



September 4, 2024

SUBMITTED ELECTRONICALLY

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

Re: FOIA Request for Records Related to ICE’s Request for Information and Solicitation For New West Coast Immigration Detention Facilities (Fee Waiver & Expedited Proceeding Requested)

Dear Freedom of Information Officer:

This letter is a request for records (“Request”) made pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, *et seq.*, and the relevant implementing regulations, *see* 6 C.F.R. § 5 *et seq.* The Request is submitted by the American Civil Liberties Union Foundation (“ACLU” or “Requestor”).

Requestor seeks the disclosure of records submitted in response to a Request for Information (“RFI”) titled “ICE West Coast Multi-State RFI,” originally issued by U.S. Immigration and Customs Enforcement (“ICE”) on August 14, 2024, for “available detention facilities for single adult populations (male and female)” in areas covered by the Phoenix, El Paso, Seattle, and San Francisco Enforcement and Removal Operations (“ERO”) Field Offices, to include facilities in Arizona, New Mexico, Washington, Oregon, and Northern California.

Requester also seeks a fee waiver, pursuant to 5 U.S.C. § 552(a)(4)(A) and 6 C.F.R. § 5.11(k), and expedited processing, pursuant to 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5(d). The justifications for the fee waiver and expedited processing are set out in detail below.

I. Background

ICE detains over 37,000 people each day in a network of over 120 immigration detention facilities nationwide.¹ Although ICE owns five detention facilities, it relies on contracts, inter-governmental service agreements, or inter-governmental agreements with private prison

¹ TRACImmigration, *Immigration Detention Quick Facts*, <https://trac.syr.edu/immigration/quickfacts/> [https://perma.cc/46QG-MXMF] (Jul. 14, 2024); ICE ERO, *Authorized Non-Dedicated Facility List, Authorized Dedicated Facility List*, <https://www.ice.gov/doclib/facilityInspections/dedicatedNonDedicatedFacilityList.xlsx> (Jul. 8, 2024).



companies, and local and state jurisdictions, for the use of prisons, jails, and other detention facilities to hold the majority of people in its custody.²

On August 14, 2024, ICE issued a Request for Information (“RFI”) titled the “ICE West Coast Multi-State RFI,” with Notice ID number ICEMULTISTATE01 on Sam.gov, the federal government’s official website for contract opportunities.³ In the accompanying attachment, ICE provided further specifications for the RFI, noting that “ICE is seeking available detention facilities for single adult populations (male and female)” in areas including the Phoenix ERO Field Office (Arizona); the El Paso ERO Field Office (New Mexico); Seattle City ERO Field Office (Washington and Oregon); and San Francisco ERO Field Office (Northern California). The RFI noted that facilities “may be publicly or privately owned and publicly or privately operated.” Responses to the RFI had a deadline of September 15, 2024, and were to be submitted by email to Natasha Nguyen, Contracting Officer, and John Cappello, Contract Specialist.⁴

II. Records Requested

This Request seeks, for the period from August 14, 2024 to the present, the following records:

- 1) All documents submitted in response to a Request for Information (“RFI”) titled “Multi-State Detention Facility Support - Request for Information,” with Notice ID “2024ICEMULTISTATE,” originally issued by U.S. Immigration and Customs Enforcement (“ICE”) on August 14, 2024, to for available detention facilities in areas covered by the Phoenix, El Paso, Seattle, and San Francisco Enforcement and Removal Operations (“ERO”) Field Offices. *See* Exhibit A, Sam.gov, Multi-State Detention Facility Support-Request for Information.⁵

Please construe this as an ongoing FOIA request, so that any records that come into possession of the agency prior to your final response to this FOIA Request should also be considered within the Request’s scope.

² DHS Office of Inspector General, *ICE Does Not Fully Use Contracting Tools to Hold Detention Facility Contractors Accountable for Failing to Meet Performance Standards* 3 (2019), <https://www.oig.dhs.gov/sites/default/files/assets/2019-02/OIG-19-18-Jan19.pdf>.

³ Sam.gov, *ICE West Coast Multi-State RFI*, <https://sam.gov/opp/b062f46b8208474f807af0a75e0d320f/view> [https://perma.cc/6NZD-ME34].

⁴ Exhibit A, *Multi-State Request for Information*, available for download at <https://sam.gov/opp/b062f46b8208474f807af0a75e0d320f/view>.

⁵ Exhibit A, Sam.gov, *ICE West Coast Multi-State RFI*, <https://sam.gov/opp/b062f46b8208474f807af0a75e0d320f/view> [https://perma.cc/6NZD-ME34], and attachment, “West+Coast+Multi+State+RFI.doc”.



For purposes of this Request, the terms listed below are defined as follows:

“DOCUMENTS” has the same scope used in Rule 34(a)(1) of the Federal Rules of Civil Procedure and shall encompass every writing or record of every type and description and every tangible thing that is or has been in the possession, custody, or control of the federal agency or agencies that are the subject of this request and their employees, to which they have access, or of which they have knowledge, including, but not limited to, newspaper articles, magazine articles, news articles, correspondence, letters, contracts, files, electronic mail, memoranda, stenographic notes, handwritten notes, drafts, studies, publications, books, pamphlets, catalogs, purchase orders, receipts, advertisements, direct mail solicitations, point-of-sale and point-of-purchase materials, notebooks, diaries, models, devices, pictures, photographs, films, audiotapes, videotapes, computer records, voice recordings, maps, reports, surveys, minutes, data compilations, and statistical compilations, regardless of whether a particular DOCUMENT is privileged or confidential, and regardless of the form of storage (including, but not limited to, paper, microfiche, magnetic tape, magnetic disk (hard disk or floppy disk), CD-ROM, DVD, optical disk, or electronic storage device).

