UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

SUSAN B. LONG
 	
and
 	
DAVID BURNHAM,
 	
               Plaintiffs,
 	
     -against-
 	
UNITED STATES IMMIGRATION
AND CUSTOMS ENFORCEMENT,
 	
             Defendant.
	Case No. 5:17-cv-00506-BKS-TWD

**DECLARATION OF SUSAN B. LONG IN SUPPORT OF PLAINTIFFS'
CROSS-MOTION FOR SUMMARY JUDGMENT, AND IN OPPOSITION
TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

1

SUSAN B. LONG, pursuant to 28 U.S.C. § 1746, declares as follows:

1.   I am a statistician and the Co-Founder and Co-Director, with David Burnham, of the Transactional Records Access Clearinghouse ("TRAC") at Syracuse University. I am also one of the Plaintiffs in this case. I make this declaration in opposition to Defendant Immigration and Customs Enforcement's ("ICE") renewed motion for summary judgment, and in support of TRAC's cross-motion requesting an order: (i) finding that ICE's July 29, 2016 change in agency posture refusing to conduct searches responsive to Plaintiffs' detainer and notice requests ("Requests") was unlawful pursuant to 5 U.S.C § 552; (ii) remanding the matter to ICE for a search of its electronic databases, including the EID and IIDS, and any other electronic databases containing records responsive to TRAC's Requests; (iii) requiring the parties to file a Joint Status Report confirming that Defendant has complied with the so-ordered search for and production of responsive records; (iv) setting a Status Conference concerning ICE's compliance with the Court's Order; and (v) awarding such other relief as the Court seems just and proper. I base this declaration on my personal knowledge and on my review of relevant documents, including materials generated in connection with the Freedom of Information Act requests at issue in this lawsuit as well as those in additional lawsuits against ICE that Professor Burnham and I are plaintiffs in. [1]

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[1] *Susan B. Long, et al., v. United States Immigration and Customs Enforcement, et al.,* No. 14-cv-00109 (APM) (D.D.C. 2014) ("2014 D.C. Action"); *Susan B. Long, et al., v. United States Immigration and Customs Enforcement*, No. 17-cv-01097 (APM) (D.D.C. 2017) ("2017 D.C. Action" or "Secure Communities Case"). The 2017 D.C. Action "concerns Plaintiffs' FOIA requests for data similar to those at issue here, but relating to deportations (or 'removals') carried out in association with ICE's Secure Communities ("SC") program." *Long, et al., v. United States Immigration and Customs Enforcement*, No. 5:17-CV-00506-BKS-TWD, 2018 WL 4642824, at *3 (N.D.N.Y. Sept. 27, 2018) ("2018 Op.").

2.   We commenced this action when ICE abruptly began refusing to disclose certain

data about ICE's detainer programs and the people it targets with them. For years, ICE had

regularly provided this data to TRAC in response to our prior FOIA requests. We also

commenced this action to compel ICE to search for and produce other fields of data that it has

consistently refused to provide. *See* Declaration of Susan B. Long dated December 22, 2017,

Dkt. No. 19-1 ("First Long Decl.") ¶¶17-24.

3.   From a practical standpoint, the data that TRAC seeks through its FOIA requests

has enabled it to monitor changes in ICE's immigration enforcement practices. *See id*. ¶14. The

data has allowed TRAC to create and provide online databases and to publish reports that allow

the public to assess over time the focus and impact of the government's immigration

enforcement actions. *Id.* ¶11;13. For example, in October 2020, TRAC published a report on

ICE's use of detainers during Covid-19, showing only a "modest drop in detainer usage" before

climbing back up to pre-pandemic levels. *See The Pandemic and ICE Use of Detainers in FY*

2020, TRAC, Oct. 19, 2020, https://trac.syr.edu/immigration/reports/627/.

4.   However, as that report and others have made clear, the majority of requested

information items have been missing from the files TRAC now receives from ICE. Ever since

January 2017, when the agency ceased producing some of the records at issue, the public has not

had access to much of the insights TRAC was previously able to provide. Those insights include

whether ICE actually took into custody the individuals it targeted with detainers; whether

individuals had criminal records (and if so, what the specific crimes were); and whether

individuals were ever deported. [2] *See id.* These records were and still are an essential part of

TRAC's research.

     5.   Although ICE's testimony at various stages of this litigation has shifted, its

central claim is that the data points TRAC seeks "do not exist" (Dkt. Nos. 1-4, at 2; 1-8, at 2), or

at least not without "additional analyses or calculations" (Dkt. Nos. 1-4, at 3; 1-8 at 3) that would

result in the creation of a "new record." (Dkt. No. 1-4, at 3 *see also* Dkt. No. 1-8, at 3). At the

outset of this case and on its first motion for summary judgment, ICE argued generally that the

data points requested "did not exist in the form requested without additional analyses or

calculations" and that "the data points simply did "not exist in the databases as written." *See*

Long v. U.S. Immigration and Customs Enforcement, 17-cv-506-BKS-TWD, 2020 WL 5994182,

at *2 (N.D.N.Y. Oct. 9, 2020) ("2020 Op."), citing Dkt. No. 15-3, at 13-22. ICE continued to

press this argument on its renewed motion for summary judgment, stating that the "additional

data related to individuals for whom detainers have been issued is not subject to disclosure

because it either does not exist with respect to the detainers population in its database . . . or

would "require analysis, calculations, and the creation of new records." 2020 Op. at *3, citing

Dkt. No. 58-1 ("First de Castro Decl."). It was not until the August 15, 2019 evidentiary hearing

when ICE revealed that it had never actually conducted a search of its databases. Instead, it

claimed to have searched its detainer "population" which "exists outside of the database." Dkt.

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[2] Despite ICE's abrupt refusal to respond to TRAC's FOIA requests, ICE continues to publicly
tout its enforcement practices. *See, e.g.*, *ERO FY 2020 Achievements*, ICE.gov,
https://www.ice.gov/features/ERO-2020 (last visited June 25, 2021). Although ICE maintains
that it cannot "follow an individual through the law enforcement system" (*see* Second DeCastro
Decl. ¶7), its website notes that "**90 percent** of those arrested had criminal convictions or
pending criminal charges *at the time of arrest*" and that for the **122,233** detainers ICE issued in
FY 2020, "*The subjects of these detainers had criminal histories* including more than 1,900
homicide-related offenses, **1,900** kidnappings, **3,600** robberies, **42,800** assaults, and **11,900** sex
crimes." *See id.* (bold in original; emphasis added).

