

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
AMERICAN IMMIGRATION COUNCIL,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 12-856 (JEB)
)	
UNITED STATES DEPARTMENT OF)	
HOMELAND SECURITY, <i>et al.</i>)	
)	
Defendants.)	
_____)	

**DEFENDANTS’ NOTICE OF COMPLIANCE WITH THE COURT’S
MINUTE ORDER OF JULY 9, 2013**

Defendants United States Department of Homeland Security and United States Immigration and Customs Enforcement (“Defendants” or the “Agency”), respectfully give notice to the Court and to Plaintiff American Immigration Council of their filing of their supplemental declaration and updated *Vaughn* index in conformance with the Court’s Minute Order of July 9, 2013.

Dated: September 9, 2013
Washington, DC

Respectfully submitted,

RONALD C. MACHEN JR., D.C. Bar #447889
United States Attorney

DANIEL F. VAN HORN, D.C. Bar #924092
Chief, Civil Division

By: _____ /s/

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICAN IMMIGRATION)
COUNCIL,)

Plaintiffs,)

v.)

Civil Action No. 12-856 (JEB)

UNITED STATES DEPARTMENT OF)
HOMELAND SECURITY, *et al.*)

Defendants.)
_____)

**ICE'S THIRD DECLARATION IN SUPPORT OF DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT**

I. INTRODUCTION

1. I am the Deputy FOIA Officer of the United States Immigration and Customs Enforcement ("ICE") Freedom of Information Act Office (the "ICE FOIA Office"). I have held this position since May 9, 2010. Prior to this position, I was a Senior Paralegal Specialist and Paralegal Specialist within the ICE FOIA Office beginning in February 2007. Prior to my employment with ICE, I was a FOIA Specialist within the Transportation Security Administration's FOIA Office beginning in September 2005.

2. The ICE FOIA Office is responsible for processing and responding to all Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and Privacy Act, 5 U.S.C. § 552a, requests received at ICE. The ICE FOIA office mailing address is 500 12th Street, S.W., STOP 5009, Washington, D.C. 20536-5009.

3. As the Deputy FOIA Officer of the ICE FOIA Office, my official duties and responsibilities include the general management, oversight, and supervision of the ICE FOIA Office. I manage and supervise a staff of ICE FOIA Paralegal Specialists, who report to me regarding the processing of FOIA and Privacy Act requests received by ICE. In connection with my official duties, I am familiar with ICE's procedures for responding to requests for information pursuant to provisions of FOIA and the Privacy Act. In that respect, I am familiar with ICE's processing of the FOIA request dated March 14, 2011, that the American Immigration Council submitted to ICE.

4. I make this declaration in my official capacity in support of ICE's motion for summary judgment in the above-captioned action. The statements contained in this declaration are based upon my personal knowledge, my review of documents kept by ICE in the ordinary course of business, and information provided to me by other ICE employees in the course of my official duties.

5. ICE previously filed two declarations that describe how ICE received Plaintiff's FOIA request, how ICE searched for and processed records located in response to the Plaintiff's FOIA request, and how ICE disclosed records located in response to Plaintiff's FOIA request. A copy of ICE's January 22, 2013 Declaration is attached hereto as Exhibit A. A copy of ICE's March 27, 2013 Declaration is attached hereto as Exhibit B.

6. This declaration provides additional information concerning ICE's search for records that would be responsive to the Plaintiff's March 14, 2011 FOIA request and supplements ICE's previous declarations in this case.

7. In addition, in accordance with the requirements set forth in *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), this declaration provides a supplemental description of how ICE processed records located in response to the Plaintiff's March 14, 2011 FOIA request and an explanation of the basis for withholding portions of documents located in response to Plaintiff's FOIA request pursuant to Exemptions 5, 6, 7(C), and 7(E) of the FOIA. ICE's Vaughn Index is attached hereto as Exhibit C.

II. RECEIPT AND PROCESSING OF PLAINTIFF'S FOIA REQUEST

8. By letter dated March 14, 2011, which was received on March 31, 2011, Plaintiff submitted its FOIA request to ICE. Plaintiff's FOIA request sought information relating to an attorney's ability to be present during their clients' interaction with ICE, as well as what role the attorney may play during their clients' interactions with ICE, attorney conduct during interactions with ICE on behalf of their clients, and attorney appearances at ICE offices or other facilities. A true and complete copy of Plaintiff's FOIA request is attached to this declaration as Exhibit D.

9. By letter dated March 31, 2011, ICE acknowledged the receipt of Plaintiff's FOIA request and assigned it FOIA case number 2011FOIA7112. A true and complete copy of the March 31, 2011 acknowledgement letter is attached to this declaration as Exhibit E.

10. As described in Paragraphs 22 through 52 below, ICE initiated searches for potentially responsive records within the ICE Office of Enforcement and Removal Operations (ERO), the ICE Office of Homeland Security Investigations (HSI), and the ICE Office of the Principal Legal Advisor (OPLA).

11. By letter dated August 11, 2011, Plaintiff submitted its appeal to the ICE OPLA Government Information Law Division (GILD) alleging constructive denial of their request. A true and complete copy of Plaintiff's August 11, 2011 appeal letter is attached to this declaration as Exhibit F.

12. By letter dated September 23, 2011, ICE OPLA GILD responded to the Plaintiff's appeal, indicating that the search was still ongoing, and that the case was currently being processed. A true and complete copy of ICE OPLA GILD's September 23, 2011 appeal adjudication is attached to this declaration as Exhibit G.

13. By letter dated September 27, 2011, ICE responded to Plaintiff's March 14, 2011, FOIA request. ICE informed Plaintiff that searches had failed to locate or identify any records that would be responsive to the Plaintiff's FOIA request. A true and complete copy of the September 27, 2011 final response letter is attached to this declaration as Exhibit H.

14. By letter dated October 27, 2011, Plaintiff's appealed ICE's September 27, 2011 response. A true and complete copy of the October 27, 2011 appeal is attached to this declaration as Exhibit I.

15. By letter dated February 29, 2012, ICE OPLA GILD responded to the Plaintiff's October 27, 2011 appeal, and informed the Plaintiff that the request was being remanded to the ICE FOIA Office for additional searches to be conducted. A true and complete copy of ICE OPLA GILD's February 29, 2012 appeal adjudication is attached to this declaration as Exhibit J.

16. In a letter dated March 1, 2012, ICE acknowledged receipt of the remanded request and assigned the remanded case number 2012FOIA8229.

17. As described in Paragraphs 22 through 52 below, ICE initiated supplemental searches of ICE ERO, HSI, and OPLA, and further instructed the ICE Office of Detention Policy and Planning (ODPP) to conduct a search for potentially responsive records.

18. On April 27, 2012, Plaintiff appealed the constructive denial of their request and any implied fee waiver denial construed by the March 1, 2012 acknowledgment letter of ICE. A true and complete copy of the April 27, 2012 appeal is attached to this declaration as Exhibit K.

19. On May 31, 2012, Plaintiff filed the present action.

20. After commencement of the instant litigation, ICE continued the process of searching for and processing records responsive to Plaintiff's FOIA request; a process that had already begun before Plaintiff filed its lawsuit. Ultimately, ICE produced a total of 6,906 pages of records that were determined to be potentially responsive to the Plaintiff request.

21. ICE informed Plaintiff through counsel that portions of the records were withheld pursuant FOIA Exemptions 5, 6, 7(C), and 7(E).

III. ICE'S SEARCHES FOR RESPONSIVE RECORDS

22. Upon receipt of Plaintiff's FOIA request, the ICE FOIA Office thoroughly reviewed the request and determined that ICE ERO, HSI, and OPLA would be the ICE program offices that would likely maintain records that would be responsive to Plaintiff's FOIA request. The ICE FOIA Office instructed those offices to conduct a comprehensive search for records that would be responsive to Plaintiff's FOIA request and to provide all records located during that search to the ICE FOIA Office for review and processing.

23. ICE later instructed those offices to conduct a supplemental search for potentially responsive records. Additionally, the ICE FOIA Office instructed ICE ODP to conduct a search for records that would be responsive to Plaintiff's FOIA request and to provide all records located during that search to the ICE FOIA Office for review and processing.

24. ICE ERO, formerly known as the ICE Office of Detention and Removal Operations, enforces the nation's immigration laws. ICE ERO identifies and apprehends removable aliens, detains these individuals when necessary, and removes illegal aliens from the United States. ICE ERO prioritizes the apprehension, arrest, and removal of convicted criminals, those who pose a threat to national security, fugitives, and recent border entrants. ERO transports removable aliens from point to point, manages aliens in custody or in alternatives to detention programs, provides access to legal resources and representatives of advocacy groups and removes individuals from the United States who have been ordered to be deported. ERO carries out its nationwide mission through 24 ERO Field Offices, each with its own area of responsibility.

25. ENFORCE is ICE ERO's automated information management system. Although ENFORCE was described in ICE's previous declarations, a search of ENFORCE was not conducted in this case. ENFORCE contains information concerning individual investigative cases, and is not a repository for agency policies or procedures. A search of ENFORCE would not have been reasonably calculated to uncover records responsive to the Plaintiff's FOIA request.

26. Another system utilized by ICE ERO is the Alien Medical Records system. Although the Alien Medical Records system was described in ICE's previous

declarations, a search of the Alien Medical Records system was not conducted in this case. The Alien Medical Records system contains information concerning the medical care and treatment of individuals in ICE custody, and is not a repository for agency policies or procedures. A search of the Alien Medical Records system would not have been reasonably calculated to uncover records responsive to the Plaintiff's FOIA request.

27. Another system utilized by ICE ERO is the ERO Resource Library. The ERO Resource Library is an electronic system available to all ICE and ERO employees via the ICE intranet that contains current and archived policies, templates, memoranda, worksheets, directives, handbooks, standard operating procedures, and broadcast messages related to the mission of ICE ERO. For example, the ERO Resource Library contains documents concerning, but not limited to, custody management, field operations, the ICE Health Service Corps, law enforcement systems and analysis, operations support, repatriation, and enforcement. The Library also contains the Detention and Removal Operations Policy and Procedure Manual and the ERO Field Manual. The ERO Resource Library can be searched using one or more search terms.

28. Within ICE ERO, a search of the ERO Custody Management Division ("ERO CMD") was conducted. ERO CMD is responsible for establishing policy and maintaining oversight of ICE's detention operations.

