



OFFICE OF GOVERNMENT INFORMATION SERVICES

COMPLIANCE REVIEW OF

IMMIGRATION AND CUSTOMS ENFORCEMENT

FREEDOM OF INFORMATION ACT PROGRAM

STRONG MANAGEMENT, INNOVATIVE USE OF TECHNOLOGY, AND SUGGESTED IMPROVEMENTS TO CUSTOMER SERVICE

A Message from the Director

OGIS periodically conducts independent, systematic reviews of agencies to evaluate their compliance with the Freedom of Information Act (FOIA). See 5 U.S.C. §§ 552(h)(2). These reviews assess the agency's FOIA operations, programs, and policies, and may include aspects such as program design, implementation, and results. An OGIS review may result in a report that we provide to the agency and release publicly, and may include recommended improvements and administrative actions. This assessment of the FOIA program at the Immigration and Customs Enforcement (ICE) is in line with this purpose.

This report addresses ICE's compliance with FOIA and is based on direct observation of ICE's FOIA case files, analysis of applicable data and documents, a survey of FOIA staff, and interviews with agency employees and officials. This report is the last of six OGIS reviews of components of the Department of Homeland Security (DHS). At the completion of our reviews, we will also release a final report to DHS with findings and recommendations.

We developed the recommendations herein to the best knowledge available to our office, and we discussed the recommendations in draft with those responsible for the program. We hope this report and our recommendations will assist ICE in its continued efforts to fulfill its FOIA responsibilities. We will follow up with appropriate individuals about the status of these recommendations in 120 business days.

NIKKI GRAMIAN
Acting Director

Executive Summary

What OGIS Found

The number of Freedom of Information Act (FOIA) requests Immigration and Customs Enforcement (ICE) received and processed has consistently increased since 2009. Between Fiscal Year (FY) 2009 and FY 2011, ICE reported a backlog ranging from 10 requests in FY 2009 to 27 requests in FY 2010. In FY 2012 ICE's backlog spiked to 2,443 requests. The number of FOIA requests received and ICE's backlog continued to grow rapidly during FY 2013 and FY 2014, driven in large part by ICE's termination in April 2012 of an agreement with the another DHS component, U.S. Citizenship and Immigration Services (USCIS), that allowed USCIS to process ICE information found in a certain type of frequently requested immigration record. In FY 2014, ICE's backlog of 56,863 requests accounted for almost 55 percent of the overall backlog at the Department of Homeland Security (DHS) and almost 36 percent of the overall backlog Government-wide.

In FY 2015, the ICE FOIA Office undertook a major effort to eliminate its backlog. In addition to other efforts to eliminate its backlog, ICE secured a contractor to close about 60,000 backlogged requests, costing \$6.2 million. At the end of FY 2015, ICE reported a backlog of 555 requests, accounting for one-half of a percent of the overall DHS backlog.

The overall cost of the ICE FOIA program grew by almost 200 percent between FY 2009 and FY 2015—from about \$4.2 million to \$12.4 million. In FY 2015, litigation related expenses accounted for 2 percent of the program's reported expenses. In previous fiscal years, litigation-related expenses had accounted for as much as 36 percent of the total program costs.

In addition to using contractors to eliminate the FOIA backlog, ICE adopted management controls to measure and increase the FOIA staff's productivity. ICE also used its FOIA processing and tracking system to make its process efficient and invested in other technology to further streamline the process.

ICE's elimination of its backlog is likely to improve its ability to respond to requesters in a timely fashion.

What OGIS Recommends

ICE may wish to develop a process to electronically transmit misdirected FOIA requests to USCIS. We recommend that ICE add a metadata tag to all records released under FOIA as encouraged in guidance from the Department of Justice. We also recommend ICE further improve customer service.

Introduction

The Freedom of Information Act (FOIA) directs the Office of Government Information Services (OGIS) to review agency FOIA policies, procedures and compliance, and identify procedures and methods for improving compliance 5 U.S.C. §§ 552(h)(2). OGIS compliance assessments are independent and systematic evaluations of an agency's compliance with the FOIA, and include the design, implementation, and results of an agency's FOIA operations, programs, and policies. The assessments 1) provide factual and analytical information; 2) review compliance with the law, regulation, and policy; and 3) share best practices. The assessments also include recommendations for improvement.

We conduct compliance assessments of individual agency FOIA programs by visiting agencies and reviewing regulations, internal guidance for processing requests, agency request and appeal files, annual reports to the U.S. Department of Justice (DOJ), and litigation, among other sources. Our mandate is to determine compliance with FOIA.¹

OGIS's agency assessment program process involves five steps: 1) use last fiscal year's FOIA data as a starting point; 2) inventory FOIA program activity; 3) flag areas of potential noncompliance or risk; 4) consider outside factors that may contribute to noncompliance; and 5) report findings.

What We Reviewed

This report is the result of direct observations of initial request and appeal case files; a review of DHS FOIA regulations, the FOIA web page, and other written material such as ICE's memoranda of understanding, position descriptions, and FOIA Reports to the Attorney General of the U.S.; interviews with FOIA officials and staff; results of an online staff survey; and a review of agency FOIA litigation since 2009.

ICE provided us with data about FOIA request and appeal files closed in FY 2015. OGIS reviewed a random sample that included 383 FOIA requests, including eight FOIA appeals. This methodology allowed OGIS to generalize to the population of the 101,578 FOIA requests processed in FY 2015.

Background

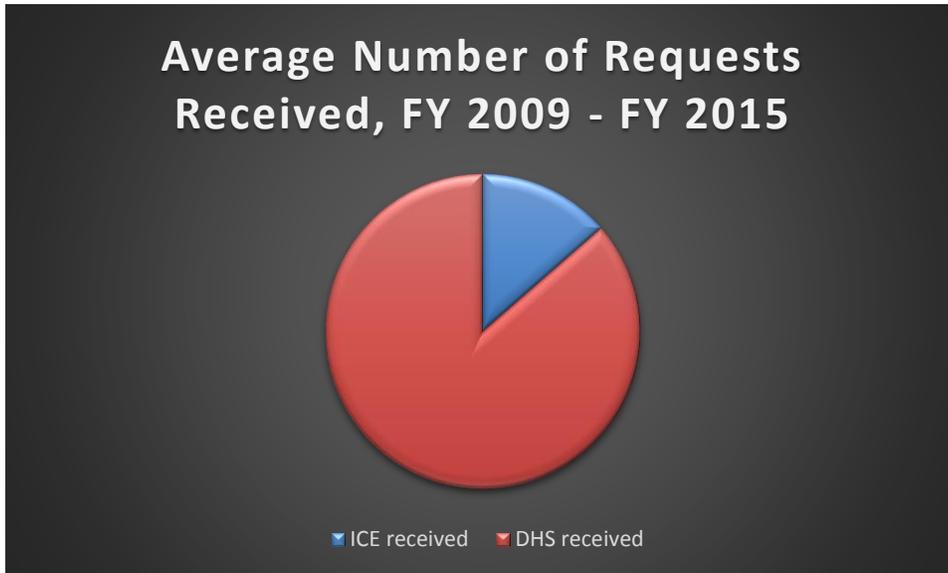
Immigration and Customs Enforcement (ICE) enforces civil and criminal Federal laws governing border control, customs, trade and immigration to promote homeland security and public safety.² ICE FOIA is one of nine offices under ICE's Management and Administration directorate. The agency's records include law enforcement records of immigrants and detainees, including arrest reports and records concerning human trafficking, gangs and smuggling.

