UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

ELINOR HILTON, COLLEEN FAGAN, POLYXENIA PANTOS, and CARLYN WILLIAMS, on behalf of themselves and all others similarly situated, Plaintiffs, v. MARKWAYNE MULLIN, Secretary of Homeland Security; TODD LYONS, Acting Director, U.S. Immigration and Customs Enforcement; JOHN A. CONDON, Acting Executive Director, Homeland Security Investigations; RODNEY SCOTT, Commissioner, U.S. Customs and Border Protection; MICHAEL BANKS, Chief, U.S. Border Patrol; THE U.S. DEPARTMENT OF HOMELAND SECURITY; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; HOMELAND SECURITY INVESTIGATIONS; U.S. CUSTOMS AND BORDER PROTECTION; U.S. BORDER PATROL; UNIDENTIFIED FEDERAL AGENCIES; and UNIDENTIFIED FEDERAL AGENTS, Defendants.	Case No. 2:26-cv-00092-JAW

PLAINTIFFS' REPLY IN SUPPORT OF THEIR MOTION FOR A PRELIMINARY INJUNCTION

INTRODUCTION

Defendants attempt to avoid liability by seeking unqualified deference to agents' testimony that observers posed a potential "threat"—even where that testimony is flatly contradicted by overwhelming record evidence. Defendants also contend that their formal policy is to respect First Amendment rights. But *even today*, Defendants will not concede that it violates the First Amendment to selectively record and track observers, PI Opp. 2–3, threaten observers with a "domestic terrorist" designation, *id.* at 34–35, or deliberately drive observers to their homes in a show of intimidation, *id.* at 3. It is no surprise that agents continue to engage in unlawful intimidation, including as recently as this month. Defendants' opposition thus underscores the pressing need for relief in this case, both to undo the ongoing harm and to prevent further intimidation against observers seeking to hold agents to account. Defendants do not identify any legitimate government interest that will be impaired by the narrow relief Plaintiffs request, and there is none.

ARGUMENT

I. Plaintiffs Are Likely to Succeed on the Merits of Their Retaliation Claims

A. The Challenged Actions Are Sufficiently "Adverse"

Defendants do not dispute that the ICM records are adverse actions that would deter a reasonably hardy person from exercising their rights. ECF No. 133 ("PI Opp.") 26–29. The targeted recording of observers by federal agents and threats and intimidation against them meet this standard as well.

Collection of personal information. Defendants argue that federal agents recording and taking photos of observers engage in only "de minimis" actions that should not chill protected activity. PI Opp. 24–25. But they do not tell the full story. The agents held up their phones and filmed observers in a deliberate show of intimidation. PI Mot. 26. Agents either provided no

explanation for recording observers or expressly suggested it would be used to brand them as "domestic terrorists." *Id.* at 7, 9–11. This conduct took place amid well-publicized efforts by this administration to track, investigate, prosecute, intimidate, and smear the reputations of individuals who engaged in the very same kinds of protected activity that agents were singling out. *Id.* at 3–4 & nn. 6–9, 13–14 & n.84; ECF No. 129 at 6–8 & nn.7–13.

With this context, the targeted collection of information about observers by federal agents would plainly chill a reasonably hardy ordinary citizen from engaging in protected activity. PI Mot. 26–27; *cf. Barton v. Clancy*, 632 F.3d 9, 29–30 (1st Cir. 2011) (even "relatively minor events" can constitute adverse actions); *Rudd v. City of Norton Shores*, 977 F.3d 503, 514 (6th Cir. 2020) (standard for adverse action is "reduced even more" when the plaintiff is an "ordinary citizen"). Defendants imply that agents used their phones in place of body cameras, PI Opp. 16, but under Defendants' own policy, agents cannot use body cameras to selectively record First Amendment activity.[1] Nor, as a practical matter, can agents circulate bodycam footage of individual observers for further investigation and tracking as easily as they did here.

