

# **Exhibit A**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

JACQUELINE STEVENS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 17 C 2853
	)	
U.S. DEPARTMENT OF HOMELAND	)	Judge Pallmeyer
SECURITY, IMMIGRATION AND	)	
CUSTOMS ENFORCEMENT,	)	
	)	
Defendant.	)	

**DECLARATION OF CATRINA PAVLIK-KEENAN**

**I. INTRODUCTION**

I, Catrina Pavlik-Keenan, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am the FOIA Officer of the Freedom of Information Act Office (the "ICE FOIA Office") at U.S. Immigration and Customs Enforcement ("ICE"). I have been the Director of the ICE FOIA Office since that office was created on December 18, 2006. Prior to holding this position, I worked for approximately four years in the FOIA office at the Transportation Security Administration - first as a Supervisory FOIA Analyst, then as Deputy Director for two years, and finally as Director. In total, I have 23 years of experience processing FOIA requests. The ICE FOIA office mailing address is 500 12th Street, S.W., STOP 5009, Washington, D.C. 20536-5009.

2. 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, requests received at ICE.

3. My official duties and responsibilities include the general management, oversight, and supervision of the ICE FOIA Office, which is responsible for the receipt, processing, and

response to all FOIA, 5 U.S.C. § 552, and Privacy Act, 5 U.S.C. § 552a, requests received at ICE. In that capacity, I manage and supervise a staff of Paralegal Specialists, who report to me regarding the processing of FOIA and Privacy Act requests received by ICE. Due to my experience and the nature of my official duties, I am familiar with ICE's procedures for responding to requests for information pursuant to provisions of the FOIA and the Privacy Act. In that respect, I am familiar with ICE's processing of the February 13, 2017 FOIA request plaintiff Jacqueline Stevens submitted to the ICE FOIA office that is the subject of this litigation.

4. I make this declaration in my official capacity in support of ICE's motion for summary judgment 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 its business activities, and information provided to me by other ICE employees in the course of my official duties. The documents attached hereto are kept by ICE in the ordinary course of its business activities.

5. This declaration describes the process upon which ICE received Stevens's February 2017 FOIA request, the process upon which ICE searched for and processed records located in response to Stevens's FOIA request, and the process upon which ICE disclosed records located in response to Stevens's FOIA request.

6. Additionally, in accordance with *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), this declaration describes the portions of records ICE withheld in response to Stevens's FOIA request and the basis for ICE's withholdings. Ex. 1.

## **II. STEVENS'S FOIA REQUEST**

7. In an email dated February 13, 2017, that ICE received that same day, Stevens submitted the following FOIA request:

I write under the Freedom of Information Act to request all correspondence on the detention or removal proceedings for people claiming or proving U.S. citizenship since January 1, 2017.

This request includes, but is not limited to email received by or sent to an email address established by ICE for the purpose of assessing claims of US citizenship.

Please note that on November 19, 2009, then Asst. Sec. of ICE, John Morton wrote in part: “If the individual’s claim is credible on its face, or if the investigation results in probative evidence that the detained individual is a USC, the individual should be released from detention. \*Any significant change in circumstances should be reported to the “USC Claims DRO” e-mailbox and the “OPLA Field Legal Ops” e-mail box.”\*

[https://www.ice.gov/doclib/detention-reform/pdf/usc\\_guidance\\_nov\\_2009.pdf](https://www.ice.gov/doclib/detention-reform/pdf/usc_guidance_nov_2009.pdf)

I am requesting all correspondence as well as all attachments and referenced reports, notes, text messages, or any other information maintained in any medium associated with the reported cases. I would appreciate it if you contact the relevant personnel at CBP, ICE OGC, ERO, and OPLA for this request.

The time frame for this request is January 1, 2017 to the present.

I will be using this information for my research, teaching, and scholarly as well as popular publications and therefore am requesting a waiver of all fees. For documentation of the public impact of this research, please see <http://buffett.northwestern.edu/program/deportationresearch/>

Please note that my work on the detention and deportation of U.S. citizens has been published in the NY Times and reported on in the New Yorker magazine.

If you have any questions, please feel free to contact me here or at .  
...

Ex. 2.

### **III. ICE’S RESPONSE TO THE REQUEST**

8. In an email to Stevens dated March 16, 2017, the ICE FOIA Office acknowledged receipt of the FOIA request and stated that the ICE FOIA Office was working through a backlog

of new FOIA requests. The email did not assign an ICE FOIA case number to Stevens's FOIA request.

9. On April 14, 2017, Stevens filed a complaint in the United States District Court for the Northern District of Illinois. Dkt. 1, Compl. Specifically, Stevens alleged that ICE constructively denied her FOIA request by not responding within the statutory deadline of 20 business days. *Id.* ¶ 18.

10. On May 24, 2017, ICE filed an answer to the complaint. Dkt. 8.

11. On July 20, 2017, the ICE FOIA Office began rolling productions of responsive documents to Stevens's attorney. The responsive documents consisted of correspondence and accompanying attachments to and from attorneys in ICE's Office of the Principal Legal Advisor ("OPLA"), Immigration Law and Practice Division ("ILPD") and Field Legal Operations ("FLO"). The ICE FOIA Office produced five productions of approximately 500 documents each for five months, resulting in a total of 2,347 responsive pages that were produced to Stevens.

12. On November 2, 2017, Stevens's attorney requested the attachments referenced in the correspondence being produced by the ICE FOIA Office, which had inadvertently been excluded from the rolling productions.

13. On January 23, 2018, the ICE FOIA Office began rolling productions of approximately 3,695 pages of documents, consisting of the attachments referenced in the correspondence. The final set of these documents was produced to Stevens on April 23, 2018.

#### **IV. ICE'S STANDARD PROCEDURE FOR INITIATING SEARCHES IN RESPONSE TO FOIA REQUESTS**

14. Each program office within ICE has a designated point of contact ("POC") who is the primary person responsible for communications between that program office and the ICE FOIA Office. Each POC is a person with detailed knowledge about the operations of their

particular program office. When the ICE FOIA Office receives a FOIA request, its first step is to identify which program offices, based on their experience and knowledge of ICE's program offices, within ICE are reasonably likely to possess records responsive to that request (if any) and to initiate searches within those program offices. Once the ICE FOIA Office determines the appropriate program offices for a given request, it provides the POCs within each of those program offices with a copy of the FOIA request and instructs them to conduct a search for responsive records. The POCs then review the FOIA request along with any case-specific instructions that may have been provided, and based on their experience and knowledge of their program office practices and activities, forward the request and instructions to the individual employee(s) or component office(s) within the program office that they believe are reasonably likely to have responsive records, if any. Per the ICE FOIA Office's instructions, the individuals and component offices are directed to conduct searches of their file systems, including both paper files and electronic files, which in their judgment and based on their knowledge of the manner in which they routinely keep records, would most likely be the files to contain responsive documents. Once those searches are completed, the individuals and component offices provide any potentially responsive records to their program office's POC, who in turn provides the records to the ICE FOIA Office. The ICE FOIA Office then reviews the collected records for responsiveness.

