



June 11, 2021

VIA EMAIL – ICE-FOIA@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

Freedom of Information Act Request: Decision to Terminate VOICE Office

Dear FOIA Officer:

America First Legal Foundation (“AFL”) is a national, nonprofit organization. AFL works to promote the rule of law in the United States, prevent executive overreach, ensure due process and equal protection for all Americans, and promote knowledge and understanding of the law and individual rights guaranteed under the Constitution and laws of the United States.

I. Background

On June 11, 2021, U.S. Immigration and Customs Enforcement (“ICE”) announced that it was terminating the Victim of Immigration Crime Engagement (VOICE) Office. American Citizens who are the victims of illegal immigrant crime and violence are one of the most marginalized and neglected groups in the country. VOICE existed to protect and care for these heartbroken, grieving American families. VOICE was their one place to go for help. Now, it seems that it has been turned into yet one more free government service for illegal aliens—courtesy of taxpayers. DHS, and ICE in particular, is a law enforcement agency, not a legal help center for those who violate the law.

According to material available on ICE’s own website, the VOICE Office was established “to acknowledge and serve the needs of crime victims and their families who have been impacted by crimes committed by individuals with a nexus to immigration.” U.S. Immigration and Customs Enforcement, *VOICE Fact Sheet*, <https://www.ice.gov/sites/default/files/documents/Fact%20sheet/2017/factsheetVOIC E.pdf> (last visited June 11, 2021). The same fact sheet even asks, “Why Does This Matter?” and answers it by saying, “Until now, victims of immigration-related crimes have not had a government resource that could provide timely information on their

cases. State and local officials within the criminal justice system may be unable to assist victims with detailed immigration-related questions. The VOICE Office will work to ensure victims and their families have access to information and will offer assistance explaining the immigration removal process.” *Id.* As recently as one month ago, it was reported that the Biden Administration was going to keep the VOICE Office. Vera Bergengruen, *Exclusive: Trump Created an Office That Highlighted Immigrant Crime. Biden's DHS Plans to Keep It*, TIME, May 14, 2021, available at <https://time.com/6048445/donald-trump-victims-of-immigrant-crime-office-joe Biden/>.

Apparently, however, at some point in the last month, this Administration has decided that the providing resources for American victims of crime is less important than providing resources to illegal aliens in the United States. The American people deserve to know who made this decision and why.

AFL’s mission includes promoting government transparency and accountability by gathering official information, analyzing it, and disseminating it through reports, press releases, and/or other media, including social media platforms, to educate the public. Therefore, under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, AFL hereby requests the following records within twenty business days.

II. Requested Records

- A. All communications, whether electronic mail, text message, phone message, phone records, or otherwise, referring or relating to the termination, closing, or replacement of the Victim of Immigration Crime Engagement Office. The date range for this request is January 20, 2021, until the date the records request is processed.
- B. All communications whether electronic mail, text message, phone message, phone records, or otherwise, referring or relating to establishing a more “comprehensive and inclusive” office to replace VOICE. The date range for this request is January 20, 2021, until the date the records request is processed.
- C. All communications whether electronic mail, text message, phone message, phone records, or otherwise, referring or relating to “victim support” and how ICE will continue to support victims of crime at the hands of illegal aliens upon the termination of the VOICE Office. The date range for this request is January 20, 2021, until the date the records request is processed.
- D. All communications whether electronic mail, text message, phone message, phone records, or otherwise, referring or relating to how ICE would continue the mission of the VOICE Office upon its termination. The date range for this request is January 20, 2021, until the date the records request is processed.

- E. All communications whether electronic mail, text message, phone message, phone records, or otherwise, referring or relating to how ICE will continue to provide victims of crime timely information as the VOICE Office did. The date range for this request is January 20, 2021, until the date the records request is processed.
- F. All communications whether electronic mail, text message, phone message, phone records, or otherwise, referring or relating to Vera Bergengruen’s article cited above. The date range for this request is May 10, 2021, until the date the records request is processed.
- G. All records, including, but not limited to, electronic mail, texts, memoranda, and handwritten notes, of, regarding, referring, or relating to the VOICE Office in the possession of each of the following custodians:
 - 1. Tae D. Johnson
 - 2. Matthew C. Allen
 - 3. Timothy Perry
 - 4. Corey Price
 - 5. Patrick Lechleitner
 - 6. Staci Barrera
 - 7. Aldemar Rodriquez
 - 8. John D. Trasviña
 - 9. Barbara Gonzalez
 - 10. Any political appointee serving at ICE.

The timeframe for this request is January 20, 2021, until the date the records request is processed.

III. Construction, Redactions, and Search Terms

“Political Appointee” shall mean any person serving at ICE who holds a position—in a permanent, acting, or in a “performing the duties of” capacity—that is any of the following: 1) requires Presidential Appointment and Senate Confirmation (PAS) position; 2) is a Presidentially Appointed (PA) position; 3) in a non-career Senior Executive Service (SES) position; 4) a Schedule C employee; 5) in an administratively determined position; 5) in a position that was filled by coordination with, or through, the White House Liaison or Presidential Personnel Office “PPO”; or 6) a career SES official who has been detailed to or within ICE since January 20, 2021.

Redactions are disfavored as the FOIA’s exemptions are exclusive and must be narrowly construed. *Am. Immigration Lawyers Ass’n v. Exec. Office for Immigration Review (AILA)*, 830 F.3d 667, 676-79 (D.C. Cir. 2016). If a record contains information responsive to a FOIA request, then ICE must disclose the entire record; a single

record cannot be split into responsive and non-responsive bits. *Id.*; see also *Parker v. United States DOJ*, 278 F. Supp. 3d 446, 451 (D.D.C. 2017). Consequently, ICE should produce email and calendar attachments.

