

**UNITED STATES DISTRICT COURT
DISTRICT OF DISTRICT OF COLUMBIA**

JUST FUTURES LAW,
95 Washington St., Ste. 104-149
Canton, MA 02021

Plaintiff,

v.

Civil Action No. 1:21-cv-2208

U.S. DEPARTMENT OF HOMELAND SECURITY,
245 Murray Lane, S.W.
Washington, D.C., 20528,

and

U.S. IMMIGRATION
AND CUSTOMS ENFORCEMENT,
500 12th Street SW
Washington, DC 20536

Defendants.

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

1. This action is brought pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, to compel Defendants Department of Homeland Security (“DHS”) and U.S. Immigration and Customs Enforcement (“ICE”) to produce records responsive to Plaintiff Just Futures Law’s (“JFL”) FOIA request, dated June 9, 2021 (the “request”). The request concerns DHS and ICE’s use of products and technologies facilitating location tracking, identity matching, and monitoring of individuals based on, *inter alia*, bankruptcy records, consumer information, credit history, telecommunications use, and other commercial information to enforce immigration

law. The request seeks documents related to agency use of those products, including personnel clearance lists, protocols, and data storage instructions.

2. To comb through large troves of information and facilitate ICE’s arrest and deportation agenda, DHS has entered into agreements with private data brokers like LexisNexis,¹ which specialize in data management and delivery.² These contracts are often sizeable, and agency payments for data broker technologies regularly amount to millions of dollars.³

3. Using tools provided by companies like LexisNexis⁴, ICE officers can search hundreds of millions of utility records, including phone, water, and electricity records — as well as other consumer data — while investigating putative immigration violations.⁵ Because of these powerful tools, noncitizens who share their information during service purchases for essential

¹ “Data brokers” are companies that collect information “including personal information about consumers, from a wide variety of sources for the purpose of reselling such information to their customers for various purposes, including verifying an individual’s identity, differentiating records, marketing products, and preventing financial fraud.” Sarah Lamdan, *When Westlaw Fuels Ice Surveillance: Ethics in the Big Data Policing Era*, 43 NYU Rev. L. & Social Change 255, 257 n.8 (2019) (quoting Fed. Trade Comm’n, *Protecting Consumer Privacy in an Era of Rapid Change: Recommendations for Businesses and Policymakers* 68 (2012)), <https://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-report-protecting-consumerprivacy-era-rapid-change-recommendations/120326privacyreport.pdf>.

² See Drew Harwell, *ICE Investigators Used a Private Utility Database Covering Millions to Pursue Immigration Violations*, Wash. Post (Feb. 26, 2021), available at <https://www.washingtonpost.com/technology/2021/02/26/ice-private-utility-data/>.

³ See Sam Biddle, *LexisNexis to Provide Giant Database of Personal Information to ICE*, The Intercept (Apr. 2, 2021), available at <https://theintercept.com/2021/04/02/ice-database-surveillance-lexisnexis/>.

⁴ See *id.*

⁵ See Harwell, *ICE Used a Private Utility Database*.

utilities or engage in other common consumer transactions risk ICE enforcement action because of their decisions to support themselves and their families.

4. Despite the significant monetary value of these contracts and ICE's statements referring to its "mission critical" use of the technologies delivered by RELX and its subsidiary LexisNexis, Thomson Reuters, and other data collection companies, ICE has not released details regarding the full extent of those services and how the agency employs them.⁶

5. Further, ICE's budget requests for Fiscal Year 2022 reflect its growing reliance on private data companies but do not provide even basic information regarding how they are used and any associated safeguards.⁷

6. The increasing deployment of "big data" in immigration enforcement activities and its potential role in associated civil rights violations is a matter of significant public concern and carries serious policy and legal implications.⁸ ICE's use of databases that aggregate personal data without consent is another example of how government agencies have exploited commercial

⁶ See McKenzie Funk, *How ICE Picks Its Targets in the Surveillance Age*, New York Times Magazine (June 7, 2021), available at <https://www.nytimes.com/2019/10/02/magazine/ice-surveillance-deportation.html>.

