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et al.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
(San Francisco Division)

JUSTICE & DIVERSITY CENTER OF THE
BAR ASSOCIATION OF SAN FRANCISCO,
IMMIGRANT LEGAL RESOURCE
CENTER, COMMUNITY LEGAL
SERVICES OF EAST PALO ALTO,
DOLORES STREET COMMUNITY
SERVICES, LEGAL SERVICES FOR
CHILDREN, PANGEA LEGAL SERVICES,
IMMIGRATION CENTER FOR WOMEN
AND CHILDREN,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY; UNITED
STATES IMMIGRATION AND CUSTOMS
ENFORCEMENT,

Defendant.

Case No.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF UNDER THE
FREEDOM OF INFORMATION ACT
(FOIA), 5 U.S.C. § 552**

*Application for Admission filed and pending approval

INTRODUCTION

1. Since 2017, the Trump Administration has sought to expand and change the use of its Alternatives to Detention (ATD) program under a shroud of secrecy and an alarming lack of transparency. Noncitizens in removal proceedings, many of whom are fleeing violence and trauma, who have no criminal records, and for whom the law does not mandate detention during the course of one's immigration proceedings, are nevertheless fitted with electronic monitoring devices and subjected to strict limitations on their physical movement. Despite the expansion and changes to the program in recent years, ICE has refused to share information and has maintained secrecy around critical aspects of the program, including, but not limited to: 1) the manner in which the federal government is contracting with a private corporation to run its ATD program; 2) how individuals' "risks" are assessed; 3) and whether there are less intrusive alternatives.

2. To uncover more information about ATDs, the Justice & Diversity Center of The Bar Association of San Francisco ("JDC"), the Immigrant Legal Resource Center ("ILRC"), Community Legal Services of East Palo Alto ("CLSEPA"), Dolores Street Community Services ("DSCS"), Legal Services for Children ("LSC"), Pangea Legal Services ("Pangea"), and Immigration Center for Women and Children ("ICWC) (collectively, "Plaintiffs"), sent the Administration a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 *et seq.*, as amended. Plaintiffs sought records about the ATD program from U.S. Immigration and Customs Enforcement ("ICE"), the sub-agency within the Department of Homeland Security ("DHS") responsible for immigration enforcement nationwide (collectively, "Defendants"). Yet after six months, Defendants have not produced a single document in response to Plaintiffs' FOIA request, even after Plaintiffs filed an administrative appeal. Plaintiffs now bring this action

under FOIA seeking an order that Defendants immediately search and disclose records pursuant to Plaintiffs' FOIA request.

JURISDICTION, VENUE & INTRADISTRICT ASSIGNMENT

3. 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). This Court also has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. §§ 701-06.

4. Venue is proper in this district under 5 U.S.C. § 552(a)(4)(B) because all Plaintiffs have their principal place of business in this district. Venue is also proper under 28 U.S.C. § 1391(e) because a substantial part of the events or omissions giving rise to this action occurred in this district.

5. Assignment to the San Francisco Division is proper pursuant to Civil Local Rules 3-2(c) and (d) because a substantial part of the events which give rise to the claims occurred in San Francisco County. Defendant, ICE, has its Northern California headquarters in San Francisco. The Intensive Supervision Appearance Program (ISAP)'s Northern California office is located in San Francisco. In addition, six out of the seven Plaintiffs have their principal place of business in San Francisco.

PARTIES

6. The Justice & Diversity Center of The Bar Association of San Francisco ("JDC") is a non-profit organization that advances fairness and equality by providing pro bono legal services to low-income people. JDC's Immigrant Legal Defense Program (ILDP) seeks to protect the due process rights of low-income and unrepresented immigrants facing deportation. ILDP builds legal capacity and resources in Northern California so local attorneys and

organizations are better coordinated and equipped to defend individuals in deportation proceedings in the San Francisco Immigration Court. ILDP coordinates a working group focused on sharing information regarding ATDs, including electronic monitoring devices.

7. The Immigrant Legal Resource Center (ILRC) is a national non-profit resource center that provides legal training, educational materials, publications, and advocacy support to individuals and groups assisting low-income persons with immigration matters. The ILRC works with a broad array of individuals, agencies, and institutions including immigration attorneys and advocates, criminal defense attorneys, civil rights advocates, social workers, law enforcement, judges, and local and state elected officials. The ILRC works with community members who are directly impacted by ATD programs and provides case-based technical assistance to attorneys whose clients are subject to ATD programs, including electronic monitoring devices.

8. Community Legal Services in East Palo Alto (CLSEPA) provides legal assistance to low-income individuals and families in East Palo Alto and surrounding communities. Its immigration law practice provides direct legal representation to hundreds of adults and children each year. It has played a key role in responding to the needs that have arisen in connection with the expedited dockets for unaccompanied minors and families who recently arrived in the United States and have cases pending before the San Francisco Immigration Court. Many of CLSEPA's clients are subject to ATD programs, including electronic monitoring devices.

9. Dolores Street Community Services (DSCS) is a non-profit organization that engages in community outreach, advocacy, and pro bono deportation defense for low-income immigrants. DSCS's Deportation Defense & Legal Advocacy Project was the first program in San Francisco dedicated specifically to deportation defense work, and continues to actively

participate in various collaboratives to advance the rights of immigrant communities in the Bay Area through representation, advocacy, and education. DSCS represents detained and formerly detained individuals who are seeking protection from persecution and torture in their countries of origin, many of whom are subject to ATD programs, including electronic monitoring devices.

10. Legal Services for Children (LSC) is one of the first non-profit law firms in the country dedicated to advancing the rights of youth. LSC's mission is to ensure that all children in the San Francisco Bay Area have an opportunity to be raised in a safe and stable environment with equal access to the services they need to become healthy and productive young adults. LSC's practice includes foster care, guardianship, education and immigration cases. Many of LSC's clients are subject to ATD programs, including electronic monitoring devices.

11. Pangea Legal Services is a nonprofit organization that provides low-cost and free legal services to low-income immigrants at risk of deportation. In addition to direct legal services, Pangea also advocates on behalf of the immigrant community through policy advocacy, education, and legal empowerment efforts. Pangea distributes a quarterly newsletter; has participated in national webinars, conferences, and international human rights forums; and has been featured in reports by Univision, Human Rights Watch, the Daily Law Journal, and The New Yorker. Many of Pangea's clients are subject to ATD programs, including electronic monitoring devices.

12. The Immigration Center for Women and Children ("ICWC") is a non-profit legal services organization whose mission is to provide affordable immigration services to underrepresented immigrants in California and Nevada. Specifically, ICWC cases focus on the rights and legal remedies of the most vulnerable immigrant communities, including victims of

serious crimes, domestic violence and sexual assault. ICWC assists clients to gain legal status and obtain work authorization to improve their lives and create security and stability for their families. ICWC does this by providing direct legal services, hosting a database for advocates nationwide, conducting national trainings and publishing practice manuals on complex immigration issues. Many of ICWC's clients are subject to ATD programs, including electronic monitoring devices.

13. Defendant, the United States Department of Homeland Security ("DHS"), is a federal agency within the meaning of 5 U.S.C. § 552(f). It is tasked with administering and enforcing the federal immigration laws. Defendant, Immigration and Customs Enforcement ("ICE"), is a sub-agency within DHS that identifies individuals to be placed in ATD programs and initiates removal proceedings. Upon information and belief, given their central role in the program's operation and administration, DHS and ICE have the requested records in their possession, custody, or control.

FACTS

I. DEFENDANTS HAVE EXPANDED THEIR USE OF INTRUSIVE ALTERNATIVES TO DETENTION TO MONITOR AND SUPERVISE NONCITIZENS IN IMMIGRATION REMOVAL PROCEEDINGS.

14. Since 2004, Congress has provided funding to Defendants, DHS and ICE, for the ATD Program.¹ The ATD program is a flight mitigation tool that uses technology and case management to guarantee that certain non-detained noncitizens comply with the conditions of their release.² Noncitizens enrolled in the ATD program are released from detention subject to

¹ Audrey Singer, Cong. Research Serv. R45804, *Immigration: Alternative to Detention (ATD) Program* 4 (2019), <https://fas.org/sgp/crs/homsec/R45804.pdf>.

² U.S. ICE, *Detention Management Detention Statistics* (last updated Jul 16, 2020), <https://www.ice.gov/detention-management#> (last updated July 28, 2020).

various conditions which may include: participation in case management services, in-person or telephonic supervision, and/or location monitoring via an electronic monitoring devices (EMD).³

15. Before a noncitizen is enrolled in the ATD program, Defendants must determine whether the noncitizen is statutorily mandated to be detained and whether the noncitizen poses a threat to public safety or national security.⁴ Assuming that the answer to both inquiries is no, Defendants use a software program known as the ICE Risk Classification Assessment (“RCA”) to assess whether a noncitizen poses a risk of flight by evaluating certain characteristics, including the noncitizen’s arrest history and community ties.⁵ Following this assessment, the noncitizen may be enrolled Defendants’ ATD program. Ostensibly, the level of supervision and monitoring to which the noncitizen is subject under the ATD will correspond to the noncitizen’s risk (or lack of risk) of flight. However, by Defendants’ own admission, the ATD program is not a substitute for detention and is not intended to mitigate the risk of flight; rather, the ATD program is used to enhance Defendants’ “ability to monitor more intensively a subset of foreign nationals released into communities.”⁶ Indeed, the most recently available data reveals that the majority of noncitizens enrolled in ATD programs had strong community ties and 90 percent had no criminal history.⁷

16. Presently, the Intensive Supervision Appearance Program (“ISAP”) III, now in its third iteration, is the only ATD program in operation.⁸ Since its inception in 2004, ISAP has been administered in whole or in part by BI Incorporated (“BI Inc.”), a wholly owned subsidiary

³ Singer, *supra* note 1, at 1.

⁴ *Id.*

⁵ *Id.* at 4.

⁶ *Id.* at 6.

⁷ *Id.* at 8.

⁸ U.S. ICE, *supra* note 2.

of the private prison corporation Geo Group.⁹ BI Inc. provides Defendants with case management and supervision services to ensure that non-detained noncitizens comply with all release conditions and attend all court hearings. Case management services “include a combination of face-to-face and telephonic meetings, unannounced visits to a [noncitizen]’s home, scheduled office visits by the participant with a case manager, and court and meeting alerts.”¹⁰ Under ISAP III, noncitizens may also be subject to intensive location monitoring through the use of GPS monitoring (via ankle monitors), or smartphone applications that enable noncitizens to report their location and check in with their case managers using facial recognition technology.¹¹

17. According to the Government Accountability Office, noncitizens are subject to the greatest restrictions and closest supervision immediately after they are enrolled in the program.¹² If the noncitizen complies with his or her conditions of release, ICE Field Office Directors should lower supervision and case management services accordingly.¹³

18. In recent years, Defendants have increased the number of noncitizens subject to the ISAP III program after being released from detention. In Fiscal Year 2019, it was reported that there were 101,568 noncitizens enrolled in ISAP III. This represents a 283 percent increase in the number of noncitizens subject to intensive monitoring and supervision in 2015.¹⁴ As of July 2020, there are currently 87,012 noncitizens enrolled in ISAP III around the country.¹⁵

⁹ Singer, *supra* note 1, at 7.

¹⁰ *Id.* at 7-8.

¹¹ *Id.* at 8.

¹² U.S. GAO, *Alternatives to Detention: Improved Data Collection and Analyses Needed to Better Assess Program Effectiveness* 15-16 (Nov. 2016), <https://www.gao.gov/assets/670/666911.pdf>.

¹³ *Id.* at 17.

¹⁴ Singer, *supra* note 1, at 8.

¹⁵ U.S. ICE, *supra* note 2.