Recognizing the targeted collection of information as adverse would not undermine agents' ability to collect information for *legitimate* law enforcement reasons; it is well-settled that an action taken for retaliatory reasons is actionable even if it is not independently unlawful. *E.g.*, *Perry v. Sindermann*, 408 U.S. 593, 597 (1972). Finally, it is irrelevant that the observers filmed by agents were often themselves "recording the same interaction." PI Opp. 25. There is an obvious difference between recording by a private citizen and recording by federal agents with the power to open criminal investigations and access advanced surveillance tools.[2]

[1] Ex. 71 (ICE Directive 19010.3 §§ 5.6(2), (13) at DEFS000525); *cf.* Ex. 69 at DEFS000297 [redacted]).

[2] Ex. 70 (ICE Directive 1061.2 § 1 at DEFS000518) [redacted]).

Targeted intimidation. Defendants argue that it is not an adverse action for agents either to threaten observers with placement on a "domestic terrorist" watchlist or to drive them deliberately to their homes. *See* PI Opp. 34–35 (dismissing these incidents as "tense or unpleasant" encounters). But agents *admitted* that the purpose and effect of these actions is to deter further observation by encouraging the observer to leave the scene or stop following them. PI Mot. 15–17; *cf.* PI Opp. 3 (purpose of drive-bys is to "disengage" vehicles following them); Carver Decl. ¶¶ 13–16. Defendants further argue that Plaintiffs themselves have not been sufficiently chilled as a result of these tactics. PI Opp. 34. But that is both incorrect, *see* PI Mot. 31–33, and irrelevant. The standard for determining whether an action is adverse is objective, not subjective. *See, e.g.*, *Bennett v. Hendrix*, 423 F.3d 1247, 1251–52 (11th Cir. 2005); *Constantine v. Rectors & Visitors of George Mason Univ.*, 411 F.3d 474, 500 (4th Cir. 2005). And retaliation claims "target[] conduct that tends to chill [protected] activity, not just conduct that freezes it completely." *Constantine*, 411 F.3d at 500. A person of ordinary firmness would be chilled by federal agents signaling to observers that they know who they are and where they live.[3]

B. Defendants Acted Because of Plaintiffs' Protected Activity

Defendants specifically targeted Plaintiffs and other observers because they observed and recorded ICE activity. PI Mot. 24–29. Defendants ignore much of the relevant evidence, including D.L.'s admission that he recorded "protesters"; J.C.'s repeated references to "professional protestors" and protected activity in ICM records; and the pattern of DHS leaders portraying the act of observing and recording as criminal in nature. *Id.* at 3–4 & nn.6–9, 24–29.[4]

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[3] *See, e.g.*, McLellan Decl. ¶¶ 9–10, 16, 18–20; Carver Decl. ¶¶ 18–20; ECF No. 132-38 (C. Jagger Decl. ¶¶ 18–22); ECF No. 132-43 (R. Jagger Decl. ¶¶ 22–24); *cf.* ECF No. 132-42 (Pantos Decl. ¶¶ 15–18); ECF No. 132-39 (Williams Decl. ¶¶ 23–29).

[4] *See also* Ex. 74 (since-deleted ICE press release stating that COTD succeeded "despite the organized efforts from activist groups, radical politicians and protestors to thwart our activities"); McLellan Decl. ¶ 16 (identifying herself as the "protestor" depicted in the press release).

Defendants' principal defense is that agents nonetheless had "legitimate operational explanations" for selectively recording individuals engaged in protected activity, creating and maintaining Williams's ICM record, and engaging in widespread intimidation of observers. PI Opp. 21. The evidence Defendants cite consists of (1) testimony about Plaintiffs' encounters that is contradicted by other record evidence and (2) misleading and irrelevant allegations about the general "operational environment" during the surge. This evidence cannot overcome Plaintiffs' showing of retaliatory animus. Nor should the Court accept Defendants' invitation to hold that actions taken "pursuant to official duties" cannot be retaliatory as a matter of law.

