AMERICAN OVERSIGHT

June 27, 2025

VIA ONLINE PORTAL

Department of Homeland Security
Privacy Office, Mail Stop 0655
2707 Martin Luther King Jr. Ave. SE
Washington, DC 20528
Via Online Portal

Re: Expedited Freedom of Information Act Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the implementing regulations of your agency, 6 C.F.R. § 5, American Oversight makes the following request for records.

The Department of Homeland Security (DHS) and Immigration and Customs Enforcement (ICE) recently issued new guidance limiting access to ICE facilities by members of Congress.[1] American Oversight seeks records with the potential to shed light on changes to congressional access to ICE facilities.

Requested Records

American Oversight seeks expedited review of this request for the reasons identified below and requests that your agency produce the following records as soon as practicable, and at least within twenty business days:

1. All formal or informal final directives (including informal email communications), guidance, protocols, or policies created by, issued to, or otherwise provided to DHS, regarding access by members of Congress or their staff members to ICE detention facilities and/or field offices. This includes, but is not limited to, directives, guidance, protocol, or policies regarding the duration of congressional visits, the standards for approving requests for congressional visits, interactions with detainees, and other facility-specific rules for congressional visits.

2. All formal or informal final directives (including informal email communications), guidance, protocols, or policies created by, issued to, or otherwise provided to DHS, regarding the arrest or detainment of elected officials seeking access to ICE detention facilities.

[1] *See, e.g.*, Michael Gold, *ICE Imposes New Rules on Congressional Visits*, N.Y. Times, June 19, 2025, https://www.nytimes.com/2025/06/19/us/politics/ice-congress.html.

3. All records reflecting policies, procedures, and practices—both formal and informal—prepared by, received by, or otherwise in the possession of DHS regarding Secretary Noem approving congressional requests for access to ICE detention facilities.

4. Records sufficient to identify qualifying "exigent circumstances" impacting congressional entry into ICE facilities,[2] including, but not limited to, any formal memoranda, guidance, criteria, or informal email communications.

For all parts of this request, please provide all responsive records created or in effect from June 1, 2025, through the date the search is conducted.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and your agency's regulations, American Oversight requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures will likely contribute to a better understanding of relevant government procedures by the general public in a significant way. Moreover, the request is for non-commercial purposes.

American Oversight requests a waiver of fees because disclosure of the requested information is "in the public interest because it is likely to contribute significantly to public understanding of operations or activities of the government."[3] The public has a significant interest in congressional access to ICE detention facilities.[4] Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the federal government, including insight into changes to access to ICE detention facilities for members of Congress and how it impacts congressional oversight responsibilities. American Oversight is committed to transparency and makes the responses agencies provide to FOIA requests publicly available, and the public's understanding of the government's activities would be enhanced through American Oversight's analysis and publication of these records.

This request "is not primarily in the commercial interest of the requester."[5] In fact, as a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose, and the release of the information requested is not in American Oversight's commercial interest. American Oversight's mission is to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight

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[2] *See* U.S. Immigration and Customs Enforcement, *Facility Visit and Engagement Protocol for Members of Congress and Staff*, June 2025, https://web.archive.org/web/20250619083422/https://www.ice.gov/doclib/detention/iceFacilityVisitationCongressional.pdf.
[3] 5 U.S.C. § 552(a)(4)(A)(iii).
[4] *See supra* note 1.
[5] 5 U.S.C. § 552(a)(4)(A)(iii).

also makes materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and X (formerly Twitter).[6]

American Oversight has also demonstrated its commitment to the public disclosure of documents and creation of editorial content through regular substantive analyses posted to its website.[7] Examples reflecting this commitment include the posting of records related to the first Trump Administration's contacts with Ukraine and analyses of those contacts;[8] posting records and editorial content about the federal government's response to the COVID-19 pandemic;[9] posting records received as part of American Oversight's "Audit the Wall" project to gather and analyze information related to the first Trump administration's proposed construction of a barrier along the U.S.-Mexico border, and analyses of what those records reveal;[10] the posting of records related to an ethics waiver received by a senior Department of Justice attorney and an analysis of what those records demonstrated regarding the Department's process for issuing such waivers;[11] and posting records and analysis of federal officials' use of taxpayer dollars to charter private aircraft or use government planes for unofficial business.[12]

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[6] American Oversight currently has approximately 16,000 followers on Facebook and 94,600 followers on X (formerly Twitter). American Oversight, Facebook, https://www.facebook.com/weareoversight/ (last visited June 24, 2025); American Oversight (@weareoversight), X (formerly Twitter), https://x.com/weareoversight (last visited June 24, 2025).

