



December 21, 2021

SENT VIA PUBLIC ACCESS PORTAL

U.S. Immigration and Customs Enforcement
Freedom of Information Act Office
800 North Capitol Street, NW, Room 585
Washington, DC 20536-5009

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

Dear Freedom of Information Officer:

The American Immigration Council (“Council”) submits the following Freedom of Information Act (“FOIA”) request for records regarding individuals held at the Torrance County Detention Facility in Estancia, New Mexico (“Detention Facility”) on or after January 1, 2021 (“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. Requestors understand that all requested data exists in a database accessible by ICE.

We request records related to the Detention Facility (which is in the El Paso Field Office area of responsibility) including current policies and individualized data. *Unless otherwise specified*, we request records related to individuals detained at the Detention Facility between January 1, 2021, and the date a search for responsive records commences. The data portion of the request should include individuals who were detained at the Detention Facility as of January 1, 2021, but

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.

who were apprehended or booked in prior to that date, as well as individuals who were detained at the Detention Facility who had not yet been released as of the date a search for responsive records commences.

Requestors seek the following records:

Policies, Guidance, and Communications

- 1) A copy of the current Intergovernmental Service Agreement (“IGSA”) that services the Detention Facility.
- 2) Records regarding detainees received at the Detention Facility beginning on September 1, 2021, to the present date, including Haitian nationals. The records include but are not limited to communications relating to the complaint filed on November 23, 2021, with the U.S. Department of Homeland Security’s Office of the Inspector General and Office for Civil Rights and Civil Liberties about conditions at the Detention Facility.²
- 3) Records, including emails, regarding Haitian nationals detained after September 2021 to the present date. Records should include emails sent or received by ICE officers at the El Paso Field Office, including, but not limited to, officers William Shaw, Sean Stevens, and Ronald Warren.
- 4) Records, including emails, that mention Allegra Love and were sent or received by Officer William Shaw between September 2021 and the present date.
- 5) Records about ICE’s decision to place Haitian nationals apprehended at the border during September 2021, or thereafter, at the Detention Facility.
- 6) Records relating to current instructions, guidance, protocols, or policies with regards to how ICE officers make determinations on parole applications.
- 7) Records providing ICE personnel with directives regarding applications for parole filed with ICE on behalf of Haitian detainees at the Detention Facility.

² Letter from ACLU of New Mexico, American Immigration Council, American Immigration Lawyers Association, Innovation Law Lab, National Immigration Project of the National Lawyers Guild to Katherine Culliton-Gonzalez, Office for Civil Rights and Civil Liberties and Inspector General Joseph V. Cuffari, Office of the Inspector General, Severe Violations of Due Process and Inhumane Conditions at Torrance County Detention Facility (Nov. 23, 2021), <https://www.americanimmigrationcouncil.org/sites/default/files/research/compla1.pdf>.

- 8) Records providing ICE personnel directives relating to detainees' request for legal assistance at the Detention Facility and the response or result of such request.
- 9) Records, including but not limited to any specific directives relating to requests for legal assistance from Haitian detainees at the Detention Facility.

Data

Individualized, disaggregated data regarding each individual booked or detained at the Detention Facility from January 1, 2021, until the present, as follows:

- 1) Person ID variable/anonymized ID variable. Please note that we do not seek personally identifiable information, but we expect the agency to produce any non-identifying variable the agency uses to connect individual-level data across data sets such as the first five digits of the Alien numbers, the first four digits of social security numbers, or any other similar information.
- 2) Arrest/Apprehension
 - a) Date of Arrest/Apprehension
 - b) State and city where arrest/apprehension occurred
 - c) Initial arresting/apprehending agency (i.e., ICE, CBP, non-DHS entity such as sheriff deputy)
- 3) Immigration status or category at time of arrest/apprehension (i.e., lawful permanent resident, visa holder, EWI, US citizen)
- 4) Biographic information
 - a) Gender
 - b) Race and ethnicity
 - c) Country of birth
 - d) Country of citizenship
 - e) Language(s) spoken
 - f) Age at book-in
- 5) Detention (entire detention history at each facility)
 - a) Anonymized detention stay ID (to identify different custody periods for the same person ID)
 - b) Initial book-in date and time
 - c) Initial intake detention facility name, city, and state
 - d) Initial intake detention facility code
 - e) Book-in date and time of each subsequent detention facility
 - f) Each subsequent detention facility name, city, and state
 - g) Each subsequent detention facility code
 - h) Book-out date and time of each subsequent detention facility

- i) Segregated from general population or in solitary confinement during detention (yes/no)
- j) Segregation/solitary confinement reason (i.e., health, administrative, disciplinary)
- k) Number of days (or hours) in segregation/solitary confinement
- 6) Release information
 - a) Enrolled in an Alternative to Detention (ATD) (yes/no)
 - b) Date enrolled in ATD
 - c) ATD type
 - d) Date terminated ATD participation
 - e) Requested release/parole from detention (yes/no)
 - f) Release/parole decision (granted/denied)
 - g) Release reason
 - i. Date of release
 - ii. Transfer reason (if release reason = transfer)
 - h) Final release date
 - i) Final release reason (i.e., Order of Recognizance; Orders of Supervision (OSUP); ICE bond; IJ bond; parole)
 - i. OSUP conditions of release (i.e., ankle monitor)
 - j) For individuals who posted an ICE-issued bond:
 - i. ICE-issued bond date
 - ii. ICE-issued bond amount

II. 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.

III. FEE WAIVER REQUEST

Requestors seek a fee waiver because the information they seek 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).

