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IMMIGRANT LEGAL RESOURCE CENTER,  
13 AMERICAN IMMIGRATION COUNCIL, and  
MIJENTE SUPPORT COMMITTEE

14 **UNITED STATES DISTRICT COURT**  
15 **NORTHERN DISTRICT OF CALIFORNIA**  
16

17 IMMIGRANT LEGAL RESOURCE CENTER, )  
18 AMERICAN IMMIGRATION COUNCIL, and )  
19 MIJENTE SUPPORT COMMITTEE )

20 Plaintiffs, )

21 v. )

22 UNITED STATES DEPARTMENT OF )  
23 HOMELAND SECURITY; UNITED STATES )  
ENFORCEMENT, )

24 Defendants. )  
25 )  
26 )  
27 )  
28 )

Case No.: 21-cv-9208

**COMPLAINT UNDER THE  
FREEDOM OF INFORMATION ACT  
FOR DECLARATORY AND  
INJUNCTIVE RELIEF**

## INTRODUCTION

1  
2 1. U.S. Immigration and Customs Enforcement (“ICE”), the agency within the U.S.  
3 Department of Homeland Security (“DHS”) (together collectively with ICE, “Defendants”) that  
4 oversees the detention and deportation of immigrants, is improperly withholding records pertaining to  
5 weekly reports regarding enforcement actions and removals. ICE field offices are required to generate  
6 these reports pursuant to a January 20, 2021 memorandum from Acting Secretary David Pekoske  
7 titled “*Review of and Interim Revision to Civil Immigration Enforcement and Removal Policies and*  
8 *Priorities*”<sup>1</sup> (“Pekoske memorandum”) and a February 18, 2021 memorandum from Acting ICE  
9 Director Tae D. Johnson titled “*Interim Guidance: Civil Immigration Enforcement and Removal*  
10 *Priorities*”<sup>2</sup> (“Johnson memorandum”). Plaintiffs Immigrant Legal Resource Center (“ILRC”),  
11 American Immigration Council (“AIC”) and Mijente Support Committee (“Mijente,” collectively  
12 with ILRC and AIC, “Plaintiffs”) requested these records pursuant to the Freedom of Information Act  
13 (“FOIA” or the “Act”), 5 U.S.C. § 552, on September 9, 2021, but Defendants failed to respond  
14 within the statutory time period. Plaintiffs accordingly seek the immediate release of these records  
15 and other appropriate relief.

16 2. The records requested here are the weekly reports ICE field offices are required to  
17 provide to the Office of the Director, the Office of the Deputy Director, and the Office of Policy and  
18 Planning (OPP) pursuant to the Johnson memorandum, which set forth guidance implementing the  
19 Pekoske memorandum. In particular, field offices were required to compile and provide a written  
20 report on enforcement actions each Friday “(1) identifying each enforcement action taken in the prior  
21 week, including the applicable priority criterion, if any; (2) providing a narrative justification of the  
22 action; and (3) identifying the date, time, and location of the action.” Johnson memorandum at 7.  
23 Field offices also were required to provide a written report on removals each Friday “(1) identifying

24 <sup>1</sup> *Review of and Interim Revision to Civil Immigration Enforcement and Removal Policies and*  
25 *Priorities*, Memorandum from David Pekoske, Acting Secretary, to Troy Miller, Tae Johnson, and  
26 Tracey Renaud (Jan. 20, 2021),  
[https://www.dhs.gov/sites/default/files/publications/21\\_0120\\_enforcement-memo\\_signed.pdf](https://www.dhs.gov/sites/default/files/publications/21_0120_enforcement-memo_signed.pdf) (last  
accessed Nov. 29, 2021).

27 <sup>2</sup> *Interim Guidance: Civil Immigration Enforcement and Removal Priorities*, Memorandum from Tae  
28 Johnson, Acting Director, to ICE Employees (Feb. 18, 2021),  
[https://www.ice.gov/doclib/news/releases/2021/021821\\_civil-immigration-enforcement\\_interim-  
guidance.pdf](https://www.ice.gov/doclib/news/releases/2021/021821_civil-immigration-enforcement_interim-guidance.pdf) (last accessed Nov. 29, 2021).

1 each removal in the prior week, including the applicable priority criterion, if any; (2) providing a  
2 narrative justification of the removal; and (3) identifying the date, time, and location of the removal.”

3 *Id.*

4 3. Policy makers and community members impacted by immigration enforcement are  
5 acutely interested in changes to civil enforcement and removal policies, especially from one  
6 administration to another. The requested reports concern ICE operations and activities and are  
7 reviewed by the ICE Director to ensure compliance with guidance set forth in the Johnson  
8 memorandum, consistency across geographic areas of responsibility, and to evaluate the effectiveness  
9 of interim priorities. *Id.* Their disclosure will contribute to the public’s understanding of government  
10 operations and enable oversight of agency actions and compliance with federal policies across various  
11 field offices.

