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# ICE in New York has a spy tool to hunt undocumented immigrants via their cell phones

ICE is spying on cell phones and acquiring call records to hunt down undocumented immigrants, even in the supposed "sanctuary city" of New York.

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COMPARTE



Federal immigration agents in New York City were permitted to use a powerful surveillance device called a “stingray” that spies on cell phones to track down an undocumented immigrant, according to court documents. His crime? Illegally re-entering the United States after being deported.

This marks the second time journalists have caught ICE using this controversial spy gadget in a deportation case during the Trump administration, showing how far the agency will go to advance the president’s zero tolerance policy on illegal immigration.

The stingray was initially perceived as a spy tool for hunting down terrorists, but in recent years it has been increasingly used -- in secret – by federal law enforcement and local police. This has sparked major privacy concerns.



In 2015, **ICE established internal rules** for using such an invasive technology “in furtherance of criminal

investigations.” However, ICE considers it a sufficient crime if a person merely returns to the United States after being deported.

Univision 41 Investiga has closely examined a case in which **ICE requested – and received – a federal judge’s permission to use a stingray** to track down a Mexican man in Brooklyn. Federal agents had also secretly obtained his cell phone’s call records and location from Sprint, according to court records we discovered.

Valente Palacios Tellez, 33, is now in federal jail. On Wednesday, October 16, he was sentenced to a year in prison and awaits deportation proceedings.

“I think it’s too much, because my brother isn’t a murderer. He’s not a terrorist,” said his older sister, who spoke to us on condition of anonymity because she fears reprisal from ICE.



Throughout Palacios Tellez’s criminal court case this

year, the federal prosecutor never revealed that the government had resorted to spying on his phone. His own federal defense lawyer, Mildred Whalen, did not know ICE spied on his phone until Univision 41 Investiga contacted her in July.

Despite lengthy interviews, Whalen declined to comment on this piece. Palacios Tellez declined an interview from jail, fearing that it would affect his case and present a danger upon his return to Mexico.

As a result of our work, the office of Federal Defenders of New York in Brooklyn is now reviewing its criminal immigration cases to see if federal agents used stingrays without notifying defense lawyers.

The details of this case surprised Jerome Greco, a surveillance technology expert and attorney at the Legal Aid Society, which provides public defense to people accused of crimes in New York City.

“They are using it to track somebody down that they think could be deported,” he said. “The fact that we’re using such a powerful, invasive technology for a charge of that sort... is completely excessive and unnecessary.”

“It’s a slippery slope. The more instances we allow this to be used, the more accepted it will become,” he added.



## **Illegal entry**

Palacios Tellez was 17 years old in 2003 when left his Mexican hometown near the city of Puebla to seek economic opportunity in the United States. He was caught trying to cross the border four times in the week before Thanksgiving that year. He succeeded on his fifth attempt and started to work construction jobs in New York City.

He started a family here, had a daughter, and worked six days a week for a nearly a decade, according to family members.

But an hour before sunrise on November 10, 2012, Palacios Tellez got into a drunk fight outside a restaurant on 5<sup>th</sup> Avenue in Brooklyn. According to the police report, an NYPD officer saw him pull out a boxcutter and attack another man. The other man was sent to Lutheran Hospital with cuts on his wrist and arm.

Palacios Tellez was convicted of a felony, sentenced to two years in state prison, and he was deported in the summer of 2014.

But he managed to make his way back to Brooklyn, where he could see his teenage daughter. He continued to work in construction and met a new partner, Maria Cruz.

Then on February 3, 2019, Palacios Tellez got into another drunk fight and was arrested by NYPD. The charges were dropped, and the case was dismissed. But sealed court records obtained by Univision 41 Investiga show that an “ICE detainer” was placed on him, as the federal agency became aware that Palacios Tellez was back in the country.

ICE pursued the case, and a grand jury in Brooklyn **secretly indicted him on March 19 for illegal re-entry**. The indictment says little about his case, merely that he “was found in the United States.”

## How they found him

ICE, using the address listed in his NYPD arrest report, tried to find him at his two sisters’ home in Brooklyn’s neighborhood of Kensington, according to court records. They stopped by the home every week in April, but he had already left and moved in with his girlfriend six miles away. They finally convinced one sister to turn over her cell phone, and on it they found one phone number listed under “Val.”