1. The agents acted with retaliatory animus, and their contrary testimony is contradicted by more credible record evidence

Defendants ask the Court to credit testimony by some agents, particularly Agent J.C., indicating that they recorded Plaintiffs and created ICM records in response to specific law enforcement concerns. PI Opp. 16–17. But the record wholly undermines that testimony and confirms that the agents were in fact motivated by Plaintiffs' First Amendment activity.

Fagan. There is no real dispute that the officers who intimidated Fagan did so in response to her protected activity. PI Mot. 11–12. Defendants do not point to any plausible operational or safety concern that justified recording her, retaining her information, or threatening her with a "domestic terrorist" designation. PI Opp. 14–15. Fagan's facts illustrate just how sweeping Defendants' position is: *Any* observer engaged in protected activity can be recorded "in case" information about them might become relevant later.

Pantos and Williams. Agent J.C. justified investigating Williams and adding her to ICM after the January 20 encounter by calling her a "protestor" and referencing the mere (and mistaken) fact that she "w[as] there"—*i.e.*, had observed an arrest earlier that day. PI Mot. 8. J.C. made similar comments to Williams in his phone call to her later that day, and the ICM record

expressly references J.C.'s belief that Williams had "photographed" agents. PI Mot. 8, 22. This is direct evidence that J.C. was motivated by his belief that Williams observed, recorded, and protested ICE agents that day.

Agent J.C. is the *only* witness to suggest that two separate individuals approached the agents and allegedly interfered with their arrest. PI Opp. 10–11. That testimony is not credible. Defendants acknowledge that there is extended video of the incident that begins *before Pantos even arrives on the scene in Williams' car* and ends with the agents driving away, having completed their arrest. PI Opp. 11; ECF No. 132-10 (PI Ex. 8). Pantos is not visible or audible. This video, combined with eyewitness testimony from Pantos, the other observer Hillary Neff, and other agents, thoroughly undermines J.C.'s testimony about a second individual getting "too close" to the arrest and ignoring warnings. *See* PI Mot. 20–21.[5]

Hilton. As Defendants acknowledge, Hilton did not impede operations in the Home Depot parking lot. PI Opp. 13. At the time agents recorded and threatened her, Hilton was undisputedly engaged in protected activity. *See* PI Mot. 21–22. And D.L., who held his phone close to Hilton's face and told other agents he had "got[ten]" her license plate number, acknowledged doing so because Hilton was filming agents and recording protesters could be a "deterrent" to continued filming. *Id.* at 9, 26. That testimony alone establishes retaliatory animus.

Defendants maintain that agents nonetheless acted for legitimate law enforcement reasons, pointing to J.C.'s testimony that he believed Hilton was part of a group that had allegedly "chased" the team to Home Depot. PI Opp. 12–14. J.C.'s testimony is questionable at best; J.C. threatened and recorded Hilton while she stood *alone* filming, having arrived in a

[5] DHS agents in Maine and elsewhere have repeatedly been exposed as fabricating justifications for violating protestors' and immigrants' rights. *See*, *e.g.*, Ex. 75; Ex. 76; Ex. 77; *see also* D.L. Dep. 81:12–83:13 (disagreeing with J.C.'s characterizations in ICM records). Excerpts from depositions cited to herein that are not otherwise in the record are attached.

different (distinctive) car. PI Mot. 21. None of the videos taken by Hilton or J.C. reference a "chase," even as agents repeatedly attempt to engage with and mock the observers.[6] Defendants' videos also confirm that J.C. recorded and threatened at least one individual—an observer standing silently with a phone in the parking lot—who he did not believe had anything to do with the alleged chase. ECF No. 132-15 (PI Ex. 17). As Defendants acknowledge, he suspected three *other* individuals of "participat[ing] in the pursuit." PI Opp. 13; *see* ECF No. 101-12 (PI Ex. 10) (depicting those individuals). This uncontroverted evidence shows that J.C.'s threats and recording of observers were motivated by retaliatory animus, not by operational or safety concerns.

