

**COPY**

**FILED**

2008 OCT 28 AM 10:37

CLERK U.S. DISTRICT COURT  
CENTRAL DISTRICT OF CALIF.  
LOS ANGELES, CA

BY \_\_\_\_\_

GIBSON, DUNN & CRUTCHER LLP  
MAURICE SUH (CA SBN 147485)  
msuh@gibsondunn.com  
ANN S. ROBINSON (CA SBN 248476)  
arobinson@gibsondunn.com  
KATHERINE V.A. SMITH (CA SBN 247866)  
ksmith@gibsondunn.com  
333 South Grand Ave.  
Los Angeles, California 90071-3197  
Telephone: (213) 229-7000  
Facsimile: (213) 229-7520

NATIONAL IMMIGRATION LAW  
CENTER  
LINTON JOAQUIN (CA SBN 73547)  
joaquin@nilc.org  
KAREN C. TUMLIN (CA SBN 234691)  
tumlin@nilc.org  
NORA A. PRECIADO (CA SBN 239235)  
preciado@nilc.org  
3435 Wilshire Blvd., Suite 2850  
Los Angeles, California 90010  
Telephone: (213) 639-3900  
Facsimile: (213) 639-3911

Attorneys for Plaintiff  
NATIONAL IMMIGRATION LAW  
CENTER  
(See next page for additional counsel)

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

NATIONAL IMMIGRATION LAW  
CENTER, ACLU FOUNDATION OF  
SOUTHERN CALIFORNIA, and  
NATIONAL LAWYERS GUILD LOS  
ANGELES CHAPTER.

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF  
HOMELAND SECURITY and U.S.  
IMMIGRATION AND CUSTOMS  
ENFORCEMENT, an agency of the  
Department of Homeland Security,

Defendants.

CASE NO. **CV08-07092**

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

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

**DDP**  
**VBKx**

1 ACLU FOUNDATION OF SOUTHERN  
CALIFORNIA

2 AHILAN ARULANANTHAM (CA SBN 237841)

aarulanantham@aclu-sc.org

3 JENNIFER L. PASQUARELLA\*

jpasquarella@aclu-sc.org

4 1313 West 8th Street

Los Angeles, California 90017

5 Telephone: (213) 977-5211

Facsimile: (213) 977-5297

6 Attorneys for Plaintiffs

7 ACLU FOUNDATION OF SOUTHERN  
CALIFORNIA and

8 NATIONAL LAWYERS GUILD LOS  
ANGELES CHAPTER

9 \*Application for *Pro Hac Vice* Pending

## INTRODUCTION

1. More than seven months after requesting records regarding a matter of public concern from Immigration and Customs Enforcement ("ICE") and the United States Department of Homeland Security ("DHS") pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), and having received neither records nor a decision on their administrative appeals, Plaintiffs National Immigration Law Center ("NILC"), American Civil Liberties Union of Southern California ("ACLU-SC"), and the National Lawyers Guild Los Angeles Chapter ("NLG-LA") now seek declaratory and injunctive relief to compel the disclosure and release of agency records improperly withheld from Plaintiffs by ICE and DHS.

2. On March 4, 2008, Plaintiffs filed a FOIA request with ICE and DHS, seeking disclosure of government records pertaining to the workplace enforcement operation conducted by ICE at the Micro Solutions Enterprises ("MSE") manufacturing plant in Van Nuys, California on February 7, 2008 ("MSE raid"). The disclosure of the requested records will help inform public debate about important issues of public concern, including, but not limited to, concerns about potentially discriminatory and unlawful conduct relating to this ICE workplace enforcement operation and the potential abuses of constitutional and statutory rights of persons questioned, arrested and detained during the course of this operation.

3. As part of the MSE raid, ICE agents interrogated and detained well over 200 workers, although they had arrest warrants for only eight MSE employees. With the exception of the eight employees for whom ICE had warrants, ICE agents lacked individualized suspicion as to the other MSE workers they detained. From the first moments of the operation, all of the workers were effectively in custody; they were not free to leave. Most if not all of the male employees were handcuffed. Workers who attempted to call family members to arrange child care, to obtain copies of their immigration or citizenship documents, or to speak to legal counsel were prevented

1 from using their cell phones. Immigration agents made threatening gestures, such as  
2 holding their hands to their guns.

3 4. ICE agents transported approximately 140 workers to the downtown Los  
4 Angeles ICE office from the MSE raid site, where they were detained on civil  
5 immigration charges. Approximately fifty of these detained individuals were released  
6 on humanitarian grounds on February 7, 2008. By February 11, 2008, all but  
7 approximately 15 of the detained workers had been released on humanitarian release or  
8 bond. Many of the individuals released on humanitarian grounds, and many of those  
9 later detained, were required to wear electronic monitoring devices. Some of these  
10 workers are still subject to electronic monitoring devices.

11 5. Information regarding the MSE raid is of public concern. The MSE raid  
12 is one of several recent large worksite enforcement operations in which ICE conducted  
13 mass arrests and detentions using coercive tactics, sweeping in U.S. citizens and legal  
14 permanent residents, and unnecessarily detaining persons who pose no danger or flight  
15 risk whatsoever. The MSE raid was the largest such worksite action in the Los Angeles  
16 area for decades, and was similar in a number of respects to other large-scale recent  
17 raids, including the use of a large number of armed federal agents, the detention and  
18 interrogation of a large part of the workforce, and the indiscriminate use of electronic  
19 monitoring devices. Some or all of these circumstances characterized each of the raids  
20 at Pilgrim's Pride plants in Kentucky and four other states in April 2008, at  
21 Agriprocessors, Inc. in Postville, Iowa in May 2008, and at Howard Industries in  
22 Laurel, Mississippi in August 2008.

23 6. Plaintiffs seek to determine whether the MSE Raid and the subsequent  
24 treatment of any persons detained were carried out in accordance with applicable  
25 federal, state, and local statutes and regulations, as well as with the agency's policies  
26 and procedures and consistent with its internal guidelines. The MSE Raid and other  
27 ICE worksite enforcement operations have been the subject of dozens of news stories,  
28 carried by both local and national media sources. The public has an urgent need to

1 know if ICE planned for and engaged in any violations of law, regulation, guidelines  
2 or policies and procedures. If abusive practices occurred in connection with the MSE  
3 Raid, public disclosure of this information may lead to a salutary reform of the  
4 government's practices. If abusive practices did not occur, public disclosure of this  
5 fact will help alleviate public concerns regarding the government's conduct in  
6 connection with the MSE Raid.

7 7. The documents sought by Plaintiffs regarding the MSE raid go to the  
8 heart of the FOIA's statutory aims of promoting open government, preventing the  
9 entrenchment of secret government practices, and permitting public scrutiny of  
10 governmental action that is of widespread concern.

11 8. To date, ICE and DHS have failed to produce a single document in  
12 response to Plaintiffs' request under the FOIA for the release of agency records  
13 pertaining to the MSE raid. Having exhausted its administrative remedies, Plaintiffs  
14 now bring this action to enjoin ICE and DHS from continuing to improperly withhold  
15 documents in violation of the FOIA.

### 16 **JURISDICTION AND VENUE**

17 9. This Court has federal subject matter jurisdiction over this action and  
18 personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). Because this  
19 action arises under federal law against an agency of the United States, this Court also  
20 has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1346.

21 10. Venue lies in this district pursuant to 28 U.S.C. § 1402 and 5 U.S.C.  
22 § 552(a)(4)(B). Plaintiffs reside or have their principal places of business in this  
23 district.

### 24 **PARTIES**

25 11. Plaintiff National Immigration Law Center ("NILC") is a non-profit, non-  
26 partisan organization whose mission is to protect and promote the rights of low-income  
27 immigrants and their family members. NILC staff specializes in immigration law, and  
28 the employment and public benefits rights of immigrants. NILC staff have given

1 trainings, written resource materials, and conducted research relating to ICE worksite  
2 enforcement operations, and NILC staff have assisted in the legal representation of  
3 persons who have been arrested on civil immigration charges as a result of such  
4 operations. The Center conducts policy analysis and impact litigation and provides  
5 publications, technical advice, and trainings to a broad constituency of legal aid  
6 agencies, community groups, and pro bono attorneys. NILC maintains its principal  
7 office in Los Angeles, California.

8 12. Plaintiff ACLU Foundation of Southern California ("ACLU-SC") is a  
9 non-profit organization dedicated to the defense of civil rights and civil liberties. As  
10 part of its work, ACLU-SC disseminates information to the public through newsletters,  
11 news briefings, "Know Your Rights" documents, and other educational and  
12 informational materials. ACLU-SC also disseminates information to individuals, tax-  
13 exempt organizations, not-for-profit groups, and members through its website,  
14 <http://www.aclu-sc.org>. In addition, ACLU-SC shares information with the national  
15 ACLU office. The national ACLU publishes information through multiple outlets  
16 including newsletters, action alerts, videos, and other media. ACLU publications are  
17 disseminated across the country to individuals and organizations. The ACLU also  
18 publishes an electronic newsletter, which is distributed to subscribers by e-mail, and  
19 maintains a website of civil rights and civil liberties information at  
20 <http://www.aclu.org>. The ACLU-SC maintains its principal office in Los Angeles.

21 13. Plaintiff National Lawyers Guild Los Angeles Chapter ("NLG-LA") is an  
22 association dedicated to the defense of civil rights over property rights. Members of  
23 the National Lawyers Guild's National Immigration Project are attorneys who  
24 specialize in removal defense of noncitizens and regularly publish newsletters, news  
25 briefings, right-to-know documents, and other materials that are disseminated to the  
26 public. Their materials are widely available to everyone, including tax- exempt  
27 organizations, not-for-profit groups, law students and faculty, at no cost or for a  
28 nominal fee. Finally, NLG-LA regularly disseminates information through

1 newsletters, which are distributed to subscribers by mail. The NLG-LA maintains its  
2 principal office in Los Angeles.

3 14. The United States Department of Homeland Security ("DHS") is  
4 the executive department responsible for enforcing federal immigration laws.  
5 Immigration and Customs Enforcement ("ICE") is an agency of DHS and is  
6 responsible for enforcing the immigration laws, including designing and implementing  
7 the MSE raid that was the subject of Plaintiffs' March 4, 2008 FOIA request.

### 8 STATUTORY FRAMEWORK

9 15. The Freedom of Information Act, 5 U.S.C. § 552, mandates disclosure of  
10 records held by a federal agency, in response to a request for such records by a  
11 member of the public, unless records fall within certain narrow statutory exemptions.

12 16. The basic purpose of the FOIA is to enable the public to hold the  
13 government accountable for its actions, through transparency and public scrutiny of  
14 governmental operations and activities. Through access to government information the  
15 FOIA helps the public better understand the government, thereby enabling a vibrant  
16 and functioning democracy.

17 17. Any member of the public may make a request for records to an agency of  
18 the United States under the FOIA. An agency that receives a FOIA request must  
19 respond in writing to the requestor within 20 business days after the receipt of such  
20 request. 5 U.S.C. § 552(a)(6)(A)(I). In its response the agency must inform the  
21 requestor whether or not it intends to comply with the request, provide reasons for its  
22 determination, and inform the requestor of her right to appeal the determination. *Id.*

23 18. A FOIA requestor who has been denied records may appeal the denial to  
24 the agency. The agency must make a determination on the appeal within 20 business  
25 days of receipt of the appeal. 5 U.S.C. § 552(a)(6)(A)(ii).

