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9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**

11
12 IMMIGRANT LEGAL RESOURCE CENTER,)

13 Plaintiff,)

14 v.)

15 UNITED STATES DEPARTMENT OF)
16 HOMELAND SECURITY; UNITED STATES)
IMMIGRATION AND CUSTOMS)
17 ENFORCEMENT,)

18 Defendants.)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)

Case No.: 3:17-cv-6029

**COMPLAINT UNDER THE
FREEDOM OF INFORMATION ACT
FOR DECLARATORY AND
INJUNCTIVE RELIEF**

INTRODUCTION

1
2 1. The United States Immigration and Customs Enforcement (“ICE”), the agency within
3 the Department of Homeland Security (“DHS”) (together collectively with ICE, “Defendants”) that
4 oversees the detention and deportation of immigrants, is improperly withholding records pertaining
5 to assistance by local governments with federal immigration enforcement. Plaintiff Immigrant Legal
6 Resource Center (“Plaintiff” or “ILRC”) seeks the immediate release of these records pursuant to the
7 Freedom of Information Act (“FOIA” or the “Act”), 5 U.S.C. § 552, and other appropriate relief.

8 2. The records requested here primarily relate to the issue of “sanctuary cities”—
9 whether and to what extent city and county law enforcement agencies agree to assist in ICE’s
10 detention and deportation efforts against immigrants living in the United States. In a previous FOIA
11 request, ILRC sought and received records that were virtually identical to the request at issue. ILRC
12 used those previously issued records to write a widely-cited report educating the public about the
13 extent of local involvement in immigration enforcement, despite the fact that local jurisdictions have
14 no legal obligation to assist with civil immigration enforcement. *See Searching for Sanctuary: An*
15 *Analysis of America’s Counties & Their Voluntary Assistance With Deportations* (Dec. 2016),
16 https://www.ilrc.org/sites/default/files/resources/sanctuary_report_final_1-min.pdf (hereinafter
17 “Searching for Sanctuary”). ILRC has made the current FOIA request so that it can update the
18 Searching for Sanctuary report with information about current practices regarding ICE detainers,
19 detention contracts, and agreements pursuant to 8 U.S.C. § 1357(g) (commonly referred to as 287(g)
20 agreements).

21 3. The public’s interest in the extent of local law enforcement’s assistance to ICE has
22 only increased since the current President took office and directed Defendants to increase
23 deportations and seek expanded assistance from local agencies. *See, e.g.*, Exec. Order. No. 13,768,
24 82 Fed. Reg. 8799 (Jan. 25, 2017), [https://www.whitehouse.gov/the-press-](https://www.whitehouse.gov/the-press-office/2017/01/25/presidential-executive-order-enhancing-public-safety-interior-united)
25 [office/2017/01/25/presidential-executive-order-enhancing-public-safety-interior-united](https://www.whitehouse.gov/the-press-office/2017/01/25/presidential-executive-order-enhancing-public-safety-interior-united). Numerous
26 media articles have covered the sanctuary city movement and the threats from the current
27 Administration to withhold federal funds from local governments that refuse to use their own
28 resources to assist ICE. *See* Liz Robbins, ‘Sanctuary City’ Mayors Vow to Defy Trump’s

1 Immigration Order, The New York Times (Jan. 25, 2017),
2 [https://www.nytimes.com/2017/01/25/nyregion/outraged-mayors-vow-to-defy-trumps-immigration-](https://www.nytimes.com/2017/01/25/nyregion/outraged-mayors-vow-to-defy-trumps-immigration-order.html)
3 [order.html](https://www.nytimes.com/2017/01/25/nyregion/outraged-mayors-vow-to-defy-trumps-immigration-order.html); Mazin Sidahmed & Nicole Puglise, How Liberal Leaders in Cities and States Across US
4 Are Planning to Thwart Trump, The Guardian (Jan. 19, 2017), [https://www.theguardian.com/us-](https://www.theguardian.com/us-news/2017/jan/19/donald-trump-liberal-cities-states-resistance)
5 [news/2017/jan/19/donald-trump-liberal-cities-states-resistance](https://www.theguardian.com/us-news/2017/jan/19/donald-trump-liberal-cities-states-resistance). Many of these news articles have
6 cited the ILRC's Searching for Sanctuary report and other ILRC analyses.

