

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

NATIONAL IMMIGRATION PROJECT,
1763 Columbia Rd. NW, Suite 175 #896645
Washington, DC 20009,

Plaintiff

v.

U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT,
500 12th Street SW,
Washington, DC 20536,

Defendant.

Civil Action No. _____

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

1. This is an action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. Plaintiff National Immigration Project seeks records from U.S. Immigration and Customs Enforcement ("ICE") relating to policy guidance regarding the interpretation and implementation of the Laken Riley Act ("LRA").

2. Plaintiff requested records reflecting policies, written directives, memoranda, training materials, presentations, or other written guidance describing how ICE interprets the LRA's mandatory detention provisions.

3. Disclosure of the requested information will address the public's concern about how the LRA is being implemented by ICE and contribute significantly to the public's

understanding of United States' policies and practices with respect to mandatory immigration detention.

4. The Laken Riley Act (Pub. L. 119-1, 139 Stat. 3) significantly expands the mandatory detention of noncitizens in removal proceedings. Since its passage in January 2025, the Act's implementation has become matters of urgent public concern. ICE's interpretation of the Act has profound implications for the due process rights of noncitizens and involves massive expenditures of public resources. The Act and the government's subsequent enforcement directives have been the subject of widespread national news reporting.¹

Jurisdiction and Venue

5. This Court has subject-matter jurisdiction over this action and personal jurisdiction over the parties under 5 U.S.C. § 552, et seq. (FOIA statute), 28 U.S.C. § 1331 (federal question), and 28 U.S.C. §§ 2201–2202 (Declaratory Judgment Act).

6. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

Parties

7. Plaintiff is a national non-profit that provides technical and litigation support to immigrant communities, legal practitioners, and advocates seeking to advance the rights of noncitizens. The National Immigration Project provides training to the bar on immigration consequences of criminal conduct, is the author of four treatises on immigration law published by Thomson Reuters, and pursues litigation that aims to extend the rights of all noncitizens in the

¹ See, e.g., Adriana Gomez Licon, *What Is the Laken Riley Act? A Look at the First Bill Trump Just Signed*, AP News, Jan. 29, 2025, <https://apnews.com/article/what-is-laken-riley-act-trump-immigration-2667d626139ddf5a16d1533516eab18f>; Ximena Bustillo, *ICE Estimates It Would Need \$26.9 Billion to Enforce GOP Deportation Bill*, NPR, Jan. 16, 2025, <https://www.npr.org/2025/01/16/nx-s1-5262921/laken-riley-act-deportation-ice>; Karoun Demirjian, *Laken Riley Act Is an Effort to Target Migrants Accused of Crimes*, N.Y. Times, Jan. 29, 2025, <https://www.nytimes.com/article/laken-riley-act-explained.html>

United States, regardless of immigration status. In addition, the National Immigration Project's staff present, and regularly publish practice advisories, on immigration law topics, which are disseminated to its members as well as to a large public audience through its website. Plaintiff also regularly publishes FOIA disclosures to the media and the public through its website.

8. Defendant ICE is a component agency of the Department of Homeland Security ("DHS"), a department of the Executive Branch of the United States. ICE is an agency within the meaning of 5 U.S.C. § 552(f). ICE has possession, custody, and control of records responsive to Plaintiff's FOIA request.

Statutory Framework

9. FOIA is designed to promote transparency and open government by providing any person a right to request federal agency records. 5 U.S.C. § 552(a)(3)(A).

10. The FOIA statute imposes strict deadlines on agencies to provide a response to FOIA requests. 5 U.S.C. § 552(a)(6)(A).

11. Agencies must comply with a FOIA request by issuing a determination within twenty working days after receipt of the request. 5 U.S.C. § 552(a)(6)(A)(i).

12. Agencies have the burden "to act in good faith and exercise due diligence to make records available as quickly as possible, or invoke an exemption, and to improve their records management systems to enable prompt responses without routine judicial involvement." *Jud. Watch, Inc. v. United States Dep't of Homeland Sec.*, 895 F.3d 770, 783 (D.C. Cir. 2018).

