



TOGETHER WE WILL END IMMIGRATION DETENTION

**FREEDOM
FOR IMMIGRANTS**



February 20, 2023

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**Re: Release Request for Individuals Affected by the ICE Data Leak On November 28, 2022
Detained at the Webb County Detention Center, Laredo Processing Center, and Rio
Grande Detention Center Including but not Limited To:**

• [REDACTED]

• [REDACTED]

• [REDACTED]



Dear Civil Rights & Civil Liberties Officer Acting Director Peter Mina, Acting Ombudsman David Gersten, DHS Inspector General Joseph V. Cuffari, and Field Office Director Marcos Charles,

This complaint is filed by the Laredo Immigrant Alliance (LIA) and its partners, The Immigrant Legal Resource Center (ILRC), Freedom For Immigrants (FFI), LatinoJustice (LJ), and The Refugee and Immigrant Center for Education and Legal Services (RAICES) on behalf of noncitizens currently in Immigration and Customs Enforcement (ICE) custody who have been affected by ICE’s data disclosure during their detention under CoreCivic at the Webb County Detention Center and subsequently transferred to the Laredo Processing Center (“Laredo Detention Center”) and Rio Grande Detention Center under GEO Group in Laredo, Texas.

On November 28, 2022, ICE posted on its public website the names, birthdates, nationalities and detention locations of more than 6,000 immigrants who claimed to be fleeing torture and persecution¹. In the ensuing days, LIA received numerous hotline calls from noncitizens who were issued a notification that ICE had released their sensitive identifying information without authorization.

The unauthorized release of sensitive information of individuals in ICE detention, who are seeking safety in our country, has not only violated their confidentiality but has endangered their lives and the lives of their loved ones. Many of these individuals came to our country fleeing government persecution, and if returned to their home country, the risk of harm these individuals will suffer is now significantly greater. The release of information is also a direct violation of the Department of Homeland Security’s (DHS) own Privacy Policy Directive², which states that - under Title 5, U.S.C., Section 552a, “The Privacy Act of 1974” - “as a matter of DHS policy, DHS administratively extends certain Privacy Act privileges to all individuals when their Personal Identifiable Information (PII) is maintained in DHS systems of records,

¹ Los Angeles Times, *ICE Accidentally Released the Identities of 6,252 Immigrants Who Sought Protection In the United States* (Nov. 30, 2022),

<https://www.latimes.com/california/story/2022-11-30/ice-released-names-6252-immigrants-persecution>

² Department of Homeland Security, DHS Privacy Policy Regarding Collection, Use, Retention, And Dissemination OF Personally Identifiable Information (May 4, 2022),

https://www.dhs.gov/sites/default/files/2022-05/mgmt-dir_262-16-00-privacy-policy-regarding-collection-use-retention-dissemination-pii.pdf

regardless of citizenship or immigration status, so long as the individual's information is retrievable by a personal identifier in the normal course of agency business."³

Currently, over 50 individuals in the Laredo sector, under the Harlingen Field Office, detained at the Laredo Processing Center, Webb County Detention Center, and Rio Grande Detention Center were issued a notification informing them of ICE's breach in confidentiality. The notification stated that the disclosure was in violation of confidentiality obligations under 8 C.F.R §208.6⁴ by revealing that, for individuals who sought protection in the United States, if they were currently subject to a final removal, ICE would delay said removal for 30 days. This delay was intended to allow impacted noncitizens to determine what actions they wish to take, including consulting with an attorney. However, this delay is a wholly inadequate response to the egregious confidentiality violation, as ICE response fails to acknowledge the heightened danger individuals affected by the breach will suffer if returned to their home country. Allowing individuals a mere 30 days to determine next steps also ignores significant barriers to legal resources and representation while an individual is in ICE custody. These barriers were also recently detailed in a pending lawsuit, referenced below, which documents the numerous barriers to adequate legal counsel in the Laredo sector. In light of the significant danger ICE has placed people in upon deportation as well as access barriers in detention, ICE's response inadequately addresses the significant consequences of their breach upon the noncitizens' privacy and asylum proceedings.

