

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

ORGANIZED COMMUNITIES AGAINST	)	
DEPORTATIONS, IMMIGRANT	)	
DEFENSE PROJECT, and CENTER FOR	)	
CONSTITUTIONAL RIGHTS,	)	
	)	
Plaintiffs,	)	No. 21 C 2519
	)	
v.	)	Judge Blakey
	)	
U.S. IMMIGRATION AND CUSTOMS	)	
ENFORCEMENT,	)	
	)	
Defendant.	)	

**DEFENDANT’S L.R. 56.1(b)(3) STATEMENT OF ADDITIONAL FACTS  
IN OPPOSITION TO PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT**

Defendant United States Immigration and Customs Enforcement, by Morris Pasqual, Acting United States Attorney for the Northern District of Illinois, submits the following statement of additional facts as to which there is no genuine issue pursuant to Local Rule 56.1(b)(3) of the United States District Court for the Northern District of Illinois.

The numbering begins at 48 to avoid confusion with defendant’s LR 56.1(a)(2) statement of facts (DSOF), which ended at number 47. *See* Dkt. 69.

48. On July 9, 2022, at 4:12 p.m., an ICE employee named Nicole Alberico circulated a draft news release regarding a planned citizens academy in Chicago. Pl. Ex. 5 at 6137A.

49. At 4:33 p.m., ICE Public Affairs Acting Deputy Press Secretary Carissa Cutrell responded with some edits to the draft. Pl. Ex. 5 at 6137A.

50. At 5:23 p.m., an ICE employee named Jenny Burke circulated some additional edits. Pl. Ex. 5 at 6136A-6137A.

51. The next day, at 8:31 a.m., Cutrell responded, writing that when the HSI version of the citizens academy was launched, “the field offices were adamant that they did not want an open call to the public for academy participants” and instead “relied on existing community relationships to invite individuals to participate in the inaugural academies.” Pl. Ex. 5 at 6136A.

52. At 10:49 a.m., an ICE employee responded, “Of course our goal is to have key stakeholders, especially at first. But we also do want to give members of the public (not representing any organizations) an opportunity down the road.” Pl. Ex. 5 at 6134A.

53. Later that day, Cutrell wrote, “I know you mentioned you had concerns moving forward with the news release. We can reassess the plan, if necessary.” Pl. Ex. 5 at 6131A.

54. Among the documents ICE produced in response to plaintiffs’ FOIA requests is a letter regarding a planned Chicago Citizens Academy, signed by Field Office Director Robert Guadian but not addressed to any particular recipient. Pl. Ex. 6.

55. On January 3, 2023, a management and program analyst at ICE who at the relevant time was special assistant to ERO’s Chicago field office’s director searched for records responsive to plaintiffs’ FOIA request by searching the office’s shared drive and emails using the search terms “Citizens Academy,” “Citizens,” and “Academy.” Def. Ex. B (Suppl. Pineiro Decl.) ¶ 5.

56. ICE’s Office of the Chief Financial Officer was not involved in the citizens academy program. Def. Ex. B (Suppl. Pineiro Decl.) ¶ 6.

57. The citizens academy program was an initiative under the purview of ICE’s Office of Public Affairs and Office of Public Engagement. Def. Ex. B (Suppl. Pineiro Decl.) ¶ 6.

58. The Office of the Chief Financial Officer is not reasonably likely to have records responsive to plaintiffs’ FOIA request. Def. Ex. B (Suppl. Pineiro Decl.) ¶ 6.

59. ICE's search tool is not case-sensitive: a search for a particular word with the first letter capitalized would return the same result as a search for the same word with the first letter in lower case. Def. Ex. B (Suppl. Pineiro Decl.) ¶ 7.

60. Many of the citizens academy participants had notable and unique job titles with prominent employers, and that information combined with the geographic area and calendar year would likely lead to the discovery of particular individuals' identities. Def. Ex. B (Suppl. Pineiro Decl.) ¶ 10.

61. ICE conducted background checks on each citizens academy participant before allowing them to participate. Def. Ex. B (Suppl. Pineiro Decl.) ¶ 11.

Respectfully submitted,

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# Exhibit B

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS

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ORGANIZED COMMUNITIES AGAINST	)	)
DEPORTATIONS, IMMIGRANT DEFENSE PROJECT,	)	)
And CENTER FOR CONSTITUTIONAL RIGHTS	)	)
	)	)
<i>Plaintiffs,</i>	)	)
	)	)
v.	)	Case No. 1:21-cv-02519
	)	)
U. S. IMMIGRATION AND	)	)
CUSTOMS ENFORCEMENT	)	)
	)	)
	)	)
<i>Defendant.</i>	)	)
	)	)
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**SUPPLEMENTAL DECLARATION OF FERNANDO PINEIRO  
IN SUPPORT OF THE UNITED STATES IMMIGRATION AND  
CUSTOMS ENFORCEMENT’S OPPOSITION TO PLAINTIFF’S  
MOTION FOR SUMMARY JUDGMENT**

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. The statements contained in this supplemental declaration are based upon my personal knowledge, my review of records 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. The purpose of this supplemental declaration is to provide ICE’s response to Plaintiffs’ claims raised in their Cross-Motion and Opposition to Defendant’s Motion for Summary Judgement. I incorporate by reference my previous declaration, which was filed on October 18, 2023. First, Plaintiffs claim that ICE failed to conduct an adequate search. Second, Plaintiffs allege for the that ICE improperly withheld information pursuant to FOIA Exemptions (b)(6) and (b)(7)(E).

