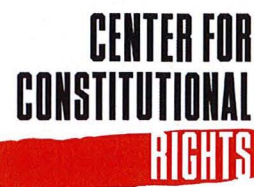




**FREE MIGRATION
PROJECT**



September 11, 2019

via Federal Express

U.S. Immigration and Customs Enforcement
Freedom of Information Act Office
500 12th Street SW Stop 5009
Washington, DC 20536

Executive Office for Immigration Review
Office of General Counsel - FOIA Service Center
5107 Leesburg Pike #1903
Falls Church, VA 22041

U.S. Department of the Treasury
FOIA and Transparency
Washington, DC 20220

Re: Freedom of Information Act Request

To Whom it May Concern:

This is a request under the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), on behalf of Grassroots Leadership, Free Migration Project, Austin Sanctuary Network, and the Center for Constitutional Rights ("CCR") (collectively "the Requesters") to the U.S. Immigration and Customs Enforcement Agency ("ICE"), the U.S. Department of Justice Executive Office for Immigration Review ("EOIR"), and the U.S. Department of the Treasury ("DOT") for information relating to any and all fines or penalties imposed on individuals, including immigrants taking "sanctuary" in churches, places of worship, or elsewhere, pursuant to Immigration and Nationality Act ("INA") § 274D, 8 U.S.C. § 1324d. We ask that you please direct this request to all appropriate offices and departments within each agency.

A. Purpose of Request

The purpose of this request is to obtain information for the public about federal agencies' policies of imposing fines and monetary penalties on individuals, including immigrants taking sanctuary. As organizations that engage in advocacy and public education on behalf of immigrant communities, Grassroots Leadership, Free Migration Project, Austin Sanctuary Network, and CCR have an interest in understanding the implementation and impact of these policies, how they were developed and what goals the agencies have in enforcing them. Because the Requesters disseminate policy and educational

materials to the public for no cost, information obtained from this FOIA request will better enable communities they represent as well as the general public to understand the effects of sanctuary fines and why they are being imposed.

B. Request for Information

Grassroots Leadership, Free Migration Project, Austin Sanctuary Network, and CCR request the following information:

1. From U.S. Immigration and Customs Enforcement:

- Any and all records relating to current policies, procedures, guidelines, instructions or other materials concerning when and how civil fines and penalties under INA§ 274D, 8 U.S.C. § 1324d, are enforced on individuals who are alleged to have a final administrative removal order, including but not limited to immigrants taking sanctuary.
- Any and all guidelines, schedules, instructions or other records concerning fee calculations, fee amounts, or other monetary information ICE is allowed to impose on individuals pursuant to INA§ 274D, 8 U.S.C. § 1324d, including but not limited to immigrants in sanctuary.
- Any communications between ICE officials and officials of local or federal agencies regarding fines, fees and/or penalties pursuant to INA§ 274D, 8 U.S.C. § 1324d for individuals, including but not limited to immigrants taking sanctuary, between January 2013 and the date of this Request.
 - This includes any communications between ICE personnel or between ICE personnel and other federal agencies relating to the drafting, updating, and/or creation of ICE Form I-79B “Notice of Intention to Fine Under Section 274D of the Immigration and Nationality Act.”
- Any data, charts, statistics or lists collected by ICE regarding individuals who have been sent notices of fines under INA§ 274D, 8 U.S.C. § 1324d, including but not limited to immigrants taking sanctuary.
- The number of individuals who ICE has imposed fees, fines and/or penalties pursuant INA§ 274D, 8 U.S.C. § 1324d, including but limited to immigrants taking sanctuary, broken down by date, country of origin, state/city of residence and gender.
- The number of individuals who have been sent ICE Form I-79B “Notice of Intention to Fine Under Section 274D of the Immigration and Nationality Act” broken down by date, country of origin, state/city of residence and gender.
- Any data, charts, statistics, lists, or records collected by ICE regarding individuals taking sanctuary and/or the churches, places of worship, and other locations where individuals are taking sanctuary.

2. From U.S. Department of the Treasury:

- The number of individuals, including but not limited to immigrants taking sanctuary, who have been referred by ICE to the Treasury Department regarding non-payment of fines or fees in connection with INA§ 274D, 8 U.S.C. § 1324d, broken down by date, country of origin, state/city of residence and gender.

- All communications between ICE and DHS officials with Treasury Department personnel regarding civil penalties, fines, fees, payments or non-payments in connection with immigrants INA§ 274D, 8 U.S.C. § 1324d, including but not limited to immigrants taking sanctuary.

