

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IMMIGRANT DEFENSE PROJECT, HISPANIC
INTEREST COLATION OF ALABAMA, and CENTER
FOR CONSTITUTIONAL RIGHTS,

Plaintiffs,

v.

UNITED STATES IMMIGRATION AND CUSTOMS
ENFORCEMENT AGENCY and
UNITED STATES DEPARTMENT OF
HOMELAND SECURITY,

Defendants.

14 Civ. 6117 (JPO)

**SECOND DECLARATION OF FERNANDO PINEIRO
IN SUPPORT OF THE UNITED STATES IMMIGRATION AND CUSTOMS
ENFORCEMENT AGENCY**

I, Fernando Pineiro, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

I. INTRODUCTION

1. I am the Deputy FOIA Officer of the Freedom of Information Act Office (the FOIA Office) at U.S. Immigration and Customs Enforcement (ICE). I have held this position since December 29, 2013. Prior to this position, I was the FOIA Officer for the office for three years at the Office for Civil Rights and Civil Liberties (CRCL) at the U.S. Department of Homeland Security (DHS). The ICE FOIA office mailing address is 500 12th Street, S.W., STOP 5009, Washington, D.C. 20536-5009.

2. The ICE FOIA Office is responsible for processing and responding to all Freedom of Information Act (FOIA), 5 U.S.C. § 552, and Privacy Act, 5 U.S.C. § 552a, requests received at ICE.

3. As the Deputy FOIA Officer of the ICE FOIA Office, my official duties and responsibilities include the general management, oversight, and supervision of the ICE FOIA Office. I manage and supervise a staff of ICE FOIA Paralegal Specialists, who report to me regarding the processing of FOIA and Privacy Act requests received by ICE. In connection with my official duties and responsibilities, I am familiar with ICE's procedures for responding to requests for information pursuant to provisions of the FOIA and the Privacy Act. In that capacity, I am familiar with ICE's processing of the FOIA request dated October 17, 2013 that the Immigrant Defense Project, Hispanic Interest Coalition of Alabama, and Center for Constitutional Rights submitted to ICE that is the subject of this litigation.

4. I make this declaration in my official capacity in support of ICE in the above-captioned action. The statements contained in this declaration are based upon my personal knowledge, my review of documents kept by ICE in the ordinary course of business, and information provided to me by other ICE employees in the course of my official duties.

5. This declaration supplements and incorporates by reference my previous declaration dated September 30, 2015, styled "Declaration of Fernando Pineiro in Support of the United States Immigration and Customs Enforcement Agency."

II. ADDITIONAL DESCRIPTION OF PROGRAM OFFICES TASKED WITH SEARCHING FOR RECORDS IN RESPONSE TO PLAINTIFF'S FOIA REQUEST

6. As stated in my previous declaration, ICE program offices use various systems to maintain records. The determination of whether or not locations need to be searched in response

to a particular FOIA tasking, as well as how to conduct any necessary searches, is necessarily based on the manner in which the employee maintains his/her files.

7. Additionally, all ICE employees have access to email. ICE uses the Microsoft Outlook email system. Each ICE employee stores their files in the way that works best for that particular employee. ICE employees use various methods to store their Microsoft Outlook email files: some archive their files monthly, without separating by subject; others archive their email by topic or by program; still others may create PST files of their emails and store them on their hard drive or shared drive.

8. Individual employees archive their own emails according to their individual work-related needs. Individual archives of emails are searched by the individual employees where those employees have identified individual archives containing potentially responsive documents.

