



January 18, 2022

VIA EMAIL TO:

U.S. Immigration and Customs Enforcement
Freedom of Information Act Office
500 12th Street, S.W., Stop 5009
Washington, D.C. 20536-5009
Email: ICE-FOIA@dhs.gov

Re: FOIA Request Related to Enforcement Activities of the Philadelphia Field Office

Dear Reviewing Officer:

Juntos and the American Civil Liberties Union (ACLU) of Pennsylvania submit this Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 *et seq.*, request for production of records (the "Request"). The Requesters also seek a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 5 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(e). The justification for the fee waiver and expedited processing are set out in detail following the Request.

I. Records Requested

Juntos and the ACLU of Pennsylvania seek release of any and all records prepared, received, transmitted, collected, and/or maintained by U.S. Immigration and Customs Enforcement (ICE) which describe, refer, or relate to policies, guidelines, or procedures regarding the Philadelphia Field Office's enforcement, detention, and removal actions. Unless otherwise noted, we request the records specified below from January 20, 2021 to present.

A. Definitions

For purposes of this request, the term "communications" means any transmittal of information from one person or entity to another by any means, including letters, correspondence, notes, memoranda, records, reports, papers, facsimiles, electronic mail (whether to, from, copied or blind copied), electronic mail generated from a hand held personal device including a Blackberry or iPhone, instant messaging, electronic mail generated from business or personal email accounts, internet relay chat, news group, group or collaboration servers, electronic bulletin boards, electronic discussion boards, dictation tapes, video recordings, audio recordings, digital recordings, memoranda, telegrams, teletypes and telexes, teleconference,

collaboration servers (including share point servers), web-based or software virtual meetings including Microsoft Teams, Zoom, Web-X and any other meeting software and share point servers, and oral contact such as face-to-face discussions or meetings, telephone conversations, and voice mail messages.

For purposes of this request, the term “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 ICE and its 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, agendas, 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).

For purposes of this request, “data compilations” has the same scope used in Rule 34(a)(1)(A) of the Federal Rules of Civil Procedure.

For purposes of this request, the term “DHS” means Department of Homeland Security, and any components, subcomponents, offices, or personnel therein.

For purposes of this request, the term “ICE” means U.S. Immigration and Customs Enforcement, and any components, subcomponents, offices, or personnel therein.

For the purposes of this request, the term “Philadelphia Field Office” means the ICE office with an Area of Responsibility of Delaware, Pennsylvania, and West Virginia.

For purposes of this request, “detainee” means any person subject to ICE arrest and detention, including individuals who were detained but are now released.

For the purposes of this request, “the Pekoske memo” means the January 20, 2021 Memorandum by David Pekoske, Acting Secretary, entitled *Review of and Interim Revision to Civil Immigration Enforcement and Removal Policies and Priorities*.

For the purposes of this request, “the Johnson memo” means the February 18, 2021 Memorandum by Tae D. Johnson, Acting ICE Director, entitled *Interim Guidance: Civil Immigration Enforcement and Removal Priorities*.

For the purposes of this request, “the Mayorkas Memo” means the September 30, 2021 Memorandum by Secretary Alejandro N. Mayorkas entitled *Guidelines for the Enforcement of Civil Immigration Law*.

B. Specific Records Requested

1. Any and all documents by the Philadelphia Field Office that seek preapproval to engage in civil immigration enforcement or removal actions that do not meet the priorities under the Johnson Memo. *See* Johnson Memo at 6. This includes but is not limited to all requests seeking preapproval under the Johnson Memo.
2. Any and all documents relating to the weekly enforcement actions of the Philadelphia Field Office, including but not limited to the weekly written reports that “identify[] each enforcement action taken in the prior week, including the applicable priority criterion, if any; (2) [] a narrative justification for the action; and (3) [] the date, time, and location of the action.” Johnson Memo at 7.
3. Any and all documents relating to the weekly removal actions of the Philadelphia Field Office, including but not limited to the weekly written reports that “identify[] each removal in the prior week, including the applicable priority criterion, if any; (2) [] a narrative justification for the removal; and (3) [] the date, time, and location of the removal.” Johnson Memo at 7.
4. Any and all documents and communications, including ICE directives, policies, procedures, protocols, and training, regarding the Pekoske, Johnson, and/or Mayorkas Memos and their implementation. This includes all versions of the documents that were in effect during the request period, as well as any updates, amendments, and attachments thereto.
5. Any and all documents relating to the enforcement and removal actions of the Philadelphia Field Office under the Mayorkas memo, including but not limited to reports that “collect detailed, precise, and comprehensive data as to every aspect of the enforcement actions” taken under this Memo. Mayorkas Memo at 6.
6. Any and all documents, communications, and other records, including spreadsheets, lists, and other data complications, regarding arrest, detention, continued detention, and/or release of people of detainees within the responsibility of the Philadelphia Field Office.
7. Any and all documents, communications, and other records, including spreadsheets, lists, and other data complications regarding the factors used in determining whether the Philadelphia Field Office should pursue an enforcement or removal action.
8. Any and all documents, communications, and other records, including spreadsheets, lists, and other data compilations, regarding the release and/or transfer of detainees at York County Prison between July 1, 2021 and August 12, 2021.
9. Any and all documents, communications, and/or other records regarding the termination of the IGSA contract with York County.

