



April 16, 2021

SENT VIA E-MAIL

U.S. Immigration and Customs Enforcement
Freedom of Information Act Office
800 North Capitol Street, NW, Room 585
Washington, DC 20536-5009
Email: ICE-FOIA@dhs.gov

Re: **FOIA Request for Records Related to U.S. Immigration and Customs Enforcement (ICE) Treatment of Individuals Held at West Texas Detention Facility**

Dear Freedom of Information Officer:

The American Immigration Council (“Council”) and the Black Alliance for Just Immigration (“BAJI”) (“Requesters”) submit the following Freedom of Information Act (“FOIA”) request for records regarding individuals held at West Texas Detention Facility on or after October 1, 2015 (“Request”). Requestors also seek a fee waiver, pursuant to 5 U.S.C. § 552(a)(4)(A) and 6 C.F.R. § 5.11(k).

In accordance with 5 U.S.C. § 552(a)(6)(A)(i), we expect a response to this request within 20 working days, unless otherwise permitted by statute.

I. REQUEST FOR INFORMATION

Requestors seek records¹ that were prepared, received, transmitted, collected and/or maintained by U.S. Immigration and Customs Enforcement (“ICE”) as described below. It is Requestors understanding that all requested data exist in a database accessible by ICE.

¹ For purposes of the Request, the term “records” includes but is not limited to all communications, correspondence, directives, documents, data, videotapes, audiotapes, e-mails, faxes, files, guidance, guidelines, standards, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, spreadsheets, charts, rules, manuals, technical specifications, training materials, and studies, including records kept in written form, or electronic format on computers and/or other electronic storage devices, electronic communications and/or videotapes, as well as any reproductions thereof that differ in any way from any other reproduction, such as copies containing marginal notations.

We request records related to West Texas Detention Facility (which is in the El Paso Field Office area of responsibility) and individuals detained there between October 1, 2015 and the date a search for responsive records commences. The data should include individuals who were detained in West Texas Detention Facility as of October 1, 2015 but who were apprehended or booked in prior to that date, as well as individuals who were detained in West Texas Detention Facility who had not yet been released as of the date a search for responsive records commences.

Requestors seek the following records:

1) Complaints, Grievances, and Related Records

- a) Logs and written records documenting complaints or grievances related to treatment in West Texas Detention Facility.
- b) Complaints or grievances regarding treatment. These include, but are not limited to, (1) lack of access to legal counsel; (2) lack of access to or substandard medical care, medicine, and food; (3) physical, sexual, or verbal abuse or mistreatment; (4) solitary confinement or segregation; (5) use of force, chemical agents, including pepper spray, rubber bullets, and/or use of retaliation or crowd control. Records include, but are not limited to, calls to the Detention Reporting and Information Line (DRIL), written grievances submitted to ICE or detention staff, and documentation of oral grievances made to ICE or detention staff. The records should include any agency responses to the complaints or grievances. Specific data for each complaint or grievance:
 - i) The Person ID variable/anonymized ID variable for the detained individual who is the subject of the complaint or grievance.
 - ii) Biographic information of the detained individual who is the subject of the complaint or grievance.
 - (1) Race and ethnicity
 - (2) Country of birth
 - (3) Country of citizenship
- c) Information regarding how agency staff document “oral” grievances.
- d) The Significant Incident Summary Worksheet (Form G-324A) and Detention Facility Inspection Form for West Texas Detention Facility completed as part of the annual detention standards compliance review, for fiscal years 2015, 2016, 2017, 2018, 2019, 2020. If no such form or worksheet is available, please provide all records regarding compliance checks for West Texas Detention Facility for the aforementioned fiscal years.

2) Records on Use of Force, Restraints, Chemical Agents, Weapons, and Other Devices

- a) Records regarding use-of-force incidents involving a person detained at West Texas Detention Facility. Per section 2.15 of the Performance-Based National Detention

Standards (PBNDS), this request encompasses, but is not limited to, records documenting the routine and emergency distribution of security equipment; use of restraints; approval and notification records for use of four/five-point restraints; reports when force was used on any detained individual for any reason; report of firearm discharge; and use of less lethal devices.² Specific data for each incident:

- i) The Person ID variable/anonymized ID variable for the detained individual in segregation.
- ii) Biographic information of the detained individual involved in the use-of-force incident.
 - (1) Race and ethnicity
 - (2) Country of birth
 - (3) Country of citizenship