¹ 5 U.S.C. §§ 552(h)(2)(A) and 552(h)(2)(B).

² "U.S. Immigration and Customs Enforcement, Who We Are," "accessed August 17, 2016, <https://www.ice.gov/about>.

Volume of Requests

Figure 1, Volume of Requests Received³



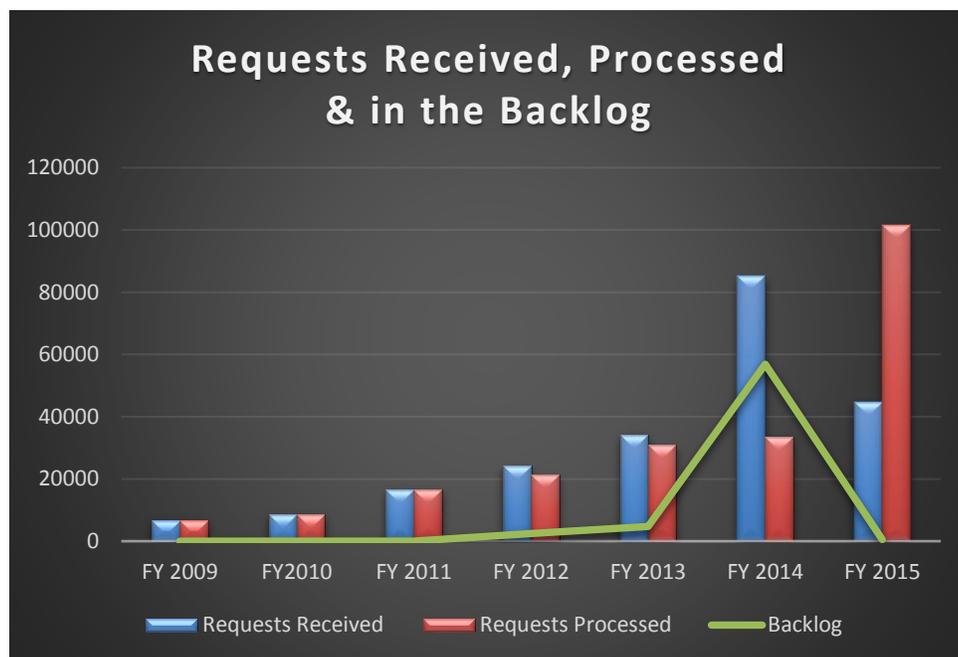
The ICE FOIA Office receives a relatively large volume of FOIA requests. Since 2009, ICE has generally reported receiving the third highest number of requests of all Department of Homeland Security (DHS) components, trailing USCIS and Customs and Border Protection (CBP).⁴ Between Fiscal Year (FY) 2009 and FY 2015, ICE has received an average of 31,405 requests per year—accounting for about 16 percent of 200,479—the average number of requests received by DHS overall each of the seven years.⁵

³ Report on DHS Requests FY 2009-FY 2015, accessed August 17, 2016, www.foia.gov.

⁴ In FY 2014, ICE reported receiving the second highest number of requests of DHS components. Report on DHS Requests FY 2009-FY 2015, accessed August 17, 2016, www.foia.gov.

⁵ Report on DHS Requests FY 2009-FY 2015.

Figure 2, Requests Received, Processed & in the Backlog⁶



ICE reported processing a greater number of requests each fiscal year between FY 2009 and FY 2015, processing an average of 31,293 requests per year.⁷ The number of requests ICE processed tripled between FY 2014 and FY 2015—from 33,644 requests to 101,578 requests.⁸ ICE’s decision in April 2012 to end an agreement with USCIS that allowed USCIS to process ICE information found in frequently requested immigration files likely drove much of this increase in volume. The increase in the number of requests processed by ICE in FY 2015 reduced the FOIA backlog by 99 percent between FY 2014 and FY 2015—from 56,863 requests to 555 requests.⁹

Type of Requests Handled

Records referred to ICE from USCIS as part of the processing of requests for Alien Files, or A-files, are a vast majority of ICE’s FOIA workload. Alien Files, or "A-Files," are individual files identified by a non-citizen’s unique personal identifier, or Alien Registration Number ("A-number"). A-Files became the official file for all immigration and naturalization records created or consolidated since April 1, 1944.¹⁰ While USCIS is the custodian of A-Files, the files regularly include information from other departments and components, including ICE and CBP; that information is referred to the originating

⁶ Report on DHS Requests FY 2009-FY 2015.

⁷ Report on DHS Requests FY 2009-FY 2015.

⁸ Report on DHS Requests FY 2009-FY 2015.

⁹ Report on ICE Backlog FY 2009-FY 2015.

¹⁰“What Are A-Files?” accessed September 30, 2016, <https://www.uscis.gov/history-and-genealogy/genealogy/files-numbered-below-8-million#WhatAreAFiles>.

agency for processing and direct response to the requester. ICE reported to us and an OGIS review of ICE FOIA logs confirmed that USCIS referrals accounted for at least 85 percent of the requests ICE processed during FY 2015.¹¹ In addition to USCIS referrals, the ICE FOIA Office receives requests concerning immigration enforcement and removal proceedings and requests for contracts.

Administration

The ICE FOIA program is centralized, and program offices conduct searches. Requests can be mailed, emailed to a dedicated ICE FOIA email account, submitted using a webform, or faxed; requests submitted using the webform are received as emails. ICE uses a proprietary FOIA tracking and processing system purchased by DHS to manage requests.

ICE has two processing queues: simple and complex. Complex requests require searches by multiple program offices. All other requests, including records referred from USCIS are considered simple.

