

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MAINE

AMERICAN CIVIL LIBERTIES UNION OF  
MAINE FOUNDATION, AMERICAN CIVIL  
LIBERTIES UNION OF NEW HAMPSHIRE  
FOUNDATION, and AMERICAN CIVIL  
LIBERTIES UNION FOUNDATION OF  
VERMONT,

Plaintiffs,

v.

U.S. DEPARTMENT OF HOMELAND  
SECURITY, U.S. CUSTOMS AND  
BORDER PROTECTION, and U.S.  
IMMIGRATION AND CUSTOMS  
ENFORCEMENT,

Defendants.

) Case No. \_\_\_\_\_

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

**INTRODUCTION**

1. The American Civil Liberties Union of Maine Foundation, American Civil Liberties Union of New Hampshire Foundation, and American Civil Liberties Union Foundation of Vermont (collectively, “Plaintiffs” or “ACLU”) bring this action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, as amended, to obtain injunctive and other appropriate relief requiring U.S. Department of Homeland Security (“DHS”), U.S. Customs and Border Protection (“CBP”), and U.S. Immigration and Customs Enforcement (“ICE”) (collectively, “Defendants”) to respond to a FOIA request sent by Plaintiffs on September 5, 2017 (“Request”), and to promptly disclose the requested records.

2. The Request seeks records concerning Defendants’ local immigration enforcement in Maine, New Hampshire, and Vermont. Specifically, the Request seeks records regarding (1) Defendants’ immigration enforcement actions in Maine, New Hampshire, and Vermont, (2) their communications with local law enforcement, and (3) their communications with local businesses. A true and correct copy of the Request is attached as **Exhibit A**.

3. There is significant public interest in these records, especially in light of Defendants’ aggressive enforcement actions under the administration of President Donald Trump—including arresting individuals in previously safe locations like courthouses. Disclosure of the requested records would facilitate the public’s understanding of how Defendants enforce the immigration laws in Maine, New Hampshire, and Vermont. Such information is critical to the public’s ability to hold the government accountable.

4. The requested records contain information of great public importance. For example, a recent court decision found violations of the federal and state constitutions based in part on collaboration between Defendant CBP and local law enforcement.<sup>1</sup> That is precisely the type of information covered by the ACLU’s FOIA request. The public has a right to know about Defendants’ local enforcement operations, including collaboration and communications with local law enforcement.

5. This action is necessary because, months after receiving the Request and a subsequent appeal, Defendants have still failed to provide timely determinations as required by statute, and have otherwise failed to adequately respond to the Request.

### **JURISDICTION**

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

### **VENUE**

7. Venue in the District of Maine is proper under 5 U.S.C. § 552(a)(4)(B) because Plaintiff ACLU of Maine’s principal place of business is in the District of Maine and because a substantial portion of the withheld records relate to immigration enforcement and

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<sup>1</sup> *New Hampshire v. McCarthy*, Docket No. 469-2017-CR-01888 (Second Circuit District Division Plymouth, Grafton, May 1, 2018), available at [https://www.aclu-nh.org/sites/default/files/field\\_documents/state\\_v.\\_mccarthy\\_-\\_order\\_5-1-18.pdf](https://www.aclu-nh.org/sites/default/files/field_documents/state_v._mccarthy_-_order_5-1-18.pdf).

communications in the District of Maine. For the same reasons, venue also is proper under 28 U.S.C. § 1391(e).

### **PARTIES**

8. Plaintiff American Civil Liberties Union of Maine Foundation (“ACLU of Maine”) is a non-profit 26 U.S.C. § 501(c)(3) organization that provides legal representation free of charge to individuals and organizations in civil rights and civil liberties cases and educates the public about civil rights and civil liberties issues across Maine. The ACLU of Maine is headquartered in Portland, Maine.

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

10. Plaintiff American Civil Liberties Union Foundation of Vermont (“ACLU of Vermont”) is a non-profit 26 U.S.C. § 501(c)(3) organization that provides legal representation free of charge to individuals and organizations in civil rights and civil liberties cases and educates the public about civil rights and civil liberties issues across Vermont. The ACLU of Vermont is headquartered in Montpelier, Vermont.

11. Defendant Department of Homeland Security (“DHS”) is a department of the executive branch of the U.S. government and is an agency within the meaning of 5 U.S.C. § 552(f)(1).

12. Defendant U.S. Customs and Border Protection (“CBP”) is a component of DHS and is a federal agency within the meaning of 5 U.S.C. § 552(f)(1).

13. Defendant U.S. Immigration and Customs Enforcement (“ICE”) is a component of DHS and is a federal agency within the meaning of 5 U.S.C. § 552(f)(1).

14. Plaintiffs are informed and therefore believe that Defendants have possession, custody, or control of the requested records.

