

UNITED STATES DISTRICT COURT
DISTRICT OF DISTRICT OF COLUMBIA

BOSTON UNIVERSITY SCHOOL OF LAW
IMMIGRANTS' RIGHTS AND HUMAN
TRAFFICKING PROGRAM,
765 Commonwealth Avenue
Boston, MA 02215

JUST FUTURES LAW,
95 Washington Street, Suite 104-149
Canton, MA 02021

Plaintiffs,

v.

U.S. IMMIGRATION
AND CUSTOMS ENFORCEMENT,
500 12th Street SW
Washington, D.C. 20536

Defendant.

Civil Action No.

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

1. This action is brought pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, to compel Defendant U.S. Immigration and Customs Enforcement (“ICE”) to produce records responsive to Plaintiffs Boston University School of Law Immigrants’ Rights & Human Trafficking Program and Just Futures Law’s FOIA request, dated January 6, 2021 (the “request”). The request concerns ICE’s use of administrative subpoena requests¹ to technology companies such as Google, Facebook, Twitter, Instagram, and YouTube in an effort to expand data surveillance of U.S. residents. The request was designed to answer key questions regarding

¹An ICE administrative subpoena request is a written request from the ICE for information in the form of records or testimony. ICE has asserted its legal authority to issue administrative subpoenas under 8 U.S.C. § 1225(d)(4) and 8 C.F.R. § 287.4. The agency presumably relies on 18 U.S.C. § 2703(c)(2) as well.

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what categories of data ICE is requesting from these technology companies, the scale of such requests, and the response of these technology companies.

2. ICE has issued administrative subpoenas to companies like Google requesting sensitive and personal information on subscribers such as phone numbers, home addresses, means and sources of payment, including credit card and account numbers, and IP address history. Providing location data to ICE can cause irreparable harm because ICE uses such information to conduct home and work raids, incarcerate noncitizens, deport individuals and their families, and tear apart communities. Notably, ICE issues these subpoenas without judicial oversight or review by a neutral decision maker. Given the lack of oversight over the issuance of ICE's administrative subpoenas, ICE's practices in this area present issues of concern for members of the immigrant community and the wider public.

3. ICE's use of administrative subpoenas to obtain consumer information is just one of many surveillance tactics that the agency employs in its immigration enforcement operations. In recent years, there has been increasing media attention and concern among the public regarding ICE accessing personal data to arrest and deport individuals.² ICE's surveillance tactics, including its use of administrative subpoenas, and their potential role in civil rights violations are matters of significant public concern and carry serious policy and legal implications.

4. The core promise of FOIA is to "open agency action to the light of public scrutiny," thus ensuring that citizens know "what their government is up to." *Am. Civ. Liberties Union v. U.S. Dep't of Just.*, 655 F.3d 1, 6 (D.C. Cir. 2011) (quoting *U.S. Dep't of Just. v. Repts. Comm. for Freedom of the Press*, 489 U.S. 749, 772, 773 (1989)).

² See Drew Harwell, *ICE Investigators Used a Private Utility Database Covering Millions to Pursue Immigration Violations*, Wash. Post (Feb. 26, 2021, 4:55 PM), <https://www.washingtonpost.com/technology/2021/02/26/ice-private-utility-data/>; McKenzie Funk, *How ICE Picks Its Targets in the Surveillance Age*, N.Y. Times Mag. (June 7, 2021), <https://www.nytimes.com/2019/10/02/magazine/ice-surveillance-deportation.html>; Sam Biddle, *LexisNexis to Provide Giant Database of Personal Information to ICE*, Intercept (Apr. 2, 2021, 10:00 AM), <https://theintercept.com/2021/04/02/ice-database-surveillance-lexisnexis/>.

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5. To date, since January 6, 2021, Defendant ICE has neither provided Plaintiffs with a substantive response nor produced any records in response to Plaintiffs' FOIA request. Defendant ICE's failure to disclose and produce the requested records violates the FOIA. Because of ICE's disregard for these requirements, important information about the nature of ICE's use of administrative subpoenas to obtain private consumer information remains hidden.

6. Plaintiffs now bring this action to obtain the information to which they are statutorily entitled.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this matter under FOIA, 5 U.S.C. § 552(a)(4)(B), and as a federal question under 28 U.S.C. § 1331.