On May 1, ICE deportation officer Christian F. Sabatino submitted a sworn affidavit to a federal judge describing the case and requesting authorization to spy on the immigrant’s phone records. That same day, **U.S. Magistrate Judge Steven M. Gold ordered Sprint to track Palacios Tellez’s phone**, and to share billing and other information with ICE. Sprint was also

directed to secretly send the phone “a signal” to determine its location, using the same GPS feature that helps first responders find someone when they call 911.

That day, ICE also received help from Jonathan Siegel, a federal prosecutor at the U.S. Attorney’s Office for the Eastern District of New York who **obtained the judge’s permission to spy on Palacios Tellez’s record of inbound and outbound phone calls** – but not the audio of the calls.

According to Palacios Tellez’s family, his gray Samsung smartphone had been disconnected for months, because he hadn’t paid the bill. Still, court records show that ICE still managed to track down to the intersection of Glenmore Avenue and Schenk Avenue.

But it wasn’t enough.

An ICE officer pulled up the address on Google Maps and saw several homes and apartment buildings in the area. The agency wanted to know exactly which room, in which house.

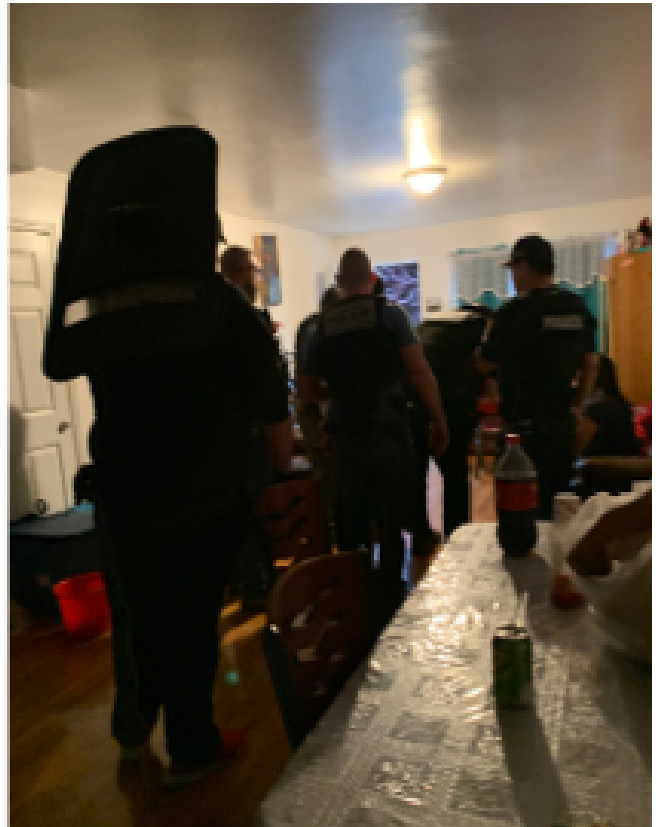
On May 16, ICE Officer Sabatino formally requested permission to use “a cell-site simulator.” That is the common term used to describe these spy tools, the famous of them being the “StingRay” developed by a defense contractor in Florida called the Harris Corporation.

**In court papers, Sabatino described how the device would work:** It would become a fake cell phone tower, secretly connecting to all the phones in the area. When it identifies the “target” phone by its unique SIM card number, it would disconnect from all other phones and focus solely on the target.



Sabatino promised that he would only use the spy device to determine its exact location but not collect any emails, text messages, photos, or phone calls. And he assured that ICE would delete anyone else's information that was accidentally collected.

U.S. Magistrate Judge Steven L. Tiscione immediately approved the request and gave ICE 30 days to do it.



## Knock knock

Just after sunrise at 6 a.m. on Wednesday, June 5, ICE agents pounded on the door of Maria Cruz's rented home in the Brooklyn neighborhood of East New York. She was asleep in bed with Palacios Tellez, and her two teenage kids from her previous marriage were in their rooms.

She remembers that federal agents were standing outside her window, shining flashlights into the home. Agents shouted that they were going to break down the door if she didn't open it immediately, she recalled. According to Cruz, she opened the door and several

agents with guns drawn walked straight to the back room, where they pulled Palacios Tellez out of bed.

Her daughter demanded to see a warrant. One agent told her to shut up and go to law school, the girl told us.

