

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

AMERICAN CIVIL LIBERTIES UNION and
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION,

Plaintiffs,

v.

DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF INVESTIGATION,
And
DEPARTMENT OF HOMELAND
SECURITY,

Defendants.

Civil Action No. 24-cv.5722

DECLARATION OF FERNANDO PINEIRO

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

1. I am the Director of the U.S. Immigration and Customs Enforcement (“ICE”) Freedom of Information Act (“FOIA”) Office. I have held this position since August 14, 2022, and I am the ICE official immediately responsible for supervising ICE responses to requests for records under the FOIA, 5 U.S.C. § 552, the Privacy Act, 5 U.S.C. § 552a, and other applicable records access statutes and regulations. Prior to this position, I was the Deputy FOIA Officer of the ICE FOIA Office from December 29, 2013, to August 13, 2022, and prior to that I was the FOIA Officer 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. As the FOIA Director, my official duties and responsibilities include the general management, oversight, and supervision of the ICE FOIA Office regarding the processing of FOIA and Privacy Act requests received at ICE. In connection with my official duties and responsibilities, I am familiar with ICE's procedures for responding to requests for information pursuant to the FOIA and the Privacy Act.

3. Through the exercise of my official duties, I am familiar with ICE's receipt and handling of the FOIA requests submitted by Plaintiffs in this lawsuit and the steps taken to respond to Plaintiffs' FOIA requests.

4. I make this declaration in support of Defendants' Motion for Summary Judgement.

5. The statements contained in this declaration are based upon my personal knowledge, my review of the 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.

**A. ICE FOIA's STANDARD PROCEDURES FOR PROCESSING FOIA
REQUESTS**

6. When the ICE FOIA Office receives a FOIA request, the intake staff evaluates it to determine if it is a proper FOIA request per DHS FOIA regulation 6 C.F.R. § 5.3. Generally, a FOIA request is considered proper and in compliance with DHS regulations if it reasonably describes the records sought and the records are under the purview of ICE.

7. Proper FOIA requests are entered into a database known as SecureRelease and assigned a case tracking number. Based upon the requester's description of the records being sought and ICE FOIA's knowledge of the various program offices' missions, the ICE FOIA Office identifies the program office(s) reasonably likely to possess responsive records and tasks the appropriate program office(s) to conduct the necessary searches.

8. ICE records are maintained by leadership offices and/or within ICE directorates, including but not limited to, the Office of Public Affairs, the Office of Enforcement and Removal Operations (ERO), the Office of Professional Responsibility, the Office of the Director, the Office of the Principal Legal Advisor (“OPLA”), and the Chief Financial Officer. The program offices are typically staffed with a designated point of contact (“POC”), who is the primary person responsible for communications between that program office and the ICE FOIA Office. Each POC is a person with detailed knowledge about the operations of his/her respective program office.

9. Upon receipt of a proper FOIA request, the ICE FOIA Office will identify which program offices within ICE are reasonably likely to possess records responsive to that request, if any, and task the relevant program offices with searches. As part of the tasking, the ICE FOIA Office provides the POCs within each of those program offices with a copy of the FOIA request and instructs them to conduct a search for responsive records. The POCs then review the FOIA request, along with any case-specific instructions that may have been provided and based on their experience and knowledge of their program office practices and activities, forward the request and instructions to the individual employee(s) or component office(s) within the program office that they believe are reasonably likely to have responsive records, if any. In conformity with the ICE FOIA Office’s instructions, the individuals and component offices are directed to conduct searches of their file systems, including both paper files and electronic files, which in their judgment, based on their knowledge of the manner in which they routinely keep records, would most likely be the files to contain responsive documents. Once those searches are completed, the individuals and component offices provide any potentially responsive records to their program office’s POC, who in turn, provides the records to the ICE FOIA Office. The ICE FOIA Office then reviews the collected records for responsiveness and the application of appropriate FOIA Exemptions.

