

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

AMERICAN IMMIGRATION COUNCIL AND
AMERICAN IMMIGRATION LAWYERS
ASSOCIATION CONNECTICUT CHAPTER,

Plaintiffs,

V.

DEPARTMENT OF HOMELAND SECURITY,

Defendant.

Case No. 12-00355

**DECLARATION
OF JAMISON MATUSZEWSKI**

Jamison Matuszewski, pursuant to 28 U.S.C. § 1746, declares as follows:

I. INTRODUCTION

1. I am the Unit Chief for the Criminal Alien Program (CAP), within Enforcement and Removal Operations (ERO) at U.S. Immigration and Customs Enforcement (ICE). I have held this position since January 2012. Prior to this, I was the Special Assistant to the Deputy Assistant Director for the Criminal Alien Division beginning in October 2010, the acting CAP Unit Chief from July 2009 to October 2010, a CAP staff officer from July 2008 to July 2009, and a Deportation officer in Phoenix, Arizona from February 2006 to July 2008. Prior to being employed by ICE, I was a United States Border Patrol Agent stationed in San Diego, California, and later in Casa Grande, Arizona, beginning in 1997.

2. The statements contained in this declaration are made to the best of my knowledge and belief, and are based upon my personal knowledge, my review of documents kept

by ICE in the ordinary course of business, and information provided to me by other ICE employees in the course of my official duties.

3. In general, the CAP provides ICE-wide support in the identification and processing for removal of aliens found incarcerated in federal, state and local prisons and jails. The CAP also provides support for the investigation and arrest of at-large criminal aliens.

4. As the Unit Chief, I am responsible for the overall success of the program to include its initiatives such as: the violent criminal alien section (VCAS), which is the criminal prosecutorial arm of ERO; law enforcement agency response team; joint criminal alien removal taskforces; and the screening of more than 4,300 prisons and jails. I also am responsible for the international criminal history sharing initiative and the development of long term agreements with other federal entities.

5. On November 29, 2011, plaintiffs requested “all records related to CAP, as well as to the series of INS [Immigration and Naturalization Service] and ICE programs out of which CAP developed, including the INS Alien Criminal Apprehension Program, INS Institutional Hearing Program, INS/ICE Institutional Removal Program, and ICE National Criminal Alien Removal Plan.” Plaintiffs sought all such records created from January 1, 1986 to the present.

6. Plaintiffs’ request includes, but is explicitly not limited to, all records regarding any individual identified by, detained by, arrested by, and/or transferred to the custody of ICE, INS, or any other federal agency pursuant to or in connection with the CAP and its predecessor programs; all records of communication to or from ICE or INS related to the CAP and its predecessors; and all policies and procedures, statistical data, resource allocation information, and program organization information of the CAP and its predecessors.

7. The purpose of this declaration is to provide the Court with an overview of the CAP and to describe the types of records that could be related to the CAP and its predecessor programs to demonstrate the breadth of plaintiffs' request.

II. RELEVANT ICE OFFICES

8. The ICE Office of Enforcement and Removal Operations (ICE ERO or ERO), formerly known as the ICE Office of Detention and Removal Operations, enforces the nation's immigration laws. ICE ERO identifies and apprehends removable aliens, detains these individuals when necessary, and removes illegal aliens from the United States. ICE ERO prioritizes the apprehension, arrest, and removal of convicted criminals who pose a threat to national security, fugitives, and recent border entrants. ICE ERO transports removable aliens from point to point, oversees the detention of aliens, provides to detained aliens access to legal resources and referrals to representatives of advocacy groups, monitors aliens as an alternative to placing them in a detention program, and removes individuals from the United States who have been issued final orders of removal. ICE ERO Officers are located at ICE Headquarters in Washington, DC, at the various Field Offices throughout the United States, and at international ICE offices around the world.

9. The following ICE offices, in addition to ERO, potentially could have responsive documents. The ICE Office of the Principal Legal Advisor ("ICE OPLA") provides legal advice, training, and services to support the ICE mission and defends the interests of the United States in administrative proceedings and Federal Courts. ICE OPLA provides legal advice and guidance to the ERO program office on a wide range of agency issues.

10. The Office of Congressional Relations ("ICE OCR") represents ICE in a broad variety of federal congressional liaison activities. ICE OCR is responsible for maintaining an

effective liaison and promoting greater congressional awareness of ICE operations and national and local policies, as well as the agency's various programs and initiatives. ICE OCR provides briefings and reports to Congress on various ICE programs.

