

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

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In the Matter of,	:	
	:	
NEW YORK CIVIL LIBERTIES UNION,	:	Index No. _____
	:	
Petitioner,	:	
	:	<b>VERIFIED PETITION</b>
-against-	:	
	:	
SUFFOLK COUNTY POLICE DEPARTMENT,	:	
	:	
Respondent,	:	
	:	
For a Judgment Pursuant to Article 78	:	
of the Civil Practice Law and Rules.	:	
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**PRELIMINARY STATEMENT**

1. On August 1, 2017, the New York Civil Liberties Union (“NYCLU”) submitted a request under the Freedom of Information Law (“FOIL”) to the Suffolk County Police Department (“SCPD”).
2. Over eight months later, the SCPD has not produced any documents or provided a substantive response of any kind in clear violation of its FOIL obligations.
3. This Article 78 proceeding seeks to compel the SCPD to respond to the FOIL request, which was initiated due to reports that cooperation between the South Country Central School District (“SCCSD” or the “District”), the SCPD, and federal immigration authorities was leading to the removal of children from their families and placement in highly restrictive detention facilities based on spurious claims of gang affiliation.
4. Having exhausted administrative remedies, the NYCLU now seeks judicial relief to require the SCPD to produce responsive records.

5. Petitioner also seeks an award of attorneys' fees and costs in light of the SCPD's failure to adhere to FOIL's statutory requirements.

### **VENUE**

6. Pursuant to C.P.L.R. 7804(b) and 506(b), venue in this proceeding lies in Suffolk County, in the judicial district in which the respondent took the action challenged here and where the office of the respondent is located.

### **PARTIES**

7. Petitioner the New York Civil Liberties Union ("NYCLU") is a not-for-profit corporation that seeks to defend civil rights and civil liberties on behalf of individuals who have experienced injustice and to promote transparency in government. For over fifty years, the NYCLU has been involved in litigation and public policy advocacy on behalf of New Yorkers to demand government accountability and transparency.

8. Respondent Suffolk County Police Department is a public agency subject to the requirements of the Freedom of Information Law, New York Officers Law § 84 et seq.

### **FACTUAL BACKGROUND**

9. During the 1980s and 1990s, immigrant children with no criminal background were routinely locked up in unsafe and unsanitary jail cells in remote facilities across the country.<sup>1</sup>

10. These conditions prompted a federal lawsuit, *Flores v Reno*, which resulted in a 1997 consent decree that sets national standards for the detention, release, and treatment of immigrant children that is still in effect today.

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<sup>1</sup> Background information on the detention of immigrant children is alleged on information and belief, relying on various sources including government sources. The citations to these facts are provided in the Memorandum of Law accompanying the Petition and are attached as exhibits to the Affirmation in Support of the Petition.

11. In 2003, Congress transferred the care and custody of unaccompanied children to the Office of Refugee Resettlement (“ORR”), an office of the Administration for Children & Families within the U.S. Department of Health & Human Services, to incorporate child welfare values into the placement of immigrant children.

12. Building on the *Flores* consent decree’s protections, Congress later passed the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (“TVPRA”), which protects children from placement in overly restrictive settings and guarantees certain legal rights for those children who have been recently detained and those who face the prospect of imminent detention.

13. Currently, ORR receives unaccompanied immigrant children that have been referred to it by the Department of Homeland Security (“DHS”).

14. The *Flores* consent decree and the TVPRA require that before any minor is transferred to detention, the child’s lawyer must be given advance notice of the transfer.

15. Further, no minor may be placed in a jail-like facility unless ORR determines the minor “poses a danger to self or others or has been charged with having committed a criminal offense.”

16. In addition, ORR must notify every minor it places in a highly restrictive facility of the reasons for the placement, must afford the minor an opportunity to contest that placement, and must notify the minor of pro bono counsel available to assist them.

17. Despite these protections, ORR has failed to follow its own procedures and has routinely placed children from Suffolk County in secure detention based on unconfirmed allegations of gang affiliation that originated with the SCPD, and frequently, information from schools in the South Country Central School District.

18. The District has publicly confirmed the existence of a strong relationship and information-sharing with the SCPD; however, the SCPD has not shared any information about this relationship in response to the NYCLU's FOIL request at issue here, such as how many children have been impacted.