3) Segregation Reports

- a) Records related to the review of a detained individual's segregation case for any individual held in segregation at West Texas Detention Facility for 14 days out of any 21-day period. This search should encompass any case in which the detainee was in segregation on or after October 1, 2015 to the date that production for this FOIA request commences. Specific data for each segregation:
 - i) The Person ID variable/anonymized ID variable for the detained individual in segregation.
 - ii) Biographic information of the detained individual in segregation.
 - (1) Race and ethnicity
 - (2) Country of birth
 - (3) Country of citizenship

4) Individualized, Disaggregated Data

- a) Individualized, Disaggregated Data regarding each individual booked or detained at any point during the timeframe in West Texas Detention Facility, as follows:
 - i) Person ID variable/anonymized ID variable
 - ii) Arrest/Apprehension
 - (1) Date of Arrest/Apprehension
 - (2) State and city where arrest/apprehension occurred
 - (3) Initial arresting/apprehending agency (i.e., ICE, CBP, non-DHS entity such as sheriff deputy)
 - iii) Immigration status or category at time of arrest/apprehension (i.e., lawful permanent resident, visa holder, EWI, US citizen)

² ICE, *Performance-Based National Detention Standards 2011* (Rev. 2016), § 2.15 Use of Force and Restraints, <https://www.ice.gov/doclib/detention-standards/2011/2-15.pdf>.

- iv) Biographic information
 - (1) Gender
 - (2) Race and ethnicity
 - (3) Country of birth
 - (4) Country of citizenship
 - (5) Age at book-in
- v) Detention and release information (entire detention history at each facility)
 - (1) Anonymized detention stay ID (to identify different custody periods for the same person ID)
 - (2) Initial book-in date and time
 - (3) Initial intake detention facility name, city, and state
 - (4) Initial intake detention facility code
 - (5) Book-in date and time of each subsequent detention facility
 - (6) Each subsequent detention facility name, city, and state
 - (7) Each subsequent detention facility code
 - (8) Book-out date and time of each subsequent detention facility
 - (9) Segregated from general population or in solitary confinement during detention (yes/no)
 - (10) Segregation/solitary confinement reason (i.e., health, administrative, disciplinary)
 - (11) Number of days (or hours) in segregation/solitary confinement
 - (12) Enrolled in an Alternative to Detention (ATD) (yes/no)
 - (a) Date enrolled in ATD
 - (b) ATD type
 - (c) Date terminated ATD participation
 - (13) Requested release/parole from detention (yes/no)
 - (14) Release/parole decision (granted/denied)
 - (15) Release reason associated with each detention facility
 - (a) Date of release
 - (b) Transfer reason (if release reason = transfer)
 - (16) Final release date
 - (17) Final release reason (i.e., Order of Recognizance; Orders of Supervision (OSUP); ICE bond; IJ bond; parole)
 - (a) OSUP conditions of release (i.e., ankle monitor)
 - (b) For individuals who posted an ICE-issued bond:
 - (i) ICE-issued bond date
 - (ii) ICE-issued bond amount

5) Medical Services Records

- a) The number of requests for mental health service submitted by or on behalf of individuals detained at West Texas Detention Facility.
- b) Specific data for each mental health service request:
 - i) Person ID variable/anonymized ID variable
 - ii) Biographic information of the detained individual
 - (1) Race and ethnicity
 - (2) Country of birth
 - (3) Country of citizenship
 - iii) The date of the request
 - iv) The outcomes of the request (i.e., mental health services provided) with dates
- c) The number of requests for off-site and specialized care submitted by or on behalf of individuals detained at West Texas Detention Facility. It is Requesters' understanding that information generally is collected in the Medical Payment Authorization ("MedPAR") system.
- d) Specific data for each off-site/specialized care request:
 - i) Person ID variable/anonymized ID variable
 - ii) Biographic information of the detained individual
 - (1) Race and ethnicity
 - (2) Country of birth
 - (3) Country of citizenship
 - iii) Type of care requested
 - iv) The date of the request
 - v) The outcomes of the request (i.e., off-site care granted) with dates

Please construe this as an ongoing FOIA request, so that any records that come within the possession of the agency prior to your final response to this Request would be considered within the Request's scope.

