



To Whom It May Concern:

Pursuant to the Freedom of Information Act, I hereby request the following records:

#### Overview

This seeks DHS-OIG agency records regarding Contractor Notifications to the Department of Homeland Security's Office of Inspector General that are required by 48 C.F.R. 52.222-50(d)(1) and (2), as incorporated by contract, regarding allegations of forced labor at civil immigration detention facilities operated by contractors of U.S. Immigration and Customs Enforcement (ICE). These Contractor Notifications are required by federal law when the contractor receives credible information regarding violations of the forced labor provisions of the TVPA, 18 U.S.C. 1589, including those arising from alleged forced labor. See 48 C.F.R. 52.222-50(b)(3). The Contractor Notification requirement is incorporated into every federal detention contract at issue in this request as a matter of law.

Since the Contractor Notification regulations took effect, ICE's two largest federal government detention contractors - CoreCivic, Inc. and The GEO Group, Inc. - have been found by federal courts to have plausibly engaged in forced labor violations at nearly all of their facilities nationwide. See *Owino v. CoreCivic, Inc.*, No. 17-cv-1112, 2020 U.S. Dist. LEXIS 58268 (S.D. Cal. 2020) (certifying a nationwide forced labor class for CoreCivic's civil immigration detention facilities), *Novoa v. The GEO Group, Inc.*, No. 5:17-cv-2514-JGB-SHK, Dkt. No. 223 (C.D. Cal. 2019) (certifying a nationwide forced labor class for most of GEO's civil immigration detention facilities) available at <https://www.clearinghouse.net/chDocs/public/IM-CA-0142-0006.pdf>. In addition, federal judges in five separate U.S. district courts have denied efforts by these contractors to dismiss TVPA forced labor claims raised by current or former ICE detainees. See *Owino v. CoreCivic, Inc.*, 2018 WL 2193644 (S.D. Cal. May 14, 2018); *Gonzalez v. CoreCivic, Inc.*, No. 1:18-cv-169 (W.D. Tex. Feb. 22, 2018), ECF No. 29 (Order Denying Motion to Dismiss), at 4-5; *Novoa v. GEO Grp., Inc.*, EDCV 17-2514 (SHKx), 2018 WL 3343494 (C.D. Cal. June 21, 2018) (same); *Menocal v. Geo Grp., Inc.*, 113 F. Supp. 3d 1125, 1131-33 (D. Colo. 2015) (same).

Together, CoreCivic and GEO house up to 60% of the civilly detained immigrants held by ICE on any given day, and receive the majority of federal immigration detention contract funds appropriated by Congress. Their market share in these contracts, and ICE's Congressionally-appropriate total number of detention beds more broadly, has grown approximately 50% in the past 3 1/2 years. Yet neither ICE's Contracting Officers nor DHS-OIG appear to have taken any of the actions required by law. See 48 C.F.R. 52.222-50(g).

In 2019, the Solicitor General of the United States informed the U.S. Court of Appeals for the Eleventh Circuit in *Barrientos v. CoreCivic, Inc.*, No. 18-15081. 951 F.3d 1269 (11th Cir. 2020), that ICE and the DOJ consider the forced labor provisions to apply to private detention contractors' work programs, and opined that where those contractors violate ICE's contractually binding Performance-Based National Detention Standards Previously (PBNDS). The Solicitor General's Amicus Brief in support of neither party specifically referenced the Executive Order which gave rise to the insertion of the Contractor Notification requirement into the Federal Acquisition Regulations for all domestic federal contracts. See



("Sec. 2. Anti-Trafficking Provisions. (a) Within 180 days of the date of this order, the Federal Acquisition Regulatory (FAR) Council, in consultation with the Secretary of State, the Attorney General, the Secretary of Labor, the Secretary of Homeland Security, the Administrator for the United States Agency for International Development, and the heads of such other executive departments and agencies (agencies) as the FAR Council determines to be appropriate, shall take steps necessary to amend the Federal Acquisition Regulation to:

(1) strengthen the efficacy of the Government's zero-tolerance policy on trafficking in persons by Federal contractors and subcontractors in solicitations, contracts, and subcontracts for supplies or services (including construction and commercial items), by: . . . (C) requiring contracting officers to notify, in accordance with agency procedures, the agency's Inspector General, the agency official responsible for initiating suspension or debarment actions, and law enforcement, if appropriate, if they become aware of any activities that would justify termination under section 106(g) of the TVPA, 22 U.S.C. 7104(g), or are inconsistent with the requirements of this order or any other applicable law or regulation establishing restrictions on trafficking in persons, the procurement of commercial sex acts, or the use of forced labor, and further requiring that the agency official responsible for initiating suspension and debarment actions consider whether suspension or debarment is necessary in order to protect the Government's interest[.]")

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Previously, the Office of Inspector General faulted ICE for failing to adequately oversee some DHS contracts: <https://www.oig.dhs.gov/sites/default/files/assets/2019-07/OIG-19-50-Jul19.pdf>, and for failing to use available contracting tools to achieve compliance with the PBNDS: <https://www.oig.dhs.gov/sites/default/files/assets/2019-02/OIG-19-18-Jan19.pdf>.

In 2017, DHS-OIG specifically notified ICE that the policies of requiring immigrant detainees to clean common living areas for no remuneration, as opposed to their immediate living areas, violates the PBNDS: <https://www.oig.dhs.gov/sites/default/files/assets/2017/OIG-17-43-MA-030617.pdf> at p. 6 ("Additionally, requiring detainees to clean common areas used by all detainees is in violation of ICE standards, as detainees are only required to clean their immediate living area."). ICE concurred with all three OIG recommendations in that report, and committed to resolving them.

#### Description of Records Requested

1. All Contractor Notifications to DHS-OIG from any ICE contractor, including, but not limited to, The GEO Group, Inc. and CoreCivic, Inc., regarding credible information that its agents have engaged in forced labor violations.
2. All DHS-OIG agency records received pursuant to 48 C.F.R. 52-222-50(g).
3. All DHS-OIG agency records pertaining to any actions taken upon receiving such Contractor Notifications.

Pursuant to 6 C.F.R. 5.4(b), we request records that should have been received by DHS-OIG from GEO at the time the *Menocal v. The GEO Group, Inc.* litigation was filed in the District of Colorado on October 22, 2014, or, at the very least after the District of Colorado ruled the allegations in *Menocal* of forced labor violations were plausible in 2015. The same dates of receipt corresponding to the filing and district court



is believed that OIG \_MAY\_ have been forwarded these notifications by the U.S. Immigration and Customs Enforcement, Office of Acquisition Management (OAQ) Contracting Officer for each relevant contract. However, because the binding regulation requires direct notification to DHS-OIG, we believe there should be records received by OIG directly from the contractors themselves.

#### Expedited Processing Request

Pursuant to 6 C.F.R. 5.5(e)(1)(iv), I request expedited processing of this request. The issue of DHS contractors' alleged use of forced labor in ICE's civil immigration detention facilities has been the subject of widespread and exceptional media interest, and there are significant questions regarding ICE and OIG's responses to those allegations which affect public confidence.

A representative sampling of the media stories we rely upon for the proposition that these allegations have been the subject of widespread and exceptional media interest follows:

1. <https://www.washingtonpost.com/news/post-nation/wp/2017/03/05/thousands-of-ice-detainees-claim-they-were-forced-into-labor-a-violation-of-anti-slavery-laws/>
2. <https://www.nytimes.com/2019/01/29/opinion/forced-labor-immigrants.html>
3. <https://www.westword.com/news/geo-lawsuit-alleging-forced-labor-of-immigrant-detainees-moves-forward-6886851>
4. <https://www.theguardian.com/us-news/2018/nov/25/private-prison-companies-served-with-lawsuits-over-usng-detainee-labor>
5. <https://www.miaminewtimes.com/news/emails-in-lawsuit-suggest-geo-group-forces-ice-detainees-to-work-11310005>
6. <https://www.npr.org/sections/thetwo-way/2018/02/09/584722399/appeals-court-broadens-immigrant-detainee-case-alleging-forced-labor>
7. <https://www.latimes.com/nation/la-na-immigrant-workers-20170305-story.html>
8. <https://www.wsj.com/articles/detention-operators-face-suits-over-1-a-day-work-programs-for-migrants-1532170801>
9. <https://ktla.com/news/nationworld/lawsuit-accuses-private-prison-contractor-of-forced-labor-in-immigrant-detention/>
10. <https://www.law.com/dailyreportonline/2020/03/02/11th-circuit-keeps-alive-claims-of-forced-labor-at-private-south-georgia-detention-center/>
11. <https://www.law.com/dailyreportonline/2020/01/30/lawyers-trade-appellate-arguments-over-forced-labor-at-immigrant-detention-site/>
12. <https://onlabor.org/the-use-of-forced-labor-in-private-immigration-detention-centers/>
13. <https://www.motherjones.com/crime-justice/2019/12/immigration-detainee-geo-forced-labor-lawsuit/>
14. [https://www.abajournal.com/news/article/ice\\_detainees\\_may\\_proceed\\_as\\_a\\_class\\_in\\_forced\\_labor\\_lawsuit\\_appeals\\_court](https://www.abajournal.com/news/article/ice_detainees_may_proceed_as_a_class_in_forced_labor_lawsuit_appeals_court)
15. <https://lawprofessors.typepad.com/immigration/2020/05/ending-forced-labor-in-ice-detention-centers-a-new-approach-georgetown-immigration-law-journal-for.html>



[http://inthesetimes.com/features/ice\\_immigrant\\_detention\\_centers\\_forced\\_prison\\_labor\\_investigation.html](http://inthesetimes.com/features/ice_immigrant_detention_centers_forced_prison_labor_investigation.html)

18. <https://news.bloomberglaw.com/us-law-week/immigrant-detention-contractors-can-be-liable-for-forced-labor>

19. <https://www.sandiegouniontribune.com/news/immigration/sd-me-detention-lawsuit-20180516-story.html>

20. <https://www.usccr.gov/press/2018/01-02.pdf>

21. <https://www.axios.com/private-prisons-immigrant-detention-8e5b3317-8ecf-476c-b915-25330852e66f.html>

22. <https://www.nytimes.com/2014/05/25/us/using-jailed-migrants-as-a-pool-of-cheap-labor.html>

22. <https://www.reuters.com/article/us-usa-immigration-detention/11-toothpaste-immigrants-pay-big-for-basics-at-private-ice-lock-ups-idUSKCN1PC0DJ>

23. <https://www.thedailybeast.com/republicans-say-forced-labor-is-good-for-detained-immigrants-in-letter-defending-private-prison>

24. <https://www.cnn.com/2018/08/13/us/senators-letter-dhs-ice-detention-work-program-invs/index.html>

25. <https://www.cnn.com/2018/07/11/us/northwest-immigrant-detention-center-geo-group-invs/index.html>

In addition to this representative sampling, the exceptional media interest in these claims has prompted the following action at the Congressional level:

1. Letter from lawmakers to three Executive Branch agencies (in body of story:

<https://www.thedailybeast.com/republicans-say-forced-labor-is-good-for-detained-immigrants-in-letter-defending-private-prison>)

2. Letter from Sen. Warren: <https://www.warren.senate.gov/oversight/letters/senator-warren-investigates-allegations-that-private-prison-contractors-withhold-basic-necessities-use-threat-of-solitary-confinement-to-coerce-detainees-into-voluntary-work-programs>

3. Letter from 5 U.S. Senators: <https://www.documentcloud.org/documents/4755454-8-13-18-Letter-to-Nielsen-Re-Conditions-and.html>

