UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SUSAN B. LONG & DAVID BURNHAM Plaintiffs, v. U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT Defendant.	Civil Action No. 17-1097 (APM) Declaration of Patricia J. de Castro, Ph.D.

SUPPLEMENTAL DECLARATION OF PATRICIA J. DE CASTRO

I, Patricia J. de Castro, Ph.D., pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am an Operations Research Analyst at Immigration and Customs Enforcement, Enforcement and Removal Operations, Strategic Initiatives Unit. I make this supplemental declaration in support of ICE's Motion for Summary Judgment in the above-captioned action. The statements contained in this declaration are based upon my personal knowledge, my review of documents kept by ICE in the ordinary course of business, and information provided to me by other ICE employees in the course of my official duties.

2. This declaration supplements and supports the previous declarations of Marla Jones dated November 8, 2017 and January 25, 2018 as well as the declaration of Dr. Patricia de Castro dated October 7, 2019**.**

3. Plaintiffs have regularly requested data related to the Security Communities (SC) program. As stated in previous declarations, ICE has, in the past, discretionarily conducted analysis and created records in response to Plaintiffs' FOIA requests. However, the volume and complexity of Plaintiffs' FOIA requests increased to the point that ICE was unable to continue

investing resources into exceeding FOIA by conducting analysis, conducting calculations, conducting research, and creating records for Plaintiffs. If ICE were to continue creating records and conducting analysis for Plaintiffs, ICE would be unable to provide timely responses to other FOIA requesters. It would not allow other requesters full access to ICE records and would not allow ICE to fulfill its transparency mandates.

4. Throughout this lawsuit, Plaintiffs have insisted that ICE should be required to continue to provide SC removals data, simply because it was provided discretionarily, in the past, beyond the date when it was no longer required or used by ICE.

5. Throughout this lawsuit, Plaintiffs have made inaccurate statements about the structure and function of the IIDS and EID databases—as further described below. Because Plaintiffs' past declarations and pleadings were often technical in nature, ICE declarants responded with technical language as well. This might have caused some difficulty for any technical laypersons to clearly understand that there is only one true issue in this case: *creation of records*. I make every effort here to use plain, non-technical language. While a technical expert could make (and has, in previous declarations made) more technically detailed statements regarding ICE's databases and the issues in this lawsuit, it may also be of value to this Court to have a "wide angle lens" on the agency's essential message.

6. Plaintiffs, in various statements, imply that I lack technical expertise to make statements regarding the ICE databases. It is a correct statement that I am not a computer programmer, nor do I use IIDS to conduct FOIA searches on a regular basis. However, I have not presented myself as an expert in computer programming or FOIA searches. Rather, I joined this litigation as a Declarant because I perceived the need for ICE to more plainly state how its databases work. After hundreds of hours discussing the ICE databases with our senior data

analysts, I understood the essence of the messaging needed—and why the analysts stated they were creating records for Plaintiffs. I wished to assist our legal representatives, the Courts, and the public by explaining clearly—in plain language—what data ICE could provide via a FOIA request—and the reasons behind any withholdings. This need extends beyond this litigation, and into all aspects of ICE's commitment to transparency, to clear communication with FOIA requesters, and full compliance with FOIA laws.

7. I taught high school math courses for approximately 20 years, and I have a high level of skill in explaining complex things clearly and plainly. In this litigation, that is my essential role: to explain things clearly, and to help the average, non-computer programmer, non-technical person understand why ICE must create records to provide Plaintiffs with data that has not already been provided.

8. The essential fact in this case relates to how the SC Removals dataset (hereinafter, "report") was created in the past—when it was required. Other than for litigation with Plaintiffs, ICE no longer creates the SC Removals report since it is no longer used or required. ICE does not have any need to create such a report.

9. ICE uses the IIDS database for its operational reporting needs. The IIDS is a "snapshot" of data extracted from the EID database. On a regular cycle, an extract of data fields contained in the EID is made and copied over to the IIDS. This is known as the ETL (Extract, Transform, Load) process—and allows ICE to do reporting from IIDS without posing risk to the critical day to day functioning of the EID.

10. ICE analysts refer to data for particular law enforcement events as "populations" that are created to fulfill operational reporting requirements. For instance, the ERO administrative arrest "population" would be the data related to ERO arrests that occurred in a

particular timeframe. Similarly, the ERO "detainers" population would be the data related to ERO detainers in a particular timeframe. For simplicity, I will refer to these as "reports" herein.

11. The ICE Removals Population (report) data exists within IIDS. If analysts wished to produce a Removals report for a FOIA request, they could simply retrieve the ICE Removals data from IIDS. However, the Secure Communities (SC) Removals report is a different kind of report.

12. To create the SC Removals report, ICE started with ***data from a different law enforcement-sensitive source not within IIDS or EID***. ICE analysts then, each time, had to "connect" the IIDS data to that other LES data source—using numerous, ultra-complex calculations and matching algorithms. This "connection" process had to occur outside of IIDS (and EID) because the other LES data source is not in IIDS or EID. This is the basis for past statements of ICE declarants who said the SC Removals Report does not exist inside IIDS.

