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Reply to
LOS ANGELES OFFICE

March 15, 2007

VIA FIRST CLASS MAIL AND FACSIMILE (202) 732-0310
FOIA Office
U.S. Immigration and Customs Enforcement
800 North Capitol St., NW
5th Floor, Suite 585
Washington, DC 20536

VIA FIRST CLASS MAIL AND FACSIMILE (571) 227-1125
Director, Departmental Disclosure & FOIA
The Privacy Office
Department of Homeland Security
Arlington, VA 22202

Re: Request under the Freedom of Information Act (FOIA)

Dear FOIA Officer:

This letter constitutes a request for records made pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 et seq., by and on behalf of the National Immigration Law Center (NILC), the American Civil Liberties Union Foundation of Southern California (ACLU-SC), and the National Immigration Project (NIP) of the National Lawyers Guild (collectively "the Requestors"). The Requestors make this request for records because of their concerns about the conditions of confinement for immigrants administratively detained under the authority of the U.S. Immigration and Customs Enforcement (ICE), formerly the Immigration and Nationality Service (INS).

The Requestors seek disclosure of any records[1] created from January 1, 2001 to the present, which were prepared, received, transmitted, collected and/or maintained by the ICE[2] or the Department of Homeland Security (DHS) relating or referring to the following:

1. All records relating or referring to visits or observations by the American Bar Association (ABA) to detention facilities holding ICE detainees, made to observe or monitor compliance with ICE National Detention Standards[3] or the conditions of confinement at these facilities, including but not limited to the reports referred to in the letter of Irena Lieberman, attached hereto as Exhibit 1.
2. All records relating or referring to visits or observations by the United Nations High Commissioner for Refugees (UNHCR) to detention facilities holding ICE detainees, made to observe or monitor conditions of confinement at these facilities, including but not limited to the reports referred to in the letter of Michael Gabaudan, attached hereto as Exhibit 2.
3. All records relating or referring to DHS' internal evaluations or inspections of detention facilities holding ICE detainees, made to observe or monitor compliance with ICE National Detention Standards or the conditions of confinement at these facilities, including but not limited to reports of the annual facility inspections, Special Assessments, and completed G-324A and G-324B forms for all detention facilities holding ICE detainees.
4. All records relating or referring to the names, numbers, and locations of facilities used to hold ICE detainees for each year. This request encompasses but is not limited to the Approved Facility Lists generated monthly or annually by the ICE or DHS that list the over-72 hour facilities regularly holding ICE detainees and the under-72 hour facilities regularly holding ICE detainees.
5. All records relating or referring to the use, deployment, or proposed expansion or reduction of staff or budget of the Detention Standards Compliance Unit of ICE in order to monitor compliance with the ICE National Detention Standards.
6. All records relating or referring to deaths of detainees while in ICE detention.
7. All records relating or referring to policies, procedures, guidelines, or criteria for requiring ICE or DHS personnel to communicate with facility officials at state, local and county jails holding ICE detainees under Inter-Governmental Service Agreements

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[1] The term "records" as used herein includes but is not limited to all records or communications preserved in electronic or written form, including but not limited to correspondence, documents, data, videotapes, audio tapes, faxes, files, e-mails, guidance, guidelines, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, technical manuals, technical specifications, training manuals, or studies.

[2] All requests for ICE records in this request should be understood to include records prepared, received, transmitted, collected and/or maintained by the former Immigration and Nationality Service (INS). All other references to ICE, ICE detainees, or the ICE National Detention Standards in this request should be understood as encompassing the former INS, INS detainees, or the INS National Detention Standards.

[3] The ICE National Detention Standards can be found at:
http://www.ice.gov/partners/dro/opsmanual/index.htm

(IGSAs), including but not limited to communication regarding detention conditions, detainee grievances, and compliance with the ICE National Detention Standards.

8. All records relating or referring to proposals to modify the ICE National Detention Standards, including proposals to create new detentions standards and proposals to codify the ICE National Detention Standards as regulations.
9. All records relating or referring to policies, procedures, guidelines, or criteria for when to terminate a contract with a facility housing ICE detainees based on violations of the ICE National Detention Standards or other problems with detention conditions.

Waiver of All Costs

We request a waiver of all costs pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) ("Documents shall be furnished without any 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"). Disclosure in this case meets the statutory criteria, and a fee waiver would fulfill Congress' legislative intent in amending FOIA. *See Judicial Watch, 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 fee waivers for noncommercial requesters.'") (citation omitted).

Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government regarding the detention of immigrants by ICE. The records requested are not sought for commercial use, and the Requestors plan to disseminate the information disclosed through print and other media to the public at no cost, and through meetings and correspondence with other advocates serving detained immigrants. If the fee waiver request is denied, while reserving our right to appeal such a decision, we will pay fees up to $25.00. If you estimate that the fees will exceed this limit, please inform us.

Limitation of Processing Fees and Waiver of Search and Review Fees

In the event that the request for waiver of all costs is denied, we request a limitation of processing fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) ("fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by . . . a representative of the news media . . .") and 28 C.F.R. § 16.11(c)(1)(i), 16.11(d)(1) (search and review fees shall not be charged to "representatives of the news media."). The information sought in this request is not sought for a commercial purpose. The Requestors include non-profit organizations serving the community who intend to disseminate the information gathered by this request to the public at no cost.

NILC is a nonprofit national legal advocacy organization whose mission is to protect and promote the rights and opportunities of low-income immigrants and their families. NILC serves as an important resource to a broad range of immigrant advocacy and community organizations, and legal service organizations. As a part of its work, NILC disseminates information to the public through electronic newsletters, news alerts, issue briefs, trainings, and other educational and informational materials. In addition, NILC also disseminates information to individuals, tax-

exempt organizations, not-for-profit groups, and members through its website, http://www.nilc.org.

The ACLU-SC is a non-profit organization dedicated to the defense of civil rights and civil liberties. As part of its work, ACLU-SC disseminates information to the public through newsletters, news briefings, "Know Your Rights" documents, and other educational and informational materials. ACLU-SC also disseminates information to individuals, tax-exempt organizations, not-for-profit groups, and members through its website, http://www.aclu-sc.org. In addition, ACLU-SC shares information with the national ACLU office. The ACLU publishes information through multiple outlets including newsletters, action alerts, videos, and other media. ACLU publications are disseminated across the country to individuals and organizations. The ACLU also publishes an electronic newsletter, which is distributed to subscribers by e-mail, and maintains a website of civil rights and civil liberties information at http://www.aclu.org.

The NIP is a legal support group specializing in defending the rights of immigrants facing deportation and incarceration. The NIP provides legal support to immigration detainees and legal resources to detainees and the general public. Through this work, the NIP has observed grave problems with detention conditions that point to the need for regulations governing living conditions of detainees. The NIP provides technical assistance to attorneys working on behalf of detainees, creates public education materials on detention and deportation, and participates in advocacy efforts to improve detention conditions for immigrants. NIP materials are also distributed via its website, http://www.nationalimmigrationproject.org.

Request for Expedited Processing

Expedited processing is warranted because there is "an urgency to inform the public about an actual or alleged federal government activity" by organizations "primarily engaged in disseminating information." 28 C.F.R. § 16.5(d)(1)(ii). This request implicates a matter of urgent public concern: namely, government policies and practices related to the monitoring of detention conditions at facilities holding ICE detainees.

In addition, expedited processing is also warranted because the information is needed immediately to prevent "the loss of substantial due process rights" to detainees. *See* 28 C.F.R. § 16.5(d)(1)(iii). There are reports that, if accurate, raise serious questions about conditions of confinement and deprivations of detainees' fundamental due process rights. Requests for information bearing upon potential Constitutional violations require an immediate response to cease present violations and prevent future violations.

Expedited processing is also warranted because the information sought relates to "a matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence." 28 C.F.R. § 16.5(d)(1)(iv). The instant request relates to possible violations of the ICE National Detention Standards by facilities housing ICE detainees as well as possible violations of the detainees' Constitutional rights while in detention.