The federal agent who led Hilton to her father's home in June likewise acted in response to protected activity. Agents routinely use drive-bys simply because the targeted observers are alleged to be "following" ICE vehicles—even when the observers do not drive in a threatening or dangerous manner or impede operations. PI Mot. 16–18; *see also* Carver Decl. ¶¶ 4–16 (agents conducted drive-by and warned observer at her home that following agents violates 18 U.S.C. § 111). The First Amendment protects the right to safely follow law enforcement, without interfering with their operations, for the purpose of observing and documenting their official actions. PI Mot. 22. Accepting Defendants' view of following agents as a *de facto* safety threat would eviscerate the right to observe and record law enforcement where officers' duties require them to move from place to place in pursuit of their "targets."[7] The right to record cannot be limited to situations where officers remain in one place or observers happen upon them.

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[6] ECF Nos. 132-3, 132-4, 132-5, 132-15 (PI Exs. 1, 2, 3, 17); *see also* Ex. 68 (DEFS000234) (J.C. approaching Hilton and determining which car she exited).

[7] The public has an interest in observing not only arrests, but also public abuses by agents in selecting and approaching targets, *see, e.g.*, ECF No. 132-43 (R. Jagger Decl. ¶¶ 2–3, 5, 9–11); ECF No. 132-41 (Neff Decl. ¶ 4); Haines Decl. ¶ 13, which Defendants' own documents suggest were happening, *see, e.g.*, Ex. 73 at DEFS001666–71, 1706–16, 1869–73, 1902–09.

2. The "operational environment" in Maine does not justify the widespread recording and intimidation of observers

Defendants argue at length that agents in Maine faced a heightened and dangerous "operational environment" during the surge. PI Opp. 5–9. To start, the environment in January does not explain why agents have *continued* to intimidate observers like Hilton since the operation ended. PI Mot. 11, 17–18; *supra* pp. 6–7. More generally, Defendants' arguments rely on agent testimony that is not credible and is refuted by record evidence. Defendants intentionally created a public spectacle during their operations in Maine and elsewhere.[8] The fact that communities responded with public protest was a foreseeable, if not intended, result.

a. Defendants repeatedly mischaracterize observers' conduct

Defendants' discussion of the community response to ICE in Maine is misleading in several respects and outright false in others. The agents deposed could not recall a single individual arrested for assaulting or impeding federal agents during Operation Catch of the Day.[9] They did not report any threats to ICE.[10] Agent D.L.—who worked alongside Agent J.C.—did not observe *any* protestor engaging in unlawful activity during the operation.[11]

Defendants suggest that observers intentionally disrupted ICE agents conducting "surveillance" of their "target[s]" by, for example, honking horns or blowing whistles. PI Opp. 6. But as J.C. conceded, private citizens have *no way of knowing* whether agents in public spaces are engaged in surveillance efforts.[12] It is well within the scope of their First Amendment rights to draw attention to ICE's presence and loudly protest ICE activity in their communities. An individual does not lose those rights whenever agents are conducting a law enforcement

[8] ECF No. 142-15 (MTD Opp. Ex. 10).
[9] S.C. Dep. 308:21–309:6; J.R. Dep. 255:22–256:2.
[10] J.R. Dep. 251:15–255:5; ECF No. 122-6 (D.L. Dep. 100:21–101:4).
[11] ECF No. 122-6 (D.L. Dep. 115:24–116:4).
[12] J.C. Dep. 332:24–334:2.

operation. Nor does an individual become suspicious merely because they "repeatedly appear[]" at ICE operations. PI Opp. 7. It is unsurprising—and constitutional—that the same concerned citizens would repeatedly respond to ICE sightings, particularly in relatively small communities.

