



EXHIBIT 6

January 12, 2021

US Immigration and Customs Enforcement
Office of Principal Legal Advisor
Government Information Law Division
500 12th Street SW Stop 5900
Washington, D.C. 20536-5009

Privacy Office
Attn: FOIA Appeals
U.S. Department of Homeland Security
245 Murray Lane SW
STOP-0655
Washington, DC 20528-0655
E-mail: foia@hq.dhs.gov

VIA FED EX

***Re: Freedom of Information Act Appeal/ FOIA APPEAL
ICE FOIA Case Number 2020-ICFO-64539
DHS FOIA Case Number 2020-HQFO-01414***

To Whom It May Concern:

This is an appeal under the Freedom of Information Act. The New Mexico Immigrant Law Center (NMILC) filed a FOIA request with the US Immigration and Customs Enforcement (ICE), the U.S. Department of Homeland Security (DHS), and Office of Inspector General (DHS OIG) on July 14, 2020. ICE acknowledged receipt of NMILC's July 14, 2020 FOIA Request on July 15, 2020. DHS also acknowledged this request on July 15 and said that the Privacy Office would be coordinating a search with ICE, and would respond to our request. DHS and ICE has neither granted nor denied this request, in violation of the time period for response set forth under 5 U.S.C. § 552(a)(6)(A)(i). Furthermore, DHS granted our expedite request and therefore this should have been processed "as soon as practicable." 6 C.F.R. § 5.5(e)(4).

PROCEDURAL HISTORY OF NMILC'S FOIA REQUEST

NMILC submitted a FOIA request to ICE, DHS and OIG on July 14, 2020 (attached at Exhibit A), which sought records in relation to the use of force and chemical agents, particularly pepper spray, against detainees on May 14, 2020:

Requesters ask for the following records:



1. Any and all contracts/agreements (IGSA) between Torrance County, CoreCivic and ICE signed from 2019-2020.
2. Records regarding the management of hunger strikes within Torrance.
3. Any email communication between CoreCivic staff and ICE staff in regards to hunger strikes and management of hunger strikes in April and May 2020.
4. All audio and visual recordings from any force used on May 14, 2020. All audio and visual recordings of or concerning the Incident, including but not limited to recordings from any and all installed cameras, handheld or mobile cameras, mobile phones, and body cameras. We understand this would include, but is not limited to, all audio and visual recordings of 2 Alpha of the Torrance detention facility, and events taking place therein, from 10:00 a.m. to 6:00 p.m. on May 14, 2020.
5. All still photographs of or concerning the Incident on May 14, 2020;
6. All reports detailing any force used on May 14, 2020. All reports and other records prepared by Torrance employees, agents, and contractors concerning the Incident, including, but not limited to, reports describing the Incident, and any reports describing Torrance's response to the Incident (including any reports documenting or concerning any use of force, chemical agents, and/or ammunition).
7. All records collected, made, or prepared during any investigation of the Incident and a complete copy of any investigation file concerning the Incident.
8. All records collected, made, or prepared during any investigation of the Incident by DHS, ICE, or DHS OIG, and a complete copy of any investigation file concerning the Incident.
9. All records containing any findings, conclusions, recommendations, or other results of any investigation by DHS, ICE, or DHS OIG concerning the Incident.
10. All records containing communications between CoreCivic employees and DHS, ICE, or DHS OIG concerning the Incident. The requested records include, but are not limited to, any such electronic mail and any and all attachments thereto.
11. All documents, audio and visual recordings, and other records concerning the Incident provided by CoreCivic to DHS, ICE, or DHS OIG.
12. All communications concerning the incident, including electronic mail, from DHS, ICE, or DHS OIG to any other office, agency, or department of the federal government, including the Executive Office of the President.
13. All communications concerning the incident with the County of Torrance.
14. All reports and after-action reports prepared after investigation by DHS, ICE or DHS OIG concerning the Incident.
15. All evidence of medical approval for the use of intermediate force and in particular the use of chemical agents/pepper spray on May 14, 2020, in accordance with PBSN 2011, 2.15. Use of Force.
16. Medical files, with names and other personal identifying information redacted, of detainees who were treated after the use of chemical agents on May 14, 2020, detailing the treatment and date and time of treatment.
17. Monthly Inventory of Chemical agents for Torrance County Detention Facility from January 2020 to June 1, 2020.



18. Any notices or field policy authorizing the use of Oleoresin Capsicum Aerosol Spray (OC Spray) at the Torrance facility.
19. Any information on trainings provided by ICE, including dates of trainings, number of trainings, a number of and a list of who is certified and trained to use OC Spray, including a breakdown of whether or not they are CoreCivic employees or ICE employees.

