

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

NATIONAL IMMIGRANT JUSTICE)
CENTER,)
Plaintiff,) Case No.
v.)
UNITED STATES DEPARTMENT OF)
HOMELAND SECURITY, and UNITED)
STATES IMMIGRATION AND CUSTOMS)
ENFORCEMENT,)
Defendants.)

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, as amended, to order defendants United States Department of Homeland Security (“DHS”) and United States Immigration and Customs Enforcement (“ICE”) to produce information related to intergovernmental service agreements (“IGSAs”) between DHS or ICE and any state, municipal, or county entity regarding the housing of immigrant detainees. DHS/ICE has failed to conduct an adequate search for responsive documents to plaintiff National Immigrant Justice Center’s (“NIJC”) April 27, 2011 FOIA request seeking this information.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331 because this action arises under FOIA and the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*

3. Venue lies in the Northern District of Illinois pursuant to 5 U.S.C. § 552(a)(4)(B) because NIJC’s principal place of business is within this district.

PARTIES

4. Plaintiff NIJC is an Illinois non-profit entity dedicated to ensuring human rights protections and access to justice for immigrants, refugees, and asylum seekers. NIJC provides direct legal services to more than 10,000 individuals each year and advocates for these populations through direct representation, policy reform, impact litigation, and public education. It is crucial to NIJC's mandate to obtain information regarding the government's detention of non-citizens to ensure the protection of civil rights and liberties of detained individuals where there are no formal mechanisms to ensure such oversight. NIJC's principal place of business is Chicago, Illinois. NIJC submitted the FOIA request that is the subject of this action.

5. Defendant DHS is an agency of the United States within the meaning of 5 U.S.C. § 552(f)(1). DHS has possession of, and control over, the information sought by NIJC under FOIA.

6. Defendant ICE is a component agency of DHS and is an agency of the United States within the meaning of 5 U.S.C. § 552(f)(1). ICE has possession of, and control over, the information sought by NIJC under FOIA.

FACTUAL ALLEGATIONS

7. DHS/ICE enters into contracts with various state, municipal, and county facilities around the country to detain immigrants.

8. DHS/ICE contracts with these facilities to detain immigrants are known as “inter-governmental service agreements,” or “IGSAs.”

9. DHS/ICE does not regularly and voluntarily publish any inspections, reviews or audits - whether formal or informal - for compliance with governing detention standards for any of the facilities under contract with it.

10. On April 27, 2011, NIJC submitted a request pursuant to FOIA to DHS/ICE requesting various documents in DHS/ICE's possession. Exhibit A. Specifically, NIJC requested:

1. Please provide copies of all intergovernmental service agreements ("IGSAs") executed at any point after 2002 between ICE or DHS and any state, municipal or county entity;
2. Please provide copies of all IGSAs executed at any point after 2002 between federal agencies other than ICE and DHS, including the U.S. Marshals, the Office of the Federal Detention Trustee, and the former Immigration and Nationality Service, with any state, municipal or county entity, which are in possession of ICE or DHS;
3. As to any IGSA contract extensions executed after 2002 between ICE, DHS, or other federal agencies, please provide the contract extension as well as the original contract, if not provided pursuant to paragraph 1 or 2 of this request;
4. Please provide copies of all contract detention facility agreements ("CDFs") currently in effect to house immigrant detainees at any privately-owned facility, including those executed by ICE or DHS, and those executed by other federal agencies which are in possession of ICE or DHS;
5. Please provide copies of all current agreements or Memorandums of Understanding ("MOUs") with any other federal entity to house immigrant detainees;
6. Please provide copies of all records related to reviews, audits, and inspections conducted by DHS/ICE/ERO [DHS's branch for Enforcement and Removal Operation] or any other governmental entity; or by any private entity contracted by ICE/ERO, such as the Nakamoto Group; or in facilities that house immigrant detainees for fiscal years 2007, 2008, 2009, 2010, and 2011;
7. Please provide copies of any ratings assigned by ICE, DHS, or ERO to any IGSA, CDF, or federal facility employed to house immigrant detainees, from 2007 to the present. Please also provide worksheets, evaluations and/or criteria requirements for any review, audit, or inspection conducted by DHS/ICE/ERO or by any

other governmental entity; or by any private entity contracted by ICE/ERO, such as the Nakamoto Group; and

8. Please provide any evaluations performed by any non-governmental entity, such as the American Bar Association (ABA), for fiscal years 2007, 2008, 2009, 2010 and 2011, through the present.

Id.

