



April 24, 2023

U.S. Citizenship and Immigration Services  
National Records Center (NRC)  
FOIA/PA Office  
P.O. Box 648010  
Lee's Summit, MO 64064-8010

*Submitted via Online Records Portal*

RE: **Freedom of Information Act Request**

**EXPEDITED PROCESSING REQUESTED**

**FEE WAIVER REQUESTED**

To Whom It May Concern:

We, Innovation Law Lab, submit this request pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 et seq. seeking the following records that have been prepared, modified, received, transmitted, collected, and/or maintained by the U.S. Citizenship and Immigration Services (USCIS): **the operative versions, as of the date of this request, of the Credible Fear Procedures Manual (CFPM) and the Reasonable Fear Procedures Manual (RFPM).**<sup>1</sup>

Pursuant to 5 U.S.C. § 552(a)(2), Innovation Law Lab requests that USCIS proactively disclose the CFPM and the RFPM (collectively, “the Manuals”) to the public by making them available in its electronic reading room. The operative versions of the Manuals fall squarely within the parameters and intent of the proactive disclosure requirements of FOIA. *See* 5 U.S.C. § 552(a)(2). The proactive disclosure requirement is motivated by the need “to afford the private citizen the essential information to enable [them] to deal effectively and knowledgeably with the Federal agencies.”<sup>2</sup> Attorney General Merrick Garland has also emphasized that proactive agency disclosure of information is fundamental to the faithful application of the FOIA.<sup>3</sup>

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<sup>1</sup> The CFPM and RFPM are referred to in several publicly available documents. *See, e.g.*, USCIS, Asylum Division, “Language Access in Credible Fear Proceedings,” at 4 (July 6, 2022), available at <https://www.uscis.gov/sites/default/files/document/memos/Language-Access-in-Credible-Fear-Screenings.pdf>; U.S. Government Accountability Office, “Actions Needed to Strengthen USCIS’s Oversight and Data Quality of Credible Fear and Reasonable Fear Screenings,” (Feb. 2020) at 21, 68, available at <https://www.gao.gov/assets/gao-20-250.pdf>; USCIS, Asylum Division, *Affirmative Asylum Procedures Manual (AAPM)* (May 2016) at 3, 72, 74, available at <https://www.uscis.gov/sites/default/files/document/guides/AAPM-2016.pdf>.

<sup>2</sup> Office of Information Policy, U.S. Dep’t of Justice, Proactive Disclosure of Non-Exempt Agency Information: Making Information Available Without the Need to File a FOIA Request (Dec. 17, 2021), available at [https://www.justice.gov/oip/oip-guidance/proactive\\_disclosure\\_of\\_non-exempt\\_information](https://www.justice.gov/oip/oip-guidance/proactive_disclosure_of_non-exempt_information).

<sup>3</sup> Press Release, “U.S. Dep’t of Justice, Attorney General Merrick B. Garland Issues New FOIA Guidelines to Favor Disclosure and Transparency” (March 15, 2022), available at <https://www.justice.gov/opa/pr/attorney-general-merrick-b-garland-issues-new-foia-guidelines-favor-disclosure-and>.

Documents subject to 5 U.S.C. § 552(a)(2) must be “automatically available for public inspection.” *Jordan v. U.S. Dep’t of Justice*, 591 F.2d 753, 756 (D.C. Cir. 1978). The Manuals fall squarely into at least two categories requiring proactive disclosure: “administrative staff manuals and instructions to staff that affect a member of the public,” and “statements of policy and interpretations which have been adopted by the agency and are not published in the federal register.” See 5 U.S.C. § 552(a)(2)(B), (C). As identified by the Government Accountability Office, “USCIS has a *Credible Fear Procedures Manual* and a *Reasonable Fear Procedures Manual* that outline the procedures officers are to follow” in credible and reasonable fear screenings.<sup>4</sup> These manuals are among the agency’s “policies and procedures related to managing and overseeing credible and reasonable fear cases in accordance with the regulations governing credible and reasonable fear screenings, including setting requirements for interview procedures, background and security checks, and supervisory review.”<sup>5</sup> The Manuals thus both affect members of the public and are statements of policy adopted by the agency that have not been published in the federal register. See 5 U.S.C. § 552(a)(2)(B), (C).