8. Venue is proper in this district under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

9. This case is ripe for judicial determination under 5 U.S.C. § 552(a)(6)(C)(i) because Defendants failed to respond to the request within the time required by law.

PARTIES

10. The Immigrants' Rights & Human Trafficking Program at Boston University School of Law advocates on behalf of vulnerable immigrants in a broad range of complex legal proceedings before the immigration courts, state, local, and federal courts, and before immigration agencies. The Clinic also collaborates with local, state, and national immigrants' rights and human rights groups to advance protections for vulnerable immigrants and survivors of human trafficking. Under the supervision of professors and instructors, law students represent children and adults seeking protection in the United States, including survivors of torture and trauma, survivors of domestic violence, abandoned and abused children, and the mentally ill and incompetent, including representation of detained and non-detained individuals in removal proceedings. The Immigrants' Rights & Human Trafficking Program at Boston University School of Law is part of Boston University, formally known as the Trustees of Boston University, a nonprofit corporation established under the laws of Massachusetts and headquartered in Boston, Massachusetts.

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11. Plaintiff Just Futures Law (JFL) is a nonprofit organization that works in partnership with immigrant and racial justice organizers and base-building groups to develop legal and advocacy strategies aimed at disrupting criminalization and deportation; file litigation aligned with organizing; and build a political home for lawyers and legal workers who center directly-impacted communities in the immigrants' rights movement. JFL disseminates information about the immigration system to the public in accessible ways and is a leader in providing training and support for legal practitioners, community-based organizations, and community members. JFL provides expert information and community-based education on ICE tactics, including surveillance practices, and possible legal and policy remedies. JFL is established under the laws of Delaware and headquartered in Washington, D.C.

11. Defendant ICE is a component agency of DHS and an agency within the meaning of 5 U.S.C. § 552(f)(1). ICE enforces immigration and customs law and is responsible for the detention and removal of immigrants. Upon information and belief, Defendants have custody and control over the records Plaintiffs seek to make publicly available under 5 U.S.C. § 552(a)(2).

STATEMENT OF FACTS

Background Information

12. In recent years, ICE has issued administrative subpoenas using Form I-138 to technology companies, such as Google, for account holder data contained in their applications (email, maps, calendar, etc.).³ Today, these technology companies maintain large amounts of personal data about their users, including real-time location, home addresses, phone numbers, assigned IP addresses, and payment information. ICE administrative subpoena requests to technology companies for such information invade the most intimate and personal information about our daily lives.

³ See Johana Bhuiyan, *This is What Happens When ICE Asks Google for Your User Information*, L.A. Times (Mar. 24, 2021, 5:00 AM), <https://www.latimes.com/business/technology/story/2021-03-24/federal-agencies-subpoena-google-personal-information>.

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13. Despite the extensive personal information ICE may be able to access from technology companies using administrative subpoenas, little is known about the extent to which the agency relies on and deploys these subpoenas in its day-to-day operations.

14. While gaps remain in the public understanding of ICE's use of administrative subpoenas to obtain information from technology companies, the agency and the media have published information regarding the use of similar requests in other civil investigation contexts. For example, ICE has used administrative subpoenas in order to obtain information from local jurisdictions that have "sanctuary" policies limiting information-sharing with ICE. Specifically, ICE has issued subpoenas to compel the New York City Department of Corrections to provide information about individuals in its custody.⁴ ICE has used subpoenas in a similar way in other sanctuary jurisdictions, such as Denver, Colorado and Washington County, Oregon.⁵ In California, ICE has issued administrative subpoenas to utility and electric companies to obtain thousands of people's consumer data, including data revealing when customers are at home.⁶

15. Additionally, ICE has issued thousands of administrative subpoenas to employers for I-9 workplace investigations.⁷ ICE has even issued administrative subpoenas to a media

⁴ See *ICE Issues Subpoenas to Obtain Information Refused Under NY Sanctuary Policies*, U.S. Immigr. and Customs Enf't, (Jan. 18, 2020), <https://www.ice.gov/news/releases/ice-issues-subpoenas-obtain-information-refused-under-ny-sanctuary-policies>.

⁵ See *id.*; Conrad Wilson, *ICE's New Tactic To Get Local Law Enforcement Authorities To Cooperate*, Nat'l Pub. Radio (Mar. 11, 2020, 5:04 AM), <https://www.npr.org/2020/03/11/814353601/ices-new-tactic-to-get-local-law-enforcement-authorities-to-cooperate>; Ted Wheeler et al., Portland City Council, *Portland City Council's Statement on ICE Subpoenas*, Portland.gov (Mar. 6, 2020, 4:11PM), <https://www.portland.gov/eudaly/news/2020/3/6/portland-city-councils-statement-ice-subpoenas>.