Defendants next describe encounters that agents perceived as particularly threatening, relying largely on suspect testimony from J.C.. For example, Defendants make a number of baseless allegations about [redacted], another observer who is now catalogued in ICM as a "Professional Protestor" because he engaged in quintessential protected activity: filming, mocking, and criticizing ICE agents.[13] Again, none of J.C.'s assertions about [redacted] are true. [redacted] did not "carr[y] a radio to coordinate rapid responses" (and does not even own a radio).[14] Nor did he "body check" D.L.; on the contrary, video evidence shows D.L. rapidly approaching [redacted], not vice versa.[15] Those videos also refute the allegation that [redacted] and another observer boxed in Agent C.H.'s vehicle. In fact, [redacted] is parked right behind the other observer, Elizabeth McLellan, in front of her own home, where they had just been led by agents in a show of intimidation.[16]

Finally, J.C.'s testimony that [redacted] "attempted to 'take the person'" that J.C. had handcuffed in the Market Basket parking lot is also false. Video confirms that [redacted] never was

[13] J.C. also [redacted] J.C. Dep. 228:9–250:14; Ex. 72 (DEFS000687). [redacted] (J.C. Dep. 240:11–241:9) [redacted] (*id.* at 257:4–264:10). This testimony leaves no doubt that J.C.'s actions against [redacted] were motivated by animus toward his protest activity. *Cf.* Ex. 73 at DEFS001746–54, 1818–23, 1864–71, 1891–1900; D.L. Dep. 148:13–154:10 (no basis to suspect [redacted] of criminal activity).

[14] [redacted] Decl. ¶ 11.

[15] [redacted] Decl. Ex. A; PI Opp. Ex. 12; [redacted] Decl. ¶ 12. D.L. notably made the same false accusation about Neff. *See* Neff Decl. ¶ 10.

[16] [redacted] Decl. Ex. A; [redacted] Decl. ¶¶ 7–10; McLellan Decl. ¶¶ 7–15; J.C. Dep. 218:10–223:3; D.L. Dep. 140:9–22; ECF No. 103-7 (PI Ex. 48 at DEFS001353); *see also* PI Opp. Ex. 12.

anywhere close to the individual under arrest.[17] Community members filmed, honked, and voiced opposition to ICE, but they did *not* interfere with the arrest, which videos show J.C. completes without issue. The fact that observers' conduct "annoy[s] or offend[s]" law enforcement does not make it unprotected speech, let alone criminal interference. *City of Houston v. Hill*, 482 U.S. 451, 465 (1987); *see also id.* at 471 ("the First Amendment recognizes . . . that a certain amount of expressive disorder not only is inevitable in a society committed to individual freedom, but must itself be protected if that freedom would survive").[18]

b. The First Amendment prohibits retaliation by law enforcement even in a "heightened" environment

Even if agents faced a heightened operational environment, it would not follow that agents in Maine invariably acted for legitimate "operational or safety" reasons. PI Opp. 16–17. The government cannot use the actions of some protestors as a license to treat all individuals engaged in protected activity as potential criminal threats. *See Healy v. James*, 408 U.S. 169, 186 (1972) ("[G]uilt by association alone, without [establishing] that an individual's association poses the threat feared by the Government, is an impermissible basis upon which to deny First Amendment rights."); *L.A. Press Club v. Noem*, 171 F.4th 1179, 1189 (9th Cir. 2026) ("The presence of some violent actors did not give Defendants *carte blanche* to fire crowd control weapons indiscriminately into crowds of peaceful protesters, legal observers, and members of the press."). If anything, Defendants' position confirms the First Amendment concern: following

[17] [redacted] Decl. ¶¶ 15–20; [redacted] Decl. Ex. B.

[18] The other evidence Defendants point to is also unpersuasive. PI Opp. 8. J.C. expressed concern about a person in "military tactical gear" at the Home Depot, but the individual he references is clearly wearing an ordinary jacket. *See* ECF No. 101-12 (PI Ex. 10). Defendants also cite a video taken by Hilton, ECF No. 133-3 (PI Opp. Ex. 11), but fail to disclose that the video is from several months after the operation and does not bear on the "environment" during the surge. And the suggestion that Hilton initiated physical contact during that encounter is contradicted by the evidence. ECF No. 132-40 (Hilton Decl. ¶¶ 44–47); Hilton Dep. 174:22–176:15. Finally, Plaintiffs and other observers complied with orders and did not claim the "right" to cross perimeters, as Defendants contend. PI Opp. 7, 33; *see* PI Mot. 9, 25.