13. An agency determination under FOIA "must at least inform the requester of the scope of the documents that the agency will produce, as well as the scope of the documents that the agency plans to withhold under any FOIA exemptions." *Citizens for Responsibility & Ethics in Wash. v. Fed. Election Comm'n*, 711 F.3d 180, 186 (D.C. Cir. 2013). An acknowledgement of

receipt noting that the request is being processed is not a determination under the FOIA statute because “it is not enough that, within the relevant time period, the agency simply decide to later decide.” *Id.*

14. An agency must timely notify requestors of its determination and the reasons for it and, in the case of an adverse determination, the right to administratively appeal. 5 U.S.C. § 552(a)(6)(B)(ii).

15. FOIA requestors are deemed to have exhausted their administrative remedies if the agency does not comply with the statute’s time limits. 5 U.S.C. § 552(a)(6)(C)(i).

Factual Background

16. On April 7, 2025, Plaintiff submitted a FOIA request to ICE seeking the following:

“A copy of all policies, written directives, memoranda, training materials, presentations, or other written guidance, including emails, that were created, modified, sent, received, or collected by ICE describing how ICE interprets the Laken Riley Act’s mandatory detention provisions, including regarding the retroactivity of said provisions.”

Plaintiff also requested a fee waiver and expedited processing. A copy of this request is attached as **Exhibit A**.

17. By email dated April 11, 2025, ICE acknowledged receipt of the FOIA request, assigned it FOIA Case Number 2025-ICFO-30387, and denied the request for a fee waiver and expedited processing. A copy of this email is attached as **Exhibit B**.

18. By email dated April 28, 2025, ICE issued a final response stating that it had conducted a search of the ICE Office of Regulatory Affairs and Policy (ORAP) and that no records responsive to the request were found. A copy of this email is attached as **Exhibit C**.

19. On July 24, 2025, Plaintiff submitted a timely administrative appeal challenging the adequacy of the unreasonably narrow search, the “no records” determination, and the denial of the fee waiver. A copy of this appeal is attached as **Exhibit D**.

20. By letter dated August 21, 2025, ICE adjudicated the appeal, which was assigned tracking number 2025-ICAP-00351. ICE determined that “new search(es) or, modifications to the existing search(es), could be made.” ICE remanded the appeal to the ICE FOIA Office for processing and re-tasking to the appropriate agency offices to obtain responsive documents. ICE stated that “[t]he ICE FOIA Office will respond directly to you.” A copy of this letter is attached as **Exhibit E**.

21. More than 20 working days have passed since Defendant remanded the request on August 21, 2025. Defendant has failed to issue a further determination or produce any records in response to the remanded search instructions.

22. Because Defendant has failed to timely respond to Plaintiff’s remanded FOIA request, Plaintiff has constructively exhausted its administrative remedies.

Plaintiff’s Claims for Relief

First Claim for Relief (Wrongful Withholding of Records Responsive to Plaintiff’s FOIA Request)

23. Plaintiff repeats and re-alleges the foregoing paragraphs.

24. In its April 7, 2025 FOIA request, Plaintiff properly asked for records within the possession, custody, and control of ICE.

25. Defendant has failed to conduct a timely and adequate search in response to Plaintiff’s FOIA request following the appellate remand.

26. Defendant is wrongfully withholding records responsive to Plaintiff's FOIA request.

27. By failing to timely release all requested records in full to Plaintiff, Defendant is in violation of FOIA.

28. Plaintiff is therefore entitled to injunctive and declaratory relief requiring immediate processing and disclosure of the requested records.

**Second Claim for Relief
(Failure to Grant Request for Fee Waiver)**

29. Plaintiff repeats and re-alleges the foregoing paragraphs.

30. Under 5 U.S.C. § 552(a)(4)(A)(iii), ICE is required to waive or reduce fees associated with a FOIA request where "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."

31. ICE's disclosure of the requested information would be in the public interest. It would likely contribute significantly to the public understanding of how the LRA is being implemented by ICE and to the public's understanding of United States' policies and practices with respect to mandatory immigration detention.

32. Plaintiff is a nonprofit organization and does not seek the requested records for a commercial use or primarily commercial interest.