11. The ICE Office of State, Local, and Tribal Coordination ("ICE OSLTC") is responsible for building and improving relationships and coordinating partnership activities for stakeholders, including state, local, and tribal governments, as well as law enforcement agencies and non-governmental organizations.

12. The Office of Policy and Planning ("ICE OPP") supports the ICE mission by providing policy and legislative analysis, program evaluation, strategic planning, performance measurement, community outreach, marketing research, statistical analysis and modeling, and quantitative and qualitative research methods.

13. The ICE Office of Homeland Security Investigations ("ICE HSI"), formerly known as the Office of Investigations (OI), is responsible for investigating a wide range of domestic and international activities arising from the illegal movement of people and goods into, within, and out of the United States. ICE HSI investigates immigration crime, human rights violations and human smuggling, smuggling of narcotics, weapons and other types of contraband, financial crimes, cybercrime and export enforcement issues. ICE special agents conduct investigations aimed at protecting critical infrastructure industries that are vulnerable to sabotage, attack, or exploitation. In addition to ICE criminal investigations, ICE HSI oversees the agency's international affairs operations and intelligence functions. ICE HSI offices are located at ICE Headquarters in Washington, D.C., at the 26 Special Agent in Charge (SAC) Offices located throughout the United States, and at international ICE offices located in 46 countries around the world.

III. SCOPE AND MISSION OF THE CRIMINAL ALIEN PROGRAM

14. The CAP, a component of ERO, provides ICE-wide direction and support in the identification, processing, and removal of criminal aliens incarcerated in federal, state, and local facilities throughout the United States, preventing their release into the general public by securing a final order of removal prior to the completion of their sentences. The CAP also provides support to ERO's 24 field offices in the identification and arrest of those aliens who are identified by ERO as at-large criminal aliens.

15. The CAP is a national program present in all 24 ICE field offices and approximately 171 sub-offices, support centers, and response centers. The CAP is part of ICE's comprehensive strategy to build cooperative relationships with local law enforcement agencies. Through the CAP, ICE potentially could interact with every municipal, county, state, and federal facility in the country. Currently, there are more than 4,300 federal, state and local jails and prisons nationwide. ICE HSI Special Agents in Charge (SACs) and ICE ERO Field Office Directors (FODs) work closely with their local counterparts to find solutions tailored to meet their needs.

16. The CAP prioritizes the detention and arrest of criminal aliens by using a risk-based approach. The program identifies all criminal aliens in jails and prisons throughout the United States and initiates removal proceedings based on their perceived threat to the community. Additionally, the program supports the aggressive prosecution of criminal offenders identified by ERO officers. ERO, in conjunction with the U.S. Attorney's Office, actively pursues criminal prosecutions upon the discovery of violations of the nation's criminal code and immigration laws. Such criminal prosecutions, in conjunction with various CAP activities, promote public safety and provide a significant deterrent to recidivism.

IV. DEVELOPMENT OF CAP

17. In 1988, Legacy INS created and had control over both the Alien Criminal Apprehension Program (ACAP) and the Institutional Removal Program (IRP), previously referred to as the Institutional Hearing Program (IHP), in response to the passage of the 1986 Immigration Reform and Control Act (P.L. 99-603). The law required the Attorney General, “[i]n the case of an alien who is convicted of an offense which makes the alien subject to deportation ... [to] begin any deportation proceeding as expeditiously as possible after the date of the conviction.” 8 U.S.C. § 1252(i) (1988). In 2006, ICE consolidated ACAP and IRP under one program called CAP and began the transfer of the CAP functions from OI, currently known as HSI, to the Office of Detention and Removal Operations, currently known as ERO. This transfer or responsibility was completed in 2007.

18. Deportation proceedings for incarcerated criminal aliens processed through the IRP began with the individual facilities’ identification of foreign-born inmates upon their entry into federal, state or county incarceration. Previously, federal and state correctional institutions provided periodic listings of foreign-born inmates to the INS offices within the relevant jurisdiction. At the county level, INS offices proactively checked local booking records of inmates identified as foreign-born for potentially deportable criminal aliens. Currently, DHS depends on the type of voluntary cooperation from state and local facilities that previously was provided to INS at the county level. However, mandatory reporting by federal correctional institutions to DHS of foreign born inmates continues today.

