

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



U.S. Immigration
and Customs
Enforcement

November 24, 2020

Christopher Benoit
The Law Office of Lynn Coyle, PLLC
2515 N. Stanton Street
El Paso, TX 79902

**RE: Diocesan Migrant & Refugee Services, Inc. v. ICE, 3:19-cv-00236-FM
ICE FOIA Case Number 2019-ICLI-00062
Supplemental Response**

Dear Mr. Benoit:

This letter is a supplemental response to your Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), dated June 26, 2019. You have requested the following records:

- 1) Any policies, rules, interpretations, instructions, procedures, or guidance documents that were created, modified, or disseminated in June 2019 that are applicable to access to counsel pursuant to the Migrant Protection Protocols, specifically regarding the one hour prior to the scheduled hearing time in immigration court that affords respondents an opportunity to meet in person with attorneys.
- 2) Any policies, rules, interpretations, instructions, procedures, or guidance documents that were created, modified, or disseminated between December 1, 2018 and the date of processing your request, that are applicable to access to counsel pursuant to the Migrant Protection Protocols and that discuss, describe, reference, or otherwise refer to:
 - a) Know Your Rights presentations or other orientations or general information sessions provided to respondents subjected to the Migrant Protection Protocols and that discuss, describe, reference, or otherwise refer to:
 - b) Individuals serving as Friend of the Court during removal proceedings for respondents pursuant to the Migrant Protection Protocols;
 - c) The location(s) in which respondents subjected to the Migrant Protection Protocols shall be seated or otherwise restricted to, during the one hour prior to the scheduled hearing time in immigration court that affords respondents an opportunity to meet in-person with attorneys;
 - d) The handling of respondents subjected to the Migrant Protection Protocols by EOIR security personnel, ICE ERO, or contractors associated therewith, during the one hour prior to the scheduled hearing time in immigration court that affords respondents an opportunity to meet in-person with attorneys; and
 - e) The provision of information to attorneys, accredited representatives, or others – and any restrictions or prohibitions thereof – regarding the EOIR docket or upcoming hearing

dates for respondents subjected to the Migrant Protection Protocols, including but not limited to any redactions of respondents' A- numbers.

- 3) Any correspondence, memoranda, reports, notes, meeting notes, calendars, telephone logs, or other records – whether in proposed, draft, or final form, and whether paper or electronic (including e-mail or cables) – that discuss, describe, reference, or otherwise refer or apply to the subject areas listed in categories 1 and 2 above.

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

A total of 1,039 pages of records were reviewed for this interim production. After review of these documents, ICE has determined that 697 pages are non-responsive. Additionally, 40 pages were referred to another agency for direct response to you. The remaining 302 pages of records were located pursuant to a search of the Office of Enforcement and Removal Operations (ERO). The responsive 302 pages of records are attached and have been marked 2019-ICLI-00062 1 to 2019-ICLI-0062 302. Upon review, ICE has determined that portions of the 302 pages will be withheld pursuant to Exemptions (b)(5), (b)(6), (b)(7)(C), and (b)(7)(E) of the FOIA.

ICE has applied the following FOIA exemptions. FOIA Exemption (b)(5) protects from public disclosure intra-agency documents that contain the recommendations, opinions, and conclusions of agency employees, and portions of the responsive documents which qualify for protection under the deliberative process privilege, the attorney-client privilege, and the attorney work-product privilege.

FOIA Exemption (b)(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, or 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 ICE and DHS employees contained within the documents, as well as the names, and other personally identifiable information of other individuals contained within the records.

FOIA Exemption 6 exempts from disclosure information in 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 when production of such 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 interests in law enforcement records, categorical withholding of information that identifies third parties in law enforcement records is ordinarily appropriate.

If you have any questions about this letter, please contact Assistant U.S. Attorney Manny Romero at (915) 534-6555 or Manuel.Romero@usdoj.gov.

Sincerely,

Fernando Pineiro Jr.
(A)FOIA Officer

Enclosure(s): 302 page(s)

cc:

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