12 4. FOIA sets a 20-day statutory deadline for agencies to respond to FOIA requests. ICE  
13 received Plaintiffs’ request on September 9, 2021. On September 21, ICE invoked a 10-day  
14 extension, as permitted by law, but then failed to respond.

15 5. The immediate disclosure of the requested records is needed to remedy the lack of  
16 current information available to the public and ascertain whether the agency adhered to the reporting  
17 requirements. Plaintiffs accordingly bring this suit under the FOIA for declaratory, injunctive, and  
18 other appropriate relief.

19 **JURISDICTION & VENUE**

20 6. This Court has subject matter jurisdiction over this action and personal jurisdiction  
21 over the parties pursuant to 5 U.S.C. § 552(a)(4)(B), (6)(C)(i), and (6)(E)(iii). This Court also has  
22 subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331.

23 7. Venue is proper in this district under 5 U.S.C. § 552(a)(4)(B), because ILRC has its  
24 principal place of business in this district.

25 8. Assignment to the San Francisco Division is proper pursuant to Civil Local Rule 3-  
26 2(c) and (d) because a substantial portion of the events giving rise to this action occurred in San  
27 Francisco County, where Plaintiff ILRC maintains its principal place of business.

**PARTIES**

1  
2 9. Plaintiff Immigrant Legal Resource Center is a nonprofit organization that works with  
3 immigrants, community organizations, legal professionals, law enforcement, and policy makers to  
4 build a democratic society that values diversity and the rights of all people. ILRC maintains its  
5 principal place of business in San Francisco, California.

6 10. Plaintiff American Immigration Council is a nonprofit organization that works to  
7 increase public understanding of immigration law and policy, and to advocate for the fair and just  
8 administration of U.S. immigration laws as well as to protect the legal rights of noncitizens. AIC  
9 maintains a principal place of business in Washington, D.C.

10 11. Plaintiff Mijente Support Committee is a national nonprofit organization that  
11 coordinates and organizes with its members in several states to address issues relating to immigration  
12 enforcement and Latinx political participation. Mijente maintains a principal place of business in  
13 Phoenix, Arizona.

14 12. Defendant U.S. Department of Homeland Security is a department of the executive  
15 branch of the United States government that is tasked with, among other things, administering and  
16 enforcing the federal immigration laws.

17 13. Defendant U.S. Immigration and Customs Enforcement is the agency within DHS  
18 that is specifically responsible for immigration enforcement.

19 **FACTS**

20 **I. *Background – ICE Changes to Enforcement and Removal Policies and Priorities***

21 14. On January 20, 2021, Acting Secretary of DHS David Pekoske issued a memorandum  
22 titled “*Review of and Interim Revision to Civil Immigration Enforcement and Removal Policies and*  
23 *Priorities.*” The Pekoske memorandum directed DHS to conduct a review of policies and practices  
24 concerning immigration enforcement, including an identification of interim priorities for civil  
25 immigration enforcement. The memorandum identified three categories of enforcement priorities for  
26 DHS (including ICE): 1. National security; 2. Border security; and 3. Public safety. These priorities  
27 applied “not only to the decision to issue, serve, file, or cancel a Notice to Appear, but also to a broad  
28 range of other discretionary enforcement decisions, including deciding: whom to stop, question, and

1 arrest; whom to detain or release; whether to settle, dismiss, appeal, or join in a motion on a case; and  
2 whether to grant deferred action or parole.” Pekoske memorandum at 2. Acting Secretary Pekoske  
3 directed the Acting Director of ICE to promulgate operational guidance on the implementation of  
4 these priorities, including a protocol for the Acting Secretary to conduct a periodic review of  
5 enforcement actions to ensure consistency with the priorities set forth in the memorandum. *Id.*

6 15. On February 18, 2021, ICE Acting Director Tae D. Johnson issued a memorandum  
7 titled “*Interim Guidance: Civil Immigration Enforcement and Removal Priorities.*” This  
8 memorandum provided operational guidance on the civil enforcement priorities identified in the  
9 Pekoske memorandum and laid out the periodic reporting requirement that is the subject of Plaintiffs’  
10 FOIA request.

11 16. Pursuant to the Johnson memorandum, ICE field offices must generate two written  
12 reports each week:

13 Each Friday, the Executive Associate Directors for Enforcement and  
14 Removal Operations and Homeland Security Investigations will compile and provide to the Office of the Director, the Office of the  
15 Deputy Director, and the Office of Policy and Planning (OPP), a written  
16 report: (1) identifying each enforcement action taken in the prior week,  
17 including the applicable priority criterion, if any; (2) providing a  
narrative justification of the action; and (3) identifying the date, time,  
and location of the action.