Acknowledging that release is the only appropriate remedy, ICE recently released 3,000 individuals from ICE custody who were affected by the data breach. We therefore demand:

- **The release of all noncitizens named on this complaint on the basis of prosecutorial discretion. Given ICE's breach, there is no ability for ICE to incontrovertibly assure the protection of these individuals in their country of origin, if deported.**
- **The monetary assistance of counsel for impacted noncitizens given ICE's direct culpability so noncitizens may have fair access to legal resources to address any change(s) to their circumstance as a result of ICE's confidentiality breach.**
- **Lastly, we also urge meaningful oversight by ICE's respective departments regarding issues of access to adequate legal counsel in the Laredo sector. There are documented issues of access to legal counsel at the local Laredo Processing Center, managed by CoreCivic, which raises concern over whether such issues also persist at the nearby Webb County Detention Center, and the Rio Grande Detention Center, as two facilities are managed by CoreCivic. Additionally several of the affected noncitizens were transferred from the Webb County Detention Center to Laredo Processing Center and Rio Grande Detention Center on or after Jan. 10, 2023 and it is unclear what meaningful access these individuals will have at the Laredo Processing Center and Rio Grande Detention Center to sufficiently address the ICE confidentiality breach.**

³ Ibid.

⁴ § 208.6 Disclosure to third parties. (a) Information contained in or pertaining to any asylum application, records pertaining to any credible fear determination conducted pursuant to §208.30, and records pertaining to any reasonable fear determination conducted pursuant to §208.31, shall not be disclosed without the written consent of the applicant, except as permitted by this section or at the discretion of the Attorney General.

Demand for Release Based on Prosecutorial Discretion

While it is unclear how ICE is attempting to sufficiently rectify the impact of their breach to those individuals affected in the Laredo Sector, the effectiveness of their current proposed solutions are inadequate, and force those impacted by their negligence to rely on limited access to effective legal counsel, or to attempt to navigate the complicated situation alone. A majority of detained noncitizens in the Laredo Sector are unrepresented, as attempts to secure legal counsel are severely hindered by the longstanding barriers discussed below. Even if a noncitizen with a positive credible fear interview (CFI) is allowed to (re)apply for relief and/or protection, they are deprived of the legal access needed to effectively navigate the complicated legal process in a timely manner. Similarly, while ICE has allotted noncitizens with a negative CFI or RFI an opportunity to have their removability reconsidered, noncitizens do not have fair and speedy access to the counsel needed to navigate the legal complexities of such opportunities. Thus, ICE's response leaves impacted noncitizens at the Laredo Processing Center, Webb County Detention Center, and the Rio Grande Center in a legal dilemma with little to no guidance. Additionally, because ICE has not provided a clear deadline to the stay of removal extension, those impacted by ICE's breach are forced to respond within an uncertain period of time. Therefore, we demand the release of all affected noncitizens to their respective sponsors to seek legal assistance within their communities.

ICE Data Breach Violated DHS policy and National Detention Standards

Generally, the divulgence of information by ICE violates the DHS' ('Department') extension of Title 5, U.S.C., Section 552a to all individuals, regardless of citizenship or immigration status, when their PII is maintained in a system of record by a DHS component agency (i.e., ICE database). In doing so, ICE violated the conditions of disclosure outlined in Section 552a(b) of the same title, which bars disclosure of any record contained in a system of records and by any means of communication to another person or agency unless consent of the individual to whom the record pertains is given.⁵ This violation enables the possibility of civil action under section 552 a(g)(1)(D), as any agency failing to comply with provisions set by section 552a in a manner that has an adverse effect on an individual may allow them to bring civil action against the agency.⁶ To note, there is legal precedent to consider "adverse effect" as including non-pecuniary and non-physical harm, such as, but not limited to, mental distress, embarrassment, or emotional trauma.