## FACTS

### **I. Public Concern with Defendants' Immigration Enforcement**

15. The Request arises from widespread public interest in immigration enforcement in Maine, New Hampshire, and Vermont after the election of Donald Trump as President and in the early days of the Trump Administration. Since President Trump's inauguration, Plaintiffs have seen harsh and unprecedented immigration enforcement in their states. These trends are particularly concerning given the ongoing and grave concerns with the lack of transparency and oversight in Defendants' enforcement practices.<sup>2</sup>

16. In the first 100 days of the Trump administration, U.S. immigration officials arrested more than 41,000 suspected undocumented individuals—an increase of nearly 38 percent over the same period the previous year.<sup>3</sup> The largest deportations have been among immigrants with no criminal records or minor non-violent offenses. The New England states, including Maine, New Hampshire, and Vermont, experienced an even larger percentage increase—up 58 percent from the same period from the previous year.<sup>4</sup> In response, the immigrant communities in Maine, New Hampshire, and Vermont have been crippled by fear and anxiety.

17. Specific instances of enforcement in Maine, New Hampshire, and Vermont have caused particular public concern in those states.

18. For example, Maine has seen an unprecedented increase in aggressive actions taken by government officials towards immigrants residing in Maine. In one incident, ICE

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<sup>2</sup> See, e.g., James Lyall *et al.*, *Record of Abuse: Lawlessness and Impunity in Border Patrol's Interior Enforcement Operations*, ACLU of Arizona (Oct. 2015), available at [https://www.acluaz.org/sites/default/files/documents/Record\\_of\\_Abuse\\_101515\\_0.pdf](https://www.acluaz.org/sites/default/files/documents/Record_of_Abuse_101515_0.pdf).

<sup>3</sup> Mark Hayward, *ICE Arrests of Illegal Immigrants Climb by 38 Percent*, UNION LEADER, May 17, 2017, available at <http://www.newhampshire.com/social-issues/ICE-arrests-of-illegal-immigrants-climb-38-percent-05172017>.

<sup>4</sup> *Id.* (stating that the New England states saw deportation numbers rise to 610 for the period).

officers arrested Abdi Ali, a Somali asylum seeker, inside a Portland courthouse while he met privately with his lawyer about a pending case.<sup>5</sup>

19. The arrest was the first of its kind in Maine and prompted an outpouring of criticism from Maine’s legal community. Maine Attorney General Janet Mills spoke out publicly against the ICE action and addressed a letter to Homeland Security and the U.S. Attorney warning that such actions would “have an unnecessary chilling effect on our efforts to obtain the cooperation of victims and our successful prosecution of crimes.”<sup>6</sup> As Attorney General Mills explained, “[i]n investigating matters of human trafficking, domestic violence and the like, it is critical to us that all individuals have free and open access to Maine courts, regardless of their immigration status.”<sup>7</sup>

20. After the incident, the ACLU of Maine and 179 lawyers across Maine signed a letter to U.S. Attorney General Jeff Sessions and Department of Homeland Security Secretary John Kelly to express the contempt felt towards ICE’s actions at the Portland courthouse and to demand that courthouses be treated as “sensitive locations” where ICE enforcement should be avoided.<sup>8</sup> The letter further emphasized the “fundamental constitutional guarantee that all people have the right to seek redress from our system” regardless of immigration status.”<sup>9</sup>

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<sup>5</sup> Danielle Waugh, *Ice Agents Make First Immigrant Arrest at Maine Courthouse*, NEW ENGLAND CABLE NEWS, Apr. 7, 2017, available at <https://www.necn.com/news/new-england/ICE-Agents-Make-First-Immigrant-Arrest-in-Maine-418674963.html>; Jennifer Mitchell & Caroline Losneck, *Immigrants fear for the future after series of ICE arrests in Maine*, BANGOR DAILY NEWS, Apr. 16, 2017, available at <http://bangordailynews.com/2017/04/16/politics/immigrants-fear-rough-waters-after-federal-agents-arrest-maine-immigrants/>.

<sup>6</sup> Judy Harrison, *Janet Mills warns ICE courthouse arrests could have a ‘chilling effect’ in Maine*, BANGOR DAILY NEWS, Apr. 20, 2017, available at <http://bangordailynews.com/2017/04/10/news/augusta/janet-mills-warns-ice-courthouse-arrests-could-have-a-chilling-effect-in-maine/>.

<sup>7</sup> *Id.*

<sup>8</sup> Megan Doyle, *Scores of Maine attorneys condemn immigration arrest at Portland courthouse*, PORTLAND PRESS HERALD (Apr. 10, 2017), <https://www.pressherald.com/2017/05/10/undocumented-maine-immigrant-in-u-s-for-20-years-now-close-to-deportation/>.

<sup>9</sup> *Id.*

21. In another alarming incident, ICE detained Otto Morales-Caballeros, a Naples, Maine resident, “as part of the Trump administration’s move to tighten immigration enforcement.”<sup>10</sup> Born in Guatemala, Morales-Caballeros had lived in the United States for approximately 20 years. He was detained while on his way to work, held at four different locations during his less-than-three-month detention, and deported to Guatemala. Mr. Morales-Caballeros says that Guatemala now feels foreign to him after 20 years in the United States.<sup>11</sup>

22. Not long after ICE detained Mr. Morales-Caballeros, the Maine State House voted down LD366, a bill that would have compelled “Maine cities to act as extensions of federal immigrations authorities.”<sup>12</sup>