⁷ See Department of Homeland Security U.S. Immigration and Customs Enforcement Budget Overview, Fiscal Year 2022 Congressional Justification, 130 (listing Lexis/Nexis as among the \$3.6 million in proposed contracts providing for assistance with "Fugitive Operations"), available at https://www.dhs.gov/sites/default/files/publications/u.s._immigration_and_customs_enforcement.pdf; Department of Homeland Office of the Secretary and Executive Management Budget Overview, Fiscal Year 2022 Congressional Justification, 90 (listing Lexis/Nexis subscription services among FY 2022 contracts and interagency agreements), available at https://www.dhs.gov/sites/default/files/publications/office_of_the_secretary_and_executive_management_0.pdf.

⁸ See Harwell, *ICE Used a Private Utility Database*.

sources to access information they are not authorized to compile on their own.⁹ Because the government uses these technologies to facilitate investigation and surveillance of noncitizens and to help effectuate their arrests and deportations, the use of these technologies implicates substantial liberty interests.¹⁰ Information about ICE's and DHS's use of these technologies will inform the public about critical facets of immigration enforcement policy, as well as contribute to important dialogues regarding civil liberties and how the government collects and uses consumer information for surveillance of immigrants, their families, and others.

7. Federal and state privacy laws may also be implicated by how these technologies collect information from consumers and provide access to immigration enforcement agencies. For that reason, broader policy debates about privacy as well as civil rights and immigration enforcement require transparency about the data broker technologies DHS and ICE use.

8. LexisNexis', Thomson Reuters', and other data brokers' participation in government surveillance poses risks to the public where private companies may not be adequately regulated or subject to the same level of scrutiny applied to government actors. Communities and advocates have raised similar concerns about the government's use of private contractors in the criminal legal system, immigration detention, and military operations.

9. ICE has failed to respond within the timeframe mandated by statute and has failed to follow key procedural safeguards required by FOIA. The FOIA statute and court precedents are

⁹ *Id.*

¹⁰ See *Bridges v. Wixon*, 326 U.S. 135, 147 (1945) (“[D]eportation may result in the loss of all that makes life worth living” (internal quotation marks omitted)); *Ng Fung Ho v. White*, 259 U.S. 276, 284 (1922) (“[Deportation] may result also in loss of both property and life; or of all that makes life worth living.”); see also *Zadvydas v. Davis*, 533 U.S. 678, 693-694, 721 (2001); *St. John v. McElroy*, 917 F. Supp. 243, 250 (S.D.N.Y. 1996) (noting that in deportation proceedings an important liberty interest is at stake).

clear on the time requirements in FOIA cases. Because of DHS and ICE's disregard for these requirements, important information about the nature of DHS and ICE's uses of powerful technologies that facilitate the tracking and monitoring of individuals through the aggregation of private consumer information remains hidden.

JURISDICTION AND VENUE

10. This Court has jurisdiction under 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

11. Venue is proper under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

12. This case is ripe for judicial determination under 5 U.S.C. § 552(a)(6)(C)(i) because Defendants failed to respond to the request within the time required by law.

PARTIES

13. Plaintiff Just Futures Law ("JFL"), a not-for-profit corporation established under the laws of Delaware, is an immigration lawyering organization that provides legal support for grassroots organizations engaged in making critical interventions in the United States' deportation and detention systems and policies. JFL maintains close relationships with organizations and activists who seek to understand and educate the public about the scope and range of government surveillance and criminalization. JFL staff have decades of experience in providing expert legal advice, legal resources, and training for immigration attorneys and criminal defense attorneys on the immigration consequences of the criminal legal system, including a recent report on DHS utility data collection and related risks. JFL has a significant interest in the administration of government surveillance and data collection.

14. Defendant DHS is a department of the executive branch of the United States government and an agency within the meaning of 5 U.S.C. § 552(f). DHS is responsible for

enforcing federal immigration laws. DHS is comprised of multiple component agencies, including ICE.

15. Defendant ICE is a component agency of DHS and an agency within the meaning of 5 U.S.C. § 552(f). ICE enforces immigration and customs law and is responsible for the detention and removal of immigrants.

16. Upon information and belief, Defendants have custody and control over the records Plaintiffs seek to make publicly available under 5 U.S.C. § 552(a)(2).

