Mills Legal Clinic
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Immigrants' Rights Clinic

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May 2, 2023

U.S. Department of Homeland Security
Headquarters & Privacy Office
Privacy Office, Mail Stop 0655
2707 Martin Luther King Jr. Ave SE
Washington, DC 20528-0655

United States Immigration & Customs Enforcement
FOIA Office
500 12th Street, SW, Stop 5009
Washington, DC 20536-5009

**Re: FOIA Request for Video and Audio Recordings of ICE Enforcement Actions**

Dear FOIA Officer:

This letter is a request pursuant to the Freedom of Information Act (FOIA), 5. U.S.C. § 552, by the Stanford Law School Immigrants' Rights Clinic on behalf of Immigrant Legal Defense (ILD) (the "Requestor"). ILD seeks video and audio recordings in the possession of U.S. Immigration and Customs Enforcement (ICE), an agency of the Department of Homeland Security (DHS). Specifically, ILD requests video and audio recordings of immigration enforcement actions in California during the week of September 28, 2020.

There is a compelling and urgent need to obtain ICE's video and audio footage from September 28 2020 to October 2, 2020 and to inform the public, particularly impacted communities, about the contents of these recordings. On September 28, 2020, ICE launched a sweeping governmental operation in California that lasted five days and resulted in the arrest and removal of hundreds of individuals from many local communities throughout the state.[1] The tactics and practices employed by ICE officers during this multi-day, statewide operation implicated the fundamental due process rights of hundreds of targeted individuals and negatively impacted countless others who witnessed the arrest and removal of their fellow community members.[2]

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[1] *See* U.S. Immigr. and Customs Enf't, *DHS Announces ICE Enforcement Actions on Criminal Aliens Released Due to California Sanctuary Policy*, (Oct. 7, 2020) https://www.ice.gov/news/releases/dhs-announces-ice-enforcement-actions-criminal-aliens-released-due-california

[2] *See* Am. Immigr. Council, *U.S. Citizen Children Impacted by Immigration Enforcement*, (June 24, 2021), https://www.americanimmigrationcouncil.org/sites/default/files/research/us_citizen_children_impacted_by_immigration_enforcement_0.pdf

Despite the scale of the operation, little is known about it. Whether ICE officers acted in a manner consistent with agency guidance and state and federal law governing the arrest, detention, and removal of noncitizens is an unanswered question. This question is of significant importance to the general public and to the individuals and local communities targeted during the operation. Unedited audio and visual recordings from this period will help answer these open questions.

The public should have access to any unedited audio or visual recordings of ICE's enforcement operations in California between September 28 and October 2, 2020. Since at least 2010, ICE has created and made public hundreds of videos of various internal agency operations, including arrests, detention, and removals.[3] On one publically available website, ICE videographers have uploaded more than 300 videos of agency actions.[4] Among these is a five-minute video depicting the arrest and detention of three different individuals in California during the week of September 28, 2020.[5] Given ICE's widespread practice of recording its operations, additional and unedited recordings of ICE operations in California likely exist but have not been made public. These videos contain important information about the tactics used when arresting noncitizens and whether ICE officers are acting in a manner consistent with ICE's own protocols and state and federal due process laws. Because these video and audio records contain information about a critical government function on a matter of significant public interest and concern, FOIA mandates their disclosure.

## Records Requested

ILD requests the following records:

1. Any audio or visual recordings of ICE operations, including arrests, detention, and removals, in California between September 28, 2020 and October 2, 2020.

## The Requestor

**Immigrant Legal Defense (ILD)** is a nonprofit agency dedicated to promoting justice and fostering systemic change through the provision of free legal services to underserved immigrant communities across California. Together, ILD's attorneys, legal assistants, and staff have represented thousands of unaccompanied minors, families seeking asylum, and detained and non-detained individuals facing removal from the United States. They have also provided individual and class-wide representation to noncitizens demanding increased rights and

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[3] *See* U.S. Immigr. and Customs Enforcement, https://www.dvidshub.net/unit/ICE (identifying 320 videos and 1,745 ICE images posted to DVIDs) (hereinafter "ICE DVIDs).

[4] *Id.*

[5] U.S. Immigr. and Customs Enf't, *DHS Annoucnes ICE Enforcement Action on Criminal Aliens Released Due to California Sanctuary Policies*, https://www.dvidshub.net/video/768708/dhs-announces-ice-enforcement-actions-criminal-aliens-released-due-california-sanctuary-policies

protections for immigrants. In addition to representing noncitizens in individual and class-wide cases, ILD also collaborates with other legal service providers and community organizers on advocacy relating to local, regional, statewide, and national immigration law and policy. ILD also regularly offers technical assistance, legal training, and public education on immigration-related topics to other immigration advocates as well as members of the public. Because of its innovative programs and partnerships, ILD is recognized as a national model for both the delivery of critical legal services and advocacy. As part of its mission to serve vulnerable communities in California, ILD engages in efforts to ensure transparency by immigration agencies. ILD intends to share records obtained through this FOIA request with the public at no cost.

**Fee Waiver**

The Requestor seeks 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. § 552(a)(4)(A)(iii). As set forth above, this request aims at furthering public understanding of the practices ICE officers used when arresting and detaining hundreds of noncitizens in the fall of 2020. The tactics employed directly affect the rights of individuals arrested during that time period and countless others who are subjected to similar treatment. These operations also have a lasting impact on the communities that witness them. Consequently, records documenting ICE's practices and tactics are of considerable 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 relevant question is whether the requested information is likely to contribute significantly to public understanding of the operations or activities of the government. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003). Disclosure of the information sought is in the public interest and will contribute significantly to the public's understanding of the treatment of immigrants during ICE arrests, detention, and removals. The requested records also relate directly to government operations that potentially impact fundamental due process rights afforded to immigrants in the United States. These government operations also impact the fabric of society—the communities that witness these operations and cope with the aftermath. The records are not sought for commercial use, and the Requestor plans to disseminate the information to the public at no cost. As demonstrated above, the Requestor has both the intent and ability to convey any information obtained through this request to the public and is therefore entitled to a full fee waiver under 5 U.S.C. § 522(a)(4)(A)(iii).

Should the request for a full fee waiver be denied, Requestor also seeks 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"). Requestor is a non-profit organization that intends to disseminate the information gathered by this request to the public at no cost, including through the Requestor's website and social media. The organization regularly disseminates information to private, government, and nonprofit legal practitioners and members of the public and media through legal training, public education, written advisories, reports, newsletters, blogs, resource libraries, and action alerts. *See* https://www.ild.org/. The Requestor 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 requestor qualifies as a "representative of the news media" under the statutory definition because they routinely gather information of interest to the public and use editorial skills to turn it into distinct work that is distributed 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.

Please send responsive records to:

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Thank you for your attention. Please contact us with any questions or concerns at the above listed email addresses or by phone at 650.725.7958.

Sincerely,

Shanti Tharayil
Immigrants' Rights Clinic, Attorney
On Behalf of Immigrant Legal Defense