

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

COMUNIDAD COLECTIVA,)	
8640 University City Blvd.)	
Suite A3-146)	
Charlotte, NC 28213)	
Plaintiff,)	
v.)	Civil Action No. 20-1256
U.S. IMMIGRATION AND)	
CUSTOMS ENFORCEMENT,)	
500 12th Street SW)	
Washington, DC 20536)	
Defendant.)	

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This action is brought under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, to compel Defendant U.S. Immigration and Customs Enforcement (“ICE”) to produce records responsive to Plaintiff Comunidad Colectiva’s FOIA request of December 17, 2019, regarding ICE’s activities to surveil, intimidate, and hinder Comunidad Colectiva and its members.

2. The core promise of FOIA is to “open agency action to the light of public scrutiny,” thus ensuring that citizens know “what their government is up to.” *Am. Civil Liberties Union v. U.S. Dep’t of Justice*, 655 F.3d 1, 6 (D.C. Cir. 2011) (quoting *U.S. Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 772, 773 (1989)).

3. To date, Defendant ICE has not produced any records in response to Plaintiff’s FOIA request. Defendant ICE’s failure to disclose and produce the requested records violates the

FOIA. Plaintiff seeks an order requiring Defendant to produce, and enjoining Defendant from withholding, records responsive to the requests.

JURISDICTION AND VENUE

4. This Court has jurisdiction under 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B). Venue is proper under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

PARTIES

5. Plaintiff Comunidad Colectiva (“Comunidad”) is a grassroots community organization focused on organizing for and protecting the human rights of immigrants in Charlotte, North Carolina, and encouraging political and civic engagement in the Latinx community. Comunidad was created in response to the anti-immigrant rhetoric of the 2016 presidential election and the xenophobic policies of the Trump administration by co-founders Stefania Arteaga and Oliver Merino. Comunidad partners with the ACLU in many of its activities. For example, in 2018, they partnered with the ACLU in a county-wide campaign to educate voters about the harms of 287(g) agreements. Three of the primary services they offer are (1) a community ICE verification system; (2) community defense trainings; and (3) colectiva youth groups, which provide a safe space for black and brown youth to learn about their identity.

6. Defendant U.S. Immigration and Customs Enforcement (“ICE”) is an agency of the federal government of the United States and has possession of and control over records the Plaintiff seeks.

STATEMENT OF FACTS

ICE Attends Community Meeting

7. On December 6, 2018, ICE agents attended a community meeting at the Camino Community Center, a faith institution and project of the Camino Church located at 201 Stetson Drive in Charlotte, North Carolina.

8. The Community Center serves a predominantly low-income Latino and immigrant community in Charlotte, North Carolina, and provides a ministry, health clinic, and food pantry.

9. ICE agents' attendance at the community meeting was a direct violation of ICE's "sensitive locations policy" because the Camino Community Center is a sensitive location of faith and worship as defined by ICE's "Sensitive Locations Memorandum":

The [sensitive locations] policy is designed to ensure that these enforcement actions do not occur at nor are focused on sensitive locations such as schools and churches unless (a) exigent circumstances exists, (b) other law enforcement actions have led officers to a sensitive location as described in the "exceptions to the General Rule" section of the policy memorandum, or (c) prior approval is obtained The enforcement actions covered by this policy are (1) arrests; (2) interviews; (3) searches; and (4) for purposes of immigration enforcement only, *surveillance*.¹

10. Despite this policy and the fact that the sign of the Christian cross is prominently and visibly featured in the Camino Community Center's signage and logo, ICE proceeded to attend the community meeting.

¹ John Morton, "Enforcement Actions at or Focused on Sensitive Locations," ICE, (Oct. 24, 2011), available at <https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf> (emphasis added). Although there are "exigent" circumstances when ICE agents may carry out enforcement actions at sensitive locations, including when there is a "national security or terrorism matter," there is no evidence that such circumstances applied in this instance. While specific enforcement action(s) can occur at sensitive locations with prior approval, the Sensitive Locations Memorandum still requires that "extra care" be taken "when assessing whether a planned enforcement action could reasonably be viewed as causing significant disruption to the operations of the sensitive locations." *Id.* at 2.