9. Because Plaintiffs failed to articulate a request that “reasonably describes” the records sought, the agency properly undertook searches based on its own reasonable interpretation of the scope of the subject matter of the request. Accordingly, ICE FOIA tasked all relevant offices as described in my first declaration, and as supplemented by this declaration and the additional declarations from ERO and HSI. The agency believes that these offices and their searches were reasonably likely to uncover all relevant records responsive to a reasonable interpretation of Plaintiff’s vague FOIA request. For example, the offices tasked including ERO and HSI, would be reasonably likely to uncover documents responsive to every topic that Plaintiffs requested records related to, because every office searched or tied their searches to “home enforcement operations” using the knowledge and expertise that each contains over this subject matter, and also using search terms such as: “home enforcement operation,” “home

enforcement operations,” “operation,” “enforcement,” “priorities,” “evidence,” “authority,” “home enforcement,” “enforcement operations,” “fugitive operations,” “fugitive,” “arrest,” “arrest statistics,” “house,” “home,” “home arrest,” “constitutional protection,” “4th amendment,” “fourth amendment,” “search,” “premises,” “contraband seizure,” “residence,” “raid,” “raids,” “search warrant,” “false arrest,” “home confinement,” “DRO/ERO policy,” “non-targets,” “encounters,” “at-large,” “collaterals,” “targets,” “quotas,” “landlord,” “contraband,” “statistics,” “statistical information,” “DeKalb Co.,” “Cherokee Co.,” “Chilton Co.,” “Jackson Co.,” “Jefferson Co.,” “Shelby Co.,” “Tuscaloosa Co.,” and “misconduct.” These searches and search terms would find responsive documentation , if any, under all topics in the request including:

- Policies, Procedures, and Objectives (and all subcategories)
- Data and Statistical Information (and all subcategories)

10. The definition of “home enforcement operations” contained in the request is very broad as it includes, “...every ICE enforcement operation in, at or, around homes.” Additionally, it includes but is not limited to, “...ICE entry in, at, or around any place of residence...houses, apartments, boarding houses, rooming houses, shelters, or motels where individuals reside, whether temporarily or permanently.” Finally it also includes, “...any enforcement operation that involves entry into a place of residence, and may include enforcement operations that combine street arrests, entry into a workplace, or enforcement at other locations.” Presumably the request does not actually seek documents related to every ICE enforcement operation, whether it takes place at a residence or is a combination of a street arrest and enforcement at, “...other locations.” Yet the request fails to specify any other particularities of the operations or arrests in the definition of “home enforcement operations,” other than those taking place at homes, businesses, or other locations, as defined in the request. Documents

relating to every arrest or operation within ICE would constitute an extremely voluminous set of records, virtually none of which would be responsive to Plaintiff's request, or be of any apparent interest to Plaintiffs.

11. Plaintiffs have repeatedly alleged that ICE failed to use certain search terms such as "home," "enforcement," "target," "consent," "gang," or "warrant." As explained in paragraphs 6-8 above, each ICE employee stores their files in the way that works best for that particular employee and their work related needs. The determination of where to search, how to search, and what search terms to use in response to a particular FOIA tasking, as well as how to conduct any necessary searches, is necessarily based on the manner in which the employee maintains his/her files. Additionally, the terms as proposed by plaintiffs would be overly broad when taken in context with the agency's work. The word "enforcement," as an example, is a word in the title of the agency, Immigration and Customs Enforcement. If ICE employees entered the search term "enforcement" into a search of their hard drives, network shared drives, e-mail accounts, or any database, the number of hits would be extremely large. For example, most, if not all, ICE employees have the word "enforcement," in the signature of their emails. If used as a search term, it would constitute an extremely voluminous set of records, virtually none of which would be responsive to this FOIA request. Similarly, the terms "home," "target," "consent," "warrant," or "gang" are also very broad.

12. In addition to my declaration dated September 30, 2015, I would add the following information regarding ICE's program offices and the searches performed by those offices:¹

¹ Enforcement and Removal Operations (ERO), and Homeland Security Investigations (HSI), will provide their own supplemental declarations with respect to each of their offices.

