

## ICE Surveillance Past and Present: The Ethical Implications of the Agency's Invasive Efforts

Kelly Adams

As soon as Trump took office, his administration empowered U.S. Immigration and Customs Enforcement (ICE) to expand its reach and activities. ICE put out a request for contractors to provide them with technological tools to surveil and monitor non-citizens. This is not anything new, ICE and the FBI have been using facial recognition in driver's license databases in their surveillance for years. The actions of ICE, both past and present, raise serious issues concerning safety and constitutional rights of both non-citizens and citizens alike. In this blog, I want to talk about previous surveillance efforts and some of the recent developments in ICE action, along with the constitutional and ethical risks that accompany these developments.

It is important to acknowledge that the federal government and its agencies have long been utilizing controversial surveillance methods. ICE has targeted state agencies and private companies to do so. Even before Trump took office, ICE had access to driver's license data of 74% of adults and had used facial recognition technology to search license photos of about 32% of all adults in the U.S.<sup>1</sup> As far back as 2008, ICE contracted a biometrics company called L-1 Identity Solutions to access Rhode Island's DMV's face recognition database to "recognize criminal aliens."<sup>2</sup> Further, ICE has purchased records from private data brokers, such as Thomson Reuters, to search customer records from utility companies.<sup>3</sup> This data has been used to track people down for arrest and deportation.<sup>4</sup>

By utilizing driver's license databases and utility company records, ICE is targeting people through their necessities. Nationwide, people rely on vehicles to get to work. People immigrating to the United States, regardless of whether they have immigrated here legally or illegally, are no different. Multiple states have passed laws allowing undocumented persons to receive driver's licenses or driving privilege cards.<sup>5</sup> In theory, this is beneficial and helps individuals avoid the risk of being arrested for driving without a license.<sup>6</sup> These laws should be helping people avoid deportation. However, ICE has used this data to locate people to facilitate deportation—not avoid it.<sup>7</sup> This puts many people in an impossible position. Similar difficulties come up when registering with utility companies. Should people have to give up water, gas, and electricity just to maintain their privacy?

Notably, ICE operates largely without warrants or authorization. State agencies and motor vehicle departments will willingly give their data to ICE upon request in some instances. Agents

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<sup>1</sup> *American Dragnet: Data-Driven Deportation in the 21<sup>st</sup> Century*, GEORGETOWN LAW CTR. ON PRIV. AND TECH. (May 10, 2022), <https://americandragnet.org> [<https://perma.cc/6KEL-ZCQ2>].

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Kimberly Cataudella & Alexia Fernandez Campbell, *Undocumented Immigrants Can Get Licenses. ICE Can Get Their Data*, THE CTR. FOR PUB. INTEGRITY (July 13, 2021), <https://publicintegrity.org/inequality-poverty-opportunity/immigration/undocumented-immigrants-licenses-ice-data/> [<https://perma.cc/QKE9-4N9Q>].

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

will inform agencies that certain non-citizens are suspected of crimes as grounds for a personal information request or facial recognition search.<sup>8</sup> There is no way to know for certain if this is their actual purpose for requesting the information. Very few states require court orders or any proof regarding whether ICE investigations are truly related to crimes rather than minor civil immigration infractions.<sup>9</sup> Further, ICE has famously operated without Congressional permission.<sup>10</sup> Congress only discovered the 2008 contract for facial recognition a decade after it happened.<sup>11</sup>

ICE has broad authority to detain and deport non-citizens who violate immigration laws.<sup>12</sup> Although warrants are generally required for entering private residences, they have no limits to what they can do in public spaces.<sup>13</sup> The level of surveillance that ICE currently utilizes essentially circumvents the need for warrants, because they can collect so much data about non-citizen individuals and their movements that ICE does not have to rely on making arrests in private residences.

