

LEXISNEXIS AND I.C.E.: AN EXAMINATION OF
LEXISNEXIS’S HUMAN RIGHTS RESPONSIBILITIES

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I. INTRODUCTION

The use of personal data and identification technology in immigration enforcement is not new.¹ In the United States, the practice can be traced back as early as the 1798 Act Concerning Aliens, which required the documentation of personal data of all non-citizens entering the country by boat.² The Chinese Exclusion Act required that all Chinese immigrants register for certificates which listed “all facts necessary for the identification of such Chinese laborers.”³ The use of identification technology for immigration purposes in the United States was discriminatory in its early use—the registration requirement was created to specifically track and deport Chinese people from the country, a reflection of the anti-Chinese sentiments driving immigration policy at that time.⁴

1. See generally Margaret Hu, *Crimmigration-Counterterrorism*, 2017 WIS. L. REV. 955, 962-67 (2017) [hereinafter *Crimmigration-Counterterrorism*] (detailing the history of the use of identification and surveillance technologies in United States immigration policy).

2. An Act Concerning Aliens, § 3 (1798) (repealed 1800).

3. Chinese Exclusion Act, ch. 126, § 4, 22 Stat. 58 (1882) (repealed 1943).

4. Chinese Exclusion Act § 12 (“And any Chinese person found unlawfully within the United States shall be caused to be removed therefrom to the country from whence he came”). See *Crimmigration-Counterterrorism*, *supra* note 1, at 965-67 (“In the nineteenth century, hysteria about a civilizational threat meant that there must be an objective means for ‘properly identifying’ Chinese laborers who were in the United States before the [Chinese Exclusion] Act was passed.”).

Today, technology makes the collection, sharing, and analysis of massive amounts of personal data easier than ever before. Identification technologies and personal data are still used to find, surveil, arrest, and expel migrants in countries all over the world, oftentimes with discriminatory intent and effect.⁵ Following the September 11, 2001 attacks in the United States, the expansion of surveillance and intelligence gathering technologies and measures under the name of counterterrorism, both domestically and globally,⁶ has had enormous influence on the use of technology in immigration enforcement.⁷ Extensive evidence has demonstrated that these new digital technologies are used in ways which violate the rights of migrants around the world.⁸ The operations of the U.S. Immigration and Customs Enforcement (I.C.E.), the enforcement branch of the Department of Homeland Security, have been identified to be responsible for numerous violations of

5. See E. Tendayi Achiume (Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance), *Rep. of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance*, U.N. Doc. A/75/590 (Nov. 10, 2020) (describing the use of new technologies to target migrants and refugees globally and to advance xenophobic and racist ideologies). See also *Crimmigration-Counterterrorism*, *supra* note 1, at 975-92 (discussing the development of the use of biometric technologies for U.S. immigration enforcement after 9/11, including in the enforcement of the “Muslim Ban.”).

6. See Sarah Lamdan, *When Westlaw Fuels ICE Surveillance: Legal Ethics in the Era of Big Data Policing*, 43 N.Y.U. REV. L. & SOC. CHANGE 255, 263 (2019) [hereinafter *When Westlaw Fuels ICE Surveillance*] (“After the September 11, 2001 terrorist attacks, national security concerns trumped due process considerations and the U.S. surveillance regime exploded from individualized to mass surveillance. Congressional investigations linked the terrorists’ success to poor agency coordination, so Congress expanded the scope of permissible surveillance and inter-agency coordination.”); Kim Lane Scheppele & Arianna Vidaschi, *Conclusion*, in *9/11 AND THE RISE OF GLOBAL ANTI-TERRORISM LAW: HOW THE UN SECURITY COUNCIL RULES THE WORLD* 242, 242 (Kim Lane Scheppele & Arianna Vidaschi, eds., 2021) (“States routinely coordinate across borders as their intelligence services, financial regulators, prosecutors, military, and police share information and coordinate responses.”).

7. See Achiume, *supra* note 5, ¶ 16 (“The term ‘border industrial complex’ has been used to describe ‘the nexus between border policing, militarization and financial interest’, as governments increasingly turn to the private sector to manage migration through new technologies predominately through a national security lens that neglects fundamental human rights.”); *Crimmigration-Counterterrorism*, *supra* note 1, at 975 (“Expanding upon past immigration and citizenship identification protocols, in the aftermath of the terrorist acts of September 11, 2001, the newly-created U.S. Department of Homeland Security (DHS) has been developing technologically advanced forms of screening and vetting.”); *When Westlaw Fuels ICE Surveillance*, *supra* note 6, at 265 (“Whether or not it has access to FISA surveillance data, ICE is gradually accruing its own surveillance program to rival the NSA’s.”).

8. See generally Achiume, *supra* note 5 (describing the discriminatory uses and impacts of digital technology on refugees and migrants globally).

human rights, including the right to liberty and security of persons,⁹ the right to freedom of expression,¹⁰ the right to privacy,¹¹ the right to an effective remedy,¹² and the right to non-discrimination,¹³ among other fundamental human rights.

