

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

HARVARD IMMIGRATION AND REFUGEE
CLINICAL PROGRAM,
6 Everett Street, Suite 3103 (WCC),
Cambridge, MA 02138,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY,
245 Murray Lane, SW
Washington, DC 20528,

and

UNITED STATES IMMIGRATION AND
CUSTOMS ENFORCEMENT,
500 12th Street, SW
Washington, DC 20536,

Defendants.

Docket No.

COMPLAINT

COMPLAINT FOR INJUNCTIVE RELIEF

Plaintiff Harvard Immigration and Refugee Clinical Program (“HIRC”), by and through its undersigned attorneys, complains against Defendants U.S. Department of Homeland Security (“DHS”) and U.S. Immigration and Customs Enforcement (“ICE”) as follows:

INTRODUCTION

1. HIRC brings this action against Defendants DHS and its component ICE to compel compliance with the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and produce requested records concerning the use of solitary confinement in immigration detention.

2. The U.S. government has held immigrants in solitary confinement for years, under multiple presidential administrations.¹ Yet, there is little transparency about the numbers of immigrants held in solitary confinement, the process of placing immigrants in solitary confinement, and any safeguards put in place to address mental health or other concerns.

3. Transparency about the use of solitary confinement in immigration detention promotes accountability for government actions and ensures that the safeguards mandated by law, policy, and regulation are properly implemented at facilities across the United States. Absent information about these practices, the public participation and collaboration necessary to safeguard against abuse of the most vulnerable are impossible to achieve.

4. As further alleged below, for four years, HIRC has sought information from Defendants about the use and subsequent impact of solitary confinement on individuals held in civil immigration detention. Specifically, since November 21, 2017, HIRC has sought disclosure of records from DHS's Office of the Inspector General ("OIG") and Office for Civil Rights and Civil Liberties ("CRCL") related to the detention of immigrants in solitary confinement (the "OIG Request" and the "CRCL Request", collectively the OIG and CRCL FOIA Request). Since November 30, 2017, HIRC has sought the disclosure of three sets of records relating to immigrants placed into solitary confinement by ICE (the "ICE FOIA Requests"). And since December 21, 2017, HIRC has sought disclosure of records related to complaints and/or claims filed with and/or investigations by the U.S. Office of Special Counsel ("OSC") related to the use and substantive impact of segregation of civil immigration detainees (the "OSC FOIA Request").

5. Despite the clear statutory requirement that an agency respond to a FOIA Request within 20 days, and despite HIRC's repeated inquiries, Defendants DHS and ICE have failed to

¹ Ian Urbina & Catherine Rentz, *Immigrants Held in Solitary Cells, Often for Weeks*, N.Y. Times (Mar. 23, 2013), <https://www.nytimes.com/2013/03/24/us/immigrants-held-in-solitary-cells-often-for-weeks.html>.

produce any documentation at all with regard to the ICE FOIA Requests and the CRCL Request, and Defendant DHS has produced only incomplete documentation with regard to the OIG Request. Further, both Defendants ICE and DHS have yet to produce responsive records referred to them by other agencies in relation to the OIG Request and the OSC FOIA Request, respectively, within the required time limits. Defendants have thus failed to comply with the requirements of FOIA.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action under 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

7. Because Defendants failed to comply with the requirements to respond as set forth in 5 U.S.C. § 552(a)(4)(B) and HIRC filed timely appeals, HIRC has exhausted its administrative remedies and is entitled to proceed with this judicial action pursuant to 5 U.S.C. § 552(a)(6)(C)(i).

8. Venue is proper in the District of Massachusetts under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. 1391(e), including because it is the district in which HIRC has its principal place of business.

PARTIES

9. Plaintiff HIRC is a clinical program at Harvard Law School, with its principal place of business in Cambridge, Massachusetts. Founded in 1984, HIRC has supervised thousands of Harvard Law School students representing individuals seeking asylum and other forms of humanitarian protection in the United States. HIRC's mission is to advocate for immigrant justice, and it also seeks to challenge the increasing conflation of the criminal law system and the immigration system—issues directly pertinent to the solitary confinement concerns at issue in the OIG, CRCL and ICE FOIA Requests.

10. Defendant DHS is a U.S. agency within the meaning of 5 U.S.C. § 552(f)(1) and 5 U.S.C. § 551(1).

11. Defendant ICE is a component of Defendant DHS.

12. DHS OIG is tasked with driving “transformative change” to “improve DHS programs and operations and promote a safer homeland,” and DHS OIG’s mission is “[t]o provide independent oversight and promote excellence, integrity, and accountability within DHS.”²

13. A critical responsibility of DHS CRCL is “investigating civil rights and civil liberties complaints filed by the public regarding [DHS] policies or activities, or actions taken by [DHS] personnel.”³

14. DHS and ICE are in possession, custody, and control of the requested records and are responsible for responding to HIRC’s OIG, CRCL and ICE FOIA Requests and the referred OSC FOIA Request records.

STATUTORY FRAMEWORK

15. FOIA, 5 U.S.C. § 552, mandates disclosure of records held by a federal agency, in response to a request for such records by a member of the public, unless records fall within certain narrow statutory exemptions.

16. As the Supreme Court has recognized, “the basic purpose of [FOIA] is ‘to open agency action to the light of public scrutiny.’” *Dep’t of Air Force v. Rose*, 425 U.S. 352, 372 (1976). Scrutiny of otherwise opaque government actions, such as those affecting the most vulnerable populations in our country, improves public understanding of important issues. In short, transparency is necessary for a vibrant and functioning democracy.

² DHS, Office of Inspector General, *About Us*, available at <https://www.oig.dhs.gov/about>.

³ DHS, Office of Civil Rights and Civil Liberties, <https://www.dhs.gov/office-civil-rights-and-civil-liberties>.

17. Accordingly, HIRC submitted its OIG, CRCL, ICE, and OSC FOIA Requests to educate the public on the federal government’s policies and instructions regarding the use of solitary confinement in civil immigration detention.

FACTUAL ALLEGATIONS

A. BACKGROUND

18. It is well-established that solitary confinement, even for relatively short periods of time, can cause serious psychological and physical damage. Yet, noncitizens held in immigration detention are often subjected to solitary confinement, including disciplinary or administrative segregation, without regard for these medical and mental health tolls.⁴

19. The experience of solitary confinement can be acutely traumatizing for many, particularly those who have a history of “torture and abuse, as is often the case with many immigration and national security detainees.”⁵ Prolonged isolation can lead to mental health issues or severely exacerbate pre-existing mental illness.⁶

20. In light of the harmful effects of segregation, ICE’s own Performance-Based National Detention Standards (“PBNDS”), issued in 2008, acknowledged the severity of solitary confinement, listing it as a potential punishment only for the three most severe categories of offenses⁷ and generally listing it as the most severe punishment available.⁸

⁴ Homeland Security Advisory Council, *Report of the Subcommittee on Privatized Immigration Detention Facilities*, Dec. 1, 2016, available at <https://www.dhs.gov/sites/default/files/publications/DHS%20HSAC%20PIDF%20Final%20Report.pdf>.

⁵ Physicians for Human Rights, *Solitary Confinement in the U.S. Detention System*, April 2013, available at https://s3.amazonaws.com/PHR_Reports/Solitary-Confinement-April-2013-full.pdf.

⁶ *Id.*

⁷ See ICE, Performance-Based National Detention Standards § 3.19 A-1, A-3, A-5 (2008), available at https://www.ice.gov/doclib/dro/detention-standards/pdf/disciplinary_system.pdf.

⁸ See *id.* (V)(K)(1) (“Sanctions range from the withholding of privilege(s) to segregation.”).

21. Revised PBNDS issued in 2011 also emphasize that solitary confinement of vulnerable populations should be used as “a last resort” and “when no other viable housing options exist.”⁹ Still, CRCL received approximately 745 public complaints filed against ICE policies and practices, and actions carried out by ICE personnel between 2011 and 2014.¹⁰

22. In order to monitor the use of solitary confinement, ICE issued a directive in September 2013 mandating the systematic review of its use for immigrants detained by ICE (the “ICE Segregation Directive”).¹¹ The ICE Segregation Directive states that “[p]lacement in segregation should occur only when necessary and in compliance with applicable detention standards.”¹²

23. The ICE Segregation Directive established safeguards to ensure that detained immigrants with medical or mental illness are not inappropriately placed in solitary confinement. Indeed, per the directive “detainees shall be removed from segregation if the [ICE Health Services Corps] determines that the segregation placement has resulted in deterioration of the detainee’s medical or mental health.”¹³

24. On September 19, 2017, a report was published by OIG which investigated ICE field office compliance with policies and standards, including the ICE Segregation Directive, related to the segregation of detainees living with mental health issues (the “OIG Report”).¹⁴

⁹ ICE, Performance-Based National Detention Standards, § 2.12 (V)(A)(1)(c) (2011). *See also* 6 C.F.R. § 115.43(b) (“Use of administrative segregation by facilities to protect detainees vulnerable to sexual abuse or assault shall be restricted to those instances where reasonable efforts have been made to provide appropriate housing and shall be made for the last amount of time practicable, and when no other viable housing options exist, as a last resort.”).

¹⁰ CRCL, Data on Complaints Received, available at <https://www.dhs.gov/data-complaints-received>.

¹¹ ICE Directive 11065.1, Review of the Use of Segregation for ICE Detainees, DHS (2013), *available at* https://www.ice.gov/doclib/detention-reform/pdf/segregation_directive.pdf [hereinafter “ICE Segregation Directive”].

¹² ICE Segregation Directive at § 2.

¹³ *Id.* at § 5.2 (5) (a).

¹⁴ U.S. Department of Homeland Security, Office of Inspector General, ICE Field Offices Need to Improve Compliance with Oversight Requirements for Segregation of Detainees with Medical Health Conditions, September 29, 2017, available at <https://www.oig.dhs.gov/sites/default/files/assets/2017-11/OIG-17-119-Sep17.pdf>.

25. The OIG Report contained three evaluation goals: (1) to measure the extent to which “facility personnel follow ICE guidance for documenting segregation decisions”; (2) to measure the extent to which “facilities report segregation data accurately and promptly”; and (3) to assess whether “ICE field offices follow procedures for reviewing segregation decisions about detainees with mental health conditions.”¹⁵ The OIG Report found that the ICE field offices reviewed “did not record and promptly report all instances of segregation to ICE headquarters, nor did their system properly reflect all required reviews of ongoing segregation cases per ICE guidance. In addition, ICE does not regularly compare segregation data in the electronic management system with information at detention facilities to assess the accuracy and reliability of data in the system.”¹⁶

B. OIG AND CRCL FOIA REQUEST

1. Background

26. On November 21, 2017, HIRC submitted the OIG and CRCL FOIA Request to ICE. The request contained two parts.

27. Part A of the request—the OIG Request—sought the disclosure of records pertaining to the OIG Report including:

- The disclosure of records submitted by ICE to the OIG between July 2016 and January 2017 pertaining to detainees with mental health disabilities placed in segregated housing;
- The disclosure of records produced in accordance with the ICE Segregation Directive and the “Expanded Evidence for Submitting Segregation Notifications” issued by ICE on January 6, 2017 (referred to in the OIG Report); and
- The disclosure of the aforementioned records for ICE detention facilities and facilities ICE has agreements with or is contracting with for the purpose of holding immigration detainees, including Service Processing Centers, Contract Detention Facilities, and Intergovernmental Service Agreement Facilities in the state of Massachusetts between July 2016 and October 2017.¹⁷

¹⁵ *Id.* at 15.

¹⁶ *Id.* at 14–15.

¹⁷ See Exhibit A for a detailed list of requested records.

28. Part B of the request—the CRCL Request—sought the disclosure of the following:

- Records submitted by ICE to DHS CRCL in response to the primary allegations listed in Table 1 below¹⁸ as they relate to the segregation of detainees living with mental health conditions;
- Records within ICE possession related to the outcomes of the CRCL investigation into the primary allegations listed in Table 1;
- Records submitted by ICE to DHS CRCL in response to the primary allegations listed in Table 1 for the period between January 2015 and October 2017; and
- Records within ICE possession related to the outcomes of the CRCL investigation into the primary allegations listed in Table 1 for the period between January 2015 and October 2017.

Table 1 – U.S. Immigration and Customs Enforcement (ICE) Complaints Received by CRCL¹⁹

Primary Allegation	2011	2012	2013	2014
Abuse of Authority	6	10	7	3
Conditions of Detention	61	50	26	23
Disability Accommodation	0	0	3	1
Discrimination/Profiling	13	5	7	13
Due Process	9	3	2	11
Excessive Force	5	17	15	19
Legal Access	2	6	2	11
Medical/Mental Health Care	42	61	99	112
Sexual Assault/Abuse	3	6	6	8
Retained by DHS Office of Inspector General	3	0	4	1
Total	144	158	171	202

29. A true and accurate copy of the OIG and CRCL FOIA Request is attached as Exhibit A.

30. On February 21, 2018, ICE notified HIRC that ICE had received the OIG and CRCL FOIA Request, containing Part A (the OIG Request) and Part B (the CRCL Request) and

¹⁸ Table 1 includes a subset of the 745 complaints received by CRCL filed against ICE policies and practices, and actions carried out by ICE personnel between 2011 and 2014. CRCL, Data on Complaints Received, available at <https://www.dhs.gov/data-complaints-received>.

¹⁹ *Id.*

assigned the reference number 2018-ICFO-20740. ICE invoked a 10-day extension and granted HIRC's fee waiver request. [Exhibit B].

31. On February 21, 2018, ICE also determined that the OIG and CRCL FOIA Request was under the purview of the DHS OIG and DHS CRCL and informed HIRC that ICE had referred the relevant parts of the OIG and CRCL FOIA Request to the respective FOIA Officers—Part A (the OIG Request) to DHS OIG and Part B (the CRCL Request) to DHS CRCL. [Exhibit C]. However, instead of referring the CRCL Request to DHS CRCL, ICE mistakenly referred it to the DHS Privacy Office.

32. On February 23, 2018, the DHS Privacy Office notified HIRC that ICE had withdrawn the transfer of the CRCL Request to the DHS Privacy Office and that ICE had informed the DHS Privacy Office that ICE was “the proper office to search for these records.” [Exhibit D].

2. Defendants' Failure to Comply with FOIA Requirements

i. ICE's Failure to Respond to the CRCL Request

33. On August 10, 2018, HIRC emailed ICE requesting an update on the status of the OIG and CRCL FOIA Request, containing both the CRCL Request and the OIG Request. [Exhibit E].

34. On November 21, 2018, ICE notified HIRC that “the appropriate component of DHS” had been queried for records. The correspondence further stated that any responsive records would be reviewed for determination of releasability. This was the last communication that HIRC received from ICE in relation to the OIG and CRCL FOIA Request. [Exhibit F].

35. It does not appear that ICE ever referred the CRCL Request to DHS CRCL, as ICE initially purported to do. According to ICE's February 23, 2018 communication with the

DHS Privacy Office, ICE “is the proper office to search for these records” and appears to have custody of the requested records.

36. In relation to the CRCL Request, ICE has still not provided HIRC with any responsive records.

ii. DHS’s Improper Withholding of Responsive Records to the OIG Request

37. On December 10, 2018, DHS OIG provided HIRC with a response to the OIG Request. The response included 1 page released in full, 29 pages released in part, and 3 pages withheld in full. The exemptions cited for withholding records and portions of records were 5 U.S.C. §§ 552(b)(5), (b)(6), and (b)(7)(C). DHS OIG also referred 221 pages back to ICE to process and respond directly to HIRC.

38. A true and accurate copy of the DHS OIG Response is attached as Exhibit G.

39. The 30 pages released in full or in part by DHS OIG include email correspondence about scheduling site visits at the Buffalo Field Office and Buffalo Service Processing Center and three reports related to those site visits investigating the use of segregation for ICE detainees with mental health conditions. The email correspondence contains references to various relevant attachments, yet none of the attachments were released to HIRC. Because ICE has yet to respond to HIRC in relation to the 221 pages that were referred back to ICE for direct processing, HIRC cannot be sure that these attachments are contained in the pages referred to ICE.

40. Further, DHS has not provided HIRC with the necessary explanation for withholding in full 3 pages of responsive records and withholding in part 29 pages of responsive records. DHS has simply asserted that the records fall under the three exemptions cited above without any further explanation.

iii. ICE's Failure Respond to the OIG Request Referral

41. As noted above, on December 10, 2018, DHS OIG provided HIRC with a response to the OIG Request.

42. As part of its response, DHS OIG referred 221 pages back to ICE to process and respond to the Plaintiff directly. DHS OIG assigned No. 2018-IGFO-00072 to the OIG Request.

43. ICE has not provided a response to HIRC in relation to the referred pages of the OIG Request.

3. OIG and CRCL FOIA Request Appeals

44. On April 1, 2019, HIRC submitted an administrative appeal to DHS OIG in relation to the OIG and CRCL FOIA Request, which was received by DHS OIG's Information Law and Disclosure Division ("ILD") on April 10, 2019.

45. A true and accurate copy of HIRC's appeal to DHS OIG is attached as Exhibit H.

46. On April 1, 2020, ILD denied HIRC's appeal and affirmed DHS OIG's December 10, 2018 response. ILD also determined that DHS OIG had conducted an adequate records search.

47. ILD noted that of the 254 relevant pages of records located by DHS OIG, "DHS OIG referred 221 of them to ICE, as the originators of the records. As these are not DHS OIG records, DHS OIG cannot process them for release under FOIA."

48. A true and accurate copy of ILD's response to HIRC's appeal is attached as Exhibit I.

49. On April 1, 2019, HIRC submitted an administrative appeal in relation to the OIG and CRCL FOIA Request to ICE's Office of Principal Legal Advisor. As relevant here, the appeal challenged ICE's lack of response and argued that ICE was responsible for responding to the Request.

50. A true and accurate copy of HIRC’s appeal to ICE in relation to the OIG and CRCL FOIA Request is attached as Exhibit J.

51. As of the date of this complaint—more than 2 years after the appeal was filed—HIRC has not received any communication from ICE in relation to the OIG and CRCL FOIA Request appeal.

52. Specifically, HIRC has not received any communications or records from ICE in relation to the 221 pages responsive to the OIG Request that were referred back to ICE by DHS OIG for direct response to HIRC, nor has HIRC received any records from ICE that are responsive to the CRCL Request, even though ICE acknowledged in its letter to the DHS Privacy Office that ICE was the proper component to search for the requested records and had tasked its program offices to do so.

C. ICE FOIA REQUESTS

1. Background

53. On November 30, 2017, HIRC submitted the three ICE FOIA Requests, seeking three groups of requested records.

54. True and accurate copies of the three ICE FOIA Requests are attached as Exhibit K.

55. The FOIA Requests to ICE (“ICE FOIA Request 1,” “ICE FOIA Request 2,” and “ICE FOIA Request 3”) sought, for the period beginning September 4, 2013 to the present, records regarding use of segregation for immigration detainees within ICE detention facilities and facilities ICE has agreements with or is contracting with for the purpose of holding immigration detainees, including Service Processing Centers, Contract Detention Facilities, and Intergovernmental Service Agreement Facilities nationally and in the state of Massachusetts.

56. ICE FOIA Request 1 sought information related to extended solitary confinement, disability status, and detainees given heightened attention because of mental health concerns, from September 4, 2013 to the present.²⁰ ICE FOIA Request 1 in particular sought records and/or data documenting any changes in the provision of medical and mental health care in solitary confinement, from January 1, 2017 to the present, in the state of Massachusetts.²¹

57. ICE FOIA Request 2 sought various documents created, collected, received, or disseminated by ICE personnel regarding solitary confinement, as well as findings compiled by ICE.²² In particular, ICE FOIA Request 2 sought reports, records, and other documents created

²⁰ These included:

- Records, data, and/or reports regarding extended segregation placements
- Records, data, and/or reports collected by or pertaining to the operations and responsibilities of ICE Health Services Corps in ICE detention facilities and ICE contract detention facilities, including employees in county jails with agreements with ICE
- Records, data, and/or reports related to suitable accommodations for detainees with disabilities, medical or mental disabilities
- Records, data, and/or reports related to forensic assessments of competency for detainees with disabilities
- For detainees placed on mental health watch (or any similar terms indicating heightened attention because of mental health concerns), length of time on such watch

²¹ These included:

- The use of segregation in immigration detention by facility by month
- The number of health care providers employed in immigration detention facilities by month
- The amount and source of funding for medical and mental health care and staff in immigration detention facilities by month
- The number of visits by medical and mental health care providers to immigration detainees generally
- The number of visits by medical and mental health care providers to immigration detainees in segregation by facility by month
- The number of visits by medical health care providers to immigration detainees in housed in segregation by facility by month
- The number of transfers to an external medical and/or psychiatric facility and length of stay in the external facility
- The percentage of detainees in segregation provided access to showers and other basic services by facility by month
- The percentage of detainees granted access to regular outside visits
- The difference between medical and mental health care provided to those in segregation vs. those who are not
- Any written policies related to segregation

²² These included:

- Copies of segregation reports, memoranda, training materials, policy guidance, and/or notifications regarding segregation that are created, collected, disseminated or received by ICE personnel including personnel in the Custody Management Division, ERO Field Office Directors, Detention Monitoring Council, and by the Segregation Review Coordinator regarding segregation placements
- Written reports including memos, and/or other documents created by FODs regarding any findings and/or actions taken regarding detainees with disabilities, medical or mental illness, or other special vulnerability such as gender identity or sexual orientation placed in segregation

by ICE, the Detention Monitoring Council, and the Office of Detention Policy and Planning related to solitary confinement.

58. ICE FOIA Request 3 sought information regarding sexual abuse in facilities, LGBT detainees, and solitary confinement related to special vulnerabilities.²³

2. ICE's Failure to Respond to the ICE FOIA Requests

59. On February 26, 2018, ICE consolidated the three FOIA requests into one file and assigned FOIA number 2018-ICFO-21128 to the request (the "Consolidated ICE FOIA Request"). [Exhibit L].

60. On March 20, 2018 and April 6, 2018, ICE asked for clarification on the Consolidated ICE FOIA Request, which HIRC provided on April 1, 2018 and April 8, 2018, respectively [Exhibit M].

•Copies of reports by the Detention Monitoring Council of DMC subcommittees with data regarding the numbers of detainees held in segregation, the number held in extended segregation placements and/or the number who have segregation placements related to disability, medical or mental illness, suicide risk, hunger strike, status as a victim of sexual assault or other special vulnerability

•Records and/or reports (including memos, guidance letters, training materials, notifications, and other reports) generated from the quarterly meetings of the DMC on the use of segregation in ICE detention facilities and ICE contracting detention facilities

•Records and/or reports (including memos, guidance letters, training materials, notifications, and other reports) generated by the Office of Detention Policy and Planning in its review of segregation placements

•Records, data, and/or reports regarding the use of segregation in ICE detention facilities and ICE contracting detention facilities, broken down by facility

•Records, data, and/or reports regarding resources and capabilities for ICE detainees at ICE detention facilities and ICE contracting detention facilities

²³ These included:

•Records, data and/or policies implemented pursuant to the Prison Rape Elimination Act of 2003 and the Standards To Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities issued by DHS including oversight procedures, policy memoranda, training materials, or reports created or data collected that address sexual abuse in facilities used to detain individuals for immigration purposes, including any data or reports specific to LGBT detainees

•Records collected pursuant to the 2015 Transgender Care Memorandum

•Records, data, and/or reports that pertain to the demographics of the transgender detainee population

•Records, data, and/or reports of the available placements for transgender detainees

•Records of ERO LGBTI Field Liaisons and National ERO LGBTI Coordinator

•Records, data, and/or reports pertaining to immigration detainees who identify as transgender held in segregation including but not limited to data collected by EAGLE, EARM, RCA, and other relevant ICE information technology systems

•Records, data, and/or reports of instances in which transgender detainees were placed in segregation

•Records of segregation placements related to special vulnerability

61. On November 21, 2018, ICE indicated that responsive records for the Consolidated ICE FOIA Request had been located, were being reviewed for releasability, and would be processed soon [Exhibit N].

62. Nothing was ever produced.

3. Consolidated ICE FOIA Request Appeal

63. On April 16, 2019, HIRC filed an appeal in relation to the Consolidated ICE FOIA Request with ICE's Office of Principal Legal Advisor.

64. A true and accurate copy of HIRC's appeal in relation to the Consolidated ICE FOIA Request is attached as Exhibit O.

65. On April 25, 2019, ICE sent an acknowledgment letter to HIRC (the "ICE Acknowledgement Letter"), acknowledging that HIRC's appeal was transmitted on April 16, 2019 and received on April 24, 2019.

66. A true and accurate copy of the ICE Acknowledgment Letter is attached as Exhibit P.

67. On May 22, 2019, the Government Information Law Division of the ICE Office of Principal Legal Advisor remanded the appeal to the ICE FOIA office due to time and resource constraints (the "Remand Letter"). The Remand Letter indicated that the appeal was being remanded "to the ICE FOIA Office so that they [could] complete the search for [the records in dispute] and provide a direct response to [HIRC]."

68. A true and accurate copy of the Remand Letter is attached as Exhibit Q.

69. As of the date of this complaint—more than 2 years after the remand—HIRC has not received any communication from ICE in relation to the Consolidated ICE FOIA Request appeal.

D. OSC FOIA REQUEST

1. Background

70. On December 21, 2017, HIRC submitted the OSC FOIA Request for certain records regarding complaints and/or claims filed with and/or investigations by OSC related to the use and/or substantive impact of segregation of civil immigration detainees.²⁴

71. A true and accurate copy of the OSC FOIA Request is attached at Exhibit R.

72. As is relevant to this Complaint, OSC provided a response on May 19, 2020, in which it identified 2,735 responsive pages. Of the 2,735 pages, OSC referred 1,593 pages to DHS for direct response to HIRC.

73. A true and accurate copy of the response is attached at Exhibit S.

2. DHS's Failure to Respond to the OSC FOIA Request Referral

74. On May 19, 2020, OSC indicated that it had referred 1,593 pages related to the OSC FOIA Request to DHS for direct response to HIRC.

75. HIRC received no communication or response from DHS in relation to the referred pages of the OSC FOIA Request for over one year.

76. On July 6, 2021, HIRC sent DHS an email to inquire the status of the referral. DHS Privacy Office responded the following day and stated that “the case [is] currently in our processing queue. It is very difficult to provide an accurate estimated date of completion until

²⁴ Specifically, the OSC FOIA Request sought “any and all records created on and/or after September 4, 2013...related to any complaints about the use and/or substantive impact of segregation of civil immigration detainees, including, but not limited to:

1. Any complaints with and/or investigations by the Disclosure Unit;
2. Any and all records and responses related to any complaints and/or investigations;
3. Any and all records used to prepare any responses, memoranda, or reports related to segregation of civil immigration detainees;
4. Any and all records related to the Special Counsel’s “determination as to the completeness and apparent reasonableness” of any and all agency reports on solitary confinement of civil immigration detainees; and
5. Any and all OSC communications transmitted to any other agencies or branches of government, including, but not limited to the DHS Office of the Secretary, the President, Congressional oversight committees [of] the U.S. House and Senate.”

our FOIA analyst reviews these records.” However, DHS Privacy Office said that it expected it would take “three to four months” to respond to the request [Exhibit T].

77. DHS Privacy Office also sent HIRC an acknowledgement letter dated July 7, 2021 (the “DHS Acknowledgment Letter”), which noted receipt of the OSC FOIA request on October 21, 2020, and assigned case number 2020-HQFO-01140 to the referred pages.

78. A true and accurate copy of the DHS Acknowledgment Letter is attached as Exhibit U.

79. The DHS Acknowledgment Letter stated that “[d]ue to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request” and that due to the unusual circumstances of the request, “DHS will invoke a 10-day extension”.

80. DHS received the referral request over 1 year ago. DHS has not responded further.

FIRST CAUSE OF ACTION

Violation of 5 U.S.C. § 552(a)(3) For Failure to Produce Responsive Records

81. HIRC incorporates each of the foregoing paragraphs of this Complaint.

82. Pursuant to FOIA, 5 U.S.C. § 552(a), HIRC has a statutory right to access requested agency records.

83. Pursuant to FOIA, 5 U.S.C. § 552(a)(3)(A), Defendants must “make the records [requested] promptly available” to requesters.

84. Pursuant to FOIA, 5 U.S.C. § 552(a)(3)(C), Defendants must “make reasonable efforts to search” for the information requested.

85. Upon information and belief, Defendants possess records responsive to the OIG and CRCL FOIA Request that they have failed to produce without justification.

86. Upon information and belief, ICE possesses records responsive to the Consolidated ICE FOIA Request that it has failed to produce without justification.

87. Upon information and belief, Defendants' failure to produce responsive records is a result of their failure to make reasonable efforts to search for the information requested.

88. Under 5 U.S.C. § 552(a)(4)(B), when an agency "improperly withh[o]ld[s]" records, this Court may "enjoin the agency from withholding agency records" and "order the[ir] production."

SECOND CAUSE OF ACTION

Violation of 5 U.S.C. § 552(a)(6)(A)(ii) For Failure to Comply With Statutory Deadlines

89. HIRC incorporates each of the foregoing paragraphs of this Complaint.

90. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i)-(ii), Defendants had 20 business days from receipt of each FOIA request to provide an adequate response.

91. Further, agencies receiving FOIA record referrals should ensure that the requester is not disadvantaged by the timing of the process and should handle the referral in order of the initial date of receipt of the request by the referring agency—not the date of the referral itself. *See* U.S. Dep't of Justice, FOIA Update, Vol. XV, No. 3, at 6 (observing that a requester should "receive her rightful place in line as of the date upon which her request was received." (citing *Freeman v. Dep't of Justice*, 822 F. Supp. 1064, 1067 (S.D.N.Y. 1993)).

92. On November 21, 2017, HIRC submitted the OIG and CRCL FOIA Request to ICE, containing the OIG Request and the CRCL Request.

93. On February 21, 2018, ICE transferred the OIG Request to DHS OIG and mistakenly transferred the CRCL Request to the DHS Privacy Office, which then re-transferred the CRCL Request back to ICE two days later.

94. On December 10, 2018, DHS OIG responded to the OIG Request and referred 221 pages to ICE to review and respond directly to HIRC.

95. As of the date of this complaint, HIRC has not received any communications or records from ICE in relation to the 221 pages responsive to the OIG Request that were referred back to ICE by DHS OIG for direct response to HIRC.

