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General Counsel  
Bill Ong Hing

Of Counsel  
Don Ungar

Executive Director  
Eric Cohen

San Francisco  
1663 Mission Street  
Suite 602  
San Francisco, CA 94103  
t: 415.255.9499  
f: 415.255.9792

Washington D.C.  
1016 16<sup>th</sup> Street, NW  
Suite 100  
Washington, DC 20036  
t: 202.777.8999  
f: 202.293.2849

ilrc@ilrc.org  
www.ilrc.org

**Submitted via Electronic Mail to [ice-foia@dhs.gov](mailto:ice-foia@dhs.gov)**

U.S. Immigration and Customs Enforcement  
Freedom of Information Act Office  
500 12th Street SW, Stop 5009  
Washington, D.C. 20536-5009

June 22, 2017

**RE: FREEDOM OF INFORMATION ACT REQUEST TO U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT**

Dear FOIA Public Liaison:

This is a Freedom of Information Act (FOIA) request by the Immigrant Legal Resource Center (ILRC) under 5 U.S.C. § 552.

The ILRC works with immigrants, community organizations, legal professionals, law enforcement, and policy makers to build a democratic society that values diversity and the rights of all people. Through community education programs, legal training and technical assistance, and policy development and advocacy, the ILRC's mission is to protect and defend the fundamental rights of immigrant families and the communities in which they live. The ILRC is a non-profit public interest organization under Internal Revenue Code Section 501(c)(3).

With respect to immigration enforcement and detention issues, the ILRC provides training and educational materials and engages in advocacy for the fair and just administration of removal and detention operations. We also provide technical assistance to immigration practitioners on many aspects of immigration law, with a focus on the intersection between the immigration and criminal justice systems. The ILRC works towards the elimination of unjust penalties for immigrants entangled in the criminal justice system and to end the criminalization of immigrant communities.

### **I. Request for Records**

Unless otherwise stated, all requests for "records" refer to all physical or electronic records that were prepared, received, transmitted, collected, or maintained by U.S. Immigration and Customs Enforcement (ICE), including documents, meeting notes and minutes, lists of meeting participants, electronic (emails) and paper correspondence, legal research, legal opinions, letters, drafts, internal agency guides, regulations, memoranda, and spreadsheets. Furthermore,

the scope of the search should not be limited to ICE-originated records and should be construed to include records that are currently in the possession of any U.S. government contractors for purposes of records management. Records should be provided in electronic format wherever possible.

On behalf of the ILRC, we request that copies of all records containing the following information be provided:

- A. **Detainer and Notification Acceptance Status of Local Jurisdictions.** Records regarding the **current** nature of cooperation, **as of the date of this FOIA request**, between a state or local law enforcement agency and ICE, including:
- i. The name of the county and state where the agency is located;
  - ii. Designation of local jurisdiction or agency (e.g. sheriff, jail, or other law enforcement entity);
  - iii. Current detainer/notification acceptance status;
  - iv. The agency's or jurisdiction's willingness to accept or comply with detainers and requests for notification of release;
  - v. Comments regarding the jurisdiction or agency's engagement on detainers and/or responses to ICE;
  - vi. Prioritization of that jurisdiction or agency for cooperation by ICE;
  - vii. The date of last engagement between ICE and the local jurisdiction or agency;
  - viii. The month and year that the jurisdiction or agency began accepting detainers or notification requests; and
  - ix. The month and year that the jurisdiction or agency stopped accepting detainers or notification requests.

For the above request, ILRC seeks ICE's records regarding which jurisdictions or agencies are willing or not willing to accept or respond to requests for: (1) compliance with requests to "Notify DHS" under Form I-247A or previous forms, or other requests for providing ICE with notice of an individual's release date from custody; and (2) compliance with the request to "Maintain custody" under Form I-247A or previous forms, for up to 48 hours additional time, or other notes on assistance provided to ICE by local agencies.

- B. **Current and Pending 287(g) Agreements.** We request the following documents and records related to the Immigration and Nationality Act (INA) Section 287(g) program:
- i. Any document containing a list of all **currently** active 287(g) agreements (including both "jail" and "taskforce" model) under INA Section 287(g) as of the **date of this FOIA**;
  - ii. The most recent memoranda of understanding (or similar) documents memorializing these active agreements, to the extent that such records are not

already available on ICE's website at  
<https://www.ice.gov/factsheets/287g#signedMOA>;

- iii. Records regarding pending applications for 287(g) agreements as of the **date of this FOIA request**;
- iv. Records of communications between ICE and any local or state law enforcement agency or officer regarding entering or renewing a 287(g) agreement from **FY2016 to FY 2017-to-date**; and
- v. Records containing any list of target jurisdictions that ICE: (a) is in discussions with entering a 287(g) agreement; (b) plans on engaging and pursuing for a future 287(g) agreement.

C. **ICE Detention Data.** We request the following records:

- i. Data on all the facilities in which individuals may be detained in ICE custody as of **June 2017**, including any facilities with other contracts that have immigration detention riders or addenda, with the following information below. Similar data has previously been provided in a document known as the "ICE Detention Facilities Matrix."
  - a. Detention facility location;
  - b. Name of facility, address, city, state, zip code;
  - c. Facility operator;
  - d. Facility owner;
  - e. Best known contract initiation date;
  - f. Best known contract expiration date;
  - g. Per diem rate detained;
  - h. ICE area of responsibility;
  - i. Type of contract (e.g. USMS, IGSA, CDF, SPC);
  - j. Whether the facility is authorized to detain individuals for more than or less than 72 hours;
  - k. Capacity;
  - l. Applicable detention standards used for each facility;
  - m. FY 2016 - FY 2017 year to date Average Daily Population, male and female;
  - n. FY 2016 - FY 2017 year to date total population, not averaged per day;
  - o. Last inspection date and type;
  - p. Last inspection standard;
  - q. Last inspection rating – final; and
  - r. FY 2016 Rating.
- ii. Current standards governing the various ICE detention facilities as of the **date of**

**this FOIA request**; and

- iii. All communications **during FY 2017-to-date** between ICE employees and the agents or officials of outside detention contractors, including cities, counties, local, state, or federal law enforcement agencies, and private companies, regarding potential new detention contracts or potential new facilities for immigration detention. This request includes communications regarding any potential immigration detention riders or addenda to other contracts, and includes agreements for detention under 72 hours and longer term.

**D. ICE Enforcement Planning and Operations.** We request the following records:

- i. Any and all memos, legal guidance, training materials, or other directives to agents regarding agency policy or protocol on arrests of individuals at state or federal courthouses;
- ii. Records of communications with state or local probation departments regarding planned arrests of individuals at probation appointments or check-ins **during FY 2016 to FY 2017-to-date**;
- iii. Memorandum from DRO/ERO entitled: "Placement of Fugitive Cases into the National Crime Information Center's Immigration Violator File" dated **August 28, 2005**, and any subsequent or superseding memoranda on adding entries to NCIC; and
- iv. The most recent draft version of U.S. Citizenship and Immigration Services' (USCIS) update to PM-602-0050, "Revised Guidance for the Referral of Cases and Issuance of Notices to Appear," colloquially known as USCIS' NTA Guidance.

If there are no responsive records dated in June 2017 for any of the records above requested "as of the date of this FOIA," then we request the most recent responsive record dated prior to the date of this FOIA.

To provide additional detail regarding the above requests, under part (I)(A), the ILRC's request specifically seeks information regarding state and local enforcement agencies' assistance to and cooperation with ICE in the enforcement of immigration law, including state and local responses to ICE requests for notification and detainers. ICE previously provided similar information to the ILRC in response to a FOIA in 2015; this request seeks updates to that information.

Under part (I)(B), the ILRC seeks records regarding ICE's agreements under INA section 287(g) with local law enforcement, including the process for forming those agreements and information about current and pending potential agreements. If ICE would prefer to verify that the information currently on the website provides the current and complete list of active 287(g) agreements and the most recent MOAs as of June 2017, that would be sufficient to satisfy subsections (i) and (ii) of part (I)(B).

Under part (I)(C), the ILRC seeks records regarding ICE's detention practices and the detainee population, as well as plans for expansion of immigration detention. Part (I)(D) seeks records regarding ICE enforcement operations and policies, as well as interactions between ICE and other agencies, such as FBI/NCIC and USCIS.

