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Via Email to [ICE-FOIA@dhs.gov](mailto:ICE-FOIA@dhs.gov)  
U.S. Immigration and Customs Enforcement  
Freedom of Information Act Office

## **Re: FOIA Request Regarding Abuses at Irwin County Detention Center**

Al Otro Lado (“AOL”) submits this letter as a request for information under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, *et seq.*, to U.S. Immigration & Customs Enforcement (“ICE”). AOL also seeks a fee waiver, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k), and expedited processing, pursuant to 5 U.S.C. § 552(a)(6)(E) and DHS regulations at 6 C.F.R. § 5.5(e). The justifications for the fee waiver and expedited processing are set out in detail following the request.

### **I. REQUEST**

AOL requests the following records:<sup>1</sup>

1. Any and all records including relating to use of force by employees of ICE or Lasalle Corrections on immigrant detainees at Irwin County Detention Center (“ICDC”) on April 21, 2020.
2. Any reports or documents regarding use of force at ICDC on April 21, 2020, including but not limited to
  - a. All Significant Incident Reports (“SIR”)
  - b. All reports, memoranda, and incident reports sent to the Atlanta ICE Field Office or its Director pursuant to any relevant ICE national detention standard.
  - c. All audio, visual, or audiovisual recordings sent to the Atlanta ICE Field Office or its Director pursuant to any relevant ICE national detention standard.
3. Any communication sent to or from the Atlanta ICE Field Office regarding any use of force incident at ICDC on April 21, 2020. This search should contain, but should not be limited to, a keyword search or emails and instant messages for the following terms: “use of force” AND “Irwin” OR “ICDC” between April 20, 2021 and the present. A search

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<sup>1</sup> **The term “records” as used herein** includes, but is not limited to: communications, correspondence, directives, documents, data, videotapes, audiotapes, e-mails, faxes, files, guidance, guidelines, standards, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, manuals, technical specifications, training materials, and studies, including records kept in written form, or electronic format on computers and/or other electronic storage devices, electronic communications and/or videotapes, as well as any reproductions thereof that differ in any way from any other reproduction, such as copies containing marginal notations. **This request encompasses communications to or from facility ICE or contract employees’ personal accounts** on platforms such as WhatsApp, Signal, or Skype if they used such accounts to communicate regarding the requested topics and/or the general topic of the FOIA request.

should also be done for any communications between the Atlanta ICE Field Office and the ICE Office of Professional Responsibility, the Department of Homeland Security Office of the Inspector General, the Department of Security Office of Civil Rights and Civil Liberties ("CRCL") and the Federal Bureau of Investigation regarding any use of force incident on April 21, 2020.

4. All video, audio, or audiovisual recordings of ICDC's medical unit and C-1 unit on April 21, 2020 between 12 p.m. and 10 p.m.
5. Documents identifying the persons present in ICDC's medical unit and C-1 unit on April 21, 2020 between 12 p.m. and 10 p.m.
6. Any communications to and from employees of the Atlanta ICE Field Office containing the search terms "Yauro", "Debbie Nathan", "getting out", or "gettingout".
7. Any Form I-885 or equivalent form as described in 2011 PBNDS 2011 2.12(V)(a)(2) relating to any segregation decisions at ICDC between April 21, 2020 and April 26, 2020.
8. Any records relating to any disciplinary proceedings held at ICDC on April 26, 2020.

## **II. REQUEST FOR WAIVER OF FEES**

AOL requests that the agency waive all fees associated with this FOIA request because disclosure of the information 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) In addition, AOL has the ability to widely disseminate the requested information. *See Judicial Watch v. Rossotti*, 326 F.3d 1309 (D.C. Cir. 2003) (finding a fee waiver appropriate when the requester explained, in detailed and non-conclusory terms, how and to whom it would disseminate the information it received).

