

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

AMERICAN CIVIL LIBERTIES UNION  
125 Broad Street – 18th floor  
New York, NY 10004,

AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION  
125 Broad Street – 18th floor  
New York, NY 10004,

*Plaintiffs,*

v.

DEPARTMENT OF HOMELAND  
SECURITY  
2707 Martin Luther King Jr. Avenue, SE  
Washington, DC 20528-0525

*Defendant.*

No. 22-cv-\_\_\_\_\_

**COMPLAINT FOR INJUNCTIVE RELIEF  
(Freedom of Information Act)**

**INTRODUCTION**

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for injunctive and other appropriate relief. Plaintiffs American Civil Liberties Union and American Civil Liberties Union Foundation (together, the “ACLU”) seek the immediate processing and timely release of agency records from Defendant Department of Homeland Security (“DHS”) and its subcomponents.

2. On May 11, 2021, DHS announced it had established a new Center for Prevention Programs and Partnerships (“CP3”) and also a new domestic terrorism branch within DHS’s Office of Intelligence and Analysis (“I&A”).

3. These initiatives are part of broader DHS programming related to domestic violent extremism, including a focus on violent white supremacy. DHS described this effort as one that requires a “whole-of-society” approach, including collaboration across every level of government, the private sector, non-governmental organizations, and communities.

4. Since its May 2021 announcement, DHS has released very little information about CP3 and the new I&A domestic terrorism branch. And while DHS states that both CP3 and the new I&A domestic terrorism branch are intended to address “domestic terrorism” and “targeted violence,” DHS has not publicly released information regarding how it defines those phenomena. Similarly, while DHS asserts that the CP3 will coordinate extensively with the DHS Office for Civil Rights and Civil Liberties (“CRCL”) in its mission, the public has no information about CRCL’s role in CP3’s activity, how its input factors into CP3’s work, and whether and how CP3 safeguards civil rights, civil liberties, and personal privacy.

5. The lack of publicly available information regarding CP3 and the I&A domestic terrorism branch is particularly concerning given DHS’s history and ongoing practices of using flawed counterterrorism frameworks that disproportionately target or impact communities of color, immigrants, and Muslim communities. The creation of CP3 and the I&A domestic terrorism branch appears to continue harmful and ineffective programs and to use similar frameworks and methods without clear guidelines, definitions, or safeguards to protect civil rights and civil liberties.

6. In order to help inform the public about the impacts CP3 and the I&A domestic terrorism branch will have on the civil rights, civil liberties, and personal privacy of American communities, and in particular, communities of color, immigrants, and Muslim communities that have already been disproportionately targeted by DHS’s predecessor models, on April 7, 2022,

Plaintiffs submitted a FOIA request (the “Request”) seeking records regarding these initiatives and how they may impact civil rights and civil liberties.

7. To date, DHS has not released any responsive records—which means neither the ACLU nor other members of the public have been able to evaluate the frameworks and methods used by these initiatives and have no way to gauge their impacts on civil rights, civil liberties, and personal privacy. Public disclosure of the requested records is necessary to inform the ongoing public debate concerning these new institutions within DHS and their work.

8. Plaintiffs now ask the Court for an injunction requiring DHS to process the Request immediately. Plaintiffs also seek an order enjoining Defendant from assessing fees for the processing of the Request.

#### **JURISDICTION AND VENUE**

9. The Court has subject-matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B), (a)(6)(E)(iii). The Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. §§ 701–706.

10. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

#### **PARTIES**

11. Plaintiff American Civil Liberties Union is a nationwide, non-profit, nonpartisan 26 U.S.C. § 501(c)(4) organization, incorporated in the District of Columbia and with its principal place of business in New York City. The American Civil Liberties Union’s mission is to maintain and advance civil rights and civil liberties and to ensure that the U.S. government acts in compliance with the Constitution and laws of the United States. The American Civil Liberties Union is also committed to principles of transparency and accountability in government, and seeks to ensure that the American public is informed about the conduct of its government in matters that affect civil liberties and human rights. Obtaining information about

governmental activity, analyzing that information, and widely publishing and disseminating it to the press and the public is a critical and substantial component of the American Civil Liberties Union's work and one of its primary activities.

