

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LOUISE TRAUMA CENTER LLC,

Plaintiff,

v.

U.S. IMMIGRATION AND
CUSTOMS ENFORCEMENT, et al.,

Defendants.

Civil Action No. 20-3787 (TSC)

DECLARATION OF FERNANDO PINEIRO

I, Fernando Pineiro, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am the FOIA Director of the U.S. Immigration and Customs Enforcement (“ICE”) Freedom of Information Act Office (the “ICE FOIA Office”). The ICE FOIA Office is responsible for processing and responding to all Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and Privacy Act, 5 U.S.C. § 552a (the Privacy Act), requests received at ICE. I have held this position since August 14, 2022, and I am the ICE official immediately responsible for supervising ICE responses to requests for records under the FOIA, the Privacy Act, and other applicable records access statutes and regulations. Prior to this position, I was the Deputy FOIA Officer of the ICE FOIA Office from December 29, 2013, to August 13, 2022, and prior to that I was the FOIA Officer for three years at the Office for Civil Rights and Civil Liberties (“CRCL”) at the U.S. Department of Homeland Security (“DHS”). The ICE FOIA office mailing address is 500 12th Street, S.W., STOP 5009, Washington, D.C. 20536-5009.

2. As the FOIA Director, my official duties and responsibilities include the general management, oversight, and supervision of the ICE FOIA Office regarding the processing of FOIA and Privacy Act requests received at ICE. In connection with my official duties and responsibilities, I am familiar with ICE’s procedures for responding to requests for information pursuant to the FOIA and the Privacy Act.

3. I make this declaration in support of ICE’s Renewed Motion for Summary Judgment, and in response to the Court’s Memorandum Opinion, ECF No. 42, and as a supplement to (a) Declaration of Lynnea Schurkamp (Aug. 8, 2022), ECF No. 26-2 (hereinafter “Schurkamp Declaration”), and (b) Declaration of Lynnea Schurkamp (Oct. 17, 2022), ECF No. 32-2 (hereinafter, “Schurkamp Supplemental Declaration”), which ICE submitted in support of its Motion for Summary Judgment, ECF No. 26, in the above-captioned action. The statements contained in this declaration are based upon my personal knowledge, my review of documents

kept by ICE in the ordinary course of business, and information provided to me by other ICE employees in the course of my official duties.

Search at Office of Principal Legal Advisor, Baltimore Field Office

4. The Baltimore Field Office is a hard-working, driven, and dedicated team of attorneys, support staff, and contractors. It takes such a team to handle an exponentially increasing docket, growing client base, and evolving circuit court case law. In addition to litigating before Executive Office for Immigration Review (EOIR), OPLA Baltimore provides timely and sound legal support to its clients, Enforcement and Removal Operations (ERO) and Homeland Security Investigations (HIS). Specialized legal guidance and essential training are provided to clients on matters ranging from detention authorities to worksite enforcement and beyond.

5. As of April 2025, the Baltimore Field Office has 1 Chief Counsel, 4 Deputy Chief Counsel, and 17 Assistant Chief Counsel.

6. The duties of the Chief Counsel include (1) leadership of attorney and support staff; (2) strategic planning; (3) quality control of attorney written work product; (4) supervision of trial and appellate advocacy on a broad range of legal subjects; (5) provision of technical legal guidance to attorney staff; (6) oversight of legal advice to the other Agency components and litigation support to U.S. Attorney's Offices; (7) representation of the Agency in meetings and as liaison with the private bar and other stakeholders; (8) management of financial resources, including budget formulation and execution; and (9) application of the Collective Bargaining Agreement(s) in conformity with federal labor law.

7. The duties of the Deputy Chief Counsel include (1) supervision of attorney and support staff engaged primarily in the litigation of removal proceedings before the Executive Office for Immigration Review (EOIR); (2) strategic planning; (3) quality control of attorney written work product; (4) supervision of trial and appellate advocacy on a broad range of legal subjects; (5) provision of technical legal guidance to attorney staff and client offices; (6) oversight of legal advice to the other Agency components and litigation support to U.S. Attorney's Offices; (7) representation of the Agency in meetings and as liaison with the private bar; (8) management of financial resources, including budget formulation and execution; and (9) application of the Collective Bargaining Agreement(s) in conformity with federal labor law.

