

EXHIBIT 3



Northern
California

April 6, 2018

VIA U.S. POSTAL SERVICE, CERTIFIED MAIL
RETURN RECEIPT REQUESTED

VIA EMAIL ICE-FOIA@dhs.gov

U.S. Immigration and Customs Enforcement
FOIA Office
500 12th Street, S.W., Stop 5009
Washington, D.C. 20536-5009

Re: Freedom of Information Act Request
Expedited Processing Requested

Attention:

I am a staff attorney at the American Civil Liberties Union Foundation of Northern California. I write on behalf of the American Civil Liberties Union of Northern California and the East Bay Express (“Requestors”) to request records pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 522 *et seq.*, implementing regulations 6 C.F.R. § 5.1 *et seq.*, and any other applicable regulations.

I. REQUEST FOR INFORMATION

Requestors seek disclosure of all records in your possession relating to contracts by and between the U.S. Immigration and Customs Enforcement (“ICE”) and G4S Secure Solutions, Inc. (“G4S”) for the transportation of individuals within the ICE San Francisco Area of Responsibility (“AOR”).¹

¹ The term “records” as used herein includes all records or communications preserved in written or electronic form, including but not limited to: correspondence, documents, data, videotapes, audio tapes, emails, faxes, files, guidance, guidelines, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, training manuals, other manuals, or studies. With respect to privacy concerns for members of the public, we will accept copies that are redacted to protect identifying information such as names, social security numbers, and alien numbers, but we would object to the redaction of birthdates and birthplaces that would interfere with our ability to determine the ages and countries of origin for members of the public. In addition, we request that members of the public whose identifying information is redacted be identified with an alphanumeric code so that multiple records related to the same individual will be recognized as such. This redaction agreement does not apply to identifying information such as names and badge numbers for federal agents.

American Civil Liberties Union Foundation of Northern California

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In particular, we request disclosure of records containing the following information:

- 1) Policies, procedures and guidelines for the transportation of individuals² within the San Francisco AOR, including but not limited to the transportation of individuals to and from the Contra Costa West County Detention Facility in Richmond, California and the transportation of individuals to and from the Mesa Verde Detention Facility in Bakersfield, California, and the transportation of individuals to and from the ICE San Francisco Field Office at 630 Sansome Street in San Francisco, California. Such policies, procedures and guidelines may have been implemented pursuant to Section 1.3(V)(A) of the ICE Performance-Based National Detention Standards 2011 (rev. Dec. 2016) (“PBNDS”).
- 2) Policies, procedures and guidelines for shackling, or using other means to restrain individuals during transportation within the San Francisco AOR, including during the loading-on and loading-off of individuals from vehicles.
- 3) List and/or descriptions or specifications of the types of vehicles and equipment used to transport individuals within the San Francisco AOR.
- 4) Annual vehicle inspections completed in the years 2015, 2016, and 2017 of vehicles used to transport individuals within the San Francisco AOR, including but not limited to the annual inspections made pursuant to PBDNS Section 1.3(V)(B).
- 5) Vehicle inspection reports and/or checklists completed during the period of January 1, 2017 to present of vehicles used to transport individuals within the San Francisco AOR, including but not limited to vehicle inspection reports and/or checklists completed pursuant to PBNDS 1.3(V)(D)(3)(c); 1.3(V)(D)(3)(g); and 1.3(V)(F).
- 6) Records relating to vehicles used for the transportation of individuals within the San Francisco AOR that were taken out of commission for safety-related issues during the period of January 1, 2017 to present, including but not limited to vehicles taken out of commission pursuant to PBNDS 1.3(V)(B).
- 7) Records related to incidents that occurred during the transportation of individuals within the San Francisco AOR, including loading-on and loading-off of individuals from vehicles, that resulted in physical injuries to those individuals or government staff or contractors during the period of January 1, 2017 to present.
- 8) Complaints by individuals relating to transportation within the San Francisco AOR, including loading-on and loading-off of individuals from vehicles, during the period of January 1, 2017 to present.

² Such individuals include, but are not limited to, individuals in removal proceedings in the San Francisco Immigration Court and individuals detained during the pendency of removal proceedings.

