

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

PROJECT SOUTH
and CENTER FOR CONSTITUTIONAL
RIGHTS,

Civil Action No. 21-cv-8440

Plaintiffs,

v.

UNITED STATES IMMIGRATION AND
CUSTOMS ENFORCEMENT; UNITED
STATES DEPARTMENT OF HOMELAND
SECURITY; UNITED STATES
CITIZENSHIP AND IMMIGRATION SERVICES;

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

DEPARTMENT OF JUSTICE EXECUTIVE
OFFICE FOR IMMIGRATION REVIEW; and
UNITED STATES DEPARTMENT OF
STATE,

Defendants.

FOIA requests focus on (1) data regarding the demographic information of persons on deportation flights to Cameroon between August 2020 and the inauguration of President Biden on January 20, 2021, including the nature and status of immigration relief requested; and (2) correspondence and communications among ICE officials and relevant government officials regarding removals of Cameroonians and conditions in Cameroon between August 1, 2020 and February 26, 2021.

3. Despite grave public concerns over the treatment of Black immigrants and the disregard of the humanity and due process rights of Cameroonian migrants, Defendants have disclosed no information about the policies and communications regarding the removal of Cameroonians to Cameroon or the data underlying the dramatic increase of removal flights to Cameroon at the end of the Trump Administration and beginning of the Biden Administration. The lack of information raises a question as to whether the increase in removals was a targeted form of retaliation against Cameroonians and other Black migrants.

4. To address the urgent need for such critical information, Plaintiffs sought records including communications, policies, and data relating to the removal of Cameroonians to Cameroon and requested a fee waiver and expedited processing for each of the three requests. *See* Ex. 1, FOIA Request Letters on behalf of Project South, Southern Poverty Law Center (“SPLC”), and the Center for Constitutional Rights (“CCR”) (dated April 26, 2021 & June 17, 2021) (“Plaintiffs’ Requests”). The public has a compelling interest in understanding Defendants’ communications and policies on the removals of migrants into areas of known

advocacy and dialogue around executive policies on immigration enforcement and to
meaningfully part

periodicals that reach members with education, organizing updates, and consciousness-raising political analysis on poverty, race, global struggles, and youth realities. Project South also produces community-based reports to share knowledge, increase access to movement histories, and amplify movement victories.

9. Plaintiff CCR is a non-profit, public interest legal and advocacy organization that engages in the fields of civil and international human rights. CCR's diverse issue areas include litigation and advocacy around immigration, as well as racial and ethnic profiling. One of CCR's primary activities is the publication of newsletters, know-your-rights handbooks, legal analysis of current immigration law issues, and other similar materials for public dissemination. These and other materials are available through CCR's Development, Communications, and Advocacy

11. Defendant ICE is a component of DHS that enforces immigration and customs laws and is responsible for the detention and removal of immigrants. It has offices in all 50 states.

because of the numerous reports detailing the U.S. Immigration and Customs Enforcement's (ICE) use of torture to coerce migrants into signing deportation orders.²

17. U.S. Immigration and Customs Enforcement (ICE) officers have an appalling

ICE tactics such as the use of pepper spray, threatening violence, and forcibly taking fingerprints for use on deportation papers.⁷ Following these complaints, ICE deported numerous Cameroonians subject to mistreatment and abuse, and upon arrival in Cameroon, a number of Cameroonians were further detained by the Cameroonian government, forced to pay bribes to secure their freedom, and stripped of vital identification documents.⁸

18. The United States government was well aware of the dangerous situation in Cameroon. In October 2019, then President Donald Trump had announced that the U.S. would terminate the eligibility of Cameroon for trade preference benefits under the African Growth and Opportunity Act (AGOA) in January 2020, due to persistent gross violations of internationally recognized human rights. Speaking on behalf of the administration, Deputy U.S. Trade Representative C.J. Mahoney stated, “The U.S. government remains deeply concerned about persistent gross violations of human rights being committed by the Cameroonian government against its own citizens.”⁹ Despite this and other acknowledgements by the U.S. government of the dire and unsafe situation in Cameroon, removal of detained Cameroonians into these conditions continued.

