

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

AMERICA FIRST LEGAL FOUNDATION,  
600 14th Street, NW  
Fifth Floor  
Washington, DC 20005

*Plaintiff,*

v.

U.S. DEPARTMENT OF HOMELAND  
SECURITY,  
2707 Martin Luther King Jr. Ave., SE  
Washington, DC 20528

U.S. IMMIGRATION AND CUSTOMS  
ENFORCEMENT,  
500 12th Street, SW  
Washington, DC 20536

*Defendants.*

Civil Action No.: 21-2168

**COMPLAINT**

1. Plaintiff America First Legal Foundation (“AFL”) brings this action against Defendants U.S. Department of Homeland Security (“DHS”) and its component, U.S. Immigration and Customs Enforcement (“ICE”) to compel compliance with the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552.

2. The Biden Administration has issued multiple memoranda directing immigration policy changes, including a January 20, 2021 memorandum from then-Acting Secretary Dave Pekoske. *See* Dep’t of Homeland Security, *Review of and Interim Revision to Civil Immigration Enforcement and Removal Policies and Priorities* (Jan. 20, 2021) (the “Pekoske Memo.”),

available at [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). (attached as Exhibit A).

3. In execution of the Pekoske Memo, on February 18, 2021, ICE's Acting Director, Tae Johnson, issued a Memorandum for all ICE employees titled "Interim Guidance: Civil Immigration Enforcement and Removal Priorities." ICE Policy Number 11090.1, U.S. Immigration and Customs Enforcement, *Interim Guidance: Civil Immigration Enforcement and Removal Priorities* (Feb. 18, 2021) (the "Johnson Memo."), available at <https://policeissues.org/ICE%20memo%20021821.pdf> (attached as Exhibit B).

4. The Johnson Memo. detailed three priority categories of removable aliens and implemented a requirement that any alien ICE sought to remove who did not fit into one of these categories needed "preapproval" from a Field Office Director or a Special Agent in Charge.

5. The Johnson Memo. also instituted a reporting requirement for two weekly reports that would be reviewed by the Acting Director and made available to the Secretary of Homeland Security. *See* Johnson Memo. at 7.

6. Specifically, it required:

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

In addition, each Friday the Executive Associate Director for Enforcement and Removal Operations will provide to the Office of the 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.

These reporting requirements will be assessed periodically during this interim period to ensure that they are both productive and manageable.

The weekly reports will be made available to the Office of the Secretary.

*Id.*

7. The Johnson Memo. was “effective immediately” upon issuance. *Id.* at 1.

8. Upon information and belief, the first report was due Friday, February 26, 2021, and certainly no later than Friday, March 5, 2021.

9. The report includes the total number of interior enforcement actions and removals being completed by ICE. This information can be compared to historical data to reveal what ICE is doing—or not doing—at the direction of new political leadership on a matter of critical importance to the nation.

10. On May 18, 2021, AFL filed a FOIA request with ICE requesting, among other things, the weekly reports required by the Johnson Memo. *See* Exhibit C.

11. As of the date of this filing, AFL has not received any records responsive to this request.

12. These reports, which are being submitted weekly to political leaders, show whether, and to what extent, the Biden Administration is enforcing our immigration laws, protecting our borders, and keeping Americans safe during the COVID-19 pandemic. There is a massive crisis on our southern border and the requested information, once made public, will provide critical insight, and demonstrate in starkly empirical terms the real-life effects of the Biden Administration’s policy decision to not enforce the Immigration and Nationality Act.

13. As Justice Thurgood Marshal wrote, “[t]he basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against

corruption and to hold the governors accountable to the governed.” *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978).

14. Due to the political sensitivity of the requested records, and based on AFL’s knowledge and belief of the Biden Administration’s operating procedures with respect to processing FOIA requests from non-ideologically aligned requestors, including, for example, the aggressive assertion of “White House Equities” and the over-application of deliberative process privilege, AFL is concerned DHS and/or ICE political officials may be overseeing, supervising, and/or delaying the processing of AFL’s request to keep the facts from public exposure and to prevent public scrutiny of controversial Biden Administration policies.

#### **JURISDICTION AND VENUE**

15. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331. Additionally, it may grant declaratory relief pursuant to 28 U.S.C. § 2201, *et seq.*

16. Venue is proper in this District pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

#### **PARTIES**

17. AFL is a nonprofit organization working to promote the rule of law in the United States, prevent executive overreach, ensure due process and equal protection for all Americans, and encourage public knowledge and understanding of the law and individual rights guaranteed under the United States Constitution and the laws of the United States. AFL’s mission includes promoting government transparency and accountability by gathering official information, analyzing it, and disseminating it through reports, press releases, and/or other media, including social media platforms, all to educate the public. All of the records produced by Defendants will

be made publicly available on AFL's website for citizens, journalists, and scholars to review and use. AFL's principal office is located in the District of Columbia.

18. DHS is an agency of the federal government within the meaning of 5 U.S.C. § 552(f) and has possession and control of the records AFL seeks.

19. ICE is a component agency of DHS and has possession and control of the records AFL seeks.

### STATEMENT OF FACTS

20. On May 18, 2021, AFL submitted a FOIA request to ICE seeking various records, including these weekly reports. *See* Exhibit C.

21. In its May 18, 2021, request, AFL requested:

- a. All "written reports" referred to in the subsection titled "Weekly Reporting of All Enforcement And Removal Actions" on page 7 of a memorandum from Tae D. Johnson to "All ICE Employees" with a subject line of "Interim Guidance: Civil Immigration Enforcement and Removal Priorities" (Feb. 18, 2021) (the "Interim Guidance"), whether the reports be termed "Reports", "Summaries", "Rollups", or otherwise. The timeframe for this request is February 18, 2021 to the date of production of the requested records.
- b. All records, including, but not limited to, electronic mail, texts, memoranda, and handwritten notes, of, regarding, referring, or relating to the Interim Guidance from, to, or in the possession of each of the following [ICE] components:
  - i. Office of the Director of ICE
  - ii. Office of the Deputy Director
  - iii. Office of Policy and Planning
  - iv. Office of the Executive Associate Director, Enforcement and Removal Operations
  - v. Office of the Executive Associate Director, Homeland Security Investigations
  - vi. Office of the Principal Legal Advisor
  - vii. Office of the Executive Associate Director, Management and Administration

The timeframe for this request is January 20, 2021, to date of production of the requested records.

- c. All records, including, but not limited to electronic mail, texts, memoranda, and handwritten notes, of, regarding, referring, or relating to the interim civil immigration enforcement and removal priorities described in a memorandum issued by Acting Secretary Pecoske and titled “Review of and Interim Revision to Civil Immigration Enforcement and Removal Policies and Priorities” (Jan. 20, 2021) (the “Priorities Memo”) within the possession of ICE. The timeframe for this request is January 20, 2021, to the date of production of the requested records.

22. AFL submitted its FOIA request to ICE by e-mail, sending it to ICE-FOIA@dhs.gov on May 18, 2021. *See* Exhibit C.

23. On May 19, 2021, AFL received an e-mail from ICE acknowledging receipt of the FOIA request and assigning it reference number 2021-ICFO-35173. *See* Exhibit D.

24. On May 19, 2021, AFL received an e-mail from ICE stating that the request’s status was updated to “Received.” *See* Exhibit E.