10. ICE employees maintain records in several ways. ICE program offices use various systems to maintain records, such as investigative files, records regarding the operation of ICE programs, and administrative records. ICE employees may store electronic records on their individual computer hard drives, their program office's shared drive (if the office uses one), DVDs, CDs, and/or USB storage devices. The determination of whether or not these electronic locations must 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.

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

12. Records received by the ICE FOIA Office from the program office POCs are assigned to a FOIA processor who determines whether or not the records are responsive to the FOIA request. If the records are responsive, the FOIA processor will redact information pursuant to the FOIA or Privacy Act, as appropriate, while simultaneously ensuring that all reasonably segregated non-exempt information is released.

13. Frequently, the ICE FOIA Office must coordinate between multiple program offices to ensure the program office records are properly redacted and information is correctly segregated. Once the ICE FOIA Office completes its coordination efforts and all responsive records have been processed, the ICE FOIA Office releases the responsive records to the requestor.

B. PROCEDURAL HISTORY OF PLAINTIFF'S FOIA REQUEST TO ICE AND THE INSTANT LITIGATION

14. Plaintiffs sent a FOIA request to the Department of Justice National Security Division, the Federal Bureau of Investigation ("FBI") and the Department of Homeland Security ("DHS") on May 21, 2024, seeking the following records:

- (1) All final policies, guidance, procedures, directives, advisories, memoranda, agreements, training materials, and/or legal opinions created from January 20, 2017 to the present, pertaining to:
 - a. The use of JTTFs and/or fusion centers to collect information about, monitor, surveil, observe, question, interrogate, and/or investigate individuals or organizations engaged in protest;
 - b. The activities and/or predicate criteria that trigger JTTF and/or fusion center involvement, including the legal justification and/or factual showing required;
 - c. Intra-agency correspondence and correspondence among federal, state, and local law enforcement agencies pertaining to monitoring, surveilling, observing, questioning, interrogating, and/or otherwise investigating individuals or groups engaged in protest through or by JTTFs and/or fusion centers;
 - d. The collection, storage, use, and/or dissemination of data (including photographs, videos, and electronic surveillance records) obtained during and/or in connection with monitoring of individuals or groups engaged in protest through or by JTTFs and/or fusion centers; and
 - e. JTTF's and fusion centers' protection of privacy, civil rights, and civil liberties.
- (2) Records created from January 20, 2017, to the present, indicating:
 - a. The number of individuals whose activities have been investigated through or by JTTFs and/or fusion centers in connection with protests; and
 - b. The number and names of groups whose activities have been investigated through or by JTTFs and/or fusion centers in connection with protests; and

(3) Records created from January 20, 2017, to the present concerning the definition of the following terms as used and applied by JTTFs and/or fusion centers:

- a. "Racially or Ethnically Motivated Violent Extremism";
- b. "Anti-Government or Anti-Authority Violent Extremism";
- c. "Animal Rights or Environmental Violent Extremism";
- d. "All Other Domestic Terrorism Threats";
- e. "Abortion-Related Violent Extremism";
- f. "Domestic violent extremism";
- g. "Domestic terrorism";
- h. "Anarchist violent extremism";
- i. "Radical agitators";
- J. "Criminal organizers and instigators"; k. "Violent instigators";
- l. "Antifa"; and
- m. "Far-left extremists."

(4) Records describing the process and/or procedures individuals may use to find out whether and what information about themselves has been collected and maintained by JTTFs and fusion centers, and the process by which any inaccurate information may be challenged and expunged.

15. On June 13, 2024, DHS referred Plaintiffs' FOIA request, 2024-HQFO-01500 (hereafter "FOIA Request" or "Request"), to ICE via email.

16. On July 15, 2024, ICE acknowledged receipt of the FOIA Request, assigned it tracking number 2024-ICFO-46504 on same day, and sent an acknowledgement letter to Plaintiffs on July 22, 2024.

17. As explained below, the ICE FOIA Office tasked Office of Regulatory Affairs and Policy ("ORAP") on July 22, 2024, and subsequently tasked Homeland Security Investigations ("HSI") on September 4, 2024, to locate all responsive records for Case number 2024-ICFO-46504.

