

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

BLACK ALLIANCE FOR JUST
IMMIGRATION; AMERICAN
IMMIGRATION COUNCIL;
AMERICAN CIVIL LIBERTIES UNION
OF SAN DIEGO & IMPERIAL
COUNTIES and AMERICAN CIVIL
LIBERTIES UNION OF TEXAS,

Plaintiffs,

v.

U.S. CUSTOMS AND BORDER
PROTECTION,

Defendant.

Civil Action No. 20-cv-5198

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

INTRODUCTION

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, seeking to compel the release of records by U.S. Customs and Border Protection (CBP) relating to CBP’s surveillance of, and deployment of CBP personnel to, protests in various U.S. cities following the killing of George Floyd by Minnesota police officers on May 25, 2020.

2. CBP, a sub-component of the Department of Homeland Security (DHS), is a federal law enforcement agency with a long history of abusive policing tactics, including the use of racially derogatory language towards migrants and members of Congress and the repeated, egregious use of excessive force. Moreover, CBP routinely evades scrutiny and accountability for its misconduct. This combination of systemic misconduct and impunity necessitates timely public scrutiny of CBP operations as the agency extends its reach to policing domestic protests within the United States. The need for public information is all the more urgent in light of reporting that CBP continues to

prepare for further deployments to U.S. cities under the pretext of further unrest following the presidential election.

3. Plaintiffs are non-governmental organizations that have long documented and exposed CBP abuses and the agency's lack of accountability. They seek records via FOIA to further public understanding of the contours and legality of CBP's involvement in domestic policing. Plaintiffs also seek data to understand the impact of CBP policing on individuals, in the form of apprehensions, arrests, deportations, or other legal actions. Plaintiffs' request embodies the hallmark of FOIA: the demand for records to provide the public with information about the operations of a federal government agency.

4. Plaintiffs filed their FOIA request on July 28, 2020, invoking expedited treatment given its urgent nature. While CBP acknowledged receipt of Plaintiffs' FOIA request on July 28, 2020 and granted expedited treatment to the request on the same day, to date, it has failed to act on Plaintiffs' request. Plaintiffs now seek judicial review as permitted by statute.

JURISDICTION AND VENUE

5. This Court has jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

6. This Court has jurisdiction to grant declaratory and further proper relief pursuant to 5 U.S.C. § 552(a)(4)(B), 28 U.S.C. §§ 2201–2202 and Federal Rules of Civil Procedure 57 and 65.

7. Venue lies in this District under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e) because Plaintiff Black Alliance for Just Immigration (BAJI) resides in this district.

PARTIES

8. Plaintiff Black Alliance for Just Immigration (BAJI) is a not-for-profit organization. BAJI is a racial justice and migrant rights organization which engages in legal representation, advocacy, community organizing, and cross-cultural alliance-building in order to end the criminalization and economic disenfranchisement of African American and Black immigrant communities. BAJI works with local community groups to educate impacted communities in understanding their rights and responding to increased militarized police presence in their communities. To further its mission, BAJI creates and disseminates presentations, reports, articles, interviews, testimony, and social media to educate the public about the activities of the United States government as it relates to Black immigrant communities. Obtaining information about government activity, analyzing that information, and disseminating that information to the press and public are critical components of BAJI's work.

9. Plaintiff American Immigration Council ("the Council"), a not-for-profit organization established to increase public understanding of immigration law and policy, advocates for the fair and just administration of U.S. immigration laws, protects the legal rights of noncitizens and citizens, and educates the public about the enduring contributions of immigrants. Through research and analysis, the Council has become a leading resource for policymakers at the national, state, and local levels who seek to understand the power and potential of immigration and to develop policies that are based on facts rather than myths. The Council also seeks to hold the government accountable for unlawful conduct, restrictive interpretations of the law, and for failing

to ensure that the immigration laws are implemented and executed in a manner that comports with due process through the pursuit of transparency and impact litigation.

10. Plaintiff American Civil Liberties Union of San Diego and Imperial Counties (ACLU SDIC) is an affiliate of the ACLU. The ACLU is “primarily engaged in disseminating information” within the meaning of the FOIA. 5 U.S.C. § 552(a)(6)(E)(v)(II). See also 6 C.F.R. § 5.5(e)(1)(ii). Obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public are critical and substantial components of the ACLU’s work and are among its primary activities. *See ACLU v. U.S. Dep’t of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding non-profit public interest group that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience” to be “primarily engaged in disseminating information”). The ACLU does this work alone and with our national partners and allies. The ACLU SDIC regularly issues press statements (and shares statements generated by the National ACLU and other California affiliates) and creates and shares talking points, memos, and fact sheets with community partners and the public at large. The ACLU SDIC also disseminates information via its various social media platforms. Most recently, the ACLU SDIC published tens of thousands of pages of documents related to CBP’s mistreatment of minors in agency custody, obtained via the FOIA.

