

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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SUSAN B. LONG and DAVID BURNHAM,

Plaintiff,

vs.

5:17-CV-506

U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT,

Defendant.

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Transcript of an Evidentiary Hearing held on
August 15, 2019, at the James Hanley Federal
Building, 100 South Clinton Street, Syracuse,
New York, the HONORABLE BRENDA K. SANNES, United
States District Judge, Presiding.

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I N D E X O F T E S T I M O N Y

<u>Witnesses</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Curtis A. Hemphill	8 62	40 68	-- 71	-- --
Patricia DeCastro	79	--	--	--
Susan B. Long	111	--	--	--

1 (Open Court, 9:40 a.m.)

2 THE CLERK: Case is Long versus United States
3 Immigration and Customs Enforcement, 17-CV-506, Counsel,
4 please state your appearances for the record.

5 MR. KEEGAN: Good morning, your Honor, Terence
6 Keegan, Miller Korzenik Sommers Rayman, for plaintiffs. With
7 me today is Zachary Press, also of Miller Korzenik Sommers
8 Rayman.

9 MR. PRESS: Morning, your Honor.

10 MR. REYNOLDS: Morning, your Honor, Ransom Reynolds
11 for the United States representing U.S. Immigration and
12 Customs Enforcement, and to my right is Ryan Stubbs, a legal
13 advisor to ICE.

14 THE COURT: Good morning to all. And we're here
15 today for the evidentiary hearing with respect to the FOIA
16 issues. I have read all of the affidavits so I don't think
17 counsel need to unnecessarily repeat what's in the
18 affidavits, I think it would probably be most helpful to
19 address the issues that were raised by the plaintiff's latest
20 letter discussing inconsistencies in the response. So I'll
21 let defense counsel proceed.

22 MR. KEEGAN: Your Honor, if I may just --

23 THE COURT: Yes.

24 MR. KEEGAN: If I could just take just a couple
25 minutes and of course defense counsel can respond to it, but

1 just to frame, again, why we're here. And we did raise
2 issues in the -- in our letter motion around the supplemental
3 declaration which, by the way, was a fourth declaration that
4 ICE has submitted in this case. The case is going on two
5 years old now, and that declaration raised new issues and
6 creates new inconsistencies. So we're hoping to get some
7 straight answers, as we said in our letter, today, and I
8 think there are three main issues today to go over. Number
9 one is the existence of the fields of data that are in issue.
10 Number two is how ICE's databases integrated, the word
11 integrated is in the very name of the databases, and how that
12 data within those databases is interrelated. And lastly, how
13 production of that data, the data at issue, is not unduly
14 burdensome, as ICE contends.

15 So with that, I'm -- Mr. Press is going to be
16 participating with me in the examination of ICE's witnesses,
17 thank you very much.

18 THE COURT: Yes, and any response? Or I'm happy to
19 go straight to the testimony.

20 MR. STUBBS: Good morning, your Honor.

21 THE COURT: Good morning.

22 MR. STUBBS: Just real briefly in response, this
23 case comes down to the creation of records. The agency
24 believes that combining different distinct datasets to create
25 a brand new distinct dataset amounts to the creation of

1 records. TRAC would like the agency's database to be
2 person-centric, but it's not. Our database is event-centric.
3 Events such as apprehensions, detainers, removals, arrests.
4 These separate populations of data are not intertwined,
5 interwoven, or connected in the IIDS as requested. They
6 exist in separate silos with completely different purposes
7 for the agency. TRAC receives on a monthly basis massive
8 amounts of data from the agency on each of these populations.
9 We tried to print just a sample of detainer production
10 yesterday and it would have been 63,000 pages, just to show
11 your Honor as an example, we decided not to kill that many
12 trees.

13 The issue for TRAC in our opinion is that the data
14 that they seek is produced on multiple spreadsheets, and it's
15 not on one single spreadsheet, and that, to do that would --
16 it would amount to the creation of records so that is what
17 the government believes is the fundamental question here.
18 And with that, we can call our first witness.

19 THE COURT: And one question I had, I understand
20 that the data is in separate modules but one question I had
21 is, if there's an identification number that, as I understand
22 it, was provided to TRAC, why the information couldn't be
23 requested with that identification number.

24 MR. STUBBS: So in order to connect the different
25 silos that are sought, the different populations, there is

1 not one uniform identification number that connects
2 everything that is sought, and the reason for that is because
3 not everything is linked together in the system. So for
4 example, someone may have a detainer, the event as a detainer
5 that is placed on the event, but it might not be associated
6 or linked to the individual. The location, the true
7 location, and I don't want to testify, your Honor, the true
8 location of a person-centric record of an individual is in
9 something called an alien file, which is with USCIS. There's
10 these files that cover from day one to the last day,
11 person-centric, every event that transpired for that
12 individual. That's in a paper document called an alien file.
13 Even ICE deportation officers, if they lodge an event on an
14 alien, whether it's a detainer or removal, the very first
15 thing they do is request a copy of that alien file from USCIS
16 because we don't have that connection person-centric start to
17 finish in ICE's database.

18 THE COURT: Okay.

19 MR. STUBBS: Thank you.

20 THE COURT: So the defense may call their first
21 witness.

22 MR. REYNOLDS: Thank you, your Honor. We call
23 Curtis Hemphill to the stand. Judge, I've handed out a
24 binder containing defendant's eight exhibits, I've also
25 provided a copy to plaintiff's counsel, I don't believe they

Curtis Hemphill - Direct

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1 have any objection.

2 MR. KEEGAN: We do not.

3 MR. REYNOLDS: So I would just offer those eight
4 exhibits into evidence and going to do it the old-fashioned
5 way and just put this binder in front of the witness if I
6 can.

7 THE COURT: Thank you. Thank you, Mr. Reynolds,
8 Government's Exhibits 1 through 8 are admitted into evidence.

9 Step right up and the courtroom deputy will place
10 you under oath.

11 THE CLERK: Please raise your right hand. Can you
12 state and spell your name for the record.

13 THE WITNESS: Curtis Alan Hemphill.
14 H-e-m-p-h-i-l-l.

15
16 C U R T I S A . H E M P H I L L ,
17 called as a witness and being duly sworn, testifies
18 as follows:

19 THE COURT: You may proceed.

20 MR. REYNOLDS: Thank you.

21 DIRECT EXAMINATION BY MR. REYNOLDS:

22 Q Good morning, Mr. Hemphill.

23 A Good morning.

24 Q Where are you currently employed?

25 A I work for the ICE Enforcement and Removal Operations

Curtis Hemphill - Direct

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1 Statistical Tracking Unit at ICE headquarters in Washington,
2 D.C.

3 Q And what's your position with ICE in the Statistical
4 Tracking Unit?

5 A I'm a detention and deportation officer.

6 Q And can you tell us a little bit about what the
7 Statistical Tracking Unit is?

8 A So the Statistical Tracking Unit is the main reporting
9 unit for ICE Enforcement and Removal Operations, we produce a
10 number of recurring reports for executive leadership, the
11 White House, Congress, other stakeholders, our office of
12 public affairs, congressional relations, we also handle FOIA
13 requests and ad hoc requests for operational partners.

14 Q And is the Statistical Tracking Unit also commonly
15 referred to as STU, S-T-U?

16 A It is.

17 Q And how long have you worked for ICE?

18 A I've worked for ICE and its predecessor agency, the
19 Immigration and Naturalization Service, for approximately 26
20 years and three months.

21 Q And can you just briefly tell us a little bit about
22 your positions over the past 26 years with ICE and its
23 predecessor?

24 A I had two years as an immigration inspector, I spent
25 three years as an immigration adjudications officer, I spent

Curtis Hemphill - Direct

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1 three years as a deportation officer, I spent approximately
2 16 years as a supervisory deportation officer, and I've been
3 a detention and deportation officer in the STU since October
4 of 2016.

5 Q And can you tell us what your specific job duties have
6 been over the last three years since 2016 as a detention and
7 deportation officer assigned to STU?

8 A My primary responsibility is to review the requests for
9 the ad hoc recurring reports and FOIAs that come into the
10 STU, to work with the analysts and statisticians who create
11 those reports, and respond to those FOIA requests to sort of
12 interpret them from an operational standpoint to help them
13 determine which data points we will pull and provide in
14 response to those requests, and then when the requests or the
15 responses are completed, they come back to me, and I clear
16 them for release.

17 Q And those responses include, in addition to, you
18 mentioned the ad hoc recurring reports, you're also referring
19 to the FOIA requests as well?

20 A Yes.

21 Q Can you just briefly tell us what ad hoc recurring
22 reports are?

23 A So there are two types of requests, we have recurring
24 reports, those are ones that are due every week, every month,
25 every quarter, bi-annually, every year, and then the ad hoc

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1 requests are things that come in where they're not contained
2 in those recurring reports but they're generally needed for
3 operational purposes and they're sort of shorter-term,
4 one-time, one-off requests.

5 Q Have you been over the past three years involved in
6 processing FOIA requests submitted by TRAC?

7 A Yes.

8 Q And can you tell us what your role was in facilitating
9 those FOIA requests by TRAC through the STU unit?

10 A My role is, again, generally just to work with the
11 analysts and statisticians to try to figure out which data
12 points might be responsive to the requests, and then to
13 review and clear the responses once they're complete.

14 Q And when you say clear the responses once they're
15 complete, what do you mean by clear the responses?

16 A I literally forward them on out of the unit with the
17 comment that they've been cleared and are now ready to be
18 provided to the requester.

19 Q And by cleared, do you mean that you believe that the
20 product that you're producing is responsive to the request?

21 A Yes.

22 Q Are you familiar with ICE's Integrated Decision Support
23 system, also known as the IIDS?

24 A I am familiar with it, yes.

25 Q And can you tell us what that is?

1 A The IIDS is a snapshot of the ENFORCE Integrated
2 Database, the EID, which is the main database that DHS
3 systems feed into. The IIDS is a separate database that is a
4 snapshot of some of the fields in EID that is produced and
5 updated I believe three times a week, and is the primary
6 source of reporting and responding to FOIA requests for the
7 STU.

8 Q And the data points that the statisticians search for
9 in response to FOIA requests, are those data points contained
10 in the IIDS?

11 A They are, yes.

12 Q And where does the information that's contained in the
13 IIDS come from, how is it inputted into that system?

14 A The IIDS is populated by what's referred to as the ETL,
15 which is a process of copying some of the data points from
16 the EID over into the IIDS server and refreshing that three
17 times weekly.

18 Q And you mentioned populated, does the IIDS contain
19 different populations?

20 A The IIDS contains all of those data points. We take
21 those data points and we run queries for specific populations
22 weekly, and those are the populations that we use to respond
23 to FOIA requests and to create reports.

24 Q And so if a FOIA request comes in for -- seeking
25 information for detainers, is there a certain population that

1 you go to in order to respond to that request?

2 A There is.

3 Q And what population would that be?

4 A Our detainees population.

5 Q And would the same -- would it be the same for a FOIA
6 request requesting removal information?

7 A Yes, we would go to our removals population.

8 Q And is the detainer and removal population two separate
9 populations?

10 A They are.

11 Q Can you explain that any further as far as how they are
12 separate?

13 A So there are a specific set of data points in our
14 detainer population that are related to detainees to include
15 the points that are captured on the form as well as some
16 additional points that are brought in that, again, are
17 related to detainees. The same thing goes for removals,
18 there's a set number of removals data points that are
19 contained in the query that we use to pull that data out of
20 IIDS every week.

21 Q If I could ask you to turn in the binder I think that's
22 sitting in front of you to Defendant's Exhibit 1, and ask you
23 if you recognize that, and if so, can you tell us what it is.

24 A Yes, Exhibit -- Defendant's Exhibit 1 is a FOIA request
25 from TRAC regarding our detainees.

1 Q And is that the FOIA request from TRAC that is the
2 subject of this New York litigation?

3 A Yes.

4 Q It's in fact one of the two FOIA requests that's the
5 subject of this litigation, is that correct?

6 A Correct.

7 Q And does this particular FOIA request contained in D1
8 ask for information pertaining to detainers?

9 A Yes, it does.

10 Q And if I could refer you to the next exhibit, D2, do
11 you recognize that, and if so, can you tell us what that is?

12 A Exhibit D2 is a FOIA request from TRAC regarding what
13 are called notification requests which are a hybrid version
14 of the detainer requests.

15 Q And if -- and that's, as you mentioned, that's also the
16 subject of this New York litigation, correct, D2?

17 A Correct.

18 Q If I can refer you now to D3, if you could tell us what
19 that is if you recognize that.

20 A D3 is a FOIA request from TRAC regarding the population
21 of removals which are -- which occur after a secure
22 communities match.

23 Q And is D3 to your knowledge the subject of the D.C.
24 litigation?

25 A I believe so, yes.

1 Q And if I could show you, if you look at Exhibit Number
2 4, Defendant's Exhibit 4, let me know if you recognize that
3 and if so, what is that?

4 A Exhibit Number 4 is a FOIA request from TRAC seeking
5 the same information as in Exhibit Number 3 which were
6 removals which occur after a secure communities match.

7 Q So based upon your testimony and the exhibits,
8 Exhibits 1 and 2, which are the subject of New York
9 litigation, are FOIA requests pertaining to detainers
10 basically, correct?

11 A Correct.

12 Q And the D.C. litigation, those two FOIA requests, which
13 are Exhibits 3 and 4, pertain to removal information,
14 correct?

15 A Correct.

16 Q And I've got an exhibit here, Number 5, can you just
17 tell us what this depicts, Exhibit D5?

18 A D5 is summary language from the requests in D1 and D2
19 as well as the requests in D3 and D4, just describing what's
20 being asked for.

21 Q And does the exhibit basically describe -- there's
22 different things being asked for in New York compared to
23 D.C., correct?

24 A That's correct.

25 Q In other words, the D.C. case is asking for removal

1 data, not detainer data, is that correct?

2 A That's correct.

3 Q And the New York case is asking for detainer data, not
4 removal data, is that correct?

5 A Correct.

6 Q Like to bring your attention to Exhibit Number 4,
7 Defendant's Exhibit 4. Do you recognize this? I'm sorry,
8 Exhibit 6, I apologize.

9 A Sorry, you asked -- Defendant 6 exhibit is the
10 plaintiff's letter.

11 Q This is the plaintiff's letter to the court dated
12 May 16th, 2019, and it's document number 59 in this case, is
13 that correct?

14 A That's correct.

15 Q If I could direct your attention to page 1, and if we
16 could go down to the first section there labeled or titled
17 "Supplemental declaration shows that the information
18 requested generally exists," at the bottom of page 1, do you
19 see that?

20 A I do.

21 Q And do you see starting with the second sentence in
22 that first paragraph that begins with, "Previously," it
23 states that -- plaintiff states in the letter that,
24 "Previously, ICE had argued that the data 'did not exist.'"
25 And then, "Now, ICE states that the information in the

1 database 'is granular and detailed but it is not neatly
2 arranged to track individuals and their enforcement
3 history.'" So is that statement accurate?

4 A Yes.

5 Q And can you explain why you believe it's accurate?

6 A So the data exists in the IIDS database, as I described
7 before, the data that we use for reporting that's extracted
8 from the IIDS database exists in populations, the way we use
9 it, detainers, removals, arrests, and there is no function in
10 our IIDS database to track someone from an individual
11 perspective. The data that's in the IIDS is entered in there
12 by the officers based on events, things like encounters,
13 detainers, arrests.

14 Q And so for example, does the detainer population
15 contain data regarding detainers that led to a subsequent
16 arrest?

17 A No.

18 Q Why not?

19 A Because the -- there's not a requirement for our
20 officers to go in and capture that an arrest was made
21 specific to a detainer once a detainer has been issued. The
22 form does not have a place for the officer to update that.
23 When the system is updated, it's not relative to the
24 detainer, it's -- the arrest date is populated in the system
25 but it's not tied to a specific detainer.