26 19. A FOIA requestor is deemed to have exhausted her administrative  
27 remedies if the agency fails to comply with the statutory time limits. 5 U.S.C. §  
28 552(a)(6)(C)(I).

20. The FOIA requires an agency to timely disclose all records responsive to a FOIA request that do not fall within nine narrowly construed statutory exemptions. 5 U.S.C. § 552(a)(3)(A); 5 U.S.C. § 552(b)(1)-(b)(9). The FOIA also requires an agency to make a reasonable search for responsive records. *Zemansky v. Environmental Protection Agency*, 767 F.2d 569, 571 (9th Cir. 1985).

21. Upon complaint, a district court has jurisdiction to enjoin the agency from withholding records and to order production of records that are subject to disclosure. 5 U.S.C. § 552(a)(4)(B).

## FACTUAL BACKGROUND

22. ICE conducts worksite enforcement actions as part of its charge to enforce U.S. immigration laws. ICE and DHS have guidelines, memoranda, policies and procedures and the like in place to govern how actions such as worksite enforcement actions are to be carried out. To give just one example, ICE developed voluntary “Guidelines for Identifying Humanitarian Concerns among Administrative Arrestees When Conducting Worksite Enforcement Operations.” These guidelines set up numerous planning benchmarks for ICE as it plans for worksite raids targeting over 150 people. ICE also creates more specific plans relating to enforcement actions that are planned for a particular site, such as MSE. These plans are communicated to the ICE agents that carry out the enforcement actions as well as, in some instances, local law enforcement personnel.

23. On February 7, 2008, approximately 100 or more armed ICE agents entered the Micro Solutions Enterprise ("MSE") factory at Van Nuys, California in order to conduct a workplace raid. The agents entered through each of the exits to the building, sealing all of these exits, surrounded workers in different parts of the factory and ordered them to stop working. They then handcuffed most or all of the male workers and marched all of the factory workers – men and women – into the cafeteria or to other holding areas. The vast majority of the workers were forced into the cafeteria. The workers had no choice but to proceed to the holding areas ICE had set



1 up. The factory is large, but ICE agents clearly had designed a plan in advance such  
2 that they knew where they were going to detain the more than 200 MSE workers.  
3 They had brought two or more large buses with them for the raid.

4 24. When the ICE agents ordered the workers to march to the areas  
5 designated for their interrogation, the workers had no choice but to follow those orders.  
6 None of the workers, including U.S. citizens and those authorized to work in the  
7 United States, were free to leave. The ICE agents gave the instruction as marching  
8 orders, and those who refused to go along were told that they had to comply. Even  
9 people who attempted to make phone calls or go to the bathroom were not allowed to  
10 do so prior to their being marched into the separate rooms.

11 25. Once the ICE agents had marched the majority of the workers into the  
12 cafeteria, they separated the men and the women. At this point, most if not all of the  
13 men were handcuffed. The men were then separated into two groups—one group  
14 consisting of factory floor workers and the other of management workers. The  
15 workers were then told to form lines, and once they did so the ICE agents began to  
16 question them. The workers were not allowed to make any calls, even to arrange for  
17 childcare or to have family members bring them the documents the ICE agents were  
18 demanding. Workers who asked to call attorneys were told that they could not.

19 26. Prior to conducting the raid itself, ICE officials had sought and obtained  
20 judicial warrants to conduct certain limited activities at the factory. Specifically, they  
21 obtained authorization to search the worksite, and they obtained authorization to arrest  
22 eight people working at the factory. However, rather than limiting their activities to  
23 those authorized by the warrants, the ICE agents detained and interrogated  
24 approximately 200 other people, including handcuffing most or all males, without  
25 individualized suspicion. Moreover, ICE officials knew in advance that they would  
26 engage in activities not authorized by the warrants, as they brought several buses to the  
27 factory, which were then used to transport approximately 140 workers to downtown  
28

1 Los Angeles for processing. They also set a "perimeter" outside the factory, and  
2 blocked people from entering it.

3 27. Many of the detained workers were, and continue to be, required to wear  
4 electronic monitoring devices. ICE made no attempt to determine whether the workers  
5 on whom these monitoring bracelets were placed were actual flight risks. In fact,  
6 many workers had been released on their own recognizance and were not required to  
7 wear the electronic monitoring devices until after they attended subsequent  
8 appointments with ICE. The electronic monitoring devices impose a significant  
9 burden on those persons who have been made to wear them.

### 10 PLAINTIFFS' FOIA REQUEST

11 28. On March 4, 2008, the Plaintiffs served ICE and DHS, via first-class U.S.  
12 mail and facsimile, with a request for agency records pursuant to the FOIA  
13 (hereinafter, the "FOIA request"). A copy of that letter is attached to this complaint as  
14 Exhibit A. The FOIA request sought the disclosure by ICE of documents pertaining to  
15 the MSE raid.

16 29. The FOIA request sought 20 categories of agency records:

- 17 1) Worksite Enforcement Policies memoranda relating to the MSE raid,  
18 including pre-operation plans, worksite enforcement operation plans,  
19 and pre-operation briefings.
- 20 2) Communications between ICE and state and local law enforcement  
21 regarding the MSE raid.
- 22 3) Correspondence between ICE and state and local government  
23 agencies regarding the MSE raid.
- 24 4) Communications between ICE and MSE staff regarding the MSE  
25 raid.
- 26 5) Records relating to the inspection or audit of MSE's I-9 forms.
- 27 6) Copies of the administrative warrants issued and served on any agent  
28 of MSE relating to the MSE raid.

- 7) Copies of the criminal warrants issued and served on any agent of MSE relating to the MSE raid.
- 8) Records pertaining to the manner in which agents conducted the MSE raid, including the manner in which employees were selected for questioning.
- 9) Records pertaining to the manner in which employees were restrained in the MSE raid.
- 10) Records pertaining to whether the employees would have telephone access during or after the MSE raid to secure medication, care for dependents or off-site immigration or citizenship documents.
- 11) Records pertaining to the manner in which ICE agents would determine the existence of humanitarian grounds necessitating release of employees involved in the MSE raid.
- 12) Records pertaining to conditions of release that would be placed on individuals released on humanitarian grounds, including but not limited to use of electronic monitoring devices.
- 13) Communications and/or contracts between ICE and the contractor that monitors the electronic monitoring devices used during or following the MSE raid.
- 14) Records relating to the make, model, and potential hazards of the electronic monitoring devices used during or following the MSE raid.
- 15) Records relating to the costs of implementing and using the electronic monitoring devices used during or following the MSE raid.
- 16) Communications between ICE officers and the Office of Detention and Removal pertaining to detention space and transportation of individuals detained at the MSE raid.
- 17) Communications between ICE and MSE relating to the apprehension of unauthorized workers or the results of the MSE raid.

1 18) Records relating to the initiation of the MSE raid, including the  
2 reasons for selecting the method that was used to conduct the raid.

3 19) Documents prepared by ICE pertaining to the MSE raid.

4 20) Records listing the names, countries of origin, and/or A-numbers of  
5 the workers detained at the MSE raid.

6 *See Exhibit A.*

7 30. Plaintiffs sought a waiver of fees and expedited processing of their FOIA  
8 requests to DHS and ICE.

9 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

10 31. ICE provided its initial substantive response to the FOIA request on  
11 March 20, 2008. A copy of that response is attached to this complaint as Exhibit B. In  
12 its initial response ICE indicated that a “search of the Office of Investigations for  
13 documents responsive to [the] FOIA request determined [sic] that records are withheld  
14 in their entirety pursuant to Title 5 U.S.C. § 552(b)(7)(A).” *See Exhibit B.* ICE  
15 invoked this exemption, alleging that all responsive records could be withheld, because  
16 the exemption “protects from disclosure records or information compiled for law  
17 enforcement purposes [which] release . . . could reasonably be expected to interfere  
18 with law enforcement proceedings.” Exhibit B. ICE did not furnish any affidavits or  
19 other evidence describing the parameters of its search nor did ICE provide any  
20 responsive documents, redacted or otherwise, despite the fact that many responsive  
21 documents could not properly be withheld – or could not properly be withheld in their  
22 entirety – under the exemption invoked.

23 32. DHS provided its response to the FOIA request on March 24, 2008. A  
24 copy of that response is attached to this complaint as Exhibit C. DHS indicated that  
25 the records covered by the FOIA request would fall under the purview of ICE. On that  
26 basis, DHS determined that because ICE had received the request, and had issued a  
27 response, no further action was necessary from their personnel. *See Exhibit C.* DHS  
28

1 did not provide any evidence that it had undertaken any search for responsive  
2 documents nor did it provide any responsive documents, redacted or otherwise.

3 33. On April 8, 2008, Plaintiffs timely appealed ICE's refusal to disclose the  
4 responsive documents within its control, pursuant to 5 U.S.C. § 552(a)(6)(A).  
5 Plaintiffs appealed ICE's initial response on multiple distinct grounds. First, that ICE  
6 had failed to fulfill its legal duty to release requested documents that were *not* able to  
7 be withheld under the claimed exemption. Second, that ICE disregarded its duty to  
8 provide any segregable portions of responsive documents. *See* 5 U.S.C. § 552(b).  
9 Furthermore, Plaintiffs appealed based upon ICE's failure to provide an estimate of the  
10 quantity of records withheld, as required by regulation. *See* 6 C.F.R. § 5.6(c)(3).  
11 Plaintiffs also requested from ICE a complete list of responsive documents uncovered  
12 by its search and a specific indication of what material is being withheld based upon  
13 any claimed exemption. This appeal was served on ICE via certified mail, return  
14 receipt requested. The return receipt indicates that the appeal letter was received on  
15 April 18, 2008. A copy of this appeal is attached to this complaint as Exhibit D.

16 34. On May 9, 2008, Plaintiffs timely appealed DHS's failure to search for,  
17 and disclose, responsive documents within its control, pursuant to  
18 5 U.S.C. § 552(a)(6)(A). Plaintiffs informed DHS that DHS had failed to fulfill its  
19 legal duty to search for all responsive agency records and to produce all records that  
20 are not exempt from disclosure (noting that Plaintiffs did not concede that any  
21 potentially responsive documents were properly subject to any exemption that may be  
22 claimed). Furthermore, DHS failed to provide the statutorily required notice of  
23 Plaintiffs' right to appeal its decision when it informed Plaintiffs that it had reached its  
24 final decision on the FOIA request. Plaintiffs' appeal was served on DHS via certified  
25 mail, return receipt requested. The return receipt indicates that this appeal letter was  
26 received on May 20, 2008. A copy of this appeal is attached to this complaint as  
27 Exhibit E.  
28



1 ICE and DHS's illegal withholding of government documents pertaining to the MSE  
2 raid.

3 41. Declaratory relief is authorized under 22 U.S.C. § 2201 because an actual  
4 controversy exists regarding ICE and DHS's improper withholding of agency records  
5 in violation of the FOIA. An actual controversy exists because Plaintiffs contend that  
6 ICE and DHS's continuing failure to act with respect to Plaintiffs' FOIA request is in  
7 violation of the law, whereas ICE and DHS contend otherwise.