19. In March 2020, Defendants announced that ICE had entered into new five-year contract with BI Inc. for the continued operation of the ISAP program. Under the terms of the contract, which went into effect on April 1, 2020, BI Inc. is expected to manage 90,000 to 100,000 noncitizens daily.¹⁶

II. INTENSIVE SUPERVISION AND MONITORING IMPOSES SIGNIFICANT RESTRICTIONS ON INDIVIDUAL LIBERTY AND CAN HARM NONCITIZENS AND THEIR COMMUNITIES

20. Though intensive supervision and monitoring may help to ensure that noncitizens continue to appear in Immigration Court, they do so at significant cost to noncitizens.¹⁷ Irrespective of the effectiveness, electronic monitoring and supervision restricts individual liberty and negatively impacts the physical, psychological, and financial well-being of noncitizens enrolled in ISAP III.

21. The requirements of intensive supervision and electronic monitoring, including confinement to a specific space for significant parts of the day, means that the noncitizen loses the liberty and freedom and right to physically move about.¹⁸

22. In addition to significantly restricting individual liberty, electronic monitoring devices inflict physical and emotional harm on wearers. Ankle monitors are heavy devices that must be worn at all times. Wearers of ankle monitors have reported the following symptoms resulting from their electronic monitoring devices: inflammation of the skin underneath and

¹⁶*The Geo Group Announces Five-Year Contract with U.S. Immigration and Customs Enforcement for Intensive Supervision and Appearance Program (ISAP)*, BUSINESS INSIDER, Mar. 24, 2020, <https://markets.businessinsider.com/news/stocks/the-geo-group-announces-five-year-contract-with-u-s-immigration-and-customs-enforcement-for-intensive-supervision-and-appearance-program-isap-1029026008#>.

¹⁷ Singer, *supra* note 1, at 9 (noting that more than 90 percent of ISAP participants appeared at their hearings).

¹⁸ Am. Immig. L. Assoc., *Position Paper on Alternatives to Detention*, AILA Doc. No. 08070361 (Jul. 3, 2008), <https://www.aila.org/infonet/aila-position-paper-alternatives-to-detention>.

around the device; bruising, bleeding, sores, numbness in the foot and leg; cramps; electric shocks; hair loss; and chest pain.¹⁹ Wearers also experience severe psychological trauma because of the constant surveillance and the association of ankle monitors with shackles used to incarcerate and enslave people of color.²⁰

23. Electronic monitoring devices also raise safety and privacy concerns for the broader community because Defendants use information gleaned from GPS devices to carry out targeted raids against immigrant communities.²¹

III. THE PUBLIC HAS AN URGENT NEED FOR INFORMATION CONCERNING THE ADMINISTRATION OF THE ALTERNATIVES TO DETENTION PROGRAM BECAUSE OF THE DUE PROCESS IMPLICATIONS OF THE PROGRAM.

24. Plaintiffs maintain that under the Due Process Clause of the Constitution and the Immigration and Nationality Act (INA), such restrictions on liberty are only justified when they are necessary to satisfy the state's interest in protecting public safety and ensuring that noncitizens continue to appear at their immigration hearings. *See Zadvydas v. Davis*, 533 U.S. 678, 690. *See also Matter of Guerra* 24 I & N Dec. 37, 38 (BIA 2006). Consequently, Defendants are constitutionally and statutorily required to adopt the least-restrictive means for addressing a noncitizen's risk of flight or dangerousness.

¹⁹ Nat'l Immig. Forum, *Fact Sheet: Electronic Monitoring Devices as Alternatives to Detention* (Feb. 2019), <https://immigrationforum.org/article/fact-sheet-electronic-monitoring-devices-as-alternatives-to-detention/>; Molly Hennessy-Fiske, *Immigrants Object to Growing Use of Ankle Monitors After Detention*, L.A. TIMES (Aug. 2, 2015), <https://www.latimes.com/nation/immigration/la-na-immigrant-ankle-monitors-20150802-story.html>.

²⁰ Kyle Barron and Cinthya Santos Briones, *No Alternative: Ankle Monitors Expand the Reach of Immigration Detention*, NACLA, Jan. 6, 2015, <https://nacla.org/news/2015/01/06/no-alternative-ankle-monitors-expand-reach-immigration-detention>.

²¹ Lautaro Grinspan, *Many of Miami's Immigrants Wear Ankle Monitors. Will Technology Betray Them*, MIAMI HERALD, Aug. 24, 2019, <https://www.miamiherald.com/news/local/immigration/article234230202.html>.

25. Despite the significant burdens that intensive supervision and monitoring impose on noncitizens, Defendants fail to provide uniform standards or clear justification for their use of ATDs to noncitizens enrolled in the program, to their attorneys, or to the public. Defendants further fail to provide clear guidance or procedure for re-evaluating the need for case management and supervision of ATD participants who comply with conditions of release. Defendants' reliance on ATDs that severely restrict individual liberty, cause physical harm, and endanger communities without transparency about how or why restrictions were deemed necessary and whether such restrictions remain necessary, raises serious due process concerns.

26. Upon information and belief, the rapid and considerable expansion of the ATD program should have generated hundreds of pages of documents including, for example, guidance on how noncitizens should be assessed and re-assessed for their risk of flight or danger to the community; discussion of the relationship between risk assessment and conditions of release; and contracts between Defendants and the corporations responsible for implementing case management and supervision (hereinafter "contractors").

27. The expansion of the ATD program is of great interest and concern to Plaintiffs and other immigration advocates who regularly represent detained and non-detained noncitizens in removal proceedings. Plaintiffs and similarly situated organizations have long advocated to limit the use of immigration detention and expand release on parole or subject to other minimally-restrictive conditions of release. In order to ensure that Defendants' ATD program is a meaningful alternative to detention that does not unnecessarily burden individual liberty or unintentionally harm noncitizens and their communities, Plaintiffs require information about the administration of the ATD program. Given Defendants' increasing reliance on ATDs and the

considerable liberty and safety interests at stake, the public has an urgent need for information concerning the administration of the ATD program.

IV. PLAINTIFFS SUBMITTED A FOIA REQUEST FOR INFORMATION REGARDING THE ADMINISTRATION AND EXPANSION OF THE ATD PROGRAM.

28. In response to Defendants' failure to affirmatively provide necessary information about the organization and management of the ATD program, Plaintiffs submitted a request for records pursuant to the Freedom of Information Act, 5 U.S.C. §552, dated January 31, 2020. A true and correct copy of the complete FOIA request is attached as **Exhibit A**.

29. In their request, Plaintiffs sought “[a]ll records from January 2017 to present describing who should and should not be considered for enrollment in the ATD Program. This includes but is not limited to the Risk Classification Assessment (RCA) ... and any other requirements, standards, or factors involved in determining whether to place an individual under ATD supervision.” *Id.* at 3. Relatedly, plaintiffs sought records describing the requirements, standards, or factors considered when modifying or terminating a participant’s conditions of release. *Id.* at 4.

30. Plaintiffs also sought records “related to how many people participate in the ATD program, including any deliberations or determinations about how many slots are available each year, whether to increase the number of slots available, and any records related to considering and/or opening a new ISAP field office.” *Id.* at 3.

31. Plaintiffs sought records regarding memoranda from January 2017 through the present from Field Office directors relating to the ATD program and ISAP III as well as records

relating to any changes made to the Risk Classification Assessment tool following the 2015 Inspector General's Report. *Id.* at 3-4.

32. Plaintiffs further requested records related to Defendants' relationship with private contractors, including BI Inc., which provide case management and location monitoring services to Defendants. Records requested included, among others: contracts, agreements, or Statements of Work; records related to payments made to contractors; communications between Defendants and contractors related to the training and supervision of contract employees responsible for case management or supervision of ATD participants; and reports from contractors to Defendants. *Id.* at 3-4.

33. Plaintiffs sought records regarding how Defendants evaluate ATD participants with medical issues as well as records on the effects or impacts of participation in the ATD program on the health of noncitizens. *Id.* at 4.

34. Plaintiffs additionally sought records regarding the relationship between classification and requirements for participation in the ATD program and the particular procedural posture of a participant's immigration case or their ability to obtain a travel document. *Id.* at 5.

35. In addition, Plaintiffs requested records related to the collection, storage and use of GPS data collected from ATD participants; any studies, reports, or analysis written by Defendants related to the efficacy of the ATD program; and records related to the changes to the ATD program, including the decision to terminate the Family Case Management Program. *Id.* at 5.²²

²² See also Singer, *supra* note 1, at 10-14 (discussing the discontinued Family Case Management Program run by

V. DEFENDANTS FAILED TO MAKE A TIMELY DETERMINATION OF PLAINTIFFS' FOIA REQUEST AND FAILED TO CONDUCT A REASONABLE SEARCH.

36. Despite Defendants, DHS and ICE, acknowledging receipt of Plaintiffs' FOIA request on February 19, 2020 and February 25, 2020, respectively, Defendants have failed to respond to Plaintiffs' request within the twenty days afforded by the FOIA statute, 5 U.S.C. § 552(a)(6)(A)(i), or the ten additional days provided for "unusual circumstance" § 552(a)(6)(B); 28 C.F.R. § 16.5(c). In fact, despite the filing of the FOIA request nearly seven months ago, Defendants have yet to produce a single document.

37. Plaintiffs filed a FOIA request on January 31, 2020 by U.S. Certified Mail and by email. *See Exhibit A.* On February 19, 2020, Defendant, DHS, acknowledged receipt of Plaintiffs' FOIA request and assigned the Request Case No. 2020-HQFO-00538. A true and correct copy of DHS' letter of acknowledgement is attached as **Exhibit B**. In that letter, Defendants stated that Plaintiffs' FOIA request was being transferred to the Immigration and Customs Enforcement (ICE) FOIA Officer. *Id.*

38. On February 25, 2020, Defendant, ICE, acknowledged receipt of Plaintiffs' FOIA request and assigned the Request Case No. 2020-ICFO-24470.²³ A true and correct copy of ICE's letter of acknowledgment is attached as **Exhibit C**. Citing the scope of Plaintiffs' request, the ICE FOIA Officer invoked a 10-day extension, beyond the 20 days provided for by statute, to respond to Plaintiffs' request. *Id.*

Defendants).

²³ In their letter, Defendants cite two different dates that Plaintiffs' FOIA request was received – January 31, 2020 and February 25, 2020. Plaintiffs electronically submitted the FOIA request on January 31, 2020 and, as was acknowledged by Defendants' in an earlier letter, this reflects the actual receipt date.

39. On April 21, 2020, Plaintiffs filed an administrative appeal with ICE via email because nearly three months after Plaintiffs filed their FOIA request and two months after Defendants acknowledged the FOIA request, neither DHS nor ICE had produced a single document. A true and correct copy of this appeal letter, which includes original attachments 1-3, is attached as **Exhibit D**.

40. Defendants acknowledged receipt of Plaintiffs' appeal on April 22, 2020 and assigned the appeal request number 2020-ICAP-00298. A copy of this letter is attached as **Exhibit E**. On April 30, 2020, Defendants issued a second letter acknowledging receipt of the appeal, referencing the same appeal request number and stating that "in many instances, an agency cannot meet [statutory] time limits due to a high volume of requests..." and remanding the appeal to the ICE FOIA Office. Defendants invoked no statutory authority for the delay. A copy of this letter is attached as **Exhibit F**. There have been no further communications from Defendants since their communication on April 30, 2020. As of the filing of this Complaint, Defendants have failed to produce so much as a piece of paper in response to Plaintiffs' request.

41. Defendants are required to conduct a "search reasonably calculated to uncover all relevant documents." *Zemansky v. EPA*, 767 F.2d 569 (9th Cir. 1985). Upon information and belief, such a search in the context of Defendants' Alternatives to Detention programs should have yielded significant responsive records.