1 Q And does the detainer population contain data regarding
2 the most serious criminal conviction?

3 A No.

4 Q And why not?

5 A It just doesn't exist in that population.

6 Q If we could go back to Exhibit Number 6, again, the
7 bottom of page 1, that last paragraph there where plaintiff
8 states, the supplemental declaration shows IIDS records
9 numerous fields to associate or connect other enforcement
10 actions and data related to the same individual who was the
11 subject of a detainer. Is that statement accurate?

12 A The IIDS does contain a number of identifiers, they're
13 associated with things like events, encounters, cases,
14 persons, so those identifiers exist in the system, but this
15 suggests that they're somehow related in the database and
16 they're not related.

17 Q So I think it's your testimony that the IIDS does not
18 associate or connect these enforcement actions in the IIDS?

19 A Correct.

20 Q On page 2, top of page 2, do you see where it says it's
21 got 109 and 110?

22 A Yes.

23 Q And then a little bit below it's 112 and 111, and in
24 that section, do you know who drafted the items listed that
25 come after those numbers 109, 110, 112, and 111?

1 A I believe those were drafted by the plaintiffs.

2 Q And do you know if those were taken from their FOIA
3 requests or from somewhere else or don't you know?

4 A I don't know for sure.

5 Q And did ICE ever state that these requested data fields
6 listed here were related to any particular individual?

7 MR. PRESS: Objection, your Honor, I don't think
8 ICE has requested anything in this case.

9 Q Excuse me. Did -- I'll withdraw the question, rephrase
10 it.

11 If you go to the top of page 2, the second
12 half of that paragraph that carried over from page 1, that
13 last sentence says, "The two requests referenced below, that
14 being 109 and 110, pertain to identifiers that ICE assigns to
15 individuals." Are you aware of any declarations where ICE
16 has stated that information provided was assigned to specific
17 individuals?

18 A I'm not aware of any.

19 Q If I could now direct your attention to about -- little
20 more than halfway down the page, the section right before,
21 "ICE is capable of retrieving records," you see that?

22 A Yes.

23 Q And in that paragraph, plaintiff states, "ICE admits
24 that it can and does connect different law enforcement
25 actions to an individual subject to a detainer -- even though

1 ICE states in the same declaration that it cannot." Is this
2 a true statement?

3 A So ICE does connect different law enforcement actions
4 to individuals and cases such as detainers, when it's
5 operationally required. So for instance, if we had a need to
6 do that for a report or an ad hoc report, we would have an
7 analyst go in and do the analysis and the additional
8 calculations required to do that. However, we do not do that
9 for FOIA requests because doing so would lead to creation of
10 a new record that didn't previously exist.

11 Q Moving on to the next section titled, "ICE is capable
12 of retrieving records responsive to TRAC's requests," and
13 start with the first sentence of that first paragraph there
14 where plaintiff states, "The court also asked ICE to explain
15 its 'narrow' construction of TRAC's requests as 'seeking only
16 data collected or reviewed at the time a detainer or notice
17 is issued.'" Do you believe that ICE has taken a narrow view
18 of TRAC's FOIA request?

19 A No, I do not.

20 Q Why not, and can you provide any examples why not?

21 A Sure. So the detainer form and the notification form
22 each have approximately 30 fields that are gathered at the
23 time that the officer inputs the detainer information into
24 the system and generates the form. TRAC, in relation to
25 those detainer requests, requests 112 data points, and

1 including the sub data points, it's 150 data points. The
2 response that we provide in that particular FOIA includes 70
3 columns, which are 70 different data points related to
4 detainers. So in that instance, we actually provide more
5 than just what's gathered on the form and include every data
6 field that we believe would be responsive to the plaintiff's
7 request.

8 Q I'd like to point your attention or direct your
9 attention to the next sentence in that same paragraph, bottom
10 of page 2 there, states, where plaintiff states, "According
11 to the supplemental declaration, 'different data is collected
12 and entered when different law enforcement actions occur,'
13 and that in order to connect the events, 'analysts would have
14 to write complex new computer programs to temporarily access
15 the data' -- a process that ICE asserts 'would require
16 analysis, calculations, research and the creation of new
17 records.'" Is that statement accurate?

18 A Yes.

19 Q Why is that accurate?

20 A Again, because with respect to reporting, we rely on
21 our different populations to report based on the requests.
22 If we had a request come in from DHS leadership or the White
23 House or congressional office that asked us to link those
24 populations together, it would be in the normal course of our
25 business to respond to that type of a request and to do that

1 analysis, but we do not do that for FOIAs because it involves
2 the creation of a new document.

3 Q And the last sentence of that same paragraph we've been
4 looking at where plaintiff states that -- give me one second,
5 please. Lost my place. Yes, where plaintiff states that,
6 "Essentially, ICE tries to argue that its database is
7 designed to report enforcement actions in isolation only."
8 Is that true?

9 A The data is collected based on enforcement actions.
10 When we report that data back out, it may be reported in
11 isolation for those enforcement actions, or it may be
12 expanded as needed, again, for our regular course of business
13 to include case actions or other relations to the different
14 types of data population.

15 Q Now the next paragraph there at the bottom of page 3 --
16 excuse me, page 2, the last paragraph -- excuse me one
17 moment -- where plaintiff states that the information or data
18 is organized in such a way that can be easily managed,
19 updated and searched for specific information -- actually,
20 just give me a moment, I think I lost my place here. I'm
21 sorry, that's on page -- page 3, let me go ahead here. Give
22 me one moment, please, your Honor?

23 THE COURT: Sure.

24 Q Okay, I think I'm back on track. So the last paragraph
25 of page 2 where plaintiff states that, "ICE's opening

1 position in this litigation was that its EID database 'allows
2 ICE officers to manage cases from the time of a [person's]
3 arrest, in-processing or placement into removal proceedings,
4 through the final case disposition,' and that its IIDS
5 database 'manages case information and the reporting of case
6 information,'" is that statement accurate?

7 A That is not accurate.

8 Q Why not?

9 A So case management is not done in the EID, EID is a
10 database, collection of data points. The same goes for IIDS.
11 It's a database, case management is not done there. Case
12 management is done in an up-front application called the
13 ENFORCE Alien Removal Module, or EARM, which utilizes data
14 that is stored in the database but the case management is
15 done there, it's not done in the EID or the IIDS.

16 Q On to page 3, the first full paragraph and the last
17 sentence of that first full paragraph that starts with, "The
18 information," do you see that?

19 A Yes.

20 Q So on Exhibit 6, page 3, where plaintiff states that,
21 "The information, or data, is organized in such a way that it
22 can easily be managed, updated, and searched for specific
23 information," is that a correct statement?

24 A Data is not managed in the EID or the IIDS to the
25 extent that cases are being managed in those systems. When

1 case management is happening in the EARM system that relates
2 back to the EID, in other words, if you enter something in a
3 field in EARM, it updates the EID but the case management
4 itself happens in the EARM.

5 Q And is that your answer as to why that particular
6 statement is not correct, that it can -- the data can be, can
7 easily be managed, updated, and searched for specific
8 information?

9 A Yes.

10 Q Can you clarify that a little bit further for us,
11 please.

12 A Yeah. Just to clarify, I don't agree with that
13 statement that the case management or that the data
14 management is happening in those databases. The management
15 of those encounters, detainers, removals happens in the EARM.

16 Q And can you explain EARM just a little bit for us?

17 A EARM is a -- a user application that is utilized by
18 officers in the field and the support staff who help us
19 manage cases in the docket control offices, and essentially
20 what it is is it's a snapshot, so when the user goes in to
21 EARM and enters an identifier such as an alien number or an
22 FBI number, or a subject ID, they can retrieve data from the
23 EID that allows them to see the -- either the information
24 related to that encounter or to the encounters that are
25 linked to that person in EARM.

1 Q On page 3, the next paragraph that starts with, "In
2 another FOIA case," you see where I'm pointing to?

3 A I do.

4 Q In that paragraph plaintiff states, "ICE confirmed that
5 'Records can be retrieved from IIDS using descriptors entered
6 by an officer specific to a person, such as alien number,
7 subject ID, date of birth, or miscellaneous number such as an
8 FBI number.'" Is that statement accurate?

9 A No, we would not retrieve data from the IIDS using an A
10 number or an FBI number. Again, as I said a moment ago, if
11 we were looking for information regarding an encounter or a
12 person, we would run that identifier in EARM and it would
13 retrieve the data from EID. The IIDS is a separate data
14 system that is used for reporting purposes.

15 Q And is that why you would not retrieve data from IIDS
16 using an alien number or date of birth?

17 A Correct. When we retrieve data from the IIDS, it's
18 through the use of a query that generally involves a number
19 of variables to produce that information from the IIDS. I
20 don't run queries myself, I'm an officer, but I work with the
21 analysts and the statisticians that do and I've never seen a
22 query that involved just one field from the database.

23 Q And by one field, what do you mean by that? Can you
24 give us an example of what you mean by that?

25 A An A number or an FBI number.

1 Q Moving on to the next section titled, "ICE fails to
2 address specific data points that the court instructed ICE to
3 explain." In that first paragraph there, first sentence,
4 plaintiff states that, "The court asked ICE to address
5 whether an individual subject to a detainer was arrested
6 following a detainer," and, "ICE does not deny that this data
7 point exists." Can you please elaborate on that for us.

8 A That specific data point does not exist to my
9 knowledge.

10 Q Meaning an arrest following a detainer?

11 A Correct. Not without doing additional analysis and
12 calculations and creating that data point.

13 Q So ICE does not -- does not update the detainer form
14 after a subsequent arrest after detainer is issued, is that
15 what you're saying?

16 A That is correct.

17 Q And I think you've already testified that there's no
18 field connecting -- withdraw that. The last sentence in that
19 same paragraph that we're just looking at that begins with,
20 "Rather," do you see that?

21 A I do.

22 Q In that sentence, plaintiff states that ICE argues that
23 there is no comprehensive master record that allows ERO to
24 pull up all enforcement history related to that individual.
25 Is that statement accurate?

1 A That is correct, it doesn't exist in the database as
2 our data is not organized by individuals.

3 Q And is there -- is the A file that you previously
4 testified to a -- would you consider that a comprehensive
5 master record?

6 A Yes, I would consider the alien file, the A file to be
7 a comprehensive master record of an individual.

8 Q And does ICE maintain the A file?

9 A ICE is not the owner of the A file. If I as an officer
10 am going to take an enforcement action against somebody such
11 as arresting them or placing them in removal proceedings, I
12 would request the alien file, which is owned by U.S.
13 Citizenship and Immigration Services, and I would review that
14 file, that comprehensive file of the individual before taking
15 action or concurrent with taking the action.

16 Q So is it your testimony that it's a different federal
17 agency other than ICE that is the custodian of the A file?

18 A That is correct, USCIS is the custodian of alien files.

19 Q You may have mentioned but what does USCIS stand for?

20 A United States Citizenship and Immigration Services.

21 Q Okay, back to Exhibit -- or still on Exhibit 6, still
22 on page 3, that next paragraph after we were just at which is
23 the second full paragraph under the "ICE fails to address"
24 section, and the sentence that begins with, "ICE attempts,"
25 do you see that?

1 A I do.

2 Q So in that sentence, paragraph, plaintiff states that,
3 "ICE attempts to justify its withholding of these subsequent
4 enforcement action records by stating that 'the detainer
5 entries will not contain information related to future events
6 that had not even occurred yet, such as future arrests.'" And, "'Simply put,' ICE claims 'a detainer entered into the
7 database contains no information about what happened
8 following that detainer.'" Is that statement accurate?

9 A Generally that statement is accurate. There are fields
10 that I'm aware of on either the detainer or the notification
11 form which require the officer to record whether a future
12 hearing is taking place or a future arrest will take place.
13 There are a limited number of data points in the detainer
14 data that occur or that capture something that occurred after
15 the detainer was placed such as if the detainer is canceled
16 or lifted for some reason because the individual was booked
17 into custody, so we record that lift code that occurs
18 subsequent to the placing of the detainer and we record the
19 date that it happened, so that's just a general example but
20 in general there is no requirement on that form for the
21 officer to either predict when a future action will take
22 place or record a subsequent action.

23 Q And the last sentence in that same paragraph we were
24 just on that starts with, "However," plaintiff states that,
25

1 "as the court pointed out to the government counsel at the
2 summary judgment motion hearing last year, 'clearly the FOIA
3 request isn't limited to data that's on the detainer or
4 notice forms.'" How do you respond to that?

5 A We -- again, we don't limit the detainer data to the
6 four corners of that form which contain approximately 30 data
7 points. We pull significant amount more of those data points
8 and we provide I believe about 70 of them to the plaintiff.
9 Also, I would note that we don't limit in FOIA responses just
10 to that population. If a requester asks about detainers and
11 removals, they will get those as two separate populations and
12 in fact the plaintiffs get a very large amount of data
13 related to those data points from us. They get the entire
14 population of detainers and they get the entire population of
15 removals and arrests and variations thereof. They just don't
16 get them linked together because that would be creating a
17 record that doesn't exist.

18 Q And has the plaintiff been receiving the data that you
19 just described for detainers and removals over the past three
20 years?

21 A Yes.

22 MR. PRESS: I object, your Honor, what data is
23 plaintiff -- defense counsel talking about?

24 Q What data has been provided over the last three years
25 to plaintiff?

1 A I mean off the top of my head, there are well over a
2 dozen recurrent requests from the plaintiff for data every
3 month but there are all detainers, detainers that are --
4 well, it's all detainers, arrests, arrests of people with a
5 final order, arrests of people who don't have a final order,
6 removals, and some variations thereof within those
7 populations. But I don't have a list of them in front of me.

8 Q Moving on to the next paragraph, bottom of page 3 that
9 starts with, "ICE also," do you see that?

10 A Is that, "ICE also had argued"?

11 Q Yes.

12 A Yes.

13 Q In that sentence, plaintiff states that, "ICE also had
14 argued that it would have to conduct additional research and
15 analysis to determine whether an individual was arrested as a
16 result of a detainer -- a misconstruing of TRAC's requests
17 which the court acknowledged 'is not the question.'" How do
18 you respond to that?

19 A So ... we know, we know that there is no way to
20 determine if an arrest was a result of a detainer. A
21 detainer and arrest are one-to-many relationship so there can
22 be multiple detainers placed on an individual before an
23 arrest is made. There may be one arrest and four detainers
24 and even as an officer, it is impossible for me to say which
25 one of those four detainers resulted in that arrest. That's

1 why we don't have that linked that way in our data. If the
2 request then is to provide all four of those detainers and
3 the one arrest date, we do that. We just don't link it
4 together in FOIA requests. We have a detainer population, we
5 have an arrest population, and the plaintiff gets both of
6 those populations on a regular basis.

7 Q And the last paragraph on the bottom of page 3 that
8 starts with, "ICE seems to have abandoned," do you see that?

9 A Yes.

10 Q And in that sentence, plaintiff states that, "ICE seems
11 to have abandoned its contention on summary judgment that it
12 could not understand what records TRAC was requesting. Now,
13 all ICE rests on is a vague assertion that querying the IIDS
14 for arrest data -- or for any other information outside the
15 four corners of an ICE detainer form -- 'requires much
16 analysis, calculations, work, and computational power due to
17 the database limitations and structure.' That cannot suffice
18 as an explanation for not even searching for or producing
19 data that ICE understands full well TRAC sought." How do you
20 respond to that?

21 A As far as I'm understanding the question, again, when
22 the TRAC requests or any other request comes in, we do our
23 best to interpret what the requester is asking for and
24 provide data points that are responsive to that request.
25 The -- the statement that providing information outside of

1 the four corners of the ICE detainer form, that's just simply
2 inaccurate. We don't limit our responses to the four corners
3 of that detainer form; again, there are approximately 30 data
4 fields that are generated from that detainer form and we
5 provide approximately 70 detainer -- or fields in response to
6 that.

7 Q Now I'm at the top of page 4 and the first full
8 paragraph that begins with, "Likewise, the court asked ICE,"
9 do you see that?

10 A Yes.

11 Q In that sentence, the plaintiff stated that, "The court
12 asked ICE to explain its position 'that it does not have to
13 produce data that would involve the same individual that is
14 collected in a removal format, including the most serious
15 criminal conviction.' In response, ICE simply asserts that
16 its analysts 'would have to create a complex (temporary) new
17 computer query program that would make a connection between a
18 detainer event and other criminal record data related to an
19 individual.'" How do you respond to that?