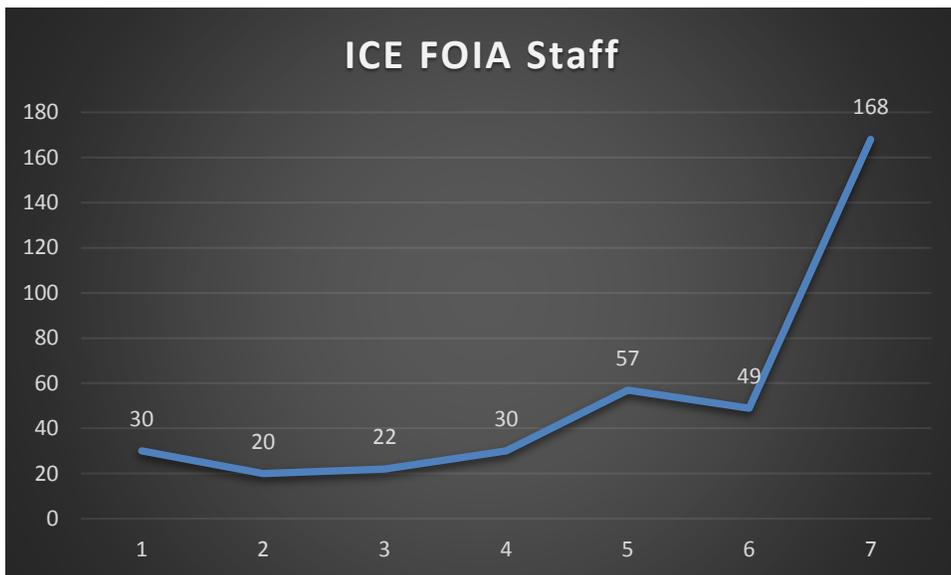
At the time of our review, the ICE FOIA Office had 53 positions, according to an organizational chart provided by ICE FOIA leadership. A Director and Deputy Director lead the office. The remaining staff is divided among eight teams. In Washington, DC, there are four FOIA processing teams, one FOIA administration team, and one team providing litigation support and handling special projects; In Orlando, Florida there are two FOIA processing teams. FOIA processors are paralegal specialists, which is in the Office of Personnel Management's 0950 job series. ICE reported that its human resources (HR) staff will change its FOIA processors current job series to the Government Information Specialist 0306 job series; the change is delayed, however, because a congressional mandate requires ICE's HR staff to use its resources to hire agents and detention and deportation officers, the Deputy Director informed us. At the time of our review, ICE reported that it had 10 vacancies and that it was in the process of filling some of these positions; the emphasis on hiring agents and detention and deportation officers means that HR staff will not work on filling some of the open FOIA positions until the beginning of FY 2017.

The DC-based FOIA processing teams include one supervisor and five paralegals; on the General Schedule (GS) grading system that determines most Federal salary ranges, the team supervisor is a GS-14 and team members range from GS-9 to GS-13. The FOIA administration team is led by a GS-13 paralegal and includes three GS-8 assistants. The litigation support and special projects team is led by a GS-15 senior advisor and includes four paralegals who range from GS-11 to GS-13. The Orlando-based FOIA processing teams each include one GS-12 supervisor and seven paralegals who range between GS-9 to GS-11.

According to the DHS FY 2015 Annual FOIA Report, ICE FOIA had 168 full time FOIA staff, which consisted of 48 full-time government FOIA employees and 120 contractors. The Deputy Director explained that ICE used the contractors to eliminate the office's FOIA backlog.

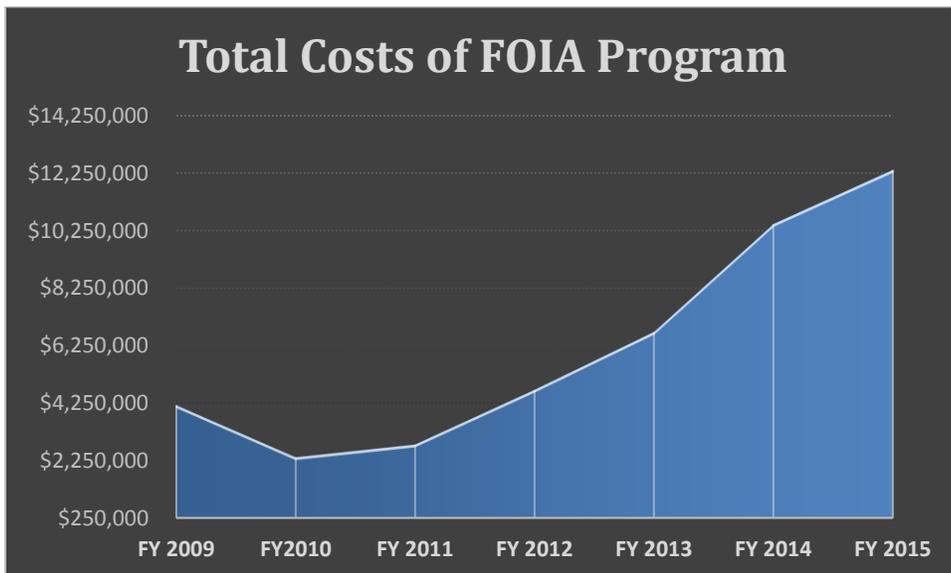
¹¹ ICE reported that in FY 2015, 85 percent of the requests it processed were referrals from USCIS. We analyzed the 383 requests including eight appeals from FY 2015 that comprised our statistically significant sample size and calculated that 88 percent of those requests involved USCIS referrals. Our confidence interval (margin of error) is +/- 5 percentage points.

Figure 3, ICE FOIA Staff¹²



Almost 75 percent of the FOIA staff who responded to OGIS’s online survey reported having more than one year of experience in FOIA; slightly more than 25 percent of respondents reported having more than 5 years of FOIA experience. Almost half of the respondents to the survey reported that they had worked at ICE for between 1 to 5 years; 15 percent reported working at ICE for between 5 to 10 years; the remaining respondents reported working at ICE for less than a year.

Figure 4, Costs of the ICE FOIA Program¹³



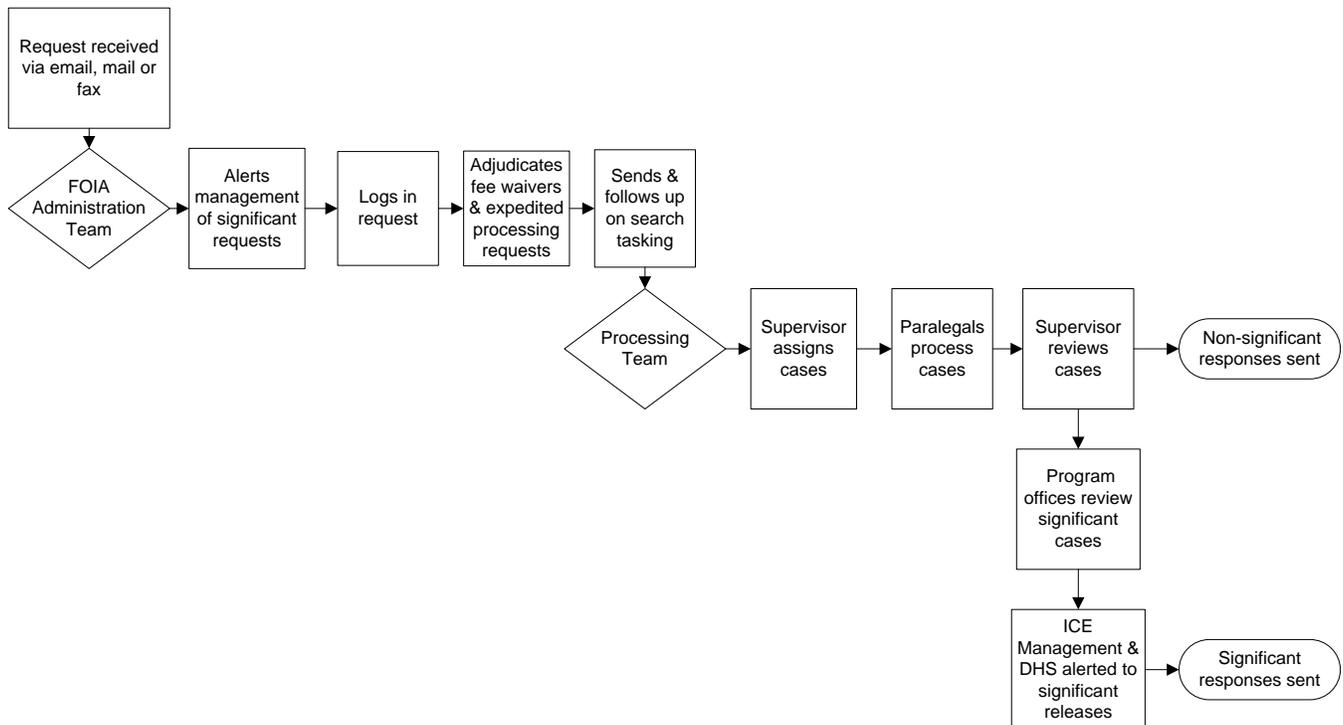
¹² Report on ICE FOIA Administration FY 2009-FY 2015, accessed May 19, 2016, www.foia.gov.

