



U.S. Immigration
and Customs
Enforcement

December 15, 2021

Brian J. Field
Schaerr Jaffe LLP
1717 K Street NW, Suite 900
Washington, DC 20006

RE: American First Legal Foundation v. DHS, et. al 21-cv-2168
ICE FOIA Case Number 2021-ICLI-00065
First Interim Response

Dear Mr. Field:

This is the first interim response to your client's Freedom of Information Act (FOIA) requests to U.S. Immigration and Customs Enforcement (ICE) dated May 18, 2021 which are now the subject of the above litigation. In the FOIA requests your client is seeking:

- a. All "written reports" referred to in the subsection titled "Weekly Reporting of All Enforcement And Removal Actions" on page 7 of a memorandum from Tae D. Johnson to "All ICE Employees" with a subject line of "Interim Guidance: Civil Immigration Enforcement and Removal Priorities" (Feb. 18, 2021) (the "Interim Guidance"), whether the reports be termed "Reports", "Summaries", "Rollups", or otherwise. The timeframe for this request is February 18, 2021 to the date of production of the requested records.
- b. All records, including, but not limited to, electronic mail, texts, memoranda, and handwritten notes, of, regarding, referring, or relating to the Interim Guidance from, to, or in the possession of each of the following [ICE] components:
 - a. Office of the Director of ICE
 - b. Office of the Deputy Director
 - c. Office of Policy and Planning
 - d. Office of the Executive Associate Director, Enforcement and Removal Operations
 - e. Office of the Executive Associate Director, Homeland Security Investigations
 - f. Office of the Principal Legal Advisor
 - g. Office of the Executive Associate Director, Management and Administration
- c. All records, including, but not limited to electronic mail, texts, memoranda, and handwritten notes, of, regarding, referring, or relating to the interim civil immigration enforcement and removal priorities described in a memorandum issued by Acting Secretary Pecoske and title "Review of and Interim Revision to Civil Immigration Enforcement and Removal Policies and Priorities" (January 20, 2021) (the "Priorities Memo") within the possession of ICE.

ICE has considered your request under the FOIA, 5 U.S.C. § 552, and processed potentially responsive documents. A search of the ICE Enforcement and Removal Operations (ERO) located records that were potentially responsive to your request. For this production, ICE reviewed 744 pages of potentially responsive records. Of the 744 total pages, 274 pages were nonresponsive and 212 pages were duplicates. ICE is releasing 91 pages in full. ICE is withholding 23 pages in full, and 136 pages in part, pursuant to FOIA Exemptions (b)(3), (b)(5), (b)(6), (b)(7)(C) and (b)(7)(E). The Exemptions applied to the records are described below. Therefore, a total of 250 pages of records are attached and have been marked 2021-ICLI-00065 1 to 2021-ICLI-00065 250. The remaining 8 pages have been sent to the Department of Homeland Security (DHS) for referral and a direct response to you.

FOIA Exemption (b)(3) protects information specifically exempted from disclosure by another statute or regulation where the statute or regulation (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld. ICE has applied Exemption (b)(3) to protect from disclosure information prohibited from disclosure by statute or regulation.

FOIA Exemption 5 protects inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency. The deliberative process privilege protects the integrity of the deliberative or decision-making processes within the agency by exempting from mandatory disclosure opinions, conclusions, and recommendations included within inter-agency or intra-agency memoranda or letters. The release of this internal information would discourage the expression of candid opinions and inhibit the free and frank exchange of information among agency personnel. The attorney work-product privilege protects documents and other memoranda prepared by an attorney in contemplation of litigation. The attorney-client privilege protects confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice. It applies to facts divulged by a client to his attorney, and encompasses any opinions given by an attorney to his client based upon, and thus reflecting, those facts, as well as communications between attorneys that reflect client-supplied information. The attorney-client privilege is not limited to the context of litigation.

ICE has applied FOIA Exemptions 6 and 7(C) to protect from disclosure the names, e-mail addresses, and phone numbers of ICE and DHS employees contained within the documents, as well as the names, and other personally identifiable information of other individuals contained within the records.

FOIA Exemption 6 exempts from disclosure information in personnel or medical files and similar files the release of which would cause a clearly unwarranted invasion of personal privacy. This requires a balancing of the public's right to disclosure against the individual's right to privacy. The privacy interests of the individuals in the records you have requested outweigh any minimal public interest in disclosure of the information. Any private interest you may have in that information does not factor into the aforementioned balancing test.

FOIA Exemption 7(C) protects records or information compiled for law enforcement purposes when production of such could reasonably be expected to constitute an unwarranted invasion of personal privacy. This exemption takes particular note of the strong interests of individuals, whether they are suspects, witnesses, or investigators, in not being unwarrantably associated with alleged

criminal activity. That interest extends to persons who are not only the subjects of the investigation, but those who may have their privacy invaded by having their identities and information about them revealed in connection with an investigation. Based upon the traditional recognition of strong privacy interests in law enforcement records, categorical withholding of information that identifies third parties in law enforcement records is ordinarily appropriate.

ICE has applied FOIA Exemption 7(E) to protect from disclosure internal agency case numbers and other law enforcement sensitive information contained within the documents.

FOIA Exemption 7(E) protects records compiled for law enforcement purposes, the release of which would disclose techniques and/or procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law. ICE has determined that disclosure of certain law enforcement sensitive information contained within the responsive records could reasonably be expected to risk circumvention of the law. Additionally, the techniques and procedures at issue are not well known to the public.

If you have any questions about this letter, please contact Brian C. Rosen-Shaud, Assistant U.S. Attorney, at Brian.C.Rosen-Shaud@usdoj.gov or 202-305-7667.

Sincerely,

Korrina Stewart
Supervisory Paralegal Specialist

Enclosure(s): 250 pages
cc: Brian C. Rosen-Shaud