STATEMENT OF FACTS

Reporting Reveals DHS and ICE’s Use of Private Data Vendor Tech

17. Several media outlets have uncovered information about some aspects of DHS and ICE’s purchase and use of data broker technologies, but gaps remain in public understanding of what these contracts mean in practice. On Oct. 2, 2019, *The New York Times* published an article that included information about ICE’s use of Thomson Reuters’ Consolidated Lead Evaluation and Reporting (“CLEAR”) tool. The article highlighted the wide array of sources CLEAR pulls information from and aggregates for ICE’s investigative purposes, including “data from credit agencies, cellphone registries, social-media posts, property records, utility accounts, fishing licenses, internet chat rooms, and bankruptcy filings, all fused and vetted by algorithm to form an ever-evolving, 360-degree view of U.S. residents’ lives.”¹¹

18. ICE coordinates investigations in part through the National Criminal Analysis and Targeting Center (“NCATC”) and the Pacific Enforcement Response Center (“PERC”) and runs massive amounts of information through search databases at both centers to track whether

¹¹ See Funk, *How ICE Picks Its Targets*.

noncitizens have reentered the country.¹² Public reporting described the Data Analysis System as “pull[ing] data from other federal agencies, as well as commercial data brokers, to match the names of deported individuals to recent car registrations, utility bills, and mailing addresses, among other records.”¹³

19. CLEAR and similar products from other vendors are updated daily, meaning ICE can exploit even a recent move or new utility sign-up to search for an individual.¹⁴ Thus, noncitizens who share their information during service purchases for essential utilities, like electricity, gas, phone, or internet services, risk ICE enforcement action.

20. While public reporting has revealed limited information about the existence of ICE and DHS contracts with Thomson Reuters and LexisNexis, the agencies have withheld crucial aspects of the scope of their use of data broker technologies. Despite a Congressional inquiry into the matter, the nature of the agencies’ use of Thomson Reuters and LexisNexis tools remains concealed.¹⁵

Advocates’ Concerns about DHS’ and ICE’s Private Data Surveillance Tools

21. Through their #NoTechForICE campaign, a coalition of groups including Mijente, Law Students Against ICE, Immigrant Defense Project, and Researchers Against Surveillance has

¹² See Max Rivlin-Nadler, *How ICE Uses Social Media To Surveil and Arrest Immigrants*, The Intercept (Dec. 22, 2019), available at <https://theintercept.com/2019/12/22/ice-social-media-surveillance/>.

¹³ *Id.*

¹⁴ Harwell, *ICE Used a Private Utility Database*.

¹⁵ House Committee on Oversight and Reform, *Oversight Subcommittee Launches Investigation into Sale of Utility Customer Info to ICE for Deporting Immigrants*, Feb. 26, 2021, available at <https://oversight.house.gov/news/press-releases/oversight-subcommittee-launches-investigation-into-sale-of-utility-customer-info>.

drawn attention to and demanded an end of Thomson Reuters' and LexisNexis' contracts with ICE.¹⁶

22. In May 2020, a group of Thomson Reuters shareholders drafted a resolution calling on Thomson Reuters to assess how it "mitigates its role in contributing to adverse human rights impacts from end users" in response to its contracts with ICE.¹⁷

23. Other advocates have made requests to ICE similar to those in Plaintiff's request. The Center for Constitutional Rights, Mijente, Immigrant Defense Project, and City University of New York Law School's Human Rights and Gender Justice Clinic filed a FOIA request to ICE and DHS for LexisNexis and Thomson Reuters service contracts, along with any guidance and communications related to ICE's use of LexisNexis and Thomson Reuters technologies.¹⁸ To date, no documents have been made public in response to that request. As a result, public understanding of these contracts and ICE's use of these data broker technologies is lacking; government accountability and oversight thus depend on the Court's action in this case.

24. Even with incomplete information, advocates have continued to share analyses and critiques of ICE's use of data broker technology. In February 2021, The Center on Privacy & Technology at Georgetown Law published research and shared documents with *The Washington Post* that drew attention to how consumer utility purchases for essential services like internet,

¹⁶ See #NoTechForICE, Reuters & RELX – Drop Your ICE Contracts, *available at* <https://notechforice.com/lawletter/>.