11. Plaintiff American Civil Liberties Union of Texas is an affiliate of the ACLU. The ACLU of Texas is “primarily engaged in disseminating information” within the meaning of the FOIA. 5 U.S.C. § 552(a)(6)(E)(v)(II). See also 6 C.F.R. § 5.5(e)(1)(ii). Obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public are critical and substantial components of the ACLU’s

work and are among its primary activities. *See ACLU v. U.S. Dep't of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding non-profit public interest group that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience” to be “primarily engaged in disseminating information”). The ACLU of Texas, which houses the Border Rights Center, does this work alone and with national partners and allies. The ACLU of Texas regularly creates and disseminates works in the form of presentations, reports, articles, interviews, testimony, social media, and blog posts to educate the public about the activities of the United States government—including works containing information gained through information requests to the government. The ACLU of Texas also regularly publishes “know your rights” materials, fact sheets, and educational brochures and pamphlets designed to educate the public about civil liberties issues and government policies that implicate civil rights and civil liberties.

12. Defendant CBP is a component agency of DHS and an agency within the meaning of 5 U.S.C. § 552(f). Its law enforcement mandate is tied to U.S. borders and ports of entry. CBP possess the records that Plaintiffs seek.

STATEMENT OF FACTS

CBP's History of Misconduct and Impunity

13. According to its website, CBP “is one of the world’s largest law enforcement organizations and is charged with keeping terrorists and their weapons out of the [United States] while facilitating lawful international travel and trade.”¹ CBP’s recent deployment to domestic protests within the United States strays far from this mandate and warrants public scrutiny.

¹ Customs and Border Protection, *About CBP* (Sept. 18, 2019), <https://www.cbp.gov/about>.

14. CBP has a long history of troubling enforcement tactics and mistreatment of people in its custody. Journalists, human rights observers, and non-governmental organizations—including Plaintiffs—have extensively documented unlawful and abusive policing practices by CBP officials. This includes the use of racial profiling, unjustified shootings and other use of excessive force, as well as unlawful arrests and deportations.² CBP misconduct, including the use of racially derogatory language and the repeated physical and verbal abuse of individuals in the agency's custody, has caused significant public concern.³

15. CBP's concerning tactics have been ongoing for decades.⁴

² See generally *Hold CBP Accountable: Stopping U.S. Customs and Border Protection (CBP) Abuse*, <https://holdcbpaccountable.org/abuses/>; see also, e.g., John Washington, "Kick Ass, Ask Questions Later": A Border Patrol Whistleblower Speaks Out About Culture of Abuse Against Migrants, *The Intercept* (Sept. 20, 2018), <https://theintercept.com/2018/09/20/border-patrol-agent-immigrant-abuse/>; Garrett M. Graff, *The Green Monster: How the Border Patrol Became America's Most Out-of-Control Law Enforcement Agency*, *Politico* (Nov./Dec. 2014), <https://www.politico.com/magazine/story/2014/10/border-patrol-the-green-monster-112220>.

³ See, e.g., American Civil Liberties Union of San Diego & Imperial Counties, et al., *Administrative Complaint Re: U.S. Border Patrol's Verbal Abuse of Detained Individuals* (July 2020), <https://www.aclusandiego.org/wp-content/uploads/2020/07/2020-07-07-OIG-Complaint-4-FINAL.pdf>; Garrett M. Graff, *The Border Patrol Hits a Breaking Point*, *Politico* (July 15, 2019), <https://www.politico.com/magazine/story/2019/07/15/border-patrol-trump-administration-227357>; Univ. of Chicago Law School Int'l Human Rights Clinic, et al., *Neglect and Abuse of Unaccompanied Immigrant Children by U.S. Customs and Border Protection*, at 10-13 (May 2018), <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1001&context=ihr>; Sara Campos & Guillermo Cantor, Am. Immigr. Council, *Deportations in the Dark: Lack of Process and Information in the Removal of Mexican Migrants*, at 13-16 (Sept. 2017), <https://www.americanimmigrationcouncil.org/research/deportations-dark>; Guillermo Cantor & Walter Ewing, Am. Immigr. Council, *Still No Action Taken: Complaints Against Border Patrol Agents Continue to Go Unanswered*, at 8 (Aug. 2017), <https://www.americanimmigrationcouncil.org/research/still-no-action-taken-complaints-against-border-patrol-agents-continue-go-unanswered>.

