

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

**NATIONAL IMMIGRATION PROJECT OF
THE NATIONAL LAWYERS GUILD**

14 Beacon St., Suite 602
Boston, MA 02108,

Plaintiff,

v.

**U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT,**

500 12th Street S.W., Stop 5009
Washington, DC 20536-5009, and

**UNITED STATES DEPARTMENT OF
HOMELAND SECURITY,**

245 Murray Lane S.W.,
Washington, DC 20528,

Defendants.

Case No. 1:17-cv-2596

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

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

INTRODUCTION

1. Pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, the National Immigration Project of the National Lawyers Guild (“NIPNLG” or “Plaintiff”) files this action demanding Defendant United States Immigration and Customs Enforcement (“ICE”) and Defendant U.S. Department of Homeland Security (“DHS”) (collectively, “Defendants”) release the requested agency records related to the use of mobile biometric devices and applications by ICE.

2. Plaintiff NIPNLG is a U.S. non-profit organization dedicated to protecting the rights of immigrants and educating the public regarding immigration law.

3. Plaintiff, alongside Mijente, Inc. (“Mijente”), another U.S. non-profit organization, submitted two FOIA requests seeking basic information about the use of mobile biometric devices and applications in immigration actions. The first request was addressed to Defendant ICE, an agency within Defendant DHS, and the second request was addressed to the Office of Civil Rights and Civil Liberties (“CRCL”), a division of DHS (collectively, the “Agency”).

4. In recent years, the proliferation of mobile biometric devices and applications in ICE enforcement actions has become a subject of significant public interest and raises national concerns over civil rights, racial profiling, and privacy rights.¹ Increased ICE raids under the Administration of President Donald J. Trump raise further questions as to whether mobile biometric devices, which agents are using in raids, are being deployed in communities with proper accountability and oversight.²

¹ Alvaro Bedoya, *Deportation Is Going High-Tech Under Trump*, THE ATLANTIC, Jun. 21, 2017; Courtney Norris, “Silicon Valley Jumps Into Biometric Gold Rush for Trump’s ‘Other Border Wall,’” PBS NEWSHOUR, May 5, 2017, available at <http://www.pbs.org/newshour/updates/silicon-valley-jumps-biometric-gold-rush-trumps-border-wall/> (“In North America, government spending is expected to account for 40 percent of the biometric industry’s market share by 2020.”); Seung Min Kim, *Trump Just Getting Started With Immigration Raids*, POLITICO, Feb. 13, 2017 (noting that “ICE could also begin to use mobile units to scan fingerprints of suspected undocumented immigrants found during enforcement operations”); Lee Fang, *Surveillance and Border Security Contractors See Big Money in Donald Trump’s Immigration Agenda*, THE INTERCEPT, Dec. 6, 2016; Ariel Cheung, “This Is Wrong,” *Latino Day Laborer Declares of ICE Raids at Job Sites*, DNA INFO, Aug. 11, 2016; Zoe Carpenter, *How the Government Created Stop-and-Frisk for Latinos*, THE NATION, Sept. 3, 2014; Hannah Rappleye, *Does High Tech Dragnet to Deport Immigrants Go Too Far*, NBC NEWS, Feb. 28, 2014.

² See e.g. Sam Newhouse, “ICE arrests 107 in Philly as part of raids targeting Sanctuary Cities,” METRO, September 29, 2017, available at <https://www.metro.us/news/local-news/philadelphia/ice-arrests-sanctuary-cities-operation-safe-city> (community reported that ICE agents deployed mobile biometrics devices on all residents after entering their home during recent Operation “Safe City” raids).

5. Moreover, ICE has been promoting the use of mobile biometric devices and related technologies, particularly with local law enforcement.³ Local police use of mobile biometric devices has been a significant subject of public interest and concern.⁴

6. Plaintiff seeks the requested information in order to inform public debate regarding the use of such technologies by ICE and what accountability and oversight measures should be adopted to address their deployment in communities.

7. The Agency has failed to comply with the statutory deadline for responding to either of Plaintiff's requests. Plaintiff's requests were submitted on March 17, 2017, so, even assuming the ten business day "unusual circumstances" extension applies, ICE and DHS were due to respond by April 28, 2017. As of the date of this filing, 263 days have elapsed since Plaintiff's requests were submitted, yet neither ICE nor DHS has given a formal response to either of Plaintiff's requests.

8. ICE and DHS should not be permitted to flout FOIA's requirements. This Court should order Defendants to respond to Plaintiff's FOIA requests and disclose the requested information.

³ See e.g. ICE, "Day 2: EDDIE," ICE AT NATIONAL SHERIFFS' ASSOCIATION 2017, Aug. 2, 2017, available at <https://www.ice.gov/features/NSA2017> (discussing how the mobile biometric software application known as EDDIE was the highlighted technology at the ICE booth at the National Sheriff's Association convention); Pamela Brown, "CNN rides along as ICE team arrests illegal immigrants," ANDERSON COOPER 360, Jun. 1, 2016, available at <http://www.cnn.com/videos/us/2016/06/01/ice-exclusive-ride-along-immigration-brown-pkg-ac.cnn>.

⁴ See e.g. "Street Level Surveillance: Biometrics FOIA Campaign," Muck Rock, available at: <https://www.muckrock.com/news/archives/2015/aug/04/street-level-surveillance-who-using-mobile-biometr/>.