7 4. In addition, ILRC seeks records of ICE's guidance and policy memos to its agents
8 regarding apprehensions of immigrants at state and local courthouses. Following the inauguration of
9 Donald Trump and his executive orders on immigration enforcement from late January 2017, ICE
10 agents began actively arresting immigrants who were attending court dates in state courts around the
11 country. Legal professionals expressed deep concern that "ICE arrests at courthouses will create
12 enough fear of deportation among witnesses or victims of crime to affect the outcome of cases." *See*
13 *ICE Agents Now Going to Courthouses to Arrest Undocumented Immigrants*, CBS Los Angeles
14 (Mar. 15, 2017), [http://losangeles.cbslocal.com/2017/03/15/ice-agents-now-going-to-courthouses-to-](http://losangeles.cbslocal.com/2017/03/15/ice-agents-now-going-to-courthouses-to-arrest-undocumented-immigrants/)
15 [arrest-undocumented-immigrants/](http://losangeles.cbslocal.com/2017/03/15/ice-agents-now-going-to-courthouses-to-arrest-undocumented-immigrants/). Chief Justices from several state supreme courts, including
16 Washington, California, Connecticut, New York, Oregon, and New Jersey, wrote letters to the
17 Department of Homeland Security and the Department of Justice, objecting to these arrests, but
18 Attorney General Sessions defended the tactics and declared that they would continue. *See* Alex
19 Dobuzinskis, *Trump Officials Defend Immigration Arrests at California Courthouses*, Reuters (Mar.
20 31, 2017), [https://www.reuters.com/article/us-usa-immigration-courthouses/trump-officials-defend-](https://www.reuters.com/article/us-usa-immigration-courthouses/trump-officials-defend-immigration-arrests-at-california-courthouses-idUSKBN1722T1)
21 [immigration-arrests-at-california-courthouses-idUSKBN1722T1](https://www.reuters.com/article/us-usa-immigration-courthouses/trump-officials-defend-immigration-arrests-at-california-courthouses-idUSKBN1722T1).

22 5. FOIA sets a 20-day statutory deadline for agencies to respond to FOIA requests.
23 ILRC filed its FOIA request on June 28, 2017. ICE requested a 10-day extension, as permitted by
24 law, but then failed to produce any documents. On September 15, 2017, ILRC filed an
25 administrative appeal of the agency's complete failure to produce documents with the ICE FOIA
26 Appeals Office. On October 11, 2017, the ICE FOIA Appeals Office remanded the appeal, without
27 producing even a single document in response to Plaintiff's request.
28

6. The immediate disclosure of the requested records is needed to remedy the lack of current information available to attorneys, to local governments, to the press, and to the public. Plaintiff accordingly brings this suit under the Freedom of Information Act for declaratory, injunctive, and other appropriate relief.

JURSDICTION & VENUE

7. This Court has subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B), (6)(C)(i), and (6)(E)(iii). This Court also has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331.

8. Venue is proper in this district under 5 U.S.C. § 552(a)(4)(B), because ILRC has its principal place of business in this district.

9. Assignment to the San Francisco Division is proper pursuant to Civil Local Rule 3-2(c) and (d) because a substantial portion of the events giving rise to this action occurred in San Francisco County, where ILRC maintains its principal place of business.

PARTIES

10. Plaintiff Immigrant Legal Resource Center is a nonprofit organization that 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. ILRC maintains its principal place of business in San Francisco, California.

11. Defendant United States Department of Homeland Security is a department of the executive branch of the United States government that is tasked with, among other things, administering and enforcing the federal immigration laws. Defendant Immigration and Customs Enforcement is the agency within DHS that is specifically responsible for immigration enforcement.

FACTS

I. Background—Involvement of City and County Law Enforcement in the Detention and Deportation of Immigrants

12. DHS operates the largest police force in the nation and has a budget that is more than all of the other federal law enforcement agencies combined. Over the past ten years, the increased involvement of city and county law enforcement in deportations—at the urging of DHS, particularly

1 ICE—has played a central role in the record-breaking volume of deportations today. *See* Searching
2 for Sanctuary at 1.

3 13. Local governments have no legal obligation to use their limited resources to assist
4 with federal immigration enforcement. But the current Administration has threatened to take away
5 federal funding from local governments that decline to take on the federal government’s job and
6 seek to separate local functions from federal immigration enforcement. *See, e.g.,* Exec. Order. No.
7 13,768. Litigation is currently pending about the legality of this order.

8 14. When local police and sheriffs participate in deportations, immigrants need not be
9 convicted of an offense to find themselves trapped in the jail-to-deportation pipeline. *See* Searching
10 for Sanctuary at 2. Every encounter with local law enforcement provides an opportunity for
11 immigrants to be racially profiled and flagged for deportation, regardless of their immigration status.
12 *Id.* And unlike U.S. citizens, after fully satisfying their sentencing or rehabilitation terms in the
13 criminal legal system, immigrants with convictions are being forced to pay double punishment for
14 their actions by then being turned over to ICE for detention and deportation. *See id.*

15 15. When communities view local law enforcement as a direct pipeline to permanent
16 separation from their families, the already-fragile relationship of community trust with police is
17 harmed. *Id.* As a result, victims of domestic and other violence choose to suffer in silence rather
18 than seek assistance; witnesses of crime refuse to come forward out of fear that they themselves will
19 become a target; a climate of fear grips neighborhoods; and anxiety-ridden children struggle in
20 school. *Id.* The public safety of all of the county’s residents is endangered—a safety that rests on
21 the premise that police are there to protect and to serve all residents equally. *See id.*

22 16. ILRC’s work on the involvement of local law enforcement in deportations helps
23 immigrant communities, elected officials, and the public understand the nature of immigration
24 enforcement and take control of the role of their own local agencies in immigration. *See generally*
25 Searching for Sanctuary. ILRC helps local governments develop policies that allow immigrants to
26 be safe, to protect their ability to remain in their communities, and to mitigate against the harsh
27 immigration law consequences of interaction with the criminal legal system. *Id.*

II. *Plaintiff's Request for Crucial Records Under the Freedom of Information Act and Defendants' Failure To Timely Respond*

17. On June 22, 2017, Plaintiff requested that ICE produce records pertaining to the involvement of city and county law enforcement in the detention and deportation of immigrants and other ICE enforcement activities. *See* FOIA Request, attached hereto as Exhibit A.