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- 9) Records documenting the need for the use of restraints on women and/or minors during their transportation within the San Francisco AOR, including during the loading-on and loading-off of women and/or minors from vehicles, pursuant to PBNDS 1.3(V)(R), during the period of January 1, 2017 to present.
- 10) Policies and procedures regarding the standards and processes by which ICE monitors and supervises private vendors, companies, or contractors engaged in the provision of services to ICE.
- 11) Policies and procedures regarding the standards and processes by which ICE monitors and supervises private vendors, companies, or contractors engaged in the provision of services to ICE relating to the transportation of individuals between facilities or detention centers.
- 12) Any quotations, bids, information, offers, proposals or other responses provided in response to a solicitation or request for quotations or proposals made by ICE for the transportation of individuals within the San Francisco Area of Responsibility (“AOR”) from January 1, 2017 to present, including but not limited to those made during the process that culminated in Blanket Purchase Agreement (“BPA”) HSCEDM-12-A-00002 with G4S Secure Solutions, Inc., along with related communications.
- 13) The names of the officers, G4S employees, or contractors who are involved in the transport of individuals within the San Francisco Area of Responsibility (“AOR”) from January 1, 2017 to present.
- 14) For any individual identified in response to Request No. 13, a copy of that individual’s employment, contractor, or other file relating to the work that individual has provided to ICE.
- 15) Policies, procedures regarding the screening performed by ICE of individuals and companies that provide services in the transport of individuals within the San Francisco Area of Responsibility (“AOR”).
- 16) For any individual identified in response to Request No. 13, a copy of any information about background screening performed by ICE prior to hiring or engagement of that individual to provide services in the transport of individuals within the San Francisco Area of Responsibility (“AOR”).
- 17) For any individual identified in response to Request No. 13, a copy of any information or records about misconduct, or about failure to comply with standards or restrictions related to the transport of individuals within the San Francisco AOR.

II. REQUEST FOR EXPEDITED PROCESSING

Requestors seek expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and the statute’s implementing regulations. There is a “compelling need” for these records, as defined in

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the statute and regulations, because the information requested is urgently needed by an organization primarily engaged in disseminating information in order to inform the public about actual or alleged government activity. 5 U.S.C. § 552(a)(6)(E)(v); *see also* 6 C.F.R. § 5.5(e)(1)(ii).

A. *Requestors are organizations primarily engaged in disseminating information in order to inform the public about actual or alleged government activity.*

Requestors East Bay Express and the American Civil Liberties Union of Northern California (“ACLU-NC”) are “primarily engaged in disseminating information” within the meaning of the statute and relevant regulations. 5 U.S.C. § 552(a)(6)(E)(v)(II); 6 C.F.R. § 5.5(e)(1)(ii).

The ACLU-NC is an affiliate of the ACLU, a national organization that works to protect civil liberties of all people, including the safeguarding of the basic constitutional rights to privacy, free expression, and due process of law. The ACLU-NC is responsible for serving the population of northern California. Dissemination of information about actual or alleged governmental activity is a critical and substantial component of the ACLU-NC’s mission and work. The organization actively disseminates and frequently garners extensive media coverage of the information it obtains about actual or alleged government activity through FOIA and California’s statutory counterpart, the California Public Records Act. It does so through a heavily visited website (averaging between 10,000 and 20,000 visitors per week) and a paper newsletter distributed to its members, who now number over 80,000. In the past, FOIA requests, litigation over FOIA responses, and information obtained by the ACLU-NC through FOIA about the federal government’s immigration enforcement, ethnic and racial profiling, and detention operations have been the subject of articles on the ACLU-NC’s website.³ They have also garnered coverage by other news media.⁴ ACLU-NC staff persons are frequent spokespersons in television and print media and make frequent public presentations at meetings and events. *See ACLU v. Dep’t of Justice*, 321 F. Supp. 2d 24, 30 n.5 (D.D.C. 2004) (finding that a non-profit, public interest group that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience” is “primarily engaged in disseminating information” (internal citation omitted));

³ *See, e.g.*, <https://www.aclunc.org/news/aclu-northern-california-files-demands-documents-implementation-trump-s-muslim-ban> (FOIA request for CBP detention and deportation records); <https://www.aclunc.org/news/aclu-northern-california-files-lawsuit-demanding-documents-implementation-trumps-muslim-ban> (lawsuit challenging government’s response to FOIA request for CBP records) <https://www.aclunc.org/news/aclu-seeks-records-immigration-enforcement-actions-northern-california> (FOIA request for ICE enforcement action records); <https://www.aclunc.org/news/lawsuit-seeks-documents-regarding-ice-raids> (lawsuit challenging government’s response to FOIA request for ICE enforcement action records);