20 A That's correct. There is no removal data or criminal
21 charge data contained in our detainers population, and it
22 would require the creation of a complex or what would seem to
23 be a very complex query to go in and pull data points from
24 those two disparate populations together to combine them and
25 which would in fact create a new record that didn't

1 previously exist solely for the purpose of responding to this
2 FOIA request.

3 Q And the next paragraph, which is the last paragraph on
4 page 4 before we get to the next section titled, "ICE offers
5 inconsistent explanations," and that paragraph begins with,
6 "As discussed below," do you see that?

7 A I do.

8 Q And in that paragraph, plaintiff states that, "As
9 discussed below, querying a database is at the heart of an
10 agency's FOIA obligations. ICE's prior regular production of
11 the 'disappearing fields' connected each detainer record
12 issued on an individual with other information about that
13 person's subsequent arrests, custody, and removal histories.
14 Where an individual had a criminal record, ICE's previous
15 releases also provided the individual's criminal history,
16 including information on the person's most serious criminal
17 conviction. ICE no longer denies that these data points
18 exist; instead, it announces that in July 2016, it assumed a
19 'new posture' whereby it would only search for and produce
20 such records in its discretion. The court should not permit
21 ICE to claim such broad 'discretionary' powers to ignore the
22 law whenever it deems FOIA searches, queries or productions
23 'complex.'" How do you respond to that?

24 A We agree that we're obligated to perform query searches
25 to retrieve data. However, and with respect to the

1 "disappearing fields," since I've been involved with the FOIA
2 requests, we've been providing solely detainers data in
3 relation to detainers, and there was a change in time where
4 the forms changed from the I-247 and the 247D to the 247N so
5 some fields did drop off of those detainer populations
6 because they no longer existed in the forms. I believe Marla
7 Jones in her declaration also addressed this issue where she
8 talked about these "disappearing fields" and that they were
9 fields that just did not exist because they're calculated
10 fields that were -- would have to be created. They don't
11 exist in the database. An example being detainer lead to an
12 arrest doesn't exist in the database. So it's not a
13 disappearing field, it's just not there.

14 With respect to discretionary, providing
15 fields at discretion, I don't agree that we're doing that
16 using our discretion. We are using our detainers population
17 to provide the data points that we believe are responsive to
18 the plaintiff's request, where they exist in our detainers
19 population.

20 Q You mentioned a change in form, to the I-247 form; do
21 you know approximately when that form changed?

22 A I believe it was sometime in 2015.

23 Q And you mentioned I think in your testimony a minute
24 ago that that form change may have resulted in a change in
25 the data that was collected; is that what you said?

1 A That's correct.

2 Q Can you explain, please explain that for us, what you
3 mean by that.

4 A So the fields that were previously in the I-247 form
5 and the I-247D were not exactly the same fields that ended up
6 in the I-247N form. There were some slight variations. So
7 there were fields on the old forms that weren't required on
8 the new form.

9 Q So did the new form contain less fields than the old
10 form contained, is that what you're saying?

11 A I don't know which version contained more fields but
12 they were different types of fields that gathered different
13 information.

14 Q And it's your belief that the form changed sometime in
15 2015?

16 A I believe so.

17 Q Moving on to the next section, little more than halfway
18 down the page, page 4 of Exhibit 6, section titled, "ICE
19 offers inconsistent explanations concerning time required to
20 fill requests." If you look at the last paragraph on page 4,
21 that begins with, "The supplemental declaration fails," do
22 you see that?

23 A I do.

24 Q And basically it states that, in that section the
25 plaintiff states that, "The supplemental declaration fails to

1 advance any justification for its claim that TRAC's requests
2 at issue in this case exceed ICE's operational capacity due
3 to the number of hours required to process them." Do TRAC's
4 FOIA requests at issue in this case exceed, in fact exceed
5 ICE's operational capacity due to the number of hours
6 required to process them?

7 A Yes.

8 Q Can you explain or elaborate?

9 A So the increasing number of requests coming from TRAC
10 and the varied type of requests do put a strain on our
11 operational posture in terms of the number of analysts and
12 statisticians that we have that are available to respond to
13 those requests. More importantly, the size of the TRAC
14 requests and the increasing scope of their requests are
15 putting a strain on our ability to even run those queries on
16 the server, and in some cases, the queries that we have
17 attempted to run have broken during the running process
18 because the requests are so large. The plaintiff has
19 increased their size of their data requests, they used to be
20 from the fiscal year 2015 onward year to date, then they went
21 back to FY '12 -- I'm sorry, fiscal year '12 onward year to
22 date, I believe there was a request recently for fiscal year
23 '09 onward, which is when we began gathering data, year to
24 date and as those -- as the scope of those queries gets
25 larger and larger, it becomes impossible to run them on the

1 database and they involve thousands and thousands and
2 thousands of rows of data.

3 Q And now moving on to the last section which starts on
4 the top of page 5 titled, "Searches do not require analysis
5 of underlying records or the creation of new records," do you
6 see that section on page 5?

7 A Yes.

8 Q And if I could direct you to the second full paragraph
9 that begins with, "But once again," do you see that?

10 A I do.

11 Q And in that paragraph, plaintiff states that, "ICE
12 fails to explain how such a 'query program' requires its ERO
13 office to perform 'calculations' or 'analysis' of the
14 underlying records in its database. Nor does it explain how
15 a search requires the 'creation of a new record.' FOIA
16 defines the term 'search' as requiring an agency 'to review,
17 manually or by automated means, agency records for the
18 purpose of locating those records which are responsive to a
19 request.'" Can you respond to that -- how do you respond to
20 that?

21 A We understand that creating a query to go into our
22 population, to our database to look for records is a
23 reasonable expectation under the FOIA rules. However, when
24 we go into the database to pull in, again, data points from
25 disparate populations that are not related to each other,

1 that we don't normally report through our normal operational
2 posture that requires us to go in and create a new document,
3 then that document is a new record that did not exist prior
4 to the request from requester, whether it's the plaintiff or
5 anyone else, and that is why we do not go in and create those
6 new records. Again, if we get a request for detainers and a
7 request for removals, we would provide a detainer population
8 and the data points associated with detainer population and
9 we would provide a removal population and the data points
10 associated with those removals, but we would not connect
11 them, and we report them separately.

12 Q And the next paragraph on page 5 that begins with,
13 "Furthermore," do you see that?

14 A I do.

15 Q And in that paragraph plaintiff states that,
16 "Furthermore, 'an agency complying with its FOIA obligations
17 will need to use a computer program to search for responsive
18 records.' Because an electronic database search 'does not
19 amount to a creation of records ... it follows that the
20 programming necessary to instruct the computer to conduct the
21 search does not involve the creation of a record.' As
22 before, ICE's assertion that the search queries needed to
23 connect data points would require the creation of a new
24 record has no basis in fact or law. Nor can ICE avoid its
25 FOIA obligations by simply asserting that the searches it has

1 to conduct for responsive data are 'complex.'" How do you
2 respond to that?

3 A I would -- I would disagree. There's a difference
4 between, for instance, as I referenced earlier, we create
5 these populations every week. Once the ETL process is, it
6 takes the data from the EID, moves it over to IIDS and our
7 developers run a series of queries that are predefined
8 queries that create this detainers population, this removals
9 population, this arrests population that then becomes the
10 basis for our reporting. And those, while they're not simple
11 queries, they're complex queries, but they are queries that
12 are created in the course of our regular business for the
13 purpose of us meeting our regular reporting obligations. The
14 creation of a new query, even more complex than those, to
15 join those disparate populations together, is much more
16 complex, and is a creation of a new record, and even if you
17 don't consider that the creation of a new record, the result
18 output and the resulting spreadsheet is the creation of a new
19 record that didn't exist prior to that point, and now only
20 exists to meet the FOIA request.

21 MR. REYNOLDS: I'm almost done if you just give me
22 one moment, your Honor?

23 THE COURT: Sure.

24 (Pause in Proceedings.)

25 MR. REYNOLDS: We're all set, no further questions,

Curtis Hemphill - Direct

40

1 your Honor, thank you.

2 THE COURT: Okay. Cross-examination.

3 MR. KEEGAN: Your Honor, we would request some
4 time, if I may confer with co-counsel and our client before
5 we do some cross.

6 THE COURT: Okay, why don't we take our morning
7 break, and if you could return at five to 11, that's about,
8 almost 15 minutes, is that good? Or return at 11:00, I see
9 the look on your faces. 11.

10 MR. PRESS: Thank you, your Honor.

11 MR. KEEGAN: Thank you, your Honor.

12 THE COURT: We'll take our morning break and return
13 at 11.

14 (Court in recess, 10:43 a.m. to 11:10 a.m.)

15 THE COURT: You may proceed. On cross-examination.

16 MR. KEEGAN: Thank you, your Honor.

17 MR. PRESS: One moment, your Honor.

18 THE COURT: You may proceed.

19 MR. PRESS: Thank you, your Honor.

20 CROSS-EXAMINATION BY MR. PRESS:

21 Q Good morning, Mr. Hemphill.

22 A Good morning.

23 Q Like to talk to you about your testimony this morning.
24 Just wanted to confirm, where do you work, Mr. Hemphill, is
25 that at ICE?

1 A Yes.

2 Q And within ERO?

3 A Yes.

4 Q Within STU?

5 A Yes.

6 Q At the headquarters in D.C.?

7 A I'm actually a remote employee so my job is based at
8 the headquarters in D.C. but I work out of the office in
9 Reno, Nevada.

10 Q And part of your duties at STU are to review FOIA
11 requests, is that correct?

12 A Correct.

13 Q And part of reviewing FOIA requests -- strike that. Is
14 part of your job when you review FOIA requests to determine
15 which data points might be responsive to the request?

16 A Um, I don't make that determination by myself, I work
17 with analysts and statisticians and together we determine
18 which data points would be responsive to the request.

19 Q Right, but you clear the request?

20 A I do.

21 Q Mr. Hemphill, did you review and clear plaintiff's
22 requests that are at issue in this action?

23 A I don't recall.

24 MR. PRESS: One moment, your Honor.

25 During your testimony this morning, you spoke

1 about -- did you say that there are a number of identifiers
2 that exist within the ICE database?

3 A Which ICE database are you referring to?

4 Q The IIDS.

5 A There are a number of identifiers that exist in the
6 IIDS, yes.

7 Q Do those identifiers relate to people?

8 A There are identifiers in the IIDS that relate to people
9 but they don't exist in every record.

10 Q Do the identifiers relate to populations?

11 A Some of them do.

12 Q Do some of them relate to detainer population, the
13 detainer population?

14 A So there are IDs that I know, and this is me speaking
15 from my experience, I'm not a database expert, but there are
16 some IDs that are generated at the time that the officer goes
17 in and creates the encounter in the system, the up-front
18 application or where they create the case in the EARM. There
19 are also some identifiers that are generated in the IIDS
20 database itself and I believe there is a detainer identifier
21 in the IIDS.

22 Q So they do relate to populations, the identifiers do
23 relate to populations?

24 A I'm not familiar with how the detainer ID works, again,
25 it's a system database identifier and I don't work in the

1 database.

2 Q Could you tell me what a population is?

3 A A population is, as I've been speaking today, is a
4 grouping of records that are like in scope, in other words,
5 detainers, arrests, encounters, removals, and those
6 populations contain the fields that are in the IIDS that are
7 pulled out of the IIDS each time we run one of the queries in
8 the system.

9 Q Okay. So you had mentioned that some of those
10 populations like encounters and events are not related, you
11 said that this morning, right?

12 A Correct.

13 Q So in other words you said they were disparate
14 populations?

15 A Yes, encounters and events are similar, and we don't
16 really report on events so much anymore, but we have, you
17 know, encounters is a population, detainers is a population,
18 admissions to detention are what we call book-ins, book-outs,
19 those are different populations and they're each unique and
20 they're based on the way they're pulled out of the IIDS.

21 Q So I just want to make sure I have that right,
22 Mr. Hemphill, those populations are disparate, they are not
23 related, that's correct?

24 A Correct.

25 Q Now, what's -- what actually belongs to a population,

1 could I say that -- strike that. Is it fair to say to your
2 knowledge that there are tables within the IIDS populations?

3 A Again, I --

4 Q Within any given population, excuse me, are there
5 tables within that?

6 A No. I mean, again, I'm not a database expert. There
7 are tables in the database, I know that, but --

8 Q And the tables are part of populations?

9 A No, the populations are what happens when we take a
10 query and we run it in the IIDS and we have the query pull
11 records from the IIDS for the purpose of reporting or
12 responding to FOIA requests. So the populations are then
13 existing in a grouping outside of the database.

14 Q There's a detainer population list, right?

15 A Correct.

16 Q There is data about that population within the
17 database, the IIDS?

18 A Correct.

19 Q Now does that data, is that in a table related to
20 detainers?

21 A In the database?

22 Q Yes.

23 A Again, I can't speak to the design of the database or
24 the tables. A population is, for our purposes, is the data
25 points that exist in a database that would be extracted each

1 time we ran our detainers query, those set, I don't know,
2 100, 150, however many there are, the actual number is
3 sensitive, so -- but that number of fields that would be
4 extracted from the database if we ran our detainers query,
5 that becomes our detainers population.

6 Q So Mr. Hemphill, this morning you also spoke about the
7 agency's FOIA obligations or the obligations to respond to
8 FOIA requests. Are you aware of any -- to your knowledge,
9 are you aware of any guidelines that direct the agency's
10 responses to FOIA requests?

11 A I'm aware that the agency has guidelines for responding
12 to FOIA requests, that the agency in this case, meaning DHS,
13 the department has departmental guidelines, but I am not
14 familiar with them directly.

15 Q Any guidelines at the ICE level?

16 A I don't know.

17 Q But there are guidelines at the DHS level?

18 A Yes.

19 Q And ICE is a subset of DHS?

20 A Yes.

21 Q Okay. So to your knowledge, do those guidelines refer
22 to any change, has there been any change in the agency's
23 posture that relates to how the agency is required to respond
24 to FOIA requests?

25 A I can't speak to those guidelines directly, I haven't

1 been through them all.

2 MR. PRESS: Okay. One moment, your Honor --

3 THE COURT: Yes.

4 MR. PRESS: -- if I may? Thank you.

5 (Pause in Proceedings.)

6 Q Mr. Hemphill, is it fair to say that a query is a
7 search or queries are searches?

8 A Yes.

9 Q Okay. Those searches, are they preset?

10 A We use a, depending on what we're doing, we use a
11 preset query, in respect to rating those populations we use a
12 set of preset queries every week once the IIDS is refreshed
13 with the data from the EID to query those populations. If
14 we're asked by the White House to create a specific report --

15 Q I'm sorry to interrupt you, Mr. Hemphill, does the
16 White House file FOIA requests, do they launch FOIA requests
17 with you?

18 A No, I wasn't speaking of a FOIA request there, but
19 simply to say that in the course of our normal business, we
20 do answer questions from the White House and they do require
21 the creation of queries, but those are different than the set
22 queries that we run on our population every week.

23 Q And you don't do queries, that's right?

24 A I don't do them personally, no.

25 Q Mr. Hemphill, I have a question about a statement you

1 made this morning that relates to plaintiff's letter motion,
2 that's document number 59, docket in this action, it is
3 Defendant's Exhibit Number 7 I believe. Is that right?

4 A The --

5 Q The document that is Docket Number 59 on this docket,
6 plaintiff's letter motion. You testified that on page 2,
7 very bottom of page 2 of that letter?

8 A Is this Defendant 6? I'm sorry.

9 Q I apologize, one moment. My apologies, I am referring
10 to Defendant's Exhibit 6, Docket Number 59.

11 A Okay.

12 Q So I'd like to refer you to page 2, the bottom of
13 page 2. I'm referring you to the paragraph that begins with,
14 "Yet ICE's opening position in this litigation." Something
15 about this paragraph, you testified that this was not
16 accurate, is that correct?

