The Honorable Ronald B. Leighton

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

COWLITZ COUNTY, et al.,

Plaintiffs,

v.

UNIVERSITY OF WASHINGTON, et al.,

Defendants.

No. 3:19-cv-06250-RBL

UNIVERSITY OF WASHINGTON AND DR. ANGELINA GODOY'S REPLY IN SUPPORT OF MOTION TO REMAND TO STATE COURT

NOTE ON MOTION CALENDAR: February 21, 2020

ORAL ARGUMENT REQUESTED

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I. INTRODUCTION AND SUMMARY OF ARGUMENT

This action is not subject to removal, because the County's lawsuit was not in any sense "against or directed to" any federal actor. 28 U.S.C. § 1442(a)(1). The County did not bring any claim against ICE, and its action seeks no relief from or against ICE. Remand is required.

ICE contends that a federal actor sometimes may remove under Section 1442(a)(1), even if it is not a "traditional defendant." Dkt. 23 ("Opp.") at 3, 8. But this contention cannot justify removal here, because ICE stands before this Court as a traditional *plaintiff*, and no authority permits a plaintiff to remove under Section 1442(a)(1). The state court designated ICE as a plaintiff, and ICE's conduct since removal confirms that this characterization was correct: ICE has asserted an affirmative injunction claim for relief (Dkt. 8), and it has now filed for summary judgment on that claim, explicitly arguing that it is entitled to "sue" to protect its interests. Dkt. 21 at 21. As a plaintiff, ICE had no right to remove this action. *See* § II.A, *infra*.

ICE cites a handful of cases in which "non-defendant" federal actors were permitted to remove under 28 U.S.C. § 1442(a)(1). Every one of these cases is distinguishable: in each, the non-defendant federal actor was permitted to remove only because it would have been (i) liable for some relief under the action asserted, and/or (ii) deprived of a remedy or defense had the case remained in state court. Neither circumstance exists here. First, the County does not seek to compel ICE to do, or cease doing, anything. Second, ICE had a remedy in state court: it was permitted to intervene in the state court action, where it could pursue an injunction to bar disclosure. *See* § II.B, *infra*.

Removal is not permitted under the facts of this case. There is no nexus between the County's claims and any federal action or defenses. The records at issue are not "federal property": they fall outside the statutory definition of federal "records," 44 U.S.C. § 3301, but very clearly meet the state definition of "public records" under RCW 42.56.010(3) and GR 31.1. ICE is not asserting a defense to any claim against it. Rather, it seeks to block disclosure of the requested redacted jail files. It is entitled to seek that remedy, but as a plaintiff in a state records injunction action. This case is not a removable action *against* ICE. *See* § II.C, *infra*.

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Finally, UW respectfully asks that this Court defer any decision on ICE's pending summary judgment motion until after this Motion is decided. If remand is denied, the Court should set a briefing schedule that provides UW sufficient time to obtain leave to be heard on ICE's counterclaims and to respond on the merits. *See* § II.D, *infra*.

II. ARGUMENT

A. A Plaintiff Cannot Remove Under Section 1442, and ICE Has Confirmed It Is A Plaintiff In This Action.

"No right exists in favor of a person who, as plaintiff, has filed an action in the state court, to cause the removal of such action to a federal court." *In re Walker*, 375 F.2d 678, 678 (9th Cir. 1967). Contrary to ICE's suggestion (Opp. at 7), this hornbook principal is not limited to the general removal statute, 28 U.S.C. § 1441. It applies equally to removal under Section 1442. "Removal is available only to defendants. 28 U.S.C. §§ 1441(c), 1442, 1443, 1446(c)." *Okot v. Callahan*, 788 F.2d 631, 633 (9th Cir. 1986) (emphasis added) (citing *Walker*). "This language, as these cases show, is consistently echoed by related statutes concerning removal, with constant reference to removal by the defendant or defendants – not by the plaintiff." *Meza v. California*, 2018 WL 4700343, at *1 (N.D. Cal. Oct. 1, 2018), *aff'd*, 2019 WL 364454 (9th Cir. Jan. 24, 2019). No statute provides for removal by a plaintiff. *See* 14C Wright & Miller, *Fed. Prac. & Proc. Juris.* § 3730 (rev. 4th ed. 2019) ("[P]laintiffs cannot remove").