42. Defendants' failure to provide any substantive responses to Plaintiffs' FOIA request reveals a clear failure to conduct a search for records and to make the records available promptly. *See* 5 U.S.C. §§ 552(a)(3)(C) & (6)(C)(i).

FIRST CAUSE OF ACTION
(Freedom of Information Act—Failure to Comply with Time Limit Provision)

43. Plaintiff repeats and re-alleges the factual allegations contained in paragraphs 1 through 42, inclusive.

44. By letter January 31, 2020, Plaintiff submitted the Request to Defendants pursuant to the Freedom of Information Act (FOIA). *See Exhibit A.*

45. Defendants have a statutory obligation to determine whether they will comply with the FOIA request and to communicate that determination to Plaintiffs. Despite acknowledging receipt of Plaintiffs' FOIA request on February 19, 2020 and again on February 25, 2020, Defendants failed to respond to Plaintiffs' request within the 20 days afforded under the FOIA statute, 5 U.S.C. § 552(a)(6)(A)(i), or the additional 10 days provided for "unusual circumstances," 5 U.S.C. § 552(a)(6)(B), 6 C.F.R § 5.5(c). *See Exhibit B; Exhibit C.*

46. Defendants' failure to notify Plaintiffs of their determination whether to comply with Plaintiffs' requests violates 5 U.S.C. §§ 552(a)(6)(A)(i) & (a)(6)(B), and 6 C.F.R § 5.5(c).

47. Plaintiffs have exhausted all applicable administrative remedies with respect to Defendants' failure to determine whether they will comply with Plaintiffs' request. 5 U.S.C. § 552(a)(6)(C)(i).

48. Plaintiffs have a legal right under FOIA, 5 U.S.C. § 552(a)(6)(A)(i), 5 U.S.C. § 552(a)(6)(B), and 6 C.F.R § 5.5(c), to timely notification from Defendants, and there exists no basis for Defendants' denial of this right.

SECOND CAUSE OF ACTION
(Freedom of Information Act—Failure to Conduct a Reasonable Search for Records
Responsive to Plaintiffs’ Request)

49. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 42 above, inclusive.

50. By letter dated January 31, 2020, Plaintiffs submitted the Request to Defendants pursuant to the Freedom of Information Act (FOIA). *See Exhibit A.*

51. When responding to a FOIA request, Defendants have a statutory obligation to search for “agency records for the purpose of locating those records which are responsive to a request.” FOIA, 5 U.S.C. § 552(a)(3)(D). Defendants are also required to “make reasonable efforts to search for the records in electronic form or format.” 5 U.S.C. § 552(a)(3)(C). Defendants have not provided Plaintiffs with any records.

52. Defendants’ failure to undertake a search reasonably calculated to uncover all relevant records sought by Plaintiffs’ request violates FOIA, 5 U.S.C. § 552(a)(3), and corresponding agency regulations. *See* 6 C.F.R. § 5.4.

53. Plaintiffs have exhausted all required and available administrative remedies with respect to this claim. 5 U.S.C. § 552(a)(6)(C)(i).

54. Plaintiffs have a legal right under FOIA to enforce Defendants’ obligation to undertake a search reasonably calculated to uncover all relevant records that are responsive to Plaintiffs’ FOIA request, and there exists no basis for Defendants’ denial of this right. *See* 5 U.S.C. § 552(a)(4)(B).

THIRD CAUSE OF ACTION
(Freedom of Information Act—Failure to Make Records Promptly Available)

55. Plaintiffs repeat and re-allege the factual allegations contained in paragraphs 1 through 42 above, inclusive.

56. Plaintiffs submitted the Request to Defendants pursuant to the Freedom of Information Act (FOIA) by letter dated January 31, 2020. *See Exhibit A.*

57. On April 21, 2020, Plaintiffs appealed Defendants' failure to timely respond. *See Exhibit D.*

58. On April 30, 2020, Defendants remanded the Request to the ICE FOIA office, indicating that additional time would be needed but not providing any statutory authority for the additional time. Defendants' further failed to provide a deadline by which a response would be provided to Plaintiffs'. Defendants have not provided any correspondence since April 30, 2020.

59. Defendants have a statutory obligation to make records sought by Plaintiffs' request "promptly available." 5 U.S.C. § 552(a)(3)(A). Defendants have produced no responsive records whatsoever, despite first acknowledging receipt of Plaintiffs' request nearly six months ago on February 19, 2020.

60. As of the date of this filing, Defendants have neither responded following remand of the request to the ICE FOIA office nor produced any records.

61. Defendants' failure to make records sought by Plaintiffs' request "promptly available" violates FOIA. *See* 5 U.S.C. § 552(a)(3)(A).

62. Plaintiffs have exhausted all required and available administrative remedies with respect to Defendants' failure to make records sought by Plaintiffs' request "promptly available." 5 U.S.C. § 552(a)(6)(C)(i).

63. Plaintiffs have a legal right under FOIA to obtain the agency records they seek, and there is no legal basis for Defendants' denial of said right.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs requests that this Court award them the following relief:

A. Declare, pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, that the Defendants violated the Freedom of Information Act (FOIA), 5 U.S.C. § 552;

B. Order all Defendants to determine whether they will comply with Plaintiffs' FOIA request and to communicate that determination to Plaintiffs;

C. Order all Defendants to conduct a reasonable search for all responsive records;

D. Order all Defendants to promptly disclose the requested records in their entirety and make copies available to Plaintiffs;

E. Order Defendants to prepare an index pursuant to *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974), for any documents they seek to withhold under a FOIA exemption;

F. Provide for expeditious proceedings in this action pursuant to 28 U.S.C. § 1657;

G. Award Plaintiffs their reasonable costs and attorneys' fees pursuant to 5 U.S.C. § 552(a)(4)(E); and

H. Order such other relief as the Court deems just and appropriate.

Respectfully submitted,

DATED: July 29, 2020

IMMIGRANTS' RIGHTS CLINIC
Mills Legal Clinic at Stanford Law School

By: /s/ Lisa Weissman-Ward
Lisa Weissman-Ward

LISA WEISSMAN-WARD
SHANTI THARAYIL
IMMIGRANTS' RIGHTS CLINIC
MILLS LEGAL CLINIC
STANFORD LAW SCHOOL

EXHIBIT A

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January 31, 2020

Via Electronic Mail and U.S. Certified Mail

U.S. Department of Homeland Security
FOIA/PA
The Privacy Office
245 Murray Lane SW
STOP-0655
Washington, D.C. 20528-0655
Fax: 202-343-4011
E-mail: foia@hq.dhs.gov

U.S. Immigration and Customs Enforcement
Freedom of Information Act Office
500 12th Street, S.W., Stop 5009
Washington, D.C. 20536-5009
Fax: 202-732-4265
E-mail: ice-foia@dhs.gov

RE: FOIA Request for Records Related to Alternatives to Detention Programs

Dear FOIA Officer:

This letter is a request pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 522, by the Stanford Law School Immigrants' Rights Clinic on behalf of The Justice and Diversity Center of The Bar Association of San Francisco. Additional requestors to this FOIA request include the Immigrant Legal Resource Center, Community Legal Services of East Palo Alto, Dolores Street Community Services, Legal Services for Children, Pangea Legal Services, and Immigration Center for Women and Children. Requestors seek records pertaining to the Alternatives to Detention (ATD)¹ programs that U.S. Immigration and Customs Enforcement (ICE), an agency of the U.S. Department of Homeland Security (DHS), employs to supervise and monitor individuals whom ICE is seeking to remove from the United States.

¹ Alternatives to Detention (ATD) refers to the programs run by ICE "to provide supervised release and enhanced monitoring for a subset of foreign nationals subject to removal whom ICE has released into the United States." AUDREY SINGER, CONG. RESEARCH SERV., R45804, IMMIGRATION: ALTERNATIVES TO DETENTION (ATD) PROGRAMS (2019), <https://fas.org/sgp/crs/homsec/R45804.pdf>. This includes ISAP, ISAP II, ISAP III, the Family Case Management Program (FCMP), and any other similar program currently or previously existing.

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There is a compelling and urgent need to inform the public about the ATD programs; in particular, changes to ATD programs since 2017; as well as the effects of ATD programs on participants. Since its inception in 2004, ATD has grown rapidly, particularly over the last five years. As of October 26, 2019, 94,257 people were enrolled in the ATD Intensive Supervision Appearance Program (ISAP III)², nearly quadrupling the number of participants enrolled in 2015.³ Participants are often vulnerable men and women seeking asylum in the United States. 90% of ATD participants have no criminal record and 56% are members of a family unit.⁴ In addition to ATD's rapid growth over recent years, the program has also drawn public attention around its physical and psychological impacts on participants⁵ and around the fact that GPS data from Electronic Monitoring Devices (EMDs) is being used to conduct workplace raids.⁶ The public should have access to information regarding the increased use of intensive supervision, including but not limited to the use of electronic monitoring. In addition, many of the ATD programs, including the electronic monitoring programs, involve a contractual and financial relationship between the federal government and private, for-profit companies that is of interest to the public.⁷ Because the ATD usage and programs concern a critical function of the government on a matter of significant public interest and concern, FOIA mandates its disclosure.

RECORDS REQUESTED

We request the following records⁸ prepared, received, transmitted, collected, and/or maintained by DHS and ICE:

² U.S. IMMIGRATION AND CUSTOMS ENF'T, *Detention Management—Detention Statistics*, <https://www.ice.gov/detention-management> (last visited December 22, 2019).

³ SINGER, *supra* note 1, at 7.

⁴ *Id.* at 8.

⁵ Ruthie Epstein, *ICE Is Using an Alternative to Immigration Detention. But It's Inhumane*, WASH. POST (Sep. 5, 2018) <https://www.washingtonpost.com/news/worldpost/wp/2018/09/05/trump-immigrants-2/>; Colleen Long, Frank Bajak & Will Weissert, *Ankle Monitors for Immigrants Almost Universally Disliked*, DENVER POST (Aug. 25, 2018), <https://www.denverpost.com/2018/08/25/ice-issuing-immigrant-ankle-monitors/>

⁶ <https://www.nbcnews.com/news/us-news/gps-tracking-immigrants-ice-raids-troubles-advocates-n1042846>

⁷ SINGER, *supra* note 1, at 7 n. 51; Lucas High, *Boulder's BI Incorporated Has Earned More Than Half-Billion Dollars From ICE Contracts*, DENVER POST (July 16, 2018), <https://www.denverpost.com/2018/07/16/boulder-bi-incorporated-ice-contracts/>

⁸ The term "records" as used in this request includes all records or communications preserved in electronic or written form, including but not limited to correspondence, regulations, directives, documents, data, videotapes, audiotapes, e-mails, faxes, files, guidance, guidelines, standards, evaluations, instructions, analyses memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, manuals, technical specifications, training materials or studies, including records kept in written form, or electronic format on computers and /or other electronic storage devices, electronic communications and/or videotapes, as well as any reproductions thereof that differ in any way from any other reproduction, such as copies containing marginal notations.