15. ICE employees maintain records in several ways. ICE program offices use various systems to maintain records, such as investigative files, records regarding the operation of ICE programs, and administrative records. ICE employees may store electronic records on their individual computer hard drives, their program office's shared drive (if the office uses one), DVDs, CDs, or USB storage devices. The determination as to how to conduct searches in response to a

particular FOIA tasking is necessarily based on the manner in which each employee maintains his or her files.

16. Additionally, all ICE employees have access to email. ICE uses the Microsoft Outlook email system. Each ICE employee stores their files in the way that works best for that particular employee. ICE employees use various methods to store their Microsoft Outlook email files: some archive their files monthly, without separating by subject; others archive their email by topic or by program; still others may create PST files of their emails and store them on their hard drive or shared drive.

17. Individual employees archive their own emails according to their individual work-related needs. Individual archives of emails are searched by the individual employees where those employees have identified individual archives containing potentially responsive documents.

#### **V. PROGRAM OFFICES TASKED WITH SEARCHING FOR RECORDS IN RESPONSE TO STEVENS'S FOIA REQUEST**

18. ICE is the principal investigative arm of DHS and the second largest investigative agency in the federal government. Created in 2003 through a merger of the investigative and interior enforcement elements of the U.S. Customs Service and the Immigration and Naturalization Service, ICE now has more than 20,000 employees and offices in all 50 states and 48 foreign countries.

19. On March 4, 2017, upon receipt and review of Stevens's FOIA request, the ICE FOIA Office determined that OPLA and Enforcement Removal Operations ("ERO") were the offices reasonably likely to have records responsive to the request and that no other ICE program offices were likely to have responsive records. The ICE FOIA Office instructed OPLA and ERO to conduct a comprehensive search for records and to provide all records located during that search

to the ICE FOIA Office for review and processing.

**a. BACKGROUND ON ICE U.S. CITIZENSHIP CLAIMS PROCEDURES**

20. The ICE procedure for addressing United States citizenship (“USC”) claims is set out in ICE Policy Directive 16001.2 “Investigating the Potential U.S. Citizenship of Individuals Encountered by ICE,” issued November 10, 2015. The Directive is summarized in the following paragraphs; however, a version of this Directive is available to the public (subject to limited redactions) via the ICE FOIA library, and has been attached to this Declaration. Ex. 3.

21. “It is ICE policy to carefully and expeditiously investigate and analyze the potential U.S. citizenship of individuals encountered by ICE.” Ex. 3 at 1. ICE officers, agents, and attorneys have a responsibility to assess the potential USC of any individual encountered by ICE, whether that individual makes an affirmative claim to USC or ICE personnel become aware of certain indicia of USC.

22. Regardless of the USC claim trigger (affirmative claim or USC indicia), USC claims are documented via alert emails to shared email inboxes maintained by ERO and OPLA. After the initial alerts, USC claims prompt the creation of memoranda containing a factual examination and legal analysis of the claim. Each memorandum is created by a local OPLA Office of the Chief Counsel (“OCC”) attorney working in conjunction with ICE officers and agents,<sup>1</sup> and uses a standardized template approved by ICE Headquarters. The memorandum assesses the USC claim and recommends a course of action. Ex. 3 at 5.

23. The memorandum is then submitted by the local OCC to ICE Headquarters ERO and OPLA ILPD for review. Since the memorandum is almost entirely attorney work product and

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<sup>1</sup> As noted in Directive 16001.2, ERO or the other major ICE office, Homeland Security Investigations (“HSI”), can also be involved in USC claims. However, due to the non-immigration nature of HSI’s work, it is extremely rare for USC claims to arise from and involve HSI. For the purposes of this declaration, only ERO will be referenced in this process, as they were the only other ICE office involved in these claims.



contains recommendations for courses of action between attorneys and clients, it is marked draft, pre-decisional and deliberative, privileged attorney-client communication, attorney work product, and as containing sensitive personally identifiable information (“PII”).

24. Headquarters ERO and OPLA ILPD respond to the memorandum and either concur or dissent with the recommended course of action. If more information or further analysis is required, the local OCC attorney and an attorney from ILPD will work together to address all concerns.

25. Once a final decision is rendered, a copy of the memorandum is finalized. The final copy is sent via email to the shared email inboxes maintained by ERO and OPLA. ICE officers and agents will make a notation in the appropriate case management system and/or databases, and place a copy of the memorandum and resulting decision, marked as attorney work product, attorney-client communication, and containing sensitive PII, in the appropriate case management system and/or databases. Additionally, ICE attorneys will save a copy of the memorandum and document the resulting decision and other information in OPLA’s case management system.

**b. OPLA’S SEARCH FOR RESPONSIVE RECORDS**

26. OPLA provides a full range of legal counsel and services to all ICE offices and programs. OPLA's primary responsibilities include, among other things, representing the Department in all exclusion, deportation, and removal proceedings; arguing administrative appeals before the Board of Immigration Appeals; providing direction and support to U.S. Attorney's Offices nationwide; counseling ICE clients on removal order reinstatements, administrative removal orders, and expedited removals; reviewing legislative and regulatory proposals; and providing legal training and ethics guidance to all ICE personnel. OPLA is the largest legal program in the Department of Homeland Security, providing legal advice, training, and services

in cases related to the ICE mission.

27. On March 22, 2017, the ICE FOIA Office tasked OPLA to search for records responsive to Stevens's FOIA request. The ICE FOIA Office instructed OPLA to conduct a comprehensive search for records and to provide all records located during that search to the ICE FOIA Office for review and processing. Upon receipt of Stevens's FOIA request from the ICE FOIA Office, a POC within OPLA reviewed the request and, based on the POC's experience and knowledge of the office's practices and activities, the POC instructed FLO (which supervises all OCCs), and ILPD to conduct searches for records responsive to Stevens's FOIA request, as they are the only OPLA divisions involved in USC claims.

28. ILPD tasked all their line attorneys with Stevens's FOIA request. FLO tasked all 26 Offices of the Chief Counsel, which are OPLA's field offices throughout the country, with the FOIA request.

29. Both FLO and ILPD collected correspondence from attorneys who drafted USC-claims memoranda from January 1, 2017, until approximately mid-May 2017, as requested in Stevens's FOIA request. These emails and attachments came directly from ILPD and OCC attorneys, as well as from the OPLA USC Claims inbox. On May 22, 2017, OPLA responded to the FOIA tasking by providing the documents it collected to the ICE FOIA Office for review and processing.

**c. ERO'S SEARCH FOR RESPONSIVE RECORDS**

30. The mission of ERO is to identify, arrest, and remove aliens who present a danger to national security or are a risk to public safety, as well as those who enter the United States illegally or otherwise undermine the integrity of immigration laws and border control efforts. ERO upholds federal immigration laws at, within, and beyond our borders, through efficient enforcement and

removal operations. ERO prioritizes the apprehension, arrest, and removal of convicted criminals, those who pose a threat to national security, fugitives, and recent border entrants. Individuals seeking asylum also work with ERO. ERO transports removable aliens from point to point, manages aliens in custody or in an alternative to detention program, and removes individuals from the United States who have been ordered deported.

