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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

SETON HALL SCHOOL OF LAW CENTER
FOR SOCIAL JUSTICE and EVICAO EL
BRASILEIRA (d.b.a. Brazilian Voice)

Plaintiffs,

-vs-

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY (DHS); UNITED
STATES IMMIGRATION AND CUSTOMS
ENFORCEMENT (ICE); and UNITED
STATES CITIZENSHIP AND
IMMIGRATION SERVICES (USCIS)

Defendants.

Civil Action No.

COMPLAINT

Plaintiffs, Seton Hall School of Law Center for Social Justice and the Evicao el Brasileira (d.b.a. Brazilian Voice), by their attorneys, Lowenstein Sandler PC and Seton Hall School of Law Center For Social Justice, for their Complaint allege as follows:

THE NATURE OF THE ACTION

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.* for declaratory and injunctive relief to compel the disclosure and release of agency records improperly withheld from Plaintiffs by Defendant United States Department of Homeland Security (“DHS”) and several of its component divisions, including Defendant United States Immigration and Customs Enforcement (“ICE”) and Defendant United States Citizenship and Immigration Services (“USCIS”).

2. Plaintiffs seek to compel the release of records on a matter of pressing public concern, namely, ICE’s enforcement policies, practices, and activities in the state of New Jersey. In particular, Plaintiffs seek to compel the release of records regarding a pattern and practice of pre-dawn “raids” of immigrant homes that ICE agents have conducted—and continue to conduct—without search warrants, throughout the state of New Jersey.

3. So-called “Fugitive Operations Teams” have conducted hundreds of these raids in an attempt to meet recently established quotas for the arrest and deportation of immigrants with outstanding orders of deportation. Upon information and belief, ICE is continuing to conduct raids on a regular basis. The public remains critically uninformed about these activities, with no access to vital information—including records, statements, and policy guidelines—concerning the methods ICE agents are using to target, locate, and arrest immigrants in increasing numbers inside their homes. This Complaint seeks to obtain such information.

4. It appears that many of these raids are being conducted pursuant to DHS’s “Operation Return to Sender.” Operation Return to Sender takes place in the context of a major national debate about immigration enforcement practices and policies. Nevertheless, in denying Plaintiffs’ demand for the expedited processing of their FOIA request, DHS informed the Plaintiffs that it does not consider this issue to be a matter of particular public interest, in large part because “a preliminary search of the internet does not indicate that there is substantial current news interest concerning this topic.” Contrary to DHS’s assessment, however, there has

been widespread and persistent media interest in this government program, on a national and regional level.¹

5. These media reports—themselves based on evidence from persons subject to the raids—reveal a troubling pattern by ICE enforcement teams. ICE teams appear to have developed a practice of raiding residential homes in the dead of night, without warrant, in search of persons believed to have an outstanding deportation order. In a typical raid, multiple immigration agents surround a house and pound on the front door, announcing themselves as “police.” In the belief that there is an emergency, an occupant opens the door. The immigration agents (often armed) then enter the home, without a search warrant and without securing informed consent for their entry. They move through the home in an intimidating manner, wake all occupants including children, and make them gather in a central location. The agents often announce that they are looking for an individual who is unknown to the occupants of the home, and proceed to question the occupants and arrest anyone they suspect of having an unlawful presence in the United States. In many cases, the occupants subjected to these warrantless pre-dawn raids include children and adults who are citizens or lawful permanent residents of the United States.

6. These raids implicate individuals’ basic constitutional rights, including their right under the Fourth Amendment to be free from unlawful searches of their homes. Without disclosure of the documents requested by Plaintiffs under FOIA, immigration agents will continue to conduct warrantless raids in a manner that raises constitutional concerns but cannot be subjected to the comprehensive public scrutiny that would be possible with access to government policies, procedures, and records regarding the raids. Plaintiffs thus seek documents

¹ See, e.g., Nina Bernstein, *Immigrant Workers Caught in Net Cast for Gangs*, N.Y. Times, Nov. 25, 2007; Brian Donohue, *The deportation crackdown: Dragnet against fugitive immigrants has its critics*, Star-Ledger (Newark, N.J.), Dec. 27, 2007; Liz Llorente, *Suits: Feds play dirty; Immigration officials say raids on illegals are within the law*, Bergen Record (Hackensack, N.J.), Jan. 2, 2008; Nick Norlen, *Immigration raid tactics alarm Princeton advocates*, Princeton Packet, Jan. 25, 2008.

to ascertain whether government officials are acting with lawful authority when undertaking such invasive action, and to otherwise disseminate information to the public that is necessary to evaluate the effectiveness, consequences, and desirability of such a sweeping policy initiative of our government.

