

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK**

JUSTICE FOR MIGRANT FAMILIES, )  
PRISONERS' LEGAL SERVICES OF NEW )  
YORK, and ROBERT F. KENNEDY )  
HUMAN RIGHTS, )

*Plaintiffs,* )

v. )

U.S. IMMIGRATION AND CUSTOMS )  
ENFORCEMENT, )

*Defendant.* )

Civil Action No. \_\_\_\_\_

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

**I. INTRODUCTION**

1. Plaintiffs—nonprofits who serve and advocate on behalf of immigrants—bring this Freedom of Information Act (“FOIA”) suit to obtain records related to the treatment of immigrants detained by Immigration and Customs Enforcement (“ICE”) at the Buffalo Service Processing Center (“Batavia”), New York State’s largest immigrant detention facility. Plaintiffs’ FOIA request was submitted in March 2022, yet ICE has refused even to process it, much less produce the requested records. Plaintiffs therefore seek judicial intervention to obtain this information vital to their missions and to the wellbeing of the hundreds of immigrants detained at Batavia each year.

2. Plaintiffs Justice for Migrant Families (“JFMF”), Prisoners’ Legal Services of New York (“PLS”), and Robert F. Kennedy Human Rights (“RFKHR”), together, the “Plaintiffs,” work closely with people detained in Batavia and regularly receive reports

concerning conditions, treatment, and due process violations at the facility. For example, Elias<sup>1</sup> described being placed in solitary confinement for 13 days without a hearing after he accidentally injured another person during a soccer game. “After I got out, I was given a different color uniform and moved to a higher security unit. I worried how this could hurt my case, even though I did nothing wrong.” Detained individuals also report the use of solitary confinement as a form of retaliation, like Apollo, who recounted being placed in solitary confinement after he refused to sign a form to ‘self-deport.’

3. Indeed, in recent years Batavia has generated public interest and concern for the egregious conditions of confinement, including, but not limited to, medical neglect,<sup>2</sup> failure to provide COVID-19 vaccines and personal protective equipment (“PPE”) such as masks,<sup>3</sup> and retaliation for protesting unsafe conditions.<sup>4</sup>

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<sup>1</sup> Plaintiffs use pseudonyms in this paragraph in order to protect the privacy of these individuals and due to their fear of retaliation by ICE for speaking out about their experiences at Batavia.

<sup>2</sup> See, e.g., Rita Omokha, *‘They don’t have any humanity’: Black immigrants in Ice custody report abuse and neglect*, The Guardian (July 22, 2022, 08:00 EDT), <https://www.theguardian.com/us-news/2022/jul/22/ice-black-immigrants-abuse-medical-neglect>.

<sup>3</sup> See, e.g., Massarah Mikati, *63% of local ICE detainees contracted COVID-19. Now some are getting first vaccine shot.*, Times Union (updated Mar. 24, 2021, 4:33 PM), <https://www.timesunion.com/news/article/63-of-local-ICEdetainees-contracted-COVID-19-16049808.php>; Noelle E.C. Evans, *30 detainees test positive for coronavirus at ICE detention center in Batavia*, WBFO – NPR (Feb. 23, 2021, 6:06 AM EST), <https://www.wbfo.org/crime/2021-02-23/30-detainees-test-positive-for-coronavirus-at-ice-detention-center-in-batavia>; Jim Heaney, *Lawyers protest dangers at detention center*, Investigative Post (Mar. 25, 2020), <https://www.investigativepost.org/2020/03/25/lawyers-protest-dangers-at-detention-center/>.

<sup>4</sup> See, e.g., Phoebe Taylor-Vuolo, *A Man Detained in Batavia is Fighting to Be Deported. ICE Has Cancelled His Flight 13 Times.*, Documented (Apr. 27, 2021), <https://documentedny.com/2021/04/27/a-man-detained-in-batavia-is-fighting-to-be-deported-ice-has-cancelled-his-flight-13-times/>.

4. Batavia has also been implicated in unsafe release practices that have resulted in serious injury and even death.<sup>5</sup> For example Pierre, a man with schizophrenia and multiple physical health conditions, was found dead in the street shortly after his release from Batavia at a rural gas station. Despite months of advocacy and repeated requests by Plaintiff JFMF, ICE declined to provide a release date to the advocates coordinating his housing and medical care and refused to make reasonable accommodations to facilitate Pierre's safe release.

5. Plaintiffs seek records regarding ICE detention practices to ensure that they and the communities they serve can evaluate immigration enforcement actions in their communities, including their potential detrimental effects. Without this information, Plaintiffs and other stakeholders involved in defending the rights of people detained at Batavia are hampered in their efforts to hold ICE accountable for the treatment of people detained at Batavia.

6. Not only will this information assist detained people, their loved ones, and advocates defending the rights of detained people in upstate New York, it is also vital to providing the public with the information necessary to engage in the democratic process and public debate surrounding ICE detention in New York State and beyond. The records sought will inform statewide and national conversations on the use of immigration detention, particularly as New York considers the Dignity Not Detention Act (S.B. 7373/Assemb. B. 7099A) and New York for All Act (S.B. 03076/Assemb. B. 02328), which would prohibit state, municipal, and

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<sup>5</sup> See FOIA Request, attached hereto as Exhibit A and incorporated by reference herein, at 2-3; Giulia McDonnell Nieto Del Rio, *ICE is Leaving Asylum Seekers at a Remote Bus Station in New York*, Documented (Feb. 25, 2022), <https://documentedny.com/2022/02/25/ice-detainees-locator-new-york/>; Alex Love, *Local immigration organizations accuse ICE in Batavia of mishandling*, Rochester First (Dec. 6, 2021, 5:55 PM EST), <https://www.rochesterfirst.com/news/local-immigration-charities-accuse-i-c-e-in-batavia-of-mishandling/>; Phil Gambini, *ICE's ill treatment of released [detained people]*, Investigative Post (updated Apr. 28, 2020, 8:10 PM), <https://www.investigativepost.org/2020/04/28/ices-ill-treatment-of-released-detainees/>.

private facilities from entering into detention contracts with ICE, and prevent state and local officials from enforcing federal immigration laws, respectively.

7. Despite the strong public interest in records regarding ICE's detention practices in upstate New York and whether they comply with constitutional, statutory, and regulatory requirements regarding detention, ICE has failed to produce a single document in the more than eight months since Plaintiffs submitted their request. Plaintiffs bring this lawsuit to compel Defendants to comply with the FOIA, 5 U.S.C. § 552 *et seq.* and to promptly release the improperly withheld agency records vital to vindicating the rights of detained people and to the public conversation on the future of immigration detention in New York.

## **II. JURISDICTION AND VENUE**

8. This Court has subject-matter jurisdiction over this action under 28 U.S.C. § 1331, 28 U.S.C. § 2201, and 5 U.S.C. § 702 *et seq.*

9. Venue is proper in this Court under 5 U.S.C. § 552(a)(4)(B) because Plaintiff JFMF maintains its principal place of business in this judicial district and, on information and belief, at least some of the records at issue are located in this judicial district.

## **III. PARTIES**

10. Plaintiff JFMF is a community-based 501(c)(3) non-profit organization with its principal place of business in Buffalo, New York. JFMF connects detained people with legal resources and social services, provides material support to detained and recently released people, and conducts a visitation and pen pal program with people detained at Batavia. JFMF also collects and disseminates resources for people detained at Batavia and their families, which are housed on JFMF's website. JFMF will use the information obtained through the FOIA request to serve community members most directly affected by the information and to ensure accountability for the Government's routine violations of detained peoples' rights at Batavia. JFMF will also

work with other non-profit and advocacy organizations to ensure that the information obtained through these requests is distributed to directly impacted populations and other stakeholders, and to the public at large.

11. Plaintiff PLS is a 501(c)(3) nonprofit that provides legal representation and assistance to indigent prisoners, helping them to secure their civil and human rights and advocate for more humane prisons and for a more humane criminal justice system. PLS represents individuals detained at Batavia in their immigration proceedings and in challenges to the length and conditions of their detention in federal court. PLS also advocates on conditions, issues, and policies affecting people detained at Batavia through litigation and other means. PLS will work with other nonprofit and advocacy organizations to ensure that the information obtained through these requests is distributed to directly impacted populations and other stakeholders, along with the public at large.

12. Plaintiff RFKHR is a 501(c)(3) not-for-profit organization that, among other things, advocates for human rights issues and pursues strategic litigation to hold governments accountable for human rights abuses, including by pursuing immigrants' rights and anti-detention advocacy and litigation opportunities. RFKHR carries on the work and interests of Rapid Defense Network ("RDN") following the integration of RDN's operations with RFKHR in September 2022. RDN was a 501(c)(3) nonprofit that represented a number of people detained at Batavia. RDN worked with local partners to develop resources for people detained at Batavia and increase access to legal services at the facility. RDN monitored developments in immigration law that affect the rights of non-U.S. citizens and partnered with law firms and law school clinics to bring impact litigation and federal court claims on behalf of noncitizens to address systemic issues. During the COVID-19 pandemic, RDN made information available to the public

regarding litigation efforts to address the conditions of confinement for people in immigration detention through its website and related media platforms that are accessible to the public. RDN will be moving to dissolve as an independent 501(c)(3) following the integration of its operations with RFKHR. RFKHR carries RDN's interests in this matter going forward and will work with other non-profit advocacy organizations to ensure that the information obtained through these requests is distributed to directly impacted populations and other stakeholders, and to the public at large.

13. Defendant ICE is an office of the Department of Homeland Security (DHS), is a federal agency within the meaning of FOIA, 5 U.S.C. § 552(f)(1), and is headquartered in Washington, DC. ICE has possession, custody, and control of the records Plaintiffs seek in this action.

#### **IV. LEGAL FRAMEWORK OF FOIA**

14. FOIA requires federal agencies to make non-exempt records “promptly available to any person” who makes a proper request. 5 U.S.C. § 552(a)(3)(A).

15. Federal agencies must provide non-exempt public records when they are requested by the public in order “to ensure an informed citizenry, vital to the functioning of a democratic society.” *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978).

16. An agency must determine “whether to comply with [a FOIA] request” “within 20 days (excepting Saturdays, Sundays, and legal public holidays),” and must “immediately notify the person making such request of,” *inter alia*, “such determination and the reasons therefor.” 5 U.S.C. § 552(a)(6)(A)(i); *see also* 6 C.F.R. § 5.6(c).

17. Under the governing regulation, ICE is required to deny or grant a request, in full or in part, and to notify the requester in writing. 6 C.F.R. § 5.6(c) (“a component shall have twenty (20) working days from when a request is received to determine whether to grant or deny

the request unless there are unusual or exceptional circumstances”). A denial, in whole or in part, must indicate the specific reason for the denial, such as: the requested record is exempt, in whole or in part; the request does not reasonably describe the records sought; the information requested is not a record subject to the FOIA; the requested record does not exist, cannot be located, or has been destroyed; or the requested record is not readily reproducible in the form or format sought by the requester. 6 C.F.R. § 5.6(d).

18. Although an agency need not always make its productions by the statutory deadline, its timely response must include “the agency’s determination of whether or not to comply with the request; the reasons for its decision, and notice of the right of the requester to appeal to the head of the agency if the initial agency decision is adverse.” *Sloman v. U.S. Dep’t of Just.*, 832 F. Supp. 63, 66 (S.D.N.Y. 1993).

19. An agency is required to respond to any FOIA appeals within 20 business days of the receipt of the appeal by granting access to the records or fully explaining the reasons for further denial in writing. 5 U.S.C. § 552(a)(6)(A)(ii); 6 C.F.R. § 5.8(d).

20. If a determination on the appeal is not rendered within 20 business days, the failure to do so constitutes an exhaustion of administrative remedies. § 552(a)(6)(C)(i). The requester “shall be deemed to have exhausted [their] administrative remedies with respect to such request if the agency fails to comply with the applicable time limit [provided by 5 U.S.C. § 552(a)(6)(A)-(B)].” *Id.*

21. FOIA provides that any person who has not been provided the records requested pursuant to FOIA, after actually or constructively exhausting their administrative remedies, may seek legal redress from the federal district court to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the

complainant. *See* § 552(a)(4)(B); *Oglesby v. U.S. Dep’t of Army*, 920 F.2d 57, 64 (D.C. Cir. 1990) (“[C]onstructive exhaustion under 5 U.S.C. § 552(a)(6)(C) allows immediate recourse to the courts to compel the agency’s response to a FOIA request.”).

22. FOIA also provides that this Court may assess attorneys’ fees and litigation costs against the United States if Plaintiffs prevail in this action. *See* § 552(a)(4)(E).

## V. FACTUAL ALLEGATIONS

### 1. The FOIA Request

23. On March 30, 2022, Plaintiffs submitted a FOIA request via electronic mail to ICE that requested, among other things, records regarding the scope and scale of detention in the Buffalo Field Office District (“BFOD”) and records regarding the treatment of people detained at Batavia, including accommodations for disabled people; language access and access to justice; safe release practices; adequacy of medical care; solitary confinement practices; officer misconduct and abuse; and conditions of confinement. *See* Exh. A.

### 2. ICE’s Failure to Respond to the FOIA Requests

24. ICE’s response was due by April 27, 2022, 20 business days after receiving the FOIA request. 5 U.S.C. § 552(a)(6)(A); 6 C.F.R. § 5.6(C). ICE did not respond.

25. Plaintiffs submitted follow-up emails to ICE on April 29, 2022, and May 12, 2022, alerting ICE that the statutory period to reply had lapsed, informing them that no response to the FOIA request had been provided, and requesting that ICE provide one. ICE failed to respond to either email.

26. On June 2, 2022—over one month after a response was due in compliance with 5 U.S.C. § 552(a)(6)(A) and 6 C.F.R. § 5.6(C)—ICE acknowledged receipt of the FOIA request but did not provide any of the information legally required of an agency’s response. In addition, ICE constructively denied Plaintiffs’ request for a fee waiver with no explanation, in violation of



5 U.S.C. § 552(a)(4)(A)(iii). *See* Agency FOIA Receipt, attached hereto as Exhibit B and incorporated by reference herein.

### **3. ICE's Failure to Provide Records**

27. On June 16, 2022, Plaintiffs submitted an Administrative Appeal to ICE, requesting that ICE grant the FOIA Request and provide a fee waiver. *See* Administrative Appeal, attached hereto as Exhibit C and incorporated by reference herein. ICE's response to the Administrative Appeal was due July 19, 2022, 20 business days after receiving the Administrative Appeal. 5 U.S.C. § 552(a)(6)(A)(ii); 6 C.F.R. § 5.8(d).

28. On June 21, 2022, ICE acknowledged receipt of the Administrative Appeal but did not provide a substantive response. *See* Administrative Appeal Receipt, attached hereto as Exhibit D and incorporated by reference herein.

29. On July 13, 2022, ICE remanded the search to ICE FOIA Office but again failed to provide a substantive response. *See* ICE Remand July 13, 2022, attached hereto as Exhibit E and incorporated by reference herein.

30. On August 11, 2022, ICE sent a *pro forma* response asserting that Plaintiff's FOIA Request "is too broad in scope, did not specifically identify the records which you are seeking, or only posed questions to the agency." *See* ICE Response August 11, 2022, at 1, attached hereto as Exhibit F and incorporated by reference herein. ICE requested Plaintiffs re-submit the request with a "reasonable description" of the records sought. *Id.* ICE failed to indicate what details the FOIA Request lacked.

