August 30, 2021

Re: Enforced Disappearances Perpetrated by the United States in Immigration Detention

Dear Officer Culliton-González, Inspector Cuffari, Acting Director Johnson, Secretary Mayorkas, and Acting Ombudsman Gersten:

Freedom for Immigrants submits this complaint regarding the pattern or practice of enforced disappearances of migrants by U.S. Immigration & Customs Enforcement (ICE). As detailed in the attached report, we have documented 698 enforced disappearances of adult migrants between January 2017 and August 2021 as well as systemic, deliberate, and widespread inaccuracy of
governmental tools and communications ostensibly created to help family members, advocates and attorneys find immigrants in ICE custody.

Specifically, through a survey administered to our network and family members of loved ones, we documented 424 enforced disappearances of adult migrants between January 2017 and October 2019. More than half of these enforced disappearances followed a transfer, including individual transfers between ICE facilities, mass transfers between ICE facilities, and transfers from law enforcement custody to ICE detention. In the last 16 months alone, Freedom for Immigrants has documented an additional 274 instances where an individual in ICE detention could not be located via the ICE Locator between five days and five months, sometimes longer.

Freedom for Immigrants has raised this systemic issue with ICE officials and specific ICE detention facilities countless times, and we have requested ICE support where loved ones could not be located. We also have tried to address transfer issues through introduction of legislation, such as the End Transfers of Detained Immigrants Act\(^1\) authored by Congresswoman Veronica Escobar (TX-16), Representatives Jason Crow (CO-06) and Sylvia Garcia (TX-29). While Freedom for Immigrants has been able to locate some people who have been disappeared by the U.S. government, there remains no effective domestic remedy for obtaining redress for injury resulting from the federal government’s actions to disappear migrants.

Therefore, we urge the DHS Office for Civil Rights and Civil Liberties (CRCL), pursuant to its authority under 6 U.S.C. § 345, to immediately investigate this complaint, and we request a substantive response within 30 days. If we do not receive a substantive response, we will be required to pursue additional paths of redress beyond what the U.S. government is able or willing to offer.

A. ICE’s lack of communication about detained individuals violates international law and amounts to “enforced disappearances” under the International Convention for the Protection of All Persons from Enforced Disappearance (“the Convention”).

Enforced disappearances are categorized as “crimes against humanity” according to the 1998 Rome Statute that established the International Criminal Court.\(^2\) An “enforced disappearance” is


defined by Art. 2 of the International Convention for the Protection of All Persons from Enforced Disappearance (“the Convention”), which includes the arrest or detention by agents of the State, “followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law” (emphasis added).  

Under the Convention, a failure to communicate with nongovernmental organizations, such as Freedom for Immigrants, can constitute a failure to acknowledge the whereabouts of a migrant deprived of their liberty, thereby constituting an enforced disappearance. Additionally, “there is no time-restriction to an enforced disappearance according to the [Convention], and the reappearance of the forcibly disappeared person does not influence the attribution of the situation as an enforced disappearance.”

ICE’s arrests and detentions of individuals increasingly match the definition of enforced disappearances. Whether individuals are arrested at their homes in the dead of night, transferred into federal custody from local law enforcement agencies, or stopped and taken into custody in border zones, they are often unable to notify loved ones or advocates that they have been detained, where they are being held, by which agency, or how long they will remain in detention. Family members, friends, and advocates have long reported that they have been unable to locate their loved ones and clients for months or even years.

The governmental tools available to locate a person in Customs and Border (CBP) or ICE custody effectively conceal the fate or whereabouts of the disappeared persons. As detailed in the attached report, the ICE Online Detainee Locator System (“ICE Locator”) is a government database launched in 2011 under the Obama administration to ensure that legal counsel, families, and advocates are able to locate and contact individuals in detention often is inaccurate. Over the last year, between April 2020 and August 2021, Freedom for Immigrants documented 216 instances in which an individual in ICE detention could not be located via the ICE Locator for

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https://www.researchgate.net/publication/346396538_Analysis_Disappeared_Migrants_and_Refugees_Th e_Relevance_of_the_International_Convention_on_Enforced_Disappearance_in_their_search_and_prote ction

5 Id.
over five days. We also documented **58 additional instances** in which an individual’s name produced “zero matching records” in the ICE Locator for over five months or longer.