25. On May 22, 2021, AFL received an e-mail from ICE stating that ICE was “invoke[ing] a 10-day extension for your request,” based on “the increasing number of FOIA requests received by this office[.]” *See* Exhibit F.

26. In its May 22, 2021, correspondence, ICE also acknowledged AFL’s status as an educational requester.

27. After hearing nothing further from ICE, on July 8, 2021, AFL sent a message to ICE through DHS’s Public Access Portal requesting an update on the status of its FOIA request.

28. AFL did not receive a response to its July 8, 2021, request for a status update.

29. On July 16, 2021, AFL sent an e-mail to ICE requesting a status update on the processing of its May 18, 2021, request. *See* Exhibit G.

30. On July 22, 2021, AFL received an e-mail from ICE stating that the FOIA request was “In Process.” *See* Exhibit H.

31. As of the date of this Complaint, Defendants have issued no substantive response to AFL's FOIA request.

32. Additionally, as of the date of this Complaint, DHS's Public Access Portal states that AFL's request is "In Process" with an estimated delivery date of June 22, 2021.

**COUNT I**  
**Violation of FOIA, 5 U.S.C. § 552**

33. AFL incorporates paragraphs 1–32 as if set forth fully herein.

34. Defendants are agencies of the federal government within the meaning of 5 U.S.C. § 552(f).

35. By letter dated May 18, 2021, AFL submitted a FOIA request to ICE.

36. AFL's FOIA request complied with all applicable statutes and regulations.

37. The requested records are not exempt from FOIA pursuant to 5 U.S.C. § 552(b).

38. ICE has failed to respond to AFL's request within the statutory time-period. *See* 5 U.S.C. § 552(a)(6).

39. Accordingly, AFL has exhausted its administrative remedies. *See* 5 U.S.C. § 552(a)(6)(C).

40. By failing to release any responsive, non-exempt records, or otherwise offer a reasonable schedule for production, Defendants have violated FOIA. *See* 5 U.S.C. § 552(a)(3)(A).

**PRAYER FOR RELIEF**

WHEREFORE, AFL respectfully requests that this Court:

i. Declare that the records sought by the request, as described in the foregoing paragraphs, must be disclosed pursuant to 5 U.S.C. § 552.

ii. Order Defendants to conduct searches immediately for all records responsive to AFL's FOIA request and demonstrate that they employed search methods reasonably likely to lead to the discovery of responsive records.

iii. Order Defendants to produce by a date certain all non-exempt records responsive to AFL's FOIA request.

iv. Award AFL attorneys' fees and costs incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E).

v. Grant AFL such other and further relief as this Court deems proper.

August 13, 2021

Respectfully submitted,

/s/ Brian J. Field

BRIAN J. FIELD

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*Counsel for Plaintiff America First Legal*



# **EXHIBIT A**

Secretary  
U.S. Department of Homeland Security  
Washington, DC 20528



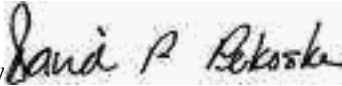
January 20, 2021

MEMORANDUM FOR: Troy Miller  
Senior Official Performing the Duties of the Commissioner  
U.S. Customs and Border Protection

Tae Johnson  
Acting Director  
U.S. Immigration and Customs Enforcement

Tracey Renaud  
Senior Official Performing the Duties of the Director  
U.S. Citizenship and Immigration Services

CC: Karen Olick  
Chief of Staff

FROM: David Pekoske  
Acting Secretary 

SUBJECT: **Review of and Interim Revision to Civil Immigration  
Enforcement and Removal Policies and Priorities**

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This memorandum directs Department of Homeland Security components to conduct a review of policies and practices concerning immigration enforcement. It also sets interim policies during the course of that review, including a 100-day pause on certain removals to enable focusing the Department's resources where they are most needed. The United States faces significant operational challenges at the southwest border as it is confronting the most serious global public health crisis in a century. In light of those unique circumstances, the Department must surge resources to the border in order to ensure safe, legal and orderly processing, to rebuild fair and effective asylum procedures that respect human rights and due process, to adopt appropriate public health guidelines and protocols, and to prioritize responding to threats to national security, public safety, and border security.

This memorandum should be considered Department-wide guidance, applicable to the activities of U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP), and U.S. Citizenship and Immigration Services (USCIS).

## **A. Comprehensive Review of Enforcement Policies and Priorities**

The Chief of Staff shall coordinate a Department-wide review of policies and practices concerning immigration enforcement. Pursuant to the review, each component shall develop recommendations to address aspects of immigration enforcement, including policies for prioritizing the use of enforcement personnel, detention space, and removal assets; policies governing the exercise of prosecutorial discretion; policies governing detention; and policies regarding interaction with state and local law enforcement. These recommendations shall ensure that the Department carries out our duties to enforce the law and serve the Department's mission in line with our values. The Chief of Staff shall provide recommendations for the issuance of revised policies at any point during this review and no later than 100 days from the date of this memo.

The memoranda in the attached appendix are hereby rescinded and superseded.

## **B. Interim Civil Enforcement Guidelines**

Due to limited resources, DHS cannot respond to all immigration violations or remove all persons unlawfully in the United States. Rather, DHS must implement civil immigration enforcement based on sensible priorities and changing circumstances. DHS's civil immigration enforcement priorities are protecting national security, border security, and public safety. The review directed in section A will enable the development, issuance, and implementation of detailed revised enforcement priorities. In the interim and pending completion of that review, the Department's priorities shall be:

1. **National security.** Individuals who have engaged in or are suspected of terrorism or espionage, or whose apprehension, arrest and/or custody is otherwise necessary to protect the national security of the United States.
2. **Border security.** Individuals apprehended at the border or ports of entry while attempting to unlawfully enter the United States on or after November 1, 2020, or who were not physically present in the United States before November 1, 2020.
3. **Public safety.** Individuals incarcerated within federal, state, and local prisons and jails released on or after the issuance of this memorandum who have been convicted of an "aggravated felony," as that term is defined in section 101(a) (43) of the Immigration and Nationality Act at the time of conviction, and are determined to pose a threat to public safety.

These priorities shall apply not only to the decision to issue, serve, file, or cancel a Notice to Appear, but also to a broad range of other discretionary enforcement decisions, including deciding: whom to stop, question, and arrest; whom to detain or release; whether to settle, dismiss, appeal, or join in a motion on a case; and whether to grant deferred action or parole. In

addition, all enforcement and detention decisions shall be guided by DHS's ability to conduct operations and maintain custody consistent with applicable COVID-19 protocols.

While resources should be allocated to the priorities enumerated above, nothing in this memorandum prohibits the apprehension or detention of individuals unlawfully in the United States who are not identified as priorities herein. In order to ensure appropriate allocation of resources and exercise of prosecutorial discretion, the Acting Director of ICE shall issue operational guidance on the implementation of these priorities. This guidance shall contain a protocol for the Acting Secretary to conduct a periodic review of enforcement actions to ensure consistency with the priorities set forth in this memorandum. This guidance shall also include a process for the Director of ICE to review and approve of any civil immigration enforcement actions against individuals outside of federal, state or local prisons or jails.

These interim enforcement priorities shall go into effect on February 1, 2021 and remain in effect until superseded by revised priorities developed in connection with the review directed in section A.

