

# EXHIBIT A

**Justice & Diversity**  
CENTER  
OF THE BAR ASSOCIATION OF SAN FRANCISCO



November 30, 2018

*Via U.S. Certified Mail and Email (ICE-FOIA@dhs.gov)*

U.S. Immigration and Customs Enforcement  
Freedom of Information Act Office  
500 12th Street SW, Stop 5009  
Washington, D.C. 20536-5009

**RE: FOIA Request for Records Related to Institutional Hearing Program**

Dear FOIA Officer:

This letter is a request pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 522, by the Stanford Law School Immigrants' Rights Clinic on behalf of The Justice & Diversity Center of The Bar Association of San Francisco and Centro Legal de la Raza. We seek records from U.S. Immigration and Customs Enforcement ("ICE") pertaining to certain policies and practices involving the Institutional Hearing Program ("IHP"), including the program's administration, policies, and treatment of people placed in IHP.<sup>1</sup>

There is a compelling and urgent need to inform the public about ICE policies and practices that pertain to the IHP. Since coming into office, the Trump Administration has targeted IHP for modernization and expansion. On January 25, 2017, President Trump issued Executive Order 13767, entitled "Border Security and Immigration Enforcement Improvements" that prioritized the removal of noncitizens with criminal convictions.<sup>2</sup> To implement the Executive Order, then-Secretary of the Department of Homeland Security, John Kelly, issued a memo instructing ICE to initiate removal proceedings against incarcerated noncitizens through the IHP "to the maximum extent possible."<sup>3</sup> On March 30,

<sup>1</sup> The term "people placed in IHP" is used interchangeably for the purpose of this request with other terms that may apply to incarcerated noncitizens who are placed in removal proceedings through the IHP, including but not limited to "respondents," "noncitizens," "prisoners," "inmates," and "aliens."

<sup>2</sup> Exec. Order No. 13767, Border Security and Immigration Enforcement Improvements (Jan. 25, 2017), <https://www.whitehouse.gov/presidential-actions/executive-order-border-security-immigration-enforcement-improvements/>.

<sup>3</sup> Memorandum from John Kelly, Sec'y, U.S. Dep't of Homeland Sec., on Enforcement of Immigration Laws to Serve the National Interest (Feb. 20, 2017),

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2017, then-Attorney General Jeff Sessions announced an IHP revitalization plan intended to “speed the process of deporting incarcerated criminal aliens.”<sup>4</sup> Despite the Trump Administration’s efforts to expand the IHP, immigration attorneys and the public know little about the implementation of IHP and its impact on removable noncitizens incarcerated in federal correctional institutions operated by the Federal Bureau of Prisons (“BOP”).<sup>5</sup>

### **RECORDS REQUESTED**

We request the following records<sup>6</sup> prepared, received, transmitted, collected and/or maintained by ICE:

1. All records that reference site selection for the IHP to commence on or after January 20, 2017, including any facilities that are expected to begin serving as IHP “hearing sites”<sup>7</sup> in the future.
2. All records that reference the criteria that ICE uses to designate any federal, state, and/or county correctional facilities as IHP hearing sites, including federal BOP facilities, private contract facilities, state prisons, and county jails.

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[https://www.dhs.gov/sites/default/files/publications/17\\_0220\\_S1\\_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf](https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf).

<sup>4</sup> Press Release, Off. of Pub. Aff., U.S. Dep’t of Just., Attorney General Sessions Announces Expansion and Modernization of Program to Deport Criminal Aliens Housed in Federal Correctional Facilities (Mar. 30, 2017), <https://www.justice.gov/opa/pr/attorney-general-sessions-announces-expansion-and-modernization-program-deport-criminal>.

<sup>5</sup>The term “BOP,” “BOP facility,” or “BOP institution” refers to all BOP-controlled correctional facilities, including all subcontracted private facilities and any facilities that hold and/or house BOP inmates/prisoners/detainees.

<sup>6</sup> The term “records” as used in this request includes all records or communications preserved in electronic or written form, including but not limited to correspondence, regulations, directives, documents, data, videotapes, audiotapes, e-mails, faxes, files, guidance, guidelines, standards, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, manuals, technical specifications, training materials or 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.

<sup>7</sup> The term IHP “hearing site” refers to facilities where noncitizens are issued a Notice to Appear (NTA) and placed into removal proceedings and are appearing before the Immigration Court while still serving their prison sentence.

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3. All records describing how IHP hearing sites at all federal or state prisons, correctional facilities, county jails, or county correctional facilities are prioritized, and defining the criteria for such prioritization.
4. Any records that describe which federal BOP facilities, private contract facilities, state prisons, and/or county jails are considered IHP “release sites.”<sup>8</sup>
5. Any records describing or including policies, procedures, memoranda, communications, or other records describing the criteria to be used for identifying which federal or state prisoners should be placed in removal proceedings through the IHP.
6. Any records describing ICE’s current intake policy for the IHP.<sup>9</sup>
7. Any records describing or including policies, procedures, memoranda, communications, or guidance describing when, during a noncitizen’s criminal sentence, he or she should be placed into removal proceedings at an IHP location.
8. Any records describing or including any training or guidance provided by ICE to BOP employees about the administration and/or facilitation of the IHP.
9. Any records including policies, procedures, memoranda, guidance, training materials, or communications describing the obligations, protocols, or practices of ICE or BOP administrators to provide information about the IHP to noncitizens who have been placed in the program.
10. Any records describing or including policies, procedures, memoranda, or guidance concerning when and how noncitizens are notified that they are being placed in IHP, including what information they are provided about the program, and whether they are advised of their rights in the program.
11. Any records describing what rights, privileges, and protections are afforded to noncitizens placed in IHP.
12. Any records describing any federal or state conditions, detention, or imprisonment standards that apply to noncitizens by virtue of their being placed in removal proceedings through the IHP, including but not limited to ICE detention standards, BOP correctional standards, American Correctional Association Standards, National