29. Within ERO CMD, an 8 hour search was conducted by the Acting Unit Chief within ERO CMD. The search included a search of the ERO CMD paper files and of the office's hard-copy central file system. Paper and hard-copy files were manually searched by hand for records that would be responsive to the Plaintiff's FOIA request.

Additionally, a search of the ERO CMD Network Shared Drive¹ was conducted using the search terms “RA Memos”, “SPC”, “Jena”, “Florence”, “El Paso”, “DEAC”, “Detention Facility”, “LCI”, and “Broward.” A search of the Acting Unit Chief’s e-mail was also conducted using the terms “RA Memos”, “SPC”, “Jena”, “Florence”, “El Paso”, “DEAC”, “Detention Facility”, “LCI”, and “Broward.”

30. Additionally within ERO CMD, a 2-hour search was conducted by a writer-editor for records responsive to the Plaintiff’s request. The employee conducted a search of the ERO Resource Library using the search terms “attorney”, “court”, “client”, and “noncitizen”. The employee also conducted a search of his desktop/laptop computer search using the search terms “attorney”, “court”, “case”, and “noncitizen”.

31. Additionally within ERO CMD, a 16-hour search was conducted by a Detention and Deportation Officer from March 14 through March 16, 2012. This search included a search of the ERO CMD Network Shared Drive using the terms “Telephone Access”, “Visitation”, “Legal Rights”, “Group Presentations”, “Law Library”, “Legal Material”, and “Detainee Transfer”.

32. These searches within ICE ERO were reasonably calculated to locate all records that would be responsive to the Plaintiff’s FOIA request.

33. ICE HSI, formerly known as the ICE Office of Investigations, is responsible for investigating a wide range of domestic and international activities arising from the illegal movement of people and goods into, within, and out of the United States. HSI investigates immigration crime, human rights violations and human smuggling, smuggling of narcotics, weapons and other types of contraband, financial crimes, and

¹ The ERO CMD Network Shared Drive contains all ERO CMD office work-product including, but not limited to, draft and final documents created and/or received by ERO CMD.

cybercrime and export enforcement issues. Special agents conduct investigations aimed at protecting critical infrastructure industries that are vulnerable to sabotage, attack, or exploitation. In addition to ICE criminal investigations, HSI oversees the agency's international affairs operations and intelligence functions. HSI offices are located at ICE Headquarters in Washington, D.C., at the 26 Special Agent in Charge (SAC) Offices located throughout the United States, and at international ICE Offices located in 46 countries around the world.

34. TECS is ICE HSI's investigative case management system. Although TECS was described in ICE's previous declarations, a search of TECS was not conducted in this case. TECS contains information concerning individual investigative cases, and is not a repository for agency policies or procedures. A search of TECS would not have been reasonably calculated to uncover records responsive to the Plaintiff's FOIA request.

35. Within ICE HSI, the Section Chief of the Records Disclosure Unit thoroughly reviewed the Plaintiff's request. Based upon that individual's knowledge and experience of HSI's mission, organization, and records systems, she responded that a search of individual employees and records systems within ICE HSI would not reasonably be calculated to uncover potentially responsive documents.

36. ICE OPLA provides legal advice, training, and services to support the ICE mission and defends the interests of the United States in the administrative and Federal Courts. ICE OPLA provides legal advice and guidance to the all ICE program offices on a wide range of agency issues, including those related to the conduct and execution of ERO and HSI investigations and operations.

37. The General Counsel Electronic Management System (“GEMS”) is OPLA’s case management system. Although GEMS was described in ICE’s previous declarations, a search of GEMS was not conducted in this case. GEMS contains information concerning individual immigration cases, and is not a repository for agency policies or procedures. A search of GEMS would not have been reasonably calculated to uncover records responsive to the Plaintiff’s FOIA request.

38. Within ICE OPLA, a search of the OPLA Homeland Security Investigations Law Division (“OPLA HSILD”) and the OPLA District Court Litigation Division (“OPLA DCLD”).

39. OPLA HSILD provides legal support and training to all headquarters HSI operational components, and provides legal advice to ERO offices that are involved in the detention and removal of aliens who are suspected of human rights violations or are of national security interest.

40. Within OPLA HSILD, a 1-hour search was conducted by the HSILD Division Chief for records that would be responsive to the Plaintiff’s FOIA request. The search included a search of the HSILD Network Shared Drive² using the terms “attorney representation”, “access to counsel”, and “right to counsel”. Additionally, the HSILD Division Chief conducted a manual review of individual hard copy and electronic folders for records that would be responsive to Plaintiff’s FOIA request. The search also included a search of the Division Chief’s e-mail using the terms “attorney representation”, “right to counsel”, and “access to counsel”. Finally, the Division Chief conducted a targeted manual review of e-mail messages that originated from individuals

² The HSILD Network Shared Drive contains all HSILD office work-product including, but not limited to, draft and final documents created and/or received by HSILD.

who may have been involved in matters relating to the subject matter of the Plaintiff's FOIA request. This targeted review, along with the other searches performed by the Division Chief, were reasonably calculated to locate all records that would be responsive to the Plaintiff's FOIA request.

41. OPLA DCLD represents the interests of the agency and its officers in all claims and litigation.

42. Within OPLA DCLD, a 2-hour search was completed by an Associate Legal Advisor. A search of the OPLA DCLD Litigation Database was conducted using the terms "Sixth and 6th Amendment". A search of the Associate Legal Advisor's computer was conducted using the terms "Sixth or 6th Amendment", "Detainer", "Counsel", and "Worksite". Additionally, the Associate Legal Advisor conducted a search of his e-mail using terms "Sixth or 6th Amendment", "Detainer", "Counsel", and "Worksite".

43. Additionally, within OPLA DCLD, a 4-hour search was conducted by another Associate Legal Advisor. The employee conducted a manual hand search of the office's paper files, which included the office's paper filing cabinets and book shelf. The employee conducted a search of the DCLD Litigation Database using the terms "right to counsel", "6th amendment", "have counsel present", "seek counsel", and "right to representation". The Associate Legal Advisor also conducted a search of his e-mail using the terms "right to counsel", "6th Amendment", "have counsel present", "seek counsel", and "right to representation". Finally, the employee conducted a targeted search of OPLA DCLD compact discs using the terms "right to counsel", "6th Amendment", "have counsel present", "seek counsel", and "right to representation".

44. Additionally, within OPLA DCLD, a 2-hour search was conducted by a third Associate Legal Advisor. This Associate Legal Advisor conducted a manual hand search of the office's paper files, which included the office's paper filing cabinets. The employee conducted a search of his computer using the terms "attorney-client", "communications", "interactions", "right to counsel", "detention facility(ies)", and "representation". The employee also conducted a search of his e-mail files using the terms "attorney-client", "communications", "interactions", "right to counsel", "representation", and "detention facility(ies)" and included a manual review of folders having relevant information.

45. These terms and locations were used within OPLA as they were determined by the three attorneys who conducted the searches, and were familiar with the records, to be relevant to the request and reasonably calculated to uncover relevant documents.

46. Specifically, these searches within ICE OPLA were reasonably calculated to locate all records that would be responsive to the Plaintiff's FOIA request.

47. ICE ODPP is responsible for leading ICE's detention reform initiative by implementing short-term improvements to immediately address issues in the existing immigration detention system, by identifying long-term improvements, and by redesigning the immigration detention system to pave the way toward 21st century immigration detention services.

48. Within ODPP, the ODPP Chief of Staff conducted a search of the ODPP Network Shared Drive³ using the term "attorney". The ODPP Chief of Staff also

³ The ODPP Network Shared Drive contains all ODPP office work-product including, but not limited to, draft and final documents created and/or received by ODPP.

conducted a search of his computer's "documents" folder using the term "attorney". The ODPP Chief of Staff also conducted a search of the ERO Resource Library using the search term "attorney." The ERO Resource Library is described in Paragraph 27, above.

49. Finally, the ODPP Chief of Staff conducted a search of the ICE Policy Manual using the search term "attorney".

50. The ICE Policy Manual is an electronic system available to all ICE employees via the ICE intranet that contains current and archived ICE-wide management and operational policies, documents, templates, memoranda of agreement, memoranda of understanding, and delegation orders. For example, the ICE Policy Manual contains documents concerning, but not limited to, financial management, human resources, security, training, privacy, diversity, enforcement and investigations, detention and removal, legal, and emergency preparedness. The ICE Policy Manual can be searched using one or more search terms.

51. These searches within ICE ODPP were reasonably calculated to locate all records that would be responsive to the Plaintiff's FOIA request.

IV. ICE's PROCESSING AND DISCLOSURE OF RESPONSIVE RECORDS

52. Potentially responsive records located within ICE ERO, OPLA, and ODPP were forwarded to the ICE FOIA Office for review and processing.

53. A FOIA paralegal specialist within the ICE FOIA Office reviewed and processed the potentially responsive documents. The FOIA paralegal applied the appropriate FOIA exemptions to those documents.

54. ICE disclosed all non-exempt portions of the responsive documents to the Plaintiff in five separate interim releases.

V. DESCRIPTION OF WITHHOLDINGS

55. ICE's response letters informed the Plaintiff that portions of the documents were being withheld pursuant to Exemptions 5, 6, 7(C), and 7(E) of the FOIA.

56. FOIA Exemption (b)(5), 5 U.S.C. § 552(b)(5). This exemption protects from disclosure those inter- or intra-agency documents that are normally privileged in the civil discovery context. The three most frequently invoked privileges are the deliberative process privilege, the attorney work-product privilege, and the attorney-client privilege. 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.

57. ICE applied the deliberative process privilege to withhold draft documents, comments by reviewers, and marked revisions to drafts. A release of any portion of this information would reveal not only the substantive content of the draft that was not

incorporated into the finalized version, but would also reveal the deliberations of each agency employee as the drafts circulated throughout various components of the agency.

58. ICE applied the attorney work-product and attorney client privilege to requests by ICE employees for legal representation by ICE attorneys and case discussions by counsel within the Office of the Principal Legal Advisor of ongoing *Bivens* and other civil lawsuits. The request for counsel, as well as the discussion of the merits of existing litigation, were both prepared in anticipation of litigation, and are, by their nature, communications between an attorney and a client regarding the merits of a case. Any disclosure of the content of those letters would violate the attorney-client privilege, and would also disclose material prepared specifically in anticipation of litigation. The latter discussions within OPLA regarding the case summaries and discussions also qualify for the deliberative process privilege inasmuch as they deliberate potential future action within a case.