17 A Correct.

18 Q Do you know who made that statement?

19 A I don't. It says here this is the declaration of
20 Catrina Pavlik-Keenan.

21 Q Have you reviewed that declaration?

22 A I have not.

23 Q What makes that statement not accurate?

24 A I believe it's a misrepresentation of the way that the
25 data in the EID is used and the -- you could actually say

1 that it was partially true in that the data in the EID is
2 used to manage cases but it's not used to manage cases in the
3 EID or in the IIDS. Those cases are managed in EARM using
4 data that is brought into EARM from the EID for the purposes
5 of populating that dashboard and managing those cases in
6 EARM.

7 Q Okay, so they don't -- doesn't allow ICE to manage
8 that, but does it permit ICE to view that data?

9 A ICE views that data through the EARM application and
10 through the EAGLE application, so those two applications are
11 up-front applications, and they are used for the purpose of
12 managing cases, arrests, and removals. The data exists in
13 the EID but it's pulled into those applications as a
14 dashboard.

15 Q You spent a little bit of time this morning discussing
16 the size and hours required, the size of plaintiff's FOIA
17 requests and the time required in general to respond to those
18 requests. How many FOIA requests are at issue in this case?

19 A In this immediate case?

20 Q In this case.

21 A There are two FOIA requests that I'm aware of that are
22 at issue.

23 Q Okay. So would you say that any of plaintiff's other
24 FOIA requests, the time that it takes to complete those is
25 relevant here?

1 MR. REYNOLDS: Objection to the form, your Honor.

2 THE COURT: Sustained.

3 MR. PRESS: May I rephrase?

4 THE COURT: Yes.

5 Q We're not talking about any of the other requests,
6 we're not talking about any of the other requests, any of
7 plaintiff's other requests except for the two that are at
8 issue in this case, is that correct, we're just talking about
9 two requests?

10 A I believe that in the plaintiff's letter it also
11 references the requests in the D.C. case.

12 Q But those aren't in issue here, is that right?

13 A Correct.

14 Q To your knowledge do you know if -- strike that. Your
15 Honor.

16 THE COURT: Yes.

17 MR. PRESS: Just one moment.

18 (Pause in Proceedings.)

19 Q Just want to go back quickly to that statement,
20 Defendant's Exhibit Number 6, bottom of page 2, I'd ask you
21 if you knew who that statement was -- do you know who
22 Ms. Pavlik-Keenan is?

23 A I believe she is the FOIA officer for ICE.

24 Q Is that her only job at ICE?

25 A I don't know, I don't know her personally.

1 Q Okay. Do you know if she worked there when you joined
2 the office in 2016?

3 A I believe so.

4 Q Okay. And just to return again to queries briefly, is
5 it true that the agency does not create a new query for each
6 FOIA request?

7 A Correct.

8 Q Does not create a new query for each FOIA request?

9 A Correct.

10 Q So the agency runs preset queries for each FOIA
11 request?

12 A Correct.

13 MR. PRESS: Okay. Thank you, your Honor, I have no
14 more questions.

15 THE COURT: Okay. Mr. Hemphill, I had a few
16 questions.

17 THE WITNESS: Yes, ma'am.

18 THE COURT: Are you finished or --

19 MR. PRESS: I'm finished, your Honor, may I?

20 THE COURT: Yes. I had a few questions about the
21 identifiers that are associated with persons.

22 THE WITNESS: Yes.

23 THE COURT: As I understand it, there are, ICE has
24 key identifiers or does have identifiers associated with
25 persons?

1 THE WITNESS: Yes, but they don't exist for every
2 record.

3 THE COURT: I see. And would one of those
4 identifiers be the EID CIV PERS ID?

5 THE WITNESS: I am familiar with that ID only to
6 the extent that I know it exists in the database, and I
7 believe it's one of those database-generated IDs as opposed
8 to a person ID which is a little bit different because it's
9 created in our up-front applications.

10 THE COURT: And can you query by identifiers?

11 THE WITNESS: Yes, but it depends on what you're
12 querying, so not to seem evasive, but as an officer, I can
13 query the, for instance, the EID, setting aside the IIDS, I
14 can create the ID through the EARM if I knew the person's
15 A number or FBI number and then I can search it and then it
16 would go into the EID and pull the records back that were
17 associated with that alien number or that FBI number. From
18 an IIDS or reporting perspective, we generally wouldn't have
19 a need to do that and I did ask one of my analysts about
20 this, and she said literally that would be the equivalent of
21 writing a query that was just one number to say bring me
22 every number associated with the subject ID or every record
23 associated with this subject ID out of the database. In
24 other words, there's no starting population there, because
25 the first question would be what type of records do you want,

1 do you want detainer records, do you want arrest records, do
2 you want removal numbers associated with that alien number,
3 or that subject ID or alien number. So it's a yes and no
4 thing. You can query, but from an operational standpoint, if
5 we were querying records for somebody that way, we would do
6 it in EARM to pull the records out of the EID not for
7 reporting purposes but for case management, or printing forms
8 or whatever we needed to do.

9 THE COURT: And I'm just curious because you have
10 two different populations.

11 THE WITNESS: Yes, ma'am.

12 THE COURT: Is there no way to -- that a FOIA
13 requester could get an ID number that would help to link, so
14 the FOIA requester could make some sense of the detainer, the
15 arrest, and the removal populations?

16 THE WITNESS: This is complicated, because of the
17 way that our systems are set up. The -- so going back in
18 time a little bit, the agency used to have a system called
19 DACS that was this not web based, just a -- I don't even know
20 what the database was, but it literally could only track one
21 person at a time, and one removal case at a time. You
22 couldn't manage multiple removal cases for a person or
23 multiple arrests for a person or multiple detainers. So back
24 in 2008 we redesigned that system -- when I say we, it was me
25 and a group of other deportation officers working with some

1 designers and people who knew how to do computer stuff. And
2 we replaced that system with a system that allows you to
3 have, for instance, multiple detainers for a person. So as
4 an officer I encounter somebody at the county jail and then
5 they go to the state prison and then they end up in the
6 federal system after that and then we get them, now they have
7 three detainers before I even start their case. Those
8 detainers may not be associated with the case, they may be
9 just existing out in the ethernet in terms of out in the
10 database not related to a person, not related to a case, not
11 related to a removal proceeding, and the system is purposely
12 designed to allow for that.

13 So the reason that I say that is just to let you
14 know that there are no identifiers that we have that I am
15 aware of that exist in every record, and the danger in
16 saying, for instance, using a person ID to pull detainers is
17 that if a detainer is not linked to a person ID or there's no
18 person ID in that detainer record and I tell the analyst to
19 pull all of the detainers using the PERS ID as a common
20 denominator, we would underreport those. We would actually
21 inaccurately report those. And we know from a FOIA
22 perspective that it's, you know, we have an obligation to
23 report it to the best extent that we can and that, you know,
24 we need to be able to pull data that is as accurate as we
25 possibly think it can be. In other words, when I sign off on

1 the clearance form, it's because I believe we've pulled that
2 data accurately to the best of our ability.

3 THE COURT: And is that true for the arrest
4 populations and the removal populations?

5 THE WITNESS: All of the populations.

6 THE COURT: And you had described that if you
7 received a non-FOIA request, you could do the analysis that's
8 required. Can you briefly describe what analysis and
9 additional calculations are required to respond to the
10 requests that were made here.

11 THE WITNESS: Yes. So if we received a request in
12 the normal course of our reporting obligations, for either
13 senior leader or some other stakeholder that we respond to
14 and it asks us to link fields that exist in our detainers
15 query to fields that exist in our arrest query, the first
16 thing we would do is interpret the request to decide, you
17 know, what universe to start with in terms of the population.
18 So if the request was about arrests that had a detainer at
19 some point in some facility, we would start with our arrest
20 population and then go back and look for detainers that were
21 associated with that arrest in that facility. If it was how
22 many detainers have been placed in Miami, the Miami area of
23 responsibility this fiscal year that were subsequently
24 removed, we would start with our detainers population and
25 then do what our analysts call a bump which is to say, here's

1 our detainers population, we would run it against our
2 removals population to see if there was a common link there
3 for those cases and where it did, we would report that there
4 were this many detainers that had this many removals. That
5 is a ad hoc type report that we don't generally have a need
6 to do in the course of our normal reporting, unless it's
7 specifically requested.

8 THE COURT: And what would the link be, how do you
9 know a detainer's linked to removal?

10 THE WITNESS: At the point where the officer goes
11 into the EARM, to the dashboard, assuming that -- and there's
12 a lot of assumptions here and a lot of data quality issues
13 that we know exist in the system because of the way it's
14 designed, but from a basic standpoint if an officer goes into
15 EARM and runs say an alien number, that is generally common
16 to a lot of the documentation that we use to, in removal
17 proceedings, and the results set of that alien number is that
18 it would bring it up in EARM, again, this is not linked to a
19 database but in the EARM application, it will bring up
20 everything that's related to that A number, or everything
21 ever populated with it, and it would say, here's three
22 detainers over here, here's two encounters where that subject
23 was interviewed in an incarceration setting and the officer
24 has the ability in the EARM to say, I want to take this
25 interview and that detainer and I want to create a case with

1 that, in the system. And once they do that, it generates a
2 case ID that then copies back to the EID and now there's a
3 case ID in the system. So that would be a way of linking
4 those through, and again, I'm not a database expert but what
5 I've been explained to by the, by our analysts is that they
6 would go through different dimensions in the database, so
7 they would say, to answer this, because it involves a removal
8 I'm going to go through this case dimension because there has
9 to be a case dimension, and I'll go look for the detainers
10 that are associated in that dimension. I hope that's not too
11 technical.

12 THE COURT: No. So that when, when ICE previously
13 responded to these types of FOIA requests, did they have to
14 go into the EARM?

15 THE WITNESS: No. So when ICE was previously
16 reporting it to this -- you mean prior to July 2016 when we
17 changed our posture for FOIAs, they were writing queries that
18 would do what I just described. Would say, you know, start
19 with the detainers population, filter for this, group this
20 together, now go look with this in this other dimension to --
21 for the case dimension for removals and associate them all
22 together, and then send us back a batch of data that meets
23 all those criterias that are in the query. And some of that
24 was done after the data was pulled out, it would be
25 manipulated by the analyst to do certain things, some of it

1 is done in the ETL process so it's, when it copies over, it's
2 just automatically formatted differently, but the majority of
3 it was them writing queries which is the equivalent of us
4 writing a question for the database, and saying, hey,
5 database, please go find all of these things, even though
6 they're not linked together, I need you to pull them all into
7 one place.

8 THE COURT: And so my question is, is there a
9 number that links for example detainers and removals, a
10 number -- I'm not sure how your analysts link them, but is
11 there something that could be provided to the plaintiff so
12 they could do a separate query, so they could do some of the
13 work that you're describing your analysts have done?

14 THE WITNESS: Our position has been in that case
15 that the creation of a unique ID that exists outside of the
16 database, it is assigned solely to those records for the
17 purpose of outside requester tracking them, is the creation
18 of something that literally doesn't exist in our database.
19 We would have to create those numbers, and I'm not sure that
20 they would be of a ton of value because unless we somehow
21 tracked that unique ID from the beginning to the end, and
22 again, our data is not organized by individual, right, so if
23 we created a unique ID for detainers, we would somehow have
24 to figure out a way to make sure that that unique ID was also
25 assigned in the other populations, to those arrests or to

1 those removals for those individuals. Otherwise it's of
2 little value because all you have is a unique ID in the
3 detainer population that may relate to a different unique ID
4 in the arrest population that probably relates to a different
5 unique ID in the removal population.

6 THE COURT: And how do you -- I guess I'm not clear
7 on how do your analysts link an individual in the detainer
8 population to an individual in the removal population? Or
9 the arrest population?

10 THE WITNESS: That's way beyond the scope of my --
11 of my technical abilities but my understanding is that once
12 they start with the population, they are able to go through
13 the database through different dimensions where they can say,
14 in this detainer population I have this record, and this
15 record is -- and it's not just one record, it may be 100,000
16 records but for these 100,000 records, with these 100,000
17 either subject IDs or A numbers, go look for those in this
18 other population through this dimension and see where there's
19 a match to one or any of those identifiers and then pull them
20 all into this one data group that then becomes the new, the
21 new record.

22 THE COURT: And are the subject -- so there would
23 be a number, like a subject ID number, that might be in both,
24 that might be in both populations that would be a way to link
25 them?

1 THE WITNESS: It might be in both populations or it
2 might be in one population and not the other or it might be
3 in neither population. It's just, there are so many
4 identifiers in our database that are generated based on the
5 encounters and the events and the different enforcement
6 actions we take because, again, our database really is fed by
7 enforcement actions, it's not an individual tracking
8 database, yet. And so the risk there is that if you rely on
9 one type of number, this number or that number, whether it's
10 subject ID or case ID or A number, FBI number, whatever,
11 you're only getting back where it exists in those records,
12 and there is a -- there is a probability, even beyond risk
13 that you're going to underreport the data in that case.

14 THE COURT: And do you have any sense of how much
15 time it took to do the detainer and the notice of detainer
16 FOIA queries in this case?

17 THE WITNESS: I don't, I wish I had gone back and
18 looked specifically at these two FOIA queries. I know this
19 case has been around for a while, so I can say that it is
20 generally a lot less than it would take today because of the
21 number of records involved. We -- off the top of my head I
22 don't know what the number is but it's a couple hundred
23 thousand detainers that the agency issues every year so as we
24 add years to those queries, it becomes larger and larger of
25 an effort and it becomes unwieldy.

1 THE COURT: But with respect to the information
2 that's requested regarding detainers and removals, is it
3 anything more than just a click of a button, I mean is it
4 really a lot, significantly more?

5 THE WITNESS: It's a lot more. And I know that
6 people feel like in this day and age you should be able just
7 to push the button on a computer and Google the whatever,
8 it's not that simple of a query. So in this respect, in
9 using your example of detainers and removals, that requires
10 the analyst -- first it requires me telling the analysts,
11 this is what the person's asking for because the people in
12 the congressional office, and the media, they know what they
13 want to ask for but they don't know quite how to ask for it
14 so I help them interpret that request. The analyst then goes
15 back and if it's something that doesn't exist in our regular
16 reporting or in an ad hoc setting where we've got to write a
17 query, they go and write query which involves writing these
18 SQL statements that basically become the question. They, if
19 they can run it on a local computer, they will, but most of
20 it, I mean I don't know of any of the TRAC queries that will
21 run on a local computer so they send that query off to a
22 database developer, database developer runs it on a separate
23 server and if the query completes at all, then they've got to
24 go through, they validate the data after it comes back, they
25 send it back to the analyst, the analyst validates it, then

1 sends it to another analyst for a second validation, packages
2 it into an Excel spreadsheet and reviews it, sends it to me
3 for clearance and these are very large spreadsheets. We
4 try -- I believe we tried to print -- we were thinking about
5 printing out a detainer spreadsheet the other day for our
6 TRAC requests and it was like 63,000 pages. So it's just not
7 a matter of just pushing the button and getting the data
8 back.

9 THE COURT: Thank you, Mr. Hemphill.

10 THE WITNESS: Thank you.

11 THE COURT: Any further redirect?

12 MR. REYNOLDS: No, thank you, your Honor, nothing.

13 THE COURT: Any further cross-examination?

14 MR. KEEGAN: Your Honor, no further
15 cross-examination but we would reserve the opportunity to do
16 some direct.

17 THE COURT: Of this witness?

18 MR. KEEGAN: Yes.

19 THE COURT: Well, I want to finish the witness now,
20 so why don't you proceed.

21 MR. KEEGAN: I see. I see. Just have a couple
22 minutes?

23 THE COURT: Yes.

24 MR. KEEGAN: Thank you.

25 (Pause in Proceedings.)

1 DIRECT EXAMINATION BY MR. PRESS:

2 Q Hello again, Mr. Hemphill.

3 A Hello.

4 Q Earlier you were speaking about pulling certain data,
5 pulling -- going through different dimensions and pulling
6 them into this one data proof that becomes a new record. Is
7 that the right word, proof? I'm just not sure if I heard you
8 correctly?