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1. All records from January 2017 to present describing who should and should not be considered for enrollment in the ATD Program. This includes but is not limited to the Risk Classification Assessment (RCA) from the Enforcement Case Tracking System (ENFORCE)⁹ and any other requirements, standards, or factors involved in determining whether to place an individual under ATD supervision.
2. All records from January 2017 to present related to how many people participate in the ATD program, including any deliberations or determinations about how many slots are available each year, whether to increase the number of slots available, and any records related to considering and/or opening a new ISAP field office.
3. All Memoranda to Field Office Directors from January 2017 to present, including to the San Francisco Field Office Director, related to ATD and/or ISAP III.
4. Any contracts, agreements, or Statements of Work from January 2017 to present between DHS and private entities (hereinafter “contractors”)¹⁰ who provide Electronic Monitoring Devices, case management, technology, or any other services as part of the ATD program.
5. Any records from January 2017 to present related to payments made by DHS to BI Incorporated or any other contractor, including but not limited to: 1) amount paid to the contractor per participant, including descriptions of different levels of payment for different levels of supervision¹¹ and 2) any commitment, indication, suggestion, or promise made by DHS to enroll or pay for a certain (or minimum) number of participants or devices.
6. All communications from January 2017 to present between contractors and ICE, including but not limited to Daily Emergency Reports; Weekly Termination Summary Reports; Weekly Court Appearance Summary Reports; Weekly average Daily Cost and Average Length in Program Reports; Monthly Program Progress Reports; Quarterly Program Reports; and Annual Reports, including those records relating to the ATD program and its involvement with participants who are within the jurisdiction of the San Francisco Field Office.
7. All records from January 2017 to present describing or pertaining to DHS/ICE’s relationship with contractors, including but not limited to how ICE Officers supervise, train, communicate or interact with Case Specialists¹² and other contractor employees.

⁹ The Risk Classification Assessment refers to the assessment tool referenced in OFFICE OF INSPECTOR GEN., DEP’T OF HOMELAND SEC., U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT’S ALTERNATIVES TO DETENTION (OIG-15-22) at 4-5 (2015) (hereinafter “IG Report”), https://www.oig.dhs.gov/assets/Mgmt/2015/OIG_15-22_Feb15.pdf, or if such a tool is no longer in use, any equivalent thereof.

¹⁰ This includes BI Incorporated as well as any other private entity with whom DHS has contracted with as part of the ATD program from January 2017 to present.

¹¹ As referenced in the IG Report at 4, which noted that at the time the report was written, the contractor charged \$0.17 per participant per day for telephonic monitoring, \$4.41 per participant per day for GPS tracking, and \$8.37 per participant per day for Full-Service supervision.

¹² “Case Specialist” refers to any employee of the private contractors (such as BI Incorporated or GEO Group) who is responsible for case management or supervision of ATD participants.

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8. All records related to any changes made to the RCA since the issuance of the Inspector General's report¹³ in 2015.
9. All records from January 2017 to present related to how Enforcement and Removal Operations (ERO) officers or any other ICE officers are instructed or trained on how to use the RCA and when an ICE/ERO officer may or may not override the RCA's computer-generated recommendation.
10. All records from January 2017 to present related to factors an ICE officer, Case Specialist, or other contractor employee can or should consider when deciding whether to place someone on "Full-Service" Supervision, "Technology-Only" Supervision, or any other level of supervision that may now exist.¹⁴
11. All records from January 2017 to present related to the requirements, standards, or factors considered by an ICE Officer and/or contracting Case Specialist, for modifying the intensity of supervision¹⁵ —or ceasing supervision—under ATD. This includes but is not limited to any training materials or guidance provided to ICE Officers and/or Case Specialists on when, whether, and how to cease or modify supervision.
12. Any policy, training, or guidance on when a participant is deemed "No Longer Required to Participate" in ATD Supervision.
13. All records from January 2017 to present that include guidance, training, or information to ICE officers and/or Case Specialists about the process through which ATD participants can request to modify and/or terminate supervision, how to process such requests when they are made, and how to decide whether or not to grant the request. Requests to modify supervision include, but are not limited to, requests to remove the Electronic Monitoring Devices (EMDs).
14. Any records from January 2017 to present related to removing the EMD, modifying supervision, or terminating supervision for participants with medical issues, participants who are pregnant, or in other special circumstances. This includes any policies, memoranda, or training on what type of supervision is appropriate for those described above, and how ICE officers or Case Specialists who receive requests to remove EMDs or modify supervision based on pregnancy, medical issues, or other special circumstances should respond to such requests.
15. Any records from January 2017 to present relating to, discussing, or contemplating the effects or impact of participation in the ATD program, including but not limited to any possible health effects of Electronic Monitoring (EM) on participants, including for those who may be pregnant, nursing, or have other health conditions.

¹³ OFFICE OF INSPECTOR GEN., DEP'T OF HOMELAND SEC., U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT'S ALTERNATIVES TO DETENTION (OIG-15-22) (2015), https://www.oig.dhs.gov/assets/Mgmt/2015/OIG_15-22_Feb15.pdf,

¹⁴ "Full Service" and "Technology Only" refer to the two supervision options referenced on BI Incorporated's website, <http://www2.bi.com/immigration-services/>, and in the IG Report at 3.

¹⁵ Modifying supervision may include transferring a participant from Electronic Monitoring via an ankle bracelet to Telephonic Reporting or using SmartLINK, or any other similar change in intensity of supervision.

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16. All records from January 2017 to present related to the contractor/Case Specialist's development of the "Individual Service Plan" (ISP)¹⁶, including but not limited to guidance given to the contractor by DHS or any sub-agency thereof.
17. Any records from January 2017 to present discussing case management requirements based on the participant's status (pre-order; post-order; appeal), including but not limited to the number of face-to-face interviews, home visits, electronic monitoring, and telephonic reporting required.
18. Any records from January 2017 to present related to securing travel documents for ATD participants, including but not limited to records that refer to securing a travel document as a requirement for ATD participation, any exceptions to such requirements, and how participants can request or be granted such an exception.
19. Any records from January 2017 to present pertaining to the use of GPS data obtained from participants' ATDs, including how such data is stored, and any policies, memoranda, or other records describing how such data can and should be used for other activities, including enforcement operations, which includes but is not limited to, any records related to use of GPS data to plan workplace raids or targeted enforcement operations.¹⁷
20. Any audits, studies, reports, analysis, or examinations, from January 2017 to present, related to the efficacy of ATD.
21. All records discussing the Family Case Management Program, including the decision to terminate the program in 2017.¹⁸
22. Any records related to changes made to the ATD program in since January 2017.

THE REQUESTORS

The Justice & Diversity Center of The Bar Association of San Francisco ("JDC") is one of the largest and most distinguished legal service providers in San Francisco. JDC's primary purpose is the delivery of free legal services to low-income San Franciscans, as well as the non-profits that serve them. JDC delivers free legal services through its Legal Services Program Division, which consists of Pro Bono Legal Services Program, Homeless Advocacy Project, and the Immigration Program. JDC helps to coordinate, organize, and increase capacity to provide legal services to underserved populations. JDC's Immigrant Legal Defense Program (ILDP) seeks to increase access to justice and protect the due process rights of low-income and unrepresented immigrants facing deportation. ILDP builds legal capacity and resources in Northern California so

¹⁶ "Individual Services Plan" refers to the plan developed by BI Incorporated or any other private contractor as part of the "Full-Service" supervision, as referenced on BI Incorporated's website, <http://www2.bi.com/immigration-services/>

¹⁷ See Jimmie E. Gates & Alissa Zhu, *ICE Used Ankle Monitors, Informants to Plan Immigration Raids Where 680 People Were Arrested*, USA TODAY (Aug. 10, 2019), <https://www.usatoday.com/story/news/nation/2019/08/10/ice-raids-how-federal-investigation-led-mississippi-poultry-plants/1975583001/>; see also McKenzie Funk, *How ICE Picks Its Targets in the Surveillance Age*, New York Times (Oct. 2, 2019), <https://www.nytimes.com/2019/10/02/magazine/ice-surveillance-deportation.html>

¹⁸ See SINGER, *supra* note 1, at 10-14.

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agencies are better coordinated and equipped to defend individuals in deportation proceedings in the San Francisco Immigration Court.

Founded in 1979, the **Immigrant Legal Resource Center (ILRC)** is a national non-profit resource center that provides legal training, educational materials, publications, and advocacy support to individuals and groups assisting low-income persons with immigration matters. The ILRC works with a broad array of individuals, agencies, and institutions including immigration attorneys and advocates, criminal defense attorneys, civil rights advocates, social workers, law enforcement, judges, and local and state elected officials.

Community Legal Services in East Palo Alto (CLSEPA) provides legal assistance to low-income individuals and families in East Palo Alto and surrounding communities. Its immigration law practice provides direct legal representation to hundreds of adults and children each year. It has played a key role in responding to the needs that have arisen in connection with the expedited dockets for unaccompanied minors and families who recently arrived in the United States and have cases pending before the San Francisco Immigration Court. In addition to its provision of direct legal services to children and families on the expedited dockets of the San Francisco Immigration Court, CLSEPA helps staff the “Attorney of the Day” (AOD) program through the Bar Association of San Francisco, which involves having a pro bono attorney or team of attorneys in the courtroom for master calendar hearings, including in particular those conducted for the expedited dockets. Among other tasks, AODs assist unrepresented individuals in seeking continuances to allow time to secure counsel and prepare their cases for presentation to the immigration court. CLSEPA is also involved in training other attorneys to serve as AODs for the expedited docket. CLSEPA maintains a website, <http://www.clsepa.org>, and additionally disseminates information about immigration court matters and the expedited dockets for unaccompanied minors and families through community presentations and through its partnerships with the private pro bono bar. CLSEPA is located in East Palo Alto, California.

Dolores Street Community Services (DSCS) provides community outreach services and pro bono deportation defense to low-income immigrants. DSCS is a registered non-profit organization and an active participant in the San Francisco Immigrant Legal and Education Network (“SFILEN”), which supports immigrants facing deportation in removal proceedings and disseminates information to the public through trainings and workshops as well as published educational and informational materials. DSCS represents numerous detained and formerly detained individuals who are seeking protection from persecution and torture in their countries of origin, many of whom are either subject to the Intensive Supervision Appearance Program or Alternatives to Detention.

Founded in 1975 as a nonprofit organization, **Legal Services for Children (LSC)** is one of the first non-profit law firms in the country dedicated to advancing the rights of youth. LSC’s mission is to ensure that all children in the San Francisco Bay Area have an opportunity to be raised in a safe and stable environment with equal access to the services they need to become healthy and productive young adults. Our practice includes foster care, guardianship, education and immigration cases.

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Pangea Legal Services is a nonprofit organization that provides low-cost and free legal services low-income immigrants at risk of deportation. In addition to direct legal services, Pangea also advocates on behalf of the immigrant community through policy advocacy, education, and legal empowerment efforts. Pangea distributes a quarterly newsletter; has participated in national webinars, conferences, and international human rights forums; and has been featured in reports by Univision, Human Rights Watch, the Daily Law Journal, and The New Yorker.

The **Immigration Center for Women and Children (“ICWC”)** is a non-profit legal services organization whose mission is to provide affordable immigration services to underrepresented immigrants in California and Nevada. Specifically, ICWC cases focus on the rights and legal remedies of the most vulnerable immigrant communities, including victims of serious crimes, domestic violence and sexual assault. ICWC represents thousands of clients before USCIS each year with a specialization in U nonimmigrant status. ICWC assists clients gain legal status and obtain work authorization to improve their lives and create security and stability for their families. ICWC does this by providing direct legal services, hosting a database for advocates nationwide, conducting national trainings and publishing practice manuals in our area of expertise. Since ICWC was founded in 2004, ICWC has provided legal assistance to more than thirty thousand individuals, including many who are eligible for, and have received, U nonimmigrant status.

FEE WAIVER OR REDUCATION OF ALL COSTS

Requestors also seek a full fee waiver on the grounds that disclosure of the requested records is in the public interest and is “likely to contribute significantly to public understanding of operations or activities of the government and is not primarily in the commercial interest of the requestor.” 5 U.S.C. § 22(a)(4)(A)(iii). As set forth above, this request aims at furthering public understanding of ICE programs and practices that directly affect thousands of noncitizens in removal proceedings and are of interest to the general public.