⁴ *See, e.g.*, Eric Tucker, *5 Men Sue Over Anti-Terror Info-Sharing Program*, Associated Press, July 9, 2014, <http://goo.gl/NYgF8p>; Hameed Aleaziz, *Lawsuit Against ICE Seeks Information on Asylum Seekers*, SFGate.com, Oct. 20, 2016, <http://goo.gl/VjBJYZ>; Luke Darby, *What Surveillance Looks Like Under the Trump Administration*, GQ Magazine, May 1, 2017, <http://goo.gl/oYvQfq>; Daisy Alioto, *How Taking a Photograph Can Land You a Visit from the FBI*, Artsy.com, June 20, 2017, <http://goo.gl/bGZvPh>; Nicole Narea, *ICE To Hand Over Asylum Seeker Detention Policy Data*, Law360.com, Aug. 9, 2017, <http://goo.gl/Q4y34D>.

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see also *Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005) (finding Leadership Conference—whose mission is to “disseminate[] information regarding civil rights and voting rights to educate the public [and] promote effective civil rights laws”—to be “primarily engaged in the dissemination of information”).

The East Bay Express is a newsweekly in northern California focusing on investigative long-form journalism, with a weekly print distribution of 40,000 issues and 71,000 weekly readers across Alameda and Contra Costa counties and a website (www.eastbayexpress.com). The paper is locally-owned, independent, and has been published since 1978.

The East Bay Express and the ACLU-NC plans to analyze and disseminate to the public the information gathered through this Request. The records requested are not sought for commercial use, and the Requestors plan to disseminate the information disclosed as a result of this Request to the public at no cost.

B. The records sought are urgently needed to inform the public about actual or alleged government activity.

Further, the records sought are urgently needed to inform the public. They relate to matters in which there is “[a]n urgency to inform the public about an actual or alleged Federal Government activity,” 6 C.F.R. § 5.5(e)(1)(ii), as well as matters “of widespread and exceptional media interest in which there exist possible questions about the government’s integrity which affect public confidence,” *id.* § (e)(1)(iv).

Requestors seek these records to understand the conditions and treatment of civil immigration detainees during their detention and transportation. These issues, including transportation specifically, have garnered widespread public attention within recent years and to this day. See, e.g., Robin Urevich, *Investigation Finds ICE Detention Center Cut Corners and Skirted Federal Detention Rules*, PRI, Mar. 15, 2018, <http://bit.ly/2FLDWqB>; Jacey Fortin, *U.S. Put 92 Somalis on a Deportation Flight, Then Brought Them Back*, N.Y. Times, Dec. 9, 2017, <http://nyti.ms/2ppCf77>; Kate Morrissey, *Women Temporarily Evacuated After Exposure to Noxious Chemical in Immigration Detention*, San Diego Union-Tribune, Nov. 15, 2017, <http://goo.gl/MCRF75>; Phillip Jankowski, *Woman at Hutto Immigration Detention Says Guard Sexually Assaulted Her*, Austin American-Statesman, Nov. 15, 2017, <http://goo.gl/AqRYdS>; Aline Barros, *Behind the Doors of Immigrant Detention*, Voice of America, Nov. 14, 2017, <http://goo.gl/rzi87P>; Laurel Wamsley, *As It Makes More Arrests, ICE Looks for More Detention Centers*, NPR News, Oct. 26, 2017, available at <http://goo.gl/RTdAV1>; Alan Gomez, *Trump Plans Massive Increase in Federal Immigration Jails*, USA Today, Oct. 17, 2017, <http://goo.gl/ax6yqY>; Charles Bethea, *A Medical Emergency, and the Growing Crisis at Immigration Detention Centers*, The New Yorker, Sept. 13, 2017, <http://goo.gl/bAMgbS>; Caitlin Dickerson, *Plan Would Limit Protections for Immigrants Held in Jails*, N.Y. Times, Apr. 14, 2017, at A1; Vivian Yee & Ron Nixon, *Memo Tells of U.S. Plan to Speed Up Border Hires*, N.Y. Times, Apr. 13, 2017, at A15.

