No. 16-15342

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

EDWARD TUFFLY, AKA BUD TUFFLY,

Plaintiff-Appellant,

v.

UNITED STATES DEPARTMENT OF HOMELAND SECURITY

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

BRIEF FOR APPELLEE

BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General

JOHN S. LEONARDO
United States Attorney

MATTHEW COLLETTE
(202) 514-4214
ROBERT D. KAMENSHINE
(202) 514-2494
Attorneys, Appellate Staff
Civil Division, Room 7213
Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

TABLE OF CONTENTS

Page(s)

TABLE OF AUTHORITIES

Cases: **Page(s)**

Statutes:

Rule:

Other Authorities:

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 16-15342

EDWARD TUFFLY, AKA BUD TUFFLY,

Plaintiff-Appellant,

v.

UNITED STATES DEPARTMENT OF HOMELAND SECURITY,

Defendant-Appellee.

BRIEF FOR APPELLEE

STATEMENT OF SUBJECT MATTER AND APPELLATE JURISDICTION

The district court had subject matter jurisdiction under the Freedom of Information Act (FOIA), 5 U.S.C. 552(a)(4)(B). This Court has jurisdiction under 28 U.S.C. 1291. Appellant filed a timely notice of appeal on March 3, 2016. See Fed. R. App. P. 4(a)(1)A).

STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

Mr. Tuffly filed a FOIA request asking the Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE), to release information "about all detainees released from detention facilities in Arizona due

to 'fiscal uncertainty.'" Aplnts. Br. 3. DHS released 401 pages of responsive records, but redacted the names and identifying information of the released detainees.

The question presented is whether the district court, in sustaining the withholding by DHS of the requested names under FOIA Exemption7(C), 5 U.S.C. 552(b)(7)(C), properly balanced those persons' interest in personal privacy against the public interest in disclosure.

STATEMENT OF THE CASE

Edward Tuffly, the treasurer of the National Border Patrol Council, the union that represents Border Patrol agents, made a FOIA request seeking information regarding ICE's release of detainees from federal facilities in Arizona for budgetary reasons during a specified time period. The detainees were then in removal proceedings.

During the pendency of this case, ICE released information pertaining to 149 detainees – a spreadsheet consisting of two tabs, and 401pages of the requested information. However, on personal privacy grounds, ICE redacted the names of, and other potentially identifying information about the released detainees. Following that release, DHS moved for summary judgment, which the district court granted because the redacted names were exempt from disclosure under FOIA's Exemption 7(C). Mr. Tuffly then filed the present appeal.

STATEMENT OF FACTS

A. Facts Of This Case

In February of 2013, ICE announced that "fiscal uncertainty" had led the agency to review the status of its detainees to ensure that detention levels did not exceed its budget. ER 5. In light of that review, ICE ended the detention of several hundred detainees, then in removal proceedings, in favor of less costly methods of supervision. Id. Finally, ICE's announcement explained that its "[p]riority for detention" would "remain[] on serious criminal offenders and other individuals who pose a significant threat to public safety." Id.; ER 14.

Mr. Tuffly made a FOIA request to ICE for information "sufficient to identify" all persons released from five Arizona detention facilities for budgetary reasons, as well as additional information pertaining to those persons. ER 6. In response, ICE released one Excel spreadsheet consisting of two tabs, and 401 pages of records. Id. at 24, 27. That information for 149 persons included alien file numbers, dates of release, criminal history, and the status of immigration court proceedings. Id. at 6. Redacted were the names of the persons released, as well as other information that would make it possible to identify the released individuals. Id. But "the only information Mr. Tuffly still seeks are the names of the persons released." Id.