### **A. Disclosure of the Information Is in the Public Interest**

Disclosure of the requested information will contribute significantly to public understanding of government operations and activities as they relate to the health and wellbeing of detained immigrants. The records sought by AOL's FOIA request are critically important to inform the general public in understanding how the U.S. government treats people in its custody. This information is important in aiding public debate over the extent to which funding ICE detention is a good use of the government's tax revenues.<sup>2</sup> The public would also benefit from information about operations of the Atlanta ICE Field Office, which oversees the operation ICDC by private prison company Lasalle Corrections. Detention centers within the Atlanta ICE Field Office's area of responsibility such as ICDC and Stewart Detention Center have

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<sup>2</sup> See e.g. *Chairwoman Roybal-Allard Statement at Hearing on FY 2021 ICE Budget Request*, Mar. 11, 2020, House Committee on Appropriations, <https://appropriations.house.gov/news/statements/chairwoman-roybal-allard-statement-at-hearing-on-fy-2021-ice-budget-request>; Julian Resendiz, *Activists want Biden to defund ICE, overhaul migrant detention policies*, Border Report, Jan. 22, 2021, <https://www.borderreport.com/hot-topics/immigration/activists-want-biden-to-defund-ice-overhaul-migrant-detention-policies/>; Dara Lind, "Abolish ICE," *explained*, Vox, Jun. 28, 2018, <https://www.vox.com/policy-and-politics/2018/3/19/17116980/ice-abolish-immigration-arrest-deport>;

controversial reputations regarding the treatment of those detained inside.<sup>3</sup> In general, the public would benefit from additional information regarding retaliation against those who speak about ICE abuses.<sup>4</sup> In particular, ICDC in particular was rocked in 2020 by scandals involving COVID-19 protocols, retaliation against detained people for speaking to the media, and forced gynecological procedures.<sup>5</sup> As such, records relating to ICE's handling of abuse and retaliation cases at ICDC would aid the public in determining whether ICE is exercising proper oversight authority over its contractors and whether the government should contract with private prison contractors at all.<sup>6</sup>

The use of solitary confinement by ICE and the government in general is also a matter of public debate.<sup>7</sup> Many advocates seek to prohibit or limit the use of solitary confinement while private prison companies defend the practice.<sup>8</sup> The records being sought in this request about how and why ICE uses solitary confinement would aid the public in determining whether to support limits on ICE's use of the practice. AOL therefore seeks records shedding light on the circumstances surrounding the use of solitary confinement at privately run ICDC.

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<sup>3</sup> See e.g. *Concerns about ICE Detainee Treatment and Care at Detention Facilities*, Dep't of Homeland Security Office of Inspector General, Dec. 11, 2017, <https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-32-Dec17.pdf>; *IMPRISONED JUSTICE: Inside Two Georgia Immigrant Detention Centers*, Project South and Penn State Law, May 2017, [https://projectsouth.org/wp-content/uploads/2017/06/Imprisoned\\_Justice\\_Report-1.pdf](https://projectsouth.org/wp-content/uploads/2017/06/Imprisoned_Justice_Report-1.pdf).

<sup>4</sup> ICE Violating First Amendment by Targeting Immigrant Rights Advocates for Deportation, Legal Groups Say, Georgetown Law, Mar. 23, 2018, <https://www.law.georgetown.edu/news/ice-violating-first-amendment-by-targeting-immigrant-rights-advocates-for-deportation-legal-groups-say/>.

<sup>5</sup> Rachel Treisman, *Whistleblower Alleges 'Medical Neglect,' Questionable Hysterectomies Of ICE Detainees*, NPR, Sep. 16, 2020, <https://www.npr.org/2020/09/16/913398383/whistleblower-alleges-medical-neglect-questionable-hysterectomies-of-ice-detainee>; Debbie Nathan, *Women in ICE Detention Face Reprisals for Speaking up About Fears of COVID-19*, The Intercept, Apr. 28, 2020, <https://theintercept.com/2020/04/28/ice-detention-coronavirus-videos/>.