13. In addition to the information provided in my declaration dated September 30, 2015, where I described the searches conducted by the Office of the Principal Legal Advisor (OPLA), I would like to add the following information regarding the search(es) performed by this office: The Deputy Chief of the OPLA District Court Litigation Division (DCLD), based on his experience and knowledge of OPLA's practices and activities, searched paper files and the OPLA shared drive for responsive documentation from two (2) previous litigations in which ICE was involved, *Aguilar v. ICE*, No. 07-8224 (S.D.N.Y. filed Sept. 20, 2007), and *Escobar v. Gaines*, No. 11-0994 (MD Tenn. filed Oct. 19, 2011). The Deputy Chief believed that responsive documentation might be found in these two litigations because they involved a similar subject matter to the FOIA request. Based on his knowledge, the Deputy Chief did not use search terms, and instead, conducted a manual, document by document review of the paper and electronic files located in the folders where the documents from those cases were stored. Responsive documentation was then provided to ICE FOIA on November 5, 2014 and released to the Plaintiffs in rolling productions between December 19, 2014 and March 19, 2015.

14. In addition to the information provided in my declaration dated September 30, 2015, where I described the searches conducted by the Office of Professional Responsibility (OPR), I would like to add the following information regarding the search(es) performed by this office: The Management and Program Analyst tasked to search by the FOIA POC did not search OPR's hard drive, shared drives, or Microsoft Outlook e-mail accounts because the Joint Integrity Case Management System (JICMS) is the primary database used by OPR during the conduct of criminal investigations, management referrals, and/or administrative inquiries. JICMS contains all case data and information gathered in the course of inquiries or investigations. The search terms used by the Management and Program Analyst would also retrieve the plural

version of the search terms as well, including “raids,” “search warrants,” “false arrests,” “home confinements,” “home arrests,” “home enforcements,” and “contraband seizures.” OPR located responsive documentation, which was provided to ICE FOIA on November 14, 2014 and released to the Plaintiffs in rolling productions between December 19, 2014 and March 19, 2015.

15. In addition to the information provided in my declaration dated September 30, 2015, where I described the searches conducted by the Office of Policy (Policy), I would like to add the following information regarding the search(es) performed by this office: The Policy Analyst tasked by the FOIA POC searched, specifically, the ICE Policy Manual (IPM) and the Policy shared drive, which contains both working documents and archived documents. IPM is a database that contains all ICE policies. Based on her experience and knowledge of Policy’s practices and activities, the Policy Analyst did not use search terms, and instead, conducted a manual, document by document review of IPM and the Policy shared drive where any potentially responsive policy documents may have been located. The responsive documentation was remitted to the ICE FOIA Office on November 5, 2015, and released to the Plaintiffs in rolling productions between December 19, 2014 and March 19, 2015.

16. In addition to the information provided in my declaration dated September 30, 2015, where I described the searches conducted by the Office of Training and Development (OTD), I would like to add the following information regarding the search(es) performed by this office: The ERO Training Division Chief tasked to search by the FOIA POC searched two (2) shared drives where all of the training materials for OTD are kept, specifically, the ICE Academy shared drive and the OTD shared drive. OTD does not keep training materials in paper format, in outlook accounts, or on individual employee hard drives. The search terms used by the ERO Training Division Chief would also retrieve the plural version of the search terms as

well, including “operations,” “residences,” “constitutional protections,” and “fugitives.” The ERO Training Division Chief located responsive documentation, which was provided to ICE FOIA on January 30, 2015, and released to the Plaintiffs in rolling productions between December 19, 2014 and March 19, 2015.

