



January 31, 2020

Via Electronic Mail and U.S. Certified Mail

U.S. Department of Homeland Security

FOIA/PA

The Privacy Office

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U.S. Immigration and Customs Enforcement

Freedom of Information Act Office

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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.

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.

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.

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.

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.

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.

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

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

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



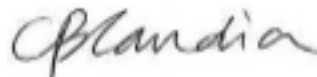
Rachel Prandini, Immigrant Legal Resource
Center



Misha Seay, Community Legal Services of
East Palo Alto



Kate Mahoney, Dolores Street Community
Services



Cecilia Candia, Legal Services for Children



Esperanza Cuautle Velazquez, Pangea Legal
Services



Jessica Farb, Immigration Center for
Women and Children