18 In addition, each Friday the Executive Associate Director for  
19 Enforcement and Removal Operations will provide to the Office of the  
20 Director, the Office of the Deputy Director, and OPP, a written report:  
(1) identifying each removal in the prior week, including the applicable  
priority criterion, if any; (2) providing a narrative justification of the  
removal; and (3) identifying the date, time, and location of the removal.

21 Johnson memorandum at 7. The weekly reports will also be made available to the Office of the  
22 Secretary of DHS. *Id.* The guidance set forth in the Johnson memorandum, including the weekly  
23 reporting requirement, was “effective immediately.” *Id.* at 1.

24 17. On August 19, 2021, a federal judge in the Southern District of Texas issued a  
25 preliminary injunction against the enforcement of these two memoranda, and litigation is pending.  
26 *State of Texas et al v. United States et al*, No. 6:21-cv-00016, Dkt. 79 (S.D. Tex. Aug. 19, 2021). The  
27 preliminary injunction, which had a delayed effective date of August 30, 2021, was temporarily  
28 administratively stayed by the Fifth Circuit in *State of Texas et al v. United States et al*, No. 21-40618

1 (5th Cir. Aug. 25, 2021). On September 15, 2021, the Fifth Circuit granted-in-part and denied-in-part  
2 the government’s motion to stay the district court’s injunction. However, on information and belief,  
3 neither of these rulings disrupted the reporting requirements at issue in this FOIA request.

4 18. On September 30, 2021, DHS Secretary Alejandro N. Mayorkas issued a  
5 memorandum titled “*Guidelines for the Enforcement of Civil Immigration Law.*”<sup>3</sup> Although this  
6 memorandum set forth revised guidelines on enforcement priorities and reporting as compared to the  
7 Pekoske memorandum, it will not become effective until November 29, 2021.

8 19. Because the Pekoske memorandum and the Johnson memorandum remain in effect,  
9 and no injunction against the reporting requirements set forth in the memoranda ever went into effect,  
10 the 24 ICE field offices should, on information and belief, have been continuously generating weekly  
11 enforcement and removal reports pursuant to the Johnson memorandum since February 18, 2021.

12 **II. *Plaintiffs’ Request for Crucial Records Under the Freedom of Information Act and***  
13 ***Defendants’ Failure to Timely Respond***

14 20. On September 9, 2021, Plaintiffs requested that ICE produce records pertaining to the  
15 weekly enforcement and removal reports required by the Pekoske and Johnson memoranda. *See*  
16 FOIA Request, attached hereto as Exhibit A.

17 21. ICE responded by e-mail on September 21, 2021 acknowledging receipt of the  
18 request and invoking the ten-day extension period for response provided in 5 U.S.C. § 552(a)(6)(B),  
19 giving the agency a total of thirty working days to respond to the request with a determination of  
20 whether it would comply. *See* Acknowledgment Letter, attached hereto as Exhibit B.

21 22. Defendants have failed to comply with their fundamental obligations under the Act.  
22 Defendants failed to issue a determination within thirty days of the initial September 9, 2021 request,  
23 nor did they produce any responsive records. *See* 5 U.S.C. § 552(a)(6)(B).

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27 <sup>3</sup> *Guidelines for the Enforcement of Civil Immigration Law*, Memorandum from Alejandro N.  
28 Mayorkas, Secretary, to Tae D. Johnson, Troy Miller, Ur Jaddou, Robert Silvers, Katherine Culliton-  
González, Lynn Parker Dupree (Sept. 30, 2021), <https://www.ice.gov/doclib/news/guidelines-civilimmigrationlaw.pdf> (last accessed Nov. 29, 2021).

1 **III. *Ongoing Harm and Need for the Unlawfully Withheld Records***

2 23. Defendants are continuing to follow the un-enjoined portions of the Pekoske and  
3 Johnson memoranda, including its civil enforcement priorities and reporting requirements. Plaintiffs'  
4 request remains pending and ICE has failed to issue the legally required determination or produce  
5 responsive records, depriving the public of vital information concerning the agency's compliance  
6 with its own priorities.

7 24. Defendants' continued failure to produce records responsive to Plaintiffs' request  
8 violates the FOIA and deprives Plaintiffs of the ability to inform the public of a matter of exceptional  
9 public importance. Plaintiffs accordingly seek relief from this Court.

10 **CLAIMS FOR RELIEF**

11 **First Claim**

12 **Failure to Determine Whether to Comply with the Request in Violation of FOIA**

13 25. Plaintiffs repeat and incorporate all facts in paragraphs 1 through 24 as though set  
14 forth fully herein.