23. New Hampshire has faced similar patterns of immigration enforcement. During the summer of 2017, ICE began the process of deporting more than 50 Indonesians living in the seacoast area of New Hampshire—including 17 married couples with children who are U.S. citizens or have DACA (“Deferred Action for Childhood Arrivals”) status—some of whom have serious medical conditions. All of the families have lived in the United States for years and were known to ICE because of their participation in a program enacted eight years earlier called “Operation Indonesian Surrender.” ICE had called this program “a humanitarian effort” meant to “bring folks out of the shadows” and send the message to Indonesian Christian community members that “we will work with you.” In exchange for identifying themselves, turning over their passports, and regularly checking in with immigration, these families were able to legally remain and work in the United States. However, in 2017, ICE ended the program and then tried

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<sup>10</sup> Megan Doyle, *Undocumented Maine immigrant, in U.S. for 20 years, now close to deportation*, PORTLAND PRESS HERALD, May 10, 2017, available at <https://www.pressherald.com/2017/05/10/undocumented-maine-immigrant-in-u-s-for-20-years-now-close-to-deportation/>.

<sup>11</sup> Megan Doyle, *“It’s not my world,” says Naples man deported to Guatemala*, PORTLAND PRESS HERALD, June 25, 2017, available at <https://www.pressherald.com/2017/06/25/its-not-my-world-says-naples-man-deported-to-guatemala/>.

<sup>12</sup> Steve Mistler, *Maine House Rejects Anti-Sanctuary City Bill*, MAINE PUBLIC, May 31, 2017, available at <http://mainepublic.org/post/maine-house-rejects-anti-sanctuary-city-bill#stream/0>.

to deport the participants. ICE sought to deport these individuals even though ICE could easily have allowed these families sufficient time to find lawyers to seek to reopen cases based on the current conditions in Indonesia, ensuring that those who fear danger have the opportunity to go before a judge and make their case. Instead, ICE officials refused. The District of Massachusetts has since issued a preliminary injunction enjoining these immediate deportations. *See Devitri v. Cronen*, 290 F. Supp. 3d 86 (D. Mass. Nov. 27, 2017) (holding that federal court jurisdiction exists in class action lawsuit to halt the immediate deportation of Indonesian nationals residing in New Hampshire and who faced immediate removal to Indonesia where they are in danger of persecution); *Devitri v. Cronen*, 289 F. Supp. 3d 287 (D. Mass. Feb. 1, 2018) (issuing preliminary injunction preventing the immediate deportation).

24. Similarly, in June 2017, ICE raided a Mexican restaurant in New Boston, New Hampshire arresting some of the restaurant's staff cooks and waiters.<sup>13</sup> And in February 2017, the Strafford County Jail, which houses immigration detainees, saw an average of 106 immigration detainees each day, a 25 percent increase over the previous month.<sup>14</sup>

25. In response, several Granite State churches and community groups have started to organize a response to increased ICE enforcement.<sup>15</sup> For example, in June 2017, religious leaders hosted an interfaith prayer vigil in front of the Norris Cotton Federal Building in Manchester to show support for immigrant families facing the threat of deportation.<sup>16</sup>

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<sup>13</sup> Emily Corwin, *Mexican Restaurant in N.H. Shuts Down After Immigration Raid*, NHPR, June 9, 2017, available at <http://nhpr.org/post/mexican-restaurant-nh-shuts-down-after-immigration-raid#stream/0>.

<sup>14</sup> Emily Corwin, *N.H.'s Immigration Detention Facility Saw Spike in February*, NHPR, Mar. 21, 2017, available at <http://nhpr.org/post/nhs-immigration-detention-facility-saw-spike-february#stream/0>.

<sup>15</sup> Mark Hayward, *NH Churches, Community Groups Plan Response to ICE Efforts*, UNION LEADER, Apr. 04, 2017, available at <http://www.unionleader.com/social-issues/NH-churches-community-groups-plan-response-to-ICE-efforts-040520167>.

<sup>16</sup> Laura Montenegro, *NH Vigil Planned Against Deportation of "Law-Abiding" Immigrants in U.S. Illegally*, NH1, June 5, 2017, available at <http://www.nh1.com/news/nh-vigil-planned-againstdeportation-of-law-abiding-immigrants-in-u-s-illegally/>.

26. This increased enforcement has also included the use of CBP checkpoints deep in the interior of New Hampshire. On two separate occasions in August and September 2017, CBP instituted temporary immigration checkpoints on Interstate 93 (South) in Woodstock, New Hampshire. Woodstock is a small town (population 1,374) located in the White Mountains—a popular tourist attraction—that is approximately 90 driving miles from the Canadian border. As part of the checkpoints, CBP used suspicionless “dog sniffs” and collaborated with local law enforcement. When CBP allegedly found small amounts of drugs for personal use on 16 individuals as a result of these “dog sniff” searches, CBP then handed these individuals off to the Woodstock Police Department to be charged in state court.

