

21-1233

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

AMERICAN CIVIL LIBERTIES UNION IMMIGRANTS' RIGHTS PROJECT,
Plaintiff-Appellant,

v.

UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT,
Defendant-Appellee.

*On Appeal from the United States District Court
for the Southern District of New York*

JOINT APPENDIX

ZACHARY BANNON
Assistant United States Attorney
86 Chambers Street, Third Floor
New York, NY 10007
Tel: (212) 637-2728
zachary.bannon@usdoj.gov

Counsel for Defendant-Appellee

NOOR ZAFAR
MICHAEL TAN
American Civil Liberties Union
Immigrants' Rights Project
125 Broad Street, 18th Floor
New York, NY 10004
Tel: (212) 549-2660
nzafar@aclu.org

CODY WOFSY
American Civil Liberties Union
Immigrants' Rights Project
39 Drumm Street
San Francisco, CA 94111
Tel: (415) 343-0770
cwofsy@aclu.org
Counsel for Plaintiff-Appellant

***ACLU IRP v. U.S. ICE*, No. 21-1233 (2d Cir.)**

**JOINT APPENDIX
TABLE OF CONTENTS**

ACLU IRP v. U.S. ICE, No. 19-7058 (GBD) (S.D.N.Y)

U.S. District Court for the Southern District of New York, Docket Sheet, Case No. 19 Civ. 7058 (GBD)	JA1
Freedom of Information Act Request (Oct. 3, 2018).....	JA8
Plaintiff’s Complaint for Injunctive Relief (July 29, 2019), ECF No. 1	JA20
Stipulation and Order (Mar. 30, 2020), ECF No. 29	JA 30
Notice of Defendant’s Motion for Summary Judgment (May 7, 2020), ECF No. 30	JA 35
Declaration of Donna Vassilio-Diaz (May 6, 2020), ECF No. 32	JA 36
Exhibit A – Sample spreadsheet pages.....	JA 44
Notice of Plaintiff’s Cross-Motion for Summary Judgment (June 18, 2020), ECF No. 33	JA 74
Declaration of David Hausman (June 18, 2020), ECF No. 35	JA 76
Exhibit B – Excerpt of New York Times FOIA data	JA 85
Exhibit C – Excerpt of Human Rights Watch FOIA data	JA 87
Exhibit D – Excerpt of Transactional Records Access Clearinghouse FOIA data.....	JA 89
Exhibit E – ICE response letter	JA 91
Declaration of Eugene Wu (June 18, 2020), ECF No. 36	JA 94

Supplemental Declaration of Donna Vassilio-Diaz (July 16, 2020), ECF No. 40	JA 102
Transcript of December 3, 2020 hearing on Defendant’s Motion for Summary Judgment and Plaintiff’s Cross-Motion for Summary Judgment, ECF No. 47	JA 109
Memorandum Decision and Order (Mar. 10, 2021), ECF No. 52.....	JA 176
Judgment (Mar. 10, 2021), ECF No. 53	JA 191
Plaintiff’s Notice of Appeal (May 7, 2021), ECF No. 54.....	JA 192

CLOSED,APPEAL,CASREF,ECF

**U.S. District Court
Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:19-cv-07058-GBD**

American Civil Liberties Union Immigrants' Rights Project v.
United States Immigration and Customs Enforcement
Assigned to: Judge George B. Daniels
Referred to: Magistrate Judge James L. Cott (Settlement)
Cause: 05:552 Freedom of Information Act

Date Filed: 07/29/2019
Date Terminated: 03/10/2021
Jury Demand: None
Nature of Suit: 895 Freedom of
Information Act
Jurisdiction: U.S. Government Defendant

Plaintiff

**American Civil Liberties Union
Immigrants' Rights Project**

represented by **Elizabeth Anne Molino Sauvigne**
Skadden, Arps, Slate, Meagher & Flom,
LLP
One Manhattan West
New York, NY 10001-8602
914-715-8907
Email: elizabeth.molino@skadden.com
TERMINATED: 01/19/2021

Eric Riedel
Skadden, Arps, Slate, Meagher & Flom
LLP
One Manhattan West
New York, NY 10001-8602
212-735-3362
Email: eric.riedel@skadden.com
ATTORNEY TO BE NOTICED

Michael Thomas Tan
American Civil Liberties Union (NYC)
125 Broad Street, 18th Floor
New York, NY 10004
347-714-0740
Email: mtan@aclu.org
ATTORNEY TO BE NOTICED

George Abraham Zimmerman
Skadden, Arps, Slate, Meagher & Flom
LLP
One Manhattan West
New York, NY 10001-8602
212-735-2047
Email: gzimmerm@skadden.com
ATTORNEY TO BE NOTICED

V.

Defendant

**United States Immigration and
Customs Enforcement**

represented by **Tomoko Onozawa**
U.S. Attorney's Office, SDNY (Chambers
Street)
86 Chambers Street
New York, NY 10007
(212) 637-2721
Fax: (212) 637- 2686
Email: tomoko.onozawa@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

JA 001

Zachary Bannon
 DOJ-USAO
 86 Chambers St
 New York, NY 10007
 212-637-2728
 Email: zachary.bannon@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
07/29/2019	<u>1</u>	COMPLAINT against United States Immigration and Customs Enforcement. (Filing Fee \$ 400.00, Receipt Number ANYSDC-17330641) Document filed by American Civil Liberties Union Immigrants' Rights Project. (Attachments: # <u>1</u> Exhibit A – FOIA Request, # <u>2</u> Exhibit B – ACLU and FOIA Correspondence)(Zimmerman, George) (Entered: 07/29/2019)
07/29/2019	<u>2</u>	CIVIL COVER SHEET filed. (Zimmerman, George) (Entered: 07/29/2019)
07/29/2019	<u>3</u>	REQUEST FOR ISSUANCE OF SUMMONS as to United States Immigration and Customs Enforcement, re: <u>1</u> Complaint,. Document filed by American Civil Liberties Union Immigrants' Rights Project. (Zimmerman, George) (Entered: 07/29/2019)
07/29/2019	<u>4</u>	RULE 7.1 CORPORATE DISCLOSURE STATEMENT. No Corporate Parent. Document filed by American Civil Liberties Union Immigrants' Rights Project.(Zimmerman, George) (Entered: 07/29/2019)
07/30/2019		CASE OPENING INITIAL ASSIGNMENT NOTICE: The above-entitled action is assigned to Judge George B. Daniels. Please download and review the Individual Practices of the assigned District Judge, located at http://nysd.uscourts.gov/judges/District . Attorneys are responsible for providing courtesy copies to judges where their Individual Practices require such. Please download and review the ECF Rules and Instructions, located at http://nysd.uscourts.gov/ecf_filing.php . (dnh) (Entered: 07/30/2019)
07/30/2019		Magistrate Judge James L. Cott is so designated. Pursuant to 28 U.S.C. Section 636(c) and Fed. R. Civ. P. 73(b)(1) parties are notified that they may consent to proceed before a United States Magistrate Judge. Parties who wish to consent may access the necessary form at the following link: http://nysd.uscourts.gov/forms.php . (dnh) (Entered: 07/30/2019)
07/30/2019		Case Designated ECF. (dnh) (Entered: 07/30/2019)
07/30/2019	<u>5</u>	ELECTRONIC SUMMONS ISSUED as to United States Immigration and Customs Enforcement. (dnh) (Entered: 07/30/2019)
07/30/2019	<u>6</u>	NOTICE OF APPEARANCE OF PRO BONO COUNSEL by Elizabeth Anne Molino Sauvigne on behalf of American Civil Liberties Union Immigrants' Rights Project (Sauvigne, Elizabeth) (Entered: 07/30/2019)
07/30/2019	<u>7</u>	MOTION for Michael King Thomas Tan to Appear Pro Hac Vice . Filing fee \$ 200.00, receipt number ANYSDC-17338402. Motion and supporting papers to be reviewed by Clerk's Office staff. Document filed by American Civil Liberties Union Immigrants' Rights Project. (Attachments: # <u>1</u> Affidavit of Michael Tan, # <u>2</u> Supplement, # <u>3</u> Text of Proposed Order)(Tan, Michael) (Entered: 07/30/2019)
07/30/2019		>>>NOTICE REGARDING PRO HAC VICE MOTION. Regarding Document No. <u>7</u> MOTION for Michael King Thomas Tan to Appear Pro Hac Vice . Filing fee \$ 200.00, receipt number ANYSDC-17338402. Motion and supporting papers to be reviewed by Clerk's Office staff.. The document has been reviewed and there are no deficiencies. (bcu) (Entered: 07/30/2019)
07/30/2019	<u>8</u>	AFFIDAVIT OF SERVICE (FOIA CASE). United States Immigration and Customs Enforcement served on 7/30/2019, answer due 8/29/2019. Service was made by Certified Mail, Return Receipt Requested. Document filed by American Civil Liberties Union Immigrants' Rights Project. (Zimmerman, George) (Entered: 07/30/2019)

07/31/2019	<u>9</u>	INITIAL PRETRIAL CONFERENCE: This case has been designated an electronic case and has been assigned to this Court for all purposes. An Initial pretrial conference will be held on Thursday, September 5, 2019 at 9:30 a.m. at the United States District Courthouse, 500 Pearl Street, New York, New York, Courtroom 11A. And as set forth herein. SO ORDERED. Initial Conference set for 9/5/2019 at 09:30 AM in Courtroom 11A, 500 Pearl Street, New York, NY 10007 before Judge George B. Daniels. (Signed by Judge George B. Daniels on 7/31/2019) (ama) (Main Document 9 replaced on 8/7/2019) (kv). (Entered: 07/31/2019)
08/01/2019	<u>10</u>	ORDER FOR ADMISSION PRO HAC VICE granting <u>7</u> Motion for Michael King Thomas Tan to Appear Pro Hac Vice. (Signed by Judge George B. Daniels on 8/1/2019) (rro) (Entered: 08/01/2019)
08/01/2019	<u>11</u>	NOTICE OF APPEARANCE by Michael Thomas Tan on behalf of American Civil Liberties Union Immigrants' Rights Project. (Tan, Michael) (Entered: 08/01/2019)
08/08/2019	<u>12</u>	AFFIDAVIT OF SERVICE of Letter to United States Immigration and Customs Enforcement dated August 7, 2019 (attached as Exhibit A), Initial Pretrial Conference Order signed July 31, 2019, Electronic Case Filing Rules & Instructions, Individual Practices of Magistrate Judge James L. Cott and Individual Rules and Practices of Judge George B. Daniels on August 7, 2019. Service was made by Certified Mail. Return Receipt Requested. Document filed by American Civil Liberties Union Immigrants' Rights Project. (Sauvigne, Elizabeth) (Entered: 08/08/2019)
08/13/2019	<u>13</u>	NOTICE OF APPEARANCE by Tomoko Onozawa on behalf of United States Immigration and Customs Enforcement. (Onozawa, Tomoko) (Entered: 08/13/2019)
08/28/2019	<u>14</u>	LETTER addressed to Judge George B. Daniels from AUSA Tomoko Onozawa dated 8/28/2019 re: request to extend Defendant's time to respond to complaint and to adjourn initial conference. Document filed by United States Immigration and Customs Enforcement.(Onozawa, Tomoko) (Entered: 08/28/2019)
09/03/2019	<u>15</u>	MEMO ENDORSEMENT on re: <u>14</u> Letter re: request to extend Defendant's time to respond to complaint and to adjourn initial conference., filed by United States Immigration and Customs Enforcement.,ENDORSEMENT: The initial conference is adjourned from September 5, 2019 to October 24, 2019 at 9:30 a.m. United States Immigration and Customs Enforcement answer due 9/30/2019., Initial Conference set for 10/24/2019 at 09:30 AM before Judge George B. Daniels. (Signed by Judge George B. Daniels on 9/3/2019) (rj) (Entered: 09/03/2019)
09/30/2019	<u>16</u>	ANSWER to <u>1</u> Complaint,. Document filed by United States Immigration and Customs Enforcement.(Onozawa, Tomoko) (Entered: 09/30/2019)
10/24/2019		Minute Entry for proceedings held before Judge George B. Daniels: Initial Pretrial Conference held on 10/24/2019, (Pretrial Conference set for 1/16/2020 at 09:45 AM in Courtroom 11A, 500 Pearl Street, New York, NY 10007 before Judge George B. Daniels.). Plaintiff Counsel: Elizabeth Anne Molino Sauvigne; Defense Counsel: Tomoko Onozawa and Court Reporter present. (Vega, Elizabeth) (Entered: 10/25/2019)
01/13/2020	<u>17</u>	NOTICE OF APPEARANCE by Zachary Bannon on behalf of United States Immigration and Customs Enforcement. (Bannon, Zachary) (Entered: 01/13/2020)
01/13/2020	<u>18</u>	PROPOSED SCHEDULING ORDER. Document filed by United States Immigration and Customs Enforcement. (Bannon, Zachary) (Entered: 01/13/2020)
01/15/2020	<u>19</u>	MEMO ENDORSEMENT on re: <u>18</u> Proposed Scheduling Order filed by United States Immigration and Customs Enforcement. ENDORSEMENT: SO ORDERED. (Motions due by 3/27/2020. Cross Motions due by 5/26/2020. Responses due by 6/16/2020. Replies due by 7/7/2020.) (Signed by Judge George B. Daniels on 1/15/2020) (jwh) (Entered: 01/15/2020)
01/16/2020		Minute Entry for proceedings held before Judge George B. Daniels: Final Pretrial Conference held on 1/16/2020. Plaintiff Counsel: Elizabeth Anne Molino Sauvigne Defense Counsel: Zachary Bannon amd Court Reporter present. (Vega, Elizabeth) (Entered: 01/21/2020)

01/21/2020	<u>20</u>	ORDER REFERRING CASE TO MAGISTRATE JUDGE Order that case be referred to the Clerk of Court for assignment to a Magistrate Judge for General Pretrial (includes scheduling, discovery, non-dispositive pretrial motions, and settlement), Settlement. Referred to Magistrate Judge James L. Cott. (Signed by Judge George B. Daniels on 1/16/2020) (rj) (Entered: 01/21/2020)
01/22/2020	<u>21</u>	ORDER: By Order of Reference dated January 16, 2020 (Dkt. No. 20), Judge Daniels referred this FOIA case to me for general pretrial supervision, including settlement. The Court will hold a telephone conference on February 6, 2020 at 12:00 p.m. to discuss what role the Court can play to facilitate settlement, including by helping to narrow or resolve any outstanding issues in advance of the scheduled motion practice. Counsel should contact chambers at (212) 805-0250 with both sides on the line, or alternatively provide a call-in number to the Court by emailing it to CottNYSDChambers@nysd.uscourts.gov. (Telephone Conference set for 2/6/2020 at 12:00 PM before Magistrate Judge James L. Cott.) (Signed by Magistrate Judge James L. Cott on 1/22/2020) (mro) (Entered: 01/22/2020)
02/06/2020		Minute Entry for proceedings held before Magistrate Judge James L. Cott: Telephone Conference held on 2/6/2020. (Tam, David) (Entered: 02/06/2020)
02/06/2020	<u>22</u>	ORDER SCHEDULING SETTLEMENT CONFERENCE: By Order of Reference dated January 16, 2020 (Dkt. No. 20), Judge Daniels referred this FOIA case to me for settlement. The parties and the Court conferred, and agreed that the conference will be held before me on February 27, 2020 at 10:00 a.m. in Courtroom 21D, United States Courthouse, 500 Pearl Street, New York, New York. (And as further set forth in this Order.) SO ORDERED. Settlement Conference set for 2/27/2020 at 10:00 AM in Courtroom 21D, 500 Pearl Street, New York, NY 10007 before Magistrate Judge James L. Cott. (Signed by Magistrate Judge James L. Cott on 2/6/2020) (jca) (Entered: 02/06/2020)
02/11/2020	<u>23</u>	PROPOSED SCHEDULING ORDER. Document filed by United States Immigration and Customs Enforcement. (Bannon, Zachary) (Entered: 02/11/2020)
02/12/2020	<u>24</u>	MEMO ENDORSEMENT on re: <u>23</u> Proposed Scheduling Order filed by United States Immigration and Customs Enforcement. Cross Motions due by 6/26/2020., Motions due by 4/27/2020. Responses due by 7/17/2020. Replies due by 8/7/2020. ENDORSEMENT: SO ORDERED. (Signed by Judge George B. Daniels on 2/12/2020) (ama) (Entered: 02/12/2020)
02/26/2020	<u>25</u>	NOTICE OF APPEARANCE OF PRO BONO COUNSEL by Eric Riedel on behalf of American Civil Liberties Union Immigrants' Rights Project.(Riedel, Eric) (Entered: 02/26/2020)
02/27/2020		Minute Entry for proceedings held before Magistrate Judge James L. Cott: Settlement Conference held on 2/27/2020. (Tam, David) (Entered: 02/27/2020)
02/27/2020	<u>26</u>	ORDER: The Court held a settlement conference today, at which the parties agreed to continue their settlement efforts. As discussed, the Court will hold a telephone conference on March 16, 2020 at 11:30 a.m., during which the parties will provide a status report. Counsel should contact chambers at (212) 805-0250 with both sides on the line, or alternatively provide a call-in number to the Court by emailing it to CottNYSDChambers@nysd.uscourts.gov. SO ORDERED. (Telephone Conference set for 3/16/2020 at 11:30 AM before Magistrate Judge James L. Cott.) (Signed by Magistrate Judge James L. Cott on 2/27/2020) (jca) (Entered: 02/27/2020)
03/02/2020	<u>27</u>	NOTICE OF CHANGE OF ADDRESS by George Abraham Zimmerman on behalf of American Civil Liberties Union Immigrants' Rights Project. New Address: Skadden, Arps, Slate, Meagher & Flom LLP, One Manhattan West, New York, New York, 10001-8602,..(Zimmerman, George) (Entered: 03/02/2020)
03/16/2020		Minute Entry for proceedings held before Magistrate Judge James L. Cott: Telephone Conference held on 3/16/2020. (ml) (Entered: 03/30/2020)
03/27/2020	<u>28</u>	PROPOSED STIPULATION AND ORDER. Document filed by United States Immigration and Customs Enforcement..(Bannon, Zachary) (Entered: 03/27/2020)
03/30/2020	<u>29</u>	STIPULATION AND ORDER: NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the Parties as follows: 1. The Parties agree that

		arguments asserted during the summary judgment phase of the above-captioned action shall be limited to the issue of Unique Identifiers in place of A-numbers, as requested by Plaintiff in the FOIA Request (see Dkt. No. 1-1), and as further set forth in this stipulation. The Parties further agree that the summary judgment briefing schedule and page limits shall be amended to the following: By May 7, 2020, Defendant will file its motion for summary judgment, with a brief not longer than 20 pages. By June 18, 2020, Plaintiff will file a single brief not longer than 30 pages in support of its cross-motion and in opposition to Defendant's motion. By July 9, 2020, Defendant will file a single brief not longer than 20 pages in opposition to Plaintiff's cross-motion and in reply in support of its own motion. By July 30, 2020, Plaintiff will file their reply brief not longer than 10 pages in support of its cross-motion. (Motions due by 5/7/2020. Cross Motions due by 6/18/2020. Responses due by 7/9/2020. Replies due by 7/30/2020.) (Signed by Judge George B. Daniels on 3/30/2020) (jwh) (Entered: 03/30/2020)
05/07/2020	<u>30</u>	MOTION for Summary Judgment . Document filed by United States Immigration and Customs Enforcement..(Bannon, Zachary) (Entered: 05/07/2020)
05/07/2020	<u>31</u>	MEMORANDUM OF LAW in Support re: <u>30</u> MOTION for Summary Judgment . . Document filed by United States Immigration and Customs Enforcement..(Bannon, Zachary) (Entered: 05/07/2020)
05/07/2020	<u>32</u>	DECLARATION of Donna Vassilio-Diaz in Support re: <u>30</u> MOTION for Summary Judgment .. Document filed by United States Immigration and Customs Enforcement. (Attachments: # <u>1</u> Exhibit A).(Bannon, Zachary) (Entered: 05/07/2020)
06/18/2020	<u>33</u>	CROSS MOTION for Summary Judgment . Document filed by American Civil Liberties Union Immigrants' Rights Project..(Zimmerman, George) (Entered: 06/18/2020)
06/18/2020	<u>34</u>	MEMORANDUM OF LAW in Support re: <u>33</u> CROSS MOTION for Summary Judgment . <i>MEMORANDUM OF LAW in Opposition re: <u>30</u> MOTION for Summary Judgment.</i> Document filed by American Civil Liberties Union Immigrants' Rights Project..(Zimmerman, George) (Entered: 06/18/2020)
06/18/2020	<u>35</u>	DECLARATION of Eugene Hausman in Support re: <u>33</u> CROSS MOTION for Summary Judgment .. Document filed by American Civil Liberties Union Immigrants' Rights Project. (Attachments: # <u>1</u> Exhibit A FOIA Request, # <u>2</u> Exhibit B NYT Data Excerpt, # <u>3</u> Exhibit C HRW Data Excerpt, # <u>4</u> Exhibit D TRAC Data Excerpt, # <u>5</u> Exhibit E ICE Response Letter, # <u>6</u> Exhibit F Immigration Bond Form).(Zimmerman, George) (Entered: 06/18/2020)
06/18/2020	<u>36</u>	DECLARATION of Eugene Wu in Support re: <u>33</u> CROSS MOTION for Summary Judgment .. Document filed by American Civil Liberties Union Immigrants' Rights Project. (Attachments: # <u>1</u> Exhibit A Curriculum Vitae).(Zimmerman, George) (Entered: 06/18/2020)
06/29/2020	<u>37</u>	LETTER MOTION for Extension of Time to File Response/Reply addressed to Judge George B. Daniels from Zachary Bannon dated 6/29/2020. Document filed by United States Immigration and Customs Enforcement..(Bannon, Zachary) (Entered: 06/29/2020)
06/29/2020	<u>38</u>	ORDER granting <u>37</u> Letter Motion for Extension of Time to File Response/Reply re <u>37</u> LETTER MOTION for Extension of Time to File Response/Reply addressed to Judge George B. Daniels from Zachary Bannon dated 6/29/2020. SO ORDERED. (Signed by Judge George B. Daniels on 6/29/2020) Responses due by 7/16/2020 Replies due by 8/13/2020. (ks) (Entered: 06/29/2020)
07/16/2020	<u>39</u>	REPLY MEMORANDUM OF LAW in Support re: <u>30</u> MOTION for Summary Judgment . <i>and in Opposition to Plaintiff's Motion for Summary Judgment.</i> Document filed by United States Immigration and Customs Enforcement..(Bannon, Zachary) (Entered: 07/16/2020)
07/16/2020	<u>40</u>	DECLARATION of Donna Vassilio-Diaz in Support re: <u>30</u> MOTION for Summary Judgment .. Document filed by United States Immigration and Customs Enforcement..(Bannon, Zachary) (Entered: 07/16/2020)

08/13/2020	<u>41</u>	REPLY MEMORANDUM OF LAW in Support re: <u>33</u> CROSS MOTION for Summary Judgment . . Document filed by American Civil Liberties Union Immigrants' Rights Project..(Zimmerman, George) (Entered: 08/13/2020)
08/13/2020	<u>42</u>	LETTER addressed to Judge George B. Daniels from Eric J. Riedel dated August 13, 2020 re: Request for Oral Argument on Parties' Cross-Motions for Summary Judgment. Document filed by American Civil Liberties Union Immigrants' Rights Project..(Riedel, Eric) (Entered: 08/13/2020)
08/17/2020	<u>43</u>	ORDER: This Court will hear oral argument on Defendant's Motion for Summary Judgment, (ECF No. 30), and Plaintiffs Cross-Motion for Summary Judgment, (ECF No. 33), on December 3, 2020 at 10:30 a.m. SO ORDERED. (Signed by Judge George B. Daniels on 8/17/2020) (Oral Argument set for 12/3/2020 at 10:30 AM before Judge George B. Daniels.) (ks) (Entered: 08/17/2020)
11/30/2020	<u>44</u>	LETTER addressed to Judge George B. Daniels from Eric J. Riedel dated November 30, 2020 re: respectfully requesting that Your Honor hold Oral Argument remotely. Document filed by American Civil Liberties Union Immigrants' Rights Project..(Riedel, Eric) (Entered: 11/30/2020)
12/02/2020	<u>45</u>	ORDER: The oral argument scheduled for December 3, 2020 at 10:30 a.m. shall occur as a videoconference using the Skype platform. To optimize the quality of the video feed, only the Court, Plaintiff's counsel, Movant' s counsel, and Defendants' counsel will appear by video for the proceeding; all others will participate by telephone. Due to the limited capacity of the Skype system, only one counsel per party may participate. Co-counsel, members of the press, and the public may access the audio feed of the conference by calling (917) 933-2166 and entering the conference ID 225540242, and as further set forth in this order. (Telephone Conference set for 12/3/2020 at 10:30 AM before Judge George B. Daniels.) (Signed by Judge George B. Daniels on 12/2/2020) (jwh) (Entered: 12/02/2020)
12/03/2020		Minute Entry for proceedings held before Judge George B. Daniels: Oral Argument held on 12/3/2020 re: <u>30</u> MOTION for Summary Judgment . filed by United States Immigration and Customs Enforcement, <u>33</u> CROSS MOTION for Summary Judgment . filed by American Civil Liberties Union Immigrants' Rights Project. Plaintiff's Counsel: Eric Riedel; Defense Counsel: Zachary Bannon and Court Reporter present. (Vega, Elizabeth) (Entered: 12/04/2020)
12/30/2020	<u>46</u>	NOTICE of Supplemental Authority. Document filed by United States Immigration and Customs Enforcement. (Attachments: # <u>1</u> Exhibit 1)..(Bannon, Zachary) (Entered: 12/30/2020)
01/06/2021	<u>47</u>	TRANSCRIPT of Proceedings re: CONFERENCE held on 12/3/2020 before Judge George B. Daniels. Court Reporter/Transcriber: Steven Greenblum, (212) 805-0300. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 1/27/2021. Redacted Transcript Deadline set for 2/8/2021. Release of Transcript Restriction set for 4/6/2021..(McGuirk, Kelly) (Entered: 01/06/2021)
01/06/2021	<u>48</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT Notice is hereby given that an official transcript of a CONFERENCE proceeding held on 12/3/20 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days....(McGuirk, Kelly) (Entered: 01/06/2021)
01/13/2021	<u>49</u>	MOTION for Elizabeth A. Molino Sauvigne to Withdraw as Attorney . Document filed by American Civil Liberties Union Immigrants' Rights Project..(Sauvigne, Elizabeth) (Entered: 01/13/2021)
01/13/2021	<u>50</u>	DECLARATION of Elizabeth A. Molino Sauvigne in Support re: <u>49</u> MOTION for Elizabeth A. Molino Sauvigne to Withdraw as Attorney .. Document filed by American Civil Liberties Union Immigrants' Rights Project..(Sauvigne, Elizabeth) (Entered: 01/13/2021)

01/19/2021	<u>51</u>	ORDER granting <u>49</u> Motion to Withdraw as Attorney: Elizabeth A. Molino Sauvigne's motion to withdraw her appearance as counsel for Plaintiff American Civil Liberties Union Immigrants' Rights Project is GRANTED. (Attorney Elizabeth Anne Molino Sauvigne terminated.) (Signed by Judge George B. Daniels on 1/14/2021) (jwh) (Entered: 01/19/2021)
03/10/2021	<u>52</u>	MEMORANDUM DECISION AND ORDER granting <u>30</u> Motion for Summary Judgment; denying <u>33</u> Motion for Summary Judgment. Defendant's motion for summary judgment dismissing Plaintiffs claims, (ECF No. 30), is GRANTED. Plaintiff's cross-motion, (ECF No. 33), is DENIED. The Clerk of Court is directed to close the motions accordingly.. (Signed by Judge George B. Daniels on 3/10/2021) (ks) Transmission to Orders and Judgments Clerk for processing. (Entered: 03/10/2021)
03/10/2021	<u>53</u>	CLERK'S JUDGMENT re: <u>52</u> Order on Motion for Summary Judgment. in favor of United States Immigration and Customs Enforcement against American Civil Liberties Union Immigrants' Rights Project. It is hereby ORDERED, ADJUDGED AND DECREED: That for the reasons stated in the Court's Memorandum Decision and Order dated March 10, 2021, Defendant's motion for summary judgment dismissing Plaintiff's claims (ECF No. 30), is granted; Plaintiff's cross-motion, (ECF No. 33), is denied. (Signed by Clerk of Court Ruby Krajick on 3/10/2021) (Attachments: # <u>1</u> Notice of Right to Appeal) (dt) (Entered: 03/10/2021)
03/10/2021		Terminate Transcript Deadlines (dt) (Entered: 03/10/2021)
05/07/2021	<u>54</u>	NOTICE OF APPEAL from <u>52</u> Order on Motion for Summary Judgment,,, <u>53</u> Clerk's Judgment,,, Document filed by American Civil Liberties Union Immigrants' Rights Project. Filing fee \$ 505.00, receipt number ANYSDC-24509430. Form C and Form D are due within 14 days to the Court of Appeals, Second Circuit..(Tan, Michael) Modified on 5/7/2021 (tp). (Entered: 05/07/2021)
05/07/2021		Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: <u>54</u> Notice of Appeal. (tp) (Entered: 05/07/2021)
05/07/2021		Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files for <u>54</u> Notice of Appeal, filed by American Civil Liberties Union Immigrants' Rights Project were transmitted to the U.S. Court of Appeals. (tp) (Entered: 05/07/2021)

October 3, 2018

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

**RE: Request Under Freedom of Information Act
(Expedited Processing & Fee Waiver / Limitation Requested)**

Dear Freedom of Information Officer:

The American Civil Liberties Union Foundation (“ACLU”) submits this Freedom of Information Act (“FOIA”) request for digital records. *See* 5 U.S.C. § 552 et seq.; 6 C.F.R. § 5 et seq. This is a request for spreadsheet data on U.S. Immigration and Customs Enforcement (“ICE”) initial apprehensions, risk classification assessments, detentions, and removals. The ACLU also requests expedited processing and a fee waiver or fee limitation in connection with this Request. Producing the records will not be burdensome, and none of the records are exempt from disclosure. Should any portion of this request appear burdensome, the requestor would welcome the opportunity discuss ways of narrowing the request to reduce the burden.

I. Records Requested

This request seeks electronic spreadsheet data along with any explanatory notes needed to make the data intelligible. “Electronic spreadsheet data” means data in a spreadsheet format (such as .xls, .csv, or another standard electronic format) with a row in the spreadsheet for each individual or case. In removal data, this means one row for each removal. In detention data, this means one row for each detention period. In apprehension data, this means one row for every apprehension. In the risk classification data, this means a row for each assessment. In every case, alien numbers (“A-numbers”) should be replaced with unique identifiers, and unique identifiers should also be provided for each unit of observation (e.g. allowing a single person to be tracked across more than one detention period, and a single detention period to be tracked across transfers to multiple detention centers).

Please provide data that is current as of the date that ICE provides its final response to this request.

A. Removal Data

This part of the request seeks an updated version of the information provided to the New York Times in response to request 14-03290, which included information on removals that occurred between 2003 and 2013. This request seeks a rerun/extract of that data for removals that occurred between 2003 and the date of this request or any later date. Below are listed the fields provided in response to that request and also sought here. If the names of these fields have changed, this request is for the equivalent current fields.

Departed Date
Port of Departure
Departed to Country
Case Status
Gender
Country of Birth
Country of Citizenship
Age at Removal
Birth Date
LPR (Yes/No)
Entry Date
Entry Status
Most Serious Criminal Conviction
Most Serious Criminal Conviction Charge Date
Most Serious Criminal Conviction Status
Most Serious Criminal Conviction Code
Most Serious Criminal Conviction Conviction Date
RC Threat Level
Aggravated Felon (Yes/No)
Processing Disposition Code
Case Category
Removal Program & Program Code
Case Category Time of Arrest
Latest Arrest Program & Program Code
Latest Arrest Apprehension Date
Final Order Yes No
Final Order Date
Final Order Yes No
Final Order Date
Prior Removal Reinstatement
Prior Removal Reinstatement Date
Final Charge Code
Final Charge Section
Prior Removal
Most Recent Prior Departed Date

Unique Id (Note that this should correspond to A-numbers and match the unique identifier provided in the detainers and removals data: an individual's case ID should be the same in both spreadsheets.)

B. Detention Data

This part of the request seeks a longer-term set of data that was released to Human Rights Watch as part of request 15-06191. The data should include all detentions with book-in dates from 2003 to the date of this request or any later date. It should include the following columns/fields (or their equivalents if the names have changed):

Unique ID (Note that this should correspond to A-numbers and match the unique identifier provided in the detention and detainers data: an individual's case ID should be the same in both spreadsheets.)

Detention ID (Note that one individual may have more than one unique Detention ID; each detention ID should have the same initial book-in date and final book-out date.)

Current Order of Detentions

Initial Book In Date

Current Book In date

Current Detention Facility

Current Book Out Date

Current Release Reason

Final Book Out Date

Final Release Reason

Religion

Gender

Marital Status

Age at Initial Book In

Ethnicity

Entry Status

Aggravated Felon (Yes/No)

Latest Bond Posted Date Case

Latest Bond Posted Amount Case

Case Status

Case Category

Final Order (Yes/No)

Final Order Date

Rc Threat Level

Final Charge

Departed Date

Departed To

Initial Bond Set Amount
Initial Bond Set Date (Custody A&D)
Initial Custody Determination

C. Apprehension Data

This part of the request seeks data tracking ICE arrests/apprehensions. This should include (not exclusively):

- A unique identifier (**Note that this should correspond to A-numbers and match the unique identifier provided in detention, removals, and RCA data: an individual's case ID should be the same in all spreadsheets.**)
- Date of Arrest
- Type of arrest (e.g. from local jail, at large)
- Identifier for arresting officer
- Resolution of arrest (e.g. release, detention, release on alternative to detention, etc.)

D. Risk Classification Assessment Data

This part of the request seeks data tracking ICE risk classification assessments. This should include all electronic database information concerning individuals' Risk Classification Assessments ("RCAs") conducted by ICE during the relevant time period. That means all information entered by officers into the RCA, including, for example, criminal history information. This should also include all database information concerning the results of the RCA, including the date on which it was conducted, its status and result, any determinations concerning danger, flight risk, or other relevant factors, any information concerning the recommendation of the RCA algorithm, the field officer, and the supervisor, and any numerical or other scores produced. In addition, this information should include unique identifiers of the same type requested for each other source of data.

E. Bond Management Information System Data

This part of the request seeks data tracking transactions related to immigration bonds, including their setting, payment, cancellation and breach. The database information sought is part of the Bond Management Information System database maintained by the Burlington Finance Center. The requested data should include (not exclusively) the amount of each transaction, a description of that transaction, the relevant dates, dates and content of any database information related to forms filed (e.g. I-323, I-391),

names of individuals or companies serving as obligors. In addition, this information should include unique identifiers of the same type requested for each other source of data.

II. Application for Expedited Processing

The ACLU requests expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E). *See also* 6 C.F.R. § 5.5(e)(1). There is a “compelling need” for these records because the information requested is “urgen[tly]” needed by an organization primarily engaged in disseminating information “to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II).

A. *The records sought are urgently needed to inform the public about actual or alleged government activity.*

These records are urgently needed to inform the public about actual or alleged government activity. *See* 5 U.S.C. § 552(a)(6)(E)(v)(II); 6 C.F.R. § 5.5(e)(1)(ii). The requested records seek to inform the public about the government’s current enforcement policies. There is a compelling and urgent need to inform the public about new directives regarding detention, detainers, and removals. The aims of increasing detention, eliminating the “catch and release” policy, increasing removals of noncitizens without criminal records, and expanding the use of detainers alter long-standing policies adopted by prior administrations.¹ This shift in established policies and its attendant effect on liberty interests warrant prompt and immediate review of its bases, interpretation, and implementation.

ICE has previously released anonymized, individual-level spreadsheet data on removals, immigration detention, and detainer requests. These records have played an important role in informing the public about ICE’s activities. For example, the New York Times has relied on records of removals in its

¹ See, e.g., Tal Kopen and Catherine E. Schoichet, *Key Points in Trump’s Immigration Executive Orders*, CNN, Jan. 26, 2017, available at <http://www.cnn.com/2017/01/25/politics/donald-trump-immigration-executive-orders/> (comparing Executive Order’s detention provisions to previous policy); Dara Lind, *The Wall Is The Least Aggressive Of Trump’s Executive Actions on Immigration*, Vox, Jan. 25, 2018, available at <http://www.vox.com/2017/1/25/14378474/trump-immigration-order-wall-deport-sanctuary> (describing the Executive Order’s detention policies as among “the biggest single-day changes to immigration policy in recent memory”); Maria Sacchetti, *ICE immigration arrests of noncriminals double under Trump*, Washington Post, Apr. 16, 2017, available at https://www.washingtonpost.com/local/immigration-arrests-of-noncriminals-double-under-trump/2017/04/16/98a2f1e2-2096-11e7-be2a-3a1fb24d4671_story.html?utm_term=.151496df9b13.

coverage of trends in removals. *See, e.g.*, Ginger Thompson & Sarah Cohen, *More Deportations Follow Minor Crimes, Records Show*, April 6, 2014, <https://www.nytimes.com/2014/04/07/us/more-deportations-follow-minor-crimes-data-shows.html>. Human Rights Watch has relied on detention data from ICE to track transfers between detention centers. *See, e.g.*, Human Rights Watch, *Locked Up Far Away: The Transfer of Immigrants to Remote Detention Centers in the United States*, December 2, 2009, <https://www.hrw.org/report/2009/12/02/locked-far-away/transfer-immigrants-remote-detention-centers-united-states>. And the Transactional Records Access Clearinghouse has relied on information about detainer requests to publish reports and offer an interactive online tool allowing users to search the data. *See* <http://trac.syr.edu/phptools/immigration/detain/>.

B. The ACLU is an organization primarily engaged in disseminating information in order to inform the public about actual or alleged government activity.

The ACLU is “primarily engaged in disseminating information” within the meaning of the FOIA. 5 U.S.C. § 552(a)(6)(E)(v)(II). *See also* 6 C.F.R. § 5.5(e)(1)(ii). Obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public are critical and substantial components of the ACLU’s work and are among its primary activities. *See ACLU v. U.S. Dep’t of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding non-profit public interest group that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience” to be “primarily engaged in disseminating information”).²

The ACLU regularly issues press releases to call attention to documents obtained through FOIA requests, as well as other breaking news,³ and

² Courts have found that the ACLU as well as other organizations with similar missions that engage in information-dissemination activities similar to the ACLU are “primarily engaged in disseminating information.” *See, e.g.*, *Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005); *ACLU*, 321 F. Supp. 2d at 29 n.5; *Elec. Privacy Info. Ctr. v. U.S. Dep’t of Defense*, 241 F. Supp. 2d 5, 11 (D.D.C. 2003).

