

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

<hr/>)	
PROJECT SOUTH)	
And CENTER FOR CONSTITUTIONAL)	
RIGHTS)	
)	
<i>Plaintiffs,</i>)	
)	
v.)	Case No. 21-cv-8440
)	
U. S. IMMIGRATION AND)	
CUSTOMS ENFORCEMENT; UNITED)	
STATES DEPARTMENT OF HOMELAND)	
SECURITY; UNITED STATES CITIZENSHIP)	
AND IMMIGRATION SERVICES; UNITED STATES)	
DEPARTMENT OF JUSTICE EXECUTIVE)	
OFFICE FOR IMMIGRATION REVIEW; and)	
UNITES STATE DEPARTMENT OF)	
STATE)	
)	
)	
<i>Defendants.</i>)	
)	
<hr/>)	

DECLARATION OF FERNANDO PINEIRO

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

1. I am the FOIA Director of the U.S. Immigration and Customs Enforcement (“ICE”) Freedom of Information Act (“FOIA”) Office. I have held this position since August 14, 2022, and I am the ICE official immediately responsible for supervising ICE responses to requests for records under the Freedom of Information Act, 5 U.S.C § 552 (the FOIA), the Privacy Act, 5 U.S.C. § 552a (the Privacy Act), and other applicable records access statutes and regulations. Prior to this position, I was the Deputy FOIA Officer of the ICE FOIA Office from December 29, 2013, to August 13, 2022, and prior to that I was the FOIA Officer for three years at the Office for Civil

Rights and Civil Liberties (“CRCL”) at the U.S. Department of Homeland Security (“DHS”). The ICE FOIA office mailing address is 500 12th Street, S.W., STOP 5009, Washington, D.C. 20536-5009.

2. As the FOIA Director my official duties and responsibilities include the general management, oversight, and supervision of the ICE FOIA Office regarding the processing of FOIA, 5 U.S.C. § 552, and Privacy Act, 5 U.S.C. § 552a, requests received at ICE. In connection with my official duties and responsibilities, I am familiar with ICE’s procedures for responding to requests for information pursuant to the FOIA and the Privacy Act.

3. 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.

4. This declaration provides a description of how ICE received Plaintiffs’ two FOIA requests, how ICE searched for and processed records in response to Plaintiffs’ FOIA requests, and how ICE disclosed records located in response to Plaintiffs’ FOIA requests.

5. In addition, in accordance with the requirements set forth in *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), this declaration explains the basis for withholding portions of the requested information pursuant to FOIA Exemptions (b)(3), (b)(5), (b)(6), (b)(7)(C), and (b)(7)(E), 5 U.S.C. §§ 552(b)(5), (b)(6), (b)(7)(C), and (b)(7)(E). **ICE’s *Vaughn* Index is attached hereto as Exhibit A.**

I. PROCEDURAL HISTORY OF THE PLAINTIFFS’ FOIA REQUESTS AND THE INSTANT LITIGATION

6. This suit stems from two separate FOIA requests Plaintiffs sent to ICE, as well as FOIA requests sent to the Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS), U.S. Department of Justice Executive Office for Immigration Review (EOIR) and the U.S. Department of State (DOS). **A true and complete copy of Plaintiffs’ FOIA Requests to ICE are attached hereto as Exhibit B.**

7. The first FOIA request to ICE was filed on April 26, 2021, and included 14 subparts seeking data regarding the demographic information of persons on deportation flights to Cameroon between August 2020 and January 20, 2021. This request was referred to as the “data request.” The data request was never assigned a tracking number.

8. The second FOIA request to ICE was also filed on April 26, 2021 and included seven (7) subparts seeking records relating to email and other communications regarding Cameroonian migrants. This request was acknowledged by the ICE FOIA Office on September 23, 2021, and assigned tracking number 2021-ICFO-39989. This request was referred to as the “communications request.”

