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12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

14 CLERGY AND LAITY UNITED FOR
15 ECONOMIC JUSTICE; EL
16 RESCATE; AMNESTY
17 INTERNATIONAL USA, HUMAN
18 RIGHTS WATCH; ALDEA – THE
19 PEOPLE’S JUSTICE CENTER;
20 ALIANZA AMERICAS;
21 IMMIGRANTS’ RIGHTS CLINIC AT
22 COLUMBIA LAW SCHOOL;
23 GEOGRAPHIES OF
24 DISPLACEMENT UNIVERSITY OF
25 TEXAS AT AUSTIN AND EL
26 COLEGIO DE SONORA;
27 IMMIGRANT JUSTICE TASK
28 FORCE; INTERFAITH
COMMUNITY FOR DETAINED
IMMIGRANTS; CALIFORNIA
LEAGUE OF UNITED LATIN
AMERICAN CITIZENS; LEGAL
SERVICES FOR PRISONERS WITH
CHILDREN; NO MORE DEATHS;
PROJECT LIFELINE; PROYECTO
DILLEY; PUBLIC LAW CENTER;

Case No.

**COMPLAINT FOR
INJUNCTIVE AND
DECLARATORY RELIEF
(FREEDOM OF INFORMATION ACT).**

1 REFUGEE AND IMMIGRANT
2 CENTER FOR EDUCATION AND
3 LEGAL SERVICES; UNCAGE &
4 REUNITE FAMILIES COALITION;
AND WITNESS AT THE BORDER,

5 Plaintiffs,

6 v.

7 DEPARTMENT OF HOMELAND
8 SECURITY; U.S. IMMIGRATION
AND CUSTOMS ENFORCEMENT,

9 Defendants.
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I
INTRODUCTION

1. This action for injunctive and declaratory relief is brought under the Freedom of Information Act (FOIA), 5 U.S.C. §552 to compel the Department of Homeland Security (DHS) and Immigration and Customs Enforcement (ICE), a component of the Department of Homeland Security (DHS), to produce records responsive to a FOIA request for certain data in the possession of the DHS and ICE Headquarters and its family detention centers, juvenile detention centers, and locations where parole or credible fear determination records are located.

2. Plaintiffs seek access to the information described in the FOIA request and detailed in the FACTUAL ALLEGATIONS section of this Complaint, in order to further their study and assessment of policies and practices relating to the adjudication of, and delays in processing of parole and credible fear determinations for immigrant minors and their parents in ICE custody.

3. Since DHS and ICE have not responded to Plaintiffs FOIA request of August 4, 2020, Plaintiffs are treating the non-response as the functional equivalent of a denial. DHS and ICE's withholding of the records violates FOIA and DHS's FOIA regulations.

4. Plaintiffs have provided DHS and ICE with more than adequate time to respond to their FOIA request and administrative appeal, and therefore now seek judicial review of DHS's and ICE's failure to release any records in response to Plaintiffs' FOIA request.

II
JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331. Venue is properly in this judicial district

1 pursuant to 5 U.S.C. § 552(a)(4)(B) because several of the plaintiffs, including
2 Clergy and Laity United for Economic Justice and El Rescate have their principal
3 places of business within the jurisdiction of the Central District of California. See 5
4 U.S.C. § 552(a)(4)(B) (“Under the FOIA, an agency may be sued in the district
5 where the plaintiff resides or has his principal place of business, or in the district
6 where the records are located, or in the District of Columbia”).
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10 **III**
PARTIES

11 6. Plaintiff Clergy and Laity United for Economic Justice (CLUE) is
12 headquartered in Los Angeles, CA and is a is a non-profit corporation consisting of
13 clergy and lay leaders of all faiths with workers, immigrants and low-income
14 families with a goal of creating a just economy that works for all and protects those
15 most vulnerable. Plaintiff CLUE is a “person” within the meaning of 5 U.S.C. §
16 551(2), and is one of the organizations that requested access to Defendant’s records
17 as alleged herein.

18 7. Plaintiff El Rescate is headquartered in Los Angeles, CA and is a non-
19 profit corporation dedicated to empowering immigrants to improve their political and
20 economic well-being in order to promote their full participation as citizens. Plaintiff
21 El Rescate is a “person” within the meaning of 5 U.S.C. § 551(2), and is one of the
22 organizations that requested access to Defendant’s records as alleged herein.

23 8. Plaintiff Amnesty International USA is a non-profit corporation that
24 draws attention to human rights abuses and campaigns for compliance
25 with international laws and standards. Plaintiff Amnesty International USA is a
26 “person” within the meaning of 5 U.S.C. § 551(2), and is one of the organizations
27 that requested access to Defendant’s records as alleged herein.

28 9. Plaintiff Human Rights Watch is a non-profit corporation that

1 investigates and reports on human rights abuses internationally. Plaintiff Human
2 Rights Watch is a “person” within the meaning of 5 U.S.C. § 551(2), and is one of
3 the organizations that requested access to Defendant’s records as alleged herein.

4 10. Plaintiff Aldea – The People’s Justice Center, is a non-profit
5 organization based in Reading, PA. The mission of Aldea is to provide a holistic
6 approach to meeting the multi-faceted needs of immigrant community members,
7 including through legal, social, educational, and medical services, including to offer
8 *pro bono* representation to every family detained by ICE in the state of Pennsylvania.
9 Plaintiff Aldea is a “person” within the meaning of 5 U.S.C. § 551(2), and is one of
10 the organizations that requested access to Defendant’s records as alleged herein.

11 11. Plaintiff Alianza Americas is a non-profit corporation headquartered in
12 Chicago, IL. Its mission is to achieve a more inclusive, equitable and sustainable
13 way of life for Latino immigrant communities in the United States and throughout
14 the Americas. Plaintiff Alianza Americas is a “person” within the meaning of 5
15 U.S.C. § 551(2), and is one of the organizations that requested access to Defendant’s
16 records as alleged herein.