### **C. Immediate 100-Day Pause on Removals**

In light of the unique circumstances described above, DHS's limited resources must be prioritized to: (1) provide sufficient staff and resources to enhance border security and conduct immigration and asylum processing at the southwest border fairly and efficiently; and (2) comply with COVID-19 protocols to protect the health and safety of DHS personnel and those members of the public with whom DHS personnel interact. In addition, we must ensure that our removal resources are directed to the Department's highest enforcement priorities. Accordingly, and pending the completion of the review set forth in section A, I am directing an immediate pause on removals of any noncitizen<sup>1</sup> with a final order of removal (except as noted below) for 100 days to go into effect as soon as practical and no later than January 22, 2021.

The pause on removals applies to any noncitizen present in the United States when this directive takes effect with a final order of removal except one who:

1. According to a written finding by the Director of ICE, has engaged in or is suspected of terrorism or espionage, or otherwise poses a danger to the national security of the United States; or
2. Was not physically present in the United States before November 1, 2020; or
3. Has voluntarily agreed to waive any rights to remain in the United States, provided that he or she has been made fully aware of the consequences of waiver

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<sup>1</sup> "Noncitizen" as used in this memorandum does not include noncitizen nationals of the United States.

and has been given a meaningful opportunity to access counsel prior to signing the waiver;<sup>2</sup> or

4. For whom the Acting Director of ICE, following consultation with the General Counsel, makes an individualized determination that removal is required by law.

No later than February 1, 2021, the Acting Director of ICE shall issue written instructions with additional operational guidance on the further implementation of this removal pause. The guidance shall include a process for individualized review and consideration of the appropriate disposition for individuals who have been ordered removed for 90 days or more, to the extent necessary to implement this pause. The process shall provide for assessments of alternatives to removal including, but not limited to, staying or reopening cases, alternative forms of detention, custodial detention, whether to grant temporary deferred action, or other appropriate action.

#### **D. No Private Right Statement**

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

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<sup>2</sup> A voluntary waiver encompasses noncitizens who stipulate to removal as part of a criminal disposition.

## APPENDIX

Department of Homeland Security, *Enforcement of the Immigration Laws to Serve the National Interest*, Memorandum of February 20, 2017.

U.S. Immigration and Customs Enforcement, *Implementing the President's Border Security and Interior Immigration Enforcement Policies*, Memorandum of February 20, 2017.

U.S. Immigration and Customs Enforcement, *Guidance to OPLA Attorneys Regarding the Implementation of the President's Executive Orders and the Secretary's Directives on Immigration Enforcement*, Memorandum of August 15, 2017.

US Citizenship and Immigration Services, *Updated Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens*, Policy Memorandum of June 28, 2018. (US Citizenship and Immigration Services should revert to the preexisting guidance in Policy Memorandum 602-0050, US Citizenship and Immigration Services, *Revised Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Removable Aliens*, Policy Memorandum of Nov. 7, 2011.)

US Citizenship and Immigration Services, *Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) When Processing a Case Involving Information Submitted by a Deferred Action for Childhood Arrivals (DACA) Requestor in Connection with a DACA Request or a DACA-Related Benefit Request (Past or Pending) or Pursuing Termination of DACA*, Policy Memorandum of June 28, 2018.

U.S. Customs and Border Protection, *Executive Orders 13767 and 13768 and the Secretary's Implementation Directions of February 17, 2017*, Memorandum of February 21, 2017.

# **EXHIBIT B**

Policy Number: 11090.1  
FEA Number: 306-112-0026

Office of the Director

U.S. Department of Homeland Security  
500 12<sup>th</sup> Street, SW  
Washington, DC 20536



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

February 18, 2021

MEMORANDUM FOR: All ICE Employees

FROM: Tae D. Johnson   
Acting Director

SUBJECT: Interim Guidance: Civil Immigration Enforcement and  
Removal Priorities

Purpose

This memorandum establishes interim guidance in support of the interim civil immigration enforcement and removal priorities that Acting Secretary Pekoske issued on January 20, 2021. Acting Secretary Pekoske issued the interim priorities in his memorandum titled, *Review of and Interim Revision to Civil Immigration Enforcement and Removal Policies and Priorities* (Interim Memo).

This interim guidance is effective immediately. It applies to all U.S. Immigration and Customs Enforcement (ICE) Directorates and Program Offices, and it covers enforcement actions, custody decisions, the execution of final orders of removal, financial expenditures, and strategic planning.

This interim guidance will remain in effect until Secretary Mayorkas issues new enforcement guidelines. The Secretary has informed me that he will issue new guidelines only after consultation with the leadership and workforce of ICE, U.S. Customs and Border Protection, and other Department of Homeland Security (Department) agencies and offices. He anticipates issuing these guidelines in less than 90 days.

I have requested approval of certain revisions to the Interim Memo until the Secretary issues new enforcement guidelines. My requested revisions have been approved, and they are incorporated into this guidance. To the extent this guidance conflicts with the Interim Memo, this guidance controls. As you will read below, the revisions include, but are not limited to: (1) authorization to apprehend presumed priority noncitizens<sup>1</sup> in at-large enforcement actions without advance approval; (2) the inclusion of current qualifying members of criminal gangs and transnational criminal organizations as presumed enforcement priorities; (3) authorization to apprehend

<sup>1</sup> For purposes of this memorandum, "noncitizen" means any person as defined in section 101(a)(3) of the Immigration and Nationality Act (INA).



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without prior approval other presumed priority noncitizens who are encountered during enforcement operations; (4) how to evaluate whether a noncitizen who is not a presumed priority nevertheless poses a public safety threat and should be apprehended; (5) the further delegation of approval authority; and (6) the importance of providing advance notice of at-large enforcement actions to state and local law enforcement.

Section C of the Interim Memo has been enjoined. This memorandum does not implement, nor take into account, Section C. This memorandum implements Section B (Interim Civil Enforcement Guidelines).

**Background**

On January 20, 2021, President Biden issued Executive Order (EO) 13993, Revision of Civil Immigration Enforcement Policies and Priorities, 86 Fed. Reg. 7051 (Jan. 25, 2021), which articulated the Administration's baseline values and priorities for the enforcement of the civil immigration laws.

On the same day, Acting Secretary Pekoske issued the Interim Memo. The Interim Memo did four things. First, it directed a comprehensive Department-wide review of civil immigration enforcement policies. Second, it established interim civil immigration enforcement priorities for the Department. Third, it instituted a 100-day pause on certain removals pending the review. Fourth, it rescinded several existing policy memoranda, including two ICE-related memoranda, as inconsistent with EO 13993.<sup>2</sup> The Interim Memo further directed that ICE issue interim guidance implementing the revised enforcement priorities and the removal pause.

On January 26, 2021, the U.S. District Court for the Southern District of Texas issued a temporary restraining order (TRO) enjoining the Department from enforcing and implementing the 100-day removal pause in Section C.

Like other national security and public safety agencies, ICE operates in an environment of limited resources. Due to these limited resources, ICE has always prioritized, and necessarily must prioritize, certain enforcement and removal actions over others.

In addition to resource constraints, several other factors render ICE's mission particularly complex. These factors include ongoing litigation in various fora; the health and safety of the ICE workforce and those in its custody, particularly during the current COVID-19 pandemic; the responsibility to ensure that eligible noncitizens are able to pursue relief from removal under the immigration laws; and the requirements of, and, relationships with, sovereign nations, whose laws and expectations can place additional constraints on ICE's ability to execute final orders of removal.