96. As of the date of this complaint, HIRC has also not received any records from ICE in relation to the CRCL Request.

97. Accordingly, ICE has failed to respond to the OIG and CRCL FOIA Request, including both the CRCL Request and the referral from DHS OIG in relation to the OIG Request within the time limits prescribed by FOIA, 5 U.S.C. § 552(a)(6)(A)(i)-(ii).

98. On November 30, 2017, HIRC submitted three FOIA Requests to ICE, which ICE subsequently consolidated into one request.

99. Despite an appeal decision on May 22, 2019, asserting that the ICE FOIA office would complete its search and provide a response to the appeal, HIRC has not yet received these records.

100. Accordingly, ICE has failed to respond to the Consolidated ICE FOIA Request within the time limits prescribed by FOIA, 5 U.S.C. § 552(a)(6)(A)(i)-(ii).

101. On December 21, 2017, HIRC submitted the OSC FOIA Request. On May 19, 2020, OSC responded to the OSC FOIA Request and referred 1,593 pages to DHS for direct response to HIRC.

102. On July 7, 2021, DHS acknowledged receipt of the referral and noted that it could not estimate a timeframe in which it could review and respond to the referral, but expected it to take another three to four months.

103. Because Defendants have failed to comply with the requirements to respond as set forth in 5 U.S.C. § 552(a)(6)(A)(i)-(ii), HIRC has constructively exhausted its administrative remedies and is entitled to proceed with this judicial action pursuant to 5 U.S.C. § 552(a)(6)(C)(i).

104. Under 5 U.S.C. § 552(a)(4)(B), when an agency “improperly withh[o]ld[s]” records, this Court may “enjoin the agency from withholding agency records” and “order the[ir] production.”

THIRD CAUSE OF ACTION

Violation of 5 U.S.C. § 552(b)(5) For Improperly Withholding Records under FOIA Exception 5

105. HIRC incorporates each of the foregoing paragraphs of this Complaint.

106. DHS OIG invoked deliberative process privilege 5 U.S.C. § 552(b)(5) to withhold three pages of records believed to be responsive from HIRC, without necessary explanation or segregating these records.

107. However, “the government must explain, for each withheld record, at least, (1) what deliberative process is involved, (2) the role played by the documents in issue in the course of that process, and (3) the nature of the decisionmaking authority vested in the office or person issuing the disputed document[s], and the positions in the chain of command of the parties to the documents.” *Ctr. for Investigative Reporting v. U.S. Customs & Border Prot.*, 436 F. Supp. 3d 90, 101 (D.D.C. 2019).

108. 5 U.S.C. § 552(b) further provides 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 under this subsection.”

FOURTH CAUSE OF ACTION

Violation of 5 U.S.C. § 552(b)(6) For Improperly Withholding Records under FOIA Exception 6

109. HIRC incorporates each of the foregoing paragraphs of this Complaint.

110. DHS OIG improperly withheld nonexempt information by invoking U.S.C. § 552(b)(6) in overly broad terms.

111. 5 U.S.C. § 552(b)(6) exempts “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.”

112. DHS OIG instead overbroadly invoked 5 U.S.C. § 552(b)(6) to withhold “the names of third parties and any information that could reasonably be expected to identify such individuals” without specific explanation of the privacy interests at stake. [Exhibit G].

FIFTH CAUSE OF ACTION

Violation of 5 U.S.C. § 552(b)(7)(C) For Improperly Withholding Records under FOIA Exception 7(C)

113. HIRC incorporates each of the foregoing paragraphs of this Complaint.

114. DHS OIG improperly withheld nonexempt information by invoking 5 U.S.C. § 552(b)(7)(C) in overly broad terms.

115. 5 U.S.C. § 552(b)(7)(C) exempts records or information compiled for law enforcement purposes to the extent that their production “could reasonably be expected to constitute an unwarranted invasion of personal privacy.”

116. DHS OIG instead overbroadly invoked 5 U.S.C. § 552(b)(7)(C) to “protect the identities of third parties, and any information contained in these investigative records that could reasonably be expected to identify those individuals.” [Exhibit G].

PRAYER FOR RELIEF

WHEREFORE, HIRC respectfully requests that this Court enter a judgment for HIRC and award the following relief:

117. Injunctive relief, ordering ICE to respond to the Consolidated ICE FOIA Request, by a date certain, by

(a) conducting a search using “reasonable effort[s]” “for the purpose of locating those records which are responsive” to the Consolidated ICE FOIA Request, as required by 5 U.S.C. §§ 552(a)(3)(C)-(D);

(b) demonstrating that it has conducted an adequate search;

(c) producing to HIRC all non-exempt records or portions of records responsive to the Consolidated ICE FOIA Request, as well as a Vaughn index of any records or portions of records withheld due to a claim of exemption; and

(d) precluding Defendant ICE from withholding the requested records;

118. Injunctive relief, ordering ICE to process the 221 pages responsive to the OIG Request and to respond to the CRCL Request, by a date certain, by

(a) conducting a search using “reasonable effort[s]” “for the purpose of locating those records which are responsive” to the CRCL Request, as required by 5 U.S.C. §§ 552(a)(3)(C)-(D);

(b) demonstrating that it has conducted an adequate search;

(c) producing to HIRC all non-exempt records or portions of records responsive to the OIG and CRCL FOIA Request, as well as a Vaughn index of any records or portions of records withheld due to a claim of exemption; and

(d) precluding Defendant ICE from withholding the requested records;

119. Injunctive relief, ordering DHS OIG to release any improperly withheld nonexempt information in the responsive records to the OIG Request, by a date certain, by

(a) producing to HIRC all non-exempt records or portions of records responsive to the OIG Request, as well as a Vaughn index of any records or portions of records withheld due to a claim of exemption; and

(b) precluding Defendant DHS from withholding the requested records;

120. Injunctive relief, ordering DHS to process and produce the 1,593 pages referred to DHS for direct response from OSC in relation to the OSC FOIA Request, by a date certain, by

(a) producing to HIRC all non-exempt records or portions of records responsive to the OSC FOIA Request that were referred to DHS, as well as a Vaughn index of any records or portions of records withheld due to a claim of exemption; and

(b) precluding Defendant DHS from withholding the requested records;

121. Award HIRC its costs and attorney fees reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and

122. Grant HIRC such other and further relief as the Court may deem just and proper.

Dated: December 13, 2021

Respectfully submitted,

/s/ Sabrineh Ardalan

Sabrineh Ardalan (BBO #706806)

Philip L. Torrey (BBO # 736506)

Michael Shang, Law Student

George Biashvili, Law Student

HARVARD IMMIGRATION AND

REFUGEE CLINICAL PROGRAM,

HARVARD LAW SCHOOL

6 Everett Street, Wasserstein 3103

Cambridge, Massachusetts 02138

Telephone: (617) 384-7504

sardalan@law.harvard.edu

ptorrey@law.harvard.edu

David Bitkower
JENNER & BLOCK LLP
1099 New York Avenue, NW
Suite 900
Washington, DC 20001
Tel: (202) 639-6048
dbitkower@jenner.com
(pro hac vice motion forthcoming)

Amanda Azarian
JENNER & BLOCK LONDON LLP
25 Old Broad Street
London EC2N 1HQ
Tel: +44 (330) 060-5405
aazarian@jenner.com
(pro hac vice motion forthcoming)

Exhibit A

HARVARD LAW SCHOOL

CAMBRIDGE MASSACHUSETTS 02138

HARVARD IMMIGRATION AND
REFUGEE CLINIC
Harvard Law School

Location: 6 Everett St., Suite 3103
E-mail Address: hirc@law.harvard.edu
Phone: 617-384-8165

November 21, 2017

SENT VIA EMAIL (ICE-FOIA@dhs.gov)

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

To Whom It May Concern:

This is a request for records made pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 et seq., and the relevant implementing regulations, see 6 C.F.R. § 5 (Department of Homeland Security, Disclosure of Records and Information). The Request is submitted by the Harvard Immigration and Refugee Clinic (“HIRC”), HIRC Managing Attorney Phil Torrey, and Assistant Clinical Professor Sabi Ardalan (“Requesters”). Requesters seek the disclosure of records submitted by the U.S. Immigration and Customs Enforcement (“ICE”) agency to the U.S. Department of Homeland Security’s (“DHS”) Office of Inspector General (“OIG”) and Office for Civil Rights and Liberties (“CRCL”) related to ICE detainees placed into segregated housing.

I. Background

Noncitizens held in immigration detention may be subject to solitary confinement, disciplinary or administrative segregation, for a variety of reasons.¹ Yet, it is well-established that solitary confinement, even for relatively short periods of time, can cause serious psychological and physical damage. The experience of solitary confinement can be acutely traumatizing for many, including those who have a history of “torture and abuse, as is often the case with many immigration and national security detainees.”² Prolonged isolation can often lead to mental health issues or severely exacerbate pre-existing mental illness.³

¹ Homeland Security Advisory Council, *Report of the Subcommittee on Privatized Immigration Detention Facilities*, Dec. 1, 2016, available at

<https://www.dhs.gov/sites/default/files/publications/DHS%20HSAC%20PIDF%20Final%20Report.pdf>.

² Physicians for Human Rights, *Solitary Confinement in the U.S. Detention System*, April 2013, available at https://s3.amazonaws.com/PHR_Reports/Solitary-Confinement-April-2013-full.pdf.

³ *Id.*

In light of the harmful effects of segregation, Performance Based National Detention Standards (PBNDS) issued in 2011 emphasize that administrative segregation of vulnerable populations should be used as “a last resort” and “when no other viable housing options exist.”⁴ In order to monitor the use of segregation, ICE issued a directive in September 2013 mandating the systematic review of the use of segregation for ICE detainees.⁵ The directive states that “[p]lacement in segregation should occur only when necessary and in compliance with applicable detention standards.”⁶ The directive puts in place safeguards to ensure that detainees with medical or mental illness are not inappropriately placed in segregation and that “[s]uch detainees shall be removed from segregation if the IHSC determines that the segregation placement has resulted in deterioration of the detainee’s medical or mental health.”⁷

The OIG is tasked with performing “independent audits, investigations, and inspections of the programs and operations of DHS, and recommends ways for DHS to carry out its responsibilities in the most effective, efficient, and economical manner possible.”⁸ A critical responsibility of CRCL is “investigating and resolving civil rights and civil liberties complaints filed by the public regarding Department policies or activities, or actions taken by Department personnel.”⁹ Both the OIG and CRCL have evaluated ICE conduct surrounding detainees living with mental health disabilities. The records supplied by ICE to the OIG and CRCL for such evaluations would provide invaluable insight to the public on whether vulnerable detainees are receiving the medical care and attention they not only need, but are crucially entitled to. Therefore, Requesters seek the disclosure of any and all records delivered to the OIG and CRCL by ICE on matters related to the treatment and handling of vulnerable detainees sentenced to solitary confinement. We describe the requested records in greater detail below.

II. Records Requested

As used herein, the term “records” includes all records or communications preserved in electronic or written form, including but not limited to: correspondence; documents; data; videotapes; audio tapes; emails; faxes; files; guidance; guidelines; evaluations; instructions; analysis; memoranda; agreements; notes; orders; policies; procedures; protocols; reports; rules; manuals; specifications; and studies.

⁴ ICE, Performance Based National Detention Standards, § 2.12 (V)(A)(1)(c). *See also* 6 C.F.R. § 115.43(b) (“Use of administrative segregation by facilities to protect detainees vulnerable to sexual abuse or assault shall be restricted to those instances where reasonable efforts have been made to provide appropriate housing and shall be made for the least amount of time practicable, and when no other viable housing options exist, as a last resort.”).

⁶ C.F.R. § 115.68(a) (“The facility shall take care to place detainee victims of sexual abuse in a supportive environment that represents the least restrictive housing option possible (e.g., protective custody), subject to the requirements of § 115.43.”).

⁵ ICE Directive 11065.1, Review of the Use of Segregation for ICE Detainees, DHS (2013), *available at* https://www.ice.gov/doclib/detention-reform/pdf/segregation_directive.pdf. [hereinafter “ICE Segregation Directive”].

⁶ ICE Segregation Directive at § 2.

⁷ ICE Segregation Directive at § 5(a).

⁸ OIG, Mission Statement, *available at* <https://www.oig.dhs.gov/about>.

⁹ CRCL, *available at* <https://www.dhs.gov/office-civil-rights-and-civil-liberties>.

As used herein, the term “segregation” is used to refer to solitary confinement, administrative segregation, disciplinary segregation, restrictive housing, and other related terms. To the extent that the records and data disaggregate between different terminology, status, or type of segregation, please provide the records in the disaggregated form.

Should any responsive record contain personally identifiable information (“PII”) of any third party, Requesters ask that the agencies redact that information. This Request seeks non-PII data and records relevant to the segregation of detainees, not any personal or identifying information about any specific individual(s).

A. Office of Inspector General

A recent report published by the OIG investigates ICE field office compliance with policies and standards related to the segregation of detainees living with mental health issues. Specifically, the report contains three evaluation goals: (1) to measure the extent to which “[ICE] facility personnel follow ICE guidance for documenting segregation decisions”; to measure the extent to which “facilities report segregation data accurately and promptly; and to assess whether “ICE field offices follow procedures for reviewing segregation decisions about detainees with mental health conditions.”¹⁰ Appendix B – Objective, Scope, and Methodology further describes the data collection and analysis process employed to evaluate the aforementioned goals.¹¹

Requesters seek the disclosure of records submitted by ICE to the OIG between July 2016 and January 2017 pertaining to detainees with mental health disabilities placed in segregated housing. The list of requested records includes the following:

- “Prior ICE inspection reports on detention facilities used by ICE.”¹²
- Records related to meetings between “[Enforcement and Removal Operations] ERO and [ICE Health Service Corps] IHSC officials at ICE headquarters...to discuss segregation, reporting, and oversight; identify alternatives to segregation; and follow up on observations and conditions identified during site visits.”¹³
- Records related to meetings conducted “at selected field offices and detention facility staff to discuss segregation, reporting, and oversight; identify alternatives to segregation; and to follow up on observations and conditions identified during site visits.”¹⁴
- “Prior reports from other Federal agencies that address segregating individuals with mental health conditions.”¹⁵
- Records collected by OIG staff including but not limited to “alien files, medical files, incident and grievance records, and detention and segregation files” during site visits to seven facilities listed herein: “Buffalo Federal Detention Facility (a service processing center) in New York; two contract detention centers, the Northwest Detention Facility in

¹⁰ U.S. Department of Homeland Security, Office of Inspector General, *ICE Field Offices Need to Improve Compliance with Oversight Requirements for Segregation of Detainees with Medical Health Conditions*, September 29, 2017, available at <https://www.oig.dhs.gov/sites/default/files/assets/2017/OIG-17-119-Sep17.pdf>.

¹¹ *Id.*

¹² *Id.* 15.

¹³ *Id.* 15.

¹⁴ *Id.* 15.

¹⁵ *Id.* 15.

Washington and the South Texas Detention Complex in Texas; and four Intergovernmental Service Agreement facilities, the Adelanto Detention Center in California, Baker County Sheriff's Office in Florida, Tri-County Detention Center in Illinois, and York County Prison in Pennsylvania.”¹⁶

- Any and all records related to observations made by OIG staff during facility tours “to assess the confinement conditions for detainees in segregation.”¹⁷
- Segregation Review and Management System (“SRMS”) data collected and reviewed by the OIG for the purposes of the aforementioned OIG report. This includes data records on “713 segregation placements for detainees with mental health conditions—272 disciplinary instances and 441 administrative instances.”¹⁸
- Records related to the practice of “ICE headquarters’ offices us[ing] data from SRMS to jointly review and evaluate the appropriateness of segregation and coordinat[ing] recommendations for alternatives to segregation.”¹⁹
- Records from weekly meetings held by ICE headquarters “to oversee and review facility segregation decisions by using data from SRMS to assess segregation placements of individual detainees with mental health conditions.”²⁰ This includes commentary from those in attendance—namely, “representatives from IHSC, Domestic Operations Division Office of the Principal Legal Advisor, and Office of Detention Policy and Planning.”²¹
- Records related to ICE “internal controls [currently] in place, including periodic inspections by the ICE Office of Professional Responsibility’s Office of Detention Oversight.”²²
- Records from weekly and quarterly meetings between [ERO’s Custody Management Division] CMD and a Detention Monitoring Council “to discuss issues and concerns pertaining to long-term segregation placements, medical or mental illnesses, vulnerabilities, and other significant issues.”²³

Appendix C – Expanded Evidence for Submitting Segregation Notifications of the aforementioned report documents “expanded guidance” made by ICE on January 6, 2017. Requesters seek the disclosure of records produced in accordance with the new directive, which includes:

- Records related to the “ICE self-inspection document for field offices” for “ensur[ing] their [Field Office Directors] FODs and [Assistant Field Office Directors] AFODs are complying with the directive.”²⁴
- Records related to the change in “methodology used to calculate the length of segregation placements in SRMS.”²⁵
- Records related to *Section 4. Special Vulnerability Segregation Placement Reporting* noted in Appendix C. “All special vulnerability segregation placements are required to be entered

¹⁶ *Id.* 15.

¹⁷ *Id.* 15.

¹⁸ *Id.* 15.

¹⁹ *Id.* 4.

²⁰ *Id.* 4.

²¹ *Id.* 4.

²² *Id.* 9.

²³ *Id.* 9.

²⁴ *Id.* 9.

²⁵ *Id.* 9.

into SRMS with an AFOD signed review document, regardless of whether the placement lasts less than 72 hours.”²⁶

Finally, Requesters seek the disclosure of the aforementioned records for ICE detention facilities and facilities ICE has agreements with or is contracting with for the purpose of holding immigration detainees, including **Service Processing Centers (SPCs)**, **Contract Detention Facilities (CDFs)**, and **Intergovernmental Service Agreement Facilities (IGSAs)** (together “ICE contract detention facilities”)²⁷ in the state of Massachusetts between July 2016 and October 2017.

B. Office for Civil Rights and Civil Liberties

The CRCL received approximately 745 public complaints filed against ICE policies, practices, and actions carried out by ICE personnel between 2011 and 2014.²⁸ Requesters seek the disclosure of the following:

- Records submitted by ICE to CRCL in response to the primary allegations listed in Table 1 below as it relates to the segregation of detainees living with mental health conditions.
- Records within ICE possession related to the outcomes of CRCL investigation into the primary allegations listed in Table 1.
- Records submitted by ICE to CRCL in response to the primary allegations listed in Table 1 for the period between January 2015 and October 2017.
- Records within ICE possession related to the outcomes of CRCL investigation into the primary allegations listed in Table 1 for the period between January 2015 and October 2017.

Table 1. U.S. Immigration and Customs Enforcement (ICE) Received by CRCL²⁹

Primary Allegation	2011	2012	2013	2014
Abuse of Authority	6	10	7	3
Conditions of Detention	61	50	26	23
Disability Accommodation	0	0	3	1
Discrimination/Profiling	13	5	7	13
Due Process	9	3	2	11
Excessive Force	5	17	15	19
Legal Access	2	6	2	11
Medical/Mental Health Care	42	61	99	112
Sexual Assault/Abuse	3	6	6	8

²⁶ *Id.* 9.

²⁷ “Over many decades, immigration detention has evolved into a mixed public-private system where only 10 percent of detainees are now in ICE-owned facilities (known as Service Processing Centers or SPCs). Nearly all of the rest of the detainees are in facilities operated by private companies or by county jails, under various forms of contract or agreement with ICE. Even in the SPCs, many core functions, including security, are carried out by contract personnel, but with a more direct form of supervision by ICE officers than is the case in the other two broad categories of detention facilities.” Homeland Security Advisory Council Report, *supra* note 1, 5-6; *see also* Physicians for Human Rights Report, *supra* note 2.

²⁸ CRCL, Data on Complaints Received, available at <https://www.dhs.gov/data-complaints-received>.

²⁹ This table was amended from the longer list available at <https://www.dhs.gov/data-complaints-received>.

Primary Allegation	2011	2012	2013	2014
Retained by DHS Office of Inspector General	3	0	4	1
Total	144	158	171	202

III. Fee Waiver Request

Requestors are entitled to a waiver or reduction of all costs because the information sought “is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the [Requestors’] commercial interest.” 5 U.S.C. § 552(a)(4)(A)(iii); 6 C.F.R. § 5.11(k) (records must be furnished without charge if the information is in the public interest, and disclosure is not in the commercial interest of the institution); 6 C.F.R. § 5.11(d). Requestors will make any information that they receive as a result of this FOIA request available to the public, including the press, at no cost. The issue of immigration removal is one of the significant public interest in general, and the issue of how the federal government processes immigrants in its custody is of significant interest in particular. Requestors have undertaken this work in the public interest and not for any private commercial interest. The primary purpose of this FOIA request is to obtain information to further the public’s understanding of federal immigration detention policies and practices. Access to this information is necessary for the public to meaningfully evaluate the costs and consequences of federal immigration detention policies, including the government polices with regard to segregation and its effects on immigrants in government custody.

Disclosure in this case therefore meets the statutory criteria, and a fee waiver would fulfill Congress’s legislative intent in amending FOIA. *See Judicial Wrath, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers of noncommercial requesters.’”). Because the documents subject to this request are not sought for any commercial use, we understand that no fee may be charged for the first two hours of search time or for the first 100 pages of duplication. 5 U.S.C. § 552(a)(4)(A)(iv)(II).

IV. Certification

Requestors certify that the above information is true and correct to the best of their knowledge. *See* 6 C.F.R. § 5.5(d)(3).

Please reply to this request within twenty working days, or as required by statute. *See* 5 U.S.C. § 552(a)(6)(A)(i). Please furnish records as soon as they are identified to the following individual and address:

Sabi Ardalan
 Harvard Immigration and Refugee Clinical Program
 Harvard Law School
 6 Everett Street, Suite 3106
 Cambridge, MA, 02138

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Ardalan', with a long horizontal flourish extending to the right.

Sabi Ardalan
Harvard Immigration and
Refugee Clinical Program
(617) 384-7504
sardalan@law.harvard.edu

Exhibit B

Azarian , Amanda L.

Subject: FW: ICE FOIA Request 2018-ICFO-20740

From: "ice-foia@dhs.gov" <ice-foia@dhs.gov>

Date: Wednesday, February 21, 2018 at 11:03 AM

To: Cassandra Agbayani <cassandra_agbayani@hks18.harvard.edu>

Subject: ICE FOIA Request 2018-ICFO-20740

February 21, 2018

CASSANDRA AGBAYANI
HARVARD UNIVERSITY
6 EVERETT STREET
STE 3103
CAMBRIDGE, MA 02138

RE: ICE FOIA Case Number 2018-ICFO-20740

Dear Ms. AGBAYANI:

This acknowledges receipt of your Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), dated November 27, 2017, and to your request for a waiver of all assessable FOIA fees. Your request was received in this office on November 27, 2017. Specifically, you requested records submitted by ICE to DHS/OIG and CRCL relating to ICE detainees placed into segregated housing (see request for specific details).

Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Per Section 5.5(a) of the DHS FOIA regulations, 6 C.F.R. Part 5, ICE processes FOIA requests according to their order of receipt. Although ICE's goal is to respond within 20 business days of receipt of your request, the FOIA does permit a 10- day extension of this time period. **As your request seeks numerous documents that will necessitate a thorough and wide-ranging search, ICE will invoke a 10-day extension for your request, as allowed by Title 5 U.S.C. § 552(a)(6)(B). If you care to narrow the scope of your request, please contact our office. We will make every effort to comply with your request in a timely manner.**

ICE evaluates fee waiver requests under the legal standard set forth above and the fee waiver policy guidance issued by the Department of Justice on April 2, 1987, as incorporated into the Department of Homeland Security's Freedom of Information Act regulations [1]. These regulations set forth six factors to examine in determining whether the applicable legal standard for fee waiver has been met. I have considered the following factors in my evaluation of your request for a fee waiver:

- (1) Whether the subject of the requested records concerns "the operations or activities of the government";
- (2) Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;
- (3) Whether disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requestor or a narrow segment of interested persons;
- (4) Whether the contribution to public understanding of government operations or activities will be "significant";
- (5) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and
- (6) Whether the magnitude of any identified commercial interest to the requestor is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requestor.

Upon review of your request and a careful consideration of the factors listed above, I have determined to grant your request for a fee waiver.

ICE has queried the appropriate program offices within ICE for responsive records. If any responsive records are located, they will be reviewed for determination of releasability. Please be assured that one of the processors in our office will respond to your request as expeditiously as possible. We appreciate your patience as we proceed with your request.

Your request has been **assigned reference number 2018-ICFO-20740**. Please refer to this identifier in any future correspondence. To check the status of an ICE FOIA/PA request, please visit <http://www.dhs.gov/foia-status>. Please note that to check the status of a request, you must enter the 2018-ICFO-XXXXX tracking number. If you need any further assistance or would like to discuss any aspect of your request, please contact the FOIA office. You may send an e-mail to ice-foia@ice.dhs.gov, call toll free (866) 633-1182, or you may contact our FOIA Public Liaison, Fernando Pineiro, in the same manner. Additionally, you have a right to right to seek dispute resolution services from the Office of Government Information Services (OGIS) which mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974.

You may contact OGIS as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Regards,

ICE FOIA Office
Immigration and Customs Enforcement
Freedom of Information Act Office
500 12th Street, S.W., Stop 5009
Washington, D.C. 20536-5009
Telephone: 1-866-633-1182
Visit our FOIA website at www.ice.gov/foia

[1] 6 CFR § 5.11(k).

Exhibit C

Office of Information Governance and Privacy

U.S. Department of Homeland Security
500 12th St., NW
Washington, D.C. 20536



U.S. Immigration
and Customs
Enforcement

February 21, 2018

CASSANDRA AGBAYANI
HARVARD UNIVERSITY
6 EVERETT STREET
STE 3103
CAMBRIDGE, MA 02138

RE: ICE FOIA Case Number 2018-ICFO-20740

Dear Ms. AGBAYANI:

This acknowledges receipt of your November 27, 2017, Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), for records submitted by ICE to DHS/OIG and CRCL relating to ICE detainees placed into segregated housing (see request for specific details). Your request was received in this office on November 27, 2017.

Upon initial review of your request, I have determined that the information you are seeking is under the purview of the Office of the Inspector General, a DHS component. Therefore, I am referring your request to the FOIA Officer for processing and direct response to you. You may contact that office at:

OIG Office of Counsel
PHONE: 202-254-4001
FAX: 202-254-4398
EMAIL: FOIA.OIG@OIG.DHS.GOV

MAILING ADDRESS:
245 Murray Lane SW
Mail Stop - 0305
Washington, D.C. 20528-0305

Your request has been assigned reference number **2018-ICFO-20740**. Please refer to this identifier in any future correspondence. To check the status of an ICE FOIA/PA request, please visit <http://www.dhs.gov/foia-status>. Please note that to check the status of a request, you must

[Type text]

enter the 2018-ICFO-XXXXX tracking number. You may contact this office at (866) 633-1182. Our mailing address is 500 12th Street, S.W., Stop 5009, Washington, D.C. 20536-5009.

Sincerely,

David F. Stadnicki / for

Catrina M. Pavlik-Keenan
FOIA Officer

Office of Information Governance and Privacy

U.S. Department of Homeland Security
500 12th St., NW
Washington, D.C. 20536



**U.S. Immigration
and Customs
Enforcement**

February 21, 2018

CASSANDRA AGBAYANI
HARVARD UNIVERSITY
6 EVERETT STREET
STE 3103
CAMBRIDGE, MA 02138

RE: ICE FOIA Case Number 2018-ICFO-20740

Dear Ms. AGBAYANI:

This acknowledges receipt of your November 27, 2017, Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), for records submitted by ICE to DHS/OIG and CRCL relating to ICE detainees placed into segregated housing (see request for specific details). Your request was received in this office on November 27, 2017.

Upon initial review of your request, I have determined that the information you are seeking is under the purview of the Office of Civil Rights and Civil Liberties, a DHS component. Therefore, I am referring your request to the FOIA Officer for processing and direct response to you. You may contact that office at:

The Privacy Office
U.S. Department of Homeland Security
245 Murray Lane SW
STOP-0655
Washington, D.C. 20528-0655
Phone: 202-343-1743 or 866-431-0486
Fax: 202-343-4011
E-mail: foia@hq.dhs.gov

Your request has been assigned reference number **2018-ICFO-20740**. Please refer to this identifier in any future correspondence. To check the status of an ICE FOIA/PA request, please visit <http://www.dhs.gov/foia-status>. Please note that to check the status of a request, you must

[Type text]

enter the 2018-ICFO-XXXXX tracking number. You may contact this office at (866) 633-1182. Our mailing address is 500 12th Street, S.W., Stop 5009, Washington, D.C. 20536-5009.

Sincerely,

David F. Stadnicki / for

Catrina M. Pavlik-Keenan
FOIA Officer

Exhibit D



Homeland
Security

Privacy Office, Mail Stop 0655

February 23, 2018

SENT VIA E-MAIL TO: Cassandra_Agbayani@hks18.harvard.edu

CASSANDRA AGBAYANI
HARVARD UNIVERSITY
6 EVERETT STREET
STE 3103
CAMBRIDGE, MA 02138

Re: **2018-ICFO-20740**
2018-HQFO-00656

Dear Ms. AGBAYANI:

This in response to a transfer received by the Department of Homeland Security (DHS) Privacy Office of your November 21, 2017 Freedom of Information Act (FOIA) request that you addressed to ICE seeking records relating to records submitted by ICE to DHS/OIG and CRCL relating to ICE detainees placed into segregated housing.

ICE inadvertently referred your request to this office for processing under FOIA. This request was received in the on February 22, 2018 and ICE withdrew their transfer to our office today. ICE advised that they tasked their program offices to search for records for your request and they are the proper office to search for these records.

Your request has been assigned the reference number **2018-HQFO-00656**. Please refer to this identifier in future correspondence. You may contact this office at our toll-free telephone number, 1-866-431-0486, or at 202-343-1743.

Sincerely,

/s/

Maura Busch
FOIA Program Specialist

Exhibit E

Azarian , Amanda L.

Subject: FW: Status Request of 2018-ICFO-20740

From: FOIA OIG [<mailto:foia.oig@oig.dhs.gov>]
Sent: Friday, August 10, 2018 2:15 PM
To: Torrey, Phil <ptorrey@law.harvard.edu>; FOIA <FOIA@HQ.DHS.GOV>
Cc: ICE-FOIA <ICE-FOIA@ice.dhs.gov>; Chua, Errol-HLSCLINICS <echua.2018@hlsclinics.org>
Subject: RE: Status Request of 2018-ICFO-20740

Thank you for your interest in the Department of Homeland Security (DHS) Office of Inspector General (DHS-OIG). Please be advised that for security purposes we do not open email attachments nor click on attached links.

