

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

AMERICAN CIVIL LIBERTIES UNION OF
MASSACHUSETTS, INC.,

Plaintiff,

v.

PLYMOUTH COUNTY SHERIFF'S
DEPARTMENT,

Defendant.

No. 1:26-CV-14149-LTS

**DECLARATION OF DANIEL L. MCFADDEN IN SUPPORT OF
PLAINTIFF'S MOTION TO REMAND**

I, Daniel L. McFadden, declare as follows:

1. I am a managing attorney at the American Civil Liberties Union Foundation of Massachusetts, Inc. The following facts are based on my personal knowledge and review of the attached exhibits and, if called as a witness, I would and could competently testify thereto under oath.

2. I represent the American Civil Liberties Union of Massachusetts, Inc. ("ACLUM") in the above-captioned matter. I am aware that, on or about September 10, 2026, ACLUM ordered the transcript of the hearing held on July 7, 2026, before the Honorable James Budreau of the Massachusetts Superior Court, during which the Court heard the parties' arguments regarding the Motion to Dismiss filed by the Plymouth County Sheriff's Department. On or about September 11, 2026, ACLUM received a certified copy of this transcript, which was certified by court reporter

Lisa Marie Phipps. Attached as **Exhibit A** is a true and correct copy of the transcript that ACLUM received.

3. On October 6, 2026, the Plymouth County Sheriff's Department ("Plymouth") sent me what appear to be scanned copies of certain redacted email correspondence.

4. It is my understanding that these emails were produced in response to a public records request that I, on behalf of ACLUM, sent to Plymouth on September 11, 2026, for certain communications between Plymouth and U.S. Immigration and Customs Enforcement ("ICE"), the U.S. Department of Homeland Security, and/or the U.S. Department of Justice.

5. Plymouth sent me three redacted emails (one of which appears to contain a chain of emails), each of which is summarized herein.

6. Plymouth has informed me that Timothy Baptiste and Anna Yeghiasarian, two people indicated as recipients of certain of these emails, are both ICE personnel and have email addresses at the @ice.dhs.gov email domain.

7. The redacted emails produced by Plymouth include a December 16, 2025 email from Plymouth to Timothy Baptiste containing several attachments, one of which is titled "ACLUM Public Records Request – 12_11_25.pdf." The date listed in the file name for this attachment matches the date of ACLUM's public records request that resulted in this lawsuit. *See* Notice of Removal Ex. 1-1, ¶ 3. Attached as **Exhibit B** is a true and correct copy of the December 16, 2025 email, as produced and redacted by Plymouth.

8. The redacted emails produced by Plymouth include a February 25, 2026 email from Plymouth to Anna Yeghiasarian containing an attachment titled "Complaint - Case No. 2684CV00477 ACLUM v. Plymouth County Sheriff's Department.pdf." This file name matches the docket number for this action in the Massachusetts Superior Court. *See* Notice of Removal Ex.

1-3. Attached as **Exhibit C** is a true and correct copy of the February 25, 2026 email and incorporated email chain, as produced and redacted by Plymouth.

9. The redacted emails produced by Plymouth include a February 26, 2026 email from Plymouth to Rayford Farquhar. Mr. Farquhar is an Assistant United States Attorney at the U.S. Attorney's Office for the District of Massachusetts. It is my understanding that Mr. Farquhar is Deputy Chief of the Civil Division and Chief of the Defensive Litigation Unit in that office. This email included as attachments files titled, "ACLUM Public Records Request – 12_11_25.pdf" and "Complaint - Case No. 2684CV00477 ACLUM v. Plymouth County Sheriff's Department.pdf." Attached as **Exhibit D** is a true and correct copy of the February 26, 2026 email, as produced and redacted by Plymouth.

I declare, under the penalty of perjury, that the foregoing is true and correct.

Executed on October 7, 2026 in Boston, Massachusetts.



Daniel L. McFadden

CERTIFICATE OF SERVICE

I hereby certify that on October 7, 2026, this document, filed through the CM/ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants.

Dated: October 7, 2026

/s/ Andrew J. O'Connor

Andrew J. O'Connor

EXHIBIT A

Volume: I
Pages: 1-50
Exhibits: See Index

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

AMERICAN CIVIL LIBERTIES UNION*
OF MASSACHUSETTS, INC., *
Plaintiff, *

vs. *

Docket No. 2684CV00477

PLYMOUTH COUNTY SHERIFF'S *
DEPARTMENT, *
Defendant. *

RULE 12 HEARING
BEFORE THE HONORABLE JAMES BUDREAU

APPEARANCES:

For the Plaintiff:

American Civil Liberties Union Foundation of Massachusetts
By: Daniel Louis McFadden, Esquire
By: Mackenzie R. Saunders, Esquire
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For the Defendant:

Plymouth County Sheriff's Department
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Boston, Massachusetts
Courtroom 304
July 7, 2026

Court Transcriber: Lisa Marie Phipps, Certified Shorthand
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I N D E X

WITNESS:

(None.)

EXHIBITS:

(None.)

1 P R O C E E D I N G S

2 (Court called to order.)

3 (11:03 a.m.)

4 THE COURT OFFICER: All rise.

5 The honorable court's in session.

6 You may be seated.

7 THE CLERK: All right. Your Honor, the
8 matter before the Court is American Civil
9 Liberties Union of Massachusetts versus Plymouth
10 County Sheriff's Department.

11 It is Docket No. 2026 Civil Action 477.

12 The matter is on today for a motion to
13 dismiss.

14 Counsel, please identify yourselves for
15 the Court and the record, starting with
16 plaintiff.

17 MR. MCFADDEN: Good morning, your Honor.
18 Dan McFadden on behalf of the ACLU of
19 Massachusetts.

20 THE COURT: Attorney McFadden.

21 MS. SAUNDERS: Good morning.

22 Mackenzie Saunders with the ACLU of
23 Massachusetts.

24 THE COURT: Attorney Saunders.

25 MS. KENNY: Good morning, your Honor.

1 Jessica Kenny, general counsel for the
2 Plymouth County Sheriff's Department.

3 With me, your Honor, I have a 303 intern
4 who is working with us in the legal department
5 for the summer, Edgar Martinez.

6 THE COURT: Okay.

7 MS. KENNEY: And I appreciate permission
8 for him to sit at the bar this morning.

9 THE COURT: Okay. Attorney Kenny and
10 Mr. Rodriguez [sic].

11 Good after -- good morning.

12 We have, I think, a pretty interesting
13 issue here, and I'd like plaintiffs to start.

14 I've read through the briefs, and it
15 seems -- is the primary -- the primary -- the
16 first question is whether or not there's -- I
17 guess it's whether or not there's -- the
18 Supremacy Clause prohibits the production of the
19 documents.

20 And my understanding is that the
21 Commonwealth, or at least -- excuse me, the
22 plaintiff has cited the case, *Rahim*, as its
23 primary kind of focus of that issue.

24 Is that correct?

25 MR. MCFADDEN: That's certainly one of

1 the authorities supporting our position, yes,
2 your Honor.

3 THE COURT: Right. Right. Okay.

4 And, essentially, just because it's -- the
5 federal government can't prohibit the state from
6 producing the records, despite the fact that they
7 have a contract with the federal government.

8 Is that the core of that issue?

9 MR. MCFADDEN: Yes, your Honor.

10 I think that the state is not allowed to
11 contract into violation of the public records
12 law, and, also, that the federal government has
13 not prohibited the state from releasing these
14 records.

15 THE COURT: Okay. Well, okay.

16 Well, go ahead; kind of inform me about
17 these issues.

18 Go ahead.

19 MR. MCFADDEN: Yes, your Honor.

20 So, just to step back and set the stage
21 a bit, the Plymouth County Sheriff's Department
22 is an agency of the Commonwealth of
23 Massachusetts.

24 THE COURT: Yes.

25 MR. MCFADDEN: It is subject to the public

1 records law.

2 And the *Rahim* case stands very clearly
3 for the proposition that Plymouth has no
4 authority to contract its way out of the public
5 records law. It has to comply.

6 Plymouth is the only House of Correction
7 in Massachusetts that houses federal civil
8 immigration detainees.

9 It does that under a contract with ICE and
10 DHS.

11 And there have been concerns, both
12 nationally and locally, about the quality and
13 accessibility of healthcare for immigration
14 detainees.

15 So the ACLU of Massachusetts, last
16 December, submitted a public records request --

17 THE COURT: Right.

18 MR. MCFADDEN: -- seeking information
19 about the medical program at Plymouth for the
20 immigration detainees.

21 I want to be clear that we did not ask for
22 the medical file for any detainee.

23 THE COURT: No, I understand that.

24 MR. MCFADDEN: We asked for records about
25 the program itself.

1 And these are records that we have good
2 reason to believe exist because the contract,
3 you know, states that they're being created at
4 Plymouth over the course of the contract.

5 These included things like the Continuous
6 Quality Improvement program documents that
7 Plymouth indicates it creates, invoices that
8 Plymouth sends to ICE, and then various
9 categories of correspondence between -- you
10 know, from Plymouth to ICE about the medical
11 program.

12 And we were very careful to try to protect
13 the privacy of the detainees.

14 We asked that to the extent any of these
15 records contain any medical information that it
16 be fully anonymized by removing the names, dates
17 of birth, A-number, et cetera.

18 In response to our 10 categories of
19 requests relating to the medical program, we got
20 back from Plymouth a total of two pages of
21 documents and a blanket assertion of an exemption
22 for all other categories of records.

23 And then, in response to this litigation,
24 I think Plymouth has taken an even broader
25 position that the public records law doesn't

1 apply at all to their immigration detention
2 program through principles of preemption.

3 They're arguing field preemption, conflict
4 preemption, as well as a statutory exemption
5 under the state law, all under 8 CFR 236.6 as the
6 basis for these assertions, and that's ICE's
7 regulation about detainee names not being
8 released.

9 So Plymouth has moved to dismiss.

10 With your Honor's permission, we divide
11 the argument.

12 I'm happy to oppose the motion to dismiss;
13 and my colleague, Attorney Saunders, is prepared
14 to address the motion for summary judgment, if
15 the Court decides to reach that today.

16 But, on the motion to dismiss, Plymouth is
17 asserting these three arguments: field
18 preemption, conflict preemption, and the state
19 statute.

20 Our view is that field preemption does not
21 apply.

22 Field preemption is a very extraordinary
23 form of preemption where a state is totally
24 prohibited from having any rules or laws in
25 the particular field that's covered by the

1 preemption doctrine.

2 And, in order to trigger that field
3 preemption, there has to be some clear indication
4 from Congress that it intends to preempt state
5 laws in the entire field, both inconsistent and
6 consistent with federal law.

7 And it would be pretty extraordinary, I
8 think, if Congress intended to preempt the
9 state's ability to control the records being
10 generated by the state's own agencies related to
11 the state's operation of its own jail.

12 And there's no indication that Congress
13 tried to do that here, your Honor.

14 Plymouth is not pointing to any statute
15 of Congress that indicates that there's field
16 preemption in effect.

17 Instead, Plymouth is really pointing at
18 one sentence of one regulation issued by ICE; but
19 the issuance of a regulation does not, itself,
20 generally trigger field preemption.

21 If that was the case, then every
22 regulation would trigger field preemption, which,
23 obviously, is not how this works.

24 And I think the cases that Plymouth cites
25 for this proposition that the regulation is

1 triggering field preemption actually disprove
2 Plymouth's point.

3 So they rely on the *Capron* case --

4 THE COURT: Um-hum.

5 MR. MCFADDEN: -- from the First Circuit.

6 That's a case where there was a
7 comprehensive federal regulatory scheme for a
8 guest worker program --

9 THE COURT: Um-hum.

10 MR. MCFADDEN: -- for workers to enter the
11 United States as domestic workers.

12 And the First Circuit found that
13 Massachusetts was not field preempted from
14 applying its own wage and hour laws to those
15 workers once they arrived in the United States,
16 even though there was a comprehensive federal
17 regulatory scheme.

18 Arizona, I think, also does not get
19 Plymouth where it's trying to go.

20 Arizona is a case where there were four
21 state statutes at issue that related to
22 immigration.

23 Only one of those statutes related -- was
24 found to be field preempted.

25 That was a statute where the state was

1 actually trying to graft an additional penalty
2 onto a federal registration scheme, and the
3 Supreme Court said, No, you can't do that.

4 But all of the other statutes, the other
5 three in that case, two of them were found to
6 be conflict preempted; one was not preempted at
7 all.

8 And so I think that indicates there is
9 still room for the state to have statutes that
10 relate incidentally to immigration that aren't
11 going to be field preempted.

12 And so we think that the field preemption
13 argument fails for those reasons.

14 The conflict preemption argument, we
15 think, also fails, because our request is not in
16 conflict with the regulation that Plymouth is
17 citing.

18 This is a regulation that applies to the
19 name of, or other information relating to, the
20 detainees.

21 THE COURT: Right.

22 MR. MCFADDEN: And the principle of
23 statutory interpretation we use when there's
24 a specific item followed by a general category
25 is the specific informs the meaning of the

1 general.

2 So this would indicate that it means the
3 name of or other identifying information about
4 the detainees.

5 And that's how -- we cited a couple
6 federal courts that have construed this provision
7 in federal discovery disputes to mean that,
8 name of the detainee or other identifying
9 information.

10 And, of course, we ask that all of that
11 information be redacted from these records.

12 So we don't think we're in conflict for
13 that reason.

14 I think that the history of the regulation
15 also indicates why we are not in conflict.

16 This was a regulation -- and we cited the
17 Federal Register entries for its promulgation,
18 but it was promulgated immediately after 9/11 in
19 2002.

20 And the reason it was promulgated was
21 there was a concern, according to the agency,
22 that they were arresting people and putting them
23 in civil immigration detention who were the
24 subject of investigations into terrorism or
25 foreign intelligence activity.