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Of particular interest to the public is the conduct of private contractors who detain and transport immigrants, specifically G4S Secure Solutions, Inc. For example, sheriff deputies in Pinellas County, Florida, have publicly stated that they informed G4S supervisors that their workers need more training, noting that G4S was unfamiliar with the Pinellas County roads, had trouble with their vans, and had “awful” handcuffing techniques, days before a transportee was beaten to death by another transportee during a transport conducted by G4S. See Stephen Thompson, *Concerns preceded attack in sheriff’s van; Pinellas deputies thought G4S workers needed more training*, The Tampa Times, Apr. 27, 2014, <https://bit.ly/2pBqTgm>. In another example, an Australian coroner found that G4S had contributed to the “wholly necessary and avoidable” death of an immigrant detainee as a result of high temperatures in the back of a van operated by G4S. See Melissa Fyfe, *Uproar Over New Prison Contract*, The Sydney Morning Herald, Oct. 4, 2009, <http://bit.ly/2u6nQ5I>. The number of deaths linked to G4S employees in England, including the death of an immigrant in the custody of G4S employees on an airplane, have come under scrutiny. See Simon Hattenstone and Eric Allison, *G4S, The Company with No Convictions—But Does It Have Blood on Its Hands?*, The Guardian, Dec. 22, 2014, <http://bit.ly/2cbvTFK>.

The substandard conditions and abusive treatment of detainees in the care of private contractors is a subject of intense, and current, media attention, advocacy, public engagement, and protest. See, also Roger Schneider, *Prison Company Seeks C.R. 7 Property for Immigration Detention Facility*, The Goshen News, Nov. 17, 2017, <http://goo.gl/rqYwfZ>; Sarah Macaraeg, *Inside a Private Prison’s \$150M Deal To Detain Immigrants in New Mexico*, Center for Investigative Reporting, Oct. 26, 2017, <http://goo.gl/Zg47mN>; Sean Collins Walsh, *ICE Plans New 1,000-bed Facility in South Texas “Detention Alley,”* Austin American-Statesman, Oct. 13, 2017, <http://goo.gl/h73pj5>; Roxana Asgarian, *Conroe Residents Protest Expansion of Immigration Detention Facility*, Houstonia Magazine, July 25, 2017, <http://goo.gl/BpKqfQ>; Madison Pauly, *In 3 Months, 3 Immigrants Have Died at a Private Detention Center in California*, Mother Jones, June 2, 2017, <http://goo.gl/SxH1Kp>; Ben Norton, *Privatized For-Profit Immigrant Detention Centers Are a ‘Living Nightmare,’ Investigation Shows*, AlterNet, May 16, 2017, <http://goo.gl/gmeaAY>; Spencer Woodman, *ICE Detainees Are Asking To Be Put in Solitary Confinement for Their Own Safety*, The Verge, Mar. 10, 2017, <http://goo.gl/V3i9mo>; Alene Tchekmedyan, *Thousands of Immigrant Detainees Sue Private Prison Firm over ‘Forced’ Labor*, L.A. Times, Mar. 5, 2017, <http://goo.gl/ce4cZV>; Jenny Jarvie, “This Industry Stands To Benefit from Trump’s Crackdown on the Border,” L.A. Times, Feb. 14, 2017, <http://goo.gl/qZsLwD>; American Civil Liberties Union, *Shutting Down the Profiteers: Why and How the Department of Homeland Security Should Stop Using Private Prisons* (Sept. 2016), <http://goo.gl/KVTtsC>.

As the news articles cited above demonstrate, there is sustained and extensive media interest in the issues of immigration detention, the use of privately-run detention facilities, and the conditions and standards of care for immigration detainees. Incidents of sexual assault, deprivation of proper medical care, and exposure to hazardous conditions raise troubling questions about government integrity in the operation and oversight of detention facilities. The federal government’s imminent plans to expand immigration detention and contracts with private

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companies creates an urgent need to obtain records of existing government relationships with private contractors.

III. APPLICATION FOR WAIVER OR LIMITATION OF FEES

A. Release of the records is in the public interest.

Requestors seek a waiver of search, review, and reproduction fees on the grounds that disclosure of the requested records is in the public interest because it is likely to contribute significantly to the public understanding of the United States government's operations or activities and is not primarily in the commercial interest of the requester. 5 U.S.C. § 552(a)(4)(A)(iii); 6 C.F.R. § 5.11(k).