⁴ See, e.g., Daniel E. Martinez, Guillermo Cantor & Walter Ewing, Am. Immigr. Council, *No Action Taken: Lack of CBP Accountability in Responding to Complaints of Abuse* (May 2014), <https://www.americanimmigrationcouncil.org/research/no-action-taken-lack-cbp-accountability-responding-complaints-abuse>; Cantor & Ewing, *Still No Action Taken*, *supra* n. 3 (examining records of alleged misconduct by Border Patrol employees).

16. In July 2019, media outlets reported that thousands of CBP officers were members of a Facebook group in which CBP officers mocked a father and his toddler who drowned while attempting to enter the United States.⁵ The same Facebook group members engaged in abusive, racist language about members of Congress—and then attempted to delete the posts.⁶ In the same month, journalists reported that CBP officers forced a noncitizen to walk in front of other detainees holding a sign identifying himself as attracted to men,⁷ detained children in “poor conditions that are not pure byproducts of overcrowding,”⁸ sexually assaulted a child in CBP custody, and retaliated against other children for protesting the conditions of their confinement.⁹

17. CBP continually evades responsibility for its actions and operates in a culture of secrecy and impunity. Complaints by migrants who have come forward to raise allegations of verbal, physical, and sexual abuse go unheard and unchecked.¹⁰

⁵ A.C. Thompson, *Inside the Secret Border Patrol Facebook Group Where Agents Joke About Migrant Deaths and Post Sexist Memes*, ProPublica (July 1, 2019, 10:55 AM), <https://bit.ly/2YyJXfu>.

⁶ *Id.*; see also Ryan Deveraux, *Border Patrol Agents Tried to Delete Racist and Obscene Facebook Posts. We Archived Them*, The Intercept (July 5, 2019), <https://theintercept.com/2019/07/05/border-patrol-facebook-group/>.

⁷ Nick Valencia et al., *Border Patrol agents allegedly tried to shame a migrant by making him hold a sign reading ‘I like men,’ emails show*, CNN (July 4, 2019, 4:58 PM), <https://cnn.it/2mPKOes>.

⁸ Jacob Soboroff & Julia Ainsley, *Migrant kids in overcrowded Arizona border station allege sex assault, retaliation from U.S. agents*, NBC News (July 9, 2019, 8:30 PM), <https://nbcnews.to/2LbfbGP>; see also Simon Romero et al., *Hungry, Scared and Sick: Inside the Migrant Detention Center in Clint, Tex.*, N.Y. Times (July 9, 2019), <https://nyti.ms/2L7dREA>.

⁹ See Soboroff & Ainsley, *supra*.

¹⁰ See, e.g., Martinez, Cantor & Ewing, *No Action Taken*, *supra* n. 4; Cantor & Ewing, *Still No Action Taken*, *supra* n. 3.

18. Earlier this year, CBP successfully obtained “security agency” status, shielding “all CBP employee names from subsequent responses to [FOIA] requests or other public disclosures for CBP employee data.”¹¹

19. Building on this trend towards further secrecy, CBP recently sought approval from the National Archives and Records Administration (NARA) to destroy various types of records pertaining to its misconduct.¹² These include documents held by CBP, including witness testimony and other evidence, due to complaints made to the DHS Office of Civil Rights and Civil Liberties (CRCL); complaints raised under the Prison Rape Elimination Act (PREA); and internal complaints and criminal investigations concerning CBP personnel. In some cases, records could be destroyed in as soon as four years.¹³

20. Rather than accountability, CBP instead enjoys an astronomical budget of \$18.2 billion for FY 2020—a 19% increase over FY 2019—and an increased number of personnel.¹⁴ Most troubling, CBP’s reach has gone beyond its law enforcement mandate to patrol the U.S. borders and monitor trade.

¹¹ Ken Klippenstein, *Exclusive: Customs and Border Protection Gains an Extra Layer of Secrecy*, *The Nation* (Feb. 4, 2020), <https://www.thenation.com/article/politics/cbp-security-agency/> (quoting an CBP internal memo obtained by *The Nation*); Jessica K. Lang, *U.S. Customs and Border Protection Designated ‘Security Agency,’* *The Nat’l Law Review* (Feb. 24, 2020), <https://www.natlawreview.com/article/us-customs-and-border-protection-designated-security-agency>.