15 26. Defendants have a statutory obligation to respond to Plaintiffs' FOIA request and to  
16 communicate that determination to Plaintiffs within thirty days of receiving the request. 5 U.S.C.  
17 § 552(a)(6)(A).

18 27. Defendants' failure to make such a determination and to communicate it to Plaintiffs  
19 violates the FOIA. 5 U.S.C. § 552 (a)(6)(E)(iii).

20 **Second Claim**

21 **Improper Withholding of Agency Records in Violation of FOIA**

22 28. Plaintiffs repeat and incorporate all facts in paragraphs 1 through 24 as though set  
23 forth fully herein.

24 29. Defendants have failed to produce any records in response to Plaintiffs' FOIA  
25 request.

26 30. Defendants' failure to produce these records violates their statutory obligation to  
27 make requested records "promptly" available to the public. 5 U.S.C. § 552(a).

28

**Third Claim**

**Failure to Conduct a Reasonable Search**

31. Plaintiffs repeat and incorporate all facts in paragraphs 1 through 24 as though set forth fully herein.

32. Defendants have failed to make a reasonable effort to search for records sought by Plaintiffs' request, and that failure violates the FOIA, 5 U.S.C. § 552(a)(6)(A), and corresponding regulations.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray that this Court:

A. Order Defendants to issue a determination within seven days;

B. Order Defendants to process the requested records in their entirety, to disclose the requested records in their entirety, and to make copies available to Plaintiffs in their entirety within thirty days;

C. Order Defendants to prepare a *Vaughn* index for any documents they seek to continue to withhold under a FOIA exemption;

D. Award Plaintiffs their costs and reasonable attorney's fees incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and

E. Order such other relief that the Court deems just and appropriate.

Dated: November 29, 2021

Respectfully Submitted,

By: */s/ W. Hardy Callcott*

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MIJENTE SUPPORT COMMITTEE

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Immigrant Legal Resource Center, American Immigration Council, Mijente Support Committee

(b) County of Residence of First Listed Plaintiff San Francisco (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

W. Hardy Callcott, Sue Wang, Wesley Chao, Sidley Austin LLP, 555 California Street, Suite 2000, San Francisco, CA 94104 (415) 772-1200

DEFENDANTS

U.S. Department of Homeland Security, United States Immigration and Customs Enforcement

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)
X 2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- X 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation-Transfer 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 5 U.S.C. section 552

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes X No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) X SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 11/23/2021

SIGNATURE OF ATTORNEY OF RECORD

s/ W. Hardy Callcott

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

**Authority For Civil Cover Sheet.** The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
  - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
  - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
  - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
  - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
  - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
  - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
  - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
  - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
  - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.

## **Exhibit A**



**Submitted via Electronic Mail to [ice-foia@dhs.gov](mailto:ice-foia@dhs.gov)**

U.S. Immigration and Customs Enforcement  
Freedom of Information Act Office  
500 12th Street SW, Stop 5009  
Washington, D.C. 20536-5009

**RE: Freedom of Information Act Request to U.S. Immigration and Customs Enforcement Regarding Enforcement Priorities**

Dear FOIA Officer:

This is a Freedom of Information Act (FOIA) request by the Immigrant Legal Resource Center (“ILRC”), the American Immigration Council (“Council”) and Mijente Support Committee (together with the ILRC and Council, “Requesters”) under 5 U.S.C. § 552.

The ILRC works with immigrants, community organizations, legal professionals, law enforcement, and policy makers to build a democratic society that values diversity and the rights of all people. Through community education programs, legal training and technical assistance, and policy development and advocacy, the ILRC’s mission is to protect and defend the rights of immigrant families and the communities in which they live. The ILRC also provides technical assistance to immigration practitioners on many aspects of immigration law, with a focus on the intersection between the immigration and criminal justice systems. The ILRC works towards the elimination of unjust penalties for immigrants entangled in the criminal justice system and to end the criminalization of immigrant communities. The ILRC is a non-profit public interest organization under Internal Revenue Code Section 501(c)(3).

The Council was established to increase public understanding of immigration law and policy, advocate for the fair and just administration U.S. immigration laws, protect the legal rights of noncitizens and citizens, and educate the public about the enduring contributions of immigrants. Through research and analysis, the Council informs policymakers at the national, state, and local levels who seek to understand the power and potential of immigration and to develop policies that are based on facts rather than myths. The Council also seeks to hold the government accountable for unlawful conduct and restrictive interpretations of the law and for failing to ensure that the immigration laws are implemented and executed in a manner that comports with due process through the pursuit of transparency and impact litigation. The

Council is a non-profit public interest organization under Internal Revenue Code Section 501(c)(3).

