CIVIL ACTION COVER SHEET

DOCKET NUMBER

Trial Court of Massachusetts
The Superior Court

COUNTY: Suffolk

PLAINTIFF(S):	American Civil Liberties Union Of Massachusetts, Inc.	DEFENDANT(S):	Bristol County Sheriff's Office
ADDRESS:	211 Congress St, Boston, MA 02110		
ATTORNEY:	Christopher E. Hart and Nicholas L. Anastasi, Foley Hoag LLP		
ADDRESS:	155 Seaport Blvd. Boston, MA 02210	ADDRESS:	400 Faunce Corner Rd, North Dartmouth, MA 02747
BBO:	625031, 703171		

TYPE OF ACTION AND TRACK DESIGNATION (see reverse side)

CODE NO.	TYPE OF ACTION (specify)	TRACK	HAS A JURY CLAIM BEEN MADE?
E99	Other Administrative Action	X	☐ YES ☒ NO

*If "Other" please describe: Action Seeking Public Records

Is there a claim under G.L. c. 93A? ☐ YES ☒ NO

Is this a class action under Mass. R. Civ. P. 23? ☐ YES ☒ NO

STATEMENT OF DAMAGES PURSUANT TO G.L. c. 212, § 3A

The following is a full, itemized and detailed statement of the facts on which the undersigned plaintiff or plaintiff's counsel relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.

TORT CLAIMS
(attach additional sheets as necessary)

A. Documented medical expenses to date:
1. Total hospital expenses ..... $
2. Total doctor expenses ..... $
3. Total chiropractic expenses ..... $
4. Total physical therapy expenses ..... $
5. Total other expenses (describe below) ..... $

Subtotal (A): $

B. Documented lost wages and compensation to date ..... $
C. Documented property damages to date ..... $
D. Reasonably anticipated future medical and hospital expenses ..... $
E. Reasonably anticipated lost wages ..... $
F. Other documented items of damages (describe below) ..... $

G. Briefly describe plaintiff's injury, including the nature and extent of injury:

TOTAL (A-F): $

CONTRACT CLAIMS
(attach additional sheets as necessary)

☐ This action includes a claim involving collection of a debt incurred pursuant to a revolving credit agreement. Mass. R. Civ. P. 8.1(a).

Provide a detailed description of claim(s):

TOTAL: $

Signature of Attorney/ Unrepresented Plaintiff: X _____ **Date:** May 18, 2020

RELATED ACTIONS: Please provide the case number, case name, and county of any related actions pending in the Superior Court.

CERTIFICATION PURSUANT TO SJC RULE 1:18

I hereby certify that I have complied with requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods of dispute resolution.

Signature of Attorney of Record: X _____ **Date:** May 18, 2020

CIVIL ACTION COVER SHEET INSTRUCTIONS
SELECT CATEGORY THAT BEST DESCRIBES YOUR CASE

AC Actions Involving the State/Municipality *

AA1 Contract Action involving Commonwealth, Municipality, MBTA, etc. (A)
AB1 Tortious Action involving Commonwealth, Municipality, MBTA, etc. (A)
AC1 Real Property Action involving Commonwealth, Municipality, MBTA etc. (A)
AD1 Equity Action involving Commonwealth, Municipality, MBTA, etc. (A)
AE1 Administrative Action involving Commonwealth, Municipality, MBTA,etc. (A)

CN Contract/Business Cases

A01 Services, Labor, and Materials (F)
A02 Goods Sold and Delivered (F)
A03 Commercial Paper (F)
A04 Employment Contract (F)
A05 Consumer Revolving Credit - M.R.C.P. 8.1 (F)
A06 Insurance Contract (F)
A08 Sale or Lease of Real Estate (F)
A12 Construction Dispute (A)
A14 Interpleader (F)
BA1 Governance, Conduct, Internal Affairs of Entities (A)
BA3 Liability of Shareholders, Directors, Officers, Partners, etc. (A)
BB1 Shareholder Derivative (A)
BB2 Securities Transactions (A)
BC1 Mergers, Consolidations, Sales of Assets, Issuance of Debt, Equity, etc. (A)
BD1 Intellectual Property (A)
BD2 Proprietary Information or Trade Secrets (A)
BG1 Financial Institutions/Funds (A)
BH1 Violation of Antitrust or Trade Regulation Laws (A)
A99 Other Contract/Business Action - Specify (F)

* Choose this case type if ANY party is the Commonwealth, a municipality, the MBTA, or any other governmental entity UNLESS your case is a case type listed under Administrative Civil Actions (AA).

† Choose this case type if ANY party is an incarcerated party, UNLESS your case is a case type listed under Administrative Civil Actions (AA) or is a Prisoner Habeas Corpus case (E97).

ER Equitable Remedies

D01 Specific Performance of a Contract (A)
D02 Reach and Apply (F)
D03 Injunction (F)
D04 Reform/ Cancel Instrument (F)
D05 Equitable Replevin (F)
D06 Contribution or Indemnification (F)
D07 Imposition of a Trust (A)
D08 Minority Shareholder's Suit (A)
D09 Interference in Contractual Relationship (F)
D10 Accounting (A)
D11 Enforcement of Restrictive Covenant (F)
D12 Dissolution of a Partnership (F)
D13 Declaratory Judgment, G.L. c. 231A (A)
D14 Dissolution of a Corporation (F)
D99 Other Equity Action (F)

PA Civil Actions Involving Incarcerated Party †

PA1 Contract Action involving an Incarcerated Party (A)
PB1 Tortious Action involving an Incarcerated Party (A)
PC1 Real Property Action involving an Incarcerated Party (F)
PD1 Equity Action involving an Incarcerated Party (F)
PE1 Administrative Action involving an Incarcerated Party (F)

TR Torts

B03 Motor Vehicle Negligence - Personal Injury/Property Damage (F)
B04 Other Negligence - Personal Injury/Property Damage (F)
B05 Products Liability (A)
B06 Malpractice - Medical (A)
B07 Malpractice - Other (A)
B08 Wrongful Death - Non-medical (A)
B15 Defamation (A)
B19 Asbestos (A)
B20 Personal Injury - Slip & Fall (F)
B21 Environmental (F)
B22 Employment Discrimination (F)
BE1 Fraud, Business Torts, etc. (A)
B99 Other Tortious Action (F)