8 WHEREFORE, Plaintiffs pray for judgment against ICE and DHS as follows:

9 (a) For declaratory relief declaring that ICE and DHS's failure to disclose the  
10 records requested by Plaintiffs is unlawful;

11 (b) For injunctive relief ordering ICE and DHS to process immediately and  
12 expeditiously Plaintiffs' FOIA request and, upon such processing, to make available  
13 the requested records to Plaintiffs;

14 (c) For Plaintiffs' reasonable attorney fees and other litigation costs  
15 reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and

16 (d) For such other relief as the Court may deem just and proper.

17 DATED: October 28, 2008

18 GIBSON, DUNN & CRUTCHER LLP  
19 MAURICE SUH  
20 ANN S. ROBINSON  
KATHERINE V.A. SMITH

21 NATIONAL IMMIGRATION LAW CENTER  
22 LINTON JOAQUIN  
23 KAREN C. TUMLIN  
24 NORA A. PRECIADO

25 By:

26 Ann S. Robinson  
27 Ann S. Robinson

28 Attorneys for Plaintiff  
NATIONAL IMMIGRATION LAW CENTER

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

ACLU FOUNDATION OF SOUTHERN  
CALIFORNIA  
AHILAN ARULANANTHAM  
JENNIFER L. PASQUARELLA

By:   
\_\_\_\_\_  
Ahilan Arulanantham

Attorneys for Plaintiffs  
ACLU FOUNDATION OF SOUTHERN  
CALIFORNIA  
NATIONAL LAWYERS GUILD LOS  
ANGELES







NATIONAL  
IMMIGRATION  
LAW CENTER  
www.nilc.org

BOARD OF DIRECTORS

Allen Erenbaum  
*Chair*  
Mayer, Brown,  
Rowe & Maw

Cynthia Lange  
*Secretary*  
Fragomen, Del Rey,  
Berssen & Loewy, PC

Lucas Guttentag  
*Treasurer*  
American Civil  
Liberties Union,  
Immigrants'  
Rights Project

Della Bahan  
Bahan & Associates

Andrea Bazan-Manson  
Triangle Community  
Foundation

Richard Boswell  
University of California  
Hastings College of Law

Muzaffar Chishti  
Immigration Policy  
Institute at  
New York University  
School of Law

Iris Gomez  
Massachusetts Law  
Reform Institute

Michèle Lord  
Lord, Ross

Lin-Hua Wu  
Kekst and Company

*Organizations listed for  
identification purposes only*

EXECUTIVE DIRECTOR

Linton Joaquin

LOS ANGELES  
(HEADQUARTERS)  
3435 Wilshire Boulevard  
Suite 2850  
Los Angeles, CA 90010  
213 639-3900  
fax 213 639-3911

WASHINGTON, DC  
1101 14th Street, NW  
Suite 410  
Washington, DC 20005  
202 216-0261  
fax 202 216-0266

OAKLAND  
405 14th Street  
Suite 1400  
Oakland, CA 94612  
510 663-8282  
fax 510 663-2028

VIA FIRST CLASS MAIL AND FACSIMILE

March 4, 2008

Catherine M. Papoi, FOIA Officer  
Vania T. Locket, FOIA Requester Service Center Contact  
U.S. Department of Homeland Security  
The Privacy Office  
245 Murray Drive, SW Building 410  
STOP-0550  
Washington, D.C. 20528-0550

Catrina Pavlik-Keenan, FOIA Officer  
Anastazia Taylor, FOIA Requester Service Center Contact  
U.S. Immigration and Customs Enforcement  
800 North Capitol Street, N.W.  
5<sup>th</sup> Floor, Suite 585  
Washington, D.C. 20528

RE: Request under the Freedom of Information Act (FOIA)

Dear FOIA Officer:

The National Immigration Law Center ("NILC"), the American Civil Liberties Union of Southern California ("ACLU-SC"), and the National Lawyers Guild Los Angeles Chapter ("NLG-LA") (collectively "the Requestors") make this request for information under the Freedom of Information Act (FOIA), 5 U.S.C. § 552 et seq. The Requestors make this request for records because of their concerns about the manner in which a workplace enforcement operation in Van Nuys, California was conducted, and the subsequent treatment of the persons detained in the operation.

The following requests pertain to a worksite immigration enforcement operation conducted on or about February 7, 2008 by the Bureau of Immigration and Customs Enforcement (ICE) at Micro Solutions Enterprises located at 8201 Woodley Avenue, Van Nuys, CA. With respect to the enforcement action at Micro Solutions Enterprises ("MSE"), please provide all records<sup>1</sup> which were prepared, received, transmitted, collected and/or

<sup>1</sup> The term "records" as used herein includes but is not limited to all records or communications preserved in electronic or written form, including but not limited to correspondence, documents, data, videotapes, audio tapes, faxes, files, e-mails, guidance, guidelines, evaluations, instructions, analyses, memoranda, agreements,

March 4, 2008

maintained by the ICE<sup>2</sup> or the Department of Homeland Security (DHS) relating or referring to the following:

- 1) Any and all records, including but not limited to documents, correspondence, memoranda, and communications pertaining to documents referenced in the *Worksite Enforcement Policies Memorandum*, Memo, Pearson, Exec. Assoc. Comm. (HQOPS 50/19-P)(Oct. 20, 199), including but not limited to the pre-operation plans, worksite enforcement operation plans, and pre-operation briefings pertaining to the worksite enforcement operation that was conducted at MSE.
- 2) Any and all records, including but not limited to communications, correspondence, memoranda between ICE and any state or local law enforcement agencies relating to the worksite enforcement operation at MSE.
- 3) Any and all records, including but not limited documents, correspondence, memoranda and communications between ICE and any other state or local governmental agencies pertaining to the worksite enforcement operation at MSE.
- 4) Any and all records, including but not limited documents, correspondence, memoranda and communications between ICE and MSE managers, supervisors, employees and/or agents pertaining to the worksite enforcement operation.
- 5) Any and all records, including but not limited documents, correspondence, memoranda and communications pertaining to the inspection or audit of MSE's I-9 forms.
- 6) Copies of any and all administrative warrants issued and served on an agent of MSE relating to the worksite enforcement operation.
- 7) Copies of any and all criminal warrants issued and served on an agent of MSE relating to the worksite enforcement operation.
- 8) Any and all records, including but not limited documents, correspondence, memoranda, guidelines and communications pertaining to the manner in which agents were to conduct the worksite enforcement operation at MSE, including the manner in which employees would be selected for questioning and manner of questioning for each employee.
- 9) Any and all records, including but not limited documents, correspondence, memoranda, guidelines and communications

---

notes, orders, policies, procedures, protocols, reports, rules, technical manuals, technical specifications, training manuals, or studies.

<sup>2</sup> All requests for ICE records in this request should be understood to include records prepared, received, transmitted, collected and/or maintained by the former Immigration and Nationality Service (INS).

March 4, 2008

pertaining to the manner in which employees would be restrained during the worksite enforcement operation at MSE.

- 10) Any and all records, including but not limited documents, correspondence, memoranda, guidelines and communications pertaining to whether employees of MSE would be provided with telephone access during the worksite action or at the completion of the worksite enforcement operation to secure medication, care for dependents or documents located off-site proving their lawful residence in the U.S. and their authorization to work.
- 11) Any and all records, including but not limited documents, correspondence, memoranda, guidelines or communications pertaining to the manner in which ICE agents would determine the existence of humanitarian grounds in order to release employees involved in the worksite enforcement operation of MSE.
- 12) Any and all records, documents, correspondence, memoranda, guidelines or communications pertaining to the conditions of release that would be placed on individuals released on humanitarian grounds, including but not limited to the condition of placing these individuals on electronic monitoring devices.
- 13) Any and all records, including but not limited documents, correspondence, memoranda, or communications between the contractor that monitors the electronic monitoring devices and ICE, including but not limited to any government contracts.
- 14) Any and all records, including but not limited documents, correspondence, memoranda, or communications pertaining to the make, model and potential hazardous associated with the electronic monitoring devices.
- 15) Any and all records, including but not limited documents, correspondence, memoranda, or communications pertaining to the costs of implementing and using electronic monitoring devices, including but not limited to the cost per day of electronic monitoring per person.
- 16) Any and all records, including but not limited documents, correspondence, memoranda and communications between the ICE Supervisory Agent, Special Agent in Charge, or other ICE officer leading the worksite enforcement operation at MSE and the Office of Detention and Removal (DRO) pertaining to the detention space and transportation of detained individuals.
- 17) Any and all records, including but not limited documents, correspondence, memoranda and communications between ICE and MSE pertaining to the apprehension of unauthorized workers or the results of the worksite enforcement operation conducted at MSE.
- 18) Any and all records, including but not limited documents, correspondence, memoranda and communications pertaining to the initiation of the worksite enforcement operation at MSE, including, but

March 4, 2008

not limited to, the reasons for selecting the method that was used to conduct the worksite operation.

- 19) Any and all records, including but not limited documents, correspondence, memoranda, communications, including reports, prepared by ICE pertaining to the worksite enforcement action conducted at MSE.
- 20) Any and all records, including but not limited documents or communications listing the names, country of origin, and/or A-numbers of workers detained at the worksite enforcement operation at MSE or any other individuals detained at other locations in connection with this action.

#### **Waiver of All Costs**

We request a waiver of all costs pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) ("Documents shall be furnished without any charge . . . if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester"). Disclosure in this case meets the statutory criteria, and a fee waiver would fulfill Congress' legislative intent in amending FOIA. See *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be 'liberally construed in favor of fee waivers for noncommercial requesters.'") (citation omitted).

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 regarding high-visibility worksite enforcement actions. The records requested are not sought for commercial use, and the Requestors plan to disseminate the information disclosed through print and other media to the public at no cost, and through meetings and correspondence with other advocates serving immigrants. If the fee waiver request is denied, while reserving our right to appeal such a decision, we will pay fees up to \$25.00. If you estimate that the fees will exceed this limit, please inform us.

#### **Limitation of Processing Fees and Waiver of Search and Review Fees**

In the event that the request for waiver of all costs is denied, we request a limitation of processing fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) ("fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by . . . a representative of the news media . . .") and 28 C.F.R. § 16.11(c)(1)(i), 16.11(d)(1) (search and review fees shall not be charged to "representatives of the news media."). The information sought in this request

March 4, 2008

is not sought for a commercial purpose. The Requestors include non-profit organizations serving the community who intend to disseminate the information gathered by this request to the public at no cost.

NILC is a nonprofit national legal advocacy organization whose mission is to protect and promote the rights and opportunities of low-income immigrants and their families. NILC serves as an important resource to a broad range of immigrant advocacy and community organizations, and legal service organizations. As a part of its work, NILC disseminates information to the public through electronic newsletters, news alerts, issue briefs, trainings, and other educational and informational materials. In addition, NILC also disseminates information to individuals, tax-exempt organizations, not-for-profit groups, and members through its website, <http://www.nilc.org>.

The ACLU-SC is a non-profit organization dedicated to the defense of civil rights and civil liberties. As part of its work, ACLU-SC disseminates information to the public through newsletters, news briefings, "Know Your Rights" documents, and other educational and informational materials. ACLU-SC also disseminates information to individuals, tax-exempt organizations, not-for-profit groups, and members through its website, <http://www.aclu-sc.org>. In addition, ACLU-SC shares information with the national ACLU office. The ACLU publishes information through multiple outlets including newsletters, action alerts, videos, and other media. ACLU publications are disseminated across the country to individuals and organizations. The ACLU also publishes an electronic newsletter, which is distributed to subscribers by e-mail, and maintains a website of civil rights and civil liberties information at <http://www.aclu.org>.