JURISDICTION AND VENUE

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

10. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

PARTIES

11. Plaintiff NIPNLG is a membership-based organization that works with immigrants swept into the removal system. It is a national non-profit organization that provides legal assistance and technical support to immigrant communities, legal practitioners, and advocates working to protect the rights of noncitizens seeking to promote justice and equality of treatment in all areas of immigration law.

12. Plaintiff seeks the requested information for the purpose of disseminating it to members of the public who have access to its public website and other free publications, as well as to interested members of the media and in speaking engagements and written materials. Disclosure of the requested information will contribute significantly to the public understanding of government operations and activities related to the use of mobile biometric devices and applications in immigration actions, because Plaintiff has the capacity and intent to disseminate widely the information to a broad audience. Disclosure of the requested information will shed light on aspects of processes of ICE and other agencies that are unknown to the public. Finally, consistent with its missions and past practices, Plaintiff intends, once it receives the information, to share it with fellow organizations dedicated to public interests as well as the public, in order to help protect the rights of immigrants, their families, and communities, including by increasing accountability in the use of biometric devices, and ensuring that affected individuals receive legal representation.

13. Defendant DHS is a cabinet department of the U.S. federal government with responsibilities focusing on public security in the United States. CRCL is a division within Defendant DHS whose stated purpose is to preserve individual liberty, fairness, and equality under the law. Defendant ICE is a component of Defendant DHS and is responsible for enforcing federal immigration and customs laws. Both ICE and DHS are “agenc[ies]” within the meaning of 5 U.S.C. § 552(f)(1). ICE and DHS have possession and control over the records Plaintiff seeks and are responsible for fulfilling Plaintiff’s FOIA requests.

STATUTORY FRAMEWORK

14. “The basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed.” *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978).

15. To that end, FOIA requires federal agencies to make government records “promptly available to any person” unless an enumerated exemption applies. *See* 5 U.S.C. § 552(a)(3).

16. In addition to the general requirement that records be made “promptly” available, FOIA sets forth a specific timeline for disclosure. In particular, the statute provides that a federal agency must “determine within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of,” among other things, “such determination and the reasons therefor.” *Id.* § 552(a)(6)(A)(i). In “unusual circumstances,” including a “need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records,” that deadline may be extended for a period not to exceed ten additional business days. *Id.* § 552(a)(6)(B).

17. FOIA provides that a requester may sue in federal court without waiting for an answer whenever an agency does not abide by the applicable deadline. *Id.* § 552(a)(4)(B), (a)(6)(C)(i).

FACTUAL ALLEGATIONS

A. Plaintiff's First FOIA Request

18. On March 17, 2017, Plaintiff and Mijente electronically filed a FOIA request with ICE seeking certain categories of information regarding ICE's use of mobile biometric devices and applications. *See* Ex. A.

19. Plaintiff's request sought a fee waiver under 5 U.S.C. § 552(a)(4)(A)(iii), citing the public's "significant interest" in having access to the requested records and Plaintiff's intention and proven ability to widely disseminate the information.

20. Within minutes of submission, Plaintiff received an automatically generated e-mail acknowledging receipt of Plaintiff's request. *See* Ex. B.

21. On May 10, 2017, Plaintiff received an e-mail from the ICE FOIA Office acknowledging receipt of Plaintiff's FOIA request and stating that it "may encounter some delay in processing your request." In this e-mail, ICE invoked its right to a 10-day extension pursuant to 5 U.S.C. § 552(a)(6)(B). The e-mail also provided with respect to Plaintiff's request for a fee waiver that "[u]pon review of your request and a careful consideration of the factors listed above, I have determined to grant your request for a fee waiver." Despite using the personal pronoun "I," no individual was identified as a point of contact in the e-mail. *See* Ex. C.

22. Since May 10, 2017, Plaintiff has heard nothing further regarding its request.

23. Since filing the request, Plaintiff's counsel has attempted to call ICE and DHS numerous times. On all but one call, Plaintiff's counsel received an answering machine or no

response. Plaintiff's counsel was only able to speak to DHS once, during a call on April 21, 2017, at which time they were informed that processing of the request had been delayed because it had been lost in the Agency's e-mail inbox.

24. Even assuming the ten business day extension was warranted, a response to Plaintiff's March 17 request should have been forthcoming by April 28, 2017, pursuant to 5 U.S.C. §§ 552(a)(6)(A)(i) and (a)(6)(B). Even counting May 10, 2017, as the date of receipt, a response was due June 21, 2017 (again assuming the invocation of the ten business day extension provision).

25. A search regarding the status of Plaintiff's FOIA request on the website <http://www.dhs.gov/foia-status> provides that the request was received on March 17, 2017, and the status of the request is "Request for Docs Sent." Searches on this website by Plaintiff's counsel prior to September 22, 2017, stated that the estimated delivery date was May 3, 2017. A search by Plaintiff's counsel on September 22, 2017, revealed that the estimated delivery date had been updated to October 24, 2017. As of December 5, 2017, the date of this Complaint, the estimated delivery date is now December 7, 2017.

26. Pursuant to 5 U.S.C. § 552(a)(6)(C), Plaintiff is deemed to have exhausted any and all administrative remedies with respect to this FOIA request because Defendants failed to comply with the time limit set forth in 5 U.S.C. § 552(a)(6)(A).

B. Plaintiff's Second FOIA Request

27. On March 17, 2017, Plaintiff and Mijente electronically filed a FOIA request with DHS CRCL seeking records relating to civil rights or civil liberties investigations conducted regarding the use of mobile biometric devices or applications. *See* Ex. D.