17 12. Plaintiff Immigrants’ Rights Clinic at Morningside Heights Legal
18 Services, Inc. is a faculty supervised legal clinic based at Columbia Law School in
19 New York, NY (“Immigrants’ Rights Clinic”). Law students at the Immigrants’
20 Rights Clinic take on significant case responsibilities on behalf of the most
21 vulnerable immigrants who would otherwise face the deportation process without
22 representation. Plaintiff the Immigrants’ Rights Clinic is a “person” within the
23 meaning of 5 U.S.C. § 551(2), and is one of the organizations that requested access
24 to Defendant’s records as alleged herein.

25 13. Plaintiff Geographies of Displacement is a Joint Research Project of the
26 University of Texas at Austin and El Colegio de Sonora (Austin, TX) (“Geographies
27 of Displacement”). Its research and work focuses on geographies of displacement of
28 Mexican Migrant/Refugee Children and Youth including in the Sonora-Arizona

1 Borderlands and works to establish new binational partnerships with domestic and
2 international NGOs, government entities, advocates, scholars, and universities, and
3 developing innovative methodologies for migration studies, particularly for research
4 with children/adolescents. Geographies of Displacement is a “person” within the
5 meaning of 5 U.S.C. § 551(2), and is one of the organizations that requested access
6 to Defendant’s records as alleged herein.

7 14. Plaintiff Immigrant Justice Task Force, Wellington Avenue United
8 Church of Christ is headquartered in Chicago, IL and is a non-profit corporation that
9 is dedicated to ensuring human rights protections and access to justice for all
10 immigrants, refugees and asylum seekers. Plaintiff the Immigrant Justice Task Force
11 is a “person” within the meaning of 5 U.S.C. § 551(2), and is one of the
12 organizations that requested access to Defendant’s records as alleged herein.

13 15. Plaintiff Interfaith Community for Detained Immigrants (ICDI) is
14 headquartered in Chicago, IL and is a non-profit, interfaith organization called to
15 respond actively and publicly to the suffering of all individuals and communities
16 affected by immigration detention, deportation, and post-detention through spiritual
17 care, accompaniment, advocacy, and public witness. ICDI is a “person” within the
18 meaning of 5 U.S.C. § 551(2), and is one of the organizations that requested access
19 to Defendant’s records as alleged herein.

20 16. Plaintiff California League of United Latin American Citizens
21 (LULAC) is headquartered in Huntington Beach, CA and is a non-profit corporation.
22 LULAC is the largest and oldest Hispanic Organization in the United States. LULAC
23 advances the economic condition, educational attainment, political influence,
24 housing, health and civil rights of Hispanic Americans through community-based
25 programs operating at more than 1,000 LULAC councils nationwide. The
26 organization involves and serves all Hispanic nationality groups. Historically,
27 LULAC has focused heavily on immigrants’ rights, education, civil rights, health,
28 and employment for Hispanics. LULAC is a “person” within the meaning of 5

1 U.S.C. § 551(2), and is one of the organizations that requested access to Defendant’s
2 records as alleged herein.

3 17. Plaintiff Legal Services for Prisoners with Children (LSPC) is
4 headquartered in Oakland, CA and is a non-profit corporation that organizes
5 communities impacted by the criminal justice system and advocates to release
6 incarcerated people, to restore human and civil rights, and to reunify families and
7 communities. LSPC is a “person” within the meaning of 5 U.S.C. § 551(2), and is
8 one of the organizations that requested access to Defendant’s records as alleged
9 herein.

10 18. Plaintiff No More Deaths is a non-profit corporation and a ministry of
11 the Unitarian Universalist Church of Tucson, AZ, that seeks to end the fatalities of
12 undocumented immigrants crossing the desert regions near the United States-Mexico
13 border. No More Deaths is a “person” within the meaning of 5 U.S.C. § 551(2), and
14 is one of the organizations that requested access to Defendant’s records as alleged
15 herein.

16 19. Plaintiff Project Lifeline is headquartered in Tiburon, CA and is a non-
17 profit organization committed to supporting immigrant children through legal and
18 medico-legal initiatives. Project Lifeline is a “person” within the meaning of 5
19 U.S.C. § 551(2), and is one of the organizations that requested access to Defendant’s
20 records as alleged herein.

21 20. Plaintiff Proyecto Dilley is a local partner of the Immigration Justice
22 Campaign. Its mission is to serve the immigrant mothers and children detained at the
23 South Texas Family Residential Center in Dilley, TX. Most of these families are
24 fleeing extreme violence in Central America and elsewhere. They are in the United
25 States seeking asylum. Plaintiff Proyecto Dilley is a “person” within the meaning of
26 5 U.S.C. § 551(2), and is one of the organizations that requested access to
27 Defendant’s records as alleged herein.

28 21. Plaintiff Public Law Center (PLC) is headquartered in Santa Ana, CA

1 and is a pro bono law firm that is committed to providing access to justice for low-
2 income and vulnerable residents, including immigrants in Orange County,
3 California. PLC’s legal services for low-income families and children include
4 counseling, individual representation, community education and strategic litigation
5 and advocacy to challenge societal injustices. PLC is a “person” within the meaning
6 of 5 U.S.C. § 551(2), and is one of the organizations that requested access to
7 Defendant’s records as alleged herein.

8 22. Plaintiff Refugee and Immigrant Center for Education and Legal
9 Services (San Antonio, TX) (“RAICES”), RAICES is a “person” within the meaning
10 of 5 U.S.C. § 551(2), a nonprofit organization working to promote justice for all by
11 providing free and low-cost legal services to underserved immigrant children,
12 families, including asylum seekers and refugees. While RAICES provides legal
13 services primarily in Texas, RAICES advocates for immigrant communities nation-
14 wide. RAICES is a “person” within the meaning of 5 U.S.C. § 551(2), and is one of
15 the organizations that requested access to Defendant’s records as alleged herein..