B. District Court's Opinion

The district court, in holding that the requested names and identifying information were exempt from disclosure under Exemption 7(C), determined that "[t]he released detainees have a significant privacy interest" (ER 6) (bolding and capitalization omitted), and that "the marginal public interest does not warrant an invasion of privacy." ER 8 (same). The court first rejected Mr. Tuffly's claim, "heavily" based on Union Leader Corp. v. U.S. Dep't of Homeland Sec., 749 F.3d 45 (1st Cir. 2014), that "the released persons ha[d] only an 'attenuated' privacy interest in the nondisclosure of their names." ER 6. In Union Leader, as the district court described, "a newspaper [successfully] sought the names of six persons arrested by ICE," which "redacted the names from its disclosure of records which otherwise outlined the persons' criminal histories and arrest records." Id. The district court concluded that Union Leader's "reasoning (and Tuffly's, in reliance upon it) [was] difficult to square with Supreme Court precedent in two ways." Id.

First, the district court noted that the Supreme Court, in U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press, 489 U.S. 749 (1989), "long ago 'reject[ed]' [the] 'cramped notion of personal privacy'" (ER 7 (first alteration in original)) that the First Circuit had applied in holding that "the public availability of criminal records 'significantly diminished' any interest in a

compilation of those records." ER 6. Thus, the district court explained, the circumstance "that criminal records are public does not vitiate a privacy interest in a full criminal history compiled by the government." ER 7.

Second, the district court continued, while the First Circuit had "emphasized the [requestor] newspaper's avowal it had no intention of contacting the six individuals [whose names were requested]" and "Tuffly gives similar assurances," "the Supreme Court has repeatedly stated that 'whether an invasion of privacy is warranted cannot turn on the purpose for which the request is made.'" ER 7 (quoting Reporters Committee, 489 U.S. at 771) (emphasis omitted)). Thus, the district court summarized, "the released persons' privacy interests are not attenuated either by the fact that their criminal records are already public in some form, or because Tuffly disavows any intent to harass them." Id.

Noting the "often hostile atmosphere surrounding unauthorized immigration," the district court explained that it "must consider the risk that [the released persons] will face harassment from any source, regardless of Tuffly's intentions." ER 7. Finally, quoting U.S. Dep't of State v. Ray, 501 U.S. 164, 176 (1991), the court noted the Supreme Court's reasoning that "'[a]lthough disclosure of * * * personal information [of Haitians interdicted from entering the United States and returned to Haiti] constitutes only a de minimis invasion of privacy

when [their] identities * * * are unknown, the invasion of privacy becomes significant when the personal information is linked to particular interviewees.'" ER 8.

Turning to the public interest in obtaining the redacted names, the district court explained that "it is clear Tuffly seeks to determine whether ICE acted diligently in pursuing its stated policy that '[p]riority for detention remains on serious criminal offenders and other individuals who pose a significant threat to public safety.'" ER 8-9 (alteration in original). The court responded that "[t]he information Tuffly has received includes each person's criminal history (if any), to the extent of ICE's knowledge," which is "sufficient to evaluate ICE's decision-making." Id. at 5. The court acknowledged that "[t]he names might shed some additional light, but that marginal utility is more than outweighed by the privacy interests at stake." Id.

SUMMARY OF ARGUMENT

The district court properly held that the names of the released detainees were validly withheld under FOIA's Exemption 7(C). The court first correctly determined that those detainees "have a significant privacy interest" (ER. 6) in their names. The court further correctly determined that while "[t]he [requested] names might shed some additional light" on "ICE's decision-making," any such

"marginal utility" was "more than outweighed by the privacy interests at stake." Op. 5.

1. Mr. Tuffly concedes that the released detainees, whom he incorrectly deems to be all "criminal aliens," have a privacy interest in their names. He seeks to trivialize it by stating that his goal in seeking the names is "research," and that he "does not intend to contact, harass, or embarrass the aliens, [n]or * * * intend for others to do so if and when the information is made public." Aplnts. Br. 4 (citation omitted). But a requestor's intention, no matter how sincere, is irrelevant to Exemption 7(C)'s balancing process. A decision requiring disclosure to one requestor effectively requires disclosure to all. Mr. Tuffly cannot offer assurances on behalf of the public. Here, the concern with harassment, and perhaps even violence, is heightened given the well-known "often hostile atmosphere surrounding unauthorized immigration" (ER 7), particularly in Arizona.