## II. Under Statute and Case Law ICE Must Disclose the Requested Records

As you aware, the central legislative purpose behind the FOIA Act is to “pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny.”<sup>1</sup> While FOIA provides certain exemptions of which federal agencies, such as ICE, may avail themselves, these “limited exemptions do not obscure the basic policy that disclosure, not secrecy, is the dominant objective of the Act.”<sup>2</sup> Moreover, these exemptions are narrowly construed, and the burden of establishing a valid claim of exemption is on the agency. Agencies are given deference in the assertion of exemptions, but such deference only exists so long as the claim of exemption is not arbitrary and capricious or contrary to law. The agency must provide a document-by-document log of every document withheld (in whole or in part), together with a sufficient description to justify the claim of exemption.

An agency may lose deference if there is evidence of bad faith.<sup>3</sup> Evidence of bad faith on part of the agency leads to courts refraining from according “substantial weight” to agency affidavits<sup>4</sup> and the stated underlying grounds for exercising certain exemptions, leading to a review of the FOIA request with “heightened scrutiny.”<sup>5</sup>

Finally, while exempt information is protected from disclosure, reasonably segregable, nonexempt portions of otherwise exempt records cannot be withheld and must be released.<sup>6</sup> The ILRC strongly urges you to consider this legislative intent and case law when responding to

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<sup>1</sup> *Dep't of Air Force v. Rose*, 425 U.S. 352, 361 (1976) (quoting *EPA v. Mink*, 410 U.S. 73, 79 (1973)) (“To make crystal clear the congressional objective in the words of the Court of Appeals, to pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny, Congress provided in § 552(c) that nothing in the Act should be read to authorize withholding of information or limit the availability of records to the public, except as specifically stated.”).

<sup>2</sup> *Id.* at 361; see also *U.S. Dept. of Justice v. Tax Analysts*, 492 U.S. 136, 151 (1989) (“[T]he exemptions are explicitly exclusive.”).

<sup>3</sup> See *Minier v. Cent. Intelligence Agency*, 88 F.3d 796, 800 (9th Cir. 1996) (quoting *Church of Scientology v. U.S. Dep't of the Army*, 611 F.2d 738, 742 (9th Cir. 1979)) (“In evaluating a claim for exemption, a district court must accord substantial weight to CIA affidavits, provided the justifications for nondisclosure are not controverted by contrary evidence in the record or by evidence of CIA bad faith.”); *Weissman v. Cent. Intelligence Agency*, 565 F.2d 692, 698 (D.C. Cir. 1977); *Assassination Archives & Research Ctr. v. C.I.A.*, 177 F. Supp. 2d 1, 11 (D.C. Cir. 2001) (citing *Students Against Genocide v. U.S. Dep't of State*, 257 F.3d 828, 837 (D.C. Cir. 2001)); see also *Pac. Fisheries Inc. v. United States*, 395 F. App'x 438, 440 (9th Cir. 2010); *Calvert v. United States*, 662 F. Supp. 2d 27 (D.D.C. 2009).

<sup>4</sup> See *Minier*, 88 F.3d at 803 (citing *Carter v. U.S. Dep't of Commerce*, 830 F.2d 388, 393 (D.C. Cir. 1987)).

<sup>5</sup> *Id.*

<sup>6</sup> See 5 U.S.C. § 552(b); *F.B.I. v. Abramson*, 456 U.S. 615, 626 (1982) (“[§ 552(b)] requires agencies and courts to differentiate among the contents of a document rather than to treat it as an indivisible ‘record’ for FOIA purposes.”); see also *Krikorian v. U.S. Dep't of State*, 984 F.2d 461, 466 (D.C. Cir. 1993) (quoting *Ctr. for Auto Safety v. E.P.A.*, 731 F.2d 16, 21 (D.C. Cir. 1984)) (“We have made clear that the ‘segregability’ requirement applies to all documents and all exemptions in the FOIA.”).

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this request. In particular, many of these requests seek updates to documents that have previously been made public.

Specifically, the records requested under (I)(A) represent a request for the latest versions of records that ICE previously provided—claiming no exemption—to the ILRC. We believe it clearly would be arbitrary and capricious and contrary to law for ICE to withhold the current versions of records, for which ICE has already provided earlier versions in response to a prior FOIA request from the same organization.

On December 9, 2015, the ILRC submitted a FOIA request to ICE,<sup>7</sup> in response to which ICE disclosed the previous version of the records requested under (I)(A).<sup>8</sup> In regard to (I)(A), ICE provided a comprehensive spreadsheet that listed the following data fields: (a) Field Office; (b) State; (c) County; (d) Jurisdiction; (e) Priority; (f) Month and Year Jurisdiction Began Not Accepting Detainers; (g) Date of First Engagement between ERO and Local Government; (h) Date of Last Engagement between ERO and Local Government; (i) Who Met with the Local Government?; (j) Current Detainer/Notification Acceptance Status; (k); Comments; (l); Follow Up Meeting Scheduled; (m) Next Meeting Date; (n) HQ Priority Jurisdictions; (o) Item Type; and (p) Path.<sup>9</sup>