ICE acknowledged the request on July 15, 2020 and assigned the following case number 2020-ICFO-64539. (Exhibit B.) DHS also acknowledged the FOIA request on July 15, 2020 and assigned the case number 2020-HQFO-01414. (Exhibit C.) Furthermore, DHS stated that the Privacy Office would be coordinating a search with ICE, and would respond to our request, while the Office of the Inspector General would directly and separately respond to our request. (Exhibit C.)

NMILC’s letter also sought a waiver of all fees associated with the FOIA request because disclosure of the information NMILC sought would “likely to contribute significantly to the public understanding of the operations or activities of the government and is not primarily in the commercial interest” of NMILC, which is a 501(c)(3) non-profit organization. DHS conditionally granted this in the July 15, 2020 response. (Exhibit C.)

NMILC also requested expedited processing. NMILC argued that this request qualified for expedited processing under three of the four scenarios laid out in 6 C.F.R. § 5.5(e)(1)(ii)-(iv): compelling need; loss of substantial due process rights; and it was a matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity which affect public confidence. (Exhibit A.) This was granted in DHS’s July 15th response, obligating the agency to respond as soon as possible. 6 C.F.R. § 5.5(e)(4); (Exhibit C.)

The DHS Privacy Officer and ICE has provided no further response to NMILC’s request within the FOIA time limits and NMILC has construed the lack of response as a constructive denial of its request and is filing an administrative appeal at this time.

I. DHS and ICE HAS FAILED TO RESPOND TO NMILC’S JULY 14, 2020 FOIA REQUEST

When a party submits a FOIA request, the agency has 20 business days to determine whether to produce records responsive to the request. 5 U.S.C. § 552(a)(6)(A)(i). In unusual circumstances, this deadline may be extended for a maximum of ten additional business days. 5 U.S.C. § 552(a)(6)(B)(i). When an agency fails to meet the response times required by FOIA, the requesting parties may deem the agency’s delay a denial of the FOIA request and appeal the denial. *See Ruotolo v. Department of Justice, Tax Div.*, 53 F.3d 4, 8 (2d Cir. 1995) (“[A]dministrative remedies are ‘deemed exhausted’ if the agency fails to comply with the ‘applicable time limit’ provisions of the FOIA.”); *Voinche v. Fed. Bureau of Investigation*, 999 F.2d 962, 963 (5th Cir. 1993) (“If an agency has not complied within the statutory limits of a FOIA



request, the requestor shall be deemed to have exhausted his administrative remedies a [may] be bring suit.”). Therefore, an agency’s failure to comply with the FOIA’s time limits is, by itself, a violation. *Nightingale et al. v. USCIS et al.*, 3:19-cv-03512 (N.D. Cal. filed June 19, 2019 (quoting *Our Children’s Earth Found. v. Nat’l Marine Fisheries Serv.*, No. 14-1130 SC, 2015 WL 4452136, at *7 (N.D. Cal. Jul. 20, 2015) and *Gilmore v. U.S. Dep’t of Energy*, 33 F. Supp. 2d 1184, 1187 (N.D. Cal. 1998)).

DHS and ICE has failed to respond to NMILC’s FOIA request within the time limits, either the twenty days provided under the FOIA statute and within the ten additional days that it invoked pursuant to 5 U.S.C. § 552(a)(6)(B). Furthermore, DHS granted requesters request that this FOIA be processed on an expedited basis. See 5 U.S.C. § 552(a)(6)(E) (mandating that agencies establish expedited processing regulations); 6 C.F.R. § 5.5(e) (DHS’ expedited processing regulations). It has not been almost six months since the request.

FOIA incorporates a strong presumption in favor of mandatory disclosure of requested records. Agencies may deny a FOIA request only when the requested records fall under any of the nine exemptions listed in FOIA. 5 U.S.C. § 552(b)(1)-(9). DHS has not responded to NMILC’s FOIA request and thus has not applied any of the statutory exemptions to withhold the records requested. Accordingly, NMILC is entitled to the requested records.

NMILC is a nonprofit 501(c)(3) primarily based in Albuquerque, New Mexico which provides free legal services to low-income immigrants all across New Mexico. NMILC started in 2010 and represents immigrants in deportation and bond proceedings before the Immigration Court, as well as in humanitarian forms of relief for survivors of crime, human trafficking, and asylum. NMILC partners with community-based organizations, advocacy groups, and businesses to increase the knowledge of immigrant rights and to advocate for changes that advance equity and justice for everyone, regardless of immigration status.

Please provide a response to this appeal within 20 days allowed by 5 U.S.C § 552(a)(6)(A)(2). Thank you for your attention to this matter.

