

EXHIBIT A



September 10, 2024

Sent via Email

FOIA/PA Section
Office of General Counsel, Room 924
Federal Bureau of Prisons
320 First Street, N.W.
Washington, DC 20534
Email: BOP-OGC-EFOIA-S@BOP.GOV

Re: FOIA Request for Records Related to Use of BOP Facilities for Immigration Detention (Fee Waiver & Expedited Processing 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* 28 C.F.R. § 16.1, *et seq.*; 28 C.F.R. § 513 *et seq.* The Request is submitted by the American Civil Liberties Union Foundation of Southern California (“ACLU SoCal” or “Requestor”).

As specified below, Requestor seeks the disclosure of **records related to the use of Bureau of Prisons (“BOP”) facilities for immigration detention from the period of January 1, 2017 through the present, including but not limited to policy memoranda, detention standards, contracts and any other documents regarding the use of BOP facilities to hold people in the custody of U.S. Immigration and Customs Enforcement (“ICE”).**

Requester also seeks a fee waiver, pursuant to 5 U.S.C. § 552(a)(4)(A), 28 C.F.R. § 16.10(k), and 28 C.F.R. § 513.67, and expedited processing, pursuant to 5 U.S.C. § 552(a)(6)(E), 28 C.F.R. § 16.5(e), and 28 C.F.R. § 513.68. The justifications for the fee waiver and expedited processing are set out in detail below.

I. Background

As part of its processing and removal operations, ICE detains noncitizens, often for prolonged periods of time stretching weeks, months, and years. While ICE maintains some of its own detention centers and its own contracts with private companies for additional detention space, ICE has also relied on a range of facilities from other sources ranging from commercial lodging facilities to converted military bases.

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Presidential-candidate Donald Trump has publicly stated his plans to, if reelected in 2024, conduct mass deportations of noncitizens on an unprecedented scale.¹ A critical aspect of this scheme involves the facilities where ICE will detain these individuals pending their proceedings and deportation flights. This Request seeks information regarding BOP’s role in the immigration detention apparatus.

Indeed, during Trump’s first term in office, ICE incarcerated noncitizens in five federal prisons in the western United States to meet, in ICE’s words, a growing “demand for additional immigration detention space” resulting from a surge in border crossings and the federal government’s the Zero Tolerance Policy.² ICE detained thousands of noncitizens in prisons including the Federal Correctional Institution Victorville Medium II (“FCI Victorville”), a violent and understaffed medium-security federal prison in San Bernardino County.³ Detained noncitizens at FCI Victorville faced degrading and punitive conditions—including enduring strip searching and shackling, and being denied basic necessities like adequate food and water, medical care, language services, and the ability to practice their religion. ICE only transferred individuals out of the facility after detained people brought suit challenging their conditions of confinement.⁴ Yet despite the prior use of BOP facilities for immigration detention, there is very little in the public domain about the underlying contracts, operative detention standards, or policies pertaining to ICE’s use of such facilities. Requestor seeks to understand the BOP facilities available for any future administration, including one under Trump to use as part of his proposed mass deportation system.

II. Requestor

ACLU SoCal is a non-profit organization dedicated to defending and securing the rights granted by the U.S. Constitution and Bill of Rights. ACLU SoCal’s work focuses on immigrants’ rights, the First Amendment, equal protection, due process, privacy, and furthering civil rights for disadvantaged groups. As part of its work, ACLU SoCal monitors ICE enforcement practices and detention conditions. ACLU SoCal disseminates information to the public through its website and social media platforms, “Know Your Rights” documents, and other educational and informational materials. The ACLU SoCal regularly submits FOIA requests to DHS and other agencies – including, for example, on ICE’s policies and practices for worksite immigration enforcement, and USCIS’s policies and practices for the adjudication of naturalization applications – and publicizes the information it obtains through its website, newsletters, reports and “Know Your Rights” presentations and materials.

III. Definitions

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

¹ Ronald Brownstein, *Trump’s ‘Knock on the Door’*, Atlantic (Feb. 8, 2024), <https://www.theatlantic.com/politics/archive/2024/02/trumps-immigration-plan-is-even-more-aggressive-now/677385/>.

² Sarah N. Lynch & Kristina Cooke, *Exclusive - U.S. sending 1,600 immigration detainees to federal prisons*, Reuters (June 7, 2018), <https://www.reuters.com/article/world/exclusive-u-s-sending-1-600-immigration-detainees-to-federal-prisons-idUSKCN1J32X9/>.

³ Complaint, *Teneng v. Trump*, No. 5:18-cv-01609 (C.D. Cal. Aug. 1, 2018), ECF No. 1.