31. When ERO receives a FOIA tasking from the ICE FOIA Office, the request is submitted to ERO's Information Disclosure Unit ("IDU"). POCs in IDU review the substance of the request. Based on subject matter expertise and knowledge of the program offices' activities within ERO, IDU forwards the FOIA request to specific individuals and component offices, and directs specific employees to conduct searches of their file systems (including both paper files and electronic files) which in their judgment, based on their knowledge of the manner in which they routinely keep records, would be reasonably likely to have responsive records, if any. The employees exercise discretion, based on their operational knowledge and subject matter expertise, in choosing the specific search terms utilized to ascertain whether or not potentially responsive documentation exists. Once searches are completed, the individuals and component offices provide any potentially responsive records to the IDU POC, who in turn provides the records to the ICE FOIA Office. The ICE FOIA Office then reviews the collected records for responsiveness.

32. On March 22, 2017, the ICE FOIA Office tasked ERO with responding to Stevens's FOIA request. A POC in ERO IDU received and reviewed the request. Based upon subject matter expertise and knowledge of the program offices' activities within ERO, IDU determined searches at the headquarters level for responsive documentation should be conducted. Accordingly, IDU tasked the Unit Chief of the Domestic Operations Division, who monitors the ERO USC Claims

inbox.

33. The ERO USC Claims inbox is the email account that ERO uses for initial USC claims alerts, for review and concurrence on USC claims memoranda, and for documentation of final USC claims memoranda and decisions.

34. The Unit Chief of the Domestic Operations Division reviewed the ERO USC Claims mailbox and determined that providing the contents of the ERO USC Claims inbox would be an unnecessarily duplicative effort because OPLA would be providing the exact same emails and accompanying attachments from its USC Claims inbox and ILPD/OCC attorneys to the ICE FOIA Office. ERO concluded that it would not have unique responsive emails and accompanying attachments in its USC Claims inbox that were different from the responsive emails from OPLA's USC Claims inbox and/or ILPD attorneys.

35. On May 8, 2017, ICE ERO informed the ICE FOIA Office that it deferred to OPLA to provide all responsive correspondence regarding USC claims during the stated timeframe.

#### **d. ICE FOIA'S REVIEW OF RESPONSIVE DOCUMENTS**

36. After receiving and reviewing the responsive documents gathered by OPLA, the ICE FOIA Office determined that the documents contained PII and sensitive and/or privileged materials protected by numerous FOIA exemptions, applied redactions to the documents under the FOIA exemptions outlined below, and released the documents to Stevens.

### **VI. ORGANIZATION OF ICE'S VAUGHN INDEX**

37. Pursuant to the requirements set forth in *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), a *Vaughn* index accompanies this declaration providing a description of each redaction and applicable exemption in the first 150 pages of two productions ICE made to Stevens, as agreed to by the parties. The redactions and applicable exemptions described in the index are indicative and

representative of the redactions and applicable exemptions for the remainder of the documents ICE produced to Stevens in response to her FOIA request.

38. The *Vaughn* index is in a table format. The first row contains the titles of four (4) columns that provide a brief description of the information contained within the corresponding columns below. The heading titles, from the left to the right side of the page, are: Page Number, Withholding: Full/Partial, Description of Records and Redactions, and Reasons for Redactions, and Exemption(s) Applied.

39. The first heading, Page Number, refers to the page number on each of the responsive documents. The second heading, Full/Partial Withholding, refers to the level of withholdings taken on the documents. The information below the third heading, Description of Records and Redactions, and Reasons for Redactions, describes the redacted information and the justification for redaction. The fourth heading, Exemption(s) Applied, describes the exemptions applied to the redactions in the documents.

a. **DESCRIPTION OF RECORDS RELEASED TO THE PLAINTIFF BY ICE**

40. The 6,042 pages of records responsive to Stevens's FOIA request originated from OPLA. Of the 6,042 pages, 4,841 pages were released subject to partial FOIA withholdings; 746 pages were withheld in full; 280 pages were released in full; 158 pages were withheld as duplicates; and 17 pages were referred to other agencies for processing and release. A complete description of the agreed-upon 300 pages of documents, and the bases for the withholding of information in said documents, is detailed in ICE's *Vaughn* Index. In this case, the records produced to Stevens included email correspondence between ICE OPLA attorneys and/or ICE officers and agents (such as ERO officers), and any accompanying attachments. The email attachments included USC claims memos drafted by OPLA attorneys and supporting materials for the USC claim (such as

birth certificates, ancestry data from online databases, relevant legal codes, case management print-outs, etc.). All responsive records pertain to correspondence and attachments regarding USC claims relating to persons in ICE custody during the timeframe specified in the FOIA request.

## **VII. APPLICABLE FREEDOM OF INFORMATION ACT WITHHOLDINGS**

### **FOIA Exemption (b)(5)**

41. Exemption 5 of the FOIA allows the withholding of inter- or intra-agency records that are normally privileged in the civil discovery context. Pursuant to Exemption (b)(5), the three most frequently invoked privileges are the deliberative process privilege, the attorney work-product privilege, and the attorney-client privilege.

42. ICE applied FOIA Exemption (b)(5) to protect from disclosure, documentation subject to the deliberative process privilege, attorney work-product privilege, and attorney-client privilege.

43. ICE withheld internal discussions, deliberations, and recommendations between and amongst attorneys and personnel in OPLA and ERO regarding all USC claims made during the FOIA request's stated timeframe. Specifically, these communications contemplate the appropriate response to U.S. citizenship claims for individuals encountered by ICE, and require vigorous research and multidivisional concurrence. Thus, the contents of these discussions and deliberations are pre-decisional in nature because they were prepared in order to assist a decisionmaker in making a final decision, and deliberative because they are consultative processes given that the facts and options discussed in the communications are selective in nature and highlight the portions of the record that were deemed pertinent to the ultimate recommendation and decision on the citizenship claim. The deliberative process privilege 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 memoranda, letters, or emails. 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 action freely.

44. Exemption 5 was also applied to draft documents that discussed the legal analysis and basis for USC claims relating to persons in ICE custody. By their very nature, draft documents are pre-decisional, preliminary versions of what may later become a final document in whole or in part, or they remain drafts that never mature into final form as the material may be withdrawn or discarded during the decision making process. In fact, the process by which a draft evolves into a final document is itself a deliberative process. Some draft documents within the responsive document set contain edits, marginal suggestions and comments, and/or embedded questions regarding content; other draft materials include emails with proposed changes to the draft memos. If draft responses to inquiries and agency policies in actions were released, the public could potentially become confused regarding ICE's mission and activities. Disclosure of such material could mislead the public as the comments and text of draft documents often differ, sometimes significantly, from final agency positions. Disclosure of such material could also cause the same chilling effect noted in paragraph 43.