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<sup>2</sup> Memorandum from Matthew T. Albence, Exec. Assoc. Dir., ICE, to All ERO Employees, *Implementing the President's Border Security and Interior Immigration Enforcement Policies* (Feb. 21, 2017); Memorandum from Tracy Short, Principal Legal Advisor, ICE, to All OPLA Attorneys, *Guidance to OPLA Attorneys Regarding Implementation of the President's Executive Orders and the Secretary's Directives on Immigration Enforcement* (Aug. 15, 2017).

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Accordingly, in executing its critical national security, border security, and public safety mission, the Department must exercise its well-established prosecutorial discretion and prioritize its limited resources to most effectively achieve that mission.

**Civil Immigration Enforcement and Removal Priorities**

In support of the interim priorities, the guidance established in this memorandum shall be applied to all civil immigration enforcement and removal decisions made after the issuance of this memorandum. The civil immigration enforcement and removal decisions include, but are not limited to, the following:<sup>3</sup>

- Deciding whether to issue a detainer, or whether to assume custody of a noncitizen subject to a previously issued detainer;
- Deciding whether to issue, reissue, serve, file, or cancel a Notice to Appear;
- Deciding whether to focus resources only on administrative violations or conduct;
- Deciding whether to stop, question, or arrest a noncitizen for an administrative violation of the civil immigration laws;
- Deciding whether to detain or release from custody subject to conditions;
- Deciding whether to grant deferred action or parole; and
- Deciding when and under what circumstances to execute final orders of removal.

For ease of reference, the interim priorities identified in the Interim Memo, and as revised by this guidance, are set forth below along with further explanation.

As a preliminary matter, it is vitally important to note that the interim priorities do not require or prohibit the arrest, detention, or removal of any noncitizen. Rather, officers and agents are expected to exercise their discretion thoughtfully, consistent with ICE's important national security, border security, and public safety mission. Enforcement and removal actions that meet the criteria described below are presumed to be a justified allocation of ICE's limited resources. Actions not reflected in the criteria described below may also be justified, but they are subject to advance review as outlined further below.

In determining whether to pursue an action that falls outside the criteria described below, all relevant facts and circumstances regarding the noncitizen should be considered. For instance, officers and agents should consider: whether there are criminal convictions; the seriousness and recency of such convictions, and the sentences imposed; the law enforcement resources that have been spent; whether a threat can be addressed through other means, such as through recourse to criminal law enforcement authorities at the federal, state, or local level, or to public health and other civil authorities at the state or local level; and, other relevant factors (including, for example, the mitigating factors identified on page 5).

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<sup>3</sup> As discussed above, the Department is enjoined from enforcing the Immediate 100-Day Process on Removals in the Interim Memo. This following interim guidance should not be read to permit implementation of Section C of the Interim Memo.

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*Criteria Defining Cases That Are Presumed to be Priorities*

**Priority Category 1: National Security.** A noncitizen is *presumed* to be a national security enforcement and removal priority if:

- 1) he or she has engaged in or is suspected of engaging in terrorism or terrorism-related activities;
- 2) he or she has engaged in or is suspected of engaging in espionage or espionage-related activities;<sup>4</sup> or
- 3) his or her apprehension, arrest, or custody is otherwise necessary to protect the national security of the United States.

In evaluating whether a noncitizen's "apprehension, arrest, or custody is otherwise necessary to protect" national security, officers and agents should determine whether a noncitizen poses a threat to United States sovereignty, territorial integrity, national interests, or institutions. General criminal activity does not amount to a national security threat (as distinguished from a public safety threat) and is discussed below.

**Priority Category 2: Border Security.** A noncitizen is *presumed* to be a border security enforcement and removal priority if:

- 1) he or she was apprehended at the border or a port of entry while attempting to unlawfully enter the United States on or after November 1, 2020<sup>5</sup>; or
- 2) he or she was not physically present in the United States before November 1, 2020.

To be clear, the border security priority includes any noncitizen who unlawfully entered the United States on or after November 1, 2020.

**Priority Category 3: Public Safety.** A noncitizen is *presumed* to be a public safety enforcement and removal priority if he or she poses a threat to public safety and:

- 1) he or she has been convicted of an aggravated felony as defined in section 101(a)(43) of the INA<sup>6</sup>; or

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<sup>4</sup> For purposes of the national security enforcement priority, the terms "terrorism or terrorism-related activities" and "espionage or espionage-related activities" should be applied consistent with (1) the definitions of "terrorist activity" and "engage in terrorist activity" in section 212(a)(3)(B)(iii)-(iv) of the INA, and (2) the manner in which the term "espionage" is generally applied in the immigration laws.

<sup>5</sup> The statutory mandates in Section 235 of the INA (regarding asylum seekers) continue to apply to noncitizens.

<sup>6</sup> This criterion tracks Congress's prioritization of aggravated felonies for immigration enforcement actions.

Whether an individual has been convicted of an aggravated felony is a complex question that may involve securing and analyzing a host of conviction documents, many of which may not be immediately available to officers and agents. Even when all conviction documents are available, whether a conviction is for an aggravated felony may be a novel question under applicable law. Accordingly, in deciding whether a noncitizen has been convicted of an

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- 2) he or she has been convicted of an offense for which an element was active participation in a criminal street gang, as defined in 18 U.S.C. § 521(a), or is not younger than 16 years of age and intentionally participated in an organized criminal gang or transnational criminal organization to further the illegal activity of the gang or transnational criminal organization.

In evaluating whether a noncitizen currently "pose[s] a threat to public safety," officers and agents are to consider the extensiveness, seriousness, and recency of the criminal activity. Officers and agents are to also consider mitigating factors, including, but not limited to, personal and family circumstances, health and medical factors, ties to the community, evidence of rehabilitation, and whether the individual has potential immigration relief available.

Officers are to base their conclusions about intentional participation in an organized criminal gang or transnational criminal organization on reliable evidence and consult with the Field Office Director (FOD) or Special Agent in Charge (SAC) in reaching this conclusion.

Particular attention is to be exercised in cases involving noncitizens who are elderly or are known to be suffering from serious physical or mental illness. Similarly, particular attention is to be exercised with respect to noncitizens who have pending petitions for review on direct appeal from an order of removal; have filed only one motion to reopen removal proceedings, and such a motion either remains pending or is on direct appeal via a petition for review; or have pending applications for immigration relief and are prima facie eligible for such relief. In such cases, execution of removal orders should have a compelling reason and are to have approval from the FOD.

A civil enforcement or removal action that does not meet the above criteria for presumed priority cases will require preapproval as described below.

**Enforcement and Removal Actions: Approval, Coordination, and Data Collection**

To ensure compliance with this guidance and consistency across geographic areas of responsibility, and to facilitate a dialogue between headquarters and field leadership about the effectiveness of the interim guidance, ICE will require that field offices collect data on the nature and type of enforcement and removal actions they perform. In addition, ICE will require field offices to coordinate their operations and obtain preapproval for enforcement and removal actions that do not meet the above criteria for presumed priority cases. The data and coordination will inform the development of the Secretary's new enforcement guidance.

***No Preapproval Required for Presumed Priority Cases***

Officers and agents need not obtain preapproval for enforcement or removal actions that meet the above criteria for presumed priority cases, beyond what existing policy requires and what a supervisor instructs.

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aggravated felony for purposes of this memorandum, officers and agents must have a good-faith belief based on either a final administrative determination, available conviction records, or the advice of agency legal counsel.