RP Summary Process (Real Property)

S01 Summary Process - Residential (X)
S02 Summary Process - Commercial/ Non-residential (F)

RP Real Property

C01 Land Taking (F)
C02 Zoning Appeal, G.L. c. 40A (F)
C03 Dispute Concerning Title (F)
C04 Foreclosure of a Mortgage (X)
C05 Condominium Lien & Charges (X)
C99 Other Real Property Action (F)

MC Miscellaneous Civil Actions

E18 Foreign Discovery Proceeding (X)
E97 Prisoner Habeas Corpus (X)
E22 Lottery Assignment, G.L. c. 10, § 28 (X)

AB Abuse/Harassment Prevention

E15 Abuse Prevention Petition, G.L. c. 209A (X)
E21 Protection from Harassment, G.L. c. 258E (X)

AA Administrative Civil Actions

E02 Appeal from Administrative Agency, G.L. c. 30A (X)
E03 Certiorari Action, G.L. c. 249, § 4 (X)
E05 Confirmation of Arbitration Awards (X)
E06 Mass Antitrust Act, G.L. c. 93, § 9 (A)
E07 Mass Antitrust Act, G.L. c. 93, § 8 (X)
E08 Appointment of a Receiver (X)
E09 Construction Surety Bond, G.L. c. 149, §§ 29, 29A (A)
E10 Summary Process Appeal (X)
E11 Worker's Compensation (X)
E16 Auto Surcharge Appeal (X)
E17 Civil Rights Act, G.L. c.12, § 11H (A)
E24 Appeal from District Court Commitment, G.L. c.123, § 9(b) (X)
E25 Pleural Registry (Asbestos cases)
E94 Forfeiture, G.L. c. 265, § 56 (X)
E95 Forfeiture, G.L. c. 94C, § 47 (F)
E99 Other Administrative Action (X)
Z01 Medical Malpractice - Tribunal only, G.L. c. 231, § 60B (F)
Z02 Appeal Bond Denial (X)

SO Sex Offender Review

E12 SDP Commitment, G.L. c. 123A, § 12 (X)
E14 SDP Petition, G.L. c. 123A, § 9(b) (X)

RC Restricted Civil Actions

E19 Sex Offender Registry, G.L. c. 6, § 178M (X)
E27 Minor Seeking Consent, G.L. c.112, § 12S (X)

TRANSFER YOUR SELECTION TO THE FACE SHEET

EXAMPLE:

CODE NO.	TYPE OF ACTION (specify)	TRACK	HAS A JURY CLAIM BEEN MADE?
B03	Motor Vehicle Negligence-Personal Injury	F	[x] YES [ ] NO

STATEMENT OF DAMAGES PURSUANT TO G.L. c. 212, § 3A

DUTY OF THE PLAINTIFF - The plaintiff shall set forth, on the face of the civil action cover sheet (or attach additional sheets as necessary), a statement specifying the facts on which the plaintiff relies to determine money damages. A copy of such civil action cover sheet, including the statement as to the damages, shall be served with the complaint. **A clerk-magistrate shall not accept for filing a complaint, except as otherwise provided by law, unless it is accompanied by such a statement signed by the attorney or self-represented litigant.**

DUTY OF THE DEFENDANT - If the defendant believes that the statement of damages filed by the plaintiff is inadequate, the defendant may file with his/her answer a statement specifying the potential damages which may result if the plaintiff prevails.

A CIVIL COVER SHEET MUST BE FILED WITH EACH COMPLAINT.
FAILURE TO COMPLETE THIS COVER SHEET THOROUGHLY AND ACCURATELY MAY RESULT IN DISMISSAL OF THIS ACTION.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. _____

AMERICAN CIVIL LIBERTIES UNION OF MASSACHUSETTS, INC.,

Plaintiff,

v.

BRISTOL COUNTY SHERIFF'S OFFICE,

Defendant.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This lawsuit seeks the production of records under the Massachusetts Public Records Law ("PRL"), G.L. c. 66, § 10, which have been unlawfully and completely withheld by the Bristol County Sheriff's Office ("BCSO") in response to a public records request from the American Civil Liberties Union of Massachusetts, Inc. ("ACLUM.") concerning a violent incident that occurred at the BCSO on May 1, 2020.

2. The incident on May 1 involved BCSO staff members and several civil immigration detainees in their care. The incident escalated to violence and put three detainees in the hospital.

3. After the incident, Bristol County Sheriff Thomas M. Hodgson made numerous public statements on the BCSO's behalf, which purported to describe the event in great detail. Among other things, Sheriff Hodgson gave a lengthy press conference and separate radio interview in which he described the incident, including his personal involvement. Sheriff

Hodgson also invited members of the press into the immigration detention unit to inspect it and take photographs. Sheriff Hodgson has made many subsequent comments about the incident on Twitter, Facebook, and in various news media.

4. On May 7, following the incident and those public pronouncements, ACLUM submitted the request that forms the basis of this lawsuit. The request sought audiovisual recordings of the incident, and reports and communications concerning it, among other things.

5. After receiving ACLUM's request, the BCSO suddenly reversed course. Notwithstanding its multiple prior public claims about the incident, the BCSO issued a blanket denial of ACLUM's request and now claims that *all* information concerning the incident must be shielded from public view. The BCSO has refused to produce even a single piece of paper in response to the request.

6. The BCSO's complete refusal to produce these records is contrary to law. Additionally, release of the requested records would serve the public interest by promoting transparency and accountability. Such transparency is particularly important where this incident arose in the context of an ongoing public controversy concerning allegedly unsafe conditions in the BCSO's immigration detention facilities.

7. Accordingly, ACLUM respectfully requests that the Court order the BCSO to produce all responsive records as soon as possible.

PARTIES

8. Plaintiff American Civil Liberties Union of Massachusetts, Inc., is a Massachusetts non-profit corporation with its principal place of business in Boston, Massachusetts. ACLUM is dedicated to the protection of civil rights and civil liberties, and in service of that mission it pursues government transparency and accountability.