1 THE COURT: Um-hum.

2 MR. MCFADDEN: And they were concerned
3 that if the identities of these detainees were
4 released, their co-conspirators would learn that
5 the conspiracies (phonetic) were compromised --

6 THE COURT: Um-hum.

7 MR. MCFADDEN: -- and so they wanted
8 to prohibit the release of identifying
9 information.

10 And, again, that's what we've asked to be
11 redacted.

12 So we don't think conflict preemption
13 applies either.

14 And then the last argument Plymouth is
15 making is that the state statutory exemption
16 applies.

17 And that's an exemption for records that
18 are exempt from disclosure by statute.

19 And that was a very specific choice by
20 the legislature to say "by statute," not "by
21 regulation."

22 The principle for interpreting the state's
23 own exemptions to the public records law is that
24 they have to be narrowly interpreted.

25 And, here, "statute" should mean

1 "statute." It shouldn't mean statute or
2 regulation.

3 That would expand the scope of the
4 exemption beyond its permissible boundaries.

5 And I think that it makes sense, from the
6 perspective of the legislature, why it would do
7 that.

8 If executive agencies were allowed to
9 expand public records exemptions whenever they
10 wanted to by regulation, that would really
11 undermine the transparency goals of the public
12 records statute.

13 So we think that exemption doesn't apply
14 either because all that's being asserted here is
15 a federal regulation, not a federal statute.

16 THE COURT: Right.

17 MR. MCFADDEN: And I think the last thing
18 that Plymouth raised was just the supervisor of
19 record decisions, which I can address very
20 briefly.

21 The supervisor of record decisions are not
22 about this case.

23 We did not go to the supervisor. I want
24 to be clear about that.

25 They're about unrelated requests for

1 documents from the sheriffs.

2 And there is no deference owed to those
3 decisions.

4 The public records statute requires this
5 court to undertake a de novo review of all of the
6 issues that are presented.

7 And, also, I'll just note that I did
8 review those decisions.

9 You know, I didn't personally find them
10 particularly persuasive.

11 There's not a lot of reasoning in there
12 from the supervisor about why they think this
13 regulation would have this impact, which would
14 really be to shield a huge volume of records --

15 THE COURT: Right.

16 MR. MCFADDEN: -- from public
17 accessibility.

18 So, for those reasons, we think the motion
19 to dismiss should be denied, your Honor.

20 And if you wish to hear about the motion
21 for summary judgment that we filed, Attorney
22 Saunders is happy to address that as well.

23 THE COURT: Let's stick with the motion to
24 dismiss right now.

25 MS. KENNY: Thank you, your Honor.

1 Just to be clear factually, there were
2 10 categories -- or maybe even 12 categories of
3 items that were requested.

4 There were some records that we did
5 provide.

6 So we provided -- I know it's being
7 cited as a link, but it is a link to a very
8 voluminous amount of records that have just been
9 made available by the federal government via a
10 link.

11 I'm sure if I were to have printed them
12 out, you know, I'd be able to say we provided
13 hundreds or dozens of pages.

14 I certainly don't want it to look like we
15 are providing a scant amount of records.

16 We did provide some of the records that we
17 were able to provide that we did not believe
18 conflicted with the CFR.

19 And it's important, also, that two of the
20 categories of records they requested, we did not
21 have any responsive records.

22 So that is important because we can't
23 produce, obviously, records that we don't
24 have.

25 And, most specifically, one of those was

1 requests for, pursuant to the contract, any
2 corrective or preventative actions concerning
3 unsatisfactory conditions pertaining to
4 detainees.

5 And we've simply had none of those
6 corrective action plans because none of the
7 medical care that we've provided has resulted in
8 that finding.

9 So I think that's an important
10 distinction.

11 THE COURT: So it's No. 1 and 12?
12 Are those the two or...

13 MS. KENNY: Correct.

14 THE COURT: Okay.

15 MS. KENNY: So No. 1 and 12, we had no
16 responsive records to.

17 So it's not just this sort of language
18 that's used, like we are hiding in total secrecy
19 or we are completely excluded or prohibited from
20 following Massachusetts public records laws.
21 It's just simply not the case.

22 So, in this instance, the remainder of the
23 records do squarely fit within the records that
24 are defined by that CFR.

25 And, quite frankly, the CFR itself is

1 referenced in our contract; but, independent
2 of that, this isn't a situation like in *Rahim*
3 where the state is just contracting or agreeing
4 with another federal agency to not provide
5 records.

6 Our own statute in Massachusetts here
7 certainly indicates that there are times, under
8 Exemption A, when another law prohibits us from
9 providing records.

10 And, again, to be very clear, this is not
11 an instance where the sheriff is attempting to
12 hide or not provide information.

13 This is an instance where the sheriff is
14 in a position where he has a state law that asks
15 him to do one thing and a federal law that --

16 THE COURT: You -- you need me to tell you
17 what to do?

18 MS. KENNY: Exactly.

19 And I don't -- there will be no opposition
20 from the sheriff.

21 THE COURT: I understand that.

22 I understand your particular position.

23 MS. KENNY: Correct.

24 THE COURT: Okay.

25 MS. KENNEY: So to -- to -- to -- you

1 know, as general counsel, to advise the sheriff,
2 well, what do we do, we don't have a decision in
3 Massachusetts where this appears to have been
4 dealt with.

5 So first we go to the supervisor of
6 records, right because, clearly, that's the
7 regulatory agency that handles these types of
8 appeals, probably on a daily basis.

9 And there are a number of decisions
10 there where the supervisor of records has said
11 that these records meet the definition under the
12 CFR.

13 And, unlike some other records, for
14 example, CORI records, there is a -- you can
15 redact records that are CORI in nature and they
16 can still be provided.

17 The plain reading of this statute
18 indicates that the entire record is not a public
19 record.

20 And I certainly concede that if I was only
21 objecting to the production of these records on a
22 CORI ground or a privacy ground, they absolutely
23 could be provided in a redacted format.

24 But this law says that the entire record
25 is not a public record. And our supervisor of

1 records has read that the same way and come to
2 that same conclusion multiple times.

3 And so that certainly informs us of how we
4 should respond to this.

5 Additionally, your Honor, we look at other
6 jurisdictions.

7 They're certainly not binding on this
8 Court, but they are persuasive for this Court.

9 And we found instances in -- and I've
10 cited these cases -- in Wisconsin, Connecticut,
11 New Jersey, and even Florida, where the same
12 situation occurred where a state public records
13 law conflicts with this exact CFR.

14 And, in those instances, the states said
15 that the records were not subject to the state
16 public records laws because of the preemption
17 argument that we made.

18 That Florida case, your Honor, is actually
19 interesting.

20 In that case, a sheriff was being sued,
21 and the sheriff wanted to release the records.

22 And the U.S. District Court in Florida
23 refused to permit the sheriff to release those
24 records without ICE weighing in first because, as
25 the statute makes very clear, the records that

1 are created in this -- because of this contract
2 are the property of ICE, and they can be released
3 only by ICE.

4 I think that is a very interesting
5 distinction in this case as well.

6 This CFR does not bar entirely the release
7 of these records.

8 It bars the release of these records by
9 the state entity.

10 But what it very clearly says that any
11 requester can and should do is to make the
12 request pursuant to federal law.

13 In the federal system, we have FOIA
14 requests.

15 THE COURT: Um-hum.

16 MS. KENNY: And I had made that suggestion
17 to the ACLU, that they could -- while we were
18 in the course of working out these public records
19 requests and responding to these requests -- they
20 can file a FOIA request and the records can and
21 may be released by the federal agency pursuant to
22 the federal law, which is what the CFR says that
23 they can do.

24 So it's -- it's not a total bar. It's a
25 bar that the state can't release them.

1 And if you look at -- you know, my counsel
2 there talked a little bit about the history of
3 this case.

4 And, obviously, the fact that this
5 regulation was promulgated by the U.S. Attorney
6 General, certainly is within the scope of the
7 authority delegated to the Attorney General, and
8 it's necessary and proper in carrying out the
9 Attorney General's functions under our
10 immigration laws.

11 Those are certainly some of the concerns.

12 Certainly the security concern; being
13 uniform in the way that these records are
14 provided across states that have varying public
15 records laws.

16 And so those are all important
17 considerations and why I think, again, there's no
18 bad faith here on the part of the sheriff's
19 department.

20 Certainly trying to look at a state law
21 and look at a contradicting federal law and look
22 at the resources available to determine if it can
23 provide the records.

24 And it's not a matter of wanting to hide
25 them because, quite frankly, providing them could

1 also be a violation of the law.

2 So it's -- it's really an effort to
3 try not and violate anyone's laws in this
4 instance.

5 So a FOIA request has never -- as far as I
6 know, has never been filed for these records.

7 And I suggest that *Rahim* is different than
8 this because this is actually a regulation.

9 As it relates to the argument that a
10 regulation is not a statute, I certainly found
11 cases -- I cited one in my brief -- where our
12 own SJC used regulations to help carve out what
13 is meant by certain exemptions to the public
14 records law.

15 So, certainly, we look to the regulations.

16 The regulations are promulgated by federal
17 laws, and so they have that full force in effect
18 in order to effectuate those laws.

19 And, again, those are the rights of the
20 Attorney General.

21 I don't think anybody's arguing that the
22 states are left to enforce immigration laws.
23 That's not the case.

24 So, for those reasons, your Honor,
25 that's -- that's the thinking of the Sheriff's

1 Department; that was all articulated in our
2 denial of the records.

3 We don't have a court in Massachusetts
4 that has told us what to do with this.

5 We believe the preemption law, and the
6 other sort of ancillary litigation that's gone
7 on around this helps inform what we're supposed
8 to do.

9 But if this Court were to order the
10 Sheriff's Department to provide the records in a
11 redacted format, certainly at that time we would
12 have clear guidance about that.

13 We don't, in this case, think that that's
14 what the -- appropriately what the law is
15 saying.

16 THE COURT: Okay, good.

17 Thank you. Thank you.

18 That's helpful.

19 Anything you want to respond to?

20 MR. MCFADDEN: Just very briefly, your
21 Honor, a couple points.

22 In terms of the link that was mentioned,
23 that link was provided in response to our request
24 for amendments to the contract between Plymouth
25 and ICE.

1 And it's just a link to the general FOIA
2 library, so it's not a link that contains, as far
3 as I'm aware, the types of medical program
4 records that we asked for.

5 It's about the amendments to the contract.

6 THE COURT: Well, let me ask you: Is
7 there -- is it of any value to go through each
8 of these categories to -- let's just say, in the
9 off chance that I were to find that, you know,
10 the state -- the federal regulation trumps
11 everything here, so to speak, and -- is there
12 any -- is it of any value to go through these
13 categories to see if they fall outside of what
14 this would -- this -- this regulation is focused
15 on?

16 Because some of them don't seem to deal
17 with -- with specific records relating to
18 detainees at all, um...

19 MR. MCFADDEN: I -- I think that's true,
20 your Honor.

21 So, for example, we asked for records of
22 the Continuous Quality Improvement system.

23 I don't know why any detainee information
24 would be contained in those records.

25 THE COURT: Right.

1 MR. MCFADDEN: We asked for invoices
2 submitted from Plymouth to ICE, which, as I
3 understand it, would be invoices for their
4 various immigration-related services.

5 I don't know why any detainee information
6 would be in that.

7 That's -- that's Category 11 and 3, your
8 Honor.

9 THE COURT: Right.

10 MR. MCFADDEN: So there are some
11 categories that would not seem to -- even in the
12 view most friendly to Plymouth -- would not seem
13 to view -- implicate the issues raised in the
14 regulation.

15 I also think Plymouth's view of the
16 regulation is overbroad to the extent they're
17 saying that redaction can't cure the problem, if
18 there are detainee names.

19 The regulation says it applies insofar
20 as any documents or other records contain such
21 information.

22 So, once that information is gone, the
23 regulation no longer applies, so we do think
24 redaction is appropriate.

25 Counsel for Plymouth mentioned a few cases

1 from other states.

2 We cited a case from Michigan, which
3 has --

4 THE COURT: Um-hum.

5 MR. MCFADDEN: -- that's the ACLU of
6 Michigan case v. Calhoun Sheriff.

7 THE COURT: Right.

8 MR. MCFADDEN: That -- Michigan has a
9 public records exemption that's almost identical
10 to ours in terms of the statutory exemption.

11 And, there, the Supreme Court of Michigan
12 found that exemption was not implicated by
13 Section 236.6.

14 And I think that the cases cited by
15 Plymouth actually involve broader state law
16 exemptions than we have here in Massachusetts.

17 So, for example, the Voces case from
18 Wisconsin, there they had a state law exemption
19 for things that were confidential under federal
20 law or regulations.

21 So it was a broader exemption than ours,
22 which just deals with things confidential under
23 statute.

24 And then, I guess, just, lastly, on the
25 FOIA point, you know, FOIA exists in parallel to

1 the state public records law.

2 It's not a free pass to allow agencies not
3 to comply with our state public records law.

4 And, here, we're talking about documents
5 that are in the custody of Plymouth.

6 If ICE doesn't have some of these
7 documents, they can't give them to us under FOIA.

8 THE COURT: Right.

9 MR. MCFADDEN: So it's very important
10 to maintain transparency under our own state's
11 law.

12 THE COURT: Okay. Anything else from the
13 sheriff?

14 MS. KENNY: Um, So these -- these
15 documents were all created pursuant to the IGA,
16 so ICE does have access to all of them.

17 And, additionally, I have provided all
18 the responsive records to ICE.

19 The contract also contemplates when this
20 occurs that I have to provide notice to ICE right
21 away.

22 So I have provided notice to ICE.

23 I have provided them with all the records
24 that are responsive.

25 And ICE has indicated that the CFR applies

1 and that I cannot provide any of the records.

2 THE COURT: That was going to be my next
3 question. Okay.

4 MS. KENNY: Yeah.

5 So they have reviewed these, and they have
6 provided that information.

7 Not -- notwithstanding that, maybe
8 anecdotally, I did provide a two-page document
9 that was -- I think -- I believe it's attached in
10 the actual lawsuit, and it's called the CPS
11 Correctional Healthcare CQI study. So I did
12 provide one of those.

