

EXHIBIT I

EXHIBIT A

Subpoena to DHS

UNITED STATES DISTRICT COURT

for the

Eastern District of Tennessee

Isabel Zelaya, et al.

Plaintiff

v.

Jere Miles, et al.

Defendant

Civil Action No. 3:19-cv-00062-PLR-HBG

**SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION**

To: U.S. Department of Homeland Security, c/o John Mitnick, General Counsel, 245 Murray Lane SW,
Mail Stop 0485, Washington D.C. 20528

(Name of person to whom this subpoena is directed)

Production: **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See attached addendum.

Place: Attn: Tori Guy P.O. Box 1287, Decatur, GA 30031-1287	Date and Time:
--	----------------

Inspection of Premises: **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
--------	----------------

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: _____

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Plaintiffs
Isabel Zelaya, et al. _____, who issues or requests this subpoena, are:
Meredith Stewart, 201 St. Charles Ave, Suite 2000, New Orleans, LA 70170, 504-486-8982, meredith.stewart@splcenter.org

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 3:19-cv-00062-PLR-HBG

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____ .

I served the subpoena by delivering a copy to the named person as follows: _____
_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____
_____ *Server's signature*

_____ *Printed name and title*

_____ *Server's address*

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

EXHIBIT A TO FORM AO88 - SUBPOENA IN A CIVIL CASE

In accordance with Fed. R. Civ. P. 45, you are commanded to produce and permit inspection of the following objects described below, at the place, date and time specified on the subpoenas. Instead of producing the objects at the place specified, you may also mail or email the objects to the following address at least three days prior to the date specified on the subpoena or by Court order:

Attn: Tori Guy
P.O. Box 1287
Decatur, GA, 30031-1287
tori.guy@splcenter.org

You should produce all documents and things in your custody, possession or control, as well as those in the possession, custody or control of your employees, agents, companies, corporations, partners, attorneys and all others from whom you may reasonably obtain them. If the documents are electronically stored, all available versions of the documents should be produced on a compact disc in their native format(s) and without making any alterations or changes. For example, if the original document was created in Microsoft Word, please produce the Microsoft Word document by copying it to a disc without making any changes. If your responses will include electronically stored information, we ask that you or your attorney (if you are represented by one) contact Plaintiffs' counsel Meredith Stewart (504-486-8982) or Araceli Martínez-Olguín (213-797-7420) to discuss appropriate production of such electronically-stored information in accordance with the federal rules.

If you contend that any materials encompassed by this request are subject to privilege, you must comply with the requirements of Fed. R. Civ. P. 45(d) in responding to this subpoena.

DEFINITIONS

1. The word “DOCUMENT” includes all “writings,” “recordings,” and “photographs,” as those terms are defined in Federal Rule of Evidence 1001, and should be construed in the broadest sense permissible. Accordingly, “document” includes, but is not limited to, all written, printed, recorded or graphic material, photographic matter, sound reproductions, or other retrievable data (whether recorded, taped, or coded electrostatically, electromagnetically, optically or otherwise on hard drive, diskette, compact disk, primary or backup tape, audio tape, video tape, or DVD) from whatever source derived and however and by whomever prepared, produced, reproduced, disseminated, or made. Without limiting the generality of the foregoing, “document” includes the original and any non-identical copy and also every draft and proposed draft of all correspondence, internal memoranda, telegrams, telexes, facsimiles, electronic mail, reports, text messages, transcripts of telephone conversations, diaries, notebooks, minutes, notes, tests, reports, analyses, studies, testimony, speeches, worksheets, maps, charts, diagrams, computer printouts, online profiles, postings, messages (including, without limitation, tweets, replies, retweets, direct messages, status updates, wall comments, groups joined, activity streams, and blog entries), and other writings or materials of any nature whatsoever, whether or not divulged to other parties, together with any attachments thereto and enclosures therewith. In addition, the word “document” encompasses all forms and manifestations of electronically or optically coded, stored, and/or retrievable information, including but not limited to “e-mail,” “voice mail,” digital images and graphics, digital or analog audiotapes and files, and digital or analog videotapes and files.
2. With respect to a person, the word “IDENTIFY,” or any version thereof, shall mean to specify the person’s:

- (1) Full name;
- (2) Title;
- (3) Agency/Department;
- (3) All known telephone numbers; and
- (4) All known addresses.

