

**EXHIBIT D**

**ICE REVERSAL OF FEE WAIVER DENIAL TO SPLC**

U.S. Department of Homeland Security  
500 12<sup>th</sup> St. SW; STOP 5009  
Washington, DC 20536-5009



**U.S. Immigration  
and Customs  
Enforcement**

March 31, 2016

Eunice Cho  
Staff Attorney  
Southern Poverty Law Center  
1989 College Avenue, NE  
Atlanta, Georgia 30317

**RE: 2016-ICAP-00363, 2016-ICFO-14741**

Dear Ms. Cho:

This letter is in response to your correspondence dated March 1, 2016, received March 3, 2016, appealing the adverse determination by U.S. Immigration and Customs Enforcement (ICE) to your January 7, 2016, Freedom of Information Act (FOIA) request. Your January 7, 2016, request, which was assigned case number 2016-ICFO-14741, sought disclosure of any and all records prepared, collected, maintained, or created, including the following:

1. Any and all records containing, describing, or referring to guidance, guidelines, rules, directives, policies, procedures, or trainings related to enforcement operations to identify, locate, arrest, or remove individuals apprehended at the southern border after May 1, 2014 without authorization, including, but not limited to individuals taken into custody in North Carolina, Georgia, and Texas on January 2 and 3, 2016; or discussing enforcement goals, quotas, or targets for such enforcement teams or operations;
2. Any and all records containing, describing, or referring to disciplinary complaints, press releases, public statements, and post-investigation reports for enforcement operations conducted by DHS in North Carolina, Georgia, and Texas on January 2 and 3, 2016, including, but not limited to lists of individuals relied upon during enforcement operations;
3. Any and all records containing, describing, or referring to assistance provided by or cooperation with local, state, or federal law enforcement officers or agencies, including, but not limited to local police departments or sheriffs in the jurisdictions of enforcement operations conducted by DHS in North Carolina, Georgia, and Texas on January 2 and 3, 2016. Such records may include, but are not limited to agreements with counties, cities, towns, and municipalities, or any agent thereof; information-sharing agreements, including, but not limited to proposed agreements, Memoranda of Agreements, Memoranda of Understanding; or communication between DHS agents and any local or state law enforcement official;

Eunice Cho  
2016-ICAP-00363, 2016-ICFO-14741  
Page 2 of 4

4. Any and all records containing, describing, referring to, or revealing the following information related to enforcement operations conducted by DHS in North Carolina, Georgia, and Texas on January 2 and 3, 2016:
  - a) Individuals Apprehended by Immigration and Customs Enforcement ("ICE") or other DHS component agencies, including Homeland Security Investigations ("HSI"):
    - i. Name, date of birth, nationality, race and ethnicity, and location of any individual apprehended by ICE;
    - ii. The name of any officers involved in the individual's apprehension by ICE;
    - iii. Any warrant of deportation/removal, or search warrant relied upon in the course of arresting each individual;
    - iv. Any other document containing information on the individual relied upon in relation to the apprehension, including any documents containing a photograph and/or printed material related to the individual apprehended;
  - b) Other Individuals Not Apprehended During Enforcement Operations
    - i. The name, date of birth, nationality, and race and ethnicity of other individuals encountered but not apprehended during enforcement operations;
  - c) Location of Enforcement Operations
    - i. Address of any residence that ICE sought to enter in the course of enforcement operations; that ICE entered in the course of enforcement operations; and that ICE sought to enter, but failed, to gain entry in the course of enforcement operations;
    - ii. For each residence entered, the date and time of entry and duration of the presence of any DHS officers; whether ICE possessed a warrant of any kind, and if so, the type of such warrant; the number of individuals encountered at the residence, arrested at the residence, manner and circumstances of entry, and legal authority for entry. For each residence where "consent" formed the purported legal basis of entry, by and to whom consent was given to enter, and the circumstances under which consent was obtained;
  - d) All press releases, statements, post-investigation reports, summaries, or records of communication within federal agencies or federal and local agencies;
5. Any and all records containing, describing, pertaining to, or referring to aggregate statistical reports or data regarding the enforcement operations or raids conducted in North Carolina, Georgia, and Texas on January 2 and 3, 2016.

Additionally, your FOIA request stated "[w]e request a waiver or reduction of fees pursuant to 5 U.S.C. § 552(a)(4)(A)(iii)."