45. ICE also applied Exemption (b)(5) to protect from disclosure documentation subject to the attorney work product privilege. This privilege protects documents and other memoranda prepared by an attorney in contemplation of litigation. Its purpose is to protect the adversarial trial process by insulating the attorney's preparation from scrutiny.

46. Given the extremely sensitive nature of the rights involved in USC claims and/or the inadvertent detention of a U.S. citizen, the potential for litigation is heightened and ICE

attorneys are constantly aware of this possibility. Thus, ICE withheld information in records (Word documents, PDFs, emails, and case management system entries) that was prepared by agency attorneys - specifically, attorney memos, notes, questions, thoughts, strategy, and legal analysis - as well as an intra-agency communications discussing the information in these records, because the information constitutes attorney insight about the citizenship status of individuals encountered by ICE, which may be and has been subject to future litigation in immigration and federal court. This information is protected from disclosure because it was prepared by an attorney in contemplation of any such litigation.

47. Finally, ICE applied Exemption (b)(5) to protect from disclosure documentation subject to the attorney-client privilege.

48. The attorney-client privilege protects confidential communications between an attorney and his or her client relating to a legal matter for which the client has sought professional advice. It applies to facts divulged by a client to his attorney, and encompasses any opinions given by an attorney to his or her client based upon, and thus reflecting, those facts, as well as communications between attorneys that reflect client-supplied information. The attorney-client privilege is not limited to protecting documents created in anticipation of litigation. The attorney-client privilege applies in this instance because the records contain confidential communications between attorneys (OPLA attorneys) and their client (ICE officers and agents such as ERO personnel) relating to the citizenship status of individuals encountered by ICE. The client seeks the professional advice of OPLA attorneys on USC claims, specifically from ILPD attorneys who specialize in this area of law. This privilege applies to facts that are divulged to the attorney and encompasses the opinions given by the attorney based upon, and thus reflecting, those facts. These communications provide advice to the client about recommended actions and legal decisions.



Attorney-client communications are shielded from disclosure in order to encourage a full and frank discussion between the client and its legal advisor. The attorney-client privilege recognizes that sound legal advice or advocacy depends upon a lawyer being fully informed by his client. If these communications, as covered by the attorney-client privilege, were disclosed, this could result in a chilling effect on interactions and communications between agency employees and their legal counsel.

**FOIA Exemption 5 U.S.C. § 552(b)(7) Threshold**

49. 5 U.S.C. § 552(b)(7) establishes a threshold requirement that, to withhold information on the basis of any of its subparts, the records or information must be compiled for law enforcement purposes.

50. The information for which the ICE FOIA Office asserted Exemption (b)(7) satisfies this threshold requirement. Pursuant to the Immigration and Nationality Act, codified under Title 8 of the U.S. Code, the Secretary of Homeland Security is charged with the administration and enforcement of laws relating to the immigration and naturalization of aliens, subject to certain exceptions. See 8 U.S.C. § 1103. ICE is the largest investigative arm of DHS and is responsible for identifying and eliminating vulnerabilities within the nation's borders. ICE is tasked with preventing any activities that threaten national security and public safety by investigating the people, money, and materials that support illegal enterprises.

51. The records and information at issue in this matter pertain to ICE's obligation to enforce the immigration laws of the United States by investigating non-U.S. individuals who may be present in the United States illegally, including records of interviews, arrests, bookings, detentions, removals, other related investigations, and investigations of allegations of misconduct. Therefore, all of the ICE records responsive to Stevens's FOIA request were compiled for law

enforcement purposes and meet the threshold requirement of FOIA Exemption (b)(7).

**FOIA Exemptions 5 U.S.C. § 552(b)(6) & (7)(C)**

52. FOIA Exemption 6 allows the withholding of information found in “personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6) (“Exemption 6”). Records that apply to or describe a particular individual, including investigative records, qualify as “personnel,” “medical” or “similar files” under Exemption 6. When applying this exemption to responsive documentation, the agency must balance the individual’s personal privacy interest against the public need for the information.

53. FOIA Exemption 7(C) similarly protects from disclosure records or information “compiled for law enforcement purposes” if a release of the records or information “could reasonably be expected to constitute an unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(7)(C) (“Exemption 7(C)”).

54. When asserting Exemptions 6 and 7(C), ICE balances an individual’s personal privacy interest against the public’s interest in shedding light on ICE’s performance of its statutory duties.

55. Here, ICE applied Exemption 6 in conjunction with Exemption 7(C) to protect from disclosure the names, signatures, contact information, biometric information, immigration status, and case history of third party individuals and ICE employees.

56. Such information, if disclosed to the public or to a third party requester without the permission of the individual, could expose the individual to identity theft and may reasonably lead to unwanted contact from persons that might seek to harm the individual.

57. Furthermore, third party individuals have a recognized privacy interest in not being

publicly associated with law enforcement investigations through the release of records compiled for law enforcement purposes. The identities of persons named in law enforcement files (whether or not the named individual is the target of investigations or law enforcement actions) are properly withheld under Exemptions 6 and 7(C) in recognition of the stigmatizing connotation carried by the mere mention of individuals in law enforcement files. The individuals' privacy interest in the information contained in the record outweighs any minimal public interest in the disclosure of the information. Stevens has not articulated a sufficient public interest or public need to justify release of this information. The disclosure of this PII serves no public benefit and would not assist the public in understanding how ICE is carrying out its statutory responsibilities. Finally, the third parties mentioned in the law enforcement records did not consent to the disclosure of their PII.

58. In many of the redactions, much of the information pertaining to a claimant was redacted as PII because it could reasonably be used to determine the identity of the USC claimant. Even without specific names, there are numerous websites and oftentimes news articles that contain enough information for a person like the plaintiff in this case to piece together and identify the claimants. For example, the location or date of arrest or prior immigration history could be used to identify those claiming USC status. This indirect disclosure of claimants' identities would violate the spirit of Exemptions 6 and 7(C).

59. ICE determined that the disclosure of the information described in Paragraphs 55 and 58 would constitute a clearly unwarranted invasion of personal privacy and thus Exemption 6 applied. In addition, ICE determined that disclosure of the information described in Paragraphs 55 and 58, which was compiled for law enforcement purposes, could reasonably be expected to constitute an unwarranted invasion of personal privacy, and thus Exemption 7(C) applied.

60. Having determined that the individuals identified in the responsive records have a

cognizable privacy interest in not having their information released, ICE FOIA then balanced the interest in safeguarding the individuals' privacy from unnecessary public scrutiny against the public's interest in shedding light on the operations and activities of ICE in the performance of its statutory duties. Exemptions 6 and 7(C) were applied to prevent disclosure of USC claimant identities and immigration status as well as the identities of ICE personnel. In each instance where Exemptions 6 and 7(C) were applied, the redaction was limited to the name of the individual and all other personally identifiable information, which if released, would not shed any further light as to the operations or activities of ICE. In some redactions, the information surrounding the redactions was released and the limited extent of the redaction is readily apparent from the context of the records; however, in other cases, more extensive redactions were necessary, as explained in paragraph 58.

