



COMMUNITY EDUCATION CENTER • IMMIGRATION POLICY CENTER • INTERNATIONAL EXCHANGE CENTER • LEGAL ACTION CENTER

March 14, 2011

**FOIA Office
U.S. Immigration and Customs Enforcement
800 North Capitol Street, NW
5th Floor, Suite 585
Washington, DC 20536**

Re: Freedom of Information Act Request

Dear Sir or Madam:

The American Immigration Council (AIC) submits this letter as a request for information under the Freedom of Information Act (FOIA), 5 U.S.C. §552, *et. seq.*

1. RECORDS SOUGHT

AIC requests any and all records¹ which have been prepared, received, transmitted, collected and/or maintained by the U.S. Department of Homeland Security and/or U.S. Immigration and Customs Enforcement (ICE), whether issued or maintained by ICE Headquarters offices (including but not limited to the Office of the Assistant Secretary (OAS), Enforcement and Removal Operations (ERO), Homeland Security Investigations (HIS), Management and Administration, Office of the Principal Legal Advisor (OPLA), and the Office of Detention Policy and Planning (ODPP), including any divisions, subdivisions or sections therein); ICE field offices, including any divisions, subdivisions or sections therein; local Offices of Chief Counsel; and/or any other ICE organizational structure; and which relate or refer in any way to any of the following:

- Attorneys' ability to be present during their clients' interactions with ICE;
- What role attorneys may play during their clients' interactions with ICE;
- Attorney conduct during interactions with ICE on behalf of their clients;
- Attorney appearances at ICE offices or other facilities.

The above records may include, but are not limited to:

- 1) Results of evaluations or inspections of detention facilities intended to monitor compliance with ICE Performance Based National Detention Standards, particularly as they impact attorneys' access to detained clients. Of particular importance are evaluations that have

¹ The term "records" as used herein includes all records or communications preserved in electronic or written form, including but not limited to correspondence, documents, data, videotapes, audiotapes, e-mails, faxes, files, guidance, guidelines, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, manuals, technical specifications, training materials, and studies.

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- monitored compliance with standards related to i) telephone access; ii) attorney visitation; iii) transfer; iv) legal rights group presentations; and v) law libraries and legal materials;
- 2) Guidance or any information obtained by the agency regarding noncitizens' access to counsel during or after worksite or other enforcement actions;
 - 3) Guidance or any information obtained by the agency regarding the circumstances under which an attorney may accompany a client to an Order of Supervision appointment or what role the attorney may play during that appointment;
 - 4) Guidance or any information obtained by the agency regarding the circumstances under which an attorney may accompany a client during questioning prior to or pursuant to an arrest, including processing and booking, or what role the attorney may play during such questioning;
 - 5) Guidance or any information obtained by the agency regarding the circumstances under which an attorney may accompany a client during questioning pursuant to a request for a Stay of Removal or what role the attorney may play during such questioning;
 - 6) Guidance or any information obtained by the agency regarding the circumstances under which an attorney may accompany a client during questioning related to the National Security Entry-Exit Registration System (NSEERS) or what role the attorney may play during such questioning;
 - 7) Guidance or any information obtained by the agency regarding the circumstances under which an attorney may accompany a client during general questioning by an ICE officer or what role the attorney may play during such questioning;
 - 8) Guidance or any information obtained by the agency regarding the circumstances under which an attorney may accompany a client during questioning related to a Notice to Report for Removal or what role the attorney may play during such questioning;
 - 9) Guidance or any information obtained by the agency regarding the circumstances under which an attorney may accompany a client during questioning pursuant to a request for Deferred Action or what role the attorney may play during such questioning;
 - 10) Guidance or any information obtained by the agency regarding the circumstances under which an attorney may accompany a client during questioning related to participation in the Intensive Supervision Appearance Program (ISAP) or what role the attorney may play during such questioning;
 - 11) Guidance or any information obtained by the agency regarding the circumstances under which an attorney may accompany a client to a deferred inspection appointment or what role the attorney may play during questioning at a deferred inspection appointment;
 - 12) Guidance or any information obtained by the agency regarding the circumstances under which an attorney may accompany a client during questioning pursuant to an interview

conducted in a jail/ detention facility to determine whether ICE should place a detainer on the individual or what role the attorney should play during questioning at such an interview;

13) Guidance or any information obtained by the agency regarding procedures for notification of attorneys with Form EOIR-28 or G-28 on file of ICE's intention to question their clients.