The ICE FOIA Office notified you by correspondence dated January 8, 2016, that the fee waiver request was denied based on the Southern Poverty Law Center's (SPLC) failure to satisfy factors four, five, and six of the six factors used in determining whether a fee waiver has been met. *See* 6 C.F.R. § 5.11(k) (2). The ICE FOIA Office further determined that, based on the information provided in the FOIA request, SPLC would be considered a "non-commercial requestor" for purposes of assessing charges for records.

Eunice Cho  
2016-ICAP-00363, 2016-ICFO-14741  
Page 3 of 4

Your March 1, 2016, appeal, which was assigned case number 2016-ICAP-00363, states "...we respectfully appeal the denial of the request for a fee waiver." As such, the scope of this appeal adjudication is limited to the issue of your request for a blanket fee waiver. On appeal, ICE completes a *de novo* review of the fee waiver request. As a requester, you bear the burden under FOIA of showing that the fee waiver requirements have been met.

As was explained in the ICE FOIA Office's January 8, 2016, correspondence, DHS FOIA Regulations at 6 C.F.R. § 5.11(k) enumerate six factors to be considered in determining whether a request for a fee waiver satisfies the legal standard, specifically:

- (1) Whether the subject of the requested records concerns "the operations or activities of the government;"
- (2) Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;
- (3) Whether disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requestor or a narrow segment of interested persons;
- (4) Whether the contribution to public understanding of government operations or activities will be "significant;"
- (5) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and
- (6) Whether the magnitude of any identified commercial interest to the requestor is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requestor.

As to the first requirement, the requested information likely concerns the operations or activities of the government as they relate to enforcement operations conducted by DHS on January 2 and 3, 2016, in North Carolina, Georgia, and Texas.

Second, the disclosure be "likely to contribute" to an understanding of government operations or activities. The information SPLC has requested will likely contribute to an understanding of government operations or activities as they relate to enforcement operations conducted by DHS on January 2 and 3, 2016, in North Carolina, Georgia, and Texas.

The third requirement mandates that the disclosure of requested information contribute to the understanding of the public at large, as opposed to the individual understanding of the requestor or a narrow segment of interested persons. As such, requestors must establish an ability to disseminate the information to the public at large. *See Cause of Action v. Fed. Trade Comm'n*, 961 F. Supp. 2d 142, 158 (D.D.C. 2013) (requester must specifically demonstrate its intent and ability to disseminate the requested information to the public); *Larson v. C.I.A.*, 843 F.2d 1481, 1483 (D.C. Cir. 1988) (requester bears burden to demonstrate intent and ability to disseminate the information to the public). The information SPLC has requested will likely contribute to the understanding of the public at large. Moreover, SPLC has established its ability and intention to disseminate the requested information to the public.

Eunice Cho  
2016-ICAP-00363, 2016-ICFO-14741  
Page 4 of 4

The fourth requirement provides that the disclosure and subsequent contribution to public understanding of government operations or activities be "significant." Waivers or reductions in fees will be granted only if the public's understanding of the subject matter in question will likely be enhanced by the disclosure to a significant extent. The requested information would likely contribute a significant public understanding of issues related to enforcement operations conducted by DHS on January 2 and 3, 2016, in North Carolina, Georgia, and Texas.

The fifth requirement considers whether the requester has a commercial interest that would be furthered by the requested disclosure and the sixth requirement takes into consideration whether the disclosure is primarily in the commercial interest of the requestor; whether the magnitude of any identified commercial interest to the requestor is sufficiently large in comparison with the public interest in disclosure. The appeal states that SPLC is a not-for-profit organization and, attached thereto, you provided a copy of correspondence from the Internal Revenue Service reflecting that SPLC is classified a public charity. Moreover, you have represented in your appeal letter that SPLC disseminates information to the public through public forums, legislative testimony, educational events and workshops while also sharing information with the news media and through the website at [www.splcenter.org](http://www.splcenter.org) and social media. Therefore, with respect to your request, you have established that any potential commercial interest is outweighed by the public interest and that the primary interest in disclosure is the public interest.

Upon review of the record, your request for a fee waiver in case 2016-ICFO-14741 is granted.

Should you have any questions regarding this appeal adjudication, please contact ICE at [ice-foia@dhs.gov](mailto:ice-foia@dhs.gov). In the subject line of the email please include the word "appeal," your appeal number, which is **2016-ICAP-00363**, and the FOIA case number, which is **2016-ICFO-14741**.

Sincerely,



Debbie Seguin  
Chief  
Government Information Law Division  
ICE Office of the Principal Legal Advisor  
U.S. Department of Homeland Security