

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**

**AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NEW HAMPSHIRE**

Plaintiff,

v.

**UNITED STATES CUSTOMS AND
BORDER PROTECTION**

Defendant.

Case No.:

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF FOR VIOLATION
OF THE FREEDOM OF INFORMATION ACT, 5 U.S.C. § 552 et seq.**

The American Civil Liberties Union Foundation of New Hampshire (“Plaintiff” or “ACLU-NH”) brings this action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, as amended, to obtain injunctive and other appropriate relief requiring the United States Customs and Border Protection (“CBP” or “Defendant”) to release records about the Swanton Sector of CBP apprehensions and encounters in New Hampshire from October 2022 to January 2023 (hereinafter “the Request”). Exhibit A.

INTRODUCTION

The Swanton Sector of CBP covers (i) the entire State of Vermont, (ii) Clinton, Essex, Franklin, St. Lawrence and Herkimer counties in New York, and (iii) Coos, Grafton, and Carroll counties in New Hampshire.

For the period from October 1, 2022 to December 31, 2022, the Request seeks records sufficient to identify (1) how many of the apprehensions occurred in New Hampshire—including

in the New Hampshire counties of the Swanton Sector (Coos, Grafton, and Carroll Counties)—relative to the total number of apprehensions by the sector, (2) the municipality where the apprehensions occurred, and (3) the nationality of individuals apprehended. Exhibit A. For the period of January 2023, the Request seeks records sufficient to identify (1) how many of the 367 January 2023 apprehensions occurred in New Hampshire, (2) the municipality where the apprehensions occurred, and (3) the nationality of the individuals apprehended. Exhibit A.

On January 25, 2023, CBP publicly stated that apprehensions in the CBP's Swanton sector have increased from October 2022 to January 2023 compared to the same period in the prior year. However, these statistics are not specific to New Hampshire, but rather cover the entire Swanton sector. Notwithstanding this data's lack of a specific nexus to the New Hampshire/Canada border, the New Hampshire Department of Safety and the Governor of New Hampshire have used CBP's public statements to advocate for a \$1,435,384 budgetary proposal for the fiscal year ending June 30, 2023 that would create and fund a Northern Border Alliance Program.

However, to date, no concrete evidence indicates that apprehensions have significantly increased at the New Hampshire/Canada border. In light of State officials' use of CBP's data to promote the purported need for the Northern Border Alliance Program, the ACLU-NH submitted public records requests to both the Department of Safety and the Office of the Governor seeking information on New Hampshire apprehensions by CBP. The responses from these state actors confirm what was suspected: that these state officials have no records in their possession concerning CBP apprehensions at the New Hampshire/Canada border that would remotely justify this nearly \$1,500,000 appropriation. In recognition of this reality, the New Hampshire House of Representatives stripped this Program out of the budget. However, the Senate Finance Committee recently voted to restore this funding to the budget in a proposal that will soon be voted on by the

Senate.

The production of this information is in the public interest. This FOIA request seeks information in possession of CBP that is similar to the information the ACLU-NH previously requested from state officials (but that these state officials did not have). This information will help the public continue to evaluate the propriety of this proposed nearly \$1,500,000 appropriation for a “Northern Border Alliance Program.” And CBP is the only entity that possesses accurate data concerning the nature of apprehensions at the border.

But in the face of these obvious public interests, CBP categorically rejected the ACLU-NH’s request because “CBP does not release enforcement statistics and/or enforcement data at less than a Sector or Field Officer level.” Exhibit B. This is not a lawful or valid excuse for CBP to withhold the information. CBP can only withhold the requested information by specifically citing statutory exemptions Congress provided. *See Carpenter v. United States DOJ*, 470 F.3d 434, 438 (1st Cir. 2006) (“[t]he government bears the burden of proving that withheld materials fall within one of the statutory exemptions”). No valid exemption has been cited here. While CBP references Exemption 6, that exemption covers information that would constitute a clearly unwarranted invasion of the personal privacy of the individuals involved. CBP fails to explain how Exemption 6 has anything to do with the Swanton Sector’s statistics of how many alleged noncitizens were apprehended in New Hampshire. Exhibit B. Here, the ACLU-NH is only seeking data, not identifying information. CBP’s position is further undermined by the fact that it may have already released to WMUR the fact that no crossing was “recorded in New Hampshire” between October 2022 and January 2023, while “[t]here were 94 people from 11 different countries taken into custody across Vermont and New York.” If CBP has already released apprehension data disaggregated by state, then there is no basis for withholding the New Hampshire apprehension

data sought here.

For these reasons, CBP unlawfully withholds the requested information without any justification under the FOIA statute. The ACLU-NH further alleges as follows:

JURISDICTION AND VENUE

1. This Court has subject-matter jurisdiction over this action and personal jurisdiction over the parties under 5 U.S.C. § 552(a)(4)(B), 5 U.S.C. §§ 701-706, and 28 U.S.C. § 1331.

2. The venue is proper in the District of New Hampshire under 5 U.S.C. § 552(a)(4)(B) because ACLU-NH's principal place of business is the District of New Hampshire and because a substantial portion of the requested records related to immigration enforcement and communications occurs in the District of New Hampshire. For the same reasons, the venue is also proper under 28 U.S.C. § 1391(e).

PARTIES

3. Plaintiff American Civil Liberties Union Foundation of New Hampshire ("ACLU-NH") is a non-profit 26 U.S.C. § 501(c)(3) organization that provides legal representation free of charge to individuals and organizations in civil rights and civil liberties cases and educates the public about civil rights and civil liberty issues across New Hampshire. ACLU-NH is headquartered in Concord, New Hampshire.

4. Defendant U.S. Customs and Border Protection ("CBP") is a federal agency within the meaning of 5 U.S.C. § 552(f)(1).

FACTS

Public Concern with CBP's New Hampshire Border Crossing Data

5. The Request arises from CBP's recent claim that the number of apprehensions and encounters concerning the Canadian/New Hampshire border crossings has significantly increased.

Exhibits A-C.

6. On January 25, 2023, CBP issued a press release stating that “[b]etween October 1, 2022, and December 31, 2022, [CBP’s] Swanton Sector recorded an approximate 743% increase in apprehensions and encounters compared to the same period of the year prior.” Exhibit D. On February 13, 2023, CBP also publicly announced that the “Swanton Sector recorded 367 apprehensions and encounters during January of fiscal year 2023” and “January’s total surpassed the preceding January apprehensions for the past 12 years combined (Total: 344).” Exhibit E.

7. However, these statistics are not specific to New Hampshire. Instead, they cover the entire Swanton Sector: (i) the entire State of Vermont, (ii) Clinton, Essex, Franklin, St. Lawrence and Herkimer counties in New York, and (iii) Coos, Grafton, and Carroll counties in New Hampshire.¹ And the New Hampshire/Canadian border only constitutes about 58 of the 295 miles of Canadian border in the Swanton Sector. Further, these statistics referenced by CBP do not seem to be limited to cross-border apprehensions but rather seem to cover apprehensions in the entire sector and potentially deep into the interior of New England. This would include, if they in fact occurred, apprehensions deep in the interior of New Hampshire in Grafton and Carroll Counties—far from the border.

8. Notwithstanding this ambiguity, the Commissioner of the New Hampshire Department of Safety Robert Quinn recently testified before the U.S. House of Representatives Committee on Homeland Security Subcommittee on Oversight, Investigations, and Accountability on March 28, 2023 that “New Hampshire has seen an increase in crossings.” Exhibit F. As reported in the *Boston Globe*, Commissioner Quinn also appeared on Fox News on March 27, 2023 and told viewers the state had seen a “slight increase” in illegal crossings. Exhibit G.

¹ <https://www.cbp.gov/border-security/along-us-borders/border-patrol-sectors/swanton-sector-vermont>

9. Commissioner Quinn’s statements are related to New Hampshire Governor Christopher Sununu’s earlier letter to Secretary of Homeland Security Alejandro Mayorkas, which also noted “the recent rise in [CBP] agents encountering and apprehending individuals illegally crossing the international border in this [Swanton] Sector.” Exhibit H.

10. These state officials have also used CBP’s public statements to advocate for a \$1,435,384 budgetary proposal for the fiscal year ending June 30, 2023 that would create and fund a Northern Border Alliance Program. Under this proposed Program, the Department of Safety would “make grants available to other state, county, and local law enforcement agencies, and also provide funding for the division of state police to reduce the instance of crimes and illicit activity in close proximity to the Canadian border.” Exhibit I.

11. After Commissioner Quinn’s public statements, the *Boston Globe* inquired about the data supporting Commissioner’s statement that there has seen a “slight increase” in illegal crossings. Exhibit G. The spokesperson for the Department of Safety indicated to the *Boston Globe* that a CBP supervisor provided this information—presumably orally²—to the New Hampshire Information and Analysis Center, indicating there has been a slight increase in the number of illegal crossings into the United States from Canada along New Hampshire’s border. This was the sole basis of Commissioner Quinn’s “slight increase” statement. Exhibit F. Further, according to WMUR, no crossing was “recorded in New Hampshire” between October 2022 and January 2023. Exhibit J. The WMUR article also indicated that “[t]here were 94 people from 11 different countries taken into custody across Vermont and New York.” *Id.* Presumably, CBP provided this data to WMUR.

² The ACLU-NH asked the Department of Safety for documentation supporting this “slight increase” comment. The Department stated on April 10, 2023 that “Commissioner Quinn’s ‘slight increase’ comment was not based on any written/electronic document and was the product of only verbal communication from CBP.”

12. To have access to the exact number of border crossings between Canada and New Hampshire, the ACLU-NH submitted a right-to-know request under RSA 91-A to the New Hampshire Department of Safety and under the New Hampshire Constitution to the New Hampshire Governor's Office on March 16, 2023. Exhibit K; Exhibit L.

13. On March 23, 2023, the New Hampshire Governor's Office indicated that the office was "not in possession of any governmental records that would be responsive to [the ACLU-NH's] request." Exhibit M.

14. On March 22, 2023, the New Hampshire Department of Safety responded that "the State Police was unable to locate any records responsive to [ACLU-NH's] requests pertaining to CBP apprehensions in the Swanton Sector during the months of October through December 2022." Exhibit N.

15. On April 10, 2023, the New Hampshire Department of Safety further shared to the *Boston Globe* that "Commission Quinn's statement [concerning the slight increase in the New Hampshire border crossing] was based solely upon information from a supervisor of the United States Border Patrol in the Swanton Sector, provided to the New Hampshire Information and Analysis Center" Exhibit O.

16. The Department suggested that the *Globe* would "have to contact U.S. Border Patrol through their CBP spokesperson for an explanation, and to clarify any of [ACLU-NH's] questions on statistics" Exhibit O.

Plaintiff's FOIA Request

17. On April 5, 2023, ACLU-NH submitted the Request to CBP. Exhibit A.

18. The Request sought the following data:

- October 1, 2022 to December 31, 2022

- Records sufficient to identify how many of the apprehensions from October 1, 2022 to December 31, 2022 occurred in New Hampshire—including in the New Hampshire counties of the Swanton sector (Coos, Grafton, and Carroll Counties)—relative to the total number of apprehensions by the sector during that three-month time period.
 - Records sufficient to identify (1) how many of the 367 January 2023 apprehensions occurred in New Hampshire, (2) the municipality where the apprehensions occurred, and (3) the nationality of the individuals apprehended.
- January 2023
- Records sufficient to identify how many of the 367 January 2023 apprehensions occurred in New Hampshire, including in the New Hampshire counties of the Swanton sector (Coos, Grafton, and Carroll Counties).
 - Of these January 2023 apprehensions in New Hampshire identified in Request No. 3, records sufficient to identify (i) the municipality where the apprehension occurred, and (ii) the nationality of the person apprehended.