19. The District's code of conduct, for instance, explicitly references law enforcement's role in identifying which items of clothing should be prohibited at the high school due to gang affiliation.

20. Despite the clear collaboration between the SCPD and the District, there is also no public information provided on how the SCPD updates the District on developments in its gang identification policies or on procedures governing how the SCPD responds to a District report of purported gang-related activity.

21. SCPD's relationship with federal immigration authorities is also documented; yet the SCPD did not produce any documents in response to the NYCLU's FOIL request inquiring about this relationship.

22. A 2017 "Information Memo" from ORR states that "ORR has assisted Suffolk County police with their investigation of MS-13 members by providing information on who, among gang suspects identified by local police have come through" ORR's program for unaccompanied children.

#### **The NYCLU's FOIL Request to the SCPD**

23. The NYCLU submitted a FOIL request to the SCPD on August 1, 2017 seeking records relating to the number of children impacted through SCPD's identification of gang members and cooperation with the District, ICE, and DHS. A true and correct copy of the FOIL request is attached as **Exhibit A** to this Petition.

24. The request also sought records relating to policies and guidance directing SCPD officers how to recognize gang affiliation (request 8), policies related to the SCPD's use of gang databases (request 6), agreements between the SCPD and federal immigration agencies (request 4), and instructions from the SCPD to the District relating to the identification of gang members (request 2), among other items.

25. The request sought the following 10 categories of records:

1. Documents sufficient to identify the number of individuals reported to or identified in collaboration with the SCPD as suspected gang members by the South Country Central School District and the race, ethnicity, country of origin, and age of each individual.
2. Any instructions, directives, or memoranda from the SCPD to the South Country Central School District regarding how to identify gang membership or gang activity.
3. All policies, procedures, training materials, or protocols, relating to information sharing with Immigration and Customs Enforcement ("ICE") or any other branch of the Department of Homeland Security ("DHS").
4. All contracts, memoranda of understanding, or agreements between the SCPD, ICE, or any other branch of DHS.
5. Documents sufficient to identify the number of individuals suspected or known to be gang members by the SCPD and the race, ethnicity, country of origin, and age of each individual.
6. All policies and procedures related to the SCPD's use of any gang list or database maintained by, or created in collaboration with, the SCPD.
7. Documents sufficient to identify the number of individuals whose identities the SCPD has shared with ICE or any other branch of DHS due to their inclusion in any gang list or database maintained by, or created in collaboration with, the SCPD.
8. All directives, orders, guidance, procedures, memoranda, rules, regulations, forms, and other statements of policy directing SCPD officers how to recognize gang membership or gang activity. This includes, but is not limited to, clothing, jewelry, hairstyle, shoes, tattoo, logos, makeup, symbols, graffiti tags, patterns, colors, symbols, hand gestures, songs, whistles, etc.

9. Any notices, letters, and proofs of service served on gang members or suspected gang members and associates regarding SCPD penalties for participation in a criminal street gang.

10. Documents sufficient to identify the number of times a Suffolk County Police officer was present in a meeting between a SCCSD employee and a minor student with and without the presence of the minor student's guardian or parent.

26. The Freedom of Information Officer of the Central Records Section of the SCPD acknowledged the request in a letter dated August 21, 2017. A true and correct copy of the SCPD's acknowledgement is attached as **Exhibit B** to this Petition.

27. Despite that acknowledgement, the NYCLU received no response to the FOIL request even though there were several follow-up phone calls to inquire about its progress.

28. By letter dated October 30, 2017, 70 days after the SCPD acknowledged receipt of the FOIL request and failed to produce any documents, the NYCLU timely filed an administrative appeal for the constructive denial of its FOIL request. A true and correct copy of the NYCLU's administrative appeal is attached as **Exhibit C** to this Petition.

29. On November 17, 2017, the FOIL Appeals Officer for Suffolk County and its agencies, including the SCPD, acknowledged receipt via email of the NYCLU's administrative appeal. A true and correct copy of the SCPD's acknowledgement is attached as **Exhibit D** to this Petition.

30. Over the course of the next three months, the FOIL Appeals Officer requested multiple extensions of time to reply to the FOIL appeal. A true and correct copy of the SCPD's email requesting an extension of the time to reply to the appeal until December 19, 2017 is attached as **Exhibit E** to the Petition and a true and correct copy of the SCPD's email requesting an extension of the time to reply to the appeal until January 19, 2018 is attached as **Exhibit F** to the Petition.