18. As further explained below, in total, HSI and ORAP located 73 pages that were potentially responsive to the Request. Those pages were then sent to the ICE FOIA Office for review and processing.

19. Out of the 73 pages located by HSI and ORAP, ICE FOIA identified four (4) pages with ICE equities that originated from ORAP that were responsive to the Request, and seven (7) pages with ICE equities that originated from HSI that were responsive to the Request. ICE FOIA determined that the eleven (11) pages with ICE equities should be withheld in part pursuant to FOIA exemptions (b)(5), (b)(6), (b)(7)(C) and (b)(7)(E).¹

20. ICE FOIA determined that 62 of the 73 pages located by HSI and ORAP originated from the FBI. ICE FOIA then referred all 73 pages to the FBI for processing and release to Plaintiffs.

21. On March 25, 2025, ICE FOIA sent a letter to the plaintiff, advising that the request has been administratively closed, and that the FBI would provide them with the final release. *See* Ex. C.

22. The FBI's second interim release of records on March 31, 2025, contained the 73 pages referred to the FBI from ICE. The documents were Bates stamped 24-cv-5722-324 through 396. The eleven (11) pages with ICE equities were Bates stamped 24-cv-5722-350-351, 380, 383, 385, 387-390, and 392-393. ICE's assertion of FOIA exemptions (b)(5), (b)(6), (b)(7)(C) and (b)(7)(E) are discussed in Section F of this declaration. *See also* Declaration of Michael Seidel, Ex. N.

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

23. ICE is the principal investigative arm of DHS and the second largest investigative agency in the federal government. Created in 2003 through a merger of the investigative and interior enforcement elements of the U.S. Customs Service and the Immigration and Naturalization Service, ICE now employs more than 20,000 people in offices in every state and in 48 foreign

¹ ICE assertion of these exemptions is discussed in detail in Section F of this declaration.

countries. After reviewing Plaintiff's FOIA Request and based on its subject matter expertise and knowledge of agency record systems, the ICE FOIA Office determined that, based on the nature of the FOIA request, HSI and Office of Regulatory Affairs and Policy (ORAP) were the offices reasonably likely to have responsive records, as HSI is the only operational component within ICE that is a JTTF partner and ORAP is the office most likely to have ICE policy-related documents.

24. Therefore, on September 4, 2024, ICE FOIA tasked HSI and on July 22, 2024, ICE FOIA tasked ORAP to conduct a comprehensive search for records and to provide all potentially responsive records located during that search to the ICE FOIA Office for review and processing. Based on the information HSI and ORAP personnel provided regarding the searches conducted within those offices, and as described in more detail below, all locations reasonably likely to contain responsive records were searched.

D. HSI'S SEARCH IN RESPONSE TO PLAINTIFFS' FOIA REQUEST

25. HSI is responsible for investigating a wide range of domestic and international activities arising from the illegal movement of people and goods into, within and out of the United States. HSI uses its legal authority to investigate criminal activities such as immigration crime; child exploitation; human rights violations and human smuggling; smuggling of narcotics; weapons and other types of contraband; and financial crimes; cybercrime and export enforcement issues. HSI is also the only ICE component that participates in the FBI-led Joint Terrorism Task Force (JTTF) and as such is involved in a significant percentage of JTTF disruptions of terrorism-related activity each year. In addition to ICE criminal investigations, HSI oversees the agency's international affairs operations and law enforcement intelligence functions. ICE HSI offices are located at ICE Headquarters in Washington, D.C., at the 26 Special Agent in Charge ("SAC")

Offices located throughout the United States, and at international ICE Offices located in 48 countries around the world.

26. When HSI receives a FOIA request tasking from the ICE FOIA Office, the HSI Records Disclosure Unit (“RDU”) POCs review the substance of request. The HSI RDU FOIA POC then determines, based on their knowledge of the program office’s duties and mission and based on their knowledge of the manner in which HSI routinely keeps records, the HSI units that would be reasonably likely to have responsive records, if any. The HSI RDU FOIA POC then sends the request to the appropriate HSI Unit FOIA POCs. Based on their knowledge and subject matter expertise, the HSI Unit FOIA POCs exercise discretion in choosing the specific search terms utilized to ascertain whether or not potentially responsive records exist. Once searches are completed, the HSI Unit FOIA POCs provide any potentially responsive records to the HSI RDU FOIA POC, who in turn provides the records to the ICE FOIA Office. The ICE FOIA Office then reviews the collected records for responsiveness.