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P
Field Office	State	County	Jurisdiction	Priority	Month and Year	First Engagement	Last Engagement	Who Met	Current Detainer/Notification Acceptance Status	Comments	Follow Up Meeting Scheduled	Next Meeting Date	HQ Priority Jurisdiction	Item Type	Path
NOL	AL	Avoyelles	Avoyelles Sheriff's Office	D	7/31/2015	7/31/2015	FOO	4	Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNE FOD met with the Alabama LEA and discussed PEP at the Alabama Sheriff's Association event, and offered an individual briefing for any interested jurisdictions.	No			FALSE	Item B(C)
NOL	AL	Baldwin	Baldwin Sheriff's Office	C	7/31/2015	7/31/2015	FOO	4	Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNE FOD met with the Alabama LEA and discussed PEP at the Alabama Sheriff's Association event, and offered an individual briefing for any interested jurisdictions.	No			FALSE	Item B(C)
NOL	AL	Barbour	Barbour Sheriff's Office	D	7/31/2015	7/31/2015	FOO	4	Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNE FOD met with the Alabama LEA and discussed PEP at the Alabama Sheriff's Association event, and offered an individual briefing for any interested jurisdictions.	No			FALSE	Item B(C)
NOL	AL	Bibb	Bibb Sheriff's Office	D	7/31/2015	7/31/2015	FOO	4	Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNE FOD met with the Alabama LEA and discussed PEP at the Alabama Sheriff's Association event, and offered an individual briefing for any interested jurisdictions.	No			FALSE	Item B(C)
NOL	AL	Bleeb	Bleeb Sheriff's Office	D	7/31/2015	7/31/2015	FOO	4	Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNE FOD met with the Alabama LEA and discussed PEP at the Alabama Sheriff's Association event, and offered an individual briefing for any interested jurisdictions.	No			FALSE	Item B(C)
NOL	AL	Bullock	Bullock Sheriff's Office	D	7/31/2015	7/31/2015	FOO	4	Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNE FOD met with the Alabama LEA and discussed PEP at the Alabama Sheriff's Association event, and offered an individual briefing for any interested jurisdictions.	No			FALSE	Item B(C)
NOL	AL	Burlier	Burlier Sheriff's Office	D	7/31/2015	7/31/2015	FOO	4	Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNE FOD met with the Alabama LEA and discussed PEP at the Alabama Sheriff's Association event, and offered an individual briefing for any interested jurisdictions.	No			FALSE	Item B(C)
NOL	AL	Calhoun	Calhoun Sheriff's Office	D	7/31/2015	7/31/2015	FOO	4	Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNE FOD met with the Alabama LEA and discussed PEP at the Alabama Sheriff's Association event, and offered an individual briefing for any interested jurisdictions.	No			FALSE	Item B(C)
NOL	AL	Chandler	Chandler Sheriff's Office	D	7/31/2015	7/31/2015	FOO	4	Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNE FOD met with the Alabama LEA and discussed PEP at the Alabama Sheriff's Association event, and offered an individual briefing for any interested jurisdictions.	No			FALSE	Item B(C)
NOL	AL	Cherokee	Cherokee Sheriff's Office	D	7/31/2015	7/31/2015	FOO	4	Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNE FOD met with the Alabama LEA and discussed PEP at the Alabama Sheriff's Association event, and offered an individual briefing for any interested jurisdictions.	No			FALSE	Item B(C)
NOL	AL	Chilton	Chilton Sheriff's Office	D	7/31/2015	7/31/2015	FOO	4	Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNE FOD met with the Alabama LEA and discussed PEP at the Alabama Sheriff's Association event, and offered an individual briefing for any interested jurisdictions.	No			FALSE	Item B(C)
NOL	AL	Choctaw	Choctaw Sheriff's Office	D	7/31/2015	7/31/2015	FOO	4	Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNE FOD met with the Alabama LEA and discussed PEP at the Alabama Sheriff's Association event, and offered an individual briefing for any interested jurisdictions.	No			FALSE	Item B(C)
NOL	AL	Clarke	Clarke Sheriff's Office	D	7/31/2015	7/31/2015	FOO	4	Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNE FOD met with the Alabama LEA and discussed PEP at the Alabama Sheriff's Association event, and offered an individual briefing for any interested jurisdictions.	No			FALSE	Item B(C)
NOL	AL	Clay	Clay Sheriff's Office	D	7/31/2015	7/31/2015	FOO	4	Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNE FOD met with the Alabama LEA and discussed PEP at the Alabama Sheriff's Association event, and offered an individual briefing for any interested jurisdictions.	No			FALSE	Item B(C)
NOL	AL	Clayton	Clayton Sheriff's Office	D	7/31/2015	7/31/2015	FOO	4	Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNE FOD met with the Alabama LEA and discussed PEP at the Alabama Sheriff's Association event, and offered an individual briefing for any interested jurisdictions.	No			FALSE	Item B(C)
NOL	AL	Coffee	Coffee Sheriff's Office	D	7/31/2015	7/31/2015	FOO	4	Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNE FOD met with the Alabama LEA and discussed PEP at the Alabama Sheriff's Association event, and offered an individual briefing for any interested jurisdictions.	No			FALSE	Item B(C)
NOL	AL	Colbert	Colbert Sheriff's Office	D	7/31/2015	7/31/2015	FOO	4	Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNE FOD met with the Alabama LEA and discussed PEP at the Alabama Sheriff's Association event, and offered an individual briefing for any interested jurisdictions.	No			FALSE	Item B(C)
NOL	AL	Concord	Concord Sheriff's Office	D	7/31/2015	7/31/2015	FOO	4	Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNE FOD met with the Alabama LEA and discussed PEP at the Alabama Sheriff's Association event, and offered an individual briefing for any interested jurisdictions.	No			FALSE	Item B(C)
NOL	AL	Coosa	Coosa Sheriff's Office	D	7/31/2015	7/31/2015	FOO	4	Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNE FOD met with the Alabama LEA and discussed PEP at the Alabama Sheriff's Association event, and offered an individual briefing for any interested jurisdictions.	No			FALSE	Item B(C)
NOL	AL	Corning	Corning Sheriff's Office	D	7/31/2015	7/31/2015	FOO	4	Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNE FOD met with the Alabama LEA and discussed PEP at the Alabama Sheriff's Association event, and offered an individual briefing for any interested jurisdictions.	No			FALSE	Item B(C)
NOL	AL	Crawford	Crawford Sheriff's Office	D	7/31/2015	7/31/2015	FOO	4	Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNE FOD met with the Alabama LEA and discussed PEP at the Alabama Sheriff's Association event, and offered an individual briefing for any interested jurisdictions.	No			FALSE	Item B(C)
NOL	AL	Cullman	Cullman Sheriff's Office	D	7/31/2015	7/31/2015	FOO	4	Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNE FOD met with the Alabama LEA and discussed PEP at the Alabama Sheriff's Association event, and offered an individual briefing for any interested jurisdictions.	No			FALSE	Item B(C)
NOL	AL	Dale	Dale Sheriff's Office	D	7/31/2015	7/31/2015	FOO	4	Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNE FOD met with the Alabama LEA and discussed PEP at the Alabama Sheriff's Association event, and offered an individual briefing for any interested jurisdictions.	No			FALSE	Item B(C)
NOL	AL	Dallas	Dallas Sheriff's Office	D	7/31/2015	7/31/2015	FOO	4	Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNE FOD met with the Alabama LEA and discussed PEP at the Alabama Sheriff's Association event, and offered an individual briefing for any interested jurisdictions.	No			FALSE	Item B(C)
NOL	AL	De Kalb	De Kalb Sheriff's Office	C	7/31/2015	7/31/2015	FOO	4	Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNE FOD met with the Alabama LEA and discussed PEP at the Alabama Sheriff's Association event, and offered an individual briefing for any interested jurisdictions.	No			FALSE	Item B(C)
NOL	AL	Etowah	Etowah Sheriff's Office	D	7/31/2015	7/31/2015	FOO	4	Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNE FOD met with the Alabama LEA and discussed PEP at the Alabama Sheriff's Association event, and offered an individual briefing for any interested jurisdictions.	No			FALSE	Item B(C)
NOL	AL	Escambia	Escambia Sheriff's Office	D	7/31/2015	7/31/2015	FOO	4	Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNE FOD met with the Alabama LEA and discussed PEP at the Alabama Sheriff's Association event, and offered an individual briefing for any interested jurisdictions.	No			FALSE	Item B(C)
NOL	AL	Etowah	Etowah County Sheriff	C	7/31/2015	7/31/2015	FOO	4	Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNE FOD met with the Alabama LEA and discussed PEP at the Alabama Sheriff's Association event, and offered an individual briefing for any interested jurisdictions.	No			FALSE	Item B(C)
NOL	AL	Fayette	Fayette Sheriff's Office	D	7/31/2015	7/31/2015	FOO	4	Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNE FOD met with the Alabama LEA and discussed PEP at the Alabama Sheriff's Association event, and offered an individual briefing for any interested jurisdictions.	No			FALSE	Item B(C)
NOL	AL	Franklin	Franklin Sheriff's Office	D	7/31/2015	7/31/2015	FOO	4	Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNE FOD met with the Alabama LEA and discussed PEP at the Alabama Sheriff's Association event, and offered an individual briefing for any interested jurisdictions.	No			FALSE	Item B(C)
NOL	AL	Gadsden	Gadsden Sheriff's Office	D	7/31/2015	7/31/2015	FOO	4	Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNE FOD met with the Alabama LEA and discussed PEP at the Alabama Sheriff's Association event, and offered an individual briefing for any interested jurisdictions.	No			FALSE	Item B(C)
NOL	AL	Greene	Greene Sheriff's Office	D	7/31/2015	7/31/2015	FOO	4	Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNE FOD met with the Alabama LEA and discussed PEP at the Alabama Sheriff's Association event, and offered an individual briefing for any interested jurisdictions.	No			FALSE	Item B(C)
NOL	AL	Hale	Hale Sheriff's Office	D	7/31/2015	7/31/2015	FOO	4	Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNE FOD met with the Alabama LEA and discussed PEP at the Alabama Sheriff's Association event, and offered an individual briefing for any interested jurisdictions.	No			FALSE	Item B(C)
NOL	AL	Haley	Haley Sheriff's Office	D	7/31/2015	7/31/2015	FOO	4	Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNE FOD met with the Alabama LEA and discussed PEP at the Alabama Sheriff's Association event, and offered an individual briefing for any interested jurisdictions.	No			FALSE	Item B(C)
NOL	AL	Houston	Houston Sheriff's Office	D	7/31/2015	7/31/2015	FOO	4	Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNE FOD met with the Alabama LEA and discussed PEP at the Alabama Sheriff's Association event, and offered an individual briefing for any interested jurisdictions.	No			FALSE	Item B(C)

An excerpt from ICE's response to the ILRC's December 2015 FOIA.

Thus, ICE previously, in response to the ILRC's FOIA request, released records requested under (I)(A) and claimed no exemption. To withhold the disclosure of updated versions of such

<sup>7</sup> See Appendix A.

<sup>8</sup> For a copy of ICE's response to the ILRC's FOIA, please see Appendix B.