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<sup>8</sup> The term “release site” refers to facilities designated for noncitizens who have been ordered deported and who are awaiting removal, ordinarily after the completion of their criminal sentences.

<sup>9</sup> *See supra* n. 4, Press Release, Off. of Pub. Aff. (stating “EOIR and ICE will finalize a new and uniform intake policy. EOIR and ICE expect to have reached agreement on this new intake process by April 6, 2017.”).

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Commission on Correctional Health Care (“NCCHC”) Standards, and Title 15 & Title 24 Minimum Standards for detention facilities.

13. All records showing any current contractual agreement, Intergovernmental Service Agreement (“IGSA”), Interagency Agreement (“IAA”), memoranda of understanding, or other agreement entered into between DHS and BOP that governs the operation of the IHP at any BOP facility outside of California.
14. All records showing any current contractual agreement, IGSA, IAA, memoranda of understanding, or other agreement entered into between DHS and BOP that governs the operation of the IHP at any BOP facility within California, including FCI Dublin, Taft CI, USP Victorville, FCI Victorville I, and FCI Victorville II.
15. All records describing policies, procedures, communications, guidance, memoranda of understanding, IGSA, and/or IAAs regarding any contractual obligations entered into between DHS and BOP that pertain to any budget and reimbursement agreements related to the operation of IHP hearing sites within California, including FCI Dublin, Taft CI, USP Victorville, FCI Victorville I, and FCI Victorville II.
16. All records showing any audits, inspections, or reviews conducted of the IHP program at individual IHP hearing sites in California.
17. All records including policies, procedures, memoranda, or communications concerning whether ICE officials maintain a regular physical presence within IHP prison locations in California, such as designated offices within each BOP facility or specific times when ICE agents visit the facilities.
18. Any records describing or including policies, procedures, guidance, or communications pertaining to or governing the ability of attorneys to meet and talk with clients within each BOP facility that serves as an IHP hearing site in California, including attorneys’ access to confidential visitation spaces and IHP respondents’ access to private, unmonitored telephone calls.
19. From October 1991-present, please disclose the number of respondents who have been issued a Notice to Appear (“NTA”) as part of the IHP at the following IHP locations: FCI Dublin, Taft CI, USP Victorville, FCI Victorville I, FCI Victorville II. For each such respondent, please also disclose:
  - a. Country of Citizenship
  - b. Age
  - c. Immigration Status
  - d. Inadmissibility or Deportability Charges
  - e. Factual Allegations regarding inadmissibility and/or deportability
    - i. For respondents at FCI Dublin, we seek factual allegations from October 2012-present;

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- ii. For respondents at Taft CI, USP Victorville, FCI Victorville I, and FCI Victorville II, we seek factual allegations from October 2016-present.

### **THE REQUESTOR**

The Justice & Diversity Center of The Bar Association of San Francisco (“JDC”) is one of the largest and most distinguished legal services providers in San Francisco. JDC’s primary purpose is the delivery of free legal services to low-income San Franciscans, as well as the non-profits that serve them. JDC delivers free legal services through its Legal Services Programs division, which consists of the Pro Bono Legal Services Program, Homeless Advocacy Project, and the Immigration Program. JDC helps to coordinate and organize and increase the capacity to provide legal services to underserved populations.

Centro Legal de la Raza (“Centro”) is a nonprofit that provides free legal services to low-income individuals and families in the East Bay and throughout Northern and Central California. For five decades, Centro has protected and advanced the rights of low-income communities, including Spanish-speaking immigrants, workers, and tenants. Founded in 1969 and headquartered in Oakland, Centro combines quality legal services with know-your-rights education and youth education and development. Centro ensures access to justice for thousands of individuals and families each year. As California’s largest provider of legal services for immigrants facing deportation, Centro’s Immigration Program assists thousands of immigrants annually. Centro’s removal defense practice specializes in cases that are urgent and often involve novel legal issues. Centro represents unaccompanied minors and families fleeing violence and immigrants with long term community ties, including those in immigration detention.

Both organizations regularly represent IHP respondents through in the Attorney of the Day (“AOD”) program before the San Francisco Immigration Court, where experienced immigration attorneys appear in immigration court to assist unrepresented respondents in their initial removal hearings. The requestors seek information about IHP because the AODs provide IHP respondents with individual consultations, initial legal advice, and referrals within BOP facilities, as well as provide long term and full scope representation of IHP respondents before the Executive Office of Immigration Review.

### **FEE WAIVER**

The requestor also seeks a full fee waiver on the grounds that disclosure of the requested records is in the public interest and is “likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requestor.” 5 U.S.C. § 522(a)(4)(A)(iii). As set forth above, this request aims at furthering public understanding of government conduct: specifically, ICE IHP policies and practices. Because the requested records will contribute significantly to

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public understanding of the immigrant detention and removal system, we request a waiver of fees under 5 U.S.C. § 552(a)(4)(A)(iii).