### **Request for Expedited Processing**

Innovation Law Lab requests that this FOIA request be expedited pursuant to 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5(e) because this FOIA request involves: (1) circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of individuals in ICE custody at the Torrance County Detention Facility; (2) an urgency to inform the public about an actual or alleged federal government activity; (3) the loss of substantial due process rights; and (4) a matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity which affect public confidence.

### **Request for Fee Waiver**

Innovation Law Lab requests that all fees associated with this FOIA request be waived in accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k) because disclosure is “likely to contribute significantly to public understand of the operations or activities of the government and is not primarily in the commercial interest of the requester” and Innovation Law Lab does not seek the records for a commercial purpose. 5 U.S.C. § 552(a)(4)(A)(iii).

#### *A. Disclosure of the Information Is in the Public Interest*

The requested records will provide important, nonpublic information that directly related the Credible Fear Interviews that are being conducted at the Torrance County Detention Facility (TCDF) in Estancia, New Mexico. TCDF, which is owned and operated by CoreCivic, detains individuals in ICE custody pursuant to an Intergovernmental Services Agreement (“IGSA”) that ICE has signed with Torrance County. It has come to Innovation Law Lab’s attention that

<sup>4</sup> U.S. Government Accountability Office, “Actions Needed to Strengthen USCIS’s Oversight and Data Quality of Credible Fear and Reasonable Fear Screenings,” at 21, 68 (Feb. 2020), available at <https://www.gao.gov/assets/gao-20-250.pdf>.

<sup>5</sup> See *id.* at 21.

individuals detained at TCDF are being consistently deprived of their procedural rights in the credible fear process, preventing them from understanding their legal proceedings and meaningfully participating in their fear interviews.

Individuals at TCDF have been subjected to credible fear interviews without adequate interpretation, orientation, or understanding of the credible fear process; without confidentiality; and without written notice of fear decisions – all in violation of their rights. *See, e.g.*, 42 U.S.C. § 2000d (prohibiting discrimination on the basis of race, color, and national origin, including language access, in federal programs and activities); 8 C.F.R. §§ 208.30(d) (requiring credible fear interviews to be conducted in a confidential setting “separate and apart from the general public”), 208.30(g)(1) (requiring written notice of negative fear determinations “including copies of the asylum officer’s notes, the summary of the material facts, and other materials upon which the determination was based”). Innovation Law Lab understands that these violations persist as of the date of this letter, despite repeated advocacy with DHS on behalf of affected individuals.<sup>6</sup> As a result, individuals detained at TCDF are being issued final removal orders and deported back to danger without a full screening of their fear of return in accordance with law.

The requested Manuals will be meaningfully informative about the government’s policies and practices in this area and will contribute significantly to public understanding of how credible fear interviews should be conducted at the Torrance County Detention Facility. Moreover, the requested records are of immense public concern, as shown by the substantial public interest in the procedures employed during fear interviews, at the Torrance County Detention Facility, by the Houston Asylum Office, and more generally.<sup>7</sup>

As evidenced by its active advocacy and reporting on TCDF, Innovation Law Lab has substantial expertise and experience regarding the treatment of individuals in ICE custody at the Torrance County Detention Facility, and has the capacity, intent, and demonstrated ability to effectively disseminate the information it receives to the public free of charge.<sup>8</sup>

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<sup>6</sup> *See* Letter to DHS from Innovation Law Lab, New Mexico Immigrant Law Center, Las Americas Immigrant Advocacy Center, & Santa Fe Dreamers Project, “Re: Relief from Torturous Conditions and Rights Violations at Torrance County Detention Facility” (February 24, 2023), available at [https://innovationlawlab.org/media/TCDF\\_Letter-and-Report\\_02.24.23.pdf](https://innovationlawlab.org/media/TCDF_Letter-and-Report_02.24.23.pdf); Letter to DHS from Innovation Law Lab, New Mexico Immigrant Law Center, Las Americas Immigrant Advocacy Center, & Santa Fe Dreamers Project, “Re: Relief from Torturous Conditions and Rights Violations at Torrance County Detention Facility” (March 20, 2023), available at [https://innovationlawlab.org/media/TCDF\\_Second-Letter-and-Reports\\_03.20.23.pdf](https://innovationlawlab.org/media/TCDF_Second-Letter-and-Reports_03.20.23.pdf).

