

**NATIONAL
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JUSTICE CENTER**
A HEARTLAND ALLIANCE PROGRAM

August 9, 2019

Submitted via email to foia@hq.dhs.gov

The Privacy Office
U.S. Department of Homeland Security
245 Murray Lane SW
Washington, D.C. 20528

**Re: Freedom of Information Act Request – Transfer and Reprogramming Requests
FY2019**

Dear FOIA Officer:

Under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, I request the following records in the custody and control of United States Department of Homeland Security:

- *All transfer and reprogramming notifications for Immigration and Customs Enforcement (ICE) made under Sections 208 and 503 of the DHS Appropriations Act for Fiscal Year 2019.*

I. Application for Expedited Processing

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).

I certify to be true and correct to the best of my knowledge and belief, that there is widespread and exceptional public interest in the information sought in this FOIA request, and there exist serious questions about the government’s integrity, which affect public confidence. Requester, Heartland Alliance’s National Immigrant Justice Center (NIJC), is primarily engaged in disseminating information to the public and, in this case, there is an urgent need to inform the public about government activity that is the subject of this request. DHS has taken advantage of Sections 208 and 503 of the DHS Appropriations Act, which allow for transfer and reprogramming funds, to grow its detention system in violation of congressional intent. In 2018, ICE moved more than \$200 million into its detention and removal account from other accounts including the Federal Emergency Management Agency, TSA and the Coast Guard. This practice has allowed ICE to overspend with impunity while growing its detention and enforcement budget by nearly one billion dollars (from \$3.2 to \$4.1 billion) in just two years.

The practice of transferring funds away from FEMA and other DHS components for the purposes of detention and deportations has taken place under a cloak of secrecy, damaging public trust and circumventing proper oversight mechanisms. Meanwhile, ICE’s immigration

detention system has grown by 40 percent since January 2017, with vast sums flowing to private prison companies with histories of abuse and corner-cutting.

Continued secrecy surrounding such policies drastically violates the rights of the public to know how their taxpayers dollars are being spent, and hinders Congress from carrying out their oversight role. It imperative that DHS immediately make all records that are in the public interest related to the transfer and reprogramming of funding for ICE. Public advocates, and lawyers are in desperate need of more information disclosures to help prevent ICE from draining funds for natural disasters, aviation safety, or other vital government services. Americans lives are at serious risk while DHS is irresponsibly moving funds away from emergency services to carry out an abusive anti-immigrant agenda.

Requester has undertaken considerable work concerning Congressional oversight as it relates to ICE over-spending, and immigration enforcement system. Access to the information sought in this FOIA request is urgently required for the public to meaningfully evaluate the policies and practices of DHS, and to inform the public if government wrongdoing or abuses are occurring.

II. Application for Waiver or Limitation of Fees

Requester 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 conducts extensive research into patterns and practices related to ICE enforcement and detention. As such, the primary purpose of the Requester is to inform the legal community, lawmakers, and the public about the proposed and current functioning relating to ICE activity. Providing the requested information will contribute significantly to understanding how DHS is allocating taxpayer dollars from emergency response agencies to ICE entities.

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). NIJC has a proven track-record of compiling and disseminating information to the public about government functions and activities. We intend to make any records obtained in response to our FOIA requests– and an analysis thereof – publicly available on our website, www.immigrantjustice.org, and through other means of communication.

The Requester is 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 2016

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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).

III. Record Delivery

If the DHS Privacy Office 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 another DHS 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 in PDF format is preferred. 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).

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 jfranzblau@heartlandalliance.org or call me at 202-879-4312.

Sincerely,

s/Jesse Franzblau

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