Agency's Response

19. On April 18, 2023, CBP categorically denied the Request. Exhibit B.
20. CBP explained that “CBP does not release enforcement statistics and/or enforcement data at less than a Sector of Field Office level.” *Id.*
21. However, CBP failed to cite any statutory exemption for this position. *Id.*
22. CBP also noted that CBP “may have applied FOIR Exemption 6 to protect PII of DHS employees, including names and contact information.” *Id.*
23. However, CBP failed to explain how Exemption 6 is pertinent to the Request. The

Request did not seek any names or contact information. *Cf. Exhibit A.*

Plaintiff's Administrative Appeal

24. On April 18, 2023, ACLU-NH administratively appealed CBP's categorical denial. Exhibit C.

25. ACLU-NH raised two arguments. First, CBP failed to carry the burden of establishing the applicability of proper exemptions. *See Stalcup v. CIA*, 768 F.3d 65, 70 (1st Cir. 2014) (“[t]he government carries the burden of establishing the applicability of the exemption”). Second, CBP failed to release any data that was not covered by Exemption 6. Nor did CBP explain how the Request is subject to Exemption 6, especially where CBP has released similar data publicly for its own benefit (as reflected in the press release cited in the original request, and as possibly reflected in the WMUR story).

26. CBP has acknowledged ACLU-NH's administrative appeal. However, CBP has not adjudicated the appeal yet. 5 U.S.C. § 552(a)(6)(A)(i). Exhibit C.

27. ACLU-NH is deemed to have exhausted its administrative remedies with respect to the administrative appeal under 5 U.S.C. § 552(a)(6)(C), because CBP failed to provide its determination on the appeal within the 20-business-day time limit required by statute under 5 U.S.C. § 552(a)(6)(A)(i). *See Citizens for Resp. & Ethics in Wash. V. FEC*, 711 F.3d 180, 189-90 (D.C. Cir. 2013) (“if the agency does not adhere to FOIA's explicit timelines, the ‘penalty’ is that the agency cannot rely on the administrative exhaustion requirement to keep cases from getting into court”).

CLAIMS FOR RELIEF

COUNT I

VIOLATION OF FOIA FOR ERRONEOUSLY WITHHOLDING THE REQUESTED INFORMATION WITHOUT LAWFUL JUSTIFICATION

28. All prior paragraphs are incorporated.
29. CBP's determination to withhold the requested information violates FOIA, 5 U.S.C. § 552.

RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests that this Court:

- A. Assume jurisdiction over this matter;
- B. Declare that Defendant's withholding of the requested information violates FOIA;
- C. Issue an injunction ordering Defendant to immediately disclose the requested information and to make copies immediately available to Plaintiff without charge for any search or duplication fees;
- D. Award reasonable costs and attorney's fees incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
- E. Grant such further relief as the Court deems just and proper.

Respectfully submitted,

By and through his attorneys affiliated with the
American Civil Liberties Union Foundation of New
Hampshire,

/s/ SangYeob Kim

Gilles R. Bissonnette (N.H. Bar. No. 265393)

SangYeob Kim (N.H. Bar No. 266657)

Henry R. Klementowicz (N.H. Bar No. 21177)

AMERICAN CIVIL LIBERTIES UNION OF NEW

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Date: May 22, 2023

EXHIBIT A



18 Low Avenue
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(603) 224-5591
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Devon Chaffee
Executive Director

April 5, 2023

FOIA Officers, Swanton Sector
U.S. Customs & Border Protection
155 Grand Avenue
Swanton, Vermont 05488

FOIA Officer
U.S. Customs & Border Protection
1300 Pennsylvania Avenue, NW Room 3.3D
Washington, D.C. 20229

Re: Request Under Freedom of Information Act
(Expedited Processing & Fee Waiver/Limitation Requested)

To Whom It May Concern:

The American Civil Liberties Union Foundation of New Hampshire (“ACLU-NH”)¹ submits this Freedom of Information Act (“FOIA”) request (“Request”) for records about the Swanton Sector of the U.S. Customs and Border Protection (“CBP”) apprehensions and encounters in New Hampshire from October 2022 to January 2023. This letter constitutes a request pursuant to FOIA, 5 U.S.C. § 552 *et seq.*, and the relevant implementing regulations. *See* 6 C.F.R. § 5 *et seq.*

For the purpose of this Request, “Records” are collectively defined to include, but not limited to any apprehension or encounter reports.

Background Related to Requests: CBP issued a press release on January 25, 2023 stating the following: “Between October 1, 2022, and December 31, 2022, U.S. Border Patrol’s Swanton Sector recorded an approximate 743% increase in apprehensions and encounters compared to the same period the year prior.”² CBP issued another press release on February 13, 2023 stating the following: “U.S. Border Patrol’s (BP) Swanton Sector recorded 367 apprehensions and encounters during January of fiscal year 2023 (FY23.) January’s total surpassed the preceding January apprehensions for the past 12 years combined (Total: 344.)”³ However, these statistics are not disaggregated by State, and instead cover the entire Swanton sector. The Swanton sector covers (i) the entire State of Vermont, (ii) Clinton, Essex, Franklin, St. Lawrence and Herkimer counties in New York, and (iii) Coos, Grafton and Carroll counties in New Hampshire.⁴ And the New Hampshire/Canadian border only constitutes about 58 of the 295 miles of Canadian border in the Swanton sector. Further, these statistics referenced by CBP do not seem to be limited to cross-border apprehensions, but rather seem to cover apprehensions in the entire sector and

¹ The American Civil Liberties Union Foundation of New Hampshire is a 501(c)(3) organization that defends and promotes the fundamental principles embodied in the Bill of Rights and the U.S. and New Hampshire Constitutions. In furtherance of that mission, the ACLU-NH regularly conducts research into government activities in New Hampshire.

² <https://www.cbp.gov/newsroom/local-media-release/increased-illicit-border-crossings-carry-higher-risk-winter-months>

³ <https://www.cbp.gov/newsroom/local-media-release/border-patrol-s-swanton-sector-apprehensions-encounters-reach-historic>

⁴ <https://www.cbp.gov/border-security/along-us-borders/border-patrol-sectors/swanton-sector-vermont>

potentially deep into the interior of New England. Accordingly, additional data is needed on the degree to which these cited apprehensions actually occurred in New Hampshire and whether they were near the Canadian border.

Requests: Accordingly, the ACLU-NH seeks the release of the following:

October 1, 2022 to December 31, 2022

- 1. Records sufficient to identify how many of the apprehensions from October 1, 2022 to December 31, 2022 occurred in New Hampshire—including in the New Hampshire counties of the Swanton sector (Coos, Grafton, and Carroll Counties)—relative to the total number of apprehensions by the sector during that three-month time period.**
- 2. Of these October 1, 2022 to December 31, 2022 apprehensions in New Hampshire identified in Request No. 1, records sufficient to identify (i) the municipality where the apprehension occurred, and (ii) the nationality of the person apprehended.**

January 2023

- 3. Records sufficient to identify how many of the 367 January 2023 apprehensions occurred in New Hampshire, including in the New Hampshire counties of the Swanton sector (Coos, Grafton, and Carroll Counties).**
- 4. Of these January 2023 apprehensions in New Hampshire identified in Request No. 3, records sufficient to identify (i) the municipality where the apprehension occurred, and (ii) the nationality of the person apprehended.**

If any records responsive or potentially responsive to the Request have been destroyed, our Request includes, but is not limited to, any and all records relating or referring to the destruction of those records. This includes, but is not limited to, any and all records relating or referring to the events leading to the destruction of those records.

As required by the relevant case law, the agency, here CBP, should follow any leads it discovers during the conduct of its searches and should perform additional searches when said leads indicate that records may be located in another system. Failure to follow clear leads is a violation of FOIA.

With respect to the form of production, *see* 5 U.S.C. § 552(a)(3)(B), the ACLU-NH requests that responsive electronic records be provided electronically in their native file format, if possible. Alternatively, the ACLU-NH requests that the records be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency’s possession and that the records be provided in separate, Bates-stamped files.

APPLICATION FOR EXPEDITED PROCESSING

The ACLU-NH requests expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E).⁵ There is a “compelling need” for these records, as defined in the statute because the information requested is “urgen[tly]” 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).

⁵ *See* 6 C.F.R. § 5.5(e)(1).

A. The ACLU-NH is an organization primarily engaged in disseminating information to inform the public about actual or alleged government activity.

The ACLU-NH is “primarily engaged in disseminating information” within the meaning of the statute. 5 U.S.C. § 552(a)(6)(E)(v)(II).⁶ 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 the ACLU’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”).⁷

The ACLU-NH regularly issues press releases to call attention to documents obtained through FOIA requests, as well as other breaking news, and the ACLU-NH staffs are interviewed frequently for news stories about documents released through the ACLU-NH FOIA requests.

Similarly, the ACLU-NH publishes reports about government conduct and civil liberties issues based on its analysis of information derived from various sources, including information obtained from the government through FOIA requests. This material is broadly circulated to the public. The ACLU-NH also regularly publishes “know your rights” materials, fact sheets, and educational brochures and pamphlets designed to educate the public about civil liberties issues and government policies that implicate civil rights and liberties.

The ACLU-NH publishes a widely read blog where original editorial content reporting on and analyzing civil rights and civil liberties news is posted daily. *See* <http://www.aclu-nh.org/en/NEWS>.

The ACLU-NH plans to analyze, publish, and disseminate to the public the information gathered through this Request. The records requested are not sought for commercial use, and the requesters plan to disseminate the information disclosed as a result of this Request to the public at no cost.

B. The records sought are urgently needed to inform the public about actual or alleged government activity.

These records are urgently needed to inform the public about actual or alleged government activity. *See* 5 U.S.C. § 552(a)(6)(E)(v)(II).⁸ Specifically, as discussed above, the requested records seek to inform the public about the CBP’s current practice of apprehensions and encounters near New Hampshire/Canadian border.

Given the foregoing, the ACLU-NH has satisfied the requirements for expedited processing of this Request.

APPLICATION FOR WAIVER OR LIMITATION OF FEES

⁶ *See* 6 C.F.R. § 5.5(e)(1)(ii).

⁷ Courts have found that the ACLU as well as other organizations with similar missions that engage in information-dissemination activities similar to the ACLU 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).

⁸ *See* 6 C.F.R. § 5.5(e)(1)(ii).

The ACLU-NH requests a waiver of document search, review, and duplication fees on the grounds that disclosure of the requested records is in the public interest and because disclosure 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.” 5 U.S.C. § 552(a)(4)(A)(iii).⁹ The ACLU-NH also requests a waiver of search fees on the grounds that the ACLU-NH qualifies as a “representative of the news media,” and the records are not sought for commercial use.” 5 U.S.C. § 552(a)(4)(A)(ii)(II).

A. The Request 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 ACLU-NH.

The ACLU-NH is not filing this Request to further its commercial interest. As described above, any information disclosed by the ACLU-NH as a result of this FOIA Request will be available to the public at no cost. Thus, a fee waiver would fulfill Congress’s legislative intent in amending the FOIA. *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 waivers for noncommercial requesters.” (quotation marks omitted)).

B. The ACLU-NH is a representative of the news media and the records are not sought for commercial use.

The ACLU-NH also requests a waiver of search fees on the grounds that the ACLU-NH qualifies as a “representative of the news media” and the records are not sought for commercial use. 5 U.S.C. 552(a)(4)(A)(ii)(II). The ACLU-NH meets the statutory and regulatory definitions of a “representative of the news media” because it is an “entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii)(III);¹⁰ *see also Nat’l Sec. Archive v. U.S. Dep’t of Defense*, 880 F. 2d 1381, 1387 (D.C. Cir. 1989) (finding that an organization that gathers information, exercises editorial discretion in selecting and organizing documents, “devises indices and finding aids,” and “distributes the resulting work to the public” is a “representative of the news media” for purposes of the FOIA); *Serv. Women’s Action Network v. U.S. Dep’t of Defense*, 888 F. Supp. 2d 282 (D. Conn. 2012) (requesters, including ACLU, were representatives of the news media and thus qualified for fee waivers for FOIA requests to the Department of Defense and Department of Veterans Affairs); *ACLU of Wash. V. U.S. Dep’t of Justice*, No. C09-0642RSL, 2011 WL 887731, at *10 (W.D. Wash. Mar. 10, 2011) (finding that the ACLU of Washington is an entity that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience”); *ACLU*, 321 F. Supp. 2d at 30 n.5 (finding non-profit public interest group to be “primarily engaged in disseminating information”). The ACLU-NH is, therefore, a “representative of the news media” for the same reasons it is “primarily engaged in the dissemination of information.”