⁶ See City News Serv., *Newsom Signs Todd Gloria Bill to Limit ICE's Use of Customer Utility Data* (Sept. 28, 2020, 7:22 PM), NBC San Diego, <https://www.nbcsandiego.com/news/local/newsom-signs-todd-gloria-bill-to-limit-ices-use-of-customer-utility-data/2414101/>.

⁷ See Bruce E. Buchanan, *ICE is on the Warpath Against Employers with 3,000 I-9 Audits in 2 Months*, HR Pros. Mag. (Nov. 2019), <https://hrprofessionalsmagazine.com/2019/11/03/ice-is-on-the-warpath-against-employers-with-3000-i-9-audits-in-2-months/>.

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organization requesting that it reveal its sources, implicating First Amendment concerns.⁸ Recently, ICE issued overbroad administrative subpoenas under specious legal authority to obtain bulk data on routine money transfers, which are frequently used by immigrants and others to send remittances.⁹

16. Given ICE's reliance on administrative subpoenas in other contexts, it is reasonable to assume that ICE's use of such subpoenas to obtain user information from technology companies is substantial. Indeed, the Los Angeles Times has reported on ICE's use of an administrative subpoena to obtain a subscriber's information from Google.¹⁰ When technology companies receive information-sharing requests from federal agencies, such as ICE administrative subpoenas, they frequently comply with the requests. As of 2020, self-reported company data showed that, out of the total number of government requests received in the U.S., Google responded 83% of the time with some data; Twitter responded 59% of the time with some data; and Facebook responded 88% of the time with some data.

17. Advocates for immigrant and privacy rights have expressed increasing concerns about ICE's use of technology and surveillance of personal data to carry out its deportation agenda.¹¹ Advocates have identified ICE's use of administrative subpoenas to obtain user information from technology companies as an important issue given this context. For example, in 2020, civil rights groups, including Plaintiffs, wrote a letter to Google's Chief Legal Officer arguing for more robust privacy protections for users.¹²

⁸ See Hamed Aleaziz, *The Trump Administration Is Trying To Force BuzzFeed News To Divulge Its Sources With A Subpoena*, BuzzFeed News (Dec. 4, 2020, 8:29 PM), <https://www.buzzfeednews.com/article/hamedaleaziz/ice-subpoena-buzzfeed-immigration-sources?bfsource=relatedmanual>.

⁹ See Hamed Aleaziz, *ICE Conducted Sweeping Surveillance Of Money Transfers Sent To And From The US, A Senator Says*, BuzzFeed News (Mar. 8, 2022, 6:01 AM), <https://www.buzzfeednews.com/article/hamedaleaziz/ice-western-union-records-wyden>.

¹⁰ See Bhuiyan, *supra* note 3.

¹¹ See #NoTechForICE, <https://notechforice.com/>.

¹² See Bhuiyan, *supra* note 3.

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18. Despite the public attention to ICE's surveillance tactics in general, there is very little publicly available information about ICE's use of administrative subpoenas to obtain personal data on immigrants from technology companies. Information about ICE's use of administrative subpoenas for this purpose will inform the public about critical facets of immigration enforcement policy, as well as contribute to important dialogues regarding civil liberties and how the government collects and uses consumer information for surveillance of immigrants, their families, and others.

Plaintiffs' FOIA Request and Defendant's Response

19. On January 6, 2021, Plaintiffs submitted a FOIA request to the ICE FOIA Office in Washington, D.C. (via email at ICE-FOIA@DHS.GOV) seeking records regarding ICE's use of administrative subpoenas to obtain information from technology companies. *See* Exhibit 1.