19. In December 2020, Human Rights Watch called on the U.S. Government to halt these deportations into areas of conflict, cautioning that hundreds of Cameroonians had been killed in the Anglophone North-West and South-West regions.¹⁰ Disregarding these pleas, throughout the fall of 2020 and into early 2021, ICE continued to deport Cameroonian and other African migrants despite the life-threatening situations they faced in their home countries, and

⁷ *Id.*

⁸ John Washington, *Cameroonian Asylum Seekers Say They Face Violent Persecution upon Deportation*, The Nation (Nov. 9, 2020), <https://www.thenation.com/article/politics/cameroon-asylum-deportation-immigration/>.

⁹ *President Trump Terminates Trade Preference Program Eligibility for Cameroon*, Office of the United States Trade Representative, Executive Office of the President (October 31, 2019), <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2019/october/president-trump-terminates-trade> (last visited Oct. 12, 2021).

¹⁰ See Human Rights Watch, *US: Protect Cameroonians From Deportation* (Dec. 18, 2020), <https://www.hrw.org/news/2020/12/18/us-protect>

despite reports that individuals previously deported went missing upon arrival.¹¹ The government deported asylum seekers despite the fact that many individuals still had pending immigration court proceedings at the time of their deportation, displaying ICE's callous disregard for immigrants' due process rights.¹²

20. While some immigrants involved in the ongoing complaints were pulled off the deportation flights,¹³

civilians.¹⁷ Additionally, on April 7, 2021, eleven human rights, civil liberties, faith groups, and others wrote a statement demanding the U.S. end military assistance to Cameroon and referenced the high number of Cameroonian asylum seekers in the U.S.¹⁸ Amnesty International revealed research in July 2021 demonstrating the horrific scope of violence and the ongoing crisis in Cameroon's Anglophone regions, and emphasized the immediate need for international responses to support Cameroonian refugees.¹⁹

22. In response to the continuing conflict and public outcry, elected officials have pushed for action to protect Cameroonians in the United States. On July 30, 2021, 20 members of the House Judiciary Committee urged Secretary Mayorkas to designate Cameroon for Temporary Protected Status (TPS) due to the continued humanitarian crisis and the urgent need for assistance.²⁰ On October 12, 2021, members of the U.S. House of Representatives introduced the Cameroon TPS Act of 2021, a bill to protect Cameroonians from deportation for eighteen months.²¹

23. The crisis remains one of urgent concern by human rights and international organizations as well as the public. A Human Rights Watch report released on August 2, 2021²² and an update from the U.N. Office for Coordination of Humanitarian Affairs on September 28 n r isrberto

revealed worsening conditions in Cameroon, including increasing “violence, kidnapping, and attacks,” lockdowns across the country, school closures, and worsening food insecurity.²³ On August 12, 2021, The Guardian reported on a lawsuit filed by one impacted individual in an attempt to hold them ICE officials for physically attacking him and exposing him to COVID-19.²⁴

24. Despite persistent and increasing concerns from the public, the press, and elected officials, little to no information has been publicly released regarding the abuses suffered by these Black immigrants as a result of U.S. government actions – information that is critical to holding the federal government accountable and preventing future harm.

II. Compelling Necessity for Records Sought

25. There is a desperate need for transparency into how Defendants treat Black immigrants. In recent weeks, Defendants’ inhumane actions toward Black immigrants at the Southern border have received urgent and widespread attention from the public and the press.²⁵ There is a clear connection between DHS’s mistreatment of Black Cameroonian asylum-seekers and fellow Black migrants at the U.S.-Mexico border.

²³ U.N. Office for Coordination of Humanitarian Affairs, *Cameroon Flash Update: Ban on movements and activities in the North-West and South-West* (Sept. 28, 2021), <https://reliefweb.int/report/cameroon/cameroon-flash-update-ban-movements-and-activities-north-west-and-south-west-28>.