**Interim Guidance: Civil Immigration Enforcement and Removal Priorities**  
**Page 6 of 7**

*Preapproval for Other Priority Cases*

Any civil immigration enforcement or removal actions that do not meet the above criteria for presumed priority cases will require preapproval from the FOD or SAC. In deciding to undertake an enforcement action or removal, the agent or officer must consider, in consultation with his or her leadership, the nature and recency of the noncitizen's convictions, the type and length of sentences imposed, whether the enforcement action is otherwise an appropriate use of ICE's limited resources, and other relevant factors. In requesting this preapproval, the officer or agent must raise a written justification through the chain of command, explaining why the action otherwise constitutes a justified allocation of limited resources, and identify the date, time, and location the enforcement action or removal is expected to take place.

The approval to carry out an enforcement action against a particular noncitizen will not authorize enforcement actions against other noncitizens encountered during an operation if those noncitizens fall outside the presumption criteria identified above. An approval to take an enforcement action against any other noncitizen encountered who is not a presumed priority must be separately secured as described above.

In some cases, exigent circumstances and the demands of public safety will make it impracticable to obtain preapproval for an at-large enforcement action. While it is impossible to preconceive all such circumstances, they generally will be limited to situations where a noncitizen poses an imminent threat to life or an imminent substantial threat to property. If preapproval is impracticable, an officer or agent should conduct the enforcement action and then request approval as described above within 24 hours following the action.<sup>7</sup>

As always, it is important that ICE endeavor to remove noncitizens with final removal orders who have remained in post-order detention for more than 90 days. ICE will continue to review such noncitizens' cases on a regular basis, consistent with existing law and policy. ICE will endeavor to remove such noncitizens consistent with legal requirements and national, border security, and public safety priorities.

Periodically, ICE receives requests to exercise some form of individualized discretion in the interests of law and justice. ICE will create and maintain a system by which personnel can evaluate these individualized requests.

*Notice of At-Large Enforcement Actions*

The execution of an at-large enforcement action should be preceded by notification to the relevant state and local law enforcement agency or agencies. This notification will advance

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<sup>7</sup> Where approval is sought following the enforcement action due to exigent circumstances, the request shall explain the exigency, where and when the enforcement activity took place, and whether the noncitizen is currently detained. Additionally, when the location of a proposed or completed enforcement action is a courthouse, as defined in ICE Directive I1072.1: Civil Immigration Enforcement Actions Inside Courthouses (Jan. 10, 2018, or as superseded), or a sensitive location, as defined in ICE Directive No. 10029.2: Enforcement Actions at or Focused on Sensitive Locations (Oct. 24, 2011, or as superseded), that should be explicitly highlighted in the request.

**Interim Guidance: Civil Immigration Enforcement and Removal Priorities**  
**Page 7 of 7**

public safety and help ensure that planned immigration enforcement actions do not improperly interfere with state and local law enforcement investigations and actions.

***Weekly Reporting of All Enforcement and Removal Actions***

The Director will review all enforcement actions to ensure compliance with this guidance and consistency across geographic areas of responsibility and to facilitate a dialogue between headquarters and field leadership about the effectiveness of the interim priorities.

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

In addition, each Friday the Executive Associate Director for Enforcement and Removal Operations will provide to the Office of the 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.

These reporting requirements will be assessed periodically during this interim period to ensure that they are both productive and manageable.

The weekly reports will be made available to the Office of the Secretary.

**Questions**

Questions regarding this interim guidance or the Interim Memo should be directed to OPP through the chain of command and Directorate or Program Office leadership. Answers to frequently asked policy questions will be published on OPP's inSight page on an ongoing basis. Please note, however, that case-specific questions should generally be addressed by Directorate or Program Office leadership.

**No Private Right Statement**

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

# **EXHIBIT C**



May 18, 2021

VIA EMAIL – [ICE-FOIA@dhs.gov](mailto:ICE-FOIA@dhs.gov)

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

**Freedom of Information Act Request: Weekly Reporting of All Enforcement and Removal Actions and Other Enforcement Records**

Dear FOIA Officer:

America First Legal Foundation (“AFL”) is a national, nonprofit organization. AFL works to promote the rule of law in the United States, prevent executive overreach, ensure due process and equal protection for all Americans, and promote knowledge and understanding of the law and individual rights guaranteed under the Constitution and laws of the United States.

AFL’s mission includes promoting government transparency and accountability by gathering official information, analyzing it, and disseminating it through reports, press releases, and/or other media, including social media platforms, to educate the public. Therefore, under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, AFL hereby requests the following records within twenty business days.

**I. Requested Records**

- A. All “written reports” referred to in the subsection titled “Weekly Reporting of All Enforcement And Removal Actions” on page 7 of a memorandum from Tae D. Johnson to “All ICE Employees” with a subject line of “Interim Guidance: Civil Immigration Enforcement and Removal Priorities” (Feb. 18, 2021) (the “[Interim Guidance](#)”), whether the reports be termed “Reports”, “Summaries”, “Rollups”, or otherwise. The timeframe for this request is February 18, 2021 to the date of production of the requested records.
- B. All records, including, but not limited to, electronic mail, texts, memoranda, and handwritten notes, of, regarding, referring, or relating to the Interim



Guidance from, to, or in the possession of each of the following Immigration and Customs Enforcement (“ICE”) components:

1. Office of the Director of ICE
2. Office of the Deputy Director
3. Office of Policy and Planning
4. Office of the Executive Associate Director, Enforcement and Removal Operations
5. Office of the Executive Associate Director, Homeland Security Investigations
6. Office of the Principal Legal Advisor
7. Office of the Executive Associate Director, Management and Administration

The timeframe for this request is January 20, 2021, to date of production of the requested records.

- C. All records, including, but not limited to electronic mail, texts, memoranda, and handwritten notes, of, regarding, referring, or relating to the interim civil immigration enforcement and removal priorities described in a memorandum issued by Acting Secretary Pecoske and titled “Review of and Interim Revision to Civil Immigration Enforcement and Removal Policies and Priorities” (Jan. 20, 2021) (the “[Priorities Memo](#)”) within the possession if ICE. The timeframe for this request is January 20, 2021 to the date of production of the requested records.

## II. Redactions and Search Terms

Redactions are disfavored as the FOIA’s exemptions are exclusive and must be narrowly construed. *Am. Immigration Lawyers Ass 'n v. Exec. Office for Immigration Review (AILA)*, 830 F.3d 667, 676-79 (D.C. Cir. 2016). If a record contains information responsive to a FOIA request, then ICE must disclose the entire record; a single record cannot be split into responsive and non-responsive bits. *Id.*; *see also Parker v. United States DOJ*, 278 F. Supp. 3d 446, 451 (D.D.C. 2017). Consequently, ICE should produce email attachments.