“ICE-ERO” or “ERO” means Immigration and Customs Enforcement’s Enforcement and Removal Office, and any components, subcomponents, offices, or personnel therein.

“ICE” means Immigration and Customs Enforcement, and any components, subcomponents, offices, or personnel therein.

III. Fee Waiver Request

Requestor requests that any fees associated responding to its FOIA request be waived pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k). Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k), fees should be waived or reduced if disclosure is (1) in the public interest because it is “likely to contribute significantly to public understanding of the operations or activities of the government” and (2) “not primarily in the commercial interest of the requester.” Disclosure in this case meets both of these tests. Requestor also requests a waiver or reduction of fees on the grounds that it qualifies as “representative[s] of the news media” and the records are not sought for commercial use. *See* 5 U.S.C. § 552(a)(4)(A)(ii)(II); 6 C.F.R. § 5.11(d)(1).

A. Disclosure is in the public interest as it is likely to contribute significantly to the public’s understanding of the operations and activities of government.

First, disclosure pursuant to this Request is in the public interest. ICE’s interest in expanding and establishing new immigration detention facilities via the RFI and other similar requests have prompted active concern and attention from Congress, the media, and advocates. In recent weeks, members of Congress have written multiple letters to the Department of

Homeland Security raising concern about potential expansion of the immigration detention system, and urging DHS and ICE to reject contracts with for-profit prison corporations for detention. For example, ten senators wrote to DHS and ICE on May 14, 2024, urging the agency to recommit to phasing out ICE’s use of private, for-profit detention facilities.⁶ On July 16, 2024, U.S. Representatives from Washington State, including Pramila Jayapal and Adam Smith, wrote a letter to DHS calling for the phase out of the use of private, for-profit detention centers for immigrants and consider alternatives to expanding the immigration detention system.⁷

Multiple national news outlets have covered ICE’s recent plans “for an expansion of ICE’s . . . detention capabilities,”⁸ to “increase overall detention capacity” and “expand detention bed space,”⁹ and to “pay for more detention space following President Biden’s executive action on the border.”¹⁰ Local media outlets have similarly covered decisions to expand or close immigration detention facilities in the areas identified by the RFI and solicitation notices.¹¹

⁶ Letter from Sen. Elizabeth Warren, et al., to DHS Secretary Alejandro Mayorkas, May 14, 2024, https://www.warren.senate.gov/imo/media/doc/final_-_letter_to_dhs_and_ice_on_private_detention_center_use_05142024.pdf [https://perma.cc/EJ5T-HC4L].

⁷ Letter from Rep. Pramila Jayapal and Adam Smith, to DHS Secretary Alejandro Mayorkas, Jul. 16, 2024, <https://jayapal.house.gov/wp-content/uploads/2024/07/Mayorkas-Letter-Dilley-Closure-071624.pdf>.

⁸ Rafael Bernal, *Biden Administration’s Immigrant Detention Moves Highlight Strained System*, The Hill, Jun. 15, 2024, <https://thehill.com/homenews/administration/4723342-biden-administration-immigrant-detention-moves-highlight-strained-system/>.

⁹ Ted Hesson, *U.S. To Close Costly Texas Immigration Detention Center and Reroute Funds*, Reuters, Jun. 10, 2024, <https://www.reuters.com/world/us/us-close-costly-texas-immigration-detention-center-reroute-funds-2024-06-10/>.

¹⁰ Michelle Hackman, *Biden to Close ‘Dilley’ Detention Center, Shift Resources Amid Border Crackdown*, Wall St. Journal, Jun. 10, 2024, <https://www.wsj.com/politics/policy/biden-to-close-dilley-detention-center-shift-resources-amid-border-crack-down-2b2cfc5>.

¹¹ See, e.g. Susan Dunlap, *Legislator Introducing Bill to Prevent Immigrant Detention in New Mexico*, New Mexico Political Report, Jan. 19, 2024, <https://nmpoliticalreport.com/nmleg/legislator-introducing-bill-to-prevent-immigrant-detention-in-new-mexico/>; Morgan Lee, *County in Rural New Mexico Extends Agreement with ICE for Immigrant Detention Amid Criticism*, Associated Press, Apr. 24, 2024, <https://apnews.com/article/new-mexico-migrant-detention-facility-extension-032e5695f94490e6a2ff9b06b2cfc8da>; Nimra Ahmad, *Washington Representatives Call for the Closure of Private Immigration Detention Centers*, South Seattle Emerald, Jul. 18, 2024, <https://southseattleemerald.com/2024/07/18/washington-representatives-call-for-the-closure-of-private-immigration-detention-centers/>; Seattle Times Editorial Board, *Pass Dignity for Detained Immigrants Act for Greater Transparency*, Apr. 29, 2024, <https://www.seattletimes.com/opinion/editorials/pass-dignity-for-detained-immigrants-act-for-greater-transparency/>; Conrad Wilson, *NORCOR, Last Jail in Oregon to Hold Immigration Detainees, to End ICE Contract*, Oregon Public Broadcasting, Aug. 22, 2020, <https://www.opb.org/article/2020/08/21/northern-oregon-regional-correctional-facility-norcor-ice/>; Tim Gruver, *Last Jail in Oregon to House Immigration Detainees to End ICE Contract*, Oregonian, Aug. 25, 2020, <https://www.oregonlive.com/pacific-northwest-news/2020/08/last-jail-in-oregon-to-house-immigration-detainees-to-end-ice-contract.html>; Tyche Hendricks, “Waste of Federal Funds”: ICE Ends Contract with Northern California Jail after Years of Outrage Over Conditions, KQED, Dec. 9, 2022, <https://www.kqed.org/news/11934879/waste-of-federal-funds-ice-ends-contract-with-norcal-jail-after-years-of-outrage-over-conditions>; Deepa Fernandes, *Northern California Jail Reopens to Immigrant Detention*, Jan. 16, 2022, <https://www.sfchronicle.com/california/article/Northern-California-jail-reopens-to-immigrant-16765144.php>;