⁴ *Id.*; see also Conrad Wilson, *ICE Removes Immigration Detainees From Federal Prisons, Including Washington; 3 Remain In Oregon*, Northwest Public Broadcasting (Oct. 21, 2018), <https://www.nwpb.org/2018/10/21/ice-removes-immigration-detainees-from-federal-prisons-including-washington-3-remain-in-oregon/>.

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

“BOP” means Bureau of Prisons, and any components, subcomponents, offices, or personnel therein.

“BOP FACILITY” means any prison or other detention facility operated by or on behalf of BOP.

“DETENTION STANDARDS” means any set of requirements, regulations, or guidelines involving medical care, mental health care, dental care, access to counsel, visitation, searches of people’s bodies or their possessions, shackling, food, water, telephones, programming, library access, or religious services for people detained in a facility, including ICE’s National Detention Standards, Performance-Based National Detention Standards, and Family Residential Standards; the Bureau of Prisons Clinical Guidance and Program Statements; and the US Marshals Service Federal Performance-Based Detention Standards.

IV. Records Requested

This Request seeks:

1. DOCUMENTS sufficient to show all DETENTION STANDARDS that have applied, from January 1, 2017 through the present, to people who are in the legal custody of ICE but who are held in a BOP FACILITY.
2. All contracts or agreements between ICE and BOP, dated between January 1, 2017 and the present, regarding use of BOP FACILITIES to hold people who are in the legal custody of ICE; and,
3. Policy memoranda and other DOCUMENTS, effective between January 1, 2017 and the present, setting out BOP policy with respect to holding people in the legal custody of other agencies (such as ICE or the U.S. Marshals Service) in BOP facilities.

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

V. 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), 28 C.F.R. § 16.10(k), and 28 C.F.R. § 513.67. Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 28 C.F.R. § 16.10(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); 28 C.F.R. § 16.10(c)(1)(i), (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. Presidential-candidate Trump's proposed deportation machine has attracted significant interest from advocates, lawmakers, and the public. But Trump's plans “face a bottleneck in detention space.”⁵ Indeed, one of the biggest deterrents to Trump's attempt to carry out mass deportations during his presidency, according to one former senior administration official, “was limited space to house people while they were awaiting a court proceeding.”⁶

To address that bottleneck, it is anticipated that ICE may use any and all detention space available to it—including existing space in facilities run by localities and private prison companies, hotels and BOP facilities—as well as building so-called “detention camps” on military bases and airfields. As described above, during Trump's first administration, ICE detained thousands of asylum seekers and other noncitizens in multiple federal prisons as part of its “Zero Tolerance Policy” in order to deter noncitizens from seeking refuge in the United States by subjecting them to horrific conditions.⁷ Because of ICE's restrictive policies preventing noncitizens in those prisons from contacting attorneys by phone or in person, courts found that government officials were denying noncitizens' their right to access counsel and issued emergency orders remedying those constitutional violations.⁸ Reports about this and other punitive conditions at these facilities garnered much public attention.⁹

⁵ Isaac Arnsdorf, Nick Miroff & Josh Dawsey, *Trump and Allies Planning Militarized Mass Deportations, Deportation Camps*, Wash. Post (Feb. 21, 2024), <https://www.washingtonpost.com/politics/2024/02/20/trump-mass-deportations-immigration/>.

⁶ *Id.*

⁷ Mot. for Preliminary Injunction, *Teneng v. Trump*, No. 5:18-cv-01609 (C.D. Cal. Sept. 5, 2018), ECF No. 42.

⁸ *See Innovation L. Lab v. Nielsen*, 310 F. Supp. 3d 1150, 1165 (D. Or. 2018); *Castillo v. Nielsen*, No. 5:18-cv-01317-ODW-MAA, 2018 WL 6131172, at *3-4 (C.D. Cal. June 21, 2018).

⁹ *See, e.g.,* Conrad Wilson, *Hundreds of Immigrant Detainees Held In Federal Prisons*, NPR (Aug. 23, 2018), <https://www.npr.org/2018/08/23/641165251/legal-battles-began-when-migrants-were-sent-to-federal-prisons>; Leighton Akio Woodhouse, *Immigrant Detainees Describe Abusive Conditions in 'Guantánamo Bay for Asylum-Seekers'*, The Intercept (Aug. 2, 2018), <https://theintercept.com/2018/08/02/immigrant-prison-abuse-california/>;

Given Trump's and his associated policy makers' clear intent to expand immigration detention as part of his proposed deportation machine, the public has a substantial interest in learning about existing contracts, standards and policies regarding the BOP's facilities that can be used to detain people in ICE custody.