<sup>7</sup> *See, e.g.*, “10 Organizations Urge DHS Office of CRCL to Investigate Houston Asylum Office's Mishandling of Credible Fear Interviews, National Immigration Project” (April 27, 2022) (detailing a complaint filed with the DHS Office of Civil Rights and Civil Liberties calling for an investigation of the Houston Asylum Office’s mishandling of credible fear interviews), available at <https://nipnlg.org/news/press-releases/10-organizations-urge-dhs-office-crcl-investigate-houston-asylum-offices>.

<sup>8</sup> *See, e.g., See, e.g.*, “In New Report, Asylum Seekers Describe Sleep Deprivation, Torture Rooms, Rigged Deportation Process and Yet Another Attempted Suicide at Notorious Torrance County Detention Facility,” Innovation Law Lab (February 15, 2023), available at <https://innovationlawlab.org/press-releases/new-report-tcdf-feb-2023/>; “New Mexico Groups Call On DHS to Provide Asylum Seekers Relief From Torturous Conditions, Investigate Retaliation and Abuse at Torrance County Detention Facility,” Innovation Law Lab (March 1, 2023), available at <https://innovationlawlab.org/press-releases/new-mexico-groups-call-on-dhs-to-provide-relief-from->

Innovation Law Lab (“Law Lab”) is a 501(c)(3) nonprofit organization that harnesses technology, lawyers, and activists to advance immigrant and refugee justice. Law Lab has vast experience providing pro bono legal services to asylum-seeking immigrants in detention, including establishing pro bono projects in Artesia, New Mexico, and Dilley, Texas, to provide representation for immigrant families in detention. Through its Anti-carceral Legal Organizing program, Law Lab works to win release, provide support, and facilitate legal representation for persons in ICE custody at detention facilities including TCDF.

Law Lab has been serving people detained in ICE custody at TCDF since August 2019. Since August 2019, Law Lab has conducted over 825 referrals for individuals at TCDF, and of those referrals Law Lab has provided legal services to more than 190 individuals at TCDF. In addition to pro bono legal representation and advocacy, Law Lab, along with partner organizations, provides weekly pro bono legal consultations via telephone as well as occasional in-person group legal orientation sessions for individuals detained in TCDF, the expenditures and resources for which are assumed in their entirety by Law Lab and its partners. Law Lab also engages regularly in advocacy related to conditions faced by individuals detained at TCDF, including recent advocacy with CRCL regarding egregious conditions of confinement and due process violations.

Law Lab disseminates information about immigration law and policy in numerous different media and forums for use in educating the public. For example, Law Lab publishes in depth reports of critical interest that are disseminated to a wide public audience, including reports focusing on conditions and access to legal rights in immigrant detention. Law Lab uses innovative social media strategies to inform the public about immigration law and policy. The organization publishes periodic e-mail updates, long- and short-form videos, and other content systems to widely share information and analysis. Law Lab’s website, [innovationlawlab.org](http://innovationlawlab.org), is intended to share information and educate the public. This website is visited by many members of the public, elected officials, and individuals impacted by immigration law and policy. Law Lab regularly issues press statements and other media alerts to an extensive list of local, regional, and national media outlets. Law Lab maintains regular contact with a broad set of reporters who cover immigration law and policy.<sup>9</sup> Law Lab also does direct advocacy to elected officials at the local, state, and federal level. Law Lab intends to widely disseminate the requested information to the public through its website, e-newsletter, and other forums.

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[torturous-conditions-torrance/](https://innovationlawlab.org/press-releases/new-mexico-groups-send-2nd-demand-letter-after-dhs-fails-to-provide-asylum-seekers-relief-investigate-retaliation-and-abuse-at-torrance/); “New Mexico Groups Send 2nd Demand Letter after DHS Fails to Provide Asylum Seekers Relief, Investigate Retaliation and Abuse at Torrance,” Innovation Law Lab (March 21, 2023), available at <https://innovationlawlab.org/press-releases/new-mexico-groups-send-2nd-demand-letter-after-dhs-fails-to-provide-asylum-seekers-relief-investigate-retaliation-and-abuse-at-torrance/>.

