

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

GRASSROOTS LEADERSHIP,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	Cause No. 1:19-cv-872
	§	
U.S. DEPARTMENT OF HOMELAND SECURITY; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT,	§	
	§	
Defendants.	§	

**PLAINTIFF GRASSROOTS LEADERSHIP’S COMPLAINT**

**FOR DECLARATORY AND INJUNCTIVE RELIEF**

**INTRODUCTION**

1. Plaintiff Grassroots Leadership (“GRL” or “Plaintiff”) brings this action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for declaratory and injunctive relief to enforce its right to agency records from the Department of Homeland Security (“DHS”) and its component agency, United States Immigration and Customs Enforcement (“ICE”) (collectively, “Defendants”).

2. Plaintiff seeks records relating to Defendant ICE’s contracts for the operation of the T. Don Hutto Residential Center (“Hutto”), a federal immigration detention facility located in Taylor, Texas and operated by CoreCivic, a for-profit private prison company. The Hutto detention center, which opened in 2006, holds approximately 500 women who have pending administrative removal proceedings.

3. From 2015 to 2018, GRL coordinated and spearheaded a public campaign to raise awareness of disturbing detention conditions and allegations of mistreatment and sexual abuse of detainees at the Hutto detention center. In June 2018, after intense public pressure and revelations of abuse, Williamson County, Texas cancelled its contract with ICE and CoreCivic to authorize the operation of the Hutto detention center. Despite that cancellation, ICE has continued to fund the facility, and CoreCivic has operated it, without interruption. Beginning in January 2019, ICE announced a temporary direct contract with CoreCivic, in potential circumvention of federal laws and regulations on competitive bidding for federal contracts. Defendants have refused to disclose the contract or any information about the contracting process.

4. In November 2018, Plaintiff submitted a FOIA request to Defendants seeking information on Defendants' Request for Information seeking potential sources in the Austin, Texas area to detain 500 women in a facility, and related documents. In June 2019, Plaintiff submitted a second FOIA request to Defendants seeking information on ICE's contract with CoreCivic to continue operating the Hutto detention center, and related documents. The applicable statutory deadlines have passed, and Defendants have failed to respond or produce documents in accordance with FOIA. Therefore, Plaintiff seeks declaratory and injunctive relief.

#### **JURISDICTION AND VENUE**

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1346. This Court also has both subject matter jurisdiction over this action and personal jurisdiction over the Defendants pursuant to 5 U.S.C. § 552(a)(4)(B).

6. Venue is proper in the Western District of Texas pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e). Venue is proper because a substantial portion of the

events giving rise to this action occurred in this district, because Plaintiff maintains an office in this district, and because Defendants maintain records and information subject to the FOIA request in this district.

### **PARTIES**

7. Plaintiff Grassroots Leadership is a 501(c)(3) non-profit organization incorporated in North Carolina and headquartered in Austin, Texas. The mission of GRL is to work “for a more just society where prison profiteering, mass incarceration, deportation and criminalization are things of the past.” GRL engages in community organizing, public education, and advocacy to reduce and end immigration detention, both in Texas and nationally. GRL also operates a program for visiting immigrant women in detention facilities, including Hutto. GRL has a longstanding commitment to promoting and protecting the constitutional and human rights of immigrants, including detained immigrants, and to eliminating the Congressionally mandated quota that now funds 40,520 beds in immigration detention at any given time, regardless of individual circumstances.

8. Defendant DHS is a federal agency within the meaning of 5 U.S.C. § 552(f). DHS is the executive department responsible for enforcing federal immigration laws and is an agency of the United States. DHS has possession of, and control over, the information sought by Plaintiff under FOIA.

9. Defendant ICE is a component agency of DHS and an agency of the United States within the meaning of 5 U.S.C. § 552(f)(1). ICE’s mission is to enforce federal laws governing immigration, including immigration detention. ICE contracts with local governmental entities, and in rare cases directly with private prison companies, to operate numerous immigration

detention facilities around the country. ICE has possession of, and control over, the information sought by Plaintiff under FOIA.

### STATUTORY BACKGROUND

10. The Freedom of Information Act (FOIA), 5 U.S.C. § 552, mandates disclosure of records held by a federal agency in response to a request for such records by a member of the public unless the records sought fall within certain narrow statutory exemptions.

