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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN FRANCISCO DIVISION**

11 NATIONAL BAIL FUND NETWORK,)
12)
13 NORCAL RESIST,)
14)
15 REFUGEE AND IMMIGRANT CENTER)
16 FOR EDUCATION AND LEGAL)
17 SERVICES,)

18 PRAIRIELANDS FREEDOM FUND,)

19 and)

20 AMERICAN IMMIGRATION COUNCIL,)

21 Plaintiffs,)

22 v.)

23 IMMIGRATION AND CUSTOMS)
24 ENFORCEMENT,)

and)

U.S. DEPARTMENT OF HOMELAND)
SECURITY,)

Defendants.)

**COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF**

No. _____

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17 * *Pro hac vice* application forthcoming
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1 Minnesota, Illinois, South Dakota, and North Dakota, who are otherwise unable to find bond
2 assistance.

3 11. Plaintiff American Immigration Council (“the Council”) is a tax-exempt, not-for-
4 profit educational and charitable organization. The Council works to increase public
5 understanding of immigration law and policy, and to advocate for the fair and just administration
6 of U.S. immigration laws, as well as to protect the legal rights of noncitizens. The Council also
7 seeks to hold the government accountable for unlawful conduct, restrictive interpretations of the
8 law, and for failing to ensure that the immigration laws are implemented and executed in a
9 manner that comports with due process through the pursuit of transparency and impact litigation.
10 The Council maintains a principal place of business in Washington, D.C.

11 12. Defendant DHS is an agency of the United States government within the meaning
12 of 5 U.S.C. § 552(f)(1).

13 13. Defendant ICE is an agency of the United States government within the meaning
14 of 5 U.S.C. § 552(f)(1) and a component of DHS.

15 14. Defendants have possession of and control over the records Plaintiffs seek to have
16 made publicly available under 5 U.S.C. § 552(a)(2).

17 **BACKGROUND**

18 **Legal Framework**

19 15. Section 552(a)(2) of FOIA, known as the “proactive disclosure” or “reading
20 room” provision, “identifies certain categories of records the agency must make available on an
21 ongoing basis, no request necessary.” *Animal Legal Def. Fund v. USDA*, 935 F.3d 858, 862 (9th
22 Cir. 2019). This “affirmative obligation,” *id.*, applies to the following categories of records,
23 among others:
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1 (B) those statements of policy and interpretations which have been adopted by the
2 agency and are not published in the Federal Register;

3 (C) administrative staff manuals and instructions to staff that affect a member of
4 the public; [and]

5 (D) copies of all records, regardless of form or format—

6 (i) that have been released to any person under [§ 552(a)(3)]; and

7 (ii)(I) that because of the nature of their subject matter, the agency
8 determines have become or are likely to become the subject of subsequent
9 requests for substantially the same records; or

10 (II) that have been requested 3 or more times

11 5 U.S.C. § 552(a)(2)(B)–(D).

12 16. FOIA vests in district courts “jurisdiction to enjoin the agency from withholding
13 agency records and to order the production of any agency records improperly withheld from the
14 complainant.” 5 U.S.C. § 552(a)(4)(B). “This provision cloaks district courts with the authority
15 to order an agency to post records in an online reading room,” pursuant to FOIA’s proactive
16 disclosure provision. *Animal Legal Def. Fund*, 935 F.3d at 869.

17 **ICE Bond Policies and Procedures**

18 17. Certain noncitizens detained in ICE custody are eligible for release upon payment
19 of a bond. *See, e.g.*, 8 U.S.C. § 1226(a)(2)(A).

20 18. When ICE detains a bond-eligible person, ICE may initially set a bond amount. 8
21 C.F.R. § 236.1(c)(8). The noncitizen may request a bond redetermination by an immigration
22 judge if ICE refuses to set bond or the amount set is too high. 8 C.F.R. §§ 236.1(d)(1),
23 1003.19(a), (b).