<sup>9</sup> See, e.g., Rafael Bernal, “Suicide attempts highlight mental health concerns in immigrant detention,” The Hill (March 3, 2023), available at <https://thehill.com/latino/3881755-suicide-attempts-highlight-mental-health-concerns-in-immigrant-detention> (citing Law Lab report); María Inés Taracena, “The Dark Truth of Biden’s Immigration Policy,” The New Republic (April 12, 2023), available at <https://newrepublic.com/article/171665/biden-immigration-policy-dark-truth> (quoting Law Lab advocates).

*B. Disclosure of the Information Is Not Primarily in the Commercial Interest of the Requester*

Innovation Law Lab is a 501(c)(3) non-profit organization. As detailed above, Innovation Law Lab seeks the requested records for the purposes of disseminating relevant information to the public. Innovation Law Lab does not have a commercial interest in the requested records.

Accordingly, we request that all fees associated with this FOIA request be waived because Innovation Law Lab is entitled to a public interest fee waiver. If, however, a waiver is not granted, please contact Tess Hellgren at 352-559-0897 or [tess@innovationlawlab.org](mailto:tess@innovationlawlab.org) to advise us of the amount of any anticipated or estimated search, review, and duplication charges in excess of \$25.00 before you conduct these activities.

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We expect a response within 10 calendar days of the agency's receipt of this request for expedited processing as provided by law. If you have any questions regarding this request or need any additional information, please contact Tess Hellgren at 352-559-0897 or [tess@innovationlawlab.org](mailto:tess@innovationlawlab.org). Thank you for your prompt attention to this matter.

Sincerely,

INNOVATION LAW LAB



Tess Hellgren  
Deputy Legal Director



Jemila Mohamed  
Attorney and OWR Fellow

**Statement in Support of Request for Expedited Processing for Freedom of Information Act Request – Credible and Reasonable Fear Procedures Manuals**

1. My name is PJ Podesta. I am an accredited representative and a Program Manager at Innovation Law Lab.
2. I am requesting expedited processing of this FOIA request pursuant to 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5(e) because this FOIA request involves: (1) circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of individuals in ICE custody at the Torrance County Detention Facility (“TCDF”); (2) an urgency to inform the public about actual or alleged federal government activity; (3) the loss of substantial due process rights; and (4) a matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity which affect public confidence.
3. ***Imminent Threat to Life or Physical Safety:*** This FOIA request involves circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of individuals in ICE custody at TCDF. My colleagues at Innovation Law Lab and I have spoken with over one hundred individuals detained at TCDF since January 2023. These individuals consistently describe a lack of basic procedural rights in their credible and reasonable fear screenings, including lack of notice and orientation to the fear interview itself, lack of confidentiality and adequate interpretation during the interview, and lack of notice or documentation of their fear denials. It is thus our understanding that many individuals who have expressed a fear of return to their home countries have been denied a fair opportunity to explain this fear to the Asylum Office. As a result, we understand that individuals with a credible or reasonable fear of return may have already been deported or face imminent deportation, in violation of legal protections of the right to *non-refoulement*. Expedited processing of this request is necessary to stop any further deportations back to danger.
4. ***Urgency to Inform the Public:*** This FOIA request involves an urgency to inform the public about actual or alleged federal government activity. Although Innovation Law Lab is not a full-time member of the news media, its staff include persons who are significantly engaged in information dissemination. We will distribute the requested information through our website and social media platforms, including Facebook, Twitter, and Instagram. Additionally, we will share this information over multiple legal service provider listservs which reach hundreds of practitioners across the country. Numerous news articles have been published on the conditions of confinement at TCDF,<sup>1</sup> which is a strong indicator of the particular urgency to inform the public

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<sup>1</sup> See, e.g., María Inés Taracena, “The Dark Truth of Biden’s Immigration Policy,” *The New Republic* (April 12, 2023), available at <https://newrepublic.com/article/171665/biden-immigration-policy-dark-truth>; Rafael Bernal, “Suicide attempts highlight mental health concerns in immigrant detention,” *The Hill* (March 3, 2023), available at <https://thehill.com/latino/3881755-suicide-attempts-highlight-mental-health-concerns-in-immigrant-detention>.