No. 80, Evidentiary Hearing Transcript dated Aug. 15, 2019 ("2019 Tr."), at 44:13. This

"population" is the result of ICE's own "predefined queries," generated weekly – preselected

data that it had already extracted and that are "existing . . . outside the database." *See* 2019 Tr.

39:4-10, 44:9-13; 2020 Op. at *4. In revealing that ICE's effort so far has been limited to

"populations" resulting from "preset" queries, ICE also revealed that it never actually did FOIA

searches responsive to TRAC's requests at issue in this case. *See* 2019 Tr. 12:20-25, 13:3-4,13-

20, 50:4-12.

> 6.   Dr. de Castro later clarified the meaning of a population:
>
> Officer Hemphill's use of the word "population"—simply meaning a report—is
> simply a term for a report. It is an "in house" word that ICE analysts use. For
> example, an arrest "population" is simply a report that shows all the arrest data
> produced when an IIDS search is conducted for all the arrests in a particular time
> period. The reason Officer Hemphill described this as "outside IIDS" is because
> once a report is run, it exists as its own entity. Therefore, in this example, an
> arrest "population"—a report of all arrests in a time period—once run, exists as a
> record.

Dkt. No. 96-2, ¶10 ("Second de Castro Decl.").

> 7.   ICE's failure to conduct a search of its databases for the requested records

was the result of a heretofore secret decision allegedly made in July 2016 which

effectively placed ICE databases outside the reach of FOIA requesters. *See, e.g.* 2019 Tr.

56:16,57:1-7; First de Castro Decl. ¶15. The agency did not claim that all information in

its databases was exempt from disclosure. Nor did it cite any other legal basis for its

decision. Instead, ICE took it upon itself to decide that its databases need not be searched

when responding to FOIA requests, and thus were simply not subject to FOIA. This was

a patently unlawful decision.

> 8.   While the accompanying memorandum of law shows that there are no remaining

triable issues of fact in this case, this declaration documents further factual inaccuracies raised by

ICE's declarants on the agency's third summary judgment attempt concerning the role of its

database management systems (DBMS) and how linkages are built into modern relational

databases. I also write to inform the Court of recent ICE testimony in the 2017 D.C. Action,

which provides additional insight into what exactly the agency considers "analyses" and

"calculations" and how the agency's renewed motion for summary judgment before this Court

contradicts the record here. ICE's claim – that writing SQL queries to locate and compile

requested records that exist in its database results in the "creation of records" – defies reason.

Lastly, this declaration documents more recent examples of ICE's intransigence on disclosure of

its detainer records to TRAC pursuant to its other FOIA requests. In short, this new information

further shows how ICE can both search its databases for the information TRAC seeks in this case

and produce the relevant records – but simply refuses to do what FOIA requires of it.

ICE's New Declarations Contradict the Record

9.   ICE asserts that there is "no responsive data in the EID that is not in the IIDS"

and that the IIDS "contains all data that would be responsive to plaintiffs' requests." [3] *See* Dkt.

No. 96-2 ("Second de Castro Decl.") ¶¶4, 8; *see also id.* ¶5 ("There is no record system, not

already searched, that could be used to produce responsive records for plaintiffs' requests.").

These statements plainly contradict a key revelation at the 2019 evidentiary hearing: *ICE never*

actually searched the EID or IIDS for responsive data. It had only searched its much smaller

"populations," which are *not part of its* IIDS or any database, but rather "exist[] in a grouping

outside of the database." *See* 2019 Tr. 12:24-13:4, 13:14; 44:13; *see also id.* 13:13-14, 18-20

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[3] TRAC has not limited its requests to data within the IIDS. *See, e.g.*, Dkt. No. 91, at 2.

(describing "populations" as comprised of "a set number" of "data points that are contained in the query that we use to *pull that data out of IIDS*") (emphasis added).

10.   ICE asserts that a search of its "'populations' means that a "complete search of the IIDS has occurred." *See* Second de Castro Decl. ¶7. Furthermore, Dr. de Castro claimed that "ICE analysts indeed query the entirety of IIDS for the data requested by plaintiffs." *Id.* [4] But as explained below, ICE *never* queried any of its databases likely to contain responsive records. [5]

11.   The EID and IIDS contain more data than ICE's "populations," but the agency *has not* searched for responsive records there. *See* First Long Decl. ¶8 ("Both FOIA requests at issue sought information from ICE's Enforcement Integrated Database concerning its Form I-247 requests; *id.* ¶31 (stating that "disappearing fields of data existed and were contained in ICE's EID database"); *id.* ¶37(a) (stating that ICE previously provided exactly the same data elements from its EID); *id.* ¶38 (stating that ICE continues to provide these items from its EID in response to other of TRAC's current monthly requests).

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[4] Dr.de Castro previously testified that she has only a "general awareness" of how the IIDS is structured. 2019 Tr. at 88:9-10. Dr. de Castro is "not a computer programmer (*see id.*at 81:8) and is "not familiar with computer programming" (*id.* at 81:23-24). Dr. de Castro has no knowledge of SQL (*see id.* at 81:1-18), and she does not know what "integrated" means as used in the ICE Integrated Decision Support (IIDS) system (*id.* at 86:3-7, or in the Enforcement Integrated Database (EID) (*id.* at 88:20-25). In other words, Dr. de Castro has no personal knowledge of whether "ICE analysts indeed query the entirety of IIDS for the data requested by plaintiffs."

[5] Mr. Curtis Hemphill, ICE's sole witness at the 2019 evidentiary hearing, told the Court, "I'm not a database expert." *See* 2019 Tr. 42:15; 44:6; 56:4. He further acknowledged, "I don't do [queries] personally." He did not even recall having viewed TRAC's FOIA requests at issue in this case. *Id.* 41:21-23.

12.   The IIDS is in part a continuously updated "snapshot" [6] of the EID. 2019 Tr.

12:3-7. [7] The EID is a "common database repository" for "records created, updated, and

accessed" by ICE agents, which "maintains information related to the investigation, arrest,

booking, detention, and removal" of people, and permits staff to "access a person-centric and/or

event centric view of the data." 2018 Op. at *3 n.11, citing Jones Decl. ¶¶6, 7. While the EID

remains an important database repository tracking immigration enforcement actions, it is not

ICE's only such system of record, nor does it contain *all* relevant records. [8] The EID, however,

is likely to have responsive records, and ICE can search it. *See, e.g.* Second de Castro Decl. ¶8,

n.1 (discussing *American immigration Council v. ICE*, 464 F. Supp. 3d 228 (D.D.C. 2020)).

