

# **EXHIBIT B**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:18-cv-00302-RPM

**CIVIL RIGHTS EDUCATION AND ENFORCEMENT CENTER,**

Plaintiff,

v.

**UNITED STATES DEPARTMENT OF HOMELAND SECURITY and  
UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT,**

Defendants.

---

**SECOND AMENDED COMPLAINT**

---

**NATURE OF THE CASE**

1. In this action, brought pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, *et seq.*, Plaintiff seeks declaratory and injunctive relief to effect the release by the Defendants of agency records that Plaintiff has requested from the Defendants pursuant to FOIA.

2. Plaintiff, Civil Rights Education and Enforcement Center (“CREEC”), is a non-profit corporation organized under the laws of the State of Colorado that is dedicated to protecting and defending the civil rights of individuals and educating the public concerning civil rights issues.

3. Defendants, agencies of the U.S. Government, maintain a network of detention facilities at which individuals who are not United States citizens are confined under authority

exercised by the Defendants. With few exceptions, these individuals are confined in county jails or private facilities that are operated by public or private entities pursuant to contracts with the Defendants.

4. In recent years, there has developed significant public interest and controversy over the conditions of confinement of immigrant detainees placed into custody by the Defendants.

5. Defendants' network includes the Adelanto Detention Facility ("Adelanto") located in or near the city of Adelanto, California. Adelanto is operated by GEO Group, Inc. ("GEO"), a private entity, pursuant to a contract between the City of Adelanto and the Defendants, and an operating agreement between GEO and the City, under which Adelanto undertakes responsibility for confinement of individuals detained under authority and oversight of the Defendants. Adelanto has been the subject of numerous complaints of substandard conditions of confinement, investigations of such complaints and conditions by non-governmental civil rights organizations, and reports to the public concerning substandard conditions of confinement issued by such organizations. On information and belief, the Defendants possess considerable agency records and data regarding substandard conditions of confinement at Adelanto that have not been made available to the public.

6. Defendants' network of detention facilities also includes the Etowah County Detention Center ("Etowah"), situated in the town of Gadsden, Alabama. Etowah is operated by the Etowah County Sheriff's Office pursuant to a contract with the Defendants under which Etowah undertakes responsibility for confinement of individuals detained under authority and oversight of the Defendants. Etowah has been the subject of numerous complaints of

substandard conditions of confinement, investigations of such complaints and conditions by non-governmental civil rights organizations, and reports to the public concerning substandard conditions of confinement issued by such organizations. On information and belief, the Defendants possess considerable agency records and data regarding substandard conditions of confinement at Etowah that have not been made available to the public.

7. Defendants' network of detention facilities also includes the Denver Contract Detention Facility ("Aurora") located in or near the City of Aurora, Colorado. Aurora is operated by GEO Group, Inc., a private entity, pursuant to a contract between GEO and the Defendants, under which Aurora undertakes responsibility for confinement of individuals detained under authority and oversight of the Defendants. Aurora has been the subject of numerous complaints of substandard conditions of confinement, investigation of such complaints and conditions by nongovernmental civil rights organizations, and reports to the public concerning substandard conditions of confinement issued by such organizations. On information and belief, the Defendants possess considerable agency records and data regarding substandard conditions of confinement at Aurora that have not been made available to the public.

8. Defendants' network also includes the Theo Lacy Facility ("Theo Lacy") located in Orange County, California. Theo Lacy is operated by the Orange County Sheriff's Office pursuant to a contract between the Orange County Sheriff's Office and the Defendants under which Theo Lacy undertakes responsibility for confinement of individuals detained under authority and oversight of the Defendants. Theo Lacy has been the subject of numerous complaints of substandard conditions of confinement, investigations of such complaints and conditions by nongovernmental civil rights organizations, and reports to the public concerning

substandard conditions issued by such organizations. On information and belief, the Defendants possess considerable agency records and data regarding substandard conditions of confinement at Theo Lacy that have not been made available to the public.

9. From August 2017 through April 2018, CREEC submitted to Defendants FOIA requests seeking agency records concerning conditions of confinement at Adelanto, Etowah, Aurora, and Theo Lacy of individuals detained pursuant to authority exercised by Defendants. In addition, in April of 2018, CREEC submitted to Defendants a set of requests seeking documents relating to conditions of confinement for disabled individuals at all detention facilities in the Defendants' network.

10. CREEC seeks the requested agency records in order to inform public debate regarding conditions of confinement at Adelanto, Etowah, Aurora, Theo Lacy, and throughout Defendants' network of detention facilities, and accountability and oversight measures that may be needed to address substandard conditions of confinement.

11. Defendants have failed to comply with the statutory deadline for responding to CREEC's requests pursuant to FOIA.

12. Defendants should not be permitted to ignore FOIA's requirements. This Court should order Defendants to respond to CREEC's FOIA requests and disclose the requested records.

**JURISDICTION AND VENUE**

13. This Court has subject matter jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

14. Venue lies in this District pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

**PARTIES**

15. CREEC is a non-profit organization that provides legal assistance, advocacy, and public education concerning actions, practices, and policies that abridge or threaten the civil rights of individuals in the United States. CREEC has formed an internal immigration detainee task force charged with investigating suspected substandard conditions of confinement of non-citizens who have become immigration detainees pursuant to authority exercised by Defendants and, where warranted and appropriate, to consider litigation to vindicate the rights of such individuals. CREEC's work that is the subject of this action has been undertaken by its immigration detainee task force.

