



AMERICAN
IMMIGRATION
LAWYERS
ASSOCIATION



IMMIGRANT
DEFENSE
PROJECT

July 16, 2019

U.S. Department of Justice
Executive Office for Immigration Review (EOIR)
Office of the General Counsel – FOIA Service Center
FOIA/Privacy Act Requests
5107 Leesburg Pike, Suite 1903
Falls Church, VA 22041

Via email: EOIR.FOIARequests@usdoj.gov

Re: Freedom of Information Act Request

Dear FOIA Officer:

The American Immigration Council (Immigration Council), the American Immigration Lawyers Association (AILA) and the Immigrant Defense Project (IDP) (collectively, “requesters”), submit the following request for information under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, *et. seq.* In accordance with 5 U.S.C. § 552(a)(6)(A)(i), we expect that you will respond to this request within twenty working days, unless otherwise permitted by statute.

1. REQUEST FOR INFORMATION

The present request is for the following records from the Executive Office for Immigration Review (EOIR):

A. List of Facilities:

- A current list of all federal, state, municipal and local facilities, by name, city and state, that participate in the Institutional Hearing Program (IHP), also known as the Institutional Removal Program (IRP) or Institutional Hearing and Removal Program (IHRP).¹

B. Individual Data:

- For FY 2013 through the present, the total number of individuals (respondents) who appeared before an immigration judge (IJ) on the EOIR IHP/IRP/IHRP docket
- The following information for each individual respondent who appeared before an IJ on the EOIR IHP/IRP/IHRP docket in FY 2013 – through the present:

¹ These terms refer to a federal program by which noncitizens in federal, state, municipal and local criminal custody are identified for removal proceedings and appear for their hearings before the immigration courts while serving their criminal sentence, either in person or via video-teleconferencing (VTC). Requesters understand the program to be known under the various names referenced above and wish to clarify that the request for data pertains to this program under any of the variations in name, including any not specifically mentioned above.

- Name of the facility via which the respondent’s case was heard on the IHP/IRP/IHRP docket;
- Country of origin for the respondent;
- Whether the respondent was represented by counsel;
- Location (city and state) of the immigration court that adjudicated the case;
- Whether the immigration court conducted a competency hearing pursuant to the BIA decision *Matter of M-A-M*, 25 I&N Dec. 474 (BIA 2011);
- Type of application for relief filed by the respondent;
- Date and disposition of the application.

C. Policy document:

- The EOIR and Immigration & Customs Enforcement (ICE) updated uniform intake policy, referenced in the March 30, 2017 Department of Justice press release.²

2. FEE WAIVER REQUEST

The Immigration Council, AILA and IDP request a fee waiver because the information they seek is “likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the [requesters]...” 5 U.S.C. § 552(a)(4)(A)(iii).

A. Disclosure Will Contribute to Public Understanding of EOIR Operations

The immigration courts are tasked with administering the immigration laws of the United States. Noncitizens appearing before the immigration courts have well-established due process rights, including a meaningful opportunity to be heard. 8 U.S.C. § 1229a(b)(4); *see also Wong Wing v. U.S.*, 163 U.S. 228 (1896). Individuals appearing before the immigration courts while in criminal custody face challenges accessing these procedural safeguards. These individuals do not have access to *pro se* assistance or other legal guidance via EOIR’s Legal Orientation Program (LOP) or other legal rights programs, which are offered to individuals in ICE custody. The data sought in this request will contribute to public understanding of the obstacles that individuals in criminal custody face during their removal proceedings. Data regarding rates of representation and disposition of claims for this population will help inform the public debate about the need for counsel in a removal proceeding. Information about this program is particularly necessary given EOIR’s March 2017 announcement regarding the expansion of the program and the fact that there remains little public guidance or information about the program.

As outlined further below, the Immigration Council, AILA and IDP intend to make the information received in response to this request available to the public at no charge. Further, all three requesters have significant audience reach, which includes varied segments of the U.S. public.

² Department of Justice, Attorney General Sessions Announces Expansion and Modernization of Program to Deport Criminal Aliens Housed in Federal Correctional Facilities, Mar. 30, 2017, available at <https://www.justice.gov/opa/pr/attorney-general-sessions-announces-expansion-and-modernization-program-deport-criminal> (last visited Apr. 8, 2019).

The Immigration Council regularly provides information to the public based on its FOIA requests.³ In keeping with its track record of synthesizing or otherwise publishing information on governmental operations gleaned from FOIA requests, the Immigration Council intends to post documents received in response to this FOIA request on its publicly accessible website. For calendar year 2018 (Jan. 1 - Dec. 31, 2018), the Immigration Council's website had over 3.1 million-page views from 1.8 million unique visitors.