The National Lawyers Guild of Los Angeles is an association dedicated to the defense of noncitizens' civil rights. Members of the National Lawyers Guild's immigration committee are attorneys that specialize in removal defense of noncitizens and regularly publishes newsletters, news briefings, right-to-know documents, and other materials that are disseminated to the public. Their material is widely available to everyone, including tax-exempt organizations, not-for-profit groups, law students and faculty, for no cost or for a nominal fee. Finally, NLG regularly disseminates information through newsletters, which are distributed to subscribers by mail.

#### **Request for Expedited Processing**

Expedited processing is warranted because there is "an urgency to inform the public about an actual or alleged federal government activity" by organizations "primarily engaged in disseminating information." 28 C.F.R. § 16.5(d)(1)(ii). This request implicates a matter of urgent public concern:

March 4, 2008

namely, government policies and practices related to immigration raids, which often impact lawful workers and citizens as well.

In addition, expedited processing is also warranted because the information is needed immediately to prevent "the loss of substantial due process rights" to those affected by this worksite operation. See 28 C.F.R. § 16.5(d)(1)(iii). There are reports that, if accurate, raise serious questions about the manner in which the worksite enforcement action was conducted and whether due process was afforded to persons detained in the operation. Requests for information bearing upon potential Constitutional violations require an immediate response to cease present violations and prevent future violations.

Expedited processing is also warranted because the information sought relates to "a matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence." 28 C.F.R. § 16.5(d)(1)(iv). The instant request relates to possible violations of ICE's internal procedures as well as possible violations of the detainees' statutory and Constitutional rights.

The exceptional media interest in the conduct of ICE worksite enforcement operations is reflected in widespread news coverage at both the national and local level. See, e.g., *Raid an 'Outrageous Use of Force,' Union Says*, CNSNews.Com (Dec. 13, 2006); *Inhumane Raid Was Just One of Many*, Boston Globe (Mar. 26, 2007), *350 are held in immigration raid*, Boston Globe (Mar. 7, 2007); *Immigration Raid Rips families*, Washington Post (Mar. 18, 2007); *At least 56 arrested in immigration raids at Mc Donalds*, Associated Press, (Sep. 28, 2007); *Immigration raids Koch Foods Chicken Plant*, Reuters (Aug. 28, 2007); *Portland plant raid highlights safety, say officials*, Seattle Times, AP (June 14, 2007).

At a minimum, should you determine that expedited processing is not warranted, while reserving our right to appeal that decision, we expect a response within the 20-day time limit set forth under 5 U.S.C. § 552(a)(6)(A)(ii).

The requested records are not exempt from disclosure under FOIA. We expect that all records will be provided in complete form. To the extent that any requested records are marked classified, please redact such records and immediately provide us with the remaining records. If you deny this request in whole or in part, please provide a written explanation for that denial, including reference to the specific statutory exemptions upon which you rely and notify us of appeal procedures available under the law. Also,

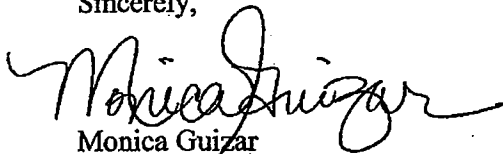
March 4, 2008

please provide all segregable portions of otherwise exempt material. Requesters reserve the right to appeal a decision to withhold any information, to deny a waiver of fees, or to deny a limitation of processing fees.

We appreciate your prompt response to this request. Please provide us responsive documents as soon as they are identified. If you have any questions regarding this request or if the request for a fee waiver is denied, please contact Linton Joaquin at (213) 674-2909

Thank you in advance for your timely consideration of this request.

Sincerely,



Monica Guizar  
Employment Policy Attorney  
National Immigration Law Center  
(213) 639-3900 ext. 123  
guizar@nilc.org



**EXHIBIT B**

U.S. Department of Homeland Security  
425 I Street, NW  
Washington, DC 20536



**U.S. Immigration  
and Customs  
Enforcement**

Ms. Monica Guizar  
Employment Policy Attorney  
National Immigration Law Center  
3435 Wilshire Boulevard, Suite 2850  
Los Angeles, CA 90010

MAR 20 2008

Re: DIS 2-01 OI:MS:ID  
08-FOIA-1644

Dear Ms. Guizar:

This is the final response to your Freedom of Information Act (FOIA) request to the Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE) dated March 4, 2008, and seeking information pertaining to a worksite immigration enforcement operation conducted on or about February 7, 2008, by ICE at Micro Solutions Enterprises located at 8201 Woodley Avenue, Van Nuys, CA. Specifically, you requested twenty categories of records.

To provide you with the greatest degree of access authorized by law, we have considered your request under both the FOIA, 5 U.S.C. § 552, and the Privacy Act, 5 U.S.C. § 552a. Information about an individual that is maintained in a Privacy Act system of records may be accessed by that individual<sup>1</sup> unless the agency has exempted by system of records from the access provisions of the Privacy Act.<sup>2</sup> However, I have determined that none of the withheld information is maintained in a system of records that is retrievable by your name or other personal identifier. Therefore, that information was processed under the FOIA.

A search of the Office of Investigations for documents responsive to your request determined that records are withheld in their entirety pursuant to Title 5 U.S.C. § 552 (b)(7)(A) of the FOIA.

Records are being withheld as described below.

**FOIA Exemption 7(A)** protects from disclosure records or information compiled for law enforcement purposes, the release of which could reasonably be expected to interfere with enforcement proceedings. I have determined that the information you are seeking relates to an ongoing criminal law enforcement investigation. Therefore, I am withholding all records,

<sup>1</sup> 5 U.S.C. § 552a(d)(1).

<sup>2</sup> 5 U.S.C. §§ 552a(d)(5), (j), and (k)

documents, and/or other material, which if disclosed prior to completion, could reasonably be expected to interfere with law enforcement proceedings and final agency actions related to those proceedings. Please be advised that once all pending matters are resolved and FOIA Exemption 7(A) is no longer applicable, there may be other exemptions which could protect certain information from disclosure, such as FOIA Exemptions (2), 7(C), 7(D), 7(E) and (j)(2) of the PA.

**FOIA Exemption 2(high)** protects information applicable to internal administrative and personnel matters, such as operating rules, guidelines, and manual of procedures of examiners or adjudicators, to the extent that disclosure would risk circumvention of an agency regulation or statute, impede the effectiveness of an agency's activities, or reveal sensitive information that may put the security and safety of an agency activity or employee at risk. Whether there is any public interest in disclosure is legally irrelevant. Rather, the concern under high 2 is that a FOIA disclosure should not benefit those attempting to violate the law and avoid detection.

**FOIA Exemption 2(low)** protects information applicable to internal administrative personnel matters to the extent that the information is of a relatively trivial nature and there is no public interest in the document.

**Exemption 7(C)** protects records or information compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy. This exemption takes particular note of the strong interests of individuals, whether they are suspects, witnesses, or investigators, in not being unwarrantably associated with alleged criminal activity. That interest extends to persons who are not only the subjects of the investigation, but those who may have their privacy invaded by having their identities and information about them revealed in connection with an investigation. Based upon the traditional recognition of strong privacy interest in law enforcement records, categorical withholding of information that identifies third parties in law enforcement records is ordinarily appropriate. As such, I have determined that the privacy interest in the identities of individuals in the records you have requested clearly outweigh any minimal public interest in disclosure of the information. Please note that any private interest you may have in that information does not factor into this determination.

**Exemption 7(D)** pertains to records or information compiled for law enforcement purposes, the release of which could reasonably be expected to disclose the identities of confidential sources.

**Exemption 7(E)** protects records compiled for law enforcement purposes, the release of which would disclose techniques and/or procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

Privacy Act Exemption (j)(2) permits the government to withhold material reporting investigative efforts pertaining to enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals.

Monica Guizar, Esq.  
Page 3 of 3

You have a right to appeal the above withholding determination. Should you wish to do so, you must send your appeal and a copy of this letter, within 60 days of the date of this letter, to: Associate General Counsel (General Law), U.S. Department of Homeland Security, Washington, D.C. 20528, following the procedures outlined in the DHS regulations at 6 C.F.R. § 5.9. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at [www.dhs.gov/foia](http://www.dhs.gov/foia).

Provisions of the FOIA allow us to recover part of the cost of complying with your request. In this instance, because the cost is below the \$14 minimum, there is no charge. 6 CFR § 5.11(d)(4).

If you need to contact our office again about this matter, please refer to **08-FOIA-1644**. I can be reached at 202-353-3983.

Sincerely,

*for Blady Crenshaw-Davis*  
Reba A. McGinnis  
Chief, Information Disclosure Unit  
Mission Support Division  
Office of Investigations





## Homeland Security

*Privacy Office, Mail Stop 0550*

March 24, 2008

Ms. Monica Guizar  
Employment Policy Attorney  
National Immigration Law Center  
3435 Wilshire Boulevard, Suite 2850  
Los Angeles, CA 90010

Re: **DHS/OS/PRIV 08-366/Guizar**

Dear Ms. Guizar:

This is in response to your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), dated March 4, 2008, and received in this office on March 5, 2008. You are seeking information pertaining to a worksite immigration enforcement operation conducted on or about February 7, 2008, by U.S. Immigration and Customs Enforcement (USICE) at Micro Solutions Enterprises located at 8201 Woodley Avenue, Van Nuys, CA.

Upon initial review of your request, I determined that, if such records exist, they would be under the purview of USICE. It has come to my attention that your request was also submitted directly to USICE and that USICE issued a response to your request via letter, dated March 20, 2008. Therefore, no further action is required of this office.

If you need to contact this office again concerning your request, please reference case number **DHS/OS/PRIV 08-366/Guizar**. You may contact this office at 1-866-431-0486 or 703-235-0790.

Sincerely,



Vania T. Lockett

Associate Director, Disclosure & FOIA Operations





NATIONAL  
IMMIGRATION  
LAW CENTER  
www.nilc.org

BOARD OF DIRECTORS

Allen Erenbaum  
*Chair*  
Mayer, Brown,  
Rowe & Maw

Cynthia Lange  
*Secretary*  
Fragomen, Del Rey,  
Berssen & Loewy, PC

Lucas Guttentag  
*Treasurer*  
American Civil  
Liberties Union,  
Immigrants'  
Rights Project

Della Bahan  
Bahan & Associates

Andrea Bazar-Manson  
Triangle Community  
Foundation

Richard Boswell  
University of California  
Hastings College of Law

Muzaffar Chishti  
Immigration Policy  
Institute at  
New York University  
School of Law

Iris Gomez  
Massachusetts Law  
Reform Institute

Michele Lord  
Lord Ross

Lin-Hua Wu  
Kekst and Company

Organizations listed for  
identification purposes only.