31. On September 9, 2022, Plaintiffs responded to ICE's *pro forma* response, disagreeing with ICE's assertion that the request failed to reasonably describe the records sought and asking ICE to either process the request as submitted, or in the alternative to "provide further guidance on what portions of the request fail to 'reasonably describe' the records sought and what additional information is needed to process the request[.]" as ICE is required to do under 6 C.F.R. § 5.3(b). *See* Plaintiff's Reply September 9, 2022 at 3, attached hereto as Exhibit G and incorporated by reference herein.

32. ICE has not "inform[ed] the requester what addition information is needed" as is required by 6 C.F.R. § 5.3(b). ICE has not replied at all. On October 7, 2022, Plaintiffs checked the DHS FOIA Public Access Portal and saw that their request had been closed. ICE provided no information regarding this closure, and Plaintiffs were not notified that their request had been closed.

#### **4. Exhaustion of Administrative Remedies**

33. Given that ICE has failed to provide the required determinations in response to Plaintiff's FOIA Requests by the statutory deadlines, Plaintiffs have constructively exhausted the administrative remedies and may pursue judicial review. *See* § 552(a)(6)(C)(i); *Oglesby*, 920 F.2d at 64 ("[C]onstructive exhaustion under 5 U.S.C. § 552(a)(6)(C) allows immediate recourse to the courts to compel the agency's response to a FOIA request.").

## **VI. CAUSES OF ACTION**

### **Count 1**

#### **Violation of FOIA, 5 U.S.C. § 552(a)(3)(A), for Failure to make Promptly Available the Records Sought by Plaintiffs' Request**

34. Plaintiffs repeat the allegations in the foregoing paragraphs and incorporate them as though fully set forth herein.

35. Plaintiffs properly requested records within the possession, custody, and control of Defendant.

36. Defendant's failure to make promptly available the records sought by Plaintiffs' Request violates FOIA, 5 U.S.C. § 552(a)(3)(A).

### **Count 2**

#### **Violation of FOIA, 5 U.S.C. § 552(a)(6)(A)(i), for Failure to Timely Respond to Plaintiffs' Request with the Required "Determinations"**

37. Plaintiffs repeat the allegations in the foregoing paragraphs and incorporate them as though fully set forth herein.

38. Plaintiffs properly requested records within the possession, custody, and control of Defendant.

39. Defendant's failure to timely respond to Plaintiffs' Request with the required determinations violates the FOIA, 5 U.S.C. § 552(a)(6)(A)(i), and DHS regulation promulgated thereunder, *see* 6 C.F.R. § 5.6(c); 6 C.F.R. § 5.3(b).

### **Count 3**

#### **Violation of FOIA, 5 U.S.C. § 552, for Wrongful Denial of Statutory Fee Waiver**

40. Plaintiffs repeat the allegations in the foregoing paragraphs and incorporate them as though fully set forth herein.

41. FOIA requires Defendants to provide records at no charge or at reduced charge “if disclosure of the information is in the public interest because it 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).

42. Plaintiffs request records related to issues of significant public interest, including Defendants’ treatment of Plaintiffs’ clients and community members and ICE’s compliance with constitutional law and human rights.

43. Plaintiffs are requesters with no commercial interest in the records sought and will make responsive records available to the public at no charge.

44. In addition, an agency “shall not assess any search fees” if it fails to comply with the time limits in subparagraph 6 of FOIA, including the time limit to “determine within 20 days . . . after the receipt of any such request whether to comply with such request.” 5 U.S.C. § 552(a)(4)(A)(viii); § 552(a)(6)(A)(i).

45. Plaintiffs are thus eligible for a fee waiver under 5 U.S.C. § 552(a)(4)(A)(iii) and entitled to a fee waiver under 5 U.S.C. § 552(a)(4)(A)(viii).

## **VII. PRAYER FOR RELIEF**

Plaintiffs respectfully request that this Court enter Judgment for Plaintiffs and provide the following relief:

(a) Declare that Defendant has violated FOIA by failing to provide Plaintiffs with all non-exempt records responsive to Plaintiffs’ FOIA request;

(b) Declare that Defendant has violated FOIA by failing to timely respond to Plaintiffs’ FOIA request with the required determinations or additional information the FOIA request needs;

(c) Direct by injunction that Defendant perform adequate searches for records responsive to Plaintiffs' FOIA request and provide Plaintiffs with all non-exempt responsive records to Plaintiffs' FOIA request no later than 20 days after this Court issues an order granting Plaintiffs relief;

(d) Enjoin Defendant to grant a full waiver of all fees associated with Plaintiffs' request;

(e) Enjoin Defendant from charging Plaintiffs search, review, or duplication fees of the processing of the request;

(f) Review *de novo* any assertions by Defendant that the requested records (or any portion thereof) are exempt from disclosure;

(g) Grant Plaintiffs the costs of litigation, including reasonable attorney fees, as provided by FOIA, 5 U.S.C. § 552(a)(4)(E), 28 U.S.C. § 2412, and any other applicable authority; and

(h) Grant any other relief that the Court deems just and proper.

Dated: December 1, 2022

Respectfully submitted,

/s/ Sarah T. Gillman

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March 30, 2022

U.S. Immigration and Customs Enforcement  
Freedom of Information Act Office  
500 12<sup>th</sup> Street, S.W., Stop 5009  
Washington, DC 20536  
**Via Electronic Mail** – ICE-FOIA@dhs.gov

**RE: FREEDOM OF INFORMATION ACT REQUEST**

To Whom It May Concern:

Justice for Migrant Families, Prisoners' Legal Services of New York, and Rapid Defense Network, represented by Justice Action Center, Rapid Defense Network, and Orrick, Herrington & Sutcliffe LLP, pursuant to the provisions of the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 *et seq.*, as amended, and applicable agency regulations, request copies of the records identified in the numbered paragraphs below from the United States Immigration and Customs Enforcement ("ICE" or "the Agency").

We ask that you please direct this request to all appropriate offices and components within ICE including, but not limited to: Buffalo Service Processing Center; Buffalo Field Office Enforcement and Removal Operations; Office of Detention Policy and Planning; Detention Standards Compliance Unit, Detention Management Division; Segregation Review Coordinator; Detention Service Managers (DSM); Custody Management Division ("CMD"); ICE Health Service Corps ("IHSC"); Facility Administrators that report to the Buffalo Field Office; and the Detention Monitoring Council ("DMC").

Purpose of the Request

The Buffalo Service Processing Center ("Batavia"), New York State's largest immigrant detention center, has generated public interest and concern in recent years for its egregious conditions of confinement as well as unsafe release practices that have led to serious injury and even death. One person, who has served time in local, state, and federal criminal custody, stated that his experience in detention at Batavia was unquestionably worse than any criminal custody he had endured. Due to the opaque operations of ICE, even advocates and attorneys who work closely with individuals at Batavia describe ICE practices within the facility as a "black box." At times, ICE's efforts to keep attorneys and advocates in the dark appear to be deliberate. Elias, who endured three years of detention at Batavia recalled, "We were threatened with 'la hielera'<sup>1</sup> for speaking to outside groups."<sup>2</sup> While COVID-19-related litigation created a small window into the conditions at Batavia, as pandemic restrictions continue to subside on the state and national level, that window is closing.

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<sup>1</sup> "La Hielera," or the "Ice box," is a term used for the freezing cold cells ICE and Customs and Border Patrol often uses to hold immigrants.

<sup>2</sup> Requesters interviewed several currently and formerly detained people in December 2021 and January 2022 while preparing this FOIA request. Where referenced by name, Requesters use pseudonyms in order to protect the privacy of these individuals and due to their fear of retaliation by ICE for speaking out about their experiences.



Other facilities in the region are even more opaque: ICE lists six facilities under the Buffalo Field Office’s purview on its website, several of which Requesters have never heard of in connection to immigration detention, despite their significant experience serving detained individuals in the region. Conversely, Requesters know that Rensselaer County Jail houses detained people for ICE and is the subject of a pending Office of Civil Rights and Civil Liberties complaint due to egregious conditions and officer abuse there.<sup>3</sup> Yet Rensselaer does not appear on ICE’s list of facilities in New York.<sup>4</sup> This FOIA request is necessary to bring transparency to the agencies’ activities in upstate New York that are otherwise nearly entirely hidden from public view.

Requesters regularly witness and hear from individuals detained at Batavia about ICE’s violations of its statutory obligations, its constitutional obligations, and its obligations under its own standards to “improve safety, security and conditions of confinement for detainees.” (“Performance-Based National Detention Standards” or “PBNDS”).<sup>5</sup> These violations include:

- ***Unsafe release practices***, such as releasing individuals in the middle of winter without appropriate clothing, without accommodations for disabled and other vulnerable people, and without sufficient notice and opportunity to coordinate with family or advocates to arrange shelter and travel. These practices have resulted in hospitalization and even death.
- ***Inadequate medical care and accommodation***, including a pattern and practice of delaying and denying people necessary medical care while in detention.
- ***Routine and retaliatory use of solitary confinement without due process***, such as placement in solitary confinement for 10 to 15 days with no hearing or accommodation for people with mental or physical health conditions. For example, Elias was placed in solitary confinement for 13 days without a hearing after he accidentally injured another person during a soccer game. “After I got out, I was given a different color uniform and moved to a higher security unit. I worried how this could hurt my case, even though I did nothing wrong.” Detained individuals also report the use of solitary confinement as a form of retaliation, like Apollo, who was placed in solitary confinement after he refused to sign a voluntary departure form to ‘self-deport’.
- ***Rampant physical abuse and mistreatment***, which continues because complaints and grievances are not addressed.
- ***Racial discrimination***, which results in more punitive treatment of Black detained people, in particular, including higher rates of solitary confinement, use of restraints, and use of force.
- ***Inadequate language access services***, which results in the denial of medical care, access to justice, and meaningful access to services, despite that such access is mandated by federal law. As one advocate observed, “People who don’t have a shared language with other people are treated worse; officials just don’t bother communicating to them.”

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<sup>3</sup> Kenneth C. Crowe II, *Complaint alleges ‘filthy living conditions’ for immigrants at local jail*, Times Union, Sept. 21, 2021, <https://www.timesunion.com/news/article/Complaint-alleges-filthy-living-conditions-for-16477034.php>.

<sup>4</sup> *Detention Facilities*, Immigration and Customs Enforcement, <https://www.ice.gov/detention-facilities?state=21&office=&name=> (last updated Feb. 18, 2022).

<sup>5</sup> *ICE Detention Standards*, Immigration and Customs Enforcement (Nov. 9, 2021), <https://www.ice.gov/factsheets/facilities-pbnds>.

Interviews with advocates and individuals previously detained at Batavia illustrate the severity of these violations. For example, Pierre, a man with severe schizophrenia and other mental and physical disabilities, was found dead in the street shortly after his release from Batavia at a rural gas station. Despite months of advocacy and repeated requests by Requester Justice for Migrant Families, ICE declined to provide a release date to advocates coordinating his housing and medical care and refused to make reasonable accommodations to facilitate Pierre's safe release.

In another case illustrating the physical abuse experienced by people detained in Batavia, a dozen officers piled onto a petite Black man who refused to enter his cell because he had not been given dinner. The officers beat him so badly he had to be carried out on a stretcher. In yet another instance, a guard choked a man in his bed, only stopping due to the outcry of other detained people who came to the man's defense. The detained individuals complained about the guard. Rather than being fired, the officer was transferred to another unit where he continued to abuse detained people. "That person should not be in charge of caring for people," a witness said.

Requesters include local immigrant rights advocates and organizations that provide legal representation to individuals detained at Batavia. Requesters work closely with people detained at Batavia and other facilities in upstate New York and advocate alongside them. Knowledge of the conditions in which they are held are relevant for Requesters' representation of people detained at Batavia and for Requesters' advocacy efforts to ensure the rights of people detained at Batavia are respected. Requesters have a vested interest in the conditions in which their clients and community members are held.

Requesters urgently seek information on the federal government's policies, directives, and actions relating to the treatment and processing of immigrants at Batavia and other facilities in upstate New York. The public has a right to know what happens in the "black box" of ICE custody in their state, particularly as New York considers the Dignity Not Detention bill, A7099A/S7373, which would end current and future ICE contracts with state, municipal, and private facilities. The disclosure of the information sought below will contribute to the "public understanding of the operations or activities of the government," 5 U.S.C. § 552(a)(4)(A)(iii) and provide the public with information necessary to engage in the democratic process and public debate regarding the use of ICE detention in New York State. Disclosure would thus be "in the public interest," 28 C.F.R. § 16.10(k). *See also* 6 C.F.R. § 5.11(k)(1).

### Definitions

The records request below incorporates the following definitions:

"Anonymized ID" refers to any non-identifying variable the Agency may use to connect individual-level data across data sets, such as the first five digits of the Alien numbers, the last four digits of social security numbers, or any other similar information.

"Buffalo Field Office District" refers to the geographical area that ICE considers within the "area of responsibility" or jurisdiction of the ICE Buffalo Field Office. ICE detention facilities including Albany County Correctional Facility, Allegany County Jail, Buffalo ("Batavia") Service

Processing Center, Chautauqua County Jail, Clinton County Jail, Rensselaer County Jail, and Wayne County Jail are located within the Buffalo Field Office District.

“Communication(s)” refers to the transmittal of information in any format, including, but not limited to, the communication formats listed under “Record.”

“Contract” or “Government Contract” refers to any agreement or modification thereof between any contracting agency and any person or entity for the purchase, sale, or use of personal property or nonpersonal services.

“Contractor” refers to any person or entity holding, or who has ever held or sought to hold, a Government Contract as defined in 41 CFR § 60-1.3. Any reference herein to a specific contractor or a contractor in general also refers to any division, subsidiary, or affiliate thereof and to their employees.

“Custody” refers to the state of being under the control of ICE or a third party at the direction of ICE based on purported violation of the Immigration and Nationality Act.

“Detain” or “Detention” refers to the act of ICE, whether by Agency personnel or a third party at the direction of ICE or Agency personnel, taking an individual into the custody of the United States government based on purported violations of the Immigration and Nationality Act, including but not limited to placement in a local or state jail or prison, including through Intergovernmental Service Agreement facilities, 287(g) agreements, private facilities, and federal facilities.

“Facility” or “ICE Facility” refers to any physical location where individuals are held pursuant to ICE custody.

“Grievance” refers to any formal or informal complaint made by or on behalf of a detained person, or regarding the behavior of ICE personnel or conditions at Batavia, whether submitted to Batavia personnel or other government or nongovernment actors. For each grievance record requested, we also request records regarding any Agency investigation of, and response to, the grievance.

“Limited English Proficiency” or “LEP” refers to “[i]ndividuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English. . . . LEP individuals may be competent in English for certain types of communication (e.g. speaking or understanding), but still be LEP for other purposes (e.g. reading or writing).” *Language Access Information and Resources*, U.S. Immigration and Customs Enforcement, <https://www.ice.gov/detain/language-access> (last accessed March 17, 2022).

“Personnel” refers to an individual employed by an organization or authorized to act on behalf of an organization, including employees, contractors, contractors’ employees, agents, or representatives.