Much of the data at issue in this case centers on "person-centric" fields of the type that ICE has

admitted its officers routinely retrieve from the EID. *See, e.g.*, 2019 Tr. 24:17-25.

13.   "[T]here may be responsive data within the EID that is not in the IIDS." Second

de Castro Decl. ¶8, citing 2020 Op. at *11. TRAC has not limited its requests to data within the

EID or the IIDS. But in all events ICE has not searched for the responsive records that exist

there. Because each of these are relational databases, they each have the capability to execute

SQL queries through their respective DBMS systems.

14.   ICE claims, though it is "unable to specifically explain in public why," it is "not

feasible for the agency to search the EID directly." *See* Second de Castro Decl. ¶8. Yet in the

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[6] During testimony on May 27, 2021 in the 2017 D.C. Action, by an ICE official who is the IIDS
project manager, it was revealed for the first time that the IIDS also loads data through a separate
weekly ETL process from other data source(s) not contained in the EID. *See* ¶24(c), *infra*.

[7] On summary judgment in 2018, any distinctions between the EID and IIDS did not seem to
affect Plaintiffs' requests for relief. *See* 2018 Op. at *2 n.2; Dkt. No. 19-12, at 9 n.4.

[8] *See* ¶24(c), *infra*.

same declaration, ICE confirms that it has searched and can search the EID. *See id.* ¶8, n.1.

"After the Court's Decision in [*American Immigration Council v. ICE*, 464 F. Supp. 3d 228

(D.D.C. 2020) ("*AIC*")], *ICE notified Plaintiff that it had searched the EID . . . .*" *Id.* (emphasis

added).

15.   ICE claims that "If the requested data existed linked together in ICE databases,

ICE analysts would have been able to retrieve and produce those records." Second de Castro

Decl. ¶5. This is misleading: the facts show that the requested data *are linked together* in ICE's

databases, and that it *can* retrieve and produce these records:

   a. As the D.C. Court ruled in TRAC's 2014 action against ICE, the IIDS is an

       integrated database, the structure of which includes built-in connections that

       allow different events and fields to be linked. *See* 2014 D.C. Action, 464 F. Supp.

       3d 409, 418-19 (D.D.C. June 2, 2020); *see, e.g.*, IIDS Database Schema, TRAC's

       2019 Evidentiary Hearing Ex. 33 (attached as "Exhibit A"), at 85.

   b. "Information within a database is organized into database 'tables,' which contain

       data on a particular subject." 464 F. Supp. 3d at 417-18 (internal citations

       omitted); *see* Ex. A, at 85; *accord* Dkt. No. 84-1, ¶9(d) ("Clark Decl.") ("[ICE's]

       previous FOIA productions and testimony showed that (i) ICE stores data in a

       series of linked tables, and (ii) ICE employs a database management system

       (DBMS), a feature supported in all commercial databases, to enable queries that

       span a multitude of tables.") *See also* 2014 D.C. Action, Declaration of Karolyn

       Miller, Dkt. 17-1 ¶¶8-9, 11 ("Miller Decl.") (discussing role of DBMS).

   c. "The tables typically comprise multiple 'fields' of data, which correspond to

       columns in a spreadsheet. Rows within each table are the equivalent of a *single*

record which is a collection of information about a specific *person or event* (depending on the topic around which the table is organized." 464 F. Supp. 3d at 418 (emphasis added); 2014 D.C. Action, Miller Decl. ¶8; *see, e.g.*, Ex. A, at 85; *accord* Clark Decl. ¶9(m) ("ICE can and does query its database to retrieve records of various 'events' for individual people, or groups of individuals.").

d. "A database schema provides the blueprint of a database, laying out exactly where everything is in each database and how it's stored." 464 F. Supp. 3d at 418 (internal quotations and brackets omitted); *see, e.g.*, Ex. A, at 85, *accord* Clark Decl. ¶9(a), (b), (d), (g). "It also includes graphic depictions of the structure of the database, which includes not only the names of tables and fields therein, but also the ways *in which the tables are connected to one another*." 464 F. Supp. 3d at 418 (emphasis added); *see, e.g.*, Ex. A, at 85.

e. "[I]n the graphical description of the schema, each block represents a table, the items listed within each block represent field names with a table, and arrows between the blocks represent 'linkages' between tables within the database." 464 F. Supp. 3d at 418 (emphasis added) (citing Ex. A, at 85); 2014 D.C. Action, Miller Decl. ¶¶8-9, 11; *accord* Clark Decl. ¶9(g) ("A diagram of ICE's database management system further shows that these 'identifiers' serve as links between various tables of data." (citations omitted)).

f. ICE employs a DBMS to enable SQL queries that span a multitude of tables. Clark Decl. ¶9(d), citing 2019 Tr. 32:24; 89:21-24; 2014 D.C. Action, Miller Decl. ¶¶6(c), 9, 11; Testimony of Tadgh Smith from Transcript of Evidentiary Hearing Held May 8, 2018, 2014 D.C. Action, Dkt. 62 ("2018 Tr."), at 20:10-23;

24:2-14; 58:5-8; Testimony of Timothy Gibney, Transcript of Evidentiary

Hearing Held May 27, 2021, 2017 D.C. Action (attached as "Exhibit B"), 128:21-

25; 129:1-20. The function of a DBMS shows why searching a database is

fundamentally different from searching "datasets," "populations," or "reports"

located outside of a database. This impacts the ease of implementation, efficiency

and capacity for a computer system to handle the search required. The

Department of Homeland Security even acknowledges in its own FOIA

regulations that "Creating a computer program that produces the specific fields or

records contained within a well-defined database structure is usually considered

business as usual." *See* Dkt. 91, at 7, citing 6 C.F.R. § 5.4(i)(2)(ii). In other

words, it is not a "reasonable procedure" to "start the search with the detainers

data" when it is necessarily less efficient than searching its databases. *See* Second

de Castro Decl. ¶7.

    g.   DHS FOIA regulations further require that "Components shall ensure that

searches are done in the most efficient . . . manner, reasonably possible and by

readily available means." 6 C.F.R. § 5.11(b)(8). The agency failed to conduct its

search in the most efficient manner which would have employed SQL queries

using the DBMS system of its databases.

