

Secret Police:

Access to Information about Immigration Enforcement in the United States

A Report to the Inter-American Commission on Human Rights

December 5, 2018



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CENTER FOR HUMAN RIGHTS

UNIVERSITY *of* WASHINGTON

Henry M. Jackson School
of International Studies

About the UW Center for Human Rights

The University of Washington Center for Human Rights (UWCHR) was established by an initiative of the Washington state legislature in 2009. The University of Washington Center for Human Rights is committed to interdisciplinary excellence in the education of undergraduate and graduate students in the field of human rights; promoting human rights as a core area of faculty and graduate research; and engaging productively with local, regional, national, and international organizations and policymakers to advance respect for human rights.

For more information: <https://jsis.washington.edu/humanrights/>

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Introduction

Immigrant rights are under assault in the contemporary United States. In a climate of open hostility to immigrants propagated at the highest levels of government, with virtually no effective oversight of the institutions afforded unprecedented resources to enforce the nation's immigration laws, the work of human rights defenders to ensure the compatibility of immigration enforcement with international human rights standards is more urgent than ever. Yet this work is rendered ever more difficult by growing secrecy surrounding the work of Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP), the two primary sub-agencies of the Department of Homeland Security charged with immigration enforcement.

The present report summarizes the experience of the University of Washington Center for Human Rights in seeking to obtain information about immigration enforcement, placing this work in the larger context of nationwide access-to-information efforts in this sector. We begin by documenting patterns of secrecy and misinformation in immigration enforcement, then illustrate their impacts on human rights defenders, and conclude by offering recommendations for improvement.

Background

In recent years, the University of Washington Center for Human Rights has developed a specialized research team dedicated to the use of access to information laws for human rights purposes. Since 2011, we have filed 633 of Freedom of Information Act (FOIA) requests of 8 agencies of the federal government; in addition, we have worked with partners to file access to information requests in both El Salvador and Argentina. We began this work seeking information about crimes against humanity committed in the context of El Salvador's armed conflict, but in early 2017 began to apply these same skills to questions emerging in the context of contemporary immigration debates in the United States. Since that time, we have filed a total of 189 requests for information about the US federal government's immigration enforcement practices in our state and region, using both federal and state public information laws.

In addition, we analyze other datasets of public records to produce insights about immigration enforcement in our state. We have obtained and analyzed records from over 250 district court cases of prosecution under federal immigration charges, and are currently analyzing [a large dataset](#)¹ containing 14 years of records of federal prosecution for immigration-related crimes in our state.

We conduct this work in close partnership with local immigrant rights defenders, including grassroots organizations such as the Northwest Detention Center Resistance headed by Maru Mora Villalpando, advocacy groups such as the American Civil Liberties Union, and other organizations; the trends they report and the research needs they identify shape the lines of research we pursue.

¹ Years include 2005-2018. United States Department of Justice, Office of the States Attorneys, "Caseload Data," <https://www.justice.gov/usao/resources/foia-library/national-caseload-data>

In 1967, the U.S. Freedom of Information Act (FOIA) was established as the preeminent mechanism of open government in the United States. The law grants anyone the right to request access to records of the agencies of the U.S. federal government, and mandates that agencies disclose the requested information unless it falls into nine categories of information exempt from disclosure. The law places the onus on agencies to justify redacting materials or refusing requests, mandating that they cite the relevant exemption category when declining to provide access to all or part of a record; petitioners may sue in court if they believe these exemptions have been applied in error. While highly imperfect, FOIA remains a vital tool for transparency in the United States. In addition, each of the fifty states has also adopted its own open records laws to provide access to the records of state agencies.

Unfortunately, UWCHR's experience seeking information from U.S. federal government agencies regarding the practices of immigration enforcement has not been a positive one. While we have received the files requested in some of our FOIA cases, far more frequently our efforts have been stymied by responses that are either nonexistent (our requests have gone unacknowledged); overdue (agencies have indicated that the documents are forthcoming by a certain date, only to allow that date to pass without release of documentation or an explanation of further delays); or capricious (exemptions to mandatory disclosure have been inappropriately invoked to avoid transparency). As a result, on September 21, 2018, the University of Washington filed suit under FOIA in federal court against the Department of Homeland Security, citing its sub-agencies Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) as defendants.² We are still awaiting their response to our suit.

Regrettably, our experience in this regard has not been unique. Both ICE and CBP routinely seek to conceal knowledge of their operations from the public. Their anti-transparency practices are not limited to stonewalling FOIA requests: the agencies have been shown to provide false information to the media and elected government officials; to structure institutional relationships in ways that inhibit access to information; and to retaliate against those who expose their lies. **For all of these reasons, we believe they are effectively operating as a secret police.**

This report tackles secrecy in contemporary immigration enforcement in five chapters:

1. [Misleading proactive disclosures by ICE and CBP](#)
2. [Inadequate responses to FOIA requests](#)
3. [Specific institutional arrangements thwart access to information](#)
4. [Impact of secrecy on the work of human rights defenders](#)
5. [Conclusions and recommendations](#)

² See full complaint for *University of Washington v. Department of Homeland Security* filed September 21, 2018 here: <https://isis.washington.edu/humanrights/wp-content/uploads/sites/22/2018/09/UWCHRvDHS-20180921.pdf>

1. Misleading proactive disclosures by ICE and CBP

ICE and CBP proactively disclose information to the public through regular reports issued by the agencies about their operations, and public statements made by officials in response to media inquiries. Both types of information are often reported in a misleading manner, and released in ways that impede independent verification. Typically, these distortions appear intended to exaggerate the criminality of the immigrant population.