59. FOIA Exemption 6, 5 U.S.C. § 552(b)(6): This exemption precludes the public disclosure under FOIA of personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Documents that apply to or describe a particular individual, including investigative records, qualify as “personnel,” “medical,” or “similar files” under FOIA Exemption (b)(6). When applying this exemption, the agency must balance the individual’s personal privacy interest against the public need for the information for purposes of shedding light on the agency’s performance of its statutory duties.

60. ICE applied FOIA Exemptions (b)(6) to protect from disclosure the names, phone numbers, and e-mail addresses of government employees and personal identifying

information of third parties to include the names, addresses, phone numbers, and case holdings within ICE's documents. The privacy consideration is to protect these individuals from unnecessary, unofficial questioning and harassment, and the public need for this information, as discussed below, is minimal (if any).

61. ICE also applied this exemption when determining that certain descriptive information relating to third parties wherein the information can be used by individuals, who know or have knowledge of the third parties identified within the records, to clearly identify the third party, is exempt from public disclosure. Given that the subject matter of the FOIA request relates to an alien's right to counsel, the responsive documents identify aliens, agency employees, cases, and individuals involved in the arrest and detention of aliens. The release of this information could reasonably be expected to subject these aliens and agency employees to not only embarrassment, humiliation, harassment, but also to physical harm.

62. The third parties identified in the records have not provided their consent to the disclosure of their information to the Plaintiff. In each instance where (b)(6) information was withheld, it was determined that the individual's privacy interest in the information was not outweighed by any public interest in the disclosure. To reveal the identifying information of these individuals in the context of these records could reasonably be expected to cause embarrassment, humiliation, harassment, and physical harm and thus constitute a clearly unwarranted invasion of personal privacy.

63. The disclosure of the identities of the state and/or federal law enforcement agents/officers involved in the performance of law enforcement duties and government personal employed by a law enforcement agency aimed at apprehending individuals who

violate criminal and immigration laws could cause reprisals against the state and federal law enforcement agents/officers and government personnel by individuals who are of investigative interest to law enforcement agencies as well as undue attention by the public.

64. The disclosure of this information would not inform the Plaintiff or the general public about ICE's performance of its mission to enforce federal and criminal statutes and/or how ICE actually conducts its internal operations and investigations. Since only the public interest is relevant to the balancing required under Exemption (b)(6), any specific or unique interest in the information that a requestor articulates is irrelevant to determining the applicability of this exemption. Additionally, every effort has been made to release all segregable information contained in these records without invading the privacy interest of these individuals.

65. FOIA Exemption (b)(7), 5 U.S.C. § 552(b)(7): To successfully defend the assertion of any (b)(7) exemption as a basis for withholding records and information, an agency must demonstrate that the matters withheld were compiled for law enforcement purposes.

66. The information for which FOIA Exemption (b)(7) has been asserted in the instant matter satisfies this threshold requirement. ICE is the largest investigative arm of DHS, and is responsible for identifying and eliminating vulnerabilities within the nation's borders. ICE is tasked with preventing any activities that threaten national security and public safety by investigating the people, money, and materials that support illegal enterprises. The records at issue in this case pertain to the access to counsel of individuals after they are in ICE custody, pursuant to the enforcement of Federal

Criminal and Immigration Laws. That is to say, the only documents responsive to Plaintiff's request relate to ICE's activities in investigating persons suspected to have violated federal immigration laws, arresting these persons, and confining them until further administrative and/or judicial proceedings, or the documents relate to any of ICE's policies and procedures surrounding these specific law enforcement activities (i.e., investigation, arrest, and confinement/custody). Therefore, all the records responsive to Plaintiff's FOIA request were compiled for law enforcement purposes and meet the threshold requirement of FOIA Exemption (b)(7).

67. FOIA Exemption (b)(7)(C), 5 U.S.C. § 552(b)(7)(C): This exemption was applied to protect from disclosure information compiled for law enforcement purposes that, if released to the public, could reasonably be expected to constitute an unwarranted invasion of personal privacy. This exemption allows the withholding of information that identifies agency employees and third parties in law enforcement records. In asserting this exemption, each piece of information withheld was examined to determine the degree and nature of the privacy interest of any individual whose personally identifiable information appears within ICE's records. The public interest in the disclosure of this information is determined by whether the information to be withheld would inform the public about ICE's performance of its mission to enforce federal and criminal statutes and/or how ICE actually conducts its internal operations and investigations.

68. ICE applied this exemption when deciding to withhold the names of government employees, including ICE Special Agents, Deportation Officers, Mission Support Specialists, Legal Advisors, state law enforcement officers, and/or other government employees, as exempt from public disclosure under FOIA. These

government employees handle a myriad of tasks relating to official investigations into the criminal activities of third parties. They were, and still are, in positions of access to information regarding official law enforcement investigations. If their identities are released, they could become targets of harassment. There is no public interest to be served by releasing the identities of these government employees. ICE also used this exemption to withhold personally identifiable information including: names of third parties, signatures, Alien registration numbers, case numbers, case holdings, telephone numbers, and residential addresses. The third parties identified within the records were and possibly still are, subjects of investigations, witnesses, or have provided information or other cooperation to the government.

69. The release of this information in the context of these records could reasonably cause these individuals humiliation, embarrassment, hostility which could constitute a clearly unwarranted invasion of privacy. This interest extends to persons who are not only the subjects of the investigation, but to those individuals who were either witnesses, or who provided law enforcement with information. In the context of the records at issue which were the subject of a law enforcement investigation, arrest, or deportation proceedings, the personal privacy interests of the individual's personally identifiable information is greater than any public interest that may otherwise exist in this information. Based upon the traditional recognition of strong privacy interest in law enforcement records, categorical withholding of information that identifies third parties in law enforcement records is ordinarily appropriate. Further, the third parties identified in these records have not provided consent to the release of their personally identifiable information.

70. Moreover, the disclosure of the identities of state and federal law enforcement agents/officers and other government personnel who are still in a position of access to information regarding law enforcement investigations could subject the individuals to harassing inquiries for authorized access to information regarding ongoing or closed investigations; trigger reprisals, harassment, or otherwise interfere with the performance of the individual's duties by individuals who are of interest to the law enforcement agency or oppose the agency's law enforcement mission. Therefore, the privacy interest in the identities of law enforcement personnel and government employees in the records clearly outweighs any minimal public interest in the disclosure of the information.

71. The disclosure of this information would not inform the public about ICE's performance of its mission to enforce federal and criminal statutes and/or how ICE actually conducts its internal operations and investigations. Every effort has been made to release all reasonably segregable information contained in these records without invading the privacy interests of third parties, law enforcement officers, and law enforcement agency employees.

72. FOIA Exemption (b)(7)(E), 5 U.S.C. § 552(b)(7)(E): This exemption protects from disclosure records and information that would disclose techniques and 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.

73. ICE applied FOIA Exemption (b)(7)(E) to protect from disclosure information related to the specific methods and processes used in conducting contraband

searches of persons in ICE's custody. To disclose these techniques and procedures would jeopardize the lives and safety of ICE personnel charged with maintaining the security of these facilities, other inmates, and visitors. The disclosure of this information would provide individuals seeking to circumvent ICE's search techniques and procedures with information that would allow them to anticipate avoid and defeat ICE's security procedures.

74. Additionally, ICE applied FOIA Exemption (b)(7)(E) to protect from disclosure descriptions of the factors and techniques used by ICE agents in identifying individuals believed to be unauthorized to be present within the United States using the identity of United States citizens. The factors used by ICE agents during investigations of this nature are sensitive law enforcement techniques and procedures. The disclosure of these factors could permit people seeking to violate immigration laws and regulations to avoid apprehension by altering their behavior to avoid detection under these factors.

75. Additionally, ICE applied FOIA Exemption (b)(7)(E) to protect from disclosure descriptions and procedures concerning the use or non-use of undercover agents during law enforcement operations, premise descriptions, the number of law enforcement personnel involved in an operation, descriptions of team assignments and duties, the manner by which contact will be made with suspects and targets, assignment codes, descriptions of the composition and responsibilities of the mobile command center, use of force continuum, what specific radio channels used during a law enforcement operation, and the descriptions of the particulars of each phase of the law enforcement operation. Whether or not an undercover agent was used during a specific operation, the extent of agency knowledge of a target location, internal codes used, how

agents will contact individuals, and how to allocate and distribute law enforcement resources and teams during an operation are sensitive law enforcement techniques and procedures. The disclosure of these techniques and practices could permit people seeking to violate immigration and customs laws and regulations to circumvent the law by anticipating when undercover agents are used, what information regarding a target location the agency is privy to, the overall strength and composition of the law enforcement presence, and where teams and law enforcement resources will be deployed to counteract enforcement effectiveness, and could threaten the safety of the agents and public.

76. Additionally, ICE applied FOIA Exemption 7(E) to protect from disclosure internal agency secure URL addresses of law enforcement databases, operation names, site reporting location codes, law enforcement program codes, TECS Access codes, law enforcement database navigation codes and instructions, and other database access techniques used by ICE during the investigation of violations of immigration and customs law. The disclosure of these law enforcement database codes, case numbers, and numeric references, specifically from the TECS database, could provide the holder of this information with information from other law enforcement agencies. TECS interfaces with many databases belonging to other federal law enforcement agencies. Information from other federal law enforcement databases are communicated to ICE law enforcement officials through TECS. The codes ICE officers use contain law enforcement information such as law enforcement personal identifying number codes and query codes. Law enforcement database codes to include administrative and computer codes serve a dual purpose. The codes are not only used for the purposes of indexing, storing,

locating, and retrieving information, but also serve to provide information about the investigation. Specifically this information could identify the type and location of the case, the scope and size of the investigation regarding agency resources utilized for the investigation, type of activity under investigation, and location of investigative efforts. These codes and case numbers continue to be used in other ongoing investigations thus relaying the scope of the investigation. Additionally, this information could also be used by person seeking improper access to law enforcement data to decipher the meaning of the codes, navigate the law enforcement system and compromise the integrity of the data either by deleting or altering information. The quality and quantity of information contained in these records if disclosed could impede ongoing investigations. The disclosure of this information serves no public benefit and would not assist the public in understanding how the agency is executing its statutory responsibilities.