³ *See, e.g.*, Press Release, American Civil Liberties Union, *U.S. Releases Drone Strike ‘Playbook’ in Response to ACLU Lawsuit* (Aug. 6, 2016), <https://www.aclu.org/news/us-releases-drone-strike-playbook-response-aclu-lawsuit>; Press Release, American Civil Liberties Union, *Secret Documents Describe Graphic Abuse and Admit Mistakes* (June 14, 2016), <https://www.aclu.org/news/cia-releases-dozens-torture-documents-response-aclu-lawsuit>; Press Release, American Civil Liberties Union, *U.S. Releases Targeted Killing Memo in Response to Long-Running ACLU Lawsuit* (June 23, 2014), <https://www.aclu.org/national-security/us-releases-targeted-killing-memo-response-long->

ACLU attorneys are interviewed frequently for news stories about documents released through ACLU FOIA requests.⁴

Similarly, the ACLU publishes reports about government conduct and civil liberties issues based on its analysis of information derived from various sources, including information obtained from the government through FOIA requests. This material is broadly circulated to the public and widely available to everyone for no cost or, sometimes, for a small fee. ACLU national projects regularly publish and disseminate reports that include a description and analysis of government documents obtained through FOIA requests.⁵

running-aclu-lawsuit; Press Release, *American Civil Liberties Union, Justice Department White Paper Details Rationale for Targeted Killing of Americans* (Feb. 4, 2013), <https://www.aclu.org/national-security/justice-department-white-paper-details-rationale-targeted-killing-americans>; Press Release, *American Civil Liberties Union, Documents Show FBI Monitored Bay Area Occupy Movement* (Sept. 14, 2012), <https://www.aclu.org/news/documents-show-fbi-monitored-bay-area-occupy-movement-insidebayareacom>.

⁴ See, e.g., Karen DeYoung, *Newly Declassified Document Sheds Light on How President Approves Drone Strikes*, Wash. Post, Aug. 6, 2016, https://www.washingtonpost.com/world/national-security/newly-declassified-document-sheds-light-on-how-president-approves-drone-strikes/2016/08/06/f424fe50-5be0-11e6-831d-0324760ca856_story.html (quoting former ACLU deputy legal director Jameel Jaffer); Catherine Thorbecke, *What Newly Released CIA Documents Reveal About 'Torture' in Its Former Detention Program*, ABC, June 15, 2016, <http://abcnews.go.com/US/newly-released-cia-documents-reveal-torture-detention-program/story?id=39873389> (quoting ACLU staff attorney Dror Ladin); Nicky Woolf, *US Marshals Spent \$10M on Equipment for Warrantless Stingray Device*, Guardian, Mar. 17, 2016, <https://www.theguardian.com/world/2016/mar/17/us-marshals-stingray-surveillance-airborne> (quoting ACLU attorney Nate Wessler); David Welna, *Government Suspected of Wanting CIA Torture Report to Remain Secret*, NPR, Dec. 9, 2015, <http://www.npr.org/2015/12/09/459026249/cia-torture-report-may-remain-secret> (quoting ACLU project director Hina Shamsi).

⁵ See, e.g., ACLU, *ACLU-Obtained Emails Prove that the Federal Bureau of Prisons Covered Up Its Visit to the CIA's Torture Site* (Nov. 22, 2016, 3:15 PM), <https://www.aclu.org/blog/speak-freely/aclu-obtained-emails-prove-federal-bureau-prisons-covered-its-visit-cias-torture>; ACLU, *Details Abound in Drone 'Playbook' – Except for the Ones That Really Matter Most* (Aug. 8, 2016, 5:30 PM), <https://www.aclu.org/blog/speak-freely/details-abound-drone-playbook-except-ones-really-matter-most>; ACLU, *ACLU-Obtained Documents Reveal Breadth of Secretive Stingray Use in Florida* (Feb. 22, 2015, 5:30 PM), <https://www.aclu.org/blog/free-future/aclu-obtained-documents-reveal-breadth-secretive-stingray-use-florida>; ACLU, *New NSA Documents Shine More Light into Black Box of Executive Order 12333* (Oct. 30, 2014, 3:29 PM), <https://www.aclu.org/blog/new-nsa-documents-shine-more-light-black-box-executive-order-12333>; ACLU, *ACLU Eye on the FBI: Documents Reveal Lack of Privacy Safeguards and Guidance in Government's "Suspicious Activity Report" Systems* (Oct. 29, 2013), https://www.aclu.org/sites/default/files/assets/eye_on_fbi_-_sars.pdf.

The ACLU publishes several widely-read blogs where original editorial content reporting on and analyzing civil rights and civil liberties news is posted daily. *See* <https://www.aclu.org/blog>. The ACLU creates and disseminates original editorial and educational content on civil rights and civil liberties news through multi-media projects, including videos, podcasts, and interactive features. *See* <https://www.aclu.org/multimedia>. The ACLU also publishes, analyzes, and disseminates information through its heavily visited website, www.aclu.org. The website addresses civil rights and civil liberties issues in depth, provides features on civil rights and civil liberties issues in the news, and contains many thousands of documents relating to the issues on which the ACLU is focused. The ACLU's website also serves as a clearinghouse for news about ACLU cases, as well as analysis about case developments, and an archive of case-related documents. Through these pages, and with respect to each specific civil liberties issue, the ACLU provides the public with educational material, recent news, analyses of relevant Congressional or executive branch action, government documents obtained through FOIA requests, and further in-depth analytic and educational multi-media features.

The ACLU website includes many features on information obtained through the FOIA.⁶ For example, the ACLU's "Predator Drones FOIA" webpage, <https://www.aclu.org/national-security/predator-drones-foia>, contains commentary about the ACLU's FOIA request, press releases, analysis of the FOIA documents, numerous blog posts on the issue, documents related to litigation over the FOIA request, frequently asked questions about targeted killing, and links to the documents themselves. Similarly, the ACLU maintains an online "Torture Database," a compilation of over 100,000 pages of FOIA documents that allows researchers and the public to conduct sophisticated searches of FOIA documents relating to government policies on rendition, detention, and interrogation.⁷

The ACLU has also published a number of charts and explanatory materials that collect, summarize, and analyze information it has obtained through the

⁶ *See, e.g.,* <https://www.aclu.org/blog/free-future/fbi-releases-details-zero-day-exploit-decisionmaking-process>; <https://www.aclu.org/blog/free-future/fbi-documents-reveal-new-information-baltimore-surveillance-flights>; <https://www.aclu.org/national-security/anwar-al-awlaki-foia-request>; <https://www.aclu.org/cases/aclu-v-department-defense>; <https://www.aclu.org/mappingthefbi>; <https://www.aclu.org/cases/bagram-foia>; <https://www.aclu.org/national-security/csrt-foia>; <http://www.aclu.org/safefree/nsaspying/30022res20060207.html>; <https://www.aclu.org/patriot-foia>; <https://www.aclu.org/nsi-documents-released-dod?redirect=cpreirect/32088>.

⁷ <https://www.thetorturedatabase.org>. *See also* <https://www.aclu.org/foia-collection/targeted-killing-foia-database>.

FOIA. For example, through compilation and analysis of information gathered from various sources—including information obtained from the government through FOIA requests—the ACLU created an original chart that provides the public and news media with a comprehensive summary index of Bush-era Office of Legal Counsel memos relating to interrogation, detention, rendition, and surveillance.⁸ Similarly, the ACLU produced a summary of documents released in response to a FOIA request related to the FISA Amendments Act⁹; a chart of original statistics about the Defense Department's use of National Security Letters based on its own analysis of records obtained through FOIA requests¹⁰; and an analysis of documents obtained through FOIA requests about FBI surveillance flights over Baltimore.¹¹

The ACLU plans to analyze, publish, and disseminate to the public the information gathered through this Request. The records requested are not sought for commercial use and the requesters plan to disseminate the information disclosed as a result of this Request to the public at no cost.

Given the foregoing, the ACLU has satisfied the requirements for expedited processing of this request.

III. Application for Waiver or Limitation of Fees

The ACLU requests a waiver of document search, review, and duplication fees on the grounds that disclosure of the requested records is in the public interest and because disclosure 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.” 5 U.S.C.

§ 552(a)(4)(A)(iii). *See also* 6 C.F.R. § 5.11(k). The ACLU also requests a waiver of search fees on the grounds that the ACLU qualifies as a “representative of the news media” and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

- A. The request 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 ACLU.*

⁸ https://www.aclu.org/sites/default/files/pdfs/safefree/olcmemos_2009_0305.pdf.

⁹ <https://www.aclu.org/files/pdfs/natsec/faafoia20101129/20101129Summary.pdf>.

¹⁰ https://www.aclu.org/sites/default/files/field_document/nsi_stats.pdf.

¹¹ <https://www.aclu.org/blog/free-future/fbi-documents-reveal-new-information-baltimore-surveillance-flights>.

As discussed above, news accounts underscore the substantial public interest in the records sought through this request. Given the ongoing and widespread media attention to this issue, the records sought will significantly contribute to public understanding of an issue of profound public importance. Especially because little specific information has been made public about how ICE plans to enforce the removal, detention, and detainer policies, the records sought are certain to contribute significantly to the public's understanding of these issues.

The ACLU is not filing this request to further its commercial interest. As described above, any information disclosed by the ACLU as a result of this FOIA Request will be available to the public at no cost. Thus, a fee waiver would fulfill Congress's legislative intent in amending the FOIA. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be liberally construed in favor of waivers for noncommercial requesters." (quotation marks omitted)).

B. The ACLU is a representative of the news media and the records are not sought for commercial use.

The ACLU also requests a waiver of search fees on the grounds that the ACLU qualifies as a "representative of the news media" and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II). The ACLU meets the statutory and regulatory definitions of a "representative of the news media" because it is an "entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." 5 U.S.C. § 552(a)(4)(A)(ii)(III); *see also* 6 C.F.R. § 5.11(b)(6); *Nat'l Sec. Archive v. U.S. Dep't of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (finding that an organization that gathers information, exercises editorial discretion in selecting and organizing documents, "devises indices and finding aids," and "distributes the resulting work to the public" is a "representative of the news media" for purposes of the FOIA); *Serv. Women's Action Network v. U.S. Dep't of Defense*, 888 F. Supp. 2d 282 (D. Conn. 2012) (requesters, including ACLU, were representatives of the news media and thus qualified for fee waivers for FOIA requests to the Department of Defense and Department of Veterans Affairs); *ACLU of Wash. v. U.S. Dep't of Justice*, No. C09-0642RSL, 2011 WL 887731, at *10 (W.D. Wash. Mar. 10, 2011) (finding that the ACLU of Washington is an entity that "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience"); *ACLU*, 321 F. Supp. 2d at 30 n.5 (finding non-profit public interest group to be "primarily engaged in

disseminating information”). The ACLU is therefore a “representative of the news media” for the same reasons it is “primarily engaged in the dissemination of information.”

Furthermore, courts have found other organizations whose mission, function, publishing, and public education activities are similar in kind to the ACLU’s to be “representatives of the news media” as well. *See, e.g., Cause of Action v. IRS*, 125 F. Supp. 3d 145 (D.C. Cir. 2015); *Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 10–15 (finding non-profit public interest group that disseminated an electronic newsletter and published books was a “representative of the news media” for purposes of the FOIA); *Nat’l Sec. Archive*, 880 F.2d at 1387; *Judicial Watch, Inc. v. U.S. Dep’t of Justice*, 133 F. Supp. 2d 52, 53–54 (D.D.C. 2000) (finding Judicial Watch, self-described as a “public interest law firm,” a news media requester).¹²

On account of these factors, fees associated with responding to FOIA requests are regularly waived for the ACLU as a “representative of the news media.”¹³ As was true in those instances, the ACLU meets the requirements for a fee waiver here.

¹² Courts have found these organizations to be “representatives of the news media” even though they engage in litigation and lobbying activities beyond their dissemination of information / public education activities. *See, e.g., Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d 5; *Nat’l Sec. Archive*, 880 F.2d at 1387; *see also Leadership Conference on Civil Rights*, 404 F. Supp. 2d at 260; *Judicial Watch, Inc.*, 133 F. Supp. 2d at 53-54.

¹³ In May 2016, the FBI granted a fee-waiver request regarding a FOIA request issued to the DOJ for documents related to Countering Violent Extremism Programs. In April 2013, the National Security Division of the DOJ granted a fee-waiver request with respect to a request for documents relating to the FISA Amendments Act. Also in April 2013, the DOJ granted a fee-waiver request regarding a FOIA request for documents related to “national security letters” issued under the Electronic Communications Privacy Act. In August 2013, the FBI granted a fee-waiver request related to the same FOIA request issued to the DOJ. In June 2011, the DOJ National Security Division granted a fee waiver to the ACLU with respect to a request for documents relating to the interpretation and implementation of a section of the PATRIOT Act. In March 2009, the State Department granted a fee waiver to the ACLU with regard to a FOIA request for documents relating to the detention, interrogation, treatment, or prosecution of suspected terrorists. Likewise, in December 2008, the Department of Justice granted the ACLU a fee waiver with respect to the same request. In November 2006, the Department of Health and Human Services granted a fee waiver to the ACLU with regard to a FOIA request. In May 2005, the U.S. Department of Commerce granted a fee waiver to the ACLU with respect to its request for information regarding the radio-frequency identification chips in United States passports. In March 2005, the Department of State granted a fee waiver to the ACLU for a request regarding the use of immigration laws to exclude prominent non-citizen scholars and intellectuals from the country because of their political views, statements, or associations. In addition, the Department of Defense did not charge the ACLU fees associated with FOIA requests submitted by the ACLU in April 2007, June 2006, February 2006, and October 2003. The

* * *

Pursuant to applicable statutes and regulations, the ACLU expects a determination regarding expedited processing within 10 days. *See* 5 U.S.C. § 552(a)(6)(E)(ii); 6 C.F.R. § 5.5(e)(4).

If the request is denied in whole or in part, the ACLU asks that you justify all deletions by reference to specific FOIA exemptions. The ACLU expects the release of all segregable portions of otherwise exempt material. The ACLU reserves the right to appeal a decision to withhold any information or deny a waiver of fees.

Thank you for your prompt attention to this matter. Please furnish the applicable records to:

David Hausman
ACLU Immigrants' Rights Project
125 Broad Street—18th Floor
New York, New York 10004
T: 212.549.2549
dhausman@aclu.org

I affirm that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief. *See* 5 U.S.C. § 552(a)(6)(E)(vi).

Sincerely,

/s David Hausman
David Hausman
ACLU Immigrants' Rights Project
125 Broad Street—18th Floor
New York, New York 10004
T: 212.549.2549
dhausman@aclu.org

DOJ did not charge the ACLU fees associated with FOIA requests submitted by the ACLU in November 2007, December 2005, and December 2004. Finally, three separate agencies—the Federal Bureau of Investigation, the Office of Intelligence Policy and Review, and the DOJ Office of Information and Privacy—did not charge the ACLU fees associated with a FOIA request submitted by the ACLU in August 2002.

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

AMERICAN CIVIL LIBERTIES UNION
IMMIGRANTS' RIGHTS PROJECT,

Plaintiff,

v.

UNITED STATES IMMIGRATION AND
CUSTOMS ENFORCEMENT,

Defendant.

Case No. _____

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

INTRODUCTION

1. Plaintiff American Civil Liberties Union Immigrants' Rights Project ("Plaintiff" or "ACLU"), brings this action pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and seeks disclosure of records held by the United States Immigration and Customs Enforcement agency ("ICE"), a branch of the Department of Homeland Security ("DHS"). Plaintiff seeks to enforce the public's right to information regarding Defendant's immigration removals, detentions, and apprehensions. *See* Request Under Freedom of Information Act (Expedited Processing & Fee Waiver/Limitation Requested) (the "FOIA Request"), a true and correct copy of the FOIA Request is annexed hereto as Exhibit A.

2. The information sought is of significant value to the public. Plaintiff seeks information about removals, detentions, apprehensions, risk classification assessments, and bond management information system data. *Id.* This data will help Plaintiff monitor the Trump administration's unprecedented use of immigration detention and its sweeping changes to immigration enforcement in communities inside the U.S.

3. ICE's failure to respond to Plaintiff's FOIA Request and turn over requested records violates the FOIA and impedes Plaintiff's efforts to educate the public regarding how ICE enforces federal immigration laws and to determine whether ICE's current practices comply with applicable laws, regulations, and constitutional requirements. Currently, there is no comparable source of information or analysis of enforcement and immigration detainee data available to the public. The requested information would increase the public's understanding about how ICE is targeting immigrants for detention and removal; how it is treating immigration detainees; and how the public's tax dollars are being spent with respect to such immigration matters. Thus, the requested information will significantly contribute to the public's understanding of government operations and activities.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B), 28 U.S.C. § 1331, and 28 U.S.C. § 1346.

5. Venue in this district is proper under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391 because Plaintiff has its principal place of business in New York, New York.

THE PARTIES

6. Plaintiff ACLU is a non-partisan non-profit that works to defend and preserve individual rights and liberties guaranteed to all people in the United States by the Constitution. The ACLU Immigrants' Rights Project is a project of the ACLU that focuses on defending immigrants' rights in the United States and informing the public about immigration enforcement practices of the U.S. federal government.

THE FOIA REQUEST

7. On October 3, 2018, Plaintiff submitted the FOIA Request, seeking five categories of “spreadsheet data along with any explanatory notes needed to make the data intelligible” on: (1) “removals that occurred between 2003 and the date of this request or any later date;” (2) “all detentions with book-in dates from 2003 to the date of this request or any later date;” (3) “data tracking ICE arrests/apprehensions;” (4) “ICE risk classification assessments;” and (5) “data tracking transactions related to immigration bonds, including their setting, payment, cancellation and breach.”

8. The FOIA Request in large part seeks records that Defendants have previously disclosed under the FOIA. First, the FOIA Request seeks an updated version of the removal data already provided to the New York Times in response to request 14-03290, which detailed removals that occurred between 2003 and 2013. (*Id.* at 1-2.) The information would include all “removals that occurred between 2003 and the date of this request or any later date.” *Id.* The FOIA Request included a list of thirty-six (36) fields related to removal data that, upon information and belief, were included in Defendant’s response to the New York Times’ request and asked that Defendant produce the same fields or, if the fields had since changed, equivalent current fields. (*Id.* at 2.) On information and belief, these items remain in ICE databases and have previously been released to the public.

9. Second, the FOIA Request seeks a longer-term set of updated detention data than the data released to the Human Rights Watch as part of request 15-06191. (*Id.* at 3.) The information would include “all detentions with book-in dates from 2003 to the date of this request or any later date.” (*Id.*) The FOIA Request included a list of thirty (30) fields related to detention data that were included in Defendant’s response to the Human Rights Watch’s

request and asked that Defendant produce the same fields or, if the fields had since changed, equivalent current fields. (*Id.* at 3-4.) On information and belief, these items remain in ICE databases and have previously been released to the public.

10. Third, the FOIA Request seeks apprehension data about ICE arrests and apprehensions. (*Id.* at 4.) Specifically, Plaintiff requested that Defendant release five (5) fields of apprehension data, including: (1) unique identifiers; (2) dates of arrest; (3) types of arrests; (4) identifier data for each arresting officer; and (5) resolution of arrests (e.g., release, detention, release on alternative to detention). (*Id.*) On information and belief, ICE maintains this data and has released it to third parties in the past.

11. Fourth, the FOIA Request seeks “data tracking ICE risk classification assessments . . . [including] all electronic database information concerning individuals’ Risk Classification Assessments (“RCAs”) conducted by ICE during the relevant time period.” (*Id.*) The request for RCA data includes: “all database information concerning the results of the RCA, including the date on which it was conducted, its status and result, any determinations concerning danger, flight risk, or other relevant factors, any information concerning the recommendation of the RCA algorithm, the field officer, and the supervisor, and any numerical or other scores produced.” (*Id.* at 4.) On information and belief, ICE maintains this data and has released it to third parties in the past.

12. Fifth, the FOIA Request seeks “data tracking transactions related to immigration bonds, including their setting, payment, cancellation and breach.” *Id.* The Burlington Finance Center maintains this information as “part of the Bond Management Information System database.” *Id.* On information and belief, ICE maintains and operates the Bond Management System database.

13. Plaintiff asked ICE for a waiver of document search, review, and duplication fees because “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 [because it] is not primarily in the commercial interest of the requester.” (*Id.* at 9 (citations omitted).) *See* 5 U.S.C. § 552(a)(4)(A)(iii); 6 C.F.R. § 5.11(k). Additionally, Plaintiff’s request for a waiver of search fees emphasized that Plaintiff qualifies as a “representative of the news media” within the meaning of the FOIA. (Ex. A, at 9.) *See* 5 U.S.C. § 552(a)(4)(A)(ii); 6 C.F.R. § 5.11(k).

14. Plaintiff requested expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E)(v)(II) and 6 C.F.R. § 5.5(e)(1) because of a compelling and urgent need for these records “to inform the public concerning actual or alleged Federal Government Activity.”

15. Through the FOIA Request, Plaintiff seeks records to help inform the public about the government’s current enforcement policies. Plaintiff has a compelling and urgent need for these records because it seeks to inform the public about new governmental directives regarding removals, detentions, apprehensions, risk classification assessments, and bond management. The aims of increasing detention, eliminating the “catch and release” policy, increasing removals of noncitizens without criminal records, and expanding the use of detainers alter long-standing policies adopted by the Obama administration.¹ This shift in

¹ *See* Tal Kopan & Catherine E. Shoichet, *Key Points in Trump’s Immigration Executive Orders*, CNN (Jan. 26, 2017), <https://www.cnn.com/2017/01/25/politics/donald-trump-immigration-executive-orders/index.html>; Dara Lind, *The Wall Is The Least Aggressive of Trump’s Executive Actions on Immigration*, VOX (Jan. 25, 2018), <https://www.vox.com/2017/1/25/14378474/trump-immigration-order-wall-deport-sanctuary>; *see also* Maria Sacchetti, *ICE Immigration Arrests of Noncriminals Double Under Trump*, WASHINGTON POST (Apr. 16, 2017).

established policies and its attendant effect on immigrants' fundamental liberty interests warrants prompt and immediate review of its bases, interpretation, and implementation.

16. On October 25, 2018, Defendant ICE sent Plaintiff a request for clarification regarding Plaintiff's FOIA Request. Defendant ICE stated that Plaintiff's written request was too broad in scope and advised Plaintiff that most data is saved for a maximum of seven (7) years. Plaintiff responded promptly to the request for additional information and sent ICE a response the same day on October 25, 2018. True and correct copies of Defendant's request for clarification and Plaintiff's response thereto are annexed hereto as Exhibit B.

17. In that response, Plaintiff stated that its understanding was that ICE maintains such electronic data for more than seven (7) years. However, Plaintiff agreed to limit the scope of its request to completions from 7 years before the date of ICE's response to Plaintiff's request. (*See Ex. B.*)

18. After Plaintiff submitted the additional information ICE requested on October 25, 2018, Plaintiff did not receive any response from ICE to the FOIA Request.

19. It has been over 9 months since Plaintiff submitted the supplemental information requested by ICE, but Plaintiff has received no response from ICE and no rejection of the FOIA Request.

20. Plaintiff has exhausted its administrative remedies under 5 U.S.C. § 552, under which ICE has, at most, 20 business days to make a "determination" on Plaintiff's request. *See* 5 U.S.C. § 552(a)(6)(C)(i); *id.* at § 552(a)(6)(A)(i); *id.* at § 552(a)(3); *see also Coleman v. Drug Enforcement Admin.*, 714 F.3d 816, 823 (4th Cir. 2013) ("[I]f an agency does not respond to a request within twenty working days after receiving it, the requester may typically commence litigation.").

21. Defendant failed to respond to Plaintiff's request by November 23, 2018, which was twenty working days after Plaintiff's response to ICE's request for additional information on October 25, 2018, and no exception to the twenty-day response requirement applies here. Thus, Plaintiff has exhausted its administrative remedies.

22. Therefore, Defendant has violated the applicable statutory time limit for the FOIA Request and wrongfully failed to release responsive data and records to Plaintiff.

23. Accordingly, Plaintiff is entitled to file this lawsuit, pursuant to 5 U.S.C. § 552, and seeks enforcement of FOIA by this Court.

FIRST CLAIM

Violation of Freedom of Information Act, 5 U.S.C. § 552, and 6 C.F.R. § 5.6(c) Promulgated Thereunder, for Failure to Timely Disclose Responsive Agency Records

24. Plaintiff repeats, alleges, and incorporates by reference the allegations in paragraphs 1 through 23 as though fully set forth herein.

25. Defendant's unlawful withholding of documents responsive to Plaintiff's FOIA Request violates 5 U.S.C. § 552(a)(3)(A) and 5 U.S.C. § 552(a)(6)(A), as well as 6 C.F.R. § 5.6(c), promulgated thereunder.

26. Defendant is obligated under 5 U.S.C. § 552(a)(3) to produce records responsive to Plaintiff's FOIA Request.

27. Defendant was required to respond to Plaintiff's FOIA Request within 20 business days under 5 U.S.C. § 552(a)(6)(A) and 6 C.F.R. § 5.6(c), promulgated thereunder.

28. No basis exists for Defendant's failure to provide a response to Plaintiff's request. Plaintiff has exhausted its administrative remedies by virtue of Defendant's failure to respond to the FOIA Request.

SECOND CLAIM

Violation of Freedom of Information Act, 5 U.S.C. § 552, for Failure to Timely Conduct an Adequate Search of Agency Records

29. Plaintiff repeats, alleges, and incorporates by reference the allegations in paragraphs 1 through 28 as though fully set forth herein.

30. Plaintiff's FOIA Request seeks records from October 25, 2011 through to present day.

31. Defendant has failed to produce or reproduce any responsive records.

32. ICE is obligated under 5 U.S.C. § 552(a)(3)(C) to conduct a reasonable search for and to produce records responsive to Plaintiff's FOIA Request. Plaintiff has a legal right to obtain such records, and no legal basis exists for ICE's failure to conduct a reasonable search for records through the present date.

33. Defendant's failure to conduct a reasonable search for records responsive to Plaintiff's FOIA Request violates 5 U.S.C. §§ 552(a)(3)(C) and (a)(6)(A), as well as 6 C.F.R. § 5.6(c), promulgated thereunder.

THIRD CLAIM

Violation of the Administrative Procedure Act, 5 U.S.C. §§ 706(1) & (2), for Failure to Timely Respond to the Request for Agency Records

34. Plaintiff repeats, alleges, and incorporates by reference the allegations in paragraphs 1 through 33 as though fully set forth herein.

35. Defendant's failure to timely respond to Plaintiff's FOIA Request for agency records constitutes agency action unlawfully withheld and unreasonably delayed in violation of the Administrative Procedure Act, 5 U.S.C. § 706(1).

36. Additionally, Defendant's failure to timely respond is arbitrary, capricious, an abuse of discretion, and not in accordance with law in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that judgment be entered in its favor and against Defendant and that the Court:

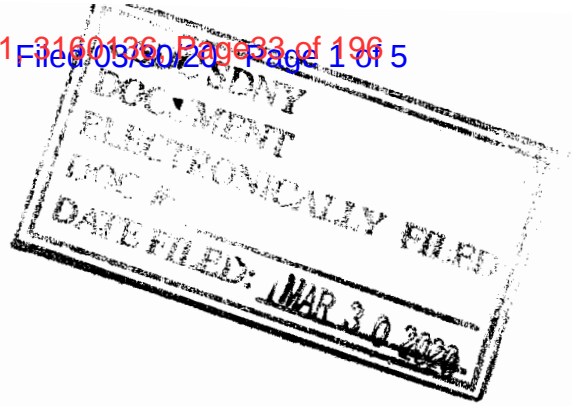
- (a) Declare unlawful Defendant's refusal to disclose the records requested;
- (b) Declare that Defendant's failure to make a determination with respect to Plaintiff's FOIA Request within the statutory time limit and Defendant's failure to disclose responsive records violates the FOIA;
- (c) Declare that Defendant's failure to timely respond to Plaintiff's request for agency records violates the Administrative Procedure Act;
- (d) Compel Defendant and any of Defendant's departments, components, other organizational structures, agents, or other persons acting by, through, for, or on behalf of Defendant to conduct a full, adequate, and expeditious search for records responsive to Plaintiff's FOIA Request and to produce any and all such records to Plaintiff;
- (d) Enjoin Defendant, and any of their departments, components, other organizational structures, agents, or other persons acting by, through, for or on behalf of Defendant from withholding non-exempt records responsive to Plaintiff's FOIA Request and order them to promptly produce the same without redaction;
- (e) Award Plaintiff its reasonable attorney fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E)(i); and
- (f) Grant any such other or further relief as the Court deems just and equitable.

Dated: New York, New York
July 29, 2019

Respectfully submitted,

/s/ George A. Zimmerman
George A. Zimmerman
Elizabeth A. Molino Sauvigne
4 Times Square
New York, New York 10036
george.zimmerman@probonolaw.com
elizabeth.molino@probonolaw.com
T: 212-735-3000
F: 212-735-2000/1

Michael Tan (*pro hac vice* forthcoming)
AMERICAN CIVIL LIBERTIES UNION
IMMIGRANTS' RIGHTS PROJECT
125 Broad Street, 18th Floor
New York NY 10004
mtan@aclu.org
T: 212-549-2500
F: 212-549-2654



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AMERICAN CIVIL LIBERTIES
UNION IMMIGRANTS' RIGHTS
PROJECT,

Plaintiff,

- against -

UNITED STATES IMMIGRATION AND
CUSTOMS ENFORCEMENT,

Defendant.

No. 19 Civ. 7058 (GBD) (JLC)

**STIPULATION AND
~~PROPOSED~~ ORDER**

WHEREAS, on July 29, 2019, the American Civil Liberties Union Immigrants' Rights Project ("Plaintiff") initiated this matter by filing a complaint, Dkt. No. 1, against the United States Immigration and Customs Enforcement ("Defendant," and with Plaintiff, the "Parties") seeking certain records under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, in response to an October 3, 2018 records request, *see* Dkt. No. 1-1 (the "FOIA Request");

WHEREAS, the FOIA Request seeks the production of five categories of data and for each category of data requests that, in every case, Defendant replaces alien numbers ("A-numbers") with unique identifiers for each unit of observation, allowing individuals to be tracked within and across the categories of data (the "Unique Identifiers");

WHEREAS, on or about September 30, 2019 and October 24, 2019, Defendant disclosed records in the form of Microsoft Excel spreadsheets partially responsive to Plaintiff's FOIA Request (collectively, the "Disclosure");

WHEREAS, the Disclosure did not contain any Unique Identifiers;

WHEREAS, the Parties have engaged in settlement discussions in an attempt to resolve or, at a minimum, limit the issues presented to the Court at the summary judgment stage of this action;

WHEREAS, the Parties have reached a partial settlement on the issues, agreeing to limit their arguments on summary judgment and to the additional obligations stated below.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the Parties as follows:

1. The Parties agree that arguments asserted during the summary judgment phase of the above-captioned action shall be limited to the issue of Unique Identifiers in place of A-numbers, as requested by Plaintiff in the FOIA Request (*see* Dkt. No. 1-1).

2. In connection with Paragraph 1, Plaintiff agrees to waive its right to challenge: (a) any absence of look-up tables, codebooks or explanatory notes; (b) any absence of certain columns or fields, other than Unique Identifiers, from the spreadsheets produced; (c) any missing or empty data in the columns, fields or rows within the spreadsheets; and (d) Defendants' application of FOIA exemptions 5 U.S.C. § 552(b)(6) and (b)(7), except to the extent that Defendant claims those exemptions apply to Unique Identifiers.

3. The Parties agree that neither Paragraph 1 nor 2 limits or otherwise waives Plaintiff's ability to assert arguments on summary judgment relating to Defendant's obligations under the FOIA to produce the Unique Identifiers requested by Plaintiff or an alternative means for tracking persons within and across the categories of data.

4. Plaintiff agrees to waive its right to seek attorneys' fees incurred in the prosecution of this matter up and until the date this Stipulation is entered by the Court. For the avoidance of doubt, Plaintiff does not waive the right to seek attorneys' fees incurred subsequent to the entry of this Stipulation by the Court.

5. Defendant agrees to provide to Plaintiff, within 60 days from the date this Stipulation is entered by the Court, updated versions of all spreadsheets originally produced as

part of the Disclosure, reflecting updated data up to and including the date this Stipulation is entered by the Court (the “Supplemental Disclosure”).

6. Defendant agrees that the Supplemental Disclosure will be provided as Microsoft Excel spreadsheets and subject to the same redactions as the Disclosure.

7. Defendant agrees that its search for and production of records for the Supplemental Disclosure will be substantially similar to how it searched for and produced records for the Disclosure. Accordingly, the Supplemental Disclosure will provide spreadsheets containing data in the same form and format as the columns, fields, rows, codes and variables, including all dates and times, originally produced for each of the five categories of records produced in the Disclosure.

8. Defendant further agrees to provide to Plaintiff tables providing definitions of the “Alert Code” and “Status Code” variables referenced in the risk classification assessment spreadsheets and the “Processing Disposition Code,” “Final Charge Code,” and “Final Charge Section” variables referenced in the removals spreadsheets.

9. The Parties further agree that nothing in this Stipulation shall impede or waive Plaintiff’s right to seek discovery following the submission by Defendant of any motions for summary judgment and/or supporting declarations or affidavits. For the avoidance of doubt, Defendant reserves the right to oppose any request for discovery.

10. The Parties understand and agree that this Stipulation contains the entire agreement between them, and that any statements, representations, promises, agreements, or negotiations, oral or otherwise, between the Parties that are not included herein shall be of no force or effect.

11. This Stipulation shall be governed by, interpreted under, and construed in accordance with federal law.

12. The Stipulation shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

13. The Parties further agree that the summary judgment briefing schedule and page limits shall be amended to the following:

- By May 7, 2020, Defendant will file its motion for summary judgment, with a brief not longer than 20 pages.
- By June 18, 2020, Plaintiff will file a single brief not longer than 30 pages in support of its cross-motion and in opposition to Defendant's motion.
- By July 9, 2020, Defendant will file a single brief not longer than 20 pages in opposition to Plaintiff's cross-motion and in reply in support of its own motion.
- By July 30, 2020, Plaintiff will file their reply brief not longer than 10 pages in support of its cross-motion.

14. If not approved and entered by the Court, this Stipulation shall be null and void, with no force or effect.

15. This Stipulation may be executed in one or more counterparts, each of which shall be deemed to be one and the same.

Dated: New York, New York
March 27, 2020

Dated: New York, New York
March 27, 2020

By: 

GEORGE A. ZIMMERMAN
ELIZABETH A. MOLINO SAUVIGNE
ERIC J. RIEDEL
One Manhattan West
New York, New York 10001-8602
Tel.: (212) 735-3000
Fax: (212) 735-2000
george.zimmerman@probonolaw.com
elizabeth.molino@probonolaw.com
eric.riedel@probonolaw.com

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION,
IMMIGRANTS' RIGHTS PROJECT
MICHAEL TAN
125 Broad Street, 17th Floor
New York, NY 10004
Tel.: (347) 714-0740
Fax: (212) 549-2660
mtan@aclu.org

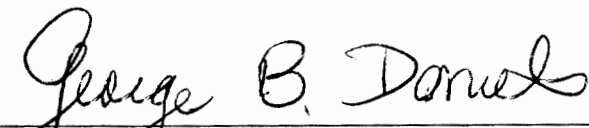
By: 

GEOFFREY S. BERMAN
United States Attorney for the
Southern District of New York
Attorney for Defendant

ZACHARY BANNON
Assistant United States Attorney
86 Chambers Street, 3rd Floor
New York, NY 10007
Tel.: (212) 637-2728
Fax: (212) 637-2717
Zachary.Bannon@usdoj.gov

SO ORDERED:

Dated: New York, New York


MAR 30 2020

HON. GEORGE B. DANIELS
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AMERICAN CIVIL LIBERTIES UNION,
IMMIGRANTS' RIGHTS PROJECT,

Plaintiff,

v.

IMMIGRATION AND CUSTOMS
ENFORCEMENT,

Defendant.

No. 19 Civ. 7058 (GBD) (JLC)

NOTICE OF MOTION

PLEASE TAKE NOTICE that upon (1) the accompanying Memorandum of Law in Support of the Its Motion for Summary Judgment and (2) the Declaration of Donna Vassilio-Diaz, Defendant Immigration and Customs Enforcement, by its attorney, Geoffrey S. Berman, United States Attorney for the Southern District of New York, hereby moves this Court for an order granting summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure.

Dated: May 7, 2020
New York, New York

GEOFFREY S. BERMAN
United States Attorney for the
Southern District of New York
Attorney for the Defendant

By: /s/ Zachary Bannon
ZACHARY BANNON
Assistant United States Attorney
86 Chambers Street, 3rd Floor
New York, New York 10007
Tel: (212) 637-2728
Fax: (212) 637-2717
Email: Zachary.Bannon@usdoj.gov

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

AMERICAN CIVIL LIBERTIES UNION IMMIGRANTS' RIGHTS PROJECT)	
)	
)	
Plaintiff,)	No. 19 Civ. 7058 (GBD)
)	
v.)	
)	
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT)	
)	
Defendant.)	

**DECLARATION OF DONNA VASSILIO-DIAZ
IN SUPPORT OF THE UNITED STATES IMMIGRATION AND CUSTOMS
ENFORCEMENT'S MOTION FOR SUMMARY JUDGMENT**

I. INTRODUCTION

I, Donna Vassilio-Diaz, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am the Unit Chief of the Statistical Tracking Unit ("STU") within Enforcement and Removal Operations ("ERO") Law Enforcement and Systems Analysis ("LESA") at U.S. Immigration and Customs Enforcement ("ICE"). I have held this position since December 2019. I previously served as the Acting Chief of STU from November 2019 until accepting the position, and prior to that, served as the Detention and Deportation Officer subject matter expert within the LESA Data Quality and Integrity Unit ("DQI") since November 2016 . I have served as an officer for ERO since February 2007. The LESA STU mailing address is 500 12th Street, S.W., STOP 5009, Washington, D.C. 20536-5009.

2. The LESA STU is responsible for providing all official ERO reporting to Congress, the White House, and other internal and external stakeholders, in addition to the public through the FOIA.

3. As the Unit Chief for the STU, my official duties and responsibilities include the general management, oversight, and supervision of a staff of Statisticians, Detention and Deportation Officers (Subject Matter Experts), Program Analysts, and Mission Support staff.

4. I make this declaration in support of ICE's Motion for Summary Judgment 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. In my role as the Unit Chief for the STU, I am familiar with the FOIA request submitted by David Hausman on behalf of the American Civil Liberties Union Foundation ("ACLU") to ICE dated October 3, 2018, which is the subject of this lawsuit.

II. DESCRIPTION OF THE DATA REPOSITORIES

6. The Enforcement Integrated Database ("EID") is owned and operated by ICE and is used primarily to support the law enforcement activities of certain Department of Homeland Security ("DHS") components, including ICE and U.S. Customs and Border Protection ("CBP"). The EID is the common database repository for all records created, updated, and accessed by a number of software applications. The EID allows ICE officers to manage cases from the time of an alien's arrest, in-processing, or placement into removal proceedings, through the final case disposition (*i.e.*, removal or granting of immigration benefits). It also contains law enforcement sensitive information relating to investigations, enforcement operations, and checks of other law enforcement databases. The EID is a operational database that operates 24 hours a day, 7 days a week, with more than 55,000 users. The EID houses data and business rules that are integrated with other systems through direct database connectivity or complex interfaces.