For your information, DHS-OIG is responsible for conducting and supervising audits, investigations, and inspections relating to the programs and operations of DHS. Additionally, this unit of DHS-OIG only handles Freedom of Information Act (FOIA) requests for specific, identifiable government records that exist and can be located in DHS-OIG files. It is evident from your below email that you are not requesting DHS-OIG records. As such, we cannot be of any assistance to you.

If you are, requesting records held by the U.S. Immigration and Customs Enforcement (ICE) you will need to contact them directly. More information can be found on their website at: <https://www.ice.gov/foia/overview>.

The DHS-OIG FOIA unit will not take any other action on the email communication you submitted below.

Sincerely,
FOIA/DHS-OIG

From: Torrey, Phil <ptorrey@law.harvard.edu>
Sent: Friday, August 10, 2018 12:17 PM
To: FOIA <FOIA@HQ.DHS.GOV>; FOIA OIG <foia.oig@oig.dhs.gov>
Cc: ICE-FOIA <ICE-FOIA@ice.dhs.gov>; Chua, Errol-HLSCLINICS <echua.2018@hlsclinics.org>
Subject: Status Request of 2018-ICFO-20740

Dear Madam or Sir,

This email is to inquire about the status of the following outstanding FOIA request:

- 2018-ICFO-20740 received Nov 27, 2017; estimated delivery 15 Jan, 2018

On 27 Nov 27, 2018, we filed an FOIA request with the ICE FOIA Office.

On Feb 21, 2018, we received correspondence from ICE FOIA Officer Catrina Pavlik-Keenan acknowledging receipt of our FOIA request. That correspondence also included an invocation for a further 10-day extension, as well as referrals to the Privacy Office and the OIG Office of Counsel respectively.

We have received no further correspondence from either department since.

FOIA responses typically should be responded to within 20 days. 5 U.S.C. § 552(a)(6)(A)(i). ICE exercised its rights to a 10-day extension pursuant to 6 C.F.R. § 5.5(a). As of the date of this email, this request has now been pending for 170 days.

Please provide an update on the status of this request as soon as possible. Many thanks for your prompt attention to this matter.

Philip L. Torrey

Harvard Immigration and Refugee Clinical Program
Harvard Law School
6 Everett Street, Suite 3105
Cambridge, Massachusetts 02138
Phone: (617) 495-0638

This transmittal is intended for a particular addressee(s). It may constitute a confidential and privileged attorney-client communication or attorney work product. If it is not clear that you are the intended recipient, you are hereby notified that you have received this transmittal in error; any review, copying, or dissemination is strictly prohibited. If you have received this transmittal in error, please notify the sender immediately and destroy all copies of the transmittal and any attachments from your inbox and data storage systems. Thank you.

Exhibit F

Azarian , Amanda L.

Subject: FW: 2018ICFO20740

From: ICE-FOIA <mailto:ICE-FOIA@ice.dhs.gov>
Se t: Wednesday, November 21, 2018 11:13 AM
To: Torrey, Phil
Subject: RE: 2018ICFO20740

Good evening,

In regards to 2018-ICFO-20740 we have queried the appropriate component of DHS for responsive records. If any responsive records are located, they will be reviewed for determination of releasability. We will process your request as expeditiously as possible. Upon completion of the processing, all documents that can be released will be made available to you at the earliest possible date. We sincerely apologize for the delay you are experiencing and appreciate your continued patience.

Sincerely,
ICE FOIA

From: Torrey, Phil <ptorrey@law.harvard.edu>
Se t: Thursday, November 15, 2018 1:14 PM
To: ICE-FOIA <ICE-FOIA@ice.dhs.gov>
Cc: Lee, Seung Heon-HLSCLINICS <slee.jd19@hlsclinics.org>; Ayoub, Sherif <sayoub@llm19.law.harvard.edu>
Subject: 2018ICFO20740

Dear Madam or Sir,

This email is to inquire about the status of the following outstanding FOIA request:

2018ICFO20740

On Feb 21, 2018, we received correspondence from ICE that the information we are seeking through our FOIA request to ICE was under the purview of the Office of the Inspector General (OIG) of DHS.

On Aug. 10, 2018 we received correspondence from FOIA DHS-OIG that our FOIA request is not one that can be addressed by DHS-OIG as DHS-OIG does not store any information relevant to our request, and that FOIA ICE should address this request instead.

From the Systems of Records Notices available on the DHS website, ICE maintains several systems of records on detainees, including DHS/ICE-013 Alien Health Records System which maintains information on the health of detainees, which includes information on "examination, diagnosis and treatment of aliens whom ICE detains." We believe that this is directly related to our request and hence that ICE is the correct office that this request should be directed to.

FOIA responses typically should be responded to within 20 days. 5 U.S.C. § 552(a)(6)(A)(i). ICE exercised its rights to a 10 day extension pursuant to 6 C.F.R. § 5.5(a). As of the date of this email, this request has now been pending for 345 days.

Please provide an update on the status of this request as soon as possible. Many thanks for your prompt attention to this matter.

Philip L. Torrey
Managing Attorney
Harvard Immigration and Refugee Clinical Program
Harvard Law School
6 Everett Street, Suite 3105
Cambridge, Massachusetts 02138
Phone: (617) 495-0638

This transmittal is intended for a particular addressee(s). It may constitute a confidential and privileged attorney-client communication or attorney work product. If it is not clear that you are the intended recipient, you are hereby notified that you have received this transmittal in error; any review, copying, or dissemination is strictly prohibited. If you have received this transmittal in error, please notify the sender immediately and destroy all copies of the transmittal and any attachments from your inbox and data storage systems. Thank you.

Exhibit G



OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

December 10, 2018

Sabi Ardalan
Harvard Immigration and Refugee Clinical Program
Harvard Law School
6 Everett Street, Suite 3106
Cambridge, MA 02138
sardalan@law.harvard.edu

Subject: Freedom of Information Act Request No. 2018-IGFO-00072
Final Response

Dear Ms. Ardalan:

This responds to your Freedom of Information Act (FOIA) addressed to the Department of Homeland Security (DHS) U.S. Immigrations and Customs Enforcement (ICE), dated November 21, 2017, Section A of your request is seeking records submitted by ICE to the OIG between July 2016 and January 2017 pertaining to detainees with mental health disability placed in segregated housing. ICE referred your request to the Department of Homeland Security (DHS) Office of Inspector General (OIG) for processing and direct response to you. DHS-OIG received that referral on February 21, 2018.

We reviewed the responsive records under the FOIA to determine whether they may be disclosed to you. Based on that review, this office is providing the following:

1 page(s) are released in full (RIF);
29 page(s) are released in part (RIP);
3 page(s) are withheld in full (WIF);
221 page(s) were referred to another entity.

The exemptions cited for withholding records or portions of records are marked below.

Freedom of Information Act, 5 U.S.C. § 552			Privacy Act, 5 U.S.C. § 552a
<input type="checkbox"/> 552(b)(1)	<input checked="" type="checkbox"/> 552(b)(5)	<input checked="" type="checkbox"/> 552(b)(7)(C)	<input type="checkbox"/> 552a(j)(2)
<input type="checkbox"/> 552(b)(2)	<input checked="" type="checkbox"/> 552(b)(6)	<input type="checkbox"/> 552(b)(7)(D)	<input type="checkbox"/> 552a(k)(2)
<input type="checkbox"/> 552(b)(3)	<input type="checkbox"/> 552(b)(7)(A)	<input type="checkbox"/> 552(b)(7)(E)	<input type="checkbox"/> 552a(k)(5)
<input type="checkbox"/> 552(b)(4)	<input type="checkbox"/> 552(b)(7)(B)	<input type="checkbox"/> 552(b)(7)(F)	<input type="checkbox"/> Other:



OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

OIG redacted from the enclosed documents, names and identifying information of third parties to protect the identities of these individuals. Absent a Privacy Act waiver, the release of such information concerning the third parties named in these records would result in an unwarranted invasion of personal privacy in violation of the Privacy Act. Information is also protected from disclosure pursuant to Exemption (b)(5), (b)(6), and (7)(C) of the FOIA further discussed below.

Exemption 5, 5 U.S.C. § 552(b)(5)

Exemption 5 of the FOIA protects “inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.” 5 U.S.C. § 552(b)(5). DHS-OIG is invoking the [deliberative process] privilege of Exemption 5 to protect information that falls within that privilege’s domain.

Exemption 6, 5 U.S.C. § 552(b)(6)

Exemption 6 allows withholding of “personnel and medical files and *similar files* the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6)(emphasis added). DHS-OIG is invoking Exemption 6 to protect the names of third parties and any information that could reasonably be expected to identify such individuals.]

Exemption 7(C), 5 U.S.C. § 552(b)(7)(C)

Exemption 7(C) protects from public disclosure “records or information compiled for law enforcement purposes . . . [if disclosure] could reasonably be expected to cause an unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(7)(C). DHS-OIG is invoking Exemption 7(C) to protect the identities of third parties, and any information contained in these investigative records that could reasonably be expected to identify those individuals.]

Additionally, 221 pages have been referred to Department of Homeland Security Immigration and Customs Enforcement a DHS component. ICE will process the record under the FOIA and respond to you directly. Should you wish to contact ICE you may write to:



OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

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

Appeal

You have the right to appeal this response.¹ Your appeal must be in writing and received within 90 days after the date of this response. Please address any appeal to:

FOIA/PA Appeals Unit
DHS-OIG Office of Counsel
Stop 0305
245 Murray Lane, SW
Washington, DC 20528-0305

Both the envelope and letter of appeal must be clearly marked "Freedom of Information Act/Privacy Act Appeal." Your appeal letter must also clearly identify the DHS-OIG's response. Additional information on submitting an appeal is set forth in the DHS regulations at 6 C.F.R. § 5.8.

Assistance and Dispute Resolution Services

Should you need assistance with your request, you may contact DHS-OIG's FOIA Public Liaison. You may also seek dispute resolution services from our FOIA Public Liaison. You may contact DHS-OIG's FOIA Public Liaison in any of the following ways:

FOIA Public Liaison
DHS-OIG Counsel
STOP 0305
245 Murray Lane, SW
Washington, DC 20528-0305
Phone: 202-981-6100
Fax: 202-245-5217
E-mail: foia.oig@oig.dhs.gov

¹ For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. 5 U.S.C. 552(c) (2006 & Supp. IV 2010). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.



OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

Additionally, the 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road - OGIS
College Park, MD 20740-6001
E-mail: ogis@nara.gov
Web: <https://ogis.archives.gov>
Telephone: 202-741-5770
Fax: 202-741-5769
Toll-free: 1-877-684-6448

If you have any questions about this response, please contact us at 202-981-6100.

Sincerely,

Glenn Lewis

Glenn Lewis
FOIA/PA Disclosure Specialist

Enclosures 33 pages

Requester's Name:

Sabi Ardalan

FOIA/PA NO.:

No. 2018-IGFO-00072

33

PAGES OF DOCUMENTS

1 PAGES are released in full (RIF);

29 PAGES are released in part (RIP);

3 PAGES are withheld in full (WIF);

EXEMPTIONS CITED

(b)(7)(C), (b)(5), (b)(6)



**U.S. Department of Homeland Security
Office of Inspector General
Office of Inspections & Evaluations**

See C.1.PR.G (2) for PSSC

**Use of Segregation for ICE Detainees with Mental Health Conditions
16-073-ISP-ICE**

(b)(6);(b)(7)(C) Team Lead: (b)(6);(b)(7)(C)

**E-mails / Conversations Scheduling Entrance Conference
(Including planning for the week)**

From: (b)(6);(b)(7)(C)

Sent: Monday, August 22, 2016 1:19 PM

To: (b)(6);(b)(7)(C)

Cc: (b)(6);(b)(7)(C)

(b)(6);(b)(7)(C); (b)(6);(b)(7)(C)

Subject: Site Visits - OIG 16-073 - Use of Segregation for ICE Detainees with Mental Health Conditions

Hi (b)(6);(b)(7)(C)

Here is a quick summary to detail a few of the questions you have asked.

As far as personnel interviews go, we will make every effort to ensure all staff is available when you request them. ICE Supervisors available for interview will be: Supervisor Detention & Deportation Officers (b)(6);(b)(7)(C) (b)(6);(b)(7)(C) and (b)(6);(b)(7)(C). We all work in admin, and will be available throughout your visit.

Contact Supervisors will be available until 3PM and include Captain (b)(6);(b)(7)(C) and Lt (b)(6);(b)(7)(C). Lt (b)(6);(b)(7)(C) (SHU Supervisor) will be available until 6PM.

The IHSC medical staff consisting of CDR's (b)(6);(b)(7)(C), (b)(6);(b)(7)(C) and (b)(6);(b)(7)(C) will be available at 2:30PM as indicated on your schedule.

My Custody Management Unit staff consisting of Deportation Officers (b)(6);(b)(7)(C), (b)(6);(b)(7)(C), (b)(6);(b)(7)(C) (b)(6);(b)(7)(C) and (b)(6);(b)(7)(C) will be available at all times, and will be responsible for escorting you down range if necessary and to retrieve any files or other items you may request.

Cell phone usage is typically restricted to the administrative areas of the facility. However, if you plan to use your cell phones for pictures, we can accommodate, but request that you limit the amount of phones down range necessary to complete your mission. Cell phone connection in the administrative area is generally good, however, there are areas down range that lack any signal.

Upon arrival, your credentials will be checked at the Main Gate by a Contract Detention Officer, and once admitted, you will provided directions to your reserved parking spaces which will be towards the front of the main building. You will enter the main door at the facility and will be required to pass our security measures at that point. No weapons of any kind will be allowed into the facility.

Once cleared by the Lobby Officer, we will escort you all to the Muster room for the entrance conference.

We look forward to meeting you all in the morning.

Best regards,

(b)(6);(b)(7)(C)

(b)(6);(b)(7)(C)

From: (b)(6);(b)(7)(C)
Sent: Thursday, August 18, 2016 2:10 PM
To: (b)(6);(b)(7)(C)
Cc: (b)(6);(b)(7)(C); (b)(6);(b)(7)(C)
Subject: RE: 3 of 3 FW: Site Visits - OIG 16-073 - Use of Segregation for ICE Detainees with Mental Health Conditions

We received all three e-mails as well as the attached e-mail on 8/18/2016. We had no problem with you splitting it up into 3 separate e-mails.

Thank you so much and we are looking forward to our site visit next week.

From: (b)(6);(b)(7)(C)
Sent: Thursday, August 18, 2016 2:06 PM
To: (b)(6);(b)(7)(C)
Cc: (b)(6);(b)(7)(C); (b)(6);(b)(7)(C); (b)(6);(b)(7)(C); (b)(6);(b)(7)(C)
Subject: RE: 3 of 3 FW: Site Visits - OIG 16-073 - Use of Segregation for ICE Detainees with Mental Health Conditions

Confirming that we received 11 attachments that we could open. However, we received 3.4.4 Protective Custody Operations and the Detainee Request Form twice.

From: (b)(6);(b)(7)(C)
Sent: Wednesday, August 17, 2016 12:32 PM
To: (b)(6);(b)(7)(C); (b)(6);(b)(7)(C); (b)(6);(b)(7)(C); (b)(6);(b)(7)(C); (b)(6);(b)(7)(C)
Subject: 3 of 3 FW: Site Visits - OIG 16-073 - Use of Segregation for ICE Detainees with Mental Health Conditions
Importance: High

Three of Three (11 attachments included).

Unfortunately the initial message was too large for your server, so I must split it up into 3 separate messages.

(b)(6);(b)(7)(C)

From: (b)(6);(b)(7)(C)
Sent: Thursday, August 18, 2016 1:59 PM
To: (b)(6);(b)(7)(C); (b)(6);(b)(7)(C); (b)(6);(b)(7)(C); (b)(6);(b)(7)(C); (b)(6);(b)(7)(C)
Subject: RE: 2 of 3 FW: Site Visits - OIG 16-073 - Use of Segregation for ICE Detainees with Mental Health Conditions

Confirming that we received 12 attachments that we could open. However, we received 3.5.6 Detainee Grievance

Procedure and 3.4.6 Log Systems in Special Housing Units twice.

From: (b)(6);(b)(7)(C)
Sent: Wednesday, August 17, 2016 12:24 PM
To: (b)(6);(b)(7)(C) (b)(6);(b)(7)(C) (b)(6);(b)(7)(C) (b)(6);(b)(7)(C) (b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)
Subject: 2 of 3 FW: Site Visits - OIG 16-073 - Use of Segregation for ICE Detainees with Mental Health Conditions
Importance: High

Two of Three (12 attachments included)

Unfortunately the initial message was too large for your server, so I must split it up into 3 separate messages.

(b)(6);(b)(7)(C)

From: (b)(6);(b)(7)(C)
Sent: Thursday, August 18, 2016 1:48 PM
To: (b)(6);(b)(7)(C)
Cc: (b)(6);(b)(7)(C) (b)(6);(b)(7)(C) (b)(6);(b)(7)(C)
Subject: RE: 1 of 3 FW: Site Visits - OIG 16-073 - Use of Segregation for ICE Detainees with Mental Health Conditions

Confirming that we received 10 attachments that we could open.

From: (b)(6);(b)(7)(C)
Sent: Wednesday, August 17, 2016 12:23 PM
To: (b)(6);(b)(7)(C) (b)(6);(b)(7)(C) (b)(6);(b)(7)(C) (b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)
Subject: 1 of 3 FW: Site Visits - OIG 16-073 - Use of Segregation for ICE Detainees with Mental Health Conditions
Importance: High

One of three (10 attachments included).

Unfortunately the initial message was too large for your server, so I must split it up into 3 separate messages.

(b)(6);(b)(7)(C)

From: (b)(6);(b)(7)(C)
Sent: Wednesday, August 17, 2016 12:08 PM
To: (b)(6);(b)(7)(C)
Cc: (b)(6);(b)(7)(C) (b)(6);(b)(7)(C) (b)(6);(b)(7)(C) (b)(6);(b)(7)(C) (b)(6);(b)(7)(C)
(b)(6);(b)(7)(C) (b)(6);(b)(7)(C) (b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)
Subject: RE: Site Visits - OIG 16-073 - Use of Segregation for ICE Detainees with Mental Health Conditions
Importance: High

Hi (b)(6);(b)(7)(C)

Per your request, please find 33 attachments included for your review. These attachments encompass, organization

chart of detention facility personnel involved in segregation and monitoring ICE detainees, policies and procedures on segregation including logs, reports, and other records used to indicate segregation activity, BFDF disciplinary policies, BFDF grievance policy for ICE detainees, as well as additional policies and records that may pertain to your inspection. I did not include the BFDF Detainee Handbook as it was forwarded in (b)(6);(b)(7) email.

Please let me know if you have any questions or need any further information prior to your arrival next week.

Best regards,

(b)(6);(

(b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)

[Redacted]

From: (b)(6);(b)(7)(C)

Sent: Wednesday, August 17, 2016 12:10 PM

To: (b)(6);(b)(7)(C)

Cc: (b)(6);(b)(7)(C); (b)(6);(b)(7)(C); (b)(6);(b)(7)(C)

(b)(6);(b)(7)(C)

Subject: RE: Site Visits - OIG 16-073 - Use of Segregation for ICE Detainees with Mental Health Conditions

(b)(6);(b)(7)(C)

Yes, I can open it.

Thanks,

(b)(6);(b)(7)(C)

From: (b)(6);(b)(7)(C)

Sent: Wednesday, August 17, 2016 11:17 AM

To: (b)(6);(b)(7)(C)

Cc: (b)(6);(b)(7)(C); (b)(6);(b)(7)(C); (b)(6);(b)(7)(C)

(b)(6);(b)(7)(C)

Subject: RE: Site Visits - OIG 16-073 - Use of Segregation for ICE Detainees with Mental Health Conditions

(b)(6);(b)(7)(C)

See if you can open the attached org chart. – See [D.1.2](#)

(b)(6);(b)(7)(C) – can you address (b)(6);(b)(7)(C) question regarding whether or not the BFDF has its own SOPs?

Thanks

From: (b)(6);(b)(7)(C)
Sent: Wednesday, August 17, 2016 10:46 AM
To: (b)(6);(b)(7)(C)
Cc: (b)(6);(b)(7)(C); (b)(6);(b)(7)(C); (b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)
Subject: RE: Site Visits - OIG 16-073 - Use of Segregation for ICE Detainees with Mental Health Conditions

(b)(6);(b)(7)(C)

Thank you for providing the information in advance. We greatly appreciate the documents being pulled together for our visit. In the e-mail below, we wanted to make sure that we got everything so we matched the file to the listing.

However, we cannot open the first document [IHSC Data Collection Tool (48 KB)]. Instead of the BUF Field Office Organization Chart 06.06.2016, we received the Broadcast Message from *sent on behalf of* (b)(6);(b)(7)(C) (b)(6);(b)(7)(C) *It is titled*, Updated Guidance for Submitting Segregation Notifications to ERO Headquarters. So can we get a copy of the actual organization chart.

In addition, we would like to verify whether the detention facility has its own standard operating procedures/manual or does it merely use the 2011 Performance-Based National Detention Standards as such.

If you have any questions, I can be reached at (202) (b)(6);(b)(7)(C)

(b)(6);(b)(7)(C)

(b)(6);(b)(7)(C)

(b)(6);(b)(7)(C)

Office of Inspections
Office of Inspector General
U.S. Department of Homeland Security
(202) 254-(b)(6) work
(202) (b)(6);(b)(7)(C) cell
(202) 254-4304 fax

From: (b)(6);(b)(7)(C)
Sent: Wednesday, August 17, 2016 9:52 AM
To: (b)(6);(b)(7)(C)
Cc: (b)(6);(b)(7)(C); (b)(6);(b)(7)(C); (b)(6);(b)(7)(C); (b)(6);(b)(7)(C)
(b)(6);(b)(7)(C); (b)(6);(b)(7)(C); (b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)
Subject: RE: Site Visits - OIG 16-073 - Use of Segregation for ICE Detainees with Mental Health Conditions

Hi (b)(6);(b)(7)(C)

Per your request, attached is an organizational chart for the Buffalo Field Office. Also attached:

- Email dated 4/16/15 regarding Updated Guidance for Submitting Segregation Notifications to ERO Headquarters (BUF Field Office Organization Chart 06.06.2016.xlsx) – See C.1.2

- Clinical Segregation Data Checklist [IHSC Data Collection Tool.docx (28 KB)] – See [C.1.5](#)
- 2/12/14 email with subject line Mental Health Segregation Routine Request for Information (FOD Segregation Directive Summary 09-04-13.docx – inside Mental Health Segregation Routine Request for Information) – See [C.1.6](#)
- Segregation Directive Summary (FOD Segregation Directive Summary 09-04-13.docx) – See [C.1.6](#)
- Interim Checklist for Review of Segregation Placement Decisions (sent to the field on 9/4/13) (Interim FOD Seg Checklist 09032013.pdf) – See [C.1.3](#)
- 2011 Performance-Based National Detention Standard on Staff-Detainee Communications (staff_detainee_communication.pdf) – See [PA3.nn](#)
- 2011 Performance-Based National Detention Standard on Grievance System (grievance_system.pdf) – See [PA3.mm](#)
- BFDf Detainee Handbook (BFDf Detainee Handbook.pdf) – See [C.1.7](#)

Let me know if you need anything else.

(b)(6);(b)(7)(C)

From: (b)(6);(b)(7)(C)
Sent: Monday, August 15, 2016 5:29 PM
To: (b)(6);(b)(7)(C) (b)(6);(b)(7)(C)
Cc: (b)(6);(b)(7)(C)
(b)(6);(b)(7)(C) (b)(6);(b)(7)(C)
Subject: RE: Site Visits - OIG 16-073 - Use of Segregation for ICE Detainees with Mental Health Conditions

Hi (b)(6);(b)(7)(C)
The Incident Report files you will be reviewing are the original hard files. We will attempt to put the Incident Report “database” on CD for ease of use, however, this database only contains information pertaining to the code violations and disposition for individual detainees. I believe the hard files will be more useful for your purpose. I will provide you with a list of Contract Supervisors that initiate segregation tomorrow.

Regards
(b)(6);(b)(7)(C)

From: (b)(6);(b)(7)(C)
Sent: Monday, August 15, 2016 4:24 PM
To: (b)(6);(b)(7)(C) (b)(6);(b)(7)(C)
Cc: (b)(6);(b)(7)(C)
(b)(6);(b)(7)(C) (b)(6);(b)(7)(C)
Subject: RE: Site Visits - OIG 16-073 - Use of Segregation for ICE Detainees with Mental Health Conditions

(b)(6);(b)(7)(C)

That sounds about right to me. I look forward to speaking to you more tomorrow.

(b)(6);(b)(7)(C)

From: (b)(6);(b)(7)(C)
Sent: Monday, August 15, 2016 4:21 PM
To: (b)(6);(b)(7)(C)
Cc: (b)(6);(b)(7)(C); (b)(6);(b)(7)(C)
(b)(6);(b)(7)(C); (b)(6);(b)(7)(C)
Subject: RE: Site Visits - OIG 16-073 - Use of Segregation for ICE Detainees with Mental Health Conditions

Good afternoon everyone,

(b)(6);(b)(7) and (b)(6);(b)(7) thank you for taking my calls this afternoon. Based on our conversations, we understand (b)(6);(b)(7)(C) and (b)(6);(b)(7)(C) are located at the field office (b)(6);(b)(7)(C) (b)(6);(b)(7)(C), and the bulk of the records related to segregation of detainees are located at the facility. There are also supervisory contract officers at the facility who manage the detainee population and would be the initiators of segregation actions; they would therefore be useful to speak with. (b)(6);(b)(7)(C), if you could provide a list of these supervisory officers that would be helpful.

The administrative wing is separate from the detention spaces at the facility. There is a muster room at the facility that would be available for our use, with sufficient room for our team and outlets for computers. We will have access to the incident report files on a CD for us to search for case information as needed. We will also need access to certain detainee files.

If any of the information here is incorrect, or if you have questions about anything I have described here, please let me know. Also, if there are any other individuals involved in the segregation of detainees with mental health conditions, or in the review of these types of cases, please advise us.

Thanks, and we will be in touch tomorrow with a proposed schedule.

Regards,

(b)(6);(b)(7)(C)

U.S. Department of Homeland Security
Office of Inspector General
Office of Inspections and Evaluations

BB: 202 (b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)

From: (b)(6);(b)(7)(C)
Sent: Monday, August 15, 2016 11:05 AM
To: (b)(6);(b)(7)(C)
Cc: (b)(6);(b)(7)(C); (b)(6);(b)(7)(C); (b)(6);(b)(7)(C)
(b)(6);(b)(7)(C); (b)(6);(b)(7)(C); (b)(6);(b)(7)(C)
Subject: Site Visits - OIG 16-073 - Use of Segregation for ICE Detainees with Mental Health Conditions

Good morning (b)(6);(b)(7)(C) and (b)(6);(b)(7)(C)

My name is (b)(6);(b)(7)(C) with the U.S. Department of Homeland Security, Office of Inspector General, Office of Inspections and Evaluations. We are conducting a review entitled, "Use of Segregation for Detainees with Mental Health Conditions." Our objectives are to determine whether (1) facilities use segregation appropriately, (2) facility personnel follow applicable detention standards, and (3) facilities report segregation data accurately and timely.

We held an entrance conference with U.S. Immigration and Customs Enforcement (ICE) Headquarters officials on July 13, 2016. We would like to make arrangements to visit and conduct work at the Buffalo Field Office (FO) and Buffalo Service Processing Center on August 23-26, 2016. A joint entrance conference can be held at the detention facility followed by tour of facility starting from intake and a walkthrough of the segregation process. Thereafter, the teams would like to split up with one team working with the FO to gain an understanding of the segregation review process, and the other team performing compliance work at the detention facility. Both teams will hold discussions with available personnel and review a sample of segregation instances involving detainees with mental health conditions (records and activities).

We would like to request some information in advance. The list of documents is not all inclusive. We would greatly appreciate it if you could send us these documents electronically by close of business on Thursday, August 18, 2016:

From the Field Office

1. Organization chart of designated FO personnel responsible for segregation review to include Assistant Field Office Director (AFOD) level or high with the authority to approve segregation placements, supervisory-level staff member assigned to author written reports of findings and any actions taken regarding segregation placements, and segregation coordinator designated to enter associated data into the Segregation Review Management System (SRMS).
2. Standard operating procedures used for the segregation review (directives and guidance provided by ICE ERO Headquarters) to include checklists, logs, and other records used, documentation reviewed, systems used, and reports of findings completed.
3. Any instructions/guidance for managing associated data in and uploading attachments to SRMS.
4. Procedures for ICE detainees to submit written questions, request or concerns to ICE (other than the facility's detainee handbook).

From the Detention Facility

1. Organization chart of detention facility personnel involved in segregation and monitoring ICE detainees.
2. Policies and procedures on segregation including logs, reports, and other records used to indicate segregation activity.
3. Disciplinary policy (if separate from item 2 above).
4. Grievance policy for ICE detainees.
5. Facility's Detainee Handbook.

We will be requesting additional program information and statistics once we arrive. In addition, we would like to be able to take pictures during the tour. We would not take pictures of ICE officers, detention facility staff, or detainees.

I will contact you this afternoon to get started. However, if you have any questions, I can be reached at (202) 254-

(b)(6);(b)(7)(C)

Thanks,

(b)(6);(b)(7)(C)

(b)(6);(b)(7)(C)

(b)(6);(b)(7)(C)

Office of Inspections
Office of Inspector General
U.S. Department of Homeland Security
(202) 254-(b)(6); work
(202) (b)(6);(b)(7) cell
(202) 254-4304 fax

From: (b)(6);(b)(7)(C)
Sent: Wednesday, August 10, 2016 11:02 AM
To: (b)(6);(b)(7)(C)
Cc: (b)(6);(b)(7)(C); (b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)

Subject: Site Visits - OIG 16-073 - Use of Segregation for ICE Detainees with Mental Health Conditions

Good morning,

We would like to go ahead and get started on our first site visits. We will have two teams traveling to conduct work on August 23-26, 2016. One team will be working in the Buffalo Field Office (FO) and the other team will be performing work at the Buffalo Service Processing Center. Separate entrance conferences will be held at each facility followed by a walkthrough of the segregation process and/or tour of facility. We will hold discussions with available personnel and review a selected sample of segregation cases (records and activities) involving ICE detainees with mental health conditions. We would like to request some information in advance:

From the Field Office

5. Organization chart of designated FO personnel responsible for segregation review to include Assistant Field Office Director (AFOD) level or high with the authority to approve segregation placements, supervisory-level staff member assigned to author written reports of findings and any actions taken regarding segregation placements, and segregation coordinator designated to enter associated data into the Segregation Review Management System (SRMS).
6. Standard operating procedures used for the segregation review (directives and guidance provided by ICE ERO Headquarters) to include checklists, logs, and other records used, documentation reviewed, systems used, and reports of findings completed.
7. Any instructions/guidance for managing associated data in and uploading attachments to SRMS.
8. Procedures for ICE detainees to submit written questions, request or concerns to ICE (other than the facility's detainee handbook).

