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U.S. Immigration & Customs Enforcement
Freedom of Information Act Office
500 12th Street, S.W., Stop 5009
Washington, D.C. 20536-5009

Via Email at ice-foia@ice.dhs.gov

September 14, 2021

Re: Records Related to Immigration & Customs Enforcement (ICE)'s Use of B.I. Incorporated's SmartLINK Application for the Intensive Supervision Appearance Program (ISAP)

Dear FOIA Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 and its implementing regulations, 6 C.F.R. § 5.1 *et seq.*, Just Futures Law (“JFL”), Mijente Support Committee, and Community Justice Exchange (“CJE”) (herein “Requesters”) seek records from Immigration & Customs Enforcement (“ICE”) (herein “agency”) related to its use of B.I. Incorporated (“B.I.”)’s SmartLINK application as part of the Intensive Supervision Appearance Program (“ISAP”). Requesters specifically request records pertaining to the collection of data from the SmartLINK application, the retention, sharing, and use of such data, and the nature of monitoring through the application.

Requesters seek a fee waiver, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k), and expedited processing, pursuant to 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5(d).

We ask that you direct this request to all appropriate offices, components, divisions, and/or directorates within ICE and the Department of Homeland Security (“DHS”) as necessary.

Background

In 2004, ICE commenced ISAP as a so-called “alternatives to detention” program.¹ Over the last seventeen years, however, this program has only increased the number of immigrants under ICE’s supervision, subjecting them to invasive surveillance through voice verification monitoring, ankle shackles, and the SmartLINK application.² Consistently, as ICE’s budget for ISAP increased, so did its budget for detention, highlighting that this program is not an

¹ OIG, *U.S. Immigration & Customs Enforcement’s Alternatives to Detention (Revised)*, Report (Feb. 2015), https://www.oig.dhs.gov/assets/Mgmt/2015/OIG_15-22_Feb15.pdf (“OIG Report”).

² Just Futures Law & Mijente, *ICE Digital Prisons*, Report (May 2021), <https://www.flipsnack.com/JustFutures/ice-digital-prisons-1u8w3fnd1j.html> (“ICE Digital Prisons Report”).

alternative but an extension.³ B.I., a subsidiary of GEO Group, has held the contract for ISAP since 2004.⁴ B.I. and GEO Group are heavily invested in mass incarceration across the country and profit every year from surveillance and incarceration through contracts like this one.⁵

The constant, invasive surveillance as a part of ISAP has very serious physical and emotional impacts on the immigrants who are enrolled in the program. Reports show that large percentages of immigrants on ankle shackles report aches, pains, numbness, and swelling, among other damages as a result of the devices.⁶ Electronic monitoring can also be all-encompassing, knowing that your every move is being monitored. It makes it difficult to obtain and maintain employment, sustain relationships with family members and friends, and causes social isolation.⁷

In the last three months alone, the number of immigrants enrolled in the ISAP program has increased by more than 11,000.⁸ And ICE's reliance on the SmartLINK application is increasing rapidly as well. According to an oversight report, only 12% of individuals in the program were on the SmartLINK application as of June 2019.⁹ In ICE's latest numbers, as of August 2021, 46.3% of people in the program are now on the application.¹⁰ While ICE pitches the application as a "step-down" from other forms of electronic monitoring, advocates have serious privacy and civil rights concerns about ICE's use of SmartLINK.¹¹

From information that is publicly available, it is unclear what data from the SmartLINK application is being collected, retained, used for enforcement operations, and shared with other government agencies. B.I.'s privacy policy for the SmartLINK application allows for extremely broad collection of data, including application usage details and device information like IP address and mobile network information.¹² Moreover, many community members have also expressed concerns that the application may be monitoring them surreptitiously beyond the already concerning parameters of the program.

³ *Id.*

⁴ Press Release, *The GEO Group Announces Five-Year Contract With U.S. Immigration & Customs Enforcement for Intensive Supervision and Appearance Program (ISAP)*, Business Wire, Mar. 24, 2020, <https://www.businesswire.com/news/home/20200324005145/en/The-GEOGroup-Announces-Five-Year-Contract-With-U.S.-Immigration-and-Customs-Enforcementfor-Intensive-Supervision-and-Appearance-Program-ISAP>.

