

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

**JASON LEOPOLD,** )  
6824 Lexington Avenue )  
Los Angeles, CA 90038 )

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

Case No. 18-cv-2415

**Plaintiffs,** )

**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 )

**U.S. CUSTOMS & BORDER PROTECTION** )  
1300 Pennsylvania Avenue, NW )  
Washington, DC 20229 )

**U.S. CITIZENSHIP & IMMIGRATION** )  
**SERVICES** )  
P.O. Box 648010 )  
Lee's Summit, MO 64064-8010 )

**Defendants.** )

**COMPLAINT**

1. Plaintiffs JASON LEOPOLD and BUZZFEED INC. file this Freedom of Information Act suit to force Defendants U.S. DEPARTMENT OF HOMELAND SECURITY, U.S. CUSTOMS & BORDER PROTECTION, U.S. IMMIGRATION & CUSTOMS

ENFORCEMENT, and U.S. CITIZENSHIP & IMMIGRATION SERVICES to comply with the clear statutory requirement that they promptly release videos, audio recordings, and photographs depicting the detention, treatment, removal and intake of migrant children, as well as other requested records.

### **PARTIES**

2. Plaintiffs JASON LEOPOLD and BUZZFEED INC. are members 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 (“ICE”) is a federal agency and component of DHS and is subject to the Freedom of Information Act, 5 U.S.C. § 552.

5. Defendant U.S. CUSTOMS & BORDER PROTECTION (“CBP”) is a federal agency and component of DHS and is subject to the Freedom of Information Act, 5 U.S.C. § 552.

6. Defendant U.S. CITIZENSHIP & IMMIGRATION SERVICES (“CIS”) 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**

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

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

### **DEFENDANTS' FOIA VIOLATIONS**

9. On June 19, 2018, Plaintiffs requested from ICE and CBP, for the time period beginning January 20, 2017: (1) All unedited videos, audio, and photographs shot and recorded by ICE and CBP employees and/or contractors working for both agencies of any and all immigration enforcement actions undertaken by the agency related to migrants and migrant children seeking asylum, criminal aliens, immigration fugitives, and re-entrants; (2) All unedited videos, audio recordings, and photographs shot and recorded by ICE and CBP employees and/or contractors working for both agencies of migrant children being separated from their parents or parent and subsequently held in U.S. detention facilities, either those operated by the U.S. government or private prisons and contractors; and (3) A copy of the concluding document (report of investigation, final report, closing memo, referral letter) concerning investigations undertaken by OPR/IG at CBP/ICE/DHS in 2017 and 2018, thus far relating or referring to immigration, migrants, criminal aliens, aliens, asylum seekers, and personnel and/or contractor working for these agencies. A true and correct copy of the request is attached as Exhibit A.

10. On June 21, 2018, Plaintiffs requested from DHS, for the time period beginning January 20, 2017: (1) All unedited videos, audio, and photographs taken by DHS agents depicting the detention, treatment, removal and intake of migrant children seeking asylum, criminal aliens, immigration fugitives, and re-entrants; (2) All unedited video, audio, and photographs taken by DHS agents depicting the detention, treatment, removal, and intake of migrant children being separated from their parents and subsequently held in U.S. detention facilities; (3) The concluding documents regarding DHS OPR/IG investigations of 2017 and 2018 referring to immigration, migrants, criminal aliens, asylum seekers, and personnel and/or contractor working for these agencies. A true and correct copy of the full request, which has been paraphrased here, is attached as Exhibit B.

11. On August 7, 2018, Plaintiffs requested from CIS, for the time period beginning January 20, 2017: (1) All unedited videos, audio, and photographs taken by DHS agents depicting the detention, treatment, removal and intake of migrant children seeking asylum, criminal aliens, immigration fugitives, and re-entrants; (2) All unedited video, audio, and photographs taken by DHS agents depicting the detention, treatment, removal, and intake of migrant children being separated from their parents and subsequently held in U.S. detention facilities; (3) The concluding documents regarding DHS OPR/IG investigations of 2017 and 2018 referring to immigration, migrants, criminal aliens, asylum seekers, and personnel and/or contractor working for these agencies.

12. On June 27, 2018, DHS denied Plaintiffs' request for expedited processing, conditionally granted its request for a fee waiver, and stated that it was transferring the DHS request to CBP and ICE for processing. A true and correct copy of the response is attached as Exhibit C.

13. CBP has never provided any response to the request.

14. On July 27, 2018, ICE provided a response to the request. With regard to parts one and two of the request, ICE indicated that it "is not capable of editing any video footage." ICE offered to provide an Excel spreadsheet in response to part three of the request, which Plaintiffs accepted. A true and correct copy of the correspondence is attached as Exhibit D.

15. In its response, ICE failed to assert any exemptions over any records responsive to parts one or two of the ICE request.

16. DHS, ICE, and CBP possess software that allows for the redaction of videos.

17. On August 31, 2018, while not legally required because ICE failed to issue a proper determination or advise Plaintiffs of the need to appeal, Plaintiffs appealed ICE's response.

18. On October 2, 2018, ICE responded to the appeal, remanding the request back to the ICE FOIA Office to complete processing of the request. A true and correct copy is attached as Exhibit E.

19. ICE has provided no further response to the request.

20. On October 5, 2018, Plaintiffs received another acknowledgment letter from DHS bearing the date of August 13, 2018, and erroneously referencing an August 7, 2018 request from Plaintiffs. Upon information and belief, that letter was sent in error as DHS had already acknowledged the request, which was sent in June 2018.

21. DHS has provided no further response to the request.

22. On August 13, 2018, CIS acknowledged receipt of the request to CIS. A true and correct copy is attached as Exhibit F.

23. CIS has provided no further response to the request.

#### **COUNT I – VIOLATION OF FOIA**

24. The above paragraphs are incorporated herein.

25. Defendants are agencies subject to FOIA.

26. Plaintiffs made a FOIA request to Defendants for agency records of Defendants.

27. One or more of the requested record are not exempt from disclosure.

28. Defendants have failed to produce the requested records.

**WHEREFORE**, Plaintiffs ask the Court to:

- i. Order Defendants to conduct a reasonable search for records and promptly produce all non-exempt requested records within 90 days of the service of this Complaint;
- ii. Award Plaintiffs attorney fees and costs; and
- iii. Enter any other relief the Court deems appropriate.

DATED: October 22, 2018

Respectfully Submitted,

/s/ Matthew Topic

Attorneys for Plaintiffs

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