<sup>6</sup> See e.g. *The Accreditation Con: A Broken Prison and Detention Facility Accreditation System That Puts Profits Over People*, The Office of Senator Elizabeth Warren, Dec. 14, 2020, <https://www.warren.senate.gov/imo/media/doc/The%20Accreditation%20Con%20-%20December%2020.pdf>; Tom O'Connor and Naveed Jamali, *Under Pressure on Immigration, Biden Gives ICE A Pass on Private Prison Ban*, Newsweek, Feb. 19, 2021, <https://www.newsweek.com/under-pressure-immigration-biden-gives-ice-pass-private-prison-ban-1570652>; Noah Lanard, *Biden Pledged to Close For-Profit ICE Detention Centers. Will He Follow Through?*, Mother Jones, Jan. 27, 2021.

<sup>7</sup> Grassley, Blumenthal Seek Briefing On ICE Solitary Confinement Policies And Challenges, Office of Sen. Chuck Grassley, Jul. 24, 2019, <https://www.grassley.senate.gov/news/news-releases/grassley-blumenthal-seek-briefing-ice-solitary-confinement-policies-and>.

<sup>8</sup> Ian Urbina, *The Capricious Use of Solitary Confinement Against Detained Immigrants*, The Atlantic, Sep. 6, 2019, <https://www.theatlantic.com/politics/archive/2019/09/ice-uses-solitary-confinement-among-detained-immigrants/597433/>; Carmen Molina Acosta, *Psychological Torture: ICEResponds To Covid-19 With Solitary Confinement*, The Intercept, Aug. 24, 2020, <https://theintercept.com/2020/08/24/ice-detention-coronavirus-solitary-confinement/>.

While there are public reports of ICE and private prison use of violent force and solitary confinement, this request is not duplicative because there is very little public information about the current use of those practices at ICDC. In addition, because ICE and private prison companies allege that these practices are not widespread, any information about additional incidents is critical to the public discourse.

AOL has the capacity, intent, and demonstrated ability to disseminate the requested information to a broad cross-section of the public. AOL is a bi-national non-profit organization established to advocate for indigent refugees, migrants, and deportees in the U.S. and Mexico. AOL staff regularly provide information and analysis to the media and the general public, as well as international organizations and human rights monitoring bodies, including the International Committee of the Red Cross, Amnesty International, the United Nations High Commissioner for Refugees, Women's Refugee Commission, and Human Rights Watch.<sup>9</sup> Additionally, AOL co-directors regularly lecture at professional and academic conferences, and universities.<sup>10</sup> Finally, AOL actively shares and disseminates information about its work and conditions on the U.S.-Mexico border and in immigration detention centers through its various social media accounts, which have thousands of followers, including many immigration reporters.<sup>11</sup> AOL will analyze and share the information obtained through this FOIA request via its social media accounts and other publicly accessible fora. If the responsive information is voluminous, AOL also will publish a summary analysis of such information and will disseminate that summary through its established networks. Finally, AOL has regular contact with national and international print and news media and plans to share information gleaned from FOIA disclosures with interested media.

## **B. Disclosure of the Information Is Not Primarily in the Commercial Interest of AOL**

AOL is a 501(c)(3) not-for-profit organization. We seek the requested information for the purpose of disseminating it to members of the public who have access to our public websites, our public social media feeds, and other free publications at no cost, for immigrants' rights advocacy, and not for the purpose of commercial gain.

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<sup>9</sup> See e.g. *Amnesty Response to Reports of Surveillance on Journalists and Immigration Advocates on the US-Mexico Border*, Amnesty International, Mar. 17, 2019, <https://www.amnestyusa.org/press-releases/amnesty-response-to-reports-of-surveillance-on-journalists-and-immigration-advocates-on-the-us-mexico-border/>; *"Like I'm Drowning" Children and Families Sent to Harm by the US 'Remain in Mexico' Program*, Human Rights Watch, Jan. 6, 2021, <https://www.hrw.org/report/2021/01/06/im-drowning/children-and-families-sent-harm-us-remain-mexico-program>.