16.   The allegedly exempt information discussed in the Declaration of Ms. Vassilio-

Diaz (*see* Dkt. No. 96-3 ("Vassilio-Diaz Decl."), ¶¶12-16) focuses on data recorded in the IIDS

concerning "detainer information, detention information ("date booked into ICE custody" or

"book ins") and apprehension information [apprehension method]" needed to respond to

"TRAC's FOIA request, 2017-ICFO-08061, item #9." The publicly available portions of those

documents show that ICE's starting point for a search for responsive records begins with the

"detainer population" – and not the IIDS itself. *See* Vassilio-Diaz Decl. ¶16 ("ERO has

developed a notational methodology to describe the steps necessary to create and add the

requested data fields to the *baseline ERO detainer population as requested by TRAC*." (emphasis

added)). But the logical place to start a search for responsive records is in the database itself –

not a "population" that exists "outside" of it. For example:

    a. The apprehension table (*see* Ex. A, at 85, box labeled

        "APPREHENSION_DIMENSION in upper left-hand corner) lists a data field

        labeled "APPREHENSION_METHOD." As shown, the first listed field set off

        from the others labeled "APPREHENSION_ID" contains the unique ID for each

        apprehension record in this table. The detainer table (*see* box labeled

        "DETAINER_DIMENSION") directly to the right of the apprehension table

        shows that it contains a data field labeled "PREPARE_DATE." The first listed

        field labeled "DETAINER_ID" contains the unique ID for each detainer record in

        this table. A detention table (*see* box labeled

        "DETENTION_STAY_DIMENSION") in the fourth column of boxes from the

        left of the page) lists a data field labeled "BOOK_IN_DATE." The first listed

        field labeled "DETENTION_STAY_ID" contains the unique ID for each

        detention stay record in this table. *See, e.g.*, 2014 D.C. Action, 2018 Tr., at

        155:15-157:14; *see also* 464 F. Supp. 3d at 418 (citing my testimony from the

        2018 Evidentiary Hearing in the 2014 D.C. Action).

    b. The apprehension, detainer, and detention tables have lines from them that show

        that these three are all interlinked through a special "FACT" table which is

colored blue. This "FACT" table lists which records from each of these three

tables correspond to one another via their composite IDs: APPREHENSION_ID,

DETAINER_ID [9] and LATEST_DETENTION_STAY_ID. *See* Ex. A, at 85.

(The "(FK)" designation listed after each of these points indicate they are what

relational databases refer to as a "foreign key" – that is an ID field not from the

present table but from a *different* (i.e., "foreign") table.)

    c. Using an analogy to paper records, the "FACT" table is like an index that allows a

person to look up and link records under an individual's name with their Social

Security number and their driver's license number or their bank account number.

However, in a relational database such as IIDS, rather than this being a manual

linking process with paper files, a computer query issued in SQL allows

automatic location and linking of the appropriate fields from *each of these three*

tables. Contrary to Ms. Vassilio-Diaz's representation that "composite

identifiers" must be created from scratch in multiple steps to *recreate* these

interlinkages from a "detainers population" – these links *already exist* in the IIDS.

See, e.g., Ex. A, at 85.

    d. The IIDS Database Schema similarly shows how the detainer dimension (through

the DETAINER_ID) links to the REMOVAL_CASE_DIMENSION and the

DEPARTURE_DIMENSION which records whether the individual was ordered

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[9] The Excel spreadsheet that ICE released in response to the Detainer Request already contains the columns "Prepare Date" and "Detainer ID." *See* Dkt. No. 15-7 (CD Containing January 2017 Excel Spreadsheet). Thus, it would have only been necessary to add the two additional fields "apprehension_method" and "book_in_date" to an SQL query run directly on IIDS since the database itself already has these two additional fields interlinked to the "Detainer_ID." *See also* Clark Decl. ¶9(i).

removed [FINAL_ORDER_DATE] and where and when the individual actually

was deported [DEPARTED_DATE, PORT_OF_DEPARTURE]. *See id.* It

further shows linkages to other requested and "disappearing fields," including

linkages to the criminal history of the individual

[PERSON_CRIMINAL_CHARGE_DIM]. *See id.* at 84; 42-44.

17.   ICE asserts that "Any data plaintiffs request that exists in the IIDS outside of the

detainers population, in any form, including other populations, has been provided to the extent

that it does not require the creation of records." Second de Castro Decl. ¶6. As discussed above,

ICE never searched the IIDS (or any database) where responsive records are likely to be located:

its effort so far has been limited to "populations" resulting from "preset" queries. *See* 2019 Tr.

46:10-13; 50:4-12. Neither the Jones Declaration nor the First de Castro Declaration had even

discussed "populations" as the result of "predefined queries" that result in the creation of

records. Following the 2019 evidentiary hearing, ICE claimed to have "mentioned 'populations'

many times previously," though it had never done so in the same way that ICE witness Curtis

Hemphill described "populations" at the hearing as existing "outside of the database." *See* Dkt.

No. 85, at 2; Tr. 44:12-13; *see also* Defendant's Statement of Undisputed Material Facts, Dkt.

No. 96-5 ¶41 ("On a weekly basis, ICE runs a series of predefined queries in IIDS to generate

specific 'populations' of data that correspond to particular types of law enforcement actions,

including a detainers population, a removals population, and an arrests population." (citing 2019

Tr. 12:18-23)). ICE has never identified in this case or elsewhere data existing "outside" the

"detainers population." ICE has not searched the IIDS – only ICE "populations" – so, it is false

to state that it has provided data that exists "in any form" in IIDS. And – as discussed below –

ICE now claims the detainer "population" or "detainer data set" doesn't exist. *See* ¶¶ 30-41,

infra.

18.   ICE has repeatedly alluded to "the absence of one single unique identifier" as the

reason it "would be unable to create a complete record" or "person-centric" view of the data

stored in its databases. Second de Castro Decl. ¶¶7-8 ("[I]n neither the EID nor the IIDS is there

only ONE unique identifier that can associate individuals across all law enforcement events.").

But this is a red herring – modern relational databases, as explained above (*see* ¶¶15, 16), are

based on an entirely different strategy for linking data related to the same individual. In the

approach used by integrated relational databases – the approach which ICE has adopted – data

are stored in a series of tables and every table has its own "unique ID" to identify records within

that table. These different table-specific unique IDs are themselves then interlinked to one

another. Through its relational database management software (DBMS), which is built-into the

database, users can employ efficient SQL querying to locate and compile the particular

information being sought about any individual or event. The wide adoption of modern relational

database systems by organizations both in and outside government evidence this as a superior

methodology to much older systems which required use of a single unique ID. [10]

19.   ICE asserts that there is a "profound non-connect between law enforcement

events in the database." Second de Castro Decl. ¶7. For the reasons discussed above, the IIDS

Database Schema shows the very connections that Dr. de Castro claims do not exist. *See, e.g.*,

464 F. Supp. 3d at 418 ("A database schema provides the blueprint of a database, laying out

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[10] ICE identified Oracle, a leading commercial relational database software package, as what it
uses for the IIDS. *See* Ex. A, at 93. "Relational databases have been around since the 1970s.
Today, the advantages of the relational model continue to make it the most widely accepted
model for databases." *What is A Relational Database (RDBMS)?*, Oracle.com,
https://www.oracle.com/database/what-is-a-relational-database/ (last visited June 25, 2021).

exactly where everything is in each database and how it's stored." (internal quotations and

brackets omitted)); *accord* Clark Decl. ¶9(a), (b), (d), (g). "It also includes graphic depictions of

the structure of the database, which includes not only the names of tables and fields therein, but

also the ways *in which the tables are connected to one another.*" 464 F. Supp. 3d at 418.

