



March 19, 2020

SENT VIA E-MAIL

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

Re: **FOIA Request for Records Related to U.S. Immigration and Customs Enforcement (ICE)
Response to COVID-19**

Dear Freedom of Information Officer:

The American Immigration Council (“Council”) submits this Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, *et seq.*, request for production of records (the “Request”). The Council also seeks a fee waiver, pursuant to 5 U.S.C. § 552(a)(4)(A) and 6 C.F.R. § 5.11(k), and for the Request to be expedited pursuant to 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5(e).

I. Request for Information

The Council seeks records that were prepared, received, transmitted, collected and/or maintained by U.S. Immigration and Customs Enforcement (“ICE”) described below.

For purposes of the Request, the term “records” includes but is not limited to any and all communications, correspondence, directives, documents, data, videotapes, audiotapes, e-mails, faxes, files, guidance, guidelines, standards, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, spreadsheets, charts, rules, manuals, technical specifications, training materials, and studies, including records kept in written form, or electronic format on computers and/or other electronic storage devices, electronic communications and/or videotapes, as well as any reproductions thereof that differ in any way from any other reproduction, such as copies containing marginal notations.

Please do not produce ICE guidance regarding COVID-19 already publicly available on ICE’s website.¹

¹ See U.S. Immigration and Customs Enforcement, *ICE Guidance on COVID-19*, <https://www.ice.gov/covid19> (last visited March 18, 2020).

II. Records Requested

1. Records issued by the ICE Health Service Corps related to COVID-19 including but not limited to:
 - a. recommendations for changes or additions to intake medical screening
 - b. monitoring of detained individuals with exposure risk who do not present with fever or symptoms
 - c. treatment of individuals who would be at high risk for serious illness or death in the event of COVID-19 infection based on their age and underlying medical conditions
 - d. treatment of detained individuals with fever and/or symptoms of respiratory illness
 - e. testing of individuals with exposure risk or who present with fever or other symptoms
2. Records related to separately housing detained individuals ill with COVID-19 or at risk of contracting COVID-19 within facilities if private medical housing rooms in the facility are not available
3. Guidance for the release of individuals in ICE custody who are at risk of contracting or who have contracted COVID-19, including the use of alternatives to detention
4. Guidance related to the availability of free, unmonitored phones in private areas to ensure confidentiality and the availability of free video teleconferencing to enable detained persons to meet with their legal counsel
5. Protocols for cleaning and sanitizing ICE facilities in response to COVID-19
6. Guidance provided to individuals about COVID-19 when they are released from ICE detention
7. Communication with and training provided to sub-contractors and employees of ICE about limiting the spread of COVID-19

III. Data Requested

1. The number of medical housing rooms available in all ICE facilities
2. The number of detained individuals who have been placed in non-medical housing rooms for COVID-1-related reasons because there are no medical housing rooms available
3. The number of detained individuals who have been placed in solitary confinement in ICE facilities for COVID-19-related reasons.
4. The number of detained individuals who have been transferred to an external hospital center or urgent care facility for treatment related to COVID-19
5. The number of detained individuals who have been tested for COVID-19
6. The number of detained individuals who have tested positive for COVID-19
7. The number of detained individuals deemed at risk of infection for COVID-19 (including older individuals over the age of 50, individuals with underlying health

conditions, individuals who are immunocompromised, pregnant individuals) who have been released on ankle monitors or other alternatives to detention

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 Request would be considered within the Request's scope.

With respect to the form of production, the Council requests that responsive electronic records be provided electronically in their native file format, if possible, with all metadata and load files. Alternatively, the Council requests that the records be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency's possession, and that the records be provided in separate, Bates-stamped files. We request that you produce responsive materials in their entirety, including all attachments, appendices, enclosures, and/or exhibits.

IV. Fee Waiver Request

The Council seeks a fee waiver because the information sought in the Request 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); 6 C.F.R. § 5.11(k).