2. Mr. Tuffly has already obtained the disclosure of any convictions or criminal proceedings involving the released detainees prior to their release. Thus, he already knows what ICE knew when it acted. That knowledge fully equipped him to assess the exercise of judgment by ICE at that relevant time. Consequently, Mr. Tuffly has not demonstrated, as he must to be successful, that release of the undisclosed "names" would significantly advance, beyond what has already been accomplished, the public interest in learning about what ICE has done. The

asserted public interest in obtaining the names remains at best speculative and attenuated. As such, it cannot outweigh the significant privacy interest at stake.

STANDARD OF REVIEW

"'[A] two-step standard of review applies to summary judgment in FOIA cases. The court first determines under a de novo standard whether an adequate factual basis exists to support the district court's decisions. If an adequate factual basis exists, then the district court's conclusions of fact are reviewed for clear error, while legal rulings, including its decision that a particular exemption applies, are reviewed de novo.'" Prudential Locations LLC v. U.S. Dep't of Hous. & Urban Dev., 739 F.3d 424, 429 (9th Cir. 2013) (brackets in original) (quoting Lane v. Dep't. of the Interior, 523 F.3d 1128, 1135 (9th Cir. 2008)).

ARGUMENT

THE DISTRICT COURT, IN SUSTAINING THE WITHHOLDING OF THE REQUESTED NAMES OF THE RELEASED DETAINEES, PROPERLY BALANCED THEIR PRIVACY INTEREST AGAINST THE PUBLIC INTEREST IN DISCLOSURE

The FOIA serves to "open agency action to the light of public scrutiny." Department of the Air Force v. Rose, 425 U.S. 352, 361 (1976). But the FOIA simultaneously demands a balancing of that interest against other important interests. Thus Congress made clear that an agency may withhold "records of information compiled for law enforcement purposes" where release of the information "could reasonably be expected to constitute an unwarranted invasion

of personal privacy." Exemption 7(C), 5 U.S.C. 552(b)(7)(C). See also Exemption 6, 5 U.S.C. 552(b)(6).[1] Plaintiff does not argue that the records at issue here were not "compiled for law enforcement purposes," and thus the only question is whether the release of the names and identifying information of the detainees "could reasonably be expected to constitute an unwarranted invasion of personal privacy."

The FOIA's two personal privacy "[e]xemptions * * * speak of an 'unwarranted' invasion of personal privacy, not any invasion. So, to determine whether a record is properly withheld, [the Court] must balance the privacy interest protected by the exemptions against the public interest in government openness that would be served by disclosure." Lahr v. NTSB, 569 F.3d 964, 973 (9th Cir. 2009) (citing National Archives & Records Admin. v. Favish, 541 U.S. 157, 171 (2004); U.S. Dep't of Def. v. FLRA, 510 U.S. 487, 494-95 (1994)). Exemption 6 requires "a clearly unwarranted invasion of personal privacy," whereas Exemption 7 is less demanding, requiring only that release of the requested information "could reasonably be expected to constitute an unwarranted invasion of personal privacy." See Lahr, 569 F.3d at 973-74 . But the same standards for identification of privacy and public interests to be balanced apply to both exemptions. Id. at 974 ("Because

[1] Exemption 6(C) bars disclosure of "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. 552(b)(6).

both exemptions require balancing of public and private interests, cases arising under Exemption 6 also inform [the Court's] analysis.").