<sup>9</sup> Italicized fields represent data that the ILRC requests in this FOIA under (I)(A).

records would be arbitrary and capricious and contrary to law, and could lead to potential litigation that the records are being “improperly withheld”<sup>10</sup> and do not fall within any of the nine statutory exemptions.<sup>11</sup>

In addition, ICE currently provides information regarding the 287(g) program on its website, including current participants and the underlying Memoranda of Agreement (MOAs). ILRC’s FOIA request seeks to verify the complete list of current 287(g) participants and obtain the most recent MOAs, as well as obtain other information about the 287(g) program. There is no reasonable basis to deny a request for an update to records that ICE already provides on its own website.

Similarly, ICE has previously provided the “Detention Facilities Matrix,” including all of the data requested above in section (I)(C)(i). Data as of December 8, 2015 is currently available.<sup>12</sup> ICE also published excerpts of this spreadsheet in its own Congressional Budget Justification.<sup>13</sup> ILRC seeks the most complete and updated version this spreadsheet as of June 2017. Withholding these records would be arbitrary and capricious because the information is clearly not subject to any exemptions.

### III. Request for Fee Waiver

Under the Freedom of Information Act, we request a waiver of fees.<sup>14</sup> A fee waiver requires that: (1) “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government;” and (2) the request “is not primarily in the commercial interest of the requestor.”<sup>15</sup>

The public interest criteria is satisfied when (1) the request concerns operations or activities of the government; (2) disclosure is likely to contribute to an understanding of government operations or activities; (3) disclosure contributes to an understanding of the subject by the

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<sup>10</sup> See 5 U.S.C. § 552(a)(4)(B) (West 2015); *GTE Sylvania, Inc. v. Consumers Union of U.S., Inc.*, 445 U.S. 375, 386 (1980) (“Congress gave the federal district courts under the Freedom of Information Act jurisdiction to order the production of “improperly” withheld agency records.”); *Minier*, 88 F.3d at 803 (citing *Spurlock v. FBI*, 69 F.3d 1010, 1016 (9th Cir. 1995)) (emphasis in original) (“A district court only has *jurisdiction* to compel an agency to disclose *improperly withheld* agency records.”).

<sup>11</sup> See *U.S. Dept. of Justice v. Tax Analysts*, 492 U.S. 136, 151 (1989) (“It follows from the exclusive nature of the § 552(b) exemption scheme that agency records which do not fall within one of the exemptions are “improperly” withheld.”).

<sup>12</sup> U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, U.S. DEPARTMENT OF HOMELAND SECURITY, ERO Custody Management Division, Dec. 8, 2015, <http://immigrantjustice.org/ice-detention-facility-list-december-2015>.

<sup>13</sup> U.S. DEPARTMENT OF HOMELAND SECURITY *Congressional Budget Justification: FY 2018—Volume II ICE – O&S – 128-133*, 2018, <https://www.dhs.gov/sites/default/files/publications/DHS%20FY18%20CJ%20VOL%20II.PDF>.

<sup>14</sup> 5 U.S.C. § 552 (West 2017).

<sup>15</sup> See *id.*; *Larson v. C.I.A.*, 843 F.2d 1481, 1483 (D.C. Cir. 1988) (holding a public interest must be identified with “reasonable specificity”); *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987) (holding that requestors must explain with reasonable specificity how disclosure will contribute to public understanding); 6 C.F.R. § 5.11(k)(1).

public at large; and (4) disclosure is likely to contribute significantly to such understanding.<sup>16</sup> This request meets all four of these criteria.

The ILRC seeks to use the requested information to: (a) produce public educational materials, including advisories for practicing attorneys; (b) write reports analyzing, summarizing, and sharing the information to increase public understanding; (c) collaborate with media organizations to disseminate information about immigration enforcement to the public; and (d) use the information to update its online, interactive enforcement map (discussed below), which is widely relied upon by the public and the media.

As previously outlined at the end of Section (I), all of the requests under (I)(A), (I)(B), (I)(C), and (I)(D), clearly concern the operations and activities of the government, in this case, ICE, a federal agency subcomponent of the U.S. Department of Homeland Security. Disclosure of these records will contribute to the understanding of government operations in several ways. The records will illuminate the scope of ICE detention and the process for determining detention locations; the extent of other government agencies' assistance to ICE in detaining immigrants and responding to ICE detainer requests; and ICE policies regarding enforcement actions. The records requested will expand and improve public understanding of immigration enforcement and allow the public to have clearer expectations regarding ICE policies and operations.

There is significant demand from the public for information regarding the entanglement between state and local law enforcement and ICE. As part of the current Administration's executive orders on immigration, the President directed the U.S. Department of Justice to target so-called "sanctuary" cities, e.g. jurisdictions that limit their entanglement with federal immigration enforcement, by exploring strategies to withhold or restrict federal funding.<sup>17</sup> Subsequently, the Administration's actions on "sanctuary" jurisdictions triggered widespread media stories and inquiries, especially questions regarding what constitutes a "sanctuary" jurisdiction. This interest was supplemented by currently pending litigation challenging the provisions of the Executive Order that directed the federal government to target these jurisdictions.<sup>18</sup> Consequently, the issue of "sanctuary" jurisdictions is a subject of wide public interest, with media and citizens attempting to better understand what constitutes a "sanctuary" jurisdiction. This widespread public interest is apparent due to the multitude of stories by major media organizations, some of them listed further below, regarding this topic.

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<sup>16</sup> 6 C.F.R. § 5.11(k)(2) (2017) (DHS regulations outlining criteria for responses to requests for fee waivers under FOIA); *See also Judicial Watch, Inc. v. U.S. Dep't of Justice*, 365 F.3d 1108, 1126 (D.C. Cir. 2004) (citing 28 C.F.R. § 16.11(k)(2)).

<sup>17</sup> Enhancing Public Safety in the Interior of the United States, Exec. Order No. 13,768, 82 Fed. Reg. 8799 (Jan. 25, 2017), available at <https://www.federalregister.gov/documents/2017/01/30/2017-02102/enhancing-public-safety-in-the-interior-of-the-united-states>.

<sup>18</sup> Sudhin Thanawala, *Federal judge blocks Trump order to withhold sanctuary city money*, CHICAGO TRIBUNE, April 25, 2017, <http://www.chicagotribune.com/news/nationworld/ct-judge-blocks-order-sanctuary-money-20170425-story.html>.

In addition, there has been substantial public attention to the issue of ICE making immigration arrests of individuals who arrive at state and local courthouses for scheduled appointments. These incidents have been widely reported in the media and generated broad attention to the propriety of ICE enforcement tactics.<sup>19</sup> Several Chief Justices or other leadership of state judicial systems have expressed concerns about ICE undermining the legal system.<sup>20</sup> ILRC's request for policies and protocol related to enforcement at courthouses and other legal appointments addresses a matter of key public concern.

Disclosure of these records will contribute to the understanding of immigration enforcement by the public at large, because ILRC will use these records to explain immigration issues and better inform the public. The ILRC employs multiple channels of communication and platforms to disseminate information obtained in response to this FOIA to the public at large. The ILRC maintains multiple mailing lists used for the sharing of ILRC-produced materials and reports, including documents summarizing ICE FOIA data. The ILRC's education listserv contains over 2,000 subscribers, while the ILRC's marketing mailing list contains nearly 5,000 email addresses, both of which are used to share updates regarding FOIA responses. The ILRC manages two public immigration mailing lists that it uses to disseminate FOIA information, including the [dreamact@lists.ilrc.org](mailto:dreamact@lists.ilrc.org) mailing list (2,188 subscribers) and the [famvisa@lists.ilrc.org](mailto:famvisa@lists.ilrc.org) mailing list (1,661 subscribers), and sends updates through these listservs at least once a week. To disseminate records, the ILRC also uses its website (<http://www.ilrc.org>) (which receives an average of over 30,000 unique visits per month), a Twitter account with over 2,300 followers,<sup>21</sup> and a public Facebook page with over 10,000 followers.<sup>22</sup> Finally, the ILRC has a carefully

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<sup>19</sup> Jonathan Blitzer, *The Woman Arrested by ICE in a Courthouse Speaks Out*, NEW YORKER, Feb. 23, 2017, <http://www.newyorker.com/news/news-desk/the-woman-arrested-by-ice-in-a-courthouse-speaks-out>; James Queally, *ICE agents make arrests at courthouses, sparking backlash from attorneys and state supreme court*, LOS ANGELES TIMES, Mar. 16, 2017, <http://www.latimes.com/local/lanow/la-me-ln-ice-courthouse-arrests-20170315-story.html>; Noelle Phillips, *Videos of ICE making arrests at Denver's courthouse renew calls for city to push back against White House policies*, DENVER POST, May 9, 2017 <http://www.denverpost.com/2017/05/09/video-ice-arrests-denver-courthouse-immigration-policy/>; Tal Kopan, *Trump administration says ICE courthouse arrests will continue*, CNN, Mar. 31, 2017, <http://www.cnn.com/2017/03/31/politics/ice-arrests-courthouses-sessions-kelly/index.html>.

