

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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FAMILIES FOR FREEDOM; and JOHN DOE,

Plaintiffs.

v.

UNITED STATES BUREAU OF IMMIGRATION AND  
CUSTOMS ENFORCEMENT,

Defendant.  
-----X

STIPULATION  
AND ORDER

08 Civ. 5566 (JR) (JSR)

WHEREAS on June 20, 2008, Plaintiffs Families for Freedom and John Doe (the "Plaintiffs") filed a complaint ("the Complaint"), seeking the release of certain documents by the United States Bureau of Immigration and Customs Enforcement ("ICE") pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA");

WHEREAS the allegations in the Complaint concern, inter alia, a FOIA request dated April 9, 2008 (the "FOIA Request"), received by the FOIA Office of ICE on April 18, 2008, and attached to the Complaint as Exhibit A;

WHEREAS on August 4, 2008, ICE responded to Plaintiffs' FOIA Request by producing 285 pages and a letter dated August 4, 2008, setting forth the claimed exemptions for information withheld or redacted pursuant to applicable FOIA exemptions (collectively, ICE's "First FOIA Response");

WHEREAS on September 19, 2008 an Amended Stipulation and Order ("First Stipulation and Order") was fully executed by which the Plaintiffs withdrew portions of the

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FOIA Request in return for ICE's agreement to produce certain documents and a draft *Vaughn* index on December 2, 2008;

WHEREAS on December 2, 2008, ICE responded to Plaintiffs' FOIA Request by producing 3601 pages (which encompassed ICE's First FOIA Response) and a draft *Vaughn* Index, setting forth the claimed exemptions for information withheld or redacted pursuant to applicable FOIA exemptions (collectively, ICE's "Second FOIA Response");

WHEREAS on December 4, 2008 a second Stipulation and Order ("Second Stipulation and Order") was fully executed by which the Plaintiffs consented to ICE's request for an extension until January 9, 2009 to process a large volume of emails to and from its Office of Principal Legal Advisor and Plaintiffs agreed to narrow their request under paragraph 6(f) of the FOIA Request as set forth in paragraph 1 of the Second Stipulation and Order. In return, ICE agreed to provide a comprehensive list of every lawsuit filed or pending in federal court anywhere regarding "home raids" as defined in the FOIA Request;

WHEREAS on January 8, 2009, a third Stipulation and Order ("Third Stipulation and Order") was fully executed by which ICE agreed to provide Plaintiffs with a list of responsive documents, falling within the 3601 documents produced on December 2, 2008, which include any substantive discussion of: (a) consensual or non-consensual entries into homes by ICE agents; (b) instances, trends or allegations of misconduct during "home raids" as defined in Section (A)(5) of the FOIA Request; (c) ICE arrest goals/targets/quotas and/or how various types of arrests (i.e. target vs. non-target arrests) are counted toward such goals/targets/quotas (the "Designated Documents") and a revised draft *Vaughn* index by January 9, 2009. In addition, ICE agreed to provide Plaintiffs with certain data regarding information described in paragraph 3 of the Third Stipulation and Order, by January 16, 2009. In exchange, Plaintiffs agreed to forgo

any challenge to the adequacy of the search for the data, and to forgo any challenge to any exemptions claimed by ICE in the 3601 pages turned over on December 2, 2008, excluding the Designated Documents and a list of other documents set forth in paragraph 4 of the Third Stipulation and Order;

WHEREAS on January 9, 2009, ICE responded to Plaintiffs' FOIA Request by producing one additional document and a second draft *Vaughn* index pursuant to the Second Stipulation and Order. In addition, ICE released in part or in their entirety, eight documents it had previously withheld (collectively, ICE's "Third FOIA Response");

WHEREAS on January 16, 2009, ICE responded to Plaintiffs' FOIA Request by producing largely unredacted versions of nine narrative documents previously withheld in their entirety or in part, data documents responsive to paragraph 3 of the Third Stipulation and Order, and a revised third draft *Vaughn* index (collectively, ICE's "Fourth FOIA Response"); and