The exceptional media interest in this issue is reflected in widespread news coverage at both the national and local level. *See, e.g.*, Anabelle Garay, ACLU Suing on Behalf of Detained Immigrant Children, The Associated Press State & Local Wire, March 6, 2007; Brandon Lausch, East Amwell Church Fighting to Improve Conditions at Elizabeth Detention Center, Courier News, March 4, 2007; Nina Bernstein, A Jail Suicide Darkens a Family's American Dream, New York Times, February 23, 2007; Rachel L. Swarns, 2 Groups Compare Immigrant Detention Centers to Prisons, New York Times, February 22, 2007; Sylvia Moreno, Detention Facility for Immigrants Criticized: Organizations Laud DHS Effort to Keep Families Together but Call Center a 'Prison-Like Institution,' Washington Post, February 22, 2007; Lisa Falkenberg, Conditions at Immigrant Detention Center Decried, The Houston Chronicle, February 22, 2007; Albor Ruiz, Immig Detention Report Ignores Serious Issues, New York Daily News, January 21, 2007; Sen. Lieberman Seeks Safe Haven, Human Treatment for Asylum Seekers held in U.S Detention Facilities, US Fed News, February 9, 2007; Spencer S. Hsu and Sylvia Moreno, Border Policy's Success Strains Resources Tent City in Texas Among Immigrant Holding Sites Drawing Criticism, Washington Post, Feb. 2, 2007; Greg Moran, Some 230 Detainees Moved from San Diego Jail following ACLU Lawsuit, Copley News Service, January 30, 2007; Samantha Henry, Abuses ignored, Group claims; But jail officials deny allegations, Herald News, January 26, 2007; American Civil Liberties Union Sues U.S. Immigration Officials, For-Profit Corrections Over Dangerous, Inhumane Housing Of Detainees, US Fed News, January 24, 2007; Detainee Report Doesn't Fix the Problem; DHS audit short on answering complaints, Herald News, January 19, 2007; Immigrants Held in U.S. Often Kept in Squalor, National Public Radio (NPR), January 18, 2007; Samantha Henry, Study Finds Jail Ignored Detainees' Complaints, The Record, January 17, 2007; Spencer S. Hsu, Immigrants Mistreated, Report Says, Washington Post, January 17, 2007; Associated Press, Inspector General Documents Health and Safety Shortcomings at U.S. Detention Facilities, January 17, 2007; Greg Moran, Audit Finds Errors at Immigration Center, San Diego Union-Tribune, January 17, 2007; Samantha Henry, Facility Lax in Treatment of Detainees, Report Finds, Herald News, January 17, 2007; Pauline Arrillaga, An ill-fated journey to America challenges immigration policies, The Associated Press State & Local Wire, July 30, 2006; Casey Woods, Krome Crowd Raises Concerns; Amid complaints from immigrants at the Krome detention center, officials acknowledged that the facility is holding about 120 more detainees than its previously stated capacity, The Miami Herald, June 30, 2006; Charles Keeshan Suicide Suit will be heard in Rockford Woman held on Immigration Violation Killed Herself in McHenry County Jail, Chicago Daily Herald, June 10, 2006; Samantha Henry, Advocates Urge Guide's Adherence; Say laws should enforce detainee guidelines, Herald News, May 15, 2006; Jeff Long, Suit Filed in Death of Jailed Woman; Family says her suicide could have been prevented, Chicago Tribune, March 16, 2006; The death of Richard Rust, National Public Radio (NPR), December 5, 2005; Noreen S. Ahmed-Ullah, Detainee Found Dead in Jail Cell; Woman was awaiting immigration hearing, Chicago Tribune, March 24, 2005.

At a minimum, should you determine that expedited processing is not warranted, while reserving our right to appeal that decision, we expect a response within the 20-day time limit set forth under 5 U.S.C. § 552(a)(6)(A)(ii).

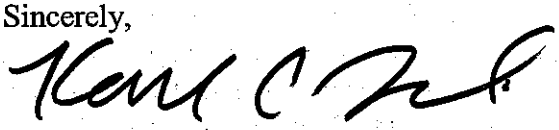
The requested records are not exempt from disclosure under FOIA. We expect that all records will be provided in complete form, and covering all of the ICE National Detention

Standards. To the extent that any requested records are marked classified, please redact such records and immediately provide us with the remaining records. If you deny this request in whole or in part, please provide a written explanation for that denial, including reference to the specific statutory exemptions upon which you rely and notify us of appeal procedures available under the law. Also, please provide all segregable portions of otherwise exempt material. Requesters reserve the right to appeal a decision to withhold any information, to deny a waiver of fees, or to deny a limitation of processing fees.

We appreciate your prompt response to this request. Please provide us responsive documents as soon as they are identified. If you have any questions regarding this request or if the request for a fee waiver is denied, please contact Karen Tumlin at 213-639-3900 x110.

Thank you in advance for your timely consideration of this request.

Sincerely,



Karen Tumlin,
Skadden Fellow/ Staff Attorney
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Los Angeles, CA 90010

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

CROSBY WILFREDO ORANTES-HERNANDEZ, et al.,

Plaintiffs,

v.