7. The EID stores data as a case-centric and/or event-centric view of the data. Users can pull data on a person-centric basis from the EID by using a software application. However, these data pulls can be performed only on an ad-hoc basis, searching one person at a time if the user has the appropriate identifier to search on. This software application does not give ICE the capability to create reports of data on a person-centric basis (i.e., with each row (a single data record) corresponding to an individual and showing that individual's removals, detentions, etc.). Users can also print records containing the EID data, which are used for criminal and administrative law enforcement purposes and typically are retained in criminal investigative files, detention files, and Alien Files ("A-Files").

8. As ICE's operational database, the EID is accessible to ICE and CBP law enforcement personnel at all times for the input or updating of law enforcement sensitive information about individuals that have been encountered or arrested by ICE or CBP law enforcement officers. The data captured by officers includes information about individuals who will be turned over to ICE, those currently in custody, those that have been released, and those that are targeted for future enforcement actions. This includes information captured in the Risk Classification Assessment ("RCA") module. The RCA is a module in ICE's Enforcement Case Tracking System ("ENFORCE"), which ERO uses to track detention, removal, and release operations. The EID is used for data storage throughout the immigration enforcement lifecycle from arrest to removal or release.

9. In response to FOIA Request 2019-ICFO-10844, dated October 3, 2018, submitted by the ACLU for spreadsheet data, which is the subject of this litigation, ICE conducted searches utilizing the ICE Integrated Decision Support System ("IIDS"). The IIDS contains a subset of data from the EID database that is updated regularly three days a week. When the update is provided, it completely replaces the older snapshot/extract with the new data and the older data is not retained.

10. Additionally, the IIDS contains information that is adapted for efficient report generation. While the EID contains information needed for ICE officers and agents to advance the agency's mission to promote homeland security and public safety through the criminal and civil enforcement of federal laws governing border control, customs, trade, and immigration, the IIDS contains a subset of case and enforcement-related information that is used to create reports for the Agency, external stakeholders such as Congress, the White House, etc.

11. The IIDS supports queries of the snapshot EID data for operational or executive reporting purposes. ICE queries IIDS instead of the EID to protect the integrity of the live data held in the EID operational environment and to prevent the performance of EID from being diminished.

12. The IIDS database maintains information in distinct data sets which capture populations of aliens at various points in the removal lifecycle. In other words, data related to removals, detentions, and administrative arrests, are stored separately, in different data sets of standardized reporting populations. When an ICE law enforcement action occurs, officers input information related to that event into the system and it is stored in the EID. When populated into IIDS, those events are included in the standard populations, but making connections for the same individual for events between distinct populations is not always possible. ICE uses the IIDS to prepare and publish regular population-based summary reports regarding law enforcement actions for the public, ICE leadership, Congress, and the President. ICE officers can also pull data related to an individual from the EID by using a separate software application. However, these data pulls can only be searched one at a time on an ad-hoc basis, and the ICE officer must have a specific personal identifier, such as an A-number. This software application does not give ICE the capability to create reports of data on a person-centric basis (i.e., with each row corresponding to an individual and showing that individual's removals, detentions, etc.). ICE officers can view an individual's immigration history by consulting his or her paper "Alien File."

13. The IIDS database does not contain a complete set of bond or RCA related information; therefore, RCA and bond reporting is limited to pre-configured reports that are available in the system. A complete set of bond related information can be found in a separate database called the Bond Management Information System (“BMIS”). RCA related information is accessed via the RCA ENFORCE module, and stored in the EID, but not stored within the IIDS.

III. DESCRIPTIONS OF ERO AND PROGRAM OFFICE TASKED WITH SEARCHING FOR RECORDS IN RESPONSE TO PLAINTIFF’S FOIA REQUEST

14. ERO enforces the nation’s immigration laws. ERO identifies and apprehends removable aliens, detains these individuals when necessary, and removes illegal aliens from the United States. ERO transports removable aliens from point to point, manages aliens in custody or in an alternative to detention program, and removes individuals from the United States who have been ordered to be deported. ERO’s mission is carried out nationwide by 24 ERO Field Offices, each with its own area of responsibility.

15. When ERO receives a FOIA tasking from the ICE FOIA Office, the request is submitted to ERO’s Information Disclosure Unit (“IDU”). Points of Contact (POC) in IDU review the substance of the request. Based on subject matter expertise and knowledge of the program offices’ activities within ERO, IDU forwards the FOIA request to specific individuals and component offices, and directs that they conduct searches of their file systems (including both paper files and electronic files). The employees leverage their operational knowledge and subject matter expertise in defining operational search terms utilized to ascertain whether or not potentially responsive documentation exists. Once searches are completed, the individuals and component offices provide any potentially responsive records to the IDU POC, who in turn provides the records to the ICE FOIA Office. The ICE FOIA

Office then reviews the collected records for responsiveness and processes the records, if any, for applicable exemptions prior to release to the requestor.

IV. THE SEARCH CONDUCTED FOR 2019-ICFO-10844

16. On October 24, 2018, the ICE FOIA Office tasked ERO to conduct a search for records responsive to Plaintiff's FOIA request. A POC in ERO IDU received and reviewed the request. Based upon subject matter expertise and knowledge of the program offices' activities within ERO, IDU determined searches at the headquarters ("HQ") level for potentially responsive documentation should be conducted. Accordingly, IDU tasked LESA, as LESA was reasonably likely to have responsive records as they are the reporting arm of ERO.

17. Upon receipt of the initial FOIA request from IDU on October 24, 2018, a FOIA POC in LESA reviewed the substance of the request and, based on their experience and knowledge of their office's practices and activities tasked the STU to search for potentially responsive documentation.¹ Between November 12, 2018 and February 6, 2019, a STU analyst spent 30 hours conducting a line-by-line review of the requested information taking into consideration standard reporting methodologies as well as consulting the database to query all available responsive information as requested from IIDS. This search of the IIDS database was consistent with the approach followed by ERO and STU in response to the New York Times' FOIA request 12-03290 and Human Rights Watch's FOIA request 15-06191.

18. Upon completion of the search, LESA submitted 13 Microsoft Excel Spreadsheets to IDU on February 27, 2019.²

¹ At ERO's request, ICE FOIA and Plaintiff agreed to narrow the initial FOIA Request on October 25, 2018 from a ten-year time frame to a seven-year time frame.

² For the Court's awareness, upon litigation review, on August 26, 2019, an Associate Legal Advisor in the Office of the Principal Legal Advisor ("OPLA") reviewed ERO's February 6, 2019 response and noted that records related to Part D "Risk Classification Assessment Data" were missing. On August 26, 2019, IDU tasked LESA to provide the "Risk Classification Data." On September 10, 2019, a Support Contractor with LESA conducted a search for 2.5

19. The ICE FOIA Office processed 21 Microsoft Excel Spreadsheets that contained 40 tabs of data. The data processed for the ACLU consisted of: eight (8) spreadsheet tabs of removal data dating from 2012 to 2019 including approximately 400,000 rows of data per year; eight (8) spreadsheet tabs of detention data dating from 2012 to 2019 including approximately 1,000,000 rows of data per year; eight (8) spreadsheet tabs of apprehension data dating from 2012 to 2019 including approximately 100,000 rows of data per year; eight (8) spreadsheet tabs of risk assessment classification data dating from 2012 to 2019 including approximately 2,000 rows of data per year; and eight (8) spreadsheet tabs of bond management data dating from 2012 to 2019 including approximately 75,000 rows of data per year. Sample spreadsheet pages from each dataset have been attached as Exhibit A.

20. ICE's disclosures did not include newly created, randomized unique identifiers in place of A-numbers, as the ACLU had requested. The only piece of information stored in a row of IIDS data that connects an entry to an individual uniquely is that individual's A-number. An A-number is a unique number assigned to any alien immigrating to the United States by the Department of Homeland Security. These unique personal identifiers are personally identifying information that are protected from disclosure under the FOIA.³

21. ICE does not maintain a computer program by which it can replace A-numbers from the IIDS database with other, unique identifiers. In order to replace A-numbers with new, unique identifiers, ICE would have to: (1) create a program capable of uniquely substituting a new number for a pre-existing number; (2) input each A-number from each dataset within the IIDS (millions of entries in

hours and provided the eight (8) Microsoft Excels to IDU. On September 12, 2019, IDU provided the additional eight (8) Microsoft Excel Spreadsheets to the ICE FOIA Office.

³ On March 30, 2020, Plaintiff agreed to not challenge the withholdings asserted on the documents. However, for the Court's awareness, ICE determined that several columns of information within the spreadsheets were subject to withholding under the FOIA. For example, ICE relied upon FOIA exemptions related to personal privacy, 5 U.S.C. § 552(b)(6) and (b)(7)(C), to withhold birthdates, names, A-numbers, Subject IDs, User IDs, Officer IDs, Supervisor IDs, Detention IDs, Bond IDs, and bond numbers. ICE relied upon a FOIA exemption related to law-enforcement techniques, 5 U.S.C. § 552(b)(7)(E), to withhold certain information generated to connect events within the IIDS databases for law-enforcement purposes, including Case IDs.

total) into the program; (3) run the program to create new unique identifiers; (4) replace all A-numbers within the IIDS datasets with the new unique identifiers; and (5) maintain and store the new computer program and new unique identifiers, for which ICE has no operational use.

22. All 21 responsive spreadsheets were processed by the ICE FOIA Office and released to the Plaintiff on September 30, 2019.

V. JURAT CLAUSE

I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge and belief. Signed this 6th day of May, 2020.

Donna Vassilio-Diaz
Unit Chief, Statistical Tracking Unit
Law Enforcement and Systems Analysis
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security
500 12th Street, S.W., Stop 5009
Washington, DC 20536-5009

Exhibit A

2013 Removal Sample

ERO-LESA Statistical Tracking Unit

For Official Use Only (FOUO)/Pre-decisional

FOIA 2019-ICFO-10844

ICE Removals for FY2013

Departed Date	Port Of Departure	Departed To Country	Case Status	Gender
10/1/2012	DEL RIO, TX, POE	MEXICO	8-Excluded/Removed - Inadmissibility	Male
10/1/2012	BROWNSVILLE-MATAMOR, TX, POE	MEXICO	8-Excluded/Removed - Inadmissibility	Male
10/1/2012	CALEXICO, CA, POE	MEXICO	8-Excluded/Removed - Inadmissibility	Male
10/1/2012	SAN ANTONIO, TX, POE	HONDURAS	8-Excluded/Removed - Inadmissibility	Male
10/1/2012	SAN ANTONIO, TX, POE	HONDURAS	8-Excluded/Removed - Inadmissibility	Male
10/1/2012	DEL RIO, TX, POE	MEXICO	8-Excluded/Removed - Inadmissibility	Male
10/1/2012	HARLINGEN, TX, POE	GUATEMALA	8-Excluded/Removed - Inadmissibility	Male
10/1/2012	NOGALES, AZ, POE	MEXICO	6-Deported/Removed - Deportability	Male
10/1/2012	NEW ORLEANS INTERNATIONAL AIRPORT, NEW ORLEANS LA, POE	MEXICO	6-Deported/Removed - Deportability	Male
10/1/2012	DEL RIO, TX, POE	MEXICO	8-Excluded/Removed - Inadmissibility	Male
10/1/2012	NOGALES, AZ, POE	MEXICO	8-Excluded/Removed - Inadmissibility	Male
10/1/2012	HARLINGEN, TX, POE	MEXICO	9-VR Witnessed	Male
10/1/2012	DALLAS, TX, POE	HONDURAS	8-Excluded/Removed - Inadmissibility	Male
10/1/2012	NOGALES, AZ, POE	MEXICO	6-Deported/Removed - Deportability	Male
10/1/2012	DEL RIO, TX, POE	MEXICO	8-Excluded/Removed - Inadmissibility	Male
10/1/2012	NEW ORLEANS INTERNATIONAL AIRPORT, NEW ORLEANS LA, POE	MEXICO	6-Deported/Removed - Deportability	Male
10/1/2012	BROWNSVILLE, TX, POE	MEXICO	9-VR Witnessed	Male
10/1/2012	LAKE CHARLES, LA, POE	MEXICO	9-VR Witnessed	Male
10/1/2012	DEL RIO, TX, POE	MEXICO	8-Excluded/Removed - Inadmissibility	Male
10/1/2012	LAREDO, TX, POE	MEXICO	6-Deported/Removed - Deportability	Male
10/1/2012	CALEXICO, CA, POE	MEXICO	8-Excluded/Removed - Inadmissibility	Male
10/1/2012	NOGALES, AZ, POE	MEXICO	9-VR Witnessed	Male
10/1/2012	LAREDO, TX, POE	HONDURAS	8-Excluded/Removed - Inadmissibility	Female
10/1/2012	PASO DEL NORTE, TX, POE	MEXICO	8-Excluded/Removed - Inadmissibility	Male
10/1/2012	SAN ANTONIO, TX, POE	HONDURAS	8-Excluded/Removed - Inadmissibility	Male
10/1/2012	HIDALGO, TX, POE	MEXICO	8-Excluded/Removed - Inadmissibility	Male
10/1/2012	MIAMI INTERNATIONAL AIRPORT, MIAMI FLORIDA, POE	HONDURAS	8-Excluded/Removed - Inadmissibility	Female
10/1/2012	SAN ANTONIO, TX, POE	HONDURAS	8-Excluded/Removed - Inadmissibility	Male
10/1/2012	HARLINGEN, TX, POE	MEXICO	9-VR Witnessed	Male
10/1/2012	NEWARK INTERNATIONAL AIRPORT, NEWARK NJ, POE	MEXICO	3-Voluntary Departure Confirmed	Male
10/1/2012	NOGALES, AZ, POE	MEXICO	6-Deported/Removed - Deportability	Male
10/1/2012	BROWNSVILLE, TX, POE	MEXICO	8-Excluded/Removed - Inadmissibility	Male
10/1/2012	OTAY MESA, CA, POE	MEXICO	6-Deported/Removed - Deportability	Female
10/1/2012	LAREDO COLUMBIA BRIDGE, TX, POE	MEXICO	3-Voluntary Departure Confirmed	Male
10/1/2012	OTAY MESA, CA, POE	MEXICO	9-VR Witnessed	Male
10/1/2012	NOGALES, AZ, POE	MEXICO	6-Deported/Removed - Deportability	Male
10/1/2012	CALEXICO, CA, POE	MEXICO	8-Excluded/Removed - Inadmissibility	Male
10/1/2012	SAN YSIDRO, CA, POE	MEXICO	8-Excluded/Removed - Inadmissibility	Male
10/1/2012	DALLAS, TX, POE	HONDURAS	8-Excluded/Removed - Inadmissibility	Male
10/1/2012	HIDALGO, TX, POE	MEXICO	6-Deported/Removed - Deportability	Female
10/1/2012	NEW YORK, NY, POE	BRAZIL	8-Excluded/Removed - Inadmissibility	Female
10/1/2012	CALEXICO, CA, POE	MEXICO	8-Excluded/Removed - Inadmissibility	Male
10/1/2012	LAREDO, TX, POE	MEXICO	8-Excluded/Removed - Inadmissibility	Male
10/1/2012	DOUGLAS, AZ, POE	MEXICO	8-Excluded/Removed - Inadmissibility	Male
10/1/2012	HARLINGEN, TX, POE	GUATEMALA	8-Excluded/Removed - Inadmissibility	Male
10/1/2012	CALEXICO, CA, POE	MEXICO	8-Excluded/Removed - Inadmissibility	Male

Case 21-1233, Document 32, 08/20/2021, 3160136, Page49 of 196

Birth Country	ERO Citizenship	Birth Date	Entry Date	Entry Status Code	Entry Status
MEXICO	MEXICO	(b)(6)(b)(7)(c)	9/21/2012	PWAM	PWA Mexico
MEXICO	MEXICO	(b)(6)(b)(7)(c)	7/15/2008	PWAM	PWA Mexico
MEXICO	MEXICO	(b)(6)(b)(7)(c)	9/26/2012	PWAM	PWA Mexico
HONDURAS	HONDURAS	(b)(6)(b)(7)(c)	9/6/2012	PWAM	PWA Mexico
HONDURAS	HONDURAS	(b)(6)(b)(7)(c)	9/10/2012	PWAM	PWA Mexico
MEXICO	MEXICO	(b)(6)(b)(7)(c)	9/26/2012	PWAM	PWA Mexico
GUATEMALA	GUATEMALA	(b)(6)(b)(7)(c)	9/1/2012	PWAM	PWA Mexico
MEXICO	MEXICO	(b)(6)(b)(7)(c)	9/29/2012	PWAM	PWA Mexico
MEXICO	MEXICO	(b)(6)(b)(7)(c)		PWAM	PWA Mexico
MEXICO	MEXICO	(b)(6)(b)(7)(c)	9/27/2012	PWAM	PWA Mexico
MEXICO	MEXICO	(b)(6)(b)(7)(c)		PWAM	PWA Mexico
MEXICO	MEXICO	(b)(6)(b)(7)(c)	7/15/2012	PWAM	PWA Mexico
HONDURAS	HONDURAS	(b)(6)(b)(7)(c)		PWAM	PWA Mexico
MEXICO	MEXICO	(b)(6)(b)(7)(c)	9/24/2012	PWAM	PWA Mexico
MEXICO	MEXICO	(b)(6)(b)(7)(c)	9/11/2012	PWAM	PWA Mexico
MEXICO	MEXICO	(b)(6)(b)(7)(c)		PWAM	PWA Mexico
MEXICO	MEXICO	(b)(6)(b)(7)(c)	9/28/2012	PWAM	PWA Mexico
MEXICO	MEXICO	(b)(6)(b)(7)(c)	9/30/2012	PWAM	PWA Mexico
MEXICO	MEXICO	(b)(6)(b)(7)(c)	9/17/2012	PWAM	PWA Mexico
MEXICO	MEXICO	(b)(6)(b)(7)(c)	10/17/2007	PWAM	PWA Mexico
MEXICO	MEXICO	(b)(6)(b)(7)(c)	9/27/2012	PWAM	PWA Mexico
MEXICO	MEXICO	(b)(6)(b)(7)(c)		PWAM	PWA Mexico
HONDURAS	HONDURAS	(b)(6)(b)(7)(c)	9/7/2012	PWAM	PWA Mexico
MEXICO	MEXICO	(b)(6)(b)(7)(c)	9/21/2012	PWAM	PWA Mexico
HONDURAS	HONDURAS	(b)(6)(b)(7)(c)	9/6/2012	PWAM	PWA Mexico
MEXICO	MEXICO	(b)(6)(b)(7)(c)	9/15/2011	PWAM	PWA Mexico
HONDURAS	HONDURAS	(b)(6)(b)(7)(c)	9/14/2012	PWAM	PWA Mexico
HONDURAS	HONDURAS	(b)(6)(b)(7)(c)	6/20/2012	PWAM	PWA Mexico
MEXICO	MEXICO	(b)(6)(b)(7)(c)	9/25/2012	PWAM	PWA Mexico
MEXICO	MEXICO	(b)(6)(b)(7)(c)		PWAM	PWA Mexico
MEXICO	MEXICO	(b)(6)(b)(7)(c)	9/30/2012	PWAM	PWA Mexico
MEXICO	MEXICO	(b)(6)(b)(7)(c)	8/13/2010	LPR	Legal Permanent Resident
MEXICO	MEXICO	(b)(6)(b)(7)(c)		OFUC	Oral False Claim to U.S. Citizenship
MEXICO	MEXICO	(b)(6)(b)(7)(c)		PWAO	PWA Other
MEXICO	MEXICO	(b)(6)(b)(7)(c)		PWAM	PWA Mexico
MEXICO	MEXICO	(b)(6)(b)(7)(c)		PWAM	PWA Mexico
MEXICO	MEXICO	(b)(6)(b)(7)(c)	9/21/2012	PWAM	PWA Mexico
MEXICO	MEXICO	(b)(6)(b)(7)(c)		PWAM	PWA Mexico
HONDURAS	HONDURAS	(b)(6)(b)(7)(c)	7/16/2012	PWAM	PWA Mexico
MEXICO	MEXICO	(b)(6)(b)(7)(c)	9/29/2012	PWAM	PWA Mexico
BRAZIL	BRAZIL	(b)(6)(b)(7)(c)	5/11/2004	PWAM	PWA Mexico
MEXICO	MEXICO	(b)(6)(b)(7)(c)	9/23/2012	PWAM	PWA Mexico
MEXICO	MEXICO	(b)(6)(b)(7)(c)		PWAM	PWA Mexico
MEXICO	MEXICO	(b)(6)(b)(7)(c)	8/3/2012	PWAM	PWA Mexico
GUATEMALA	GUATEMALA	(b)(6)(b)(7)(c)	9/7/2012	PWAM	PWA Mexico
MEXICO	MEXICO	(b)(6)(b)(7)(c)	6/19/2012	PWAM	PWA Mexico

Most Severe Conviction Charge	Most Severe Conviction Charge Date	Most Severe Conviction Charge Status	Most Severe Conviction Charge Code	Most Severe Conviction Date	RC Threat Level	Processing Disposition Code	Processing Disposition
					NA	ER	Expedited Removal (I-860)
Aggravated Assault - Weapon	10/16/2010	Convicted	1315	1/31/2011	2	WA/NTA	Warrant of Arrest/Notice to Appear
					NA	REINST	REINSTATEMENT OF DEPORT ORDER I-871
Illegal Entry (INA SEC.101(a)(43)(O), 8USC1325 only)	9/7/2012	Convicted	0301	9/12/2012	3	REINST	REINSTATEMENT OF DEPORT ORDER I-871
					NA	ER	Expedited Removal (I-860)
					NA	ER	Expedited Removal (I-860)
					NA	REINST	REINSTATEMENT OF DEPORT ORDER I-871
					NA	REINST	REINSTATEMENT OF DEPORT ORDER I-871
Battery	10/3/2003	Convicted	13AA	7/7/2004	3	REINST	REINSTATEMENT OF DEPORT ORDER I-871
Illegal Entry (INA SEC.101(a)(43)(O), 8USC1325 only)	9/27/2012	Convicted	0301	9/28/2012	3	ER	Expedited Removal (I-860)
Traffic Offense	8/21/2008	Convicted	5499	2/26/2009	3	REINST	REINSTATEMENT OF DEPORT ORDER I-871
					NA	V	Voluntary Return
Carrying Prohibited Weapon	2/3/2008	Convicted	5203	2/4/2008	1	REINST	REINSTATEMENT OF DEPORT ORDER I-871
Illegal Entry (INA SEC.101(a)(43)(O), 8USC1325 only)	12/14/2011	Convicted	0301	12/16/2011	3	REINST	REINSTATEMENT OF DEPORT ORDER I-871
					NA	ER	Expedited Removal (I-860)
Assault	8/10/2011	Convicted	1399	5/4/2012	1	ADMDPT	ADMINISTRATIVE DEPORTATION I-851/I-851A
Vehicle Theft	9/1/2004	Convicted	2404	9/1/2004	2	V	Voluntary Return
					NA	V	Voluntary Return
					NA	ER	Expedited Removal (I-860)
Burglary	3/23/2001	Convicted	2299	1/3/2002	1	REINST	REINSTATEMENT OF DEPORT ORDER I-871
Illegal Entry (INA SEC.101(a)(43)(O), 8USC1325 only)	9/27/2012	Convicted	0301	9/28/2012	3	REINST	REINSTATEMENT OF DEPORT ORDER I-871
Driving Under Influence Liquor	9/28/2012	Convicted	5404	9/28/2012	3	V	Voluntary Return
Illegal Entry (INA SEC.101(a)(43)(O), 8USC1325 only)	9/7/2012	Convicted	0301	9/11/2012	3	ER	Expedited Removal (I-860)
					NA	ER	Expedited Removal (I-860)
Illegal Entry (INA SEC.101(a)(43)(O), 8USC1325 only)	9/10/2012	Convicted	0301	9/11/2012	3	ER	Expedited Removal (I-860)
Public Order Crimes	4/2/2011	Convicted	7399	4/2/2011	3	REINST	REINSTATEMENT OF DEPORT ORDER I-871
					NA	ER	Expedited Removal (I-860)
Illegal Entry (INA SEC.101(a)(43)(O), 8USC1325 only)	6/22/2012	Convicted	0301	6/25/2012	3	ER	Expedited Removal (I-860)
					NA	V	Voluntary Return
Resisting Officer	6/24/2007	Convicted	4801	9/11/2007	2	WA/NTA	Warrant of Arrest/Notice to Appear
					NA	REINST	REINSTATEMENT OF DEPORT ORDER I-871
Drug Trafficking	8/13/2010	Convicted	35AB	8/29/2011	1	NTA/DT	Notice to Appear Detained (I-862)
					NA	REINST	REINSTATEMENT OF DEPORT ORDER I-871
					NA	WA/NTA	Warrant of Arrest/Notice to Appear
Traffic Offense	8/17/2003	Convicted	5499	8/18/2003	3	V	Voluntary Return
Molestation of Minor	7/18/2008	Convicted	3618	9/25/2012	1	ADMDPT	ADMINISTRATIVE DEPORTATION I-851/I-851A
					NA	ER	Expedited Removal (I-860)
					NA	REINST	REINSTATEMENT OF DEPORT ORDER I-871
					NA	WA/NTA	Warrant of Arrest/Notice to Appear
Illegal Entry (INA SEC.101(a)(43)(O), 8USC1325 only)	6/11/2012	Convicted	0301	7/11/2012	3	REINST	REINSTATEMENT OF DEPORT ORDER I-871
					NA	NTA	Notice to Appear Released (I-862)
					NA	ER	Expedited Removal (I-860)
Larceny	5/7/2012	Convicted	2399	7/19/2012	2	WA/NTA	Warrant of Arrest/Notice to Appear
Forgery	1/27/2012	Convicted	2589	2/29/2012	2	REINST	REINSTATEMENT OF DEPORT ORDER I-871
Aggravated Assault - Gun	11/5/2009	Convicted	1314	4/15/2011	1	REINST	REINSTATEMENT OF DEPORT ORDER I-871
					NA	WA/NTA	Warrant of Arrest/Notice to Appear

Case Category	Program	Arrest Date	Final Order Yes No	Final Order Date	Final Charge Code	Final Charge Section	Alien File Number	Case Id
[8F] Expedited Removal	Border Patrol	9/27/2012	YES	9/28/2012	I7A1	212a7AiI	(b)(6)(b)(7)(c)	(b)(7)(e)
[8C] Excludable / Inadmissible - Administrative Final Order Issued	Border Patrol	9/10/2012	YES	9/20/2012	I6A	212a6Ai	(b)(6)(b)(7)(c)	(b)(7)(e)
[16] Reinstated Final Order	Border Patrol	9/27/2012	YES	9/28/2012	I9A2	212a9Aii	(b)(6)(b)(7)(c)	(b)(7)(e)
[16] Reinstated Final Order	Border Patrol	9/7/2012	YES	9/8/2012	I9A2	212a9Aii	(b)(6)(b)(7)(c)	(b)(7)(e)
[8F] Expedited Removal	Border Patrol	9/18/2012	YES	9/19/2012	I7A1	212a7AiI	(b)(6)(b)(7)(c)	(b)(7)(e)
[8F] Expedited Removal	Border Patrol	9/26/2012	YES	9/27/2012	I7A1	212a7AiI	(b)(6)(b)(7)(c)	(b)(7)(e)
[16] Reinstated Final Order	Border Patrol	9/13/2012	YES	9/13/2012	I9A2	212a9Aii	(b)(6)(b)(7)(c)	(b)(7)(e)
[16] Reinstated Final Order	Border Patrol	9/29/2012	YES	10/2/2012	I9C2	212a9CiII	(b)(6)(b)(7)(c)	(b)(7)(e)
[16] Reinstated Final Order	ERO Criminal Alien Program	9/24/2012	YES	9/24/2012	I9A2	212a9Aii	(b)(6)(b)(7)(c)	(b)(7)(e)
[8F] Expedited Removal	Border Patrol	9/27/2012	YES	9/28/2012	I7A1	212a7AiI	(b)(6)(b)(7)(c)	(b)(7)(e)
[16] Reinstated Final Order	ERO Criminal Alien Program	10/1/2012	YES	10/1/2012	I6A	212a6Ai	(b)(6)(b)(7)(c)	(b)(7)(e)
[9] VR Under Safeguards	Border Patrol	9/28/2012			I6A	212a6Ai	(b)(6)(b)(7)(c)	(b)(7)(e)
[16] Reinstated Final Order	287G Program	9/4/2012	YES	9/5/2012	I9C2	212a9CiII	(b)(6)(b)(7)(c)	(b)(7)(e)
[16] Reinstated Final Order	Border Patrol	10/1/2012	YES	10/2/2012	I9C2	212a9CiII	(b)(6)(b)(7)(c)	(b)(7)(e)
[8F] Expedited Removal	Border Patrol	9/24/2012	YES	9/25/2012	I7A1	212a7AiI	(b)(6)(b)(7)(c)	(b)(7)(e)
[11] Administrative Deportation / Removal	ERO Criminal Alien Program	5/8/2012	YES	6/27/2012	R2A3	237a2Aiii	(b)(6)(b)(7)(c)	(b)(7)(e)
[9] VR Under Safeguards	Border Patrol	9/28/2012			I6A	212a6Ai	(b)(6)(b)(7)(c)	(b)(7)(e)
[9] VR Under Safeguards	Border Patrol	10/1/2012			I6A	212a6Ai	(b)(6)(b)(7)(c)	(b)(7)(e)
[8F] Expedited Removal	Border Patrol	9/24/2012	YES	9/25/2012	I7A1	212a7AiI	(b)(6)(b)(7)(c)	(b)(7)(e)
[16] Reinstated Final Order	Border Patrol	11/6/2008	YES	11/7/2008	I9A2	212a9Aii	(b)(6)(b)(7)(c)	(b)(7)(e)
[16] Reinstated Final Order	Border Patrol	9/27/2012	YES	9/28/2012	I9A2	212a9Aii	(b)(6)(b)(7)(c)	(b)(7)(e)
[9] VR Under Safeguards	Violent Criminal Alien Section	10/1/2012			I6A	212a6Ai	(b)(6)(b)(7)(c)	(b)(7)(e)
[8F] Expedited Removal	Border Patrol	9/8/2012	YES	9/8/2012	I7A1	212a7AiI	(b)(6)(b)(7)(c)	(b)(7)(e)
[8F] Expedited Removal	Border Patrol	9/24/2012	YES	9/25/2012	I7A1	212a7AiI	(b)(6)(b)(7)(c)	(b)(7)(e)
[8F] Expedited Removal	Border Patrol	9/7/2012	YES	9/7/2012	I7A1	212a7AiI	(b)(6)(b)(7)(c)	(b)(7)(e)
[16] Reinstated Final Order	ERO Criminal Alien Program	9/29/2012	YES	4/13/2011	I9C2	212a9CiII	(b)(6)(b)(7)(c)	(b)(7)(e)
[8F] Expedited Removal	Border Patrol	9/14/2012	YES	9/15/2012	I7A1	212a7AiI	(b)(6)(b)(7)(c)	(b)(7)(e)
[8G] Expedited Removal - Credible Fear Referral	Border Patrol	6/21/2012	YES	6/11/2012	I7A1	212a7AiI	(b)(6)(b)(7)(c)	(b)(7)(e)
[9] VR Under Safeguards	Border Patrol	9/26/2012			I6A	212a6Ai	(b)(6)(b)(7)(c)	(b)(7)(e)
[8C] Excludable / Inadmissible - Administrative Final Order Issued	ERO Criminal Alien Program	8/2/2012	NO		I6A	212a6Ai	(b)(6)(b)(7)(c)	(b)(7)(e)
[16] Reinstated Final Order	Border Patrol	9/30/2012	YES	10/2/2012	I9C2	212a9CiII	(b)(6)(b)(7)(c)	(b)(7)(e)
[8C] Excludable / Inadmissible - Administrative Final Order Issued	Inspections - Land	8/13/2010	YES	10/1/2012	I2A2	212a2AiII	(b)(6)(b)(7)(c)	(b)(7)(e)
[16] Reinstated Final Order	ERO Criminal Alien Program	10/1/2012	YES	6/18/1997	I9C2	212a9CiII	(b)(6)(b)(7)(c)	(b)(7)(e)
[8C] Excludable / Inadmissible - Administrative Final Order Issued	ERO Criminal Alien Program	4/10/2012	NO		I6A	212a6Ai	(b)(6)(b)(7)(c)	(b)(7)(e)
[9] VR Under Safeguards	ERO Criminal Alien Program	10/1/2012			I6A	212a6Ai	(b)(6)(b)(7)(c)	(b)(7)(e)
[11] Administrative Deportation / Removal	ERO Criminal Alien Program	9/27/2012	YES	10/1/2012	I6A	212a6Ai	(b)(6)(b)(7)(c)	(b)(7)(e)
[8F] Expedited Removal	Border Patrol	9/28/2012	YES	9/29/2012	I7A1	212a7AiI	(b)(6)(b)(7)(c)	(b)(7)(e)
[16] Reinstated Final Order	ERO Criminal Alien Program	10/1/2012	YES	2/26/1997	I9C2	212a9CiII	(b)(6)(b)(7)(c)	(b)(7)(e)
[8C] Excludable / Inadmissible - Administrative Final Order Issued	Border Patrol	7/19/2012	YES	9/21/2012	I6A	212a6Ai	(b)(6)(b)(7)(c)	(b)(7)(e)
[16] Reinstated Final Order	Border Patrol	9/29/2012	YES	9/30/2012	I9A2	212a9Aii	(b)(6)(b)(7)(c)	(b)(7)(e)
[8C] Excludable / Inadmissible - Administrative Final Order Issued	Border Patrol	5/11/2004	YES	7/22/2004	I6A	212a6Ai	(b)(6)(b)(7)(c)	(b)(7)(e)
[8F] Expedited Removal	Border Patrol	9/27/2012	YES	9/27/2012	I7A1	212a7AiI	(b)(6)(b)(7)(c)	(b)(7)(e)
[8C] Excludable / Inadmissible - Administrative Final Order Issued	ERO Criminal Alien Program	5/8/2012	YES	9/26/2012	I6A	212a6Ai	(b)(6)(b)(7)(c)	(b)(7)(e)
[16] Reinstated Final Order	Border Patrol	8/3/2012	YES	8/4/2012	I9C2	212a9CiII	(b)(6)(b)(7)(c)	(b)(7)(e)
[16] Reinstated Final Order	Border Patrol	9/14/2012	YES	9/17/2012	I9A2	212a9Aii	(b)(6)(b)(7)(c)	(b)(7)(e)
[8C] Excludable / Inadmissible - Administrative Final Order Issued	Border Patrol	6/19/2012	YES	10/1/2012	I6A	212a6Ai	(b)(6)(b)(7)(c)	(b)(7)(e)

2013 Detention Sample

ERO-LESA Statistical Tracking Unit**For Official Use Only (FOUO)/Pre-decisional****FOIA 2019-ICFO-10844****ICE Detentions for FY2013**

Detention Stay Book In Date	Book In Date And Time	Detention Facility	Detention Facility Code
11/13/2012 12:28	11/13/2012 12:28	TUCSON INS HOLD ROOM	TUCHOLD
6/27/2013 3:50	6/27/2013 3:50	LOS CUST CASE	LOSHOLD
6/27/2013 3:50	6/27/2013 16:36	ADELANTO ICE PROCESSING CENTER	ADLNTCA
6/27/2013 3:50	7/2/2013 8:05	LOS CUST CASE	LOSHOLD
6/27/2013 3:50	7/2/2013 16:22	ADELANTO ICE PROCESSING CENTER	ADLNTCA
6/27/2013 3:50	7/8/2013 7:45	LOS CUST CASE	LOSHOLD
6/27/2013 3:50	7/8/2013 15:43	ADELANTO ICE PROCESSING CENTER	ADLNTCA
6/27/2013 3:50	7/10/2013 8:20	LOS CUST CASE	LOSHOLD
6/27/2013 3:50	7/11/2013 4:12	AZ REM OP COORD CENTER (AROC)	IWAHOLD
10/16/2012 10:14	10/16/2012 10:14	RALEIGH HOLD ROOM	RDUHOLD
10/16/2012 10:14	10/16/2012 13:17	NORTH GEORGIA DETENTION CENTER	NGDCTGA
10/16/2012 10:14	10/22/2012 11:47	STEWART DETENTION CENTER	STWRTGA
11/23/2012 10:41	11/23/2012 10:41	DEKALB COUNTY DETENTION CENTER	DEKALAL
11/23/2012 10:41	11/29/2012 20:31	LASALLE ICE PROCESSING CENTER	JENADLA
8/26/2013 16:00	8/26/2013 16:00	MARION COUNTY JAIL	MARIOIN
8/26/2013 16:00	8/28/2013 12:05	INDIANAPOLIS HOLD ROOM	INPHOLD
8/26/2013 16:00	8/28/2013 13:13	BOONE COUNTY JAIL	BOONEKY
8/26/2013 16:00	9/29/2013 7:17	TRI-COUNTY JAIL	TRICOIL
4/29/2013 21:23	4/29/2013 21:23	COASTAL BEND DET. FACILITY	CBENDTX
3/20/2013 15:00	3/20/2013 15:00	WESTERN TENNESSEE DET. FAC.	TNWESDF
3/20/2013 15:00	3/22/2013 14:08	LASALLE ICE PROCESSING CENTER	JENADLA
5/10/2013 18:33	5/10/2013 18:33	WEST TEXAS DETENTION FACILITY	WTXDFTX
11/25/2011 10:00	9/18/2012 13:41	JAMES A MUSICK FACILITY	MUSIKCA
11/25/2011 10:00	10/9/2012 5:10	SANTA ANA DRO HOLDROOM	SAAHOLD
11/25/2011 10:00	10/9/2012 16:16	JAMES A MUSICK FACILITY	MUSIKCA
11/25/2011 10:00	11/16/2012 5:43	SANTA ANA DRO HOLDROOM	SAAHOLD
11/25/2011 10:00	11/16/2012 14:01	JAMES A MUSICK FACILITY	MUSIKCA
11/25/2011 10:00	11/26/2012 5:47	SANTA ANA DRO HOLDROOM	SAAHOLD
11/25/2011 10:00	11/26/2012 12:35	JAMES A MUSICK FACILITY	MUSIKCA
11/25/2011 10:00	11/29/2012 5:00	SANTA ANA DRO HOLDROOM	SAAHOLD
11/25/2011 10:00	11/29/2012 12:39	JAMES A MUSICK FACILITY	MUSIKCA
11/25/2011 10:00	5/7/2013 7:30	LOS CUST CASE	LOSHOLD
11/25/2011 10:00	5/7/2013 18:59	JAMES A MUSICK FACILITY	MUSIKCA
11/25/2011 10:00	5/13/2013 7:20	LOS CUST CASE	LOSHOLD
11/25/2011 10:00	5/14/2013 2:13	AZ REM OP COORD CENTER (AROC)	IWAHOLD
7/12/2013 14:01	7/12/2013 14:01	BAKERFIELD HOLD	BKLHOLD
7/12/2013 14:01	7/12/2013 22:00	CALIFORNIA CITY CORECTIONS CENTER	CACTYCA
4/20/2013 2:27	4/20/2013 2:27	OTERO COUNTY PRISON FACILITY	OTROPNM
4/30/2013 7:00	4/30/2013 7:00	WEST TEXAS DETENTION FACILITY	WTXDFTX
10/15/2012 10:32	10/15/2012 10:32	US INS/DETENTION & DEPORTATION	SPMHOLD
10/15/2012 10:32	10/15/2012 15:03	CARVER COUNTY JAIL	CARJAMN
10/15/2012 10:32	10/31/2012 19:20	LASALLE ICE PROCESSING CENTER	JENADLA
9/12/2012 22:27	9/13/2012 16:40	OTERO CO PROCESSING CENTER	OTRPCNM
3/22/2013 10:40	3/22/2013 10:40	SAN BERNADINO HOLD ROOM	SBDHOLD
11/7/2012 12:44	11/7/2012 12:44	SFR HOLD ROOM	SFRHOLD
8/30/2013 7:46	8/30/2013 7:46	LA SALLE CO REGIONAL DET. CENTER	LSRDCTX