27. On May 1, 2018, a New Hampshire state court ruled that these searches were unconstitutional under both State and federal law.<sup>17</sup> As the court explained, suspicionless “dog sniff” searches violate the New Hampshire constitution (which applies in state court prosecutions), regardless of whether federal or state officers conduct the search. Furthermore, on the facts before it, the court found that CBP had collaborated with local law enforcement to facilitate the prosecution of state drug charges—which is unconstitutional.<sup>18</sup>

28. Vermont has also seen an increase in public concern over immigration enforcement. Just days into the Trump administration, Vermont’s attorney general announced the creation of an immigration task force to help address anxiety and fear arising from the administration’s immigration enforcement agenda.<sup>19</sup>

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<sup>17</sup> *New Hampshire v. McCarthy*, Docket No. 469-2017-CR-01888 (Second Circuit District Division Plymouth, Grafton, May 1, 2018), available at [https://www.aclu-nh.org/sites/default/files/field\\_documents/state\\_v.\\_mccarthy\\_-\\_order\\_5-1-18.pdf](https://www.aclu-nh.org/sites/default/files/field_documents/state_v._mccarthy_-_order_5-1-18.pdf).

<sup>18</sup> *Id.* at 10-12.

<sup>19</sup> John Walters, With Fed Policy Unclear, Donovan Creates Immigrant Task Force, SEVEN DAYS, Jan. 25, 2017, available at <https://www.sevendaysvt.com/OffMessage/archives/2017/01/25/walters-with-fed-policy-unclear-donovan-creates-immigrant-task-force>; Peter Hirschfeld, Trump’s Executive Orders Create Uncertainty For Immigrants In Vermont, VT. PUBLIC RADIO, Jan. 25, 2017, available at <http://digital.vpr.net/post/trumps-executive-orders-create-uncertainty-immigrants-vermont#stream/0>.

29. One month later, Vermont’s governor unveiled a bill aimed at limiting local law enforcement involvement in enforcing federal immigration law; the bill garnered tri-partisan support, was passed unanimously by the Senate and overwhelmingly by the House, and was signed into law in March.<sup>20</sup>

30. In May 2017, the Governor signed into law a bill requiring all Vermont law enforcement agencies to adopt a revised Fair and Impartial Policing policy that, without conflicting with federal law, strengthens existing limitations on their involvement in immigration enforcement.<sup>21</sup>

31. As another trigger for public outcry, ICE and CBP have arrested numerous prominent members of Migrant Justice—a community-based organization made up of Vermont dairy farm workers and their families that advocates for human rights and food justice<sup>22</sup>—in apparent retaliation for their outspoken advocacy for workers’ human, labor, and civil rights.

32. On August 1, 2017, CBP agents boarded a commercial bus as it arrived in White River Junction at 2 a.m. and would not let anyone off the bus. The agents demanded to see certain individuals’ identification and papers. One witness stated that the agents only made these requests of individuals who had accents or were not white.<sup>23</sup>

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<sup>20</sup> See Bill Status, S.79, An act relating to freedom from compulsory collection of personal information, available at <http://legislature.vermont.gov/bill/status/2018/S.79>; see also Cory Dawson, VT law counters Trump’s immigration orders, BURLINGTON FREE PRESS, Mar. 28, 2017, available at <http://www.burlingtonfreepress.com/story/news/2017/03/28/vermont-governor-signs-law-immigration/99754604/>.

<sup>21</sup> See Elizabeth Hewitt, *House Advances Bills Promoting Racial Justice*, VTDigger, Apr. 12, 2017, available at <https://vtdigger.org/2017/04/12/house-advances-bills-promoting-racial-justice/>; Elizabeth Hewitt, *Senate Approves Racial Justice Oversight Board Bill*, VTDigger, Apr. 20, 2017, available at <https://vtdigger.org/2017/04/20/senate-approves-racial-justice-oversight-board-bill/>; Peter Hirschfeld, *Gov. Scott Signs Bill Establishing ‘Racial Justice Oversight Board*, VT. PUB. RADIO, May 31, 2017, available at <http://digital.vpr.net/post/gov-scott-signs-bill-establishing-racial-justice-oversight-board#stream/0>.

<sup>22</sup> Migrant Justice, *About Migrant Justice*, <https://migrantjustice.net/about>.

<sup>23</sup> John Gregg, *Gregg: Border Patrol Checks IDs of Bus Passengers in White River Junction*, VTDigger, Aug. 3, 2017, available at <https://vtdigger.org/2017/08/03/gregg-border-patrol-checks-ids-bus-passengers-white-river-junction/> (originally published in the Valley News on August 2, 2017).

33. Also in the summer of 2017, a Franklin County Sheriff's Deputy stopped a vehicle and discovered that the driver did not speak English and did not have a Vermont driver's license. The deputy requested by radio a "Romeo unit"—a reference to the U.S. Border Patrol station in Richmond, Vermont—and U.S. Border Patrol agents arrived within ten minutes. Video footage of the stop captured a Border Patrol agent saying "He's a wet. He's gonna be what we're looking for"—"wet" being shorthand for the ethnic slur "wetback." Later in the stop, an agent discusses whether a woman who had helped translate is "wet."<sup>24</sup>

## II. Plaintiffs' FOIA Request

34. On September 5, 2017 Plaintiffs sent the Request via electronic mail to DHS Headquarters in Washington, D.C., to foia@dhs.gov and foia@hq.dhs.gov. *See* 6 C.F.R. § 5.3 (stating that all DHS components "have the capability to receive requests electronically, either through email or a web portal"). **Exh. A.**

35. The Request seeks all records and communications relating to ICE's and CBP's immigration enforcement actions in the states of Maine, New Hampshire, and Vermont from January 1, 2017, until the date when DHS completes an adequate search for responsive records. Because no adequate search has yet been completed, the period covered by the Request is ongoing.