11. The information was requested to “obtain information to further the public’s understanding of federal immigration detention policies and practices” and to “inform the public of the scope and effect of the government’s collaboration with local detention facilities.” *Id.*

12. DHS/ICE received NIJC’s April 27, 2011 FOIA request on May 3, 2011. Exhibit B.

13. DHS/ICE responded to NIJC’s April 27, 2011 FOIA request on June 21, 2011, assigning it reference number 2011FOIA8213.¹ *Id.*

14. In its June 21, 2011 response, DHS/ICE indicated that information pertaining to Requests 1-3 and 5-8 in NIJC’s April 27, 2011 FOIA request could be found “online in our ICE website under the section ‘ICE FOIA Library.’ ” *Id.* DHS/ICE also stated that it was still processing NIJC’s request for the information in Request 4 of NIJC’s April 27, 2011 FOIA request. *Id.*

15. On August 26, 2011, NIJC responded to DHS/ICE’s preliminary response to NIJC’s FOIA request. Exhibit C. In this response, NIJC noted that DHS/ICE’s response to Requests 1-3 and 5-8 was incomplete, for many documents that would be responsive to those requests were not available on ICE’s website. *Id.*

¹ The June 21, 2011 letter mistakenly referred in the text to reference number 2011FOIA8931, instead of 2011FOIA8213. Exhibit B.

16. On October 22, 2011, DHS/ICE responded to NIJC's August 26, 2011 letter, treating it as an appeal of the adequacy of DHS/ICE's search. Exhibit D.

17. In its October 22, 2011 response, DHS/ICE determined that "additional responsive records may be found in locations the agency has not yet searched" and "remand[ed] [the] appeal to ICE FOIA for processing and re-tasking to the appropriate agency/office(s) to obtain any responsive documents." *Id.*

18. Having received no further substantive response from DHS/ICE, NIJC filed a timely appeal on March 30, 2012. Exhibit E.

19. DHS/ICE received NIJC's appeal on April 16, 2012 and responded on April 18, 2012. Exhibit F.

20. DHS/ICE assigned NIJC's appeal of its FOIA request the reference number OPLA12-470. *Id.*

21. On June 1, 2012, DHS/ICE provided a further response to NIJC's appeal. Exhibit G.

22. In its June 1, 2012 response, DHS/ICE remanded NIJC's appeal to the DHS/ICE FOIA unit to continue processing NIJC's FOIA request. *Id.*

23. In remanding NIJC's April 27, 2011 FOIA request, DHS/ICE assigned it a new case number, 2012FOIA3030. *Id.*

24. Further, DHS/ICE stated that an "interim release of responsive records" to what is now 2012FOIA3030 would be completed by June 29, 2012. *Id.*

25. Although June 29, 2012 has passed, NIJC has not received any "interim release of responsive records" or any other substantive response from DHS/ICE to its FOIA request.

26. No exceptional circumstances prevent DHS/ICE from responding to NIJC's FOIA request.

COUNT I

27. NIJC incorporates and realleges paragraphs 1- 26 above.
28. The requested records in NIJC's FOIA request are agency records subject to FOIA.
29. Upon information and belief, DHS/ICE have records responsive to NIJC's FOIA request in their possession.
30. NIJC has a statutory right to the records it seeks, and there is no legal basis for DHS/ICE's refusal to produce them.
31. DHS/ICE's failure to execute a sufficient search and to produce responsive records violates FOIA, 5 U.S.C. § 552(a).
32. Alternatively, DHS/ICE's failure to produce the requested documents is arbitrary and capricious.
33. DHS/ICE failed to respond to NIJC's request and to its appeal within the statutory time period. Thus, NIJC is deemed to have exhausted its administrative remedies.

RELIEF REQUESTED

WHEREFORE, NIJC prays that this Court:

- a) Enter judgment in favor of NIJC and against defendants DHS and ICE;
- b) Declare that DHS and ICE unlawfully failed to respond to NIJC's FOIA Request 2011FOIA8213 and 2012FOIA3030;
- c) Enjoin the withholding of responsive records to NIJC's FOIA Request 2011FOIA8213 and 2012FOIA3030 and order the production of responsive documents and information;
- d) Find that DHS's and ICE's failure to respond to NIJC's FOIA Request 2011FOIA8213 and 2012FOIA3030 is arbitrary and capricious;

- e) Award NIJC its costs and reasonable attorneys' fees in this action; and
- f) Grant such other and further relief as the Court may deem just and proper.

Dated: July 9, 2012

Respectfully submitted,

By: /s/ Samuel Fifer
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*Attorneys for National Immigrant Justice
Center*

13065369

EXHIBIT A



National Immigrant Justice Center

27 April 2011

Catrina M. Pavlik-Keenan, FOIA Officer
Immigration and Customs Enforcement
Freedom of Information Act Office,
800 North Capitol Street, NW, Room 585
Washington, DC 20536

Dear Ms. Pavlik-Keenan:

This is a request for information under the Freedom of Information Act ("FOIA"), 5 U.S.C. §552. We request any and all records in the custody or control of the U.S. Department of Homeland Security ("DHS"), including the Immigration and Customs Enforcement ("ICE") and its branch for Enforcement and Removal Operation ("ERO") (or its predecessor the Office of Detention and Removal, "DRO"), which fit the following description:

1. Please provide copies of all intergovernmental service agreements ("IGSAs") executed at any point after 2002 between ICE or DHS and any state, municipal or county entity;
2. Please provide copies of all IGSAs executed at any point after 2002 between federal agencies other than ICE and DHS, including the U.S. Marshals, the Office of the Federal Detention Trustee, and the former Immigration and Nationality Service, with any state, municipal or county entity, which are in possession of ICE or DHS;¹
3. As to any IGSA contract extensions executed after 2002 between ICE, DHS, or other federal agencies, please provide the contract extension as well as the original contract, if not provided pursuant to paragraph 1 or 2 of this request;
4. Please provide copies of all contract detention facility agreements ("CDFs") currently in effect to house immigrant detainees at any privately-owned facility, including those executed by ICE or DHS, and those executed by other federal agencies which are in possession of ICE or DHS;
5. Please provide copies of all current agreements or Memorandums of Understanding ("MOUs") with any other federal entity to house immigrant detainees;
6. Please provide copies of all records related to reviews, audits, and inspections conducted by DHS/ICE/ERO or any other governmental entity; or by any private entity contracted by ICE/ERO, such as the Nakamoto Group;

¹ We understand that many agreements signed by other federal agencies specifically authorize and envision that immigrant detainees will be held pursuant to those agreements.

or in facilities that house immigrant detainees for fiscal years 2007, 2008, 2009, 2010, and 2011;

7. Please provide copies of any ratings assigned by ICE, DHS, or ERO to any IGSA, CDF, or federal facility employed to house immigrant detainees, from 2007 to the present. Please also provide worksheets, evaluations and/or criteria requirements for any review, audit, or inspection conducted by DHS/ICE/ERO or by any other governmental entity; or by any private entity contracted by ICE/ERO, such as the Nakamoto Group; and
8. Please provide any evaluations performed by any non-governmental entity, such as the American Bar Association (ABA), for fiscal years 2007, 2008, 2009, 2010 and 2011, through the present.

Electronic versions of the requested documents on compact discs are preferred. Please produce with the records any metadata and load files, so that the records can be accessed, searched, and displayed in a manner comparable to an ICE user. If codes are employed, please also produce any documents in your possession explaining the codes employed, and what they signify.

Please construe this as an ongoing FOIA request, so that any records that come within the possession of the agency prior to your response to this FOIA request should also be considered within the scope of the request. Please provide data that is current as of the day of production of the data.

If all or part of any of this request is denied, please specify the exemption(s) claimed for withholding each item of data. If some portion(s) of the requested materials are determined to be exempt, please provide the remaining non-exempt portions. 5 U.S.C. §552(b). To the extent that materials are excised, please "black out" these materials, rather than "whiting out" or "cutting out" these materials. We reserve the right to appeal any decision(s) to withhold information and expect that you will list the address and office to which such an appeal may be directed. 5 U.S.C. §552(a)(6)(A)(i). Please reply to this request within twenty working days, or as required by statute. *Id.*

Fee Waiver

The Requester is entitled to a waiver of all costs because the information sought "is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the [Requester's] commercial interest." 5 U.S.C. § 552(a)(4)(A)(iii); see also 6 C.F.R. § 5.11(k) (records furnished without charge if the information is in the public interest, and disclosure is not in the commercial interest of the institution). The Requester has a proven track-record of compiling and disseminating information to the public about government functions and activities. We intend to make your response – and an analysis thereof – publicly available on our website, www.immigrantjustice.org. The issue of immigration detention is one of significant public interest generally, and the issue of how the federal government interacts with state and local governments in maintaining the federal immigration detention regime is of significant interest particularly. The Requester has undertaken this work in the public interest and not for any private commercial interest. The primary purpose of this FOIA request is to obtain information to further the public's understanding of federal

immigration detention policies and practices. Access to this information is a prerequisite for the public to meaningfully evaluate the costs and consequences of federal immigration detention policies, and the public has an interest in knowing about the manner in which the federal government involves state and local entities in the federal immigration detention system. The Records sought in this request will inform the public of the scope and effect of the government's collaboration with local detention facilities.

As stated above, the Requester has no commercial interest in this matter. The Requester will make any information that it receives as a result of this FOIA request available to the public, including the press, at no cost. Disclosure in this case therefore meets the statutory criteria, and a fee waiver would fulfill Congress' legislative intent in amending FOIA. 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 of noncommercial requesters.'").

Because the documents subject to this request are not sought for any commercial use, we understand that no fee may be charged for the first two hours of search time or for the first 100 pages of duplication. 5 U.S.C. §552(a)(4)(A)(iv)(II). If you decline to waive these fees, and if these fees will exceed \$100.00, please notify us of the amount of these fees before fulfilling this request. We note that under FOIA, an agency may only charge "reasonable standard charges for document duplication," and not search-related costs, to "a representative of the news media." Under the 2007 amendments to FOIA, "a representative of the news media," means "any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into distinct work, and distributes that work to an audience." 5 U.S.C. § 552(a)(6)(A)(ii). "News" means "information that is about current events or that would be of current interest to the public." Examples of news media entities includes "alternative media" that disseminate their publications for free "through telecommunications services," i.e., the internet. As noted above, NIJC has a track record of turning raw material into reports and other publications for distribution to the general public, which it does at no charge. Because NIJC qualifies as "a representative of the news media" under the revised statutory definition, you should not charge NIJC any search-related costs for this FOIA request. Should you have any questions regarding NIJC's work in gathering information and using editorial skills to digest or distribute that information to the general public, please advise me, and I will be happy to provide examples and explanation.