Sincerely,

Jasmine McGee
Managing Attorney
New Mexico Immigrant Law Center
505-331-8170
jmcgee@nmilc.org

EXHIBIT A



July 13, 2020

USCIS (ICE)
Freedom of Information Act Office
500 12th Street SW Stop 5009
Washington, D.C. 20536-5009
E-mail: ice-foia@dhs.gov

Senior Director of FOIA Operations
Department of Homeland Security
245 Murray Lane SW
STOP-0655
Washington, DC 20528-0655
E-mail: foia@hq.dhs.gov

FOIA Public Liaison
DHS-OIG Counsel
STOP 0305
245 Murray Lane, SW Washington, D.C. 20528-0305
FOIA.OIG@oig.dhs.gov

Via Electronic Mail

Re: Freedom of Information Act Request

To Whom It May Concern:

The New Mexico Immigrant Law Center (NMILC) submits this Freedom of Information Act (FOIA) request pursuant to 5 U.S.C. § 552, *et seq.*, and the relevant regulations, 6 C.F.R. § 5, *et seq.* NMILC seeks records pertaining to and leading up to an incident on May 14th 2020 at Torrance County Detention Facility¹ where guards used force against ICE detainees and seeks a fee waiver of this request.

I. Requestor

NMILC is a nonprofit 501(c)(3) primarily based in Albuquerque, New Mexico with a satellite office in Santa Fe, which provides free legal services to low-income immigrants all across New Mexico. NMILC started in 2010 and represents immigrants in deportation and bond proceedings before the Immigration Court, as well as in humanitarian forms of relief for

¹ Ike Swetlitz, *Suddenly they started gassing us: Cuban migrants tell of shocking attack at Ice prison*, July 2, 2020, <https://www.theguardian.com/us-news/2020/jul/02/cuban-migrants-detention-ice-facility-new-mexico>



survivors of crime, human trafficking, and asylum. NMILC partners with community-based organizations, advocacy groups, and businesses to increase the knowledge of immigrant rights and to advocate for changes that advance equity and justice for everyone, regardless of immigration status.

II. Requested Records

For purposes of this request, the term “records” includes but is not limited to any and all communications, correspondence, directives, documents, data, videotapes, audiotapes, e-mails, faxes, files, guidance, guidelines, standards, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, spreadsheets, charts, rules, manuals, technical specifications, training materials, and 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.

For purposes of this request, the term “communications” means any transmittal of information from one person or entity to another by any means, including letters, correspondence, notes, memoranda, records, reports, papers, facsimiles, electronic mail (whether to, from, copied or blind copied), electronic mail generated from a hand held personal device including a Blackberry or iPhone, instant messaging, electronic mail generated from business or personal email accounts, internet relay chat, news group, group or collaboration servers, electronic bulletin boards, electronic discussion boards, dictation tapes, video recordings, audio recordings, digital recordings, memoranda, telegrams, telecopies and telexes, teleconference, collaboration servers (including share point servers), web-based or software virtual meetings including Web-X and any other meeting software and share point servers, and oral contact such as face-to-face discussions or meetings, telephone conversations, and voicemail messages.

For purposes of this request, the term “DHS” means Department of Homeland Security, and any components, subcomponents, offices, or personnel therein.

For purposes of this request, the term “ICE” means Immigration and Customs Enforcement, and any components, subcomponents, offices, or personnel therein.

For purposes of this request, “detainee” means any person detained in an immigration detention facility or holding facility.

For the purposes of this request, “intermediate force” is defined in the 2011 Operations Manual ICE Performance-Based National Detention Standards (PBDNS 2011) under Chapter 2, Security, 2.15 Use of Force.



For the purposes of this request, “incident” refers to reports of the use of force and chemical agents, particularly pepper spray, against detainees on or around May 14, 2020.²

All requests below relate to records that were prepared, received, transmitted, collected, and/or utilized by ICE and/or DHS or prepared, received, transmitted, collected, and/or utilized by private contractors (including but not limited to CoreCivic) and that are now in the possession of ICE and/or DHS for the following facility: Torrance County Detention Facility (“Torrance”).