¹² 85 FR 47248, National Records and Archives Administration (NARA), *Notice of Availability of Proposed Records Schedules, Request for Comments*; Alice Speri, *Homeland Security Wants to Erase Its History of Misconduct*, *The Intercept* (Oct. 6, 2020, 11:57 AM), <https://theintercept.com/2020/10/06/homeland-security-dhs-misconduct-records-erasure/>.

¹³ *Id.*

¹⁴ Executive Office of the President, *Border Security 2020 Fact Sheet: Strengthening Border Security and Immigration Enforcement*, https://www.whitehouse.gov/wp-content/uploads/2019/03/FY20-Fact-Sheet_Immigration-Border-Security_FINAL.pdf.

21. For example, in April of 2019, DHS surreptitiously implemented a pilot program in which CBP officers were tasked with the unprecedented role of conducting sensitive threshold screening interviews, known as “credible fear interviews,” that determine whether asylum-seekers can present their claims before an immigration judge.¹⁵ This screening role has been historically undertaken by asylum officers, who are trained in asylum law and in dealing with individuals suffering trauma after enduring persecution and arduous journeys to the United States. The assignment of CBP officers to this role drew criticism and concern, given the agency’s historical function as a law enforcement agency and its well-documented animosity towards asylum seekers.¹⁶

CBP Deployment Nationwide to Protests in the Aftermath of George Floyd Killing (“Floyd Protests”)

22. On May 25, 2020, George Floyd was killed by Minnesota police officers. Mr. Floyd’s killing triggered mass protests in cities across the United States.¹⁷ Protestors took to the

¹⁵ See Molly O’Toole, *Border Patrol agents, rather than asylum officers, interviewing families for ‘credible fear’*, L.A. Times (Sept. 19, 2019, 5:50 AM), <https://lat.ms/2mqC263>; Julia Ainsley, *Stephen Miller wants Border Patrol, not asylum officers, to determine migrant asylum claims*, NBC News (July 29, 2019, 7:31 PM), <https://nbcnews.to/2YpVQni>; Nick Miroff, *U.S. asylum screeners to take more confrontational approach as Trump aims to turn more migrants away at the border*, Wash. Post (May 7, 2019), <https://wapo.st/2JzaEe4>; Geneva Sands et al., *White House Backs Stephen Miller Proposal to Let Border Patrol Agents to Conduct Asylum Interviews*, CNN (May 8, 2019, 1:27 PM), <https://cnn.it/2ntS5AZ>.

¹⁶ See, e.g., John Washington, *Bad Information: Border Patrol Arrest Reports Are Full of Lies That Can Sabotage Asylum Claims*, The Intercept (Aug. 11, 2019, 12:20 PM), <https://bit.ly/2Kx6Zir>; Amnesty International, *‘You Don’t Have Any Rights Here’: Illegal Pushbacks, Arbitrary Detention & Ill-Treatment of Asylum-Seekers in the United States*, at 17. (2018), <https://www.amnesty.org/en/latest/research/2018/10/usa-treatment-of-asylum-seekers-southern-border/>; Shaw Drake et al., Human Rights First, *Crossing the Line: U.S. Border Agents Illegally Reject Asylum Seekers* (May 2017), <http://bit.ly/2pb69jd>; U.S. Comm’n on Int’l Religious Freedom, *Barriers to Protection: The Treatment of Asylum Seekers in Expedited Removal* (2016), <https://bit.ly/2uydMQ8>.

¹⁷ See, e.g., Alex Altman, *Why the Killing of George Floyd Sparked an American Uprising*, Time (June 4, 2020), <https://time.com/5847967/george-floyd-protests-trump/>.

streets to express outrage over Mr. Floyd's death, as well as to call for racial justice and police reform. These protests were met with stepped-up police presence as local law enforcement agencies throughout the country deployed additional officers to these gatherings.¹⁸

23. In early June, media outlets reported that CBP personnel and aerial surveillance, along with other DHS and federal agency personnel, had been deployed to the protests over Mr. Floyd's killing and accompanying calls for racial justice and police reform.¹⁹ These reports revealed that CBP and other DHS officers were present in various cities throughout the United States. Further, aerial surveillance recorded hours of footage at these largely peaceful gatherings.²⁰ A leaked CBP document would later reveal that purported requests from law enforcement agencies across the country resulted in 326.4 hours of aviation assets deployed and 2,174 agency personnel.²¹

