



April 18, 2022

Submitted via Electronic Mail to ice-foia@dhs.gov

U.S. Immigration and Customs Enforcement
Freedom of Information Act Office
500 12th Street SW, Stop 5009
Washington, D.C. 20536-5009

RE: FOIA Request to U.S. Immigration and Customs Enforcement (ICE) re *Dent v. Holder*, 627 F.3d 365 (9th Cir. 2010)

Dear FOIA Officer:

This is a Freedom of Information Act (FOIA) request by the American Immigration Council ("Council") under 5 U.S.C. § 552.

The Council was established to increase public understanding of immigration law and policy, advocate for the fair and just administration of U.S. immigration laws, protect the legal rights of noncitizens and citizens, and educate the public about the enduring contributions of immigrants. Through research and analysis, the Council informs policymakers at the national, state, and local levels who seek to understand the power and potential of immigration and to develop policies based on facts rather than myths. The Council also seeks to hold the government accountable for unlawful conduct and restrictive interpretations of the law and for failing to ensure that the immigration laws are implemented and executed in a manner that comports with due process through the pursuit of transparency and impact litigation. The Council is a non-profit public interest organization under Internal Revenue Code Section 501(c)(3).

I. Request for Records

We request the following records and information:

- Current ICE Office of Principle Legal Advisory (OPLA) policies and guidance regarding *Dent v. Holder*, 627 F.3d 365 (9th Cir. 2010);
- Current ICE OPLA policies and guidance regarding 8 U.S.C. § 1229a(c)(2)(B); and
- Current ICE OPLA policies and guidance governing how ICE responds to respondents' requests for documents in removal proceedings.

For purposes of this request, “records” refer to all physical or electronic records that were prepared, received, transmitted, collected, or maintained by ICE, including documents, meeting notes and minutes, lists of meeting participants, electronic (emails) and paper correspondence, legal research, legal opinions, letters, drafts, internal agency guides, regulations, memoranda, and spreadsheets. Records should be provided in electronic format wherever possible.

II. Request for Fee Waiver

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

A. Disclosure Will Contribute to Understanding ICE Operations

Requesters seek to use the requested information to: (a) inform the public about access to individual immigration records in removal proceedings; and (b) enable oversight of agency actions by assessing ICE’s compliance with the law and internal guidance.

This request clearly concerns the operations and activities of the government, in this case, ICE, a federal agency. Disclosure of these records will clarify agency policies and practices with respect to *Dent v. Holder*, a Ninth Circuit case interpreting the agency’s obligations to provide certain records to individuals in removal proceedings. 627 F.3d 365 (9th Cir. 2010). By obtaining and analyzing current agency guidance, the Council may assess whether the agency abides by the Court’s order and agency policy directives.

The Council uses multiple methods of communication to disseminate information obtained in response to FOIA requests. The Council regularly synthesizes and publishes information about governmental operations obtained from FOIA requests on its publicly accessible website. This information is shared with the public in the form of summaries with links to government documents, reports, fact sheets and practice materials.¹ In calendar year 2020, the Council’s website received more than 2.4 million pageviews from more than 1.4 million visitors. The Council also regularly shares information with national print and news media and plans to distribute information obtained from these FOIA disclosures to interested media.

¹ See, e.g., American Immigration Council, *The Electronic Nationality Verification Program: An Overview* (Jan. 26, 2021), <https://www.americanimmigrationcouncil.org/research/electronic-nationality-verification-program-overview>; Guillermo Cantor et al., *Changing Patterns of Interior Immigration Enforcement in the United States, 2016 -2018*, American Immigration Council (July 1, 2019), <https://americanimmigrationcouncil.org/research/interior-immigration-enforcement-united-states-2016-2018>; American Immigration Council, *Stays of Removal Responses from EOIR* (May 2019), https://americanimmigrationcouncil.org/sites/default/files/foia_documents/board_of_immigration_appeals_interpretation_of_stay_of_removal_foia_production.pdf; Guillermo Cantor & Walter Ewing, *Still No Action Taken: Complaints Against Border Patrol Agents Continue to Go Unanswered*, American Immigration Council (Aug. 2017) (examining records of alleged misconduct by Border Patrol employees), http://bit.ly/Council_StillNoActionTaken.

The Council plan to employ all of the above methods when sharing and disseminating the information received by ICE pursuant to this petition. Accordingly, this satisfies the request and disclosure would “contribute significantly to public understanding of the operations or activities of the government.”²

B. Disclosure of the Information is not in the Commercial Interest of Requesters

The disclosure of records would not primarily be in the commercial interest of the Council. The Council is a 501(c)(3) organization that has no commercial interest in the request. The request furthers the Council’s work to increase public understanding of immigration law and policy and to advocate for the fair and just administration of U.S. immigration laws as well as to protect the legal rights of noncitizens. As with all other reports and information available on the Council’s website, the information that the Council receives in response to the Request will be available to immigration attorneys, noncitizens, and other interested members of the public free of charge.

If you have any questions, please do not hesitate to contact me at 202-507-7514, ecreighton@immcouncil.org.

Thank you for timely responding to this request.

Sincerely,



Emily J. Creighton

² 5 U.S.C. § 552 (West 2017).