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 public at large; and (4) disclosure is likely to contribute significantly to such understanding.³

A. Disclosure Will Contribute to Public Understanding of ICE Operations

ICE manages and oversees the nation’s civil immigration detention system, which includes the Torrance County Detention Facility. The Detention Facility is under the jurisdiction of ICE’s El Paso Field Office. On December 16, 2021, members of Congress wrote a letter to DHS Secretary Alejandro Mayorkas, Acting ICE Director Tae Johnson, and the President of CoreCivic Damon T. Hininger, the private corporation that operates the Detention Facility, describing the significant problems faced by detainees at the Detention Facility.⁴ Information from government sources that furthers the public’s understanding about the procedures in place at the Detention Facility, and that may explain any deviations from such procedures in the treatment of immigrants from certain nationalities, concerns operations of the government that are of critical importance to the public. The information may also be useful to legal service providers and advocates working on behalf of immigrants detained at the Torrance County Detention Facility.

This request seeks information that encompasses the treatment of Haitian nationals by U.S. government agencies, which has garnered wide attention from media, the public, and government officials including President Biden. When U.S. Customs and Border Protection agents on horseback charged at Haitian immigrants to stop them from entering the country, those officials drew condemnation from President Biden who called those acts “outrageous”⁵ and from DHS Secretary Mayorkas, who said the images of CBP officers pushing back migrants back into the Rio Grande “painfully conjured up the worst elements of our nation’s ongoing battle against systemic racism.”⁶ These discriminatory actions have continued while certain Haitian nationals are in detention, as media has reported about the obstacles these Haitian nationals have encountered

³ 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)).

⁴ Letter from Sens. Martin Heinrich and Ben Ray Lujan and U.S. Reps. Melanie Stansbury and Teresa Leger Fernandez to DHS Secretary Alejandro Mayorkas, Acting ICE Director Tae Johnson, and Damon T. Hininger, President and CEO, CoreCivic, Calling for Increased Oversight at CoreCivic Detention Facility in Torrance County After Asylum Seekers Face Barriers to Legal Representation (Dec. 16, 2021), https://www.heinrich.senate.gov/download/letter_torrance-county-detention-center_final.

⁵ Annika Kim Constantino, *Biden condemns Border Patrol agents’ treatment of Haitian migrants, vows they will face consequences*, CNBC, Sept. 24, 2021, <https://www.cnbc.com/2021/09/24/biden-condemns-border-patrol-treatment-of-haitian-migrants-in-del-rio.html>.

⁶ Katie Rogers and Michael D. Shear, *Biden Condemns Border Patrol Treatment of Haitian Migrants as Expulsions Continue*, THE NEW YORK TIMES, Sept. 24, 2021, <https://www.nytimes.com/2021/09/24/us/politics/biden-border-patrol-haitian-migrants.html>.

in engaging legal counsel, obtaining basic information about their rights, and gathering information about their cases.⁷

The treatment of Haitian immigrants at the Torrance County Detention Facility is an extension of the same discrimination these immigrants received at the border, which requires accountability. Calls for accountability have come from the highest levels of government. Vice-President Kamala Harris stated, “There needs to be consequences and accountability.”⁸ The information sought from ICE should provide the public, including elected officials, with a transparent view of the agency’s treatment of this vulnerable population, and is a first step towards accountability. Accordingly, the information requested is likely to contribute to the public’s understanding of ICE’s operation of the Detention Facility, and in particular, its treatment of the Haitian nationals detained at the Torrance County Detention Facility.

Further, the Council regularly provides information to the public based on its FOIA requests.⁹ Requester reaches a wide audience, which includes varied segments of the U.S. public. 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 regularly shares information with national print and news media and plans to distribute information obtained from these FOIA disclosures to interested media. In keeping with its track record of synthesizing or otherwise publishing information on governmental operations shared in responses to FOIA requests, the Council intends to post documents received in response to this FOIA request on its publicly accessible website. Requesters intend to make the information received in response to this request available to the public at no charge. The Requester’s demonstrated ability to disseminate exactly the types of information requested to the public will contribute to the public’s understanding of EOIR’s treatment of this vulnerable population. Further, the Council’s commitment to disseminate this information widely and free of charge among its network of supporters ensures that disclosure is likely to contribute significantly to such understanding.

Thus, the request for information meets the public interest element for the fee waiver request rule.

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

The Council is a not-for-profit organization and has no commercial interest in the present request. See e.g. 6 C.F.R. § 5.11(k)(3)(i)-(ii). This request furthers the Council’s work to increase public

⁷ Julian Resendiz, *Advocates want ICE to halt removals, provide access to counsel to Haitians detained in New Mexico facility*, KTMS.COM, Nov. 15, 2021, <https://www.ktms.com/news/border-report/advocates-want-ice-to-halt-removals-provide-access-to-counsel-to-haitians-detained-in-new-mexico-facility/>.

⁸ Constantino, *supra* note 4.

⁹ See, e.g., Guillermo Cantor and Walter Ewing, American Immigration Council, *Still No Action Taken: Complaints Against Border Patrol Agents Continue to Go Unanswered* (August 2017) (examining records of alleged misconduct by Border Patrol employees), http://bit.ly/Council_StillNoActionTaken; American Immigration Council, *Enforcement Overdrive: A Comprehensive Assessment of ICE’s Criminal Alien Program* (November 2015) (analyzing data obtained from ICE on the CAP program), http://bit.ly/Council_ICE_CAP.

understanding of immigration law and policy, advocate for the fair and just administration of our 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 this FOIA request will be available to immigration attorneys, noncitizens, and other interested members of the public free of charge.

Accordingly, the request is not primarily in the commercial interest of the requester.

Thank you in advance for your attention to this request. If you have any questions regarding this request, you may contact me at 202-507-7549 or via email at rpinto@immcouncil.org.

Very truly yours,

/s/ Raul A. Pinto,
Senior Staff Attorney