27. On August 28, 2024, HSI RDU received the FOIA request and determined that, based on the subject matter of the FOIA request, the HSI office that needed to be tasked with conducting a search for records was the National Security Investigative Division/Joint Terrorist Task Force (“NSID/JTTF”). Therefore, HSI RDU tasked all 10 NSID/JTTF employees with the search in response to the above described FOIA request on August 28, 2024. Upon receipt of the FOIA tasking, all HSI employees within the NSID/JTTF (10 in total) conducted a search of his/her hardcopy and electronic records by searching locations which, in their judgment, was reasonably likely to contain responsive records based on the way each of these employees organized their records in the normal course of business, as further described in the following paragraphs.

28. On August 30, 2024, a National Program Manager/Special Agent at HSI conducted a search of his desktop, hard drive, one drive, shared drive and outlook folders using the following terms: “monitor” and “protest”; “surveil” and “protest”; “observe” and “protest”; “interrogate” and “protest”; “privacy rights” and “protection”; “civil rights” and “protection”; “civil liberties” and “protection”; “protest” and “investigate”; “protest” and “investigation”; “expunge”; and “expungement.”

29. On September 3, 2024, a Senior Criminal Analyst at HSI conducted a search of his desktop, one drive and outlook folders using the following terms: “monitor” and “protest”; “surveil” and “protest”; “observe” and “protest”; “interrogate” and “protest”; “privacy rights” and “protection”; “civil rights” and “protection”; “civil liberties” and “protection”; “protest” and “investigate”; “protest” and “investigation”; “expunge”; and “expungement.”

30. On September 4, 2024, a Unit Chief at NSID conducted a search of her email outlook using the following terms: “protest”; “protection of privacy”; “civil liberties”; “civil rights”; “fusion center”; “criminal organizer”; “anti-government”; “anti-authority”; “violent extremism”; “animal rights”; “instigator”; “domestic terrorism threats”; “abortion-related”; “domestic terrorism” and “radical agitator”; “Antifa”; “far-left extremists”; and “first amendment.”

31. On September 4, 2024, a Section Chief/Supervisory Special Agent at NSID conducted a search of his one drive email outlook using the following terms: “monitor” and “protest”; “surveil” and “protest”; “observe” and “protest”; “interrogate” and “protest”; “privacy rights” and “protection”; “civil rights” and “protection”; “civil liberties” and “protection”; “protest” and “investigate”; “protest” and “investigation”; “expunge”; and “expungement.”

32. On September 4, 2024, a Criminal Analyst at NSID conducted a search of his desktop, hard drive, shared drive and outlook folders using the following terms “monitor” and “protest”; “surveil” and “protest”; “observe” and “protest”; “interrogate” and “protest”; “privacy rights” and “protection”; “civil rights” and “protection”; “civil liberties” and “protection”; “protest” and “investigate” “protest” and “investigation” “expunge”; and “expungement.”

33. On September 4, 2024, an HSI Management and Program Analyst conducted a search of his desktop, hard drive, shared drive and outlook folders using the following terms: “terrorism”; “extremism”; “domestic”; and “threats.”

34. On September 5, 2024, an HSI Program Manager and Special Agent conducted a search of his desktop, hard drive, one drive, shared drive and outlook folders using the following terms “monitor” and “protest”; “surveil” and “protest” “observe” and “protest”; “interrogate” and “protest”; “privacy rights” and “protection”; “civil rights” and “protection”; “civil liberties” and “protection”; “protest” and “investigate”; “protest” and “investigation”; “expunge”; “expungement”; “racially or ethnically motivated violent extremism”; “anti-Government or anti-authority violent extremism”; “animal rights or environmental violent extremism,” “abortion related violent extremism”; “domestic violence extremism”; “domestic terrorism”; “anarchist violent extremism”; “radical agitators”; “criminal organizers and instigators”; “violent instigators”; “antifa” “far-left extremists.”