16 23. Plaintiff Uncage & Reunite Families Coalition headquartered in Tempe,
17 AZ, is a grassroots organization comprised of community activists, religious leaders,
18 and volunteers who advocate for justice and work towards the reunification of
19 children and their families who have been separated at the U.S. border and detained
20 at different locations. Uncage & Reunite Families Coalition is a “person” within the
21 meaning of 5 U.S.C. § 551(2), and is one of the organizations that requested access
22 to Defendant’s records as alleged herein.

23 24. Plaintiff Witness at the Border (Menlo Park, CA) is an organization of
24 volunteers focusing on immigrant children and families suffering from the
25 Government’s family separation, travel ban, immigrant children detained in cages,
26 the Remain in Mexico (MPP) and other Government policies aimed at the swift
27 deportation and expulsion of asylum seekers. Witness at the Border is a “person”
28 within the meaning of 5 U.S.C. § 551(2), and is one of the organizations that

1 requested access to Defendant’s records as alleged herein.

2 25. Defendant U.S. Immigration and Customs Enforcement ICE), is a
3 component of Defendant the Department of Homeland Security (DHS). The DHS
4 and ICE are the agencies from which the requested documents were sought under the
5 Freedom of Information Act.

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8 **IV**

9 **FACTUAL ALLEGATIONS**

10 26. On August 4, 2020, Plaintiffs submitted a written request pursuant to 5
11 U.S.C. § 552 (“FOIA Request”) to Defendants DHS and ICE seeking access to
12 documents relating to policies and practices involving the detention of Class
13 Members in *Flores v. Monty Wilkinson*, Case No. CV 85-4544-DMG-AGRx (Central
14 District of California), and when accompanied, their parents. (“Request Letter”). *See*
15 Exhibit A filed herewith.

16 27. The Request Letter sought documents in the possession of the
17 Department of Homeland Security (DHS) and the Immigration and Customs
18 Enforcement (ICE) Headquarters, its family and juvenile detention centers, and
19 locations where parole or credible fear determination records are archived. The
20 Request sought the following categories of documents:

- 21 1. For each parent or guardian *and* for each accompanying *Flores* Class
22 Member detained between January 1, 2020, and the date the FOIA
23 request was received (i) all of their parole worksheets, (ii) all documents
24 relied upon to reach the decisions in the parole worksheets, (iii) all
25 documents regarding interviews with the parents or their children
26 regarding release, (iv) documents showing communications with the
27 parents’ or their children’s counsel of record, (v) their forms I-860, I-
28 867, I-870, and I-899, and (vi) all G-28 Notice of Appearance forms

1 filed for the parents or *Flores* Class Member children. Ex. A at 5-7.

2 2. Regardless of when dated, all current contracts (i.e. those currently in
3 force) relating to the operation of Dilley, Karnes, or Berks including
4 contracts in which ICE or DHS is a party and contracts in which
5 CoreCivic (Dilley), Geo Group (Karnes), or Berks County(Berks), or
6 any other person or entity is a party even if ICE or DHS are not parties.
7 Ex. A at 5-6.

8 3. Regardless of when dated, all documents that relate to the current state
9 license status of the Dilley, Karnes, and Berks facilities, including but
10 not limited to (i) any license(s) they possess, (ii) application materials
11 relating to the license(s), and (iii) all communications between ICE,
12 DHS, or CoreCivic, Geo Group, or Berks County regarding any of the
13 three facilities' current license(s). (Ex. A at 5-6).

14 4. Regardless of when dated, all instructions or directions provided to ICE
15 employees working at Dilley, Karnes, and Berks or Dilley, Karnes, and
16 Berks staff relating to the release of minors or their accompanying
17 parents, including instructions or directions relating to (i) which parents
18 may be released or (ii) compliance with the *Flores* Settlement
19 Agreement or any of the Orders issued in *Flores v. Barr*, Cv. No. 85-
20 04544(C.D. Cal.).

21 28. For *Flores* class members detained at the Cowlitz County Youth
22 Services Center (Cowlitz) in Longview, WA, and the Northern Oregon Regional
23 Correctional Facility (Norcor) in The Dalles, Oregon, from January 1, 2020 to the
24 time Defendants received the request, Plaintiffs sought copies of (i) Class Members'
25 parole worksheets, (ii) documents relied upon to reach the parole decisions, (iii)
26 documents regarding interviews with parents or relatives of the Class Members or
27 with detained class members regarding release, (iv) documents showing
28 communications with the parents' or relatives' or class members' counsel, and (v)

1 forms I-860, I-867, I-870, and I-899, and (vi) G-28 Notice of Appearance forms filed
2 for the class member. The number of *Flores* Class Members detained at these
3 facilities over the requested period of time is relatively low. The request also sought
4 copies of current contracts relating to the detention of *Flores* Class Members at
5 Cowlitz and Norcor, records relating to any licenses possessed by the facilities, and
6 records relating to the *Flores* Settlement Agreement rights of class members detained
7 at Cowlitz and Norcor. Ex. A at 7-8.

8 29. Finally, the FOIA request sought copies of documents dated on or after
9 January 1, 2019, involving instructions regarding the conduct of or decisions in
10 credible fear of persecution interviews and training materials shared with officers
11 conducting credible fear interviews dated on or after January 1, 2019. (Ex. A at 8).

12 30. The FOIA Request asked Defendants ICE and DHS to waive fees for
13 processing Plaintiffs' request pursuant to 6 C.F.R. § 5.11(k) on the grounds (i) that
14 Plaintiffs are non-profit organizations, and (ii) that the requested information will be
15 used solely for humanitarian purposes. Ex. A at 3.

16 31. The FOIA Request also advised, “[i]f you find it impossible to produce
17 all documents called for by this request within the statutorily prescribed time limits,
18 please produce all documents that are located by you within such time and advise us
19 when you believe the remainder of the documents requested will be produced.” Ex.
20 A at 3.