Many ICE facilities are not even included in the ICE Locator, meaning that for the people detained there, they may never be found through the ICE Locator. Examples of facilities absent from the database despite currently caging people in ICE detention include:

- San Luis Regional Detention Center in Arizona
- Polk County Jail, Pottawattamie County Jail, and Linn County Jail in Iowa
- Kankakee County Jail in Illinois
- Chase County Jail in Kansas
- La Salle Correctional Center in Louisiana
- Kandiyohi County Jail in Minnesota
- Morgan County Detention Center in Missouri
- Phelps County Jail in Nebraska
- Strafford County Jail in New Hampshire
- Henderson Detention Center, Nevada Southern Detention Center, Nye County Jail, and Washoe County Jail in Nevada
- Okmulgee County Jail in Oklahoma
- Cambria County Jail in Pennsylvania
- Wyatt Detention Center in Rhode Island
- Limestone County Detention Center in Texas

The list above is not all-inclusive, but even just these facilities listed cage over 10% (1,515) of all people in ICE detention as of February 2021. Entire states, such as Nevada, New Hampshire, and Rhode Island, do not appear in the drop-down list of states to search by.

In other words, the U.S. government is not only concealing the fate or whereabouts of these individuals, but also doing so in locations outside of the formal detention system. In this way, the government clearly has placed these individuals outside the protection of the law. To make matters worse, ICE’s Pro Bono Telephone System—a system designed to allow people in detention to contact certain non-governmental organizations and consulates—does not properly work at all immigration detention facilities or is periodically restricted at others. This can interfere with an individual’s treaty right under the Vienna Convention on Consular Relations to communicate with consular officers from their country of origin.\(^6\)

\(^6\) The Vienna Convention entered into force with respect to the United States in 1967.
This results in psychological distress for friends and family members of detained individuals and hinders the ability of advocates like Freedom for Immigrants to locate clients. Freedom for Immigrants is concerned that these systemic failures are part of a broader pattern to restrict both support and access to detained individuals. Although the United States has not ratified the Convention, the International Covenant on Civil and Political Rights (“the Covenant”) entered into force for the United States in 1992. Enforced disappearances as we have described here clearly violate at least Articles 2, 6, 9, 10, 12, 13, 14, 16, 17, and 26 of the Covenant.

B. The ICE Locator’s inaccuracies violate ICE’s own policies and Congressional mandates.

Freedom for Immigrants and partner organizations successfully advocated for the creation of the ICE Locator. According to ICE’s Privacy Impact Assessment, the ICE Locator was developed within the following parameters:

- The ICE Locator pulls information electronically from the Enforcement Integrated Database (EID), a database used by ICE personnel to enter biographical and location information at the point of booking. The ICE Locator contains each person’s name; A-Number; country of birth; date of birth; custody status; the name, location, contact information, and website of the detention facility; and the Enforcement and Removal Operations (ERO) office responsible for their immigration case;
- ICE requires individuals provide at least two identifying pieces of information and exact-match searching in order to run a query, intentionally limiting the data available to the public to avoid over-exposing individuals;
- The ICE Locator contains information on all people currently held in ICE custody and those who have been booked out of ICE custody within the last 60 days. ICE policy required all information pertaining to release, removal, or transfer to be entered into the ICE Locator within eight hours. Congress has since legislated that ICE must update information within 48 hours of an individual’s entry into detention and within 24 hours of a transfer.\(^7\)

Unfortunately, the ICE Locator is not being run in accordance with these parameters and the Congressional mandate is not being followed. Through the monitoring conducted by Freedom for Immigrants’ national visitation network, our members and affiliates report that the ICE Locator under the Obama administration was imperfect but functional. Most challenges arose from exact-match name requirements, which did not allow for reversed first, last and middle

names, misspellings, or hyphenations. Use error by ICE officers during data entry was also common.

Soon after the Trump administration took office, a difference in the ICE Locator’s reliability and accuracy became readily apparent among advocates, immigration attorneys, and members and affiliates in the Freedom for Immigrants’ network. By August 2017, nine visitation groups in California, Georgia, New York, New Jersey, New Mexico, and Texas had reported that the ICE Locator was no longer working properly and hindering their efforts to locate and support people in detention, often showing “zero matching records” when, in fact, the person was later confirmed to be detained. In fact, Freedom for Immigrants

By now, the ICE Locator had become so erroneous that it systematically obstructs access to legal counsel, human rights monitoring, and essential familial connection and support. People in ICE detention are routinely unsearchable in the ICE Locator or show up with incorrect information listed, even when advocates or family members can confirm where they are detained through ongoing contact. This has not improved under the new administration.

It is noteworthy that despite the fact that Congress has issued a clear mandate and ICE has created policies to maintain the ICE Locator in a way that ensures transparency of individuals’ locations, there has been no oversight by Congress or the Office for Civil Rights & Civil Liberties concerning enforcement of these policies and mandates. This leaves organizations like Freedom for Immigrants and family members at a loss for who is responsible for preventing enforced disappearances of migrants, many of whom are vulnerable and have experienced abuse at the hands of other governments.