Immigrant advocates and other human rights organizations have scrutinized the relationships between I.C.E. and data technology corporations.¹⁴ The partnerships between I.C.E. and the parent and sibling companies of the legal databases LexisNexis and Westlaw are particularly relevant for the legal community in the United States.¹⁵ On February 25, 2021, LexisNexis Risk Solutions signed a \$22.1 million contract with I.C.E., providing the immigration enforcement agency with access to over 37 billion records of personal data as well as use of their proprietary data analysis technology, Accurint.¹⁶ LexisNexis' sale of data

9. International Covenant on Civil and Political Rights art. 9, *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171.

10. *Id.* at art. 19.

11. *Id.* at art. 17.

12. *Id.* at art. 2(3).

13. *Id.* at art. 26.

14. See, e.g., Mijente, *The War Against Immigrants: Trump's Tech Tools Powered by Palantir*, #NoTECHFORICE (Aug. 2019), https://mijente.net/wp-content/uploads/2019/08/Mijente-The-War-Against-Immigrants_-Trumps-Tech-Tools-Powered-by-Palantir_.pdf (last visited Dec. 8, 2021); *Surveillance, Tech & Immigration Policing*, IMMIGRANT DEF. PROJECT, <https://www.immigrantdefenseproject.org/surveillance-tech-immigration-policing/> (last visited Dec. 8, 2021); Neema Singh Guliani, *Amazon Met With ICE Officials to Market Its Facial Recognition Product*, AM. CIV. LIBERTIES UNION (Oct. 24, 2018, 12:00 PM), <https://www.aclu.org/blog/privacy-technology/surveillance-technologies/amazon-met-ice-officials-market-its-facial>.

15. See Just Futures Law & Mijente, *The Data Broker to Deportation Pipeline: How Thomson Reuters & LexisNexis Share Utility & Commercial Data with ICE*, #NoTECHFORICE 7, <https://www.flipsnack.com/justfutures/commercial-and-utility-data-report/full-view.html> (last visited Dec. 1, 2021) [hereinafter *The Data Broker to Deportation Pipeline*] (“As of May 2021, Thomson Reuters and LexisNexis have ongoing contracts with ICE with potential award values of over \$16 million and \$27 million, respectively.”); *When Westlaw Fuels ICE Surveillance*, *supra* note 6, at 284 (“Thomson Reuters and RELX Group’s ICE partnership forces lawyers to confront difficult issues of social responsibility.”).

16. Sam Biddle, *LexisNexis to Provide Giant Database of Personal Information to ICE*, INTERCEPT (Apr. 2, 2021, 10:00 AM), <https://theintercept.com/2021/04/02/ice-database-surveillance-lexisnexis/>; *The Data Broker to Deportation Pipeline*, *supra* note 15, at 7; *Definitive Contract PIID 70CMSD21C00000001*, USASPENDING.GOV, https://www.usaspending.gov/award/CONT_AWD_70CMSD21C00000001_7012_-NONE_-NONE- (last visited Nov. 16, 2021). A contract modification was signed on June 24, 2021 which awarded an additional \$4.75 million in addition to the original \$17.4 million contract. See U.S. IMMIGR. & CUSTOMS ENF’T OFF. OF ACQUISITION MGMT., ICE ACQUISITION

technology to I.C.E. raises questions about the company's liability for human rights violations stemming from I.C.E.'s use of its technology. This annotation briefly discusses LexisNexis' data-sharing practices with I.C.E., and how the company contributes to a number of human rights violations through this relationship. This annotation concludes that LexisNexis, under international standards for businesses, has an obligation to (1) sever its relationship with I.C.E.; (2) stop and prevent human rights violations connected to I.C.E.'s use of its services; and (3) provide adequate remediation for any adverse human rights impacts.

II. LEXISNEXIS' CONTRACT WITH U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

LexisNexis' February 2021 contract with I.C.E is intended to replace the immigration enforcement agency's use of similar database and analysis technology, provided by Thomson Reuters, known as Consolidated Lead Evaluation and Reporting (CLEAR).¹⁷ I.C.E.'s use of CLEAR has been crucial to its deportation efforts.¹⁸ I.C.E. has relied on CLEAR since 2015 to find targets by tracking the movements of immigrants through its massive license plate recognition technology.¹⁹

MANUAL 3006.301-90, JUSTIFICATION FOR OTHER THAN FULL COMPETITION J&A-21-00148, ¶ 7 (2021), <https://govtribe.com/file/government-file/p00002-ja-21-00148-competition-advocate-signed-6-dot-24-dot-21-redacted-dot-pdf> (noting the "Price adjusted to include Justice Intelligence.").

17. *The Data Broker to Deportation Pipeline*, *supra* note 15, at 7; Biddle, *supra* note 16. Thomson Reuters continues to contract with I.C.E. For information about two ongoing contracts with I.C.E., see *Purchase Order (PO) PIID 70CDCR18P00000048*, USASPENDING.GOV, https://www.usaspending.gov/award/CONT_AWD_70CDCR18P00000048_7012_-NONE_-NONE- (last visited Nov. 16, 2021) and *Purchase Order (PO) PIID 70CMSD18P00000145*, USASPENDING.GOV, https://www.usaspending.gov/award/CONT_AWD_70CMSD18P00000145_7012_-NONE_-NONE- (last visited Nov. 16, 2021).