9. Defendant Bristol County Sheriff's Office is an agency of the Commonwealth of Massachusetts. The BCSO is administered by an elected sheriff, who is an employee of the Commonwealth. The Bristol County Sheriff is Thomas M. Hodgson.

JURISDICTION AND VENUE

10. Jurisdiction and venue are proper pursuant to G. L. c. 66, § 10A(c), c. 212, § 4, c. 231A, § 1, c. 231A, § 1, and Chapter 61 of the Acts of 2009.

FACTS ALLEGED

Escalating Tensions at the BCSO

11. The BCSO houses sentenced prisoners, pre-trial detainees, and civil immigration detainees. Civil immigration detainees are not held for any criminal justice purpose. Rather, they are held pending the resolution of civil proceedings to decide their immigration status or, in some cases, while awaiting deportation.

12. On or about March 20, 2020, various news organizations published a letter from more than 50 people held in the BCSO's immigration detention "Unit B." The letter asserted that the BCSO's cramped housing conditions were unsafe in light of the ongoing coronavirus pandemic, including because more than 50 people were being held together in closely spaced bunk beds.[1]

[1] *See, e.g.*, Shannon Dooling, "57 Inmates to a Unit, Bunk Beds 3 Feet Apart; ICE Detainees In Bristol County Cite Overcrowding Amid COVID-19 Fears," *WBUR* (Mar. 20, 2020), *available at* https://www.wbur.org/news/2020/03/20/bristol-county-sheriff-immigration-covid-19-coronavirus; Sarah Betancourt, "Detainees at jail say they fear COVID-19 outbreak; In letter, 51 say they are packed too close together," *Commonwealth Magazine* (Mar. 20, 2020), *available at* https://commonwealthmagazine.org/immigration/detainees-at-jail-say-they-fear-covid-19-outbreak/.

13. The BCSO made a series of public statements denying the accusations in the letter, including reportedly characterizing certain allegations as a "[c]omplete lie."[2]

14. On March 27, 2020, immigration detainees—including at least one in "Unit B"—filed a class action lawsuit in the United States District Court for the District of Massachusetts, captioned *Savino v. Souza*, C.A. No. 20-10617-WGY (D. Mass.) ("*Savino*"). The suit (filed by the detainees' counsel at Lawyers for Civil Rights and the Yale Law School) alleged the existence of "dangerous conditions" at the BCSO that "will imminently result in the uncontrolled spread of COVID-19."[3]

15. Beginning in early April 2020, the court in *Savino* conducted a series of bail hearings for civil immigration detainees at the BCSO and ordered certain of them be released on conditions.[4] To date, the federal court has ordered more than 40 immigration detainees released from the BCSO.[5]

16. In response, the BCSO and Sheriff Hodgson made an escalating series of public statements expressing strong disapproval of, and opposition to, the release of civil immigration

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[2] Sarah Betancourt, "*Detainees at jail say they fear COVID-19 outbreak; In letter, 51 say they are packed too close together*," Commonwealth Magazine (Mar. 20, 2020), *available at* https://commonwealthmagazine.org/immigration/detainees-at-jail-say-they-fear-covid-19-outbreak/.

[3] Complaint *available at*: https://law.yale.edu/sites/default/files/area/clinic/document/1-_complaint.pdf.

[4] *See, e.g.*, April 2, 2020 Order, *Savino v. Souza*, C.A. No. 20-10617-WGY (D. Mass.), *available at* https://law.yale.edu/sites/default/files/area/clinic/wirac_savino_v._souza_order_from_april_3_hearing.pdf.

[5] *See* May 12, 2020 Memorandum of Decision, *Savino v. Souza*, C.A. No. 20-10617-WGY (D. Mass.), *available at* https://law.yale.edu/sites/default/files/area/clinic/wirac_savino_v._souza_175_pi_order.pdf.

detainees through the *Savino* litigation. For example, on April 16, 2020, Sheriff Hodgson appeared on the television program "Fox & Friends First" and characterized such releases as "ludicrous" and a "serious, serious problem."[6]

17. On May 1, 2020, at 3:07 p.m., Sheriff Hodgson tweeted that "I took an oath to protect the people in our neighborhood, and these judges are undermining that oath by releasing dangerous individuals back into our communities."[7]

The May 1, 2020 Incident

18. On May 1, 2020, at 10:03 p.m., the BCSO released a letter describing an encounter that evening between BCSO personnel and immigration detainees in Unit B that escalated to physical violence (the "Incident"). *See* Ex. A (May 1, 2020 letter from Sheriff Hodgson, released via BCSO twitter account).[8] According to the letter, BCSO personnel used force to restrain the detainees, and three detainees were hospitalized. *Id.*

19. Following the Incident, the BCSO made a series of detailed public assertions concerning the alleged sequence of events.

20. For example, the BCSO's May 1 letter asserts that detainees "rushed violently at Sheriff Thomas M. Hodgson and corrections officers, barricaded themselves inside the facility, ripped washing machines and pipes off the wall, broke windows and trashed the entire unit." *See* Ex. A. It further asserts that BCSO "corrections officers, special response team members and the

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[6] https://twitter.com/FoxFriendsFirst/status/1250763428140134402.

[7] https://twitter.com/SheriffHodgson/status/1256299143389200384.

[8] https://twitter.com/BristolSheriff/status/1256404027925041152.

K9 unit entered the facility and were attacked by the ICE detainees," but were "able to quickly gain control of the wing and restrain the detainees." *Id.*

21. Similarly, on or about May 2, 2020, Sheriff Hodgson gave a press conference lasting about 15 minutes, in which he purported to describe the Incident in great detail.[9] Among other things, he asserted that he was personally present in Unit B during at least part of the Incident, and that he personally initiated the use of force against a non-violent detainee by, at least, attempting to forcibly remove a telephone from the detainee's hand. Sheriff Hodgson also appeared to express personal animus toward that detainee, calling him "the ringleader of all these people" and referring to him multiple times as a "con man." Sheriff Hodgson further stated "we have it all on film."