regarding the procedures required for individuals detained there and subject to the expedited removal process. Public concern about the treatment and due process of individuals detained in ICE custody at TCDF has been heightened for years, including the denial of access to legal counsel in 2021 for Haitian migrants detained at TCDF after suffering abuse and mistreatment by Border Patrol agents in Del Rio, Texas.<sup>2</sup> The sustained public outcry regarding conditions at TCDF and the treatment of individuals in ICE custody at this facility has amply demonstrated the gravity of the public's concern. There is thus a particular urgency to inform the public of the subject matter of this FOIA request.

5. ***Loss of Substantial Due Process Rights:*** This FOIA request involves the loss of substantial due process rights. Since January 2023, individuals in ICE custody at TCDF are generally in expedited removal proceedings. Based on over one hundred conversations that my team members and I have had with individuals detained at TCDF during this period, it is my understanding that individuals at TCDF are subjected to credible fear interviews without adequate interpretation, orientation or understanding of the credible fear process; without confidentiality; and without written notice of fear decisions – all in violation of their rights. Recent letters and reporting from Innovation Law Lab have highlighted these serious procedural violations for USCIS and other DHS agencies, including the fact that fear interviews at TCDF are conducted at phone banks with minimal separation between individuals, depriving individuals of the confidential setting necessary to enable them to share the sensitive and traumatic details that may be central to their claims for protection.<sup>3</sup> As a result of these procedural violations, individuals detained at TCDF face significantly heightened challenges in meaningfully exercising their right to seek asylum and other relief from removal, severely undermining their ability to apply for protection in the United States. The Manuals requested through this FOIA will help immigration advocates and members of the public understand the procedures that should be observed in fear interviews generally, at TCDF and other facilities.
  
6. ***Matter of Widespread and Exceptional Media Interest:*** This FOIA request involves a matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence. As cited above, numerous news outlets have demonstrated substantial and persistent interest in the living conditions at TCDF and the treatment of individuals detained in ICE custody

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<sup>2</sup> Innovation Law Lab, "ICE Continues to Deny Haitians Access to Legal Support, Humane Conditions, and Release from Torrance County Detention Facility (Nov. 22, 2021), <https://innovationlawlab.org/press-releases/ice-continues-to-deny-haitians-access-to-legal-support-humane-conditions-and-release-from-torrance-county-detention-facility/>.

<sup>3</sup> See Letter to DHS from Innovation Law Lab, New Mexico Immigrant Law Center, Las Americas Immigrant Advocacy Center, & Santa Fe Dreamers Project, "Re: Relief from Torturous Conditions and Rights Violations at Torrance County Detention Facility" (February 24, 2023), available at [https://innovationlawlab.org/media/TCDF\\_Letter-and-Report\\_02.24.23.pdf](https://innovationlawlab.org/media/TCDF_Letter-and-Report_02.24.23.pdf); Letter to DHS from Innovation Law Lab, New Mexico Immigrant Law Center, Las Americas Immigrant Advocacy Center, & Santa Fe Dreamers Project, "Re: Re: Relief from Torturous Conditions and Rights Violations at Torrance County Detention Facility" (March 20, 2023), available at [https://innovationlawlab.org/media/TCDF\\_Second-Letter-and-Reports\\_03.20.23.pdf](https://innovationlawlab.org/media/TCDF_Second-Letter-and-Reports_03.20.23.pdf).

there. As detailed above, Innovation Law Lab maintains regular contact with members of the press on such matters and has considerable capacity to disseminate the requested information to media outlets to ensure a widespread understanding of applicable procedures in the credible fear context.

7. These considerations, whether considered separately or together, are more than sufficient to meet the standard set out in 5 U.S.C. § 552(a)(6)(E) for the agency to grant expedited processing of this FOIA request. For the reasons stated above, I respectfully request expedited processing of this FOIA request pursuant to 5 U.S.C. § 552(a)(6)(E).

I certify that this statement is complete, true, and correct to the best of my knowledge and belief.



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PJ Podesta

April 21, 2023

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Date