PARTIES

7. Plaintiff Seton Hall Law School Center for Social Justice (“CSJ”) is a non-profit entity that is a part of Seton Hall Law School, which, in turn, is operated by Seton Hall University, a major university organized under the laws of the State of New Jersey. The CSJ engages in advocacy, public education, and scholarship in relation to immigrant rights and other civil rights issues. The CSJ also provides direct legal services related to those areas of law. As part of its public education and advocacy mandate, the CSJ’s staff: disseminates press releases; writes opinion pieces in major local newspapers; distributes information via the CSJ’s web site; and holds conferences, panel discussions, town hall meetings, and informal sessions with local community groups and advocacy coalitions. The CSJ works closely with organizations that provide direct services to immigrants throughout New Jersey, and its staff publishes articles and speaks at public events related to immigration issues. The CSJ also provides a range of legal services to individuals in New Jersey who have been subject to human rights and civil rights violations, including a focus on the rights of immigrants.

8. Plaintiff Evicao el Brasileira (d.b.a. Brazilian Voice) is incorporated under the laws of the State of New Jersey, and its principal place of business is located at 412 Chestnut St., Newark, New Jersey, 07102. It publishes the *Brazilian Voice*, a Portuguese-language newspaper. Two editions of the *Brazilian Voice* are circulated each week and distributed in New Jersey, New York, Connecticut, Massachusetts, and Pennsylvania. Established in 1988, the *Brazilian Voice* reports on a wide range of current events and issues of interest to the Brazilian community in the United States, including issues and events related to immigration enforcement. Its Saturday edition reports specifically on issues and current events of interest to the Brazilian community in New Jersey.

9. Defendant DHS is the federal agency responsible for enforcing the United States immigration laws. DHS is an agency within the meaning of 5 U.S.C. § 552(f).

10. Defendant ICE is the division of DHS responsible for enforcing immigration laws.

11. Defendant USCIS is the division of DHS responsible for the administration of immigration and naturalization adjudication functions and establishing immigration services policies and priorities.

12. Defendants have possession and control over the records that Plaintiffs seek.

JURISDICTION AND VENUE

13. This Court has jurisdiction over this matter pursuant to FOIA, 5 U.S.C. §§ 552(a)(4)(B) and 552(a)(6)(C)(i), and 28 U.S.C. § 1331.

14. Venue lies in this District under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e) as Plaintiffs' principal places of business are in the District of New Jersey.

STATEMENT OF FACTS

ICE's Immigration Enforcement Activities In The State Of New Jersey

15. ICE, a branch of DHS, is responsible for enforcing the Immigration and Nationality Act (the "INA"). Its officers have the authority to arrest, detain, and remove aliens from the United States.

16. In 2003, ICE began its Fugitive Operation Program, "to eliminate the nation's backlog of immigration fugitives."² ICE defines a fugitive as "an alien who has failed to depart the United States based upon a final order of removal, deportation, or exclusion; or who has failed to report to a Detention and Removal Officer after receiving notice to do so."³

² ICE News Release, *New Jersey ICE fugitive operations teams arrest more than 2,000 in one year*, Dec. 4, 2007, available at <http://www.ice.gov/pi/news/newsreleases/articles/071204newark.htm>.

³ ICE Factsheet, *Fugitive Operations Program*, Dec. 4, 2007, available at http://www.ice.gov/pi/news/factsheets/NFOP_FS.htm.