9. The ICE FOIA Office tasked the Office of the Principal Legal Advisor (OPLA) and Enforcement and Removal Operations (ERO) on the “communications request.” No offices were tasked to search for records responsive to the “data request.”

10. On October 13, 2021, not having heard from ICE, Plaintiffs filed the Complaint.

II. ICE’S STANDARD PROCEDURE FOR INITIATING SEARCHES IN RESPONSE TO FOIA REQUESTS

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

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

13. ICE records are maintained by leadership offices and/or within ICE directorates, including but not limited to, the Office of Public Affairs, the Office of Enforcement and Removal Operations (ERO), the Office of Professional Responsibility (OPR), the ICE FOIA Office, the

Office of the Director, the Office of the Principal Legal Advisor (OPLA), and the Chief Financial Officer (CFO). The program offices are typically staffed with a designated point of contact (POC) who is the primary person responsible for communications between that program office and the ICE FOIA Office. Each POC is a person with detailed knowledge about the operations of his/her respective program office.

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

15. ICE employees maintain records in several ways. ICE program offices use various systems to maintain records, such as investigative files, records regarding the operation of ICE programs, and administrative records. ICE employees may store electronic records on their individual computer hard drives, their program office's shared drive (if the office uses one), DVDs, CDs, and/or USB storage devices. The determination of whether or not these electronic locations must be searched in response to a particular FOIA tasking, as well as how to conduct any necessary searches, is necessarily based on the manner in which the employee maintains his/her files.

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

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

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

III. DESCRIPTION OF PROGRAM OFFICES TASKED WITH SEARCHING FOR RECORDS IN RESPONSE TO PLAINTIFFS' FOIA REQUESTS

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

20. After reviewing the FOIA requests, the ICE FOIA Office determined that because of the subject matter of Plaintiffs' FOIA Requests, ERO, the Office of Regulatory Affairs and Policy (ORAP), Homeland Security Investigations (HSI) and the Office of Public Affairs (OPA) were the program offices likely to have responsive records (if such records existed). Therefore, based on their subject matter expertise and knowledge of the agency record systems, the ICE FOIA Office instructed these program offices to conduct a comprehensive search for records and to

provide all potentially responsive records located during that search to the ICE FOIA Office for review and processing. Accordingly, and based on the information described below, all locations likely to contain records responsive to Plaintiffs' FOIA Requests (to the extent that they exist within ICE's custody) were searched.

21. ERO is responsible for arrest and removal of aliens, managing ICE detention operations and providing medical and mental health care to persons in ICE custody. ORAP collaborates with internal and external stakeholders to identify, develop and effectively communicate ICE's strategic and organizational policies; regulations and regulatory processes; and operational requirements. HSI is the principal investigative arm of DHS, responsible for investigating transnational crime and threats, specifically those criminal organizations that exploit the global infrastructure through which international trade, travel and finance move. OPA is the agency's public face, a team of communications professionals dedicated to telling the story of ICE and fostering an understanding of the agency's mission through outreach to employees, the media and the general public.

ERO's Search in Response to Plaintiffs' FOIA Requests

22. ERO oversees programs and conducts operations to identify and apprehend removable aliens, to detain these individuals when necessary, and to remove illegal aliens from the United States. ERO prioritizes the apprehension, arrest, and removal of convicted criminals, those who pose a threat to national security, fugitives, recent border entrants, and aliens who thwart immigration controls. ERO manages all logistical aspects of the removal process, including domestic transportation, detention, alternatives to detention programs, bond management, and supervised release.

23. When ERO receives a FOIA tasking from the ICE FOIA Office, the request is submitted to ERO's Information Disclosure Unit (IDU). A POC in IDU reviews the substance of the request and based on the subject matter expertise and knowledge of the program offices' activities within ERO, IDU determines whether it can search for records, or whether it is necessary to forward the FOIA request to specific individuals and component offices to conduct searches of

their files systems which in their judgement, based on their knowledge of the manner in which they routinely keep records, would be reasonably likely to have responsive records, if any.