In the alternative, the Requester seeks all applicable reductions in fees pursuant to 6 C.F.R. § 5.11(d). The Requester agrees to pay for the first 100 pages of duplication. See 6 C.F.R. § 5.11(d). The Requester agrees to pay search, duplication, and review fees up to \$200.00. If the fees will amount to more than \$200.00, the Requester requests a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). If no fee waiver is granted and the fees exceed \$200.00, please contact the Requester at the telephone number below to obtain consent to incur additional fees.

Certification

The Requester certifies that the above information is true and correct to the best of the Requester's knowledge. See 6 C.F.R. § 5.5(d)(3). If you have any questions regarding this request, please feel free to call me at my direct line, 312-660-1608.

Sincerely,

Claudia Valenzuela
(Tel.): 312-660-1308
(Fax): 312-660-1505
(Email): cvalenzuela@heartlandalliance.org

EXHIBIT B

U.S. Department of Homeland Security
800 North Capitol Street NW Stop 5009
Washington, DC 20536-5050



U.S. Immigration
and Customs
Enforcement

June 21, 2011

CLAUDIA VALENZUELA
HEARTLAND ALLIANCE
208 S. LASALLE ST., STE 1818
CHICAGO, IL 60604

Re: ICE FOIA Case # 2011FOIA8213

Dear Ms. Valenzuela:

This is in further response to your April 27, 2011, Freedom of Information Act (FOIA) request to Immigration and Customs Enforcement (ICE), for copies of all intergovernmental services agreements (IGSAs) executed at any point after 2002 between ICE and DHS and any state, municipal or county entity;

Copies of all IGSAs executed at any point after 2002 between federal agencies other than ICE and DHS, including the U.S. Marshals, the Office of the Federal Detention Trustee, and the former Immigration and Nationality Service, with any state, municipal or county entity, which are in possession of ICE or DHS;

Any IGSA contract extensions executed after 2002 between ICE, DHS, or other federal agencies, please provide the contract extension as well as the original contract, if not provided pursuant to paragraph 1 or 2 of this request;

Copies of all current agreements or Memorandums of Understanding (MOUs) with any other federal entity to house immigrant detainees;

Copies of all records related to review, audits, and inspections conducted by DHS/ICE/ERO or any other governmental entity; or by any private entity contracted by ICE/ERO, such as the Nakamoto Group; or in facilities that house immigrant detainees for fiscal years 2007, 2008, 2009, 2010, and 2011;

Copies of any ratings assigned by ICE, DHS, or ERO to any IGSA, CDF, or federal facility employed to house immigrant detainees, from 2007 to present. Provide worksheets, evaluations, and/or inspection conducted by DHS/ICE/ERO or by any other governmental entity, or by any private entity contracted by ICE/ERO, such as the Nakamoto Group; and

Any evaluations performed by any non-governmental entity, such as the American Bar Association (ABA), for fiscal years 2007, 2008, 2009, 2010, and 2011, through the present. Your request was received in this office on May 3, 2011.

The information pertaining to the items listed above, is available online in our ICE website under the section "ICE FOIA Library" at the URL below:

<http://www.ice.gov/foia/>

The remainder of your request seeking copies of all contract detention facility agreements (DFCs) currently in effect to house immigrant detainees at any privately owned facility, including those executed by ICE or DHS, and those executed by other federal agencies which are in possession of ICE or DHS; is still out for processing. We have queried the appropriate offices within ICE for responsive records. If any responsive records are located, they will be reviewed for our 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.

If you have any questions regarding these records found on our website, please reference FOIA case number **2011FOIA8931**. You may contact this office at (202) 732-0300 or (866) 633-1182.

Sincerely,


✓ Catrina M. Pavlik-Keenan
FOIA Officer

EXHIBIT C



National Immigrant Justice Center

26 August 2011

Catrina M. Pavlik-Keenan, FOIA Officer
Immigration and Customs Enforcement
Freedom of Information Act Office,
800 North Capitol Street, NW, Room 585
Washington, DC 20536

Dear Ms. Pavlik-Keenan:

I am in receipt of your preliminary response to the Freedom of Information Act (FOIA) request made by me on behalf of the NIJC on April 27, 2011. In your response, you noted our request for the following:

1. Please provide copies of all intergovernmental service agreements ("IGSAs") executed at any point after 2002 between ICE or DHS and any state, municipal or county entity;
2. Please provide copies of all IGSAs executed at any point after 2002 between federal agencies other than ICE and DHS, including the U.S. Marshals, the Office of the Federal Detention Trustee, and the former Immigration and Nationality Service, with any state, municipal or county entity, which are in possession of ICE or DHS;¹
3. As to any IGSA contract extensions executed after 2002 between ICE, DHS, or other federal agencies, please provide the contract extension as well as the original contract, if not provided pursuant to paragraph 1 or 2 of this request;
4. Please provide copies of all contract detention facility agreements ("CDFs") currently in effect to house immigrant detainees at any privately-owned facility, including those executed by ICE or DHS, and those executed by other federal agencies which are in possession of ICE or DHS;
5. Please provide copies of all current agreements or Memorandums of Understanding ("MOUs") with any other federal entity to house immigrant detainees;
6. Please provide copies of all records related to reviews, audits, and inspections conducted by DHS/ICE/ERO or any other governmental entity; or by any private entity contracted by ICE/ERO, such as the Nakamoto Group; or in facilities that house immigrant detainees for fiscal years 2007, 2008, 2009, 2010, and 2011;

¹ We understand that many agreements signed by other federal agencies specifically authorize and envision that immigrant detainees will be held pursuant to those agreements.

7. Please provide copies of any ratings assigned by ICE, DHS, or ERO to any IGSA, CDF, or federal facility employed to house immigrant detainees, from 2007 to the present. Please also provide worksheets, evaluations and/or criteria requirements for any review, audit, or inspection conducted by DHS/ICE/ERO or by any other governmental entity; or by any private entity contracted by ICE/ERO, such as the Nakamoto Group; and
8. Please provide any evaluations performed by any non-governmental entity, such as the American Bar Association (ABA), for fiscal years 2007, 2008, 2009, 2010 and 2011, through the present.

You also stated in your response that the majority of documents we requested, - essentially all but request #4 – are currently available on your website, www.ice.gov/foia/. Further, we understand that you are currently working on responding to Request #4.

However, a review of your website calls into question whether DHS/ICE has been responsive to our other requests thus far. I will note your attention to the following:

- With regard to Requests # 1, 2 and 3, there are currently 123 Inter-governmental Service Agreements (IGSAs) – either original or extensions – on your website. Even assuming *arguendo* that all of those IGSAs are current and active contracts, that would still leave 50%, 123 IGSAs and CDFs, unaccounted for. For example, we would note the absence of ICE's contracts to detain immigrants at the McHenry County Jail in Woodstock, Illinois and Boone County Jail in Burlington, Kentucky;
- As far as we can ascertain, with regard to Request #5, there are no Memorandums of Understanding (MOUs) between ICE and other federal entities available for public viewing on ICE's website;
- With regard to Requests #6 and #7 (facility reviews, audits, inspections and ratings by DRO or a private entity), the ICE website has reports by DRO for only select facilities dating through spring 2010. The ICE website also has limited reviews, audits and inspections by the Commission on Accreditation for Corrections through the year 2009 and also, only for a limited number of facilities. To the extent ICE possess more current reviews, audits, and inspections, these do not appear to be on ICE's website.
- The same preceding point also applies to Request # 8: ICE's website does not contain any evaluations performed by a non-governmental entity beyond 2008 (evaluations for the ABA end in 2008 and in 2004 for the UNHCR).

Given the above-outlined points, we consider your response to Requests # 1-3 and 5-8 to be incomplete. Therefore, we ask that you review your responses on these requests and amend as appropriate. To the extent you can direct us more specifically to the sites that contain requested information, we ask that you provide us with these links. To the extent that ICE does not in fact have anything other than what is online – i.e., no entity has conducted reviews, audits or inspections for non-listed facilities, or no reviews, audits or inspections have occurred since the years noted above (keeping in mind that we have requested documents through 2011 for *all* facilities), please confirm that as well in response to our FOIA request.

If you have any questions regarding this request, please feel free to call me at my direct line, 312-660-1308.

Sincerely,

Claudia Valenzuela
(Tel.): 312-660-1308
(Fax): 312-660-1505
(Email): cvalenzuela@heartlandalliance.org

EXHIBIT D

**U.S. Department of Homeland Security
500 12th St. SW; STOP 5009
Washington, DC 20536-5009**



**U.S. Immigration
and Customs
Enforcement**

October 20, 2011

CLAUDIA VALENZUELA
HEARTLAND ALLIANCE
NIJC
208 S. LASALLE ST. SUITE 1818
CHICAGO, IL 60604

RE: OPLA11-276, 2011FOIA8213

Dear Ms. Valenzuela:

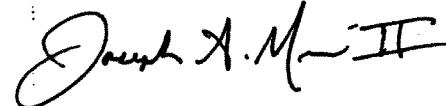
This is in response to your letter dated August 26, 2011, appealing the adverse determination in response to your Freedom of Information Act/Privacy Act (FOIA/PA) request. The initial request asked for records regarding Intergovernmental services agreements (IGSAs) executed at any point after 2002 between ICE and DHS and any state, municipal, or county entity.

