Freedom of Information Act Office

U.S. Department of Homeland Security
500 12th St SW, Stop 5009
Washington, DC 20536

U.S. Immigration and Customs Enforcement

March 7, 2018

Caroline M. DeCell
Knight First Amendment Institute at
Columbia University
475 Riverside Drive, STE 302
New York, NY 10115

RE: ICE FOIA Case Number 2018-ICAP-00118

Dear Ms. DeCell:

This letter responds to the Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), submitted by Knight First Amendment Institute, dated August 7, 2017. In the FOIA request your client has requested copies of the following records:

1. All directives, memoranda, guidance, emails, or other communications sent by the White House to any federal agency since January 19, 2017, regarding consideration of individuals' speech, beliefs, or associations in connection with immigration determinations, including decisions to exclude or remove individuals from the United States.

2. All memoranda concerning the legal implications of excluding or removing individuals from the United States based on their speech, beliefs, or associations.

3. All legal or policy memoranda concerning the endorse or espouse provisions, or the foreign policy provision as it relates to "beliefs, statements or associations."

4. All records containing policies, procedures, or guidance regarding the application or waiver of the endorse or espouse provisions or the foreign policy provision. Such records would include policies, procedures, or guidance concerning the entry or retrieval of data relevant to the endorse or espouse provisions or the foreign policy provision into or from an electronic or computer database.

5. All Foreign Affairs Manual sections (current and former) relating to the endorse or espouse provisions or the foreign policy provision, as well as records discussing, interpreting, or providing guidance regarding such sections.

6. All records concerning the application, waiver, or contemplated application or waiver of the endorse or espouse provisions to exclude or remove individuals from the United States, or the application, waiver, or contemplated application or waiver of the foreign policy provision to

exclude or remove individuals from the United States based on "beliefs, statements or associations," including:

a. Statistical data or statistical reports regarding such application, waiver, or contemplated application or waiver;
b. Records reflecting the application, waiver, or contemplated application or waiver of the endorse or espouse provisions or foreign affairs provision by an immigration officer, a border officer, a Department of Homeland Security official, or a Department of Justice official;
c. Records concerning any determination made by the Attorney General pursuant to 8 U.S.C. § 1225(c) regarding the admissibility of arriving aliens under the endorse or espouse provisions or the foreign policy provision;
d. Department of Homeland Security and Department of Justice records concerning consultation between the Secretary of State, the Secretary of Homeland Security, and/or the Attorney General (or their designees) relating to any waiver or contemplated waiver of the endorse or espouse provisions pursuant to 8 U.S.C. §§ 1158(b)(2)(v), 1182(d)(3)(A), or 1182(d)(3)(B)(i); and
e. Notifications or reports from the Secretary of Homeland Security or the Secretary of State concerning waivers of the endorse or espouse provision pursuant to 8 U.S.C. §1182(d)(3)(B)(ii).

This Production – March 2018

ICE has processed 560 pages for release, 87 pages of which were sent to other agencies for referral. These 560 pages of records were located by a search of ICE's Enforcement and Removal Office (ERO), Office of Policy, OPLA, and the Front Office. These documents have been Bates numbered 2018-ICAP-00118 1 through 2018-ICAP-00118 463. Portions of these documents have been withheld pursuant to FOIA Exemptions 5, 6, 7(C) and 7(E) of the FOIA.

ICE has applied FOIA Exemption 5 to withhold draft documents under the deliberative process privilege, the general purpose of which is to prevent injury to the quality of agency decisions, as well as the attorney-client privilege and the attorney work product privilege.

FOIA Exemption (5) exempts from disclosure inter-agency or intra-agency memorandums or letters, which would not be available by law to a party other than an agency in litigation with the agency.

ICE has applied FOIA Exemptions 6 and 7(C) to protect from disclosure the names, e-mail addresses, and phone numbers of ICE and DHS employees contained within the documents, as well as the names, and other personally identifiable information of other individuals contained within the records.

FOIA Exemption 6 exempts from disclosure personnel or medical files and similar files the release of which would cause a clearly unwarranted invasion of personal privacy. This requires a balancing of the public's right to disclosure against the individual's right to privacy. The privacy interests of the individuals in the records you have requested outweigh any minimal public

interest in disclosure of the information. Any private interest you may have in that information does not factor into the aforementioned balancing test.

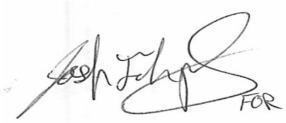
FOIA Exemption 7(C) protects records or information compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy. This exemption takes particular note of the strong interests of individuals, whether they are suspects, witnesses, or investigators, in not being unwarrantably associated with alleged criminal activity. That interest extends to persons who are not only the subjects of the investigation, but those who may have their privacy invaded by having their identities and information about them revealed in connection with an investigation. Based upon the traditional recognition of strong privacy interest in law enforcement records, categorical withholding of information that identifies third parties in law enforcement records is ordinarily appropriate. As such, I have determined that the privacy interest in the identities of individuals in the records you have requested clearly outweigh any minimal public interest in disclosure of the information. Please note that any private interest you may have in that information does not factor into this determination.

ICE has applied FOIA Exemption 7(E) to protect from disclosure internal agency law enforcement case numbers, internal codes, agency software and hardware information, and instructional manuals, user manuals, and training materials related to a law enforcement system and database which contain law enforcement sensitive techniques and procedures that are not well known to the public.

FOIA Exemption 7(E) protects records compiled for law enforcement purposes, the release of which would disclose techniques and/or procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law. I have determined that disclosure of certain law enforcement sensitive information contained within the responsive records could reasonably be expected to risk circumvention of the law. Additionally, the techniques and procedures at issue are not well known to the public.

If you need to contact our office about this matter, please refer to FOIA case number **2018-ICAP-00118**. This office can be reached at (866) 633-1182.

Sincerely,



Catrina M. Pavlik-Keenan
FOIA Officer

Enclosure(s): 463 page(s)