For example, ICE's annual Enforcement and Removals Report typically presents a picture of operations that target dangerous criminals; their [most recent report](#) describes the agency as "identif[y]ing, arrest[ing], and remov[ing] aliens who present a danger to national security or a threat to public safety, or who otherwise undermine border control and the integrity of the U.S. immigration system."³ This report claims that in FY 2017 ICE arrested 2608 criminals, and 768 noncriminals, for a total of 3376 arrests in the Seattle area of responsibility, which covers Alaska, Oregon, and Washington. It claims to have removed (or deported) 2,202 criminals, and 1,795 noncriminals, for a total of 3,995. Yet when we dig into the data it draws from, a different picture emerges.

Under FOIA, UWCHR requested a breakdown of what specific crimes are at stake, and whether the individuals in question were actually convicted, or merely suspected by ICE, of committing those crimes, in ICE's Seattle area of responsibility during FY 2017 and FY 2018. In response, ICE provided us with [a spreadsheet](#) (See **Appendix A**) listing each type of crime and the number of criminal charges and convictions of each crime for FY 2017 and FY 2018. A closer look at the data shows that ICE appears to be double-counting criminality by counting charges *as well as* convictions, and may be counting multiple charges or convictions against a single person as separate "criminals."

As a result, the total number of crimes exceeds the total number of individuals they report having arrested, making it impossible to discern what proportion of ICE's so-called "criminals" were a) ever convicted, as opposed to simply accused of crimes; or b) involved in crimes that represent genuine threats to public safety, as opposed to minor crimes such as traffic violations. See **Figure 1**, below:

³ United States Department of Homeland Security, Immigration and Customs Enforcement, "Fiscal Year 2017 ICE Enforcement and Removal Operations Report," December 13, 2017. <https://www.ice.gov/removal-statistics/2017>

ERO-LESA Statistical Tracking Unit

~~For Official Use Only (FOUO)/Pre-decisional~~

2018-ICFO-36166

Criminal Charges and Convictions for FY2017-FY2018 YTD ERO Administrative Arrests for Seattle Area of Responsibility

Criminal Charge Category	FY2017			FY2018 YTD 10/01/2017-04/27/2018		
	Criminal Charges	Criminal Convictions	Total	Criminal Charges	Criminal Convictions	Total
Abortion	-	-	-	-	1	1
Arson	2	9	11	3	8	11
Assault	365	1,329	1,694	199	690	889
Bribery	-	1	1	-	-	-
Burglary	69	288	357	39	147	186
Commercialized Sexual Offenses	9	17	26	5	11	16
Conservation	3	12	15	4	5	9
Damage Property	44	98	142	14	37	51
Dangerous Drugs	409	1,662	2,071	188	847	1,035
Embezzlement	-	1	1	-	2	2
Extortion	1	10	11	2	3	5
Family Offenses	16	57	73	5	41	46
Flight / Escape	20	58	78	5	41	46
Forgery	30	130	160	20	71	91
Fraudulent Activities	45	245	290	49	188	237
Gambling	1	2	3	-	4	4
General Crimes	88	350	438	68	199	267
Health / Safety	5	37	42	3	14	17
Homicide	13	42	55	4	14	18
Immigration	108	665	773	65	374	439
Investigation of Delinquency	64	212	276	27	117	144

Figure 1 - Excerpt of spreadsheet released by ICE regarding criminal charges and convictions for FY 2017- FY 2018 (See Appendix A for full spreadsheet)

Along similar lines, regular media releases have been found to be misleading in ways that generate an impression of exaggerated immigrant criminality. For example:

- In 2015, CBP adopted a new methodology for tallying assaults against its agents, as Debbie Nathan reported in *The Intercept*.⁴ While the agency previously employed conventional law enforcement methods, counting the number of agents who experienced assault, the new method multiplies the number of CBP agents by the number of alleged assailants by the number of objects—such as rocks—involved in each incident. James Tomsheck, former CBP internal affairs director, explained to *The Intercept* that usually, “law enforcement agencies count the number of people assaulted, not the discrete acts of violence that occur during an incident...five rocks thrown would have been considered as one assault.”⁵ Under the methods used now, five rocks thrown by two assailants at two CBP officers would be registered as twenty assaults. This statistical gymnastics results in vastly inflated numbers, conveying an impression of escalating violence along the border.
- In 2017, ICE initiated a series of high-profile sweeps of so-called “sanctuary” cities, jurisdictions that have adopted policies limiting local law enforcement’s collaboration with immigration enforcement. These are frequently accompanied by statements provided to the media denouncing the criminality of those apprehended, likely intended to create a

⁴ Nathan, Debbie. “How the Border Patrol Faked Statistics Showing a 73 Percent Rise in Assaults Against Agents.” *The Intercept*, April 23, 2018. <https://theintercept.com/2018/04/23/border-patrol-agents-assaulted-cbp-fbi/>

⁵ Ibid.

perception that the agency's operations are enhancing public safety. Yet these claims often fall apart under scrutiny. For example, after a 2017 sweep in Austin, Texas, Vanderbilt Law School students conducted FOIA research that revealed that ICE higher-ups ordered agents to produce narratives about the arrests of "egregious" criminals detained in the sweep.⁶ Unable to locate sufficiently compelling cases, the agents forwarded descriptions of arrests that occurred outside the dates of the operation itself.

- ICE plans for a sweep of Oakland, California in March 2018 were allegedly disrupted when the city's mayor, Libby Schaaf, publicly announced she had received word of a coming sweep. Agency officials reacted angrily by claiming her actions enabled dangerous criminals to evade arrest. But James Schwab, an ICE spokesperson, subsequently resigned in protest, saying he had been ordered to lie to the public about the criminality of the sweep's intended targets⁷. He was later subjected to intimidation when federal agents showed up at his door to interrupt a media interview about his resignation; the incident was captured on camera⁸.