¹³ Report on ICE FOIA Administration FY 2009-FY 2015.

In FY 2015, ICE reported in the DHS Annual FOIA Report a FOIA budget totaling about \$12 million, including about \$239,000 in litigation-related expenses. Litigation-related spending reported in Annual FOIA Reports represents staff time spent on litigation-related issues; this figure does not include attorney’s fees awarded to the plaintiff, or the value of any settlements that the agency reached with a litigant.

Initial ICE FOIA Process

Figure 5, ICE FOIA Process



The FOIA administration team logs in requests and acknowledges them using templates loaded into the FOIA tracking and processing system. While reviewing incoming requests, the FOIA administration team notes any requests from media or non-profit organizations and alerts ICE FOIA leadership and the DHS Privacy Office of such significant requests.¹⁴The FOIA Administration team also handles requests for expedited processing.

If ICE needs additional information to process the request or if it is a first-party request that does not include proper authorization, the FOIA administration team contacts the requester to “perfect” the request. A “perfected” FOIA request reasonably describes the records sought and is made in accordance with the agency’s regulations. The FOIA administration team informs the requester that additional

¹⁴ “Guidelines for Reporting on Significant FOIA Activity for Inclusion in the Cabinet Report to the White House,” accessed September 30, 2016, https://www.dhs.gov/xlibrary/assets/foia/priv_cfoiao_memo_cabinet_report_foia_guidelines_20090707.pdf

information or authorization is needed to process the request and that they have 10 working days to respond before the request is closed.

The FOIA administration team asks program offices to search for responsive records. Program offices are asked to fill out a form describing the searches they conducted, including the date of the search, the time spent searching, the record systems searched and search terms. Program offices are also asked to suggest any other program offices that might have responsive records. The deadline for program offices to return the completed search forms and responsive records is 10 working days.

After the program office sends the ICE FOIA Office responsive records, the head of the FOIA administration team assigns cases to the processing teams. Orlando-based teams process only USCIS referrals; DC-based FOIA processing teams handle a mix of simple and complex cases. Team supervisors are responsible for assigning cases to processors.

Team supervisors review all processed records before responses are sent to requesters. Program offices and ICE FOIA managers also review responses to significant requests. As required by DHS policy, the ICE FOIA Officer alerts the DHS Privacy Office for awareness of responses to any significant requests prior to responding to the requester.

ICE FOIA Appeals

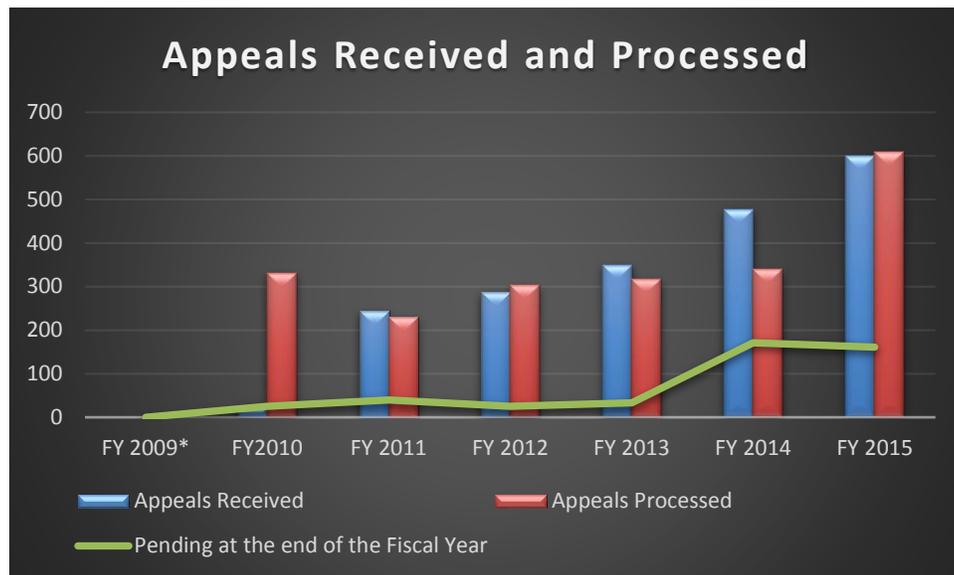
In FY 2010 attorneys in the Government Information Law Division (GILD) of the General Law Division in the Office of the Primary Legal Advisor began processing FOIA appeals and assisting the Department of Justice in defending ICE FOIA litigations. GILD attorneys handle legal issues related to information law, including records management and the Privacy Act.

GILD includes 10 full time employees; the office had three vacancies at the time of our assessment according to the GILD Chief. All GILD attorneys are assigned FOIA cases. The GILD Chief reported that FOIA appeals and litigation account for about 50 percent of the office's workload. GILD also operates a detailee program for ICE employees—which it launched in FY 2015 to help keep up with an increased workload.

Since FY 2010, the number of appeals received and processed by the office has increased each year—reaching a high of 599 appeals received and 609 appeals processed in FY 2015. ICE receives relatively few appeals given the number of requests it processes—between FY 2010 and FY 2015 ICE received appeals for less than 1.5 percent of the FOIA cases it processed. In FY 2015 the 599 appeals received accounts for about one-half of a percent of the 101,578 requests ICE processed.¹⁵

¹⁵ Report on ICE FOIA Appeals FY 2009-FY 2015, accessed August 18, 2016, www.foia.gov.

Figure 6, ICE FOIA Appeals¹⁶



GILD uses the same proprietary tracking and processing system as the ICE FOIA Office. A paralegal logs all appeals into the system, retrieves the administrative record for the case, generates an acknowledgement letter and assigns the case to an attorney for processing. GILD management monitors the attorney caseload and reassigns cases as needed.

Two GS-15 attorney team leads review cases before responses are sent to the requester. If GILD disagrees with a decision made during initial processing, it remands the case to ICE FOIA with instructions for re-processing.

Finding 1: Strong Management Support, Controls and Incentives

Changes to the ICE FOIA program and processes resulted in the virtual elimination of the agency’s FOIA backlog in FY 2015. While not a compliance issue for ICE, the FOIA program may wish to consider developing a process to electronically transfer misdirected requests to UCSIS to improve the overall efficiency of the FOIA process.

