

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT  
HOUSTON DIVISION

ACLU FOUNDATION OF TEXAS, INC.,	)	Case No. _____
	)	
Plaintiff,	)	
	)	
v.	)	<b>COMPLAINT</b>
	)	
U.S. DEPARTMENT OF HOMELAND SECURITY and U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT,	)	
	)	
Defendants.	)	
	)	

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**PLAINTIFF ACLU FOUNDATION OF TEXAS, INC.’S COMPLAINT  
FOR DECLARATORY AND INJUNCTIVE RELIEF FOR VIOLATION  
OF THE FREEDOM OF INFORMATION ACT**

1. This is an action for the production of public records pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552.
2. This case challenges the government’s refusal to disclose search warrants that provided the basis for a U.S. Immigration and Customs Enforcement (“ICE”) and Homeland Security Investigations (“HSI”) enforcement action at CVE Technology Group, Inc. (“CVE”) in Allen, Texas on April 3, 2019 (the “Raid”). Both ICE and HSI are components of the Department of Homeland Security (“DHS”).
3. Purportedly pursuant to these warrants, armed officers from ICE, HSI, and other law enforcement agencies entered CVE, forced employees to stop working, demanded that employees follow them into a holding area, and prohibited employees from communicating with one another or using their phones for any purpose. Officers demanded information and/or documents from each employee as a condition to each employee’s freedom to leave. Hundreds of CVE employees, including United States citizens and lawful permanent residents, were detained without individualized suspicion. Officers administratively arrested 280 employees.
4. ICE issued a press release about the Raid, claiming that the detention and arrests were connected to the execution of search warrants issued to CVE and its staffing agencies. ICE

published photos and video of the Raid, including video of agents entering CVE and ultimately arresting employees.

5. On April 16, 2019, the ACLU Foundation of Texas, Inc. (“Plaintiff” or “ACLU”) filed a FOIA request for the administrative and criminal warrants that were issued and served on CVE and its staffing agencies related to the Raid (“Request”).

6. Defendants DHS and ICE (collectively, “Defendants”) refused to produce any records. DHS merely forwarded the request to ICE, and ICE refused to provide records on the basis of a single claimed exemption to its duty to disclose, asserting that production of already executed warrants might somehow interfere with ongoing law enforcement investigations.

7. Defendants provided no information to justify claiming the exemption, let alone to justify categorical withholding pursuant to it. Further explanation is required: ICE has proclaimed that it is engaging in nationwide investigations, that it is investigating CVE and its staffing agencies as part of this nationwide investigation, that the Raid was conducted pursuant to criminal and administrative search warrants, and has even released photographs and video of the purported warrants being executed. Defendants have not articulated how producing these executed warrants to the public could possibly interfere with an ongoing law enforcement investigation.

8. Further, Defendants’ final responses to the Request violate FOIA in other regards. First, even to the extent certain information can be withheld, Defendants have violated their legal duty to be transparent and withhold only those portions of responsive records that might interfere with an ongoing investigation. Second, Defendants have failed to honor their duty to describe the searches they conducted, the volume and nature of records they found, and to provide explanations for each particular withholding or redaction.

9. The Supreme Court has said that an informed citizenry is “vital to the functioning of a democratic society” and “needed to check against corruption and to hold the governors accountable to the governed.” *NLRB v. Robbins Tire & Rubber*, 437 U.S. 214, 242 (1978). We bring suit under FOIA to vindicate the fundamental democratic values of government transparency and accountability.

**JURISDICTION**

10. This Court has subject-matter jurisdiction over this action and personal jurisdiction over the parties under 5 U.S.C. § 552(a)(4)(B), 5 U.S.C. §§ 701–706, and 28 U.S.C. § 1331.

**VENUE**

11. Venue in the Southern District of Texas is proper under 5 U.S.C. § 552(a)(4)(B) as Plaintiff’s principal place of business is in Houston, Harris County, Texas. Further, for the same reason, venue is proper under 28 U.S.C. § 1391(e), as Plaintiff resides in this district and no real property is involved in this action. Assignment to the Houston Division is proper for the same reasons.

