

**NATIONAL
IMMIGRANT
JUSTICE CENTER**
A HEARTLAND ALLIANCE PROGRAM

April 12, 2017

Via email to EOIR.FOIARequests@usdoj.gov

U.S. Department of Justice
Executive Office for Immigration Review
Office of General Counsel - FOIA Service Center
FOIA/Privacy Act Requests
5107 Leesburg Pike, Suite 1903
Falls Church, Virginia 22041

Dear FOIA Officer:

This is a request for information under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. The following terms in this request have the following meanings:

- **“record” or “records”**: any written records dated between November 9, 2016 and the present which set out or reflect approved policies, guidelines, or procedures, or any data (including Excel spreadsheets); and
- **“communications”**: any written document in your possession, including transmittals, letters, emails, memoranda, reports, instructions and summaries (such as to or from agency staff, contractors, or other providers), and the like.

We request the following records in the custody and control of the Executive Office for Immigration Review (EOIR):

New Hearing Locations

1. Any records relating to “details” of immigration judges to new hearing locations, including any non-private records relating to scheduling, staffing, structure, requirements, conditions, training or case processing guidelines and including but not limited to all communications related thereto; the new hearing locations are identified as the following facilities as of March 24, 2017:
 - South Texas Family Residential Center (Texas)
 - LaSalle Detention Facility (Louisiana)
 - Karnes County Residential Center (Texas)
 - Laredo Processing Center (Texas)
 - Otero County Processing Center (New Mexico)
 - Polk County Detention Center (Texas)
 - Cibola County Detention Center (New Mexico)

- Prairieland Detention Center (Texas);
2. Any records relating to the number, category, type, location, or other related information on cases that have been re-calendared, rescheduled, continued, or postponed due to the reassignment or detailing of immigration judges, including but not limited to all communications related thereto;
 3. Any records relating to assignment of immigration judges to cases of detained respondents in new hearing locations described in Request 1 and the processing of cases previously assigned to immigration judges during the period of absence on detail including whether immigration judges will retain cases assigned during their details or whether cases will pass to other immigration judges subsequently detailed to the hearing location in question, including but not limited to all communications related thereto;
 4. Any records relating to the calendaring of master calendar or merits hearings that were scheduled to occur on the docket of immigration judges subsequently assigned to one of the details described in Request 1 including the form and procedure for providing notice of cancellations or re-calendaring to respondents and counsel of record, including but not limited to all communications related thereto;
 5. Any records relating to current status of immigration judge hiring and whether EOIR intends to hire or assign immigration judges to permanent detail at any of the new hearing locations described in Request 1, including any records relating to the “new, streamlined hiring plan” implemented on or before April 11, 2017, as announced by Attorney General Jefferson Sessions in his remarks “Announcing the Department of Justice’s Renewed Commitment to Criminal Immigration Enforcement” on April 11, 2017, and including but not limited to all communications related thereto;
 6. Any records relating to the facilitation of witness appearance in proceedings in the new hearing locations described in Request 1, including any records relating to the use of video teleconference or telephone and including but not limited to all communications related thereto;
 7. All complete contracts or subcontracts between the Department of Justice (DOJ) and any private entity to provide services for facilities designated as new hearing locations, identified as the following facilities:
 - South Texas Family Residential Center (Texas)
 - LaSalle Detention Facility (Louisiana)
 - Karnes County Residential Center (Texas)
 - Laredo Processing Center (Texas)

- Otero County Processing Center (New Mexico)
- Polk County Detention Center (Texas)
- Cibola County Detention Center (New Mexico)
- Prairieland Detention Center (Texas)

This request includes any modifications or addenda extending or modifying a contract, such that the contract is provided in its current and complete form;

8. Any records relating to access to legal counsel and referral to legal counsel for detainees in proceedings in the new hearing locations described in Request 1, including any Pro Bono Legal Service Provider Lists provided to detainees at the new hearing locations described in Request 1 and including but not limited to all communications related thereto;
9. Any records relating to access of legal counsel of detainees to the hearing locations described in Request 1, including any records relating to the use of video teleconference or telephone and including but not limited to all communications related thereto;
10. Any records relating to any changes in the immigration court or administrative control court with jurisdiction over cases arising in any hearing locations not described in Request 1;

Institutional Hearing Program (IHP)

11. Any records relating to the 14 Bureau of Prisons (BOP) facilities and six (6) Bureau of Prisons (BOP) contract facilities in which the Institutional Hearing Program (IHP) is present or to which the IHP will be expanded, including:
 - Name of facility;
 - Maximum capacity;
 - Whether the facility holds men or women or both; and
 - Immigration court or administrative control court with jurisdiction over cases arising from the facility.