18. McKenzie Funk, *How ICE Picks Its Targets in the Surveillance Age*, N.Y. TIMES (June 7, 2021), <https://www.nytimes.com/2019/10/02/magazine/ice-surveillance-deportation.html>.

19. The license to use CLEAR also includes access to Vigilant Solutions, a database of over 7 billion recorded sightings of license plates. *CLEAR for law enforcement*, THOMSON REUTERS, <https://legal.thomsonreuters.com/en/products/clear-investigation-software/law-enforcement> (last visited Nov. 16, 2021). With almost 100 million sightings generated every month, this technology has been used by I.C.E. to create a detailed record of an individual's movements and associations. *When Westlaw Fuels ICE Surveillance*, *supra* note 6, at 277-78. The American Civil Liberties Union has warned that through use of this technology, "[l]aw enforcement can drill down into the data to build a detailed picture of your private life, including where you work, where you

I.C.E. has combined the use of Thomson Reuters' technology with Palantir to automate policing decisions regarding who to target for its investigations and enforcement actions.²⁰ The relationship between I.C.E. and LexisNexis is not new. RELX, the parent company of LexisNexis, and its subsidiaries have provided I.C.E. with information technology for over a decade.²¹ The most recent contract grows the massive data technology corporation's relationship with I.C.E. by providing the agency with five years of access to enormous amounts of personal data on more than 276 million consumers in the United States, including social networking information, credit reports, and license plate numbers, and the technology to use this trove of data to find a single person quickly and accurately—all for the price of \$22.1 million.²²

The contract has not been publicly released, and LexisNexis has not been transparent about its contents.²³ Researchers, advocates, and journalists have identified that the contract provides I.C.E. with “billions of different records containing personal data aggregated from a wide array of public and private sources, including credit history, bankruptcy records, license plate images, and cellular subscriber

live, when you go to the doctor, and what political demonstrations you attend.” Matt Cagle, *A California City Fights Off ICE's Digital Deportation Machine*, AM. CIV. LIBERTIES UNION (Feb. 13, 2018, 4:45 PM), <https://www.aclu.org/blog/privacy-technology/location-tracking/california-city-fights-ices-digital-deportation-machine/>.

20. *When Westlaw Fuels ICE Surveillance*, *supra* note 6, at 278. See Edward Ongweso Jr., *Shareholders Push Thomson Reuters to End Intimate Ties With ICE*, VICE (May 26, 2020, 11:09 AM), <https://www.vice.com/en/article/n7wbbd/shareholders-push-thomson-reuters-to-end-intimate-ties-with-ice/> (describing how I.C.E. uses Palantir to analyze Thomson Reuters' data); see also Achiume, *supra* note 5 (discussing how using artificial intelligence to make policing decisions in the immigration context increases the likelihood of violations of human rights).

21. Biddle, *supra* note 16. See *Reed Elsevier PLC*, USASPENDING.GOV, <https://www.usaspending.gov/recipient/93c2a28c-5b0b-06e8-0dcd-bec2bb59e64b-P/latest> (last visited Nov. 16, 2021) (noting that RELX has received \$20.4 million from the Department of Homeland Security in the 2021 fiscal year as of Nov. 16, 2021); USASPENDING.GOV, SPENDING BY PRIME AWARD, <https://www.usaspending.gov/search/?hash=8427e6c1fd09064d25c328a048a5cb75> (last visited Nov. 16, 2021) (listing all the contracts RELX and its subsidiaries have had with the Department of Homeland Security since the 2008 fiscal year).

22. *The Data Broker to Deportation Pipeline*, *supra* note 15, at 7; *Definitive Contract PIID 70CMSD21C00000001*, *supra* note 16 (noting that the total contract award is up to \$22.1 million if all contract options are exercised).

23. Biddle, *supra* note 16 (“LexisNexis Risk Solutions spokesperson Jennifer Richman declined to say exactly what categories of data the company would provide ICE under the new contract, or what policies, if any, will govern how the agency [sic] uses it.”); *End the Contract Coalition Official Response to LexisNexis*, END CONT., <https://endthecontract.wixsite.com/home> (last visited Nov. 16, 2021).

information.”²⁴ It also provides I.C.E. with the technology to locate immigrants and conduct raids, arrests, and deportations at a massive scale.²⁵

III. LEXISNEXIS’ OBLIGATIONS UNDER INTERNATIONAL HUMAN RIGHTS STANDARDS

A. *LexisNexis’ human rights responsibilities*

As affirmed by the United Nations Human Rights Council,²⁶ all businesses have a responsibility to respect human rights.²⁷ LexisNexis is no exception. As a signatory of the United Nations Global Compact, LexisNexis has expressly committed to respecting human rights and ensuring that it is not complicit in human rights abuses.²⁸ The Guiding Principles on Business and Human Rights, unanimously endorsed by the Human Rights Council in 2011, details what companies must do to meet its international human rights responsibilities. Businesses are required to assess the risks of negative human rights impacts, take actions to prevent and mitigate those impacts, track the effectiveness of its

24. Biddle, *supra* note 16.

25. See Mijente et al., *ICE Intelligence Centers: How ICE Gathers Data to Conduct Raids and Deportations*, #NoTechForICE 5-8, <https://www.flipsnack.com/justfutures/ice-intelligence-centers/full-view.html> (last visited Dec. 1, 2021) [hereinafter *ICE Intelligence Centers*] (discussing how I.C.E. uses technology, including from LexisNexis and Thomson Reuters, to find, detain, and deport immigrants. In the 2019 fiscal year, I.C.E. surveilled 5.1 million people).