**PARTIES**

12. The ACLU is a 501(c)(3) organization with its principal place of business in Houston, Texas. ACLU is dedicated to protecting and defending the individual rights and liberties guaranteed by the Constitution and laws of the United States. In furtherance of this mission, the ACLU provides legal representation free of charge to individuals and organizations whose civil rights and civil liberties have been violated; educates the public about its rights, as well as government practices that threaten those rights; and disseminates free of charge information and analysis to the public at large.

13. Defendant Department of Homeland Security is a department of the executive branch of the U.S. government and is an agency within the meaning of 5 U.S.C. § 552(f)(1).

14. Defendant U.S. Immigration and Customs Enforcement is a component of DHS and is a federal agency within the meaning of 5 U.S.C. § 552(f)(1).

15. Plaintiff is informed and therefore believes that Defendants have possession, custody, or control of the requested records.

**FACTS**

16. On April 3, 2019, ICE and HSI directed a worksite enforcement operation at CVE Technology Group, Inc. in Allen, Texas, a city about 15 miles northeast of Dallas.

17. The same day, ICE issued a press release describing the operation. ICE reported that “special agents with [ICE] Homeland Security Investigations (HSI) executed criminal search

warrants at CVE Technology Group Inc. (CVE), and four of CVE's staffing companies." See Press Release, *ICE executes federal criminal search warrant in North Texas*.<sup>1</sup> According to ICE, "[t]his ongoing investigation began after HSI received multiple tips that the company may have knowingly hired illegal aliens," and the Raid was a culmination of "an audit of CVE's I-9 Forms, which confirmed numerous hiring irregularities." *Id.* ICE reported that the Raid "was coordinated with federal, state and local counterparts including the U.S. Attorney's Office for the Eastern District of Texas, and ICE Enforcement and Removal Operations," and part of a broader "two-phase operation" under the effort to "use[] I-9 audits to create a culture of compliance among employers." *Id.*

18. ICE posted video of the Raid, showing armed law enforcement agents planning and preparing to enter the technology factory, dozens of agents entering the factory, and agents handcuffing employees and escorting them onto buses waiting outside the factory. According to ICE, more than 280 employees were administratively arrested in connection with ICE's execution of federal criminal search warrants. *Id.*

19. On April 16, 2019, Plaintiff sent the Request to DHS's Privacy Office and to ICE's Freedom of Information Act Center. A true and correct copy of the Request is attached and incorporated by reference as **Exhibit A**. The Request sought copies of all administrative and criminal warrants "**issued and served** on an agent of CVE or its staffing agencies related to the enforcement operation." *Id.* (emphasis added).

20. The Request included an application for a fee waiver or limitation under 5 U.S.C. § 552(a)(4)(A)(iii) on the grounds that disclosure of the requested records is in the public interest and 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." In particular, as described in the Request, the requested records are a necessary part of a story with profound public significance, a story about which Defendants have otherwise selectively disclosed information. As further elaborated in the Request, ACLU intends to disseminate the information

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<sup>1</sup> Attached as **Exhibit F**, available at <https://www.ice.gov/news/releases/ice-executes-federal-criminal-search-warrant-north-texas>

disclosed to the public at no cost. *Id.*

21. The Request also sought a waiver of search fees under 5 U.S.C. § 552(a)(4)(A)(ii)(II) on the grounds that Plaintiff qualifies as a “representative of the news media” and the records are not sought for commercial use, given the ACLU’s non-profit mission and substantial activities to publish information for the public. This mission and the ACLU’s record of such work is described above and in the Request. *See id.*

22. DHS acknowledged receipt of the Request by electronic mail on April 19, 2019. As its “final response” to Plaintiff’s Request, DHS stated that, “[d]ue to the subject matter of your request, I am transferring this request to the FOIA Officer for ICE.” A true and correct copy of the email cover and attached letter are included as **Exhibit B**.

