

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

BRENNAN CENTER FOR JUSTICE AT NEW  
YORK UNIVERSITY SCHOOL OF LAW

Plaintiff,

- against -

U.S. IMMIGRATION AND CUSTOMS  
ENFORCEMENT

Defendant.

Case No. \_\_\_\_\_

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF FOR  
VIOLATION OF THE FREEDOM  
OF INFORMATION ACT, 5 U.S.C.  
§ 552 *et seq.***

Plaintiff Brennan Center for Justice at New York University School of Law (“Brennan Center” or “Plaintiff”), by and through its undersigned attorneys, brings this action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, for declaratory, injunctive, and other appropriate relief to compel the disclosure and release of documents from Defendant U.S. Immigration and Customs Enforcement (“ICE” or “Defendant”). In support thereof, Plaintiff alleges as follows:

### **INTRODUCTION**

1. Plaintiff Brennan Center is a bipartisan, not-for-profit law and public policy institute that works to reform, revitalize, and, when necessary, defend American systems of democracy and justice.

2. On November 3, 2020, Plaintiff submitted a FOIA request (“the Request”) to Defendant ICE for materials related to Homeland Security Investigations (“HSI”) handbooks for Counterterrorism & Criminal Exploitation Investigations; Human Smuggling & Trafficking Investigations; Narcotics and Transnational Organized Crime Rewards Program; National Security Investigation; and Investigative Methods. *See Ex. A.*

3. HSI is the second-largest investigative agency in the federal government and the principal investigative component of the Department of Homeland Security (“DHS”). HSI, which employs more than 7,100 agents across 225 cities and has a significant international presence, has a broad mandate within ICE to conduct federal criminal investigations into the “cross-border movement of people, goods, money, [and] technology.”<sup>1</sup> Moreover, HSI agents are sweepingly empowered to investigate “any federal crime.”<sup>2</sup> HSI has also been deployed against Americans to monitor those engaging in First Amendment-protected activities.<sup>3</sup>

4. The HSI handbooks and related documents sought by the Request are essential for ensuring transparency of the conduct of an investigative agency with a wide-ranging mandate and a checkered history when it comes to the rights of citizens and non-citizens. Indeed, previously published iterations of HSI handbooks have raised concerns from civil liberties advocates about the techniques endorsed therein.<sup>4</sup> As such, the public interest at stake in the release of these documents is of the utmost importance.

5. The Freedom of Information Act “focuses on the citizens’ right to be informed about ‘what their government is up to,’” by requiring the release of “[o]fficial information that sheds light on an agency’s performance of its statutory duties.” *DOJ v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 750, 773 (1989) (citation omitted). “[D]isclosure, not secrecy, is the dominant objective” of FOIA. *Dept. of Interior v. Klamath Water Users Protective Ass’n*, 532 U.S. 1, 8 (2001) (internal quotation marks and citations omitted).

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<sup>1</sup> *Homeland Security Investigations*, U.S. Immigration and Customs Enforcement, <https://www.ice.gov/about-ice/homeland-security-investigations> (last accessed Mar. 18, 2021).

<sup>2</sup> Todd Feathers, *The most powerful agency you’ve never heard of: Homeland Security Investigations*, MUCKROCK (Apr. 22, 2014), <https://www.muckrock.com/news/archives/2014/apr/22/operation-cornerstone-training-slides> (last accessed Mar. 4, 2021).

<sup>3</sup> See, e.g., Jimmy Tobias, *Exclusive: ICE Has Kept Tabs on ‘Anti-Trump’ Protesters in New York City*, THE NATION (Mar. 6, 2019), <https://www.thenation.com/article/archive/ice-immigration-protest-spreadsheet-tracking> (last accessed Mar. 4, 2021).

<sup>4</sup> Eoin Higgins, *Confidential ICE Handbook Lays Out Paths for Investigators to Avoid Constitutional Challenges*, THE INTERCEPT (Feb. 23, 2018), <http://theintercept.com/2018/02/23/ice-search-seizure-handbook-manual-secret> (last accessed Mar. 4, 2021).

6. Defendant ICE has failed to comply with its obligations under FOIA. As of the date of this filing, Defendant has not issued a final determination in response to Plaintiff's Request, and has yet to produce a single document.

7. Plaintiff brings this action to compel Defendant to immediately process and release to Plaintiff all responsive records that it has unlawfully withheld.

### **PARTIES**

8. Plaintiff Brennan Center is a nonprofit, nonpartisan law and policy institute that is focused on fundamental issues of democracy and justice. The Brennan Center's Liberty and National Security ("LNS") Program uses innovative policy recommendations, litigation, and public advocacy to advance effective national security policies that respect the rule of law and constitutional values. The Brennan Center is a 501(c)(3) corporation headquartered at 120 Broadway in New York, New York.