The search terms for our requests should include, but not be limited to, all the following:

1. Removal
2. Removals
3. Priorities
4. Memo
5. “Interim Guidance”

6. "Interim Guidance" & "Priorities
7. "Enforcement Actions"
8. Enforcement
9. Prosecutorial Discretion
10. Administrative Closure
11. Termination
12. Summary
13. Report
14. Rollup
15. Weekly

In connection with this request, and to comply with your legal obligations:

- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics.
- In conducting your search, please construe the term "record" in the broadest possible sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek all records, including electronic records, audiotapes, videotapes, and photographs, as well as texts, letters, emails, facsimiles, telephone messages, voice mail messages, and transcripts, notes, or minutes of any meetings, telephone conversations, or discussions.
- Our request includes any attachments to those records or other materials enclosed with a record when transmitted. If an email is responsive to our request, then our request includes all prior messages sent or received in that email chain, as well as any attachments.
- Please search all relevant records or systems containing records regarding agency business. Do not exclude records regarding agency business contained in files, email accounts, or devices in the personal custody of your officials, such as personal email accounts or text messages. Records of official business conducted using unofficial systems or stored outside of official files are subject to the Federal Records Act and FOIA. It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; AFL has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, by intent or through negligence, failed to meet their obligations.
- Please use all tools available to your agency to conduct a complete and efficient search for potentially responsive records. Agencies are subject to governmentwide requirements to manage agency information electronically, and many agencies have adopted the National Archives and Records Administration (NARA) Capstone program, or similar policies. These systems provide options for searching emails and other electronic records in a manner

that is reasonably likely to be more complete than just searching individual custodian files. For example, a custodian may have deleted a responsive email from his or her email program, but your agency's archiving tools may capture that email under Capstone. At the same time, custodian searches are still necessary; you may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.

- If some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If a request is denied in whole, please state specifically why it is not reasonable to segregate portions of the record for release.
- Please take appropriate steps to ensure that records responsive to this request are not deleted by the agency before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

### **III. Fee Waiver Request**

Per 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11, AFL requests a waiver of all search and duplication fees associated with this request.

First, AFL is a qualified non-commercial public education and news media requester. AFL is a new organization, but it has already demonstrated its commitment to the public disclosure of documents and creation of editorial content through regular substantive analyses posted to its website. For example, its officials routinely appear on national television and use social media platforms to disseminate the information it has obtained about federal government activities. In this case, AFL will make your records and your responses publicly available for the benefit of citizens, scholars, and others. The public's understanding of your policies and practices will be enhanced through AFL's analysis and publication of the requested records. As a nonprofit organization, AFL does not have a commercial purpose and the release of the information requested is not in AFL's financial interest.

Second, waiver is proper as disclosure of the requested information is "in the public interest because it is likely to contribute significantly to public understanding of operations or activities of the government." The public has a significant interest in the enforcement of its laws, especially here where, it seems, ICE is being prevented from enforcing the law. Records with the potential to shed light on this issue would contribute significantly to public understanding of operations of the federal government, including whether and to what extent the Department of Homeland Security and/or the White House comply with applicable statutes and judicial

decisions, respect the rule of law, and protect the borders and security of the United States.

#### **IV. Production**

To accelerate release of responsive records, AFL welcomes production on an agreed rolling basis.

If possible, please provide responsive records in an electronic format by email. Alternatively, please provide responsive records in native format or in PDF format on a USB drive. Please send any responsive records being transmitted by mail to America First Legal Foundation, 600 14<sup>th</sup> Street NW, 5<sup>th</sup> Floor, Washington, D.C. 20005.

#### **V. Conclusion**

If you have any questions about how to construe this request for records or believe further discussions regarding search and processing would facilitate a more efficient production of records of interest to AFL, please do not hesitate to contact me at [info@aflegal.org](mailto:info@aflegal.org).

Thank you,

/s/ Gene P. Hamilton

Gene P. Hamilton

America First Legal Foundation

# **EXHIBIT D**



AFL Info <info@aflegal.org>

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## Request Acknowledgement by Department of Homeland Security

1 message

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palhelpdesk@hq.dhs.gov <palhelpdesk@hq.dhs.gov>  
To: info@aflegal.org

Wed, May 19, 2021 at 10:10 AM

Dear Gene Hamilton,

Request Number 2021-ICFO-35173 has been assigned to the request you submitted. In all future correspondence regarding this request please reference request number 2021-ICFO-35173.

Regards,

Department of Homeland Security

# **EXHIBIT E**



AFL Info &lt;info@aflegal.org&gt;

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**Status Update for Request #2021-ICFO-35173**

1 message

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**palhelpdesk@hq.dhs.gov** <palhelpdesk@hq.dhs.gov>  
To: info@aflegal.org

Wed, May 19, 2021 at 10:10 AM

Dear Gene Hamilton,

The status of your ICE FOIA request #2021-ICFO-35173 has been updated to the following status 'Received'. To log into the Department of Homeland Security PAL click on the Application URL below.

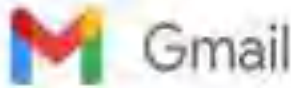
[HTTPS://foiarequest.dhs.gov](https://foiarequest.dhs.gov)

Sincerely,

Department of Homeland Security



# **EXHIBIT F**



AFL Info &lt;info@aflegal.org&gt;

**ICE FOIA Request 2021-ICFO-35173**

2 messages

ice-foia@dhs.gov <ice-foia@dhs.gov>  
To: info@aflegal.org

Sat, May 22, 2021 at 7:05 AM

May 22, 2021

Gene Hamilton  
600 14th Street NW  
5th Floor  
Washington, D.C., DC 20005**RE: ICE FOIA Case Number 2021-ICFO-35173**

Dear Mr. Hamilton:

This acknowledges receipt of your May 19, 2021, Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), for A. All "written reports" referred to in the subsection titled "Weekly Reporting of All Enforcement And Removal Actions" on page 7 of a memorandum from Tae D. Johnson to "All ICE Employees" with a subject line of "Interim Guidance: Civil Immigration Enforcement and Removal Priorities" (Feb. 18, 2021) (the "Interim Guidance"), whether the reports be termed "Reports", "Summaries", "Rollups", or otherwise. The timeframe for this request is February 18, 2021 to the date of production of the requested records. B. All records, including, but not limited to, electronic mail, texts, memoranda, and handwritten notes, of, regarding, referring, or relating to the Interim Guidance from, to, or in the possession of each of the following Immigration and Customs Enforcement ("ICE") components: 1. Office of the Director of ICE 2. Office of the Deputy Director 3. Office of Policy and Planning 4. Office of the Executive Associate Director, Enforcement and Removal Operations 5. Office of the Executive Associate Director, Homeland Security Investigations 6. Office of the Principal Legal Advisor 7. Office of the Executive Associate Director, Management and Administration The timeframe for this request is January 20, 2021, to date of production of the requested records. C. All records, including, but not limited to electronic mail, texts, memoranda, and handwritten notes, of, regarding, referring, or relating to the interim civil immigration enforcement and removal priorities described in a memorandum issued by Acting Secretary Pecoske and titled "Review of and Interim Revision to Civil Immigration Enforcement and Removal Policies and Priorities" (Jan. 20, 2021) (the "Priorities Memo") within the possession if ICE. The timeframe for this request is January 20, 2021 to the date of production of the requested records. (Date Range for Record Search: From 01/20/2021 To 05/19/2021). Your request was received in this office on May 19, 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.

Provisions of the FOIA allow us to recover part of the cost of complying with your request. We shall charge you for records in accordance with the DHS Interim FOIA regulations as they apply to educational requesters. As an educational requester, you will be charged 10 cents per page for duplication; the first 100 pages are free. We will construe the submission of your request as an agreement to pay up to \$25.00. You will be contacted before any further fees are accrued.