35. On September 5, 2024, a National Program Manager at HSI’s Cybercrime Center conducted a search of his desktop, hard drive, shared drive and outlook folders using the following terms: “monitor” and “protest”; “surveil” and “protest”; “observe” and “protest”; “interrogate” and “protest”; “privacy rights” and “protection”; “civil liberties” and “protection”; “protest” and “investigate”; “protest” and “investigation”; “racially or ethnically motivated violent extremism”;

“ethnically motivated violent extremism”; “racially motivated violent extremism”; “anti-government violent extremism”; “anti-authority violent extremism”; “animal rights or environmental violent extremism”; “animal rights environmental violent extremism” “environmental violent extremism”; “all other domestic terrorism threats”; “abortion-related violent extremism”; domestic violent extremism”; “domestic terrorism”; “anarchist violent extremism”; “radical agitators”; “criminal organizers and instigators”; “criminal organizers” and “instigators”; “violent instigators”; “antifa”; “far-left extremists”; “expunge”; and “expungement.”

36. On September 5, 2024, an HSI National Program Manager and Special Agent conducted a search of her desktop, hard drive, one drive, and outlook folders using the terms: “monitor”; “protest”; “observe,”; “interrogate”; “privacy rights”; “protection”; “civil rights”; “civil liberties”; “investigation”; “expunge”; “expungement”; “surveil”; and “investigate.”

37. On September 5, 2024, an HSI Program Manager and Special Agent conducted a search of her desktop, hard drive, and outlook folders using the following terms: “monitor”; “protest”; “observe”; “interrogate”; “privacy rights”; “protection”; “civil rights”; “civil liberties”; “investigation”; “expunge”; “expungement”; “surveil”; and “investigate.”

38. On September 5, 2024, an HSI Section Chief conducted a search of his desktop, hard drive, one drive, and outlook folders using the following terms: “monitor” and “protest,”; “surveil” and “protest”; “observe” and “protest”; “interrogate” and “protest”; “privacy rights” and “protection”; “civil rights” and “protection”; “civil liberties” and “protection”; “protect” and “investigate”; “protest” and “investigation”; “expunge” and “expungement.”

39. Upon completion of the searches, HSI’s NSID/JTTF located 7 potentially responsive pages, which were sent to ICE FOIA for review and processing.

40.

E. ORAP'S SEARCH IN RESPONSE TO PLAINTIFF'S FOIA REQUEST

41. ORAP collaborates with internal and external stakeholders to identify, develop and effectively communicate ICE's strategic and organizational policies; regulations and regulatory processes; and operational requirements. ORAP also supports ICE's strategic priorities through coordination with departmental and interagency partners, establishing policies and regulations impacting ICE.

42. Upon receipt of the Plaintiff's FOIA request via a tasking on July 22, 2024, an ORAP Taskings Analyst conducted a search of the locations that were reasonably likely to have responsive records: (1) ICE's intranet,² which stores ICE's policies, including the ICE Policy Manual; and (2) the ORAP internal document repository (SharePoint), which houses background material relating to ICE's policies. The ORAP Taskings Analyst searched both locations using the following terms: "Joint Terrorist Task Force"; "JTTF"; and "terror."

43. ORAP does not have employees whose work relates to JTTFs or fusion centers. It was therefore determined that a search of ORAP employee e-mails was not reasonably likely to locate records responsive to Plaintiffs' FOIA request.

44. In total, ORAP located four (4) potentially responsive pages, which were provided to ICE FOIA for review and processing.³

² ORAP no longer maintains hard copy files; all policy files have been digitized.

³ As noted previously, the other 62 pages identified by ORAP and HSI were determined to originate with the FBI. *See supra* ¶ 18.

