

**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 facilities housing detained immigrants from 2013 to the present. Pursuant to an ongoing FOIA request, plaintiff National Immigrant Justice Center (“NIJC”) here seeks that DHS/ICE comply with its obligations under this Act by producing documents concerning: 1) calendars for ICE’s Enforcement and Removal Office (ERO) inspections for 2016–2018, 2) all inspections, reports, and associated documents generated pursuant to ERO inspections and Organizational Self-Review Assessments (ORSAs) for facilities housing noncitizens in ICE custody for 2016 and 2017, 3) all documents and correspondence related to the ERO inspections and ratings, including final ratings for specified facilities. DHS/ICE has failed to conduct an adequate search for NIJC’s February 16¹, 2018 FOIA request seeking this information.

JURISDICTION AND VENUE

¹ICE/DHS referred to this request as the “February 25, 2018 FOIA request” in their acknowledgement of receipt, also FOIA request 2018-ICFO-21283.

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. Venue is also proper within this district pursuant to 28 U.S.C. § 1391(e)(1)(C).

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 noncitizens 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. In 2009, Congress passed a DHS appropriations bill which included a provision that ICE cannot expend funds to immigration detention facilities that fail two consecutive inspections.² Facilities are inspected according to a specific set of detention standards promulgated by ICE.

² See H.R. 2638 (110th). ("Provided further, That effective April 15, 2009, none of the funds provided under this heading may be used to continue any contract for the provision of detention services if the two most recent overall

8. Facilities that hold 50 or more people are subject to two types of investigations: ERO inspections and ODO Inspections. ERO inspections are conducted annually by private investigators, on the basis of a three tier ratings system. The components of each standard receive ratings, which determine the rating for each standard, which in turn inform the overall rating for the facility. ODO inspections are performed by ICE employees or contractors, and focus on key standards which have been identified as areas where a facility may not be in compliance.

9. Facilities that hold 50 or fewer people at a time, or facilities that hold immigrants for less than 72 hours at a time, are subject only to the Organizational Review Self-Assessment process.³

10. ICE's ERO inspections generate the ratings that determine, under DHS Appropriations Act requirements, whether the government continues funding a local government or private entity to detain immigrants.

11. 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.⁴

12. On February 16, 2018, NIJC submitted a request pursuant to FOIA to DHS/ICE requesting various documents in DHS/ICE's possession. *See Exhibit A.* Specifically, NIJC requested:

1. A calendar of ERO inspections programmed for FY 2016, FY 2017 and FY 2018.
2. All inspections and reports, including attachments, work plans, Form G-324A, and any other materials generated pursuant to ICE's Enforcement and Removal Office (ERO) inspections for all facilities housing more than 50 noncitizens in ICE custody for FY 2016 and FY 2017;
3. All inspections and reports generated pursuant to Organizational Self-Review Assessments (ORSAs) for all facilities housing less than 50 noncitizens in ICE custody for FY2016 and FY2017;
4. Any written documents or correspondence outlining the procedure by which a recommended rating for an ICE/ERO-inspected facility is reviewed and a final rating is subsequently generated.

performance evaluations received by the contracted facility are less than 'adequate' or the equivalent median score in any subsequent performance evaluation system."

³ ORSA inspections were not included in NIJC's previous FOIA litigation, which focused on the largest 100 immigration detention facilities.

⁴ Publicly available information regarding the detention centers is limited and outdated, and was provided by DHS pursuant to a prior FOIA request by Requestor, *see* 2012FOIA03030; *see also* <https://www.ice.gov/foia/library>.