9. Defendant Immigration and Customs Enforcement is a component of the U.S. Department of Homeland Security and an "agency" within the meaning of 5 U.S.C. § 552(f)(1). ICE is the component agency of the Department of Homeland Security that enforces U.S. immigration law. HSI is an investigative component within ICE. ICE has possession of and control over the documents and information requested by Plaintiff.

### **JURISDICTION AND VENUE**

10. This Court has subject-matter jurisdiction over this action and personal jurisdiction over the parties under 5 U.S.C. § 552(a)(4)(B), 5 U.S.C. § 701-706, and 28 U.S.C. § 1331.

11. Venue in the Southern District of New York is proper under 5 U.S.C. § 552(a)(4)(B) because the Brennan Center has its principal place of business in New York City and because the Brennan Center's FOIA request to ICE occurred within the City and County of New York, within this District.

### **STATUTORY BACKGROUND**

12. The Freedom of Information Act provides that any member of the public may request records from a United States agency. Upon receipt of a FOIA request, an agency must determine within 20 business days—or, in “unusual circumstances,” by 30 business days—whether it will comply with a request and notify the requestor of its determination and reasoning in writing. 5 U.S.C. § 552(a)(6)(A)(i)-(B)(i). This determination must also timely indicate the scope of the documents the agency intends to produce and the exemptions, if any, that it will apply to withhold documents.

13. In response to a FOIA request, an agency, after engaging in a reasonable search for responsive records, including of any field offices that may possess relevant materials, must disclose in a timely manner all records that do not fall within nine narrowly construed statutory exemptions. 5 U.S.C. § 552 (a)(3)(A), (C), (b)(1)-(9).

14. Typically, a requester under FOIA must appeal agency action administratively before commencing litigation. However, if the agency has failed to abide by its obligations and issue a determination on the request or a determination on an administrative appeal within the statutory timeframe, the administrative appeal process is considered exhausted. 5 U.S.C. § 552(a)(6)(C)(i).

15. Upon complaint, a district court can enjoin an agency from withholding records and order production of records improperly withheld. 5 U.S.C. § 552(a)(4)(B).

### **FACTUAL BACKGROUND**

16. The second-largest federal investigative agency, HSI is the principal investigative component of DHS, employing more than 7,100 agents across 225 cities with additional offices and agents overseas. Within ICE, HSI is broadly responsible for conducting federal criminal investigations into the “cross-border movement of people, goods, money, [and] technology.”<sup>5</sup> Additionally, HSI agents are sweepingly authorized to investigate any federal crime. HSI is the

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<sup>5</sup> See *supra* note 1.

only federal law enforcement investigative agency with border search authority, full access to the Bank Secrecy Act reports, and exclusive access to trade data.<sup>6</sup>

17. HSI has also been involved with surveilling Americans engaged in First Amendment-protected activities. For example, in the summer of 2019, HSI was involved with surveilling and tracking peaceful, left-leaning protests in New York,<sup>7</sup> and in August 2020, as part of its surge of federal law enforcement into American cities following predominantly peaceful nationwide protests, the Trump Administration deployed HSI agents to Chicago.<sup>8</sup>

18. Furthermore, previous iterations of HSI guidelines and handbooks have raised cause for concern about HSI's practices. Following the public dissemination of HSI's Search and Seizure handbook, investigative journalists were alarmed at the techniques revealed in the handbook that were geared at allowing HSI to "effectively operate with as few restrictions as possible across the country" and described "[p]rotecting agents' work from constitutional challenges" as one of the Handbook's primary focuses.<sup>9</sup> Likewise, the unauthorized dissemination of HSI's Asset Forfeiture Handbook revealed HSI's systematic use of asset seizure, a practice that has come under bipartisan scrutiny, to fund itself.<sup>10</sup>

19. Accordingly, the policies and practices contained in the HSI handbooks sought in the Request relate to a number of issues of the highest public importance: Counterterrorism & Criminal Exploitation Investigations; Human Smuggling & Trafficking Investigations; Narcotics and Transnational Organized Crime Rewards Program; National Security Investigation; and Investigative Methods. In turn, the policies and procedures that HSI may leverage in pursuing its broad mandate inherently implicate the rights of Americans and the need for transparency into governmental operations. These handbooks are relevant to the policies and practices, from agent

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<sup>6</sup> See Feathers, *supra* note 2.

<sup>7</sup> See Tobias, *supra* note 3.

<sup>8</sup> See Kyle Cheney, DHS: ICE agents sent to cities would be highly trained, cooperate with local police, POLITICO (Aug. 12, 2020, 10:04 AM), <https://www.politico.com/news/2020/08/12/dhs-ice-agents-cities-training-police-cooperation-394211> (last accessed Mar. 4, 2021).