4. Letter from Rep. Pressley and Sen. Warren <https://pressley.house.gov/media/press-releases/rep-pressley-senator-warren-colleagues-investigate-revolving-door-between>

With respect to the Public Confidence prong of DHS's expedited processing regulations, in addition to the sources provided above, your office should consider the following information in making its expedited processing determination:

1. <https://www.thedailybeast.com/private-prison-executive-at-geo-group-pursues-federal-funds-spends-at-trump-hotel>

2. <https://www.thedailybeast.com/private-prison-bosses-beg-taxpayers-to-pay-human-trafficking-lawsuit-bills>

3. <https://www.thedailybeast.com/ex-ice-official-paid-to-defend-dollar1-a-day-wages-for-immigrants>



If, as it appears from DHS-OIG's actions over the past several years, no Contractor Notifications have been received by the Department, in direct contravention of the Federal Acquisition Regulations and these private detention contracts, which amount to billions of dollars of federal tax dollars committed over a period as long as 15 years to contractors who have manifestly failed to comply with their contracts and the certification provisions of the FAR and Homeland Security Acquisition Regulations relating to contractors' obligations upon receiving credible allegations of forced labor, this fact would significantly undermine the public confidence in the agency's ability to oversee these federal funds and the contractors who profit from receiving them.

I therefore respectfully request Expedited Processing of this request, including a determination within 10 working days as to whether DHS-OIG will grant it.

If you require any further information, please do not hesitate to contact me.

The requested documents will be made available to the general public, and this request is not being made for commercial purposes.

In the event that there are fees, I would be grateful if you would inform me of the total charges in advance of fulfilling my request. I would prefer the request filled electronically, by e-mail attachment if available or CD-ROM if not.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 20 business days, as the statute requires.

Sincerely,

Andrew Free

**From:** Department of Homeland Security Office of Inspector General

07/06/2020



**Subject:** DHS OIG 2020-IGFO-00152 Acknowledgement Letter

Email

Dear Mr. Free:

Thank you for your interest in the U.S. Department of Homeland Security (DHS) Office of Inspector General (OIG). Attached please find DHS OIG's acknowledgement of your Freedom of Information Act request, referenced as 2020-IGFO-00152.

Sincerely,

FOIA/DHS-OIG



2020-IGFO-00152 Acknowledgement Letter



From: Andrew Free

07/06/2020

Subject: RE: Freedom of Information Act Request: TVPA Contractor Notifications to OIG Pursuant to 48 CFR 52.222-5... Mail

Good afternoon:

I am in receipt of your letter dated July 6, 2020. I have the following information to supplement our request for expedited processing. Based on this information, I ask that you reconsider my client's expedited processing request and make a de novo determination on it within ten business days. I have also appealed today's determination administratively, which would become moot if you were to grant based on this request. See

An urgent need to inform the public exists because Congress is currently debating the FY21 Appropriations Bill, which will determine levels of future funding for contracts and contractors, as well as ICE and OIG, for civil immigration detention.

A record from OIG confirming that the contractors, ICE, and OIG have violated the FAR and HSAR provisions cited is a material and directly relevant matter of consideration for House appropriators, because the ultimate penalty for violating these provisions can include voiding the contracts and permanently disbarring the contractors involved.

Congress and the public have a right to know, in a time that allows for prompt and effective action, whether OIG, ICE's Contracting Officer, and these contractors have violated the terms of the contracts on which their appropriated funds are based.

Separately, the confirmation that contractors have failed to fulfill their contractual obligations with respect to the cited FAR and HSAR provisions has a direct and immediate impact on the individuals currently in ICE custody who are currently being subjected to these alleged practices by ICE's two largest detention contractors.

In sum, waiting until after Congress makes funding decisions to release this information now, when it matters, will render this information far less useful, and violate the letter and purpose of the FOIA.

Many thanks,

R. Andrew Free

We'll automatically follow-up with the agency in 4 weeks.

Disable

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