A. The District Court Properly Found That "The Released Detainees Have a Significant Privacy Interest" In The Withholding Of Their Names

1. Standards For Identifying And Weighing Privacy Interest

"To withhold information * * *, an agency must show that 'some nontrivial privacy interest' is at stake." Prudential Locations LLC v. U.S. Dep't of Hous. & Urban Dev., 739 F.3d 424, 430 (9th Cir. 2013) (quoting U.S. Dep't of Def. v. FLRA, 510 U.S. at 501. See also Forest Serv. Emps. for Envtl Ethics v. U.S. Forest Serv., 524 F.3d 1021, 1027 (9th Cir. 2008) ("'[S]ome nontrivial privacy interest' is sufficient to justify the withholding of information * * * unless the public interest in disclosure is sufficient to outweigh it." (emphasis omitted).

The "nontrivial" privacy interests that Exemption 7(C) protects include "[e]mbarassing and humiliating facts—particularly those connecting an individual to criminality." Detroit Free Press, Inc. v. U.S. Dep't of Justice, No. 14-1670, 2016 WL 3769970, at *2 (July 14, 2016) (en banc) (citing Department of Justice v. Reporters Comm. for Freedom of the Press, 489 U.S. 749, 771 (1989). Moreover, that 7(C) privacy interest "must be understood in light of the consequences that would follow" from unlimited disclosure). Favish, 541 U.S. at 170.

"[T]he reasons why [a requestor] seeks [information] are irrelevant to [the Court's] inquiry." Forest Serv., 524 F.3d at 1025 (denying request as to "identities of the Forest Service employees"). Thus, "[w]hether an invasion of privacy is warranted cannot turn on the purposes for which the request for information is made." Id. (quoting U.S. Dep't of Def., 510 U.S. at 496 quoting in turn Reporters Committee, 489 U.S. at 771). "FOIA provides every member of the public with equal access to public documents and, as such, information released in response to one FOIA request must be released to the public at large." Id. Accordingly, in assessing the potential adverse impact that the requested disclosure could have on privacy interests, the Court "consider[s] the consequences of disclosure * * * to the entire public," not just disclosure to the requestor. Id. (emphasis added).

2. Privacy Interest Here "Significant"

Mr. Tuffly acknowledges (Aplnts. Br. 5), as Reporter's Committee compels, that protected privacy interests encompass the names of persons with criminal records. See Union Leader Corp. v. U.S. Dep't of Homeland Sec., 749 F.3d 45, 51-52 (1st Cir. 2014). The district court here correctly found the privacy interest at stake to be "significant." ER 6. This Court, like the district court, may appropriately take judicial notice of today's "often hostile atmosphere surrounding unauthorized immigration," particularly in southwestern border states such as

Arizona. Op. 3. That atmosphere enhances "the risk that [the released persons] will face harassment from any source, regardless of Tuffly's intentions." Id.

Mr. Tuffly's efforts to overcome the privacy interest is unavailing.[2] First, Mr. Tuffly states that he seeks the information, including the names of the released persons, "only to research, or make available for others to research, th[eir] backgrounds * * * to determine all of their past crimes, any crimes that they have committed under supervision since being released, and whether they have now been removed."[3] Aplnts. Br. 4 (emphasis added). He further emphasizes, that he "does not intend to contact, harass, or embarrass the aliens, [n]or * * * intend for others to do so if and when the information is made public." Id. (citation omitted).

Mr. Tuffly principally relies, as he did before the district court, on the conclusion in Union Leader "that the aliens' privacy rights were attenuated by

---

[2] Mr. Tuffly's repeated references to the detainees as "criminal aliens" – which incorrectly lumps together individuals who have no criminal record, have merely been charged, or have actual convictions – does not undermine the privacy interests here. FOIA protects an individual's personal privacy regardless of whether he has been convicted of a crime, See Reporters Committee, 489 U.S. at 771.