Furthermore, courts have found other organizations whose mission, function, publishing, and public education activities are similar to the ACLU-NH’s to be “representative of the news media” as well. *See., e.g., Cause of Action v. IRS*, 125 F. Supp. 3d 145 (D.C. Cir. 2015); *Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 10-15 (finding non-profit public interest group that disseminated an electronic newsletter and published books was a “representative of the news media” for purposes of the FOIA); *Nat’l Sec. Archive*, 880 F. 2d at 1387; *Judicial Watch, Inc., v. U.S. Dep’t of Justice*, 133 F. Supp. 2d 53, 54 (D.D.C. 2000) (finding Judicial Watch, self-described as a “public interest law firm,” a news media requester).¹¹

⁹ *See* 5 C.F.R. 5.11(k).

¹⁰ *See* 6 C.F.R. § 5.11(b)(6).

¹¹ Courts have found these organizations to be “representatives of the news media” even though they engage in litigation and lobbying activities beyond their dissemination of information / public education activities. *See, e.g., Elec. Privacy Info. Ctr.*,

On account of these factors, fees associated with responding to FOIA requests are regularly waived for the ACLU-NH as a “representative of the news media.”

* * *

Pursuant to applicable statutes and regulations, the ACLU-NH expects a determination regarding expedited processing within 10 days. *See* 5 U.S.C. § 552(a)(6)(E)(ii); 6 C.F.R. § 5.5(e)(4).

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

Thank you for your prompt attention to this matter. Please furnish the applicable records to:

ACLU Foundation of New Hampshire
c/o SangYeob Kim
18 Low Ave, # 12
Concord, New Hampshire 03301
sangyeob@aclu-nh.org

I affirm that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief. *See* 5 U.S.C. § 552(a)(6)(E)(vi).

Respectfully,



SangYeob Kim, Staff Attorney

241 F. Supp. 2d 5; *Nat'l Sec. Archive*, 880 F. 2d at 1387; *see also Leadership Conference on Civil Rights*, 404 F. Supp. 2d at 260; *Judicial Watch, Inc.*, 133 F. Supp. 2d at 53-54.

EXHIBIT B

From: cbpfoia@cbp.dhs.gov
To: [SangYeob Kim](#)
Subject: CBP FOIA - CBP-FO-2023-066185
Date: Tuesday, April 18, 2023 8:45:20 AM

SangYeob Kim
ACLU of New Hampshire
18 Low Avenue
Concord, New Hampshire 03301

04/18/2023

CBP-FO-2023-066185

Dear SangYeob Kim:

Please be advised that CBP does not release enforcement statistics and/or enforcement data at less than a Sector or Field Office level. You are welcome review enforcement statistics/data by Fiscal Year at <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics>.

Pursuant to DHS Instruction 262-11-004, FOIA Officers at DHS have been instructed to withhold personally identifiable information (PII) and sensitive personally identifiable information (SPII) of DHS personnel unless a determination is made that the disclosure does not raise security or privacy concerns, or if those concerns are outweighed by any public interest in that information. This policy is available online. Under this policy, the names of senior leaders, spokespersons, and political appointees are generally releasable. With respect to this FOIA request, DHS may have applied FOIA Exemption 6 to protect PII of DHS employees, including names and contact information. To the extent that has DHS withheld employee PII within these records, it has been determined that the employee(s) has/have substantial and legitimate privacy interests and that these interests are not outweighed by any public interest in the operations of the Department.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. 552(c). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

This completes the CBP response to your request. You may contact CBP's FOIA Public Liaison, Charlyse Hoskins, by sending an email via your SecureRelease account, mailing a letter to 90 K St, NE MS 1181, Washington DC, 20229 or by calling 202-325-0150. (If you need telecommunication relay service (TRS) assistance to communicate with the CBP FOIA Office and you are in the United States, please dial 711 to obtain TRS assistance and notify the Communications Assistant that you want to contact the CBP FOIA Office at the telephone number (202) 325-0150). The FOIA Public Liaison is able to assist in advising on the requirements for submitting a request, assist with narrowing the

scope of a request, assist in reducing delays by advising the requester on the type of records to request, suggesting agency offices that may have responsive records and receive questions or concerns about the agency's FOIA process. Please notate file number CBP-FO-2023-066185 on any future correspondence to CBP related to this request.

If you are not satisfied with the response to this request, you have a right to appeal the final disposition. Should you wish to do so, you must file your appeal within 90 days of the date of this letter following the procedures outlined in the DHS regulations at Title 6 C.F.R. §5.8. Please include as much information as possible to help us understand the grounds for your appeal. You should submit your appeal via your SecureRelease account . If you do not have computer access, you may send your appeal and a copy of this letter to: FOIA Appeals, Policy and Litigation Branch, U.S. Customs and Border Protection, 90 K Street, NE, 10th Floor, Washington, DC 20229-1177. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at www.dhs.gov/foia. Additional information can be found at the following link https://www.cbp.gov/sites/default/files/assets/documents/2019-Dec/definitions-exemptions-foia_0.pdf.

Additionally, you have a right to seek dispute resolution services from the Office of Government Information Services (OGIS) which mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769. Please note that contacting the CBP FOIA Public Liaison or OGIS does not stop the 90-day appeal clock and is not a substitute for filing an administrative appeal.

Sincerely,

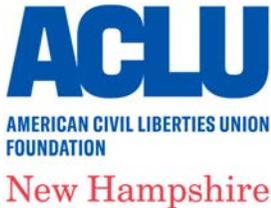
U.S. Customs and Border Protection

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EXHIBIT C



18 Low Avenue
Concord NH 03301
(603) 224-5591
aclu-nh.org

Devon Chaffee
Executive Director

April 18, 2022

FOIA Appeals
Policy and Litigation Branch
U.S. Customs and Border Protection
90 K Street, NE, 10th Floor
Washington, DC 20229-1177

Re: Freedom of Information Act Appeal CBP-FO-2023-066185

To Whom It May Concern:

The American Civil Liberties Union Foundation of New Hampshire (“ACLU-NH”)¹ writes to appeal the response by the U.S. Customs and Border Protection (“CBP”), to the Freedom of Information Act (“FOIA”) request dated April 5, 2023 with reference number CBP-FO-2023-066185 (the “Responses,” attached as Exhibit A). The Request seeks records about the Swanton Sector of the U.S. Customs and Border Protection apprehensions and encounters in New Hampshire from October 2022 to January 2023.

The ACLU-NH’s requests were followings:

October 1, 2022 to December 31, 2022

1. Records sufficient to identify how many of the apprehensions from October 1, 2022 to December 31, 2022 occurred in New Hampshire—including in the New Hampshire counties of the Swanton sector (Coos, Grafton, and Carroll Counties)—relative to the total number of apprehensions by the sector during that three-month time period.
2. Of these October 1, 2022 to December 31, 2022 apprehensions in New Hampshire identified in Request No. 1, records sufficient to identify (i) the municipality where the apprehension occurred, and (ii) the nationality of the person apprehended.

January 2023

3. Records sufficient to identify how many of the 367 January 2023 apprehensions occurred in New Hampshire, including in the New Hampshire counties of the Swanton sector (Coos, Grafton, and Carroll Counties).

¹ The American Civil Liberties Union Foundation of New Hampshire is a 501(c)(3) organization that defends and promotes the fundamental principles embodied in the Bill of Rights and the U.S. and New Hampshire Constitutions. In furtherance of that mission, the ACLU-NH regularly conducts research into government activities in New Hampshire.

4. Of these January 2023 apprehensions in New Hampshire identified in Request No. 3, records sufficient to identify (i) the municipality where the apprehension occurred, and (ii) the nationality of the person apprehended.

However, CBP categorically denied the FOIA request because “CBP does not release enforcement statistics and/or enforcement data at less than a Sector or Field Office level.” *See* Exhibit B.

APPEAL

The ACLU-NH appeals CBP’s erroneous determination that it cannot release the data for the following reasons.

First, CBP failed to carry the burden of establishing the applicability of proper exemptions. *See Stalcup v. CIA*, 768 F.3d 65, 70 (1st Cir. 2014) (“[t]he government carries the burden of establishing the applicability of the exemption”). For the conclusion that CBP “does not release enforcement statistics and/or enforcement data at less than a Sector or Field Office level,” CBP does not rely on any statutory exemptions to withhold the information.

Second, CBP failed to release any data that was not covered by Exemption 6. Nor did CBP explain how the “enforcement statistics and/or enforcement data at less than a Sector or Field Office level” is subject to Exemption 6, especially where CBP has released data publicly for its own benefit (as reflected in the press releases cited in the original request). CBP explained that it withheld “employee PII within these records.” However, CBP did not release non-Exemption 6 covered records. The ACLU-NH’s request specifically asked “the total number of apprehensions by the sector” in “the New Hampshire counties of the Swanton sector,” “the municipality where the apprehension occurred,” and “the nationality of the person apprehended.” None of this information is covered by Exemption 6, and none of the information requested implicates “employee PII.”

Thank you for your prompt attention to this matter.

APPLICATION FOR EXPEDITED PROCESSING

The ACLU-NH requests expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E).² There is a “compelling need” for these records, as defined in the statute because the information requested is “urgen[tly]” 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).

- A. The ACLU-NH is an organization primarily engaged in disseminating information to inform the public about actual or alleged government activity.

The ACLU-NH is “primarily engaged in disseminating information” within the meaning of the statute. 5 U.S.C. § 552(a)(6)(E)(v)(II).³ 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 the ACLU’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

² *See* 6 C.F.R. § 5.5(e)(1).

³ *See* 6 C.F.R. § 5.5(e)(1)(ii).

material into a distinct work, and distributes that work to an audience” to be “primarily engaged in disseminating information”).⁴

The ACLU-NH regularly issues press releases to call attention to documents obtained through FOIA requests, as well as other breaking news, and the ACLU-NH staffs are interviewed frequently for news stories about documents released through the ACLU-NH FOIA requests.

Similarly, the ACLU-NH publishes reports about government conduct and civil liberties issues based on its analysis of information derived from various sources, including information obtained from the government through FOIA requests. This material is broadly circulated to the public. The ACLU-NH also regularly publishes “know your rights” materials, fact sheets, and educational brochures and pamphlets designed to educate the public about civil liberties issues and government policies that implicate civil rights and liberties.

The ACLU-NH publishes a widely read blog where original editorial content reporting on and analyzing civil rights and civil liberties news is posted daily. *See* <http://www.aclu-nh.org/en/NEWS>.

The ACLU-NH plans to analyze, publish, and disseminate to the public the information gathered through this Request. The records requested are not sought for commercial use, and the requesters plan to disseminate the information disclosed as a result of this Request to the public at no cost.

B. The records sought are urgently needed to inform the public about actual or alleged government activity.

These records are urgently needed to inform the public about actual or alleged government activity. *See* 5 U.S.C. § 552(a)(6)(E)(v)(II).⁵ Specifically, as discussed above, the requested records seek to inform the public about the CBP’s current practice of apprehensions and encounters near New Hampshire/Canadian border.

Given the foregoing, the ACLU-NH has satisfied the requirements for expedited processing of this Request.

Please furnish the applicable records and responses to:

ACLU Foundation of New Hampshire
c/o SangYeob Kim
18 Low Ave, # 12
Concord, New Hampshire 03301
sangyeob@aclu-nh.org
603-333-2081

⁴ Courts have found that the ACLU as well as other organizations with similar missions that engage in information-dissemination activities similar to the ACLU 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).

⁵ *See* 6 C.F.R. § 5.5(e)(1)(ii).

Respectfully,

A handwritten signature in blue ink, appearing to read "S. Kim", is positioned above a horizontal line.

Sang Yeob Kim, Senior Staff Attorney

SangYeob Kim

From: noreply@cbp.dhs.gov <noreply@securerelease.us>
Sent: Wednesday, May 17, 2023 7:43 AM
To: SangYeob Kim
Subject: Receipt of Appeal and Update, CBP-AP-2023-000967

Good morning, Mr. Kim.

This message confirms receipt of your Freedom of Information Act appeal challenging the determination issued by U.S. Customs and Border Protection's FOIA Division as related to request file number CBP-FO-2023-066185. Your appeal tracking number is CBP-AP-2023-000967. Please reference that tracking number in any subsequent communications with the agency related to your appeal. Your appeal has been assigned to a CBP FOIA Appeals attorney and will be processed in the order it was received and as expeditiously as possible.

We are also reaching out to inform you that under 6 CFR 5.5(c), "whenever the statutory time limits for processing a request cannot be met because of 'unusual circumstances,' as defined in the FOIA, and the component extends the time limits on that basis, the component shall, before expiration of the twenty-day period to respond, notify the requester in writing of the unusual circumstances involved and of the date by which processing of the request can be expected to be completed." We are reaching out to provide you with this notification.