22. Following the press conference, Sheriff Hodgson escorted members of the media into Unit B and allowed them to inspect and take photographs of the interior.[10]

23. Sheriff Hodgson subsequently made a series of additional public statements about the Incident, including on Twitter, Facebook, and various news media. *See* Exs. B, C, & D. Among other things, Sheriff Hodgson was interviewed for more than 30 minutes about the Incident on WBSM's Chris McCarthy Show, during which he again described the Incident in great detail.[11] Sheriff Hodgson again described personally trying to remove a telephone from the hands of a

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[9] NBC 10 WJAR Facebook Post Embedding Live Press Conference Video, *available at* https://www.facebook.com/nbc10/videos/live-bristol-county-sheriff-thomas-hodgson-delivers-a-press- conference-regarding/931771247283424/.

[10] Mary Serreze, "Photos: Ice Lockup at Bristol County Jail Trashed by Detainees," May 3, 2010, *available at* https://wbsm.com/photos-ice-lockup-at-bristol-county-jail-trashed-by-detainees/.

[11] https://www.youtube.com/watch?reload=9&v=4nJ6xZf8Tug.

detainee, who Sheriff Hodgson described as "the ringleader" who is "always on the phone . . . spewing lies."

24. Conflicting reports of the Incident have emerged. The detainees have asserted that they did not attack anyone, but rather were victims of violence initated by Sheriff Hodgson and the BCSO.

25. For example, news organizations have published audio recordings purportedly made during the Incident, in which a detainee stated, "The sheriff approached me and attacked me." Another detainee stated, "They sprayed gas, they've hit us, and they've beat us."[12]

The Request

26. On May 7, 2020, ACLUM sent a public records request to the BCSO for records concerning the incident (the "Request"). *See* Ex. E (exhibits to letter omitted).

27. The Request sought production of:

a. All audio and visual recordings of or concerning the Incident, including but not limited to recordings from any and all installed cameras, handheld or mobile cameras, mobile phones, and body cameras. We understand this would include, but is not limited to, all audio and visual recordings of the B Wing of the BCSO's immigration detention facility, and events taking place therein, from 4:00 p.m. to midnight on May 1, 2020.

b. All still photographs of or concerning the Incident.

c. All reports and other records prepared by BCSO's employees, agents, and contractors concerning the Incident, including, but not limited to, reports describing the Incident, and any reports describing the BCSO's response to the Incident (including any reports documenting or concerning any use of force, chemical agents, and/or ammunition).

[12] Betancourt, Sarah. "Recordings of Detainees at Bristol Jail Released." Common Wealth Magazine, 7 May 2020, *available at* https://commonwealthmagazine.org/immigration/recordings-of-detainees-at-bristol-jail-released/.

d. All records collected, made, or prepared during any investigation of the Incident by the BCSO, and a complete copy of any investigation file concerning the Incident.

e. All records containing any findings, conclusions, recommendations, or other results of any investigation by the BCSO concerning the Incident.

f. All records containing communications between the BCSO (including Sheriff Hodgson and BCSO employees), on the one hand, and any federal department or agency (including the Department of Homeland Security and U.S. Immigration and Customs Enforcement), on the other, concerning the Incident. The requested records include, but are not limited to, any such electronic mail and any and all attachments thereto.

g. All documents, audio and visual recordings, and other records provided by the BCSO to the Department of Homeland Security and/or to U.S. Immigration and Customs Enforcement in connection with any investigation into the Incident.

h. All records containing communications between the BCSO (including Sheriff Hodgson and BCSO employees), on the one hand, and the Office of the Inspector General for the Department of Homeland Security, on the other, concerning the Incident. The requested records include, but are not limited to, any such electronic mail and any and all attachments thereto.

i. All documents, audio and visual recordings, and other records provided by the BCSO to the Office of the Inspector General for the Department of Homeland Security in connection with any investigation into the Incident.

j. All records containing communications between the BCSO (including Sheriff Hodgson and BCSO employees), on the one hand, and the Executive Office of the President, on the other, concerning the Incident. The requested records include, but are not limited to, any such electronic mail and any and all attachments thereto.

28. Pursuant to 950 C.M.R. 32.07, the Request also sought a waiver of any fees and copying costs, because it was made by a non-profit organization that makes information available to the public, and was therefore in the public interest and not in ACLUM's commercial interest.

BCSO's Blanket Refusal to Produce Any Records

29. Pursuant to c. 66, § 10, the BCSO was required, within 10 business days, to either produce the requested records pursuant to § 10(a), or provide a written response pursuant to § 10(b). A written response pursuant to § 10(b) "shall" include nine enumerated categories of information, including identifying

> any records, categories of records or portions of records that the . . . municipality intends to withhold, and . . . the specific reasons for such withholding, including the specific exemption or exemptions upon which the withholding is based.

See G.L. c. 66, § 10(b)(iv)-(v).

30. On May 14, 2020, the BCSO responded with a blanket rejection to the requests invoking exemptions under G.L. c. 4, §§ 7(26)(f) and (n). *See* Ex. F.

31. Exemption (f) exempts certain investigatory materials from disclosure under the Massachusetts PRL. It exempts only "investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials," in situations where disclosing the investigatory materials "would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest."

32. Exemption (n) exempts certain records related to public safety from disclosure under the Massachusetts PRL. Specifically, it allows a records custodian to withhold an otherwise public record if the record is sufficiently related to the safety or security of persons or infrastructure, and if disclosure of the record, in the "reasonable judgment of the record custodian," is "likely to jeopardize public safety."

33. These limited exemptions apply only to certain records or portions of records in certain carefully delineated circumstances. They do not justify the wholesale withholding of every record concerning the Incident, particularly given the extensive public disclosures about the Incident and the facility already made by the BCSO and Sheriff Hodgson.