11. The basic purpose of FOIA is to enable the public to hold the government accountable for its actions, through transparency and public scrutiny of governmental operations and activities. Through access to government information, FOIA helps the public better understand the government, thereby enabling a vibrant and functioning democracy. Freedom of Information Act, 74 Fed. Reg. 4683 (Jan. 26, 2009) (“In our democracy, the Freedom of Information Act (FOIA), which encourages accountability through transparency, is the most prominent expression of a profound national commitment to ensuring an open Government.”).

12. Any member of the public may request records from an agency of the United States under FOIA. 5 U.S.C. § 552(a)(3). An agency that receives a FOIA request must respond in writing to the requestor within 20 business days after receipt of the request. 5 U.S.C. § 552(a)(6)(A)(i). In its response, the agency must inform the requestor whether or not it intends to comply with the request, provide reasons for its determination, and inform the requestor of his or her right to appeal the determination. FOIA provides for an extension of this deadline “[i]n unusual circumstances” but limits this extension to “ten working days.” 5 U.S.C. § 552(a)(6)(B)(i).

13. A FOIA requestor is deemed to have exhausted all administrative remedies if the agency fails to comply with the request within statutory time limits. 5 U.S.C. § 552(a)(6)(C)(i).

14. FOIA requires an agency to timely disclose all records to a FOIA request that do not fall within nine narrowly construed statutory exemptions. 5 U.S.C. § 552(a)(3)(A); 5 U.S.C. § 552(b)(1)-(b)(9). FOIA also requires an agency to make a reasonable search for responsive records. 5 U.S.C. § 552(a)(3)(C).

15. Upon a requestor's complaint, a district court has jurisdiction to enjoin an agency from withholding records and to order production of records subject to disclosure. 5 U.S.C. § 552(a)(4)(B).

#### **FACTUAL BACKGROUND**

16. ICE depends heavily on for-profit companies to operate its immigrant detention facilities. As of 2016, ICE stated that 72 percent of immigration detention beds were in privately run facilities, up from 49 percent in 2009.<sup>1</sup>

17. CoreCivic is one of a handful of for-profit companies that operates immigration detention centers for ICE. According to CoreCivic, its contracts with ICE account for 27 percent of the company's revenue.<sup>2</sup>

18. In 2006, CoreCivic, or Corrections Corporation of America as it was then known, opened the T. Don Hutto Residential Center in Taylor, Texas as an immigration detention facility. To fund operations of this detention center, ICE executed an Intergovernmental Service Agreement with Williamson County, Texas wherein the County received money transfers from the federal government and then hired CoreCivic to be the operator of the Hutto detention center.

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<sup>1</sup> Dana Nickel, *Who Profits from Migrant Detention in the US?*, The Globe Post, August 19, 2019, at <https://theglobepost.com/2019/08/19/profit-migrant-detention/> (last visited Sept. 4, 2019).

<sup>2</sup> *Id.*, citing CoreCivic, *Supplemental Financial Information for the Quarter Ended Mar. 31, 2019*, at <http://ir.corecivic.com/static-files/e4e47919-848d-432d-b093-bc9f85de3848> (last visited Sept. 4, 2019).

19. From 2006 to 2009, Hutto detention center housed immigrant families, including parents and children. In 2007, advocates brought litigation challenging detention conditions, which settled later that year.<sup>3</sup> From 2009 to the present, Hutto detention center has housed immigrant women.

20. From 2010 to the present, Hutto detention center housed an average of 461 to 512 immigrant women at a time.

21. Beginning in 2010, Plaintiff began operating a visitation program at the Hutto detention center, whereby community members visited immigrant detainees and provided them company and support to counter their isolation, among other things. That visitation program continues to the present.<sup>4</sup>

22. In October 2017, GRL employees began hearing allegations of sexual abuse of a woman detainee by Hutto detention center staff. GRL documented the allegations and, at the woman's wishes, mobilized community members to ask for an investigation by law enforcement and elected officials.<sup>5</sup> Ultimately, after interviewing the survivor, Williamson County Sheriff's Office declined to open a formal investigation. However, the mobilization campaign led members of Congress to request ICE to conduct an audit of the Hutto detention center to examine its compliance with the Prison Rape Elimination Act (PREA).<sup>6</sup> PREA forbids prison, jail and detention facility staff from engaging in any sexual activity with persons in their custody,

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<sup>3</sup> ACLU, *Landmark Settlement Announced in Federal Lawsuit Challenging Conditions at Immigrant Detention Center in Texas*, Aug. 22, 2007, at <https://www.aclu.org/press-releases/landmark-settlement-announced-federal-lawsuit-challenging-conditions-immigrant> (last visited Sept. 4, 2019).