36. Specifically, the Request seeks "the disclosure of all records related to U.S. Immigration and Customs Enforcement ("ICE") and U.S. Customs and Border Protection ("CBP") enforcement operations in Vermont, New Hampshire, and Maine," including:

- A. All Records, including but not limited to data or statistics, mentioning, referencing, relating to, or referring to any immigration enforcement action, including but not limited to any investigations, arrests, or detentions of any individual in the states of Vermont, New Hampshire, or

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<sup>24</sup> Taylor Dobbs, *Footage Show Feds Using Ethnic Slur During Traffic Stop*, Seven Days, Dec. 8, 2017, available at <https://www.sevendaysvt.com/OffMessage/archives/2017/12/08/footage-shows-feds-using-ethnic-slur-during-traffic-stop>; John Dillon, *Traffic Stop of Migrant Workers Raises Questions About Policing Policy*, Vt. Pub. Radio, Dec. 11, 2017, available at <http://digital.vpr.net/post/traffic-stop-migrant-workers-raises-questions-about-policing-policy#stream/0>.

Maine by DHS or its sub-agencies; any requests for automated license plate reader data; any boarding by DHS officials of any commercial bus or other form of public transportation to perform immigration checks; and any roadblock or checkpoint established by DHS officials.

- B. All communications with, to, or from any Vermont, New Hampshire, or Maine state or local law enforcement agency—including but not limited to Departments of Motor Vehicles and Departments of Corrections—mentioning, referencing, or referring to immigration enforcement, or to the investigation, arrest, or detention of any individual, and all Records pertaining to any such communications.
- C. All communications with, to, or from any Vermont, New Hampshire, or Maine state or local government official mentioning, referencing, or referring to immigration enforcement, “sanctuary” policies, detainers, or “fair and impartial policing,” or to the investigation, arrest, or detention of any individual, and all Records pertaining to any such communications.
- D. All communications relating to immigration enforcement with, to, or from any Vermont, New Hampshire, or Maine businesses or business owners, including but not limited to dairy farms and other agricultural operations, and all Records pertaining to any such communications.
- E. All records created, sent, received, referenced, and/or used in fulfilling and/or responding to any of the foregoing parts of this Request. **Exh. A at 8.**

37. The Request includes an application for expedited processing, on the grounds that there is a “compelling need” for the requested records under 5 U.S.C. § 552(a)(6)(E)(v)(II) because of the “urgency to inform the public concerning actual or alleged Federal Government activity.” **Exh. A at 9–11.** As set forth above, there is an urgent need for public transparency and information about how Defendants are carrying out their activities in Vermont, New Hampshire, and Maine.

38. Furthermore, the Request details that the ACLU is primarily engaged in disseminating information within the meaning of 5 U.S.C. § 552(a)(6)(E)(v), given that a critical and substantial aspect of the ACLU’s mission is to obtain information about government activity, analyze that information, and publish and disseminate that information widely to the press and public. **Exh. A at 9.**

39. As explained in the Request, examples of the ACLU’s information-dissemination function include publishing blogs, newsletters, news briefings, “Know Your Rights” documents, and other educational and informational materials. **Exh. A at 9.**

40. The Request also includes an application for a fee waiver or limitation under 5 U.S.C. § 552(a)(4)(A)(iii) on the grounds that disclosure of the requested records is in the public interest and 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.” In particular, the ACLU emphasized that the Request would significantly contribute to public understanding on a matter of profound public importance about which scant specific information had been made public, *i.e.*, Defendants’ local enforcement of the immigration laws and communications with local law enforcement in Maine, New Hampshire, and Vermont. The Request also made clear that the ACLU plans to disseminate the information disclosed as a result of the Request to the public at no cost. **Exh. A at 13-14.**

41. The Request also applied for a waiver of search fees under 5 U.S.C. § 552(a)(4)(A)(ii)(II) on the grounds that Plaintiffs qualify as “representatives of the news media” and the records are not sought for commercial use, given the ACLU’s non-profit mission and substantial activities to publish information for dissemination to the public, as discussed in greater detail in ¶ 39 above. **Exh. A at 12.**

### **III. Agencies’ Responses**

#### **A. DHS’s Response**

42. Defendant DHS provided a wholly inadequate response to the Request, and, after Plaintiffs’ appealed that inadequate response, DHS failed to comply with the statutory timeline to make a determination with respect to the appeal.

43. Specifically, on September 15, 2017, the DHS FOIA office sent a letter acknowledging receipt of the Request. **Exh. B.** The letter stated that DHS had begun a search for the records requested in item 1 (regarding immigration enforcement actions), but stated that

items 2 through 5 of the request had been transferred to Immigration and Customs Enforcement (“ICE”).