33. By failing to grant Plaintiff's request for a fee waiver, ICE has denied Plaintiff rights under 5 U.S.C. § 552(a)(4)(A)(iii) and its own regulations.

Requested Relief

WHEREFORE, Plaintiff respectfully requests that this Court:

- (1) Order Defendant to immediately and fully process Plaintiff's FOIA request and disclose all non-exempt records to Plaintiff;
- (2) Declare unlawful Defendant's failure to grant Plaintiff's request for a fee waiver;
- (3) Issue a declaration that Plaintiff is entitled to immediate processing and disclosure of the requested records;
- (4) Enjoin Defendant from assessing fees or costs for the processing of Plaintiff's FOIA request;
- (5) Compel Defendant to conduct a full, adequate, and expeditious search for records responsive to Plaintiff's FOIA request;
- (6) Provide for expeditious proceedings in this action;
- (7) Retain jurisdiction of this action to ensure no agency records are wrongfully withheld;
- (8) Award Plaintiff costs and reasonable attorneys' fees in this action; and
- (9) Grant such other relief as the Court may deem just and proper.

Date: May 5, 2026

Respectfully Submitted,

/s/ Khaled Alrabe
Khaled Alrabe
National Immigration Project
Phone: 510-679-3994
Bar ID: NY0507
1763 Columbia Road NW,
Suite 175 #896645,
Washington, DC 20009

Exhibit A

April 7, 2025

Sent via ICE Secure Release Online Portal

U.S. Immigration & Customs Enforcement
500 12th Street SW, Stop 5009
Washington, DC 20536-5009
Phone: (866) 633-1182

RE: Expedited Freedom of Information Act Request for ICE Memorandum on Laken Riley Act Implementation

Dear FOIA Officer:

The National Immigration Project submits this request for records pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, to obtain Immigration and Customs Enforcement (ICE) policy guidance regarding the implementation of the Laken Riley Act, Pub L. 119-1, 139 Stat. 3.

The National Immigration Project seeks a fee waiver, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), because the records sought will contribute to the public's understanding of ICE's interpretation of a new law expanding the mandatory detention of noncitizens in removal proceedings, and release of the information is not in its commercial interest.

I. Records Requested

The National Immigration Project requests records¹ reflecting the following:

- **A copy of all policies, written directives, memoranda, training materials, presentations, or other written guidance, including emails, that were created, modified, sent, received, or collected by ICE describing how ICE interprets the Laken Riley Act's mandatory detention provisions, including regarding the retroactivity of said provisions.**

The National Immigration Project asks that any records that exist in electronic form be provided electronically in their native file format, if possible. Alternatively, the National Immigration Project asks that records be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency's possession, and that the records be provided in

¹ The term "records" as used herein includes all records or communications preserved in electronic or written form, including but not limited to correspondence, documents, data, videotapes, audiotapes, e-mails, faxes, files, guidance, guidelines, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, manuals, technical specifications, training manuals, and studies. This includes records kept in written form, electronic format on computers and/or other electronic storage devices, electronic communications and/or videotapes.

separate, *Bates*-stamped files. Please produce with the records any metadata and load files. If codes are employed, please also produce any documents in your possession explaining the codes employed, and what they signify.

If under applicable law any of the information requested is considered exempt, please describe in detail the nature of the information withheld, the specific exemption or privilege upon which the information is withheld, and whether the portions of withheld documents containing non-exempt or non-privileged information have been provided. The National Immigration Project seeks the release of all portions of otherwise exempt material that can be segregated.

The Requestor

The National Immigration Project is a national 501(c)(3), tax-exempt, nonprofit organization. Its members and supporters include attorneys, legal workers, law students, judges, jailhouse lawyers, grassroots advocates, community organizations, and people who have faced detention or deportation and their loved ones. The National Immigration Project provides technical and litigation assistance, participates in impact litigation, provides legal training to the bar and the bench, and regularly publishes practice advisories and community resources on immigration law topics.