From the Detention Facility

6. Organization chart of detention facility personnel involved in segregation and monitoring ICE detainees.
7. Policies and procedures on segregation including logs, reports, and other records used to indicate segregation activity.
8. Disciplinary policy (if separate from item 2 above).
9. Grievance policy for ICE detainees.
10. Facility's Detainee Handbook.

We have a contact for the Buffalo Field Office – (b)(6);(b)(7)(C) 130 Delaware Avenue, Buffalo, NY 14202 Phone: (716) (b)(6);(b) Email: (b)(6);(b)(7)(C) We will need a contact official for the Buffalo SPC and confirmation of the location – 4250 Federal Drive, Batavia, NY 14020. Can we also get a name and telephone number for the Field Medical Coordinator.

If you have any questions, I can be reached at (202) 254-(b)(6);

Thanks

(b)(6);(b)(7)(C)

(b)(6);(b)(7)(C)

(b)(6);(b)(7)(C)

Office of Inspections
Office of Inspector General
U.S. Department of Homeland Security
(202) 254-(b)(6) work
(202) (b)(6);(b)(7) cell
(202) 254-4304 fax

Page 11

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 12

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 13

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act



**U.S. Department of Homeland Security
Office of Inspector General
Office of Inspections & Evaluations**

See C.1.PRG (4) for PSSC

**Use of Segregation for ICE Detainees with Mental Health Conditions
16-073-ISP-ICE**

(b)(6);(b)(7)(C) (b)(6);(b)(7)(C) (b)(6);(b)(7)(C) (b)(6);(b)(7)(C)

Enforcement and Removal Operations (ERO) Field Office (FO) Officials

PURPOSE: To gain an understanding of ERO FO officials' role and responsibilities in managing and overseeing the use of segregation for detainees with mental health conditions.

Date: Tuesday, August 23, 2016
Time: 1:50 p.m. – 2:45 pm
Location: Buffalo (Batavia) Federal Detention Facility
Muster Room
4250 Federal Drive
Batavia, NY 14020

Participants:

U.S. Department of Homeland Security, Office of Inspector General, Office of Evaluations and Inspections

- (b)(6);(b)(7)(C)
- [Redacted]
- [Redacted]

U.S. Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO), Buffalo Field Office

- (b)(6);(b)(7)(C) (b)(6);(b)(7)(C)
- (b)(6);(b)(7)(C) (b)(6);(b)(7)(C)
- (b)(6);(b)(7)(C) (b)(6);(b)(7)(C)

See C.1.12 for participant list

CONCLUSION:

ERO FO officials update **the Segregation Review Management System (SRMS)**; the AFOD is the main user of the system while the SDDOs provide backup. They use lists from the facility to ensure the information is complete, and they use IHSC mental health lists to identify detainees in segregation with mental health conditions and to report them in SRMS. ICE has more flexibility regarding sanctions than in the past. They are trying to strike a balance where detainees are disciplined, but are not held in segregation for long periods of time.

The SDDOs were amicable and relaxed during the interview, and very anxious to convey good working relationships among themselves and with facility and medical staff. However, it was apparent that (b)(6);(b)(7)(C) has softened some of the rigidity that the SDDOs were accustomed to regarding disciplinary actions.

DETAILS:

(b)(6);(b)(7)(C) opened the meeting by saying although the team had many questions answered during the facility walk-through, we wanted to ensure we understood ERO's responsibilities in reviewing segregation for detainees with mental conditions.

Roles and Responsibilities

(b)(6);(b)(7)(C) said he is the (b)(6);(b)(7)(C). He reviews and signs incident reports, and pretty much anything to do with the detainees goes through him. He discusses these cases with (b)(6);(b)(7)(C). Right now, he is also involved in case information entry into SRMS. (b)(6);(b)(7)(C) is the recreation specialist, and also manages the compliance and intelligence teams, training, and emergency services. Later in the interview, (b)(6);(b)(7)(C) said that he conducts rounds of the facility checking for safety, health and security as well as spot checks. As incident reports come in, he reads them and checks the validity of the sanctions and to make recommendations. These rounds and checks feed into his compliance duties and how the facility is meeting the **2011** Performance Based National Detention Standards (PBNDS) and American Correctional Association requirements. He conducts inventories on keys, maintenance, medical and dental supplies and reviews their emergency plans. He joked that he also likes to have his coffee at 2 pm.

(b)(6);(b)(7)(C) works in the deportation section; (b)(6);(b)(7)(C) also works in the deportation section and manages the detained docket. (b)(6);(b)(7)(C) said that he and (b)(6);(b)(7)(C) are also responsible for rounds, to check with the detainees to see if anyone has an issue with their case. Their duties day-to-day are different. They may be reviewing cases, conducting custody reviews, and making arrangement for cases for removal i.e. on commercial flights or ICE flights through Harrisburg. They also deal with attorneys. (b)(6);(b)(7)(C) said that they also work with the Executive Office for Immigration Review to make sure cases get to the legal staff. Detainees may have questions or property issues, and they can meet with one of the SDDOs; (b)(6);(b)(7)(C) will designate one of them to take over the case.

(b)(6);(b)(7)(C) said there are about 60 ERO staff at the facility. (b)(6);(b)(7)(C) was trying to implement a system where employees submit a request for rotation. They all work with all the detainees, including those with mental health conditions, by entering the cases, processing the individuals, and supervising the detainees. While they may have interactions with the detainees, the ERO staff may not know for sure that the detainee has a mental health condition.

(b)(6);(b)(7)(C) asked if the SDDOs ever get together across the country to discuss issues or best practices. (b)(6);(b)(7)(C) said that outside of detention training they do not get together nationwide. They do get together with the field office staff.

ERO relationship with medical staff

(b)(6);(b)(7)(C) asked what ERO's relationship with the ICE Health Services Corps staff and the contract detention officers. (b)(6);(b)(7)(C) said they work hand in hand with the medical staff. They meet twice a week with (b)(6);(b)(7)(C) the (b)(7)(C);(b)(6) (b)(7)(C);(b)(6) and (b)(6);(b)(7)(C) (b)(7)(C);(b)(6) to discuss situations and bad cases. (b)(6);(b)(7)(C) said that ultimately ICE treats the detainees well and seek them the help they need, such as at Columbia Care in South Carolina or at Krome Transitional Unit in Miami, if needed. He said (b)(6);(b)(7)(C) is very supportive and that they are very conscientious about their job.

(b)(6);(b)(7)(C) at Columbia Care sends out a report listing who is there. (b)(6);(b)(7)(C) said that two of their detainees were just transferred to Columbia Care; he could not remember how long they were at Batavia before the transfer. Any documentation related to that transfer would be with their medical staff. (b)(6);(b)(7)(C) said that he checked with (b)(6);(b)(7)(C) before this interview to find out how long it took to get one of the detainees there once they were identified for transfer, and he said it took about a week. ERO is responsible for making the transfer happen unless Columbia Care deems it necessary to transfer the detainee themselves.

(b)(6);(b)(7)(C) asked what access ERO has to medical files. (b)(6);(b)(7)(C) said they meet with the medical staff twice weekly, and they also get a mental health list. This list includes the detainee's A number and mental health diagnosis and they use this information for SRMS entries. This list includes individuals previously as well as newly diagnosed. When there is an incident, they check the list on Mondays, Wednesdays and Fridays to see if the individual is on the mental health list and that dictates their reporting requirements.

ERO relationship with contract detention officers

(b)(6);(b)(7)(C) said the SDDOs work closely with the contract detention officers. They have been at the facility so long that they know everybody and the relationship has always been that way. (b)(6);(b)(7)(C) said that as SDDOs they interact with the contract detention officer Lieutenants and Captains a lot; (b)(7)(C);(b)(6) and the (b)(7)(C);(b)(6) for the contractors (b)(7)(C);(b)(6) so he knows where all the ERO staff are coming from.

Later in the interview, (b)(6);(b)(7)(C) asked if they had any safety concerns about the fact that detention officers aren't told which detainees have mental health conditions and may act erratically. (b)(6);(b)(7)(C) said any officer that is on his toes and has people skills can figure out who "isn't all there". There is also word of mouth between officers, but there is no official flagging system on the detention officer side. He continued to explain that they are trying to strike a balance. In the past, they used to have detainees with mental health conditions in the special housing unit for 60 – 90 days and it wasn't helping them. So now they try to keep these detainees in the general population as much as possible, but with that move the detention officers have to be more aware and on their toes. He gave an example of a detainee named (b)(6);(b)(7)(C) who he said was a perfect example of how you do all you can to help a detainee and keep them in the general population, However, one day he viciously assaulted a Captain; the detainee ended up being prosecuted and is currently serving a 5-7 year sentence.

ERO systems and records

Earlier in the interview, (b)(6);(b)(7)(C) said they received training on SRMS when it was launched and they are secondary to (b)(6);(b)(7)(C) for data entry into the system. (b)(6);(b)(7)(C) does 99% of the input and they cover for him when he is away. They all get notifications from the system, but (b)(6);(b)(7)(C) does the updating; however, because they all get the updates the cases won't fall through the cracks. They have been at the facility for 18 years and they were all supervisors. Later, they said they said they vaguely remember the training, but the PowerPoint training aid is very helpful. They also have (b)(6);(b)(7)(C) at **Headquarters (HQ)** who is always available and happy to answer any questions. (b)(6);(b)(7)(C) is also available to help.

When asked about any other systems they have access to, (b)(6);(b)(7)(C) said that they use Planet which is an Office of Chief Counsel system that needs information regarding the detainees with mental health conditions to ensure they are properly represented. (b)(6);(b)(7)(C) said they also have their internal Incident Report Database.

(b)(6);(b)(7)(C) asked how ERO ensures that the information in these systems is accurate and complete. (b)(6);(b)(7)(C) said that every evening the Lieutenants put together a segregation spreadsheet. ERO can then check this list against their mental health list to check for any detainees who may have been segregated that have mental health conditions. They can then enter the information in SRMS as needed.

When asked what checklists or records they use to ensure the information is complete, they said they get automated emails from SRMS (b)(6);(b)(7)(C) and (b)(6);(b)(7)(C) do not receive these updates).

When asked what documentation they upload into the system, they said the administrative and disciplinary segregation orders, the incident reports, and the protective custody forms.

When asked about documentation that the (b)(6);(b)(7)(C) received the 72-hour notification, (b)(6);(b)(7)(C) said that the (b)(6);(b)(7)(C) was typically notified before 72 hours and the notification might be by email. There would also be indications on the segregation orders and the **Institution Disciplinary Panel (IDP)** documentation indicating when the review occurred.

Detainee interaction with ICE

Detainees can correspond with staff at the facility and ICE through detainee request forms, the ICE correspondence box, and the OIG hotline. The detainees also speak with the lieutenants in the housing units constantly and sometimes the lieutenants will just call the SDDOs to convey concerns. (b)(6);(b)(7)(C) asked if there were any sign language options. (b)(6);(b)(7)(C) said they have TTY capabilities (TTY is teletypewriter, a shorter version recognized as a hearing impaired phone). They also had a case of a legally blind detainee from either Vietnam or Cambodia; ICE was able to bring in a reader from Headquarters for him.

Regarding grievances, there is a log file kept of the grievances; they are all kept together and the disposition of the cases were handled by (b)(6);(b)(7)(C) a Contract Detention Officer. The AFOD is part of the final disposition and might also be on the institution disciplinary panel. When asked about correcting any errors or discrepancies from the grievance process, they said they will bring the issue back to the grievance officer for action.

(b)(6);(b)(7)(C) asked if there is documentation when the facility cannot facilitate a detainee's religious accommodations or requests. (b)(6);(b)(7)(C) said not really. They have made a lot of accommodations and the main factor is whether it would affect the safety or security of the facility. (b)(6);(b)(7)(C) said he remembers getting a request for lighting candles for a religious ceremony. He remembered thinking the detainee could get electronic candles and that they couldn't give him real candles. However, the team looked into it and eventually the detainee was allowed to light three candles. (b)(6);(b)(7)(C) said if it is a legitimate religious request, he now can't think of not allowing it. He considers them very accommodating compared to his past experience; sometimes at the end of the day he says to himself "I can't believe we allowed that".

Concerns regarding use/oversight of segregation

When asked whether they could immediately release someone from segregation, (b)(6);(b)(7)(C) said yes and in fact he had done it just yesterday. He said he spoke with (b)(6);(b)(7)(C) regarding an incident and said that he didn't think the incident merited a 200 charge. (b)(6);(b)(7)(C) agreed and they released the detainee from segregation. (b)(6);(b)(7)(C) said they rarely put someone in segregation for a 300 or 400 level charge; they would more likely take away privileges such as phones (except for legal calls).

(b)(6);(b)(7)(C) asked whether they had any concerns about detainees with mental health conditions being placed in segregation. (b)(6);(b)(7)(C) said no; he is very confident in how they handle segregation. They don't hand down big sanctions; right now, a 21-day sanction would be a "big deal" for them. (b)(6);(b)(7)(C) said they cut down on their segregation times a lot. The detainees are in disciplinary segregation to learn a lesson and if it isn't benefitting that purpose then they let them out.

(b)(6);(b)(7)(C) asked if there was a way to note when they lose privileges, (b)(6);(b)(7)(C) said it would not be in the system, but it would be in the incident report folder. If they ended up in the special housing unit, their loss of privileges would be noted.

(b)(6);(b)(7)(C) asked whether they had concerns about ERO's ability to provide sufficient oversight of these cases, they said no. Their oversight responsibilities are always evolving and pointed to the various versions of the PBNDS as an example. (b)(6);(b)(7)(C) said that although he is sure there is room for improvement, he does not think that they are "behind the 8-ball", especially with segregation.

Regarding using protective custody, the form has to be signed off by the AFOD or someone acting for him. The detainee would be interviewed by the Captain to determine if there is a real threat.

(b)(6);(b)(7)(C) asked whether they had any suggestions to improve their oversight. They said they did not. (b)(6);(b)(7)(C) said they have a lot of discretion. For example, now they have more flexibility in the sanctions. For example, it used to be that the sanctions were fixed, so a 201 charge (fighting) meant 10 days or 14 days and that was that. Now, they spend a lot of time looking at video, trying to determine who was the true aggressor. The sanctions cannot be set in stone; they need to be able to use their professional judgement.

(b)(6);(b)(7)(C) asked if any detainee has been in disciplinary segregation longer than 30 days. (b)(6);(b)(7)(C) said yes, a detainee named (b)(6);(b) had a weapon and was placed in segregation for 30 days.



**U.S. Department of Homeland Security
Office of Inspector General
Office of Inspections & Evaluations**

See C.1.PRG (5) for PSSC

**Use of Segregation for ICE Detainees with Mental Health Conditions
16-073-ISP-ICE**

(b)(6);(b)(7)(C)

(b)(6);(b)(7)(C)

(b)(6);(b)(7)(C) - Akima Global Services (AGS) Personnel

PURPOSE: To gain an understanding of the Contract Detention Officers' role and responsibilities in administering the use of segregation for detainees with mental health conditions.

Date: Tuesday, August 23, 2016
Time: 1:30 p.m.
Location: Buffalo (Batavia) Federal Detention Facility (BFDF)
[Note: BFDF is an U.S. Immigration and Customs Enforcement (ICE) owned facility known as a Service Processing Center]
Conference Room
4250 Federal Drive
Batavia, NY 14020

Participants:

U.S. Department of Homeland Security, Office of Inspector General, Office of Evaluations and Inspections

- (b)(6);(b)(7)(C) (202) 254- (b)(6);(b)(7)(C)
- (b)(6);(b)(7)(C), (202) 254- (b)(6);(b)(7)(C)
- (b)(6);(b)(7)(C) (202) 632- (b)(6);(b)(7)(C)
- (b)(6);(b)(7)(C)

Buffalo (Batavia) Federal Detention Facility – Contract Detention Officers

- (b)(7)(C);(b)(6);(b)(7)(C) (b)(6);(b)(7)(C)
- (b)(6);(b)(7)(C) (b)(6);(b)(7)(C) (b)(6);(b)(7)(C)
- (b)(6);(b)(7)(C) (b)(6);(b)(7)(C)

(See C.1.13 page 1 of 2 for sign in sheet)

CONCLUSION:

Contract staff communicates with the U.S. Immigration and Customs Enforcement (ICE) personnel, as well as with the grievance coordinator and the medical staff, on a daily basis. It is a good relationship, the contractors are allowed to run the facility, do what they need to do, but they can go to the Assistant Field Office Director (AFOD).

A Contract Supervisory Detention Officer is the supervisor for the Special Housing Unit (SHU), which is the segregation housing unit. The contract staff is not told which detainees have mental health conditions. However, there is a mental health form that the detention staff can turn in to medical for things, such as not sleeping (insomnia), strange behavior, barking, or other disruptive behavior. There is no distinction of detainees with mental health conditions in the SHU or general population.

For minor rule infractions (disciplinary), detainees can have privileges such as recreational phone calls or commissary use revoked. The facility also uses administrative segregation as a non-punitive measure to protect detainees who need to be separated from the general population. The detainees have a right to appeal and can contact ICE at any time.

ICE officials are notified each day through paperwork. ICE comes down within 72 hours, interviews detainees, then there is a weekly review by ICE, specifically the AFOD. The first 72 hours review is on the administrative segregation order. Then, every 7 days the review is noted on a different form. Everything is in paper form, and at discharge everything is reviewed and forwarded to ICE.

DETAILS:

(b)(6);(b)(7)(C) opened the meeting by saying that we wanted to ensure we understood the Contract Detention Officers' role and responsibilities in administering the use of segregation for detainees with mental health conditions.

(b)(6);(b)(7)(C) led the interview, and (b)(6);(b)(7)(C) asked questions related to the segregation spot inspection checklist.

General Background Information

(b)(6);(b)(7)(C)

According to (b)(6);(b)(7)(C) there is no particular specialized training for detention staff on handling detainees with mental health conditions other than the detention staff's initial in-house training. There is a four or eight hour block on dealing with abnormal situations.

Contract staff communicates with the ICE personnel, as well as with the grievance coordinator and the medical staff, on a daily basis. According to (b)(6);(b)(7)(C) it is a good relationship, the contractors are allowed to run the facility, do what they need to do, it is kind of a cliché, but they can go to the AFOD, if needed. There is constant notification. (b)(6);(b)(7)(C) indicated that they tell ICE who is admitted and discharged, and ICE will go over files with them so they can do their reports. (b)(6);(b)(7)(C) explained that he deals with medical, there is a good relationship, open door policy, and they help if he needs it. The medical grievances go to medical, and there is an open door policy with ICE as well.

Roles and Responsibilities

(b)(6);(b)(7)(C) is the supervisor for SHU, which is the segregation housing unit. The contract staff is not told which detainees have mental health conditions. However, there is a mental health form that the detention staff can turn in to medical for things, such as not sleeping (insomnia), strange behavior, barking, or other disruptive behavior. There

is no distinction of detainees with mental health conditions in the SHU or general population. The detainees with mental health conditions are not on any special list, and they are not treated differently.

According to (b)(6);(b)(7)(C) detention officers follow standard operating procedures (SOPs), post orders, general directives, and company policy to carry out roles and responsibilities.

(b)(6);(b)(7)(C) explained that there are three primary officers, three months at a time. They need a working knowledge of facility. The officers are allowed to bid on the post. The SHU is what they like to do. Everyone is trained to work the SHU; however, ASG will not take anyone who is on probation (new staff) and the officer cannot have disciplinary issues. They use the probation time to have them shadow, observe more experienced officers.

(b)(6);(b)(7)(C) explained that after an investigation, AGS terminate segregation. According to (b)(6);(b)(7)(C), it would be during that process, or maybe afterwards if there is a mitigating circumstance, they would recommend to AFOD. So AGS can terminate during decision process. It would be noted on the incident report, on page 2, there is a termination section. There is also a memorandum to the AFOD if there is a termination recommendation. The supervisor, the panel, or the AFOD can terminate segregation. The supervisor is different level from the panel, so two reviews of decisions. (b)(6);(b)(7)(C) explained that the detainees are notified that they can appeal.

(b)(6);(b)(7)(C) indicated that the new segregation unit helps. In the past, the detainees were on the same floor, protective custody on same floor with disciplinary. The new unit gives more freedom for protective custody. In addition, there is the law library and quiet room for phone calls. Safety-wise, there are additional rails and better stairs; therefore, the new unit is beneficial to them. They also have outdoor recreation, which is an exercise bicycle and can see the sky.

Typical Instances of Segregation at the Facility

For minor rule infractions, detainees can have privileges such as recreational phone calls or commissary use revoked. The facility also uses administrative segregation as a non-punitive measure to protect detainees who need to be separated from the general population. These detainees do not lose commissary, phone, or other privileges while in administrative segregation. For administrative segregation, detainees are not restricted in terms of their rights – continue to make phone call, get commissary, and more freedom of movement. If there is an involuntary protective custody, the AFOD must approve. The facility staff conducts an interview with the detainee before passing the information to the AFOD for approval. The AFOD makes the determination to allow segregation. All detainees in segregation are reviewed weekly by the AFOD, and the medical staff visits them daily.

The facility has had several detainees request protective custody due to their LGBT status. (b)(6);(b)(7)(C) believes that there were two or three detainees identified through a call from the social worker. They feared for harm as homosexual and put on protective custody, but not because something happened. It was a fear of being preyed

upon. One French guy was in protective custody for a long time, stayed until he was deported, it was voluntary. For these cases, there is a weekly review, and the AGS officer will ask them if they want to go back to general population.

(b)(6);(b)(7)(C) asked what would happen if a lot of detainees asked for protective custody? (b)(6);(b)(7)(C) indicated that this was a great question, but we cannot answer. ICE would have to determine what would happen – the facility might go to a three tiered system where they could keep a tier [in one of the general population units] by allowing one tier out of cells at a time. The facility could handle it if they needed too. In the old SHU they were very limited, no issues since the new one SHU opened.

The longest reported disciplinary segregation was 21 days for a weapons-related offense. Long handle toothbrushes, the contract staff reported, are easily shaped into weapons.

(b)(6);(b)(7) explained that ICE sees the bigger picture. ICE has been cutting [segregation] time and giving second chances. Detainees will typically stay in SHU a month or weeks at a time. ICE cut the time down. AGS can only give 14 days at a time, which is even for something extreme, such as assault on staff, which is rare. The time given now is mostly 7 days at a time with not many egregious cases. One instance of segregation lasted 21 days for assault with a self-made weapon, a long handled toothbrushes. The facility had short handled but went back to long handled because the non-governmental organizations (NGOs) complained and the facility bought too many. The detainees can sharpen the long-handled toothbrushes, creating a weapon. The long-handled toothbrushes should not be allowed. The AGS officers are supposed to give the long handled to the low risk detainees, but they're making their way into the high risk populations. There are pencil sharpeners in the units, the detainees can sharpen them quickly.

When a detainee is placed in segregation medical staff examines the detainee at entry and perform daily eyes-on checks. This occurs either during sick call or pill line. Both functions are performed by a registered nurse.

Medical Treatment and Other Activities While in Segregation

(b)(6);(b)(7)(C) explained that the detainees have access to clergy to both disciplinary and administrative, not quite daily, but they can also fill out a form to request religious access. The current chaplain goes to the disciplinary and the administrative levels to talk to the detainees [without the detainees needing to request it specifically].

(b)(6);(b)(7)(C) explained that Medical will see all of the detainees on admittance; the Medical staff knows when they are admitted, discharged, or segregated. Medical staff sees the SHU detainees daily. The new SHU has a medical room, and they are putting eyes on the detainees every day. The detainees can also submit a sick call request if they are not feeling well. There is also a pill line for those detainees who take medication. Detainees are not allowed to keep pills; a nurse does the pill distribution and may visit the unit three or four times a day for medication.

Documentation Provide to ICE

The contracted staff feel ICE gives sufficient agency to the contractors to run the facility, but ICE does require regular notifications about the facility. The contractors are required to submit to ICE the following paperwork when a detainee is placed in segregation: (a) Administrative segregation order, (b) disciplinary segregation order; (c) incident report / investigative process form, and (d) disciplinary panel form. ICE also receives an admission and discharge report every 24 hours. Following the release of a detainee from segregation, the contracting office technical representative (COTR) receives all administrative segregation paperwork. Copies of all paperwork are also forwarded to ICE for review.

According to (b)(6);(b)(7)(C) and (b)(6);(b)(7)(C) they complete disciplinary and administrative forms. Initially, for disciplinary segregation, detainees are placed in administrative while AGS looks at the issues. Thereafter, there is a detainee rights notification, a disciplinary panel, the detainees get a copy, and ICE gets a copy. So ICE knows what steps were done – ICE officials are notified each day through paperwork. At midnight, the supervisor sends a list of admittances and discharges to ICE. ICE comes down within 72 hours, interviews detainees, then there is a weekly review by ICE, specifically the AFOD. The first 72 hours review is on the administrative segregation order. Then, every 7 days the review is noted on a different form. The file is maintained in SHU until the detainee is discharged. Then, it is given to the COR [contracting officer's representative], who gives it to the AFOD. (b)(6);(b)(7)(C) indicated that everything is in paper form, and at discharge everything is reviewed and forwarded to ICE.

Alternatives to segregation

According to (b)(6);(b)(7)(C), AGS has several options to impose sanctions, stop commissary, phone privileges. Detainees can be locked in their cell in general population. In addition, there are rooms within the medical unit that can be used, if needed. (b)(6);(b)(7)(C) indicated that a supervisor can also knock down a charge from segregation to sanctions, at discretion.

Staff Detainee Communications

(b)(6);(b)(7)(C) indicated that when detention officers must oversee a detainee who does not speak English, they utilize a telephonic translation service. They do have some employees who speak a foreign language. If they encountered a detainee with communication difficulties/disabilities, the staff would improvise a solution, as they do not have set resources in place. They once requested and utilized braille resources to facilitate communication with a vision-impaired detainee. It was a reasonable accommodation but not related to segregation.

(b)(6);(b)(7)(C) explained that they have not had detainees with hearing problems; however, they would go to ICE. ICE does video conferencing [for immigration proceedings], so they could take [the detainees] down [to the video conferencing facility].

Grievances

Grievances in general population are more common, but if the detainee [who files a lot of grievances while in the general population] goes to SHU, that individual will also grieve from there. Grievance boxes are available in most areas, and detainees can submit grievances at any time. Grievances go directly to the facility's grievance officer, then to a supervisor. (b)(6);(b)(7)(C) read them daily, answer in writing; he will talk to detainee as well, so verbal and written responses. If (b)(6);(b)(7)(C) cannot fix, it goes to the department head, then a panel with a captain, lieutenant and officer, final stop is the AFOD. They have a pretty good success in handling things. They [the detainees] could go to ICE first; there are mail boxes for ICE as well. The grievances are just about everything, up to about 300 for the year, 37 went the full route, but they have to take the time to talk to them.

The grievance is reviewed by a three-member panel, and finally reviewed by the AFOD. The contract detention staff indicated that most grievances are resolved at a low level. They claim a minority of detainees are responsible for most of the complaints. Medical grievances, they report, tend to focus on the personalities of the staff rather than the quality of care received. Detainees feel that the medical staff might not be warm and friendly.

There is a centralized grievance log; (b)(6);(b)(7)(C) enters each grievance in a log book and a computer program, so there are double books to verify that grievances have been addressed.

(b)(6);(b)(7)(C) indicated that all kinds of stuff come out of nowhere. For one guy, they called an ambulance for a medical emergency; he was upset because his cane was not taken with him. He was shackled and placed in the ambulance to take to the hospital. They were dealing with the immediate threat to his life; however, the detainee felt that they were keeping the cane and that not bringing it with the detainee to the hospital was a civil rights violation.

(b)(6);(b)(7)(C) explained that one grievance received this morning (8/23/2016) about sausage with pork in it. A lot of the detainees don't eat pork for religious reasons. They got the sausage out [of the facility] as quickly as possible, went down and apologized, and reimbursed the detainee's commissary. The difficult ones involve the whole length of the grievance process are sent up to the AFOD. The more difficult ones are the ones who have multiple grievances, multiple filings, they know all the steps and want to get to the last step. The number one grievance is medical, and it is mostly personalities, if they don't like a nurse, they attack the character of the nurse, they expect to get something when they go to medical, if they don't get pills that usually results in a grievance.

Issues, Concerns, or Improvements

(b)(6);(b)(7)(C) had no concerns. Anything we take to ICE, they address. A lot of it now has to do with money. AG] brought up an issue with door traps [requesting more be added to the doors that do not have them], so they can handcuff the detainees while they are in

the cell. The doors cost \$10,000 apiece. (b)(6);(b)(7)(C) (joking) indicated that an improvement would be more money.

According to (b)(6);(b)(7)(C), transgender detainees get separate showers. In general population, they are kept in single cells with their own bathroom [toilet]. One detainee was coming to processing for a shower. If they put themselves in protective custody they get separate showers, but they have some who have stayed in general population and needed separate showers.

(b)(6);(b)(7)(C) (b)(6);(b)(7)(C) asked not directly related to this review, but what differences do you observe with the population from the southern border? (b)(6);(b)(7)(C) indicated that the southern border non-criminals are just like detainees who they have always gotten. However, it goes in cycles, it can be quiet for months then there are behavioral issues. They used to have more of the U.S. Marshals caseload, now those detainees are in county facilities - those were the more serious criminals.



**U.S. Department of Homeland Security
Office of Inspector General
Office of Inspections & Evaluations**

**Use of Segregation for ICE Detainees with Mental Health Conditions
16-073-ISP-ICE**

(b)(6);(b)(7)(C)

(b)(6);(b)(7)(C)

U.S. Immigration and Customs Enforcement (ICE)

(b)(6);(b)(7)(C)

(b)(6);(b)(7)(C)

PURPOSE: To gain an understand Detention Facility (b)(6);(b)(7)(C) role and responsibilities in administering treatment and care for detainees with mental health conditions while in segregation (administrative and disciplinary).