44. DHS’s letter also denied the request for expedited treatment, conditionally granted the request for a fee waiver, and invoked the statutory ten-day extension for unusual circumstances in processing the request, 6 C.F.R. § 5.5(c). *See Exh. B.*

45. Almost two weeks later, on September 27, 2017, DHS sent a purported “final response” to item one of the Request, attaching only one page of responsive records. **Exhs. D, D-1.** The response contained a single page of statistics, despite the fact that the question one of the Request plainly extended to any and all records concerning immigration enforcement actions in Maine, New Hampshire, and Vermont. **Exh. D-1.**

46. The single-page response appears below, in full:

**ICE Arrests, BP Apprehensions, and OFO Inadmissible Actions Table**  
Comparison of January 1 - June 30th, 2017 and January 1 - June 30th, 2016 Time Period

Event		Area of Responsibility*		State						Total
		BOSTON**		ME		NH		VT		
		Fiscal Year		Fiscal Year		Fiscal Year		Fiscal Year		
		2016	2017	2016	2017	2016	2017	2016	2017	
USBP Apprehension	No Removal or Return Record	-	-	2	3	-	-	12	19	36
	Removed or Returned	-	-	7	4	-	-	13	6	30
ICE Arrest	No Removal or Return Record	570	1,211	-	1	-	3	-	1	1,786
	Removed or Returned	361	325	-	-	-	-	-	-	686
Determination of Inadmissibility	No Removal or Return Record	-	-	548	316	-	-	248	85	1,197
	Removed or Returned	-	-	281	359	24	9	264	483	1,420
Total		931	1,536	838	683	24	12	537	594	5,155

NOTE: None of these individuals had a book in or book out record  
\*ERO-ICE Apprehensions are noted by Area of Responsibilities which cannot be broken down into states  
\*\*Boston Area of Responsibility includes Maine, New Hampshire and Vermont

**Exh. D-1.**

47. DHS’s single-page response shows 5,155 total instances of apprehension, ICE arrest, or determinations of inadmissibility, in Maine, New Hampshire, and Vermont. Among that number, there were almost 2,500 ICE arrests in Maine, New Hampshire, and Vermont in 2016 and 2017. Yet DHS failed to provide any records relating to those specific arrests, apprehensions, and determinations of inadmissibility.

48. Despite the Request’s express reference to records related to “U.S. Customs and Border Protection (“CBP”) enforcement operations,” **Exh. A at 1**, DHS did not search any CBP records or refer any portion of the Request to CBP.

## **B. Plaintiffs' Appeal to DHS**

49. Plaintiffs submitted an appeal on February 1, 2018 (the "Appeal"), arguing that DHS failed to fully respond to the Request or adequately search for responsive documents. *See* 5 U.S.C. § 552(a)(6); 6 C.F.R. § 5.8(a)(1). **Exh. E.**

50. As explained in the Appeal, DHS failed to provide information regarding "any immigration enforcement action," as requested. **Exh. E at 2-3.** Indeed, "the one record DHS did produce reflects dozens of immigration enforcement actions in [Maine, New Hampshire, and Vermont] since January 1, 2017, yet DHS produced no records whatsoever related to these actions." **Exh. E at 2.**

51. Nor did DHS produced any records regarding numerous high-profile instances of local immigration enforcement (including those detailed above), which plainly qualify as "immigration enforcement action" within the scope of the Request. *See* **Exh. E at 3.**

52. The Appeal requested that "DHS conduct an adequate search and disclose all responsive records in an expeditious manner." **Exh. E at 3.**

53. Finally, the Appeal stated that pursuant to 5 U.S.C. § 552(a)(6)(A)(ii), DHS was required to respond within 20 working days. **Exh. E at 3.**

## **C. DHS's Response to the Appeal**

54. Defendants have a legal duty to determine whether to comply with an appeal within 20 working days after receiving the appeal, and, if denying the appeal in whole or in part, to notify the requester of that determination and of the provisions for judicial review. 5 U.S.C. § 552(a)(6)(A)(ii).

55. As described below, Defendant DHS improperly failed to determine whether to comply with an appeal within 20 days of receipt.

56. DHS acknowledged receipt of the Appeal on February 8, 2018, in a letter sent by email. **Exh. F.** According to the acknowledgment letter, DHS received the Appeal on February 7, 2018, and queried the appropriate components of DHS for responsive records. DHS stated it would review any responsive records to determine releasability. **Exh. F at 1.**

57. As of the date of this complaint—more than 20 working days since DHS received the Appeal—DHS has failed to make any determination with respect to the appeal.

58. Plaintiffs are deemed to have exhausted their administrative remedies with respect to Defendant DHS, 5 U.S.C. §§ 552(a)(6)(C), because DHS failed to respond to the Appeal within the 20 days required by statute, 5 U.S.C. § 552(a)(6)(A)(ii).

#### **D. ICE and CBP Responses**

59. ICE and CBP likewise failed to comply with their statutory obligation to respond to the request.

60. Defendants have a legal duty under the FOIA to determine whether to comply with a request within 20 days (excepting Saturdays, Sundays, and legal public holidays) after receiving the request, and also have a legal duty to immediately notify a requester of the agency's determination and the reasons therefor. 5 U.S.C. § 552(a)(6)(A)(i).