Format of Production

Requestors seek responsive electronic records in a machine-readable, native file format, with all metadata and load files. We request that any data be provided in a workable format, such as Microsoft Excel or comma-separated values (CSV) files. If terms or codes are not in the form template and/or publicly defined, please provide a glossary or other descriptive records containing definitions of acronyms, numerical codes, or terms contained in data responsive to this request. We request that you produce responsive materials in their entirety, including all attachments, appendices, enclosures, and/or exhibits.

For non-data files, Requestors ask that the records be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency's possession, and that the records be provided in separate, Bates-stamped files.

II. FEE WAIVER REQUEST

Requestors seek a fee waiver because the information sought in the Request is “likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the [requesters]....” 5 U.S.C. § 552(a)(4)(A)(iii); 6 C.F.R. § 5.11(k).

As outlined below, Requesters seek to provide the public with information about ICE’s operation of West Texas Detention Facility and the treatment of individuals held there in U.S. government custody. Requesters are non-profit organizations without a commercial interest in the release of this information and intend to make the information received in response to this request available to the public at no charge. Further, Requesters have a demonstrated track record of disseminating information obtained via FOIA requests to the public and collectively reach a wide audience, which includes varied segments of the U.S. public.

A. *Disclosure Will Contribute to Public Understanding of Treatment of Immigrants in West Texas Detention Facility*

This Request seeks information that will provide the public with critical insights into ICE operations and treatment of individuals detained at West Texas Detention Facility, one of hundreds of facilities ICE uses for detention.

Individuals held in ICE detention facilities are subject to the conditions and treatment established by ICE—part of the Department of Homeland Security—and carried out by its personnel and sub-contractors. Detained individuals have limited access to the outside world and have very few avenues to effectively raise concerns. Unfortunately, there is a long track record of complaints, abuse, misconduct, inadequate medical care, and poor oversight in ICE detention.³

Individuals held at West Texas Detention Facility have made serious allegations about treatment at the facility. Over the course of a week in 2018, detained individuals reported that officials

³ See, e.g., DHS Office of Inspector General (DHS OIG), *Concerns about ICE Detainee Treatment and Care at Detention Facilities* (Dec. 2017), <https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-32-Dec17.pdf>; Alice Speri, *Detained, then Violated*, *The Intercept* (April 11, 2018), <https://theintercept.com/2018/04/11/immigration-detention-sexual-abuse-ice-dhs/>; Human Rights Watch, *Code Red: The Fatal Consequences of Dangerously Substandard Medical Care in Immigration Detention* (June 2018), <https://www.hrw.org/report/2018/06/20/code-red/fatal-consequences-dangerously-substandard-medical-care-immigration>; Emily Ryo & Ian Peacock, *The Landscape of Immigration Detention in the United States*, American Immigration Council (Dec. 2018), <https://www.americanimmigrationcouncil.org/research/landscape-immigration-detention-united-states>; DHS OIG, *ICE Does Not Fully Use Contracting Tools to Hold Detention Facility Contractors Accountable for Failing to Meet Performance Standards* (Jan. 2019), <https://www.oig.dhs.gov/sites/default/files/assets/2019-02/OIG-19-18-Jan19.pdf>; DHS OIG, *Capping Report: Observations of Unannounced Inspections of ICE Facilities in 2019* (July 2020), <https://www.oig.dhs.gov/sites/default/files/assets/2020-07/OIG-20-45-Jul20.pdf>.

subjected them to racial slurs, physical force and abuse, chemical agents, and sexual assault.⁴ The incidents gained attention of the FBI, DHS oversight bodies, and Congress.⁵ Investigations by non-profits documented concerns ahead of the COVID-19 pandemic, including prolonged detention; inhumane conditions; mistreatment and use of force; barriers to legal resources; and inadequate medical care.⁶

The long-standing issues were only exacerbated during the COVID-19 pandemic, when ICE struggled and failed in many instances to stem the spread of the virus, putting detained individuals and ICE personnel at risk.⁷

While the importance of information about ICE detention is well established, it remains difficult to obtain information about ICE detention operations as well as data that allows for in-depth research and analysis.⁸

Requestors seek the disclosure of information that will enhance the public's understanding of government operations. Specifically, how individuals held in ICE custody are treated; the activities and operations of ICE detention; and individualized and anonymized data which is of particular

⁴ RAICES et al., "I was treated like an animal": Abuses Against African Detainees at the West Texas Detention Facility (Mar. 22, 2018), https://www.raicestexas.org/wp-content/uploads/2019/12/WTDF_Report_Final.pdf; Ryan Devereaux et al., *Week Of Hell: Dozens Of African Detainees Allege Serial Abuse And Hate Crimes At Notorious Private Immigration Jail*, The Intercept (Mar. 24, 2018), <https://theintercept.com/2018/03/24/week-of-hell-dozens-of-african-detainees-allege-serial-abuse-and-hate-crimes-at-notorious-private-immigration-jail/>.