Advocates have likewise raised concern with ICE’s efforts to expand detention: on July 11, 2024, over 200 immigrant rights organizations sent a letter to DHS urging the administration to halt ICE’s detention expansion efforts.¹² Disclosure of the information sought in the Request will contribute significantly to the public’s understanding of ICE’s plans to expand immigration detention in new facilities nationwide.

B. Disclosure is not primarily in the commercial interest of the Requestor.

Second, Requestor is not filing this request to further a commercial interest. Requestor is a 501(c)(3) nonprofit organization and therefore has no commercial interest. Requestor intends to make any relevant information obtained through this FOIA available to the public.¹³ Requestor publishes newsletters, news briefings, right-to-know handbooks, and other materials that are disseminated to the public. These materials are widely available to everyone, including tax-exempt organizations, not-for-profit groups, law students, and faculty, for no cost or for a nominal fee.

Requestor also publishes, analyzes, and disseminates information through its heavily visited website, www.aclu.org. The website addresses civil rights and civil liberties issues in depth, provides features on civil rights and civil liberties issues in the news, and contains many thousands of documents relating to the issues on which Requestor is focused. Requestor’s website also includes many features on information obtained through FOIA requests. For example, the ACLU’s “Predator Drones FOIA” webpage, <https://www.aclu.org/national-security/predator-drones-foia>, contains commentary about the ACLU’s FOIA request, press releases, analysis of the FOIA documents, numerous blog posts on the issue, documents related to litigation over the FOIA request, frequently asked questions about targeted killing, and links to the documents themselves.¹⁴ Requestor has also published a number of charts and explanatory materials that collect, summarize, and analyze information it has obtained through the FOIA. For example, in February 2017 the ACLU produced an analysis of documents released in response to

Suzanne Gamboa, *Rep. Raul Grijalva Wants to End Privately Owned Prisons, Detention Centers*, NBC News, Feb. 11, 2021, <https://www.nbcnews.com/news/latino/rep-ra-l-grijalva-wants-end-privately-owned-prisons-immigrant-n1257339>; Ryan Knappenberger, *Ban on New Private Prison Contracts Will Not Reach ICE Detainees*, Cronkite News, Jan. 29, 2021, <https://cronkitenews.azpbs.org/2021/01/29/ban-on-new-private-prison-contracts-will-not-reach-ice-detainees/>.

¹² Letter from 211 Immigrant Rights Organizations to DHS Sec. Mayorkas, *Pattern of Deteriorating Immigration Detention Conditions Amid Expansion Efforts*, Jul. 11, 2024, <https://www.detentionwatchnetwork.org/sites/default/files/NGO%20Letter%20regarding%20ICE%20Detention%20-%20July%202024.pdf> [https://perma.cc/MM6M-VPW3].

¹³ See 6 C.F.R. § 5.11(k)(1)(ii); 6 C.F.R. § 5.11(k)(3).

¹⁴ See also *FOIA Database Regarding the U.S. Government’s Violent Extremism Initiatives*, ACLU, <https://www.aclu.org/foia-collection/cve-foia-documents>; *TSA Behavior Detection FOIA Database*, ACLU, <https://www.aclu.org/foia-collection/tsa-behavior-detection-foia-database>; *Targeted Killing FOIA Database*, ACLU, <https://www.aclu.org/foia-collection/targeted-killing-foia-database>.

a FOIA request about the TSA’s behavior detection program. Based on information obtained from a February 2018 FOIA for records about ICE’s practice of misrepresenting or concealing their identity when conducting enforcement actions, the ACLU has both sued to stop these practices and provided community resources on the practice.¹⁵ Requestor plans to analyze, publish, and disseminate to the public the information gathered through this Request. The records requested are not sought for commercial use and Requestor plans to disseminate the information disclosed as a result of this Request to the public at no cost.

C. Requestor also qualifies for a fee waiver because it is a representative of the news media and the records are not sought for commercial use.

Requestor is also entitled to a waiver of search fees on the grounds that it qualifies as “representative[s] of the news media” and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II). Requestor meets the statutory and regulatory definitions of “representative[s] of the news media” because it is an “entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii)(III); *see also Nat’l Sec. Archive v. U.S. Dep’t of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (finding that an organization that gathers information, exercises editorial discretion in selecting and organizing documents, “devises indices and finding aids,” and “distributes the resulting work to the public” is a “representative of the news media” for purposes of the FOIA); *ACLU v. U.S. Dep’t of Justice*, 321 F. Supp. 2d 24, 30 n.5 (D.D.C. 2004) (finding non-profit public interest group to be “primarily engaged in disseminating information”).

Obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public are critical and substantial components of Requestor’s work and are among its primary activities. For example, the ACLU regularly publishes *ACLU Magazine* that reports on and analyzes civil liberties-related current events. The magazine is disseminated to over 950,000 households. The ACLU also publishes regular updates and alerts via email to approximately 4 million subscribers (both ACLU members and nonmembers). These updates are additionally broadcast to 4.9 million social media followers (members and non-members). The magazine, email, and social-media alerts often include descriptions and analysis of information obtained through FOIA requests.

Requestor also regularly issues press releases to call attention to documents obtained through FOIA requests, as well as other breaking news,¹⁶ and ACLU attorneys are interviewed

¹⁵ *See* ACLU of S. Cal., *Kidd v. Mayorkas*, available at <https://www.aclusocal.org/en/cases/kidd-v-mayorkas> (describing lawsuit and case developments); ACLU of S. Cal., *ICE Not Welcome: Verify, Document, and Report*, available at <https://www.aclusocal.org/icenotwelcome> (community resources).

¹⁶ *See, e.g.*, Press Release, ACLU, U.S. Releases Drone Strike ‘Playbook’ in Response to ACLU Lawsuit (Aug. 6, 2016), <https://www.aclu.org/news/us-releases-drone-strike-playbook-response-aclu-lawsuit>; Press Release, ACLU,

frequently for news stories about documents released through ACLU FOIA requests.¹⁷ Similarly, Requestor regularly publishes and disseminates reports that include a description and analysis of government documents obtained through FOIA requests.¹⁸ This material is broadly circulated to the public and widely available to everyone for no cost or, sometimes, for a small fee.

Requestor also regularly publishes books, “know your rights” materials, fact sheets, and educational brochures and pamphlets designed to educate the public about civil liberties issues and government policies that implicate civil rights and liberties. The ACLU publishes a widely read blog where original editorial content reporting on and analyzing civil rights and civil liberties news is posted daily. *See* <https://www.aclu.org/blog>. The ACLU creates and disseminates original editorial and educational content on civil rights and civil liberties news through multi-media projects, including videos, podcasts, and interactive features. *See* <https://www.aclu.org/multimedia>.

Underscoring this point, courts have found that other organizations whose mission, function, publishing, and public education activities are similar in kind to Requestor’s are “representatives of the news media” as well. *See, e.g., Elec. Privacy Info. Ctr. v. U.S. Dep’t of Def.*, 241 F. Supp. 2d 5, 10-15 (D.D.C. 2003) (finding non-profit public interest group that disseminated an electronic newsletter and published books was a “representative of the news media” for purposes of the FOIA); *Nat’l Sec. Archive v. U.S. Dep’t of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); *Jud. Watch, Inc. v. U.S. Dep’t of Just.*, 133 F. Supp. 2d 52, 53-54 (D.D.C.

CIA Releases Dozens of Torture Documents in Response to ACLU Lawsuit (June 14, 2016), <https://www.aclu.org/news/cia-releases-dozens-torture-documents-response-aclu-lawsuit>; Press Release, ACLU, U.S. Releases Targeted Killing Memo in Response to Long-Running ACLU Lawsuit (June 23, 2014), <https://www.aclu.org/national-security/us-releases-targeted-killing-memo-response-long-running-aclu-lawsuit>.

¹⁷ *See, e.g.,* Cora Currier, *TSA’s Own Files Show Doubtful Science Behind Its Behavior Screening Program*, Intercept (Feb. 8, 2017), <https://theintercept.com/2017/02/08/tsas-own-files-show-doubtful-science-behind-its-behavior-screening-program/> (quoting ACLU attorney Hugh Handeyside); ABC News, *What Newly Released CIA Documents Reveal About ‘Torture’ in Its Former Detention Program*, ABC News (June 15, 2016), <http://abcn.ws/2jy40d3> (quoting ACLU staff attorney Dror Ladin); Nicky Woolf, *US Marshals Spent \$10M on Equipment for Warrantless Stingray Surveillance*, Guardian (Mar. 17, 2016), <https://www.theguardian.com/world/2016/mar/17/us-marshals-stingray-surveillance-airborne> (quoting ACLU attorney Nate Wessler).

¹⁸ *See, e.g.,* Manar Waheed, *Customs and Border Protection Violated Court Orders During the First Muslim Ban Implementation* (Jan. 24, 2018), <https://www.aclu.org/blog/immigrants-rights/ice-and-border-patrol-abuses/customs-and-border-protection-violated-court>; Vera Eidelman, *We Sued for Records About Trump’s Muslim Bans. Here’s What We Found Out.* (Oct. 24, 2017), <https://www.aclu.org/blog/immigrants-rights/ice-and-border-patrol-abuses/we-sued-records-about-trumps-muslim-bans-heres>; Carl Takei, *ACLU-Obtained Emails Prove that the Federal Bureau of Prisons Covered Up Its Visit to the CIA’s Torture Site* (Nov. 22, 2016), <https://www.aclu.org/blog/speak-freely/aclu-obtained-emails-prove-federal-bureau-prisons-covered-its-visit-cias-torture>; Galen Sherwin et al., ACLU, *Leaving Girls Behind: An Analysis of Washington D.C.’s “Empowering Males of Color” Initiative* (May 27, 2016), <https://www.aclu.org/report/leaving-girls-behind>.



