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15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 SAN FRANCISCO DIVISION
18

19 AMERICAN CIVIL LIBERTIES UNION OF
NORTHERN CALIFORNIA and
20 LAWYERS' COMMITTEE FOR CIVIL
RIGHTS OF THE SAN FRANCISCO BAY
21 AREA,

22 Plaintiffs,

23 v.

24 U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT, an agency of the
25 Department of Homeland Security,

26 Defendant.
27
28

Case No.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Freedom of Information Act, 5 U.S.C. §
552

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INTRODUCTION

1
2 1. More than a year after making an expedited records request to Immigration
3 and Customs Enforcement (“ICE”) pursuant to the Freedom of Information Act, 5 U.S.C. § 552
4 (“FOIA”), and having received neither records nor a decision on their administrative appeals,
5 Plaintiffs now seek a judicial order enforcing the agency’s obligations under FOIA and requiring
6 ICE to disclose the requested records.

7 2. On March 6, 2007, concerned about local reports of abusive and
8 unconstitutional immigration enforcement practices, Plaintiffs and the *San Francisco Bay*
9 *Guardian* newspaper filed a FOIA request with ICE, seeking disclosure of government records
10 pertaining to all civil immigration enforcement actions in Alameda, Contra Costa, Fresno, Marin,
11 Napa, San Benito, San Francisco, San Mateo, Santa Clara, Santa Cruz, Solano, Sonoma, and
12 Tulare Counties since May 2006, including, but not limited to, all actions undertaken as part of
13 “Operation Return to Sender” (collectively, the “ICE Raids”).

14 3. According to ICE policy, these enforcement actions were intended to target
15 so-called “fugitive aliens” – unauthorized immigrants who have already been ordered deported by
16 an immigration judge or have failed to report to ICE after being notified to do so. According to
17 media accounts and official government statements, ICE’s priority in the Operation Return to
18 Sender actions that took place in Northern California in early 2007 was to apprehend “criminal
19 fugitives” who are a threat to national security and the community. However, local and national
20 media reports suggest that many undocumented immigrants who had never been in contact with
21 the immigration authorities or the criminal justice system were apprehended in connection with
22 the ICE Raids. According to ICE’s own accounts to the press in December 2007, less than 25%
23 of the 1,936 aliens arrested in Northern California in fiscal year 2007 had criminal records.
24 Moreover, less than half of the individuals arrested by ICE’s San Francisco “Fugitive Operations
25 Team” from January 1, 2007 to March 31, 2007 qualified as “fugitive aliens,” and less than 12%
26 of these “fugitives” had criminal records.

27 4. The ICE Raids and their lingering impact on communities have
28 commanded, and continue to command, substantial media attention. Abusive practices reported

1 by the media and immigrant advocacy organizations in connection with the ICE Raids include
2 racial and ethnic profiling, the illegal misuse of warrants by ICE, unconstitutional residential
3 entries and searches, violations of due process, inappropriate practices adversely affecting the
4 children of immigrants, unwarranted and pretextual arrests, misrepresentation of ICE agents as
5 members of local police forces, abusive conduct by government agents, and disruptions of
6 immigrant families and local communities. The public has an urgent need to know if ICE
7 planned for and engaged in these alleged abuses. If the reports of abusive practices in connection
8 with the ICE Raids are true, public disclosure of this information may lead to a salutary reform of
9 the government's practices. If these reports are untrue, public disclosure of this fact will help
10 alleviate public concerns regarding the government's conduct in connection with the ICE Raids.
11 In any case, the extensive news coverage, the widespread concern expressed by citizens and
12 elected officials, and the seriousness of the media allegations made against ICE make clear that
13 there is an urgent need to expose the truth about the ICE Raids to the public.

14 5. The documents sought by Plaintiffs regarding the ICE Raids go to the heart
15 of FOIA's statutory aims of promoting open government, preventing the entrenchment of secret
16 government practices, and permitting public scrutiny of governmental action that is of widespread
17 concern.

