

**FIFTEENTH JUDICIAL DISTRICT COURT
PARISHES OF ACADIA, LAFAYETTE, AND VERMILION
STATE OF LOUISIANA**

Katie Schwartzmann
Plaintiff/Petitioner

v.

Michael A. Couvillon, in his official capacity
as Sheriff of Vermilion Parish
Defendant/Respondent

Doc. No. 9622

Div. No. E

J. J. Couvillon
CLERK OF COURT

2012 SEP 19 A 9:22

VERMILION PARISH, LA.
FILED THIS DAY

**PETITION FOR WRIT OF MANDAMUS AND
DECLARATORY RELIEF**

The Plaintiff/Petitioner, Katie Schwartzmann ("Schwartzmann"), files this Petition for Writ of Mandamus and Declaratory Relief against Defendant/Respondent Michael A. Couvillon ("Sheriff"), in his official capacity as the Sheriff of Vermilion Parish. In support of this petition, Plaintiff states the following:

1. Defendant/Respondent Michael A. Couvillon is the Sheriff of Vermilion Parish. Upon information and belief, the Vermilion Parish Sheriff's Office is a municipal corporation located at 101 South State Street, Abbeville, LA 70510. Sheriff Couvillon, as a public official, is properly issued service of process at the Vermilion Parish Sheriff's Office. *See* La. Civ. Code. Proc. art. 1265.
2. The Vermilion Parish Sheriff's Office is a "public body" pursuant to the Louisiana Public Records Act ("Act"), La. Rev. Stat. Ann. § 44:1(A)(1). The Defendant is the custodian of the records of the Vermilion Parish Sheriff's Office. La. Rev. Stat. Ann. § 44:1(A)(3).
3. Plaintiff Schwartzmann is an attorney for the Southern Poverty Law Center ("SPLC"), located at 4431 Canal Street, New Orleans, LA 70119. She is domiciled in Orleans Parish. Schwartzmann's designated address for receipt of service is 4431 Canal Street, New Orleans, LA 70119.
4. Schwartzmann is a "person of the age of majority" under La. Rev. Stat. Ann. § 44:31(B)(1).
5. The SPLC is a non-profit civil rights organization that provides free legal representation to prisoners, including immigrant detainees, who have suffered violations of their civil rights.

arrest of a person, which are exempt from disclosure under the Act, La. Rev. Stat. Ann. § 44:3(A)(4)(a). As a result, the Sheriff declined to disclose the detainer forms.

11. Ultimately, the Sheriff did not provide a single document to Schwartzmann in response to her public records request.
12. Fourteen other parish sheriffs, also represented by Mr. Frosch, supplied the same response to Schwartzmann's public records request.¹
13. Schwartzmann, through her counsel, responded to the Sheriff's denial of her request for copies of immigration detainers in a letter dated August 2, 2012, which explained the nature of an immigration detainer, including that it is not an arrest record because it is issued after the arrest of an individual and is related to civil (not criminal) removal proceedings. August 2 Letter (attached as Exhibit C).
14. The Sheriff responded in a letter dated August 15, 2012, where he further argued that immigration detainers are arrest records, and also asserted that they fall under the Act's exemption for prison records and that their disclosure implicates constitutional privacy concerns. August 15 Response (attached as Exhibit D).
15. Schwartzmann sent a final letter in attempt to obtain the records on August 21, 2012 to the Sheriff. August 21 Letter (attached as Exhibit E). In this letter, Schwartzmann disputed the Sheriff's latest assertion that immigration detainers are prison records and their disclosure implicates constitutional privacy rights.
16. On September 19, Schwartzmann initiated this action for declaratory relief and a writ of mandamus directing the Sheriff to produce the requested immigration detainer forms.

CAUSE OF ACTION

17. Plaintiff incorporates by reference paragraphs 1-16 above as if fully stated herein.
18. Immigration detainers are public records under La. Rev. Stat. Ann. § 44:1(2)(A).
19. The public's right to have access to public records is a fundamental right guaranteed by statute and the Louisiana Constitution. La. Rev. Stat. Ann. § 44:1, *et seq.*; La. Const. art. 12, § 3.

¹ These sheriffs are from Allen, Ascension, Assumption, Caldwell, East Carroll, Lincoln, Livingston, Morehouse, Ouachita, Sabine, St. Helena, St. James, Vernon, and West Baton Rouge Parishes.

20. The Act and the constitution “must be construed liberally in favor of free and unrestricted access to the records, and [] *access can be denied only when a law, specifically and unequivocally, provides otherwise.*” *Capital City Press v. E. Baton Rouge Parish Metro. Council*, 696 So. 2d 562, 564 (La. 1997).
21. There is no express exemption for immigration detainers in the Act or, even more generally, for records relating to federal immigration enforcement. *See generally* La. Rev. Stat. Ann. § 44:1, *et seq.*
22. In the absence of an unequivocal exemption, the statute and the constitution require that the public have access to these records. *See Title Research Corp. v. Rausch*, 450 So. 2d 933, 936 (La. 1984).
23. The Sheriff has the burden of justifying withholding a public record. La. Rev. Stat. Ann. § 44:31(B)(3).
24. The Sheriff is relying on several inapplicable exemptions from disclosure related to arrest records, prison records, and records that implicate constitutional privacy concerns to justify withholding the immigration detainers.
25. An immigration detainer is a notice that DHS issues to a law enforcement agency to advise the agency that ICE seeks to assume custody of an individual in the agency’s custody for the purposes of removing (i.e., deporting) the individual. *See* 8 C.F.R. §287.7(a) (2012); *see also* DHS Form I-247 “Immigration Detainer – Notice of Action” (attached as Exhibit F).
26. If ICE does not assume physical custody of the individual within 48 hours after the individual is eligible for release, then the immigration detainer is lifted and the individual must be released. *See* ICE Interim Policy, Number 10074.1: Detainers (attached as Exhibit G).
27. An immigration detainer (Form I-247) is not “a record of the arrest of a person” as provided in La. Rev. Stat. Ann. § 44:3(A)(4)(a). An immigration detainer can only be issued by a federal immigration official *after* an individual is arrested by local law enforcement for a traffic, municipal, and/or state criminal violation. It is unrelated to the underlying arrest by local law enforcement because it concerns civil (not criminal) removal proceedings. *See* Ex. G.

28. An immigration detainer is also not a “prison record” as defined by the Act. *See* La. Rev. Stat. Ann. § 44:4.1(B)(7); La. Rev. Stat. Ann. § 15:574.12(A). The Act’s exemption for prison records only applies to records obtained by the Department of Public Safety and Corrections (“DPSC”). *See* La. Rev. Stat. Ann. § 15:574.12(A). Schwartzmann’s request was directed to the parish Sheriff, not the DPSC.
29. Finally, disclosure of an immigration detainer does not implicate constitutional privacy concerns. An immigration detainer does not include the type of confidential information the Act protects from disclosure. *See* Ex. F. Moreover, the public interest in disclosure of the immigration detainers outweighs any privacy interest that might exist.
30. Thus, the Sheriff is arbitrarily and unreasonably refusing to disclose the records in violation of his duties under the Act. La. Rev. Stat. Ann. § 44:31.
31. Pursuant to the Act, a writ of mandamus and declaratory relief are appropriate legal remedies when the custodian denies a requester the right to access public records. La. Rev. Stat. Ann. § 44:35(A); *see also* La. Code Civ. Proc. art. 3863; *Alliance for Affordable Energy v. Frick*, 695 So. 2d 1126, 1132 (La. Ct. App. 4 Cir. 1997).
32. For these reasons, a declaratory judgment stating immigration detainers are subject to disclosure, and a writ of mandamus directing the Sheriff to immediately provide any immigration detainers in his possession to Schwartzmann pursuant to her initial request, are appropriate.

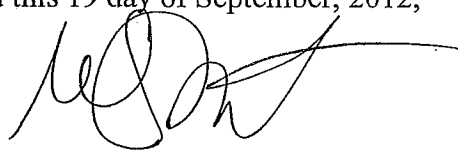
PRAYER FOR RELIEF

In light of the foregoing reasons, Plaintiff/Petitioner herein respectfully requests this Honorable Court to:

- A. Issue a declaratory judgment declaring that immigration detainers are subject to disclosure under the Act;
- B. Grant this Petition for Writ of Mandamus and order the Sheriff to produce the requested immigration detainers or show cause why production of the records should not occur on the date and hour assigned by this Court in accordance with La. Rev. Stat. Ann. § 44:35;

- C. Cause the Defendant to be served with a certified copy of this Petition and Order to Show Cause on the date assigned by this Court;
- D. Award attorney's fees, costs, and damages as provided by La. Rev. Stat. Ann. § 44:35(D); and
- E. Order any other relief as this Court deems appropriate.

Respectfully submitted this 19 day of September, 2012,



Meredith B. Stewart
Louisiana Bar Roll No. 34109
Southern Poverty Law Center
4431 Canal St.
New Orleans, LA 70115
P: (504) 486-8928
F: (504) 486-8947
meredith.stewart@splcenter.org
Counsel for Plaintiff

PLEASE SERVE:

Michael A. Couvillon, Sheriff of Vermilion Parish
Vermilion Parish Sheriff's Office

Physical Address:
101 South State Street
Abbeville, LA 70510-0307

Mailing Address:
P.O. Box 307
Abbeville, LA 70510-0307

VERMILION PARISH, LA.
FILED THIS DAY
2012 SEP 19 A 9:22
Meredith Stewart
CLERK OF COURT

EXHIBITS

VERMILION PARISH, LA.
FILED THIS DAY
2012 SEP 19 A 9:22
Diane Newmyer
CLERK OF COURT



4431 Canal Street
New Orleans, LA 70119
T 504.486.8982 F 504.486.8947
www.splcenter.org

VIA FACSIMILE AND FIRST CLASS MAIL

July 23, 2012

Vermilion Parish
Sheriff Michael Couvillon
P. O. Box 307
Abbeville, LA 70511
Phone: (337) 898-4409
Fax: (337) 740-4510

Re: Public Records Request

To Whom It May Concern:

This is a request for records pursuant to the Louisiana Public Records Act, La. Rev. Stat. Ann. § 44:1, *et seq.* I request disclosure of the following records in your possession:

1. All policies, procedures, and guidelines related to informing the federal government that the jail has custody of an individual who the jail believes is not a citizen of the United States.
2. All policies, procedures, and guidelines related to handling immigration detainees or immigration holds, as described by 8 C.F.R. § 287.7, including but not limited to:
 - a. All policies, procedures, and guidelines related to ensuring that a copy of the jail's policies and/or procedures are given to detainees; and
 - b. All policies, procedures, and guidelines ensuring an individual is not detained for longer than forty-eight (48) hours.
3. Copies of any immigration detainees issued by the federal government since January 1, 2009.
4. Correspondence related to any compensation received from the federal government related to detaining immigrants.
5. Correspondence related to the State Criminal Alien Assistance Program (SCAAP), including requests for funding and responses received.
6. Any written agreements with the federal government related to detaining immigrants.

To the extent that any requested records are marked classified, please redact such records and provide the remaining records. With respect to electronic databases, spreadsheets, and other computer files, please copy those public records in their native and unaltered format. If you deny

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all or part of this request, please state the legal basis for why the records are exempted from disclosure.

Please respond within five (5) days as required by law. *See* La. Rev. Stat. Ann. 44:35(A). To expedite this process, the Southern Poverty Law Center will pay any reasonable fee for the requested documents. Please contact me by phone at 504-486-8982, by facsimile at 504-486-8947, or by email at meredith.stewart@splcenter.org to arrange for delivery and any payment, if necessary, or with any questions. Thank you in advance for your prompt consideration of this request.