21 32. Regarding the possible assertion of exemptions, the FOIA Request
22 stated:

23 If you locate documents responsive to these requests regarding which you
24 claim an exemption in whole or in part from disclosure, please identify (1) the
25 author and his/her position in the Government, (2) the addressee(s), (3) the
26 date of the document(s), (4) the general topic of the document(s), (5) the
27 number of pages in the document(s), and (6) the specific exemption(s)
28 claimed. If you claim an exemption to part(s) of a document, please produce

1 the portion(s) for which no exemption is claimed and provide the information
2 listed above for the portion(s) for which exemption(s) is/are claimed. This will
3 permit us to determine whether or not to seek administrative or judicial review
4 of your claims of exemption(s).

5 Ex. A at 8.

6 33. The DHS confirmed receipt of the FOIA request on August 4, 2020,
7 and assigned it the reference number 2020-HQFO-01576. Plaintiffs do not believe
8 that ICE confirmed receipt of the FOIA request.

9 34. The DHS and ICE did not timely provide the requested records.
10 Plaintiffs submitted an administrative appeal addressed to FOIA Appeals, U.S.
11 Department of Homeland Security and the Office of the Principal Legal Advisor of
12 the Government Information Law Division on November 11, 2020. Copy filed
13 herewith as Exhibit B. By correspondence dated November 12, 2020, the DHS
14 acknowledged receipt of Plaintiffs' FOIA administrative appeal assigning it number
15 2021-HQAP-00011 for tracking purposes. Plaintiffs do not believe they have
16 received any acknowledgment from ICE to date.

17 35. The Appeal reiterated that if DHS finds it impossible to produce all
18 documents called for by the request within the statutorily prescribed time limits, to
19 "please produce all documents that are located within such time and advise us when
20 you believe the remainder of the documents requested will be produced." Ex. B at 7.

21 36. While Defendants initially indicated an "Estimated Delivery Date" of
22 January 2, 2021, on their online status portal, no records were released by that date
23 and Defendants have not notified Plaintiffs whether they will comply with the FOIA
24 request or by what date they may do so. Thus, under 5 U.S.C. § 552(a)(6)(A)(i) and 5
25 U.S.C. § 552(a)(6)(C), Plaintiffs have exhausted the applicable administrative
26 remedies with respect to their FOIA request.

27 37. Plaintiffs have private rights of action against Defendants ICE and
28 DHS, as pleaded herein, pursuant to 5 U.S.C. § 552 and the Administrative

1 Procedure Act, 5 U.S.C. § 706.

2 V

3 **CLAIMS FOR RELIEF**

4 38. Plaintiffs reallege and incorporate by reference ¶¶ 1 through 37 of this
5 Complaint as though fully set forth here.

6 39. Plaintiffs have received no communication from Defendants that contains
7 the notification required by 5 U.S.C. § 552(a)(6)(A)(i). Defendants failure to respond
8 within the statutory time limit violates 5 U.S.C. § 552(a)(6)(A) and is arbitrary,
9 capricious, an abuse of discretion, or otherwise not in accordance with law and in
10 violation of the Administrative Procedure Act, 5 U.S.C. § 706.

11 40. Defendants' failure to make the records sought by the Request promptly
12 available violates the FOIA, 5 U.S.C. § 552(a)(3)(A), and Defendants' corresponding
13 regulations, and is arbitrary, capricious, an abuse of discretion, or otherwise not in
14 accordance with law and in violation of the Administrative Procedure Act, 5 U.S.C. §
15 706.

16 41. Defendants' anticipated wrongful withholdings of specific responsive
17 records, or portions thereof, violates the FOIA, 5 U.S.C. § 552(a)(3)(A), (6)(A),
18 Defendants' corresponding regulations, and will be arbitrary, capricious, an abuse of
19 discretion, or otherwise not in accordance with law and in violation of the
20 Administrative Procedure Act, 5 U.S.C. § 706.

21 42. Defendants' failure to make a reasonable effort to search for records
22 responsive to the Requests violates the FOIA, 5 U.S.C. § 552(a)(3)(C), and
23 Defendants' corresponding regulations, and is arbitrary, capricious, an abuse of
24 discretion, or otherwise not in accordance with law and in violation of the
25 Administrative Procedure Act, 5 U.S.C. § 706

26 43. Plaintiffs' FOIA Request seeks disclosure of documents without
27 commercial value and solely to further governmental transparency by allowing a
28 study and assessment of the federal Government's policies relating to the detention

1 and release of detained parents and children. Defendants’ refusal to waive or reduce
2 fees for processing Plaintiffs’ FOIA Request amounts to a violation of 5 U.S.C. §
3 552, 6 C.F.R. § 5.11(k)(1), the Administrative Procedure Act, 5 U.S.C. §§ 706, *et*
4 *seq.*, and the Due Process Clause of the Fifth Amendment to the United States
5 Constitution.

6 **PRAYER FOR RELIEF**

7
8 WHEREFORE Plaintiffs pray this Court —

- 9 1. Enjoin Defendants from demanding fees, or refusing to reduce fees, as a
10 condition of producing the records Plaintiffs’ FOIA Request seeks;
- 11 2. Enjoin Defendants from withholding the agency records Plaintiffs’ FOIA
12 Request seeks and require Defendants to produce such records forthwith, or in the
13 alternative, to make a determination forthwith regarding Plaintiffs’ FOIA Request
14 that meets the requirements of 5 U.S.C. §552(a)(4)(G)(6) and 6 C.F.R. § 5.5;
- 15 3. Make a written finding pursuant to 5 U.S.C. § 552(a)(4)(F) that the
16 circumstances surrounding Defendants’ withholding of requested records raise
17 questions whether agency personnel acted arbitrarily or capriciously with respect to
18 such withholding; and
- 19 4. Award Plaintiffs reasonable attorney’s fees and costs pursuant to 5 U.S.C.
20 § 552(a)(4)(E) or the Equal Access to Justice Act, 28 U.S.C. § 2412(d);
- 21 5. Grant such other and further relief as Plaintiffs may seek or the Court may
22 deem just and proper.