<sup>4</sup> Grassroots Leadership, *Hutto Visitation Program*, at <http://grassrootsleadership.org/visit.html> (last visited Sept. 4, 2019).

<sup>5</sup> Hada Adeni and Erin Jones, *Wilco Group Seeking Answers from Sheriff's Office on Sex Assault Investigation*, Dec. 4, 2017, at <https://www.kvue.com/article/news/local/wilco-group-seeking-answers-from-sheriffs-office-on-sex-assault-investigation/496712821> (last visited Sept. 4, 2019).

<sup>6</sup> Letter from Rep. Joaquin Castro and Rep. Lloyd Doggett (along with 40 other Congressional members) to ICE, Feb. 26, 2018, at <https://doggett.house.gov/media-center/press-releases/rebs-doggett-castro-seek-accountability-detention-center-sexual-assault> (last visited Sept. 4, 2019).

in light of the coercive circumstances. The audit found one open case of alleged sexual abuse, as well as a women who reported feeling pressured by male staff but afraid to report the behavior for fear of adverse impact upon her immigration case.<sup>7</sup>

23. GRL also learned of other sub-standard detention conditions at Hutto, including violations of ICE's own Performance Based National Detention Standards. For example, a former Hutto detainee filed a lawsuit alleging that CoreCivic forced her to work inside the facility at Hutto without adequate pay, in violation of federal law.<sup>8</sup> Other detainees reported being threatened and made to work at Hutto even if they were sick or injured.

24. Based on this information, GRL and other community advocates waged a public awareness campaign to inform Williamson County officials about their potential civil liability for abuses at the Hutto detention center.<sup>9</sup> Community members testified before the Williamson County Commissioners Court about the abuses at Hutto and held a public demonstration to oppose the County's involvement in ICE's Family Separation policies through detention of mothers at Hutto. Plaintiff organized a petition drive in support of ending the contract at Hutto.<sup>10</sup> Based in large part on public outcry, in June 2018, the Williamson County Commissioners Court voted to end its contract with ICE rather than renewing it.<sup>11</sup>

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<sup>7</sup> ICE PREA Audit report, May 2018, at [https://www.ice.gov/doclib/foia/prea\\_audit/tDonHuttoResidentialCenter\\_May\\_8-10\\_2018.pdf](https://www.ice.gov/doclib/foia/prea_audit/tDonHuttoResidentialCenter_May_8-10_2018.pdf) (last visited Sept. 4, 2019).

<sup>8</sup> Federal court complaint, *Gonzalez v. CoreCivic*, at <https://www.courthousenews.com/wp-content/uploads/2018/02/ForcedLabor.pdf> (last visited Sept. 4, 2019).

<sup>9</sup> Keramet Reiter, *Paying to be Locked Up*, *The American Scholar*, Dec. 3, 2018, at <https://theamericanscholar.org/paying-to-be-locked-up/#.XXACxuhKjyR> (last visited Sept. 4, 2019).

<sup>10</sup> Mary Tuma, *Moms Describe Anguish in Letters from Inside the Hutto Detention Facility*, July 13, 2018, at <https://www.austinchronicle.com/news/2018-07-13/moms-describe-anguish-in-letters-from-inside-the-hutto-detention-facility/> (last visited Sept. 4, 2019).

<sup>11</sup> Ali Linan, *Williamson County Cuts Ties with ICE and T. Don Hutto Detention Center*, *Community Impact*, June 26, 2018, at <https://communityimpact.com/austin/georgetown/city-county/2018/06/26/williamson-county-cuts-ties-with-ice-t-don-hutto-detention-center/> (last visited Sept. 4, 2019).

25. After the County cancelled its contract, ICE continued to operate Hutto through CoreCivic, without interruption.<sup>12</sup> In August 2018, ICE issued a Request for Information to seek proposals for a detention center in the Austin area that would house 500 women.<sup>13</sup> On or about February 1, 2019, ICE began to contract directly with CoreCivic, without a local government intermediary.<sup>14</sup> An ICE spokesperson announced that ICE had “filed a short-term contract extension,” but provided no further details.<sup>15</sup> On March 19, 2019, ICE issued another Request for Information.<sup>16</sup>

26. GRL and community advocates are concerned that ICE’s direct contract with CoreCivic skirts federal law and regulations relating to federal contracting. They are also concerned that ICE has proceeded to undertake this contract without any transparency or public accountability, since it has refused to release the contract to the public and to GRL via FOIA. GRL believes that ICE has evaded local community opposition to the Hutto detention center, while also evading federal rules on bidding and government contracting with private corporations.