26. Human Rights Council Res. 17/4 (July 6, 2021). See Working Group on the issue of human rights and transnational corporations and other business enterprises, *Guiding Principles on Business and Human Rights at 10: taking stock of the first decade*, U.N. Doc. A/HRC/47/39 (Apr. 22, 2021) (noting that the Human Rights Council endorsed the Guiding Principles unanimously). For the full text of the Guiding Principles on Business and Human Rights, see Off. High Comm’r Hum. Rts., *Guiding Principles on Business and Human Rights*, U.N. Doc. HR/PUB/11/04 (June 16, 2021) [hereinafter *Guiding Principles on Business and Human Rights*].

27. *Guiding Principles on Business and Human Rights*, *supra* note 26, at 13-14 (Guiding Principles 11-12).

28. See *About LexisNexis Risk Solutions and the U.S. Department of Homeland Security*, LEXISNEXIS RISK SOLUTIONS, <https://risk.lexisnexis.com/government/our-services-for-homeland-security> (last visited Nov. 16, 2021) (stating that LexisNexis is a signatory to the United Nations Global Compact Ten Principles related to human rights (through its parent company, RELX); *The Ten Principles of the UN Global Compact*, U.N. GLOB. COMPACT, <https://www.unglobalcompact.org/what-is-gc/mission/principles> (last visited Nov. 16, 2021) (“Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and Principle 2: make sure that they are not complicit in human rights abuses.”).

actions, and publicly communicate how these impacts are being addressed. In addition, they must provide remediation to those affected.²⁹

The primary determinant of a business's responsibility to address negative human rights impact is the manner in which the actual or potential negative human rights impact connects to the business.³⁰ In all instances, businesses have a responsibility to take at least some steps to stop a human rights violation. If a business causes or may cause a negative impact on human rights, it must stop doing so and prevent any future violations.³¹ If it contributes to or may contribute to an adverse human rights impact, it must similarly stop or prevent its contribution and use its leverage to mitigate any remaining impact by other contributing parties.³² If a business does not cause a negative impact on human rights, but an impact is linked to its operations, products, or services, and caused by a party to which it has a business relationship, the business must use its leverage to mitigate the impact, and if unsuccessful, consider ending the relationship with the violating entity.³³ If a business is causing or contributing to negative human rights impacts, it must also provide remediation for any such effects associated with its operations.³⁴

LexisNexis is in violation of its obligation to address the human rights impacts connected to its data-sharing relationship with I.C.E. The company contributes to the violations of the human rights of immigrants and other people subjected to immigrant enforcement action

29. *Guiding Principles on Business and Human Rights*, *supra* note 26, at 17-26 (Guiding Principles 17-24).

30. *See Guiding Principles on Business and Human Rights*, *supra* note 26, at 21 (discussing how the different obligations of a business to address human rights impacts depends on how the impact is connected to its operations in the commentaries to Guiding Principle 19); *see also* Off. High Comm'r Hum. Rts., *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide*, p. 18, U.N. Doc. HR/PUB/12/02 (2012) [hereinafter *Interpretive Guide to Guiding Principles*] (discussing in further detail how a business must address adverse human rights impacts depending on how it is connected to its operations).

31. *Guiding Principles on Business and Human Rights*, *supra* note 26, at 20-22 (Commentaries to Guiding Principle 19); *Interpretive Guide to Guiding Principles*, *supra* note 30, at 48.

32. *Guiding Principles on Business and Human Rights*, *supra* note 26, at 20-22 (Commentaries to Guiding Principle 19); *Interpretive Guide to Guiding Principles*, *supra* note 30, at 48.

33. *Guiding Principles on Business and Human Rights*, *supra* note 26, at 20-22 (Commentaries to Guiding Principle 19); *Interpretive Guide to Guiding Principles*, *supra* note 30, at 48-50.

34. *Guiding Principles on Business and Human Rights*, *supra* note 26, at 24-25 (Guiding Principle 22 & associated Commentaries); *Interpretive Guide to Guiding Principles*, *supra* note 30, at 64.

through I.C.E.'s use of its information and data analysis technology.³⁵ LexisNexis has not stopped or prevented its contribution, nor has the company used its leverage to mitigate I.C.E.'s violations of human rights or to provide remediation. Further analysis is needed to determine whether the company is independently causing other violations of human rights, such as the right to privacy. If LexisNexis is independently causing human rights impacts through its sales of billions of records of personal data, additional obligations for the company to respond to and remedy such impacts may arise.