28. Plaintiff's request sought a fee waiver under 5 U.S.C. § 552(a)(4)(A)(iii), citing the public's "significant interest" in having access to the requested records and Plaintiff's intention and proven ability to widely disseminate the information.

29. Plaintiff did not receive any acknowledgment until March 22, 2017. On March 22, 2017, Plaintiff received an e-mail providing that DHS would not open FOIA requests sent as attachments. *See* Ex. E.

30. In response to this e-mail, Plaintiff and Mijente resubmitted the FOIA request to DHS CRCL later that same day, with the text of the request in the body of the electronic submission rather than in an attached PDF file.

31. Plaintiff has heard nothing further regarding its request, including its request for a fee waiver.

32. Since filing the request, Plaintiff's counsel has attempted to call ICE and DHS numerous times. On all but one call, Plaintiff's counsel received an answering machine or no response. Plaintiff's counsel was only able to speak to DHS once, during a call on April 21, 2017, at which time they were informed that processing of the request had been delayed because it had been lost in the Agency's e-mail inbox.

33. Unlike Plaintiff's first request, Plaintiff never received an acknowledgement that their second request had been received after it was resubmitted on March 22, 2017. Giving DHS the benefit of the ten business day extension, a response to Plaintiff's March 17 request should have been forthcoming by April 28, 2017, pursuant to 5 U.S.C. §§ 552(a)(6)(A)(i) and (a)(6)(B). Even counting March 22, 2017, as the date of receipt, a response was due by May 3, 2017.

34. Pursuant to 5 U.S.C. § 552(a)(6)(C), Plaintiff is deemed to have exhausted any and all administrative remedies with respect to its FOIA request because Defendants failed to comply with the time limit set forth in 5 U.S.C. § 552(a)(6)(A).

CLAIM FOR RELIEF

COUNT I

FOIA Violation: Failure To Timely Release Responsive Records by ICE

35. Plaintiff re-alleges and incorporates by reference paragraphs 1–34.

36. Plaintiff submitted a FOIA request to ICE on March 17, 2017.

37. As of the date of this Complaint and in violation of the deadlines set forth in 5 U.S.C. § 552(a)(6), ICE has failed to notify Plaintiff of any determination about whether Defendant will comply with Plaintiff's FOIA requests; the reasons for any such determination; or Plaintiff's right to appeal any adverse determination to the head of the Agency.

38. As of the date of this Complaint, Defendant has failed to produce any records responsive to the request; indicate when any responsive records will be produced; or demonstrate that responsive records are exempt from production.

39. ICE has not invoked any FOIA exemption, and none apply. Even if one or more exemptions did apply to certain portions of the requested records, ICE must disclose any reasonably segregable non-exempt portions. 5 U.S.C. § 552(a)(8)(A)(ii)(II). And even if ICE determines that all of the information Plaintiff requested is somehow exempt, ICE is required to inform Plaintiff of that determination.

40. ICE has violated 5 U.S.C. § 552(a)(6)(A) by failing to timely respond to Plaintiff's request.

COUNT II

FOIA Violation: Failure To Timely Release Responsive Records by DHS

41. Plaintiff re-alleges and incorporates by reference paragraphs 1–34.

42. Plaintiff submitted a FOIA request to DHS CRCL on March 17, 2017.

43. As of the date of this Complaint and in violation of the deadlines set forth in 5 U.S.C. § 552(a)(6), DHS has failed to notify Plaintiff of any determination about whether Defendant will comply with Plaintiff's FOIA requests and request for fee waiver; the reasons for any such determination; or Plaintiff's right to appeal any adverse determination to the head of the Agency.

44. As of the date of this Complaint, Defendant has failed to produce any records responsive to the request; indicate when any responsive records will be produced; indicate whether Plaintiff's fee waiver will be granted; or demonstrate that responsive records are exempt from production.

45. DHS has not invoked any FOIA exemption, and none apply. Even if one or more exemptions did apply to certain portions of the requested records, DHS must disclose any reasonably segregable non-exempt portions. 5 U.S.C. § 552(a)(8)(A)(ii)(II). And even if DHS determines that all of the information Plaintiff requested is somehow exempt, DHS is required to inform Plaintiff of that determination.

46. DHS has violated 5 U.S.C. § 552(a)(6)(A) by failing to timely respond to Plaintiff's request.

PRAYER FOR RELIEF

COUNT I

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in its favor and:

- a. Declare that ICE's withholding of the requested records is unlawful;
- b. Order ICE to make the requested records available to Plaintiff within 20 days;
- c. Order ICE to produce a Vaughn index describing with particularity the content of any documents withheld, in whole or in part, and identifying the FOIA exemptions ICE asserts to justify such withholding;
- d. Enjoin ICE from destroying any documents that may be responsive to Plaintiff's request;
- e. Award Plaintiff its costs and reasonable attorneys' fees in accordance with 5 U.S.C. § 552(a)(4)(E); and
- f. Order such other relief as the Court may deem just and proper.

COUNT II

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in its favor and:

- a. Declare that DHS's withholding of the requested records is unlawful;
- b. Order DHS to make the requested records available to Plaintiff within 20 days;
- c. Enjoin DHS from assessing fees or costs for the processing of the FOIA request submitted by Plaintiff to DHS CRCL;

- d. Order DHS to produce a Vaughn index describing with particularity the content of any documents withheld, in whole or in part, and identifying the FOIA exemptions DHS asserts to justify such withholding;
- e. Enjoin DHS from destroying any documents that may be responsive to Plaintiff's request;
- f. Award Plaintiff its costs and reasonable attorneys' fees in accordance with 5 U.S.C. § 552(a)(4)(E); and
- g. Order such other relief as the Court may deem just and proper.