Book Out Date And Time	Release Reason	Detention Stay Book Out Date
11/13/2012 20:04	Removed	11/13/2012 20:04
6/27/2013 13:55	Transferred	7/11/2013 5:58
7/2/2013 5:50	Transferred	7/11/2013 5:58
7/2/2013 13:50	Transferred	7/11/2013 5:58
7/8/2013 5:25	Transferred	7/11/2013 5:58
7/8/2013 13:20	Transferred	7/11/2013 5:58
7/10/2013 5:50	Transferred	7/11/2013 5:58
7/10/2013 16:15	Transferred	7/11/2013 5:58
7/11/2013 5:58	Removed	7/11/2013 5:58
10/16/2012 12:29	Transferred	11/23/2012 9:19
10/22/2012 9:07	Transferred	11/23/2012 9:19
11/23/2012 9:19	Removed	11/23/2012 9:19
11/29/2012 13:40	Transferred	12/13/2012 8:02
12/13/2012 8:02	Removed	12/13/2012 8:02
8/28/2013 12:05	Transferred	10/17/2013 13:14
8/28/2013 13:07	Transferred	10/17/2013 13:14
9/29/2013 7:12	Transferred	10/17/2013 13:14
10/8/2013 7:08	Transferred	10/17/2013 13:14
5/6/2013 4:47	Removed	5/6/2013 4:47
3/22/2013 14:05	Transferred	4/25/2013 12:43
4/25/2013 12:43	Removed	4/25/2013 12:43
5/12/2013 5:55	Removed	5/12/2013 5:55
10/9/2012 5:09	Transferred	5/14/2013 7:55
10/9/2012 12:52	Transferred	5/14/2013 7:55
11/16/2012 4:00	Transferred	5/14/2013 7:55
11/16/2012 12:35	Transferred	5/14/2013 7:55
11/26/2012 4:00	Transferred	5/14/2013 7:55
11/26/2012 12:12	Transferred	5/14/2013 7:55
11/29/2012 4:00	Transferred	5/14/2013 7:55
11/29/2012 12:35	Transferred	5/14/2013 7:55
5/7/2013 4:00	Transferred	5/14/2013 7:55
5/7/2013 17:10	Transferred	5/14/2013 7:55
5/13/2013 4:00	Transferred	5/14/2013 7:55
5/13/2013 16:40	Transferred	5/14/2013 7:55
5/14/2013 7:55	Removed	5/14/2013 7:55
7/12/2013 14:03	Transferred	10/15/2014 15:07
11/7/2013 15:34	Transferred	10/15/2014 15:07
4/21/2013 4:28	Removed	4/21/2013 4:28
5/2/2013 4:00	Removed	5/2/2013 4:00
10/15/2012 15:03	Transferred	11/1/2012 9:02
10/31/2012 11:36	Transferred	11/1/2012 9:02
11/1/2012 9:02	Removed	11/1/2012 9:02
10/9/2012 1:31	Removed	10/9/2012 1:31
3/22/2013 14:39	Removed	3/22/2013 14:39
11/7/2012 16:10	ATD - Alternatives to Detention	11/7/2012 16:10
9/12/2013 9:32	Removed	9/12/2013 9:32

Detention Stay Release Reason	Religion	Gender
Removed		Female
Removed		Male
Removed		Male
Removed		Male
Removed		Male
Removed		Male
Removed		Male
Removed		Male
Removed		Male
Removed	NTA	Male
Removed	NTA	Male
Removed	NTA	Male
Removed		Male
Removed		Male
Removed		Male
Removed		Male
Removed		Male
Removed		Male
Removed		Male
Removed		Male
Removed		Male
Removed	NTA	Male
Removed	NTA	Male
Removed	NTA	Male
Removed	NTA	Male
Removed	NTA	Male
Removed	NTA	Male
Removed	NTA	Male
Removed	NTA	Male
Removed	NTA	Male
Removed	NTA	Male
Removed	NTA	Male
Removed	NTA	Male
Removed	NTA	Male
Removed	NTA	Male
Order of supervision		Male
Order of supervision		Male
Removed		Male
Removed		Male
Removed		Male
Removed		Male
Removed		Male
Removed		Male
Removed	CATH	Male
ATD - Alternatives to Detention		Male
Removed	CATH	Male

Marital Status	Birth Date	Ethnicity	Entry Status	Latest Bond Posted Date
Single	(b)(6)(b)(7)(c)	Hispanic Origin	PWA Mexico	11/15/2004
Single	(b)(6)(b)(7)(c)	Hispanic Origin	PWA Other	
Single	(b)(6)(b)(7)(c)	Hispanic Origin	PWA Other	
Single	(b)(6)(b)(7)(c)	Hispanic Origin	PWA Other	
Single	(b)(6)(b)(7)(c)	Hispanic Origin	PWA Other	
Single	(b)(6)(b)(7)(c)	Hispanic Origin	PWA Other	
Single	(b)(6)(b)(7)(c)	Hispanic Origin	PWA Other	
Single	(b)(6)(b)(7)(c)	Hispanic Origin	PWA Other	
Single	(b)(6)(b)(7)(c)	Hispanic Origin	PWA Other	
Married	(b)(6)(b)(7)(c)	Hispanic Origin	PWA Other	
Married	(b)(6)(b)(7)(c)	Hispanic Origin	PWA Other	
Married	(b)(6)(b)(7)(c)	Hispanic Origin	PWA Other	
Single	(b)(6)(b)(7)(c)	Hispanic Origin	PWA Mexico	3/1/2005
Single	(b)(6)(b)(7)(c)	Hispanic Origin	PWA Mexico	3/1/2005
Single	(b)(6)(b)(7)(c)	Hispanic Origin	PWA Other	
Single	(b)(6)(b)(7)(c)	Hispanic Origin	PWA Other	
Single	(b)(6)(b)(7)(c)	Hispanic Origin	PWA Other	
Single	(b)(6)(b)(7)(c)	Hispanic Origin	PWA Other	
Married	(b)(6)(b)(7)(c)		PWA Mexico	
Single	(b)(6)(b)(7)(c)	Hispanic Origin	PWA Other	
Single	(b)(6)(b)(7)(c)	Hispanic Origin	PWA Other	
Single	(b)(6)(b)(7)(c)		PWA Mexico	
Married	(b)(6)(b)(7)(c)	Hispanic Origin	PWA Other	
Married	(b)(6)(b)(7)(c)	Hispanic Origin	PWA Other	
Married	(b)(6)(b)(7)(c)	Hispanic Origin	PWA Other	
Married	(b)(6)(b)(7)(c)	Hispanic Origin	PWA Other	
Married	(b)(6)(b)(7)(c)	Hispanic Origin	PWA Other	
Married	(b)(6)(b)(7)(c)	Hispanic Origin	PWA Other	
Married	(b)(6)(b)(7)(c)	Hispanic Origin	PWA Other	
Married	(b)(6)(b)(7)(c)	Hispanic Origin	PWA Other	
Married	(b)(6)(b)(7)(c)	Hispanic Origin	PWA Other	
Married	(b)(6)(b)(7)(c)	Hispanic Origin	PWA Other	
Married	(b)(6)(b)(7)(c)	Hispanic Origin	PWA Other	
Married	(b)(6)(b)(7)(c)	Hispanic Origin	PWA Other	
Married	(b)(6)(b)(7)(c)	Hispanic Origin	PWA Other	
Married	(b)(6)(b)(7)(c)	Hispanic Origin	PWA Other	
Married	(b)(6)(b)(7)(c)	Hispanic Origin	PWA Other	
Single	(b)(6)(b)(7)(c)		PWA Mexico	
Single	(b)(6)(b)(7)(c)		PWA Mexico	
Single	(b)(6)(b)(7)(c)	Hispanic Origin	PWA Mexico	
Single	(b)(6)(b)(7)(c)	Hispanic Origin	PWA Mexico	
Single	(b)(6)(b)(7)(c)	Hispanic Origin	PWA Mexico	
Single	(b)(6)(b)(7)(c)		PWA Mexico	
Single	(b)(6)(b)(7)(c)	Hispanic Origin	PWA Mexico	
Single	(b)(6)(b)(7)(c)	Hispanic Origin	PWA Other	5/8/2013
Married	(b)(6)(b)(7)(c)		PWA Mexico	

Latest Bond Posted Amount	Case Status
1,500	8-Excluded/Removed - Inadmissibility
	8-Excluded/Removed - Inadmissibility
	8-Excluded/Removed - Inadmissibility
	8-Excluded/Removed - Inadmissibility
	8-Excluded/Removed - Inadmissibility
	8-Excluded/Removed - Inadmissibility
	8-Excluded/Removed - Inadmissibility
	8-Excluded/Removed - Inadmissibility
	8-Excluded/Removed - Inadmissibility
	8-Excluded/Removed - Inadmissibility
	8-Excluded/Removed - Inadmissibility
	8-Excluded/Removed - Inadmissibility
5,000	8-Excluded/Removed - Inadmissibility
5,000	8-Excluded/Removed - Inadmissibility
	8-Excluded/Removed - Inadmissibility
	8-Excluded/Removed - Inadmissibility
	8-Excluded/Removed - Inadmissibility
	8-Excluded/Removed - Inadmissibility
	8-Excluded/Removed - Inadmissibility
	6-Deported/Removed - Deportability
	6-Deported/Removed - Deportability
	6-Deported/Removed - Deportability
	8-Excluded/Removed - Inadmissibility
	8-Excluded/Removed - Inadmissibility
	8-Excluded/Removed - Inadmissibility
	8-Excluded/Removed - Inadmissibility
	8-Excluded/Removed - Inadmissibility
	8-Excluded/Removed - Inadmissibility
	8-Excluded/Removed - Inadmissibility
	8-Excluded/Removed - Inadmissibility
	8-Excluded/Removed - Inadmissibility
	8-Excluded/Removed - Inadmissibility
	8-Excluded/Removed - Inadmissibility
	8-Excluded/Removed - Inadmissibility
	ACTIVE
	ACTIVE
	8-Excluded/Removed - Inadmissibility
	6-Deported/Removed - Deportability
	8-Excluded/Removed - Inadmissibility
	8-Excluded/Removed - Inadmissibility
	8-Excluded/Removed - Inadmissibility
	6-Deported/Removed - Deportability
	6-Deported/Removed - Deportability
5,000	ACTIVE
	8-Excluded/Removed - Inadmissibility

Case Category	Final Order Yes	Final Order Date	RC Threat Level
[8C] Excludable / Inadmissible - Administrative Final Order Issued	YES	8/31/2011	3
[16] Reinstated Final Order	YES	6/27/2013	1
[16] Reinstated Final Order	YES	6/27/2013	1
[16] Reinstated Final Order	YES	6/27/2013	1
[16] Reinstated Final Order	YES	6/27/2013	1
[16] Reinstated Final Order	YES	6/27/2013	1
[16] Reinstated Final Order	YES	6/27/2013	1
[16] Reinstated Final Order	YES	6/27/2013	1
[16] Reinstated Final Order	YES	6/27/2013	1
[16] Reinstated Final Order	YES	4/30/2002	1
[16] Reinstated Final Order	YES	4/30/2002	1
[16] Reinstated Final Order	YES	4/30/2002	1
[8C] Excludable / Inadmissible - Administrative Final Order Issued	YES	4/18/2008	NA
[8C] Excludable / Inadmissible - Administrative Final Order Issued	YES	4/18/2008	NA
[16] Reinstated Final Order	YES	8/28/2013	2
[16] Reinstated Final Order	YES	8/28/2013	2
[16] Reinstated Final Order	YES	8/28/2013	2
[16] Reinstated Final Order	YES	8/28/2013	2
[16] Reinstated Final Order	YES	4/27/2013	1
[16] Reinstated Final Order	YES	3/20/2013	NA
[16] Reinstated Final Order	YES	3/20/2013	NA
[16] Reinstated Final Order	YES	5/9/2013	NA
[16] Reinstated Final Order	YES	4/18/2013	2
[16] Reinstated Final Order	YES	4/18/2013	2
[16] Reinstated Final Order	YES	4/18/2013	2
[16] Reinstated Final Order	YES	4/18/2013	2
[16] Reinstated Final Order	YES	4/18/2013	2
[16] Reinstated Final Order	YES	4/18/2013	2
[16] Reinstated Final Order	YES	4/18/2013	2
[16] Reinstated Final Order	YES	4/18/2013	2
[16] Reinstated Final Order	YES	4/18/2013	2
[16] Reinstated Final Order	YES	4/18/2013	2
[16] Reinstated Final Order	YES	4/18/2013	2
[16] Reinstated Final Order	YES	4/18/2013	2
[16] Reinstated Final Order	YES	4/18/2013	2
[16] Reinstated Final Order	YES	4/18/2013	2
[16] Reinstated Final Order	YES	7/12/2013	1
[16] Reinstated Final Order	YES	7/12/2013	1
[16] Reinstated Final Order	YES	4/20/2013	3
[16] Reinstated Final Order	YES	4/29/2013	3
[16] Reinstated Final Order	YES	3/10/1994	2
[16] Reinstated Final Order	YES	3/10/1994	2
[16] Reinstated Final Order	YES	3/10/1994	2
[16] Reinstated Final Order	YES	9/10/2012	3
[16] Reinstated Final Order	YES	3/22/2013	1
[2A] Deportable - Under Adjudication by IJ	NO		NA
[16] Reinstated Final Order	YES	7/18/2013	2

Final Charge Code	Final Charge Section	Departed Date	Departed To Country	Latest Bond Initial Set Amount
I6A	212a6Ai	11/13/2012	MEXICO	5,000
I6A	212a6Ai	7/11/2013	GUATEMALA	
I6A	212a6Ai	7/11/2013	GUATEMALA	
I6A	212a6Ai	7/11/2013	GUATEMALA	
I6A	212a6Ai	7/11/2013	GUATEMALA	
I6A	212a6Ai	7/11/2013	GUATEMALA	
I6A	212a6Ai	7/11/2013	GUATEMALA	
I6A	212a6Ai	7/11/2013	GUATEMALA	
I6A	212a6Ai	7/11/2013	GUATEMALA	
I9C2	212a9CiII	11/28/2012	EL SALVADOR	
I9C2	212a9CiII	11/28/2012	EL SALVADOR	
I9C2	212a9CiII	11/28/2012	EL SALVADOR	
I6A	212a6Ai	12/13/2012	GUATEMALA	
I6A	212a6Ai	12/13/2012	GUATEMALA	
I9C2	212a9CiII	10/17/2013	GUATEMALA	
I9C2	212a9CiII	10/17/2013	GUATEMALA	
I9C2	212a9CiII	10/17/2013	GUATEMALA	
I9C2	212a9CiII	10/17/2013	GUATEMALA	
I9C2	212a9CiII	10/17/2013	GUATEMALA	
I9C2	212a9CiII	5/6/2013	GUATEMALA	
I9A1	212a9Ai	4/25/2013	GUATEMALA	
I9A1	212a9Ai	4/25/2013	GUATEMALA	
I9C2	212a9CiII	5/12/2013	MEXICO	
I9C2	212a9CiII	5/14/2013	GUATEMALA	
I9C2	212a9CiII	5/14/2013	GUATEMALA	
I9C2	212a9CiII	5/14/2013	GUATEMALA	
I9C2	212a9CiII	5/14/2013	GUATEMALA	
I9C2	212a9CiII	5/14/2013	GUATEMALA	
I9C2	212a9CiII	5/14/2013	GUATEMALA	
I9C2	212a9CiII	5/14/2013	GUATEMALA	
I9C2	212a9CiII	5/14/2013	GUATEMALA	
I9C2	212a9CiII	5/14/2013	GUATEMALA	
I9C2	212a9CiII	5/14/2013	GUATEMALA	
I9C2	212a9CiII	5/14/2013	GUATEMALA	
I9C2	212a9CiII	5/14/2013	GUATEMALA	
I9C2	212a9CiII	5/14/2013	GUATEMALA	
I9C2	212a9CiII	5/14/2013	GUATEMALA	
I9C2	212a9CiII	4/21/2013	MEXICO	
I9C2	212a9CiII	5/2/2013	MEXICO	
I9A2	212a9Aii	11/1/2012	ECUADOR	
I9A2	212a9Aii	11/1/2012	ECUADOR	
I9A2	212a9Aii	11/1/2012	ECUADOR	
I9A2	212a9Aii	10/9/2012	GUATEMALA	
I9A2	212a9Aii	3/22/2013	MEXICO	
				5,000
I9A2	212a9Aii	9/12/2013	HONDURAS	

[illegible]

2013 Arrest Sample

2013 RCA Sample

RCA AOR	RCA DCO	A-Number	Subj ID	Last Name	First Name	Alert Code	Active/ Inactive	Submission Date	Status Code	Risk to Public Safety
WAS	WAS	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	3	Inactive	2012-10-01 00:00:00	C	Medium
WAS	WAS	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	3	Active	2012-10-01 00:00:00	C	Low
WAS	WAS	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	3	Active	2012-10-01 00:00:00	E	Low
BAL	WCD	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)		Inactive	2012-10-01 00:00:00	E	High
BAL	BAL	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)		Inactive	2012-10-01 00:00:00	C	High
BAL	BAL	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	1	Active	2012-10-01 00:00:00	C	Medium
WAS	RCM	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	2	Inactive	2012-10-01 00:00:00	C	Medium
WAS	WAS	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	3	Inactive	2012-10-01 00:00:00	E	High
BAL	BAL	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	3	Active	2012-10-01 00:00:00	C	Medium
WAS	WAS	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	3	Active	2012-10-01 00:00:00	E	Medium
WAS	RMK	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	3	Inactive	2012-10-01 00:00:00	C	High
BAL	BAL	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	1	Inactive	2012-10-01 00:00:00	C	High
BAL	WCD	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)		Inactive	2012-10-01 00:00:00	E	High
WAS	WAS	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	1	Inactive	2012-10-01 00:00:00	E	Medium
BAL	WCD	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)		Inactive	2012-10-01 00:00:00	C	High
WAS	WAS	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	3	Inactive	2012-10-01 00:00:00	C	Medium
WAS	WAS	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	1	Inactive	2012-10-01 00:00:00	C	High
WAS	WAS	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	1	Inactive	2012-10-01 00:00:00	C	High
WAS	WAS	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	3	Inactive	2012-10-01 00:00:00	E	High
WAS	WAS	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	3	Inactive	2012-10-01 00:00:00	C	High
BAL	BAL	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)		Inactive	2012-10-01 00:00:00	C	Medium
WAS	WAS	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	1	Inactive	2012-10-01 00:00:00	E	High
WAS	RCM	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	3	Inactive	2012-10-01 00:00:00	E	Low
BAL	BAL	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)		Inactive	2012-10-01 00:00:00	E	High
BAL	BAL	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)		Active	2012-10-01 00:00:00	E	Medium
BAL	BAL	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	1	Active	2012-10-01 00:00:00	E	Medium
BAL	BAL	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)		Inactive	2012-10-01 00:00:00	E	High
BAL	BAL	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)		Inactive	2012-10-01 00:00:00	C	High
BAL	WCD	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	2	Inactive	2012-10-01 00:00:00	E	Medium
BAL	BAL	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)		Inactive	2012-10-01 00:00:00	E	High
BAL	BAL	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	1	Inactive	2012-10-01 00:00:00	E	High
WAS	WAS	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	2	Inactive	2012-10-01 00:00:00	E	High
WAS	WAS	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	3	Inactive	2012-10-01 00:00:00	C	Low
WAS	WAS	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	1	Inactive	2012-10-01 00:00:00	E	Low
WAS	WAS	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	2	Inactive	2012-10-01 00:00:00	E	Medium
BAL	BAL	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)		Inactive	2012-10-01 00:00:00	C	High
WAS	WAS	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	1	Inactive	2012-10-01 00:00:00	C	Low
BAL	BAL	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)		Inactive	2012-10-01 00:00:00	C	High
WAS	WAS	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	3	Inactive	2012-10-01 00:00:00	E	Medium
WAS	WAS	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	1	Inactive	2012-10-01 00:00:00	E	Medium
WAS	WAS	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	1	Inactive	2012-10-01 00:00:00	C	Medium
WAS	RCM	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	1	Inactive	2012-10-01 00:00:00	E	Medium
WAS	WAS	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	1	Inactive	2012-10-01 00:00:00	E	High
WAS	RCM	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	2	Inactive	2012-10-01 00:00:00	C	Medium
WAS	RCM	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	3	Inactive	2012-10-01 00:00:00	C	High
WAS	WAS	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	1	Inactive	2012-10-01 00:00:00	E	Medium
WAS	RCM	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	1	Inactive	2012-09-27 00:00:00	C	Medium
WAS	RCM	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	3	Active	2012-09-28 00:00:00	C	Medium
WAS	NOR	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	1	Inactive	2012-10-01 00:00:00	C	Medium
WAS	WAS	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	3	Active	2012-10-01 00:00:00	C	Low
WAS	WAS	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	1	Inactive	2012-10-01 00:00:00	C	Medium
WAS	RCM	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	3	Inactive	2012-10-01 00:00:00	C	Medium
BAL	WCD	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)		Inactive	2012-09-28 00:00:00	C	High
WAS	WAS	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	3	Inactive	2012-10-02 00:00:00	C	High
WAS	WAS	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	3	Inactive	2012-10-02 00:00:00	E	High
WAS	WAS	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	2	Inactive	2012-10-02 00:00:00	C	High
WAS	WAS	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	3	Inactive	2012-10-02 00:00:00	C	Low
WAS	WAS	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	2	Inactive	2012-10-02 00:00:00	E	High
WAS	WAS	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	N	Active	2012-10-02 00:00:00	C	Medium
WAS	NOR	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	3	Active	2012-10-02 00:00:00	C	Low
WAS	WAS	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	3	Inactive	2012-10-02 00:00:00	C	Medium
WAS	WAS	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	3	Inactive	2012-10-02 00:00:00	E	Low
WAS	WAS	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	3	Inactive	2012-10-02 00:00:00	E	High
WAS	WAS	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	3	Inactive	2012-10-02 00:00:00	E	Medium
WAS	WAS	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	2	Inactive	2012-10-02 00:00:00	E	Medium
WAS	WAS	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	3	Inactive	2012-10-02 00:00:00	E	Low
WAS	WAS	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	2, 3L1	Inactive	2012-10-02 00:00:00	C	Medium
WAS	WAS	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	2, 3L1	Inactive	2012-10-02 00:00:00	E	Medium
BAL	BAL	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)		Inactive	2012-10-02 00:00:00	C	Medium
WAS	RCM	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	b(6), b(7)(c)	3	Inactive	2012-10-02 00:00:00	C	Medium

Risk of Flight	Special Vulnerability	Special Vulnerability Comments	RCA Case Number	Case Cat. at RCA Decision	FO at RCA Decision
High	PCR		b(6), b(7)(c), b (7)(e)	8E	Y
Medium	NONE				N
Medium	NONE				N
Medium	NONE				N
Medium	NONE				N
Medium	NONE				N
High	NONE	b(6), b(7)(c), b (7)(e)	8C		Y
High	NONE				N
Medium	NONE				N
Medium	NONE				N
Medium	NONE				N
High	NONE				N
High	NONE	b(6), b(7)(c), b (7)(e)	8C		Y
Medium	NONE				N
High	NONE	b(6), b(7)(c), b (7)(e)	8C		Y
High	NONE	b(6), b(7)(c), b (7)(e)	3		Y
Medium	NONE				N
Medium	NONE				N
High	NONE				N
High	NONE				N
High	NONE	b(6), b(7)(c), b (7)(e)	3		Y
Medium	NONE				N
Medium	NONE				N
Medium	NONE				N
High	NONE				N
Medium	NONE				N
Medium	NONE				N
Medium	NONE	b(6), b(7)(c), b (7)(e)	3		Y
High	NONE				N
Medium	NONE				N
Medium	NONE				N
High	NONE				N
High	NONE				N
Medium	NONE				N
High	NONE				N
High	NONE	b(6), b(7)(c), b (7)(e)	8C		Y
Medium	NONE	b(6), b(7)(c), b (7)(e)	3		Y
High	NONE				N
Medium	NONE				N
High	NONE	b(6), b(7)(c), b (7)(e)	16		Y
High	NONE	b(6), b(7)(c), b (7)(e)	11		Y
High	NONE	b(6), b(7)(c), b (7)(e)	11		Y
High	NONE				N
Medium	NONE				N
High	NONE				N
High	NONE				N
Medium	NONE				N
High	NONE				N
Medium	NONE				N
Medium	NONE				N
Medium	NONE				N
Medium	NONE				N
High	NONE	b(6), b(7)(c), b (7)(e)	16		Y
Medium	NONE				N
High	NONE	b(6), b(7)(c), b (7)(e)	8C		Y
High	NONE	b(6), b(7)(c), b (7)(e)	8C		Y
Medium	NONE				N
High	NONE	b(6), b(7)(c), b (7)(e)	8F		Y
Medium	NONE				N
Medium	NONE				N
Medium	NONE				N
High	NONE	b(6), b(7)(c), b (7)(e)	8C		Y
High	PCR	b(6), b(7)(c), b (7)(e)	8C		Y
High	NONE	b(6), b(7)(c), b (7)(e)	8F		Y
High	NONE	b(6), b(7)(c), b (7)(e)	8E		Y
Medium	NONE				N
Medium	NONE				N
Medium	NONE				N
High	NONE	b(6), b(7)(c), b (7)(e)	8F		Y
High	NONE				N
High	NONE				N
Low	NONE				N
Medium	NONE				N

FO Date at RCA Decision	Removal Likely ...? at RCA Decision	Reason Removal Unlikely ...? at RCA Decision	Man. Det. Per Stat/Alleg
2011-01-26 00:00:00 N		Not in ICE Custody	N
			N
			Y
			N
			N
2012-02-15 00:00:00 Y			N
			N
			N
			N
			N
2011-12-08 00:00:00 Y			Y
2011-12-08 00:00:00 Y			
2011-11-07 00:00:00 Y			Y
			Y
			N
			N
2011-11-07 00:00:00 Y			N
			Y
			Y
			N
			Y
			N
			N
1989-11-06 00:00:00 Y			Y
			Y
			Y
			N
			Y
			N
			Y
2012-02-15 00:00:00 Y			
1989-11-06 00:00:00 Y			Y
			Y
2010-09-20 00:00:00 N		Other-RCM VCAS	
2012-09-27 00:00:00		Not in ICE Custody	
2012-09-27 00:00:00		Not in ICE Custody	
			Y
			Y
			Y
			N
			N
			Y
			N
			N
			N
			Y
2011-05-04 00:00:00			
			Y
2011-08-31 00:00:00 Y			
2011-08-31 00:00:00 Y			
			N
			N
			N
			N
2011-01-25 00:00:00			
2003-05-22 00:00:00 Y			
2010-09-18 00:00:00			
2006-01-09 00:00:00 Y			
			N
			Y
			N
2012-09-01 00:00:00			
			Y
			Y
			Y
			N

RCA Decision Type	RCA Recommendation	RCA Bond Recommendation	Officer ID	Officer Agree/ Disagree	Officer Comments
Detain/Release	Supervisor to Determine - Detain or Release on Community Superv		b(6), b(7)(c)	Not Applicable, Supervisor to Determine	
Detain/Release	Supervisor to Determine - D \$4,000		b(6), b(7)(c)	Not Applicable, Supervisor to Determine	
Custody Classification Level	Low		b(6), b(7)(c)	Agree	agree
Custody Classification Level	Medium / High		b(6), b(7)(c)	Agree	
Detain/Release	Detain, Eligible for Bond \$10,000		b(6), b(7)(c)	Agree	Subject was convicted of D
Detain/Release	Supervisor to Determine - D \$2,000		b(6), b(7)(c)	Not Applicable, Supervisor to Determine	Subject has pending charge
Detain/Release	Detain in the Custody of This Service		b(6), b(7)(c)	Agree	Subject is an Ag. Fel(larceny)
Custody Classification Level	Medium / Low		b(6), b(7)(c)	Agree	
Detain/Release	Supervisor to Determine - D \$5,000		b(6), b(7)(c)	Not Applicable, Supervisor to Determine	DUI pending
Custody Classification Level	Medium / High		b(6), b(7)(c)	Agree	
Detain/Release	Detain, Eligible for Bond \$14,000		b(6), b(7)(c)	Disagree	STIP
Detain/Release	Detain, Eligible for Bond \$17,000		b(6), b(7)(c)	Agree	
Custody Classification Level	High		b(6), b(7)(c)	Agree	
Custody Classification Level	High		b(6), b(7)(c)	Agree	
Detain/Release	Detain in the Custody of This Service		b(6), b(7)(c)	Agree	
Detain/Release	Detain in the Custody of This Service		b(6), b(7)(c)	Agree	MEDIUM/HIGH
Detain/Release	Detain in the Custody of This Service		b(6), b(7)(c)	Disagree	MEDIUM/HIGH
Detain/Release	Detain in the Custody of This Service		b(6), b(7)(c)	Agree	
Custody Classification Level	Medium / High		b(6), b(7)(c)	Agree	
Detain/Release	Detain, Eligible for Bond \$20,000		b(6), b(7)(c)	Disagree	DUI conviction X 2
Custody Classification Level	High		b(6), b(7)(c)	Agree	
Detain/Release	Supervisor to Determine - D \$9,000		b(6), b(7)(c)	Not Applicable, Supervisor to Determine	Subject has pending charge
Custody Classification Level	Medium / Low		b(6), b(7)(c)	Agree	AGREE
Custody Classification Level	Medium / Low		b(6), b(7)(c)	Agree	
Custody Classification Level	High		b(6), b(7)(c)	Agree	
Custody Classification Level	Low		b(6), b(7)(c)	Agree	
Custody Classification Level	High		b(6), b(7)(c)	Agree	
Custody Classification Level	High		b(6), b(7)(c)	Agree	
Detain/Release	Detain in the Custody of This Service		b(6), b(7)(c)	Agree	
Custody Classification Level	Medium / High		b(6), b(7)(c)	Disagree	Subject should be low.
Custody Classification Level	Medium / High		b(6), b(7)(c)	Agree	
Custody Classification Level	High		b(6), b(7)(c)	Agree	
Custody Classification Level	Medium / High		b(6), b(7)(c)	Agree	
Detain/Release	Supervisor to Determine - D \$4,000		b(6), b(7)(c)	Not Applicable, Supervisor to Determine	
Custody Classification Level	Medium / Low		b(6), b(7)(c)	Agree	AGREE
Custody Classification Level	Medium / Low		b(6), b(7)(c)	Agree	
Detain/Release	Detain in the Custody of This Service		b(6), b(7)(c)	Agree	
Detain/Release	Detain in the Custody of This Service		b(6), b(7)(c)	Agree	admin
Detain/Release	Detain in the Custody of This Service		b(6), b(7)(c)	Agree	Convicted of CDS Possession
Custody Classification Level	Low		b(6), b(7)(c)	Agree	
Custody Classification Level	Medium / High		b(6), b(7)(c)	Agree	
Detain/Release	Detain in the Custody of This Service		b(6), b(7)(c)	Agree	
Custody Classification Level	High		b(6), b(7)(c)	Agree	
Custody Classification Level	Medium / High		b(6), b(7)(c)	Agree	AGREE
Detain/Release	Detain in the Custody of This Service		b(6), b(7)(c)	Agree	
Detain/Release	Detain, Eligible for Bond \$23,000		b(6), b(7)(c)	Agree	
Custody Classification Level	Medium / High		b(6), b(7)(c)	Agree	
Detain/Release	Detain in the Custody of This Service		b(6), b(7)(c)	Agree	
Detain/Release	Supervisor to Determine - D \$9,000		b(6), b(7)(c)	Not Applicable, Supervisor to Determine	
Detain/Release	Supervisor to Determine - D \$10,000		b(6), b(7)(c)	Not Applicable, Supervisor to Determine	Due to criminal convictions
Detain/Release	Supervisor to Determine - D \$1,500		b(6), b(7)(c)	Not Applicable, Supervisor to Determine	Pending dip charge, no add
Detain/Release	Detain in the Custody of This Service		b(6), b(7)(c)	Agree	
Detain/Release	Detain in the Custody of This Service		b(6), b(7)(c)	Agree	
Detain/Release	Detain in the Custody of This Service		b(6), b(7)(c)	Agree	
Detain/Release	Detain in the Custody of This Service		b(6), b(7)(c)	Agree	
Custody Classification Level	Medium / High		b(6), b(7)(c)	Agree	
Detain/Release	Detain, Eligible for Bond \$8,000		b(6), b(7)(c)	Disagree	no bond per local policy
Detain/Release	Detain in the Custody of This Service		b(6), b(7)(c)	Agree	
Custody Classification Level	Medium / Low		b(6), b(7)(c)	Agree	
Detain/Release	Supervisor to Determine - D \$1,500		b(6), b(7)(c)	Not Applicable, Supervisor to Determine	
Detain/Release	Supervisor to Determine - D \$1,500		b(6), b(7)(c)	Not Applicable, Supervisor to Determine	Subject refused to sign any
Detain/Release	Detain in the Custody of This Service		b(6), b(7)(c)	Agree	Subject was previously rem
Custody Classification Level	Low		b(6), b(7)(c)	Agree	
Custody Classification Level	Medium / High		b(6), b(7)(c)	Agree	
Custody Classification Level	Low		b(6), b(7)(c)	Agree	
Detain/Release	Supervisor to Determine - D \$8,000		b(6), b(7)(c)	Not Applicable, Supervisor to Determine	VR accepted
Custody Classification Level	High		b(6), b(7)(c)	Agree	
Custody Classification Level	Low		b(6), b(7)(c)	Agree	
Detain/Release	Detain in the Custody of This Service		b(6), b(7)(c)	Agree	
Detain/Release	Detain in the Custody of This Service		b(6), b(7)(c)	Agree	
Custody Classification Level	High		b(6), b(7)(c)	Agree	
Detain/Release	Detain in the Custody of This Service		b(6), b(7)(c)	Agree	
Detain/Release	Supervisor to Determine - D \$10,000		b(6), b(7)(c)	Not Applicable, Supervisor to Determine	

Supervisor ID	Supervisor Agree/Disagree	Supervisor Comments	RCA Final Decision	Final Bond Amount	RCA Decision Date
b(6), b(7)(c)	Not Applicable, Supervisor to De	Bag and Baggage	Detain in the Custody of This Service		2012-10-01 00:00:00
b(6), b(7)(c)	Not Applicable, Supervisor to De	OREC	Release on Community Supervision		2012-10-01 00:00:00
b(6), b(7)(c)	Agree	AGREE	Low		2012-10-01 00:00:00
b(6), b(7)(c)	Agree		Medium / High		2012-10-01 00:00:00
b(6), b(7)(c)	Agree	Confer with officer's assessment	Detain, Eligible for Bond	\$35,000	2012-10-01 00:00:00
b(6), b(7)(c)	Not Applicable, Supervisor to De	Asslt 2nd Domestic related	Detain, Eligible for Bond	\$15,000	2012-10-01 00:00:00
b(6), b(7)(c)	Agree		Detain in the Custody of This Service		2012-10-01 00:00:00
b(6), b(7)(c)	Agree		Medium / Low		2012-10-01 00:00:00
b(6), b(7)(c)	Not Applicable, Supervisor to De	Subject pending DUI Charge, poss	Detain, Eligible for Bond	\$25,000	2012-10-01 00:00:00
b(6), b(7)(c)	Agree		Medium / High		2012-10-01 00:00:00
b(6), b(7)(c)	Disagree	Subject requested and signed STI	Detain in the Custody of This Service		2012-10-01 00:00:00
b(6), b(7)(c)	Agree	Subject convicted of violating Ex F	Detain, Eligible for Bond	\$25,000	2012-10-01 00:00:00
b(6), b(7)(c)	Agree		High		2012-10-01 00:00:00
b(6), b(7)(c)	Agree	AGREE BASED ON ASSAULT CHAR	High		2012-10-01 00:00:00
b(6), b(7)(c)	Agree		Detain in the Custody of This Service		2012-10-01 00:00:00
b(6), b(7)(c)	Agree	AGREE	Detain in the Custody of This Service		2012-10-01 00:00:00
b(6), b(7)(c)	Agree	MED/HIGH DUE TO PENDING CH	Detain in the Custody of This Service		2012-10-01 00:00:00
b(6), b(7)(c)	Agree	AGREE	Detain in the Custody of This Service		2012-10-01 00:00:00
b(6), b(7)(c)	Disagree	No violent tendencies. Alien is Farr	Medium / Low		2012-10-01 00:00:00
b(6), b(7)(c)	Disagree	Subject appears to be a danger to	Detain in the Custody of This Service		2012-10-01 00:00:00
b(6), b(7)(c)	Agree	ASSAULT	High		2012-10-01 00:00:00
b(6), b(7)(c)	Not Applicable, Supervisor to De	Office policy on DUI cases require	Detain, Eligible for Bond	\$25,000	2012-10-01 00:00:00
b(6), b(7)(c)	Agree		Medium / Low		2012-10-01 00:00:00
b(6), b(7)(c)	Agree		Medium / Low		2012-10-01 00:00:00
b(6), b(7)(c)	Agree		High		2012-10-01 00:00:00
b(6), b(7)(c)	Agree		Low		2012-10-01 00:00:00
b(6), b(7)(c)	Agree		High		2012-10-01 00:00:00
b(6), b(7)(c)	Agree		High		2012-10-01 00:00:00
b(6), b(7)(c)	Agree		Detain in the Custody of This Service		2012-10-01 00:00:00
b(6), b(7)(c)	Disagree	concur with case officer	Low		2012-10-01 00:00:00
b(6), b(7)(c)	Agree		Medium / High		2012-10-01 00:00:00
b(6), b(7)(c)	Agree		High		2012-10-01 00:00:00
b(6), b(7)(c)	Agree		Medium / High		2012-10-01 00:00:00
b(6), b(7)(c)	Not Applicable, Supervisor to De	\$2500	Detain, Eligible for Bond	\$2,500	2012-10-01 00:00:00
b(6), b(7)(c)	Agree		Medium / Low		2012-10-01 00:00:00
b(6), b(7)(c)	Agree		Medium / Low		2012-10-01 00:00:00
b(6), b(7)(c)	Agree		Detain in the Custody of This Service		2012-10-01 00:00:00
b(6), b(7)(c)	Agree	ADMIN removal.	Detain in the Custody of This Service		2012-10-01 00:00:00
b(6), b(7)(c)	Agree		Detain in the Custody of This Service		2012-10-01 00:00:00
b(6), b(7)(c)	Agree		Low		2012-10-01 00:00:00
b(6), b(7)(c)	Agree		Medium / High		2012-10-01 00:00:00
b(6), b(7)(c)	Agree		Detain in the Custody of This Service		2012-10-01 00:00:00
b(6), b(7)(c)	Agree		High		2012-10-01 00:00:00
b(6), b(7)(c)	Agree	AGREE	Medium / High		2012-10-01 00:00:00
b(6), b(7)(c)	Agree		Detain in the Custody of This Service		2012-10-01 00:00:00
b(6), b(7)(c)	Disagree	DUI conviction and DUI pending	Detain in the Custody of This Service		2012-10-01 00:00:00
b(6), b(7)(c)	Agree	Recommending detention due to	Medium / High		2012-10-01 00:00:00
b(6), b(7)(c)	Agree		Detain in the Custody of This Service		2012-10-01 00:00:00
b(6), b(7)(c)	Not Applicable, Supervisor to De	all crimes DWOL x 7	Detain, Eligible for Bond	\$2,500	2012-10-01 00:00:00
b(6), b(7)(c)	Not Applicable, Supervisor to De	Recommending detention due to	Detain in the Custody of This Service		2012-10-01 00:00:00
b(6), b(7)(c)	Not Applicable, Supervisor to Determine		Detain, Eligible for Bond	\$1,500	2012-10-01 00:00:00
b(6), b(7)(c)	Agree	Aggravated Felon.	Detain in the Custody of This Service		2012-10-01 00:00:00
b(6), b(7)(c)	Agree		Detain in the Custody of This Service		2012-10-01 00:00:00
b(6), b(7)(c)	Agree		Detain in the Custody of This Service		2012-10-01 00:00:00
b(6), b(7)(c)	Agree		Detain in the Custody of This Service		2012-10-02 00:00:00
b(6), b(7)(c)	Agree		Medium / High		2012-10-02 00:00:00
b(6), b(7)(c)	Disagree	Subject has a DUI conviction and	Detain in the Custody of This Service		2012-10-02 00:00:00
b(6), b(7)(c)	Agree	Final Order of Removal	Detain in the Custody of This Service		2012-10-02 00:00:00
b(6), b(7)(c)	Agree		Medium / Low		2012-10-02 00:00:00
b(6), b(7)(c)	Not Applicable, Supervisor to De	Conviction for Drug Possession.	Detain in the Custody of This Service		2012-10-02 00:00:00
b(6), b(7)(c)	Not Applicable, Supervisor to De	Subject refused to sign any ICE is	Detain in the Custody of This Service		2012-10-02 00:00:00
b(6), b(7)(c)	Agree		Detain in the Custody of This Service		2012-10-02 00:00:00
b(6), b(7)(c)	Agree		Low		2012-10-02 00:00:00
b(6), b(7)(c)	Agree		Medium / High		2012-10-02 00:00:00
b(6), b(7)(c)	Agree		Low		2012-10-02 00:00:00
b(6), b(7)(c)	Not Applicable, Supervisor to De	Subject accepted a VD and will be	Detain in the Custody of This Service		2012-10-02 00:00:00
b(6), b(7)(c)	Agree		High		2012-10-02 00:00:00
b(6), b(7)(c)	Agree		Low		2012-10-02 00:00:00
b(6), b(7)(c)	Agree	Final Order ER case.	Detain in the Custody of This Service		2012-10-02 00:00:00
b(6), b(7)(c)	Agree	ADMIN removal case.	Detain in the Custody of This Service		2012-10-02 00:00:00
b(6), b(7)(c)	Agree	Two convictions for aggravated fe	High		2012-10-02 00:00:00
b(6), b(7)(c)	Agree	As a note to this case subject is c	Detain in the Custody of This Service		2012-10-02 00:00:00
b(6), b(7)(c)	Not Applicable, Supervisor to De	DUI conviction	Detain in the Custody of This Service		2012-10-02 00:00:00

