

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

Civil Action No.

AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF COLORADO,

Plaintiff,

v.

UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT,

Defendant.

COMPLAINT FOR DECLATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for declaratory, injunctive, and other appropriate relief to compel the disclosure of records that are a matter of great public concern. Plaintiff American Civil Liberties Union Foundation of Colorado (“ACLU-CO”) (“Plaintiff” or “Requestor”) seeks the immediate processing and timely release of agency records from U.S. Immigration and Customs Enforcement (“ICE”).

2. In early August 2025, ICE officials told members of Colorado’s congressional delegation that the federal government intends to open a second Colorado detention center in Hudson, Colorado.¹ Public reporting showed that ICE has plans to more than triple its detention

¹ S. Klamann, *ICE tells Colorado lawmakers it plans to open new detention facility near metro Denver*, DENVER POST (Aug. 12, 2025), <https://perma.cc/Y7W3-9WNV>.

capacity in Colorado with three new facilities in the state, giving Colorado the sixth most ICE detention beds in the country.² This reporting followed the ACLU-CO's July 2025 release of records related to ICE's request for proposals to expand ICE detention in Colorado,³ documents that ACLU-CO only received after filing a FOIA lawsuit against ICE in April 2025 that ultimately forced ICE to disclose those documents.⁴

3. On August 8, 2025, ACLU-CO filed a FOIA request with ICE to obtain ICE's ramp-up plans for adding detention capacity in Colorado and Wyoming. Plaintiff also sought a keyword search for a limited period of time for four keywords -- potential detention sites in the state -- targeting two ICE custodians responsible for expanding detention capacity. ICE has to date failed to provide a single document, in violation of its statutory obligations. This action seeks the timely disclosure of responsive documents, as requested by Plaintiff under FOIA.

4. ICE detains thousands of people each day in its nationwide network of immigration detention facilities.⁵ But the federal government plans to vastly expand its detention capacity and recently received \$45 billion, more than the entire federal prison system budget, to

² See, e.g., D. MacMillan, et al., *ICE documents reveal plan to double immigrant detention space this year*, The Washington Post (Aug. 15, 2025), <https://perma.cc/7HTU-W5Q3>; S. Wilson, *Three new ICE detention centers reportedly planned in Colorado*, Colorado Newsline (Aug. 15, 2025), <https://perma.cc/6U75-TFHJ>; S. Klamman, *ICE plans to open as many as three new detention centers in rural Colorado, report says*, THE DENVER POST (Aug. 15, 2025), <https://perma.cc/84WP-KMTH>.

³ Press Release: *ACLU FOIA Litigation Reveals New Information About Plans to Expand ICE Detention in Colorado*, ACLU OF COLORADO (July 9, 2025), <https://perma.cc/85HN-HAW6>.

⁴ Press Release: *ACLU, ACLU of Colorado Sue ICE for Records Regarding Potential Expansion of Immigration Detention in Western States*, ACLU OF COLORADO (Apr. 21, 2025), <https://perma.cc/PP7J-3CEJ>.

⁵ TRACImmigration, *Immigration Detention Quick Facts* (Feb. 23, 2025), <https://perma.cc/9T9V-UDJS>.

expand ICE detention and enforcement across the country.⁶ In late May 2025, the White House and the Department of Homeland Security (“DHS”) also announced a quota to conduct 3,000 immigration-related arrests per day, with “consequences for not hitting arrest targets.”⁷

5. In the first six months of 2025, ICE claimed “record-breaking” immigration arrests nationwide,⁸ and there was “a nearly 300% increase” in immigration arrests in Colorado.⁹ Reporting shows that most of the people ICE arrested in Colorado and Wyoming did not have a criminal history.¹⁰ These expanded ICE arrests have led ICE to seek expanded detention here in Colorado and substantial public interest in these efforts.¹¹

6. Although ICE owns five detention facilities of its own, it relies on contracts, inter-governmental service agreements, and inter-governmental agreements with private prison companies, for the use of prisons, jails, and other detention facilities to hold the majority of people in its custody.¹²

⁶ See *supra* n. 2.

⁷ Elizabeth Findell, et al., *The White House Marching Orders That Sparked the L.A. Migrant Crackdown*, The Wall Street Journal (Jun. 9, 2025), <https://perma.cc/K6VR-X523>.

⁸ Press Release: *100 days of record-breaking immigration enforcement in the US interior*, U.S. Immigration and Customs Enforcement (Apr. 29, 2025), <https://perma.cc/AQG6-WMEJ>.

