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8 UNITED STATES IMMIGRATION  
AND CUSTOMS ENFORCEMENT AND  
9 UNITED STATES DEPARTMENT OF  
HOMELAND SECURITY

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12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA

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15 COMMUNITY JUSTICE EXCHANGE,  
JUST FUTURES LAW, MIJENTE  
16 SUPPORT COMMITTEE,

17 Plaintiffs

18 v.

19 U.S. IMMIGRATION & CUSTOMS  
ENFORCEMENT and U.S. DEPARTMENT  
20 OF HOMELAND SECURITY

21 Defendants.

No. 22-cv-2328-LB

**DEFENDANTS' ANSWER TO PLAINTIFFS'  
COMPLAINT**

Honorable Laurel Beeler

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24 Pursuant to Rule 8, Federal Rules of Civil Procedure, Defendants United States Immigration and  
25 Customs Enforcement (“ICE”) and United States Department of Homeland Security (“DHS”), by and  
26 through their undersigned counsel, hereby answer the Complaint filed by Community Justice Exchange,  
27 Just Futures Law, and Mijente Support Committee (collectively “Plaintiffs”) on April 14, 2022  
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1 (“Complaint”), as follows. For ease of reference, Defendants replicate the separately sectioned  
2 headings and paragraphs delineated in the Complaint and respond thereto,<sup>1</sup> and deny each and every  
3 allegation in the Complaint except as may be expressly and specifically admitted below.

4 **INTRODUCTION**

5 1. Paragraph 1 contains Plaintiffs’ characterization of this civil action brought pursuant to  
6 the Freedom of Information Act (“FOIA”) that is not a statement of fact but conclusions of law to  
7 which no response is required. To the extent that a response is required, Defendants admit that the  
8 Complaint purports to seek injunctive, declaratory and other relief for alleged violations of the FOIA  
9 and deny the remaining allegations contained in Paragraph 1.

10 2. Defendants admit that Plaintiffs submitted a FOIA request to ICE for various records  
11 related to its use of B.I. Incorporated’s SmartLINK application (“FOIA Request”). Plaintiffs’  
12 characterizations of the FOIA Request are not statements of fact for which a response is required.  
13 Defendants respectfully refer the Court to Plaintiffs’ FOIA Request since that request speaks for itself  
14 and is the best evidence of its contents.

15 3. Defendants admit that ICE utilizes the ISAP program as an alternative to detention and  
16 that B.I., Incorporated has held the contract for ISAP since 2004, and that the budget for and number of  
17 immigrants participating in the ISAP program has increased over the years. The remaining allegations  
18 consist of Plaintiffs’ characterizations of the ISAP program, and do not aver facts in support of a claim,  
19 and thus a response is not required. To the extent that a response is deemed required, Defendants deny  
20 the remaining allegations.

21 4. Paragraph 4 consists of Plaintiffs’ characterization of the number of individuals enrolled  
22 in the ISAP program at some point in April 2022 and what percentage of those individuals were on the  
23 SmartLINK application, and does not aver facts in support of a claim; thus, a response is not required.  
24 To the extent that a response is deemed required, Defendants lack the knowledge and information  
25 sufficient to form a belief as to the accuracy of the uncited statistics.

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28 <sup>1</sup> Although Defendants believe that no response is required to such headings, to the extent a  
response is deemed required and to the extent those headings and titles could be construed to contain  
factual allegations, those allegations are denied.

1           5. Paragraph 5 contains a four-word quotation from and Plaintiffs’ characterization of  
2 President Biden’s uncited FY23 budget request and an uncited projected growth in the number of  
3 immigrants subject to electronic monitoring, and does not aver facts in support of a claim; thus, a  
4 response is not required. To the extent that a response is deemed required, Defendants lack the  
5 knowledge and information sufficient to form a belief as to the accuracy of the uncited information and  
6 respectfully refer the Court to the FY23 budget request since that document speaks for itself and is the  
7 best evidence of its contents.

8           6. Paragraph 6 contains Plaintiffs’ characterization of uncited “information that is publicly  
9 available” regarding how SmartLINK data is being collected, retained, used and shared, and does not  
10 aver facts in support of a claim; thus, a response is not required. To the extent that a response is  
11 deemed required, Defendants are without knowledge or information sufficient to form a belief as to the  
12 truth of the allegations.