13 And that was actually opposed to ICE's
14 indication to me that I couldn't, because when I
15 look at this record I don't see identifying
16 information about an ICE detainee.

17 And so I didn't believe that it -- the
18 regulation did apply.

19 And so that is why this particular CQI was
20 provided because it talks about the -- the CQIs,
21 essentially, just so that you're aware, they're
22 kind of like an audit.

23 They're like -- they take a sample and
24 they make sure that we are -- whatever the
25 question might be: are we seeing detainees within

1 14 days, are we checking tuberculosis, whatever
2 the particular question may be.

3 THE COURT: Sure.

4 MS. KENNY: And so they're done sort of in
5 an audit style.

6 The other records contained the
7 identifying information about the detainees that
8 were particularly audited for that.

9 And so that is why it falls under that
10 exemption very plainly.

11 THE COURT: But If those -- if those are
12 redacted, then there's no way of connecting that
13 information to a detainee?

14 MS. KENNY: Presumably, no.

15 THE COURT: Okay.

16 MS. KENNY: So, but just by way of sort
17 of anecdotally, this was a record that ICE had
18 indicated they believed that the CFR applied
19 to, and I did not agree and provided it to
20 counsel.

21 All the other records, though, very
22 clearly provide detainee names or A-numbers or
23 identifying information about the particular
24 detainees, in addition, sometimes, to their
25 medical records and things of that nature.

1 THE COURT: Okay. Okay. Good.

2 Excellent.

3 Thank you for that the argument.

4 Well done.

5 I'll take that under advisement.

6 And if -- any additional submissions that
7 people want to make at this point?

8 All set?

9 MS. SAUNDERS: No, your Honor.

10 MR. MCFADDEN: No, your Honor.

11 THE COURT: Okay. I'll take that under
12 advisement.

13 Thank you.

14 MS. KENNY: Thank you.

15 MR. MCFADDEN: Thank you, your Honor.

16 THE COURT OFFICER: All rise.

17 Court's in recess.

18 (11:26 a.m. the matter adjourned.)

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/	7	14:25, 15:12, 15:20, 22:2, 24:12, 25:5, 28:4, 29:16, 29:20, 30:7, 30:23
/s [1] - 33:14	7 [2] - 1:22, 33:4 7/7/2026 [1] - 32:13	absolutely [1] - 19:22 access [1] - 28:16 accessibility [2] - 6:13, 15:17 according [1] - 12:21 ACCURATE [1] - 33:3 ACLU [6] - 3:18, 3:22, 6:15, 21:17, 27:5, 32:11 across [1] - 22:14 ACTION [2] - 33:9, 33:10 action [1] - 17:6 Action [1] - 3:11 actions [1] - 17:2 activity [1] - 12:25 actual [1] - 29:10 actually [6] - 10:1, 11:1, 20:18, 23:8, 27:15, 29:13 addition [1] - 30:24 additional [2] - 11:1, 31:6 Additionally [1] - 20:5 additionally [1] - 28:17 address [3] - 8:14, 14:19, 15:22 ADDRESS [2] - 33:20, 33:23 adjourned [1] - 31:18 ADMINISTRATIVE [1] - 33:6 advise [1] - 19:1 advisement [2] - 31:5, 31:12 after [2] - 4:11, 12:18 again [4] - 13:10, 18:10, 22:17, 23:19 agencies [3] - 9:10, 14:8, 28:2 agency [5] - 5:22, 12:21, 18:4, 19:7, 21:21 agree [1] - 30:19 agreeing [1] - 18:3 ahead [2] - 5:16, 5:18 All [4] - 3:4, 3:7, 30:21, 31:16
0	8	
01721 [1] - 33:20 02108 [1] - 1:16 02360 [1] - 1:20	8 [1] - 8:5 850 [1] - 1:16	
1	9	
1 [5] - 1:1, 17:11, 17:15, 32:13 10 [2] - 7:18, 16:2 11 [2] - 26:7, 33:17 11:03 [1] - 3:3 11:26 [1] - 31:18 12 [4] - 1:11, 16:2, 17:11, 17:15 14 [1] - 30:1	9/11 [1] - 12:18 9/11/2026 [1] - 32:10	
	A	
	A [5] - 7:17, 18:8, 30:22, 33:1, 33:2 a [80] - 3:12, 4:3, 4:12, 5:7, 5:21, 6:9, 6:16, 7:20, 7:21, 8:4, 8:22, 8:23, 9:19, 10:6, 10:7, 10:16, 10:20, 10:25, 11:2, 11:18, 11:24, 12:5, 12:16, 12:21, 13:19, 14:15, 15:5, 15:11, 15:14, 16:7, 16:9, 16:15, 18:2, 18:14, 18:15, 19:2, 19:8, 19:9, 19:14, 19:18, 19:21, 19:22, 19:23, 19:25, 20:12, 20:20, 21:4, 21:20, 21:24, 22:2, 22:20, 22:21, 22:24, 23:1, 23:5, 23:8, 23:9, 23:10, 24:3, 24:10, 24:21, 25:1, 25:2, 26:25, 27:2, 27:8, 27:18, 27:21, 28:2, 29:8, 29:23, 30:13, 30:17 A-number [1] - 7:17 A-numbers [1] - 30:22 a.m [2] - 3:3, 31:18 ability [1] - 9:9 able [2] - 16:12, 16:17 about [20] - 5:16, 6:12, 6:19, 6:24, 7:10, 8:7, 12:3, 14:22, 14:24,	
2		
2002 [1] - 12:19 2026 [4] - 1:22, 3:11, 33:5, 33:17 236.6 [2] - 8:5, 27:13 24 [1] - 1:19 2684CV00477 [2] - 1:8, 32:12		
3		
3 [1] - 26:7 303 [1] - 4:3 304 [1] - 1:21 347 [1] - 33:19		
4		
477 [1] - 3:11		
5		
508 [1] - 33:21 508.732.1867 [1] - 1:20		
6		
617.482.3170 [1] - 1:17 641-5801 [1] - 33:21		

all [17] - 7:22, 8:1, 8:5, 11:4, 11:7, 12:10, 14:14, 15:5, 22:16, 24:1, 25:18, 28:15, 28:16, 28:17, 28:23, 31:8, 32:16 allow [1] - 28:2 allowed [2] - 5:10, 14:8 almost [1] - 27:9 also [9] - 5:12, 10:18, 11:15, 12:15, 15:7, 16:19, 23:1, 26:15, 28:19 AM [2] - 33:9, 33:10 amendments [2] - 24:24, 25:5 AMERICAN [2] - 1:6, 33:4 American [2] - 1:14, 3:8 amount [2] - 16:8, 16:15 AN [1] - 33:2 an [12] - 5:22, 7:21, 7:24, 11:1, 13:17, 17:9, 18:11, 18:13, 23:2, 29:16, 29:22, 30:5 ancillary [1] - 24:6 And [43] - 5:4, 6:11, 7:12, 7:23, 9:24, 10:12, 12:5, 12:10, 13:2, 13:10, 13:14, 13:19, 13:25, 14:5, 15:7, 15:20, 16:19, 16:25, 17:5, 17:25, 18:10, 18:19, 19:9, 19:13, 20:3, 20:9, 20:14, 21:16, 22:1, 22:16, 22:24, 23:7, 23:19, 27:14, 27:24, 28:4, 28:17, 28:25, 29:17, 29:19, 30:4, 30:9, 31:6 and [75] - 3:15, 4:7, 4:9, 4:13, 4:14, 4:20, 5:12, 5:20, 6:2, 6:9, 6:12, 7:1, 7:8, 7:21, 8:6, 8:13, 8:18, 9:2, 9:5, 9:7, 9:12, 10:14, 11:2, 11:8,	11:12, 11:22, 12:16, 12:20, 12:22, 13:7, 13:17, 14:17, 15:2, 17:11, 17:15, 18:15, 19:15, 19:20, 19:25, 20:1, 20:9, 20:11, 20:21, 20:22, 21:2, 21:11, 21:19, 21:20, 22:4, 22:7, 22:8, 22:17, 22:21, 23:3, 23:17, 24:5, 24:25, 25:1, 25:11, 26:7, 27:11, 29:1, 29:5, 29:10, 29:13, 29:23, 30:19, 30:25, 32:7, 32:8 AND [2] - 33:3, 33:10 anecdotally [2] - 29:8, 30:17 anonymized [1] - 7:16 another [2] - 18:4, 18:8 ANY [1] - 33:9 any [16] - 6:22, 7:14, 7:15, 8:24, 9:14, 16:21, 17:1, 21:10, 25:7, 25:12, 25:23, 26:5, 26:20, 29:1, 31:6 anybody's [1] - 23:21 anyone's [1] - 23:3 Anything [2] - 24:19, 28:12 appeals [1] - 19:8 APPEARANCES [1] - 1:13 appears [1] - 19:3 applied [1] - 30:18 applies [6] - 11:18, 13:13, 13:16, 26:19, 26:23, 28:25 apply [5] - 8:1, 8:21, 14:13, 29:18, 32:16 applying [1] - 10:14 appreciate [1] - 4:7 appropriate [1] - 26:24 appropriately [1] - 24:14 APPROVED [2] -	33:2, 33:14 are [30] - 7:1, 12:15, 13:18, 14:21, 15:6, 16:15, 17:12, 17:18, 17:19, 17:24, 18:7, 19:9, 19:15, 20:8, 21:1, 21:2, 22:11, 22:13, 22:16, 23:16, 23:19, 23:22, 26:10, 26:18, 28:5, 28:24, 29:24, 29:25, 30:1, 30:11 aren't [1] - 11:10 arguing [2] - 8:3, 23:21 argument [7] - 8:11, 11:13, 11:14, 13:14, 20:17, 23:9, 31:3 arguments [1] - 8:17 Arizona [2] - 10:18, 10:20 around [1] - 24:7 arresting [1] - 12:22 arrived [1] - 10:15 articulated [1] - 24:1 as [16] - 4:22, 8:4, 8:5, 10:11, 15:22, 16:7, 19:1, 20:24, 21:5, 23:5, 25:2, 25:3, 26:2, 26:20 As [1] - 23:9 Ashland [1] - 33:20 ask [3] - 6:21, 12:10, 25:6 asked [6] - 6:24, 7:14, 13:10, 25:4, 25:21, 26:1 asks [1] - 18:14 asserted [1] - 14:14 asserting [1] - 8:17 assertion [1] - 7:21 assertions [1] - 8:6 ASSESSMENT [1] - 32:4 assessment [1] - 32:7 at [19] - 4:8, 4:21, 6:19, 7:3, 8:1, 9:17, 10:21, 11:6, 20:5, 22:1, 22:20, 22:21, 22:22, 24:11, 25:18, 29:15, 31:7, 32:7, 32:18
---	--	--

attached [1] - 29:9 attempting [1] - 18:11 Attorney [9] - 3:20, 3:24, 4:9, 8:13, 15:21, 22:5, 22:7, 22:9, 23:20 AUDIO [3] - 32:4, 33:3, 33:15 audio [2] - 32:18, 32:18 audit [2] - 29:22, 30:5 audited [1] - 30:8 authorities [1] - 5:1 authority [2] - 6:4, 22:7 available [2] - 16:9, 22:22 aware [2] - 25:3, 29:21 away [2] - 28:21, 32:19	before [1] - 3:8 behalf [1] - 3:18 being [7] - 7:3, 8:7, 9:9, 14:14, 16:6, 20:20, 22:12 believe [5] - 7:2, 16:17, 24:5, 29:9, 29:17 believed [1] - 30:18 between [2] - 7:9, 24:24 beyond [1] - 14:4 binding [1] - 20:7 birth [1] - 7:17 bit [2] - 5:21, 22:2 blanket [1] - 7:21 Boston [2] - 1:16, 1:21 both [2] - 6:11, 9:5 boundaries [1] - 14:4 brief [1] - 23:11 briefly [2] - 14:20, 24:20 briefs [1] - 4:14 broader [3] - 7:24, 27:15, 27:21 BUDREAU [1] - 1:12 BUSINESS [2] - 33:20, 33:22 but [8] - 9:18, 11:4, 12:18, 16:7, 18:1, 20:8, 30:11, 30:16 But [4] - 8:16, 19:24, 21:10, 24:9 by [21] - 7:16, 8:25, 9:10, 9:18, 11:24, 13:18, 13:19, 13:20, 14:10, 16:9, 17:24, 21:3, 21:8, 21:21, 22:5, 23:13, 23:16, 27:12, 27:14, 30:16 By [3] - 1:15, 1:15, 1:19 BY [2] - 33:9, 33:15	can't [6] - 5:5, 11:3, 16:22, 21:25, 26:17, 28:7 cannot [1] - 29:1 Capron [1] - 10:3 care [1] - 17:7 careful [1] - 7:12 carrying [1] - 22:8 carve [1] - 23:12 case [18] - 4:22, 6:2, 9:21, 10:3, 10:6, 10:20, 11:5, 14:22, 17:21, 20:18, 20:20, 21:5, 22:3, 23:23, 24:13, 27:2, 27:6, 27:17 CASE [1] - 32:11 cases [5] - 9:24, 20:10, 23:11, 26:25, 27:14 categories [9] - 7:9, 7:18, 7:22, 16:2, 16:20, 25:8, 25:13, 26:11 category [1] - 11:24 Category [1] - 26:7 CD [2] - 32:8, 32:15 Center [1] - 1:16 certain [1] - 23:13 Certainly [2] - 22:12, 22:20 certainly [11] - 4:25, 16:14, 18:7, 19:20, 20:3, 20:7, 22:6, 22:11, 23:10, 23:15, 24:11 certificate [1] - 32:8 Certified [2] - 1:23, 1:23 CERTIFY [3] - 33:2, 33:6, 33:8 cetera [1] - 7:17 CFR [10] - 8:5, 16:18, 17:24, 17:25, 19:12, 20:13, 21:6, 21:22, 28:25, 30:18 chance [1] - 25:9 checking [1] - 30:1 choice [1] - 13:19 circle [2] - 32:15, 32:16 Circuit [2] - 10:5, 10:12 cited [8] - 4:22, 12:5,
B		
back [3] - 5:20, 7:20, 32:7 background [1] - 32:17 bad [1] - 22:18 bar [4] - 4:8, 21:6, 21:24, 21:25 bars [1] - 21:8 basis [2] - 8:6, 19:8 be [29] - 3:6, 6:21, 7:16, 9:3, 9:7, 10:24, 11:6, 11:11, 12:11, 13:10, 13:24, 14:24, 15:14, 15:19, 16:1, 16:12, 18:10, 18:19, 19:16, 19:23, 21:2, 21:21, 23:1, 25:24, 26:3, 26:6, 29:2, 29:25, 30:2 because [14] - 5:4, 7:2, 11:15, 14:14, 16:22, 17:6, 19:6, 20:16, 20:24, 21:1, 22:25, 23:8, 29:14, 29:20 Because [1] - 25:16 been [4] - 6:11, 16:8, 19:3, 23:6 BEFORE [1] - 1:12	C C [3] - 3:1, 33:1 Calhoun [1] - 27:6 called [2] - 3:2, 29:10 can [9] - 14:19, 19:14, 19:16, 21:2, 21:11, 21:20, 21:23, 22:22	