Requesters ask for the following records:

1. Any and all contracts/agreements (IGSA) between Torrance County, CoreCivic and ICE signed from 2019-2020.
2. Records regarding the management of hunger strikes within Torrance.
3. Any email communication between CoreCivic staff and ICE staff in regards to hunger strikes and management of hunger strikes in April and May 2020.
4. All audio and visual recordings from any force used on May 14, 2020. All audio and visual recordings of or concerning the Incident, including but not limited to recordings from any and all installed cameras, handheld or mobile cameras, mobile phones, and body cameras. We understand this would include, but is not limited to, all audio and visual recordings of 2 Alpha of the Torrance detention facility, and events taking place therein, from 10:00 a.m. to 6:00 p.m. on May 14, 2020.
5. All still photographs of or concerning the Incident on May 14, 2020;
6. All reports detailing any force used on May 14, 2020. All reports and other records prepared by Torrance employees, agents, and contractors concerning the Incident, including, but not limited to, reports describing the Incident, and any reports describing Torrance’s response to the Incident (including any reports documenting or concerning any use of force, chemical agents, and/or ammunition).
7. All records collected, made, or prepared during any investigation of the Incident and a complete copy of any investigation file concerning the Incident.
8. All records collected, made, or prepared during any investigation of the Incident by DHS, ICE, or DHS OIG, and a complete copy of any investigation file concerning the Incident.
9. All records containing any findings, conclusions, recommendations, or other results of any investigation by DHS, ICE, or DHS OIG concerning the Incident.
10. All records containing communications between CoreCivic employees and DHS, ICE, or DHS OIG concerning the Incident. The requested records include, but are not limited to, any such electronic mail and any and all attachments thereto.
11. All documents, audio and visual recordings, and other records concerning the Incident provided by CoreCivic to DHS, ICE, or DHS OIG.

² Ike Swetlitz, *Suddenly they started gassing us: Cuban migrants tell of shocking attack at Ice prison*, July 2, 2020, <https://www.theguardian.com/us-news/2020/jul/02/cuban-migrants-detention-ice-facility-new-mexico>



12. All communications concerning the incident, including electronic mail, from DHS, ICE, or DHS OIG to any other office, agency, or department of the federal government, including the Executive Office of the President.
13. All communications concerning the incident with the County of Torrance.
14. All reports and after-action reports prepared after investigation by DHS, ICE or DHS OIG concerning the Incident.
15. All evidence of medical approval for the use of intermediate force and in particular the use of chemical agents/pepper spray on May 14, 2020, in accordance with PBSN 2011, 2.15. Use of Force.
16. Medical files, with names and other personal identifying information redacted, of detainees who were treated after the use of chemical agents on May 14, 2020, detailing the treatment and date and time of treatment.
17. Monthly Inventory of Chemical agents for Torrance County Detention Facility from January 2020 to June 1, 2020.
18. Any notices or field policy authorizing the use of Oleoresin Capsicum Aerosol Spray (OC Spray) at the Torrance facility.
19. Any information on trainings provided by ICE, including dates of trainings, number of trainings, a number of and a list of who is certified and trained to use OC Spray, including a breakdown of whether or not they are CoreCivic employees or ICE employees.

III. Form of Production

With respect to the form of production, see 5 U.S.C § 552(a)(3)(B), NMILC requests that responsive electronic records be provided electronically in their native file format, if possible. Alternatively, NMILC requests that the records be provided electronically in a text searchable, static-image format (PDF), in the best image quality in the agency's possession, and that the records be provided in separate, Bates-stamped files. We request that you produce responsive materials in their entirety, including all attachments, appendices, enclosures, and/or exhibits. However, to the extent that a response to this request would require you to provide multiple copies of identical material, the request is limited so that only one copy of the identical material is requested. We request that you produce responsive materials in their entirety, including all attachments, appendices, enclosures, and/or exhibits. Please do not compress images or down sample the resolution, as this interferes with their legibility. To facilitate a speedy response, we ask that records responsive to this request be produced on a rolling basis. NMILC will accept records and other information that have been redacted pursuant to the Health Insurance and Portability Accountability Act or other statutes or regulations protecting the privacy of individual detainees.

In the event you determine that materials contain information that falls within the statutory exemptions to mandatory disclosure, we request that such information be reviewed for possible discretionary disclosure. See *Chrysler Corp. v. Brown*, 441 U.S. 281, 293 (1979). We also request that, in accordance with 5 U.S.C. § 552(b), any and all reasonably segregable portions of otherwise exempt materials be produced. To the extent the request is denied, we expect to



receive notice in writing, including a description of the information withheld, the reasons for denial, and any exemptions relied upon.

IV. Application for Waiver of Fees

NMILC requests a waiver of documents search, review, and duplication fees on the grounds that disclosure of the requested records is in the public interest and because disclosure is “likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii).

- a. Waiver is warranted because disclosure of the information is likely to contribute significantly to the public understanding of the operations and activities of the government and is not primarily in the commercial interest of NMILC.**

NMILC is entitled to a waiver of all costs because disclosure will comply with 5 U.S.C. § 552(a)(4)(A)(iii). Disclosure of the records sought herein is in the public interest and will further public understanding of government conduct. NMILC is one of the only providers of free immigration legal services to New Mexico residents. We provide free legal services to those, detained at Torrance and Cibola. NMILC is listed as a pro bono legal service provider for the El Paso Immigration Court, and has applied to be one at the Otero Detained Court also. Our organization is frequently a resource for numerous community organizations to provide outreach, trainings, and support for their constituents and members. Additionally, we are a resource for local media, congressional liaisons, and the general public. We are frequently called on to present “know your rights” presentations to community organizations.