²⁴ Julian Borger, *Cameroonian asylum-seeker sues US for alleged assault by ICE officers*, The Guardian (Aug. 12, 2021), <https://www.theguardian.com/us-news/2021/aug/12/cameroonian-asylum-seeker-sues-us-for-alleged-assault-by-ice-officers>.

²⁵ See, e.g., Bill Chappell, *U.S. Border agents Chased Migrants on Horseback: A Photographer Explains What He Saw*, National Public Radio (Sept. 21, 2021), <https://www.npr.org/2021/09/21/1039230310/u-s-border-agents-haiti-migrants-horses-photographer-del-rio>; Eileen Sullivan and Zolan Kanno-

26. Defendants have withheld critical information from the public that would allow a better understanding of the conditions and treatment to which Defendants subject Black immigrants during the immigration process, and into the decision-making that factors in the deportation processes.

27. For example, on October 13, 2020, and November 10, 2020, Defendants deported over 80 Cameroonian asylum seekers on charter flights including several who still had pending immigration cases, and attempted to deport two of the eight men who had filed civil rights complaints alleging physical abuse and mistreatment at the hands of ICE.²⁶

28. In addition, immigrant rights advocates assert that Black immigrants are subject to racial discrimination throughout the immigration process. From disproportionately high denials of credible fear interviews and asylum petitions, to high incidents of disciplinary action while in immigration detention, Defendants appear to subject Black immigrants to disparate treatment during the immigration process. Government agencies should not and cannot engage in discriminatory behavior in violation of the U.S. Constitution and other laws prohibiting discrimination. The public has a compelling interest in obtaining documentation of Defendants' policies and procedures that result in the disparate treatment of Black immigrants.

Unfortunately, the need for transparency in the treatment of Black immigrants during the immigration process remains compelling under the Biden Administration, as evidenced by the inhumane treatment of Haitian immigrants at the Southern Border. The recent resignation under protest of the U.S.'s top diplomat to Haiti, further highlights the need for transparency from all

²⁶ See n.2 *supra*.

federal components that are involved in the immigration and deportation processes of Black immigrants.²⁷

29. Moreover, Plaintiffs and the public have a right to access documents and records that will explain the events and decisions that resulted in the deportation of Black immigrants to countries from which they fled in fear for their lives, and where their lives will again be at great risk. Of particular concern is that Defendants are not only forcibly returning Cameroonians to danger, but the U.S. government has indirectly contributed to enabling the conditions they fled by aiding and afing andou22 (d)2 ()-10 es iy(t)-2 (l)-6 (y) Govthovernme'eony ditlpigertihe-2 (on hdoc)4 (-6 (y

inform the public of the policies and decision-making regarding removals to areas of conflict, specifically with the recent removals of Cameroonian migrants.

38. All Plaintiffs' Requests also sought a waiver of applicable fees under 5 U.S.C. § 552(a)(4)(A)(iii); 6 C.F.R. § 5.11(b); 22 C.F.R. § 121.16(a); and 28 C.F.R. § 16.10(k), because "disclosure of the requested records is in the public interest because it is likely to contribute significantly to the public understanding of the activities or operations of the government and is not primarily in the commercial interest of the requester." Project South and CCR are non-profit entities with no commercial interest in the records requested, which are crucial to public understanding of Defendants' operations.

IV. Defendants' Failure to Respond

39. On April 26, 2021, Plaintiffs filed both the Data Request and Communications Request with Defendants ICE, DHS, DOS and EOIR via Federal Express and email. On June 17, 2021, Plaintiffs filed t

50. In a letter sent via email dated May 5, 2021, Defendant EOIR issued a “Final Response” to Plaintiffs’ Data Request and stated that in regards to paragraph 2 of Plaintiffs’ Data Request, EOIR had conducted a search and found responsive records, and was providing “partial access” to those records to Plaintiffs. EOIR produced one set of spreadsheets to Plaintiffs along with the letter.

51. On July 9, 2021, Plaintiffs appealed EOIR’s determination that its search for records responsive to the Data Request was adequate.

