

April 24, 2017

The Honorable John F. Kelly
Secretary
Department of Homeland Security
Washington, DC 20528

Thomas D. Homan
Acting Director
Immigration and Customs Enforcement
Washington, DC 20536

Re: Disclosure of data on immigration detainers in compliance with the FOIA

Dear Secretary Kelly and Acting Director Homan:

The undersigned organizations committed to government openness and accountability, human rights, civil rights, and immigrant rights, write to urge you to comply with the legal obligations under the Freedom of Information Act (FOIA), and fully disclose information on immigration enforcement cooperation between federal and non-federal law enforcement agencies.

Your agency has the obligation to disclose this information in a timely manner, in accordance with the FOIA. We are concerned that ICE has significantly reduced the amount of information it is releasing, specifically in response to FOIA requests for information on immigration detainers.¹ The incomplete and selective disclosure of information included in the ICE weekly “Declined Detainer Outcome Reports”² has been criticized for being used in a discriminatory manner that targets undocumented communities and seeks to punish cities that this administration claims do not cooperate with federal authorities on immigration enforcement.³ Following the announcement that ICE is suspending the publication of these weekly reports,⁴ we call on your agency to disclose the full record on immigration cooperation in response to public FOIA requests.

The FOIA statute permits the withholding of information *only* if an agency reasonably foresees that disclosure would harm an interest protected by an exemption described in the statute, or disclosure is prohibited by law.⁵ In recent cases, however, ICE has failed to cite any lawful exemption nor has it provided any justification for withholding such information. Claiming, as ICE has, that the releases were discretionary and the agency is not required to release such data is not an adequate or legitimate rationale to justify

¹ *ICE Refuses To Release More Comprehensive Detainer Data*, Transactional Records Access Clearinghouse (TRAC), Mar. 20, 2017: <http://bit.ly/2pqw9Sq>

² *Declined Detainer Outcome Report*, U.S. Immigration and Customs Enforcement: <http://bit.ly/2ntzin6>

³ Tina Vasquez, *ICE Report on So-called Safety Threats ‘Misleading at Best’*, Mar. 22, 2017: <http://bit.ly/2pWLxWP>

⁴ Ron Nixon, *Trump Administration Halts Reports on Immigration Cooperation*, New York Times, Apr. 10, 2017: <http://nyti.ms/2p2CUdK>

⁵ 5 U.S.C. § 552(a)(8).

nondisclosure.⁶ Given this information was routinely disclosed under prior administrations and that ICE is not claiming any exemptions in the statute, there is no justification for withholding this information from disclosure at this time.

Previously, ICE released information on each detainer and on each deportation resulting from a detainer request. This information allowed the public to examine the number of people detained or removed through a number of lenses, such as type of criminal conviction, over a long period of time.⁷ The declined detainer reports that ICE released on March 20, March 29, and April 5, however, fail to include important data points needed for well-informed policy making. For example, they do not include details on the outcomes of all detainees issued, only identifying those that were declined.

On April 10, in response to the growing criticism over accuracy problems, ICE announced it would temporarily suspend its publication of the weekly Declined Detainer Outcome Reports, saying it would allow the agency to “analyze and refine its reporting and methodologies.”⁸ Since March 20th, ICE released three of these reports on immigration cooperation as required by the January 25th Executive Order on interior enforcement (EO 13768), which directed DHS to compile and publicize a list of criminal actions committed by undocumented immigrants, and identify any jurisdiction that ignored any federal detainer requests.⁹ Law enforcement officials from the jurisdictions named immediately challenged the reports citing inaccurate and misleading information. Officials in Nassau County, New York, for example, objected to being erroneously included in the first report¹⁰ as a non-cooperative jurisdiction.¹¹ Additionally, out of the 206 declined detainer requests listed in the report, 128 came from Travis County, Texas, where the sheriff also questioned the data.¹² Following these criticisms, ICE issued a correction, attributing the incorrect reporting to “data processing” errors.¹³

In order to address the problems stemming from the publication of inaccurate and misleading information, ICE must release, at a minimum, the data it had previously disclosed in response to FOIA requests. The selective and imprecise disclosure of

⁶ *ICE Refuses To Release More Comprehensive Detainer Data*, Transactional Records Access Clearinghouse (TRAC), Mar. 20, 2017: <http://bit.ly/2pqw9Sq>

⁷ *Tracking Immigration and Customs Enforcement Detainers*, ICE Data through November 2015, Transactional Records Access Clearinghouse (TRAC): <http://bit.ly/2jX2i1E>

⁸ Ron Nixon, *Trump Administration Halts Reports on Immigration Cooperation*, New York Times, Apr. 10, 2017: <http://nyti.ms/2p2CUdK>