24. Upon receipt of the “data request” in this case and based on the nature of the Plaintiffs’ FOIA Requests, the IDU POC determined that any responsive records would be maintained within ERO’s Enforcement Division (ENF), Removals Division (REM), Custody Management Division (CMD), Law Enforcement System Analysis Division (LESA), ERO Field Operations Division (FOPS) and the Non-Detained Management Division (NDMD).

25. Upon receipt of the “data request” from IDU, a Management and Program Analyst with ERO’s Executive Information Unit, based on her knowledge and experience handling ERO policy and ERO communications taskings, conducted a search of the ERO Policy Database (EPL) system of records, which contains policies that apply to ERO. The Management and Program Analyst used search terms “Cameroonian,” and “Citizens for Responsibility and Ethics in Washington.” These terms were searched since the Plaintiffs specifically requested records disclosed as a result of responding to the FOIA request filed by Citizens for Responsibility and Ethics in Washington (CREW), as well as FOIA logs pertaining to the removal of Cameroonians between 08/01/2020-1/19/2021. No responsive records were found.

26. A second Management and Program Analyst with ERO’s Juvenile and Family Residential Management Unit conducted a search of her computer share drive and emails using the terms “Cameroon,” “Cameroonian,” and “Cameroon flights.” No responsive records were found.

27. ERO’s Enforcement Division was tasked because it manages the enforcement initiatives and components through which ERO identifies and arrests noncitizens subject to removal from the U.S.

28. ERO’s Enforcement Division did not have records responsive to the Plaintiffs’ “data request” and deferred to ERO’s Removals division.

29. ERO’s Removals division was tasked because it coordinates, manages, and facilitates efforts to successfully remove noncitizens from the United States.

30. Upon receipt of the “data request” from IDU, a Unit Chief¹ with ICE Air Operations Removals, which is a subcomponent of ERO’s Removal Division, based on their knowledge of the requested information and their subject matter expertise, searched the shared drive on their computer using the special high risk charter flights (SHRC) Schedule containing a list of flights for the time period requested. This individual also searched his outlook account by using the search function with the following: mission numbers found on the SHRC schedule to find flight reports and final manifests. The flight numbers and the date of the flights were used in the search. The flight manifests for the two removal flights were found and provided to the ICE FOIA Office for review and processing.

31. In addition, the Deputy Assistant Director of ERO Removals was asked to search for ICE policies, memos, directives, or guidance relating to the removal of individuals into Areas of Conflict; ICE policies, memos, directives, or guidance relating to agency official communication with countries receiving removed persons; and, any and all ICE policies on retention of identity documents during the process of removal in response to the “data request.” Based on his knowledge of the requested information and his subject matter expertise, this individual conducted a search of his emails using the search terms “Cameroon,” “conflict,” “policy,” “charter,” and “death flights.” A second Deputy Assistant Director of ERO Removals, based on his knowledge of the requested information and his subject matter expertise, conducted a search of his emails using the terms “areas of conflict”; “retention of identity documents”; “Cameroon” and “retention of identity documents”; and “Cameroon” and “areas of conflict.” No responsive records were found.

32. In response to Plaintiffs’ “communications request,” one of the Assistant Attaches for Removals during the time period requested by the Plaintiffs conducted a search of his emails using the term “Cameroon.” Potentially responsive records were found and sent to the ICE FOIA Office for review and processing.

33. Three Unit Chiefs for Removals were asked to conduct searches in response to Plaintiffs’ requests for ICE policies, memos, directives, or guidance relating to the removal of individuals into Areas of Conflict; ICE policies, memos, directives, or guidance relating to agency

¹ Unit Chiefs are responsible for managing all individuals in their unit, including training, work assignments and unit operations.

official communication with countries receiving removed persons; and any and all ICE policies on retention of identity documents during the process of removal. The first Unit Chief for Removals conducted a search of his computer shared drive and his emails using the terms “areas of conflict” and “suspension of removal.” A second Unit Chief for Removals conducted a search of his email using the terms “Cameroon” and “areas of conflict.” A third Unit Chief for Removals conducted a search of his emails using the search terms “Cameroon,” “guidance,” “guidance communication,” and “conflict.” No responsive records were found.