[7] *See generally News*, American Oversight, https://www.americanoversight.org/blog.

[8] *Trump Administration's Contacts with Ukraine*, American Oversight, https://www.americanoversight.org/investigation/the-trump-administrations-contacts-with-ukraine.

[9] *See generally The Trump Administration's Response to Coronavirus*, American Oversight, https://www.americanoversight.org/investigation/the-trump-administrations-response-to-coronavirus; *see, e.g.*, *CDC Calendars from 2018 and 2019: Pandemic-Related Briefings and Meetings*, American Oversight, https://www.americanoversight.org/cdc-calendars-from-2018-and-2019-pandemic-related-briefings-and-meetings.

[10] *See generally Audit the Wall*, American Oversight, https://www.americanoversight.org/investigation/audit-the-wall; *see, e.g.*, *Audit the Wall: No Plans, No Funding, No Timeline, No Wall*, American Oversight, https://americanoversight.org/audit-the-wall-no-plans-funding-or-timeline-and-no-wall/.

[11] *DOJ Records Relating to Solicitor General Noel Francisco's Recusal*, American Oversight, https://www.documentcloud.org/documents/25544090-doj-records-relating-to-solicitor-general-noel-franciscos-recusal-american-oversight; *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, American Oversight, https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents.

[12] *See generally Swamp Airlines: Chartered Jets at Taxpayer Expense*, American Oversight, https://www.americanoversight.org/investigation/swamp-airlines-private-jets-taxpayer-expense; *see, e.g.*, *New Information on Pompeo's 2017 Trips to His Home State*, American Oversight, https://www.americanoversight.org/new-information-on-pompeos-2017-trips-to-his-home-state.

Accordingly, American Oversight qualifies for a fee waiver.

Application for Expedited Processing

Pursuant to 5 U.S.C. § 552(a)(6)(E)(1) and 6 C.F.R. § 5.5(e), American Oversight requests that your agency expedite the processing of this request.

I certify to be true and correct to the best of my knowledge and belief that the information requested is urgently needed in order to inform the public concerning actual or alleged government activity.[13] DHS recently changed rules regarding congressional access to ICE facilities, purportedly asking members of Congress to now provide 72 hours' notice before visiting facilities, despite federal law requiring no advance notice.[14] That policy – dated June 2025 – appears to have been removed from ICE's website.[15] On ICE's Office of Congressional Relations webpage, it previously stated that Members of Congress were not required to provide advance notice. Now, the webpage states that DHS "requires a minimum of seven (7) calendar days advance notice for visits to DHS detention facilities," and requests "to shorten that time must be approved by the DHS Secretary."[16] Changes to these rules follow lawmakers being denied entry to detention facilities in California, Illinois, New Jersey, and New York, and the arrest of several elected officials seeking access to ICE facilities, including Rep. LaMonica McIver and Newark Mayor Ras Baraka.[17] Lawmakers have sought access to

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[13] 6 C.F.R. § 5.5(e)(1)(ii)

[14] *See, e.g.*, Maya Yang, *Outrage as D.H.S. Moves to Restrict Lawmaker Visits to Detention Centers*, N.Y. Times (June 19, 2025, 1:45 PM), https://www.theguardian.com/us-news/2025/jun/19/dhs-immigration-detention-center-visits-new-guidance; *Trump Administration Puts New Limits on Congress Visits to Immigration Centers*, Reuters (June 19, 2025, 12:02 PM), https://www.reuters.com/legal/government/trump-administration-puts-new-limits-congress-visits-immigration-centers-2025-06-19/; April Rubin, *ICE Enacts New Policy on Congressional Visits to Facilities*, Axios, June 20, 2025, https://www.axios.com/2025/06/20/trump-ice-visits-congress-restrictions.

[15] *See* https://www.ice.gov/doclib/detention/iceFacilityVisitationCongressional.pdf (broken link - webpage says "Not found").

[16] *See* Webpage, *Office of Congressional Relations*, ICE (last updated June 23, 2025), https://www.ice.gov/leadership/ocr.

[17] *See, e.g.*, Vivian Ho, *DHS Tightens Rules for Congressional Visits to ICE Facilities*, Wash. Times, June 19, 2025, https://www.washingtonpost.com/immigration/2025/06/19/dhs-ice-immigration-visits-congress/; Gwynne Hogan, *ICE Bars Reps. Goldman and Nadler from Immigration Detention Area 'Approaching Capacity'*, The City (June 18, 2025, 3:22 PM), https://www.thecity.nyc/2025/06/18/ice-nadler-goldman-federal-detention-manhattan/; Jacob Sarracino, *Illinois Members of Congress Say They Were Denied Access to an ICE Facility for a Second Day*, CBS (June 18, 2025, 5:01 PM), https://www.cbsnews.com/chicago/news/illinois-members-congress-denied-access-ice-facility-second-day/; Jesus Jiménez et al., *5 Lawmakers in California and New York Are Denied Access to Federal Detention Facilities*, N.Y. Times, June 8, 2025, https://www.nytimes.com/2025/06/08/nyregion/ice-detention-federal-plaza-nyc.html.