If a list or lists exists of such facilities, please treat that list as responsive to this request;

12. Any records relating to the “new and uniform intake policy” on which EOIR and ICE were to have reached agreement by April 6, 2017 and including but not limited to all communications related thereto;
13. Any records relating to notification of criminal defense or other attorneys representing individuals processed through the IHP of their clients’ placement in the IHP and the place and time of any hearing under the IHP, including but not limited to all communications related thereto;

14. Any records relating to each IHP facility's video teleconference capabilities and the update of existing infrastructure to aid in the ability to conduct removal proceedings and including but not limited to all communications related thereto;
15. All complete contracts or subcontracts between DOJ and any private entity to provide services for facilities with the Institutional Hearing Program. This request includes any modifications or addenda extending or modifying a contract, such that the contract is provided in its current and complete form;
16. Any records relating to the hiring or assignment of immigration judges to permanent detail at any of the IHP locations described in Request 11, including but not limited to all communications related thereto;
17. Any records relating to the facilitation of witness appearance in proceedings in the IHP locations described in Request 11, including any records relating to the use of video teleconference or telephone and including but not limited to all communications related thereto;
18. Any records relating to access to legal counsel and referral to legal counsel for detainees in proceedings in the IHP locations described in Request 11, including any Pro Bono Legal Service Provider Lists provided to detainees at the IHP locations described in Request 11 and including but not limited to all communications related thereto;
19. Any records relating to the provision of any legal orientation or other Know Your Rights programming to individuals processed through the IHP including but not limited to the orientation required under Standard 2.1.V.F of the ICE Performance-Based National Detention Standards, including but not limited to all communications related thereto;
20. Any records relating to the content of law libraries in each of the IHP locations described in Request 11, as well as all communications related to content of, or access to, those libraries;
21. Any records relating to the provision of free telephone services to individuals processed through the IHP for communication with their immigration legal counsel or consular staff, including any records relating to the ICE Detainee Telephone Service (DTS) Provider Pro Bono Platform, and including but not limited to all communications related hereto;

22. Any records relating to access of legal counsel of detainees to the IHP locations described in Request 11, including any records relating to the use of video teleconference or telephone and including but not limited to all communications related thereto.

The above requests do not include any portions of records specifically identifying a particular individual, such that would be covered under the Privacy Act or other privacy protections. Moreover, with respect to the foregoing, we are not requesting the disclosure of any drafts and no such drafts need be listed on any *Vaughn* index of withheld records or portions thereof.

Please construe this as an ongoing FOIA request, so that any records that come within the possession of the agency prior to your final response to this FOIA request should also be considered within the scope of the request. As such please produce any information responsive to the above requests relating to any new hearing locations at detention facilities made operational on or after March 24, 2017, including any new hearing locations made operational pursuant to the Institutional Hearing Program.

If EOIR does not have custody or control over certain requested and responsive records but knows or believes that another department, agency, private entity, or another subject to FOIA does, such as DOJ or another operational or support component therein, please forward this FOIA request to the appropriate person and inform the undersigned that you have done so.

Electronic versions of the requested documents on compact discs are preferred. Please produce with the records any metadata and load files, so that the records can be accessed, searched, and displayed in a manner comparable to an EOIR or DOJ user, as applicable. If codes are employed, please also produce any documents in your possession explaining the codes employed, and what they signify.