18 6. Public disclosure of information regarding the ICE Raids is necessary to
19 enable the public to evaluate the extent to which ICE's enforcement actions in Northern
20 California may be overbroad, abusive, illegal, or unconstitutional.

21 7. ICE has increased enforcement actions targeting homes and businesses in
22 Northern California in the past three months, raising anew concerns about abusive and
23 unconstitutional practices and the scope of the ICE Raids.

24 8. At the time Plaintiffs filed their FOIA request, they sought expedited
25 processing. ICE denied Plaintiffs' request for expedited processing, which Plaintiffs did not
26 appeal because of repeated assurances from ICE staff that Plaintiffs' FOIA request was being
27 processed. To date, however, ICE has failed to produce a single document in response to
28 Plaintiffs' request under FOIA for the release of agency records pertaining to the ICE Raids.

1 Having exhausted their administrative remedies, Plaintiffs now bring this action to enjoin ICE
2 from continuing to improperly withhold documents in violation of FOIA.

3 JURISDICTION

4 9. This Court has federal subject matter jurisdiction over this action and
5 personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). Because this action
6 arises under FOIA against an agency of the United States, this Court also has jurisdiction
7 pursuant to 28 U.S.C. §§ 1331 and 1346.

8 VENUE

9 10. Venue lies in this district pursuant to 28 U.S.C. § 1402 and 5 U.S.C. §
10 552(a)(4)(B). Plaintiffs reside or have their principal places of business in this district.

11 INTRADISTRICT ASSIGNMENT

12 11. Assignment of this action to the San Francisco Division of this Court is
13 warranted pursuant to Civil L.R. 3-2. Plaintiffs the American Civil Liberties Union of Northern
14 California (“ACLU-NC”) and Lawyers’ Committee for Civil Rights of the San Francisco Bay
15 Area (“LCCR”) are each based in San Francisco, California. The field office of ICE that is
16 responsible for immigrant detention and removal activities in Northern California is located in
17 San Francisco, California.

18 PARTIES

19 12. The American Civil Liberties Union is a non-profit, non-partisan
20 organization with more than 500,000 members dedicated to the principles of liberty and equality
21 embodied in the Constitution and this Nation’s civil rights laws. The American Civil Liberties
22 Union engages in litigation, advocacy, and public education to enforce and protect the
23 constitutional and civil rights of non-citizens.

24 13. Plaintiff ACLU-NC is a regional affiliate of the American Civil Liberties
25 Union with a membership of approximately 50,000, and maintains its office in San Francisco,
26 California.

27 14. Plaintiff LCCR is a civil rights and legal services organization devoted to
28 advancing the rights of people of color, low-income individuals, immigrants and refugees,

1 women, children, and other under-represented persons. LCCR has a profound interest in
2 protecting the constitutional rights of non-citizens in this country and in educating non-citizens
3 about their rights.

4 15. The United States Department of Homeland Security (“DHS”) is the
5 executive department responsible for enforcing federal immigration laws. ICE is an agency of
6 DHS and is responsible for enforcing the immigration laws, including designing and
7 implementing the ICE Raids that were the subject of Plaintiffs’ March 6, 2007, FOIA request.

8 **FACTUAL BACKGROUND**

9 16. According to news reports and ICE press releases, ICE launched a series of
10 ICE Raids in May 2006, including, but not limited to, enforcement actions conducted under the
11 rubric of “Operation Return to Sender.”

12 17. Various media organizations have reported ICE Raids throughout the
13 communities of Northern California. Media organizations such as *The New York Times* have
14 reported that the ICE Raids resulted in the arrest of more than 23,000 individuals nationwide,
15 including more than 1,800 in Northern and Central California alone.

16 18. More than fifty cities throughout the country – including cities in Northern
17 California – passed resolutions specifically declaring that they would not assist ICE in making
18 arrests in connection with the ICE Raids.

19 19. Numerous local community groups, police representatives, teachers, school
20 officials, and members of the clergy have complained to government officials and media
21 organizations about illegal, unconstitutional, and intimidating actions and tactics employed by
22 ICE during the ICE Raids.