III. LEXISNEXIS IS CONTRIBUTING TO VIOLATIONS OF A NUMBER OF HUMAN RIGHTS THROUGH I.C.E.'S USE OF ITS TECHNOLOGY

By providing I.C.E. with the data and technology to conduct detentions and deportations, LexisNexis is contributing to violations of numerous human rights, including violations of the right to liberty and security of persons, the right to freedom of expression, the right to privacy, the right to an effective remedy, and the right to non-discrimination, among other fundamental human rights.³⁶ I.C.E.'s abusive practices³⁷ are widely-reported, meaning LexisNexis almost certainly knew of I.C.E.'s human rights record prior to entering into the February 2021 contract. Regardless of whether they had actual knowledge of I.C.E.'s practices, LexisNexis had an obligation to conduct a thorough assessment of any human rights impacts that may be linked to its services to I.C.E.³⁸ Now that the contract is in effect, LexisNexis has an ongoing obligation to assess possible or actual human rights impacts that are connected to their services.³⁹ Given the well-documented use of similar technology by I.C.E. to effect enforcement actions that have

35. See *Interpretive Guide to Guiding Principles*, *supra* note 30, at 17 (“Examples of enterprises being accused of contributing to adverse human rights impact [includes]: Providing data about Internet service users to a Government that uses the data to trace and prosecute political dissidents contrary to human rights.”).

36. International Covenant on Civil and Political Rights, *supra* note 9.

37. See *infra* notes 41-47, 56-58.

38. *Guiding Principles on Business and Human Rights*, *supra* note 26, at 19-20 (Guiding Principle 18); *Interpretive Guide to Guiding Principles*, *supra* note 30, at 32 (“The focus of due diligence is on identifying and addressing the relevant impact on human rights, i.e., that which is connected to the enterprise’s own activities and to its business relationships. . . . When looking at business relationships, the focus is not on the risks the related party poses to human rights in general, but on the risks that it may harm human rights *in connection with the enterprise’s own operations, products or services*.”).

39. *Guiding Principles on Business and Human Rights*, *supra* note 26, at 17-18 (Guiding Principle 17); *Interpretive Guide to Guiding Principles*, *supra* note 30, at 33.

caused human rights violations with little oversight,⁴⁰ LexisNexis should have known of the potential human rights impacts of selling I.C.E. access to its data and technology.

I.C.E.'s practice of mass deportations has violated a number of human rights. Between 2010 and 2018, I.C.E. deported hundreds of thousands of people without any judicial review, violating several rights, including the right to liberty and security of persons.⁴¹ I.C.E. has also used data technology to target, identify, detain, and deport in retaliation thousands of immigrant advocates,⁴² violating their freedom of expression,⁴³ their right to privacy, their right to an effective remedy, and their right to non-discrimination. I.C.E. also violates the right to be free from arbitrary detention through its use of "I.C.E. holds," or immigration detainer requests, which asks law enforcement to detain a person for up to forty-eight hours beyond the time when they would

40. *Hidden in Plain Sight: ICE Air and the Machinery of Mass Deportation*, U. WASH. CTR. FOR HUM. RTS. (Apr. 23, 2019), <https://jsis.washington.edu/human-rights/2019/04/23/ice-air/> [hereinafter *Hidden in Plain Sight*].

41. Between the 2010-2018, I.C.E. deported 627,694 people without providing them access to courts. *Hidden in Plain Sight*, *supra* note 40 ("[I]n FY 2018, nearly 71% of removals on ICE Air were of people whose cases were deemed ineligible for judicial review."). See Deborah M. Weissman et al., *The Final Act: Deportation by ICE Air*, 49 HOUSTON L. REV. 437, 463-65 (2021) (discussing that there are at least thousands of cases of immigrants being removed while legal proceedings are still pending). Deportations and extended detentions with little to no due process protections are common practice. *Hidden in Plain Sight*, *supra* note 40, See also Weissman et al., *supra* note 38, at 460-67 (documenting the numerous ways in which I.C.E. commits due process violations through its enforcement actions).

42. See, e.g., José Olivares & John Washington, *ICE Discussed Punishing Immigrant Advocates for Peaceful Protests*, INTERCEPT (June 17, 2021, 7:00 AM), <https://theintercept.com/2021/06/17/ice-retaliate-immigrant-advocates-surveillance/> ("The public records show that ICE kept track of the groups' nonviolent protests and social media posts, at one point suggesting that the agency might retaliate by barring visitations by one organization."); Nick Pinto, *ICE is Targeting Political Opponents for Deportation, Ravi Ragbir and Rights Groups Say in Court*, INTERCEPT (Feb. 9, 2018, 10:18 AM), <https://theintercept.com/2018/02/09/ravi-ragbir-ice-immigration-deportation/> ("In the space of a week in January, ICE detained two of [New Sanctuary Coalition's] leaders, Jean Montrevil and Ravi Ragbir."). More than a thousand instances of retaliation by I.C.E. against immigrant advocates have been documented. See IMMIGRANT RTS. VOICES, <https://www.immigrantrightsvoices.org/#/> (last updated Dec. 7, 2020) (highlighting over one thousand instances of retaliation against immigrant activists across the United States).