If this request is denied in whole or in part, the requestors ask that the government justify all redactions by reference to specific FOIA exemptions. We expect the government to release all segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information or to deny expedited processing or a waiver of fees.

**EXPEDITED PROCESSING**

Requestors ask for Track 1 expedited treatment for this FOIA request. This request qualifies for expedited treatment pursuant to 5 U.S.C. § 552(a)(6)(E) and applicable regulations. There is a “compelling need” for expedited processing of this request, *see* 5 U.S.C. § 552(a)(6)(E)(i)(I), namely, an “urgency to inform the public concerning the actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II); *see also* 6 C.F.R § 5.5(d)(1)(ii) (same). The records requested concern potential changes to ICE’s expansion of the IHP program that affect thousands of noncitizens.

Please send responsive records to:

Lisa Weissman-Ward  
Stanford Law School Immigrants’ Rights Clinic  
559 Nathan Abbott Way  
Stanford, CA 94305

Thank you for your attention. Please contact me at [lweissmanward@law.stanford.edu](mailto:lweissmanward@law.stanford.edu) or 650-724-7396.

Sincerely,



Lisa Weissman-Ward

# **EXHIBIT B**





Lisa Weissman-Ward &lt;lisanww@law.stanford.edu&gt;

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**ICE FOIA Request 2019-ICFO-23439**

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ice-foia@dhs.gov <ice-foia@dhs.gov>  
To: lweissmanward@law.stanford.edu

Thu, Dec 6, 2018 at 7:03 AM

December 06, 2018

Lisa Weissman-Ward  
Immigrants Rights Clinic  
559 Nathan Abbot Way  
Stanford, CA 94305

**RE: ICE FOIA Case Number 2019-ICFO-23439**

Dear Ms. Weissman-Ward:

This acknowledges receipt of your November 28, 2018, Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), for ICE records pertaining to certain program's administration, policies, and treatment of people placed in IHP (see request for further details). Your request was received in this office on December 06, 2018.

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 **2019-ICFO-23439**. 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 2019-ICFO-XXXXX 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](mailto: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](http://www.ogis.gov)-OGIS, College Park, Maryland 20740-6001, e-mail at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Regards,

Attachment 2

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](http://www.ice.gov/foia)

# EXHIBIT C



Jennifer Stark <jlstar@law.stanford.edu>

**Re: ICE FOIA Request 2019-ICFO-23439. [Fee waiver request follow-up]**

Lisa Weissman-Ward <lweissmanward@law.stanford.edu>  
To: ice-foia@dhs.gov

Thu, Dec 20, 2018 at 1:33 PM

Dear ICE FOIA,

I am writing in reference to FOIA request number 2019-ICFP-23439. The Stanford Law School Immigrants' Rights Clinic sent this FOIA request on November 30, 2018, on behalf of The Justice & Diversity Center of The Bar Association of San Francisco and Centro Legal de la Raza.

On November 6, 2018, we received a response to our request indicating that we will be charged fees as a commercial requester. However, as indicated in our initial request, we do not believe that fees should apply in this case because the request: (1) is not in our commercial interest, and (2) disclosure is in the public interest because it is likely to contribute significantly to public understanding of the government's operation of the IHP. 5 U.S.C. § 552(a)(4)(A)(iii).

As is described in our original request, we specifically requested a fee waiver on the grounds that disclosure of the requested records is in the public interest and is "likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requestor." 5 U.S.C. § 552(a)(4)(A)(iii). As is detailed in the letter, this request aims at furthering public understanding of government conduct: specifically, ICE's policies and procedures as they pertain to the Institutional Hearing Program ("IHP"). Since January of 2017, the Trump Administration has made clear its intention to expand the IHP in order to expedite the removal of certain incarcerated noncitizens. However, immigration attorneys and the public know little about ICE's implementation of IHP and its impact on removable noncitizens incarcerated in federal correctional institutions operated by the Federal Bureau of Prisons ("BOP"). Because the requested records will contribute significantly to public understanding of the immigrant detention and removal system, we have requested a waiver of fees under 5 U.S.C. § 552(a)(4)(A)(iii).

Accordingly, we again request that ICE grant a fee waiver in this matter.

Please do not hesitate to contact me at [lweissmanward@law.stanford.edu](mailto:lweissmanward@law.stanford.edu) or 650-724-7396, should you have any questions or concerns.

Sincerely,

Lisa

On Thu, Dec 6, 2018 at 7:04 AM <[ice-foia@dhs.gov](mailto:ice-foia@dhs.gov)> wrote:  
December 06, 2018

Lisa Weissman-Ward  
Immigrants Rights Clinic  
559 Nathan Abbot Way  
Stanford, CA 94305

**RE: ICE FOIA Case Number 2019-ICFO-23439**

Dear Ms. Weissman-Ward:

This acknowledges receipt of your November 28, 2018, Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), for ICE records pertaining to certain program's administration, policies, and treatment of people placed in IHP (see request for further details). Your request was received in this office on December 06, 2018.