Sincerely,



Meredith Stewart
Attorney
Southern Poverty Law Center



Katie Schwartzmann
Attorney
Southern Poverty Law Center

TRANSACTION REPORT

P.01/01

JUL/23/2012/MON 11:44 AM

FAX (TX)

| # | DATE | START T. | RECEIVER | COM.TIME | PAGE | TYPE/NOTE | FILE |
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| 001 | JUL/23 | 11:43AM | 13377404510-76103 | 0:00:36 | 3 | OK | SG3 1802 |



4431 Canal Street
New Orleans, LA 70119
T 504.486.8982
F 504.486.8947
www.splcenter.org

FAX

| | | | |
|-------|-----------------------------------|-------|-------------------------|
| To | <u>Sheriff Michael Couvillion</u> | From | <u>Meredith Stewart</u> |
| Fax | <u>(337) 740-4510</u> | Pages | <u></u> |
| Phone | <u>(337) 898-4409</u> | Date | <u>July 23, 2012</u> |
| Re | <u>Public Records Request</u> | CC | <u></u> |

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Comments

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A PROFESSIONAL LAW CORPORATION
1615 POYDRAS STREET, SUITE 1250
NEW ORLEANS, LOUISIANA 70112

T. ALLEN USRY
JOHN F. WEEKS II
FREEMAN R. MATTHEWS
FRED SCHROEDER
CRAIG E. FROSCHE
TIMOTHY R. RICHARDSON
JASON P. WIXOM
BLAKE J. ARCURI

TELEPHONE: (504) 592-4600
FACSIMILE: (504) 592-4641
LA WATS: (800) 523-8793

July 27, 2012

Meredith Stewart
Southern Poverty Law Center
4431 Canal Street
New Orleans, Louisiana 70119

Re: Public Records Request Concerning ICE Detainers Vermilion Parish

Dear Ms. Stewart:

We are counsel for the Louisiana Sheriff's Association and also represent Vermilion Parish Sheriff Mike Couvillon. Your request for access to certain records of the Sheriff's Office has been referred to this office for response. Your requests, and the corresponding responses are as follows:

1. *All policies, procedures, and guidelines related to informing the federal government that the jail has custody of an individual who the jail believes is not a citizen of the United States.*

RESPONSE: The Vermilion Parish Sheriff's Office does not make a determination of an offender's possible immigration status. The policies, procedures, and guidelines used at the Vermilion Parish Jail relating to offenders on whom the U.S. immigration and Customs Enforcement agency ("ICE") has placed a detainer are promulgated by the U.S. Department of Homeland Security and/or ICE and are found at 8 C.F.R. 287.7. When the ICE-detained offender involved completes his/her local adjudged sentence or is to otherwise be released from detention on the state or local charges, the Sheriff's Office would notify ICE, and ICE would take custody of the offender and remove him/her from the VPSO facility within 48 hours of VPSO notification to ICE or if ICE does not assume custody, the offender would be released from VPSO custody.

2. *All policies, procedures, and guidelines related to handling immigration detainers or immigration holds, as described by 8 C.F.R. §287.7, including but not limited to:*
 - a. *All policies, procedures and guidelines related to ensuring that a copy of the jail's policies and/or procedures are given to detainees; and*
 - b. *All policies, procedures, and guidelines ensuring an individual is not detained for longer than forty-eight (48) hours.*

RESPONSE: See response to request number 1 above.



Meredith Stewart
Southern Poverty Law Center
July 27, 2012
Page -2-

3. *Copies of any immigration detainers issued by the federal government since January 1, 2009.*

RESPONSE:

The Public Records Act protects from disclosure certain categories of records of law enforcement agencies. See La. R.S. 44:3. Under this provision, the records of an arrest of a person are exempt from the disclosure provisions of the Act. See La. R.S. 44:3(A)(4)(a). This statutory restriction on access to law enforcement records specifically provides that only the initial report of investigating officers and the "records of the booking of a person as provided in Louisiana Code of Criminal Procedure Article 228, records of the issuance of a summons or citation, and records of the filing of a bill of information shall be a public record." *Id.* The records you request here, to the extent that any may exist, would be considered records arising out of the arrest of a person, which are protected from disclosure by these specific provisions of the Act.

4. *Correspondence related to any compensation received from the federal government since January 1, 2009.*

No such records exist.

5. *Correspondence related to the State Criminal Alien Assistance Program (SCAAP), including requests for funding and responses received.*

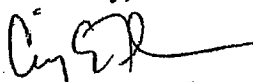
No such records exist.

6. *Any written agreements with the federal government related to detaining immigrants.*

No such records exist.

With the provision of these responses, we consider this matter concluded.

Sincerely,


Craig E. Frosch

CEF/es
cc: Sheriff Mike Couvillon



4431 Canal Street
New Orleans, LA 70119
T 504.486.8982 F 504.486.8947
www.splcenter.org

VIA FACSIMILE AND FIRST CLASS MAIL

August 2, 2012

Craig E. Frosch
Usry, Weeks & Matthews
1615 Poydras Street, Suite 1250
New Orleans, Louisiana 70112

**RE: Response to Public Records Act Request Regarding Federal Immigration
Detainers at Vermilion Parish Jail**

Dear Mr. Frosch:

I write to follow up on your July 27, 2012 letter regarding the Vermilion Parish Sheriff's response to the public records request I submitted on July 23, 2012..

*I. Response to Request for "Any Written Agreements with the Federal Government
Related to Detaining Immigrants"*

In response to my request for "any written agreements with the federal government related to detaining immigrants" you state that no such record exists. I would call your attention to the attached Intergovernmental Service Agreement ("ISGA") between the Vermilion Parish Jail and the U.S. Immigration and Naturalization Service (currently known as the Department of Homeland Security). In light of this agreement, I request that the Sheriff conduct another search for written agreements between the Vermilion Parish Jail and the federal government, including, but not limited to, documents related to the ISGA and documents indicating the ISGA has been modified, renewed, or terminated.

*II. Response to Request for "Copies of Any Immigration Detainers Issued by the Federal
Government Since January 1, 2009"*

Your letter also states the Sheriff is declining to provide access to any immigration detainers (also known as Form I-247) issued for individuals in the custody of the Vermilion Parish Jail by the federal government since January 1, 2009. As detailed below, the Louisiana Public Records Act ("Act"), La. Rev. Stat. Ann. § 44:1, *et seq.*, and the Louisiana Constitution, La. Const. art. 12, § 3, mandate disclosure of these records.

The public's right to have access to public records is a fundamental right guaranteed by statute and the constitution. LA. REV. STAT. ANN. § 44:3; LA. CONST. art. 12, § 3. "The provision of the



constitution must be construed liberally in favor of free and unrestricted access to the records, and that access can be denied only when a law, specifically and unequivocally, provides otherwise.” *Capital City Press v. E. Baton Rouge Parish Metro. Council*, 696 So. 2d 562, 564 (La. 1997). Far from “specifically and unequivocally” prohibiting access to immigration detainers, the Act makes no mention of immigration detainers, or, more generally, of records relating to federal immigration enforcement. *See generally* LA. REV. STAT. ANN. § 44:1, *et seq.* In the absence of an unequivocal exemption, the statute and the constitution require that the public have access to these records. *See Title Research Corp. v. Rausch*, 450 So. 2d 933, 936 (La. 1984) (“Whenever there is doubt as to whether the public has the right of access to certain records, the doubt must be resolved in favor of the public's right to see.”).

According to your letter, the Sheriff is invoking the Act’s “arrest records” exemption to justify withholding these records. Immigration detainers, however, are not “arrest records” and are therefore not exempt from disclosure under La. Rev. Stat. Ann. § 44:3(A)(4)(a). An immigration “detainer serves to advise another law enforcement agency that the Department [of Homeland Security] seeks custody of an alien presently in the custody of that agency, for the purpose of arresting and removing the alien. The detainer is a request that such agency advise the Department, prior to release of the alien, in order for the Department to arrange to assume custody, in situations when gaining immediate physical custody is either impracticable or impossible.” 8 C.F.R. § 287.7(a) (2012). An immigration detainer is issued after the individual is in custody of the law enforcement agency, generally post-arrest and post-booking. An immigration detainer has no relation to the individual’s underlying arrest by local law enforcement, and it is not a warrant of arrest. Furthermore, an immigration detainer relates to removal (i.e., deportation) proceedings, which are civil, not criminal. Accordingly, the Sheriff’s refusal to provide any immigration detainers is not supported by the Act’s narrow exemption for arrest records. *See Elliott v. Taylor*, 614 So. 2d 126, 128 (La. Ct. App. 1993) (“Exemptions from disclosure should be narrowly construed because they are in derogation of the public's right to know how government affairs are conducted.”).¹

Not only is an immigration detainer not an arrest record, it is analogous to an individual’s booking record, which is explicitly subject to the Act’s disclosure provisions. *See* LA. CODE CRIM. PROC. ANN. art. 228 (defining booking record); LA. REV. STAT. ANN. § 44:3(A)(4)(a) (mandating disclosure of booking information). Like an immigration detainer, bookings occur after the fact of an arrest, and the booking record provides an official record of the arrest. *See* LA. CODE CRIM. PROC. ANN. art. 228. Notably, the information on the detainer Form I-247 does not substantially differ from the information the arresting officer is required to provide in the booking summary. *Compare* Form I-247 with LA. CODE CRIM. PROC. ANN. art. 228(C)(1). Moreover, like a booking record, an immigration detainer purports to justify the local law enforcement entity’s continued detention of the individual, which must be disclosed. *See* LA.

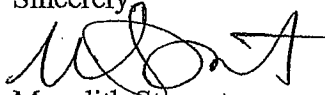
¹ In any event, even if immigration detainers are characterized as arrest records, which we disagree with, the Act clearly requires the disclosure of arrest records for individuals who have been convicted or have had a guilty plea accepted by a court. *See* LA. REV. STAT. ANN. § 44:3(A)(4)(a). As such, the Sheriff’s blanket, unsubstantiated refusal to disclose *any* detainers issued since January 1, 2009 still likely violates the Act.

CODE CRIM. PROC. ANN. art. 228 ("The booking requirement provides a valuable protection against secret arrests and improper police tactics.").

We have serious concerns about the Vermilion Parish Sheriff's refusal to comply with the Act and the Louisiana Constitution. We would like to resolve this matter amicably without resorting to legal remedies. A court is authorized to order injunctive and declaratory relief, attorney's fees, and other litigation costs if the custodian unreasonably and arbitrarily withholds public records. *See* LA. REV. STAT. ANN. § 44:35. As I mentioned in my initial request, we are willing to pay reasonable fees to cover the production of the requested documents.

I appreciate your prompt attention to this matter. If you have any questions or concerns, please do not hesitate to contact me by phone at 504-486-8982, by facsimile at 504-486-8947, or by email at meredith.stewart@splcenter.org.

Sincerely,



Meredith Stewart

Enclosure (1)

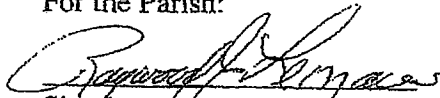
Vermillion Parish Jail
P.O. Box 307
Abbeville, Louisiana 70510

Modification No. 05
IGSA ACB-7-I-0039

This modification number 05 to Intergovernmental Service Agreement ACB-7-I-0039 makes the following change:

This Agreement is effective indefinitely from July 20, 1995.


