

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

_____)	
ADELANTE ALABAMA WORKER)	
CENTER,)	
)	
DETENTION WATCH NETWORK,)	
)	
GREATER BIRMINGHAM MINISTRIES,)	
)	
IMMIGRANT DEFENSE PROJECT,)	
)	
and)	
)	
SOUTHERNERS ON NEW GROUND,)	
)	
Plaintiffs,)	Civil Action No.
)	
v.)	
)	
DEPARTMENT OF HOMELAND)	
SECURITY,)	
)	
and)	
)	
OFFICE FOR CIVIL RIGHTS AND)	
CIVIL LIBERTIES,)	
)	
Defendants.)	
_____)	

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This action is brought under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, to compel the Department of Homeland Security (DHS) and the Office for Civil Rights and Civil Liberties (CRCL), a component of DHS, to produce records responsive to a FOIA request for a particular memorandum issued in 2015 by CRCL concerning “longstanding and continuing [civil rights and civil liberties] concerns” at a detention facility in Alabama.

JURISDICTION AND VENUE

2. This Court has jurisdiction under 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).
Venue is proper under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

PARTIES

3. Plaintiff Adelante Alabama Worker Center is a non-profit organization engaged in advocacy, training, community education, and representation on behalf of low-wage and immigrant workers in the Birmingham, Alabama area.

4. Plaintiff Detention Watch Network is a coalition of approximately 200 organizations and individuals working against the injustices of the immigration detention and deportation systems. Its members are community organizers, advocates, social workers, lawyers, doctors, artists, clergy, students, formerly detained immigrants, and affected families from around the country. They are engaged in individual case and impact litigation, documenting conditions violations, local and national administrative and legislative advocacy, community organizing and mobilizing, teaching, and social service.

5. Plaintiff Greater Birmingham Ministries is a multi-faith organization that provides direct services and engages in systemic advocacy on behalf of people in need in the greater Birmingham area.

6. Plaintiff Immigrant Defense Project is a national nonprofit organization that advocates for the rights of immigrants accused or convicted of crimes. It works with grassroots and community organizations on impact litigation, policy advocacy, legal advice and training, and strategic communications. Its principal place of business is located at 40 West 39th Street, New York, NY 10018.

7. Plaintiff Southerners on New Ground is a regional non-profit organization and

membership network dedicated to intersectional organizing and training on behalf of Lesbian, Gay, Bisexual, Transgender, and Queer people in the South.

8. Together, plaintiffs—along with other requesters—submitted the FOIA request at issue.

9. Defendant DHS is an agency of the United States.

10. Defendant CRCL is a component of DHS.

11. Defendants have possession and control over the records that plaintiffs seek.

STATEMENT OF FACTS

CRCL's Memorandum

12. Within DHS, CRCL is responsible for reviewing and assessing civil rights and civil liberties abuses by DHS employees and officials; overseeing compliance with constitutional, statutory, regulatory, policy, and other requirements relating to civil rights and civil liberties of individuals affected by DHS programs and activities; and investigating possible abuses of civil rights and civil liberties, among other duties. 6 U.S.C. § 345(a).

13. Each year, CRCL submits an annual report to Congress under 6 U.S.C. § 345(b). The report details allegations of abuses of civil rights and civil liberties by DHS employees and officials, as well as actions taken by DHS in response.

14. In its Fiscal Year 2015 Annual Report to Congress (2015 Report)—issued on June 10, 2016—CRCL described its actions in response to “numerous complaints” about a detention facility operated by Immigration and Customs Enforcement (ICE) in Alabama.

15. The 2015 Report states that, in response to over fifty complaints received since 2012, CRCL sent a “super-recommendations memorandum” to ICE in May 2015 (2015 Super-

Recommendations Memo), “formally notifying them of our long-standing and continuing concerns.”