<sup>10</sup> 2021 Journal of the Legal Profession Virtual Symposium, University of Alabama, Mar. 26, 2021, <https://www.law.ua.edu/programs/symposiums/2021-journal-of-the-legal-profession-virtual-symposium/>; *Speaker: Nicole Ramos of the Al Otro Lado Border Rights Project*, Drexel University, Mar. 20, 2019, <https://drexel.edu/provost/news-events/academic-events/details/?eid=22930&iid=65218>; Jennifer Koh Moderates Panel at Association of American Law Schools Annual Conference; Western State College of Law; Jan. 8, 2018, <https://westernstatefacultyblog.wordpress.com/2018/01/08/jennifer-koh-moderates-panel-at-association-of-american-law-schools-annual-conference/>

<sup>11</sup> See e.g. [https://twitter.com/AlOtroLado\\_Org](https://twitter.com/AlOtroLado_Org); [https://www.instagram.com/alotrolado\\_org/?hl=en](https://www.instagram.com/alotrolado_org/?hl=en); <https://www.facebook.com/AlOtroLadoOrg/>; <https://alotrolado.org/>.

### C. AOL is a Representative of the News Media

Furthermore, AOL also requested a waiver of search fees on the grounds that AOL qualifies as “representative[s] of the news media” and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II). Specifically, AOL meets the statutory and regulatory definitions of “representative of the news media” because it “devises indices and finding aids,” and “distributes the resulting work to the public” See *Nat’l Sec. Archive v. DOD*, 880 F.2d 1381, 1387 (D.C. Cir. 1989). Courts have applied this definition broadly, finding it to include organizations with websites that “do[ ] not resemble a ‘news medium’ in any traditional sense” but instead publish information solely to generate publicity for the organizations and their clients. *Judicial Watch, Inc. v. U.S. Dep’t of Justice*, 133 F. Supp. 2d 52, 53 (D.D.C. 2000).

AOL meets this definition of a “representative of the news media” because it provides information to both the public and its broad client base, has a firm intention of expanding its dissemination activities by publishing written materials for its client base in the future, and collaborates with other media representatives to publish information in public reports. Disseminating information to the public is a critical component of AOL’s work. AOL gathers information about issues affecting immigrants at the U.S.-Mexico border, uses its editorial skills to turn that information into a form that can be easily accessed by the public, and disseminates that information. For instance, AOL regularly makes its staff available for interviews with other media outlets so as to better inform the public about urgent issues affecting immigrants.<sup>12</sup> Recently, AOL’s Litigation Director also gave a TED Talk informing the public about current immigration policies.<sup>13</sup> AOL also regularly disseminates information to over fifty-seven thousand followers through its social media accounts.<sup>14</sup>

In addition to these broad efforts to gather, edit, and disseminate information to the public, AOL also distributes targeted information to its client base, which constitutes one of AOL’s primary activities. For instance, AOL gathers information about legal and policy developments affecting immigrants at the border and organizes this information into legal orientation and know-your-rights training sessions for asylum-seekers in Mexico.<sup>15</sup> Much like an organization that edits raw material for a print publication, AOL must edit raw information into

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<sup>12</sup> Erika Pinheiro on situation at US-Mexico border; BBC World News America; Mar. 5, 2021, <https://www.bbc.co.uk/programmes/p098w8t2?fbclid=IwAR1QsMo8wQ4zaNHkdgn2mmXnyMd1U1SYFWm90GdaXEU8QsjXSzDkCdZ0T6Y>; Camilo Montoya-Galvez and Nicole Sganga, Biden says he wants to ramp up expulsions of migrant families, but most are being allowed to stay, CBS News, Mar. 26, 2021,

<https://www.cbsnews.com/news/immigration-migrant-families-at-border-allowed-to-stay-under-biden/>.

<sup>13</sup> *What’s really happening at the US-Mexico border — and how we can do better*, TED, Sep. 2019, [https://www.ted.com/talks/erika\\_pinheiro\\_what\\_s\\_really\\_happening\\_at\\_the\\_us\\_mexico\\_border\\_and\\_how\\_we\\_can\\_do\\_better](https://www.ted.com/talks/erika_pinheiro_what_s_really_happening_at_the_us_mexico_border_and_how_we_can_do_better).