U.S. Immigration and Customs Enforcement (ICE) initially denied your request by returning a search of the ICE Office of Enforcement and Removal Operations which did not locate any records. However, you have appealed the adequacy of the search as returning no responsive documents. Our analysis follows.

The initial determination by ICE FOIA indicated that the records responsive to your request were available in the ICE FOIA Library at the relevant link. However, you indicated in your appeal that many IGSA's were not accounted for on the website. Additionally, no private entity examinations of ERO were located by you on the website. Although you are incorrect in asserting that MOU's are not located on the ICE FOIA Library, in examining the underlying request, no indication is given that a search was conducted beyond referring you to the ICE FOIA Library. As such, it is likely that additional responsive records may be found in locations the agency has not yet searched. We are therefore remanding your appeal to ICE FOIA for processing and re-tasking to the appropriate agency/office(s) to obtain any responsive documents. This decision does not constitute a waiver of fees that may be assessed pursuant to the processing of your request on remand.

Should you have any questions regarding this appeal closure, please contact ICE at ice-foia@dhs.gov. In the subject line of the email please include the word "appeal", your appeal number, which is **OPLA11-276** and the FOIA case number, which is **2011FOIA8213**.

Sincerely,



Susan Mathias
Chief
Government Information Law Division
ICE Office of the Principal Legal Advisor
Department of Homeland Security

EXHIBIT E



National Immigrant Justice Center

30 March 2012

Associate General Counsel (General Law)
Department of Homeland Security
FOIA Appeals
Washington, D.C. 20528

RE: APPEAL RELATING TO FOIA #2011FOIA8213 and FOIA #2011FOIA8931

Dear Counsel:

This is an appeal pursuant to 5 U.S.C. § 552(a)(6)(A)(ii) in light of ICE's failure to respond to the Freedom of Information Act (FOIA) Request filed by the National Immigrant Justice Center (NIJC) on April 27, 2011. See Attachment A. To date, we have received no documents responsive to that request. Because the time period for ICE to respond pursuant to 5 U.S.C. § 552(a)(6)(A)(i) has elapsed, an appeal is therefore proper.

Procedural History:

On June 21, 2011, ICE responded to our April 27, 2011 request, stating that the majority of the documents requested in our FOIA Request were available online, and that ICE would process only the request relating to contract detention facility agreements ("CDFs"). See Request #4 below and Attachment B. On August 29, 2011, we filed a response to ICE's June 21, 2011 preliminary response to our FOIA Request. Specifically, we noted that, contrary to the assertion in ICE's June 21, 2011 response, there are many documents not in fact available online. See Attachment C. The agency treated our August 29, 2011 as an appeal and sustained it, returning the request to ICE with instructions to process our FOIA Request. (Please note: Your June 21, 2011 response referenced "FOIA #2011FOIA8931"; out of an abundance of caution, we reference that additional FOIA number in the "RE" line shown above.) See Attachment D. However, as noted, we have received no documents in response to our April 27, 2011 FOIA.

Appeal:

Please note that in this appeal, we re-affirm all aspects of our April 27, 2011 FOIA Request, in which we requested the following documents:

1. Copies of all intergovernmental service agreements ("IGSAs") executed at any point after 2002 between ICE or DHS and any state, municipal or county entity;
2. Copies of all IGSAs executed at any point after 2002 between federal agencies other than ICE and DHS, including the U.S. Marshals, the Office of the Federal Detention Trustee, and the former Immigration and Nationality Service, with any state, municipal or county entity, which are in possession of ICE or DHS;

3. As to any IGSA contract extensions executed after 2002 between ICE, DHS, or other federal agencies, please provide the contract extension as well as the original contract, if not provided pursuant to paragraph 1 or 2 of this request;
4. Copies of all contract detention facility agreements ("CDFs") currently in effect to house immigrant detainees at any privately-owned facility, including those executed by ICE or DHS, and those executed by other federal agencies which are in possession of ICE or DHS;
5. Copies of all current agreements or Memorandums of Understanding ("MOUs") with any other federal entity to house immigrant detainees;
6. Copies of all records related to reviews, audits, and inspections conducted by DHS/ICE/ERO or any other governmental entity; or by any private entity contracted by ICE/ERO, such as the Nakamoto Group; or in facilities that house immigrant detainees for fiscal years 2007, 2008, 2009, 2010, and 2011;
7. Copies of any ratings assigned by ICE, DHS, or ERO to any IGSA, CDF, or federal facility employed to house immigrant detainees, from 2007 to the present. Please also provide worksheets, evaluations and/or criteria requirements for any review, audit, or inspection conducted by DHS/ICE/ERO or by any other governmental entity; or by any private entity contracted by ICE/ERO, such as the Nakamoto Group; and
8. Any evaluations performed by any non-governmental entity, such as the American Bar Association (ABA), for fiscal years 2007, 2008, 2009, 2010 and 2011, through the present.

Moreover, we re-iterate all other aspects of our April 27, 2011 FOIA Request:

"Electronic versions of the requested documents on compact discs are preferred. Please produce with the records any metadata and load files, so that the records can be accessed, searched, and displayed in a manner comparable to an ICE user. If codes are employed, please also produce any documents in your possession explaining the codes employed, and what they signify."