20.   Additionally, ICE continues to fundamentally misconstrue TRAC's requests in

support of its claim that production of the records TRAC seeks requires "queries, calculations

and analyses" which result in the creation of a new record. *See* Vassilio-Diaz Decl. ¶¶12, 15; *see*

also Dkt. No. 101-2, at 6. For example, ICE cites the example of item numbers 9, 9(a) and 9(b)

from TRAC's Detainers Request (2017-ICFO-08061) for the incorrect proposition that such

requests require "a set of assumptions." *Id.* ¶12. As TRAC has previously explained, and as the

Court has already determined, "the plain language for the request does not require such an

assumption, as nowhere does it ask for disclosure of data corresponding only to arrests "as a

result of" the Form I-247/I-247D. 2018 Op. at *5 (citing Dkt. No. 19-12, at 20). Instead, it

merely seeks data pertaining to arrests 'following' the issuance of the form; that is "only data

temporally related to the detainer or notice." *Id.*

21.   ICE asserts that producing the responsive records would be unduly burdensome.

Second de Castro Decl. ¶11. But ICE has failed to explain why that is so, instead offering

distortions of the record:

- ICE previously testified that processing TRAC's FOIA requests in FY 2016-17 –
  back when it actually produced the disappearing data – required five to ten
  employee hours. *See* Dkt. Nos. 23-1 ¶22; 25-1 ¶22(h).

- Whatever amount of time ICE spends retrieving and producing records responsive to TRAC's other requests, it is not relevant here, where only two requests are at issue. *See generally* Detainer Request and Notice Request.

22.   ICE asserts that its "computer has many times 'crashed'" while creating "new, multifactorial data connections for Plaintiffs" in the past. [11] *See* Second de Castro Declaration ¶12, citing First de Castro Declaration ¶23. It now claims that that the "'crashes' might better be described as a failure of the queries to complete – even when run on the IIDS database externally by a development team, versus crashing the actual database." Second de Castro Declaration ¶12. But ICE has not said whether ICE ever encountered crashes for the *two Requests at issue* or whether there is an undue burden in responding to them. Instead, ICE vaguely claims that it may have conducted searches for other requests at another point in time. *See, e.g.*, Second de Castro Decl. ¶12 ("Plaintiffs' requests have evolved over the years, and now include numerous years' worth of detainer data. . . . We have seen [crashes] happen in several of plaintiffs' regular data requests.") ICE has not established whether these "crashes" are the result of the Detainer and Notice Requests at issue here. [12]

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[11] Results that tried to join various "populations" or "reports" that exist outside any defined database structure, and therefore did not utilize the IIDS's DBMS – which is designed to maximize efficiency in the search process – are of little relevance. These alleged "crashes" may well have resulted from the use of an inefficient or inappropriate method.

[12] Indeed, ICE has released records in response to our monthly detainer requests covering a much longer time period than involved in the Requests at issue here. For example, in a response dated October 30, 2020 (2020-ICFO-76010) ICE released a spreadsheet containing case-by-case detainer data with slightly more fields of information in response to a similar request covering FY 2015 through August 2020. This recent response included 71 months of data – over two and a half times the time period of the Requests at issue here covering FY 2015 through November 2016. ICE reported no difficulties in responding to this request.

23.   ICE asserts for the first time on its third summary judgment attempt that simply because TRAC sought records from agency "databases that contain information related to law enforcement investigations into civil and criminal immigration violations" [sic], it can assert a "law enforcement" disclosure exemption. Vassilio-Diaz Decl. ¶8. The law enforcement exclusion is not even at issue for the records that are the subject of this litigation. *See, e.g.*, 2018 Op. at *5 ("ICE . . . has not invoked a FOIA exemption to justify the reduced amount of data it is now disclosing in response to Plaintiffs' requests"); Declaration of Susan B. Long dated Jan. 12, 2021 (Dkt. No. 101-1), ¶2. Yet ICE still argues that the records TRAC seeks from "ICE databases" must be exempted and withheld because they "contain information *related* [sic] law enforcement investigations into criminal and civil immigration violations." Vassilio-Diaz Decl. ¶8. (emphasis added). According to ICE, it would follow that *all* records relating to the Requests at issue – and requests relating to records previously produced to TRAC before January 2017 – are exempt simply because they *relate* to law enforcement activities.

New ICE Testimony In 2017 D.C. Action: Defining "Calculations" and "Analyses"

24.   At a May 27, 2021 evidentiary hearing in the 2017 D.C. Action, [13] ICE's project manager for the IIDS, Mr. Timothy Gibney, [14] confirmed how integrated, relational databases contain interlinked data about ICE's Secure Communities ("SC") program and how ICE can

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[13] *See* 2017 D.C. Action, Redacted Transcript of Evidentiary Hearing dated May 27, 2021, attached as "Exhibit B."

