January 6, 2021

U.S. Immigrations and Customs Enforcement
Freedom of Information Act Office
500 12th Street SW, Stop 5009,
Washington, D.C. 20536-5009
ICE-FOIA@dhs.gov

RE: Freedom of Information Act Request around ICE Administrative Subpoenas to Technology Companies

Dear FOIA Officer:

Professor Sarah Sherman-Stokes, and law students, Kennedy Barber-Fraser, Daniela Hargus, and Cristina Moreno (“Requesters”), submit this request on behalf of the Boston University School of Law Immigrants’ Rights and Human Trafficking Program, Just Futures Law, and the Mijente Support Committee for information under the Freedom of Information Act (FOIA). 5 U.S.C. § 552 et seq.

The following request seeks information on how Immigration and Customs Enforcement (ICE) is using administrative subpoena requests to technology companies such as Google, Facebook, Twitter, Instagram, Youtube in an effort to expand data surveillance on U.S. residents in this online era. Today, these technology platforms contain large amounts of personal data about their users including real-time location, address, and communication data. ICE administrative subpoena requests to technology companies for such information would invade the most intimate and personal information about our daily lives, such as location, address and communication. This FOIA request is designed to answer key questions regarding what categories of data ICE is requesting from these technology companies, the scale of such requests, and response of these technology companies.

How to Conduct the Search:
An ICE administrative subpoena request is also referred to as an “Immigration Enforcement Subpoena.” We believe ICE uses the corresponding form DHS Form I-138 to conduct such requests, though the agency may use other forms. We believe that ICE already has some data or record keeping systems to track the number of subpoenas issued by ICE subdivisions and offices such as discussed in this Privacy Impact Assessment for the ICE Subpoena System.1 We also believe that such subpoena requests are issued by ICE Office of Enforcement and Removal Operations (ERO) across all 24 Field Offices in coordination with ERO Headquarters as well as issued by ICE Homeland Security Investigations (HSI) across its 26 Special Agent in Charge (SAC) Field Offices in coordination with HSI Headquarters.

Given the foregoing, the aforementioned Requesters respectfully request that your search include but is not limited to the following ICE division headquarters and field offices for responsive records:

- ERO Headquarters
- ERO Field Offices
- ICE HSI Headquarters
- HSI Field Offices

Requesters

The Immigrants’ Rights & Human Trafficking Program at Boston University School of Law advocates on behalf of vulnerable immigrants in a broad range of complex legal proceedings before the immigration courts, state, local, and federal courts, and before immigration agencies. The Clinic also collaborates with local, state, and national immigrants’ rights and human rights groups to advance protections for vulnerable immigrants and survivors of human trafficking. Under the supervision of professors and instructors, law students represent children and adults seeking protection in the United States including survivors of torture and trauma, survivors of domestic violence, abandoned and abused children, and the mentally ill and incompetent, including representation of detained and non-detained individuals in removal proceedings.

Just Futures Law (“JFL”) is a transformational 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 staff maintains close relationships with organizations and activists who seek to understand the scope and range of government surveillance and criminalization. JFL staff have decades of experience in providing expert legal advice, written legal resources, and training for immigration attorneys and criminal defense attorneys on the immigration consequences of the criminal legal system. JFL has a significant

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interest in the administration of government surveillance and data collection. JFL has already published a number of reports on government surveillance including by ICE.

Mijente Support Committee is a national organization that coordinates and organizes with its members in several states to address issues relating to immigration enforcement and Latinx political participation. Founded by community organizers, its focus is on developing and sparking social change with respect to immigration and other social justice issues in the Latinx community and beyond. Mijente Support Committee conducts significant public education around technology and monitors whether surveillance technologies and data are being used to increase deportation and criminalization and do further harm to Black, Brown, and immigrant communities. Mijente Support Committee has already published a number of reports on government surveillance including by ICE.

Request for Information

Pursuant to the Freedom of Information Act, Requesters hereby request the following records:

(1) The total number of DHS I-138 Immigration Enforcement Subpoenas issued to the following entities per year, between January 1, 2018, to present, broken down by ICE ERO or HSI Field Office:
   (a) Google;
   (b) Facebook;
   (c) Twitter;
   (d) Instagram;
   (e) Youtube.