The public interest fee waiver provision “is to be liberally construed in favor of waivers for noncommercial requesters.” *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987). The Requestor need not demonstrate that the records would contain evidence of misconduct. Instead, the question is whether the requested information is likely to contribute significantly to public understanding of the operations or activities of the government, good or bad. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003). Disclosure of the information and report sought is in the public interest and will contribute significantly to the public’s understanding of the treatment of immigrants subjected to intensive supervision such as electronic monitoring and other aspects of Alternatives to Detention. The requested records relate directly to the operations or activities of the government that potentially impact fundamental rights and freedoms. The requested records also relate to the financial relationship between the federal government and private, for-profit contracted corporations. The records are not sought for commercial use, and the Requestors plan to disseminate the information disclosed through

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print and other media to the public at no cost. As demonstrated above, the Requestors have both the intent and ability to convey any information obtained through this request to the public, and are therefore entitled to a full fee waiver under 5 U.S.C. § 22(a)(4)(A)(iii).

Should the request for a full fee waiver be denied, Requestors also seek a limitation of processing fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) (“fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by...educational or noncommercial scientific institution...or a representative of the news media”) and 6 C.F.R. § 5.11(d)(1) (search fees shall not be charged to “representatives of the news media”). Requestors are non-profit organizations that intend to disseminate the information gathered by this request to the public at no cost, including through the Requestors’ websites and social media. The organizations regularly disseminate information to private, government, and nonprofit legal practitioners and members of the public and media through trainings, written advisories, reports, newsletters, blogs, resource libraries, and action alerts. *See* <https://www.ilrc.org/>; <https://clsepa.org/>; <https://www.dscs.org/>; <https://www.lsc-sf.org/>; <https://www.pangealegal.org/>; <https://www.icwclaw.org/>. The Requestors may also compile a report or other publication on the government’s treatment of immigrants based on information gathered through this FOIA.

The “term ‘a representative of the news media’ means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii). The statutory definition does not require that the requestor be a member of the traditional media. As long as a requestor meets the definition in any aspect of its work, it qualifies of limitation of fees under this section of the statute. The requestors qualify as a “representative of the news media” under the statutory definition because they routinely gather information of interest to the public, use editorial skills to turn it into distinct work, and distribute the work to the public. *See Electronic Privacy Information Center v. Department of Defense*, 241 F. Supp. 2d 5 (D.D.C. 2003) (non-profit organization that gathered information and published it in newsletters and otherwise for general distribution qualified as representative of news media for purpose of limiting fees. Courts have reaffirmed that non-profit requestors who are not traditional news media outlets can qualify as representatives of the new media for the purposes of the FOIA, including after the 2007 amendments to the FOIA. *See, e.g., ACLU of Washington v. U.S. Dep’t of Justice*, No. C09-0642RSL, 2011 WL 887731, at *18 (D. Wash. Mar. 10, 2011) (finding that the ACLU qualifies as a “representative of the news media”). Accordingly, any fees charged must be limited to duplication costs.

EXPEDITED PROCESSING

Requestors ask for expedited processing of this FOIA request. This request qualifies for expedited treatment pursuant to 5 U.S.C. § 552(a)(6)(E) and applicable regulations. There is a “compelling need” for expedited processing of this request, *see* 5 U.S.C. § 552(a)(6)(E)(i)(I), including an “an urgency to inform the public about an actual or alleged

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government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II); *see also* 6 C.F.R § 5.5(d)(1)(ii) (same). Additionally, this request qualifies for expedited treatment because, as is described above, the request is made by organizations “primarily engaged in disseminating information.” The records requested concern recent changes to ATD programs that affect thousands of noncitizens. Further, attorneys and other service providers need to understand the relevant policies, procedures, and practices to serve this population.

Please send responsive records to:

Lisa Weissman-Ward
Stanford Law School Immigrants’ Rights Clinic
559 Nathan Abbott Way
Stanford, CA 94305

Thank you for your attention. Please contact me with any questions or concerns at lweissmanward@law.stanford.edu or 650-724-7396.

Sincerely,



Lisa Weissman-Ward, Stanford Law School
Immigrants’ Rights Clinic, Attorney
and Allison Rothschild, Certified Law Student
On Behalf of the Justice and Diversity Center of
The Bar Association of San Francisco



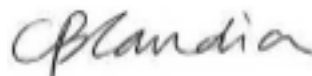
Rachel Prandini, Immigrant Legal Resource
Center



Misha Seay, Community Legal Services of
East Palo Alto



Kate Mahoney, Dolores Street Community
Services



Cecilia Candia, Legal Services for Children

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Esperanza Cuautle Velazquez, Pangea Legal
Services



Jessica Farb, Immigration Center for
Women and Children

EXHIBIT B



**Homeland
Security**

Privacy Office, Mail Stop 0655

February 19, 2020

SENT VIA E-MAIL TO: lweissmanward@law.stanford.edu

Lisa Nicole Weissman-Ward
Attorney at Law
Immigrants' Rights Clinic
559 Nathan Abbot Way
Stanford, CA 94305

Re: 2020-HQFO-00538

Dear Ms. Weissman-Ward:

This letter acknowledges receipt of your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), Privacy Office, dated January 24, 2020, and received in this office on January 24, 2020. You requested documents regarding the following records: All records describing who should and should not be considered for enrollment in the ATD Program. This includes but is not limited to the Risk Classification Assessment (RCA) from the Enforcement Case Tracking System (ENFORCE) and any other requirements, standards, or factors involved in determining whether to place an individual under ATD supervision; All records from January 2017 to present related to how many people participate in the ATD program, including any deliberations or determinations about how many slots are available each year, whether to increase the number of slots available, and any records related to considering and/or opening a new ISAP field office; All Memoranda to Field Office Directors from January 2017 to present, including to the San Francisco Field Office Director, related to ATD and/or ISAP III; Any contracts, agreements, or Statements of Work from January 2017 to present between DHS and private entities (hereinafter "contractors") who provide Electronic Monitoring Devices, case management, technology, or any other services as part of the ATD program; Any records from January 2017 to present related to payments made by DHS to BI Incorporated or any other contractor, including but not limited to: 1) amount paid to the contractor per participant, including descriptions of different levels of payment for different levels of supervision and 2) any commitment, indication, suggestion, or promise made by DHS to enroll or pay for a certain (or minimum) number of participants or devices; All communications from January 2017 to present between contractors and ICE, including but not limited to Daily Emergency Reports; Weekly Termination Summary Reports; Weekly Court Appearance Summary Reports; Weekly average Daily Cost and Average Length in Program Reports; Monthly Program Progress Reports; Quarterly Program Reports; and Annual Reports, including those records relating to the ATD program and its involvement with participants who are within

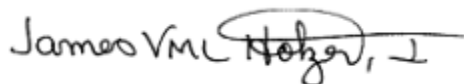
the jurisdiction of the San Francisco Field Office; All records from January 2017 to present describing or pertaining to DHS/ICE's relationship with contractors, including but not limited to how ICE Officers supervise, train, communicate or interact with Case Specialists and other contractor employees; All records related to any changes made to the RCA since the issuance of the Inspector General's report in 2015; All records from January 2017 to present related to how Enforcement and Removal Operations (ERO) officers or any other ICE officers are instructed or trained on how to use the RCA and when an ICE/ERO officer may or may not override the RCA's computer-generated recommendation; All records from January 2017 to present related to factors an ICE officer, Case Specialist, or other contractor employee can or should consider when deciding whether to place someone on "Full-Service" Supervision, "Technology-Only" Supervision, or any other level of supervision that may now exist; All records from January 2017 to present related to the requirements, standards, or factors considered by an ICE Officer and/or contracting Case Specialist, for modifying the intensity of supervision—or ceasing supervision—under ATD. This includes but is not limited to any training materials or guidance provided to ICE Officers and/or Case Specialists on when, whether, and how to cease or modify supervision; Any policy, training, or guidance on when a participant is deemed "No Longer Required to Participate" in ATD Supervision; and further after request #12. (Date Range for Record Search: From 1/1/2017 To 2/12/2020).

Due to the subject matter of your request, I am transferring this request to the FOIA Officer for ICE. Please find the contact information below.

U.S. Immigration and Customs Enforcement (ICE)
FOIA Requester Service Center Contact: Fernando Pineiro
500 12th Street, SW, Stop 5009
Washington, D.C. 20536-5009
FOIA Officer: Fernando Pineiro
Phone: 866-633-1182
Fax: 202-732-4265
E-mail: ice-foia@dhs.gov
ICE Website: <https://www.ice.gov/foia/overview>

If you need to contact our office again about this matter, please refer to **2020-HQFO-00538**. You may contact this office at 1-866-431-0486 or 202-343-1743.

Sincerely,



James Holzer
Deputy Chief Privacy Officer (A)
Deputy Chief FOIA Officer

EXHIBIT C



Lisa Weissman-Ward <lisanww@law.stanford.edu>

ICE FOIA Request 2020-ICFO-24470

2 messages

ice-foia@dhs.gov <ice-foia@dhs.gov>
To: lweissmanward@law.stanford.edu

Tue, Feb 25, 2020 at 6:26 AM

February 25, 2020

Lisa Weissman-Ward
Immigrants' Rights Clinic
559 Nathan Abbot Way
Stanford, CA 94305**RE: ICE FOIA Case Number 2020-ICFO-24470**

Dear Ms. Weissman-Ward:

This acknowledges receipt of your January 31, 2020, Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), for various documents related to Alternatives to Detention Programs (see request for details). Your request was received in this office on February 25, 2020.

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.

Provisions of the FOIA allow us to recover part of the cost of complying with your request. We shall charge you for records in accordance with the DHS Interim FOIA regulations as they apply to non-commercial requesters. As a non-commercial requester, you will be charged 10 cents per page for duplication; the first 100 pages are free, as are the first two hours of search time, after which you will pay the per quarter-hour rate (\$4.00 for clerical personnel, \$7.00 for professional personnel, \$10.25 for managerial personnel) of the searcher. We will construe the submission of your request as an agreement to pay up to \$25.00. You will be contacted before any further fees are accrued.

We have 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 **2020-ICFO-24470**. 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 2020-ICFO-24470 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, or you may contact our FOIA Public Liaison, Fernando Pineiro, in the same manner. Additionally, you have a 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](http://www.ogis.gov)-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 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
Visit our FOIA website at www.ice.gov/foia

EXHIBIT D

April 21, 2020

Via E-Mail

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

**RE: Freedom of Information Act Appeal for
Request No. 2020-HQFO-00538; 2020-ICFO-24470.**

Dear ICE FOIA Officer:

I write to appeal the refusal by Immigration and Customs Enforcement (ICE) to timely respond to the FOIA request that my office submitted on January 31, 2020 on behalf of the Justice & Diversity Center of The Bar Association of San Francisco and by additional requestors, including: Immigrant Legal Resource Center, Community Legal Services of East Palo Alto, Dolores Street Community Services, Legal Services for Children, Pangea Legal Services, and Immigration Center for Women and Children. *See* Attachment 1. The FOIA request was filed with the Department of Homeland Security (DHS) and Immigration and Customs Enforcement (ICE). The request sought records pertaining to the ICE's policies and procedures as they pertain to Alternatives to Detention (ATD), date range: January 1, 2017 to the present.

By an email dated February 19, 2020, the DHS FOIA office acknowledged receipt of this FOIA request and assigned the request Case No. 2020-HQFO-00538. *See* Attachment 2. The FOIA office stated that it was transferring the request to the FOIA Officer for ICE. *Id.* On February 25, 2020, the ICE FOIA office responded and indicated that it had assigned the request Case. No. 2020-ICFO-24470.¹ *See* Attachment 3. In that same letter, ICE also invoked a 10-day extension beyond the usual 20-day response period so that it would have sufficient time to respond to the FOIA request. *Id.* (citing 5 U.S.C. § 552(a)(6)(B)). Neither response acknowledged the fee waiver request that was included in the FOIA request.