[3] Already, Mr. Tuffly, through his counsel, has posted all of the previously released information on counsel's website, judicialwatch.org. See http://www.judicialwatch.org/wp-content/uploads/2015/07/Tuffly-v-DHS-06247-Records-r_2015-ICFO-06247.pdf (last visited August 26, 2016); Judicial Watch Document Archive, Tuffly v. DHS 06247 Records List (created July 13, 2015) http://www. judicialwatch.org/document-archive/tuffly-v-dhs-06247-records-list/ .

* * * the fact[s] that the underlying arrests and convictions were matters of public record, and that the newspaper's proposed investigation was limited." Aplnts. Br. 8.[4] He also points out that Union Leader "added that the * * * privacy rights were further diminished by the fact that the [newspaper] did not intend to contact the aliens." Id.

But, as the district court's opinion makes clear (ER. 7), under Reporters Committee, the public nature of criminal records is irrelevant to the existence of privacy interests vis-a-vis the government's disclosure of any compilations that include accounts of such records. Further, as explained above (supra p.10), under Reporters Committee a requestor's intention, no matter how sincere, to confine the use of information to "research" is irrelevant to the balancing process. A decision requiring disclosure to one requestor is effectively one that requires disclosure to all. Forest Serv., 524 F.3d at 1025.

And because disclosure to one under FOIA requires disclosure to all, Mr. Tuffly's stated intent not to harass any of the released detainees is irrelevant. Certainly, an explicit intent to contact the specific individuals magnifies the importance of protecting their identities. See U.S. Department of State v. Ray, 502 U.S. 164, 177 (1991); Forest Serv., 524 F.3d at 1026. But a stated intent not to

[4] We note that the request in Union Leader was confined to only convicted criminal aliens, whereas Mr. Tuffly seeks the names of all aliens who were released during a specified time period, without regard to their having a criminal record.

contact the individuals does nothing to diminish their privacy interests. See Reporters Comm., 489 U.S. at 771; Forest Serv., 524 F.3d at 1025.

Anyone may file a FOIA request. See Reporters Comm., 489 U.S. at 771-72 (intent that "the FOIA * * * give any member of the public as much right to disclosure as one with a special interest [in a particular document]") (quotation marks omitted). Thus, "[i]t must be remembered that once there is disclosure, the information belongs to the general public. There is no mechanism under FOIA for a protective order allowing only the requester to see whether the information bears out his theory, or for proscribing its general dissemination." Favish, 541 U.S. at 174. Because the release of the information to Mr. Tuffly would constitute a public release of the information, the question of whether the disclosure would amount to an unwarranted invasion of privacy cannot be whether he would contact the released detainees.

Thus, in National Association of Retired Federal Employees (NARFE) v. Horner, 879 F.2d 873 (D.C. Cir. 1989), cert. denied, 494 U.S. 1078 (1990), the D.C. Circuit, in rejecting a union's attempt to obtain the names and addresses of retired federal employees, explained that "[b]efore * * * Reporters Committee, NARFE's primary argument was that its planned use of their names and addresses would not occasion significant annoyance to the annuitants." 879 F.2d at 875. The Court responded that "Reporters Committee makes clear * * * that this is not the

relevant consideration," since "'the identity of the requesting party has no bearing on the merits of his or her FOIA request.'" NARFE, 879 F.2d at 875 (quoting Reporters Committee, 489 U.S. at 771). In sum, the Court stated, "[b]ecause a court cannot limit the disclosure of records to particular parties or for particular uses, it would be illogical as well as unfair to the person whose privacy is at stake for the court to balance the public interest in disclosure to the whole world against the private interest in avoiding disclosure only to the party making the request, and to ignore the impact on personal privacy of the more general disclosure that will likely ensue." Id.