<sup>9</sup> See Higgins, *supra* note 4.

<sup>10</sup> Ryan Devereux & Spencer Woodman, *Leaked ICE Guide Offers Unprecedented View of Agency's Asset Forfeiture Tactics*, The Intercept (Oct. 13, 2017, 7:58 AM), <https://theintercept.com/2017/10/13/ice-hsi-asset-forfeiture-handbook> (last accessed Mar. 4, 2021).

trainings to procedures governing agency conduct, of an important agency with a complicated history and a virtually unfettered mandate and are thus of the utmost public interest.

**PLAINTIFF'S FOIA REQUEST**

20. Plaintiff submitted the Request to Defendant ICE on November 3, 2020. *See Ex. A.*

21. The Request seeks the most recent and finalized HSI handbooks for Counterterrorism & Criminal Exploitation Investigations; Human Smuggling & Trafficking Investigations; Narcotics and Transnational Organized Crime Rewards Program; National Security Investigation; and Investigative Methods. *See id.*

22. The Request further seeks memoranda and training materials from January 21, 2017 until the date of the Request that explain the policies behind these handbooks or guide agents in implementing these handbooks. *See id.*

23. Plaintiff sought expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and DHS' implementing regulation, 6 C.F.R. § 5.5(e). This expedited processing was sought due to the "compelling need" for these records, because the information requested was required by an organization "primarily engaged in disseminating information" due to an "urgency to inform the public concerning actual or alleged federal government activity" pursuant to 6 C.F.R. § 5.5(e)(1)(ii). Plaintiff further stated that this information was necessary for the Brennan Center's work informing the public of the training governing the actions of HSI agents, a topic of significant news coverage. *See id.*

24. Plaintiff also sought a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)-(iii) on the basis that disclosure of the requested records was in the public interest because disclosure was likely to contribute significantly to the public understanding of the activities or operations of the federal government and was not primarily in Plaintiff's commercial interest. *See id.* Plaintiff further stated that it qualified for a fee waiver because of its role as a member of the news media and as an educational institution. *See id.*

**DEFENDANT ICE’S RESPONSE AND PLAINTIFF’S EXHAUSTION OF  
ADMINISTRATIVE REMEDIES**

25. On December 16, 2020, Defendant ICE sent an email acknowledging receipt of the Request in their office on November 3, 2020. *See* Ex. B, Email from ICE FOIA Office to Rachel Levinson-Waldman (Dec. 16, 2020). Defendant ICE granted Plaintiff’s request for a fee waiver and denied Plaintiff’s request for expedited processing. *Id.* Broadly referencing 5 U.S.C. § 552(a)(6)(B), Defendant ICE invoked a 10-day extension to respond to Plaintiff’s Request, stating that Plaintiff’s Request “seeks numerous documents that will necessitate a thorough and wide-ranging search.” *Id.*

26. Therefore, Defendant’s response was due on December 17, 2020.

27. As of this filing, Plaintiff has not received the required determination from Defendant ICE; nor has it received any responsive records or any other substantive reply to their Request. In fact, Plaintiff has received no further correspondence from ICE since the December 16, 2020 email.

28. Despite its clear obligations under FOIA, Defendant has not provided any substantive determination in response to the Request nor released any records responsive to the Request within the statutory timeframe.

29. Because Defendant has not complied with the statutory time limits set forth in the FOIA statute, Plaintiff’s administrative remedies are considered exhausted under 5 U.S.C. § 552(a)(6)(C)(i).

**CAUSE OF ACTION**  
**(Violation of the Freedom of Information Act)**  
**5 U.S.C. § 552(a)**

30. Plaintiff incorporates the above paragraphs as if set forth fully herein.

31. Defendant ICE has a legal duty under FOIA to determine whether to comply with a request within 20 days after receiving the Request or within 30 days upon invoking an extension. Defendant ICE also has a legal duty to timely notify the requester of the agency’s determination and the reasons therefore.

32. The Brennan Center has a legal right under FOIA to obtain the agency records they requested in its Request. There is no legal basis for Defendant's failure to timely respond to Plaintiff's Request and provide all records responsive to the Request to Plaintiff.

33. Defendant has violated 5 U.S.C. § 552(a)(6)(A)-(B) and applicable regulations promulgated thereunder by failing to determine whether to comply with Plaintiff's Request and communicate such determination to Plaintiff within 30 days.

34. Defendant ICE's failure to timely release agency records in response to Plaintiff's Request has violated 5 U.S.C. § 552(a)(3)(A).

35. Defendant ICE has violated 5 U.S.C. § 552(a)(3)(C)-(D) by failing to make reasonable efforts to search for records responsive to Plaintiff's Request.