24 19. Once a bond is set, bond companies, entities, or individuals may serve as an
“obligor” and can post the monetary bond on behalf of a noncitizen. 8 C.F.R. § 103.6(b)(1). The
obligor is responsible for ensuring that the noncitizen presents themselves upon ICE’s request. *See*
Procedures and Standards for Declining Surety Immigration Bonds and Administrative Appeal

1 Requirement for Breaches, 83 Fed. Reg. 25951, 25952 (June 5, 2018); ICE Form I-352,
2 <https://www.ice.gov/doclib/forms/i352.pdf>. The bond is “cancelled” once a noncitizen complies
3 with the conditions of their release. *See* 8 C.F.R. § 103.6(c). The bond payment is then returned
4 to the obligor. *See* ICE Form I-352, <https://www.ice.gov/doclib/forms/i352.pdf>. If ICE
5 determines that there has been a “substantial violation” of the noncitizen’s conditions of release,
6 ICE will find that the bond has been “breached.” 8 C.F.R. § 103.6(e). In some circumstances,
7 ICE will revoke a bond before it is either cancelled or breached. 8 C.F.R. § 236.1(c)(9).

8 20. Within this legal framework, the processes for posting bond, bond cancellation
9 and refund, bond revocation, and bond breach are governed by various written policies,
10 interpretations, and instructions. DHS has published some of these policies, interpretations, and
11 instructions in the Code of Federal Regulations. ICE has included those regulations, and some
12 additional instructions, in the select bond forms available on ICE’s website. ICE also has posted
13 identical sets of instructions on each of the webpages for facilities where ICE accepts bonds.
14 Finally, ICE published a memorandum dated December 18, 2006, entitled “Bond Posting Hours
15 and Release Policies and Procedures,” in its online FOIA reading room. It is unclear if this
16 memorandum is still controlling policy.

17 21. Some of ICE’s bond policies, interpretations, and instructions are contained in its
18 Enforcement and Removal Office (ERO) Bond Management Handbook (hereinafter the
19 “Handbook”). While ICE has received at least three FOIA requests for the Handbook and has
20 released an August 2014 version of the Handbook to at least one FOIA requester, it has not
21 published any version of the Handbook on its website.¹

22
23 ¹ The American Immigration Lawyers Association posted the August 2014 version of the
24 Handbook on its website after it obtained the document through a FOIA request. *See* ICE ERO,
Bond Management Handbook (Aug. 19, 2014), <https://www.aila.org/File/Related/16051730f.pdf>.

1 22. On information and belief, ICE has other written bond policies, interpretations,
2 and instructions, but it does not proactively make them available to the public.

3 23. In the experience of Plaintiffs NBFN, NorCal Resist, RAICES, and PFF
4 (hereinafter “Bond Fund Plaintiffs”), ICE’s practices relating to bond payments often diverge
5 from the instructions in the Handbook.

6 24. Bond Fund Plaintiffs frequently have been turned away or had their bond
7 payments rejected because of policies, interpretations, and instructions that individual ICE
8 offices or ICE officers invoke. These policies, interpretations, and instructions are not posted or
9 available publicly, but, on information and belief, they are kept in written form. These local
10 policies, interpretations, and instructions are often in conflict with policies, interpretations, and
11 instructions that ICE has posted publicly or that are contained in the Handbook.

12 25. Bond Fund Plaintiffs also have encountered inconsistent policies and practices
13 among different ICE offices, as well as changes in longstanding policies and practices regarding
14 bond payments without notice. ICE has not publicly posted clarification regarding inconsistent or
15 changed policies, interpretations, and instructions that impact its practices at the local or national
16 level.

17 26. The lack of access to all of ICE’s written policies, interpretations, and instructions
18 for the posting, revocation, breach, and cancellation of bond creates confusion for those seeking
19 to post bond, including Bond Fund Plaintiffs and those noncitizens who are released on bond.
20 ICE’s failure to post these records further harms detained individuals who are eligible to be
21 released from detention but whose speedy release is hindered by a lack of transparency in
22 policies, interpretations, and instructions by ICE.