V. SEGREGABILITY

77. The FOIA requires that “[a]ny reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt.” 5 U.S.C. § 552(b).

78. I have reviewed each record line-by-line to identify information exempt from disclosure or for which a discretionary waiver of exemption could be applied.

79. With respect to the records that were released in part, all information not exempted from disclosure pursuant to FOIA exemptions specified above was correctly segregated and non-exempt portions were released.

80. No documents were withheld in their entirety.

VI. JURAT CLAUSE

I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge and belief. Signed this 9th day of September 2013.



Ryan Law, Deputy FOIA Officer
Freedom of Information Act Office
U.S. Department of Homeland Security
U.S. Immigration and Customs Enforcement
500 12th Street, S.W., Stop 5009
Washington, DC 20536-5009

A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN IMMIGRATION)
COUNCIL,)

Plaintiff,)

v.)

UNITED STATES DEPARTMENT OF)
HOMELAND SECURITY, *et al.*)

Defendants.)

Civil Action No. 12-856 (JEB)

**DECLARATION OF RYAN LAW
IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

I. INTRODUCTION

I, Ryan Law, hereby declare as follows:

1. I am the Deputy FOIA Officer of the Freedom of Information Act Office (the "ICE FOIA Office") at U.S. Immigration and Customs Enforcement ("ICE"). I have held this position since May 9, 2010. Prior to this position, I was a Senior Paralegal Specialist and Paralegal Specialist within the ICE FOIA Office beginning in February 2007. Prior to my employment with ICE, I was a FOIA Specialist within the Transportation Security Administration's FOIA Office beginning in September 2005. The ICE FOIA office mailing address is 500 12th Street, S.W., STOP 5009, Washington, D.C. 20536-5009.

2. The ICE FOIA Office is responsible for processing and responding to all Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and Privacy Act, 5 U.S.C. § 552a, requests received at ICE.

3. As the Deputy FOIA Officer of the ICE FOIA Office, my official duties and responsibilities include the general management, oversight, and supervision of the ICE FOIA Office. I manage and supervise a staff of ICE FOIA Paralegal Specialists, who report to me regarding the processing of the FOIA and Privacy Act requests received by ICE. In connection with my official duties, I am familiar with ICE's procedures for responding to requests for information pursuant to provisions of FOIA and the Privacy Act. In that respect, I am familiar with ICE's processing of the FOIA request dated March 14, 2011, that the American Immigration Council submitted to ICE.

4. I make this declaration in support of ICE's Motion for Summary Judgment in the above-captioned action. The statements contained in this declaration are based upon my personal knowledge, my review of documents kept by ICE in the ordinary course of business, and information provided to me by other ICE employees in the course of my official duties.

5. This declaration provides a description of how ICE received Plaintiff's FOIA request, how ICE searched for and processed records located in response to Plaintiff's FOIA request, and how ICE disclosed records located in response to Plaintiff's FOIA request.

6. In addition, in accordance with *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), this declaration provides a description of withheld portions of the records located in response to the Plaintiff's FOIA request and an explanation of the basis for withholding portions of the pages Plaintiff is now challenging, as agreed to in the signed joint stipulation dated January 9, 2013, pursuant to Exemptions (b)(5), (b)(6), (b)(7)(C) and (b)(7)(E) of the FOIA.

II. GENERAL INFORMATION REGARDING ICE'S STANDARD PROCEDURE FOR INITIATING SEARCHES IN RESPONSE TO FOIA REQUESTS

7. Each program office within ICE has a designated point of contact ("POC") who is the primary person responsible for communications between that program office and the ICE FOIA Office. When the ICE FOIA Office receives a FOIA request, its first step is to identify which program offices within ICE are most likely to possess records responsive to that request and to initiate searches within those program offices. Once the ICE FOIA Office determines the appropriate program offices for a given request, it provides the POCs within each of those program offices with a copy of the FOIA request and specific instructions for conducting a search for responsive records. The POCs then review the FOIA request and instructions, and forward the request and instructions to the individual employee(s) or component office(s) within the program office that they believe are most likely to have responsive records. The individuals and component offices are instructed to conduct searches of their file systems, including both paper files and electronic files, which in their judgment, based on their knowledge of the manner in which they routinely keep records, would most likely be the files to contain responsive documents. Once those searches are completed, the individuals and component offices provide any potentially responsive records to their program office's POC, who in turn provides the records to the ICE FOIA Office. The ICE FOIA Office then reviews the collected records for responsiveness.

8. ICE employees maintain records in several ways. ICE program offices use various systems to maintain records, such as investigative files, records regarding the operation of ICE programs, and administrative records. ICE employees may store electronic records on their individual computer hard drives, their program office's shared drive (if the office uses one), DVDs, CDs, or USB storage devices. A search of

electronic files would necessarily include a search of these locations. The determination to search these electronic locations is solely within the employee's judgment regarding whether such a search is necessary. This determination is necessarily based on the manner in which the employee maintains his/her files. ICE does not have a policy guiding how employees are to maintain their individual working files.

9. Additionally, all ICE employees have access to email. ICE uses the Microsoft Outlook email system. Each ICE employee stores their files in the way that works best for that particular employee; ICE has no agency-wide policy or regulation that mandates how employees retain and store their emails, other electronic files, or paper files. ICE employees use various methods to store their Microsoft Outlook email files: some archive their files monthly, without separating by subject; others archive their email by topic or by program; still others may create PST files of their emails and store them on their hard drive or on a shared drive.

10. ICE employs disaster recovery systems to back up its email and file servers in accordance with Federal and DHS regulations. As part of ICE's disaster recovery plan, the agency maintains systems designed to restore agency email and file servers in the event of a catastrophic loss of data.

11. Prior to December 2008, ICE relied on periodic data archiving of its email servers on backup tapes. ICE used a variety of different systems and the backup tapes were regularly overwritten to maintain the continuity of the archival system for disaster recovery purposes. The intent of the backup systems was not to create a permanent or semi-permanent archive of the agency's emails, but was, rather, intended to allow the agency to restore its email and file servers in the event of catastrophic loss of data.

12. Beginning in December 2008, ICE implemented a new server based disaster recovery system for email servers. At this time, agency emails are being maintained indefinitely for data backup purposes.

13. Because the new server based disaster recovery system for email servers retains the complete email archive for every ICE employee, it contains an enormous quantity of data. As a result, searching the servers and data retrieval are extremely time consuming and require the services of the agency's Office of the Chief Information Officer (OCIO). Given the significant time and resource limitations of OCIO, ICE does not leverage the disaster recovery server for conducting routine FOIA searches.

14. It is not part of OCIO's mission to conduct FOIA searches on behalf of the agency and OCIO is not staffed or resourced to routinely take on FOIA searches on behalf of all other ICE program offices.

15. Individual employees also archive their own emails according to their individual work-related needs. Individual archives of emails are searched by the individual employees where those employees have identified individual archives containing potentially responsive documents.

III. DESCRIPTION OF CATEGORIES OF RECORDS

16. Agency employees may have access to various systems of records depending on their official duties and need for the information to perform their official duties. Although individual employees may maintain their own working files regarding a particular subject matter it is these records systems that are the official repository of agency information. Although ICE program offices are tasked with responding to ICE FOIA's instructions to search for records in response to any FOIA request, it is the

records systems that actually store and maintain the records. Records determined to be responsive to Plaintiff's FOIA request were retrieved from the following records systems: ICE External Investigations Records, the Immigration and Enforcement Operational Records (ENFORCE), and the Alien Medical Records.

- a. The External Investigation system of records pertains to ICE's investigation files and includes all information obtained from any source during the course of an investigation, to include information obtained from inter-agency law enforcement databases such as the Treasury Enforcement Communication System (TECS), and Seized Assets and Case Tracking System (SEACATS). Specifically this system of records includes, but is not limited to, information pertaining to (1) individuals who are the subjects of current and previous law enforcement investigations into U.S. customs and immigrations laws, as well as other laws and regulations within ICE's jurisdiction, (2) victims and witnesses in ICE law enforcement investigations, and (3) fugitives with outstanding federal or state warrants. The type of information pertaining to subjects of a current or previous law enforcement investigation may include: name, aliases, addresses, social security numbers, Alien Registration numbers, date and place of birth, passport and visa information, license information for owners and operations or vehicles, biographical information. The type of information within these records pertaining to the victim and witnesses of a law enforcement investigation may include: names, addresses and telephone numbers, sworn statements, reports of interview, and

biographical information. The type of information pertaining to investigative and evidentiary records may include: ICE case numbers, reports of investigations (ROIs) prepared by the investigator during the course of the course of the investigation or received from other agencies participating in or having information relevant to the investigation; law enforcement intelligence reports, electronic surveillance reports, correspondence, court filings, and information received from other government agencies, confidential sources, and other sources pertaining to an investigation. Lastly the records could also include any evidence in any form, including paper, photographs, electronic data, records obtained, seized, or otherwise lawfully acquired from any source during the investigation.

- b. ENFORCE system of records contains information about individuals that are or were detained by ICE Enforcement and Removal Operations (ERO). The information contained within ENFORCE includes biographic, descriptive, historical and other identifying data, including but not limited to: names; fingerprint identification number (FIN); date and place of birth; passport and other travel document information; nationality; aliases; Alien Registration Number (A-Number); Social Security Number; contact or location information (e.g., known or possible addresses, phone numbers); visa information; employment, educational, immigration, and criminal history; height, weight, eye color, hair color and other unique physical characteristics (e.g., scars and tattoos); fingerprints and

photographs. The system can also include case-related data, including: Case number, record number, and other data describing an event involving alleged violations of criminal or immigration law (location, date, time, event category, types of criminal or immigration law violations alleged, types of property involved, use of violence, weapons, or assault against DHS personnel or third parties, attempted escape and other related information; event categories describe broad categories of criminal law enforcement, such as immigration worksite enforcement, contraband smuggling, and human trafficking). ENFORCE also contains case ERO management information, including: Case category, case agent, date initiated, and date completed; detention data on aliens, including immigration detainers issued; transportation information; detention-related identification numbers; custodial property; information about an alien's release from custody on bond, recognizance, or supervision; detention facility; security classification; book-in/ book-out date and time; mandatory detention and criminal flags; aggravated felon status; and other alerts; data concerning personnel of other agencies that arrested, or assisted or participated in the arrest or investigation of, or are maintaining custody of an individual whose arrest record is contained in this system of records, which may include: name, title, agency name, address, telephone number and other information.