23 20. **Illegal Entries and Searches.** Media organizations have reported that ICE
24 agents conducting the ICE Raids threatened residents in or immediately outside their homes,
25 forced their way into homes, and misused administrative warrants of removal in order to
26 improperly gain entry into residences – leading to interrogations, searches, and arrests in violation
27 of the Fourth Amendment rights of residents.

28 21. **Misrepresentation of ICE Agents as Members of Local Police.** Media

1 organizations have reported that ICE agents conducting the ICE Raids inaccurately identified
2 themselves as “police” – misleading residents and undermining the trust between immigrant
3 communities and local law enforcement agencies that is necessary for effective law enforcement
4 and public safety.

5 22. **Inappropriate Practices Related to Children.** Media organizations have
6 reported that ICE agents carrying out the ICE Raids conducted enforcement actions near schools,
7 in order to sweep in parents as they dropped off their children at school. There have been
8 numerous media reports of a significant decline in school attendance in communities affected by
9 the ICE Raids, as well as of psychological trauma suffered by children subjected to or impacted
10 by the ICE Raids.

11 23. **Abusive Treatment.** Media organizations have reported that ICE agents
12 engaged in abusive, intimidating, and humiliating treatment of individuals who were interrogated,
13 searched, or detained in connection with the ICE Raids.

14 24. **Racial and Ethnic Profiling.** Media organizations have reported that ICE
15 agents conducting the ICE Raids targeted individuals for interrogation and arrest based solely on
16 the individuals’ racial or ethnic appearance or foreign-sounding name or accent.

17 25. **Violations of Due Process.** Media organizations have reported that
18 individuals arrested as a result of the ICE Raids have been pressured into signing forms that they
19 did not understand, including forms with pre-checked boxes waiving certain procedural rights.
20 There have also been media reports that individuals arrested in connection with the ICE Raids
21 have been summarily deported, often within 24 hours, without the chance to appear before a
22 judge or to establish special circumstances, including familial needs, that could have led a judge
23 to grant relief from deportation or a temporary stay of deportation pending removal proceedings.

24 **PLAINTIFFS’ FOIA REQUEST**

25 26. On March 6, 2007, the Plaintiffs, in conjunction with the *San Francisco*
26 *Bay Guardian* newspaper, served ICE with a request for agency records pursuant to FOIA
27 (hereinafter, the “FOIA request”). See Exhibit A. The FOIA request sought the disclosure by
28 ICE of documents pertaining to the ICE Raids.

- 1 27. The FOIA request sought 13 major categories of agency records:
- 2 (1) Documents describing the policies and procedures underlying the
- 3 ICE Raids;
- 4 (2) Documents describing how ICE determined its target locations and
- 5 suspects;
- 6 (3) Documents describing the individuals targeted by ICE;
- 7 (4) Documents describing the methods employed by ICE in carrying
- 8 out the ICE Raids;
- 9 (5) Communications between ICE and local law enforcement agencies
- 10 regarding the ICE Raids;
- 11 (6) Financial records relating to the costs of the ICE Raids;
- 12 (7) Aggregate statistics pertaining to the scope and results of the ICE
- 13 Raids;
- 14 (8) Documents pertaining to certain reported abusive practices (e.g.,
- 15 racial profiling, entry of residences without a warrant,
- 16 misidentification of ICE's agents as police officers);
- 17 (9) Training materials prepared for ICE's agents involved in the ICE
- 18 Raids;
- 19 (10) Documents describing specific aspects of the ICE Raids;
- 20 (11) Aggregate statistics pertaining to the number of individuals
- 21 contacted, arrested, and determined removable as a result of the
- 22 ICE Raids;
- 23 (12) Records describing the demographics of the individuals contacted
- 24 and/or arrested during the ICE Raids; and
- 25 (13) Documents describing all instances of personal residential entry
- 26 effected during the ICE Raids.