F. FOIA EXEMPTIONS (b)(5), (b)(6), (b)(7)(C) and (b)(7)(E)

45. As noted previously, ICE FOIA asserted FOIA exemptions (b)(5), (b)(6), (b)(7)(C), and (b)(7)(E) on eleven (11) pages of records ultimately released by the FBI that were Bates stamped 24-cv-5722-350-351, 380, 383, 385, 387-390, and 392-393.

FOIA Exemptions 5 U.S.C. § 552(b)(5)

40. Exemption 5 of the FOIA allows the withholding of inter- or intra-agency records that are normally privileged in the civil discovery context. Pursuant to Exemption (b)(5), the three most frequently invoked privileges are the deliberative process privilege, the attorney work-product privilege, and the attorney-client privilege.

41. ICE withheld internal discussions and deliberations pertaining to law enforcement plans and operations, including how to respond to incidents of threat. These discussions occurred between ICE agents and other ICE employees and discussed recommendations involving carrying out their official law enforcement duties and responsibilities. These discussions are protected by the deliberative process privilege.

42. The deliberative process privilege protects the integrity of the deliberative or decision-making processes within the agency by exempting from mandatory disclosure opinions, conclusions, and recommendations included within inter-agency or intra-agency memoranda or letters. The release of this internal information would discourage the expression of candid opinions and inhibit the free and frank exchange of information among agency personnel. This would result in a chilling effect on intra- and inter-agency communications. ICE employees must be able to discuss proposed agency action freely. Further, if draft, un-finalized responses to public inquiries and draft information regarding agency policies and enforcement actions were released, the public could potentially become confused regarding ICE's mission and enforcement activities, as well as what positions have been adopted by the agency.

43. The types of documents withheld in this case include draft documents and emails containing pre-decisional opinions of agency employees deliberating on what action the agency and its employees should take in response to incidents involving threats and violence against all ICE operations, facilities, and personnel.

FOIA Exemption 5 U.S.C. § 552(b)(7) Threshold

44. 5 U.S.C. § 552(b)(7) establishes a threshold requirement that, to withhold information based on any of its subparts, the records or information must be compiled for law enforcement purposes. The information for which the ICE FOIA Office asserted Exemption (b)(7) satisfies this threshold requirement. Pursuant to the Immigration and Nationality Act, codified under Title 8 of the U.S. Code, the Secretary of Homeland Security is charged with the administration and enforcement of laws relating to the immigration and naturalization of aliens, subject to certain exceptions. See 8 U.S.C. § 1103. ICE is the largest investigative arm of DHS and is responsible for identifying and eliminating vulnerabilities within the nation's borders. ICE is tasked with preventing any activities that threaten national security and public safety by investigating the people, money, and materials that support illegal enterprises.

45. The records and information at issue in this matter pertain to ICE's obligation as a key player in the global counterterrorism mission, to conduct federal criminal investigations into people, money, and materials that support terrorist activities in the U.S. and abroad. In particular, documents responsive to the Plaintiff's FOIA Request were compiled as part of ICE's efforts to investigate and counter terrorist-related activities which is part of ICE's mission and to protect the homeland through the arrest of individuals who undermine the safety of our nation's communities and the integrity of U.S. laws. Therefore, all responsive ICE records were compiled for law enforcement purposes and meet the threshold requirement of FOIA Exemption (b)(7).

FOIA Exemptions 5 U.S.C. § 552 (b)(6) & (7)(C)

46. FOIA Exemption 6 allows the withholding of information found in “personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6) (“Exemption 6”). Records that apply to or describe a particular individual, including investigative records, qualify as “personnel,” “medical” or “similar files” under Exemption 6. When applying this exemption to responsive documentation, the agency must balance the individual’s personal privacy interest against the public need for the information.

47. FOIA Exemption 7(C) similarly protects from disclosure records or information “compiled for law enforcement purposes” if a release of the records or information “could reasonably be expected to constitute an unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(7)(C) (“Exemption 7(C)”).

48. When asserting Exemptions 6 and 7(C), ICE balances an individual’s personal privacy interest against the public’s interest in the disclosure of the information.