52. On July 22, 2021, EOIR sent Plaintiffs a letter acknowledging the appeal in regards to the Data Request.

53. On July 22, 2021, EOIR sent Plaintiffs a “Supplemental Response” which stated an additional search for records responsive to paragraph 1 of the Data Request had been done. EOIR produced one page of partially-redacted records to Plaintiffs.

54. On September 10, 2021, Plaintiffs appealed EOIR’s July 22, 2021 “Supplemental Response” as inadequate.

55. To date, Plaintiffs have not received any other correspondence from EOIR regarding the Data Request.

Executive Office of Review Response to Communications Request

56. According to FedEx’s website, the Communications Request was received and signed for by Defendant EOIR on April 28, 2021.

57. The Communications Request was sent via email to “EOIR.FOIARequests@usdoj.gov” on April 26, 2021.

58. In an email dated May 3, 2021, Defendant EOIR denied Plaintiffs' request for expedited processing of their Communications Request.

59. In an email dated May 3, 2021, Defendant EOIR stated that Plaintiffs' Communications Request would "require [EOIR] to conduct an unreasonably burdensome search." The email directed Plaintiffs to "clarify" our Communications Request and if we did not, EOIR would "administratively close" the request in 30 days.

60. On May 29, 2021, Plaintiffs sent EOIR an email directing EOIR not to close Plaintiffs' Communications Request. Plaintiffs attached a letter, dated May 28, 2021, to the email appealing EOIR's denial of expedited processing regarding the Communications Request and also further clarifying why EOIR should not administratively close Plaintiffs' request. Plaintiffs' May 28, 2021 letter was also sent to EOIR via Federal Express.

61. On June 1, 2021, EOIR sent Plaintiffs an email stating that Plaintiffs had not clarified our Communications Request, and that the request had now been administratively closed.

62. On June 23, 2021, Plaintiffs received a letter from the Department of Justice's Office of Policy ("DOJ-OIP") in response to our appeal of EOIR's response to Plaintiffs' Communications Request. The DOJ-OIP affirmed EOIR's decision to close Plaintiffs' request.

Department of Homeland Security Response to Data Request

63. According to FedEx's website, the Data Request was received and signed for by Defendant DHS on April 28, 2021.

64. The Data Request was sent via email to foia@hq.dhs.gov on April 26, 2021.

65. In a letter sent via email dated May 4, 2021, Defendant DHS confirmed receipt of Plaintiffs' Data Request and stated that due to the nature of the records sought, the agency would take an additional 10 days to make a determination, as permitted by law. DHS also denied Plaintiffs' request for expedited processing, and "conditionally granted" Plaintiffs' request for a fee waiver. DHS's letter also stated that DHS "will only address items 1, 2, 9-14 of your request" but did not explain why other parts of Plaintiffs' Data Request would not be addressed.

66. On May 28, 2021, Plaintiffs appealed DHS's response as to the agency's denial of expedited processing, the granting of only a "conditional" fee waiver, and its refusal to address all items contained in Plaintiffs' Data Request.

67. DHS acknowledged Plaintiffs' appeal in a letter dated July 19, 2021.

68. To date, Plaintiffs have not received a response to our appeal or any further correspondence from DHS regarding Plaintiffs' Data Request. Defendant DHS has not produced any responsive records to Plaintiffs' Data Request.

Department of Homeland Security Response to Communications Request

69. According to FedEx's website, the Communications Request was received and signed for by "Defendant DHS on April 28, 2021.

70. The Communications Request was sent via email to foia@hq.dhs.gov on April 26, 2021.

71. In a letter sent via email dated May 4, 2021, Defendant DHS confirmed receipt of Plaintiffs' Communications Request and stated that due to the nature of the records sought, the agency would take an additional 10 days to make a determination, as permitted by law. DHS also denied Plaintiffs' request for expedited processing, and "conditionally granted" Plaintiffs'

request for a fee waiver. DHS's letter also stated that DHS "will only address items 1-5 of your request" but did not explain why other parts of Plaintiffs' Communications Request would not be addressed.