12:16, 16:7, 20:10, 23:11, 27:2, 27:14 cites [1] - 9:24 citing [1] - 11:17 civil [2] - 6:7, 12:23 CIVIL [2] - 1:6, 33:4 Civil [3] - 1:14, 3:8, 3:11 Clause [1] - 4:18 clear [7] - 6:21, 9:3, 14:24, 16:1, 18:10, 20:25, 24:12 clearly [4] - 6:2, 19:6, 21:10, 30:22 CLERK [1] - 3:7 co [1] - 13:4 co-conspirators [1] - 13:4 colleague [1] - 8:13 come [1] - 20:1 COMMENTS [1] - 32:22 Commonwealth [3] - 4:21, 5:22, 32:3 COMMONWEALTH [1] - 1:3 Complete [1] - 32:7 completely [1] - 17:19 COMPLIANCE [1] - 33:6 comply [2] - 6:5, 28:3 comprehensive [2] - 10:7, 10:16 compromised [1] - 13:5 COMPUTER [1] - 33:15 concede [1] - 19:20 concern [2] - 12:21, 22:12 concerned [1] - 13:2 concerning [1] - 17:2 concerns [2] - 6:11, 22:11 conclusion [1] - 20:2 conditions [1] - 17:3 confidential [2] - 27:19, 27:22 conflict [8] - 8:3, 8:18, 11:6, 11:14, 11:16, 12:12, 12:15, 13:12 conflicted [1] - 16:18	conflicts [1] - 20:13 Congress [4] - 9:4, 9:8, 9:12, 9:15 Connecticut [1] - 20:10 connecting [1] - 30:12 considerations [1] - 22:17 consistent [1] - 9:6 conspiracies [1] - 13:5 conspirators [1] - 13:4 construed [1] - 12:6 contain [2] - 7:15, 26:20 contained [2] - 25:24, 30:6 contains [1] - 25:2 contemplates [1] - 28:19 Continuous [2] - 7:5, 25:22 contract [12] - 5:7, 5:11, 6:4, 6:9, 7:2, 7:4, 17:1, 18:1, 21:1, 24:24, 25:5, 28:19 contracting [1] - 18:3 contradicting [1] - 22:21 control [1] - 9:9 copy [1] - 32:8 core [1] - 5:8 CORI [3] - 19:14, 19:15, 19:22 correct [1] - 4:24 Correct [2] - 17:13, 18:23 Correction [1] - 6:6 Correctional [1] - 29:11 corrective [2] - 17:2, 17:6 correspondence [1] - 7:9 could [3] - 19:23, 21:17, 22:25 couldn't [1] - 29:14 COUNSEL [1] - 33:9 Counsel [2] - 3:14, 26:25 counsel [4] - 4:1,	19:1, 22:1, 30:20 County [4] - 1:18, 3:10, 4:2, 5:21 COUNTY [3] - 1:9, 32:11, 33:4 couple [2] - 12:5, 24:21 course [3] - 7:4, 12:10, 21:18 court [3] - 15:5, 24:3, 32:7 COURT [45] - 1:4, 1:4, 3:4, 3:20, 3:24, 4:6, 4:9, 5:3, 5:15, 5:24, 6:17, 6:23, 10:4, 10:9, 11:21, 13:1, 13:6, 14:16, 15:15, 15:23, 17:11, 17:14, 18:16, 18:21, 18:24, 21:15, 24:16, 25:6, 25:25, 26:9, 27:4, 27:7, 28:8, 28:12, 29:2, 30:3, 30:11, 30:15, 31:1, 31:11, 31:16, 32:3, 33:2, 33:7, 33:14 Court [12] - 1:23, 3:2, 3:8, 3:15, 8:15, 11:3, 20:8, 20:22, 24:9, 27:11, 33:19 Court's [1] - 31:17 court's [1] - 3:5 Courtroom [1] - 1:21 courts [1] - 12:6 covered [1] - 8:25 CPS [1] - 29:10 CQI [2] - 29:11, 29:19 CQIs [1] - 29:20 created [3] - 7:3, 21:1, 28:15 creates [1] - 7:7 cure [1] - 26:17 custody [1] - 28:5
		D
		D [2] - 2:1, 3:1 daily [1] - 19:8 Dan [1] - 3:18 Daniel [1] - 1:15 DATE [3] - 32:10, 32:13, 33:17 dates [1] - 7:16

days [1] - 30:1 de [1] - 15:5 deal [1] - 25:16 deals [1] - 27:22 dealt [1] - 19:4 December [1] - 6:16 decides [1] - 8:15 decision [1] - 19:2 decisions [5] - 14:19, 14:21, 15:3, 15:8, 19:9 Defendant [2] - 1:10, 1:18 deference [1] - 15:2 defined [1] - 17:24 definition [1] - 19:11 delegated [1] - 22:7 denial [1] - 24:2 denied [1] - 15:19 department [2] - 4:4, 22:19 Department [6] - 1:18, 3:10, 4:2, 5:21, 24:1, 24:10 DEPARTMENT [4] - 1:4, 1:9, 32:11, 33:4 despite [1] - 5:6 detainee [9] - 6:22, 8:7, 12:8, 25:23, 26:5, 26:18, 29:16, 30:13, 30:22 detainees [12] - 6:8, 6:14, 6:20, 7:13, 11:20, 12:4, 13:3, 17:4, 25:18, 29:25, 30:7, 30:24 detention [2] - 8:1, 12:23 determine [1] - 22:22 DHS [1] - 6:10 did [11] - 6:21, 14:23, 15:7, 16:4, 16:16, 16:17, 16:20, 29:8, 29:11, 29:18, 30:19 didn't [2] - 15:9, 29:17 different [1] - 23:7 DIRECTIVE [1] - 33:7 disclosure [1] - 13:18 discovery [1] - 12:7 dismiss [6] - 3:13, 8:9, 8:12, 8:16,	15:19, 15:24 disprove [1] - 10:1 disputes [1] - 12:7 distinction [2] - 17:10, 21:5 District [1] - 20:22 divide [1] - 8:10 DO [1] - 33:2 do [13] - 9:13, 11:3, 14:6, 17:23, 18:15, 18:17, 19:2, 21:11, 21:23, 24:4, 24:8, 26:23 Docket [2] - 1:8, 3:11 DOCKET [1] - 32:12 doctrine [1] - 9:1 document [1] - 29:8 documents [8] - 4:19, 7:6, 7:21, 15:1, 26:20, 28:4, 28:7, 28:15 does [6] - 6:9, 8:20, 9:19, 10:18, 21:6, 28:16 doesn't [3] - 7:25, 14:13, 28:6 domestic [1] - 10:11 don't [13] - 12:12, 13:12, 16:14, 16:23, 18:19, 19:2, 23:21, 24:3, 24:13, 25:16, 25:23, 26:5, 29:15 done [2] - 30:4, 31:4 dozens [1] - 16:13	entity [1] - 21:9 entries [1] - 12:17 Esquire [3] - 1:15, 1:15, 1:19 essentially [2] - 5:4, 29:21 et [1] - 7:17 even [5] - 7:24, 10:16, 16:2, 20:11, 26:11 every [2] - 9:21, 32:7 everything [1] - 25:11 exact [1] - 20:13 Exactly [1] - 18:18 example [3] - 19:14, 25:21, 27:17 Excellent [1] - 31:2 EXCELLENT [1] - 32:15 excluded [1] - 17:19 excuse [1] - 4:21 executive [1] - 14:8 exempt [1] - 13:18 exemption [12] - 7:21, 8:4, 13:15, 13:17, 14:4, 14:13, 27:9, 27:10, 27:12, 27:18, 27:21, 30:10 Exemption [1] - 18:8 exemptions [4] - 13:23, 14:9, 23:13, 27:16 exhibit [1] - 32:22 Exhibits [1] - 1:2 EXHIBITS [1] - 2:6 exist [1] - 7:2 exists [1] - 27:25 expand [2] - 14:3, 14:9 extent [2] - 7:14, 26:16 extraordinary [2] - 8:22, 9:7
	E	
	E [5] - 2:1, 3:1, 33:1 each [2] - 25:7, 32:7 Edgar [1] - 4:5 effect [2] - 9:16, 23:17 effectuate [1] - 23:18 effort [1] - 23:2 either [2] - 13:13, 14:14 Eliot [1] - 33:19 else [1] - 28:12 EMAIL [1] - 33:23 EMPLOYED [1] - 33:9 enforce [1] - 23:22 enter [1] - 10:10 entire [3] - 9:5, 19:18, 19:24 entirely [1] - 21:6	F [1] - 33:1 fact [2] - 5:6, 22:4 factually [1] - 16:1 fails [2] - 11:13, 11:15 FAIR [1] - 32:15 faith [1] - 22:18 fall [1] - 25:13 falls [1] - 30:9 far [2] - 23:5, 25:2

Federal [1] - 12:17 federal [23] - 5:5, 5:7, 5:12, 6:7, 9:6, 10:7, 10:16, 11:2, 12:6, 12:7, 14:15, 16:9, 18:4, 18:15, 21:12, 21:13, 21:21, 21:22, 22:21, 23:16, 25:10, 27:19 few [1] - 26:25 field [14] - 8:3, 8:17, 8:20, 8:25, 9:2, 9:5, 9:15, 9:20, 9:22, 10:1, 10:13, 10:24, 11:11, 11:12 Field [1] - 8:22 file [2] - 6:22, 21:20 filed [2] - 15:21, 23:6 FINANCIALLY [1] - 33:10 find [2] - 15:9, 25:9 finding [1] - 17:8 First [2] - 10:5, 10:12 first [3] - 4:16, 19:5, 20:24 fit [1] - 17:23 Florida [3] - 20:11, 20:18, 20:22 focus [1] - 4:23 focused [1] - 25:14 FOIA [7] - 21:13, 21:20, 23:5, 25:1, 27:25, 28:7 followed [1] - 11:24 following [1] - 17:20 For [3] - 1:14, 1:18, 32:7 FOR [1] - 33:9 for [43] - 3:12, 3:14, 4:1, 4:5, 4:8, 6:3, 6:13, 6:19, 6:21, 6:22, 6:24, 7:22, 8:6, 8:14, 9:25, 10:7, 10:10, 11:9, 11:13, 12:12, 12:17, 13:17, 13:22, 14:25, 15:18, 15:21, 17:1, 19:13, 20:8, 23:6, 23:24, 24:24, 25:4, 25:21, 26:1, 26:3, 26:25, 27:17, 27:19, 30:8, 31:3,	32:7 force [1] - 23:17 FOREGOING [2] - 33:2, 33:6 foreign [1] - 12:25 form [2] - 8:23, 32:7 FORM [1] - 32:4 FORMAT [1] - 33:7 format [2] - 19:23, 24:11 found [6] - 10:12, 10:24, 11:5, 20:9, 23:10, 27:12 Foundation [1] - 1:14 four [1] - 10:20 frankly [2] - 17:25, 22:25 free [1] - 28:2 friendly [1] - 26:12 from [22] - 5:5, 5:13, 7:10, 7:20, 8:24, 9:4, 10:5, 10:13, 12:11, 13:18, 14:5, 15:1, 15:12, 15:16, 17:19, 18:8, 18:20, 26:2, 27:1, 27:2, 27:17, 28:12 FROM [2] - 33:3, 33:15 FTR [1] - 33:15 full [1] - 23:17 fully [1] - 7:16 functions [1] - 22:9 FURTHER [3] - 33:6, 33:8, 33:10	29:2 gone [2] - 24:6, 26:22 Good [3] - 3:17, 3:21, 3:25 GOOD [1] - 32:15 good [5] - 4:11, 7:1, 24:16, 31:1 got [1] - 7:19 government [4] - 5:5, 5:7, 5:12, 16:9 graft [1] - 11:1 ground [2] - 19:22 guess [2] - 4:17, 27:24 guest [1] - 10:8 guidance [1] - 24:12
		H
		had [5] - 17:5, 17:15, 21:16, 27:18, 30:17 handles [1] - 19:7 happy [2] - 8:12, 15:22 has [17] - 4:22, 5:12, 6:3, 6:5, 7:24, 8:9, 9:3, 17:7, 18:14, 19:10, 20:1, 23:5, 23:6, 24:4, 27:3, 27:8, 28:25 have [29] - 4:3, 4:12, 5:7, 6:11, 7:1, 11:9, 12:6, 13:24, 15:13, 16:8, 16:11, 16:21, 16:24, 19:2, 19:3, 21:13, 22:14, 23:17, 24:3, 24:12, 27:16, 28:6, 28:16, 28:17, 28:20, 28:22, 28:23, 29:5 having [1] - 8:24 he [1] - 18:14 Healthcare [1] - 29:11 healthcare [1] - 6:13 hear [1] - 15:20 HEARING [2] - 1:11, 33:9 HELD [1] - 33:4 help [1] - 23:12 helpful [1] - 24:18 helps [1] - 24:7 here [9] - 4:13, 9:13, 13:25, 14:14, 18:6, 22:18, 25:11,
	G	
	G [1] - 3:1 general [5] - 4:1, 11:24, 12:1, 19:1, 25:1 General [3] - 22:6, 22:7, 23:20 General's [1] - 22:9 generally [1] - 9:20 generated [1] - 9:10 get [1] - 10:18 give [1] - 28:7 go [6] - 5:16, 10:19, 14:23, 19:5, 25:7, 25:12 Go [1] - 5:18 goals [1] - 14:11 going [2] - 11:11,	