16. The 2015 Report defined a “super-recommendations memorandum” as “an avenue to inform Component leadership of areas where there has been no significant implementation of CRCL recommendations despite repeated follow-up, CRCL continues to receive complaint allegations on the issues raised in the recommendations, and the issues presented raise serious civil rights concerns.”

17. As described in the 2015 Report, the 2015 Super-Recommendations Memo concerning the Alabama detention facility discussed “the seriousness of problems found in previous investigations, the continued receipt of additional correspondence raising similar concerns, and CRCL’s belief that ... prior recommendations are likely not being fully implemented.”

18. The 2015 Super-Recommendations Memo also included CRCL’s recommendation “that ICE develop a comprehensive plan to address the deficiencies at the facility, address the issues raised in complaints ... and either transition the facility to the 2011 Performance Based National Detention Standards or cease use of the facility.”

Plaintiffs’ FOIA Request

19. On September 8, 2016, plaintiffs submitted a FOIA request to CRCL seeking “disclosure of the super-recommendations memorandum that is discussed in the [2015 Report] and addresses ‘a detention facility in Alabama.’”

20. By letter dated October 20, 2016, after failing to receive a response from CRCL, plaintiffs submitted an administrative appeal of CRCL’s constructive denial of their request.

21. By letter dated October 24, 2016, DHS responded to plaintiffs' request. DHS stated that a search of CRCL's Compliance Branch produced five responsive pages but that "all 5 pages are to be withheld in their entirety pursuant to Title 5 U.S.C. § 552(b)(5)."

22. By letter dated November 10, 2016, plaintiffs administratively appealed DHS's decision withholding the responsive records under exemption 5.

23. By letter dated February 2, 2017, Tommy Cantrell, Attorney-Advisor in the U.S. Coast Guard Office of the Chief Administrative Law Judge—the office DHS has delegated responsibility for adjudicating its FOIA appeals—dismissed the first administrative appeal as moot due to DHS's October 24, 2016, response.

24. By letter dated March 13, 2017, Heather MacClintock, Attorney-Advisor in the U.S. Coast Guard Office of the Chief Administrative Law Judge, issued a decision on the second administrative appeal, remanding the request to CRCL and DHS to provide "an adequate explanation of the privilege(s) underlying its use of Exemption 5 within 30 days."

25. On April 25, 2017, a representative of one of the requesters contacted Ms. MacClintock on behalf of all the requesters, including plaintiffs, to inquire as to the status of the remand to CRCL and DHS.

26. By letter dated May 23, 2017, Ms. MacClintock informed plaintiffs that she had been unable to determine the status of the remand and had not received any additional information from CRCL or DHS. Ms. MacClintock further stated that "[b]ecause a reasonable amount of time has passed without further response, DHS's lack of action must be viewed as final, giving you the right to pursue an appeal in the appropriate United States District Court. This decision is the final action of DHS concerning your initial FOIA request ... and FOIA [a]ppeal"

**CAUSE OF ACTION
(FOIA – Failure to Disclose Responsive Records)**

27. Plaintiffs have exhausted all administrative remedies with respect to their September 8, 2016, FOIA request to CRCL for the 2015 Super-Recommendations Memo.

28. Plaintiffs have a statutory right under FOIA, 5 U.S.C. § 552(a)(3)(A), to the records it requested, and there is no legal basis for CRCL and DHS's failure to disclose them. FOIA also requires agencies to release "[a]ny reasonably segregable portion of a record," 5 U.S.C. § 552(b), and CRCL and DHS have not fulfilled their segregability obligation.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this Court:

- (1) Declare that CRCL and DHS's withholding of the requested records is unlawful;
- (2) Order CRCL and DHS to make the requested records available to Plaintiffs;
- (3) Award Plaintiffs their costs and reasonable attorneys' fees pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (4) Grant such other and further relief as this Court may deem just and proper.

Dated: December 6, 2017

Respectfully submitted

/s/ Adam R. Pulver
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*Pro hac vice applications to be filed

Attorneys for Plaintiffs