Work Flow

Eight teams drive the FOIA Office’s work flow: four DC-based FOIA processing teams, two Orlando-based FOIA processing teams, a FOIA administration team, and a litigation support and special projects team.

The FOIA administration team handles all of the administrative duties involved in supporting the FOIA program. The team logs requests, acknowledges and perfects incoming requests, informs management of

¹⁶ Report on ICE FOIA Appeals FY 2009-FY 2015.

significant requests, handles requests for expedited processing, tasks program offices with searches, and assigns requests to FOIA processing teams. The FOIA administration team also is responsible for answering calls to the ICE FOIA Office.

The Orlando-based FOIA processing teams handle only records referred from USCIS. The DC-based FOIA processing teams are assigned a mixture of simple requests, including for records referred from USCIS, and requests for records related to an immigration enforcement and removal proceeding, and complex cases requiring more than one program office to be searched.

The litigation support and special projects team processes records related to litigation, congressional requests and other special projects.

USCIS Referrals and Misdirected Requests

As previously noted, records referred from USCIS constitute a vast majority of the ICE FOIA workload. In 2014 the Government Accountability Office (GAO) observed duplication of work in processing requests for A-files because of the steps necessary to transfer the files between USCIS and ICE, and ICE's need to manually re-enter information about the request into its own FOIA tracking and processing system. To eliminate the duplication of work, GAO recommended that ICE consider the viability of re-establishing an agreement that allowed USCIS to process ICE records located in A-files.¹⁷

According to ICE's response to GAO, which ICE provided to OGIS, ICE stated that it will not re-establish the agreement to allow USCIS to process ICE records because the records can include Law Enforcement Sensitive information. While ICE is a law enforcement agency with "specific statutory authorities and unique expertise," USCIS is "a benefits organization which does not have the ability to ensure that released information does not jeopardize the lives of DHS employees, law enforcement officers, confidential informants and ongoing investigations," according to the ICE response to GAO.

ICE maintains that its staff can process the referred records at a lower cost than USCIS staff and that duplication no longer exists because ICE now downloads referred requests in bulk from USCIS directly into its FOIA tracking and processing system.

ICE informed us that it frequently receives requests for immigration files that should be directed to USCIS. ICE reported that it boxes the requests and sends them to USCIS about twice weekly and informs the requesters that their requests has been sent to USCIS. The FOIA administration team keeps basic information about these requests in a spreadsheet.

¹⁷ "Freedom of Information Act: DHS Should Take Steps to Improve Cost Reporting and Eliminate Duplicative Processing," November 2014, GAO 15-82, accessed August 18, 2016, <http://www.gao.gov/products/GAO-15-82>.

Program Support and Funding

Top ICE managers strongly support the ICE FOIA program, according to the Deputy Director. The FOIA Office provides weekly updates on the program to the Chief of Staff for the Director of ICE and leadership in the Management and Administration directorate.

The overall cost of the ICE FOIA program grew by almost 200 percent between FY 2009 and FY 2015—from about \$4.2 million to \$12.4 million; over the same period, litigation-related expenses fell by about 81 percent.

Figure 7, Costs of the ICE FOIA Program¹⁸



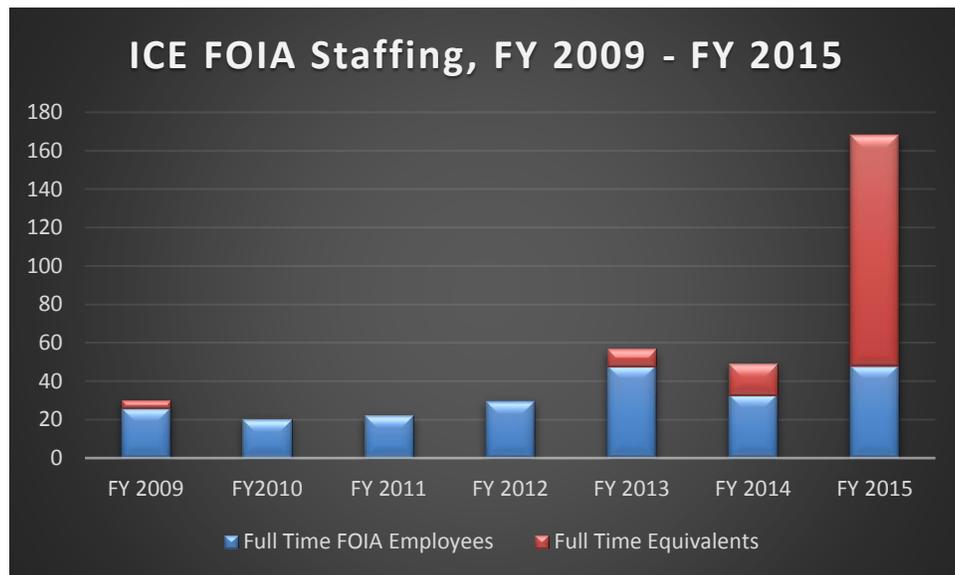
The FOIA Deputy Director explained that the program’s successful case for additional resources relied in part on reducing the agency’s exposure to litigation. Between FY 2009 and FY 2013, litigation-related expenses accounted for about 30 percent, on average, of the total costs of the ICE FOIA program. In FY 2014 litigation-related expenses accounted for less than 10 percent of the costs on the program; in FY 2015, litigation-related expenses accounted for less than 2 percent of program costs.

Staffing and Contracting

In FY 2015 ICE reported 168 full time FOIA staff, a more than 450-percent increase from the 30 full time FOIA staff reported six years earlier. As noted previously, about 70 percent of the full-time FOIA staff ICE reported in FY 2015 were contractors hired to reduce the agency’s backlog.

¹⁸ Report on ICE FOIA Costs FY 2009-FY 2015; litigation-related spending reported in Annual FOIA Reports represents staff time spent on litigation-related issues; this figure does not include any attorney’s fees awarded to the plaintiff, or the value of any settlements that the agency reached with a litigant.

Figure 8, ICE FOIA Staffing¹⁹



ICE paid \$6.2 million to contractors to reduce the agency’s FOIA backlog in FY 2015 according to information provided by the Deputy Director. The contractors closed almost 60,000 requests primarily involving records referred from USCIS.

ICE reported that it has continued to use contract support in FY 2016, paying the contractor \$1.6 million to process 17,000 requests. ICE reported it expects to continue the contract in FY 2017 because of the previously mentioned expected delay in filling the FOIA office’s vacancies and to help the office deal with any increases in the number of requests received or unexpected litigation demands.

Management Controls and Incentives

The ICE FOIA Office uses performance work plans for most of its employees that include specific goals employees are required to meet to either “achieve expectations” or “achieve excellence.” These standards relate to the number of cases closed per week, timeliness of cases closed, and accuracy of data entry.

The number of simple and complex cases FOIA employees are expected to close per week vary according to the employee’s GS level. For example, a GS-9 is required to close an average of 45 simple cases per week to achieve expectations, or close an average of 30 simple and five complex cases to achieve excellence. A GS-13 is required to close an average of 30 simple and nine complex cases to achieve expectations, or close an average of 35 simple and 11 complex cases to achieve excellence.