8. The duties for each Assistant Chief Counsel consist primarily of representing the U.S. Government in removal proceedings before immigration judges. These proceedings frequently involve applicants for asylum or other forms of relief under United States immigration laws. Additional duties include providing legal advice and support to the other ICE components on employment, criminal, customs, and information disclosure related issues, as well as litigation support to the U.S. Department of Justice's Office of Immigration Litigation and to U.S. Attorney's Offices in immigration and customs matters. The position also involves appellate advocacy before the Board of Immigration Appeals, including the preparation of briefs and other pleadings. Assistant Chief Counsel report to Chief Counsel through Deputy Chief Counsel.

9. As discussed in Schurkamp Declaration ¶ 15, “Once the ICE FOIA Office determines the appropriate program offices for a given request, it provides the FOIA point of contact (POC) within each of those program offices with a copy of the FOIA request and instructs them to conduct a search for responsive records.” The POC for the Baltimore Field Office was the Chief Counsel.

10. The Chief Counsel reviewed Plaintiff’s request and determined any responsive records would be located in the Chief Counsel’s files or the Deputy Chief Counsel’s files, because the Chief Counsel and the Deputy Chief Counsels would have created the material, distributed the material, reviewed the material, and/or approved the material. Plaintiff’s assumption that the line attorneys in the Baltimore Field Office (Assistant Chief Counsels) would have instructions or trainings that the Chief Counsel did not have knowledge of, or was otherwise not aware of, is not accurate because the Chief Counsel exercises plenary control over the management and supervision of the line attorneys and staff.

11. The Chief Counsel stated in her search response that “I construed [the FOIA Request] liberally, so included as much as possible.”

12. The Chief Counsel:

- a. manually reviewed all electronic mail messages contained in her Microsoft Outlook folders labeled “Asylum” and “Trainings”. The Chief Counsel did not search using search terms because she conducted a one-by-one review of each record contained in these folders. The Chief Counsel maintains a practice of filing emails in subject-matter-specific electronic folders. The Chief Counsel conducted a manual review of these folders because these folders were most likely to contain the majority of responsive records;
- b. also searched her *entire* Microsoft Outlook account, using single word searches for the terms “asylum”, “CAT”, “torture” and “cross”. The Chief Counsel used these search terms because these terms would find all additional responsive and relevant instructions, training manuals, and guidance that would be contained in the Chief Counsel’s Microsoft Outlook account besides what was found in the Asylum and Trainings folders; and
- c. manually reviewed all records located on the OPLA Baltimore SharePoint folders that contained instructions, training manuals, and guidance. The folder names included “Legal Resources” and “New Attorney Training”. The Chief Counsel did not use search terms because the responsive files were easily found in the folders and didn’t need to be “searched for.”
- d. also searched a folder on SharePoint called “OPLA Everywhere”. “OPLA Everywhere” are trainings provided by the OPLA Strategic Management Division (SMD). These are not trainings to a single OPLA Field Office, but rather nationwide training to all OPLA Field Offices. The Chief Counsel did not use

search terms because the responsive files were easily found in the folders and didn't need to be "searched for."

13. The Chief Counsel had a practice of saving emails in subject matter folders such as the "Asylum" and "Trainings" folders, and when the office issues instructions, training manuals, and guidance, it has a practice of saving them in SharePoint folders accessible to attorneys in the field office.

14. The Chief Counsel, who had knowledge of the office's record systems, searched ALL record systems likely to contain responsive records. There are no other record systems that the Chief Counsel, or anyone else at the Baltimore Office, could have searched that would have reasonably contained additional responsive records because the Baltimore Office maintains the records responsive to the requests within its SharePoint or Microsoft Outlook account.

15. The search identified 361 pages of responsive records.

16. After completion of the search, the Chief Counsel requested each Deputy Chief Counsel and a Senior Attorney review the request and the records identified to determine whether there may be additional records. After review, each Deputy Chief Counsel and the Senior Attorney confirmed that there would be no additional records.