- C. The Alien Medical Records system of records is maintained by the *Division of Immigration Health Services (DIHS)*, a division within the

ERO office. This system maintains medical, mental health, and dental records that document the medical screening, examination, and treatment of aliens whom ICE arrests and detains for violations of the Immigration and Nationality Act. The records contain the medical information for aliens detained in facilities owned and operated by ICE or its contractors, or in other facilities for ICE detainees where medical care is provided by ICE DIHS. The type of information contained within this system include: name and aliases, date of birth, Alien Registration number, phone numbers, email addresses, addresses, country of origin, nationality, gender, language spoken, medical history, current medical conditions, symptoms reported including dates, medical examination records and medical notes, diagnostic data, problem lists which lists all diagnosis and medical symptoms or problems for an individual as determined by a medical practitioner or reported by the person, refusal forms, informed consent forms, treatment records and medical treatment plans, and mental health records and medical treatment plans.

IV. PROCEDURAL HISTORY OF PLAINTIFF'S FOIA REQUEST AND THE INSTANT LITIGATION

17. By letter dated March 14, 2011, Plaintiff submitted its FOIA request to the ICE FOIA Office. Plaintiff's FOIA request sought information relating to an attorney's ability to be present during their clients' interaction with ICE, as well as what role the attorney may play during their clients' interactions with ICE, attorney conduct during interactions with ICE on behalf of their clients, and attorney appearances at ICE offices or other facilities. A true and complete copy of Plaintiff's FOIA request is attached to this declaration as Exhibit A.

18. The ICE FOIA Office received Plaintiff's FOIA request on March 31, 2011.

19. By letter dated March 31, 2011, the ICE FOIA Office acknowledged receipt of Plaintiff's FOIA request and assigned it FOIA case number 2011FOIA7112. A true and complete copy of the March 31, 2011 acknowledgement letter is attached to this declaration as Exhibit B.

20. Upon receiving Plaintiff's FOIA request, consistent with the general procedures described in paragraph seven (7) above, the ICE FOIA Office reviewed the request and determined that based on the subject matter of the FOIA request that the following offices and divisions are likely possessing records responsive. Accordingly the ICE FOIA Office tasked these offices with conducting searches for potentially responsive records:

- a. The ICE Office of Homeland Security Investigations (HSI) (formerly ICE Office of Investigations) is responsible for investigating a wide range of domestic and international activities arising from the illegal movement of people and goods into, within, and out of the United States. HSI investigates immigration crime, human rights violations and human smuggling, smuggling of narcotics, weapons and other types of contraband, financial crimes, and cybercrime and export enforcement issues. Special agents conduct investigations aimed at protecting critical infrastructure industries that are vulnerable to sabotage, attack, or exploitation. In addition to ICE criminal investigations, HSI oversees the agency's international affairs operations and intelligence functions. HSI

offices are located at ICE Headquarters in Washington, D.C., at the 26 Special Agent in Charge (SAC) Offices located throughout the United States, and at international ICE Offices located in 46 countries around the world.

- b. The ICE Office of the Principal Legal Advisor ("ICE OPLA") provides legal advice, training, and services to support the ICE mission and defends the interests of the United States in the administrative and Federal Courts. ICE OPLA provides legal advice and guidance to the all ICE program office on a wide range of agency issues, including those related to the conduct and execution of HSI investigations and operations.
- c. The ICE Office of Enforcement and Removal Operations (ERO) is responsible for promoting public safety and national security by making certain through the enforcement of U.S. immigration laws that all removable aliens depart the United States. ERO makes use of its resources and expertise to transport aliens, to manage them while in the custody and waiting for their cases to be processed, and to remove unauthorized aliens from the United States when so ordered.

21. By letter dated August 11, 2011, Plaintiff submitted its appeal, to the ICE Office of the Principal Legal Advisor (OPLA) Government Information Law Division (GILD) alleging constructive denial of their request. A true and complete copy of Plaintiff's August 11, 2011 appeal letter is attached to this declaration as Exhibit C.

22. By letter dated September 23, 2011, ICE OPLA GILD responded to the Plaintiff's appeal, indicating that the search was still ongoing, and that the case was

currently being processed. A true and complete copy of ICE OPLA GILD's September 23, 2011 appeal adjudication is attached to this declaration as Exhibit D.

23. By letter dated September 27, 2011, ICE responded to Plaintiff's March 14, 2011, FOIA request. ICE informed Plaintiff that a search of the foregoing records failed to produce records responsive to the Plaintiff request. A true and complete copy of the September 27, 2011 final response letter is attached to this declaration as Exhibit E.

24. By letter dated October 27, 2011, Plaintiff's appealed ICE's September 27, 2011 response. A true and complete copy of the October 27, 2011 appeal is attached to this declaration as Exhibit E.

25. By letter dated February 29, 2012, ICE OPLA GILD responded to the Plaintiff's October 27, 2011 appeal, challenging the adequacy of the search, and remanded the request to the ICE FOIA Office for additional searches and processing. A true and complete copy of ICE OPLA GILD's February 29, 2012 appeal adjudication is attached to this declaration as Exhibit F.

26. In response to the remand, ICE FOIA logged in the remanded request.

27. In a letter dated March 1, 2012, ICE issued an acknowledgment of the remanded request and assigned the remanded request FOIA case number 2012FOIA8229.

28. In addition to a re-tasking of the components listed in paragraph 20 above, ICE tasked the Office of Detention Policy and Planning.

29. The Office of Detention Policy and Planning (ODPP) leads ICE's efforts to overhaul the current immigration detention system, an effort which requires extensive collaboration and consultation with both internal and external stakeholders. ODPP is charged with designing a detention system that meets the unique needs of ICE's detained

population. ODPD will shape the future design, location and standards for civil immigration detention facilities so that ICE no longer relies primarily on existing penal models. ICE will consider access to legal services, emergency rooms and transportation hubs, among other factors when determining future facility locations.

30. On April 27, 2012, Plaintiff appealed the constructive denial of their request and any implied fee waiver denial construed by the March 1, 2012 acknowledgment letter of ICE.

31. On May 31, 2012, Plaintiff filed the complaint in this case.

32. After commencement of the instant litigation, the ICE FOIA Office continued the process of searching for and processing records responsive to Plaintiff's FOIA request; a process that had already begun before Plaintiff filed its lawsuit.

33. During the course of five interim releases, ICE produced a total of 6,906 pages of records responsive to the Plaintiff request.

34. ICE informed Plaintiff through counsel that portions of the records were withheld pursuant FOIA Exemptions (b)(5), (b)(6), (b)(7)(C), and (b)(7)(E).

35. Upon further review of the produced records, Plaintiff has stipulated with the Defendants the exemptions which they are contesting.

V. DESCRIPTION OF WITHHOLDINGS

36. In sum, a total of 6,906 pages of records were produced in response to Plaintiff's FOIA request. ICE provided Plaintiff with a summary Vaughn Index identifying the types of information withheld pursuant to a particular FOIA Exemption. Where withheld information could be included in a specific category, ICE provided a separate Vaughn entry for such information. ICE's use of a summary Vaughn Index is a

customary practice, particularly in cases like this one where a large number of potentially responsive documents subject to FOIA is identified.

37. FOIA Exemption (b)(5), 5 U.S.C. § 552(b)(5). This exemption protects from disclosure those inter- or intra-agency documents that are normally privileged in the civil discovery context. The three most frequently invoked privileges are the deliberative process privilege, the attorney work-product privilege, and the attorney-client privilege. 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.

38. ICE applied the deliberative process privilege to withhold draft documents, comments by reviewers, and marked revisions to drafts. A release of any portion of this information would reveal not only the substantive content of the draft that was not

incorporated into the finalized version, but would also reveal the deliberations of each agency employee as the drafts circulated throughout various components of the agency.

39. ICE applied the attorney work-product and attorney client privilege to requests for representation, and case discussions by counsel within the Office of the Principal Legal Advisor, of ongoing *Bivens* and other civil lawsuits. The request for counsel, as well as the discussion of the merits of an existing litigation, were both prepared in anticipation of litigation, and are, by their nature, communications between an attorney and a client regarding the merits of a case. Any disclosure of the content of those letters would violate the attorney-client privilege, and as well as would disclose material prepared specifically in anticipation of litigation. The latter discussions within OPLA regarding the case summaries and discussions also qualify for the deliberative process privilege inasmuch as they deliberate potential future action within a case.

40. FOIA Exemption 6, 5 U.S.C. § 552(b)(6): This exemption precludes the public disclosure under FOIA of personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Documents that apply to or describe a particular individual, including investigative records, qualify as "personnel," "medical," or "similar files" under FOIA Exemption (b)(6). When applying this exemption, the agency must balance the individual's personal privacy interest against the public need for the information for purposes of shedding light on the agency's performance of its statutory duties.

41. ICE applied FOIA Exemptions (b)(6) to protect from disclosure the names, phone numbers, and e-mail addresses of government employees and personal identifying information of third parties to include the names, addresses, phone numbers, and case

holdings within ICE's documents. The privacy consideration is to protect these individuals from unnecessary, unofficial questioning and harassment, and the public need for this information, as discussed below, is minimal (if any).

42. ICE also applied this exemption when determining that certain descriptive information relating to third parties wherein the information can be used by individuals, who know or have knowledge of the third parties identified within the records, to clearly identify the third party, is exempt from public disclosure. Given that the subject matter of the FOIA request relates to an alien's right to counsel, the responsive documents identify aliens, agency employees, cases, and individuals involved in the arrest and detention of aliens. The release of this information could reasonably be expected to subject these aliens and agency employees to not only embarrassment, humiliation, harassment, but also to physical harm.

43. The third parties identified in the records have not provided their consent to the disclosure of their information to the Plaintiff. In each instance where (b)(6) information was withheld, it was determined that the individual's privacy interest in the information was not outweighed by any public interest in the disclosure. To reveal the identifying information of these individuals in the context of these records could reasonably be expected to cause embarrassment, humiliation, harassment, and physical harm and thus constitute a clearly unwarranted invasion of personal privacy.