⁵ Investigate, *Profile: The GEO Group*, AFSC, <https://investigate.afsc.org/company/geo-group>.

⁶ Benjamin N. Cardozo School of Law Kathryn O. Greenberg Immigration Justice Clinic, Freedom for Immigrants & Immigrant Defense Project, *Immigration Cyber Prisons: Ending the Use of Electronic Ankle Shackles*, Report (July 2021), <https://static1.squarespace.com/static/5a33042eb078691c386e7bce/t/60ec661ec578326ec3032d52/1626105377079/Immigration+Cyber+Prisons+report.pdf>.

⁷ MediaJustice, *No More Shackles*, Report (Apr. 2020), https://mediajustice.org/wpcontent/uploads/2020/04/NoMoreShackles_PretrialReport_2019-final-draft.pdf; Molly Hennessy-Fiske, *Immigrants Object to Growing Use of Ankle Monitors After Detention*, L.A. Times, Aug. 2, 2015, <https://www.latimes.com/nation/immigration/la-na-immigrant-ankle-monitors-20150802-story.html>.

⁸ ICE, Detention Management, <https://www.ice.gov/detain/detention-management#tab2>.

⁹ OIG Report.

¹⁰ ICE, Detention Management, <https://www.ice.gov/detain/detention-management#tab2>.

¹¹ ICE Digital Prisons Report.

¹² *Id.*

Electronic monitoring is not an alternative to detention – it is a technological extension. Requesters categorically reject the use of such technologies to monitor immigrant communities and urgently request information on the types of data being collected by SmartLINK, its data sharing, retention, and use policies, and the nature of monitoring through the application.

Records Requested

Types of Data

1. Records indicating the types of data collected by the agency through the SmartLINK application. Types of data may include, but are not limited to, location data, video footage, voice recording, biometric data, information about the mobile network, and/or any other data about the mobile device or its uses.
2. Records indicating the types of data collected by the application while installed on an individual's device, with or without the knowledge and/or consent of the individual who is being monitored as a part of ISAP.
3. Records indicating the length of time for which these types of data are collected by the SmartLINK application, including but not limited to information about which types of data collection are constant when the application is installed on an individual's device.

Data Sharing & Retention

4. Records on the retention and sharing of any data collected by the SmartLINK application, including but not limited to:
 - a. B.I.'s access to any data collected by the SmartLINK application, the length of time the data is retained by B.I., and any processes for deletion of this data from B.I.'s records. This includes data collected at, retained in, and used by C sites, G sites, the central monitoring facility, and any other B.I.-operated facility or database.
 - b. ICE officers' access to any data collected by the SmartLINK application, the length of time the data is retained by ICE, and any processes for deletion of this data from ICE's records. *Note:* according to the ISAP IV contract, B.I. is required to provide ICE access to a "remotely accessible database" and "monitoring system".¹³ This request includes data collected at, retained in, shared and used by G sites, T sites, S sites, the central monitoring facility, and any ICE-operated facility or database.
 - c. All ICE components and offices which have access to the data and the extent to which this data is accessible to individuals in these components and offices.
 - d. Any guidance, instruction, manual, and/or contract describing ICE officers' use of B.I. Total Access.

¹³ See ICE, ISAP IV Contract (Mar. 2020), <https://law.stanford.edu/immigrants-rights-clinic/stanford-immigrants-rights-clinic-uncovers-new-details-about-the-governments-use-of-ankle-monitors-and-other-alternatives-to-detention>.