Mijente Support Committee is a national organization that coordinates and organizes with its members in several states to address issues relating to immigration enforcement and Latinx political participation.

## I. Request for Records

### We request the following records:

- Reports from ICE field offices detailing ICE enforcement actions carried out pursuant to the Jan. 20, 2021 memorandum from Acting Secretary David Pekoske entitled “*Review of and Interim Revision to Civil Immigration Enforcement and Removal Policies and Priorities*”<sup>1</sup> (“Pekoske memorandum”) and the memorandum from Acting ICE Director Tae Johnson on February 18, 2021 entitled “*Interim Guidance: Civil Immigration Enforcement and Removal Priorities*.”<sup>2</sup> (“Johnson memorandum”),<sup>3</sup> as detailed herein:
  - This request includes the weekly and/or other periodic written reports from ICE field offices mandated in pages 6-7 of the Johnson memorandum, which states that ICE “will require that field offices collect data on the nature and type of enforcement and removal actions they perform.”
  - The two types of reports responsive to this request are described on page 7 of the Johnson memorandum, under the subheading “*Weekly Reporting of All Enforcement and Removal Actions*”: (1) reports on enforcement actions, and (2) reports on removals.
  - With respect to the first category of reports, the memo states that “[e]ach Friday, the Executive Associate Directors for Enforcement and Removal Operations and Homeland Security Investigations will compile and provide to the Office of the Director, the Office of the Deputy Director, and the Office of Policy and Planning (OPP), a written report: (1) identifying each enforcement action taken in the prior week, including the applicable priority criterion, if any; (2) providing a narrative

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<sup>1</sup> *Review of and Interim Revision to Civil Immigration Enforcement and Removal Policies and Priorities*, Memorandum from David Pekoske, Acting Secretary, to Troy Miller, Tae Johnson, and Tracey Renaud (Jan. 20, 2021), [https://www.dhs.gov/sites/default/files/publications/21\\_0120\\_enforcement-memo\\_signed.pdf](https://www.dhs.gov/sites/default/files/publications/21_0120_enforcement-memo_signed.pdf).

<sup>2</sup> *Interim Guidance: Civil Immigration Enforcement and Removal Priorities*, Memorandum from Tae Johnson, Acting Director, to ICE Employees (Feb. 18, 2021), [https://www.ice.gov/doclib/news/releases/2021/021821\\_civil-immigration-enforcement\\_interim-guidance.pdf](https://www.ice.gov/doclib/news/releases/2021/021821_civil-immigration-enforcement_interim-guidance.pdf).

<sup>3</sup> On August 19, 2021, a federal judge in the Southern District of Texas issued a preliminary injunction against the enforcement of these two memoranda, and litigation is pending. *State of Texas et al v. United States et al*, No. 6:21-cv-0001 (S.D.Tex, Aug. 19, 2021), temporarily stayed by *State of Texas et al v. United States et al*, No. 21-40618 (5th Cir. Aug. 25, 2021). This litigation does not affect our request for the reports that have been already compiled by ICE or that are filed while the injunction has been stayed.

justification of the action; and (3) identifying the date, time, and location of the action.”

- With respect to the second category of reports, the memo states that “[e]ach Friday the Executive Associate Director for Enforcement and Removal Operations will provide to the Office of the Director, the Office of the Deputy Directors, and OPP, a written report: (1) identifying each removal in the prior week, including the applicable priority criterion, if any; (2) providing a narrative justification of the removal; and (3) identifying the date, time, and location of the removal.”
- Requesters also request a copy of any templates, forms, or further final guidance provided to ICE field offices or staff in order to implement or apply the enforcement priorities and reporting requirements set forth in the Pekoske memorandum and Johnson memorandum described above.
- Requesters further request records containing aggregate data or reports summarizing the enforcement actions described above.

Requesters do not seek the names or contact information of individuals or other exempt personal identifiable information of people referenced in the records requested herein. If any of the requested records contain exempt personal identifiable information, Requesters ask that said personal identifiable information be redacted to ensure the maximum production of responsive relational information contained within the records. Nothing in this request should be construed as a waiver of Requesters’ right to challenge any redactions made on the basis of personal identifiable information, including in the event of litigation regarding this FOIA request.

Unless otherwise stated, all requests for “records” herein refer to all physical or electronic records that were prepared, received, transmitted, collected, or maintained by U.S. Immigration and Customs Enforcement (ICE), including documents, meeting notes and minutes, lists of meeting participants, electronic (emails) and paper correspondence, legal research, legal opinions, letters, drafts, internal agency guides, regulations, memoranda, and spreadsheets. Furthermore, the scope of the search should not be limited to ICE-originated records and should be construed to include records that are currently in the possession of any U.S. government contractors for purposes of records management. Records should be provided in electronic format wherever possible.