Yet, as ICE's data breach impacts noncitizens detained at the Laredo Processing Center Webb County Detention Center, and Rio Grande also means that the disclosure is in violation of the affordances noncitizens are by right given in these ICE detention facilities, as these facilities are also governed by the national detention standards. The 2019 National Detention Standards govern the Laredo Processing Center. Under these standards, detained noncitizens must be given a "release-of-information" consent form prior to release of information in his or her detention

⁵ V. U.S.C. § 552a(b), 55.

⁶ Ibid., 57

file,” unless the release of their information is required by statute or regulation.⁷ However, no impacted noncitizen referenced in this document ever received a release-of-information form prior to ICE’s divulgence, and given the public nature of ICE’s divulgence of PII and ICE’s alarm at this divulgence,⁸ the release of information hardly seems a requirement by statute or regulation. As such, ICE’s disclosure of PII - information that is also present in a noncitizen’s detention file - violated the detention standards that apply to the impacted noncitizens from the Laredo Processing Center.

This kind of violation also applies to impacted noncitizens who are or were detained at the Webb County Detention Center, which operates under the 2011 iteration of the Performance-Based National Detention Standards (PBNDS) with 2016 revisions. Part 7.1, section V(G) of the PBNDS 2011 states a similar aforementioned policy; “Unless release of information is required by statute or regulation, a detainee must sign a release of any information.”⁹ Again, no impacted noncitizens at the Webb County Detention Center ever consented, much less received, a release of information, so the disclosure also violated the standards affording noncitizens some degree of agency over their PII while detained at this detention facility.

That the disclosure is in violation of several mandated policies is clear, a sentiment which ICE concurs with, as evidenced by their initial public statement informing the public of this disclosure. Establishing this violation in writing is a mere formality, for what is more important is the way in which this breach of confidentiality, and by extension the undermining of their well-being, is rectified. While ICE proposes several responses to the impacted noncitizens based on the conclusion of their CFI/RFI or order of removal, all responses force such noncitizens to enter legal processes for which they will need legal guidance to effectively navigate. ICE proposed responses to their error that failed to sufficiently address the danger their actions placed individuals in the barriers to legal access noncitizens at the Laredo Processing Center and Webb County Detention Center routinely encounter.

ICE Notification of the Data Breach and Steps to Mitigate the Harm are Wholly Inadequate

In December 2022, ICE issued a notification to affected non-citizens. From the information provided by ICE, noncitizens were not provided sufficient guidance and resources on how to proceed, specifically how pro se individuals could or should proceed in seeking legal counsel. As stated above, LIA has outlined how barriers to legal access in the Laredo sector currently exist, and given this information ICE’s relief response was and continues to be inadequate.

Furthermore, ICE is not following its own protocols issued in a public statement on Jan. 18th outlining how it plans to proceed with the cases of affected non-citizens in-part or entirely

⁷ 2019 NDS, Standard 7.1 § G(2), 197

⁸ ICE, “Statement on improper disclosure of noncitizen personally identifiable information,” 1/18/2023

⁹ Performance Based National Detention Standards 2011, Part 7.1, V(g), 444.

<https://www.ice.gov/detain/detention-management/2011>

on the disclosure. Outlined in this statement ICE identified ways under which they plan to mitigate the effects of the disclosure, and how they will proceed with the cases of said non-citizens. With regard to non-citizens who had a final order of removal and who were granted a 30-day stay or removal, this order was extended with an undisclosed amount of time and/or how long non-citizens will have to submit motions, and for noncitizens with positive or negative CFI/RFI on how (re)apply and yet no real assistance has been granted to those affected. Additionally, for individuals in ICE custody, ICE has stated that a language translation service is available to communicate with them about the impact of the disclosure in their preferred language. Said services are not readily available as the aforementioned barriers to counsel section mentioned.