[illegible]

2012 Bond Management Sample

ERO-LESA Statistical Tracking Unit**For Official Use Only (FOUO)/Pre-decisional****FOIA 2019-ICFO-10844****Bonds Set FY2012**

Initial Bond Set Amount	Current Set Amount Date	Current Bond Set Amount	Posted Date
5,000	7/10/2012	8,500	7/10/2012
10,000	7/10/2012	5,000	7/10/2012
5,000	1/6/2012	10,000	1/6/2012
10,000	9/5/2012	10,000	9/18/2012
25,000	2/8/2012	7,500	4/16/2012
10,000	12/29/2011	5,000	12/30/2011
10,000	12/20/2011	5,000	12/20/2011
25,000	1/10/2012	12,500	1/11/2012
5,000	8/7/2012	7,500	8/7/2012
1,500	8/24/2012	5,000	8/24/2012
7,500	11/8/2011	3,000	11/9/2011
5,000	6/27/2012	4,500	6/28/2012
10,000	8/7/2012	7,500	8/7/2012
7,500	6/6/2012	5,000	6/13/2012
75,000	10/24/2011	15,000	4/7/2014
10,000	3/13/2012	1,500	3/14/2012
20,000	12/8/2011	7,500	12/9/2011
25,000	5/23/2012	5,000	6/28/2012
7,500	3/1/2012	2,500	3/6/2012
500	11/21/2011	500	11/21/2011
15,000	2/23/2012	7,500	4/11/2012
1,000	10/4/2011	500	10/4/2011
20,000	4/19/2012	2,500	4/19/2012
20,000	12/28/2011	15,000	
500	1/9/2012	500	
10,000	1/18/2012	5,000	1/24/2012
2,000	4/2/2012	12,000	
500	5/23/2012	500	
3,500	8/9/2012	10,000	
9,500	2/16/2012	17,500	
7,500	8/17/2012	15,000	
500	11/4/2011	500	11/14/2011
500	2/24/2012	500	
500	2/24/2012	500	
2,500	11/3/2011	500	
500	10/12/2011	500	
500	2/23/2012	500	12/8/2009
5,000	5/25/2012	7,500	5/31/2012
1,500	2/16/2012	500	
500	5/17/2012	500	
500	1/6/2012	500	1/13/2012
500	11/8/2011	500	
500	1/9/2012	500	

Bond Posted Amount	Payment Type Code	Payment Type	Bond Type Code	Bond Type
8,500	C	Cash	D	Delivery
5,000	C	Cash	D	Delivery
10,000	C	Cash	D	Delivery
10,000	S	Surety	D	Delivery
7,500	C	Cash	D	Delivery
5,000	C	Cash	D	Delivery
5,000	C	Cash	D	Delivery
12,500	C	Cash	D	Delivery
7,500	C	Cash	D	Delivery
5,000	S	Surety	D	Delivery
3,000	C	Cash	D	Delivery
4,500	C	Cash	D	Delivery
7,500	C	Cash	D	Delivery
5,000	C	Cash	D	Delivery
15,000	S	Surety	D	Delivery
1,500	C	Cash	D	Delivery
7,500	C	Cash	D	Delivery
5,000	C	Cash	D	Delivery
2,500	C	Cash	D	Delivery
500	C	Cash	VD	Voluntary Departure (VD)
7,500	C	Cash	D	Delivery
500	C	Cash	VD	Voluntary Departure (VD)
2,500	C	Cash	D	Delivery
			UCB	Unposted Custody Bond
			UVDB	Unposted VD Bond
5,000	C	Cash	D	Delivery
			UCB	Unposted Custody Bond
			UVDB	Unposted VD Bond
			UCB	Unposted Custody Bond
			UCB	Unposted Custody Bond
			UCB	Unposted Custody Bond
500	C	Cash	VD	Voluntary Departure (VD)
			UVDB	Unposted VD Bond
			UVDB	Unposted VD Bond
			UVDB	Unposted VD Bond
			UVDB	Unposted VD Bond
500	C	Cash	VD	Voluntary Departure (VD)
7,500	C	Cash	D	Delivery
			UVDB	Unposted VD Bond
			UVDB	Unposted VD Bond
500	C	Cash	VD	Voluntary Departure (VD)
			UVDB	Unposted VD Bond
			UVDB	Unposted VD Bond

Bond Status Code	Bond Status	Breach Number	Bond Expiration Date	Bond Close Date
A	ACTIVE			
C	CANCELLED			12/14/2015
C	CANCELLED			1/7/2013
C	CANCELLED			4/28/2015
C	CANCELLED			3/10/2015
C	CANCELLED			3/1/2013
C	CANCELLED			6/17/2014
C	CANCELLED			5/10/2016
A	ACTIVE			
A	ACTIVE			
C	CANCELLED			8/10/2016
A	ACTIVE			
C	CANCELLED			5/11/2017
C	CANCELLED			4/2/2014
S	SET			
B	BREACHED	SAAB1800012		8/15/2017
C	CANCELLED			5/26/2015
C	CANCELLED			6/21/2013
C	CANCELLED			2/28/2013
C	CANCELLED		1/17/2012	4/2/2015
C	CANCELLED			10/24/2012
C	CANCELLED		12/5/2011	5/23/2014
C	CANCELLED			9/16/2016
S	SET			
S	SET		3/10/2012	
C	CANCELLED			6/23/2015
S	SET			
S	SET		7/22/2012	
S	SET			
S	SET			
S	SET			
C	CANCELLED		12/23/2011	4/2/2013
S	SET		4/24/2012	
S	SET		4/24/2012	
S	SET		1/3/2012	
S	SET		12/12/2011	
C	CANCELLED		4/23/2012	2/26/2013
C	CANCELLED			5/31/2017
S	SET		4/16/2012	
S	SET		7/16/2012	
C	CANCELLED		2/27/2012	5/16/2013
S	SET		1/6/2012	
S	SET		3/9/2012	

[illegible]

[illegible]

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

AMERICAN CIVIL LIBERTIES UNION
IMMIGRANTS' RIGHTS PROJECT,

Plaintiff,

v.

UNITED STATES IMMIGRATION AND
CUSTOMS ENFORCEMENT,

Defendant.

Case No. 19-cv-07058 (GBD)

PLAINTIFF'S NOTICE OF CROSS-MOTION FOR SUMMARY JUDGMENT

PLEASE TAKE NOTICE that, upon the Complaint, filed July 29, 2019; the Memorandum of Law, dated June 18, 2020, submitted herewith; the Declaration of David Hausman, dated June 18, 2020, and exhibits thereto, submitted herewith; the Declaration of Eugene Wu, dated June 18, 2020, submitted herewith; and upon all prior papers and proceedings herein, Plaintiff American Civil Liberties Union Immigrants' Rights Project, will move this Court, before the Honorable George B. Daniels, United States District Judge, at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York 10007, on a date and at a time designated by the Court, pursuant to Federal Rules of Civil Procedure 56(a), for an Order granting summary judgment in its entirety and granting such other and further relief as this Court may deem just and proper. Pursuant to the Court's endorsed order dated March 30, 2020 (ECF No. 29), opposition papers, if any, are due on or before July 9, 2020, and reply papers, if any, are due on or before July 30, 2020.

Dated: June 18, 2020
New York, New York

Respectfully submitted,

/s/ George A. Zimmerman

George A. Zimmerman
Elizabeth A. Molino Sauvigne
Eric J. Riedel
One Manhattan West
New York, NY 10001
Phone: (212) 735-3000
george.zimmerman@probonolaw.com
elizabeth.molino@probonolaw.com
eric.riedel@probonolaw.com

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION,
IMMIGRANTS' RIGHTS PROJECT
MICHAEL TAN
125 Broad Street, 18th Floor
New York, NY 10004
Phone: (347) 714-0740
mtan@aclu.org

*Counsel for Plaintiff American Civil Liberties
Union Immigrants' Rights Project*

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

AMERICAN CIVIL LIBERTIES UNION
IMMIGRANTS' RIGHTS PROJECT,

Plaintiff,

v.

UNITED STATES IMMIGRATION AND
CUSTOMS ENFORCEMENT,

Defendant.

Case No. 19-cv-07058 (GBD)

DECLARATION OF DAVID HAUSMAN

I, David Hausman, upon my personal knowledge, hereby submit this declaration pursuant to 28 U.S.C. § 1746 and declare as follows:

1. I recently obtained my Ph.D. in Political Science from Stanford University,¹ and will continue performing research as a postdoctoral fellow in the coming academic year. Until July 31, 2019, I was an attorney at the American Civil Liberties Union's Immigrants' Rights Project in New York. I have published several quantitative analyses of immigration data, including articles in the University of Pennsylvania Law Review and the Fordham Law Review. I also worked extensively with data from Immigration and Customs Enforcement ("ICE") as part of my litigation work at the ACLU.

¹ I completed my degree requirements on June 5, 2020, and am scheduled to have my degree conferred on June 18, 2020.

THE FOIA REQUEST

2. On October 3, 2018, I submitted a Freedom of Information Act (“FOIA”) request to ICE (the “Request”). A copy of the Request is attached as Exhibit A.

3. The Request sought data about five stages of the deportation process, including (1) removals, (2) detentions, (3) apprehensions (a.k.a. arrests), (4) risk classification assessments, and (5) bonds. I refer to these five sets of spreadsheets as the categories of data.

4. The goal of the Request was to obtain information that would allow researchers, advocates, and the public to better understand how people move through the deportation process. In other words, the Request sought information about how ICE manages cases from the time of a noncitizen’s arrest and detention and/or placement into removal proceedings through the final case disposition. (*See* Vassilio-Diaz Decl. ¶ 6.)

5. The stages of the deportation process are interconnected. For example, knowing only that an arrest occurred on a given date without additional context provides almost no information about what the government is up to. On the other hand, knowing that an arrest of a noncitizen from a particular country resulted in a book-in to a particular detention center, a transfer to two other detention centers, and eventual release because the individual was eligible for relief provides important information about the government’s use of its immigration arrest powers.

6. The data for each stage of the deportation process can be associated, or linked, through the use of unique identifiers (“Unique IDs”). Records with the same Unique ID are associated with the same individual.

7. I requested that ICE replace A-numbers (a.k.a., “Alien File Numbers” or “Alien Registration Numbers”) with anonymous Unique IDs. A-numbers are common across all categories of data, and therefore commonly used to link records. (*See* Vassilio-Diaz Decl. ¶¶ 12,

20.) The Department of Homeland Security assigns noncitizens an A-number upon the creation of his or her Alien File (“A-File”), which occurs because that individual was either subject to a law enforcement action or applied for immigration-related benefits.²

8. Other agencies routinely release data that includes Unique IDs, allowing researchers to identify which records are associated with the same case (i.e., an immigration proceeding). For example, the Executive Office for Immigration Review releases a monthly snapshot of its database, in which the so-called “idncase” number identifies records associated with the same case.³

9. ICE has previously created and produced Unique IDs for at least two of the categories of data: removals and detentions. I do not know of an example in which ICE has produced Unique IDs for a similar request involving multiple categories of data.

10. The request for data on removals was modeled on ICE’s production of data in response to a FOIA request from the New York Times (“NYT”) (request no. 14-03290). I asked for an updated version of the information provided to the NYT, specifically the same data fields (that is, the columns appearing on the spreadsheet), partly so that I could combine the NYT dataset with the data that ICE would later produce in response to the Request. As part of the data produced to the NYT, ICE produced Unique IDs for each record. An excerpt from the NYT data is attached as Exhibit B.

11. The request for data on detentions was modeled on ICE’s production of data in response to a FOIA request from Human Rights Watch (“HRW”) (request no. 15-06191).

² For more information on A-numbers and how ICE contributes records to the A-Files see Privacy Impact Assessment for the Central Index System (CIS), dated April 7, 2017, available at <https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis-09-a-cis-april-2017.pdf>.

³ See <https://www.justice.gov/eoir/frequently-requested-agency-records> (CASE data).

Again, I specifically asked for the same data fields so that I could combine the HRW dataset with the data ICE would produce in response to the Request. As part of the data produced to HRW ICE produced Unique IDs for each record. An excerpt from the HRW data is attached as Exhibit C.

12. Further, although I did not ask for detainers data in the Request, I referenced the fact that ICE's prior production of data on detainers, produced to the Transactional Records Access Clearinghouse ("TRAC"), also contained Unique IDs. An excerpt from the TRAC data is attached as Exhibit D.

13. I requested anonymized Unique IDs because they link the records without disclosing any personally identifying information.

INFORMATION PRODUCED BY ICE IN RESPONSE TO THE REQUEST

14. ICE responded to the Request via letter, dated September 27, 2019, enclosing 21 spreadsheets containing the five categories of data. A copy of this letter is attached as Exhibit E.

15. There are 21 spreadsheets, instead of 5, because some categories are broken into separate spreadsheets by year. For simplicity, even where there are multiple spreadsheets for a given category, I refer to the spreadsheets associated with an individual category of data as a single spreadsheet.

16. ICE claimed an exemption for all identifying information, including: Alien File Number or A-number, Case ID, Subject ID, Last Name, First Name, Detention ID, Birth Date, Bond Number, Bond ID, Eid Cb Cse Id, and RCA Case Number. Without this identifying information or the requested Unique IDs there is no way to analyze how individuals move through the deportation process.

17. **Removals:** The removals data provides information about deportations, and contains records on every removal (deportation), including case type, nationality, immigration

charge, and date of removal. Without Unique IDs, however, this data is stripped of information about the associations between removals and other areas of immigration enforcement, including detentions and bonds.

18. **Detentions:** Every row in this spreadsheet corresponds to a single stay in a detention center. For example, if an individual was apprehended and detained in New Jersey and then transferred to a detention center in Louisiana before being deported, this spreadsheet would contain two rows, one for the stay in the detention center in New Jersey and one for the related stay in the detention center in Louisiana. Without the inclusion of a Unique ID column, this data is stripped of information about consecutive detention stints for the same individual—in addition to being stripped of information about how detentions relate to arrests and removals.

19. The detentions spreadsheet includes a column providing information on whether an individual was removed or obtained relief, but only if either of those outcomes was the reason the person was released from detention. If an individual was released for another reason—for example, released on bond—without Unique IDs the data is stripped of information about whether that individual was eventually deported.

20. **Arrests:** The arrests spreadsheet contains only two columns: a column with the date of each arrest and a column with the arrest method (e.g. from local incarceration). Because the Unique IDs were redacted, ICE has stripped from these records all information about whether an individual was detained (and for how long) and/or deported following the arrest. As with the data on detentions and removals, it is impossible to identify those records relating to the same individual. Thus, without Unique IDs this data is stripped of nearly all useful information.

21. **Risk classification assessments:** Risk classification assessments are ICE decisions, made with the help of a computer algorithm, about whether to release or detain an

individual and, once detained, what level of risk (e.g., low, medium, high) that individual poses in custody. This spreadsheet provides data on the decisional history associated with each risk classification assessment. However, without Unique IDs this data provides no information on the relationships between risk classification assessments and other areas of immigration enforcement, such as arrest, detention, and removal.

22. **Bonds:** The bonds spreadsheet provides data on bond amounts, bond types, and dates when bonds were posted, as well as the name of the surety company used. Because the Unique IDs have been redacted, the data is stripped of information about how bond amounts are related to the length of detention and eventual deportation.

23. The bonds spreadsheet is the only one of the five spreadsheets that does not contain a redacted A-number column. However, bond records contain A-numbers. For example, attached as Exhibit F is an ICE form used by noncitizens to request information about an immigration bond posted on their behalf.⁴ This form requires that the noncitizen provide his or her A-number (referred to as an Alien Registration Number), and, on page one, the form specifically references using the information disclosed through the form as part of the Bond Management Information System.

24. As demonstrated above, ICE's refusal to provide Unique IDs prevents the public from obtaining information on how ICE has performed its role implementing the nation's immigration policies.

⁴ This form is available at <https://www.ice.gov/sites/default/files/documents/Document/2017/i352.pdf>.

STEPS REQUIRED TO REPLACE A-NUMBERS WITH UNIQUE IDS

25. For the four categories of data containing A-numbers (all except bonds), replacing A-numbers with Unique IDs does not require ICE to further search for responsive records or even access its databases in any way. Instead, ICE can format the Excel spreadsheets that it has already produced by running an extremely simple computer script (i.e., code). The script automatically replaces A-numbers with randomized Unique IDs.

26. According to ICE, replacing A-numbers with anonymous Unique IDs requires five steps: (1) create a program, (2) input each A-number from each dataset within the IIDS into the program, (3) run the program, (4) replace all A-numbers with the Unique IDs, and (5) maintain and store the new computer program and Unique IDs. (Vassilio-Diaz Decl. ¶ 21.)

27. I have performed these 5 steps to illustrate the de minimis burden imposed by replacing A-numbers with Unique IDs and to satisfy step 1.

28. **Step 1 - Create a program:** Creating a program for replacing Unique IDs with anonymous Unique IDs requires no computer-programing background. I have no computer science training, and I was able to write, in under three hours, a script for creating Unique IDs using a statistical program called R. R is free open-source program available at the following website: <https://www.r-project.org/>. It is one of many standard data analysis programs capable of assigning Unique IDs to spreadsheet data.

29. On June 16, 2020, this script for replacing A-numbers with Unique IDs was provided to ICE via an email sent to ICE's counsel.

30. **Step 2 - Input each A-number from each dataset within the IIDS into the program:** This step happens automatically after ICE copies and pastes into R the file path for where the 21 spreadsheets are saved and hits the "run" button. Contrary to ICE's assertions, there is no need to copy the millions of entries in IIDS or to access IIDS for any other reason. (See

Vassilio-Diaz Decl. ¶ 21.) The script uses *only* the spreadsheets that ICE has already extracted from its databases.

31. **Step 3 - Run the program:** The script accomplishes this automatically when ICE presses “run.” No further action on the part of ICE is required; the operator can step away from the computer after pressing “run” and the script will continue to run.

32. **Step 4 - Replace all A-numbers with the Unique IDs:** The script accomplishes this automatically when ICE presses “run.” The IIDS is not involved; instead the script produces a new Unique ID column with an entry for every row.

33. **Step 5 - Maintain and store the new computer program and Unique IDs:** The “new computer program” is a 25-kilobyte text file—smaller than a typical email. No additional documents are created because the new Unique IDs appear in the original spreadsheets.

34. **Burden:** In light of the above explanation, the five-step process described by Ms. Vassilio-Diaz reduces to two simple steps: (1) obtain a program (or use the one I provided to ICE) and (2) press the “run” button. These two steps are the same regardless of the number of categories of data or the number of records being converted. Writing the script took me under three hours. After creating the script, I tested it on the 21 spreadsheets produced by ICE. After inserting random Unique IDs in place of the A-numbers redacted by ICE, I ran the script following the steps above. In less than 22 minutes, and with no human involvement, the script produced anonymized Unique IDs replacing A-numbers for all 21 spreadsheets.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Signed this 18th day of June 2020.

A handwritten signature in black ink, appearing to read "David Hausman". The signature is written in a cursive, flowing style.

Dr. David Hausman

Exhibit B

ERO LESA Statistical Tracking Unit
For Official Use Only (FOUO)/Pre-decisional
FY2013 Removals Rerun - Removals with Additional Details

Please refer to Notes tab for complete notes pertaining to this dataset.

Prior Removal Reinstatement	Prior Removal Reinstatement Date	Final Charge Code	Final Charge Section	Prior Removal	Most Recent Prior Depart Date	Alien File Number	Unique ID
No		I6A	212a6Ai			(b)(6), (b)(7)(C)	302
No		R2A3	237a2Aiii			(b)(6), (b)(7)(C)	460
No		I6A	212a6Ai	YES	8/16/1999	(b)(6), (b)(7)(C)	574
No		I6A	212a6Ai			(b)(6), (b)(7)(C)	717
No		R2A1	237a2Ai			(b)(6), (b)(7)(C)	906
No		I6A	212a6Ai			(b)(6), (b)(7)(C)	2,658
No		I6A	212a6Ai			(b)(6), (b)(7)(C)	3,057
No		ROTEN	241a2			(b)(6), (b)(7)(C)	3,120
No		I6A	212a6Ai			(b)(6), (b)(7)(C)	3,302
No		I2A2	212a2AiIII			(b)(6), (b)(7)(C)	3,793
No		I6A	212a6Ai			(b)(6), (b)(7)(C)	4,615
No		I6A	212a6Ai			(b)(6), (b)(7)(C)	4,689
No		I6A	212a6Ai			(b)(6), (b)(7)(C)	5,937
No		I6A	212a6Ai			(b)(6), (b)(7)(C)	5,997
No		ROTEN	241a2			(b)(6), (b)(7)(C)	6,232

Exhibit C

ERO LESA Statistical Tracking Unit

For Official Use Only (FOUO)/Pre-decisional

FOIA 15-06191 FY2014 Initial ICE Book-Ins

Unique Id	Initial Book In Date	Current Order of Detentions	Current Book In Date	Detention Facility	Current Book Out Date	Current Release Reason	Final Book Out Date	Final Release Reason	Gender	Citizenship Country	Marital Status
62	3/6/2014	1	3/6/2014	PHOENIX DI	3/7/2014	Transferred	3/10/2014	U.S. Marshals or other agency (explai	Male	MEXICO	Single
62	3/6/2014	2	3/7/2014	PHOENIX DI	3/10/2014	Transferred	3/10/2014	U.S. Marshals or other agency (explai	Male	MEXICO	Single
62	3/6/2014	3	3/10/2014	PHOENIX DI	3/10/2014	U.S. Marshals or other agency (ex	3/10/2014	U.S. Marshals or other agency (explai	Male	MEXICO	Single
63	9/8/2014	1	9/8/2014	FLORENCE S	9/9/2014	Removed	9/9/2014	Removed	Male	MEXICO	Single
86	4/25/2014	1	4/25/2014	TUCSON INS	4/25/2014	U.S. Marshals or other agency (ex	4/25/2014	U.S. Marshals or other agency (explai	Male	MEXICO	Single
118	8/12/2014	1	8/12/2014	EL CENTRO	8/18/2014	Bonded Out	8/18/2014	Bonded Out	Male	MEXICO	Unknown
242	10/23/2013	1	10/23/2013	CORR.CORP	10/23/2013	Order of supervision	10/23/2013	Order of supervision	Female	GUATEMALA	Single
401	11/7/2013	1	11/7/2013	RIO GRANDI	11/7/2013	Transferred	11/15/2013	Removed	Male	GUATEMALA	Unknown
401	11/7/2013	2	11/8/2013	RIO GRANDI	11/13/2013	Transferred	11/15/2013	Removed	Male	GUATEMALA	Unknown
401	11/7/2013	3	11/13/2013	RIO GRANDI	11/15/2013	Removed	11/15/2013	Removed	Male	GUATEMALA	Unknown
413	4/27/2014	1	4/27/2014	SOUTH TEX.	5/4/2014	Transferred	5/29/2014	Removed	Male	EL SALVADOR	Married
413	4/27/2014	2	5/4/2014	SOUTH TEX.	5/23/2014	Transferred	5/29/2014	Removed	Male	EL SALVADOR	Married

Exhibit D

ERO LESA Statistical Tracking Unit

For Official Use Only (FOUO)/Pre-decisional

FOIA 2015-ICFO-01599 FY2014 thru August 2014 I-862 Details

•Please refer to Notes tab for complete notes pertaining to this dataset.

Initial Book In Date	Detention Facility	Gender	Citizenship Country	Unique ID	Subject Id	Eid Person
		Male	MEXICO	1	(b)(6), (b)(7)(c)	(b)(6), (b)(7)(c)
2/10/2014	EL CENTRO SPC	Male	GUATEMALA	2	(b)(6), (b)(7)(c)	(b)(6), (b)(7)(c)
2/10/2014	EL CENTRO SPC	Male	GUATEMALA	2	(b)(6), (b)(7)(c)	(b)(6), (b)(7)(c)
		Female	HONDURAS	3	(b)(6), (b)(7)(c)	(b)(6), (b)(7)(c)
		Female	HONDURAS	3	(b)(6), (b)(7)(c)	(b)(6), (b)(7)(c)
		Female	HONDURAS	3	(b)(6), (b)(7)(c)	(b)(6), (b)(7)(c)
		Male	YUGOSLAVIA	4	(b)(6), (b)(7)(c)	(b)(6), (b)(7)(c)
		Male	MEXICO	5	(b)(6), (b)(7)(c)	
		Male	COLOMBIA	6	(b)(6), (b)(7)(c)	(b)(6), (b)(7)(c)
		Female	DOMINICAN REPUBLIC	7	(b)(6), (b)(7)(c)	(b)(6), (b)(7)(c)
		Male	PANAMA	8	(b)(6), (b)(7)(c)	(b)(6), (b)(7)(c)
		Male	PANAMA	8	(b)(6), (b)(7)(c)	(b)(6), (b)(7)(c)
		Male	PANAMA	8	(b)(6), (b)(7)(c)	(b)(6), (b)(7)(c)
		Male	PANAMA	8	(b)(6), (b)(7)(c)	(b)(6), (b)(7)(c)
		Male	PANAMA	8	(b)(6), (b)(7)(c)	(b)(6), (b)(7)(c)

Exhibit E

Office of Information Governance and Privacy

U.S. Department of Homeland Security
500 12th St., SW
Washington, D.C. 20536



U.S. Immigration
and Customs
Enforcement

September 27, 2019

George Zimmerman
4 Times Square
New York, NY 10036

**RE: American Civil Liberties Union Immigrant's Right Project v. ICE; 19-cv-07058
ICE FOIA Case Number 2019-ICLI-00057**

Dear Mr. Zimmerman:

This letter is the final response to your Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), dated October 03, 2018. You have requested all records pertaining to an updated spreadsheet on removals, immigration detention, and detainer requests.

ICE has considered your request under the FOIA, 5 U.S.C. § 552.

A search of the ICE Enforcement and Removal Operations (ERO) office for records responsive to your request produced 21 excel spreadsheets that are responsive to your request. After review of those documents, ICE have determined portions of excel spreadsheets will be withheld pursuant to the FOIA Exemptions described below.

ICE has applied FOIA Exemptions (b)(6) and (b)(7)(C) to protect from disclosure the names, e-mail addresses, and phone numbers of ICE and DHS employees contained within the documents, as well as the names, and other personally identifiable information of other individuals contained within the records.

FOIA Exemption 6 exempts from disclosure personnel or medical files and similar files the release of which would cause a clearly unwarranted invasion of personal privacy. This requires a balancing of the public's right to disclosure against the individual's right to privacy. The privacy interests of the individuals in the records you have requested outweigh any minimal public interest in disclosure of the information. Any private interest you may have in that information does not factor into the aforementioned balancing test.

FOIA Exemption 7(C) protects records or information compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy. This exemption takes particular note of the strong interests of individuals, whether they are

www.ice.gov

JA 092

Page 2 of 2

suspects, witnesses, or investigators, in not being unwarrantably associated with alleged criminal activity. That interest extends to persons who are not only the subjects of the investigation, but those who may have their privacy invaded by having their identities and information about them revealed in connection with an investigation. Based upon the traditional recognition of strong privacy interest in law enforcement records, categorical withholding of information that identifies third parties in law enforcement records is ordinarily appropriate. As such, I have determined that the privacy interest in the identities of individuals in the records you have requested clearly outweigh any minimal public interest in disclosure of the information. Please note that any private interest you may have in that information does not factor into this determination.

ICE has applied FOIA Exemption 7(E) to protect from disclosure internal agency case numbers and law enforcement techniques and guidelines used for conducting investigations, contained within the document.

FOIA Exemption 7(E) protects records compiled for law enforcement purposes, the release of which would disclose techniques and/or 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. I have determined that disclosure of certain law enforcement sensitive information contained within the responsive records could reasonably be expected to risk circumvention of the law. Additionally, the techniques and procedures at issue are not well known to the public.

If you have any questions about this letter, please contact Assistant United States Attorney Tomoko Onozawa at (212) 637-2721.

Sincerely,

Handwritten signature of Dexter E. Johnson in cursive script.

Catrina M. Pavlik-Keenan
FOIA Officer

Enclosure(s): 21 excel spreadsheets

Cc. Tomoko Onozawa
Assistant United States Attorney
U.S. Attorney's Office, SDNY
86 Chambers Street, 3rd Floor
New York, New York 10007

JA 093

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

AMERICAN CIVIL LIBERTIES UNION
IMMIGRANTS' RIGHTS PROJECT,

Plaintiff,

v.

UNITED STATES IMMIGRATION AND
CUSTOMS ENFORCEMENT,

Defendant.

Case No. 19-cv-07058 (GBD)

DECLARATION OF EUGENE WU

Eugene Wu, Ph.D., pursuant to 28 U.S.C. § 1746 hereby declares as follows:

1. I am an Associate Professor of Computer Science at Columbia University. I teach the following classes: Big Data Systems, Computing Systems for Data Science, Systems for Human Data Interaction, Interactive Data Exploration Systems, Database Topics in Research and Practice, Topics in Database Research, and Introduction to Databases. I am also the co-director of the Center for Data, Media & Society at the Columbia Data Science Institute, and a co-advisor for the Columbia Journalism & Computer Science Dual Degree Program.

2. I earned a B.S. in Electrical Engineering and Computer Science from the University of California, Berkeley (2007), a M.S. in Electrical Engineering and Computer Science from the Massachusetts Institute of Technology (2010), and a Ph.D. in Electrical Engineering and Computer Science from the Massachusetts Institute of Technology (2014).

3. My past academic research includes designing fast and large-scale database systems; enhancements to database systems to support functionality such as provenance tracking and data visualization; and algorithms to facilitate data cleaning, data analysis, and interactive data visualization.

4. I have published on issues concerning database systems, data management, crowd sourcing, machine learning, data visualization, predictive modeling, and data cleaning.

5. My past teaching experience includes positions as a visiting scholar at the University of California, Berkeley, as a graduate student instructor at the Massachusetts Institute of Technology, and as an undergraduate student instructor at UC Berkeley.

6. My past commercial work experience includes database research at Google and software coding at Yahoo!, Microsoft, and IBM.

7. I have not previously testified as an expert.

8. I am not receiving a fee for my work on this matter.

9. I have reviewed the ACLU's FOIA Request, dated October 3, 2018; the spreadsheets produced in response to the ACLU's FOIA Request; excerpts of the Excel spreadsheets produced in response to FOIA requests from the New York Times, Human Rights Watch, and the Transactional Records Access Clearinghouse; the Declaration of Donna Vassilio-Diaz in Support of ICE's Motion for Summary Judgment, dated May 6, 2020 (ECF No. 32) (the "Declaration" or "Vassilio-Diaz Decl."); the U.S. Immigration and Customs Enforcement's ("ICE") Memorandum of Law in Support of Defendant's Motion for Summary Judgment (ECF No. 31); the Declaration of Karolyn Miller from *Long v. U.S. Immigration & Customs Enforcement*, No. 1:14-CV-0019-JDB (D.D.C. Oct. 9, 2014) (ECF No. 17-1) ("Miller Decl."); and the Declaration of Patricia J. De Castro from *American Immigration Council v. U.S. Customs*

& Border Protection, No. 18-1614 (ABJ) (D.D.C Mar. 29, 2019) (ECF No. 27-2) (“De Castro Decl.”).

10. If called to testify before this Court, I would provide the following testimony based on my academic, professional and technical experience, relevant academic literature, and my review of the documents listed above.

I. UNIQUE IDENTIFIERS PROVIDE TWO TYPES OF INFORMATION

11. ICE’s EID and IIDS databases are relational databases. (*See* Vassilio-Diaz Decl. ¶ 6; Miller Dec. ¶¶ 7-11.) Relational databases store information on (1) the identity of the person (i.e., the subject of a record) *and* (2) the relationships between records that refer to the same person (referred to as “relational information”). In order to create and store this information, it is necessary for each person to be assigned a unique identifier (“Unique ID”).

12. A Unique ID can be any identifier that is unique to a specific person. It can be a number or combination of specified information, such as name and date of birth, so long as it uniquely identifies a specific person.

13. Two or more records in the database are linked, and therefore convey relational information, if they contain a common Unique ID. Using paper spreadsheets to illustrate, if, while flipping through several spreadsheets, you saw that a Unique ID appears multiple times in a single column you would know that those spreadsheet rows are associated with the same person. By using a database, instead of paper records, this relational information can be quickly retrieved and presented as output files, such as Excel spreadsheets.

14. The value of a Unique ID does not matter for the purpose of linking, because the relational information is independent of the personally identifying information. For the relational information to exist, it is only necessary for two records to have the same Unique ID.

II. ICE'S DATABASES STORE INFORMATION ON THE RELATIONSHIPS BETWEEN DATABASE RECORDS

15. The Declaration states that ICE “can pull data on a person-centric basis from the EID.” (Vassilio-Diaz Decl. ¶ 7.) ICE can access information on a “person-centric basis” because its database stores this information by linking records through Unique IDs. This relational information from Unique IDs is stored in the database, despite the inability of ICE’s applications to create person-centric reports.

16. The Declaration states that ICE officers can pull person-centric data from EID if they have a “specific personal identifier, such as an A-number.” (Vassilio-Diaz Decl. ¶ 7.) ICE can access information on a person-centric basis by querying A-numbers because A-numbers link records referring to the same person within the database. Because EID is ICE’s primary database, when ICE officers run searches using A-numbers they can access data that includes, at a minimum, the data in the 21 spreadsheets produced to the ACLU. (Vassilio-Diaz Decl. ¶ 9.)

17. By redacting A-numbers and all other Unique IDs from the 21 spreadsheets produced to the ACLU, ICE stripped that data of all information regarding the relationships between the records.

III. ANONYMIZING A-NUMBERS STRIPS AWAY PERSONALLY IDENTIFYING INFORMATION AND LEAVES ONLY RELATIONAL INFORMATION

18. Replacing A-numbers with random Unique IDs removes personally identifying information, leaving only the relational information. This process works by replacing each A-number across all categories of data with an alternative, random Unique ID that has no relation to the person. Because the relational information provided by the new identifier already exists in the database, the resulting Unique ID introduces no new information. The new Unique IDs serve only to link the records.

19. As an example, consider a database record where the field for “name” contains “Peter Parker” and the field for “gender” contains “male.” A query can be written to create a column in a spreadsheet for “name” with the cell containing “Mr. Parker.” This replacement has not created any new information, but has merely *extracted* information that already existed in the database, namely the gender and last name conveyed by the original entries of “male” and “Peter Parker.” Replacing A-numbers with Unique IDs extracts (and does not create) information in a similar fashion.

IV. ICE DOES NOT NEED TO CREATE A NEW COMPUTER PROGRAM

20. The Declaration states that “ICE does not maintain a computer program by which it can replace A-numbers from the IIDS database with other, unique identifiers,” and therefore ICE would need to “create a program capable of uniquely substituting a new number from a pre-existing number” (Vassilio-Diaz Decl. ¶ 21.) This is not necessary. The task of replacing A-numbers with other Unique IDs can be accomplished in the search process through Structured Query Language (“SQL”) queries, run either in the EID or IIDS databases.

21. SQL is an industry-standard query language that enables users to efficiently retrieve, filter, link, *and* transform database records. The SQL query for A-numbers can be edited using one line of code to extract a Unique ID for each distinct A-number (across all of the categories of data). This additional line of code creates and references a temporary table containing A-numbers transformed into Unique IDs. Once the Unique IDs have been extracted to the temporary table and then to the spreadsheets and the session has ended, the database automatically deletes the temporary table.