34. In response to Plaintiffs’ “communication request” seeking communications between ICE officials pertaining to the removal of Cameroonians, the Unit Chief for ERO’s Removal and International Operations Division for Africa, based on his knowledge of the requested information and his subject matter expertise, searched for the ICE Attaché for Cameroon during the time period in question and it was determined that Francis Kemp was one of the ICE Attaches for Cameroon during the time period requested by the Plaintiffs. The Unit Chief searched the shared drive on his computer, as well as his outlook folder using the search terms “Kemp,” “Francis Kemp,” and “Cameroon.” Additionally, Mr. Kemp manually searched his emails for anything pertaining to removal of Cameroonians. In total, 2,249 pages of potentially responsive records from Mr. Kemp’s emails were sent to the ICE FOIA Office for review and processing.

35. ERO’s Custody Management Division (CMD) was tasked because CMD provides policy and oversight for and manages ICE’s detention operations to provide for the safety, security, and care of aliens in ERO custody. CMD confirmed that based on the subject of the FOIA Requests and their knowledge of the Office’s Mission, CMD would not have responsive records related to the removal of Cameroonians between 8/1/2020 – 1/19/2022 and they deferred to the Removals Division.

36. ERO’s LESA Division was tasked because they are responsible for helping inform the development of ERO strategies and supporting continuous enhancement of ERO business processes by using data collection, analysis, and technology. A statistician at LESA conducted a search of the ICE Integrated Decision Support System (IIDS). The IIDS system enables and enhances comprehensive reporting about criminal aliens throughout the alien identification,

apprehension, and removal process. LESA provided responsive records that were then sent to the ICE FOIA Office for review and processing.

37. The Field Operations Unit was tasked because they provide guidance to and coordination among the 25 ERO Field Offices throughout the United States. FOPS oversees, directs, and coordinates all ERO Field Operations activities throughout the nation's field offices and sub-offices in an effort to enhance national security and public safety. FOPS noted that and based on their subject matter expertise and familiarity with the office's mission, that they did not maintain information that was sought in the "data request."

38. The Non-Detained Management Division was tasked because they provide guidance, coordination and operational direction to ERO's 25 field offices regarding managing ICE's non-detained docket, including the alternatives to detention (ATD) program, bond management, and juvenile and family residential matters. NDMD confirmed that they did not maintain information that was responsive to the Plaintiffs' requests and, as such, no search was performed.

39. In total, 2,393 pages of potentially responsive records and three (3) spreadsheets were found by ERO and sent to the ICE FOIA Office for review and processing.

ORAP's Search in Response to Plaintiffs' FOIA Requests

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

41. Upon receipt of the "data request" from the ICE FOIA Office, specifically asking ORAP to search for ICE policies on the distribution or sharing of identity documents of removed individuals with Cameroon, as well as ICE policies for obtaining signatures from detainees to authorize removal and obtaining from receiving countries confirmation of a removed person's arrival, a Management Program Analyst from ORAP, based on their knowledge of the requested

information and their subject matter expertise, searched the ICE Intranet and the ICE Policy Manual using the terms “areas of conflict,” “identity documents,” “Cameroonian deportations,” and “retention of documents.” This individual also searched the ORAP shared drive on their computer using the same search terms.

42. In total, 121 pages of potentially responsive documents were found and sent to the ICE FOIA Office for review and processing.

HSI’s Search in Response to Plaintiffs’ FOIA Requests

43. ICE HSI is responsible for investigating a wide range of domestic and international activities arising from the illegal movement of people and goods into, within and out of the United States. HSI uses its legal authority to investigate criminal activities such as immigration crime; child exploitation; human rights violations and human smuggling; smuggling of narcotics, weapons and other types of contraband; and financial crimes, cybercrime and export enforcement issues. In addition to ICE criminal investigations, HSI oversees the agency’s international affairs operations and law enforcement intelligence functions.