44. The disclosure of the identities of the state and/or federal law enforcement agents/officers involved in the performance of law enforcement duties and government personnel employed by a law enforcement agency aimed at apprehending individuals who violate criminal and immigration laws could cause reprisals against the state and federal

law enforcement agents/officers and government personnel by individuals who are of investigative interest to law enforcement agencies as well as undue attention by the public.

45. The disclosure of this information would not inform the Plaintiff or the general public about ICE's performance of its mission to enforce federal and criminal statutes and/or how ICE actually conducts its internal operations and investigations. Since only the public interest is relevant to the balancing required under Exemption (b)(6), any specific or unique interest in the information that a requestor articulates is irrelevant to determining the applicability of this exemption. Additionally, every effort has been made to release all segregable information contained in these records without invading the privacy interest of these individuals.

46. FOIA Exemption (b)(7), 5 U.S.C. § 552(b)(7): To successfully defend the assertion of any (b)(7) exemption as a basis for withholding records and information, an agency must demonstrate that the matters withheld were compiled for law enforcement purposes.

47. The information for which FOIA Exemption (b)(7) has been asserted in the instant matter satisfies this threshold requirement. ICE is the largest investigative arm of DHS, and is responsible for identifying and eliminating vulnerabilities within the nation's borders. ICE is tasked with preventing any activities that threaten national security and public safety by investigating the people, money, and materials that support illegal enterprises. The records at issue in this case pertain to the access to counsel of individuals after they are in ICE custody, pursuant to the enforcement of Federal Criminal and Immigration Laws. Therefore, all the records responsive to Plaintiff's

FOIA request were compiled for law enforcement purposes and meet the threshold requirement of FOIA Exemption (b)(7).

48. FOIA Exemption (b)(7)(C), 5 U.S.C. § 552(b)(7)(C): This exemption was applied to protect from disclosure information compiled for law enforcement purposes that, if released to the public, could reasonably be expected to constitute an unwarranted invasion of personal privacy. This exemption allows the withholding of information that identifies agency employees and third parties in law enforcement records. In asserting this exemption, each piece of information withheld was examined to determine the degree and nature of the privacy interest of any individual whose personally identifiable information appears within ICE's records. The public interest in the disclosure of this information is determined by whether the information to be withheld would inform the public about ICE's performance of its mission to enforce federal and criminal statutes and/or how ICE actually conducts its internal operations and investigations.

49. ICE applied this exemption when deciding to withhold the names of government employees, including ICE Special Agents, Deportation Officers, Mission Support Specialists, Legal Advisors, state law enforcement officers, and/or other government employees, as exempt from public disclosure under FOIA. These government employees handle a myriad of tasks relating to official investigations into the criminal activities of third parties. They were, and still are, in positions of access to information regarding official law enforcement investigations. If their identities are released, they could become targets of harassment. There is no public interest to be served by releasing the identities of these government employees. ICE also used this exemption to withhold personally identifiable information including: names of third

parties, signatures, Alien registration numbers, case numbers, case holdings, telephone numbers, and residential addresses. The third parties identified within the records were and possibly still are, subjects of investigations, witnesses, or have provided information or other cooperation to the government.

50. The release of this information in the context of these records could reasonably cause these individuals humiliation, embarrassment, hostility which could constitute a clearly unwarranted invasion of privacy. This interest extends to persons who are not only the subjects of the investigation, but to those individuals who were either witnesses, or who provided law enforcement with information. In the context of the records at issue which were the subject of a law enforcement investigation, arrest, or deportation proceedings, the personal privacy interests of the individual's personally identifiable information is greater than any public interest that may otherwise exist in this information. Based upon the traditional recognition of strong privacy interest in law enforcement records, categorical withholding of information that identifies third parties in law enforcement records is ordinarily appropriate. Further, the third parties identified in these records have not provided consent to the release of their personally identifiable information.

51. Moreover, the disclosure of the identities of state and federal law enforcement agents/officers and other government personnel who are still in a position of access to information regarding law enforcement investigations could subject the individuals to harassing inquiries for authorized access to information regarding ongoing or closed investigations; trigger reprisals, harassment, or otherwise interfere with the performance of the individual's duties by individuals who are of interest to the law

enforcement agency or oppose the agency's law enforcement mission. Therefore, the privacy interest in the identities of law enforcement personnel and government employees in the records clearly outweighs any minimal public interest in the disclosure of the information.

52. The disclosure of this information would not inform the public about ICE's performance of its mission to enforce federal and criminal statutes and/or how ICE actually conducts its internal operations and investigations. Every effort has been made to release all reasonably segregable information contained in these records without invading the privacy interests of third parties, law enforcement officers, and law enforcement agency employees.

53. FOIA Exemption (b)(7)(E), 5 U.S.C. § 552(b)(7)(E): This exemption allows the withholding of information compiled for law enforcement purposes to the extent that the production of such information would disclose techniques, procedures, and guidelines for law enforcement investigations or prosecutions to the extent that such disclosure could reasonably be expected to risk circumvention of the law. ICE employs certain law enforcement techniques and methods designed to obtain information in furtherance of its law enforcement investigations and enforcement actions that lead to the arrest of individuals whose legal representation is the subject of the FOIA request.

54. ICE applied FOIA Exemption (b)(7)(E) to protect from disclosure investigative techniques and procedures including: methods used by ICE to identify individuals believed to be illegal aliens using the identity of U.S. Citizens, the use of undercover agents, agent team assignments, secured URL addresses, operation names, site reporting locations, program codes,

TECS Access codes, database navigation codes, and other database access techniques used by ICE during the investigation of violations of immigration and customs law.

55. The disclosure of these law enforcement database codes, case numbers, and numeric references, specifically from TECS, could provide the holder of this information with information from other law enforcement agencies. TECS interfaces with many databases belonging to other federal law enforcement agencies. Information from other federal law enforcement databases are communicated to ICE law enforcement officials through TECS. The codes ICE officers use contain law enforcement information such as law enforcement personal identifying number codes and query codes.

56. Law enforcement database codes to include administrative and computer codes serve a dual purpose. The codes are not only used for the purposes of indexing, storing, locating, and retrieving information, but also serve to provide information about the investigation. Specifically this information could identify the type and location of the case, the scope and size of the investigation regarding agency resources utilized for the investigation, type of activity under investigation, and location of investigative efforts. These codes and case numbers continue to be used in other ongoing investigations thus relaying the scope of the investigation. Additionally, this information could also be used by person seeking improper access to law enforcement data to decipher the meaning of the codes, navigate the law enforcement system and compromise the integrity of the data either by deleting or altering information. The quality and quantity of information contained in these records if disclosed could impede ongoing investigations. The disclosure of this information serves no public benefit and would not assist the public in understanding how the agency is executing its statutory responsibilities.

57. These techniques involve cooperative arrangements between ICE and other agencies and inter-agency communications prompting specific actions on the part of agency employees. The disclosure of these techniques and methods could adversely affect future investigations by giving potential subjects of investigations the ability to anticipate the circumstances under which such techniques could be employed in investigations where they may be subjects, and identify such techniques as they are being employed in order to either obstruct the investigation or evade detection from law enforcement officials. The particulars of the techniques and procedures at issue are not well known to the public. Additionally, the disclosure of this information if used to obstruct the law enforcement investigation or operation could possibly place law enforcement personnel and innocent bystanders in physical danger.

VI. SEGREGABILITY

58. The FOIA requires that “[a]ny reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt.” *See* 5 U.S.C. § 552(b).

59. I have reviewed each record line-by-line to identify information exempt from disclosure or for which a discretionary waiver of exemption could be applied to ensure that all non-exempt information was released.

60. With respect to the records that were released in part, all information not exempted from disclosure pursuant to FOIA exemptions specified above was correctly segregated and non-exempt portions were released.

VII. JURAT CLAUSE

I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge and belief. Signed this 22nd day of January, 2013.



Ryan Law, Deputy FOIA Officer
Freedom of Information Act Office
U.S. Department of Homeland Security
U.S. Immigration and Customs Enforcement
500 12th Street, S.W., Stop 5009
Washington, DC 20536-5009

B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN IMMIGRATION COUNCIL,)	
)	
Plaintiff,)	
)	Civil Action No. 12-856 (JEB)
v.)	
)	
UNITED STATES DEPARTMENT OF HOMELAND SECURITY, <i>et al.</i>)	
)	
Defendants.)	

**SUPPLEMENTAL DECLARATION OF RYAN LAW
IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

I. INTRODUCTION

I, Ryan Law, hereby declare as follows:

1. I am the Deputy FOIA Officer of the Freedom of Information Act Office (the "ICE FOIA Office") at U.S. Immigration and Customs Enforcement ("ICE"). I have held this position since May 9, 2010. Prior to this position, I was a Senior Paralegal Specialist and Paralegal Specialist within the ICE FOIA Office beginning in February 2007. Prior to my employment with ICE, I was a FOIA Specialist within the Transportation Security Administration's FOIA Office beginning in September 2005. The ICE FOIA office mailing address is 500 12th Street, S.W., STOP 5009, Washington, D.C. 20536-5009.

2. The ICE FOIA Office is responsible for processing and responding to all Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and Privacy Act, 5 U.S.C. § 552a, requests received at ICE.

3. As the Deputy FOIA Officer of the ICE FOIA Office, my official duties and responsibilities include the general management, oversight, and supervision of the ICE FOIA Office. I manage and supervise a staff of ICE FOIA Paralegal Specialists, who report to me regarding the processing of the FOIA and Privacy Act requests received by ICE. In connection with my official duties, I am familiar with ICE's procedures for responding to requests for information pursuant to provisions of FOIA and the Privacy Act. In that respect, I am familiar with ICE's processing of the FOIA request dated March 14, 2011, that the American Immigration Council submitted to ICE.

4. I make this supplemental declaration in support of ICE's Motion for Summary Judgment in the above-captioned action. The statements contained in this declaration are based upon my personal knowledge, my review of documents kept by ICE in the ordinary course of business, and information provided to me by other ICE employees in the course of my official duties.

5. This supplemental declaration provides a detailed description of how ICE searched for records located in response to Plaintiff's FOIA request.