22. The ability to write SQL queries is a basic skill taught in introductory database courses and standard database textbooks.¹

23. The Declaration confirms ICE’s ability to use SQL queries for extracting information from its databases.² (See Vassilio-Diaz Decl. ¶ 6; *see also* Miller Decl. ¶¶ 7-11, 16-19.) It states, for example, that ICE administers the EID and that the EID is accessible “through direct database connectivity.” (Vassilio-Diaz Decl. ¶ 6.) Direct database connectivity enables applications that connect to a database to run queries using SQL. In addition, the Miller Declaration (from another FOIA litigation involving ICE) confirms that the EID and IIDS can run SQL queries, stating that SQL can be used for “creating reports and manipulating the data and records” within the EID and IIDS databases.³ (Miller Decl. ¶¶ 16-19.)

24. Extracting database information through a SQL query creates a new file, such as an Excel spreadsheet. When an SQL query is used to search for and transform A-numbers into Unique IDs the resulting new file contains Unique IDs, not A-numbers.

25. The Declaration states that ICE needs to “input each A-number from each dataset within the IIDS (millions of entries in total) into the program.” (Vassilio-Diaz Decl. ¶ 21.) Using a SQL query, this step can be done automatically.

¹ As reported in a 2019 survey by Stackoverflow, a widely used forum for computer programmers, SQL was rated as the third most commonly used programming language. Over 50% of the 88,883 participating software developers, across 179 countries, reported that they program in SQL. *See Stackoverflow Developer Survey Results 2019*, Stackoverflow.com (last visited May 22, 2020), <https://insights.stackoverflow.com/survey/2019>.

² In addition, I have been told by counsel that, as of February 11, 2011, IIDS runs the Oracle 10g database management system. Oracle 10g is capable of the SQL queries and data transformations that I describe in this declaration. *See Introduction to Oracle SQL*, Oracle.com (last visited June 3, 2020), https://docs.oracle.com/cd/B19306_01/server.102/b14200/intro.htm.

³ In yet another FOIA litigation, ICE claimed that its ability to extract and report data from the IIDS database is “limited by how the system creates different populations of data, or ‘silos’ of reported information, which exist in isolation.” (De Castro Decl. ¶ 21; *see also id.* ¶ 29.) Relational databases, such as the EID and IIDS, are not limited in this way. A relational database’s ability to run a SQL query to transform data across “‘silos’ of reported information” requires only that the records in each “silo” contain A-numbers. (*Id.* ¶ 21.)

26. The Declaration further states that ICE would need to “run the program to create new unique identifiers.” (Vassilio-Diaz Decl. ¶ 21.) Using a SQL query this step should run relatively quickly. Modern database systems run on a single computer can easily retrieve and transform millions of records within minutes.

27. Alternatively, ICE can reformat A-numbers as Unique IDs without using its databases. ICE can use a standard data analysis program or script to reformat the unredacted spreadsheets that it created for the ACLU’s FOIA request.

28. Creating Unique IDs from the 21 spreadsheets should be a relatively quick process. This process would involve writing a script that performs three simple steps: (1) read (that is, copy) the Excel files into memory, (2) assign Unique IDs for each A-number and insert those Unique IDs in place of each A-number, and (3) write the Unique IDs into the Excel files.


29. I wrote and executed such a script for the spreadsheet containing removals data for FY 2014-2016. (*See, e.g.*, Vassilio-Diaz Decl. Ex. A (containing an excerpt of the removal data from 2013).) This spreadsheet is contained in a 105 MB file and contains approximately 300,000 rows. I spent 10 minutes writing the script using the Python programming language, which is commonly used for data analysis.⁴ Once I started running the script, it required approximately 180 seconds to read the Excel file into memory, less than 1 second to assign and insert Unique IDs, and 200 seconds to write the Unique IDs to an Excel file. Editing the script to also perform the three steps on the other 20 spreadsheets would take approximately 10 minutes.

⁴ Python is one of the most popular programming languages. In the same Stackoverflow survey referenced in footnote 1, *supra*, Python ranked as the 4th most popular programming language. *See Stackoverflow Developer Survey Results 2019, supra* note 1. Python is a standard program installed on every Apple computer and Unix-based computer, and is free to download and install on Windows computers. *See Get Started Using Python on Windows for Beginners*, Microsoft.com (July 19, 2019), <https://docs.microsoft.com/en-us/windows/python/beginners>.

30. Extrapolating these results to all 21 spreadsheets produced by ICE, which are contained in files totaling 1650 MB of memory, the script would require approximately 1 hour to read the Excel files into memory, about 5 seconds to assign and insert Unique IDs, and approximately 1.5 hours to write the Unique IDs to Excel files.

V. JURAT CLAUSE

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Signed this 18th day of June 2020.



Dr. Eugene Wu

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

AMERICAN CIVIL LIBERTIES UNION
IMMIGRANTS' RIGHTS PROJECT

Plaintiff,

v.

U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT

Defendant.

No. 19 Civ. 7058 (GBD)

**SUPPLEMENTAL DECLARATION OF DONNA VASSILIO-DIAZ
IN SUPPORT OF THE UNITED STATES IMMIGRATION AND CUSTOMS
ENFORCEMENT'S MOTION FOR SUMMARY JUDGMENT**

I, Donna Vassilio-Diaz, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am the Unit Chief of the Statistical Tracking Unit ("STU") within Enforcement and Removal Operations ("ERO") Law Enforcement and Systems Analysis ("LESA") at U.S. Immigration and Customs Enforcement ("ICE"). I have held this position since December 2019. I previously served as the Acting Chief of STU from November 2019 until accepting the position, and prior to that, served as the Detention and Deportation Officer subject matter expert within the LESA Data Quality and Integrity Unit ("DQI") since November 2016. I have served as an officer for ERO since February 2007. The LESA STU mailing address is 500 12th Street, S.W., STOP 5009, Washington, D.C. 20536-5009.

2. The LESA STU is responsible for providing all official ERO reporting to Congress, the White House, and other internal and external stakeholders, in addition to the public through the FOIA.

3. As the Unit Chief for the STU, my official duties and responsibilities include the general management, oversight, and supervision of a staff of Statisticians, Detention and Deportation Officers (Subject Matter Experts), Program Analysts, and Mission Support staff.

4. I make this supplemental declaration in support of ICE's Motion for Summary Judgment 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 May 6, 2020, styled "Declaration of Donna Vassilio-Diaz in Support of the United States Immigration and Customs Enforcement's Motion for Summary Judgment."

6. In the interest of judicial efficiency, this declaration responds to only certain contentions in the Declaration of Eugene Wu. ("Wu Decl.") and the Declaration of David Hausman ("Hausman Decl.") It should not be construed to concede contentions not specifically addressed.

7. Eugene Wu has never seen, used, or reported data for FOIA or any ICE operational reporting need, from ICE's database. Therefore, any opinion rendered by Eugene Wu, including from his declaration, lacks the necessary foundation. Eugene Wu has never worked for ICE and has no experience with the IIDS. The fact that Eugene Wu reportedly has worked on databases of the same "type," does not establish that he possesses specific knowledge regarding the data contained in the IIDS database.

8. Paragraph 11 of the Wu Decl. states: "Relational databases store information on (1) the identity of the person (i.e., the subject of a record) *and* (2) the relationships between records that refer to the same person (referred to as 'relational information'). In order to create and store

this information, it is necessary for each person to be assigned a unique identifier (‘Unique ID’).” With respect to the IIDS, this statement is not accurate. The IIDS was not designed as a well-formed and normalized database where every record is attached to one person through the assignment of a Unique Identifier at the time the record is created and stored. An ERO officer is not required to record an Alien Number into the front-end applications when conducting an arrest, booking in an individual to ICE custody, creating a case.

9. Paragraph 15 of the Wu Decl. states: “ICE can access information on a ‘person-centric basis’ because its database stores this information by linking records through Unique IDs.” ERO officers have access to viewing dashboards, or applications, called the ENFORCE Alien Removal Module (“EARM”) or the EID Arrest Graphical User Interface for Law Enforcement (“EAGLE”). These viewing dashboards cannot be used to produce aggregate data. They allow for a case-by-case viewing of data contained in the EID. There is not one identifier that exists across every record for an individual so an officer may search the Graphical User Interface using different identifiers.

10. Paragraph 20 of the Wu Decl. states: “The task of replacing A-numbers with other Unique IDs can be accomplished in the search process through Structured Query Language (“SQL”) queries, run either in the EID or IIDS databases.” Paragraph 21 of the Wu. Decl. explains how Dr. Wu believes this task could be accomplished. Dr. Wu’s SQL query proposal is inconsistent with the manner in which ICE uses, stores, and searches the EID and/or IIDS databases. Implementation of such a proposal requires additional analysis as ICE pulls the data from 5 population reports located in 2 separate databases and would be required to create a standardized formula to be applied to substitute Alien File Numbers consistently across these populations in both databases. Further, while Dr. Wu’s proposal may be effective in a normalized

database, the IIDS is a not considered a normalized database as these conditions exist: (1) There is data redundancy (data is stored in multiple places and is not consistent); (2) there are inconsistent dependencies (there are many to many relationships between multiple identifiers); and (3) not all relationships are established between tables. In order to use SQL queries to replace A-numbers with newly created Unique Identifiers in ICE's IIDS database and EID database, ICE would have to develop a standardized formula. In application, 5 population report queries would need to be manipulated to create this new data. Further, Dr. Wu's proposal assumes that ICE queries the IIDS database a single time in response to FOIA requests. This assumption is incorrect. In reality, ICE performs separate queries for each of the 5 populations produced over the span of the 8 fiscal years requested. As such, ICE could not ensure that Alien File Numbers are accurately replaced by Unique Identifiers by employing a *single line of code* to a *single* SQL query, as suggested by Dr. Wu. Instead, ICE would have to perform additional steps to validate the formula was applied accurately across all populations and fiscal years.

11. Paragraph 26 of the Wu Decl. states: "Using a SQL query this step should run relatively quickly. Modern database systems run on a single computer can easily retrieve and transform millions of records within minutes." Dr. Wu does not have experience with the ICE databases or data models to be able to ascertain that a SQL query "should run relatively quickly," or is even possible, with ICE's reporting database. Dr. Wu is over-simplifying a simple "substitution" solution that doesn't apply to vast and complex ICE databases and data models. In reality, estimating from the time it took to satisfy the ACLU's FOIA request in the first instance, employing SQL queries to replace Alien File Numbers with Unique Identifiers in the manner described in Paragraph 10 would take, in theory, at minimum a day, if not several days to run. This is because there are multiple years being run for 5 different populations across 2 databases and

because the proposal would require the additional validation activities. This would result in multiple datasets with misleading or incomplete connections between records, as the IIDS database is not used by ICE for this type of cross-population analysis.

12. Paragraph 28 of the Wu Decl. states: “Creating Unique IDs from the 21 spreadsheets should be a relatively quick process. This process would involve writing a script that performs three simple steps: (1) read (that is, copy) the Excel files into memory, (2) assign Unique IDs for each A-number and insert those Unique IDs in place of each A-number, and (3) write the Unique IDs into the Excel files.” Paragraph 27 of Dr. Wu’s proposal states that this could be accomplished through a standard data analysis program. Dr. Wu’s second proposal asks ICE to take its standard population reports produced and go one step further to create a new master index list with the newly created Unique Identifier column. Further, Dr. Wu asks ICE to employ data analysis programming to manipulate spreadsheet data and create records in a manner inconsistent with the way in which ICE uses spreadsheet data, raising concerns about data quality. In reality, in order create Unique Identifiers derived from Alien File Numbers from excel spreadsheet data, ICE would have to extract the data via the excel files and create a master index list of all the Alien File Numbers across the 21 spreadsheets consisting of 5 populations (and 8 years-worth of data). Upon creation of this master index list, ICE would have to create a standard formula to substitute out a Unique Identifier for each Alien File Number. ICE could not use Microsoft Excel (one of the formats requested by the ACLU for the data) to substitute Unique Identifiers because Microsoft Excel is limited to approximately 1 million rows of data entries. The 21 spreadsheets alone exceed 1 million rows of data and thus could not be placed into a new Microsoft Excel file to create a master list.

13. Paragraph 30 of the Wu Decl. states: “Extrapolating these results to all 21 spreadsheets produced by ICE, which are contained in files totaling 1650 MB of memory, the script would require approximately 1 hour to read the Excel files into memory, about 5 seconds to assign and insert Unique IDs, and approximately 1.5 hours to write the Unique IDs to Excel files.” Dr. Wu’s estimate of the time it would take to use Excel to replace A-numbers with Unique Identifiers overestimates the capacity of ICE’s computer system. In reality, the process he described (as corrected in Paragraph 12) would take approximately a day to complete. This estimate is theoretical and based on prior FOIA disclosures, as ICE has never had to implement this type of proposal before and would have to implement additional validation steps of the data produced.

14. Paragraph 9 of the Hausman Decl. states: “ICE has previously created and produced Unique IDs for at least two of the categories of data: removals and detentions. I do not know of an example in which ICE has produced Unique IDs for a similar request involving multiple categories of data.” ERO has, on limited occasions, previously *created* unique identifiers as a voluntary exercise of its discretion, such as pursuant to litigation settlements, but nonetheless, something that was not, and is not, required by the FOIA. Further, ERO did not create unique person identifiers, which is what Plaintiff is requesting in this case. ERO previously created unique identifiers for rows of data (synonymous to an enforcement action). ERO did not create relationships between the requested populations as Plaintiff is requesting here.

15. Due to current workload and staffing levels, ICE now merely limits returned data to what the FOIA requires, even in instances of creating unique identifiers for each row of data. Regardless of the burden imposed by any single discretionary disclosure, the sum of these disclosures would overwhelm the ICE’s FOIA operation.

JURAT CLAUSE

I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge and belief. Signed this 16th day of July 2020.

Donna Vassilio-Diaz
Unit Chief, Statistical Tracking Unit
Law Enforcement and Systems Analysis
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security
500 12th Street, S.W., Stop 5009
Washington, DC 20536-5009

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
-----x

3 AMERICAN CIVIL LIBERTIES UNION
4 IMMIGRANTS' RIGHTS PROJECT,

Plaintiff,

v.

19 CV 7058 (GBD)

6 UNITED STATES IMMIGRATION AND
7 CUSTOMS ENFORCEMENT,

Defendant.

Oral Argument
(via Skype)

9 -----x

New York, N.Y.
December 3, 2020
10:45 a.m.

11 Before:

12 HON. GEORGE B. DANIELS,

District Judge

14 APPEARANCES

15 SKADDEN ARPS SLATE MEAGHER & FLOM LLP

Attorneys for Plaintiff

17 BY: ERIC J. RIEDEL

18 AUDREY STRAUSS

Acting United States Attorney for the
Southern District of New York

ZACHARY BANNON

1 (Case called)

2 THE COURT: Good morning.

3 MR. RIEDEL: Good morning, your Honor.

4 MR. BANNON: Good morning, your Honor.

5 THE COURT: Let me start with ICE.

6 Mr. Bannon, let me hear from you with regard to the
7 cross motion.

8 MR. BANNON: Of course, your Honor.

9 As your Honor knows from the papers, this case
10 concerns the ACLU's request for historical immigration data
11 from ICE regarding ICE enforcement efforts that's indicated in
12 the IIDS database.

13 In particular, the ACLU asked ICE to disclose
14 information concerning arrests, detentions, removals, risk
15 assessments, and bond management in the form of Excel
16 spreadsheets, and they asked that in every instance A numbers
17 appear within that data, that A numbers be replaced with newly
18 created unique identifiers using the same unique identifier to
19 identify the particular individual in the arrest data as would
20 be used in the detention data and so on and so forth.

21 In response to that FOIA request, the government
22 reviewed its databases, identified records that were responsive
23 to the request, formatted them into Excel spreadsheets, applied
24 redactions where FOIA exemptions applied, and then turned over
25 those spreadsheets to the ACLU.

1 ICE did not create unique identifiers to replace the A
2 numbers which were redacted pursuant to personal privacy FOIA
3 exemptions. The reason the government did not do that is
4 because, as the Second Circuit held in *Pierce & Stevens* and the
5 Supreme Court confirmed in *Forsham*, FOIA does not require the
6 government to rewrite documents or to create new records in
7 response to a FOIA request.

8 As the Court in D.C. held recently, related to similar
9 requests out of the same database, the fact that person-centric
10 unique identifiers do not exist in ICE's IIDS database is not
11 disputed, and the legal principle that an agency is not
12 required to create new records is well settled.

13 THE COURT: Let me just ask a question. What manner
14 did you redact this information, just blacked out the
15 information on each document?

16 MR. BANNON: That's right, your Honor. It's redacted
17 through a normal redaction bar that would appear on any other
18 paper document, for instance, and then labeled with the
19 relevant exemption that this claims.

20 THE COURT: Is there any other information on the
21 documents that a comparison of two -- have you produced the
22 documents or just the spreadsheet?

23 MR. BANNON: We have produced the spreadsheet, which
24 is the relevant document that was reflected in the FOIA request
25 at issue here. They asked for this information in the format

1 of an Excel spreadsheet.

2 THE COURT: So what you've redacted is the A number on
3 the spreadsheet. What other information is on the spreadsheet?

4 MR. BANNON: Depending on the data set, particular
5 data set, there is a number of different pieces of information.
6 For instance, in the detention data set you would have the
7 facility at which a person is detained, the state, the date on
8 which they were arrested, things like that. There are no
9 nonredacted identifiers that would allow you to correlate one
10 data set to another, if that's what your Honor's question is.

11 THE COURT: Why would I not be able to do that by
12 looking at the date, the person was detained and the facility
13 that they are in? And I don't know what other information is
14 on the spreadsheet. But at least wouldn't that information on
15 the spreadsheet at least give me some indication of whether or
16 not -- I am just trying to understand what the spreadsheet --
17 does the spreadsheet identify all of the documents relevant to
18 an A number?

19 MR. BANNON: You are right, your Honor, that it would
20 be possible to draw inferences comparing particular rows of
21 data in, say, the arrest database to the detention database.
22 For instance, if a date of arrest in a particular state in a
23 particular area was very close in time to a detention in the
24 same area, you might be able to draw the inference that it's
25 the same individual.

1 But we are talking here about millions of rows of
2 data. So to make those kinds of correlations through the
3 information that is provided here, which is things like gender,
4 port of departure, country of departure, date of departure,
5 would require some guesswork, to say the least.

6 THE COURT: If all of that information or 90 percent
7 of that information is, I assume -- I am not sure -- I am just
8 not sure what the spreadsheet, the form of the spreadsheet is.
9 Do I have a copy of that?

10 MR. BANNON: You do, your Honor. Docket No. 32-1
11 provides a sort of snapshot of each of the relevant
12 spreadsheets provided.

13 The way the spreadsheet looks is, I have pulled up
14 here the removal sample from 2013, which every spreadsheet is
15 one dataset removals versus detentions in one particular year
16 within that data set, so there is eight for each of the
17 relevant data sets. And the removal data has a number of
18 tables.

19 What I have in front of me here says that -- the first
20 column says: Departed date; second says, port of departure;
21 the third, departed country; so on and so forth. Entry date,
22 entry status, most severe conviction charge, so on and so
23 forth.

24 THE COURT: The removal data is information that is
25 gathered from where, as opposed to arrest data or detention

1 data?

2 MR. BANNON: These data points are imported into what
3 is called an EID database, which is the ICE operational
4 database. Every time a relevant immigration event happens, an
5 immigration officer would enter these data points into their
6 operational database. The IIDS database provides a snapshot of
7 the EID data for particular times.

8 If your Honor's question -- because each of the data
9 sets -- removals, detentions -- are in separate spreadsheets,
10 you could not follow the line of data to track removal data
11 through detention data for the same individual because they are
12 part of separate spreadsheets. Does that make sense?

13 THE COURT: It does make sense. What is the volume of
14 the spreadsheet?

15 MR. BANNON: It's very large, millions of rows of
16 data.

17 THE COURT: If I had the spreadsheets and I knew that
18 I had a relative who was detained on a particular date, held at
19 a particular facility, and removed on a particular date to a --
20 does it have information of where the person was removed to?

21 MR. BANNON: Yes.

22 THE COURT: And I know that my relative was removed to
23 Yugoslavia on a certain day, came to the United States on a
24 certain day, and was detained on a certain date and was
25 detained at a certain facility, all of that information would

1 be somewhere in the various spreadsheets.

2 MR. BANNON: That's right, your Honor. And if you
3 were trying to figure out, based on a particular person who you
4 have information about, which rows of data line up with them,
5 that would be something that would probably be possible. You
6 could search the particular points that you had just mentioned
7 and maybe that would uniquely identify someone within the
8 spreadsheet. Maybe there were two people that were deported to
9 Yugoslavia on this date from this facility. So it's likely, if
10 you had a particular individual in mind and you knew a lot
11 about them, figure out where in the database it is.

12 THE COURT: It would be an arduous and difficult
13 process and may not even be successful to be able to
14 identify -- even if I wasn't looking for a particular person,
15 in order to match the information in the database to the same
16 person, I would need specific independent information about
17 that person.

18 MR. BANNON: That's right, your Honor. If you wanted
19 to correlate information from say the removal spreadsheet.

20 THE COURT: Factually, I am just trying -- I have the
21 spreadsheet. I think I understand what you said. I think I
22 understand what the Civil Liberties Union is asking for what
23 they want. I don't see redactions on what I have.

24 MR. BANNON: If you look, for instance, on page 6 of
25 30, you'll see the last column is alien file number and it says

1 B6B or B6B7C. So that's the relevant FOIA exemptions that were
2 claimed over the alien numbers.

3 THE COURT: Page 6. What's the column?

4 MR. BANNON: The second-to-last column. Although the
5 last column also has a FOIA exemption applied to it.

6 THE COURT: Those are just the statutory exemptions?

7 MR. BANNON: Exactly.

8 THE COURT: Would that be only in those two columns?
9 Is that all that you redacted that way?

10 MR. BANNON: I think that is true of the removal data.
11 Each particular data set has different data. Birthdates are
12 redacted as well. That might appear in the removal data as
13 well.

14 THE COURT: What was redacted?

15 MR. BANNON: Birthdates. And in other data sets, for
16 instance, the detention data set has, in addition to alien file
17 numbers and case IDs, subject IDs and detention IDs, which are
18 sort of a less complete identifier than an alien file number
19 which are also subject to B6 and B7C FOIA exemptions.

20 THE COURT: Subject to that exemption, you have
21 redacted the alien file number and the case ID and the date of
22 birth?

23 MR. BANNON: That's correct. I actually think that
24 the case ID was under B7E, the law enforcement exemption,
25 rather than personal privacy exemptions, but that's correct.

1 Those are redacted.

2 THE COURT: Anything else redacted on the spreadsheet
3 other than alien, file ID, case ID, and date of birth?

4 MR. BANNON: I think that's it for the removal data.
5 But each data set has different columns. For instance, the
6 detention data has additional columns for subject ID and
7 detention ID, and those are also redacted under privacy
8 exemptions. I think that the arrest data has something called
9 user ID. That's redacted under privacy exemptions. The risk
10 classification has separately redacted last names and first
11 names.

12 THE COURT: But the disagreement between the parties
13 is over the alien file number and its redaction and not
14 substituting a unique identifier for that column.

15 MR. BANNON: Exactly, your Honor. There is not
16 disagreement on whether alien numbers are properly redacted.
17 The question is whether they should be redacted or whether they
18 should be replaced with a newly created unique identifier.

19 THE COURT: And there is not a disagreement with
20 regard to the other redactions other than the alien file
21 number.

22 MR. BANNON: No. By stipulation earlier in this
23 matter, your Honor, the parties agreed to resolve the issue of
24 application of FOIA exemptions except to the extent that we
25 claimed that unique identifiers themselves were subject to

1 exemption, which we have not done.

2 THE COURT: Go ahead. You may continue.

3 MR. BANNON: The ACLU attempts to get around FOIA's
4 barrier to the creation of records by saying that A numbers
5 serve multiple purposes. They contain and convey information
6 that's personally identifying, which is the reason for which
7 they are FOIA exempt, but they also convey information that
8 relates records to one other. And in the ACLU's view, ICE had
9 an obligation to segregate this relational information, as they
10 style it, from alien numbers, and then produce it in the form
11 or format of unique identifier.

12 THE COURT: I am not sure that I completely understand
13 that the parties are using the same definition of segregate.
14 Where are you getting your definition? Where are they getting
15 their definition?

16 MR. BANNON: Yes, your Honor. FOIA's segregation
17 requirements come from two related provisions. 552(b), which
18 states: Any reasonably segregable portion of a record shall be
19 provided to any person requesting such record after deletion of
20 the portions which are exempt under this subsection. And 5
21 U.S.C. 552(a)(8)(A)(2)(ii) states that: An agency shall take
22 reasonable steps necessary to segregate and release nonexempt
23 information.

24 The parties are in agreement that these are the
25 operative segregation provisions, but differ on our

1 interpretation of what segregation requires under FOIA.

2 The ACLU's position is that the second provision that
3 I read to you, which was imposed by FOIA Improvement Act of
4 2016, imposed a new additional segregation obligation on
5 agencies to not only use deletions, but also to take additional
6 reasonable steps in order to provide information that would
7 otherwise be subject to redaction.

8 And the government disagrees that this is required
9 under the FOIA Improvement Act. The reason for the
10 disagreement is the history -- the basis for the ACLU's
11 position is that you should give every phrase in the statute
12 its own independent meaning, so reasonable steps must mean
13 something different than deletions.

14 But the legislative history of the FOIA Improvement
15 Act sufficiently reflects that general presumption that applies
16 to statutory interpretation more generally because courts have
17 interpreted the FOIA Improvement Act as a codification of a
18 memo that was written by then Attorney General Eric Holder in
19 2009, and that memo dealt largely with something that is now
20 called the foreseeable harm requirement, which is a manner in
21 which agencies apply FOIA exemptions. They are not to apply a
22 FOIA exemption unless they can actually articulate a
23 foreseeable harm to the interests protected by that exemption.

24 Separately, that memo has a section that says:
25 Agencies should be mindful that the FOIA requires them to take

1 reasonable steps to segregate and release nonexempt
2 information. And this Section 552(a)(8)(A)(2)(ii) repeats that
3 language from the Holder memo that the agencies must take
4 reasonable steps to segregate and release nonexempt
5 information.

6 However, reading the Holder home in context, it's
7 clear that this was simply an articulation of what the FOIA had
8 already required. The memo says: Agencies should be mindful
9 that the FOIA requires them to do this.

10 It was true in 2009, under Eric Holder's
11 interpretation of FOIA, that reasonable steps needed to be
12 taken and it remains true now. Nothing about the passage of
13 the FOIA Improvement Act changed the burden of what an agency
14 must do to segregate records.

15 And what an agency must do is clear from 552(b). They
16 must delete portions of the record which are exempt and then
17 determine whether any portions are reasonably segregable
18 thereafter.

19 And there are a number of cases that apply this
20 principle in the circumstance that we have here. The three
21 that we primarily rely upon are *ACLU v. DOJ* in the Second
22 Circuit, in addition to *Students against Genocide* in the D.C.
23 Circuit and *FlightSafety* in the Fifth Circuit.

24 And those cases all stand for the principle that when
25 the request asks an agency to take information conveyed by an

1 exempt record and just carve out the portion of that
2 information that gives rise to the FOIA exemption, that is the
3 creation of a new record rather than the application of FOIA's
4 segregability provision.

5 For instance, in *ACLU v. DOJ*, the district court had
6 ordered -- the context of this case was an office of legal
7 counsel memorandum that included national security information.
8 When that national security information was redacted, it was
9 hard to follow the memo. There was redactions in place of what
10 you would normally be reading as words, so it's hard to follow
11 the sentence structures in light of the redactions.

12 What the district ordered there was that the agency
13 should substitute neutral phrases that did not reveal this
14 classified information in place of the information that was
15 already there. And what the Second Circuit held is that the
16 replacement of the national security information with neutral
17 phrases rather than just a simple redaction is not a
18 segregability issue but a creation of records issue.

19 And the request here is materially identical. They
20 are asking to convey some information conveyed by a FOIA-exempt
21 portion of a record by substituting in a neutral reference. In
22 this case, instead of neutering the grammatical structure from
23 the national security information, they are asking that we
24 neuter the relational information from the alien number, so
25 there is no material difference between these, and we view the

1 case as governed by *ACLU v. DOJ* for that reason.

2 The D.C. Circuit came to a similar conclusion in
3 *Students against Genocide*. That was a case in which the agency
4 had withheld certain photographs under national security
5 exemptions, and the reason for withholding those photographs
6 was that an expert technician could view those photographs and
7 see the capabilities of our surveillance technologies by
8 comparing the resolution of the photographs to other known
9 information and determining where our satellites might be or
10 how powerful they are.

11 And the requester there said, no, no, no, we are not
12 interested in that aspect of these photographs. What we want
13 to see is what's in the pictures. So we don't care about the
14 resolution of the photograph which might give rise to this
15 concern that you can use it to determine our security
16 capabilities. We are happy to take the photograph in a format
17 that is lower resolution so as to hide that problem but still
18 convey to us the information we are interested in, the
19 information about what is the subject matter of the photograph.
20 And there the D.C. Circuit again explicitly said that, well, if
21 FOIA requires segregation of records, it does not require the
22 creation of new records, and that was what was at issue there
23 by asking for a lower resolution photograph.

24 Perhaps the most similar case is the Fifth Circuit's
25 case in *FlightSafety*. In *FlightSafety*, the facts are slightly

1 more complicated, but I'll try to convey them to the best of my
2 ability. A group that contracted with the Department of Labor
3 to provide the services was to be provided wages at rates set
4 by the Bureau of Labor statistics. The manner in which the
5 Bureau of Labor statistics set those wages was by asking
6 particular industries within particular areas to give that
7 information out to them so that they can make averages and
8 determine what was an appropriate average wage for an area.
9 But they only gave that information out subject to
10 confidentiality.

11 The Court there held, and the FOIA request there was
12 that FlightSafety was interested in this data that was used to
13 establish these prevailing wage rates. In *FlightSafety*, the
14 Court determined that the information that would allow you to
15 take that data and refer it back to say Amazon or Google and
16 say, Amazon employees who do this make this much money was
17 confidential business information, so they redacted that
18 particular information.

19 After they redacted that information, the underlying
20 data wasn't very useful anymore because of the redactions. You
21 couldn't really correlate different pieces of information from
22 the spreadsheet -- from the data set with one another.

23 So what the FOIA requester in that case asked was for
24 dummy variables to be substituted in place of this confidential
25 business information. Again, in that case the substitution of

1 these dummy variables that would allow you to correlate
2 different data pieces to one another without revealing the
3 confidential source, the Amazon or the Google, say, was found
4 to be the creation of records and not required under FOIA.

5 These cases all stand for the general proposition that
6 when you have a situation where someone asks for a substitution
7 in order to segregate out information conveyed by a record that
8 is the reason for which it is exempt from information that
9 doesn't convey sensitive information, that's not something
10 that's required under the FOIA segregation requirements.
11 That's something that is the creation of records, which is not
12 required under the FOIA, neither subject to a burden analysis
13 or any other sort of analysis.

14 THE COURT: What I don't understand is why wouldn't a
15 list of alien identification numbers, why wouldn't at least
16 such a list not be segregated?

17 MR. BANNON: If you are asking, your Honor, whether
18 alien numbers could be provided as just a general list, the
19 answer is, that information can't be provided because it's
20 subject to personal information FOIA exemptions, which the
21 parties agree on here. In fact, in the first instance --

22 THE COURT: I am not sure I understand that. That
23 information, and I know what they want. And what I'm positing
24 may not -- it's probably not what they want. But I understand
25 that the identification number itself associated with one of

1 these activities, I understand the exemption being asserted.

2 I'm just starting from the basic premise that if you
3 have a spreadsheet and the spreadsheet produces all the other
4 information and, additionally, what's provided is a separate
5 list of A numbers that don't necessarily correlate to a
6 particular document on the spreadsheet, it wouldn't be your
7 position that that's not segregable.

8 If they said, look, here is our spreadsheets, this is
9 the information on our spreadsheet, and the information that we
10 also can segregate for you is that our alien numbers run from 1
11 through 10,063. I am trying to understand your definition of
12 segregable nonexempt information and how far you think this
13 rule goes. Why would that not be segregable and not nonexempt?

14 MR. BANNON: If I'm understanding the question
15 correctly, your Honor, that's exactly what we do think is
16 segregable. For instance, in this case, we took particular
17 columns of data, for instance, A numbers, and said, these
18 particular columns are exempt, so we are going to redact them
19 and say that they are subject to exemption. But we still
20 provided the other correlated pieces of information from those
21 rows of data.

22 It is our view that the segregation requirement
23 requires you, after properly identifying exempt records or
24 exempt portions of records, say some piece of information
25 that's national security related, or some piece of information

1 that is personally identifying, you redact that, you look at
2 what you have left and you say to yourself, OK. What can I
3 give of this record that remains?

4 Here, that's exactly what the agency did. They took
5 the information from their database, they redacted the portions
6 that were protected both under law enforcement privileges and
7 private information privileges, and then provided the remainder
8 of the information.

9 So you take your redactions, you look at what you've
10 got left and you say, is any of this something that could still
11 provide them useful information and that we could give to them
12 with only a reasonable burden, and that is what is required
13 under the segregation requirement.

14 THE COURT: The exempt part of that is identifying
15 what particular action taken that's reflected on the
16 spreadsheets, associating that with a particular individual.

17 MR. BANNON: Right.

18 THE COURT: If my spreadsheet had three items on it
19 and I said, those three items -- I said, not only I will redact
20 the alien number associated with each of those items, but I can
21 tell you that we have a list of alien numbers, 1, 37, and 56.
22 Why isn't that segregated, nonexempted?

23 MR. BANNON: The alien number itself is the piece of
24 information that is exempt here. So providing a separate list
25 of alien numbers would run into the same problem as providing

1 that within the context of the spreadsheet.

2 The alien number is like a Social Security number. So
3 even absent its ability to connect records within this data
4 set, you can use an alien number to learn about a person.

5 The problem in this instance is not necessarily that
6 alien numbers connect within this spreadsheet. It's that alien
7 numbers are personal identifiers, so we redact them in the same
8 manner that we would redact a Social Security number.

9 Does that answer your question or am I missing the
10 nuance?

11 THE COURT: It does answer my question, although I'm
12 not sure how it identifies how providing the alien number
13 itself would publicly identify any specific information about a
14 particular person to fall under the exemption that while John
15 Smith is somehow revealed by a spreadsheet that says, we have
16 provided you 50,000 documents or 50,000 entries on our
17 spreadsheet. One of those 50,000 is number 27. How does that
18 in itself reveal any confidential exempt information about John
19 Smith?

20 MR. BANNON: I understand. So you are not referring
21 to a spreadsheet that would associate John Smith with an alien
22 number. You are referring to just a list of numbers.

23 THE COURT: Right.

24 MR. BANNON: I am not sure, and I don't want to
25 misspeak, but I am not sure that that would be cause for

1 exemption because alien numbers, they exist in public
2 documents. The concern is being able to correlate that with an
3 individual.

4 THE COURT: That's the information that they want.

5 MR. BANNON: They want to correlate it.

6 THE COURT: They don't necessarily want to correlate
7 it with a particular person. They want to correlate even that
8 anonymous individual's history and contact with the agency.

9 MR. BANNON: That's right, your Honor. Although I
10 would note --

11 THE COURT: They don't care whether it's John Smith's
12 record. They just want to know that there are ten people who
13 were arrested on a certain day. And nine of those people were
14 detained and subsequently three of those people were deported.

15 MR. BANNON: Right.

16 THE COURT: That's seems to be the relevant inquiry.

17 MR. BANNON: That's right, your Honor.

18 We could litigate in a case that is not this one the
19 question of whether an A number that doesn't individually
20 identify the person by correlating them with the name is FOIA
21 exempt if it connects records in the manner that it would if
22 they were provided in this spreadsheet.

23 But it simply wasn't the request at issue in this
24 case. The FOIA request in the first place didn't ask for A
25 numbers. It asked for unique identifiers in place of A

1 numbers. And the parties have reached an agreement by
2 stipulation that the application of FOIA exemptions to those A
3 numbers is not being challenged here.

4 THE COURT: I understand your argument that you are
5 not required to do so. I am not sure I understand the argument
6 that somehow that is still your argument that somehow this is
7 overly burdensome or impossible to do.

8 MR. BANNON: No, your Honor. Our position is not that
9 this is impossible to do. To the extent that the request is
10 just one to one to replace A numbers with unique identifiers,
11 without regard to the fact that some A numbers may be wrong or
12 some documents may not contain A numbers, the request is just
13 one to one replace A numbers with unique identifiers, we are
14 not arguing that under the reasonability standards that are
15 provided for segregation or the readily reproducible standard
16 that is required under the form or format requirement, that
17 here this would satisfy it and would be above and beyond those
18 standards.

19 Our argument here is that the creation of records is
20 something that is not subject to the reasonableness analysis of
21 segregation or form or format, so it's not something that's
22 required of the agency, regardless of that case. And the
23 parties have some disagreement about how burdensome the
24 activity is here. They said two and a half hours to accomplish
25 this task and our declarant said something like a day.

1 These are both, as made clear from the ACLU's brief,
2 amounts of time that, under the form or format requirements,
3 the segregation requirements, are often found to be reasonable.
4 Those are not standards that apply to the creation of records,
5 which is outside of what the FOIA statutorily requires of an
6 agency. There is no statutory provision that says, you must
7 create records if it is reasonable or if it only requires XYZ.
8 There is just a blanket bar on the creation of records.

9 And all of the case law suggests that doing something
10 like neutering information out of an exempt record is the
11 creation of records rather than application of one of these
12 other principles that they are trying to rely upon to impose a
13 reasonableness burden on the government in this case.

14 THE COURT: I guess I did understand their argument to
15 that extent, but I didn't understand that you were really
16 relying on that argument, the opposite argument.

17 MR. BANNON: No, we weren't relying on the argument
18 that this is too burdensome under the segregability requirements
19 for the form or format requirements. Those requirements are
20 just not applicable in this case because form or format deals
21 with the difference between PDFs and text files and segregation
22 involves the deletion and the conveyance of remaining
23 information when possible.

24 Here what they are asking us to do is take something,
25 a unique identifier, which everyone agrees doesn't exist in the

1 database outside of A numbers, which we agree were properly
2 exempted in this case, or at least it's not subject of this
3 lawsuit, and create those things. And creation of records is
4 something that's not required under the FOIA, irrespective of
5 some sort of burden analysis.

6 THE COURT: Your argument is not that it is not
7 possible to segregate this information. Your argument is that
8 the information that they want segregated is still exempt
9 information.

10 MR. BANNON: No, your Honor. Our argument isn't that
11 relational information, the information that they want, is
12 itself FOIA exempt. Our argument is that the act of replacing
13 A numbers with unique identifiers is not a question of
14 segregation at all. Segregation involves the deletion of
15 FOIA-exempt information and the provision of reasonably
16 segregable portions of the remaining record.