B. The District Court Properly Found That The Interest In Disclosure Of The Detainees' Names Was Only "Marginal"

1. Standards For Identifying And Weighing Public Interest

"Once the government has identified a cognizable privacy interest, 'the only relevant public interest in the FOIA balancing analysis is the extent to which disclosure of the information sought would shed light on an agency's performance of its statutory duties or otherwise let citizens know what their government is up to.'" Lahr, 569 F.3d at 974 (quoting Bibles v. Oregon Nat. Desert Ass'n, 519 U.S. 355, 355-56 (1997) (per curiam). Where there is a cognizable privacy interest, a requestor "must show that 'the public interest sought to be advanced is a significant one' and that 'the information [sought] is likely to advance that interest.'" Lane v. Department of the Interior, 523 F.3d 1128, 1137 (9th Cir. 2008)

(emphasis added; alteration in original) (quoting Favish, 541 U.S. at 172. See Forest Serv., 524 F.3d at 1025 (requested disclosure must contribut[e] significantly to public understanding of the operations or activities of government" (emphasis added; brackets in original) (quoting Reporters Comm., 489 U.S. at 775.

In determining "significance," it is only the incremental public interest value, if any, of the withheld information that must be balanced against the adversely affected privacy interests. Thus, in Lahr, this Court explained that "because only the names of witnesses and agents are missing from the released documents, under the applicable precedents the 'marginal additional usefulness' of the names in exposing government misconduct must outweigh the privacy interests at stake.'" Lahr, 569 F.3d at 978 (quoting Painting Indus. of Hawaii Market Recovery Fund v. U.S. Dep't of the Air Force, 26 F.3d 1479, 1486 (9th Cir. 1994)). See American Immigration Lawyers Ass'n v. Executive Office For Immigration Review, No. 15-5201, slip. op. at 11 (D.C. Cir. July 29, 2016) ("[T]he question is whether, given the information already disclosed * * *, the 'incremental value' served by disclosing an immigration judge's name outweighs that person's privacy interest." (quoting Schrecker v. Dep't of Justice, 349 F.3d 657, 661 (D.C. Cir. 2003)).

Moreover, as Mr. Tuffly acknowledges (Aplnts. Br. 7), in cases where the interest in disclosure derives from a government employee's negligence or

misconduct, [the requestor] must provide more than a 'bare suspicion' of agency misconduct; rather, she must 'produce evidence that would warrant a belief by a reasonable person that the alleged Government impropriety might have occurred.'" Lane, 523 F.3d at 1138 (quoting Favish, 541 U.S. at 174).

2. Public Interest Here "Marginal" At Best, In That Already-Released Information Fully Allows Assessment Of ICE's Decision-Making

The district court here found that "[t]he [requested] names might shed some additional light" in regard to Mr. Tuffly's efforts "to evaluate ICE's decision-making." ER. 9. Any "marginal utility" that might exist, the court correctly held, was "more than outweighed by the privacy interests at stake." Id. Mr. Tuffly's conclusory attempt to maximize the public interest that he claims the requested additional disclosure would advance is no more persuasive than his effort to trivialize the privacy interests at stake. He offers nothing to demonstrate the likely contribution of the names he seeks to his understanding of what ICE did.

Mr. Tuffly broadly states that the requested "names and records * * * are necessary to provide insight on the activities of government." Aplnts. Br. 10 (emphasis added). He asserts that ICE's statement that "'[p]riority for detention remains on serious criminal offenders and other individuals who pose a significant threat to public safety'" "[i]mplicit[ly]" "assert[s] that those released into 'less

costly methods of supervision' do not pose a significant threat to public safety." Aplnts. Br. 10. (first alteration in original). He points out, citing a newspaper story, that "it is already public knowledge that several of the [persons] released by ICE * * * had been charged [(at some time prior to their release)] with a number of violent crimes including assault, battery, domestic violence, and weapons charges." Id. at 11.