Search at Office of Principal Legal Advisor, Washington D.C.¹ Field Office

17. OPLA Washington, D.C. is also a hard-working, driven, and dedicated team of attorneys, support staff, and contractors. OPLA Washington, D.C.'s operational clients' geographic Area of Responsibility covers Washington, D.C., Virginia, and West Virginia. OPLA Washington, D.C. represents the Department before EOIR immigration judges (IJs) covering two immigration courts and two immigration adjudication centers. OPLA Washington D.C. litigates cases before: EOIR's Annandale Immigration Court; Sterling Immigration Court; Richmond Immigration Adjudication Center; and Falls Church Immigration Adjudication Center. In total this amounts to 65 immigration judges. The Annandale and Sterling Court dockets have over 73,000 pending cases, including detained cases, matters involving national security or human rights violator interest, and juvenile cases. OPLA Washington D.C. provides training and legal advice to ERO Washington, D.C. Field Office (ERO-WAS) and the HSI Washington, D.C. Special Agent in Charge Office (HSI-DC) on all enforcement operations including administrative detention and removals, and criminal investigations and prosecutions. In FY 2024, OPLA Washington D.C. conducted 112,674 total hearings, reviewed over 200 criminal NTAs and Administrative Removal Orders, litigated almost 500 bond hearings, filed nearly 100 unique appeals, and reviewed over 7,500 cases for prosecutorial discretion.

¹ In September and October of 2022, the OPLA Arlington Field Office was split into two offices. The main office is now located in Annandale, Virginia, and a suboffice is located in Sterling, Virginia. The OPLA Arlington Field Office is now called OPLA Washington D.C.

18. As of May 2025, OPLA Washington D.C. has 1 Chief Counsel, 8 Deputy Chief Counsel, and 88 Assistant Chief Counsel.

19. The duties of the Chief Counsel include (1) leadership of attorney and support staff; (2) strategic planning; (3) quality control of attorney written work product; (4) supervision of trial and appellate advocacy on a broad range of legal subjects; (5) provision of technical legal guidance to attorney staff; (6) oversight of legal advice to the other Agency components and litigation support to U.S. Attorney's Offices; (7) representation of the Agency in meetings and as liaison with the private bar and other stakeholders; (8) management of financial resources, including budget formulation and execution; and (9) application of the Collective Bargaining Agreement(s) in conformity with federal labor law.

20. The duties of the Deputy Chief Counsel include (1) supervision of attorney and support staff engaged primarily in the litigation of removal proceedings before the Executive Office for Immigration Review (EOIR); (2) strategic planning; (3) quality control of attorney written work product; (4) supervision of trial and appellate advocacy on a broad range of legal subjects; (5) provision of technical legal guidance to attorney staff and client offices; (6) oversight of legal advice to the other Agency components and litigation support to U.S. Attorney's Offices; (7) representation of the Agency in meetings and as liaison with the private bar; (8) management of financial resources, including budget formulation and execution; and (9) application of the Collective Bargaining Agreement(s) in conformity with federal labor law.

21. The duties for each Assistant Chief Counsel consist primarily of representing the U.S. Government in removal proceedings before immigration judges. These proceedings frequently involve applicants for asylum or other forms of relief under United States immigration laws. Additional duties include providing legal advice and support to the other ICE components on employment, criminal, customs, and information disclosure related issues, as well as litigation support to the U.S. Department of Justice's Office of Immigration Litigation and to U.S. Attorney's Offices in immigration and customs matters. The position also involves appellate advocacy before the Board of Immigration Appeals, including the preparation of briefs and other pleadings. Assistant Chief Counsel report to Chief Counsel through Deputy Chief Counsel.

22. As discussed in Schurkamp Declaration ¶ 15, "Once the ICE FOIA Office determines the appropriate program offices for a given request, it provides the FOIA point of contact (POC) within each of those program offices with a copy of the FOIA request and instructs them to conduct a search for responsive records." The POC for the Washington, D.C. Field Office was the Deputy Chief Counsel.²

23. The Deputy Chief Counsel reviewed Plaintiff's request and determined any responsive records would be located in the Chief Counsel's files or the Deputy Chief Counsel's files, because

² In Schurkamp Declaration ¶ 26, the declarant refers to the Associate Legal Advisor, and in Schurkamp Supplemental Declaration ¶ 8, the declarant refers to the Associate Legal counsel. The reference to Associate Legal Advisor was an error.

the Chief Counsel and the Deputy Chief Counsels would have created the material, distributed the material, reviewed the material, and/or approved the material. Plaintiff's assumption that the line attorneys in the Washington, D.C. Field Office (Assistant Chief Counsels) would have instructions or trainings that the Deputy Chief Counsel did not have knowledge of, or was otherwise not aware of, is not accurate because the Deputy Chief Counsel exercises plenary control over the management and supervision of the line attorneys and staff.