Due to unusual circumstances, specifically the necessity for consultation with multiple offices within CBP regarding the requested records, we are extending the deadline to respond to your appeal. The estimated target date for completion of your appeal is June 23, 2023. However, this estimated completion date is subject to change depending on any delay in response regarding the consultation. You will receive an additional status notification from me by June 23, 2023.

Your appeal is a priority, and we will make every effort to respond to your appeal as soon as possible. Thank you for your patience.

Most Sincerely,
CBP FOIA Appeals

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EXHIBIT D

Increased Illicit Border Crossings Carry Higher Risk in Winter Months

Release Date Wed, 01/25/2023 - 12:00

For More Information Ryan Brissette, (202) 945-7368

SWANTON, Vt. - Between October 1, 2022, and December 31, 2022, U.S. Border Patrol's Swanton Sector recorded an approximate 743% increase in apprehensions and encounters compared to the same period the year prior. Combined apprehensions and encounters in Fiscal Year 2023 have already surpassed that of **Fiscal Year 2022** and recent trends represent a sustained increase in illegal border crossings as we head into the harshest winter months.

Swanton Sector's terrain along the International Boundary with Canada includes rural and remote areas and ranges from mountains to lowland swamps. During the regional winter, which encompasses an extended season due to the sector's geographic location and weather patterns, sustained sub-freezing temperatures subject both large and small bodies of water within our area of operations to freezing over. Unpredictable storm fronts bring ice and significant snow accumulation throughout the extended winter season. These geographic and weather features can make traversing unfamiliar territory perilous. Additionally, the risk of hypothermia from sustained or even brief outdoor exposure to near-freezing temperatures in wet or windy conditions is significant.

These environmental challenges, coupled with the sharp increase in illicit cross-border traffic, generate great concern for the potential loss of human life. In recent press releases, Swanton Sector highlighted several instances of family groups and individuals rescued from cold-weather-related crises and trauma. Unfortunately, these types of events have not diminished as Swanton Sector Border Patrol continues to encounter family groups with children (aged as young as a few months old) crossing uncertain terrain in single-digit (Fahrenheit) temperatures. In many cases, Border Patrol Agents tasked with detecting, identifying, and apprehending individuals attempting to unlawfully cross the border end up rescuing them and rendering potentially life-saving aid—all while the Agents are selflessly placing themselves in harm's way.

Many individuals seeking to cross illegally are ill-informed of the dangers and poorly outfitted for the weather and terrain they encounter in Swanton Sector.

In the midst of our coldest months, January and February, the stated risks have only increased.

"Swanton Sector's greatest concern in carrying out our mission of border security is the preservation of life—the lives of community residents we are sworn to protect, the lives of our Border Patrol Agents carrying out the mission day-in and day-out in the field, and the lives of the individuals, families, and children we are charged with apprehending as they attempt to circumvent legal processes for entry," said Swanton Sector Chief Patrol Agent Robert N. Garcia. "Unfortunately, the transnational criminal organizations that stand to profit from the increased flow of human traffic care only about profits and have no concern for the welfare of those whose plight they seek to exploit for financial gain," he added.

For more on Customs and Border Protection's mission at our nation's [ports of entry](#) with CBP officers and [along U.S. borders](#) with Border Patrol agents, please visit the [Border Security](#) section of the CBP website.

U.S. Customs and Border Protection is the unified border agency within the Department of Homeland Security charged with the comprehensive management, control, and protection of our nation's borders, combining customs, immigration, border security, and agricultural protection at and between official ports of entry.

Tags: [Border Security](#), [Human Trafficking](#), [Sectors](#), [U.S. Border Patrol](#)

Last Modified: January 25, 2023

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Press Officer

Name: [Ryan Brissette](#)

Email:

Ryan.Brissette@cbp.dhs.gov

Phone:

+1 202-945-7368

EXHIBIT E

Border Patrol's Swanton Sector Apprehensions & Encounters Reach Historic Highs

Release Date Mon, 02/13/2023 - 12:00

For More Information Ryan.Brissette@cbp.dhs.gov / (202) 945-7368

SWANTON, Vt. – U.S. Border Patrol's (BP) Swanton Sector recorded 367 apprehensions and encounters during January of fiscal year 2023 (FY23.) Despite area temperatures reaching -4 degrees Fahrenheit, January's total surpassed the preceding January apprehensions for the past 12 years combined (Total: 344.) Prior to January, Swanton Sector experienced an uninterrupted 7-month streak of sustained encounter increases—part of an upward trend dating back to the beginning of FY22.

Fiscal year-to-Date (October 1, 2022, to January 31, 2023) data demonstrates an approximate 846% increase in encounters and apprehensions compared to the same period of FY22. FY23's total apprehensions and encounters have already surpassed FY22 and FY21 combined.

Despite sub-freezing temperatures, Swanton Sector continues encountering family groups with young children, including infants, illegally crossing from Canada into the U.S. In December 2022, Border Patrol Agents led search-and-rescue efforts, providing life-saving aid in separate incidents occurring in **Newport, VT**, and **Burke, NY**. These incidents demonstrate BP Agents' priority to preserve life, even at the risk of jeopardizing their own safety.

"As we progress deeper into winter and continue to address the ongoing pace of illicit cross-border traffic, the level of concern for the lives and welfare of our Border Patrol Agents and those we are encountering - particularly vulnerable populations - continues to climb," said Swanton Sector Chief Patrol Agent Robert N. Garcia. "It cannot be stressed enough: not only is it unlawful to circumvent legal means of entry into the United States, but it is extremely dangerous, particularly in adverse weather conditions, which our Swanton Sector has in incredible abundance," he added.

For more on Customs and Border Protection's mission at our nation's **ports of entry** with CBP officers and **along U.S. borders** with Border Patrol agents, please visit the **Border Security** section of the CBP website.

U.S. Customs and Border Protection is the unified border agency within the Department of Homeland Security charged with the comprehensive management, control, and protection of our nation's borders, combining customs, immigration, border security, and agricultural protection at and between official ports of entry.

Tags: [Border Security](#), [Sectors](#), [U.S. Border Patrol](#)

Last Modified: February 13, 2023

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Press Officer

Name: [Ryan Brissette](#)

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Media Contacts

Office of Public Affairs

[\(202\) 344-1780](tel:(202)344-1780)

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All Other Inquiries

 **(202) 325-8000**

EXHIBIT F

Good Morning/Afternoon, Mr. Chair, members of the Committee,

My name is Robert Quinn, I am the Commissioner of the New Hampshire Department of Safety which oversees the New Hampshire Divisions of State Police and Homeland Security. By way of background, I was a sworn law enforcement officer for 30 years with the New Hampshire State Police culminating with my appointment as the Colonel before eventually becoming the Commissioner of the Department.

I have been invited here today to testify about New Hampshire's recent efforts to augment and support the humanitarian crisis that appears to be building along the Canadian border in our neighboring states. New Hampshire shares an international border with Canada that is over fifty (50) miles long and lies within what is known as the U.S. Border Patrol's Swanton Sector. The Swanton Sector includes the border area containing New Hampshire, Vermont, and a small portion of New York.

Just this past Friday, I had the fortune of touring our northern border in New Hampshire and meeting some of the excellent State, local, and federal law enforcement officers who work along the border. New Hampshire is unique in that the vast majority of the border consists of State Forest land accessible through one main road and an intricate system of forest roads built for logging companies, and snowmobile and ATV enthusiasts. Many of these roads are not on GPS maps, touch the northern border, and can only be traversed by off-road vehicles. In the winter, the terrain is cold, snow bound, and difficult to travel using conventional vehicles. I learned on Friday that Pittsborough, NH, which is the town along the border, is the largest town by

area in New England with 281.3 square mile of vast mountainous terrain and overseen by a part time Chief and one part time officer. Just for perspective, I was told that it takes over an hour to reach the closest hospital to the border. As with most northern border states, travel times can greatly increase based on local weather conditions.

On January 25, 2023, the U.S. Border Patrol announced that the Swanton Sector witnessed a 743% increase in apprehensions and encounters in the first quarter of the federal fiscal year 2023 when compared to the same period a year ago. Apprehensions and encounters from October to December increased from 136 in 2021 to 1,146 in 2022 exceeding the 1,065 apprehensions and encounters for all of 2021. As of early March 2023, the total number of apprehensions in this area was 2,227. While this amount appears small in comparison to numbers experienced at the southern border, this is a large and unexpected increase for a very remote area of the country with few resources available to address. To be clear, although New Hampshire has seen an increase in crossings, we have not yet seen the large increase that Vermont is presently experiencing. However, as more resources focus on the Vermont border, I believe that it is only a matter of time for New Hampshire to experience the same or similar increases.

During my recent visit to the border, I met with the State Police Troop Commander who is responsible for patrolling the north country. He indicated that it is important to be aware that many non-citizen migrants are victims of human trafficking. During my conversations with the local police chief and the residents I learned many are generally nervous due to reports of increased activity and significant drug seizures in recent years. I spoke with an individual who was concerned and nervous when she returns home after work that increased border crossing will result in individuals trespassing on her property.

New Hampshire is not waiting for this crisis to cause further impact to our State. Without complete operational control at the New Hampshire border, we leave our residents at increased risk. Under the leadership of Governor Chris Sununu, our State started taking steps to address the crisis in January. As I understand from New Hampshire Attorney General's Office, the United States Supreme Court has placed constitutional limits on what types of border protection laws they can enact on their own. However, under existing federal law, US Department of Homeland Security has the ability to deputize state and local law enforcement officers with the authority to enforce several federal immigration laws by entering into an agreement under 8 U.S.C. §1357 (g). This is sometimes referred to as a Section 287(g) agreement or a "I.C.E. Delegation Agreement." From our perspective, it is critical that Homeland Security delegate its authority to our State Police to detain and apprehend those who are crossing the border illegally in our State.

We started the process to obtain such a delegation back in early February, culminating with a letter dated February 17, 2023, in which we formally requested that the federal government delegate its authority to enforce federal border security laws. On that same day, we received a response explaining that no agreement could be entered into due to a national freeze on all delegation agreements and that no one-off custom agreements were authorized either. Unfortunately, two (2) days later we received word that a migrant passed away while attempting to cross the border in the Swanton Sector. Although that occurred in Vermont, we certainly want to use every public safety resource available we can to prevent that from happening in New Hampshire.

Our troopers are accustomed to having a presence along the border and are among the most professional and dedicated law enforcement officials in the country and since they have experience along the border, I believe that it would be seamless for them to augment the border

security effort through a Delegation Agreement. After we received a denial from Homeland Security at the regional level, Governor Sununu spoke with Homeland Security Secretary Mayorkas about this and sent a letter directly to him, asking his department to enter into such an agreement. To date Homeland Security has not granted our state a delegation agreement and no one from his Department has reached out to any State officials to begin drafting such an agreement.

There is one other request that we have made of the Department of Homeland Security that has not yet been addressed. Since approximately 2011, State Police has assisted in patrolling the northern border through a grant funded by F.E.M.A., another agency within the Department of Homeland Security, by participating in what is known as Operation Stone Garden. Operation Stone Garden is a joint task force where state, county, and local law enforcement officers partner with the US Border Patrol to conduct joint patrols along New Hampshire's border with Canada. Last year, State and local participants requested collectively approximately \$337,000 for additional border patrol details and funds to purchase three (3) all-terrain vehicles for state and local law enforcement agencies. Homeland Security denied this request for additional resources, including the vehicles, and instead level funded (with the 2021 grant year) the Stone Garden Grant at \$180,000. In his letter to Secretary Mayorkas, Governor Sununu requested that his Department reconsider this decision to give our state, county, and local law enforcement officers the funds and tools needed to help protect the border in this Operation.

We believe it is imperative to quickly respond to today's crisis with enhanced border security and prevent any further loss of life and limit illicit activity along our border. New Hampshire cannot fully unlock its resources for this effort without the help of the leadership at Homeland Security. I cannot emphasize enough that the I.C.E. and Border Patrol Agents

working along the New Hampshire border are hard-working and doing the best they can. New Hampshire law enforcement stands by ready to assist them just as soon as Homeland Security authorizes a Delegation Agreement and provides the requested increase in funding for Operation Stone Garden.