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 **2019-ICFO-23439**. 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 2019-ICFO-XXXX 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](mailto: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](mailto: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](http://www.ice.gov/foia)

Lisa Weissman-Ward

2/5/2019

*Clinical Supervising Attorney & Lecturer in Law*

Immigrants' Rights Clinic  
Stanford Law School  
Crown Quadrangle  
559 Nathan Abbott Way  
Stanford, CA 94305-8610  
Tel: 650.724.7396  
Fax: 650.723.4426  
Email: [LWeissmanward@law.stanford.edu](mailto:LWeissmanward@law.stanford.edu)

# **EXHIBIT D**



Lisa Weissman-Ward &lt;lisanww@law.stanford.edu&gt;

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**ICE FOIA Request 2019-ICFO-23439**

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ice-foia@dhs.gov <ice-foia@dhs.gov>  
To: lweissmanward@law.stanford.edu

Mon, Feb 4, 2019 at 4:54 AM

February 04, 2019

Lisa Weissman-Ward  
Immigrants Rights Clinic  
559 Nathan Abbot Way  
Stanford, CA 94305

**RE: ICE FOIA Case Number 2019-ICFO-23439**

Dear Ms. Weissman-Ward:

This acknowledges receipt of your Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), dated November 28, 2018, and to your request for a waiver of all assessable FOIA fees. Your request was received in this office on December 06, 2018. Specifically, you requested ICE records pertaining to certain program's administration, policies, and treatment of people placed in IHP (see request for further details).

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. ICE evaluates fee waiver requests under the legal standard set forth above and the fee waiver policy guidance issued by the Department of Justice on April 2, 1987, as incorporated into the Department of Homeland Security's Freedom of Information Act regulations[1]. These regulations set forth six factors to examine in determining whether the applicable legal standard for fee waiver has been met. I have considered the following factors in my evaluation of your request for a fee waiver:

- (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 requestor 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 requestor has a commercial interest that would be furthered by the requested disclosure; and
- (6) Whether the magnitude of any identified commercial interest to the requestor is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requestor.

Upon review of your request and a careful consideration of the factors listed above, I have determined to grant your request for a fee waiver.

ICE has 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 **2019-ICFO-23439**. 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 2019-ICFO-XXXXX 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](mailto: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](mailto: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](http://www.ice.gov/foia)

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[1] 6 CFR § 5.11(k).



# **EXHIBIT E**

February 20, 2019

*Via U.S. Mail and E-Mail (ICE-FOIA@dhs.gov)*  
U.S. Immigration and Customs Enforcement  
Freedom of Information Act Office  
500 12th Street, S.W., Stop 5009  
Washington, D.C. 20536-5009

**RE: Freedom of Information Act Appeal for  
Request No. 2019-ICFO-23439**

Dear ICE FOIA Officer:

We write to appeal the refusal by Immigration and Customs Enforcement (ICE) to timely respond to the FOIA request that we submitted on behalf of the Justice & Diversity Center of The Bar Association of San Francisco and Centro Legal De La Raza. *See* Attachment 1. The FOIA request sought records pertaining to the ICE's policies and procedures as they pertain to the Institutional Hearing Program (IHP).

By an email dated December 6, 2018, the FOIA office acknowledged receipt of this FOIA request and assigned the request ICE Case No. 2019-ICFO-23439. Attachment 2. The FOIA office also invoked a 10-day extension beyond the usual 20-day response period so that it would have sufficient time to respond to the FOIA request. *Id.* (citing 5 U.S.C. § 552(a)(6)(B)).

On February 4, 2019, the FOIA office granted our fee waiver request, following an appeal. Attachment 3.

More than two and half months have now passed since our initial FOIA request and still no documents have been produced. This is highly troubling because there is a compelling and urgent need to inform the public about ICE's policies and practices that pertain to the IHP. Since coming into office, the Trump Administration has targeted IHP for modernization and expansion. On January 25, 2017, President Trump issued Executive Order 13767, entitled "Border Security and Immigration Enforcement Improvements" that prioritized the removal of noncitizens with criminal convictions.<sup>1</sup> To implement the Executive Order, then-

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<sup>1</sup> Exec. Order No. 13767, Border Security and Immigration Enforcement Improvements (Jan. 25, 2017), <https://www.whitehouse.gov/presidential-actions/executive-order-border-security-immigration-enforcement-improvements/>.

FOIA Appeal for Request No. 2019-ICFO-23439

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Secretary of the Department of Homeland Security, John Kelly, issued a memo instructing ICE to initiate removal proceedings against incarcerated noncitizens through the IHP “to the maximum extent possible.”<sup>2</sup> On March 30, 2017, then-Attorney General Jeff Sessions announced an IHP revitalization plan intended to “speed the process of deporting incarcerated criminal aliens.”<sup>3</sup> Despite the Trump Administration’s efforts to expand the IHP, immigration attorneys and the public know little about the implementation of IHP and its impact on removable noncitizens incarcerated in federal correctional institutions operated by the Federal Bureau of Prisons (“BOP”).

Accordingly, we now appeal the Department’s failure to determine whether to comply with the instant request within the time limits FOIA prescribes. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i):

Each agency ... shall...determine within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor; ... and in the case of an adverse determination, the right of such person to appeal to the head of the agency ....