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

Second, Requestor is not filing this request to further a commercial interest. The Requestor is a 501(c)(3) nonprofit organization that intends to disseminate the information gathered by this request to the public at no cost, including through the Requestor's website and social media. The ACLU SoCal regularly disseminates information to its members through action alerts, emails and newsletters (the ACLU SoCal has more than 28,000 members). See <http://www.aclusocal.org/about/>. Requestor may also compile a report or other publication on the government's treatment of immigrants based on information gathered through this FOIA. Requestor has repeatedly used information gathered through FOIA to disseminate information to the public through such forums. See, e.g., <http://www.aclu.org/immigrants-rights/immigrant-detainee-rights-are-routinely-systematically-violated-new-report-finds> (ACLU SoCal report based on documents disclosed through FOIA). See also <http://www.aclusocal.org/about/report-directory/> (compiling recent ACLU SoCal reports). For example, 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, ACLU SoCal has both sued to stop this practice and provided community resources on it.¹⁰ Thus, 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); 28 C.F.R. § 16.10(c)(1)(i). 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 *Electronic Privacy Information Center v. Department of Defense*, 241 F. Supp. 2d 5 (D.D.C. 2003) (non-profit organization that gathered information and published it in newsletters and otherwise for general distribution qualified as representative of news media for purpose of limiting fees). Courts have reaffirmed that nonprofit requestors who are not traditional news media outlets can qualify as representatives of the new media for the purposes of the FOIA, including after the 2007 amendments to the FOIA. See *ACLU of Washington v. U.S. Dep't of Just.*, No. C09-0642RSL, 2011 WL 887731, at *18 (D. Wash. Mar. 10, 2011) (finding that the ACLU qualifies as a "representative of the news media").

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

¹⁰ See ACLU of S. Cal., *Kidd v. Mayorkas* (last visited Aug. 2, 2024), <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* (last visited Aug. 2, 2024), <https://www.aclusocal.org/icenotwelcome> (community resources).

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.

VI. Expedited Processing Request

Requestor requests expedited processing of this Request pursuant to 5 U.S.C. § 552(a)(6)(E), 28 C.F.R. § 16.5(e), and 28 C.F.R. § 513.68. 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); 28 C.F.R. 16.5(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 v. Dep’t of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (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”). 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 information about the use of BOP facilities to detain noncitizens pending deportation. As described *supra*, this is a matter of widespread media and public interest, particularly as it pertains to presidential-candidate Trump’s plans, and the requested records will inform the public concern about this general subject. 5 U.S.C. § 552(a)(6)(E)(i)(I).

Furthermore, denial of expedited disclosure of the requested records could “reasonably be expected to pose an imminent threat to the life or physical safety of an individual.” 5 U.S.C. § 552(a)(6)(E)(v)(I); 28 C.F.R. § 16.5(e)(1)(i). The prospect of using BOP facilities to detain noncitizens presents a serious threat of harm. As described above, asylum seekers detained at federal prisons in 2018 experienced degrading and punitive conditions in silo until courts had to intervene. At FCI Victorville, Sikh detainees who were fleeing religious persecution reported suicidal ideations after federal officials deprived them of the ability to cover their heads with

turbans and would not provide other religious accommodations like vegetarian meals.¹¹ The facility was also dangerously understaffed, resulting in insufficient medical care, with potentially long-lasting consequences.¹²

Thus, the records that Requestor seeks regarding the contracts, detention standards and policies for immigration detention in BOP facilities would proactively informing the public in a manner that can serve to reduce the threat of harm to individuals who may be detained at those facilities. Given the foregoing, Requestor has satisfied the requirements for expedited processing of this Request.

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); 28 C.F.R. § 16.5(e)(3); 28 C.F.R. § 513.68.

VII. Conclusion

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).

Please call me at (909) 380-7505 or email me at ebitran@aclusocal.org if you have any questions or wish to obtain further information about the nature of the records in which we are interested. Please furnish the applicable records via email (ebitran@aclusocal.org).

If the records must be sent via U.S. Mail, please send to the following address:

Eva Bitran
ACLU of Southern California
1313 W. 8th Street
Los Angeles, CA 90017

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.

Sincerely,



Eva Bitran
ACLU of Southern California
1313 W. 8th Street
Los Angeles, CA 90017

¹¹ Rebecca Plevin, *At federal prison where up to 1,000 immigrant detainees are held, staff struggles to keep up after disease outbreak*, Desert Sun (July 17, 2018), <https://www.desertsun.com/story/news/2018/07/18/immigrant-detainees-held-victorville-prison-face-hunger-disease/794346002/>.

¹² *Id.*; see also *supra* note 7.