18. ICE responded by e-mail on June 28, 2017 acknowledging receipt of the request and invoking the ten-day delay period for response provided in 5 U.S.C. § 552(a)(6)(B), giving the agency a total of thirty days to respond to the request with a determination of whether it would comply. *See* Acknowledgment Letter, attached hereto as Exhibit B.

19. On September 15, 2017, having received no further response from ICE within the required statutory time period, 5 U.S.C. § 552(a)(6)(A)(i), ILRC submitted an administrative appeal of the constructive denial of the request. *See* Administrative Appeal, attached hereto as Exhibit C.

20. On October 11, 2017, ICE remanded the appeal, explaining that “[i]n many instances, an agency cannot meet . . . time limits due to a high volume of requests, resource limitations and other reasons.” *See* Administrative Appeal Response, attached hereto as Exhibit D.

21. Defendants have failed to comply with their fundamental obligations under the Act. Defendants failed to issue a determination within thirty days of the initial June 22, 2017 request, nor did they produce any responsive records. *See* Section 552(a)(6)(B).

III. *Ongoing Harm and Need for the Unlawfully Withheld Records*

22. Defendants continue to receive assistance from local law enforcement in conducting civil immigration enforcement. Thus, while Plaintiff’s request has been pending without a legally required determination and without the production of responsive records from Defendants, the detention and deportation of immigrants with assistance from local law enforcement continues, without public knowledge of the extent of this assistance or the jurisdictions involved.

23. Defendants’ continued failure to produce records responsive to Plaintiff’s request violates the Freedom of Information Act and deprives Plaintiff of the ability to inform the public of a matter of exceptional public importance. Plaintiff accordingly seeks relief from this Court.

CLAIMS FOR RELIEF

First Claim

Failure to Determine Whether to Comply with the Request in Violation of FOIA

1. Plaintiff repeats and incorporates all facts in paragraphs 1 through 23 as though set forth fully herein.

2. Defendants have a statutory obligation to respond to Plaintiff's FOIA request and to communicate that determination to Plaintiff within thirty days of receiving the request. 5 U.S.C. § 552(a)(6)(A)(i).

3. Defendants' failure to make such a determination and to communicate it to Plaintiff violates FOIA. 5 U.S.C. § 552 (a)(6)(E)(iii).

Second Claim

Improper Withholding of Agency Records in Violation of FOIA

4. Plaintiff repeats and incorporates all facts in paragraphs 1 through 23 as though set forth fully herein.

5. Defendants have failed to produce any records in response to Plaintiff's FOIA request.

6. Defendants' failure to produce these records violates their statutory obligation to make requested records "promptly" available to the public. 5 U.S.C. § 552(a).

Third Claim

Failure to Conduct a Reasonable Search

7. Plaintiff repeats and incorporates all facts in paragraphs 1 through 23 as though set forth fully herein.

8. Defendants have failed to make a reasonable effort to search for records sought by Plaintiff's request, and that failure violates FOIA, 5 U.S.C. 552(a)(6)(A), and corresponding regulations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court:

A. Order Defendants to issue a determination within seven days;

B. Order Defendants to process the requested records in their entirety, to disclose the requested records in their entirety, and to make copies available to Plaintiff in their entirety within thirty days;

C. Order Defendants to prepare a *Vaughn* index for any documents they seek to continue to withhold under a FOIA exemption;

D. Award Plaintiff its costs and reasonable attorney's fees incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and

E. Order such other relief that the Court deems just and appropriate.

Dated: October 20, 2017

Respectfully Submitted,

SIDLEY AUSTIN LLP

By: /s/ W. Hardy Callcott

W. Hardy Callcott
Attorneys for Plaintiff
IMMIGRANT LEGAL RESOURCE CENTER

Exhibit A



TEACHING, INTERPRETING AND CHANGING LAW SINCE 1979

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Hon. Cruz Reynoso

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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."¹ 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."² 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.³ Evidence of bad faith on part of the agency leads to courts refraining from according "substantial weight" to agency affidavits⁴ and the stated underlying grounds for exercising certain exemptions, leading to a review of the FOIA request with "heightened scrutiny."⁵

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

¹ *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.").

² *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.").

³ 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).

⁴ 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)).

⁵ *Id.*

⁶ 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.").