“Record” refers to any information in electronic, written, and/or printed form that is in ICE’s constructive possession, directly or indirectly, regardless of where or how the information originated or where or how ICE received it, encompassing but not limited to any information in

the custody of any U.S. government contractors for purposes of information management for ICE, and including but not limited to: messaging communications between phones or other electronic devices, including but not limited to communications sent via short message service (“SMS”), multimedia message service (“MMS”), or any other messaging service, via Blackberry Messenger, iMessage, WhatsApp, Facebook, Signal, G-Chat, Instagram direct message, Twitter direct message, Slack, and/or any other messaging and communications platform; emails, letters, faxes, and/or any other form of correspondence; minutes and/or notes of meetings and/or phone calls; voicemail messages; images, video, and/or audio data; social media posts; calendar entries; files and their contents, including any notes; logs, spreadsheets, worksheets, and/or coversheets; database entries, analyses of data; metadata; investigations, reports, studies, and/or reviews; internal memoranda; contracts, agreements, and/or memoranda of understanding, including but not limited to intergovernmental services agreements; presentations, formal or informal; training criteria, standards, evaluations, and/or materials; orders, directives, and/or instructions; legal opinions and/or memoranda; policies, procedures, protocols, and/or manuals; guidance and/or guidelines; bulletins, advisories, and/or alerts; as well as any reproductions thereof that differ in any way from any other reproduction, such as copies containing notations, drafts, and revisions.

“Solitary Confinement” refers to placement of an individual into restricted housing, typically in a single cell, often referred to as a “special management unit” or “segregated housing unit.” It includes placement into restrictive housing, segregated housing, or any other form of isolation where an individual is held for 20 or more hours a day in a cell by themselves. This term refers to isolation on any basis, or no basis, including for administrative segregation, protective custody, medical isolation, quarantine, disciplinary segregation, and segregation due to overcrowding or other logistical considerations.

“Training Materials” refers to all Records used to instruct, guide, or otherwise prepare personnel for any aspect of their employment or contract including, but not limited to, electronic records.

In addition, in interpreting the Requests, the singular form of a noun or pronoun shall be considered to include within its meaning the plural form of the noun or pronoun, and vice versa. In requesting “policies” and “guidance,” the Requesters seek national policies and guidance, as well as policies and guidance specific to the Batavia and/or Buffalo Field Office, in any format, including memoranda. However, Requesters do not refer to or seek copies of the Performance-Based National Detention Standards, unless annotated or incorporated in another record.

In requesting “correspondence” and “communications,” the Requesters seek any record of written correspondence or verbal correspondence, whether formal or informal, in any format, including intra-Agency, inter-Agency correspondence, and Agency correspondence with third parties. The date range for all searches should be understood to commence with each provided start date and to end on the date the search for documents responsive to that request is commenced by the Agency. *See Ferguson v. U.S. Dep’t of Educ.*, No. 09 CIV. 10057 FM, 2011 WL 4089880, at \*11 (S.D.N.Y. Sept. 13, 2011) (commencement date of agency’s search was reasonable cut-off date).

Request for Information

All Requests detailed below, other than Requests in paragraphs 1-5, are for records related to ICE detention at Batavia only, including records related to transfers into and out of Batavia. For Requests 1-5 Requesters request that responsive records be broken out and labeled to reflect the ICE facility the records relate to.

**General Information – All Facilities Within the Buffalo Field Office District**

- 1) All executed agreements that were in force on or after July 1, 2019 between ICE and third parties, including municipal, state, or private actors, regarding the detention of, or provision of services to, immigrants in ICE custody within the Buffalo Field Office District
- 2) Any communications since January 1, 2021 between ICE and third parties, including municipal, state, or private actors, regarding contract renewal, supplemental agreements, addendums, or riders related to the executed agreements referenced in request one
- 3) Records held by CMD created since July 1, 2019 regarding the capabilities of detention facilities in the Buffalo Field Office District to meet the needs of people with special vulnerabilities, pursuant to ICE Directive 11065.1 § 7.2(2)
- 4) Records created since July 1, 2019, including data in any database disaggregated by national origin and race of detained individuals or, if not available, in aggregate, reflecting the population of people in ICE custody at each facility within the Buffalo Field Office District, including the following information:
  - a) The subsection of the INA that purportedly authorizes their detention (e.g. 8 U.S.C. §§ 1226(a); 1226(c); 1225(b); 1231(a))
  - b) National origin
  - c) Race
  - d) Length of custody
  - e) Releases, the nature of release (e.g. transfer or release to community) and, if transferred, detention facilities where transferred
  - f) ICE or EOIR bond amount, if set
  - g) Security and/or risk classification level(s) assigned
  - h) If in cell unit, hours locked into cell per day
- 5) All Records created since January 1, 2018 regarding any death of a person in the custody of the Buffalo Field Office District, including any investigations or reports produced

**Accommodations and Care for People with Mental and Physical Disabilities**

- 6) All Records reflecting formal or informal policies in force on or after July 1, 2019 regarding:
  - a) How facilities determine whether an individual has a qualified disability (mental or physical) or chronic medical condition (mental or physical) upon intake
  - b) How facilities determine whether an individual has a qualified disability (mental or physical) or chronic condition at any point after intake

- c) Any and all processes by which an individual is designated as having a “special vulnerability” as defined in ICE Directive 11065.1 § 3.3
  - d) Any and all processes by which facilities determine what constitutes a “serious medical illness” as reflected in ICE Directive 11065.1 § 3.3
- 7) All Records created since July 1, 2019, including data in any database disaggregated by national origin and race of detained individuals or, if not available, in aggregate, regarding:
- a) Reports to the Buffalo Field Office of the detention of people with cognitive, intellectual, or developmental disabilities, or communication or mobility impairment
  - b) Formal and informal requests for accommodations and dispositions of those requests including dates of request and disposition, nature of request and outcome of adjudication
  - c) Accommodations approved by a multidisciplinary committee that require ICE approval, including the date the request for accommodation was made, the date the request for accommodation was approved by the multidisciplinary committee, the date the accommodation was authorized or not authorized by ICE and the date the accommodation was actually provided to the individual, if provided
  - d) Any removal by ICE of a detained person’s mobility aid such as a crutch, cane, or wheelchair, or other medical device or disability aid, and the basis for removal
  - e) Any provision of a chair or other object in lieu of a wheelchair, or other medical device such as a cane, for the purpose of moving between areas such as the unit and showers
  - f) Any grievances filed by a detained individual, ICE personnel, or third parties related to the provision of adequate accommodations for mental or physical health conditions or disabilities, the date the grievance was made, the date the grievance was resolved, and the outcome of the resolution
- 8) Records sufficient to show what training personnel receive related to disability and reasonable accommodations from July 1, 2019 to the date this search is conducted

#### **Language Access and Accommodation**

- 9) Records reflecting policies or protocols in force on or after July 1, 2019 regarding:
- a) How the facility determines whether an individual is LEP
  - b) Any protocols in place to ensure that each LEP person has access to all of the accommodations to which they are entitled pursuant to Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq. and Executive Order 13166, *Improving Access to Services for Persons with Limited English Proficiency*, (August 11, 2000)
  - c) Safeguards and protocols for individuals who do not have sufficient literacy to adequately comprehend written information to ensure that they are meaningfully receiving the information that is provided to them in writing, including identifying such people and obtaining informed consent for documents requiring signature
- 10) Records since July 1, 2019 sufficient to show:
- a) The number of detained people designated as LEP and accommodations provided to them



- b) Requests for interpretation made by detained people, or by ICE personnel to communicate with a detained person, the non-English language needed, the date of the request, the date of the disposition of the request, and the outcome of the request
- c) The use of non-medical ICE personnel or detained people as interpreters for detained people during medical visits
- d) Languages other than English determined to be spoken by “significant segments of the population,” per PBNDS § 2.13(II)(6), and efforts to provide written materials in those languages within the facility
- e) Any grievances by or on behalf of a detained person regarding the provision of language access services, including translation and interpretation, and the resolution of such grievances
- f) Any grievances by or on behalf of a detained person related to alleged misrepresentation by ICE of documents presented by ICE to the detained person for their signature, and the resolution of any such grievances

### **Provision of Adequate Medical Care**

- 11) Records created since July 1, 2019, including data in any database disaggregated by national origin and race of detained individuals or, if not available, in aggregate, reflecting:
  - a) The response time for requests for sick call or medical assistance
  - b) Any recommendations for external medical treatment made by IHSC, with the date of the recommendation and nature of the treatment recommended, and the result of that recommendation, including the date brought for outside treatment, if any
  - c) Any grievances related to a detained person’s medical care or lack of adequate medical care including date of grievance, nature of grievance, date(s) of response(s), and resolution of the grievance
  - d) Any notification to the facility administrator that a person’s medical or mental health needs require special consideration in such matters as housing, transfer, or transportation, per PBNDS § 4.3(II)(13)
  - e) Any notification to the Field Office Director that an individual has a serious physical or mental illness, is pregnant, or has medical complications related to advanced age, per PBNDS § 4.3(V)(X)
  - f) The provision of a medical care summary and 7-30 day supply of any prescribed medications for individuals released or transferred out of the facility
  - g) Communications to, or among, ICE personnel encouraging, instructing, or discussing the need to prevent, discourage, or delay detained people from requesting sick call
  - h) The use of psychiatric medication as a form of sedation
  - i) Grievances related to the prescription of psychiatric medication or the dosage thereof, or grievances about how a prescribed medication makes the complaining patient feel, and the resolution of any such grievances
  - j) The implementation, enforcement, and quality control of continuity of care protocols, including release planning, continuity of treatment plan, referrals, provision of necessary medical devices, medication, and detailed summary of care upon release

- k) Health Service Administrator's internal review and quality assurance relating to corrective action plans, investigation of grievances, review of deaths, suicide attempts, and illness outbreaks, pursuant to PBNDS § 4.3(V)(EE)(2)
- l) Minutes from Quarterly Administrative Meetings pursuant to PBNDS § 4.3(V)(EE)(1)

12) Records sufficient to show:

- a) The staffing plan, pursuant to PBNDS § 4.3(V)(B), in place on or after July 1, 2019, and compliance with, or failure to comply with, the staffing plan during that period, including the lengths that medical, psychiatric, and counseling positions remained unfulfilled
- b) All Medical/Psychiatric Alerts active on or after July 1, 2019
- c) Hospitalizations and injuries of detained people since July 1, 2019, including the date of injury or date range of hospitalization, the nature of the injury or purpose of hospitalization, and any investigations or reports produced regarding such incidents

**Use of Solitary Confinement and Disciplinary Process**

13) Individualized, disaggregated data regarding each individual booked or detained at Batavia on or after July 1, 2019, who was held in solitary confinement at any point, including:

- a) Anonymized ID
- b) Race and national origin
- c) Date(s) held in solitary confinement
- d) Basis for placement in solitary confinement
- e) Date(s) of hearing, if any, whether the detained person was present at the hearing, and whether the detained person was represented in the hearing
- f) If no hearing was provided, the reason a hearing was not held
- g) Any grievances filed related to a person's placement, conditions, access issues, or incidents in solitary confinement, and the resolution of any such grievances
- h) Time allowed out of cell

14) Records created since July 1, 2019 related to or reflecting:

- a) Any requests for and provision of accommodations in the disciplinary hearing process
- b) Incident reports and dispositions of charges for violations of codes 198, 199, 298, 299, 308, 311, 320, 323, 402, 404, and 413
- c) Actions taken by CMD, IHSC, and/or other components of ICE to "enhance" the capabilities and resources of the facility to meet the needs of vulnerable people in solitary confinement, pursuant to ICE Directive 11065.1 § 7.2(3)
- d) Any inspections or monitoring of the use of solitary confinement, conducted by DSMs, CMDs, the Office of Detention Oversight, The Office for Civil Rights and Civil Liberties, or other agencies
- e) Any portions of quarterly reports or related communications from the DMC subcommittee regarding Batavia, including data about detained people held in segregation who met the criteria listed in ICE Directive 11065.1 §§ 5.1 and 5.2.2, the reasons for their segregation, the results of reviews of particular cases, and areas of concern regarding particular cases, pursuant to ICE Directive 11065.1 § 7.5(7)



- f) Reports or communications regarding the determination to keep a person in solitary confinement for more than 14 days continuously, or more than 14 days total during a 21-day period
  - g) Reports or communications regarding the determination to hold a person in solitary confinement who has a qualified disability (mental or physical), mental illness, serious physical illness or disability, or otherwise has “special vulnerabilities” as defined in ICE Directive 11065.1
  - h) Any instance where an individual was held in solitary confinement for 14 or more days during a 21-day period
  - i) Any instance of solitary confinement that exceeded 10 continuous days
  - j) Any instances of a person with a known mental illness, serious physical disability, serious physical illness, or otherwise having “special vulnerabilities” as defined in ICE Directive 11065.1, being held in solitary confinement for any period of time
  - k) The placement of a person into administrative segregation on the basis of a mental or physical illness or disability, hunger strike, or suicide risk
  - l) The deprivation of any usually authorized items or activities in solitary confinement
  - m) All determinations by the DMC to end the use of solitary confinement for an individual
  - n) The Agency’s use of solitary confinement to hold people exposed to or infected with COVID-19
- 15) Records sufficient to show policies or protocols in force on or after July 1, 2019, regarding:
- a) Facility-specific rules, protocols, and processes for administering the disciplinary system and use of solitary confinement, including all records related to the oversight, audit, deviance from, and enforcement of these rules, protocols, and processes
  - b) The process used to determine whether a detained person has a “special vulnerability” as defined in ICE Directive 11065.1, or otherwise is a person whose placement in solitary confinement would trigger protections and protocols under ICE Directive 11065.1 § 5.2
- 16) All Records created since July 1, 2019 related to or reflecting the use of solitary confinement for:
- a) Quarantine
  - b) Administrative purposes due to overcrowding at the facility
  - c) Protective custody, including whether at the request of the individual in custody or not
  - d) Administrative segregation without pending charges or a disciplinary hearing, as outlined in PBNDS § 2.12(V)(A)(1)(b)
  - e) Placement in administrative segregation following end of disciplinary segregation sentence, as outlined in PBNDS § 2.12(V)(A)(1)(e)
  - f) Suicide watch
  - g) Medical isolation
- 17) All Records created since July 1, 2019 related to compliance with ICE Directive 11065.1 §§ 5.1-5.2, including:
- a) Reporting to the Field Office Director or other administrators
  - b) Supervisor interviews of detained people
  - c) Dates of reports to administrators or other officials regarding placement
  - d) Reports related to interviews and review of placement

- e) Decisions regarding ongoing placement in solitary confinement
- f) Duration of placement in solitary confinement

### **Release Protocols and Practices**

- 18) All Records created since July 1, 2019, including data in any database sufficient to show release practices in compliance with PBNDS § 2.1(V)(I), including
  - a) Provision of advanced notice to individuals being released
  - b) Any time an individual was released before 8am or after 4pm
  - c) Instances of release anywhere other than the Batavia Citgo Gas Station
  - d) The provision of winter coats upon release in November-March of each year
  - e) The provision of food upon release
  - f) Any instances where a free phone call was not made by a detained person before release and any instances where a free phone call was made more than 2 hours before release
  - g) Any accommodations or adjustments actually made to account for “special vulnerabilities” pursuant to PBNDS § 2.1(V)(I)
  - h) Communications with the Batavia Citgo gas station employees or owners
  - i) Coordination with nongovernmental organizations related to services for released individuals, including but not limited to flights and hotels
  - j) Payment by ICE for transportation of individuals released from Batavia on non-ICE chartered vehicles including Greyhound buses, trains, taxis, and commercial planes
  - k) Whether ICE has ever denied or delayed release of an individual due to insufficient funds in their commissary
  - l) Whether ICE has ever denied or delayed release of an individual otherwise cleared for release due to lack of a fixed address or competency concerns
  - m) The existence of, or communication to, detained people of a minimum amount of commissary funds an individual is required to have in order to be released
- 19) Records reflecting policies or protocols in force on or after July 1, 2019 regarding:
  - a) Measures taken to ensure people are released in a safe way, and what accommodations or adjustments are provided, if any, for people with known or suspected mental or physical disabilities or “special vulnerabilities,” including any individualized release plans created by ICE outlining specific actions taken and efforts made to ensure an individual released is safely transported to their final destination
  - b) Facility policy on providing funds or bus fare to individuals who do not have sufficient funds in their commissary to purchase a bus ticket to their destination
  - c) Rules or instructions specific to food preparation for individuals in processing for release