16. Disclosure of the requested records will shed light on Defendants and their subcontractors' operations and activities related to the confinement of immigration detainees. CREEC seeks the requested agency records in order to inform public debate regarding conditions of confinement in immigration detention facilities, and accountability and oversight measures that may be needed to address substandard conditions of confinement.

17. Defendant United States Department of Homeland Security ("DHS") is a Cabinet department of the U.S. federal government with responsibilities for protecting the security of the United States. Defendant United States Immigration and Customs Enforcement ("ICE") is a

subsidiary component entity within DHS and is responsible for enforcing federal immigration and customs laws. Both ICE and DHS are “agenc[ies]” within the meaning of 5 U.S.C. § 552(f)(1). ICE and DHS have possession and control over agency records CREEC seeks and are responsible for responding to and fulfilling CREEC’s FOIA request.

### **STATUTORY FRAMEWORK**

18. “The basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed.” *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978).

19. To that end, FOIA requires federal agencies to make government records “promptly available to any person” unless an enumerated exemption applies. *See* 5 U.S.C. § 552(a)(3).

20. In addition to the general requirement that records be made “promptly” available, FOIA sets forth a specific timeline for responding to an FOIA request. In particular, the statute provides that a federal agency must “determine within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of,” among other things, “such determination and the reasons therefor.” *Id.* § 552(a)(6)(A)(i). In “unusual circumstances,” including a “need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records,” that deadline may be extended for a period not to exceed ten additional business days. *Id.* § 552(a)(6)(B).

21. FOIA provides that a requester may sue in federal court without waiting for an answer whenever an agency does not abide by the applicable deadline. *Id.* § 552(a)(4)(B), (a)(6)(C)(1).

### **FACTUAL ALLEGATIONS**

#### **A. Plaintiff's Requests for Records Regarding Adelanto**

22. On August 15, 2017, at 4:40 p.m. MDT, CREEC electronically filed (at ICE-FOIA@dhs.gov) an FOIA request with ICE seeking certain categories of agency records regarding conditions of confinement at Adelanto<sup>1</sup> and the Defendants' oversight thereof. A true and correct copy of that written request is attached hereto as Ex. 1, and the cover e-mail is attached as Ex. 2. This request was addressed as directed on the ICE website and as directed by Defendants' regulations for the most prompt disposition. *See* 6 C.F.R. § 5.3.

23. At 4:41 p.m. MDT on August 15, 2017, CREEC received an "automatic reply" from ICE-FOIA@ice.dh.gov stating that "ICE has received the information you submitted to the ICE-FOIA@dhs.gov mailbox." This automatic reply also stated that "this courtesy reply does not replace the Acknowledgement Letter which will be sent to you once your request has been entered into our FOIA Request Tracking System." The automatic reply is attached as Ex. 3.

24. On September 5, 2017, CREEC's representative replied by e-mail to the automatic reply e-mail received from ICE-FOIA@dhs.gov on August 15, 2017, inquiring as to

---

<sup>1</sup> Adelanto has been variously referred to as Adelanto Detention Facility, Adelanto Detention Center, and the Adelanto ICE Processing Center. The facility has two buildings, one known as Adelanto East located at 10400 Rancho Road, Adelanto, CA 92301, and the other known as Adelanto West located at 10250 Rancho Road, Adelanto, CA 92301. For the purposes of this Complaint, Adelanto refers to the facility located at both of these addresses. CREEC's FOIA requests regarding Adelanto made a similar reference to the location of the facility.

why CREEC had not received an “Acknowledgement Letter” regarding CREEC’s Adelanto request, noting that the ICE FOIA website advised that CREEC should receive an Acknowledgement Letter three to five business days after a request is submitted. A copy of the September 5, 2017 e-mail is attached as Ex. 4. CREEC received an automatic reply to this e-mail, which is attached as Ex. 5.

25. On September 7, 2017, CREEC’s representative called (866) 633-1182, the number listed on the ICE FOIA website, <https://www.ice.gov/foia/overview> (“ICE FOIA Website”), but was unable to leave a message or speak to someone from the ICE FOIA Office about the pending FOIA request. The answering auto-attendant provided two options related to FOIA requests. The CREEC representative first selected an option that forwarded this call to a voicemail box; however, the box was full and the CREEC representative was unable to leave a message. The CREEC representative redialed the number, and selected an option that offered the opportunity to speak to someone about pending FOIA requests, but the line produced a busy signal and then disconnected. The CREEC representative redialed and reselected the same option but was again connected to a full voicemail box where she could not leave a message.

26. Also on September 7, 2017, CREEC’s representative called the ICE Office of Diversity and Civil Liberties and spoke to a female employee. That individual was unable to assist in obtaining an Acknowledgement Letter for CREEC’s request, but did provide contact information for one Mark Bittner (“Bittner”) of the ICE FOIA office as an individual who could do so. CREEC’s representative e-mailed Bittner and inquired as to why CREEC had not received an Acknowledgement Letter regarding the Adelanto request, and attached the original FOIA request letter sent on August 15, 2017. The e-mail to Bittner is attached hereto as Ex. 6.

27. Mr. Bittner never responded to this e-mail, but on September 8, 2017, CREEC received an e-mail from ice-foia@dhs.gov with an Acknowledgement Letter in response to its August 15 FOIA request regarding Adelanto. The letter provided a reference number for the request, 2017-ICFO-45386. The September 8, 2017 e-mail is attached hereto as Ex. 7.

28. On September 14, 2017, CREEC's representative used the Department of Homeland Security "Check Status of Request" website, <https://www.dhs.gov/foia-status> ("Check Status Website"), to determine the estimated time of delivery for its Adelanto request. The Defendants are required to maintain this facility under FOIA, 5 U.S.C. § 552(f)(2). The Check Status Website reported that the estimated time of delivery for Request No. 2017-ICFO-45386 was October 2, 2017.

29. On September 19, 2017 at 10:11 a.m. MDT, CREEC electronically filed (at ICE-FOIA@dhs.gov) a further FOIA request with ICE seeking categories of agency records regarding administrative and disciplinary segregation at Adelanto. A true and correct copy of that written request is attached as Ex. 8 and the cover e-mail is attached as Ex. 9. On the same day, CREEC received an automatic reply, attached as Ex. 10.

30. On September 19, 2017 at 10:21 a.m. MDT, CREEC electronically filed (at ICE-FOIA@dhs.gov) a further FOIA request seeking agency records related to medical care subcontractors at Adelanto. A copy of that request is attached as Ex. 11 and a copy of the cover e-mail is attached as Ex. 12. CREEC received an automatic reply the same day, attached as Ex. 13.

31. On September 19, 2017, at 10:25 a.m. MDT, CREEC electronically filed (at ICE-FOIA@dhs.gov) a further FOIA request seeking agency records regarding mental health

services at Adelanto. A copy of that request is attached as Ex. 14 and the cover e-mail is attached as Ex. 15. CREEC received an automatic reply the same day, and a copy is attached as Ex. 16.

32. On September 26, 2017, CREEC received an e-mail from ice-foia@dhs.gov, acknowledging receipt of the above three FOIA requests sent on September 19 and including them under the same reference number as the August 15 FOIA request, 2017-ICFO-45386. A copy of that e-mail is attached hereto as Ex. 17

33. CREEC's representative then checked the Check Status Website to determine the estimated time of delivery for CREEC's August 15 and September FOIA requests regarding Adelanto. The website reported that the estimated time of delivery for Request No. 2017-ICFO-45386 was October 2, 2017.

34. On November 6, 2017, CREEC's representative checked the Check Status Website for an update on CREEC's FOIA requests regarding Adelanto. The Check Status Website continued to report the estimated time of delivery for the request as October 2, 2017. A screenshot of that page of the FOIA tracker, including the date of the estimated delivery, is attached hereto as Ex. 18.

35. On November 6, 2017, CREEC's representative sent an e-mail to ice-foia@dhs.gov, asking for the materials requested or an updated timetable for delivery regarding the various Adelanto requests, which were due on October 2, 2017. A copy of that e-mail is attached hereto as Ex. 19. CREEC received an automatic reply to that e-mail, copy attached as Ex. 20.

36. On November 8, 2017, CREEC received a reply to its November 6 e-mail that stated, “Responsive documentation has been received and this request has been assigned to an analyst for processing.” A copy of that e-mail is attached hereto as Ex. 21.

37. On November 14, 2017, CREEC’s representative responded to ICE’s e-mail asking when CREEC could expect to receive the documents requested. A copy of that e-mail is attached hereto as Ex. 22. CREEC received an automatic reply e-mail, copy attached as Ex. 23, but never received a substantive response to that e-mail.

38. On December 7, 2017, having heard nothing further from the Defendants regarding the Adelanto requests, CREEC’s representative again sent an e-mail to Bittner in the ICE FOIA office that requested a status report on the 2017-ICFO-45386 request (along with a related request assigned No. 2018-ICFO-03033, per ¶¶ 45-51, *infra*). A copy of that e-mail is attached hereto as Ex. 24. CREEC did not receive a response from Bittner or Defendants.

39. On December 14, 2017 at 2:57 MST, CREEC’s representative called (866) 633-1182, the phone number listed on the ICE FOIA Website, to inquire about FOIA requests 2017-ICFO-45386 and 2018-ICFO-03033. The answering auto-attendant provided two options related to FOIAs. The CREEC representative first selected an option that forwarded this call to a voicemail box; however, the box was full and the CREEC representative was unable to leave a message. The CREEC representative redialed the number at 3:00 p.m. MST, and selected an option that offered the opportunity to speak to someone about pending FOIA requests, but the line produced a busy signal and then disconnected. The CREEC representative redialed and reselected the same option but was again connected to a full voicemail box where she could not leave a message.

40. On December 15, 2017, CREEC's representative consulted the Check Status Website to determine the estimated time of delivery for the response to request 2017-ICFO-45386. The Check Status Website reported that estimated date of delivery for Request No. 2017-ICFO-45386 had been updated from October 2, 2017 to December 29, 2017. A screenshot of that page from the ICE FOIA website is attached as Ex. 25.

41. On December 22, 2017, CREEC's representative consulted the Check Status Website to determine the estimated time of delivery for request 2017-ICFO-45386. For Request No. 2017-ICFO-45386 the estimated date of delivery was December 29, 2017. A screenshot of that page from the ICE FOIA website is attached as Ex. 26.

42. As of the date of the First Amended Complaint, the Check Status Website indicated that Request No. 2017-ICFO-45386 is "closed." Neither ICE nor DHS provided CREEC with notice that it had "closed" the request, and neither agency has produced the requested records. A copy of the report from the Check Status Website is attached as Ex. 37.<sup>2</sup>

43. Even assuming that a ten-business-day extension was warranted, a response to CREEC's August 15 request should have been forthcoming by no later than September 26, 2017, pursuant to 5 U.S.C. § 552(a)(6)(A)(i) and (a)(6)(B). Once that request was combined with CREEC's September 19 further requests concerning Adelanto, the 20-business-day response to the combined requests should have been provided no later than October 17, 2017. Even assuming that a ten-business-day extension was warranted, a response to CREEC's combined August 15 and September 19, 2017 requests should have been forthcoming by no later than

---

<sup>2</sup> This exhibit falls out of numerical order to avoid changing existing exhibit numbers for those exhibits filed with Plaintiff's Complaint.

October 31, 2017, pursuant to 5 U.S.C. § 552(a)(6)(A)(i) and (a)(6)(B). Despite its follow-up efforts, CREEC has received no substantive response to its August 15, 2017 and September 19, 2017 requests.

44. Pursuant to 5 U.S.C. § 552(a)(6)(C), CREEC is deemed to have exhausted any and all administrative remedies with respect to FOIA Request Nos. 2017-ICFO-45386 and 2018-ICFO-03033, because Defendants failed to comply within the time limit set forth in 5 U.S.C. § 552(a)(6)(A).

**B. Plaintiff's Request for Records Regarding Etowah**

45. On September 29, 2017, CREEC electronically filed (at ICE-FOIA@dhs.gov) an FOIA request with ICE seeking certain categories of agency records regarding conditions of confinement at Etowah and the Defendant's oversight thereof. A true and correct copy of that written request is attached hereto as Ex. 27, and the cover e-mail is attached as Ex. 28. This request was addressed and submitted as directed by Defendants' regulations for the most prompt disposition, 6 C.F.R. § 5.3. On that same day, CREEC received an automatic reply from ice-foia@dhs.gov, a copy of which is attached as Ex. 29.

46. On October 20, 2017, CREEC received an e-mail from ice-foia@dhs.gov with an Acknowledgment Letter acknowledging receipt of its September 29, 2017 FOIA request and invoking the ten-day extension available in "unusual circumstances." This letter indicated that the September 29 FOIA request had been assigned Reference No. 2018-ICFO-03033. A true and correct copy of the October 20, 2017 e-mail is attached as Ex. 30.

47. On October 24, 2017 at 9:45 a.m. MDT, CREEC received an e-mail from ice-foia@dhs.gov requesting clarification of the September 29 Etowah FOIA request. The e-mail stated:

In conducting a search for responsive records, the ICE FOIA office has determined that further clarification is needed regarding your request. To assist our procurement staff in the search for responsive documents, please provide the contract number or solicitation number. Please provide the ICE FOIA office with a response as soon as possible to avoid any further delay in the processing of your request. If a response is not received within 10 days, your request will be administratively closed.

The e-mail requesting clarification is attached hereto as Ex. 31.

48. At 10:30 a.m. MDT on October 24, 2017, CREEC responded to ICE's e-mail requesting clarification providing such clarification. A true and correct copy of that response is attached hereto as Ex. 32.

49. CREEC received an automatic acknowledgement to this e-mail, a true and correct copy of which is attached as Ex. 33. CREEC received no further requests for clarification.

50. On or about October 30, 2017, CREEC's representative used the Check Status Website to determine the estimated time of delivery for the September 29 FOIA request regarding Etowah. The website advised that the estimated time for delivery for the Request No. 2018-ICFO-03033 was November 19, 2017.

51. On December 7, 2017 at 10:53 a.m. MST, CREEC's representative e-mailed Bittner at mark.d.bittner@ice.dhs.gov, the address provided by the Defendants' Office of Diversity and Civil Liberties, requesting a status report on outstanding FOIA requests, including the September 29, 2017 request regarding Etowah, Request No. 2018-IFCO-03033. A true and correct copy of that e-mail is attached as Ex. 34. CREEC received no response to this e-mail.

52. On December 14, 2017 at 2:57 p.m. MST, CREEC's representative called (866) 633-1182, the phone number listed on the ICE FOIA Website, to inquire about, *inter alia*, FOIA Request No. 2018-ICFO-03033. The answering auto-attendant provided two options related to FOIA requests. The CREEC representative first selected an option that forwarded the call to a voice mailbox, however, the box was full and the CREEC representative was unable to leave a message. The CREEC representative redialed the same telephone number at 3:00 p.m. MST, and selected an option that offered the opportunity to speak to someone about a pending FOIA request, but the line produced a busy signal and disconnected. The CREEC representative redialed the number and reselected the opportunity to speak to an agent, but was again connected to a full mailbox where the representative was unable to leave a message.

53. On December 15, 2017, CREEC's representative consulted the Check Status Website to determine the estimated time of delivery for Request No. 2018-ICFO-03033 regarding Etowah, which the website reported as November 22, 2017. A screenshot of that page from the ICE FOIA website displaying this information is attached as Ex. 35.

54. On December 18, 2017, CREEC's representative again consulted the Check Status Website, and received exactly the same information. A screenshot of that page from the ICE FOIA website displaying this information is attached as Ex. 36.

