

# EXHIBIT A

# CARDOZO LAW

BENJAMIN N. CARDOZO SCHOOL OF LAW • YESHIVA UNIVERSITY

## KATHRYN O. GREENBERG IMMIGRATION JUSTICE CLINIC

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U.S. Immigration and Customs Enforcement  
Freedom of Information Act Office  
500 12th Street, S.W., Stop 5009  
Washington, D.C. 20536-5009  
Via Secure Release Portal and Email to [ICE-FOIA@dhs.gov](mailto:ICE-FOIA@dhs.gov)

Re: FOIA Request for Records Related to Language Access in Immigration Detention  
Law Libraries (Fee Waiver & Expedited Proceeding Requested)

Dear Freedom of Information Officer:

The Kathryn O. Greenberg Immigration Justice Clinic (“Clinic”) submits this letter as a request for information under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, *et seq.*, reflecting the procedures that certain detention facilities have adopted to provide language access services in law libraries within immigration detention centers. The Clinic asks that this request be expedited pursuant to 5 U.S.C. § 552(a)(6)(E), and that it be granted a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(iii).

### I. Records Requested

Immigration and Customs Enforcement’s National Detention Standards and its Performance-Based Detention Standards require each detention facility that detains individuals for immigration enforcement to “establish procedures” that the facility should use to “assist detainees who are . . . LEP . . . in using the law library.”<sup>1</sup> “LEP” refers to limited English proficiency<sup>2</sup>; as DHS describes it, an LEP individual is one who “does not speak English as their primary language, and has a limited ability to read, speak, write, or understand English.”<sup>3</sup>

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<sup>1</sup> NATIONAL DETENTION STANDARDS FOR NON-DEDICATED FACILITIES (REV. 2019), Standard 6.3(II)(J); PERFORMANCE-BASED NATIONAL DETENTION STANDARDS 2011 (REV. 2016), Standard 6.3(V)(I)(3).

<sup>2</sup> *Id.* at iii.

<sup>3</sup> Department of Homeland Security (“DHS”), Language Access at the Department of Homeland Security, [https://www.dhs.gov/language-access#:~:text=A%20limited%20English%20proficient%20\(LEP,a%20language%20other%20than%20English](https://www.dhs.gov/language-access#:~:text=A%20limited%20English%20proficient%20(LEP,a%20language%20other%20than%20English) (last updated Jan. 21, 2021).

The Clinic seeks disclosure of any and all records<sup>4</sup> prepared, received, transmitted, collected, and/or maintained by ICE (and its subcomponents) and its contractors (and their subcontractors) that reflect: (1) the current “procedures” that the detention facilities listed in Appendix A have established for ensuring that LEP individuals can use the law library, and (2) any modifications or amendments to these procedures made by ICE.

If any of the names of these detention centers have changed, this request should be construed to apply to the facility under its new name. Please construe this as an ongoing FOIA request, such that any records that come within the possession of the agency prior to its final response to this FOIA request should also be considered within the request’s scope. If ICE believes that it does not have or cannot provide any portion of the requested records, please provide the remainder of the requested records. Finally, this request is specific and narrowly tailored; however, if ICE believes that this information would be burdensome to produce as requested, the Clinic requests that ICE contact the Clinic using the information below as the Clinic may be willing to modify aspects of this request.

## II. Request for Expedited Processing

Expedited processing is warranted because there is “an urgency to inform the public” about an “actual or alleged Federal Government activity,” and the request is made by entities “primarily engaged in disseminating information.” 5 U.S.C. § 552(a)(6)(E)(v)(II); *see also* 6 C.F.R. § 5.5(e)(ii). This request demonstrates that both criteria are satisfied.

First, there is an urgent need to obtain information about the procedures for ensuring language access in detention center law libraries, which at this point, is not publicly available. It is well recognized that law libraries are a critical component of ensuring that detained individuals can access the legal system.<sup>5</sup> This is particularly true in the context of immigration detention, both because the majority of those detained are forced to represent themselves in removal proceedings<sup>6</sup> (and, for many, in other legal matters), and because people who are in immigration detention overwhelmingly have limited proficiency in English.<sup>7</sup> Accordingly, when it comes to immigration

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<sup>4</sup> The term “records” as used herein includes all records or communications preserved in electronic or written form including but not limited to training manuals, correspondence, regulations, directives, documents, data, videotapes, audiotapes, e-mails, faxes, files, guidance, guidelines, standards, evaluations, instructions, analyses, memorandum, agreements, notes, orders, policies, procedures, protocols, reports, rules, technical manuals, technical specifications, training materials or studies, including records kept in written form or electronic format on computers and/or other electronic storage devices and electronic communications and/or videotapes, as well as any reproductions thereof that differ in any way from any reproduction, such as copies containing marginal notations..