II. ICE's SEARCH FOR RESPONSIVE RECORDS

6. ICE, in its prior declaration, provided a description of the standard procedures for initiating searches, record maintenance within ICE, and a list of the Program Offices tasked with performing searches pursuant to the FOIA Request of the plaintiffs. Specifically, searches were tasked to the ICE Office of Enforcement and Removal Operations (ERO), the ICE Office of Homeland Security Investigations (HSI), the ICE Office of the Principal Legal Advisor (OPLA), and the ICE Office of Detention, Policy, and Planning (ODPP).

7. The first search, which was tasked on March 31, 2011, did not include a tasking of ODPP.

8. The second search was tasked on March 1, 2012, wherein ICE FOIA tasked OPLA, ERO, HSI, and ODPP to conduct a search pursuant to the request of the Plaintiffs, which had been appealed by the plaintiffs based off of constructive denial, remanded, and assigned FOIA case number 2012FOIA8229.

A. The Search by OPLA

9. A search of OPLA was conducted on September 18, 2011.

10. This search consisted of a 1-hour search by the Chief of the HSI Law Division.

11. The search included a search of the Network Shared Drive using the terms “attorney representation”, “access to counsel”, and “right to counsel”.

12. Additionally, this search included a targeted manual review of individual folders thought to contain relevant records.

13. The search also included an “instant search” of the Email Outlook program using the terms “attorney representation”, “right to counsel”, and “access to counsel”.

14. Lastly, the search included a targeted manual review of messages from people who may have been involved in matters relating to the subject matter of the request.

15. Over the course of five days, from September 15 to September 19, 2012, an OPLA Associate Legal Advisor completed a 2-hour search.

16. This search consisted of a search of the ICE OPLA District Court Litigation Division Litigation Database using the terms “Sixth and 6th Amendment”.

17. This search also included a computer search using the terms “Sixth or 6th Amendment”, “Detainer”, “Counsel”, and “Worksite”. Additionally, this search included a search of the archived emails of the individual conducting the search.

18. Another search was conducted by a different Associate Legal Advisor within OPLA on September 16, 2011.

19. This consisted of a 4-hour search that included a manual search of the paper files within OPLA, including the file cabinet and book shelf.

20. This search also included a database search using a search engine with the terms “right to counsel”, “6th amendment”, “have counsel present”, “seek counsel”, and “right to representation”.

21. This search also included an “advanced find” within the Email Outlook program using the terms “right to counsel”, “6th Amendment”, “have counsel present”, “seek counsel”, and “right to representation”.

22. Lastly, this search included a search of CD ROMs within OPLA using the terms “right to counsel”, “6th Amendment”, “have counsel present”, “seek counsel”, and “right to representation”.

23. A final search was conducted by a third Associate Legal Advisor on September 11, 2011.

24. This attorney works within the District Court Litigation Division and consisted of a 2-hour search that included a hand search of the file cabinet within OPLA.

25. This search also included a manual review as well as computer search queries using the terms “attorney-client”, “communications”, “interactions”, “right to counsel”, “detention facility(ies)”, and “representation”.

26. Also, this search included a search of the Email Outlook program using the terms “attorney-client”, “communications”, “interactions”, “right to counsel”, “representation”, and “detention facility(ies)” and included a manual review of folders having relevant information.

27. These terms and locations were used within OPLA as they were determined by the attorneys who conducted the searches, and were familiar with the records, to be relevant to the request and reasonably calculated to uncover relevant documents.

B. The Search by ERO

28. Over the course of four days, from March 12 to March 15, 2012, an ERO Project Manager completed an 8-hour search, including 7 hours of search time and 1 hour of review time. This search was also certified by an ERO Unit Chief.

29. The search included a search of the paper files and of the office’s central file system in a manual hand search of the file cabinets of the office.

30. Additionally, this search included a search of the Shared Drive of the office, utilizing a search engine using the search terms “RA Memos”, “SPC”, “Jena”, “Florence”, “El Paso”, “DEAC”, “Detention Facility”, “LCI”, and “Broward.”

31. A search of the Email Outlook program was also conducted during this search, using the search terms “RA Memos”, “SPC”, “Jena”, “Florence”, “El Paso”, “DEAC”, “Detention Facility”, “LCI”, and “Broward.”

32. Additionally, a separate 2-hour search was conducted by a writer-editor within ERO on March 9, 2012, for all records responsive to the Plaintiff's request.

33. The search included a database word search using the search terms "attorney", "court", "client", and "noncitizen".

34. This search also included a desktop/laptop computer search using the search terms "attorney", "court", "case", and "noncitizen".

35. Lastly, over the course of three days, a separate 16-hour search was conducted by a Detention and Deportation Officer from March 14 through March 16, 2012.

36. This search included a search of the office Shared Drive using the terms "Telephone Access", "Visitation", "Legal Rights", "Group Presentations", "Law Library", "Legal Material", and "Detainee Transfer".

37. These terms and locations were used as they were determined by the persons familiar with the records within ERO to be relevant to the request and reasonably calculated to uncover relevant documents. With respect to the 16-hour search by the Detention and Deportation Officer, the searcher also indicated that the standards listed in the search terms were the standards that applied to the request.

C. The Search by ODPP

38. A search of ODPP was conducted on March 5, 2012.

39. This search consisted of a 2-hour search by the Chief of Staff within ODPP.

40. This search included a search of the ODPP shared drive using the term "attorney."

41. This search also included a computer search of the "Documents" folder using the term "attorney."

42. Lastly, this search included a search of the ERO Resource Library, as well as the ICE Policy Manual using the search term "attorney."

43. These terms and locations were used as they were determined by the Chief of Staff, who was familiar with the records, to be relevant to the request and reasonably calculated to uncover relevant documents.

D. The Search by HSI

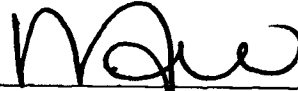
44. Upon tasking the request to HSI, the Section Chief of the Records Disclosure Unit reviewed the request and responded to the search tasking by indicating that HSI would not have any records in its possession that would be responsive to the request.

45. This decision was determined to be sufficient as HSI is not responsible for the detention and detainee care of detained aliens within ICE.

46. In each of the instances described above, the search conducted by each respective employee, who was familiar with the records creation and storage for each respective component tasked, based on their personal knowledge of their records systems, utilized search terms, locations, and search methods that were reasonably calculated to uncover all relevant documents.

III. JURAT CLAUSE

I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge and belief. Signed this 27th day of March, 2013.



Ryan Law, Deputy FOIA Officer
Freedom of Information Act Office
U.S. Department of Homeland Security
U.S. Immigration and Customs Enforcement
500 12th Street, S.W., Stop 5009
Washington, DC 20536-5009

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Page Numbers	Document Date	Document Title	Document Description and Applicable Exemptions
000090, 000171- 000174, 000176- 000177, 000179- 000202, 000204- 000209, 000211- 000212	Varies	Detention Management Division Facility Reviews	These reviews are withheld in part pursuant to FOIA Exemption 7(E). FOIA Exemption 7(E) is applied to protect from disclosure the timing and circumstances for contraband searches. How law enforcement officers determine when and under what circumstances to conduct a search for contraband is both a law enforcement technique and procedure. The disclosure of these techniques and practices could permit people seeking to violate detention laws and regulations to avoid detection in carrying or distributing contraband, and would endanger the lives and safety of agents, inmates, other agency employees, and visitors.
000229	12/08/06	Affidavit of ICE Special Agent	This document is withheld in part pursuant to FOIA Exemption 7(E). FOIA Exemption 7(E) is applied to protect the factors used by ICE agents in identifying individuals believed to be unauthorized to be present within the United States using the identity of United States citizens. The factors used by ICE agents during investigations of this nature are law enforcement techniques. The disclosure of these factors could permit people seeking to violate immigration laws and regulations to avoid apprehension by altering their behavior to avoid detection under these factors.
000522- 000528	Undated	Draft Declarations of former Assistant Secretary for ICE, Julie Myers and former Deputy Assistant Secretary (Operations) for ICE, John Torres	These documents are withheld in part pursuant to FOIA Exemption 5 under the deliberative process privilege. FOIA Exemption 5 is applied to protect from disclosure draft declarations that are deliberative, non-finalized versions being reviewed. The documents contain "red-lined" corrections and modifications of both a stylistic and substantive manner as well as comments to the draft from ICE personnel. Draft materials reflect the agency decision making process and are deliberative in nature. The disclosure of these draft materials would have a chilling effect on the free and frank exchange of ideas within the agency. A final version of these declarations was submitted to the district court in the case [and released to the Plaintiff as part of DOJ's discretionary release of all documents filed on the public docket] [IS THIS CORRECT?]. That's correct.

Page Numbers	Document Date	Document Title	Document Description and Applicable Exemptions
000624-000657	07/24/04	Draft ICE Operation Plan for SAC Chicago	<p>This document is withheld in part pursuant to FOIA Exemptions 5 under the deliberative process privilege and 7(E). FOIA Exemption 7(E) is applied to protect from disclosure of the use or non-use of undercover agents during an operation, premise descriptions, number of law enforcement personnel involved, team assignments, manner by which contact will be made with suspects, assignment codes, composition of mobile command center, and use of force continuum. Whether or not an undercover agent was used during a specific operation, the extent of agency knowledge of a target location, internal codes used, how agents will contact individuals, and how to divide law enforcement teams are law enforcement techniques and procedures. The disclosure of these techniques and practices could permit people seeking to violate immigration and customs laws and regulations to circumvent the law by anticipating when undercover agents are used, what information regarding a target location the agency is privy to, the overall strength of the law enforcement presence, and where teams will be deployed to counteract enforcement effectiveness, and could threaten the safety of the agents and public.</p> <p>FOIA Exemption 5 is applied to protect from disclosure draft operational plans that contain proposed personnel assignments, comments by ICE personnel on the premises description, operational procedures, and summary of investigation, "red-lined" corrections and modifications of a substantive and grammatical nature of investigation summaries, operational objectives, and operational procedures, and proposed personnel assignments. These redactions are appropriate under the deliberative process privilege. The comments and corrections made by ICE personnel in reviewing the draft operational plans reflect the agency decision making process and are deliberative in nature. The document contained intra-agency discussions prior to a final decision being made by the agency, namely, the final Operation Plan for SAC Chicago. The disclosure of these draft materials would have a chilling effect on the free and frank exchange of ideas within the agency.</p>