For the Parish:


Signature

RAYWOOD LEMAIRE
Name

Date: 2/15/00

For the INS:


Roger E. Fregeau
Contracting Officer

Date: 12/8/99

Vermillion Parish Jail
P. O. Box 307
Abbeville, Louisiana 70510

Modification No. 04
IGSA A/DLS-92-6089

This modification number 04 to Intergovernmental Service Agreement A/DLS-92-6089 makes the following changes, effective 10/01/96:

A. The Agreement number is hereby changed from A/DLS-92-6089 to **ACB-7-I-0039**.

B. The new Contracting Officer name and address are as follows:

Roger E. Fregeau, Contracting Officer
U. S. Immigration & Naturalization Service
70 Kimball Avenue
South Burlington, Vermont 05403-6813
Telephone No. [REDACTED]

C. The new Payment address on page 4 of the Agreement is as follows:

U. S. Immigration & Naturalization Service
70 Kimball Avenue
South Burlington, Vermont 05403-6813
Attn: Finance
Telephone No. (802) 660-1127

For the INS:

Roger E. Fregeau

Roger E. Fregeau
Contracting Officer
Immigration & Naturalization Service
70 Kimball Avenue
South Burlington, VT 05403-6813

Date: 12/16/96

| AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT | | | | 1. CONTRACT ID CODE | PAGE OF PAGES |
|---|--|--|--|---|------------------|
| 2. AMENDMENT/MODIFICATION NO. | | 3. EFFECTIVE DATE | 4. REQUISITION/PURCHASE REQ. NO. | 5. PROJECT NO. (If applicable) | |
| Threc (3) | | 08/01/95 | | 01 01 | |
| 6. ISSUED BY | | 7. ADMINISTERED BY (If other than Item 6) | CODE | | |
| US IMMIGRATION & NATURALIZATION SERVICE 7701 NORTH STEMMONS FREEWAY DALLAS, TX 75247 | | US IMMIGRATION & NATURALIZATION SERVICE P.O. BOX 5095 OAKDALE, LA 71463-5095 | | | |
| 8. NAME AND ADDRESS OF CONTRACTOR (No. street, county, State and ZIP Code) | | | | | |
| VERMILLION PARISH JAIL P.O. BOX 307 ABBEVILLE, LA 70510 | | | | | |
| CODE | | FACILITY CODE | | 9. AMENDMENT OF SOLICITATION NO. | |
| | | | | 9A. DATED (SEE ITEM 11) | |
| | | | | 10A. MODIFICATION OF CONTRACT/ORDER NO. | |
| | | | | X IGSA-A/DLS-92-6089 | |
| | | | | 10B. DATED (SEE ITEM 11) | |
| 11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS | | | | | |
| <input type="checkbox"/> The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers <input type="checkbox"/> is extended, <input type="checkbox"/> is not extended. | | | | | |
| Offers must acknowledge receipt of this amendment prior to the hour and date specified in this solicitation or as amended, by one of the following methods: (a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment. | | | | | |
| 12. ACCOUNTING AND APPROPRIATION DATA (If required) | | | | | |
| 13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14. | | | | | |
| A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CON. | | | | | |
| B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation data, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b). | | | | | |
| X C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF: | | | | | |
| THE AGREEMENT | | | | | |
| D. OTHER (Specify type of modification and authority) | | | | | |
| E. IMPORTANT: Contractor <input type="checkbox"/> is not, <input checked="" type="checkbox"/> is required to sign this document and return _____ copies to the issuing office. | | | | | |
| 14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by DCF section headings, including solicitation/contract subject matter where feasible.) | | | | | |
| Effective 08/01/95 IGSA DLS-92-6089 IS MODIFIED AS FOLLOWS: | | | | | |
| "This agreement shall remain in force indefinitely until terminated by either party. Should conditions of an unusual nature occur, making it impractical or impossible to house detainee(s), the contractor may suspend or restrict the use of the facility by giving written notice to the INS. Such notice will be provided sixty (60) days in advance of the effective date of formal termination and at least thirty (30) days in advance of a suspension or restriction of use unless an emergency situation requires an earlier relocation of detainee(s)." | | | | | |
| Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect. | | | | | |
| 15A. NAME AND TITLE OF SIGNER (Type or print) | | | 16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) | | |
| RAYWOOD J. LEMAIRE, Sheriff | | | ARTHUR S. COOPER, III | | |
| 15B. CONTRACTOR/OFFEROR | | | 15C. DATE SIGNED | | 16C. DATE SIGNED |
| (Signature of person authorized to sign) | | | BY | | 10/13/95 |
| | | | (Signature of Contracting Officer) | | |

| | | | |
|--|---|-------------------|--------------------------------|
| AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT | | 1 | 1 |
| 2. AMENDMENT/MODIFICATION NO. TWO (2) | 3. EFFECTIVE DATE 10/03/94 | 4. REQUISITION/PL | 5. PROJECT NO. (If applicable) |
| 6. ISSUED BY US IMMIGRATION & NATURALIZATION SERVICE 7701 North Stemmons Freeway Dallas, TX 75247 | 7. ADMINISTERED BY (If other than Item 6) US IMMIGRATION & NATURALIZATION SERVICE P.O. Box 5095 Oakdale, LA 71463-5095 | | |

| | |
|---|--|
| 8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code) VERMILLION PARISH JAIL P.O. Box 307 Abbeville, Louisiana 70510 | 9A. AMENDMENT OF SOLICITATION NO. 9B. DATED (SEE ITEM 11) 10A. MODIFICATION OF CONTRACT ORDER X IGSA-A/DLS-92-6089 10B. DATED (SEE ITEM 13) 10/03/94 |
| CODE FACILITY CODE | |

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

☐ The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of offers ☐ is extended, ☐ is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:
(a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

APPROVED, ARC-RODDP: *Int Economy 11-25-94* APPROVED, ROBUD: *71.2.94*

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF ~~CONTRACTS/ORDERS~~
IT MODIFIES THE IGSA AS DESCRIBED IN ITEM 14.

| | |
|---|---|
| W | A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A. Extend Indefinitely |
| | B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation data, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b). |
| X | C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF: THE AGREEMENT |
| | D. OTHER (Specify type of modification and authority) |

IMPORTANT: Contractor ☐ is not, ☒ is required to sign this document and return 2 copies to the issuing office.

4. DESCRIPTION OF ~~AMENDMENT~~/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

Effective 10/03/94 IGSA-A/DLS-92-6089 IS MODIFIED UNDER MINIMUM STANDARDS - PART 3 as follows:

"A minimum of three nutritionally balanced meals in a 24-hour period for each detainee. No fewer than 1,500 calories total per 24 hours and, if detention exceeds four (4) days, no fewer than 2,400 calories per day thereafter. There will also be no more than 14 hours between meals.

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

| | |
|---|--|
| 5A. NAME AND TITLE OF SIGNER (Type or print) Raywood J. Lemaire, Sheriff | 16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) ARTHUR S. COOPER, III |
| 5B. CONTRACTOR/OFFEROR <i>Raywood J. Lemaire</i> (Signature of person authorized to sign) | 15C. DATE SIGNED 11/9/94 |
| | 16B. UNITED STATES OF AMERICA BY <i>Arthur S. Cooper, III</i> (Signature of Contracting Officer) |
| | 16C. DATE SIGNED 12/1/94 |

One (1)

7-20-92

6. ISSUED BY

CODE

7. ADMINISTERED BY (If other than Item 6)

CODE

US IMMIGRATION & NATURALIZATION SERVICE
7701 NORTH STEMMONS FREEWAY
DALLAS, TX 75247

US IMMIGRATION & NATURALIZATION SERVICE
P.O. BOX 5095
OAKDALE, LA 71463-5095

8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code)

Vermillion Parish Jail
P.O. Box 307
Abbeville, Louisiana 70510

9A. AMENDMENT OF SOLICITATION NO.

9B. DATED (SEE ITEM 11)

10A. MODIFICATION OF

X IGSA-A/DLS-92-6089

10B. DATED (SEE ITEM 13)

CODE

FACILITY CODE

7-20-92

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

☐ The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of offers ☐ is extended, ☐ is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:

(a) By completing Items 8 and 15, and returning _____ copies of this amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

N/A

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS OR ORDERS.
IT MODIFIES THE IGSA AS DESCRIBED IN ITEM 14.

14. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.

B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation data, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).

C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:

X THE AGREEMENT

D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor ☐ is not, ☒ is required to sign this document and return 2 copies to the issuing office.

14. DESCRIPTION OF MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

The FINANCIAL PROVISIONS on page 3 of the Agreement are changed as follows:
The per diem rate under this agreement if \$46.00 per manday for Cuban and Non-Cuban criminal alien detainees.

////////////////////END OF MODIFICATION////////////////////

Rabate 10/23/92

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)

Raywood J. LeMaire
Sheriff

16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)

ARTHUR S. COOPER III
Contracting Officer

15B. CONTRACTOR/OFFEROR

15C. DATE SIGNED

16B. UNITED STATES OF AMERICA

16C. DATE SIGNED

Signature of person authorized to sign

9-17-92

Signature of Contracting Officer

11/4/92

IGSA-A/DLS- 92-6089

INTERGOVERNMENTAL SERVICE AGREEMENT

PURPOSE

The purpose of this Intergovernmental Service Agreement is to establish a formal binding relationship between the United States, Immigration and Naturalization Service (hereafter referred to as the "Service") and the Vermillion Parish Jail (hereafter referred to as the "Provider") for the long term detention and care of Mariel Cuban aliens and aliens of other nationalities (hereafter referred to as "Detainees").

SUPPORT, MEDICAL SERVICES AND GUARD SERVICES

The **Provider** agrees to accept and provide for the secure custody, care, and safekeeping of detainees in accordance with the State and local laws, standards, policies, procedures, or court orders applicable to the operations of the facility.

The **Provider** agrees to provide INS detainees with the same level of medical care and services as provided non-INS prisoners as part of the per manday per diem rate. This rate includes:

- o On-site sick call (when provided by on-site staff);
- o Medications (over the counter/non-legend and routine drugs and medical supplies);
- o Emergency ambulance service to off-site health care services; and
- o Escort/security guard services for transport to/from emergency or non-emergency health care services as either an in-patient or out-patient.

The **Provider** agrees to provide stationary guard services as requested or required for detainees committed to a medical facility for inpatient medical care. Such services will be performed by qualified law enforcement or correctional officer personnel employed by the **Provider** under their policies, procedures and practices. The **Provider** agrees to augment such practices as may be requested by the **Service** to enhance specific requirements for security, detainee monitoring, visitation and contraband control. The itemized monthly invoice for such stationary guard services shall state the number of hours being billed, the duration of the billing (times and dates) and the name of the detainee(s) that was guarded. The **Service** agrees to reimburse the **Provider** for actual stationary guard services provided at the rate of \$7.50 per hour.

When specifically requested by the **Service**, the **Provider** agrees to arrange for and/or provide non-emergency ambulance transportation service to transport detainees from one off-site medical care facility to another. The **Service** agrees to provide reimbursement, over and above the per manday per diem rate, to the **Provider** for such ambulance transportation services when the costs are included with the regular monthly billing for detention services.