31. The FOIL Appeals Officer also inquired multiple times via email as to whether the SCPD had responded to the initial FOIL request. A true and correct copy of this email correspondence is attached as **Exhibit F** and **Exhibit G** and **Exhibit K** to the Petition.

32. The first deadline of December 19, 2017 passed without production of any documents or any other substantive response.

33. The NYCLU agreed to a second requested deadline of January 19, 2018.

34. The FOIL Appeals Officer requested multiple times via email that the NYCLU resubmit its original FOIL request to the same office to which it submitted its request in August 2017. A true and correct copy of this email correspondence is attached as **Exhibit H** and **Exhibit I** and **Exhibit J** to the Petition.

35. On January 12, 2018, the FOIL Appeals Officer requested via email that the NYCLU advise “when and if” it receives a response from the SCPD. A true and correct copy of this email correspondence is attached as **Exhibit K** to the Petition.

36. As of January 19, 2018, the SCPD had neither responded to the original FOIL request nor provided a response to the NYCLU’s administrative appeal.

37. The NYCLU followed up via phone with the FOIL Appeals Officer on January 23, 2018 to discuss whether any response to the request would be provided. A true and correct copy of email correspondence arranging this phone call is attached as **Exhibit L** to the Petition.

38. The FOIL Appeals Officer could not identify a date certain by which records responsive to the request would be produced or whether any documents would be produced at all.

39. As of the filing of this petition, the SCPD has not provided a single document, claimed any exemptions, or responded to the administrative appeal.

40. Having exhausted administrative remedies, the NYCLU files this Article 78 proceeding seeking immediate production of responsive documents.

### **CAUSE OF ACTION UNDER ARTICLE 78**

41. Petitioner repeats and realleges paragraphs 1 through 40 hereof, as if fully set forth herein.

42. Article 78 is the appropriate method for review of agency determinations concerning FOIL requests.

43. Petitioners have a clear right to the records responsive to Requests 1 through 10.

44. There is no basis in law or fact for the respondent to fail to respond to the initial FOIL request or the administrative appeal, or withhold the requested records.

45. The respondent's obligation under FOIL to respond to a FOIL request, respond to a FOIL administrative appeal, and produce documents is mandatory, not discretionary.

46. The petitioner exhausted its administrative remedies with the respondent when it appealed the respondent's constructive denial of its initial request and did not receive records or a response to the appeal within the statutory time.

47. The petitioner has no other remedy at law.

48. This Petition is timely under CPLR § 217 as it is filed within four months of January 19, 2018, the expiration of respondent's final deadline extension of the administrative appeal.

### **REQUESTED RELIEF**

WHEREFORE, the petitioner seeks judgment:

(1) Pursuant to CPLR § 7806, directing the respondent to comply with its duty under FOIL and disclose the records sought by the petitioner in Requests 1 through 10 in the FOIL request dated August 1, 2017;



- (2) Awarding reasonable attorneys' fees and litigation costs as allowed under New York Public Officers Law § 89; and
- (3) Granting such other relief as the Court deems just and proper.

Respectfully Submitted,



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*Counsel for Petitioner*

Dated: April 9, 2018  
New York, NY

## VERIFICATION

STATE OF NEW YORK     )  
  ) ss:  
COUNTY OF NEW YORK )

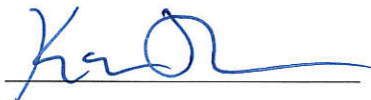
Stefanie D. Coyle, an attorney admitted to practice in the State of New York, affirms pursuant to CPLR § 2106 under the penalties of perjury:

1. I am an attorney for the Petitioner in the within proceeding. I make this Verification pursuant to CPLR § 3020 [d] [3].
2. I have read the attached Verified Petition and know its contents.
3. All of the material allegations of the Verified Petition are true to my personal knowledge or upon information and belief. As to those statements that are based upon information and belief, I believe those statements to be true.

  
STEFANIE D. COYLE

Dated: April 6, 2018  
New York, New York

Sworn and subscribed to me  
this 6<sup>th</sup> day of April, 2018



KEVIN E JASON  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 02JA6351103  
Qualified In Kings County  
My Commission Expires 11-28-2020