The search terms for our requests should include, but not be limited to, all the following:

1. VOICE
2. "Victim of Immigration Crime Engagement"
3. "Victim Support"
4. "Comprehensive and inclusive"
5. "VOICE" & "Terminate"
6. "VOICE" & "Replace"
7. Vera Bergengruen

In connection with this request, and to comply with your legal obligations:

- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics.
- In conducting your search, please construe the term "record" in the broadest possible sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek all records, including electronic records, audiotapes, videotapes, and photographs, as well as texts, letters, emails, facsimiles, telephone messages, voice mail messages, and transcripts, notes, or minutes of any meetings, telephone conversations, or discussions.
- Our request includes any attachments to those records or other materials enclosed with a record when transmitted. If an email is responsive to our request, then our request includes all prior messages sent or received in that email chain, as well as any attachments.
- Please search all relevant records or systems containing records regarding agency business. Do not exclude records regarding agency business contained in files, email accounts, or devices in the personal custody of your officials, such as personal email accounts or text messages. Records of official business conducted using unofficial systems or stored outside of official files are subject to the Federal Records Act and FOIA. It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; AFL has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, by intent or through negligence, failed to meet their obligations.
- Please use all tools available to your agency to conduct a complete and efficient search for potentially responsive records. Agencies are subject to

governmentwide requirements to manage agency information electronically, and many agencies have adopted the National Archives and Records Administration (NARA) Capstone program, or similar policies. These systems provide options for searching emails and other electronic records in a manner that is reasonably likely to be more complete than just searching individual custodian files. For example, a custodian may have deleted a responsive email from his or her email program, but your agency's archiving tools may capture that email under Capstone. At the same time, custodian searches are still necessary; you may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.

- If some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If a request is denied in whole, please state specifically why it is not reasonable to segregate portions of the record for release.
- Please take appropriate steps to ensure that records responsive to this request are not deleted by the agency before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

IV. Fee Waiver Request

Per 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11, AFL requests a waiver of any and all applicable fees. This statute and regulation provide that the agency shall furnish requested records without or at reduced charge if “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.”¹

First, AFL is a qualified non-commercial public education and news media requester. AFL is a new organization, but it has already demonstrated its commitment to the public disclosure of documents and creation of editorial content through regular substantive analyses posted to its website. For example, its officials routinely appear on national television and use social media platforms to disseminate the information it has obtained about federal government activities. In this case, AFL will make your records and your responses publicly available for the benefit of citizens, scholars, and others. The public's understanding of your policies and practices will be enhanced through AFL's analysis and publication of the requested records. As a nonprofit

¹ 5 U.S.C. § 552(a)(4)(A)(iii); *see also Cause of Action v. Fed. Trade Comm'n*, 799 F.3d 1108, 1115-19 (D.C. Cir. 2015) (discussing proper application of public-interest fee waiver test).

organization, AFL does not have a commercial purpose and the release of the information requested is not in AFL's financial interest.

Second, in this case, a fee waiver is appropriate because of the public's right to know about the termination of a victims' rights office dedicated to providing victims of crimes information regarding the status of the criminal alien. Per statistics available on your website, ICE's VOICE Office received over 4,600 inquires between April 26, 2017 and September 30, 2017, or one fiscal quarter. ICE VOICE, *Quarterly Report June 2018*, <https://www.ice.gov/sites/default/files/documents/Report/2018/voice-quarterlyreport.pdf>, (last visited June 11, 2021). Assuming those numbers bear out, that means that ICE was receiving over 15,000 inquires per year—and those 15,000 requestors have a right to know why they can no longer turn to the VOICE Office for answers. Moreover, given recent reports that the VOICE Office would remain, the Public has a right to know why the Administration has suddenly reversed course. *See Bergengruen, supra*.

V. Record Preservation Requirement

We request that the disclosure officer responsible for the processing of this request issue an immediate hold on all records responsive, or potentially responsive, to this request, so as to prevent their disposal until such time as a final determination has been issued on the request and any administrative remedies for appeal have been exhausted. It is unlawful for an agency to destroy or dispose of any record subject to a FOIA request.²

VI. Production

To accelerate release of responsive records, AFL welcomes production on an agreed rolling basis.

If possible, please provide responsive records in an electronic format by email. Alternatively, please provide responsive records in native format or in PDF format on a USB drive. Please send any responsive records being transmitted by mail to America First Legal Foundation, 600 14th Street NW, 5th Floor, Washington, D.C. 20005.

² *See* 36 C.F.R. § 1230.3(b) (“Unlawful or accidental destruction (also called unauthorized destruction) means . . . disposal of a record subject to a FOIA request, litigation hold, or any other hold requirement to retain the records.”); *Chambers v. Dep’t of the Interior*, 568 F.3d 998, 1004-05 (D.C. Cir. 2009) (“[A]n agency is not shielded from liability if it intentionally transfers or destroys a document after it has been requested under the FOIA or the Privacy Act.”); *Judicial Watch, Inc. v. Dep’t of Commerce*, 34 F. Supp. 2d 28, 41-44 (D.D.C. 1998).

VII. Conclusion

If you have any questions about how to construe this request for records or believe further discussions regarding search and processing would facilitate a more efficient production of records of interest to AFL, please do not hesitate to contact me at info@aflegal.org.

Thank you,

/s/ Gene P. Hamilton

Gene P. Hamilton

America First Legal Foundation