34. Further, the asserted exemptions cannot overcome the public interest in disclosure. Among other things, it is important for the public to understand any use of force by corrections facilities against civil detainees, particularly where there is reason to conclude that leadership of the facility harbored animus toward at least some of the detainees as a result of their litigation against the facility to challenge allegedly unsafe conditions.[13]

CLAIMS FOR RELIEF

Count I – Violation of the Massachusetts Public Records Law (G.L. Ch. 66, § 10 & 10a)

35. ACLUM incorporates by reference the foregoing paragraphs as if set forth in their entirety.

36. The BCSO has unlawfully refused to produce public records in response to ACLUM"s Request.

37. ACLUM is entitled to injunctive relief requiring the BCSO to produce the requested records forthwith.

38. ACLUM is entitled to injunctive relief prohibiting the BCSO from charging any fee for the production of the requested records.

Count II – Declaratory Judgment (G.L. Ch. 231A, § 1)

39. ACLUM incorporates by reference the foregoing paragraphs as if set forth in their entirety.

[13] At least for the moment, it appears that the requested records will not generally be discoverable in the *Savino* litigation. *See* May 4, 2020 Electronic Order, *Savino v. Souza*, C.A. No. 20-10617-WGY (D. Mass.) ("The present conditions under which any of the detainees are being held is properly discoverable. The circumstances of Friday's disruption is not.").

40. There is an actual controversy between ACLUM and the BCSO regarding the production of the requested records in response to the Request.

41. ACLUM is entitled to a declaration that the records requested are public records within the meaning of G. L. c. 66, § 10, that their release is required by law, and that BCSO is prohibited from charging any fee for responding to the request.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that the Court:

1. Expedite these proceedings pursuant to G.L. c. 66, § 10A(d)(1)(iii), and order the Defendant to show cause forthwith why the requested relief should not be granted;

2. Issue a declaratory judgment pursuant to G. L. c. 231A that the records Plaintiff has requested are public records within the meaning of G. L. c. 66, § 10, that their release is required by law, and that Defendant may not charge a fee for responding to the Request;

2. Enter a permanent injunction ordering Defendant to immediately disclose the requested records to Plaintiff;

4. Award Plaintiff attorney fees and costs; and

5. Grant such other and further declaratory and equitable relief as the Court deems just and proper.

May 18, 2020

Respectfully submitted,

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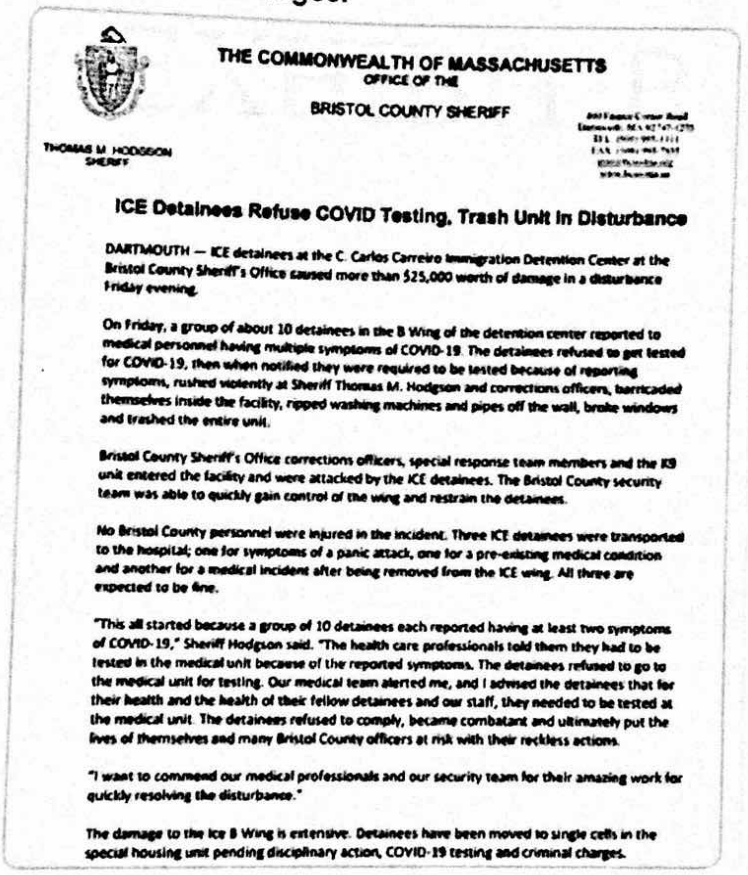
Attorneys for Plaintiff

EXHIBIT A

Bristol County Sheriff's Office
@BristolSheriff

Community Advisory: Group of ICE detainees in Bristol County reported multiple COVID symptoms Friday but refused to get tested and ultimately trashed the facility, attacked officers and caused thousands in damages.



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE
BRISTOL COUNTY SHERIFF

THOMAS M. HODGSON
SHERIFF

ICE Detainees Refuse COVID Testing, Trash Unit in Disturbance

DARTMOUTH — ICE detainees at the C. Carlos Carreiro Immigration Detention Center at the Bristol County Sheriff's Office caused more than $25,000 worth of damage in a disturbance Friday evening.

On Friday, a group of about 10 detainees in the B Wing of the detention center reported to medical personnel having multiple symptoms of COVID-19. The detainees refused to get tested for COVID-19, then when notified they were required to be tested because of reporting symptoms, rushed violently at Sheriff Thomas M. Hodgson and corrections officers, barricaded themselves inside the facility, ripped washing machines and pipes off the wall, broke windows and trashed the entire unit.

Bristol County Sheriff's Office corrections officers, special response team members and the K9 unit entered the facility and were attacked by the ICE detainees. The Bristol County security team was able to quickly gain control of the wing and restrain the detainees.

No Bristol County personnel were injured in the incident. Three ICE detainees were transported to the hospital; one for symptoms of a panic attack, one for a pre-existing medical condition and another for a medical incident after being removed from the ICE wing. All three are expected to be fine.

"This all started because a group of 10 detainees each reported having at least two symptoms of COVID-19," Sheriff Hodgson said. "The health care professionals told them they had to be tested in the medical unit because of the reported symptoms. The detainees refused to go to the medical unit for testing. Our medical team alerted me, and I advised the detainees that for their health and the health of their fellow detainees and our staff, they needed to be tested at the medical unit. The detainees refused to comply, became combatant and ultimately put the lives of themselves and many Bristol County officers at risk with their reckless actions.