49. Here, ICE applied Exemption 6 in conjunction with Exemption 7(C) to protect from disclosure the names, email addresses, phone numbers, and other personally identifiable information (“PII”) of third-party individuals and ICE employees.

50. Such information, if disclosed to the public or to a third-party requester without the permission of the individual, could cause harm to the individual, expose the individual to identity theft and may reasonably lead to unwanted contact from persons that might seek to harm the individual.

51. Additionally, ICE employees have received an increase in threats, intimidation and personal attacks in recent years due to the nature of their work. Publicly disclosing employees’ PII

could subject ICE employees to harassment or harm. Additionally, the release of the e-mail addresses, which are not publicized, could expose employees to an increase in cyber threats.

52. Furthermore, third-party individuals have a recognized privacy interest in not being publicly associated with law enforcement investigations through the release of records compiled for law enforcement purposes. The identities of persons named in law enforcement files (whether or not the named individual is the target of investigations or law enforcement actions) are properly withheld under Exemptions 6 and 7(C) in recognition of the stigmatizing connotation carried by the mere mention of individuals in law enforcement files. The individuals' privacy interest in the information contained in the record outweighs any minimal public interest in the disclosure of the information. Plaintiff has not articulated a sufficient public interest or public need to justify release of this information. The disclosure of this PII serves no public benefit and would not assist the public in understanding how ICE is carrying out its statutory responsibilities. Additionally, the third parties identified in the records have not consented to the disclosure of their PII.

53. ICE determined that the disclosure of the information described above would constitute a clearly unwarranted invasion of personal privacy and thus Exemption 6 was applied. In addition, ICE determined that disclosure of this information, which was compiled for law enforcement purposes, could reasonably be expected to constitute an unwarranted invasion of personal privacy, and thus Exemption 7(C) was applied.

54. Having determined that the third-party individuals identified in the responsive records have a cognizable privacy interest in not having their information released, ICE FOIA then balanced the interest in safeguarding the individuals' privacy from unnecessary public scrutiny against the public's interest in understanding how ICE performs its statutory duties. Exemptions 6 and 7(C) were applied to prevent disclosure of third-party individuals' identities and PII as well as

the identities of ICE personnel. In each instance where Exemptions 6 and 7(C) were applied, the redaction was limited to the name of the individual and all other personally identifiable information, which if released, would not shed any further light as to the operations or activities of ICE. In all instances non-exempt information surrounding the redactions was released and the limited extent of the redaction is readily apparent from the context of the records.

55. Based upon the long-standing recognition of strong privacy interests in law enforcement records, the categorical withholding of third-party information identified in law enforcement records is appropriate. Moreover, the third parties identified in these records have not provided consent to the release of their personally identifiable information.

FOIA Exemptions 5 U.S.C. § 552(b)(7)(E)

56. FOIA Exemption 7(E) affords protection to law enforcement information that “would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.”

57. Here ICE has applied Exemption 7(E) to law enforcement sensitive information, specifically law enforcement sensitive operational information pertaining to facilities, and intranet website URLs.

58. Disclosure of the aforementioned law enforcement sensitive links to law enforcement databases and/or systems could permit malicious actors seeking to interfere with law enforcement investigations and/or operations to take proactive steps to counter operational and investigative actions taken by ICE during enforcement operations. Revealing law enforcement database links to the public can disrupt investigations and allow third parties to thwart law

enforcement investigations by compromising the integrity of the database and manipulating the stored information, thereby thwarting law enforcement operations.

59. The disclosure of the aforementioned law enforcement sensitive information serves no public benefit and would not assist the public in understanding how the agency is carrying out its statutory duties.

G. SEGREGABILITY

50. 5 U.S.C. § 552(b) requires that “[a]ny reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt.”

51. A line-by-line review was conducted to identify information exempt from disclosure or for which a discretionary waiver of exemption could be applied.

52. With respect to the records that were released, all information not exempted from disclosure pursuant to the FOIA exemptions specified above was correctly segregated and non-exempt portions were released. ICE did not withhold any non-exempt information on the grounds that it was non-segregable.

FERNANDO
PINEIRO JR

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