ALBERTO R. GONZALES, Attorney General of the United States, et al.,

Defendants.

No. 2:82-CV-1107MMM

DECLARATION OF IRENA LIEBERMAN

DECLARATION OF IRENA LIEBERMAN ON BEHALF OF THE AMERICAN BAR ASSOCIATION

I, Irena Lieberman, hereby declare under penalty of perjury on behalf of the American Bar Association, that the following is true and accurate to the best of my knowledge, information, and belief:

I am the Director of the American Bar Association (ABA) Commission on Immigration and I have held this position for approximately two years. I am responsible for carrying out and overseeing the work of the Commission and in this capacity, I am aware of the following facts.

The ABA coordinates visits by pro bono attorneys to facilities used for immigration detention by the former Immigration and Naturalization Service (INS) and currently, the Department of Homeland Security's (DHS) Immigration and Customs Enforcement (ICE). The ABA's delegations have visited a total of 67 facilities, including Federal Detention Centers as well as Bureau of Prisons (BOP) and local jails that contract with ICE. The ABA conducts approximately 13 delegations to facilities per year and has done so since 2001.

During these visits, attorneys interview immigration detainees and facility personnel in order to ascertain how the ICE Detention Standards, with a focus on the four legal access standards, are being implemented at the facility. These standards address, among other things, access to visitation, telephones, legal materials, and legal rights presentations. The attorneys then develop reports on their observations on behalf of the ABA, and the ABA presents the reports to ICE. These visits are conducted pursuant to an agreement with ICE that the reports and their contents will be kept confidential and will not be released to the public.

Irena Lieberman
Director, ABA Commission on Immigration

12/14/05
Date

UNHCR
United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

UNHCR
United Nations High Commissioner for Refugees
Regional Representation in Washington

1775 K Street NW
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Washington, DC 20006

Tel: (202) 296 5191
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22 November 2006

Dear Ms. Nataran:

I am writing in response to your request regarding the monitoring by the Office of the United Nations High Commissioner for Refugees (UNHCR) of United States detention facilities used by the Department of Homeland Security (DHS). You have asked a number of specific questions regarding UNHCR's monitoring activities including: UNHCR's expertise in monitoring conditions of detention worldwide, UNHCR's expertise in the sources of domestic and/or international law on which it relies, the methodology used by UNHCR in its detention monitoring, and UNHCR's goals in undertaking its monitoring activities.

UNHCR's expertise in detention conditions monitoring

The Office of UNHCR was established on 14 December 1950 by the United Nations General Assembly. UNHCR is mandated to lead and co-ordinate international action to protect refugees and resolve refugee problems worldwide. Its primary purpose is to safeguard the rights and well-being of refugees. The detention of asylum-seekers and refugees has been an issue of recurring concern for UNHCR.[1] It is UNHCR's position that, as a general matter, asylum-seekers should not be detained.[2] UNHCR routinely monitors conditions of detention for asylum-seekers and refugees around the globe. Instances of detention may include situations in which such persons are detained while undergoing refugee status determination procedures or are arbitrarily detained, often owing to their

Ranjana Nataran
Staff Attorney
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[1] This concern has been repeatedly expressed by the Executive Committee of the High Commissioner's Programme (the Executive Committee). The Executive Committee is currently made up of 70 member States. The Executive Committee meets in Geneva annually to review and approve UNHCR's programmes and budget, advise on international protection and discuss a wide range of other issues with UNHCR and its intergovernmental and non-governmental partners. The Executive Committee issues Conclusions on International Protection and has discussed the subject of detention of asylum-seekers and/or refugees in Conclusions No. 3 (XXVIII) – 1977, No. 7 (XXVIII) – 1977, No. 36 (XXXVI) – 1985, No. 44 (XXXVII) – 1986, No. 46 (XXXVIII) – 1987, No. 47 (XXXVIII) – 1987, No. 50 (XXXIX) – 1988, No. 55 (XL) – 1989, No. 65 (XLII) – 1991, No. 68 (XLIII) – 1992, No. 71 (XLIV) – 1993, No. 85 (XLIX) – 1998, No. 89 (LI) – 2000, No. 93 (LIII) – 2002.