ICE's own policies require the agency to engage in timely reporting in response to certain developments, yet evidence suggests these guidelines are routinely ignored. For example, ICE's Directive on the Notification and Reporting of Detainee Deaths mandates that following a death in ICE custody, the detainee's next-of-kin must be notified within 24 hours, and once good-faith efforts to reach next-of-kin have been made, "The Office of Public Affairs shall provide a media release to the local press and the Associated Press, and post the media release on ICE's Internet website." Furthermore, "The ICE Office of Policy shall provide a copy of the media release to nongovernmental organizations (NGOs) via the ICE/NGO working group co-chairs."⁹ Yet ICE did not disclose the death by suicide of Marco Antonio Muñoz, a Honduran man who became distraught after being separated from his family at the border in May 2018, until Nick Miroff of the *Washington Post* learned of the incident from local sheriff's records a month later¹⁰.

This incident and others have generated a lack of confidence that ICE can be relied upon to transparently disclose the circumstances of detainee deaths—let alone to prevent these deaths

⁶ Speri, Alice. "Internal Emails Show ICE Agents Struggling to Substantiate Trump's Lies About Immigrants." *The Intercept*, October 4, 2017. <https://theintercept.com/2017/10/04/ice-raids-trump-immigration-deportation/>

⁷ Simon, Dan. "ICE Spokesman in SF Resigns and Slams Trump Administration Officials." *CNN*, March 13, 2018. <https://www.cnn.com/2018/03/12/politics/ice-spokesman-resigns-san-francisco/index.html>.

⁸ Haag, Matthew. "'This Is Intimidation': Interview With ICE Whistle-Blower Is Interrupted by Federal Agents." *The New York Times*, June 28, 2018. <https://www.nytimes.com/2018/06/28/us/ice-james-schwab-interview.html>

⁹ US Immigration and Customs Enforcement, ICE Office of Policy, Directive Title: Notification and Reporting of Detainee Deaths. https://www.ice.gov/doclib/dro/pdf/11003.1-hd-notification_reporting_detainee_deaths.pdf

¹⁰ Miroff, Nick. "A family was separated at the border, and this distraught father took his own life." *The Washington Post* June 9, 2018. https://www.washingtonpost.com/world/national-security/a-family-was-separated-at-the-border-and-this-distraught-father-took-his-own-life/2018/06/08/24e40b70-6b5d-11e8-9e38-24e693b38637_story.html

through adequate medical care—leading four Members of Congress to demand an investigation into the recent death of Russian detainee Mergansana Amar in ICE custody in Washington state¹¹.

Congressionally-mandated reporting has been equally deceptive. For example, in 2018 Congress included new reporting requirements in the Department of Homeland Security appropriations bill. Among other things, Congress directed ICE “to make public all final detention facility inspection reports within 60 days of inspection; complete and make public an initial report regarding any in-custody death within 30 days of such death, with subsequent reporting to be completed and released within 60 days of the initial report unless additional time is required for redacting personally identifiable information; make public a full list, updated monthly, of all facilities in use for detention of adults and/or children, including the average daily population, the type of contract, the governing detention standards, and the complement of on-board medical and mental health personnel.”¹² Yet there are numerous indications that ICE has flouted these requirements as well.

For example, an independent autopsy has recently revealed evidence that Honduran asylum seeker Roxsana Hernández, who died on May 25, 2018, may have been beaten while shackled in ICE custody¹³. Despite the spending bill’s requirements that ICE make public its report on her death, the agency has declined to do so.

Relatedly, the agency has failed to adhere to the bill’s requirement that ICE provide monthly lists of all facilities in use for detention. In fact, as Detention Watch Network and the National Immigrant Justice Center denounced, the agency ignored the new reporting requirements altogether for the first two months after the bill’s passage, and subsequently provided a list that omitted at least ten of the more controversial facilities.¹⁴ Unconfirmed reports continue to circulate about the temporary holding of immigrants in office buildings and other locations unfit for detention. (For example, investigative reporters Aura Bogado, Ziva Branstetter, and Vanessa Swales reported that for a period of three weeks, migrant children were held in “a vacant Phoenix office building with dark

¹¹ On November 29, 2018, Sens. Maria Cantwell and Patty Murray, and Reps. Adam Smith and Pramila Jayapal issued a letter to the Acting Inspector General of the Department of Homeland Security, asking his office to undertake an investigation into Amar’s death, conditions at the Northwest Detention Center, and reports of retaliatory abuse against “detainee whistleblowers” at the Center. For more information, see <https://adamsmith.house.gov/cache/files/a/f/afa3e2e5-a4f8-4c08-b247-64de5adfcfcc/5CB81EBAA04EB388859293E49DBD02A4.letter-to-dhs-ig-to-investigate-conditions-at-the-nwdc.pdf>

¹² United States House of Representatives, 115th Congress (2017-2018). Department of Homeland Security Appropriations Bill, 2018. Report 115-239. <https://www.congress.gov/congressional-report/115th-congress/house-report/239/1>.

¹³ Rosenberg, Eli. “Transgender Asylum Seeker was Beaten Before her Death, According to New Autopsy,” *The Washington Post*. November 26, 2018. https://www.washingtonpost.com/nation/2018/11/27/transgender-asylum-seeker-was-beaten-before-her-death-according-new-autopsy/?utm_term=.988cf3973723

¹⁴ Detention Watch Network and National Immigrant Justice Center. “Secret Expansion: ICE’s Deception about Metastasizing Detention System Continues.” September 2018. https://immigrantjustice.org/sites/default/files/uploaded-files/no-content-type/2018-09/ICE_Facilities_Matrix_Memo_2018-09-05_1.pdf

windows, no kitchen and only a few toilets.”¹⁵ *The Texas Tribune’s* Shannon Najmabadi reported that ICE is using basements, offices and hotels to detain people for “hours or days when they are enroute to other locations.”¹⁶) Absent a transparent accounting of the places in which all those detained are held, it is difficult to know the extent to which the agency uses these so-called “black sites,” let alone to ensure the adequacy of their conditions.