In the meantime, our Governor, in his 2024/2025 budget has proposed dedicating approximately one million four hundred thousand dollars (\$1,400,000) toward the creation of a Northern Border Alliance Program. If enacted, this program will establish a task force of state, county, and local law enforcement officers to patrol the roads, highways, and state forest land along the border to detect and deter illegal activity and to prevent any further escalation of the humanitarian crisis facing our borders.

We believe all of the above efforts, done in conjunction with one another, will prevent the northern border crisis from escalating within New Hampshire's borders.

Thank you for your time and attention to this important matter. I am happy to take any questions.

EXHIBIT G

NH NEWS

Sununu's proposal to increase border patrol under fire

The New Hampshire governor has proposed spending \$1.4 million to address an increase in crossings at the state's northern border, but it's unclear how many crossings are occurring -- or whether there's been an increase

By [Amanda Gokee](#) Globe Staff, Updated March 31, 2023, 56 minutes ago



This file photo taken on March 1, 2017 shows the Canadian and American flags seen at the US/Canada border in Pittsburg, N.H. DON EMMERT

CONCORD, N.H. – Governor Chris Sununu has proposed spending \$1.4 million to address an increase in illegal border crossings from Canada, even though it is unclear how many of those crossings have occurred along New Hampshire’s northern border.

The ACLU has criticized the governor’s proposal to spend state money to have local, county, and state police patrol the border without data proving border activity has increased in New Hampshire. The civil rights group and advocates for immigrant rights say the policy would undermine community safety by discouraging immigrants from contacting the police if they witness a crime or are the victim of a crime.

“We have very serious concerns with this approach,” said Frank Knaack, policy director for the ACLU NH. “They’ve been unable to provide any actual evidence to back up the rhetoric which is pushing these very harmful policies.”

When the ACLU NH filed a Right to Know request for data proving that New Hampshire’s border has been busier than usual, the governor’s office replied that it had no responsive records. The Department of Safety had no records to share either.

A spokesperson for the governor told the Globe the claim is based on data [published](#) by Customs and Border Patrol on February 13, reporting “an approximate 846% increase in encounters and apprehensions compared to the same period of FY22.”

But that data includes 295 miles of border called the Swanson Sector, stretching from New Hampshire to New York -- and just 58 miles of it is in New Hampshire. Knaack also noted that data isn’t limited to people apprehended while crossing the border, and could include people who live in the region and are stopped far beyond the border.

Sununu called the situation at the border “a humanitarian crisis” and said the state must address it. “To take no action to stop these illegal crossings is to perpetuate a humanitarian crisis,” he said in a written statement. “Whether it’s to prevent human trafficking or the flow of illegal drugs, protecting America’s borders and enforcing the

laws of our nation should and must be the priority of the Biden Administration and the Department of Homeland Security.”

He [wrote](#) to the Secretary of Homeland Security Alejandro Mayorkas on March 13 to see if New Hampshire law enforcement officers can be more involved in securing the northern border. Sununu said he wanted Hampshire law enforcement officers be trained to work alongside federal border agents through a Section 287 agreement.

New Hampshire Department of Safety Commissioner Robert Quinn made the same request while testifying before Congress earlier this week.

“To be clear, although New Hampshire has seen an increase in crossings, we have not yet seen the large increase that Vermont is presently experiencing,” he said in [his testimony](#). Quinn also appeared [on Fox News](#) on March 27 and told viewers the state had seen a “slight increase” in illegal crossings.

“It’s unclear to us how they’re coming to those conclusions and providing that statement to Congress when they don’t have any responsive documents to requests on that specific issue,” said Knaack. “They’re manufacturing these crises without actually having any data to support the rhetoric.”

A spokesperson for the Department of Safety said the information came from a supervisor of the United States Border Patrol in the Swanton Sector. It was provided to the New Hampshire Information and Analysis Center and indicated a slight increase in the number of illegal crossings into the United States from Canada along New Hampshire’s border, the spokesperson said.

Having state and local police patrol New Hampshire’s northern border could negatively impact businesses and tourism in the state, warned Sebastian Fuentes, who works at the nonprofit Rights and Democracy and advocates for immigrant rights.

Fuentes, who came to New Hampshire from Lima, Peru, when he was 19 and worked at the Mount Washington resort, now lives in Thornton. He said that giving local and state police the same power as border patrol agents could intimidate international visitors, and could deter those who cross the border for work.

“There’s no crisis at the border,” he said. “It’s scary to think that northern New Hampshire — a really nice, welcoming, beautiful landscape — is going to be treated like the southern border in Texas or New Mexico.”

He said the \$1.4 million the governor has proposed spending on border security would be better spent on childcare or education.

But others in the North Country view the Governor’s program favorably. “We’re the size of San Antonio or Austin, Texas and do not have the resources to govern the area properly,” said Douglas Ahlstrin, a selectman in Pittsburg, N.H., near the state’s border with Canada. “Anything that can help with law enforcement up here is greatly appreciated.”

Crime rates in Pittsburg are low, according to data from the state Department of Safety, requested by the ACLU NH. There were 13 total offenses in Pittsburg in 2021 and seven in 2020.

The New Hampshire House will vote on the governor’s \$1.4 million border proposal, which is part of the [state budget](#), when it is in session next week.

Amanda Gokee can be reached at amanda.gokee@globe.com. Follow her on Twitter [@amanda_gokee](#).

[Show comments](#)

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EXHIBIT H



**STATE OF NEW HAMPSHIRE
OFFICE OF THE GOVERNOR**

CHRISTOPHER T. SUNUNU
Governor

March 13, 2023

Alejandro Mayorkas
Secretary of Homeland Security
2707 Martin Luther King Jr Ave SE
Washington, DC 20528

Re: Request to Enter into an I.C.E. Delegation Agreement Pursuant to Section 287(g)

Dear Secretary Mayorkas,

Thank you for speaking with me this weekend. I am glad we were able to discuss the pressing issues at our northern border. As you know, the State of New Hampshire shares a 51-mile international border with Canada that lies within the U.S. Border Patrol's Swanton Sector. On January 25, 2023, the U.S. Border Patrol issued a press release detailing the recent rise in their agents encountering and apprehending individuals illegally crossing the international border in this Sector.

While the recent announcement that 25 additional border patrol agents will be stationed in the Swanton Sector is a good first step, more can and should be done in collaboration with state and local authorities to address the alarming rise in border crossings. Over the last few months, the State of New Hampshire has attempted to assist the federal government in securing our northern border. These offers of assistance have been repeatedly rejected. The Biden Administration has cut funding and hindered the state's ability to assist in patrolling the northern border.

If the Biden Administration truly believes that securing the border is a priority, I hope you will partner with the State of New Hampshire to make this a reality.

On February 17, 2023, the State of New Hampshire formally offered to assist the federal government by requesting your Department delegate its authority to enforce certain specific federal immigration laws in a manner that is appropriately tailored to account for New Hampshire's unique circumstances – which would require no additional federal funds. That very same day, regional I.C.E. officers, who also fall under your Department, informed State officials that you have placed a nation-wide hold on entering into new delegation agreements since 2021. On or about February 19, 2023, a migrant from Mexico died in the Swanton Sector while trying to enter the county illegally from Canada.

During a follow-up meeting with regional I.C.E. officials, the State explained that the vast majority of our northern border is State-owned forest land with limited and remote access to

emergency medical services. As your Department acknowledged, due to the cold weather, rough terrain, and ill-equipped individuals, your agents have often been required to administer emergency medical aid to those individuals who have crossed the border illegally.

The State explained at that meeting that the unique circumstances and the urgency of the situation required the federal government to partner with State officials to respond to the northern border as soon as possible. While the regional officers were informative and helpful, they explained that their hands were tied and that the decision to indefinitely suspend these delegation agreements came from Washington.

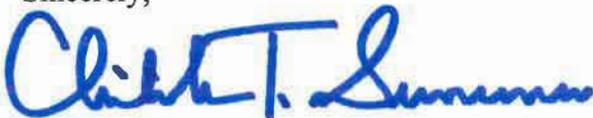
I am now writing to request that you immediately lift the moratorium and enter into a customized agreement with the State of New Hampshire in order to train its law enforcement officers and to allow them to serve as a force multiplier in New Hampshire's North Country. Time is of the essence – New Hampshire is ready to act quickly to respond to this crisis. We strongly urge you to reconsider your current policy.

Secondly, but also importantly, New Hampshire for years has assisted in patrolling the northern border through a grant funded by F.E.M.A., yet another agency within your Department, by participating in what is known as Operation Stone Garden. Last year, the State requested your Department provide additional funding to pay for increased state and local participation in routine border patrols and to purchase additional all-terrain vehicles, which are necessary to patrol the vast network of forest roads abutting the international border. The Department declined to provide that additional funding for these efforts. I ask you to reconsider this decision as well.

It is imperative that we act quickly to respond to today's crisis with enhanced border security and prevent any further loss of life along our border. New Hampshire will not be waiting idly by while your Department decides whether or not to take action along the northern border. In my budget proposal this year, I have put forward \$1.4 million toward the creation of a Northern Border Alliance Program. If enacted, this program will establish a task force of state, county, and local law enforcement officers to patrol the roads, highways, and state forest land along the border to detect and deter illegal activity and to prevent any further escalation of the humanitarian crisis facing our borders.

As always, New Hampshire stands by ready to assist the hard-working U.S. Border Patrol and I.C.E. agents in your Department. Thank you for your time and attention to this urgent matter and I look forward to your response.

Sincerely,



Christopher T. Sununu
Governor

EXHIBIT I

HB 2-FN-A-LOCAL - AS INTRODUCED

2023 SESSION

23-1064
10/05

HOUSE BILL ***2-FN-A-LOCAL***

AN ACT relative to state fees, funds, revenues, and expenditures.

SPONSORS: Rep. Weyler, Rock. 14

COMMITTEE: Finance

ANALYSIS

This bill:

1. Names the divisions of the department of information technology.
2. Authorizes the department of information technology to fill unfunded positions for the biennium ending June 30, 2025.
3. Broadens the community college system of New Hampshire's dual and concurrent enrollment program and makes an appropriation therefor.
4. Limits retirement system eligibility for full time community college system employees to only those participating prior to January 1, 2024.
5. Makes an appropriation to the university system of New Hampshire for the renovation of the Whittemore Center Arena.
6. Authorizes the liquor commission to transfer funds for its employee incentive program.
7. Establishes new unclassified positions within the department of corrections.
8. Moves positions within the department of corrections from group I to group II status in the New Hampshire retirement system.
9. Removes the position of professional standards director from the department of corrections.
10. Makes certain organizational changes to the office of the commissioner of the department of environmental services.
11. Alters the hearings process within the department of environmental services, for the wetlands council, water council, and air resources council to be under the attorney general.
12. Removes the subsurface systems fund established in RSA 485-A:30, I-b and directs the revenues to the water resources fund.
13. Makes certain changes to, and continuously appropriates, the fees collected for excavating and dredging permits being deposited into the water resources fund.
14. Modifies the wastewater plant operator certification fund to be continuously appropriated.

HB 2-FN-A-LOCAL - AS INTRODUCED

15. Mandates that applications for aid to municipalities for water pollution control under RSA 486:7 be filed within one year of final completion of the eligible project and makes an appropriation to such program.
16. Clarifies the chargeable area for fees associated with terrain alteration disturbances.
17. Removes certain limitations to the Winnepesaukee River basin control program.
18. Establishes a new chapter regulating PCB assistance, a corresponding fund, and makes an appropriation therefor.
19. Establishes a new office of regulatory review, reduction, and government efficiency and makes an appropriation therefor.
20. Establishes a historic housing preservation tax credit.
21. Establishes the InvestNH Program.
22. Makes an appropriation for the Affordable Housing Fund.
23. Makes an appropriation for the Juvenile Peer-to-Peer Grief Support program.
24. Repeals statutes related to the advanced manufacturing education advisory council, membership and terms, duties, and the advanced manufacturing education fund.
25. Modifies New Hampshire excellence in higher education endowment fund definitions.
26. Changes the regenerative manufacturing workforce development program into the workforce development student debt relief program.
27. Changes the college tuition savings advisory commission to a scholarship commission.
28. Creates a computer science and STEM administrator for the department of education.
29. Creates a new chapter for a computer science educator program.
30. Creates the establishment of the bridges house special account.
31. Establishes a fund and appropriations for the New Hampshire state prison administered by the department of corrections.
32. Makes an appropriation for the department of corrections IT infrastructure.
33. Makes an appropriation for the department of administrative services to purchase 2 Granite Place, Concord, New Hampshire, construct a new youth detention center, and construct a new legislative parking garage.
34. Makes an appropriation for the body-worn and dashboard camera fund.
35. Authorizes the Christa McAuliffe memorial.
36. Establishes a commission on New Hampshire civics.
37. Makes an appropriation for the Governor's commission on alcohol and other drugs.
38. Makes an appropriation for expanding the Teacher of the Year program.