¹ It should be noted that the letter acknowledging receipt of the FOIA request provides two conflicting dates by which it received the request (January 31, 2020 and February 25, 2020). The FOIA request was submitted by email on January 31, and as such, this earlier date is, in fact, the accurate one.

FOIA Appeal for Request Nos. 2020-HQFO-00538; 2020-ICFO-24470

April 21, 2020

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More than 80 days (nearly three months) have now passed since our initial FOIA request and still no documents have been produced.² This is highly troubling because there is a compelling and urgent need to inform the public about ICE's policies and practices that pertain to ATDs. Since its inception in 2004, ATD has grown rapidly, particularly over the last five years. As of October 26, 2019, 94,257 people were enrolled in the ATD Intensive Supervision Appearance Program (ISAP III)³, nearly quadrupling the number of participants enrolled in 2015.⁴ Participants are often vulnerable men and women seeking asylum in the United States. 90% of ATD participants have no criminal record and 56% are members of a family unit.⁵ In addition to ATD's rapid growth over recent years, the program has also drawn public attention around its physical and psychological impacts on participants⁶ and around the fact that GPS data from Electronic Monitoring Devices (EMDs) is being used to conduct workplace raids.⁷ The public should have access to information regarding the increased use of intensive supervision, including but not limited to the use of electronic monitoring. In addition, many of the ATD programs, including the electronic monitoring programs, involve a contractual and financial relationship between the federal government and private, for-profit companies that is of interest to the public.⁸ Because the ATD usage and programs concern a critical function of the government on a matter of significant public interest and concern, FOIA mandates its disclosure.

Accordingly, we now appeal the Department's failure to determine whether to comply with the instant request within the time limits FOIA prescribes. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i):

² Even excluding weekends and federal holidays, more than 55 days have elapsed without any substantive response.

³ U.S. IMMIGRATION AND CUSTOMS ENF'T, *Detention Management—Detention Statistics*, <https://www.ice.gov/detention-management> (last visited December 22, 2019).

⁴ SINGER, *supra* note 1, at 7.

⁵ *Id.* at 8.

⁶ Ruthie Epstein, *ICE Is Using an Alternative to Immigration Detention. But It's Inhumane*, WASH. POST (Sep. 5, 2018), <https://www.washingtonpost.com/news/theworldpost/wp/2018/09/05/trump-immigrants-2/>; Colleen Long, Frank Bajak & Will Weissert, *Ankle Monitors for Immigrants Almost Universally Disliked*, DENVER POST (Aug. 25, 2018),

<https://www.denverpost.com/2018/08/25/ice-issuing-immigrant-ankle-monitors/>

⁷ <https://www.nbcnews.com/news/us-news/gps-tracking-immigrants-ice-raids-troubles-advocates-n1042846>

⁸ SINGER, *supra* note 1, at 7 n. 51; Lucas High, *Boulder's BI Incorporated Has Earned More Than Half-Billion Dollars From ICE Contracts*, DENVER POST (July 16, 2018), <https://www.denverpost.com/2018/07/16/boulder-bi-incorporated-ice-contracts/>

FOIA Appeal for Request Nos. 2020-HQFO-00538; 2020-ICFO-24470

April 21, 2020

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Each agency ... shall...determine within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor; ... and in the case of an adverse determination, the right of such person to appeal to the head of the agency

In unusual circumstances, as set forth in 5 U.S.C. § 552(a)(6)(B), the time limits may be extended for not more than 10 days. The FOIA also provides that, “upon any determination by any agency to comply with a request for records, the records shall be made *promptly* available to such person making such request.” 5 U.S.C. § 552(a)(6)(C)(i) (emphasis added).

Given that the ICE FOIA office confirmed receipt of the written request on January 31, 2020, its response was due no later than Monday, March 16, 2020, with the 10-day extension. This date excludes all weekends and federal holidays.

In light of the Department’s failure to adhere to the requirements of 5 U.S.C. §552(a)(6)(B) and 22 C.F.R. § 171.11(g), and refusal to determine whether to comply with any portion of our requests within the time limits of Section 552(a)(6)(A)(i), we deem our request denied pursuant to 5 U.S.C. § 552(a)(6)(C), and hereby appeal from that denial pursuant to 5 U.S.C. § 552(a)(6) and 6 C.F.R. § 5.8.

Pursuant to 5 U.S.C. § 552(a)(6)(A)(ii) and 6 C.F.R. § 5.8(d), we request a decision on this appeal within twenty days. Please acknowledge receipt of this appeal, and advise when the decision may be expected. Absent a timely response to this appeal or compliance with Section 552(a)(6), we shall anticipate litigation to compel the Department’s compliance with the Freedom of Information Act, for which we shall also seek attorney’s fees and costs. *See* 5 U.S.C. §552(a)(4)(E).

Sincerely,



Lisa Weissman-Ward

ATTACHMENT 1

**JUSTICE & DIVERSITY CENTER**
OF THE BAR ASSOCIATION OF SAN FRANCISCO

January 31, 2020

Via Electronic Mail and U.S. Certified Mail

U.S. Department of Homeland Security

FOIA/PA

The Privacy Office

245 Murray Lane SW

STOP-0655

Washington, D.C. 20528-0655

Fax: 202-343-4011

E-mail: foia@hq.dhs.gov

U.S. Immigration and Customs Enforcement

Freedom of Information Act Office

500 12th Street, S.W., Stop 5009

Washington, D.C. 20536-5009

Fax: 202-732-4265

E-mail: ice-foia@dhs.gov

RE: FOIA Request for Records Related to Alternatives to Detention Programs

Dear FOIA Officer:

This letter is a request pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 522, by the Stanford Law School Immigrants' Rights Clinic on behalf of The Justice and Diversity Center of The Bar Association of San Francisco. Additional requestors to this FOIA request include the Immigrant Legal Resource Center, Community Legal Services of East Palo Alto, Dolores Street Community Services, Legal Services for Children, Pangea Legal Services, and Immigration Center for Women and Children. Requestors seek records pertaining to the Alternatives to Detention (ATD)¹ programs that U.S. Immigration and Customs Enforcement (ICE), an agency of the U.S. Department of Homeland Security (DHS), employs to supervise and monitor individuals whom ICE is seeking to remove from the United States.

¹ Alternatives to Detention (ATD) refers to the programs run by ICE "to provide supervised release and enhanced monitoring for a subset of foreign nationals subject to removal whom ICE has released into the United States." AUDREY SINGER, CONG. RESEARCH SERV., R45804, IMMIGRATION: ALTERNATIVES TO DETENTION (ATD) PROGRAMS (2019), <https://fas.org/sgp/crs/homsec/R45804.pdf>. This includes ISAP, ISAP II, ISAP III, the Family Case Management Program (FCMP), and any other similar program currently or previously existing.

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There is a compelling and urgent need to inform the public about the ATD programs; in particular, changes to ATD programs since 2017; as well as the effects of ATD programs on participants. Since its inception in 2004, ATD has grown rapidly, particularly over the last five years. As of October 26, 2019, 94,257 people were enrolled in the ATD Intensive Supervision Appearance Program (ISAP III)², nearly quadrupling the number of participants enrolled in 2015.³ Participants are often vulnerable men and women seeking asylum in the United States. 90% of ATD participants have no criminal record and 56% are members of a family unit.⁴ In addition to ATD's rapid growth over recent years, the program has also drawn public attention around its physical and psychological impacts on participants⁵ and around the fact that GPS data from Electronic Monitoring Devices (EMDs) is being used to conduct workplace raids.⁶ The public should have access to information regarding the increased use of intensive supervision, including but not limited to the use of electronic monitoring. In addition, many of the ATD programs, including the electronic monitoring programs, involve a contractual and financial relationship between the federal government and private, for-profit companies that is of interest to the public.⁷ Because the ATD usage and programs concern a critical function of the government on a matter of significant public interest and concern, FOIA mandates its disclosure.

RECORDS REQUESTED

We request the following records⁸ prepared, received, transmitted, collected, and/or maintained by DHS and ICE:

² U.S. IMMIGRATION AND CUSTOMS ENF'T, *Detention Management—Detention Statistics*, <https://www.ice.gov/detention-management> (last visited December 22, 2019).

³ SINGER, *supra* note 1, at 7.

⁴ *Id.* at 8.

⁵ Ruthie Epstein, *ICE Is Using an Alternative to Immigration Detention. But It's Inhumane*, WASH. POST (Sep. 5, 2018) <https://www.washingtonpost.com/news/worldpost/wp/2018/09/05/trump-immigrants-2/>; Colleen Long, Frank Bajak & Will Weissert, *Ankle Monitors for Immigrants Almost Universally Disliked*, DENVER POST (Aug. 25, 2018), <https://www.denverpost.com/2018/08/25/ice-issuing-immigrant-ankle-monitors/>

⁶ <https://www.nbcnews.com/news/us-news/gps-tracking-immigrants-ice-raids-troubles-advocates-n1042846>

⁷ SINGER, *supra* note 1, at 7 n. 51; Lucas High, *Boulder's BI Incorporated Has Earned More Than Half-Billion Dollars From ICE Contracts*, DENVER POST (July 16, 2018), <https://www.denverpost.com/2018/07/16/boulder-bi-incorporated-ice-contracts/>

⁸ The term "records" as used in this request includes all records or communications preserved in electronic or written form, including but not limited to correspondence, regulations, directives, documents, data, videotapes, audiotapes, e-mails, faxes, files, guidance, guidelines, standards, evaluations, instructions, analyses memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, manuals, technical specifications, training materials or studies, including records kept in written form, or electronic format on computers and /or other electronic storage devices, electronic communications and/or videotapes, as well as any reproductions thereof that differ in any way from any other reproduction, such as copies containing marginal notations.

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1. All records from January 2017 to present describing who should and should not be considered for enrollment in the ATD Program. This includes but is not limited to the Risk Classification Assessment (RCA) from the Enforcement Case Tracking System (ENFORCE)⁹ and any other requirements, standards, or factors involved in determining whether to place an individual under ATD supervision.
2. All records from January 2017 to present related to how many people participate in the ATD program, including any deliberations or determinations about how many slots are available each year, whether to increase the number of slots available, and any records related to considering and/or opening a new ISAP field office.
3. All Memoranda to Field Office Directors from January 2017 to present, including to the San Francisco Field Office Director, related to ATD and/or ISAP III.
4. Any contracts, agreements, or Statements of Work from January 2017 to present between DHS and private entities (hereinafter “contractors”)¹⁰ who provide Electronic Monitoring Devices, case management, technology, or any other services as part of the ATD program.
5. Any records from January 2017 to present related to payments made by DHS to BI Incorporated or any other contractor, including but not limited to: 1) amount paid to the contractor per participant, including descriptions of different levels of payment for different levels of supervision¹¹ and 2) any commitment, indication, suggestion, or promise made by DHS to enroll or pay for a certain (or minimum) number of participants or devices.
6. All communications from January 2017 to present between contractors and ICE, including but not limited to Daily Emergency Reports; Weekly Termination Summary Reports; Weekly Court Appearance Summary Reports; Weekly average Daily Cost and Average Length in Program Reports; Monthly Program Progress Reports; Quarterly Program Reports; and Annual Reports, including those records relating to the ATD program and its involvement with participants who are within the jurisdiction of the San Francisco Field Office.
7. All records from January 2017 to present describing or pertaining to DHS/ICE’s relationship with contractors, including but not limited to how ICE Officers supervise, train, communicate or interact with Case Specialists¹² and other contractor employees.