61. Based upon the traditional recognition of strong privacy interests in law enforcement records, the categorical withholding of third party information identified in law enforcement records is appropriate. Moreover, the third parties identified in these records have not provided consent to the release of their personally identifying information as required by 6 C.F.R. §§ 5.3(a) & 5.21(d).

**FOIA Exemption (b)(7)(E)**

62. FOIA Exemption (b)(7)(E), 5 U.S.C. §552(b)(7)(E), protects from disclosure records compiled for law enforcement purposes, the release of which would disclose techniques and/or procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law. It also protects from disclosure techniques and procedures that are not well known to the public.

63. While not arising in the agreed-upon 300 pages for which ICE prepared a *Vaughn* index, ICE applied FOIA Exemption (b)(7)(E) in a limited number of instances to protect from disclosure law enforcement sensitive Uniform Resource Locators (“URLs”) for the OPLA case management system. This information, which points to the system that OPLA uses to store, index, and communicate information on legal cases, could be used by persons seeking improper access to ICE legal and law enforcement sensitive data to navigate the case management system and compromise the integrity of the data either by deleting or altering information. The release of this information could also reasonably be expected to allow a person to breach into sensitive legal/ law enforcement sensitive systems and potentially circumvent detection or manipulate law enforcement sensitive information, in an attempt to sabotage ICE legal proceedings. The disclosure of this information, which is not readily known by the public, would serve no public benefit and would not assist the public in understanding how the agency is executing its statutory responsibilities.

#### **VIII. SEGREGABILITY**

64. 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.”

65. A line-by-line review was conducted to identify information exempt from disclosure or for which a discretionary waiver of exemption could be applied.

66. 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.

**IX. JURAT CLAUSE**

I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge and belief. Signed this 30 day of April, 2018.

A handwritten signature in black ink, reading "Catrina Pavlik-Keenan". The signature is written in a cursive style and is positioned above a horizontal line.

Catrina Pavlik-Keenan, FOIA Officer  
Freedom of Information Act Office  
U.S. Department of Homeland Security  
U.S. Immigration and Customs Enforcement  
500 12th Street, S.W., Stop 5009  
Washington, DC 20536-5009

# **Exhibit 1**

*Stevens v. DHS-ICE*

Case No. 17 C 2853 (N.D. Ill.)

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



Page Numbers	Withholding Full/Partial	Description of Records and Redactions, and Reasons for Redactions	Exemption(s) Applied
<p>1020-1029, 1032-1049, 1051-1156, 1158-1163, 1165-1169, 1526-1565, 1566-1567, 1569-1582, 1584-1590, 1592-1624, 1626-1675</p>	<p>Partial</p>	<p><b>Redactions:</b> These pages contain emails between Immigration and Customs Enforcement (ICE) employees and/or other federal agency employees; therefore, most of these pages contain personally identifiable information (PII) of federal employees, including their names and contact information, such as phone number and/or email address. This information was withheld throughout the document set under FOIA exemptions (b)(6) and (b)(7)(C).</p> <p><b>Reason:</b> Under FOIA exemptions (b)(6) and (b)(7)(C), the disclosure of the names and contact information of ICE personnel could reasonably be expected to constitute an unwarranted invasion of personal privacy by: (1) conceivably subjecting ICE personnel to harassment and annoyance in conducting their official duties and in their private lives; (2) potentially placing them in danger as targets of law enforcement investigations may begrudge personnel for an indefinite time period and seek revenge; and (3) possibly minimizing their ability to effectively conduct future investigations. The disclosure of this PII serves no public benefit and would not assist the public in understanding how the agency is carrying out its statutory responsibilities. As a result, the privacy interest in this PII outweighs any minimal public interest that could possibly exist in the disclosure of this information.</p>	<p>Freedom of Information Act 5 U.S.C. § 552 (b)(6), (b)(7)(C)</p>
<p>1024, 1032, 1034-1035, 1038-1041, 1043-1045, 1046-1049, 1087-1090, 1094-1100, 1104-1105, 1109-1110, 1113-1114, 1116, 1121-1122, 1125-1129, 1131-1134, 1136, 1138-1139, 1149, 1156, 1160, 1163, 1526-1536, 1543-1559, 1569-1582, 1584-1590, 1592-1594, 1596, 1598-1607, 1609-1616, 1626-1642, 1650-1657, 1665-1671</p>	<p>Partial</p>	<p><b>Redactions:</b> These pages contain personally identifiable information (PII), including the names, biometric information, contact information, immigration history, and/or other identifying information, of third-party individuals. This information was withheld throughout the document set under FOIA exemptions (b)(6) and (b)(7)(C). Additionally, contextual information around the PII that could be used to identify a third party was withheld, as that information could be used in conjunction with information found online, news stories, and other forms of media and internet information to breach personal privacy.</p> <p><b>Reason:</b> Under FOIA exemptions (b)(6) and (b)(7)(C), the disclosure of the names, biometric information, contact information, immigration history, and/or other identifying information of third-party individuals could reasonably be expected to constitute an unwarranted invasion of these individuals' personal privacy interests in: (1) not being associated unwarrantedly with alleged criminal activity; (2) being free from harassment, criticism, intimidation, legal consequences, economic reprisals, embarrassment, undue public attention, physical harm, and derogatory inferences and suspicion; (3) controlling how communications about them are communicated to others;</p>	<p>Freedom of Information Act 5 U.S.C. § 552 (b)(6), (b)(7)(C)</p>

Page Numbers	Withholding Full/Partial	Description of Records and Redactions, and Reasons for Redactions	Exemption(s) Applied
		<p>and (4) not revealing their immigration or citizenship status to the public. The disclosure of this PII serves no public benefit and would not assist the public in understanding how the agency is carrying out its statutory responsibilities. Also, the privacy interest in this PII outweighs any minimal public interest that could possibly exist in the disclosure of this information. Finally, the third parties identified in the records have not consented to the disclosure of their PII.</p>	
<p>1024, 1032, 1034-1035, 1038-1041, 1043-1045, 1046-1049, 1087-1090, 1094-1100, 1104-1105, 1109-1110, 1113-1114, 1116, 1121-1122, 1125-1129, 1131-1134, 1136, 1138-1139, 1149, 1156, 1160, 1163, 1569-1575, 1584-1587, 1589, 1592-1594, 1596, 1598-1607, 1627</p>	<p>Partial</p>	<p>Redactions: These pages contain attorney work product regarding U.S. citizenship claims ("USC claims") made by persons in ICE custody. Specifically, they contain draft versions of legal memos created by ICE attorneys, which contains their legal evaluations, write-ups, and commentary on USC claims. Each USC claim memo follows a set template, which sets forth the facts of the individual case, the relevant legal standards for USC claims, the attorney's evaluation of evidence and data against the relevant USC law, a suggested conclusion on the matter of law, and a recommendation for agency action. All memos, whether put into the body of an email or attached as a Word document, begin and conclude with the markings "SENSITIVE/PRIVILEGED*" *PRE-DECISIONAL** ATTORNEY WORK PRODUCT." The draft memos and/or any proposed edits to legal language are deliberative attorney work products meant for providing legal advice and recommendations to other ICE attorneys and ICE officers and agents. This information was withheld throughout the document set under FOIA exemption (b)(5).</p> <p>Reason: The information in these pages was properly withheld under FOIA exemption (b)(5) because it is draft, pre-decisional, and deliberative as well as attorney work product and attorney-client privileged.</p> <p>First, these documents are deliberative draft documents from ICE attorneys about USC claims made by persons in ICE custody; they are subject to edits by other attorneys and/or ERO agents or officials. For example, while no pages in this sample contain edited documents (such as: Word documents with tracked changes and comments), many other pages with the productions contained edited documents, edits which, in some cases, change the legal analysis. Additionally, many of the deliberative documents are marked as draft. These documents also contain pre-decisional and deliberative information. FOIA Exemption (b)(5) was applied to protect the integrity of the deliberative or decision-making processes within the agency and by exempting from mandatory disclosure opinions, conclusions, and recommendations included in these</p>	<p>Freedom of Information Act 5 U.S.C. § 552 (b)(5)</p>