[14] Mr. Gibney has been a federal employee of ICE since 2017. Previously, he supported ICE as a contractor at various roles since 2009. He is currently the "management and program analyst, and then functionally . . . the project manager for IIDS." He is "responsible for all aspects, from requirements gathering to implementation of changes, testing those changes, training users of those changes, [and] O&M support." He also helps "end users get the data of the system that they need to get." *See* Ex. B 13:8-23. ICE has never offered Mr. Gibney's testimony in this case.

produce that data. *See also* ¶1, n.1, *supra*. Further, ICE's testimony explicitly revealed that it

has been conflating SQL searches of integrated, relational databases with what the agency

considers "calculations" or "analyses." Not only does ICE consider combining disparate

"populations" to require "calculations" or "analyses" that result in the creation of a new record; it

now asserts that even searching its integrated relational database for responsive records that

already exist somehow results in the creation of a new record if the search involves linking

records in two tables, or any date comparisons are used to locate records concerning events *after*

another event or concerning the most recent (i.e., latest) recorded event.

a. **Interoperability between agency databases.** For context, the data at issue in the

2017 D.C. Action concerns ICE's Secure Communities program "in which

fingerprints of individuals in the custody of a state or local law enforcement

agency are sent to the FBI, and then the FBI sends the fingerprints to DHS to

check against its immigration databases to see if the individual might be

removable." Ex. B 93:4-10. ICE then decides whether to issue a detainer so the

individual can be taken into custody, and removal proceedings begun. The

technology that implemented ICE's ability to integrate with other agencies'

databases is called "interoperability" (*id.* at 93:11-14) and a match between FBI

and DHS fingerprint databases is called an "interoperability match" (*id.* at 94:12-

17.) The 2017 D.C. Action involves SC removals, which are what ICE believes is

a removal that potentially originated with an interoperability match. *See id.*

95:18-24.

b. **"Populations" are not the records to be searched.** The FOIA request at issue

in the 2017 D.C. Action seeks records involving individuals removed where one

of these interoperability matches occurred. Just as TRAC's Detainer and Notice

Requests in this case are not limited to the "detainer population," the request at

issue in the 2017 case is similarly "not limited to data in the SC *removals*

population report that is regularly pulled from the IIDS using a canned query for

reporting purposes." *See id.* 96:5-9 (emphasis added).

c. **Existence of other data sources in the IIDS that are not in EID**. Mr. Gibney's

testimony in the 2017 D.C. Action revealed that the EID does not contain "all

records created, updated, and accessed" which "captures and maintains

information related to the investigation, arrest, booking, detention, and removal of

persons encountered during immigration and law enforcement investigations and

operations conducted by ICE." 2020 Op. at *4. Specifically, ICE stated that

"EID is not the system of record for interoperability data." *See* Ex. B, at 37:7. As

a result, the IIDS requires a secondary weekly ETL [15] where data points from the

system of record for interoperability data – *another* ICE database separate from

the EID – are extracted and added to the IIDS. *See id.* 37:7-17. This information

is not contained in or added to the EID.

d. **ICE wrongly claims that using built-in linkages in relational databases to**

locate requested data which it describes as "conducting analysis" or "having

to make a calculation . . . alone constitute the creation of records." When

discussing the work involved to extract and assemble the data in ICE's SC

removals spreadsheet previously released to plaintiffs, ICE confirmed that such a

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[15] ETL stands for extract, transform, load. See 2019 Tr. 12:12-17; Exhibit B 32:20-25, 33:1-6, 96:23-25, 97:1-2.

process "involves tracing links in the IIDS between the SC removal that is

represented in the rows and the fields which are in various tables that are

somehow linked to that removal." *See id.* at 103:2-5. [16] In the IIDS project

manager's opinion, *querying an integrated relational database* (not just a

"population") to select a piece of data that exists constitutes the creation of the

record anytime it "involves calculations and lookups where you're discerning

which record to pick and when you have one record and then you have to use data

from that record to determine what other records to select and then perform

downstream calculations on that." *See id.* at 103:13-18. Such an explanation is

inconsistent with how an integrated relational database is designed, with built-in

linkages connecting pre-existing data points.

e. **ICE reveals what constitutes "calculations" and "analyses."** ICE's position

amounts to saying that *searching for existing data in a database with preexisting*

linkages is a "calculation" or "analysis" and that producing the *existing data*

resulting from that "calculation" or "analysis" is somehow a "new record."

Analogizing ICE's databases to paper records, an exchange between TRAC's

counsel and ICE's IIDS project manager from the May 27, 2021 evidentiary

hearing in the 2017 D.C. Action shows that ICE has been conflating

"calculations" and "analyses" with a "search":

> Q: Let me give you an example. Let's say I have two letters sitting
> on my desk and you ask me for the most recent letter. Now I'm
> going to have to look at the dates on both and do a calculation to

---

[16] This testimony refers to "Plaintiffs' Exhibit 1" at the May 8, 2018 hearing in the 2017 D.C. Action, which was the spreadsheet ICE produced in response to FOIA request 14043. As in this case, ICE previously produced records containing the "disappearing fields" before its decision to not search the IIDS but instead use the Secure Communities "population."

determine which is more recent. But the letter I hand over to you, it will not be newly created, it already existed, but I had to do the calculation to select the letter that was responsive to your request. So there, if that letter already existed but I have to do a calculation to find it, that doesn't constitute the creation of a new record, does it?

A: *It does to me, yes.*

Q: Even though that letter was already sitting on my desk?

A: I'm asking you to analyze it and flag which one was the latest? *Yes, that's a calculation. If you're writing a query to do that, you're performing a calculation.*

Q: But the data is not being created, rather, the query that extracts the data . . . is being created?

A: The final deliverable that you're returning back to me is being created, yes.

Q: And the work an analyst must do is really to identify the linkages that are needed to find the data and then write the query, probably using SQL, to generate the spreadsheets with the requested data; is that right?

. . .

A: There's a lot of work involved to do that. An analyst has to understand how to write a query, the analyst has to understand the data and how it's structured, have an operational understanding of the data and the data model, write a query, understand how to write those calculations, create those calculations, and then understand how to present it back. So there's a lot of steps involved to performing a query.

Ex. B, at 103:25-105:12-19. (emphasis added).

f. **Searches are not "calculations."** As explained above, a relational database such as IIDS, rather than being a manual linking process with paper files, uses a computer query issued in SQL to *automatically locate and link the appropriate fields from each of the tables in a database*. *See* ¶9(c), *supra*. In other words,

ICE explicitly admitted in its May 28, 2021 Secure Communities evidentiary

hearing testimony that it is conflating a "search" with "calculations;" and that the

searches themselves purportedly generate the creation of a new record. As I

testified in that hearing, "I wouldn't necessarily say you have to sort the records.

You just link them [by issuing a query in SQL] and the database management

system pulls them together. There are all these built-in cross-links between the

tables. That's just the beauty of having a relational database. It's fundamental to

its operation." *See id.* at 140:2-7; *accord* Clark Decl. ¶9(a)-(f). Mr. Gibney,

ICE's IIDS project manager, agreed:

> Q: Mr. Gibney, do you see the next line . . . it says "detainer ID is
> being provided so the record may be associated with other actions
> related to the detainer?"
>
> A: Right.
>
> Q: So the IIDS does contain detainer IDs, correct?
>
> A: Yeah, same concept. . . . But the detainer ID to me means
> something that's used for linkages only.
>
> Q: Okay. But for those purposes, once one has identified a
> detainer . . . then it is possible to extract from the IIDS every field
> or table that is linked to that detainer; is that right?
>
> A: Right, with an additional query, an additional analysis, if
> they're linked properly, you can get the data, sure.
>
> Q: Okay. And isn't that really the point of having an integrated
> relational database warehouse like IIDS which has built-in links
> among the tables and fields? It's so a user can query to extract and
> compile information?
>
> A: Of course.