C. Request Parameters

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

Where available, we request that records responsive to this request be produced in the original electronic format with all metadata and load files. We ask that any records produced in PDF, TIFF, or other image formats be produced in full, uncompressed form; please do not compress images or downsample the resolution, as this interferes with their legibility. To facilitate a speedy response, we ask that records responsive to this request be produced on a rolling basis.

Additionally, requesters do not seek the names or contact information of individuals or other exempt personal identifiable information of people referenced in the records requested herein. If any of the requested records contain exempt personal identifiable information, Requesters ask that said personal identifiable information be redacted to ensure the maximum production of responsive relational information contained within the records. Nothing in this request should be construed as a waiver of Requesters' right to challenge any redactions made on the basis of personal identifiable information, including in the event of litigation regarding this FOIA request.

II. The Requesters

Juntos is a community-led, Latinx immigrant organization in South Philadelphia fighting for human rights to education and immigration for workers, parents, youth, and immigrants. They believe that every human being has the right to a quality education and the freedom to live with dignity regardless of immigration status. Juntos combines leadership development, community organizing, and focused collaborations with other community-based and advocacy organizations to build the power of community members so they may be active agents of change and work against their own oppression.

The ACLU of Pennsylvania is a non-profit, non-partisan organization and a state affiliate of the American Civil Liberties Union (ACLU), a national organization works to protect civil liberties of all people, including the safeguarding of the basic constitutional rights that include due process of law.

III. Request for Fee Waiver

Juntos and ACLU of Pennsylvania request 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. The ACLU of Pennsylvania also requests a waiver or reduction of fees on the grounds that the ACLU

qualifies as a “representative[] 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. The Request is likely to contribute significantly to public understanding of the operations or activities of the government.

The enforcement activities of the Philadelphia Field Office are of great concern to the public. Community based organizations, including Juntos, Asian Americans United, Casa San Jose, Movement of Immigrant Leaders in Pennsylvania, New Sanctuary Movement of Philadelphia, and Vietlead have been organizing for years to push back against ICE and hold them accountable. Most recently, they worked together to demand the release of people detained at York County Prison after it was announced that the ICE contract was ending. A collective effort between these community based organizations and legal service providers secured the release of over 100 people.¹ ICE’s activities have also been of interest to media² and elected officials.³

This concern has continued despite the change in administration, as the Philadelphia Field Office continues an aggressive stance on enforcement and removal. They have flouted their own agency guidance and have continued detaining people who clearly fall outside agency guidelines.⁴ Not only that, but the Philadelphia Field Office has also recently expanded the number of detention beds available in the state.⁵

¹ Laura Benshoff, *York County Prison has no more ICE detainees. Advocates call it a ‘partial victory,’* WHYY (August 12, 2021), <https://whyy.org/articles/york-county-prison-has-no-more-ice-detainees-advocates-call-it-a-partial-victory/>

² *See e.g.* Deborah Sontag & Dale Russakoff, *In Pennsylvania, It’s Open Season on Undocumented Immigrants*, ProPublica (April 12, 2018), <https://www.propublica.org/article/pennsylvania-ice-undocumented-immigrants-immigration-enforcement>; Brian X. McCrone, *ICE Targets Van Full of Workers in Reading, Berks County, Detaining Numerous Undocumented Immigrants*, NBC10 (April 7, 2017) <https://www.nbcphiladelphia.com/news/local/ICE-Targets-Vans-Full-of-Workers-in-Reading-Berks-County-Detaining-Numerous-Undocumented-Workers-418677453.html>; Michael Matza, *248 foreign nationals apprehended in Pa., Del., N.J., W.Va., in two-week sweep by ICE*, Philadelphia Inquirer (March 13, 2017), <https://www.inquirer.com/philly/news/248-foreign-nationals-apprehended-in-Pa-Del-W-Va-in-two-week-sweep-by-ICE.html>