⁵ *Oversight Of ICE Detention Facilities: Is DHS Doing Enough?: Hearing Before the Subcomm. on Oversight, Mgmt., & Acct. of the H. Comm. on Homeland Sec. 106th Cong. 1* (2019), <https://www.govinfo.gov/content/pkg/CHRG-116hrg40455/html/CHRG-116hrg40455.htm>; see Ryan Devereaux et al., *Week Of Hell: Dozens Of African Detainees Allege Serial Abuse And Hate Crimes At Notorious Private Immigration Jail*, The Intercept (Mar. 24, 2018), <https://theintercept.com/2018/03/24/week-of-hell-dozens-of-african-detainees-allege-serial-abuse-and-hate-crimes-at-notorious-private-immigration-jail/>.

⁶ See Human Rights First, *Ailing Justice: Texas: Soaring Immigration Detention, Shrinking Due Process* (June 2018), https://www.humanrightsfirst.org/sites/default/files/Ailing_Justice_Texas.pdf; RAICES et al., "I was treated like an animal": Abuses Against African Detainees at the West Texas Detention Facility (Mar. 22, 2018), https://www.raicestexas.org/wp-content/uploads/2019/12/WTDF_Report_Final.pdf.

⁷ See, e.g., Joel Rose, *Internal ICE Reviews Of Two Immigrant Deaths Stoke Fears About COVID-19 Care*, NPR (April 29, 2020), <https://www.npr.org/2020/04/29/847838342/internal-ice-reviews-of-two-immigrant-deaths-stoke-fears-about-covid-19-care>; Rosemary Westwood, *16 Immigrants In Louisiana Are Suing ICE For Their Freedom — And Their Health*, WWNO New Orleans Public Radio (April 23, 2020), <https://www.wwno.org/latest-news/2020-04-23/16-immigrants-in-louisiana-are-suing-ice-for-their-freedom-and-their-health>; Morning Edition, *Immigration Detention Facilities Can be Breeding Ground for Disease*, NPR (Sept. 23, 2019), <https://www.npr.org/2019/09/23/763343004/immigration-detention-facilities-can-be-a-breeding-ground-for-disease>.

⁸ See, e.g., Brief for American Immigration Council as Amici Curiae Supporting Plaintiffs, *Citizens for Responsibility and Ethics in Washington et al. v. National Archives and Records Administration et al.*, No. 1:2018cv02473 (D.D.C. 2020), https://www.americanimmigrationcouncil.org/amicus_brief/stopping-destruction-ices-records-abuse-and-mistreatment-people-detention (discussing the lack of transparency in ICE detention operations and surrounding mistreatment and abuse in ICE detention facilities, including how ICE skirts public scrutiny with lengthy FOIA delays, failing to proactively disclose vital information, and criticism from DHS' own oversight bodies.).

interest to the public because it allows for greater transparency and understanding of potential disparate experiences of detained individuals. This information is not readily available to the public. As outlined further below, Requestors intend to make the information received in response to the Request available to the public at no charge. Further, the Requestors reach broad audiences, which includes varied segments of the U.S. public.

B. Disclosure of the Information Is Not in the Commercial Interest of Requestors

The Council is a not-for-profit organization and has no commercial interest in the Request. See e.g. 6 C.F.R. § 5.11(k)(3)(i)-(ii). The Request furthers the Council's work to increase public understanding of immigration law and policy, advocate for the fair and just administration of U.S. immigration laws, protect the legal rights of noncitizens, and educate the public about the enduring contributions of America's immigrants. As with all other reports and information available on the Council's website, the information that the Council receives in response to the Request will be available to immigration attorneys, noncitizens, and other interested members of the public free of charge.

The Council regularly provides information to the public based on its FOIA requests.⁹ It synthesizes and publishes information about governmental operations obtained from FOIA requests on its publicly accessible website. In calendar year 2020, the Council's website received more than 2.4 million pageviews from more than 1.4 million visitors. The Council also has regular contact with national print and news media and plans to share information obtained from FOIA disclosures with interested media.