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24 Date: February 9, 2021

25 Respectfully submitted,
26 CENTER FOR HUMAN RIGHTS AND
27 CONSTITUTIONAL LAW
28 PETER SCHEY
CARLOS HOLGUIN

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

CLERGY AND LAITY UNITED FOR
ECONOMIC JUSTICE et al.,

Plaintiffs,

v.

DEPARTMENT OF HOMELAND
SECURITY; U.S. IMMIGRATION
AND CUSTOMS ENFORCEMENT,

Defendants.

Case No.

**EXHIBIT A OF COMPLAINT
FOR INJUNCTIVE AND
DECLARATORY RELIEF
(FREEDOM OF INFORMATION ACT).**



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August 4, 2020

*Via Priority Mail USPS and via email to
ice-foia@ice.dhs.gov and foia@hq.dhs.gov*

Chief Privacy Officer/Chief FOIA Officer
Privacy Office, Mail Stop 0655
Department of Homeland Security
2707 Martin Luther King Jr. AVE SE
Washington, DC 20528-065

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

Re: Freedom of Information Request

To Whom It May Concern:

This request is made pursuant to the Freedom of Information Act (“FOIA”) on behalf of the Center for Human Rights and Constitutional Law (Los Angeles, CA), and the following non-profit organizations: Amnesty International USA, Human Rights Watch, Aldea – The People’s Justice Center (Reading, PA), Alianza Americas (Chicago, IL), Columbia Law School Immigrants’ Rights Clinic (New York, NY), Clergy and Laity United for Economic Justice (Los Angeles, CA), El Rescate (Los Angeles, CA), Geographies of Displacement: a Joint Research Project of the University of Texas at Austin and El Colegio de Sonora (Austin, TX), Immigrant Justice Task Force (Chicago, IL), Interfaith Community for Detained Immigrants (Chicago, IL), League of United Latin American Citizens (Huntington Beach, CA), Legal Aid Foundation of Los Angeles (Los Angeles, CA), Legal Services for Prisoners with Children (San Francisco, CA), No More Deaths (Tucson, AZ), Project Lifeline (Tiburon, CA), Proyecto Dille (San Antonio, TX), Public Law Center (Santa Ana, CA), Refugee and Immigrant Center for Education and Legal Services (San Antonio, TX), Uncage & Reunite Families Coalition (Tempe, AZ), and Witness at the Border (Menlo Park, CA).

The Requesting Parties are represented in this matter by the Center for Human Rights and Constitutional Law, Columbia Law School Immigrants’ Rights Clinic, Greater Dallas Legal and

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Community Development Foundation, Legal Aid Foundation of Los Angeles, Legal Services for Prisoners with Children, and St. Vincent de Paul Legal Program Child Advocacy Clinic at St. Johns University School of Law.

Location of documents sought

This request seeks documents in the possession of the Department of Homeland Security (DHS) and the Immigration and Customs Enforcement (ICE) Headquarters and its family detention centers, juvenile detention centers, and locations where parole or credible fear determination records are located.

Purpose of document request

The Requesting Parties seek access to the information described below in order to further their study and assessment of policies and practices relating to the adjudication of, and delays in processing of parole and credible fear determinations for immigrant minors and their parents in ICE custody. The Requesting Parties' interest in this information is non-pecuniary and they will both use the records obtained to develop administrative and legislative policy recommendations as well as to disseminate records obtained to other stakeholders and academicians concerned with the detention of parents and their children.

The assessments arrived at by the Requesting Parties along with documents released or summaries of such documents will be shared with interested non-profit organizations, religious entities, and U.S. policy makers, with the goal of increasing public understanding of the issues addressed in the requested documents and encouraging the formulation of proposals for consistent and fair parole and credible fear determinations and the prompt release of parents with their children.

Time to Respond

If you find it impossible to produce all documents called for by this request within the statutorily prescribed time limits, please produce all documents that are located by you within such time and advise us when you believe the remainder of the documents requested will be produced.

Request for fee waiver

Because the Requesting Parties are non-profit organizations, and because the information sought will be used solely for humanitarian purposes, we request that a fee waiver be granted in this matter.

The disclosure is likely to contribute to an understanding of government operations or activities. The disclosable portions of the requested records will be meaningfully informative about government operations or activities and therefore will be likely to contribute to an increased public understanding of those operations or activities.

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The disclosure of the requested information will contribute to public understanding. The disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requesting parties. The requesters' collective expertise in the subject area and ability and intention to effectively convey information to the public may be considered as evidence of their ability to disseminate disclosures in a way that would contribute to public understanding.

The disclosures are likely to contribute significantly to public understanding of government operations or activities. The public's understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure, will be enhanced significantly by the disclosure.

The requesting parties have no commercial interest that would be furthered by the requested disclosures.

If this request is insufficient to secure the requested fee waiver, please advise us of what additional information we can share with you that might permit you to approve the application. In the event a fee waiver is denied, we request that you process this request immediately and the Center for Human Rights and Constitutional Law agrees to pay all fees reasonably incurred responding to this request while reserving the right to appeal any denial of the fee waiver request.

Definitions

The terms "document" or "documents" as used in this request refer to all forms of communication preserved in some physical form, including, but not limited to, spreadsheets, data compilations, directives, instructions, files, indices, orders, reports, cables, emails, telegrams, notes, letters, instructions, memoranda, reviews, photographs, and transcripts, whether maintained in paper, digital, video, audio tape, or any other form.

The term the "FSA" refers to the settlement in the case entitled *Flores v. Barr*, Cv. No. 85-04544 (C.D. Cal.).