Furthermore, the records are not requested for commercial use. As mentioned, NMILC is a provider of free immigration legal services and regularly disseminates free information to the public, congressional liaisons, media and the general public. NMILC is not filing this request to further any commercial interest and is a 501(c)(3) non-profit organization. Our organization works collaboratively with numerous other immigration advocacy organizations nationally and within New Mexico. Any information disclosed as a result of this request will be made available to the public at no cost. NMILC plans to analyze, publish and disseminate to the public the information gathered through this request.

V. REQUEST FOR EXPEDITED PROCESSING

Finally, Requesters ask that this request be processed on an expedited basis. See 5 U.S.C. § 552(a)(6)(E) (mandating that agencies establish expedited processing regulations); 6 C.F.R. § 5.5(e) (DHS’ expedited processing regulations). This request qualifies for such expedited processing under three of the four scenarios laid out in 6 C.F.R. § 5.5(e)(1)(ii)-(iv).



First, there is a “compelling need” for these records, as defined in the statute, because the information requested is “urgen[tly]” needed by an organization primarily engaged in disseminating information “to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II); see also 6 C.F.R. § 5.5(e)(1)(ii).

Second, delay in disclosing the requested information could lead to “[t]he loss of substantial due process rights.” 6 C.F.R. § 5.5(e)(1)(iii). Immigrant detainees in federal civil detention are protected by the procedural and substantive guarantees of the Fifth Amendment. See *Demore v. Kim*, 538 U.S. 510, 523 (2003) (procedural due process); *Bell v. Wolfish*, 441 U.S. 520, 535 (1979) (substantive due process). The government is required to affirmatively provide individuals in its custody with medical care, reasonable safety, and protection from harm. *DeShaney v. Winnebago County Dep’t of Social Servs.*, 489 U.S. 189, 200 (1989). A failure to do so deprives detainees of their due process rights. *Id.* Individuals in immigration detention are entitled to greater due process protections than those in criminal pretrial detention, see *Jones v. Blanas*, 393 F.3d 918, 933-34 (9th Cir. 2004), and ought to receive “more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish.” *Youngberg v. Romeo*, 457 U.S. 307, 322 (1982).

Finally, this request seeks records on “[a] matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity which affect public confidence.” 6 C.F.R. § 5.5(e)(1)(iv). The public and media have shown a “widespread and exceptional . . . interest in” the use of chemical agents against immigrant detainees. On August 2, 2019, at Bossier Parish Corrections Center in Louisiana, immigrant detainees claimed ICE guards pepper-sprayed and beat them.³ A later inspection of the Bossier Parish facility by the Nakamoto Group found that during this protest, force was used on a detainee while he was unconscious.⁴ Another such incident reportedly occurred on June 12, 2017, when surveillance footage captured from ICE’s Adelanto, CA, processing center depicted ICE personnel using pepper spray on detainees protesting detention conditions.⁵ In light of the increasing COVID-19 infections in immigration detention facilities and the associated risks of contagion, sickness, and death that immigrant detainees presently face, there have been increased reports of the use of chemical agents against ICE detainees who protest the lack of adequate protections, including

³ Fernanda Echavarri, Dozens of ICE Detainees Were Pepper-Sprayed by Guards for Protesting at a Louisiana Jail, MOTHER JONES, Aug. 2, 2019, <https://www.motherjones.com/politics/2019/08/immigrant-detention-ice-bossier-louisiana-pepper-spray/>.

⁴ Lanard & Fernanda Echavarri, ICE Stops Using Jail Where Detainees Were Beaten and Pepper Sprayed, MOTHER JONES, Feb. 10, 2020, <https://www.motherjones.com/politics/2020/02/ice-stops-using-jail-where-detainees-were-beaten-and-pepper-sprayed/>.

⁵ Tom Dreisbach, Exclusive: Video Shows Controversial Use Of Force Inside An ICE Detention Center, NPR (Feb. 6, 2020, 7:45 AM), <https://www.npr.org/2020/02/06/802939294/exclusive-video-shows-controversial-use-of-force-inside-an-ice-detention-center>.



NEW MEXICO IMMIGRANT LAW CENTER
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two incidents in June 2020,⁶ one in May 2020,⁷ and one in March 2020.⁸ The requested records will be disseminated both by NMILC and its contacts in local, national and international news media.