17. ICE implements its Fugitive Operations Program through Fugitive Operations Teams (“FOT”s) that are tasked with apprehending fugitive aliens. At the end of Fiscal Year (“FY”) 2007, there were 75 FOTs nationwide. Since mid-2006, there have been four FOTs within the state of New Jersey (doubled from two FOTs previously).

18. On January 31, 2006, each of those teams was ordered to apprehend one thousand fugitives per year.

19. On May 26, 2006, FOTs began a nationwide fugitive-apprehension effort known as “Operation Return to Sender.”⁴

20. Since the escalation of Operation Return to Sender and the implementation of FOT quotas, the number of individuals arrested by New Jersey FOTs has doubled. In FY 2007, New Jersey FOTs apprehended 2,079 individuals, compared with 1,094 in FY 2006. These statistics are consistent with a doubling in arrests nationally.

21. Of the 2,079 individuals arrested in FY 2007, 1,809 had no criminal history.⁵

22. Media reports and numerous personal accounts suggest that FOTs have executed many of these arrests in pre-dawn warrantless raids of immigrant homes across the state.

23. Upon information and belief, ICE conducted raids of immigrant homes without search warrants in at least the following New Jersey municipalities:

- i) Trenton, New Jersey on or around May 2004 and February 12, 2005;
- ii) Freehold, New Jersey on or around May-August, 2004 and June 13, 2007;
- iii) Hightstown, New Jersey on or around May-August, 2004 and early 2005;
- iv) Ewing, New Jersey on or around May-August, 2004 and early 2005;
- v) Princeton, New Jersey on or around October 12, 2006 and December 7, 2007;
- vi) West Windsor, New Jersey, on or around late 2004 and early 2005;

⁴ Office of the Inspector General, *An Assessment of United States Immigration and Customs Enforcement’s Fugitive Operations Teams*, at 8, available at http://www.dhs.gov/xoig/assets/mgmtrpts/OIG_07-34_Mar07.pdf (citing Office of Detention and Removal Operations Memorandum, “Fugitive Operations Case Priority and Annual Goals,” January 31, 2006).

⁵ See note 2, *supra*.

- vii) Union City, New Jersey on or around May 1, 2005, August 14, 2007, and September 26-27, 2007;
- viii) Bridgeton, New Jersey on or around July-September, 2005, June 2006, September 2006, and January 2007
- ix) Paterson, New Jersey on or around March 4, 2006 and August-September 2007;
- x) Edison, New Jersey on or around May 24, 2006;
- xi) Metuchen, New Jersey on or around May 24, 2006;
- xii) Woodbridge, New Jersey on or around May 24, 2006;
- xiii) Penn's Grove, New Jersey on or around August 1, 2006;
- xiv) Clifton, New Jersey on or around November 13, 2006;
- xv) Atlantic City, New Jersey on and around November 13-19, 2006;
- xvi) Vineland, New Jersey on or around February 1-2, 2007 and August 29, 2007;
- xvii) Englewood, New Jersey on or around March 26, 2007;
- xviii) Morristown, New Jersey on or around June 6, 2007;
- xix) Lakewood, New Jersey on or around June 13, 2007;
- xx) Emerson, New Jersey on or around June 20, 2007;
- xxi) Hillsdale, New Jersey on and around June 20, 2007;
- xxii) Westwood, New Jersey on or around June 20, 2007;
- xxiii) Bloomfield, New Jersey on or around August 22, 2007;
- xxiv) Passaic, New Jersey on or around August-September 2007;
- xxv) Irvington, New Jersey on or around August-September 2007;
- xxvi) Livingston, New Jersey on or around September 10-17, 2007;
- xxvii) New Brunswick, New Jersey on or around August-October 2007; and
- xxviii) New Egypt, New Jersey on or around October 3, 2007.

24. No official information is available regarding the basis for any of these raids, or the manner in which they were conducted. However, media reports and personal accounts from subjects of these raids suggest the following pattern of conduct.