17. In addition to the information provided in my declaration dated September 30, 2015, where I described the searches conducted by the Office of Public Affairs (OPA), I would like to add the following information regarding the search(es) performed by this office: The Office of Public Affairs was not tasked to search initially because upon review ICE FOIA determined that the FOIA request did not ask for records that fall under the purview of OPA, however, after a litigation review in the instant case, and out of an abundance of caution, on November 5, 2014, the ICE FOIA Office forwarded the Request to the Office of Public Affairs (OPA), instructing OPA to search for and provide the ICE FOIA Office with all documentation that may be responsive to the request. A FOIA POC in OPA received the FOIA request and reviewed its substance, and based on experience and knowledge of OPA’s practices and activities, determined that a Management Program Analyst should be tasked to search, as she would be reasonably likely to have responsive records, if any. The Management Program Analyst responded to the tasking sent by the ICE FOIA Office on November 5, 2014, indicating that OPA doesn’t have involvement with home enforcement operations matters, and therefore a search would not be reasonably calculated to uncover any relevant documents. In addition, any documents maintained by OPA, such as press releases, would fall outside the scope of the FOIA request as written.

18. In addition to the information provided in my declaration dated September 30, 2015, where I described the searches conducted by the Office of Detention Policy and Planning

(ODPP), I would like to add the following information regarding the search(es) performed by this office: ODPP's mission is to spearhead ICE's detention reform initiative by implementing short-term improvements to immediately address issues in the existing detention system, identifying long-term improvements and redesigning the detention system to pave the way toward 21st century immigration detention services. This includes, for example, providing detainees with access to high-quality and timely medical care while in ICE's custody. As demonstrated by ODPP's mission, the ODPP's Chief of Staff based on the Chief of Staff's knowledge and expertise of the ODPP practices and activities responded to the tasking sent by the ICE FOIA Office, indicating that ODPP doesn't have involvement with home enforcement operations matters, and therefore a search would not be reasonably calculated to uncover relevant documents.

19. In addition to the information provided in my declaration dated September 30, 2015, where I described the searches conducted by the Office of State, Local and Tribal Coordination (OSLTC), I would like to add the following information regarding the search(es) performed by this office: OSLTC was established on October 1, 2010. OSLTC assists ICE in building strong partnerships and improving relationships with state and local law enforcement, elected officials and tribal entities to promote public safety, national security and border integrity. OSLTC's mission is to develop and maintain collaborative relationships with stakeholders and facilitate interaction with these groups to support ICE goals and objectives. OSLTC's key objectives include 1) Conducting outreach to assess stakeholder needs; 2) Communicating ICE priorities to stakeholders; 3) Building, strengthening and sustaining relationships and partnerships with stakeholders; 4) Educating and informing stakeholders on ICE priorities activities and initiatives; and 5) Attending local and national stakeholder

conferences, as budget permits, and coordinating ICE's participation. Plaintiffs state that "[t]he Request sought information related to 'protocols for obtaining information or data from [law enforcement agencies], district attorney offices, parole offices, departments of corrections, and probation offices.'" Plaintiff's Memorandum of Law at 17. The Request actually states:

"Any and all Records reflecting or memorializing ICE protocol for obtaining information or data from any and all agencies that is used for home enforcement operations, including but not limited to protocols for obtaining information or data from LEAs, district attorney offices, parole offices, departments of corrections, and probation offices. Any and all Records reflecting ICE protocol for requesting information or data used for home enforcement operations from an and all governmental agencies." Request ¶ (1)(d)(i).

The Request seeks "Any and all Records reflecting or memorializing ICE protocol for obtaining information or data from any and all agencies that is *used for home enforcement operations* (emphasis added)," and "Any and all Records reflecting ICE protocol for requesting information or data *used for home enforcement operations* (emphasis added)." *Id.* The Request is not seeking all protocols for obtaining information from law enforcement agencies; it is seeking all protocols for obtaining information from law enforcement agencies used for "home enforcement operations." Consequently and as further demonstrated by OSLTC's mission and key objectives, the OSLTC Chief of Staff, based on the Chief of Staff's knowledge and expertise of the office's practices and activities, responded to the tasking sent by the ICE FOIA Office indicating that OSLTC doesn't have involvement with home enforcement operations matters, and therefore a search would not be reasonably calculated to uncover relevant documents.

20. I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge and belief. Signed this 5th day of April 2016.



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