2000) (finding Judicial Watch, self-described as a non-profit “public interest law firm,” a news media requester).¹⁹

As representatives of the news media, Requestor plans to analyze and disseminate to the public the information gathered through this Request. The records requested are not sought for commercial use. On account of these factors, fees associated with responding to FOIA requests are regularly waived for the ACLU as a “representative of the news media.”²⁰ A fee waiver would fulfill Congress’s legislative intent in amending FOIA.²¹ Additionally, on account of these factors, Requestor has not been charged fees associated with responding to FOIA requests on numerous occasions.²²

In sum, because disclosure of the requested documents is in the public interest and not primarily in the commercial interest of the Requestor, and Requestor is a representative of the news media, Requestor is entitled to a total waiver of fees associated with this Request and should, in no event, be required to pay more than reasonable standard charges for document duplication. In the event that you decide not to waive the fees, please provide us with prior notice so that we can discuss arrangements.

¹⁹ Courts have found organizations to be “representatives of the news media” even though they engage in litigation and lobbying activities beyond their dissemination of information and public education activities. *See, e.g., Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 6; *Nat’l Sec. Archive*, 880 F.2d at 1387; *see also Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005); *Judicial Watch, Inc.*, 133 F. Supp. 2d at 53-54.

²⁰ For example, in May 2016, the FBI granted a fee-waiver request regarding a FOIA request submitted to the DOJ for documents related to Countering Violent Extremism Programs. In April 2013, the National Security Division of the DOJ granted a fee-waiver request with respect to a request for documents relating to the FISA Amendments Act. Also in April 2013, the DOJ granted a fee-waiver request regarding a FOIA request for documents related to “national security letters” issued under the Electronic Communications Privacy Act. In August 2013, the FBI granted the fee-waiver request related to the same FOIA request issued to the DOJ.

²¹ *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requestors.’”) (citation omitted); *Citizens for Responsibility and Ethics in Washington v. U.S. Dept. of Educ.*, 593 F. Supp. 2d 261, 268 (D.D.C. 2009) (“[FOIA’s] purpose . . . is to remove the roadblocks and technicalities which have been used by . . . agencies to deny waivers.”) (internal quotation marks and citation omitted).

²² For example, in August 2016, the ICE FOIA Office and DHS Privacy Office both granted fee waivers to the ACLU for a FOIA request seeking a DHS OIG super-memorandum and ICE’s response to that memorandum. Similarly, in March 2016, the ICE Office of the Principal Legal Advisor granted a fee waiver to the ACLU for a FOIA request seeking records about selected deaths in detention, reversing an incorrect denial of a fee waiver by the ICE FOIA Office. In July 2015, the ICE Office of the Principal Legal Advisor granted a fee waiver to the ACLU for a FOIA request seeking records about the use of segregation in ICE detention, reversing an incorrect denial of a fee waiver by the ICE FOIA Office.

IV. Expedited Processing Request

Requestor requests expedited processing of this Request pursuant to 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5(e). There is a “compelling need” for these records, as defined in the statute, because the information requested is “urgen[tly]” needed by an organization primarily engaged in disseminating information “to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II); *see also* 6 C.F.R. § 5.5(e)(1)(ii).

A. *Requestor is an organization primarily engaged in disseminating information in order to inform the public about actual or alleged government activity.*

Requestor is “primarily engaged in disseminating information” within the meaning of the statute. 5 U.S.C. § 552(a)(6)(E)(v)(II). As detailed *supra*, Requestor has the ability and intention to widely disseminate the requested information through a variety of sources, including reports, newsletters, news briefings, right-to-know handbooks, and other materials, to the public at no cost. Indeed, obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public are critical and substantial components of Requestor’s work and are among its primary activities. *See ACLU*, 321 F. Supp. 2d at 29 n.5 (finding non-profit public interest group that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience” to be “primarily engaged in disseminating information”).²³ Moreover, as mentioned *supra*, Requestor intends to distribute the information obtained through this FOIA request via its website and/or other means available to it.

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

The requested records are also urgently needed to inform the public about actual or alleged government activity. *See* 5 U.S.C. § 552(a)(6)(E)(v)(II). Specifically, the requested records pertain to ICE’s active plans to expand immigration detention facilities in Arizona, New Mexico, Washington, Oregon, and Northern California.

²³ Courts have found that the ACLU as well as other organizations with similar missions that engage in information-dissemination activities similar to the ACLU are “primarily engaged in disseminating information.” *See, e.g., Leadership Conference on Civil Rights*, 404 F. Supp. 2d at 260; *ACLU*, 321 F. Supp. 2d at 29 n.5; *Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 11.