⁹ The Risk Classification Assessment refers to the assessment tool referenced in OFFICE OF INSPECTOR GEN., DEP’T OF HOMELAND SEC., U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT’S ALTERNATIVES TO DETENTION (OIG-15-22) at 4-5 (2015) (hereinafter “IG Report”), https://www.oig.dhs.gov/assets/Mgmt/2015/OIG_15-22_Feb15.pdf, or if such a tool is no longer in use, any equivalent thereof.

¹⁰ This includes BI Incorporated as well as any other private entity with whom DHS has contracted with as part of the ATD program from January 2017 to present.

¹¹ As referenced in the IG Report at 4, which noted that at the time the report was written, the contractor charged \$0.17 per participant per day for telephonic monitoring, \$4.41 per participant per day for GPS tracking, and \$8.37 per participant per day for Full-Service supervision.

¹² “Case Specialist” refers to any employee of the private contractors (such as BI Incorporated or GEO Group) who is responsible for case management or supervision of ATD participants.

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8. All records related to any changes made to the RCA since the issuance of the Inspector General's report¹³ in 2015.
9. All records from January 2017 to present related to how Enforcement and Removal Operations (ERO) officers or any other ICE officers are instructed or trained on how to use the RCA and when an ICE/ERO officer may or may not override the RCA's computer-generated recommendation.
10. All records from January 2017 to present related to factors an ICE officer, Case Specialist, or other contractor employee can or should consider when deciding whether to place someone on "Full-Service" Supervision, "Technology-Only" Supervision, or any other level of supervision that may now exist.¹⁴
11. All records from January 2017 to present related to the requirements, standards, or factors considered by an ICE Officer and/or contracting Case Specialist, for modifying the intensity of supervision¹⁵ —or ceasing supervision—under ATD. This includes but is not limited to any training materials or guidance provided to ICE Officers and/or Case Specialists on when, whether, and how to cease or modify supervision.
12. Any policy, training, or guidance on when a participant is deemed "No Longer Required to Participate" in ATD Supervision.
13. All records from January 2017 to present that include guidance, training, or information to ICE officers and/or Case Specialists about the process through which ATD participants can request to modify and/or terminate supervision, how to process such requests when they are made, and how to decide whether or not to grant the request. Requests to modify supervision include, but are not limited to, requests to remove the Electronic Monitoring Devices (EMDs).
14. Any records from January 2017 to present related to removing the EMD, modifying supervision, or terminating supervision for participants with medical issues, participants who are pregnant, or in other special circumstances. This includes any policies, memoranda, or training on what type of supervision is appropriate for those described above, and how ICE officers or Case Specialists who receive requests to remove EMDs or modify supervision based on pregnancy, medical issues, or other special circumstances should respond to such requests.
15. Any records from January 2017 to present relating to, discussing, or contemplating the effects or impact of participation in the ATD program, including but not limited to any possible health effects of Electronic Monitoring (EM) on participants, including for those who may be pregnant, nursing, or have other health conditions.

¹³ OFFICE OF INSPECTOR GEN., DEP'T OF HOMELAND SEC., U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT'S ALTERNATIVES TO DETENTION (OIG-15-22) (2015), https://www.oig.dhs.gov/assets/Mgmt/2015/OIG_15-22_Feb15.pdf,

¹⁴ "Full Service" and "Technology Only" refer to the two supervision options referenced on BI Incorporated's website, <http://www2.bi.com/immigration-services/>, and in the IG Report at 3.

¹⁵ Modifying supervision may include transferring a participant from Electronic Monitoring via an ankle bracelet to Telephonic Reporting or using SmartLINK, or any other similar change in intensity of supervision.

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16. All records from January 2017 to present related to the contractor/Case Specialist's development of the "Individual Service Plan" (ISP)¹⁶, including but not limited to guidance given to the contractor by DHS or any sub-agency thereof.
17. Any records from January 2017 to present discussing case management requirements based on the participant's status (pre-order; post-order; appeal), including but not limited to the number of face-to-face interviews, home visits, electronic monitoring, and telephonic reporting required.
18. Any records from January 2017 to present related to securing travel documents for ATD participants, including but not limited to records that refer to securing a travel document as a requirement for ATD participation, any exceptions to such requirements, and how participants can request or be granted such an exception.
19. Any records from January 2017 to present pertaining to the use of GPS data obtained from participants' ATDs, including how such data is stored, and any policies, memoranda, or other records describing how such data can and should be used for other activities, including enforcement operations, which includes but is not limited to, any records related to use of GPS data to plan workplace raids or targeted enforcement operations.¹⁷
20. Any audits, studies, reports, analysis, or examinations, from January 2017 to present, related to the efficacy of ATD.
21. All records discussing the Family Case Management Program, including the decision to terminate the program in 2017.¹⁸
22. Any records related to changes made to the ATD program in since January 2017.

THE REQUESTORS

The Justice & Diversity Center of The Bar Association of San Francisco ("JDC") is one of the largest and most distinguished legal service providers in San Francisco. JDC's primary purpose is the delivery of free legal services to low-income San Franciscans, as well as the non-profits that serve them. JDC delivers free legal services through its Legal Services Program Division, which consists of Pro Bono Legal Services Program, Homeless Advocacy Project, and the Immigration Program. JDC helps to coordinate, organize, and increase capacity to provide legal services to underserved populations. JDC's Immigrant Legal Defense Program (ILDP) seeks to increase access to justice and protect the due process rights of low-income and unrepresented immigrants facing deportation. ILDP builds legal capacity and resources in Northern California so

¹⁶ "Individual Services Plan" refers to the plan developed by BI Incorporated or any other private contractor as part of the "Full-Service" supervision, as referenced on BI Incorporated's website, <http://www2.bi.com/immigration-services/>

¹⁷ See Jimmie E. Gates & Alissa Zhu, *ICE Used Ankle Monitors, Informants to Plan Immigration Raids Where 680 People Were Arrested*, USA TODAY (Aug. 10, 2019), <https://www.usatoday.com/story/news/nation/2019/08/10/ice-raids-how-federal-investigation-led-mississippi-poultry-plants/1975583001/>; see also McKenzie Funk, *How ICE Picks Its Targets in the Surveillance Age*, New York Times (Oct. 2, 2019), <https://www.nytimes.com/2019/10/02/magazine/ice-surveillance-deportation.html>

¹⁸ See SINGER, *supra* note 1, at 10-14.

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agencies are better coordinated and equipped to defend individuals in deportation proceedings in the San Francisco Immigration Court.

Founded in 1979, the **Immigrant Legal Resource Center (ILRC)** is a national non-profit resource center that provides legal training, educational materials, publications, and advocacy support to individuals and groups assisting low-income persons with immigration matters. The ILRC works with a broad array of individuals, agencies, and institutions including immigration attorneys and advocates, criminal defense attorneys, civil rights advocates, social workers, law enforcement, judges, and local and state elected officials.

Community Legal Services in East Palo Alto (CLSEPA) provides legal assistance to low-income individuals and families in East Palo Alto and surrounding communities. Its immigration law practice provides direct legal representation to hundreds of adults and children each year. It has played a key role in responding to the needs that have arisen in connection with the expedited dockets for unaccompanied minors and families who recently arrived in the United States and have cases pending before the San Francisco Immigration Court. In addition to its provision of direct legal services to children and families on the expedited dockets of the San Francisco Immigration Court, CLSEPA helps staff the “Attorney of the Day” (AOD) program through the Bar Association of San Francisco, which involves having a pro bono attorney or team of attorneys in the courtroom for master calendar hearings, including in particular those conducted for the expedited dockets. Among other tasks, AODs assist unrepresented individuals in seeking continuances to allow time to secure counsel and prepare their cases for presentation to the immigration court. CLSEPA is also involved in training other attorneys to serve as AODs for the expedited docket. CLSEPA maintains a website, <http://www.clsepa.org>, and additionally disseminates information about immigration court matters and the expedited dockets for unaccompanied minors and families through community presentations and through its partnerships with the private pro bono bar. CLSEPA is located in East Palo Alto, California.

Dolores Street Community Services (DSCS) provides community outreach services and pro bono deportation defense to low-income immigrants. DSCS is a registered non-profit organization and an active participant in the San Francisco Immigrant Legal and Education Network (“SFILEN”), which supports immigrants facing deportation in removal proceedings and disseminates information to the public through trainings and workshops as well as published educational and informational materials. DSCS represents numerous detained and formerly detained individuals who are seeking protection from persecution and torture in their countries of origin, many of whom are either subject to the Intensive Supervision Appearance Program or Alternatives to Detention.

Founded in 1975 as a nonprofit organization, **Legal Services for Children (LSC)** is one of the first non-profit law firms in the country dedicated to advancing the rights of youth. LSC’s mission is to ensure that all children in the San Francisco Bay Area have an opportunity to be raised in a safe and stable environment with equal access to the services they need to become healthy and productive young adults. Our practice includes foster care, guardianship, education and immigration cases.

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Pangea Legal Services is a nonprofit organization that provides low-cost and free legal services low-income immigrants at risk of deportation. In addition to direct legal services, Pangea also advocates on behalf of the immigrant community through policy advocacy, education, and legal empowerment efforts. Pangea distributes a quarterly newsletter; has participated in national webinars, conferences, and international human rights forums; and has been featured in reports by Univision, Human Rights Watch, the Daily Law Journal, and The New Yorker.

The **Immigration Center for Women and Children (“ICWC”)** is a non-profit legal services organization whose mission is to provide affordable immigration services to underrepresented immigrants in California and Nevada. Specifically, ICWC cases focus on the rights and legal remedies of the most vulnerable immigrant communities, including victims of serious crimes, domestic violence and sexual assault. ICWC represents thousands of clients before USCIS each year with a specialization in U nonimmigrant status. ICWC assists clients gain legal status and obtain work authorization to improve their lives and create security and stability for their families. ICWC does this by providing direct legal services, hosting a database for advocates nationwide, conducting national trainings and publishing practice manuals in our area of expertise. Since ICWC was founded in 2004, ICWC has provided legal assistance to more than thirty thousand individuals, including many who are eligible for, and have received, U nonimmigrant status.

FEE WAIVER OR REDUCATION OF ALL COSTS

Requestors also seek a full fee waiver on the grounds that disclosure of the requested records is in the public interest and is “likely to contribute significantly to public understanding of operations or activities of the government and is not primarily in the commercial interest of the requestor.” 5 U.S.C. § 22(a)(4)(A)(iii). As set forth above, this request aims at furthering public understanding of ICE programs and practices that directly affect thousands of noncitizens in removal proceedings and are of interest to the general public.

The public interest fee waiver provision “is to be liberally construed in favor of waivers for noncommercial requesters.” *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987). The Requestor need not demonstrate that the records would contain evidence of misconduct. Instead, the question is whether the requested information is likely to contribute significantly to public understanding of the operations or activities of the government, good or bad. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003). Disclosure of the information and report sought is in the public interest and will contribute significantly to the public’s understanding of the treatment of immigrants subjected to intensive supervision such as electronic monitoring and other aspects of Alternatives to Detention. The requested records relate directly to the operations or activities of the government that potentially impact fundamental rights and freedoms. The requested records also relate to the financial relationship between the federal government and private, for-profit contracted corporations. The records are not sought for commercial use, and the Requestors plan to disseminate the information disclosed through

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print and other media to the public at no cost. As demonstrated above, the Requestors have both the intent and ability to convey any information obtained through this request to the public, and are therefore entitled to a full fee waiver under 5 U.S.C. § 22(a)(4)(A)(iii).