13. The SC Removals Report is not a report that can be produced—like a standard Removals report—by simply using data from IIDS. It must be created anew, each time, outside of IIDS, by "connecting" IIDS data with data from the other LES data source. Those "connections" are, by definition, not pre-existing, and require creation of records, because they must be made each time the SC Removals report is created. In fact, there is no way, using data only from IIDS, to even identify which removals are SC Removals.

14. After ICE no longer needed to report SC Removals data in 2014, each time ICE provided the SC Removals report to Plaintiffs, it was done discretionarily, and required ICE to create records by conducting all the numerous analyses and transformations required to "connect" the IIDS data to the other LES data source. That effort was done discretionarily, and solely for Plaintiffs, since ICE no longer required or used that report.

15. The technical explanations for why each of those data fields Plaintiffs complain of exist, or do not exist, are in my Declaration dated October 29, 2019. Although those descriptions might have strayed far into technical language, they form the basis for this statement: that the data fields not provided pursuant to Plaintiffs' request either (1) simply are not in IIDS or EID, or (2) must be created anew, each time, by applying all the ultra-complex analyses, transformations, and matching methodologies needed to combine IIDS data with the other LES data source to create the SC Removals report—which ICE has no use or requirement for.

16. When the agency created SC Removals reports for its own reporting requirements, the agency also provided those records to FOIA requesters. However, once the SC reporting requirement ended, there was no use or requirement for an SC Removals report. The analysis and calculations required to create the SC Removals Report were no longer required operationally.

17. When the SC report is created, the "connected" data are only recorded in the SC report itself, and *not in IIDS or EID*. The report only exists after the agency "connects" IIDS data to data from an additional LES source, which must happen outside of IIDS, and those "connected" data then only exist in the SC Removals Report, not in IIDS.

18. Although the agency discretionarily conducted extensive analysis, transformations of data, and calculations for Plaintiffs in the past, it is no longer able to provide data that is not mandated by the FOIA due to time constraints. Prior to July 2016, ICE produced the SC Removals report just for Plaintiffs alone, despite the fact that doing so required so many complex analyses and calculations (see Second Jones declaration, p. 12, paragraph 22). In July 2016, ERO finally discontinued this discretionary practice—not just for the Plaintiffs' requests, but for all FOIA requests. This was done to manage a dramatic increase in volume and complexity of

FOIA requests from Plaintiffs and other FOIA requesters. However, due to ongoing litigation and past litigation settlement agreements with Plaintiffs, some limited FOIA request productions, which exceeded FOIA requirements, continued pursuant to those agreements.

19. As a result of the discontinuation of this fully discretionary analysis, some of the "fields" previously provided to Plaintiffs related to this litigation were no longer provided since they required extensive analysis, calculations, and creation of records. The Plaintiffs have labeled these the "disappearing fields." They are not, in fact, disappearing fields at all. *Rather, they are fields that were previously calculated and created as a matter of discretion. ICE has provided all the data that does not require ICE to conduct extensive analysis, calculations, matching methodologies, or other means of creating records.*

Production of the "Disappearing Fields"

20. The Plaintiffs claim that the "disappearing fields" at issue in this case can be produced from the EID and/or the IIDS (3rd Long declaration ¶ 4). However this is, very simply, not true. The Plaintiffs have only a general understanding of the ICE databases. In fact, when ICE previously produced those fields, they required complex calculations, *and used data from a law enforcement sensitive source outside of the EID and IIDS databases.* Plaintiffs simply want the data—regardless of the fact that ICE must create records to produce the data.

21. Plainly stated, records contained in the EID and IIDS databases do not contain labels or other indicators that a certain detainer, arrest or removal was related to Secure Communities. Rather, the Secure Communities data is created *only when the additional external data is "connected" to data extracted from the EID and IIDS*. An ICE analyst cannot go into IIDS or EID to identify whether a removal is an SC removal. Rather, that awareness only comes

from the separate process by which the SC Removals report is created—using an external, Law Enforcement Sensitive (LES) dataset.

22. Some data points requested by the Plaintiffs simply do not exist, although Plaintiffs must assume that they do. For instance, ICE does not need or record data that reflects "Visa Violator Yes/No" from an operational standpoint, so it is not a metric that the agency tracks. In order to provide such data, ICE would have to create records.

Person Identifiers in IIDS and Linkages

23. The Plaintiffs' claim that identifiers are already inter-linked in the EID/IIDS so all information relating to a particular person can be "readily located" in any search is absolutely incorrect (3rd Long declaration ¶ 15). In plain language as it relates to this case, the EID and IIDS databases are organized by law enforcement events, and do not label events as related to SC. Also, how IIDS is organized is immaterial to this case since *IIDS does not identify any persons or events as either related or unrelated to SC*. So, as it relates to this case, the manner in which IIDS is organized is not relevant.