A. Disclosure Will Contribute to Public Understanding of ICE Guidelines Regarding the COVID-19 Pandemic

Individuals detained in ICE detention facilities are at risk of experiencing an outbreak of COVID-19. Large numbers of individuals confined together are not able to follow public health guidelines for maintaining a safe distance from each other to avoid the spread of COVID-19.²

Individuals detained in ICE facilities have been victims of infectious disease outbreaks in the past. In 2018, ICE reported the quick spread of 423 cases of influenza and 461 cases of chickenpox in its facilities.³ Between March 2018 and March 2019, ICE confirmed 236 confirmed or probably cases of mumps among 51 facilities.⁴ According to ICE, in June 14, 2019,

² Centers for Disease Control and Prevention, Coronavirus Disease 2019 (COVID-19), *How to Protect Yourself*, March 18, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/prepare/prevention.html> (people should avoid "close contact" with sick people and "put distance" between themselves and other people if COVID-19 is spreading in their community) (last visited March 18, 2020); *See also* The White House and Centers for Disease Control and Prevention, *The President's Coronavirus Guidelines for America*, March 16, 2020, <https://www.whitehouse.gov/briefings-statements/coronavirus-guidelines-america/> (cautioning people to avoid groups of more than 10 people) (last visited March 18, 2020).

³ *See* Chantal da Silva, *U.S. Detention Centers Quarantine More Than 2,000 Migrants Over Mumps, Other Outbreaks*, NEWSWEEK, March 11, 2019, <https://www.newsweek.com/us-detention-centers-migrants-mumps-outbreaks-quarantine-1358058>.

⁴ *Id.*

5,200 individuals in its custody were in quarantine because of exposure to mumps and chickenpox.⁵

ICE's ability to stem the spread of COVID-19 impacts not only the health of detained individuals and the health of the public, but their ability to adequately prepare their immigration cases as well. During other outbreaks, an immediate effect of limited access to the facilities by visitors was the lack of access to legal representatives. Attorneys reported delayed cases and prolonged detention as a result of the outbreak.⁶

In addition, stakeholders and public health officials have long been concerned about inadequate medical care in ICE facilities⁷ and worry that the system will quickly become overwhelmed with potentially fatal consequences if COVID-19 begins to spread among detained individuals.⁸

The Request seeks the disclosure of information that will enhance the public's understanding of steps ICE has taken to protect detained individuals from an outbreak of COVID-19 and steps ICE will take to identify and treat detained individuals who are at risk of infection or who have become infected. As outlined further below, the Council intends to make the information received in response to the Request available to the public at no charge. Further, the Council reaches a broad audience, which includes varied segments of the U.S. public.

⁵ See Priscilla Alvarez, *5,200 People in ICE Custody Quarantined for Exposure to Mumps or Chicken Pox*, CNN, June 14, 2019, <https://www.cnn.com/2019/06/14/politics/mumps-chicken-pox-quarantine-ice/index.html>.

⁶ Morning Edition, *Immigration Detention Facilities Can be Breeding Ground for Disease*, NPR, Sept. 23, 2019, <https://www.npr.org/2019/09/23/763343004/immigration-detention-facilities-can-be-a-breeding-ground-for-disease>

⁷ See Human Rights Watch, American Civil Liberties Union, et al., *Code Red: The Fatal Consequences of Dangerously Substandard Medical Care in Immigration Detention* (June 2018), <https://www.hrw.org/report/2018/06/20/code-red/fatal-consequences-dangerously-substandard-medical-care-immigration>.

⁸ See Letter from the El Paso Immigration Collaborative (EPIC) to Corey Price, ICE Field Office Director, *Request for Immediate Release of Detained Individuals At Risk of COVID-19*, March 17, 2020, https://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/letter_demands_release_of_detained_individuals_at_risk_of_covid-19_in_el_paso_area_immigration_detention_centers.pdf (the risk to detained individuals includes "heightened risk of infection due to the poor conditions in these facilities, including lack of access to adequate medical care") (citing 2019 U.S. Dep't of Homeland Sec. Office of the Inspector General investigation related to medical treatment in four detention facilities); See Compl., *Dawson v. Asher*, No. 2:20-cv-409 (W.D. Wash. March 16, 2020), available at <https://www.aclu.org/legal-document/dawson-v-asher-complaint> (correctional health experts have recommended the release of vulnerable individuals from ICE detention who are greatest risk of serious illness or death if infected by COVID-19).

The Council regularly provides information to the public based on its FOIA requests.⁹ It synthesizes and publishes information about governmental operations obtained from FOIA requests on its publicly accessible website. For calendar year 2019, the Council received approximately 2.6 million pageviews from 1.5 million unique visitors. The Council intends to do the same with documents received in response to this request.