11. Multiple community members, including Stefania Arteaga, Comunidad member and President, noticed the presence of the ICE agents. The agents sat close to the front row.

12. The local media was also in attendance and questioned the ICE officers as to why they were at the meeting.

13. ICE's presence at the community meeting and disregard for this "sensitive location" disrupted the meeting, which was intended for the discussion of the harmful impact of ICE's collaboration with local authorities.

ICE Surveillance of Comunidad Colectiva President and Co-Founder

14. Stefania Arteaga, the President of Comunidad Colectiva, has been the target of ICE surveillance and intimidation.

15. On April 11, 2019, at a Cabarrus County 287(g) Steering Committee meeting, an ICE agent informed Ms. Arteaga he was aware of a change in her employment status.

16. The ICE agent then mentioned to Ms. Arteaga that he was aware that the co-founder of Comunidad Colectiva, Oliver Merino, "was working at Florida New Majority."

17. Ms. Arteaga has also received a social media invitation on LinkedIn from a known ICE agent. She received notifications that the agent had viewed her LinkedIn profile.

18. An ICE agent has also asked Ms. Arteaga if her family member worked at a workplace where ICE had previously arrested a Salvadoran man.

19. The ICE agents' actions have intimidated Ms. Arteaga and impacted her activities with Comunidad. The ICE surveillance is causing Ms. Arteaga to experience serious anxiety attacks that have led to her being placed on medication. She now regularly checks the surroundings around her apartment to make sure ICE is not surveilling her and waiting to pick her up. Ms. Arteaga carries a G-28 form, a notice that she is represented by an immigration

attorney, in case she is detained. She has met with her former supervisor to discuss contingency plans to limit her exposure when attending 287(g) Steering Committee meetings.

Plaintiff's FOIA Request

20. On December 17, 2019, Plaintiff submitted a FOIA request ("FOIA request for Comunidad") to the ICE FOIA Office in Washington DC (via e-mail at ICE-FOIA@DHS.GOV) seeking records regarding ICE surveillance of Comunidad in North Carolina. *See* Exhibit A.

21. A summary of the information requested is:

(1) Any and all records related to information collected or in the possession or control of Immigration and Customs Enforcement ("ICE") regarding Comunidad Colectiva, its members, and associates; (2) Any and all records related to ICE's surveillance or investigation methods of Comunidad Colectiva, its members or associates; (3) Records related to search terms including: Stefania Arteaga, Oliver Merino, Comunidad Colectiva, immigrant organization; (4) Records related to the collaborative efforts between ICE and Mecklenburg County Sheriff's office relating to surveillance or investigation of Comunidad Colectiva; (5) Records related to the collaborative efforts between ICE and Charlotte-Mecklenburg Police Department relating to surveillance or investigation of Comunidad Colectiva; (6) Any and all records related to communications between ICE law enforcement officers and (a) the Atlanta ICE Regional Field Office concerning Comunidad Colectiva, or (b) ICE National Headquarters; and (7) Any and all records related to ICE's investigations of the immigration status, employment authorization, or employment status of Comunidad Colectiva, its members or associates.

Exhibit A at 2-5.

22. The stated purpose of the information requested was to:

share it with fellow-public interest organizations, local and federal elected officials, members of the media, as well as the general public.... in order to foster educated debate and discussion regarding the federal government's surveillance and retaliation policies and practices towards the immigrant and Latinx communities and whether and/or to what extent local government should be involved in such actions, to further education and protect the rights of immigrants and Latinx individuals through Know-Your-Rights trainings and public education forums, and to develop legal representation strategies.

Exhibit A at 6.