Defendants' lead, agents have branded people who record or protest ICE activity as "agitators," "domestic terrorists," "paid protestors," or otherwise threatening.[19]

Defendants' argument that agents all acted "pursuant to" their "understanding of their law enforcement duties" is similarly flawed. PI Opp. 25–26. That rule would seem to insulate virtually all actions by law enforcement from First Amendment retaliation claims. But the Supreme Court has repeatedly reaffirmed that plaintiffs challenging retaliatory action by law enforcement officers can meet their burden with evidence that their speech was a "substantial" or "motivating" factor behind the officers' action; once that showing is made, the burden shifts to the defendant to prove the same action would have been taken regardless of the plaintiff's speech. *Nieves v. Bartlett*, 587 U.S. 391, 404 (2019). In the particular context of retaliatory arrest and prosecution claims (neither of which is asserted here), the plaintiff generally must *also* establish the absence of probable cause. *Id.* But by reaffirming that retaliation claims remain available where the plaintiff meets that evidentiary burden, *Nieves* rejected the rule that Defendants seem to propose here—*i.e.*, a blanket assumption that law enforcement actions taken in the course of official duties cannot be motivated by retaliatory animus as a matter of law.[20]

II. Plaintiffs Are Likely to Succeed on Their Viewpoint Discrimination Claims

Defendants' response to Plaintiffs' viewpoint discrimination claims largely mischaracterizes the claims and misstates the law. To start, Plaintiffs *are* challenging an agency-wide policy or practice rather than a series of isolated actions. PI Opp. 36. Plaintiffs have demonstrated officially sanctioned unwritten policies and practices of targeting observers with

[19] ECF No. 122-6 (D.L. Dep. 41:24–44:2, 127:24–130:22, 134:1–14); ECF No. 122-7 (J.C. Dep. 266:24–268:15, 338:22–339:22); S.C. Dep. 294:4–295:21; D.L. Dep. 104:21–107:19; Ex. 73 at DEFS001867 (describing [redacted]), 2097–98 (stating [redacted]).

[20] The one case Defendants point to as support for their proposed rule, *Aldridge v. City of St. Louis*, 75 F.4th 895, 899–900 (8th Cir. 2023), in fact reaffirms that officers are liable for retaliation when they "single out" protestors for adverse action.

perceived viewpoints (often expressly described as "protestors" or identified by their protected activity) by recording and intimidating them. *Supra* p. 3.

Contrary to Defendants' suggestion, viewpoint discrimination claims do not require a written regulation. *See*, *e.g.*, *Shurtleff v. City of Bos., Mass.*, 596 U.S. 243, 257–59 (2022) (refusal to fly Christian flag based on unwritten policy). The fact that agents were told about a pro-ICE group called Pine Guard at the prebrief in no way undermines Plaintiffs' viewpoint discrimination claim. If anything, it supports it. Despite the indication that *supporters* posed the more likely threat, agents admitted to only recording individuals perceived as "protesters"—an inherently viewpoint-based description.[21] And operation leadership affirmatively invited friendly journalists to observe and record their actions while "embedded" with agents on the ground.[22]

Finally, Defendants are simply wrong in arguing that "the strict scrutiny framework is inapplicable" without an express policy to discriminate based on viewpoint. PI Opp. 38. An unwritten policy that directs or authorizes viewpoint discrimination is subject to strict scrutiny. *See, e.g.*, *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 565–66 (2011); *NRA v. Vullo*, 602 U.S. 175, 191–94, 198–99 (2024); *Shurtleff*, 596 U.S. at 259. Here, Defendants' broad assumptions about observers confirm the woeful lack of narrow tailoring. For example, Defendants *still* cannot identify any aspect of Fagan's conduct that created a safety or operational concern or justified recording her. Yet officers nonetheless collected her information and branded her a "domestic terrorist." *See Friend v. Gasparino*, 61 F.4th 77, 92–93 (2d Cir. 2023) (arresting an individual who warned others of police ahead in a non-emergency situation was not narrowly tailored to advancing the state's interest in saving lives or enforcing the law).