9 A I don't believe I said proof. I'm not familiar with
10 that term.

11 Q I'm just trying to figure out what you said earlier
12 today. You were referring to pulling them into this one
13 data, and I thought I heard the word proof.

14 A I don't recall saying that. The general process is to
15 extract the data from the IIDS and bring it together into a
16 new document or record that would be a collection of these
17 data points in perhaps an Excel spreadsheet, actually the
18 majority of our deliverables are done in Excel spreadsheets.

19 Q Just to clarify, they come to you in the form of an
20 Excel spreadsheet?

21 A Correct.

22 Q Going back to previous -- does every query result in a
23 new record, as a factual matter, does every query create a
24 new -- result in a new record?

25 A I don't think that would be an accurate statement. We

1 have queries that we run, weekly, biweekly, monthly,
2 quarterly, bi-annually, annually for Congress, that are
3 recurring reports that are based on the same query, they're
4 run every time, I wouldn't consider those -- the iterations
5 of a recurring report to be a new record.

6 Q What about for FOIA requests, what if a FOIA request is
7 identical to another FOIA request; does that second query for
8 the second identical FOIA request create a new record?

9 MR. REYNOLDS: I'm going to object to the form of
10 that hypothetical, your Honor.

11 THE COURT: Overruled. He did describe new records
12 in his direct.

13 MR. PRESS: Thank you, your Honor.

14 A Can you repeat the question?

15 Q We've been talking about queries resulting in the
16 creation of a new record.

17 A Yes.

18 Q And we had also discussed previous queries. Were any
19 of plaintiff's queries that are at issue in this -- I'm
20 sorry. Were any of plaintiff's requests that are at issue in
21 this case identical to any previous requests?

22 A Not that I'm aware of. I'm sorry, just to clarify,
23 they weren't identical to any previous requests from people
24 other than the requester; the requests that we get from the
25 plaintiff are fairly consistent over time.

1 Q Consistent. So if STU is querying based on the same --
2 based on those identical requests, right, are each of those
3 queries -- do each of those queries result in the creation of
4 a new record?

5 A To my knowledge, the query that's used to satisfy this
6 particular detainers request is the same each time they run
7 it, it's based on the detainers population and it pulls in
8 the same data points, unless the requester changes the data
9 point request, but it pulls in the same data points each time
10 we do that iteration. I would not consider the providing of
11 the same data from one month to the next to be a new record,
12 but if the request changes, then it's a new record.

13 Q So when we are writing a SQL, when you're writing a
14 query, can you reuse that same query, can you reuse that same
15 query for an identical request?

16 A I don't do the queries myself but my understanding is
17 that those queries are reusable as long as the SQL or the
18 description contained in the query doesn't change.

19 Q It takes some human time to create that query, right?

20 A Yes.

21 Q Right? So some human time to create subsequent query
22 for an identical request, that saves some time, right, for
23 the person who's writing the query?

24 A Reusing queries saves time, yes, if they're the exact
25 same query for the exact same report, month-to-month.

1 Q So if you send a query off to a developer once it's
2 validated, if they do the same query again -- strike that.
3 Strike that. So when you run a query, does it create a new
4 population?

5 A Yes, because the EID is a live database, it updates in
6 real time so every time you run the query -- so when you run
7 the IIDS snapshot three times a week, the data in the
8 database changes when you run the query against the IIDS,
9 it's going to contain records inevitably that weren't there
10 the last time you ran the query.

11 Q So that population is a new agency record, is that a
12 new agency record?

13 A That calls for a legal opinion, I'm not an attorney but
14 it creates a new population, I don't know whether that
15 constitutes a record under the FOIA or not.

16 MR. PRESS: One moment, your Honor.

17 THE COURT: Yes.

18 MR. PRESS: Thank you.

19 (Pause in Proceedings.)

20 Q Thank you. Just want to return to time required to
21 query the database. Once a query is sent off to the
22 developer and it's validated, do you save any time when it
23 comes back to you when you -- I'm sorry, when you validate
24 that query, that comes back from the developer, the results
25 from that query that come back from the developer -- may I

1 rephrase?

2 THE COURT: Yes.

3 Q When you've sent a query off to a developer, and you
4 validate it, is any time saved in that validation because
5 there was a previous request that was identical that was
6 previously validated?

7 A Just to clarify, I don't send queries off to the
8 developer and I don't validate queries, I'm a detention and
9 deportation officer. The analysts and the statisticians
10 would do that in terms of retrieving the query, validating it
11 or creating the query and validating it and then sending it
12 off to the developer. But in general, from a business
13 process standpoint, if you have a query that has been
14 validated and previously run against the database in let's
15 say June, and we get a request in July for the exact same
16 number of 150 data points that would have been contained in
17 this detainers request, reusing that previous query, assuming
18 that none of the data points have changed, would save some
19 time, yes, because if data points change, you have to
20 redesign the query, then when the query comes back, it all
21 has to be revalidated, the query has to be revalidated, the
22 datasets that result from that have to be revalidated,
23 basically you're starting over the process from scratch.

24 Q So how much time is saved?

25 A I don't know.

1 Q And just to clarify, the recent request of what you
2 just mentioned, request that resulted in 63,000 pages of
3 something, that wasn't for this request, is that right?

4 A I believe --

5 Q Requests that are at issue in this case?

6 A I believe that was a -- when that, that was us trying
7 to print out a paper copy of the spreadsheet that's received
8 in this request, this is a -- and I don't know the scope of
9 this particular detainers request but in general those
10 requests were from 2015 onward for year to date, and as I
11 said before, the agency files hundreds of thousands of
12 detainers a year, so a resulting dataset from this type of
13 detainers request is going to have approximately 70 columns
14 and several hundred thousand rows.

15 Q But you just ran that search that resulted in the
16 63,000 pages, right, so it wasn't -- is that right, that
17 happened recently?

18 A No, no, we were looking at an Excel spreadsheet trying
19 to figure out a way to print that out so we could demonstrate
20 what was contained in the request; this had nothing to do
21 with running a query.

22 MR. PRESS: Thank you. I have no further
23 questions.

24 THE COURT: Anything further, Mr. Reynolds?

25 MR. REYNOLDS: Yes, just a few questions, your

1 Honor, please.

2 CROSS-EXAMINATION BY MR. REYNOLDS:

3 Q Mr. Hemphill, isn't it true that to the best of your
4 knowledge that TRAC has never submitted identical FOIA
5 requests?

6 A TRAC does submit identical FOIA requests from month to
7 month for updated data and then periodically those data
8 requests change, one or two of the fields might change from
9 the previous request, that happens, but in general, what we
10 get is a fairly consistent request from TRAC every month for
11 the same data requests.

12 Q And when you mentioned one of those fields or some of
13 those fields change, would that change in fields require you
14 to start the entire query process over?

15 A Yes, if that were a data field that we needed to pull
16 into the result set, we would have to change the query to
17 include that data field.

18 Q And you testified earlier on direct examination with me
19 that the TRAC requests have grown in length and scope I
20 think, is that what your testimony was this morning?

21 A Correct.

22 Q And can you explain in the context of what we're
23 talking about now with saving the queries and saving time,
24 explain how, what you meant when you said FOIA requests
25 changed in scope and length over time?

1 A So originally when I started doing this and I was -- I
2 previously worked in the STU on temporary details and such
3 where I was also dealing with some of the TRAC requests but
4 they were generally for data for FY, fiscal year '15 to date,
5 and that became the fairly routine population that we would
6 respond with which was just to update the query to include
7 now the next month of data or the month after that. At some
8 point, and I can't tell you exactly when that was, the number
9 of years contained in the request started to expand, and I
10 believe that the first change that I recall seeing was for
11 data from fiscal year '12 forward because my analyst came to
12 me and said, we're not sure if this is gonna run, we have to
13 try it, and I instructed them to go ahead and send the query
14 off to the developers and see if it would run or not. And
15 then at some point we got a request for FY '09 forward, I
16 believe that was a TRAC request and the analyst again came to
17 me and said, I don't believe this is going to run and in some
18 of the cases it doesn't run.

19 Q And in fact in this case, the Exhibits 1 and 2 which I
20 previously showed you which are the New York FOIA requests,
21 those two requests are in fact not identical, are they?

22 A I'm sorry, one moment.

23 Q I'd ask you to look, pay particular attention to the
24 date range in each of those requests.

25 A Thank you. So the request, the data being requested,

1 the actual universe of data in Defendant's 1 and Defendant's
2 2 are two different things. To begin with, Defendant's 1
3 asks for data points related to the I-247 and the I-247D, and
4 the request in Number 2 relates to data from the I-247N which
5 are going to be inherently some different datasets. Without
6 going through these line by line, I would just say that as I
7 mentioned before, there were fields that were existing in a
8 previous I-247 form that were not carried over into the 247N.

9 Q So would there be a different query for each, to
10 process each of those requests?

11 A There would either be a different query or the
12 filtering of the detainers query would be changed to include
13 one form or the other. So it may be the same base query but
14 the actual filtering changes after the query's run is how I
15 believe this one runs.

16 Q And Exhibits 3 and 4 which I showed you before were the
17 FOIA requests that are the subject of the D.C. litigation, I
18 think you already testified that those involved requests for
19 removal data, therefore are they not identical to the
20 requests here in New York?

21 A That's correct.

22 MR. REYNOLDS: Just one moment, your Honor, I think
23 I'm done. Yep, I'm done, thank you.

24 THE COURT: Okay. Mr. Hemphill, you may step down,
25 thank you, you're excused.

1 MR. KEEGAN: Your Honor.

2 THE COURT: Yes?

3 MR. KEEGAN: Could we just ask two questions on
4 recross.

5 THE COURT: Yes.

6 MR. KEEGAN: I appreciate it, thank you.

7 MR. PRESS: Thank you, your Honor.

8 REDIRECT EXAMINATION BY MR. PRESS:

9 Q Mr. Hemphill, you were just speaking about the first
10 time you remember TRAC's request grew in scope and length and
11 in time. Do you remember what month and year that was, the
12 first time you remember seeing that?

13 A I don't.

14 Q Do you recall if it was after 2015?

15 A Well, it would have been after 2015 because I joined
16 the STU permanently in 2016.

17 Q So it would have been sometime after October 2016?

18 A I don't know that.

19 Q You just ... okay. You began working at STU D.C. in
20 October 2016, is that right?

21 A That was when I became permanently working there, I was
22 previously assigned on temporary details.

23 Q Had you seen any of TRAC's requests prior to that?

24 A Prior to October 2016?

25 Q Yes.

1 A Yes.

2 Q You have. Was it the request at issue?

3 A I don't know specifically, we process 800 FOIA requests
4 a year, so --

5 Q Okay, I just want to ask briefly also about -- you had
6 referred to a policy shift, ICE's policy in responding to
7 FOIA requests. Are you aware of any meetings that led to a
8 policy shift?

9 A I wouldn't describe it as a policy shift. I believe
10 the term I used was a change in our posture. I believe there
11 were some meetings between the unit chief who was my boss,
12 Marla Jones, and some other folks in leadership and with our
13 attorneys regarding what our obligations were actually under
14 the FOIA.

15 Q Were you at that meeting?

16 A I was not.

17 Q How do you know about that meeting?

18 A I heard about it later.

19 Q Is there any documentation of this meeting, to your
20 knowledge?

21 A Not that I'm aware of.

22 Q Okay. But you do know about this meeting, you do know
23 that it happened?

24 A I know there was a meeting.

25 Q Okay. And you know that Marla Jones was there?

1 A I believe so, yes.

2 Q Do you know when that meeting was?

3 A No.

4 Q I believe you'd referred to July 26, 2016?

5 A July 2016 was about the time that we started changing
6 our approach to what we provided in FOIAs, so it would have
7 taken place before that I assume.

8 MR. PRESS: One moment, your Honor?

9 THE COURT: Yes.

10 (Pause in Proceedings.)

11 MR. PRESS: Thank you, your Honor.

12 Mr. Hemphill, when did you -- when did you first
13 learn about that change in procedure?

14 A I can't tell you exactly when that was, but since the
15 change in our approach happened in 2016, I would assume I
16 learned about it about that time.

17 MR. PRESS: Okay. Thank you, your Honor. I have
18 no further questions.

19 THE COURT: Yes. I had one follow-up question.
20 Before ICE changed its approach when you were providing all
21 of the data, was that using queries that are -- that were
22 preset?

23 THE WITNESS: Yes and no. So in the instance of a
24 requester in the FOIA context where we were receiving a --
25 the same request for updates from month to month or maybe

1 quarter to quarter, we could use a preset query that went in
2 and gathered all of these different data points from the
3 different populations, that was used solely for the purpose
4 of responding to this FOIA request. In other words, we would
5 not use a query for that, that was something that we used in
6 the course of our regular reporting obligations. So we were,
7 prior to that, going through and creating these new records
8 solely for the purpose of satisfying the FOIA request, and
9 for that purpose we designed queries to do that.

10 Most of our FOIAs outside of the plaintiff's FOIAs,
11 which are actually the bulk of what our FOIAs are, but I
12 would say that the rest of those are fairly simple, fairly
13 routine FOIAs that come in from reporters or students working
14 on their PhD, and they'll ask simple questions like, you
15 know, I'm working on something involving Nicaraguans, how
16 many Nicaraguans were deported from the United States last
17 year, what was their age and gender. We would actually go to
18 our removals query and pull that out to satisfy that FOIA
19 request, no query needed. In the event that they had asked
20 then for something more complex, we might have to write a
21 query to go in and look at that if we didn't have something
22 on hand to do it.

23 THE COURT: But in this case for the TRAC queries
24 that were done before ICE changed its position and said we're
25 just going to stay within our populations, are there preset

1 queries that ICE could use to generate the information that's
2 requested in these FOIAs?

3 THE WITNESS: Are you asking if there are queries
4 that exist now that were used back then that could be
5 repurposed?

6 THE COURT: Queries that were -- existed at the
7 time ICE responded to these FOIAs.

8 THE WITNESS: Without -- I would have to have an
9 analyst look at those queries to confirm, but because these
10 requests have evolved over time and I know that there were
11 periods where we would have to go through the requests line
12 by line because one or two or three things may have changed
13 over the course of time and they weren't flagged for us that
14 way, and so in that -- in that context where the requests
15 have changed over time, we would not be able to reuse that
16 query, we would have to redesign that query and use it again.

17 THE COURT: I see, thank you. Anything further?

18 MR. REYNOLDS: No, your Honor, thank you.

19 MR. PRESS: No.

20 THE COURT: You're excused, Mr. Hemphill, thank
21 you.

22 (The witness was excused.)

23 THE COURT: And why don't we take our lunch break.
24 How many more witnesses do counsel expect to call?

25 MR. REYNOLDS: Excuse me one moment, your Honor.

1 (Pause in proceedings.)

2 MR. REYNOLDS: We're going to rest, we are not
3 going to call any more witnesses today, your Honor.

4 THE COURT: Okay. And plaintiffs -- do plaintiffs
5 intend to call any more witnesses?

6 MR. KEEGAN: Your Honor, we had previously
7 discussed with the court, with defense counsel the prospect
8 of a continuation of this hearing. We did not have a
9 declaration from Mr. Hemphill in this case, we've heard a lot
10 of new facts today, everything from preset queries, further
11 light on this new posture about, about the requests at issue
12 and so we need to formulate a rebuttal to that. And so I
13 would ask for an opportunity to confer with plaintiffs to
14 formulate a more proper rebuttal on continuation, a
15 continuation, I might add, that may delve into some --
16 something of a technical realm and may require some expert
17 testimony, and as you -- as we have noticed a potential
18 expert last week.

19 THE COURT: Do you have -- because you had
20 originally indicated that you intended to call Ms. DeCastro
21 or Susan Long at this hearing, are they prepared to testify
22 today? I would not be inclined to continue that.

