

January 22, 2025

*Filed Electronically Via Secure Release*

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

U.S. Customs and Border Protection  
Freedom of Information Act Office  
1300 Pennsylvania Avenue NW  
Washington, D.C 20229-1181  
Mail Stop 1181

**Re: Freedom of Information Act Request Related to the Rescission of Protected Areas Policies (Fee Waiver and Expedited Processing Requested)**

Dear FOIA Officers:

This letter constitutes a request (“Request”) pursuant to the Freedom of Information Act, 5 U.S.C. § 552. This request is submitted on behalf of The National Immigration Law Center (“NILC”); CASA; The Services, Immigrant Rights & Education Network (SIREN); The Tennessee Immigrant & Refugee Rights Coalition (TIRRC); We Are One America; New York Immigration Coalition; The Coalition for Human Immigrant Rights (CHIRLA); and Make the Road New York, regarding the recent changes to, and rescission of, guidelines for Immigration and Customs Enforcement (“ICE”) and Customs and Border Protection (“CBP”) related to protected areas, also known as sensitive locations or “sensitive” areas (hereinafter “protected areas”).

**I. Background**

On January 20, 2025, the Trump Administration rescinded a Biden-era memo that protected certain areas—such as churches, school, and hospitals—from immigration enforcement.<sup>1</sup> According to new ICE interim guidance,<sup>2</sup> a second Biden-era memo that limited immigration enforcement at courthouses has also been rescinded.<sup>3</sup> Since 2011, the Department of Homeland Security (“DHS”) has maintained standing guidance<sup>4</sup> requiring ICE to refrain from immigration enforcement actions in certain areas

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<sup>1</sup> Dep’t of Homeland Security, Statement from a DHS Spokesperson on Directives Expanding Law Enforcement and Ending the Abuse of Humanitarian Parole, <https://www.dhs.gov/news/2025/01/21/statement-dhs-spokesperson-directives-expanding-law-enforcement-and-ending-abuse> (Jan. 21, 2025).

<sup>2</sup> Memorandum from Caleb Vitello, Acting Director, *Interim Guidance: Civil Immigration Enforcement Actions in or near Courthouses*, <https://immpolicytracking.org/policies/ice-issues-interim-guidance-for-civil-immigration-enforcement-at-or-near-courthouses/#/tab-policy-documents> (last visited Jan. 22, 2025).

<sup>3</sup> Memorandum from Alejandro N. Mayorkas, Secretary, *Guidelines for Enforcement Actions in or Near Protected Areas*, Oct. 27, 2021, [https://www.dhs.gov/sites/default/files/publications/21\\_1027\\_opa\\_guidelines-enforcement-actions-in-near-protected-areas.pdf](https://www.dhs.gov/sites/default/files/publications/21_1027_opa_guidelines-enforcement-actions-in-near-protected-areas.pdf).

<sup>4</sup> Memorandum from John Morton, Director, *Enforcement Actions at or Focused on Sensitive Locations*, Oct. 24, 2011, <https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf>.

(previously known as “Sensitive Locations”). In 2021, the Biden Administration issued a new memo expanding the definitions of these areas, which included schools (including preschools, K-12 schools, and higher education institutions); healthcare facilities (including hospitals, doctor’s offices, and community health clinics); places of worship; places where children gather (including playgrounds and bus stops); social services establishments (such as domestic violence shelters and food pantries); disaster/emergency response sites (including evacuation routes); weddings, funerals, and religious ceremonies; and parades, demonstrations, and rallies. The memo also specified that officers should refrain from enforcement actions “near” these protected areas, including surrounding areas like sidewalks, entrances, and parking lots. Lastly, the Biden Administration issued a separate memorandum<sup>5</sup> limiting the circumstances in which immigration enforcement actions could take place in courthouses.

On January 21, 2025, DHS issued a brief statement confirming the protected areas memo had been rescinded without issuing new guidance, simply stating that the Trump Administration would “trust” law enforcement to use “common sense” in their enforcement actions around these areas. The public thus has only limited information about the Trump Administration’s changes made to these policies.

## **II. Records Requested**

The Requestors seek ICE and CBP records from November 26, 2024,<sup>6</sup> to the present, which were prepared, created, received, transmitted, collected, and maintained by ICE, and CBP related to or referring to the process and decision to rescind the “sensitive” areas memoranda.

These records include but are not limited to:

- All documents, correspondence, memoranda, directives, guides, guidelines, emails, Teams messages, policies, practices, procedures, rules, standards, protocols, analyses, agreements, training materials related to changes to, replacement of, or rescission of, the memoranda listed below, from November 26, 2024 to present, including but not limited to, internal communications, as well as communications with any component agencies, and/or interagency communications, and/or with any other law enforcement agencies, including state and local agencies:
  - Memorandum from Alejandro N. Mayorkas, Secretary, *Guidelines for Enforcement Actions in or Near Protected Areas*, Oct. 27, 2021;
  - Memorandum from Tae Johnson, Acting Director U.S. Immigration and Customs Enforcement and Troy Miller, Acting Commissioner, U.S. Customs and Border Protection, *Civil Immigration Enforcement Actions in or near Courthouses*, Apr. 27, 2021;
  - Memorandum from John Morton, Director, *Enforcement Actions at or Focused on Sensitive Locations*, Oct. 24, 2011.

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<sup>5</sup> Memorandum from Tae Johnson, Acting Director U.S. Immigration and Customs Enforcement and Troy Miller, Acting Commissioner, U.S. Customs and Border Protection, *Civil Immigration Enforcement Actions in or near Courthouses*, Apr. 27, 2021, <https://www.cbp.gov/sites/default/files/assets/documents/2021-Apr/Enforcement-Actions-in-Courthouses-04-26-21.pdf>.

