

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

BUZZFEED INC.,)
111 East 18th Street, 13th Floor)
New York, NY 10003)

Plaintiff,)

v.)

U.S. IMMIGRATION & CUSTOMS)
ENFORCEMENT,)
Office of General Counsel)
United States Department of Homeland Security)
Washington, D.C. 20258)

U.S. DEPARTMENT OF HOMELAND)
SECURITY,)
245 Murray Lane SW)
Mail Stop 0485)
Washington, D.C. 20528-0485)

Defendants.)

COMPLAINT

1. Plaintiff BUZZFEED INC. files this Freedom of Information Act suit to force Defendants U.S. DEPARTMENT OF HOMELAND SECURITY and U.S. IMMIGRATION & CUSTOMS ENFORCEMENT to comply with the clear statutory requirement that they “promptly” release records related to solitary confinement that were requested over nine months ago.

PARTIES

2. Plaintiff BUZZFEED INC. is a member of the media and made the FOIA requests at issue in this case.

3. Defendant U.S. DEPARTMENT OF HOMELAND SECURITY (“DHS”) is a federal agency subject to the Freedom of Information Act, 5 U.S.C. § 552.

4. Defendant U.S. IMMIGRATION & CUSTOMS ENFORCEMENT is a federal agency and component of DHS and is subject to the Freedom of Information Act, 5 U.S.C. § 552.

JURISDICTION AND VENUE

5. This case is brought under 5 U.S.C. § 552(a)(6)(c)(i) and presents a federal question conferring jurisdiction on this Court.

6. Venue is proper under 5 U.S.C. § 552(a)(4)(B).

BACKGROUND

7. Solitary confinement, also known as segregation, is the total or near-total isolation of prisoners, often in small cells for 23 hours a day.

8. The United Nations Special Rapporteur of the Human Rights Council has found that prolonged solitary confinement can amount to torture.¹

9. Solitary confinement of more than 15 days may lead to irreversible psychological damage.²

10. ICE policies state that placement in segregation should occur only when necessary and in compliance with applicable detention standards and requires additional review and oversight of decisions to retain detainees in segregation for over 14 days.³

DEFENDANTS' FOIA VIOLATION

11. On September 15, 2017, BUZZFEED requested from ICE, for the time period beginning January 1, 2016, all written notices to each ICE field office director of instances when a detainee has been held continuously in segregation, and all subsequent reviews conducted by

¹ *Solitary Confinement Should be Banned in Most Cases*, UN Expert Says, UN News (Oct. 18, 2011), <https://news.un.org/en/story/2011/10/392012-solitary-confinement-should-be-banned-most-cases-un-expert-says>.

² *Id.*

³ U.S. Immigration & Customs Enforcement, *Review of the Use of Segregation for ICE Detainees 1* (Sep. 4, 2013), https://www.ice.gov/doclib/detention-reform/pdf/segregation_directive.pdf.

the field office director. A true and correct copy of the full request, which has been paraphrased here, is attached as Exhibit A.

12. As of October 2, 2017, ICE had acknowledged receipt of the request and granted expedited processing, but had not provided a determination or estimated completion date.

13. During the time period of October 2, 2017, through February 26, 2018, BUZZFEED contacted ICE multiple times to obtain an estimated completion date but ICE failed to provide one.

14. On February 26, 2018, ICE provided an estimated completion date of December 20, 2017. That date is not a typo; ICE provided an estimated completion date that was two months in the past. A true and correct copy of the email chain referenced in this paragraph and the preceding paragraph is attached as Exhibit B.

15. While no administrative appeal was required, BUZZFEED submitted an appeal on March 16, 2018. A true and correct copy is attached as Exhibit C.

16. In response to the appeal, on April 4, 2018, DHS provided no estimated completion date, instead stating that “[i]n many instances, an agency cannot meet [the twenty day] time limits due to a high volume of requests, resource limitations, and other reasons,” and remanded the appeal to ICE for a direct response. A true and correct copy is attached as Exhibit D.

17. ICE has provided no further response to the request and no estimated completion date.

COUNT I – VIOLATION OF FOIA

18. The above paragraphs are incorporated herein.

19. Defendants are agencies subject to FOIA.

20. Plaintiff made a FOIA request to Defendants for agency records of Defendants.

21. One or more of the requested record are not exempt from disclosure.
22. Defendants have failed to produce the requested records.

WHEREFORE, Plaintiff asks the Court to:

- i. Order Defendants to conduct a reasonable search for records and promptly produce all non-exempt requested records;
- ii. Award Plaintiff attorney fees and costs; and
- iii. Enter any other relief the Court deems appropriate.

DATED: June 25, 2018

Respectfully Submitted,

/s/ Matthew Topic

Attorneys for Plaintiffs

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