<sup>5</sup> *Bounds v. Smith*, 430 U.S. 817, 828 (1977) (recognizing that meaningful access to courts requires prison officials to provide adequate access to legal resources); *see also* DHS, ACCESS TO DUE PROCESS, FISCAL YEAR 2021 REPORT TO CONGRESS at 6 (2022), <https://www.dhs.gov/sites/default/files/2022-04/ICE%20-%20Access%20to%20Due%20Process.pdf> (discussing access to law libraries as part of DHS’s report to Congress on access to due process in immigration detention).

<sup>6</sup> *See* TRAC Immigration, Who is Represented in Immigration Court?, <https://trac.syr.edu/immigration/reports/485/>; Ingrid V. Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. PA. L. REV. 1, 1 (2015).

<sup>7</sup> *See* Cristobal Ramon, Lucas Reyes, Language Access in the Immigration System: A Primer, Bipartisan Policy Center (Sept. 18, 2020), <https://bipartisanpolicy.org/blog/language-access-in-the-immigration-system-a-primer/> (reporting that “approximately 89% of migrants in immigration court hearings receiv[ed] their hearings in a language other than English in 2018”).

detention, ensuring access to law libraries means providing language services such that detained LEP individuals can use law libraries in a language that they sufficiently understand.

ICE has recognized the importance of this obligation in promulgating its detention standards, requiring facilities that detain noncitizens for purposes of immigration enforcement to “establish procedures” to ensure that LEP individuals can access law libraries in immigration detention centers.<sup>8</sup> Yet, despite the importance of ensuring that individuals can access these services, these procedures are not publicly available nor, based on the Clinic’s interviews with individuals at a number of detention facilities, known to the noncitizens who are detained there.<sup>9</sup> And the Clinic has been unable to ascertain these procedures even through phone calls to the staff at many of these detention centers.<sup>10</sup>

Obtaining information about how detained LEP noncitizens can meaningfully use law libraries is, of course, most critical for the individuals currently detained by ICE. Recent reports confirm that detained LEP individuals face major obstacles in attempting to obtain translations and other language assistance in law libraries.<sup>11</sup> These findings echo the reports that the Clinic has received directly from detained LEP individuals who have attempted to use law libraries.<sup>12</sup> Without this information, the Clinic and other advocates are unable to help LEP individuals understand how they can access translation and interpretation services in law libraries, and, consequently, prevented from providing the information that they often offer otherwise.

Most troublingly, the dearth of public information about these procedures means that LEP individuals continue to be denied meaningful access to law libraries—and therefore any meaningful chance to defend themselves in legal proceedings—simply because they cannot access the language assistance that the standards require. For example, the Clinic has spoken with numerous people—including currently detained individuals—who could not access basic legal materials or even read legal documents sent to them because they did not know how to request language assistance from the law library.<sup>13</sup> Noncitizens have also reported to the Clinic that they did not even realize that they were entitled to such assistance and that they have turned to other detained individuals for interpretation—despite the serious risks created by disclosing sensitive legal information to other detained individuals.<sup>14</sup> Other advocates who work with noncitizens have received similar reports from currently and recently detained LEP individuals.<sup>15</sup> Accordingly, to the extent that these facilities have adopted the procedures mandated by ICE’s detention standards, it is critical to make this information public so that noncitizens can avail themselves of their right to language assistance and, as a result, meaningful access to law libraries in detention.

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<sup>8</sup> See *supra* note 1.

<sup>9</sup> Notes from calls are on file with the Clinic.

<sup>10</sup> Notes from some of these calls are on file with the Clinic.

<sup>11</sup> See, e.g., CA DEP’T OF JUSTICE, IMMIGRATION DETENTION IN CALIFORNIA 32, 50 (2021); Andrew Dafoe, ICE Uses Language Barriers to Silence Asylum Seekers in Louisiana, *The Lens* (Aug. 7, 2019), <https://thelensnola.org/2019/08/07/ice-uses-language-barriers-to-silence-asylum-seekers-in-louisiana/>; see also Mike Ludwig, Asylum Seekers Are Being “Disappeared” in Private Louisiana Jails, *TruthOut* (May 17, 2019), <https://truthout.org/articles/asylum-seekers-are-being-disappeared-in-private-louisiana-jails/> (describing asylum-seeker’s need to rely on volunteers to translate legal documents).

<sup>12</sup> Notes from calls are on file with the Clinic.

<sup>13</sup> Notes from calls are on file with the Clinic.