20. The request seeks the following records:

(1) The total number of DHS I-138 Immigration Enforcement Subpoenas issued to the following entities per year, between January 1, 2018 to present, broken down by ICE ERO or HSI Field Office: (a) Google; (b) Facebook; (c) Twitter; (d) Instagram; (e) Youtube; (2) The following records regarding DHS I-138 Immigration Enforcement Subpoenas issued to the entities referenced in Point(1)(a)-(e), per year, between January 1, 2018 to present: (A) The total number of DHS I-138 Immigration Enforcement Subpoenas issued to the referenced entities which was accompanied by a judicial warrant, judicial order, or other evidentiary finding as to probable cause or reasonable suspicion; and (B) The total number of DHS I-138 Immigration Enforcement Subpoenas to which the referenced entities responded with user data including but not limited to names, addresses, email address, screen names, telephone numbers, credit card information, or IP addresses; (3) Of those DHS I-138 Immigration Enforcement Subpoenas to which the entities referenced in Point (1)(a)-(e) responded with user data between January 1, 2018 to present, please confirm whether any of the following categories of user data was sought or provided to ICE: (A) All names, screen names, email addresses; (B) Connection records (including assigned IP addresses) or record of session times and duration for all accounts; (C) Location (street addresses) of all accounts; (D) Length of service (including start date) and types of services utilized; (E) Telephone or instrument number or other subscriber number or identity; and (F) Means or source of payment for such service (including credit card or account numbers); (4) A random sample of 20 DHS I-138 Immigration Enforcement Subpoenas issued to each of the referenced entities in Point (1)(a)-(e) between January 1, 2020 to present by ICE.

Exhibit A at 3-4.

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21. Plaintiffs sought expedited processing, citing a compelling need “to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II). The request specifically noted the marked increase in internet usage during the COVID-19 pandemic and vulnerable community members’ reliance on email to access essential services in order to highlight the importance of understanding ICE’s request and retention of information from Google and other technology companies.

22. By email dated March 4, 2021, ICE acknowledged receipt of the request, assigning tracking number 2021-ICFO-31889 to the request, and invoking a 10-day extension to the 20 working-day deadline for ICE to provide a substantive response to the FOIA request. *See* Exhibit 2.

23. In that same email, ICE granted Plaintiffs’ request for a fee waiver and denied their request for expedited processing.

24. On November 22, 2021, Plaintiffs emailed the ICE FOIA Office in Washington, D.C. (via email at ICE-FOIA@DHS.GOV) to inquire as to the status of the request. *See id.* Plaintiffs did not receive any response.

25. More than 30 working days have passed since ICE acknowledged receipt of the FOIA request.

26. To date, Plaintiffs have not received a determination from ICE as to whether they will comply with the request.

27. To date, Plaintiffs have not received any documents from ICE that are responsive to the request nor explained its failure to do so. Plaintiffs have exhausted all administrative remedies because ICE has failed to comply with the time limit for responding to the request under the FOIA.

28. ICE has wrongfully withheld the requested records from Plaintiffs.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

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**Violation of the Freedom of Information Act for Wrongful Withholding of Agency Records
And Wrongful Denial of Request for Expedited Processing**

29. Plaintiffs repeat, allege and incorporate, as fully set forth herein, each and every allegation contained in paragraphs 1–27 above.

30. The failure of Defendant to make a reasonable effort to search for records responsive to the request violates the FOIA, 5 U.S.C. § 552(a)(3), and Defendant’s corresponding regulations.

31. The failure of Defendant to promptly make available the records sought by the request violates the FOIA, 5 U.S.C. § 552(a)(3)(A), (a)(6)(A), and Defendant’s corresponding regulations.

32. The failure of Defendant to process Plaintiffs’ request expeditiously and as soon as practicable violates the FOIA, 5 U.S.C. § 552(a)(6)(E), and Defendant’s corresponding regulations.

33. The failure of Defendant to grant Plaintiffs’ request for expedited processing violates the FOIA, 5 U.S.C. § 552(a)(6)(E), and Defendant’s corresponding regulations.

REQUESTED RELIEF

WHEREFORE, Plaintiffs respectfully pray that this Court:

- a. Declare that Defendant’s failure to disclose the records responsive to Plaintiffs’ request is unlawful;
- b. Declare that Defendant’s failure to respond to Plaintiffs’ request for expedited processing is unlawful;
- c. Order Defendant to promptly conduct a thorough search for all responsive records;
- d. Order Defendants to expeditiously process and release all responsive records, and enjoin Defendants from improperly withholding records;
- e. Award Plaintiffs reasonable attorneys’ fees and other litigation costs incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and
- f. Grant such other relief as the Court may deem just and proper.

Dated: November 21, 2022

Respectfully submitted,

/s/ Sejal Zota

Sejal Zota (D.C. Bar. No. NC020)

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