Date: Tuesday, August 23, 2016

Time: 2:50 p.m.

Location: Buffalo (Batavia) Federal Detention Facility (BFDF)
[Note: BFDF is an U.S. Immigration and Customs Enforcement (ICE) owned facility known as a Service Processing Center. Therefore, this is an IHSC Staffed Facility]
Conference Room
4250 Federal Drive
Batavia, NY 14020

Participants:

U.S. Department of Homeland Security, Office of Inspector General, Office of Evaluations and Inspections

- (b)(6);(b)(7)(C) 202) 254 (b)(6);(b)(7)(C) (b)(6);(b)(7)(C)
- (b)(6);(b)(7)(C), (202) 254- (b)(6);(b)(7)(C)
- (b)(6);(b)(7)(C) (202) 632- (b)(6);(b)(7)(C)

Buffalo (Batavia) Federal Detention Facility - (b)(6);(b)(7)(C)

- (b)(7)(C);(b)(6) (b)(6);(b)(7)(C)
- Commander (b)(6);(b)(7)(C) (b)(6);(b)(7)(C)
- (b)(7)(C);(b)(6) (b)(6);(b)(7)(C)
- (b)(6);(b)(7)(C) (b)(6);(b)(7)(C) (b)(6);(b)(7)(C)

(See C.1.13 page 2 of 2 for sign in sheet)

CONCLUSION:

The Detention Facility Medical staff receives an orientation and annual mental health training. There is a psychologist on staff and a psychiatrist available via teleconference.

The medical staff does not deal with field office often but has a good relationship with the Assistant Field Office Director (AFOD) and Supervisory Detention and Deportation Officers (SDDOs).

The Field Office Director (FOD) and the mental health team meet every Monday, Wednesday, and Friday to discuss detainees with mental health conditions. The psychologist will send a spreadsheet of all mental health diagnoses - plus if the mental health detainee is in segregation, that is noted on the spreadsheet. It is a running document that changes week to week. As detainees are deported or released, they take them off the list.

For detainees in the Special Housing Unit (SHU), the medical staff will go down to evaluate detainees by conducting a physical assessment, taking vital signs, and assessing injuries (if any). The medical staff is responsible for clearing all detainees for segregation. When detainees are sent to segregation—administrative or disciplinary, they are still able to receive behavioral health appointments while in segregation.

In addition, the detainees in segregation are seen daily by a registered nurse (RN). If the detainees need to see a more specialized provider, the medical staff will schedule it. Every week, a more senior staff will go down and evaluate all the detainees in segregation, whether they want an evaluation or not. The nurses sign a log and put a note in chart. The psychologist does the same thing - sign in and put a weekly note. There are two log books, plus a chart, and a paper log, and notes placed in the medical record [in eClinicalWorks (eCW)].

A mental health weekly round log plus a mental health case log are forwarded to the IHSC Headquarters / Behavioral Health Unit in Headquarters so they can review the notes.

At BFDF, the medical staff treats all detainees the same. The medical staff knows the mental health cases and will clear them to make sure they are okay to go into segregation. The mental health care continues wherever the detainees are housed.

There is IHSC guidance and guidance documents from Headquarters. The medical documentation is maintained within the electronic health record, called eCW. The visits are in eCW along with the treatment plan and medications. In addition, you can see in the notes whether the detainee is in segregation, or not. You can also tell from the appointment notes.

To ensure treatment is accurate and up to date; the medical staff reviews the records. It is a 10 day chart review, to make sure everything was done, any chronic care issues exist. The medical staff will then run reports, 90 days for chronic care, 30 day mental health medication reviews. In addition, there are reports they can run in eCW.

Medical emergency staff is available if needed. The Detention Facility Medical personnel indicated that only thing that would come up as emergencies or circumstances that would cause them to pull a detainee out of segregation would maybe entail closer observation of mental health needs. In this regards, the medical staff would bring the detainee to the Medical Unit for observation. If the detainee declines further they go to Columbia Care.

The medical staff has never recommended an alternative to segregation. If the detainees are taking their medications, they are stable. If they come off their

medications, they can be a problem, and should not be in general population. If the medical staff cannot handle them, then they go to Columbia care. The medical staff cannot pull someone from segregation, but can recommend it to the AFOD.

The Detention Facility Medical personnel have mixed feelings about eCW. It is easy to see what is being done in eCW; however, there is a lot of data entry (which is time consuming). With a lot of data entry and more options that you have to click through, the more opportunities there are for error.

Detainees can file a grievance through a grievance coordinator or a medical grievance through the psychologist. The most common complaints relate to difficulty getting appointments, and denial of specialized care. A lot of detainees' main concerns are they (1) wanted something the provider didn't give them, (2) wanted to change providers because the provider didn't give something, or (3) felt that they were denied access to care in a timely manner. There is an appeal process. The detainees can also call the OIG hotline.

DETAILS:

(b)(6);(b)(7)(C) opened the meeting by saying that we wanted to ensure we understood Detention Facility Medical Personnel role and responsibilities in administering treatment and care for detainees with mental health conditions while in segregation (administrative and disciplinary). (b)(6);(b)(7)(C) led the interview, and (b)(6);(b)(7)(C) asked questions related to the segregation spot inspection checklist.

Medical

(b)(6);(b)(7)(C) Public Health, (b)(7)(C);(b)(6) and (b)(6);(b)(7)(C) (b)(7)(C);(b)(6) and (b)(6);(b)(7)(C) Public Health, (b)(7)(C);(b)(6) responded to the questions accordingly.

General Background Information

(b)(6);(b)(7)(C)

According to (b)(6);(b)(7)(C) the medical staff receives an orientation and annual mental health training. Both (b)(6);(b)(7)(C) and (b)(6);(b)(7)(C) explained that, they have received on the job training - at arrival, there are a lot of trainings, webinars, PowerPoint. In addition, there are a lot of training opportunities.

There is a psychologist on staff and a psychiatrist available via teleconference.

(b)(6);(b)(7)(C) indicated that the medical staff has an excellent relationship with ICE. The medical staff does not deal with field office often but has a good

mental health rounds. The mental health care continues wherever the detainees are housed.

(b)(6);(b)(7)(C) explained that whatever nurse is present in the morning will cover segregation - it is usually one of the registered nurses cover segregation.

(b)(6);(b)(7)(C) tends to do the mental health rounds and will get help if needed from other medical staff.

Guidance and Instructions

(b)(6);(b)(7)(C) indicated that the guidance specifies how often [each check is required] - there is IHSC guidance, including weekly mental health round. The medical staff will document it, where to send documents, and when they are done. There are guidance documents from Headquarters.

(b)(6);(b)(7)(C) explained that the medical documentation is within the electronic health record, called eCW. (b)(6);(b)(7)(C) added that the visits are in eCW along with the treatment plan and medications. You can see in the notes whether the detainee is in segregation, or not. You can also tell from the appointment notes.

Monitoring, Care and Treatment, and Documentation

According to (b)(6);(b)(7)(C) diagnosis is sometimes at intake (with a diagnosis from a previous facility). Other times, some detainees are diagnosed while they are here. According to (b)(6);(b)(7)(C) daily monitoring is tracked on the log in segregation as well as in eCW. (b)(6);(b)(7)(C) explained that the medical staff reviews what they came to the facility with, follows treatment and care closely, and routine reviews it all. If the detainees ask to see the psychiatrist because they think the medications are not working, the appointment can be moved up. The medical staff has worked with tele psychiatry, it works well, it meets a need, but in the best possible world, it would be face to face. The tele psychiatrist they have is good. They do show a range of emotions, they are reacting, and you can forget it is on a monitor.

In responding to any recommendations from medical staff that people be pulled off segregation, (b)(6);(b)(7)(C) said, "No." If the detainees need a higher level of care, the medical staff would recommend it. It wouldn't matter where. The medical staff has had patients referred for in patient care from segregation, but it would have happened anyway.

(b)(6);(b)(7)(C) indicated to ensure treatment is accurate and up to date; the medical staff reviews the records. It is a 10 day chart review, to make sure everything was done, any chronic care issues exist. The medical staff will then run reports, 90 days for chronic care, 30 day mental health medication reviews. In addition, there are reports they can run in eCW.

Emergencies Circumstances and Alternative to Segregation

Medical emergency staff is available if needed. In responding to the questions, are there emergencies or circumstances that would cause medical staff to pull a detainee

out of segregation, (b)(6);(b)(7)(C) explained that only thing that would come up as emergencies or circumstances that would cause them to pull a detainee out of segregation would maybe entail closer observation of mental health needs. In this regards, the medical staff would bring the detainee to the Medical Unit for observation. If the detainee declines further they go to Columbia Care.

According to (b)(6);(b)(7)(C) the medical staff has never recommended an alternative to segregation. If the detainees are taking their medications they are stable. If they come off their medications, they can be a problem, and should not be in general population. If the medical staff cannot handle them, then they go to Columbia care. The medical staff has a weekly conference with Columbia Care for their patients. They get information on how the detainees are doing, when they might be coming back.

(b)(6);(b)(7)(C) agreed on Columbia medical care being helpful.

(b)(6);(b)(7)(C) explained that the medical staff cannot pull someone from segregation, but can recommend it to the AFOD. (b)(6);(b)(7)(C) indicated that they have no concerns about segregation because the detainees are not in there for very long. According to (b)(6);(b)(7)(C) the State of New York is limiting segregation, on the correctional side. If it is done for mental health or administrative reasons, there are frequent checks on detainees, daily segregation rounds, and 24/7 care. (b)(6);(b)(7)(C) corrected himself that no one is in segregation for mental health.

Suggestions for Improvement

(b)(6);(b)(7)(C) indicated that detainees are never denied access. The detention officer calls right away if a detainee is not acting right. (b)(6);(b)(7)(C) explained, as a best practice, there is good communication with the Field Office Director (FOD) through daily alerts and monthly meetings. The FOD is very responsive; custody refers people all the time.

According to (b)(6);(b)(7)(C), there is good communication, on mental health segregation; they talk to the AFOD every day. If there is any length of time a detainee is in segregation, they have a panel and U.S. Public Health Service (PHS) sits on the panel. It has been a while [since anyone was on long term segregation]. They are open to recommendations on the cases in segregation, so a lot of contact on any detainee who is in segregation.

(b)(6);(b)(7)(C) like eCW now, it works for him. As an administrator, (b)(6);(b)(7)(C) (b)(6);(b)(7)(C) likes eCW, it is easy to see what is being done, they've gone back and forth between paper and an older electronic system, but eCW is easiest for an administrator to follow and track. However, (b)(6);(b)(7)(C) explained that he does not know if he would recommend eCW for smaller facilities because it not chart. It is great for reviewing.

- According to (b)(6);(b)(7)(C) he actually uses eCW. He has dealt with many systems, including Case Tracker, private hospital systems, where you get the product. He is prior Air Force and there the saying is you adapt and overcome. Certain things about eCW are great while others are time consuming.

It takes time and there is a lot of data entry - that is the issue. It is not a smart system that is efficient to use. To answer the question would you recommend to another facility, (b)(6);(b)(7)(C) maybe would give it a 6 or 7 of 10 (being the highest mark).

- (b)(6);(b)(7)(C) prefers Case Tracker, it has standard operating procedures that allow notes and he liked that. (b)(6);(b)(7)(C) said with eCW, there is a lot of clicking, and a lot of manual steps, which slows things down.
- According to (b)(6);(b)(7)(C) if there is a storm, the mainframe gets affected, and eCW can be quite slow.
- (b)(6);(b)(7)(C) indicated the more smart forms, the more data that has to be entered, the more options [that have to be clicked through], the more opportunities there are for error. When there are 14 or 18 questions, people just miss things, mental health is contained, they are used to it, but for general medical care it can be challenging. (b)(6);(b)(7)(C) uses smart forms when he can.
- (b)(6);(b)(7)(C) stated that if eCW goes down, they have to call ICE to get it rebooted or fixed. ICE has to reboot nationwide sometimes.
- (b)(6);(b)(7)(C) explained that if eCW is down for a day, which is rare, they have to use paper.

Grievances

According to (b)(6);(b)(7)(C) the detainees can file through grievance coordinator or a medical grievance which goes to him. Should a detainee have a medical grievance, their report is filed through the grievance coordinator, like non-medical grievances. The most common complaints relate to difficulty getting appointments, and denial of specialized care. A lot of detainees' main concerns are they (1) wanted something the provider didn't give them, (2) wanted to change providers because the provider didn't give something, or (3) felt that they were denied access to care in a timely manner.

(b)(6);(b)(7)(C) will review the chart before talking to the detainees, indicating that provider won't see them [as the grievance]. He will check the charts and notes, which usually indicate the provider did see them, through a sick call. Then, he will talk to the provider, and he will check the complaint was addressed. Sometimes the grievance is an issue separate from medical. The medical staff will try to resolve the grievance, if the detainees feel they are not getting the proper care. (b)(6);(b)(7)(C) will try to resolve all grievances; however, a lot of it is communication issues, or the provider is not going to give the detainees something they want. They have the option of filing another grievance if they don't like the resolution. Often, the detainees wanted to see a specialist; however, they don't get to see one just because they ask. There is an appeal process. The detainees can also call the OIG hotline.

Additional Information provided by IHSC Detention Facility Medical Personnel:

- (b)(6);(b)(7)(C) indicated that ICE can refer detainees to medical if the detainee is crying a lot or have some other issues. The nurse will down and take a look at the detainee. If it is legitimate, the nurse will send them out for evaluation- usually the recommendation is observation. Then, the detainees are

reevaluated. According to (b)(6);(b)(7)(C) if there are any concerns about risk to self or others, the custody staff or the judge alerts medical immediately. (b)(6);(b)(7)(C) explained that other detainees may also refer a detainee. (b)(6);(b)(7)(C) added that sometimes ICE refers detainees because of unusual social behavior. Things get referred quickly; they can refer for suicide watch, etc. The medical staff will try to keep the detainees in the least restrictive and appropriate setting. (b)(6);(b)(7)(C) indicated that if it is medical call, the medical staff will make the final decision on who is referred to medical for observation. Should the healthcare staff has an issue with a particular detainee remaining in detention, the staff would make a recommendation to the AFOD.

- IHSC sends a mental health conditions tracking document to ICE three times a week. Appointments and patient care history are listed in eCW. The staff reports that the services at the facility are adequate, including the tele-psychiatry program. The staff's opinions of eCW are mixed.
- The staff also reports that they have never requested that a detainee leave segregation for mental health reasons. The staff does sometimes send detainees with serious mental health issues to Columbia Care, a facility capable of providing detainees with a higher level of mental health care and monitoring.
- Mental health crisis can be handled by the local hospital. Detainees on suicide watch are placed in the least restrictive environment possible. Ultimately suicide watch status is the medical staff's decision.

Exhibit H

H A R V A R D L A W S C H O O L

CAMBRIDGE · MASSACHUSETTS · 02138

HARVARD IMMIGRATION AND
REFUGEE CLINIC
Harvard Law School

Location: 6 Everett St., Suite 3105
ptorrey@law.harvard.edu
Phone: 617-495-0638

April 1, 2019

OIG Office of Counsel
U.S. Department of Homeland Security
Freedom of Information Act Office
245 Murray Lane SW
Mail Stop - 0305
Washington, D.C. 20528-0305

RE: FOIA Appeal for Records on Solitary Confinement of Immigrant Detainees in the State of Massachusetts

FOIA Reference Number: FOIA-2018-ICFO-20740

Dear Sir or Madam:

This letter constitutes an appeal under the Freedom of Information Act (“FOIA”). See 5 U.S.C. § 552(a)(6)(A)(ii) and 6 C.F.R. § 5.9. This appeal is on behalf of the Harvard Immigration and Refugee Clinical Program at the Harvard Law School (“Requester”). This appeal is timely filed.

Specifically, the Requester appeals the adequacy of the agency’s searches for and responses to request 2018-ICFO-20740. The Requester asks that the agency conduct new searches for records responsive to the request, provide information concerning data disclosed.

BACKGROUND

On November 27, 2017, Requester submitted a request to U.S. Immigration and Customs Enforcement (“ICE”) related to the detention of immigrants in solitary confinement in the State of Massachusetts. A copy of the FOIA request designated FOIA-2018-ICFO-20740 is attached hereto as Exhibit A.

On February 21, 2018, Requester received two acknowledgments and correspondences from ICE FOIA Officer Catrina Pavlik-Keenan. One stated that the information we are seeking through the above-mentioned FOIA request to ICE was under the purview of the Office of Civil

FOIA Appeal
April 1, 2019
Page 2 of 4

Rights and Civil Liberties (“CRCL”) and that the relevant FOIA Officer to contact was located at the Privacy Office. Correspondence attached hereto as Exhibit B. The other mentioned that the above-mentioned FOIA request to ICE was under the purview of the Office of the Inspector General at the U.S. Department of Homeland Security (“OIG”). Correspondence attached hereto as Exhibit C.

On August 10, 2018, Requester emailed ICE, OIG and the U.S. Department of Homeland Security (“DHS”) requesting an update on the status of the request. Email attached hereto as Exhibit D. On August 10, 2018, Requester received correspondence from OIG that the above-mentioned FOIA request to ICE is not one that can be addressed by OIG, as OIG does not store any information relevant to our request and that ICE is the correct agency to address the request. Correspondence attached hereto as Exhibit E.

On November 15, 2018, Requester emailed ICE requesting an update on the status of the request. Email attached hereto as Exhibit F. On November 21, 2018, Requester received a correspondence from ICE informing us that “the appropriate component of DHS” had been queried for records. The correspondence further stated that any responsive records would be reviewed for determination of releasability. Correspondence attached hereto as Exhibit G.

490 days have passed since the Requester’s FOIA request, and OIG and ICE have failed to provide a determination within the statutory deadlines. The Requester hereby appeals OIG’s lack of response and search for records as insufficient.

THE AGENCY’S LACK OF RESPONSE

Pursuant to the FOIA, in response to a request, an agency must determine whether to comply with the request within 20 days of receipt and “shall immediately notify the person making such request” of a “determination and the reasons therefor,” “the right of such person to seek assistance from the FOIA Public Liaison of the agency,” and in the case of an adverse determination, the right of that person to appeal and also to seek dispute resolution services from the FOIA Public Liaison of the agency or the Office of Government Information Services. 5 U.S.C. § 522(a)(6)(A). Neither DHS or ICE has provided a determination regarding the Requester’s request or informed the Requestor of its right to seek assistance from the FOIA Public Liaison. Neither agency has provided notice of a ten-day extension request under § 522(a)(6)(B).

OIG has failed to meet its statutory obligations under FOIA by failing to respond to the request well past the applicable statutory deadlines.

A. OIG is the correct agency to respond to this Request

Furthermore, OIG is the correct agency to respond to this request. OIG has issued a memorandum on issues directly addressed by the FOIA request referring to records directly responsive to the FOIA request but which were not provided.

FOIA Appeal
April 1, 2019
Page 3 of 4

The 2017 OIG Memorandum “ICE Field Offices Need to Improve Compliance with Oversight Requirements for Segregation of Detainees with Mental Health Conditions”¹ contains recommendations by OIG aimed at improving oversight and accountability for segregation, or solitary confinement, of detainees with mental health conditions. The memorandum also incorporates comments from ICE in response to these recommendations, which concur with the recommendations by OIG and describe corrective actions that it has or will take in the future. The Request specifically seeks the disclosure of information submitted by ICE to DHS OIG and DHS Office for Civil Rights and Civil Liberties (“CRCL”) regarding solitary confinement, of which OIG must have received in order to complete this Memorandum.

It therefore appears highly unlikely that the agency does not have any written materials in response to the Request, given the scope of the Request. See Ctr. For Nat. Sec. Studies, 215 F. Supp.2d 94, 109–11 (D.D.C. 2002), *aff’d in part and rev’d in part*, 331 F.3d 918 (D.C. Cir. 2003) (reversing order to disclose information requested due to significant national security concerns).

In Center for National Security Studies, the plaintiffs challenged the adequacy of the Department of Justice’s search for documents responsive to their request for “all policy directives and guidance issued to officials about making public statements or disclosures” about persons detained after Sept. 11, 2001 or about “sealing judicial or immigration proceedings.” In response to that request, the Department of Justice (DOJ) had released only two documents: a two-page document from DOJ entitled “draft talking points” for the Attorney General; and (2) a memorandum via electronic mail from Chief Immigration Judge. The district court found that this response was inadequate on several grounds. As part of its reasoning, the court concluded that:

Finally, it is simply not credible that no other documents are responsive to Plaintiffs’ request. Somehow all United States Attorneys Offices, all FBI offices, all INS offices, and all DOJ offices throughout the United States were told that matters related to those apprehended in connection with September 11, were to remain secret. How was this directive communicated? The Government never explains how widespread notification was accomplished without the use of a single document produced under FOIA.

For the foregoing reasons, the Court concludes that the Government’s search for “all policy directives and guidance issued to officials about making public statements or disclosures” with respect to the detainees or about “sealing judicial or immigration proceedings” was inadequate. The Government must conduct another search.

Ctr. For Nat. Sec. Studies, 215 F. Supp. 2d at 110–11.

Likewise, in this case, it appears highly unlikely that the agency has no documents that are relevant and responsive to the Request, which seeks information and records concerning various aspects of solitary confinement for noncitizens in immigration detention.

¹ <https://www.oig.dhs.gov/sites/default/files/assets/2017-11/OIG-17-119-Sep17.pdf>

FOIA Appeal
April 1, 2019
Page 4 of 4

We therefore respectfully request that OIG conduct a thorough search and provide a timely response to our Request Thank you for your consideration and prompt attention.

Sincerely,

A handwritten signature in black ink, appearing to read "Philip L. Torrey". The signature is fluid and cursive, with a large initial "P" and a long, sweeping underline.

Philip L. Torrey
Managing Attorney

Exhibit I



OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

April 1, 2020

Philip L. Torrey
Managing Attorney
Harvard Immigration and Refugee Clinic
Harvard Law School
6 Everett St., Suite 3105
Cambridge, Massachusetts 02138

Transmitted by email to: ptorrey@law.harvard.edu

Re: Freedom of Information Act Appeal
Appeal No. 2019-IGAP-00004
Request No. 2018-IGFO-00072

Dear Philip Torrey:

You submitted a request under the Freedom of Information Act (FOIA) to U.S. Immigration and Customs Enforcement (ICE), Department of Homeland Security (DHS) on November 21, 2018. ICE referred part of your request to DHS' Office of Inspector General (OIG) for processing and direct response to you. DHS OIG responded to your request on December 10, 2018. You submitted a timely appeal of that response. Your appeal has been denied.

FOIA Request and DHS OIG's Response

DHS OIG received a referral from ICE on February 21, 2018, for Section A of your FOIA request, which sought records that DHS OIG received from ICE between July 2016 and January 2017 pertaining to detainees with mental health disabilities placed in segregated housing.

On December 10, 2018, DHS OIG responded to your FOIA request, providing records that resulted from a search of DHS OIG's Office of Special Reviews and Evaluations' (SRE) records regarding DHS OIG Report No. OIG-17-119 and its underlying documents.

Appeal

On April 1, 2019, you submitted your appeal of DHS OIG's response to your FOIA request. You sent your appeal by mail. This office (DHS OIG's Information Law and Disclosure Division (ILD)) received your appeal on April



OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

10, 2019. In your appeal, you challenge the agency's searches and its lack of a final response, stating that the agency provided no records. Your appeal only references the ICE FOIA tracking number for your request. Since you direct this appeal to DHS OIG, I will only assess DHS OIG's response to your request, which we have numbered as FOIA Request No. 2018-IGFO-00072.

Determination

I reviewed your FOIA request, DHS OIG's response to it, and your appeal of that response. After careful consideration, I have denied your appeal and affirmed DHS OIG's response. Your appeal states that as of April 1, 2019 (i.e., the date of your appeal), DHS OIG had provided no records, and that DHS OIG had not responded to your request. According to our file for this matter, on December 10, 2018, DHS OIG provided one page in full and 29 pages in part to Sabi Ardalan, the initial requester, at the email address sardalan@law.harvard.edu. As a courtesy, we are re-sending these documents to you.

DHS OIG also conducted an adequate records search. ILD submitted a records search request to DHS OIG's Office of Inspections and Evaluations (now referred to as SRE), which conducted the field work related to DHS OIG Report No. OIG-17-119. SRE searched for records submitted by ICE to DHS OIG between July 2016 and January 2017 pertaining to detainees with mental health disabilities placed in segregated housing. This search resulted in 254 pages of records. Of these pages, DHS OIG referred 221 of them to ICE, as the originators of the records.¹ As these are not DHS OIG records, DHS OIG cannot process them for release under FOIA.

For the above reasons, I am upholding DHS OIG's response to your FOIA request, and its referral of responsive records to ICE.

Assistance and Dispute Resolution Services

If you have further questions, you may contact the DHS OIG FOIA Public Liaison in any of the following ways:

¹ See OIP Guidance: Referrals, Consultations, and Coordination: Procedures for Processing Records when Another Agency or Entity Has an Interest in Them (posted 2011, updated 8/15/2014), <https://www.justice.gov/oip/blog/foia-guidance-13>.



OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

FOIA Public Liaison
DHS OIG Counsel
STOP 0305
245 Murray Lane, SW
Washington, DC 20528-0305
Phone: 202-254-4001
Fax: 202-254-4398
E-mail: foia.oig@oig.dhs.gov

Judicial Review and Mediation Services

If you are dissatisfied with my action on your appeal, you may seek judicial review in accordance with 5 U.S.C. § 552(a)(4)(B). Additionally, as a non-exclusive alternative to litigation, the Office of Government Information Services (OGIS), which is the Federal FOIA Ombudsman's office, offers mediation services to help resolve disputes between FOIA requesters and Federal agencies. OGIS can be reached as follows:

Office of Government Information Services (OGIS)
National Archives and Records Administration (NARA)
8601 Adelphi Road
College Park, Maryland 20740-6001
Email: OGIS@NARA.gov
Websites: <https://ogis.archives.gov>;
<https://www.archives.gov/ogis/mediation-program/request-assistance>
Phone: 202-741-5770
Toll-free: 1-877-684-6448

Sincerely,

Jillian M. Clouse

Assistant Counsel to the Inspector General
Information Law & Disclosure Division
FOIA Appeals

Enclosures: FOIA Request; Final Response (with Records); Appeal Letter

Exhibit J

H A R V A R D L A W S C H O O L

CAMBRIDGE · MASSACHUSETTS · 02138

HARVARD IMMIGRATION AND
REFUGEE CLINIC
Harvard Law School

M 6 Everett St., Suite 3105
ptorrey law.harvard.edu
617-4 5-0638

April 1, 201

U.S. Immigration and Customs Enforcement
Office of Principal Legal Advisor
U.S. Department of Homeland Security
Freedom of Information Act Office
500 12th Street, S.W.
Washington, D.C. 20536

RE: FOIA Appeal for Records on Solitary Confinement of Immigrant Detainees in the State of Massachusetts

FOIA Reference Number: FOIA-2018-ICFO-20740

Dear Sir or Madam:

This letter constitutes an appeal under the Freedom of Information Act (FOIA). See 5 U.S.C. 552(a)(6)(A)(ii) and 6 C.F.R. 5. . This appeal is on behalf of the Harvard Immigration and Refugee Clinical Program at the Harvard Law School (Requester). This appeal is timely filed.

Specifically, the Requester appeals the adequacy of the agency s searches for and responses to request 2018-ICFO-20740. The Requester asks that the agency conduct new searches for records responsive to the request, provide information concerning data disclosed.

BACKGROUND

On November 27, 2017, Requester submitted a request to U.S. Immigration and Customs Enforcement (ICE) related to the detention of immigrants in solitary confinement in the State of Massachusetts. A copy of the FOIA request designated FOIA-2018-ICFO-20740 is attached hereto as E hibit A.

On February 21, 2018, Requester received two acknowledgments and correspondences from ICE FOIA Officer Catrina Pavlik- eenan. One stated that the information we are seeking through the above-mentioned FOIA request to ICE was under the purview of the Office of Civil

FOIA Appeal
April 1, 2021
Page 2 of 4

Rights and Civil Liberties (CRCL) and that the relevant FOIA Officer to contact was located at the Privacy Office. Correspondence attached hereto as E_hibit B. The other mentioned that the above-mentioned FOIA request to ICE was under the purview of the Office of the Inspector General at the U.S. Department of Homeland Security (OIG). Correspondence attached hereto as E_hibit C.

On August 10, 2018, Requester emailed ICE, OIG and the U.S. Department of Homeland Security (DHS) requesting an update on the status of the request. Email attached hereto as E_hibit D. On August 10, 2018, Requester received correspondence from OIG that the above-mentioned FOIA request to ICE is not one that can be addressed by OIG, as OIG does not store any information relevant to our request and that ICE is the correct agency to address the request. Correspondence attached hereto as E_hibit E.

On November 15, 2018, Requester emailed ICE requesting an update on the status of the request. Email attached hereto as E_hibit F. On November 21, 2018, Requester received a correspondence from ICE informing us that the appropriate component of DHS had been queried for records. The correspondence further stated that any responsive records would be reviewed for determination of releasability. Correspondence attached hereto as E_hibit G.

40 days have passed since the Requester's FOIA request, and OIG, ICE and CRCL have failed to provide a determination within the statutory deadlines. The Requester hereby appeals ICE's lack of response and search for records as insufficient.

THE AGENCY'S LACK OF RESPONSE

Pursuant to the FOIA, in response to a request, an agency must determine whether to comply with the request within 20 days of receipt and shall immediately notify the person making such request of a determination and the reasons therefor, the right of such person to seek assistance from the FOIA Public Liaison of the agency, and in the case of an adverse determination, the right of that person to appeal and also to seek dispute resolution services from the FOIA Public Liaison of the agency or the Office of Government Information Services. 5 U.S.C.

522(a)(6)(A). Neither DHS or ICE has provided a determination regarding the Requester's request or informed the Requester of its right to seek assistance from the FOIA Public Liaison. Neither agency has provided notice of a ten-day extension request under 522(a)(6)(B).

ICE has failed to meet its statutory obligations under FOIA by failing to respond to the request well past the applicable statutory deadlines and by transferring the request to OIG and CRCL.

A. ICE is the correct agency to respond to this Request

Furthermore, ICE is the correct agency to respond to this request. ICE has issued policy guidance on issues directly addressed by the FOIA request which refer to the creation or analysis of policies and records directly responsive to the FOIA request but which were not provided.