<sup>14</sup> Notes from calls are on file with the Clinic.

<sup>15</sup> Email is on file with Clinic.

Language access in immigration detention is also an area of intense public interest. In recent years, this issue has emerged in numerous reports and news stories about language access in the context of law libraries and other critical detention programs.<sup>16</sup> However, despite the widespread interest and attention, little to no information about how the facilities purport to implement these standards is available in the public domain.<sup>17</sup> Without access to the records requested, the public is unable to understand how detention centers are implementing this critical portion of the detention standards and, as a result, participate in the ongoing debate about the conditions within and due process concerns created by immigration detention,<sup>18</sup> a massive—and growing—governmental activity.<sup>19</sup>

Second, this request is made by an entity that is considered to be “primarily engaged in disseminating information.” 5 U.S.C. § 552(a)(6)(E)(v)(II). Indeed, the Clinic has a demonstrated track record of publishing public-facing reports and other public education materials, including through using materials obtained via FOIA.<sup>20</sup> See 6 C.F.R. § 5.5(d)(3) (specifying that “information dissemination . . . need not be [a requestor’s] sole occupation”). As such, this request satisfies the standard for expedited processing.

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<sup>16</sup> See, e.g., Isabela Dias, He Was Critically Ill in ICE Detention. A Translator May Have Saved His Life, Mother Jones, Jan. 29, 2021, <https://www.motherjones.com/politics/2021/01/he-was-critically-ill-in-ice-detention-a-translator-may-have-saved-his-life/>; see also *supra* note 11 (collecting sources); Katherine L. Beck, *Interpreting Injustice: The Department of Homeland Security’s Failure To Comply With Federal Language Access Requirements In Immigration Detention*, 20 HARV. LATINO L. REV. 15 (2017); see also Nina Rabin, *Unseen Prisoners: Women In Immigration Detention Facilities In Arizona*, 23 GEO. IMMIGR. L.J. 695 (2009); NATIONAL IMMIGRATION LAW CENTER, BROKEN SYSTEM: CONFIDENTIAL REPORTS REVEAL FAILURES IN U.S. IMMIGRANT DETENTION CENTERS at 31 (2016), <https://www.nilc.org/wp-content/uploads/2016/02/A-Broken-System-2009-07.pdf>.

<sup>17</sup> See *supra* notes 9–10 and accompanying text (describing dearth of information and the Clinic’s unsuccessful efforts to obtain this information from detention centers).

<sup>18</sup> See, e.g., Rep. Grijalva, Rep. Grijalva and 27 Members of Congress Call Out ICE’s Lack of Access to Legal Representation and Resources for Detained Immigrants, Press for Changes, Nov. 3, 2022, <https://grijalva.house.gov/rep-grijalva-and-27-members-of-congress-call-out-ices-lack-of-access-to-legal-representation-and-resources-for-detained-immigrants-press-for-changes/>; Reuters, US to close or scale back troubled immigration detention centers, Mar. 25, 2022, <https://www.reuters.com/world/us/us-plans-close-scale-back-four-immigrant-detention-centers-document-shows-2022-03-25/>; Carmen Sesin, Asylum-seekers, attorneys decry ‘horrendous’ Louisiana ICE detention center, NBC News, <https://www.nbcnews.com/news/latino/asylum-seekers-attorneys-decry-horrendous-louisiana-ice-detention-cent-rcna1218>.

<sup>19</sup> See Camilo Motoya-Galvez, U.S. ICE immigration arrests and deportations in the U.S. interior increased in fiscal year 2022, CBS News, Dec. 30, 2022, <https://www.cbsnews.com/news/ice-immigration-arrests-and-deportations-us-interior-increased-fiscal-year-2022/>; Philip Marcelo and Gerald Herbert, *Immigrant Detentions Soar Despite Biden’s Campaign Promises*, Assoc. Press, Aug. 5, 2021, <https://apnews.com/article/joe-biden-health-immigration-coronavirus-pandemic-4d7427ff67d586a77487b7efec58e74d>.