The Deputy Director said that goals for each GS level were based on historical data on the number of requests analysts closed per week; the Director and Deputy Director also devoted time to processing cases to determine the number of cases they might reasonably expect processors to close per week. According to the GS levels on the organizational chart provided to us, the office can expect to close a

¹⁹ Report on ICE FOIA Administration FY 2009-FY 2015.

minimum of almost 86,000 requests per year if there are no vacancies and all members of the staff achieve expectations or excellence. With the 10 vacancies reported at the time of our assessment, the FOIA Office should be able to maintain a low backlog. If all of the employees in positions that were filled at the time of our review meet or exceed expectations, the office could be expected to close a minimum of between 70,772 to 71,656 requests per year. These projected case closures should allow the FOIA Office to maintain a low backlog.

Figure 9, Yearly Case Closure Expectations Based on Current Staffing Levels²⁰

GS Level (Current Staff)	Performance Work Plan Expectations				Yearly Projections (= staff x expectation x 52 weeks)			
	Meet Expectation: Average per Week		Achieve Excellence: Average per Week		Meet Expectation; Average per Week		Achieve Excellence: Average per Week	
	Simple Cases	Complex Cases	Simple Cases	Complex Cases	Simple Cases	Complex Cases	Simple Cases	Complex Cases
GS-9 (15)	45	0	30	5	35,100	0	23,400	3,900
GS-11 (6)	30	5	35	7	9,360	1,560	10,920	2,184
GS-12 (7)	30	7	35	9	10,920	2,548	12,740	3,276
GS-13 (6)	30	9	35	11	9,360	2,808	10,920	3,432
Subtotal					64,740	6,916	57,980	12,792
Total					71,656		70,772	

At the time of our review, the Deputy Director explained that the office had recently implemented incentives to encourage FOIA staff to meet the weekly targets included in the performance work plans. Employees who achieve expectations or achieve excellence are allowed greater flexibility than those who do not meet expectations, including telework and alternative work schedules. ICE provided us with statistics showing an increase in productivity of about 35 percent in the Orlando office since the incentives were put into place; that increased productivity came despite having one fewer employee when compared to a similar period in the prior fiscal year.

Training

All FOIA staff receive training annually, according to the Deputy Director. New FOIA employees are trained by the Director and Deputy Director and on how to use DHS’s proprietary tracking and processing system. Staff are also required to attend training courses offered by the Department of Justice; the Deputy Director approves other training as needed. Almost 70 percent of respondents to OGIS’s survey of FOIA staff reported being “extremely confident,” or “confident” of knowing the correct legal procedures for how to properly process a FOIA request and/or appeal.

²⁰ Information from Position Descriptions provided by ICE.

The Director and Deputy Director also provide FOIA training for FOIA contacts in ICE program offices. About 78 percent of respondents to OGIS’s survey of ICE’s FOIA staff reported that they think program staff are “very cooperative,” “somewhat cooperative” or “neutral” to requests to search for records.

Recommendation

Recommendation 1: The ICE FOIA Office may wish to develop a process to electronically transmit misdirected requests to USCIS. This recommendation is not a compliance issue per se, but could increase efficiency of the FOIA process.

Finding 2: Investing in Improvements to Technology to Improve Processes

ICE uses technology to streamline its FOIA process. ICE has heavily invested in new technologies to improve its operations and is maximizing its use of these technologies. We recommend that ICE comply with guidance encouraging agencies to add a FOIA metadata tag to all released records posted online.

FOIA Tracking and Processing System

ICE uses the DHS FOIA tracking and processing system to improve its management of the process. The FOIA administration team created standard reports that alert the team of any overdue records search requests from program offices and of any requests that should be administratively closed because the requester has not responded to a request for additional information or documentation.

ICE reported that providing access to the FOIA tracking and processing system for certain individuals in the Enforcement and Removal Office (ERO) improved the efficiency of the process. The FOIA Office asks ERO to search for responsive records and to report on whether the requester is a fugitive.²¹ ICE does not process FOIA requests made by or on behalf of fugitives. ICE explained that providing limited access to the FOIA processing and tracking system to ERO employees to report on fugitive status made it easier for the FOIA Office and ERO to manage the process and respond in a timely manner to those requesters.

Notably, the files we reviewed on ICE’s system included a robust administrative record: correspondence with the requester and responsive documents were generally uploaded to the system. According to the GILD Chief, the paralegal who prepares appeals for review and the attorneys reviewing appeals have not reported difficulties finding the documents necessary to decide an appeal.

As previously discussed, the FOIA Office has also leveraged its work with a contractor to simplify the process of responding to records that are referred from USCIS. Since USCIS and ICE do not use the same processing system, GAO noted that ICE was required to log all referred requests from USCIS into

²¹ ICE defines a fugitive as a person who remains in the U.S. after receiving a final order of removal, deportation or exclusion, or who has failed to report to ICE after receiving a notice to do so. “Fugitive Operations,” accessed September 21, 2016, <https://www.ice.gov/fugitive-operations>.

its own system. ICE reported that it addressed the issue with a tool that a contractor created that allows ICE's computer system to ingest referrals in bulk from USCIS.

ICE also is leveraging the technical expertise of its contractors by purchasing and integrating into the FOIA process commercial software used for electronic discovery (e-discovery). While processing records in ICE's backlog, the contractor showed ICE how the e-discovery software could be used to identify similar types of information that potentially should be withheld or is non-responsive and help processors search for responsive records and better narrow the scope of the request. ICE is purchasing the software and is beginning to use it to streamline the review of records referred from USCIS and to work on requests for particularly voluminous records.

Posting Released Records

ICE reported that the head of the FOIA administration team can update the FOIA web page and is responsible for adding new records to the webpage. According to the head of the FOIA administration team, ICE generally posts all handbooks and policies to the website after they are processed in response to a request; ICE also posts copies of all contracts that have been requested and processed as well as its FOIA logs in a format that allows requesters to search, sort and combine the data with other sources.²² A small sample of documents downloaded from the website indicate that the records do generally include metadata about the record, but they do not include the FOIA metadata tag suggested by the Department of Justice (DOJ).²³

Recommendation

Recommendation 2: We recommend that ICE comply with OIP guidance encouraging agencies to use a FOIA metadata tag with all posted records released under FOIA.

Finding 3: Providing Requesters with Additional Information Would Improve Customer Service

ICE backlog reduction efforts are likely to improve the timeliness of its responses but the program can take steps to further improve its customer service. We recommend that ICE provide requesters with additional information about certain records withholdings and comply with DOJ guidance regarding the use of still interested letters.