FOIA Appeal

April 1, 201

Page 3 of 4

For example, the 2013 ICE Directive *Review of the Use of Segregation for ICE Detainees*, contains policy and procedures for review of ICE detainees placed into segregated housing.¹ Pursuant to 5.1 of the directive, the field office director shall take steps to ensure that she is notified in writing by the facility administrator whenever a detainee has been held continuously in segregation for 14 days, 30 days, and at every 30-day interval thereafter, or has been held in segregation for 14 days out of any 21 day period. Additionally, 5.1 requires the field office director to review immediately the detainee's segregation case, upon reception of the notification, including, when relevant, the full detention file and EARM records.

Moreover, 5.3 provides that the field operator director shall develop a written report of his/her findings and any actions taken, and transmit it to CMD, with respect to detainees who meet the following criteria. Additionally, in 7.5, a subcommittee of the Detention monitoring Council (DMC) - co-chaired by the Custody Management Division (CMD) and the Office of Detention Policy and Planning (ODPP) - shall ensure an effective, timely and comprehensive review of the segregation reports sent to Headquarters from the field operator directors. It appears highly unlikely that the agency does not have any other written materials in response to the Request, given the scope of the Request. See *Ctr. For Nat. Sec. Studies*, 215 F. Supp.2d 4, 10 11 (D.D.C. 2002), *M M M M*, 331 F.3d 18 (D.C. Cir. 2003) (reversing order to disclose information requested due to significant national security concerns).

In *Center for National Security Studies*, the plaintiffs challenged the adequacy of the Department of Justice's search for documents responsive to their request for all policy directives and guidance issued to officials about making public statements or disclosures about persons detained after Sept. 11, 2001 or about sealing judicial or immigration proceedings. In response to that request, the Department of Justice (DOJ) had released only two documents: a two-page document from DOJ entitled draft talking points for the Attorney General and (2) a memorandum via electronic mail from Chief Immigration Judge. The district court found that this response was inadequate on several grounds. As part of its reasoning, the court concluded that:

Finally, it is simply not credible that no other documents are responsive to Plaintiffs request. Somehow all United States Attorneys Offices, all FBI offices, all INS offices, and all DOJ offices throughout the United States were told that matters related to those apprehended in connection with September 11, were to remain secret. How was this directive communicated? The Government never explains how widespread notification was accomplished without the use of a single document produced under FOIA.

For the foregoing reasons, the Court concludes that the Government's search for all policy directives and guidance issued to officials about making public statements or disclosures with respect to the detainees or about sealing judicial or immigration proceedings was inadequate. The Government must conduct another search.

Ctr. For Nat. Sec. Studies, 215 F. Supp. 2d at 110 11.

¹ https://www.ice.gov/doclib/detention-reform/pdf/segregation_directive.pdf.

FOIA Appeal

April 1, 2021

Page 4 of 4

Likewise, in this case, it appears highly unlikely that the agency has no documents that are relevant and responsive to the Request, which seeks information and records concerning various aspects of solitary confinement for noncitizens in immigration detention.

We therefore respectfully request that ICE conduct a thorough search and provide a timely response to our Request. Thank you for your consideration and prompt attention to this request.

Sincerely,

Philip L. Torrey
Managing Attorney

Exhibit K

H A R V A R D L A W S C H O O L

CAMBRIDGE · MASSACHUSETTS · 02138

HARVARD IMMIGRATION AND
REFUGEE CLINIC
Harvard Law School

Location: 6 Everett St., Suite 3103
E-mail Address: hirc@law.harvard.edu
Phone: 617-384-8165

November 30, 2017

SENT VIA EMAIL (ICE-FOIA@dhs.gov)

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

To Whom It May Concern:

This is a request for records made pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 et seq., and the relevant implementing regulations, see 6 C.F.R. § 5 (Department of Homeland Security, Disclosure of Records and Information). The Request is submitted by the Harvard Immigration and Refugee Clinic (“HIRC”), HIRC Managing Attorney Phil Torrey, and Assistant Clinical Professor Sabi Ardanan (“Requesters”). Requesters seek the disclosure of records related to Immigration and Customs Enforcement (“ICE”) detainees placed into segregated housing.

Background

Noncitizens held in immigration detention may be subject to solitary confinement, disciplinary or administrative segregation, for a variety of reasons.¹ Solitary confinement, even for relatively short periods of time, can cause serious psychological and physical damage. The experience of solitary confinement can be acutely traumatizing for many, including those who have a history of “torture and abuse, as is often the case with many immigration and national security detainees.”² Prolonged isolation can often lead to mental health issues or severely exacerbate pre-existing mental illness.³

¹ Homeland Security Advisory Council, *Report of the Subcommittee on Privatized Immigration Detention Facilities*, Dec. 1, 2016, available at <https://www.dhs.gov/sites/default/files/publications/DHS%20HSAC%20PIDF%20Final%20Report.pdf>.

² Physicians for Human Rights, *Solitary Confinement in the U.S. Detention System*, April 2013, available at https://s3.amazonaws.com/PHR_Reports/Solitary-Confinement-April-2013-full.pdf.

³ *Id.*

ICE FOIA Request
November 30, 2017
Page 2 of 7

ICE issued Performance Based National Detention Standards (PBNDS) in 2011, which recognized that administrative segregation of vulnerable populations should only be used as “a last resort” and “when no other viable housing options exist.”⁴ In order to systematically monitor the use of segregation, on September 4, 2013, Immigration and Customs Enforcement issued a directive mandating the review of the use of segregation for ICE detainees.⁵ The directive states that “[p]lacement in segregation should occur only when necessary and in compliance with applicable detention standards.”⁶

The 2013 ICE directive established safeguards to ensure that detainees with medical or mental illness are not inappropriately placed in segregation. Indeed, per the directive “detainees shall be removed from segregation if the IHSC [ICE Health Services Corps] determines that the segregation placement has resulted in deterioration of the detainee’s medical or mental health.”⁷

Records Requested

As used herein, the term “records” includes all records or communications preserved in electronic or written form, including but not limited to: correspondence; documents; data; videotapes; audio tapes; emails; faxes; files; guidance; guidelines; evaluations; instructions; analysis; memoranda; agreements; notes; orders; policies; procedures; protocols; reports; rules; manuals; specifications; and studies.

As used herein, the term “segregation” is used to refer to solitary confinement, administrative segregation, protective custody, disciplinary segregation, restrictive housing, and other related terms. To the extent that the records and data disaggregate between different terminology, status, or type of segregation, please provide the records in the disaggregated form.

As used herein, the term “detainee” refers to an individual detained for immigration purposes in an ICE facility or a facility with which ICE has an agreement or is contracting.

Should any responsive record contain the personal identifying information of any third party, Requesters ask that the agencies redact that information. This Request seeks aggregate data and records relevant to ICE’s use of segregation, not any personal or identifying information

⁴ ICE, Performance Based National Detention Standards, § 2.12 (V)(A)(1)(c). *See also* 6 C.F.R. § 115.43(b) (“Use of administrative segregation by facilities to protect detainees vulnerable to sexual abuse or assault shall be restricted to those instances where reasonable efforts have been made to provide appropriate housing and shall be made for the least amount of time practicable, and when no other viable housing options exist, as a last resort.”). 6 C.F.R. § 115.68(a) (“The facility shall take care to place detainee victims of sexual abuse in a supportive environment that represents the least restrictive housing option possible (e.g., protective custody), subject to the requirements of § 115.43.”).

⁵ ICE Directive 11065.1, Review of the Use of Segregation for ICE Detainees, DHS (2013), *available at* https://www.ice.gov/doclib/detention-reform/pdf/segregation_directive.pdf [hereinafter “ICE Segregation Directive”].

⁶ ICE Segregation Directive at § 2.

⁷ ICE Segregation Directive at § 5(a).

ICE FOIA Request
November 30, 2017
Page 3 of 7

about any specific individual(s). However, to the extent available, please include data fields indicating detainees' ethnicity, country of origin, race, English proficiency, religion, and/or other similar characteristics in disaggregated form.

Requesters seek disclosure of records in the custody or control of Immigration and Customs Enforcement (ICE) pertaining to the treatment of detainees held in segregation to include at least:

For the period beginning **September 4, 2013 to the present**, records regarding use of segregation for immigration detainees within ICE detention facilities and facilities ICE has agreements with or is contracting with for the purpose of holding immigration detainees, including Service Processing Centers (SPCs), Contract Detention Facilities (CDFs), and Intergovernmental Service Agreement Facilities (IGSAs) (together "ICE contract detention facilities")⁸ **in the state of Massachusetts**:

- I. Records, data, and/or reports regarding extended segregation placements including but not limited to:
 - a. Records, data, and/or reports of detainees who were held continuously in segregation for 14 days, 30 days, or 14 days out of any 21-day period, including records of the full length of time in detention⁹
 - b. Records relating to review of such cases by ICE personnel including ICE Health Services Corps (IHSC) personnel, Detention Services Managers (DSMs), and Field Office Directors (FODs)¹⁰

- II. Records, data, and/or reports collected by or pertaining to the operations and responsibilities of ICE Health Services Corps (IHSC) in ICE detention facilities and ICE contract detention facilities, including employees in county jails with agreements with ICE, including but not limited to:
 - a. Records, data, and reports received, ordered, or compiled by IHSC or the Custody Management Division ("CMD") regarding facility medical services, resources, and capabilities including but not limited to:
 - i. The extent and training of medical and mental health staffing¹¹

⁸ "Over many decades, immigration detention has evolved into a mixed public-private system where only 10 percent of detainees are now in ICE-owned facilities (known as Service Processing Centers or SPCs). Nearly all of the rest of the detainees are in facilities operated by private companies or by county jails, under various forms of contract or agreement with ICE. Even in the SPCs, many core functions, including security, are carried out by contract personnel, but with a more direct form of supervision by ICE officers than is the case in the other two broad categories of detention facilities." Homeland Security Advisory Council Report, *supra* note 1, at 5-6; *see also* Physicians for Human Rights Report, *supra* note 2.

⁹ ICE Segregation Directive at § 5.1(1).

¹⁰ ICE Segregation Directive at § 5.1(2).

¹¹ ICE Segregation Directive at § 7.3(1).

ICE FOIA Request
November 30, 2017
Page 4 of 7

- ii. The number of dedicated medical beds, medical housing units, and appropriate cells for monitoring high-risk or suicidal detainees¹²
 - iii. Employment status of the staff (i.e. whether ICE is the employer or a third party contractor, and if so, which third-party company), and any contracts, memoranda of understanding, or agreements between ICE or ICE contract facilities and medical or mental health professionals or hospitals or other health care facilities.
 - b. Copies of any training materials or memoranda disseminated to facility staff regarding the use of segregation and the role of medical and mental health professionals
 - c. Records, data, and/or reports of cases reviewed by IHSC identified as raising disability, medical or mental health concerns in the context of segregation¹³
 - i. Including information as to which special vulnerability the detainee classified as, what concerns were raised, and what the detainee was diagnosed with or treated for
 - d. Records, data, and/or reports of IHSC feedback on the appropriate placement for detainees in light of their disability or medical or mental health conditions¹⁴
 - e. Records, data, and/or reports including data of cases identified by or to IHSC in which the detainee was moved to ensure appropriate treatment¹⁵
 - f. Records, data, and/or reports including data of cases identified by employees or contractors in county jails with agreements with ICE
 - g. Records, data, and/or reports including data of cases identified by or to IHSC in which the detainee was not moved and why¹⁶
 - h. Any records, data, and/or reports referenced or relied upon in developing the FY 2015 Detainee Health factsheet that pertain to facilities in Massachusetts. The fact sheet notes that “[t]he following number and types of health care services were provided [nationally in FY 2015”:
 - Intake Screenings: 199,107
 - Physical Exams: 87,078
 - Sick Calls: 126,486
 - Urgent Care Visits: 21,245
 - Emergency Room/Off-Site Referrals: 19,483
 - Dental Visits: 24,233
 - Mental Health Interventions: 90,276
 - Prescriptions Filled: 234,001¹⁷

¹² ICE Segregation Directive at § 7.3(1).

¹³ ICE Segregation Directive at § 7.3(2).

¹⁴ ICE Segregation Directive at § 7.3(2).

¹⁵ ICE Segregation Directive at §§ 7.3(2); 5.2(5)(a).

¹⁶ ICE Segregation Directive at § 7.3(2); 5.2(5)(a).

¹⁷ FY 2015 Detainee Health Care factsheet, <https://www.ice.gov/factsheets/dhc-fy15> (“In a typical day IHSC provides approximately 545 health screenings, 239 physical exams and 347 sick calls.”).

ICE FOIA Request
November 30, 2017
Page 5 of 7

- i. Records, data, and/or reports including communication between and among any ICE personnel, including IHSC, DSMs, FODs, the Segregation Review Coordinator, and/or the detainee's defense attorney if applicable, regarding cases where a detainee with a disability, medical or mental health concern is held in segregation¹⁸
- III. Records, data, and/or reports related to suitable accommodations for detainees with disabilities, medical or mental disabilities including but not limited to:
- a. Records of facilities with suitable accommodations for such detainees (i.e. facilities that IHSC recommends that such detainees are moved to when they make a recommendation)¹⁹
 - b. Records, data, and/or reports documenting the funding source and amount budgeted and spent on health care services
 - c. Records, data, and/or reports documenting the employment status of the doctors, nurses, nurse practitioners, psychologists, psychiatrists, social workers, and other related staff members (i.e. whether ICE, another government agency, or a private contractor is the employer, and if so, which agency or private contractor) and copies of any contracts, employment agreements, memoranda of understanding between ICE or ICE contract facilities and medical and mental health care professionals, hospitals or other health care facilities.
- IV. Records, data, and/or reports related to forensic assessments of competency for detainees with disabilities, including but not limited to:
- a. Number of forensic assessments, by month and facility
 - b. Outcome of forensic assessments, by month and facility
- V. For detainees placed on mental health watch (or any similar term indicating heightened attention because of mental health concerns), length of time on such a watch.

Records and/or data documenting any changes to the provision of medical and mental health care in segregation over the past year, **from January 1, 2017 to the present in the state of Massachusetts**, including:

- a. the use of segregation in immigration detention by facility by month
- b. the number of health care providers employed in immigration detention facilities by month
- c. the amount and source of funding for medical and mental health care and staff in immigration detention facilities by month
- d. the number of visits by medical and mental health care providers to immigration detainees generally

¹⁸ ICE Segregation Directive at § 5.2(4).

¹⁹ ICE Segregation Directive at § 7.3(3).

ICE FOIA Request
November 30, 2017
Page 6 of 7

- e. the number of visits by medical and mental health care providers to immigration detainees in segregation by facility by month
- f. the number of visits by medical health care providers to immigration detainees in housed in segregation by facility by month
- g. the number of transfers to an external medical and/or psychiatric facility and length of stay in the external facility
- h. the percentage of detainees in segregation provided access to showers and other basic services (laundry, hair care, barbering, clothing, bedding, linen) by facility by month
- i. the percentage of detainees granted access to regular outside visits
- j. the difference between medical and mental health care provided to those in segregation vs. those who are not
- k. any written policies related to segregation.²⁰

Fee Waiver Request

Requestors are entitled to a waiver or reduction of all costs because the information sought “is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the [Requestors’] commercial interest.” 5 U.S.C. § 552(a)(4)(A)(iii); 6 C.F.R. § 5.11(k) (records must be furnished without charge if the information is in the public interest, and disclosure is not in the commercial interest of the institution); 6 C.F.R. § 5.11(d). Requestors will make any information that they receive as a result of this FOIA request available to the public, including the press, at no cost. The issue of immigration removal is one of the significant public interest in general, and the issue of how the federal government processes immigrants in its custody is of significant interest in particular. Requestors have undertaken this work in the public interest and not for any private commercial interest. The primary purpose of this FOIA request is to obtain information to further the public’s understanding of federal immigration detention policies and practices. Access to this information is necessary for the public to meaningfully evaluate the costs and consequences of federal immigration detention policies, including the government policies with regard to segregation and its effects on immigrants in government custody.

Disclosure in this case therefore meets the statutory criteria, and a fee waiver would fulfill Congress’s legislative intent in amending FOIA. *See Judicial Wrath, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers of noncommercial requesters.’”). Because the documents subject to this request are not sought for any commercial use, we understand that no fee may be charged for the first two hours of search time or for the first 100 pages of duplication. 5 U.S.C. §552(a)(4)(A)(iv)(II).

²⁰ For an analogous report made available through FOIA related to the Lumpkin detention facility in Georgia, see <https://www.ice.gov/doclib/foia/dfra-ero/2012StewartDetentionCenterG324A.pdf>.

ICE FOIA Request
November 30, 2017
Page 7 of 7

Certification

Requestors certify that the above information is true and correct to the best of their knowledge. *See* 6 C.F.R. § 5.5(d)(3).

Please reply to this request within twenty working days, or as required by statute. *See* 5 U.S.C. §552(a)(6)(A)(i). Please furnish records as soon as they are identified to the following individual and address:

Sabi Ardalan
Harvard Immigration and Refugee Clinical Program
Harvard Law School
6 Everett Street, Suite 3106
Cambridge, MA, 02138

If you have any questions regarding this request, please contact me at sardalan@law.harvard.edu or via phone at (617) 384-7504.

Sincerely,



Sabi Ardalan
Harvard Immigration and
Refugee Clinical Program
(617) 384-7504
sardalan@law.harvard.edu

H A R V A R D L A W S C H O O L

CAMBRIDGE · MASSACHUSETTS · 02138

HARVARD IMMIGRATION AND
REFUGEE CLINIC
Harvard Law School

Location: 6 Everett St., Suite 3103
E-mail Address: hirc@law.harvard.edu
Phone: 617-384-8165

November 30, 2017

SENT VIA EMAIL (ICE-FOIA@dhs.gov)

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

To Whom It May Concern:

This is a request for records made pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 et seq., and the relevant implementing regulations, see 6 C.F.R. § 5 (Department of Homeland Security, Disclosure of Records and Information). The Request is submitted by the Harvard Immigration and Refugee Clinic (“HIRC”), Assistant Clinical Professor Sabi Ardalan, and HIRC Managing Attorney Phil Torrey (“Requesters”). Requesters seek the disclosure of records related to Immigration and Customs Enforcement (“ICE”) detainees placed into segregated housing.

Background

Noncitizens held in immigration detention may be subject to solitary confinement, disciplinary or administrative segregation, for a variety of reasons.¹ Yet, it is well-established that solitary confinement, even for relatively short periods of time, can cause serious psychological and physical damage. The experience of solitary confinement can be acutely traumatizing for many, including those who have a history of “torture and abuse, as is often the case with many immigration and national security detainees.”² Prolonged isolation can often lead to mental health issues or severely exacerbate pre-existing mental illness.³

¹ Homeland Security Advisory Council, *Report of the Subcommittee on Privatized Immigration Detention Facilities*, Dec. 1, 2016, available at

<https://www.dhs.gov/sites/default/files/publications/DHS%20HSAC%20PIDF%20Final%20Report.pdf>

² Physicians for Human Rights, *Solitary Confinement in the U.S. Detention System*, April 2013, available at https://s3.amazonaws.com/PHR_Reports/Solitary-Confinement-April-2013-full.pdf

³ *Id.*

ICE FOIA Request
November 30, 2017
Page 2 of 7

In light of the harmful effects of segregation, Performance Based National Detention Standards (PBNDS) issued in 2011 emphasize that administrative segregation of vulnerable populations should be used as “a last resort” and “when no other viable housing options exist.”⁴ In order to monitor the use of segregation, Immigration and Customs Enforcement issued a directive in September 2013 mandating the systematic review of the use of segregation for ICE detainees.⁵ The directive states that “[p]lacement in segregation should occur only when necessary and in compliance with applicable detention standards.”⁶ The directive puts in place safeguards to ensure that detainees with medical or mental illness are not inappropriately placed in segregation and that “[s]uch detainees shall be removed from segregation if the IHSC determines that the segregation placement has resulted in deterioration of the detainee’s medical or mental health.”⁷

Records Requested

As used herein, the term “records” includes all records or communications preserved in electronic or written form, including but not limited to: correspondence; documents; data; videotapes; audio tapes; emails; faxes; files; guidance; guidelines; evaluations; instructions; analysis; memoranda; agreements; notes; orders; policies; procedures; protocols; reports; rules; manuals; specifications; and studies.

As used herein, the term “detainee” refers to an individual detained for immigration purposes in an ICE facility or a facility with which ICE has an agreement or is contracting.

As used herein, the term “segregation” is used to refer to solitary confinement, administrative segregation, protective custody, disciplinary segregation, restrictive housing, and other related terms. To the extent that the records and data disaggregate between different terminology, status, or type of segregation, please provide the records in the disaggregated form.

Should any responsive record contain the personal identifying information of any third party, Requesters ask that the agencies redact that information. This Request seeks aggregate data and records relevant to the segregation of detainees, not any personal or identifying information about any specific individual(s). However, to the extent available, please include

⁴ ICE, Performance Based National Detention Standards, § 2.12 (V)(A)(1)(c). *See also* 6 C.F.R. § 115.43(b) (“Use of administrative segregation by facilities to protect detainees vulnerable to sexual abuse or assault shall be restricted to those instances where reasonable efforts have been made to provide appropriate housing and shall be made for the least amount of time practicable, and when no other viable housing options exist, as a last resort.”). 6 C.F.R. § 115.68(a) (“The facility shall take care to place detainee victims of sexual abuse in a supportive environment that represents the least restrictive housing option possible (e.g., protective custody), subject to the requirements of § 115.43.”).

⁵ ICE Directive 11065.1, Review of the Use of Segregation for ICE Detainees, DHS (2013), *available at* https://www.ice.gov/doclib/detention-reform/pdf/segregation_directive.pdf [hereinafter “ICE Segregation Directive”].

⁶ ICE Segregation Directive at § 2.

⁷ ICE Segregation Directive at § 5(a).

ICE FOIA Request
November 30, 2017
Page 3 of 7

data fields indicating detainees' ethnicity, country of origin, race, English proficiency, religion, and/or other similar characteristics in disaggregated form.

Requesters seek disclosure of records in the custody or control of Immigration and Customs Enforcement (ICE) pertaining to detainees held in segregation to include at least:

For the period beginning **September 4, 2013 to the present**, records regarding use of segregation for immigration detainees within ICE detention facilities and facilities ICE has agreements with or is contracting with for the purpose of holding immigration detainees, including Service Processing Centers (SPCs), Contract Detention Facilities (CDFs), and Intergovernmental Service Agreement Facilities (IGSAs) (together "ICE contract detention facilities")⁸ **in the state of Massachusetts**:

- I. Copies of segregation reports, memoranda, training materials, policy guidance, and/or notifications regarding segregation that are created, collected, disseminated or received by ICE personnel including personnel in the Custody Management Division (CMD), ERO Field Office Directors (FODs), Detention Monitoring Council (DMC), and by the Segregation Review Coordinator regarding segregation placements.⁹
- II. Written reports including memos and/or other documents created by FODs regarding any findings and/or actions taken regarding detainees with "disabilities, medical or mental illness, or other special vulnerability" such as gender identity or sexual orientation placed in segregation including but not limited to:¹⁰
 - a. Records, data, and/or reports regarding detainees held continuously in segregated housing for more than 14 days or for 14 days out of any 21-day period, by facility including records indicating¹¹
 - i. The reason(s) for the segregation placement, review of those reasons, and any determination made as to the validity of those reasons¹²
 - ii. Whether the placement is in compliance with applicable detention standards (including the substantive grounds for placement and the procedural requirements for status reviews)¹³

⁸ "Over many decades, immigration detention has evolved into a mixed public-private system where only 10 percent of detainees are now in ICE-owned facilities (known as Service Processing Centers or SPCs). Nearly all of the rest of the detainees are in facilities operated by private companies or by county jails, under various forms of contract or agreement with ICE. Even in the SPCs, many core functions, including security, are carried out by contract personnel, but with a more direct form of supervision by ICE officers than is the case in the other two broad categories of detention facilities." Homeland Security Advisory Council Report, *supra* note 1, at 5-6; *see also* Physicians for Human Rights Report, *supra* note 2.

⁹ ICE Segregation Directive at § 7.2(1).

¹⁰ ICE Segregation Directive at § 5.3(1).

¹¹ ICE Segregation Directive at § 5.3(1)(a).

¹² ICE Segregation Directive at § 5.3(2)(a).

¹³ ICE Segregation Directive at § 5.3(2)(b).

ICE FOIA Request
November 30, 2017
Page 4 of 7

- iii. A description of the disability, illness, medical or mental health condition, special vulnerability, sexual orientation, gender identity, or other relevant factor identified when placing individuals in segregation, during their confinement or upon release¹⁴
- iv. For detainees placed in administrative segregation due to a special vulnerability,
 1. What the nature of that vulnerability was
 2. Why segregation was used including
 - a. whether or not the placement was used only as a last resort and
 - b. when no other viable housing options existed, and
 3. How that determination was made¹⁵
 4. Options for alternative housing or custodial arrangements that were considered,¹⁶ including the FOD's assessment of the best course of action¹⁷
- b. Records, data, and/or reports regarding detainees held continuously in segregated housing for more than 30 days including¹⁸
 - i. Records of the reason(s) for the segregation placement, whether those reasons were determined to be valid, how that determination was made, and whether they remained valid for the duration of the placement¹⁹
 - ii. Whether the placement is in compliance with applicable detention standards (including the substantive grounds for placement and the procedural requirements for status reviews)²⁰
 - iii. A description of the disability, illness, special vulnerability or other relevant factor of those held in segregation²¹
 - iv. For detainees placed in administrative segregation due to a special vulnerability, whether the placement was used only as a last resort and when no other viable housing options existed²²
 - v. Options for alternative housing or custodial arrangements that were considered²³
 - vi. The FOD's assessment of the best course of action²⁴

¹⁴ ICE Segregation Directive at § 5.3(2)(c).

¹⁵ ICE Segregation Directive at § 5.3(2)(d).

¹⁶ ICE Segregation Directive at § 5.3(2)(f).

¹⁷ ICE Segregation Directive at § 5.3(2)(g).

¹⁸ ICE Segregation Directive at § 5.3(1)(b).

¹⁹ ICE Segregation Directive at § 5.3(2)(a).

²⁰ ICE Segregation Directive at § 5.3(2)(b).

²¹ ICE Segregation Directive at § 5.3(2)(c).

²² ICE Segregation Directive at § 5.3(2)(d).

²³ ICE Segregation Directive at § 5.3(2)(f).

²⁴ ICE Segregation Directive at § 5.3(2)(g).

ICE FOIA Request
November 30, 2017
Page 5 of 7

- III. Copies of reports by the Detention Monitoring Council (DMC) or DMC subcommittees with data regarding the numbers of detainees held in segregation, the number held in extended segregation placements and/or the number who have segregation placements related to disability, medical or mental illness, suicide risk, hunger strike, status as a victim of sexual assault or other special vulnerability including data that reflects:²⁵
 - i. The reasons for their segregation
 - ii. The results of the reviews of particular cases
 - iii. Areas of concern regarding particular cases or facilities that warrant further examination
 - iv. All information submitted to or collected by the DMC in monitoring detainee segregation

- IV. Records and/or reports (including memos, guidance letters, training materials, notifications, and other reports) generated from the quarterly meetings of the DMC on the use of segregation in ICE detention facilities and ICE contracting detention facilities.²⁶

- V. Records and/or reports (including memos, guidance letters, and other such reports) generated by the Office of Detention Policy and Planning (ODPP) in its review of segregation placements including:²⁷
 - i. Analysis of data
 - ii. Preparation of reports
 - iii. Development of remedial plans and new policies
 - iv. Communication with stakeholders with respect to policy, planning, and implementation

- VI. Records, data, and/or reports regarding the use of segregation in ICE detention facilities and ICE contracting detention facilities, broken down by facility, including but not limited to:
 - a. Number of detainees held in segregation each year
 - b. Percentage of total detainees held in segregation each year
 - c. Countries of origin of detainees held in segregation and countries of origin of general detainee population
 - d. Average length of time in segregation
 - e. Number of detainees who have “segregation placements related to disability, medical or mental illness, suicide risk, hunger strike, status as a victim of sexual assault or other special vulnerability with a description of that vulnerability, illness or disorder”²⁸

²⁵ ICE Segregation Directive at § 7.5(7).

²⁶ ICE Segregation Directive at § 7.5(8).

²⁷ ICE Segregation Directive at § 7.4.

²⁸ ICE Segregation Directive at § 5.2.

ICE FOIA Request
November 30, 2017
Page 6 of 7

- VII. Records, data, and/or reports regarding resources and capabilities for ICE detainees at ICE detention facilities and ICE contracting detention facilities including but not limited to:²⁹
- a. Facilities that have dedicated protective custody housing units and the number of medical and mental health staff, dedicated medical beds, and medical housing units at these facilities
 - b. Facilities that have cells for monitoring high-risk or suicidal detainees and the number of cells and beds allotted to that purpose
 - c. Facilities that have segregation housing units with substantial out-of-cell time, commingling, or other privileges

Fee Waiver Request

Requestors are entitled to a waiver or reduction of all costs because the information sought “is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the [Requestors’] commercial interest.” 5 U.S.C. § 552(a)(4)(A)(iii); 6 C.F.R. § 5.11(k) (records must be furnished without charge if the information is in the public interest, and disclosure is not in the commercial interest of the institution); 6 C.F.R. § 5.11(d). Requestors will make any information that they receive as a result of this FOIA request available to the public, including the press, at no cost. The issue of immigration removal is one of the significant public interest in general, and the issue of how the federal government processes immigrants in its custody is of significant interest in particular. Requestors have undertaken this work in the public interest and not for any private commercial interest. The primary purpose of this FOIA request is to obtain information to further the public’s understanding of federal immigration detention policies and practices. Access to this information is necessary for the public to meaningfully evaluate the costs and consequences of federal immigration detention policies, including the government policies with regard to segregation and its effects on immigrants in government custody.

Disclosure in this case therefore meets the statutory criteria, and a fee waiver would fulfill Congress’s legislative intent in amending FOIA. *See Judicial Wrath, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers of noncommercial requesters.’”). Because the documents subject to this request are not sought for any commercial use, we understand that no fee may be charged for the first two hours of search time or for the first 100 pages of duplication. 5 U.S.C. §552(a)(4)(A)(iv)(II).

Certification

Requestors certify that the above information is true and correct to the best of their

²⁹ ICE Segregation Directive at § 7.2(2).

