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Via Email to ICE-FOIA@dhs.gov
U.S. Immigration and Customs Enforcement
Freedom of Information Act Office

Re: FOIA Request Regarding Death at Richwood Correctional 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:¹

1. Any and all records relating to the death of Roylan Hernandez Diaz at Richwood Correctional Center (“RCC”) on October 15, 2019.
2. All records pertaining to Mr. Hernandez Diaz’s detention, including detainee location logs, kites, grievances, responses to kites and grievances, and medical and mental health screenings and assessments.
3. All Mortality Reviews created by the Immigrant Health Services Corps (“IHSC”) regarding the death of Mr. Hernandez Diaz (<https://www.ice.gov/news/releases/ice-detainee-passes-away-louisiana>). These reviews may be found in the Medical Quality Management Unit (“MQMU”) Sharepoint Folder as described by, e.g., Section F.1.B (page 7) of IHSC's Mortality Review Policy: <https://www.documentcloud.org/documents/6025551-IHSC-Operations-Memorandum-Mortality-Review.html>.
4. All records relied upon or used to create the above mortality review.
5. Any communications regarding this event between IHSC and Lasalle Corrections and

¹ **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.

- between IHSC and any people employed at RCC.
6. Any Root Cause Analysis created by the IHSC for any Sentinel Event occurring at RCC between January 1, 2019 to Present.
 7. All records relied upon or used to create the following ICE Detainee Death Review regarding Mr. Hernandez Diaz:
(<https://www.ice.gov/doclib/foia/reports/ddr-Hernandez.pdf>)
 8. Any investigation reports regarding the death of Mr. Hernandez Diaz conducted by the ICE's Office of Professional Responsibility and all documents relied upon to prepare those reports.
 9. Any electronic communications including but not limited to e-mails, text messages, and instant messages on any platform, to and from New Orleans Deputy Field Office Director John Hartnett containing the words "Roylan," "Hernandez Diaz," or "Hernandez-Diaz," His email address is diane.l.witte@ice.dhs.gov. The time range for this search should be from October 15, 2019 to the date the officer engages in this search.
 10. Any electronic communications including but not limited to e-mails, text messages, and instant messages on any platform, to and from director or acting director of the New Orleans ICE Field Office containing the words "Roylan," "Hernandez Diaz," or "Hernandez-Diaz." Their email addresses are William.P.Joyce@ice.dhs.gov, Trey.Lund@ice.dhs.gov, and diane.l.witte@ice.dhs.gov. The time range for this search should be from October 15, 2019 to the date the officer engages in this search.
 11. All reports, memoranda, or audits created or received on or after January 1, 2019, by the ICE Detention Standards Compliance Unit for RCC.
 12. Any communications sent or received on or after January 1, 2019, between ICE's Detention Standards Compliance Unit and Lasalle Corrections or any of its subcontractors or subsidiaries regarding compliance or non-compliance with ICE's Performance-Based National Detention Standards.
 13. All Significant Incident Reports ("SIR") and any associated records relating to RCC or immigrants detained therein between January 1, 2019 and the present. ICE's SIR policy is detailed here:
https://www.dhs.gov/sites/default/files/publications/privacy_pia_23_ice_sen.pdf
 14. All documents pertaining to Detainee Reporting and Information Line calls made from RCC between January 1, 2019 and the present. Information about the reporting line can be found here:
<https://www.ice.gov/contact/detention-information-line#:~:text=The%20ICE%20ERO%20Detention%20Reporting,%2D888%2D351%2D4024.>
 15. All documents or copies thereof that may have accompanied Mr. Hernandez Diaz when he was transferred from one facility to another, including without limitation:
 - a. Any Form I-216 and/or appropriate copies of Form I-77, Baggage Check (or IGSA equivalent);
 - b. Any Form USM-553 or local Medical Transfer Summary form;
 - c. Any Form I-213, Record of Deportable/Inadmissible Alien Form;
 - d. Any original or photocopy of Form I-203/203A, Order to Detain/Release Alien;
 - e. Any Detainee Transfer Checklist;
 - f. Any age verification documents (if applicable);
 - g. Any classification sheet;
 - h. Any charging documents/records of proceedings; and

- i. Any photographs

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. Mr. Hernandez Diaz was found hanging in a solitary confinement cell at RCC, which is run by private prison contractor Lasalle Corrections on October 15, 2019.² This was one of at least thirty-two ICE detainee deaths since the beginning of 2019.³

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.⁴ Recently, debate has raged over whether government funds should fund private immigration detention companies.⁵ The public would also benefit from information about operations of the New Orleans ICE Field Office, which oversees the operation RCC by Lasalle Corrections. Detention centers within the New Orleans ICE Field Office's area of responsibility and those run by Lasalle Corrections have faced multiple allegations of

² Detainee Death Report: HERNANDEZ Diaz, Roylan, ICE, last accessed May 20, 2021, <https://www.ice.gov/doclib/foia/reports/ddr-Hernandez.pdf>.