44. Upon receipt of the initial FOIA “data request” from the ICE FOIA Office, the Section Chief of HSI, based on their knowledge of the requested information and their subject matter expertise, reviewed the request and noted that HSI does not conduct removal operations; therefore, they would not have records pertaining to the removal of Cameroonians. The Section Chief tasked the request to the Counter Threat Development Unit (CTLD), who determined that ERO would have the data requested. The request was also sent to the Cyber and Operational Technology Unit (COT), the group responsible for FALCON, since Plaintiffs specifically requested any removal records contained in the FALCON system. The COT unit informed the Section Chief that the records related to Cameroonian removals are not FALCON² generated records and that ERO would likely have the information requested.

² The FALCON system is a decommissioned system that was used to enable ICE law enforcement and homeland security personnel to store, search, analyze, and visualize volumes of existing information in support of ICE’s mission to enforce and investigate violations of U.S. criminal, civil, and administrative laws.

OPA's Search in Response to Plaintiffs' FOIA Requests

45. OPA is the agency's public face and conducts outreach to employees, the media and the general public.

46. Upon receipt of the initial FOIA request from the ICE FOIA Office, a Public Affairs Specialist at OPA conducted a search of their shared drive database using the terms "Cameroonian," "Africa removals," "African removals," and "Cameroon." They also conducted a search of their sent and received emails using the terms "Cameroon," "Cameroonian," "Africa" and "African." In total, 168 pages of potentially responsive records were found and sent to the ICE FOIA Office for review and processing.

47. As seen in the "communications request," Plaintiffs specifically requested "any and all records of communications between ICE and Bryan Cox, then-ICE Press Secretary, regarding Cameroon, Cameroonians, or the removal of Cameroonians to Cameroon." As such, the archived emails of former Press Secretary Bryan Cox were obtained and searched using a list of search terms and connectors that were agreed upon with the Plaintiffs. These terms included the following:

- (Cameroon w/5 remove) OR (Cameroon w/5 removal) OR (Cameroonian w/5 remove) OR (Cameroonian w/5 removal)
- (Cameroon w/5 repatriation) OR (Cameroonian w/5 repatriation) OR (Cameroon w/5 repatriate) OR (Cameroonian w/5 repatriate) OR (Cameroon w/5 repatriating) OR (Cameroonian w/5 repatriating)
- (Cameroon w/5 manifest) OR (Cameroonian w/5 manifest)
- (Cameroon w/5 Omni) OR (Cameroonian w/5 Omni)
- (Cameroon w/5 illegal) OR (Cameroon w/5 illegals) OR (Cameroonian w/5 illegal) OR (Cameroonian w/5 illegals)
- (Cameroon w/5 alien) OR (Cameroon w/5 aliens) OR (Cameroonian w/5 alien) OR (Cameroonian w/5 aliens)
- "N225AX" OR "N207XA" OR "ET 501" OR "ET 905"

48. In total, 1,827 pages of potentially responsive records were found in Mr. Cox's emails and sent to the ICE FOIA Office for review and processing.

IV. ORGANIZATION OF THE *VAUGHN* INDEX

49. Pursuant to the requirements set forth in *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), a *Vaughn* Index accompanies this declaration; the *Vaughn* Index provides a description of each redaction and the corresponding FOIA exemption being applied.

50. The *Vaughn* index is in a table format. The first column contains the bates number prefix for the records produced. The second column contains the bates stamp suffix (page numbers) of the responsive records. The third column describes the category of withholdings taken on the documents (full or partial). The fourth column describes the redaction codes, which are citations to the sections of the FOIA Exemptions. The fifth column describes the underlying records and provides justifications for the asserted exemptions.