"I want to commend our medical professionals and our security team for their amazing work for quickly resolving the disturbance."

The damage to the Ice B Wing is extensive. Detainees have been moved to single cells in the special housing unit pending disciplinary action, COVID-19 testing and criminal charges.

10:03 PM · May 1, 2020 · Twitter Web App

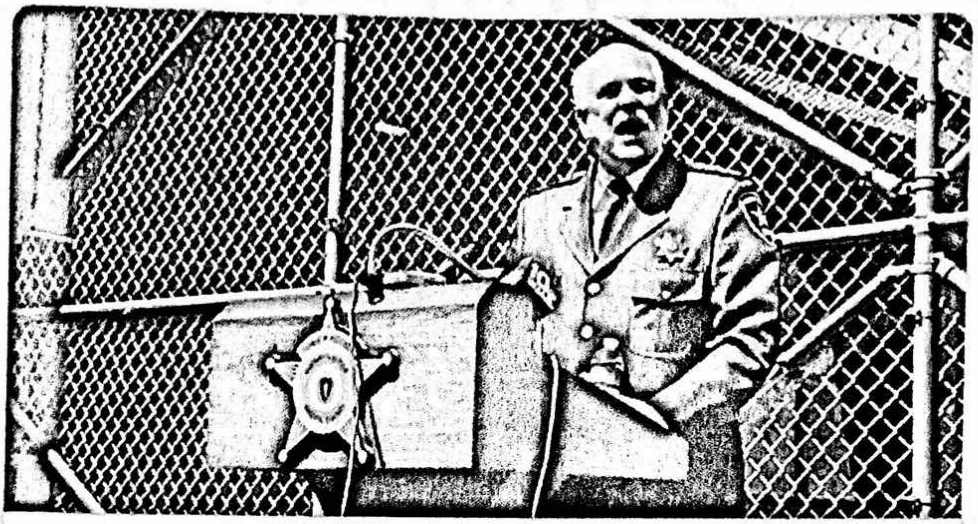
47 Retweets **32** Likes

https://twitter.com/BristolSheriff/status/1256404027925041152

EXHIBIT B

Sheriff Thomas Hodgson
@SheriffHodgson

Of all the lies and fiction being peddled by political activist attorneys about Friday's incident at @BristolSheriff ICE facility, saying I threw a detainee to the ground and pepper sprayed him is the most ridiculous and absurd.



Lawyer: Hodgson Assaulted ICE Detainee Ahead of Violent Conflict
Atty. Ira Alkalay says the Bristol County Sheriff precipitated the chaotic conflict that left the North Dartmouth ICE lockup with $25,000 worth of ...
wbsm.com

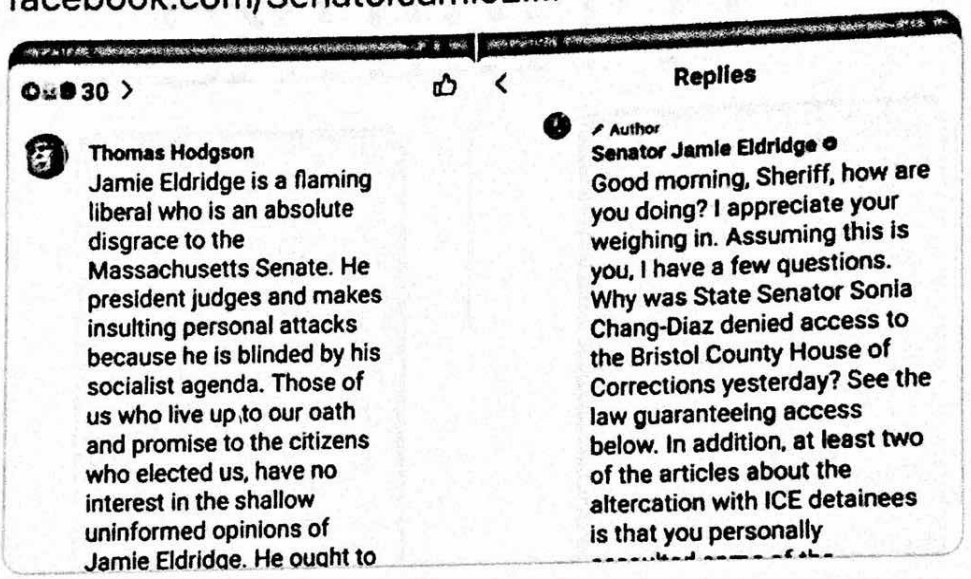
2:39 PM · May 4, 2020 · Twitter for iPhone

https://twitter.com/SheriffHodgson/status/1257379339542421507

EXHIBIT C

Jamie Eldridge
@JamieEldridgeMA

If you remain disturbed by the altercation between @SheriffHodgson
& #immigrant #ICE detainees on Friday night, Sheriff Hodgson has commented on my Senate Facebook page, please weigh in there or here on Twitter #mapoli #maleg
facebook.com/SenatorJamieEl...



12:27 PM · May 3, 2020 from Acton, MA · Twitter for Android

24 Retweets **61** Likes

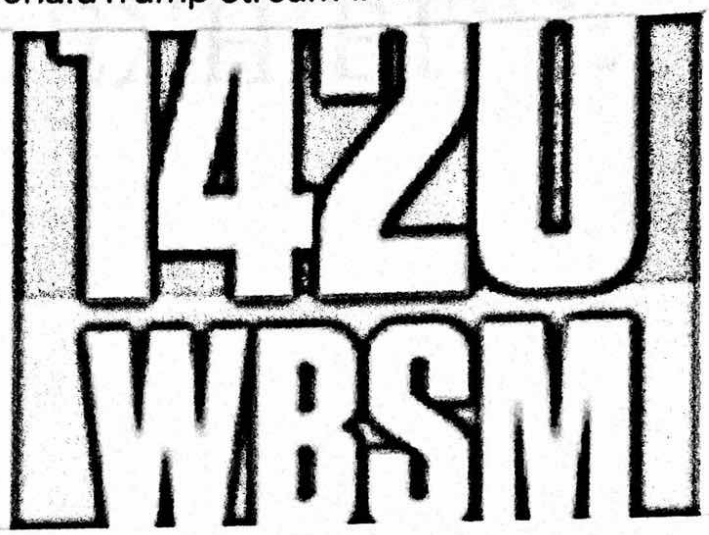
https://twitter.com/JamieEldridgeMA/status/1256983819778916353