43. See Pinto, *supra* note 42 (discussing a lawsuit that was filed against I.C.E. in 2018 alleging that the practice of targeting immigrant advocates is a violation of the First Amendment of the U.S. Constitution guaranteeing the right to freedom of expression).

ordinarily be released.⁴⁴ As stated by the American Civil Liberties Union, this practice “imprison[s] people without due process and, in many cases, without any charges pending or probable cause of any violation.”⁴⁵ In addition, the terrible and well-documented conditions in I.C.E. detention facilities across the United States were exacerbated by COVID-19, making 2020 the deadliest year for those in immigration detention.⁴⁶ The conditions in these facilities violate the right to life, the right to liberty and security of persons, and the international minimum standards for the treatment of prisoners.⁴⁷

LexisNexis contributes to I.C.E.’s human rights violations by providing both the information and the technology that the agency needs to efficiently and effectively identify, surveil, arrest, detain, and deport immigrants en masse.⁴⁸ Just Futures Law and Mijente explained that

[t]hese tools go far beyond the use cases of a simple database. Without data analytics tools like CLEAR and Accurint, ICE would need to gain access to dozens of different databases that may not be compatible and then manually search them over and over to find information and connections in a case. CLEAR and Accurint streamline and greatly enhance this process.⁴⁹

Although surveillance technology has been used by I.C.E. for decades, the use of these advanced data analytics tools is essential to

44. *Backgrounder on ICE detainer requests*, AM. CIV. LIBERTIES UNION (Jan. 31, 2019), https://www.aclu.org/sites/default/files/field_document/aclu_backgrounder_on_detainers_1.31.19_-_public.pdf.

45. *Immigration Detainers*, AM. CIV. LIBERTIES UNION <https://www.aclu.org/issues/immigrants-rights/ice-and-border-patrol-abuses/immigration-detainers> (last visited Nov. 16, 2021).

46. *See First Ten to Communities Not Cages*, DET. WATCH NETWORK (2021), <https://www.detentionwatchnetwork.org/sites/default/files/reports/DWN%20First%20Ten%20to%20Communities%20Not%20Cages.pdf> (last visited Nov. 16, 2021) (documenting the ten worst I.C.E. detention facilities in the United States). *See also* Letter from Ronald Newman, ACLU National Political Director, to Alejandro Mayorkas, Secretary of Homeland Security (Apr. 28, 2021), <https://www.aclu.org/letter/letter-dhs-secretary-mayorkas-regarding-ice-detention> (calling for the closure of thirty-eight detention facilities, many due to patterns of inhumane treatment or conditions).

47. G.A. Res. 70/175, U.N. Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) (Jan. 8, 2016).

48. *The Data Broker to Deportation Pipeline*, *supra* note 15, at 9; Funk, *supra* note 18; *When Westlaw Fuels ICE Surveillance*, *supra* note 6, at 269.

49. *The Data Broker to Deportation Pipeline*, *supra* note 15, at 9.

I.C.E.'s practice of mass deportations.⁵⁰ I.C.E. deports more than 200,000 people every year,⁵¹ and the sheer number of deportations is a major factor contributing to I.C.E.'s human rights abuses.⁵² An operation at that scale relies upon the denial of due process to a significant number of people.⁵³ Without tools like Accurint, I.C.E. would not be able to identify, locate, detain, and deport at the scale it does. LexisNexis' services, and others like it, have become an essential facilitator of I.C.E.'s human rights violations.

It is particularly alarming that evidence indicates that the data and technology LexisNexis provides to I.C.E. contains significant errors,⁵⁴ increasing the already substantial risk that I.C.E. may use this data to identify and deport the wrong person.⁵⁵ Between 2010-2018, I.C.E. wrongfully deported over 8,000 people with pending immigration determination proceedings, and another 102 people who had already been granted a benefit which protected them from deportation.⁵⁶ Between May 2015 and February 2016, six percent of the requests that I.C.E. issued were for people who were ineligible for immigration

50. *ICE Intelligence Centers*, *supra* note 25, at 8; *The Data Broker to Deportation Pipeline*, *supra* note 15, at 9; *When Westlaw Fuels ICE Surveillance*, *supra* note 6, at 269 (“Predictably, the combination of ICE’s sweeping new directive to arrest any unauthorized immigrant and its enhanced surveillance capacities has led to soaring immigration enforcement numbers.”).

51. Adam Garnick, *Human Rights Abuses at 30,000 Feet*, REGUL. REV. (June 17, 2021), <https://www.theregreview.org/2021/06/17/garnick-human-rights-abuses-30000-feet/>.

52. Weissman et al., *supra* note 41, at 460-67 (documenting the numerous ways in which I.C.E. commits due process violations through its enforcement actions).