The terms "*Flores* class member" refers to all minors who are detained in the legal custody of the ICE. See FSA ¶ 10.

The term "parole worksheet" refers to documents used to record determinations regarding the release of parents detained with their *Flores* class member children in family detention facilities and *Flores* class members in the custody of ICE detained in any location identified below.

The term "Dilley" refers to the South Texas Family Residential Center run by CoreCivic in Dilley, TX.

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The term “Karnes” refers to the Karnes Family Residential Center run by Geo Group in Karnes, TX.

The term “Berks” refers to Berks Family Residential Center run by the County of Berks in Leesport, PA.

The term “Cowlitz” refers to Cowlitz County Youth Services Center run by Cowlitz County in Longview, WA.

The term “Norcor” refers to the Northern Oregon Regional Correctional Facility run by Wasco, Sherman, Gilliam and Hood River Counties in The Dalles, OR.

The term “parent” includes parents and guardians detained by ICE with *Flores* class members.

Documents requested

Unless otherwise indicated, the Requesting Parties seek access to copies of the documents described below relating to parents and *Flores* class members who were in ICE custody on January 1, 2020, or any time between January 1, 2020, and the date you receive this FOIA request. This includes parents and *Flores* class members in ICE detention as of January 1, 2020, regardless if placed in ICE custody prior to January 1, 2020, as well as parents and *Flores* class members released between January 1, 2020, and the date you receive or respond to this FOIA request. If you have any questions about this limitation, please immediately contact us.

Dilley

1. For each parent or guardian *and* for each accompanying *Flores* class member please separately produce (i) all of their parole worksheets, (ii) all documents relied upon to reach the decisions in the parole worksheets, (iii) all documents regarding interviews with the parents or their children regarding release, (iv) documents showing communications with the parents’ or their children’s counsel of record, (v) their forms I-860, I-867, I-870, and I-899, and (vi) all G-28 Notice of Appearance forms filed for the parents or *Flores* class member children regardless when the G-28 was filed with ICE.

2. Regardless of when dated, please produce all current contracts (i.e. those currently in force) relating to the operation of Dilley including contracts in which ICE or DHS is a party and contracts in which CoreCivic or any other person or entity is a party even if ICE or DHS are not parties.

3. Regardless of when dated, please produce all documents that relate to the current state license status of the Dilley facility, including but not limited to (i) any license(s) it possesses, (ii) application materials relating to the license(s), and (iii) all communications between ICE, DHS, or CoreCivic regarding the facility's current license(s).

4. Regardless of when dated, please produce all instructions or directions provided to ICE employees working at Dilley or Dilley staff relating to the release of minors or their accompanying parents, including instructions or directions relating to (i) which parents may be

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released or (ii) compliance with the *Flores* Settlement Agreement or any of the Orders issued in *Flores v. Barr*, Cv. No. 85-04544 (C.D. Cal.).

Karnes

5. For each parent or guardian *and* for each accompanying *Flores* class member please separately produce (i) all of their parole worksheets, (ii) all documents relied upon to reach the decisions in the parole worksheets, (iii) all documents regarding interviews with the parents or their children regarding release, (iv) documents showing communications with the parents' or their children's counsel of record, (v) their forms I-860, I-867, I-870, and I-899, and (vi) all G-28 Notice of Appearance forms filed for the parents or *Flores* class member children regardless when the G-28 was filed with ICE.

6. Regardless of when dated, please produce all current contracts (i.e. those currently in force) relating to the operation of Karnes including contracts in which ICE or DHS is a party and contracts in which Geo Group or any other person or entity is a party even if ICE or DHS are not parties.

7. Regardless of when dated, please produce all documents that relate to the current state license status of the Karnes facility, including but not limited to (i) any license(s) it possesses, (ii) application materials relating to the license(s), and (iii) all communications between ICE, DHS, or Geo Group regarding the facility's current license(s).

8. Regardless of when dated, please produce all instructions or directions provided to ICE employees working at Karnes or Karnes staff relating to the release of minors or their accompanying parents, including instructions or directions relating to (i) which parents may be released or (ii) compliance with the *Flores* Settlement Agreement or any of the Orders issued in *Flores v. Barr*, Cv. No. 85-04544 (C.D. Cal.).

Berks

9. For each parent or guardian *and* for each accompanying *Flores* class member please separately produce (i) all of their parole worksheets, (ii) all documents relied upon to reach the decisions in the parole worksheets, (iii) all documents regarding interviews with the parents or their children regarding release, (iv) documents showing communications with the parents' or their children's counsel of record, (v) their forms I-860, I-867, I-870, and I-899, and (vi) all G-28 Notice of Appearance forms filed for the parents or *Flores* class member children regardless when the G-28 was filed with ICE.

10. Regardless of when dated, please produce all current contracts (i.e. those currently in force) relating to the operation of Berks including contracts in which ICE or DHS is a party and contracts in which Berks County or any other person or entity is a party even if ICE or DHS are not parties.

11. Regardless of when dated, please produce all documents that relate to the current state license status of the Berks facility, including but not limited to (i) any license(s) it possesses, (ii) application materials relating to the license(s), and (iii) all communications between ICE, DHS, or Berks County regarding the facility's current license(s).

12. Regardless of when dated, please produce all instructions or directions provided to ICE employees working at Berks or Berks staff relating to the release of minors or their

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accompanying parents, including instructions or directions relating to (i) which parents may be released or (ii) compliance with the *Flores* Settlement Agreement or any of the Orders issued in *Flores v. Barr*, Cv. No. 85-04544 (C.D. Cal.).