72. On May 7, 2021, Defendant DHS sent Plaintiffs a response that was almost identical to its May 4, 2021 response, however this response did not indicate that only certain parts of Plaintiffs' Communications Request would be addressed.

73. On May 11, 2021, Plaintiffs received an email from the DHS Privacy Office regarding our Communications Request. The email stated that a "backend search came back

77. On June 28, 2021, Plaintiffs responded to DHS's June 3, 2021 email, and indicated we would like to speak with DHS on the phone to try and discuss potentially narrowing the Communications Request. Plaintiffs proposed several periods of time when they would potentially be available. Plaintiffs did not hear back from DHS as to arranging a time to talk.

78. On June 30, 2021, Plaintiffs received an email from DHS indicating DHS had tried to call Plaintiffs that afternoon. DHS also included some suggested search terms and additional information regarding ways to potentially narrow the request, including narrowing the custodians searched to only "Political Appointees, SES, GS-15" employees.

79. On July 9, 2021, Plaintiffs responded to DHS's June 30, 2021 email, stating that we continued to believe our original request was not overbroad. Plaintiffs asked which DHS "offices, subcomponents and departments" would be covered by the search if narrowed to include only "Political Appointees, SES, GS-15" employees.

80. On July 13, 2021, Plaintiffs received an email from DHS indicating that "DHS Office of Strategy, Policy, and Plans, Office of the Executive Secretary | Homeland Security – DHS, Office of the General Counsel | Homeland Security, Office of Legislative Affairs | Homeland Security, Office of Public Affairs - Department of Homeland Security, Office of Intergovernmental Affairs | Homeland Security, Science and Technology | Homeland Security"

light that other offices, components or divisions within DHS HQ are involved in the subject matter at issue in our FOIA request.”

82. On July 19, 2021, DHS emailed Plaintiffs an acknowledgement letter which stated that DHS had received Plaintiffs’ “amended request” on July 16, 2021. The letter also indicated that Plaintiffs’ request had been referred to USCIS.

83.

reasonably describing the records sought; told Plaintiffs items 3

96. In a letter dated June 22, 2021, DOS denied Plaintiffs' appeal and stated that its response "represents the Department's final determination on expedited processing and exhausts all administrative remedies available to you."

USCIS Response to Plaintiffs' Request

97. Plaintiffs' Request to USCIS was sent via email to uscis.foia@uscis.dhs.gov

failing to conduct an adequate search reasonably calculated to uncover responsive records, Defendants have violated the public's right, advanced by the Plaintiffs, to agency records under 5 U.S.C. §§ 552 *et seq.*

Second Claim for Relief:

Violation of FOIA for Improper Denial of Plaintiffs' Request for Expedited Processing

104. Plaintiffs repeat and re-allege each and every allegation contained in paragraphs 1 through 103 as if repeated and incorporated herein.

105. By denying or failing to respond timely to Plaintiffs' requests for expedited processing, Defendants have violated Plaintiffs' rights under 5 U.S.C. § 552(a)(6)(E) and Defendants' own regulations.

Third Claim for Relief:

106. Plaintiffs repeat and re-allege each and every allegation contained in paragraphs one through 105 as if repeated and incorporated herein.

107. By failing to respond or failing to non-conditionally grant Plaintiffs' requests for fee waivers, Defendants have denied Plaintiffs' rights under 5 U.S.C. § 552(a)(4)(A)(iii) and Defendants' own regulations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

- (a) Order Defendants immediately to make a full, adequate, and expedited search for the requested records;
- (b) Order Defendants to engage in expedited processing in this action;
- (c) Enjoin Defendants DHS, ICE, DOS and DOJ EOIR from assessing fees or costs for the processing of the FOIA Request;
- (d) Order Defendants to disclose the requested records in their entirety and make copies available to Plaintiffs no later than ten days after theed

- (e) Award Plaintiffs their costs and reasonable attorney's fees incurred in this action as provided by 5 U.S.C. § 552(a)(4)(E); and
- (f) Grant each other and further relief as this Court may deem just and proper.

Dated: October 13, 2021
New York, NY

\s\ Samah Sisay
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