### **Conditions of Confinement and Access to Justice**

- 20) Any and all studies, reports, audits, or analyses produced by the federal government evaluating the conditions at Batavia since July 1, 2019, including internal reports produced by Batavia personnel

- 21) All Records created since July 1, 2019, including data in any database disaggregated by national origin and race of detained individuals or, if not available, in aggregate, sufficient to show the use of the Risk Classification Assessment at Batavia, including
  - a) The identification and use of “special vulnerabilities” in classifying individuals
  - b) Consideration of “similar backgrounds” in classifying individuals
  - c) Use of medical information to classify people
  - d) The determination of, and use of, suspected gang affiliation to classify people
  - e) Any placement in medium-high or high security based solely on history of arrest(s) not convictions
  - f) Reclassification from a higher to a lower level of security
  - g) Any approval of classification or reclassification outside of the custody level guideline ranges
  - h) Security classification forms determining a person is a member of a “security threat group”
  - i) Significant event notices
  - j) Grievances by or on behalf of detained people regarding their risk classification and the resolution of such grievances
  - k) How classification affects detained people’s freedom of movement, eligibility for programming, and the use of restraints
- 22) Records created since July 1, 2019 sufficient to show
  - a) Batavia provides detained people sufficient access to operable computers capable of running electronic legal research media, operable printers, supplies for both, and instructions on basic use of the system, pursuant to PBNDS § 6.3(V)(E)(1)
  - b) Dates individuals requested a computer account in order to use the computers in the law library and the date individuals were given access to such a computer account
  - c) Any grievances by or on behalf of a detained individual related to access to the law library, access to counsel, mailings to a court related to a legal proceeding, or calls to a court related to a legal proceeding, and the resolution of any such grievances

### **Abuse and Misconduct**

- 23) All Records created on or after July 1, 2019, including data in any database disaggregated by national origin and race of the detained individual or, if not available, in aggregate showing any of the following:
  - a) Personnel reports and other documentation of use of force on, or injury to, detained individuals, including reports submitted to the Field Office Director and after action review reports as outlined in §§ PBNDS 2.15(V)(C) and (V)(O), and the use of force against people with “special needs” as defined in § 2.15(V)(F)(3)
  - b) The forwarding of audiovisual recordings of “questionable or inappropriate” use of force to the Detention Management Division, pursuant to PBNDS § 2.15(V)(O)(3)
  - c) Investigation of any use of force by the Office of Professional Responsibility, the Department of Homeland Security, Office of the Inspector General, or the Federal Bureau of Investigation
  - d) Any deployment of “situation response teams”
  - e) Civil rights grievances filed with the Agency against Agency personnel

- f) Any firings, unpaid leave, or other reprimands or discipline of ICE personnel as a result of their actions toward detained people or other ICE personnel
  - g) Implementation and enforcement of protections against retaliation, including any affirmative monitoring of adverse action taken against people who have filed grievances
  - h) Strip searches and body cavity searches performed on detained people and reason given for strip search, including
    - i) All strip searches conducted based on a contact visit
    - ii) All strip searches conducted based on violent criminal history
    - iii) All strip searches conducted based on suspected affiliation with a gang, terrorist organization, or other special group
  - i) Requests to use restraints, the disposition of each request, and documentation of any determination to use restraints beyond two hours, per PBNDS § 2.15(V)(M)
  - j) Each use of four or five-point restraints including the request, approval of request, examination by medical personnel, and monitoring of restrained person
  - k) Use or allegations of use, of prohibited force techniques or devices, as defined in PBNDS §§ 2.15(V)(E) and (V)(G)(5), including any resulting investigations
  - l) Training provided related to use of force and people with mental, physical, or psychiatric disabilities
  - m) The Significant Incident Summary Worksheet (Form G-324A or equivalent) and Detention Facility Inspection Form for Batavia completed as part of the annual detention standards compliance review, for each fiscal year since 2020
  - n) Communications regarding alleged racism, racial bias, disparate treatment based on race, or disparate impact on people of different races, stemming from Agency personnel actions and policies, including but not limited to grievances regarding one or more of these issues
  - o) Policies and communications regarding withholding food, changing the quality of food, or intentionally providing poor quality food to a detained person, for any non-medical reason
  - p) Communications about and treatment of detained people striking, including from the voluntary work program, including the revocation of recreation time, the right to make phone calls, or any other change in treatment following their refusal to work
  - q) The number of hours per day people held in units with cells are locked into their cells
- 24) Individualized, disaggregated data regarding each individual booked or detained at Batavia on or after July 1, 2019, who was the subject of a use of force report, filed a grievance, or had a grievance filed on their behalf, regarding use of force, discrimination, harassment, abuse, or threats by or involving Agency personnel, or was subjected to a strip search or body cavity search, including:
- a) Anonymized ID
  - b) Race and national origin
  - c) Use of force report(s) filed by Agency personnel regarding the individual
  - d) Use of restraints including type of restraint, date of use, reason for use, and duration of use
  - e) Grievances filed by detained person or others on their behalf regarding use of force, discrimination, harassment, abuse, or threats by or involving Agency personnel, and any investigations and resolution of such grievances
  - f) Any incidents of strip search or body cavity search subjected to, reason for search, gender of detained person, titles and genders of individuals present for search, and times search(es) began and ended

### Format of Production

The Requesters request that responsive documents and materials be produced *in their entirety*, including all attachments, enclosures, hyperlinks and internal links, and exhibits. If it is determined that a document contains material or information that falls within a statutory exemption to mandatory disclosure under FOIA, the Requesters ask that such material or information be reviewed for possible discretionary disclosure, consistent with the presumption of openness codified in the Freedom of Information Act Improvement Act of 2016, Pub. L. 114-185, 130 Stat. 538.

Please search for responsive records regardless of format, medium, or physical characteristics, and including electronic records. Please provide the requested documents in the following format:

- In PDF format whenever possible;
- Electronically searchable whenever possible;
- Email attachments provided in sequential order following the email, to preserve the “parent-child” relationship, such that Requesters are able to identify which documents were the attachments to which emails;
- Any data records in native format (e.g. Excel spreadsheets in Excel);
- Emails include BCC and any other hidden fields;
- With any other metadata preserved.

Please furnish all applicable Records in electronic format via email as specified above to: Lauren Wilfong at Lauren.Wilfong@JusticeActionCenter.org, Sarah Gillman at sarah@defensenetwork.org, and Rene Kathawala at rkathawala@orrick.com. The burden is on the Government to provide a determination within 20 working days. In the event the Government is unable to meet that deadline, the Requesters are willing to discuss an appropriate schedule for rolling productions. To the extent the Government has any questions after reviewing these Requests, please do not hesitate to contact the undersigned.

### Fee Waiver Request

Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), the Requesters apply for a fee waiver. Applicable agency regulations require fees to be waived when it is determined, based upon the submission of the requester, that 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* 5 C.F.R. § 5.11(k)(1) (permitting fee waiver when “[d]isclosure of the requested information is in the public interest” and “is not primarily in the commercial interest of the requester”); 28 C.F.R. § 16.10(k) (“[r]equester[] may seek a waiver of fees by . . . demonstrating how disclosure of the requested information is in the public interest because it 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”).

Requesters are non-profit organizations that advocate alongside individuals detained at Batavia and other facilities in upstate New York. Access to this information is crucial for the Requesters and the communities they serve to evaluate immigration enforcement actions in their communities, including the conditions of confinement and protocols for detention, confinement and release, and their potential detrimental effects in their communities.

Justice For Migrant Families (JFMF) is a grassroots and community-based non-profit organization with federal 501(c)(3) status. Based in upstate New York, JFMF promotes justice for migrant families by providing support to people detained in Batavia, information and resources to families in the community, and advocacy both within and beyond the local community. JFMF connects detained people with legal resources and social services, provides material support to detained and recently released people, and conducts a visitation and pen pal program with people detained at the facility. JFMF also collects and disseminates resources for people detained at Batavia and their families, which are housed on their website at [justiceformigrantfamilies.org](http://justiceformigrantfamilies.org). JFMF will use the information obtained through these Requests to serve community members most directly affected by the information, and to ensure accountability for the Government's routine violations of detained people's rights at Batavia. JFMF will also work with other non-profit and advocacy organizations to ensure that the information obtained through these Requests is distributed to directly impacted populations and other stakeholders, and to the public at large.

Prisoners' Legal Services of New York (PLS) is a 501(c)(3) nonprofit that provides legal representation and assistance to indigent prisoners, helping them to secure their civil and human rights and advocate for more humane prisons and for a more humane criminal justice system. PLS is committed to ensuring access to the courts for all incarcerated New Yorkers. PLS represents individuals detained at Batavia in their immigration proceedings and in challenges to the length and conditions of their detention in federal court. PLS also advocates on conditions issues and policies affecting people detained at Batavia through litigation and other means. PLS will work with other nonprofit and advocacy organizations to ensure that the information obtained through these Requests is distributed to directly impacted populations and other stakeholders, and to the public at large.

Rapid Defense Network (RDN) is a 501(c)(3) nonprofit that provides rapid legal representation on a *pro bono* basis to immigrants facing unlawful detention or deportation. In addition to individual representation RDN works with law firms and other partners to address gaps in resources and challenge conditions of confinement in immigrant detention, including through resource development and litigation. RDN has represented a number of people detained at Batavia and works with local partners to develop resources for people detained at Batavia and increase access to legal services at the facility. RDN monitors developments in immigration law that affect the rights of non U.S.-citizens, and partners with law firms and law school clinics to bring impact litigation and federal court claims on behalf of noncitizens to address systemic issues. During the COVID-19 pandemic, RDN has made information available to the public regarding litigation efforts to address the conditions of confinement for people in immigration detention through its website and related media platforms that are accessible to the public. RDN will work with other non-profit advocacy organizations to ensure that the information obtained through these Requests is distributed to directly impacted populations and other stakeholders, and to the public at large.

The Requesters will make any information that they receive from these Requests available to the public, including the press, at no cost. As detailed above, the conditions of immigrants detained in upstate New York is of significant public interest.<sup>6</sup> The Requesters have undertaken this work in

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<sup>6</sup> The treatment of people in ICE custody in upstate New York has generated significant media attention and been the subject of numerous protests. See, e.g., Giulia McDonnell Nieto Del Rio, *ICE is Leaving Asylum Seekers at a*



the public interest and not for any private commercial interest. Access to this information is necessary for the public to meaningfully evaluate the consequences of federal immigration policies and the operations of immigration detention facilities in their communities to which the public has no other way of gaining visibility. The Government must waive or, at minimum, reduce any fees because the Requesters have no commercial interest in the requested information. They request this information to educate the public regarding the Government's operations and activities. *See* 5 U.S.C. § 552(a)(4)(A)(iii).

If a fee waiver is not granted, Requesters in the alternative ask for a limitation of processing fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) (“[F]ees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by . . . a representative of the news media.”). *See also* 6 C.F.R. § 5.11(d)(1) (“No search fees will be charged for requests by . . . representatives of the news media, unless the records are sought for a commercial use.”) The Requesters have engaged pro bono counsel who will be responsible for the reasonable cost of locating and reproducing the requested documents to the extent required by applicable regulations and not otherwise waived. If such costs will exceed \$150, please contact the Requesters and their counsel before incurring them.

### Conclusion

There is an urgent need to inform the public of the policies and practices in immigration detention centers in upstate New York, where egregious treatment of immigrants in ICE custody has resulted and will continue to result in constitutional rights violations, public health risks, and even death, as highlighted by the horrific and preventable death of Pierre, detailed above. The public has a right to know about what happens in the “black box” of ICE custody, particularly as New York considers the Dignity Not Detention bill, which would end current and future ICE contracts with state, municipal, and private facilities. Not only will this information assist advocates defending the rights of detained people in upstate New York, it is also vital to providing the public with the information necessary to engage in the democratic process and public debate regarding ending ICE contracts in New York State.

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*Remote Bus Station in New York*, Documented, Feb. 25, 2022, <https://documentedny.com/2022/02/25/ice-detainees-locator-new-york/>; Alex Love, *Local immigration organizations accuse ICE in Batavia of mishandling*, Rochester First, Dec. 6, 2021, <https://www.rochesterfirst.com/news/local-immigration-charities-accuse-i-c-e-in-batavia-of-mishandling/>; Phil Gambini, *ICE's ill treatment of released [detained people]*, Investigative Post, Apr. 28, 2020, <https://www.investigativepost.org/2020/04/28/ices-ill-treatment-of-released-detainees/>; Phoebe Taylor-Vuolo, *A Man Detained in Batavia is Fighting to Be Deported ICE Has Cancelled His Flight 13 Times.*, Documented NY, Apr. 27, 2021, <https://documentedny.com/2021/04/27/a-man-detained-in-batavia-is-fighting-to-be-deported-ice-has-cancelled-his-flight-13-times/>; Phil Gambini, *Lawyers protest dangers at detention center*, Investigative Post, Mar. 25, 2020, <https://www.investigativepost.org/2020/03/25/lawyers-protest-dangers-at-detention-center/>; Noelle E.C. Evans, *30 detainees test positive for coronavirus at ICE detention center in Batavia*, WBFO – NPR, Feb. 23, 2021, <https://www.wbfo.org/crime/2021-02-23/30-detainees-test-positive-for-coronavirus-at-ice-detention-center-in-batavia/>; Noah Lanard, *“You’re Doing Nothing”: Judge Slams ICE for Failing to Vaccinate Detainees*, Mother Jones, Mar. 4, 2021, <https://www.motherjones.com/politics/2021/03/youre-doing-nothing-judge-slams-ice-for-failing-to-vaccinate-detainees/>; Massarah Mikati, *63% of local ICE detainees contracted COVID-19. Now some are getting first vaccine shot.*, Times Union, Mar. 24, 2021, <https://www.timesunion.com/news/article/63-of-local-ICE-detainees-contracted-COVID-19-16049808.php>; Hamed Aleaziz, *ICE Moved Dozens Of Detainees Across The Country During The Coronavirus Pandemic. Now Many Have COVID-19.*, BuzzFeed News, Apr. 29, 2020, <https://www.buzzfeednews.com/article/hamedaleaziz/ice-immigrant-transfer-jail-coronavirus>.

Certification

The Requesters certify that the above information is true and correct to the best of the Requesters' knowledge. *See* 6 C.F.R. § 5.5(d(3)). If this Request is denied in whole or in part, the Requesters ask that ICE justify all deletions or redactions by reference to specific exemptions of FOIA. The Requesters expect ICE to release all segregable portions of otherwise exempt material, and reserve the right to appeal a decision to withhold any records or to deny Requesters' application for waiver of fees.

If you have any questions regarding the processing of this request, please contact Lauren Wilfong at 323-450-7270 or by email at [Lauren.Wilfong@justiceactioncenter.org](mailto:Lauren.Wilfong@justiceactioncenter.org), or Sarah Gillman at 212-843-0910 or by email at [sarah@defensenetwork.org](mailto:sarah@defensenetwork.org).