25. In a typical raid, between three and ten ICE agents surround a home believed to house one or multiple immigrant families. This occurs in the pre-dawn hours of the morning. The agents pound furiously on the door, and in many cases shout “police.” The occupants are awoken and a person rushes to the door, assuming an emergency. In some instances, the person opens the door. In other cases, the person asks who is there, to which the ICE agents respond “police” and in some cases demand that the door be opened. In other instances the ICE agents state that they are police, looking for a particular individual who is unknown to the occupants of the home, which then leads the occupant to open the door in order to assist with the inquiry. As the door is opened, the agents enter the home, typically without requesting consent. In some cases, if the agents do not have a clear path of entry, they forcibly push the door and the individual who opened it. It has been reported that agents have even broken down doors to gain entry.

26. Upon information and belief, the agents typically do not have a search warrant authorizing entry to the premises.

27. According to published reports and other information, multiple armed agents then move through the home and order all of the individuals out of bed and to a central location in the home. Often, these occupants include small children, many of whom are US citizens. ICE agents have pointed guns directly at the occupants of a home, including, in some instances, children.

28. The ICE agents often state that they are looking for a particular individual. Regardless of whether that individual is known to the occupants (in many cases, the occupants have never heard of the person), or whether the individual is present in the home, the agents typically question all of the occupants about their identity and immigration status. There are several first-hand reports of ICE agents confiscating individuals’ cell phones, checking telephone

numbers stored on these phones, and forcing the owners of the phones to divulge details about relatives and friends whose numbers were stored in the phones.

29. It has been reported that ICE agents are sometimes verbally abusive, and if the occupants are uncooperative, physically abusive as well.

30. In front of children and other family members, ICE agents typically handcuff individuals they suspect are unlawfully present in the United States and place them in a van outside the home. They often do not allow the person to change out of his or her bedclothes. Nor do they typically tell the family where they are taking the person. ICE agents then move on to other houses in the neighborhood and repeat this sequence, filling the van with arrestees.

31. It has been reported that ICE agents have on several occasions refused to allow individuals to speak with an attorney after they had demanded to do so during a raid.

Plaintiffs' FOIA Requests

32. By letters to Defendants dated December 13, 2007, Plaintiffs submitted a FOIA request for records relating to the raids and arrests that took place in New Jersey on specific dates between January 2004 and December 2007. Those letters also requested information regarding policies and procedures governing home raids in general. Plaintiffs also submitted identical FOIA requests to the following individual offices operating within the Defendant agencies: ICE Field Office (Newark, NJ), ICE Field Office (New York, NY), Fugitive Operations Support Center (C/O ICE Headquarters), Compliance Enforcement Division (Washington, DC; C/O ICE Headquarters), Office of Detention and Removal Operations (Washington, DC), Office of Detention and Removal Operations (Newark, NJ), Office of Investigations (Newark, NJ), New York Intelligence Office, National Fugitive Operations Program (Washington, DC; C/O ICE Headquarters), and New Jersey Fugitive Operations Teams (C/O ICE Headquarters). Copies of the FOIA requests are attached as Exhibit "A."

33. Specifically, Plaintiffs sought the following records in their FOIA requests:

- i) *Records of Policies and Procedures.* All guidelines, instructions, memoranda, protocols or training materials issued from January 1, 2004 to the present, setting

forth policies or procedures related to operations to identify, locate, or arrest suspected fugitives in the state of New Jersey. These include but are not limited to operations conducted as part of “Operation Return to Sender,” “Operation Predator,” and “Operation Community Shield.”

- ii) *Database Records.* Records related to the individuals apprehended in the specific operations listed in the request, held in the Fugitive Case Management System, National Crime Information Center, and Deportable Alien Control System.
- iii) *Fugitive Operations Team (“FOT”) Apprehension Goal.* Specifically, the Detention and Removal Office (“DRO”) Memorandum, entitled “Fugitive Operations Case Priority and Annual Goals,” January 31, 2006, including any subsequent versions or updates to the memorandum.
- iv) *FOT Plans.* Plans submitted to the DRO office in Newark or Washington, D.C., or to the National Fugitive Operations Program relating to the specific operations listed in the request.
- v) *National Fugitive Operations Program Weekly Statistical Reports.* Reports related to the state of New Jersey from January 1, 2004 to the present.
- vi) *Records Related to Operations Reported by ICE.* Specific records (a detailed list was provided in the request) related to each and every arrest made during the raids listed in Plaintiffs’ request.
- vii) *Local Law Enforcement.* Records regarding assistance provided by towns, municipalities, or state departments in New Jersey, including records of agreements and communications between the FOT and the local law enforcement agencies.