3. “DHS” refers to the following Department of Homeland Security subcomponents: Immigration and Customs Enforcement, Homeland Security Investigations, and Enforcement and Removal Operations.

4. “OFFICER AND/OR EMPLOYEE” refers to any individual, in his official capacity; employed by DHS or acting on its behalf.

5. “SUPERVISOR” refers to any DHS OFFICER AND/OR EMPLOYEE with supervisory duties.

6. The singular includes the plural and vice versa; “any” or “each” should be understood to include and encompass “all”; “or” should be understood to include and encompass “and”; “and” should be understood to include and encompass “or”; and “any” should be understood to include and encompass “any” and “every.”

7. The term “relating to,” “relate to,” or “related to” means all matters or things, which in any way discuss, support, are connected to, arise from, reflect, summarize, evaluate or comment on the subject in question.

8. The terms “and” as well as “or” shall be construed either disjunctively or conjunctively in order to bring within the scope of the specifications stated in a Request all responses that might otherwise be deemed outside the scope.

9. The use of a verb in any tense shall be construed as the use of the verb in all other tenses,

whenever necessary to bring into the scope of the specification all responses which might otherwise be construed outside the scope.

10. The use of any masculine or feminine pronoun includes both the masculine and feminine.

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects:

- A list that identifies all the OFFICERS, SUPERVISORS, AND/OR EMPLOYEES at DHS who authorized, planned, participated in, and/or were physically present during the execution of an Internal Revenue Service (“IRS”) search warrant on April 5, 2018 at the Southeastern Provision meat packing plant in Bean Station, Tennessee (“the Raid”).
- Any documents related to the Raid that name the OFFICERS AND/OR EMPLOYEES of DHS who participated in and/or were physically present during the Raid.
- Any documents related to the Raid that name the SUPERVISORS at DHS who participated in the planning and/or approving any of the DHS OFFICERS AND/OR EMPLOYEES’s actions during the Raid.

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
KNOXVILLE DIVISION**

ISABEL ZELAYA, et al.,

Plaintiffs,

v.

JERE MILES, et al.

Defendants.

Civil Action No. 3:19-cv-00062-PLR-HBG

CLASS ACTION

**DECLARATION OF MEREDITH B. STEWART IN SUPPORT OF THE SUBPOENA
TO THE U.S. DEPARTMENT OF HOMELAND SECURITY**

I, Meredith Stewart, do declare and say the following:

1. My name is Meredith Stewart. I am over the age of 18 years and am competent to give this Declaration. I am a resident of New Orleans, Louisiana.

2. I work for the Southern Poverty Law Center, and I am one of the attorneys for the Plaintiffs in *Zelaya, et al. v. Miles, et al.*, 3:19-cv-00062.

3. I submit this Declaration in support of Plaintiffs’ subpoena to the U.S. Department of Homeland Security (“DHS”) for records related to the identities of the Doe Defendants in this matter and in compliance with the DHS regulations at 6 C.F.R. § 5 *et seq.*

4. The subpoena will be served on the DHS Office of General Counsel in Washington D.C. in accordance with 6 C.F.R. §§ 5.41 and 5.43, as well as Counsel for Defendant Jere Miles at the U.S. Attorney’s Office for the Eastern District of Tennessee.

BACKGROUND ON THE PROCEEDINGS

5. Plaintiffs and the putative class members are individuals of Latino ethnicity or race who were working in the Southeastern Provision meatpacking plant (Plant) on April 5, 2018

when dozens of DHS agents from Immigration and Customs Enforcement (“ICE”) and Homeland Security Investigations (“HSI”) raided the Plant during the execution of an Internal Revenue Service search warrant for documents (“the Raid”). Plaintiffs allege that the agents’ conduct during the Raid violated their rights under the Fourth and Fifth Amendments to the U.S. Constitution. Plaintiffs also allege that the agents conspired to violate the Plaintiffs’ and the class members’ fundamental rights in the planning and the execution of the Raid.

6. Plaintiffs, on behalf of themselves and the proposed class, filed the lawsuit on February 21, 2019 against officers from ICE, in their individual capacities, for damages and declaratory relief. *See* Pls’ Compl., Doc. 1. Plaintiffs are suing nine named ICE agents and thirty unknown Doe Defendants/ ICE agents.