51. The *Vaughn* index encompasses the responsive records produced by the program offices. ICE made ten (10) productions, in total of 1,761 pages and 3 Excel spreadsheets. The records contained in these productions were subject to withholdings pursuant to FOIA Exemptions (b)(3), (b)(5), (b)(6), (b)(7)(C) and (b)(7)(E).

52. The 1,761 pages of records and three (3) spreadsheets were released to Plaintiffs on a rolling basis. A completed description of these documents, and the bases for the withholdings of information in them, is detailed in ICE's *Vaughn* index. Generally, they include documents pertaining to internal emails regarding removal flights, media requests for information pertaining to Cameroonian detainees and removal flights and the proposed responses to same, and spreadsheets including personally identifiable information of detainees.

V. DESCRIPTION OF FOIA WITHHOLDINGS APPLIED TO RECORDS PROVIDED TO PLAINTIFFS

FOIA Exemption 5 U.S.C. § 552(b)(3)

53. FOIA Exemption 3 protects information specifically exempted from disclosure by another statute, if the statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) established particular criteria for withholding or refers to particular types of matters to be withheld. Applicants for, and recipients of, immigration

relief under the Violence Against Women Act of 1994 (VAWA) and the Victims of Trafficking and Violence Prevention Act of 2000 (T and U nonimmigrant status for victims of trafficking and other serious crimes) are entitled to special privacy and confidentiality protections. The governing statute, codified at 8 U.S.C. § 1367(a)(2), prohibits the unauthorized disclosure of any information about applicants for, and beneficiaries of, VAWA, T-, and U-related benefits to anyone other than an officer or employee of the Department of Homeland Security (DHS), the Department of Justice (DOJ), or the Department of State (DOS). DHS has implemented this requirement through 8 C.F.R. § 208.6, which, in order to ensure compliance with the statutory requirements, prohibits disclosure of “[i]nformation contained in or pertaining to any application for refugee admission, asylum, withholding of removal under section 241(b)(3) of the Immigration and Nationality Act, or protection under regulations issued pursuant to the Convention Against Torture’s implementing legislation, records pertaining to any credible fear determination conducted pursuant to § 208.30, and records pertaining to any reasonable fear determination conducted pursuant to § 208.31,” except under circumstances not applicable here..

54. ICE applied FOIA Exemption 3 to protect sensitive information pertaining to various detainees.

FOIA Exemption 5 U.S.C. § 552(b)(5)

55. Exemption 5 of the FOIA allows the withholding of inter- or intra-agency records that are normally privileged in the civil discovery context. Pursuant to Exemption (b)(5), the two most frequently invoked privileges are the deliberative process privilege and the attorney-client privilege. ICE applied FOIA Exemption (b)(5) to protect from disclosure information subject to the deliberative process privilege.

56. ICE withheld pre-decisional, deliberative internal discussions, deliberations, and recommendations between ERO and OPA employees regarding how to respond to media inquiries and Congressional inquiries pertaining to Cameroonian detainees and information pertaining to the scheduling of removal flights. The final responses to the media were released to Plaintiffs but the internal, pre-decisional and deliberative discussions prior to finalizing the media responses were withheld.

57. The contents of these discussions and deliberations are pre-decisional in nature because they were prepared by employees within OPA and ERO in order to assist a OPA in making a final decision on how to respond to the media and to other third-party inquiries.

58. The deliberative process privilege protects the integrity of the deliberative or decision-making processes within the agency by exempting from mandatory disclosure opinions, conclusions, and recommendations included within inter-agency or intra-agency memoranda, letters, or emails. Many of the documents withheld contain questions within the documents that are directed to government personnel. They contain recommendations for how to proceed with responding to the media and to Congress.