ICE Responds to FOIA Request via E-Mail That Request Is "too broad in scope"

23. By e-mail dated January 29, 2020, ICE responded to Plaintiff's FOIA request from December 17, 2019. *See* Exhibit B.

24. ICE assigned the FOIA number 2020-ICFO-19662 to Plaintiff's FOIA request. Exhibit B.

25. ICE informed Plaintiff that after a careful review of the FOIA request, ICE "determined that your request is *too broad in scope*, did not specifically identify the records which you are seeking, or only posed questions to the agency." Exhibit B at 1 (Emphasis in original).

26. ICE stated that "[r]ecords must be described in reasonably sufficient detail to enable government employees who are familiar with the subject area to locate records without placing an unreasonable burden upon the agency" and that the FOIA "does not require an agency to create new records, answer questions posed by requesters, or attempt to interpret a request that does not identify specific records." Exhibit B at 1.

27. The e-mail then stated that absent a response from Plaintiff within thirty days, ICE would "assume [Plaintiff] is no longer interested in this FOIA request, and the case will be administratively closed." Exhibit B at 1.

Plaintiff Responds to ICE that Request is not "too broad in scope"

28. Plaintiff responded on February 28, 2020, to the ICE e-mail from January 29, 2020. *See* Exhibit C.

29. Plaintiff notified ICE that it remained interested in the FOIA number 2020-ICFO-19662 request and that the case should not be administratively closed. Exhibit C at 1.

30. Plaintiff also informed ICE that it did *not*:

wish to modify our FOIA request as it is quite specific, does not ask ICE to create new records, and it does not pose any questions to the agency. To be clear, we seek only the release of *existing* records that ICE has in its files. With regard to the specificity of our FOIA request, it contains a reasonable description of the records we are seeking, and an ICE employee familiar with the subject area should be able to locate the responsive records with a reasonable amount of effort. Our request is for specific records relating to the surveillance of one entity (Comunidad Colectiva) and two specified individuals (Mayra Stefania Arteaga and Oliver Merino). Further, we list multiple officials who are likely to be in possession of most of the relevant documents requested. Accordingly, simple searches of Comunidad Colectiva and the specified affiliated individuals within the e-mails and records of the named ICE officials should return most of the responsive records. If ICE should view any particular sub-request as vague, unclear, or too broad, it should specifically identify that sub-request and the need for clarification.

Exhibit C at 1.

ICE Acknowledges FOIA Request From December 17, 2019

31. By e-mail dated March 31, 2020, ICE acknowledged receipt of Plaintiff's FOIA number 2020-ICFO-19662 request submitted on December 17, 2019. Exhibit D.

32. ICE stated that "the request was received in this office on February 28, 2020." Exhibit D at 1.

33. ICE then stated that it was invoking the 10-day extension to the 20 business days of receipt to respond to the request, pursuant to 5 U.S.C. § 552(a)(6)(B). Exhibit D at 1.

34. To date and months after Plaintiff filed the FOIA request, ICE has not provided any records pursuant to the Plaintiff's request.

35. ICE has not provided Plaintiff with a determination that describes the records that it intends to produce or withhold or the reasons for withholding any records, or informed Plaintiff that the organization may appeal any specific adverse determination within the relevant time periods listed in 5 U.S.C. § 552(a)(6)(A)(i) or 5 U.S.C. § 552(a)(6)(B).

36. ICE has no lawful basis under FOIA for its delay or for withholding the records that Plaintiff requested in its FOIA request.

CLAIMS FOR RELIEF

FREEDOM OF INFORMATION ACT – FIRST CAUSE OF ACTION

Violation of the Freedom of Information Act, 5 U.S.C. § 552, for Failure to Conduct an Adequate Search for Responsive Records

37. Plaintiff repeats, alleges and incorporates, as fully set forth herein, each and every allegation contained in paragraphs 1–36 above.

38. Defendant is obligated under 5 U.S.C. § 552(a)(3)(C) to conduct a reasonable search for records responsive to Plaintiff’s FOIA request.

39. Plaintiff has a legal right to obtain such records, and no legal basis exists for Defendant’s failure to search for them.