27. GRL learned that the City of Taylor, Texas, has entered into security agreements with the Hutto detention center. Plaintiff attempted without success to obtain a copy of the new

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<sup>12</sup> Will DuPree, *Williamson County Agreement with ICE Detention Center Ends Thursday*, KXAN.com, Jan. 31, 2019, at <https://www.kxan.com/news/local/williamson-county/williamson-county-agreement-with-ice-detention-center-ends-thursday/> (last visited Sept. 4, 2019).

<sup>13</sup> ICE RFI, *Detention Services 500 Bed Females*, Aug. 8, 2018, at [https://www.fbo.gov/index?s=opportunity&mode=form&id=bddcc632a35e4a62693641b7f01f3e70&tab=core&\\_cvi\\_ew=0](https://www.fbo.gov/index?s=opportunity&mode=form&id=bddcc632a35e4a62693641b7f01f3e70&tab=core&_cvi_ew=0) (last visited Sept. 4, 2019).

<sup>14</sup> Mary Tuma, *T. Don Hutto Detention Center Still Open*, The Austin Chronicle, Mar. 1, 2019, at <https://www.austinchronicle.com/news/2019-03-01/t-don-hutto-detention-center-still-open/> (last visited Sept. 4, 2019).

<sup>15</sup> DuPree, *supra* note 12.

<sup>16</sup> ICE RFI, *Detention Services 512 [sic] Bed Females*, Mar. 9, 2019, at <https://www.fbo.gov/index.php?s=opportunity&mode=form&id=239a3135637a9e96da31db331a888fa2&tab=core&tabmode=list> (last visited Sept. 4, 2019).

contract between ICE and CoreCivic from the City of Taylor, which responded that it did not have the contract.

28. As a result of Defendants' refusal to provide responsive records to Plaintiff's FOIA request, GRL and community members do not know how long the new ICE-CoreCivic contract authorizes operation of the Hutto Detention Center, and whether and to what extent it requires compliance with the ICE Performance Based Detention Standards at Hutto.

29. Grassroots Leadership is part of a national network of groups and organizations that oppose immigrant detention centers and are urging their local elected leaders to end these contracts. Hutto is one of three detention centers where ICE has contracted directly with for-profit prison companies after local governments cancelled their contracts with ICE. This practice by ICE risks creating a system where immigration detention center contracts can be created in non-transparent, unaccountable ways that oppose local community wishes and subvert federal procurement law.

30. Once it obtains the records requested, GRL intends to disseminate the information to the public and evaluate whether the contract was created in accordance with federal procurement law and regulations.

### **PLAINTIFF'S FOIA REQUEST**

#### **November 2018 FOIA Request**

31. On November 28, 2018, Plaintiff through counsel submitted a FOIA request to the DHS and ICE FOIA offices. The request sought a variety of records, including documents and communications, relating to ICE's "RFI/Solicitation No. 70CDCRAustin," Request for Information "to identify potential sources in the Austin, Texas area, capable of providing the physical structure, equipment, personal and services" for detaining 500 women in a facility. The

FOIA request also sought documents and communications relating to a Request for Proposal referenced in the RFI, and documents and communications relating to Williamson County's decision to end its contract with CoreCivic to operate the Hutto detention center. Plaintiff incorporates by reference the request, a true and correct copy of which is attached hereto as Ex.

1. The FOIA request included a request for a fee waiver.

32. On December 3, 2018, the ICE FOIA office sent an email to Plaintiff's counsel acknowledging receipt of the November 28, 2018 FOIA request "for Documents Concerning RFI/Solitation No. 70CDCR8RAustin." In the same letter, ICE invoked a ten-day extension to process the request, citing 5 U.S.C. 552(a)(6)(B). A true and correct copy of ICE's letter is attached hereto as Ex. 2.

33. On December 11, 2018, the ICE FOIA office sent an email to Plaintiff's counsel stating that it had decided to grant GRL's request for a fee waiver. In the same letter, ICE invoked a second ten-day extension to process Plaintiff's request, citing 5 U.S.C. 552(a)(6)(B). A true and correct copy of ICE's letter is attached hereto as Ex. 3.