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

The Council is a not-for-profit organization and has no commercial interest in the Request. *See e.g.* 6 C.F.R. § 5.11(k)(3)(i)-(ii). The Request furthers the 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 Council's website, the information that the Council receives in response to the Request will be available to immigration attorneys, noncitizens, and other interested members of the public 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).

V. Request to Expedite

The Council also asks that ICE expedite the Request. Expedited treatment is warranted under the statute and governing regulations. *See* 5 U.S.C. § 552(a)(6)(E)(i); 6 C.F.R. § 5.5(e).

A request qualifies for expedited treatment if one of the following criteria are met:

"(i) circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; (ii) An urgency to inform the public about an actual or alleged federal government activity, if made by a person who is primarily engaged in disseminating information; (iii) The loss of

⁹ *See, e.g.*, Guillermo Cantor, Emily Ryo, and Reed Humphrey, "Changing Patterns of Interior Immigration Enforcement in the United States, 2016 -2018," AMERICAN IMMIGRATION COUNCIL (July 1, 2019), <https://americanimmigrationcouncil.org/research/interior-immigration-enforcement-united-states-2016-2018>; AMERICAN IMMIGRATION COUNCIL, "Stays of Removal Responses from EOIR," (May 2019), https://americanimmigrationcouncil.org/sites/default/files/foia_documents/board_of_immigration_appeals_interpretation_of_stay_of_removal_foia_production.pdf; Guillermo Cantor and Walter Ewing, AMERICAN IMMIGRATION COUNCIL, *Still No Action Taken: Complaints Against Border Patrol Agents Continue to Go Unanswered* (August 2017) (examining records of alleged misconduct by Border Patrol employees), http://bit.ly/Council_StillNoActionTaken.

substantial due process rights; or (iv) A matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence.”

6 C.F.R. § 5.5(e)(1)(i)-(iv). A FOIA request need meet only one of the four criteria for expedited treatment. Here, the lack of expedited processing poses a significant threat to the lives of detained individuals and a heightened threat to a vulnerable segment of these individuals. 6 C.F.R. § 5.5(e)(1)(i). The Centers for Disease Control and Prevention has stated that “older adults and people who have severe underlying chronic medical conditions or lung disease or diabetes seem to be at higher risk for developing more serious complications from COVID-19 illness.”¹⁰ Because individuals detained in ICE facilities currently live and sleep in close proximity to each other and cannot isolate themselves, it is critical to immediately understand steps ICE has taken to prepare for a COVID-19 outbreak. The information requested here will inform detained individuals, particularly older adults and those with severe underlying chronic medical conditions, about treatment they can expect at ICE facilities. This will help families and legal representatives determine whether detained individuals should seek immediate release from ICE custody.

In addition, the information the Council seeks is crucial in understanding the protocols and guidance that ICE has in place to respond to outbreaks that threaten the lives of individuals in its custody. Given ICE’s track record regarding its inadequate medical care, the public has a right to know how ICE intends to safeguard thousands of detained men and women, avoiding their unnecessary illness and possible death.

The Council also meets the second prong for expedite treatment. 6 C.F.R. § 5.5(e)(1)(ii). The Council is primarily engaged in the dissemination of information and intends to make the information it receives in response to the Request available to the public.¹¹ ICE has released only general information to the public regarding its plans for detained individuals. The lack of information has generated confusion and concern as well as litigation seeking the release of detained individuals at high risk of illness or death if they were to contract COVID-19.¹² Given the risk to detained individuals, the lack of transparency regarding ICE’s readiness to react to a COVID-10 outbreak, and concern about lack of adequate medical treatment for detained individuals in ICE custody, there is an urgent need for the public to understand the information sought in this FOIA.

Pursuant to 5 U.S.C. § 552(a)(6)(E)(vi), I certify the statement in support of the request for expedited treatment to be true and correct to the best of my knowledge and belief.

¹⁰ Centers for Disease Control and Prevention, Coronavirus Disease 2019 (COVID-19), *How to Protect Yourself*, March 18, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/prepare/prevention.html>.

¹¹ *See supra*, Section IV(A).

¹² *Dawson v. Asher*, No. 2:20-cv-409 (W.D. Wash. March 16, 2020), *available at* <https://www.aclu.org/legal-document/dawson-v-asher-complaint>.

Thank you in advance for your attention to the Request. If you have any questions, please feel free to email or call me at the contact information below.

Sincerely,

/s/ Emily Creighton

Emily Creighton

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