23 MR. KEEGAN: Well, with regard to -- I believe
24 Ms. DeCastro is here, and so we would -- I would just want to
25 confer with my client and with co-counsel as to whether we

1 have any direct questions for her. As to Dr. Long, while she
2 is here, again, I think this morning's testimony brought up a
3 lot of new material, a lot of new answers from ICE, and to
4 formulate a more proper rebuttal which is what our testimony
5 would be, I mean we're here in a rebuttal capacity, this is
6 not a trial where, you know, where we're presenting an
7 affirmative case. And so I just, with respect, I think it
8 fair to just give us some time to have a more cohesive
9 testimony from Dr. Long, and potentially in tandem with
10 expert testimony and I think that would -- we would be better
11 able to frame a rebuttal for the court.

12 THE COURT: All right, why don't we do this. Let's
13 take our lunch break, we'll return at 1:30, and given the
14 testimony of Mr. Hemphill and the evidence that's in the
15 record from Ms. DeCastro, it does appear that the database is
16 maintained in a way with the two different populations that
17 it does appear to me that it would be creating a record to
18 provide the information that you're seeking in the way that
19 has been described, so it seems to me that's the kind of key
20 issue here.

21 And with respect to burdensome, I do agree with
22 counsel that the question is burdensome with respect to these
23 two FOIA requests before us, not burdensome with respect to
24 all of ICE's work in FOIA on behalf of these two individuals
25 but it appears to me -- I mean that's my tentative sense of

1 this case so that's what I think you have to focus on. I
2 would need to have some proffer of what your expert would say
3 to be inclined to grant any continuance for that purpose.

4 MR. KEEGAN: Of course.

5 THE COURT: So why don't we return at 1:30.

6 MR. KEEGAN: Thank you, your Honor.

7 THE COURT: And then at 1:30 if you do intend to
8 call Ms. DeCastro and Dr. Long, it appears to me, you know,
9 this is the date I set for the evidentiary hearing so this is
10 the time for their testimony.

11 MR. KEEGAN: Thank you, your Honor.

12 THE CLERK: Court's in recess.

13 (Luncheon recess, 12:20 p.m. to 1:36 p.m.)

14 THE COURT: And do plaintiffs intend to call
15 another witness?

16 MR. KEEGAN: Your Honor, we would like to call
17 Patricia DeCastro.

18 THE COURT: Okay.

19 MR. REYNOLDS: Judge, if we could just have a
20 minute to get her, she's just a couple floors down.

21 THE COURT: Yes, sure.

22 (Pause in proceedings.)

23 THE COURT: Step right up here and the courtroom
24 deputy will place you under oath.

25 THE WITNESS: Okay.

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1 THE CLERK: Could you please state and spell your
2 name for the record.

3 THE WITNESS: Patricia DeCastro, D-e-C-a-s-t-r-o.

4 THE CLERK: Please raise your right hand.

5

6 P A T R I C I A D E C A S T R O , called
7 as a witness and being duly sworn, testifies as
8 follows:

9 DIRECT EXAMINATION BY MR. KEEGAN:

10 Q Good afternoon, Dr. DeCastro.

11 A Hi.

12 Q I'd like to first go through your position at
13 Immigration and Customs Enforcement. You are currently an
14 employee of Immigration and Customs Enforcement?

15 A Yes.

16 Q Could you tell me your title and position with ICE?

17 A My title is operations research analyst.

18 Q And when did you -- did you join the agency?

19 A I believe it was April 2018.

20 Q Do you recall a particular day when you -- in
21 April 2018 that you joined?

22 A Possibly the 1st, I'm not certain.

23 Q Could it have been later, possibly the 30th?

24 A I'm not sure.

25 Q Okay. Could you please take me through your

1 educational credentials?

2 A Well, my doctorate degree is in university and business
3 administration, my master's degree is in computer science
4 with an emphasis in instruction, and my bachelor's degree is
5 in education with a minor in math.

6 Q Your declaration filed in this case referenced that you
7 had some experience with, I believe you used the term
8 loosely-coupled entities; do you recall using that term?

9 A Yes.

10 Q Would you regard ICE as such an organization?

11 A I would regard most agencies in that way, most large
12 federal agencies.

13 Q And what does loosely coupled mean?

14 A It means -- I would give you an example of an
15 organization that is not loosely coupled and that would be
16 the military, where there's direct lines of command, and at a
17 university and a government agency, it's known as loosely
18 coupled because there doesn't exist that command structure.

19 Q A single chain of command, is that --

20 A Yes.

21 Q So ICE does not have a single chain of command?

22 A I don't know precisely, I don't know precisely.

23 Q Okay. I believe you spoke about -- excuse me, with --
24 withdraw that. Have you received any higher education in
25 computer programming?

1 A My master's degree was -- had computer emphasis.

2 Q Was the emphasis on computer programming?

3 A Not programming, applications more specifically.

4 Q In terms of applications, was that the development of
5 applications or what in particular regarding applications?

6 A A lot of instructional emphasis, I was a teacher for 20
7 years and it was very helpful to me in that field. So no, I
8 am not a computer programmer.

9 Q Okay. By instructional emphasis and applications,
10 would that mean training in terms of instructing others to
11 use applications, or is it something different?

12 A Actually both.

13 Q Okay.

14 A But the emphasis in the program I was in at UNLV was
15 the use -- effective use of instructional technologies.

16 Q Do you have any education in, specifically with
17 reference to SQL languages?

18 A No.

19 Q And by SQL, I just want to make sure we understand each
20 other, SQL being S-Q-L languages.

21 A No.

22 Q Do you know what SQL is?

23 A I hear it but I -- I'm not familiar with computer
24 programming, it's just not --

25 Q Okay.

1 A No.

2 Q You made your supplemental declaration that you filed
3 in this case; do you recall whether you based that
4 supplemental declaration on your personal knowledge?

5 A It was a combination. Much of what I know is from my
6 experience, but I also gained a lot of knowledge of how our
7 systems work from my coworkers.

8 Q Okay. Did you review records kept by ICE in its
9 ordinary course of business?

10 A Yes.

11 Q Did other ICE employees provide information to you as
12 part of your declaration?

13 A Yes.

14 Q Was that information provided to you orally or in
15 writing?

16 A There were many conversations about how our systems
17 work and how our FOIA requests are processed, et cetera, so
18 mostly discussions.

19 Q Did you review any written information?

20 A Yes.

21 Q And is the supplemental declaration that you entered in
22 this case, is that the first declaration that you've entered
23 in a proceeding?

24 A I believe it is the second one.

25 Q What was the other declaration?

1 A It was in another case.

2 Q Do you recall the -- the parties in that case, was ICE
3 a party in that case?

4 A Well, ICE was a party but I don't exactly remember the
5 plaintiff, so I don't want to guess.

6 Q Okay. Do you recall where that case was pending?

7 A I do not.

8 Q I'm sorry, the court in which that case was pending.

9 A I don't.

10 Q Do you recall whether or not it's still pending?

11 A I assume that it is.

12 Q Okay.

13 A But I'm not always aware of everything regarding cases.

14 Q Sure. Did you file that -- you said to your knowledge,
15 perhaps one other declaration, did you file that this year?

16 A It was this year, I don't recall exactly when.

17 Q Okay.

18 A I just don't.

19 Q I'd like to ask you a few questions about what you
20 referred to in your supplemental declaration as a new posture
21 that ICE was taking with regard to FOIA, responding to FOIA
22 requests. Do you recall speaking of a new posture in your
23 declaration?

24 A I do.

25 Q Do you recall stating in your declaration that the new

1 posture was the result of a meeting that occurred --

2 A I do recall.

3 Q -- within ICE?

4 A Yes.

5 Q Do you recall stating in your declaration when that
6 meeting took place?

7 A Yes.

8 Q And do you recall the date of that meeting on that?

9 A I think it was July 2016.

10 Q July 2016 --

11 A I believe so.

12 Q -- is that right? So, well before you joined the
13 agency, is that right?

14 A Yes.

15 Q Do you know who attended that meeting?

16 A I do not.

17 Q How did you learn of that meeting?

18 A My coworkers told me, and ... that's it.

19 Q Your coworkers told you?

20 A Yes.

21 Q How did they tell you?

22 A In all of our discussions about our FOIA processes,
23 that was brought up many times.

24 Q Did they tell you about that meeting in any writing?

25 A Pardon?

1 Q I'm sorry. Did they tell you about that meeting in any
2 writing, a written document?

3 A I'm not sure. I'm trying to think. I'm not sure.

4 Q Okay. Did they tell you about that meeting in any
5 e-mail, perhaps?

6 A It's possible, but I know most of what I've gathered
7 about our FOIA processes has just been from sitting down and
8 talking to the analysts.

9 Q Sure. I just would like to stay focused on that
10 July 2016 meeting and the new posture that resulted from
11 that, from that meeting. Do you have an understanding as to
12 what that new posture entails?

13 A My understanding is that previously to that date, the
14 posture was that we would exceed FOIA by creating records for
15 requesters, and afterward, we would not continue to create
16 records but we would meet FOIA, but not exceed it.

17 Q And again, is there any, to your knowledge -- strike
18 that, excuse me. Do you know whether or not there's any
19 writing that describes what ICE previously did prior to
20 July 2016 and what the new posture would be?

21 A No. If I -- I don't think I've seen anything like
22 that. It may exist but I haven't seen it.

23 Q Okay. So would ... withdrawn. Were you present for
24 the testimony of ICE's witness this morning?

25 A No.

1 Q Okay. I want to talk a bit about -- now about the
2 database that's named, the acronym is IIDS and I believe that
3 stands for ICE Integrated Decision Support, is that right?

4 A Yes.

5 Q What do you understand integrated to mean in that name?

6 A I never -- I'm not sure, I didn't name it, so I'm not
7 sure what it was meant to mean.

8 Q Any writings that you have seen within the agency that
9 define what integrated means as far as that database is
10 concerned?

11 A No.

12 Q Okay. No writings that you're aware of, is that right?

13 A No.

14 Q Okay. We've talked today about querying that database.
15 Do you understand what querying a database would entail?

16 A Yes, generally, yes.

17 Q Would you understand that querying a database is --
18 would be synonymous with searching it, searching that
19 database for its contents?

20 A I'm not sure that they're the same, I'm not sure.

21 Q Okay. We spoke, earlier today we were discussing
22 queries of the IIDS, and have you ever queried the IIDS
23 yourself?

24 A Yes.

25 Q And in what capacity?

1 A In my operations research capacity, I sometimes have to
2 use one of the predone reports in IIDS that exists, and all I
3 have to do is run it and I can see the data.

4 Q Did you say predone report? I just wasn't sure if I
5 heard you correctly.

6 A Yeah, it's one of the regular reports that STU
7 generates for the agency.

8 Q Okay. So that, as I understand, is not a response to a
9 FOIA request, is that right?

10 A Right, it would be separate from any FOIA requests.

11 Q So you have not conducted a query of the IIDS as part
12 of a response to a FOIA request, is that right?

13 A No, no.

14 Q Have you directed other ICE employees to query the IIDS
15 in a certain way in response to a FOIA request?

16 A No.

17 Q Do you have an understanding of -- that queries need
18 to -- are written, you write a query and enter that into the
19 database, is that right?

20 A I really am not certain.

21 Q Okay.

22 A I just know what I'm told, how -- that's ...

23 Q Does ICE have a set of queries that are available to
24 you to run if you need certain information from the IIDS?

25 A Well, I don't know if the word query applies, but like

1 I said, I can -- I can use the reports that exist to answer
2 any questions that I have.

3 Q Do you know whether ICE has any preset queries?

4 A I do not know exactly. The STU personnel would be the
5 expert on that.

6 Q And again, do you know if ICE has anything -- queries
7 that are predefined?

8 A I don't know exactly.

9 Q Okay. Do you know how the IIDS is structured?

10 A I have general awareness of its structure.

11 Q Could you share with me what, what you're aware of in
12 terms of the IIDS structure, how would you describe that?

13 A It's been explained to me that our data exists in the
14 IIDS by events, versus an individual, and that we report
15 based on those events.

16 Q The data that's -- that exists within the IIDS, does it
17 originate there, do you know?

18 A My understanding is that the data is pulled out of the
19 EID.

20 Q And the EID I believe is the Enforcement Integrated
21 Database, is that right?

22 A I think so, yes.

23 Q Okay. And do you have any knowledge as to the meaning
24 of the term integrated in that database?

25 A Again, I'm not sure --

1 Q Okay.

2 A -- why it was named that.

3 Q Sure. Do you have an understanding of populations
4 within the IIDS?

5 A I have some awareness from what our analysts have told
6 me.

7 Q And what have they told you a population is?

8 A Populations are events, so we would, for instance, have
9 a detainer population, or a -- some other population.

10 Q Do you know how those populations come to be in the
11 IIDS?

12 A No.

13 Q Could they come to be as a result of a query?

14 A I don't know.

15 Q Do you know whether or not they come -- the populations
16 come from the EID?

17 A I don't know exactly. My awareness is general.

18 Q You spoke -- do you recall speaking in your declaration
19 in this case about modules in the IIDS?

20 A Yes.

21 Q Could you say whether or not a module as you used that
22 term is synonymous with a population in the IIDS?

23 A I think that's what I meant when I wrote that word and
24 a better word for it would have been population.

25 Q But you did not use the word population to your

1 recollection in your declaration?

2 A I don't recall if that word appeared, I don't know.

3 Q Okay. Do you recall using the term dataset in your
4 declaration?

5 A I believe so.

6 Q And in using that word, did you intend it to be
7 synonymous with module?

8 A No.

9 Q Okay.

10 A I would assume -- no.

11 Q How are they different?

12 A Our analysts I believe use the word dataset to mean
13 what they would produce from a FOIA request search.

14 Q So dataset would be a production of information,
15 production of data from the IIDS?

16 A I believe so.

17 Q In response to a FOIA request?

18 A I believe so.

19 Q Do you know whether or not within a population, there
20 are tables of data?

21 A I do not know.

22 Q Do you know whether or not in a population there are
23 fields of data?

24 A I'm not certain.

25 Q Okay.

- 1 A I don't do the searches.
- 2 Q Do you know who designs the searches?
- 3 A For FOIA requests?
- 4 Q Yes.
- 5 A Our STU analysts.
- 6 Q And are they the same analysts who would decide the
- 7 searches for a population?
- 8 A I think so, I think -- they do all the searches for
- 9 FOIA requests.
- 10 Q Are they the same people that would decide to define
- 11 populations in terms of events as you said?
- 12 A You mean structure the system?
- 13 Q I mean -- excuse me. I mean in terms of how
- 14 populations are organized.
- 15 A In the system?
- 16 Q You had said that your understanding is that the IIDS
- 17 is organized as a series of events?
- 18 A Right.
- 19 Q Is that the determination of your analysts as to how --
- 20 how those populations are organized?
- 21 A I don't think that they're deciding how it's organized.
- 22 Q Okay. Your understanding is that the IIDS is organized
- 23 as a series of events, where an event is something such as a
- 24 detainer, is that right?
- 25 A Yes.

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1 Q Do you know whether or not that -- strike that, excuse
2 me. Do you know whether or not that organization is really a
3 different set of records, a subset of IIDS records as result
4 of a set of queries?

5 A I don't know.

6 MR. KEEGAN: Okay. Your Honor, if I can have just
7 two minutes to confer with co-counsel?

8 THE COURT: Yes.

9 MR. KEEGAN: Thank you, thank you, Doctor.

10 (Pause in proceedings.)

11 MR. KEEGAN: Thank you.

12 Q Dr. DeCastro, you stated in your declaration that the
13 database, being the IIDS, is not structured in a manner that
14 would correlate items that plaintiffs wish to be correlated.
15 Do you recall saying that?

16 A Yes.

17 Q Do you recall saying in your declaration that because
18 the IIDS database is "event-centric," actions such as
19 detainers are "not connected" with other actions?

20 A Yes.

21 Q Dr. DeCastro, I'd like to go over a document that I'll
22 hand up to you now, I'm going to hand it to the court, it's
23 been -- it's listed in plaintiff's exhibit list, it's a page
24 from one of those exhibits.

25 THE COURT: And have you marked this as an exhibit?

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1 MR. KEEGAN: Yes, we have, your Honor.