ICE suggests (untenably, as discussed in the next section) that removal under Section 1442 is exceedingly flexible. But even ICE does not contend that a federal actor, appearing in state court as a *plaintiff* with an affirmative claim for relief, has a right to remove under Section 1442(a)(1). ICE fails to identify a single case allowing removal by a plaintiff. UW likewise has located no such authority.

This point is critical, because ICE unquestionably appears in this action as a *plaintiff*, as the state court properly found and as events since removal have confirmed. ICE was properly characterized as a plaintiff because the relief it seeks – blocking release of the requested records – is an affirmative claim for injunctive relief, a remedy for which it bears the burden of proof.

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See Mot. at 8-12. Ignoring the state court's order that it was a "plaintiff," ICE filed a notice of removal on December 30, 2019. The following week, ICE asserted a "counterclaim" in this court, seeking declaratory and injunctive relief. Dkt. 1; Dkt. 8 at 7, 8. Then, concurrent with its response to this Motion, ICE filed a cross-motion for summary judgment confirming, in both form and substance, that it is a plaintiff in this action. The summary judgment motion seeks affirmative relief on its injunction claim. Indeed, in *that* motion ICE makes no bones about its status as a plaintiff: the motion contends that ICE "has the right to seek protection" of the records at issue and that it "can sue" to protect its alleged interests. Dkt. 21 at 21.[1]

UW does not dispute that ICE is entitled to seek injunctive relief in support of its attempt to suppress disclosure of the records at issue. But, as UW explained in its Motion, that remedy is available to ICE in state court. *See* Mot. at 10-14. ICE's apparent preference to have its affirmative claim for relief heard in federal court rather than state court does not magically transform it from a plaintiff to a defendant. Because ICE was and is plainly a plaintiff on its injunction claim, and in this action generally, there is no civil action "against or directed to" any federal party, and the case was not removable in the first instance.

B. Cases Permitting Section 1442(a) Removal By Federal Actors That Are Not "Traditional Defendants" Are Inapposite Here.

In its attempt to avoid the clear prohibition against removal by a plaintiff, ICE cites to the general rule that Section 1442 is broadly construed, and to a handful of cases permitting federal actors to remove even when they are not situated as "traditional" defendants. Opp. 7-12. None of this authority helps ICE here.

First, no rule of construction permits Section 1442 to be interpreted so broadly as to permit federal-actor *plaintiffs* to remove in order to pursue their own affirmative claims. As explained in the Motion, although Section 1442(a)(1)'s "policy should not be frustrated by a

[1] In its summary judgment motion, ICE also suggests this Court should simply "re-align the parties." Dkt. 21 at 22-23. But ICE cannot escape remand by seeking realignment at this stage, because removal jurisdiction is determined by "the complaint as of the time the removal petition was filed." *Libhart v. Santa Monica Dairy Co.*, 592 F.2d 1062, 1065 (9th Cir. 1979).

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narrow, grudging interpretation," that statutory policy exists to assure federal actors can *defend* claims against or directed to them; its purpose is to assure that when federal officers face claims "arising out of their duty to enforce federal law," their immunity and other defenses can be "litigated in the federal courts." *Willingham v. Morgan*, 395 U.S. 402, 405, 407 (1969). ICE does not, because it cannot, explain how Section 1442 could be "frustrated" by denying removal where, as here, the only asserted federal interest is the agency's affirmative claim as a plaintiff in an injunction action.

Next, ICE contends that the 2011 amendment – which added the phrase "directed to" to Section 1442(a)(1) – was enacted "for the purpose of avoiding narrow interpretations" of the statute. Opp. at 8. But the amendment manifestly does not permit removal by a federal *plaintiff*. Rather, the language was intended to expand the types of proceedings in which federal agents could remove to *defend* claims directed to them – such as in cases where the federal actor was a third party implicated in a motion or collateral proceeding. "The 2011 amendments to the removal statute clarified … that a 'civil action' and a 'criminal prosecution' within subsection (a) includes any proceeding (whether or not ancillary to another proceeding) to the extent that in such proceeding a judicial order, including a subpoena for testimony or documents, is sought or issued." 14C Wright & Miller, *Fed. Prac. & Proc. Juris*. § 3726 (rev. 4th ed. 2019). In other words, the "directed to" amendment gives a federal actor a right to remove even if it is not a party to the action, if the action would result in liability or an order against the federal actor.