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

Your request has been assigned reference number **2021-ICFO-35173**. 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-35173 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, Fernando Pineiro, 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)

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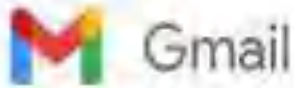
**AFL Info** <[info@aflegal.org](mailto:info@aflegal.org)>

Tue, May 25, 2021 at 11:16 AM

To: Gene Hamilton <[gene.hamilton@aflegal.org](mailto:gene.hamilton@aflegal.org)>, Andrew Block <[andrew.block@aflegal.org](mailto:andrew.block@aflegal.org)>

[Quoted text hidden]

# **EXHIBIT G**



AFL FOIA &lt;foia@aflegal.org&gt;

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**Status Update for 2021-ICFO-35173**

1 message

AFL FOIA &lt;foia@aflegal.org&gt;

Fri, Jul 16, 2021 at 5:00 PM

To: ice-foia@ice.dhs.gov

Bcc: Gene Hamilton &lt;gene.hamilton@aflegal.org&gt;, Andrew Block &lt;andrew.block@aflegal.org&gt;, Reed Rubinstein &lt;reed.rubinstein@aflegal.org&gt;

Good afternoon,

I am writing seeking a status update for FOIA request 2021-ICFO-35173. This was a request for simple reports that ICE produces on a weekly basis that should require few, if any, redactions. ICE immediately invoked a 10-day extension, although it was likely not necessary. Nevertheless, the due date for this request was June 30, which AFL did not object to. We followed up with a request for a timeline on July 8, and still have not heard back.

It is now COB July 16. Please provide us with a status update of when we can expect documents by COB, Wednesday, July 21, 2021, or we will be forced to consider alternate legal remedies.

Sincerely,  
America First Legal Foundation

# **EXHIBIT H**



AFL Info &lt;info@aflegal.org&gt;

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**Status Update for Request #2021-ICFO-35173**

1 message

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**palhelpdesk@hq.dhs.gov** <palhelpdesk@hq.dhs.gov>  
To: info@aflegal.org

Thu, Jul 22, 2021 at 12:47 PM

Dear Reed Rubinstein,

The status of your ICE FOIA request #2021-ICFO-35173 has been updated to the following status 'In Process'. To log into the Department of Homeland Security PAL click on the Application URL below.

[HTTPS://foiarequest.dhs.gov](https://foiarequest.dhs.gov)

Sincerely,  
DHS

CIVIL COVER SHEET

JS-44 (Rev. 11/2020 DC)

<p><b>I. (a) PLAINTIFFS</b> AMERICA FIRST LEGAL FOUNDATION</p> <p>(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF <u>11001</u> (EXCEPT IN U.S. PLAINTIFF CASES)</p>	<p><b>DEFENDANTS</b> U.S. DEPARTMENT OF HOMELAND SECURITY U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT</p> <p>COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT <u>11001</u> (IN U.S. PLAINTIFF CASES ONLY)</p> <p><small>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED</small></p>
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<p>(c) ATTORNEYS (FIRMNAME, ADDRESS, AND TELEPHONE NUMBER) Brian J. Field Schaerr   Jaffe LLP 1717 K Street NW, Suite 900, Washington, DC 20006 (202) 787-1060</p>	<p>ATTORNEYS (IF KNOWN)</p>
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<p><b>II. BASIS OF JURISDICTION</b> (PLACE AN x IN ONE BOX ONLY)</p> <p><input type="radio"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="radio"/> 2 U.S. Government Defendant</p> <p><input type="radio"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)</p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) <b>FOR DIVERSITY CASES ONLY!</b></p> <table style="width:100%; border: none;"> <tr> <td style="border: none;"></td> <td style="border: none; text-align: center;"><b>PTF</b></td> <td style="border: none; text-align: center;"><b>DFT</b></td> <td style="border: none;"></td> <td style="border: none; text-align: center;"><b>PTF</b></td> <td style="border: none; text-align: center;"><b>DFT</b></td> </tr> <tr> <td style="border: none;">Citizen of this State</td> <td style="border: none; text-align: center;"><input type="radio"/> 1</td> <td style="border: none; text-align: center;"><input type="radio"/> 1</td> <td style="border: none;">Incorporated or Principal Place of Business in This State</td> <td style="border: none; text-align: center;"><input type="radio"/> 4</td> <td style="border: none; text-align: center;"><input type="radio"/> 4</td> </tr> <tr> <td style="border: none;">Citizen of Another State</td> <td style="border: none; text-align: center;"><input type="radio"/> 2</td> <td style="border: none; text-align: center;"><input type="radio"/> 2</td> <td style="border: none;">Incorporated and Principal Place of Business in Another State</td> <td style="border: none; text-align: center;"><input type="radio"/> 5</td> <td style="border: none; text-align: center;"><input type="radio"/> 5</td> </tr> <tr> <td style="border: none;">Citizen or Subject of a Foreign Country</td> <td style="border: none; text-align: center;"><input type="radio"/> 3</td> <td style="border: none; text-align: center;"><input type="radio"/> 3</td> <td style="border: none;">Foreign Nation</td> <td style="border: none; text-align: center;"><input type="radio"/> 6</td> <td style="border: none; text-align: center;"><input type="radio"/> 6</td> </tr> </table>		<b>PTF</b>	<b>DFT</b>		<b>PTF</b>	<b>DFT</b>	Citizen of this State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input type="radio"/> 4	<input type="radio"/> 4	Citizen of Another State	<input type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input type="radio"/> 5	<input type="radio"/> 5	Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6
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Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6																				

**IV. CASE ASSIGNMENT AND NATURE OF SUIT**

(Place an X in one category, A-N, that best represents your Cause of Action and one in a corresponding Nature of Suit)