Responsiveness

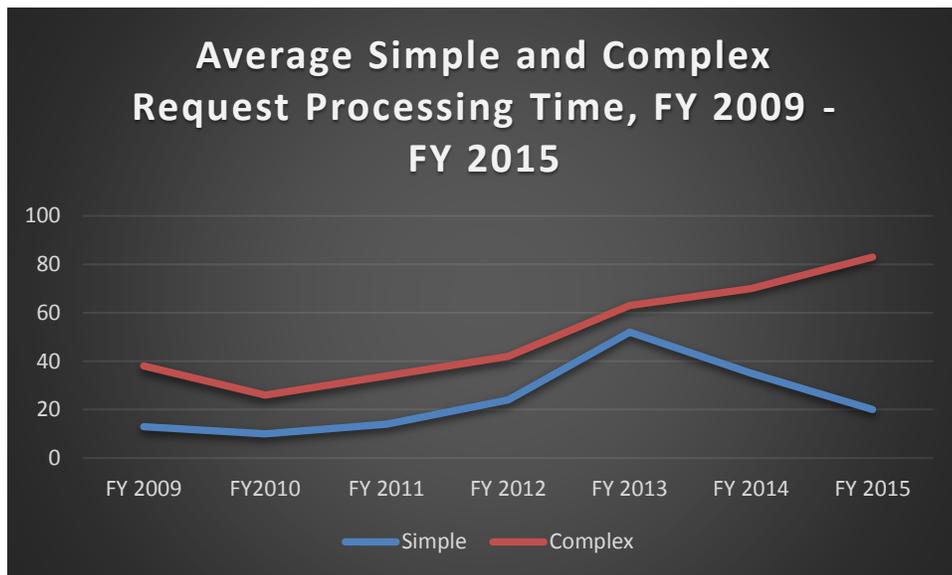
ICE's failure to respond to a request in a timely manner was cited as a factor in about 57 percent of the 85 FOIA lawsuits filed against ICE since 2009.²⁴ ICE's elimination of its backlog should greatly improve its ability to respond to relatively simple requests in a timely manner.

²² At the time of our assessment, 219 contracts were posted in the online ICE FOIA Library, accessed August 11, 2016, <https://www.ice.gov/foia/library>.

²³ Using Metadata in FOIA Documents Posted Online to Lay the Foundation for Building a Government-Wide FOIA Library," last modified July 16, 2015, <http://www.justice.gov/oip/blog/foia-guidance-11>

²⁴ See Appendix for list of FOIA cases filed against ICE since January 2009.

Figure 9, Average Simple and Complex Processing Times²⁵



Customer Service, Plain Language and Still Interested Letters

The ICE FOIA webpage includes information about: how to request specific types of information; ICE’s FOIA process; instructions for tracking the status of FOIA requests online; and links to other relevant offices, including USCIS, DHS Privacy Office, and DOJ (the link to DOJ was not functioning at the time of our review). The ICE FOIA webpage refers to the DHS regulation at several points, but there is no link to the actual regulation; the page also does not include information about ICE’s FOIA Public Liaison or OGIS’s dispute resolution services.²⁶

The FOIA Office uses its own template letters to correspond with requesters; ICE reported that these templates are similar if not identical to the DHS-approved templates used by other DHS components. ICE’s standard response letter that accompanies records referred by USCIS provides requesters only with a physical address to send an appeal and includes citations to the DHS regulation that might confuse requesters who are not familiar with government and/or FOIA processes.

ICE’s responses include a brief description of the exemptions cited. In cases where ICE withheld information under Exemption 3—which allows or requires information to be withheld under other Federal statutes—the FOIA Office did not provide information about the specific statute it was citing in

²⁵ DHS Annual FOIA Reports, FY 2009 – FY 2016.

²⁶ The FOIA Improvement Act of 2016, signed into law on June 30, 2016, requires agencies to notify requesters of the right of the person to seek dispute resolution services from the FOIA Public Liaison of the agency or the Office of Government Information Services at various points in the FOIA process. 5 U.S.C. §§ 552(a)(6)(A)(i)(III) and 552(a)(6)(B)(ii).

response letters. Providing requesters with a specific Exemption 3 statute in the response letter helps them better understand the reason that the information was not released and promotes accountability.²⁷

ICE reported that it occasionally contacts requesters to ask whether the requester is still interested in the request and if the request can be closed. In our review of ICE case files, we reviewed one case in which the request was closed after the requester told the Deputy Director by phone that she was no longer interested in the request. The administrative record did not include any correspondence with the requester confirming that the request was closed. ICE reported that when it asks if a requester is still interested via mail or email, it provides the requester with 10 days to respond before the request is administratively closed.

Recommendations

Recommendation 3: We recommend that ICE cite in its response letters to requesters which Exemption 3 statute it is relying on to withhold information.

Recommendation 4: We recommend that ICE provide requesters with at least 30 working days to respond to a still interested inquiry, as per DOJ guidance, and that the FOIA Office confirm to the requester in writing that a request is closed as a result of a discussion.²⁸

²⁷ ICE withheld information under four Exemption 3 statutes in FY 2015. Ninety-nine percent of those withholdings involved 49 U.S.C. § 114, which protects from disclosure Sensitive Security Information, a category of sensitive but unclassified information.

²⁸ “OIP Releases New Guidance for Agency Still-interested Inquiries,” last modified July 5, 2015, <http://www.justice.gov/oip/blog/oip-releases-new-guidance-agency-still-interested-inquiries>.

Checklist of OGIS Recommendations for ICE'S FOIA Program Management

Management

- ICE may wish to develop a process to electronically transmit misdirected FOIA requests to USCIS.

Technology

- Comply with DOJ guidance encouraging agencies to use a FOIA metadata tag with all posted records released under FOIA.

Communication

- Cite in response letters to requesters which Exemption 3 statute the agency is relying on to withhold information.
- Provide requesters with at least 30 working days to respond to a still interested inquiry as per DOJ guidance and confirm with the requester in writing if a request is closed as a result of a discussion.

Scope and methodology²⁹

OGIS Review Team Lead Kirsten Mitchell and Team member Amy Bennett assessed ICE's FOIA program. This report is the result of direct observation of ICE's initial FOIA request and appeal case files; results of an online OGIS survey completed by ICE FOIA processors and managers; and analysis of applicable data and documents including DHS FOIA regulations, the agency's FOIA website and other written material, and agency FOIA litigation interviews with ICE FOIA officials and staff. On July 28, 2016, we interviewed the Deputy Director of FOIA, the Chief of GILD, and the paralegal supervisor of the FOIA Administration Team. ICE granted us access to its electronic FOIA processing and tracking system. Before our visit, ICE provided us with spreadsheets of its FOIA cases closed in FY 2015. We chose a randomized generalizable sample of 383 FOIA files, which included 373 simple cases, one complex case, one expedited case, and eight appeals. We finished reviewing the case files on August 2, 2016. Our findings rely on OGIS's Elements of an Effective FOIA Program, based on

- the FOIA statute;
- Office of Management and Budget Guidelines for Fees;
- Presidential Memorandums;
- Attorney General Memorandums;
- Guidance from the Department of Justice's Office of Information Policy, including DOJ's Guide to the Freedom of Information Act; and
- Inconsistencies and non-compliance observed during OGIS's mediation services.

²⁹ Please direct questions to OGIS at ogis@nara.gov or 202-741-5770.

Appendix

American Civil Liberties Union (ACLU) et al v. Department of Homeland Security (DHS) et al, 1:2011cv03786, S.D.N.Y.

ACLU Foundation v. DHS et al, 1:2015cv09020, S.D.N.Y.

ACLU of Arizona et al v. DHS Office for Civil Rights and Civil Liberties et al, 2:2015cv00247, D.Ariz.

ACLU San Diego & Imperial Counties v. United States (US) DHS et al, 3:2010cv00544, S.D.N.Y.