"Please construe this as an ongoing FOIA request, so that any records that come within the possession of the agency prior to your response to this FOIA request should also be considered within the scope of the request. Please provide data that is current as of the day of production of the data."

"If all or part of any of this request is denied, please specify the exemption(s) claimed for withholding each item of data. If some portion(s) of the requested materials are determined to be exempt, please provide the remaining non-exempt portions. 5 U.S.C. §552(b). To the extent that materials are excised, please "black out" these materials, rather than "whiting out" or "cutting out" these materials. We reserve the right to appeal any decision(s) to withhold information and expect that you will list the address and office to which such an appeal may be directed. 5 U.S.C. §552(a)(6)(A)(i). Please reply to this request within twenty working days, or as required by statute. *Id.*

“Fee Waiver”

“The Requester is entitled to a waiver of all costs because the information sought “is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the [Requester’s] commercial interest.” 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 6 C.F.R. § 5.11(k) (records furnished without charge if the information is in the public interest, and disclosure is not in the commercial interest of the institution). The Requester has a proven track-record of compiling and disseminating information to the public about government functions and activities. We intend to make your response – and an analysis thereof – publicly available on our website, www.immigrantjustice.org. The issue of immigration detention is one of significant public interest generally, and the issue of how the federal government interacts with state and local governments in maintaining the federal immigration detention regime is of significant interest particularly. The Requester has undertaken this work in the public interest and not for any private commercial interest. The primary purpose of this FOIA request is to obtain information to further the public’s understanding of federal immigration detention policies and practices. Access to this information is a prerequisite for the public to meaningfully evaluate the costs and consequences of federal immigration detention policies, and the public has an interest in knowing about the manner in which the federal government involves state and local entities in the federal immigration detention system. The Records sought in this request will inform the public of the scope and effect of the government’s collaboration with local detention facilities.

“As stated above, the Requester has no commercial interest in this matter. The Requester will make any information that it receives as a result of this FOIA request available to the public, including the press, at no cost. Disclosure in this case therefore meets the statutory criteria, and a fee waiver would fulfill Congress’ legislative intent in amending FOIA. *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 of noncommercial requesters.’”).

“Because the documents subject to this request are not sought for any commercial use, we understand that no fee may be charged for the first two hours of search time or for the first 100 pages of duplication. 5 U.S.C. §552(a)(4)(A)(iv)(II). If you decline to waive these fees, and if these fees will exceed \$100.00, please notify us of the amount of these fees before fulfilling this request. We note that under FOIA, an agency may only charge “reasonable standard charges for document duplication,” and not search-related costs, to “a representative of the news media.” Under the 2007 amendments to FOIA, “a representative of the news media,” means “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(6)(A)(ii). “News” means “information that is about current events or that would be of current interest to the public.” Examples of news media entities includes “alternative media” that disseminate their publications for free “through telecommunications services,” i.e., the internet. As noted above, NIJC has a track record of turning raw material into reports and other publications for distribution to the general public, which it does at no charge. Because NIJC qualifies as “a representative of the news media” under the revised statutory definition, you should not charge NIJC any search-related costs for this FOIA request. Should you have any questions regarding NIJC’s work in gathering information and using editorial skills to digest or distribute that information to

the general public, please advise me, and I will be happy to provide examples and explanation.

"In the alternative, the Requester seeks all applicable reductions in fees pursuant to 6 C.F.R. § 5.11(d). The Requester agrees to pay for the first 100 pages of duplication. See 6 C.F.R. § 5.11(d). The Requester agrees to pay search, duplication, and review fees up to \$200.00. If the fees will amount to more than \$200.00, the Requester requests a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). If no fee waiver is granted and the fees exceed \$200.00, please contact the Requester at the telephone number below to obtain consent to incur additional fees.

"Certification"

"The Requester certifies that the above information is true and correct to the best of the Requester's knowledge. See 6 C.F.R. § 5.5(d)(3)...."

Conclusion

Please note that pursuant to 5 U.S.C. § 552(a)(6)(A)(ii), we expect you will make a determination with respect to our appeal within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of our appeal.

If you have any questions regarding this request, please feel free to call me at my direct line, 312-660-1308.

Sincerely,



Claudia Valenzuela
(Tel.): 312-660-1308
(Fax): 312-660-1505
(Email): cvalenzuela@heartlandalliance.org

**Cc: Samuel Fifer, Esq., SNR Denton US LLP, Chicago, Illinois
 James A. Klenk, Esq., SNR Denton US LLP, Chicago, Illinois**

EXHIBIT F

U.S. Department of Homeland Security

500 12th ST. SW; STOP 5009

Washington, DC 20536-5009



U.S. Immigration
and Customs
Enforcement

April 18, 2012

CLAUDIA VALENZUELA
HEARTLAND ALLIANCE
NATIONAL IMMIGRANT JUSTICE CENTER
208 S. LASALLE SUITE 1818
CHICAGO, IL 60604

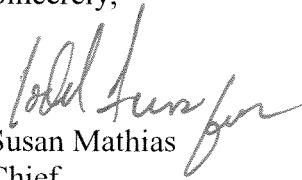
Dear Sir or Madam:

The Department of Homeland Security has received your letter appealing the adverse determination of your Freedom of Information Act/Privacy Act (FOIA/PA) request by U.S. Immigration and Customs Enforcement seeking records regarding IGSA's. Your appeal, dated March 30, 2012, was received on April 16, 2012.