## **II. Request for Fee Waiver**

Under the Freedom of Information Act, we request a waiver of fees.<sup>4</sup> A fee waiver requires that: (1) “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government;” and (2)

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<sup>4</sup> 5 U.S.C. § 552 (West 2017).

the request “is not primarily in the commercial interest of the requestor.”<sup>5</sup>

The public interest criteria is satisfied when (1) the request concerns operations or activities of the government; (2) disclosure is likely to contribute to an understanding of government operations or activities; (3) disclosure contributes to an understanding of the subject by the public at large; and (4) disclosure is likely to contribute significantly to such understanding.<sup>6</sup> This request meets all four of these criteria.

#### **A. Disclosure Will Contribute to Understanding of ICE Operations**

The Requesters seek to use the requested information to: (a) inform advocates about immigrant enforcement patterns for the purpose of upholding immigrant rights; (b) enable oversight of agency actions and monitor compliance with federal policies across various field offices; and (c) collaborate with media organizations to disseminate information about immigration enforcement to the public.

This request clearly concerns the operations and activities of the government, in this case, ICE, a federal agency subcomponent of the U.S. Department of Homeland Security. Disclosure of these records will contribute to the understanding of government operations in several ways. The records will illuminate the scope of ICE priorities and the agency’s compliance with its own policy directives; the extent of actual supervision and accountability within the agency; and the effects on the public of immigration enforcement. The records requested will expand and improve public understanding of immigration enforcement and allow the public to have clearer expectations regarding ICE policies and operations.

Disclosure of these records will contribute to the understanding of immigration enforcement by the public at large because the records will explain the agency’s implementation of its own new enforcement guidance. Policymakers and community members impacted by immigration enforcement are acutely interested in changes to civil enforcement and removal policies.

The Requesters employ multiple channels of communication and platforms to disseminate information obtained in response to the public.

The ILRC has demonstrated the expertise and technical ability to understand, digest, summarize, and disseminate responsive information obtained from ICE as a result of FOIA requests. The ILRC has been particularly involved in informing and educating the public about the DHS Enforcement Priorities and their implications and interpretation, as well as monitoring

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<sup>5</sup> See *id.*; *Larson v. C.I.A.*, 843 F.2d 1481, 1483 (D.C. Cir. 1988) (holding a public interest must be identified with “reasonable specificity”); *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987) (holding that requestors must explain with reasonable specificity how disclosure will contribute to public understanding); 6 C.F.R. § 5.11(k)(1).

<sup>6</sup> 6 C.F.R. § 5.11(k)(2) (2017) (DHS regulations outlining criteria for responses to requests for fee waivers under FOIA); See also *Judicial Watch, Inc. v. U.S. Dep’t of Justice*, 365 F.3d 1108, 1126 (D.C. Cir. 2004) (citing 28 C.F.R. § 16.11(k)(2)).



the agency's compliance with those priorities. The ILRC has produced explanatory materials, practice advisories, and trainings meant to inform advocates and attorneys about what to expect and how to advise their clients with regards to enforcement policy, as well as educating the public about the DHS Enforcement Priorities and their implications and interpretation.<sup>7</sup> Through mailing lists, social media,<sup>8</sup> and the organization's webpage at [www.ilrc.org](http://www.ilrc.org), the ILRC shares reports, graphics, advisories, and other documents explaining various aspects of the immigration system. The ILRC has used previous FOIA records to produce a national map of local policies on immigration enforcement, as well as several explanatory reports.<sup>9</sup>

Similarly, the Council regularly synthesizes and publishes information about governmental operations obtained from FOIA requests on its publicly accessible website. This information is shared with the public in the form of summaries with links to government documents, reports, fact sheets and practice materials.<sup>10</sup> In calendar year 2020, the Council's website received more than 2.4 million pageviews from more than 1.4 million visitors. The Council also regularly shares information with national print and news media and plans to distribute information obtained from these FOIA disclosures to interested media.