53. See Scott Bixby, *Biden Broke with Obama on Immigration, Only to Become Just Like Him*, DAILY BEAST (Oct. 4, 2021, 8:06 AM), <https://www.thedailybeast.com/biden-broke-with-obama-on-immigration-only-to-become-just-like-him> (“The higher numbers are due to numerous factors, including country of origin and the increased length of time that migrants were held in immigrant detention before being removed, but were in large part due to the administration’s ability to streamline deportations. With fewer targets for removal, there are fewer chances for more complicated cases—those involving unaccompanied minors, potential asylees, and families—from jamming up the system.”); *Hidden in Plain Sight*, *supra* note 40 (“[I]n FY 2018, nearly 71% of removals on ICE Air were of people whose cases were deemed ineligible for judicial review.”).

54. *When Westlaw Fuels ICE Surveillance*, *supra* note 6, at 267 (“It is particularly troublesome that big data collected and sold by brokers like Thomson Reuters and RELX often contains many errors that unfairly place individuals in legal limbo.”).

55. *When Westlaw Fuels ICE Surveillance*, *supra* note 6, at 267 (“One recent investigation found that 1,488 immigrants have been wrongly detained by ICE agents since 2012 ‘based on incomplete government records, bad data and lax investigations.’”).

56. *Hidden in Plain Sight*, *supra* note 40.

enforcement action, including U.S. citizens.⁵⁷ In 2010 alone, I.C.E. detained or deported more than 4,000 U.S. citizens.⁵⁸ The errors that LexisNexis' technology contains will only exacerbate the substantial number of mistaken detentions and deportations.

LexisNexis' contract with I.C.E. may also violate the rights of immigrants to access essential services. LexisNexis offers access to a database of sensitive information from credit bureaus and utility companies, which the company has highlighted to be “[c]apable of evaluating over 240 million consumers including more than 80% of thin/no file and other ‘emerging’ populations (i.e., Millennial & Hispanic).”⁵⁹ Although, it is unclear whether Accurint currently provides I.C.E. access to this database, it is not difficult to imagine this possibility considering that I.C.E.’s partnership with Thomson Reuters involved the provision of this information.⁶⁰ Even though the National Consumer Telecom & Utilities Exchange announced that it would no longer allow new utility data to be shared with I.C.E, existing utility data retained prior to October 2021 will still be available to I.C.E.⁶¹ If Accurint had provided I.C.E. with access to personal utility data, this would be a violation of immigrants’ rights to access essential services, such as the internet, phone services, and driver licenses, because accessing basic utilities may place them at risk of deportation.⁶² Because immigrants would be

57. *ICE Intelligence Centers*, *supra* note 25, at 9. See Weissman et al., *supra* note 41, at 467-68 (“Despite the difficulties in ascertaining exact figures, political scientist Jacqueline Stevens estimates that ‘.05% of those detained at the border or in an ICE facility who sign removal orders and are physically removed are U.S. citizens’—meaning that from 2003 to 2011, ICE likely deported thousands of U.S. citizens.”).

58. Eyder Peralta, *You Say You’re an American, But What If You Had to Prove It or Be Deported?*, NPR (Dec. 22, 2016, 12:29 PM), <https://www.npr.org/sections/thetwo-way/2016/12/22/504031635/you-say-you-re-an-american-but-what-if-you-had-to-prove-it-or-be-deported>.

59. *The Data Broker to Deportation Pipeline*, *supra* note 15, at 6; *PowerView Score™*, LEXISNEXIS RISK SOLUTIONS, <https://risk.lexisnexis.com/products/powerview-score> (last visited Nov. 16, 2021).

60. See *The Smarter Way to Get Your Investigative Facts Straight*, THOMSON REUTERS (2015) <https://www.thomsonreuters.com/content/dam/openweb/documents/pdf/legal/fact-sheet/clear-brochure.pdf> (last visited Nov. 16, 2021).

61. Drew Harwell, *Utility giants agree to no longer allow sensitive records to be shared with ICE*, WASH. POST (Dec. 8, 2021 2:39 PM), <https://www.washingtonpost.com/technology/2021/12/08/utility-data-government-tracking/>.

62. See *ICE Intelligence Centers*, *supra* note 25, at 9 (“Mass surveillance and data tracking hinder access to essential services such as utilities, driver’s licenses, cell phones, and internet for everyone, particularly immigrants, for fear of criminalization and deportation.”); Harwell, *supra* note 61 (“The information, which people often submitted in applications or other filings with their local utility companies, could be used to track where a person lived, where they had moved from, whom they had lived with and other details.”).

disproportionately affected by the potential “chilling impact” of LexisNexis’ data technology,⁶³ this may also raise questions about the company’s responsibility for violations of the right to non-discrimination.⁶⁴

IV. LEXISNEXIS MUST TAKE ACTION TO STOP AND ADDRESS THESE HUMAN RIGHTS VIOLATIONS

International human rights standards for businesses require LexisNexis to terminate its relationship with I.C.E. in order to stop contributing to I.C.E.’s human rights violations. LexisNexis must also use its leverage to mitigate the risk that I.C.E. will continue to violate the human rights of immigrants, and it must provide remediation for any adverse human rights impacts associated with the use of its services.⁶⁵

The Guiding Principles on Business and Human Rights emphasizes that the severity of the actual or potential adverse human rights impact is the most important factor in determining the scale and complexity of measures that a business must take to address the adverse human rights impact.⁶⁶ Severity is judged by its “scale, scope and irremediable character.”⁶⁷ The scale and scope of the potential human rights impacts are enormous. LexisNexis provides I.C.E. with the data and tools to identify, track, and locate as many as 276 million people in the United States. I.C.E.’s enforcement actions are marred by widely-reported and rampant human rights abuses. The immense severity of these violations is compounded by the fact that deportations are essentially irreversible. Once someone is deported, return is almost

63. See *ICE Intelligence Centers*, *supra* note 25, at 9 (“Mass surveillance and data tracking hinder access to essential services such as utilities, driver’s licenses, cell phones, and internet for everyone, particularly immigrants, for fear of criminalization and deportation.”).