## **I. DISPUTES REGARDING DATA PROVIDED BY ICE**

### **A. ERO CHICAGO FIELD OFFICE SEARCH**

5. Plaintiffs, in their Memorandum in Support of Cross-Motion for Summary Judgment and Opposition to Defendants’ Summary Judgment (Dkt. No. 76) allege ICE failed to search key subcomponents and custodians of ERO. As previously stated in ICE’s declaration, ERO performed a supplemental search on January 3, 2023. Pineiro Decl. at ¶¶27-29. The

supplemental search was performed by a management and program analyst who, during the relevant period, served as special assistant to the Chicago Field Office Director in ERO's Chicago field office. In the ordinary course of business, a special assistant is responsible for performing searches on behalf of the Field Office Director. The analyst performed a search of the Chicago field office's shared drive as well as searching emails. The analyst utilized the following search terms: "Citizens Academy," "Citizens," "Academy."

**B. The Office of the Chief Financial Officer**

6. Plaintiffs assert that ICE failed to search the Office of the Chief Financial Officer (OCFO) for records. OCFO was not involved in the citizens academy program. Citizens academy was an ICE initiative that fell under the purview of the Office of Public Affairs (OPA) and the Office of Public Engagement (OPE). Therefore, the OCFO is not reasonably likely to have records responsive to this FOIA request.

**C. Selection of Search Terms**

7. Plaintiffs further allege that ICE utilized varying search terms. The search tool used by ICE is not case-sensitive. A search for a certain word capitalizing the first letter would return the same result as a search for the same word where the first letter is lower case. Thus, a search for "Citizen" would return the same result as a search for "citizen." Furthermore, it is reasonably expected that search terms would vary when conducted by different employees. The individual employee conducting the search is best suited to know how they store and archive their own records. The employee performing the search selects the terms based on their own personal categorization systems. As the categorization systems are not uniform, so, too, will the search terms vary.

## II. DISPUTES REGARDING WITHHELD INFORMATION

### A. Application of Exemption (b)(6)

8. Plaintiffs in their Memorandum contend that ICE has improperly withheld the employers and job titles of citizens academy participants. Plaintiffs assert that the employers and job titles of the participants are not Personally Identifiable Information (PII), and as such, their release would not pose a risk to an individual's privacy. To the contrary, as ICE explains below, the information is properly withheld as its release would create a potential harm to the participants' privacy interest.

9. As described in ICE's previous declaration, Exemptions (b)(6) and (b)(7)(c) were applied because 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. Pineiro Decl. at ¶58. 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. Plaintiffs bear the burden of establishing that the disclosure of the participants' job titles would shed light on government operations.

10. FOIA does not require a threat to privacy to be patent or obvious to be relevant. Many of the citizens academy participants had notable and unique job titles with prominent employers. Indeed, Plaintiffs even reference some of the unique job titles in their motion, which include, lawyers, entrepreneurs, and bank anti-money laundering specialists. The information contained in the citizens academy participant lists and applications when combined with a unique



job title can lead to the discovery of a particular person. Specifically, the citizens academy participant lists and applications contain information related to geographic location and date. It is likely the combination of the geographic area, calendar year, and a unique job title would lead to the discovery of a particular person. Thus, the privacy interest of the third-party in not being public associated with law enforcement outweighs Plaintiffs unstated interest in the information.

### **B. Application of (b)(7)(E)**

11. Plaintiffs also allege that ICE has improperly withheld citizens academy training materials because the citizens academy participants were members of the public. ICE has provided Plaintiff with a *Vaughn Index* justifying its withholdings under FOIA Exemption (b)(7)(E). However, to the extent Plaintiffs assert that the information has already been provided to the public, ICE conducted background checks on each citizens academy participant before they were allowed to participate. Citizen Academy participants are not members of the general public because ICE tightly controls who can participate in, and be exposed to, the program, by conducting a rigorous, selective procedure and having all potential candidates undergo background checks. Because of these restrictions, the information and training Citizen Academy participants are exposed to is therefore not available to the members of the general public.

### **JURAT CLAUSE**

12. I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge and belief. Signed this \_\_\_\_\_ day of December 2023

**FERNANDO  
PINEIRO JR**

Digitally signed by  
FERNANDO PINEIRO JR  
Date: 2023.12.28 15:26:04  
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Fernando Pineiro, FOIA Director  
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