¹⁵ Aura Bogado, Ziva Branstetter, and Vanessa Swales. “Defense Contractor Detained Migrant Kids in Vacant Phoenix Office Building.” *Reveal*, July 6, 2018 <https://www.revealnews.org/article/defense-contractor-detained-migrant-kids-in-vacant-phoenix-office-building/>

¹⁶ Najmabadi, Shannon. “Across the Country, Basements, Offices and Hotels Play Short-Term Host to People in ICE Custody.” *The Texas Tribune*, August 29, 2018. <https://www.texastribune.org/2018/08/29/heres-ice-network-basements-offices-and-hotels-hold-immigrants/>

2. Inadequate responses to public records requests

In light of evidence that ICE/CBP have regularly engaged in deceptive reporting about their practices, the importance of the agencies' compliance with FOIA becomes all the more clear. Yet UWCHR's experience, and that of other researchers, suggests these agencies routinely sidestep or ignore the requirements of this law. Largely as a result, they have been subjected to an increasing number of lawsuits under FOIA in recent years.¹⁷ (See **Figure 2**.) These lawsuits have not only been brought by journalists, rights advocates, and academic researchers, but also by [state Attorneys General](#)¹⁸ who, despite serving as the chief law enforcement officers in their respective jurisdictions, have been unable to obtain information about the operations of federal immigration enforcement within their states.

Rising Numbers of FOIA Lawsuits against USCIS, ICE, and CBP

Chart by UWCHR with data from foiaproject.org/lawsuit/

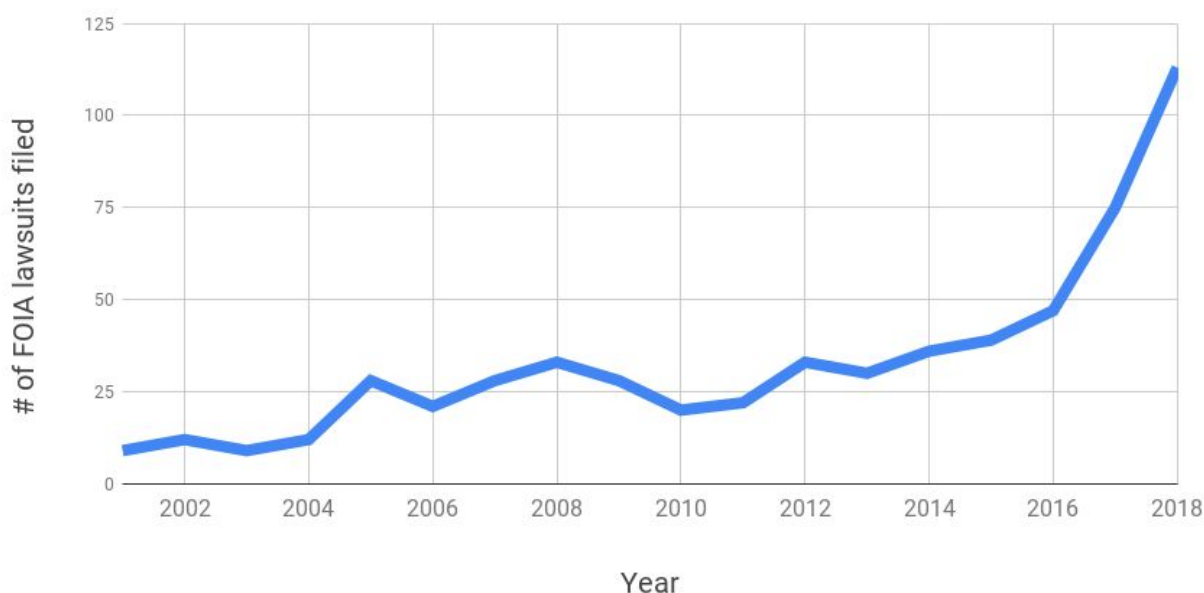


Figure 2 - Rising numbers of FOIA lawsuits against USCIS, ICE, and CBP (Chart by UWCHR with data from foiaproject.org/lawsuit/)

¹⁷ The FOIA Project. "Annual Report: FOIA Lawsuits Reach Record Highs in FY 2018." November 12, 2018. <https://foiaproject.org/2018/11/12/annual-report-foia-lawsuits-reach-record-highs-in-fy-2018/>

¹⁸ The Attorneys General of Massachusetts, California, District of Columbia, Hawaii, Illinois, Iowa, Maryland, New York, Oregon, and Washington filed a lawsuit against the Department of Homeland Security, specifically ICE, CBP, and CIS (Citizenship and Immigration Services) for information regarding federal immigration enforcement in their respective states. See complaint here: https://oag.ca.gov/system/files/attachments/press_releases/FOIA%20Complaint.pdf

The post-2016 spike in litigation reflects not only growing concern about immigrant rights in the context of the Trump administration's crackdown, but also new secrecy practices that roll back previously established disclosure norms. ICE has claimed that the number of FOIA requests it receives has been surging, precisely at a time when the agency's budgets for FOIA response have been cut¹⁹. Yet overall, ICE and CBP budgets have grown exponentially in recent years; if budgets for FOIA processing have been cut, it has been the result of deliberate agency decisions to de-prioritize transparency.

Another indicator of growing secrecy is the agency's decision in January 2017 to systematically withhold information it had always previously released in response to FOIA requests. Researchers at Syracuse University's Transactional Records Clearinghouse (TRAC), a research center specializing in analysis of government records, had filed regular monthly FOIA requests for years, using the data received to create web tools and reports to inform the public about immigration enforcement. In May and June 2017, the center filed lawsuits to contest ICE's decision to begin withholding data previously provided; these cases are still before the courts. In the meantime, the absence of information continues to hamper TRAC's research²⁰.