³ Letter from Welcoming PA Caucus to Secretary Mayorkas (July 13, 2021), *available at* <https://pasenate.com/wp-content/uploads/2021/07/Welcoming-PA-Caucus-Ltr-re-York-County-Prison.pdf>

⁴ *See e.g.* John Washington, *ICE Subverting Biden’s Priorities for Detention and Deportation*, The Intercept (May 7, 2021), <https://theintercept.com/2021/05/07/ice-biden-priorities-deportation/>

⁵ Bret Pallotto, *Plans for major immigrant detention center near Philipsburg move forward after ACLU drops lawsuit*, Centre Daily Times (November 11, 2021), <https://www.centredaily.com/news/local/community/article255729526.html>; *see also* Anthony Orozco, *A major PA. immigrant detention center closed, but a new one could mean more detainees than ever*, WITF (November 3, 2021), <https://www.wesa.fm/courts-justice/2021-11->

B. Disclosure is not primarily in the commercial interest of Juntos and the ACLU of Pennsylvania.

Juntos and the ACLU of Pennsylvania are not filing this request to further a commercial interest.

Juntos is a 501(c)(3) nonprofit organization that provides free assistance to the Latinx community. They have a demonstrated capacity to disseminate the requested information through their large network. For example, in partnership with other organizations, Juntos has published several reports seeking to inform the public about ICE's activities in Pennsylvania, including their entanglement with local and state law enforcement.⁶ These reports are readily available through their website to members of the public. Juntos also utilizes its website and social media to disseminate information that furthers its mission. They have over 15,000 followers on Facebook.

Likewise, the ACLU and its affiliates, including the ACLU of Pennsylvania, has a longstanding practice of disseminating information obtained through FOIA at no cost to further the public's understanding of immigration laws and policy—and it has a wide network in which to share the information with.⁷ For example, in 2016, the ACLU used documents obtained through FOIA requests to ICE, together with documents that the National Immigrant Justice Center (NIJC) obtained through FOIA, to publish a joint report with Detention Watch Network entitled *Fatal Neglect: How ICE Ignores Deaths in Detention*.⁸ This report described how ICE's inadequate responses to its internal death review findings contributed to ongoing substandard medical care in detention, and has received significant public and congressional attention. Furthermore, the requesting organizations have the ability to widely disseminate the requested information through a variety of sources including reports, newsletters, news briefings, right-to-know handbooks. These materials would be made available to the public at no cost.

As such, Juntos and ACLU of Pennsylvania satisfy the test for a fee waiver. *See Jud. 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 requesters” (internal quotation marks 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)).

[03/a-major-immigrant-detention-center-just-closed-but-a-new-one-could-mean-more-detainees-than-ever](#)

⁶ See e.g. *Interlocking Systems: How Pennsylvania Counties and Local Police Are Assisting ICE to Deport Immigrants*, June 2019, Stephen and Sandra Sheller Center for Social Justice, available at <https://law.temple.edu/cs/wp-content/uploads/sites/3/2019/06/Interlocking-Systems.pdf>

⁷ The ACLU of Pennsylvania has more than 27,000 followers on social media and over 147,000 e-mail subscribers who receive updates on the ACLU of Pennsylvania's activities.

⁸ ACLU, Detention Watch Network & NIJC, *Fatal Neglect: How ICE Ignores Deaths in Detention* (February 2016), available at <https://www.aclu.org/report/fatal-neglect-how-ice-ignores-death-detention>

C. Juntos and the ACLU of Pennsylvania also qualifies for a free waiver because they are representative of the news media and the records are not sought for commercial use.

Juntos and the ACLU of Pennsylvania is also entitled to a fee waiver of search fees on the grounds that they qualify as a “representative of the news media” and the records are “not sought for commercial use.” 5 U.S.C. § 552(a)(4)(A)(ii)(II).