Cowlitz

13. For each *Flores* class member detained for ICE at Cowlitz at any time from January 1, 2020 to the time you receive this request please produce (i) all of their parole worksheets, (ii) all documents relied upon to reach the decisions in the parole worksheets, (iii) all documents regarding interviews with the parents or relatives of the detained *Flores* class members or with the detained *Flores* class members regarding release, (iv) documents showing communications with the parents' or relatives' or class members' counsel of record, (v) their forms I-860, I-867, I-870, and I-899, and (vi) all G-28 Notice of Appearance forms filed for the class members regardless when the G-28 was filed with ICE.

14. Regardless of when dated, please produce all current contracts (i.e. those currently in force) relating to the detention of *Flores* class members at Cowlitz, including contracts in which ICE or DHS is a party and contracts in which Cowlitz or any other person or entity is a party even if ICE or DHS are not parties.

15. Regardless of when dated, please produce all documents that relate to the current license status of the Cowlitz facility, including but not limited to (i) any license(s) it possesses, (ii) application materials relating to the license(s), and (iii) all communications between ICE, DHS, or Cowlitz regarding the facility's current license(s).

16. Regardless of when dated, please produce all instructions or directions provided to ICE employees dealing with or making decisions regarding *Flores* class members detained at Cowlitz, or provided to Cowlitz staff, relating to the FSA rights of *Flores* class members detained at Cowlitz including their right to release.

Norcor

17. For each *Flores* class member detained for ICE at Norcor at any time from January 1, 2020, to the time you receive this request please produce (i) all of their parole worksheets, (ii) all documents relied upon to reach the decisions in the parole worksheets, (iii) all documents regarding interviews with the parents or relatives of the detained *Flores* class members or with the detained *Flores* class members regarding release, (iv) documents showing communications with the parents' or relatives' or class members' counsel of record, (v) their forms I-860, I-867, I-870, and I-899, and (vi) all G-28 Notice of Appearance forms filed for the class members regardless when the G-28 was filed with ICE.

18. Regardless of when dated, please produce all current contracts (i.e. those currently in force) relating to the detention of *Flores* class members at Norcor, including contracts in which ICE or DHS is a party and contracts in which Wasco, Sherman, Gilliam and Hood River Counties or any other person or entity is a party even if ICE or DHS are not parties.

19. Regardless of when dated, please produce all documents that relate to the current license status of the Norcor facility, including but not limited to (i) any license(s) it possesses, (ii) application materials relating to the license(s), and (iii) all communications between ICE, DHS, or Cowlitz regarding the facility's current license(s).

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20. Regardless of when dated, please produce all instructions or directions provided to ICE employees dealing with or making decisions regarding *Flores* class members detained at Norcor, or provided to Norcor staff, relating to the FSA rights of *Flores* class members detained at Cowlitz including their right to release.

Credible Fear Interviews

21. Please provide copies of all documents dated on or after January 1, 2019, involving in whole or in part instructions regarding the conduct of or decisions in credible fear of persecution or torture interviews and all training materials shared with officers conducting credible fear interviews dated on or after January 1, 2019.

Handling claimed exemptions

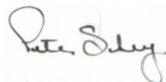
If you locate documents responsive to these requests regarding which you claim an exemption in whole or in part from disclosure, please identify (1) the author and his/her position in the Government, (2) the addressee(s), (3) the date of the document(s), (4) the general topic of the document(s), (5) the number of pages in the document(s), and (6) the specific exemption(s) claimed. If you claim an exemption to part(s) of a document, please produce the portion(s) for which no exemption is claimed and provide the information listed above for the portion(s) for which exemption(s) is/are claimed. This will permit us to determine whether or not to seek administrative or judicial review of your claims of exemption(s).

If we do not hear from you by the expiration of the statutory time period, we may deem your non-response to be a denial of this request and may seek administrative review. Please advise us to whom the administrative appeal(s) should be addressed.

If you have any questions please feel free to call Peter Schey at (323) 251-3223 or email at pschey@centerforhumanrights.org.

Thank you for your consideration and assistance.

Sincerely,



Peter A. Schey
Center for Human Rights and
Constitutional Law

Elora Mukherjee
Columbia Law School Immigrants' Rights
Clinic

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Attorneys for Plaintiffs

10 UNITED STATES DISTRICT COURT
 11 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

12 CLERGY AND LAITY UNITED FOR
 13 ECONOMIC JUSTICE et al.,

Plaintiffs,

v.

15 DEPARTMENT OF HOMELAND
 16 SECURITY; U.S. IMMIGRATION
 17 AND CUSTOMS ENFORCEMENT,

Defendants.

Case No.

**EXHIBIT B OF COMPLAINT
 FOR INJUNCTIVE AND
 DECLARATORY RELIEF
 (FREEDOM OF INFORMATION ACT).**



CENTER FOR HUMAN RIGHTS AND CONSTITUTIONAL LAW

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November 11, 2020

Via Priority Mail USPS, fax, and email to
ice-foia@ice.dhs.gov ice-foia@dhs.gov and foia@hq.dhs.gov
ICE Fax (202) 732-4266, (202) 732-4265

Privacy Office, Attn: FOIA Appeals,
U.S. Department of Homeland Security,
245 Murray Lane, SW, Mail Stop 0655,
Washington, D.C. 20528-0655

Office of the Principal Legal Advisor
Government Information Law Division
500 12th Street S.W. Stop 5900
Washington, D.C. 20536-5900

Re: FOIA Request Administrative Appeal DHS 2020-HQFO-01576

To Whom It May Concern:

This is an appeal relating to the August 4, 2020, FOIA request submitted to the Department of Homeland Security (DHS) and U.S. Immigration and Customs Enforcement (ICE) a copy of which is attached. DHS confirmed receipt of the FOIA request (2020-HQFO-01576). We do not believe that ICE confirmed receipt of the FOIA request.

DHS and ICE have not responded to the FOIA request of August 4, 2020, and we are treating the non-response as the functional equivalent of a denial. We plan to file a complaint in the United States District Court for the Central District of California fairly promptly if this administrative appeal is not responded to in a timely manner.