Dated: December 5, 2017

Respectfully submitted,

/s/ C. Kevin Marshall

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Attorneys for Plaintiff

Exhibit A

JONES DAY

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DIRECT NUMBER: (202) 879-3437
SMLEVINE@JONESDAY.COM

March 17, 2017

VIA E-MAIL: ICE-FOIA@DHS.GOV

U.S. Immigration and Customs Enforcement
Freedom of Information Act Office
500 12th Street S.W., Stop 5009
Washington, D.C. 20536-5009

Re: **Freedom of Information Act Request: Mobile Biometric Devices and Applications**

Dear Sir or Madam:

The Jones Day law firm represents Mijente Inc. (“Mijente”) and the National Immigration Project of the National Lawyers Guild (“NIPNLG”). Mijente is a national organization that coordinates and organizes with its affiliates 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. NIPNLG is a membership-based organization that works with immigrants swept into the removal system. It is a national non-profit organization that provides legal assistance and technical support to immigrant communities, legal practitioners, and advocates working to protect the rights of noncitizens, seeking to promote justice and equality of treatment in all areas of immigration law.

In accordance with the Freedom of Information Act, 5 U.S.C. § 552, I request on behalf of our clients the records that are described below or contain the information described below:

1. All manuals or records, including but not limited to those described in 5 U.S.C. §§ 552(a)(2)(B) & (C), and any forms or checklists that:
 - a. Describe the history of the use of mobile biometric devices and applications by U.S. Immigration and Customs Enforcement (“ICE”) for immigration purposes, including but not limited to the application designated Eagle Directed Identification Environment (“EDDIE”).
 - b. Contain any training materials or protocols for ICE agents regarding the use of mobile biometric devices or applications, including but not limited

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to EDDIE, for any immigration enforcement actions, including raids, workplace actions, and fugitive operations. The requested training materials or protocols include but are not limited to (i) descriptions of which types of ICE agents are authorized to use mobile biometric devices or applications in immigration actions; (ii) information regarding how the use of mobile biometric devices or applications for immigration purposes is supervised; (iii) instructions on the utilization of mobile biometric devices or applications by ICE agents in immigration actions; (iv) descriptions of and instructions for utilization of mobile biometric devices or applications by ICE agents for immigration purposes in conjunction with other technologies or devices; (v) descriptions of when mobile biometric devices or applications are to be used during the course of an immigration enforcement action by ICE agents; and (vi) instructions regarding the statements to provide to subjects of mobile biometric devices or applications, as well as follow-up responses to questions or refusals to be subjected to such devices or applications.

- c. Describe any procedures or protocols for determining the circumstances under which ICE agents will use mobile biometric devices or applications, including but not limited to EDDIE, in any given immigration action, including but not limited to how the decision is made and whether such decision is subject to review.
- d. Describe the types of data collected using mobile biometric devices or applications, including but not limited to EDDIE, by ICE agents in immigration functions.
- e. Describe the storage and retention of data collected using mobile biometric devices or applications, including but not limited to EDDIE, by ICE agents in immigration functions, including but not limited to the names of the databases to which such information is uploaded and stored (regardless of whether such databases are maintained by ICE).
- f. Describe the way that data collected using mobile biometric devices or applications, including but not limited to EDDIE, by ICE agents in immigration functions is matched against records in databases (regardless of whether such databases are maintained by ICE).
- g. Describe or relate to plans for ICE to expand the use of mobile biometric devices or applications, including but not limited to EDDIE, by ICE

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agents in immigration functions, including but not limited to plans to expand the use of mobile biometric devices or applications in conjunction with U.S. federal agencies other than ICE and/or U.S. sub-federal agencies or local law enforcement.

- h. Describe or relate to any procedure or protocol for sharing the information collected by ICE agents using mobile biometric devices or applications, including but not limited to EDDIE, in immigration functions with other U.S. federal or sub-federal agencies or organizations.
2. With respect to each ICE immigration program that involves the use of mobile biometric devices or applications, including but not limited to EDDIE, provide (i) the name of the program; (ii) the geographic region in which such program operates; (iii) any records describing the program; and (iv) the number of individuals whose information has been collected using the program, as well as the aggregate amount of each type of personal information that has been collected (e.g., fingerprints, photographs).
3. The number of mobile biometric devices and applications, including but not limited to EDDIE, used by ICE for immigration functions, both nationally and in each field office.
4. Budgetary and any other financial records pertaining to the use of mobile biometric devices or applications, including but not limited to EDDIE, by ICE for immigration functions, including but not limited to any changes to budgets and funding on or after January 20, 2017.
5. All U.S. federal inter-agency communications, contracts, memoranda of understanding, and agreements that address or pertain to the use of mobile biometric devices or applications, including but not limited to EDDIE, for immigration functions.
6. All communications, contracts, memoranda of understanding, and agreements with U.S. sub-federal governmental entities or law enforcement agencies that address or pertain to the use of mobile biometric devices or applications, including but not limited to EDDIE, for immigration functions, including but not limited to notifications or solicitations for comments to U.S. sub-federal governmental entities or law enforcement agencies.
7. All records and policies pertaining to the use of mobile biometric devices or

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applications in agreements executed pursuant to section 287(g) of the Immigration and Nationality Act of 1965, Pub. L. No. 89-236 (“287(g) Agreements”), including but not limited to (i) how federal databases are linked to sub-federal databases with respect to information collected using mobile biometric devices or applications pursuant to 287(g) Agreements; (ii) how state and local law enforcement officers deputized under 287(g) Agreements are trained in the use of mobile biometric devices or applications; (iii) the methods used to provide mobile biometric devices or applications to state and local law enforcement officers deputized under 287(g) Agreements; and (iv) how mobile biometric devices or applications already in the possession of state and local law enforcement officers are utilized pursuant to 287(g) Agreements.