3. *From the U.S. Department of Justice Executive Office for Immigration Review:*

- The number of individuals, including but not limited to immigrants taking sanctuary, who have filed appeals or motions to reopen or reconsider a decision by an ICE Deciding Official to the Board of Immigration Appeals to impose a fee, fine, or penalty pursuant to INA§ 274D, 8 U.S.C. § 1324d, broken down by date, country of origin, state/city of residence and gender.
- The number of decisions issued by the Board of Immigration Appeals on appeals or motions to reopen or reconsider a decision by an ICE Deciding Official to impose a fee, fine, or penalty pursuant to INA§ 274D, 8 U.S.C. § 1324d, broken down by outcome (including denial, grant, and whether and by how much the amount of the fee, fine or penalty was changed), and further broken down by date, country of origin, state/city of residence and gender.

C. Format of Production

Please search for responsive records regardless of format, medium, or physical characteristics, and including electronic records. Please provide the requested documents in the following format:

- Saved on a CD, CD-ROM,DVD, hard drive or other hardcopy media;
- In PDF or TIF format wherever possible;
- Electronically searchable wherever possible;
- Each paper record in a separately saved file;
- "Parent-child" relationships maintained, meaning that the Requester must be able to identify the attachments with emails;
- Any data records in native format (i.e. Excel spreadsheets in Excel);
- Emails should include BCC and any other hidden fields;
- With any other metadata preserved.

D. The Requesters

Grassroots Leadership is a non-profit advocacy organization based in Austin, Texas that works for a more just society where prison profiteering, mass incarceration, deportation, and criminalization are things of the past. Grassroots Leadership uses research, education, organizing and direct action to deliver its message, including through its website (www.grassrootsleadership.org), its email list of more than 18,000 individuals, its blog, and its social media channels. Grassroots Leadership regularly publishes and widely disseminates reports, newsletters, press releases and other materials that provide impacted communities, national and local policy-makers, the press and the public with information on the system of detention and deportation, Grassroots Leadership is a member of many national networks and coalitions that educate and advocate for better treatment of immigrants and other people of color in the immigration and criminal legal systems.

Free Migration Project represents immigrant clients in their legal proceedings, provides legal support and training to organizers and advocates, engages in public education and outreach, litigates in the

public interest, and advocates for fair and open immigration laws. Free Migration Project represents clients in public deportation defense campaigns and provides legal and strategic support to undocumented organizers fighting for immigrant rights. Free Migration Project works to educate and inform the public about the widespread benefits of open migration policies. Free Migration Project organizes public forums, workshops, and panel events to provide a platform for scholars, advocates, and activists to challenge status quo ideas about migration.

Austin Sanctuary Network (ASN) is a coalition of faith communities, immigrants and other community members of civil society and organizations in and around Austin, Texas, that support immigrants fleeing violence or in danger of deportation. Among other activities, ASC educates the faith community and the community as a whole about the refugee crisis and mass migration, partnering with other educators and multi-faith groups who approach the crisis from an ethical and theological perspective.

The Center for Constitutional Rights ("CCR") is a non-profit, public interest legal and advocacy organization that engages in the fields of civil and international human rights. CCR's diverse issue areas include litigation and advocacy around immigration, as well as racial and ethnic profiling. CCR is a member of several networks nationally and provides legal support to civil rights movements. One of CCR's primary activities is the publication of newsletters, know-you-rights handbooks, legal analysis of current immigration law issues, and other similar materials for public dissemination. These and other materials are available through CCR's Development, Communications, and Advocacy Departments. CCR operates a website, <http://ccrjustice.org>, which addresses the issues on which the Center works. CCR staff members often serve as sources for journalist and media outlets, including on issues related to racial justice, police brutality, racial discrimination, and the right to dissent. In addition, CCR regularly issues press releases, has an active social media presence with thousands of followers, and also issues regular email updates sent to over 50,000 supporters about developments and news pertaining to CCR's work.

E. Expedited Processing

Expedited processing of this request is required because there is a "compelling need" for the information. *See* 5 U.S.C. § 552(a)(6)(E)(i)(I). A "compelling need" may be established where "a failure to obtain requested records on an expedited basis under this paragraph could reasonably be expected to pose an imminent threat to the life or physical safety of an individual." *Id.* § 552(a)(6)(E)(v)(I), 6 C.F.R. § 5.5(e)(i); 28 C.F.R. § 16.5(e)(1)(i), 31 C.F.R. § 1.4(e)(1)(i). To date, it appears that civil fines are being imposed on individuals taking sanctuary for their own safety and that of their families. Removal to their countries of origin may have dire consequences to their lives. The fines reportedly being imposed by ICE of hundreds of thousands of dollars will make it impossible for them, even if they were to leave sanctuary, to meet their basic needs and access services important to their ability to live a free and safe life.

