

February 9, 2017
By Email (ICE-FOIA@dhs.gov)

U.S. Immigration and Customs Enforcement (“ICE”)
Freedom of Information Act Office
500 12th Street, S.W., Stop 5009
Washington, D.C. 20536-5009

Re: FOIA Request

To whom it may concern:

This Freedom of Information Act (“FOIA”) request is made on behalf of our client the National Immigrant Justice Center, a program of the Heartland Alliance for Human Needs & Human Rights, 208 S. LaSalle St., Suite 1300, Chicago, IL 60604 (“Requester”). All communications concerning this request should be sent to the undersigned attorney, Seth A. Watkins, Adduci, Mastriani & Schaumberg LLP, 1133 Connecticut Avenue, NW, Washington, DC 20036, tel. 202-407-8647, fax 202-466-2006, and email watkins@adduci.com.

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 *et seq.*, the following Records¹ in the possession, custody, or control of ICE are hereby requested (collectively, the “Requests”):²

¹ As used herein, the term “Records” *includes but is not limited to* data (including Excel spreadsheets), transmittals, letters, emails, memoranda, reports (including, e.g., audit reports), instructions (such as to or from agency staff, contractors, or other providers), and summaries.

² These requests are currently the subject of litigation against ICE in *Heartland Alliance for Human Needs & Human Rights d/b/a National Immigrant Justice Center v. United States Immigration and Customs Enforcement*, No. 1:16-cv-00204-RC (D.D.C.). However, ICE has not revealed its search “cut-off date” for responsive records for the FOIA request being litigated in that case (No. 2016-ICLI-00019). ***Thus, these new requests seek Records subsequent to the date on which the prior FOIA request was submitted, i.e., between July 2, 2014 and present.*** If, in connection with FOIA No. 2016-ICLI-00019, ICE used a search cut-off date later than July 2, 2014, please inform the undersigned so that the date range in the Requests herein can be adjusted as appropriate.

ICE's San Antonio and Seattle Areas of Responsibility (AORs)³

1. any Records concerning the **setting and calculation** of bond amounts for detainees in ICE's San Antonio and Seattle AORs *from July 2, 2014 to the present*, including but not limited to all communications (e.g., transmittals, letters, emails, memoranda, and reports, instructions, and summaries) related thereto;

Nationwide ICE-Related Detention (a.k.a. the Detention Bed Quota)

2. any Records *dated between July 2, 2014 and the present* which set out or reflect approved policies, guidelines, or procedures for maintaining and/or filling (i) a level of not less than 33,400 detention beds and/or (ii) a level of not less than 34,000 detention beds, including all communications (e.g., transmittals, letters, emails, memoranda, and reports, instructions, and summaries) related thereto (such as to, from, or within ICE headquarters, an ICE field office, or an ICE AOR);
3. any Records *dated between July 2, 2014 and the present* which set out or reflect an assessment of compliance with any statutory requirement for maintaining and/or filling (i) a level of not less than 33,400 detention beds and/or (ii) a level of not less than 34,000 detention beds;
4. any Records *from July 2, 2014 through the present* which set out or reflect approved policies, guidelines, or procedures for appraising the performance of ICE personnel, Field Offices, or AORs related to maintaining and/or filling beds in detention facilities used to house ICE detainees;
5. any Records *from July 2, 2014 through the present* which set out or reflect approved policies, guidelines, or procedures for requesting and/or setting and/or calculating bond amounts for apprehended and/or detained individuals based on the presence of vacant beds in an ICE detention facility.

The above Requests do **NOT** include any portions of Records specifically identifying a particular individual, that would be covered under the Privacy Act or other privacy protections.

With respect to the foregoing, Requester is **NOT** requesting the disclosure of any drafts and no such drafts need be listed on any *Vaughn* index of withheld Records or portions thereof.

Possession of Records. If ICE does not have custody or control over certain requested and responsive Records but knows or believes that another department, agency, private entity, or

³ As used herein, the term "ICE's San Antonio and Seattle AORs" means the geographic areas of responsibility (AOR) under the authority of ICE's San Antonio Field Office and ICE's Seattle Field Office.

another subject to FOIA does, such as DHS 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.