8. All records that:
 - a. Contain policies pertaining to personal privacy with respect to information collected by ICE agents using mobile biometric devices or applications, including but not limited to EDDIE, for immigration purposes.
 - b. Pertain to the standards of confidentiality for information collected by ICE agents using mobile biometric devices or applications, including but not limited to EDDIE, in immigration functions.
 - c. Describe information retention and destruction policies with respect to information collected by ICE agents using mobile biometric devices or applications, including but not limited to EDDIE, for immigration purposes.
 - d. Contain legal analyses, opinions, or memoranda regarding the use of mobile biometric devices or applications, including but not limited to EDDIE, by ICE agents for immigration purposes.
 - e. Relate to civil rights or civil liberties investigations conducted by ICE, the Department of Homeland Security’s Office for Civil Rights and Civil Liberties, or third parties regarding ICE’s use of mobile biometric devices or applications in immigration actions, including but not limited to complaints of racial profiling, indiscriminate fingerprinting, immigration sweeps, or collateral arrests.
 - f. Contain analyses of the accuracy of the information gathered from mobile biometric devices or applications, including but not limited to EDDIE, by ICE agents for immigration purposes.

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9. All reports describing the outcomes of any investigations into the use of mobile biometric devices or applications, including but not limited to EDDIE, by ICE agents in immigration functions.
10. All reports prepared regarding the outcome of the use of mobile biometric devices or applications, including but not limited to EDDIE, in particular enforcement actions.
11. All records related to press, public, and/or U.S. Congressional inquiries regarding the use of mobile biometric devices or applications, including but not limited to EDDIE, by ICE agents in immigration actions.
12. The number of individuals that have been apprehended for immigration-related purposes by any law enforcement agency as a result of the use of mobile biometric devices or applications, including but not limited to EDDIE, by ICE agents, and the ultimate outcome of such apprehension.
13. All arrest or apprehension records, including but not limited to Forms I-213, Record of Deportable Alien, in the possession of the ICE Chicago Field Office or the ICE Atlanta Field Office that reference the use of mobile biometric devices or applications, including but not limited to EDDIE.

I respectfully request a waiver of fees in accordance with 5 U.S.C. § 552(a)(4)(A)(iii). That provision is to be “liberally construed in favor of waivers for noncommercial requesters.” *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003). Neither Jones Day nor our clients have a commercial interest in this information. Rather, Jones Day is providing pro bono legal services to NIPNLG and Mijente, both of which are non-profit organizations dedicated to public interests. Attorneys, noncitizens, and any other interested members of the public may obtain information about immigration-related issues through NIPNLG and Mijente’s distribution of written materials, including on their respective websites, and through public and educational appearances. NIPNLG and Mijente seek the requested information for the purpose of disseminating it to members of the public who have access to their public websites and other free publications, and not for the purpose of commercial gain. In addition, disclosure of the requested information “is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii); 6 C.F.R. § 5.11(k). Disclosure of the requested information will contribute significantly to the public understanding of government operations and activities related to use of mobile biometric devices and applications in immigration actions because NIPNLG and Mijente have the capacity and intent to disseminate widely the information to a broad audience. NIPNLG and Mijente will review and analyze the information obtained through this FOIA request. In addition, NIPNLG and Mijente staff will speak publicly and publish written materials to be shared with the public

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and organizational members. NIPNLG and Mijente will make the information available through their respective websites, which are accessible by any member of the public. Moreover, NIPNLG and Mijente have frequent contact with national print and news media and plan to share information gleaned from FOIA disclosures with interested media. Disclosure of the requested information will shed light on aspects of processes of ICE and other agencies heretofore unknown to the public. Finally, consistent with their missions and past practices, the organizations intend, once they receive the information, to share it with fellow organizations dedicated to public interests as well as the public, in order to help protect the rights of immigrants, including ensuring that they receive legal representation.

If my fee-waiver request is denied, I am willing to pay fees up to a maximum of \$100. For reasons similar to those set out above, this request at least qualifies for substantially reduced fees. If you nevertheless estimate that the fees will exceed this limit, or if you have any questions regarding this request, please contact me at 202-879-3437 or smlevine@jonesday.com. I reserve the right, however, to challenge a denial of my fee-waiver request. *See* 5 U.S.C. § 552(a)(4)(A)(vii).

Please deliver the requested documents by email or mail.

Thank you for your consideration of this request. I look forward to receiving your response within the 20-day period set by Congress. *See id.* § 552(a)(6)(A)(i).

Sincerely,

A handwritten signature in dark ink, appearing to read "Scott M. Levine", is written over a light blue horizontal line.

Scott M. Levine

Exhibit B

Davis, Kayla M.