Sincerely,

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**From:** [ice-foia@dhs.gov](mailto:ice-foia@dhs.gov) <[ice-foia@dhs.gov](mailto:ice-foia@dhs.gov)>  
**Sent:** Thursday, June 2, 2022 7:14 AM  
**To:** Lauren Wilfong <[Lauren.Wilfong@justiceactioncenter.org](mailto:Lauren.Wilfong@justiceactioncenter.org)>  
**Subject:** ICE FOIA Request 2022-ICFO-17953

June 02, 2022

Lauren Wilfong  
Justice Action Center  
P.O. Box 27280  
Los Angeles, CA 90027

**RE: ICE FOIA Case Number 2022-ICFO-17953**

Dear Wilfong:

This acknowledges receipt of your May 12, 2022, Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), for various records pertaining to the Buffalo Field Office District (see request for details). Your request was received in this office on May 12, 2022.

**PLEASE NOTE:** Requesters seeking responsive records from the U.S. Immigration and Customs Enforcement (ICE) are encouraged to create a DHS FOIA Public Access Link (PAL) account at: <https://foiarequest.dhs.gov>. Creating a PAL account will allow you to directly submit your FOIA request to ICE and track the status of your request. In PAL, you can view your prior PAL submissions, sent correspondences, and responsive records. Although PAL is preferred, ICE FOIA will continue to accept FOIA requests via email at [ICE-FOIA@ice.dhs.gov](mailto:ICE-FOIA@ice.dhs.gov) or via regular mail at U.S. Immigration and Customs Enforcement, Freedom of Information Act Office, 500 12<sup>th</sup> St. SW, STOP 5009, Washington, DC 20536-5009.

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 **2022-ICFO-17953**. 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 2022-ICFO-17953 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, Marcus Francis, 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)

June 16, 2022

U.S. Immigration and Customs Enforcement  
Freedom of Information Act Office  
500 12th Street, S.W., Stop 5009  
Washington, DC 20536  
**Via Electronic Mail** – ICE-FOIA@dhs.gov

ADMINISTRATIVE APPEAL FOR FOIA REQUEST 2022-ICFO-17953

Dear Records Access Appeals Officer:

On behalf of our clients, Justice For Migrant Families (JFMF), Prisoners' Legal Services of New York (PLS), and Rapid Defense Network (RDN), together, the "Requesters," we submit this appeal of the more than one-month delayed response of U.S. Immigration and Customs Enforcement ("ICE" or "the Agency") to Requesters' Freedom of Information Act ("FOIA") request, dated March 30, 2022, assigned case number 2022-ICFO-17953 (the "FOIA Request"). The FOIA Request seeks records related to detention facilities within the jurisdiction of the ICE Buffalo Field Office, including the Buffalo Service Processing Center ("Batavia"), New York State's largest immigrant detention center.

Among other things, Requesters seek records relating to (1) agreements and related communications between ICE and third parties within the Buffalo Field Office District (BFOD); (2) the capabilities of detention facilities within the BFOD to meet the needs of people with special vulnerabilities; (3) basic demographic information of detained individuals within the BFOD; (4) investigations or reports regarding the death of any person in ICE custody within the BFOD; (5) accommodations for people with mental and/or physical disabilities at Batavia; (6) language access and accommodations at Batavia; (7) provision of adequate medical care at Batavia; (8) use of solitary confinement and other disciplinary processes at Batavia; (9) release

protocols and practice at Batavia; (10) conditions of confinement and access to justice at Batavia; and (11) abuse and misconduct at Batavia.

Requesters submitted the FOIA Request on March 30, 2022—not on May 12, 2022, as ICE has claimed. *See* FOIA Request, attached as Exhibit A; FOIA Submission Email, attached as Exhibit B, ICE Response, attached as Exhibit E. The Agency’s response was therefore due by April 27, 2022, twenty business days after receiving the FOIA request. 5 U.S.C. § 552(a)(6)(A); 6 C.F.R. § 5.6(C). The Agency did not serve a response. Requesters submitted a follow-up email to the Agency, dated April 29, 2022, alerting the Agency that the statutory period for replying had lapsed, informing the Agency that no response to the FOIA request had been provided, and requesting the Agency provide one. *See* First Follow-Up, attached as Exhibit C. The Agency also failed to respond to that email.

Requesters submitted *another* email to the Agency, dated May 12, 2022, reminding the Agency that the statutory period for its response had lapsed, and that even if it had invoked a 10-day extension—which it had not done—that extended period had also elapsed, and requesting an adequate response by May 19, 2022. *See* Second Follow-Up, attached as Exhibit D. Again, the Agency failed to respond.

On June 2, 2022—over one month after a response was due in compliance with 5 U.S.C. § 552(a)(6)(A) and 6 C.F.R. § 5.6(C)—the Agency acknowledged receipt of the FOIA Request but did not provide any of the information legally required of an agency’s response. In addition, ICE constructively denied Requesters’ request for a fee waiver with no explanation, in violation of 5 U.S.C. § 552(a)(4)(A)(iii).

This timely appeal follows.

As set forth below, this appeal should be granted in full because ICE has wrongfully denied Requesters' fee waiver request and failed to sufficiently respond in a timely manner to the FOIA Request. For these reasons, and as detailed below, Requesters respectfully request that your office grants this administrative appeal in full.

**ICE FAILED TO RESPOND TO THE FOIA REQUEST IN A TIMELY AND LEGALLY SUFFICIENT MANNER AS IT WAS REQUIRED TO DO**

**ICE Did Not Respond Within 20 Business Days as it Was Required to Do**

“The FOIA was intended by Congress to enable individuals to inform themselves of their government's activities, and the time provisions of the Act are central to its purpose.” *Hayden v. U.S. Dep't of Just.*, 413 F. Supp. 1285, 1288 (D.D.C. 1976).

Pursuant to the FOIA and the Department of Homeland Security (DHS)'s Regulations, ICE is required to respond to a FOIA request within 20 business days of receiving it. 5 U.S.C. § 552(a)(6)(A)(i); 6 C.F.R. § 5.6(c); *Hayden*, 413 F. Supp. at 1287 (finding an agency had violated FOIA by waiting 35 business days to acknowledge a FOIA request); *Jud. Watch v. Rossotti*, 285 F. Supp. 2d 17, 22 (D.D.C. 2003) (“Upon receipt of a FOIA request, an agency must determine within 20 days whether it will comply and ‘immediately notify the person making such request of such determination and the reasons therefor’”) (quoting 5 U.S.C. § 552(a)(6)(A)(i)); *Jud. Watch, Inc. v. U.S. Dep't of Energy*, 888 F. Supp. 2d 189, 192 (D.D.C. 2012) (“The Freedom of Information Act requires that within twenty days of receiving a FOIA request, an agency must make a determination as to whether it will comply with the request and must notify the requestor of this determination”); *Sterling Drug Inc. v. Harris*, 488 F. Supp. 1019, 1023 (S.D.N.Y. 1980).

If the anticipated date of production is to be beyond twenty business days due to “unusual” circumstances, ICE must, *before* the expiration of the 20 business days, “notify the

requester in writing of the unusual circumstances involved and of the date by which processing of the request can be expected to be completed.” 6 C.F.R. § 5.5(c).

ICE did not respond—at all—within 20 business days of receiving the FOIA Request. It failed to respond for 46 business days (March 30, 2022 to June 2, 2022), taking over twice as long as permitted under FOIA.

### **ICE Did Not Grant or Deny the FOIA Request as it Was Required to Do**

A legally sufficient response requires ICE to deny or grant a request, in full or in part, and to notify the requester in writing. 6 C.F.R. § 5.6(c) (“a component shall have twenty (20) working days from when a request is received to determine whether to grant or deny the request unless there are unusual or exceptional circumstances”). A denial, in whole or in part, must indicate the specific reason for the denial, such as: the requested record is exempt, in whole or in part; the request does not reasonably describe the records sought; the information requested is not a record subject to the FOIA; the requested record does not exist, cannot be located, or has been destroyed; or the requested record is not readily reproducible in the form or format sought by the requester. 6 C.F.R. § 5.6(d).

Although an agency need not actually make its productions by the statutory deadline, “it is required to notify the requester of its decision whether and how it will comply, its reasons for that decision, and the requester's right to appeal any adverse determination” within the statutory deadline. *Pollack v. Dep't of Just.*, 49 F.3d 115, 118 (4th Cir. 1995).

ICE did not grant or deny the FOIA Request within 20 business days. ICE *still* has not granted or denied the FOIA Request, over a month since it was legally mandated to do so.

### **Receiving a Large FOIA Request Is Not a Legally Sufficient Reason to Extend a FOIA Response Deadline**

An agency may, before the expiration of the 20-day response period, notify the requester of “unusual” circumstances that prevent it from meeting the 20-day deadline. 6 C.F.R. § 5.5(c). Any “delays resulting from a predictable agency workload of requests” are excluded from the definition of “unusual” or “exceptional” circumstances. *Donham v. U.S. Dep’t of Energy*, 192 F. Supp. 2d 877, 882 (S.D. Ill. 2002) (finding that an agency had violated FOIA by citing its backlog of requests as an “exceptional circumstance” because such a backlog was predictable); *Hamlin v. Kelley*, 433 F. Supp. 180, 182 (N.D. Ill. 1977) (finding that an agency had violated FOIA by citing its staff’s inability to handle the large work volume by the deadline as an “exceptional circumstance”). If predictable circumstances—such as a large workload or scarce resources—were considered “exceptional” or “unusual,” “then the ‘exceptional circumstances’ provision would render meaningless the twenty-day response requirement.” *Donham*, 192 F. Supp. 2d at 882; *Caifano v. Wampler*, 588 F. Supp. 1392, 1394 (N.D. Ill. 1984) (finding that an agency had violated FOIA by citing its backlog of requests because otherwise the FOIA deadline clause would be rendered “a non-entity”). It is predictable to receive a FOIA request that “seeks numerous documents.” *See* Exhibit E. It is not an “unusual” circumstance simply because such a FOIA request would require a large workload to accomplish by the statutory deadline.

Likewise, a complex FOIA request does not count as an “exceptional” circumstance if the agency does not provide any evidence “other than anecdotal evidence” that the complexity of the FOIA request has made the agency unable to comply with the deadline. *Daily Caller News Found. v. Fed. Bureau of Investigation*, 387 F. Supp. 3d 112, 119 (D.D.C. 2019). In *Daily Caller*, the FBI claimed it could not comply with the statutory deadline because the FOIA requests “contain numerous and/or multi-faceted subject and often require much more

coordination with external and internal stakeholders to ensure the FBI makes appropriate disclosure decisions.” *Id.* at 118. The court found that because “the FBI provides no evidence to support these claims other than anecdotal evidence,” the FOIA request’s “complexity” does not constitute an exceptional circumstance. *Id.* at 119.

ICE’s request for an extension—26 business days late—failed to comply with 6 C.F.R. § 5.5(c), not only because it was late, but because its stated circumstance falls far short of the threshold for an “exceptional” or “unusual” circumstance. ICE seeks an extension because the “request seeks numerous documents that will necessitate a thorough and wide-ranging search.” If every large or complex request requiring a wide-ranging search were an “unusual circumstance,” the 20-day response requirement would be rendered meaningless. Such FOIA requests do not constitute “unusual” or “exceptional” circumstances. The inability of ICE’s staff to handle the FOIA Request by the deadline does not render it an “unusual” or “exceptional” circumstance.

Moreover, even if the Agency had stated an “exceptional” or “unusual” circumstance, the Agency only sought a ten-day extension, the maximum extension that may be invoked under 5 U.S.C. § 552(a)(6)(B)(i). Assuming *arguendo* that the Agency met the standard for establishing exceptional or unusual circumstances, and had invoked the extension within the statutory period provided, which it did not, that extension would still have expired on May 11, 2022, 30 working days after the FOIA Request was received by ICE.

That “Congress wrote a tough statute on agency delay in FOIA compliance, and recently made it tougher,” *Fiduccia v. U.S. Dep’t of Just.*, 185 F.3d 1035, 1041 (9th Cir. 1999), does not permit ICE to disregard or violate the FOIA deadlines. ICE, in disregard of FOIA, 6 C.F.R. § 5, and established case law, did not furnish any response to the FOIA Request by the April 27,



2022 deadline. Its June 2, 2022 response was not legally sufficient, as it did not grant or deny the Request. It did not provide a legally sufficient reason for a deadline extension, and even if it had, that extension would have expired over a month ago.

ICE therefore remains in violation of FOIA and DHS' regulations. Requesters are willing to work with the Agency to establish a rolling production schedule of responsive records.

**REQUESTERS ARE ENTITLED TO A FEE WAIVER BECAUSE THEIR REQUEST IS IN THE PUBLIC INTEREST RATHER THAN FOR A COMMERCIAL PURPOSE**

ICE's Response on June 2, 2022 noted that "[p]rovisions 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*." Exhibit E (emphasis added).

As discussed in the FOIA Request, 5 U.S.C. § 552(a)(4)(A)(iii) requires fees to be waived when 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)(1) (requiring fee waiver when "[d]isclosure of the requested information is in the public interest" and "is not primarily in the commercial interest of the requester"); 28 C.F.R. § 16.10(k)(1) ("[r]equester[] may seek a waiver of fees by . . . demonstrating how disclosure of the requested information is in the public interest because it 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"); *see, e.g., Nat. Res. Def. Council, Inc. v. U.S. E.P.A.*, 581 F. Supp. 2d 491, 502 (S.D.N.Y. 2008); *Serv. Women's Action Network v. Dep't of Def.*, 888 F. Supp. 2d 282, 290 (D. Conn. 2012) (finding that had Plaintiffs' request been reasonable, it would have been entitled to the public interest waiver); *Seavey v. Dep't of Just.*, 253 F. Supp. 3d 269 (D.D.C. 2017); *Fed. CURE v.*

*Lappin*, 602 F. Supp. 2d 197 (D.D.C. 2009); *Citizens for Resp. & Ethics in Wash. v. U.S. Dep't of Educ.*, 593 F. Supp. 2d 261 (D.D.C. 2009); *Physician's Comm. For Responsible Med. v. Dep't of Health & Hum. Servs.*, 480 F. Supp. 2d 119 (D.D.C. 2007); *Prison Legal News v. Lappin*, 436 F. Supp. 2d 17 (D.D.C. 2006).

Disclosure of requested information is in the public interest if the records sought 1) “concern identifiable operations or activities of the federal government, with a connection that is direct and clear, not remote or attenuated”; 2) disclosure is “meaningfully informative about government operations or activities,” as opposed to disclosing information that is “already in the public domain”; 3) “[t]he disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject . . . [a] requester’s expertise in the subject area as well as . . . ability and intention to effectively convey information to the public shall be considered.”; and 4) “[t]he public’s understanding of the subject in question must be enhanced by the disclosure to a significant extent.” 6 C.F.R. § 5.11(k)(2).

To determine whether disclosure of the requested information is not primarily in the Requesters’ commercial interest the Agency must “identify any commercial interest of the requester that would be furthered by the requested disclosure” and provide the requester an opportunity to explain any such interest. The Agency must then weigh the identified commercial interest against the public interest in disclosure of the documents. “A waiver or reduction of fees is justified where the public interest is greater than any identified commercial interest in disclosure.” 6 C.F.R. § 5.11(k)(3).

ICE mistakenly labels Requesters as “commercial requester[s].” However, Requesters meet both prongs of the fee waiver analysis, requiring waiver of fees. First, a fee waiver is required because Requesters meet all four prongs of the public interest analysis detailed above.