Page Numbers	Withholding Full/Partial	Description of Records and Redactions, and Reasons for Redactions	Exemption(s) Applied
		<p>legal memos. The release of this internal information would discourage the expression of candid opinions and inhibit the free and frank exchange of information and ideas between agency personnel resulting in a chilling effect on intra- and inter-agency communications.</p> <p>Second, the attorney work product privilege protects documents and other memoranda prepared by an attorney in contemplation of litigation. Here, these documents are protected from disclosure because they were prepared by attorneys in anticipation of any such litigation regarding USC Claims, either in immigration proceedings or any other proceedings. The information withheld was prepared by an agency attorney - specifically, attorney memos, notes, questions, thoughts, strategy, and legal analysis - in contemplation of litigation both in immigration and in federal court.</p> <p>Finally, the attorney-client privilege is also applicable to the portions of these records. Communications between ICE attorneys and their clients (ICE agents and officers) were made for the purpose of securing legal advice or service regarding USC claims made by persons in ICE custody. Attorney-client communications are shielded from disclosure in order to encourage a full and frank discussion between the client and his legal advisor. The attorney-client privilege recognizes that sound legal advice or advocacy depends upon a lawyer being fully informed by his client. If these communications, as covered by the attorney-client privilege, were disclosed, this could result in a chilling effect on interactions and communications between agency employees and their legal counsel.</p>	
<p>1022-1023, 1025-1029, 1033, 1036-1037, 1042, 1051-1086, 1091-1093, 1101-1103, 1105-1108, 1111-1112, 1114-1115, 1117-1121, 1123-1124, 1137, 1141-1148, 1151-1155, 1158-1159, 1161-1162, 1165-1169, 1526-1565, 1567, 1576-1582, 1588</p>	<p>Partial</p>	<p>Redactions: These pages contain communications via email between ICE attorneys and/or ICE officers and agents, specifically regarding USC claims made by persons in ICE custody and/or the USC claims memos drafted by OPLA attorneys. This information was withheld throughout the document set under FOIA exemption (b)(5).</p> <p>Reason: The information in these pages was properly withheld under FOIA exemption (b)(5) because it is deliberative, draft and pre-decisional, attorney work product, and protected attorney-client privilege.</p> <p>First, these draft documents contain pre-decisional, draft, and deliberative information. FOIA Exemption (b)(5) was applied to protect the integrity of the deliberative or decision-making processes within the agency and by exempting from mandatory</p>	<p>Freedom of Information Act 5 U.S.C. § 552 (b)(5)</p>

Page Numbers	Withholding : Full/Partial	Description of Records and Redactions, and Reasons for Redactions	Exemption(s) Applied
		<p>disclosure opinions, conclusions, and recommendations included in these legal memos and discussions. In this case, the discussions between ICE attorneys and/or ICE officers and agents about draft legal documents drafted in preparation for potential litigations were withheld. These discussions were directly tied to the USC claims, and thus the release of this internal information would discourage the expression of candid opinions and inhibit the free and frank exchange of information and ideas between agency personnel resulting in a chilling effect on intra- and inter-agency communications.</p> <p>Second, the attorney work product privilege protects documents and other memoranda prepared by an attorney in contemplation of litigation. Here, these documents are protected from disclosure because they were prepared by ICE attorneys in anticipation of any such litigation. The information withheld was prepared by an agency attorney - specifically, attorney memos, notes, questions, thoughts, strategy, and legal analysis - because the information constitutes attorney insight about the citizenship status of individuals encountered by ICE, which may be and has been subject to future litigation in immigration and federal court.</p> <p>Finally, the attorney-client privilege is also applicable to the portions of these records. Communications between ICE attorneys and their clients (ICE agents and officers) were made for the purpose of securing legal advice or service regarding USC claims made by persons in ICE custody. These communications involved issues of law and questions about evidence and/or data about a person making a USC claim. Attorney-client communications are shielded from disclosure in order to encourage a full and frank discussion between the client and his legal advisor. The attorney-client privilege recognizes that sound legal advice or advocacy depends upon a lawyer being fully informed by his client. If these communications, as covered by the attorney-client privilege, were disclosed, this could result in a chilling effect on interactions and communications between agency employees and their legal counsel, and would hamper the agency's ability to efficiently and effectively formulate its final positions on issues of public significance.</p>	

# **Exhibit 2**



**From:** Jacqueline Stevens  
**To:** ICE-FOIA@dhs.gov  
**Cc:** [REDACTED]  
**Subject:** request for correspondence associated with USC Claims DRO/ERO e-mail box  
**Date:** Monday, February 13, 2017 4:13:53 PM

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To Whom It May Concern:

I write under the Freedom of Information Act to request all correspondence on the detention or removal proceedings for people claiming or proving US citizenship since January 1, 2017. This request includes but is not limited to email received by or sent to an email address established by ICE for the purpose of assessing claims of US citizenship.

Please note that on November 19, 2009, then Asst. Sec. of ICE, John Morton wrote in part:

"If the individual's claim is credible on its face, or if the investigation results in probative evidence that the detained individual is a USC, the individual should be released from detention. \*Any significant change in circumstances should be reported to the "USC Claims DRO" e-mailbox and the "OPLA Field Legal Ops" e-mail box."\*  
[https://www.ice.gov/doclib/detention-reform/pdf/usc\\_guidance\\_nov\\_2009.pdf](https://www.ice.gov/doclib/detention-reform/pdf/usc_guidance_nov_2009.pdf)

I am requesting all correspondence as well as all attachments and referenced reports, notes, text messages, or any other information maintained in any medium associated with the reported cases. I would appreciate it if you contact the relevant personnel at CBP, ICE OGC, ERO and OPLA for this request.