From: Wang, James S.
Sent: Thursday, November 30, 2017 12:10 PM
To: Davis, Kayla M.
Subject: FW: Automatic reply: Freedom of Information Act Request -- Mobile Biometric Devices and Applications

Jim Wang ([bio](#))
Associate
[JONES DAY® - One Firm WorldwideSM](#)
51 Louisiana Avenue, NW
Washington DC 20001-2113
Office +1.202.879.3814
Cell +1.202.308.0222
jwang@jonesday.com

From: ICE-FOIA [mailto:ICE-FOIA@ice.dhs.gov]
Sent: Friday, March 17, 2017 10:29 AM
To: James S Wang <jwang@jonesday.com>
Subject: Automatic reply: Freedom of Information Act Request -- Mobile Biometric Devices and Applications

ICE has received the information you submitted to the ICE-FOIA@dhs.gov mailbox.

If you are submitting a FOIA request, this courtesy reply does not replace the Acknowledgement Letter which will be sent to you once your request has been entered into our FOIA Request Tracking System.

If you are seeking the status of a pending FOIA request for which you have a FOIA case number, you may check the status of your request online at www.ice.gov/foia/status/.

Please visit the ICE FOIA Library at www.ice.gov/foia/library/.

As this reply is automatically generated, please do not respond to this notification.

Exhibit C

Davis, Kayla M.

From: Wang, James S.
Sent: Thursday, November 30, 2017 12:10 PM
To: Davis, Kayla M.
Subject: FW: ICE FOIA Request 2017-ICFO-27384

Jim Wang ([bio](#))
Associate
[JONES DAY® - One Firm WorldwideSM](#)
51 Louisiana Avenue, NW
Washington DC 20001-2113
Office +1.202.879.3814
Cell +1.202.308.0222
jwang@jonesday.com

From: US DHS Immigration and Customs Enforcement FOIA Office [<mailto:ice-foia@dhs.gov>]
Sent: Wednesday, May 10, 2017 9:32 AM
To: jwang@jonesday.com
Subject: ICE FOIA Request 2017-ICFO-27384

May 10, 2017

Jim Wang
Jones Day
51 Louisiana Avenue, NW
Washington, DC 20001-2113

RE: ICE FOIA Case Number 2017-ICFO-27384

Dear Mr. Wang:

This acknowledges receipt of your Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), dated March 17, 2017, and to your request for a waiver of all assessable FOIA fees. Your request was received in this office on March 17, 2017. Specifically, you requested all records pertaining to the use of mobile biometric devices and applications by ICE (please see attached for more details).

Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Per Section 5.5(a) of the DHS FOIA regulations, 6 C.F.R. Part 5, ICE processes FOIA requests according to their order of receipt. Although ICE's goal is to respond within 20 business days of receipt of your request, the FOIA does permit a 10- day extension of this time period. As your request seeks numerous documents that will necessitate a thorough and wide-ranging search, ICE will invoke a 10-day extension for your request, as allowed by Title 5 U.S.C. § 552(a)(6)(B). If you care to narrow the scope of your request, please contact our office. We will make every effort to comply with your request in a timely manner.

ICE evaluates fee waiver requests under the legal standard set forth above and the fee waiver policy guidance issued by the Department of Justice on April 2, 1987, as incorporated into the Department of Homeland Security's Freedom of Information Act regulations^[1]. These regulations set forth six factors to examine in determining whether the applicable legal standard for fee waiver has been met. I have considered the following factors in my evaluation of your request for a fee waiver:

- (1) Whether the subject of the requested records concerns "the operations or activities of the government";
- (2) Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;
- (3) Whether disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requestor or a narrow segment of interested persons;
- (4) Whether the contribution to public understanding of government operations or activities will be "significant";
- (5) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and

(6) Whether the magnitude of any identified commercial interest to the requestor is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requestor.

Upon review of your request and a careful consideration of the factors listed above, I have determined to grant your request for a fee waiver.

ICE has queried the appropriate program offices within ICE for responsive records. If any responsive records are located, they will be reviewed for determination of releasability. Please be assured that one of the processors in our office will respond to your request as expeditiously as possible. We appreciate your patience as we proceed with your request.

Your request has been assigned reference number **2017-ICFO-27384**. Please refer to this identifier in any future correspondence. To check the status of an ICE FOIA/PA request, please visit <http://www.dhs.gov/foia-status>. Please note that to check the status of a request, you must enter the 2016-ICFO-XXXXX or 2017-ICFO-XXXXX tracking number. If you need any further assistance or would like to discuss any aspect of your request, please contact the FOIA office. You may send an e-mail to ice-foia@ice.dhs.gov, call toll free (866) 633-1182, or you may contact our FOIA Public Liaison in the same manner. Additionally, you have a right to seek dispute resolution services from the Office of Government Information Services (OGIS) which mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Regards,

ICE FOIA Office
Immigration and Customs Enforcement
Freedom of Information Act Office
500 12th Street, S.W., Stop 5009
Washington, D.C. 20536-5009
Telephone: 1-866-633-1182
Visit our FOIA website at www.ice.gov/foia

[1] 6 CFR § 5.11(k).

Exhibit D

JONES DAY

51 LOUISIANA AVENUE, N.W. • WASHINGTON, D.C. 20001.2113

TELEPHONE: +1.202.879.3939 • FACSIMILE: +1.202.626.1700

DIRECT NUMBER: (202) 879-3437
SMLEVINE@JONESDAY.COM

March 17, 2017

VIA E-MAIL: FOIA@HQ.DHS.GOV

The Privacy Office
U.S. Department of Homeland Security
245 Murray Lane SW
STOP-0655
Washington, D.C. 20528-0655

Re: **Freedom of Information Act Request: Mobile Biometric Devices and Applications**

Dear Sir or Madam:

The Jones Day law firm represents Mijente Inc. (“Mijente”) and the National Immigration Project of the National Lawyers Guild (“NIPNLG”). Mijente is a national organization that coordinates and organizes with its affiliates 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. NIPNLG is a membership-based organization that works with immigrants swept into the removal system. It is a national non-profit organization that provides legal assistance and technical support to immigrant communities, legal practitioners, and advocates working to protect the rights of noncitizens, seeking to promote justice and equality of treatment in all areas of immigration law.