EXHIBIT D

Sheriff Thomas Hodgson Retweeted

Christopher McCarthy
@Chris_topher_Mc

Bristol County Sheriff Tom Hodgson will join be on "The Chris McCarthy Show" on @WBSM1420 radio at 10am tomorrow to discuss illegal alien attacks on him and his staff @BristolSheriff @SheriffHodgson @realDonaldTrump stream live



1420 WBSM – New Bedford's News, Talk and Sports Radio
WBSM News Talk Sports Radio has the best news and sports coverage in New Bedford, Massachusetts.
wbsm.com

8:29 PM · May 3, 2020 · Twitter for iPhone

4 Retweets **9** Likes

https://twitter.com/Chris_topher_Mc/status/1257105110288814083

EXHIBIT E

FOLEY HOAG LLP

155 Seaport Blvd
Boston, MA 02210

617.832.1000 main
617.832.7000 fax

Nicholas L. Anastasi
617-832-1241 direct
nanastasi@foleyhoag.com

May 7, 2020

Via Electronic Mail

Lorraine Rousseau, Esq.
Records Access Officer
Bristol County Sheriff's Office
400 Faunce Corner Rd.
North Dartmouth, MA 02747
publicrecords@bcso-ma.org

Re: Public Records Request

Dear Ms. Rousseau:

This firm represents the ACLU of Massachusetts, Inc. ("ACLUM"). This letter is a public records request by ACLUM to the Bristol County Sheriff's Office (the "BCSO") under the Massachusetts Public Records Law, G.L. c. 66, § 10.

On May 1, 2020, the BCSO released a letter purporting to describe an incident that occurred that day at the BCSO's immigration detention facility (the "Incident"). *See* Ex. A. According to the BCSO, the Incident involved a confrontation between BCSO personnel and immigration detainees in the B Wing of the detention facility that escalated to physical violence. BCSO personnel evidently used force to restrain the detainees, and three detainees were hospitalized.

After the Incident, Bristol County Sheriff Thomas M. Hodgson made a series of public assertions regarding the sequence of events. For example, on or about May 2, 2020, Sheriff Hodgson gave a press conference in which he purported to describe the Incident.[1] Among other things, Sheriff Hodgson stated that the Incident began no later than 5:20 p.m. He appeared to assert that he was personally present in the B Wing during at least part of the Incident, and that he personally initiated the use of force against a non-violent detainee by, at least, attempting to forcibly remove a telephone from the detainee's hand. Sheriff Hodgson also appeared to express personal animus towards that detainee, calling him "the ringleader of all these people" and

[1] https://www.facebook.com/nbc10/videos/live-bristol-county-sheriff-thomas-hodgson-delivers-a-press-conference-regarding/931771247283424/

referring to him multiple times as a "con man." Sheriff Hodgson further stated "we have it all on film."

Conflicting reports of the Incident have emerged. For example, news organizations have published audio recordings purportedly made during the Incident, in which a detainee stated that Sheriff Hodgson "attacked" him, and in which detainees assert that tear gas and pepper spray were deployed against them.[2] Sheriff Hodgson has made a series of additional public statements, including apparently on Twitter, Facebook, and the radio, addressing these allegations and denying certain of them. *See* Exs. B, C, & D.

This is a public records request for audiovisual recordings, documents, and other records concerning the Incident. We are aware that, on or about May 5, 2020, Sheriff Hodgson tweeted that the "[Department of Homeland Security] Office of Inspector General informed me today that they will be the official agency conducting the independent investigation of" the Incident.[3] Whether or not that is true, the BCSO is a Massachusetts state entity, and it may not voluntarily or contractually relinquish its responsibilities to comply with state public records law and with state investigations into the conduct of state officials.

Please provide the following records:

1. All audio and visual recordings of or concerning the Incident, including but not limited to recordings from any and all installed cameras, handheld or mobile cameras, mobile phones, and body cameras. We understand this would include, but is not limited to, all audio and visual recordings of the B Wing of the BCSO's immigration detention facility, and events taking place therein, from 4:00 p.m. to midnight on May 1, 2020.

2. All still photographs of or concerning the Incident.

3. All reports and other records prepared by BCSO's employees, agents, and contractors concerning the Incident, including, but not limited to, reports describing the Incident, and any reports describing the BCSO's response to the Incident (including any reports documenting or concerning any use of force, chemical agents, and/or ammunition).

4. All records collected, made, or prepared during any investigation of the Incident by the BCSO, and a complete copy of any investigation file concerning the Incident.

5. All records containing any findings, conclusions, recommendations, or other results of any investigation by the BCSO concerning the Incident.

6. All records containing communications between the BCSO (including Sheriff Hodgson and BCSO employees), on the one hand, and any federal department or agency (including the Department of Homeland Security and U.S. Immigration and Customs Enforcement), on the other, concerning the Incident. The requested

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[2] https://commonwealthmagazine.org/immigration/recordings-of-detainees-at-bristol-jail-released/

[3] https://twitter.com/SheriffHodgson/status/1257753162255085571

records include, but are not limited to, any such electronic mail and any and all attachments thereto.

7. All documents, audio and visual recordings, and other records provided by the BCSO to the Department of Homeland Security and/or to U.S. Immigration and Customs Enforcement in connection with any investigation into the Incident.

8. All records containing communications between the BCSO (including Sheriff Hodgson and BCSO employees), on the one hand, and the Office of the Inspector General for the Department of Homeland Security, on the other, concerning the Incident. The requested records include, but are not limited to, any such electronic mail and any and all attachments thereto.

9. All documents, audio and visual recordings, and other records provided by the BCSO to the Office of the Inspector General for the Department of Homeland Security in connection with any investigation into the Incident.