Juntos and the ACLU of Pennsylvania meets the statutory and regulatory definitions of a “representative of the news media” because they are “entit[ies] that gather[] information of potential interest to a segment of the public, use[] [their] editorial skills to turn the raw materials into a distinct work, and distribute[] 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); *Serv. Women’s Action Network v. U.S. Dep’t of Def.*, 888 F. Supp. 2d 282, 290 (D. Conn. 2012) (requesters, including ACLU, were representatives of the news media and thus qualified for fee waivers for FOIA requests to the Department of Defense and Department of Veterans Affairs); *ACLU of Wash. v. U.S. Dep’t of Justice*, No. C09–0642RSL, 2011 WL 887731, at *10 (W.D. Wash. Mar. 10, 2011) (finding that the ACLU of Washington 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”); *see also Elec. Privacy Info. Ctr. v. Dep’t of Def.*, 241 F. Supp. 2d 9, 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*, 880 F.2d at 1387; *Judicial Watch, Inc. v. U.S. Dep’t of Justice*, 133 F. Supp. 2d 52, 53–54 (D.D.C. 2000) (finding Judicial Watch, self-described as a “public interest law firm,” a news media requester).

Obtaining information about government activity is a core part of Juntos work. They publish regular updates and alerts via email to approximately 1350 subscribers. They also share information regularly through their social media account, and they regularly issue press releases to call attention to information obtained from government agencies. All of this is shared with the public and widely available to everyone for no cost.

Similarly, 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 the ACLU’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 of Pennsylvania also publishes regular updates and alerts via email to approximately 147,000 subscribers. These updates are additionally broadcast to 17,000 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.

The ACLU and its affiliates also regularly issue press releases to call attention to documents obtained through FOIA requests, as well as other breaking news, and ACLU attorneys are interviewed frequently for news stories about documents released through ACLU FOIA requests. Similarly, the ACLU regularly publishes and disseminates reports that include a description and analysis of government documents obtained through FOIA requests. This material is broadly circulated to the public and widely available to everyone for no cost or, sometimes, for a small fee.

In sum, because disclosure of the requested documents is in the public interest and not primarily in the commercial interest of Juntos and the ACLU of Pennsylvania, and because the Requesters are a representative of the news media, the Requesters are 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 the Requesters with prior notice so that we can discuss arrangements.

IV. Expedited Processing Request

The Requesters seek expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E)(i)(I) 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. The Requesters are primarily engaged in disseminating information in order to inform the public about actual or alleged government activity.

Juntos regularly obtains information about government activity, analyzes it, and then widely disseminates that information through their organizing and advocacy work. And as mentioned in *supra*, Juntos also intends to share information obtained through this FOIA request via their website.

Likewise, the ACLU and its affiliates are “primarily engaged in disseminating information” within the meaning of the statute. 5 U.S.C. § 552(a)(6)(E)(v)(II). 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 the ACLU’s work and are among its primary activities. *See ACLU v. U.S. Dep’t of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding ACLU to be “primarily engaged in disseminating information” because it “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”).⁹ Moreover, as mentioned in *supra*, the ACLU intends to distribute information obtained through this FOIA request via their website.

⁹ Courts have found that the ACLU and organizations with similar missions are “primarily engaged in disseminating information.” *See, e.g., Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005); *ACLU v. U.S. Dep’t of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004); *Elec. Privacy Info. Ctr. v. U.S. Dep’t of Defense*, 241 F. Supp. 2d 5, 11 (D.D.C. 2003).

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

These 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 will be used by Juntos and the ACLU of Pennsylvania to inform the public about ICE's operations. The request squarely concerns the operations and activity of the government. ICE is a federal agency subcomponent of the U.S. Department of Homeland Security. Disclosure is needed given the changes in enforcement priorities, the actions by the Philadelphia Field Office in response to the closure of York County Prison, and because of ICE's recent decision to expand immigration detention in Pennsylvania.

* * *

Given the foregoing, the Requesters have satisfied the requirements for expedited processing of this Request.

We 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(d)(3).

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

Vanessa Stine
Immigrants' Rights Attorney
ACLU of Pennsylvania
P.O. Box 60173, Philadelphia, PA 19102
(215) 592-1513, ext 145
vstine@aclupa.org

Finally, if this Request is denied in whole or in 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 deny a waiver of fees. Please call me at (215) 592-1513, extension 145 if you have any questions or wish to obtain further information about the nature of the records in which we are interested.

Respectfully submitted,

/s/ Erika Guadalupe Núñez

Erika Guadalupe Núñez
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/s/ Vanessa L. Stine

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