24. As protests calling for racial justice and police reform continued, President Trump issued Executive Order No. 13933, "Protecting American Monuments, Memorials, and Statues and Combating Recent Criminal Violence" (Exec. Order No. 13933).²²

¹⁸ *Id.*

¹⁹ Jana Winter, *Leaked Document Reveals Details of Federal Law Enforcement Patrolling Washington Amid Protests*, YahooNews (June 5, 2020), <https://news.yahoo.com/exclusive-leaked-document-reveals-details-of-federal-law-enforcement-patrolling-washington-amid-protests-154138680.html>; Geneva Sands, *Customs and Border Protection Drone Flew Over Minneapolis to Provide Live Video to Law Enforcement*, CNN (May 29, 2020), <https://www.cnn.com/2020/05/29/politics/cbp-drone-minneapolis/index.html>.

²⁰ Zolan Kanno-Youngs, *U.S. Watched George Floyd Protests in 15 Cities Using Aerial Surveillance*, N.Y. Times (June 19, 2020), <https://www.nytimes.com/2020/06/19/us/politics/george-floyd-protests-surveillance.html>; Sands, *Customs and Border Protection Drone*, *supra* n. 19.

²¹ Ken Klippenstein, *The Federal Response to Protests Extends Far Beyond Portland*, The Nation (July 23, 2020), <https://www.thenation.com/article/society/cbp-deployment-harris/>.

²² See Exec. Order No. 13933, 85 Fed. Reg. 40081 (2020), <https://www.govinfo.gov/content/pkg/FR-2020-07-02/pdf/2020-14509.pdf>.

25. In direct response to Exec. Order No. 13933, DHS, as well as the Department of Justice (DOJ), took various non-transparent measures to purportedly implement the presidential directive. Among these, DHS created the “Protecting American Communities Task Force” (PACT), which includes “Rapid Deployment Teams” or “Rapid Deployment Forces” (RDTs or RDFs), roving teams composed of federal law enforcement officers to dispatch to protests.²³ These RDTs or RDFs have been deployed to support operations carried out in the name of Executive Order 13933, such as “Operation Diligent Valor” in Portland, and “Operation Legend” in various U.S. cities.²⁴

26. CBP and other federal law enforcement presence at peaceful protests has only served to exacerbate tensions and violence, drawing criticism from elected officials in the cities to which these RDTs/RDFs have been dispatched.²⁵

²³ In its official announcement, DHS referred to these roving units as “Rapid Deployment Teams” or RDTs. See Department of Homeland Security, “DHS Announces New Task Force to Protect American Monuments, Memorials, and Statues,” July 1, 2020, <https://www.dhs.gov/news/2020/07/01/dhs-announces-new-task-force-protect-american-monuments-memorials-and-statues>. However, federal officials have also referred to these patrols as “Rapid Deployment Forces” or RDFs. See Josh Gerstein, *Feds Assemble ‘Operation Diligent Valor’ Force to Battle Portland Unrest*, Politico (July 22, 2020, 9:37 AM), <https://www.politico.com/news/2020/07/22/federal-government-assembles-force-portland-unrest-377785> (quoting a court declaration by a federal official describing the actions of a “DHS Rapid Deployment Force”).

²⁴ Gerstein, *supra* n. 23; Sergio Olmos, et al., *Federal Officers Deployed in Portland Didn’t Have Proper Training, D.H.S. Memo Said*, N.Y. Times (July 21, 2020), <https://www.nytimes.com/2020/07/18/us/portland-protests.html>; Ken Klippenstein, *The Border Patrol Was Responsible for An Arrest in Portland*, The Nation (July 17, 2020), <https://www.thenation.com/article/society/border-patrol-portland-arrest/>.