II. Request for Fee Waiver

The National Immigration Project is an organization that works on behalf of immigrant communities and asks that the agency waive all fees associated with this request, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 6 CFR § 5.11(k). The 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.” 5 U.S.C. § 552(a)(4)(A)(iii). The National Immigration Project merits a fee waiver under the FOIA statute as well as under the factors set forth in the DHS FOIA regulations, 6 CFR § 5.11(k).

1. The records requested concern government operations and activities. 6 CFR § 5.11(k)(2)(i).

As described above, the requested records concern ICE’s custody determinations, clearly a government activity.

2. The records requested will contribute significantly to a public understanding of government operations and activities. 6 CFR § 5.11(k)(1)(i), (k)(2)(ii)-(iv).

Disclosure of the requested information will contribute significantly to the public’s understanding of how the Laken Riley Act is being implemented by ICE. The information contained in the requested records—which is not currently available to the public—describes to which noncitizens ICE believes the newly enacted Laken Riley Act applies. The requested records would thus shed light on a significant U.S. government operation that the public is currently in the dark about.

The National Immigration Project has the capacity and intent to disseminate widely the requested information to the public. *See Judicial Watch, Inc. v. Rossoti*, 326 F.3d 1309, 1301 (D.C. Cir. 2003) (finding a fee waiver appropriate when the requester explained how and to whom it would disseminate the information it received). The National Immigration Project will review, analyze, and/or summarize the information obtained through this FOIA. In addition, the National Immigration Project's staff will publish related written materials to be shared with the public, organizational members, and the academic community. The National Immigration Project will make the information available through its website, which is accessible by any member of the public. In 2024, the National Immigration Project received 374,892 page views with the top resource garnering 1,397 views.

3. The National Immigration Project has no commercial interest in the disclosure. 6 CFR § 5.11(k)(1)(ii), (k)(3).

As a tax-exempt, nonprofit educational and charitable organization, the National Immigration Project has no commercial interest in, and does not stand to gain financially from, the information requested. The National Immigration Project distributes written materials through our website, www.nipnlg.org. The National Immigration Project also shares information through public and educational appearances. The requested information is sought for the purpose of disseminating it to members of the public and the organization's members so that they gain an understanding of ICE's custody determinations under the recently enacted Laken Riley Act. The requested information is not for the purpose of commercial gain. Congress intended the FOIA fee waiver provision to encourage "open and accountable government." *Citizens for Responsibility and Ethics in Washington v. U.S. Dep't. of Educ.*, 593 F. Supp. 2d 261, 271 (D.D.C. 2009). Therefore, agencies should "apply the public-interest waiver liberally." *Conklin v. United States*, 654 F. Supp. 1104, 1005 (D. Colo. 1987).

Please inform us if the charges for this FOIA production will exceed \$25.00.

III. Request for Expedited Processing

The National Immigration Project requests expedited processing of the above Request pursuant to applicable law and regulations. There is a "compelling need" for these records, as defined in the statute and regulations, because the information requested is urgently needed by an organization primarily engaged in disseminating information in order "to inform the public about actual or alleged Federal Government activity." *See* 5 U.S.C. § 552(a)(6)(E)(v)(II); *see also* 6 C.F.R. § 5.5(e)(1)(ii). In addition, the records and information sought relate to a "loss of substantial due process rights." *Id.*

The records requested herein concern ICE's implementation of the Laken Riley Act's mandatory detention provision, which are a matter of current exigency to the American public. *See Al-Fayed v. CIA*, 254 F.3d 300, 310 (D.C. Cir. 2001). The below non-exhaustive list of recent news articles about the Laken Riley Act further illustrate that the records are urgently needed to inform the public about this matter. *See* 6 C.F.R. § 5.5(e)(3) ("The existence of numerous articles published on a given subject can be helpful to establishing the requirement that there be an 'urgency to inform' the public on the topic."); *see also Amer. Civil Liberties Union v. Dept. of Justice*, 321 F.