2 THE COURT: What's the exhibit number?

3 MR. KEEGAN: This is a page from Plaintiff's
4 Exhibit 33. I believe it's page 83 of that exhibit.

5 THE COURT: Thank you. And is there any objection
6 to the admission of this exhibit?

7 MR. STUBBS: Your Honor, this exhibit is something
8 that the agency considers law enforcement sensitive, it was
9 produced in something we call an inadvertent disclosure in
10 approximately 2011 to a FOIA request. It should not have
11 been released, it should have been redacted in full under
12 FOIA Exception (b)(7)(E). This contains law enforcement
13 sensitive data table names and the names of fields contained
14 in those tables. If this was to be requested today, this
15 document would not be produced in FOIA without full
16 redactions. It is also the subject of the older D.C.
17 litigation in front of Judge Mehta. This was an inadvertent
18 release and because of the inadvertent release, arguments
19 there were made that current documents thus should have to be
20 released and we've asserted in declarations and testimony in
21 that case that this document should be withheld under (7)(E),
22 law enforcement sensitive. So we would object to the
23 entering of this exhibit into the public record on PACER, for
24 example, but don't necessarily object to the line of
25 questioning at this time.

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1 THE COURT: So is the issue whether it can be
2 disclosed publicly currently before Judge Mehta?

3 MR. STUBBS: That's correct, your Honor.

4 MR. KEEGAN: Your Honor, I would have to -- I would
5 have to look into that, it's the first that I'm -- that I've
6 heard of this. We did list this exhibit on our exhibit list
7 last week, and we did not hear anything about any reservation
8 or redactions that were necessary, but, you know, so --

9 THE COURT: Okay, I'll permit questioning regarding
10 this exhibit and I'll hold off any ruling on its public
11 admission pending supplemental briefing by the parties,
12 letter briefing with respect to whether it should be admitted
13 under seal and the status of Judge Mehta's ruling on the
14 exhibit.

15 MR. STUBBS: Thank you, your Honor.

16 MR. KEEGAN: Thank you.

17 Q So Dr. DeCastro, have you seen this exhibit before?

18 A No.

19 Q Excuse me, have you seen this document before?

20 A No.

21 Q Would you agree that this document is something of a
22 diagram?

23 A Yes.

24 Q Presents a series of boxes with information listed,
25 lists of information in each box?

1 A Yes.

2 Q I want to direct your attention to the box all the way
3 on the left-hand side of the page, do you see that?

4 A Yes.

5 Q Do you see that there's a title, if you will, of that
6 box, at the top of the box?

7 A Yes.

8 Q And could you read that title for me?

9 A It says Detainer Dimension.

10 Q And then inside that box, there's -- the next line, if
11 you will, of that box, what does that say?

12 A Detainer ID.

13 Q Do you know what this box signifies?

14 A No.

15 Q Do you know what detainer dimension might signify?

16 A No, I'm not an expert at this.

17 Q Sure. Do you know what detainer ID might signify?

18 A No.

19 Q Do you see that the box that's titled Detainer
20 Dimension, above where it says Detainer Dimension, there's a
21 line, do you see that?

22 A Yes.

23 Q And do you see how that line follows, it first goes up
24 and then it goes over to the right of that diagram, is that
25 right?

1 A Yes.

2 Q And do you see how it connects to another box?

3 A Yes.

4 Q And that box, about in the middle of the page, shaded
5 gray on this paper, that has a title, too, is that right?

6 A I see words above the box.

7 Q Words above the box, yes.

8 A So I would assume, yes.

9 Q Okay, thank you. And what does it say above that box?

10 A The words above the box?

11 Q Yes.

12 A Detainer Fact.

13 Q Do you know what Detainer Fact can signify?

14 A I don't.

15 Q Inside that box, there's a series of information and
16 the top, the top words in that box say Detainer_ID(FK), is
17 that right?

18 A That's what I see.

19 Q Do you know what Detainer ID(FK) might signify?

20 A No.

21 Q Do you know what FK might signify?

22 A No.

23 Q Underneath Detainer ID(FK) there's another term that
24 says Encounter Person ID(FK); do you know what that might
25 signify?

1 A No.

2 Q Further down on that same box, there's
3 EID_Person_ID(FK); again, do you know what that might
4 signify?

5 A I don't.

6 Q Okay. Further down, it seems like that box has a line
7 dividing it into two parts, and the first word underneath
8 that dividing line says Removal_Case_Yes_No, do you see that?

9 A Yes.

10 Q And do you know what that might signify?

11 A No.

12 THE COURT: And Counsel, do you have any reason to
13 believe this is going to lead to anything relevant?

14 MR. KEEGAN: Yes, your Honor. I'm sorry, I don't
15 mean to march through, but do you, Dr. DeCastro, do you
16 have -- you see how this Detainer Dimension box and the
17 Detainer Fact box are connected in this diagram; would that
18 be a fair thing to say?

19 A Yeah, yes.

20 Q But you do not -- you do not know whether or not this
21 concerns the structure of the IIDS database, is that correct?

22 A No, I'm not even precisely sure what this document is,
23 I have not seen it before.

24 Q Okay, okay, thank you.

25 If I may just have one more minute, your

1 Honor, I appreciate it.

2 THE COURT: Yes.

3 (Pause in proceedings.)

4 MR. KEEGAN: Thank you again.

5 Do you recall as part of your declaration in this
6 case you included a immigration detainer form, a copy of an
7 immigration detainer form as an exhibit?

8 A Yes. Yes.

9 Q Thank you. Are you familiar with the contents of that
10 form?

11 A Generally, but not specifically.

12 Q Okay. On the -- on the top of that form, and this is
13 in your declaration, there's a box that says Subject ID with
14 a colon.

15 MR. REYNOLDS: Your Honor, if I could just object,
16 just ask Mr. Keegan to clarify, attached to her declaration I
17 believe there are three different detainer forms, if I could
18 just ask that he be specific about which one we're referring
19 to with this line of questioning.

20 MR. KEEGAN: I'm sorry, your Honor, this is
21 Exhibit B to the DeCastro declaration.

22 THE COURT: And perhaps for the record could you
23 read the title of Exhibit B, what's in all bold at the top.

24 MR. KEEGAN: Yes, Detainer Form I-247.

25 So again, on that detainer form, there are two

1 fields, two pieces of information in the upper left corner of
2 that detainer form to be filled out presumably, one is
3 subject ID, another is event number. Do you recall those or
4 do either subject ID or event number mean anything to you?

5 A Well, I don't interact in any regular way with detainer
6 forms, so I'm not very familiar with exactly what's on that
7 form.

8 Q Okay. The information, is it your understanding that
9 the information that's collected first on the detainer form
10 is input to the EID database?

11 A I believe so.

12 Q And then is it your understanding that that information
13 comes from the EID database, is transferred -- a copy of that
14 information, excuse me, is transferred from the EID database
15 to the IIDS?

16 A I believe that's generally true but I'm -- our STU
17 people are the experts at that.

18 Q Sure, okay. So if subject ID or event number were to
19 be stored in the IIDS, would you know where in the IIDS they
20 would be stored?

21 A No, other than what I'm told, which is that detainer
22 information is kept with detainers, in the database.

23 Q Would you know whether it's kept elsewhere in the
24 database?

25 A No.

1 Q Okay.

2 Okay, your Honor, I may just have one more
3 question, I just want to --

4 THE COURT: Yes.

5 MR. KEEGAN: Thank you.

6 (Pause in proceedings.)

7 Q Dr. DeCastro, you said that in your declaration that
8 ICE personnel have, and I'm quoting from paragraph 19 of your
9 declaration, "ICE personnel have some capability to view some
10 data from one individual in the EID database." Do you recall
11 saying that?

12 A Yes, that was -- it was explained to me that way.

13 Q Okay. Is there anything else about that that you can
14 tell us today?

15 A Just that our analysts tell me we can only report from
16 IIDS and that this -- well, what I know is, I put in the
17 declaration.

18 Q Okay. When you said that ICE personnel have some
19 capability to view some data for one individual in the EID,
20 does that mean that data exists in the EID for that
21 individual?

22 A I suppose so.

23 Q Okay.

24 A That, that you can view it, like I said, that's what I
25 was told.

1 Q You said -- and Dr. DeCastro, you said in paragraph 17
2 of your declaration that creating a connection between data
3 for different law enforcement actions requires ERO to conduct
4 analysis calculations and create new records. Do you recall
5 stating that?

6 A Yes.

7 Q Could you tell me concretely what analysis is required?

8 A Not absolutely concretely. I can tell you what I know,
9 which is what I've said in my declaration, that I -- would
10 you tell me the question again.

11 Q Sure. Your declaration on paragraph 17 of your
12 declaration, you state that the database, meaning the IIDS
13 database, within the IIDS database creating a "connection"
14 between data for different law enforcement actions requires
15 ERO to conduct analysis, calculations, and create new
16 records?

17 A Yes.

18 Q And so my question is, do you know what concrete
19 analysis such connections would require?

20 A I'm not sure what you mean by concrete. If that means
21 really ultra specific, no.

22 Q Do you know what analysis such connections would
23 require?

24 A It's been explained to me that when there's one event
25 population and another event population, that they don't

1 exist connected, so connecting them requires a lot of effort
2 to get them to mesh, and it's very difficult to do.

3 Q Do you know whether or not the populations are
4 predetermined subsets of the IIDS database?

5 A I don't feel like I'm expert enough to answer that
6 question, I think a STU person would be better.

7 Q Okay. Do you know whether or not there's something
8 more to the IIDS database than just the populations?

9 A I don't know.

10 MR. KEEGAN: Okay. I have nothing further, your
11 Honor.

12 THE COURT: Any cross-examination?

13 MR. STUBBS: No cross-examination, your Honor.

14 THE COURT: Ms. DeCastro, you may step down, you're
15 excused.

16 THE WITNESS: Thank you.

17 (The witness was excused.)

18 THE COURT: Do the plaintiffs have any further
19 witnesses?

20 MR. KEEGAN: Your Honor, not today. Now again, I
21 would, I would say that we -- there's new information that
22 was put forward today and it's the first that we're learning
23 of it, and when it comes to the structure of this database,
24 it does not sound like we're any closer to understanding what
25 exactly it is, and I would like the opportunity to say why

1 expert testimony would be in order to rebut the testimony
2 that we heard today.

3 THE COURT: And what expert testimony would you
4 proffer?

5 MR. KEEGAN: We would proffer testimony from the
6 witness that we noticed last week, Dr. Paul Clark, in terms
7 of an expertise in how databases are structured, how queries
8 of a database such as the IIDS are written, the programming
9 language that is required to write that query. We've heard
10 today reference to SQL but we don't have the definition from
11 either of ICE's witnesses as to what that is, what that
12 means, and most importantly, as I've mentioned this morning
13 at the top of this hearing, how ICE's Integrated Decision
14 Support is an integrated database and what that term really
15 means and what that term means for databases in general, how
16 the data within a database is necessarily interrelated.

17 THE COURT: Does Dr. Clark have any experience with
18 the IIDS?

19 MR. KEEGAN: I believe he has experience with
20 databases of which the IIDS is a type, databases of the same
21 type.

22 THE COURT: But does he have any experience with
23 the IIDS?

24 MR. KEEGAN: Just one moment, your Honor. From our
25 client, I should say Dr. Clark has appeared as an expert in

1 the 2014 D.C. action of plaintiffs versus Immigration and
2 Customs Enforcement.

3 (A discussion was held off the record.)

4 MR. KEEGAN: And your Honor, if I may, that 2014
5 case concerns in part the schema of the IIDS database.
6 Dr. Clark sat through testimony as to the structure of that
7 database and commented on that database, I think we would --
8 and gave a report there. I think, would not be so simple as
9 to just pour over what he said in that case into our case,
10 especially given what was said today about new terms that
11 haven't been a part of our case at all in the last two years
12 such as predefined queries, populations, and so we can --
13 we'd like to, the opportunity to rebut those, that testimony
14 and the significance of that testimony.

15 THE COURT: And let me just make sure I'm clear,
16 you're saying that Dr. Clark sat through the evidentiary
17 hearing in the 2014 D.C. case?

18 MR. KEEGAN: I believe that's true, I believe that
19 in the 2014 D.C. case, both plaintiffs and defendant were
20 given an opportunity to make presentation, and Dr. Clark's
21 was the presentation on behalf of plaintiffs and he reviewed
22 defendant's presentation as well.

23 THE COURT: And let me hear from defense counsel.

24 MR. REYNOLDS: Your Honor, I have -- I object to
25 the request for an adjournment or extension of this hearing

1 to present an expert witness for several reasons. First of
2 all, I believe that the testimony that we elicited this
3 morning from Curtis Hemphill was nothing new. In fact I used
4 plaintiff's letter document 59 dated May -- excuse me,
5 February 16th, 2000 -- no, I'm sorry, it's Exhibit 6 that we
6 referred to, I don't have the exact date here, but we went
7 through that in detail, spent an hour going through it, and
8 the basis of Mr. Hemphill's testimony was responding to the
9 inconsistencies alleged in Mr. Keegan's letter to the court.
10 So I disagree respectfully that there's something new that's
11 been presented here.

12 Nevertheless, you know, as Mr. Keegan pointed out
13 in his opening statement this morning to the court, this case
14 has been going on for two years and in numerous, numerous
15 filings with the court, including when the government was
16 shut down, Mr. Keegan was urging the court to move this case
17 along. Now, at the request of Mr. Keegan and the plaintiff,
18 this case was set for evidentiary hearing, we came prepared,
19 we flew up witnesses from D.C. and Reno, Nevada, and we're
20 ready to go today. At the late stages of this litigation, to
21 allow Mr. Keegan to present expert testimony without ever
22 disclosing it through Rule 26 or pursuant to Rule 37 I think
23 would be unfairly prejudicial to the government and the
24 defendant at this stage. And we've received no notice of
25 this, other than Mr. Clark appearing a week before this

1 hearing on this -- on his witness list.

2 Additionally, it sounds like the basis or sole
3 basis of Mr. Clark's knowledge is sitting through this other
4 hearing in 2000 -- in the 2014 case, I'm not sure when the
5 hearing took place based upon Mr. Keegan's representations to
6 the court. So for all of those reasons, we would object.

7 MR. KEEGAN: If I may just respond?

8 THE COURT: Yes.

9 MR. KEEGAN: Very briefly, your Honor. ICE has had
10 four declarations in this case over two years. This
11 morning -- we didn't even hear about predefined queries or
12 SQL or populations in any of those declarations. The first
13 we hear of it is this morning with Dr. Hemphill's testimony
14 and he did not put in a declaration. So yes, I have been
15 trying to move this case along, but two years later this is
16 the first we hear this is what ICE -- this is how ICE
17 structures things. It sounds to me from this morning's
18 testimony that that's not how the database is structured,
19 that they have a set of predetermined queries like canned
20 queries for FOIA requests and they sit on a shelf and that's
21 how they think that they've fulfilled their FOIA duties.
22 That's not how the database is structured, we still don't
23 know that. And so I'm trying to rebut that. And in terms of
24 moving this case forward I think that's -- an expert
25 testimony is what we need. We don't have any expert

1 testimony from ICE. Mr. Hemphill said that he did not have
2 that knowledge of how queries were conducted. Dr. DeCastro
3 said that she did not have that knowledge, and the exhibit
4 that we put in, I realize that we'll talk about whether it
5 should be on the public record but that exhibit is part -- it
6 comes from this 2014 action, and it's part of the actual
7 structure of the IIDS database at a certain point in time.

8 So Dr. Clark has experience in reviewing what ICE
9 says about that database, comparing it with the reality of
10 how these databases generally are structured. This is not a
11 custom database that ICE built by itself, and so I think
12 Dr. Clark's testimony would be very helpful to the court.
13 And just, again, this is a FOIA litigation, this is a very
14 odd FOIA litigation at that, where a government agency has
15 been producing data for years and then suddenly decides it
16 doesn't want to do that anymore, and that's what this fight
17 is about. But as a FOIA litigation, we have not had
18 discovery, we have not had the normal course of pretrial
19 proceedings where expert disclosures would be due by a
20 certain point in time, and we would proffer our experts and
21 exchange that and line up occasions for experts to take
22 testimony.