HB 2-FN-A-LOCAL - AS INTRODUCED

39. Creates the norther border alliance program.
40. Modifies the authority and duties of police employees acting within 25 air miles of the border with Canada.
41. Makes appropriations to the department of natural and cultural resources to assess the materials in the state library and to the governor's commission on alcohol and other drugs for student assistance programming and youth risk behavior surveys.
42. Requires the board of tax and land appeals to have at least one member of board be an attorney admitted to practice in New Hampshire.
43. Repeals the communications service tax.
44. Redirects workers' compensation funds from the general fund to a department of labor restricted fund and makes changes to the employer insurance carrier reimbursement process.
45. Alters the nomination process to the labor commissioner penalty appeal board.
46. Authorizes the commissioner of labor to adopt administrative rules to facilitate administration and enforcement of family and medical leave insurance.
47. Alters the composition of the workers' compensation appeal board.
48. Changes the term of office, the process to fill vacancies, and scope of authority of the department of transportation appeals board.
49. Creates an over-length, over-width, and over-height revolving fund under the railroad appeals board credited to the department of transportation.
50. Authorizes highway surveillance for the security of the Little Bay Bridges in Dover and Newington.
51. Alters the definition of prime wetlands and adjacent buffers for state highway rights-of-way and authorizes the commissioner of transportation to discontinue rights-of-way.
52. Authorizes the department of transportation to charge a credit card use convenience fee for aircraft operating fee transactions.
53. Clarifies the requirements for eligibility for the E-Z Pass transponder road toll discount.
54. Alters the process of the development of the statewide transportation improvement program plan.
55. Alters the process to claim assets which have escheated to the state.
56. Suspends revenue sharing with cities and towns for the biennium ending June 30, 2025.
57. Transfers certain responsibilities of the department of environmental services and the public utilities commission to the department of energy.
58. Directs the department of energy to support offshore wind initiatives.
59. Changes the dates required to submit reports to the department of energy.
60. Increases staff and expenditures at the department of energy.

HB 2-FN-A-LOCAL - AS INTRODUCED

61. Changes the dates of the quarters for quarterly assessments by the public utilities commission.
62. Enables the commissioner of the department of energy to appoint a general counsel.
63. Removes the statutory fee for record requests from the division of motor vehicles.
64. Requires the state fire marshal to make annual inspections of residential care and health facility licensing.
65. Allows certain emergency medical care providers to administer Naloxone.
66. Enables the engagement of peer support services following a critical incident or other certain experiences by emergency services providers.
67. Suspends the highway fund allocation.
68. Defines what students are eligible for education freedom accounts.
69. Changes the distribution schedule from the education trust fund.
70. Creates the state building aid fund.
71. Revises the formula for calculating adequate education grants and increases the amount of such funding.
72. Provides that appropriations to state agencies for bond insurance and property and casualty insurance shall not be transferred or expended for any other purpose.
73. Provides that funds appropriated for state employee medical and surgical benefits shall be nonlapsing.
74. Clarifies administration of the salary adjustment fund and employee benefit adjustment account.
75. Changes the name of the department of administrative services state budget director to the state budget officer.
76. Provides the department of administrative services authority to bill agencies for planning and design costs associated with capital construction projects.
77. Makes an appropriation to the department of administrative services for technology upgrades.
78. Revises the duties and authority of the state commission on aging.
79. Establishes the salary schedule applicable to certain corrections officers.
80. Authorizes the department of administrative services to expend funds appropriated for additional parking for state employees in downtown Concord.
81. Establishes salaries and salary schedules for certain state officers and unclassified employees.
82. Increases the distribution of business profits and business enterprise tax revenues to the education trust fund.

HB 2-FN-A-LOCAL - AS INTRODUCED

83. Makes an appropriation to the department of health and human services for the Choose Love Program.
84. Allows the department of health and human services to fill unfunded positions.
85. Suspends the foster grandparents program.
86. Suspends the congregate housing and services program.
87. Requires the department of health and human services to raise the income eligibility for elderly and adult clients under the social services block grant program.
88. Suspends suspend the provision of direct and indirect graduate medical education payments to hospitals.
89. Suspends catastrophic aid payments to hospitals.
90. Allows for additional funding for Medicaid to schools.
91. Makes an appropriation for the Sununu Youth Services Center.
92. Requires submission of health facility plans to the division of fire safety.
93. Delays the workplace violence prevention and health care workplace safety commission.
94. Establishes unclassified positions in the department of health and human services.
95. Requires no admissions to the forensic psychiatric hospital in the biennium.
96. Funds the acquired brain disorder services, and in-home support waiver.
97. Increases the total county nursing services billings.
98. Makes appropriations to the department of health and human services for programs and systems.
99. Repeals department of business and economic affairs programs for college graduate retention incentive partnership (NH GRIP), COVID-19 micro enterprise relief fund, and the package plan program.
100. Revises the workforce development program administration.
101. Makes an appropriation to the department of natural and cultural resources for the bureau of historic sites fund.
102. Provides for quarterly meetings of the agricultural advisory board.
103. Reclassifies and renames positions in the department of justice to unclassified.
104. Establishes a handling charge for the division of charitable trusts.
105. Provides for continued retirement system administration of certain benefit payments to existing beneficiaries.
106. Increases the business finance authority unified contingent credit limit.
107. Requires certain hospitals to be designated as mental health receiving facilities.

HB 2-FN-A-LOCAL - AS INTRODUCED

108. Redefines the roles and responsibilities of the office of professional licensure and certification (OPLC) for the state's occupational regulatory boards and commissions. The bill consolidates administrative authority for OPLC in a new chapter and repeals redundant provisions of law. The bill repeals, or merges with other boards, several boards or commissions.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears ~~[in brackets and struckthrough.]~~
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

HB 2-FN-A-LOCAL - AS INTRODUCED
- Page 34 -

1 91 Appropriation; Department of Education. There is hereby appropriated to the department of
2 education the sum of \$250,000 for the fiscal year ending June 30, 2023 which shall not lapse until
3 June 30, 2025 for the purpose of expanding the Teacher of the Year program by providing
4 promotional, training, professional development, and collaboration with other stakeholder's
5 opportunities.

6 92 Effective Date. Section 91 of this act shall take effect June 30, 2023.

7 93 New Sections; Northern Border Alliance Program. Amend RSA 21-P by inserting after
8 section 68 the following new sections:

9 21-P:69 Northern Border Alliance Program.

10 I. The commissioner of safety shall establish a northern border alliance program which shall
11 make grants available to other state, county, and local law enforcement agencies, and also provide
12 funding for the division of state police for the following purposes:

13 (a) Overtime costs for officers performing law enforcement activities under this program.

14 (b) Equipment for use in performing law enforcement activities under this program.

15 (c) Training costs, including overtime backfill, for officers participating in this program.

16 II. The commissioner shall establish protocols and conditions for increased state police
17 patrols and conditions for eligibility for grants to other state, county, and local law enforcement
18 agencies. The protocols and conditions shall focus on reducing the instance of crimes and illicit
19 activity occurring within 25 air miles from the Canadian border. The protocols and conditions shall:

20 (a) Establish state police as the lead agency for scheduling patrol and coordination with
21 participating agencies.

22 (b) Ensure that officers assigned to patrols are relieved of taking calls for service absent
23 an emergency.

24 (c) Ensure that the officers assigned to such patrol units have been trained on state and,
25 if applicable, federal policies, laws and constitutional provisions.

26 III. The program shall include the following prohibitions on allowable uses of funds:

27 (a) No funds shall be granted for "purchase of evidence" or for "confidential funds."

28 (b) No funds shall be used for supplanting locally budgeted and approved funds for
29 routine law enforcement.

30 IV. The program shall include semi-annual reporting, to the governor, senate president, and
31 speaker of the house of representatives, which includes measurable program results and a detailed
32 accounting of program funding and uses. The first report shall be submitted on or before December
33 31, 2023.

34 21-P:70 Northern Border Alliance Fund.

35 I. There is hereby established the northern border alliance fund within the department of
36 safety for the purpose of make grants available to other state, county, and local law enforcement
37 agencies, and also provide funding for the division of state police to reduce the instance of crimes and

HB 2-FN-A-LOCAL - AS INTRODUCED
- Page 35 -

1 illicit activity in close proximity to the Canadian border. All moneys in the fund shall be nonlapsing
2 and continually appropriated to the department of safety

3 II. The fund shall be overseen by the commissioner of the department of safety who shall,
4 within 180 days of the effective date of this section, establish a process for the application for grants
5 from the fund. Such process shall be established in rules adopted in accordance with RSA 541-A.

6 III. The commissioner of the department of safety may charge administrative costs related
7 to this section to the fund.

8 94 Appropriation; Department of Safety; Northern Border Alliance Program.

9 I. The sum of \$1,435,384 for the fiscal year ending June 30, 2023 is hereby appropriated to
10 the department of safety and shall be nonlapsing. This sum shall be expended as follows:

11 (a) \$619,641 shall be expended by state police for the purpose of funding overtime
12 patrols, related training activities and purchase equipment in support of the northern border
13 alliance program.

14 (b) The sum of \$815,743 is hereby appropriated to the department of safety to disburse
15 grants to other state, county, and local law enforcement agencies for the purpose of funding overtime
16 costs for county and local law enforcement officers performing law enforcement activities
17 attributable to the northern border alliance program established in RSA 21-P:69.

18 II. The governor is authorized to draw a warrant for said sums out of any money in the
19 treasury not otherwise appropriated.

20 95 Effective Date. Section 94 of this act shall take effect on June 30, 2023.

21 96 Authority and Duties of Police Employees. Amend RSA 106-B:12 to read as follows:

22 106-B:12 Authority and Duties of Police Employees. Police employees shall be ex-officiis
23 constables throughout the state. They shall have statewide authority to enforce all provisions of
24 RSA title XXI relative to motor vehicle laws and the regulations relative to the transportation of
25 hazardous materials, pursuant to RSA 106-A:18 and RSA 106-B:15. The director, division of state
26 police, shall report to the director, division of motor vehicles, all violations of and prosecutions under
27 the motor vehicle laws. Police employees shall have general power to enforce all criminal laws of the
28 state and to serve criminal processes and make arrests, under proper warrants, in all counties. They
29 shall not serve civil processes. No police employee shall act, be used or called upon for service within
30 any town in any industrial dispute unless actual violence has occurred therein, and then only upon
31 order of the governor. When any police employee shall apprehend any person who has committed or
32 attempted to commit a felony the director shall immediately make a report to the attorney and the
33 sheriff of the county and the chief of police of the municipality in which the offense was, or was
34 suspected of being, committed and such cases shall be investigated and prosecuted by said county
35 officials with the cooperation of said police employees. ***Further, police employees acting within***
36 ***25 air miles of the international border with Canada, shall have the same authority and***

EXHIBIT J



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New Hampshire governor budgets nearly \$1.5M in funding for northern border safety

Updated: 9:23 AM EST Mar 10, 2023

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Marissa Tansino

News Anchor/Reporter

CONCORD, N.H. — A request for more money in a state budget proposal for patrols near the Canadian border in New Hampshire is being debated in Concord.

Gov. Chris Sununu, R-New Hampshire, is asking lawmakers to approve nearly \$1.5 million to create a Northern Border Alliance Program. The money would go toward state and local police in New Hampshire patrol towns near the Canadian border in hopes of making it safer.

Advertisement

"We have the money. We have the ability. It's important to secure the border, as small as our border might be," Sununu said.

Chief border patrol agent Robert Garcia tweeted out a video Thursday, saying the short clip shows one of the several groups that agents encountered over the weekend.

There were 94 people from 11 different countries taken into custody across Vermont and New York.

U.S. Customs and Border Protection data shows the section of the northern border that covers New York and Vermont has seen more than 1,500 encounters between October and January, up from 160 people the year before, and a nearly 850% increase.