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,⁷ in response to which ICE disclosed the previous version of the records requested under (I)(A).⁸ 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.⁹

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 Status	Comments	Follow Up Meeting Scheduled	Next Meeting Date	HQ Priority	Item Type	Path
AL	Alabama	Alabama	Alabama	C	Large jurisdictions that continue to accept detainers	7/31/2015	7/31/2015	FO	4. Willing to accept both (I-247N) Notifications and (I-247D) Detainers	Alabama does not have contract jobs as handled by the state.	No		FALSE	Item	ICE
NOL	AL	Avoyelles	Avoyelles Sheriff's Office	D	Remaining jurisdictions that continue to accept detainers	7/31/2015	7/31/2015	FO	4. Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNL 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	ICE
NOL	AL	Baldwin	Baldwin Sheriff's Office	C	Large jurisdictions that continue to accept detainers	7/31/2015	7/31/2015	FO	4. Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNL 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	ICE
NOL	AL	Barbour	Barbour Sheriff's Office	D	Remaining jurisdictions that continue to accept detainers	7/31/2015	7/31/2015	FO	4. Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNL 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	ICE
NOL	AL	Bibb	Bibb Sheriff's Office	D	Remaining jurisdictions that continue to accept detainers	7/31/2015	7/31/2015	FO	4. Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNL 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	ICE
NOL	AL	Bloount	Bloount Sheriff's Office	D	Remaining jurisdictions that continue to accept detainers	7/31/2015	7/31/2015	FO	4. Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNL 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	ICE
NOL	AL	Bullock	Bullock Sheriff's Office	D	Remaining jurisdictions that continue to accept detainers	7/31/2015	7/31/2015	FO	4. Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNL 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	ICE
NOL	AL	Butler	Butler Sheriff's Office	D	Remaining jurisdictions that continue to accept detainers	7/31/2015	7/31/2015	FO	4. Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNL 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	ICE
NOL	AL	Calhoun	Calhoun Sheriff's Office	D	Remaining jurisdictions that continue to accept detainers	7/31/2015	7/31/2015	FO	4. Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNL 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	ICE
NOL	AL	Chandler	Chandler Sheriff's Office	D	Remaining jurisdictions that continue to accept detainers	7/31/2015	7/31/2015	FO	4. Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNL 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	ICE
NOL	AL	Cherokee	Cherokee Sheriff's Office	D	Remaining jurisdictions that continue to accept detainers	7/31/2015	7/31/2015	FO	4. Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNL 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	ICE
NOL	AL	Chilton	Chilton Sheriff's Office	D	Remaining jurisdictions that continue to accept detainers	7/31/2015	7/31/2015	FO	4. Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNL 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	ICE
NOL	AL	Chester	Chester Sheriff's Office	D	Remaining jurisdictions that continue to accept detainers	7/31/2015	7/31/2015	FO	4. Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNL 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	ICE
NOL	AL	Clarke	Clarke Sheriff's Office	D	Remaining jurisdictions that continue to accept detainers	7/31/2015	7/31/2015	FO	4. Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNL 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	ICE
NOL	AL	Clay	Clay Sheriff's Office	D	Remaining jurisdictions that continue to accept detainers	7/31/2015	7/31/2015	FO	4. Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNL 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	ICE
NOL	AL	Claiborne	Claiborne Sheriff's Office	D	Remaining jurisdictions that continue to accept detainers	7/31/2015	7/31/2015	FO	4. Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNL 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	ICE
NOL	AL	Coffee	Coffee Sheriff's Office	D	Remaining jurisdictions that continue to accept detainers	7/31/2015	7/31/2015	FO	4. Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNL 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	ICE
NOL	AL	Colbert	Colbert Sheriff's Office	D	Remaining jurisdictions that continue to accept detainers	7/31/2015	7/31/2015	FO	4. Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNL 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	ICE
NOL	AL	Conecuh	Conecuh Sheriff's Office	D	Remaining jurisdictions that continue to accept detainers	7/31/2015	7/31/2015	FO	4. Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNL 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	ICE
NOL	AL	Covington	Covington Sheriff's Office	D	Remaining jurisdictions that continue to accept detainers	7/31/2015	7/31/2015	FO	4. Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNL 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	ICE
NOL	AL	Crawford	Crawford Sheriff's Office	D	Remaining jurisdictions that continue to accept detainers	7/31/2015	7/31/2015	FO	4. Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNL 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	ICE
NOL	AL	Cullman	Cullman Sheriff's Office	D	Remaining jurisdictions that continue to accept detainers	7/31/2015	7/31/2015	FO	4. Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNL 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	ICE
NOL	AL	Dale	Dale Sheriff's Office	D	Remaining jurisdictions that continue to accept detainers	7/31/2015	7/31/2015	FO	4. Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNL 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	ICE
NOL	AL	Dallas	Dallas (Alabama) Sheriff's Office	D	Remaining jurisdictions that continue to accept detainers	7/31/2015	7/31/2015	FO	4. Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNL 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	ICE
NOL	AL	De Kalb	De Kalb Sheriff's Office	C	Large jurisdictions that continue to accept detainers	7/31/2015	7/31/2015	FO	4. Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNL 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	ICE
NOL	AL	Elmore	Elmore Sheriff's Office	D	Remaining jurisdictions that continue to accept detainers	7/31/2015	7/31/2015	FO	4. Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNL 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	ICE
NOL	AL	Escambia	Escambia (Alabama) Sheriff's Office	D	Remaining jurisdictions that continue to accept detainers	7/31/2015	7/31/2015	FO	4. Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNL 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	ICE
NOL	AL	Etowah	Etowah County Sheriff's Office	C	Large jurisdictions that continue to accept detainers	7/31/2015	7/31/2015	FO	4. Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNL 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	ICE
NOL	AL	Fayette	Fayette Sheriff's Office	D	Remaining jurisdictions that continue to accept detainers	7/31/2015	7/31/2015	FO	4. Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNL 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	ICE
NOL	AL	Franklin	Franklin Sheriff's Office	D	Remaining jurisdictions that continue to accept detainers	7/31/2015	7/31/2015	FO	4. Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNL 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	ICE
NOL	AL	Gadsden	Gadsden Sheriff's Office	D	Remaining jurisdictions that continue to accept detainers	7/31/2015	7/31/2015	FO	4. Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNL 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	ICE
NOL	AL	Greene	Greene Sheriff's Office	D	Remaining jurisdictions that continue to accept detainers	7/31/2015	7/31/2015	FO	4. Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNL 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	ICE
NOL	AL	Hale	Hale Sheriff's Office	D	Remaining jurisdictions that continue to accept detainers	7/31/2015	7/31/2015	FO	4. Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNL 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	ICE
NOL	AL	Henry	Henry Sheriff's Office	D	Remaining jurisdictions that continue to accept detainers	7/31/2015	7/31/2015	FO	4. Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNL 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	ICE
NOL	AL	Houston	Houston Sheriff's Office	D	Remaining jurisdictions that continue to accept detainers	7/31/2015	7/31/2015	FO	4. Willing to accept both (I-247N) Notifications and (I-247D) Detainers	FNL 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	ICE

