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9
10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12 HARBOR INSTITUTE FOR
13 IMMIGRANT AND ECONOMIC
14 JUSTICE; IMMIGRANT LEGAL
15 RESOURCE CENTER,

16 Plaintiffs,

17 vs.

18 U.S. IMMIGRATION AND CUSTOMS
19 ENFORCEMENT,

20 Defendant.

Case No. 8:24-cv-02738

**COMPLAINT FOR INJUNCTIVE
RELIEF**

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1 8. Plaintiffs have exhausted all administrative remedies in connection
2 with this FOIA request.

3 **PARTIES**

4 9. Plaintiff Harbor Institute is a fiscally-sponsored organization
5 established in 2020 that is dedicated to advancing immigrant and economic justice
6 through local and regional political transformations to uplift working-class
7 immigrant and refugee communities in Orange County, California. The Harbor
8 Institute serves as a resource to and brings together community organizations,
9 grassroots leaders, and policymakers to advance a pro-immigrant and pro-worker
10 agenda that ensures justice for all. The Harbor Institute is based in Santa Ana,
11 California.

12 10. Plaintiff IRLC is a non-profit 501(c)(3) organization that works with
13 immigrants, community organizations, legal professionals, law enforcement, and
14 policy makers to build a democratic society that values diversity and the rights of all
15 people. With respect to immigration enforcement, the ILRC provides training and
16 educational materials and engages in advocacy towards the elimination of unjust
17 penalties for immigrants entangled in the criminal justice system and to end the
18 criminalization of immigrant communities. The ILRC is based in San Francisco,
19 California.

20 11. ICE is a component of the U.S. Department of Homeland Security
21 (“DHS”), and an “agency” within the meaning of 5 U.S.C. § 552(f)(1). ICE is
22 headquartered in Washington, D.C. and has field offices around the country.

23 **FACTUAL BACKGROUND**

24 12. The Freedom of Information Act (“FOIA”) protects the public’s right
25 to be informed about vital public matters and policy issues, such as those raised by
26 the subject matter of Plaintiffs’ request here.
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1 13. Last fiscal year, ICE Enforcement and Removal Operations (“ERO”)
2 made 170,590 civil immigration arrests of individuals nationwide.¹

3 14. Plaintiffs seek data regarding ICE civil immigration arrests, including
4 the method of arrests, data from the ICE Detainer Assistance Tracker, materials
5 concerning the ICE ERO National Fugitive Operations Program’s “Probation and
6 Parole” program, and email communications between Field Office personnel and
7 probation or parole officials concerning collusion in the arrest of, and information
8 sharing about, individuals under probation or parole supervision.

9 15. The data requested by Plaintiffs about ICE civil immigration arrests is
10 particularly important as it will be useful in establishing a baseline against which to
11 compare anticipated changes to immigration enforcement policy in the next
12 presidential administration.²

13 16. The public has a right to examine the policies, practices, and impact of
14 agency operations on communities around the country. Public interest in disclosure
15 is most acute when agencies have been accused of operating in a manner that does
16 not align with public expectations or that undermines public trust in the
17 government.³ Public disclosure of data about ICE activities can incentivize the
18 agency to act in an ethical manner.

19 17. ICE’s work with state and local law enforcement can undermine
20 community members’ trust in state and local government. Understanding state and
21 local variation can help to shed light on these issues. Members of the public have an
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24 ¹ *Year in Review: ICE Fiscal Year 2023 Annual Report*, OFF. WEBSITE OF THE DEP’T OF HOMELAND SEC.,
25 <https://www.ice.gov/features/2023-year-review#:~:text=U.S.%20Immigration%20and%20Customs%20Enforcement's,opioids%20coming%20to%20U.S.%20communities%3B> (last visited Dec. 7, 2024).

26 ² Samantha Artiga, D. Pillai, *Expected Immigration Policies Under a Second Trump Administration and Their Health and Economic Implications*, KFF (Dec. 7, 2024), <https://www.kff.org/racial-equity-and-health-policy/issue-brief/expected-immigration-policies-under-a-second-trump-administration-and-their-health-and-economic-implications/>; *Trump Team Eyes Using State and Local Police for Immigration Enforcement*, NEWSWEEK (Nov. 26, 2024), <https://www.newsweek.com/trump-team-eyes-using-state-local-police-immigration-enforcement-1991921>.

28 ³ See Tom K. Wong, *How Interior Immigration Enforcement Affects Trust in Law Enforcement*, U.C. SAN DIEGO (2019), <https://usipc.ucsd.edu/publications/usipc-working-paper-2.pdf>.