²⁵ Letter from Speaker Nancy Pelosi to President Donald Trump (June 4, 2020), https://www.speaker.gov/sites/speaker.house.gov/files/06.04.2020.Letter%20to%20President%20Trump_2.pdf; Letter from Senator Kamala Harris to Mark A. Morgan, Acting Commissioner, U.S. CBP, and Matthew T. Albence, Acting Director, U.S. ICE (June 5, 2020), <https://www.harris.senate.gov/imo/media/doc/Harris%20Letter%20to%20CBP%20and%20ICE%20at%20Demonstrations%20FINAL.pdf>; see also, e.g., Klippenstein, *The Federal Response to Protests*, *supra* n. 21; Steve Vladeck, *What the Heck Are Federal Law Enforcement Officials*

27. DHS has expressed its continued intention to deploy personnel from various sub-agencies—including CBP—to assist with local law enforcement efforts around the country.²⁶ Recent reporting indicates that DHS is preparing to deploy CBP and Immigration & Customs Enforcement (ICE) tactical law enforcement teams under the alleged justification of potential civil unrest following the election.²⁷ As reporting indicates, CBP remains on “standby” at all times.²⁸

28. CBP’s expanded law enforcement role and its participation in PACT remains largely shielded by secrecy.

Plaintiffs’ FOIA Request

29. Plaintiffs seek information that will provide the public with critical insight into CBP’s recent deployments to U.S. cities—during Floyd Protests, as part of the Protecting American Communities Task Force, in “Operation Diligent Valor,” in “Operation Legend,” or in any other capacity—since May 25, 2020. Given that CBP’s core mandate is immigration-related law enforcement at U.S. borders, the public has a right to know the scope of CBP’s role in these deployments and understand the basis for CBP’s purported authority to engage in more generalized policing throughout the interior of the country.

Doing in Portland?, Lawfare (July 17, 2020), <https://www.lawfareblog.com/what-heck-are-federal-law-enforcement-officers-doing-portland>;

Gregory Pratt & Jeremy Goner, *Trump Expected to Send New Federal Force to Chicago This Week to Battle Violence, but Plan’s Full Scope Is a Question Mark*, Chicago Tribune (July 20, 2020), <https://www.chicagotribune.com/news/criminal-justice/ct-chicago-police-dhs-deployment-20200720-dftu5ychwbcxtg4ltarh5qnwma-story.html>.

²⁶ Caitlin Oprysko, *Trump Announces Plan to Send Federal Law Enforcement to Chicago, Albuquerque*, Politico (July 22, 2020, 6:28 PM), <https://www.politico.com/news/2020/07/22/trump-law-enforcement-chicago-albuquerque-378692> (describing deployments to additional U.S. cities under rubric of “Operation Legend”).

²⁷ Geneva Sands and Priscilla Alvarez, *Homeland Security agencies prepare for civil unrest amid heightened tensions nationwide*, CNN (October 26, 2020), <https://www.cnn.com/2020/10/26/politics/cbp-ice-prepare-for-unrest/index.html>.

²⁸ *Id.*

30. Plaintiffs filed their FOIA request on July 27, 2020. Ex. A, Plaintiffs' FOIA Request. Specifically, Plaintiffs requested,

“For the period beginning May 25, 2020 to the present, all records...mentioning, referring, or relating to”:

1) Requests, communications, and/or correspondence received by DHS, or CBP directly, regarding the deployment of CBP personnel to U.S. cities—whether at Floyd Protests, as part of the Protecting American Communities Task Force, or in any other capacity, anywhere in the United States;

2) Requests, communications and/or correspondence received by DHS or CBP for deployment of CBP aerial assets (including drones and helicopters) to U.S. cities, whether at Floyd Protests, as part of the Protecting American Communities Task Force, or in any other capacity, anywhere in the United States;

3) Final versions of policies, protocols and/or instructions outlining the procedures and criteria to which entities must adhere in order to request law enforcement assistance from CBP personnel, including the process for CBP's assessment and approval of such requests;

4) Final versions of directives, communications and/or other instructions authorizing the deployment of CBP personnel to U.S. cities, whether at Floyd Protests, as part of the Protecting American Communities Task Force, or in any other capacity, regardless of originating agency;

5) Final versions of directives, communications and/or other instructions regarding CBP's expected role and conduct during the deployment of CBP personnel to U.S. cities, whether at Floyd Protests, as part of the Protecting American Communities Task Force, or in any other capacity;

6) Final versions of documents summarizing, referring to, and/or stating the legal authority or authorities pursuant to which the deployment of CBP personnel to U.S. cities has occurred, whether at Floyd Protests, as part of the Protecting American Communities Task Force, or in any other capacity;

7) Final versions of all policies governing the use of, and/or documents stating the legal authority or authorities for, any surveillance (including but not limited to aerial surveillance) by CBP in U.S. cities, whether at Floyd Protests, as part of the Protecting American Communities Task Force, or in any other capacity;