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

⁷ See Appendix A.

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

⁹ 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”¹⁰ and do not fall within any of the nine statutory exemptions.¹¹

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.¹² ICE also published excerpts of this spreadsheet in its own Congressional Budget Justification.¹³ 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.¹⁴ 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.”¹⁵

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

¹⁰ 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.”).

¹¹ 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.”).

¹² 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>.

¹³ 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>.

¹⁴ 5 U.S.C. § 552 (West 2017).

¹⁵ 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.¹⁶ 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.¹⁷ 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.¹⁸ 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.

¹⁶ 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)).

¹⁷ 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>.

¹⁸ 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.¹⁹ Several Chief Justices or other leadership of state judicial systems have expressed concerns about ICE undermining the legal system.²⁰ 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 mailing list (2,188 subscribers) and the 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,²¹ and a public Facebook page with over 10,000 followers.²² Finally, the ILRC has a carefully

¹⁹ 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>.

²⁰ 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; 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; 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/>.

²¹ Twitter.com, @ILRC_SF, (last accessed June 1, 2017), https://twitter.com/ILRC_SF.

²² 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.²³ 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.²⁴

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;²⁵ 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.²⁶ 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.²⁷ The ILRC's immigration expertise, coupled with its staffing of over a dozen immigration attorneys,²⁸ 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.²⁹ Using these records, the ILRC produced two key materials. The first was

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

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

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

²⁶ 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>.

²⁷ 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>.

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

²⁹ See Appendix B for ICE's response to the ILRC's 2015 FOIA.

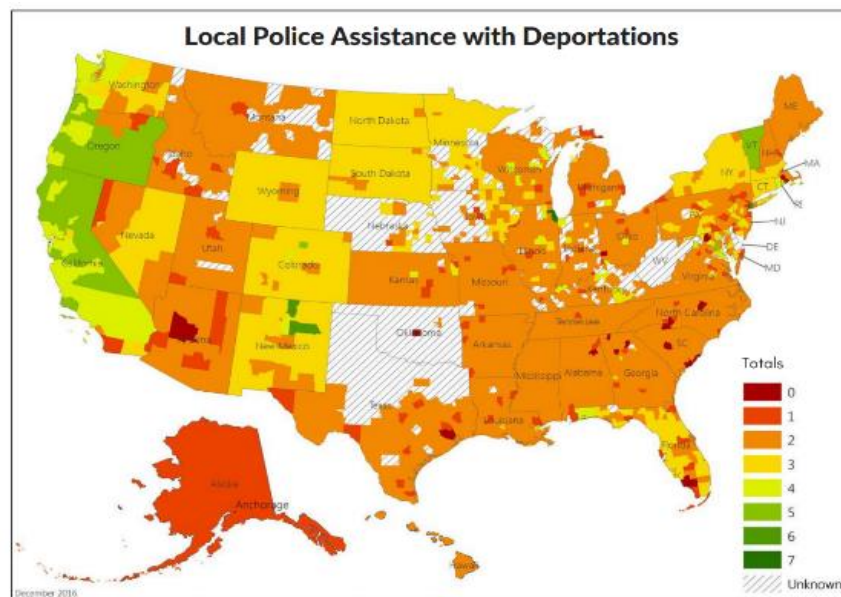
its *Searching for Sanctuary* report, which provided the most comprehensive policy and scholarly overview of county policies concerning local entanglement with federal immigration enforcement.³⁰ The data previously disclosed by ICE formed the foundation of the report, as noted in this excerpt:³¹