In accordance with the Freedom of Information Act, 5 U.S.C. § 552, I request on behalf of our clients all records that relate to civil rights or civil liberties investigations conducted by the Department of Homeland Security’s Office for Civil Rights and Civil Liberties or third parties regarding the use of mobile biometric devices or applications, including but not limited to those used by U.S. Immigration and Customs Enforcement in immigration actions, including but not limited to complaints of racial profiling, indiscriminate fingerprinting, immigration sweeps, or collateral arrests.

I respectfully request a waiver of fees in accordance with 5 U.S.C. § 552(a)(4)(A)(iii). That provision is to be “liberally construed in favor of waivers for noncommercial requesters.” *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003). Neither Jones Day nor our clients have a commercial interest in this information. Rather, Jones Day is providing pro

NAI-1502528573v2

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MEXICO CITY • MIAMI • MILAN • MINNEAPOLIS • MOSCOW • MUNICH • NEW YORK • PARIS • PERTH • PITTSBURGH • RIYADH
SAN DIEGO • SAN FRANCISCO • SÃO PAULO • SHANGHAI • SILICON VALLEY • SINGAPORE • SYDNEY • TAIPEI • TOKYO • WASHINGTON

U.S. Department of Homeland Security
March 17, 2017
Page 2

bono legal services to NIPNLG and Mijente, both of which are non-profit organizations dedicated to public interests. Attorneys, noncitizens, and any other interested members of the public may obtain information about immigration-related issues through NIPNLG and Mijente's distribution of written materials, including on their respective websites, and through public and educational appearances. NIPNLG and Mijente seek the requested information for the purpose of disseminating it to members of the public who have access to their public websites and other free publications, and not for the purpose of commercial gain. In addition, disclosure of the requested information "is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government." 5 U.S.C. § 552(a)(4)(A)(iii); 6 C.F.R. § 5.11(k). Disclosure of the requested information will contribute significantly to the public understanding of government operations and activities related to use of mobile biometric devices and applications in immigration actions because NIPNLG and Mijente have the capacity and intent to disseminate widely the information to a broad audience. NIPNLG and Mijente will review and analyze the information obtained through this FOIA request. In addition, NIPNLG and Mijente staff will speak publicly and publish written materials to be shared with the public and organizational members. NIPNLG and Mijente will make the information available through their respective websites, which are accessible by any member of the public. Moreover, NIPNLG and Mijente have frequent contact with national print and news media and plan to share information gleaned from FOIA disclosures with interested media. Disclosure of the requested information will shed light on aspects of processes of ICE and other agencies heretofore unknown to the public. Finally, consistent with their missions and past practices, the organizations intend, once they receive the information, to share it with fellow organizations dedicated to public interests as well as with the public itself, in order to help protect the rights of immigrants, including ensuring that they receive legal representation.

If my fee-waiver request is denied, I am willing to pay fees up to a maximum of \$100. For reasons similar to those set out above, this request at least qualifies for substantially reduced fees. If you nevertheless estimate that the fees will exceed this limit, or if you have any questions regarding this request, please contact me at 202-879-3437 or smlevine@jonesday.com. I reserve the right, however, to challenge a denial of my fee-waiver request. *See* 5 U.S.C. § 552(a)(4)(A)(vii).

Please deliver the requested documents by email or mail.

Thank you for your consideration of this request. I look forward to receiving your response within the 20-day period set by Congress. *See id.* § 552(a)(6)(A)(i).

JONES DAY

U.S. Department of Homeland Security
March 17, 2017
Page 3

Sincerely,

A handwritten signature in dark ink, appearing to read "Scott M. Levine". The signature is fluid and cursive, with the first name "Scott" being more prominent.

Scott M. Levine

Exhibit E

Davis, Kayla M.

From: Wang, James S.
Sent: Thursday, November 30, 2017 12:11 PM
To: Davis, Kayla M.
Subject: FW: Freedom of Information Act Request -- Mobile Biometric Devices and Applications

Jim Wang ([bio](#))
Associate

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51 Louisiana Avenue, NW
Washington DC 20001-2113
Office +1.202.879.3814
Cell +1.202.308.0222
jwang@jonesday.com

From: FOIA [<mailto:FOIA@HQ.DHS.GOV>]
Sent: Wednesday, March 22, 2017 8:30 AM
To: 'James S Wang' <jwang@jonesday.com>
Cc: Scott M Levine <smlevine@JonesDay.com>
Subject: RE: Freedom of Information Act Request -- Mobile Biometric Devices and Applications

Good morning,

Thank you for contacting the Department of Homeland Security's Privacy Office. ***Please be advised that we do not open attachments for security purposes. Please resubmit your request with attachment in the body of email, via fax or USPS.***

This office is responsible for administering policies, programs, and procedures to ensure that the Department complies with the Freedom of Information Act (FOIA) and the Privacy Act (PA), 5 U.S.C. 552 and 5 U.S.C. 552a, respectively. For more information about the DHS Privacy Office, please click here: <https://www.dhs.gov/topic/privacy>.