8) All communications—including emails, cell phone texts and images—sent or received by CBP personnel from May 25, 2020 to the present, mentioning, referring, or relating to the deployment of CBP to U.S. cities, whether at Floyd Protests, as part of the Protecting American Communities Task Force, or in any other capacity;

31. Plaintiffs' request also asked for data as follows:

9) The total number of CBP personnel, per Field Office and/or Sector, deployed to U.S. cities, whether at Floyd Protests, as part of the Protecting American Communities Task Force, or in any other capacity; and

10) During the deployment of CBP to U.S. cities—whether at Floyd Protests, as part of the Protecting American Communities Task Force, or in any other capacity—the total number of individuals, by city and state:

- i. Apprehended by CBP (and the statutory basis for apprehension);
- ii. Detained by CBP (and the statutory basis for detention);
- iii. Arrested by CBP (and the statutory basis for arrest);
- iv. Whether the individual was a U.S. citizen or a foreign national (including immigration status, where applicable);
- v. For foreign nationals, whether CBP initiated removal proceedings (and the alleged statutory basis/bases for removability); and
- vi. For foreign nationals, whether CBP removed the individual from the United States or referred the person to ICE for removal (and the alleged statutory basis/bases for removal).

32. In their FOIA request, Plaintiffs defined “Floyd Protests” as follows: “For purposes of this FOIA request, ‘Floyd Protests’ are protests, demonstrations, or gatherings that occurred in the wake of Mr. Floyd’s death on May 25, 2020, regardless of attribution or official designation, *e.g.*, ‘Black Lives Matter’ protests or any other variation in name that reasonably relates to protests in the wake of Mr. Floyd’s death.” *Id.* at 1 n. 2.

33. Plaintiffs further defined “deployment of CBP to U.S. cities” as including, but not limited to, “all CBP deployments to U.S. cities from late May 2020 to the present, even those not yet publicly identified by name, including but not limited to: any U.S. Department of Homeland Security (DHS) Rapid Deployment Force (such as ‘Operation Diligent Valor’ in Portland, Oregon); any CBP deployments in support of other federal deployments (such as ‘Operation Legend’); and all CBP deployments as part of the DHS ‘Protecting American Communities Task Force’ (PACT), created in response to Executive Order 13933.” *Id.* at 1 n. 3.

34. Plaintiffs also requested a fee waiver because the information they sought is “likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the [requesters]....” *Id.* at 3-8; 5 U.S.C. § 552(a)(4)(A)(iii).

35. Plaintiffs further invoked expedited treatment of their FOIA request on the basis that the request met all four criteria for such treatment under the statute and agency regulations. *Id.* at 9-10; 5 U.S.C. § 552(a)(6)(E)(i); 6 C.F.R. § 5.5(e).

36. Plaintiffs received email confirmation from CBP that it had received Plaintiffs’ FOIA request by email on July 27, 2020. Ex. B, CBP Confirmation Email.

37. Plaintiffs then received an acknowledgment letter that CBP had received their FOIA Request on July 28, 2020. Ex. C, CBP Acknowledgment Letter.

38. In the same letter, CBP invoked an extension of 10 days, finding that Plaintiffs’ request entailed “a voluminous amount of separate and distinct records” *Id.*; 6 C.F.R. § 5.5(c); *see also* 5 U.S.C. § 552(a)(6)(B)(i). CBP assigned Plaintiffs’ FOIA request tracking number CBP-2020-068594. *Id.*

39. Also on July 28, Plaintiffs received various email communications from CBP.

40. In one email, CBP communicated to Plaintiffs that their FOIA request had been modified. Ex. D, CBP Modification Email.

41. As to Plaintiffs’ fee waiver request, CBP communicated its determination that the waiver was “not applicable as the request is not billable.” Ex. E, CBP July 28, 2020 Fee Waiver Disposition.

42. Last, CBP granted Plaintiffs’ request for expedited treatment in another email notification. Ex. F, CBP July 28, 2020 FOIA Expedited Disposition.

43. Nearly three months later, Plaintiffs have heard nothing further from CBP.

44. Because Defendants have failed to respond to Plaintiffs' FOIA request within the applicable statutory and regulatory periods, any administrative remedies are deemed exhausted. 5 U.S.C. § 552(a)(6)(C)(i).