⁹ Seth Klamann, *Immigration arrests in Colorado have surged under the Trump administration. Now we know how much*, The Denver Post (Jul. 9, 2025), <https://perma.cc/7BCV-GCRS>.

¹⁰ Sandra Fish, et al., *Most people arrested by ICE in Colorado and Wyoming this year did not have a criminal history*, The Colorado Sun (Jul. 18, 2025) (citing Deportation Data Project’s compilation of ICE data on immigration arrests in Colorado), <https://perma.cc/Z2Z7-423D>.

¹¹ See *supra* n. 1, 2, 7, 9; Dan Boyce, *Two Colorado facilities eyed as possible ICE detention centers*, Colorado Public Radio (Jun. 27, 2025), <https://perma.cc/94DK-LS3M>.

¹² DHS Office of Inspector General, *ICE Does Not Fully Use Contracting Tools to Hold Detention Facility Contractors Accountable for Failing to Meet Performance Standards* (2019), <https://www.oig.dhs.gov/sites/default/files/assets/2019-02/OIG-19-18-Jan19.pdf> <https://perma.cc/2V5L-22F3>.

7. Plaintiff ACLU-CO is a non-profit, non-partisan civil liberties advocacy organization. Plaintiff submitted a FOIA request (the “Request”) to the Defendant on August 8, 2025, seeking the disclosure of ramp-up plans for adding detention capacity for immigrants in Colorado and Wyoming. Defendant has not released any responsive records, notwithstanding FOIA’s requirement that agencies respond to requests within 20 working days.

8. Plaintiff now asks the Court for injunctive and other relief requiring Defendant to conduct a thorough search for all responsive records and to immediately process and release any responsive records. Plaintiff also appealed the Defendant’s denial of its request for expedited processing. Plaintiff seeks an order enjoining Defendant from withholding non-exempt, responsive records, and from charging search, review, or duplication fees for the processing of the Request.

JURISDICTION AND VENUE

9. The Court has subject-matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). The Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. §§ 701–06.

10. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B). Plaintiff ACLU-CO has its principal place of business in this district and requested the documents from this district.

PARTIES

11. Plaintiff ACLU-CO is a non-profit, nonpartisan 26 U.S.C. § 501(c)(3) organization. The ACLU-CO is a state affiliate of the American Civil Liberties Union (“ACLU”), and its mission is to maintain and advance civil rights and civil liberties and to ensure that the U.S. government acts in compliance with the Constitution and laws of the United

States, with a focus on impacts in the state of Colorado. ACLU-CO is committed to principles of transparency and accountability in government and seeks to ensure that the American public is informed about the conduct of its government in matters that affect civil liberties and human rights. Obtaining information about governmental activity, analyzing that information, and widely publishing and disseminating it to the press and the public is a critical and substantial component of ACLU-CO's work.

12. Defendant ICE is an agency of the U.S. government within the meaning of 5 U.S.C. § 551, 5 U.S.C. § 552(f), and 5 U.S.C. § 702. ICE has possession, custody, and control of the records that Plaintiff seeks.

FACTUAL BACKGROUND

13. This is not the first time in recent months that ACLU-CO has been forced to file FOIA litigation to obtain records regarding ICE's efforts to expand detention in Colorado. In March 2025, ACLU-CO submitted a FOIA request seeking the release of records responsive to a Request for Information ("RFI") that ICE issued for proposals from private companies to provide expanded detention in Colorado and Wyoming.¹³ The Defendant did not release any responsive records within 30 working days, so the ACLU-CO and ACLU filed a lawsuit in April 2025 in the U.S. District Court for the Southern District of New York: *American Civil Liberties Union Foundation, et al. v. United States Immigration and Customs Enforcement*, No. 1:25-cv-3271-VEC. In response to the lawsuit, ICE provided redacted copies of six private companies'

¹³ See *supra* n. 3-4.

responses to the RFI.¹⁴ ICE improperly redacted information in the documents, and in late August 2025, ACLU-CO forced ICE to produce updated documents without the redactions.¹⁵

14. By reviewing the disclosed documents, the ACLU-CO found that Hudson REIT, a private real estate investment trust based in Chicago, submitted a response proposing to operate a facility formerly known as the Hudson Correctional Facility located in Hudson, Colorado, as part of ICE’s immigration detention operations. In addition, CoreCivic submitted a response proposing to operate an immigrant detention facility at the Huerfano County Correctional Center. Other companies submitted additional responses for facilities in different parts of Colorado. In addition, the Southern Ute detention center has previously been used by ICE for immigrant detention in Colorado. *See supra* n. 2.

15. Because these proposals were dated February 21, 2025, and released to the ACLU-CO only in July 2025, it was important for ACLU-CO and the public to understand what additional plans ICE has developed to ramp-up expanded detention since that time.

16. Accordingly, on August 8, 2025, Plaintiff submitted another FOIA request to Defendant, seeking, for the period from February 21, 2025 to the present, the following records:

- Ramp-up plans for adding detention capacity for immigrants in Colorado or Wyoming
- Emails including the keywords “Hudson,” “Big Horn,” “Huerfano,” or “Southern Ute.”

¹⁴ *Id.*; Tony Gorman, *Six Colorado Cities Considered for ICE Detention*, COLORADO PUBLIC RADIO (July 10, 2025), <https://perma.cc/282X-TVDS>; Anna Alejo, *Private Prison Companies Vie for Business as ICE Plans to Expand Colorado Detention Capacity*, CBS NEWS (July 9, 2025), <https://perma.cc/9CFT-7EYN>.

¹⁵ Press Release: *Updated Documents Reveal New Details for ICE Detention Expansion in Colorado*, ACLU OF COLORADO (Aug. 28, 2025), <https://perma.cc/Q6FP-5EDR>.

The Request is attached as Exhibit 1 to this Complaint.

17. The FOIA request specified that “[t]he custodians to be searched for the keyword search above include Monica Burke and Albert Dainton.”

18. On information and belief, Monica Burke is the Acting Assistant Director of Custody Management Division for the Enforcement and Removal Operations (“ERO”) office of ICE. On information and belief, Albert Dainton was the Director and Head of Contracting Activity, Office of Acquisition Management for ICE.

19. Public reporting confirmed that ICE has internal “planning road maps” that include expanding detention in Colorado, including at the former Hudson Correctional Facility (which ICE refers to as the “Big Horn Detention Facility”), at the Huerfano County Correctional Facility, at the Southern Ute detention facility, as well as expansion at the Denver Contract Detention Facility in Aurora. *See supra* n. 2. Reporting indicated that ICE has plans to more than triple its detention capacity in Colorado. *Id.* Despite the existence of these plans, ICE has failed to provide these documents or any others in response to the FOIA Request.

20. Plaintiff sought a waiver of search, review, and reproduction fees because the disclosure of the requested records is “in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); 6 C.F.R. § 5.11(k).

21. Plaintiff also sought a waiver of search and review fees because they qualify as a “representative of the news media” and that the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii); *see also* 6 C.F.R. § 5.11(d)(1).

22. In support of its request for a fee waiver, Plaintiff noted in the Request that disclosure of the materials is in the public interest in light of the attention and concern raised by members of Congress, the media, and advocates, regarding ICE's plans to expand and establish new immigration facilities. Plaintiff cited Congressional letters, multiple news stories, and national advocacy letters.

23. Plaintiff noted that they are a 501(c)(3) nonprofit organization that has no commercial interest, and cited to their work of publishing, analyzing, and disseminating information through their heavily visited websites, which include many features on information obtained through FOIA requests. Plaintiff also noted their status as a "representative of the news media" under 5 U.S.C. § 552(a)(4)(A)(ii)(II)-(III). *See also Nat'l Sec. Archive v. U.S. Dep't of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (finding that an organization that gathers information, exercises editorial discretion in selecting and organizing documents, "devises indices and finding aids," and "distributes the resulting work to the public" is a "representative of the news media" for purposes of the FOIA); *ACLU v. U.S. Dep't of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding non-profit public interest group to be "primarily engaged in disseminating information").

24. Plaintiff also sought expedited processing of the Request on the ground that there is a "compelling need" for these records because the information requested is urgently needed by an organization primarily engaged in disseminating information to inform the public about actual or alleged federal government activity. 5 U.S.C. § 552(a)(6)(E); *see also* 6 C.F.R. § 5.5(e).

DEFENDANT'S RESPONSE TO THE REQUEST

25. By email dated August 11, 2025, ICE acknowledged receipt of the Request, and assigned it tracking number 2025-ICFO-53841. This email also requested “clarification” regarding the Request. Plaintiff sent an email on August 12, 2025, providing the information requested in the request for clarification. Additionally, Defendant sent an email on August 13, 2025, denying Plaintiff’s request for an expedited processing of the Request, invoking a 10-day extension to provide the documents (beyond the 20-day statutory period), and stating that it would adjudicate the fee waiver request only if the agency is allowed to assess fees under FOIA. These emails are attached as Exhibit 2 to this Complaint.