[2] Office of the United Nations High Commissioner for Refugees, Conclusions on the International Protection of Refugees adopted by the Executive Committee of the UNHCR Programme, No. 44 (XXXVII) (1986).

illegal entry in the country of asylum. UNHCR's reference point in undertaking such monitoring is its own guidelines on the detention of asylum-seekers issued in order to provide guidance to States on the use of detention,[3] as well as relevant international human rights instruments.[4] As an agency of the United Nations charged with protecting refugees, international human rights instruments are core to UNHCR's work and an aspect of its expertise.

UNHCR's monitoring of detention facilities in the United States

The United States is a signatory to the 1967 Protocol relating to the Status of Refugees. Under Article II of the 1967 Protocol, the United States undertakes to cooperate with UNHCR in the exercise of UNHCR's functions and to facilitate UNHCR's supervision of the treaty's implementation in the United States. In its advisory capacity, UNHCR, through its Regional Representation in Washington, DC, has undertaken monitoring of facilities where asylum-seekers may be detained by DHS in order to ensure the conditions are consistent with international standards. Through its monitoring, UNHCR seeks to improve the conditions at the specific facilities visited and to identify any systemic issues which need to be addressed. In addition, UNHCR's detention monitoring informs its advice to DHS regarding the detention policies of the United States. We note that UNHCR enjoys a collaborative working relationship with DHS officials responsible for detention oversight.

UNHCR's Regional Representation in Washington has monitored the conditions of detention for asylum-seekers in the United States for over ten years. From 1993 to 2006, UNHCR visited approximately 60 facilities, with forty-eight of those facilities visited between 2001 and 2006, some of them two or more times. Facilities visited included DHS Service Processing Centers, contract detention facilities and local jails in various regions of the United States and its territories. At each facility it visits, UNHCR spends an average of five to seven hours. It typically meets with local DHS officials as well as local authorities in charge of the facility's operations to obtain an overview of the facility's population and operations. UNHCR observes all aspects of the facility including living areas, holding rooms, special housing units, libraries, recreation areas, interview rooms, medical treatment areas, clinics, and segregation areas. UNHCR asks general questions of relevant facility staff regarding such issues as detainees' access to interpreters, written materials on facility rules in different languages, telephones, library materials, attorney and family visitation, educational or other programs, medical care and recreation. UNHCR observes the physical conditions of the facility including air quality, cleanliness, availability of private bathing facilities, frequency of clean clothing and bathing opportunities and other necessary

[3] Office of the United Nations High Commissioner for Refugees, *UNHCR Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum Seekers* (Feb. 1999) (hereinafter UNHCR Detention Guidelines). These guidelines discuss conditions of detention at Guideline 10.

[4] UNHCR Detention Guidelines reference various international human rights instruments, in particular, the International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Exec. Doc. E, 95-2 (1978), 999 U.N.T.S. 171; Standard Minimum Rules for the Treatment of Prisoners, Aug. 30, 1955, by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, U.N. Doc. A/CONF/611, Annex I, E.S.C. Res. 663C, 24 U.N. ESCOR Supp. (No. 1) at 11, U.N. Doc. E/3048 (1957), amended E.S.C. Res. 2076, 62 U.N. ESCOR Supp. (No. 1) at 35, U.N. Doc. E/5988 (1977); Basic Principles for the Treatment of Prisoners, G.A. Res. 45/111, Annex, 45 U.N. GAOR Supp. (No. 49A) at 200, U.N. Doc. A/45/49 (Dec. 14, 1990); Universal Declaration of Human Rights, G.A. Res. 217A, at 71, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 12, 1948); and Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, G.A. Res. 43/173, Annex, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (Dec. 9, 1988).

elements to guarantee hygiene. UNHCR also conducts private interviews with asylum-seekers or other persons of concern being held at the facility and inquires about these same issues as well as about verbal and physical treatment.

After each visit, UNHCR provides to DHS and the Department of State detailed written reports containing its observations and recommendations based on the information gathered in the course of its monitoring visit to the facility. The reports generally reference UNHCR's guidelines and the relevant human rights instruments. While UNHCR does not evaluate whether DHS has followed its own Detention Standards, we note that, in many instances, DHS's standards are consistent with international standards and, in that respect, may be referenced in UNHCR's reports. UNHCR often conducts follow up visits to determine the impact of its recommendations by observing what changes may have occurred since UNHCR's last visit.

I hope that this information will be useful to you. Should you have further questions about this matter, please do not hesitate to contact us.

Sincerely yours,

Michel Gabaudan
Regional Representative