In unusual circumstances, as set forth in 5 U.S.C. § 552(a)(6)(B), the time limits may be extended for not more than 10 days. The FOIA also provides that, “upon any determination by any agency to comply with a request for records, the records shall be made *promptly* available to such person making such request.” 5 U.S.C. § 552(a)(6)(C)(i) (emphasis added).

Given that the ICE FOIA office confirmed receipt of the written request on December 6, 2018, its response was due no later than Monday, January 7, 2019, with the 10-day extension. Even extending the deadline to respond by 35 days (the length of the partial government shutdown, which began on December

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<sup>2</sup> Memorandum from John Kelly, Sec’y, U.S. Dep’t of Homeland Sec., on Enforcement of Immigration Laws to Serve the National Interest (Feb. 20, 2017), [https://www.dhs.gov/sites/default/files/publications/17\\_0220\\_S1\\_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf](https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf).

<sup>3</sup> Press Release, Off. of Pub. Aff., U.S. Dep’t of Just., Attorney General Sessions Announces Expansion and Modernization of Program to Deport Criminal Aliens Housed in Federal Correctional Facilities (Mar. 30, 2017), <https://www.justice.gov/opa/pr/attorney-general-sessions-announces-expansion-and-modernization-program-deport-criminal>.

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22, 2018, and ended on January 25, 2019), the ICE FOIA office was required to respond by **February 11, 2019**.

In light of the Department's failure to adhere to the requirements of 5 U.S.C. §552(a)(6)(B) and 22 C.F.R. § 171.11(g), and refusal to determine whether to comply with any portion of our requests within the time limits of Section 552(a)(6)(A)(i), we deem our request denied pursuant to 5 U.S.C. § 552(a)(6)(C), and hereby appeal from that denial pursuant to 5 U.S.C. § 552(a)(6) and 6 C.F.R. § 5.8.

Pursuant to 5 U.S.C. § 552(a)(6)(A)(ii) and 6 C.F.R. § 5.8(d), we request a decision on this appeal within twenty days. Please acknowledge receipt of this appeal, and advise when the decision may be expected. Absent a timely response to this appeal or compliance with Section 552(a)(6), we shall initiate litigation to compel the Department's compliance with the Freedom of Information Act, for which we shall also seek attorney's fees and costs. *See* 5 U.S.C. §552(a)(4)(E).

Sincerely,

A handwritten signature in blue ink, appearing to read "Lisa Weissman-Ward", with a long horizontal flourish extending to the right.

Lisa Weissman-Ward

# ATTACHMENT 1

Crown Quadrangle  
559 Nathan Abbott Way  
Stanford, CA 94305-8610  
Tel 650 724-1900  
Fax 650 723-4426  
www.law.stanford.edu

**Justice & Diversity**  
CENTER  
OF THE BAR ASSOCIATION OF SAN FRANCISCO



November 30, 2018

*Via U.S. Certified Mail and Email (ICE-FOIA@dhs.gov)*  
U.S. Immigration and Customs Enforcement  
Freedom of Information Act Office  
500 12th Street SW, Stop 5009  
Washington, D.C. 20536-5009

**RE: FOIA Request for Records Related to Institutional Hearing Program**

Dear FOIA Officer:

This letter is a request pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 522, by the Stanford Law School Immigrants' Rights Clinic on behalf of The Justice & Diversity Center of The Bar Association of San Francisco and Centro Legal de la Raza. We seek records from U.S. Immigration and Customs Enforcement ("ICE") pertaining to certain policies and practices involving the Institutional Hearing Program ("IHP"), including the program's administration, policies, and treatment of people placed in IHP.<sup>1</sup>

There is a compelling and urgent need to inform the public about ICE policies and practices that pertain to the IHP. Since coming into office, the Trump Administration has targeted IHP for modernization and expansion. On January 25, 2017, President Trump issued Executive Order 13767, entitled "Border Security and Immigration Enforcement Improvements" that prioritized the removal of noncitizens with criminal convictions.<sup>2</sup> To implement the Executive Order, then-Secretary of the Department of Homeland Security, John Kelly, issued a memo instructing ICE to initiate removal proceedings against incarcerated noncitizens through the IHP "to the maximum extent possible."<sup>3</sup> On March 30,

<sup>1</sup> The term "people placed in IHP" is used interchangeably for the purpose of this request with other terms that may apply to incarcerated noncitizens who are placed in removal proceedings through the IHP, including but not limited to "respondents," "noncitizens," "prisoners," "inmates," and "aliens."

<sup>2</sup> Exec. Order No. 13767, Border Security and Immigration Enforcement Improvements (Jan. 25, 2017), <https://www.whitehouse.gov/presidential-actions/executive-order-border-security-immigration-enforcement-improvements/>.

<sup>3</sup> Memorandum from John Kelly, Sec'y, U.S. Dep't of Homeland Sec., on Enforcement of Immigration Laws to Serve the National Interest (Feb. 20, 2017),

FOIA Request  
November 30, 2018  
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2017, then-Attorney General Jeff Sessions announced an IHP revitalization plan intended to “speed the process of deporting incarcerated criminal aliens.”<sup>4</sup> Despite the Trump Administration’s efforts to expand the IHP, immigration attorneys and the public know little about the implementation of IHP and its impact on removable noncitizens incarcerated in federal correctional institutions operated by the Federal Bureau of Prisons (“BOP”).<sup>5</sup>

### **RECORDS REQUESTED**

We request the following records<sup>6</sup> prepared, received, transmitted, collected and/or maintained by ICE:

1. All records that reference site selection for the IHP to commence on or after January 20, 2017, including any facilities that are expected to begin serving as IHP “hearing sites”<sup>7</sup> in the future.
2. All records that reference the criteria that ICE uses to designate any federal, state, and/or county correctional facilities as IHP hearing sites, including federal BOP facilities, private contract facilities, state prisons, and county jails.