¹⁷ Kim Lyons, *Thomson Reuters Faces Pressure Over ICE Contracts*, The Verge (May 21, 2020), *available at* <https://www.theverge.com/2020/5/21/21266431/thomson-reuters-ice-clear-software>.

¹⁸ See Center for Constitutional Rights, FOIA for Info on Thomson Reuters, RELX Group Contracts with ICE, Sept. 14, 2020, *available at* <https://ccrjustice.org/home/what-we-do/our-cases/foia-info-thomson-reuters-relx-group-contracts-ice>.

electricity, gas, and phone service may expose individuals to ICE surveillance, arrest, and detention.¹⁹ Specifically, Georgetown highlighted how Thomson Reuters' and LexisNexis' mass aggregation of address and other information from these purchase records to create up-to-date profiles of individuals and their locations helps fuel ICE enforcement.²⁰

DHS Budget Request and Use of Private Data Broker Technologies

25. Budget requests for Fiscal Year 2022 reflect the growing reliance on private data brokers within DHS, although the requests provide virtually no information regarding their use and any associated safeguards.²¹ For example, the DHS Budget request for FY 2022 lists Lexis/Nexis as among the \$3.6 million in proposed contracts providing for assistance with ICE "Fugitive Operations" without providing any additional context.²²

Plaintiff's FOIA Request and Defendant's Response

26. On June 9, 2021, Plaintiff submitted the request to the DHS FOIA Office in Washington D.C. (via email at foia@hq.dhs.gov) seeking records regarding DHS contracts for and use of identification products and technologies provided by RELX, Thomas Reuters, and other private data brokers. *See Exhibit 1.*

27. A summary of the information requested is:

- (1) A list of all companies offering personal data collection, storage, analysis and distribution with whom DHS has a contractual relationship;
- (2) Updated executed

¹⁹ See Harwell, *ICE Used a Private Utility Database*; see also Nina Wang, *Is Your Utility Company Telling ICE Where You Live?*, Center for Privacy and Technology at Georgetown Law, Feb. 26, 2021, available at <https://medium.com/center-on-privacy-technology/is-your-utility-company-telling-ice-where-you-live-ae1c7d187eff>.

²⁰ See Wang, *Is Your Utility Company Telling ICE Where You Live?*.

²¹ See Department of Homeland Security U.S. Immigration and Customs Enforcement Budget Overview.

²² *Id.*

agreements, dating from June 1, 2016, awarded by DHS for data provided by RELX (including subsidiary LexisNexis) and Thomas Reuters; (3) All communications, correspondence, or directives regarding DHS contractual agreements for data services provided by RELX (including LexisNexis) or Thomas Reuters; (4) Records related to classification, use, sharing, and storage of consumer information or data accessed by DHS agencies or personnel originating from RELX (and LexisNexis) and Thomas Reuters; (5) Records related to classification, use, sharing, and storage of consumer information or data accessed by DHS agencies or personnel originating from credit reporting agencies; (6) All records relating to how the RELX (and LexisNexis), or Thomas Reuters products or services function (or malfunction) that were created on or after September 1, 2017; (7) All records indicating the number of DHS personnel and/or individuals acting on behalf of DHS, including HSI or ERO divisions, that possess accounts that provide access to any Thomas Reuters or RELX (and LexisNexis) products, services or technologies; (8) All records indicating the number of queries initiated by ICE, CBP, and DHS personnel utilizing Thomas Reuters or RELX (and LexisNexis) products or services on or after September 1, 2017; (9) All records indicating the number of warrant applications, warrants, arrests and/or prosecutions associated with a query utilizing Thomas Reuters or RELX (and LexisNexis) products or services conducted on or after September 1, 2017; and (9) Any records of contractual provisions related to sub-agency access or use of information provided by private data vendors by the National Crime Analysis and Targeting Center (“NCATC”) and the Pacific Enforcement Response Center (“PERC”), including instructions and/or protocols for use of such products and information by NCATC and PERC personnel.

28. The Request sought expedited processing under 5 U.S.C. § 552(a)(6)(E)(i)(I), citing a “compelling need” to inform the public of the federal government’s use of powerful technologies to collect vast amounts of personal information to arrest, detain, and deport individuals, among others, so that the public can meaningfully engage with elected representatives concerning the proposed increased public expenditures on these technologies as budget negotiations for Fiscal Year 2022 are finalized.