Detention of noncitizens, and ICE’s decision to expand or end detention contracts, is a matter of significant government activity and public interest.²⁴ Plans to expand or close detention facilities in the areas identified by the RFI is a matter of widespread media interest, which have closely followed and reported on local and national administrative measures to restrict detention, close detention facilities, or open new facilities in Arizona,²⁵ New Mexico,²⁶ Washington,²⁷ Oregon,²⁸ and Northern California.²⁹ Members of Congress—including those representing states where ICE has sought proposals for expanded immigration detention in this RFI—have repeatedly raised concerns about conditions of confinement, continued presence, use of private prison detention facilities, and expansion of detention with the Department of

²⁴ See, e.g. Ted Hesson, Mica Rosenberg, and Kristina Cooke, *Biden Vowed to Reform Immigration Detention. Instead, Private Prisons Benefited*, Reuters, Aug. 7, 2023, <https://www.reuters.com/world/us/biden-vowed-reform-immigration-detention-instead-private-prisons-benefited-2023-08-07/>; Jose Olivares, *Investigators Wanted to Close an Abusive ICE Facility. Biden’s Administration Extended Its Contract*, The Appeal, Jul. 25, 2024, <https://theappeal.org/biden-admin-extended-contract-abusive-ice-detention-center/>; Austin Fisher, *Torrance County Commission Votes to Extend ICE Contract*, Source New Mexico, Apr. 25, 2024, <https://sourcennm.com/2024/04/25/torrance-county-commission-votes-to-extend-ice-contract/>; Allison Kite, *Shuttered Private Jail in Leavenworth Could Become ICE Detention Center*, Kansas Reflector, Sept. 6, 2023, <https://kansasreflector.com/2023/09/06/shuttered-private-jail-in-leavenworth-could-become-ice-detention-center/>; Jose Abonce, *ICE Detains Illinois Immigrants in Out-of-State Jails*, South Side Weekly, Dec. 6, 2023, <https://southsideweekly.com/ice-detains-chicago-immigrants-in-wisconsin-despite-illinois-way-forward-act/>.

²⁵ See, e.g. Suzanne Gamboa, *Rep. Raul Grijalva Wants to End Privately Owned Prisons, Detention Centers*, NBC News, Feb. 11, 2021, <https://www.nbcnews.com/news/latino/rep-ra-l-grijalva-wants-end-privately-owned-prisons-immigrant-n1257339>; Ryan Knappenberger, *Ban on New Private Prison Contracts Will Not Reach ICE Detainees*, Cronkite News, Jan. 29, 2021, <https://cronkitenews.azpbs.org/2021/01/29/ban-on-new-private-prison-contracts-will-not-reach-ice-detainees/>.

²⁶ See, e.g. Susan Dunlap, *Legislator Introducing Bill to Prevent Immigrant Detention in New Mexico*, New Mexico Political Report, Jan. 19, 2024, <https://nmpoliticalreport.com/nmleg/legislator-introducing-bill-to-prevent-immigrant-detention-in-new-mexico/>; Morgan Lee, *County in Rural New Mexico Extends Agreement with ICE for Immigrant Detention Amid Criticism*, Associated Press, Apr. 24, 2024, <https://apnews.com/article/new-mexico-migrant-detention-facility-extension-032e5695f94490e6a2ff9b06b2cfc8da>.

²⁷ See, e.g. Nimra Ahmad, *Washington Representatives Call for the Closure of Private Immigration Detention Centers*, South Seattle Emerald, Jul. 18, 2024, <https://southseattleemerald.com/2024/07/18/washington-representatives-call-for-the-closure-of-private-immigration-detention-centers/>; Seattle Times Editorial Board, *Pass Dignity for Detained Immigrants Act for Greater Transparency*, Apr. 29, 2024, <https://www.seattletimes.com/opinion/editorials/pass-dignity-for-detained-immigrants-act-for-greater-transparency/>.

²⁸ See, e.g. Conrad Wilson, *NORCOR, Last Jail in Oregon to Hold Immigration Detainees, to End ICE Contract*, Oregon Public Broadcasting, Aug. 22, 2020, <https://www.opb.org/article/2020/08/21/northern-oregon-regional-correctional-facility-norcor-ice/>; Tim Gruver, *Last Jail in Oregon to House Immigration Detainees to End ICE Contract*, Oregonian, Aug. 25, 2020, <https://www.oregonlive.com/pacific-northwest-news/2020/08/last-jail-in-oregon-to-house-immigration-detainees-to-end-ice-contract.html>.

²⁹ See, e.g. Tyche Hendricks, *“Waste of Federal Funds”: ICE Ends Contract with Northern California Jail after Years of Outrage Over Conditions*, KQED, Dec. 9, 2022, <https://www.kqed.org/news/11934879/waste-of-federal-funds-ice-ends-contract-with-norcal-jail-after-years-of-outrage-over-conditions>; Deepa Fernandes, *Northern California Jail Reopens to Immigrant Detention*, Jan. 16, 2022, <https://www.sfchronicle.com/california/article/Northern-California-jail-reopens-to-immigrant-16765144.php>;



Homeland Security.³⁰ The requested records will inform the public of activity by ICE and DHS. 5 U.S.C. § 552(a)(6)(E)(i)(I).

I affirm that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief. *See* 5 U.S.C. § 552(a)(6)(E)(vi) and 6 C.F.R. § 5.5(e)(3).

Thank you for your prompt attention to this Request. We look forward to your reply to this Request within ten (10) business days, as required under 5 U.S.C. § 552(a)(6)(E)(ii) and 6 C.F.R. § 5.5(e)(4). Please furnish all responsive records to:

Dan Galindo
American Civil Liberties Union
125 Broad St.
New York, NY 10004
dgalindo@aclu.org

If this Request is denied in whole or part, we ask that you justify all deletions by reference to specific exemptions of the FOIA. We expect the release of all segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information, or to deny a waiver of fees. Please email or call me at the contact information above if you have any questions or wish to obtain further information about the nature of the records in which we are interested.