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[https://www.dhs.gov/sites/default/files/publications/17\\_0220\\_S1\\_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf](https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf).

<sup>4</sup> Press Release, Off. of Pub. Aff., U.S. Dep’t of Just., Attorney General Sessions Announces Expansion and Modernization of Program to Deport Criminal Aliens Housed in Federal Correctional Facilities (Mar. 30, 2017), <https://www.justice.gov/opa/pr/attorney-general-sessions-announces-expansion-and-modernization-program-deport-criminal>.

<sup>5</sup>The term “BOP,” “BOP facility,” or “BOP institution” refers to all BOP-controlled correctional facilities, including all subcontracted private facilities and any facilities that hold and/or house BOP inmates/prisoners/detainees.

<sup>6</sup> The term “records” as used in this request includes all records or communications preserved in electronic or written form, including but not limited to correspondence, regulations, directives, documents, data, videotapes, audiotapes, e-mails, faxes, files, guidance, guidelines, standards, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, manuals, technical specifications, training materials or 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.

<sup>7</sup> The term IHP “hearing site” refers to facilities where noncitizens are issued a Notice to Appear (NTA) and placed into removal proceedings and are appearing before the Immigration Court while still serving their prison sentence.

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3. All records describing how IHP hearing sites at all federal or state prisons, correctional facilities, county jails, or county correctional facilities are prioritized, and defining the criteria for such prioritization.
4. Any records that describe which federal BOP facilities, private contract facilities, state prisons, and/or county jails are considered IHP “release sites.”<sup>8</sup>
5. Any records describing or including policies, procedures, memoranda, communications, or other records describing the criteria to be used for identifying which federal or state prisoners should be placed in removal proceedings through the IHP.
6. Any records describing ICE’s current intake policy for the IHP.<sup>9</sup>
7. Any records describing or including policies, procedures, memoranda, communications, or guidance describing when, during a noncitizen’s criminal sentence, he or she should be placed into removal proceedings at an IHP location.
8. Any records describing or including any training or guidance provided by ICE to BOP employees about the administration and/or facilitation of the IHP.
9. Any records including policies, procedures, memoranda, guidance, training materials, or communications describing the obligations, protocols, or practices of ICE or BOP administrators to provide information about the IHP to noncitizens who have been placed in the program.
10. Any records describing or including policies, procedures, memoranda, or guidance concerning when and how noncitizens are notified that they are being placed in IHP, including what information they are provided about the program, and whether they are advised of their rights in the program.
11. Any records describing what rights, privileges, and protections are afforded to noncitizens placed in IHP.
12. Any records describing any federal or state conditions, detention, or imprisonment standards that apply to noncitizens by virtue of their being placed in removal proceedings through the IHP, including but not limited to ICE detention standards, BOP correctional standards, American Correctional Association Standards, National

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<sup>8</sup> The term “release site” refers to facilities designated for noncitizens who have been ordered deported and who are awaiting removal, ordinarily after the completion of their criminal sentences.

<sup>9</sup> *See supra* n. 4, Press Release, Off. of Pub. Aff. (stating “EOIR and ICE will finalize a new and uniform intake policy. EOIR and ICE expect to have reached agreement on this new intake process by April 6, 2017.”).



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Commission on Correctional Health Care (“NCCHC”) Standards, and Title 15 & Title 24 Minimum Standards for detention facilities.

13. All records showing any current contractual agreement, Intergovernmental Service Agreement (“IGSA”), Interagency Agreement (“IAA”), memoranda of understanding, or other agreement entered into between DHS and BOP that governs the operation of the IHP at any BOP facility outside of California.
14. All records showing any current contractual agreement, IGSA, IAA, memoranda of understanding, or other agreement entered into between DHS and BOP that governs the operation of the IHP at any BOP facility within California, including FCI Dublin, Taft CI, USP Victorville, FCI Victorville I, and FCI Victorville II.
15. All records describing policies, procedures, communications, guidance, memoranda of understanding, IGSA, and/or IAAs regarding any contractual obligations entered into between DHS and BOP that pertain to any budget and reimbursement agreements related to the operation of IHP hearing sites within California, including FCI Dublin, Taft CI, USP Victorville, FCI Victorville I, and FCI Victorville II.
16. All records showing any audits, inspections, or reviews conducted of the IHP program at individual IHP hearing sites in California.
17. All records including policies, procedures, memoranda, or communications concerning whether ICE officials maintain a regular physical presence within IHP prison locations in California, such as designated offices within each BOP facility or specific times when ICE agents visit the facilities.
18. Any records describing or including policies, procedures, guidance, or communications pertaining to or governing the ability of attorneys to meet and talk with clients within each BOP facility that serves as an IHP hearing site in California, including attorneys’ access to confidential visitation spaces and IHP respondents’ access to private, unmonitored telephone calls.
19. From October 1991-present, please disclose the number of respondents who have been issued a Notice to Appear (“NTA”) as part of the IHP at the following IHP locations: FCI Dublin, Taft CI, USP Victorville, FCI Victorville I, FCI Victorville II. For each such respondent, please also disclose:
  - a. Country of Citizenship
  - b. Age
  - c. Immigration Status
  - d. Inadmissibility or Deportability Charges
  - e. Factual Allegations regarding inadmissibility and/or deportability
    - i. For respondents at FCI Dublin, we seek factual allegations from October 2012-present;

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- ii. For respondents at Taft CI, USP Victorville, FCI Victorville I, and FCI Victorville II, we seek factual allegations from October 2016-present.