- e. All other DHS components which have access to the data and the extent to which this data is accessible to individuals in these components and offices.
 - f. All other federal and/or local government agencies which have access to the data and the extent to which this data is accessible to individuals in any other federal and/or local government agencies.
 - g. Any policy, procedure, release, and/or form relating to processes for sharing information collected through the SmartLINK application with any of the components, offices, and/or agencies mentioned above.
 - h. Any policy, procedure, release, and/or form relating to the process for sharing and/or selling information collected through SmartLINK with any other entity, public or private.
5. Records describing the operations of the “central monitoring facility,” as mentioned in ICE’s Statement of Work for the ISAP IV contract,¹⁴ including but not limited to:
- a. The division of responsibilities in management of the central monitoring facility between ICE employees and B.I. employees.
 - b. The process through which alert reports are generated by the central monitoring facility and then sent to ICE field offices.
 - c. The number of requests per month that ICE retroactively requests data generated from the SmartLINK application.
 - d. Any breakdown of the types of data requested through these retroactive requests.
 - e. Any breakdown by ICE field office of these retroactive requests.
 - f. Any policy, procedure, release, and/or form outlining guidelines for requesting information from SmartLINK retroactively.

Data Use for Enforcement Operations

6. Records regarding all enforcement operations that used data collected from the SmartLINK application, including but not limited to:
- a. The types of data used in these enforcement operations.
 - b. Breakdown by ICE field office of enforcement operations that relied on any data from SmartLINK.
 - c. The sharing of data with other DHS components and offices or government agencies as listed above for the explicit purpose of enforcement operations.
 - d. Any policy, procedure, release, and/or form relating to obtaining this data for the purposes of enforcement operations.

Efficacy of SmartLINK’s Features

7. Records indicating the accuracy of the SmartLINK application features, including but not limited to:

¹⁴ ICE, *ISAP IV Request for Proposal, Attachment 1*, https://imlive.s3.amazonaws.com/Federal%20Government/ID67569442195091255930432594724101179259/Attachment_1_-_Detailed_GPS,_Telephonic_and_Biometric_Reporting_Specs_Amendment_0001.pdf.

- a. The accuracy of the facial recognition feature in the SmartLINK application and the number of false positives and false negatives as a part of the facial recognition check in process.
- b. Breakdown by race, gender, and/or age on the accuracy of the facial recognition feature and the number of false positives and false negatives as a part of the facial recognition check in process.
- c. The accuracy of location tracking in the SmartLINK application and the number of noted errors as a result of the application in location verification.
- d. Any audits or other records that describe validation, accuracy, or reliability.

Consent & Notice

8. Any policy, procedure, release, or/and form relating to obtaining the consent of individuals to collect or use their data through the SmartLINK application, whether as a part of the orientation process or at any other time.
9. Any policy, procedure, or/and form relating to providing notice to individuals on the collection, use, and/or sharing of their data in instances beyond when they are explicitly aware that their data is being collected, used, and/or shared.

Requesters

Just Futures Law is a transformational immigration lawyering organization that provides legal support for grassroots organizations engaged in making critical interventions in the United States' deportation and detention systems and policies. JFL staff maintains close relationships with organizations and activists who seek to understand the scope and range of government surveillance and criminalization. JFL staff have decades of experience in providing expert legal advice, written legal resources, and training for immigration attorneys and criminal defense attorneys on the immigration consequences of the criminal legal system. JFL has a significant interest in the administration of government surveillance and data collection. JFL has already published a number of reports on government surveillance including a report around the "alternatives to detention" program.¹⁵

Mijente Support Committee is a national organization that coordinates and organizes with its members in several states to address issues relating to immigration enforcement and Latinx political participation. Founded by community organizers, its focus is on developing and sparking social change with respect to immigration and other social justice issues in the Latinx community and beyond.

The Community Justice Exchange is a movement support organization that serves as a national hub for developing, sharing, and experimenting with tactical interventions, strategic organizing practices, and innovative organizing tools toward prison industrial complex abolition. We provide support to community-based organizations that are experimenting with bottom-up, power-building interventions in the criminal legal and immigration detention systems.

¹⁵ ICE Digital Prisons Report.

Request for Fee Waiver

Requesters further seek a limitation or waiver of processing (search and review) fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) (“fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by ... a representative of the news media . . .”); 5 U.S.C. § 552(a)(4)(A)(iii) (“Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.”). *See also* 6 C.F.R. § 5.11(d)(1). That provision should be “liberally construed in favor of waivers for noncommercial requestors.” *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003).