But it does not follow that the amendment allows a federal-actor *plaintiff* to remove. To the contrary, the amendment purpose was "to ensure that any individual *drawn into* a State legal proceeding based on that individual's status as a Federal officer has the right to remove the proceeding to a U.S. district court for adjudication," and to make clear that "State courts lack the authority to hold Federal officers criminally or civilly *liable for* acts performed in the execution of their duties." H.R. REP. No. 112-17, at 1-2 (2011), *reprinted in* 2011 U.S.C.C.A.N. 420, 420-21 (emphasis added). As an illustration of the problem the amendment was intended to prevent, the House Report cites a case in which a plaintiff filed a state court motion to take a pre-suit

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deposition of a non-party member of Congress; the member had complete legislative immunity from suit, but was denied the right to remove the matter because no civil action had been initiated "against" him. *Id.* at 3-4 ("the problem occurs when a plaintiff who contemplates suit against a Federal officer petitions for discovery without actually filing suit in State court."). The amendment says nothing about allowing a federal plaintiff to remove. It simply permits a federal party to remove in order to defend itself in federal court, even if it has not been named as a defendant, so long as the state matter seeks relief from or enforcement against the federal party.

The cases ICE cites in its opposition fit this pattern. For example, *In re Lusk*, 2016 WL 4107671, at *1, 2 (C.D. Cal. July 30, 2016), *appeal dismissed*, 2017 WL 7733073 (9th Cir. Nov. 16, 2017), involved a state statutory "application" notifying the court about an individual allegedly engaged in the unauthorized practice of law. The action sought to "seize a law practice" of a federally certified Judge Advocate General. 2016 WL 4107671, at *3. Although neither the individual attorney nor the United States were defendants, the action was plainly "directed to" the U.S., as it would have barred a federally certified attorney from practicing. The U.S. was permitted to remove, specifically in order to defend "the licensure requirements for its attorneys practicing in military courts martial." *Id.*; Opp. at 9-10. Other cases cited by ICE similarly involve actions in which the federal actor was not named as a defendant, but nevertheless was subject to a state civil proceeding in which it faced potential liability or an order compelling it to take some action, such as providing discovery,[2] paying or discharging a

[2] *See* Opp. 10, citing *Nationwide Inv'rs v. Miller*, 793 F.2d 1044, 1047 (9th Cir. 1986) (third-party federal personnel employee permitted to remove municipal court proceeding seeking her examination in garnishment action); *F.B.I. v. Superior Court of Cal.*, 507 F. Supp. 2d 1082, 1089 (N.D. Cal. 2007) (permitting removal of state criminal proceeding where federal agency sought to quash third-party subpoena compelling federal agent's testimony); *Johnson v. Soc. Sec. Admin.*, 2018 WL 4677829, at *3 (E.D. Va. June 8, 2018) ("federal agencies and agents may remove state court proceedings that seek specific relief against the agency or agent," such as subpoenas and contempt orders).

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lien,[3] or indemnifying another party.[4]

ICE's reliance (Opp. at 11) on *Miami Herald Media Co. v. Fla. Dep't of Transp.*, 345 F. Supp. 3d 1349 (N.D. Fla. 2018) is similarly misplaced. In that case, a requestor brought a state public records action seeking production of records that, as a matter of law, had been turned over to a federal agency (the National Transportation Safety Board, "NTSB") for purposes of an accident investigation. Although the records originated with a state agency, the NTSB had "deputize[d]" the agency and its records pursuant to the "party" system federal law imposes on NTSB investigations. *Id.* at 1356 (citing 49 C.F.R. § 831.11(a)(1), (4)). As a deputized party, the state agency was required to "turn over" relevant records to NTSB, and was directed not to disclose the records until NTSB had publicly released them. 345 F. Supp. 3d at 1356, 1363. Under these circumstances, the federal court found that the state public records action was one "against or directed to" NTSB, because it could have required disclosure of the federally deputized records, thereby undermining NTSB's "authority to control the timing of the release of investigative information." *Id.* at 1363.

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[3] *See* Opp. at 9-11, citing *Goncalves By & Through Goncalves v. Rady Children's Hosp. San Diego*, 865 F.3d 1237, 1243, 1250 (9th Cir. 2017) (third-party federal healthcare administrator permitted to remove malpractice action after plaintiff filed motion seeking to expunge administrator's subrogation lien; plaintiff's "motion to expunge the lien is a proceeding in which 'a judicial order ... is sought,'" and thus was "directed to" the federal lienholder) (citation omitted); *Smith v. Hous. Auth. of Balt. City*, 2011 WL 232006, at *2 (D. Md. Jan. 24, 2011) (federal department of Housing and Urban Development permitted to remove garnishment action brought against state housing authority where funds sought to be garnished were federal funds deposited by HUD); *Law Office of Mark Kotlarsky Pension Plan v. Hillman*, 2015 WL 5021399, at *2 (D. Md. Aug. 21, 2015) (federal government permitted to remove action seeking to enforce state writ of garnishment against federal Medicare administrative contractor, to assert defense that the state court lacked jurisdiction over the targeted federal Medicare funds).