The ILRC has been tracking local policies regarding assistance with deportations through city and county use of ICE detainers 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.³² 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.³³



Excerpt from the ILRC's Searching for Sanctuary Report

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

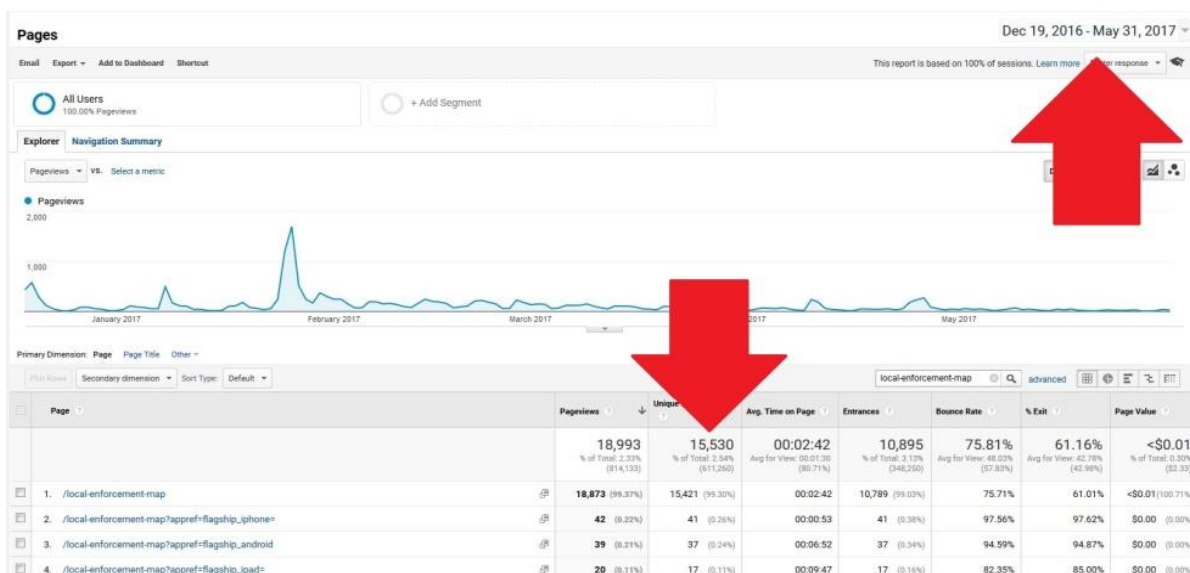
³¹ *Id.* at 3.

³² *Id.* at 5.

³³ *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.³⁴

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.");³⁵

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

³⁵ 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 . . .”),³⁶
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.”);³⁷
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.”]);³⁸
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.”);³⁹
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.”);⁴⁰
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.”);⁴¹
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.”);⁴²

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

³⁶ 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/>.

³⁷ 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>.

³⁸ 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>.

³⁹ 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.

⁴⁰ 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>.

⁴¹ 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/>.

⁴² 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.”);⁴³
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.”);⁴⁴ 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 . . .”).⁴⁵

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.”⁴⁶ 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.⁴⁷ 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

⁴³ 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/>.

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

⁴⁵ 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/>.

⁴⁶ 5 U.S.C. § 552 (West 2017).

⁴⁷ 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,⁴⁸ 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. 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 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.

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

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

Exhibit B

----- Forwarded message -----

From: **US DHS Immigration and Customs Enforcement FOIA Office** <ice-foia@dhs.gov>
Date: Wed, Jun 28, 2017 at 9:24 AM
Subject: ICE FOIA Request 2017-ICFO-34743
To: Jose Magana-Salgado <jmagana@ilrc.org>

June 28, 2017

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

RE: ICE FOIA Case Number 2017-ICFO-34743

Dear Mr. Magana-Salgado:

This acknowledges receipt of your Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), dated June 23, 2017, and to your request for a waiver of all assessable FOIA fees. Your request was received in this office on June 23, 2017. Specifically, you requested 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 (please see original request for more details).

Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Per Section 5.5(a) of the DHS FOIA regulations, 6 C.F.R. Part 5, ICE processes FOIA requests according to their order of receipt. Although ICE's goal is to respond within 20 business days of receipt of your request, the FOIA does permit a 10- day extension of this time period. As your request seeks numerous documents that will necessitate a thorough and wide-ranging search, ICE will invoke a 10-day extension for your request, as allowed by Title 5 U.S.C. § 552(a)(6)(B). If you care to narrow the scope of your request, please contact our office. We will make every effort to comply with your request in a timely manner.