17 And here that's what ICE did by deleting case ID
18 numbers, deleting alien numbers, and then providing the
19 remainder of the documents. That's what segregation requires,
20 replacing existing information with some modification of it
21 that would allow an individual to still use some purposes of
22 that information, while getting rid of the purposes of that
23 information that give rise to a FOIA exemption is the creation
24 of records, which is *ACLU v. DOJ*, where the circuit found that
25 the district court exceeded its authority by requiring the

1 government to provide substitute neutral phrases to preserve
2 the sentence structure of a memorandum while getting rid of the
3 national security information. For instance, dare I say they
4 wanted to say that an individual was subject to a particular
5 interrogation technique. The memo would have sensitive
6 information about who that individual was and what the
7 technique was, and you can get rid of that national security
8 problem by saying person 1, interrogation technique 1. And the
9 Second Circuit in that case found that putting in person 1,
10 putting in interrogation technique 1, rather than just
11 redacting the national security information, was the creation
12 of records rather than a segregation of grammatical structure
13 from otherwise national security exempt information.

14 THE COURT: Well, in one sense, isn't there a
15 distinction, whether or not it's a relevant distinction? The
16 distinction here is that you are not really substituting a
17 unique identifier for actual information about the individual.
18 You've already substituted that information about the
19 individual by using the identification with the alien ID
20 number. The alien ID number is itself a substitution, isn't
21 it, for the actual identity of the individual.

22 MR. BANNON: Yes, your Honor. And if there were other
23 unique identifiers that were not privacy exempted that already
24 existed in ICE's database, we would be required to provide
25 them. So if there was already this concept, this unique

1 identifier in the IIDS database, separate and apart from the
2 alien number, and the relevant FOIA exemptions did not apply to
3 that unique identifier, we would have to disclose that
4 information.

5 Here, the distinction is that those unique
6 identifiers, what they are asking for, aren't things that are
7 maintained in ICE's database. They are asking us to create
8 those unique identifiers, and the creation of records is not
9 required under FOIA. FOIA does not require an agency to
10 rewrite a document. It doesn't require it to make a new
11 record. And by asking for information that's not already
12 stored in the database, they are asking us to create a new
13 record rather than do a segregation analysis or a form or
14 format analysis.

15 THE COURT: So your only disagreement is that what
16 they are asking for is the creation of the new record, not of
17 segregation.

18 MR. BANNON: That's right, your Honor. That's the
19 source of the disagreement. We believe that this is a creation
20 of a new record because unique identifiers don't exist in the
21 database. Their position, as I understand it, is that alien
22 numbers exist, but they are exempt from disclosure, but you can
23 segregate what they style as relational information from the
24 alien numbers, and then that relational information could be
25 provided in the form or format of a unique identifier. But the

1 form or format requirement is one that deals with whether
2 you're passing the record as a PDF or a text file or a CD or
3 thumb drive, not one that requires the production of an
4 entirely new concept that did not exist in the database in the
5 first instance.

6 THE COURT: As I understand your argument, based on
7 the cases that you've cited -- but I didn't see any cases cited
8 by you or the other side or any cases that I found on my own
9 that address the issue of, I'll characterize it as the
10 substitution of unique identifiers for identification numbers.

11 MR. BANNON: That's right, your Honor. The closest, I
12 think, we can get in the case law is the American Immigration
13 Council case from D.D.C. in May of this year, which noted that
14 the fact that persons entered unique identifiers do not exist
15 in ICE's database is not disputed, and the legal principle that
16 an agency is not required to create new records is well
17 settled. That's an application of this principle in a
18 relatively similar context.

19 But if we are talking replacement of a personal
20 identifier with the unique identifier, the closest you can come
21 in the law outside of that case, I would say the *FlightSafety*
22 case where the information that was redacted was information
23 that could attribute wage information to a particular company.

24 And the Fifth Circuit held that you did not need to
25 substitute dummy variables in place of the company names or

1 other identifying information in order to continue to correlate
2 wage of individual 1 with wage of individual 3. That's one
3 that doesn't deal with personal identifiers. It deals with
4 business identifiers. Other than that, it's a quite analogous
5 case. It's the substitution of the dummy code that lends
6 attribution to a particular company and maintains the integrity
7 of the data set otherwise by allowing the correlation of one
8 record with another.

9 Otherwise, the cases that we rely on are for the
10 principle that a particular purpose for which a piece of data
11 can be used cannot be segregated from that data point as a
12 whole. And that's what cases like *ACLU v. DOJ* say. There is
13 national security information. That information gets redacted.
14 It doesn't get replaced by something that's not secure or not
15 national security sensitive. The act of replacing a record
16 with something new is the creation of a record and not the
17 segregation of nonexempt information, as the ACLU styles it.

18 THE COURT: The exemption you're asserting is not
19 national security.

20 MR. BANNON: No. Personal privacy.

21 THE COURT: It's only personal privacy. I don't see
22 where -- in most of the other cases, if not all of the other
23 cases, it is what the courts were doing with the substantive
24 information rather than the personal privacy information.

25 MR. BANNON: We are not claiming that unique

1 identifiers are exempt under the personal privacy exemption to
2 FOIA. We are claiming that this act of substitution, which is
3 the same sort of act of substitution at issue in *ACLU v. DOJ*,
4 at issue in the *Students against Genocide*, and at issue in
5 *FlightSafety*, is the creation of records rather than the
6 segregation of information.

7 THE COURT: The question is not whether unique
8 identifiers is personal privacy information. The question is
9 whether or not the A numbers are personal privacy information.

10 MR. BANNON: Yes, your Honor. And in this case the
11 FOIA request at issue -- let me pull it up -- did not request
12 alien numbers. Rather than request alien numbers it said: In
13 every case, alien numbers should be replaced with unique
14 identifiers and unique identifiers should be provided for each
15 unit of observation.

16 The parties are not contesting whether alien numbers
17 are properly subject to the privacy exemption or not. As I
18 mentioned before, that couldn't be grounds for another lawsuit.
19 A party could claim that alien numbers are not FOIA exempt.
20 That is not what the ACLU has claimed here. There is no
21 dispute. There is no active dispute in this case about whether
22 the withholding of alien numbers in full or alien numbers as
23 they exist was appropriate. And the FOIA request at issue here
24 requires that result because it doesn't ask for alien numbers.
25 It asks for a substitution of alien numbers and unique

1 identifiers.

2 THE COURT: Anything further before I hear from Mr.
3 Riedel?

4 MR. BANNON: No, your Honor. We believe that this
5 case involves the application of the creation of records
6 doctrine. What they are asking for here, unique identifiers
7 that come from relational information, does not exist in ICE's
8 database. Relational information, which is the concept that
9 they have coined to create an appearance that this is existing
10 database information, is not some sort of metadata that would
11 make this an odd database case. It's just a concept that's an
12 attribute of alien numbers. And the cases -- *ACLU v. DOJ*,
13 *FlightSafety*, *Students against Genocide* -- say that when you
14 are trying to segregate neutral information from exempt
15 information, that's the creation of records and that's what we
16 have at issue here. Otherwise, we rest on our papers.

17 THE COURT: Mr. Riedel.

18 MR. RIEDEL: Good morning, your Honor. May it please
19 the Court.

20 THE COURT: I am getting an echo from you. Maybe you
21 need to turn the sound down. I know it's going to be difficult
22 for the court reporter.

23 MR. RIEDEL: Can you hear me now?

24 THE COURT: Say that again.

25 MR. RIEDEL: Can you hear me now, your Honor?

1 THE COURT: Yes.

2 MR. RIEDEL: My name is Eric Riedel, your Honor,
3 appearing on behalf of the ACLU Immigrants' Rights Project.

4 I thought it would be most useful to you to include in
5 my remarks three main topic areas, the first of which would be
6 to describe alien numbers and unique identifiers and the
7 information that they convey, to the extent we haven't
8 discussed that already; second, to review the two provisions of
9 the FOIA requiring that ICE create unique identifiers; and,
10 third, address ICE's arguments on creation of the new record,
11 highlighting how in this case unique identifiers are a copy of
12 nonexempt information, not the creation of a new record.

13 As we discussed, the ACLU has requested five
14 categories of records. Those being arrests, detentions, risk
15 assessments, bonds, and deportations, which is also called
16 removals. In every case the ACLU has requested that A numbers
17 be replaced with unique identifiers.

18 I think a good way of highlighting the informational
19 value of unique identifiers is comparing the information that
20 ICE has access to verse the information that was released with
21 the records in response to the ACLU's request. Because ICE
22 includes A numbers in its record, it's able to make connections
23 between the different entries in its databases. It's not under
24 an obligation to include A numbers. It could just use first
25 name, last name, date of birth. But this information is

1 valuable.

2 So for an example, noncitizen, we will call him person
3 A, he might have been arrested on a certain date, detained,
4 transferred to a second detention facility, transferred to a
5 third detention facility, a risk assessment was performed on
6 that individual, and they were released on bond. They were
7 rearrested, detained, and then deported. Those are eight
8 separate records. ICE would know that all eight of those
9 records relate to the same individual. They would know that
10 the first three detentions were one continuous detention stint
11 rather than three distinct detention stints.

12 But as released to the ACLU, it would be impossible to
13 tell that any of those records were related. It would appear
14 as if there were four detentions involving either one or four
15 individuals. There is no way to tell that the first three of
16 those were actually a continuous detention stint. In other
17 words, it's impossible to follow any immigration through the
18 deportation process, which is what the ACLU and the public has
19 the right to know.

20 THE COURT: I am not sure what part of it you are
21 saying that the public has the right to know. It depends on
22 whether or not you are seeking personal information or you are
23 seeking statistical information. What you appear to be asking
24 for is beyond statistical information. But what you seem to be
25 explaining to me for the purpose for which you want it is for

1 statistical purposes. I assume a lot of the stuff that you
2 just articulated to me they do have in their database in terms
3 of how many people have been deported, how many people who were
4 detained and deported. The specific statistical information
5 that you are asking for is something different than what you
6 are asking for here. What you are asking for here is to know
7 that certain information is all associated with the same
8 person.

9 MR. RIEDEL: Your Honor, I think it's part of the
10 connected question because the information as disclosed
11 provides statistical information in silos, so it provides
12 information on arrests. You can see how those arrests change
13 over time, deportations, and across the various categories.
14 It's of very limited informational value to understand that in
15 different years there is different numbers of arrests,
16 deportations, etc. It is much more valuable --

17 THE COURT: Why not request it in that form? Why not
18 request, I want to know how many deportations you had in 2017.
19 That should be readily available public information that's in
20 their database.

21 So I didn't follow that connection, if that's the
22 example that you are giving me, because that example has
23 nothing to do with identifiable -- that's statistical
24 information that has nothing to do with an identifiable
25 individual. I am trying to understand, what is the

1 associational information that you want through associating a
2 unique identifier to a particular -- to the same individual
3 that is somehow information -- that somehow gives you the
4 information that you say you are entitled to or that you want?
5 You want the statistical information. What is it that you want
6 to know that you cannot directly ask for and you believe you
7 are entitled to?

8 MR. RIEDEL: A good example of that, your Honor, is
9 that the ACLU wants to understand how ICE is carrying out the
10 nation's immigration policies.

11 In the last two administrations there have been two
12 very different immigration policies. The Trump administration
13 has prioritized the arrest and deportation of any noncitizen
14 with a criminal offense, and that's different than the Obama
15 administration that prioritized the arrest and deportation of
16 only noncitizens with serious criminal offenses.

17 THE COURT: What information is relevant to your
18 understanding?

19 MR. RIEDEL: If you were to take the arrest data, the
20 only information disclosed by ICE is that the arrest happened
21 on a certain date and the arrest method, and then they redacted
22 out the identifying information. So there is no way, based on
23 the data, to correlate whether an arrest relates to a criminal
24 offense, whether that be serious or just any criminal offense,
25 and whether or not those arrests are related to ICE's

subsequent deportation. As the policies change --

THE COURT: Did you ask directly for that information?

MR. RIEDEL: No, your Honor.

THE COURT: Is that information available to you?

MR. RIEDEL: The requests here were modeled after prior FOIA requests. They were modeled after the New York Times' request and the Human Rights Watch request.

The way ICE discloses data -- to get a little bit technical here and some background on their two databases, they have this master database, the EID, which Mr. Bannon has discussed how all immigration records are initially entered into the EID. But whenever possible, they pull their data from a smaller database that only contains a subset of the data. The database is called the IIDS. And ICE claims that that's their reporting database, it's easier on their system, so that's the only one that will be used, when possible, for FOIA requests. Here they pulled IIDS for all of the categories of data except one of them, risk assessment posed, because that one is only contained in the EID.

When ICE pulled that data from its master database to the smaller database, it silos it. So it picks and chooses which categories or which information is going to exist in each silo. And as a result, they haven't disclosed -- in other litigations that are currently ongoing they are contesting the issue of whether they need to disclose the information that is

1 in each one of those silos in the IIDS database.

2 THE COURT: It depends on what kind of information
3 they are asking for.

4 MR. RIEDEL: If you are going to ask whether an arrest
5 is related to a criminal conviction, I don't know for a fact
6 here, but it's my understanding from other litigations that ICE
7 would say that they could only access that information through
8 additional research or analysis and, therefore, it would
9 constitute the creation of a new record and, therefore, ICE is
10 not obligated to produce it because it doesn't exist in its
11 database. That's not the case. It does exist in its
12 databases. It exists -- well, one is through the disclosure of
13 unique identifiers and it exists in its master database, the
14 EID.

15 What unique identifiers do is, regardless of how that
16 data is stored, whether it's stored in the EID or the IIDS
17 database, whatever database it is, it links the information and
18 provides the same information about how people move through the
19 immigration system, the link in each one of those categories of
20 data or each step in the immigration process by being able to
21 link the records.

22 THE COURT: The issue here is not whether or not it
23 effectively gives you what you want to know. The issue here is
24 twofold. One, whether or not they have an obligation to
25 provide you that information in that form and, two, if they

1 don't have the obligation to provide the information because it
2 is exempt and is a valid exemption, then the question is in
3 what other -- is the information you are asking for, the
4 relevant information, segregable nonexempt information? What
5 court identifies a segregable nonexempt information?

6 MR. RIEDEL: One of the two provisions of the FOIA
7 that requires or independently requires the production or ICE
8 to create unique identifiers I think lays out the answer to
9 your question. So Congress, in enacting the FOIA Improvement
10 Act, stated that when full disclosure of a record is not
11 possible, the agency shall consider whether partial disclosure
12 of information is possible and take reasonable steps necessary
13 to segregate and release nonexempt information.

14 So a few key points from that statute are: First,
15 here, full disclosure of the A number record is not possible
16 because it provides personally identifiable information and is
17 thus exempt. However, partial disclosure of the information
18 from that A number record is possible.

19 THE COURT: What is the partial disclosure from the A
20 number that you are asking for that you think you are entitled?

21 MR. RIEDEL: A numbers provide two types of
22 information. They identify the person that's the subject to a
23 record, but then they also identify and provide information on
24 how each record is related to every other record.

25 THE COURT: Where is the personal information that you

1 are asking them to give you?

2 MR. RIEDEL: The information on the relationships
3 between the records. So to be able to know in the earlier
4 example that all eight of those records relate to one
5 individual and to be able to look at the detention data, for
6 example, and see that a person is being moved to three
7 detention facilities before being released on bond. As the
8 data was produced, it's impossible to understand that type of
9 information. That information is not provided.

10 THE COURT: Why can't you simply ask for that
11 information?

12 MR. RIEDEL: I think the detention information is a
13 good example. I'm assuming here, I don't know, that ICE's
14 argument would be that providing any information in the links
15 between the different detention stints would be a creation of a
16 new record because in its database it makes those connections
17 through A numbers. ICE doesn't need a new record because ICE
18 can just pull up the A number for any individual and see that
19 that person has three detention stints before being released on
20 bond. Once you strip out that A number, it's impossible to
21 know that these three detention stints were related. It
22 appears from the data that those are three separate detention
23 stints.

24 THE COURT: Let's say they weren't using alien
25 identification numbers. Let's say they were using the names

1 and the Social Security number. Your argument would be the
2 same that while we are not contesting that the names and Social
3 Security numbers are not exempt and that they can't withhold
4 that, but we want them to give us the information as to each
5 history to connect the history of that particular individual.

6 Why would they have the responsibility to do that
7 unless you have made a specific request for the information
8 that you think is relevant that you believe you're entitled to?
9 It seems to me that you are not asking them for the information
10 that you say that you're interested in that you are entitled
11 to. You are asking them to create the unique identifiers so
12 that you can examine that and come to your own conclusions
13 about what you think you want to know about each case. Your
14 argument wouldn't be that if they -- maybe it would be. If
15 these were identified only by name or by Social Security
16 number, would it be your argument that you are entitled to a
17 unique identifier for the name rather than you're simply
18 entitled to the documents with the name redacted simply because
19 you want it for a different purpose and it's not as useful to
20 you?

21 MR. RIEDEL: Your Honor, here I think A numbers are
22 unique because A numbers are what ICE uses to link records and
23 that's why A numbers were requested or unique identifiers based
24 on A numbers were requested instead of unique identifiers based
25 on another sort of identifier.

1 Because, you are right. If ICE used -- it would be
2 possible for ICE to use names and date of birth as its only
3 identifier in all of its records and then it would search name
4 and dates of birth. Whenever it wanted to find whether two or
5 more records were related, it could use that to compare the
6 records. They don't do that. They use A numbers. And ICE
7 admits so much in its declaration where Ms. Vassilio-Diaz
8 states that in its IIDS, A numbers are the only identifier
9 that's copied from the EID into that database.

10 To get into the technical nature of how databases
11 work, Congress recognized this when they passed the E-FOIA
12 amendments, and they broadly defined the record. They defined
13 records to include any information that would be an agency
14 record. So a record is information and then, as the Supreme
15 Court has laid out, an agency record is material that has been
16 created and is under the control of the agency when the request
17 is made.

18 THE COURT: It's difficult for me to articulate
19 specifically the information that you are requesting. What is
20 the information that you are requesting?

21 MR. RIEDEL: We are requesting information on how
22 records are linked, so how two records are associated with the
23 same person, to illustrate -- you can take the arrest data that
24 we looked at before. Looking at it, all you see is date, time,
25 and method of arrest. If the eight numbers were not redacted,

1 you would be able to use your finger and go through them and
2 say, oh, here is 12345, and then a couple of rows later, here
3 is 12345. I know that those arrests were of the same person.
4 That's the information that we are seeking.

5 THE COURT: But that would be true whether or not it
6 was identified by name, by date of birth, by Social Security
7 number. And I am not sure that you would be making this
8 argument if you were saying that, well, they linked this by
9 name. We think they are entitled to an exemption not to
10 disclose the name, but they have the obligation to give it a
11 unique identifier. I never heard that argument. Or you said,
12 they keep certain records by Social Security numbers.

13 If you acknowledge that they are entitled to withhold
14 it or redact the Social Security number as exempt, I am not
15 sure your argument would be, we think we are entitled to
16 another identifier on top of the Social Security number.

17 The name, the Social Security number, the date of
18 birth, how are they any different than the identifier except
19 that they give you greater information or ease of information
20 about what you're attempting to look for?

21 I'm having some difficulty trying to understand what
22 is the legal obligation that they have to substitute one
23 identification associated with the individual for another
24 identification because that would be more useful for you,
25 whether or not it was going from name, date of birth, Social

1 Security number to unique identifier or going from alien ID
2 number to unique identifier. If the unique identifier has the
3 same protection of exemption as the name, date of birth, Social
4 Security number, why is this different in terms of what they
5 are obligated to give you, in terms of what they are obligated
6 to create or substitute, and what you are entitled to simply
7 because it's an alien identification number rather than a
8 Social Security number?

9 MR. RIEDEL: Three parts to address your question,
10 your Honor.

11 The first is usefulness. Usefulness is not at issue
12 here. The ACLU is not seeking unique identifiers to make the
13 data more useful. They are seeking unique identifiers because
14 they actually independently disclose information.

15 Going back to the record, you can't tell that a
16 detention stint is related to one -- three detention stints for
17 one individual because the way they show up in the records is
18 that every time they are moved to a different detention
19 facility, it appears as a new record. So the only way to know
20 that those three detention stints are one record is through a
21 unique identifier, whether that's based on A numbers, whether
22 that's based on name and date of birth or any other identifier
23 like you pointed out, your Honor. That doesn't matter.

24 But it's the information created by those identifiers,
25 and they in fact tell that certain records are related to one

1 another that has informational value in its own or on its own.
2 Because if you were to take those detention stints and you look
3 at them without any sort of unique identifier, whether that's
4 the ones we are requesting A numbers, names and dates of birth,
5 let's just say there is a million. But once you get those
6 unique identifiers, you then know that half of them were part
7 of one continuous detention, and there were only 500,000 like
8 continuous detention periods because noncitizens following
9 arrests get moved from detention facilities to detention
10 facilities very frequently. So as produced --

11 THE COURT: But the question is whether or not they
12 are obligated to provide you that specific information. You
13 are not arguing that they have an obligation to provide you
14 with that information. You are arguing that they have the
15 obligation to provide you a unique identifier so that you could
16 comb the records and put the puzzle together and come up with
17 whatever is useful to you in terms of what you think you can
18 glean from that additional identifier.

19 MR. RIEDEL: I would go back to not that it would be
20 more useful; it would be new information that they would be
21 producing by producing any sort of identifier.

22 THE COURT: They don't have an obligation to produce
23 new information. That's not their obligation. Their
24 obligation is to produce the records that they have. And if
25 those records are not as useful to you without new information,

1 you are not making the argument that you were entitled to ask
2 them for that new information if it's not part of the record.

3 MR. RIEDEL: We are not asking for new information,
4 your Honor. We are asking for information that ICE created by
5 putting unique identifiers in its database and that it retains
6 in its database. As part of the E-FOIA amendment adopting the
7 definition for a record, Congress clearly stated that it was to
8 provide the records and information that government agencies
9 maintained, used, retained, and disseminated by the Federal
10 Government. The Federal Government uses the information from
11 the identifiers, it retains it, it disseminates it. In fact,
12 there is the Office of Immigration Statistics that writes a
13 paper based on how people move through the immigration system.

14 THE COURT: And you would be entitled to get that
15 information from a direct request for that information.

16 MR. RIEDEL: We would not be provided that
17 information, your Honor, because the Office of Immigration
18 Statistics is provided A numbers. And even if we requested
19 that data, we would receive the data with the A numbers
20 stripped out. And then we could no longer do the analysis on
21 that data that the Office of Immigration Statistics does.

22 THE COURT: But you said that they already do that
23 analysis and they didn't put out a report.

24 MR. RIEDEL: They did some analysis, your Honor, but
25 not the analysis that the ACLU is looking to do. They select

1 which analysis they would like to do.

2 THE COURT: I think you just phrased it in the
3 critical way that I'm trying to analyze this. They are not
4 doing it in the way that you want to examine. That's not
5 really their responsibility, is it? Their responsibility is to
6 produce it to you in the way that they have it minus any
7 exemptions, right?

8 MR. RIEDEL: No, your Honor. They are responsible for
9 any time that there is an exempt record, here an A number. The
10 government has the obligation under the FOIA to consider
11 whether partial disclosure of the information from that record,
12 not the actual record itself, but the information disclosed by
13 that record is possible.

14 THE COURT: What is the personal disclosure other than
15 the creation of a different document?

16 I can't see you anymore. I can hear you.

17 MR. RIEDEL: Can you see me now, your Honor?

18 THE COURT: No, unfortunately.

19 MR. BANNON: I can see you.

20 It might be a problem with your Honor's tech.

21 THE COURT: Go ahead. I'm sorry.

22 MR. RIEDEL: The government doesn't have an obligation
23 to do the analysis that the ACLU seeks. But that's the whole
24 point of the FOIA, so that the public can gather the record,
25 the information.

1 Going back to Congress, when it adopted the definition
2 of a record, it stated the purpose of that definition and it
3 stated to provide the public with access to the records and
4 information that's used and maintained by a government agency.

5 The D.C. Circuit has stated that the purpose of the
6 FOIA or the focus of the FOIA is information and not records.
7 Throughout the FOIA itself, when it talks about exemption, the
8 focus of an exemption and the disclosure of information is
9 concerned with information and not specific data points.

10 So going back to the FOIA Improvement Act, when the
11 government can withhold the record, when it can withhold data
12 points, it still has an obligation to produce information
13 conveyed by these data points, meaning it has the obligation to
14 convey anything that's nonexempt when it can do so through
15 reasonable steps.

16 And here the information that the ACLU has requested
17 is this relational information or information about the
18 different linkages between records and how they are related to
19 one another, which ICE can relatively easily produce. In fact,
20 they admit in the declarations that it would take them about an
21 eight-hour workday. So this is nonexempt information. ICE is
22 not claiming that unique identifiers would disclose any exempt
23 information. That they can do with a minimal burden. And
24 under the FOIA Improvement Act, that's a requirement of the
25 FOIA. It doesn't matter that the A number record is exempt.

1 Here, partial disclosure of the information from the exempt A
2 number record is required under the law.

3 THE COURT: Same question that I asked Mr. Bannon.

4 My difficulty is that I don't see any case law that
5 specifically says that you are or are not entitled to have
6 unique identifiers substituted for other identifying
7 information. What case law do you say, if you say there is
8 case law that addresses that specific issue?

9 MR. RIEDEL: Your Honor, you are correct. There is no
10 case law on the point of whether a request for one identifier
11 to be substituted with another identifier. However, in the
12 *Trans-Pacific Policing Agreement* decision, this was prior to
13 the FOIA Improvement Act, so this would be under the old
14 segregation standard. Even under that standard, there was a
15 ten-digit identifier, and plaintiff had requested just four to
16 six of the digits so that they could link the records so they
17 could get the same relational information that the ACLU seeks.
18 And there the Court remanded the case.

19 THE COURT: Which case are you referring to?

20 MR. RIEDEL: *TransPacific Policing Agreement*. That's
21 177 F.3d 1022, the D.C. Circuit in 1999.

22 The crux of that case, your Honor, is that the
23 district court had to look at whether nonexempt information
24 could be segregated from a data point, which is the same
25 request that we are making, but instead of taking only four to

1 six of the ten digits, we are asking for unique identifiers,
2 which, subsequent to this case, this is 1999, the FOIA
3 Improvement Act was passed in 2016, which lays out the steps
4 that agencies must follow regarding the partial disclosure of
5 information from an otherwise exempt record.

6 Your Honor, I also wanted to touch on how databases
7 work. And one of our two declarants, Professor Wu, gets into
8 this in some detail. But specifically in paragraph 21 he talks
9 about how ICE can change the search parameters that it uses
10 when searching its database. So the database will actually
11 extract and insert into the Excel spreadsheet that they have
12 produced to us not A numbers, but instead the unique
13 identifiers.

14 What that illustrates is that unique identifiers or
15 this relational information, like you said before, is not
16 limited to just unique identifiers, but the database recognizes
17 that it's information. And if you adjust your search query you
18 can actually extract that relational information in any form
19 you want.

20 THE COURT: Articulate exactly what you characterize
21 as the nonexempt information that you are asking to be
22 segregated. What is the nonexempt information that you are
23 asking be segregated?

24 MR. RIEDEL: The way I understand it is thinking about
25 how an individual moves through the deportation process, and

1 the nonexempt information is -- I guess the best way to
2 describe it is the steps to the deportation process.

3 THE COURT: How do you segregate it? I understand
4 what you want it for. But that's not what you are asking him
5 to give you.

6 MR. RIEDEL: You segregate that information through
7 anonymized unique identifiers. So anonymized unique
8 identifiers, they take any identifier and they strip out the
9 identifying information, meaning you can no longer tell that
10 that identifier relates to one specific person, but you are
11 still able to see that any record with that anonymized unique
12 identifier are related.

13 So using these unique identifiers, anonymized unique
14 identifiers, the ACLU and the public can track individuals
15 through the immigration process, which they can then use to
16 understand how ICE is performing or how ICE is doing its job
17 carrying out the nation's immigration policies, whether they
18 are executing the stated focus of the government or not.

19 Going back to the two different --

20 THE COURT: As you articulate it that way, it seems to
21 me the only nonexempt information that you are asking to be
22 segregated is information that connects one set of documents to
23 another set of documents by giving you the opportunity to know
24 that they are associated with the same unique identifier.

25 MR. RIEDEL: That's right, your Honor. We are seeking

1 the information to know that various records are associated.

2 However, the one part of that example I would take
3 issue with is, inside ICE's database there is no such thing as
4 the Excel spreadsheets that ICE produces to us. They don't
5 exist in that form. The first time they existed in that form
6 was when ICE responded to our FOIA request.

7 THE COURT: What form? I missed that.

8 MR. RIEDEL: The Excel spreadsheets that ICE produced
9 in response to the ACLU's FOIA requests don't actually exist
10 prior to ICE responding to that request.

11 THE COURT: They do exist in their computer system.
12 They have just not been coordinated and printed out.

13 MR. RIEDEL: No. The information exists. But as it's
14 stored in the computer system, it's stored in one amalgamation.
15 All of those spreadsheets, plus all of the other information
16 that ICE possesses, is all stored together. It's grouped into
17 one. It's basically a big massive set of tables. Every record
18 is stored together.

19 ICE had to pull that data apart and segregate it to
20 create the spreadsheets that it produced to the ACLU. Those
21 spreadsheets are ICE's own creation. They are a record that
22 ICE created in response to the request. They are not a
23 preexisting search. They are not a preexisting document.

24 Just like telling ICE's database, hey, as Professor Wu
25 lays out, if ICE changes the code it uses to search its

1 database, it could have created those spreadsheets not with
2 unique identifiers -- sorry -- not with A numbers. But it
3 could have just created a column that said unique identifiers
4 and listed that information instead. They just chose not to
5 run that search.

6 THE COURT: Just because they voluntarily create a
7 separate document doesn't change the analysis. They can create
8 the documents in exactly the form that you want them tomorrow
9 if they decided to do that. And if they did do that, then you
10 would be entitled to it.

11 But that doesn't answer the question of whether or not
12 they have the obligation now to create additional documents or
13 create the documents in the form that you want them even if I
14 accept the proposition that it's not information that is
15 already stored in their computers, that this is information
16 that they created since you made your request.

17 Well, the argument is, well, if they hadn't existed,
18 and you hadn't created it, you didn't have any obligation to
19 produce it. But once it was requested and you did create it,
20 then not only is the ACLU entitled to it, every other entity or
21 person who wants to make a FOIA request is entitled to it
22 because you created it. I am not sure that that advances one
23 way or the other whether or not they have an obligation to
24 create something further than the spreadsheet that they created
25 in reaction -- I wouldn't say in response -- in reaction to

1 your request.

2 MR. RIEDEL: Your Honor, the information the ACLU has
3 requested, the linkages between the various records, does exist
4 in ICE's databases. It's the documents that they produced in
5 response to the requests that do not exist in their databases.
6 None of the 21 Excel spreadsheets that existed existed prior to
7 ICE making them in response to this request.

8 THE COURT: You are not complaining about getting
9 those documents. You just want more information than is on
10 those documents.

11 MR. RIEDEL: We want what FOIA requires that ICE
12 produce, is the information in its custody and control.

13 THE COURT: By your argument with regard to documents
14 that they didn't have in their computer, they had no obligation
15 to produce those documents; not that you received it or in the
16 form that you wanted it.

17 MR. RIEDEL: No, your Honor. ICE is not disputing
18 that they made these documents. In fact, they say so in their
19 papers, that they made the documents in response to our FOIA
20 request.

21 THE COURT: You are not claiming that those documents
22 were somehow not sufficiently responsive to your requests other
23 than that they are missing a substituted identification number.
24 You are not talking about the documents in any other manner.

25 It's kind of irrelevant whether they created the

documents in response to your request or created the documents for their own purpose or created the documents in response to somebody else's request.

What you are saying is, you have documents now that exist that we want, and we want those documents because that gives us information that we are interested in. But you've redacted those documents. You've redacted those documents in the form in which you agree that they are entitled to redact those documents.

So now the issue is no longer about those documents or even whether or not the redactions are appropriate. The question is whether or not you now are entitled to additional documents. And the additional documents you want are documents that indicate that the -- they give you unique identifiers so that you can connect the dots. That's what you are trying to do. You want more dots because you want to be able to connect the dots.

And they are saying, look, we don't have an obligation to give you more dots so you can connect the dots and come up with whatever information you think is useful to you. That's not our analysis. Our analysis is that, look, if we have information in terms of dots, we give you those dots.

If that information is useful for you to connect those dots for one purpose and not connect those dots for another purpose, that's not our problem, is basically their argument,

1 because that's not our obligation.

2 Our obligation is just to give you what we have. And
3 we only are obligated to give you what we have that is not
4 exempt. We all agree that they are entitled to redact the A
5 numbers. Then the only question, it seems to me, that I'm
6 trying to resolve, and which I find not as exceptional guidance
7 in the cases that both sides have cited, the only question is
8 the reasonable step -- they have a further obligation to take
9 the reasonable step of changing the identification numbers to
10 some other number because that's an appropriate way to
11 segregate the nonexempt information.

12 The nonexempt information is not the personal
13 information about the individual. It's not the personal
14 information that identifies who that person is. That's not
15 what seems to be at issue. Because even the alien
16 identification number doesn't tell you who that person is, but
17 it could lead to identifying who that person is.

18 And if you agree that they don't have the obligation
19 to give you that number, I am trying to understand why if they
20 are not -- if they don't have an obligation to give you
21 identification number No. 26, why they have an obligation to
22 change that to say it is unique identifier No. 25, and to do
23 that throughout so you can connect it with all of the different
24 documentation that you have.

25 (Video cut out)

1 THE COURT: Let's sort of wind up. Why don't you move
2 forward if you have any further argument.

3 MR. RIEDEL: As an initial matter, your Honor, the
4 government concedes that unique identifiers do not produce
5 exempt information. And you're absolutely right when you
6 consider unique identifiers as disclosing additional dots.
7 Those dots are information that ICE holds in its possession
8 that it's obligated to produce under the FOIA.

9 It's better laid out in Dr. Wu's declaration, but you
10 had mentioned earlier that this is about whether we want new
11 documents that have unique identifiers rather than A numbers,
12 and that's not really the question at all. The question is
13 whether ICE created the right documents in the first place.
14 Dr. Wu lays out how using the type of databases ICE has, you
15 can adjust your search query and you can tell the computer to
16 do exactly what the ACLU requested.

17 Go find those A numbers, but when you make the
18 spreadsheets, don't put the A numbers in there. Put unique
19 identifiers in there. You can write the code for that. If ICE
20 would have done that, they would have made the spreadsheet
21 responding to the ACLU's FOIA requests. Those spreadsheets
22 would have had all of the same information except instead of
23 having a column for A numbers, it would have had a column for
24 unique ID.

25 I would also like to touch on one more point that ICE

1 has made unique identifiers on multiple occasions in response
2 to FOIA requests by other entities, one of those being an
3 entity called Trap. ICE made unique identifiers for Trap for
4 multiple years in response to many FOIA requests per year and
5 then abruptly stopped in 2016.

6 It also made what it styled discretionary disclosures
7 of unique identifiers to the New York Times and Human Rights
8 Watch. If you look at the timing of those disclosures, they
9 were all under the Holder memo that Mr. Bannon referenced in
10 his remarks.

11 As we discussed, the Holder memo was entirely
12 discretionary. It set out a presumption of openness and, based
13 on that presumption of openness, stated that when the Attorney
14 General would defend FOIA withholding.

15 I laid it out in my papers, your Honor, but if you
16 look at what Congress enacted, it's a lot different than what
17 the Holder memo stated. The Holder memo was entirely
18 discretionary. It stated, you know, I think the clearest line
19 is that agencies should always be mindful that the FOIA
20 requires them to take reasonable steps to segregate and release
21 nonexempt information. But Congress had something else in mind
22 when it adopted the FOIA Improvement Act and section alpha 8
23 alpha. Instead, it used the word fail.

24 Agencies shall take reasonable steps to disclose, and
25 then it used nonexempt information where disclosure of the full

1 record is not possible because of an exemption. Congress added
2 a provision, also not found in the memo, stating that an agency
3 may withhold information -- not records; information -- only if
4 disclosure would harm an interest protected by an exemption or
5 disclosure is prohibited by law. Here, disclosure is not
6 prohibited by law, and ICE concedes that there is no interest
7 protected by an exemption at stake.

8 THE COURT: Let me ask you this. How did you
9 articulate your request that you say what's responsive to that
10 request is to substitute unique identifiers for EID numbers?
11 What was the FOIA request that requires them to do that?

12 MR. RIEDEL: The FOIA request asks for, in all cases,
13 A numbers be substituted for unique identifiers.

14 THE COURT: That's not the FOIA request. As you said,
15 FOIA deals with information, if a FOIA request is a request for
16 information. It's not a request for the format of the
17 information. It's not even a request for a substitution of
18 certain information or knowledge. It is a request for
19 information that's in their possession.

20 What is the information that's in their possession
21 that you asked for that you say that a reasonable response to
22 is to give you these documents with unique identifiers? What
23 was the request? What did you ask them for? What information?

24 MR. RIEDEL: The ability to link the records. As you
25 phrased it earlier, the dots.

1 THE COURT: That's not information. It was the
2 subject matter that you had requested. You say, give me the
3 documents that reflect X. Give me the documents that deal with
4 Y. What is it that you asked for that requires a response that
5 gives you a unique identifier? Otherwise, it's not responsive
6 to the information that you asked for.

7 MR. RIEDEL: I don't really understand that question,
8 your Honor.

9 THE COURT: Let me rephrase it.

10 When I make a FOIA request, I say I want you to give
11 me documents that you have in your possession on such and such
12 subject matter. Give me the documents that have to do with X.
13 That's the nature of a FOIA request. You didn't make a request
14 that said, give me all the documents in your possession that
15 are immigration documents, and I want you to change or give it
16 to me in the form of unique identifiers. That is not a FOIA
17 request. Your FOIA request, and I can go back and look at it,
18 your FOIA request asks them to give you what kind of documents.

19 MR. RIEDEL: Your Honor, here we are asking for
20 database information.

21 THE COURT: Say it again.

22 MR. RIEDEL: Database information. It's discussed in
23 this Court's *Everytown* decision and the *New York Times Company*
24 decision, also from the Southern District, where in the context
25 of database information, it's much different than a request for

1 individual documents.

2 THE COURT: I still don't understand what you asked
3 them for. What were they supposed to go and get? If there had
4 been no exempt documents, what documents did you ask them for?
5 That's what I'm trying to understand. What information were
6 you asking for? How did you articulate it?

7 MR. RIEDEL: We requested, and I'm assuming this was
8 for ease of reference and putting it in the database lingo that
9 ICE and the data people are familiar with, they asked for A
10 numbers and then they said that the information, the relational
11 information from the A numbers, should be disclosed through
12 unique identifiers, was the request, so that they can
13 correspond to the A numbers and match the unique identifiers
14 provided in the detainers and removal data in individual case
15 ID in both spreadsheets.

16 THE COURT: That doesn't tell me what the subject
17 matter is. What is it that you asked them for? Did you ask
18 for documents that indicate all of the contacts with
19 noncitizens, or did you ask them for documents with regard to
20 all deportations? I am just trying to get you to articulate
21 the subject matter so I could try and relate that to what you
22 say they were required to do to respond to that request.
23 Clearly, they weren't required to simply respond to your
24 request saying, give me all immigration documents and change
25 the ID numbers to unique identifiers and give me everything you

1 got. That's not what you asked for.

2 What did you ask them for? You say you got documents
3 about deportations, you got documents about arrests, you got
4 documents about detentions. I assume all of those documents
5 were responsive to your requests for certain kinds of
6 documents. What kind of documents did you ask for?