AIC requests that records existing in electronic form be provided in electronic format or on a compact disc. If any of the requested records or information is not in a succinct format, we request the opportunity to view the documents in your offices.

If under applicable law any of the information requested is considered exempt, please describe in detail the nature of the information withheld, the specific exemption or privilege upon which the information is withheld, and whether the portions of withheld documents containing non-exempt or non-privileged information have been provided.

2. REQUEST FOR WAIVER OF ALL COSTS

AIC requests that all fees associated with this FOIA request be waived. AIC is entitled to a waiver of all costs because disclosure of the information is "...likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). *See also* 6 C.F.R. § 5.11 (k) (Records furnished without charge or at a reduced rate if the information is in the public interest, and disclosure is not in commercial interest of institution). In addition, AIC has the ability to widely disseminate the requested information. *See Judicial Watch v. Rossotti*, 326 F.3d 1309 (D.C. Cir. 2003) (finding a fee waiver appropriate when the requester explained, in detailed and non-conclusory terms, how and to whom it would disseminate the information it received).

i. Disclosure of the Information Is in the Public Interest

AIC educates citizens about the enduring contributions of America's immigrants, supports sensible and humane immigration policies that reflect American values, and works to ensure that immigration laws are enacted and implemented in compliance with fundamental constitutional and human rights. The AIC's Immigration Policy Center (IPC) and Legal Action Center (LAC) help carry out this mission by reaching out to the general public to promote a better understanding of immigration law, policy and practice. The IPC researches issues related to immigration (such as the impact of immigration on the economy, jobs and crime), and regularly provides information to leaders on Capitol Hill and the media. The LAC works with other immigrants' rights organizations and immigration attorneys across the United States to advance the fair administration of immigration laws. Relevant to this FOIA request, the LAC has historically focused on access to counsel issues. Specifically, the LAC educates the public about the law surrounding access to counsel for immigrants in removal proceedings, advocates for fair standards and procedures to remedy the effects of ineffective assistance of counsel, and encourages better access to counsel in proceedings before the Department of Homeland Security and its sub-agencies.

Disclosure of the requested information will contribute significantly to public understanding of non-citizens' access to counsel in interactions with ICE. The disclosed records will inform attorneys who represent non-citizens at risk of removal from the United States, the noncitizens themselves, and other members of the public who are concerned with immigration agency proceedings and policies. Because there is no publicly

available comprehensive guidance governing attorney representation and conduct in interactions with ICE, the dissemination of these records will significantly inform public understanding of the scope of representation permitted before ICE. AIC has the capacity and intent to disseminate widely the requested information to the public. To this end, the LAC and the IPC will post the information on the AIC website, a website that is accessible by any member of the public. In addition, the LAC and IPC will publish this information in an LAC report, an LAC newsletter and an IPC blog. The LAC newsletter is directly distributed to 12,000 recipients and the IPC blog is distributed to 25,000 recipients. These publications also are available on the AIC website.

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

AIC is a 501(c)(3), tax-exempt, not-for-profit educational, charitable organization. Immigration attorneys, noncitizens and any other interested member of the public may obtain information about counsel-related issues on AIC's frequently updated website. AIC seeks the requested information for the purpose of disseminating it to members of the public who access AIC's website and not for the purpose of commercial gain.

Please inform us if the charges for this FOIA production will exceed \$25.00.

Thank you in advance for your response to this request within twenty working days, as FOIA requires. See 5 U.S.C. § 552(a)(6)(A)(i). If you have any questions, please feel free to contact me at (202) 507-7505.

Sincerely,



Emily Creighton
Staff Attorney
American Immigration Council
Suite 200
1331 G Street, NW
Washington, DC 20005-3141
Telephone: (202) 507-7505
Fax: (202) 742-5619
E-mail: ecreighton@immcouncil.org