<sup>6</sup> See Steve Holland and Nandita Bose, *Trump team signs transition agreement with Biden White House after delays*, Reuters (Nov. 26, 2024), <https://www.reuters.com/world/us/trump-team-signs-memorandum-understanding-transition-with-biden-white-house-2024-11-26/>.

- All communications, including phone and meeting minutes, emails, mail, Teams messages, and any other method of communication, from November 26, 2024 to present, sent to or received by ICE and CBP and their employees in relation to immigration enforcement that include the following search terms: “Guidelines for Enforcement Actions in or Near Protected Areas”, “Civil Immigration Enforcement Action in or near Courthouses”, “Enforcement Action at or Focused on Sensitive Locations”, “sensitive locations”, “protected area”, “protected areas”, “protected locations”, “sanctuary”, “school”, “pre-school”, “preschool”, “primary school”, “secondary school”, “vocational school”, “trade school”; “college”, “university”, “medical facility”, “hospital”, “doctor’s office”, “health clinic”, “vaccination site”, “testing site”, “urgent care”, “health center”, “place of worship”, “church”, “churches”, “religious schools”, “place where children gather”, “playground”, “recreation center”, “childcare center”, “after-school care center”, “foster care facility”, “group home”, “school bus stop”, “social services establishment”, “social services organization”, “crisis center”, “domestic violence shelter”, “victims services center”, “child advocacy center,” “supervised visitation center”, “family justice center”, “community-based organization”, “facility that serves disabled persons”, “homeless shelter”, “treatment facility”, “food bank”, “pantry”, “emergency”, “evacuation routes”, “shelter”, “funeral”, “graveside”, “wedding”, “religious ceremonies”, “civil ceremonies”, “observances”, “parade”, “demonstration”, “courthouse”, “congregation”.

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

NILC and its co-signatories request a waiver of all costs pursuant to the public interest/benefit fee waiver established by 5 U.S.C. § 552(a)(4)(A)(iii) (“Documents shall be furnished without any charge ... if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.”). The public interest/benefit fee waiver provisions of the FOIA are to be “liberally construed.” *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it be ‘liberally construed in favor of fee waivers for noncommercial requesters.’”) (citation omitted).

NILC is routinely granted fee waivers by government agencies. NILC is a nonprofit national legal advocacy organization that engages in policy analysis, advocacy, education, and litigation to promote and advance the rights of low-income immigrants and their families. NILC serves as an important resource to a broad range of immigrant advocacy groups, community organizations, legal service organizations, and the general public. As a part of its work, NILC disseminates information to the public through electronic newsletters, news alerts, issue briefs, trainings, and other educational and informational materials. In addition, NILC disseminates information to individuals, tax exempt organizations, not-for-profit groups, and members through its website (<http://www.nilc.org>). On average, NILC’s website receives nearly 7,703 visits per day, our email listserv has about 230,000 subscribers, and many visitors to our website actively download our reports, brochures, and fact sheets.

The records requested are not sought for commercial use, and NILC plans to disseminate the disclosed information to the public at no cost. *See* 6 C.F.R. § 5.11(k). Disclosure of the requested records is likely to contribute significantly to public understanding of the new guidance on ICE and CBP enforcement actions in protected areas. The requested information is of great interest to the public at large, but it is not available in the public domain.

In the alternative, we request a limitation of processing fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II). (“[F]ees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by ... a representative of the news media.”). *See also* 6 C.F.R. § 5.11(d). If the fee waiver request is denied, while reserving our right to appeal the denial, NILC agrees to pay fees up to \$50. If fees are estimated to exceed this limit, please inform us to obtain consent to incur additional fees.

If the Request is denied in whole or in part, NILC asks that you justify all deletions by reference to specific FOIA exemptions. NILC expects the release of all segregable portions of otherwise exempt material. NILC reserves the right to appeal a decision to withhold any information or to deny any waiver of fees.

#### **IV. Expedited Processing**

NILC requests expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E). There is a “compelling need” for these records, as defined in the statute, because the information requested is “urgent[ly]” needed by an organization primarily engaged in disseminating information “to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. 552(a)(6)(E)(v)(II). NILC 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 NILC’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”). Organizations with similar missions that engage in information dissemination activities similar to NILC are “primarily engaged in disseminating information.” *See, e.g., Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005); *ACLU*, 321 F. Supp. 2d at 29 n.5; *Elec. Privacy Info. Ctr. v. U.S. Dep’t of Defense*, 241 F. Supp. 2d 5, 11 (D.D.C. 2003). Policies, procedures, and protocols about ICE and CBP’s law enforcement activities in protected areas are the source of considerable public discussion and debate. Accordingly, transparency regarding ICE and CBP’s guidance on their law enforcement activities in protected areas is vital to the public interest.

NILC does its work on its own and in collaboration with partners and allies, including the co-signatories to this request. NILC 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 as they relate to low-income immigrants and their families. NILC also regularly publishes practice advisories, “Know Your Rights” materials, fact sheets, and educational brochures and pamphlets designed to educate stakeholders and the general public about issues impacting low-income immigrants. The records that are the subject of this request are urgently needed to inform the public about actual or alleged government activity. *See* 5 U.S.C. § 552(a)(6)(E)(v)(II). Specifically, as discussed above, the requested records seek to inform the public about ICE and CBP’s immigration enforcement action in protected areas.

Please furnish the applicable records to [graybill@nilc.org](mailto:graybill@nilc.org), [damiannopearson@nilc.org](mailto:damiannopearson@nilc.org), and [bonilla@nilc.org](mailto:bonilla@nilc.org). Please provide documents in digital form wherever possible.

Thank you for your prompt attention to this matter.

Sincerely,

/s/ Lisa Graybill

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