1. Release of the requested records is in the public interest.

The records requested will contribute significantly to public understanding of the government’s operations or activities. Under 6 C.F.R. § 5.11(k)(2), the following factors are to be considered in determining whether a disclosure is in the public interest: (i) whether the subject of the requested records concerns “the operations or activities of the government”; (ii) whether the disclosure is “likely to contribute” to an understanding of government operations or activities; (iii) whether disclosure of the requested information will contribute to “public understanding,” that is, “the understanding of a reasonably broad audience of persons interested in the subject”; and (iv) whether disclosure is likely to contribute “significantly” to public understanding of government operations or activities. *See* 6 C.F.R. § 5.11(k)(2)(i)–(iv).

Each of these considerations is satisfied here. First, the records requested pertain directly to “operations or activities” of the federal government: specifically, how the agency uses the SmartLINK application to surveil immigrants who are on ISAP. As ICE and DHS focus more resources on surveillance technology at the border and for purposes of immigration enforcement, it is essential that members of the public have a clear understanding of the invasive nature of these technologies and to what extent the agency is collecting, retaining, and using personal information. Second, this request is “likely to contribute” to a public understanding of government operations or activities by answering these pressing questions for the public and lawmakers. Recent reports have indicated that ICE is buying utility information and has access to a network of other data points that paint intimate pictures of immigrants’ lives.¹⁶ Advocates have also discovered that ICE has been surveilling activists for the purposes of retaliation.¹⁷ Especially given ICE’s history of intrusive surveillance of immigrant communities, requested records will further contribute to the public’s understanding of the impact of ICE’s surveillance operations.

¹⁶ Drew Harwell, *ICE Investigators Used a Private Utility Database Covering Millions to Pursue Immigration Violations*, Wash. Post, Feb. 26, 2021, <https://www.washingtonpost.com/technology/2021/02/26/ice-private-utility-data>.

¹⁷ Joel Rose, *Immigrant Activists Say ICE Is Purposely Targeting Them. They're Urging Biden To Help*, NPR, Aug. 4, 2021, <https://www.npr.org/2021/08/04/1024348198/immigrant-activists-ask-biden-administration-to-ban-ice-from-retaliating-against>.

Third, disclosure of the requested information will contribute to “the understanding of a reasonably broad audience of persons interested in the subject.” Requesters will publish responsive records and their analysis through reports, press releases, online posts, newsletters or other media to raise public awareness of the agency’s use of data collection, sharing, and analysis in its immigration enforcement actions. Moreover, Requesters will use the records to inform know-your-rights presentations and training for the public and attorneys. Using records produced from prior FOIA requests, Requesters have previously published reports, fact sheets, and community resources on federal and local government agency use of data collection, sharing, and analysis, which has reached a broad audience and garnered significant public attention.¹⁸

Finally, disclosure will contribute “significantly” to the public understanding of the agency’s increasing use of surveillance data in its immigration enforcement actions. The requested records will meaningfully inform the public debate over the “alternatives to detention” program. As Congress appropriates \$440 million for the program this year and the current administration calls for a capacity of 140,000 people monitored,¹⁹ this disclosure will provide the public and lawmakers making decisions about appropriations insight into how ICE carries out the surveillance of immigrants in the program and what types of data it is collecting, retaining, and using. Moreover, specifically with SmartLINK, ICE has rapidly increased its reliance on the application throughout the year, with some field offices increasing the number of people on SmartLINK by almost 400% in just three months.²⁰ With this quick shift towards surveillance through a mobile application, the public has significant interest in understanding how SmartLINK works to comprehend the privacy and civil rights risks associated with its use.

2. *Disclosure of the information requested is not in the Requesters’ commercial interest.*

Disclosure of the information requested is not in the commercial interest of Requesters. 6 C.F.R. § 5.11(b). Requesters are non-profit organizations that intend to disseminate the information gathered by this request to the public at no cost, including through the Requesters’ websites and social media.