1 Bond Payment and Release from Detention

2 27. To determine ICE’s operative policies, interpretations, and instructions for
3 posting bond and securing the release of a loved one or community member from ICE custody,
4 Plaintiffs and members of the public rely on a patchwork of information sources, some of which
5 cannot be verified as accurate or current.

6 28. It is unclear, for example, who can post a bond on behalf of an individual in ICE
7 custody. In Bond Fund Plaintiffs’ experience, ICE only allows adults who are U.S. citizens or
8 lawful permanent residents to serve as bond obligors. This practice contradicts the Handbook,
9 which states that lawfully admitted nonimmigrants, noncitizens released on an order of
10 supervision, noncitizens in removal proceedings or with deferred action, and noncitizens with
11 stays of removal may also post bond on behalf of detained noncitizens.

12 29. In Bond Fund Plaintiffs’ experience, this lack of transparency and inconsistency
13 allows ICE to make bond determinations in an arbitrary and discriminatory manner.

14 30. Plaintiff NorCal Resist has observed that only their Asian volunteers are required
15 to provide proof of citizenship when they serve as obligors. In Plaintiff NBFN’s experience, their
16 volunteers who are people of color have been subjected to racial profiling by facing concerted
17 questioning about their identification, yet white volunteers have not been subject to similar
18 scrutiny when they post bond on Plaintiff NBFN’s behalf. Plaintiff RAICES has observed ICE
19 officers requiring the obligor to speak English to pay the bond.

20 31. Another area of confusion for Bond Fund Plaintiffs and members of the public
21 relates to the hours of operation for offices that accept bonds. To pay a bond, obligors must
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1 physically appear at any of the eighty-two ICE ERO offices around the country that accept bond
2 payments, regardless of where ICE detains the individual.²

3 32. The December 18, 2006, ICE memo established that offices accepting bond
4 payments will process payments between 9:00 AM and 3:00 PM local time.³ However, in Bond
5 Fund Plaintiffs' experience, potential obligors frequently are turned away from posting bond
6 before 3:00 PM local time. Offices also stop accepting bonds at various points in the afternoon –
7 after 12:00 PM, 1:00 PM, or 2:00 PM, depending on the facility.

8 33. Additionally, ICE ERO offices often require that bonds be processed by 3:00 PM
9 in the time zone in which the individual is detained. Thus, Plaintiff NBFN, which is located in
10 California, has encountered issues in attempting to post bond for an individual detained in a
11 detention facility located in the Eastern Time Zone.

12 34. On information and belief, individual ICE ERO offices have written policies,
13 interpretations, and instructions that establish the hours of operation during which they will
14 process payments, but they fail to proactively disclose those policies, interpretations, and
15 instructions.

16 35. Further, other ICE practices regarding bond are confusing because they conflict
17 with binding regulations and the Handbook. On information and belief, these practices stem from
18 nonpublic written policies, interpretations, and instructions that diverge from those that ICE
19 makes publicly available.

21 ² See *ICE ERO Bond Acceptance Facilities*, [https://www.ice.gov/detain/ice-ero-bond-acceptance-](https://www.ice.gov/detain/ice-ero-bond-acceptance-facilities)
22 [facilities](https://www.ice.gov/detain/ice-ero-bond-acceptance-facilities).

23 ³ Memorandum from John P. Torres, Dir. of ICE, to Asst. Dirs., Deputy Asst. Dirs, Field Office
24 Dirs., and Deputy Field Office Dirs., Bond Posting Hours and Release Policies and Procedures
(Dec. 18, 2006),
[https://www.ice.gov/doclib/foia/dro_policy_memos/bondpostinghoursandreleasepoliciesandproc-](https://www.ice.gov/doclib/foia/dro_policy_memos/bondpostinghoursandreleasepoliciesandprocedures12182006.pdf)
[edures12182006.pdf](https://www.ice.gov/doclib/foia/dro_policy_memos/bondpostinghoursandreleasepoliciesandprocedures12182006.pdf).