<sup>20</sup> Letter from Mary Fairhurst, Chief Justice, Washington State Supreme Court, to John F. Kelly, Secretary, U.S. Department of Homeland Security, March 22, 2017, <https://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20News/KellyJohnDHSICE032217.pdf>; Russell Blair, *Chief Justice Of CT Supreme Court Asks ICE Not To Come To Courthouses*, HARTFORD COURANT, Jun. 9, 2017, <http://www.courant.com/politics/capitol-watch/hc-chase-rogers-ice-courthouses-story.html>; Kristine Phillips, *California Chief Justice to ICE: Stop Stalking Immigrants and Courthouses*, WASHINGTON POST, Mar. 17, 2017, [https://www.washingtonpost.com/news/post-nation/wp/2017/03/17/california-chief-justice-to-ice-stop-stalking-immigrants-at-courthouses/?utm\\_term=.6c3578e6ef49](https://www.washingtonpost.com/news/post-nation/wp/2017/03/17/california-chief-justice-to-ice-stop-stalking-immigrants-at-courthouses/?utm_term=.6c3578e6ef49); S.P. Sullivan, *N.J.'s chief justice asks ICE to stop arresting immigrants at courthouses*, NJ.COM, Apr. 20, 2017, [http://www.nj.com/politics/index.ssf/2017/04/nj\\_top\\_judge\\_asks\\_ice\\_to\\_stop\\_arresting\\_immigrants.html](http://www.nj.com/politics/index.ssf/2017/04/nj_top_judge_asks_ice_to_stop_arresting_immigrants.html); Ryan Haas and Conrad Wilson, *Oregon Supreme Court Chief Justice Tells ICE To Stay Out Of Courthouses*, OREGON PUBLIC BROADCASTING, Apr. 7, 2017, <http://www.opb.org/news/article/oregon-supreme-court-justice-ice-courthouse-letter/>.

<sup>21</sup> Twitter.com, @ILRC\_SF, (last accessed June 1, 2017), [https://twitter.com/ILRC\\_SF](https://twitter.com/ILRC_SF).

<sup>22</sup> Facebook.com, Immigrant Legal Resource Center (ILRC), (last accessed June 1, 2017), <https://www.facebook.com/immigrantlegalresourcecenter/>.

cultivated list of over 140 local, state, and national reporters and journalists with whom it regularly shares data, reports, and information.

The ILRC employs all of these aforementioned networks to share reports, graphics, advisories, and other documents explaining various aspects of the immigration system. These listservs and other outlets were key tools for disseminating ILRC's analysis of the responsive materials provided by ICE in response to the ILRC's 2015 FOIA request. The ILRC intends to employ all of the above networks when sharing and disseminating our resources and analyses of the documents provided by ICE in response to this FOIA request.

The ILRC has demonstrated the expertise and technical ability to understand, digest, and summarize responsive materials from ICE obtained as a result of this FOIA request. The ILRC is a nationally known immigration resource center that provides trainings, advisories, webinars, and other educational materials to help attorneys, BIA accredited representatives, policy makers, and pro se applicants understand immigration statutes, regulations and guidance.<sup>23</sup> The ILRC authored and regularly updates over a dozen comprehensive immigration manuals, which provide technical guidance regarding complex immigration topics, including family immigration, deportation, hardship, parole, naturalization, DACA, inadmissibility, removal defense, and more.<sup>24</sup>

In terms of the records requested by this letter, the ILRC maintains a comprehensive library of detainer policies; legal analyses regarding ICE detainers and arrest and detention authority of different agencies;<sup>25</sup> and explainers and fact sheets regarding ICE enforcement operations, the role of local agencies in immigration enforcement, and so-called "sanctuary" policies, all topics that are the subject of this FOIA request.<sup>26</sup> The ILRC was a co-author in a letter from over 300 constitutional, administrative, and immigration law professors regarding the legality of the use of state and local resources to enforce federal immigration law.<sup>27</sup> The ILRC's immigration expertise, coupled with its staffing of over a dozen immigration attorneys,<sup>28</sup> means that the ILRC is uniquely suited to understand, examine, and analyze the type of data sought, and to synthesize it for use by the public and media.

As discussed above, the ILRC previously requested and obtained records similar to those sought in this request. Specifically, the ILRC obtained records that outlined the relationship between ICE and all counties in the United States in regard to state and local cooperation on immigration enforcement matters.<sup>29</sup> Using these records, the ILRC produced two key materials. The first was

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<sup>23</sup> Immigrant Legal Resource Center, *Mission*, (last accessed June 1, 2017), <https://www.ilrc.org/mission>.

<sup>24</sup> Immigrant Legal Resource Center, *Publications*, (last accessed June 1, 2017), <https://www.ilrc.org/publications>.

<sup>25</sup> Immigrant Legal Resource Center, *Legal Analysis of Immigration Detainers*, (last accessed June 1, 2017), <https://www.ilrc.org/legal-analysis-immigration-detainers>.

<sup>26</sup> Immigrant Legal Resource Center, *Fact Sheet on Sanctuary Policies and 8 USC 1373*, (last accessed June 1, 2017), <https://www.ilrc.org/fact-sheet-sanctuary-policies-and-federal-funding>.

<sup>27</sup> Immigrant Legal Resource Center, *Law Professor Letter to President Trump Regarding Constitutionality of Executive Order on Sanctuary Cities*, (last accessed June 1, 2017), <https://www.ilrc.org/letter-law-profs-1373>.

<sup>28</sup> Immigrant Legal Resource Center, *Our Staff*, (last accessed June 1, 2017), <https://www.ilrc.org/our-staff>.

<sup>29</sup> See Appendix B for ICE's response to the ILRC's 2015 FOIA.

its *Searching for Sanctuary* report, which provided the most comprehensive policy and scholarly overview of county policies concerning local entanglement with federal immigration enforcement.<sup>30</sup> The data previously disclosed by ICE formed the foundation of the report, as noted in this excerpt:<sup>31</sup>

The ILRC has been tracking local policies regarding assistance with deportations through city and county use of ICE detainees since 2013. In November 2016, we received data from a Freedom of Information Act (FOIA) request that provided details on how local jails across the country have met with ICE and what levels of assistance they said they were willing to provide.

Based on this data, as well as our own collected data from existing written policies and ordinances, we analyzed the extent of local assistance in civil immigration enforcement across the country.

*Excerpt from the ILRC's Searching for Sanctuary Report*

Using this previous FOIA data, the ILRC developed a seven-tiered system to categorize counties in terms of their cooperation with federal law enforcement and used this rubric to better inform the public regarding the nature of a county's cooperation with ICE.<sup>32</sup> Additionally, the ILRC created the most comprehensive map of state and local "sanctuary" policies, and included this map as one of the key features in the *Searching for Sanctuary* report.<sup>33</sup>



*Excerpt from the ILRC's Searching for Sanctuary Report*

<sup>30</sup> Lena Graber & Nikki Marquez, *Searching for Sanctuary*, Immigrant Legal Resource Center, Dec. 2016, available at <https://www.ilrc.org/searching-sanctuary>.