The **Provider** further agrees to include all costs associated with hospital or health care services specifically provided to any detainees both inside and outside the facility, with the regular monthly billing to the **Service** for detention services. In this case, the **Provider** arranges for the health care facility, consultant health care provider, and other health care vendor/suppliers to invoice the **Provider** for services provided at rates no greater than those applicable for non-INS detainees in the custody of the **Provider**. The **Service** shall include payment for the hospital/health care services provided along with the monthly payment for detention services. The **Provider** shall submit invoices for hospital and health care services to the **Service** within sixty (60) days after the services were rendered. In addition, the following documentation must be provided in order to support INS payment of these costs:

- 1) Health Care Facility invoice with discharge summary attached which includes diagnosis, treatment, prognosis and follow-up needed;
- 2) Health Care Provider invoice with note attached which includes diagnosis, treatment and follow-up needed;
- 3) Health Care Vendors/Suppliers invoice with name of INS detainee(s) and list of services/supplies rendered.

The **Provider** shall also notify the designated contact person at the local **Service** office, when any reimbursable medical care is provided to a detainee inside the **Provider's** facility or at a medical care facility outside of the **Provider's** facility, in accordance with procedures to be established and mutually agreed upon.

As requested or required by the **Service** the **Provider** shall furnish necessary articles of clothing (1 pair jeans, 1 shirt, 1 set underwear, 1 pair socks, 1 pair shoes, and if required by weather, 1 coat or jacket) to detainees prior to their release to a half-way house or to family. The **Service** agrees to reimburse the **Provider** for all actual costs for providing such clothing. The charges for clothing costs shall be included with the regular monthly billing to the **Service** for detention services. A copy of the receipts for such clothing paid by the **Provider** shall be submitted with the detention billing to support the reimbursement.

MINIMUM STANDARDS

The Provider agrees to meet the following minimum standards:

1. 24 hour supervision
2. Full compliance with applicable fire and/or life safety codes, and has appropriate smoke/fire detection equipment installed in the facility.
3. A minimum of two meals in a 24 hour period for each detainee. No fewer than 1,500 calories total per 24 hours and, if detention exceeds four (4) days no fewer than 2,000 calories per day thereafter. There will also be no more than 14 hours between meals.
4. Appropriate 24 hour emergency medical care, and emergency evacuation procedures.
5. When detained overnight, each detainee will be provided a mattress, and, when appropriate, a blanket.

FACILITY LOCATION

The Provider shall provide detention services for aliens at the following institutions(s):

Vermillion Parish Jail
P.O. Box 307
Abbeville, Louisiana 70510

INSPECTION

The Provider agrees to allow periodic inspections of the facility by INS jail inspectors. Findings will be shared with the facility administrator in order to promote improvements to facility operations or conditions of confinement.

FINANCIAL PROVISIONS

The per diem rate under this agreement is \$46.00 per manday for Cubans, \$35.00 per manday for Non-Cubans. The rate covers one person per day. The Government may not be billed for two days when an alien is admitted one evening and removed the following morning. The Provider may bill for the day of arrival but not for the day of departure.

The Provider shall prepare and submit an itemized invoice for services provided each month, in arrears. The invoice is to be submitted to the following location:

U.S. Immigration & Naturalization Service
P.O. Box 960 - 207 E. 5th Ave.
Oakdale, Louisiana 71463

Payments under this agreement shall be effected within thirty calendar days after receipt of a correct and proper invoice, by the following office:

Immigration & Naturalization Service
7701 North Stemmons Freeway (ROBUD)
Dallas, Texas 75247

Payments effected under the terms of this agreement are to be submitted to the following address:

Vermillion Parish Jail
P.O. Box 307
Abbeville, Louisiana 70510

This agreement shall be in effect on July 20, 1992, and shall remain in effect until July 20, 1995 (not to exceed three years from the date of execution), unless terminated sooner in writing, by either party. Should conditions of an unusual nature occur making it impractical or undesirable to continue to house aliens, the Provider may suspend or restrict the use of the facility by the Service by giving written notice of such intent to the Service. Such notice will be provided 30 days in advance of the effective date of a formal termination and at least two weeks in advance of suspension or restriction of use unless an emergency situation requires the immediate relocation of aliens.

The Provider may initiate a request for a rate increase or decrease by notifying the local office of the Service in writing a least 60 days prior to the desired effective date of the adjustment. Any rate increase must be justified in writing to the local Service office prior to being approved. Changes in rates or other terms and/or conditions of this agreement, shall be effected by the issuance of either an amendment to this agreement, or the execution of a new agreement.

ORDERING OFFICE(S)

The following **Service** office(s) at the address(s) shown may place orders for detention related services in accordance with the text above:

Immigration & Naturalization Service
P.O. Box 960 - 207 E. 5th Ave.
Oakdale, Louisiana 71463

CONTACT PERSONS

The **Provider** is advised to contact the following representative(s) at the local **Service** office(s) for assistance in matters related to this agreement:

Name: [REDACTED]
Title: Chief of Detention
Phone #: [REDACTED]

The **Service** may contact the following representatives of the **Provider** for assistance in matters related to this agreement:

Name: [REDACTED]
Title: Warden
Phone #: [REDACTED]

CONCURRENCE/FUNDING DATA:

1251/2501/Approved: [Signature] ARC-RODDP

Approved ROBUD: [Signature] 8/14/92

SIGNATURES & EXECUTION

U.S. Department of Justice
IMMIGRATION AND
NATURALIZATION SERVICE

FAX

for
ARTHUR S. COOPER, III
Contracting Officer

Name of Person Authorized to
Sign on Behalf of the Provider

[Signature]
Signature

[Signature]
Signature

8-21-92
Date Signed

8/5/92
Date Signed

USRY, WEEKS & MATTHEWS

A PROFESSIONAL LAW CORPORATION
1615 POYDRAS STREET, SUITE 1250
NEW ORLEANS, LOUISIANA 70112

T. ALLEN USRY
JOHN F. WEEKS II
FREEMAN R. MATTHEWS
FRED SCHROEDER
CRAIG E. FROSCHE
TIMOTHY R. RICHARDSON
JASON P. WIXOM
BLAKE J. ARCURI

TELEPHONE: (504) 592-4600
FACSIMILE: (504) 592-4641
LA WATS: (800) 523-8793

August 15, 2012

VIA FACSIMILE 486-8947 AND REGULAR MAIL

Meredith Stewart
Southern Poverty Law Center
4431 Canal Street
New Orleans, LA 70119

**Re: Public Records Request seeking ICE Detainer Information
Vermilion Parish**

Dear Ms. Stewart:

We write in reply to your response to our objections to certain parts of your Public Records Request directed to Louisiana Sheriffs seeking records related to the 48-hour immigration detainees that may be issued by the Immigration and Customs Enforcement Agency. Insofar as your reply suggested that the Vermilion Parish Sheriff was improperly withholding records responsive to your request for contracts between the Sheriff's office and ICE "related to detaining immigrants," we must disagree with your judgment of the response provided. The contracts you attached to your reply relate to the long-term housing of INS/ICE detainees, not the distinct 48-hour limited ICE detainees we understood your request to inquire about.

We also note that the subject series of contracts you rely upon in your criticism of the Sheriff's response were entered into by former Sheriff Ray Lemaire, who left office in 2004. The last extension of the INS/ICE contract you included was signed in 2000. The current Sheriff's administration does not have a contract to hold INS detainees on a long term or any other basis, and has no records pertaining to the INS/ICE contracts of the previous sheriff's administration. It is important here to note that the Public Records Act generally only requires records to be retained for a period of three years. See La. R.S. 44:36(A). That retention period as it may have related to the subject contracts, signed as they were in 2000 and before, expired some time ago.

We must also respectfully disagree with your interpretation that these detainees are not included in the Public Records Act exclusion for records of the arrest of persons accused of criminal activity found at La. R.S. 44:3(A)(4)(a). The only reason for the existence of these detainees is the fact that the person has been arrested on local charges. That is to say, the Sheriffs would only receive these detainer requests because a person has been arrested and is being maintained in the Sheriff's custody pending disposition of the local criminal charges or a release on bail. We believe that the detainees would thus be records generated because of the arrest. Therefore, we believe they are reasonably considered records pertaining to the arrest of a person and are covered by the referenced exception to the disclosure provisions of the Act.



Meredith Stewart
Southern Poverty Law Center
August 15, 2012
Page -2-


In our view, the Public Records Act in this manner protects from disclosure the records pertaining to the arrest of a person to include the records of that person's detention, just as it protects from disclosure "prison records" obtained by the Louisiana Department of Corrections with regard to convicted persons. See La. R.S. 44:4.1(B)(7); La. R.S. 15:574.12(A); *Johnston v. Stalder*, 97-0584, 754 So. 2d 246, 252 (La. App. 1st Cir. 12/22/1998) ("this statute specifically and unequivocally provides that the prison record of an inmate obtained by DPSC in the discharge of its official duties is confidential and shall not be subject to public inspection."). We also note that in its opinion number 09-0139, the Louisiana Attorney General's Office found that the term "prison records" included within its scope work release records of convicted persons, including information such as hours worked, salary earned, and work assignment history. This conclusion was reached even though the words "work release records" are found nowhere in the exceptions to the Public Records Act. Your view that immigration detainees are not protected because those words do not appear in Title 44 is by this rationale unavailing.

We also observe that the courts have made it clear that the constitutionally protected privacy interests of individuals sometimes must be weighed against the public's right to know in making a determination as to whether a particular records set is subject to the provisions of the Public Records Act. For while the Constitution does indeed enshrine the doctrine of broad access to public records within its scope, it also without question includes at least equal protection for a person's right to privacy. Article 1, Section 5 of the Louisiana Constitution provides that "every person shall be secure in his person, property, communications, houses, papers and effects against unreasonable searches, seizures, and invasions of privacy." La. Const. Art. 1, Sec. 5. Again, we believe that this constitutional right to privacy should be considered when interpreting the Public Records Act.

With respect to R.S. 44:3(A)(1)(a), we are of the opinion that the phrase "records of the arrest of a person" would include within its scope, all records pertaining to the arrest of a person and that person's pre-trial detention in a parish jail facility, which records would include the immigration detainees to which you seek access. If the Public Records Act protects from disclosure a convicted person's prison record, which arguably would include a 48-hour immigration detainer, the constitutional right to privacy should weigh in favor of an interpretation of R.S. 44:3(A)(1)(a) that affords at least similar protection to the arrest and pretrial detention records of an accused person.

In short, we stand by our original analysis.

Sincerely,



Craig E. Frosch

CEF/es
cc: Sheriff Mike Couvillon



4431 Canal Street
New Orleans, LA 70119
T 504.486.8982 F 504.486.8947
www.splcenter.org

VIA FACSIMILE AND U.S. MAIL

August 21, 2012

Craig E. Frosch
Usry, Weeks & Matthews
1615 Poydras Street, Suite 1250
New Orleans, Louisiana 70112

RE: Public Records Act Request Regarding Federal Immigration Detainers from Sheriffs of Allen, Ascension, Assumption, Caldwell, East Carroll, Lincoln, Livingston, Morehouse, Ouachita, Sabine, St. Helena, St. James, Vermilion, Vernon, and West Baton Rouge Parish

Dear Mr. Frosch:

I write to follow up on your letters regarding the abovementioned Sheriffs' response to the public records request we submitted on July 23, 2012. According to your letters, these Sheriffs are refusing to disclose the immigration detainers (Form I-247) that we are seeking. As you know, our position is that the immigration detainers are public records subject to disclosure under the Louisiana Constitution and the Louisiana Public Records Act ("Act"), La. Rev. Stat. Ann. § 44:1, *et seq.*

You have cited the Act's exemptions for arrest records and prison records to justify withholding the immigration detainers. We have previously stated our position with respect to the arrest records exemption. In short, immigration detainers are not "records of the arrest of a person" and, even if immigration detainers are characterized as such, which we disagree with, the Act clearly requires the disclosure of arrest records for individuals who have been convicted or have had a guilty plea accepted by a court. LA. REV. STAT. ANN. § 44:3(A)(4)(a). The Sheriffs' blanket refusal to disclose any immigration detainers issued since January 1, 2009 is not justified by the arrest records exemption.