(2) The following records regarding DHS I-138 Immigration Enforcement Subpoenas issued to the entities referenced in Point (1)(a)-(e), per year, between January 1, 2018 to present:
   (A) The total number of DHS I-138 Immigration Enforcement Subpoenas issued to the referenced entities which was accompanied by a judicial warrant, judicial order, or other evidentiary finding as to probable cause or reasonable suspicion; and
   (B) The total number of DHS I-138 Immigration Enforcement Subpoenas to which the referenced entities responded with user data including but not limited to names, addresses, email address, screen names, telephone numbers, credit card information, or IP addresses

(3) Of those DHS I-138 Immigration Enforcement Subpoenas to which the entities referenced in Point (1)(a)-(e) responded with user data between January 1, 2018 to
present, please confirm whether any of the following categories of user data was sought or provided to ICE:

(A) All names, screen names, email addresses;
(B) Connection records (including assigned IP addresses) or record of session times and duration for all accounts;
(C) Location (street addresses) of all accounts;
(D) Length of service (including start date) and types of services utilized;
(E) Telephone or instrument number or other subscriber number or identity; and
(F) Means or source of payment for such service (including credit card or account numbers).

Please note: We are not seeking any personally identifiable details but rather confirmation of whether the DHS I-138 sought data or the referenced entity provided data within each of the above categories. All requested records that are responsive can be provided with personally identifiable details redacted.

(4) A random sample of 20 DHS I-138 Immigration Enforcement Subpoenas issued to each of the referenced entities in Point (1)(a)-(e) between January 1, 2020 to present by ICE.

Please note: we are requesting 20 random samples of DHS I-138 for each of the referenced entities in Point (1)(a)-(e), which would mean a total of 100 sample DHS I-138 forms. All requested records that are responsive can be provided with personally identifiable details redacted.

If any of the requested information is exempt under applicable laws, please describe the nature of the information withheld, the specific exemption being invoked, and whether portions of withheld documents containing non-exempt information were provided. Requesters seek the release of all separable portions of otherwise exempt material.

Request for Fee Waiver

Requesters seek a fee waiver under 5 U.S.C. § 552(a)(4)(A)(iii) because the disclosure of the information is “in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” Requesters have no commercial interest and are not seeking to gain financially from any of the information requested. The requested information will be used to further public understanding of information sharing between Google and ICE.
Congress intended the FOIA fee waiver provision to encourage “open and accountable government.”

Therefore, agencies should “apply the public-interest waiver liberally.”

Please inform us if the charges for this FOIA production will exceed $25.00.

### Expedited Processing

We also request expedited processing for this FOIA request under 5 U.S.C. § 552(a)(6)(E). There is a compelling need “to inform the public concerning the actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II). The COVID-19 pandemic and subsequent shift towards remote work and at-home activities has led to a dramatic upick in internet use of over 40% since March 2020. 

During the COVID-19 pandemic and in the wake of a hotly contested presidential election, the public heavily relies upon internet resources, including Google and social media, to access pandemic and political news. 

Because vulnerable communities rely on email to access essential services, understanding ICE’s request and retention of information from Google is especially crucial to spotting any potential privacy concerns, as well as addressing any possible confusion or distrust among communities who need access to these life-saving, online tools. As such, there is a compelling need to understand the ongoing federal practices surrounding internet user information dissemination.

Thank you in advance for your cooperation and timely consideration of this request. We look forward to receiving your response to this request within 20 business days, as the statute requires. If you have any questions regarding this request, please contact the Requesters at (617) 358-6272 or ssstokes@bu.edu.

Sincerely,

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(617) 358-6272

Julie Mao
Just Futures Law

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5 Miles Parks, Social Media Usage Is at an All-Time High. That Could Mean a Nightmare for Democracy, NPR (May 27, 2020, 5:02 AM), https://www.npr.org/2020/05/27/860369744/social-media-usage-is-at-an-all-time-high-that-could-mean-a-nightmare-for-democr.