

1 W. Hardy Callcott (CABN 196373)  
hcallcott@sidley.com  
2 Sue Wang (CABN 286247)  
sue.wang@sidley.com  
3 Wesley Chao (CABN 324077)  
wchao@sidley.com  
4 SIDLEY AUSTIN LLP  
555 California Street, Suite 2000  
5 San Francisco, CA 94104  
Telephone: (415) 772-1200  
6 Facsimile: (415) 772-7400

7 Emily Creighton (*Pro hac vice* forthcoming)  
ECreighton@immcouncil.org  
8 Raul Pinto (*Pro hac vice* forthcoming)  
RPinto@immcouncil.org  
9 American Immigration Council  
1331 G St. NW, Suite 200  
10 Washington, D.C. 20005  
Telephone: (202) 507-7514  
11

12 Attorneys for Plaintiffs  
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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W. Hardy Callcott (CABN 196373)  
hcallcott@sidley.com  
Sue Wang (CABN 286247)  
sue.wang@sidley.com  
Wesley Chao (CABN 324077)  
wchao@sidley.com  
SIDLEY AUSTIN LLP  
555 California Street, Suite 2000  
San Francisco, CA 94104  
Telephone: (415) 772-1200  
Facsimile: (415) 772-7400



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American Immigration Council  
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Washington, D.C. 20005  
Telephone: (202) 507-7514

Attorneys for Plaintiffs  
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