C. There are a plethora of documented examples of enforced disappearance in immigration detention, and the United States has been on notice about this problem for decades.

In October 2019, Freedom for Immigrants distributed two separate bilingual surveys, one to organizations and community groups providing support to people impacted by immigration detention, and another to individuals, family members, and personal advocates of people in immigration detention. The organizational survey asked about patterns and trends identified by groups that work with multiple people at a time, while individual advocates and family members were asked about specific disappearances. We documented 424 enforced disappearances of migrants, and more than half of these enforced disappearances followed a transfer, including individual transfers between ICE facilities, mass transfers between ICE facilities, and transfers from law enforcement custody to ICE detention.
Three recent examples of enforced disappearances highlight the harm experienced by advocates, attorneys, and family members when the U.S. government withholds data from the public, congressional representatives, attorneys, and family members:

1. In March 2019, advocates in Louisiana shared that they had received phone calls from people detained at the River Correctional Facility (RCF) in Ferriday, Louisiana. People reported that they had been transferred from the California/Mexico border and other locales to RCF. Some of those locked up at RCF described RCF as a “black site,” and many went on hunger strike at RCF and named due process, barriers to release, psychological torture, and human rights abuses as motivations for their protest. Freedom for Immigrants believes this description to be accurate, especially given the fact that there was no public record of RCF ever being used as an ICE detention facility prior to these transfers. When the name of an individual transferred to RCF was entered into the ICE Locator, the individual would appear as in ICE custody but without any location provided.

2. In November 2019, attorneys at Refugee and Immigrant Center for Education and Legal Services (RAICES), a well-known legal services organization serving migrants, publicized the disappearance of 1,072 women who had been suddenly transferred out of Karnes County Residential Center, in Karnes City, TX, during the weeks of September 20 to October 1, 2019. According to attorneys:
   - RAICES received emailed notices of transfer from ICE for some of the women and found information for others in the ICE Locator. The ICE Locator showed information different from the initial notices of transfer emailed by ICE.
   - At least 125 of the missing women had documented, severe medical conditions.
   - As of October 2019, they still could not find 328 of the transferred women in the ICE Locator.
   - As of December 2019, there were still 87 women whose locations remained unknown. The majority of these women were later found to be at Adams County Correctional Center, Mississippi, noted in Senator Warren’s letter as one of the undisclosed blacksites that was missing from the ICE detention facility database at the time.
Donald Brown is a man of Jamaican origin who was held in ICE detention for six months in various detention facilities in Florida. According to Brown’s family, he was able to call his family several times a day until June 1, 2020, when communication abruptly stopped. Brown’s family was unable to locate him in the ICE Locator and did not receive a response from ICE officials when they called to locate him. After the *Miami Herald* published an article featuring Brown’s story, the family was finally able to receive a three-minute call from Brown, who was in a hospital where he was being treated for COVID-19. The article identified three additional instances in which people detained in ICE jails in South Florida went missing from ICE’s Locator after contracting COVID-19.

Freedom for Immigrants has outlined a series of recommendations for the Administration and Congress, ICE, and DHS in our attached report. We encourage CRCL and OIG to review these recommendations. Although Freedom for Immigrants maintains a long-term objective of total abolition of the U.S. system of immigration detention, we recommend the following short-term interventions. We ask that CRCL and OIG work with ICE to implement these immediate measures to prevent enforced disappearances:

- Ensure access at all immigration detention facilities to not only the ICE Pro Bono Telephone System but also free telephone communication with family, counsel, and consulates not available on the Pro Bono platform;
- Create a position at the agency responsible for working with family members and recognized immigrant rights and human rights NGOs to locate persons deprived of liberty;
- Adjust search parameters on the ICE Detainee Locator to enable “smart searching,” in order to allow for individuals to be located via partial/incomplete queries (e.g. if a name is incomplete or misspelled);
- Conduct a review of naming conventions, and standardize surname formatting in the ICE Detainee Locator;
- Update the ICE Facility Locator list to ensure that all facilities are searchable by both facility name and state, including new and unlisted facilities;
- Resume the former practice of listing an individual as “no longer in custody” in the ICE Detainee Locator following release from custody or deportation; and

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Ensure that operations are in compliance with the agency’s own policies, including ensuring that the ICE Detainee Locator is updated within eight hours of release, deportation, or transfer of an individual in ICE custody.

Thank you for your prompt attention to this matter. We look forward to your substantive response by September 20, 2021. If you have any questions, please contact Rebecca Merton at rmerton@freedomforimmigrants.org.

Sincerely,

Christina M. Fialho
Co-Founder/Executive Director
Freedom for Immigrants

Admitted to the State Bar of California (License No. #285808)