

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SOUTHERN POVERTY LAW CENTER

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY

and

UNITED STATES IMMIGRATION AND
CUSTOMS ENFORCEMENT

Defendants.

Civil Action No. 1:18-cv-01725

JURY DEMANDED

I.
PARTIES

4. Plaintiff SPLC is a non-profit organization dedicated to fighting hate and bigotry and to seeking justice for the most vulnerable members of our society. Through the use of public education, litigation, and other forms of advocacy, SPLC works toward a vision of equal justice and equal opportunity. SPLC has a longstanding commitment to defending the rights of immigrants, and it provides free legal representation to immigrants who have suffered violations of their civil rights. SPLC submitted the Request that is the subject of this action and is a “person” within the meaning of 5 U.S.C. § 551(2).

5.

9. Venue is proper in this District pursuant to 5 U.S.C. § 552(a)(4)(B), which provides for the hearing of FOIA cases in, among other proper venues, the district in which responsive records may be found, and in the District of Columbia.

10. Injunctive relief is proper under 28 U.S.C. § 2202 and 5 U.S.C. § 552(a)(4)(B).

III.

IV.
FACTUAL BACKGROUND

15. On or about January 17, 2018, ICE issued a press release announcing a “new enforcement partnership” with 17 Florida sheriffs. According to the ICE press release, the 17 counties participating in the partnership would enter into “Basic Ordering Agreements” with ICE, under which the counties would hold individuals who have been arrested and who are suspected of being deportable for a 48-hour period and be reimbursed by ICE.

16. Federal courts across the country have concluded that local enforcement of immigration detainers—requests made by ICE that law enforcement authorities hold individuals under arrest who would otherwise be eligible for release—is unconstitutional. ICE and Florida sheriffs have claimed that this new partnership protects local law enforcement from incurring liability for constitutional violations. However, without more information, it is difficult for SPLC (and other educational and advocacy organizations) to determine whether these Basic Ordering Agreements comply with the Fourth Amendment’s protection against being held without probable cause.

V.
THE FOIA REQUEST

17. On January 23, 2018, SPLC submitted the FOIA Request to ICE. The Request,

hold detainees of Immigration and Customs Enforcement (ICE) and aliens arrested on local criminal charges under the authority of the state of Florida.

- Any and all documents, including memoranda, policies, and correspondence referencing Basic Ordering Agreements;
- Any and all documents, including memoranda, policies, correspondence, and meeting notes referencing the use of Basic Ordering Agreements for detention of ICE detainees and aliens arrested on local criminal charges; and
- Any and all agreements, contracts, or memoranda of understanding, budgets and/or invoices with ICE regarding payment for holding ICE detainees and aliens arrested on local criminal charges that exist within the state of Florida.

Ex. 1. at 1. The Request was confined to the period of July 2017 to the present day.

19. SPLC requested a waiver of all fees for the Request because disclosure of the requested information was in the public interest and not in SPLC's commercial interest. Ex. 1 at 1-2. See 5 U.S.C. § 552(a)(4)(A). Numerous news accounts reflect the strong and sustained public interest in the records the SPLC seeks. The records sought in the Request will significantly contribute to public understanding of the operations or activities of the government. See id. § 552(a)(4)(A)(iii).

20. By email dated March 6, 2018 (the "ICE Email"), ICE acknowledged that it had received the Request on February 2, 2018. This email is attached hereto as Exhibit 2. The ICE

23. By email dated June 29, 2018, counsel for SPLC again contacted the FOIA Public Liaison for ICE, attached the June 11, 2018 Letter and requested that the parties schedule a call to discuss the Request (the "June 29, 2018 Email").

24. As of the filing of this Complaint, ICE has not responded to SPLC's June 11, 2018 Letter or June 29, 2018 Email. SPLC has received no further correspondence from ICE or DHS regarding the status of the Request.

25. As of the filing of this Complaint, ICE has not produced any documents or records responsive to the Request.

26. As of the filing of this Complaint, searching for the Request's tracking number (ICE-2018-17869) on the "FOIAOnline" website¹ yields no search results.

27. Based on the foregoing, ICE has constructively denied the Request.

VI. CAUSES OF ACTION

28. SPLC re-alleges and incorporates by reference all the foregoing paragraphs in this Complaint as though fully set forth herein.

29. Defendants have violated FOIA, 5 U.S.C. § 552(a)(3) by failing to promptly release agency records in response to SPLC's Request.

30. Defendants have violated FOIA, 5 U.S.C. § 552(a)(3)(D), by failing to make reasonable efforts to search for records responsive to SPLC's Request.