Sincerely,

/s/

Dan Galindo
Staff Attorney
ACLU Immigrants' Rights Project

³⁰ Letter from Sen. Elizabeth Warren, et al., to DHS Secretary Alejandro Mayorkas, May 14, 2024, <https://www.warren.senate.gov/imo/media/doc/final-letter-to-dhs-and-ice-on-private-detention-center-use-05142024.pdf> [https://perma.cc/EJ5T-HC4L]; Letter from Rep. Pramila Jayapal and Adam Smith, to DHS Secretary Alejandro Mayorkas, Jul. 16, 2024, <https://jayapal.house.gov/wp-content/uploads/2024/07/Mayorkas-Letter-Dilley-Closure-071624.pdf> [https://perma.cc/Q5JD-PAC8]; Letter from 50 Members of Congress to DHS Secretary Alejandro Mayorkas, Feb. 16, 2024, <https://jayapal.house.gov/wp-content/uploads/2024/02/ICE-Detention-Closure-Letter-021624.pdf> [https://perma.cc/B4TV-75JZ].

EXHIBIT A



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U.S. Immigration and Customs Enforcement

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ICE West Coast Multi-State RFI

Contract Opportunity

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○ ACTIVE

Contract Opportunity

Notice ID
ICEMULTISTATE01

Related Notice

Department/Ind. Agency
HOMELAND SECURITY, DEPARTMENT OF
Sub-tier
US IMMIGRATION AND CUSTOMS ENFORCEMENT
Office
DETENTION COMPLIANCE AND REMOVALS

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General Information

Contract Opportunity Type: Sources Sought (Original)

All Dates/Times are: (UTC-04:00) EASTERN STANDARD TIME, NEW YORK, USA

Original Published Date: Aug 14, 2024 09:25 am EDT

Original Response Date: Sep 15, 2024 05:00 pm EDT

Inactive Policy: 15 days after response date

Original Inactive Date: Sep 30, 2024

Initiative:

- None

Classification

Original Set Aside:

Product Service Code: S206 - HOUSEKEEPING- GUARD

NAICS Code:

- 561612 - Security Guards and Patrol Services

Place of Performance:

USA

Description



The United States Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) is issuing this request for information (RFI) in accordance with Federal Acquisition Regulation (FAR) Part 10 to identify possible detention facilities to house noncitizens in support of its public safety mission

under the authority of the Immigration and Nationality Act (INA), as amended.
See attached RFI document for further informaiton.

Attachments/Links

 [Download All Attachments/Links](#)

Attachments


Document	File Size	Access	Updated Date
 West Coast Multi-State RF I.docx	37 KB	 Public	Aug 14, 2024

Contact Information

Contracting Office Address

500 12TH ST SW
WASHINGTON , DC 20024
USA

Primary Point of Contact

John Cappello
 John.Cappello@ice.dhs.gov

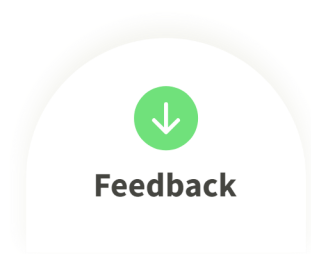
Secondary Point of Contact

Natasha Nguyen

✉ natasha.t.nguyen@ice.dhs.gov

History

↻ Aug 14, 2024 09:25 am EDT
Sources Sought (Original)



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**Multi-state Request for Information
U.S. Immigration and Customs Enforcement
Immigration Detention Services**

A. Introduction

The United States Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) is issuing this request for information (RFI) in accordance with Federal Acquisition Regulation (FAR) Part 10 to identify possible detention facilities to house noncitizens and immigration violators in support of its public safety mission under the authority of the Immigration and Nationality Act (INA), as amended.

The intent of this RFI is to obtain market information for planning purposes and to determine appropriate strategies to meet the agency's requirements. This RFI is issued solely for informational and planning purposes and does not constitute a request for proposal (RFP) or a commitment to a RFP in the future. Responses to this notice are not considered offers and cannot be accepted by the government to form a binding contract. Responders are advised that the government will not pay for any information or administrative costs incurred in response to this announcement and information submitted in response to this RFI will not be returned. ICE may use the information submitted in response to this RFI to determine any potential for future requirements and contingent on operational needs and available funding.

B. Facility Overview and ICE Preferences

ICE is seeking available detention facilities for single adult populations (male and female) within the following:

- **Phoenix ERO Field Office** includes Arizona
Point of Contact: Phoenix.Outreach@ice.dhs.gov
- **El Paso ERO Field Office** includes New Mexico
Point of Contact: ElPaso.Outreach@ice.dhs.gov
- **Seattle City ERO Field Office** includes Washington and Oregon
Point of Contact: Seattle.Outreach@ice.dhs.gov
- **San Francisco ERO Field Office** includes Northern California
Point of Contact: SanFrancisco.Outreach@ice.dhs.gov

Facilities should be within a two-hour surface commute of an ICE field office or sub-office (see below). Interested parties may submit one or more facilities for each field- office and may also support multiple field offices. Facilities may be publicly or privately owned, and publicly or

privately operated. Please submit the information below for each geographic area of interest. Submissions should be clearly labeled with the geographic area of interest and are limited to 15 pages including photographs.

Proposed solutions must be capable of providing all infrastructure, services, equipment, and personnel necessary to house ICE noncitizens in a safe and secure environment in accordance with ICE [Performance Based National Detention Standards 2011](#)). If your organization is unable to comply with these standards, please clearly describe what additional efforts are required, including renovations, staffing, etc.