¹⁸ See, e.g., NationAction, *Take Action Now: Fight for Immigrant Justice*, Nation, May 18, 2020, <https://www.thenation.com/article/activism/take-action-now-fight-for-immigrant-justice> (referencing the JFL advisory “Surveillance During COVID-19 to learn how governments and companies arousing the health crisis to expand surveillance”); Frank Bajak, *Report: Mobile Fingerprinting a Core Tool in US Deportations*, Associated Press, Nov. 23, 2020, <https://apnews.com/article/donald-trump-freedom-of-information-freedom-of-information-act-lawsuits-immigration-0fac264dc20da65c3e5924174f9db5aa> (referencing the Just Futures Law report “Meet EDDIE: Biometric Tech Used against Immigrant Communities”); Just Futures Law, *FACTSHEET: Whitehouse Office of Science & Technology Policy Tech Surveillance Response to COVID-19* (July 2021), <https://justfutureslaw.org/wp-content/uploads/2020/07/OSTP.2020-07-28.FACTSHEET.pdf>; Mijente, *Who’s Behind ICE? The Tech and Data Companies Fueling Deportations* (2018), https://mijente.net/wp-content/uploads/2018/10/WHO%E2%80%99S-BEHIND-ICE_-The-Tech-and-Data-Companies-Fueling-Deportations_v3-.pdf; <https://mediajustice.org/resource/no-more-shackles-report/>.

¹⁹ Kari Paul, *Human Rights Groups Call For an End to Digital Surveillance of Immigrants*, Guardian, June 1, 2021, <https://www.theguardian.com/us-news/2021/jun/01/human-rights-groups-call-for-an-end-to-digital-surveillance-of-immigrants>.

²⁰ ICE, *Detention Management*, <https://www.ice.gov/detain/detention-management#tab2>.

In prior FOIA requests, Requesters have received fee waivers by government agencies including FOIA Requests CBP-2020-060295 and CBP-2021-008288.

For these reasons, this request for a full fee waiver should be granted. Alternatively, if the full fee waiver is not granted, Requesters seek all applicable reductions in fees. Further, if no fee waiver is granted and the anticipated costs associated with this request exceed \$25.00, please notify Requesters to obtain consent and provide an estimate of the additional fees.

Request for Expedited Processing

Requesters are entitled to expedited processing of this request under the FOIA statute and implementing regulations, where there is a “compelling need” for the information requested. 5 U.S.C. § 552(a)(6)(E); 6 C.F.R. § 5.5(d)(ii). A “compelling need” is established when there exists an “urgency to inform the public about an actual or alleged Federal Government activity,” and when the requester is a “person primarily engaged in disseminating information,” 6 C.F.R. § 5.5(d)(ii).

- 1. Requesters are organizations primarily engaged in disseminating information to the public and there is an urgent need to inform the public about actual or alleged government activity.*

Dissemination of information to the public about actual or alleged government activity is a critical and substantial component of the Requesters’ mission and work. The records requested are urgently needed to inform the public about actual or alleged government activity, specifically, federal government’s use of powerful technologies to collect vast amounts of personal information. JFL, Mijente Support Committee, and CJE represent and work with communities whose members are subject to ISAP and the intrusive surveillance that is a part of the program. Moreover, recent appropriations indicate that the expenditure for the ISAP program is continuing to increase. Additional information is urgently needed to allow the public to fully engage with elected representatives concerning future public expenditure on SmartLINK.

Conclusion

Thank you for your consideration of this request. Requesters certify that the above information is true and correct to the best of their knowledge pursuant to 6 C.F.R. § 5.5(e)(3). We look forward to your response to our request for expedited processing within ten (10) business days, as required under 5 U.S.C. § 552(a)(6)(E)(ii)(I). Notwithstanding our request for expedited processing, we alternatively look forward to your reply to this request within twenty (20) business days, as required under 5 U.S.C. § 552(a)(6)(A)(I). If the Request is denied in whole or in part, we ask that you justify all withholdings by reference to specific exemptions to the FOIA. We also ask that you release all segregable portions of otherwise exempt material.

We request that the records be made available electronically, by e-mail attachment if available or CD-ROM if not.

For any questions regarding this request, please contact Sejal Zota at sejal@justfutureslaw.org,
cc: foia@justfutureslaw.org, julie@justfutureslaw.org, & aly.panjwani@justfutureslaw.org.
Thank you for your consideration.

Signed,

A handwritten signature in black ink, appearing to read 'Aly Panjwani', with a stylized flourish at the end.

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