This email account exists to facilitate FOIA requests that are properly made in accordance with the DHS FOIA regulations. While PA requests may be sent via e-mail, no work will be done nor access provided to records until we receive either a notarized request or a signed statement made under 28 U.S.C. 1746. If you have questions regarding what constitutes a properly made request, please refer to the regulations found at: http://www.dhs.gov/xlibrary/assets/FOIA_FedReg_Notice.pdf.

If your request is a properly made request, and you do not receive an acknowledgement letter within 15 business days, please send a follow-up email or call our office at 1-866-431-0486. Please have the date and time you sent your email so that we may quickly reference it.

If your request is not a properly made request, this is the only response you will receive from us. You may wish to consult one of the references below:

General FOIA Information

How to file a FOIA request -- http://www.dhs.gov/xfoia/editorial_0316.shtm

Frequently requested records -- http://www.dhs.gov/xfoia/editorial_0424.shtm

FOIA Contacts -- http://www.dhs.gov/xfoia/Copy_of_editorial_0318.shtm

Citizenship and Benefits Information

If you are seeking information or records pertaining to citizenship or immigration benefits, you should contact one of the following offices or programs within U.S. Citizenship and Immigration Services (USCIS):

--Immigration Case Status:

To check your immigration case status, visit www.uscis.gov and enter your immigration case number. You may also contact the USCIS National Customer Service Center at 1-800-375-5283.

--Replacement Documents:

If you are simply trying to obtain a replacement copy of your naturalization certificate, the most efficient way to do so is to contact your local USCIS service center. To obtain the necessary forms and a list of service centers, visit www.uscis.gov.

Identity Theft

If you are a victim of a telephone scam and paid money or gave your credit card account numbers, or any other financial information, to someone claiming to collect required taxes or duty on lottery winnings, you should contact Project Phone Busters at 1-888-495-8501 or www.phonebusters.com.

If you are a victim of identity theft, you can call the Federal Trade Commission's Identity Theft Hotline at 1-877-438-4338 or report it <http://www.ftc.gov/bcp/edu/microsites/idtheft/> online. If you believe someone is using your social security number, you can report it to the Social Security Administration Fraud Hotline at 1-800-269-0271.

DHS Equal Employment Opportunity (EEO) Program

If you have a question or need assistance with an EEO case, please call the EEO Customer service line at (202) 254-8250, or email at statusFA@hq.dhs.gov.

Complaints

To file a complaint against employees and/or officials of the Department of Homeland Security with the Office for Civil Rights and Civil Liberties, follow this link: <https://www.dhs.gov/compliance-branch> CRCL Compliance Branch.

To file a complaint with the Department of Homeland Security Office of Inspector General, follow this link: <https://www.dhs.gov/office-inspector-general-foia-requests>.

Reporting Suspicious Activity

To Report Incidents: <https://www.dhs.gov/how-do-i/report-suspicious-activity>

DHS Main Operator: (202) 282-8000

DHS Tip Lines:

1-866-DHS-2ICE -- Illegal immigration or related activities that are under the purview of U.S. Immigration & Customs Enforcement (ICE)

1-877-9TUNNEL -- Information concerning underground passageways along the U.S./Mexican border

1-800-BE-ALERT -- Suspicious activity regarding customs or border issues that are under the purview of U.S. Customs and Border Protection (CBP)

1-800-THE-LOST -- Tips regarding exploited children or online predators, which fall under the purview of the National Center for Missing and Exploited Children (also alert local law enforcement)

1-866-720-5721 -- Cases of fraud involving the Federal Emergency Management Agency (FEMA)

DHS TRIP Program

The Department of Homeland Security's Travel Redress Inquiry Program (DHS TRIP) is a single point of contact for individuals who have inquiries or seek resolution regarding difficulties they experienced during their travel screening at transportation hubs--like airports and train stations--or crossing U.S. borders, including: 1) denied or delayed airline boarding; 2) denied or delayed entry into and exit from the U.S. at a port of entry or border checkpoint; or 3) continuously referred to additional (secondary) screening. Individuals seeking to file an inquiry to have erroneous information corrected in DHS systems should contact DHS TRIP at trip@dhs.gov or visit www.dhs.gov/trip.

If you are requesting records pertaining to difficulties experienced during travel, we recommend consulting the DHS TRIP program first, as an alternative to filing a FOIA request, and if you are still interested in pursuing the request via the FOIA, submit the request directly to the component that would most likely have the records (CBP or TSA depending on the travel situation).

For further information, please visit www.dhs.gov/trip.

Regards,

The Privacy Office
U.S. Department of Homeland Security
245 Murray Lane SW
STOP-0655
Washington, D.C. 20528-0655
Phone: 202-343-1743 or 866-431-0486
Fax: 202-343-4011
E-mail: foia@hq.dhs.gov
Visit our [FOIA website](http://www.dhs.gov/foia)

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prohibited. If you have received this in error, please reply immediately to the sender and delete this message. Thank you.

From: James S Wang [<mailto:jwang@jonesday.com>]

Sent: Friday, March 17, 2017 10:30 AM

To: FOIA <FOIA@HQ.DHS.GOV>

Cc: Scott M Levine <smlevine@JonesDay.com>

Subject: Freedom of Information Act Request -- Mobile Biometric Devices and Applications

Dear Sir or Madam,

On behalf of Scott M. Levine of the law firm Jones Day, attached please find a request to the U.S. Department of Homeland Security Office for Civil Rights and Civil Liberties pursuant to the Freedom of Information Act, 5 U.S.C. 552.

Thank you.

Jim Wang ([bio](#))

Associate

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