Pursuant to 6 C.F.R. § 5.5(e)(3), the undersigned certify that the information provided above as a basis for requesting expedited processing is true and correct to the best of their knowledge and belief.

Thank you in advance to this request and NMILC, in accordance with DHS regulations, expects to receive a decision on our request for expedited processing within 10 calendar days. See 6 C.F.R. § 5.5(e)(4). We also expect a written response to our FOIA request within 20 business days. 5 U.S.C. § 552(a)(6)(A)(i). If the Request is denied in whole or in part, we ask that you justify all withholdings by reference to specific exemptions to the FOIA. We also ask that you release all segregable portions of otherwise exempt material.

Please furnish all responsive records to:

Jasmine McGee
New Mexico Immigrant Law Center
PO Box 7040
Albuquerque, NM 87194
jmcgee@nmilc.org
505-331-8170

Sincerely,

A handwritten signature in cursive script that reads "Jasmine McGee".

Jasmine McGee
Managing Attorney
New Mexico Immigrant Law Center
505-331-8170
jmcgee@nmilc.org

⁶ Noah Lanard, Guards Pepper-Spray Protesting Asylum Seekers at an ICE Detention Center, June 22, 2020, <https://www.motherjones.com/politics/2020/06/guards-pepper-spray-protesting-asylum-seekers-at-an-ice-detention-center/>; Elly Yu, Immigrant Detainees At Adelanto Say Officers Pepper-Sprayed Them For Peacefully Protesting, June 22, 2020, <https://laist.com/2020/06/22/adelanto-detention-facility-immigrant-detainee-protest.php>

⁷ Catherine E. Shoichet, After violence erupted in an ICE detention facility, a message left on a window said, 'HELP US', May 22, 2020, <https://www.cnn.com/2020/05/22/us/ice-detention-coronavirus-violence-hunger-strikes/index.html>

⁸ Noah Lanard, The Women Asked ICE for Soap. They Got Pepper-Sprayed Instead, April 22, 2020 <https://www.motherjones.com/coronavirus-updates/2020/04/ice-pepper-spray-lasalle/>

EXHIBIT B



Jasmine McGee <jmcgee@nmilc.org>

ICE FOIA Request 2020-ICFO-64539

1 message

ice-foia@dhs.gov <ice-foia@dhs.gov>
To: jmcgee@nmilc.org

Wed, Jul 15, 2020 at 11:12 AM

July 15, 2020

Jasmine McGee
New Mexico Immigrant Law Center
P.O. Box 7040
Albuquerque, NM 87194**RE: ICE FOIA Case Number 2020-ICFO-64539**

Dear Ms. McGee:

This acknowledges receipt of your July 14, 2020, Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), for records pertaining to and leading up to an incident on May 14th 2020 at Torrance County Detention Facility where guards used force against ICE detainees (see request for details). Your request was received in this office on July 15, 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 commercial requesters. As a commercial requester, you will be charged 10 cents per page for duplication, and for search and review time at the per quarter-hour rate (\$4.00 for clerical personnel, \$7.00 for professional personnel, \$10.25 for managerial personnel) of the searcher and reviewer. 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-64539**. 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-64539 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 right to seek dispute resolution services from the Office of Government Information Services (OGIS) which mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting

access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS as follows: Office of Government Information Services, National Archives and Records Administration, [8601 Adelphi Road](#)-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; 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 C



**Homeland
Security**

Privacy Office, Mail Stop 0655

July 15, 2020

SENT VIA E-MAIL TO: jmcgee@nmilc.org

Jasmine McGee
P.O. Box 7040
Albuquerque, NM 87194

Re: **2020-HQFO-01414**

Dear Ms. McGee:

This letter acknowledges receipt of your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), dated July 13, 2020, and to your request for expedited handling and a waiver of all assessable FOIA fees. Our office received your request on July 14, 2020.

You also submitted your request to the U.S. Immigration and Customs Enforcement (ICE) and the Office of Inspector General (OIG). The Privacy Office will be coordinating a search with the U.S. Immigration and Customs Enforcement (ICE) and will respond to your request on behalf of DHS and its components. We will also transfer your request to the Office of Inspector General (OIG) for their direct response to you.

Specifically, you requested:

1. Any and all contracts/agreements (IGSA) between Torrance County, CoreCivic and ICE signed from 2019-2020.
2. Records regarding the management of hunger strikes within Torrance.
3. Any email communication between CoreCivic staff and ICE staff in regards to hunger strikes and management of hunger strikes in April and May 2020.
4. All audio and visual recordings from any force used on May 14, 2020. All audio and visual recordings of or concerning the Incident, including but not limited to recordings from any and all installed cameras, handheld or mobile cameras, mobile phones, and body cameras. We understand this would include, but is not limited to, all audio and visual recordings of 2 Alpha of the Torrance detention facility, and events taking place therein, from 10:00 a.m. to 6:00 p.m. on May 14, 2020.
5. All still photographs of or concerning the Incident on May 14, 2020;
6. All reports detailing any force used on May 14, 2020. All reports and other records prepared by Torrance employees, agents, and contractors concerning the Incident, including, but not limited to, reports describing the Incident, and any reports describing Torrance's response to the Incident (including any reports documenting or concerning any use of force, chemical agents,

and/or ammunition).