Supp. 2d 24, 29 (D.D.C. 2004) (noting that numerous newspaper articles on the topic requested justify expedited processing of the request):

- Adriana Gomez Licon, *What Is the Laken Riley Act? A Look at the First Bill Trump Just Signed*, AP News, Jan. 29, 2025, <https://apnews.com/article/what-is-laken-riley-act-trump-immigration-2667d626139ddf5a16d1533516eab18f>
- Max Matza, *Congress Passes Laken Riley Act in Early Win for Trump on Immigration*, BBC News, Jan. 22, 2025, <https://www.bbc.com/news/articles/cj482l0kw7qo>
- Ximena Bustillo, *ICE Estimates It Would Need \$26.9 Billion to Enforce GOP Deportation Bill*, NPR, Jan. 16, 2025, <https://www.npr.org/2025/01/16/nx-s1-5262921/laken-riley-act-deportation-ice>
- Will Weissert, *While Signing Laken Riley Act, Trump Says He'll Send "Worst Criminal Aliens" to Guantanamo*, AP News, Jan. 29, 2025, <https://apnews.com/article/trump-signs-laken-riley-act-immigration-crackdown-30a34248fa984d8d46b809c3e6d8731a>
- Karoun Demirjian, *Laken Riley Act Is an Effort to Target Migrants Accused of Crimes*, N.Y. Times, Jan. 29, 2025, <https://www.nytimes.com/article/laken-riley-act-explained.html>
- Clare Foran, Haley Talbot & Priscilla Alvarez, *Congress Passes Immigrant Detention Bill in First Legislative Win for Trump*, CNN, Jan. 22, 2025, <https://www.cnn.com/2025/01/22/politics/laken-riley-act-house-immigrant-detention-vote/index.html>
- Laura Mannweiler, *What Is the Laken Riley Act? And What Did Al Green Do? Answering Your Questions About Trump's Speech*, U.S. News & World Report, Mar. 5, 2025, <https://www.usnews.com/news/politics/articles/2025-03-05/what-is-the-laken-riley-act-and-what-did-al-green-do-your-trump-speech-questions-answered>

IV. Address for Production

Thank you for your consideration of and prompt response to this request. We look forward to your response to our request within ten (10) business days, as required by statute. 5 U.S.C. § 552(a)(6)(E). Please furnish records as soon as they are identified via email to rebecca@nipnlg.org and by mail to:

Rebecca Scholtz
National Immigration Project
1763 Columbia Road NW, Ste 175 #896645
Washington, DC 20009

If you have any questions regarding this request, please contact me at rebecca@nipnlg.org.

Sincerely,



Rebecca Scholtz
Senior Staff Attorney
National Immigration Project

Exhibit B



Rebecca Scholtz <rebecca@nipnlg.org>

ICE FOIA 2025-ICFO-30387

ice-foia@ice.dhs.gov <noreply@securerelease.us>
Reply-To: ice-foia@ice.dhs.gov
To: rebecca@nipnlg.org

Fri, Apr 11, 2025 at 3:13 PM

04/11/2025

Rebecca Scholtz
1763 Columbia Road NW
Washington, District of Columbia 20009

RE: ICE FOIA Case Number 2025-ICFO-30387

Dear Requester:

This acknowledges receipt of your Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), dated 4/7/2025, your request for a waiver of all assessable FOIA fees, and your request for expedited treatment. Your request was received in this office on 4/7/2025. Specifically, you have requested records pertaining to a copy of all policies, written directives, memoranda, training materials, presentations, or other written guidance, including emails, that were created, modified, sent, received, or collected by ICE describing how ICE interprets the Laken Riley Act's mandatory detention provisions, including regarding the retroactivity of said provisions. .

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're able to narrow the scope of your request please contact our office. Narrowing the scope may speed up the search process. We will make every effort to comply with your request in a timely manner.

Your request for expedited treatment is hereby denied.

Under the DHS FOIA regulations, expedited processing of a FOIA request is warranted if the request involves "circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual," 6 C.F.R. § 5.5(e)(1)(i), or "an urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information," 6 C.F.R. § 5.5(e)(1)(ii). Requesters seeking expedited processing must submit a statement explaining in detail the basis for the request, and that statement must be certified by the requester to be true and correct. 6 C.F.R. § 5.5(e)(3).

Your request for expedited processing is denied because you do not qualify for either category under 6 C.F.R. § 5.5(e)(1). You failed to demonstrate a particular urgency to inform the public about the government activity involved in the request beyond the public's right to know about government activity generally. Your letter was conclusory in nature and did not present any facts to justify a grant of expedited processing under the applicable standards.