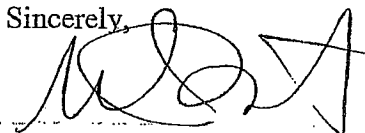
The prison records exemption is also inapplicable to our request. This exemption only includes information obtained by the Department of Public Safety and Corrections. *See* LA. REV. STAT. ANN. § 44:4.1(B)(7); LA. REV. STAT. ANN. § 15:574.12(A); *see also* La. Att'y Gen. Op. No. 09-0235, 1 n.1 (July 19, 2010) (noting the exemption is only triggered when the information is gathered by the Department of Public Safety and Corrections). We are requesting the detainers from the parish sheriffs, not the Louisiana Department of Public Safety and Corrections. As such, the prison records exemption does not support the Sheriffs' denial of our right to inspect these records.



To the extent your letter analogizes detainers to arrest and prison records to suggest that our request implicates constitutional privacy concerns, we respectfully disagree. An immigration detainer simply does not include the type of confidential information the Act protects from disclosure through its express and narrowly construed exemptions. See DHS Form I-247 "Immigration Detainer - Notice of Action." An immigration detainer includes information that is nearly identical to the information in an individual's booking record, which is a public record under the Act. See LA. CODE CRIM. PROC. ANN. art. 228; LA. REV. STAT. ANN. § 44:3(A)(4)(a). Moreover, Immigration and Customs Enforcement issues an immigration detainer only *after* an individual is in the custody of local law enforcement. See 8 C.F.R. § 287.7(a) (2012). In order for a local law enforcement entity to legally arrest an individual, a probable cause determination must first be made. U.S. CONST. amend. IV; *Henry v. United States*, 361 U.S. 98, 100 (1959). In the public records context, the Attorney General has noted that after a "determination that probable cause [for arrest] exists . . . an individual's right to privacy would not be violated." La. Att'y Gen. Op. No. 95-294, 4 (Jan. 23, 1996) (instructing that outstanding arrest warrants are public records). For these reasons, the disclosure of immigration detainers does not implicate constitutional privacy concerns.

We would like to resolve this matter amicably without resorting to legal remedies. However, in the event this issue cannot be resolved, we are preparing to file lawsuits against your Sheriff clients pursuant to La. Rev. Stat. Ann. § 44:35(A). If you have any questions or concerns, please do not hesitate to contact me by phone at 504-486-8982, by facsimile at 504-486-8947, or by email at meredith.stewart@splcenter.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'Meredith Stewart', with a stylized, looped flourish at the end.

Meredith Stewart

Cc: Katie Schwartzmann

TRANSACTION REPORT

P.01/01

AUG/21/2012/TUE 00:56 PM

FAX (TX)

| # | DATE | START T. | RECEIVER | COM.TIME | PAGE | TYPE/NOTE | FILE |
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SPLC



Southern Poverty Law Center

4431 Canal Street
New Orleans, LA 70119
T 504.486.8982
F 504.486.8947
www.splcenter.org

FAX

| | | | |
|-------|--|-------|-----------------------------|
| To | Craig E. Frosch | From | Meredith Stewart |
| Fax | Usry, Weeks, and Matthews | Pages | 3 including this cover page |
| Phone | (504) 592-4641 | Date | August 21, 2012 |
| Re | Public Records Request to Louisiana Sheriffs | CC | |

☒ Urgent ☐ For Review ☐ Please Comment ☒ Please Reply ☐ Please Recycle

Comments

Please see the attached letter regarding our public records request. Thank you.

CONFIDENTIALITY NOTICE: The information contained in this transmission is attorney privileged and confidential. It is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution of or the taking of any action in reliance on the contents of this telecopied information is strictly prohibited. If you received this transmission in error, please notify us immediately by telephone collect and return the original transmission to us via the United States Postal Service. We will reimburse you for the postage.

DEPARTMENT OF HOMELAND SECURITY
IMMIGRATION DETAINER - NOTICE OF ACTION

Subject ID:
Event #:

File No:
Date:

TO: (Name and Title of Institution - OR Any Subsequent Law Enforcement Agency)

FROM: (Department of Homeland Security Office Address)

MAINTAIN CUSTODY OF ALIEN FOR A PERIOD NOT TO EXCEED 48 HOURS

Name of Alien: _____

Date of Birth: _____ Nationality: _____ Sex: _____

THE U.S. DEPARTMENT OF HOMELAND SECURITY (DHS) HAS TAKEN THE FOLLOWING ACTION RELATED TO THE PERSON IDENTIFIED ABOVE, CURRENTLY IN YOUR CUSTODY:

- ☐ Initiated an investigation to determine whether this person is subject to removal from the United States.
- ☐ Initiated removal proceedings and served a Notice to Appear or other charging document. A copy of the charging document is attached and was served on _____ (Date)
- ☐ Served a warrant of arrest for removal proceedings. A copy of the warrant is attached and was served on _____ (Date)
- ☐ Obtained an order of deportation or removal from the United States for this person.

This action does not limit your discretion to make decisions related to this person's custody classification, work, quarter assignments, or other matters. DHS discourages dismissing criminal charges based on the existence of a detainer.

IT IS REQUESTED THAT YOU:

- ☐ Maintain custody of the subject for a period **NOT TO EXCEED 48 HOURS**, excluding Saturdays, Sundays, and holidays, beyond the time when the subject would have otherwise been released from your custody to allow DHS to take custody of the subject. This request flows from federal regulation 8 C.F.R. § 287.7, which provides that a law enforcement agency "shall maintain custody of an alien" once a detainer has been issued by DHS. **You are not authorized to hold the subject beyond these 48 hours.** As early as possible prior to the time you otherwise would release the subject, please notify the Department by calling _____ during business hours or _____ after hours or in an emergency. If you cannot reach a Department Official at these numbers, please contact the Immigration and Customs Enforcement (ICE) Law Enforcement Support Center in Burlington, Vermont at: (802) 872-6020.
- ☐ Provide a copy to the subject of this detainer.
- ☐ Notify this office of the time of release at least 30 days prior to release or as far in advance as possible.
- ☐ Notify this office in the event of the inmate's death, hospitalization or transfer to another institution.
- ☐ Consider this request for a detainer operative only upon the subject's conviction.
- ☐ Cancel the detainer previously placed by this Office on _____ (Date)

(Name and title of Immigration Officer)

(Signature of Immigration Officer)

TO BE COMPLETED BY THE LAW ENFORCEMENT AGENCY CURRENTLY HOLDING THE SUBJECT OF THIS NOTICE:

Please provide the information below, sign, and return to the Department using the envelope enclosed for your convenience or by faxing a copy to _____. You should maintain a copy for your own records so you may track the case and not hold the subject beyond the 48-hour period.

Local Booking or Inmate # _____ Date of latest criminal charge/conviction: _____

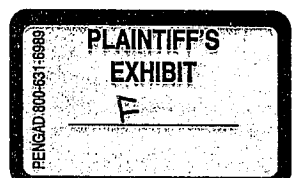
Last criminal charge/conviction: _____

Estimated release date: _____

Notice: Once in our custody, the subject of this detainer may be removed from the United States. If the individual may be the victim of a crime, or if you want this individual to remain in the United States for prosecution or other law enforcement purposes, including acting as a witness, please notify the ICE Law Enforcement Support Center at (802) 872-6020.

(Name and title of Officer)

(Signature of Officer)



NOTICE TO THE DETAINEE

The Department of Homeland Security (DHS) has placed an immigration detainer on you. An immigration detainer is a notice from DHS informing law enforcement agencies that DHS intends to assume custody of you after you otherwise would be released from custody. DHS has requested that the law enforcement agency which is currently detaining you maintain custody of you for a period not to exceed 48 hours (excluding Saturdays, Sundays, and holidays) beyond the time when you would have been released by the state or local law enforcement authorities based on your criminal charges or convictions. **If DHS does not take you into custody during that additional 48 hour period, not counting weekends or holidays, you should contact your custodian** (the law enforcement agency or other entity that is holding you now) to inquire about your release from state or local custody. **If you have a complaint regarding this detainer or related to violations of civil rights or civil liberties connected to DHS activities, please contact the ICE Joint Intake Center at 1-877-2INTAKE (877-246-8253).** If you believe you are a United States citizen or the victim of a crime, please advise DHS by calling the ICE Law Enforcement Support Center toll free at (855) 448-6903.

NOTIFICACIÓN A LA PERSONA DETENIDA

El Departamento de Seguridad Nacional (DHS) de EE. UU. ha emitido una orden de detención migratoria en su contra. Mediante esta orden, se notifica a los organismos policiales que el DHS pretende arrestarlo cuando usted cumpla su reclusión actual. El DHS ha solicitado que el organismo policial local o estatal a cargo de su actual detención lo mantenga en custodia por un período no mayor a 48 horas (excluyendo sábados, domingos y días festivos) tras el cese de su reclusión penal. **Si el DHS no procede con su arresto migratorio durante este período adicional de 48 horas, excluyendo los fines de semana o días festivos, usted debe comunicarse con la autoridad estatal o local que lo tiene detenido** (el organismo policial u otra entidad a cargo de su custodia actual) para obtener mayores detalles sobre el cese de su reclusión. **Si tiene alguna queja que se relacione con esta orden de detención o con posibles infracciones a los derechos o libertades civiles en conexión con las actividades del DHS, comuníquese con el Joint Intake Center (Centro de Admisión) del ICE (Servicio de Inmigración y Control de Aduanas) llamando al 1-877-2INTAKE (877-246-8253).** Si usted cree que es ciudadano de los Estados Unidos o que ha sido víctima de un delito, infórmele al DHS llamando al Centro de Apoyo a los Organismos Policiales (Law Enforcement Support Center) del ICE, teléfono (855) 448-6903 (llamada gratuita).

Avis au détenu

Le département de la Sécurité Intérieure [Department of Homeland Security (DHS)] a émis, à votre rencontre, un ordre d'incarcération pour des raisons d'immigration. Un ordre d'incarcération pour des raisons d'immigration est un avis du DHS informant les agences des forces de l'ordre que le DHS a l'intention de vous détenir après la date normale de votre remise en liberté. Le DHS a requis que l'agence des forces de l'ordre, qui vous détient actuellement, vous garde en détention pour une période maximum de 48 heures (excluant les samedis, dimanches et jours fériés) au-delà de la période à la fin de laquelle vous auriez été remis en liberté par les autorités policières de l'État ou locales en fonction des inculpations ou condamnations pénales à votre rencontre. **Si le DHS ne vous détient pas durant cette période supplémentaire de 48 heures, sans compter les fins de semaines et les jours fériés, vous devez contacter votre gardien** (l'agence des forces de l'ordre qui vous détient actuellement) pour vous renseigner à propos de votre libération par l'État ou l'autorité locale. **Si vous avez une plainte à formuler au sujet de cet ordre d'incarcération ou en rapport avec des violations de vos droits civils liées à des activités du DHS, veuillez contacter le centre commun d'admissions du Service de l'Immigration et des Douanes [ICE - Immigration and Customs Enforcement] [ICE Joint Intake Center] au 1-877-2INTAKE (877-246-8253).** Si vous croyez être un citoyen des États-Unis ou la victime d'un crime, veuillez en aviser le DHS en appelant le centre d'assistance des forces de l'ordre de l'ICE [ICE Law Enforcement Support Center] au numéro gratuit (855) 448-6903.