1 interest in being able to evaluate such information in furtherance of their
2 engagement with elected officials on relevant policy.

3 18. ICE’s work with probation officers and parole agents in particular can
4 undermine the objectives of probation and parole supervision. Individuals concerned
5 about their immigration status may hesitate to attend meetings or to keep probation
6 officers or parole agents updated on their whereabouts.⁴

7 19. The data Plaintiffs have requested is known to be maintained by ICE.
8 For example, ICE reports immigration statistics and arrest data each year in its
9 annual Yearbook of Immigration Statistics.⁵

10 20. ICE has provided similar arrest data as that requested by Plaintiffs to
11 other entities, such as the Transactional Records Access Clearinghouse at Syracuse
12 University, in the past.⁶

13 21. Regarding arrests made by ICE Enforcement and Removal Operations
14 (ERO) in the field specifically, ICE has maintained certain arrest data requested by
15 Plaintiffs for the time period of 10/1/2017 in the Operations Management Module
16 (OM2 module). *See* Exhibit A. The module “tracks activities, leads, and operations
17 information for persons of interest or fugitives throughout Immigration and Customs
18 Enforcement (ICE) Enforcement and Removal Operations (ERO) field offices.” *Id.*

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24 ⁴ *See, e.g., Episode 2: Sisters, Separated by Birth*, IMMIGRANT DEF. PROJECT,
25 <https://www.immigrantdefenseproject.org/indefensible-episode-2/>; Darwin Bond Graham, *Ambushed: Contra Costa County Law Enforcement sets up Surprise Stings to Help Federal Immigration Agents Arrest and Deport Immigrants*, E. BAY EXPRESS, <https://eastbayexpress.com/ambushed-contra-costa-county-law-enforcement-sets-up-surprise-stings-to-help-federal-immigration-agents-arrest-and-deport-immigrants-2-1/>.

26 ⁵ Office of Homeland Security Statistics, *Yearbook of Immigration Statistics*,
27 <https://ohss.dhs.gov/topics/immigration/yearbook> (last visited Dec. 7, 2024).

28 ⁶ *See* TRAC Immigration, *Immigration and Customs Enforcement Arrests*
https://trac.syr.edu/phptools/immigration/arrest/about_data.html (TRAC ICE arrests tool containing data up to May 2018); TRAC Immigration, *About the Data – ICE Arrests*,
https://trac.syr.edu/phptools/immigration/arrest/about_data.html (explaining that the data from the arrests tool was obtained via FOIA requests).

1 22. ICE also maintains a “Detainer Acceptance Tracker” for tracking
2 compliance with ICE detainer requests by facility so it can provide the agency with
3 up-to-date information on which facilities are willing to work with it.⁷

4 23. The tracker, updated monthly, identifies institutions that provide
5 neither notification to ICE prior to release nor adequate hold time to assume DHS
6 custody as “Non-Cooperative.”⁸ Furthermore, it identifies institutions that do
7 provide notification to ICE prior to release but do not provide adequate hold time to
8 assume DHS custody as “Limited Cooperation.”⁹

9 24. ICE provided a copy of the Detainer Acceptance Tracker in spreadsheet
10 form to ILRC in 2017 in response to a previous FOIA request.

11 25. Further, according to the website of ICE’s ERO National Fugitive
12 Operation Program (NFOP), the NFOP operates a “Probation and Parole” program,
13 which targets noncitizens who are under probation or parole supervision.¹⁰ The
14 mandate of this program is presumably carried out by ICE field teams—consisting
15 of ICE Supervisory Detention and Deportation Officers (SDDOs) and Deportation
16 Officers (DOs) at ICE field offices around the country.

17 26. Given the public concern surrounding the topics above, transparency
18 about ICE’s activities is critical.

19 PLAINTIFF’S FOIA REQUEST

20 27. On August 19, 2024, Plaintiffs submitted their FOIA request, through
21 undersigned counsel, by email to the ice-foia@ice.dhs.gov inbox. *See* Exhibit B.¹¹
22 After receiving an instruction that the request should instead be submitted via the
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24 ⁷ *See* ICE Detainer Acceptance Tracker – Limited and Non-Cooperative Institutions (June 21, 2024)
<https://cis.org/sites/cis.org/files/KML/Sanctuary/Detainer-Acceptance-June-2024.pdf> (reflecting an ICE summary of
recent data from the Detainer Acceptance Tracker obtained through FOIA by the Center for Immigration Studies).