<p><input type="radio"/> <b>A. Antitrust</b></p> <p><input type="checkbox"/> 410 Antitrust</p>	<p><input type="radio"/> <b>B. Personal Injury/Malpractice</b></p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel &amp; Slander</p> <p><input type="checkbox"/> 330 Federal Employers Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p> <p><input type="checkbox"/> 362 Medical Malpractice</p> <p><input type="checkbox"/> 365 Product Liability</p> <p><input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Product Liability</p>	<p><input type="radio"/> <b>C. Administrative Agency Review</b></p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><u>Social Security</u></p> <p><input type="checkbox"/> 861 HIA (1395ff)</p> <p><input type="checkbox"/> 862 Black Lung (923)</p> <p><input type="checkbox"/> 863 DIWC/DIWW (405(g))</p> <p><input type="checkbox"/> 864 SSID Title XVI</p> <p><input type="checkbox"/> 865 RSI (405(g))</p> <p><u>Other Statutes</u></p> <p><input type="checkbox"/> 891 Agricultural Acts</p> <p><input type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 890 Other Statutory Actions (If Administrative Agency is Involved)</p>	<p><input type="radio"/> <b>D. Temporary Restraining Order/Preliminary Injunction</b></p> <p>Any nature of suit from any category may be selected for this category of case assignment.</p> <p>*(If Antitrust, then A governs)*</p>
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<p><input type="radio"/> <b>E. General Civil (Other)</b>                                  <b>OR</b>                                  <input type="radio"/> <b>F. Pro Se General Civil</b></p>			
<p><u>Real Property</u></p> <p><input type="checkbox"/> 210 Land Condemnation</p> <p><input type="checkbox"/> 220 Foreclosure</p> <p><input type="checkbox"/> 230 Rent, Lease &amp; Ejectment</p> <p><input type="checkbox"/> 240 Torts to Land</p> <p><input type="checkbox"/> 245 Tort Product Liability</p> <p><input type="checkbox"/> 290 All Other Real Property</p> <p><u>Personal Property</u></p> <p><input type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p>	<p><u>Bankruptcy</u></p> <p><input type="checkbox"/> 422 Appeal 27 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p><u>Prisoner Petitions</u></p> <p><input type="checkbox"/> 535 Death Penalty</p> <p><input type="checkbox"/> 540 Mandamus &amp; Other</p> <p><input type="checkbox"/> 550 Civil Rights</p> <p><input type="checkbox"/> 555 Prison Conditions</p> <p><input type="checkbox"/> 560 Civil Detainee – Conditions of Confinement</p> <p><u>Property Rights</u></p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input type="checkbox"/> 830 Patent</p> <p><input type="checkbox"/> 835 Patent – Abbreviated New Drug Application</p> <p><input type="checkbox"/> 840 Trademark</p> <p><input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 (DTSA)</p>	<p><u>Federal Tax Suits</u></p> <p><input type="checkbox"/> 870 Taxes (US plaintiff or defendant)</p> <p><input type="checkbox"/> 871 IRS-Third Party 26 USC 7609</p> <p><u>Forfeiture/Penalty</u></p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 690 Other</p> <p><u>Other Statutes</u></p> <p><input type="checkbox"/> 375 False Claims Act</p> <p><input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))</p> <p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 430 Banks &amp; Banking</p> <p><input type="checkbox"/> 450 Commerce/ICC Rates/etc</p> <p><input type="checkbox"/> 460 Deportation</p> <p><input type="checkbox"/> 462 Naturalization Application</p>	<p><input type="checkbox"/> 465 Other Immigration Actions</p> <p><input type="checkbox"/> 470 Racketeer Influenced &amp; Corrupt Organization</p> <p><input type="checkbox"/> 480 Consumer Credit</p> <p><input type="checkbox"/> 485 Telephone Consumer Protection Act (TCPA)</p> <p><input type="checkbox"/> 490 Cable/Satellite TV</p> <p><input type="checkbox"/> 850 Securities/Commodities/Exchange</p> <p><input type="checkbox"/> 896 Arbitration</p> <p><input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision</p> <p><input type="checkbox"/> 950 Constitutionality of State Statutes</p> <p><input type="checkbox"/> 890 Other Statutory Actions (if not administrative agency review or Privacy Act)</p>



<input type="radio"/> <b>G. Habeas Corpus/ 2255</b>  <input type="checkbox"/> 530 Habeas Corpus – General <input type="checkbox"/> 510 Motion/Vacate Sentence <input type="checkbox"/> 463 Habeas Corpus – Alien Detainee	<input type="radio"/> <b>H. Employment Discrimination</b>  <input type="checkbox"/> 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation)  *(If pro se, select this deck)*	<input checked="" type="radio"/> <b>I. FOIA/Privacy Act</b>  <input checked="" type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act)  *(If pro se, select this deck)*	<input type="radio"/> <b>J. Student Loan</b>  <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (excluding veterans)
<input type="radio"/> <b>K. Labor/ERISA (non-employment)</b>  <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> <b>L. Other Civil Rights (non-employment)</b>  <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Americans w/Disabilities – Employment <input type="checkbox"/> 446 Americans w/Disabilities – Other <input type="checkbox"/> 448 Education	<input type="radio"/> <b>M. Contract</b>  <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran’s Benefits <input type="checkbox"/> 160 Stockholder’s Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> <b>N. Three-Judge Court</b>  <input type="checkbox"/> 441 Civil Rights – Voting (if Voting Rights Act)

**V. ORIGIN**  
 1 Original Proceeding  
  2 Removed from State Court  
  3 Remanded from Appellate Court  
  4 Reinstated or Reopened  
  5 Transferred from another district (specify)  
  6 Multi-district Litigation  
  7 Appeal to District Judge from Mag. Judge  
  8 Multi-district Litigation – Direct File

**VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)**  
 Under U.S.C. § 552, Defendants are required to disclose all non-exempt records responsive to Plaintiff’s FOIA requests.

<b>VII. REQUESTED IN COMPLAINT</b>	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	<b>DEMAND \$</b> <b>JURY DEMAND:</b>	Check YES only if demanded in complaint YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
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<b>VIII. RELATED CASE(S) IF ANY</b>	(See instruction)	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	If yes, please complete related case form
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DATE: 08/13/2021	SIGNATURE OF ATTORNEY OF RECORD /s/ Brian J. Field
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**INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44**  
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil coversheet. These tips coincide with the Roman Numerals on the cover sheet.

- I.** COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III.** CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV.** CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI.** CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII.** RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk’s Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

AMERICA FIRST LEGAL FOUNDATION

\_\_\_\_\_  
*Plaintiff*

v.

Civil Action No.

U.S. DEPARTMENT OF HOMELAND SECURITY

\_\_\_\_\_  
*Defendant*

**SUMMONS IN A CIVIL ACTION**

To: *(Defendant's name and address)*

U.S. DEPARTMENT OF HOMELAND SECURITY  
2707 Martin Luther King Jr. Ave, SE  
Washington, DC 20528

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Brian J. Field  
Schaerr | Jaffe LLP  
1717 K Street NW  
Suite 900  
Washington, DC 20006

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

*ANGELA D. CAESAR, CLERK OF COURT*

Date: \_\_\_\_\_

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

AMERICA FIRST LEGAL FOUNDATION

\_\_\_\_\_  
*Plaintiff*

v.

U.S. DEPARTMENT OF HOMELAND SECURITY

\_\_\_\_\_  
*Defendant*

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Civil Action No.

**SUMMONS IN A CIVIL ACTION**

To: *(Defendant's name and address)*

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT  
500 12th Street, SW  
Washington, DC 20536

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Brian J. Field  
Schaerr | Jaffe LLP  
1717 K Street NW  
Suite 900  
Washington, DC 20006

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

*ANGELA D. CAESAR, CLERK OF COURT*

Date: \_\_\_\_\_

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

AMERICA FIRST LEGAL FOUNDATION

*Plaintiff*

v.

U.S. DEPARTMENT OF HOMELAND SECURITY

*Defendant*

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Civil Action No.

**SUMMONS IN A CIVIL ACTION**

To: *(Defendant's name and address)*

Merrick B. Garland, United States Attorney General  
United States Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Brian J. Field  
Schaerr | Jaffe LLP  
1717 K Street NW  
Suite 900  
Washington, DC 20006

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

*ANGELA D. CAESAR, CLERK OF COURT*

Date: \_\_\_\_\_

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

AMERICA FIRST LEGAL FOUNDATION

\_\_\_\_\_  
*Plaintiff*

v.

U.S. DEPARTMENT OF HOMELAND SECURITY

\_\_\_\_\_  
*Defendant*

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Civil Action No.

**SUMMONS IN A CIVIL ACTION**

To: *(Defendant's name and address)*

Channing D. Phillips  
Acting U.S. Attorney for the District of Columbia  
Civil Process Clerk  
555 Fourth Street, NW  
Washington, DC 20530

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Brian J. Field  
Schaerr | Jaffe LLP  
1717 K Street NW  
Suite 900  
Washington, DC 20006

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

*ANGELA D. CAESAR, CLERK OF COURT*

Date: \_\_\_\_\_

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*