27:16, 28:4 HEREBY [1] - 33:2 hide [2] - 18:12, 22:24 hiding [1] - 17:18 him [2] - 4:8, 18:15 history [2] - 12:14, 22:2 Honor [19] - 3:7, 3:17, 3:25, 4:3, 5:2, 5:9, 5:19, 9:13, 15:19, 15:25, 20:5, 20:18, 23:24, 24:21, 25:20, 26:8, 31:9, 31:10, 31:15 Honor's [1] - 8:10 HONORABLE [1] - 1:12 honorable [1] - 3:5 hour [1] - 10:14 House [1] - 6:6 houses [1] - 6:7 how [3] - 9:23, 12:5, 20:3 huge [1] - 15:14 hum [6] - 10:4, 10:9, 13:1, 13:6, 21:15, 27:4 hundreds [1] - 16:13	I'd [2] - 4:13, 16:12 I'll [3] - 15:7, 31:5, 31:11 I'm [3] - 8:12, 16:11, 25:3 I've [2] - 4:14, 20:9 ICE [17] - 6:9, 7:8, 7:10, 9:18, 20:24, 21:2, 21:3, 24:25, 26:2, 28:6, 28:16, 28:18, 28:20, 28:22, 28:25, 29:16, 30:17 ICE's [2] - 8:6, 29:13 identical [1] - 27:9 identify [1] - 3:14 identifying [6] - 12:3, 12:8, 13:8, 29:15, 30:7, 30:23 identities [1] - 13:3 IDs [1] - 32:22 If [4] - 9:21, 14:8, 28:6, 30:11 if [13] - 8:14, 9:8, 13:3, 15:20, 16:11, 19:20, 22:1, 22:22, 24:9, 25:13, 26:17, 30:11, 31:6 IGA [1] - 28:15 immediately [1] - 12:18 immigration [10] - 6:8, 6:13, 6:20, 8:1, 10:22, 11:10, 12:23, 22:10, 23:22, 26:4 immigration-related [1] - 26:4 impact [1] - 15:13 implicate [1] - 26:13 implicated [1] - 27:12 important [5] - 16:19, 16:22, 17:9, 22:16, 28:9 Improvement [2] - 7:6, 25:22 in [59] - 3:5, 4:4, 6:7, 7:23, 8:24, 9:2, 9:5, 9:16, 10:15, 11:5, 11:15, 12:7, 12:12, 12:15, 12:18, 12:23, 15:11, 17:7, 17:18, 17:22, 18:1, 18:2, 18:6, 18:14, 19:2,	19:15, 19:23, 20:9, 20:10, 20:14, 20:22, 20:24, 21:1, 21:5, 21:18, 22:8, 22:13, 23:3, 23:11, 23:17, 23:18, 24:1, 24:3, 24:10, 24:13, 24:23, 25:8, 25:24, 26:6, 26:11, 26:13, 27:10, 27:16, 27:25, 28:5, 29:9, 30:4, 30:24, 31:17 IN [4] - 33:3, 33:6, 33:9, 33:10 In [4] - 7:18, 20:20, 21:13, 24:22 INC [2] - 1:6, 33:4 incidentally [1] - 11:10 include [2] - 32:7, 32:16 included [1] - 7:5 inconsistent [1] - 9:5 independent [1] - 18:1 index [1] - 32:8 Index [1] - 1:2 indicate [1] - 12:2 indicated [2] - 28:25, 30:18 indicates [6] - 7:7, 9:15, 11:8, 12:15, 18:7, 19:18 indication [3] - 9:3, 9:12, 29:14 inform [2] - 5:16, 24:7 information [17] - 6:18, 7:15, 11:19, 12:3, 12:9, 12:11, 13:9, 18:12, 25:23, 26:5, 26:21, 26:22, 29:6, 29:16, 30:7, 30:13, 30:23 informs [2] - 11:25, 20:3 insofar [1] - 26:19 instance [4] - 17:22, 18:11, 18:13, 23:4 instances [2] - 20:9, 20:14 Instead [1] - 9:17 intelligence [1] - 12:25 intended [1] - 9:8 intends [1] - 9:4
I		
I [69] - 1:1, 2:1, 3:1, 4:3, 4:7, 4:12, 4:16, 5:10, 6:21, 6:23, 7:24, 9:7, 9:24, 10:18, 11:8, 12:14, 14:5, 14:17, 14:19, 14:23, 15:7, 15:9, 16:6, 16:11, 16:14, 17:9, 18:19, 18:21, 18:22, 19:20, 21:4, 21:16, 22:17, 23:5, 23:7, 23:10, 23:11, 23:21, 25:9, 25:19, 25:23, 26:2, 26:5, 26:15, 27:14, 27:24, 28:17, 28:20, 28:22, 28:23, 29:1, 29:8, 29:9, 29:11, 29:14, 29:15, 29:17, 30:19, 33:1, 33:2, 33:6, 33:8, 33:9, 33:10		

INTERESTED [1] - 33:10 interesting [3] - 4:12, 20:19, 21:4 intern [1] - 4:3 interpretation [1] - 11:23 interpreted [1] - 13:24 interpreting [1] - 13:22 into [2] - 5:11, 12:24 investigations [1] - 12:24 invoices [3] - 7:7, 26:1, 26:3 involve [1] - 27:15 IS [2] - 33:2, 33:6 Is [2] - 4:24, 5:8 is [63] - 3:8, 3:11, 3:12, 4:4, 4:15, 4:16, 4:20, 5:10, 5:22, 5:25, 6:6, 8:13, 8:16, 8:20, 8:22, 8:23, 9:14, 9:17, 9:23, 9:25, 10:20, 11:8, 11:15, 11:16, 11:18, 11:25, 13:14, 13:15, 13:23, 14:14, 15:2, 15:22, 16:7, 16:22, 17:25, 18:3, 18:10, 18:11, 18:13, 19:14, 19:18, 19:25, 20:18, 21:4, 21:11, 21:22, 22:6, 23:7, 23:8, 23:10, 23:13, 24:14, 25:6, 25:7, 25:11, 25:12, 25:14, 26:16, 26:22, 26:24, 29:19, 30:9 isn't [1] - 18:2 issuance [1] - 9:19 issue [4] - 4:13, 4:23, 5:8, 10:21 issued [1] - 9:18 issues [3] - 5:17, 15:6, 26:13 ISSUES [1] - 32:16 It [5] - 3:11, 5:25, 6:5, 6:9, 14:1 it [26] - 4:14, 7:7, 7:15, 9:4, 9:7,	12:2, 12:18, 12:20, 14:5, 14:6, 16:7, 16:14, 21:8, 21:10, 22:22, 23:9, 25:7, 25:12, 26:3, 26:19, 27:21, 29:17, 29:20, 30:9, 30:19, 32:7 It's [3] - 21:24, 25:5, 28:2 it's [19] - 4:17, 5:4, 10:19, 16:6, 16:19, 17:11, 17:17, 17:21, 21:24, 22:8, 22:24, 23:2, 25:1, 25:2, 28:9, 29:9, 29:10 item [1] - 11:24 items [1] - 16:3 its [6] - 4:22, 6:4, 9:11, 10:14, 12:17, 14:4 itself [3] - 6:25, 9:19, 17:25 J jail [1] - 9:11 JAMES [1] - 1:12 Jersey [1] - 20:11 Jessica [2] - 1:19, 4:1 judgment [2] - 8:14, 15:21 JULY [1] - 33:4 July [1] - 1:22 jurisdictions [1] - 20:6 just [14] - 5:4, 5:20, 14:18, 15:7, 16:8, 17:17, 17:21, 18:3, 25:1, 25:8, 27:22, 27:24, 29:21, 30:16 Just [2] - 16:1, 24:20 K KENNEY [2] - 4:7, 18:25 Kenny [3] - 1:19, 4:1, 4:9 KENNY [13] - 3:25, 15:25, 17:13, 17:15, 18:18, 18:23, 21:16,	28:14, 29:4, 30:4, 30:14, 30:16, 31:14 kind [3] - 4:23, 5:16, 29:22 know [12] - 7:3, 7:10, 15:9, 16:6, 16:12, 19:1, 22:1, 23:6, 25:9, 25:23, 26:5, 27:25 L language [1] - 17:17 last [3] - 6:15, 13:14, 14:17 lastly [1] - 27:24 law [26] - 5:12, 6:1, 6:5, 7:25, 8:5, 9:6, 13:23, 18:8, 18:14, 18:15, 19:24, 20:13, 21:12, 21:22, 22:20, 22:21, 23:1, 23:14, 24:5, 24:14, 27:15, 27:18, 27:20, 28:1, 28:3, 28:11 laws [11] - 8:24, 9:5, 10:14, 17:20, 20:16, 22:10, 22:15, 23:3, 23:17, 23:18, 23:22 lawsuit [1] - 29:10 learn [1] - 13:4 least [1] - 4:21 left [1] - 23:22 legal [1] - 4:4 legislature [2] - 13:20, 14:6 let [1] - 25:6 Let's [1] - 15:23 let's [1] - 25:8 LIBERTIES [2] - 1:6, 33:4 Liberties [2] - 1:14, 3:9 library [1] - 25:2 like [7] - 4:13, 7:5, 16:14, 17:18, 18:2, 29:22, 29:23 link [7] - 16:7, 16:10, 24:22, 24:23, 25:1, 25:2 Lisa [2] - 1:23, 32:10 LISA [3] - 33:2, 33:6,
---	--	--

33:8 list [1] - 32:22 litigation [2] - 7:23, 24:6 little [1] - 22:2 LMP [1] - 33:19 Impreporing@gmail .com [1] - 33:23 locally [1] - 6:12 log [1] - 32:22 Long [1] - 1:19 longer [1] - 26:23 look [8] - 16:14, 20:5, 22:1, 22:20, 22:21, 23:15, 29:15 lot [1] - 15:11 Louis [1] - 1:15 low [2] - 32:18, 32:18 Lynn [1] - 1:19	3:18, 3:20 MCFADDEN [23] - 3:17, 4:25, 5:9, 5:19, 5:25, 6:18, 6:24, 10:5, 10:10, 11:22, 13:2, 13:7, 14:17, 15:16, 24:20, 25:19, 26:1, 26:10, 27:5, 27:8, 28:9, 31:10, 31:15 ME [1] - 33:3 me [6] - 4:3, 4:21, 5:16, 18:16, 25:6, 29:14 mean [3] - 12:7, 13:25, 14:1 meaning [1] - 11:25 means [1] - 12:2 meant [1] - 23:13 medical [8] - 6:19, 6:22, 7:10, 7:15, 7:19, 17:7, 25:3, 30:25 meet [1] - 19:11 mentioned [2] - 24:22, 26:25 Michigan [4] - 27:2, 27:6, 27:8, 27:11 microphone [1] - 32:19 might [1] - 29:25 morning [5] - 3:17, 3:21, 3:25, 4:8, 4:11 most [2] - 16:25, 26:12 motion [7] - 3:12, 8:12, 8:14, 8:16, 15:18, 15:20, 15:23 moved [1] - 8:9 MR [23] - 3:17, 4:25, 5:9, 5:19, 5:25, 6:18, 6:24, 10:5, 10:10, 11:22, 13:2, 13:7, 14:17, 15:16, 24:20, 25:19, 26:1, 26:10, 27:5, 27:8, 28:9, 31:10, 31:15 Mr [1] - 4:10 MS [17] - 3:21, 3:25, 4:7, 15:25, 17:13, 17:15, 18:18, 18:23, 18:25, 21:16, 28:14, 29:4,	30:4, 30:14, 30:16, 31:9, 31:14 multiple [1] - 20:2 my [5] - 4:20, 8:13, 22:1, 23:11, 29:2
M		
MA [1] - 32:11 Mackenzie [2] - 1:15, 3:22 made [3] - 16:9, 20:17, 21:16 maintain [1] - 28:10 make [3] - 21:11, 29:24, 31:7 makes [2] - 14:5, 20:25 making [1] - 13:15 MANAGEMENT [1] - 32:3 Marie [1] - 1:23 MARIE [3] - 33:2, 33:6, 33:8 Martinez [1] - 4:5 MASSACHUSETTS [3] - 1:3, 1:6, 33:4 Massachusetts [18] - 1:14, 1:16, 1:20, 1:21, 3:9, 3:19, 3:23, 5:23, 6:7, 6:15, 10:13, 17:20, 18:6, 19:3, 24:3, 27:16, 32:3, 33:20 MATTER [1] - 33:3 matter [4] - 3:8, 3:12, 22:24, 31:18 may [3] - 3:6, 21:21, 30:2 maybe [2] - 16:2, 29:7 McFadden [3] - 1:15,		N N [2] - 2:1, 3:1 NAME [3] - 32:10, 32:11, 33:14 name [3] - 11:19, 12:3, 12:8 names [4] - 7:16, 8:7, 26:18, 30:22 narrowly [1] - 13:24 nationally [1] - 6:12 nature [2] - 19:15, 30:25 necessary [1] - 22:8 need [1] - 18:16 NEITHER [1] - 33:9 never [2] - 23:5, 23:6 New [1] - 20:11 next [1] - 29:2 No [9] - 1:8, 3:11, 6:23, 11:3, 17:11, 17:15, 31:9, 31:10, 32:22 no [9] - 6:3, 9:12, 15:2, 17:15, 18:19, 22:17, 26:23, 30:12, 30:14 noise [1] - 32:17 None [2] - 2:4, 2:7 none [2] - 17:5, 17:6 NOR [2] - 33:9, 33:10 not [44] - 4:16, 4:17, 5:10, 5:13, 6:21, 8:7, 8:20, 9:14, 9:19, 9:23, 10:13, 10:18, 11:6, 11:15, 12:15, 13:20, 14:15, 14:21, 14:23, 15:11, 16:17, 16:20, 17:17, 17:21, 18:4, 18:10, 18:12, 19:18, 19:25, 20:7, 20:15, 21:6, 21:24, 22:24, 23:3, 23:10, 23:23, 25:2, 26:11, 26:12, 27:12, 28:2, 30:19 Not [1] - 29:7