Palacios Tellez was put in custody by U.S. Marshals and taken to MDC Brooklyn, the federal jail that overlooks Gowanus Bay.

Cruz was three months pregnant with twins.

Since then, Cruz visits her partner every Monday afternoon. It's an hour-long ride that takes two subways across Brooklyn. During a recent trip in September, she said: "I'm happy for my babies, but at the same time, I'm always sad. I think when any woman is pregnant, she wants to be with her partner."

She's due to give birth in December. The children's father will still be in prison. Cruz plans to continue visiting him. But that will become impossible if, like many immigrants, he is moved to rural Pennsylvania for-profit prison complex, the Moshannon Valley Correctional Center.

At the direction of her partner's defense lawyer, she keeps Palacios Tellez's phone turned off. Now that she understands how stingrays work, she's worried about her own phone too.

"So, we have to be cautious with what we carry in our hands too?" she said. "When immigrants realize that... [ICE] is going to catch us for having a phone, it's going to be very difficult then for an immigrant to have a phone."



## Piercing the veil

Palacios Tellez's attorney didn't know federal agents used a stingray or spied on his phone records, because those search warrants were filed under different case numbers in court. And the documents were not included in his criminal case.

Neither ICE nor the US Attorney's Office in Brooklyn would say whether stingrays have been used here in New York City to find other immigrants here illegally. We reviewed more than 2,000 pages of court documents, but we could not find another case in this area.

The only other instance that received widespread attention was two years ago, when Detroit News reporter Robert Snell exposed that **ICE had used a stingray in March 2017 to find Rudy Carcamo-Carranza**, a young man from El Salvador. His federal crimes? Re-entering the United States illegally and using a fake green card to get a job at a seafood restaurant in Troy, Michigan.

By all accounts, it appears that ICE is following its internal rules. **As former ICE acting director Thomas**

## **Homan said in a letter to U.S. Senator Ron Wyden**

**in 2017:** ICE Enforcement and Removal Operations... does not use cell-site simulators for the purpose of civil immigration law enforcement.” Indeed, the Michigan and New York cases are both criminal matters, because it is a felony to re-enter the United States after being deported.

However, these two examples now show that ICE’s standard for using spy tools is low, according to Nathan Freed Wessler, a staff attorney at the American Civil Liberties Union who has monitored the use of this technology.

“This is fundamentally immigration enforcement. It’s couched in the language of criminal law enforcement, because illegal re-entry is categorized as a crime. But what they are doing is looking for somebody who doesn’t have authorization for being in the country,” Wessler said.

It’s also unclear how ICE discovered the Palacios Tellez’s case. New York has declared itself a “sanctuary city,” and in 2014, Mayor Bill DeBlasio signed bills that reduced the city’s cooperation with federal immigration enforcement.

Privacy experts suspect that Palacios Tellez appeared on ICE radar after his fight in Brooklyn, because NYPD submits arrest information to New York State’s Division of Criminal Justice Services, which queries an FBI fingerprint database that communicates with ICE’s own “Enforcement Integrated Database.”

Albert Fox Cahn, a New York City lawyer who founded the Surveillance Technology Oversight Project, said this kind of information sharing presents a massive hole in the city’s supposed sanctuary status.

His views are echoed by Ángel Díaz, counsel in the liberty and national security program at the Brennan Center for Justice at NYU School of Law.

“New York City is supposed to be a sanctuary city,” Díaz said. “If there isn’t any meaningful work done to limit information sharing between local law enforcement and federal authorities, then arrest information or any info that NYPD has can be picked up by ICE to deport individuals.”

## **Back in Puebla, Mexico**

Palacios Tellez was in jail this summer when he heard the terrible news: his younger brother Ismael was shot to death back home. The 26-year-old had decided to stay back with his mother and take on the family farm in the tiny town of San Bartolomé Tepetlacaltechco, on the outskirts of the city of Puebla. There, he raised sheep, goats, and cows. On July 21 this year, he was shot 8 times and left to die.

Palacios Tellez’s sister in Brooklyn said the family doesn’t expect the police there to actually investigate the killing, because of rampant corruption that is unimaginable in the United States.

“We don’t even know who killed him,” said his sister in Brooklyn, tears gathering at her eyes. “Now my mother is worried that the same thing will happen to Valente if he’s deported.”