But Mr. Tuffly already knows what ICE knew when it released the persons in question, and thus may assess ICE's judgment in doing so. He has already obtained "records" that fully informed him of any convictions or criminal proceedings involving the detainees at the time of their release. That disclosure has well equipped him to understand and assess what ICE was doing in its release of detainees as prompted by budgetary considerations, i.e., to satisfy his concern as to whether the agency was releasing apparently dangerous persons into the community.[5]

Given that release of information concerning any criminal involvement by the detainees prior to their release, Mr. Tuffly's task now strictly pertains to the undisclosed names – to show that their disclosure will significantly advance, beyond what has already been accomplished, the public interest in learning about

[5] Notably, a number of the released persons have already been removed or voluntarily departed the United States following their release. Even if Mr. Tuffly's public interest rationale were to be accepted, it would have virtually no application to such persons.

what ICE has done. The asserted interest in the names is speculative and attenuated.

In support of his claim, Mr. Tuffly once more invokes Union Leader. See supra. p.12. But there, the newspaper-requestor was attempting to investigate the circumstances as to ICE's alleged unduly long delays in apprehending for the purpose of removal those aliens who had been convicted of crimes. See Union Leader, 749 F.3d at 55-56. That decision sanctioned a proposed derivative use of disclosed material (use of disclosed names to obtain information from state and local governments).

It is not clear, however, that any public interest that is cognizable under FOIA is even involved in cases where that alleged interest is predicated on the so-called "derivative use" of the information that is being sought – where the requestor's claim as to a public interest is based on "the hope that [he] may be able to use that information to obtain additional information outside the Government files." Ray, 502 U.S. at 178. See Lahr, 569 F.3d at 978 (Court has "viewed skeptically the assertion that the public interest is materially advanced by disclosing names of individuals redacted from documents already in the public record"). But at least the focus of Union Leader was on the newspaper's desire to learn more, even circuitously, about what ICE was doing or not doing in fulfilling its responsibility to apprehend and deport "criminal aliens" who posed a danger to

the community. The newspaper expected that with the requested names, it culd examine state and local agency files to ascertain the interaction of such agencies with ICE as to the status of those aliens.

Here, as in Union Leader, Mr. Tuffly claims that his obtaining the requested names will better enable him to obtain derivative information from third parties. But, unlike in that case, there is no reasonable prospect that the derivative information will disclose anything more about the already-disclosed functioning of ICE as to the named persons. Rather, it would but only perhaps enable Mr. Tuffly to more easily research the practical effects of ICE's action.

CONCLUSION

For the foregoing reasons, the order of the district court should be affirmed.

Respectfully submitted,

BENJAMIN C. MIZER
Principal Deputy Assistant
Attorney General

JOHN S. LEONARDO
United States Attorney

MATTHEW COLLETTE
(202) 514-4214
ROBERT D. KAMENSHINE
(202) 514-2494
Attorneys, Appellate Staff
Civil Division, Room 7213
Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-000

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type volume limitations set forth in Federal Rule of Appellate Procedure 32(a)(7)(B). This brief contains 4,444 words.

s/Robert Kamenshine
ROBERT D. KAMENSHINE
Attorney for Defendant-Appellant
Appellate Staff, Civil Division
Room 7213
U.S. Department of Justice
950 Pennsylvania Ave., N.W.
Washington , D.C. 20530-0001
202-514-2404
robert.kamenshine@usdoj.gov

STATEMENT OF RELATED CASES

I hereby state that I am aware of no related cases.

s/Robert Kamenshine
ROBERT D. KAMENSHINE
Attorney for Defendant-Appellant
Appellate Staff, Civil Division
Room 7213
U.S. Department of Justice
950 Pennsylvania Ave., N.W.
Washington , D.C. 20530-0001
202-514-2404
robert.kamenshine@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on this **29th day of August, 2016,** I caused to be served on all interested parties, via this Court's ECF system, a copy of Appellee's brief

s/Robert Kamenshine
ROBERT D. KAMENSHINE
Attorney for Defendant-Appellant
Appellate Staff, Civil Division
Room 7213
U.S. Department of Justice
950 Pennsylvania Ave., N.W.
Washington , D.C. 20530-0001
202-514-2404
robert.kamenshine@usdoj.gov