NOT [1] - 33:10 note [1] - 15:7 notes [1] - 32:22 notice [2] - 28:20, 28:22 notwithstanding [1] - 29:7 novo [1] - 15:5 now [1] - 15:24 NUMBER [1] - 32:12 number [2] - 7:17, 19:9 numbers [1] - 30:22	23:19, 23:25, 24:2, 24:6, 24:22, 25:3, 25:7, 25:8, 25:12, 25:13, 25:16, 25:21, 26:15, 27:5, 27:10, 27:11, 28:5, 28:6, 28:16, 29:1, 29:12, 29:22, 30:4, 30:12, 30:16, 30:17, 30:25, 32:3, 32:7, 32:19 off [1] - 25:9 OFFICE [2] - 32:3, 33:7 OFFICER [2] - 3:4, 31:16 Okay [10] - 4:6, 5:15, 17:14, 18:24, 24:16, 28:12, 29:3, 30:15, 31:1, 31:11 okay [4] - 4:9, 5:3, 5:15, 31:1 ON [2] - 33:4, 33:7 on [11] - 3:12, 3:18, 8:16, 10:3, 19:8, 19:21, 20:7, 22:18, 24:7, 25:15, 27:24 once [2] - 10:15, 26:22 One [1] - 1:16 one [10] - 4:25, 9:18, 10:23, 11:6, 16:25, 18:15, 23:11, 29:12, 32:15 Only [1] - 10:23 only [3] - 6:6, 19:20, 21:3 onto [1] - 11:2 operation [1] - 9:11 oppose [1] - 8:12 opposed [1] - 29:13 opposition [1] - 18:19 or [22] - 4:16, 4:17, 4:21, 8:24, 11:19, 12:3, 12:8, 12:24, 14:1, 16:2, 16:13, 17:2, 17:19, 18:3, 18:12, 19:22, 26:20, 27:20, 30:22, 32:22 or.. [1] - 17:12 order [4] - 3:2, 9:2, 23:18, 24:9 original [1] - 32:7 other [14] - 7:22,	11:4, 11:19, 12:3, 12:8, 19:13, 20:5, 24:6, 26:20, 27:1, 30:6, 30:21, 32:20 OTHERWISE [1] - 33:10 our [11] - 5:1, 7:18, 11:15, 18:1, 19:25, 22:9, 23:11, 24:1, 24:23, 28:3, 28:10 Our [2] - 8:20, 18:6 ours [2] - 27:10, 27:21 out [5] - 6:4, 16:12, 21:18, 22:8, 23:12 OUTCOME [1] - 33:10 outside [1] - 25:13 over [1] - 7:4 overbroad [1] - 26:16 owed [1] - 15:2 own [7] - 9:10, 9:11, 10:14, 13:23, 18:6, 23:12, 28:10
O		P
O [1] - 3:1 objecting [1] - 19:21 obviously [3] - 9:23, 16:23, 22:4 occurred [1] - 20:12 occurs [1] - 28:20 OF [13] - 1:3, 1:4, 1:6, 32:3, 32:11, 32:13, 33:3, 33:4, 33:7, 33:9, 33:10, 33:14 of [121] - 1:14, 3:9, 3:18, 3:22, 4:18, 4:23, 4:25, 5:8, 5:11, 5:16, 5:22, 6:4, 6:6, 6:13, 6:15, 7:4, 7:9, 7:13, 7:14, 7:17, 7:18, 7:20, 7:21, 7:22, 8:2, 8:23, 9:11, 9:15, 9:18, 9:19, 10:23, 11:4, 11:5, 11:19, 11:22, 11:25, 12:3, 12:8, 12:10, 12:14, 12:24, 13:3, 13:8, 14:3, 14:6, 14:11, 14:18, 14:21, 15:5, 15:11, 15:14, 16:2, 16:8, 16:13, 16:15, 16:16, 16:19, 16:20, 16:25, 17:5, 17:6, 17:17, 17:22, 18:2, 19:5, 19:7, 19:9, 19:10, 19:17, 19:21, 19:25, 20:3, 20:16, 21:1, 21:2, 21:7, 21:8, 21:18, 22:2, 22:6, 22:11, 22:18, 22:24, 23:1,		P [1] - 3:1 page [2] - 29:8, 32:8 Pages [1] - 1:1 pages [2] - 7:20, 16:13 parallel [1] - 27:25 part [1] - 22:18 particular [5] - 8:25, 18:22, 29:19, 30:2, 30:23 particularly [2] - 15:10, 30:8 PARTIES [1] - 33:9 pass [1] - 28:2 PDF [1] - 32:8 penalty [1] - 11:1 people [2] - 12:22, 31:7 permissible [1] - 14:4 permission [2] - 4:7, 8:10 permit [1] - 20:23 personally [1] - 15:9 perspective [1] - 14:6 persuasive [2] - 15:10, 20:8 pertaining [1] - 17:3 PHIPPS [3] - 33:2, 33:6, 33:8

Phipps [2] - 1:23, 32:10 phonetic [1] - 13:5 plain [1] - 19:17 plainly [1] - 30:10 plaintiff [3] - 1:7, 3:16, 4:22 Plaintiff [1] - 1:14 plaintiffs [1] - 4:13 plans [1] - 17:6 Plaza [1] - 1:16 please [1] - 3:14 Plymouth [29] - 1:18, 1:20, 3:9, 4:2, 5:21, 6:3, 6:6, 6:19, 7:4, 7:7, 7:8, 7:10, 7:20, 7:24, 8:9, 8:16, 9:14, 9:17, 9:24, 10:19, 11:16, 13:14, 14:18, 24:24, 26:2, 26:12, 26:25, 27:15, 28:5 PLYMOUTH [3] - 1:9, 32:11, 33:4 Plymouth's [2] - 10:2, 26:15 point [3] - 10:2, 27:25, 31:7 pointing [2] - 9:14, 9:17 points [1] - 24:21 Pond [1] - 1:19 POOR [1] - 32:15 position [4] - 5:1, 7:25, 18:14, 18:22 preempt [2] - 9:4, 9:8 preempted [5] - 10:13, 10:24, 11:6, 11:11 preemption [19] - 8:2, 8:3, 8:4, 8:18, 8:20, 8:22, 8:23, 9:1, 9:3, 9:16, 9:20, 9:22, 10:1, 11:12, 11:14, 13:12, 20:16, 24:5 prepared [1] - 8:13 presented [1] - 15:6 Presumably [1] - 30:14 pretty [2] - 4:12, 9:7 preventative [1] - 17:2 primary [3] - 4:15,	4:23 principle [2] - 11:22, 13:22 principles [1] - 8:2 printed [1] - 16:11 privacy [2] - 7:13, 19:22 probably [1] - 19:8 problem [1] - 26:17 PROCEEDINGS [2] - 33:3, 33:15 produce [1] - 16:23 produced [1] - 32:7 PRODUCED [1] - 33:15 producing [1] - 5:6 production [2] - 4:18, 19:21 Professional [1] - 1:23 program [8] - 6:19, 6:25, 7:6, 7:11, 7:19, 8:2, 10:8, 25:3 prohibit [2] - 5:5, 13:8 prohibited [3] - 5:13, 8:24, 17:19 prohibits [2] - 4:18, 18:8 promulgated [4] - 12:18, 12:20, 22:5, 23:16 promulgation [1] - 12:17 proper [1] - 22:8 property [1] - 21:2 proposition [2] - 6:3, 9:25 protect [1] - 7:12 provide [12] - 16:5, 16:16, 16:17, 18:4, 18:12, 22:23, 24:10, 28:20, 29:1, 29:8, 29:12, 30:22 PROVIDED [1] - 33:3 provided [14] - 16:6, 16:12, 17:7, 19:16, 19:23, 22:14, 24:23, 28:17, 28:22, 28:23, 29:6, 29:20, 30:19, 32:22 providing [3] - 16:15, 18:9, 22:25 provision [1] - 12:6	public [21] - 5:11, 5:25, 6:4, 6:16, 7:25, 13:23, 14:9, 14:11, 15:4, 15:16, 17:20, 19:18, 19:25, 20:12, 20:16, 21:18, 22:14, 23:13, 27:9, 28:1, 28:3 pursuant [4] - 17:1, 21:12, 21:21, 28:15 putting [1] - 12:22 Q Quality [2] - 7:6, 25:22 QUALITY [1] - 32:15 quality [1] - 6:12 question [4] - 4:16, 29:3, 29:25, 30:2 quite [2] - 17:25, 22:25 R R [3] - 1:15, 3:1, 33:1 Rahim [4] - 4:22, 6:2, 18:2, 23:7 raised [2] - 14:18, 26:13 reach [1] - 8:15 read [2] - 4:14, 20:1 reading [1] - 19:17 really [4] - 9:17, 14:10, 15:14, 23:2 Realtime [1] - 1:24 reason [3] - 7:2, 12:13, 12:20 reasoning [1] - 15:11 reasons [3] - 11:13, 15:18, 23:24 recess [1] - 31:17 record [9] - 3:15, 14:19, 14:21, 19:18, 19:19, 19:24, 19:25, 29:15, 30:17 RECORDED [1] - 33:15 RECORDING [3] - 32:13, 33:3, 33:15 records [71] - 5:6, 5:11, 5:14, 6:1,
--	---	---

6:5, 6:16, 6:24, 7:1, 7:15, 7:22, 7:25, 9:9, 12:11, 13:17, 13:23, 14:9, 14:12, 15:4, 15:14, 16:4, 16:8, 16:15, 16:16, 16:20, 16:21, 16:23, 17:16, 17:20, 17:23, 18:5, 18:9, 19:6, 19:10, 19:11, 19:13, 19:14, 19:15, 19:21, 20:1, 20:12, 20:15, 20:16, 20:21, 20:24, 20:25, 21:7, 21:8, 21:18, 21:20, 22:13, 22:15, 22:23, 23:6, 23:14, 24:2, 24:10, 25:4, 25:17, 25:21, 25:24, 26:20, 27:9, 28:1, 28:3, 28:18, 28:23, 29:1, 30:6, 30:21, 30:25 redact [1] - 19:15 redacted [5] - 12:11, 13:11, 19:23, 24:11, 30:12 redaction [2] - 26:17, 26:24 referenced [1] - 18:1 refused [1] - 20:23 Register [1] - 12:17 Registered [1] - 1:23 registration [1] - 11:2 regulation [24] - 8:7, 9:18, 9:19, 9:22, 9:25, 11:16, 11:18, 12:14, 12:16, 13:21, 14:2, 14:10, 14:15, 15:13, 22:5, 23:8, 23:10, 25:10, 25:14, 26:14, 26:16, 26:19, 26:23, 29:18 regulations [4] - 23:12, 23:15, 23:16, 27:20 regulatory [3] - 10:7, 10:17, 19:7 relate [1] - 11:10 related [4] - 9:10, 10:21, 10:23, 26:4 RELATED [1] - 33:9	relates [1] - 23:9 relating [3] - 7:19, 11:19, 25:17 release [6] - 13:8, 20:21, 20:23, 21:6, 21:8, 21:25 released [4] - 8:8, 13:4, 21:2, 21:21 releasing [1] - 5:13 rely [1] - 10:3 remainder [1] - 17:22 removing [1] - 7:16 Reporter [3] - 1:23, 1:24 Reporting [1] - 33:19 request [6] - 6:16, 11:15, 21:12, 21:20, 23:5, 24:23 requested [2] - 16:3, 16:20 requester [1] - 21:11 requests [6] - 7:19, 14:25, 17:1, 21:14, 21:19 requires [1] - 15:4 resources [1] - 22:22 respond [2] - 20:4, 24:19 responding [1] - 21:19 response [3] - 7:18, 7:23, 24:23 responsive [4] - 16:21, 17:16, 28:18, 28:24 resulted [1] - 17:7 review [2] - 15:5, 15:8 reviewed [1] - 29:5 Right [9] - 5:3, 6:17, 11:21, 14:16, 15:15, 25:25, 26:9, 27:7, 28:8 right [5] - 3:7, 5:3, 15:24, 19:6, 28:20 rights [1] - 23:19 rise [2] - 3:4, 31:16 Road [1] - 1:19 Rodriguez [1] - 4:10 room [1] - 11:9 RULE [1] - 1:11 rules [1] - 8:24	said [3] - 11:3, 19:10, 20:14 same [3] - 20:1, 20:2, 20:11 sample [1] - 29:23 SAUNDERS [2] - 3:21, 31:9 Saunders [5] - 1:15, 3:22, 3:24, 8:13, 15:22 say [3] - 13:20, 16:12, 25:8 saying [2] - 24:15, 26:17 says [4] - 19:24, 21:10, 21:22, 26:19 scant [1] - 16:15 scheme [3] - 10:7, 10:17, 11:2 scope [2] - 14:3, 22:6 seated [1] - 3:6 secrecy [1] - 17:18 Section [1] - 27:13 security [1] - 22:12 see [2] - 25:13, 29:15 See [1] - 1:2 seeing [1] - 29:25 seeking [1] - 6:18 seem [3] - 25:16, 26:11, 26:12 seems [1] - 4:15 sends [1] - 7:8 sense [1] - 14:5 sentence [1] - 9:18 September [1] - 33:17 Services [1] - 32:3 services [1] - 26:4 session [1] - 3:5 set [2] - 5:20, 31:8 sheriff [8] - 18:11, 18:13, 18:20, 19:1, 20:20, 20:21, 20:23, 28:13 Sheriff [1] - 27:6 sheriff's [1] - 22:18 SHERIFF'S [3] - 1:9, 32:11, 33:4 Sheriff's [6] - 1:18, 3:10, 4:2, 5:21, 23:25, 24:10 sheriffs [1] - 15:1 shield [1] - 15:14 Shorthand [1] - 1:23
	S	
	S [1] - 3:1	