1 36. For example, regulations state that ICE will accept bond payments in the form of
2 cash or cash equivalents, such as postal money orders, certified checks, or cashier's checks. *See*
3 8 C.F.R. § 103.6(b)(1). The Handbook states that ICE only will accept cash or money order for
4 bonds under \$10,000. Form I-352 states that ICE will accept only certified checks, cashier's
5 checks, and money orders, but not cash. *See* ICE Form I-352,
6 <https://www.ice.gov/doclib/forms/i352.pdf>; *see also* Agency Information Collection Activities;
7 Revision of a Currently Approved Collection: Immigration Bond, 84 Fed. Reg. 44913, 44914
8 (Aug. 27, 2019).

9 37. However, Plaintiff RAICES has filled out forms at certain ICE ERO offices that
10 state cash is accepted only for bonds under \$5,000. In the experience of Bond Fund Plaintiffs,
11 ICE usually refuses to accept payment in cash or certified check, regardless of the bond amount.
12 ICE has required Plaintiff NorCal, for example, to present a cashier's check or money order for
13 bonds as low as \$1,500 and \$3,000. On information and belief, some ICE ERO offices have
14 written policies and instructions under which they only will accept postal money orders and no
15 other forms of payment. These policies, interpretations, and instructions are not publicly
16 available.

17 38. There is further public confusion as to how payment by check can be made.
18 According to ICE's website and the Handbook, ICE will accept checks made out to
19 "Immigration and Customs Enforcement" or "Department of Homeland Security."⁴ However,
20 Bond Fund Plaintiffs have attempted to post bonds at certain offices where ICE only will accept
21 checks made out to "Department of Homeland Security." On information and belief, some ICE
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23
24 ⁴ *See, e.g., Mesa Verde ICE Processing Center*, <https://www.ice.gov/detain/detention-facilities/mesa-verde-ice-processing-facility>.

1 ERO offices have written policies and instructions that require checks be made out to specific
2 names that differ from published materials and the Handbook. These policies, interpretations,
3 and instructions are not publicly available.

4 39. Plaintiff RAICES also has observed employees for an ICE contractor, The GEO
5 Group, Inc., accepting and processing bond payments at some ICE ERO offices. In Plaintiff
6 RAICES's experience, GEO Group employees are less familiar with the bond process than ICE
7 officers, who are employed directly by the agency.

8 40. On information and belief, some ICE ERO offices also have adopted additional
9 written policies, interpretations, and instructions for proof of identification that are not found in
10 the Handbook. For example, some ICE ERO offices have required obligors associated with
11 Plaintiff NBFN to present additional information, like obligors' social security number or
12 detained individuals' port of entry and date of entry. These additional and arbitrary nonpublic
13 policies create a chilling effect: Bond Fund Plaintiffs have avoided ICE ERO offices that require
14 such additional information and Bond Fund Plaintiffs have worked with individuals who were
15 considering, but ultimately declined to be obligors because of uncertainty around what additional
16 identification they would be required to show. When Plaintiff NBFN requested a copy of these
17 written policies, interpretations, and instructions, ICE refused, even when ICE has stated to
18 Plaintiff NBFN's volunteers that a written policy, interpretation, and instruction exists.

19 41. ICE agents also have stopped Plaintiff NorCal Resist's volunteers when they
20 attempt to post bond, placed them in a separate room, and interrogated them about the bond fund
21 they work for, the bond fund's mission, and what happens to individuals for whom the bond fund
22 posts bond.

23 42. Various ICE ERO offices require Bond Fund Plaintiffs and other members of the
24 public to present government-issued identification for the detained noncitizen, in addition to that

1 of the obligor, even when it was not ordered as a condition of release by the immigration judge
2 or by the designated ICE officer. Often, the detained individual's identification is in ICE's
3 possession, so the obligor is unable to present it. Even when a detained individual's identification
4 is presented, ICE may refuse to accept the identification or delay the bond posting by weeks
5 while the identification is verified. Bond Fund Plaintiffs most frequently see this happen when
6 the detained individuals are African nationals.