After thoroughly reviewing your letter and request for fee waiver, I have determined that you have not presented a convincing argument that you and/or your organization is entitled to a blanket waiver of applicable fees.

The DHS FOIA Regulations at 6 CFR § 5.11(k)(2) set forth six factors to examine in determining whether the applicable legal standard for a fee waiver has been met. We will consider these factors in our 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.

As a requester, you bear the burden under FOIA of showing that the fee waiver requirements have been met. Based on my review of your 4/7/2025 letter and for the reasons stated herein, I have determined that your fee waiver request is deficient because your request did not satisfy factors 1, 2, 3, 4, 5 and 6. Since your request for a fee waiver has failed to satisfy each of the required factors, I am denying your fee waiver request.

Provisions of the FOIA 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 non-commercial requesters. As a non-commercial requester, you will be charged 10 cents per page for duplication; the first 100 pages are free, as are the first two hours of search time, after which you will pay the per quarter-hour rate (\$4.00 for clerical personnel, \$7.00 for professional personnel, \$10.25 for managerial personnel) of the searcher. 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. If you deem the decision to deny expedited treatment and fee waiver for your request an adverse determination, you have the right to appeal. Should you wish to do so, you must send your appeal and a copy of this letter, within 90 days of the date of this letter following the procedures outlined in the DHS FOIA regulations at 6 C.F.R. Part 5 § 5.5(e)(2). You may submit your appeal electronically at GILDFOIAAppeals@ice.dhs.gov or via regular mail to:

U.S. Immigration and Customs Enforcement
Office of the Principal Legal Advisor
U.S. Department of Homeland Security
500 12th Street, S.W., Mail Stop 5900
Washington, D.C. 20536-5900

Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at www.dhs.gov/foia.

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.

If you have any questions please contact FOIA Public Liaison Daniel Edgington, at (866) 633-1182 or 500 12th St, SW Stop 5009 Washington, DC 20536-5009. Additionally, you have a 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.

Your request has been assigned reference number 2025-ICFO-30387. Please use this number in future correspondence.

Sincerely,

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

Exhibit C



Rebecca Scholtz <rebecca@nipnlg.org>

ICE FOIA Case Number 2025-ICFO-30387

ice-foia@ice.dhs.gov <noreply@securerelease.us>
Reply-To: ice-foia@ice.dhs.gov
To: rebecca@nipnlg.org

Mon, Apr 28, 2025 at 11:04 AM

Rebecca Scholtz
1763 Columbia Road NW
Washington, District of Columbia 20009

RE: ICE FOIA Case Number 2025-ICFO-30387

Dear Requester:

This letter is the final response to your Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), dated 4/7/2025. You have requested records pertaining to a copy of all policies, written directives, memoranda, training materials, presentations, or other written guidance, including emails, that were created, modified, sent, received, or collected by ICE describing how ICE interprets the Laken Riley Act's mandatory detention provisions, including regarding the retroactivity of said provisions. .

ICE has considered your request under both the FOIA, 5 U.S.C. § 552, and the Privacy Act, 5 U.S.C. § 552a. Information about an individual that is maintained in a Privacy Act system of records may be accessed by that individual unless the agency has exempted the system of records from the access provisions of the Privacy Act.

ICE has conducted a search of the ICE Office of Regulatory Affairs and Policy (ORAP) for records responsive to your request and no records responsive to your request were found.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 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.

While an adequate search was conducted, you have the right to appeal this determination that no records exist within the above mentioned ICE office(s). Should you wish to do so, you must send your appeal and a copy of the original response letter, within 90 days of the date of the letter following the procedures outlined in the DHS FOIA regulations at 6 C.F.R. Part 5 § 5.8. You may submit your appeal electronically at GILDFOIAAppeals@ice.dhs.gov or via regular mail to:

U.S. Immigration and Customs Enforcement
Office of the Principal Legal Advisor
U.S. Department of Homeland Security
500 12th Street, S.W., Mail Stop 5900
Washington, D.C. 20536-5900

Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at www.dhs.gov/foia.