should [4] - 13:25, 15:19, 20:4, 21:11 shouldn't [1] - 14:1 sic [1] - 4:10 sidebar [1] - 32:18 simply [2] - 17:5, 17:21 simultaneous [1] - 32:19 sit [1] - 4:8 situation [2] - 18:2, 20:12 SJC [1] - 23:12 So [31] - 5:20, 8:9, 10:3, 12:2, 12:12, 13:12, 14:13, 15:18, 16:6, 16:22, 17:9, 17:11, 17:15, 17:17, 17:22, 18:25, 19:5, 21:24, 23:2, 23:5, 23:15, 23:24, 25:21, 26:10, 27:17, 27:21, 28:9, 28:14, 28:22, 29:11, 30:16 so [18] - 6:15, 11:8, 11:12, 13:7, 20:3, 22:16, 23:17, 25:2, 25:11, 26:22, 26:23, 28:16, 29:5, 29:17, 29:19, 29:21, 30:4, 30:9 some [8] - 9:3, 16:4, 16:16, 19:13, 22:11, 25:16, 26:10, 28:6 sometimes [1] - 30:24 sort [4] - 17:17, 24:6, 30:4, 30:16 speak [1] - 25:11 speaker [1] - 32:22 speaking [1] - 32:19 specific [4] - 11:24, 11:25, 13:19, 25:17 specifically [1] - 16:25 speech [1] - 32:19 spellings [1] - 32:22 squarely [1] - 17:23 SS [1] - 1:4 stage [1] - 5:20 stamp [3] - 32:16,	32:17, 32:20 stands [1] - 6:2 start [1] - 4:13 starting [1] - 3:15 state [23] - 5:5, 5:10, 5:13, 8:5, 8:18, 8:23, 9:4, 10:21, 10:25, 11:9, 13:15, 18:3, 18:14, 20:12, 20:15, 21:9, 21:25, 22:20, 25:10, 27:15, 27:18, 28:1, 28:3 state's [5] - 9:9, 9:10, 9:11, 13:22, 28:10 states [5] - 7:3, 20:14, 22:14, 23:22, 27:1 States [2] - 10:11, 10:15 statute [16] - 8:19, 9:14, 10:25, 13:18, 13:20, 13:25, 14:1, 14:12, 14:15, 15:4, 18:6, 19:17, 20:25, 23:10, 27:23 statutes [4] - 10:21, 10:23, 11:4, 11:9 statutory [4] - 8:4, 11:23, 13:15, 27:10 STENOGRAPHICALL Y [1] - 33:15 step [1] - 5:20 stick [1] - 15:23 still [2] - 11:9, 19:16 Street [1] - 33:19 study [1] - 29:11 style [1] - 30:5 subject [3] - 5:25, 12:24, 20:15 submissions [1] - 31:6 submitted [2] - 6:16, 26:2 such [1] - 26:20 sued [1] - 20:20 SUFFOLK [1] - 1:4 suggest [1] - 23:7 suggestion [1] - 21:16 Suite [1] - 1:16 summary [2] - 8:14, 15:21 summer [1] - 4:5	SUPERIOR [1] - 1:4 supervisor [7] - 14:18, 14:21, 14:23, 15:12, 19:5, 19:10, 19:25 supporting [1] - 5:1 supposed [1] - 24:7 Supremacy [1] - 4:18 Supreme [2] - 11:3, 27:11 sure [2] - 16:11, 29:24 Sure [1] - 30:3 system [2] - 21:13, 25:22 T T [2] - 33:1 take [3] - 29:23, 31:5, 31:11 TAKEN [1] - 33:10 taken [1] - 7:24 talked [1] - 22:2 talking [1] - 28:4 talks [1] - 29:20 TAPE [1] - 32:15 TELEPHONE [1] - 33:22 tell [1] - 18:16 terms [2] - 24:22, 27:10 terrorism [1] - 12:24 than [3] - 23:7, 27:16, 27:21 Thank [7] - 15:25, 24:17, 31:3, 31:13, 31:14, 31:15 THAT [4] - 33:2, 33:6, 33:8, 33:10 that [153] - 4:20, 4:23, 4:24, 5:6, 5:8, 5:10, 5:12, 6:3, 6:7, 6:9, 6:21, 6:23, 7:1, 7:3, 7:6, 7:7, 7:14, 7:15, 7:25, 8:15, 8:20, 9:2, 9:4, 9:12, 9:13, 9:15, 9:21, 9:24, 9:25, 10:12, 10:21, 11:3, 11:5, 11:8, 11:9, 11:10, 11:12, 11:16, 11:18, 12:2, 12:6, 12:7, 12:10, 12:13, 12:14, 12:22, 13:3,
---	---	--

13:4, 13:15, 13:17, 13:19, 13:23, 14:5, 14:7, 14:10, 14:13, 14:18, 14:24, 15:6, 15:7, 15:21, 15:22, 16:3, 16:4, 16:8, 16:16, 16:17, 16:19, 16:22, 16:23, 17:7, 17:8, 17:23, 17:24, 18:2, 18:7, 18:14, 18:15, 18:21, 19:7, 19:11, 19:15, 19:18, 19:20, 19:24, 20:1, 20:2, 20:3, 20:15, 20:17, 20:20, 20:25, 21:4, 21:10, 21:16, 21:17, 21:22, 21:25, 22:4, 22:13, 22:14, 23:7, 23:9, 23:17, 23:21, 24:1, 24:4, 24:11, 24:12, 24:13, 24:22, 24:23, 25:2, 25:4, 25:9, 26:6, 26:11, 26:17, 26:22, 27:12, 27:14, 27:19, 28:5, 28:20, 28:24, 28:25, 29:1, 29:6, 29:7, 29:9, 29:13, 29:14, 29:17, 29:19, 29:21, 29:24, 30:7, 30:8, 30:9, 30:12, 30:17, 30:18, 30:25, 31:3, 31:5, 31:6, 31:11, 32:16 That [5] - 10:25, 14:3, 20:18, 27:8, 29:2 that's [17] - 8:6, 8:25, 12:5, 13:10, 13:17, 14:14, 17:9, 17:18, 19:6, 23:25, 24:6, 24:13, 25:19, 26:7, 27:5, 27:9 That's [5] - 4:25, 10:6, 23:23, 24:18, 26:7 The [11] - 3:12, 11:14, 13:22, 14:21, 15:4, 19:17, 23:16, 26:19, 28:19, 30:6, 32:3 THE [54] - 1:4, 1:12, 3:4, 3:7, 3:20,	3:24, 4:6, 4:9, 5:3, 5:15, 5:24, 6:17, 6:23, 10:4, 10:9, 11:21, 13:1, 13:6, 14:16, 15:15, 15:23, 17:11, 17:14, 18:16, 18:21, 18:24, 21:15, 24:16, 25:6, 25:25, 26:9, 27:4, 27:7, 28:8, 28:12, 29:2, 30:3, 30:11, 30:15, 31:1, 31:11, 31:16, 33:2, 33:3, 33:3, 33:6, 33:7, 33:9, 33:10, 33:14 the [256] - 1:14, 1:18, 3:5, 3:7, 3:8, 3:15, 3:18, 3:22, 4:1, 4:4, 4:5, 4:8, 4:14, 4:15, 4:17, 4:18, 4:20, 4:21, 4:22, 5:1, 5:4, 5:5, 5:6, 5:7, 5:8, 5:10, 5:11, 5:12, 5:13, 5:20, 5:21, 5:22, 5:25, 6:2, 6:3, 6:4, 6:6, 6:12, 6:15, 6:19, 6:22, 6:25, 7:2, 7:4, 7:5, 7:10, 7:13, 7:14, 7:16, 7:19, 7:25, 8:5, 8:11, 8:12, 8:14, 8:15, 8:16, 8:18, 8:25, 9:5, 9:8, 9:9, 9:10, 9:11, 9:19, 9:21, 9:24, 9:25, 10:3, 10:5, 10:10, 10:12, 10:15, 10:25, 11:2, 11:4, 11:9, 11:12, 11:16, 11:18, 11:19, 11:22, 11:25, 12:2, 12:4, 12:8, 12:14, 12:16, 12:20, 12:21, 12:23, 13:3, 13:5, 13:8, 13:14, 13:15, 13:20, 13:22, 13:23, 14:3, 14:5, 14:6, 14:11, 14:17, 14:18, 14:23, 15:1, 15:5, 15:12, 15:18, 15:20, 15:23, 16:9, 16:16, 16:18,	16:19, 17:1, 17:6, 17:12, 17:21, 17:22, 17:23, 17:25, 18:3, 18:11, 18:13, 18:20, 19:1, 19:5, 19:6, 19:10, 19:11, 19:18, 19:21, 19:24, 20:1, 20:11, 20:14, 20:15, 20:16, 20:21, 20:22, 20:23, 20:25, 21:2, 21:6, 21:8, 21:9, 21:11, 21:13, 21:17, 21:18, 21:20, 21:21, 21:22, 21:25, 22:2, 22:4, 22:5, 22:6, 22:7, 22:8, 22:11, 22:12, 22:13, 22:18, 22:22, 22:23, 23:1, 23:9, 23:13, 23:15, 23:19, 23:21, 23:23, 23:25, 24:2, 24:5, 24:9, 24:10, 24:14, 24:22, 24:24, 25:1, 25:3, 25:5, 25:8, 25:10, 25:22, 26:11, 26:13, 26:15, 26:16, 26:17, 26:22, 27:5, 27:10, 27:11, 27:14, 27:17, 27:24, 28:1, 28:5, 28:12, 28:15, 28:18, 28:23, 28:25, 29:1, 29:10, 29:17, 29:20, 29:24, 30:2, 30:6, 30:7, 30:18, 30:21, 30:23, 31:3, 31:18, 32:7, 32:8 their [4] - 8:1, 13:4, 26:3, 30:24 them [11] - 11:5, 12:22, 15:9, 16:11, 21:25, 22:25, 25:16, 28:7, 28:16, 28:23 then [6] - 7:8, 7:23, 9:21, 13:14, 27:24, 30:12 there [22] - 6:11, 9:3, 10:6, 10:16, 10:20,
--	--	--

11:8, 12:21, 15:2, 15:11, 16:1, 18:7, 18:19, 19:9, 19:10, 19:14, 22:2, 25:7, 25:11, 26:10, 26:18, 27:11, 27:18 There [1] - 16:4 there's [7] - 4:16, 4:17, 9:12, 9:15, 11:23, 22:17, 30:12 There's [1] - 15:11 These [1] - 7:5 these [24] - 5:13, 5:17, 7:1, 7:14, 8:6, 8:17, 12:11, 13:3, 19:7, 19:11, 19:21, 20:10, 21:7, 21:8, 21:18, 21:19, 22:13, 23:6, 25:8, 25:12, 28:6, 28:14, 29:5 they [26] - 5:6, 10:3, 10:15, 12:22, 13:2, 13:7, 13:24, 14:9, 15:12, 16:20, 19:15, 19:22, 20:8, 21:2, 21:17, 21:19, 21:23, 23:17, 25:13, 27:18, 28:7, 29:5, 29:23, 29:24, 30:18 They're [4] - 8:3, 14:25, 20:7, 29:23 they're [4] - 7:3, 26:16, 29:21, 30:4 thing [2] - 14:17, 18:15 things [4] - 7:5, 27:19, 27:22, 30:25 think [27] - 4:12, 5:10, 7:24, 9:8, 9:24, 10:18, 11:8, 11:12, 11:15, 12:12, 12:14, 13:12, 14:5, 14:13, 14:17, 15:12, 15:18, 17:9, 21:4, 22:17, 23:21, 24:13, 25:19, 26:15, 26:23, 27:14, 29:9 thinking [1] - 23:25	This [4] - 11:18, 12:16, 18:13, 21:6 THIS [1] - 33:9 this [42] - 4:8, 7:23, 9:23, 9:25, 12:2, 12:6, 14:22, 15:4, 15:12, 15:13, 17:17, 17:22, 18:2, 18:10, 19:3, 19:17, 19:24, 20:4, 20:7, 20:8, 20:13, 21:1, 21:5, 22:3, 22:4, 23:3, 23:8, 24:4, 24:7, 24:9, 24:13, 25:14, 28:19, 29:15, 29:19, 30:17, 31:7, 32:7 Those [1] - 22:11 those [19] - 10:14, 10:23, 11:13, 15:2, 15:8, 15:18, 16:25, 17:5, 17:12, 20:14, 20:23, 22:16, 23:18, 23:19, 23:24, 25:24, 29:12, 30:11 though [2] - 10:16, 30:21 three [2] - 8:17, 11:5 through [4] - 4:14, 8:2, 25:7, 25:12 time [4] - 24:11, 32:16, 32:17, 32:20 times [2] - 18:7, 20:2 to [151] - 3:2, 3:12, 4:8, 4:13, 5:10, 5:20, 5:25, 6:4, 6:5, 6:21, 7:2, 7:8, 7:10, 7:12, 7:14, 7:18, 7:19, 7:23, 8:1, 8:9, 8:12, 8:14, 8:15, 8:16, 9:2, 9:3, 9:4, 9:8, 9:9, 9:10, 9:13, 9:14, 10:10, 10:14, 10:19, 10:21, 10:24, 11:1, 11:5, 11:9, 11:10, 11:11, 11:18, 11:19, 12:7, 12:21, 13:8, 13:10, 13:20, 13:23, 13:24, 14:8, 14:10, 14:23, 14:24, 15:2, 15:5, 15:14, 15:19,	15:20, 15:22, 15:23, 16:1, 16:7, 16:11, 16:12, 16:14, 16:17, 17:1, 17:3, 17:16, 18:4, 18:10, 18:11, 18:15, 18:16, 18:17, 18:25, 19:1, 19:3, 19:5, 19:21, 20:1, 20:4, 20:15, 20:21, 20:23, 21:11, 21:12, 21:17, 21:19, 21:21, 22:7, 22:20, 22:22, 22:24, 23:2, 23:9, 23:12, 23:13, 23:15, 23:18, 23:22, 24:4, 24:8, 24:9, 24:10, 24:19, 24:23, 24:24, 25:1, 25:5, 25:7, 25:8, 25:9, 25:11, 25:12, 25:13, 25:16, 25:17, 26:2, 26:11, 26:12, 26:13, 26:16, 27:10, 27:25, 28:2, 28:3, 28:7, 28:10, 28:15, 28:16, 28:18, 28:20, 28:22, 29:2, 29:13, 29:14, 30:13, 30:19, 30:24, 31:7 TO [3] - 33:3, 33:9, 33:9 today [2] - 3:12, 8:15 TODAY'S [1] - 32:10 told [1] - 24:4 total [3] - 7:20, 17:18, 21:24 totally [1] - 8:23 Transcriber [1] - 1:23 TRANSCRIBER [3] - 32:10, 33:2, 33:14 transcribers [1] - 32:7 TRANSCRIPT [4] - 32:13, 33:3, 33:7, 33:15 transcript [3] - 32:7, 32:8, 32:8 Transcription [1] - 32:3 transparency [2] - 14:11, 28:10
---	--	--