EXECUTIVE DIRECTOR

Linton Joaquín

LOS ANGELES  
HEADQUARTERS

3435 Wilshire Boulevard  
Suite 2850  
Los Angeles, CA 90010  
213 639-3900  
fax 213 639-3911

WASHINGTON, DC  
1444 Eye Street, NW  
Suite 1110  
Washington, DC 20005  
202 216-0261  
fax 202 216-0266

April 8, 2008

Associate General Counsel (General Law)  
U.S. Department of Homeland Security  
Washington, D.C. 20528  
*VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED*

**FREEDOM OF INFORMATION ACT (FOIA) APPEAL**

**Re: FOIA Request No. 08-FOIA-1644 Regarding a Worksite Enforcement  
Operation in Van Nuys, California**

To Whom it May Concern:

This letter constitutes an appeal pursuant to the Freedom of Information Act, 5 U.S.C. § 552(a)(6)(A), concerning the Bureau of Immigration and Customs Enforcement's (ICE's) refusal to disclose certain documents within its control. This appeal is on behalf of the three organizations responsible for the original Freedom of Information Act (FOIA) request, the National Immigration Law Center (NILC), the American Civil Liberties Union of Southern California (ACLU-SC), and the National Lawyers Guild Los Angeles Chapter (NLG-LA). On March 4, 2008, we submitted a FOIA request (No. 08-FOIA-1644) to the FOIA Requester Service Center Contact at ICE (Ms. Catrina Pavlik-Keenan) for records relating to a worksite enforcement operation conducted on or about February 7, 2008 by ICE at Micro Solutions Enterprises located at 8201 Woodley Avenue, Van Nuys, California. *See Exhibit A.* On March 17, 2008, ICE issued a letter acknowledging our FOIA request and fee waiver request and stating that ICE would require a 10-day extension of the statutory time period to respond to our request and noting that no decision had yet been made on our fee waiver request.

Subsequently, on March 20, 2008, ICE issued a letter refusing to provide any responsive documents to our FOIA request, citing FOIA exemption 7(A), 5 U.S.C. § 552(b), which exempts the production of documents that "could reasonably be expected to interfere with enforcement proceedings." *See Exhibit B* (ICE letter citing exemption).<sup>1</sup> Specifically, the letter states that "I have determined that the information you are seeking relates to an ongoing criminal law enforcement investigation. Therefore, I am withholding all records . . . which . . . could reasonably be expected to interfere with law enforcement proceedings . . . related to those proceedings." *Id.* at 1-2. As discussed below, that refusal violates the FOIA, 5 U.S.C. § 552(b) and 6 C.F.R. § 5.6(c)(3).

<sup>1</sup> Although this letter from ICE goes on to list other FOIA exemptions that *may* apply to "protect certain information from disclosure" "once all pending matters are resolved", the ICE denial letter does not appear to rely on any other FOIA exemptions for its decision to deny release of any responsive documents. Exh. B at 2. In fact, the letter states that "A search of the Office of Investigations for documents responsive to your request determined that records are withheld in their entirety pursuant to Title 5 U.S.C. § 552(b)(7)(A) of the FOIA." *Id.* at 1. Moreover, the ICE letter completely fails to identify specifically any documents for which such other exemptions may be claimed. To the extent that the ICE denial letter constitutes a decision to withhold responsive documents based on other FOIA exemptions, we also appeal that decision.



April 8, 2008

We appeal the denial of our FOIA request on two distinct grounds. First, ICE failed to fulfill its legal duty to release records that could *not* reasonably be expected to interfere with any future enforcement proceedings, such as operational records or documents regarding ICE's adherence to internal protocols such as grounds for humanitarian release or provisions to allow detained workers to contact family members, including minor children.

Second, ICE disregarded its duty to provide segregable portions of responsive records. In addition to exempting documents that contain information that could reasonably be expected to interfere with enforcement proceedings, 5 U.S.C. § 552(b) provides, "Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection."<sup>2</sup>

In order to comply with the statute, ICE must provide us with records—or portions of records—that cannot reasonably be expected to interfere with enforcement proceedings. To give a few examples, communications from ICE to other entities requesting assistance with the worksite enforcement operation prior to its commencement, communications to ICE from other entities agreeing to provide assistance with the worksite enforcement operation, and pre- and post-operation reports on the operation are not likely to interfere with enforcement proceedings. In addition, records outlining ICE protocols for ensuring that detained workers have appropriate access to medication and can arrange to care for their dependents located off-site are similarly unlikely to impede ongoing investigations. Information on each of these issues is of substantial value to the public debate regarding the appropriateness of ICE worksite enforcement operations and the manner in which these operations have been conducted.

The denial of the FOIA request also violated applicable regulations because it did not provide an estimate of the quantity of records or information withheld. 6 C.F.R. § 5.6(c)(3) states that when a component of the DHS denies a FOIA request, it must provide:

[a]n estimate of the volume of records or information withheld, in number of pages or in some other reasonable form of estimation. This estimate does not need to be provided if the volume is otherwise indicated through deletions on records disclosed in part, or if providing an estimate would harm an interest protected by an applicable exemption . . . .

6 C.F.R. § 5.6(c)(3). ICE did not provide segregable portions of documents. Thus, no indication of the volume of information withheld was given "through deletions on records disclosed in part." 6 C.F.R. § 5.6(c)(3). Providing such an estimate would not pose any threat to on-going law enforcement proceedings, because an estimate would not reveal any information relating to those proceedings. In any case, the

---

<sup>2</sup> In objecting on these bases, we do not concede that any of the information withheld is properly subject to the exemption claimed by ICE. We reserve the right to object on that basis once ICE complies with its obligations by providing us some responsive documents, at which time we could assess whether or not the claimed exemption applies to those documents which remain withheld.

April 8, 2008

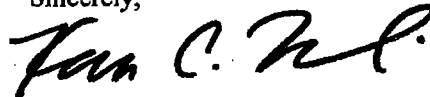
denial of the FOIA request did not indicate that supplying an estimate "would harm an interest protected by an applicable exemption." 6 C.F.R. § 5.6(c)(3).

Last, we request that ICE provide a complete list of documents covered by our FOIA request as well as a specific indication of what material is being withheld based on which specific exemptions.

I look forward to a written response by the close of the statutory time period, which is within twenty working days of your receipt of this appeal letter. *See* 5 U.S.C. § 552(a)(6)(A)(ii). We reserve the right to a judicial appeal in the event that ICE's denial of this request is affirmed in full or in part.

Thank you for your prompt attention to this matter. If you have any questions, please contact me at (213) 674-2850.

Sincerely,



Karen C. Tumlin  
Staff Attorney  
National Immigration Law Center

Enclosures

# **Exhibit A**



NATIONAL  
IMMIGRATION  
LAW CENTER  
www.nilc.org

BOARD OF DIRECTORS

Allen Erenbaum  
Chair  
Mayer, Brown,  
Rowe & Maw

Cynthia Lange  
Secretary  
Fragomen, Del Rey,  
Bernsen & Loewy, PC

Lucas Guttentag  
Treasurer  
American Civil  
Liberties Union,  
Immigrants'  
Rights Project

Della Bahan  
Bahan & Associates

Andrea Bazari-Manson  
Triangle Community  
Foundation

Richard Boswell  
University of California  
Hastings College of Law

Muzaffar Chishti  
Immigration Policy  
Institute at  
New York University  
School of Law

Iris Gomez  
Massachusetts Law  
Reform Institute

Michele Lord  
Lord, Ross

Lin-Hua Wu  
Kelst and Company

*Organizations listed for  
identification purposes only*

EXECUTIVE DIRECTOR  
Linton Joaquin

LOS ANGELES  
(HEADQUARTERS)  
3435 Wilshire Boulevard  
Suite 2850  
Los Angeles, CA 90010  
213 639-3900  
fax 213 639-3911

WASHINGTON, DC  
1101 14th Street, NW  
Suite 410  
Washington, DC 20005  
202 216-0261  
fax 202 216-0266

OAKLAND  
405 14th Street  
Suite 1400  
Oakland, CA 94612  
510 663-8282  
fax 510 663-2028

VIA FIRST CLASS MAIL AND FACSIMILE

March 4, 2008

Catherine M. Papoi, FOIA Officer  
Vania T. Locket, FOIA Requester Service Center Contact  
U.S. Department of Homeland Security  
The Privacy Office  
245 Murray Drive, SW Building 410  
STOP-0550  
Washington, D.C. 20528-0550

Catrina Pavlik-Keenan, FOIA Officer  
Anastazia Taylor, FOIA Requester Service Center Contact  
U.S. Immigration and Customs Enforcement  
800 North Capitol Street, N.W.  
5<sup>th</sup> Floor, Suite 585  
Washington, D.C. 20528

RE: Request under the Freedom of Information Act (FOIA)

Dear FOIA Officer:

The National Immigration Law Center ("NILC"), the American Civil Liberties Union of Southern California ("ACLU-SC"), and the National Lawyers Guild Los Angeles Chapter ("NLG-LA") (collectively "the Requestors") make this request for information under the Freedom of Information Act (FOIA), 5 U.S.C. § 552 et seq. The Requestors make this request for records because of their concerns about the manner in which a workplace enforcement operation in Van Nuys, California was conducted, and the subsequent treatment of the persons detained in the operation.

The following requests pertain to a worksite immigration enforcement operation conducted on or about February 7, 2008 by the Bureau of Immigration and Customs Enforcement (ICE) at Micro Solutions Enterprises located at 8201 Woodley Avenue, Van Nuys, CA. With respect to the enforcement action at Micro Solutions Enterprises ("MSE"), please provide all records<sup>1</sup> which were prepared, received, transmitted, collected and/or

<sup>1</sup> The term "records" as used herein includes but is not limited to all records or communications preserved in electronic or written form, including but not limited to correspondence, documents, data, videotapes, audio tapes, faxes, files, e-mails, guidance, guidelines, evaluations, instructions, analyses, memoranda, agreements,

March 4, 2008

maintained by the ICE<sup>2</sup> or the Department of Homeland Security (DHS) relating or referring to the following:

- 1) Any and all records, including but not limited to documents, correspondence, memoranda, and communications pertaining to documents referenced in the *Worksite Enforcement Policies Memorandum*, Memo, Pearson, Exec. Assoc. Comm. (HQOPS 50/19-P)(Oct. 20, 1999), including but not limited to the pre-operation plans, worksite enforcement operation plans, and pre-operation briefings pertaining to the worksite enforcement operation that was conducted at MSE.
- 2) Any and all records, including but not limited to communications, correspondence, memoranda between ICE and any state or local law enforcement agencies relating to the worksite enforcement operation at MSE.
- 3) Any and all records, including but not limited documents, correspondence, memoranda and communications between ICE and any other state or local governmental agencies pertaining to the worksite enforcement operation at MSE.
- 4) Any and all records, including but not limited documents, correspondence, memoranda and communications between ICE and MSE managers, supervisors, employees and/or agents pertaining to the worksite enforcement operation.
- 5) Any and all records, including but not limited documents, correspondence, memoranda and communications pertaining to the inspection or audit of MSE's I-9 forms.
- 6) Copies of any and all administrative warrants issued and served on an agent of MSE relating to the worksite enforcement operation.
- 7) Copies of any and all criminal warrants issued and served on an agent of MSE relating to the worksite enforcement operation.
- 8) Any and all records, including but not limited documents, correspondence, memoranda, guidelines and communications pertaining to the manner in which agents were to conduct the worksite enforcement operation at MSE, including the manner in which employees would be selected for questioning and manner of questioning for each employee.
- 9) Any and all records, including but not limited documents, correspondence, memoranda, guidelines and communications

---

notes, orders, policies, procedures, protocols, reports, rules, technical manuals, technical specifications, training manuals, or studies.

<sup>2</sup> All requests for ICE records in this request should be understood to include records prepared, received, transmitted, collected and/or maintained by the former Immigration and Nationality Service (INS).