Despite this authority, there are still significant ethical and constitutional concerns surrounding their actions. The Fourth Amendment is of particular concern. Many argue that the agency violates the Fourth Amendment right to liberty through a process where ICE requires local jails to hold non-citizens for 48 additional hours, without any neutral oversight to show probable cause and without real authority to hold people in custody.<sup>14</sup> ICE required the extended holding so that they could detain non-citizens directly from local jails.<sup>15</sup> The ACLU provides a list of ICE practices that pose Fourth Amendment concern such as: representing themselves as probation officers or police officers to gain entry into a person's home; disguising themselves as day laborers or civilians, and tricking people into locating family members.<sup>16</sup>

The Trump administration aimed to aggressively increase arrests and deportations. This is being done by throwing out Biden's limitations on ICE arrests, expanding ICE's mandate, and

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.* The four states which require an ICE agent to provide a court order or arrest warrant in exchange for personal data are New Jersey, New Mexico, Virginia, and Washington.

<sup>10</sup> *American Dragnet*, *supra* note 1.

<sup>11</sup> *Id.*

<sup>12</sup> *U.S. Immigration and Customs Enforcement*, U.S. IMMIGR. AND CUSTOMS ENFOR'T (Feb. 24, 2025), <https://www.ice.gov/about-ice> [<https://perma.cc/G32N-BP8Y>].

<sup>13</sup> ERO Letter to the American Public, U.S. IMMIGR. AND CUSTOMS ENFOR'T (Sep. 12, 2019), <https://www.ice.gov/news/releases/enforcement-and-removal-operations-mythbuster#:~:text=ICE%20does%20not%20need%20a,places%20all%20parties%20in%20jeopardy> [<https://perma.cc/7HRX-TBRB>].

<sup>14</sup> New Class Action Settlement Requires ICE to Stop Rampant Constitutional Violations For People Subject to ICE Detainers, NAT'L IMMIGRANT JUST. CTR. (Feb. 10, 2025), <https://immigrantjustice.org/staff/blog/new-class-action-settlement-requires-ice-stop-rampant-constitutional-violations-people#:~:text=Most%20ICE%20detainers%20are%20issued,without%20foundational%20Fourth%20Amendment%20protections> [<https://perma.cc/DP53-3G9D>].

<sup>15</sup> *Id.*

<sup>16</sup> Leila Rafei, *This Deceptive ICE Tactic Violates the Fourth Amendment*, ACLU (April 12, 2023), <https://www.aclu.org/news/immigrants-rights/this-deceptive-ice-tactic-violates-the-fourth-amendment> [<https://perma.cc/SET4-MRVF>].

expanding the power of agents to arrest non-citizens.<sup>17</sup> After eliminating Biden-era policies, ICE can arrest people in sensitive locations (such as schools, hospitals, and churches).<sup>18</sup> These efforts came with the promise that ICE would arrest and deport non-citizens with criminal charges first.<sup>19</sup> It seems that the Trump administration has not held up this promise, as the number of detainees without criminal convictions or charges is rapidly spiking.<sup>20</sup> Detention centers are almost at capacity,<sup>21</sup> but that is apparently not enough. Trump just reassigned the acting head of ICE because he is frustrated that the pace of arrests and deportations is not fast enough.<sup>22</sup>

The rapid increase of immigration arrests and the expansion of ICE authority and surveillance use introduces ethical and constitutional concerns. Even before Trump returned to office, there is a long history of unethical practices from the agency. Utilizing technology such as facial recognition has allowed the agency to operate discretely, even evading Congress's notice. Trump's anti-immigrant executive orders and actions should be watched closely, as the various agency actions are likely to pose serious constitutional issues.

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<sup>17</sup> Camilo Montoya-Galvez, *Acting Head of ICE Reassigned Amid Frustrations Over Deportation Efforts*, CBS NEWS (Feb. 21, 2025), <https://www.cbsnews.com/news/acting-head-immigration-customs-enforcement-reassigned-frustrations-deportation-efforts-trump/> [https://perma.cc/G2EW-S4JD].

<sup>18</sup> *Id.*

<sup>19</sup> Laura Strickler, *New Immigration and Customs Enforcement Data Shows Administration Isn't Just Arresting Criminals*, NBC NEWS (Feb. 19, 2025, 5:00 AM), <https://www.nbcnews.com/politics/national-security/new-ice-data-shows-administration-isnt-just-arresting-criminals-rcna192656> [https://perma.cc/KH2M-5XDU].

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Montoya-Galvez, *supra* note 17.