None were recorded in New Hampshire in that time frame.

Recommended

10-year-old cancer survivor befriends Boston Celtics star Jayson Tatum



New Hampshire Department of Safety Commissioner Robert Quinn said this money will help prepare for any possible surge that spills over into our state.

"This is remote territory and the conditions can be very harsh and unforgiving, and we're trying to build and ensure that in the coming months that we have the resources to work together," Quinn said.

Sununu said he's pushing hard to have state and local law enforcement work as a U.S. Immigration and Customs Enforcement detainer. This money would help give them the resources to be able to do that.

"In the past six months, I think you've seen northern border crossings go up close to 10 times what they previously were, something like that, so that's just startling, and I think the fear is that could keep accelerating," Sununu said.

There were more than 360 arrests in that area this past January alone. U.S. Customs Border and Protection said that's more than they've seen in the past 12 Januarys combined.

EXHIBIT K



18 Low Avenue
Concord NH 03301
(603) 224-5591
aclu-nh.org

Devon Chaffee
Executive Director

March 16, 2023

VIA EMAIL (robert.l.quinn@dos.nh.gov; Eddie.Edwards@DOS.NH.GOV;
NATHAN.NOYES@DOS.NH.GOV)

Commissioner Robert Quinn
Assistant Commissioner Eddie Edwards
Colonel Nathan Noyes
New Hampshire Department of Safety
33 Hazen Drive
Concord, NH 03305

Re: Right-to-Know Request

Dear Commissioner Quinn, Commissioner Edwards, and Colonel Noyes:

This is a Right-to-Know request to the New Hampshire Department of Safety (“the Department”) pursuant to RSA 91-A and Part I, Article 8 of the New Hampshire Constitution by the American Civil Liberties Union of New Hampshire (“ACLU-NH”). The ACLU-NH defends and promotes the fundamental principles embodied in the Bill of Rights and the U.S. and New Hampshire Constitutions. In furtherance of that mission, the ACLU-NH regularly conducts research into government activities in New Hampshire. We ask that your Department waive all fees associated with responding to this request. Please contact me to discuss the fee waiver in advance of preparing any copies.

As you know, Customs and Border Patrol (“CBP”) issued a press release on January 25, 2023 stating the following: “Between October 1, 2022, and December 31, 2022, U.S. Border Patrol’s Swanton Sector recorded an approximate 743% increase in apprehensions and encounters compared to the same period the year prior.”¹ CBP issued another press release on February 13, 2023 stating the following: “U.S. Border Patrol’s (BP) Swanton Sector recorded 367 apprehensions and encounters during January of fiscal year 2023 (FY23.) January’s total surpassed the preceding January apprehensions for the past 12 years combined (Total: 344.)”²

However, these statistics—which various state actors seem to be relying on—are not specific to New Hampshire, but rather cover the entire Swanton sector. The Swanton sector covers (i) the entire State of Vermont, (ii) Clinton, Essex, Franklin, St. Lawrence and Herkimer counties in New York, and (iii) Coos, Grafton and Carroll counties in New Hampshire.³ And the New Hampshire/Canadian border only constitutes about 58 of the 295 miles of Canadian border in the Swanton sector. Further, these statistics referenced by CBP do not seem to be limited to cross-border apprehensions, but rather seem to cover apprehensions in the entire sector and potentially deep into the interior of New England. This would

¹ <https://www.cbp.gov/newsroom/local-media-release/increased-illicit-border-crossings-carry-higher-risk-winter-months>

² <https://www.cbp.gov/newsroom/local-media-release/border-patrol-s-swanton-sector-apprehensions-encounters-reach-historic>

³ <https://www.cbp.gov/border-security/along-us-borders/border-patrol-sectors/swanton-sector-vermont>



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Devon Chaffee
Executive Director

include, if they in fact occurred, apprehensions deep in the interior of New Hampshire in Grafton and Carroll Counties—far from the border.

Thus, additional data is needed on the degree to which these cited apprehensions actually occurred in New Hampshire and whether they were near the Canadian border. Accordingly, the ACLU-NH makes the following requests:

October 1, 2022 to December 31, 2022

1. Of the apprehensions that occurred in the Swanton sector from October 1, 2022 to December 31, 2022, documents sufficient to identify how many of the individuals apprehended had crossed the Canadian border at or around the time of the apprehension, thus constituting a “cross-border” apprehension.
2. Documents sufficient to identify how many of the apprehensions from October 1, 2022 to December 31, 2022 occurred in New Hampshire—including in the New Hampshire counties of the Swanton sector (Coos, Grafton, and Carroll Counties)—relative to the total number of apprehensions by the sector during that three-month time period.
3. Of these October 1, 2022 to December 31, 2022 apprehensions in New Hampshire identified in Request No. 2, documents sufficient to identify (i) the municipality of the apprehension and (ii) how many occurred within 25 miles of the New Hampshire border or at the border.
4. Of these October 1, 2022 to December 31, 2022 apprehensions in New Hampshire identified in Request No. 2, documents sufficient to identify how many of the individuals apprehended had crossed the Canadian border at or around the time of the apprehension, thus constituting a “cross-border” apprehension.
5. Of these October 1, 2022 to December 31, 2022 apprehensions in New Hampshire identified in Request No. 2, documents sufficient to identify how many of the individuals apprehended involved the filing of criminal charges under state or federal law, including a breakdown of those alleged offenses (e.g., possession of alleged contraband)?

January 2023

6. Of the 367 apprehensions that occurred in the Swanton sector in January 2023, documents sufficient to identify how many of the 367 individuals apprehended had crossed the Canadian border at or around the time of the apprehension, thus constituting a “cross-border” apprehension.
7. Documents sufficient to identify how many of these 367 January 2023 apprehensions occurred in New Hampshire, including in the New Hampshire counties of the Swanton sector (Coos, Grafton, and Carroll Counties).



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Devon Chaffee
Executive Director

8. Of these January 2023 apprehensions in New Hampshire identified in Request No. 7, documents sufficient to identify (i) the municipality of the apprehension and (ii) how many occurred within 25 miles of the New Hampshire border or at the border.
9. Of these January 2023 apprehensions in New Hampshire identified in Request No. 7, documents sufficient to identify how many of the individuals apprehended had crossed the Canadian border at or around the time of the apprehension, thus constituting a “cross-border” apprehension.
10. Of these January 2023 apprehensions in New Hampshire identified in Request No. 7, documents sufficient to identify how many of the individuals apprehended involved the filing of criminal charges under state or federal law, including a breakdown of those alleged offenses (e.g., possession of alleged contraband)?

In responding to this request, please consider the time limits mandated by the Right-to-Know law. In discussing those limits in *ATV Watch v. N.H. Dep’t of Res. & Econ. Dev.*, 155 N.H. 434 (2007), the New Hampshire Supreme Court has stated that RSA 91-A:4, IV requires that a public body or agency, “within 5 business days of the request, make such records available, deny the request in writing with reasons, or to furnish written acknowledgement of the receipt of the request and a statement of the time reasonably necessary to determine whether the request shall be granted or denied.” *Id.* at 440.

If produced, these records must be produced irrespective of their storage format; that is, they must be produced whether they are kept in tangible (hard copy) form or in an electronically-stored format, including but not limited to e-mail communications. If any records are withheld, or any portion redacted, please specify the specific reasons and statutory exemption relied upon. *See* RSA 91-A:4, IV(c) (“A public body or agency denying, in whole or part, inspection or copying of any record shall provide a written statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld.”).

Thank you for your anticipated cooperation. I look forward to hearing from you as soon as possible. Of course, if you have any questions or concerns, do not hesitate to contact me.

Very truly yours,

/s/ Gilles Bissonnette

Gilles Bissonnette
ACLU-NH, Legal Director
Gilles@aclu-nh.org

EXHIBIT L



18 Low Avenue
Concord NH 03301
(603) 224-5591
aclu-nh.org

Devon Chaffee
Executive Director

March 16, 2023

VIA EMAIL (governorsununu@nh.gov)

Office of the Governor
107 North Main Street
Concord, NH 03301

Re: Right-to-Know Request

This is a Right-to-Know request to the Office of the Governor (“the Office”) pursuant to Part I, Article 8 of the New Hampshire Constitution by the American Civil Liberties Union of New Hampshire (“ACLU-NH”). The ACLU-NH defends and promotes the fundamental principles embodied in the Bill of Rights and the U.S. and New Hampshire Constitutions. In furtherance of that mission, the ACLU-NH regularly conducts research into government activities in New Hampshire. We ask that your Office waive all fees associated with responding to this request. Please contact me to discuss the fee waiver in advance of preparing any copies.

As you know, Customs and Border Patrol (“CBP”) issued a press release on January 25, 2023 stating the following: “Between October 1, 2022, and December 31, 2022, U.S. Border Patrol’s Swanton Sector recorded an approximate 743% increase in apprehensions and encounters compared to the same period the year prior.”¹ CBP issued another press release on February 13, 2023 stating the following: “U.S. Border Patrol’s (BP) Swanton Sector recorded 367 apprehensions and encounters during January of fiscal year 2023 (FY23.) January’s total surpassed the preceding January apprehensions for the past 12 years combined (Total: 344).”²

However, these statistics—which various state actors seem to be relying on—are not specific to New Hampshire, but rather cover the entire Swanton sector. The Swanton sector covers (i) the entire State of Vermont, (ii) Clinton, Essex, Franklin, St. Lawrence and Herkimer counties in New York, and (iii) Coos, Grafton and Carroll counties in New Hampshire.³ And the New Hampshire/Canadian border only constitutes about 58 of the 295 miles of Canadian border in the Swanton sector. Further, these statistics referenced by CBP do not seem to be limited to cross-border apprehensions, but rather seem to cover apprehensions in the entire sector and potentially deep into the interior of New England. This would include, if they in fact occurred, apprehensions deep in the interior of New Hampshire in Grafton and Carroll Counties—far from the border.

Thus, additional data is needed on the degree to which these cited apprehensions actually occurred in New Hampshire and whether they were near the Canadian border. Accordingly, the ACLU-NH makes the following requests:

¹ <https://www.cbp.gov/newsroom/local-media-release/increased-illicit-border-crossings-carry-higher-risk-winter-months>

² <https://www.cbp.gov/newsroom/local-media-release/border-patrol-s-swanton-sector-apprehensions-encounters-reach-historic>

³ <https://www.cbp.gov/border-security/along-us-borders/border-patrol-sectors/swanton-sector-vermont>



18 Low Avenue
Concord NH 03301
(603) 224-5591
aclu-nh.org

Devon Chaffee
Executive Director

October 1, 2022 to December 31, 2022

1. Of the apprehensions that occurred in the Swanton sector from October 1, 2022 to December 31, 2022, documents sufficient to identify how many of the individuals apprehended had crossed the Canadian border at or around the time of the apprehension, thus constituting a “cross-border” apprehension.
2. Documents sufficient to identify how many of the apprehensions from October 1, 2022 to December 31, 2022 occurred in New Hampshire—including in the New Hampshire counties of the Swanton sector (Coos, Grafton, and Carroll Counties)—relative to the total number of apprehensions by the sector during that three-month time period.
3. Of these October 1, 2022 to December 31, 2022 apprehensions in New Hampshire identified in Request No. 2, documents sufficient to identify (i) the municipality of the apprehension and (ii) how many occurred within 25 miles of the New Hampshire border or at the border.
4. Of these October 1, 2022 to December 31, 2022 apprehensions in New Hampshire identified in Request No. 2, documents sufficient to identify how many of the individuals apprehended had crossed the Canadian border at or around the time of the apprehension, thus constituting a “cross-border” apprehension.
5. Of these October 1, 2022 to December 31, 2022 apprehensions in New Hampshire identified in Request No. 2, documents sufficient to identify how many of the individuals apprehended involved the filing of criminal charges under state or federal law, including a breakdown of those alleged offenses (e.g., possession of alleged contraband)?