### **THE REQUESTOR**

The Justice & Diversity Center of The Bar Association of San Francisco (“JDC”) is one of the largest and most distinguished legal services providers in San Francisco. JDC’s primary purpose is the delivery of free legal services to low-income San Franciscans, as well as the non-profits that serve them. JDC delivers free legal services through its Legal Services Programs division, which consists of the Pro Bono Legal Services Program, Homeless Advocacy Project, and the Immigration Program. JDC helps to coordinate and organize and increase the capacity to provide legal services to underserved populations.

Centro Legal de la Raza (“Centro”) is a nonprofit that provides free legal services to low-income individuals and families in the East Bay and throughout Northern and Central California. For five decades, Centro has protected and advanced the rights of low-income communities, including Spanish-speaking immigrants, workers, and tenants. Founded in 1969 and headquartered in Oakland, Centro combines quality legal services with know-your-rights education and youth education and development. Centro ensures access to justice for thousands of individuals and families each year. As California’s largest provider of legal services for immigrants facing deportation, Centro’s Immigration Program assists thousands of immigrants annually. Centro’s removal defense practice specializes in cases that are urgent and often involve novel legal issues. Centro represents unaccompanied minors and families fleeing violence and immigrants with long term community ties, including those in immigration detention.

Both organizations regularly represent IHP respondents through in the Attorney of the Day (“AOD”) program before the San Francisco Immigration Court, where experienced immigration attorneys appear in immigration court to assist unrepresented respondents in their initial removal hearings. The requestors seek information about IHP because the AODs provide IHP respondents with individual consultations, initial legal advice, and referrals within BOP facilities, as well as provide long term and full scope representation of IHP respondents before the Executive Office of Immigration Review.

### **FEE WAIVER**

The requestor also seeks a full fee waiver on the grounds that disclosure of the requested records is in the public interest and is “likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requestor.” 5 U.S.C. § 522(a)(4)(A)(iii). As set forth above, this request aims at furthering public understanding of government conduct: specifically, ICE IHP policies and practices. Because the requested records will contribute significantly to

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public understanding of the immigrant detention and removal system, we request a waiver of fees under 5 U.S.C. § 552(a)(4)(A)(iii).

If this request is denied in whole or in part, the requestors ask that the government justify all redactions by reference to specific FOIA exemptions. We expect the government to release all segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information or to deny expedited processing or a waiver of fees.

### **EXPEDITED PROCESSING**

Requestors ask for Track 1 expedited treatment for this FOIA request. This request qualifies for expedited treatment pursuant to 5 U.S.C. § 552(a)(6)(E) and applicable regulations. There is a “compelling need” for expedited processing of this request, *see* 5 U.S.C. § 552(a)(6)(E)(i)(I), namely, an “urgency to inform the public concerning the actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II); *see also* 6 C.F.R § 5.5(d)(1)(ii) (same). The records requested concern potential changes to ICE’s expansion of the IHP program that affect thousands of noncitizens.

Please send responsive records to:

Lisa Weissman-Ward  
Stanford Law School Immigrants’ Rights Clinic  
559 Nathan Abbott Way  
Stanford, CA 94305

Thank you for your attention. Please contact me at [lweissmanward@law.stanford.edu](mailto:lweissmanward@law.stanford.edu) or 650-724-7396.

Sincerely,



Lisa Weissman-Ward

# ATTACHMENT 2



Lisa Weissman-Ward &lt;lisanww@law.stanford.edu&gt;

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**ICE FOIA Request 2019-ICFO-23439**

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ice-foia@dhs.gov <ice-foia@dhs.gov>  
To: lweissmanward@law.stanford.edu

Thu, Dec 6, 2018 at 7:03 AM

December 06, 2018

Lisa Weissman-Ward  
Immigrants Rights Clinic  
559 Nathan Abbot Way  
Stanford, CA 94305**RE: ICE FOIA Case Number 2019-ICFO-23439**

Dear Ms. Weissman-Ward:

This acknowledges receipt of your November 28, 2018, Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), for ICE records pertaining to certain program's administration, policies, and treatment of people placed in IHP (see request for further details). Your request was received in this office on December 06, 2018.