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[21] Agents' self-serving justifications for their actions are insufficient when there is ample evidence in the record revealing them to be pretext. *Supra* p. 3; *see Ridley v. Mass. Bay Transp. Auth.*, 390 F.3d 65, 86 (1st Cir. 2004).

[22] Ex. 78 (https://tinyurl.com/4rrmp7h3).

III. Plaintiffs Have Standing to Seek the Requested Relief

Defendants largely reprise meritless standing arguments from their motion to dismiss. MTD Opp. 16–24. Their new arguments fare no better.

A. Williams Has Standing to Seek Relief Relating to the ICM/TECS Records

Defendants argue that Williams lacks standing to challenge her ICM and TECS records. Their contention is that Williams has no current plans to travel internationally and therefore cannot establish an injury-in-fact. PI Opp. 26–27. But Williams *did* plan to travel internationally in September 2026, canceling that trip once discovery confirmed the existence of the ICM records. The fact that she is refraining from international travel *because of the challenged records* confirms their deterrent effect and ongoing harm; it cannot possibly defeat her standing to seek expungement and other appropriate relief.

B. Plaintiffs Have Standing to Seek an Order Barring the Adverse Use of Their Unlawfully Collected Information

Defendants also challenge Plaintiffs' standing to seek limited relief barring the adverse use of information unlawfully collected in response to their protected activity. Their arguments rest on the false premise that Plaintiffs' information is only maintained because of "litigation-preservation obligations," which in their view establishes that Defendants are unlikely to make use of the information. PI Opp. 23. But Defendants informed Congress that information collected during ICE encounters with observers—even observers not arrested or detained, or involved in an ongoing lawsuit—constitute official government records, MTD Opp. 7–8, and discovery confirmed that, at minimum, the Signal chats where some Plaintiffs' information was circulated are [redacted].[23] As to their potential use, agents expressly stated that the purpose of collecting and circulating the

[23] *See* ICE 30(b)(6) Dep. 331:3–332:15.

information was to inform future investigations,[24] and this administration routinely initiates prosecutions months after alleged wrongdoing occurred.[25]

In any event, Plaintiffs' injury does not depend on Defendants' future actions. Plaintiffs' self-censorship is an ongoing injury in-fact. PI Mot. 31–33; MTD Opp. 14–15. And because the collection of information is "adverse" for purposes of a retaliation claim, *supra* pp. 1–2, the fact that Defendants took this action in retaliation for protected activity is also a concrete, ongoing injury. *See Media Matters for Am. v. Paxton*, 138 F.4th 563, 582–83 (D.C. Cir. 2025).[26]

C. Plaintiffs Have Standing to Seek an Injunction Against Defendants' Practice of Threatening and Intimidating Observers

Plaintiffs' standing to seek an injunction against Defendants' practice of threatening and intimidating observers follows from three facts: (1) Plaintiffs continue to self-censor as a result of Defendants' threats and intimidation, MTD Opp. 16–18; PI Mot. 31–33; (2) immigration enforcement in Maine continues at an elevated pace and Plaintiffs intend (or wish) to continue observing and recording, making repeated encounters with ICE likely, MTD Opp. 21–23; and (3) the pattern of intimidation is both widespread and officially sanctioned, establishing a likelihood that ICE agents will again respond to Plaintiffs' protected activity with threats and harassment, *id.* at 19–21; *see also id.* at 9–10, 20 (explaining Defendants' misrepresentations about their policy and training). In early October, a retired physician who regularly observes ICE activities near Auburn was told to "go home" by an agent who identified her by name and described her home and property in detail—sending the same chilling message that agents know who she is

[24] *E.g.*, ECF No. 135-13 (D.L. Dep. 155:11–25); ECF No. 135-15 (J.C. Dep. 126:10–127:19); S.C. Dep. 175:11–177:16. J.C. also confirmed his desire to create an ICM record for Hilton. *See* PI Mot. 10.