23. ICE submitted its “final response” to the Request by electronic mail on May 23, 2019. A true and correct copy of the email cover and attachments are included as **Exhibit C**. ICE provided no records and claimed that “the information you are requesting is withholdable in its entirety.” Referring to 5 U.S.C. §552(b)(7)(A), ICE asserted “that the information you are seeking relates to ongoing law enforcement investigations” and ICE was withholding all information because disclosure “could reasonably be expected to interfere with law enforcement proceedings and final agency actions related to those proceedings.” In addition, ICE stated that “once all pending matters are resolved and FOIA Exemption 7(A) is no longer applicable, there may be other exemptions,” including “Exemptions 6, 7(C), 7(D), 7(E), and/or 7(F).” ICE did not respond to Plaintiff’s requests for a fee waiver.

24. Plaintiff appealed ICE’s decision on June 26, 2019. A true and correct copy of the appeal is attached as **Exhibit D**. ACLU identified several bases for appeal. First, ACLU stated that ICE failed to fulfill its legal duty to disclose. Specifically, Plaintiff requested search warrants that had already issued and which the government had already served in order to conduct a search that had already occurred. ICE did not demonstrate that disclosure of such records could reasonably be expected to interfere with an enforcement proceeding or investigation.

25. Second, ACLU stated that, even to the extent certain documents could be withheld, ICE disregarded its duty to provide segregable portions of responsive records. Plaintiff set forth

Defendants' selective disclosures of information relating to the Raid, including as to the existence and service of administrative and criminal warrants, a press release about the execution of these warrants, and photographs and video of the enforcement action purportedly pursuant to these warrants, as suggesting that at least portions of the requested records could be disclosed.

26. Third, Plaintiff stated that ICE's categorical withholding violated ICE's own regulations. FOIA requires that agencies coordinate searches reasonably calculated to uncover all relevant documents, and, to the extent uncovered documents are exempt, to describe the documents withheld and the basis for withholding. ICE provided no information as to the searches conducted, the documents uncovered (*e.g.*, the number or type of warrant(s) it issued and served), and did not explain the particular bases for withholding each record. Further, Plaintiff identified applicable DHS regulations requiring components to provide an estimate of the volume of records withheld, and noted that ICE did not disclose any documents or information that might reveal such a volume.

27. Plaintiff reiterated its requests for a fee waiver. *See* Ex. D.

28. On July 22, 2019, ICE affirmed its decision on the Request. A true and correct copy of ICE's affirmation on appeal is attached as **Exhibit E**. The agency stated that "the requested records continue to relate to an open and ongoing law enforcement investigation," and "the withholding of the records in full is proper pursuant to Exemption 7(A) of the FOIA." ICE stated that "[t]his decision is the final action of ICE concerning your FOIA request," and that Plaintiffs "may obtain judicial review of this decision." *See id.*

29. Because Defendants affirmed the categorical withholding on appeal, and otherwise refused to produce any records after Plaintiff's appeal, Plaintiff has exhausted its administrative remedies with respect to the Request under 5 U.S.C. § 552(a)(6)(C)(i).

**Violation of FOIA for Failure  
to Make Records Available**

30. Plaintiff incorporates by reference the preceding factual allegations.

31. Plaintiff has a legal right under FOIA to obtain the specific agency records requested on April 16, 2019, and there exists no legal basis for Defendants' failure to make the

requested records available to Plaintiff and the public. Defendants have failed to honor their legal duty to disclose such records.

32. Defendants' failure to promptly make available the records sought by the Request violates FOIA, 5 U.S.C. § 552(a)(3)(A), and applicable regulations promulgated thereunder.

33. On information and belief, Defendants currently have possession, custody or control of the requested records.

**WHEREFORE**, Plaintiff requests that the Court award it the following relief:

1. Declare that Defendants violated FOIA by unlawfully withholding the requested records;
2. Order Defendants to immediately produce the requested records;
3. Enjoin Defendants from charging ACLU search, review, or duplication fees for processing the Request;
4. Award Plaintiff reasonable costs and attorneys' fees; and
5. Grant such other relief as the Court may deem just and proper.

DATED this 5<sup>th</sup> day of February, 2020.

Respectfully submitted,

/s/ David Donatti  
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