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 **2019-ICFO-23439**. 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 2019-ICFO-XXXXX 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](mailto: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](http://www.ogis.gov)-OGIS, College Park, Maryland 20740-6001, e-mail at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Regards,

Attachment 2

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](http://www.ice.gov/foia)

# ATTACHMENT 3



Lisa Weissman-Ward &lt;lisanww@law.stanford.edu&gt;

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**ICE FOIA Request 2019-ICFO-23439**

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ice-foia@dhs.gov <ice-foia@dhs.gov>  
To: lweissmanward@law.stanford.edu

Mon, Feb 4, 2019 at 4:54 AM

February 04, 2019

Lisa Weissman-Ward  
Immigrants Rights Clinic  
559 Nathan Abbot Way  
Stanford, CA 94305

**RE: ICE FOIA Case Number 2019-ICFO-23439**

Dear Ms. Weissman-Ward:

This acknowledges receipt of your Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), dated November 28, 2018, and to your request for a waiver of all assessable FOIA fees. Your request was received in this office on December 06, 2018. Specifically, you requested ICE records pertaining to certain program's administration, policies, and treatment of people placed in IHP (see request for further details).

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. ICE evaluates fee waiver requests under the legal standard set forth above and the fee waiver policy guidance issued by the Department of Justice on April 2, 1987, as incorporated into the Department of Homeland Security's Freedom of Information Act regulations<sup>[1]</sup>. These regulations set forth six factors to examine in determining whether the applicable legal standard for fee waiver has been met. I have considered the following factors in my evaluation of your request for a fee waiver:

- (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 requestor 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 requestor has a commercial interest that would be furthered by the requested disclosure; and
- (6) Whether the magnitude of any identified commercial interest to the requestor is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requestor.

Upon review of your request and a careful consideration of the factors listed above, I have determined to grant your request for a fee waiver.

ICE has 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 **2019-ICFO-23439**. 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 2019-ICFO-XXXXX 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](mailto: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 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](mailto: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](http://www.ice.gov/foia)

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[1] 6 CFR § 5.11(k).

# **EXHIBIT F**

U.S. Department of Homeland Security  
500 12<sup>th</sup> ST. SW; STOP 5009  
Washington, DC 20536-5009



U.S. Immigration  
and Customs  
Enforcement

February 28, 2019

Lisa Weissman-Ward  
Immigrants Rights Clinic  
559 Nathan Abbot Way  
Stanford, CA 94305

Dear Ms. Weissman-Ward:

The Department of Homeland Security has received your letter appealing the adverse determination of your Freedom of Information Act/Privacy Act (FOIA/PA) request by U.S. Immigration and Customs Enforcement. Your appeal, **postmarked or electronically transmitted on February 20, 2019**, was received on **February 20, 2019**.

The Government Information Law Division acknowledges your appeal request of **2019-ICFO-23439** and is assigning it number **2019-ICAP-00249** for tracking purposes. Please reference this number in any future communications about your appeal.

A high number of FOIA/PA requests have been received by the Department. Accordingly, we have adopted the court-sanctioned practice of generally handling backlogged appeals on a first-in, first-out basis.<sup>1</sup> While we will make every effort to process your appeal on a timely basis, there may be some delay in resolving this matter. Should you have any questions concerning the processing of your appeal, please contact the ICE FOIA Office/Public Liaison at (866) 633-1182, or by email at [ice-foia@dhs.gov](mailto:ice-foia@dhs.gov).

Sincerely,

*/s/MCuestas for*

Shiraz Panthaky  
Chief  
Government Information Law Division  
ICE Office of the Principal Legal Advisor  
U.S. Department of Homeland Security

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<sup>1</sup> Appeals of expedited treatment denials will be handled on an expedited basis.

# EXHIBIT G

Office of the Principal Legal Advisor  
500 12<sup>th</sup> St. SW; STOP 5009  
Washington, DC 20536-5009



U.S. Immigration  
and Customs  
Enforcement

March 20, 2019

Lisa Weissman-Ward  
Immigrants' Rights Clinic  
559 Nathan Abbot Way  
Stanford, CA 94305

**RE: 2019-ICAP- 00249, 2019-ICFO-23439**

Dear Ms. Weissman-Ward:

This is in response to your letter dated February 20, 2019, received February 20, 2019 appealing the U.S. Immigration and Customs Enforcement (ICE) Freedom of Information Act (FOIA) Office's response to your FOIA request, dated November 30, 2018. Your request sought documents pertaining to policies and practices involving the Institutional Hearing Program (IHP).

By electronic correspondence dated December 6, 2018, the ICE FOIA Office acknowledged receipt of your FOIA request, assigned it case number 2019-ICFO-23439 and invoked the ten (10) day extension period pursuant to Title 5 U.S.C. § 552(a)(6)(B). On February 4, 2019, the ICE FOIA Office granted your request for a fee waiver pursuant to Department of Homeland Security's Freedom of Information Act regulations.

You have appealed the constructive denial of your FOIA request based upon the ICE FOIA Office not responding to your request within either the twenty (20) days provided by statute, or the additional ten (10) day extension invoked by the ICE FOIA Office. In many instances, an agency cannot meet these time limits due to a high volume of requests, resource limitations and other reasons. Accordingly, this office is remanding your appeal to the ICE FOIA Office so that they may complete the search for these records and provide a direct response to you.

Should you have any questions regarding this appeal remand, please contact ICE at [ice-foia@dhs.gov](mailto:ice-foia@dhs.gov). In the subject line of the email, please include the word "appeal," the appeal number, which is **2019-ICAP-00249**, and the FOIA case number, which is **2019-ICFO-23439**.

Sincerely,

*Anne M. Rose*

for

Shiraz Panthaky,  
Chief

Government Information Law Division  
ICE Office of the Principal Legal Advisor  
U.S Department of Homeland Security

cc: The ICE FOIA Office