ACLU Southern California v. Immigration and Customs Enforcement (ICE), 2:2011cv10148, C.D.Cal.

Acosta v. Federal Bureau of Investigation (FBI) et al, 1:2012cv01578, D.D.C.

Ajualip-Miranda et al v. DHS, 3:2013cv00715, M.D.Tenn.

American Immigration Council et al v. DHS et al, 1:2014cv08403, S.D.N.Y.

American Immigration Council v. DHS et al, 1:2012cv00856, D.D.C.

Americans for Immigrant Justice v. ICE, 1:2012cv00038, D.D.C.

Artiga Carrero v. DHS et al, 1:2016cv01568, D.Md.

Asian Law Caucus v. ICE et al, 4:2008cv00842, N.D.Cal.

Asian Law Caucus v. ICE et al, 4:2013cv01593, N.D.Cal.

Baptiste v. ICE, 1:2015cv21660, S.D.Fla.

Bloomer v. DHS, 2:2011cv00035, D.Vt.

Bloomer v. DHS, 5:2011cv00035, D.Vt.

Brigido Acosta Luis v. Johnson et al, 1:2014cv07755, N.D.Ill.

Carrier v. ICE, 1:2012cv11244, D.Mass.

Casper et al v. DHS et al, 0:16cv00380, D.Minn.

Contant v. DHS et al, 2:2015cv00494, W.D.Pa.

Detention Watch Network et al v. ICE et al, 1:2014cv00583, S.D.N.Y.

Dolores Street Community Services et al v. DHS et al, 3:2015cv00786, N.D.Cal.

El Khader v. Johnson et al, 1:2016cv04675, N.D.Ill.

Fallas v. Executive Office for United States Attorneys (EOUSA) et al, 1:2011cv02048, D.D.C.

Families for Freedom et al v. Customs and Border Protection (CBP) et al, 1:2010cv02705, S.D.N.Y.

Families for Freedom v. ICE, 1:2010cv08354, S.D.N.Y.

Ferrigno v. US DHS, ICE, 1:2009cv05878, S.D.N.Y.

Gahagan v. CBP et al, 2:2014cv02619, E.D.La.

Gahagan v. Department of Justice (DOJ) et al, 2:2013cv05526, E.D.La.

Gelb v. DHS et al, 1:2015cv06495, S.D.N.Y.

Georgia Latino Alliance for Human Rights et al v. DHS et al, 1:2012cv03702, N.D.Ga.

Gilman v. ICE, 1:2015cv01248, W.D.Tex.

Gutierrez-Blandon v. Papoi, et al, 3:2009cv01552, N.D.Ill.

Heartland Alliance National Immigration Justice Center v. DHS et al, 1:2016cv00211, D.D.C.

Hidalgo Cordoba v. Mayorkas et al, 0:2013cv00940, D.Minn.

Ho v. DHS et al, 3:2013cv00035, D.Or.

Knight v. DHS et al, 2:2014cv01520, E.D.Pa.

Legal Aid Justice Center v. ICE, 1:2015cv01316, E.D.Va.

Long et al v. ICE, 1:2012cv01725. D.D.C.

Long et al v. ICE et al, 1:2014cv00109, D.D.C.

Ma v. U.S. Citizenship and Immigration Services, et al, 1:2011cv04382, N.D.Ill.

Marcheletta et al v. ICE, et al, 1:2010cv03280, N.D.Ga.

Marshall v. Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), et al, 1:2010cv21424, S.D.Fla.

Naji Awdat Hamdan et al US DOJ et al, 2:2010cv06149, C.D.Cal.

National Day Laborer Organizing Network et al v. ICE, 1:2010cv03488, S.D.N.Y.

National Day Laborer Organizing Network et al v. ICE et al, 1:2010cv03488, S.D.N.Y.

National Immigrant Justice Center v. DHS et al, 1:2012cv00637, N.D.Ill.

National Immigrant Justice Center v. DHS et al, 1:2011cv03469. N.D.Ill.

National Immigrant Justice Center v. DHS et al, 1:2012cv04825, N.D.Ill.

National Immigrant Justice Center v. DHS et al, 1:2012cv05358, N.D.Ill.

National Immigrant Justice Center v. DHS, ICE, 1:2011cv01050, N.D.Ill.

National Immigrant Justice Center v. US DHS et al, 1:2009cv02022, N.D.Ill.

National Immigration Law Center et al v. US DHS et al, 2:2008cv07092, C.D.Cal.

National Immigration Law Center v. DHS et al, 2:2014cv09632, C.D.Cal.

National Immigration Project of the National Lawyers Guild et al v. DHS et al, 1:2011cv03235, S.D.N.Y.

National Immigration Project of the National Lawyers Guild et al v. DHS et al, 1:2015cv11583, D.Mass.

National Lawyers' Guild San Francisco Chapter et al v. US DHS et al, 3:2008cv05137, N.D.Cal.

New Orleans Workers' Center for Racial Justice et al v. ICE, 1:2015cv00431, D.D.C

Noveron v. Johnson et al, 1:2015cv03535, N.D.Ill.

Olivas Castillo v. DHS et al, 1:2011cv00069, D.N.M.

Ozment v. DHS, ICE, 3:2011cv00429, M.D.Tenn.

Pardo v. DHS et al, 1:2009cv02609, N.D.Ill.

Parker v. ICE, 1:2015cv01253, D.D.C
Patel v. Holder et al, 2:2009cv03087, E.D.Pa.
Patino-Restrepo v. DOJ et al, 1:2014cv01866, D.D.C
Pierre v. DHS, 3:2009cv01230, D.Conn.
Prison Legal News v. DHS et al, 2:2014cv00479, W.D.Wash.
PRP Trading Corp v. ICE, 1:2014cv00629, D.D.C.
Raices Inc v. ICE, 1:2015cv01318, D.D.C
Ramirez-Anzo v. DHS ICE, 3:2013cv00682, M.D.Tenn.
Restrepo v. ICE et al, 1:2012cv00510, D.D.C.
Rodriguez v. DOJ et al, 1:2011cv00556, D.D.C.
Rosenberg v. ICE et al, 1:2012cv00452, D.D.C.
Rubashkin v ICE, 2:2009cv01034, N.D.Iowa.
Santos v. Johnson et al, 5:2014cv04545, E.D.Pa.
Stevens v. DHS, ICE, 1:2014cv03305, N.D.Ill.
Stevens v. DHS-ICE, 1:2014cv08133, N.D.Ill.
Stevens v. Executive Office of Immigration Review et al, 1:2013cv05546, N.D.Ill.
Torres v. DHS et al, 2:2014cv00004, D.Ariz.
Tushnet v. ICE, 1:2015cv00907, D.D.C
Union Leader Corporation v. DHS, ICE, 1:2012cv00018, D.N.H.
Union Leader Corporation v. DHS, US ICE, 1:2012cv00134, D.N.H.
Urdaneta v. Internal Revenue Service (IRS) et al, 1:2009cv02405, D.D.C.
von Grabe v. DHS et al, 6:2009cv02162, M.D.Fla.
Wadhia v. DHS et al, 1:2012cv00231, D.D.C.