The UWCHR's own experience with ICE/CBP's noncompliance with FOIA led us to file suit against both agencies on September 21, 2018, citing twelve specific requests where federal agencies' responses defied the requirements of FOIA. A few of these are described below to illustrate the depth of the agencies' non-compliance with the law. For example:

UWCHR FOIA request regarding use of solitary confinement at Northwest Detention Center ignored by ICE

On September 18, 2017, UWCHR filed a request with ICE for information about the use of solitary confinement ("segregation") at the privately-run Northwest Detention Center in Tacoma, Washington. This information is important for human rights research because of numerous reports received from detainees that placement in segregation is used to retaliate against those who participate in hunger strikes and other Constitutionally-protected activities to protest conditions in detention. ICE promised to deliver us these records by December 20, 2017; we have received nothing, although this date, now long passed, is still listed as the delivery date for documents in their online portal. No explanation has been provided for the delay.

In May 2018, we turned to our Members of Congress to request their assistance in obtaining this information. Both Representative Pramila Jayapal and Senator Maria Cantwell separately sent letters to ICE asking their attention to our request; they were told the case is "in progress," and

¹⁹ Walker, Chris. "ICE Way Behind on Processing FOIA Requests, Federal Case in Denver Shows." *Westword*. September 24, 2018. <https://www.westword.com/news/ice-sued-in-federal-court-over-backlog-of-foia-requests-and-slow-response-times-10817164>

²⁰ Lawrence, Dune. "Trump Refuses to Release Data on Immigration Crackdown." *Bloomberg Businessweek*, June 14, 2018. <https://www.bloomberg.com/news/articles/2018-06-14/trump-refuses-to-release-data-on-immigration-crackdown>

directed to have us call ICE's "FOIA public liaison" at a phone number which leads to a recorded outgoing message only. (In other words, it is impossible to leave a message for, or otherwise engage in communications with, ICE's public liaison.)

UWCHR requests to ICE and CBP for copies of Form I-213 denied citing improper exemptions

On October 17, 2017, UWCHR filed a request to ICE (and a parallel one to CBP) for "copies of Form I-213 ("Record of Deportable/Inadmissible Alien") created on or after January 1, 2012, for each individual detained or taken into custody by staff from ICE's Seattle field office, and each individual transferred to the custody of staff from the Seattle field office by CBP, or by state or local law enforcement officials." The I-213 forms are important because they document the reasons ICE sought to apprehend specific individuals, as well as the location of their apprehension and any participation by local law enforcement agencies. This information would help us assess the extent to which people are targeted by ethnic profiling or for politically-motivated reasons. For example, through the support of Sen. Cantwell's office, immigrant rights activist Maru Mora Villalpando was able to obtain her I-213 form, which lists her "anti-ICE" activity as the reason ICE has placed her in deportation proceedings; she has no criminal history. We are seeking the records of the countless other Washingtonians who may have been similarly targeted because of the way they look, the language they speak, or the beliefs they espouse.

On March 26, 2018, ICE closed the case by asserting that their records of detentions/deportations were exempt from FOIA because they relate to law enforcement practices subject to the (b)(7)(A) subsection of the FOIA, as amended in 2000. This subsection exempts from disclosure "records or information compiled for law enforcement purposes, but only to the extent that production of such law enforcement records or information . . . could reasonably be expected to interfere with enforcement proceedings."²¹ Yet the § 552(c) exclusions cited in [ICE's March 26 letter to us](#) (See **Appendix B**) are only applicable in cases where there is reason to believe the release of records would tip off an otherwise-unaware target to the existence of an active criminal investigation, thus impeding the enforcement of criminal law. It is not reasonable to expect that all those detained or deported since by ICE since 2012 remain unaware today that they were being investigated, nor is it reasonable to assert that all those detained were ever under criminal investigation. We appealed this determination on May 14, 2018, arguing that to apply this exemption to all records of ICE's detentions and deportations in our state for the past six years is dangerously overbroad, effectively concealing a large part of the agency's operations from the public.

In May, both Sen. Cantwell and Rep. Jayapal contacted ICE on our behalf. In a letter dated May 30, 2018, Sen. Cantwell was told that this case had been closed because ICE had located no responsive records. In fact, the case was under active appeal at the time. On June 25, 2018, ICE rejected our appeal and closed the case. It is relevant to note that in similar cases that have gone to litigation in

²¹ 5 U.S.C. Â§ 552(b)(7)(A) (2000).

other states, federal courts have ordered ICE to release the *exact same* records we are now seeking for Washington state.²²

UWCHR FOIA requests for emails between ICE agents and Washington state Department of Licensing employees denied under inconsistent and implausible pretexts

In January 2018, we requested copies of emails by three different ICE agents to the Washington state Department of Licensing (DOL)²³ seeking Washingtonians' personal information. On May 25, ICE responded by giving us *some* of the emails requested, but withholding 4 pages in full, asserting FOIA's b(5) exemption. The b(5) exemption is intended to protect the deliberative process within government agencies by allowing employees to discuss potential policies candidly behind the scenes. But it is clearly inappropriate to apply it to this case, because these emails were exchanged with Washington state's DOL, with whom ICE employees have no reason to be formulating immigration policy. For this reason, we appealed the applicability of this exemption, but on July 14, 2018, ICE rejected our appeal, now claiming that the 4 pages initially withheld are in fact blank, and were therefore not withheld, but simply contain no text.