25 ⁸ *Id.*

26 ⁹ *Id.*

27 ¹⁰ *See Fugitive Operations*, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, [https://www.ice.gov/identify-and-](https://www.ice.gov/identify-and-arrest/fugitive-operations)
[arrest/fugitive-operations](https://www.ice.gov/identify-and-arrest/fugitive-operations) (last visited Dec. 7, 2024); *Memorandum For: Special Agents in Charge Field Office*
Directors, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (2014),
28 https://www.ice.gov/doclib/foia/policy/memo_TransProbParoleEnforcementResponsibilities_07.28.2014.pdf
(discussing the transition of probation and parole enforcement responsibilities from Homeland Security Investigations
to Enforcement and Removal Operations)

¹¹ The request contains an error and lists the date as August 20, 2024, but it was submitted on August 19, 2024.

1 Secure Release Portal, *see* Exhibit C, Plaintiffs’ counsel promptly re-submitted the
2 request there, *see* Exhibit D.

3 28. Plaintiffs’ request sought:

- 4 1. Data for the time period of 10/1/2017 to present on ICE
5 civil/administrative immigration arrests made, with a
6 breakdown by arrest date; apprehension method/agency;
7 event type; whether the arrest was made in the field or via a
8 law enforcement agency transfer (and if so, by which agency);
9 whether a law enforcement agency transfer followed issuance
10 of an ICE detainer (and if so, which agency was issued the
11 detainer); arrest AOR, team, program; arrest location (city,
12 county, state); arrestee country of citizenship, gender, age (or
13 year of birth), conviction information, probation/parole
14 status; and latest available status/disposition.
- 15 2. For ICE civil/administrative immigration arrests made **in the**
16 **field**, data for the time period of 10/1/2017 to present from
17 the **OM2 module** in ICE’s enforcement database, with a
18 breakdown by AOR; Team; Program; State; Operation;
19 Arrestee Country of Citizenship; Arrestee Classification;
20 Arrestee Criminality/Conviction; Activity Date; Place of
21 Arrest; Level of Police Markings; and Target vs. Non-Target
22 (“Activity Report” with Activity Type as “Arrest”).
- 23 3. From the “Detainer Acceptance Tracker” or any successive
24 record system for tracking county jail response to ICE
25 detainer requests and/or other requests for ICE access to jail
26 inmates or information, current (or last available) data,
27 including:
 - 28 1. Name and location (city, county, state) of the relevant
agency or facility;
 2. Type of local jurisdiction or agency (e.g. sheriff, police
department or other law enforcement entity);
 3. Current detainer and notification acceptance status,
including whether the agency holds people for ICE and
whether they provide notice of release;
 4. The extent or nature of ICE’s access to the facility;

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5. Comments regarding the jurisdiction or agency’s engagement on detainers and/or responses to ICE;
 6. Prioritization of that jurisdiction or agency for cooperation by ICE;
 7. The date of last engagement between ICE and the local jurisdiction or agency;
 8. The month and year that the jurisdiction or agency began or stopped accepting detainers or notification requests.
4. For the time period of 1/1/2020 to present, memoranda, bulletins, briefings, reports, guidance, handbooks/manuals, training materials, and/or data pertaining to the ICE ERO National Fugitive Operations Program’s “Probation and Parole” program.
 5. For the time period of 1/1/2020 to present, for the Los Angeles Field Office, San Francisco Field Office, and the ten (10) ERO Field Offices, including sub-offices, that had the highest number of field civil/administrative immigration arrests in FY 2023 where the Place of Arrest in OM2 was Probation and Parole, e-mail communications of Field Office personnel with probation or parole officials concerning:
 1. planned immigration arrests of individuals (adults or juveniles) under probation/parole supervision, including in-custody arrests or arrests at probation/parole check-ins, appointments, and/or at individuals’ homes;
 2. whether or not probation/parole officials are willing to share information about individuals (adults or juveniles) under their supervision with ICE and/or help to facilitate an immigration arrest; and
 3. any consequences for a person’s probation or parole as a result of their arrest and detention by ICE, including but not limited to possible probation/parole revocation as a result of inability to attend meetings, classes, programs, or appointments.

See Exhibit B, which is incorporated herein by reference.

1 29. Plaintiffs also indicated that for requests #1 and #2, they did not seek
2 any PII and that in any data report or spreadsheet ICE provides, columns containing
3 PII could be omitted.

4 30. Plaintiffs further requested a fee waiver or reduction for their request
5 pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), and as representatives of the news media
6 pursuant to 6 C.F.R. § 5.11(d)(1) and 5 U.S.C. § (a)(4)(A)(ii)(II).