36. 5 U.S.C. § 552(a)(4)(B) authorizes the grant of injunctive relief to Plaintiff Brennan Center because Defendant ICE continues to flout FOIA and improperly withhold agency records. Because Defendant's refusal to respond to Plaintiff's Request prevents Plaintiff from educating the public about the operations and standards of HSI, Plaintiff will continue to suffer irreparable injury from Defendant's withholding of government documents subject to Plaintiff's Request in defiance of FOIA mandates.

37. 28 U.S.C. § 2201 authorizes declaratory relief because an actual and justiciable controversy exists regarding Defendant's improper withholding of agency records in violation of FOIA.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Brennan Center requests the Court award it the following relief:

A. Enter judgment that Defendant's failure to determine within the statutorily appointed 30 days whether to comply with the Request and timely notify Plaintiff of such determination and its reasoning violates FOIA;

B. Enter judgment that Defendant's unlawful withholding of the records requested violates FOIA;



C. Enter an order requiring Defendant to immediately release any and all responsive and not otherwise exempt records to Plaintiff;

D. Award Plaintiff its reasonable costs and attorneys' fees pursuant to 5 U.S.C. § 552(a)(4)(E); and

E. Grant such further relief as the Court may deem just and proper.

Dated: New York, New York  
March 19, 2021

Respectfully submitted,

DAVIS WRIGHT TREMAINE LLP

By: /s/ Nimra H. Azmi

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*Attorneys for Brennan Center for Justice at New  
York University School of Law*

# Exhibit A

**BRENNAN  
CENTER**  

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**FOR JUSTICE**

November 3, 2020

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

Sent by email to: [ice-foia@ice.dhs.gov](mailto:ice-foia@ice.dhs.gov)

Re: FOIA Request and Request for Expedited Processing & Fee Waiver

Dear Madam or Sir:

Pursuant to the Freedom of Information Act (“FOIA”), 5 U.S. Code § 552, et. seq, the Brennan Center for Justice (“Brennan Center”) hereby requests copies of all records in your agency’s possession or control described below, and a waiver of processing and reproduction fees for the reasons that follow. The Brennan Center would be happy to discuss this request via phone or e-mail in order to answer any questions regarding the scope or substance.

**Request**

The Brennan Center hereby requests the following documents and materials:

- 1) The following HSI Special Agent Handbooks, as identified in the Index to the Special Agent Manual,<sup>1</sup> in the version most recently finalized for agency use:
  - a. Counterterrorism & Criminal Exploitation Investigations Handbook
  - b. Human Smuggling & Trafficking Investigations Handbook
  - c. Narcotics and Transnational Organized Crime Rewards Program Handbook
  - d. National Security Investigations Handbook
  - e. Investigative Methods Handbook<sup>2</sup>

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<sup>1</sup> This index was released in 2017 in response to a FOIA request from governmentattic.org; see Exhibit A.

<sup>2</sup> This handbook is designated in the above index as a legacy USCS OI Special Agent Handbook chapter, dated August 1990. Our request is for the most recent version of this handbook or its HSI equivalent.

- 2) Any memoranda or training materials issued from January 21, 2017 to the date of this request that purport to explain the policies behind, or guide agents in implementation of, the documents above.

If any information described above is withheld, we request copies of all non-exempt, reasonably segregable portions of such materials, as well as a detailed statement of the statutory basis and reasons for each instance of withholding, including specifically but not limited to the FOIA exemption relied upon for such withholding, and an index or similar statement of the nature of any materials withheld.

### **Application for Expedited Processing**

The Brennan Center requests expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and DHS's implementing regulation, 6 C.F.R. § 5.5(e). There is a "compelling need" for these records because the information requested is required by an organization "primarily engaged in disseminating information" due to an "urgency to inform the public concerning actual or alleged federal government activity." 6 C.F.R. § 5.5(e)(1)(ii).

The Brennan Center is a section 501(c)(3) non-profit organization that is "primarily engaged in disseminating information" within the meaning of 5 U.S.C. § 552(a)(6)(E)(v)(II) and 6 C.F.R. § 5.5(e)(1)(ii). *See, e.g., Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005) (expedited treatment warranted where requester "disseminates information regarding civil rights and voting rights to educate the public, promote effective civil rights laws, and ensure their enforcement"). The Brennan Center regularly writes and publishes reports and newspaper articles and makes appearances on various media outlets, addressing U.S. policy on issues ranging from counterterrorism efforts to the powers of the federal government to voting rights and beyond, and it will continue to do so for the foreseeable future.