5. Any written documents or correspondence discussing the FY 2017 ERO inspections and ratings, including the recommended rating following an ERO inspection and any final rating for the following facilities:
 - a. Christian County Jail (Ozark, MO) (last inspected 7/13/2017)
 - b. Clinton County Jail (Plattsburgh, NY) (last inspected 6/8/17)
 - c. Morgan County Jail (Versailles, MO) (last inspected 1/20/17)
 - d. Strafford County Corrections (Dover, NH) (last inspected 5/11/17)

13. NIJC's February 16, 2018 FOIA request explicitly stated it was to be "construe[d] 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 scope of the request." *Id.*

14. This request stated that NIJC is entitled to a fee waiver on multiple grounds. First, the information was requested to contribute to the public understanding of the activities of the government and is not primarily in the NIJC's commercial interest. 5 U.S.C. § 552(a)(4)(A)(iii); 6 C.F.R. §§ 5.11(k). *See* 2018-ICFO-21283 at 2. "This FOIA request is to supplement limited and outdated information that DHS provided in a prior FOIA request by Requestor *see* 2012FOIA03030 to further the public's knowledge and understanding of ICE contracts with and inspections of facilities that house individuals in its custody. Access to this information is required for the public to meaningfully understand DHS practice and expenditures with regard to the detention of noncitizens in the U.S." *Id.* Second, NIJC has a proven "track-record of compiling and disseminating information to the public about DHS detention contracting, and not for any private commercial interest." *See* 2018-ICFO-21283 at 2. Third, NIJC is entitled to a waiver of search-related fees as "a representative of the news media." 5 U.S.C. § 552(a)(4)(A)(ii)(II); 6 C.F.R. § 5.11(d)(1). *See* 2018-ICFO-21283 at 2.

15. NIJC sent the February 16, 2018 FOIA request via FedEx two day delivery. According to the FedEx tracking receipt, the package was delivered on February 20, 2018. *See Exhibit B.*

16. DHS/ICE notified NIJC that the request had been received on February 25, 2018. The FOIA request was then assigned reference number 2018-ICFO-21283. *See Exhibit C.*

17. In this February 25, 2018 response, DHS/ICE invoked the 10-day extension period permitted under FOIA. DHS/ICE asserted this delay might be encountered because NIJC "seeks

numerous documents that will necessitate thorough and wide-ranging search, ICE will invoke a 10-day extension” for the request. *Id.*

18. According to the agency’s online FOIA status checking tool, the estimated delivery date for the documents responsive to 2018-ICFO-21283 was March 28, 2018.

19. DHS/ICE did not properly respond to NIJC’s request for a waiver of fees. In the March 13, 2018 correspondence, DHS/ICE informed NIJC that it would be charged as a “non-commercial requester,” which would entail “10 cents per page for duplication, and for search and review time at the per quarter-hour rate (\$4.00 for clerical personnel, \$7.00 for professional personnel, \$10.25 for managerial personnel) of the searcher and reviewer” without explaining how this determination had been reached.

20. DHS/ICE’s conclusion that NIJC was not entitled to a fee waiver was incorrect, for the merit-based reasons stated in the February 16, 2018 FOIA and detailed above.

21. As of the date of filing, 80 business days have passed since the ICE FOIA office received NIJC’s request and sought a 10-day extension. NIJC has received no other correspondence response from DHS/ICE in regards to FOIA 2018-ICFO-21283.

22. Under U.S.C. § 552(a)(4)(A)(viii) no fees should be assessed because the processing of the FOIA request was not complete within statutory time limitations, or within the 10-day extension invoked by the ICE FOIA office.

23. NIJC has not received any substantive response from DHS/ICE to its FOIA request.

24. No exceptional circumstances prevent DHS/ICE from responding to NIJC’s FOIA request.

COUNT I

25. NIJC incorporates and realleges paragraphs 1-24 above.

26. The requested records in NIJC’s FOIA request are agency records subject to FOIA.

27. Upon information and belief, DHS/ICE have records responsive to NIJC’s FOIA request in their possession.

28. NIJC has a statutory right to the records it seeks, and there is no legal basis for DHS/ICE's refusal to produce them.

29. DHS/ICE's failure to execute a sufficient search and to produce responsive records violates FOIA, 5 U.S.C. § 552(a).

30. Alternatively, DHS/ICE's failure to produce the requested documents is arbitrary and capricious.

31. 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 2018-ICFO-21283;
- c) Enjoin the withholding of responsive records to NIJC's FOIA Request 2018-ICFO-21283 and order the production of responsive documents and information;
- d) Find that DHS's and ICE'S failure to respond to Request 2018-ICFO-21283 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: June 19, 2018

Respectfully submitted,

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