7 31. On August 26, 2024, ICE sent a request for clarification of Plaintiffs’
8 request. ICE stated that “the time frame for both points 4 and 5 are too broad. For
9 #4, what about the probation and parole program are you seeking? A specific topic
10 is needed. #5, please identify the 10 field offices and identify the positions of ‘field
11 office personnel.’ Also, provide search term.” *See* Exhibit E.

12 32. In response, Plaintiffs agreed to narrow the timeframe for requests #4
13 and #5 to 1/1/2021. Plaintiffs also provided more information about the specific
14 documents about the “Probation and Parole” program that they were seeking.
15 Additionally, Plaintiffs provided the names of the 10 additional field offices they
16 were interested in emails for: San Antonio, Houston, New Orleans, Miami, Chicago,
17 New York City, Atlanta, Salt Lake City, Phoenix, and Seattle. Plaintiffs also
18 narrowed the field office personnel whose emails should be searched to SDDOs and
19 DOs currently assigned to teams that regularly make administrative arrests in the
20 field. Finally, Plaintiffs suggested some email search terms. *See* Exhibit E.

21 33. Plaintiffs’ response to ICE’s request for clarification seemed to trigger
22 a new review of the FOIA request. On the day Plaintiffs provided their response,
23 September 25, 2024, ICE sent an email acknowledging receipt of the FOIA request
24 that had been submitted on August 19, 2024. *See* Exhibit F.

25 34. Also on September 25, 2024, ICE sent another request for clarification.
26 This one was similar, but not identical, to the request for clarification ICE had sent
27 on August 26, 2024. It asked that Plaintiffs “[p]lease narrow the scope of records to
28 one or two years,” to “provide timeframes,” and to “provide exactly which [10]

1 ERO field offices” Plaintiffs were requesting records from for the email search. *See*
2 Exhibit H. This clarification request seemed to ignore the response Plaintiffs had
3 just sent in response to the August 26, 2024 clarification request.

4 35. On September 26, 2024, ICE sent yet another request for clarification.
5 This one *did* acknowledge Plaintiffs’ response to the August 26, 2024 clarification
6 request and asked that Plaintiffs “narrow timeframe for points 1 through 3 to one to
7 two years. We have received clarification for points 4 and 5.” *See* Exhibit G.

8 36. On October 1, 2024, Plaintiffs sent a response to the third clarification
9 request dated September 26, 2024. Plaintiffs explained that the data sought in
10 requests #1 and #2 was being sought for a longer period of time to allow for analysis
11 of trends over time. Further, Plaintiffs explained that pulling a larger set of data
12 would not be unduly burdensome for ICE because it was maintained in such a way
13 that allowed for the agency to electronically generate reports over a period of time.
14 *See* Exhibit G.

15 37. On October 1, 2024, Plaintiffs also responded to ICE’s second
16 clarification request dated September 25, 2024, explaining that Plaintiffs had already
17 provided responses to the questions posed by ICE in their responses to the August
18 26, 2024 and September 26, 2024 clarification requests, respectively. *See* Exhibit H.

19 38. No further word from ICE followed. To date, ICE has not responded to
20 Plaintiffs as required by statute. 5 U.S.C. § 552(a)(6)(A)(i).

21 39. More than twenty (20) business days have passed since ICE received
22 Plaintiffs’ FOIA request on August 19, 2024, and since Plaintiffs provided their last
23 response to a clarification request from ICE on October 1, 2024.

24 40. ICE has failed to issue a final determination on or produce records
25 responsive to Plaintiffs’ FOIA request within the applicable FOIA time limits.

26 **FEE WAIVER**

27 41. Plaintiffs seek a waiver or reduction of fees associated with this
28 request. A fee waiver or reduction is required where “disclosure of the information

1 is in the public interest because it is likely to contribute significantly to public
2 understanding of the operations or activities of the government and is not primarily
3 in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); 6 C.F.R. §
4 § 5.11(k)(1). In addition, search fees shall not be charged where requests are made
5 by a “representative of the news media.” 6 C.F.R. § 5.11(d)(1); 5 U.S.C. §
6 552(a)(4)(A)(ii)(II).

7 42. Plaintiffs intend to make information obtained as a result of this FOIA
8 request available to the public at no cost. Plaintiffs employ multiple channels of
9 communication and platforms to disseminate information to the public and have the
10 track record and technical expertise to digest, interpret, and share responsive
11 information obtained from public records requests for the public.