34. Thereafter, Defendants did not produce any responsive records or provide any response to this FOIA request.

### **June 2019 FOIA Request**

35. On June 24, 2019, Plaintiff submitted a FOIA request to the DHS and ICE FOIA office. The request sought a variety of records relating to contracts or other agreements between ICE and CoreCivic to operate the Hutto detention center. The request also sought records regarding the cancellation of the contract between Williamson County and ICE and CoreCivic; records regarding the continued operation of the Hutto detention center after the cancellation; and records relating to compliance with the Competition in Contracting Act, as related to the

Hutto detention center. The FOIA request included a request for a fee waiver. Plaintiff incorporates by reference the request, a true and correct copy of which is attached hereto as Ex. 4.

36. On July 3, 2019, the ICE FOIA office sent an email to Plaintiff regarding the June 24, 2019 request. In the email, the ICE FOIA office sought clarification of a timeframe for the records requested. On the same day, Plaintiff responded to the ICE office to clarify that the timeframe for the request was from June 1, 2018 to the present.

37. On July 8, 2019, the ICE FOIA office sent an email acknowledging receipt of the FOIA request. A true and correct copy of the email is attached as Ex. 5.

38. Thereafter, Defendants did not produce any responsive records or provide any response to this FOIA request.

#### **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

39. FOIA requires that an agency “determine within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor.” 5 U.S.C. § 552(a)(6)(A)(i). FOIA provides for an extension of this deadline “[i]n unusual circumstances” but limits this extension to “ten working days.” 5 U.S.C. § 552(a)(6)(B)(i).

40. FOIA requires an agency to timely disclose all records to a FOIA request that do not fall within nine narrowly construed statutory exemptions. 5 U.S.C. § 552(a)(3)(A); 5 U.S.C. § 552(b)(1)-(b)(9).

41. A FOIA requestor is deemed to have exhausted all administrative remedies if the agency fails to comply with the statutory time limits. 5 U.S.C. § 552(a)(6)(C)(i).

42. Upon complaint, a district court has jurisdiction to enjoin the agency from withholding records and to order production of records that are subject to disclosure. 5 U.S.C. § 552(a)(4)(B).

43. Over eight months have passed since Plaintiff submitted its November 2018 FOIA request, and Defendants have failed to produce any records or provide a substantive response to the request. Plaintiff has now therefore exhausted its administrative remedies with respect to this FOIA request.

44. Over two months have passed since Plaintiff submitted its June 2018 FOIA request, and Defendants have failed to produce any records or provide a substantive response to the request. Plaintiff has now therefore exhausted its administrative remedies with respect to this FOIA request.

## **CAUSES OF ACTION**

### **VIOLATIONS OF THE FREEDOM OF INFORMATION ACT**

45. Plaintiff realleges and incorporates the allegations contained in the foregoing numerical paragraphs as if each such allegation was set forth herein in its entirety.

46. Defendants have violated 5 U.S.C. § 552(a)(3)(A) by failing to promptly release agency records in response to the FOIA request.

47. Defendants have violated 5 U.S.C. § 552(a)(3)(C)-(D) by failing to make reasonable efforts to search for records responsive to the FOIA request.

48. Defendants have violated 5 U.S.C. § 552(a)(6)(A)(i) by failing to make a determination regarding the FOIA request within the governing statutory time limit.

49. Injunctive relief is authorized under 5 U.S.C. § 552(a)(4)(B) on the basis of the foregoing violations and because Defendants continue to improperly withhold agency records in

violation of FOIA. Plaintiff will suffer irreparable injury from, and have no adequate remedy for, Defendants' illegal withholding of government documents subject to its FOIA request.

50. Declaratory relief is authorized under 22 U.S.C. § 2201 because an actual and justiciable controversy exists regarding Defendants' improper withholding of agency records in violation of FOIA, as set forth in preceding paragraphs.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff herewith prays for the following relief:

(a) For a judicial declaration that Defendants' failure to timely process Plaintiff's request and disclose the records requested by Plaintiff is unlawful;

(b) For injunctive relief ordering Defendants to immediately and expeditiously process Plaintiff's FOIA request and, upon such processing, to make the requested records available to Plaintiff;

(c) For Plaintiff's reasonable attorney's fees and litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and

(d) For such other relief as the Court may deem just and proper.

Dated: September 9, 2019

/s/ Ranjana Natarajan

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