<sup>14</sup> See e.g. [https://twitter.com/AlOtroLado\\_Org/status/1372338015314472962](https://twitter.com/AlOtroLado_Org/status/1372338015314472962); <https://www.facebook.com/AlOtroLadoOrg/posts/3807427962685560>; <https://www.instagram.com/p/CMD37SMgOuF/>.

<sup>15</sup> Ed Vulliamy, *‘Work that never ends’: the lawyers fighting for migrants stuck at the border*, The Guardian, Feb. 12, 2019, <https://www.theguardian.com/world/2019/feb/12/al-otro-lado-asylum-seekers-lawyers-mexico-us>.

an accessible format to design and host these events. AOL is currently working to expand its information-disseminating activities by creating and distributing print materials similarly informing asylum-seekers of their legal rights. It thus has a “firm intention” to expand its activities as a representative of the news media in the future, supporting a finding that it qualifies as such a representative. *See Ctr. For Pub. Integrity v. U.S. Dep’t of Health & Human Servs.*, No. CIV.A.06 1818 JDB, 2007 WL 2248071, at \*6 (D.D.C. Aug. 3, 2007) (discussing how a “firm intention” of future publications can cure an otherwise inadequate showing that an entity is a representative of the news media). Finally, AOL collaborates with other organizations such as to provide information for reports which are published to inform the public about immigration issues. To do this, AOL must gather raw material, edit it into a form that is useful to the publishing organization, and distribute that edited information to organizations that can incorporate it into published materials.

Courts have found that a variety of other organizations are “representatives of the news media” as well, even though they engage in litigation and lobbying activities in addition to disseminating information and educating the public. *See, e.g., Cause of Action v. IRS*, 125 F. Supp. 3d 145 (D.C. Cir. 2015); *Nat’l Sec. Archive*, 880 F.2d at 1387; *Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005); *Elec. Privacy Info. Ctr. v. Dep’t of Defense*, 241 F. Supp. 2d 5, 10-15 (D.D.C. 2003) (finding that a non-profit public interest group that disseminated an electronic newsletter and published books was a “representative of the news media” for purposes of the FOIA).

As a representative of the news media, AOL plans to analyze, publish, and disseminate the information gathered through this request to the public. The records requested are not sought for commercial use and the AOL plan to publicly disseminate the information at no cost.

### **III. REQUEST FOR EXPEDITED PROCESSING**

Finally, AOL asks that this request be processed on an expedited basis. *See* 6 C.F.R. § 5.5(e). This request qualifies for such expedited processing under three of the four scenarios laid out in 6 C.F.R. § 5.5(e)(1)(i)-(iv).

Finally, this request seeks records on “[a] matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity which affect public confidence.” 6 C.F.R. § 5.5(e)(1)(iv). As discussed in section II, subsection A, *supra*, The public and media have shown a “widespread and exceptional . . . interest in” the issues of ICE abuse, use of solitary confinement, retaliation against those exercising their First Amendment rights, and contracts with private prison contractors. As explained above, the requested records will be disseminated both by AOL and its contacts in national and international news media.

We appreciate your prompt attention to this request. In accordance with DHS regulations, we expect to receive a decision on our request for expedited processing within 10 calendar days. *See* 6 C.F.R. § 5.5(e)(4). We also expect a written response to our FOIA request within 20 business days. 5 U.S.C. § 552(a)(6)(A)(i). We reserve the right to appeal a decision to deny a waiver of fees, withhold any records, or deny expedition of this request. If this request is denied in whole or in part, we ask that any deletions or omissions be justified by reference to

specific exemptions of the FOIA. We expect the release of all segregable portions of otherwise exempt material. If you have any questions, do not hesitate to contact the undersigned by telephone or email.

Sincerely,

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke extending to the right.

Jeremy Jong  
Staff Attorney