As discussed above, numerous news accounts reflect the considerable public interest in the requested records. Given the ongoing and widespread media attention to this issue, the records sought by the Request will significantly contribute to the public understanding of the operations and activities of the Department of Homeland Security and ICE, and will be of interest to a broad audience. *See* 6 C.F.R. § 5.11(k)(1)(i), (k)(2)(iii). In addition, disclosure is not in Requestors' commercial interest. As described above, any information disclosed as a part of this FOIA Request will be available to the public at no cost. Thus, a fee waiver would fulfill Congress's legislative intent in amending FOIA. *See Judicial Watch Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be 'liberally construed in favor of waivers for noncommercial requesters.'") (citation omitted); OPEN Government Act of 2007, Pub. L. No. 110-175, § 2, 121 Stat. 2524 (finding that "disclosure, not secrecy, is the dominant objective of the Act," quoting *Dep't of Air Force v. Rose*, 425 U.S. 352, 361 (1992)).

B. Requestors qualify as representatives of the news media.

A waiver of search and review fees is warranted because Requestors qualify as "representative[s] of the news media" and the requested records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii); *see also* 6 C.F.R. §§ 5.11(b)(6), (k)(2)(iii). Accordingly, fees associated with the processing of this request should be "limited to reasonable standard charges for document duplication." Requestors meet the statutory and regulatory definitions of a "representative of the news media" because they are each an "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)(II); *see also Nat'l Sec. Archive v. Dep't of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); *cf. ACLU v. Dep't of Justice*, 321 F. Supp. 2d 24, 30 n.5 (D.D.C. 2004) (finding non-profit public interest group to be "primarily engaged in disseminating information"). Requestors are each a "representative of the news media" for the same reasons that they are "primarily engaged in the dissemination of information." *See Elec. Privacy Info.Ctr. v. Dep't of Def.*, 241 F. Supp. 2d 5, 10–15 (D.D.C. 2003) (finding nonprofit public interest group that disseminated an electronic newsletter and published books was a "representative of the news media" for FOIA purposes). The ACLU-NC recently was held to be a "representative of the news media." *Serv. Women's Action Network v. Dep't of Def.*, No. 3:11CV1534 (MRK), 2012 WL 3683399, at *3 (D. Conn.

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May 14, 2012); *see also* *ACLU of Wash. v. Dep't of Justice*, No. C09-0642RSL, 2011 WL 887731, at *10 (W.D. Wash. Mar. 10, 2011) (finding ACLU of Washington to be a "representative of the news media"), *reconsidered in part on other grounds*, 2011 WL 1900140 (W.D. Wash. May 19, 2011).

* * *

Pursuant to the applicable statute and regulations, we expect a determination regarding expedited processing within ten (10) calendar days. *See* 5 U.S.C. § 552(a)(6)(E)(ii)(I); 6 C.F.R. § 5.5(e)(4).

If this request for information is denied in whole or in part, we ask that you justify all deletions by reference to specific exemptions to the Freedom of Information Act. We expect you to release all segregable portions of otherwise exempt material in accordance with 5 U.S.C. § 552(b). We reserve the right to appeal a decision to withhold any information.

Thank you for your prompt attention to this matter. Please furnish all applicable records to the following addresses:

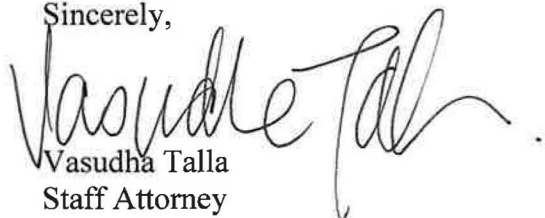
Vasudha Talla, American Civil Liberties Union Foundation of Northern California, 39 Drumm Street, San Francisco, California 94111, telephone (415) 621-2493 ext. 308.

Darwin BondGraham, East Bay Express, 318 Harrison Street, Suite 302, Oakland, CA 94607, or via email, darwin.bondgraham@eastbayexpress.com.

I affirm that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief.

Executed on the April 6, 2018.

Sincerely,



Vasudha Talla
Staff Attorney

American Civil Liberties Union Foundation of Northern California

Also on behalf of
East Bay Express