12. Plaintiff American Civil Liberties Union Foundation is a separate 501(c)(3) organization that educates the public about civil liberties and employs lawyers who provide legal representation free of charge in cases involving civil liberties. It is incorporated in New York State and its principal place of business is in New York City.

13. Defendant DHS is a department of the executive branch of the U.S. government and is an agency within the meaning of 5 U.S.C. § 552(f)(1).

### **FACTUAL BACKGROUND**

#### Department of Homeland Security Announcement Regarding Domestic Terrorism Initiatives

14. On May 11, 2021, DHS announced its establishment of a new Center for Prevention Programs and Partnerships ("CP3") and also a new domestic terrorism branch within DHS's Office of Intelligence and Analysis ("I&A").

15. According to DHS Secretary Alejandro Mayorkas, CP3 replaces the Office for Targeted Violence and Terrorism Prevention ("OTVTP") and focuses on threat assessments intended to detect "risk factors for radicalization to violence." Press Release, Dep't Homeland Sec., DHS Creates New Center for Prevention Programs and Partnerships and Additional Efforts to Comprehensively Combat Domestic Violent Extremism (May 11, 2021), <https://www.dhs.gov/news/2021/05/11/dhs-creates-new-center-prevention-programs-and-partnerships-and-additional-efforts> [hereinafter "May 11, 2021 Press Release"].

16. In the same press statement, DHS announced that the new I&A domestic terrorism branch would leverage the National Network of Fusion Centers to produce intelligence to combat threats related to domestic terrorism and targeted violence. *Id.*

17. These new initiatives are part of broader DHS programming related to domestic violent extremism, including a focus on violent white supremacy. DHS Secretary Mayorkas also designated combating domestic violent extremism as a priority area for Federal Emergency Management Agency grant programs, requiring state, local, tribal, and territorial governments to spend at least \$77 million of DHS grant awards towards this cause. In its press statement, DHS described this effort as a “whole-of-society” approach, including collaboration across every level of government, the private sector, non-governmental organizations, and communities. *Id.*

18. Since this announcement, DHS has publicly released very little information about CP3 and the new I&A domestic terrorism branch. While DHS states that both CP3 and the new I&A domestic terrorism branch are intended to address domestic terrorism and targeted violence, DHS has not publicly released information regarding how it defines those phenomena. Indeed, DHS only added “targeted violence” to its prevention objectives in 2019 and despite announcing in its Strategic Framework for Countering Terrorism and Targeted Violence that the agency sought to formulate a definition of “targeted violence” by October 1, 2020, it has not yet done so publicly.

19. DHS itself admits that its own ability to address domestic violent extremism is hampered by the fact that it has not formulated an official definition of “domestic violent extremist,” offered agency guidance about what constitutes domestic violent extremism, or provided training for government officials tasked with identifying violent extremism. *See* Dep’t Homeland Sec. Off. of the Chief Sec. Officer, Report to the Secretary of Homeland Security

Domestic Violent Extremism Internal Review: Observations, Findings, and Reconsiderations (2022), <https://www.dhs.gov/publication/dhs-report-domestic-violent-extremism-internal-review>.

20. Similarly, while CP3 claims to coordinate extensively with the DHS Office for Civil Rights and Civil Liberties (“CRCL”) in its mission, the public has no information about CRCL’s role in CP3’s activity, how its input factors into CP3’s work, and whether and how CP3 safeguards civil rights, civil liberties, and personal privacy.

#### DHS History of Flawed Counterterrorism Frameworks

21. The lack of publicly available information regarding CP3 and the I&A domestic terrorism branch is particularly concerning given DHS’s history and ongoing practices of using flawed counterterrorism frameworks that disproportionately impact communities of color and immigrants. By viewing American communities through a threat-based security lens, these programs have disproportionately targeted and harmed Black, Brown and Muslim people, as well as other marginalized communities.