Furthermore, the Brennan Center requires the information sought by this request in order to inform the public of federal government activity, namely the standards and training governing the actions of HSI agents. *See* 5 U.S.C. § 552(a)(6)(E)(v)(II); 6 C.F.R. § 5.5(e)(1)(ii). HSI has been the subject of significant news coverage, indicating substantial public interest in the agency's activities and the circumstances under which it can undertake investigations and other matters. In addition to coverage of HSI's role in monitoring and intervening in domestic protests this summer,<sup>3</sup> there has been reporting

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<sup>3</sup> *See, e.g.,* Jimmy Tobias, "Exclusive: ICE Has Kept Tabs on 'Anti-Trump' Protesters in New York City," *The Nation*, March 6, 2019, <https://www.thenation.com/article/archive/ice-immigration-protest-spreadsheet-tracking/> (reporting that HSI conveyed information to DHS about public protests occurring in New York City, challenging the Trump administration's immigration and deportation policies, in a spreadsheet titled "Anti-Trump protests"); *id.* (reporting that an HSI official circulated information about a "Deportee Suitcase Solidarity March" opposing the administration's deportation practices); Nicole

regarding the scope of the agency’s investigations,<sup>4</sup> training materials for HSI agents,<sup>5</sup> the opacity of its policies,<sup>6</sup> and concerns about the mechanisms by which HSI agents obtain information from their targets.<sup>7</sup> Furthermore, DHS has publicly stated that it is preparing for possible mobilization of ICE and CBP agents in case of civil unrest around the November 3 federal election; in light of the deployment of HSI agents over the summer, it seems likely that they would be involved in election response as well.<sup>8</sup> As the executive director of the First Amendment Coalition has observed, “There is intense public interest in understanding [HSI’s] processes.”<sup>9</sup> This request will contribute to the public understanding of those processes.

### Request for Fee Waiver

The Brennan Center respectfully requests a waiver of all fees for document search, duplication, and review associated with this request in accord with 5 U.S.C. § 552(a)(4)(A)(ii)-(iii), as disclosure of the records sought is in the public interest, because it is likely to contribute significantly to public understanding of the operations or activities of the federal government’s law enforcement agencies and operations, and because the Brennan Center has no commercial interest in this information. The Brennan Center is an independent, nonpartisan law and policy organization organized under 26 U.S.C. § 501(c)(3) that works to reform, revitalize, and when necessary, defend the nation’s systems of democracy and justice. The Brennan Center has a demonstrated ability to analyze, synthesize, and report on matters of public concern, in a manner that is available to and reaches the public on a widespread basis.

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Acevedo, “ICE special agents detain Floyd protester in NYC,” *NBC News*, June 5, 2020, <https://www.nbcnews.com/news/latino/federal-immigration-agents-detain-floyd-protester-nyc-n1226086> (reporting the detention of an individual of Puerto Rican descent who was targeted by HSI officers at a protest against police brutality).

<sup>4</sup> Brittny Mejia, “This agency helped catch ‘El Chapo.’ But association with ICE can be a headache,” *Los Angeles Times*, March 19, 2019, <https://www.latimes.com/local/lanow/la-me-ln-ice-difficulties-20190319-story.html>.

<sup>5</sup> Todd Feathers, “The most powerful agency you’ve never heard of: Homeland Security Investigations,” *MuckRock*, April 22, 2014, <https://www.muckrock.com/news/archives/2014/apr/22/operation-cornerstone-training-slides/>.

<sup>6</sup> Eoin Higgins, “ICE doesn’t want you to read its manuals—for no good reason whatsoever,” *The Intercept*, April 18, 2018, <https://theintercept.com/2018/04/18/ice-hsi-special-agent-training-manuals/>.

<sup>7</sup> Eoin Higgins, “Confidential ICE handbook lays out paths for investigations to avoid constitutional challenges,” *The Intercept*, February 23, 2018, <https://theintercept.com/2018/02/23/ice-search-seizure-handbook-manual-secret/>.

<sup>8</sup> 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>.

<sup>9</sup> Eoin Higgins, “Confidential ICE handbook lays out paths for investigations to avoid constitutional challenges.”

The Brennan Center qualifies as a “representative of the news media” for the same reasons that it is “primarily engaged in dissemination of information”—i.e., because the Brennan Center “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.”<sup>10</sup> The Brennan Center has released over 100 publications in the form of reports and papers on various issues of public importance in the period since January 2011.<sup>11</sup> The Brennan Center is therefore entitled to a waiver of search and review fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 28 C.F.R. § 16.10(d)(1).