WHEREAS the parties now wish to resolve the remainder of their disputes concerning the FOIA Request without further litigation;

IT IS HEREBY STIPULATED AND AGREED, by and between the parties, as follows:

1. ICE agrees to produce all portions of the following five documents which have previously been withheld under FOIA exemptions (b)(2)high and (b)(5):
  - a. ICE002662-2664: ICE Intra-agency email Oct. 7, 2007 between OI Special Agents responding to questions of Nassau County official in preparation for Long Island meeting with Congressman King.
  - b. ICE002665-2667: ICE Intra-agency email Oct. 7, 2007 between OI Special Agents responding to questions of Nassau County official in preparation for Long Island meeting with Congressman King.

- c. ICE002668-2670: ICE Intra-agency email Oct. 7, 2007 between OI Special Agents re: Long Island meeting with Congressman King.
- d. ICE002671-2672: ICE Intra-agency email between OI Special Agents re: questions concerning OCS Surge relating to target locations in Nassau County dated Oct. 3, 2007.
- e. ICE002940-2949: Intra-agency email dated Oct. 4 2007 re: Long Island arrests by county and attached draft powerpoint Long Island report.

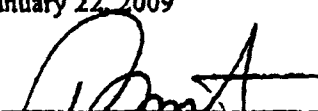
ICE will maintain all (b)(2)low redactions and the (b)(7)(C) redactions of names and identifying information in these five documents.

- 2. ICE agrees to produce an accounting of the number of Fugitive Operation Teams that were operational for each of the fiscal years 2005 through 2008.
- 3. ICE agrees to produce aggregate data for all Fugitive Operation arrests nationwide for fiscal years 2005 through 2008, disaggregated by:
  - a. Fugitive vs. non-fugitive arrests, within the meaning of ICE's Fugitive Case Management System Reporting and the 1000 Arrest Annual Goal for Fugitive Operation Teams Memorandum, dated September 29, 2006;
  - b. Criminal aliens vs. non-criminal aliens arrested, within the meaning of ICE's Case Load Priority with Fugitive Operations Memorandum, dated January 22, 2004; and
  - c. Arrests by fugitive priority categories I-V, as defined in ICE's Fugitive Operation Case Priority and Annual Goals Memorandum, dated January 31, 2006.
- 4. ICE will produce the information enumerated in Paragraphs 1-3 to Plaintiffs on or before January 23, 2009.

5. In return, Plaintiffs hereby dismiss this action with prejudice.
6. This Stipulation and Order shall not constitute an admission on the part of ICE and/or the United States that any document identified as responsive to the FOIA Request or this Stipulation and Order is subject to disclosure under the FOIA. Moreover, nothing contained herein shall be construed as prejudicing, impeding or limiting in any way ICE's authority to make any determination with respect to any aspect of the FOIA request or the Stipulation and Order, except as specifically provided above, including but not limited to any determination regarding the withholding of any responsive document, or portion thereof, pursuant to 5 U.S.C. §552(b) and all other applicable laws and regulations. This Stipulation and Order shall not constitute an admission on the part of the Plaintiffs that any documents responsive to the FOIA request or this Stipulation and Order withheld by ICE are lawfully withheld.
7. The parties understand and agree that this Stipulation and Order contains the entire agreement between them, and that no statements, representations, promises, agreements, or negotiations, oral or otherwise, between the parties or their counsel that are not included herein shall be of any force or effect.
8. The parties agree that the United States District Court for the Southern District of New York shall retain jurisdiction over any controversy or claim arising out of or relating to this Stipulation and Order.

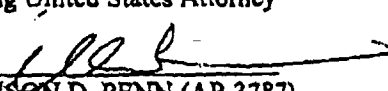
9. Entry of this Stipulation and Order does not confer or prevent the conferral of prevailing party status upon plaintiffs under the fee shifting provision of FOIA 5 U.S.C. § 552(a)(4)(E).

Dated: New York, New York  
January 22, 2009

  
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SO ORDERED:

  
United State District Judge  
Jed S. Rakoff

  
Date