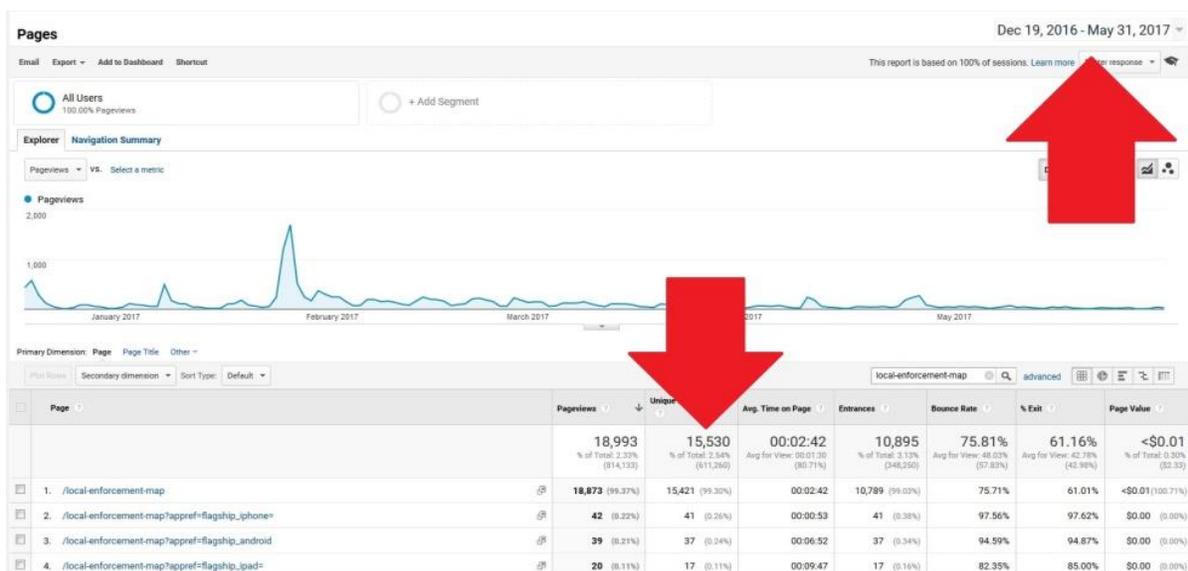
<sup>31</sup> *Id.* at 3.

<sup>32</sup> *Id.* at 5.

<sup>33</sup> *Id.* at 9.

ILRC also created an interactive, online version of this map, titled *National Map of Local Entanglement with ICE* located at <https://www.ilrc.org/local-enforcement-map>. This map color-codes each county depending on the type of cooperation in which it engages with ICE and is based directly on the FOIA data that the ILRC received from ICE. The online map allows readers and media organizations to quickly find and identify the level of cooperation in which a particular county engages with regard to federal immigration enforcement. In short, the ILRC's map translates dense, hard to understand government data into a colorful, easy to understand, and interactive map that the general public and media regularly use to learn more about state and local cooperation with ICE. Indeed, courts have held that summarizing information and structuring it in a user-friendly format to reach the public is a significant public benefit.<sup>34</sup>

Public response to the ILRC's *Searching for Sanctuary* report and the online enforcement map was significant. On the ILRC's website alone, the web page hosting the ILRC's enforcement map received 15,530 unique visitors between December 19, 2016, the date the online enforcement map was released, and May 31, 2017:



Screenshot demonstrating unique website hits for the ILRC's online enforcement map

Many media outlets covered the ILRC's report, the enforcement map, or both. These media outlets specifically referenced and credited the ILRC for the dissemination of this information. Examples of coverage with attribution to the ILRC include:

1. **The New York Times** ("The maps shown here are based on data collected by the Immigrant Legal Resource Center, specifically looking at jurisdictions that limit how much the local police cooperate with requests from federal authorities to hold immigrants in detention.");<sup>35</sup>

<sup>34</sup> *Western Watersheds Project v. Brown*, 318 F. Supp. 2d 1036 (D. Idaho 2004).

<sup>35</sup> Jasmine C. Lee, et. al, *What Are Sanctuary Cities?*, N.Y. TIMES, Feb. 6, 2017, <https://www.nytimes.com/interactive/2016/09/02/us/sanctuary-cities.html>; Vivian Yee, *Cities in New York Advised*

2. **The Washington Post** (“An Immigration and Customs Enforcement compliance report obtained by the Immigrant Legal Resource Center showed that, in the 168 counties where most of the 11 million illegal immigrants live . . .”);<sup>36</sup>
3. **Bloomberg** (“‘Searching for Sanctuary,’ a report by the Immigrant Legal Resource Center” and the “Immigrant Legal Resource Center . . . says at least 635 U.S. counties—more than one in five—refuse to hold people in jail on federal detainer requests.”);<sup>37</sup>
4. **Univision National** (“Un análisis del Immigrant Legal Resource Center...” [translation: “An analysis from the Immigrant Legal Resource Center”] and “[S]egún el nuevo reporte ‘Searching for Sanctuary’ del Immigrant Legal Resource Center . . .”... [translation “A new report titled *Searching for Sanctuary* by the Immigrant Legal Resource Center.”]);<sup>38</sup>
5. **The Huffington Post** (“Some 447 jurisdictions met that threshold as of last month, according to a report by the Immigrant Legal Resource Center, titled “Searching for Sanctuary. More than 150 others exceeded it.”);<sup>39</sup>
6. **The Guardian** (“According to the Immigrant Legal Resource Center, there are more than 500 counties and cities that do not assist US Immigration and Customs Enforcement.”);<sup>40</sup>
7. **The Atlantic** (“[A] report released by the Immigrant Legal Resource Center in December found that the overwhelming majority of the 2,556 counties surveyed didn’t need formal programs: They were already offering assistance to ICE.”);<sup>41</sup>
8. **USA Today** (“A study of more than 2,500 counties by the Immigrant Legal Resource Center, which favors sanctuary, found just 6% of counties would refuse to alert federal immigration authorities when an undocumented inmate is being released.”);<sup>42</sup>

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*How to Buck a Trump Deportation Push*, Jan. 18, 2017, <https://www.nytimes.com/2017/01/18/nyregion/new-york-sanctuary-cities.html>.

<sup>36</sup> Darla Cameron, *How sanctuary cities work, and how Trump’s stalled executive order might affect them*, Washington Post, April 26, 2017, <https://www.washingtonpost.com/graphics/national/sanctuary-cities/>.

<sup>37</sup> Jordan Yadoo, *Why ‘Sanctuary Cities’ Are a Target for Trump: QuickTake Q&A*, BLOOMBERG POLITICS, Feb. 15, 2017, <https://www.bloomberg.com/politics/articles/2017-02-15/why-sanctuary-cities-are-a-target-for-trump-quicktake-q-a>.

<sup>38</sup> Melvin Felix, *¿Ciudad o condado santuario? Un informe explica cuál puede proteger más al inmigrante indocumentado*, UNIVISION, Dec. 19, 2017, <http://www.univision.com/noticias/inmigracion/ciudad-o-condado-santuario-un-informe-explica-cual-puede-proteger-mas-al-inmigrante-indocumentado>.

<sup>39</sup> Roque Planas, *Sanctuary City Movement Highlights Barack Obama’s Complicated Immigration Legacy*, HUFFINGTON POST, Jan. 9, 2017, [http://www.huffingtonpost.com/entry/sanctuary-city-obama-legacy\\_us\\_5873bdebe4b099cdb0fe76ab](http://www.huffingtonpost.com/entry/sanctuary-city-obama-legacy_us_5873bdebe4b099cdb0fe76ab).

<sup>40</sup> Mazin Sidahmed and Nicole Puglise, *How liberal leaders in cities and states across US are planning to thwart Trump*, THE GUARDIAN, Jan. 19, 2017, <https://www.theguardian.com/us-news/2017/jan/19/donald-trump-liberal-cities-states-resistance>.

<sup>41</sup> Amanda Sakuma, *Donald Trump’s Plan to Outsource Immigration Enforcement to Local Cops*, THE ATLANTIC, Feb. 18, 2017, <https://www.theatlantic.com/politics/archive/2017/02/trump-immigration-enforcement/517071/>.

<sup>42</sup> Editorial Board, *When ‘sanctuary cities’ go too far: Our view*, USA TODAY, March 12, 2017, <https://www.usatoday.com/story/opinion/2017/03/12/when-sanctuary-cities-go-too-far-editorials-debates/98805354/>.

9. **PBS Newshour** (“There is no official definition or count of sanctuary cities, but the Immigrant Legal Resource Center identifies more than six hundred counties with such policies.”);<sup>43</sup>
10. **VICE News** (“As of December 2016, there were about 70 or so jurisdictions that have declined to hold illegal immigrants in jail for federal authorities to deport, according to Immigrant Legal Resource Center.”);<sup>44</sup> and
11. **Public Radio International** (“Sanctuary counties are defined here based on data received via a Freedom of Information Act request filed by the Immigrant Legal Resource Center . . .”).<sup>45</sup>

These press reports demonstrate both that there is substantial public interest in the subjects of this FOIA request, and that providing the requested information to the ILRC is likely to contribute substantially to public understanding of these issues. The ILRC will collaborate with these reporters and media outlets to disseminate and share the updated and expanded information that the ILRC receives from ICE.