January 2023

6. Of the 367 apprehensions that occurred in the Swanton sector in January 2023, documents sufficient to identify how many of the 367 individuals apprehended had crossed the Canadian border at or around the time of the apprehension, thus constituting a “cross-border” apprehension.
7. Documents sufficient to identify how many of these 367 January 2023 apprehensions occurred in New Hampshire, including in the New Hampshire counties of the Swanton sector (Coos, Grafton, and Carroll Counties).
8. Of these January 2023 apprehensions in New Hampshire identified in Request No. 7, documents sufficient to identify (i) the municipality of the apprehension and (ii) how many occurred within 25 miles of the New Hampshire border or at the border.
9. Of these January 2023 apprehensions in New Hampshire identified in Request No. 7, documents sufficient to identify how many of the individuals apprehended had crossed the Canadian border at or around the time of the apprehension, thus constituting a “cross-border” apprehension.



18 Low Avenue
Concord NH 03301
(603) 224-5591
aclu-nh.org

Devon Chaffee
Executive Director

10. Of these January 2023 apprehensions in New Hampshire identified in Request No. 7, documents sufficient to identify how many of the individuals apprehended involved the filing of criminal charges under state or federal law, including a breakdown of those alleged offenses (e.g., possession of alleged contraband)?

In responding to this request, please consider the time limits mandated by the Right-to-Know law. In discussing those limits in *ATV Watch v. N.H. Dep't of Res. & Econ. Dev.*, 155 N.H. 434 (2007), the New Hampshire Supreme Court has stated that RSA 91-A:4, IV requires that a public body or agency, “within 5 business days of the request, make such records available, deny the request in writing with reasons, or to furnish written acknowledgement of the receipt of the request and a statement of the time reasonably necessary to determine whether the request shall be granted or denied.” *Id.* at 440.

If produced, these records must be produced irrespective of their storage format; that is, they must be produced whether they are kept in tangible (hard copy) form or in an electronically-stored format, including but not limited to e-mail communications. If any records are withheld, or any portion redacted, please specify the specific reasons and statutory exemption relied upon. *See* RSA 91-A:4, IV(c) (“A public body or agency denying, in whole or part, inspection or copying of any record shall provide a written statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld.”).

Thank you for your anticipated cooperation. I look forward to hearing from you as soon as possible. Of course, if you have any questions or concerns, do not hesitate to contact me.

Very truly yours,

/s/ Gilles Bissonnette

Gilles Bissonnette
ACLU-NH, Legal Director
Gilles@aclu-nh.org

EXHIBIT M



STATE OF NEW HAMPSHIRE
OFFICE OF THE GOVERNOR

CHRISTOPHER T. SUNUNU
Governor

VIA Email

March 23, 2023

Gilles Bissonnette
ACLU-NH, Legal Director
18 Low Avenue
Concord, NH 03301

Dear Attorney Bissonnette,

I am writing this letter to provide a final response to your March 16, 2023 request made pursuant to Part I, Article 8 of the New Hampshire Constitution for the following:

1. Of the apprehensions that occurred in the Swanton sector from October 1, 2022 to December 31, 2022, documents sufficient to identify how many of the individuals apprehended had crossed the Canadian border at or around the time of the apprehension, thus constituting a “cross-border” apprehension.
2. Documents sufficient to identify how many of the apprehensions from October 1, 2022 to December 31, 2022 occurred in New Hampshire—including in the New Hampshire counties of the Swanton sector (Coos, Grafton, and Carroll Counties)—relative to the total number of apprehensions by the sector during that three-month time period.
3. Of these October 1, 2022 to December 31, 2022 apprehensions in New Hampshire identified in Request No. 2, documents sufficient to identify (i) the municipality of the apprehension and (ii) how many occurred within 25 miles of the New Hampshire border or at the border.
4. Of these October 1, 2022 to December 31, 2022 apprehensions in New Hampshire identified in Request No. 2, documents sufficient to identify how many of the individuals apprehended had crossed the Canadian border at or around the time of the apprehension, thus constituting a “cross-border” apprehension.
5. Of these October 1, 2022 to December 31, 2022 apprehensions in New Hampshire identified in Request No. 2, documents sufficient to identify how many of the individuals apprehended involved the filing of criminal charges under state or federal law, including a breakdown of those alleged offenses (e.g., possession of alleged contraband)?

6. Of the 367 apprehensions that occurred in the Swanton sector in January 2023, documents sufficient to identify how many of the 367 individuals apprehended had crossed the Canadian border at or around the time of the apprehension, thus constituting a “cross-border” apprehension.
7. Documents sufficient to identify how many of these 367 January 2023 apprehensions occurred in New Hampshire, including in the New Hampshire counties of the Swanton sector (Coos, Grafton, and Carroll Counties).
8. Of these January 2023 apprehensions in New Hampshire identified in Request No. 7, documents sufficient to identify (i) the municipality of the apprehension and (ii) how many occurred within 25 miles of the New Hampshire border or at the border.
9. Of these January 2023 apprehensions in New Hampshire identified in Request No. 7, documents sufficient to identify how many of the individuals apprehended had crossed the Canadian border at or around the time of the apprehension, thus constituting a “cross-border” apprehension.
10. Of these January 2023 apprehensions in New Hampshire identified in Request No. 7, documents sufficient to identify how many of the individuals apprehended involved the filing of criminal charges under state or federal law, including a breakdown of those alleged offenses (e.g., possession of alleged contraband)?

Please be advised that it is the long-standing position of the New Hampshire Department of Justice that RSA 91-A does not apply to the Governor’s Office. Our office responds to such requests as inquiries pursuant to Part I, Article 8 of the New Hampshire Constitution to the extent applicable and subject to all privileges and defenses under New Hampshire law. While this office is therefore not subject to the 5-day timeline provided for in RSA 91-A, we endeavor to respond to all requests as soon as possible.

After reviewing your request, it has been determined that our office is not in possession of any governmental records that would be responsive to your request. If you have any additional questions, please do not hesitate to contact me.

Sincerely,


James Scully
Legal Counsel

EXHIBIT N

SangYeob Kim

From: Hilts, David <David.M.Hilts@DOS.NH.GOV>
Sent: Wednesday, March 22, 2023 8:12 AM
To: Gilles Bissonnette
Subject: RE: RSA 91-A request re: CBP statistics
Attachments: Safety 91-A 3.16.23.pdf

Gilles,

By way of update on your attached request, the State Police was unable to locate any records responsive to your requests pertaining to CBP apprehensions in the Swanton Sector during the months of October through December 2022. This request is considered to be closed.

David M. Hilts
Senior Staff Counsel
Office of the Commissioner
New Hampshire Department of Safety
33 Hazen Drive
Concord, NH 03305
W [REDACTED]
F (603) 271-1033

This email and any files transmitted with it are confidential and are intended solely for the use of the individual or entity to whom they are addressed. This communication may contain material protected by law. If you are not the intended recipient or the person responsible for delivering the e-mail to the intended recipient, be advised that you have received this e-mail in error and that any use, dissemination, forwarding, printing, or copying of this e-mail is strictly prohibited and may be subject to criminal prosecution. If you have received this e-mail in error, please immediately notify me by telephone at [REDACTED]. You will be reimbursed for reasonable costs incurred in notifying us.

From: Gilles Bissonnette <gilles@aclu-nh.org>
Sent: Thursday, March 16, 2023 11:40 AM
To: Hilts, David <David.M.Hilts@DOS.NH.GOV>
Subject: RE: RSA 91-A request re: CBP statistics

EXTERNAL: Do not open attachments or click on links unless you recognize and trust the sender.

Much appreciated. My apologies – I should have copied you on the request.

Gilles Bissonnette
Pronouns: he, his
Legal Director
American Civil Liberties Union of New Hampshire
18 Low Avenue, Concord, NH 03301
603-227-6678 | gilles@aclu-nh.org
aclu-nh.org  



From: Hilts, David <David.M.Hilts@DOS.NH.GOV>
Sent: Thursday, March 16, 2023 11:39 AM
To: Gilles Bissonnette <gilles@aclu-nh.org>
Subject: RSA 91-A request re: CBP statistics

Gilles,

I'm writing to respond to your attached request. The State Police was unable to locate any records responsive to your requests pertaining to CBP apprehensions in the Swanton Sector during the month of January 2023. In light of the scope of your remaining requests and the workloads and availability of the personnel participating in the processing of your request, I anticipate being able to respond to your October-December 2022 requests by the end of next week.

David M. Hilts
Senior Staff Counsel
Office of the Commissioner
New Hampshire Department of Safety
33 Hazen Drive
Concord, NH 03305
W [REDACTED]
F (603) 271-1033

This email and any files transmitted with it are confidential and are intended solely for the use of the individual or entity to whom they are addressed. This communication may contain material protected by law. If you are not the intended recipient or the person responsible for delivering the e-mail to the intended recipient, be advised that you have received this e-mail in error and that any use, dissemination, forwarding, printing, or copying of this e-mail is strictly prohibited and may be subject to criminal prosecution. If you have received this e-mail in error, please immediately notify me by telephone at [REDACTED]. You will be reimbursed for reasonable costs incurred in notifying us.

EXHIBIT O

Dumont, Tyler

From: Dumont, Tyler
Sent: Thursday, March 30, 2023 2:56 PM
To: Gokee, Amanda
Subject: RE: Comment on northern border crossings?

Hi Amanda,

Commissioner Quinn's statement was based solely upon information from a supervisor of the United States Border Patrol in the Swanton Sector, provided to the New Hampshire Information and Analysis Center, indicating there has been a slight increase in the number of illegal crossings into the United States from Canada along New Hampshire's border.

The publicly-accessible [Customs and Border Protection Data Portal](#) does not provide any data for Border Patrol "encounters" in the State of New Hampshire.

It only provides data for Customs and Border Protection's Office of Field Operations "encounters", which we understand were recorded at places such as the Manchester-Boston Regional Airport, the Port of New Hampshire, etc.

You'd have to contact U.S. Border Patrol through their CBP spokesperson for an explanation, and to clarify any of your questions on statistics: Ryan.Brissette@cbp.dhs.gov / (202) 945-7368.



Tyler Dumont
Strategic Communications Administrator
Public Information Officer
New Hampshire Department of Safety
Office of the Commissioner
Cell. [REDACTED]
Desk. 603.223.3641

From: Gokee, Amanda <amanda.gokee@globe.com>
Sent: Thursday, March 30, 2023 8:45 AM
To: Dumont, Tyler <Tyler.P.Dumont@dos.nh.gov>
Subject: Comment on northern border crossings?

EXTERNAL: Do not open attachments or click on links unless you recognize and trust the sender.

Hi Tyler!

Commissioner Quinn stated on Fox news that NH has seen a slight increase in border crossings, but when the ACLU requested data to prove it, the DOS had no responsive records.

Is it possible to speak with Commissioner Quinn about this? My deadline is EOD today. If it's not possible to speak with Commissioner Quinn, would you be able to comment on this?

Thanks!

Amanda Gokee
New Hampshire Reporter
M: [REDACTED]
amanda.gokee@globe.com

@amanda_gokee

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

American Civil Liberties Union Foundation of New Hampshire

(b) County of Residence of First Listed Plaintiff Merrimack County (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

ACLU of New Hampshire, 18 Low Ave, Concord, NH 03301, 603-333-2081

DEFENDANTS

United States Customs and Border Protection

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

U.S. Attorney's Office New Hampshire

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, INTELLECTUAL PROPERTY RIGHTS, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Personal Injury, Contract, Labor, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 5 U.S.C. 552. Brief description of cause: Action to compel production of records requested under the Freedom of Information Act (FOIA)

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

5/22/2023 /s/ SangYeob Kim

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of New Hampshire [dropdown icon]

American Civil Liberties Union Foundation of New Hampshire

Plaintiff(s)

v.

United States Customs and Border Protection

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) United States Customs and Border Protection
Office of the Chief Counsel
1300 Pennsylvania Avenue, N.W.
Washington, DC 20229

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: SangYeob Kim, American Civil Liberties Union of New Hampshire, 18 Low Ave, Concord, NH 03301

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of New Hampshire



American Civil Liberties Union Foundation of New Hampshire

Plaintiff(s)

v.

United States Customs and Border Protection

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) United States Customs and Border Protection
Office of the Attorney General
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

SangYeob Kim
American Civil Liberties Union of New Hampshire
18 Low Ave
Concord, NH 03301

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of New Hampshire



American Civil Liberties Union Foundation of New Hampshire

Plaintiff(s)

v.

United States Customs and Border Protection

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) United States Customs and Border Protection
United States Attorney's Office
53 Pleasant Street, 4th Fl
Concord, NH 03301

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

SangYeob Kim
American Civil Liberties Union of New Hampshire
18 Low Ave
Concord, NH 03301

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: