

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

**AMERICANS FOR IMMIGRANT
JUSTICE, INC.
3000 Biscayne Blvd., Suite 400,
Miami, FL 33137,**

Plaintiff,

v.

Civil Action No. _____

**UNITED STATES CUSTOMS AND
BORDER PROTECTION
1300 Pennsylvania Ave., NW
Washington, DC 20229**

and

**UNITED STATES DEPARTMENT OF
HOMELAND SECURITY
Office of the General Counsel
20 Massachusetts Ave., NW
Washington, DC 20528,**

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552 et seq., (“FOIA”), seeking disclosure of records concerning the enforcement operations and activities of United States Customs and Border Protection (“CBP”), a component of the United States Department of Homeland Security (“DHS”), related to detention of immigrants in CBP’s Rio Grande

Valley Sector in Texas. Americans for Immigrant Justice (“AI Justice”) seeks declaratory, injunctive, and other appropriate relief with respect to Defendants’ unlawful withholding of these records.

2. CBP has authority to secure the borders of the United States. In furtherance of this mission, CBP officers routinely admit or exclude individuals seeking entry to the United States, make arrests, issue charging documents, and detain noncitizens. Some noncitizens who are arrested by CBP are held in CBP-operated facilities known as CBP holding stations comprised of numerous “hold rooms.”

3. On or about January 31, 2008, CBP issued an internal directive, entitled “Hold Rooms and Short Term Custody.” *See* U.S. Border Patrol Policy (Jan. 31, 2008), attached at Exhibit A to Plaintiff AI Justice’s 07-03-13 FOIA Request, attached hereto at Exhibit A (hereinafter “CBP Short Term Custody Policy” or “Policy”). The express purpose of the CBP Short Term Custody Policy is stated as follows:

This directive establishes national policy for the short-term custody of persons arrested or detained by Border Patrol Agents and detained in hold rooms at Border Patrol Stations, checkpoints, processing facilities, and other facilities that are under the control of U.S. Customs and Border Protection (CBP).

CBP Short Term Custody Policy ¶ 1. In pertinent part, the Policy provides that:

All persons arrested or detained by the Border Patrol will be held in facilities that are safe, secure, and clean. Detainees will be provided food, water, properly equipped restrooms and hygiene supplies as set forth in this directive.

Id. ¶ 5.1.

Whenever possible, a detainee should not be held for more than 12 hours. Every effort will be made to promptly process, transfer, transport, remove, or release those in custody as appropriate and as operationally feasible.

Id. ¶ 6.2.1.

4. AI Justice attorneys conduct weekly “Know Your Rights” presentations at immigrant detention facilities operated by United States Immigrant and Customs Enforcement (“ICE”), a different component of DHS. In 2013, these attorneys interviewed more than one hundred immigrant detainees who had been apprehended by CBP in Texas in a territory that CBP categorizes as its “Rio Grande Valley Sector,” an operational division of CBP. Subsequently, the detainees were transferred to ICE detention facilities in Florida, where AI Justice attorneys encountered them. Upon information and belief, CBP operates ten holding stations in its Rio Grande Valley Sector. The detainees described prolonged periods of detention—as long as two weeks for some individuals—in inhumane and unlawful conditions.

5. Specifically, detainees consistently reported that, upon their arrest, they were told by CBP agents that they were being taken to what the CBP agents referred to as the “hieleras,” which is Spanish for “icebox” or “freezer.” The hieleras were extremely cold concrete holding rooms—cells—inside a CBP holding station. Detainees stated that the temperature inside the concrete cells was kept so cold that the detainees’ lips chapped and split, their fingers and toes turned blue, and their faces chapped and throbbed with pain. The majority of detainees reported being kept in cells with no beds, no chairs, and a single toilet sitting in plain view in the corner of the cell. Lights remained on twenty-four hours a day. Detainees, including women and children, reported sleeping, what little they could on the frigid concrete floor, frequently huddled together for warmth. So many detainees were placed in the cells that the cells became grossly overcrowded. Detainees described being held with as many as sixty other detainees in a single hielera, with all sixty individuals having to share a single toilet. Some detainees indicated that the cells were so crowded they could not

stretch their arms out without touching other detainees. Other detainees indicated they were so crowded that there was not enough room to lie down on the floor. Instead, they tried to sleep while sitting up.

6. The hieleras have no shower or bathing facilities. As a result, detainees described being held for days—and in some cases as long as two weeks—without being able to bathe or clean themselves. This was particularly hard on female detainees who were menstruating during their detention. Many detainees reported that when they ran out of toilet paper in the overcrowded cells, CBP agents took hours to provide more toilet paper and typically did so only after detainees made repeated requests for more. Detainees were not provided with even the most basic personal hygiene products, such as toothbrushes, toothpaste, combs, or soap. Detainees were not provided with a change of clothing. They remained in the clothing in which they were apprehended. Consequently many of them remained in soiled clothing for days or weeks.

7. The majority of detainees described being fed only once every twelve hours. Many of the detainees reported that the “meal” they received consisted of a bologna sandwich that was often either freezing cold or actually partially frozen. As a result, the majority of the detainees reported experiencing constant hunger and suffering headaches. Many detainees also indicated that the only water provided to them was in a single thermos shared by all the detainees. No cups were provided to drink the water. Detainees described the water as smelling like bleach and it burned their throats when they drank it.

8. No medical facilities existed at the hieleras. Detainees who arrived with prescription medications had their medications confiscated. Several detainees, including a diabetic whose insulin

was confiscated, reported experiencing medical emergencies while in the hieleras but having received no or inadequate medical attention.

9. Many of the detainees stated that at some point in their detention CBP officers began telling them they would be released from the hieleras if the detainees would sign documents that were provided only in English, which the vast majority of the detainees could neither read nor understand. Many of the detainees initially refused to sign the documents, but after days of suffering in the hieleras, almost all succumbed and signed. The documents they signed turned out to be acknowledgment of and agreement with factual allegations which support a finding of inadmissibility, providing for the expedited removal of the detainee, despite the fact that the factual allegations were frequently inaccurate or false.

10. In July 2013, based on these reports from more than one hundred detainees of their mistreatment and CBP's apparent wholesale disregard of its own Short Term Custody Policy, AI Justice submitted a Freedom of Information Act ("FOIA") request to CBP seeking records related to CBP's operation of hold stations in its Rio Grande Valley Sector including, but not limited to, CBP's compliance with its Short Term Custody Policy.

11. CBP responded to neither AI Justice's FOIA request, nor to AI Justice's appeal of CBP's constructive denial of its request. CBP's failure to produce the requested records violates the FOIA and is impeding AI Justice's efforts to educate the public regarding CBP enforcement operations in general and to educate the immigration bar regarding CBP's detention practices in particular. CBP also is hindering AI Justice's ability to effectively advocate for justice and fairness for noncitizens subject to these practices.

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1331 and 1361. The Court's review of the matter is de novo. 5 U.S.C. § 552(a)(4)(B).

13. Venue lies in the Southern District of Florida pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e) because Plaintiff AI Justice's principal place of business is in the Southern District of Florida.

14. Declaratory and further necessary and proper relief is authorized by 28 U.S.C. §§ 2201-2202 and Rule 57, Federal Rules of Civil Procedure, Fed. R. Civ. P. 57.

15. Plaintiff AI Justice has exhausted any and all administrative remedies in connection with its FOIA request.

PARTIES

16. Plaintiff AI Justice is a nonprofit organization with its principal place of business at 3000 Biscayne Blvd., Suite 400, Miami, Florida 33137. Founded in 1996, AI Justice is a legal assistance organization dedicated to protecting and promoting the basic human rights of immigrants of all nationalities through public education, advocacy and impact litigation. AI Justice champions the rights of unaccompanied immigrant children, advocates for victims of trafficking and domestic violence, serves as a watchdog on immigration detention practices and policies, and speaks for immigrant groups who have particular and compelling claims to justice.

17. Defendant DHS is a department of the executive branch of the United States government and is an agency within the meaning of 5 U.S.C. § 552(f). DHS is responsible for

enforcing federal immigration laws. DHS has possession and control over the records sought by AI Justice.

18. Defendant CBP is a component of DHS and is an agency within the meaning of 5 U.S.C. § 552(f). Among other duties, CBP is responsible for enforcing immigration laws at and between ports of entry to the United States, including detaining noncitizens who enter without authorization and operating detention facilities for that purpose. CBP has possession and control over the records sought by AI Justice.

STATEMENT OF FACTS

19. On July 3, 2013, AI Justice submitted a FOIA request to CBP seeking:

[D]isclosure of any and all records that were prepared, received, transmitted, collected and/or maintained by the U.S. Department of Homeland Security (DHS) and/or U.S. Customs and Border Protection (CBP) that describe, refer or relate to CBP's national policy for the short-term custody of persons arrested or detained by Border Patrol agents/officers and detained in hold rooms/cells at Border Patrol stations, checkpoints, processing facilities, and any other facilities that are under the control of CBP and used to detain persons for any period of time.

Letter from Joseph Anderson, Director of Litigation, Americans for Immigrant Justice, to CBP, FOIA Division (July 3, 2013) ("AI Justice's FOIA Request"), a copy of which is attached hereto at Exhibit A.

20. AI Justice's FOIA Request identified thirty-three non-exclusive categories of records sought by AI Justice via electronic mail and Federal Express. *See* Exhibit A. The requested documents fall into the three categories of documents and records maintained by DHS and CBP relevant to: (1) DHS/CBP's policies governing the short-term custody and detention of persons arrested or detained by CBP; (2) CBP's compliance/non-compliance with CBP's Short Term

Custody Policy; and (3) actual conditions of detention in CBP holding stations in CBP's Rio Grande Valley Sector including but not limited to duration of detention for those held between January 1, 2008 and December 31, 2013.

21. Each part of AI Justice's FOIA request reasonably described the records sought and provided sufficient information for CBP to conduct a reasonable search for documents responsive to the request, as required by 5 U.S.C. § 552(a)(3)(A). *See, e.g.*, Exhibit A at 1-6 (describing in detail the records sought).

22. AI Justice's FOIA Request also sought a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(iii). *See* Exhibit A at 7-8.

23. On July 3, 2013, AI Justice received an email from CBP acknowledging AI Justice's FOIA Request and assigning the Request "File Number 2013F27556." A copy of CBP's email is attached at Exhibit B.

24. On September 13, 2013, having received no response other than CBP's July 3, 2013 acknowledgement email, AI Justice again wrote to CBP's FOIA Division, requesting that CBP substantively respond to AI Justice's FOIA Request by making a determination sufficient to satisfy the requirements of 5 U.S.C. § 552(a)(6)(A)(i). *See* Letter from Anderson to CBP, FOIA Division (Sept. 13, 2013) (w/o exhibits), attached at Exhibit C.

25. On December 18, 2013, having received no response to its September 13, 2013 letter, AI Justice again wrote to CBP's FOIA Division, appealing the constructive denial of AI Justice's FOIA Request. *See* Letter from Anderson to CBP, FOIA Division (Dec. 18, 2013) (w/o exhibits), attached at Exhibit D.

26. As of the date of the filing of this Complaint, AI Justice has received no response to its December 18, 2013 letter. The only communication from CBP AI Justice has received regarding its FOIA Request is CBP's July 3, 2013 acknowledgment email.

27. AI Justice has exhausted administrative remedies as CBP has failed to respond to AI Justice's FOIA Request as required by the FOIA. *See* 5 U.S.C. § 552(a)(6)(C)(i). *See also, e.g., Ruotolo v. Dep't of Justice*, 53 F.3d 4, 8 (2d Cir. 1995) ("[A]dministrative remedies are 'deemed exhausted' if the agency fails to comply with the 'applicable time limit' provisions of the FOIA.").

FIRST CAUSE OF ACTION

Violation of the Freedom of Information Act for Failure to Disclose and Release Responsive Records

28. AI Justice repeats, alleges and incorporates the allegations in paragraphs 1-27 as if fully set forth herein.

29. The Freedom of Information Act ("FOIA") requires agencies to determine within 20 business days of a request for records whether the agency will comply with the request, and immediately notify the requester of the agency's decision, the reasons therefore, and appeal procedures for adverse determinations. 5 U.S.C. § 552(a)(6)(A)(i).

30. A requestor is deemed to have exhausted administrative remedies if the agency fails to comply with the applicable time limit provisions. 5 U.S.C. § 552(a)(6)(C)(i).

31. This Court has jurisdiction to enjoin an agency from withholding agency records and to order the production of agency records improperly withheld, after determining the matter de novo. 5 U.S.C. § 552(a)(4)(B).

32. Plaintiff AI Justice properly submitted a request to Defendant CBP for records that are public records under the FOIA and established that any applicable fees should be waived.

33. Defendants are obligated under 5 U.S.C. § 552(a)(3) to conduct a reasonable search for and to produce records responsive to AI Justice's FOIA Request. AI Justice has a legal right to obtain such records, and no legal basis exists for Defendants' failure to search for and disclose them.

34. Defendants' refusal to conduct a reasonable search for records responsive to AI Justice's FOIA Request, and to disclose and release responsive records therefore violates 5 U.S.C. § 552(a)(3)(A), (a)(3)(C) and (a)(6)(A), as well as regulations promulgated thereunder.

35. Injunctive relief is authorized under 5 U.S.C. § 552(a)(4)(B) because CBP and DHS continue to improperly withhold agency records in violation of the FOIA. AI Justice will suffer irreparable injury from, and have no adequate legal remedy for CBP's and DHS's illegal withholding of government documents. Unless enjoined by this Court, CBP will continue to violate AI Justice's statutory rights to receive records under FOIA.

SECOND CAUSE OF ACTION

Defendants Failed to Grant Plaintiff's Public Interest Fee Waiver Request

36. AI Justice repeats, alleges and incorporates the allegations in paragraphs 1-35 as if fully set forth herein.

37. FOIA requires that each agency promulgate regulations specifying the schedule of fees to be charged for processing a FOIA request. FOIA establishes procedures and guidelines for determining when such fees should be waived or reduced. 5 U.S.C. § 552(a)(4)(A)(i).

38. The agency's fee regulations under FOIA must provide that fees will be limited to reasonable standard charges for document search and duplication when records are neither requested for commercial use, nor requested by an educational or scientific institution or member of the news media. 5 U.S.C. § 552(a)(4)(A)(ii)(III).

39. Moreover, the regulations must provide that documents "shall be furnished without any charge or at a charge reduced below the fees established . . . if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii).

40. An agency may not assess search or duplication fees if the agency fails to comply with any statutory time limit, if no unusual or exceptional circumstances (as those terms are defined in the statute) apply to the processing of the request. 5 U.S.C. § 552(a)(4)(A)(vii).

41. Defendants constructively denied AI Justice's public interest fee waiver request by failing to respond to AI Justice's FOIA request.

42. AI Justice is entitled to obtain the requested records immediately at no cost.

43. AI Justice is entitled to reasonable costs of litigation, including attorneys' fees, pursuant to 5 U.S.C. § 552(a)(4)(E).

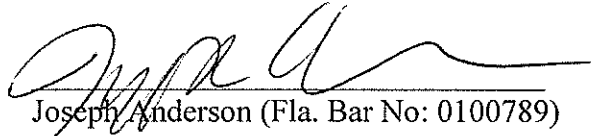
PRAYER FOR RELIEF

WHEREFORE, Plaintiff AI Justice respectfully requests that this Court:

- (a) Assume jurisdiction over this matter;
- (b) Order Defendants to process immediately and expeditiously AI Justice's FOIA Request, and to disclose and release the requested records in their entirety and without further delay;
- (c) Declare unlawful Defendants' refusal to conduct a reasonable search for records responsive to AI Justice's FOIA Request and refusal to disclose such records violated the FOIA;
- (d) Order Defendants and any of Defendants' departments, divisions, components, other organizational structures, agents, or other persons acting by, through, for, or on behalf of Defendants to conduct a reasonable search for records responsive to AI Justice's FOIA Request;
- (e) Enjoin Defendants and any of Defendants' departments, divisions, components, other organizational structures, agents, or other persons acting by, through, for, or on behalf of Defendants from withholding records responsive to AI Justice's FOIA Request and order them to promptly produce responsive records to Plaintiff AI Justice;
- (f) Order Defendants to grant AI Justice's public interest fee waiver;
- (g) Award AI Justice reasonable attorneys' fees and other litigation costs in accordance with 5 U.S.C. § 552(a)(4)(E); and
- (h) Grant Plaintiff AI Justice any other relief the Court deems just and proper.

Dated: March 13, 2014

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. Anderson', is written over a horizontal line.

Joseph Anderson (Fla. Bar No: 0100789)

Email: janderson@aijustice.org

Americans for Immigrant Justice

3000 Biscayne Blvd., Suite 400

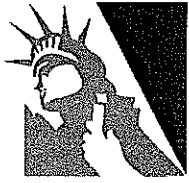
Miami, FL 33137

Tel: (786) 454-8564

Fax: (305) 576-6273

Attorney for Plaintiff

EXHIBIT A



Americans for Immigrant Justice

Formerly Florida Immigrant Advocacy Center (FIAC)

July 3, 2013

VIA FEDERAL EXPRESS AND ELECTRONIC MAIL:CBPFOIA@dhs.gov

U.S. Customs and Border Protection
FOIA Division
799 9th Street NW, Mint Annex
Washington, DC 20229-1181
CBPFOIA@dhs.gov

Re: **Freedom of Information Act (FOIA) Request**

Dear FOIA Officer:

Americans for Immigrant Justice (AI Justice) submits this request for information under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, *et. seq.* (hereinafter the "Request").

REQUEST FOR INFORMATION

AI Justice requests disclosure of any and all records¹ that were prepared, received, transmitted, collected and/or maintained by the U.S. Department of Homeland Security (DHS) and/or U.S. Customs and Border Protection (CBP)² that describe, refer or relate to CBP's national policy for the short-term custody of persons arrested or detained by Border Patrol agents/officers and detained in hold rooms/cells at Border Patrol stations, checkpoints, processing facilities, and any other facilities that are under the control of CBP and used to detain persons for any period of time.

Specifically, please produce those records describing, referring or relating to:

¹ The term "records" as used herein includes all records or communications preserved in electronic or written form, including but not limited to correspondence, directives, documents, data, videotapes, audiotapes, emails, faxes, files, guidance, standards, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, technical manuals, technical specifications, training materials or studies, including records kept in written form, or electronic format on computers and/or other electronic storage devices, electronic communications and/or videotapes, as well as any reproductions thereof that differ in any way from any other reproduction, such as copies containing marginal notations.

² The term "CBP" as used herein means CBP headquarters offices, including any divisions, subdivisions or sections therein; CBP field operations offices, including any divisions, subdivisions or sections therein; CBP offices at ports of entry, including any divisions, subdivisions or sections therein; and any other CBP organizational structures and offices.

A non-profit organization dedicated to protecting and promoting the basic human rights of immigrants

- (1) From January 2008 through June 2013, all memoranda, reports, correspondence, communications, or other documentation reflecting, recording or stating the number of detainees held on a daily, weekly and monthly basis at each CBP Station at Brownsville CBP Station, Corpus Christi CBP Station, Falfurrias CBP Station, Fort Brown CBP Station, Harlingen CBP Station, Kingsville CBP Station, McAllen CBP Station, Rio Grande City CBP Station, and Weslaco CBP Station (hereinafter collectively referred to as the Rio Grande Valley Sector).
- (2) Guidance, guidelines, directives, rules, policies, procedures or other documents that address questioning of individuals apprehended by DHS and/or CBP agents and transported to the Rio Grande Valley Sector.
- (3) Guidance, guidelines, directives, rules, policies, procedures or other documents that address the documentation of detainee concerns about cell conditions and/or detainee health concerns at CBP Stations in the Rio Grande Valley Sector.
- (4) Guidance, guidelines, directives, rules, policies, procedures or other documents that address translation services provided for detainees at CBP Stations in the Rio Grande Valley Sector.
- (5) From January 2008 through June 2013, all memoranda, reports, correspondence, communications, or other documents regarding compliance with and application of CBP policy as set forth in the memorandum titled "U.S Border Patrol Policy, Subject: Detention Standards, Reference Number: 08-11267, Date: January 31, 2008,"³ (hereinafter "Detention Standards") including the following:
 - a) An unredacted copy of the Detention Standards.
 - b) All memoranda, reports, correspondence, communications, or other documents regarding compliance with Detention Standards ¶ 6.2.1.
 - c) All memoranda, reports, correspondence, communications, or other documents regarding compliance with Detention Standards ¶ 6.2.2, including documentation specifically relating to "[t]he PAIC or the senior shift supervisor" being "notified of all detentions at the station level that reach or exceed 24 hours," and documentation reflecting what, if any, actions were taken to "make every effort to promptly move the detainee(s)."
 - d) All memoranda, reports, correspondence, communications, or other documents regarding compliance with Detention Standards ¶ 6.2.3, including documentation specifically relating to "[t]he Sector Staff Duty Officer" being "notified when the detention period reaches or exceeds 72 hours" and documentation reflecting what, if any, actions were taken to

³ A copy of the CBP Detention Standards, redacted by CBP, is attached at Exhibit A for your reference.

comply with the requirement that the “Staff Duty Officer or their designee shall make every effort to promptly move the detainee(s).”

- e) All memoranda, reports, correspondence, communications, or other documents regarding compliance with Detention Standards ¶ 6.2.4, including but not limited to documentation relating or concerning compliance with all the notification requirements delineated in Detention Standards ¶ 6.2.4 concerning an “unaccompanied alien child (UAC).”
- (6) From January 2008 through June 2013, a copy of each and every “Master Detention Log” also known as or referred to as the “ENFORCE apprehension log” for each and every CBP Station and facility in the Rio Grande Valley Sector. *See* Detention Standards ¶ 6.4.1
- (7) From January 2008 through June 2013, a copy of each and every I-216 created in ENFORCE for detainees in the Rio Grande Valley Sector. *See* Detention Standards ¶ 6.4.2.
- (8) From January 2008 through June 2013, a copy of each and every log created and maintained in compliance with Detention Standards ¶ 6.5.2 requiring that “[h]olding cells [of UAC] must be physically checked regularly and recorded in a log.”
- (9) From January 2008 through June 2013, a copy of each and every “Alien Booking Record (I-385)” created in ENFORCE for detainees in the Rio Grande Valley Sector. *See* Detention Standards ¶ 6.6.
- (10) All memoranda, reports, correspondence, communications, or other documents regarding compliance with Detention Standards ¶ 6.7.2, including but not limited to documentation relating or concerning evaluation of detainees by “qualified personnel” as fully set forth in Detention Standards ¶¶ 6.7.2– 6.7.5.
- (11) From January 2008 through June 2013, any and all plans on communications enacted in response to any inspection or review of the operations of any CBP station in the Rio Grande Valley Sector.
- (12) All memoranda, reports, correspondence, communications, or other documents regarding the procedures and policies surrounding the detention of unaccompanied alien children (UAC) in CBP Stations in the Rio Grande Valley Sector, including but not limited to all documentation reflecting compliance with Detention Standards ¶ 6.5.2, demanding in relevant part that “unaccompanied alien children require direct supervision.” In addition, we request all documentation reflecting compliance with Detention Standards ¶ 6.24.3, requiring in relevant part, that “all juveniles will be processed expeditiously,” ¶ 6.24.4 “juveniles must be separated from unrelated adults whenever practicable,” and ¶ 6.24.6 “juveniles detained longer than 24 hours will be given access to basic hygiene articles, a blanket and a mattress (a pillow is optional).”

- (13) All memoranda, reports, correspondence, communications, or other documents regarding the procedures and policies for those items detainees are permitted to keep in their possession while in custody in CBP Stations in the Rio Grande Valley Sector, including but not limited to all documentation reflecting compliance with Detention Standards ¶ 6.12 and ¶ 6.13 respectively, requiring in relevant part that purses, handbags, and backpacks “will be secured separately from the detainee until release or removal,” and “all items belonging to the detainee will be properly receipted and placed in a secure area.”
- (14) All memoranda, reports, correspondence, communications, or other documents regarding the policies and procedures for how often—if ever—clean clothes are provided for detainees in CBP Stations in the Rio Grande Valley Sector
- (15) All memoranda, reports, correspondence, communications, or other documents regarding the provision of shower facilities in CBP Stations in the Rio Grande Valley Sector, including but not limited to all documentation reflecting compliance with Detention Standards ¶ 6.14, requiring in relevant part that “agents will make reasonable efforts to provide a shower for any detainee held for more than 72 hours.”
- (16) All memoranda, reports, correspondence, communications, or other documents regarding the distribution of hygiene products, sanitary napkins, soap, tooth brushes, toothpaste, and toilet paper for detainees in CBP Stations in the Rio Grande Valley Sector, including but not limited to all documentation reflecting compliance with Detention Standards ¶ 6.14 and ¶ 6.10 respectively, requiring in relevant part that “detainees that are showering will be provided a clean towel and basic toiletries,” and “detainees using restrooms will have access to toilet items, such as soap, toilet paper, and sanitary napkins.”
- (17) All memoranda, reports, correspondence, communications, or other documents regarding the number of toilets and sinks provided in each holding cell and the adequacy of privacy of restroom facilities in CBP Stations in the Rio Grande Valley Sector, including but not limited to all documentation reflecting compliance with Detention Standards ¶ 6.10, requiring in relevant part that adequate “restrooms will be available to detainees.”
- (18) From January 2008 through June 2013, all memoranda, reports, correspondence, communications, or other documents regarding the number of meals provided and a description of the meals provided to detainees in CBP Stations in the Rio Grande Valley Sector, including but not limited to all documentation reflecting compliance with Detention Standards ¶ 6.8, requiring in relevant part that “[d]etainees will be provided juice and snacks every four hours;” “two of three meals will be hot;” and “. . . pregnant women will have regular access to snacks, milk or juice at all times.”
- (19) All memoranda, reports, correspondence, communications, or other documents concerning the quality and amount of potable drinking water available to

detainees at CBP Stations in the Rio Grande Valley Sector including but not limited to all documentation reflecting compliance with Detention Standards ¶ 6.9, requiring in relevant part that “potable drinking water will be available to detainees,” and “the supervisor is responsible for ensuring that drinking water is available.”

- (20) All memoranda, reports, correspondence, communications, or other documents concerning the frequency of general cleaning and sanitation procedures and trash removal in holding cells in CBP Stations in the Rio Grande Valley Sector, including but not limited to all documentation reflecting compliance with Detention Standards ¶ 6.16, requiring in relevant part that “supervisors will ensure that detention cells are regularly cleaned and sanitized.”
- (21) All memoranda, reports, correspondence, communications, or other documents concerning the temperature at which CBP detention cells, search rooms, and hold rooms at CBP Stations in the Rio Grande Valley Sector are maintained.
- (22) All memoranda, reports, correspondence, communications, or other documents regarding sleeping arrangements, the time lights are turned off, the number of mattresses, and amount of bedding provided for detainees at CBP Stations in the Rio Grande Valley Sector including but not limited to all documentation reflecting compliance with Detention Standards ¶ 6.11, requiring in relevant part that “detainees requiring bedding will be given clean bedding,” and “this bedding will be changed every three days and cleaned before it is issued to another detainee.”
- (23) From January 2008 through June 2013, all memoranda, reports, correspondence, communications, or other documents regarding the provision of medical care for detainees, including the number of hospitalizations of detainees while in custody at CBP Stations in the Rio Grande Valley Sector, including but not limited to all documentation reflecting compliance with Detention Standards ¶ 6.6, requiring in part that “the alien booking record will be created in ENFORCE and [will] contain...an annotation indicating that the person has a medical condition that requires medical care or prescribed medication, has a communicable disease, is suffering from depression, or appears to be suicidal.”
- (24) All memoranda, reports, correspondence, communications, or other documents regarding the square footage, size and/or dimensions of detention cells and hold rooms in CBP Stations in the Rio Grande Valley Sector.
- (25) All memoranda, reports, correspondence, communications, or other documents regarding the number of detainees that can be detained in detention cells and hold rooms in CBP Stations in the Rio Grande Valley Sector, including but not limited to all documentation reflecting compliance with Detention Standards ¶ 7.1.2, requiring in part that “detention space capacity will not be exceeded.”

- (26) All memoranda, reports, correspondence, communications, or other documents regarding the policies, procedures, and/or instructions on transferring detainees to other CBP Stations in the Rio Grande Valley Sector.
- (27) From January 2008 through June 2013, the total number of detainee injuries, including attempted suicides, while in CBP custody at CBP Stations in the Rio Grande Valley Sector, including but not limited to all documentation reflecting compliance with Detention Standards ¶ 6.6(j), requiring in relevant part that the Alien Booking Record will be created in ENFORCE and will include “an annotation indicating that the person appears to be suicidal.”
- (28) From January 2008 through June 2013, the total number of detainee suicides while in CBP custody at CBP Stations in the Rio Grande Valley Sector.
- (29) From January 2008 through June 2013, the total number of detainee deaths while in CBP custody at CBP Stations in the Rio Grande Valley Sector.
- (30) From January 2008 through June 2013, the total number of detainees that were victims of sexual abuse⁴ while in CBP custody at CBP Stations in the Rio Grande Valley Sector.
- (31) From January 2008 through June 2013, the total number of detainees held in CBP facilities that suffered from communicable diseases while in CBP custody at CBP Stations in the Rio Grande Valley Sector, including but not limited to all documentation reflecting compliance with Detention Standards ¶ 6.6(j) and ¶ 6.7.1 respectively, requiring in relevant part that the Alien Booking Record will be created in ENFORCE and will include “an annotation indicating that the person has a communicable disease,” and “detainees needing medical attention or showing signs of serious infectious disease or contagion” are “evaluated by qualified personnel” and will be given medical attention as soon as possible.
- (32) From January 2008 through June 2013, the total number of detainees held in CBP facilities that died from communicable diseases while in CBP custody at CBP Stations in the Rio Grande Valley Sector.
- (33) All memoranda, reports, correspondence, communications, or other documents regarding the policies, procedures, and/or instructions for placing a detainee in segregation in CBP Stations in the Rio Grande Valley Sector.

⁴ For purposes of this FOIA request, we use the term “sexual abuse” generally to encompass all forms and degrees of sexually-based harm, including but not limited to all types of sexual contact—both attempted or accomplished—through force, threats, coercion, or intimidation; sexual assault; sexual harassment; unwelcome sexual advances; and gestures or actions of a derogatory or offensive sexual nature.

REQUEST FOR WAIVER OF ALL COSTS

AI Justice requests that all fees associated with this FOIA request be waived. AI Justice is entitled to a waiver of all costs because disclosure of the information is “. . . likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 522(a)(4)(A)(iii). *See also* 6 C.F.R. § 5.11(k) (Records furnished without charge or at a reduced rate if the information is in the public interest, and disclosure is not in commercial interest of institution). In addition, AI Justice has the ability to widely disseminate the requested information. *See Judicial Watch v. Rossoti*, 326 F.3d 1309 (D.C. Cir. 2013) (finding a fee waiver appropriate when the requester explained, in detailed and non-conclusory terms, how and to whom it would disseminate the information it received).

i. Disclosure of the Information is in the Public Interest

AI Justice aims to protect and promote the basic human rights of immigrants through a unique combination of free direct services, impact litigation, policy reform, and public education at local, state, and national levels. Grounded in real-world, real-people experience, AI Justice’s direct work with immigrant clients informs its broader policy work. Its multicultural and multilingual staff works to build alliances between immigrant and nonimmigrant groups, including government, civic, social and faith-based communities. Advocates involved in immigration issues, the national media, and federal and state policy makers, consider AI Justice to be one of the most effective national groups fighting for immigrant justice.

With Comprehensive Immigration Reform on the horizon in Congress, immigration issues make up a major segment of the public discourse. Increasingly covered by U.S. media outlets, information regarding immigration matters is much more widely disseminated than ever before.^{5,6}

Border security and an exponential increase in the number of CBP officers surrounds much of the dialogue surrounding Comprehensive Immigration Reform. Disclosure of the requested information will contribute significantly to public understanding of noncitizens’ information about CBP stations and detention conditions in CBP holding cells. The disclosed records will inform attorneys about detention conditions in CBP holding cells, the noncitizens themselves, and other members of the public who are concerned with the detention conditions of CBP holding cells. AI Justice has the capacity and intent to disseminate widely the requested information to the public. To this end, AI Justice will post the information on the AI Justice website, draft a report and hold a press conference,

⁵ Eric Lipton and Julia Preston, *As U.S. Plugs Border in Arizona, Crossings Shift to South Texas*, N.Y. Times, June 16, 2013, available at <http://www.nytimes.com/2013/06/17/us/as-us-plugs-border-in-arizona-crossings-shift-to-south-texas.html?pagewanted=1&r=0>.

⁶ Fernanda Santos, *Shootings by Agents Increase Border Tensions*, N.Y. Times, June 10, 2013, available at <http://www.nytimes.com/2013/06/11/us/shootings-by-agents-increase-border-tensions.html?pagewanted=1&r=1&hp>.

disseminate the report to other immigration advocacy groups and members of Congress.

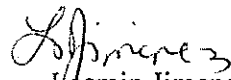
ii. Disclosure of the Information is Not Primarily in the Commercial Interest of the Requester

AI Justice is a 501(c)(3), tax-exempt, not-for-profit, charitable legal services organization. AI Justice's work encompasses advocating for the basic human rights of immigrants through direct representation, policy reform, impact litigation, and public education. Therefore, AI Justice has no commercial interest that could be furthered by any FOIA request. Immigration attorneys, noncitizens and any other interested member of the public may obtain information about CBP detention policies and practices on AI Justice's frequently updated website. As stated above, AI Justice seeks the requested information for the purpose of disseminating it to members of the public who access AI Justice's website and not for the purpose of commercial gain.

Please inform us if the charges for this FOIA production will exceed \$50.00.

Thank you in advance for your response to this request within twenty working days, as FOIA requires. *See* 5 U.S.C. § 552(a)(6)(A)(i). Should you have any questions or concerns, please feel free to contact me at (305) 573-1106, ext. 1380, or via email at ljimenez@aijustice.org.

Sincerely,


Losmin Jimenez
Litigation Attorney

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EXHIBIT A

to AI Justice 07-03-13 FOIA Request

U.S. BORDER PATROL POLICY

SUBJECT: DETENTION STANDARDS

Reference Number: 08-11267

DATE: January 31, 2008

HOLD ROOMS AND SHORT TERM CUSTODY

1. **PURPOSE.** This directive establishes national policy for the short-term custody of persons arrested or detained by Border Patrol Agents and detained in hold rooms at Border Patrol stations, checkpoints, processing facilities, and other facilities that are under the control of U.S. Customs and Border Protection (CBP).
2. **AUTHORITIES/REFERENCES.**
 - 2.1. Title 8, United States Code, Section 236
 - 2.2. Title 8, Code of Federal Regulations, Section 236
 - 2.3. *Border Patrol Handbook*
 - 2.4. *Officers Handbook* (M-68)
 - 2.5. *The Law of Arrest, Search and Seizure for Immigration Officers* (M-69)
 - 2.6. *Flores v. Reno*, Stipulated Settlement Agreement, No. CV 85-4544-RJK (Px) (C.D. Cal. Jan. 17, 1997). Also, "*Flores*."
 - 2.7. Homeland Security Act of 2002, Section 462
 - 2.8. "Interim Guidance Regarding Unaccompanied Juveniles in Custody" Memorandum to All Chief Patrol Agents from David V. Aguilar, Chief, U.S. Border Patrol (September 2, 2005).
 - 2.9. Immigration and Customs Enforcement guidelines on age determination.
3. **DEFINITIONS.**
 - 3.1. Bedding. Any combination of pillow, sheets, blanket, sleeping bag, or mattress.
 - 3.2. Custody. The period of time in which a detainee is under arrest or is detained in a Border Patrol hold room.

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3.3. Hold Room. An area such as a detention cell, a search room, or an interview room in which detained persons are temporarily held pending processing or transfer.

3.4. Open Area. An area within a secure facility where the detainee is not in a locked room but where there are locked doors to prevent escape (e.g., a processing room).

3.5. Direct Supervision. Detaining a person in a location where the employee assigned detention duties can constantly observe or hear the detainee.

3.6. Family Group. (b) (7)(E) and juveniles (b) (7)(E) in custody at the same time and place.

3.7. Intermittent Supervision. Detaining a person in a hold room where a detainee may be occasionally out of view and/or hearing of the employee assigned detention duties.

3.8. Juvenile. A person under 18 years of age.

3.8.1. Persons under the age of 18 who have been emancipated by a state court or convicted and incarcerated for a criminal offense as an adult are NOT considered juveniles. Such individuals must be treated as adults for all purposes, including confinement and release on bond.

3.8.2. If a reasonable person would conclude that an individual claiming to be a juvenile is really an adult, that person will be treated as an adult for all purposes, including transportation, confinement, and release on bond or own recognizance. Age determination will be conducted, if necessary, in accordance with Immigration and Customs Enforcement guidelines on age determination.

3.8.3. An unaccompanied alien child (UAC) is defined in Section 462 (g) (2) of the Homeland Security Act of 2002 as a child who:

- a. Has no lawful immigration status in the United States;
- b. Has not attained 18 years of age; and
- c. With respect to whom—
 - 1. There is no parent or legal guardian in the United States; or
 - 2. No parent or legal guardian in the United States is available to provide care and physical custody.

4. RESPONSIBILITIES.

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4.1. The Chief, Office of Border Patrol, is responsible for policy oversight, which includes formulating and implementing guidelines and procedures.

4.2. Chief Patrol Agents (CPAs) are responsible for managing the implementation of this program at the sector level and monitoring compliance with the procedures to ensure uniformity of application, as well as for ensuring that all employees under their direction receive proper training concerning this policy and these procedures.

4.3. Patrol Agents in Charge (PAIC) are responsible for monitoring compliance at the station level.

4.4. Supervisory Border Patrol Agents are responsible for fulfilling all of their duties specified herein, and for ensuring that Border Patrol Agents under their direction are familiar with this policy and these procedures, and comply with them.

5. POLICY.

5.1. All persons arrested or detained by the Border Patrol will be held in facilities that are safe, secure, and clean. Detainees will be provided food, water, properly equipped restrooms and hygiene supplies as set forth in this directive.

5.2. Detainees will be promptly processed and turned over to U.S. Immigration and Customs Enforcement (ICE), Office of Detention and Removal Operations (DRO); the Office of Refugee Resettlement (ORR); the U.S. Marshals Service; or an other agency (OA), as appropriate.

6. PROCEDURES.

6.1. Detention Cells, Search Rooms, and Hold Rooms.

6.1.1. Supervisors are responsible for designating areas as detention cells, search rooms, and/or hold rooms and ensuring that employees under their direction are familiar with such designations and intended uses. Dual designation of a particular room is authorized, i.e, a detention cell may also be used as a search room.

6.2. Duration of Detention.

6.2.1. Whenever possible, a detainee should not be held for more than 12 hours. Every effort will be made to promptly process, transfer, transport, remove, or release those in custody as appropriate and as operationally feasible.

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6.2.2. The PAIC or the senior shift supervisor will be notified of all detentions at the station level that reach or exceed 24 hours, and they shall make every effort to promptly move the detainee(s).

6.2.3. The Sector Staff Duty Officer must be notified when the detention period reaches or exceeds 72 hours, and the Staff Duty Officer or their designee shall make every effort to promptly move the detainee(s).

6.2.4. When the detainee is an unaccompanied alien child (UAC), every effort must be made to move them out of the Border Patrol facility and into ORR placement within 12 hours; however, there are times when placement by ORR may take longer than 12 hours. The PAIC must be notified immediately when a UAC's detention exceeds 24 hours; however, it is strongly encouraged that the PAIC be notified when the detention exceeds 12 hours. The PAIC or their designee will ensure that the ICE/DRO Field Office Juvenile Coordinator (FOJC) has been notified and ensure that the UAC is being held in accordance with this policy. The reason for the extended detention and the time and date that the PAIC and FOJC were notified will be documented in the Unaccompanied Alien Children Detention Log and retained for a period of two years.

6.2.4.1. In accordance with the *Flores v. Reno* Stipulated Settlement Agreement, UAC must be placed in an ORR-approved facility within 72 hours. In cases where the PAIC has reason to believe that the UAC's detention will exceed 72 hours or exceeds 72 hours, the PAIC or their designee will notify a sector staff officer immediately. This notification may occur well before the 72 hour time period is reached if information is provided at an earlier time that indicated the UAC placement won't be met under current conditions. The sector staff officer will contact the local ICE DRO Field Office Director for assistance and intervention.

6.2.4.2. Under extenuating circumstances, the maximum time allowed for placing UAC in an ORR-approved facility is five days. In cases where UAC are detained longer than five days, sector staff will immediately contact the DRO liaison officer at the Office of Border Patrol via telephone and e-mail for further guidance and assistance, ensuring that all pertinent information and actions taken thus far are provided. Sector staff may contact the DRO liaison officer earlier when they deem appropriate or necessary.

6.3. Exceptions to Short-Term Detention in Border Patrol Hold Rooms.

6.3.1. Agents will expedite processing of detained persons who are (b) (7)(E)

(b) (7)(E)

(b) (7)(E)

or UACs.

6.3.2. If circumstances permit, (b) (7)(E) & (b) (7)(F)

(b) (7)(E) & (b) (7)(F)

Patrol hold room.

(b) (7)(E) & (b) (7)(F)

(b) (7)(E) & (b) (7)(F)

should not be detained in a Border

The determination to place these detainees in a hold room

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should be made on a case-by-case basis. Some factors that need to be considered when making this decision are (b) (7)(E)

(b)(7)(E)&(b)(7)(F)

6.3.3. (b)(7)(E)&(b)(7)(F)

(b)(7)(E)&(b)(7)(F)

6.3.4. (b)(7)(E)&(b)(7)(F)

(b)(7)(E)&(b)(7)(F)

6.3.5. Direct supervision and control of detainees must be maintained at all facilities that do not have hold rooms.

6.4. Master Detention Log.

6.4.1. The ENFORCE apprehension log will serve as the master detention log. It will contain at a minimum the detainee's:

- a. Name
- b. Sex
- c. Age and date of birth
- d. Alien registration number
- e. Nationality
- f. Reason detained
- g. Final disposition

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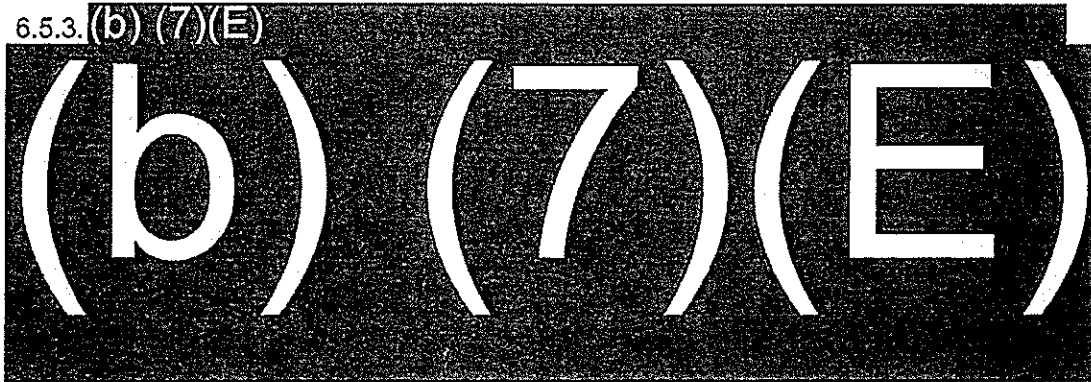
6.4.2. Any alien detained in custody for removal proceedings or voluntarily returned must be transferred via an I-216 created in ENFORCE.

6.5. Hold Room Monitoring.

6.5.1. Although video surveillance is an outstanding tool, it is not a replacement for physical checks. Holding cells must be physically checked regularly. Physical checks give processing agents better control of the aliens in their hold rooms, provide a deterrent for misconduct, and provide detainees with an opportunity to communicate issues such as health or safety concerns to the processing agent.

6.5.2. Juveniles. Unaccompanied alien children require direct supervision. Physical checks are a critical aspect of monitoring UACs. Holding cells must be physically checked regularly and recorded in a log. Each station will be responsible for creating a hold room check sheet to verify the physical checks of juveniles.

6.5.3. (b) (7)(E)



6.6. Alien Booking Record (I-385). An Alien Booking Record (I-385) will be generated for each detainee that requires special handling (i.e., a detainee held for prosecution or removal or a detainee awaiting a voluntary return with a medical condition, or an unaccompanied juvenile). The Alien Booking Record will be posted near the entrance to the hold room or in a secure area. Any medical alerts (e.g., diabetic requiring injections) or significant remarks (e.g., high risk detainee or escape risk) will be annotated on the Alien Booking Record. The sheet will be maintained until the detainee is released from CBP custody. The fact that a detainee may have a medical alert or significant remark on his or her Alien Booking Record will be communicated during shift change briefings and musters to all Border Patrol Agents assigned detention duties or to processing areas. The Alien Booking Record will be created in ENFORCE and contain the following detainee information:

- a. Name
- b. Alias

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- c. Sex
- d. Date of birth
- e. Place of birth
- f. Country of citizenship
- g. Alien registration number
- h. Date apprehended
- i. Responsible station or office
- j. Medical alert—an annotation indicating that the person has a medical condition that requires medical care or prescribed medication, has a communicable disease, is suffering from depression, or appears to be suicidal.
- k. Remarks—for example, the person is an escape or flight risk, is a high risk detainee, is an asylum claimant, or is an accompanied or unaccompanied alien child.

6.7. Medical Issues.

6.7.1. Detainees needing medical attention or showing signs of serious infectious disease or contagion (tuberculosis, severe acute respiratory syndrome, pandemic influenza, etc.) will be handled as set forth in this section:

6.7.2. Such detainees will be evaluated by qualified personnel:

- a. an emergency medical technician (EMT) or a paramedic (Border Patrol or local); or
- b. a physician, physician's assistant, or nurse practitioner.

6.7.3. (b) (7)(E) [REDACTED]
(b) (7)(E) [REDACTED] Masks should be made available for the detainee and agents should encourage their use. Agents will wear appropriate personal protective equipment while exposed to the person.

6.7.4. A supervisor will be notified as soon as possible of detainees needing medical attention.

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6.7.5. Medications. Border Patrol Agents will not administer or inject any medication unless they are certified EMTs or paramedics practicing under the direction of a medical director and the administration of such medicine is within their scope of practice and is authorized under the protocols of their medical practice. Medication prescribed in the United States, in a properly identified container, with the specific dosage indicated, may be self-administered under the supervision of a Border Patrol Agent. Administration of prescribed medication, medical assistance, or refusal of the same will be noted on the Alien Booking Record. Medications will not be left in the possession of the detainee. They will be secured separately, preferably with the detainee's property. (b) (7)(E)

6.8. Meals. Detainees will be provided snacks and juice every four hours. Detainees whether in a hold room or not, will be provided a meal if detained more than 8 hours or if their detention is anticipated to exceed 8 hours. Regardless of the time in custody, juveniles will be provided with meal service, and at least every six hours thereafter; two of three meals must be hot. Juveniles, small children, toddlers, babies, and pregnant women will have regular access to snacks, milk, or juice at all times. When an adult detainee requests a snack or meal before the next meal service, the processing agent may grant the request on the basis of the circumstances. Agents should be sensitive to the culinary, cultural, and religious dietary restrictions and/or differences of all detainees and should provide a meal that conforms to the dietary restrictions, if feasible.

6.9. Drinking Water. Potable drinking water will be available to detainees. The supervisor is responsible for ensuring that drinking water is available.

6.10. Restrooms. Restrooms will be available to detainees. Detainees using the restrooms will have access to toilet items, such as soap, toilet paper, and sanitary napkins. Families with small children will also have access to diapers and wipes.

6.11. Bedding. Detainees requiring bedding will be given clean bedding. Only one detainee will use this bedding between cleanings. This bedding will be changed every three days and cleaned before it is issued to another detainee. Vinyl or rubber-coated mattresses will be disinfected before being reissued.

6.12. Inspection of Personal Property. Purses, handbags, backpacks, and luggage will be inspected for weapons and contraband. They will be secured separately from the detainee until release or removal.

6.13. Control and Safeguarding of Detainees' Personal Property. The control and safeguarding of detainees' personal property will include the secure storage of funds, valuables, baggage, and other personal property. All property will be receipted on the appropriate Form I-77. All items belonging to the detainee will be properly receipted and placed in a secure area.

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6.13.1. All property and legal papers that are in the juvenile's possession, or are served upon the juvenile during processing, shall accompany the juvenile upon transfer to any other agency or facility. Property of the juvenile that is in the custody of the Border Patrol that exceeds the limit of the transporting agency shall be shipped to that facility in a timely manner.

6.14. Showers. Agents will make reasonable efforts to provide a shower for any detainee held for more than 72 hours. Detainees that are showering will be provided a clean towel and basic toiletries. Agents will make every reasonable effort to provide unaccompanied alien children who are held more than 48 hours with access to a shower and clean towel, clean clothing, and basic hygiene articles as soon as practicable. These items may be provided to UACs sooner, depending on availability and the condition of the juvenile.

6.15. Inspection. Detention cells will be routinely inspected for evidence of tampering.

6.16. Cleaning and Sanitization. Supervisors will ensure that detention cells are regularly cleaned and sanitized. Employees will not be expected nor required to perform such tasks.

6.17. Smoking. Smoking is prohibited in hold rooms.

6.18. Evacuation. Every station will have an evacuation plan and will post it in the processing area. The PAIC is responsible for ensuring that agents are familiar with procedures in the evacuation plan.

6.19. Search Procedures. All detainees that are under arrest will be thoroughly searched before being placed into a Border Patrol hold room. Detainees may not be strip searched unless there is a reasonable suspicion that a strip search of a particular detainee will yield weapons or contraband.

6.20. Restraint Procedures. (b)(7)(E)&(b)(7)(F)
(b)(7)(E)&(b)(7)(F) This should be annotated on an Alien Booking Record. Any detainee restrained in a holding room requires direct supervision. (b)(7)(E)&(b)(7)(F)

(b)(7)(E)&(b)(7)(F)

6.21. Telephones. Persons detained more than 24 hours will be given access to a telephone for the purposes of contacting an attorney or other party as stated on the I-826 *Notice of Rights and Request for Disposition* and will be given access at a minimum of once per day until they are no longer in Border Patrol custody. Detainees who wish to make other than a local call must use a calling card or collect call. Processing agents may, at their discretion, grant telephone access to any alien. Unaccompanied alien children will be given access to telephones as soon as practicable to aid in locating family members.

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6.22. Segregation. (b)(7)(E)&(b)(7)(F)
 (b)(7)(E)&(b)(7)(F) Unaccompanied alien
 children must be separated from unrelated adults and must not be detained with
 unrelated adults in the same holding room. (b)(7)(E)&(b)(7)(F)
 (b)(7)(E)&(b)(7)(F)
 (b)(7)(E)&(b)(7)(F)

6.23. Privacy. Border Patrol hold rooms should have privacy screens in toilet areas
 whenever possible. (b)(7)(E)&(b)(7)(F)
 (b)(7)(E)&(b)(7)(F)
 (b)(7)(E)&(b)(7)(F)

6.24. Juveniles. The following is a summary of guidelines from the *Flores v. Reno*
 Settlement Agreement, and the Homeland Security Act of 2002. The terms of the
 Settlement are binding and must be adhered to.

6.24.1. Access to Legal Counsel and Consular Officials. All UACs shall be advised of
 their rights as per Form I-770 *Notice of Rights and Request for Disposition*, which
 includes their right to make a telephone call to any persons mentioned in the notice. If
 the juvenile is under 14 or is unable to understand the form, the I-770 must be read and
 explained in a language that the juvenile understands. The UAC's consular official
 must be notified as soon as possible, and notification of the UAC's family must be in
 accordance with Form I-770. All UAC processed for removal must be given a list of free
 legal service providers. Each CPA, or designee, will ensure that the lists of free legal
 services providers are current, accurate, and provided to juvenile detainees. Free legal
 service providers must represent juveniles in removal proceedings. Updated lists will
 be distributed regularly to all Border Patrol stations.

6.24.2. Authority of the Office of Refugee Resettlement. ORR has assumed authority
 for decisions related to the care and placement of UACs detained in federal custody.
 The current procedure requires stations to immediately contact an ICE/DRO Field
 Office Juvenile Coordinator (FOJC) to coordinate UAC placement in an ORR facility.

6.24.3. Procedures for Processing Juveniles. All juveniles will be processed
 expeditiously and (b)(7)(E)
 (b)(7)(E) As soon as practicable after determining that
 a detainee is a UAC and will require detention, the processing agent should contact an
 ICE/DRO FOJC to obtain pre-authorization to place the unaccompanied alien child with
 ORR. The agent must obtain pre-authorization from the FOJC regardless of a UAC's
 anticipated time in detention and must provide the following information: the juvenile's
 name, any aliases, alien registration number, country of citizenship, sex, date of birth,
 age, date of entry, place of entry, manner of entry, date of custody, custody location,
 and indication regarding whether or not the juvenile is a criminal or non-criminal. The
 FOJC must have this information to secure placement for the UAC with ORR. The
 FOJC will contact the local ORR representative who will locate an appropriate

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placement and notify the FOJC when that is completed. The FOJC will coordinate the placement transfer.

6.24.4. Separation of Juveniles from Unrelated Adults. Juveniles must be separated from unrelated adults whenever practicable and must not be detained with unrelated adults in the same holding room. (b)(7)(E)&(b)(7)(F)

(b)(7)(E)&(b)(7)(F)

6.24.5. Transportation of Juveniles. Unaccompanied alien children arrested or taken into custody should not be transported in vehicles with detained adults when separate transportation is practical and available. When separate transportation is impractical, all necessary precautions should be taken for the juvenile's protection and well-being.

6.24.6. Requirements for Juvenile Hold Rooms. Juveniles detained longer than 24 hours will be given access to basic hygiene articles, a blanket, and a mattress (a pillow is optional), etc. If showers are available, the juveniles will be permitted to take one shower every 48 hours and be provided with a clean towel. Agents and supervisors may give these items and privileges to any juvenile at any time based on the availability and the condition of the juvenile.

6.24.7. All hold rooms used for unaccompanied alien children must provide access to the following:

- a. Toilets and sinks
- b. Drinking water
- c. Adequate temperature control and ventilation
- d. Clean blankets and mattresses
- e. Meals, which must be offered every six hours (two of three meals must be hot)
- f. Emergency medical assistance
- g. Direct supervision

6.24.8. Unaccompanied Alien Children Detention Log. Each Border Patrol station must maintain a separate detention log (example attached) for all juveniles placed in custody. The log will be kept on file at the station for two years. The log will contain, at minimum, the following information about each juvenile:

- a. Name

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- b. Sex
- c. Age
- d. Alien registration number
- e. Nationality
- f. Reason for placement
- g. Date and time in
- h. Date and time FOJC was notified
- i. Date and time out (transferred or released)
- j. Final disposition
- k. Comments
- l. Times that meals were provided

6.24.9. Meals. Juveniles must receive the next meal served, regardless of the time in custody and must have regular access to snacks, milk, juice, etc. Meals must be offered every six hours (two of three meals must be hot).

6.24.10. Transfers. Each station must complete an I-216 in ENFORCE for all UACs transferred to ORR or DRO custody. A hard copy of the I-216 will be kept on file at the station for two years for the purposes of auditing and oversight.

6.24.11. Training Requirements. The Border Patrol Academy will include training on the conditions of the *Flores v. Reno* Settlement Agreement as a part of Border Patrol basic training. All CPA's, PAIC's and Border Patrol Agents will take at least one hour per year of refresher training on *Flores* and associated Border Patrol policy. Pertinent training updates will be well-posted in Border Patrol station processing areas to ensure awareness and adherence.

6.24.12. Family Groups (with Juveniles). The following are examples of family groups as defined in section 4.6 of this directive. The following groups will be detained as a unit.

- a. (b) (7)(E)
- b. (b) (7)(E)
- c. (b) (7)(E)

-13-

d. (b) (7)(E)

e. (b) (7)(E)

6.24.13 Documentation. Times of meals, showers, telephone use, and visual checks of juveniles who are held in custody will all be recorded.

7. **PERFORMANCE MEASUREMENTS**. All detainees will be held under safe and humane conditions. Unaccompanied alien children in Border Patrol custody will be treated with dignity, respect and special concern for their particular vulnerability as minors.

7.1. Performance Measurement 1: All detainees will be held in appropriate conditions of confinement that ensure their safety and security. Juveniles will be held in the least restrictive setting appropriate for their age and special needs as minors.

7.1.1. Detainees are segregated according to sex, age, risk, family group.

7.1.2. Detention space capacity will not be exceeded.

7.1.3. Hold rooms will be kept clean and free of contraband and other potentially hazardous or dangerous materials.

7.2. Performance Measurement 2: All detainees will be held under humane conditions of confinement that provide for their well being and general good health.

7.2.1. Detainees have access to sanitary facilities and restrooms.

7.2.2. Detainees are provided food and water.

7.2.3. Detainees have access to appropriate medical services, prescriptions, medications, and emergency medical treatment.

7.2.4. Detention spaces are appropriately maintained and provide detainees with appropriate comfort items – housekeeping and clean bedding.

7.3. Performance Measurement 3: The time of detention for detainees is minimized.

7.3.1. The period of detention does not exceed 24 hours and commonly does not exceed 24 hours for UACs.

7.4. Performance Monitoring Tools:

a. Sector and/or Station Detention Logs

-14-

- b. Form I-216 Record of Persons and Property Transferred
- c. Supervisor oversight
- d. Local inspection programs
- e. Reporting of deficiencies
- f. Periodic compliance summary reports

8. **CANCELLATION.** This policy remains in effect until cancellation by an updated version.

9. **NO PRIVATE RIGHTS CREATED.** This document is an internal policy statement of U.S. Customs and Border Protection and does not create or confer any rights, privileges, or benefits on any person or party.