61. In other words, “[t]he statute requires that, within the relevant time period, an agency must determine whether to comply with a request—*that is, whether a requester will receive all the documents the requester seeks*. It is not enough that, within the relevant time period, the agency simply decide to later decide.” *Citizens for Responsibility & Ethics in Washington v. Fed. Election Comm’n*, 711 F.3d 180, 186 (D.C. Cir. 2013) (emphasis added).

62. As described below, Defendants ICE and CBP improperly failed to determine whether to comply with the Request within 20 business days after receiving the Request.

63. Specifically, on September 18, 2017, ICE acknowledged receipt of the Request for items two through four, but without mentioning item five and without making any “determination” whether to comply with the Request. **Exh. C**.

64. ICE stated that it granted the request for expedited processing and for a fee waiver. **Exh. C. at 2**. ICE further stated that it had “queried the appropriate program offices within ICE for responsive records,” and that ICE would respond to the request “as expeditiously as possible.” **Exh. C. at 2**.

65. Despite its promise to provide expedited processing, ICE failed to provide a determination whether to comply with the request. ICE has also failed to produce any responsive records.

66. Accordingly, ICE improperly failed to provide a determination within the statutory deadline, 5 U.S.C. § 552(a)(6)(A)(i), and also failed to provide expedited processing as required by statute, 5 U.S.C. § 552(a)(6)(E)(iii).

67. As of the date of this Complaint, CBP has failed to respond, or to make any determination whatsoever, with respect to the Request. That is despite the fact that the Request explicitly requests “disclosure of records related to . . . U.S. Customs and Border Protection,” **Exh. A at 1**. Upon information and belief, CBP was or should have been contacted by DHS to search for and produce responsive records, yet CBP improperly failed to respond.

68. Plaintiffs are deemed to have exhausted their administrative remedies with respect to Defendants ICE and CBP, 5 U.S.C. §§ 552(a)(6)(C), because ICE and CBP failed to provide a response to the Request within the 20-business-day time limit required by statute, 5 U.S.C. § 552(a)(6)(A)(i).

#### **IV. Ongoing Public Interest In Local Immigration Enforcement**

69. Since the Request was filed in September 2017, there continues to be strong public interest in the requested records regarding local immigration enforcement.

70. For instance, there was public outcry in February 2018 over the Trump Administration’s detention and deportation of a long-time Maine resident, Lexius Saint Martin, a 35-year-old husband and father of two.<sup>25</sup> ICE arrested Mr. Saint Martin on his way to work, detained him for an indefinite period of time, and ultimately deported him. His deportation triggered an outcry across Maine, and especially in Mr. Saint Martin’s hometown of Waterville.<sup>26</sup>

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<sup>25</sup> Callie Ferguson, *Maine man whose arrest shocked family deported to Haiti*, BANGOR DAILY NEWS (Feb. 21, 2018), [bangordailynews.com/2018/02/21/news/mid-maine/maine-man-whose-arrest-shocked-family-deported-to-haiti/](http://bangordailynews.com/2018/02/21/news/mid-maine/maine-man-whose-arrest-shocked-family-deported-to-haiti/).

<sup>26</sup> *Id.*

71. Upon information and belief, ICE has also continued to target and arrest people in previously safe locations like courthouses.

72. Additionally, the fight against anti-immigrant animus continues at the Maine legislature, with the Governor re-introducing the anti-sanctuary city bill in the 2017-2018 term. The bill was voted down by the legislature on April 17, 2018.<sup>27</sup>

73. ICE has also continued its aggressive enforcement actions in Vermont. For instance, on January 22, 2018, ICE raided a hotel in Colchester, Vermont, arresting fourteen migrant construction workers who were staying there. Vermont's governor described his "great concern about the overreach of the federal government," calling the action "unfortunate" and noting that "[w]e here in Vermont are desperate for workers."<sup>28</sup>

74. On February 8, 2018, CBP arrested a migrant dairy worker after he left a dental appointment in Richford, Vermont. CBP agents pulled over the car in which the worker was a passenger as it drove back from the health clinic and then arrested the worker.<sup>29</sup>

75. In short, all available information paints a concerning picture of Defendants' local immigration operations in Maine, New Hampshire, and Vermont. The public has the right to know the true scope of those operations.

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<sup>27</sup> Legislature Rejects Anti-Immigrant Bill, ACLU of Maine (Apr. 17, 2018), <https://www.aclumaine.org/en/press-releases/legislature-rejects-anti-immigrant-bill>.

<sup>28</sup> Anne Galloway, *UPDATED: ICE Raids Days Inn in Colchester*, VTDIGGER, Jan. 22, 2018, available at <https://vtdigger.org/2018/01/22/ice-raids-days-inn-colchester/>.