Provisions of FOIA allow DHS to charge for processing fees, up to \$25, unless you seek a waiver of fees. In this instance, because the cost is below the \$25 minimum, there is no charge.

If you have any questions please contact FOIA Public Liaison Daniel Edgington at (866) 633-1182 or [500 12th St., SW](mailto:500.12th.St.,SW) Stop 5009 Washington, DC 20536-5009 and refer to your tracking number. 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.

Sincerely,

Megan Davis
Deputy FOIA Officer, Operations

Exhibit D

**NATIONAL
IMMIGRATION
PROJECT**

Lawyers for the Movement

July 24, 2025

Sent via Email

U.S. Immigration and Customs Enforcement
Office of the Principal Legal Advisor
U.S. Department of Homeland Security
500 12th Street, S.W., Mail Stop 5900
Washington, D.C. 20536-5900

**Re: Freedom of Information Act Appeal
ICE FOIA Case Number 2025-ICFO-30387**

Dear FOIA Appeals Officer,

This letter constitutes an administrative appeal under the federal Freedom of Information Act (FOIA), 5 U.S.C. § 552, on behalf of the National Immigration Project.

On April 7, 2025, we submitted a FOIA request to Immigration and Customs Enforcement (ICE) seeking policy guidance regarding the implementation of the Laken Riley Act. *See* Exhibit A. By email dated April 11, 2025, ICE acknowledged receipt and denied the accompanying requests for a fee waiver and expedited processing. *See* Exhibit B. On April 28, 2025, ICE issued a final response stating that “ICE has conducted a search of the ICE Office of Regulatory Affairs and Policy (ORAP) for records responsive to your request and no records responsive to your request were found.” *See* Exhibit C.

We are writing to appeal both (I) the “no records” determination and (II) the denial of the fee waiver.

I. Appeal of “No Records” Determinations

ICE’s final response indicates that the only component searched was the Office of Regulatory Affairs and Policy (ORAP), and that no responsive records were located. This search is unreasonably narrow and not reasonably calculated to uncover all relevant documents, as required under FOIA. *See, e.g., Ancient Coin Collectors Guild v. U.S. Dep’t of State*, 641 F.3d 504, 514 (D.C. Cir. 2011) (“An agency is required to perform more than a perfunctory search in response to a FOIA request. *It fulfills its obligations under FOIA if it can demonstrate beyond material doubt that its search was reasonably calculated to uncover all relevant documents.*”) (emphasis added) (citations and quotation marks omitted).

The request sought policies, written directives, memoranda, training materials, presentations, or other written guidance, including emails, describing how ICE interprets the Laken Riley Act’s

mandatory detention provisions. This includes internal guidance or materials addressing whether the Act is being applied retroactively.

Given the scope of the request, the agency should have conducted a search beyond ORAP. Other components that are reasonably likely to maintain responsive records include: Office of the Principal Legal Advisor (OPLA); Enforcement and Removal Operations (ERO); the Basic Immigration Enforcement Training Program; and ICE field offices and chief counsel offices.

Additionally, the request expressly sought emails. There is no indication that ICE searched email systems or databases used to circulate legal or policy guidance internally.

For these reasons, ICE's search was not reasonably calculated to uncover all responsive records and a new broader search must be conducted.

II. Appeal of Fee Waiver Denial

ICE's denial of our fee waiver request under 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k) is contrary to law.

FOIA provides that fees shall be waived when:

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.
5 U.S.C. § 552(a)(4)(A)(iii)

This standard is echoed in 6 C.F.R. § 5.11(k)(1).

ICE's April 11, 2025, email asserts without any substantive analysis beyond listing "six factors" in 6 C.F.R. § 5.11(k), that we failed to meet our burden of demonstrating eligibility for a waiver. That is incorrect.

The "six factors" listed in § 5.11(k)(2) are means of evaluating the two overarching statutory elements: (1) contribution to public understanding, and (2) absence of a commercial interest. ICE's email cites no caselaw, regulation, or statute that requires a requester to "satisfy all six factors." Exhibit B. Crucially, the FOIA statute "is to be liberally construed in favor of waivers for noncommercial requestors." *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) ((quoting 132 Cong. Rec. S14298 (Sept. 30, 1986) (statement of Sen. Leahy))).