[4] *See* Opp. at 12, citing *Golden v. N. J. Inst. of Tech.*, 934 F.3d 302, 308 (3d Cir. 2019) (FBI removed third-party complaint filed against it by state agency seeking indemnification in the event the agency was liable for attorneys' fees as a result of relying on FBI's direction). ICE cites *Golden* for the proposition that a non-defendant federal actor has a right of removal. But at the time the FBI removed in *Golden*, it *was* defending a claim – namely, the third-party indemnification action brought by the original defendant in the action. Removal at that point was permitted under 28 U.S.C. § 1442(a)(1) because the action was "against" the FBI.

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Miami Herald is entirely distinguishable on its facts. This case involves no investigative "party" system and no "deputized" federal records. The request at issue here seeks the County's own jail files (redacted to remove any identifying information). No federal authority provides for federalizing local jail files in any manner resembling the NTSB's authority to deputize accident investigation records.[5] Unlike the records in *Miami Herald*, the County retains control and possession over its jail files. Indeed, the County has a statutory obligation to maintain records of all juvenile detainees in its custody. *See* RCW 13.50.010(1); .010(3) ("It is the duty of any juvenile justice or care agency to maintain accurate records" and to "make reasonable efforts to insure the completeness of its records"). This independent duty means that the jail files are the County's "records" under state law, even if the record also was collected or compiled pursuant to some federal purpose. *Gendler v. Batiste*, 174 Wn.2d 244, 260-61, 274 P.3d 346 (2012) (federal obligations to maintain records "cannot alter the [agency's] obligations under [state law].").

Miami Herald also is distinguishable because there, NTSB sought removal on the ground that it "is an indispensable party that, under state law, could not be joined because of sovereign immunity." 345 F. Supp. 3d at 1363. The court agreed, finding that absent removal "there are no alternative forms of relief that could either lessen or avoid prejudice to the United States." *Id.* at 1373-74. That is not the situation here, for at least three reasons. First, ICE has not asserted any immunity defense, in its removal petition, its answer, or otherwise. *See* Dkt. 1, 8. Second, ICE has never claimed that it could not be joined in this action. To the contrary, it went out of its way to be joined as an ostensible defendant, first by seeking to intervene below as a defendant,

[5] ICE mis-cites 8 U.S.C. § 1103(a)(2) as directing "the federal government to 'control, direct[], and supervis[e]' all of the 'files and records' concerning ICE detainees." Opp. at 3. That is not what the statute says. The provision states in full: "He [Secretary of Homeland Security] shall have control, direction, and supervision of all employees and of all the files and records *of the Service*." 8 U.S.C. § 1103(a)(2). The statute says nothing about "detainees," nor about records held by entities other than "the Service" (INS, now DHS). ICE also cites to 8 C.F.R. § 236.6, but that provision has been held not to prohibit a government agency like the County from disclosing records, with personally identifying information removed, to other government entities such as UW. *See U.S. v. Cal.*, 314 F. Supp. 3d 1077, 1090-92 (E.D. Cal, 2018), *aff'd in part, rev'd on other grounds*, 921 F.3d 865 (2019), *cert. pet. docketed*, No. 19-532 (Oct. 23, 2019).

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and later by purporting to "answer" the County's complaint (notwithstanding that it was not even named in that complaint). Dkt. 8; Dkt. 13-1 at 194. Third, ICE has alternate forms of relief – namely, a state court injunction seeking to block disclosure. Motion 10-12.

In sum, ICE has failed to meet its burden of establishing federal removal jurisdiction. *Hunter v. United Van Lines*, 746 F.2d 635, 639 (9th Cir. 1984). No authority permits a federal agent situated as ICE is in this case – as a plaintiff seeking to enjoin a local agency from releasing requested records – to remove, under 28 U.S.C. § 1442(a)(1) or otherwise.