7. All records collected, made, or prepared during any investigation of the Incident and a complete copy of any investigation file concerning the Incident.
8. All records collected, made, or prepared during any investigation of the Incident by DHS, ICE, or DHS OIG, and a complete copy of any investigation file concerning the Incident.
9. All records containing any findings, conclusions, recommendations, or other results of any investigation by DHS, ICE, or DHS OIG concerning the Incident.
10. All records containing communications between CoreCivic employees and DHS, ICE, or DHS OIG concerning the Incident. The requested records include, but are not limited to, any such electronic mail and any and all attachments thereto.
11. All documents, audio and visual recordings, and other records concerning the Incident provided by CoreCivic to DHS, ICE, or DHS OIG.
12. All communications concerning the incident, including electronic mail, from DHS, ICE, or DHS OIG to any other office, agency, or department of the federal government, including the Executive Office of the President.
13. All communications concerning the incident with the County of Torrance.
14. All reports and after-action reports prepared after investigation by DHS, ICE or DHS OIG concerning the Incident.
15. All evidence of medical approval for the use of intermediate force and in particular the use of chemical agents/pepper spray on May 14, 2020, in accordance with PBSDN 2011, 2.15. Use of Force.
16. Medical files, with names and other personal identifying information redacted, of detainees who were treated after the use of chemical agents on May 14, 2020, detailing the treatment and date and time of treatment.
17. Monthly Inventory of Chemical agents for Torrance County Detention Facility from January 2020 to June 1, 2020.
18. Any notices or field policy authorizing the use of Oleoresin Capsicum Aerosol Spray (OC Spray) at the Torrance facility.
19. Any information on trainings provided by ICE, including dates of trainings, number of trainings, a number of and a list of who is certified and trained to use OC Spray. including a breakdown of whether or not they are CoreCivic employees or ICE employees.

Your request for expedited treatment is hereby granted.

You have requested a fee waiver. The DHS FOIA regulations at 6 C.F.R. Part 5 § 5.11(k) set forth six factors DHS must evaluate to determine whether the applicable legal standard for a fee waiver has been met: (1) Whether the subject of the requested records concerns “the operations or activities of the government,” (2) Whether the disclosure is “likely to contribute” to an understanding of government operations or activities, (3) Whether disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons, (4) Whether the contribution to public understanding of government operations or activities will be “significant,” (5) Whether the requester has a commercial interest that would be furthered by the requested disclosure, and (6) Whether the magnitude of any identified commercial interest to the requester is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

Upon review of the subject matter of your request, and an evaluation of the six factors identified above, DHS has determined that it will conditionally grant your request for a fee waiver. The fee waiver determination will be based upon a sampling of the responsive documents received from the various DHS program offices as a result of the searches conducted in response to your FOIA request. DHS will, pursuant to DHS FOIA regulations applicable to non-commercial requesters, provide two hours of search time and process the first 100 pages at no charge to you. If upon review of these documents, DHS determines that the disclosure of the information contained in those documents does not meet the factors permitting DHS to waive the fees, then DHS will at that time either deny your request for a fee waiver entirely, or will allow for a percentage reduction in the amount of the fees corresponding to the amount of relevant material found that meets the factors allowing for a fee waiver. In either case, DHS will promptly notify you of its final decision regarding your request for a fee waiver and provide you with the responsive records as required by applicable law.

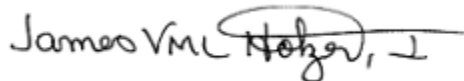
In the event that your fee waiver is denied, and you determine that you still want the records, provisions of the FOIA allow us to recover part of the cost of complying with your request. We shall charge you for records in accordance with the DHS FOIA regulations as they apply to non-commercial requesters. As a non-commercial requester you will be charged for any search time and duplication beyond the free two hours and 100 pages mentioned in the previous paragraph. You will be charged 10 cents per page for duplication and search time at the per quarter-hour rate (\$4.00 for clerical personnel, \$7.00 for professional personnel, \$10.25 for managerial personnel) of the searcher. In the event that your fee waiver is denied, we will construe the submission of your request as an agreement to pay up to \$25.00. This office will contact you before accruing any additional fees.

