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Caroline DeCell  
Knight First Amendment Institute  
314 Low Library  
535 West 116th Street  
New York, NY 10027  

RE:  ICE FOIA Case Number 2017-ICFO-43023  

Dear Ms. DeCell:  

This letter is the final response to your Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), dated August 07, 2017, for 1. All directives, memoranda, guidance, emails, or other communications sent by the White House to any federal agency since January 19, 2017, regarding consideration of individuals’ speech, beliefs, or associations in connection with immigration determinations, including decisions to exclude or remove individuals from the United States (please see request for more details).  

ICE has considered your request under both the FOIA, 5 U.S.C. § 552.  

A search of the ICE Office of Policy and Office of The Principal Legal Advisor for records responsive to your request produced 1666 pages that are responsive to your request. After review of those documents, ICE has determined that 13 pages will be released in their entirety. Portions of 1653 pages will be withheld pursuant to Exemptions of the FOIA as described below.  

ICE has applied Exemption 5 to protect from disclosure intra-agency documents that contain the recommendations, opinions, and conclusions of agency employees. The disclosure of these communications would discourage the expression of candid opinions and inhibit the free and frank exchange of information and opinions among agency personnel on important agency decision-making by having a chilling effect on the agency’s deliberative process.  

**FOIA Exemption 5** protects from disclosure those inter- or intra-agency documents that are normally privileged in the civil discovery context. The three most frequently invoked privileges are the deliberative process privilege, the attorney work-product privilege, and the attorney-client privilege. After carefully reviewing the responsive documents, I have determined that portions of the responsive documents qualify for protection under the deliberative process privilege, the attorney-client privilege, and the attorney work-product privilege. The deliberative process privilege protects the integrity of the deliberative or decision-making processes within the agency by exempting from mandatory disclosure opinions, conclusions, and recommendations included within inter-agency or intra-agency memoranda or letters. The release of this internal
information would discourage the expression of candid opinions and inhibit the free and frank
exchange of information among agency personnel. The attorney work-product privilege protects
documents and other memoranda prepared by an attorney in contemplation of litigation. The
attorney-client privilege protects confidential communications between an attorney and his client
relating to a legal matter for which the client has sought professional advice. It applies to facts
divulged by a client to his attorney, and encompasses any opinions given by an attorney to his
client based upon, and thus reflecting, those facts, as well as communications between attorneys
that reflect client-supplied information. The attorney-client privilege is not limited to the context
of litigation.

ICE has applied FOIA Exemptions 6 and 7(C) to protect from disclosure the names, e-mail
addresses, and phone numbers of DHS employees contained within the documents.

**FOIA Exemption 6** exempts from disclosure personnel or medical files and similar files the
release of which would cause a clearly unwarranted invasion of personal privacy. This requires a
balancing of the public’s right to disclosure against the individual’s right to privacy. The privacy
interests of the individuals in the records you have requested outweigh any minimal public
interest in disclosure of the information. Any private interest you may have in that information
does not factor into the aforementioned balancing test.

**FOIA Exemption 7(C)** protects records or information compiled for law enforcement purposes
that could reasonably be expected to constitute an unwarranted invasion of personal privacy. This exemption takes particular note of the strong interests of individuals, whether they are
suspects, witnesses, or investigators, in not being unwarrantably associated with alleged criminal
activity. That interest extends to persons who are not only the subjects of the investigation, but
those who may have their privacy invaded by having their identities and information about them
revealed in connection with an investigation. Based upon the traditional recognition of strong
privacy interest in law enforcement records, categorical withholding of information that
identifies third parties in law enforcement records is ordinarily appropriate. As such, I have
determined that the privacy interest in the identities of individuals in the records you have
requested clearly outweigh any minimal public interest in disclosure of the information. Please
note that any private interest you may have in that information does not factor into this
determination.

ICE has applied FOIA Exemption 7(E) to protect from disclosure internal agency case numbers
contained within the document.

**FOIA Exemption 7(E)** protects records compiled for law enforcement purposes, the release of
which would disclose techniques and/or procedures for law enforcement investigations or
prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if
such disclosure could reasonably be expected to risk circumvention of the law. I have
determined that disclosure of certain law enforcement sensitive information contained within the
responsive records could reasonably be expected to risk circumvention of the law. Additionally,
the techniques and procedures at issue are not well known to the public.
If you are not satisfied with the response to this request, you have the right to appeal following the procedures outlined in the DHS regulations at 6 C.F.R. § 5.9. 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, 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 the FOIA and Privacy Act allow us to recover part of the cost of complying with your request. In this instance, because the cost is below the $14 minimum, there is no charge.¹

If you need any further assistance or would like to discuss any aspect of your request, please contact the FOIA office refer FOIA case number 2017-ICFO-43023. You may send an e-mail to ice-foia@ice.dhs.gov, call toll free (866) 633-1182, or you may contact our FOIA Public Liaison, Fernando Pineiro, in the same manner. 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; or facsimile at 202-741-5769.

Sincerely,

Catrina M. Pavlik-Keenan
FOIA Officer

Enclosure(s): 1666 page(s)

¹ 6 CFR § 5.11(d)(4).
Withheld pursuant to exemption
(b)(5), (b)(7), (E)
of the Freedom of Information and Privacy Act.
Withheld pursuant to exemption
(b)(5), (b)(7)(E)
of the Freedom of Information and Privacy Act
Withheld pursuant to exemption (b)(7)(E) of the Freedom of Information and Privacy Act.
July 27, 2018

Caroline M. DeCell
Knight First Amendment Institute at
Columbia University
475 Riverside Drive, Suite 302
New York, NY 10115

Dear Caroline M. DeCell:

The United States Citizenship and Immigration Services (USCIS) is providing records in response to a Freedom of Information Act/Privacy Act (FOIA/PA) referral received in this office on July 26, 2018 from Immigration and Customs Enforcement (ICE) regarding ICE FOIA request 2018-ICAP-0011. This request is the subject of litigation, *Knight First Amendment Institute vs. Dep’t of Homeland Security, et al.*, 17-cv-7572 (S.D.N.Y.).

We have completed the review of all documents and have identified 15 pages that are responsive to your request. Enclosed are 15 pages withheld in full. In our review of these pages, we have determined that they contain no reasonably segregable portion(s) of non-exempt information. We have reviewed and have determined these pages are exempt pursuant to 5 U.S.C. § 552 (b)(7)(C) and (b)(7)(E) of the FOIA.

The following exemptions are applicable:

Exemption (b)(7)(C) provides protection for personal information in law enforcement records, which could reasonably be expected to constitute an unwarranted invasion of personal privacy. We have withheld information relating to third-party individuals. The types of documents and/or information we have withheld could consist of names, addresses, identification numbers, telephone numbers, fax numbers, or various other documents that are considered personal.

Exemption (b)(7)(E) provides protection for records or information for law enforcement purposes which would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law. The types of documents and/or information we have withheld could consist of law enforcement systems checks, manuals, checkpoint locations, surveillance techniques, and various other documents.

If you have any questions about our response to your FOIA request, please contact Assistant United States Attorney Ellen Blain, Southern District of New York, 86 Chambers Street, New York, New York 10007.

Sincerely,

Jill A. Eggleston
Director, FOIA Operations

www.uscis.gov