The records sought in this FOIA “concern identifiable operations or activities of the federal government,” specifically records related to ICE detention operations in the BFOD. 6 C.F.R. § 5.11(k)(2)(i). Disclosure of the records will be “meaningfully informative,” significantly “add[ing] to the public’s understanding,” because none of the records sought are “in the public domain.” 6 C.F.R. § 5.11(k)(2)(ii). Indeed, Requesters described at length in their FOIA Request the “black box” of detention practices that they seek to shed light on through this FOIA Request. Exhibit A, at 1-3. Requesters, who work closely with people detained in the BFOD, currently have virtually no visibility into the operations of ICE detention in the BFOD. *Id.* The opaque nature of ICE detention practices and conditions underscore the public interest import in disseminating records responsive to this FOIA Request as, without this Request, the public has no way of gaining information about ICE detention practices in their community.

In addition, the disclosure will “contribute to the understanding of a reasonably broad audience,” as Requesters have “expertise in the subject area” and a demonstrated track record of “effectively convey[ing]” information to the public. 6 C.F.R. § 5.11(k)(2)(iii); *see also* Exhibit A, at 15. Requesters are well-established nonprofit advocacy organizations that work not only with individuals detained in the BFOD but with other organizations and community stakeholders. Requester JFMF regularly provides “information and resources” to detained people and community members regarding detention in the BFOD through their programs, website and other distribution channels, including regional listservs for immigration advocates. *Id.* Requester PLS provides legal representation to detained people in the BFOD and advocates for more humane detention conditions and practices. They disseminate information to their many clients and state that they “will work with other nonprofit and advocacy organizations to ensure that the information obtained through these Requests is distributed to directly impacted

populations and other stakeholders, and to the public at large.” *Id.* Requester RDN provides legal representation to detained people in the BFOD and works with local partners to develop resources for people detained in the BFOD. RDN “has made information available to the public regarding litigation efforts to address the conditions of confinement for people in immigration detention through its website and related media platforms that are accessible to the public.” *Id.* Thus, Requesters have the expertise, experience, and intention necessary to ensure records produced “contribute to the understanding of a reasonably broad audience.” 6 C.F.R. § 5.11(k)(2)(iii).

Finally, “the public’s understanding of the subject” will be “enhanced by the disclosure to a significant extent” as Requesters seek records that will provide a clear picture of key detention policies, practices and conditions in the BFOD that will not otherwise be made available to the public due to the opaque nature of ICE detention in the BFOD.

Second, the Agency must provide a fee waiver because Requesters have no commercial interest in the disclosure of the records sought. 6 C.F.R. § 5.11(k)(3). Requesters are non-profit organizations that advocate for individuals detained at Batavia and other facilities in upstate New York. They provide legal and advocacy services at no cost to people detained in the BFOD. They have no pecuniary or commercial interest in the records on ICE detention sought in their FOIA Request and have stated that they will make records they receive as a result of the FOIA Request available to the public, including the press, at no cost. Exhibit A, at 15. This information is thus not in any of the Requesters’ “commercial interest.” 6 C.F.R. § 5.11(k)(3). Rather, this specific information is necessary to allow Requesters, the communities they serve, and the general public to evaluate immigration enforcement actions in their communities, including the conditions of confinement; protocols for detention, confinement, and release; and

their potential detrimental effects on their communities. Moreover, to the extent the Agency identifies a commercial interest, it would be outweighed by the significant public interest in disclosure of records related to a topic of pressing public concern that otherwise would not enter the public domain. 6 C.F.R. § 5.11(k)(3)(ii); Exhibit A, at 15 n.6.

### CONCLUSION

For the foregoing reasons, Requesters respectfully request that this administrative FOIA appeal be granted in full.

ICE is required to respond to this appeal within twenty business days of the receipt of the appeal by granting access to the records or fully explaining the reasons for further denial in writing. 5 U.S.C. § 552(a)(6)(A)(ii); 6 C.F.R. § 5.8(d). If a determination on this appeal is not rendered within twenty business days, the failure to do so constitutes an exhaustion of administrative remedies, leaving Requesters no choice but to file suit in federal court to vindicate their rights under FOIA. 5 U.S.C. § 552(a)(6)(C)(i); *Maricopa Audubon Soc. v. U.S. Forest Serv.*, 923 F. Supp. 1436, 1442 (D.N.M. 1995), *aff'd sub nom. Audubon Soc. v. U.S. Forest Serv.*, 104 F.3d 1201 (10th Cir. 1997); *Friends of the Earth v. U.S. Army Corps of Eng'rs.*, 374 F. Supp. 3d 1045, 1051–52 (W.D. Wash. 2019); *Pollack v. Dep't of Just.*, 49 F.3d 115, 118 (4th Cir. 1995); *Long v. Dep't of Homeland Sec.*, 436 F. Supp. 2d 38, 43 (D.D.C. 2006). This is because “unreasonable delays in disclosing non-exempt documents violate the intent and purpose of the FOIA, and the courts have a duty to prevent these abuses.” *Long v. U.S. I.R.S.*, 693 F.2d 907, 910 (9th Cir. 1982). To avoid the necessity of litigation, Requesters are open to negotiating a production schedule of responsive records with the Agency.

Dated: June 16, 2022  
New York, New York

Respectfully submitted,



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# EXHIBIT A

March 30, 2022

U.S. Immigration and Customs Enforcement  
Freedom of Information Act Office  
500 12<sup>th</sup> Street, S.W., Stop 5009  
Washington, DC 20536  
**Via Electronic Mail** – ICE-FOIA@dhs.gov

**RE: FREEDOM OF INFORMATION ACT REQUEST**

To Whom It May Concern:

Justice for Migrant Families, Prisoners' Legal Services of New York, and Rapid Defense Network, represented by Justice Action Center, Rapid Defense Network, and Orrick, Herrington & Sutcliffe LLP, pursuant to the provisions of the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 *et seq.*, as amended, and applicable agency regulations, request copies of the records identified in the numbered paragraphs below from the United States Immigration and Customs Enforcement ("ICE" or "the Agency").

We ask that you please direct this request to all appropriate offices and components within ICE including, but not limited to: Buffalo Service Processing Center; Buffalo Field Office Enforcement and Removal Operations; Office of Detention Policy and Planning; Detention Standards Compliance Unit, Detention Management Division; Segregation Review Coordinator; Detention Service Managers (DSM); Custody Management Division ("CMD"); ICE Health Service Corps ("IHSC"); Facility Administrators that report to the Buffalo Field Office; and the Detention Monitoring Council ("DMC").

Purpose of the Request

The Buffalo Service Processing Center ("Batavia"), New York State's largest immigrant detention center, has generated public interest and concern in recent years for its egregious conditions of confinement as well as unsafe release practices that have led to serious injury and even death. One person, who has served time in local, state, and federal criminal custody, stated that his experience in detention at Batavia was unquestionably worse than any criminal custody he had endured. Due to the opaque operations of ICE, even advocates and attorneys who work closely with individuals at Batavia describe ICE practices within the facility as a "black box." At times, ICE's efforts to keep attorneys and advocates in the dark appear to be deliberate. Elias, who endured three years of detention at Batavia recalled, "We were threatened with 'la hielera'<sup>1</sup> for speaking to outside groups."<sup>2</sup> While COVID-19-related litigation created a small window into the conditions at Batavia, as pandemic restrictions continue to subside on the state and national level, that window is closing.

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<sup>1</sup> "La Hielera," or the "Ice box," is a term used for the freezing cold cells ICE and Customs and Border Patrol often uses to hold immigrants.

<sup>2</sup> Requesters interviewed several currently and formerly detained people in December 2021 and January 2022 while preparing this FOIA request. Where referenced by name, Requesters use pseudonyms in order to protect the privacy of these individuals and due to their fear of retaliation by ICE for speaking out about their experiences.



Other facilities in the region are even more opaque: ICE lists six facilities under the Buffalo Field Office’s purview on its website, several of which Requesters have never heard of in connection to immigration detention, despite their significant experience serving detained individuals in the region. Conversely, Requesters know that Rensselaer County Jail houses detained people for ICE and is the subject of a pending Office of Civil Rights and Civil Liberties complaint due to egregious conditions and officer abuse there.<sup>3</sup> Yet Rensselaer does not appear on ICE’s list of facilities in New York.<sup>4</sup> This FOIA request is necessary to bring transparency to the agencies’ activities in upstate New York that are otherwise nearly entirely hidden from public view.

Requesters regularly witness and hear from individuals detained at Batavia about ICE’s violations of its statutory obligations, its constitutional obligations, and its obligations under its own standards to “improve safety, security and conditions of confinement for detainees.” (“Performance-Based National Detention Standards” or “PBNDS”).<sup>5</sup> These violations include:

- ***Unsafe release practices***, such as releasing individuals in the middle of winter without appropriate clothing, without accommodations for disabled and other vulnerable people, and without sufficient notice and opportunity to coordinate with family or advocates to arrange shelter and travel. These practices have resulted in hospitalization and even death.
- ***Inadequate medical care and accommodation***, including a pattern and practice of delaying and denying people necessary medical care while in detention.
- ***Routine and retaliatory use of solitary confinement without due process***, such as placement in solitary confinement for 10 to 15 days with no hearing or accommodation for people with mental or physical health conditions. For example, Elias was placed in solitary confinement for 13 days without a hearing after he accidentally injured another person during a soccer game. “After I got out, I was given a different color uniform and moved to a higher security unit. I worried how this could hurt my case, even though I did nothing wrong.” Detained individuals also report the use of solitary confinement as a form of retaliation, like Apollo, who was placed in solitary confinement after he refused to sign a voluntary departure form to ‘self-deport’.
- ***Rampant physical abuse and mistreatment***, which continues because complaints and grievances are not addressed.
- ***Racial discrimination***, which results in more punitive treatment of Black detained people, in particular, including higher rates of solitary confinement, use of restraints, and use of force.
- ***Inadequate language access services***, which results in the denial of medical care, access to justice, and meaningful access to services, despite that such access is mandated by federal law. As one advocate observed, “People who don’t have a shared language with other people are treated worse; officials just don’t bother communicating to them.”

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<sup>3</sup> Kenneth C. Crowe II, *Complaint alleges ‘filthy living conditions’ for immigrants at local jail*, Times Union, Sept. 21, 2021, <https://www.timesunion.com/news/article/Complaint-alleges-filthy-living-conditions-for-16477034.php>.

<sup>4</sup> *Detention Facilities*, Immigration and Customs Enforcement, <https://www.ice.gov/detention-facilities?state=21&office=&name=> (last updated Feb. 18, 2022).

<sup>5</sup> *ICE Detention Standards*, Immigration and Customs Enforcement (Nov. 9, 2021), <https://www.ice.gov/factsheets/facilities-pbnds>.

Interviews with advocates and individuals previously detained at Batavia illustrate the severity of these violations. For example, Pierre, a man with severe schizophrenia and other mental and physical disabilities, was found dead in the street shortly after his release from Batavia at a rural gas station. Despite months of advocacy and repeated requests by Requester Justice for Migrant Families, ICE declined to provide a release date to advocates coordinating his housing and medical care and refused to make reasonable accommodations to facilitate Pierre's safe release.

In another case illustrating the physical abuse experienced by people detained in Batavia, a dozen officers piled onto a petite Black man who refused to enter his cell because he had not been given dinner. The officers beat him so badly he had to be carried out on a stretcher. In yet another instance, a guard choked a man in his bed, only stopping due to the outcry of other detained people who came to the man's defense. The detained individuals complained about the guard. Rather than being fired, the officer was transferred to another unit where he continued to abuse detained people. "That person should not be in charge of caring for people," a witness said.

Requesters include local immigrant rights advocates and organizations that provide legal representation to individuals detained at Batavia. Requesters work closely with people detained at Batavia and other facilities in upstate New York and advocate alongside them. Knowledge of the conditions in which they are held are relevant for Requesters' representation of people detained at Batavia and for Requesters' advocacy efforts to ensure the rights of people detained at Batavia are respected. Requesters have a vested interest in the conditions in which their clients and community members are held.

Requesters urgently seek information on the federal government's policies, directives, and actions relating to the treatment and processing of immigrants at Batavia and other facilities in upstate New York. The public has a right to know what happens in the "black box" of ICE custody in their state, particularly as New York considers the Dignity Not Detention bill, A7099A/S7373, which would end current and future ICE contracts with state, municipal, and private facilities. The disclosure of the information sought below will contribute to the "public understanding of the operations or activities of the government," 5 U.S.C. § 552(a)(4)(A)(iii) and provide the public with information necessary to engage in the democratic process and public debate regarding the use of ICE detention in New York State. Disclosure would thus be "in the public interest," 28 C.F.R. § 16.10(k). *See also* 6 C.F.R. § 5.11(k)(1).

### Definitions

The records request below incorporates the following definitions:

"Anonymized ID" refers to any non-identifying variable the Agency may use to connect individual-level data across data sets, such as the first five digits of the Alien numbers, the last four digits of social security numbers, or any other similar information.

"Buffalo Field Office District" refers to the geographical area that ICE considers within the "area of responsibility" or jurisdiction of the ICE Buffalo Field Office. ICE detention facilities including Albany County Correctional Facility, Allegany County Jail, Buffalo ("Batavia") Service

Processing Center, Chautauqua County Jail, Clinton County Jail, Rensselaer County Jail, and Wayne County Jail are located within the Buffalo Field Office District.

“Communication(s)” refers to the transmittal of information in any format, including, but not limited to, the communication formats listed under “Record.”

“Contract” or “Government Contract” refers to any agreement or modification thereof between any contracting agency and any person or entity for the purchase, sale, or use of personal property or nonpersonal services.

“Contractor” refers to any person or entity holding, or who has ever held or sought to hold, a Government Contract as defined in 41 CFR § 60-1.3. Any reference herein to a specific contractor or a contractor in general also refers to any division, subsidiary, or affiliate thereof and to their employees.

“Custody” refers to the state of being under the control of ICE or a third party at the direction of ICE based on purported violation of the Immigration and Nationality Act.

“Detain” or “Detention” refers to the act of ICE, whether by Agency personnel or a third party at the direction of ICE or Agency personnel, taking an individual into the custody of the United States government based on purported violations of the Immigration and Nationality Act, including but not limited to placement in a local or state jail or prison, including through Intergovernmental Service Agreement facilities, 287(g) agreements, private facilities, and federal facilities.

“Facility” or “ICE Facility” refers to any physical location where individuals are held pursuant to ICE custody.

“Grievance” refers to any formal or informal complaint made by or on behalf of a detained person, or regarding the behavior of ICE personnel or conditions at Batavia, whether submitted to Batavia personnel or other government or nongovernment actors. For each grievance record requested, we also request records regarding any Agency investigation of, and response to, the grievance.

“Limited English Proficiency” or “LEP” refers to “[i]ndividuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English. . . . LEP individuals may be competent in English for certain types of communication (e.g. speaking or understanding), but still be LEP for other purposes (e.g. reading or writing).” *Language Access Information and Resources*, U.S. Immigration and Customs Enforcement, <https://www.ice.gov/detain/language-access> (last accessed March 17, 2022).

“Personnel” refers to an individual employed by an organization or authorized to act on behalf of an organization, including employees, contractors, contractors’ employees, agents, or representatives.