We have queried the appropriate component(s) of DHS for responsive records. If any responsive records are located, they will be reviewed for determination of releasability. Please be assured that one of the analysts 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-HQFO-01414**. Please refer to this identifier in any future correspondence. The status of your FOIA request is now available online and can be accessed at: <https://www.dhs.gov/foia-status>, by using this FOIA request number.

If you have any questions, or would like to discuss this matter, please feel free to contact this office at 1-866-431-0486 or 202-343-1743.

Sincerely,

A handwritten signature in black ink that reads "James V. M. Holzer, J." with a stylized flourish at the end.

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

ORIGIN ID: ONMA (505) 247-1023
JASMINE MCGEE

SHIP DATE: 12JAN21
ACTWGT:
CAD: 113104730INNET4280

NMMLC
625 SILVER SW SUITE 410
ALBUQUERQUE, NM 87102
UNITED STATES US

BILL SENDER

TO PRIVACY OFFICE

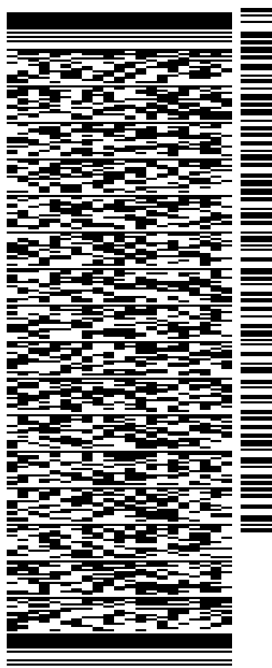
US DHS, ATTN FOIA APPEALS
245 MURRAY LANE SW
STOP 0655

WASHINGTON DC 20528

(202) 343-1743

REF: FOIA APPEAL

PO: NV DEPT:



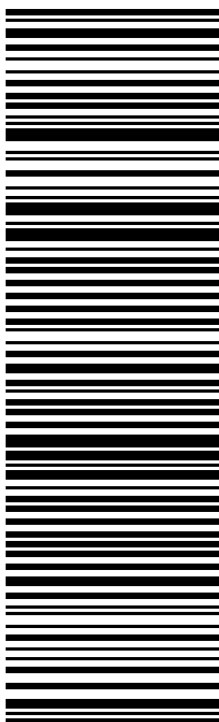
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CAD: 113104730INNET4280

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ALBUQUERQUE, NM 87102
UNITED STATES US

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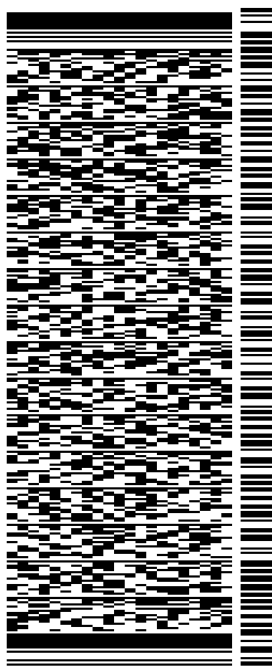
TO GOVERNMENT INFORMATION LAW DIVISION

US ICE, OPLA
500 12TH STREET SW STOP 5900

WASHINGTON DC 20536

(866) 633-1182 REF: FOIA APPEAL

PO: DEPT:

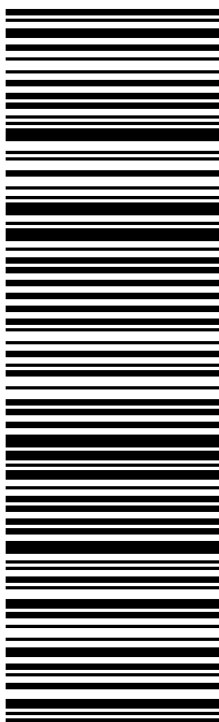


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Shipment Receipt

Address Information**Ship to:**

Government Information
Law Division
US ICE, OPLA
500 12th Street SW Stop
5900

WASHINGTON, DC
20536
US
(866) 633-1182

Ship from:

Jasmine McGee

NMILC

625 Silver SW Suite 410
Albuquerque, NM
87102
US
5052471023

Shipment Information:

Tracking no.: 772601874910

Ship date: 01/12/2021

Estimated shipping charges: 11.55 USD

Package Information

Pricing option: FedEx One Rate

Service type: FedEx Express Saver

Package type: FedEx Envelope

Number of packages: 1

Total weight:

Declared Value: 0.00 USD

Special Services:

Pickup/Drop-off: Drop off package at FedEx location

Billing Information:

Bill transportation to: NMILC User-730

Your reference: FOIA APPEAL

P.O. no.:

Invoice no.:

Department no.:

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FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$1000, e.g., jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits; Consult the applicable FedEx Service Guide for details.

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