24. The Deputy Chief Counsel:

- a. manually reviewed all electronic mail messages contained in her Microsoft Outlook folder labeled “##Chief Counsel Office – Arlington VA”. The Deputy Chief Counsel maintains a practice of filing emails in electronic folders organized by subject or organized by recipient or recipient group. The Deputy Chief Counsel did not search using search terms because this folder contains all emails sent to the entire Washington, D.C. Field Office, and many responsive documents would have been sent by email to the entire Washington, DC Field Office. Search terms were not needed to search the Deputy Chief Counsel's Microsoft Outlook because of the way she stored her records; and
- b. manually reviewed all records located on the OPLA Washington, D.C. SharePoint folders that contained instructions, training manuals, and guidance. The folder names included “Alert Guidance”, “Office Wide Emails”, “New Attorney Orientation”, “Policy Emails and Documents”, “Priorities”, and “Trainings”. The Deputy Chief Counsel did not use search terms because search terms were not needed, since staff manually reviewed each file in the only SharePoint location where responsive records might be.

25. When the office shares instructions, training manuals, and guidance, it either saves them in SharePoint folders accessible to attorneys in the field office or emails them to the entire Washington, DC field office.

26. The Deputy Chief Counsel, who had knowledge of the office's record systems, searched ALL record systems likely to contain responsive records. There are no other record systems that the Deputy Chief Counsel, or anyone else at the Washington, D.C. Field Office, could have searched that would have reasonably contained additional responsive records because the Washington, D.C. Field Office maintains the records responsive to the requests within its SharePoint or Microsoft Outlook account.

27. The search identified 246 pages of responsive records.

Difference In Search Methodology Used by the Baltimore and Washington, D.C. Field Offices

28. The Court pointed out that the “FOIA does not mandate uniform searches across different agency offices” and only “require[s] reasonable explanations for variances in scope and methodology...” I appreciate the opportunity to provide clarity to the Court. As stated in ICE's

previous declarations, each field office stores files in different locations, for different purposes. Each office has a system for organizing files, but one office may keep files in folders in a SharePoint site and another office might not. One office may use Microsoft Outlook to distribute and store files more frequently than another office.

29. In this case, OPLA Baltimore and OPLA Washington, D.C. both possess and utilize SharePoint sites. These sites are online shared repositories of information available to all employees at that given office that provide organizational structure for document storage and retrieval. OPLA Baltimore and OPLA Washington, D.C. both conducted searches of their office's SharePoint page, using the specific organizational structure designed and used by the office, and both offices found responsive records on them. Additionally, both OPLA Baltimore and OPLA Washington, D.C. possess and utilize Microsoft Outlook for exchanging emails, and both offices conducted searches of their Microsoft Outlook email accounts and found responsive records.

Organization of the *Vaughn* Index

30. Pursuant to the requirements set forth in *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), a Supplemental *Vaughn* Index accompanies this declaration; the Supplemental *Vaughn* Index provides a description of each redaction and the corresponding FOIA exemption being applied³.

31. The Supplemental *Vaughn* index is in a table format. The first column contains the page numbers of the responsive record. The second column describes the underlying information and provides justifications for the asserted exemption. The third column describes the redaction codes, which are citations to the sections of the FOIA Exemptions.

Description of FOIA Withholdings Applied to the Challenged Record

FOIA Exemption (b)(5)

32. Exemption 5 of the FOIA allows the withholding of inter- or intra-agency records that are normally privileged in the civil discovery context. The information that ICE withheld under FOIA Exemption (b)(5) is protected by the deliberative process privilege, the attorney work product privilege, and the attorney-client privilege.