If all or any part of this request is denied, please specify the exemption(s) claimed for withholding each record. If some portion(s) of the requested records are determined to be exempt, please provide the remaining non-exempt portions. 5 U.S.C. § 552(b). To the extent that materials are excised, please “black out” these materials, rather than “whiting out” or “cutting out” these materials. We reserve the right to appeal any decision(s) to withhold information and expect that you will list the address and office to which such an appeal may be directed. 5 U.S.C. § 552(a)(6)(A)(i).

Request for Expedited Processing and Fee Waiver

We hereby request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and a fee waiver under FOIA to the fullest extent permitted by law and as permitted under the applicable DOJ regulations.

Expedited processing is appropriate because the requests involve “[a]n urgency to inform the public about an actual or alleged government activity, if made by a person primarily engaged in disseminating information,” “the loss of substantial due process rights,” and “[a] matter of widespread and exceptional media interest in which there exist possible questions about the

government's integrity which affect public confidence." See 28 C.F.R. § 16.5(e)(1).

Requester, Heartland Alliance's National Immigrant Justice Center (NIJC), is a non-profit entity under Section 501(c)(3) of the Internal Revenue code. Dedicated to ensuring human rights protections and access to justice for all immigrants, refugees, and asylum seekers, NIJC provides direct legal services to and advocates for these populations through policy reform, impact litigation, and public education. Through its work, NIJC advocates for individual clients as well as broad-based systemic change. As such, the primary purpose of the Requester is to inform the legal community and the public about EOIR policies and procedures regarding incarcerated, detained, and non-detained immigrants in removal or other related proceedings. Providing the requested information will likely contribute significantly to understanding current practices at EOIR, as well as identifying potential grounds for seeking to adjust such practices.

In amending the FOIA statute, Congress intended for liberal construction of all fee waiver provisions for non-commercial Requesters. See *Judicial Watch Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be 'liberally construed in favor of waivers of noncommercial requesters.'")

The Requester is entitled to a waiver of all costs because the information sought "is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the [Requester's] commercial interest." 5 U.S.C. § 552(a)(4)(A)(iii); 28 C.F.R. § 16.10(k). The Requester has a proven track-record of compiling and disseminating information to the public about government functions and activities. We intend to make EOIR's response – and an analysis thereof – publicly available on our website, www.immigrantjustice.org, and through other means of communication.

Requester has undertaken its work concerning EOIR policies relating to access to counsel in the public interest and not for any private commercial interest. This FOIA request seeks to obtain information to further the public's understanding of EOIR's policies and procedures relating to the statutory right to counsel for aliens in removal proceedings. Access to this information is required for the public to meaningfully evaluate the effectiveness of these policies vis-à-vis any collateral consequences. The records sought in this request will shed light on whether EOIR policies or procedures in any way contravene the statutory right of an alien in removal proceedings to access to counsel.

The Requester is also entitled to a waiver of search-related fees as "a representative of the news media." 5 U.S.C. § 552(a)(4)(A)(ii)(II); 28 C.F.R. §§ 16.10(b)(6), (k). Under the 2007 amendments to FOIA, "a representative of the news media," means "any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into distinct work, and distributes that work to an audience." 5 U.S.C. § 552(a)(4)(A)(ii). "News" means "information that is about current events or that would be of current interest to the public." *Id.* Examples of news media entities includes "alternative media" that disseminate their publications for free "through telecommunications services," *i.e.*, the internet. *Id.* As noted above, NIJC has a track record of turning raw material into reports and other publications for distribution to the general public, which it does at no charge. You should therefore not charge NIJC any search-related costs for this FOIA request.

The documents subject to this request are not sought for any commercial use. Thus, in the alternative, we understand that no fee may be charged for the first two hours of search time or for the first 100 pages of duplication. 5 U.S.C. § 552(a)(4)(A)(iv)(II); 28 C.F.R. § 16.10(d)(4). If you decline to waive these fees, and if these fees will exceed \$100.00, please notify us of the amount of these fees before fulfilling this request. 28 C.F.R. § 16.10(e).

Please reply to this request within twenty (20) working days, or as required by statute. 5 U.S.C. § 552(a)(6)(A)(i). If you have any questions regarding this request, please feel free to email me at haltman@heartlandalliance.org or call me at 312-718-5021.

Sincerely,

s/Heidi Altman

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