64. International Covenant on Civil and Political Rights, *supra* note 9. This question warrants further discussion which is outside the scope of this paper.

65. *Guiding Principles on Business and Human Rights*, *supra* note 26, at 20-22, 24-25 (Guiding Principles 19 and 22). See *Interpretive Guide to Guiding Principles*, *supra* note 30, at 18 (“If an enterprise is at risk of causing or contributing to an adverse human rights impact through its own activities, it should cease or change the activity that is responsible, in order to prevent or mitigate the chance of the impact occurring or recurring. If an impact nevertheless takes place, the enterprise should engage actively in its remediation either directly or in cooperation with others (be it the courts, the Government, other enterprises involved or other third parties).”).

66. *Guiding Principles on Business and Human Rights*, *supra* note 26, at 15 (Guiding Principle 14); *Interpretive Guide to Guiding Principles*, *supra* note 30, at 19.

67. *Guiding Principles on Business and Human Rights*, *supra* note 26, at 15 (Guiding Principle 14); *Interpretive Guide to Guiding Principles*, *supra* note 30, at 19.

impossible.⁶⁸ Due to the severe potential adverse human rights impacts of detentions and deportations and the heightened vulnerability that immigrants bear regarding violations of their rights, LexisNexis must take comprehensive and immediate action to stop contributing to these human rights abuses.

International standards make clear that the responsibility of LexisNexis does not end with stopping its sharing of data and analytics technology with I.C.E. It must also “use its leverage to mitigate any remaining impact (by other parties involved) to the greatest extent possible.”⁶⁹ LexisNexis must also provide remediation for all past, current, and future harm that results from their relationship prior to its end. LexisNexis should consult immigrant communities and advocates on what would be an effective remedy.⁷⁰ An operations-level grievance mechanism or a similar measure is likely to be insufficient for LexisNexis to meet its responsibilities.⁷¹ The human rights impacts are likely to be severe because it may include wrongful deportations by the United States, a grave consequence not resolvable by a corporate grievance mechanism. Additionally, the opacity of LexisNexis’ data-sharing relationship with I.C.E. and how exactly I.C.E. uses this data⁷² increases the likelihood that the full extent of the human rights impacts will not be known. At a minimum, LexisNexis should provide full support, within its abilities, to the efforts of immigrants and advocates to

68. Tiziana Rinaldi, *When the Government Wrongly Depports People, Coming Back to the US is Almost Impossible*, WORLD (July 26, 2018, 10:30 AM), <https://www.pri.org/stories/2018-07-26/when-government-wrongly-deports-people-coming-back-us-almost-impossible>. See Esha Bhandari, *Yes, the U.S. Wrongfully Depports its own Citizens*, AM. CIV. LIBERTIES UNION (Apr. 25, 2013, 11:45 AM), <https://www.aclu.org/blog/speak-easy/yes-us-wrongfully-deports-its-own-citizens> (“Although Lyttle was eventually able to return home with the help of a lawyer, not all those who are wrongfully deported have access to the same resources. In Lyttle’s case, the government spent hundreds of thousands of dollars to detain him, prosecute his removal proceedings and litigate against his federal court case—brought by the ACLU Immigrants’ Rights Project, the ACLU of Georgia, the ACLU of North Carolina, and pro bono lawyers including the law firm of Troutman Sanders—and ultimately pay him monetary damages. However, the government has never admitted any wrongdoing, nor has it put in place procedures sufficient to ensure that this cannot happen to others.”).

69. *Interpretive Guide to Guiding Principles*, *supra* note 30, at 53. A complete discussion of what level of leverage LexisNexis has and how it could use that influence to force I.C.E. to change its practice is outside of the scope of this paper.

70. See *Interpretive Guide to Guiding Principles*, *supra* note 30, at 64 (“Remedies can take a variety of forms and it is important to understand what those affected would view as effective remedy, in addition to the enterprise’s own view.”).

71. See *Interpretive Guide to Guiding Principles*, *supra* note 30, at 65, 68-73.

72. See Biddle, *supra* note 16 (“LexisNexis Risk Solutions spokesperson Jennifer Richman declined to say exactly what categories of data the company would provide ICE under the new contract, or what policies, if any, will govern how agency uses it.”).

stop immigration enforcement actions which may have involved the use of data or technology provided by LexisNexis. Additionally, LexisNexis should cooperate with immigrants and advocates in their efforts to seek accountability for human rights abuses that may have occurred in connection with its relationship with I.C.E.