IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CITIZENS FOR RESPONSIBILITY AND ETHICS IN WASHINGTON,
1331 F St. NW, Suite 900
Washington, DC 20004,

Plaintiff,

v.

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT,
500 12th St., SW
Washington, DC 20536,

Defendant.

Civil Action No. _____

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

1. Plaintiff Citizens for Responsibility and Ethics in Washington ("CREW") brings this action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, seeking records from U.S. Immigration and Customs Enforcement ("ICE") relating to President Biden's Executive Order on eliminating the use of private detention facilities and ICE's subsequent contracts with private prison companies GEO Group and CoreCivic.

2. CREW seeks declaratory relief that Defendant has violated FOIA by failing to timely respond to CREW's request, and injunctive relief requiring Defendant to immediately process and release the requested records.

Jurisdiction and Venue

3. This Court has subject-matter jurisdiction and personal jurisdiction under 5 U.S.C. §§ 552(a)(4)(B) and 552(a)(6)(C)(i). The Court also has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 2201(a), and 2202.

4. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

Parties

5. Plaintiff CREW is a non-profit, non-partisan organization organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the rights of citizens to be informed about the activities of government officials and agencies, and to ensuring the integrity of government officials and agencies. CREW seeks to empower citizens to have an influential voice in government decisions and in the government decision-making process through the dissemination of information about public officials and their actions. To advance its mission, CREW uses a combination of research, litigation, and advocacy. As part of those efforts, CREW uses government records it obtains under FOIA.

6. Defendant ICE is an agency within the meaning of 5 U.S.C. § 552(f)(1). ICE has possession, custody, and control of the requested records.

Factual Background

7. On January 26, 2021, President Joe Biden issued an executive order to phase out the use of privately operated criminal detention facilities by the federal government.[1]

8. President Biden's executive order does not apply to ICE detention facilities, many of which are operated by private prison companies GEO Group and CoreCivic. As a result, for-profit immigration detention has continued and even expanded under the Biden administration.[2]

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[1] Exec. Order No. 14006, 86 FR 7483 (Jan. 26, 2021), https://www.federalregister.gov/documents/2021/01/29/2021-02070/reforming-our-incarceration-system-to-eliminate-the-use-of-privately-operated-criminal-detention.

[2] *See, e.g.,* Chris Geidner, A year after Biden's executive order on private prisons, business is still booming, (Jan. 26, 2022), https://www.grid.news/story/politics/2022/01/26/a-year-after-bidens-executive-order-on-private-prisons-business-is-still-booming/; Letter from More than 100 Members of Congress to Secretary of Homeland Security Alejandro Mayorkas and Acting Director of ICE Tae D. Johnson, March 1, 2022, https://jayapal.house.gov/wp-content/uploads/2022/03/LETTER_Private_Prisons_03_10_2022.pdf.

9. To help answer questions about these issues, CREW submitted a FOIA request to ICE on June 17, 2022, seeking the following records:

> 1. Any contracts or other agreements from January 20, 2021 to the present between ICE Office of Acquisition Management (OAQ) and GEO Group.
>
> 2. Any contracts or other agreements from January 20, 2021 to the present between ICE Office of Acquisition Management (OAQ) and CoreCivic.
>
> 3. All communications from January 20, 2021 to the present pertaining to contracts for detention between ICE (OAQ), ICE (ERO), GEO Group and/or CoreCivic.
>
> 4. Any and all records and communications from January 20, 2021 to the present referring to or relating to President Biden's Executive Order on eliminating the use of private detention facilities.[1] This request covers any and all records or internal and external communications, including but not limited to interagency communications, and communications with the White House and other government agencies, from January 20, 2021 to the present sent or received by or copying, Acting Director of the U.S. Immigration and Customs Enforcement, Tae D. Johnson, U.S. Attorney General Merrick Garland, Director of the U.S. Department of Justice's Executive Office for Immigration Review, David L. Neal, Director of the Federal Bureau of Prisons, Michael Carvajal, and Acting Director of the U.S. Department of Justice's National Institute of Corrections, Shaina Vanek.

10. CREW's request sought a fee waiver.

11. On June 17, 2022, ICE confirmed by email that it received CREW's request and assigned the request ICE Case Number 2022-ICFO-20575.

12. Receiving no further response, CREW emailed ICE on November 4, 2022, requesting a status update. ICE responded that the request is "pending."

13. On November 7, 2022, CREW emailed ICE again seeking an estimated processing time for the request. ICE responded to CREW's inquiry on November 8, 2022, but declined to provide an estimated processing time.

14. To date, CREW has received no other communications from Defendant regarding its June 17, 2022 FOIA request.

CREW'S CLAIM FOR RELIEF

ICE's Wrongful Withholding of Records Responsive to CREW's FOIA Request

15. CREW repeats and re-alleges the foregoing paragraphs.

16. In its June 17, 2022 FOIA request, CREW properly asked for records within the possession, custody, and control of ICE.

17. ICE is wrongfully withholding records responsive to CREW's FOIA request.

18. ICE has failed to conduct an adequate search in response to CREW's FOIA request.

19. By failing to timely release all requested records in full to CREW, ICE is in violation of FOIA.

20. CREW is therefore entitled to injunctive and declaratory relief requiring immediate processing and disclosure of the records requested in its June 17, 2022 FOIA request to ICE.

Requested Relief

WHEREFORE, CREW respectfully requests that this Court:

1. Order Defendant to immediately and fully process CREW's FOIA request and disclose all non-exempt documents to CREW;

2. Issue a declaration that CREW is entitled to immediate processing and disclosure of the requested records;

3. Provide for expeditious proceedings in this action;

4. Retain jurisdiction of this action to ensure no agency records are wrongfully withheld;

5. Award CREW its costs and reasonable attorneys' fees in this action; and

6. Grant such other relief as the Court may deem just and proper.

Date: November 16, 2022

Respectfully Submitted,

/s/ Nikhel S. Sus

Nikhel S. Sus
(D.C. Bar No. 1017937)
Kayvan Farchadi
(D.C. Bar No. 1672753)
CITIZENS FOR RESPONSIBILITY AND ETHICS IN WASHINGTON
[redacted]
Telephone: (202) 408-5565
Fax: (202) 588-5020
[redacted]