33. ICE determined that the deliberative process privilege applies to all of the redacted information. The contents of the discussions and deliberations are pre-decisional in nature because they were prepared to assist ICE attorneys in making a final decision regarding immigration proceedings. They are deliberative because they occurred during consultative processes (training) and the legal strategies and tips discussed in the communications are selective in nature and highlight the portions of records that were deemed pertinent to the legal recommendations and

³ Plaintiff challenged Defendants' Exemption 5 withholdings to two documents: the "212(h) Criminal Waiver Form" and "Persecutor [sic] Training 101." Pl.'s Cross-MSJ at 21–26, 33–38. On March 5, 2025, upon litigation review, ICE discretionarily withdrew prior assertions of Exemption 5 on the document titled "212(h) Criminal Waiver Form" and released the document in full. Therefore, the only document with withholdings still at issue is the document titled "Persecutor [sic] Training 101."

decisions. The release of this internal information would discourage the expression of candid opinions and inhibit the free and frank exchange of information among agency personnel. This would result in a chilling effect on intra- and inter-agency communications. ICE employees must be able to discuss proposed agency actions, immigration judges' rulings, case law, and legal strategies, to accomplish the agency's mission adequately and diligently in an efficient manner.

34. All of the (b)(5) withholdings at issue are redactions of information exchanged between and among ICE attorneys, in contemplation of litigation, specifically including the anticipation of future immigration proceedings, as well as before the Board of Immigration Appeals. The withheld information was prepared for the purpose of pending and future litigation and contains legal thoughts, strategy, tips, and analysis. All of the information withheld under Exemption (b)(5) is thus protected from disclosure under the attorney work product doctrine.

35. Finally, the redacted information is also protected by the attorney-client privilege. The PERSECUTOR LAW 101 training for ICE attorneys contains recommendations for trial attorneys to pursue when preparing for immigration court proceedings and for proceedings before the Board of Immigration Appeals. Specifically, on the information withheld on pages 2, 3, 5, 8, and 12, contains legal guidance and legal tips from the Deputy Chief Counsel to new ICE attorneys regarding recent court decisions and litigation strategy for attorneys going forward in pending and future litigations. The communications were made in confidence, only being communicated among ICE legal staff. Ultimately, ICE attorneys provide legal advice, legal recommendations, legal oversight, and serve as the agency representatives in Court with respect to administrative immigration court matters. The disclosure of these recommendations would chill the free and frank exchange of ideas that form the backbone of effective decision-making when it comes to selecting the most effective strategy to pursue in litigating immigration cases on behalf of ICE.

FOIA Improvement Act

36. The FOIA Improvement Act of 2016 simply codified the Department of Justice's foreseeable harm standard which ICE has been following. ICE FOIA only withholds information when the agency reasonably foresees that disclosure would harm an interest protected by an exemption or disclosure is prohibited by law.

37. In this case, with respect to Exemptions (b)(5), the agency reasonably foresees that disclosure would: 1) harm the deliberative process privilege which protects the integrity of the deliberative or decision-making processes within the agency by exempting from mandatory disclosure opinions, conclusions, and recommendations included within inter-agency or intra-agency documents; 2) harm the expression of candid opinions and the free and frank exchange of information among agency personnel, which would result in a chilling effect on intra- and inter-agency communications; and 3) cause harm if a document containing pre-deliberative/deliberative information (including attorney notes, thoughts, strategy, tips, and legal analysis regarding agency policies) because the public could potentially become confused regarding ICE's mission and law enforcement activities.

Segregability

38. 5 U.S.C. § 552(b) requires that “[a]ny reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt.”

39. A line-by-line review was conducted to identify information exempt from disclosure or for which a discretionary waiver of exemption could and should be applied. Specifically, for FOIA Exemption (b)(5) which is protected by the deliberative process privilege, the attorney work product privilege, and the attorney-client privilege, all information including guidance and training involving an agency attorney - including attorney thoughts, strategy, tips, and legal analysis, which were in contemplation of litigation in immigration matters, were segregated and withheld. All basic, factual, or instructional matters that do not involve recommendations, legal analyses, or opinions on legal or policy matters were produced.

40. With respect to the records that were released, all information not exempted from disclosure pursuant to the FOIA exemptions specified above was correctly segregated and non-exempt portions were released. ICE did not withhold any non-exempt information on the grounds that it was non-segregable.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed on September 30, 2025.

Fernando Pineiro, FOIA Director
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