10. All records containing communications between the BCSO (including Sheriff Hodgson and BCSO employees), on the one hand, and the Executive Office of the President, on the other, concerning the Incident. The requested records include, but are not limited to, any such electronic mail and any and all attachments thereto.

If you withhold some portions of the requested documents on the grounds that they are exempt from disclosure, please specify which exemptions apply and release any portions of the records for which you do not claim an exemption. We ask that you provide the records in electronic format to the maximum extent possible.

To the extent you contend that any of the requested records are not public records, or are otherwise exempt from disclosure in response to this request, you should take steps to ensure that such records are preserved, and are not modified, deleted, or destroyed, pending our review of your contention and the resolution of any resulting dispute.

We request that you waive any fees and copying costs, including pursuant to 950 C.M.R. 32.07. Our client, ACLUM, is a not-for-profit, non-partisan organization dedicated to the principles of liberty and equality. As the Massachusetts affiliate of the national ACLU, a not-for-profit, non-partisan organization, ACLUM distributes information both within and outside of Massachusetts. Gathering and disseminating current information to the public is a critical and substantial component of ACLUM's mission and work. ACLUM publishes newsletters, news briefings, reports and other printed materials that are disseminated to the public. These materials are widely available to everyone, including tax-exempt organizations, not-for-profit groups, law students and faculty, at no cost. ACLUM also disseminates information through its website[4] and regular posts on social media sites such as Facebook and Twitter. Accordingly, disclosure of the records serves the public interest, and not the commercial interest of ACLUM.

[4] www.aclum.org

With respect to the form of production, we request that responsive electronic records be provided electronically in their native file format, to the maximum extent possible. Paper records may be scanned and provided in static-image format (PDF). Please provide copies of entire correspondence in relevant searches, including any and all documents or attachments that were included or forwarded. Records should include but not be limited to electronic correspondence transmitted via computer, laptop, mobile phone and other electronic devices, and should include but not be limited to any emails in which an employee was the direct recipient, CC recipient, BCC recipient and/or listserv recipient. All images in any email should be downloaded and viewable before being copied.

A custodian of public records shall comply with a request within ten days of receipt.

Thank you for your assistance. Please do not hesitate to contact me if I can clarify any part of this request.

Sincerely,

/s/ Nicholas L. Anastasi

Nicholas L. Anastasi

cc: Christopher E. Hart, Esq.
Daniel L. McFadden, Esq.

EXHIBIT F

Anastasi, Nicholas

From: Lorraine Rousseau <LORRAINEROUSSEAU@bcso-ma.org>
Sent: Thursday, May 14, 2020 9:46 AM
To: Anastasi, Nicholas; Public Records
Cc: Hart, Christopher
Subject: RE: Public Records Request - ACLU of Massachusetts

Mr. Anastasi,

The Bristol County Sheriff's Office ("BCSO") is in receipt of your request for public records, dated May 5, 2020, requesting records relating to an incident in the C. Carlos Carreiro Immigration Detention Center on May 1, 2020.

In response, please be advised that the requested records are exempt from disclosure as a public record under G.L. c. 4, §§ 7(26)(f) and (n).

Exemption (f) applies to "investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest." G.L. c. 4, § 7(26)(f). The incident, underlying your request, is presently under investigation by the BCSO as well as the United States Immigration and Customs Enforcement (ICE). The records requested are central to the investigation and disclosure of such would be prejudicial to the efficacy of a thorough and efficient inquiry into the cause and subsequent action of the May 1st incident. Thus, until all investigations of the incident are concluded, records relating to the incident are exempt from disclosure as a public record under G.L. c. 4, § 7(26)(f).

Further, Exemption (n) applies to: "records, including, but not limited to, blueprints, plans, policies, procedures and schematic drawings, which relate to internal layout and structural elements, security measures, emergency preparedness, threat or vulnerability assessments, or any other records relating to the security or safety of persons or buildings, structures, facilities, utilities, transportation, cyber security or other infrastructure located within the commonwealth, the disclosure of which, in the reasonable judgment of the record custodian, subject to review by the supervisor of public records under subsection (c) of section 10 of chapter 66, is likely to jeopardize public safety or cyber security." G.L. c. 4, § 7 (26)(n). Disclosure of video and/or photographs of the interior of the secure facility would be akin to releasing the internal layout of the facility, which the statute expressly forbids. Releasing interior videos and/or photographs would jeopardize the operational security required to maintain the effective, safe, and secure operation of the jail. It would provide the BCSO's tactical and strategic "playbook" for responding to emergency situations and inmate/detainee disturbances, which would compromise the BSCO's ability to respond in a timely, effective and safe manner. Releasing the requested information could place BCSO inmates and staff at an unnecessary risk by giving the public an unfettered view of structural layouts, officer movements, and operational security measures. The release of any video and/or photographs would place the security and safety of the facility at risk by disclosing to the public camera placement and recording capabilities. The BSCO has a duty to maintain vigilant observation for safety, investigatory, and security concerns and to release the requested records could be used to circumvent the public's interest in inmate and staff safety. As such, the requested records are exempt from disclosure under G.L. c. 4, § 7(26)(n).

You have the right to appeal this decision to the Supervisor of Public Records under 950 CMR 32.08(1) and to seek judicial review by commencing a civil action in the Superior Court.

Thank you,
Lorraine Rousseau, Esq.
Records Access Officer

Lorraine J. Rousseau, Esq.
Bristol County Sheriff's Office
400 Faunce Corner Road
North Dartmouth, MA 02747
Tel. (508) 995-1311
Fax (508) 995-7835
lorrainerousseau@bcso-ma.org

From: Anastasi, Nicholas [mailto:nanastasi@foleyhoag.com]
Sent: Thursday, May 7, 2020 5:52 PM
To: Public Records
Cc: Hart, Christopher
Subject: Public Records Request - ACLU of Massachusetts

Dear Ms. Rousseau,

Attached please find a public records request submitted on behalf of our client, the ACLU of Massachusetts. Please let me know if you have any questions.

Best,
Nick

Nicholas Anastasi | Associate

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