Ex. B, at 128:21-129:20.

23

The data at issue in the 2017 D.C. Action "exists" and the sole remaining issue is whether production of the records TRAC seeks constitutes the creation of a record.

25.   At the conclusion of the May 28, 2021 Secure Communities evidentiary hearing, Judge Mehta stated that "everybody agrees that the data that is associated with these fields, it exists, and there's no dispute that the data that comprises the missing fields exists in the IIDS, it exists in the – well, I don't know if it exists in the EID, but it's certainly in the IIDS. And . . . with respect to these fields, the production of that data and how it gets produced the creation of new records . . . is the question." *See* Ex. B, at 170:7-15.

26.   ICE cannot lawfully fail to search record systems that unquestionably have the greatest likelihood of containing the records sought, particularly when these record systems consist of well-structured databases since any search of these is – according to ICE's own regulations – considered "business as usual." ICE testimony in this case and the D.C. Actions shows that the data TRAC seeks exists, that ICE can search for and produce it, and that it does not result in the creation of new records.

TRAC's Continued Monthly Requests To ICE

27.   TRAC has continued to submit monthly FOIA requests to ICE similar to those at issue in this case. But ICE continues to withhold records that are the subject of these requests. Most recently ICE has started responding to TRAC's monthly requests effectively withholding all records, claiming in standardized wording that "no records" were found. For example, on November 4, 2020, TRAC made another FOIA request, 2021-ICFO-08855, for the latest detainer-by-detainer data covering the period of FY 2015 through October 31, 2020 where the jurisdiction refused to honor the detainer. In response, ICE stated that it had "conducted a search of the ICE Enforcement and Removal Operations for records responsive to your request and no records responsive to [TRAC's] request were found." It provided no further information. It

gave no information or possible reasons why no records were found, and furnished neither the record systems it searched, nor the search terms it used.

28.   Yet is unquestioned that much of the requested data actually exists in the agency's databases. 2020 Op. at *10. ICE has on repeated occasions produced information on these very same detainers described in precisely the same way that would be encompassed in its responses to this monthly request. The only difference on this latest request was that it extended the time period of coverage by a few months and – since data is constantly being updated in agency databases – sought the current status of the information recorded on the previously released detainer cases.

29.   ICE has admitted in declarations from ICE officials and in its sworn testimony that this same data exists in agency databases. *Id.* The data overlaps the specific items of information sought in its November 4, 2020 request. Again, ICE failed to search any of its actual databases for the requested records in response to the request.

29a.   Similarly, in response to TRAC's February 3, 2020 request (2020-ICFO-24524) for records that identify each of the ERO's Document Control Offices and their addresses, ICE responded on April 15, 2021 claiming "no records responsive to your request were found." We appealed, and on May 25, 2021 the Chief of ICE's Government Information Law Division within its Office of the Principal Legal Advisor turned down our appeal. Despite the fact that the information is apparently recorded in its IIDS in two interlinked tables – one with the name of each DCO office and the second with the address for each office, ICE stated: "You have requested for ICE to search for each DCO and link with their full address. As stated above, the FOIA does not require agencies to create a document that does not exist to satisfy a request."

TRAC's "Detainer Data Set" Requests

30.   At the 2019 evidentiary hearing in this case, TRAC also learned for the first time

that the "detainer population" was actually a concrete record which was regularly generated from

pre-defined queries, and that this "population" existed outside of ICE's IIDS database. 2019 Tr.

44:12-13. TRAC also learned that a "detainer population" was synonymous with the "detainer

data set" referred to by ICE's witness in an April 2019 declaration. *See* First de Castro Decl.

¶¶ 11, 57 ("ERO . . . has provided all detainer datapoints in the Detainer "entrée."). Using this

new knowledge, TRAC began making monthly FOIA requests for copies of the "current detainer

data set."

31.   The first of these monthly FOIA requests for the detainer data set, dated

September 3, 2019, was jointly signed by David Burnham and me as Co-Directors of TRAC.

Our request identified the requests we were seeking as follows:

> In an April 2019 sworn declaration, ICE ERO Operations Research Analyst
> Dr. Patricia J. de Castro stated that "ERO supports the full production of
> records required under the FOIA." She further testified that the agency "can
> easily and quickly produce the data" when the "Detainer data set" itself is
> requested by a member of the public, analogizing it to a customer ordering
> an entree from a restaurant menu. According to the August 15, 2019 sworn
> statements by Curtis A. Hemphill, Detention and Deportation Officer
> assigned to the headquarters office of ICE Enforcement and Removal
> Operations Statistical Tracking Unit, this detainer data set is produced
> "every week" by running "a series of…predefined queries that create this
> detainers population."
>
> Under the provisions of the Freedom of Information Act we are therefore
> requesting a complete copy of the current "detainer data set" referred to by
> Dr. de Castro and Mr. Hemphill. As noted above, this same data set created
> weekly by predefined queries has also been described as a "detainers
> population" of data elements.

32.   On September 4, 2019, ICE acknowledged receipt of TRAC's request and

assigned it tracking number 2019-ICFO-56713. ICE also determined that TRAC's request was

entitled to a full waiver of fees, after evaluating it on six factors including that release would

make a "significant . . . contribution to public understanding of government operations."

33.   Weeks passed without a response from ICE. On October 1, 2019, TRAC emailed

a request to ICE for the status on this request, and for an estimate of the completion time.[17] On

October 2, ICE replied to our email inquiry and declined to provide the estimate. ICE's response

merely stated:

> Thank you for contacting ICE FOIA in regards to your request, 2019-ICFO-
> 56713. Currently, we are unable to offer an estimated date of completion at this
> time. We have queried the appropriate component of DHS for responsive records.
> If any responsive records are located, they will be reviewed for determination of
> release. We will process your request as expeditiously as possible. Upon
> completion of the processing, all documents that can be released will be made
> available to you as soon as possible.

34.   On January 6, 2021, some 16 months after ICE's receipt of our initial request,

TRAC had still received no further response from the agency. We submitted another email

inquiry requesting a status update. On January 7, ICE responded. No estimated completion date

was provided. ICE told us only that:

> In regard to 2019-ICFO-56713, we have queried the appropriate component of
> DHS for responsive records. If any responsive records are located, they will be
> reviewed for determination of releasability. We will process your request as
> expeditiously as possible. Upon completion of the processing, all documents that
> can be released will be made available to you as soon as possible.