We know this to be false because after cross-referencing these emails against emails provided to us by the Washington state DOL under Washington state's Public Records Act, we determined that the email from ICE officer Timothy Black requesting immigrant activist Maru Mora's personal information is among those ICE is withholding. We have obtained DOL employee Mandy Hummel's response to ICE's request for Ms. Mora's information, which reads "Here is your request," and contains her driver's license application as an attachment; it is simply implausible that the DOL understood a blank email as a request for Ms. Mora's information. Rather, what this suggests is a pattern of willful deception to evade accountability for abuses.

²² Ohio State University and Advocates for Basic Legal Equality filed suit under the FOIA in November 2014 against the CBP sought similar information, such as I-213, I-44, and I-247 forms, in addition to communication between CBP and state and local law enforcement. We modeled our request language after this request for similar information. See the full complaint here: <https://cbpabusestest2.files.wordpress.com/2015/11/foia-request.pdf>

²³ The Washington State Department of Licensing is the state agency responsible for issuing driver's licenses and registering motor vehicles.

3. Specific institutional arrangements thwart access to information

In the United States, immigration enforcement is carried out through a tangle of institutions both public and private, local and federal, civil and criminal. The practices vary from state to state, even city to city, and the rights protections available to individuals vary depending on the manner and location of their apprehension, among other factors. The confusion generated by the multiplicity of institutional actors and legal regimes at play creates particular challenges for transparency, which agencies exploit to conceal their operations.

ICE/CBP Hide Behind Private Contractors

Many of the detention centers where migrants are held for ICE are privately run, yet private companies are not subject to the requirements of FOIA. In theory, information about their operations under contract for ICE should be obtainable via FOIA requests to ICE, yet records in the exclusive custody of specific detention centers are often difficult to get, and are sometimes inappropriately withheld under exemptions protecting confidential commercial or financial information. For example, in response to a 2013 FOIA request by Detention Watch Network and the Center for Constitutional Rights for information regarding the bed quota—a provision in ICE’s contracts with private companies that mandates the agency fill a minimum number of beds on a daily basis—ICE withheld this information, citing exemption 4, and arguing this was necessary to protect the prison corporations’ “competitive advantage” as private corporations. While a court eventually forced the release of this information, this was only possible after lengthy and expensive litigation.²⁴

Relatedly, Citizens for Responsibility and Ethics in Washington (CREW) accuse private prison corporations like The Geo Group and CoreCivic of “manipulating their current immunity from most open records laws to cover up violations of prisoners’ rights and conceal their real costs.”²⁵ The organization argues that the use of private prisons effectively shrouds government activities in secrecy, stating: “Privatizing entities once under exclusive governmental control has eliminated a key component of public accountability — access to information that explains how the prisons are being run, at what cost, and the extent to which they are engaging in abuses that deprive prisoners of their basic civil liberties.”²⁶

²⁴ See case summary here: <https://ccrjustice.org/sites/default/files/attach/2017/08/17-64%20Brief%20in%20Opposition%20-%20Final.pdf>

²⁵ Watson, Joe. “Advocates Want Private Prisons Subject to Open Records Laws.” Prison Legal News, August 2, 2016. <https://www.prisonlegalnews.org/news/2016/aug/2/advocates-want-private-prisons-subject-open-records-laws/>

²⁶ Citizens for Responsibility and Ethics in Washington. “Private Prisons: A Bastion of Secrecy.” Washington, D.C., February 2014. <https://s3.amazonaws.com/storage.citizensforethics.org/wp-content/uploads/2017/08/02211102/private-prisons.pdf>

ICE/CBP erode transparency of other public institutions

Across the country, ICE and CBP also work with state and local law enforcement agencies through various forms of partnership. These include agreements by jails to hold individuals wanted by ICE or CBP on so-called “detainers,” facilitating their later transfer to ICE. When human rights defenders have sought information about detainers from the local and state agencies under state public records laws, ICE has objected to the disclosure of this information, effectively rendering *other* government institutions less transparent.

This makes it more difficult to obtain information about non-citizens detained for immigration purposes than about other incarcerated populations.²⁷ Immigration cases, unlike criminal cases, are not a matter of public record. This poses numerous challenges to advocates seeking to document abuses against detainees, improve their access to legal representation, or even to understand where individual detainees are being held at a given time.²⁸

²⁷ See, for example, [this article](https://www.miamiherald.com/news/local/community/miami-dade/article138851593.html) about ICE’s actions to block disclosure of information by the mayor of Miami, Florida: Hanks, Douglas. “Are Immigration Detention Requests a Secret? The Mayor and the Feds Are at Odds.” Miami Herald, March 16, 2017. <https://www.miamiherald.com/news/local/community/miami-dade/article138851593.html>

²⁸ Sacchetti, Maria. “ICE Detainee Hanged Himself After Being Taken off Suicide Watch,” *Washington Post*, November 29, 2018. https://www.washingtonpost.com/local/immigration/ice-detainee-hanged-himself-after-being-taken-off-suicide-watch/2018/11/28/67a62e74-edb8-11e8-baac-2a674e91502b_story.html

4. Impact of secrecy on the work of human rights defenders

Access to information through government transparency is vital to the work of human rights defenders in the contemporary USA, for multiple reasons.

First, even for immigrants who do not engage in public advocacy work, FOIA represents an essential tool for self-defense. Because those facing deportation under civil immigration rules lack the most basic due process protections, including access to information about the government's case against them, *FOIA is the only mechanism by which they can obtain their own records*. Despite this, and in violation of the law, ICE sometimes declines to provide immigrants access to their own information. In one recent case, ICE refused to provide an immigration attorney information about her client's case—information that was necessary for her to effectively defend her client—under the reasoning that “It is ICE's practice to deny fugitive alien FOIA requesters access to the FOIA process when the records requested could assist the alien in continuing to evade immigration enforcement efforts.”²⁹ In other words, ICE denied the lawyer access to information about her client precisely because that information could be used to defend her against the agency's enforcement efforts. No such exemption exists under FOIA; ICE's attempt to invent one is illustrative of the agency's broader hostility to the democratic rule of law.