13           7. Paragraph 7 contains Plaintiffs’ characterization of an uncited B.I. Incorporated’s  
14 privacy policy for SmartLINK, and does not aver facts in support of a claim; thus, a response is not  
15 required. To the extent that a response is deemed required, Defendants are without knowledge or  
16 information sufficient to form a belief as to the accuracy of the quotations or the information contained  
17 in the uncited privacy policy referenced by Plaintiffs, and respectfully refer the Court to the uncited  
18 privacy policy since that document speaks for itself and is the best evidence of its contents.

19           8. Paragraph 8 contains Plaintiffs’ characterization of B.I. Incorporated’s uncited privacy  
20 policy for the SmartLINK application related to data retention, and does not aver facts in support of a  
21 claim; thus, a response is not required. To the extent that a response is deemed required, Defendants are  
22 without knowledge or information sufficient to form a belief as to the accuracy of the partial quotation  
23 or the information contained in the uncited privacy policy, and respectfully refer the Court to the  
24 uncited document since it speaks for itself and is the best evidence of its contents.

25           9. Paragraph 9 contains Plaintiffs’ characterization of B.I. Inc.’s uncited privacy policy for  
26 the SmartLINK application related to information sharing, and does not aver facts in support of a claim;  
27 thus, a response is not required. To the extent that a response is deemed required, Defendants are  
28 without knowledge or information sufficient to form a belief as to the accuracy of the quotations or the

1 information contained in the uncited privacy policy, and respectfully refer the Court to the uncited  
2 document since it speaks for itself and is the best evidence of its contents.

3 10. Paragraph 10 is Plaintiffs' characterization of B.I. Inc.'s uncited "public reporting" on  
4 information sharing between law enforcement agencies, and does not aver facts in support of a claim;  
5 thus a response is not required. To the extent that a response is deemed required, Defendants are  
6 without knowledge or information sufficient to form a belief as to the truth of the uncited allegations.

7 11. Paragraph 11 contains Plaintiffs' characterization of an uncited letter sent by 25  
8 members of Congress to Secretary of Homeland Security Mayorkas. Defendants are without  
9 knowledge or information sufficient to form a belief as to the existence of the uncited letter or the  
10 information contained therein, and respectfully refer the Court to the uncited letter since that document  
11 speaks for itself and is the best evidence of its contents.

12 12. Paragraph 12 contains Plaintiffs' characterization of electronic monitoring and purpose  
13 of the FOIA Request, to which no response is required. To the extent that a response is deemed  
14 required, Defendants deny the allegations in the first sentence of Paragraph 12. Defendants admit in the  
15 second sentence of Paragraph 12 that Plaintiffs FOIA request seeks various information regarding  
16 SmartLINK and respectfully refer the Court to the Plaintiffs' FOIA Request since that request speaks  
17 for itself and is the best evidence of its contents. Defendants are without knowledge or information  
18 sufficient to form a belief as to the truth or falsity of the remaining allegations in the second sentence of  
19 Paragraph 12.

### 20 **JURISDICTION AND VENUE**

21 13. Paragraph 13 constitutes Plaintiffs' conclusions of law as to jurisdiction, to which no  
22 response is required. To the extent that a response is deemed required, Defendants admit only that this  
23 Court has jurisdiction subject to the limitations of FOIA and deny any remaining allegations contained  
24 in Paragraph 13.

25 14. Paragraph 14 constitutes Plaintiffs' conclusions of law as to venue, to which no response  
26 is required. To the extent that a response is deemed required, Defendants admit only that 5 U.S.C. §  
27 552(a)(4)(B) governs venue in actions brought under the FOIA and that venue is proper in this judicial  
28 district, and deny any remaining allegations contained in Paragraph 14.

1 15. Paragraph 15 constitutes Plaintiffs' conclusions of law as to venue, to which no response  
2 is required. To the extent that a response is required, Defendants admit only that Civil Local Rule 3-  
3 2(c) and (d) governs venue in actions brought under the FOIA and that venue is proper in this judicial  
4 district and deny any remaining allegations contained in paragraph 15.

5 **PARTIES**

6 16. Paragraph 16 describes Plaintiff Community Justice Exchange's nonprofit status, the  
7 nature of its work and its principal place of business, to which no response is required. To the extent  
8 that a response is deemed required, Defendants are without knowledge or information sufficient to form  
9 a belief as to the truth of the allegations contained in this paragraph.