Mijente Support Committee has demonstrated its capacity to use FOIA information to inform the public about immigration enforcement. For example, Mijente Support Committee and the Detention Watch Network filed FOIA litigation over ICE's Operation Mega, and published the resulting documents in context on a webpage dedicated to this topic.<sup>11</sup> In partnership with other

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<sup>7</sup> Immigrant Legal Resource Center, Immigrant Defense Project, and National Immigration Project of the National Lawyers Guild, *Advocating for Clients under the Biden Administration's Interim Enforcement Priorities*, (March 2021) <https://www.ilrc.org/advocating-clients-under-biden-administration%E2%80%99s-interim-enforcement-priorities>; Immigrant Legal Resource Center, Immigrant Defense Project, and National Immigration Project of the National Lawyers Guild, *Practice Advisory for Criminal Defense Attorneys: The Biden Administration's Interim Enforcement Priorities*, (March 2021) <https://www.ilrc.org/practice-advisory-criminal-defense-attorneys-biden-administration%E2%80%99s-interim-enforcement-priorities>; Immigrant Legal Resource Center, Immigrant Defense Project, and National Immigration Project of the National Lawyers Guild, *Advocating for Clients in Removal Proceedings Using the OPLA Prosecutorial Discretion Memo*, (March 2021) <https://www.ilrc.org/advocating-clients-removal-proceedings-using-opla-prosecutorial-discretion-memo>.

<sup>8</sup> Twitter.com, @the\_ILRC, [https://twitter.com/the\\_ILRC](https://twitter.com/the_ILRC); Facebook.com, Immigrant Legal Resource Center (ILRC), <https://www.facebook.com/immigrantlegalresourcecenter/>; Instagram.com, [https://www.instagram.com/the\\_ilrc](https://www.instagram.com/the_ilrc).

<sup>9</sup> See [www.ilrc.org/local-enforcement-map](https://www.ilrc.org/local-enforcement-map); Lena Graber and Nikki Marquez, *Searching for Sanctuary*, ILRC (2016), available at <https://www.ilrc.org/searching-sanctuary>; Lena Graber, Kemi Bello, Nikki Marquez, and Krsna Avila, *The Rise of Sanctuary*, ILRC (2018), available at <https://www.ilrc.org/rise-sanctuary>.

<sup>10</sup> See, e.g., American Immigration Council, *The Electronic Nationality Verification Program: An Overview* (Jan. 26, 2021), <https://www.americanimmigrationcouncil.org/research/electronic-nationality-verification-program-overview>; Guillermo Cantor et al., *Changing Patterns of Interior Immigration Enforcement in the United States, 2016 -2018*, American Immigration Council (July 1, 2019), <https://americanimmigrationcouncil.org/research/interior-immigration-enforcement-united-states-2016-2018>; American Immigration Council, *Stays of Removal Responses from EOIR* (May 2019), [https://americanimmigrationcouncil.org/sites/default/files/foia\\_documents/board\\_of\\_immigration\\_appeals\\_interpretation\\_of\\_stay\\_of\\_removal\\_foia\\_production.pdf](https://americanimmigrationcouncil.org/sites/default/files/foia_documents/board_of_immigration_appeals_interpretation_of_stay_of_removal_foia_production.pdf); Guillermo Cantor & Walter Ewing, *Still No Action Taken: Complaints Against Border Patrol Agents Continue to Go Unanswered*, American Immigration Council (Aug. 2017) (examining records of alleged misconduct by Border Patrol employees), [http://bit.ly/Council\\_StillNoActionTaken](http://bit.ly/Council_StillNoActionTaken).

<sup>11</sup> *Blueprint for Terror: How ICE Planned its Largest Immigration Raid in History*, available at <https://mijente.net/icepapers/>.

organizations, Mijente Support Committee has also published several reports seeking to advance the public's knowledge on the surveillance technology used by ICE and the companies profiting from that relationship.<sup>12</sup> These reports are readily available through Mijente Support Committee's website to members of the public. Mijente Support Committee also utilizes its website and social media to disseminate information that further its mission. Mijente Support Committee has over 9,000 followers on Facebook, and close to 1,000 Twitter followers.<sup>13</sup> These platforms are used to share the work of Mijente Support Committee with followers and others.

The Requesters's demonstrated ability to disseminate exactly the types of information requested here satisfies the test for a fee waiver that the request and disclosure would "contribute significantly to public understanding of the operations or activities of the government."<sup>14</sup>

#### **B. Disclosure of the Information is not in the Commercial Interest of Requesters**

Finally, the disclosure of records would not primarily be in the commercial interest of the ILRC, the Council or Mijente Support Committee.

The ILRC is a non-profit 501(c)(3) organization that does not primarily partake in commercial, economic, or profit-producing activity.<sup>15</sup> The information obtained through the above request would not be sold, commercialized, or used in any way to derive profit. In fact, the interactive map composed of the information obtained through the previous FOIA request is easily searchable and available at the ILRC website (<http://www.ilrc.org>) free of charge to all members of the public,<sup>16</sup> and the ILRC will publish the updated information received from ICE to the public in the same way.