Second, given ICE's demonstrated willingness to ignore Congressional reporting mandates, FOIA represents the only tool available to exercise independent oversight over the agency's operations. This has proved pivotal, for example, in cases of retaliatory targeting of human rights defenders who are vulnerable to deportation: absent access to the agencies' internal documentation through FOIA, the politically-motivated targeting of activists in violation of the first amendment to the US Constitution would be extraordinarily difficult to prove.

For example, in Vermont, human rights defenders have used public records to document a stunning pattern of surveillance and retaliation against members of Migrant Justice, an immigrant rights organization. Pathbreaking research uncovered the use of a civilian informant to infiltrate the organization, and the targeting of people for investigation based on their wearing Migrant Justice T-shirts or otherwise demonstrating affiliation with the organization. Multiple leaders of the organization, including Balcazar Sánchez, have been targeted for deportation despite having no criminal records.

Although ICE claims that all undocumented persons currently present in the United States are legitimate targets for enforcement activity, the systematic nature of its surveillance of Migrant Justice makes clear that the agency is motivated to break up organizations that challenge its abuses through the selective deployment of immigration law to target outspoken leaders like Mr. Sánchez. This case is now before U.S. courts, where plaintiffs allege violations of their rights under the First

²⁹ To read the complaint filed in this case, see <http://aclu-co.org/wp-content/uploads/2016/08/1-Complaint-082416.pdf>

Amendment to the Constitution, but it would not have come to light without research relying on activist leadership and the dogged use of public records laws.³⁰ Its success to date illustrates the importance of strengthening and expanding these laws³¹.

In Washington state, Maru Mora Villapando's case offers another example of withholding information that could be used in self defense as well as to prove patterns of targeting. A vocal critic of ICE with no criminal record, Ms. Mora was targeted for deportation by ICE in apparent retaliation for her public activities in defense of immigrant rights—though she only learned this thanks to the intervention of Sen. María Cantwell, whose office secured access to her I-213 form when Ms. Mora's own attorney was unable to obtain it using FOIA.

As part of her attempt to defend her rights, in February 2018, Ms. Mora filed a FOIA request for public documents that could shed light on ICE's targeting of her and other activists for deportation. After receiving no response, in May 2018 she filed suit in federal district court. ICE sought to strike information about Ms. Mora's Constitutionally protected free speech activities from the complaint, which was denied by in July 2018. The judge emphasized that the information Maru Mora requested "seeks to shed light on the legality of the Defendant's actions against her and other immigrant rights activists" and is a matter of "grave public interest" and key to "provide necessary context for the heightened public interest concerns involving potential government wrongdoing".³² Despite this ruling, almost six months later Ms. Mora has yet to obtain the information requested.

³⁰ See copy of the complaint, *Migrant Justice v. Department of Homeland Security*, available here: <https://ccrjustice.org/sites/default/files/attach/2018/11/SVTworkersS18111412220.pdf>

³¹ Indeed, several of the specific records that plaintiffs used to document their unlawful profiling (including I-213 forms, Field/Fugitive Operations worksheets, significant event notifications received by ICE's Field Office, and other records) are the same forms UWCHR is currently suing ICE to obtain for Washington state.

³² *Maria Mora-Villalpando v. United States Immigration and Customs Enforcement, et al.* Case No. C18-0655JLR. July 23, 2018. See: <https://www.leagle.com/decision/infeco20180808686>

5. Conclusion and Recommendations

The defense of immigrant rights in the United States today requires urgent and attention on multiple fronts. One essential component of what's needed is basic transparency.

As in all human rights struggles, community organizing and resistance lie at the heart of any movement for change, yet access to public records provides a powerful way for defenders to corroborate individual accounts and situate them within a broader context of institutional practices, essential to establish accountability. Records obtained through FOIA help shine a light on human rights abuses that would otherwise transpire largely in secret, leaving only their victims to give voice to their experiences. For this reason, the growing secrecy about ICE/CBP's operations today is cause for grave concern.

To address transparency problems, the United States government should adopt the following recommendations:

1. Treat immigration court proceedings as a matter of public record, equivalent to criminal justice proceedings.
2. Link funding for immigration enforcement with demonstrated compliance with FOIA and mandatory reporting mechanisms. The inclusion of new reporting requirements in the 2018 DHS appropriations bill is a step in this direction, but absent consequences for noncompliance, these provisions are toothless. Congress should not renew funding for agencies that openly flout the law.
3. All private corporations that contract to provide services to the federal government should be subject to FOIA for the portion of their operations that relates to government services. This should be explicit in all contracts for government services, and refusal to comply with FOIA should be identified as grounds for termination.

Appendices

Appendix A: Spreadsheet released by ICE in response to UWCHR FOIA request regarding criminal charges and convictions for FY 2017- FY 2018 for administrative arrests in the Seattle area of responsibility covering Alaska, Oregon, and Washington.

Appendix B: Letter to Angelina Godoy from Catarina M. Pavlik-Keenan, RE: ICE FOIA Case Number 2018-ICEFO-14208, dated March 26, 2018.