27 See Exhibit A.

28 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

29 28. ICE provided its initial substantive response to the FOIA request on July 2,

30 2007. In its initial response, ICE stated that it would not provide any records in response to

31 Categories 2, 12, and 13, and to certain portions of Categories 7, 10, and 11, as set forth in

1 Paragraph 27, above. ICE did not base its denial of these requests on any of the nine statutory
2 exemptions enumerated under FOIA; instead, ICE claimed either that the agency did not possess
3 any records responsive to the requests, or that the requests were unduly burdensome. ICE did not
4 furnish any affidavits or other evidence describing the parameters of its search – if any – for
5 records in response to Plaintiffs’ FOIA request.

6 29. On August 13, 2007, Plaintiffs timely appealed ICE’s partial denial of the
7 FOIA request. To date, ICE has failed to make any substantive determination regarding the
8 Plaintiffs’ August 13, 2007 administrative appeal.

9 30. With respect to the other categories of documents requested from the
10 agency, ICE stated in its July 2, 2007 response that it was continuing to search for records
11 responsive to those requests and would respond on an interim basis as those records became
12 available.

13 31. Despite its assurances, ICE failed to produce a single agency record in
14 response to Plaintiffs’ FOIA request. By letter dated March 18, 2008, Plaintiffs filed a second
15 administrative appeal as to all remaining categories of the FOIA request.

16 32. To date, ICE has failed to make any substantive determination regarding
17 the Plaintiffs’ March 18, 2008 administrative appeal.

18 33. FOIA requires that an agency “make a determination with respect to any
19 appeal” within 20 business days after the receipt of the appeal. 5 U.S.C. § 552(a)(6)(A)(ii). More
20 than 20 business days have elapsed since the receipt by ICE of each of Plaintiffs’ administrative
21 appeals. Plaintiffs have therefore exhausted their administrative remedies with respect to the
22 FOIA request.

23 **CLAIM FOR RELIEF**

24 **Violation of the Freedom of Information Act**

25 34. Plaintiffs reallege and incorporate, as though fully set forth herein, each
26 and every allegation contained in the above paragraphs.

27 35. ICE has violated FOIA in several respects: 1) ICE violated 5 U.S.C. §
28 552(a)(3)(A) by failing to promptly release agency records in response to the FOIA request; 2)

1 ICE violated 5 U.S.C. § 552(a)(3)(C)-(D) by failing to make reasonable efforts to search for
2 records responsive to the FOIA request; 3) ICE violated 5 U.S.C. § 552(a)(6)(A)(i) by failing to
3 make a determination regarding the FOIA request within the governing statutory time limit; and
4 4) ICE violated 5 U.S.C. § 552(a)(6)(A)(ii) by failing to make a determination with respect to
5 Plaintiffs’ FOIA administrative appeals within the governing statutory time limit.

6 36. Injunctive relief is authorized under 5 U.S.C. § 552(a)(4)(B) because ICE
7 continues to improperly withhold agency records in violation of FOIA. Plaintiffs will suffer
8 irreparable injury from, and have no adequate legal remedy for, ICE’s illegal withholding of
9 government documents pertaining to the ICE Raids.

10 37. Declaratory relief is authorized under 22 U.S.C. § 2201 because an actual
11 controversy exists regarding ICE’s improper withholding of agency records in violation of FOIA.
12 An actual controversy exists because Plaintiffs contend that ICE’s continuing failure to act with
13 respect to Plaintiffs’ FOIA request is in violation of the law, whereas ICE contends otherwise.

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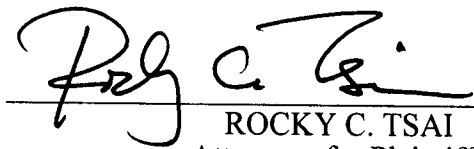
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WHEREFORE, Plaintiffs pray for judgment against ICE as follows:

- (a) For declaratory relief declaring that ICE's failure to disclose the records requested by Plaintiffs is unlawful;
- (b) For injunctive relief ordering ICE to process immediately and expeditiously Plaintiffs' FOIA request and, upon such processing, to make available the requested records to Plaintiffs;
- (c) For Plaintiffs' reasonable attorney fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (d) For such other relief as the Court may deem just and proper.

Dated: June 2, 2008

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