40. Defendant’s failure to conduct a reasonable search for records responsive to Plaintiff’s request violates, at a minimum, 5 U.S.C. § 552(a)(3)(C) and the regulations promulgated thereunder.

FREEDOM OF INFORMATION ACT – SECOND CAUSE OF ACTION

Violation of the Freedom of Information Act, 5 U.S.C. § 552, for Failure to Disclose Responsive Records

41. Plaintiff repeats, alleges, and incorporates, as fully set forth herein, each and every allegation contained in paragraphs 1–36 above.

42. Defendant is obligated under 5 U.S.C. § 552(a)(3) to promptly produce records responsive to Plaintiff’s FOIA request.

43. Plaintiff has a legal right to obtain such records, and no legal basis exists for Defendant’s failure to disclose them.

44. Defendant’s failure to disclose all responsive records violates, at a minimum, 5 U.S.C. § 552(a)(3)(A), as well as the regulations promulgated thereunder.

FREEDOM OF INFORMATION ACT – THIRD CAUSE OF ACTION

Violation of the Freedom of Information Act, 5 U.S.C. § 552, for Failure to Make a Determination within Time Required

45. Plaintiff repeats, alleges, and incorporates, as fully set forth herein, each and every allegation contained in paragraphs 1–36 above.

46. Defendant ICE is obligated under 5 U.S.C. § 552(a)(6)(A)(i) to make a determination on Plaintiff’s FOIA request within twenty business days. Defendant ICE did not make a determination within twenty business days of receipt of the Plaintiff’s FOIA request.

47. Plaintiff has a legal right to obtain such records, and no legal basis exists for Defendant’s failure to make a determination on Plaintiff’s request.

48. Defendant’s failure to make a determination within the statutory time frame violates, at a minimum, 5 U.S.C. § 552(a)(6)(A)(i), as well as the regulations promulgated thereunder.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays for judgment against Defendant as follows:

- a. Order Defendant to expeditiously conduct an adequate search for all records responsive to Plaintiff’s FOIA request in accordance with 5 U.S.C. § 552(a)(3)(C);
- b. Declare that Defendant’s failure to disclose the records responsive to Plaintiff’s request violates FOIA, 5 U.S.C. § 552(a)(3)(A), as well as the regulations promulgated thereunder;
- c. Declare that Defendant’s failure to make a determination on Plaintiff’s FOIA request within the statutory time frame violates FOIA, 5 U.S.C. § 552(a)(6)(A)(i);

- d. Order Defendant to expeditiously process and disclose all responsive, non-exempt records, and enjoin Defendant from improperly withholding records;
- e. Award Plaintiff reasonable attorneys' fees and other litigation costs pursuant to 5 U.S.C. § 552(a)(4)(E), and any other applicable statute or regulation; and
- f. Grant such other relief as the Court may deem just, equitable, and appropriate.

Dated: May 13, 2020

Respectfully submitted,

/s/ Thomas K. Ragland

Thomas K. Ragland (DC Bar No. 501021)
Clark Hill PLC
1001 Pennsylvania Avenue N.W.,
Suite 1300 South
Washington, DC 20004
Telephone: (202) 552-2360

Sejal Zota* (NC Bar No. 36535)
Just Futures Law
95 Washington Street, Suite 104-149
Canton, MA 02021
Telephone: (919) 698-5015
sejal@justfutureslaw.org

Christopher N. Lasch* (CO Bar No. 42241)
University of Denver Sturm College of Law
Student Law Office**
2255 E. Evans Ave., Suite 335
Denver, CO 80208
Telephone: (303) 871-6368
Mobile: (203) 779-9401
Fax: (303) 871-6847
E-mail: clasch@law.du.edu

Attorneys for Plaintiffs

** Applications for pro hac vice admission forthcoming

*** Law students Edgar Chavarria and Humberto Prospero from the Immigration Law and Policy Clinic at the University of Denver Sturm College of Law contributed substantially to this Complaint.