7 MR. RIEDEL: Basically, because it's the database, and
8 I refer your Honor to the *Everytown* decision that talks about
9 searching a database and creation of the new records standard
10 in the context of the data. We asked for data on apprehension.
11 We asked for data on risk classification assessments, we asked
12 for data on bond information systems, we asked for data on
13 deportation, data on detention, data on arrests.

14 THE COURT: In response to that, they would be
15 obligated to produce those documents to you dealing with those
16 subject matters, absent any legitimate assertion of exemption
17 and absent any illegitimate assertion of exemption based on
18 their obligation to take reasonable steps to segregate the
19 nonexempt information from the exempt information and give you
20 that subject matter of documents, withhold the exempt
21 documents. But with regard to nonexempt information that might
22 have been swept up in that net, they have to take reasonable
23 steps to say, OK, we can segregate that information and still
24 provide you with that information.

25 The limited issue, it seems to me, is the information

1 that you say that they should segregate is information that is
2 useful to connect one aspect of the immigration process to
3 another aspect of the immigration process through
4 identification of those individuals as being the same
5 individuals, without telling us who they are.

6 Is that a fairly accurate description of where you
7 are, how you got there, and what was requested and what was
8 responded to?

9 MR. RIEDEL: Yes, your Honor. The only thing I would
10 add to that is that the information we seek is not merely for
11 academic purposes. This is information that ICE uses on a
12 regular basis to make decisions.

13 THE COURT: But that's pretty much irrelevant to my
14 analysis, isn't it? What do I care what you want it for? I
15 don't care why you want it. You are entitled to it. You are
16 entitled to it or you are not. You may want it for a good
17 reason or a bad reason. I don't get involved in that.

18 MR. RIEDEL: In the context of database information --

19
20 THE COURT: Either they had the obligation to give you
21 the documents or they don't have the obligation to give you the
22 documents. But how useful it is or not useful it is to you,
23 what you can do with it beyond what it says is not really much
24 of an analysis here.

25 MR. RIEDEL: Other than to the extent it plays into

1 the analysis of what is a record. When Congress adopted the
2 definition of a record, it made clear that the FOIA required
3 the production of records and information that stated in the
4 public law adopting the E-FOIA amendments of 1996. It makes
5 quite clear that the FOIA is not limited to just records,
6 particularly when it comes to computer systems and storing
7 information electronically. It's the disclosure of physical
8 documents, but, also, the information stored in government
9 databases.

10 THE COURT: Right. That doesn't necessarily get to
11 the heart of the dispute of whether or not they have to
12 substitute a unique identifier for an alien number.

13 MR. RIEDEL: No. That's determined by whether making
14 that substitution requires reasonable steps, and here, as I
15 submit, the steps are reasonable. They can make the
16 substitution in approximately one day.

17 THE COURT: I understand.

18 Anything further, Mr. Riedel?

19 MR. RIEDEL: Very briefly, your Honor. There is
20 another provision that we didn't get to do much about form or
21 format.

22 In kind of a technical sense, all database information
23 is not documented. It's just ones and zeros stored in a
24 database, so extracting any information requires a new form or
25 format. As long as the agency can do a search of the

1 information and extract it, which Dr. Wu discusses in his
2 declaration, ICE can write its code to say, hey, don't pull
3 from your database A numbers. Instead, look for those A
4 numbers, but then pull and provide to me unique identifiers and
5 make the spreadsheets that way. That's a new form for format
6 and, therefore, that provision of the FOIA also requires the
7 production of unique identifiers.

8 THE COURT: The way you said it, I am not sure that
9 that's accurate. You say, we are saying instead of pulling it
10 out with alien numbers, A numbers, pull it out with unique
11 identifiers. It's not in their database with unique
12 identifiers.

13 MR. RIEDEL: Databases don't care how information is
14 stored. It's all just digits.

15 THE COURT: Right. But there are no unique
16 identifiers stored in the database.

17 MR. RIEDEL: In a technical sense, what the computer
18 does is, it creates a list of unique identifiers.

19 THE COURT: It's clear to me that you have to convince
20 me that creating the identifiers, unique identifiers, is the
21 equivalent of segregating nonexempt information.

22 MR. RIEDEL: It is the equivalent of segregating
23 nonexempt information and it is required under the FOIA
24 Improvement Act.

25 THE COURT: Because unique identifiers are not in the

1 computer. They are something that have to be created.

2 MR. RIEDEL: But the computer can pull them out of the
3 existing information.

4 THE COURT: No, it can't pull them until someone gives
5 the concluded instruction to create them.

6 MR. RIEDEL: In a search, your Honor, it's well
7 established that a search, so those computer instructions are
8 required by the FOIA. That's laid out in the *Everytown*
9 decision. The *Everytown* decision discusses how the FOIA
10 requires that agencies run searches. And a search, if you can
11 pull information out of a database using a search, it's not the
12 creation of a new record.

13 THE COURT: Technically, I just don't understand that
14 argument, only because of my lack of sophistication. I don't
15 understand how you say it is only a search. It is not a
16 search. If you were only going to do a search, the only
17 information that you would come up with with regard to
18 identities would be A numbers. You would not come up with
19 names. You would not come up with Social Security numbers.
20 You would not come up with dates of birth. You would not come
21 up with unique identifiers. No search will give you unique
22 identifiers until you create those unique identifiers and
23 assign them to a particular case.

24 Because what you want is, you want the unique
25 identifier to be cross-referenced by documents that are coming

1 from different sources. For you to get your detention
2 documents and you to get your deportation documents, a computer
3 has got to assign the same unique identifier to both sets of
4 documents. There is no search that you can do for those
5 documents that's going to come up with the same identifier.

6 I might understand your argument if you say, well,
7 when you give us detention documents, just give us some
8 identifiers. And then you give me your deportation documents,
9 give us identifiers, and we don't care whether those
10 identifiers are the same or not. That would be a search. If
11 you say, well, yeah, in this case on the spreadsheet I'm giving
12 you a hundred items and I have numbered them 1 through 100.
13 And if deportation says, well, we are going to give you 50
14 items and we are going to designate those 50 items 1 through
15 50, sure, that is a search, and I could see your argument with
16 regard that that's just simply a computer mechanism to do that.

17 But to say that you want to take document identifier
18 No. 6 in the deportation documents, and you want to take
19 identifier No. 6 document in the removal documents, and you
20 want to change those identifiers to make both of those
21 documents have the same unique identifier is more than just a
22 search. That's an exercise that you've got to do that has to
23 be coordinated. Otherwise, it's totally useless to you.

24 MR. RIEDEL: In his declaration, your Honor, Professor
25 Wu lays out how relational databases, which is what ICE uses,

1 what matters is the information in the database, not the form
2 or format of how that information is stored. And you can write
3 a search to pull out any information.

4 And to not get in the weeds here, I think the one
5 point that illustrates, if you run these searches, they can
6 pull out unique identifiers because that information exists and
7 it exists in ICE's database.

8 THE COURT: That's the part I don't understand. I
9 don't understand how it exists in the database until it's
10 created and you make sure that you take the A numbers in all of
11 the databases and give a certain A number the exact same
12 identifier, unique identifier, as that particular A number.

13 Let's put it this way. It would be a task for an
14 individual to do by hand and it will be a task, a much simpler
15 task, but it is a task for a computer to do that. It's not
16 just a pulling of information. It is associated, a
17 particularly unique identifier with a particular A number
18 across the board. And that can't happen just by saying, OK,
19 even if you say -- what you've got to do minimally is say, A
20 number 6, we are going to change that throughout the agency to
21 unique identifier B.

22 MR. RIEDEL: Your Honor, the one thing that I would
23 say is, it doesn't have to be assigned permanently. It can be
24 assigned in response to every request. And it should be
25 assigned in response to every request because that's the only

1 way to keep them anonymized.

2 Real quick example is, if you were to pull out any one
3 of our spreadsheets and you had the unredacted form and you
4 looked at them and you were able to find unique identifiers,
5 whether they are A numbers matching up, you would know that
6 those two records on the piece of paper relate to the same
7 individual, but the actual number doesn't matter. If it's 123
8 and 123, if those records relate to another and you know they
9 are associated, they are the same arrest record. But if it's
10 567 on those same lines of the spreadsheet as 567, you know
11 that it relates to the same arrests or arresting the same
12 person. The actual number doesn't change the information. As
13 long as the numbers match, that's all that matters.

14 THE COURT: I understand.

15 Mr. Bannon, do you have anything further?

16 MR. BANNON: I would just say, your Honor, that alien
17 numbers are the only unique identifiers that exist in the
18 database. In order to produce unique identifiers, they would
19 have to be created. The FOIA request here says as much. They
20 ask that A numbers be substituted with these identifiers. That
21 is what the request asks.

22 This distinction between information and records is
23 made throughout the FOIA. They use those terms somewhat
24 interchangeably. The courts have held that the definition of
25 records that say information that would be an agency record is

1 a topology. It doesn't expand the world of records that are
2 available.

3 And this idea that because you can produce unique
4 identifiers through a query means that you have to do it is
5 inaccurate. The paper file analogy is helpful. You have to
6 query a database like you have to pull files out of a file
7 cabinet. But if the query involves a transformation, that is
8 pulling files out of a file cabinet and scribbling on them, and
9 the scribbling part is the creation of a record, which isn't
10 required.

11 Not all queries are built the same, so this conflation
12 of queries was something that's automatically required. You
13 only have to query for information that already exists. And
14 these identifiers here are something that have to be
15 transformed, which is above and beyond pulling records that
16 already exist. It's the alteration of the records.

17 THE COURT: Thank you, gentlemen. I'll get back to
18 you as quickly as I can. Hopefully, with the holidays, within
19 the next 60 days.

20 Thank you very much.

21 (Adjourned)

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

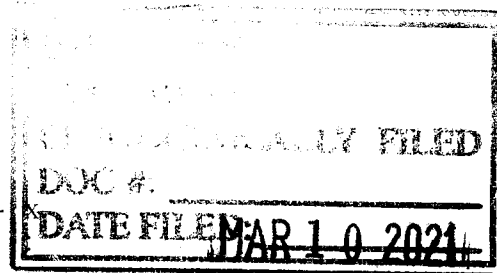
AMERICAN CIVIL LIBERTIES UNION
IMMIGRANTS' RIGHTS PROJECT,

Plaintiff,

-against-

UNITED STATES IMMIGRATION AND
CUSTOMS ENFORCEMENT,

Defendant.



MEMORANDUM DECISION
AND ORDER

19 Civ. 7058 (GBD)

----- x
GEORGE B. DANIELS, United States District Judge:

Plaintiff American Civil Liberties Union Immigrants' Rights Project ("ACLU") brought this action under the Freedom of Information Act ("FOIA") against Defendant United States Immigration and Customs and Enforcement ("ICE") seeking disclosure of certain agency records regarding immigration apprehensions, detentions, removals, risk classification assessments, and bond management information. The parties have cross-moved for summary judgment. For the reasons that follow, the Court DENIES Plaintiff's motion and GRANTS the Defendant's motion by dismissing Plaintiff's claims for relief.

I. FACTUAL BACKGROUND¹

A. The ACLU's FOIA Request

On October 3, 2018, the ACLU submitted a FOIA request to ICE, seeking five categories of "spreadsheet data along with any explanatory notes needed to make the data intelligible" on:

¹ In keeping with the standard practice in FOIA cases in this Circuit, the parties did not submit Rule 56.1 statements. *See New York Times Co. v. U.S. Dep't of Justice*, 872 F. Supp. 2d 309, 314 (S.D.N.Y. 2012). Therefore, the facts laid out here are drawn from the parties' submissions, including affidavits and exhibits.

(1) removals or deportations, (2) detentions, (3) apprehensions, (4) ICE risk classification assessments, and (5) “data tracking transactions related to immigration bonds.” (Decl. of David Hausman in Supp. of Pl.’s Mot. for Summ. J., (“Hausman Decl.”), ECF No. 35, ¶ 3, Ex. A.) The request specified that the ACLU wanted each row of data in the spreadsheet to correspond to an “individual or case.” (*Id.* at Ex. A.) Importantly, the ACLU also requested “[i]n every case, alien numbers (“A-numbers”) should be replaced with unique identifiers, and unique identifiers should also be provided for each unit of observation,” thus allowing for single individuals to be tracked within and between the categories of data. (*Id.* at ¶¶ 4, 6.)

An alien number (“A-number”) is a unique sequence of numbers assigned to noncitizens immigrating to the United States and functions as a personal identifier. (Decl. of Donna Vassilio-Diaz in Supp. of Def.’s Mot. for Summ. J., (“Vassilio-Diaz Decl.”), ECF No. 32, ¶ 20.) A-numbers are personally identifying information, which are protected from disclosure by the FOIA.² (*Id.*) A-numbers are “[t]he only piece of information stored” in ICE’s database that connect a category of data to a specific individual. (*Id.* at ¶¶ 12, 20.) Thus, substituting unique identifiers (“Unique IDs”) for A-numbers would advance the goal of the request, which was to obtain information “about how ICE manages cases from the time of a noncitizen’s arrest and detention and/or placement into removal proceedings through the final case disposition.” (Hausman Decl. ¶ 4.)

B. ICE’s Search and Production

ICE maintains two main databases, the Enforcement Integrated Database (“EID”) and the ICE Integrated Decision Support System (“IIDS”). (Vassilio-Diaz Decl. ¶¶ 6, 9.) On October 24, 2018, the ICE FOIA Office forwarded the ACLU’s request to the Enforcement Removal Operations department (“ERO”), the office responsible for spreadsheet data related to immigration

² The withholding of A-numbers is not at issue in this case. (Stipulation and Order, ECF No. 29, ¶ 2(d).)

enforcement. (*Id.* at ¶ 15.) An analyst in the Statistical Tracking Unit determined that all the information responsive to the ACLU’s requests was located on the IIDS and searched this database to fulfill the request. (*Id.* at ¶ 17.) This is the same process ICE employed in response to similar FOIA requests from the New York Times and Human Rights Watch, after which the ACLU modeled its request. (Vassilio-Diaz Decl. ¶ 17; Hausman Decl. ¶¶ 10, 11.)

As explained in more detail in the declaration of Ms. Vassilio-Diaz, the IIDS database houses information on detentions, apprehensions, risk classifications, and bond management in “distinct data sets” (i.e. separately). (Vassilio-Diaz Decl. ¶ 12.) The IIDS “contains information that is adapted for efficient report generation” and is commonly used to prepare and publish population-based summary reports “for the public, ICE leadership, Congress, and the President.” (*Id.* at ¶¶ 10, 11.) ICE officers can retrieve data on specific individuals from the EID using a “separate software application,” but the data can only be pulled “one at a time on an ad-hoc basis, and the ICE officer must have a specific personal identifier, such as an A-number.” (*Id.* at ¶ 12.) According to ICE, this software does not give ICE the ability to create reports that are person-centric (i.e. reports where each row of a category of data corresponds to a particular individual). (*Id.*) Similarly, ICE officers can view an individual’s complete immigration history by reviewing the noncitizens hardcopy file, also referred to as an “Alien File.”³ (*Id.*)

ICE searched the IIDS database, and after multiple layers of review, produced spreadsheets for each category of information requested. (*Id.* at ¶¶ 19, 22.) In total, ICE produced 40 spreadsheet tabs constituting a little over one million rows of data covering the years 2012 to 2019. (*Id.*) Notably, ICE did not provide Unique IDs in place of A-numbers (which, as noted above,

³ The ACLU does not challenge these contentions by ICE’s declarant. Instead, the ACLU argues that ICE would face a “de minimus burden” in creating or obtaining a computer program which could extract Unique IDs “in the process of searching for the requested information.” (Pl.’s Mot. at 2; Hausman Decl. ¶¶ 27, 34.)

were redacted pursuant to personal privacy FOIA exemptions) as the ACLU had requested. ICE maintains that it does not have a computer program that would allow it to replace A-numbers in the IIDS with Unique IDs. (*Id.* at ¶ 21.)

C. Procedural History

The ACLU commenced this action on July 19, 2019 and alleged that ICE had failed to timely search its records and produce responsive documents in violation of the FOIA and the Administrative Procedures Act, 5 U.S.C. § 706. (Compl., ECF No. 1.) The complaint sought to compel the disclosure of all requested records. (*Id.* at 9.) After ICE’s production, the parties reached a partial settlement, agreeing to limit their arguments on summary judgment to ICE’s obligation to disclose “Unique Identifiers in place of A-numbers, as requested by Plaintiff in the FOIA Request.” (Stipulation and Order, ECF No. 29, ¶ 1.)

The sole issue to be decided by this Court is whether the FOIA requires ICE to replace A-numbers with Unique IDs.

II. LEGAL STANDARD

A. Summary Judgment and the Freedom of Information Act

“FOIA cases are generally and most appropriately resolved on motions for summary judgment.” *Families for Freedom v. U.S. Customs & Border Prot.*, 797 F. Supp. 2d 375, 385 (S.D.N.Y. 2011). Summary judgment is granted “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); *see also Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–48 (1986).

A district court considering a FOIA claim “may grant summary judgment in favor of an agency ‘on the basis of agency affidavits if they contain *reasonable specificity* of detail rather than merely conclusory statements, and if they are not called into question by contradictory evidence

in the record or by evidence of agency bad faith.” *Grand Cent. P'ship, Inc. v. Cuomo*, 166 F.3d 473, 478 (2d Cir. 1999) (quoting *Gallant v. NLRB*, 26 F.3d 168, 171 (D.C. Cir. 1994)); *see also Garcia v. U.S. Dep't of Justice, Office of Info. & Privacy*, 181 F.Supp.2d 356, 366 (S.D.N.Y. 2002) (“If the agency’s submissions are facially adequate, summary judgment is warranted unless the plaintiff can make a showing of bad faith on the part of the agency or present evidence that the exemptions claimed by the agency should not apply.”). Thus, “if the agency’s submissions are adequate on their face . . . the district court may forgo discovery and award summary judgment on the basis of affidavits.” *Carney v. U.S. Dep't of Justice*, 19 F.3d 807, 812 (2d Cir. 1994) (internal quotations omitted). On the other hand, “[s]ummary judgment in favor of the FOIA plaintiff is appropriate when an agency seeks to protect material which, even on the agency’s version of the facts, falls outside the proffered exemption.” *Nat. Res. Def. Council, Inc. v. U.S. Dep't of Interior*, 36 F.Supp.3d 384, 398 (S.D.N.Y. 2014) (quoting *N.Y. Times Co. v. U.S. Dep't of Def.*, 499 F.Supp.2d 501, 509 (S.D.N.Y. 2007)).

III. THE ACLU’S REQUEST REQUIRES THE CREATION OF A NEW RECORD

A. Relevant Statutory Background

The “‘FOIA was enacted to promote honest and open government’ and ‘to ensure public access to information created by the government in order to hold the governors accountable to the governed.’” *Long v. Office of Pers. Mgmt.*, 692 F.3d 185, 190 (2d Cir. 2012) (internal citations omitted). To meet these goals, the FOIA requires that “each agency, upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules . . . shall make the records promptly available to any person.” 5 U.S.C. § 552(a)(3)(A).

Thirty years after the FOIA was first enacted, Congress passed the Electronic Freedom of Information Act Amendments of 1996 (“E-FOIA Amendments”) as many agencies began shifting

from keeping records in paper format to storing them electronically. Principally, the E-FOIA Amendments, “altered FOIA’s definition of ‘search’ and agency ‘record’ to specifically address automatic review of electronic files.” *Everytown for Gun Safety Support Fund v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 403 F. Supp. 3d 343, 348 (S.D.N.Y. 2019), *rev’d and remanded*, 984 F.3d 30 (2d Cir. 2020). The E-FOIA Amendments also added the provision that, “[i]n responding ... to a request for records, an agency shall make reasonable efforts to search for the records in electronic form or format, except when such efforts would significantly interfere with the operation of the agency’s automated information system.” 5 U.S.C. § 552(a)(3)(C). Congress defined “record” to include electronically stored information. *Id.* § 552(f)(2)(A). Additionally, agencies must provide the record “in any form or format requested by the person if the record is readily reproducible by the agency in that form or format.” *Id.* § 552(a)(3)(B).

The parties’ motions also raise the FOIA Improvement Act of 2016, which was signed into law by President Obama and amended FOIA in numerous ways. *See* Pub. L. No. 114-185, 130 Stat. 538. As relevant here, the FOIA Improvement Act added a provision concerning segregability, which requires agencies to “(I) consider whether partial disclosure of information is possible whenever the agency determines that a full disclosure of a requested record is not possible . . . and (II) take reasonable steps necessary to segregate and release nonexempt information.”⁴ 5 U.S.C. § 552(a)(8)(A)(ii).

⁴ As the parties note, the only court to analyze this new provision acknowledged that “the FOIA Improvement Act of 2016 added another provision that concerns segregability,” but concluded that for information in a document the requirements of sections 552 (b) and 552 (a)(8)(A)(ii) are coextensive. *See Ctr. for Investigative Reporting v. U.S. Customs & Border Prot.*, 2019 WL 7372663, at *15 (D.D.C. Dec. 31, 2019) (“[S]ubsection (b) of FOIA [is] satisfied by affidavits attesting to the agency’s ‘line-by-line review of each document withheld in full’ and the agency’s determination ‘that no documents contained releasable information which could be reasonably segregated from the nonreleasable portions. . . . The FOIA Improvement Act appears to require no more than that’”)

Here, the ACLU argues that ICE is required to “replace A-numbers with Unique IDs” because ICE can segregate out Unique IDs (nonexempt information) from A-numbers (exempt information) using nonburdensome computer software. (Pl.’s Cross Mot. for Summ. J. and Opp’n to Def.’s Mot. for Summ. J. (“Pl.’s Mot.”), ECF No. 33, at 10-11.) This process, according to the ACLU, is required, in part, because Congress expanded the scope of the FOIA’s segregability mandate when it passed the FOIA Improvement Act of 2016. (*Id.*) ICE argues that it is not obligated to provide Unique ID’s, as the ACLU requests, because doing so would require the creation of new records, and additional research and analysis, which goes beyond the obligations imposed by FOIA. (Def.’s Mot. for Summ. J., (“Def.’s Mot.”), ECF No. 30, at 11–18.)

B. The Replacement of Alien Numbers with Unique IDs Creates a New Record

1. Record Creation

ICE avers that its IIDS database does not contain the type of person-centric Unique IDs requested by the ACLU. (Def.’s Mem. in Opp’n to Pls.’ Mot. for Summ. J. (“Def.’s Opp’n”), ECF No. 39, at 1; Vassilio-Diaz Decl. ¶ 20.) It maintains that “the only piece of information stored in a row of IIDS data that connects an entry to an individual uniquely is that individual’s A-number.” (Vassilio-Diaz Decl. ¶ 20.) According to ICE’s declarant, because ICE does not maintain a computer program capable of replacing A-numbers with Unique IDs, it would have to: “(1) create a program capable of uniquely substituting a new number for a pre-existing number; (2) input each A-number from each dataset within the IIDS (millions of entries in total) into the program; (3) run the program to create new unique identifiers; (4) replace all A-numbers within the IIDS datasets with the new unique identifiers; and (5) maintain and store the new computer program and new unique identifiers, for which ICE has no operational use.” (*Id.* at ¶ 20.)

The ACLU concedes that the “full disclosure of A-numbers is not possible” and does not claim that Unique IDs are directly stored in the IIDS database. (Pl.s’ Mot. at 12.) Instead, the ACLU asserts that one of the functions of A-numbers is to convey “Relational Information,” that is information which shows that the records are associated with particular individuals. (*Id.*) The ACLU argues that the FOIA requires ICE to segregate out this “nonexempt Relational Information” by running Structured Query Language searches or the five-step process described by ICE, either of which, it maintains, is not a burdensome process for ICE to perform. (*Id.* at 12–14.) The ACLU further argues that ICE is obligated by the FOIA to reformat A-numbers as Unique IDs because that format is “readily producible.” (*Id.* at 14–16.) According to the ACLU, all of the information conveyed by A-numbers is an existing record within ICE’s database and thus its requests only ask for the disclosure of an existing record.

The FOIA does not require agencies to generate new records in response to FOIA requests. *Forsham v. Harris*, 445 U.S. 169, 186 (1980); *see also Yeager v. DEA*, 678 F.2d 315, 321 (D.C. Cir. 1982) (“It is well settled that an agency is not required by FOIA to create a document that does not exist in order to satisfy a request.”). Agencies are “only obligate[d] . . . to provide access to those [documents] which it in fact has created and retained.” *Kissinger v. Reporters Committee for Freedom of the Press*, 445 U.S. 136, 152 (1980). While the FOIA requires agencies to conduct a reasonable search, they need not “dig out all the information that might exist, in whatever form or place it might be found, and . . . create a document that answers plaintiff’s question.” *Frank v. U.S. Dep’t of Justice*, 941 F. Supp. 4, 5 (D.D.C. 1996). Thus, the dispute here is whether the ACLU’s request for the substitution of Unique IDs requires ICE to create new records or conduct research and analysis beyond the contents of the IIDS database.

When an agency stores information in an electronic database, “searching that database . . . [or] sorting [it] to make information intelligible does not involve the creation of a new record.” *Nat’l Sec. Counselors v. CIA*, 898 F. Supp. 2d 233, 270 (D.D.C. 2012). “Sorting a database by a particular data field (*e.g.*, date, category, title) is essentially ‘the application of codes or some form of programming,’” and thus does not involve creating new records or conducting research—it is just another form of searching that is within the scope of an agency’s duties in responding to FOIA requests.” H.R. Rep. 104–795, at 22, 1996 U.S.C.C.A.N. 3448, 3465. But this alone does not resolve the issue of determining when “the manipulation of data points in an electronic database through ‘the application of codes or some form of programming’ crosses the all-important line between searching a database, on the one hand, and either creating a record or conducting research in a database on the other.” *Nat’l Sec. Counselors*, 898 F. Supp. 2d at 270–271.

In *National Security Counselors v. C.I.A.*, the plaintiff challenged the CIA’s refusal to produce certain records in response to a FOIA request. Among plaintiff’s requests were “(1) a request for ‘database listings of all FOIA requesters from Fiscal Years 2008-2010 according to the fee categories to which CIA assigned them,’ and (2) a request for ‘a record that would indicate the ten individuals responsible for the most FOIA requests submitted (each) in Fiscal Years 2008, 2009, and 2010.’” *Id.* at 268–69. The CIA refused to produce these records arguing that its “record systems are not configured in a way that would allow [it] to perform a search reasonably calculated to lead to the responsive record without an unreasonable effort.” *Id.* at 245. The CIA further argued that “processing requests for database listings would (a) require it to create new records, as opposed to merely producing preexisting records and/or (b) require it to conduct research, as opposed to merely performing a search.” *Id.* at 269. The court held that “although

the act of searching and sorting” the database was not the creation of a new record the production of “a listing of database search results involve[d] the creation of a record.” *Id.* at 271. The court reasoned that “[p]roducing a listing or index of records . . . is different than producing particular points of data (*i.e.*, the records themselves)” because “the listing or index of the contents of a database would not necessarily have existed prior to a given FOIA request.” So too here.

The ACLU requests “nonexempt Relational Information” or information conveyed by the existence of A-numbers. But ICE does not maintain “Relational Information” or “unique identifiers” in the IIDS database. (Def.’s Mot. at 18; Vassilio-Diaz Decl. ¶ 20.) These extrapolated data points are simply not something that ICE “has in fact chosen to create and retain.”⁵ *Yeager*, 678 F.2d at 321. “Relational Information” and “Unique IDs” are not preexisting data fields (e.g. date, category, or title) in the IIDS database which ICE can sort. The ACLU’s request for “Unique IDs” or “Relational Information” does not seek the contents of the IIDS database (such as A-numbers), but instead seemingly seeks information about those contents. As such it is a request that requires the creation of a new record. *See People for the American Way Foundation v. U.S. Dep’t of Justice*, 451 F.Supp.2d 6, 15 (D.D.C. July 18, 2006) (producing a “list of records returned from [a database] search” is “something that FOIA does not mandate” because “the list was not previously created or obtained by the agency” and “an order that defendant produce such a list would be tantamount to requiring the defendant to *create* an agency record”);

⁵ Plaintiff asserts that creating computer programming necessary to conduct a search does not constitute record creation. *See Schladetsch v. U.S. Dept of H.U.D.*, No. 99-0175, 2000 WL 33372125, at *3 (D.D.C. Apr. 4, 2000). But that is not the issue in this case. In *Schladetsch*, the Department of Housing and Urban Development “conceded that it possesse[d] in its databases the discrete pieces of information” which the plaintiff sought. *Id.* While ICE does not “maintain a computer program” which could replace A-numbers with Unique IDs, the more salient issue is that ICE’s IIDS database does not contain the Unique IDs sought by the ACLU. (Vassilio-Diaz Decl. ¶¶ 20, 21.)

see also *Elkins v. Fed. Aviation Admin.*, 103 F. Supp. 3d 122, 131 (D.D.C. 2015) (holding that application of a “confidential algorithm . . . in order to translate identifying information” into a nonexempt format was record creation.)

The ACLU relies heavily on *Everytown for Gun Safety Support Fund v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, and argues that after this decision “a request for database information creates a new record only when ‘generating the information requires the agency to engage in additional research or conduct additional analyses above and beyond the contents of its database.’” (Reply Mem. in Further Supp. of Pl.’s Cross Mot. for Summ. J (“Pl.’s Reply”), ECF No. 41, at 7, (citing 403 F. Supp. 3d at 359.)) The ACLU further contends that if the requested information is “apparent on the face of a database when searches required by FOIA are conducted” then disclosing that information does not create a new record. *Id.*

But *Everytown* also makes clear that “whether an agency is obligated to respond [to a request for database information] in a given case will depend upon the design and structure of its database.” 403 F. Supp. 3d at 357. Here, Unique IDs are not “apparent on the face of the database” because ICE has made clear that the database does not contain Unique IDs. (Vassilio-Diaz Decl. ¶¶ 20.) As noted in the Vassilio-Diaz declaration, after creating or obtaining a computer program to conduct the search, the program would need to create the Unique IDs and replace all the A-numbers with the new Unique IDs. (*Id.* at ¶ 21.) The ACLU asserts that “Relational Information is apparent from the A-numbers appearing on the unredacted spreadsheets compiled by ICE after searching its databases.” (Pl.’s Reply at 7.) However, “Relational Information” or Unique IDs cannot be “apparent on the face of the database” because they are conceptual abstractions, not datapoints within the IIDS. Further, the “IIDS was not designed as a well-formed and normalized database where every record is attached to one person through the assignment of a Unique [ID].”

(Vassilio-Diaz Supp. Decl. ¶ 8.) Thus, the design and structure of the IIDS database does not oblige ICE to create Unique IDs.

2. Segregability

In support of their segregability argument, the ALCU cites (and highlighted at oral argument) *Trans-Pacific Policing Agreement v. U.S. Customs Service*, 177 F.3d 1022 (D.C. Cir. 1999). (P’s Mot. at 10,12; *see also* Tr. of Oral Arg, dated Dec. 3, 2020 (“Oral Argument Tr.”), ECF No. 47, at 46:9– 47:19.) In *Trans-Pacific Policing Agreement*, an association of ocean common carriers requested shipping code numbers from the United States Customs Service. 177 F.3d at 1023. Customs refused to provide certain codes and claimed that they were exempted from the FOIA. *Id.* The codes at issue were ten-digits long and each digit “add[ed] an additional layer of specificity to the description of the good.” *Id.* 1024. The district court held that the full unredacted code was properly withheld. *Id.* at 1026. The D.C. Circuit held that the district court had erred when it did not “consider segregability sua sponte” and remanded the case for the purpose of determining whether disclosure of redacted shipping codes was possible. *Id.* 1029–1030.

Trans-Pacific only highlights a weakness in the ACLU’s argument; the ACLU presumes the existence of segregable information (Unique IDs) in ICE’s database. In *Trans-Pacific*, the shipping codes (which the district court was to consider redacting on remand) had already been created by Customs prior to the FOIA request. Here, ICE would have to first create the Unique IDs and then substitute them for A-numbers. The ACLU’s theory that A-numbers convey “Relational Information” which may be segregated out by the application of code is unavailing. Every datapoint in an agency database conveys a variety of information but an agency is not obligated to produce “information in the abstract.” *Forsham*, 445 U.S. at 185–186. Extending the

FOIA to obligate agencies to segregate and produce not just data points but the meaning of every data point is beyond the power of this Court. *See, e.g., ACLU v. DOJ*, 681 F.3d 61, 71 (2d Cir. 2012) (“FOIA does not permit courts to compel an agency to produce anything other than responsive, non-exempt records.”) Simply put, ICE cannot be compelled to segregate what does not already exist.⁶

3. Form and Format

The ACLU’s argument “that ICE is obligated to honor Plaintiff’s request for A-numbers formatted as Unique IDs because that format is readily reproducible” similarly fails. (Pl.’s Mot. at 14.) FOIA mandates that agencies disclose records in “any form or format requested . . . if the record is readily reproducible by the agency in that form or format. 5 U.S.C. § 552(a)(3)(B). The ACLU contends that because ICE admits to having A-numbers in its databases, and because it has the capability of transforming A-numbers into Unique IDs, it must produce A-numbers in the format of Unique IDs.

FOIA does not define the words “form” or “format,” so the Court must consider the ordinary meanings of these words. *See BP America Prod. Co. v. Burton*, 549 U.S. 84, 91 (2006) (“Unless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning.”) The United States District Court for the District of Columbia recently analyzed the ordinary meanings of “form or format” as used in 5 U.S.C. § 552(a)(3)(B). *See*

⁶ The ACLU asserts that ICE should be required to provide Unique IDs because the steps (laid out by their declarants) for ICE to create Unique IDs is “essentially the same as those for a search” and “impose no significant burden” on ICE. (Pls Br. Pg. 12.) Having determined that the production of Unique IDs constitutes record creation, this Court need not decide whether applying software to transform A-numbers to Unique IDs is burdensome. *See, e.g. Aguiar v. Drug Enf’t Admin.*, 334 F. Supp. 3d 130, 144 (D.D.C. 2018) (declining to consider arguments regarding reproducibility after finding that the request would require the creation of new records.)

generally, *Sai v. Transportation Sec. Admin.*, 466 F. Supp. 3d 35, 41 (D.D.C. 2020). In *Sai*, the court “constru[ed] ‘form’ to refer to the media—*e.g.*, paper or thumb drive—and constru[ed] ‘format’ to refer to the electronic ‘structure for the processing, storage, or display of data . . . *e.g.* a PDF or JPEG.’” This Court finds no reason to depart from this analysis. Applying these definitions here, ICE is correct, the ACLU’s request does not implicate format (*i.e.* file type). Instead, the ACLU seeks to have ICE transform A-numbers into Unique IDs. Such a request is not the purpose of this section of the FOIA. *Id.* (“Congress intended to increase access to electronic records in all types of media (*e.g.*, tapes, microfiche, thumb drives) and in all types of formats (*e.g.*, PDF, JPEG).”)

4. ICE’s Prior Practice

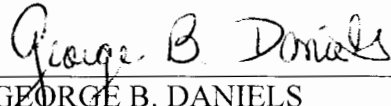
Finally, the ACLU contends that because ICE had previously provided Unique IDs in response to FOIA requests from the New York Times, Human Rights Watch, and the Transactional Records Access Clearinghouse it is obligated to do so here. (Pl.’s Mot. at 22; Hausman Decl. ¶¶ 10–12.) This is incorrect for two reasons. First, the identifiers provided in those cases differed from the Unique IDs requested here. (Supplemental Decl. of Donna Vassilio-Diaz (“Vassilio-Diaz Supp. Decl.”), ECF No. 40, ¶ 14.) The earlier requests did not seek to track individuals across multiple categories of data. (*Id.*) Second, ICE provided those unique identifiers as an “exercise of discretion.” *Am. Immigration Council v. U.S. Immigration & Custom Enf’t*, 2020 WL 2748515, at *8 (D.D.C. May 27, 2020). This exercise of discretion does not change ICE’s obligations under the FOIA. *See Am. Civil Liberties Union v. Dep’t of Def.*, 752 F. Supp. 2d 361, 372 (S.D.N.Y. 2010) (“Numerous courts have found, under similar circumstances, that the Government’s discretionary decision to release a limited set of information does not waive FOIA protection for similar information that is not discretionarily released.”)

IV. CONCLUSION

Defendant's motion for summary judgment dismissing Plaintiff's claims, (ECF No. 30), is GRANTED. Plaintiff's cross-motion, (ECF No. 33), is DENIED. The Clerk of Court is directed to close the motions accordingly.

Dated: New York, New York
March 10, 2021

SO ORDERED.



GEORGE B. DANIELS
United States District Judge

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

-----X
AMERICAN CIVIL LIBERTIES UNION
IMMIGRANTS RIGHTS PROJECT,

Plaintiff,

19 **CIVIL** 7058 (GBD)

-against-

JUDGMENT

UNITED STATES IMMIGRATION AND
CUSTOS ENFORCEMENT,

Defendant.

-----X

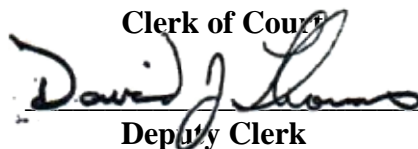
It is hereby **ORDERED, ADJUDGED AND DECREED:** That for the reasons stated in the Court's Memorandum Decision and Order dated March 10, 2021, Defendant's motion for summary judgment dismissing Plaintiff's claims (ECF No. 30), is granted; Plaintiff's cross-motion, (ECF No. 33), is denied.

Dated: New York, New York
March 10, 2021

RUBY J. KRAJICK

Clerk of Court

BY:


Deputy Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

American Civil Liberties Union

Immigrants' Rights Project

(List the full name(s) of the plaintiff(s)/petitioner(s).)

19 CV 07058 (GBD)()

-against-

NOTICE OF APPEAL

United States Immigration and Customs Enforcement

(List the full name(s) of the defendant(s)/respondent(s).)

Notice is hereby given that the following parties: American Civil Liberties Union Immigrants' Rights Project

(list the names of all parties who are filing an appeal)

in the above-named case appeal to the United States Court of Appeals for the Second Circuit

from the ☒ judgment ☒ order entered on: 03/10/2021

(date that judgment or order was entered on docket)

that:

denies Plaintiff's cross-motion for summary judgment and grants Defendant's motion for

summary judgment dismissing Plaintiff's claims brought in this action under the Freedom of Information Act

(If the appeal is from an order, provide a brief description above of the decision in the order.)

05/07/2021

Dated

/s/ Michael Tan

Signature*

Tan, Michael

Name (Last, First, MI)

125 Broad Street, 18th Floor

Address

New York

City

NY

State

10004

Zip Code

(347) 714-0740

Telephone Number

mtan@aclu.org

E-mail Address (if available)

* Each party filing the appeal must date and sign the Notice of Appeal and provide his or her mailing address and telephone number, EXCEPT that a signer of a pro se notice of appeal may sign for his or her spouse and minor children if they are parties to the case. Fed. R. App. P. 3(c)(2). Attach additional sheets of paper as necessary.

CERTIFICATE OF SERVICE

I hereby certify that on August 20, 2021, I electronically filed the foregoing joint appendix, consisting of one volume, with the Clerk of the Court for the United States Court of Appeals for the Second Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

/s/ Noor Zafar

Noor Zafar

Counsel for Plaintiff-Appellant