34. Plaintiffs also requested expedited processing of their requests, pursuant to 5 U.S.C. § 552(a)(6)(E). DHS regulations require that a request made by a person primarily engaged in disseminating information be given expedited treatment if the request involves an “urgency to inform the public about an actual or alleged federal government activity.” 6 C.F.R. §5.5(d).

35. On January 15, 2008, Plaintiffs received a letter from DHS denying their request for expedited processing. A copy of the letter is attached as Exhibit “B.” DHS’s primary basis for the denial was that Plaintiffs had not “detailed with specificity why [Plaintiffs] feel there is urgency to inform the public about past DHS actions,” and that Plaintiffs did not “offer any supporting evidence of an interest of the public that is any greater than the public’s general

interest in past fugitive operations.” DHS concluded that public interest in immigration enforcement and ongoing warrantless raids of immigrant homes across the state and the country are not of particular interest to the public because (1) “your request is the only recent request for information on ICE operations,” and (2) “a preliminary search of the internet does not indicate that there is substantial current news interest concerning this topic. In this regard, I note that the majority of the articles that you cited appeared in the press in 2005, 2006 and early 2007.”

36. Contrary to the characterizations in DHS’s denial of expedited processing, the issue of immigration enforcement continues to be at the center of a local and national public debate. For example, a search of the New York Times from January 1, 2007 to January 22, 2008 returned 2,002 hits for “immigration” and 74 hits for “immigration and raid.”

37. Local New Jersey newspapers continue to cover the issue of immigration enforcement, with repeated and widespread coverage of the questionable practice of warrantless ICE home raids. Plaintiffs’ FOIA request cites to 16 articles on this issue from New Jersey media outlets ranging from 2004 through December 5, 2007. Since that date, at least two of New Jersey’s largest newspapers have again extensively covered the issue of questionable enforcement techniques used by ICE in ongoing warrantless home raids.⁶ Nevertheless, information concerning the practice that is available only from government documents has not yet been made available to the public. Moreover, because the raids are apparently conducted without search warrants, it remains unknown whether any particular search has been conducted on a lawful basis.

38. DHS statistics and media reports suggest that as FOTs escalate and accelerate their efforts to find and arrest “fugitives,” they will continue to enter immigrant homes in the dead of the night without search warrants, without consent, and with questionable bases for targeting particular homes. Unless the information sought in Plaintiffs’ FOIA request is obtained

⁶ E.g., Liz Llorente, *Suits: Feds play dirty; Immigration officials say raids on illegals are within the law*, Bergen Record (Hackensack, N.J.), Jan. 2, 2008; Brian Donohue, *The deportation crackdown: Dragnet against fugitive immigrants has its critics*, Star-Ledger (Newark, N.J.), Dec. 27, 2007.

expeditiously, this highly questionable practice will continue to be carried out without scrutiny or accountability to an American public that is deeply interested in the methods employed by immigration agents.

39. Plaintiffs also requested a fee waiver because the information they seek “is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in [Plaintiffs’] commercial interest.” 5 U.S.C. § 552(a)(4)(A)(iii). *See also* 6 C.F.R. § 5.11(k).

40. The public has an interest in being informed about the manner in which federal immigration agents are enforcing immigration laws. In particular, the public has a strong interest in ensuring that immigration agents are operating within constitutional limitations protecting individuals from unauthorized searches of their homes. As set forth in paragraphs 36-38 *supra*, the enforcement of immigration laws has been an issue of both local and national public concern and media coverage.

41. The Plaintiffs have no commercial interest in the matter. They will make any information they receive as a result of this FOIA request available to the public, including the press, at no cost. Plaintiffs therefore meet the statutory criteria for a fee waiver.