7 43. Bond Fund Plaintiffs and members of the public also have encountered
8 inconsistent or unclear policies, interpretations, and instructions regarding additional information
9 ICE ERO offices require to release an individual once bond is posted.

10 44. For example, various ICE ERO offices reject bond payments unless the obligor
11 presents a bus or plane ticket for the detained individual or the name of the person who will pick
12 up the detained individual. Because it is often unclear when and where ICE will release the
13 detained individual, family members do not or cannot always purchase tickets in advance. Even
14 when obligors can secure travel arrangements in advance, they often do not know to bring a bus
15 or plane ticket with them to post bond because they do not know that the ICE ERO office
16 implemented this policy, interpretation, or instruction. ICE's lack of information on policies,
17 interpretations, and instructions regarding release once bond is posted thus can delay the detained
18 individual's release from detention.

19 45. On information and belief, ICE has rejected bond payment for reasons such as
20 that the detained individual's home address is not in the U.S. Postal Service online system or the
21 obligor's identity documents appear fraudulent. ICE also has told Plaintiff RAICES, for
22 example, that a bond payment "fell out of the queue," and refused to accept payment, regardless
23 of time of day. ICE refused to explain what "fell out of the queue" meant. In some cases, ICE has
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1 rejected Bond Fund Plaintiffs’ attempted bond payments for reasons that ICE refused to name or
2 explain.

3 46. ICE has not publicly posted any of its written policies, interpretations, or
4 instructions regarding how it determines whether to reject a bond payment or how an individual
5 may challenge ICE’s determination to reject a bond payment.

6 47. On information and belief, ICE rejects some bonds erroneously. For example,
7 Plaintiff NBFN volunteers have attempted to post bond after ICE sets a bond, but ICE does not
8 accept the bond payment from the volunteer because ICE cannot find the bond in its system. On
9 information and belief, ICE has written policies, interpretations, and instructions that govern the
10 documentation and notification to ICE ERO offices about newly set bonds that the agency has
11 not posted publicly. The public posting of these written policies, interpretations, and instructions
12 are essential in ensuring that obligors can successfully post timely bonds and avoid delays in the
13 release of individuals who have been granted bond.

14 48. When ICE does release an individual, the lack of publicly available policies,
15 interpretations, and instructions governing release can create further confusion and stress.

16 49. The Handbook states that ICE must release detained noncitizens from custody “in
17 a timely manner in a location that is safe and where public transportation is available.” However,
18 on information and belief, individual ICE ERO offices’ written policies, interpretations, and
19 instructions diverge from the Handbook regarding release location and timing. These individual
20 offices’ written policies, interpretations, and instructions are not posted publicly.

21 50. In Bond Fund Plaintiffs’ experience, different ICE ERO offices have dropped off
22 released individuals on the side of the road, in the middle of the night, or after long delays that
23 have led to individuals missing their buses and planes. These release practices contradict ICE’s
24

1 policy as set forth in the Handbook. Plaintiffs and the public cannot understand the apparent
2 contradiction without access to ICE’s other written policies, interpretations, or instructions.

3 Bond Cancellation and Refund

4 51. ICE also fails to fully proactively disclose its written policies, interpretations, and
5 instructions regarding how an obligor can obtain a refund once the noncitizen fulfills all their
6 immigration conditions and the bond is “cancelled.”

7 52. The conditions of the bond are met and the bond is cancelled when the noncitizen
8 has not breached their conditions of release and the bond is no longer necessary – for example, if
9 the noncitizen obtains legal status in the United States, their removal proceedings are terminated,
10 ICE takes the noncitizen back into custody, the bonded noncitizen is removed or voluntarily
11 departs, or the bonded noncitizen dies. *See* 8 C.F.R. § 103.6(c); ICE Form I-352,
12 <https://www.ice.gov/doclib/forms/i352.pdf>.