As you must know, the Freedom of Information Act was meant to guarantee prompt access to important agency records. To that end, the FOIA generally grants an agency a limited time in which to respond to a request for records. 5 U.S.C. § 552(a)(6)(A)(i). *See also* the FOIA Improvement Act of 2016, Public Law 114-185. When an agency fails to respond within that statutory time frame, it has constructively denied the request. *See* 5 U.S.C. § 552(a)(6)(c)(i); *see also* *Oglesby v. U.S. Dep't of Army*, 920 F.2d 57, 65 (D.C. Cir. 1990) (“Congress adopted the time limit provision in the FOIA in order to ‘contribute to the fuller and faster release of information, which is the basic objective of the Act.’”

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(quoting H.R. Rep. No. 93-876, 93d Cong., 2d Sess., reprinted (1974) U.S. Code Cong. & Ad. News 6267 at 6271)).

DHS and ICE have not asserted that “extraordinary circumstances” exist to justify its refusal to timely respond to the request for records within the time period required by the FOIA. *Govt. Accountability Project v. US Dept. of HHS*, 568 F.Supp. 2d 55, 58 (D.D.C. 2008) (citing *Open Am. V. Watergate Special Prosecution Force*, 547 F.2d 605, 616 (D.C. Cir. 1976).

The FOIA mandates fee waivers where the “disclosure of the requested 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 “the disclosure of the information is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); 6 C.F.R. § 5.11(k), Fees.

The current request for records meets both requirements. First, this request seeks information that will contribute significantly in the requesting parties’ study and assessment of policies and practices relating to the adjudication of and delays in processing of parole and credible fear determinations for immigrant minors and their parents in ICE custody.

Second, the Requesting Parties’ interest in this information is entirely non-pecuniary and they will both use the records obtained to develop administrative and legislative policy recommendations as well as to disseminate records obtained to other stakeholders and academicians concerned with the detention of parents and their children.

Given the unique capacity of the Requesting Parties to ensure that the requested disclosure benefits the public interest, as well as the absence of any commercial interest motivating this request, DHS and ICE should grant the requested fee waiver.

By enacting the fee waiver provision of FOIA, “Congress explicitly recognized the importance and the difficulty of access to governmental documents for under-funded organizations and individuals.” *Coalition for Safe Power v. U.S. Dep’t of Energy*, Civ. No. 87-1380PA, slip op. at 7 (D.Or. July 22, 1988) (citing *Better Gov’t Ass’n v. Department of State*, 780 F.2d 86, 94 (D.C. Cir. 1986)).

Congress was particularly concerned that some agencies were using search and copying costs to prevent transparency of their activities:

Indeed, experience suggests that agencies are most resistant to granting fee waivers when they suspect that the information sought may cast them in a less than flattering light or may lead to proposals to reform their practices. Yet that is precisely the type of information, which the FOIA is supposed to disclose, and agencies should not be allowed to use fees as an offensive weapon against requesters seeking access to Government information....

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132 Cong. Rec. S14298 (Sen. Leahy).

FOIA's expanded fee waiver provision was intended to facilitate access to agency records by citizen "watchdog" organizations, which utilize FOIA to monitor and occasionally, where appropriate, to mount challenges to governmental activities. *See Better Gov't Ass'n v. Department of State*, 780 F.2d 86, 88-89 (D.C. Cir. 1986)(fee waiver intended to benefit public interest watchdogs).

[Fee waivers are essential to groups that] rely heavily and frequently on FOIA and its fee waiver provision to conduct the investigations that are essential to the performance of certain of their primary institutional activities - publicizing governmental choices and highlighting possible abuses that otherwise might go undisputed and thus unchallenged. These investigations are the necessary prerequisites to the fundamental publicizing and mobilizing functions of these organizations. Access to information through FOIA is vital to their organizational missions....

The waiver provision was added to FOIA "in an attempt to prevent government agencies from using high fees to discourage certain types of requesters and requests," in a clear reference to requests from journalists, scholars and, most importantly for our purposes, nonprofit public interest groups.

Better Gov't Ass'n, 780 F.2d at 93-94.

In the event you believe a fee waiver should be denied, please explain the basis therefore and forward us a statement of costs. We shall endeavor to provide additional information supporting waiver of fees, or forward payment for reasonable search and copying fees.

If you determine that certain information requested is exempt from disclosure, we respectfully request that you redact such information and release any reasonably segregable portion. Should you withhold any records, we ask that you please provide an index describing the withheld information, including minimally —

- A description of each record (including the date such record was created, the author of such record, the subject matter of such record and the number of pages of such record);
- A statement revealing which statutory exemption is claimed to justify the withholding; and
- An explanation of how disclosure would damage the interests protected by the claimed exemption.

See Citizens Comm'n on Human Rights v. FDA, 45 F.3d 1325, 1326 n.1 (9th Cir. 1995).

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Notwithstanding the redaction of segregable information or the issuance of an index, the requesting parties reserve the right to appeal any failure to comply with the applicable time limits imposed by the FOIA and any denial or withholding of information.

We respectfully request that you respond to this appeal within the time prescribed by law. *See* 5 U.S.C. § 552(a)(6)(A)(ii). In light of the COVID-19 pandemic, and the dangers this exposes detained children and parents to, we respectfully request expedited treatment of this appeal.

Please feel free to contact me by telephone (323) 251-3223 or email pschey@centerforhumanrights.org if you have any questions regarding this appeal.

Sincerely,

Peter Schey, Esq.
Center for Human Rights and Constitutional Law

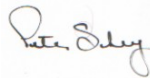
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Legal Aid Foundation of Los Angeles

Jennifer Baum, Esq.
St. Vincent de Paul Legal Program Child
Advocacy Clinic at St. Johns University
School of Law

By:



Peter Schey
Center for Human Rights and Constitutional Law
Attorneys for the Requesting Parties

ccs: Requesting parties

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