LIA continues to receive hotline calls from non-citizens in ICE custody at all the Laredo facilities, that they have been handed documents pertaining to their case without translation or interpretation in their preferred language, which only demonstrates that ICE has no interest in effectively executing the outline reliefs mentioned above. We have also received reports that access to the Law Library has been limited and all the legal information available to non-citizens is in the English language. These factors effectively bar all pro se individuals from understanding, knowing of, and submitting motions to reopen for proper relief, and for non-citizens with positive or negative CFI/RFI to (re)apply for relief. This, in addition to the lack of guidance to file motions based on the avenues the disclosure identified highlights how ICE's response fails to adequately address the breach.

LIA and the undersigned organizations, urge the 'Department' and ICE to uphold people's rights while taking a more holistic and proactive approach when providing avenues of relief that allows for non-citizens to effectively understand and submit motions to reopen, as it was ICE's error it is ICE's responsibility to meaningfully assist non-citizens affected by the breach and release these individuals from ICE custody.

A 30-Day Stay of Removal Extension for Unexecuted Orders of Removal and Noncitizens with Positive and Negative CFI/RFI to Seek Legal Counsel is Wholly Inadequate to Mitigate the Harm Caused By The Breach

As stated above, noncitizens with a final order of removal were given a 30-day stay of removal to allow the noncitizen time to determine how to seek legal counsel and determine how to move forward. However, a recent lawsuit, Case 1:22-cv-03118, identified at length the multiple barriers barring noncitizens' access to effective legal counsel. Locally, the Laredo Processing Center's detained noncitizens are negatively impacted by barriers such as:

- 1. A limited number of attorney visitation rooms (two attorney rooms for a detention center with a capacity to hold 404 detained noncitizens);**
- 2. Lack of confidential meeting space, as the walls are thin and guards, staff, other detained persons, and visitors can overhear conversations;¹⁰**

¹⁰Americans for Immigrant Justice, Florence Immigrant and Refugee Rights Project, Immigration Justice Campaign, Immigration Services and Legal Advocacy, and Refugee and Immigrant Center for Education and Legal Services V. U.S. Department of Homeland Security, Alejandro N. Mayorkas, U.S. Immigration and Customs Enforcement, and Tae D. Johnson, 1:22-cv-03118, (D.D.C. 2022).

3. **An untimely process and limited access to interpreters via in-person and telephonic participation, as time spans for phone calls are miniscule and the process for securing an interpreter’s presence requires an “ICE-pre-approval” procedure that can take anywhere from six months to a year, with approval expiring after 90 days;¹¹**
4. **Long wait times for visitation and a prohibition on laptops, printers, and cellphones by attorneys to facilitate legal counsel;**
5. **Inability for attorneys to use their cellphones for interpretation purposes;**
6. **Difficulty for interpreters to attend deliberations with legal counsel due the remote location of the Laredo Processing Center;**
7. **Refusal by some detention staff to allows individuals to schedule calls with their attorney and if scheduling is permitted, the requirements are burdensome;**
8. **Expensive call rates for noncitizen;**
9. **detention staff routinely fail to deliver telephone messages individuals;**
10. **Unreliable scheduling of calls in advance;**
11. **A burdensome process to place calls using the Executive Office for Immigration Review (“EOIR”) and ICE’s established EOIR pro bono platform telephone lines for detained people to call legal service providers for free¹²;**
12. **Inefficient internal mail processing system in addition to detention personnels’ opening of all mail’;**
13. **Unavailable free and confidential video teleconferencing (VTC); and**
14. **Lastly, in violation of section 504,¹³ there is no reasonable access to counsel accommodations for detained clients with disabilities.**

The aforementioned barriers in this section not only violate the 2019 National Detention Standards,¹⁴ and the 2011 Performance Based National Standards ICE and its contractors are obligated to uphold, but also prevent clients from obtaining effective legal services within the 30 days allotted. As such, the 30-days given to those whose information was disclosed and for non-citizens with positive and negative CFI/RFI responses is not a sufficient amount of time.