22. For example, the Countering Violent Extremism program created under the Obama administration utilized a deeply flawed approach that called on social service providers and community members to identify potentially “extremist” individuals based on vague and broad criteria that encompassed lawful speech and association. And later, the Trump administration adopted a similarly problematic model when it created OTVTP, raising the same acute concerns for communities of color and immigrants.

23. CP3 comes in the shadow of these harmful and ineffective programs and appears to use similar frameworks and methods such as “threat assessments” intended to detect “risk factors for radicalization to violence,” without clear guidelines, definitions, or safeguards to protect civil rights and civil liberties. May 11, 2021 Press Release.

24. I&A's domestic terrorism branch raises similar concerns, including because it focuses on information sharing through the National Network of Fusion Centers. Established after the September 11, 2001 attacks to facilitate information sharing between federal, state, and local law enforcement agencies, fusion centers are notorious for targeting communities of color and tracking First Amendment-protected activity. For example, in recent years, DHS has used fusion centers to monitor protesters at Standing Rock, those protesting the Trump administration's family separation and border policies, and Black Lives Matter activists.

25. Furthermore, DHS created both CP3 and the new I&A domestic terrorism branch amid reports that the agency had previously launched a strategy to identify domestic "threats" based on social media activity. Yet DHS has not released meaningful information about what any of these efforts entail and how they are, or will be, implemented while safeguarding First Amendment-protected speech, beliefs, and activity.

26. Given the potential impacts CP3 and the I&A domestic terrorism branch will have on the civil rights, liberties, and personal privacy of American communities, and in particular communities of color, immigrants, and other marginalized communities that have already been disproportionately targeted under predecessor models, it is imperative for DHS to make public records that would provide a greater understanding about the policies, practices, methods, and goals of both CP3 and the new I&A domestic terrorism branch, how (if at all) those initiatives differ from the previous flawed DHS methods DHS, and how CP3 and I&A will safeguard civil rights and civil liberties.

27. In the year since the administration's announcement, these initiatives have caused significant concern among communities who have been disproportionately targeted by DHS and privacy and rights groups. For example, advocates have highlighted the risks associated with

CP3’s approach and a lack of evidence that its proposed frameworks and methods actually prevent violence. *See* Brennan Ctr. for Just., *A Course Correction for Homeland Security* (2022), <https://www.brennancenter.org/our-work/research-reports/course-correction-homeland-security>.

### The FOIA Request

28. On April 7, 2022, the ACLU submitted a FOIA Request to DHS and its subcomponents, the Office of Intelligence & Analysis and the Office for Civil Rights and Civil Liberties. The Request sought records concerning how DHS—specifically CP3 and I&A—assess targeted violence, risk management tools, and definitions of key terms used to formulate domestic terrorism frameworks. The ACLU also requested records concerning the input and guidance from CRCL regarding CP3 programs and activities, including any incorporation of civil rights, liberties, and privacy safeguards and specific materials regarding the use of social media.

29. Specifically, the Request sought:

1. All policies, guidelines, formal or informal guidance, advisories, directives, presentations, and memoranda concerning:
  - a. Specific conduct, behaviors, ideologies, theories, beliefs, opinions, and/or “risk factors” purportedly associated with targeted violence;
  - b. Behavioral threat assessment and management tools to address radicalization to violence;
  - c. How CP3 or I&A respond when an individual is identified as at risk of conducting targeted violence;
  - d. How CP3 or I&A determines which stakeholders to engage with;
  - e. How grant applications are evaluated and awarded; and
  - f. The role and involvement of federal, state, and local law enforcement agencies in CP3 programs and activities.
2. Materials developed by DHS Science and Technology Directorate (“S&T”) and I&A’s National Threat Evaluation and Reporting (“NTER”) Program that



characterize threats, identify opportunities for prevention, and evaluate terrorism and targeted violence prevention programs and interventions;