AVISO AO DETENTO

O Departamento de Segurança Nacional (DHS) emitiu uma ordem de custódia migratória em seu nome. Este documento é um aviso enviado às agências de imposição da lei de que o DHS pretende assumir a custódia da sua pessoa, caso seja liberado. O DHS pediu que a agência de imposição da lei encarregada da sua atual detenção mantenha-o sob custódia durante, no máximo, 48 horas (excluindo-se sábados, domingos e feriados) após o período em que seria liberado pelas autoridades estaduais ou municipais de imposição da lei, de acordo com as respectivas acusações e penas criminais. **Se o DHS não assumir a sua custódia durante essas 48 horas adicionais, excluindo-se os fins de semana e feriados, você deverá entrar em contato com o seu custodiante** (a agência de imposição da lei ou qualquer outra entidade que esteja detendo-o no momento) para obter informações sobre sua liberação da custódia estadual ou municipal. **Caso você tenha alguma reclamação a fazer sobre esta ordem de custódia migratória ou relacionada a violações dos seus direitos ou liberdades civis decorrente das atividades do DHS, entre em contato com o Centro de Entrada Conjunta da Agência de Controle de Imigração e Alfândega (ICE) pelo telefone 1-877-246-8253.** Se você acreditar que é um cidadão dos EUA ou está sendo vítima de um crime, informe o DHS ligando para o Centro de Apoio à Imposição da Lei do ICE pelo telefone de ligação gratuita (855) 448-6903.

THÔNG BÁO CHO NGƯỜI BỊ GIAM GIỮ

Bộ Quốc Phòng (DHS) đã có lệnh giam giữ quý vị vì lý do di trú. Lệnh giam giữ vì lý do di trú là thông báo của DHS cho các cơ quan thi hành luật pháp là DHS có ý định tạm giữ quý vị sau khi quý vị được thả. DHS đã yêu cầu cơ quan thi hành luật pháp hiện đang giữ quý vị phải tiếp tục tạm giữ quý vị trong không quá 48 giờ đồng hồ (không kể thứ Bảy, Chủ nhật, và các ngày nghỉ lễ) ngoài thời gian mà lẽ ra quý vị sẽ được cơ quan thi hành luật pháp của tiểu bang hoặc địa phương thả ra dựa trên các bản án và tội hình sự của quý vị. **Nếu DHS không tạm giam quý vị trong thời gian 48 giờ bổ sung đó, không tính các ngày cuối tuần hoặc ngày lễ, quý vị nên liên lạc với bên giam giữ quý vị (cơ quan thi hành luật pháp hoặc tổ chức khác hiện đang giam giữ quý vị) để hỏi về việc cơ quan địa phương hoặc liên bang thả quý vị ra. Nếu quý vị có khiếu nại về lệnh giam giữ này hoặc liên quan tới các trường hợp vi phạm dân quyền hoặc tự do công dân liên quan tới các hoạt động của DHS, vui lòng liên lạc với ICE Joint Intake Center tại số 1-877-2INTAKE (877-246-8253). Nếu quý vị tin rằng quý vị là công dân Hoa Kỳ hoặc nạn nhân tội phạm, vui lòng báo cho DHS biết bằng cách gọi ICE Law Enforcement Support Center tại số điện thoại miễn phí (855) 448-6903.**

对被拘留者的通告

美国国土安全部 (DHS) 已发出对你的移民监禁令。移民监禁令是美国国土安全部用来通告执法当局, 表示美国国土安全部意图在你可能从当前的拘留被释放以后继续拘留你的通知单。美国国土安全部已经向当前拘留你的执法当局要求, 根据对你的刑事起诉或判罪的基础, 在本当由州或地方执法当局释放你时, 继续拘留你, 为期不超过 48 小时 (星期六、星期天和假日除外)。如果美国国土安全部未在不计周末或假日的额外 48 小时期限内将你拘留, 你应该联系你的监管单位 (现在拘留你的执法当局或其他单位), 询问关于你从州或地方执法单位被释放的事宜。如果你对于这项拘留或关于美国国土安全部的行动所涉及的违反民权或公民自由权有任何投诉, 请联系美国移民及海关执法局联合接纳中心 (ICE Joint Intake Center), 电话号码是 1-877-2INTAKE (877-246-8253)。如果你相信你是美国公民或犯罪被害人, 请联系美国移民及海关执法局的执法支援中心 (ICE Law Enforcement Support Center), 告知美国国土安全部。该执法支援中心的免费电话号码是 (855) 448-6903。

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

INTERIM Policy Number 10074.1: Detainers

Issue Date: 08/02/2010

Effective Date: 08/02/2010

Superseded: LESC LOP 005-09 (September 23, 2009)

Federal Enterprise Architecture Number: 111-601-001-a

1. **Purpose/Background.** This directive establishes the interim policy of U.S. Immigration and Customs Enforcement (ICE) regarding the issuance of civil immigration detainers.
2. **Definitions.** The following definitions apply for purposes of this directive only.
 - 2.1. A **detainer** (Form I-247) is a notice that ICE issues to Federal, State, and local law enforcement agencies (LEAs) to inform the LEA that ICE intends to assume custody of an individual in the LEA's custody. An immigration detainer may serve three key functions—
 - notify an LEA that ICE intends to arrest or remove an alien in the LEA's custody once the alien is no longer subject to the LEA's detention;
 - request information from an LEA about an alien's impending release so ICE may assume custody before the alien is released from the LEA's custody; and
 - request that the LEA maintain custody of an alien who would otherwise be released for a period not to exceed 48 hours (excluding Saturdays, Sundays, and holidays) to provide ICE time to assume custody.
 - 2.2. An **Immigration officer** includes an officer or an agent who is authorized to issue detainers pursuant to 8 C.F.R. § 287.7(b), or who a state, local, or tribal officer or agent who is delegated such authority pursuant to § 287(g) of the Immigration and Nationality Act.
3. **Policy.**
 - 3.1. Only immigration officers may issue detainers.
 - 3.2. Immigration officers shall issue detainers only after an LEA has exercised its independent authority to arrest the alien for a criminal violation.
4. **Procedures.**
 - 4.1. Immigration officers shall not issue a detainer unless an LEA has exercised its independent authority to arrest the alien. Immigration officers shall not issue detainers for aliens who have been temporarily detained by the LEA (i.e., roadside or *Terry* stops)

but not arrested. This policy, however, does not preclude temporary detention of an alien by the LEA while ICE responds to the scene.

- 4.2. If an immigration officer has reason to believe that an individual arrested by an LEA is subject to ICE detention for removal or removal proceedings, and issuance of the detainer otherwise comports with this policy and appears to advance the priorities of the agency, the immigration officer may issue a detainer (Form I-247) to the LEA.
- 4.3. If the alien is the subject of an administrative arrest warrant, warrant of removal, or removal order, the immigration officer who issues the detainer should attach the warrant or order to the detainer, unless impracticable.
- 4.4. Immigration officers are expected to make arrangements to assume custody of an alien who is the subject of a detainer in a timely manner and without unnecessary delay. Although a detainer serves to request that an LEA temporarily detain an alien for a period not to exceed 48 hours from the time the LEA otherwise would have released the alien (excluding Saturdays, Sundays, and holidays) to permit ICE to assume custody of the alien, immigration officers should avoid relying on that hold period. If at any time after a detainer is issued, ICE determines it will not assume custody of the alien, the detainer should be withdrawn or rescinded and the LEA notified.
- 4.5. ICE shall timely assume custody of the alien if ICE has opted to lodge a detainer against an alien in any of the following categories—
 - aliens who are subject to removal based upon certain criminal or security-related grounds set forth in INA § 236(c);
 - aliens who are within the “removal period,” as defined in INA § 241(a)(2); and
 - aliens who have been arrested for controlled substance offenses under INA § 287(d).
- 4.6. Immigration officers shall take particular care when issuing a detainer against a lawful permanent resident (LPR) as some grounds of removability hinge on a conviction, while others do not [eg. removability pursuant to INA § 237(a)(4) and INA § 237(a)(1)(E).] Although in certain instances ICE may hold LPRs for up to 48 hours to make charging determinations, immigration officers should exercise such authority judiciously and seek advice of counsel for guidance if the LPR has not been convicted of a removable offense.
- 4.7. Immigration officers should consult their supervisors or local chief counsel office with all inquiries, questions, or concerns regarding this policy.
5. **Authorities/References.**
 - 5.1. INA §§ 103(a)(3), 236, 241, 287.
 - 5.2. 8 C.F.R. §§ 236.1, 287.3, 287.5, 287.7, 287.8, 1236.1.

6. **Attachments.**

6.1. Form I-247: Immigration Detainer - Notice of Action.

7. **No Private Right Statement.** This Directive is an internal policy statement of ICE. It is not intended to, and does not create any rights, privileges, or benefits, substantive or procedural, enforceable by any party against the United States; its departments, agencies, or other entities; its officers or employees; contractors or any other person.



John Morton

Director

U.S. Immigration and Customs Enforcement

**FIFTEENTH JUDICIAL DISTRICT COURT
PARISHES OF ACADIA, LAFAYETTE, AND VERMILION
STATE OF LOUISIANA**

Katie Schwartzmann
Plaintiff/Petitioner

v.

Michael A. Couvillon, in his official capacity
as Sheriff of Vermilion Parish
Defendant/Respondent

Doc. No. _____

Div. No. _____

RULE TO SHOW CAUSE

In consideration of the Petition for Writ of Mandamus and supporting Memorandum of Law filed by Plaintiff/Petitioner Katie Schwartzmann ("Schwartzmann"),

IT IS HEREBY ORDERED that the Defendant/Respondent, Michael A. Couvillon, in his official capacity as Sheriff of Vermilion Parish, show cause on the _____ day of _____, 2012, before the Fifteenth Judicial District Court, Division _____, at _____, why the Petition for Writ of Mandamus should not be granted and the records requested by the Plaintiff/Petitioner should not be produced.

SIGNED AND ORDERED on this _____ day of _____, 2012 in the City of Abbeville, Louisiana, Parish of Vermilion, State of Louisiana.

Honorable Judge
Fifteenth Judicial District Court

VERMILION PARISH, LA.
FILED THIS DAY

2012 SEP 19 A 9:22

Madeline Newby Brown
CLERK OF COURT

**FIFTEENTH JUDICIAL DISTRICT COURT
PARISHES OF ACADIA, LAFAYETTE, AND VERMILION
STATE OF LOUISIANA**

Katie Schwartzmann
Plaintiff/Petitioner

v.