Opportunity of Appointed Legal Counsel and Effective Implementation

To better allow those impacted by ICE’s negligence a meaningful opportunity to address the ICE data breach, we demand that DHS afford those impacted by the disclosure at the Laredo Processing Center, Webb County Detention Center, and Rio Grande Detention Center with payment assistance to independently secure legal counsel, accepted at the discretion of the impacted noncitizen. Moreover, we emphatically encourage DHS to maintain close scrutiny and oversight of opportunities for effective access to legal counsel at the aforementioned detention centers - that is, access to legal counsel without the prior stated barriers.

¹¹Ibid.

¹²Ibid.

¹³Ibid.

¹⁴Ibid.

ICE's Data Breach Significantly Increased The Possibility of Danger of Prosecution, Torture or Death if Removed to Those Affected By The Breach

For all noncitizens, violence is the main reason why they decide to leave their home country and flee to the United States, often at the hands of their own government. However, violence is the first thing deported noncitizens' encounter once they return. According to Human Rights Watch, since 2013 there have been 138 cases of Salvadorans killed after deportation from the U.S.¹⁵ The report identified people killed upon deportation who had been fleeing political persecution. It also identified gangs as the culprits for more than 70 cases in which Salvadoran deportees were victims of sexual violence, torture, and other harms – including, many deportees disappearing¹⁶.

Stories of deportees suffering violence in their home country are unfortunately common. In an interview with the Washington Post, Valeska Alemán and Moises Alberto Ortega Valdivia, Nicaraguan nationals who fled their home country due to political persecution shared her experience as deported noncitizens in Nicaragua. Aleman detailed that when she returned to Nicaragua, government officials confiscated their identification card, and posted photos of their return on social media due to their political activism. In addition, Ortega Valdivia shared that due to his fear, he swallowed his asylum documentation before arriving in Nicaragua. As soon as they arrived, both were taken in government vehicles to be interrogated and then released to be monitored for several days by the police. Due to previous trauma, Alemán and Ortega Valdivia feared their return to El Chicote where they once were imprisoned and tortured.

When returned to El Salvador, deportees are also in danger of suffering violence at the hands of gangs such as the MS-13 (or Mara Salvatrucha-13), as well as police officers, corrupt officials, and community members. The Salvadoran media falsely classify deportees as criminals and a violent threat to the community¹⁷. Many also face emotional instability due to the trauma of recently being detained and returned to a country in which they fear for their lives.

Currently, the State Department describes Nicaragua as violent with “limited healthcare availability and arbitrary enforcement of laws.” In addition, El Salvador has been classified as a dangerous country due to violence and corruption. Aware of current country conditions in both countries, the United States is not only sending noncitizens back to the life they originally fled, but placing them at enhanced risk of danger and death. As a majority of those affected by the data breach in the Laredo Sector are from El Salvador and Nicaragua, the country's condition demonstrates that these individuals will face increased threats and danger if removed.

¹⁵ Kennedy 2020

¹⁶ Ibid.

¹⁷ Paley, 2019

Conclusion

Given the risk of acute harm, including death, ICE's negligence has placed people in by the data disclosure of Nov. 28th, and ICE's and DHS' inadequate response to said disclosure, including lack of translation and the current barriers to legal counsel in the Laredo region, we reiterate no adequate solution to the increased threat of harm noncitizens face upon deportation with no guarantee of protection, than to enumerate our demands:

- 1. Release the individuals listed in this complaint based on prosecutorial discretion.**
- 2. Provide payment assistance to counsel for noncitizens at the Laredo Processing Center, Webb County Detention Centers, and Rio Grande Detention Center to ensure fair access to legal guidance to address any change(s) to their circumstance as a result of this violation.**
- 3. Implement effective oversight at these detention centers for noncitizens' access to confidential, timely, and multi-modal legal counsel. The documented issues of access to legal counsel at the local Laredo Processing Center, managed by CoreCivic, raises concern over whether such issues also persist at the nearby Webb County Detention Center, also under CoreCivic, and the Rio Grande Detention Center as several of the affected noncitizens were transferred to Rio Grande Detention Center on or after Jan. 10, 2022**

Sincerely,

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