Thus, the ILRC’s previous dissemination of substantially similar records provided by ICE demonstrates a proven track record of the ILRC’s expertise and ability to understand, process, and synthesize this type of information for the media and public. The ILRC’s demonstrated ability to disseminate exactly the types of information requested here satisfies the test for a fee waiver that the request and disclosure would “contribute significantly to public understanding of the operations or activities of the government.”<sup>46</sup> We observe that ICE granted a fee waiver in connection with the ILRC’s 2015 FOIA request, and we believe it would be arbitrary and capricious and contrary to law for ICE not to grant a fee waiver for a very similar FOIA request in 2017.

Finally, the disclosure of records would not primarily be in the commercial interest of the ILRC. The ILRC is a non-profit 501(c)(3) organization that does not primarily partake in commercial, economic, or profit-producing activity.<sup>47</sup> The information obtained through the above request would not be sold, commercialized, or used in any way to derive profit. In fact, the interactive map composed of the information obtained through the previous FOIA request is easily searchable and available at the ILRC website (<http://www.ilrc.org>) free of charge to all

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<sup>43</sup> Danielle Renwick and Brianna Lee, *Where does the immigration debate stand under President Trump?*, PBS NEWSHOUR, April 6, 2017, <http://www.pbs.org/newshour/rundown/why-the-u-s-immigration-debate-is-difficult-to-resolve/>.

<sup>44</sup> Gabrielle Bluestone, *Sanctuaries saved*, VICE NEWS, April 25, 2017, <https://news.vice.com/story/federal-judge-blocks-trumps-attempt-to-punish-sanctuary-cities>.

<sup>45</sup> Monica Campbell, *America’s sanctuary communities are more numerous than you think*, PRI, March 9, 2017, <https://www.pri.org/interactive/2017/03/mapping-sanctuary/>.

<sup>46</sup> 5 U.S.C. § 552 (West 2017).

<sup>47</sup> See *Consumers’ Checkbook, Center for Study of Services v. U.S. Dep’t of Health and Human Services*, 502 F. Supp. 2d 79 (D.D.C. 2007) (holding that a FOIA requestor who charges fees to produce and disseminate its work does not render its interest “primarily commercial” when it charges fees only to support its operation).

members of the public,<sup>48</sup> and the ILRC will publish the updated information received from ICE to the public in the same way.

Please contact me if this fee waiver is not granted. The maximum dollar amount the ILRC is willing to pay for this request is \$100. If the amount for this request is greater than \$100, please contact me to discuss this request and associated pricing. You may deliver the requested records electronically to [lgraber@ilrc.org](mailto:lgraber@ilrc.org). Alternatively, you may physically mail the responsive records to the ILRC at:

**ATTN: Lena Graber**  
Immigrant Legal Resource Center  
1663 Mission St., Suite 602  
San Francisco, CA 94103

If you have any questions, please do not hesitate to contact me at 415-321-8545 or [lgraber@ilrc.org](mailto:lgraber@ilrc.org) or you may contact our outside counsel on this matter, W. Hardy Callcott at Sidley Austin LLP, at 415-772-7402 or [hcallcott@sidley.com](mailto:hcallcott@sidley.com).

Thank you for responding to this request.

Sincerely,  
/s/  
Lena Graber  
Staff Attorney

**Cc:**  
W. Hardy Callcott  
Sidley Austin LLP  
555 California Street, Suite 2000  
San Francisco, CA 94104

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<sup>48</sup> Immigrant Legal Resource Center, *National Map of Local Entanglement with ICE*, (last accessed June 1, 2017), <https://www.ilrc.org/local-enforcement-map>.

# **APPENDIX A – ILRC’S PREVIOUS FOIA REQUEST**

**(Reference Only, Not Submitted as a FOIA  
REQUEST)**



Advisory Board

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Nancy Pelosi  
Cruz Reynoso

Board of Directors

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(Ret.)  
Allen S. Weiner  
Roger Wu

Executive Director

Eric Cohen

**Submitted via Electronic Mail to [ice-foia@dhs.gov](mailto:ice-foia@dhs.gov)**

U.S. Immigration and Customs Enforcement  
Freedom of Information Act Office  
500 12th Street SW, Stop 5009  
Washington, D.C. 20536-5009

December 9, 2015

**RE: FOIA Request for PEP Records**

Dear FOIA Public Liaison:

This is a request by the Immigrant Legal Resource Center (ILRC), under the Freedom of Information Act (FOIA), 5 USC § 552.

Founded in 1979, the Immigrant Legal Resource Center is a national resource center that provides training, consultations, publications and advocacy support to individuals and groups assisting low-income persons with immigration matters. ILRC works with a broad array of individuals; agencies; and institutions including immigration attorneys and advocates, criminal defense attorneys, civil rights advocates, social workers, law enforcement, judges, and local and state elected officials.

With respect to enforcement and detention issues, ILRC provides trainings, educational materials, and engages in advocacy for the fair and just administration of removal and detention operations. We also provide technical assistance to practitioners on deferred action-related issues with a focus on the intersection between the immigration and criminal justice systems. ILRC works towards the elimination of unjust penalties for immigrants entangled in the criminal justice system and to end the criminalization of immigrant communities.

**I. Request for Records**

The ILRC requests that a copy of the documents and records containing the following information be provided:

- 1. Name of all state and local jurisdictions that are currently participating in U.S. Immigration and Customs Enforcement's (ICE) Priority Enforcement Program (PEP);**
- 2. Data regarding the number of state and local jurisdictions that currently have an agreement to participate in PEP;**
- 3. All memorandums or other written agreements between ICE and state and local jurisdictions formalizing their cooperation with ICE under PEP;**
- 4. Data regarding the number of requests for notification and detainers issued by ICE, broken down by month, state, facility name, offense seriousness level, enforcement**

**San Francisco**

1663 Mission Street  
Suite 602  
San Francisco, CA 94103  
t: 415.255.9499  
f: 415.255.9792

**Washington D.C.**

1016 16<sup>th</sup> Street, NW  
Suite 100  
Washington, DC 20036  
t: 202.777.8999  
f: 202.293.2849

priority level, from November 2014 to present.

## II. Request for Fee Waiver

Under the Freedom of Information Act, we request a waiver of fees.<sup>1</sup> A fee waiver requires that: (1) “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government; and (2) the request “is not primarily in the commercial interest of the requestor.”<sup>2</sup> This request meets both requirements. ILRC seeks to produce public education materials based on our review of records released under FOIA to serve the general public at large. Additionally, ILRC is a public interest group and this request is not for commercial use.

The rollout of PEP has sown substantial confusion among the public, with competing narratives regarding how its implementation is similar or different than Secure Communities, PEP’s forerunner. The public has little to no information regarding how the program functions, how it differs from Secure Communities, and what jurisdictions participate in the program. Indeed, this confusion has led to some law enforcement officials to claim that PEP “doesn’t operate any differently than Secure Communities did at all” and that DHS “just renamed it.”<sup>3</sup> Secretary Johnson’s goal in promulgating PEP was to make it a “fresh start” and avoid the confusion associated with Secure Communities.<sup>4</sup> Consequently, informing the public regarding how the new PEP program functions is essential to ensure that the Secretary’s goals are met. ILRC plans on using the information obtained through this request to achieve that very goal and inform the public, including sharing which jurisdictions participate in the program, how the use of detainers has changed since the implementation of PEP, and where ICE cooperates with state and local jurisdictions.

Statistics and data regarding the implementation of PEP and ICE’s cooperation with state and local jurisdictions is generally unavailable to the public. The information that ICE does release through its website is often incomplete and outdated—ICE’s electronic reading room only containing records and data dealing with Secure Communities and not PEP.<sup>5</sup> The disclosure of the requested materials will very likely significantly improve the public’s understanding of how ICE cooperates with state and local jurisdictions. ILRC will use the requested records to produce free practice advisories for attorneys, BIA-accredited representatives, and pro se requestors analyzing and summarizing ICE’s policy in regards to state and local cooperation.