7. On February 25, 2019, Plaintiffs filed a Motion for Leave to Take Expedited Discovery for the limited purpose of ascertaining the identifies of the Doe Defendants. The Motion requested permission to serve on Defendant Jere Miles (“Miles”) two narrow interrogatories regarding the names, titles, telephone numbers, and addresses of the ICE agents who planned, participated in, and/or were physically present at the Raid. The interrogatories also sought the identities of any supervisors who planned and/or approved the agents’ actions during the Raid. *See generally* Docs. 9-10 & Ex. A.

8. In that Motion, Plaintiffs described the measures they have taken to identify the Doe Defendants, including making two Freedom of Information Act (FOIA) requests to DHS, making an Open Records Act request to the Tennessee Highway Patrol, conducting an extensive review of media coverage of the Raid, and attempting to contact the U.S. Attorney’s Office to discuss obtaining the Doe Defendant identities. Doc. 10, at 7-8.

9. Defendant Miles opposed Plaintiffs' Motion stating, *inter alia*, that the "Plaintiffs should seek information from DHS records from the United States (through its agencies) by serving third-party discovery" *See* Doc. 24. Defendant also argued that the DHS' Touhy Regulations, codified at 6 C.F.R. 5 § *et seq.*, apply to any request for information from DHS or its current or former employees.

10. On March 12, 2019, Plaintiffs sought the consent of counsel for Defendant Miles to a motion for leave to issue a subpoena to DHS. Counsel for Defendant Miles declined to consent or join in that motion. On March 14, Plaintiffs filed a Reply brief requesting leave of Court to issue this subpoena to DHS.

NATURE AND RELEVANCE OF THE DOCUMENTS

11. Plaintiffs serve this subpoena on the DHS General Counsel pursuant to 6 C.F.R. § 5.43 and Federal Rule of Civil Procedure 45.

12. Plaintiffs seek documents that identify the ICE agents who were involved in the Raid. These documents are relevant to the litigation because they will reveal the identities of the Doe Defendants, who Plaintiffs have alleged engaged in unconstitutional conduct in the Raid's execution, including making and implementing the decision to detain and arrest only the Latino workers. If Plaintiffs do not name the Doe Defendants prior to April 5, 2019 – the expiration of the statute of limitations period applicable to their claims – they risk losing their individual and class-wide claims.

13. Additionally, the documents sought are relevant to this litigation because they will allow Plaintiffs to effectuate service on the named and unnamed Defendants and dismiss improperly named Defendants, if necessary.

14. Plaintiffs seek information about a significant enforcement operation that occurred on one day and in a single location. The specific date, operation target, and location all provide DHS with a manner to search efficiently for the requested discovery.

15. DHS likely has custody or possession of the requested documents in the form of operation plans related to the Raid, staffing lists, payroll records, and/or other personnel documents. Plaintiffs are not seeking voluminous discovery from DHS through this subpoena.

OTHER CONSIDERATIONS

16. Disclosure of these documents is permissible under Federal Rules of Civil Procedure 26, 34, and 45. The request is narrow and specific, and thus compliance with the subpoena will not unduly burden the agency.

17. The public interest will be served by disclosure of these documents given the pending litigation in federal court. The Court and the public will be served by having access to relevant documents, particularly those that will lift the veil on the Defendants' identities, thereby narrowing the issues for the Court and conserving judicial resources.

18. Though Plaintiffs do not believe this narrow document request will overburden the agency, Plaintiffs remain willing to work with DHS to minimize any potential burden this subpoena could cause.

19. Plaintiffs are willing to pay a reasonable retrieval and copying fee, if necessary, for the documents.

20. The disclosure of these documents will not affect the impartiality of any litigant in this case given the limited nature of the document request, nor will this disclosure affect the overall mission of DHS.

21. Plaintiffs request a response to this subpoena request within seven days of service.

Pursuant to 20 U.S.C. § 1746, I declare under penalty of perjury that each statement that I have made above is true and correct.

Signed this 14th day of March 2019,

A handwritten signature in black ink, appearing to read 'M. Stewart', written over a horizontal line.

Meredith B. Stewart