24. Any assertions made by the Plaintiffs regarding the existence of person identifiers in either the EID or IIDS which can be "readily located" ignore the fact that there exists no single person-centric identifier across all records in the databases. As has been pointed out in previous declarations (see de Castro Declaration, p. 5, paragraph 13), the databases are organized around events, not people. Each event may contain one, several, or no person-centric identifiers. Such identifiers are not mandatory when entering data into events; thus, they are sometimes present, and sometimes not present. Once again, how IIDS is organized, and what identifiers exist, are immaterial to this case since *IIDS does not identify any persons or events as either related or unrelated to SC.*

25. Plaintiffs' statements that ICE officials have access to person-centric views of all data stored in the EID through the Enforce Alien Removal Module (EARM) is misleading (3rd Long declaration ¶14). EARM cannot be used for reporting purposes, or for any use involving thousands of records, since it can return only one record at a time. *Most importantly for this case, EARM does not identify any persons or events as either related (or unrelated) to SC.*

ICE's Calculations of Particular Events

26. In prior declarations, I pointed out the complex calculations required to create specific data fields for Plaintiffs, such as "Latest Arrest, "Latest Apprehension Date," "Most Recent Prior Departure Date." Plaintiffs now claim that nothing requires ICE to select one out of several events (3rd Long declaration ¶17) related to such fields. This position is, by definition, untenable. Obviously, if a request is for "Latest Arrest," one data point is being requested. There cannot be more than one "latest" or "most recent" of a particular event. Additionally, due to the nature of SC reporting, providing those fields requires significant effort by the agency to create records—even beyond that required to create SC reporting in the first place—since ICE has no need or use for such data.

Secure Communities Reporting and the Plaintiffs' Requests

27. The Plaintiffs now take issue with the agency's representations regarding the need for Secure Communities data at all (3rd Long declaration ¶20). To be clear, *ICE does not have any need or requirement to report Secure Communities data*. After the SC Removals data were no longer required or used, the agency only created the SC Removals report for the *sole purpose of discretionarily accommodating Plaintiffs' FOIA requests*. To revert to creating an SC Removals report—only for this Plaintiff—when the agency does not use or need it, would require the agency to expend very significant resources, to conduct the analyses required to

produce a new SC Removals report for which it has no use or requirement, and to continue to create calculated data fields, used nowhere else, for the sole purpose of providing that to Plaintiffs. Simply because the agency could continue creating records to provide such a report, discretionarily, does not require it to continue creating records discretionarily.

28. The Plaintiffs are sowing confusion when they conflate the Secure Communities Program with the Priority Enforcement Program (PEP). The statement that the PEP "relied" on interoperability matches is wrong (3rd Long declaration ¶24). The PEP simply required the agency to prioritize enforcement of certain types of immigration cases over others. While it is true that interoperability continued in the background, no interoperability match was required or considered in the PEP program decisions. SC and PEP are two separate programs.

The "FOIA Restaurant"

29. In previously filed declarations, I outlined a "FOIA Restaurant" analogy to differentiate between records that an agency has available for review and production, and those requests which require the agency to assemble a new record. The existing agency records are categorized as "menu items" and the non-existent records are special requests that must be made from scratch by the FOIA Restaurant's kitchen. The Plaintiffs argue that customers of this restaurant should not just be limited to the existing items on the menu (3rd Long declaration ¶21-23). The agency disagrees. The idea that every "customer" can walk in the door of an establishment and order anything they want, whether it is on the menu or not, and whether the ingredients exist or not, is counter to the way a business (and FOIA) is run. Plaintiffs' requests here are the equivalent of walking into the restaurant and ordering apple pie, even though it is no longer on the menu, and the restaurant no longer offers it. That would mean the FOIA restauranteur would be required to create an apple pie—even though it may no longer need or

use the ingredients necessary—just for that one FOIA customer—which exceeds FOIA restaurant requirements.

30. The plaintiffs further allege that the "menu" available to them is a secret and cite several of their own FOIA requests asking for every field in the IIDS Detainers population. The agency is not withholding responses to those requests, and in fact has not yet issued a denial of the requests. However, generally speaking, the fields and table names in the ICE databases are law enforcement-sensitive and cybersecurity-sensitive. These requests will be responded to as the agency is able, given its large backlog and workload of FOIA requests. Plaintiffs' complaint is ironic given that the Plaintiffs' FOIA requests constitute the vast majority of all FOIA requests that ICE ERO handles. It is the volume and complexity of Plaintiffs' own *hundreds of yearly requests* that causes the backlog which is preventing the agency from responding to the requests the Plaintiffs cite.

31. Further complicating any future FOIA response to requests for database fields is the fact that the *ICE databases are law enforcement sensitive and have significant cybersecurity sensitivities.* Plaintiffs' ongoing desire for IIDS and EID database field names, along with the structure/schema of the ICE databases, is the subject of a different lawsuit currently pending with this Court. Database fields are generally included in the category of items which constitute a cybersecurity threat if released. Therefore, it is not possible to simply list all the database fields for Plaintiffs to choose from. Rather, Plaintiffs are offered "entrees" (aka populations or reports)

which currently exist on the "menu" (in the database). Law enforcement sensitivities and cybersecurity concerns prevent listing of the ingredients, recipes, and techniques used in the "FOIA Restaurant."

JURAT CLAUSE

I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge and belief. Signed this 14th day of August, 2020.

Patricia J. de Castro

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