On behalf of the Chief for the Government Information Law Division, we acknowledge your appeal request of **2011FOIA8213** and are assigning it number **OPLA12-470** for tracking purposes. Please reference this number in any future communications about your appeal.

A high number of FOIA/PA requests have been received by the Department. Accordingly, we have adopted the court-sanctioned practice of generally handling backlogged appeals on a first-in, first-out basis.¹ While we will make every effort to process your appeal on a timely basis, there may be some delay in resolving this matter. Should you have any questions concerning the processing of your appeal, please contact ICE FOIA at 1-202-732-0600, or by email at ice-foia@dhs.gov.

Sincerely,


Susan Mathias

Chief

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

¹ Appeals of expedited treatment denials will be handled on an expedited basis.

EXHIBIT G

U.S. Department of Homeland Security
500 12th St. SW, STOP 5009
Washington, DC 20536-5009



U.S. Immigration
and Customs
Enforcement

June 1, 2012

CLAUDIA VALENZUELA
HEARTLAND ALLIANCE
NATIONAL IMMIGRANT JUSTICE CENTER
208 S. LASALLE SUITE 1818
CHICAGO, IL 60604

RE: OPLA12-470; 2011FOIA8213, 2012FOIA3030

Dear Ms. Valenzuela:

This is in response to your letter dated March 30, 2012 appealing the constructive denial of your Freedom of Information Act (FOIA) request by U.S. Immigration & Customs Enforcement (ICE). Your initial request, (2011FOIA8213) remanded and assigned FOIA case number 2012FOIA3030. Your original request asked for:

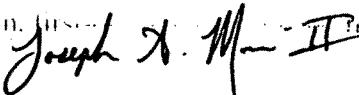
- Copies of all intergovernmental services agreements (IGSAs) executed at any point after 2002 between ICE or DHS and any state, municipal or county entity;
- Copies of all IGSA's executed at any point after 2002 between federal agencies other than ICE and DHS, including the U. S. Marshals, the Office of the Federal Detention Trustee, and the former Immigration and Nationality Service, with any state, municipal or county entity, which are in possession of ICE or DHS;
- Any IGSA contract extensions executed after 2002 between ICE, DHS, or other federal agencies, please provide the contract extension as well as the original contract, if not provided pursuant to paragraph 1 or 2 of this request;
- Copies of all contract detention facility agreements (DCF's) currently in effect to house immigrant detainees at any privately owned facility, including those executed by ICE or DHS, and those executed by other federal agencies which are in possession of ICE or DHS;
- Copies of all current agreements or Memorandums of Understanding (MOU's) with any other federal entity to house immigrant detainees;
- Copies of all records related to review, audits, and inspections conducted by DHS/ICE/ERO or any other governmental entity; or by any private entity contracted by ICE/ERO, such as the Nakamoto Group; or in facilities that house immigrant detainees for fiscal years 2007, 2008, 2009, 2010, and 2011;
- Copies of any ratings assigned by ICE, DHS, or ERO to any IGSA, CDF, or federal facility employed to house immigrant detainees, from 2007 to present. Provide worksheets, evaluations and/or inspection conducted by DHS/ICE/ERO or by any other governmental entity; or by any private entity contracted by ICE/ERO, such as the Nakamoto Group; and
- Any evaluations performed by any non-governmental entity, such as the American Bar Association (ABA), for fiscal years 2007, 2008, 2009, 2010 and 2011, though the present.

You have appealed the constructive denial of this claim based upon ICE FOIA's failure to provide you with a response to your FOIA request within the twenty (20) days provided by statute.

ICE has begun processing your request on a "first-in, first-out basis" and is permitted to respond to relatively simple requests more quickly than requests involving complex and/or voluminous records. In your FOIA request, a search has been conducted and responsive records are being processed. Therefore, we are remanding your appeal to ICE FOIA so that they may complete their processing of these records and provide a direct response to you. Due to the voluminous nature of your request, the ICE FOIA Office anticipates that an interim release of responsive records will be complete by June 29, 2012.

Should you have any questions regarding this appeal closure, please contact ICE at ice-foia@dhs.gov. In the subject line of the email please include the word "appeal", your appeal number, which is **OPLA12-470**, and the FOIA case numbers, which are **2011FOIA8213**, and **2012FOIA3030**.

Sincerely,


Susan Mathias
Chief
Government Information Law Division
ICE Office of the Principal Legal Advisor
Department of Homeland Security