ICE facilities to conduct oversight in light of increasing immigration detention as part of mass deportation efforts.[18] In particular, as detention and deportation efforts rise, overcrowding in detention facilities—and its concomitant impact on detention conditions—has also been rising at an alarming rate, making oversight all the more critical.[19]

Moreover, I certify to be true and correct to the best of my knowledge and belief that there is an urgent need to inform the public about changes to congressional access to ICE facilities. There are significant concerns that the new rules governing congressional access to ICE facilities violate federal law.[20] Members of Congress have the right to make unannounced oversight inspection visits, a longstanding norm enacted into law in the 2024 Further Consolidated Appropriations Act (Public Law 118-47).[21] The public requires the requested information to understand whether, and to what extent, DHS and ICE are knowingly implementing unlawful rules on access to detention facilities limiting the public's right to have their representatives conduct oversight of facilities.

I further certify that American Oversight is primarily engaged in disseminating information to the public. American Oversight's mission is to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. Similar to other organizations that have been

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[18] *See, e.g.*, Alec Schemmel, *DHS Issues New Guidance for Members of Congress Who Want to Visit ICE Detention Facilities*, Fox (June 19, 2025, 3:54 PM), https://www.foxnews.com/politics/dhs-issues-new-guidance-members-congress-who-want-visit-ice-detention-facilities.

[19] *See, e.g.*, Jasmine Garsd, *In Recorded Calls, Reports of Overcrowding and Lack of Food at ICE Detention Centers*, NPR (June 6, 2025, 10:33 AM), https://www.npr.org/2025/06/05/nx-s1-5413364/concerns-over-conditions-in-u-s-immigration-detention-were-hearing-the-word-starving#:~:text=ICE%20told%20NPR%20that%20%22some,our%20commitment%20to%20humane%20treatment.

[20] *See, e.g.*, Andrea Castillo, *ICE Issued New Rules for Congress Members Visiting Detention Centers. Experts Say They're Illegal*, L.A. Times (June 19, 2025, 2:41 PM), https://www.latimes.com/politics/story/2025-06-19/dhs-keeps-denying-access-to-members-of-congress-attempting-oversight-experts-say-its-illegal; Joe Lancaster, *ICE Insists That Congress Needs Its Permission to Conduct Oversight*, Reason (June 19, 2025, 4:45 PM), https://reason.com/2025/06/19/ice-insists-that-congress-needs-its-permission-to-conduct-oversight/; Rebecca Beitsch, *DHS Places New Limits on Lawmakers Visiting ICE Facilities*, The Hill (June 18, 2025, 4:36 PM), https://thehill.com/homenews/house/5358006-dhs-lawmakers-visits-ice/.

[21] *See, e.g.*, Jeff Abbott, *DHS Places New Limitations on Congressional Oversight, As Concern Grows Over ICE Facilities*, El Paso Times (June 21, 2025, 1:28 PM), https://www.elpasotimes.com/story/news/immigration/2025/06/21/texas-lawmaker-in-el-paso-challenges-dhs-over-ice-oversight-limits/84259285007/; Chris Johnson, *DHS Tightens Protocol for Lawmaker Visits to Immigration Facilities*, Roll Call (June 18, 2025, 5:46 PM), https://rollcall.com/2025/06/18/dhs-tightens-protocol-for-lawmaker-visits-to-immigration-facilities/.

found to satisfy the criteria necessary to qualify for expedition,[22] American Oversight "'gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience.'"[23] American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, and other media. American Oversight also makes materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and Twitter.com.[24] As discussed previously, American Oversight has demonstrated its commitment to the public disclosure of documents and creation of editorial content.[25]

Accordingly, American Oversight's request satisfies the criteria for expedition.

Guidance Regarding the Search & Processing of Requested Records

In connection with its request for records, American Oversight provides the following guidance regarding the scope of the records sought and the search and processing of records:

- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics.