23 I'm happy to give the court further information as
24 to why Dr. Clark's testimony would bear on this case and the
25 resolution of these issues.

1 THE COURT: Anything further?

2 MR. REYNOLDS: Yes, your Honor. You know, I would
3 just like to point out, as I'm sure you're aware, this
4 morning the court was extremely patient with plaintiff's
5 counsel and gave him ample opportunity to ask questions and
6 cross-examine Curtis Hemphill about any of these issues
7 including SQL, et cetera.

8 Second point I would like to make is, you know, at
9 the end of the morning your Honor correctly pointed out that,
10 you know, this case at this point, after all these issues
11 have been narrowed, to really focus the issues for this
12 hearing, that the issues remaining in this case really are
13 about the creation of records and, you know, the overly
14 burdensome issue and I don't believe that really anything
15 that Mr. Keegan has represented that Dr. Clark would testify
16 about would really go to the heart of those issues.

17 THE COURT: Thank you. Thank you to both counsel.

18 MR. KEEGAN: Your Honor, I'm very sorry, but just
19 one other point. We did discuss with the -- between the
20 parties and the court the possibility of this hearing
21 continuing, and the court's calendar did not enable that to
22 spill over to a second day. So that was always the
23 understanding going in and it's 3:00 already now, so just as
24 a practical matter, I think a continuance would be necessary.

25 THE COURT: Right. I do -- have listened very

1 carefully to the testimony this morning, and I really don't
2 see a lot new here with respect to the gist, and the gist is,
3 although Ms. DeCastro referred to it as modules and
4 Mr. Hemphill referred to it as populations, the gist is that
5 there are two different parts of the database, and a FOIA
6 query can do one or the other but doesn't connect them
7 without additional analysis and what ICE considers to be
8 creating a record. That doesn't seem to be new, that was
9 very clearly set out in DeCastro's affidavit and I thought it
10 was very clearly set out in Hemphill's testimony. To the
11 extent you had some information from Dr. Clark that would be
12 useful, I'm not sure why it wasn't used in cross-examining
13 Mr. Hemphill or Ms. DeCastro.

14 Nevertheless, because we did indicate, or you had
15 requested a possible continuance, I'll let you make a proffer
16 of what he would testify to, but as I -- through a letter
17 proffer, but I'm not inclined to consider his testimony. I
18 will wait and look at your proffer. And the reason I'm not
19 is because, as I understood it, he was involved in the 2014
20 D.C. case which involves the database schema, which is a
21 different question than what's at issue here and it seems to
22 me that ICE has put on a fairly strong case for why trying to
23 connect these two populations creates -- requires them to do
24 additional analysis that they would consider to be creating a
25 record. So that's the issue, I'm not sure how Dr. Clark has

1 anything on that issue that's relevant to that issue. I will
2 accept a letter proffer, but I'm also concerned about the
3 fact it seems that whatever he had could have been used for
4 cross-examining the witnesses which I did not hear anything
5 that appeared to be of that nature.

6 MR. KEEGAN: We'll outline that in our letter, your
7 Honor, thank you.

8 THE COURT: So let's set some dates, and if I
9 decline to consider Dr. Clark, then I -- if counsel request,
10 I would allow each counsel time to submit a brief letter
11 brief, if counsel seek to, addressing the testimony that's
12 presented to the court and addressing counsel's request for
13 what the court should do after today's evidentiary hearing.

14 MR. REYNOLDS: Thank you.

15 MR. KEEGAN: Your Honor, I'm sorry, may I just have
16 five minutes to speak with my client?

17 THE COURT: Yes.

18 MR. KEEGAN: Thank you.

19 (Pause in proceedings.)

20 MR. KEEGAN: Your Honor, if I may make a request.
21 Given your Honor's view of the case as you just told me, and
22 given that Dr. Long is here with us today, I wonder if we
23 could put on Dr. Long for a brief direct to try to flesh
24 out -- one of the issues in this case is the structure and
25 the interrelated structure of this database.

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1 THE COURT: Yes.

2 MR. KEEGAN: We appreciate that.

3 THE COURT: You may step up, Dr. Long.

4 THE CLERK: Can you please state and spell your
5 name for the record.

6 THE WITNESS: My name is Susan B. Long, it's
7 S-u-s-a-n, B as in Bradley, my middle name, Long, L-o-n-g.

8

9 S U S A N B . L O N G , called as a
10 witness and being duly sworn, testifies as follows:

11 MR. PRESS: Thank you.

12 THE COURT: You may proceed.

13 MR. PRESS: Thank you, your Honor.

14 DIRECT EXAMINATION BY MR. PRESS:

15 Q Good afternoon, Dr. Long.

16 A Good afternoon.

17 Q Dr. Long, where do you work these days?

18 A I am a professor at Syracuse University.

19 Q And you work at TRAC, is that right?

20 A Yes. I am --

21 Q Can you just tell us what TRAC is?

22 A Pardon?

23 Q Can you briefly tell us what TRAC is?

24 A TRAC stands for, it's an acronym for Transactional
25 Records Access Clearinghouse. We're a research and data

1 center established in 1989 as part of Syracuse University.

2 Q And do you have any doctoral degrees, any -- you
3 obviously have a doctoral degree, what is that degree in?

4 A Yes, I have a doctorate in, with a dual major in
5 essentially criminal justice and quantitative methods and a
6 postdoc from -- my PhD is from the University of Washington,
7 and my postdoc is from Princeton University in the statistics
8 department, and I am currently on the faculty of the Whitman
9 School of Management and an associate professor of managerial
10 statistics, so that's my specialty.

11 Q Thank you. Thank you. Now, a little while ago, my
12 co-counsel presented what we've been referring to as page 83
13 of Plaintiff's Exhibit 33, I believe. Have you had an
14 opportunity -- have you seen that document before?

15 A Oh, yes, absolutely.

16 MR. STUBBS: Your Honor, we just renew our
17 objection from earlier requesting that this document be filed
18 under seal.

19 THE COURT: Yes, and I'll hear from both counsel
20 with respect to that request.

21 MR. STUBBS: Thank you, your Honor.

22 MR. PRESS: Just want to --

23 THE COURT: You may question the witness.

24 MR. PRESS: Thank you.

25 Q How would you describe that page, what does that

1 represent?

2 A Well, it is a part of a document that we received in
3 response to a Freedom of Information request from ICE that is
4 a portion of the database schema that existed when the
5 document was prepared for the IIDS.

6 Q So in other words, this is the structure of the -- this
7 document represents the structure and part of the IIDS?

8 A Yes. Yes, what -- the IIDS is an integrated relational
9 database, and it describes how the data is stored in tables
10 and how the tables are linked together so the information can
11 be queried, found and retrieved.

12 Q I want to hold up right there with integrated. What
13 does that mean for a database to be integrated, Dr. Long?

14 A Well, integrated usually means that everything is
15 interconnected.

16 Q Interconnected?

17 A And that's true for the IIDS.

18 Q So I just want to bring your attention back to that
19 page 83 of our exhibit.

20 A Yes, is it here?

21 MR. PRESS: May I have one moment to present her
22 with the document that --

23 THE COURT: Yes.

24 A Oh, I see it here.

25 Q Okay, great.

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1 A Yes.

2 Q Do you see a box in the middle of that table, on mine
3 it's shaded gray?

4 A Yes.

5 Q What does the top of that table say?

6 A It says Detainer Fact.

7 Q I'm sorry. Just to go back, that box that I'm talking
8 about, the shaded box that I just referred to as a table, and
9 that's you just said the detainer fact table?

10 A Yes.

11 Q Okay.

12 A Each box is a table.

13 Q Each box is a table?

14 A Mm-hmm.

15 Q And do you see the lines that run from Detainer Fact to
16 the other tables?

17 A Yes.

18 Q What does that signify to you?

19 A That says this is how the tables are linked together,
20 so these are linkages, these are the built-in linkages within
21 the integrated database system.

22 MR. STUBBS: Your Honor, we object on foundation.

23 It's not clear what this document is, where it's from, the
24 the date it was created. Also it's not been established that
25 Dr. Long works for ICE or has worked for ICE or helped

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1 developed this document so I don't believe she can reach
2 conclusions on what the document signifies.

3 THE COURT: Sustained.

4 MR. PRESS: If I may, your Honor, may I continue to
5 question the witness?

6 THE COURT: Well, that question has been sustained
7 so you need a new question.

8 MR. PRESS: Yes, new question, your Honor.

9 Were you the plaintiff in what has been referred to
10 today as the D.C. action?

11 A Yes.

12 Q And you've had a chance to review this document as part
13 of the D.C. litigation, D.C. action?

14 A Oh, yes.

15 Q And this page, page 83, is part of -- do you see at the
16 bottom -- strike that. At the bottom of this page 83, do you
17 see a series of numbers and letters that reads 2011 FOIA
18 0619?

19 A Yes.

20 Q Right? So is this page part of a larger document?

21 A Pardon me?

22 Q Is this page part of a larger document?

23 A Yes.

24 Q And have you seen that document?

25 A Yes.

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1 Q You've had a chance to review that full document?

2 A Yes, it was received in response to our FOIA request.
3 For documentation on the IIDS and how it was structured.

4 MR. REYNOLDS: I'm sorry, I didn't catch that last
5 part, was that in response to a question?

6 (The answer was read.)

7 Q So Dr. Long, given that you've seen this entire
8 document before and you're familiar with it, read it, and I
9 ask you again, what, what -- I ask you again if you see the
10 lines that connect the Detainer Fact table to any of the
11 other tables.

12 A Yes.

13 Q You see those connections, those -- and what do those
14 represent to you?

15 A This is an entity relationship diagram, part of it, and
16 those are the linkages between the tables.

17 MR. STUBBS: Objection, I'm sorry --

18 THE COURT: Sustained. Sustained.

19 Q Dr. Long, were you present for Mr. Hemphill's testimony
20 this morning?

21 A Yes.

22 Q And did you have a chance to hear about the way that he
23 described populations?

24 A Yes.

25 Q Are there any populations in this diagram?

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1 A Not as he described it, no.

2 Q How is it different, the way that you see it from the
3 way Dr. -- Mr. Hemphill described it?

4 A Well, as I understand his testimony he said he did not
5 know how the data was stored in the IIDS, he didn't know
6 about tables, he -- he didn't know about how it was
7 structured because he wasn't familiar with that, and the
8 populations as I understood his testimony were a creation
9 based upon a preprogrammed query that then resulted in this
10 so-called detainer population.

11 MR. PRESS: May I just have one moment to confer
12 with co-counsel, your Honor?

13 THE COURT: Yes.

14 MR. PRESS: Thank you.

15 (Pause in proceedings.)

16 Q Dr. Long, you regularly submit FOIA requests to ICE, is
17 that right?

18 A Yes.

19 Q And as part of your FOIA requests, how do you let ICE
20 know what you're looking for?

21 A Yes.

22 Q How do you let ICE know what you are looking for?

23 A Well, we try to itemize the information. After the
24 evidentiary hearing where ICE experts testified that this in
25 fact was the structure and data storage in part in IIDS, we

1 began making requests that would specify exactly these names
2 to make it easier. That is why we had originally sought this
3 document in the first place, because this is the first step
4 that we always do when we're going, we -- we request data
5 from federal agencies' internal management databases, as a
6 first step we ask for documentation so we know what they
7 have, how it is stored, so we can make a very specific
8 logical query to them, and so that is what we did.

9 Q I'm sorry, I just want to clarify, Dr. Long, do you
10 write the queries and submit them to ICE?

11 A Do I write the -- I write the letters, yes.

12 Q The letters, but do you write as part of that letter,
13 do you write a query in SQL language?

14 A No, we're not allowed to do that. For other agencies
15 we have.

16 Q And who writes -- who writes those queries?

17 A We have a software engineer.

18 Q Oh, I apologize, Dr. Long. May I rephrase that
19 question?

20 Is it the responsibility of TRAC to formulate
21 a query when submitting a FOIA request to ICE?

22 A No.

23 Q Do you know whose responsibility that is?

24 A It would be ICE's responsibility to conduct the search.

25 Q And how do they come up with search -- strike that,

1 your Honor. Okay.

2 Now on prior FOIA requests that you've made --
3 on prior FOIA requests that you've made, Dr. Long, and on
4 production that ICE, and on records that ICE has produced,
5 have they ever redacted any information as part of that
6 production?

7 A Yes.

8 MR. PRESS: Okay. Your Honor, I have no further
9 questions.

10 THE COURT: Okay. Cross-examination?

11 MR. STUBBS: No, your Honor.

12 THE COURT: You may step down, Dr. Long.

13 (The witness was excused.)

14 THE COURT: Okay. So let me say again that I'm not
15 inclined to consider additional testimony. I'm not sure why
16 these questions weren't asked of the first witness who seemed
17 to have pretty detailed knowledge. ICE brought this
18 individual here from someplace, Washington, D.C. or
19 somewhere, he seemed to be the person who had the most
20 information about the database. I thought he explained very
21 clearly why the request that was given would take additional
22 analysis and work and would involve the creation of records,
23 so I'm not inclined to consider Dr. Clark's testimony but I
24 will let you make a proffer. How much time do you need to
25 make the proffer?

1 MR. PRESS: May I just make one point with respect
2 to what your Honor just mentioned about these questions not
3 being presented earlier today? I believe it is, it was
4 Mr. Hemphill's testimony that he did not do queries, that he
5 does not -- he does not have a programming background and
6 that he does not write SQL, he does -- he's not familiar with
7 SQL language, he would not have been able to answer my
8 questions, questions about connectivity and integration, as
9 his testimony showed. I believe that Dr. Clark's testimony
10 would be helpful in this respect.

11 THE COURT: And I will consider a proffer.

12 MR. PRESS: Thank you, your Honor.

13 MR. KEEGAN: Thank you, your Honor.

14 THE COURT: How much time do you need to write a
15 letter to the court letting the court know a proffer of what
16 Dr. Clark would testify to?

17 MR. KEEGAN: Your Honor, could we have until the
18 end of August to submit that letter to you?

19 THE COURT: Yes. So that would be August 30th, and
20 I assume the government would like to respond?

21 MR. REYNOLDS: Yes, please.

22 THE COURT: Two weeks, September 13?

23 MR. REYNOLDS: Sounds good, thank you.

24 THE COURT: And I assume that at the conclusion of
25 the evidentiary hearing, both parties would like an

1 opportunity to briefly write a letter brief to the court
2 regarding their position of the evidence that's been
3 presented?

4 MR. KEEGAN: We would, your Honor.

5 MR. REYNOLDS: Yes, thank you.

6 THE COURT: Okay. So I will set -- I will,
7 following the decision on Dr. Clark, set a briefing schedule
8 for that.

9 MR. KEEGAN: Thank you, your Honor.

10 THE COURT: And in respect -- with respect to the
11 government's response on September 13th, could you also
12 include the sealing request? We do have a local rule in
13 civil cases regarding sealing so government counsel just
14 needs to explain why any public interest in sealing is
15 outweighed by countervailing factors and the local rule
16 describes it, I think it's 83.13, something like that.

17 MR. REYNOLDS: Yes, we will do that, thank you.

18 MR. KEEGAN: Your Honor, when should we respond to
19 that by?

20 THE COURT: The sealing request?

21 MR. KEEGAN: Yes.

22 THE COURT: I'll give you two weeks to respond to
23 the sealing request so that would be September 27th.
24 Anything further?

25 MR. REYNOLDS: No, thank you, your Honor.

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MR. KEEGAN: No, your Honor.

THE COURT: Okay, thank you, Counsel.

THE CLERK: Court's adjourned.

(Court Adjourned, 3:11 p.m.)

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CERTIFICATE OF OFFICIAL REPORTER

I, JODI L. HIBBARD, RPR, CRR, CSR, Federal Official Realtime Court Reporter, in and for the United States District Court for the Northern District of New York, DO HEREBY CERTIFY that pursuant to Section 753, Title 28, United States Code, that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 21st day of August, 2019.

/S/ JODI L. HIBBARD
JODI L. HIBBARD, RPR, CRR, CSR
Official U.S. Court Reporter