35.   As of the date of this declaration, TRAC has not received any records or any

response to the September 3, 2019 request seeking this detainer data.

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[17] In 2007, Congress added a provision to FOIA that requires agencies to provide requesters with
"an estimated date on which the agency will complete action on the request." 5 U.S.C.
552(a)(7)(B)(ii).

36.   We have continued to submit identical FOIA requests each month for the updated

detainer population ("current detainer data set"). These requests were submitted at the beginning

of October 2019 through June 2021. We have yet to receive *any* requested records in response to

any of these 22 FOIA requests. For the requests from October 2019 through September 2020,

apart from acknowledging receipt of our request and granting a full fee waiver, we have heard

nothing further.

37.   On our monthly requests submitted during FY 2021, we also have not received

any records regarding the requested detainer data. Instead, we have begun receiving boilerplate

responses from ICE either refusing to even process our request claiming we had not adequately

identified the record we were seeking, [18] or claiming that it had found no records responsive to

---

[18] The agency's response stated:

> After careful review of your FOIA request, we determined that your request is too
> broad in scope, did not specifically identify the records which you are seeking, or
> only posed questions to the agency. Records must be described in reasonably
> sufficient detail to enable government employees who are familiar with the
> subject area to locate records without placing an unreasonable burden upon the
> agency. For this reason, §5.3(b) of the DHS regulations, 6 C.F.R. Part 5, require
> that you describe the records you are seeking with as much information as
> possible to ensure that our search can locate them with a reasonable amount of
> effort. Whenever possible, a request should include specific information about
> each record sought, such as the date, title or name, author, recipients, and subject
> matter of the records, if known, or the ICE program office you believe created
> and/or controls the record. The FOIA does not require an agency to create new
> records, answer questions posed by requesters, or attempt to interpret a request
> that does not identify specific records.
>
> Please resubmit your request containing a reasonable description of the records
> you are seeking. Upon receipt of a perfected request, you will be advised as to the
> status of your request.
>
> If we do not hear from you within 30 days from the date of this letter, we will
> assume you are no longer interested in this FOIA request, and the case will be
> administratively closed.

our request. Late in May 2021 we began receiving a third variant boilerplate response that

confusingly combined the previous two conflicting claims asserting first that it had conducted a

search and second that it could not conduct a search and was administratively closing our request

"as being too broad in nature and lacking specificity [so that] the search would be unduly

burdensome."

      38.   These boilerplate responses to the monthly requests submitted during FY

2021, in addition to continuing to withhold the requested "current detainer population,"

also ignored any prior letter we had sent requesting – as DHS regulations require be

provided – information on what additional details ICE sought. [19] ICE further ignored

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[19] Our response said in part:

> We are greatly puzzled by the agency's assertion that this request did not contain
> "a reasonable description of the records you are seeking." The description of this
> record used the specific description given by not only Dr.de Castro, but by a
> second ICE official, Curtis A. Hemphill. Dr. de Castro in a sworn declaration
> dated December 11, 2020 in that same case referred to the detainer data set as
> "simply a report" which "once run, exists as a record." Our request further
> referred to her earlier April 2019 declaration affirming that if requested, the
> agency can easily and quickly produce it.

> We note that according to DHS FOIA regulations we would appear to have
> already done what is required. The regulations define that an adequate description
> is one which "describe[s] the records sought in sufficient detail to enable DHS
> personnel to locate them with a reasonable amount of effort."

Noting that the letter did not provide any real information about why the agency deemed our
description was insufficient, and citing the consultation provisions in DHS FOIA regulations at 6
C.F.R. § 5.3(b), we requested "an appointment with the agency for…assistance in describing the
records we are seeking."   We closed our letter assuring the agency that:

> TRAC would be happy to work cooperatively with the agency to obtain the
> records we seek. Please let us when we can confer by phone to learn what
> additional information in the agency's view is required, and how we can assist
> you in describing and obtaining the records we seek.

how in response to our earlier appeals of "no records found" responses, the ICE Appeals

officer had remanded and ordered that a new search be conducted. [20]   As of this date we

have not received any of the requested reports containing the "current detainer

population."

39.   In addition to making monthly requests for the current detainer data set,

separate series of FOIA requests have been submitted at the same monthly intervals

beginning in September 2019 and continuing through June 2021 for the:

     a.   Apprehensions/encounters data set
     b.   Arrests data set
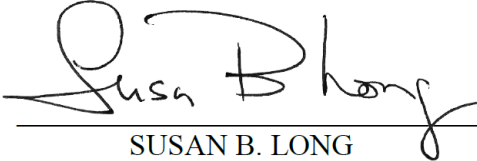   c.   Detention data set
     d.   Removals data set

We have yet to receive *any* requested records in response to any of these 88 FOIA requests.

40.   We have also made monthly requests for copies of the regular recurring reports

Mr. Hemphill testified about on August 15, 2019. These were generated each month from the

various "populations" created by these pre-defined queries. Our monthly requests followed the

same schedule as before. The first was submitted in September 2019 and they continued to be

submitted each month through June 2021. We have received no records in response to any of

these 22 FOIA requests.

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[20] In a letter dated April 13, 2021, a response was provided to our first appeals regarding 2021-ICFO-03467 and 2021-ICFO-08862. The Appeals office "determined that a new search or modification to the existing search could be made." After ruling that the agency's original searches were inadequate, both requests were remanded to the ICE FOIA Office "for processing and re-tasking to the appropriate agency/office(s) to obtain responsive documents, if any exist." [2021-ICAP-00576 and 2021-ICAP-00581]. No response has been received from the FOIA Office on these remands. Most recently two additional similar remands to do a new search for the requested monthly detainer population data sets were received in 2021-ICAP-00796 and 2021-ICAP-00797.

41.   We have also made monthly requests for copies of the "ad hoc" reports Mr.

Hemphill testified about at the August 15, 2019 hearing. These are the reports that the agency

was asked to prepare during a month for various non-FOIA requesters. Our monthly requests

also followed the same schedule as before. The first was submitted in September 2019 and they

continued to be submitted each month through June 2021. We have received no records in

response to any of these 22 FOIA requests.

I declare under penalty of perjury that the foregoing is true and correct to the best of my

knowledge and belief. Executed this 25th day of June, 2021 in Syracuse, New York.

_____

SUSAN B. LONG