19. Upon the initial transfer of the CAP functions to ERO in October 2006, Congress funded 89 CAP teams across the nation. Each team consisted of several law enforcement officers, including Supervisory Detention and Deportation Officers, Deportation Officers,

Immigration Enforcement Agents, and Enforcement Removal Assistants. Using a risk-based assessment, the teams strategically were placed within all ERO field offices and sub-offices and, at the field office director's discretion, were assigned to prisons and jails within each area of responsibility. In 2008, the CAP was increased to 119 teams. In 2009, after the implementation of the Secure Communities Deployment Unit (SC), which assists in the identification and removal of criminal aliens held in local and state correctional facilities by using various technologies to share national, state, and local law enforcement data among agencies, the CAP was increased to 126 teams.

20. Today, the CAP no longer uses a formal team structure. Instead, ERO field office directors and officers use any available resources to accomplish the CAP's mission. Thus, any of ERO's 7,854 employees may conduct CAP-related activities on any given day. In addition, ICE Headquarters employs a Unit Chief, two Section Chiefs, and 10 staff officers who are solely assigned to work on CAP functions.

21. ERO, through the CAP, currently provides 100% screening to all sentenced inmates in Bureau of Prisons (BOP) facilities and all state correctional institutions. Screening is the process of verifying the identity of a person through biographic and/or biometric identifiers. Currently, the CAP screens inmates from more than 4,300 federal, state and local jails and prisons on a daily basis. According to Criminal Alien Program Risk Assessment (CAPRA), in fiscal year (FY) 2012, 3,054 out of 3,066 county jails (99.6%) received 100% screening.

V. RECORDS POTENTIALLY RESPONSIVE TO PLAINTIFFS' FOIA REQUEST

A. INDIVIDUAL RECORDS

22. From 2007 to the present, there have been approximately 2.5 million “CAP encounters.” A “CAP encounter” is defined as an interview or screening. An interview is, at minimum, a conversation that is documented, while a screening is a review of biographic and biometric identifiers associated with the individual who has been encountered. For example, in FY2011, there were 701,473 “CAP encounters,” of which 221,122 resulted in arrests. An arrest occurs when an ICE agent believes, based on the totality of the circumstances, that the suspect is in violation of U.S. immigration law.

23. Although ICE tracks the cumulative number of “CAP encounters,” it does not have any supporting details that would allow it to identify the individuals encountered by CAP and retrieve their records, nor are any files identified as “CAP files.” Further, an individual could have had more than one “CAP encounter.” An individual who had a “CAP encounter” between 1986 and the present could be any alien in any prison or jail in the country during that time. ICE does not have a database or system that designates an individual as having a “CAP encounter.”

24. There is also no typical “CAP encounter” and therefore ICE does not generate a particular form or set of forms as a result of a “CAP encounter.” “CAP encounters” vary based on a number of circumstances, including the alien’s legal status, nationality, criminal history, length of time in the United States, and the place of encounter and number of previous encounters. Based on these factors, ICE determines the manner of processing and types of forms to use to initiate removal proceedings.

25. A “CAP encounter” can generate at least 25 to 50 records, which would mean there would be approximately 64 million to 127 million records associated with the 2.5 million “CAP encounters” for the time period of 2007 to the present. These “CAP encounter” records

related to an individual could be located within an individual alien file (A-file). The A-file is the official record system that contains information regarding transactions involving an individual as he or she passes through the U.S. immigration and inspection process. However, those individual A-files may not contain all CAP-related records for that individual; thus, ICE would still need to search for CAP-related records in other places. CAP-related records could include hard copy files, electronic files, emails, and pulls from a wide variety of databases, systems, websites, and computer programs used by officers conducting CAP-related activities.

26. In order to respond to plaintiffs' FOIA request, ICE would have to conduct a global search and manual review of all A-files to determine which A-files contain responsive CAP-related records. A-files are managed by USCIS, which is DHS's official custodian of such files. There are over 25.1 million inactive A-files and approximately 35 million active A-files. Because the A-file is the official record system that contains information regarding transactions involving an individual as he or she passes through the U.S. immigration and inspection process, depending upon how lengthy that history is, an A-file could contain anywhere from 30 to 300 to 3000 records. The A-files are not designated by anything other than "active" and "inactive." The active files are not stored in one location, nor are they stored and labeled as ERO CAP files, nor are they stored and labeled by year. Moreover, neither the inactive nor active A-files are organized by whether an individual alien was at one time detained or serving a criminal sentence. Notably, ICE does not maintain any computerized, electronic system that can be searched to determine which A-files could contain CAP-related records.