13 53. Once the conditions of the bond are met, ICE sends a notice of cancellation to the
14 obligor and automatically begins the refund process. *See* ICE Form I-352,
15 <https://www.ice.gov/doclib/forms/i352.pdf>; *see also* Agency Information Collection Activities,
16 84 Fed. Reg. at 44914–15. ICE eventually sends the refund via check to the obligor.

17 54. According to the Handbook, bond refunds are handled by DHS’s Debt
18 Management Center (DMC) in Vermont. On information and belief, DHS has written policies,
19 interpretations, and instructions governing the processing of bond returns by the DMC. These
20 policies, interpretations, and instructions are not posted publicly.

21 55. Bond Fund Plaintiffs and members of the public have encountered inconsistencies
22 in how ICE determines whether a bond is cancelled. For example, ICE did not cancel bonds in
23 certain removal cases that were dismissed or when relief was granted until after Plaintiff
24 RAICES reached out to inquire.

1 56. Bond Fund Plaintiffs have encountered a wide range in the time it takes for bonds
2 to be cancelled, ranging from four weeks to around eight months after the conditions of bond
3 have been satisfied. Without publicly available information about how the cancellation process
4 occurs, or how long this process can or should take, obligors are left without an estimate of when
5 they can expect to receive their refund and with no way of knowing if there is a problem with
6 their refund.

7 57. Bond Fund Plaintiffs also have been told by ICE officers that cases that have been
8 administratively closed do not automatically lead to the bond being cancelled, and that each case
9 is reviewed individually by a case officer. On information and belief, ICE has written policies,
10 interpretations, and instructions that apply to cancellation determinations for administratively
11 closed cases. ICE never has posted publicly the criteria it applies to such administratively closed
12 cases to determine whether bond should be cancelled.

13 58. After a bond is cancelled, Bond Fund Plaintiffs have also experienced a wide
14 range in the amount of time it takes for the refund to be sent from the DMC in Vermont to the
15 obligor. In some cases, Bond Fund Plaintiffs have to follow up repeatedly with the DMC by
16 phone or email before DHS mails the refund check. Without publicly available information about
17 how the DMC processes refund checks, obligors are left without an estimate of when they can
18 expect to receive their refund and with no way of knowing if there is a problem with their refund.

19 Bond Breach and Revocation

20 59. If an individual released on bond “substantial[ly] violat[es]” the conditions of
21 release, the bond is breached. 8 C.F.R. § 103.6(e). ICE determines whether such a bond should
22 be declared breached or cancelled. *Id.*

23 60. Per the Handbook, when the conditions of release under bond have been
24 breached, ICE gives the obligor notice and demands that the obligor present the noncitizen. If the

1 noncitizen does not appear, ICE will send the obligor a notice of breach and the obligor cannot
2 receive a bond refund. The obligor may appeal the finding of a breach within 30 days with the
3 U.S. Citizenship and Immigration Service’s (USCIS) Administrative Appeals Office.⁵

4 61. Additionally, a noncitizen released on bond may have their release revoked at any
5 time at ICE’s discretion, at which point, they may be taken into custody and detained. 8 U.S.C.
6 § 1226(b); 8 C.F.R. § 236.1(c)(9). If a noncitizen’s release is revoked and they are re-detained,
7 any outstanding bond is revoked and cancelled, unless a breach has occurred. 8 C.F.R.
8 § 236.1(c)(9).

9 62. ICE has not posted policies, procedures, or interpretations of the factors it
10 considers when deciding whether a bond is breached or to revoke a bond.

11 63. This lack of clarity on both bond breach and bond revocation allows ICE to use
12 terms such as “breach” and “revocation” arbitrarily.

13 **Plaintiffs’ FOIA Request**

14 64. On June 24, 2022, Plaintiffs and four other organizations that administer bond
15 funds (hereinafter, “Requesters”) submitted a FOIA request to ICE and DHS under 5 U.S.C.
16 § 552(a)(2), requesting that ICE publish on its website the agency’s policies, interpretations, and
17 instructions relating to the immigration bond process. The FOIA request submitted by
18 Requesters is attached as Exhibit A.