55. On December 19, 2017, CREEC's representative again dialed the ICE FOIA phone number, (886) 663-1182, but was again unable to leave a message due to a full mailbox or to speak to anyone in the ICE FOIA office.

56. As of the date of this filing, no updated information has been provided by the Department of Homeland Security on the Check Status Website regarding request 2018-ICFO-03033.

57. Even assuming that a ten-business-day extension was warranted, a response to CREEC's September 29, 2017 request should have been forthcoming by no later than November 10, 2017, pursuant to 5 U.S.C. § 552(a)(6)(A)(i) and (a)(6)(B). Despite its follow-up efforts, CREEC has received no response to the September 29 request other than the acknowledgements of receipt and request for clarification described above.

58. Pursuant to 5 U.S.C. § 552(a)(6)(C), CREEC is deemed to have exhausted any and all administrative remedies with respect to FOIA Request No. 2018-ICFO-03033, because Defendants failed to comply within the time limit set forth in 5 U.S.C. § 552(a)(6)(A).

**C. Plaintiff's Request for Records Regarding Aurora**

59. On January 22, 2018, at 12:48 p.m. MST, CREEC electronically filed (at ICE-FOIA@dhs.gov) an FOIA request with ICE seeking certain categories of agency records regarding conditions of confinement at Aurora and the Defendants' oversight thereof. A true and correct copy of that written request is attached as Ex. 38, and the cover e-mail is attached as Ex. 39. The request was addressed as directed on the ICE website and as directed by Defendants' regulations for the most prompt disposition. *See* 6 C.F.R. § 5.3.

60. At 12:49 p.m. MST on January 22, 2018, CREEC received an "automatic reply" from ICE-FOIA@ice.dhs.gov stating that "DUE TO THE RECENT FURLOUGH, THIS INBOX WILL NOT BE ACTIVELY MONITORED UNTIL AN APPROPRIATION OR CONTINUING RESOLUTION." This automatic reply also stated that "this courtesy reply does

not replace the Acknowledgement Letter which will be sent to you once your request has been entered into our FOIA Request Tracking System.” This automatic reply is attached as Ex. 40.

61. On January 30, 2018, CREEC replied to the automatic reply e-mail received from ICE-FOIA@dhs.gov on January 22, 2018, inquiring as to why CREEC had not received an “Acknowledgement Letter,” which, according to the ICE FOIA website, CREEC should have received three to five business days after the request was submitted. The e-mail sent on January 30, 2018 is attached as Ex. 41. The same day, CREEC received an automatic reply to this e-mail, attached as Ex. 42.

62. On February 7, 2018, having received no response to the e-mail of January 30, 2018, CREEC e-mailed Bittner, whose contact information had been provided to CREEC by the ICE Office of Diversity and Civil Liberties. In the e-mail, attached hereto as Ex. 43, CREEC asked for an Acknowledgement Letter with tracking number so that CREEC might keep track of the status of their request.

63. On February 7, 2018, at 10:54 a.m. MST, CREEC received an automatic response to its e-mail to Bittner saying he no longer worked at ICE and to address FOIA related e-mails to the ICE FOIA e-mail, ice-foia@ice.dhs.gov. The automatic reply is attached as Ex. 44.

64. On February 15, 2018, a representative of CREEC called the phone number listed on the ICE FOIA Website to inquire as to why CREEC had not received an Acknowledgement Letter from ICE for its January 22 FOIA request. The representative was unable to speak to a live person or leave a message by calling this number.

65. On February 16, 2018, having received no Acknowledgement Letter from ICE, CREEC resubmitted the January 22 request via Certified Mail. The resubmitted FOIA request

included a cover letter indicating this was a resubmission designed to produce an Acknowledgement Letter and that the January 22 request should be considered the relevant date for the calculation of the agency's time to respond under 5 U.S.C. § 552(a)(6)(A)(i) and 5 U.S.C. § 552(a)(6)(B). The resubmitted FOIA request and cover letter is attached as Ex. 45.

66. According to the United States Postal Service tracking website, the resubmitted FOIA request was received on February 28, 2018, at 11:19 a.m. EST.

67. On March 13, 2018, a representative of CREEC received from ice-foia@dhs.gov an Acknowledgement Letter responding to its FOIA request regarding Aurora and other Colorado facilities. However, the Acknowledgement Letter referred only to the February 16 resubmission sent via Certified Mail and not the initial e-mail submission on January 22. The request was assigned Request No. 2018-ICFO-24034, and ICE invoked the ten-day extension available in unusual circumstances. The March 13, 2018 e-mail is attached as Ex. 46.

68. On May 24, 2018, a representative of CREEC consulted the Check Status Website to determine the estimated time of response to its request. The website, as reflected in Ex. 47, stated that the estimated time for delivery for request 2018-ICFO-24034 was April 15, 2018.

69. As of this date, CREEC has not received any response to its request for documents involving Aurora and other Colorado detention facilities. As of the date of the First Amended Complaint, the Check Status Website indicated that the estimated time of response was April 15, 2018. A copy of a screenshot of the website reflecting this information is attached as Ex. 48.

70. As of the date of this Second Amended Complaint, the Check Status Website indicated that Request No. 2018-ICFO-24034 is "closed." Neither ICE nor DHS provided

CREEC with notice that it had “closed” the request, and neither agency has produced the requested records. A copy of the report from the Check Status Website is attached as Ex. 66.

71. Even assuming that the request date on Request No. 2018-ICFO-24034 is deemed to be February 16, 2018 rather than January 22, 2018 when the request was originally submitted, and even assuming that a ten-business-day extension was warranted, a response to CREEC’s Request No. 2018-ICFO-24034 should have been forthcoming by no later than April 2, 2018, pursuant to 5 U.S.C. § 552(a)(6)(A)(i) and (a)(6)(B).

72. On April 3, 2018, CREEC electronically filed (at ICE-FOIA@dhs.gov) a further FOIA request with ICE seeking certain categories of additional agency records and documents regarding conditions of confinement at Aurora. A true and correct copy of that written request is attached hereto as Ex. 49, and the cover e-mail is attached as Ex. 50.

73. On April 18, 2018, CREEC received an e-mail from ice-foia@dhs.gov a written Acknowledgement Letter responding to CREEC’s second FOIA request regarding Aurora. The Acknowledgement Letter assigned this request Request No. 2018-ICFO-29725. A copy of the e-mail and Acknowledgement Letter is attached hereto as Ex. 51.

74. As of the filing of the First Amended Complaint, the Check Status Website indicated that the estimated time for response to Request No. 2018-ICFO-29725 was May 6, 2018. A copy of a screenshot of the Check Status Website is attached as Ex. 52.

75. As of the date of the Second Amended Complaint, CREEC has received no response to Request No. 2018-ICFO-29725.

76. Even assuming that a ten-business-day extension was warranted, a response to CREEC's Request No. 2018-ICFO-29725 should have been forthcoming by no later than May 15, 2018, pursuant to 5 U.S.C. § 552(a)(6)(A)(i) and (a)(6)(B).

77. Pursuant to 5 U.S.C. § 552(a)(6)(C), CREEC is deemed to have exhausted any and all administrative remedies with respect to FOIA Request No. 2018-ICFO-29725, because Defendants failed to comply within the time limit set forth in 5 U.S.C. § 552(a)(6)(A).

**D. Plaintiff's Request for Records Regarding Theo Lacy**

78. On February 13, 2018, at 10:25 a.m. MST, CREEC electronically filed (at ICE-FOIA@dhs.gov) an FOIA request seeking certain categories of agency records regarding conditions of confinement at Theo Lacy and the Defendants' oversight thereof. A true and correct copy of that written request is attached as Ex. 53, and the cover e-mail is attached as Ex. 54.

79. On February 21, 2018, CREEC received an e-mail from ice-foia@dhs.gov with an Acknowledgement Letter responding to CREEC's February 13 FOIA request regarding Theo Lacy. The request was assigned reference No. 2018-ICFO-20737. The February 21 e-mail is attached as Ex. 55.

80. On May 24, 2018, CREEC used the DHS Check Status Website to determine the estimated time of delivery for Request No. 2018-ICFO-20737, and the website indicated the estimated time of response was April 2, 2018. A copy of a screenshot of the Check Status Website is attached as Ex. 56. As of the date of the First Amended Complaint, the Check Status Website indicates that the estimated time of delivery of the response to Request

No. 2018-ICFO-20737 is April 2, 2018. A copy of a screenshot of the Check Status Website is attached as Ex. 57.

81. As of the date of this Second Amended Complaint, the Check Status Website indicated that Request No. 2018-ICFO-20737 is “closed.” Neither ICE nor DHS provided CREEC with notice that it had “closed” the request, and neither agency has produced the requested records. A copy of the report from the Check Status Website is attached as Ex. 67.

82. As of this time, CREEC has received no response to Request No. 2018-ICFO-20737.

83. Even assuming that a ten-business-day extension was warranted, a response to CREEC’s February 13, 2018 request should have been forthcoming by no later than March 28, 2018, pursuant to 5 U.S.C. § 552(a)(6)(A)(i) and (a)(6)(B).

84. Pursuant to 5 U.S.C. § 552(a)(6)(C), CREEC is deemed to have exhausted any and all administrative remedies with respect to FOIA Request No. 2018-ICFO-20737, because Defendants failed to comply within the time limit set forth in 5 U.S.C. § 552(a)(6)(A).

**E. Plaintiff’s Request for Records Regarding Defendants’ Entire Network of Facilities**

85. On April 3, 2018, CREEC electronically filed (at ICE-FOIA@ice.dhs.gov) a FOIA request with ICE seeking certain categories of agency records regarding conditions of confinement at all facilities used by ICE for detention of individuals during their immigration proceedings, limited to ten discrete categories of information related to detainees having disabilities. A true and correct copy of that written request is attached as Ex. 58, and the cover e-mail is attached as Ex. 59.

86. On April 18, 2018, CREEC received an e-mail from ice-fioa@dhs.gov indicating a case number for CREEC's April 3, 2018 request of 2018-ICFO-29727 and seeking clarification of "which facility you are seeking data related to your request." A true and correct copy of the e-mail from ICE and CREEC's response is attached as Ex. 60.

87. Also on April 18, 2018, CREEC responded to the request for clarification by indicating that the request sought records regarding individuals with disabilities detained by ICE at all facilities where ICE detainees are held, as well as the policies requested related to disabilities that are applicable to all facilities. *Id.*

88. On April 18, 2018, at 2:51 p.m., CREEC received an e-mail from ICE-FOIA@ice.dhs.gov that noted the request would require information from all ICE detention centers, and requested clarification as to what information CREEC was seeking relating to detainees with disabilities, and that CREEC narrow the request to certain field offices or locations. The e-mail also indicated that policies related to all facilities will be "easy to task out to the proper program." A true and correct copy of this e-mail is contained in Ex. 61.

89. On April 24, 2018, CREEC responded to the foregoing e-mail, and, without prejudice to its rights to seek additional documents in the future, narrowed its request, in addition to documents applicable to all ICE detention facilities, to three specific categories and only to the extent they are to be found in Defendants' field offices. *Id.* This communication noted that CREEC had "greatly reduced the scope of our request," and invited Defendants to "contact me for any further information." *Id.*

90. Although CREEC responded to both requests for clarification on April 24, 2018, and has received no further such requests, the status of CREEC's April 3 request as shown on the

DHS Check Status Website, indicates the status as “on hold – need info/clarification.” A copy of this response from the DHS FOIA Check Status Website, which remains as of the date of the First Amended Complaint, is attached as Ex. 62.

91. As of the date of this Second Amended Complaint, the Check Status Website indicated that Request No. 2018-ICFO-29727 is “closed.” Neither ICE nor DHS provided CREEC with notice that it had “closed” the request, and neither agency has produced the requested records. A copy of the report from the Check Status Website is attached as Ex. 68.

92. CREEC has received no response to its April 3, 2018 request as of the date of this Second Amended Complaint.

93. Even assuming that a ten-business-day extension was warranted, a response to CREEC’s April 3, 2018 request should have been forthcoming by no later than May 15, 2018, pursuant to 5 U.S.C. § 552(a)(6)(A)(i) and (a)(6)(B).

94. Pursuant to 5 U.S.C. § 552(a)(6)(C), CREEC is deemed to have exhausted any and all administrative remedies with respect to FOIA Request No. 2018-ICFO-29727, because Defendants failed to comply within the time limit set forth in 5 U.S.C. § 552(a)(6)(A).

**F. Plaintiff’s Supplemental Request on March 1, 2019 for Updated Records Regarding the ICE/The GEO Group Contract For Operation of the Aurora Facility and Updated Records Regarding Investigation of Death of Kamyar Samimi at Aurora.**

95. On March 1, 2019, CREEC filed (at ICE-FOIA@ice.dhs.gov) a supplemental FOIA request with ICE seeking updated and completed records regarding (a) the contract between ICE and The GEO Group regarding the expansion of the Aurora ICE detention facility and governance of the facility pursuant thereto, and (b) the detainee death investigation of the death of Kamyar Samimi on December 2, 2017 at the Aurora facility which, on information and

belief, was fully completed prior to July 3, 2018. A true and correct copy of that request letter is attached hereto as Exhibit 63. Records concerning the Aurora/GEO contracts, matters pertaining to segregation, deaths, and disabilities of detainees at Aurora and the death of Mr. Samimi were the subject of a prior request already at issue (*see* Exhibit 38, *supra* at ¶¶ 1-2, 12, 19; Exhibit 49), but the Defendants have advised that they will not produce records created after or incomplete at the time of Defendants' original search pursuant to CREEC's prior request.

96. On March 22, 2019, ICE sent an email to CREEC that acknowledged receipt of the forgoing request and assigned the request tracking number 2019-ICFO-31521. This email advised CREEC that ICE would avail itself of the 10-business-day extension of the 20-business-day response time, bringing the resulting 30-business-day deadline for response to April 12, 2019. *See* 5 U.S.C. § 552(a)(6)(A)(i) and (B). The email also invited CREEC to use the tracking number to check the status of ICE's compliance with the request on the ICE web site. A true and correct copy of this email is attached as Exhibit 64.

97. As of April 19, 2019, the ICE website advised that ICE's response to the forgoing request was to be expected by April 24, 2019. As of May 22, 2019, the website still advised that the estimated delivery date was April 24, 2019. No documents have been delivered.

98. ICE has failed to respond to CREEC'S March 1, 2019 request as required by law or otherwise further communicate with CREEC concerning that request.

99. Pursuant to 5 U.S.C. § 552(a)(6)(C), CREEC is deemed to have exhausted any and all administrative remedies with respect to FOIA Request No. 2019-ICFO-31521.

100. Defendants have wrongfully withheld the records requested in Request No. 2019-ICFO-31521 from CREEC.

**G. Plaintiff's Supplemental Request on April 19<sup>th</sup>, 2019, for Further Updated Records Regarding the ICE/The GEO Group Contract for Operation of the Aurora Facility and Updated Records Regarding the Investigation of the Death of Vicente Caceres Maradiaga at the Adelanto Facility**

101. On April 19, 2019, CREEC filed (at ICE-FOIA@ice.dhs.gov) a supplemental FOIA request with ICE seeking updated and completed records regarding (a) further amendments to the contract between ICE and The GEO Group for operation of the Aurora facility (announced April 15, 2019) and (b) the investigation of the death of detainee Vicente Caceres Maradiaga at the Aurora facility. A true and correct copy of that request letter is attached hereto as Exhibit 65. Records concerning the Aurora/GEO Group contracts (*See* Exhibit 38, supra at ¶¶ 1-2) and the death of Mr. Maradiaga (see Exhibit 1, supra, at ¶ 17) were the subject of a prior request already at issue, but the Defendants have advised that they will not produce records created after or incomplete at the time of Defendants' original search pursuant to CREEC's prior request.

102. As of May 22, 2019, ICE had failed to send an acknowledgment of receipt of CREEC's request. CREEC has yet to receive a tracking number, and no documents have been produced and the status of any production cannot be ascertained.

103. ICE has failed to respond to CREEC's April 19, 2019 request as required by law or otherwise further communicate with CREEC concerning that request.

104. Pursuant to 5 U.S.C. § 552(a)(6)(C), CREEC is deemed to have exhausted any and all administrative remedies with respect to FOIA Request No. 2019-ICFO-\_\_\_\_\_.

105. ICE has wrongfully withheld the records requested in Request No. 2019-ICFO-\_\_\_\_\_ from CREEC.

**CLAIMS FOR RELIEF**

106. CREEC realleges and incorporates herein by reference the allegations of ¶¶ 1 through 105 above.

107. As of the date of this Second Amended Complaint and in violation of the deadline set forth in 5 U.S.C. § 552(a)(6), Defendants failed to notify CREEC of any determination about whether Defendants will comply with the Plaintiff's FOIA Request Nos. 2017-ICFO-45386, 2018-ICFO-03033, 2018-ICFO-24034, 2018-ICFO-29725, 2018-ICFO-20737, 2018-ICFO-29727, 2019-ICFO-31521, and 2019-ICFO-\_\_\_\_\_ the reasons for any such determination, or CREEC's right to appeal any adverse determination to the head of the agency.

108. As of the date of this Second Amended Complaint, Defendants have failed to produce any records responsive to any of the requests in the eight numbered cases, indicate when responsive records will be produced, or demonstrate that the responsive records are exempt from production.

109. Defendants have not invoked any FOIA exception, and none apply. Even if one or more exemptions did apply to certain portions of the requested records, Defendants must disclose any reasonably segregable non-exempt portions. 5 U.S.C. § 552(a)(8)(A)(ii)(II). And even if ICE determines that any or all of the agency documents CREEC has requested are somehow exempt, ICE is required to inform CREEC of that determination and the reasons therefor.

110. Defendants have violated 5 U.S.C. § 552(a)(6)(A) by failing to timely respond to CREEC's Requests Nos. 2017-ICFO-45386, 2018-ICFO-03033, 2018-ICFO-24034, 2018-ICFO-29725, 2018-ICFO-20737, 2018-ICFO-29727, 2019-ICFO-31521, and 2019-ICFO-

\_\_\_\_\_. As a result, Defendants may not charge CREEC any retrieval fees, duplication charges, or review fees as a condition of providing the requested records. 5 U.S.C. § 552(a)(4)(A)(viii).

WHEREFORE, Plaintiff, Civil Rights Education and Enforcement Center, requests that this Court enter judgment in its favor and

- (a) declare that Defendants' withholding of the requested records is unlawful, and permanently enjoin the same;
- (b) order Defendants to make the records available for Plaintiff;
- (c) enjoin Defendants from imposing any retrieval fees or duplication costs as a condition of providing the requested records;
- (d) order Defendants to produce a *Vaughn* index describing with particularity the content of any documents withheld, in whole or in part, and identifying the FOIA exemptions Defendants assert to justify such withholding;
- (e) award Plaintiff its costs and reasonable attorneys' fees in accordance with 5 U.S.C. § 552(a)(4)(E); and
- (f) order such other and further relief as the Court may deem just and proper.

Dated this 5th day of July, 2019

Respectfully submitted,

*/s/ Thomas B. Kelley*

---

Thomas B. Kelley  
Killmer Lane & Newman, LLP  
1543 Champa Street  
Suite 400  
Denver, Colorado 80202  
Telephone: 303.571.1000  
tkelley@kln-law.com

Amber R. Gonzales  
Armstrong Teasdale LLP  
4643 S. Ulster Street  
Suite 800  
Denver, Colorado 80237  
Telephone: 720.200.0676  
agonzales@armstrongteasdale.com

Steven D. Zansberg  
Chad P. Jimenez  
Ballard Spahr LLP  
1225 17<sup>th</sup> Street  
Suite 2300  
Denver, Colorado 80202  
Telephone: 303.292.2400  
zansbergs@ballardspahr.com  
jimenezp@ballardspahr.com

Timothy P. Fox  
Colo. Atty. Reg. No. 25889  
Elizabeth B. Jordan  
N.Y. Atty. Reg. No. 5516422  
La. Bar Roll No. 35186  
CIVIL RIGHTS EDUCATION AND  
ENFORCEMENT CENTER  
104 Broadway, Suite 400  
Denver, Colorado 80203  
tfox@creeclaw.org  
ejordan@creeclaw.org

*Attorneys for Plaintiff CIVIL RIGHTS  
EDUCATION AND ENFORCEMENT CENTER*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 5th day of July 2019, I served a true and correct copy of the foregoing **SECOND AMENDED COMPLAINT** by filing same with the Court's CM/ECF filing system, which will send notification to the following:

Mark S. Pestal  
Kyle Brenton  
Assistant United States Attorneys  
1801 California Street, Suite 1600  
Denver, Colorado 80202  
Telephone: (303) 454-0100  
Fax: (303) 454-0407  
mark.pestal@usdoj.gov  
kyle.brenton@usdoj.gov

*Attorneys for Defendants*

s/ Steve Johnson  
Steve Johnson