March 4, 2008

- pertaining to the manner in which employees would be restrained during the worksite enforcement operation at MSE.
- 10) Any and all records, including but not limited documents, correspondence, memoranda, guidelines and communications pertaining to whether employees of MSE would be provided with telephone access during the worksite action or at the completion of the worksite enforcement operation to secure medication, care for dependents or documents located off-site proving their lawful residence in the U.S. and their authorization to work.
  - 11) Any and all records, including but not limited documents, correspondence, memoranda, guidelines or communications pertaining to the manner in which ICE agents would determine the existence of humanitarian grounds in order to release employees involved in the worksite enforcement operation of MSE.
  - 12) Any and all records, documents, correspondence, memoranda, guidelines or communications pertaining to the conditions of release that would be placed on individuals released on humanitarian grounds, including but not limited to the condition of placing these individuals on electronic monitoring devices.
  - 13) Any and all records, including but not limited documents, correspondence, memoranda, or communications between the contractor that monitors the electronic monitoring devices and ICE, including but not limited to any government contracts.
  - 14) Any and all records, including but not limited documents, correspondence, memoranda, or communications pertaining to the make, model and potential hazardous associated with the electronic monitoring devices.
  - 15) Any and all records, including but not limited documents, correspondence, memoranda, or communications pertaining to the costs of implementing and using electronic monitoring devices, including but not limited to the cost per day of electronic monitoring per person.
  - 16) Any and all records, including but not limited documents, correspondence, memoranda and communications between the ICE Supervisory Agent, Special Agent in Charge, or other ICE officer leading the worksite enforcement operation at MSE and the Office of Detention and Removal (DRO) pertaining to the detention space and transportation of detained individuals.
  - 17) Any and all records, including but not limited documents, correspondence, memoranda and communications between ICE and MSE pertaining to the apprehension of unauthorized workers or the results of the worksite enforcement operation conducted at MSE.
  - 18) Any and all records, including but not limited documents, correspondence, memoranda and communications pertaining to the initiation of the worksite enforcement operation at MSE, including, but

March 4, 2008

not limited to, the reasons for selecting the method that was used to conduct the worksite operation.

- 19) Any and all records, including but not limited documents, correspondence, memoranda, communications, including reports, prepared by ICE pertaining to the worksite enforcement action conducted at MSE.
- 20) Any and all records, including but not limited documents or communications listing the names, country of origin, and/or A-numbers of workers detained at the worksite enforcement operation at MSE or any other individuals detained at other locations in connection with this action.

#### Waiver of All Costs

We request a waiver of all costs pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) ("Documents shall be furnished without any charge . . . if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester"). Disclosure in this case meets the statutory criteria, and a fee waiver would fulfill Congress' legislative intent in amending FOIA. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be 'liberally construed in favor of fee waivers for noncommercial requesters.'") (citation omitted).

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 regarding high-visibility worksite enforcement actions. The records requested are not sought for commercial use, and the Requestors plan to disseminate the information disclosed through print and other media to the public at no cost, and through meetings and correspondence with other advocates serving immigrants. If the fee waiver request is denied, while reserving our right to appeal such a decision, we will pay fees up to \$25.00. If you estimate that the fees will exceed this limit, please inform us.

#### Limitation of Processing Fees and Waiver of Search and Review Fees

In the event that the request for waiver of all costs is denied, we request a limitation of processing fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) ("fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by . . . a representative of the news media . . .") and 28 C.F.R. § 16.11(c)(1)(i), 16.11(d)(1) (search and review fees shall not be charged to "representatives of the news media."). The information sought in this request

March 4, 2008

is not sought for a commercial purpose. The Requestors include non-profit organizations serving the community who intend to disseminate the information gathered by this request to the public at no cost.

NILC is a nonprofit national legal advocacy organization whose mission is to protect and promote the rights and opportunities of low-income immigrants and their families. NILC serves as an important resource to a broad range of immigrant advocacy and community organizations, and legal service organizations. As a part of its work, NILC disseminates information to the public through electronic newsletters, news alerts, issue briefs, trainings, and other educational and informational materials. In addition, NILC also disseminates information to individuals, tax-exempt organizations, not-for-profit groups, and members through its website, <http://www.nilc.org>.

The ACLU-SC is a non-profit organization dedicated to the defense of civil rights and civil liberties. As part of its work, ACLU-SC disseminates information to the public through newsletters, news briefings, "Know Your Rights" documents, and other educational and informational materials. ACLU-SC also disseminates information to individuals, tax-exempt organizations, not-for-profit groups, and members through its website, <http://www.aclu-sc.org>. In addition, ACLU-SC shares information with the national ACLU office. The ACLU publishes information through multiple outlets including newsletters, action alerts, videos, and other media. ACLU publications are disseminated across the country to individuals and organizations. The ACLU also publishes an electronic newsletter, which is distributed to subscribers by e-mail, and maintains a website of civil rights and civil liberties information at <http://www.aclu.org>.

The National Lawyers Guild of Los Angeles is an association dedicated to the defense of noncitizens' civil rights. Members of the National Lawyers Guild's immigration committee are attorneys that specialize in removal defense of noncitizens and regularly publishes newsletters, news briefings, right-to-know documents, and other materials that are disseminated to the public. Their material is widely available to everyone, including tax-exempt organizations, not-for-profit groups, law students and faculty, for no cost or for a nominal fee. Finally, NLG regularly disseminates information through newsletters, which are distributed to subscribers by mail.

#### Request for Expedited Processing

Expedited processing is warranted because there is "an urgency to inform the public about an actual or alleged federal government activity" by organizations "primarily engaged in disseminating information." 28 C.F.R. § 16.5(d)(1)(ii). This request implicates a matter of urgent public concern:



March 4, 2008

namely, government policies and practices related to immigration raids, which often impact lawful workers and citizens as well.

In addition, expedited processing is also warranted because the information is needed immediately to prevent "the loss of substantial due process rights" to those affected by this worksite operation. See 28 C.F.R. § 16.5(d)(1)(iii). There are reports that, if accurate, raise serious questions about the manner in which the worksite enforcement action was conducted and whether due process was afforded to persons detained in the operation. Requests for information bearing upon potential Constitutional violations require an immediate response to cease present violations and prevent future violations.

Expedited processing is also warranted because the information sought relates to "a matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence." 28 C.F.R. § 16.5(d)(1)(iv). The instant request relates to possible violations of ICE's internal procedures as well as possible violations of the detainees' statutory and Constitutional rights.

The exceptional media interest in the conduct of ICE worksite enforcement operations is reflected in widespread news coverage at both the national and local level. See, e.g., *Raid an 'Outrageous Use of Force,' Union Says*, CNSNews.Com (Dec. 13, 2006); *Inhumane Raid Was Just One of Many*, Boston Globe (Mar. 26, 2007), *350 are held in immigration raid*, Boston Globe (Mar. 7, 2007); *Immigration Raid Rips families*, Washington Post (Mar. 18, 2007); *At least 56 arrested in immigration raids at Mc Donalds*, Associated Press, (Sep. 28, 2007); *Immigration raids Koch Foods Chicken Plant*, Reuters (Aug. 28, 2007); *Portland plant raid highlights safety, say officials*, Seattle Times, AP (June 14, 2007).

At a minimum, should you determine that expedited processing is not warranted, while reserving our right to appeal that decision, we expect a response within the 20-day time limit set forth under 5 U.S.C. § 552(a)(6)(A)(ii).

The requested records are not exempt from disclosure under FOIA. We expect that all records will be provided in complete form. To the extent that any requested records are marked classified, please redact such records and immediately provide us with the remaining records. If you deny this request in whole or in part, please provide a written explanation for that denial, including reference to the specific statutory exemptions upon which you rely and notify us of appeal procedures available under the law. Also,

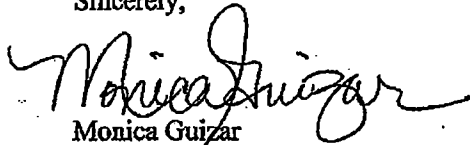
March 4, 2008

please provide all segregable portions of otherwise exempt material. Requesters reserve the right to appeal a decision to withhold any information, to deny a waiver of fees, or to deny a limitation of processing fees.

We appreciate your prompt response to this request. Please provide us responsive documents as soon as they are identified. If you have any questions regarding this request or if the request for a fee waiver is denied, please contact Linton Joaquin at (213) 674-2909

Thank you in advance for your timely consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Monica Guizar", with a stylized, flowing script.

Monica Guizar  
Employment Policy Attorney  
National Immigration Law Center  
(213) 639-3900 ext. 123  
guizar@nilc.org

# **Exhibit B**



**U.S. Immigration  
and Customs  
Enforcement**

Ms. Monica Guizar  
Employment Policy Attorney  
National Immigration Law Center  
3435 Wilshire Boulevard, Suite 2850  
Los Angeles, CA 90010

MAR 20 2008

Re: DIS 2-01 OI:MS:ID  
08-FOIA-1644

Dear Ms. Guizar:

This is the final response to your Freedom of Information Act (FOIA) request to the Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE) dated March 4, 2008, and seeking information pertaining to a worksite immigration enforcement operation conducted on or about February 7, 2008, by ICE at Micro Solutions Enterprises located at 8201 Woodley Avenue, Van Nuys, CA. Specifically, you requested twenty categories of records.

To provide you with the greatest degree of access authorized by law, we have considered your request under both the FOIA, 5 U.S.C. § 552, and the Privacy Act, 5 U.S.C. § 552a. Information about an individual that is maintained in a Privacy Act system of records may be accessed by that individual<sup>1</sup> unless the agency has exempted by system of records from the access provisions of the Privacy Act.<sup>2</sup> However, I have determined that none of the withheld information is maintained in a system of records that is retrievable by your name or other personal identifier. Therefore, that information was processed under the FOIA.

A search of the Office of Investigations for documents responsive to your request determined that records are withheld in their entirety pursuant to Title 5 U.S.C. § 552 (b)(7)(A) of the FOIA.

Records are being withheld as described below.

**FOIA Exemption 7(A)** protects from disclosure records or information compiled for law enforcement purposes, the release of which could reasonably be expected to interfere with enforcement proceedings. I have determined that the information you are seeking relates to an ongoing criminal law enforcement investigation. Therefore, I am withholding all records,

<sup>1</sup> 5 U.S.C. § 552a(d)(1).

<sup>2</sup> 5 U.S.C. §§ 552a(d)(5), (j), and (k)

documents, and/or other material, which if disclosed prior to completion, could reasonably be expected to interfere with law enforcement proceedings and final agency actions related to those proceedings. Please be advised that once all pending matters are resolved and FOIA Exemption 7(A) is no longer applicable, there may be other exemptions which could protect certain information from disclosure, such as FOIA Exemptions (2), 7(C), 7(D), 7(E) and (j)(2) of the PA.

**FOIA Exemption 2(high)** protects information applicable to internal administrative and personnel matters, such as operating rules, guidelines, and manual of procedures of examiners or adjudicators, to the extent that disclosure would risk circumvention of an agency regulation or statute, impede the effectiveness of an agency's activities, or reveal sensitive information that may put the security and safety of an agency activity or employee at risk. Whether there is any public interest in disclosure is legally irrelevant. Rather, the concern under high 2 is that a FOIA disclosure should not benefit those attempting to violate the law and avoid detection.

**FOIA Exemption 2(low)** protects information applicable to internal administrative personnel matters to the extent that the information is of a relatively trivial nature and there is no public interest in the document.