⁹ Executive Order 13768, Section 10(c), (Jan. 25, 2017): <http://bit.ly/2jybzNG>

¹⁰ The first report, released on March 20th covered the period from Jan. 28 to Feb. 3: <http://bit.ly/2nf4JBa>

¹¹ Ron Nixon & Liz Roberts, *Law Enforcement Agencies Bristle at U.S. Report on Immigration Detention*, New York Times, Mar. 20, 2017: <http://nyti.ms/2nLlf9L>

¹² Katie Hall, *NEW DETAILS: Travis County sheriff's office questions DHS report on immigration detainer requests*, Statesman, Mar. 21, 2017: <http://atxne.ws/2p4GdkN>

¹³ The corrections to the first report are listed here: <http://bit.ly/2owgzHE>

information is a hindrance to informed policy making, and raises serious concern at a time when the administration plans to drastically increase its immigration enforcement programs.

In addition, we are concerned over reports that ICE is interfering with state requests for public information.¹⁴ ICE must not hamper the disclosure of information at the state level, and should permit the release of data on immigration enforcement cooperation in full compliance with local and state transparency laws. This troubling trend prevents states from following their own transparency laws and policies. The secrecy surrounding immigration enforcement has become such a problem for non-federal authorities that elected state representatives are resorting to filing their own FOIA requests in order to obtain information on ICE activities in their states.¹⁵ The full disclosure of complete and accurate data has critical policy implications, as the administration is citing such data to justify the possible withdrawal of federal grants in order to force cities to cooperate with immigration authorities.¹⁶

Complete access to unbiased data on immigration enforcement is a matter of high public interest at this time, and is essential to better inform policy making at the federal and state level. We call on your FOIA offices to ensure the timely disclosure of this information, and process pending and future FOIA requests in an expeditious manner.

Thank you for your attention to this matter. If you have any questions, please contact Lisa Rosenberg, Executive Director of OpenTheGovernment, at rosenberg@openthegovernment.org, or 202.332.6736.

Sincerely,

American-Arab Anti-Discrimination Committee (ADC)
Asian Americans Advancing Justice – Atlanta/Asian Law Caucus/Los Angeles
Association of Alternative Newsmedia
El CENTRO de Igualdad y Derechos
Center for Constitutional Rights (CCR)
Christian Church (Disciples of Christ) Refugee & Immigration Ministries
Citizens for Responsibility and Ethics in Washington (CREW)
Cleveland Jobs With Justice
Detention Watch Network (DWN)
Defending Rights & Dissent

¹⁴ Douglas Hanks, *Are immigration detention requests a secret? The mayor and the feds are at odds*, Miami Herald, Mar. 16, 2017: <http://hrld.us/2mbNod9>

¹⁵ Nikita Vladimirov, *Calif. lawmakers file FOIA demanding info on ICE activities*, The Hill, Mar. 4, 2017: <http://bit.ly/2oVaa9Z>; Rachel Monahan, *In Formal Public Records Request, Oregon Elected Officials Ask for Information on ICE Policies*, Newsweek, Mar. 29, 2017: <http://bit.ly/2p2HBr0>

¹⁶ Alex Newman, *This is the data we no longer get about immigration enforcement under the Trump administration*, PRI, Mar. 30, 2017: <http://bit.ly/2p2JcNk>

Demand Progress
East Bay Community Law Center
Electronic Frontier Foundation (EFF)
Electronic Privacy Information Center (EPIC)
FRESC: Good Jobs, Strong Communities
Government Accountability Project
Grassroots Leadership
Illinois Coalition for Immigrant and Refugee Rights
Immigrant Defense Project
Immigrant Legal Resource Center (ILRC)
Jobs With Justice
Justice Strategies
Keeping Government Beholden
Lafayette Urban Ministry (Lafayette, IN)
La Resistencia Iowa
Liberty Coalition
Mi Familia Vota
National Center for Lesbian Rights
National Center for Transgender Equality
National Coalition Against Censorship
National Freedom of Information Coalition (NFOIC)
National Immigration Law Center (NILC)
National Immigration Project of the National Lawyers Guild
National Iranian American Council (NIAC)
National LGBTQ Task Force
National Security Archive
New Sanctuary Coalition
NM Faith Coalition for Immigrant Justice
OneAmerica (Washington State)
OpenTheGovernment
Project Censored
Project On Government Oversight
Reformed Church of Highland Park
Refugee and Immigrant Center for Education and Legal Services (RAICES)
Resilient Communities, New America
Society of Professional Journalists
Sunlight Foundation
T'ruah: The Rabbinic Call for Human Rights
Unidad Latina en Acción Connecticut (ULA)
Unidad Latina en Acción NJ
Unitarian Universalist Service Committee
Washington Defender Association, Seattle WA