A "compelling need" may also exist where there is an "urgency to inform the public concerning actual or alleged Federal Government activity," and the requesting party is "primarily engaged in disseminating information." 6 C.F.R. § 5.5(e)(ii); 28 C.F.R. § 16.5(e)(ii), 31 C.F.R. § 1.4(e)(1)(ii). There is an urgent need to inform the public of the policies and decision-making regarding these penalties and fines and how they are being imposed. Currently, imposing excessive monetary fines on individuals taking sanctuary and who have no means to pay is viewed as both a confusing and punitive government policy and potentially wasteful use of government resources. Moreover, because of unprecedented and critical

changes to the federal government's immigration policies and practices, public interest in this information has grown to an all-time high. Consistent media reporting on immigration issues underscore the high public interest; indeed, leading national news organizations have reported on these fines very recently.¹ Thus, the level of urgency and public interest is clear. Further, as shown in (D) above, Requester Grassroots Leadership is primarily engaged in disseminating information.

The public must be able to meaningfully engage with the political and legal issues surrounding these policies, to be equipped to engage in the notice and comment process and otherwise advise clients on the final rules.

F. Fee Waiver

The Requesters are entitled to a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) on the grounds that "disclosure of the requested records is in the public interest because it is likely to contribute significantly to the public understanding of the activities or operations of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). Requesters meet the requirements for a fee waiver because the subject of the request concerns the operations or activities of the government, the disclosure of the information is likely to contribute to a significant public understanding of government operations or activities, the Requesters' primary interest is in disclosure; and they have no commercial interest in the information. *See* 28 C.F.R. § 16.10(k); 31 C.F.R. 1.7(b); 6 F.R. 5.11(b).

As described in above, the Requesters are non-profit organizations dedicated to educating the public and advocating for civil rights, human rights, and immigrant rights, and have undertaken this work in the public interest and not for any private commercial interest. Similarly, the primary purpose of this FOIA request is to obtain information to further the public's understanding of federal immigration actions and policies, and their effects on alien and immigrant communities. Access to this information is crucial for Requesters and the communities they serve to evaluate government procedures and actions, as well as their potential detrimental effects.

Requesters will make any information that they receive as a result of this FOIA request available to the public, including the press, at no cost. Disclosure in this case therefore meets the statutory criteria, and a fee waiver would fulfill Congress' legislative intent in amending FOIA. *See Judicial Watch Inc. v. Rossotti*, 326 F.3d 1309 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be 'liberally construed in favor of waivers of noncommercial requesters.'").

In the alternative, if no fee waiver is granted and the fees exceed \$250.00, please contact the Requester's undersigned counsel to obtain consent to incur additional fees. Processing fees should be limited pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) ("[F]ees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by ... a representative of the news media.").

¹ *See* "Trump administration threatens hefty fines on immigrants who elude deportations," Washington Post, July 2, 2019; "Trump Administration Hits Some Immigrants In U.S. Illegally With Fines Up To \$500,000," National Public Radio, July 2, 2019; "Ordered Deported, Then Sent a \$497,777 Fine From ICE," New York Times, July 5, 2019; "Immigrants taking sanctuary in churches hit with huge fines," Fox Business News, July 30, 2019; "ICE issuing fines to immigrants who have taken sanctuary in churches," ABC News, July 2, 2019.

G. Certification & Conclusion

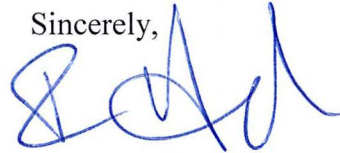
The Requesters certify that the above information is true and correct to the best of the Requesters' knowledge. *See* 6 C.F.R. 5.5(e)(3); 28 C.F.R. § 16.5(e)(3); 31 C.F.R. 1.4(e)(3). If this Request is denied in whole or in part, Requesters ask that you justify all deletions by reference to specific exemptions of FOIA. The Requesters expect you to release all segregable portions of otherwise exempt material, and reserves the right to appeal a decision to withhold any records or to deny the within application for expedited processing or fee waiver.

If you have any questions regarding the processing of this request, please do not hesitate to contact Ian Head at ihead@ccrjustice.org or at:

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Center for Constitutional Rights
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ihead@ccrjustice.org

Thank you for your prompt attention to this matter.

Sincerely,



Ian Head
Senior Legal Worker