59. The deliberations that are exhibited on the records are between ICE employees and these employees must be able to discuss proposed agency action freely. Release of the draft material would serve to profoundly chill the decision-making process across ICE because it would discourage the expression of candid opinions and inhibit the free and frank exchange of information and ideas between agency personnel, and also ensure personnel would be less inclined to produce and circulate materials for the consideration and comment of their peers. Additionally, since these documents contain proposals for agency action, release of these documents may create confusion regarding what positions have actually been adopted by the agency. Should internal deliberations between ICE employees and officials be released to the public, this could cause a great likelihood of harassment and annoyance by members of the public. This could hinder ICE employees from conducting their official duties and could disrupt their private lives; could place them in danger as targets of law enforcement investigations and could minimize the ability to effectively conduct future investigations.

60. In each case, Plaintiffs have been provided with the final response and as such, obtaining the deliberative materials is unnecessary.

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

61. 5 U.S.C. § 552(b)(7) establishes a threshold requirement that, to withhold information on the basis of any of its subparts, the records or information must be compiled for law enforcement purposes.

62. The information for which the ICE FOIA Office asserted Exemption (b)(7) satisfies this threshold requirement. Pursuant to the Immigration and Nationality Act, codified under Title 8 of the U.S. Code, the Secretary of Homeland Security is charged with the administration and enforcement of laws relating to the immigration and naturalization of aliens, subject to certain exceptions. See 8 U.S.C. § 1103. ICE is the largest investigative arm of DHS and is responsible for identifying and eliminating vulnerabilities within the nation's borders. ICE is tasked with preventing any activities that threaten national security and public safety by investigating the people, money, and materials that support illegal enterprises. Created in 2003 through a merger of the investigative and interior enforcement elements of the U.S. Customs Service and the Immigration and Naturalization Service, ICE now has more than 20,000 employees and offices in all 50 states and 48 foreign countries, and is responsible for enforcing the nation's immigration laws, and identifying and eliminating vulnerabilities within the nation's borders.

63. The records and information at issue in this matter pertain to ICE's obligation to accurately portray the work it is doing to further its mission and to allow its employees to conduct work in furtherance of the ICE mission. The records and information at issue in this matter pertain to ICE's obligation to enforce the immigration laws of the United States by investigating non-U.S. individuals who may be present in the United States illegally, including records of interviews, arrests, bookings, detentions, removals, other related investigations, and investigations of allegations of misconduct. In keeping records related to detainees, ICE is acting in the interest of its employees who are working to ensure that these policies are enacted, that they are fair and that they provide the greatest level of safety to the public and to ICE employees. The records and information located in response to Plaintiffs' FOIA requests were collected and compiled by ICE law enforcement officers advancing law enforcement missions. Therefore, the records and information located in response to the FOIA requests were compiled for law enforcement purposes and meet the threshold requirement of FOIA Exemption 7.

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

64. FOIA Exemption 6 allows the withholding of information found in "personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6) ("Exemption 6"). Records that apply to or

describe a particular individual, including investigative records, qualify as “personnel,” “medical” or “similar files” under Exemption 6. When applying this exemption to responsive documentation, the agency must balance the individual’s personal privacy interest against the public need for the information.

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

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

67. Here, ICE applied Exemption 6 in conjunction with Exemption 7(C) to protect from disclosure the names, contact information, including domain names and email addresses, office numbers, initials, immigration status, signatures, case history, and other personally identifiable information (“PII”) of third-party individuals (detainees) and ICE employees.

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

69. Additionally, ICE employees have received an increase in threats, intimidation and personal attacks in recent years due to the nature of their work. Publicly disclosing employees’ PII could subject ICE employees to harassment or harm. Additionally, the release of the email addresses, which are not publicized, could expose employees to an increase of cyber threats.

70. Furthermore, third party individuals have a recognized privacy interest in not being publicly associated with law enforcement investigations through the release of records compiled for law enforcement purposes. The identities of persons named in law enforcement files (whether or not the named individual is the target of investigations or law enforcement actions) are properly withheld under Exemptions 6 and 7(C) in recognition of the stigmatizing connotation carried by

the mere mention of individuals in law enforcement files. The individuals' privacy interest in the information contained in the record outweighs any minimal public interest in the disclosure of the information. Plaintiffs have not articulated a sufficient public interest or public need to justify release of this information. The disclosure of this PII serves no public benefit and would not assist the public in understanding how ICE is carrying out its statutory responsibilities. Additionally, the third parties identified in the records have not consented to the disclosure of their PII.