29. By email dated June 17, 2021, DHS responded to the request from June 9, 2021. *See Exhibit 2.*

30. DHS assigned reference number 2021-HQFO-01051 to the request.

31. DHS wrote in its email that it was transferring the request to ICE for processing, given the subject matter of the request.

32. DHS's response did not address Plaintiff's request for expedited processing.

33. To date, ICE has not responded to the FOIA request.²³

34. Plaintiffs have not received any further communications or other responses to the request from Defendants since June 17, 2021.

35. Defendants have wrongfully withheld the records from Plaintiff.

CLAIMS FOR RELIEF

FREEDOM OF INFORMATION ACT – FIRST CAUSE OF ACTION

Violation of FOIA, 5 U.S.C. § 552(a)(6)(A)(i) for Failure to Make a Determination on Plaintiff's FOIA Request within the Time Required

36. Plaintiff repeats, alleges, and incorporates, as fully set forth herein, each and every allegation contained in paragraphs 1–33 above.

37. Defendants are obligated under 5 U.S.C. § 552(a)(6)(A)(i) and (B)(i) to make a determination on Plaintiff's FOIA request within twenty business days.

38. Defendants did not make a determination within twenty business days of receipt of the Plaintiff's request.

39. Defendants' failure to make a determination within the statutory time frame violates, at a minimum, 5 U.S.C. § 552(a)(6)(A)(i) and (B)(i) and the regulations promulgated thereunder.

FREEDOM OF INFORMATION ACT – SECOND CAUSE OF ACTION

Violation of FOIA, 5 U.S.C. § 552(a)(3)(A) for Failure to Promptly Produce Records Responsive to Plaintiff's FOIA Request

²³ The relevant date from which the Court should evaluate ICE's failure to respond is June 9, 2021. The date does not change as a result of the referral from DHS to ICE. *See* 6 C.F.R. § 5.4(g) ("All consultations and referrals received by DHS will be handled according to the date that the FOIA request initially was received by the first component or agency, not any later date.").

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

41. Defendants are obligated under 5 U.S.C. § 552(a)(3) to promptly produce records responsive to Plaintiff's FOIA request.

42. Plaintiff has a legal right to obtain such records, and no legal basis exists for Defendants' failure to disclose them.

43. Defendants' 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 FOIA, 5 U.S.C. § 552(a)(3)(C) for Failure to Conduct an Adequate Search for Responsive Records

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

45. Defendants are obligated under 5 U.S.C. § 552(a)(3)(C) to conduct a reasonable search for records responsive to Plaintiff's FOIA request.

46. Plaintiff has a legal right to obtain such records, and no legal basis exists for Defendants' failure to search for them.

47. Defendants' 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 – FOURTH CAUSE OF ACTION

Violation of FOIA, 5 U.S.C. § 552(a)(6)(E) for Defendants' Failure to Respond to Plaintiff's Request for Expedited Processing

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

49. Defendants' failure to respond to Plaintiff's request for expedited processing violates 5 U.S.C. § 552(a)(6)(E) and the regulations promulgated thereunder.

PRAYER FOR RELIEF

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

a. Declare that Defendants' 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;

b. Declare that Defendants' failure to conduct an adequate search for responsive records to disclose the records responsive to Plaintiff's request violates FOIA, 5 U.S.C. § 552(a)(3)(C), as well as the regulations promulgated thereunder;

c. Declare that Defendants' 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), as well as the regulations promulgated thereunder;

d. Declare that Defendants' failure to respond to Plaintiff's request for expedited processing within the statutory time frame violates FOIA, 5 U.S.C. § 552(a)(6)(E), as well as the regulations promulgated thereunder;

e. Order Defendants to expeditiously process and disclose all responsive, non-exempt records, and enjoin Defendants from improperly withholding records;

f. 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

g. Grant such other relief as the Court may deem just, equitable, and appropriate.

Dated: August 19, 2021

Respectfully submitted,

/s/ Sejal Zota
Sejal Zota (D.C. Bar No. NC020)
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* Motion for Pro Hac Vice Admission forthcoming