“Record” refers to any information in electronic, written, and/or printed form that is in ICE’s constructive possession, directly or indirectly, regardless of where or how the information originated or where or how ICE received it, encompassing but not limited to any information in

the custody of any U.S. government contractors for purposes of information management for ICE, and including but not limited to: messaging communications between phones or other electronic devices, including but not limited to communications sent via short message service (“SMS”), multimedia message service (“MMS”), or any other messaging service, via Blackberry Messenger, iMessage, WhatsApp, Facebook, Signal, G-Chat, Instagram direct message, Twitter direct message, Slack, and/or any other messaging and communications platform; emails, letters, faxes, and/or any other form of correspondence; minutes and/or notes of meetings and/or phone calls; voicemail messages; images, video, and/or audio data; social media posts; calendar entries; files and their contents, including any notes; logs, spreadsheets, worksheets, and/or coversheets; database entries, analyses of data; metadata; investigations, reports, studies, and/or reviews; internal memoranda; contracts, agreements, and/or memoranda of understanding, including but not limited to intergovernmental services agreements; presentations, formal or informal; training criteria, standards, evaluations, and/or materials; orders, directives, and/or instructions; legal opinions and/or memoranda; policies, procedures, protocols, and/or manuals; guidance and/or guidelines; bulletins, advisories, and/or alerts; as well as any reproductions thereof that differ in any way from any other reproduction, such as copies containing notations, drafts, and revisions.

“Solitary Confinement” refers to placement of an individual into restricted housing, typically in a single cell, often referred to as a “special management unit” or “segregated housing unit.” It includes placement into restrictive housing, segregated housing, or any other form of isolation where an individual is held for 20 or more hours a day in a cell by themselves. This term refers to isolation on any basis, or no basis, including for administrative segregation, protective custody, medical isolation, quarantine, disciplinary segregation, and segregation due to overcrowding or other logistical considerations.

“Training Materials” refers to all Records used to instruct, guide, or otherwise prepare personnel for any aspect of their employment or contract including, but not limited to, electronic records.

In addition, in interpreting the Requests, the singular form of a noun or pronoun shall be considered to include within its meaning the plural form of the noun or pronoun, and vice versa. In requesting “policies” and “guidance,” the Requesters seek national policies and guidance, as well as policies and guidance specific to the Batavia and/or Buffalo Field Office, in any format, including memoranda. However, Requesters do not refer to or seek copies of the Performance-Based National Detention Standards, unless annotated or incorporated in another record.

In requesting “correspondence” and “communications,” the Requesters seek any record of written correspondence or verbal correspondence, whether formal or informal, in any format, including intra-Agency, inter-Agency correspondence, and Agency correspondence with third parties. The date range for all searches should be understood to commence with each provided start date and to end on the date the search for documents responsive to that request is commenced by the Agency. *See Ferguson v. U.S. Dep’t of Educ.*, No. 09 CIV. 10057 FM, 2011 WL 4089880, at \*11 (S.D.N.Y. Sept. 13, 2011) (commencement date of agency’s search was reasonable cut-off date).

Request for Information

All Requests detailed below, other than Requests in paragraphs 1-5, are for records related to ICE detention at Batavia only, including records related to transfers into and out of Batavia. For Requests 1-5 Requesters request that responsive records be broken out and labeled to reflect the ICE facility the records relate to.

**General Information – All Facilities Within the Buffalo Field Office District**

- 1) All executed agreements that were in force on or after July 1, 2019 between ICE and third parties, including municipal, state, or private actors, regarding the detention of, or provision of services to, immigrants in ICE custody within the Buffalo Field Office District
- 2) Any communications since January 1, 2021 between ICE and third parties, including municipal, state, or private actors, regarding contract renewal, supplemental agreements, addendums, or riders related to the executed agreements referenced in request one
- 3) Records held by CMD created since July 1, 2019 regarding the capabilities of detention facilities in the Buffalo Field Office District to meet the needs of people with special vulnerabilities, pursuant to ICE Directive 11065.1 § 7.2(2)
- 4) Records created since July 1, 2019, including data in any database disaggregated by national origin and race of detained individuals or, if not available, in aggregate, reflecting the population of people in ICE custody at each facility within the Buffalo Field Office District, including the following information:
  - a) The subsection of the INA that purportedly authorizes their detention (e.g. 8 U.S.C. §§ 1226(a); 1226(c); 1225(b); 1231(a))
  - b) National origin
  - c) Race
  - d) Length of custody
  - e) Releases, the nature of release (e.g. transfer or release to community) and, if transferred, detention facilities where transferred
  - f) ICE or EOIR bond amount, if set
  - g) Security and/or risk classification level(s) assigned
  - h) If in cell unit, hours locked into cell per day
- 5) All Records created since January 1, 2018 regarding any death of a person in the custody of the Buffalo Field Office District, including any investigations or reports produced

**Accommodations and Care for People with Mental and Physical Disabilities**

- 6) All Records reflecting formal or informal policies in force on or after July 1, 2019 regarding:
  - a) How facilities determine whether an individual has a qualified disability (mental or physical) or chronic medical condition (mental or physical) upon intake
  - b) How facilities determine whether an individual has a qualified disability (mental or physical) or chronic condition at any point after intake

- c) Any and all processes by which an individual is designated as having a “special vulnerability” as defined in ICE Directive 11065.1 § 3.3
  - d) Any and all processes by which facilities determine what constitutes a “serious medical illness” as reflected in ICE Directive 11065.1 § 3.3
- 7) All Records created since July 1, 2019, including data in any database disaggregated by national origin and race of detained individuals or, if not available, in aggregate, regarding:
- a) Reports to the Buffalo Field Office of the detention of people with cognitive, intellectual, or developmental disabilities, or communication or mobility impairment
  - b) Formal and informal requests for accommodations and dispositions of those requests including dates of request and disposition, nature of request and outcome of adjudication
  - c) Accommodations approved by a multidisciplinary committee that require ICE approval, including the date the request for accommodation was made, the date the request for accommodation was approved by the multidisciplinary committee, the date the accommodation was authorized or not authorized by ICE and the date the accommodation was actually provided to the individual, if provided
  - d) Any removal by ICE of a detained person’s mobility aid such as a crutch, cane, or wheelchair, or other medical device or disability aid, and the basis for removal
  - e) Any provision of a chair or other object in lieu of a wheelchair, or other medical device such as a cane, for the purpose of moving between areas such as the unit and showers
  - f) Any grievances filed by a detained individual, ICE personnel, or third parties related to the provision of adequate accommodations for mental or physical health conditions or disabilities, the date the grievance was made, the date the grievance was resolved, and the outcome of the resolution
- 8) Records sufficient to show what training personnel receive related to disability and reasonable accommodations from July 1, 2019 to the date this search is conducted

#### **Language Access and Accommodation**

- 9) Records reflecting policies or protocols in force on or after July 1, 2019 regarding:
- a) How the facility determines whether an individual is LEP
  - b) Any protocols in place to ensure that each LEP person has access to all of the accommodations to which they are entitled pursuant to Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq. and Executive Order 13166, *Improving Access to Services for Persons with Limited English Proficiency*, (August 11, 2000)
  - c) Safeguards and protocols for individuals who do not have sufficient literacy to adequately comprehend written information to ensure that they are meaningfully receiving the information that is provided to them in writing, including identifying such people and obtaining informed consent for documents requiring signature
- 10) Records since July 1, 2019 sufficient to show:
- a) The number of detained people designated as LEP and accommodations provided to them



- b) Requests for interpretation made by detained people, or by ICE personnel to communicate with a detained person, the non-English language needed, the date of the request, the date of the disposition of the request, and the outcome of the request
- c) The use of non-medical ICE personnel or detained people as interpreters for detained people during medical visits
- d) Languages other than English determined to be spoken by “significant segments of the population,” per PBNDS § 2.13(II)(6), and efforts to provide written materials in those languages within the facility
- e) Any grievances by or on behalf of a detained person regarding the provision of language access services, including translation and interpretation, and the resolution of such grievances
- f) Any grievances by or on behalf of a detained person related to alleged misrepresentation by ICE of documents presented by ICE to the detained person for their signature, and the resolution of any such grievances

### **Provision of Adequate Medical Care**

- 11) Records created since July 1, 2019, including data in any database disaggregated by national origin and race of detained individuals or, if not available, in aggregate, reflecting:
  - a) The response time for requests for sick call or medical assistance
  - b) Any recommendations for external medical treatment made by IHSC, with the date of the recommendation and nature of the treatment recommended, and the result of that recommendation, including the date brought for outside treatment, if any
  - c) Any grievances related to a detained person’s medical care or lack of adequate medical care including date of grievance, nature of grievance, date(s) of response(s), and resolution of the grievance
  - d) Any notification to the facility administrator that a person’s medical or mental health needs require special consideration in such matters as housing, transfer, or transportation, per PBNDS § 4.3(II)(13)
  - e) Any notification to the Field Office Director that an individual has a serious physical or mental illness, is pregnant, or has medical complications related to advanced age, per PBNDS § 4.3(V)(X)
  - f) The provision of a medical care summary and 7-30 day supply of any prescribed medications for individuals released or transferred out of the facility
  - g) Communications to, or among, ICE personnel encouraging, instructing, or discussing the need to prevent, discourage, or delay detained people from requesting sick call
  - h) The use of psychiatric medication as a form of sedation
  - i) Grievances related to the prescription of psychiatric medication or the dosage thereof, or grievances about how a prescribed medication makes the complaining patient feel, and the resolution of any such grievances
  - j) The implementation, enforcement, and quality control of continuity of care protocols, including release planning, continuity of treatment plan, referrals, provision of necessary medical devices, medication, and detailed summary of care upon release

- k) Health Service Administrator's internal review and quality assurance relating to corrective action plans, investigation of grievances, review of deaths, suicide attempts, and illness outbreaks, pursuant to PBNDS § 4.3(V)(EE)(2)
- l) Minutes from Quarterly Administrative Meetings pursuant to PBNDS § 4.3(V)(EE)(1)

12) Records sufficient to show:

- a) The staffing plan, pursuant to PBNDS § 4.3(V)(B), in place on or after July 1, 2019, and compliance with, or failure to comply with, the staffing plan during that period, including the lengths that medical, psychiatric, and counseling positions remained unfulfilled
- b) All Medical/Psychiatric Alerts active on or after July 1, 2019
- c) Hospitalizations and injuries of detained people since July 1, 2019, including the date of injury or date range of hospitalization, the nature of the injury or purpose of hospitalization, and any investigations or reports produced regarding such incidents

**Use of Solitary Confinement and Disciplinary Process**

13) Individualized, disaggregated data regarding each individual booked or detained at Batavia on or after July 1, 2019, who was held in solitary confinement at any point, including:

- a) Anonymized ID
- b) Race and national origin
- c) Date(s) held in solitary confinement
- d) Basis for placement in solitary confinement
- e) Date(s) of hearing, if any, whether the detained person was present at the hearing, and whether the detained person was represented in the hearing
- f) If no hearing was provided, the reason a hearing was not held
- g) Any grievances filed related to a person's placement, conditions, access issues, or incidents in solitary confinement, and the resolution of any such grievances
- h) Time allowed out of cell

14) Records created since July 1, 2019 related to or reflecting:

- a) Any requests for and provision of accommodations in the disciplinary hearing process
- b) Incident reports and dispositions of charges for violations of codes 198, 199, 298, 299, 308, 311, 320, 323, 402, 404, and 413
- c) Actions taken by CMD, IHSC, and/or other components of ICE to "enhance" the capabilities and resources of the facility to meet the needs of vulnerable people in solitary confinement, pursuant to ICE Directive 11065.1 § 7.2(3)
- d) Any inspections or monitoring of the use of solitary confinement, conducted by DSMs, CMDs, the Office of Detention Oversight, The Office for Civil Rights and Civil Liberties, or other agencies
- e) Any portions of quarterly reports or related communications from the DMC subcommittee regarding Batavia, including data about detained people held in segregation who met the criteria listed in ICE Directive 11065.1 §§ 5.1 and 5.2.2, the reasons for their segregation, the results of reviews of particular cases, and areas of concern regarding particular cases, pursuant to ICE Directive 11065.1 § 7.5(7)



- f) Reports or communications regarding the determination to keep a person in solitary confinement for more than 14 days continuously, or more than 14 days total during a 21-day period
  - g) Reports or communications regarding the determination to hold a person in solitary confinement who has a qualified disability (mental or physical), mental illness, serious physical illness or disability, or otherwise has “special vulnerabilities” as defined in ICE Directive 11065.1
  - h) Any instance where an individual was held in solitary confinement for 14 or more days during a 21-day period
  - i) Any instance of solitary confinement that exceeded 10 continuous days
  - j) Any instances of a person with a known mental illness, serious physical disability, serious physical illness, or otherwise having “special vulnerabilities” as defined in ICE Directive 11065.1, being held in solitary confinement for any period of time
  - k) The placement of a person into administrative segregation on the basis of a mental or physical illness or disability, hunger strike, or suicide risk
  - l) The deprivation of any usually authorized items or activities in solitary confinement
  - m) All determinations by the DMC to end the use of solitary confinement for an individual
  - n) The Agency’s use of solitary confinement to hold people exposed to or infected with COVID-19
- 15) Records sufficient to show policies or protocols in force on or after July 1, 2019, regarding:
- a) Facility-specific rules, protocols, and processes for administering the disciplinary system and use of solitary confinement, including all records related to the oversight, audit, deviance from, and enforcement of these rules, protocols, and processes
  - b) The process used to determine whether a detained person has a “special vulnerability” as defined in ICE Directive 11065.1, or otherwise is a person whose placement in solitary confinement would trigger protections and protocols under ICE Directive 11065.1 § 5.2
- 16) All Records created since July 1, 2019 related to or reflecting the use of solitary confinement for:
- a) Quarantine
  - b) Administrative purposes due to overcrowding at the facility
  - c) Protective custody, including whether at the request of the individual in custody or not
  - d) Administrative segregation without pending charges or a disciplinary hearing, as outlined in PBNDS § 2.12(V)(A)(1)(b)
  - e) Placement in administrative segregation following end of disciplinary segregation sentence, as outlined in PBNDS § 2.12(V)(A)(1)(e)
  - f) Suicide watch
  - g) Medical isolation
- 17) All Records created since July 1, 2019 related to compliance with ICE Directive 11065.1 §§ 5.1-5.2, including:
- a) Reporting to the Field Office Director or other administrators
  - b) Supervisor interviews of detained people
  - c) Dates of reports to administrators or other officials regarding placement
  - d) Reports related to interviews and review of placement

- e) Decisions regarding ongoing placement in solitary confinement
- f) Duration of placement in solitary confinement

### **Release Protocols and Practices**

- 18) All Records created since July 1, 2019, including data in any database sufficient to show release practices in compliance with PBNDS § 2.1(V)(I), including
  - a) Provision of advanced notice to individuals being released
  - b) Any time an individual was released before 8am or after 4pm
  - c) Instances of release anywhere other than the Batavia Citgo Gas Station
  - d) The provision of winter coats upon release in November-March of each year
  - e) The provision of food upon release
  - f) Any instances where a free phone call was not made by a detained person before release and any instances where a free phone call was made more than 2 hours before release
  - g) Any accommodations or adjustments actually made to account for “special vulnerabilities” pursuant to PBNDS § 2.1(V)(I)
  - h) Communications with the Batavia Citgo gas station employees or owners
  - i) Coordination with nongovernmental organizations related to services for released individuals, including but not limited to flights and hotels
  - j) Payment by ICE for transportation of individuals released from Batavia on non-ICE chartered vehicles including Greyhound buses, trains, taxis, and commercial planes
  - k) Whether ICE has ever denied or delayed release of an individual due to insufficient funds in their commissary
  - l) Whether ICE has ever denied or delayed release of an individual otherwise cleared for release due to lack of a fixed address or competency concerns
  - m) The existence of, or communication to, detained people of a minimum amount of commissary funds an individual is required to have in order to be released
- 19) Records reflecting policies or protocols in force on or after July 1, 2019 regarding:
  - a) Measures taken to ensure people are released in a safe way, and what accommodations or adjustments are provided, if any, for people with known or suspected mental or physical disabilities or “special vulnerabilities,” including any individualized release plans created by ICE outlining specific actions taken and efforts made to ensure an individual released is safely transported to their final destination
  - b) Facility policy on providing funds or bus fare to individuals who do not have sufficient funds in their commissary to purchase a bus ticket to their destination
  - c) Rules or instructions specific to food preparation for individuals in processing for release