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

72. Having determined that the individuals identified in the responsive records have a cognizable privacy interest in not having their information released, ICE FOIA then balanced the interest in safeguarding the individuals' privacy from unnecessary public scrutiny against the public's interest in understanding how ICE performs its statutory duties. Exemptions 6 and 7(C) were applied to prevent disclosure of third-party individuals' identities and PII as well as the identities of ICE personnel. In each instance where Exemptions 6 and 7(C) were applied, the redaction was limited to the name of the individual and all other personally identifiable information, which if released, would not shed any further light as to the operations or activities of ICE. In some redactions, the information surrounding the redactions was released and the limited extent of the redaction is readily apparent from the context of the records.

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

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

74. FOIA Exemption 7(E) affords protection to law enforcement information that "would disclose techniques and procedures for law enforcement investigations or prosecutions, or

would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.”

75. Here ICE has applied Exemption 7(E) to law enforcement sensitive information, specifically intelligence reports and disclosure of methods that ICE uses to conduct removal operations. Exemption (b)(7)(E) was also applied to discussions between ICE employees stationed at post in Africa and ICE Air Operations employees pertaining to a removals charter flight scheduled to land in Cameroon and the DRC. The discussions include obtaining approval from abroad for the number of detainees to transport, itinerary options, including detailed locations that were options for landing, and options for the exact time of departure and landing.

76. This type of information was compiled for law enforcement purposes as it is in furtherance of ICE’s obligation to enforce the immigration laws of the United States by conducting removal operations and ensuring that these removal operations are not hindered by actions of bad actors who may obtain access to confidential law enforcement sensitive information and intelligence.

77. Disclosure of this law enforcement sensitive information could assist third parties in circumventing the law. The law enforcement sensitive information withheld in this document is detailed information pertaining to the charter flight’s itinerary. Much of the information pertaining to charter flight itineraries, scheduling of locations, and other details are repeated with future flights and, as such, disclosure of this information could cause harm to future operations if disclosed. Disclosure of the methods that ICE uses to conduct removal operations could cause interference with removal operations and bad actors could use this information to evade removal. Additionally, should individuals obtain access to flight itinerary information, they could use this information to adversely affect the scheduled flights, cause delays or engage activity that would sacrifice the safety of both ICE employees and detainees on the flight.

78. Disclosure of the law enforcement sensitive information withheld in the email communications, specifically, detailed information pertaining to the removal flight to Cameroon and DRC, would reveal methods that ICE uses to conduct removal operations, could enable an

individual to navigate, alter, and/or manipulate the flights and/or cause disruption to the flight. It could also allow individuals to conduct surveillance activities.

79. The intelligence reports that were withheld contain detailed information on how the intelligence data was collected and techniques and procedures that were used in collecting such data, including various law enforcement databases and coordination with other intelligence communities. The reports include copies of documents obtained via covert measures from the individuals/groups who were identified as threats. ICE uses this report to assist them in combating counter surveillance operations. To allow this information to be disseminated to the public would irreparably harm ICE's ability to conduct intelligence gathering and to keep the nation safe. The gathering of intelligence is used to help determine courses of action to be taken. If the public were allowed access to this information, then bad actors could utilize this information to change the course of their activities and cause harm in other ways.

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

VI. SEGREGABILITY

81. 5 U.S.C. § 552(b) requires that “[a]ny reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt.”

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

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

I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge and belief.

Signed this 25th day of May 2023.

Fernando Pineiro, FOIA Officer
Freedom of Information Act Office
U.S. Department of Homeland Security
U.S. Immigration and Customs Enforcement
500 12th Street, S.W., Stop 5009
Washington, DC 20536-5009