ILRC is uniquely situated to synthesize, translate, and reach segments of the public, noncitizens in general and noncitizens who speak Spanish, representing a significant contribution to the public understanding of how where and how ICE cooperates with local and state jurisdictions. Indeed, courts have held that summarizing information and structuring in a user-friendly format to reach the public is a significant public benefit.<sup>6</sup>

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<sup>1</sup> 5 U.S.C. § 552 (West 2015).

<sup>2</sup> See *id.*

<sup>3</sup> Dave Boucher, *Nashville still aiding controversial deportation program*, THE TENNESSEAN, Nov. 12, 2015, <http://www.tennessean.com/story/news/politics/2015/11/11/nashville-still-aiding-controversial-deportation-program/75580732/>.

<sup>4</sup> Memorandum from Jeh C. Johnson, Secretary, U.S. Department of Homeland Security, on Secure Communities to Thomas S. Winkowski, et. al (Nov. 20, 2014), available at [http://www.dhs.gov/sites/default/files/publications/14\\_1120\\_memo\\_secure\\_communities.pdf](http://www.dhs.gov/sites/default/files/publications/14_1120_memo_secure_communities.pdf).

<sup>5</sup> FOIA Library, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, U.S. DEPARTMENT OF HOMELAND SECURITY, (last accessed Dec. 9, 2015), <http://www.ice.gov/foia/library>.

<sup>6</sup> *Western Watersheds Project v. Brown*, 318 F.Supp.2d 1036 (D. Idaho 2004).

Furthermore, these records would enhance public understanding,<sup>7</sup> particularly for noncitizens who speak and read only Spanish, a language commonly spoken by individuals and families of individuals subject to detention. ILRC's efforts would reduce the administrative burden upon ICE by minimizing the number of FOIA requests on this topic as ILRC will publicly release this information.

ILRC makes this request in light of structural and bureaucratic obstacles that immigrant requestors face in attempting to obtain ICE records. Individuals most likely to seek this information are undocumented immigrants or other immigrants subject to detention and remove. These individuals are unlikely to submit FOIA requests to ICE out of fear of being identified and placed in removal proceedings or detention. By placing this request and communicating the responsive records to these populations, ILRC will communicate critical information to a population that would otherwise have no recourse to obtain such information.

Additionally, the disclosure of records would not primarily be in the commercial interest of ILRC. ILRC is a non-profit organization that does not primarily partake in commercial, economic, or profit-producing activity.<sup>8</sup> Finally, the information obtained through the above request would not be sold, commercialized, or used in any way to derive profit.

Please contact me if this fee waiver is not granted. The maximum dollar amount ILRC is willing to pay for this request is \$100. If the amount for this request is greater than \$100, please contact me to discuss this request and associated pricing. You may deliver the requested records electronically to [jmagana@ilrc.org](mailto:jmagana@ilrc.org). Alternatively, you may physically mail the responsive records to the ILRC at 1016 16th Street, NW, Suite 100 Washington, DC 20036, ATTN: Jose Magana-Salgado.

If you have any questions, please do not hesitate to contact me at (202) 777-8999 or [jmagana@ilrc.org](mailto:jmagana@ilrc.org).

Thank you for responding to this request.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jose Magana-Salgado', with a horizontal line extending to the right.

Jose Magana-Salgado  
Immigration Policy Attorney

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<sup>7</sup> *Hall v. C.I.A.*, 2005 WL 850379 (D.D.C. 2005).

<sup>8</sup> See *Consumers' Checkbook, Center for Study of Services v. U.S. Dep't of Health and Human Services*, 502 F. Supp 2d 79 (D.D.C. 2007) (holding that a FOIA requestor who charges fees to produce and disseminate its work does not render its interest "primarily commercial" when it charges fees only to support its operation).

**APPENDIX B – ICE’S FINAL RESPONSE TO ILRC’S  
PREVIOUS FOIA**



**U.S. Immigration  
and Customs  
Enforcement**

October 31, 2016

Jose Magana-Salgado  
Immigrant Legal Resource Center  
1016 16th St NW Suite 100  
Washington, DC 20036

**RE: ICE FOIA Case Number 2016-ICFO-15603**

Dear Mr. Magana-Salgado:

This letter is the final response to your Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), dated December 09, 2015. You have requested copies of the following records:

1. Name of all state and local jurisdictions that are currently participating in ICE's PEP;
2. Data regarding the number of state and local jurisdictions that currently have an agreement to participate in the PEP;
3. All memorandums or other written agreements between ICE and state/local jurisdictions formalizing their cooperation with ICE under PEP; and
4. Data regarding the number of requests for notification and detainers issued by ICE, broken down by month, state, facility name, offense seriousness level, enforcement priority level, from November 2014-present.

ICE has considered your request under the FOIA, 5 U.S.C. § 552. A search of the ICE Office of Enforcement and Removal Operations (ERO) for records responsive to your request produced 2 Excel Spreadsheets that are responsive to your request. After review of those documents, I have determined that 1 Excel Spreadsheet will be released in its entirety and portions of 1 Excel Spreadsheet will be withheld pursuant to Exemptions of the FOIA as described below.

ICE has applied FOIA Exemptions 6 and 7(C) to protect from disclosure the names, e-mail addresses, and phone numbers of DHS employees contained within the documents.

**FOIA Exemption 6** exempts from disclosure personnel or medical files and similar files the release of which would cause a clearly unwarranted invasion of personal privacy. This requires a balancing of the public's right to disclosure against the individual's right to privacy. The privacy interests of the individuals in the records you have requested outweigh any minimal public interest in disclosure of the information. Any private interest you may have in that information does not factor into the aforementioned balancing test.

**FOIA Exemption 7(C)** protects records or information compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy. This exemption takes particular note of the strong interests of individuals, whether they are suspects, witnesses, or investigators, in not being unwarrantably associated with alleged criminal activity. That interest extends to persons who are not only the subjects of the investigation, but those who may have their privacy invaded by having their identities and information about them revealed in connection with an investigation. Based upon the traditional recognition of strong privacy interest in law enforcement records, categorical withholding of information that identifies third parties in law enforcement records is ordinarily appropriate. As such, I have determined that the privacy interest in the identities of individuals in the records you have requested clearly outweigh any minimal public interest in disclosure of the information. Please note that any private interest you may have in that information does not factor into this determination.

ICE has applied FOIA Exemption 7(E) to protect from disclosure internal agency case numbers contained within the document.

**FOIA Exemption 7(E)** protects records compiled for law enforcement purposes, the release of which would disclose techniques and/or procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law. I have determined that disclosure of certain law enforcement sensitive information contained within the responsive records could reasonably be expected to risk circumvention of the law. Additionally, the techniques and procedures at issue are not well known to the public.

If you are not satisfied with the response to this request, you have the right to appeal following the procedures outlined in the DHS regulations at 6 C.F.R. § 5.9. Should you wish to do so, you must send your appeal and a copy of this letter, within 90 days of the date of this letter, to:

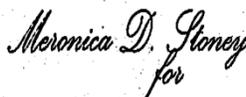
U.S. Immigration and Customs Enforcement  
Office of the Principal Legal Advisor  
U.S. Department of Homeland Security  
500 12th Street, S.W., Mail Stop 5900  
Washington, D.C. 20536-5900

Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at [www.dhs.gov/foia](http://www.dhs.gov/foia).

Provisions of the FOIA and Privacy Act allow us to recover part of the cost of complying with your request. In this instance, because the cost is below the \$14 minimum, there is no charge.<sup>1</sup>

If you need any further assistance or would like to discuss any aspect of your request, please contact the FOIA office and refer to FOIA case number **2016-ICFO-15603**. You may send an e-mail to [ice-foia@ice.dhs.gov](mailto:ice-foia@ice.dhs.gov), call toll free (866) 633-1182, or you may contact our FOIA Public Liaison in the same manner. Additionally, you have a right to right to seek dispute resolution services from the Office of Government Information Services (OGIS) which mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,



Catrina M. Pavlik-Keenan  
FOIA Officer

Enclosure(s): Excel, 2 spreadsheets

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<sup>1</sup> 6 CFR § 5.11(d)(4).