3. Input and guidance from CRCL regarding CP3 programs and activities, including any incorporation of civil rights, liberties, and privacy safeguards;
4. The online training course “Countering Terrorists Exploitation of Social Media and the Internet”;
5. Records concerning the definitions of the following terms:
  - a. “Targeted violence”
  - b. “Whole of society”
  - c. “Behavioral threat assessment”
  - d. “Radicalization” and/or “Radicalizing to violence”
  - e. “Domestic terrorism”
  - f. “Foreign Terrorist” and/or “Foreign Terrorism”
  - g. “Violent white supremacy”
  - h. “Homegrown violent extremism
6. Training materials pertaining to “targeted violence,” “prevention activities,” “behavioral threat assessments,” and “early-risk factors” leading to “radicalization to violence.”

30. Plaintiffs sought expedited processing of the Request on the ground that there is a “compelling need” for these records because the information requested is urgently needed by an organization primarily engaged in disseminating information in order to inform the public about actual or alleged federal government activity. 5 U.S.C. § 552(a)(6)(E).

31. Plaintiffs sought a waiver of search, review, and reproduction fees on the ground that disclosure of the requested records is “in the public interest because it 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.” *Id.* § 552(a)(4)(A)(iii).

32. Plaintiffs also sought a waiver of search and review fees on the grounds that the ACLU qualifies as a “representative of the news media” and that the records are not sought for commercial use. *Id.* § 552(a)(4)(A)(ii).

Defendant's Responses to the Request

33. Despite the urgent public interest in the creation of these new initiatives and the bases for their activities, DHS has not released any records in response to the Request.

34. Under the FOIA, DHS has twenty working days to respond to a request. 5 U.S.C. § 552(a)(6)(A)(i). If there are “unusual circumstances,” an agency may extend the time limit by no more than ten working days. *Id.* § 552(a)(6)(B)(i). More than thirty working days have passed since Plaintiffs filed the Request. Thus, these statutory time periods have elapsed.

35. On April 7, 2022, Plaintiffs received an automated email stating that DHS had received the Request and assigned it tracking number 2022-HQFO-00853.

36. On May 3, 2022 and May 17, 2022, DHS issued identical letters denying Plaintiffs' request for expedited processing and conditionally granted Plaintiffs' request for a fee waiver.

37. To date, DHS has neither released responsive records nor explained its failure to do so. Plaintiffs have exhausted all administrative remedies because DHS has failed to comply with the time limit for responding to the Request under the FOIA.

38. DHS continues to wrongfully withhold the requested records from Plaintiffs.

**CLAIMS FOR RELIEF**

39. The failure of Defendant to make a reasonable effort to search for records responsive to the Request violates the FOIA, 5 U.S.C. § 552(a)(3), and Defendant's corresponding regulations.

40. The failure of Defendant to promptly make available the records sought by the Request violates the FOIA, 5 U.S.C. § 552(a)(3)(A), (a)(6)(A), and Defendant's corresponding regulations.

41. The failure of Defendant to process Plaintiffs' request expeditiously and as soon as practicable violates the FOIA, 5 U.S.C. § 552(a)(6)(E), and Defendant's corresponding regulations.

42. The failure of Defendant to unconditionally grant Plaintiffs' request for a waiver of search, review, and duplication fees violates the FOIA, 5 U.S.C. § 552(a)(4), (a)(6), and Defendant's corresponding regulations.

43. The failure of Defendant to grant Plaintiffs' request for a limitation of fees violates the FOIA, 5 U.S.C. § 552(a)(4), (a)(6), and Defendants' corresponding regulations.

### **REQUESTED RELIEF**

WHEREFORE, Plaintiffs respectfully request that this Court:

- A. Order Defendant to conduct a thorough search for all responsive records;
- B. Order Defendant to immediately process and release any responsive records;
- C. Enjoin Defendant from charging Plaintiffs search, review, or duplication fees for the processing of the Request;
- D. Award Plaintiffs their costs and reasonable attorneys' fees incurred in this action;  
and
- E. Grant such other relief as the Court deems just and proper.

Respectfully submitted,

/s/ Brett Max Kaufman

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June 15, 2022