[25] *E.g.*, Ex. 79.

[26] That distinguishes this case from *Phillips v. U.S. Customs & Border Protection*, 74 F.4th 986 (9th Cir. 2023); the plaintiffs there "d[id] not argue that the nature of the alleged underlying constitutional violation affects our analysis." *Id.* at 991 n.4; *see also* MTD Opp. 15 n.39.

and where she lives.[27] The record of unconstitutional conduct thus only continues to grow.[28]

IV. The Remaining Equitable Factors Support a Preliminary Injunction and Interim Declaratory Relief

The Court presumes irreparable harm when a plaintiff is likely to succeed on the merits of a First Amendment claim, and Plaintiffs are also experiencing actual ongoing harm—including forgone travel and chilled speech on matters of vital public concern. Neither the end of Operation Catch of the Day nor the 2019 memo counsels against relief, given the evidence of ongoing constitutional violations. PI Opp. 37, 39. Defendants also identify no plausible government interest that would be undermined by the requested relief. Maintaining Williams's inaccurate ICM records and the information collected in response to Plaintiffs' protected activity serves no legitimate government purpose. And Defendants' briefing makes no attempt to articulate a legitimate justification for the intimidation tactics Plaintiffs seek to enjoin. *See* PI Mot. 38.

Defendants simply contend (without citation) that an injunction would "interfere with officers' ability to make contemporaneous judgments" in the field and impose reasonable safety restrictions. PI Opp. 39. That is manifestly wrong. The requested injunction would prohibit officers in the field from baselessly threatening observers with a "domestic terrorist" designation and harassing (or threatening to harass them) at their homes; officers would remain free to enforce the law and impose reasonable safety restrictions. PI Mot. 34–40. The notion that officer safety and operational integrity depend on officers' blanket authority to engage in this conduct is precisely why Plaintiffs came forward to bring this action.

CONCLUSION

Plaintiffs respectfully request that the Court grant their preliminary injunction motion.

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[27] Haines Decl. ¶¶ 13–14; *see also id.* ¶ 18 (drive-by at another observer's home in September).
[28] *See also, e.g.*, Ex. 80 at 109 (report noting evidence of over 30 drive-bys); Exs. 81, 82 (documenting a drive-by involving Maine observer named Stewart); Ex. 83 at DEFS001386–87.

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Respectfully submitted,

/s/ JoAnna Suriani

JoAnna Suriani*
Janine M. Lopez*
Ori Lev*
F. Elias Boujaoude*
Protect Democracy Project
2020 Pennsylvania Ave. NW, Suite 163
Washington, DC 20006
(202) 579-4582
joanna.suriani@protectdemocracy.org
janine.lopez@protectdemocracy.org
ori.lev@protectdemocracy.org
elias.boujaoude@protectdemocracy.org

Genevieve Nadeau*
Kenneth Parreno*
Protect Democracy Project
15 Main Street, Suite 312
Watertown, MA 02472
(202) 579-4582
genevieve.nadeau@protectdemocracy.org
kenneth.parreno@protectdemocracy.org

Jessica Marsden*
Protect Democracy Project
101 Glen Lennox, Suite 300
Chapel Hill, NC 27517
(202) 579-4582
jess.marsden@protectdemocracy.org

Melissa A. Hewey
David M. Kallin
Drummond Woodsum
84 Marginal Way, Suite 600
Portland, ME 04101
(207) 253-0528

mhewey@dwmlaw.com
dkallin@dwmlaw.com

Karen L. Dunn*
Jeannie S. Rhee*
L. Rush Atkinson*
Yotam Barkai*
John Paredes*
Benjamin J. Cabranes*
Dunn Isaacson Rhee LLP
401 9th Street, NW
Washington, DC 20004
(202) 240-2900
kdunn@dirllp.com
jrhee@dirllp.com
ratkinson@dirllp.com
ybarkai@dirllp.com
jparedes@dirllp.com
bcabranes@dirllp.com

**Pro hac vice*