In our initial letter, we set forth with reasonable specificity why the records sought would significantly contribute to public understanding and are not sought for a commercial purpose. *See* Exhibit A. That alone satisfies the standard.

Moreover, even under ICE's "six factor" framework, our initial letter met all of factors:

1. The records concern government operations. The request seeks internal guidance on how ICE is implementing a newly enacted federal statute. This clearly involves the operations and activities of the government.
2. Disclosure is likely to contribute to public understanding. The materials requested are not otherwise available and would shed light on how ICE interprets and applies the Laken Riley Act, including its retroactivity. This is a matter of significant legal, policy, and public interest.
3. The understanding will be shared with a broad audience. The National Immigration Project is a national nonprofit with a demonstrated ability to widely disseminate information. In 2024, our website received over 374,000 page views, and our legal resources are regularly used by attorneys, advocates, academics, and affected community members.
4. The contribution will be significant. ICE's implementation of the Laken Riley Act, especially with respect to its mandatory detention mandate and any retroactive application, raise substantial legal questions. Clarifying ICE's position will provide a meaningful public benefit.
5. No commercial interest exists. The National Immigration Project is a § 501(c)(3) nonprofit organization. We do not sell access to FOIA materials or profit from publication of FOIA records. There is no commercial interest in the records sought.
6. As stated above, no commercial interest exists.

ICE's summary conclusion that our request does not warrant a fee waiver is not supported by the record or the law and should be reversed.

For the reasons above, we ask ICE conduct an adequate search across all appropriate components, including email systems, and grant a public interest fee waiver.

Thank you for your consideration. If you have any questions regarding this appeal, please contact us at khaled@nipnlg.org or rebecca@nipnlg.org.

Sincerely,
Khaled Alrabe



Senior Staff Attorney
National Immigration Project

Exhibit E

U.S. Department of Homeland Security
500 12th Street, SW
Washington, D.C. 20536



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

August 21, 2025

Khaled Alrabe
National Immigration Project
1763 Columbia Rd. NW, Suite 175 #896645
Washington, DC 20009

RE: 2025-ICAP-00351, 2025-ICFO-30387

Dear Mr. Alrabe:

This is in response to your email dated and received on July 24, 2025, appealing the U.S. Immigration and Customs Enforcement's (ICE) Freedom of Information Act (FOIA) Office's response to your FOIA request dated April 7, 2025, seeking records pertaining to the following:

A copy of all policies, written directives, memoranda, training materials, presentations, or other written guidance, including emails, that were created, modified, sent, received, or collected by ICE describing how ICE interprets the Laken Riley Act's mandatory detention provisions, including regarding the retroactivity of said provisions.

By letter dated April 11, 2025, the ICE FOIA Office advised you that your request for a fee waiver was denied. In a subsequent letter, dated April 28, 2025, the ICE FOIA Office advised you that a search for records had been conducted but that no records responsive to your request were found. In your most recent correspondence, you appealed both the ICE FOIA Office's decision regarding your fee waiver request, and the adequacy of the search.

The ICE FOIA Office is not currently assessing fees. As a result, the agency is not making a determination on the assessment of fees.

With respect to the adequacy of ICE's search, after a complete review of the administrative record, ICE has determined that new search(es) or, modifications to the existing search(es), could be made. We are therefore remanding your appeal to the ICE FOIA Office for processing and re-tasking to the appropriate agency/office(s) to obtain any responsive documents. The ICE FOIA Office will respond directly to you.

Should you have any questions regarding this appeal decision, please contact ICE at ice-foia@ice.dhs.gov. In the subject line of the email please include the word "appeal," your appeal number, which is **2025-ICAP-00351**, and the FOIA case number, which is **2025-ICFO-30387**.

Khaled Alrabe

Page 2

Sincerely,

/s/ Erick G. Cipau

for Sara Jazayeri
Chief
Government Information Law Division
ICE Office of the Principal Legal Advisor
U.S. Department of Homeland Security

cc: The ICE FOIA Office