10 17. Paragraph 17 describes Plaintiff Just Future Law's nonprofit status and the nature of its  
11 work, to which no response is required. To the extent that a response is deemed required, Defendants  
12 are without knowledge or information sufficient to form a belief as to the truth of the allegations  
13 contained in this paragraph.

14 18. Paragraph 18 describes Plaintiff Mijente Support Committee's nonprofit status and the  
15 nature of its work, to which no response is required. To the extent that a response is deemed required,  
16 Defendants are without knowledge or information sufficient to form a belief as to the truth of the  
17 allegations contained in this paragraph.

18 19. Defendants admit the allegations contained in Paragraph 19.

19 20. Defendants admit the allegations contained in Paragraph 20. Defendants further admit  
20 that DHS had no involvement in the subject matter of the instant action since Plaintiffs only lodged the  
21 FOIA request at issue in this lawsuit with ICE – and not DHS. Thus, the claims in this lawsuit appear  
22 to be lodged solely against ICE.

23 **FACTS**

24 21. Defendants admit that ICE received Plaintiffs' FOIA Request dated September 14, 2021,  
25 and respectfully refer the Court to the Plaintiffs' FOIA Request for a complete and accurate description  
26 of the contents of the request at issue in this action since that document speaks for itself and is the best  
27 evidence of what Plaintiffs requested from ICE.

28 22. Defendants admit that ICE received Plaintiffs' FOIA Request dated September 14, 2021,

1 and respectfully refer the Court to the Plaintiffs' FOIA Request since that document speaks for itself  
2 and is the best evidence of the contents of the subject FOIA request.

3 20.<sup>2</sup> Defendants admit in the second Paragraph 20 that the Plaintiffs' FOIA request sought a  
4 fee waiver and respectfully refer the Court to the FOIA Request for a complete and accurate reading of  
5 its contents since that document speaks for itself and is the best evidence of the contents of the subject  
6 FOIA request.

7 21. Defendants admit the allegations in the second Paragraph 21.

8 22. The second Paragraph 22 does not contain statements of fact but legal conclusions, to  
9 which no response is required. To the extent that a response is deemed required, Defendants admit that  
10 as of the filing of the Complaint a final response to Plaintiffs' FOIA Request to ICE was not provided  
11 to the Plaintiffs and deny the remaining allegations contained in the second Paragraph 22.

12 23. The second paragraph 23 does not contain statements of fact but Plaintiffs' conclusions  
13 of law, to which no response is required.

14 **VIOLATION OF FOIA FOR FAILURE TO PROVIDE A DETERMINATION WITHIN**  
15 **20 DAYS**

16 24. Defendants incorporate by reference their answer to all preceding paragraphs.

17 25. Paragraph 25 does not contain statements of fact, but Plaintiffs' conclusion of law, to  
18 which no response is required.

19 **VIOLATION OF FOIA FOR FAILURE TO MAKE RECORDS AVAILABLE**

20 26. Defendants incorporate by reference their answer to all preceding paragraphs.

21 27. Paragraph 27 does not contain statements of fact, but Plaintiffs' conclusion of law, to  
22 which no response is required.

23  
24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiffs seeks the relief identified in Paragraphs 1 to 4 at page 9 of the  
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27  
28 <sup>2</sup> Beginning on page 8, line 20 of their Complaint, Plaintiffs do not use consecutive numbers.  
At that point in their Complaint, Plaintiffs re-use paragraph number 20, 21 and 22. In answering  
Plaintiff's Complaint, Defendants use the same numbers employed by Plaintiffs.

1 Complaint, Defendants aver as follows.

2 1. This paragraph sets forth Plaintiffs' prayer for relief to which no response is required.  
3 To the extent a response is required, Defendants deny that Plaintiffs are entitled to the requested relief.

4 2. This paragraph sets forth Plaintiffs' prayer for relief to which no response is required. To  
5 the extent a response is required, Defendants deny that Plaintiffs are entitled to the requested relief.

6 3. This paragraph sets forth Plaintiffs' prayer for relief to which no response is required. To  
7 the extent a response is required, Defendants deny that Plaintiffs are entitled to the requested relief.