BAJI is a not-for-profit organization and has no commercial interest in the Request. BAJI is a racial justice and migrant rights organization which engages in legal representation, advocacy, community organizing, education, and cross-cultural alliance-building in order to end the racism, criminalization, and economic disenfranchisement of African American and Black immigrant communities. BAJI was founded in Oakland, CA by veteran civil rights activists and clergy who were concerned about a wave of unjust immigration enforcement laws. BAJI subsequently expanded its mission to include advocacy on behalf of all Black immigrants and refugees, and today has offices and/or staff members in New York, NY; Los Angeles, CA; Oakland, CA; Atlanta, GA; Miami, FL; Washington, DC; Minneapolis, MN; and Houston, TX.

⁹ See, e.g., American Immigration Council, *The Electronic Nationality Verification Program: An Overview* (Jan. 26, 2021), <https://www.americanimmigrationcouncil.org/research/electronic-nationality-verification-program-overview>; Guillermo Cantor et al., *Changing Patterns of Interior Immigration Enforcement in the United States, 2016-2018*, American Immigration Council (July 1, 2019), <https://americanimmigrationcouncil.org/research/interior-immigration-enforcement-united-states-2016-2018>; American Immigration Council, *Stays of Removal Responses from EOIR* (May 2019), https://americanimmigrationcouncil.org/sites/default/files/foia_documents/board_of_immigration_appeals_interpretation_of_stay_of_removal_foia_production.pdf; Guillermo Cantor & Walter Ewing, *Still No Action Taken: Complaints Against Border Patrol Agents Continue to Go Unanswered*, American Immigration Council (Aug. 2017) (examining records of alleged misconduct by Border Patrol employees), http://bit.ly/Council_StillNoActionTaken.

BAJI works with local community groups to educate impacted communities in understanding their rights and responding to increased militarized police presence in their communities. To further its mission, BAJI creates and disseminates presentations, reports, articles, interviews, testimony, social media, and blog posts to educate the public about the activities of the United States government as it relates to Black immigrant communities. Obtaining information about government activity, analyzing that information, and disseminating that information to the press and public are critical components of BAJI's work.¹⁰

Given that FOIA's fee-waiver requirements are to "be liberally construed in favor of waivers for noncommercial requesters," a waiver of all fees is justified and warranted in this case. See *Judicial Watch v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (finding a fee waiver appropriate when the requester explained, in detailed and non-conclusory terms, how and to whom it would disseminate the information it received).

III. EXEMPTIONS

Please note that Requesters do not seek personally identifiable information. ICE should provide unique identifiers for individuals, as outlined in the Request for Information (Sec. I). Otherwise, Requesters understand that the agency will redact any personally identifiable information.

If ICE withholds records based on its assessment that one or more statutory exemptions apply to any of the records requested, please describe in detail the nature of the records withheld and the specific exemption(s) or privilege(s) ICE contends permits the withholding. If any portion(s) of the requested records are determined to be exempt, please provide the non-exempt portions. 5 U.S.C. §552(a)(8)(A)(ii)(II).

Thank you in advance for your attention to the Request. If you have any questions, please feel free to contact Requestors at the contact information below.

Sincerely,

/s/ Tory Johnson

Tory Johnson

¹⁰ See S. Priya Morley et al., "There is a Target on Us" – *The Impact of Mexico's Anti-Black Racism on African Migrants at Mexico's Southern Border*, Black Alliance for Just Immigration (2021), <http://baji.org/wp-content/uploads/2021/01/The-Impact-of-Anti-Black-Racism-on-African-Migrants-at-Mexico.pdf>; Juliana Morgan-Trostle et al., *The State of Black Immigrants*, Black Alliance for Just Immigration and New York University Immigrant Rights Clinic (Jan. 2020), <http://baji.org/wp-content/uploads/2020/03/sobi-fullreport-jan22.pdf>; Nancy Adossi et al., *Black Lives at the Border*, Black Alliance for Just Immigration (Jan. 2018), <http://baji.org/wp-content/uploads/2020/03/black-lives-at-the-borderfinal-2.pdf>.

American Immigration Council
1331 G Street, NW, Suite 200
Washington, DC 20005
(202) 507-7529
tjohnson@immcouncil.org

Tsion Gurmu
Legal Director
Black Alliance for Just Immigration
tsion@BAJI.org