AILA also widely disseminates information to its members and the public in the form of continuing legal education materials, information, and resources, primarily through its website, <https://www.aila.org/>. Those who visit AILA's website include immigration attorneys and their individual and employer clients, media representatives, U.S businesses, foreign nationals, law students, and other interested members of the public. Moreover, information posted to AILA's website is often linked to the websites of other organizations and immigration law firms. AILA also disseminates the information through its newsletters and other print and electronic publications.

IDP regularly disseminates information about the immigration system to the public in accessible ways and is a leader in providing training and support for legal practitioners and community members. IDP's education efforts have included developing a 1500+ page manual about the criminal-immigration system, designing and presenting a curriculum on the criminal-immigration system, and publishing a toolkit on ICE enforcement practices⁴ based largely on documents obtained from ICE and other federal agencies through FOIA.

B. Disclosure of the Information Is Not in the Commercial Interest of the Council and AILA

The Immigration Council is a not-for-profit organization and has no commercial interest in the present request. *See e.g.* 6 C.F.R. § 5.11(k)(3)(i)-(ii). This request furthers the Immigration Council's work to increase public understanding of immigration law and policy, advocate for the fair and just administration of our immigration laws, protect the legal rights of noncitizens, and educate the public about the enduring contributions of America's immigrants. As with all other reports and information available on the Immigration Council's website, the information that the Immigration Council receives in response to this FOIA request will be available to immigration attorneys, noncitizens, and other interested members of the public free of charge.

³ *See, e.g., Behind Closed Doors: An Overview of DHS Restrictions on Access to Counsel*, a report summarizing certain key documents released by DHS agencies in response to FOIA requests regarding noncitizens' access to counsel, available at http://bit.ly/Council_behind_closed_doors (last visited, March 21, 2019); *Enforcement Overdrive: A Comprehensive Assessment of ICE's Criminal Alien Program*, a report analyzing data obtained from ICE to provide a fuller picture of CAP's evolution, operations, and outcomes between fiscal years 2010 and 2013, all of which was previously unknown to the public, available at http://bit.ly/Council_ICE_CAP (last visited, March 21, 2019); *Still No Action Taken: Complaints Against Border Patrol Agents Continue to Go Unanswered*, a report examining records of alleged misconduct by Border Patrol employees, available at http://bit.ly/Council_StillNoActionTaken (last visited, March 21, 2019); and *Legal Orientation Program Overview*, a fact sheet providing an overview of the Legal Orientation Program (LOP), detailing the kinds of services it provides, and explaining the important role the program plays in helping ensure due process for detained immigrants, available at <https://bit.ly/2U7VUdu> (last visited, March 21, 2019).

⁴ Immigration Defense Project, "ICE Raids Toolkit," available at <https://www.immigrantdefenseproject.org/raids-toolkit/>.

AILA is a nonpartisan, 501(c)(6) tax-exempt not-for-profit organization that provides its members and the public with continuing legal education, information, and resources, primarily through its website, www.aila.org, that is updated daily with the latest immigration news and information, including agency guidance, interpretations and policy memoranda. As described above, AILA seeks the requested information for the purpose of disseminating it to the general public, free of charge.

The Immigrant Defense Project (IDP) is a non-profit organization whose mission is to promote fundamental fairness for immigrants accused or convicted of criminal offenses. IDP seeks to minimize the harsh and disproportionate immigration consequences of contact with a racially biased criminal legal system by 1) working to transform unjust deportation laws and policies and 2) educating and advising immigrants, their criminal defenders, and other advocates. IDP also publishes its materials and information on its website, <https://www.immigrantdefenseproject.org/>, free of charge.

Given that FOIA's fee-waiver requirements are to "be liberally construed in favor of waivers for noncommercial requesters," a waiver of all fees is justified and warranted in this case. *See Judicial Watch v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (finding a fee waiver appropriate when the requester explained, in detailed and non-conclusory terms, how and to whom it would disseminate the information it received).

3. EXEMPTIONS

If EOIR concludes that statutory exemptions apply to any of the information requested, please describe in detail the nature of the information withheld, the specific exemption or privilege upon which the information is withheld, and whether the portions of withheld documents containing non-exempt or non-privileged information have been provided.

4. FORMAT OF PRODUCTION

The Immigration Council, AILA and IDP seek the data in a workable format, such as Microsoft Excel. ***Please also provide a glossary or other descriptive records containing definitions of acronyms, numerical codes or terms contained in data responsive to this request, if those terms are not in the form template and/or publicly defined.***

Thank you in advance for your attention to this request. If you have any questions regarding this request, please feel free to email or call Claudia Valenzuela at the contact information under the first signature block below.

Sincerely,

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