As a noncommercial requester, the Brennan Center also qualifies for waivers as an “educational institution” pursuant to 28 C.F.R. § 16.10 (c)(1)(i). The Brennan Center qualifies as an educational institution because it is affiliated with the NYU School of Law, which is plainly an educational institution under the definition provided in 28 C.F.R. § 16.10(b)(4).<sup>12</sup> Moreover, disclosure is not primarily in the Brennan Center’s commercial interests.<sup>13</sup> As stated above, the Brennan Center plans to make any information disclosed as a result of this request available to the public at no cost. A fee waiver would therefore fulfill Congress’s legislative intent that FOIA be “liberally construed in favor of waivers for noncommercial requesters.”<sup>14</sup>

We look forward to your response within twenty (20) working days from the date you receive this request, as required by 5 U.S.C. § 552(a)(6)(A)(i). Please email the undersigned at [levinsonr@brennan.law.nyu.edu](mailto:levinsonr@brennan.law.nyu.edu) if you have any questions. Thank you.

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<sup>10</sup> The Freedom of Information Act (FOIA), 5 U.S.C. § 552(a)(4)(A)(ii)(III) (1966); 28 C.F.R. § 16.10(b)(6) (2015); *Nat’l Sec. Archive v. Dep’t of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); *see also Elec. Privacy Info. Ctr. v. Dep’t of Def.*, 241 F. Supp. 2d 5, 11 (D.C. Cir. 2003).

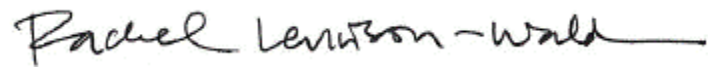
<sup>11</sup> For representative examples of the Brennan Center’s previous publications on issues of public concern, *see, e.g.*, Faiza Patel, Rachel Levinson-Waldman and Raya Koreh, *Social Media Monitoring*, Brennan Center for Justice, 2019, <https://www.brennancenter.org/our-work/research-reports/social-media-monitoring>; Elizabeth Goitein and Faiza Patel, *What Went Wrong with the FISA Court*, Brennan Center for Justice, 2015, <https://www.brennancenter.org/our-work/research-reports/what-went-wrong-fisa-court>; Michael German, *Hidden in Plain Sight: Racism, White Supremacy, and Far-Right Militancy in Law Enforcement*, Brennan Center for Justice, 2020, <https://www.brennancenter.org/our-work/research-reports/hidden-plain-sight-racism-white-supremacy-and-far-right-militancy-law>; “Social Media Surveillance by Homeland Security Investigations: A Threat to Immigrant Communities and Free Expression,” *Brennan Center for Justice*, November 15, 2019, <https://www.brennancenter.org/our-work/research-reports/social-media-surveillance-homeland-security-investigations-threat>; *cf. Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 11-12 (finding that the Electronic Privacy Information Center was representative of the news media based on its publication of seven books about national and international policies relating to privacy and civil rights); *see also Nat’l Sec. Archive*, 880 F.2d at 1386 (deeming National Security Archive a representative of the news media after it published one book and indicated its intention to publish a set of documents on national and international politics and nuclear policy).

<sup>12</sup> *See also Nat’l Sec. Archive*, 880 F.2d at 1381.

<sup>13</sup> *See* 28 C.F.R. § 16.10 (d)(1).

<sup>14</sup> *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (quoting 132 Cong. Rec. 27, 190 (1986) (Statement of Sen. Leahy)).

Sincerely,

A handwritten signature in black ink that reads "Rachel Levinson-Waldman". The signature is written in a cursive style with a long horizontal line extending to the right.

Rachel Levinson-Waldman  
Deputy Director, Liberty & National Security Program  
Brennan Center for Justice at NYU School of Law

# **EXHIBIT A**





# governmentattic.org

*"Rummaging in the government's attic"*

Description of document: Immigration and Customs Enforcement (ICE) Office of Homeland Security Investigations (HSI) Special Agent Manual table of contents, 2016\*

Requested date: 25-January-2017

Released date: 09-August-2017

Posted date: 29-January-2018

\* Manual composed of sections originating 2005-2016

Source of document: FOIA Request  
U.S. Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, MD 20814  
Fax: 301-504-0127  
Email: [cpsc-foia@cpsc.gov](mailto:cpsc-foia@cpsc.gov)  
[e-FOIA Public Access Link \(PAL\)](#)

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*Freedom of Information Act Office*

U.S. Department of Homeland Security  
500 12<sup>th</sup> St SW, Stop 5009  
Washington, DC 20536



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

August 09, 2017

**RE: ICE FOIA Case Number 2017-ICFO-16778**

This letter is the final response to your Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), dated January 25, 2017, for all records pertaining to a digital/electronic copy of the table of contents of the “Special Agent Handbook”..

ICE has considered your request under the FOIA, 5 U.S.C. § 552.

A search of the ICE Office of Homeland Security Investigations (HSI) for records responsive to your request produced 6 pages that are responsive to your request. ICE has determined that 6 pages will be released in their entirety; ICE has claimed no deletions or exemptions.

