



May 18, 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: Weekly Reporting of All Enforcement and Removal Actions and Other Enforcement Records

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.

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.

I. Requested Records

- A. All “written reports” referred to in the subsection titled “Weekly Reporting of All Enforcement And Removal Actions” on page 7 of a memorandum from Tae D. Johnson to “All ICE Employees” with a subject line of “Interim Guidance: Civil Immigration Enforcement and Removal Priorities” (Feb. 18, 2021) (the “[Interim Guidance](#)”), whether the reports be termed “Reports”, “Summaries”, “Rollups”, or otherwise. The timeframe for this request is February 18, 2021 to the date of production of the requested records.
- B. All records, including, but not limited to, electronic mail, texts, memoranda, and handwritten notes, of, regarding, referring, or relating to the Interim

Guidance from, to, or in the possession of each of the following Immigration and Customs Enforcement (“ICE”) components:

1. Office of the Director of ICE
2. Office of the Deputy Director
3. Office of Policy and Planning
4. Office of the Executive Associate Director, Enforcement and Removal Operations
5. Office of the Executive Associate Director, Homeland Security Investigations
6. Office of the Principal Legal Advisor
7. Office of the Executive Associate Director, Management and Administration

The timeframe for this request is January 20, 2021, to date of production of the requested records.

- C. All records, including, but not limited to electronic mail, texts, memoranda, and handwritten notes, of, regarding, referring, or relating to the interim civil immigration enforcement and removal priorities described in a memorandum issued by Acting Secretary Pecoske and titled “Review of and Interim Revision to Civil Immigration Enforcement and Removal Policies and Priorities” (Jan. 20, 2021) (the “[Priorities Memo](#)”) within the possession if ICE. The timeframe for this request is January 20, 2021 to the date of production of the requested records.

II. Redactions and Search Terms

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 attachments.

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

1. Removal
2. Removals
3. Priorities
4. Memo
5. “Interim Guidance”

6. "Interim Guidance" & "Priorities
7. "Enforcement Actions"
8. Enforcement
9. Prosecutorial Discretion
10. Administrative Closure
11. Termination
12. Summary
13. Report
14. Rollup
15. Weekly

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.

III. 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 all search and duplication fees associated with this request.

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

Second, waiver is proper as disclosure of the requested information is "in the public interest because it is likely to contribute significantly to public understanding of operations or activities of the government." The public has a significant interest in the enforcement of its laws, especially here where, it seems, ICE is being prevented from enforcing the law. Records with the potential to shed light on this issue would contribute significantly to public understanding of operations of the federal government, including whether and to what extent the Department of Homeland Security and/or the White House comply with applicable statutes and judicial

decisions, respect the rule of law, and protect the borders and security of the United States.

IV. 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.

V. 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