Additionally, ICE is seeking:

- Approximately 850 to 950 detention beds (15%-20% for females) for each field office for low, medium-low, medium-high, and high-level security adult noncitizens, to include a dedicated dorm(s) or special housing unit(s) for ICE noncitizens with custody classifications of medium-high and high.
- Facilities with segregation unit(s), an infirmary, and local access to general acute hospital care to include an emergency room, surgical and mental health services, and access to public and commercial transportation routes and services.
- Dedicated facilities solely for ICE use are preferred; however, ICE will consider detention facilities housing other detained populations if separation from ICE detainees is maintained.
- For additional information regarding ICE's detention network please visit: <https://www.ice.gov/detain/detention-management>.

C. RFI Responses:

- Interested parties should submit the following information:
 - Point of contact information (name, title, phone number, address, email address).
 - Facility address(es).
 - Facility information: percentage of proposed facility for ICE use up to 100%. Less than 100% is acceptable; however, provide the composition of other populations and their percentage of the overall facility capacity.
 - Facility ownership.
 - Proposed facility operator.
 - Date of last use, population, and operator.
 - Dedicated or shared facility.
 - Year built.
 - Capacity:
 - Number of housing units and beds (by gender and classification)
 - Beds available for ICE use
 - General population (GP) beds
 - Intake beds

- Segregation beds
 - Medical beds
 - o Information on medical, dental, and mental health clinical space.
 - o Capacity and information on visitation areas to include video teleconferencing space and capabilities.
 - o Capacity and information on administrative space and parking availability for ICE and various stakeholders.
 - o Size of, and information on, outdoor recreation area.
 - o Photographs of the exterior and interior.
 - o Timeframe for availability for ICE use.
 - o Transportation distances and names of local hospitals, transportation hubs (airport, bus, train), fire stations, and immigration court.
 - o Availability of, and access to, local consulates and pro-bono legal services
- Interested parties should also provide responses to the following:
 - o Current detention or transportation services provided to ICE, Customs and Border Protection, U.S. Marshals Service, Federal Bureau of Prisons, or other federal agencies.
 - o In the past, the government has priced detention contracts with an all-in bed day rate. Provide other pricing structures that you believe could be used to better distribute risk between the government and a contractor which might result in better operational and business outcomes for all parties.
 - o Any recommended changes to ICE's requirements to better meet *best value*, i.e., by reducing cost substantially without sacrificing the effectiveness of core operations.
 - o Identity potential hiring/staffing challenges.
 - o List potential impediments to facility operation (pending or expected legal issues, state/county statutes, political concerns including opposition to ICE mission within local and state government/community, etc.).

D. RFI Submission

Responses must be submitted no later than **5 p.m. Eastern Time on 15 September 2024**. Responses cannot exceed **15 pages** in length. Responses shall be submitted to the following personnel via email:

Natasha Nguyen, Contracting Officer, natasha.t.nguyen@ice.dhs.gov
 John Cappello, Contract Specialist, john.cappello@ice.dhs.gov

Interested parties may provide additional feedback (i.e., questions, comments, etc.) to the government regarding this RFI. Government responses to industry feedback may not be provided or published. However, if formally solicited, industry feedback may be considered when finalizing the solicitation documentation including the requirements of the statement of work.

Please note that responses to this RFI may be subject to a Freedom of Information Act release. If any information in the response is proprietary, then it must be clearly identified and labeled as such.

AOR	Office Type	Address	City	Region	Zip
ELP	Sub-Field Office	1140 Commerce Drive Ste. B	Las Cruces	NM	88011
ELP	Sub-Field Office	500 N. Richardson Avenue	Roswell	NM	88201
ELP	Sub-Field Office	26 McGregor Range Road	Chaparral	NM	88081
ELP	Sub-Field Office	5441 Watson Drive SE	Albuquerque	NM	87106
PHO	Field Office	2035 N. Central Ave.	Phoenix	AZ	85004
PHO	Sub-Field Office	6431 South Country Club Road	Tucson	AZ	85706
PHO	Sub-Field Office	7431 E. 30th St.	Yuma	AZ	85365
SEA	Field Office	12500 Tukwila International Blvd	Seattle	WA	98168
SEA	Sub-Field Office	1623 East J Street	Tacoma	WA	98421
SEA	Sub-Field Office	825 Jadwin Avenue	Richland	WA	99352
SEA	Sub-Field Office	301 Yakima Street	Wenatchee	WA	98801
SEA	Sub-Field Office	411 West Cataldo Avenue	Spokane	WA	99201
SEA	Sub-Field Office	5200 Industrial Place	Ferndale	WA	98248
SEA	Sub-Field Office	3701 River Road	Yakima	WA	98902
SFR	Sub-Field Office	443 Redcliff Drive	Redding	CA	96002
SFR	Sub-Field Office	650 Capitol Mall, Room I-120	Sacramento	CA	95814
SFR	Sub-Field Office	603 San Juan Ave	Stockton	CA	95203
SFR	Sub-Field Office	220 Vineyard Ct, Suite #10	Morgan Hill (San Jose)	CA	95037
SFR	Sub-Field Office	630 Sansome St	San Francisco	CA	94111
SFR	Sub-Field Office	733 L Street	Fresno	CA	93721
SFR	Sub-Field Office	800 Truxtun Ave, 1st Floor,	Bakersfield	CA	93301