If you are not satisfied with the response to this request, you have the right to appeal following the procedures outlined in the DHS regulations at 6 C.F.R. § 5.9. Should you wish to do so, you must send your appeal and a copy of this letter, within 90 days of the date of this letter, to:

U.S. Immigration and Customs Enforcement  
Office of the Principal Legal Advisor  
U.S. Department of Homeland Security  
500 12th Street, S.W., Mail Stop 5900  
Washington, D.C. 20536-5900

Your envelope and letter should be marked “FOIA Appeal.” Copies of the FOIA and DHS regulations are available at [www.dhs.gov/foia](http://www.dhs.gov/foia).

Provisions of the FOIA and Privacy Act allow us to recover part of the cost of complying with your request. In this instance, because the cost is below the \$14 minimum, there is no charge.<sup>1</sup>

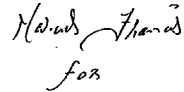
If you need any further assistance or would like to discuss any aspect of your request, please contact the FOIA office and refer to FOIA case number **2017-ICFO-16778**. You may send an e-

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<sup>1</sup> 6 CFR § 5.11(d)(4).

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 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.

Sincerely,



Catrina M. Pavlik-Keenan  
FOIA Officer

Enclosure(s): 6 page(s)

# HOMELAND SECURITY INVESTIGATIONS

## SPECIAL AGENT MANUAL



# **HOMELAND SECURITY INVESTIGATIONS SPECIAL AGENT MANUAL INDEX**

**The HSI Special Agent Manual is composed of the Special Agent Handbooks issued by ICE Homeland Security Investigations or its predecessor ICE Office of Investigations, as well as selected chapters from the legacy U.S. Customs Service Office of Investigations Special Agent Handbook which are being updated and will be superseded by new Handbooks. (See the following indexes.)**

# HOMELAND SECURITY INVESTIGATIONS

## Special Agent Handbooks

### Index

(All Special Agent Handbooks are Law Enforcement Sensitive.)

1.	Arrest Procedures Handbook	HB 15-03	07/21/2015
2.	Asset Forfeiture Handbook	HB 10-04	06/30/2010
3.	Benefit Fraud Investigations Handbook	HB 14-01	01/07/2014
4.	Case Management Handbook	HB 08-02	02/01/2008
5.	Child Sexual Exploitation Investigations Handbook	HB 12-05	11/19/2012
6.	Commercial Trade Fraud Investigations Handbook	HB 07-03	12/03/2007
7.	Computer Forensics Handbook	HB 11-01	04/27/2011
8.	Counterterrorism and Criminal Exploitation Investigations Handbook	HB 14-07	11/12/2014
9.	Cultural Property, Art, and Antiquities Investigations Handbook	HB 13-06	11/08/2013
10.	Currency Pick-Up and Delivery Operations Handbook	HB 16-01	4/14/2016
11.	Cyber Crimes Investigations Handbook	HB 11-03	08/09/2011
12.	Denaturalization Investigations Handbook	HB 08-01	01/15/2008
13.	Document and Identity Fraud Investigations Handbook	HB 13-01	01/08/2013
14.	Emergency Driving Handbook	HB 12-02	05/10/2012

15. Evidence Handbook	HB 15-05	11/09/2015
16. Evidence Recovery Team Handbook	HB 14-06	10/22/2014
17. Financial Investigations Handbook	HB 14-03	05/13/2014
18. Fugitives Handbook	HB 15-06	11/23/2015
19. Human Smuggling and Trafficking Investigations Handbook	HB 15-04	08/21/2015
20. Informants Handbook	HB 12-03	08/02/2012
21. Interviewing Techniques Handbook	HB 10-03	04/28/2010
22. Live and Photographic Lineups Handbook	HB 08-05	10/08/2008
23. Lure Operations Handbook	HB 15-07	11/23/2015
24. Narcotics and Transnational Organized Crime Rewards Programs Handbook	HB 16-03	08/11/2016
25. National Ceremonial Honor Guard Handbook	HB 12-01	05/08/2012
26. National Security Investigations Handbook	HB 13-03	04/26/2013
27. Notional Immigration Document Handbook	HB 14-02	03/27/2014
28. Polygraph Examinations Handbook	HB 16-02	06/02/2016
29. Private Bill Investigations Handbook	HB 13-04	08/15/2013
30. Protective Operations Handbook	HB 15-01	02/26/2015
31. Retention of Forfeited Property Handbook	HB 11-04	09/12/2011
32. Search and Seizure Handbook	HB 12-04	09/14/2012
33. Special Agent On-the-Job Training and Evaluation Handbook	HB 08-03	02/08/2008