The time frame for this request is January 1, 2017 to the present.

I will be using this information for my research, teaching, and scholarly as well as popular publications and therefore am requesting a waiver of all fees. For documentation of the public impact of this research, please see  
<http://buffett.northwestern.edu/programs/deportationresearch/>

Please note that my work on the detention and deportation of U.S. citizens has been published in the NY Times and reported on in the New Yorker magazine.

If you have any questions, please feel free to contact me here or at [REDACTED].

Thank you,  
Jacqueline Stevens

Professor

Political Science and Legal Studies  
Northwestern University  
Director  
Deportation Research Clinic  
Buffett Institute  
<http://buffett.northwestern.edu/programs/deportationresearch/>

office phone: [REDACTED]  
mail

[REDACTED]

[REDACTED]

<http://jacquelinestevens.org>

<http://stateswithoutnations.blogspot.com>

# **Exhibit 3**



## **U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT**

### **16001.2: Investigating the Potential U.S. Citizenship of Individuals Encountered by ICE**

**Issue Date:** November 10, 2015

**Effective Date:** November 10, 2015

**Superseded:** ICE Policy No. 16001.1: Superseding Guidance on Reporting and Investigating Claims to United States Citizenship (Nov. 19, 2009).

**Federal Enterprise Architecture Number:** 306-112-002b

1. **Purpose/Background.** This Directive establishes ICE policy and procedures for ensuring that the potential U.S. citizenship of individuals encountered by U.S. Immigration and Customs Enforcement (ICE) officers, agents, and attorneys is immediately and carefully investigated and analyzed. The Immigration and Nationality Act of 1952, as amended (INA), sets forth the parameters for U.S. citizenship by virtue of birth in the United States. Additionally, the INA and various related statutes codify numerous avenues by which an individual may derive, acquire, or otherwise obtain U.S. citizenship other than through birth in the United States. As a matter of law, ICE cannot assert its civil immigration enforcement authority to arrest and/or detain a U.S. citizen. While performing their civil immigration enforcement duties, ICE officers, agents, and attorneys may encounter individuals who are not certain of their citizenship status, who claim to be U.S. citizens, and/or for whom there are indicia warranting further examination to determine whether they may be U.S. citizens.
2. **Policy.** It is ICE policy to carefully and expeditiously investigate and analyze the potential U.S. citizenship of individuals encountered by ICE. ICE officers, agents, and attorneys should handle these matters with the utmost care and highest priority, recognizing that, while some cases may be easily resolved, many may require additional investigation and substantial legal analysis, particularly in light of the complexity of U.S. citizenship and nationality law.

ICE personnel must assess the potential U.S. citizenship of an individual encountered by ICE if the individual makes or has made a claim to U.S. citizenship, as well as when certain indicia of potential U.S. citizenship, as identified in this Directive, are present in a case even if the individual does not affirmatively make a claim to U.S. citizenship. In all situations where an individual's potential U.S. citizenship requires further investigation, Enforcement and Removal Operations (ERO) and Homeland Security Investigations (HSI) personnel must consult with the Office of the Principal Legal Advisor's (OPLA) local Office of the Chief Counsel (OCC), as prescribed in this Directive.

3. **Definitions.** The following definitions apply for purposes of this Directive only.

3.1. **Indicia of Potential U.S. Citizenship.** Circumstances that tend to indicate that an individual may be a U.S. citizen. Indicia are not conclusive evidence that the individual is a U.S. citizen but factors that trigger the need for further investigation. With respect to individuals encountered by ICE, the existence of any of the following factors should lead to further investigation of the individual's U.S. citizenship:

- 1) [REDACTED]
- 2) [REDACTED]
- 3) [REDACTED]
- 4) [REDACTED]
- 5) [REDACTED]
- 6) [REDACTED]
- 7) [REDACTED]
- 8) [REDACTED]
- 9) [REDACTED]
- 10) [REDACTED]

**3.2 Individual Encountered by ICE.** An individual who is:

- 1) Arrested and taken into ICE custody pursuant to the agency's civil immigration authorities, including those released from such custody pending a decision on removal or execution of a removal order;
- 2) Subject to, or may become subject to, a request made by ICE that another law enforcement agency continue to hold the individual for up to 48 hours following the completion of his or her criminal custody, i.e., an "immigration detainer;"<sup>1</sup> and/or
- 3) In proceedings before the Executive Office for Immigration Review (EOIR) or administrative removal proceedings before ICE, including but not limited to pursuant to sections 217, 235, 238(b), or 241(a)(5) of the INA.

**3.2. Probative Evidence of U.S. Citizenship.** A unique policy standard adopted by ICE meaning that the evidence before the agency tends to show that the individual may, in fact, be a U.S. citizen. U.S. citizenship need not be shown by a preponderance of the evidence for the agency to find that there is some probative evidence of U.S. citizenship.

**4. Responsibilities.**

- 4.1. **ERO Officers, HSI Agents, and OCC Attorneys** have responsibilities under Section 5.1 of this Directive.
- 4.2. **ERO Field Office Directors (FODs), HSI Special Agents in Charge (SACs), and OPLA Chief Counsels** are responsible for providing appropriate supervisory oversight to ensure officers, agents and attorneys in their respective offices comply with the policy (see section 2) and procedures (see section 5) prescribed in this Directive.
- 4.3. **FODs** are responsible for ensuring that all state and local officers with delegated immigration authority pursuant to INA § 287(g) within their area of responsibility have the training and oversight necessary to understand and adhere to this Directive, and thoroughly investigate all U.S. citizenship claims made by individuals encountered by 287(g)-designated officers.
- 4.4. **Headquarters (HQ) OPLA, ERO, and HSI** have responsibilities under section 5.1(3). (Headquarters Review).
- 4.5. **The Executive Associate Directors for ERO and HSI, and the Principal Legal Advisor**, or their designees, are responsible for providing appropriate supervisory oversight to ensure officers, agents and attorneys in their respective offices comply with the policy (see section 2) and procedures (see section 5) of this Directive.

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<sup>1</sup> This includes individuals subject to the former Form I-247 (Immigration Detainer – Notice of Action), Form I-247D (Immigration Detainer – Request for Voluntary Action), Form I-247X (Request for Voluntary Transfer) when this form requests detention rather than simply notification, and/or any successor form serving the same or substantially similar process.

5. **Procedures/Requirements.** An ICE officer, agent or attorney must assess the potential U.S. citizenship of an individual encountered by ICE if the individual makes or has made a claim to U.S. citizenship or, even in the absence of such a claim, when indicia of potential U.S. citizenship are present in a case. The ICE Directorate that first encounters the individual is generally responsible for identifying indicia of potential U.S. citizenship.