19 65. Requesters asked that ICE publish “statements of policy and interpretation
20 adopted by the agency” and “staff manuals and instructions to staff that affect a member of the
21 public” relating to five categories of records: 1) procedures relating to the posting of bond and
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23 _____
24 ⁵ USCIS Form I-290B, Notice of Appeal or Motion,
<https://www.uscis.gov/sites/default/files/document/forms/i-290b.pdf>.

1 subsequent release from detention; 2) information about how an individual eligible for bond may
2 challenge the agency's determination to revoke bond or that conditions of release have been
3 breached; 3) policies and procedures used by ICE officers to decide whether to reject, cancel, or
4 revoke bond determinations; 4) information about how a bond obligor may challenge the
5 agency's rejection of a bond payment or claim that conditions of release have been breached; and
6 5) the process and conditions by which an obligor can obtain a refund of paid bonds.

7 66. The request also asked the agency to proactively disclose any ICE ERO Field
8 Office's local policies, interpretations, and instructions relating to the above-referenced
9 categories of records.

10 67. Defendant DHS acknowledged receipt of Requesters' FOIA request via email on
11 June 24, 2022, and assigned the request reference number 2022-ICFO-21370. The
12 acknowledgment of receipt is attached as Exhibit B.

13 68. On June 29, 2022, Defendant ICE sent an email to Requesters acknowledging
14 receipt of the FOIA request and invoking FOIA's ten-working-day extension to respond to the
15 request. This email is attached as Exhibit C.

16 69. As of this date, Defendants have not published the information as requested by
17 Plaintiffs and have not responded to Plaintiffs' FOIA request.

18 70. Defendants' failure to publish the requested records on ICE's website deprives the
19 Plaintiffs and the public of information desperately needed to ascertain ICE bond policies,
20 interpretations, and instructions and to successfully interact with the agency. It also creates
21 confusion and impairs bond funds' and the public's ability to assist individuals in detention and
22 secure their release. Most importantly, ICE's lack of transparency regarding written policies,
23 interpretations, and instructions has caused the unnecessary, prolonged, and possibly erroneous
24 incarceration of individuals in ICE custody.

1 2020. *See* Exhibits D–F. The Handbook was released in response to at least two of those
2 requests.

3 80. Because the Handbook has “been released to any person under” 5 U.S.C.
4 § 552(a)(3), and has “been requested 3 or more times,” Defendants have a statutory obligation
5 under 5 U.S.C. § 552(a)(2)(D) to proactively make the Handbook and any updates to it available
6 for public inspection in an electronic format on an ongoing basis.

7 81. By failing to proactively disclose the Handbook and any updates to it in
8 accordance with 5 U.S.C. § 552(a)(2)(D), Defendants are in violation of their obligations under
9 FOIA.

10 82. To the extent that administrative exhaustion is required, Plaintiffs have exhausted
11 their administrative remedies under FOIA.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiffs respectfully request that this Court:

- 14 (A) Declare that Defendants’ failure to proactively make publicly available in an electronic
15 format all records at issue is unlawful and in violation of FOIA;
- 16 (B) Order Defendants to immediately make all records at issue publicly available on an
17 ongoing basis in an electronic format by posting them on ICE’s website;
- 18 (C) Enjoin Defendants from wrongfully withholding any of the records at issue or portions
19 thereof;
- 20 (D) Retain jurisdiction to ensure ICE’s compliance with the Court’s orders;
- 21 (E) Award Plaintiffs their costs, expenses, and reasonable attorneys’ fees; and
- 22 (F) Grant such other and further relief as this Court may deem just and proper.
- 23
24

1 Dated: December 8, 2022

Respectfully submitted,

2 /s/ Alison Pennington

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16 Washington, DC 20004

17 **Pro Hac Vice Motion Forthcoming*