10. **ATTACHMENTS.**

Appendix 1: Unaccompanied Alien Children Detention Log

(b)(6)&(b)(7)(C)

David V. Aguilar
Chief
U.S. Border Patrol

[illegible]

ESN / ESN / ESN **ESN / ESN / ESN**

EXHIBIT B

Losmin Jimenez

From: cbpfoia@cbp.dhs.gov
Sent: Wednesday, July 03, 2013 3:06 PM
To: Losmin Jimenez
Subject: Request Acknowledgement by U.S. Customs and Border Protection

Dear Losmin Jimenez,

File Number 2013F27556 has been assigned to your request with temporary file number 11780. In all future correspondence regarding this request please reference File Number 2013F27556.

Regards,
U.S. Customs and Border Protection



U.S. Customs and Border Protection
Securing America's Borders

www.cbp.gov/foia

FOIA Freedom of
Information Act

Request Submitted Successfully

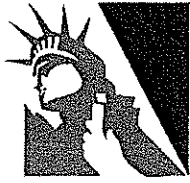
Your request has been successfully submitted. Your Temporary Case Number is **11780**. Shortly, you will receive a permanent case number to the e-mail address that you provided during registration.

Request History

You will receive an e-mail, if no technical problems encountered and a proper e-mail address is specified.

You are about to access a Department of Homeland Security computer system. This computer system and data therein are property of the U.S. Government and provided for official U.S. Government information and use. There is no expectation of privacy when you use this computer system. The use of a password or any other security measure does not establish an expectation of privacy. By using this system, you consent to the terms set forth in this notice. You may not process classified national security information on this computer system. Access to this system is restricted to authorized users only. Unauthorized access, use, or modification of this system or of data contained herein, or in transit to/from this system, may constitute a violation of section 1030 of title 18 of the U.S. Code and other criminal laws. Anyone who accesses a Federal computer system without authorization or exceeds access authority, or obtains, alters, damages, destroys, or discloses information, or prevents authorized use of information on the computer system, may be subject to penalties, fines or imprisonment. This computer system and any related equipment is subject to monitoring for administrative oversight, law enforcement, criminal investigative purposes, inquiries into alleged wrongdoing or misuse, and to ensure proper performance of applicable security features and procedures. DHS may conduct monitoring activities without further notice.

EXHIBIT C



Americans for Immigrant Justice

Formerly Florida Immigrant Advocacy Center (FIAC)

Via Federal Express

September 13, 2013

U.S. Customs and Border Protection
FOIA Division
799 9th Street NW, Mint Annex
Washington, DC 20229-1181

Re: Freedom of Information Act Request - Ref. No. 2013F29445

Dear FOIA Officer:

On July 3, 2013, Americans for Immigrant Justice ("AI Justice") submitted a Freedom of Information Act ("FOIA") request via electronic mail and Federal Express. *See* Exhibit A (hereinafter "FOIA Request"). The FOIA Request pertained to disclosure of any and all records that were prepared, received, transmitted, collected and/or maintained by the U.S. Department of Homeland Security (DHS) and/or U.S. Customs and Border Protection (CBP) that describe, refer or relate to CBP's national policy for the short-term custody and detention of persons arrested or detained by CBP.

Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), an agency has twenty (20) working days in which to make a determination on a FOIA request. Pursuant to section 552 (a)(6)(A)(i), a "determination" for FOIA purposes must include at least a list of the documents to which the requester is being denied access and reasons for the withholding. "Denial of this information would in all likelihood be a violation of due process as well as effectively gutting the reasons for applying the exhaustion doctrine in FOIA cases." *See Shermco Indus., Inc. v. Sec'y of Air Force*, 452 F. Supp. 306, 317 n.7 (N.D. Tex. 1978) *rev'd on other grounds*, 613 F.2d 1314 (5th Cir. 1980); *see also Oglesby v. Dep't of Army*, 920 F.2d 57, 65 (D.C. Cir. 1990).

On July 19, 2013, we received an acknowledgment letter from the CBP FOIA office. However, this acknowledgment letter does not constitute a "determination" sufficient to satisfy the requirements of 5 U.S.C. § 552(a)(6)(A)(i) if it does not grant or deny the right to appeal. *See Martinez v. FBI*, No. 82-1547 (D.D.C. Oct. 11, 1983)(citing *Shermco Indus., Inc. v. Sec'y of Air Force*, 452 F.Supp. 306 (N.D. Tex. 1978)). As of today's date, forty-eight (48) working days after our initial request, CBP has failed to make a determination on our request.

A non-profit organization dedicated to protecting and promoting the basic human rights of immigrants

U.S. Customs and Border Protection, FOIA Division
September 13, 2013
Page Two

Without further delay, we request that CBP make the required determination and produce all responsive information. An agency's failure to comply with the time limit for an initial request determination may be treated as "constructive exhaustion" of administrative remedies. *See* 5 U.S.C. § 552(a)(6)(C)(i); *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1310 (D.C. Cir. 2003)(stating that agency's failure to respond to FOIA request within twenty days constitutes constructive exhaustion of administrative remedies).

In the event that we do not receive the required determination and production in the next thirty (30) days, we will take appropriate legal action to enforce our rights under the FOIA.

Thank you for your time and consideration. Please contact me at (305) 573-1106, ext. 1380, or via email at ljimenez@aijustice.org should you have any questions regarding this matter.

Sincerely,

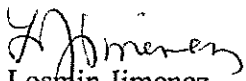

Lospin Jimenez
Litigation Attorney

EXHIBIT D



Americans for Immigrant Justice

Formerly Florida Immigrant Advocacy Center (FIAC)

Via Priority Mail

December 18, 2013

U.S. Customs and Border Protection
FOIA Division
799 9th Street NW, Mint Annex
Washington, DC 20229-1181

Re: Freedom of Information Act Request - Ref. No. 2013F29445

Dear FOIA Officer:

On July 3, 2013, Americans for Immigrant Justice ("AI Justice") submitted a Freedom of Information Act ("FOIA") request via electronic mail and Federal Express. *See* Exhibit A (hereinafter "FOIA Request"). The FOIA Request pertained to disclosure of any and all records that were prepared, received, transmitted, collected and/or maintained by the U.S. Department of Homeland Security ("DHS") and/or U.S. Customs and Border Protection ("CBP") that describe, refer or relate to CBP's national policy for the short-term custody and detention of persons arrested or detained by CBP. On July 19, 2013, we received an email from CBP acknowledging our request. *See* Exhibit B. Since that time, we have received no other correspondence from CBP.

Please consider this letter an appeal of your constructive denial of our FOIA request and a restatement of our request for a fee waiver.

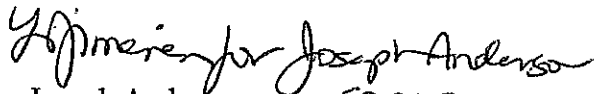
When a party submits a FOIA request, the agency has 20 business days to determine whether to produce records responsive to the request. 5 U.S.C. § 552(a)(6)(A)(i). In unusual circumstances, this deadline may be extended for a maximum of ten additional business days. 5 U.S.C. § 552(a)(6)(B)(i). When an agency fails to meet the response times required by FOIA, requesting parties may deem the agency's delay a denial of the FOIA request and appeal the denial. *See, e.g., Ruotolo v. Dep't of Justice*, 53 F.3d 4, 8 (2d Cir. 1995) ("[A]dministrative remedies are 'deemed exhausted' if the agency fails to comply with the 'applicable time limit' provisions of the FOIA."); *Voinche v. Fed. Bureau of Investigation*, 999 F.2d 962, 963 (5th Cir. 1993) ("If an agency has not complied within the statutory time limits of a FOIA request, the requestor shall be deemed to have exhausted his administrative remedies and [may] bring suit."). You have failed to respond to our FOIA request within the twenty days provided under the FOIA statute.

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U.S. Customs and Border Protection, FOIA Division
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FOIA incorporates a strong presumption in favor of mandatory disclosure of requested records. *Wisconsin Project on Nuclear Arms Control v. Dep't of Commerce*, 317 F.3d 275, 279 (D.C. Cir. 2003) ("FOIA accordingly mandates a 'strong presumption in favor of disclosure.'") (quoting *Dep't of Justice v. Ray*, 502 U.S. 164, 173 (1991)). Agencies may deny a FOIA request only when the requested records fall under any of the nine exemptions listed in FOIA, 5 U.S.C. § 552(b)(1)-(9). You have not responded to our FOIA request and thus have not applied any of the statutory exemptions to withhold the records we requested. Accordingly, we are entitled to the requested records.

Sincerely,


Joseph Anderson 52247

Director of Litigation
Americans for Immigrant Justice
3000 Biscayne Blvd.
Suite 400
Miami, FL 33137
Telephone: (786) 454-8564
Fax: (305) 576-6273
janderson@aijustice.org