Michael A. Couvillon, in his official capacity
as Sheriff of Vermilion Parish
Defendant/Respondent

Doc. No. _____

Div. No. _____

**MEMORANDUM OF LAW IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS
AND DECLARATORY RELIEF**

The Plaintiff/Petitioner, Katie Schwartzmann (“Schwartzmann”), seeks a writ of mandamus and declaratory judgment against the Defendant/Respondent, Michael A. Couvillon, in his official capacity as the Sheriff of Vermilion Parish, stating that federal immigration detainers (Form I-247) are subject to disclosure under the Louisiana Public Records Act (“Act”), La. Rev. Stat. Ann. § 44:1, *et seq.*, and ordering the Sheriff to provide such records in his possession immediately in accordance to Schwartzmann’s public records request. Immigration detainers are public records under the Act, *see* La. Rev. Stat. Ann. § 44:1(A)(2), and the Act does not specifically exempt them from disclosure, *see generally* La. Rev. Stat. Ann. § 44:1 *et seq.* Yet, the Sheriff is refusing to provide access to these records and is relying on various inapplicable exemptions from disclosure to justify his denial of Schwartzmann’s request. In these circumstances, the issuance of a writ of mandamus and declaratory relief is warranted to facilitate prompt public access to these records. *See* La. Rev. Stat. Ann. § 44:35(A).

FACTS

On July 23, 2012, Schwartzmann, through her counsel, Meredith Stewart, sent a written request for public records under La. Rev. Stat. Ann. § 44:1, *et seq.* to sixty-three parish sheriffs

in Louisiana.¹ Ex. A. Schwartzmann sought the following records related to federal immigration detainees:

- Policies and procedures for informing the U.S. Department of Homeland Security (“DHS”) and/or U.S. Immigration and Customs Enforcement (“ICE”) that a suspected non-citizen is in the custody of the local law enforcement agency (#1);
- Policies and procedures related to handling immigration detainees (#2);
- Copies of any immigration detainees issued by the federal government since January 1, 2009 (#3);
- Correspondence related to any compensation received from the federal government related to detaining immigrants (#4);
- Correspondence related to the State Criminal Alien Assistance Program (SCAAP), including requests for funding and responses received (#5); and
- Any written agreements with the federal government related to detaining immigrants (#6).

Pursuant to La. Rev. Stat. Ann. §§ 44:31(B)(2) and 44:32(A),(C), Schwartzmann requested the Sheriff provide copies of the documents and offered to pay reasonable fees for their production.

On July 27, 2012, the Sheriff, through his counsel, Craig E. Frosch, responded to Schwartzmann’s request. Ex. B. In response to requests #4, #5, and #6, the Sheriff averred that no such documents exist. In response to requests #1 and #2, the Sheriff directed Schwartzmann to the policies promulgated by DHS in 8 C.F.R. § 287.7. Finally, in response to request #3, the Sheriff stated the detainees are records of the arrest of a person, which are exempt from disclosure under the Act, La. Rev. Stat. Ann. § 44:3(A)(4)(a). As a result, the Sheriff declined to

¹ Schwartzmann is an attorney for the Southern Poverty Law Center (“SPLC”). SPLC is a non-profit civil rights organization that provides free legal representation to prisoners, including immigrant detainees, who have suffered violations of their civil rights. SPLC also engages in disseminating information, regularly participating in public forums regarding civil rights and immigration. The records Schwartzmann requested were to be used in furtherance of these goals and, more generally, to promote transparency in the operations of local government regarding federal immigration enforcement.

disclose the detainer forms. Fourteen other parish sheriffs, also represented by Mr. Frosch, provided the same response to Schwartzmann's public records request.²

Schwartzmann, through her counsel, responded to the Sheriff's denial of her request for copies of immigration detainers in a letter dated August 2, 2012. Ex. C. Schwartzmann explained the nature of an immigration detainer, including that it is not an arrest record because it is issued after the arrest of an individual by local law enforcement and is related to civil (not criminal) removal proceedings.³

The Sheriff responded in a letter dated August 15, 2012, where he further argued that immigration detainers are arrest records. Ex. D. He also asserted two new justifications for withholding the immigration detainers: immigration detainers are "prison records" exempted from disclosure by La. Rev. Stat. Ann. § 44:4.1(B)(7) and La. Rev. Stat. Ann. § 15:574.12 and disclosing them would implicate constitutional privacy rights.

Schwartzmann sent a final letter in attempt to obtain the records on August 21, 2012 to the Sheriff. Ex. E. In this letter, Schwartzmann disputed the Sheriff's latest justifications for withholding the immigration detainers. The Sheriff did not respond. To date, Sheriff Couvillon, as well as fourteen other parish sheriffs, have not provided a single record in response to Schwartzmann's public records request.

ARGUMENT

I. IMMIGRATION DETAINERS ARE PUBLIC RECORDS AND MUST BE DISCLOSED

The public's right to have access to public records is a fundamental right guaranteed by statute and the constitution. La. Rev. Stat. Ann. § 44:1, *et seq.*; LA. CONST. art. 12, § 3; *Landis v. Moreau*, 779 So. 2d 691, 694 (La. 2001). A request for records under the Act must be construed liberally in favor of free and unrestricted access to the record. *Title Research Corp. v. Rausch*,

² These sheriffs are from Allen, Ascension, Assumption, Caldwell, East Carroll, Lincoln, Livingston, Morehouse, Ouachita, Sabine, St. Helena, St. James, Vernon, and West Baton Rouge Parishes.

³ Schwartzmann also addressed the Sheriff's failure to disclose an agreement between the Vermilion Parish Jail and the U.S. Immigration and Naturalization Service (currently known as DHS) related to housing immigrant detainees. See Ex. C. This agreement would have been responsive to Schwartzmann's request for any written agreements with the federal government related to detaining immigrants.

450 So. 2d 933, 937 (La. 1984). This unrestricted access to public records “*can be denied only when a law, specifically and unequivocally, provides otherwise.*” *Capital City Press v. E. Baton Rouge Parish Metro. Council*, 696 So. 2d 562, 564 (La. 1997); *Johnson v. City of Pineville*, 9 So. 3d 313, 320 (La. Ct. App. 3 Cir. 2009). The custodian of the records has the burden of justifying the denial of access to a public record. La. Rev. Stat. Ann. § 44:31(B)(3).

Immigration detainers are “public records” as defined by the Act. *See* La. Rev. Stat. Ann. § 44:1(A)(2)(a). The Sheriff must therefore provide the public access to these records in the absence of a specific and unequivocal exemption established by law. *Capital City Press*, 696 So. 2d at 564. There is no specific and unequivocal exemption for immigration detainers in the Act. *See generally* La. Rev. Stat. Ann. § 44:1, *et seq.* Nor has the Sheriff met his burden to justify withholding these records. *See* La. Rev. Stat. Ann. § 44:31(B)(3). As discussed below, the justifications the Sheriff is relying on are inapplicable or irrelevant. Moreover, even if there were doubt as to whether these detainers must be disclosed, “the doubt must be resolved in favor of the public's right to see.” *Title Research Corp.*, 450 So. 2d at 937. Here, the public has a strong interest in obtaining information about the immigration detainer process. This process exemplifies the complex intersection of state criminal law and federal immigration law and, without the necessary transparency, can place individual rights and liberties at risk. In these circumstances, the Sheriff is required to disclose the detainers.

II. IMMIGRATION DETAINERS ARE NOT SUBJECT TO THE ACT’S EXPRESS AND NARROWLY CONSTRUED EXEMPTIONS

The Act lists specific categories of records that are exempt from disclosure. *See generally* La. Rev. Stat. Ann. § 44:1, *et seq.* These exemptions are narrowly construed to facilitate the public’s right to information about governmental affairs. *See E. Bank Consol. Special Serv. Fire Prot. Dist. v. Crossen*, 892 So. 2d 666, 669 (La. Ct. App. 5 Cir. 2004); *Hays v. Lundy*, 616 So. 2d 265, 267 (La. Ct. App. 2 Cir. 1993), *aff’d as amended*, 621 So. 2d 616 (La. 1993); *Elliott v. Taylor*, 614 So. 2d 126, 128 (La. Ct. App. 4 Cir. 1993). The statutory exemptions the Sheriff has cited to justify withholding the immigration detainers are inapplicable to Schwartzmann’s request. Moreover, his attempt to expand these exemptions to include immigration detainers contravenes the Act, the Louisiana Constitution, and Louisiana Supreme

Court precedent favoring broad disclosure of public records. *See Landis v. Moreau*, 779 So. 2d at 694-95; *Title Research Corp.*, 450 So. 2d at 937.

Before turning to a discussion of the exemptions relied upon by the Sheriff, however, some background on the process of issuing an immigration detainer is important to understanding why these records are subject to disclosure.

A. The Process of Issuing a Federal Immigration Detainer

An immigration detainer is a notice that DHS issues to a law enforcement agency to advise the agency that ICE seeks to assume custody of an individual in the agency's custody for the purposes of removal (i.e., deportation). *See* 8 C.F.R. § 287.7(a) (2012). This notice may advise the agency that ICE 1) intends to assume custody of the individual once the individual is eligible for release; 2) is requesting information about the individual's release date so that ICE may assume custody; and/or 3) is requesting that the law enforcement agency maintain custody of the individual after the individual's release for a period not to exceed 48 hours so that ICE may assume physical custody. *See* Ex. G; *see also* 8 C.F.R. § 287.7(d).

Generally, if a law enforcement agency suspects that an individual in its custody, who was arrested for traffic, municipal, and/or state criminal violations, is not a U.S. citizen (for example by interrogating the individual or by confirming the individual does not have a valid form of U.S. identification), the agency informs DHS (or ICE or Customs and Border Protection). If ICE determines the individual is subject to civil removal proceedings, ICE can then issue the detainer to the law enforcement agency. *See* Ex. G. ICE may issue an immigration detainer "only after [a law enforcement agency] has exercised its independent authority to arrest the alien for a criminal violation." *Id.* An immigration detainer itself is not grounds for arrest, and a probable cause determination as to the individual's immigration status is not a prerequisite to its issuance. An immigration detainer is only a request – not a requirement – that the law enforcement agency hold the individual for ICE. 8 C.F.R. § 287.7(a). If ICE does not assume custody of the individual within 48 hours after resolution or dismissal of charges, the immigration detainer is withdrawn and the individual must be released. *See* 8 C.F.R. § 287.7(d).

B. Immigration Detainers Are Not “Records of the Arrest of a Person”

Certain categories of law enforcement records are expressly exempt from disclosure under the Act, including “records of the arrest of a person, . . . , until a final judgment of conviction or the acceptance of a plea of guilty by a court of competent jurisdiction.” La. Rev. Stat. Ann. § 44:3(A)(4)(a). Immigration detainers are not arrest records, but the Sheriff has attempted to categorize detainers as such to justify withholding them. *See* Exs. B, D. Not only is this exemption inapplicable here, but the Sheriff’s expansive interpretation of the arrest records exemption contravenes Louisiana Supreme Court precedent, which has consistently construed the exemption of certain law enforcement documents narrowly in favor of broad disclosure. *See, e.g., Cormier v. DiGiulio*, 553 So. 2d 806, 807 (La. 1989); *State v. McEwen*, 504 So. 2d 817, 817 (La. 1987); *State v. Raggio*, 508 So. 2d 59 (La. 1987). Moreover, even if detainers are subject to § 44:3(A)(4)(a), the Act includes numerous categories of law enforcement records that are subject to disclosure, such as booking records, which are analogous to immigration detainers. *See* La. Rev. Stat. Ann. § 44:3(A)(4)(a).