5.1. **Procedures for Investigating and Assessing Potential U.S. Citizenship.**

1) **Factual Examination.** The assessment of potential U.S. citizenship under this Directive must include a factual examination and a legal analysis and shall include a check of all available DHS data systems and any other reasonable means available to the officer. In general, the factual examination should be conducted by the ICE operational Directorate (ERO or HSI) that first encountered the individual. In cases where the OCC first encounters the individual, ERO should generally conduct the factual examination in coordination with the OCC.

a) [REDACTED]

b) [REDACTED]

c) [REDACTED]

d) [REDACTED]

e) [REDACTED]

f) [REDACTED]

g) [REDACTED]

- 2) **Preparing and Submitting Memorandum.** After the factual examination is completed, ERO or HSI (whichever conducted the factual examination) and the relevant OCC must jointly prepare and submit a memorandum for HQ review, using as a guide the attached HQ-approved template, which assesses the claim and recommends a course of action.
- a) Absent extraordinary circumstances, this memorandum must be submitted no more than one business day from the time ERO, HSI, or OPLA first becomes aware of a claim or indicia of potential U.S. citizenship if the individual is subject to an immigration detainer or is detained in ICE custody. In all other cases, the memorandum must be submitted as promptly as practicable.
  - b) For purposes of such memoranda, the legal analysis must indicate whether, in the OCC's view:
    - 1) The evidence in the case strongly suggests that the individual is a U.S. citizen or his or her claim to U.S. citizenship is credible on its face;
    - 2) Some probative evidence indicates that the individual may be a U.S. citizen but the evidence is inconclusive; or
    - 3) No probative evidence indicates that the individual is a U.S. citizen.
  - c) The memorandum must be clearly annotated as containing pre-decisional, privileged attorney-client communication, attorney work product, and sensitive personally identifiable information.
  - d) Upon completion, the memorandum must be elevated via e-mail to the HQ OPLA Immigration Law and Practice Division at [REDACTED] and either the HQ ERO Assistant Director for Field Operations at [REDACTED] or to the HQ HSI Domestic Operations Manager assigned responsibility for the relevant SAC office, as appropriate.
  - e) Any significant change in circumstances in a case elevated to HQ should be reported in the same manner as outlined in the preceding subparagraph, as well as

to any previously assigned HQ points of contact, as an update to the original memorandum.

**3) Headquarters (HQ) Review.**

- a) HQ OPLA and either HQ ERO or HQ HSI will respond to the field with a decision on the recommendation within one business day of receipt of the memorandum by detained claimants and individuals subject to an immigration detainer. In all other cases a decision will be made as promptly as practicable.

**4) Detainer/Custody Determination.**

- a) In those cases involving individuals who fall within section 5.1(2)(b)(1) or 5.1(2)(b)(2) of this Directive (cases involving strong/facially credible or probative evidence of U.S. citizenship):
  - 1) ICE should not lodge an immigration detainer against or arrest the individual.
  - 2) If ICE has already lodged an immigration detainer against the individual, it should be immediately cancelled.
  - 3) If the individual is already in ICE custody, he or she should be immediately released.
  - 4) If the individual has been released from ICE custody on conditions, those conditions should be re-evaluated in consultation with OPLA.
- b) Where the field's initial recommendation to HQ is that an individual falls within section 5.1(2)(b)(1) or 5.1(2)(b)(2) of this Directive, it is not necessary to await HQ concurrence before cancelling an immigration detainer, releasing the individual from custody, or terminating conditions of release.
- c) On a case-by-case basis and in consultation with OPLA, an individual determined by ICE to fall within section 5.1(2)(b)(1) or 5.1(2)(b)(2) of this Directive may be placed in removal proceedings on EOIR's non-detained docket to more conclusively resolve his or her immigration and citizenship status if reasons remain to believe that he or she is an alien present in the United States in violation of law.
- d) Where no probative evidence of U.S. citizenship exists (section 5.1(2)(b)(3) of this Directive) and probable cause exists that the individual is a removable alien, it is permissible to lodge an immigration detainer in the case, arrest the individual, and/or process the individual for removal.
- e) In any case in which there is uncertainty about whether the evidence is probative of U.S. citizenship, ICE should not detain, arrest, or lodge an immigration

detainer against the individual and should cancel any immigration detainer already lodged by ICE.

- f) Where ICE determines that it will not proceed further with an enforcement action due to the U.S. citizenship claim, the individual should be informed that he or she may attempt to obtain proof of U.S. citizenship by submitting a passport application to the Department of State (<http://travel.state.gov/passport>) or filing an Application for Certificate of Citizenship, Form N-600, with U.S. Citizenship and Immigration Services ([www.uscis.gov/n-600](http://www.uscis.gov/n-600)).

**5) Case Management.**

- a) ICE officers and agents will make a notation in the appropriate database(s) (e.g., ENFORCE Alien Booking Module and/or Alien Removal Module), and place a copy of the memorandum and resulting decision, properly marked as containing attorney work product, attorney-client communication, and sensitive personally identifiable information in the individual's A-file, if one already exists.
- b) ICE attorneys will save the memorandum in the PLANet case management system and document the resulting HQ decision and other information about the claim by completing the "USC Claims" section in PLANet.

**6. Recordkeeping.** Records generated pursuant to this directive are maintained in the Alien File, Index, and National File Tracking System of Records, 76 Fed. Reg. 34233 (June 13, 2011), the General Counsel Electronic Management System (GEMS), 74 Fed. Reg. 41914 (August 19, 2009), the Immigration and Enforcement Operational Records (ENFORCE), 75 Fed. Reg. 23274 (May 3, 2010), and any other applicable system. The memorandum and resulting HQ decision will be also be saved in PLANet.

**7. Authorities/References.**

- 7.1. Immigration and Nationality Act (INA) § 101(b) and (c).
- 7.2. INA §§ 301 - 303.
- 7.3. INA §§ 306 - 309.
- 7.4. INA § 316.
- 7.5. INA §§ 319 - 320.
- 7.6. INA § 322.
- 7.7. INA §§ 328 - 329.

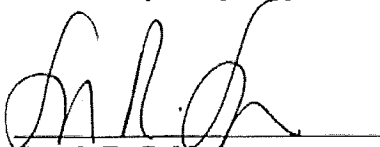


7.8. Section 303 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, Pub. L. No. 94-241, 90 Stat. 263, 266 (set out as a note to 48 U.S.C. § 1801).

8. **Attachments.**

8.1. Sample – USC Claims Memorandum Template.<sup>2</sup>

9. **No Private Right.** This document provides only internal ICE policy guidance, which may be modified, rescinded, or superseded at any time without notice. It is not intended to, does not, and may not be relied upon to create or diminish any rights, substantive or procedural, enforceable at law or equity by any party in any criminal, civil, or administrative matter. Likewise, no limitations are placed by this guidance on the otherwise lawful enforcement or litigative prerogatives of the Department of Homeland Security.



Sarah R. Saldaña

Director

U.S. Immigration and Customs Enforcement

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<sup>2</sup> This template may be periodically updated by OPLA, as new legal and policy developments warrant. In such circumstances, OPLA will work with the Office of Policy to have the updated template posted to the ICE Policy Manual online environment.