**Exemption 7(C)** protects records or information compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy. This exemption takes particular note of the strong interests of individuals, whether they are suspects, witnesses, or investigators, in not being unwarrantably associated with alleged criminal activity. That interest extends to persons who are not only the subjects of the investigation, but those who may have their privacy invaded by having their identities and information about them revealed in connection with an investigation. Based upon the traditional recognition of strong privacy interest in law enforcement records, categorical withholding of information that identifies third parties in law enforcement records is ordinarily appropriate. As such, I have determined that the privacy interest in the identities of individuals in the records you have requested clearly outweigh any minimal public interest in disclosure of the information. Please note that any private interest you may have in that information does not factor into this determination.

**Exemption 7(D)** pertains to records or information compiled for law enforcement purposes, the release of which could reasonably be expected to disclose the identities of confidential sources.

**Exemption 7(E)** protects records compiled for law enforcement purposes, the release of which would disclose techniques and/or procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

Privacy Act Exemption (j)(2) permits the government to withhold material reporting investigative efforts pertaining to enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals.

Monica Guizar, Esq.


Page 3 of 3 .

You have a right to appeal the above withholding determination. Should you wish to do so, you must send your appeal and a copy of this letter, within 60 days of the date of this letter, to: Associate General Counsel (General Law), U.S. Department of Homeland Security, Washington, D.C. 20528, following the procedures outlined in the DHS regulations at 6 C.F.R. § 5.9. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at [www.dhs.gov/foia](http://www.dhs.gov/foia).

Provisions of the FOIA allow us to recover part of the cost of complying with your request. In this instance, because the cost is below the \$14 minimum, there is no charge. 6 CFR § 5.11(d)(4).

If you need to contact our office again about this matter, please refer to **08-FOIA-1644**. I can be reached at 202-353-3983.

Sincerely,

*for*   
Reba A. McGinnis  
Chief, Information Disclosure Unit  
Mission Support Division  
Office of Investigations





NATIONAL  
IMMIGRATION  
LAW CENTER  
www.nilc.org

BOARD OF DIRECTORS

Allen Erenbaum  
Chair  
Mayer, Brown,  
Rowe & Maw

Cynthia Lange  
Secretary  
Fragomen, Del Rey,  
Berssen & Loewy, PC

Lucas Guttentag  
Treasurer  
American Civil  
Liberties Union,  
Immigrants'  
Rights Project

Della Bahan  
Bahan & Associates

Andrea Bazan-Manson  
Triangle Community  
Foundation

Richard Boswell  
University of California  
Hastings College of Law

Muzaffar Chishti  
Immigration Policy  
Institute at  
New York University  
School of Law

Iris Gomez  
Massachusetts Law  
Reform Institute

Michele Lord  
Lord Ross

Lin-Hua Wu  
Kekst and Company

Organizations listed for  
identification purposes only

EXECUTIVE DIRECTOR  
Linton Joaquin

LOS ANGELES  
HEADQUARTERS  
3435 Wilshire Boulevard  
Suite 2850  
Los Angeles, CA 90010  
213 639-3900  
fax 213 639-3911

WASHINGTON, DC  
1444 Eye Street, NW  
Suite 1110  
Washington, DC 20005  
202 216-0261  
fax 202 216-0266

May 9, 2008

Associate General Counsel (General Law)  
U.S. Department of Homeland Security  
Washington, D.C. 20528  
*VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED*

**FREEDOM OF INFORMATION ACT (FOIA) APPEAL**

**Re: FOIA Case No. DHS/OS/PRIV 08-366/Guizar Regarding a Worksite  
Enforcement Operation in Van Nuys, California**

To Whom it May Concern:

This letter constitutes an appeal pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552(a)(6)(A), concerning the Department of Homeland Security's (DHS's) apparent failure to search for documents within its control responsive to our FOIA request. This appeal is on behalf of the three organizations responsible for the original FOIA request, the National Immigration Law Center (NILC), the American Civil Liberties Union of Southern California (ACLU-SC), and the National Lawyers Guild Los Angeles Chapter (NLG-LA). On March 4, 2008, we submitted a FOIA request (Case No. DHS/OS/PRIV 08-366/Guizar) to the FOIA Requester Service Center Contact at DHS (Ms. Catherine M. Papoi) for records relating to a worksite enforcement operation conducted on or about February 7, 2008 by the Bureau of Immigration and Customs Enforcement (ICE) at Micro Solutions Enterprises located at 8201 Woodley Avenue, Van Nuys, California. *See Exhibit A.* On March 24, 2008, DHS issued a letter acknowledging our FOIA request and stating that after an "initial review" of our request DHS had determined that, "if such records exist, they would be under the purview of" ICE. *See Exhibit B.* Further, because our FOIA request was also sent to ICE, DHS determined that "no further action is required of this office."

We appeal the denial of our FOIA request because DHS failed to fulfill its legal duty to search for all responsive agency records and to produce all records that are not exempt from disclosure.<sup>1</sup> Under the FOIA, federal agencies must produce all agency records that are not exempt by statute. 5 U.S.C. §§ 552(a)(3); § 552(b). Furthermore, federal agencies must make "a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested," *Oglesby v. United States Dep't of Army*, 920 F.2d 57, 68 (D.C.Cir.1990); *see also* 5 U.S.C. § 552(a)(3)(C)-(D). In this instance, DHS did not even allege that it conducted the statutorily required search for all responsive documents. Instead, DHS simply noted that if any such documents exist, they would be in the possession of ICE. The fact that ICE may have records responsive to our inquiry does not exempt the DHS from conducting its own search for responsive

<sup>1</sup> In objecting on this basis, we do not concede that any of the potentially responsive documents are properly subject to an exemption that may be claimed by DHS. We reserve the right to object on that basis once DHS complies with its obligations by providing us some responsive documents, at which time we could assess whether or not the claimed exemption applies to those documents which remain withheld.



May 9, 2008

records pursuant to the FOIA, particularly given that DHS may have documents responsive to our request because one of its sub-components is ICE.

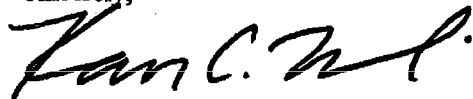
We also note the DHS failed to provide the statutorily required notice of our right to appeal its decision when it informed us that it had reached its final decision on our FOIA request. *See* 5 U.S.C. § 552(a)(6)(A)(i).

Once it conducts an adequate search, we request that DHS provide a complete list of any responsive documents covered by our FOIA request as well as a specific indication of what material is being withheld based on which specific exemptions, if any.

I look forward to a written response to this appeal by the close of the statutory time period, which is within twenty working days of your receipt of this appeal letter. *See* 5 U.S.C. § 552(a)(6)(A)(ii). We reserve the right to a judicial appeal in the event that DHS's decision not to conduct a search for responsive documents is affirmed in full or in part. If, after a proper search is conducted, DHS claims that any responsive documents are subject to an exemption, and therefore, not required to be disclosed, we reserve the right to appeal that determination.

Thank you for your prompt attention to this matter. If you have any questions, please contact me at (213) 674-2850.

Sincerely,



Karen C. Tumlin  
Staff Attorney  
National Immigration Law Center

Enclosures

# **EXHIBIT A**



NATIONAL  
IMMIGRATION  
LAW CENTER  
www.nilc.org

BOARD OF DIRECTORS

Allen Erenbaum  
*Chair*  
Mayer, Brown,  
Rowe & Maw

Cynthia Lange  
*Secretary*  
Fragomen, Del Rey,  
Berssen & Loewy, PC

Lucas Guttentag  
*Treasurer*  
American Civil  
Liberties Union,  
Immigrants'  
Rights Project

Della Bahan  
Bahan & Associates

Andrea Bazani-Manson  
Triangle Community  
Foundation

Richard Boswell  
University of California  
Hastings College of Law

Muzaffar Chishti  
Immigration Policy  
Institute at  
New York University  
School of Law

Iris Gomez  
Massachusetts Law  
Reform Institute

Michele Lord  
Lord Ross

Lin-Hua Wu  
Kelst and Company

Organizations listed for  
identification purposes only

EXECUTIVE DIRECTOR  
Unton Joaquin

LOS ANGELES  
(HEADQUARTERS)  
3435 Wilshire Boulevard  
Suite 2850  
Los Angeles, CA 90010  
213 639-3900  
fax 213 639-3911

WASHINGTON, DC  
1101 14th Street, NW  
Suite 410  
Washington, DC 20005  
202 216-0261  
fax 202 216-0266

OAKLAND  
405 14th Street  
Suite 1400  
Oakland, CA 94612  
510 663-8282  
fax 510 663-2028

VIA FIRST CLASS MAIL AND FACSIMILE

March 4, 2008

Catherine M. Papoi, FOIA Officer  
Vania T. Locket, FOIA Requester Service Center Contact  
U.S. Department of Homeland Security  
The Privacy Office  
245 Murray Drive, SW Building 410  
STOP-0550  
Washington, D.C. 20528-0550

Catrina Pavlik-Keenan, FOIA Officer  
Anastazia Taylor, FOIA Requester Service Center Contact  
U.S. Immigration and Customs Enforcement  
800 North Capitol Street, N.W.  
5<sup>th</sup> Floor, Suite 585  
Washington, D.C. 20528

RE: Request under the Freedom of Information Act (FOIA)

Dear FOIA Officer:

The National Immigration Law Center ("NILC"), the American Civil Liberties Union of Southern California ("ACLU-SC"), and the National Lawyers Guild Los Angeles Chapter ("NLG-LA") (collectively "the Requestors") make this request for information under the Freedom of Information Act (FOIA), 5 U.S.C. § 552 et seq. The Requestors make this request for records because of their concerns about the manner in which a workplace enforcement operation in Van Nuys, California was conducted, and the subsequent treatment of the persons detained in the operation.

The following requests pertain to a worksite immigration enforcement operation conducted on or about February 7, 2008 by the Bureau of Immigration and Customs Enforcement (ICE) at Micro Solutions Enterprises located at 8201 Woodley Avenue, Van Nuys, CA. With respect to the enforcement action at Micro Solutions Enterprises ("MSE"), please provide all records<sup>1</sup> which were prepared, received, transmitted, collected and/or

<sup>1</sup> The term "records" as used herein includes but is not limited to all records or communications preserved in electronic or written form, including but not limited to correspondence, documents, data, videotapes, audio tapes, faxes, files, e-mails, guidance, guidelines, evaluations, instructions, analyses, memoranda, agreements,

March 4, 2008

maintained by the ICE<sup>2</sup> or the Department of Homeland Security (DHS) relating or referring to the following:

- 1) Any and all records, including but not limited to documents, correspondence, memoranda, and communications pertaining to documents referenced in the *Worksite Enforcement Policies Memorandum*, Memo, Pearson, Exec. Assoc. Comm. (HQOPS 50/19-P)(Oct. 20, 1999), including but not limited to the pre-operation plans, worksite enforcement operation plans, and pre-operation briefings pertaining to the worksite enforcement operation that was conducted at MSE.
- 2) Any and all records, including but not limited to communications, correspondence, memoranda between ICE and any state or local law enforcement agencies relating to the worksite enforcement operation at MSE.
- 3) Any and all records, including but not limited documents, correspondence, memoranda and communications between ICE and any other state or local governmental agencies pertaining to the worksite enforcement operation at MSE.
- 4) Any and all records, including but not limited documents, correspondence, memoranda and communications between ICE and MSE managers, supervisors, employees and/or agents pertaining to the worksite enforcement operation.
- 5) Any and all records, including but not limited documents, correspondence, memoranda and communications pertaining to the inspection or audit of MSE's I-9 forms.
- 6) Copies of any and all administrative warrants issued and served on an agent of MSE relating to the worksite enforcement operation.
- 7) Copies of any and all criminal warrants issued and served on an agent of MSE relating to the worksite enforcement operation.
- 8) Any and all records, including but not limited documents, correspondence, memoranda, guidelines and communications pertaining to the manner in which agents were to conduct the worksite enforcement operation at MSE, including the manner in which employees would be selected for questioning and manner of questioning for each employee.
- 9) Any and all records, including but not limited documents, correspondence, memoranda, guidelines and communications

---

notes, orders, policies, procedures, protocols, reports, rules, technical manuals, technical specifications, training manuals, or studies.