34. Special Response Team Handbook	HB 06-001	11/20/2005
35. T Nonimmigrant Status Handbook	HB 09-03	08/05/2009
36. Technical Operations Handbook	HB 14-04	07/21/2014
37. U Nonimmigrant Status Handbook	IIB 09-04	12/01/2009
38. Undercover Operations Handbook	HB 08-04	04/14/2008
39. Witness Security Handbook	HB 15-02	03/06/2015



# **HOMELAND SECURITY INVESTIGATIONS**

## **Legacy USCS OI Special Agent Handbook Chapters**

### **Index**

**(All Chapters are Law Enforcement Sensitive.)**

1. Controlled Deliveries	Ch. 15	04/03/1997
2. Drug Smuggling Investigations	Ch. 9	11/1990
3. Investigative Methods	Ch. 12	08/1990

# Exhibit B

**Fw: ICE FOIA Request 2021-ICFO-15723**

Kaylana Mueller-Hsia &lt;mueller-hsiak@brennan.law.nyu.edu&gt;

Fri 2/19/2021 1:46 PM

**To:** Kaylana Mueller-Hsia <mueller-hsiak@brennan.law.nyu.edu>**From:** [ice-foia@dhs.gov](mailto:ice-foia@dhs.gov) <[ice-foia@dhs.gov](mailto:ice-foia@dhs.gov)>**Sent:** Wednesday, December 16, 2020 9:55 AM**To:** Rachel Levinson-Waldman <[levinsonr@brennan.law.nyu.edu](mailto:levinsonr@brennan.law.nyu.edu)>**Subject:** ICE FOIA Request 2021-ICFO-15723

December 16, 2020

Rachel Levinson-Waldman  
Brennan Center for Justice  
1140 Connecticut Ave. NW, Suite 1150  
Washington, DC 20036

**RE: ICE FOIA Case Number 2021-ICFO-15723**

Dear Ms. Levinson-Waldman:

This acknowledges receipt of your Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), dated November 03, 2020, your request for a waiver of all assessable FOIA fees, and your request for expedited treatment. Your request was received in this office on November 03, 2020. Specifically, you requested request the following HSI Special Agent Handbooks, as identified in the Index to the Special Agent Manual,<sup>1</sup> in the version most recently finalized for agency use. (see request for details).

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.

ICE evaluates fee waiver requests under the legal standard set forth above and the fee waiver policy guidance issued by the Department of Justice on April 2, 1987, as incorporated into the Department of Homeland Security's Freedom of Information Act regulations. These regulations set forth six factors to examine in determining whether the applicable legal standard for fee waiver has been met. I have considered the following factors in my evaluation of your request for a fee waiver:

- (1) Whether the subject of the requested records concerns "the operations or activities of the government";
- (2) Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;
- (3) Whether disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requestor or a narrow segment of interested persons;
- (4) Whether the contribution to public understanding of government operations or activities will be "significant";
- (5) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and
- (6) Whether the magnitude of any identified commercial interest to the requestor is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requestor.

Upon review of your request and a careful consideration of the factors listed above, I have determined to grant your request for a fee waiver.

Your request for expedited treatment is hereby denied.

Under the DHS FOIA regulations, expedited processing of a FOIA request is warranted if the request involves "circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual," 6 C.F.R. § 5.5(e)(1)(i), or "an urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information," 6 C.F.R. § 5.5(e)(1)(ii). Requesters seeking expedited processing must submit a statement explaining in detail the basis for the request, and that statement must be certified by the requester to be true and correct. 6 C.F.R. § 5.5(e)(3).

Your request for expedited processing is denied because you do not qualify for either category under 6 C.F.R. § 5.5(e)(1). You failed to demonstrate a particular urgency to inform the public about the government activity involved in the request beyond the public's right to know about government activity generally. Your letter was conclusory in nature and did not present any facts to justify a grant of expedited processing under the applicable standards.

If you deem the decision to deny expedited treatment of your request an adverse determination, you have the right to appeal. Should you wish to do so, you must send your appeal and a copy of the original response letter, within 90 days of the date of the letter following the procedures outlined in the DHS FOIA regulations at 6 C.F.R. Part 5 § 5.8. You may submit your appeal electronically at [GILDFOIAAppeals@ice.dhs.gov](mailto:GILDFOIAAppeals@ice.dhs.gov) or via regular mail to:

U.S. Immigration and Customs Enforcement  
Office of the Principal Legal Advisor  
U.S. Department of Homeland Security  
500 12th Street, S.W., Mail Stop 5900  
Washington, D.C. 20536-5900

Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at [www.dhs.gov/foia](http://www.dhs.gov/foia).

ICE has 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-15723**. 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-15723 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 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)