expedited search for the requested records;
- (b) Order Defendants to engage in expedited processing in this action;
- (c) Enjoin Defendants from assessing fees or costs for the processing of the FOIA Request;

- (d) 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;
- (e) 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
- (f) Grant each other and further relief as this Court may deem just and proper.

Dated: November 21, 2022
New York, NY

s/Maria LaHood
Maria LaHood
CENTER FOR CONSTITUTIONAL RIGHTS
666 Broadway, 7th Floor
New York, NY 10012
(212) 614-6445
mlahood@ccrjustice.org

s/Andrew Wachtenheim
Andrew Wachtenheim
IMMIGRANT DEFENSE PROJECT
P.O. Box 1765
New York, NY 10027
(212) 725-6421
andrew@immdefense.org

/s/ Ghita Schwarz
Ghita Schwarz
LatinoJustice PRLDEF
475 Riverside Dr., Suite 1901
New York, NY 10115
212-219-3360
gschwarz@latinojustice.org

Attorneys for Plaintiffs