The Council is a not-for-profit organization and also has no commercial interest in the Request. The Request furthers the Council's work to increase public understanding of immigration law and policy and to advocate for the fair and just administration of U.S. immigration laws as well as to protect the legal rights of noncitizens. As with all other reports and information available on the Council's website, the information that the Council receives in response to the Request will be available to immigration attorneys, noncitizens, and other interested members of the public free of charge.

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<sup>12</sup> See <https://notechforice.com/>.

<sup>13</sup> Twitter.com, @mijentecomite, <https://twitter.com/mijentecomite>; Facebook.com, Mijente Support Committee, <https://www.facebook.com/mijentecomite>.

<sup>14</sup> 5 U.S.C. § 552 (West 2017).

<sup>15</sup> See *Consumers' Checkbook, Center for Study of Services v. U.S. Dep't of Health and Human Services*, 502 F. Supp. 2d 79 (D.D.C. 2007) (holding that a FOIA requestor who charges fees to produce and disseminate its work does not render its interest "primarily commercial" when it charges fees only to support its operation).

<sup>16</sup> Immigrant Legal Resource Center, *National Map of Local Entanglement with ICE*, (last accessed June 1, 2017), <https://www.ilrc.org/local-enforcement-map>.

Mijente Support Committee is a not-for-profit organization that similarly plans to analyze and disseminate to the public the information gathered through this Request at no cost, and the records are not sought for any commercial purpose.

Please contact the undersigned, Lena Graber, if this fee waiver is not granted. The maximum dollar amount the Requesters are willing to pay for this request is \$100. If the amount for this request is greater than \$100, please contact Ms. Graber to discuss this request and associated pricing. Please deliver the requested records electronically to [lgraber@ilrc.org](mailto:lgraber@ilrc.org). Alternatively, you may physically mail the responsive records to the ILRC at:

**ATTN: Lena Graber**  
Immigrant Legal Resource Center  
1663 Mission St., Suite 602  
San Francisco, CA 94103

If you have any questions, please do not hesitate to contact Ms. Graber at 415-321-8545 or [lgraber@ilrc.org](mailto:lgraber@ilrc.org) or you may contact our outside counsel on this matter, W. Hardy Callcott at Sidley Austin LLP, at 415-772-7402 or [hcallcott@sidley.com](mailto:hcallcott@sidley.com).

Thank you for responding to this request.

Sincerely,  
/s/  
Lena Graber  
Staff Attorney

/s/  
Raul Pinto  
Senior Attorney  
American Immigration Council

/s/  
Jacinta Gonzalez  
Field Director  
Mijente Support Committee

**Cc:**  
W. Hardy Callcott  
Sidley Austin LLP  
555 California Street, Suite 2000  
San Francisco, CA 94104

## **Exhibit B**

**From:** ice-foia@dhs.gov  
**Sent:** Tuesday, September 21, 2021 3:59 AM  
**To:** Lena Graber  
**Subject:** ICE FOIA Request 2021-ICFO-39798

September 21, 2021

LENA GRABER  
IMMIGRANT LEGAL RESOURCE CENTER  
1663 MISSION STREET  
STE 602  
SAN FRANCISCO, CA 94103

**RE: ICE FOIA Case Number 2021-ICFO-39798**

Dear Ms. GRABER:

This acknowledges receipt of your September 09, 2021, Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), for reports from ICE field offices detailing ICE enforcement actions carried out pursuant to the January 20, 2021 memorandum from Acting Secretary David Pekoske entitled "Review of and Interim Revision to Civil Immigration Enforcement and Removal Policies and Priorities" ("Pekoske memorandum") and the memorandum from Acting ICE Director Tae Johnson on February 18, 2021 entitled "Interim Guidance: Civil Immigration Enforcement and Removal Priorities." ("Johnson memorandum"), details attached. Your request was received in this office on September 09, 2021.

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

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

Your request has been assigned reference number **2021-ICFO-39798**. Please refer to this identifier in any future correspondence. To check the status of an ICE FOIA/PA request, please visit <http://www.dhs.gov/foia-status>. Please note that to check the status of a request, you must enter the 2021-ICFO-39798 tracking number. If you need any further assistance or would like to discuss any aspect of your request, please contact the FOIA office. You may send an e-mail to [ice-foia@ice.dhs.gov](mailto:ice-foia@ice.dhs.gov), call toll free (866) 633-1182, or you may contact our FOIA Public Liaison, Marcus Francis, in the same manner. Additionally, you have a right to right to seek dispute resolution services from the Office of Government Information Services (OGIS) which mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Regards,

ICE FOIA Office  
Immigration and Customs Enforcement  
Freedom of Information Act Office  
500 12th Street, S.W., Stop 5009

Washington, D.C. 20536-5009

Telephone: 1-866-633-1182

Visit our FOIA website at [www.ice.gov/foia](http://www.ice.gov/foia)