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[22] *See ACLU v. U.S. Dep't of Justice*, 321 F. Supp. 2d 24, 30–31 (D.D.C. 2004); *EPIC v. Dep't of Defense*, 241 F. Supp. 2d 5, 15 (D.D.C. 2003).
[23] *ACLU*, 321 F. Supp. 2d at 29 n.5 (quoting *EPIC*, 241 F. Supp. 2d at 11).
[24] American Oversight currently has approximately 16,000 followers on Facebook and 95,800 followers on X (formerly Twitter). American Oversight, Facebook, https://www.facebook.com/weareoversight/ (last visited Feb. 10, 2025); American Oversight (@weareoversight), X (formerly Twitter), https://x.com/weareoversight (last visited Feb. 10, 2025).
[25] *See generally News*, American Oversight, https://www.americanoversight.org/blog; *see, e.g.*, *Emails and Resume of Trump's Pick to Head Government Personnel Office*, American Oversight, https://www.americanoversight.org/emails-and-resume-of-trumps-pick-to-head-government-personnel-office; *CDC Calendars from 2018 and 2019: Pandemic-Related Briefings and Meetings*, American Oversight, https://www.americanoversight.org/cdc-calendars-from-2018-and-2019-pandemic-related-briefings-and-meetings; *State Department Releases Ukraine Documents to American Oversight*, American Oversight, https://www.americanoversight.org/state-department-releases-ukraine-documents-to-american-oversight; *Documents Reveal Ben Carson Jr.'s Attempts to Use His Influence at HUD to Help His Business*, American Oversight, https://www.americanoversight.org/documents-reveal-ben-carson-jr-s-attempts-to-use-his-influence-at-hud-to-help-his-business; *Investigating the Trump Administration's Efforts to Sell Nuclear Technology to Saudi Arabia*, American Oversight, https://www.americanoversight.org/investigating-the-trump-administrations-efforts-to-sell-nuclear-technology-to-saudi-arabia; *Sessions' Letter Shows DOJ Acted On Trump's Authoritarian Demand to Investigate Clinton*, American Oversight, https://www.americanoversight.org/sessions-letter.

- In conducting your search, please understand the terms "record," "document," and "information" in their broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind.

- Our request for records includes any attachments to those records or other materials enclosed with those records when they were previously transmitted. To the extent that an email is responsive to our request, our request includes all prior messages sent or received in that email chain, as well as any attachments to the email.

- Please search all relevant records or systems containing records regarding agency business. Do not exclude records regarding agency business contained in files, email accounts, or devices in the personal custody of your officials, such as personal email accounts or text messages. Records of official business conducted using unofficial systems or stored outside of official files are subject to the Federal Records Act and FOIA.[26] It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; American Oversight has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, by intent or through negligence, failed to meet their obligations.[27]

- Please use all tools available to your agency to conduct a complete and efficient search for potentially responsive records. Agencies are subject to government-wide requirements to manage agency information electronically,[28] and many agencies have adopted the National Archives and Records Administration (NARA) Capstone program, or similar policies. These systems provide options for searching emails and other electronic records in a manner that is reasonably likely to be more complete than just searching individual custodian files. For example, a custodian may have deleted a responsive email from his or her email program, but your agency's archiving tools may capture that email under Capstone. At the same time, custodian searches are still necessary; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.

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[26] *See Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145, 149–50 (D.C. Cir. 2016); *cf. Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 955–56 (D.C. Cir. 2016).
[27] *See Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016).
[28] Presidential Memorandum—Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidential-memorandum-managing-government-records; Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments & Independent Agencies, "Managing Government Records Directive," M-12-18 (Aug. 24, 2012), https://www.archives.gov/files/records-mgmt/m-12-18.pdf.

- In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If a request is denied in whole, please state specifically why it is not reasonable to segregate portions of the record for release.

- Please take appropriate steps to ensure that records responsive to this request are not deleted by the agency before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

Conclusion

If you have any questions regarding how to construe this request for records or believe that further discussions regarding search and processing would facilitate a more efficient production of records of interest to American Oversight, please do not hesitate to contact American Oversight. American Oversight welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, American Oversight and your agency can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in an electronic format by email. Alternatively, please provide responsive material in native format or in PDF format on a USB drive. Please send any responsive material being sent by mail to American Oversight, 1030 15th Street NW, Suite B255, Washington, DC 20005. If it will accelerate release of responsive records to American Oversight, please also provide responsive material on a rolling basis.

We share a common mission to promote transparency in government. American Oversight looks forward to working with your agency on this request. If you do not understand any part of this request, please contact Emma Lewis at foia@americanoversight.org or (202) 919-6303. Also, if American Oversight's request for expedition is not granted or its request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,

/s/ Emma Lewis
Emma Lewis
on behalf of
American Oversight