Page Numbers	Document Date	Document Title	Document Description and Applicable Exemptions
000782-000783, 000788-000789, 000794-000795	03/18/09, 06/01/09-06/02/09	Emails re: AILA conference questions and talking points	<p>These documents are withheld in part pursuant to FOIA Exemption 5 under the deliberative process privilege and the attorney client privilege. The emails involve ICE attorneys of a supervisory level (Riah Ramlogan, as well as various deputies whose names have been redacted), ICE attorneys of a non-supervisory level (associate legal advisors whose names have been redacted), and an ICE employee in a non-attorney capacity (Dan Ragsdale [Assistant to the Secretary]). The emails specifically discuss a request for legal advice from Dan Ragsdale (03/18/09 at 3:51pm and 03/18/09 at 3:20pm), guidance to a legal question by a supervisory attorney (03/18/09 at 3:50), recommendation by supervisory attorney to Dan Ragsdale on how to answer legal question related to conference (03/18/09 at 2:53pm), a draft response from a supervisory attorney regarding a question about I-213 interviews (03/18/09 at 2:53pm), discussion between supervisory attorney and non-supervisory attorney regarding request for legal advice from Dan Ragsdale (03/18/09 at 8:02pm), discussion between supervisory attorneys regarding 8 CFR 287.3 and advice to ICE officers (03/18/09 at 3:56pm; at 4:37pm; at 4:45pm; at 5:01pm). FOIA Exemption 5 is applied to protect from disclosure discussions between counsel and between counsel and agency client on possible ways to respond to NGO inquiries. These materials were proposing various ways to respond to questions on when an alien is entitled to an attorney during an I-213 interview, and extending the status of F-1 students. Additionally, some of these materials are made up attorney work product, that is to say, they consist of the advice of an attorney in contemplation of legal action or they consist of information given to an attorney at the attorney's direction to assist the attorney in his/her legal analysis. These materials were discussions between agency counsel and its client and deliberated different circumstances and scenarios and what possible responses would be under those circumstances. The disclosure of these materials would interfere with the attorney client relationship, where the attorney's advice depends on being fully informed by his/her client, and would have a chilling effect on the free and frank exchange of ideas within the agency. The final version of the talking points was release at 000447.</p>

Page Numbers	Document Date	Document Title	Document Description and Applicable Exemptions
000798-000802	07/09/04-07/11/04, 07/24/04,	Emails re: draft declarations for undisclosed case	<p>These documents are withheld in part pursuant to FOIA Exemption 5 under the deliberative process privilege, the attorney client privilege and the attorney work product privilege. The emails involve ICE attorneys of a non-supervisory level, an Assistant United States Attorney, and an ICE special agent. FOIA Exemption 5 is applied to protect from disclosure discussions between ICE attorneys, the AUSA representing the agency and an ICE special agent regarding the agent's draft declaration, including specific questions asked by the attorneys for the agent to answer in preparation of the declaration. These materials were prepared in contemplation of litigation and were deliberative as to the next steps counsel would pursue in the case, and were discussions regarding the case between agency counsel and the client. Additionally, the emails are made up attorney work product, that is to say, they consist of the advice of an attorney in contemplation of legal action. The disclosure of these materials would have a chilling effect on counsel discussing deliberative measures to take in a case, would prevent the client from fully informing counsel of the circumstances of the case, and would frustrate the adversarial trial process by refusing to insulate the attorney's preparation from scrutiny. The final version of this document was released at 000222.</p>
000817-000820	02/18/08	Emails re: discussion of preparation for assistant secretary's response to a question regarding an alien's right to counsel	<p>These documents are withheld in part pursuant to FOIA Exemption 5 under the deliberative process privilege. The emails involve ICE attorneys of a supervisory level (deputies whose names have been redacted), ICE attorneys of a non-supervisory level (associate legal advisors whose names have been redacted), and an ICE employee in a non-attorney capacity (Dan Ragsdale [Assistant to the Secretary]). Specifically, there is a draft answer to the right to counsel question which was prepared by an ICE attorney for review by a fellow attorney and his/her client, Dan Ragsdale (02/18/08 at 3:41 pm). The attachment to the email contains the same copy of text as is providing within the email itself and therefore contains the same exempt material listed above. This draft material consisted of an intra-agency discussion, the disclosure of which would have a chilling effect on the free and frank exchange of ideas within the agency.</p>
000963-000964	Undated	Attachment to the email	

Page Numbers	Document Date	Document Title	Document Description and Applicable Exemptions
000876-000879	03/04/10, 03/05/10, 03/15/10, 03/16/10	Emails re: discussion of how to respond to a letter from an NGO to ICE and Cobb County, GA	These documents are withheld in part pursuant to FOIA Exemption 5 under the deliberative process privilege. The emails involve ICE attorneys of a supervisory level (deputies whose names have been redacted), ICE attorneys of a non-supervisory level (associate legal advisors whose names have been redacted), and ICE employees in a non-attorney capacity (division chiefs and deputies whose names have been redacted). Specifically, there two draft answers (03/05/10 at 2:42pm and 03/15/10 at 5:54pm) to the question from the NGO regarding aliens' rights when being interviewed at a detention. Draft #1 (03/05/10) consisted of edits made by ICE attorneys to the draft answer for review by other ICE attorneys. This draft material consisted of intra-agency discussion, the disclosure of which would have a chilling effect on the free and frank exchange of ideas within the agency. Draft #2 (03/15/10) was prepared by an ICE attorney for review by other ICE attorneys and the attorney's client. This draft material consisted of an intra-agency discussion, the disclosure of which would have a chilling effect on the free and frank exchange of ideas within the agency. The final version of the letter was released at 000430.
000913-000915	09/09/08	Emails re: discussion of questions from an all-hands briefing on a proposed worksite enforcement operation	These documents are withheld in part pursuant to FOIA Exemption 5 under the deliberative process privilege and the attorney client privilege. The emails involve ICE attorneys of a supervisory level (deputies whose names have been redacted), ICE attorneys of a non-supervisory level (associate legal advisors whose names have been redacted), and ICE employees in a non-attorney capacity (whose names have been redacted). Specifically, an ICE employee was seeking guidance from ICE attorneys regarding the processing of aliens during a worksite enforcement action (09/09/08 at 2:38pm) and an ICE attorney was providing a legal opinion to the question about the processing of aliens (09/09/08 at 3:43pm). This material is deliberative in nature as it consisted of intra-agency discussions regarding questions from a client to his/her attorney, the disclosure of which would have a chilling effect on the free and frank exchange of ideas within the agency. These emails are the final version of this document.

Page Numbers	Document Date	Document Title	Document Description and Applicable Exemptions
000932-000933	04/07/08, 04/10/08	Emails re: comments from ICE attorney related to an operations plan	These documents are withheld in part pursuant to FOIA Exemption 5 under the deliberative process privilege. The emails involve ICE attorneys of a supervisory level (deputies whose names have been redacted) and an ICE employee in a non-attorney capacity (Dan Ragsdale [Assistant to the Secretary]). Specifically, an ICE attorney was providing his/her client ICE employee with comments and recommendations to a proposed operation plan for his review. The comments also addressed previous questions presented by the client and the attorney's legal opinion to those comments. This material is deliberative in nature as it consisted of an intra-agency discussion regarding comments and recommendations from an attorney to his/her client, the disclosure of which would have a chilling effect on the free and frank exchange of ideas within the agency.
000946	03/19/10	Email re: internal tasking seeking legal opinion on interrogations and transfers	This document is withheld in part pursuant to FOIA Exemption 5 under the deliberative process privilege. The email involves the Office of the Assistant Secretary, Senior Management Counsel, the Office of Investigations tasking personnel, ICE attorneys of a supervisory level (deputies whose names have been redacted) and an ICE employee in a non-attorney capacity (Dan Ragsdale [Assistant to the Secretary]). Specifically, this was a tasking that was sent to the Office of Principal Legal Advisor from the Office of the Assistant Secretary seeking legal advice regarding questions about interrogations and transfers. This material is deliberative in nature as it consisted of an initial, intra-agency question from an agency component to its legal department seeking guidance and a legal opinion, the disclosure of which would have a chilling effect on the free and frank exchange of ideas within the agency. As this was a tasking email seeking guidance, and was not a "draft" document, this email is the final version of this document.
000965-000966	Undated	Untitled draft document discussing the right to remain silent and the right to counsel	This document is withheld in part pursuant to FOIA Exemption 5 under the deliberative process privilege and the attorney client privilege. The untitled document provides a draft legal opinion as to the right to remain silent and the right to counsel. It contains "red-lined" edits within the text as well as comments provided by an ICE attorney discussing his/her opinion of a legal holding and its implications. This material is deliberative in nature as it consisted of an intra-agency discussion regarding comments and recommendations from an attorney within the agency intended for his/her client, the disclosure of which would have a chilling effect on the free and frank exchange of ideas within the agency.

Page Numbers	Document Date	Document Title	Document Description and Applicable Exemptions
000985-001003	Undated	Enforcement Operation Plan for SAC St. Paul	This document is withheld in part pursuant to FOIA Exemptions 5 and 7(E). FOIA Exemption 7(E) is applied to protect from disclosure of radio channels used, assignment codes, teams and assignments, and the particulars of each phase of the operation. The extent of agency knowledge of a target location, internal codes and radio used, how agents will contact individuals, and how to divide law enforcement teams are law enforcement techniques and procedures. The disclosure of these techniques and procedures could permit people seeking to violate immigration and customs laws and regulations to circumvent the law by anticipating when undercover agents are used, what information regarding a target location the agency is privy to, the overall strength of the law enforcement presence, and where teams will be deployed to counteract enforcement effectiveness, and could threaten the safety of the agents and public.
001020-001022	Undated	Untitled – attorneys notes regarding specific cases	This document is withheld in part pursuant to FOIA Exemption 5 under the attorney work product privilege. The untitled document consists of hand written notes by an ICE attorney that discusses the particulars of specific cases involving aliens. FOIA Exemption 5 is applied to protect from disclosure material prepared by an ICE attorney regarding significant ongoing litigation cases. This material was drafted by an attorney in contemplation of litigation and is therefore attorney work product.