ICE evaluates fee waiver requests under the legal standard set forth above and the fee waiver policy guidance issued by the Department of Justice on April 2, 1987, as incorporated into the Department of Homeland Security's Freedom of Information Act regulations [\[1\]](#). These regulations set forth six factors to examine in determining whether the applicable legal standard for fee waiver has been met. I have considered the following factors in my evaluation of your request for a fee waiver:

- (1) Whether the subject of the requested records concerns "the operations or activities of the government";
- (2) Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;
- (3) Whether disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requestor or a narrow segment of interested persons;
- (4) Whether the contribution to public understanding of government operations or activities will be "significant";

(5) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and

(6) Whether the magnitude of any identified commercial interest to the requestor is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requestor.

Upon review of your request and a careful consideration of the factors listed above, I have determined to grant your request for a fee waiver.

ICE has queried the appropriate program offices within ICE for responsive records. If any responsive records are located, they will be reviewed for determination of releasability. Please be assured that one of the processors in our office will respond to your request as expeditiously as possible. We appreciate your patience as we proceed with your request.

Your request has been assigned reference number **2017-ICFO-34743**. Please refer to this identifier in any future correspondence. To check the status of an ICE FOIA/PA request, please visit <http://www.dhs.gov/foia-status>. Please note that to check the status of a request, you must enter the 2016-ICFO-XXXXX or 2017-ICFO-XXXXX tracking number. If you need any further assistance or would like to discuss any aspect of your request, please contact the FOIA office. You may send an e-mail to ice-foia@ice.dhs.gov, call toll free [\(866\) 633-1182](tel: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; telephone at [202-741-5770](tel:202-741-5770); toll free at [1-877-684-6448](tel:1-877-684-6448); or facsimile at [202-741-5769](tel:202-741-5769).

Regards,

ICE FOIA Office
Immigration and Customs Enforcement
Freedom of Information Act Office
500 12th Street, S.W., Stop 5009
Washington, D.C. 20536-5009
Telephone: [1-866-633-1182](tel:1-866-633-1182)
Visit our FOIA website at www.ice.gov/foia

[\[1\]](#) 6 CFR § 5.11(k).

--

Jose Magaña-Salgado
Managing Policy Attorney
Immigrant Legal Resource Center
1016 16th Street, NW, Suite 100 | Washington, DC 20036
Tel: 202-777-8999 | Cell: 202-656-4501
Email: jmagana@ilrc.org
Website: www.ilrc.org

San Francisco Office: 1663 Mission Street, Suite 602 | San Francisco, CA 94103

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Exhibit C



TEACHING, INTERPRETING AND CHANGING LAW SINCE 1979

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Hon. Nancy Pelosi
Hon. Cruz Reynoso

Board of Directors
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Richard Boswell
W. Hardy Callcott
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Hon. James L. Warren (Ret.)
Allen S. Weiner
Roger Wu

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t: 202.777.8999
f: 202.293.2849

ilrc@ilrc.org
www.ilrc.org

Submitted via Electronic Mail to ice-foia@dhs.gov

September 15, 2017

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

Re: 2017-ICFO-34743

Dear FOIA Appeals Officers:

On June 23, 2017 the Immigrant Legal Resource Center (“ILRC”) submitted a request under the Freedom of Information Act (FOIA) to U.S. Immigration and Customs Enforcement (ICE). The ILRC request (the “ILRC Data FOIA Request” attached as Exhibit A) asked for information relating to Detainer and Notification Acceptance Status between state or local law enforcement agencies and ICE, current and pending Section 287(g) agreements, ICE detention data, and information relating to ICE enforcement and planning and operations.

ICE responded by e-mail on June 28, 2017 acknowledging receipt of the ILRC Data FOIA Request, assigning it a case number (2017-ICFO-34743), invoking the ten-day delay period for response contained in 5 U.S.C. § 552(a)(6)(B), and granting Requestors’ fee waiver request (Exhibit B). ICE has not provided any further response to the ILRC Data FOIA Request or any further information about the status of that request.

Please consider this letter an appeal of ICE’s constructive denial of the FOIA request submitted on June 23, 2017. When a party submits a FOIA request, the agency has 20 business days to determine whether to produce records responsive to the request. 5 U.S.C. § 552(a)(6)(A)(i). In unusual circumstances, this deadline may be extended for a maximum of 10 additional business days. 5 U.S.C. § 552(a)(6)(B). When an agency fails to meet the response times required by FOIA, requesting parties may deem the agency’s delay a denial of the FOIA request and appeal the denial. 5 U.S.C. § 552(a)(6)(C)(i). *See, e.g., Coleman v. DEA*, 714 F.3d 816, 823 (4th Cir. 2013) (“even if a request ‘may have been burdensome to the agency or would have to be delayed because of other requests filed earlier,’ the constructive exhaustion provision still applies”) (quoting *Pollack v. DOJ*, 49 F.3d

115, 119 (4th Cir. 1995); *Ruotolo v. Dep't of Justice*, 53 F.3d 4, 8 (2d Cir. 1995) (“[A]dministrative remedies are ‘deemed exhausted’ if the agency fails to comply with the ‘applicable time limit’ provisions of the FOIA.”); *Voinche v. Fed. Bureau of Investigation*, 999 F.2d 962, 963 (5th Cir. 1993) (“If an agency has not complied within the statutory time limits of a FOIA request, the requestor shall be deemed to have exhausted his administrative remedies and [may] bring suit.”). ICE has failed to respond to the ILRC Data FOIA request within the 30 business days provided under the FOIA statute.