The Defendants’ Failure To Respond

42. Plaintiffs sent their FOIA requests by Registered Mail on Wednesday, December 14, 2007. Defendants, as well as the aforementioned offices operating within the Defendant agencies identified in Paragraph 32 *supra*, received and signed for the requests more than twenty (20) working days prior to the filing of this Complaint.

43. To date, Plaintiffs have received no substantive response to their requests for public documents from the Defendants or the offices operating within the Defendant agencies that are identified in Paragraph 32 *supra*, notwithstanding FOIA’s mandatory requirement that an agency respond within twenty (20) working days. *See* 5 U.S.C. § 552(a)(6)(A)(i).

44. Plaintiffs received a letter from DHS on January 15, 2008, wherein DHS acknowledged receipt of the FOIA request and stated that it was referring the request to three

additional DHS components: Office of the Inspector General, Office of the General Counsel, and Office of Policy. *See* Exhibit “B.” In that letter, DHS also denied Plaintiffs’ request for expedited processing and reported that Plaintiffs’ fee waiver request “will be held in abeyance pending the quantification of responsive records.” DHS did not, however, respond to—or even address—Plaintiffs’ request for information.

45. Defendant USCIS sent a letter to Plaintiffs dated January 17, 2008, wherein it acknowledged receipt of their FOIA request and informed them that their requests had “been placed in the complex track” of a multi-track, first-in, first-out system. A copy of the letter is attached as Exhibit “C.” USCIS did not provide a substantive response to Plaintiffs’ request for information. USCIS asked Plaintiffs to “provide specific names, date of births and country of births regarding items #6-7 on your request.” This is, however, precisely the information that Plaintiffs do not have and were therefore seeking in #6-7 of their request. USCIS did not address any other items that were the subject of Plaintiffs’ request.

46. Due to Defendants’ failure to respond to the FOIA requests, Plaintiffs are deemed to have automatically exhausted their administrative remedies under 5 U.S.C. § 552(a)(6)(C)(i). Pursuant to 5 U.S.C. § 552(a)(6)(E)(iii), Plaintiffs are not required to pursue an administrative appeal of the initial denial of their request for expedited processing before seeking judicial review.

FIRST COUNT
**(VIOLATION OF FOIA FOR IMPROPER DENIAL
 OF REQUEST FOR EXPEDITED PROCESSING)**

47. Plaintiffs repeat and re-allege each and every allegation contained in paragraphs 1 through 46 as if repeated and reincorporated herein.

48. The failure of Defendants ICE and USCIS to respond to Plaintiffs’ request for expedited processing violated 5 U.S.C. § 552 (a) (6)(E) (ii) (I) and 6 C.F.R. § 5.5 (d) (4) .

49. Defendant DHS’s denial of Plaintiffs’ request for expedited processing violates 5 U.S.C. § 552(a)(6)(E)(v)(II) and 6 C.F.R. § 5.5 (d)(1)(ii).

SECOND COUNT
**(VIOLATION OF FOIA FOR FAILURE TO TIMELY RESPOND
TO REQUEST FOR RECORDS)**

50. Plaintiffs repeat and re-allege each and every allegation contained in paragraphs 1 through 49 as if repeated and reincorporated herein.

51. Defendants have violated Plaintiffs' right to a timely response under 5 U.S.C. § 552(a)(6)(A)(i).

THIRD COUNT
(VIOLATION OF FOIA FOR FAILURE TO DISCLOSE RECORDS)

52. Plaintiffs repeat and re-allege each and every allegation contained in paragraphs 1 through 51 as if repeated and reincorporated herein.

53. Defendants' failure to make its records available to the public violates 5 U.S.C. § 552(a)(1)-(2).

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

- 1) Assume jurisdiction over this matter;
- 2) Grant Plaintiffs' request for a fee waiver;
- 3) Order Defendants to immediately disclose the requested records in their entireties and to make copies available to Plaintiffs;
- 4) Award Plaintiffs costs and reasonable attorneys' fees in this action as provided by 5 U.S.C. § 552(a)(4)(E); and
- 5) Grant any other relief the Court deems appropriate.

Dated: January 28, 2008

Respectfully submitted,

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