<sup>29</sup> Jess Aloe, *Border Patrol, Migrant Justice Dispute Account of Arrest at 'Sensitive Location*, BURLINGTON FREE PRESS, Feb. 20, 2018 (updated Mar. 5, 2018), available at <https://www.burlingtonfreepress.com/story/news/2018/02/20/border-patrol-migrant-justice-dispute-account-arrest-sensitive-location/352478002/>; Esther Yu His Lee, *UPDATED: Detained Immigrant Dairy Worker Released After Public Pressure*, THINKPROGRESS, Feb. 20, 2018 (updated Mar. 1, 2018), available at <https://thinkprogress.org/border-agents-dairy-worker-dentist-019cf18b4223/>.

**FIRST CAUSE OF ACTION**  
**Violation of FOIA for Failure  
to Provide a Determination  
Within 20 Business Days  
(DHS, ICE, CBP)**

76. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 74 above, inclusive.

77. Defendants have a legal duty under FOIA to determine whether to comply with a request within 20 days (excepting Saturdays, Sundays, and legal public holidays) after receiving the request, and also have a legal duty to immediately notify a requester of the agency's determination and the reasons therefor. 5 U.S.C. § 552(a)(6)(A)(i).

78. In violation of 5 U.S.C. § 552(a)(6)(A)(i), and applicable regulations promulgated thereunder, Defendants ICE and CBP failed to determine whether to comply with the Request within 20 business days after receiving the Request.

79. Defendants also have a legal duty to determine whether to comply with an appeal within 20 working days after receiving the appeal, and, if denying the appeal in whole or in part, to notify the requester of that determination and of the provisions for judicial review. 5 U.S.C. § 552(a)(6)(A)(ii).

80. In violation of 5 U.S.C. § 552(a)(6)(A)(ii), and applicable regulations promulgated thereunder, Defendant DHS failed to determine whether to grant or deny the Appeal within 20 business days after receiving the Appeal, and to notify Plaintiffs of that decision.

**SECOND CAUSE OF ACTION**  
**Violation of FOIA for Failure  
To Make Records Promptly Available  
(DHS, ICE, CBP)**

81. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 74 above, inclusive.

82. Plaintiffs have a legal right under FOIA to obtain the specific agency records requested on September 5, 2017, and there exists no legal basis for Defendants' failure to properly make the requested records available to Plaintiffs, their members, and the public.

83. On information and belief, Defendants currently have possession, custody, or control of the requested records.

84. In violation of 5 U.S.C. § 552(a)(3)(A), Defendants failed to promptly make available the records sought in the Request.

**THIRD CAUSE OF ACTION**  
**Violation of FOIA for Failing to Provide**  
**Expedited Processing**  
**(DHS & ICE)**

85. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 74 above, inclusive.

86. Plaintiffs have a legal right under FOIA and agency regulations to expedited processing because their Request involves “[a]n urgency to inform the public about an actual or alleged federal government activity, if made by a person who is primarily engaged in disseminating information.” 6 C.F.R. § 5.5(e)(1)(ii).

87. Despite conceding that Plaintiffs were eligible for expedited processing, and stating that it granted such expedited processing, Defendant ICE failed to provide any determination or response for months, in violation of FOIA and implementing regulations regarding expedited processing. 5 U.S.C. § 552(a)(6)(E); 6 C.F.R. § 5.5(e).

88. Because Defendants have not provided a complete response to the Request, this Court has jurisdiction under FOIA, 5 U.S.C. § 552(a)(6)(E)(iv) to review Defendants’ failure to make a determination concerning Plaintiffs’ request for expedited processing.

**FOURTH CAUSE OF ACTION**  
**Violation of FOIA for Denying Plaintiffs’**  
**Request for Expedited Processing**  
**(DHS)**

89. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 74 above, inclusive.

90. Plaintiffs have a legal right under FOIA and agency regulations to expedited processing because their Request involves “[a]n urgency to inform the public about an actual or

alleged federal government activity, if made by a person who is primarily engaged in disseminating information.” 6 C.F.R. § 5.5(e)(1)(ii).

91. Defendant DHS improperly denied Plaintiffs’ request for expedited processing of the Request, in violation of FOIA and implementing regulations. 5 U.S.C. § 552(a)(6)(E); 6 C.F.R. § 5.5(e).

92. Because Defendants have not provided a complete response to the Request, this Court has jurisdiction under FOIA, 5 U.S.C. § 552(a)(6)(E)(iv) to review Defendants’ failure to make a determination concerning Plaintiffs’ request for expedited processing.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs request that the Court award them the following relief:

1. Declare that Defendants ICE and CBP violated FOIA by failing to make a determination whether to comply with the Request within 20 business days;
2. Declare that Defendant DHS violated FOIA by failing to make a determination with respect to the Appeal within 20 business days;
3. Declare that Defendants violated FOIA by unlawfully withholding the requested records;
4. Declare that Defendants DHS and ICE violated FOIA by failing to provide expedited processing;
5. Order Defendants to immediately disclose the requested records to the public and make copies immediately available to Plaintiffs without charge for any search or duplication fees, or, in the alternative, provide for expedited proceedings to adjudicate Plaintiffs’ rights under FOIA;
6. Award Plaintiffs their reasonable costs and attorneys’ fees; and
7. Grant such other relief as the Court may deem just and proper.

DATED this 8th day of May, 2018.

Respectfully submitted,  
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*\* Application for pro hac vice pending*