C. Removal Is Not Permitted Under the Facts of This Case.

ICE contends that removal is appropriate under the Ninth Circuit's three-part test set out in *Goncalves.* That test provides: "An entity seeking removal under § 1442(a)(1) bears the burden of showing that (a) it is a person within the meaning of the statute; (b) there is a causal nexus between its actions, taken pursuant to a federal officer's directions, and plaintiff's claims; and (c) it can assert a colorable federal defense." 865 F.3d at 1244 (emphasis added) (internal citation and quotation marks omitted). Merely reciting the test demonstrates that it contemplates removal by a defendant or subject of an action, and that ICE cannot satisfy the test here. This case involves no "actions" by the party seeking removal (ICE), pursuant to a "federal officer's directions" or otherwise; there is no nexus between the County's claims and any action by ICE; and there is no claim against ICE, and thus no claim for which it can assert a "defense."

Even if the test did apply, ICE's attempt to satisfy it is unavailing. Opp. at 13-18. UW does not dispute that Section 1442(a) permits an agency such as ICE to remove. But the other elements are completely absent.

The second element of the test requires removing entities to show both "'(1) that their actions [in the claims asserted] are 'actions under' a federal officer and (2) that those actions are causally connected to" plaintiffs' claims. *Goncalves*, 865 F.3d at 1250. Neither prong is met here. The County's complaint seeks declaratory and injunctive relief regarding *its own* obligations under state disclosure laws. Specifically, the County sought a determination that the County's obligation to respond to UW's records request is governed by GR 31.1 and ch. 13.50

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RCW; that the County "may fulfill [UW's] records request," subject to certain redactions; that the County can provide the requested records for research purposes; and that 8 C.F.R. § 236.6 does not prevent disclosure of records to a government agency like UW. *See* Dkt. 13-1 at 9-10, 206. The claims do not assert, and do not arise from, any federal officer's action. It follows that the claims also cannot be causally connected to any such action.

ICE claims the second prong is met because the records are exempt under a federal rule, 8 C.F.R. § 236.6, and because the records at issue are "federal property." Opp. at 13. Neither of these arguments justifies removal.

First, the potential application of a federal privacy provision to records held by a Washington local agency does not justify removal, or mean that a request implicating such a provision is "against or directed to" any federal agency. Rather, Washington's records laws accommodate federal non-disclosure provisions by examining them as potential exemptions to disclosure under state law. *See* RCW 42.56.070(1) (Public Records Act's "other statute" exemption); GR 31.1(j) (incorporating PRA's exemptions into judicial administrative records rule). Courts can, and routinely do, address the extent to which federal law operates as an exemption to state disclosure requirements. *See Ameriquest Mortg. Co. v. Wash. Office of Attorney Gen.*, 170 Wn.2d 418, 440, 241 P.3d 1245 (2010); *Freedom Found. v. Wash. State Dep't of Transp.*, 168 Wn. App. 278, 287-89, 276 P.3d 341 (2012). These actions typically do not name, and are not brought against, federal agencies. Thus, even assuming 8 C.F.R. § 236.6 applied to UW's request for redacted jail records here (and it does not),[6] the rule would operate like any other exemption to disclosure, regardless of any action by ICE. The potential application of 8 C.F.R. § 236.6 does not make the County's action one "against or directed to" ICE. UW raised these points in its Motion (at 12-14). ICE has no answer.

Second, the County's jail records are not "federal property." ICE's contention to the contrary rests on *Golden v. N.J. Inst. of Tech.*, 934 F.3d 302 (3d Cir. 2019). Opp. at 13-14. But

[6] The rule does not prohibit disclosure of redacted detainee data to government entities such as UW. *See U.S. v. Cal.*, 314 F. Supp. 3d at 1092.

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the records there "originated with the [FBI]" before being provided to a state agency subject to federal confidentiality requirements. 934 F.3d at 304. The court found that the FBI colorably had alleged that the records were "federal records within the meaning of 44 U.S.C. § 3301." *Id.* at 311. Here, in contrast, the records are the County's own jail files, not ICE's records. The jail files fall outside the definition of federal "records" relied on in *Golden*: they were not "made or received by a Federal agency under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency[.]" 44 U.S.C. § 3301(a)(1)(A). Rather, they were created and maintained by the County pursuant to its state statutory obligations. *See* RCW 13.50.010(1)(b), (d); .010(3). They are "public records" under state law, because they were prepared, used and retained by the County. *See* RCW 42.56.010(3); GR 31.1(i)(6). Accordingly, there is no nexus between the records and any action by ICE.