Should the request for a full fee waiver be denied, Requestors also seek a limitation of processing fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) (“fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by...educational or noncommercial scientific institution...or a representative of the news media”) and 6 C.F.R. § 5.11(d)(1) (search fees shall not be charged to “representatives of the news media”). Requestors are non-profit organizations that intend to disseminate the information gathered by this request to the public at no cost, including through the Requestors’ websites and social media. The organizations regularly disseminate information to private, government, and nonprofit legal practitioners and members of the public and media through trainings, written advisories, reports, newsletters, blogs, resource libraries, and action alerts. *See* <https://www.ilrc.org/>; <https://clsepa.org/>; <https://www.dscs.org/>; <https://www.lsc-sf.org/>; <https://www.pangealegal.org/>; <https://www.icwclaw.org/>. The Requestors may also compile a report or other publication on the government’s treatment of immigrants based on information gathered through this FOIA.

The “term ‘a representative of the news media’ means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii). The statutory definition does not require that the requestor be a member of the traditional media. As long as a requestor meets the definition in any aspect of its work, it qualifies for limitation of fees under this section of the statute. The requestors qualify as a “representative of the news media” under the statutory definition because they routinely gather information of interest to the public, use editorial skills to turn it into distinct work, and distribute the work to the public. *See Electronic Privacy Information Center v. Department of Defense*, 241 F. Supp. 2d 5 (D.D.C. 2003) (non-profit organization that gathered information and published it in newsletters and otherwise for general distribution qualified as representative of news media for purpose of limiting fees. Courts have reaffirmed that non-profit requestors who are not traditional news media outlets can qualify as representatives of the new media for the purposes of the FOIA, including after the 2007 amendments to the FOIA. *See, e.g., ACLU of Washington v. U.S. Dep’t of Justice*, No. C09-0642RSL, 2011 WL 887731, at *18 (D. Wash. Mar. 10, 2011) (finding that the ACLU qualifies as a “representative of the news media”). Accordingly, any fees charged must be limited to duplication costs.

EXPEDITED PROCESSING

Requestors ask for expedited processing of this FOIA request. This request qualifies for expedited treatment pursuant to 5 U.S.C. § 552(a)(6)(E) and applicable regulations. There is a “compelling need” for expedited processing of this request, *see* 5 U.S.C. § 552(a)(6)(E)(i)(I), including an “an urgency to inform the public about an actual or alleged

FOIA Request
January 31, 2020
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government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II); *see also* 6 C.F.R § 5.5(d)(1)(ii) (same). Additionally, this request qualifies for expedited treatment because, as is described above, the request is made by organizations “primarily engaged in disseminating information.” The records requested concern recent changes to ATD programs that affect thousands of noncitizens. Further, attorneys and other service providers need to understand the relevant policies, procedures, and practices to serve this population.

Please send responsive records to:

Lisa Weissman-Ward
Stanford Law School Immigrants’ Rights Clinic
559 Nathan Abbott Way
Stanford, CA 94305

Thank you for your attention. Please contact me with any questions or concerns at lweissmanward@law.stanford.edu or 650-724-7396.

Sincerely,



Lisa Weissman-Ward, Stanford Law School
Immigrants’ Rights Clinic, Attorney
and Allison Rothschild, Certified Law Student
On Behalf of the Justice and Diversity Center of
The Bar Association of San Francisco



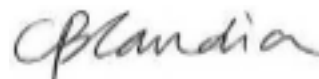
Rachel Prandini, Immigrant Legal Resource
Center



Misha Seay, Community Legal Services of
East Palo Alto



Kate Mahoney, Dolores Street Community
Services



Cecilia Candia, Legal Services for Children

FOIA Request
January 31, 2020
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Esperanza Cuautle Velazquez, Pangea Legal
Services



Jessica Farb, Immigration Center for
Women and Children

ATTACHMENT 2



**Homeland
Security**

Privacy Office, Mail Stop 0655

February 19, 2020

SENT VIA E-MAIL TO: lweissmanward@law.stanford.edu

Lisa Nicole Weissman-Ward
Attorney at Law
Immigrants' Rights Clinic
559 Nathan Abbot Way
Stanford, CA 94305

Re: 2020-HQFO-00538

Dear Ms. Weissman-Ward:

This letter acknowledges receipt of your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), Privacy Office, dated January 24, 2020, and received in this office on January 24, 2020. You requested documents regarding the following records: All records describing who should and should not be considered for enrollment in the ATD Program. This includes but is not limited to the Risk Classification Assessment (RCA) from the Enforcement Case Tracking System (ENFORCE) and any other requirements, standards, or factors involved in determining whether to place an individual under ATD supervision; All records from January 2017 to present related to how many people participate in the ATD program, including any deliberations or determinations about how many slots are available each year, whether to increase the number of slots available, and any records related to considering and/or opening a new ISAP field office; All Memoranda to Field Office Directors from January 2017 to present, including to the San Francisco Field Office Director, related to ATD and/or ISAP III; Any contracts, agreements, or Statements of Work from January 2017 to present between DHS and private entities (hereinafter "contractors") who provide Electronic Monitoring Devices, case management, technology, or any other services as part of the ATD program; Any records from January 2017 to present related to payments made by DHS to BI Incorporated or any other contractor, including but not limited to: 1) amount paid to the contractor per participant, including descriptions of different levels of payment for different levels of supervision and 2) any commitment, indication, suggestion, or promise made by DHS to enroll or pay for a certain (or minimum) number of participants or devices; All communications from January 2017 to present between contractors and ICE, including but not limited to Daily Emergency Reports; Weekly Termination Summary Reports; Weekly Court Appearance Summary Reports; Weekly average Daily Cost and Average Length in Program Reports; Monthly Program Progress Reports; Quarterly Program Reports; and Annual Reports, including those records relating to the ATD program and its involvement with participants who are within

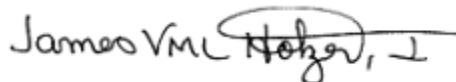
the jurisdiction of the San Francisco Field Office; All records from January 2017 to present describing or pertaining to DHS/ICE's relationship with contractors, including but not limited to how ICE Officers supervise, train, communicate or interact with Case Specialists and other contractor employees; All records related to any changes made to the RCA since the issuance of the Inspector General's report in 2015; All records from January 2017 to present related to how Enforcement and Removal Operations (ERO) officers or any other ICE officers are instructed or trained on how to use the RCA and when an ICE/ERO officer may or may not override the RCA's computer-generated recommendation; All records from January 2017 to present related to factors an ICE officer, Case Specialist, or other contractor employee can or should consider when deciding whether to place someone on "Full-Service" Supervision, "Technology-Only" Supervision, or any other level of supervision that may now exist; All records from January 2017 to present related to the requirements, standards, or factors considered by an ICE Officer and/or contracting Case Specialist, for modifying the intensity of supervision—or ceasing supervision—under ATD. This includes but is not limited to any training materials or guidance provided to ICE Officers and/or Case Specialists on when, whether, and how to cease or modify supervision; Any policy, training, or guidance on when a participant is deemed "No Longer Required to Participate" in ATD Supervision; and further after request #12. (Date Range for Record Search: From 1/1/2017 To 2/12/2020).

Due to the subject matter of your request, I am transferring this request to the FOIA Officer for ICE. Please find the contact information below.

U.S. Immigration and Customs Enforcement (ICE)
FOIA Requester Service Center Contact: Fernando Pineiro
500 12th Street, SW, Stop 5009
Washington, D.C. 20536-5009
FOIA Officer: Fernando Pineiro
Phone: 866-633-1182
Fax: 202-732-4265
E-mail: ice-foia@dhs.gov
ICE Website: <https://www.ice.gov/foia/overview>

If you need to contact our office again about this matter, please refer to **2020-HQFO-00538**. You may contact this office at 1-866-431-0486 or 202-343-1743.

Sincerely,



James Holzer
Deputy Chief Privacy Officer (A)
Deputy Chief FOIA Officer

ATTACHMENT 3



Lisa Weissman-Ward <lisanww@law.stanford.edu>

ICE FOIA Request 2020-ICFO-24470

2 messages

ice-foia@dhs.gov <ice-foia@dhs.gov>
To: lweissmanward@law.stanford.edu

Tue, Feb 25, 2020 at 6:26 AM

February 25, 2020

Lisa Weissman-Ward
Immigrants' Rights Clinic
559 Nathan Abbot Way
Stanford, CA 94305**RE: ICE FOIA Case Number 2020-ICFO-24470**

Dear Ms. Weissman-Ward:

This acknowledges receipt of your January 31, 2020, Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), for various documents related to Alternatives to Detention Programs (see request for details). Your request was received in this office on February 25, 2020.

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.

Provisions of the FOIA allow us to recover part of the cost of complying with your request. We shall charge you for records in accordance with the DHS Interim FOIA regulations as they apply to non-commercial requesters. As a non-commercial requester, you will be charged 10 cents per page for duplication; the first 100 pages are free, as are the first two hours of search time, after which you will pay the per quarter-hour rate (\$4.00 for clerical personnel, \$7.00 for professional personnel, \$10.25 for managerial personnel) of the searcher. We will construe the submission of your request as an agreement to pay up to \$25.00. You will be contacted before any further fees are accrued.

We have 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 **2020-ICFO-24470**. 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 2020-ICFO-24470 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, or you may contact our FOIA Public Liaison, Fernando Pineiro, in the same manner. Additionally, you have a 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](http://www.ogis.gov)-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 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
Visit our FOIA website at www.ice.gov/foia

EXHIBIT E

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



U.S. Immigration
and Customs
Enforcement

April 22, 2020

Lisa Weissman-Ward
Immigrants' Rights Clinic
559 Nathan Abbot Way
Stanford, CA 94305

Dear Ms. Weissman-Ward:

The Department of Homeland Security has received your letter appealing the adverse determination of your Freedom of Information Act/Privacy Act (FOIA/PA) request by U.S. Immigration and Customs Enforcement. Your appeal, **postmarked *or* electronically transmitted** on **April 21, 2020**, was received on **April 22, 2020**.

The Government Information Law Division acknowledges your appeal request of **2020-ICFO-24470** and is assigning it number **2020-ICAP-00298** for tracking purposes. Please reference this number in any future communications about your appeal.

A high number of FOIA/PA requests have been received by the Department. Accordingly, we have adopted the court-sanctioned practice of generally handling backlogged appeals on a first-in, first-out basis.¹ While we will make every effort to process your appeal on a timely basis, there may be some delay in resolving this matter. Should you have any questions concerning the processing of your appeal, please contact the ICE FOIA Office/Public Liaison at (866) 633-1182, or by email at ice-foia@dhs.gov.

Sincerely,

/s/MCuestas for

Shiraz Panthaky
Chief
Government Information Law Division
ICE Office of the Principal Legal Advisor
U.S. Department of Homeland Security

¹ Appeals of expedited treatment denials will be handled on an expedited basis.

EXHIBIT F

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



U.S. Immigration
and Customs
Enforcement

April 30, 2020

Lisa Weissman-Ward
Immigrants' Rights Clinic
559 Nathan Abbot Way
Stanford, CA 94305

RE: 2020-ICAP-00298, 2020-ICFO-24470

Dear Ms. Weissman-Ward:

This letter is in response to your letter dated April 21, 2020, received April 22, 2020, appealing the U.S. Immigration and Customs Enforcement (ICE) Freedom of Information Act (FOIA) Office's response to your FOIA request dated January 31, 2020, seeking records pertaining to the Alternatives to Detention Program.

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 the requested 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 **2020-ICAP-00298**, and the FOIA case number, which is **2020-ICFO-24470**.

Sincerely,

A handwritten signature in cursive script that reads "Kishou Khun".

for

Shiraz Panthaky
Chief

Government Information Law Division
ICE Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security