ICE FOIA Request
November 30, 2017
Page 7 of 7

knowledge. *See* 6 C.F.R. § 5.5(d)(3).

Please reply to this request within twenty working days, or as required by statute. *See* 5 U.S.C. §552(a)(6)(A)(i). Please furnish records as soon as they are identified to the following individual and address:

Sabi Ardalan
Harvard Immigration and Refugee Clinical Program
Harvard Law School
6 Everett Street, Suite 3106
Cambridge, MA, 02138

Sincerely,



Sabi Ardalan
Harvard Immigration and
Refugee Clinical Program
(617) 384-7504
sardalan@law.harvard.edu

H A R V A R D L A W S C H O O L

CAMBRIDGE · MASSACHUSETTS · 02138

HARVARD IMMIGRATION AND
REFUGEE CLINIC
Harvard Law School

Location: 6 Everett St., Suite 3103
E-mail Address: hirc@law.harvard.edu
Phone: 617-384-8165

November 30, 2017

SENT VIA EMAIL (ICE-FOIA@dhs.gov)

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

To Whom It May Concern:

This is a request for records made pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 et seq., and the relevant implementing regulations, see 6 C.F.R. § 5 (Department of Homeland Security, Disclosure of Records and Information). The Request is submitted by the Harvard Immigration and Refugee Clinic (“HIRC”), Assistant Clinical Professor Sabi Ardanan, and HIRC Managing Attorney Phil Torrey (“Requesters”). Requesters seek the disclosure of records related to the treatment of lesbian, gay, bisexual, transgender, and intersex (LGBTI)¹ detainees in the United States.

Background

Noncitizens held in immigration detention may be subject to solitary confinement disciplinary or administrative segregation, for a variety of reasons.² Solitary confinement, even for relatively short periods of time, can cause serious psychological and physical damage. Prolonged isolation can often lead to mental health issues or severely exacerbate pre-existing mental illness.³ Transgender individuals held in immigration detention are disproportionately

¹ Mem. from Thomas Homan to U.S. Immigration and Customs Enforcement, *Further Guidance Regarding the Care of Transgender Detainees*, June 19, 2015, at attachment 3. available at <https://www.ice.gov/sites/default/files/documents/Document/2015/TransgenderCareMemorandum.pdf> [hereinafter “Transgender Care Memorandum”]

² Homeland Security Advisory Council, *Report of the Subcommittee on Privatized Immigration Detention Facilities*, DHS, Dec. 1, 2016, available at

<https://www.dhs.gov/sites/default/files/publications/DHS%20HSAC%20PIDF%20Final%20Report.pdf>

³ Physicians for Human Rights, *Solitary Confinement in the U.S. Detention System*, Apr. 2013, available at https://s3.amazonaws.com/PHR_Reports/Solitary-Confinement-April-2013-full.pdf.

ICE FOIA Request
November 30, 2017
Page 2 of 9

placed in solitary confinement, or segregation, often for their protection.⁴ The experience of solitary confinement can be acutely traumatizing for many, including those who have a history of “torture and abuse, as is often the case with many immigration and national security detainees,” particularly transgender detainees.⁵

On June 19, 2015, Immigration and Customs Enforcement (“ICE”) issued guidance to personnel “regarding the placement and care of transgender adult detainees in the custody of U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations (ERO).”⁶ The Transgender Care Memorandum prescribed changes to ICE’s data collection systems to account for transgender identities, identification and processing procedure for transgender detainees, and appropriate housing placements for transgender individuals.

Previously, on September 4, 2013, Immigration and Customs Enforcement had issued a directive for the review of the use of segregation for ICE detainees.⁷ The directive defined “special vulnerabilities” to include detainees “who would be susceptible to harm in general population due in part to their sexual orientation or gender identity.”⁸ It provides that “[a] detainee’s age, physical disability, *sexual orientation, gender identity*, race, or religion may not provide the sole basis for a decision to place the detainee in involuntary segregation.”⁹

The 2013 ICE Segregation Directive and the 2015 Transgender Care Memorandum build on the Performance Based National Detention Standards (PBNDS) ICE issued in 2011, which recognized that administrative segregation of vulnerable populations should only be used as “a last resort” and “when no other viable housing options exist.”¹⁰

⁴ U.S. Commission on Civil Rights, *The State of Civil Rights at Immigration Detention Facilities* (2015), available at http://www.usccr.gov/pubs/Statutory_Enforcement_Report2015.pdf.

⁵ Physicians for Human Rights, *Solitary Confinement in the U.S. Detention System*, April 2013, available at https://s3.amazonaws.com/PHR_Reports/Solitary-Confinement-April-2013-full.pdf.

⁶ Transgender Care Memorandum at 1.

⁷ ICE Directive 11065.1 Review of the Use of Segregation for ICE Detainees (U.S.D.H.S 2013), available at https://www.ice.gov/doclib/detention-reform/pdf/segregation_directive.pdf [hereinafter “ICE Segregation Directive”].

⁸ ICE Segregation Directive at § 3.3.

⁹ ICE Segregation Directive at § 5.2 (emphasis added).

¹⁰ ICE, Performance Based National Detention Standards, § 2.12 (V)(A)(1)(c). *See also* 6 C.F.R. § 115.43(b) (“Use of administrative segregation by facilities to protect detainees vulnerable to sexual abuse or assault shall be restricted to those instances where reasonable efforts have been made to provide appropriate housing and shall be made for the least amount of time practicable, and when no other viable housing options exist, as a last resort.”). 6 C.F.R. § 115.68(a) (“The facility shall take care to place detainee victims of sexual abuse in a supportive environment that represents the least restrictive housing option possible (e.g., protective custody), subject to the requirements of § 115.43.”).

ICE FOIA Request
November 30, 2017
Page 3 of 9

Records Requested

As used herein, the term “records” includes all records or communications preserved in electronic or written form, including but not limited to: correspondence; documents; data; videotapes; audio tapes; emails; faxes; files; guidance; guidelines; evaluations; instructions; analysis; memoranda; agreements; notes; orders; policies; procedures; protocols; reports; rules; manuals; specifications; and studies.

As used herein, the term “segregation” is used to refer to solitary confinement, administrative segregation, protective custody, disciplinary segregation, restrictive housing, and other related terms. To the extent that the records and data disaggregate between different terminology, status, or type of segregation, please provide the records in the disaggregated form.

As used herein, the term “detainee” refers to an individual detained for immigration purposes in an ICE facility or a facility with which ICE has an agreement or is contracting.

As used herein, the term “LGBTI” is used to refer to individuals who identify as lesbian, gay, bisexual, transgender, intersex, queer, or other similar terms which denote sexual orientation or gender identify.¹¹ To the extent that the records and data disaggregate between detainees who identify as different sexual orientations or gender identities, please provide the records in the disaggregated form.

Should any responsive record contain the personal identifying information of any third party, Requesters ask that the agencies redact that information. This Request seeks aggregate data and records relevant to the ICE’s segregation of detainees, not any personal or identifying information about any specific individual(s). However, to the extent available, please include data fields indicating detainees’ ethnicity, country of origin, race, English proficiency, religion, and/or other similar characteristics in the disaggregated form.

Requesters seek disclosure of records in the custody or control of Immigration and Customs Enforcement (ICE) pertaining to the treatment of LGBTI detainees to include at least:

For the period beginning **September 4, 2013 to the present**, records regarding use of segregation for immigration detainees within ICE detention facilities and facilities ICE has agreements with or is contracting with for the purpose of holding immigration detainees, including Service Processing Centers (SPCs), Contract Detention Facilities (CDFs), and Intergovernmental Service Agreement Facilities (IGSAs) (together “ICE contract detention facilities”)¹² **in the state of Massachusetts**:

¹¹ Transgender Care Memorandum at Attachment 3.

¹² “Over many decades, immigration detention has evolved into a mixed public-private system where only 10 percent of detainees are now in ICE-owned facilities (known as Service Processing Centers or SPCs). Nearly all of the rest of the detainees are in facilities operated by private companies or by county jails, under various forms of contract or agreement with ICE. Even in the SPCs, many core functions, including security, are

ICE FOIA Request
November 30, 2017
Page 4 of 9

- I. Records, data and/or policies implemented pursuant to the Prison Rape Elimination Act of 2003 and the “Standards To Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities,” issued by DHS including oversight procedures, policy memoranda, training materials, or reports created or data collected that address sexual abuse in facilities used to detain individuals for immigration purposes, including any data or reports specific to LGBTI detainees.¹³

- II. Records collected pursuant to the 2015 Transgender Care Memorandum including but not limited to
 - a. Records, data, and/or reports documenting the process and result of identifying detainees as transgender such as:
 - a. Data Systems and Form I-213 “Record of Deportable/Inadmissible Alien”¹⁴
 - i. Fields of entry available in ICE data systems (including, but not limited to, EAGLE, EARM, and other systems that receive data from ERO-related data systems for statistical, medical or other purposes) related to gender including:
 1. Fields to capture a detainee’s “Biological Sex” or “Sex”
 2. Fields to capture a detainee’s “Gender”
 3. Fields to capture if a detainee identifies as “Transgender”
 - ii. Record of “Transgender” identification on Form I-213 “Record of Deportable/Inadmissible Alien” when printed
 - b. Processing and Identification¹⁵
 - i. Records and data, including both de-identified individual and aggregate data, indicating the number of detainees who self-identify as transgender or an identity different from that which corresponds with their biological sex including:
 1. Self-identification
 2. Affirmative response during a Risk Classification Assessment
 3. Other reporting

carried out by contract personnel, but with a more direct form of supervision by ICE officers than is the case in the other two broad categories of detention facilities.” Homeland Security Advisory Council Report, *supra* note 1, at 5-6; *see also* Physicians for Human Rights Report, *supra* note 2.

¹³ 79 Fed. Reg. 45, 131,100, 131,100 (Mar. 7, 2014); SPLC Complaint by F.A.C.P. regarding sexual abuse and inappropriate segregation at the Stewart Detention Center in Lumpkin, Georgia to DHS OIG and DHS CR-CL (Oct. 18, 2017).

¹⁴ Transgender Care Memorandum at § 1(a).

¹⁵ Transgender Care Memorandum at § 2.

ICE FOIA Request
November 30, 2017
Page 5 of 9

- ii. Screening questionnaires, memos, or scripts used to determine whether detainees would like to formally disclose their gender identity
 - iii. Guidance, training materials, or policy memos regarding appropriate accommodations to converse with detainees in private and appropriate safeguards to ensure privacy of information disclosed about gender identity
 - iv. Records, including de-identified aggregate data, indicating when a detainee self-identifies as transgender or an identity different from that which corresponds with their biological sex including:
 - 1. Number of days between start of detention and ICE-recognized identification as transgender
 - 2. Detainee's stage of proceeding when ICE identified the individual as transgender
- III. Records, data, and/or reports that pertain to the demographics of the transgender detainee population including but not limited to:¹⁶
 - a. The placement of transgender detainees by facility
 - b. The use of segregation in the case of transgender detainees
 - c. Medical and mental services available to transgender detainees
 - d. Parole applications by transgender detainees accepted or denied
 - e. Administration of hormone therapy for transgender detainees
 - f. Placement of transgender detainees based on either birth gender or gender identity
 - g. Transfer of transgender detainees from one facility to another and reasons for transfer
 - h. Documented incidents of physical, sexual, psychological, or verbal abuse directed towards transgender detainees
- IV. Records, data, and/or reports of the available placements for transgender detainees including but not limited to:
 - a. Records, data, and reports of ICE detention facilities and ICE contracting detention facilities, by name and location, that have incorporated the "ICE Detention Facility Contract Modification for Transgender Care" and/or maintain a functioning Transgender Classification and Care Committee (TCCC)¹⁷
 - b. Records, data, and reports of ICE detention facilities and ICE contracting detention facilities, by name and state, which operate a protective custody unit (PCU) for transgender detainees, broken down by state and including the name.¹⁸
 - c. Records, data, and reports of ICE detention facilities and ICE contracting detention facilities, by name and state, which have available medical personnel

¹⁶ Transgender Care Memorandum at §§ 3-7(d); U.S. Commission on Civil Rights, *The State of Civil Rights at Immigration Detention Facilities*, available at http://www.usccr.gov/pubs/Statutory_Enforcement_Report2015.pdf.

¹⁷ Transgender Care Memorandum at § 3(b)(i).

¹⁸ Transgender Care Memorandum at § 3(b)(ii).

ICE FOIA Request
November 30, 2017
Page 6 of 9

- who have experience providing care and treatment to transgender detainees (to include the delivery of hormone therapy)¹⁹
- d. Records, data, and reports of ICE detention facilities and ICE contracting detention facilities, by name and state, which have administered LGBTI Sensitivity Awareness Training to staff including the dates of such trainings and the number and positions of staff members in attendance²⁰
- V. Records of ERO LGBTI Field Liaisons and National ERO LGBTI Coordinator including but not limited to:²¹
- a. Records documenting the appointment of ERO LGBTI Field Liaisons, including in Massachusetts and National ERO LGBTI Coordinator(s)
- b. Records of ICE detention facilities and ICE contracting detention facilities which have, or do not have, an LGBTI Field Liaison or Liaisons
- c. Records, including but not limited to guidance, policies, memorandum, policy reports, generated by, or in partnership with, any ERO LGBTI Field Liaisons or the National ERO LGBTI Coordinator
- d. Records of training materials related to transgender detainees and/or the implementation of the Transgender Care Memorandum including but not limited to the use of ICE's Virtual University.²²
- VI. Records, data, and/or reports pertaining to immigration detainees who identify as transgender held in segregation including but not limited to²³ data collected by EAGLE, EARM, RCA, and other relevant ICE information technology systems which captures:
- a. Date entered into detention and date released from detention
- i. In the alternative, total number of days in detention
- b. Date entered into segregation and date released from segregation
- i. In the alternative, total number of days in detention
- c. Name and state of ICE detention facility or ICE contracting detention facility
- VII. Records, data, and/or reports of instances in which transgender detainees were placed in segregation including:²⁴
- a. Facility at which the detainee was placed in segregation
- b. Reasons why the detainee was placed in segregation
- c. Records of complaints, appeals, or other related documentation challenging transgender detainees' segregation, either based on an individual or a class of individuals

¹⁹ Transgender Care Memorandum at § 3(b)(iii).

²⁰ Transgender Care Memorandum at § 3(b)(iii).

²¹ Transgender Care Memorandum at §§ 6, 7.

²² Transgender Care Memorandum at § 8.

²³ Transgender Care Memorandum at § 7(a).

²⁴ Transgender Care Memorandum at § 3(c).

ICE FOIA Request
November 30, 2017
Page 7 of 9

- d. Records including policy memos and directives regarding implementation of policy memos related to segregation of transgender detainees
- VIII. Records of segregation placements related to special vulnerability including but not limited to:²⁵
- a. Records, data, and/or reports of detainees identified as having special vulnerabilities whose vulnerabilities were the sole basis for their placement in segregation including²⁶
 - i. The name of the detention facility the detainee was placed in
 - ii. Where the detainee was held
 - iii. How long the detainee was held in segregation
 - iv. Whether the detainee had any mental health, medical, or disability diagnosis and/or treatment plan
 - v. Whether the detainees gender identity or perceived gender identity was the basis for the segregation
 - b. Records of notifications to the Field Office Director (FOD) after the initial segregation placement of a detainee with such specialized vulnerabilities, by facility²⁷
 - c. Records of notification to the Custody Management Division (CMD), ICE Health Service Corps (IHSC), and other members of the Detention Monitoring Council (DMC) subcommittee and the Segregation Review Coordinator, and the detainee's attorney, where applicable, for detainees with such vulnerabilities²⁸
 - d. Records indicating whether detainees were transferred to hospitals or health care facilities for medical care, which facilities they were transferred to and for how long²⁹
 - e. For detainees placed in administrative segregation based on sexual assault, length of time held in segregation³⁰
 - f. For detainees placed on mental health watch (or any similar term indicating heightened attention because of mental health concerns) based on sexual assault, length of time on such a watch
 - g. Records indicating reasons detainees were placed in segregation, i.e. whether they were placed in segregation as a last resort and when no other viable housing options exist, or for other reasons³¹
 - h. Records, data, and reports of FOD written reports to ICE Headquarters regarding detainees with such special vulnerabilities who are held continuously in

²⁵ ICE Segregation Directive at § 5.

²⁶ ICE Segregation Directive at § 5.2(1).

²⁷ ICE Segregation Directive at § 5.2(2)(a).

²⁸ ICE Segregation Directive at § 5.2(4).

²⁹ ICE Segregation Directive at § 5.2(2)-(6).

³⁰ ICE Segregation Directive at § 5.2(2)-(6).

³¹ ICE Segregation Directive at § 5.2(6)(b).

ICE FOIA Request
November 30, 2017
Page 8 of 9

segregated housing for more than 14 days or for any 14 days out of any 21-day period³²

Fee Waiver Request

Requestors are entitled to a waiver or reduction of all costs because the information sought “is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the [Requestors’] commercial interest.” 5 U.S.C. § 552(a)(4)(A)(iii); 6 C.F.R. § 5.11(k) (records must be furnished without charge if the information is in the public interest, and disclosure is not in the commercial interest of the institution); 6 C.F.R. § 5.11(d). Requestors will make any information that they receive as a result of this FOIA request available to the public, including the press, at no cost. The issue of immigration removal is one of the significant public interest in general, and the issue of how the federal government processes immigrants in its custody is of significant interest in particular. Requestors have undertaken this work in the public interest and not for any private commercial interest. The primary purpose of this FOIA request is to obtain information to further the public’s understanding of federal immigration detention policies and practices. Access to this information is necessary for the public to meaningfully evaluate the costs and consequences of federal immigration detention policies, including the government policies with regard to segregation and its effects on immigrants in government custody.

Disclosure in this case therefore meets the statutory criteria, and a fee waiver would fulfill Congress’s legislative intent in amending FOIA. *See Judicial Wrath, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers of noncommercial requesters.’”). Because the documents subject to this request are not sought for any commercial use, we understand that no fee may be charged for the first two hours of search time or for the first 100 pages of duplication. 5 U.S.C. §552(a)(4)(A)(iv)(II).

Certification

Requestors certify that the above information is true and correct to the best of their knowledge. *See* 6 C.F.R. § 5.5(d)(3).

Please reply to this request within twenty working days, or as required by statute. *See* 5 U.S.C. §552(a)(6)(A)(i). Please furnish records as soon as they are identified to the following individual and address:

Sabi Ardalan
Harvard Immigration and Refugee Clinical Program
Harvard Law School

³² ICE Segregation Directive at §§ 5.3(1)(a), 5.3(2)(c).

ICE FOIA Request
November 30, 2017
Page 9 of 9

6 Everett Street, Suite 3106
Cambridge, MA, 02138

If you have any questions regarding this request, please contact me at sardalan@law.harvard.edu or via phone at (617) 384-7504.

Sincerely,



Sabi Ardalan
Harvard Immigration and
Refugee Clinical Program
(617) 384-7504
sardalan@law.harvard.edu

Exhibit L

Azarian , Amanda L.

Fr m: Ardalan, Sabi sardalan@law.harvard.edu
Sent: 19 December 2019 14:04
: A rian , Amanda L.
Cc: Torrey, Phil
Subject: FW: Fw: ICE Clarification Request FOIA Number 2018-ICFO-21131

External Email Exercise Caution

C Rachel roll <rkrolljd19@clinics.law.harvard.edu>
Monday, February 26, 2018 10:08:16 PM
Ardalan, Sabi
Fw: ICE Clarification Request FOIA Number 2018-ICFO-21131

On Mon, 26 Feb, 2018 at 8:21 AM, ice-foia@dhs.gov <ice-foia@dhs.gov> wrote:

To: rkrolljd19@clinics.law.harvard.edu

February 26, 2018

Rachel Kroll
HARVARD LAW SCHOOL

RE: ICE FOIA Case Number 2018-ICFO-21131

This e-mail is in regards to your February 02, 2018 ICE FOIA request for REQUEST 3 OF 3: TITLED 20171130160053 For the period beginning September 4, 2013 to the present, records regarding use of segregation for immigration detainees within ICE detention facilities and facilities ICE has agreements with or is contracting with for the purpose of holding immigration detainees, including Service Processing Centers (SPCs), Contract Detention Facilities (CDFs), and Intergovernmental Service Agreement Facilities (IGSAs) (together "ICE contract detention facilities") 12 in the state of Massachusetts: SEE REQUEST 20171130160053 FOR SPECIFICS (Date Range for Record Search: From 9/4/2013 To 2/23/2018).

In conducting a search for responsive records, the ICE FOIA office has determined that the response to this request will be included in 2018-ICFO-21128. This request is thereby being administratively closed.
Sincerely,

ICE FOIA

Azarian , Amanda L.

Fr m: Ardalan, Sabi sardalan@law.harvard.edu
Sent: 19 December 2019 14:02
: A rian , Amanda L.
Cc: Torrey, Phil
Subject: FW: ICE Clarification Request FOIA Number 2018-ICFO-21130

External Email Exercise Caution

Sabrineh Ardalan
Assistant Clinical Professor, Harvard Law School
Assistant Director, Harvard Immigration and Refugee Clinical Program
6 Everett Street, WCC 3106
Cambridge, MA 02138
617-384-7504
Pronouns: she/her/hers
sardalan@law.harvard.edu
[website](#) [read our blog](#) [@HLS Immigration](#) [subscribe to our newsletter](#)

r d d r r r ddr d d r d r r r r r d
r r r d dr r r d r d r r r r rd
r r d r d r r r d r d d r r d
r r dd r

C Rachel roll <mailto:rkrolljd19@clinics.law.harvard.edu>
Monday, February 26, 2018 10:08 PM
Ardalan, Sabi <sardalan@law.harvard.edu>
Fw: ICE Clarification Request FOIA Number 2018-ICFO-21130

On Mon, 26 Feb, 2018 at 8:23 AM, ice-foia@dhs.gov <ice-foia@dhs.gov> wrote:

To: rkrolljd19@clinics.law.harvard.edu

February 26, 2018

Rachel Kroll
HARVARD LAW SCHOOL

RE: ICE FOIA Case Number 2018-ICFO-21130

This e-mail is in regards to your February 02, 2018 ICE FOIA request for REQUEST 2 OF 3: TITLED 20171130160036 For the period beginning September 4, 2013 to the present, records regarding use of segregation for immigration detainees within ICE detention facilities and facilities ICE has agreements with or is contracting with for the purpose of holding immigration detainees, including Service Processing Centers (SPCs), Contract Detention Facilities (CDFs), and Intergovernmental Service Agreement Facilities (IGSAs) (together "ICE contract detention facilities") 12 in the state of Massachusetts: SEE REQUEST 20171130160036 FOR SPECIFICS - (Date Range for Record Search: From 9/4/2013 To 2/23/2018).

In conducting a search for responsive records, the ICE FOIA office has determined that further clarification is needed regarding your request. In conducting a search for responsive records, the ICE FOIA office has determined that the response to this request will be included in 2018-ICFO-21128. This request is thereby being administratively closed.

Sincerely,

ICE FOIA

Exhibit M

Azarian , Amanda L.

Fr m: Ardalan, Sabi sardalan@law.harvard.edu
Sent: 19 December 2019 13:55
: A arian , Amanda L.
Cc: Torrey, Phil
Subject: FW: ICE Clarification Request FOIA Number 2018-ICFO-21128

External Email Exercise Caution

Sabrineh Ardalan
Assistant Clinical Professor, Harvard Law School
Assistant Director, Harvard Immigration and Refugee Clinical Program
6 Everett Street, WCC 3106
Cambridge, MA 02138
617-384-7504
Pronouns: she/her/hers
sardalan@law.harvard.edu
[website](#) [read our blog](#) [@HLS Immigration](#) [subscribe to our newsletter](#)

r d d r r r ddr d d r d r r r r r d
r r r d dr r r d r d r r r r rd
r r d r d r r r d r d d r r d
r r dd r

C Ardalan, Sabi
Sunday, April 1, 2018 1:58 PM
ice-foia@dhs.gov
Torrey, Phil <ptorrey@law.harvard.edu>
RE: ICE Clarification Request FOIA Number 2018-ICFO-21128

To Whom It May Concern: In response to the clarification request below, we respectfully request data pertaining to all detainees in segregation for the date range requested, as well as the total numbers of detainees in ICE facilities in each state. Although we are requesting the data for all facilities, we would be willing to accept the Massachusetts data first, because we recognize that there may be a lot of data to pull together.

Please let us know if you have any further questions or concerns. Thanks in advance,

Sabi

Sabrineh Ardalan
Assistant Director, Harvard Immigration and Refugee Clinical Program
Assistant Clinical Professor, Harvard Law School
6 Everett Street, Suite 3106
Cambridge, MA 02138
617-384-7504
sardalan@law.harvard.edu

[website](#) [read our blog](#) [@HLS Immigration](#) [subscribe to our newsletter](#)

r d d r r r ddr d d r d r r r r r d
r r r d d r r r d r d r r r r r r d
r r d r d r r r r r r d r d d r r d
r r d d r

On Tue, 20 Mar, 2018 at 7:57 AM, ice-foia@dhs.gov <ice-foia@dhs.gov> wrote:

To: rkrolljd19@clinics.law.harvard.edu

March 20, 2018

HARVARD LAW SCHOOL

RE: ICE FOIA Case Number 2018-ICFO-21128

This e-mail is in regards to your February 02, 2018 ICE FOIA request for REQUEST 1 OF 3: TITLED 20171130160009 For the period beginning September 4, 2013 to the present, records regarding use of segregation for immigration detainees within ICE detention facilities and facilities ICE has agreements with or is contracting with for the purpose of holding immigration detainees, including Service Processing Centers (SPCs), Contract Detention Facilities (CDFs), and Intergovernmental Service Agreement Facilities (IGSAs) (together "ICE contract detention facilities") 12 in the state of Massachusetts: SEE REQUEST 20171130160009 FOR SPECIFICS - (Date Range for Record Search: From 9/1/2013 To 2/23/2018).

In conducting a search for responsive records, the ICE FOIA office has determined that further clarification is needed regarding your request. On page 3 of the letter, in the header paragraph prior to the bulleted list of items requested, you requested records pertaining to detainees in segregation, in the State of Massachusetts, for a particular date range; however, in item number III under that header paragraph, you appear to ask for information related to all ICE facilities. What specific information are you looking for Please provide the ICE FOIA office with a response as soon as possible to avoid any further delay in the processing of your request. If a response is not received within 30 days, your request will be administratively closed.

Sincerely,

ICE FOIA

Azarian , Amanda L.

Fr m: Ardalan, Sabi sardalan@law.harvard.edu
Sent: 19 December 2019 13:57
: A arian , Amanda L.
Cc: Torrey, Phil
Subject: FW: ICE Clarification Request FOIA Number 2018-ICFO-21128

External Email Exercise Caution

Sabrineh Ardalan
Assistant Clinical Professor, Harvard Law School
Assistant Director, Harvard Immigration and Refugee Clinical Program
6 Everett Street, WCC 3106
Cambridge, MA 02138
617-384-7504
Pronouns: she/her/hers
sardalan@law.harvard.edu
[website](#) [read our blog](#) [@HLS Immigration](#) [subscribe to our newsletter](#)

r d d r r r ddr d d r d r r r r r d
r r r d dr r r d r d r r r r rd
r r d r d r r r d r d dd r r d
r r dd r

C Rachel roll mailto:rkrolljd19@clinics.law.harvard.edu
Sunday, April 8, 2018 7:23 PM
ice-foia@dhs.gov
Ardalan, Sabi <sardalan@law.harvard.edu>
Re: ICE Clarification Request FOIA Number 2018-ICFO-21128

To Whom It May Concern:

In response to the clarification request below, we respectfully request data pertaining to all detainees in segregation for the date range requested, as well as the total numbers of detainees in ICE facilities in each state. Although we are requesting the data for all facilities, we would be willing to accept the Massachusetts data first, because we recognize that there may be a lot of data to pull together.

Going forward, please direct all questions and responses to Sabi Ardalan, cc-ed here.

Please let us know if you have any further questions or concerns.

Thanks in advance,
Rachel Kroll

On Fri, 6 Apr, 2018 at 10:18 AM, ice-foia@dhs.gov <ice-foia@dhs.gov> wrote:

To: rkrolljd19@clinics.law.harvard.edu

April 06, 2018

Rachel Kroll
HARVARD LAW SCHOOL

RE: ICE FOIA Case Number 2018-ICFO-21128

This e-mail is in regards to your February 02, 2018 ICE FOIA request for REQUEST 1 OF 3: TITLED 20171130160009For the period beginning September 4, 2013 to the present, records regarding use of segregation for immigration detainees within ICE detention facilities and facilities ICE has agreements with or is contracting with for the purpose of holding immigration detainees, including Service Processing Centers (SPCs), Contract Detention Facilities (CDFs), and Intergovernmental Service Agreement Facilities (IGSAs) (together "ICE contract detention facilities") 12 in the state of Massachusetts: SEE REQUEST 20171130160009 FOR SPECIFICS - (Date Range for Record Search: From 9/1/2013 To 2/23/2018).

In conducting a search for responsive records, the ICE FOIA office has determined that further clarification is needed regarding your request. While conducting their search, the program asked for clarification of the following: **On page 3 of the letter, in the header paragraph prior to the bulleted list of items requested, the requestor asks for records pertaining to detainees in segregation, in the State of Massachusetts, for a particular date range; however, in item number III under that header paragraph, the requestor appears to ask for information related to all ICE facilities.** Please provide the ICE FOIA office with a response as soon as possible to avoid any further delay in the processing of your request. If a response is not received within 15 days, your request will be administratively closed.

Sincerely,

ICE FOIA

Exhibit N

Azarian , Amanda L.

Subject: FW: 2018ICFO21128

From: ICE-FOIA <mailto:ICE-FOIA@ice.dhs.gov>
Se t: Wednesday, November 21, 2018 11:18 AM
To: Torrey, Phil
Subject: RE: 2018ICFO21128

Good evening,

In regards to 2018-ICFO-21128, responsive records have been located, they will be reviewed for determination of releasability. We will process your request as expeditiously as possible. Upon completion of the processing, all documents that can be released will be made available to you at the earliest possible date. We sincerely apologize for the delay you are experiencing and appreciate your continued patience.