27. A-files are stored in numerous locations throughout the United States. A-files associated with cases that are pending in immigration court or under investigation could be located in whichever field office is handling that matter. A-files associated with cases that are

pending before U.S. Citizenship and Immigration Services (USCIS) could be located at any of the 82 USCIS field offices and numerous service centers. Active files also are kept with ICE ERO/HSI and U.S. Customs and Border Protection (CBP). Temporary files (T-files), which often contain records not yet incorporated into the A-file, are also maintained and may be located within these agencies. A-files associated with cases that are not currently active are stored in a central location in Missouri. In order to respond to the instant FOIA request, ICE would have to request each of the millions of A-files from these locations and manually review them in order to determine whether a file contains any CAP-related records. A-files also contain biographical information that would have to be redacted from responsive records. Conservatively, using an estimate of 40 hours (5 working days) to retrieve and review each A-file and redact and copy any responsive records, it would take 2.4 billion total hours to search and process these files.

28. Plaintiffs suggest they are willing to agree to sampling for individual records, which would include A-files. This suggestion is unworkable for the reasons described above. To conduct a sampling, ICE would have to retrieve the aforementioned millions of files and manually review each file to determine the universe of CAP-related records from which to draw a sample.

29. The CAP is also part of ICE's Agreements of Cooperation in Communities to Enhance Safety and Security (ACCESS) strategy, which provides an umbrella of services to assist local law enforcement agencies in identifying criminal aliens in local communities. The CAP portion of ICE ACCESS is described in the paragraphs below. These sub-programs demonstrate the broad reach of CAP-related activities. ICE is unable to do a thorough analysis to determine which records associated with these various sub-programs would be responsive to

plaintiffs' request without manually retrieving and reviewing each and every record generated by these sub-programs.

a. The Violent Criminal Alien Section ("VCAS")

30. The primary responsibility of VCAS is to enforce violations of criminal immigration law discovered through the enforcement activities of ERO. The aggressive prosecution of criminal offenders identified by ERO officers, in conjunction with the assistance of the United States Attorney's Office, further ensures public safety and provides a significant deterrent to recidivism. From 2008 to the present, under the VCAS, the CAP has facilitated the arrests of approximately 36,000 individuals.

b. Law Enforcement Agency Response Unit ("LEAR")

31. Another component of CAP is the LEAR, which was established in Arizona to provide round-the-clock response to all calls for assistance from state and local law enforcement agencies (LEAs) regarding individuals suspected of violating the immigration laws. LEAR conducts interviews to determine alienage and status, lodges detainers, conducts arrests, and transports and processes individuals who are amenable to removal, in accordance with the priorities established by the Director of ICE. LEAR operations also facilitate ICE's efforts to disrupt human trafficking, smuggling, and transnational organized crime. From 2007 to the present, LEAR has arrested approximately 21,000 individuals.

c. Rapid Repatriation of Eligible Custodial Aliens Accepted for Transfer ("Rapid REPAT")

32. Another component of the CAP is Rapid REPAT, which is a joint partnership with state correctional and parole agencies. Rapid REPAT allows the conditional, early release of non-violent aliens who have been issued final orders of removal from state custody for

removal from the United States by ICE. Rapid REPAT is a fairly recent program. From 2009 to the present, the CAP has identified approximately 5,000 individuals through Rapid REPAT. ERO is not always the originator of the records produced from Rapid REPAT cases. Therefore, there may be additional records associated with several different state and federal law enforcement agencies that ERO cannot directly access.

d. The Detention Enforcement and Processing Offenders by Remote Technology (“DEPORT”) Center

33. The DEPORT Center was created in 2006 to be the centralized ERO processing group for placing deportable aliens detained in the BOP into removal proceedings, with the cooperation of the local field offices. The CAP oversees this facility. From 2009 to the present, the CAP has encountered approximately 96,000 individuals at the DEPORT Center.

B. RECORDS OF COMMUNICATIONS

34. As of April 21, 2012 - the most recent time-frame for which ERO could provide accurate data - 1,718 positions were specifically funded for CAP operations. As of that date, ERO had a total of 7,854 filled positions. Most ERO officers have, at one point in their career, been assigned to perform CAP operations as their primary responsibility.