26. On August 15, 2025, Plaintiff submitted an administrative appeal of ICE’s denial of expedited processing for the Request. Plaintiff’s administrative appeal is attached as Exhibit 3 to this Complaint.

27. By email dated August 15, 2025, ICE’s Office of the Principal Legal Advisor confirmed receipt of the administrative appeal and assigned it tracking number 2025-ICAP-00387. The email is attached as Exhibit 4 to this Complaint.

28. By email on September 15, 2025, ICE’s Office of the Principal Legal Advisor responded to Plaintiff’s administrative appeal with a letter dated September 15, 2025. The adjudication letter is attached as Exhibit 5 to this Complaint. In its response, ICE denied Plaintiff’s request for expedited processing, stating that Plaintiff did not show that there was any urgency to inform the public about a federal governmental activity.

29. ICE has produced no records or any other response to the FOIA Request. To date, ICE has neither released responsive records nor explained its basis for withholding them.

STATUTORY REQUIREMENTS

30. The Freedom of Information Act was enacted to facilitate public access to government documents. *U.S. Dep't of State v. Ray*, 502 U.S. 164, 173 (1991) (citing *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 151 (1989)). Its basic purpose is to “ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed.” *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978).

31. With that purpose in mind, the FOIA statute requires federal agencies like Defendant to disclose records within 20 working days in response to FOIA requests. 5 U.S.C. § 552(a)(6)(A)(i).

32. If there are “unusual circumstances,” an agency may extend the time limit to respond by no more than 10 working days. *Id.* § 552(a)(6)(B)(i). To invoke that extension, the agency must provide “written notice . . . setting forth the unusual circumstances for such extension and the date on which a determination is expected to be dispatched.” *Id.*

33. An agency can extend its processing time beyond the additional 10 days only if it provides written notice and “an opportunity to limit the scope of the request so that it may be processed within that time limit or an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request.” *Id.* § 552(a)(6)(B)(ii).

34. A district court has jurisdiction to enjoin the agency from withholding records and to order production of records that are subject to disclosure. *Id.* § 552(a)(4)(B).

35. FOIA also allows for requesters to ask for expedited processing of their request for records if they can demonstrate a compelling need. *Id.* § 552(a)(6)(E)(i). The term “compelling need” applies to requesters who are primarily engaged in disseminating information

and possess the urgency to inform the public concerning actual or alleged Federal government activity. *Id.* § 552(a)(6)(E)(v)(II).

36. More than 30 working days have passed since Plaintiff filed the Request. Thus, the statutory time period has elapsed as to ICE. *Id.* § 552(a)(6)(C)(i).

37. Plaintiff has exhausted all administrative remedies regarding ICE's failure to respond to the Request, because ICE has failed to comply with the extended time limit of 30 working days to respond to the Request under the FOIA.

CLAIMS FOR RELIEF

38. The failure of Defendant to make a reasonable effort to search for records responsive to the Request violates the FOIA, 5 U.S.C. § 552(a)(3), and Defendant's corresponding regulations.

39. The failure of Defendant to promptly make available the records sought by the Request violates the FOIA, 5 U.S.C. § 552(a)(3), (a)(6)(A), and Defendant's corresponding regulations.

40. The failure of Defendant to process Plaintiff's Request expeditiously and as soon as practicable violates the FOIA, 5 U.S.C. § 552(a)(6)(E), and Defendant's corresponding regulations.

41. Defendant's withholding of non-exempt agency records subject to the Request violates the FOIA, 5 U.S.C. § 552, and Defendant's corresponding regulations.

REQUESTED RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

- a) Declare that Defendant's failure to respond and produce the requested records is unlawful;
- b) Order Defendant to conduct a full, adequate, and expedited search for all responsive records;
- c) Order Defendant to immediately process and release any responsive records;
- d) Declare that the requested records are not exempt from disclosure under the Freedom of Information Act;
- e) Enjoin Defendant from withholding non-exempt, responsive records;
- f) Award Plaintiff costs and reasonable attorneys' fees incurred in this action; and
- g) Grant such other relief as the Court deems just and proper.

Dated this 23rd day of September, 2025.

Respectfully submitted,

/s/ Timothy R. Macdonald
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