8 4. This paragraph sets forth Plaintiffs' prayer for relief to which no response is required. To  
9 the extent a response is required, Defendants deny that Plaintiffs are entitled to the requested relief.

10 5. This paragraph sets forth Plaintiffs' prayer for relief to which no response is required. To  
11 the extent a response is required, Defendants deny that Plaintiffs are entitled to the requested relief.

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13 **AFFIRMATIVE DEFENSES**

14 In further answer to Plaintiffs' Complaint, and as separate and distinct defenses to Plaintiffs'  
15 claims set forth in Plaintiffs' Complaint, Defendants allege the following affirmative defenses:

16 **FIRST DEFENSE**

17 1. The information that Defendants have withheld, or will withhold, in response to  
18 Plaintiffs' FOIA request may be exempt in whole or in part from public disclosure under FOIA, 5  
19 U.S.C. § 552, and the Privacy Act, 5 U.S.C. § 552a, *et seq.* Plaintiffs are not entitled to compel the  
20 production of responsive records protected from disclosure by any applicable FOIA exemptions or  
21 exclusions under 5 U.S.C. § 552, or the Privacy Act, 5 U.S.C. § 552a.

22 **SECOND DEFENSE**

23 2. Plaintiffs are not entitled to an award of attorney's fees or other litigation costs, and  
24 Plaintiffs have not alleged sufficient factual or legal bases for their request for costs or attorney's fees.

25 **THIRD DEFENSE**

26 3. The Court lacks jurisdiction over any matter to the extent Plaintiffs failed to satisfy  
27 prerequisites to suit, as well as over any requests or allegations that are not contained in a FOIA request  
28 at issue in this action, or for any relief that exceeds the relief authorized under the FOIA. Any relief is

1 limited to that provided for in 5 U.S.C. § 552(a)(4)(B).

2 **FOURTH DEFENSE**

3 4. Plaintiffs' requests submitted under FOIA, 5 U.S.C. § 552, as amended, did not  
4 reasonably describe the records sought and therefore do not comply with FOIA or do not trigger a  
5 search of production obligation. Plaintiffs' FOIA requests are not enforceable under FOIA to the extent  
6 a reasonable search cannot be undertaken to identify and locate all responsive records.

7 **FIFTH DEFENSE**

8 5. At all times alleged in the Complaint, Defendants acted in good faith, with justification,  
9 and pursuant to authority, and exceptional circumstances necessitated additional time for Defendants to  
10 process Plaintiffs' FOIA Request.

11 **SIXTH DEFENSE**

12 6. To the extent the Complaint refers to or quotes from external documents, statutes, or  
13 other sources, Defendants may refer to such materials for their accurate and complete contents in  
14 response; however, Defendants' references are not intended to be, and should not be construed to be, an  
15 admission that the cited materials: (a) contain accurate information; (b) are correctly cited or quoted by  
16 Plaintiff; (c) are relevant to this, or any other, action; or (d) are admissible in this, or any other, action.

17 **SEVENTH DEFENSE**

18 7. Defendants are entitled to invoke all exemptions and other defenses available to them  
19 under the Freedom of Information Act and the Privacy Act.

20 **EIGHTH DEFENSE**

21 8. FOIA does not authorize the injunctive relief requested, and there is no provision in the  
22 FOIA for obtaining declaratory relief.

23 **NINTH DEFENSE**

24 9. Defendants specifically reserve the right to raise additional affirmative defenses which  
25 become evident as the facts and circumstances giving rise to the Complaint become known through the  
26 course of the litigation, and to amend its Answer to raise any affirmative defense – including, but not  
27 limited to, those identified by Federal Rule 8(c) – not currently known and/or which it may have or  
28 through discovery or other investigation learn may be applicable.



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**PRAYER FOR RELIEF**

WHEREFORE, having fully answered, Defendants respectfully request that:

1. Plaintiffs take nothing by their Complaint;
2. The Complaint be dismissed with prejudice;
3. No injunctive relief be awarded to Plaintiffs;
4. Defendants be awarded their costs of suit;
5. Judgment be entered in favor of Defendants; and
6. The Court grant such other and further relief as it may deem proper.

Dated: May 23, 2022

Respectfully submitted,

STEPHANIE M. HINDS  
United States Attorney

/s/ Kenneth Brakebill  
Kenneth Brakebill  
Assistant United States Attorney

Counsel for Defendants