An immigration detainer is not a “record of an arrest of a person.” An immigration detainer may only be issued *after* the individual is arrested by a law enforcement agency for a traffic, municipal, and/or state criminal violation. *See* Ex. G. An immigration detainer is not grounds for a criminal arrest; rather, it relates to *civil* immigration violations and *civil* removal proceedings. *See* 8 C.F.R. § 287.7(a). Only a federal immigration official can issue an immigration detainer; it cannot be issued by the arresting law enforcement agency.⁴ *See* Ex. G. Moreover, the immigration detainer form does not contain information traditionally included in an individual’s arrest record, for example, an affidavit of probable cause, fingerprints, and mug shots. *See* Form I-247 (attached as Ex. F). Accordingly, the Sheriff’s mislabeling of an immigration detainer as an “arrest record” here does not make it an arrest record for purposes of

⁴ A law enforcement agency may issue immigration detainers when it has executed a Memoranda of Agreement (“MOA”) with the U.S. Attorney General pursuant to 8 U.S.C. §1357(g) (also known as a “287(g) agreement”). Upon information and belief, the Vermilion Parish Sheriff’s Office has no such agreement, nor does any parish sheriff’s office in Louisiana. *See Fact Sheet*, ICE, <http://www.ice.gov/news/library/factsheets/287g.htm#signed-moa> (listing all the signed MOAs) (last visited Aug. 24, 2012). If the Vermilion Parish Sheriff’s Office had such an MOA, it would have been responsive to Schwartzmann’s request, and she was told no such document exists. *See* Ex. B.

the Act. *See State v. Shropshire*, 471 So. 2d 707, 708-09 (La. 1985) (noting that the New Orleans Police Department's mislabeling of an initial report as an incident report does not exempt the report from disclosure).

The Sheriff's attempt to wedge immigration detainers into the arrest records exemption contravenes Louisiana Supreme Court precedent regarding the interpretation of La. Rev. Stat. Ann. § 44:3(A)(4)(a). The Supreme Court has consistently interpreted the exemption for certain categories of law enforcement documents in favor of disclosure. *See, e.g., Cormier v. DiGiulio*, 553 So. 2d 806, 807 (La. 1989) (initial police report includes reports of all investigations); *State v. McEwen*, 504 So. 2d 817, 817 (La. 1987) (initial police report includes the full report); *State v. Raggio*, 508 So.2d 59 (La.1987) (initial police report includes supplemental report); *see also State v. Campbell*, 566 So. 2d 1038, 1040 (La. Ct. App. 3 Cir. 1990) ("The Supreme Court has [] consistently interpreted La. R.S. 44:3 broadly"). In *Cormier*, for example, the Supreme Court rejected the sheriff's attempt to limit the Act's language requiring the disclosure of the "initial report of the officer or officers investigating the complaint" to instances of complaints raised by the public. *Cormier*, 553 So. 2d at 807. The Court construed the language of the Act broadly to include reports of *all* complaints, without qualification. *See id.* This is consistent with the broad interpretation the Court has applied to the Act more generally. *See Landis*, 779 So. 2d at 694-95; *Title Research Corp.*, 450 So. 2d at 937. This broad interpretation should apply here to favor public access to immigration detainers.

Even if immigration detainers do fall under § 44:3(A)(4)(a), they are analogous to an individual's booking record, which is explicitly subject to the Act's disclosure provisions. *See* La. Code Crim. Proc. Ann. art. 228 (defining booking record); La. Rev. Stat. Ann. § 44:3(A)(4)(a) (mandating disclosure of booking information). Like an immigration detainer, bookings occur after the fact of an arrest. *See* La. Code Crim. Proc. Ann. art. 228. Notably, the information on the detainer Form I-247 does not substantially differ from the information the arresting officer is required to provide in the booking summary. *Compare* Form I-247 (Ex. G) *with* La. Code Crim. Proc. Ann. art. 228(C)(1). Moreover, like a booking record, an immigration detainer purports to justify the local law enforcement entity's continued detention of the

individual, which must be disclosed. *See* La. Code Crim. Proc. Ann. art. 228 (“The booking requirement provides a valuable protection against secret arrests and improper police tactics.”).

As such, the Sheriff cannot meet his burden to justify withholding the immigration detainers by claiming the detainers are “records of the arrest of a person” under the Act.⁵

C. Immigration Detainers Are Not “Prison Records”

The Act incorporates an exception from the Louisiana criminal code for confidential information of offenders and ex-offenders obtained by the Department of Public Safety and Corrections (“DPSC”). La. Rev. Stat. Ann. § 44:4.1(B)(7); La. Rev. Stat. Ann. § 15:574.12.⁶ After initially citing the arrest records exemption, the Sheriff furnished this exception to deny Schwartzmann’s request for immigration detainers. Ex. D. The prison records exception, however, is inapplicable here. The prison records exception only applies to information obtained by the DPSC. *See* La. Rev. Stat. Ann. § 15:574.12(A); *see also* La. Att’y Gen. Op. No. 09-0235, 1 n.1 (July 19, 2010) (noting the exemption is only triggered when the information is gathered by the DPSC). Schwartzmann requested the detainers from the parish Sheriff, not the DPSC. To the extent the Sheriff is attempting to expand the exception beyond the plain language of the statute to include prison records in the custody of *all* law enforcement, this contravenes principles of statutory construction and Louisiana Supreme Court precedent. *See* La. Civ. Code 9, 11 (plain language of the statute controls); *In re A Matter Under Investigation*, 15 So. 3d 972,

⁵ Moreover, even if immigration detainers were characterized as arrest records, the Act clearly requires the disclosure of arrest records post “a final judgment of conviction or the acceptance of a plea of guilty by a court of competent jurisdiction.” La. Rev. Stat. Ann. § 44:3(A)(4)(a). As such, the Sheriff’s blanket refusal to disclose *any* detainers issued since January 1, 2009, as requested by Schwartzmann, is still likely a violation of his duties under the Act.

⁶ The statute reads:

The presentence investigation report, the pre-parole report, the clemency report, the information and data gathered by the staffs of the boards of pardons and parole, the prison record, and any other information obtained by the boards or the Department of Public Safety and Corrections, correction services and youth services, in the discharge of their official duties shall be confidential and shall not be subject to public inspection nor be disclosed directly or indirectly to anyone except as provided by this Section.

La. Rev. Stat. Ann. § 15:574.12(A).

991 (La. 2009) (“[T]he words of a law must be given their generally prevailing meaning.”). Accordingly, this justification for withholding the records is also unavailing.

D. Disclosure of Immigration Detainers Does Not Implicate Constitutional Privacy Concerns

The Sheriff has also cited constitutional privacy concerns to justify withholding the immigration detainers. The Louisiana Constitution, Article I Section 5, recognizes a right to privacy. But this right is limited by the public’s “right to be informed about legitimate subjects of public interest.” *See Parish Nat. Bank v. Lane*, 397 So.2d 1282, 1286 (La. 1981). In the public records context, “[t]he determination of whether a document containing private information should be exempt from disclosure involves competing constitutional interests of right of access to public records and right to privacy.” *Skamangas v. Stockton*, 867 So. 2d 1009, 1014 (La. Ct. App. 2 Cir. 2004). A court must first determine whether a reasonable expectation of privacy exists, and, if so, whether the public interest in disclosure outweighs the privacy interest. *See id.*

The Sheriff’s claim that constitutional privacy considerations are at issue here is unfounded given the superficiality of the information on an immigration detainer. *See Ex. F.* As discussed above, the information on an immigration detainer is similar to the information in an individual’s booking record, which is subject to disclosure under the Act. It is also arguably less intrusive than the information related to an individual’s detention made public by La. Rev. Stat. Ann. § 15:574.12(G)(1).⁷ As such, the disclosure of immigration detainers does not violate privacy rights.

⁷ This information includes,

... all information pertaining to an individual's misconduct while incarcerated, statistical information, information pertaining to disposition of criminal charges and incarcerations, and information of a general nature including an individual's age, offense, date of conviction, length of sentence, any correspondence by a public official which requests, or may be determined to be in support of, or in opposition to, the pardon or parole of an individual, and discharge date

La. Rev. Stat. Ann. § 15:574.12(G)(1).

Even if an individual did have a reasonable expectation of privacy with respect to an immigration detainer, the public interest in disclosure of these records outweighs the private interest. The Act “was obviously intended to implement the inherent right of the public to be reasonably informed as to the manner, basis, and reasons upon which governmental affairs are conducted.” *Trahan v. Larivee*, 365 So. 2d 294, 298 (La. Ct. App. 3 Cir. 1978). The public has a right to be informed about the operations of Louisiana law enforcement agencies that are related to the enforcement of federal immigration law. Indeed, the topic of immigration detainers has recently been the subject of active public discourse and debate, as indicated by extensive media coverage of the issue.⁸ The immigration detainer forms also provide important insight into how law enforcement agencies are managing the complex intersection of state and/or municipal criminal law and federal immigration law. United States citizens and immigrants who get caught in this dense web often lack knowledge about how the complex system functions. Transparency in this process is thus essential to preserving the public’s fundamental civil rights and liberties. As such, while the disclosure of immigration detainers does not implicate privacy concerns, even if it did, the public interest in disclosure of the detainers outweighs any privacy interest that may exist.


In sum, immigration detainers are public records under the Act, and, as they are not subject to any of the Act’s express and narrow exemptions, they must be disclosed. The Sheriff, in citing a myriad of inapplicable exemptions to disclosure, has failed to meet his burden to justify the denial of public access to these records. Therefore, pursuant to the Act and the constitution, the Sheriff must produce the requested immigration detainers.

⁸ Tara Tidwell Cullen, *Cook County, Immigration Detainers, and the Real Cost to Public Safety*, HUFFINGTON POST (Feb. 2, 2012), http://www.huffingtonpost.com/tara-tidwell-cullen/cook-county-immigration_b_1261208.html; Adrienne Lu, *Immigration Detainer Law Sparks Debate*, CHI. NEWS COOP. (Feb. 10, 2012), <http://www.chicagonewscoop.org/immigration-detainer-law-sparks-debate-2/>; Kristin Mack, *Emanuel Proposes Putting Nondetainer Policy on the Books*, CHI. TRIBUNE, June 7, 2012, available at http://articles.chicagotribune.com/2012-07-11/news/ct-met-rahm-emanuel-immigrants-0711-20120711_1_immigration-status-undocumented-immigrants-illegal-immigrants; Julia Preston, *Immigration Crackdown Also Snares Americans*, N.Y. TIMES, Dec. 14, 2011, A20, available at <http://www.nytimes.com/2011/12/14/us/measures-to-capture-illegal-aliens-nab-citizens.html?pagewanted=all>; *Immigration Policy: ICE Detainers Challenged By Lawsuit*, LATIN AM. NEWS DISPATCH (Oct. 17, 2011), <http://latindispatch.com/2011/10/17/immigration-policy-ice-detainers-challenged-by-lawsuit/>; *County Supes Move Against Ice Detainers*, PALOALTOPATCH (Oct. 18, 2011), <http://paloalto.patch.com/articles/county-supes-move-against-ice-detainers>.

CONCLUSION

For the foregoing reasons, the Plaintiff/Petitioner respectfully requests this Court enter a declaratory judgment stating immigration detainers are subject to disclosure, grant this Petition directing the Defendant/Respondent to immediately produce the immigration detainers pursuant to Schwartzmann's initial request, and award attorney's fees and costs as provided in La. Rev. Stat. Ann. § 44:35.

Respectfully submitted this 19 day of September, 2012,



Meredith B. Stewart
Louisiana Bar Roll No. 34109
Southern Poverty Law Center
4431 Canal St.
New Orleans, LA 70115
P: (504) 486-8928
F: (504) 486-8947
meredith.stewart@splcenter.org
Counsel for Plaintiff/Petitioner

VERMILION PARISH, LA.
FILED THIS DAY

2012 SEP 19 A 9:23

Rebecca Newby-Stewart
CLERK OF COURT