ERO-LESA Statistical Tracking Unit

~~For Official Use Only (FOUO)/Pre-decisional~~

2018-ICFO-36166

Criminal Charges and Convictions for FY2017-FY2018 YTD ERO Administrative Arrests for Seattle Area of Responsibility

Criminal Charge Category	FY2017			FY2018 YTD 10/01/2017-04/27/2018		
	Criminal Charges	Criminal Convictions	Total	Criminal Charges	Criminal Convictions	Total
Abortion	-	-	-	-	1	1
Arson	2	9	11	3	8	11
Assault	365	1,329	1,694	199	690	889
Bribery	-	1	1	-	-	-
Burglary	69	288	357	39	147	186
Commercialized Sexual Offenses	9	17	26	5	11	16
Conservation	3	12	15	4	5	9
Damage Property	44	98	142	14	37	51
Dangerous Drugs	409	1,662	2,071	188	847	1,035
Embezzlement	-	1	1	-	2	2
Extortion	1	10	11	2	3	5
Family Offenses	16	57	73	5	41	46
Flight / Escape	20	58	78	5	41	46
Forgery	30	130	160	20	71	91
Fraudulent Activities	45	245	290	49	188	237
Gambling	1	2	3	-	4	4
General Crimes	88	350	438	68	199	267
Health / Safety	5	37	42	3	14	17
Homicide	13	42	55	4	14	18
Immigration	108	665	773	65	374	439
Invasion of Privacy	54	213	267	37	117	154
Juvenile Offenders	7	11	18	2	5	7
Kidnapping	7	42	49	10	26	36
Larceny	106	583	689	47	306	353
Liquor	13	96	109	4	53	57
Obscenity	2	5	7	1	1	2
Obstructing Judiciary, Congress, Legislature, Etc.	402	836	1,238	287	412	699
Obstructing the Police	108	398	506	58	223	281
Public Peace	95	337	432	50	165	215
Robbery	7	127	134	2	81	83
Sex Offenses (Not Involving Assault or Commercialized Sex)	52	197	249	38	90	128
Sexual Assault	33	259	292	27	128	155
Smuggling	1	1	2	1	2	3
Stolen Property	31	146	177	13	96	109
Stolen Vehicle	35	225	260	37	140	177
Tax Revenue	-	2	2	-	-	-
Threat	3	3	6	1	2	3
Traffic Offenses	431	1,596	2,027	244	914	1,158
Traffic Offenses - DUI	406	1,665	2,071	187	802	989
Weapon Offenses	66	260	326	53	159	212

ERO-LESA Statistical Tracking Unit

~~For Official Use Only (FOUO)/Pre-decisional~~

2018-ICFO-36166

Criminal Charges and Convictions for FY2017-FY2018 YTD ICE Removals for Seattle Area of Responsibility

Criminal Charge Category	FY2017			FY2018 YTD 10/01/2017-04/27/2018		
	Criminal Charges	Criminal Convictions	Total	Criminal Charges	Criminal Convictions	Total
Abortion	-	-	-	-	1	1
Arson	-	8	8	2	6	8
Assault	165	1,022	1,187	127	618	745
Bribery	-	2	2	-	-	-
Burglary	20	217	237	28	122	150
Commercialized Sexual Offenses	4	19	23	2	12	14
Conservation	2	5	7	3	5	8
Damage Property	9	60	69	22	39	61
Dangerous Drugs	196	1,175	1,371	184	834	1,018
Embezzlement	-	1	1	-	-	-
Extortion	1	9	10	1	7	8
Family Offenses	9	69	78	11	42	53
Flight / Escape	10	42	52	5	24	29
Forgery	17	97	114	17	38	55
Fraudulent Activities	20	169	189	32	134	166
Gambling	-	2	2	-	-	-
General Crimes	53	257	310	39	212	251
Health / Safety	4	16	20	6	16	22
Homicide	4	31	35	1	24	25
Immigration	71	564	635	57	370	427
Invasion of Privacy	25	130	155	22	83	105
Juvenile Offenders	3	9	12	-	4	4
Kidnapping	2	30	32	5	21	26
Larceny	50	374	424	36	193	229
Liquor	13	86	99	9	39	48
Obscenity	-	3	3	1	5	6
Obstructing Judiciary, Congress, Legislature, Etc.	205	600	805	202	339	541
Obstructing the Police	48	317	365	43	166	209
Public Peace	35	275	310	44	155	199
Robbery	7	96	103	4	46	50
Sex Offenses (Not Involving Assault or Commercialized Sex)	30	183	213	16	109	125
Sexual Assault	31	192	223	20	153	173
Smuggling	1	3	4	-	3	3
Stolen Property	11	74	85	11	52	63
Stolen Vehicle	15	132	147	22	74	96
Tax Revenue	-	1	1	-	-	-
Threat	3	4	7	2	4	6
Traffic Offenses	235	1,357	1,592	212	880	1,092
Traffic Offenses - DUI	228	1,515	1,743	199	825	1,024
Weapon Offenses	35	226	261	29	119	148

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



U.S. Immigration
and Customs
Enforcement

March 26, 2018

Angelina Godoy
University of Washington
Box 353650

Seattle, WA 98195-3650

RE: ICE FOIA Case Number 2018-ICFO-14208

Dear Dr. Godoy:

This letter is the final response to your Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), dated October 18, 2017. You have requested copies of the following records:

request copies of Form I-213 ("Record of Deportable/Inadmissible Alien") created on or after January 1, 2012, for: a. Each individual detained or taken into custody by staff from ICE's Seattle field office (see request for details)

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 individual¹ unless the agency has exempted the system of records from the access provisions of the Privacy Act.²

ICE has conducted a search of the ICE Enforcement and Removal Operations 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 Office of Enforcement and Removal Operations that would be

¹ 5 U.S.C. § 552a(d)(1).

² 5 U.S.C. §§ 552a(d)(5), (j), and (k).

responsive to your request. 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 § 5.8., 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 need any further assistance or would like to discuss any aspect of your request, please contact the FOIA office and refer to FOIA case number **2018-ICFO-14208**. 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,

A handwritten signature in black ink, appearing to read "Catrina M. Pavlik-Keenan", with a stylized flourish at the end.

Catrina M. Pavlik-Keenan
FOIA Officer



CENTER FOR HUMAN RIGHTS

UNIVERSITY *of* WASHINGTON

Henry M. Jackson School
of International Studies