<sup>2</sup> All requests for ICE records in this request should be understood to include records prepared, received, transmitted, collected and/or maintained by the former Immigration and Nationality Service (INS).

March 4, 2008

- pertaining to the manner in which employees would be restrained during the worksite enforcement operation at MSE.
- 10) Any and all records, including but not limited documents, correspondence, memoranda, guidelines and communications pertaining to whether employees of MSE would be provided with telephone access during the worksite action or at the completion of the worksite enforcement operation to secure medication, care for dependents or documents located off-site proving their lawful residence in the U.S. and their authorization to work.
  - 11) Any and all records, including but not limited documents, correspondence, memoranda, guidelines or communications pertaining to the manner in which ICE agents would determine the existence of humanitarian grounds in order to release employees involved in the worksite enforcement operation of MSE.
  - 12) Any and all records, documents, correspondence, memoranda, guidelines or communications pertaining to the conditions of release that would be placed on individuals released on humanitarian grounds, including but not limited to the condition of placing these individuals on electronic monitoring devices.
  - 13) Any and all records, including but not limited documents, correspondence, memoranda, or communications between the contractor that monitors the electronic monitoring devices and ICE, including but not limited to any government contracts.
  - 14) Any and all records, including but not limited documents, correspondence, memoranda, or communications pertaining to the make, model and potential hazardous associated with the electronic monitoring devices.
  - 15) Any and all records, including but not limited documents, correspondence, memoranda, or communications pertaining to the costs of implementing and using electronic monitoring devices including but not limited to the cost per day of electronic monitoring per person.
  - 16) Any and all records, including but not limited documents, correspondence, memoranda and communications between the ICE Supervisory Agent, Special Agent in Charge, or other ICE officer leading the worksite enforcement operation at MSE and the Office of Detention and Removal (DRO) pertaining to the detention space and transportation of detained individuals.
  - 17) Any and all records, including but not limited documents, correspondence, memoranda and communications between ICE and MSE pertaining to the apprehension of unauthorized workers or the results of the worksite enforcement operation conducted at MSE.
  - 18) Any and all records, including but not limited documents, correspondence, memoranda and communications pertaining to the initiation of the worksite enforcement operation at MSE, including, but

March 4, 2008

not limited to, the reasons for selecting the method that was used to conduct the worksite operation.

- 19) Any and all records, including but not limited documents, correspondence, memoranda, communications, including reports, prepared by ICE pertaining to the worksite enforcement action conducted at MSE.
- 20) Any and all records, including but not limited documents or communications listing the names, country of origin, and/or A-numbers of workers detained at the worksite enforcement operation at MSE or any other individuals detained at other locations in connection with this action.

#### Waiver of All Costs

We request a waiver of all costs pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) ("Documents shall be furnished without any charge . . . if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester"). Disclosure in this case meets the statutory criteria, and a fee waiver would fulfill Congress' legislative intent in amending FOIA. See *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be 'liberally construed in favor of fee waivers for noncommercial requesters.'") (citation omitted).

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 regarding high-visibility worksite enforcement actions. The records requested are not sought for commercial use, and the Requestors plan to disseminate the information disclosed through print and other media to the public at no cost, and through meetings and correspondence with other advocates serving immigrants. If the fee waiver request is denied, while reserving our right to appeal such a decision, we will pay fees up to \$25.00. If you estimate that the fees will exceed this limit, please inform us.

#### Limitation of Processing Fees and Waiver of Search and Review Fees

In the event that the request for waiver of all costs is denied, we request a limitation of processing fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) ("fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by . . . a representative of the news media . . .") and 28 C.F.R. § 16.11(c)(1)(i), 16.11(d)(1) (search and review fees shall not be charged to "representatives of the news media."). The information sought in this request

March 4, 2008

is not sought for a commercial purpose. The Requestors include non-profit organizations serving the community who intend to disseminate the information gathered by this request to the public at no cost.

NILC is a nonprofit national legal advocacy organization whose mission is to protect and promote the rights and opportunities of low-income immigrants and their families. NILC serves as an important resource to a broad range of immigrant advocacy and community organizations, and legal service organizations. As a part of its work, NILC disseminates information to the public through electronic newsletters, news alerts, issue briefs, trainings, and other educational and informational materials. In addition, NILC also disseminates information to individuals, tax-exempt organizations, not-for-profit groups, and members through its website, <http://www.nilc.org>.

The ACLU-SC is a non-profit organization dedicated to the defense of civil rights and civil liberties. As part of its work, ACLU-SC disseminates information to the public through newsletters, news briefings, "Know Your Rights" documents, and other educational and informational materials. ACLU-SC also disseminates information to individuals, tax-exempt organizations, not-for-profit groups, and members through its website, <http://www.aclu-sc.org>. In addition, ACLU-SC shares information with the national ACLU office. The ACLU publishes information through multiple outlets including newsletters, action alerts, videos, and other media. ACLU publications are disseminated across the country to individuals and organizations. The ACLU also publishes an electronic newsletter, which is distributed to subscribers by e-mail, and maintains a website of civil rights and civil liberties information at <http://www.aclu.org>.

The National Lawyers Guild of Los Angeles is an association dedicated to the defense of noncitizens' civil rights. Members of the National Lawyers Guild's immigration committee are attorneys that specialize in removal defense of noncitizens and regularly publishes newsletters, news briefings, right-to-know documents, and other materials that are disseminated to the public. Their material is widely available to everyone, including tax-exempt organizations, not-for-profit groups, law students and faculty, for no cost or for a nominal fee. Finally, NLG regularly disseminates information through newsletters, which are distributed to subscribers by mail.

#### **Request for Expedited Processing**

Expedited processing is warranted because there is "an urgency to inform the public about an actual or alleged federal government activity" by organizations "primarily engaged in disseminating information." 28 C.F.R. § 16.5(d)(1)(ii). This request implicates a matter of urgent public concern:

March 4, 2008

namely, government policies and practices related to immigration raids, which often impact lawful workers and citizens as well.

In addition, expedited processing is also warranted because the information is needed immediately to prevent "the loss of substantial due process rights" to those affected by this worksite operation. See 28 C.F.R. § 16.5(d)(1)(iii). There are reports that, if accurate, raise serious questions about the manner in which the worksite enforcement action was conducted and whether due process was afforded to persons detained in the operation. Requests for information bearing upon potential Constitutional violations require an immediate response to cease present violations and prevent future violations.

Expedited processing is also warranted because the information sought relates to "a matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence." 28 C.F.R. § 16.5(d)(1)(iv). The instant request relates to possible violations of ICE's internal procedures as well as possible violations of the detainees' statutory and Constitutional rights.

The exceptional media interest in the conduct of ICE worksite enforcement operations is reflected in widespread news coverage at both the national and local level. See, e.g., *Raid an 'Outrageous Use of Force,' Union Says*, CNSNews.Com (Dec. 13, 2006); *Inhumane Raid Was Just One of Many*, Boston Globe (Mar. 26, 2007), 350 are held in immigration raid; Boston Globe (Mar. 7, 2007); *Immigration Raid Rips families*, Washington Post (Mar. 18, 2007); *At least 56 arrested in immigration raids at Mc Donalds*, Associated Press, (Sep. 28, 2007); *Immigration raids Koch Foods Chicken Plant*, Reuters (Aug. 28, 2007); *Portland plant raid highlights safety, say officials*, Seattle Times, AP (June 14, 2007).

At a minimum, should you determine that expedited processing is not warranted, while reserving our right to appeal that decision, we expect a response within the 20-day time limit set forth under 5 U.S.C. § 552(a)(6)(A)(ii).

The requested records are not exempt from disclosure under FOIA. We expect that all records will be provided in complete form. To the extent that any requested records are marked classified, please redact such records and immediately provide us with the remaining records. If you deny this request in whole or in part, please provide a written explanation for that denial, including reference to the specific statutory exemptions upon which you rely and notify us of appeal procedures available under the law. Also, please provide all segregable portions of otherwise exempt material.



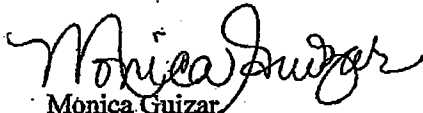
March 4, 2008

Requesters reserve the right to appeal a decision to withhold any information, to deny a waiver of fees, or to deny a limitation of processing fees.

We appreciate your prompt response to this request. Please provide us responsive documents as soon as they are identified. If you have any questions regarding this request or if the request for a fee waiver is denied, please contact Linton Joaquin at (213) 674-2909.

Thank you in advance for your timely consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Monica Guizar". The signature is fluid and cursive, with the first name "Monica" being more prominent than the last name "Guizar".

Monica Guizar  
Employment Policy Attorney  
National Immigration Law Center  
(213) 639-3900 ext. 123  
guizar@nilc.org

## **EXHIBIT B**

**Exhibit E**



**Homeland  
Security**

*Privacy Office, Mail Stop 0550*

March 24, 2008

Ms. Monica Guizar  
Employment Policy Attorney  
National Immigration Law Center  
3435 Wilshire Boulevard, Suite 2850  
Los Angeles, CA 90010

Re: **DHS/OS/PRIV 08-366/Guizar**

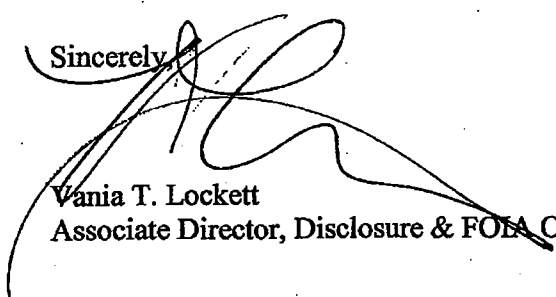
Dear Ms. Guizar:

This is in response to your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), dated March 4, 2008, and received in this office on March 5, 2008. You are seeking information pertaining to a worksite immigration enforcement operation conducted on or about February 7, 2008, by U.S. Immigration and Customs Enforcement (USICE) at Micro Solutions Enterprises located at 8201 Woodley Avenue, Van Nuys, CA.

Upon initial review of your request, I determined that, if such records exist, they would be under the purview of USICE. It has come to my attention that your request was also submitted directly to USICE and that USICE issued a response to your request via letter, dated March 20, 2008. Therefore, no further action is required of this office.

If you need to contact this office again concerning your request, please reference case number **DHS/OS/PRIV 08-366/Guizar**. You may contact this office at 1-866-431-0486 or 703-235-0790.

Sincerely,



Vania T. Lockett  
Associate Director, Disclosure & FOIA Operations