TRIAL [2] - 1:4, 33:7 tried [1] - 9:13 trigger [3] - 9:2, 9:20, 9:22 triggering [1] - 10:1 true [1] - 25:19 TRUE [1] - 33:3 trumps [1] - 25:10 try [2] - 7:12, 23:3 trying [3] - 10:19, 11:1, 22:20 tuberculosis [1] - 30:1 two [5] - 7:20, 11:5, 16:19, 17:12, 29:8 two-page [1] - 29:8 TYPE [1] - 32:15 types [2] - 19:7, 25:3	23:12 V v [1] - 27:6 V [2] - 32:11, 33:4 value [2] - 25:7, 25:12 various [2] - 7:8, 26:4 varying [1] - 22:14 versus [1] - 3:9 very [14] - 6:2, 7:12, 8:22, 13:19, 14:19, 16:7, 18:10, 20:25, 21:4, 21:10, 24:20, 28:9, 30:10, 30:21 via [1] - 16:9 view [4] - 8:20, 26:12, 26:13, 26:15 violate [1] - 23:3 violation [2] - 5:11, 23:1 Voces [1] - 27:17 VOLUME [1] - 32:13 Volume [1] - 1:1 volume [2] - 15:14, 32:7 voluminous [1] - 16:8 vs [1] - 1:8	11:12, 11:14, 11:23, 12:5, 12:10, 12:12, 12:15, 12:16, 13:12, 14:13, 15:18, 15:21, 16:4, 16:6, 16:12, 16:14, 16:16, 16:17, 16:20, 16:22, 16:23, 17:15, 17:18, 17:19, 19:2, 19:5, 20:3, 20:5, 20:9, 20:17, 21:13, 21:17, 23:15, 24:11, 25:4, 25:21, 26:23, 27:16, 29:24, 29:25, 30:1 We [10] - 4:12, 6:24, 7:14, 14:23, 16:16, 24:3, 24:5, 24:13, 26:1, 27:2 we're [3] - 12:12, 24:7, 28:4 we've [3] - 13:10, 17:5, 17:7 weighing [1] - 20:24 well [6] - 5:15, 5:16, 8:4, 15:22, 19:2, 21:5 Well [2] - 25:6, 31:4 were [21] - 7:12, 10:20, 11:5, 12:22, 12:23, 13:2, 13:3, 13:5, 14:8, 16:1, 16:3, 16:4, 16:11, 16:17, 20:15, 21:17, 24:9, 25:9, 27:19, 28:15, 30:8 what [11] - 13:10, 18:17, 19:2, 21:10, 21:22, 23:12, 24:4, 24:7, 24:14, 25:13 whatever [2] - 29:24, 30:1 when [4] - 11:23, 18:8, 28:19, 29:14 whenever [1] - 14:9 where [14] - 8:23, 10:6, 10:19, 10:20, 10:25, 18:3, 18:11, 18:13, 18:14, 19:3, 19:10, 20:11, 20:12, 23:11 whether [2] - 4:16, 4:17
U U.S [2] - 20:22, 22:5 Um [6] - 10:4, 10:9, 13:1, 13:6, 21:15, 27:4 um [1] - 28:14 Um-hum [6] - 10:4, 10:9, 13:1, 13:6, 21:15, 27:4 um.. [1] - 25:18 under [13] - 6:9, 8:5, 18:7, 19:11, 22:9, 27:19, 27:22, 28:7, 28:10, 30:9, 31:5, 31:11 undermine [1] - 14:11 understand [4] - 6:23, 18:21, 18:22, 26:3 understanding [1] - 4:20 undertake [1] - 15:5 uniform [1] - 22:13 UNION [2] - 1:6, 33:4 Union [2] - 1:14, 3:9 United [2] - 10:11, 10:15 unlike [1] - 19:13 unrelated [1] - 14:25 unsatisfactory [1] - 17:3 us [5] - 4:4, 18:8, 20:3, 24:4, 28:7 use [1] - 11:23 used [2] - 17:18,	W wage [1] - 10:14 want [5] - 6:21, 14:23, 16:14, 24:19, 31:7 wanted [3] - 13:7, 14:10, 20:21 wanting [1] - 22:24 WAS [1] - 33:10 was [29] - 9:21, 10:6, 10:13, 10:16, 10:23, 10:25, 11:6, 12:16, 12:18, 12:20, 12:21, 13:19, 14:18, 16:25, 19:20, 20:20, 22:5, 24:1, 24:22, 24:23, 27:12, 27:21, 29:2, 29:9, 29:13, 29:19, 30:17 way [5] - 6:4, 20:1, 22:13, 30:12, 30:16 we [47] - 6:21, 7:1, 7:12, 7:19, 8:10,	

WHICH [1] - 33:9 which [7] - 9:22, 14:19, 15:13, 21:22, 26:2, 27:2, 27:22 while [1] - 21:17 who [2] - 4:4, 12:23 why [8] - 12:15, 14:6, 15:12, 22:17, 25:23, 26:5, 29:19, 30:9 will [1] - 18:19 Wisconsin [2] - 20:10, 27:18 wish [1] - 15:20 with [19] - 3:15, 3:22, 4:4, 5:7, 6:9, 9:6, 11:16, 15:23, 16:18, 18:4, 19:4, 20:13, 24:4, 25:17, 27:22, 28:3, 28:23, 32:8 WITH [1] - 33:6 With [2] - 4:3, 8:10 within [3] - 17:23, 22:6, 29:25 without [1] - 20:24 WITNESS [1] - 2:3 word [1] - 32:8 worker [1] - 10:8 workers [3] - 10:10, 10:11, 10:15 working [2] - 4:4, 21:18 works [1] - 9:23 would [16] - 9:7, 9:22, 12:2, 13:4, 14:3, 14:6, 14:10, 15:13, 24:11, 25:14, 25:24, 26:3, 26:6, 26:11, 26:12	11:3, 15:20, 15:25, 16:12, 18:16, 18:25, 19:14, 22:1, 24:17, 24:19, 25:6, 25:9, 27:25, 31:3, 31:13, 31:14, 31:15 you're [1] - 29:21 your [21] - 3:7, 3:17, 3:25, 4:3, 5:2, 5:9, 5:19, 8:10, 9:13, 15:19, 15:25, 18:22, 20:5, 20:18, 23:24, 24:20, 25:20, 26:7, 31:9, 31:10, 31:15 yourselves [1] - 3:14
X	
X [1] - 2:1	
Y	
Yeah [1] - 29:4 Yes [3] - 5:9, 5:19, 5:24 yes [1] - 5:1 You [3] - 3:6, 15:9, 18:16 you [22] - 7:3, 7:9,	

EXHIBIT B

Kenny, Jessica

From: Kenny, Jessica
Sent: Tuesday, December 16, 2025 12:28 PM
To: Timothy Baptiste
Subject: ACLU ICE public records request- work product
Attachments: ACLUM Public Records Request - 12_11_25.pdf; 20251211154626159.pdf;
20251211154633303.pdf

Plymouth County Sheriff's Department
24 Long Pond Road
Plymouth, Ma 02360
ph. 508-732-1867
fax. 508-830-6234
jkenny@pcsdma.org

EXHIBIT C

Kenny, Jessica

From: Kenny, Jessica
Sent: Wednesday, February 25, 2026 11:02 AM
To: Yeghiasarian, Anna
Subject: FW: [EXTERNAL EMAIL]Re: [EXTERNAL EMAIL]Public Records Request from ACLU of Massachusetts
Attachments: Complaint - Case No. 2684CV00477 ACLUM v. Plymouth County Sheriff's Department.pdf

[REDACTED]

Jessica L. Kenny
General Counsel
Plymouth County Sheriff's Department
24 Long Pond Road
Plymouth, Ma 02360
ph. 508-732-1867
fax. 508-830-6234
jkenny@pcsdma.org

From: Mackenzie Saunders <MSaunders@aclum.org>
Sent: Wednesday, February 25, 2026 10:49 AM
To: Kenny, Jessica <jkenny@pcsdma.org>
Subject: Re: [EXTERNAL EMAIL]Re: [EXTERNAL EMAIL]Public Records Request from ACLU of Massachusetts

Attorney Kenny,

We have received your response.

We have filed a civil action on this matter; attached is the complaint. We will follow up with formal service once we receive summons from the court.

Mackenzie Saunders (she/her)

Equal Justice Works Fellow

American Civil Liberties Union of Massachusetts

(617) 482-3170 ext. 317 | msaunders@aclum.org



From: Kenny, Jessica <jkenny@pcsdma.org>
Sent: Tuesday, February 17, 2026 8:51 AM
To: Mackenzie Saunders <MSaunders@aclum.org>
Subject: RE: [EXTERNAL EMAIL]Re: [EXTERNAL EMAIL]Public Records Request from ACLU of Massachusetts

Ms. Saunders,

I have attached a copy of the decision from the Supervisor of records that the Department cited in its December 26th response. As the Regulation and this decision make clear, the records that you seek, records that contain identifying information relating to detainees, are prohibited from being released by the Department. The documents themselves are not public records and subjecting them to redactions, as you suggest, is not an option for the Department. (See pg. 4 of SPR25/1221). Additionally, the records you seek contain detailed medical information regarding the subjects of the records, including diagnosis, reasons for treatment, medical coding, test results and other detailed medical conditions. Therefore, even if the Department was not subject to the Regulation, the privacy and patient confidentiality exceptions to the public records laws do apply. For these reasons the Department maintains its decision and justification for withholding certain requested records as articulated in its December 26, 2025 response. As I noted in that letter, you have the right to appeal this determination. Additionally, you may file a F.O.I.A. request to the Department of Homeland Security.

Jessica L. Kenny
General Counsel
Plymouth County Sheriff's Department
24 Long Pond Road
Plymouth, Ma 02360
ph. 508-732-1867
fax. 508-830-6234
jkenny@pcsdma.org

From: Mackenzie Saunders <MSaunders@aclum.org>
Sent: Thursday, February 5, 2026 12:06 PM
To: Kenny, Jessica <jkenny@pcsdma.org>
Subject: [EXTERNAL EMAIL]Re: [EXTERNAL EMAIL]Public Records Request from ACLU of Massachusetts

CAUTION: This email originated from a sender outside of PCSO mail system. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Attorney Kenny,

Attached is a letter on behalf of the American Civil Liberties Union of Massachusetts, in response to the letter sent by Plymouth County Sheriff's Department about ACLUM's public records request.

Sincerely,
Mackenzie Saunders

Mackenzie Saunders (she/her)

Equal Justice Works Fellow

American Civil Liberties Union of Massachusetts

(617) 482-3170 ext. 317 | msaunders@aclum.org

ACLU
Massachusetts

From: Kenny, Jessica <jkenny@pcsdma.org>
Sent: Friday, December 26, 2025 9:06 AM
To: Mackenzie Saunders <MSaunders@aclum.org>
Cc: Eonas, Isabel <ieonas@pcsdma.org>; Sarris, Susan <ssarris@pcsdma.org>
Subject: RE: [EXTERNAL EMAIL]Public Records Request from ACLU of Massachusetts

Please find the attached letter and records responsive to your public records request.

Jessica L. Kenny
General Counsel
Plymouth County Sheriff's Department
24 Long Pond Road
Plymouth, Ma 02360
ph. 508-732-1867
fax. 508-830-6234
jkenny@pcsdma.org

From: Mackenzie Saunders <MSaunders@aclum.org>
Sent: Thursday, December 11, 2025 1:10 PM
To: Kenny, Jessica <jkenny@pcsdma.org>
Subject: [EXTERNAL EMAIL]Public Records Request from ACLU of Massachusetts

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Dear Attorney Kenny,

Attached is a public records request made under G.L. c. 66, § 10, on behalf of the American Civil Liberties Union of Massachusetts. Should you have any questions, please don't hesitate to reach out to me.

Sincerely,
Mackenzie Saunders

Mackenzie Saunders (she/her)
Equal Justice Works Fellow
American Civil Liberties Union of Massachusetts
(617) 482-3170 ext. 317 | msaunders@aclum.org



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EXHIBIT D

Kenny, Jessica

From: Kenny, Jessica
Sent: Thursday, February 26, 2026 12:26 PM
To: rayford.farquhar@usdoj.gov
Cc: Eonas, Isabel
Subject: Litigation involving out intergovernmental agreement with DOJ
Attachments: ACLUM Public Records Request - 12_11_25.pdf; ACLU ICE PR response.pdf; Complaint - Case No. 2684CV00477 ACLUM v. Plymouth County Sheriff's Department.pdf

Good afternoon AUSA Farquhar,

Jessica L. Kenny
General Counsel

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