35. There is no standard form used by ERO officers to communicate which matters are related to CAP. Therefore, at a minimum, the nearly 8,000 current ERO employees would have to conduct a search of their electronic mailbox (email) accounts and any other electronic or paper files for the requested communications records. Further, a search also would have to be conducted of the archived accounts of all officers that were previously employed by ERO. An estimated 2-hour search of each current employee’s email and paper file folders would result in an effort of over 15,000 hours.

36. ICE OCR also reviewed the plaintiffs' FOIA request for CAP records. ICE OCR determined that it likely has responsive records. ICE OCR estimated that a search of a single employee's records could yield approximately 1,000 pages, which in turn would take an estimated 90 minutes of staff time to review and print. A word search of the word "CAP" within the ICE OCR call-log (a log on the ICE intranet that lists incoming calls from Congress or outgoing calls to Congress and describes how the calls were resolved) produced only five potentially responsive documents. However, a search of the word "CAP" in Sharepoint (an internal system used to track employee work product) produced approximately 64,000 documents. ICE OCR estimated that to access and print each of these documents would consume 16,000 ICE OCR staff hours. The categories of records within OCR potentially could fall under categories other than "communications" in plaintiffs' FOIA request.

37. Plaintiffs' request seeking communication back to 1986, before the use of email, would require the agency to search any existing back-up tapes to try to capture historical data from archived mailboxes or hard drives of every officer that was employed by legacy INS in any capacity relating to the Office of Investigations, legacy Detention and Removal Operations, and the Border Patrol, as all of these divisions of INS conducted CAP-type operations under one moniker or another. Any documentation that would be identified from this manual search of millions of files also would require additional processing by ICE FOIA.

C. RECORDS RELATED TO POLICIES AND PROCEDURES

38. ERO currently maintains service-wide policies with the ERO Executive Information Reporting Unit, Policy Resource Management Section (EIRU/Policy). These policies are available to ERO officers via the ICE intranet and the ERO Resource Library. A search conducted by the staff of EIRU/Policy produced 19 policy memos, handbooks, or

manuals that had some nexus with the CAP. These were current policies. Keeping in mind that ERO only has had ownership of the CAP since 2007, EIRU/Policy has limited access to pre-2007 material. Policies and records produced from 1986 to 2007 would have been created by HSI, when it was still referred to as OI and/or CBP and would currently be maintained by HSI and CBP. However due to the lack of reliable electronic storage during most of those years, a manual search for these records would be required. The volume of work involved in a manual search of all of legacy INS's service-wide records that pertained to IHP/IRP and ACAP from 1986 to 2007 would be extensive.

39. In addition to the ERO service-wide policies that are maintained by EIRU/Policy, each field office has its own guidance, internal policies, and local standard operating procedures concerning the CAP that are unique to their field office or sub-office. Those materials may be stored and transmitted to the appropriate staff in a number of ways and would require the agency to conduct an extensive electronic and manual search of records. Each HSI office, and sub-office, as well as every CBP field office, and location would have to conduct a search for records and policies dating back to 1986.

40. The Federal Law Enforcement Training Center (FLETC) maintains all of the training materials that are provided to ERO employees during Immigration Officer Basic Training Course, Deportation Officers Transition Training, and the Fugitive Operations Course. HSI also has its own training academy at FLETC for its special agents. This program uses training material unique to HSI. A thorough search of all FLETC training materials relating to the CAP from 2007 to the present would take at least several weeks. Training materials that originated before 2007 will be even more difficult to locate. Historically, the ICE Office of Training and Development (OTD) has declined to respond to requests for material that originated

before 2007, as it cannot attest to the quality of the material or whether the contents of the material actually were ever presented. Furthermore, the OTD's records are not maintained in a way that would make them easily searchable for materials related to the CAP. Moreover, material that originated prior to 2003 would have been presented in the Immigration Officer Academy and likely would now be stored with CBP.

41. The HSI Investigative Services also reviewed plaintiffs' FOIA request. The Forensic Laboratory, a subdivision of Investigative Services, estimated that it would take three employees approximately eight hours to search for responsive records. Further, the HSI Training Academy estimated that it would take one employee approximately six hours to review old training-related disks that were compiled prior to the creation of ICE, in order to determine if there are any responsive documents. The HSI Training Academy could not locate any responsive CAP records that were created or compiled since the creation of ICE in 2003. With regard to any INS-archived curriculum, the HSI Training Academy indicated that any such records likely would be located with (a) ERO, (b) the 287g Task Force, and (c) possibly USCIS and CBP.

42. I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge and belief. Signed this 12th day of July, 2012



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