ICE's attempt to satisfy the third *Goncalves* requirement – "a colorable federal defense" – begs the question: a colorable federal defense to what? There are no claims against ICE. Even in its nugatory "answer" to the County's complaint (which asserts no claim against it), ICE did not plead any substantive affirmative defenses. Dkt. 8 at 15.

Nevertheless, in its opposition to this motion, ICE argues that it has defenses to Cowlitz's claims based on 8 C.F.R. § 236.6, preemption, and the claim that the records are federal property. Opp. at 14. None of these is "colorable," for reasons explained above and in the Motion. In brief: ICE's argument that 8 C.F.R. § 236.6 precludes disclosure of the records is not a "defense" to any claim against it; rather, it operates as a potential "other statute" exemption to disclosure – and as such, it is an affirmative claim that ICE must establish as part of its burden as a plaintiff seeking to enjoin release of a record. *See, e.g.*, *Ameriquest*, 170 Wn.2d at 439-40. *Ameriquest* also disposes of ICE's preemption argument: "This other statute exemption avoids any inconsistency and allows the federal regulation's privacy protections to supplement the PRA's exemptions[,]" without the need for preemption analysis. *Id.* at 440; *see also Roe v. Anderson*, No. 3:14-CV-05810 RBL, 2015 WL 4724739, at *3 (W.D. Wash. Aug. 10, 2015) ("constitutional preemption of PRA analysis [is] not required because of RCW § 42.56.070's

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'other statute' exemption.") (citing *Ameriquest*, 170 Wn.2d at 439-40). Again, ICE simply ignores this authority.

ICE's "property" defense fares no better. As noted above, records held by a state agency pursuant to state obligations are not "federal records"; they are state records. *See* RCW 13.50.010(1)(b), (d); .010(3); RCW 42.56.030, 070; *Gendler*, 174 Wn.2d at 260-61. ICE ignores this authority. *United States v. City of Seattle*, Case No. 16-CV-889 (RAJ), 2017 WL 176541, at *1 (W.D. Wash. Jan. 17, 2017), cited by ICE (Opp. at 15), is not to the contrary. The "property" at issue in that case was not a public record held by the City of Seattle; rather, the referenced property was "covert surveillance camera[s] mounted by the FBI" on City electric poles. *Id.* Moreover, like the records in *Golden*, the information about the cameras originated with the FBI, and was provided to the local agency under a requirement of confidentiality. *Id.* The case does not support ICE's contention that Cowlitz County's own jail files are somehow federal "property."

In sum, ICE has failed to show that the County's civil action was "against or directed" to a federal actor. The County's claim raises no issue with, and has no causal nexus to, any federal agent's actions. There is no claim against which ICE can assert a federal defense; and the defenses it argues for here are not "colorable." ICE is entitled to advocate for the federal interest in this matter, but as an injunction plaintiff; it is not a defendant and it had no right of removal.

D. This Court Should Defer Any Decision On ICE's Summary Judgment Motion Until After This Motion Is Decided.

ICE's conduct of this litigation suggests that it is seeking an end-run around disclosure laws, without regard for the interests of requestors like UW. ICE followed its improper removal with a baseless "counterclaim" against the County (to a complaint in which it is not even named), without naming UW. Then, on February 18, 2020, ICE filed a motion for summary judgment on those claims, noted for decision on the earliest possible date (March 13, just three weeks after the noting date on the instant Motion to remand). The summary judgment motion raises the possibility that the Court will issue a merits decision, potentially before it even decides

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whether this case can remain in federal court. UW also is concerned that a decision on remand will come with insufficient time for it to seek leave to be heard on ICE's counterclaims (which concern UW's requests, but which do not name UW as a party) and to file a substantive response to ICE's summary judgment motion.

To avoid this outcome, UW respectfully asked that the Court defer any decision on ICE's summary judgment motion until it decides this Motion. If the case is not remanded, UW requests that the Court set (or direct the parties to propose) a briefing schedule that allows UW a full opportunity to be heard on the merits of ICE's motion.

III. CONCLUSION

For the foregoing reasons, UW respectfully asks the Court to remand this action to Cowlitz County Superior Court, and to award UW its reasonable attorneys' fees and costs pursuant to 28 U.S.C. § 1447(c). UW further requests that the Court defer any decision on ICE's pending summary judgment motion until after a decision on this Motion and, if the matter is not remanded, to set a briefing schedule to permit UW to address that motion.

DATED this 21st day of February, 2020.

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