³ *Deaths at Adult Detention Centers*, American Immigration Lawyers Association, updated Mar. 17, 2021, <https://www.aila.org/infonet/deaths-at-adult-detention-centers>.

⁴ *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>;

⁵ *ICE to stop detaining immigrants at two county jails under federal investigation*, Washington Post, Maria Sacchetti, May 20, 2021, https://www.washingtonpost.com/immigration/ice-detentions-county-jails-halted/2021/05/20/9c0bdd1e-b8de-11eb-a6b1-81296da0339b_story.html; Ann Slisco, *Joe Biden Says 'Give Me Five Days' to Hecklers Calling for Closure of Detention Centers*, Apr. 29, 2021, Newsweek, <https://www.newsweek.com/joe-biden-says-give-me-five-days-hecklers-calling-closure-detention-centers-1587639>.

mistreatment of detained people.⁶ In particular, RCC was rocked in 2020 by a scandal in which Lasalle supervisors prohibited guards from taking COVID-19 precautions that left at least two guards dead.⁷ As such, records relating to ICE's and Lasalle Corrections' role in the death of Mr. Hernandez Diaz 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.⁸

The use of solitary confinement by ICE and the government in general is also a matter of public debate.⁹ Many advocates seek to prohibit or limit the use of solitary confinement while private prison companies defend the practice.¹⁰ 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 RCC.

⁶ See e.g. 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-hysterec-tomies-of-ice-detaine>; *Concerns about ICE Detainee Treatment and Care at Four Detention Facilities*, Dep't of Homeland Security Office of Inspector General, Jun. 13, 2019, <https://www.oig.dhs.gov/sites/default/files/assets/2019-06/OIG-19-47-Jun19.pdf>; Senators Elizabeth Warren, Cory A. Booker et. al, *Letter to ICE and DHS re Forced Deportations of Asylum Seekers*, Feb. 25, 2021, <https://www.warren.senate.gov/download/20210225-letter-to-ice-and-dhs-re-forced-deportations-of-asylu-m-seekers>.

⁷Noah Lanard, *Two Guards at an ICE Detention Center With a Major Coronavirus Outbreak Have Died*, *Mother Jones*, Apr. 29, 2020, <https://www.motherjones.com/politics/2020/04/two-guards-at-an-ice-detention-center-with-a-major-coron-avirus-outbreak-have-died/>; Noah Lanard, *Whistleblowers Say an ICE Detention Center Used Deceptive Tricks to Conceal COVID Outbreak*, *Mother Jones*, Jul. 21, 2021, <https://www.motherjones.com/politics/2020/07/whistleblowers-say-ice-detention-center-used-deceptive-tricks-to-conceal-covid-outbreak/>

⁸ 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.

⁹ *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-confi-nement-policies-and>.

¹⁰ 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-imm-igrants/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 solitary confinement and lack of medical care, this request is not duplicative because there is very little public information about the current use of those practices at RCC. 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.¹¹ Additionally, AOL co-directors regularly lecture at professional and academic conferences, and universities.¹² 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.¹³ 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.

¹¹ 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>.

¹² 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/>

¹³ See e.g. https://twitter.com/AlOtroLado_Org; 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.¹⁴ Recently, AOL’s Litigation Director also gave a TED Talk informing the public about current immigration policies.¹⁵ AOL also regularly disseminates information to over fifty-seven thousand followers through its social media accounts.¹⁶

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.¹⁷ Much like an organization that edits raw material for a print publication, AOL must edit raw information into

¹⁴ 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/>.

¹⁵ *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.

¹⁶ See e.g. https://twitter.com/AIOtroLado_Org/status/1372338015314472962;

<https://www.facebook.com/AIOtroLadoOrg/posts/3807427962685560>;

<https://www.instagram.com/p/CMD37SMgOuF/>.

¹⁷ 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, 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 fluid, connected strokes that form a stylized, elongated shape.

Jeremy Jong
Staff Attorney