Sincerely,
ICE FOIA

From: Torrey, Phil <ptorrey@law.harvard.edu>
Se t: Thursday, November 15, 2018 1:16 PM
To: ICE-FOIA <ICE-FOIA@ice.dhs.gov>
Cc: Lee, Seung Heon-HLSCLINICS <slee.jd19@hlsclinics.org>; Ayoub, Sherif <sayoub@llm19.law.harvard.edu>
Subject: 2018ICFO21128

Dear Madam or Sir,

This email is to inquire the status of an outstanding FOIA request.

On Feb 2, 2018, we filed the following three FOIA requests with the ICE FOIA Office:

2018ICFO21128 received Feb 2, 2018; estimated delivery 18 Mar, 2018
2018ICFO21130 received Feb 2, 2018; transferred and closed Feb 26, 2018
2018ICFO21131 received Feb 2, 2018; transferred and closed Feb 26, 2018

On Feb 26, 2018, ICE FOIA transferred and closed 21130 and 21131, combining them into 21128 (herein we refer to 2018ICFO21128 collectively).

On Mar 26, 2018, we received correspondence from ICE Officer Charles Williams informing us that our application was missing pages. We provided the missing information later that day.

On Apr 6, 2018, we received correspondence from ICE FOIA seeking clarification of scope for the requested data, namely whether data pertinent to the State of Massachusetts only or data related to all ICE facilities.

On Apr 8, 2018, we responded that we request data pertaining to all ICE facilities but would accept the Massachusetts data first.

On Aug 10, 2018, we inquired about the status of the above-mentioned FOIA requests.

On Oct 19, 2018 and Nov 2, 2018, we received correspondence from ICE FOIA stating that our request was in the queue to be processed by an analyst.

We have received no further correspondence since.

FOIA responses typically should be required to be responded to within 20 days. 5 U.S.C. § 552(a)(6)(A)(i).

ICE has exercised its rights to a 10 day extension pursuant to 6 C.F.R. § 5.5(a). As of the date of this email, the request has now been pending for 284 days.

Please provide an update on the status of this request as soon as possible. Many thanks for your prompt attention to this matter.

Philip L. Torrey

Harvard Immigration and Refugee Clinical Program
Harvard Law School
6 Everett Street, Suite 3105
Cambridge, Massachusetts 02138
Phone: (617) 495-0638

This transmittal is intended for a particular addressee(s). It may constitute a confidential and privileged attorney-client communication or attorney work product. If it is not clear that you are the intended recipient, you are hereby notified that you have received this transmittal in error; any review, copying, or dissemination is strictly prohibited. If you have received this transmittal in error, please notify the sender immediately and destroy all copies of the transmittal and any attachments from your inbox and data storage systems. Thank you.

Exhibit O

H A R V A R D L A W S

CAMBRIDGE · MASSACHUSETTS · 02138

HARVARD IMMIGRATION AND
REFUGEE CLINIC
Harvard Law School

Location: 6 Everett St., Suite 3105
ptorrey@law.harvard.edu
Phone: 617-495-0638

April 16, 2019

U.S. Immigration and Customs Enforcement
Office of Principal Legal Advisor
U.S. Department of Homeland Security
Freedom of Information Act Office
500 12th Street, S.W.
Washington, D.C. 20536

RE: FOIA Appeal for Records re solitary confinement of immigrant detainees in the State of Massachusetts

FOIA Reference Number: 2018-ICFO-21128

Dear Sir or Madam:

This letter constitutes an appeal under the Freedom of Information Act (“FOIA”). See 5 U.S.C. § 552(a)(6)(A)(ii) and 6 C.F.R. § 5.9. This appeal is on behalf of the Harvard Immigration and Refugee Clinical Program at the Harvard Law School (“Requester”). This appeal is timely filed.

Specifically, the Requester appeals the adequacy of the agency’s lack of response to request 2018-ICFO-21128. The Requester asks that the agency conduct a determination regarding the releasability of the information and disclose relevant records.

BACKGROUND

On February 2, 2018, Requester submitted three requests to U.S. Immigration and Customs Enforcement (“ICE”) related to the detention immigrants in Solitary confinement in the State of Massachusetts. A copy of the FOIA requests designated 2018-ICFO-21128; 2018-ICFO-21130; 2018-ICFO-21131 is attached hereto as Exhibit A.

On February 23, 2018, Requester received correspondence from ICE acknowledging receipt of 2018-ICFO-21130 and invoking a 10-day extension, and correspondence from ICE

FOIA Appeal
April 16, 2019
Page 2 of 4

acknowledging receipt of 2018-ICFO-21131 and invoking a 10-day extension. Correspondence attached as Exhibit B and Exhibit C respectively.

On February 26, 2018, Requester received correspondence from ICE stating that ICE FOIA has determined that the response to the request will be included in 2018-ICFO-21128 and therefore 2018-ICFO-21130 is being administratively closed, and correspondence from ICE stating that 2018-ICFO-21131 is being administratively closed. Correspondence attached as Exhibit D and Exhibit E respectively.

On March 26, 2018, Requester received correspondence from ICE Officer Charles Williams informing us that our application was missing pages. We provided the missing information later that day. Correspondence attached as Exhibit F.

On April 6, 2018, Requester received correspondence from ICE FOIA seeking clarification of scope for the requested data, namely whether data pertinent to the State of Massachusetts only or data related to all ICE facilities. Correspondence attached as Exhibit G.

On April 8, 2018, Requester responded confirming that request is for data pertaining to all ICE facilities but stating that Requester will accept the Massachusetts data first. Correspondence attached as Exhibit H.

On August 10, 2018, Requester inquired about the status of the above-mentioned FOIA requests. Correspondence attached as Exhibit I.

On October 19, 2018 and November 2, 2018, Requester received correspondence from ICE FOIA stating that our request was in the queue to be processed by an analyst. Correspondences attached as Exhibit J and Exhibit K respectively.

On November 15, 2018, Requester emailed ICE requesting an update on the status of the request. Correspondence attached as Exhibit L.

On November 21, 2018, Requester received correspondence from ICE FOIA stating that responsive records have been located and that they will be reviewed for determination of releasability. Correspondence attached as Exhibit M.

As of April 16, 2019, Requester has not received any further communication or records pursuant to this inquiry.

More than 430 days have passed since the Requester's FOIA request, and ICE has failed to provide a determination within the statutory deadlines. The Requester hereby appeals ICE's lack of response and search for records as insufficient.

FOIA Appeal
April 16, 2019
Page 3 of 4

THE AGENCY’S LACK OF RESPONSE

Pursuant to the FOIA, in response to a request, an agency must determine whether to comply with the request within 20 days of receipt and “shall immediately notify the person making such request” of a “determination and the reasons therefor,” “the right of such person to seek assistance from the FOIA Public Liaison of the agency,” and in the case of an adverse determination, the right of that person to appeal and also to seek dispute resolution services from the FOIA Public Liaison of the agency or the Office of Government Information Services. 5 U.S.C. § 522(a)(6)(A). ICE has not provided a determination regarding the Requester’s request or informed the Requestor of its right to seek assistance from the FOIA Public Liaison. ICE has also not provided notice of a ten-day extension request under § 522(a)(6)(B).

ICE has failed to meet its statutory obligations under FOIA by failing to respond to the request well past the applicable statutory deadlines.

A. ICE has acknowledged that it has documents responsive to our Request

In the correspondence dated November 21, 2018, ICE stated that responsive documents have been located and that they were being reviewed for releasability. An agency may withhold information only if the agency reasonably foresees that disclosure would harm an interest protected by a limited list of exemptions set out under 5 U.S.C. §552(b) (1)-(9), or it is prohibited by law. 5 U.S.C. §552(a)(8)(A)(i). Even when the agency deems that the disclosure of is not permissible, it has a duty to consider whether partial disclosure of the information is possible and must “take reasonable steps necessary to segregate and release nonexempt information.” 5 U.S.C. §552(a)(8)(A)(jj).

The Supreme Court has emphasized that “the Freedom of Information Act was enacted to facilitate public access to Government documents” and that a “strong presumption in favor of disclosure places the burden on the agency to justify the withholding of any requested documents.” *U.S. Dep’t of State v. Ray*, 502 U.S. 164, 173 (1991). Further, the Court has held that the same burden “remains with the agency when it seeks to justify the redaction of identifying information in a particular document as well as when it seeks to withhold an entire document.” *Id.*

We therefore respectfully request that ICE make a determination regarding releasability of the located documents as soon as possible. Thank you for your consideration and prompt attention to this request.

Sincerely,

Philip L. Torrey

FOIA Appeal
April 16, 2019
Page 4 of 4

Exhibit P

U.S. Department of Homeland Security
500 12th ST. SW; STOP 5009
Washington, DC 20536-5009



U.S. Immigration
and Customs
Enforcement

April 25, 2019

Rachel Kroll
HARVARD LAW SCHOOL

Dear Ms. Kroll:

The Department of Homeland Security has received your letter appealing the adverse determination of your Freedom of Information Act/Privacy Act (FOIA/PA) request by U.S. Immigration and Customs Enforcement. Your appeal, **postmarked electronically transmitted on April 1 2019**, was received on **April 24 2019**.

The Government Information Law Division acknowledges your appeal request of **2018-ICFO-21128** and is assigning it number **2019-ICAP-0032** for tracking purposes. Please reference this number in any future communications about your appeal.

A high number of FOIA/PA requests have been received by the Department. Accordingly, we have adopted the court-sanctioned practice of generally handling backlogged appeals on a first-in, first-out basis.¹ While we will make every effort to process your appeal on a timely basis, there may be some delay in resolving this matter. Should you have any questions concerning the processing of your appeal, please contact the ICE FOIA Office/Public Liaison at (866) 633-1182, or by email at ice-foia@dhs.gov.

Sincerely,

/s/MCuestas for

Shiraz Panthaky
Chief
Government Information Law Division
ICE Office of the Principal Legal Advisor
U.S. Department of Homeland Security

¹ Appeals of expedited treatment denials will be handled on an expedited basis.

Exhibit Q

Office of the Principal Legal Advisor
500 12th St. SW; STOP 5009
Washington, DC 20536-5009



**U.S. Immigration
and Customs
Enforcement**

May 22, 2019

Phillip L. Torrey
Harvard Immigration and Refugee Clinic
6 Everett Street, Suite 3105
Cambridge, MA 02138

RE: 2019-ICAP-00329, 2018-ICFO-21128¹

Dear Mr. Torrey:

This is in response to your letter dated April 16, 2019, received April 24, 2019 appealing the U.S. Immigration and Customs Enforcement (ICE) Freedom of Information Act (FOIA) Office's response to your FOIA request, dated November 30, 2017. Your request sought various documents pertaining to policies, practices, guidance letters, memoranda, data, and reports regarding the treatment of transgender detainees, and detainees with disabilities, as well as regarding the use of segregation at ICE detention facilities located in Massachusetts.

By electronic correspondence dated February 23, 2018, the ICE FOIA Office acknowledged receipt of your FOIA request, granted your request for a few waiver pursuant to Department of Homeland Security's Freedom of Information Act regulations and invoked the ten (10) day extension period pursuant to Title 5 U.S.C. § 552(a)(6)(B).

You have appealed the constructive denial of your FOIA request based upon the ICE FOIA Office not responding to your request within either the twenty (20) days provided by statute, or the additional ten (10) day extension invoked by the ICE FOIA Office. In many instances, an agency cannot meet these time limits due to a high volume of requests, resource limitations and other reasons. Accordingly, this office is remanding your appeal to the ICE FOIA Office so that they may complete the search for these records and provide a direct response to you.

Should you have any questions regarding this appeal remand, please contact ICE at ice-foia@dhs.gov. In the subject line of the email, please include the word "appeal," the appeal number, which is **2019-ICAP-00329**, and the FOIA case number, which is **2019-ICFO-21128**.

¹ Please note that you submitted three FOIA requests, which were initially assigned three separate ICFO numbers. Requests 2018-ICFO-21130 and 2018-ICFO-21131 have been consolidated into 2018-ICFO-21128.

Phillip L. Torrey
2019-ICAP-00329, 2018-ICFO-21128
Page | 2

Sincerely,

Anne M. Rose

for

Shiraz Panthaky,
Chief

Government Information Law Division
ICE Office of the Principal Legal Advisor
U.S Department of Homeland Security

cc: The ICE FOIA Office

Exhibit R

HARVARD LAW SCHOOL

CAMBRIDGE MASSACHUSETTS 02138

HARVARD IMMIGRATION AND
REFUGEE CLINIC
Harvard Law School

Location: 6 Everett St., Suite 3103
E-mail Address: hirc@law.harvard.edu
Phone: 617-384-8165

December 21, 2017

SENT VIA EMAIL (FOIARequest@osc.gov)

FOIA Officer
U.S. Office of Special Counsel
1730 M St., N.W. (Suite 218)
Washington, DC 20036-4505

To Whom It May Concern:

This is a request for records made pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 et seq., and the relevant implementing regulations, see 6 C.F.R. § 5 (Department of Homeland Security, Disclosure of Records and Information). The Request is submitted by the Harvard Immigration and Refugee Clinic (“HIRC”), HIRC Managing Attorney Phil Torrey, and Assistant Clinical Professor Sabi Ardalan (“Requesters”). Specifically, Requesters seek the disclosure of any records related to complaints and/or claims filed with and/or investigations by the U.S. Office of Special Counsel (“OSC”) related to the use and/or substantive impact of segregation of civil immigration detainees.

I. Background

Noncitizens held in immigration detention may be subject to solitary confinement, disciplinary or administrative segregation, for a variety of reasons.¹ Yet, it is well-established that solitary confinement, even for relatively short periods of time, can cause serious psychological and physical damage. The experience of solitary confinement can be acutely traumatizing for many, including those who have a history of “torture and abuse, as is often the case with many immigration and national security detainees.”² Prolonged isolation can often lead to mental health issues or severely exacerbate pre-existing mental illness.³

¹ Homeland Security Advisory Council, *Report of the Subcommittee on Privatized Immigration Detention Facilities*, Dec. 1, 2016, available at

<https://www.dhs.gov/sites/default/files/publications/DHS%20HSAC%20PIDF%20Final%20Report.pdf>.

² Physicians for Human Rights, *Solitary Confinement in the U.S. Detention System*, April 2013, available at https://s3.amazonaws.com/PHR_Reports/Solitary-Confinement-April-2013-full.pdf.

³ *Id.*

In light of the harmful effects of segregation, Performance Based National Detention Standards (PBNDS) issued in 2011 emphasize that administrative segregation of vulnerable populations should be used as “a last resort” and “when no other viable housing options exist.”⁴ In order to monitor the use of segregation, U.S. Immigration and Customs Enforcement (“ICE”) issued a directive in September 2013 mandating the systematic review of the use of segregation for ICE detainees.⁵ The directive states that “[p]lacement in segregation should occur only when necessary and in compliance with applicable detention standards.”⁶ The directive puts in place safeguards to ensure that detainees with medical or mental illness are not inappropriately placed in segregation and that “[s]uch detainees shall be removed from segregation if the IHSC determines that the segregation placement has resulted in deterioration of the detainee’s medical or mental health.”⁷

A central responsibility of OSC is to investigate “claims of wrongdoing within the executive branch of the federal government from current federal employees, former employees, and applicants for federal employment” pursuant to the Whistleblower Protection Act, 5 U.S.C. § 1201 et seq.⁸ The Disclosure Unit is housed within OSC and is tasked with evaluating the merits of five different complaints filed by whistleblowers: “violation of a law, rule, or regulation; gross mismanagement; a gross waste of funds; an abuse of authority; and/or a substantial and specific danger to public health or safety.”⁹

As described in greater detail below, Requesters respectfully request any records of any complaints and/or claims filed with OSC and/or investigation of any claims related to solitary confinement of civil detainees.

II. Records Requested

As used herein, the term “records” includes all records or communications preserved in electronic or written form, including but not limited to: correspondence; documents; data; videotapes; audio tapes; emails; faxes; files; guidance; guidelines; evaluations; instructions; analysis; memoranda; agreements; notes; orders; policies; procedures; protocols; reports; rules; manuals; specifications; and studies.

As used herein, the term “segregation” is used to refer to solitary confinement, administrative

⁴ ICE, Performance Based National Detention Standards, § 2.12 (V)(A)(1)(c). *See also* 6 C.F.R. § 115.43(b) (“Use of administrative segregation by facilities to protect detainees vulnerable to sexual abuse or assault shall be restricted to those instances where reasonable efforts have been made to provide appropriate housing and shall be made for the least amount of time practicable, and when no other viable housing options exist, as a last resort.”).

⁶ C.F.R. § 115.68(a) (“The facility shall take care to place detainee victims of sexual abuse in a supportive environment that represents the least restrictive housing option possible (e.g., protective custody), subject to the requirements of § 115.43.”).

⁵ ICE Directive 11065.1, Review of the Use of Segregation for ICE Detainees, DHS (2013), *available at* https://www.ice.gov/doclib/detention-reform/pdf/segregation_directive.pdf. [hereinafter “ICE Segregation Directive”].

⁶ ICE Segregation Directive at § 2.

⁷ ICE Segregation Directive at § 5(a).

⁸ U.S. Office of Special Counsel, Disclosure of Wrongdoing, *available at* <https://osc.gov/Pages/DOW.aspx>.

⁹ *Id.*

segregation, disciplinary segregation, restrictive housing, and other related terms. To the extent that the records and data disaggregate between different terminology, status, or type of segregation, please provide the records in the disaggregated form.

Should any responsive record contain personally identifiable information (“PII”) of any party, Requesters ask that the agencies redact that information. This Request seeks non-PII data and records.

We request any and all records created on and/or after September 4, 2013¹⁰ (as defined above) related to any complaints about the use and/or substantive impact of segregation of civil immigration detainees, including, but not limited to:

1. Any complaints with and/or investigations by the Disclosure Unit;
2. Any and all records and responses related to any complaints and/or investigations;
3. Any and all records used to prepare any responses, memoranda, or reports related to segregation of civil immigration detainees;
4. Any and all records related to the Special Counsel’s “determination as to the completeness and apparent reasonableness” of any and all agency reports on solitary confinement of civil immigration detainees;¹¹ and
5. Any and all OSC communications transmitted to any other agencies or branches of government, including, but not limited to the DHS Office of the Secretary, the President, Congressional oversight committees the U.S. House and Senate.

III. Fee Waiver Request

Requestors are entitled to a waiver or reduction of all costs because the information sought “is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the [Requestors’] commercial interest.” 5 U.S.C. § 552(a)(4)(A)(iii); 6 C.F.R. § 5.11(k) (records must be furnished without charge if the information is in the public interest, and disclosure is not in the commercial interest of the institution); 6 C.F.R. § 5.11(d). Requestors will make any information that they receive as a result of this FOIA request available to the public, including the press, at no cost. The issue of immigration removal is one of the significant public interest in general, and the issue of how the federal government processes immigrants in its custody is of significant interest in particular. Requestors have undertaken this work in the public interest and not for any private commercial interest. The primary purpose of this FOIA request is to obtain information to further the public’s understanding of federal immigration detention policies and practices. Access to this information is necessary for the public to meaningfully evaluate the costs and consequences of federal immigration detention policies, including the government polices with regard to segregation and its effects on immigrants in government custody.

Disclosure in this case therefore meets the statutory criteria, and a fee waiver would fulfill Congress’s legislative intent in amending FOIA. *See Judicial Wrath, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it be ‘liberally construed in

¹⁰ ICE Directive 11065.1, *supra* note 5.

¹¹ *Id.*

favor of waivers of noncommercial requesters.”). Because the documents subject to this request are not sought for any commercial use, we understand that no fee may be charged for the first two hours of search time or for the first 100 pages of duplication. 5 U.S.C. §552(a)(4)(A)(iv)(II).

IV. Certification

Requestors certify that the above information is true and correct to the best of their knowledge. *See* 6 C.F.R. § 5.5(d)(3).

Please reply to this request within twenty working days, or as required by statute. *See* 5 U.S.C. §552(a)(6)(A)(i). Please furnish records as soon as they are identified to the following individual and address:

Sabi Ardalan
Harvard Immigration and Refugee Clinical Program
Harvard Law School
6 Everett Street, Suite 3106
Cambridge, MA, 02138

Sincerely,



Sabi Ardalan
Harvard Immigration and
Refugee Clinical Program
(617) 384-7504
sardalan@law.harvard.edu

Exhibit S



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, DC 20036-4505
(202) 804-7000

May 19, 2020

Sabi Ardalan
Harvard Law School
6 Everett Street Suite 3103
Cambridge, MA 02138
Via Email: sardalan@law.harvard.edu

Re: Freedom of Information Act Request (#FO-18-0075)

Dear Sabi Ardalan:

Please be advised that this is a final response to your request dated December 21, 2017, in which you asked the U.S. Office of Special Counsel (OSC) to provide you with any records related to complaints and/or claims filed with and/or investigations by OSC related to the use and/or substantive impact of segregation of civil immigration detainees. Your request has been processed under the Freedom of Information Act (FOIA), 5 U.S.C. § 552 and the Privacy Act, 5 U.S.C. § 552a.

OSC identified 2,735 responsive pages. Of the 2,735 pages, we referred 1,593 pages to the Department of Homeland Security for direct response to you and can be reached at foia@hq.dhs.gov. We are releasing 800 pages to you in full, 241 pages in part, and withholding 101 pages in full pursuant to FOIA Exemptions (b)(3), (b)(5), (b)(6), (b)(7)(C), and (b)(7)(D).

- FOIA Exemption (b)(3) permits withholding of records or information if a law specifically exempts the material from disclosure. *See* 5 U.S.C. § 552(b)(3).
- FOIA Exemption 5 protects from disclosure inter-agency or intra-agency information that is normally protected from discovery in civil litigation based on one or more legal privileges (including, in this instance, the deliberative process and attorney work product privileges). *See* 5 U.S.C. § 552(b)(5).
- FOIA Exemption 6 protects information if disclosure would constitute a clearly unwarranted invasion of personal privacy. *See* 5 U.S.C. § 552(b)(6).
- FOIA Exemption 7(C) protects law enforcement information if disclosure could reasonably be expected to constitute an unwarranted invasion of personal privacy. *See* 5 U.S.C. § 552(b)(7)(C).
- FOIA Exemption (b)(7)(D) permits withholding of records when revealing a confidential source or information provided by a confidential source could reasonably be expected. *See* 5 U.S.C. § 552(b)(7)(D).

You have the right to appeal this determination under the FOIA. An appeal must be made in writing and sent to OSC's General Counsel at the address shown at the top of this letter or by email to FOIAappeal@osc.gov. The appeal must be received by the Office of General Counsel within ninety (90) days of the date of this letter.

U.S. Office of Special Counsel
Ardalan FO-18-0075
May 19, 2020
Page 2 of 2

If you have any questions or you require dispute resolution services, please feel free to contact Mahala Dar, OSC's Chief FOIA Officer and acting FOIA Public Liaison, at mdar@osc.gov or (202) 804-7000. Please reference the above tracking number when you call or write. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer.¹

Thank you,

/s/

Mahala Dar, Esq.
Clerk

¹ Office of Governmental Information Services (OGIS), National Archives and Records Administration 8601 Adelphi Road, Room 2510, College Park, MD 20740-6001; ogis@nara.gov (Email) 202-741-5770 (Office) 1-877-684-6448 (Toll Free) 202-741-5769 (Fax)

Exhibit T

Azarian , Amanda L.

From: Ardalan, Sabi sardalan@law.harvard.edu
Sent: 07 July 2021 14:56
To: Azarian , Amanda L.
Cc: Torrey, Phil
Subject: FW: Freedom of Information Act Request FO-18-0075

External Email Exercise Caution

Sabrineh Ardalan
Clinical Professor, Harvard Law School
Director, Harvard Immigration and Refugee Clinical Program
617-384-7504
Pronouns: she/her/hers
sardalan@law.harvard.edu
[website](#) [read our blog](#) [@HLS Immigration](#) [subscribe to our newsletter](#)
[Register to vote.org!](#)

This transmittal is intended for a particular addressee(s). It may constitute a confidential and privileged attorney-client communication or attorney work product. If it is not clear that you are the intended recipient, you are hereby notified that you have received this transmittal in error; any review, copying, or dissemination is strictly prohibited. If you have received this transmittal in error, please notify the sender immediately and destroy all copies of the transmittal and any attachments from your inbox and data storage systems. Thank you.

From: FOIA <mailto:FOIA@HHS.DHS.GOV>
Sent: Wednesday, July 7, 2021 9:54 AM
To: Ardalan, Sabi <sardalan@law.harvard.edu>; FOIA <FOIA@HHS.DHS.GOV>
Cc: Torrey, Phil <ptorrey@law.harvard.edu>
Subject: RE: Freedom of Information Act Request FO-18-0075

Good morning Dear Sabi Ardalan,

Thanks for reaching out to this office. Your case number is 2020- FO-01140 and the case is currently in our processing queue. It is very difficult to provide an accurate estimated date of completion until our FOIA analyst reviews these records. The Privacy Office is coordinating the Department's response to requests related to COVID-19; many of these requesters asked and qualified for expedited processing, meaning that they are required to be placed at the front of the queue. Our general expectation is that we will be able to send you a final response within three to four months. Please know that this estimate may change dramatically based on the volume of work associated with our expedited COVID-19 requests.

We hope that this response provides additional insight into why we are not able to give you a more precise estimated date of completion, and why we expect it will take three to four months for us to respond to your request. Please let us know if you have any other questions about our processes.

Regards,

DHS Privacy Office
Disclosure FOIA Program

STOP 0655
Department of Homeland Security
2707 Martin Luther King Jr. AVE SE
Washington, DC 20528-065
Telephone: 1-866-431-0486 or 202-343-1743
Fax: 202-343-4011
Visit our FOIA website

From: Ardalan, Sabi <sardalan@law.harvard.edu>
Sent: Tuesday, July 6, 2021 3:04 PM
To: FOIA <FOIA@HHS.DHS.GOV>
Cc: Torrey, Phil <ptorrey@law.harvard.edu>
Subject: Freedom of Information Act Request FO-18-0075

CAUTION: This email originated from outside of DHS. DO NOT click links or open attachments unless you recognize and/or trust the sender. Contact your component SOC with questions or concerns.

To Whom It May Concern,

This email is to inquire as to the status of the referral of responsive records in relation to Freedom of Information Act ("FOIA") request FO-18-0075 from the U.S. Office of Special Counsel ("OSC") to the U.S. Department of Homeland Security ("DHS").

On May 19, 2020, OSC sent a final response to Harvard Immigration and Refugee Clinical Program ("HIRC") in relation to its FOIA request dated December 21, 2017 (request FO-18-0075). OSC identified 2,735 responsive pages. Of the 2,735 pages, OSC referred 1,593 pages to DHS for direct response to HIRC as per OSC's regulations (5 C.F.R. § 1820.3(b)). As of today, HIRC has yet to hear from DHS in relation to this referral.

Please advise as to the status of the referred records. We appreciate your prompt attention to this matter as it has been over one year since the referral was made.

Sincerely,

Sabrineh Ardalan
Clinical Professor, Harvard Law School
Director, Harvard Immigration and Refugee Clinical Program
617-384-7504
Pronouns: she/her/hers
sardalan@law.harvard.edu
[website](#) [read our blog](#) [@HLS Immigration](#) [subscribe to our newsletter](#)
Register to [vote.org](https://www.vote.org)!

This transmittal is intended for a particular addressee(s). It may constitute a confidential and privileged attorney-client communication or attorney work product. If it is not clear that you are the intended recipient, you are hereby notified that you have received this transmittal in error; any review, copying, or dissemination is strictly prohibited. If you have received this transmittal in error, please notify the sender immediately and destroy all copies of the transmittal and any attachments from your inbox and data storage systems. Thank you.

Exhibit U



**Homeland
Security**

Privacy Office, Mail Stop 0655

July 7, 2021

Sabrineh Ardalan
Harvard Immigration and Refugee Clinic
6 Everett Street
Suite 3106
Cambridge, MA 02138
Re: **DHS FOIA Case # 2020-HQFO-01140**
U.S. Office of Special Counsel (OSC) FOIA Case # FO-18-0075

Dear Ms. Ardalan:

This acknowledges receipt of your Freedom of Information Act (FOIA) request to U.S. Office of Special Counsel (OSC), dated December 27, 2017, and seeking We request any and all records created on and/or after September 4, 2013 related to any complaints about the use and/or substantive impact of segregation of civil immigration detainees, including, but not limited to:

1. Any complaints with and/or investigations by the Disclosure Unit;
2. Any and all records and responses related to any complaints and/or investigations;
3. Any and all records used to prepare any responses, memoranda, or reports related to segregation of civil immigration detainees;
4. Any and all records related to the Special Counsel's "determination as to the completeness and apparent reasonableness" of any and all agency reports on solitary confinement of civil immigration detainees; and
5. Any and all OSC communications transmitted to any other agencies or branches of government, including, but not limited to the DHS Office of the Secretary, the President, Congressional oversight committees the U.S: House and Senate.

While processing your request, the U.S. Office of Special Counsel (OSC) located records that fall under the purview of the Department of Homeland Security (DHS). Accordingly, your request and 1593 pages of responsive records were referred to this office for processing and direct response to you. Your request was received in this office on October 21, 2020.

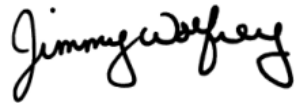
Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Per §5.5(a) of the DHS FOIA regulations, 6 C.F.R. Part 5, the Department processes FOIA requests according to their order of receipt. Although DHS' goal is to respond within 20 business days of receipt of your request, the FOIA does permit a 10-day extension of this time period. As the subject matter of your request is of substantial interest to two or more components of this Department or of substantial interest to another agency, we will need to consult with those entities before we issue a final response. Due to these unusual

circumstances, DHS will invoke a 10-day extension for your request, as allowed by Title 5 U.S.C. § 552(a)(6)(B).

Provisions of the Act allow us to recover part of the cost of complying with your request. We shall charge you for records in accordance with the DHS Interim FOIA regulations as they apply to educational requestors. As an educational requester you will be charged 10-cents a page for duplication, although the first 100 pages are free. We will construe the submission of your request as an agreement to pay up to \$25.00. You will be contacted before any further fees are accrued.

Your request has been assigned reference number **2020-HQFO-01140**. Please refer to this identifier in any future correspondence. Please be assured that one of the processors in our office will respond to your request as expeditiously as possible. You may contact this office at foia@hq.dhs.gov. Thank you for your patience as we proceed with your request.

Sincerely,

A handwritten signature in black ink that reads "Jimmy Wolfrey". The signature is written in a cursive, flowing style.

Jimmy Wolfrey
Senior Director, FOIA Operations and Management
(Acting)