### **Conditions of Confinement and Access to Justice**

- 20) Any and all studies, reports, audits, or analyses produced by the federal government evaluating the conditions at Batavia since July 1, 2019, including internal reports produced by Batavia personnel

- 21) All Records created since July 1, 2019, including data in any database disaggregated by national origin and race of detained individuals or, if not available, in aggregate, sufficient to show the use of the Risk Classification Assessment at Batavia, including
- a) The identification and use of “special vulnerabilities” in classifying individuals
  - b) Consideration of “similar backgrounds” in classifying individuals
  - c) Use of medical information to classify people
  - d) The determination of, and use of, suspected gang affiliation to classify people
  - e) Any placement in medium-high or high security based solely on history of arrest(s) not convictions
  - f) Reclassification from a higher to a lower level of security
  - g) Any approval of classification or reclassification outside of the custody level guideline ranges
  - h) Security classification forms determining a person is a member of a “security threat group”
  - i) Significant event notices
  - j) Grievances by or on behalf of detained people regarding their risk classification and the resolution of such grievances
  - k) How classification affects detained people’s freedom of movement, eligibility for programming, and the use of restraints
- 22) Records created since July 1, 2019 sufficient to show
- a) Batavia provides detained people sufficient access to operable computers capable of running electronic legal research media, operable printers, supplies for both, and instructions on basic use of the system, pursuant to PBNDS § 6.3(V)(E)(1)
  - b) Dates individuals requested a computer account in order to use the computers in the law library and the date individuals were given access to such a computer account
  - c) Any grievances by or on behalf of a detained individual related to access to the law library, access to counsel, mailings to a court related to a legal proceeding, or calls to a court related to a legal proceeding, and the resolution of any such grievances

### **Abuse and Misconduct**

- 23) All Records created on or after July 1, 2019, including data in any database disaggregated by national origin and race of the detained individual or, if not available, in aggregate showing any of the following:
- a) Personnel reports and other documentation of use of force on, or injury to, detained individuals, including reports submitted to the Field Office Director and after action review reports as outlined in §§ PBNDS 2.15(V)(C) and (V)(O), and the use of force against people with “special needs” as defined in § 2.15(V)(F)(3)
  - b) The forwarding of audiovisual recordings of “questionable or inappropriate” use of force to the Detention Management Division, pursuant to PBNDS § 2.15(V)(O)(3)
  - c) Investigation of any use of force by the Office of Professional Responsibility, the Department of Homeland Security, Office of the Inspector General, or the Federal Bureau of Investigation
  - d) Any deployment of “situation response teams”
  - e) Civil rights grievances filed with the Agency against Agency personnel

- f) Any firings, unpaid leave, or other reprimands or discipline of ICE personnel as a result of their actions toward detained people or other ICE personnel
  - g) Implementation and enforcement of protections against retaliation, including any affirmative monitoring of adverse action taken against people who have filed grievances
  - h) Strip searches and body cavity searches performed on detained people and reason given for strip search, including
    - i) All strip searches conducted based on a contact visit
    - ii) All strip searches conducted based on violent criminal history
    - iii) All strip searches conducted based on suspected affiliation with a gang, terrorist organization, or other special group
  - i) Requests to use restraints, the disposition of each request, and documentation of any determination to use restraints beyond two hours, per PBNDS § 2.15(V)(M)
  - j) Each use of four or five-point restraints including the request, approval of request, examination by medical personnel, and monitoring of restrained person
  - k) Use or allegations of use, of prohibited force techniques or devices, as defined in PBNDS §§ 2.15(V)(E) and (V)(G)(5), including any resulting investigations
  - l) Training provided related to use of force and people with mental, physical, or psychiatric disabilities
  - m) The Significant Incident Summary Worksheet (Form G-324A or equivalent) and Detention Facility Inspection Form for Batavia completed as part of the annual detention standards compliance review, for each fiscal year since 2020
  - n) Communications regarding alleged racism, racial bias, disparate treatment based on race, or disparate impact on people of different races, stemming from Agency personnel actions and policies, including but not limited to grievances regarding one or more of these issues
  - o) Policies and communications regarding withholding food, changing the quality of food, or intentionally providing poor quality food to a detained person, for any non-medical reason
  - p) Communications about and treatment of detained people striking, including from the voluntary work program, including the revocation of recreation time, the right to make phone calls, or any other change in treatment following their refusal to work
  - q) The number of hours per day people held in units with cells are locked into their cells
- 24) Individualized, disaggregated data regarding each individual booked or detained at Batavia on or after July 1, 2019, who was the subject of a use of force report, filed a grievance, or had a grievance filed on their behalf, regarding use of force, discrimination, harassment, abuse, or threats by or involving Agency personnel, or was subjected to a strip search or body cavity search, including:
- a) Anonymized ID
  - b) Race and national origin
  - c) Use of force report(s) filed by Agency personnel regarding the individual
  - d) Use of restraints including type of restraint, date of use, reason for use, and duration of use
  - e) Grievances filed by detained person or others on their behalf regarding use of force, discrimination, harassment, abuse, or threats by or involving Agency personnel, and any investigations and resolution of such grievances
  - f) Any incidents of strip search or body cavity search subjected to, reason for search, gender of detained person, titles and genders of individuals present for search, and times search(es) began and ended

### Format of Production

The Requesters request that responsive documents and materials be produced *in their entirety*, including all attachments, enclosures, hyperlinks and internal links, and exhibits. If it is determined that a document contains material or information that falls within a statutory exemption to mandatory disclosure under FOIA, the Requesters ask that such material or information be reviewed for possible discretionary disclosure, consistent with the presumption of openness codified in the Freedom of Information Act Improvement Act of 2016, Pub. L. 114-185, 130 Stat. 538.

Please search for responsive records regardless of format, medium, or physical characteristics, and including electronic records. Please provide the requested documents in the following format:

- In PDF format whenever possible;
- Electronically searchable whenever possible;
- Email attachments provided in sequential order following the email, to preserve the “parent-child” relationship, such that Requesters are able to identify which documents were the attachments to which emails;
- Any data records in native format (e.g. Excel spreadsheets in Excel);
- Emails include BCC and any other hidden fields;
- With any other metadata preserved.

Please furnish all applicable Records in electronic format via email as specified above to: Lauren Wilfong at Lauren.Wilfong@JusticeActionCenter.org, Sarah Gillman at sarah@defensenetwork.org, and Rene Kathawala at rkathawala@orrick.com. The burden is on the Government to provide a determination within 20 working days. In the event the Government is unable to meet that deadline, the Requesters are willing to discuss an appropriate schedule for rolling productions. To the extent the Government has any questions after reviewing these Requests, please do not hesitate to contact the undersigned.

### Fee Waiver Request

Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), the Requesters apply for a fee waiver. Applicable agency regulations require fees to be waived when it is determined, based upon the submission of the requester, that 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* 5 C.F.R. § 5.11(k)(1) (permitting fee waiver when “[d]isclosure of the requested information is in the public interest” and “is not primarily in the commercial interest of the requester”); 28 C.F.R. § 16.10(k) (“[r]equester[] may seek a waiver of fees by . . . demonstrating how disclosure of the requested information is in the public interest because it 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”).

Requesters are non-profit organizations that advocate alongside individuals detained at Batavia and other facilities in upstate New York. Access to this information is crucial for the Requesters and the communities they serve to evaluate immigration enforcement actions in their communities, including the conditions of confinement and protocols for detention, confinement and release, and their potential detrimental effects in their communities.

Justice For Migrant Families (JFMF) is a grassroots and community-based non-profit organization with federal 501(c)(3) status. Based in upstate New York, JFMF promotes justice for migrant families by providing support to people detained in Batavia, information and resources to families in the community, and advocacy both within and beyond the local community. JFMF connects detained people with legal resources and social services, provides material support to detained and recently released people, and conducts a visitation and pen pal program with people detained at the facility. JFMF also collects and disseminates resources for people detained at Batavia and their families, which are housed on their website at [justiceformigrantfamilies.org](http://justiceformigrantfamilies.org). JFMF will use the information obtained through these Requests to serve community members most directly affected by the information, and to ensure accountability for the Government's routine violations of detained people's rights at Batavia. JFMF will also work with other non-profit and advocacy organizations to ensure that the information obtained through these Requests is distributed to directly impacted populations and other stakeholders, and to the public at large.

Prisoners' Legal Services of New York (PLS) is a 501(c)(3) nonprofit that provides legal representation and assistance to indigent prisoners, helping them to secure their civil and human rights and advocate for more humane prisons and for a more humane criminal justice system. PLS is committed to ensuring access to the courts for all incarcerated New Yorkers. PLS represents individuals detained at Batavia in their immigration proceedings and in challenges to the length and conditions of their detention in federal court. PLS also advocates on conditions issues and policies affecting people detained at Batavia through litigation and other means. PLS will work with other nonprofit and advocacy organizations to ensure that the information obtained through these Requests is distributed to directly impacted populations and other stakeholders, and to the public at large.

Rapid Defense Network (RDN) is a 501(c)(3) nonprofit that provides rapid legal representation on a *pro bono* basis to immigrants facing unlawful detention or deportation. In addition to individual representation RDN works with law firms and other partners to address gaps in resources and challenge conditions of confinement in immigrant detention, including through resource development and litigation. RDN has represented a number of people detained at Batavia and works with local partners to develop resources for people detained at Batavia and increase access to legal services at the facility. RDN monitors developments in immigration law that affect the rights of non U.S.-citizens, and partners with law firms and law school clinics to bring impact litigation and federal court claims on behalf of noncitizens to address systemic issues. During the COVID-19 pandemic, RDN has made information available to the public regarding litigation efforts to address the conditions of confinement for people in immigration detention through its website and related media platforms that are accessible to the public. RDN will work with other non-profit advocacy organizations to ensure that the information obtained through these Requests is distributed to directly impacted populations and other stakeholders, and to the public at large.

The Requesters will make any information that they receive from these Requests available to the public, including the press, at no cost. As detailed above, the conditions of immigrants detained in upstate New York is of significant public interest.<sup>6</sup> The Requesters have undertaken this work in

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<sup>6</sup> The treatment of people in ICE custody in upstate New York has generated significant media attention and been the subject of numerous protests. See, e.g., Giulia McDonnell Nieto Del Rio, *ICE is Leaving Asylum Seekers at a*



the public interest and not for any private commercial interest. Access to this information is necessary for the public to meaningfully evaluate the consequences of federal immigration policies and the operations of immigration detention facilities in their communities to which the public has no other way of gaining visibility. The Government must waive or, at minimum, reduce any fees because the Requesters have no commercial interest in the requested information. They request this information to educate the public regarding the Government's operations and activities. *See* 5 U.S.C. § 552(a)(4)(A)(iii).

If a fee waiver is not granted, Requesters in the alternative ask for a limitation of processing fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) (“[F]ees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by . . . a representative of the news media.”). *See also* 6 C.F.R. § 5.11(d)(1) (“No search fees will be charged for requests by . . . representatives of the news media, unless the records are sought for a commercial use.”) The Requesters have engaged pro bono counsel who will be responsible for the reasonable cost of locating and reproducing the requested documents to the extent required by applicable regulations and not otherwise waived. If such costs will exceed \$150, please contact the Requesters and their counsel before incurring them.

### Conclusion

There is an urgent need to inform the public of the policies and practices in immigration detention centers in upstate New York, where egregious treatment of immigrants in ICE custody has resulted and will continue to result in constitutional rights violations, public health risks, and even death, as highlighted by the horrific and preventable death of Pierre, detailed above. The public has a right to know about what happens in the “black box” of ICE custody, particularly as New York considers the Dignity Not Detention bill, which would end current and future ICE contracts with state, municipal, and private facilities. Not only will this information assist advocates defending the rights of detained people in upstate New York, it is also vital to providing the public with the information necessary to engage in the democratic process and public debate regarding ending ICE contracts in New York State.

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*Remote Bus Station in New York*, Documented, Feb. 25, 2022, <https://documentedny.com/2022/02/25/ice-detainees-locator-new-york/>; Alex Love, *Local immigration organizations accuse ICE in Batavia of mishandling*, Rochester First, Dec. 6, 2021, <https://www.rochesterfirst.com/news/local-immigration-charities-accuse-i-c-e-in-batavia-of-mishandling/>; Phil Gambini, *ICE's ill treatment of released [detained people]*, Investigative Post, Apr. 28, 2020, <https://www.investigativepost.org/2020/04/28/ices-ill-treatment-of-released-detainees/>; Phoebe Taylor-Vuolo, *A Man Detained in Batavia is Fighting to Be Deported ICE Has Cancelled His Flight 13 Times.*, Documented NY, Apr. 27, 2021, <https://documentedny.com/2021/04/27/a-man-detained-in-batavia-is-fighting-to-be-deported-ice-has-cancelled-his-flight-13-times/>; Phil Gambini, *Lawyers protest dangers at detention center*, Investigative Post, Mar. 25, 2020, <https://www.investigativepost.org/2020/03/25/lawyers-protest-dangers-at-detention-center/>; Noelle E.C. Evans, *30 detainees test positive for coronavirus at ICE detention center in Batavia*, WBFO – NPR, Feb. 23, 2021, <https://www.wbfo.org/crime/2021-02-23/30-detainees-test-positive-for-coronavirus-at-ice-detention-center-in-batavia/>; Noah Lanard, *“You’re Doing Nothing”: Judge Slams ICE for Failing to Vaccinate Detainees*, Mother Jones, Mar. 4, 2021, <https://www.motherjones.com/politics/2021/03/youre-doing-nothing-judge-slams-ice-for-failing-to-vaccinate-detainees/>; Massarah Mikati, *63% of local ICE detainees contracted COVID-19. Now some are getting first vaccine shot.*, Times Union, Mar. 24, 2021, <https://www.timesunion.com/news/article/63-of-local-ICE-detainees-contracted-COVID-19-16049808.php>; Hamed Aleaziz, *ICE Moved Dozens Of Detainees Across The Country During The Coronavirus Pandemic. Now Many Have COVID-19.*, BuzzFeed News, Apr. 29, 2020, <https://www.buzzfeednews.com/article/hamedaleaziz/ice-immigrant-transfer-jail-coronavirus>.

Certification

The Requesters certify that the above information is true and correct to the best of the Requesters' knowledge. *See* 6 C.F.R. § 5.5(d(3)). If this Request is denied in whole or in part, the Requesters ask that ICE justify all deletions or redactions by reference to specific exemptions of FOIA. The Requesters expect ICE to release all segregable portions of otherwise exempt material, and reserve the right to appeal a decision to withhold any records or to deny Requesters' application for waiver of fees.

If you have any questions regarding the processing of this request, please contact Lauren Wilfong at 323-450-7270 or by email at [Lauren.Wilfong@justiceactioncenter.org](mailto:Lauren.Wilfong@justiceactioncenter.org), or Sarah Gillman at 212-843-0910 or by email at [sarah@defensenetwork.org](mailto:sarah@defensenetwork.org).

Sincerely,

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