Search Cut-Off Date. Please inform Requester of the “cut-off date” used for ICE’s search for responsive records.

Withheld Records. If ICE believes any Records or portions of the Records are exempt from disclosure, please provide the non-exempt and/or reasonably segregable portions of the Records. Please also provide a *Vaughn* index identifying all Records or portions thereof that are being withheld from disclosure and state the specific basis for any denial or redaction.

Request for Expedited Processing and Fee Waiver. Requester hereby requests 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 ICE/DHS regulations.

Expedited processing is appropriate, for example under 6 C.F.R. § 5.5(e)(1), because the Requests involve “[a]n urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information” and “[a] matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity which affect public confidence.” Details concerning these bases are described below.

Requester is a nonprofit 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, Requester provides direct legal services to and advocates for these populations through policy reform, impact litigation, and public education. Through its work, Requester advocates for individual clients as well as for broad-based systemic change.

The primary purpose of the Requester is to inform the legal community and the public about ICE detention, release, and bond policies and procedures. Specifically, the Requester seeks to determine, *inter alia*, whether ICE has adopted uniform detention, release, and bond policies that are independent from bed space inventory and/or from ICE quotas or performance objectives. Providing the requested information will likely contribute significantly to understanding current practices at ICE, as well as identifying potential grounds for seeking to adjust such practices.

Congress intends that fee waivers be liberally granted 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 fee waiver because the information being sought “is in the public interest because it 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); 6 C.F.R. § 5.11(k). The Requester has a proven track

record of compiling and disseminating information to the public about government functions and activities, and intends to make ICE's response—and an analysis thereof—publicly available on its website, www.immigrantjustice.org. Requester has undertaken its work concerning ICE detention, release, and bond policies and procedures 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 ICE detention, release, and bond policies and procedures. Access to this information is a required for the public to meaningfully evaluate the effectiveness of these matters vis-à-vis any collateral consequences. The public has an interest in knowing about ICE detention, release, and bond policies and procedures. The Records sought in this request will shed light on one of the central public concerns with ICE detention-related matters, in particular whether ICE's policies are independent from bed space inventory and/or from ICE quotas or performance objectives.

The Requester is also entitled to a fee waiver as “a representative of the news media.” 5 U.S.C. § 552(a)(4)(A)(ii)(II); 6 C.F.R. § 5.11(d)(1). Under the FOIA statute, “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.* Requester has a track record of turning raw material into reports and other publications for distribution to the general public, including over the internet, and does so at no charge. Therefore, ICE should not charge Requester any search-related costs for this FOIA request. Moreover, ICE should not charge Requester the cost of reproduction because, as detailed below, the Records are requested to be provided in electronic form, e.g., without hard-copy reproduction.

The documents subject to this FOIA request are not sought for any commercial use. Thus, in the alternative, Requester understands 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); 6 C.F.R. § 5.11(d)(4).

To the extent that fees associated with the Requests exceed the maximum allowable fee waiver, Requester (through its attorneys) hereby agrees to pay fees not to exceed \$250.00 in connection with the FOIA requests herein. If ICE requires the payment of fees in excess of \$250.00, please contact the undersigned to seek advance authorization to proceed and please provide an estimate of fees broken down according to each numbered request above.

The foregoing statements are hereby certified to be true and correct to the best of the undersigned individual's knowledge and belief.

Records Produced in Electronic Form. To the extent possible, please disclose all Records in connection with this FOIA request in electronic form. Where data is to be disclosed,

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to the extent possible, please produce native files (*e.g.*, Excel spreadsheets). Please send these Records by email to watkins@adduci.com or on media such as a CD or DVD. If the file sizes of the Records are too large to be emailed or provided on electronic media, please contact the undersigned to arrange another method for transmitting them.

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 ICE user. If codes are employed (for example, corresponding to particular agencies or detention facilities), please also produce any documents in ICE's possession, custody, or control explaining the codes employed as well as what they signify.

Please respond within 20 business days in accordance with 5 U.S.C. § 552(a)(6)(A). If you have any questions regarding this request, please contact the undersigned by email at watkins@adduci.com or by telephone at 202-407-8647.

Sincerely,

/s/

Seth A. Watkins, Ph.D.