FOIA incorporates a strong presumption in favor of disclosure of requested records. *Casa De Md., Inc. v. United States Dep't of Homeland Sec.*, 409 Fed. Appx. 697, 699 (4th Cir. 2011) (“Given the overarching disclosure policy, FOIA exemptions must be narrowly construed to favor disclosure”); *Wisconsin Project on Nuclear Arms Control v. Dep't of Commerce*, 317 F.3d 275, 279 (D.C. Cir. 2003) (“FOIA accordingly mandates a ‘strong presumption in favor of disclosure.’”) (quoting *Dep't of Justice v. Ray*, 502 U.S. 164, 173 (1991)). Agencies may deny a FOIA request only when the requested records fall under any of the nine exemptions listed in FOIA. 5 U.S.C. § 552(b)(1)-(9).

ICE exceeded the statutory time frame for responding to the ILRC Data FOIA Request more than one month ago. Because ICE has not applied any of the statutory exemptions to withhold the requested records, Requestors are entitled to the requested records.

Thank you for your prompt attention to this appeal. Under 5 U.S.C. § 552(a)(6)(A)(ii), you are required to make a determination on an appeal within 20 business days. If you have any questions regarding this appeal, please do not hesitate to contact Lena Graber at lgraber@ilrc.org or 415-321-8545.

Sincerely,



Lena Graber
Immigrant Legal Resource Center
1663 Mission St., Suite 602
San Francisco, CA 94103
lgraber@ilrc.org
415-321-8545

CC: W. Hardy Callcott
SIDLEY AUSTIN LLP
555 California Street, Suite 2000
San Francisco, CA 94104
+1 415 772 7402
hcallcott@sidley.com

Exhibit D

U.S. Department of Homeland Security
500 12th ST. SW; STOP 5009
Washington, DC 20536-5009



U.S. Immigration
and Customs
Enforcement

October 11, 2017

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

RE: **2017-ICAP-00564, 2017-ICFO-34743**

Dear Mr. Magana-Salgado:

This is in response to your letter dated September 15, 2017, received on September 19, 2017, appealing the U.S. Immigration & Customs Enforcement (ICE) Freedom of Information Act (FOIA) Office's adverse determination of your request dated June 22, 2017, seeking all records pertaining to: Detainer and Notification Acceptance Status of Local Jurisdiction, Current and Pending 287(g) Agreements, ICE Detention Data, and ICE Enforcement Planning and Operations.

You have appealed the constructive denial of your FOIA request based upon the ICE FOIA Office not responding to your request within either the twenty (20) days provided by statute, or the additional ten (10) day extension invoked by the ICE FOIA Office. In many instances, an agency cannot meet these time limits due to a high volume of requests, resource limitations and other reasons. Accordingly, this office is remanding your appeal to the ICE FOIA Office so that they may complete the search of these records and provide a direct response to you..

Should you have any questions regarding this appeal remand, please contact ICE at ice-foia@dhs.gov. In the subject line of the email, please include the word "appeal," your appeal number, which is **2017-ICAP-00564**, and the FOIA case number, which is **2017-ICFO-34743**

Sincerely,

A handwritten signature in black ink, appearing to read "Erin Clifford".

for Erin Clifford
Chief
Government Information Law Division
ICE Office of the Principal Legal Advisor
U.S. Department of Homeland Security

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
Immigrant Legal Resource Center

(b) County of Residence of First Listed Plaintiff San Francisco
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
W. Hardy Callcott, Jennifer Gaspar, Emma Trotter, SIDLEY AUSTIN LLP,
555 California St, Ste 2000, San Francisco, CA 94104 (415) 772-1200

DEFENDANTS
U.S. Dept. of Homeland Security; U.S. Immigration and Customs Enforcement

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question
(U.S. Government Not a Party)

☒ 2 U.S. Government Defendant ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment Of Veteran's Benefits <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury -Medical Malpractice CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities-- Employment <input type="checkbox"/> 446 Amer. w/Disabilities--Other <input type="checkbox"/> 448 Education PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury -- Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability PRISONER PETITIONS HABEAS CORPUS <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty OTHER <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee-- Conditions of Confinement	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC § 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC § 158 <input type="checkbox"/> 423 Withdrawal 28 USC § 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent--Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS--Third Party 26 USC § 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC § 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/ Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input checked="" type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)
☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation--Transfer ☐ 8 Multidistrict Litigation--Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
5 U.S.C. section 552
Brief description of cause:

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. ☐ DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S), IF ANY (See instructions): JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)
(Place an "X" in One Box Only) ☒ SAN FRANCISCO/OAKLAND ☐ SAN JOSE ☐ EUREKA-MCKINLEYVILLE