12 43. The ILRC has produced numerous reports, practice advisories,
13 graphics, and trainings to inform advocates and attorneys about ICE enforcement,
14 including on the issues covered by this request.¹² The ILRC shares these materials
15 through mailing lists, social media, and the organization’s webpage.¹³

16 44. The ILRC’s home webpage, ilrc.org, includes several banner tabs
17 linking to webpages titled “Areas of Expertise,” “Books and Trainings,” and
18 “Community Resources,”¹⁴ each linking to a separate webpage that offer resources
19 sorted by issue or by form of resource. Users can search these webpages to source a
20 plethora of free and informative resources on the immigration system, immigration
21 enforcement, specific practice advisories, and other immigration related topics.

22 45. The ILRC has also used previous records obtained via FOIA to produce
23 a national map of state and local participation in ICE enforcement, as well as several
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26 ¹² See, e.g., ILRC, New Data Analysis Reveals ICE Enforcement Activities Contradicted Biden Administration’s
27 Prioritization Guidelines (June 28, 2023), <https://www.ilrc.org/new-data-analysis-reveals-ices-enforcement-activities-contradicted-biden-administrations>; ILRC, Probation Agencies and the Deportation Pipeline (Aug 2021),
<https://www.ilrc.org/resources/probation-agencies-and-deportation-pipeline>.

28 ¹³ X.com, @the_ILRC, https://x.com/the_ILRC; Facebook.com, Immigrant Legal Resource Center (ILRC),
<https://www.facebook.com/immigrantlegalresourcecenter/>; Instagram.com, https://www.instagram.com/the_ilrc/;
website: <https://www.ilrc.org>.

¹⁴ See <https://www.ilrc.org/>.

1 explanatory reports.¹⁵ The ILRC used records detailing local jail cooperation with
2 ICE across the country to assess the level of cooperation by county and produced the
3 map as a free and easily accessible resource for the education of people across the
4 country.

5 46. The Harbor Institute has also published various reports and data tools
6 on policies impacting the immigrant community, including the Orange County
7 Sheriff's Department's participation in ICE enforcement through compliance with
8 ICE detainers.¹⁶ It has also published demographic information about those affected
9 by ICE enforcement.¹⁷ The Harbor Institute has made these resources available via
10 social media and the organization's webpage.¹⁸

11 47. The Harbor Institute has also used data obtained from the Orange
12 County Sheriff's Department (OCSD) through Public Records Requests to produce
13 an interactive map outlining OCSD collaboration with ICE in the form of referral
14 and transfer statistics.¹⁹

15 48. The Harbor Institute has also used data obtained from the 2022
16 American Community Survey (ACS) 5-year Estimate Subject Tables to produce an
17 interactive map outlining the housing crisis' acute effects on immigrant populations
18 throughout Orange County.²⁰

21 ¹⁵ See www.ilrc.org/local-enforcement-map; Lena Graber and Nikki Marquez, Searching for Sanctuary, ILRC (2016),
22 available at <https://www.ilrc.org/searching-sanctuary>; Lena Graber, Kemi Bello, Nikki Marquez, and Krsna Avila,
The Rise of Sanctuary, ILRC (2018), available at <https://www.ilrc.org/rise-sanctuary>.

23 ¹⁶ See Harbor Institute, Publications, Data Tools, & Other Resources, <https://harborinstituteoc.org/publications/>; Mai
24 Nguyen Do & Mariana N., Safeguarding Which Communities: An Analysis of the Orange County Sheriff's
Department's Continued Collusion with Immigration & Customs Enforcement (Feb 2024),
https://harborinstituteoc.org/wp-content/uploads/2024/03/MND_MN_OCSD-ICE_Feb24_HI_0227244.pdf.

25 ¹⁷ See *id.*

26 ¹⁸ X.com, @HarborInstOC, <https://x.com/HarborInstOC>; Facebook.com, Harbor Institute for Immigrant and
Economic Justice, <https://www.facebook.com/harborinstituteoc/>; Instagram.com,
<https://www.instagram.com/theharborinstitute/>; website: <https://harborinstituteoc.org/>.

27 ¹⁹ See Harbor Institute for Immigrant and Economic Justice, *Safeguarding Which Communities?*, Harbor Institute for
Immigrant and Economic Justice (February 26, 2024),
<https://storymaps.arcgis.com/stories/ae807fcc03de4ebfa961695661860d66>.

28 ²⁰ See Harbor Institute for Immigrant and Economic Justice, *Housing Conditions of Immigrants and Refugees in OC*,
Harbor Institute for Immigrant and Economic Justice (April 2, 2024)
<https://storymaps.arcgis.com/stories/8e77d30dfa2d4c3aadd7d5f22a15b59d>.