31. Defendants have violated FOIA, 5 U.S.C. § 552(a)(6) by failing to timely respond to SPLC's Request.

32. Because Defendants have failed to comply with the 60-day time-limit provision, SPLC is deemed to have exhausted its administrative remedies under 5 U.S.C. § 552(a)(6)(C)(i).

¹ <https://www.foiaonline.gov/foiaonline/action/public/home>.

Respectfully submitted,

Dated: July 24, 2018

By: /s/ Grayson D. Stratton

Grayson D. Stratton
(D.C. Bar No. 976910)
Brett D. Solberg
(Application for admission pro hac vice
forthcoming)
Betsey Boutelle
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ATTORNEYS FOR PLAINTIFF
SOUTHERN POVERTY LAW CENTER

EXHIBIT 1



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Shalini Arwal's center.or

EXHIBIT 2

From: [Shalini Agarwal](mailto:Shalini.Agarwal@dhs.gov)
To: [Viviana Bonilla Lopez](mailto:Viviana.Bonilla.Lopez@dhs.gov)
Subject: FW: ICE FOIA Request 2018-ICFO-17869
Date: Tuesday, April 10, 2018 3:22:40 PM

From: ice-foia@dhs.gov [mailto:ice-foia@dhs.gov]
Sent: Friday, February 2, 2018 11:15 AM
To: Shalini Agarwal
Subject: ICE FOIA Request 2018-ICFO-17869

February 02, 2018

SHALINI AGARWAL
SOUTHERN POVARTY LAW CENTER
4770 BISCAYNE BLVD
STE 760
MIAMI, FL 33137

RE: ICE FOIA Case Number 2018-ICFO-17869

Dear Ms. AGARWAL:

This acknowledges receipt of your Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), dated January 23, 2018, and to your request for a waiver of all assessable FOIA fees. Your request was received in this office on February 02, 2018. Specifically, you requested all records pertaining to BASIC ORDERING AGREEMENTS (see request for specific details).

Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Per Section 5.5(a) of the DHS FOIA regulations, 6 C.F.R. Part 5, ICE processes FOIA requests according to their order of receipt. Although ICE's goal is to respond within 20 business days of receipt of your request, the FOIA does permit a 10-day extension of this time period. As your request seeks numerous documents that will necessitate a thorough and wide-ranging search, ICE will invoke a 10-day extension for your request, as allowed by Title 5 U.S.C. § 552(a)(6)(B). If you care to narrow the scope of your request, please contact our office. We will make every effort to comply with your request in a timely manner.

ICE evaluates fee waiver requests under the legal standard set forth above and the fee waiver policy guidance issued by the Department of Justice on April 2, 1987, as incorporated into the Department of Homeland Security's Freedom of Information Act regulations [\[1\]](#). These regulations set forth six factors to examine in determining whether the applicable legal standard for the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requestor or a narrow segment of interested persons;

- (4) Whether the contribution to public understanding of government operations or activities will be "significant";
- (5) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and
- (6) Whether the magnitude of any identified commercial interest to the requestor is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requestor.

Upon review of your request and a careful consideration of the factors listed above, I have determined to grant your request

for a fee waiver.

ICE has queried the appropriate program offices within ICE for responsive records. If any responsive records are located, they will be reviewed for determination of releasability. Please be assured that one of the processors in our office will respond to your request as expeditiously as possible. We appreciate your patience as we proceed with your request.

Your request has been assigned reference number . Please refer to this identifier in any future correspondence. To check the status of an ICE FOIA/PA request, please visit <http://www.dhs.gov/foia-status>. Please note that to check the status of a request, you must enter the 2018-ICFO-XXXXX tracking number. If you need any further assistance or would like to discuss any aspect of your request, please contact the FOIA office. You may send an e-mail to ice-foia@ice.dhs.gov, call toll free (866) 633-1182, or you may contact our FOIA Public Liaison, Fernando Pineiro, in the same manner. Additionally, you have a right to right to seek dispute resolution services from the Office of Government



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& $\frac{1}{1-u}$ වලින් x ඉවත් කර ගන්න. $(1-x)^{-1} = 1 + x + x^2 + \dots$

, $\frac{1}{1-u^2} = 1 + u^2 + u^4 + \dots$ වලින් x ඉවත් කර ගන්න. $\frac{1}{1-u^2} = 1 + u^2 + u^4 + \dots$

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එවිට $u = 1 + u^2 + u^3 + \dots$