<sup>20</sup> See, e.g., IMMIGRATION JUSTICE CLINIC, CARDOZO SCHOOL OF LAW, IMMIGRATION CYBER PRISONS: ENDING THE USE OF ELECTRONIC ANKLE SHACKLES (2021), <https://larc.cardozo.yu.edu/cgi/viewcontent.cgi?article=1002&context=faculty-online-pubs>; New York Immigrant Representation Study Steering Committee (including Clinic Co-Director Lindsay Nash), *Assessing Justice: The Availability and Adequacy of Counsel in Removal Proceedings – New York Immigrant Representation Study Report: Part 1*, 33 CARDOZO L. REV. 358 (2011) (analyzing and reporting on ICE and Executive Office for Immigration Review (“EOIR”) data—obtained through, *inter alia*, a FOIA request—regarding the rates of representation and success in various EOIR proceedings for noncitizens facing removal in the New York area); IMMIGRATION JUSTICE CLINIC, CARDOZO SCHOOL OF LAW, CONSTITUTION ON ICE: A REPORT ON IMMIGRATION HOME RAID OPERATIONS (2009), <https://larc.cardozo.yu.edu/cgi/viewcontent.cgi?article=1109&context=faculty-articles>; see also Lindsay Nash, *Inventing Deportation Arrests*, 121 MICH. L. REV. \_\_\_\_ (forthcoming 2023) (publishing, *inter alia*, information obtained through FOIA requests).

### III. Request for Fee Waiver

The Clinic is entitled to a waiver of all fees associated with the instant request because the disclosure of the requested information 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); *see also* 6 C.F.R. § 5.11(k) (records furnished without charge or at a reduced rate if the information is in the public interest, and disclosure is not in commercial interest of institution). This request satisfies both criteria.

With respect to the first requirement, the critical nature of the requested records and the extent to which they will contribute to the public understanding of the government’s activities are described above.<sup>21</sup> With respect to the second requirement, the Clinic is a not-for-profit organization that does not seek to disseminate this information for commercial gain. Rather, the Clinic intends to make this information available to the public, including the press, at no cost, and, as described, has done so regularly in the past.<sup>22</sup> Accordingly, disclosure here meets the statutory criteria, and a fee waiver would fulfill congressional intent in amending FOIA.<sup>23</sup>

In the alternative, if a full fee waiver is not granted, the Clinic seeks all applicable reductions in fees pursuant to 6 C.F.R. § 5.11(d). Fees should be limited to reasonable duplication costs when the request is not for commercial purposes and “the request is made by an educational or noncommercial scientific institution.” 5 U.S.C. § 522(a)(4)(A)(ii)(II). The Clinic, as an educational institution, requests that if the fee waiver is not granted, fees be limited to duplication costs only and that, if those fees exceed \$200.00, the agency contact the Clinic through the undersigned counsel to obtain consent to incur additional fees.

\* \* \* \* \*

The Clinic certifies that the foregoing is true and correct. *See* 6 C.F.R. § 5.5(d)(3). If you have any questions regarding this request, please contact Lindsay Nash at 646-592-6538, or via email at [lindsay.nash@yu.edu](mailto:lindsay.nash@yu.edu). Please furnish copies of all information to Lindsay Nash using the address and contact information in the signature block. Thank you in advance for your timely cooperation.

Sincerely,

/s/ Lindsay Nash  
 Lindsay Nash, Esq.  
 Marc Cardona  
 Keisy Germosen  
 Liliana L. Martinez  
 Benjamin N. Cardozo School of Law  
 Kathryn O. Greenberg Immigration  
 Justice Clinic  
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<sup>21</sup> *See supra* Part II.

<sup>22</sup> *See supra* note 20.

<sup>23</sup> *See Judicial Watch Inc. v. Rossotti*, 326 F.3d 1310, 1312 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers of noncommercial requesters’”).

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**Exhibit A**

1. Adam County Detention Center
2. Adelanto ICE Processing Center
3. Broward Transitional Center
4. Buffalo (Batavia) Service Processing Center
5. Butler County Jail
6. Central Louisiana ICE Processing Center
7. Denver Contract Detention Facility
8. El Valle Detention Facility
9. Eloy Federal Contract Facility
10. Florence Service Processing Center
11. Folkston Main IPC
12. Houston Contract Detention Facility
13. IAH Secure Adult Detention Facility (Polk)
14. Imperial Regional Detention Facility
15. Jackson Parish Correctional Center
16. Karnes County Immigration Processing Center (Karnes County Residential Center)
17. Krome Service Processing Center
18. Laredo Processing Center
19. Montgomery ICE Processing Center
20. Moshannon Valley Correctional Center
21. Nye County Detention Center
22. Okmulgee County Criminal Justice Authority
23. Otay Mesa Detention Center (San Diego CDF)
24. Otero County Processing Center
25. Port Isabel Service Processing Center
26. Richwood Correctional Center
27. Rio Grande Detention Center
28. South Louisiana Detention Center
29. South Texas Family Residential Center
30. South Texas ICE Processing Center
31. Stewart Detention Center
32. T. Don Hutto Detention Center
33. Tacoma ICE Processing Center (Northwest Detention Center)
34. Torrance County Detention Facility
35. Webb County Detention Center
36. Winn Correctional Center