45. Plaintiffs face ongoing and irreparable harm by Defendant's failure to provide a timely response to their FOIA.

**CLAIMS FOR RELIEF
FIRST CAUSE OF ACTION**

**Violation of the Freedom of Information Act, 5 U.S.C. § 552:
Failure to Conduct an Adequate Search for Responsive Records**

46. Plaintiffs incorporate each and every allegation contained in the preceding paragraphs.

47. Defendant has custody and control over the records Plaintiffs seek to make publicly available under 5 U.S.C. § 552(a)(2).

48. Defendant is obligated under 5 U.S.C. § 552(a)(3) to conduct a reasonable search for records responsive to Plaintiffs' FOIA Requests. Defendant failed to conduct such a search.

49. Defendant possesses the records Plaintiffs seek and Plaintiffs have a legal right to obtain such records. No legal basis exists for Defendants' failure to search for them.

50. Defendant's failure to conduct a reasonable search for records responsive to Plaintiffs' Requests violates 5 U.S.C. § 552(a)(3).

SECOND CAUSE OF ACTION

**Violation of the Freedom of Information Act, 5 U.S.C. § 552:
Failure to Expedite**

51. Plaintiffs incorporate each and every allegation contained in the preceding paragraphs.

52. Plaintiffs sought expedited treatment of their FOIA request pursuant to 5 U.S.C. § 552(a)(6)(E).

53. Defendant granted Plaintiffs' request for expedited processing on July 28, 2020, nearly three months ago.

54. Defendant has failed to provide records as soon as practicable after granting expedited processing of Plaintiffs' request.

55. Defendant's failure to provide records as soon as practicable after granting Plaintiffs' request for expedited processing violates 5 U.S.C. § 552(a)(6)(E)(iii).

THIRD CAUSE OF ACTION
Violation of the Freedom of Information Act, 5 U.S.C. § 552:
Failure to Make a Determination and Promptly Produce Responsive Documents

56. Plaintiffs incorporate each and every allegation contained in the preceding paragraphs.

57. Defendant is obligated under 5 U.S.C. § 552(a)(6)(A)(i) to make a determination on Plaintiffs' FOIA Request within twenty business days. In unusual circumstances, Defendant may invoke an extension no longer than ten days. 5 U.S.C. § 552(a)(6)(B)(i).

58. Defendant has failed to make a determination within thirty days, the maximum amount of time permitted under the statute.

59. Defendant is obligated to produce responsive records promptly under 5 U.S.C. § 552(a)(3)(A)(i).

60. Defendant has failed to promptly produce responsive records.

61. Defendant's failure to make a determination within the statutory time frame and produce responsive records promptly violates 5 U.S.C. §§ 552(a)(3)(A), (a)(6)(A)(i), and (a)(6)(B)(i).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully ask that the Court:

- a. Order Defendant to conduct a search for records responsive to the FOIA request filed by Plaintiffs under 5 U.S.C. § 552(a)(3);
- b. Order Defendant to produce all records responsive to Plaintiff's FOIA request as soon as practicable in accordance with its grant of expedited treatment under 5 U.S.C. § 552(a)(6)(E)(iii), promptly, or alternatively on an expedited schedule established by the Court;
- c. Enjoin Defendant from improperly withholding records;
- d. Declare that Defendants' failure to conduct an adequate search violates 5 U.S.C. § 552(a)(3);
- e. Declare that Defendant's failure to process the Plaintiffs' FOIA request as soon as practicable violates 5 U.S.C. § 552(a)(6)(E);
- f. Declare that Defendant's failure to promptly produce records responsive to Plaintiffs' FOIA request violates 5 U.S.C. §§ 552(a)(3)(A), (a)(6)(A)(i), and (a)(6)(B);
- g. Award Plaintiffs reasonable attorneys' fees and other litigation costs pursuant to 5 U.S.C. § 552(a)(4)(E) and any other applicable statute or regulation; and
- h. Grant such other relief as the Court may deem just, equitable, and appropriate.

Respectfully submitted,

Dated: October 28, 2020

/s/Claudia Valenzuela
Claudia Valenzuela*
American Immigration Council
1331 G Street NW, Suite 200
Washington, DC 20005
(202) 507-7540
cvalenzuela@immcouncil.org

Brantley Shaw Drake*
Kathryn Huddleston*

Andre Segura
American Civil Liberties Union Foundation of
Texas, Inc.
5225 Katy Freeway, Suite 350
Houston, TX 77007
(713) 942-8146
sdrake@aclutx.org
khuddleston@aclutx.org
asegura@aclutx.org

** Application for admission pro hac vice
forthcoming*